



***MIXED USE DEVELOPMENT OF  
LOT 6-8 DP23897, LOT A DP 397985, LOT  
4A&4B DP 398716, LOT 6, 11&12 SECTION  
4A DP 758047, LOTS 8&9 DP 251206, LOT  
10 DP 244352, LOT 1 DP 499510, LOT 1  
DP781715***

***THE BALLINA GATEWAY PROJECT  
256 – 274 RIVER STREET, BALLINA***

***Proposed by SUNDOWNER  
DEVELOPMENTS (NSW) PTY LTD***

Director-General's Environmental Assessment  
Report  
Section 75I of the  
Environmental Planning and Assessment Act 1979

May 2007



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# 1 EXECUTIVE SUMMARY

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Sundowner Developments (NSW) Pty Ltd (the Proponent) has lodged a major project application for a staged mixed use development on the corner of River and Kerr Streets in Ballina ("the proposal"). The proposal involves the demolition of existing buildings, site remediation and the construction of a residential, tourist and retail development at the western 'gateway' to the Ballina Town Centre. The proposal comprises an 84 room hotel, 85 residential apartments distributed over 4 buildings, an amenities building with a pool and gym and approximately 1,200m<sup>2</sup> of ground floor retail space including a café on the Richmond River waterfront, all sited upon a two storey subterranean basement car park.

The project responds to the *Far North Coast Regional Strategy* in which Ballina is planned to become a major regional centre with employment, retail and tourism as important functions of the centre. The estimated project cost is \$70 million, employing up to 50 people during construction and up to 20 full time staff once operational.

The Department has assessed the Environmental Assessment, Statement of Commitments, Response to Submissions, the Preferred Project Report and the 78 submissions (6 from agencies and 72 from the public) received from the exhibition of the proposal. Key issues considered in the Department's assessment included:

- Desired future character
- Built Form – building height, bulk, scale and building envelopes
- Overshadowing
- Dedication of foreshore open space
- Section 94 Contributions
- Traffic and Access
- Visual linkages
- Acoustic amenity
- Acid Sulfate Soils
- Groundwater / dewatering
- Contamination

The majority of issues arising from the public exhibition and assessment were resolved through numerous meetings with the proponent and the preferred project. However, some issues have subsequently been resolved through recommended conditions of approval.

The Department has assessed the merits of the project and is satisfied that the impacts of the proposed development have been addressed via the Proponent's Preferred Project Report, Statement of Commitments and the Department's recommended conditions of approval, and can be suitably mitigated and/or managed to ensure a satisfactory level of environmental performance. All statutory requirements have been met.

Despite the development exceeding Council's height controls by one storey (3 metres), the Department is satisfied that the site is suitable for the proposed development and that the project will provide the following benefits to the Ballina community and economy:

- 14 metre setback to the Richmond River foreshore, creating 14 metres of public foreshore open space
- Dedication of 1,444sqm of public foreshore open space to Ballina Shire Council;
- 4 metre wide pedestrian boardwalk along the western and southern site boundaries;
- Active frontages to River Street;
- Activation of the foreshore through use as a café;
- Pedestrian links from River Street and Kerr Street to the Richmond River;
- New retail opportunities along River Street to boost the local economy;
- Medium density accommodation close to the city centre with variation in building heights;
- Additional car parking within the town centre; and,
- Reinforcement of the status of the Ballina Central Business District as the retail, commercial and administrative centre of the Shire of Ballina, in accordance with the objectives of the *Ballina LEP* and the *Far North Coast Regional Strategy*.

The Department recommends that the project be **approved**, subject to conditions of approval.

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## 2 BACKGROUND

### 2.1 THE SITE

#### 2.1.1 Site Location

The Ballina Gateway site is located at the western end of Ballina's commercial precinct on the corner of River and Kerr Streets adjacent to the Richmond River. The site is bound by River Street to the north, Kerr Street to the west, the RSL and Ballina Memorial Park to the east and Richmond River to the south. **Figure 1** shows the site location.



Figure 1: Site Location (Crone Partners, 2006)

The adjacent properties along River Street are a mix of commercial and retail uses (refer **Figure 2**) while the area to the west of the development is characterised by low density residential development (refer **Figure 3**). The area to the east of the site along the Richmond River frontage is dominated by the Ballina RSL Club (refer **Figure 4**) and car park and a range of multi-storey buildings (refer **Figure 5**).



Figure 2: SE along River Street (Cronepartners, 2007)



Figure 3: Low density residential houses to the west



Figure 4: Ballina RSL Club



Figure 5: Multi-storey buildings to the east on river

The majority of the site is in the ownership of the proponent, Sundowner Developments Pty Ltd. Owners consent has been obtained from all other registered owners of lots on the site, including the Department of Lands for works over the Richmond River. The description of the lots that make up the site and their tenure is outlined in **Table 1**.

**Table 1: Site Tenure**

Lot & DP	Owner
Lot 6 & 7 DP 23897	Sundowner Developments Pty Ltd
Lot A DP 397985	
Lots 4A & 4B DP398716,	
Lots 6, 11 & 12 Section 4A DP 758047	
Lots 8 & 9 DP 251206	
Lot 1 DP 781715	Glen David Mills
Lot 10 DP 244352 and Lot 1 DP 499510)	
Lot 8 DP 23897	Jeffery Sheather and Marilyn Lewin
Crown land below Mean High Water Mark	Department of Lands

### 2.1.2 Existing Site Features

The site is generally rectangular in shape, with the exception of two existing slipways that cut into the site from the river / southern boundary (refer **Figure 6** and **Figure 7**). The northern boundary provides a 114m frontage to River Street, while the south and western boundaries present a 165m frontage to the Richmond River. The site area is 11,311m<sup>2</sup>.

The topography of the site is generally flat and is prone to flooding from the Richmond River. The 1 in 100 year flood level at the site is estimated at RL1.8m AHD. Ground levels across the site generally range from RL 2.05 m AHD to

RL 1.45m AHD. The finger of land between the two slipways is the lowest point on the site (refer **Figure 8**). The Kerr Street footpath is generally at RL 1.8m AHD and River Street footpath is at RL 1.5m AHD to 2.03m AHD.



Figure 6: Existing western slipway cutting into site



Figure 7: Existing eastern slipway cutting into site



Figure 8: Central finger between the two slipways



Figure 9: Existing Norfolk Pines (Place Environmental, 2006)

The existing site contains the single storey Blue Room Motel (26 rooms), restaurant and function venue, retail shops and two residential dwellings. The site is characterised by seeded grass cover and three Norfolk pines (refer **Figure 9**). **Figure 10** shows the existing development layout on the subject site. A site visit was conducted by Department of Planning staff on 25 October 2006.



Figure 10: Existing Site Layout (Place Environmental, 2006)

### 2.1.3 Site Context

#### Town Centre

The town centre is predominantly low rise mainly consisting of 1 and 2 storey buildings, although a number of taller buildings exist along the river front. The precinct containing the Ballina Gateway site is currently in a state of transition with a number of major developments currently under construction which will alter the overall built form. Of particular note is the 6 storey Ramada Hotel that was approved by Minister Knowles in November 2003. This development complies with the 16 metre height limit as a result of minimised floor to ceiling heights.

Despite the range of architectural treatments, all buildings within the Ballina Town Centre comply with the 16 metre height limit specified in the *Ballina Shire LEP 1987* and the recently adopted *Ballina Combined Town Centre DCP (2006)*.

Buildings on larger blocks and those sited across several lots tend to be monolithic in form. Corners are generally not well defined by changes in building height, activities, building language or design. Those buildings over 1 storey tend to lack variation and articulation of form. Building form at the major entrance to the Town Centre (i.e. Kerr/ River Street intersection) is low rise and does not address the street or the 'gateway' location, which means the entrance is not immediately apparent from the Highway (*Ballina Town Centre Combined DCP, 2006*).

#### Surrounding Riverside Development

Further to the east along the river is the recently constructed Riverside Ramada on Cherry Street, approved by Ballina Shire Council in October 2000. A 4 to 5 storey rendered residential development 'Dockside Apartments' is located at the corner of Cherry and Fawcett Streets. This development, approved by Council on 19 December 1997, is 5 storeys with commercial development at ground level and serviced apartments above.

Pelican Moorings, a residential flat building, approved by Council in July 1994, currently dominates the built form in the east of the Ballina Town Centre. Pelican Moorings is 7 storeys in total above ground, being one level of car parking and 5 full and 1 part residential levels. Rooftop structures include housing for the elevator machinery and lift over-run area, weather protection for the stairwells and rooftop garden/recreational facilities including a glass walled pergola. The consent required that the rooftop structures be so constructed as to not have a ceiling.

Notwithstanding, Pelican Moorings does not exceed the 16metre LEP height control (refer **Figure 11**). Other development in the site vicinity is generally 1 to 2 storeys of mixed construction.

Existing buildings are low in scale and quality and do not relate to their position adjacent to the river as they do not provide active or usable public open space along the Richmond River. New and planned developments however have been designed to optimise the site location and aspect particularly having regard to the river frontage. Council is also undertaking significant public domain improvements with particular emphasis being paid to linking the river frontage to the CBD.

For redevelopment along the river frontage Council has required dedication of a strip of land generally 2.7 metres in width for the purposes of a cycle link. It is Council's intent to create a continuous link along the foreshore. However, in general, developments undertaken to date, while providing for the dedication of this land, have not created an appropriate relationship between the developments themselves and the adjacent link. For example the Pelican Moorings development has an approximately 2.5m high car park wall located directly on the property boundary adjacent to the 2.7m wide cycleway. This does not create an attractive inviting space for use by the public.





- The *Design Guidelines* depicted the minimum extent and location of public domain and for the building envelopes, the maximum heights and location for those heights.
- On 1 June 2006, the Department met with the proponent to discuss the latest amended proposal in response to the DGRs prior to lodgement of the Environmental Assessment (EA).
- On 14 June 2006, the Department advised the proponent that the EA should address the following concerns: built form, design issues of the hotel, access to the foreshore, vehicular access, State Environmental Planning Policy 65 - *Design Quality of Residential Flat Development* (SEPP65) and landscaping.
- On 28 August 2006, the EA was lodged. The amended application proposed 7 buildings on the site, with a maximum of 7 storeys (22m) on 2 buildings in exchange for building setbacks of 20m (14m for public open space and a further 6m for the residential component) and reduced height to a single storey building between the two slipways for use as a café (refer **Figure 14**). The Floor Space Ratio for the site was 1.84 : 1.
- The EA was placed on public exhibition for a 37 day period until 30 October 2006.
- During the public exhibition, the Department received 70 objections to the development. 47 submissions objected to an increase in the 16m height control in this location.
- Ballina Shire Council objected to non-compliance with Council's 16m LEP height limit and building envelope controls within the new *Ballina Shire Combined Development Control Plan (2006)*.
- On 27 October 2006, the Department met with the proponent to discuss the proposal, in particular the issue of the height of buildings on the site.
- Following an assessment of the EA and consideration of public submissions, the Department had concerns regarding the height, bulk and scale of the proposed development.
- On 5 and 11 December 2006, the Department met with the proponent to discuss their response to the Department's comments. The proponent presented a preferred option that incorporated a 1 x 7 storey building in the centre of the site, 3 x 5 storey buildings (the "gateway" building and 2 on the waterfront), 2 x 4 storey buildings (on River Street and the eastern boundary) and 1 x 1 storey building on the waterfront.
- On 22 December 2006 the proponent lodged their response to submissions. Their response was forwarded to relevant agencies for comment.
- On 12 February 2007, following ongoing discussions with the Department, the proponent submitted a Preferred Project Report that included a number of modifications to address issues raised in submissions (refer **Figure 15**). The significant modifications relate to the following:
  - a reduction in height of the 7 storey corner building to 5 storeys;
  - a reduction in height of the 7 storey central building to 6 storeys with the upper level set back to create a 6 metre wide terrace;
  - the upper level of the two 5 storey waterfront buildings are setback to create a 7metre wide terrace;
  - an increase in the height of the retail and amenity building to 4 storeys;
  - an increase in height of the 3 storey retail/residential building on River Street to 4 storeys, with a 4m setback on the upper level; and,
  - 4 metre wide boardwalk along the entire foreshore promenade length.



Figure 12: Preliminary Project Application (prior to DGRs) – 5 x 5 storey buildings, 3m setback to river (Crone Partners, 2005)

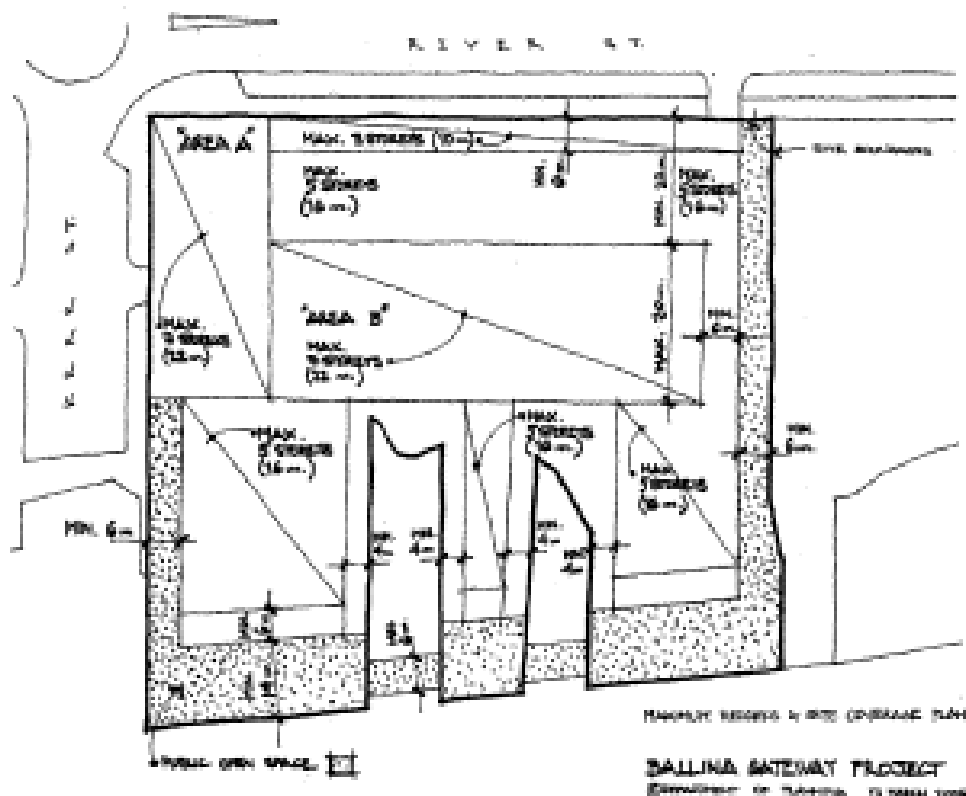


Figure 13: Department of Planning Maximum Heights and Site Coverage Plan (March 2006)



Figure 14: Revised Project Application (as exhibited) submitted 28 August 2006 – 2 x 7 storeys, 2 x 5 storeys, 1 x 3 storeys, 1 x 2 storeys, 1 x 1 storey buildings, 20m setback to river (Crone Partners, 2006)



Figure 15: Preferred Project submitted 12 February 2007 – 1 x 6 storeys, 3 x 5 storeys, 2 x 4 storeys, 1 x 1 storey buildings, 20m setback to river and 4 metre wide boardwalk (note: red numbers denote number of storeys) (Crone Partners, 2006)

### 3.2 PROJECT CHRONOLOGY

- On 2 September 2005 the proponent lodged a request for a clause 6 opinion by the Minister.
- On 5 October 2005 the Minister formed the opinion that the proposal is a Project and that Part 3A of the Act applies.
- On 14 November 2005 the proponent lodged a Preliminary Assessment with the Department and requested DGRs.
- On 18 February 2006 the DGRs were issued to the proponent.
- On 28 August 2006 the Environmental Assessment (EA) was lodged with the Department.
- On 14 September 2006 the EA was deemed to be adequate.
- On 22 September 2006 the EA was placed on public exhibition for a period of 30 days.
- On 15 November 2006 a summary of public and agency submissions was provided to the proponent.
- On 5 December 2006 a summary of issues raised by the Department was provided to the proponent.
- On 12 February 2007 a Preferred Project Report was submitted to the Department.

## 3 PROPOSED DEVELOPMENT

### 3.1 PROJECT DESCRIPTION

#### 3.1.1 Preferred Project Report

The proponent proposes a staged mixed use development comprising an 84 room tourist hotel, 85 apartments distributed over 4 residential buildings, an amenities building with a pool and gym and approximately 1,201m<sup>2</sup> of ground floor retail space including a destination café building on the waterfront. The development is sited on an underground 2 storey basement car park at the corner of Kerr and River Streets, Ballina (refer **Figure 16**).



Figure 16: Preferred Project Report (Crone Partners, 2006)

The proposed development as presented in the Preferred Project Report comprises the following;

- A 5 storey 84 room hotel (Building A) on the corner of River and Kerr Streets, with a 43 metre frontage to Kerr Street.
- Two 4/5 storey waterfront apartments (Buildings B & F) situated on the two external 'fingers' of the site with the upper level setback creating a 7 metre wide terrace on the southern side of the buildings.
- River Street Building (Building C) comprises retail at ground level and 3 levels of dual key serviced apartments with the top floor set back by 4 metres.

- Central Apartment Building (Building D) is a 6 storey building, 70 metres in length, comprising 2 & 3 bedroom double aspect apartments, arranged with one core between two apartments. The upper level of this building is also setback by 3 metres creating a 6 metre wide terrace at the upper level.
- Pool / Gym (Building E) has retail at ground level, amenities at the Level 1, manager apartment on Level 2 with 3 dual key serviced apartments on Level 3. This building connects with Buildings C and D at their eastern ends resulting in framed entry from River Street to the central courtyard and a 2 storey undercroft below the eastern apartment of Building D. It is proposed that the pool will be enclosed with louvred walls and roof allowing the space to be controlled to suit the weather.
- The waterfront café building (Building G) occupies the middle finger of the site between the two slipways. It sits in front of the adjacent waterfront apartment buildings and is visible from the public foreshore.

**Figure 17** illustrates a comparison of the exhibited proposal with the preferred project report for Buildings B and F.

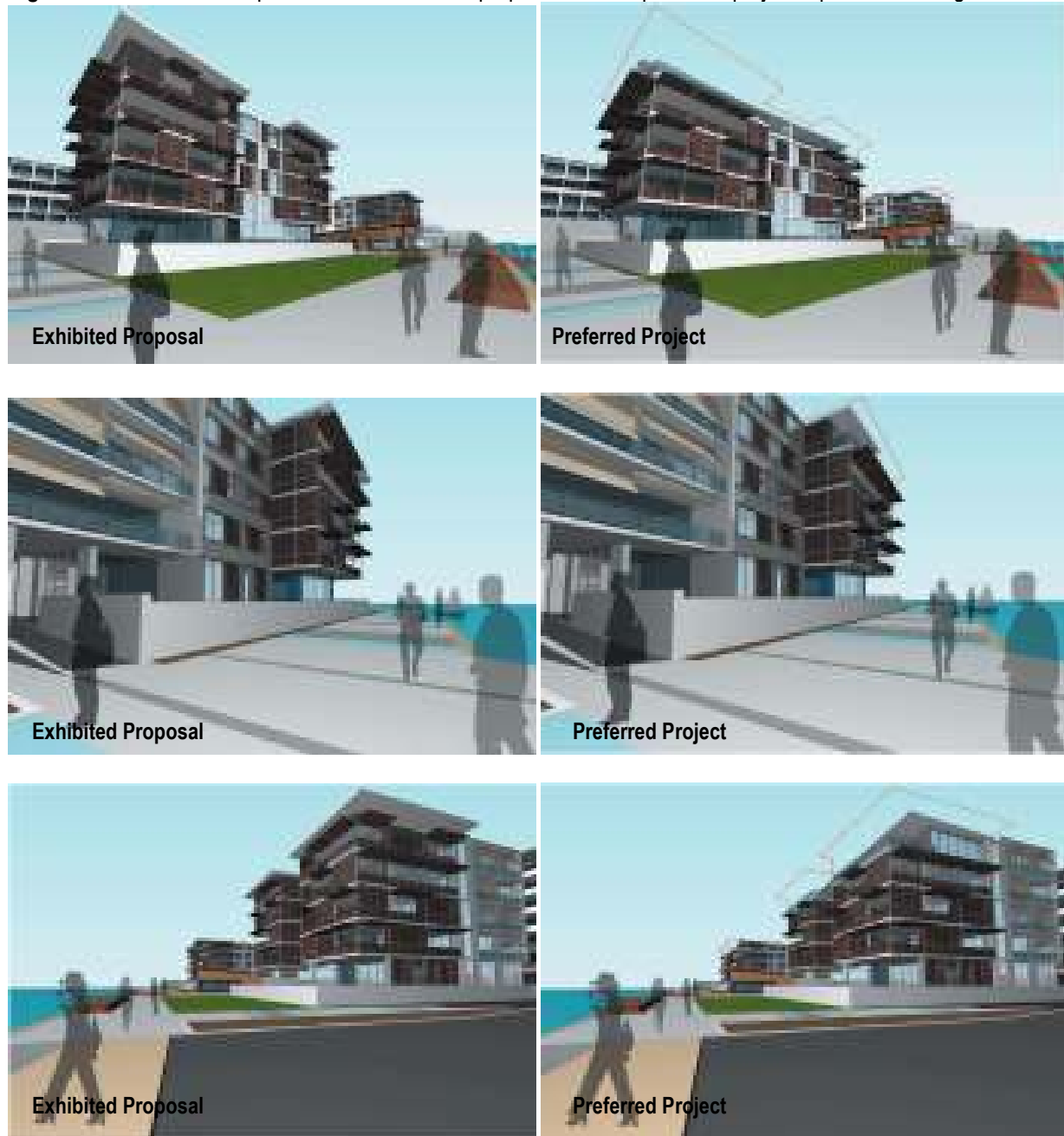


Figure 17: Exhibited Proposal versus Preferred Project Report (Crone Partners, 2007)

Further negotiations with the proponent resulted in the eastern and western corners of waterfront residential Building F being set back by an additional 2 metres. While a condition of approval modifies Building B to setback the south-

western corner of this building by an additional 2 metres such that this building presents as a 4 storey building on the south-western corner.

**Table 2** shows a summary of the key development information of the preliminary project application (prior to issue of the DGRs), project application as exhibited, and the preferred project report, for comparison. **Table 3** shows a breakdown of the Gross Floor Area (GFA) for the Preferred Project Report.

**Table 2: Summary of Key Development Information**

Statistic	Preliminary Application (prior to DGRs)		Project Application (exhibited)	Preferred Project	Amended by Condition	Relevant Control	Compliance
Site area	11,311 m <sup>2</sup>						
Gross Floor Area	27,924 m <sup>2</sup>		21,794 m <sup>2</sup>	20,001 m <sup>2</sup>	19,966 m <sup>2</sup>	NA	NA
Floor Space Ratio	2.47 : 1		1.93 : 1	1.77 : 1	1.76 : 1	NA	NA
Deep Soil Zone	-		3,571 m <sup>2</sup> / 31%	3,571 m <sup>2</sup> / 31%		1,696 m <sup>2</sup> / 15%	Yes
No. of Apartments	175		84	85		NA	NA
No. of Guestrooms	-		90	84		NA	NA
Public Open Space	-		5,112 m <sup>2</sup>	5,370 m <sup>2</sup>		NA	NA
Car Parking	309 spaces		275 spaces	265 spaces		DCP	Yes
Maximum Building Height	Bld A	16m	22m	16m		16m – Ballina LEP 16m - Ballina Combined DCP	Yes
	Bld B	16m	16.3m	16m			Yes
	Bld C	16m	10.3m	13.3m			Yes
	Bld D	16m	22m	19.0m			No *
	Bld E	16m	10.3m	13.3m			Yes
	Bld F	16m	16.3m	16m			Yes
	Bld G	16m	4.3m	4.3m			Yes
No. of Storeys	Bld A	5	7 storeys	5 storeys		5 storeys – Ballina Combined DCP	Yes
	Bld B	5	5 storeys	5 storeys	4/5 storeys		Yes
	Bld C	5	3 storeys	4 storeys			Yes
	Bld D	5	7 storeys	6 storeys			No *
	Bld E	5	2 storeys	4 storeys			Yes
	Bld F	NA	5 storeys	4/5 storeys			Yes
	Bld G	NA	1 storey	1 storey			Yes

\* Refer Section 6.2 of this report for further justification.

**Table 3: Summary of GFA for Preferred Project (as amended by conditions)**

Land Use	Preferred Project Report GFA
Residential	14,389 m <sup>2</sup>
Commercial	3,892 m <sup>2</sup>
Retail	1,204 m <sup>2</sup>
Amenities	481 m <sup>2</sup>
TOTAL	19,966 m <sup>2</sup>

### 3.1.2 External Finishes and Materials

The buildings are of framed reinforced concrete with predominant areas of glazing with timber or metal sun shading devices which provide façades that change according to the occupiers and the weather conditions. The ground floor



retail components consist predominantly of glazed shopfronts. Stone clad columns break up the expanse of glazing. The residential entrance lobbies are also glazed and protected by 3.4 metre wide cantilevered metal awnings. The roofs are a combination of raking roofs clad in pre-finished steel interspersed with flat concrete roofs. Parapet lines or cantilevered sun screening elements provide a termination to the top of the buildings. Roof top plant rooms are set back from the principle facades of the buildings and have been integrated into the building.

### 3.1.3 Traffic and Access

The development is consolidating 6 existing multiple vehicular access points to 2 locations. One access point is located on the eastern boundary of the development (fronting to River Street) and one on the western boundary (to Kerr Street). A condition of approval requires the proponent to construct a central median strip along River Street between Kerr and Grant Streets to prevent right hand turns in and out of the development onto River Street. The basement car park provides for 265 car parking spaces and a condition of approval requires the proponent to provide a vehicular turntable in the basement for heavy rigid vehicles and two service bays for other service delivery vehicles.

### 3.1.4 Staging of Development

The development is proposed to be constructed and occupied in 3 stages with the demolition of existing buildings prior to the commencement of each stage of construction. The lots on the eastern side of the site will be developed first, comprising portions of Buildings E, F & G. The staging of the development is outlined below.

#### Stage 1

Stage 1 includes the following works:

- Demolition of existing residential and commercial buildings
- Construction of basement car park Level 1
- Construction of 4 storey retail and amenity Building E
- Construction of 4/5 storey waterfront residential Building F
- Construction of single storey waterfront café
- 14m wide public open space created in front of Building G and F
- Construction of pedestrian bridges across the eastern slipway

A condition of approval amends the staging of the development by requiring a 14 metre wide foreshore open space corridor along the southern site boundary and a 5.57m corridor along the western site boundary to be dedicated to Council prior to the issue of an Occupation Certificate for Stage 1 and Stage 2, respectively. A total area of approximately 1,444 sqm.

The existing Blue Room Hotel and restaurant in the north western corner of the site will remain operational during Stage 1 construction as they relate to separate owners and commercial interests. The provision of car parking for Stage 1 is met by the construction of 1 level of basement car parking. All of the common service facilities such as the substation are located within the Stage 1 development.

#### Stage 2

Stage 2 includes the following works:

- Demolition of existing motel buildings and all other remaining structures on site
- Construction of basement car park Level 2
- Construction of 5 storey hotel Building A
- Construction of 4/5 storey waterfront residential Building B
- 14m wide public open space created in front of Building B
- Construction of pedestrian bridges across the western slipway
- Construction of boardwalk along western and southern site boundary (off-site works)

#### Stage 3

Stage 3 includes the following works:

- Construction of the central 6 storey residential Building D
- Construction of the 4 storey retail / residential building on River Street



A condition of approval requires the consolidation of lots to be registered with the Land Titles Office prior to issue of an Occupation Certificate for Stage 1 of the development. The following figures (refer **Figures 18 – 20**) illustrate the 3 stages of the project. A condition of approval amends the staging such that the following works are undertaken prior to the issue of an Occupation Certificate for Stage 1:

- Dedication of a 14 metre wide public open space corridor created in front of Buildings B, G and F;
- Construction of pedestrian bridges across the western slipway.

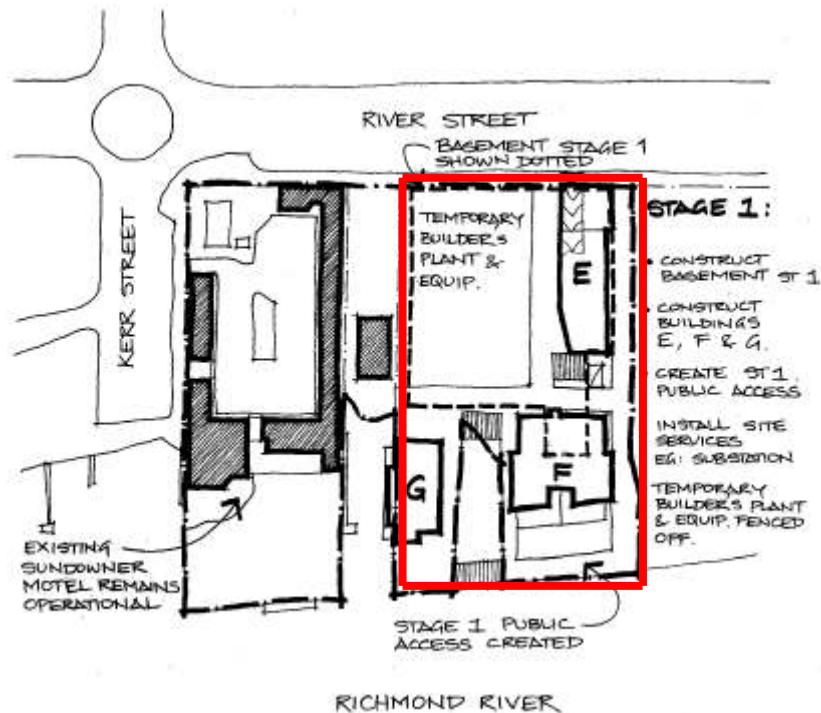


Figure 18: Stage 1 of project

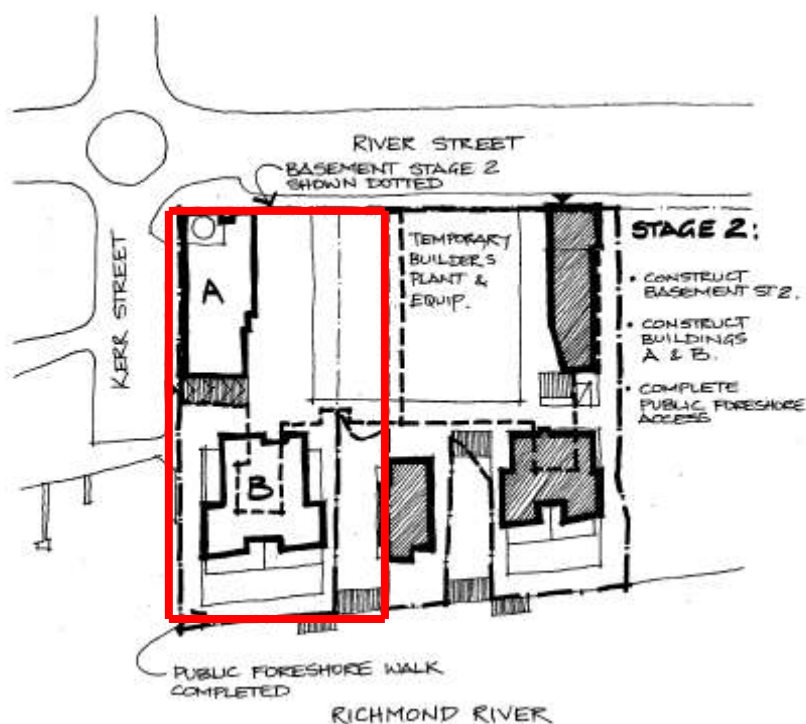


Figure 19: Stage 2 of project

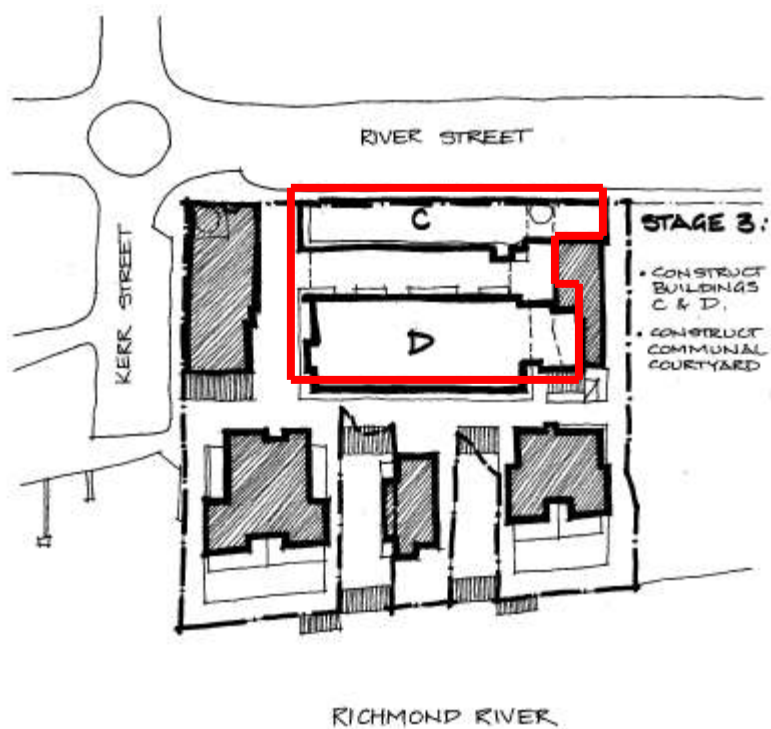


Figure 20: Stage 3 of project

## 4 STATUTORY CONTEXT

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### 4.1 MAJOR PROJECT DECLARATION

On 5 October 2005 the Minister declared the project to be a Major Project under *State Environmental Planning Policy (Major Projects) 2005* (MP SEPP) as the proposed project achieves the criteria in the MP SEPP under Group 5, as:

1. The CIV for the project will exceed \$50million; and
2. The site is prominent and is considered a "gateway" site to Ballina from both the north and south and as such the proposed project and has the potential to stimulate economic development in that part of Ballina CBD.

The proposed project also achieves the criteria in Schedule 2, 1(1)(f) of the MP SEPP as a recreational or tourist facility outside the metropolitan coastal zone that provides accommodation for any number or persons wholly or partly in a sensitive coastal location.

### 4.2 PERMISSIBILITY

Under the Ballina LEP 1987, the site is zoned 3 – Business Zone, permitting commercial, retail, restaurants, tourist facilities and residential buildings with consent.

The Proposal is considered to be consistent with the objectives of the Business Zone and is therefore a permissible use subject to the Minister's approval.

### 4.3 MINISTER'S APPROVAL POWER

The Department exhibited the EA in accordance with section 75H (3) of the *Environmental Planning and Assessment Act, 1979*, as described in **Section 6** below. The project is permissible and meets the requirements of the Major Projects SEPP. Therefore, the Department has met its legal obligations and the Minister has the power to determine this project.

The Director General is to provide a report on the project to the Minister for the purposes of deciding whether or not to grant approval to a project pursuant to Section 75O of the Act. Section 75I(2) sets out the scope of the Director General's report to the Minister. Each of the criteria set out therein have been addressed below, as follows:

(a) a copy of the proponent's environmental assessment and any preferred project report; and

The proponent's EA is included at **Appendix G** whilst the proponent's response to submissions is set out for the Ministers consideration at **Appendix F**.

(b) any advice provided by public authorities on the project; and

All advice provided by public authorities on the project for the Minister's consideration is set out at **Appendix E**.

(c) a copy of any report of a panel constituted under Section 75G in respect of the project; and

No independent hearing and assessment panel was undertaken in respect of this project.

(d) a copy of or reference to the provisions of any State Environmental Planning Policy (SEPP) that substantially govern the carrying out of the project; and

An assessment of each relevant State Environmental Planning Policies that substantially govern the carrying out of the project is set in **Appendix B** and is discussed below.

(e) except in the case of a critical infrastructure project – a copy of or reference to the provisions of any environmental planning instrument that would (but for this Part) substantially govern the carrying out of the project and that have been taken into consideration in the environmental assessment of the project under this Division; and

An assessment of the development relative to the prevailing EPI's is provided in **Appendix B**, and is discussed below.

(f) any environmental assessment undertaken by the Director General or other matter the Director General considers appropriate.

The environmental assessment of the project is this report in its entirety.

(g) a statement relating to compliance with the environmental assessment requirements under this Division with respect to the project.

The environmental assessment requirements under this Division are in **Appendix A** and are discussed below. The Department is satisfied that the requirements have been complied with.

#### **4.4 DIRECTOR-GENERAL'S ENVIRONMENTAL ASSESSMENT REQUIREMENTS (DGRS)**

The DGRs issued on 18 February 2006 required the following issues to be addressed:

- Traffic and parking
- Access
- Built form and urban design
- Crown lands
- Environmental impacts
- Aboriginal and cultural heritage
- Flora and fauna
- Environmental risk analysis

The DGRs are in **Appendix A**.

The EA lodged by the proponent on 28 August 2006 was deemed to be adequate and was placed on public exhibition from 22 September to 30 October 2006.

#### **4.5 ENVIRONMENTAL PLANNING INSTRUMENTS**

##### **4.5.1 Application of EPIs to Part 3A Projects**

To satisfy the requirements of section 75I(2)(d) and (e) of the Act, this report includes references to the provisions of the environmental planning instruments that govern the carrying out of the project and have been taken into consideration in the environmental assessment of the project. A summary of compliance with the relevant EPIs is in **Appendix B**.

The provisions, including development standards of local environmental plans, and development control plans are not required to be strictly applied in the assessment and determination of major projects under Part 3A of the Act. Notwithstanding, these standards and provisions are relevant considerations as the DGRs require the proponent to address such standards and provisions. Accordingly a number of EPIs and other plans and policies that substantially govern the carrying out of the project are appropriate for consideration in this assessment as follows:

##### **4.5.2 State Environmental Planning Policy (Major Projects) 2005**

The MP SEPP applies to the project as discussed in Section 4.1 above.

##### **4.5.3 State Environmental Planning Policy No.11 – Traffic Generating Developments**

The application was referred to the NSW Roads and Traffic Authority for comment on 15 September 2006 and was considered by the Regional Traffic Committee on 20 October 2006. The RTA had concerns with the following:

- Discounting used for the proposed development;
- Conflict with pedestrians caused by the proposed northbound left slip lane;
- Safety hazard associated with right hand turns in and out of the River Street basement car park access; and.
- Provision of on-street loading zones and the related safety and amenity impacts associated with their use.

Issues relating to traffic generation and the provision of appropriate road works and s94 contributions were resolved through discussions with Council and the RTA. Conditions of approval require a contribution of \$220,000 to Ballina Shire Council toward the upgrade of the River Street / Kerr Street / Pacific Highway intersection, and construction of a continuous median from Kerr to Grant Street. A vehicular turntable and service bays within the basement car park provide adequate provision for loading / unloading on site.

#### 4.5.4 State Environmental Planning Policy No.55 – Remediation of Land

The subject site has been the subject of investigations pursuant to SEPP 55. The site investigations found potential acid sulfate soils (PASS) from a depth of 0.3 metres to 6.0 metres. As excavation for basement construction will intersect this soil type treatment of the PASS will be required. Site soils generally have contamination levels below threshold levels for residential habitation with a limited occurrence of elevated levels of contamination in light industrial areas. Further detailed investigations are to be undertaken during demolition to isolate and treat contamination areas and potential Underground Service Tank sites.

Low levels of tributyltin (TBT) were found in both slipways.

Conditions of approval, prepared in consultation with the Department of Natural Resources, ensure that the issue of remediation is dealt with in an appropriate manner.

#### 4.5.5 State Environmental Planning Policy No.65 – Design Quality of Residential Flat Buildings

The proponent completed a SEPP 65 analysis for all four proposed residential buildings on the site. The buildings are generally compliant with minor non-compliances relating to building separation distances at level 5 between Buildings D (central building) and F (south eastern corner waterfront building).

The intention of the building separation guidelines are to ensure that there is visual and acoustic privacy as well as access to daylight and shared open spaces. The non-compliance will not detrimentally affect visual or acoustic privacy and is therefore considered acceptable in this case.

#### 4.5.6 State Environmental Planning Policy No.71 – Coastal Protection

SEPP 71 applies generally to land within the Coastal Zone. Clause 8 of the policy sets out matters for consideration by a consent authority when determining a development application to which the policy applies. Those matters generally reflect the key elements of the Coastal Policy of which the proposal generally accords. The proposal provides for the following, in accordance with SEPP71:

- new public access to the Richmond River foreshore;
- the development is suitable given its type, location and design;
- overshadowing of the foreshore has been minimised;
- protects the water quality of the Richmond River;
- preserves the two slipways which have historic significance; and,
- complies with BASIX requirements ensuring that water and energy usage by the proposed development is efficient.

As such, the proposal is considered consistent with the matters for consideration under Clause 8 of SEPP 71 and is a suitable development for the site. A detailed assessment against SEPP71 is included in **Appendix B** to this report.

#### 4.5.7 State Environmental Planning Policy (BASIX) 2004

The proponent has completed a BASIX certificate for all 4 residential buildings proposed on the site. All water, thermal and energy targets have been met.

#### 4.5.8 Ballina Shire Local Environmental Plan 1987

The land is zoned 3 – Business Zone under the *Ballina LEP 1987*, in which commercial, retail, restaurants, tourist facilities and residential buildings are permissible with Council's consent. No general concurrence provisions apply in relation to the commercial, retail, restaurants and residential land use at the subject site. The development generally meets the objectives and provisions of the *Ballina LEP 1987*.

Non-compliances relate to Clause 17 of the LEP in relation to building height. The proposal exceeds the 16 metre height limit by 3 metres on 1 building. However, this is considered acceptable as the proposal provides for an extensive area of public open space, and the additional height is in the centre of the site and has no material impact on the views to / from the development. Although there is no FSR control in Council's LEP, the proposed FSR of 1.71:1 is considered reasonable. The additional height is also reasonable given the overall quantum of development on the site, building location and massing. This is discussed in more detail in **Section 6.2** of this report.

#### **4.5.9 North Coast Regional Environmental Plan 1998**

The *North Coast REP* provides a basis for policy development to protect the natural environment on a regional basis. Relevant clauses are as follows:

Clause 15 – wetlands or fishery habitats

The proposal complies with the intent of this clause, specifically in relation to the protection of fishery habitats, the provision of foreshore access and public open space and the protection of water quality.

Clause 32B – coastal lands

The proposal complies with the intent of this clause, specifically in relation to the consideration of the *NSW Coastal Policy 1997*, the *Coastline Management Manual*, and the *North Coast: Design Guidelines*. The development does not impede public access to the foreshore and does not significantly overshadow public foreshore open space prior to 3pm mid-winter.

Clause 43 – residential development

The proposal complies with the intent of this clause, specifically in relation to the density of dwellings, impacts on environmental features and the management of sediment and erosion on site.

Clause 51 – Director's concurrence for tall buildings

The proposal exceeds 14 metres in height and therefore the assessment has taken into consideration the likely regional implications of the development as regards its social, economic and visual effect and the effect which it will or is likely to have on the amenity of the area. The proposed heights of the buildings are considered appropriate for the location.

Clause 75 – Tourism development

The proposal complies with the intent of this clause, specifically in relation to the adequate provision of infrastructure, services and transport.

Clause 81 – development adjacent to an ocean or waterway

The proposal complies with the intent of this clause, specifically in relation to the provision of foreshore open space and amenity of the Richmond River.

#### **4.6 OTHER PLANS AND POLICIES**

The Proposal has been considered against the following planning policies:

##### **4.6.1 Ballina Shire Combined Development Control Plan 2006 – Chapter 2 Ballina Town Centre**

The primary purpose of this DCP is to provide standards for regulating development of land within the Ballina Local Government Area. The following chapters are relevant to the proposal:

Chapter 2 – Ballina Town Centre

Chapter 2 of the DCP specifically relates to the development of land within the Ballina Town Centre. The proposal is generally compliant with aims of Chapter 2 of the DCP, however, notable non-compliances relate to:

- the height of the central 6 storey residential building (Building D), which exceeds the height control by 3 metres (1 storey);
- the setbacks to Kerr Street; and,
- minor urban design matters.

The proponent has provided sufficient justification for these non-compliances. This is discussed further in **Section 6.2** of this report.

Chapter 9 – BASIX (Energy & Water Smart Homes)

Chapter 9 relates to compliance with requirements under the BASIX legislation (refer Section 4.5.7 above). The proponent has submitted a BASIX certificate for all 4 residential buildings proposed on the site and meets all water, thermal and energy targets.

## Chapter 13 – Stormwater Management

Chapter 13 – Storm Water Management has been developed as a supplement to Ballina Shire Council's Urban Stormwater Management Strategy (USMS) to address the issue of stormwater management for new developments within the Ballina Shire. Based on the principles of Environmentally Sustainable Development (ESD) and the USWS, Ballina Shire Council has adopted the stormwater management objective for new urban developments that 'there shall be no net increase in the average annual load of key stormwater pollutants and peak discharge flow rates, above that occurring under existing conditions'.

The proponent has provided a stormwater management plan and has included a commitment to meet the objectives of and demonstrate compliance with Chapter 13 of the DCP within their Statement of Commitments.

### **4.6.2 NSW Coastal Policy 1997**

The 1997 *NSW Coastal Policy* responds to the fundamental challenge to provide for population growth and economic development without placing the natural, cultural, spiritual and heritage values of the coastal environment at risk. To achieve this, the Policy has a strong integrating philosophy based on the principles of ecologically sustainable development (ESD).

The proposal complies with the provisions of the policy, particularly in relation to stormwater, contamination, acid sulfate soils, sea level change, flooding and the *NSW Coastal Design Guidelines*.

### **4.6.3 NSW Coastal Design Guidelines**

The Guidelines provide a world-standard approach for how urban design can be best used in a coastal context. The Guidelines state that Ballina is a 'coastal city'. The general urban characteristics for a coastal city as described in the guidelines, includes a full range of buildings heights from low scale to tall. The Guidelines specify that locations close to the foreshore are not appropriate for tall buildings, buildings close to foreshore edges are generally 3 storeys and that taller buildings are best located closer to the city centre.

The proposed development includes two 5 storey buildings adjacent to the Richmond River foreshore. Notwithstanding, these buildings are set back 14 metres from the river and the upper level is setback by 7 metres, creating two 4/5 storey buildings.

It is considered that the proposal is generally compliant with the *Coastal Design Guidelines* and the desired future character of Ballina as a coastal city.

### **4.6.4 Far North Coast Regional Strategy**

The *Far North Coast Regional Strategy* identifies Ballina as an 'emerging regional centre'. As a significant commercial, retail and residential development in the Ballina Town Centre, the proposal meets the intentions of the *Strategy*.

The proposed development has been thoroughly assessed against these controls in **Appendix C** to this report.

## **4.7 CONSIDERATION OF ECOLOGICALLY SUSTAINABLE DEVELOPMENT**

The objects of any statute provide an overarching framework that informs the purpose and intent of the legislation and gives guidance to its operation. The Minister's consideration and determination of a project application under Part 3A must be informed by the relevant provisions of the Act, consistent with the backdrops of the objects of the Act.

The objects of the Act in section 5 are as follows:

(a) to encourage:

- (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,
- (ii) the promotion and co-ordination of the orderly and economic use and development of land,
- (iii) the protection, provision and co-ordination of communication and utility services,
- (iv) the provision of land for public purposes,
- (v) the provision and co-ordination of community services and facilities, and

- (vi) the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats, and
- (vii) ecologically sustainable development, and
- (viii) the provision and maintenance of affordable housing, and
- (b) to promote the sharing of the responsibility for environmental planning between the different levels of government in the State, and
- (c) to provide increased opportunity for public involvement and participation in environmental planning and assessment.

Of particular relevance to the assessment of the subject application is consideration of the Objects under section 5(a). Relevantly, the Objects stipulated under section 5(a) (i), (iv), (v), (vi) and (vii) are significant factors informing the determination of the application. The project does not raise significant issues with regards to 5(a)(ii), (iii) and (viii).

With respect to ESD, the Act adopts the definition in the *Protection of the Environment Administration Act 1991* including the precautionary principle, the principle of inter-generational equity, the principle of conservation of biological diversity and ecological integrity, and the principle of improved valuation, pricing and incentive mechanisms.

The Department has considered the Objects of the Act, including the encouragement of ESD in the assessment of the project application. The principles of Ecologically Sustainable Development (ESD) have been considered in this assessment as follows:

#### **4.7.1 Precautionary Principle**

The EA submitted has identified and assessed the range of environmental impacts of the proposal. The proponent has demonstrated that the building design and appropriate mitigation measures will be implemented to prevent any potential environmental impacts. Mitigation measures are outlined in the proponent's Statement of Commitments and/or the recommended conditions of approval.

#### **4.7.2 Intergenerational Equity**

The development provides the following benefits to the Ballina community now and into the future:

- 20 metre setback to the Richmond River foreshore, comprising 14 metres of public foreshore open space and 6 metres of private courtyards;
- Active frontages to River Street;
- Activation of the foreshore through use as a café;
- Pedestrian links from River Street to the Richmond River;
- New retail opportunities along River Street to boost the local economy;
- Medium density accommodation close to the city centre with variation in building heights;
- Additional car parking within the town centre; and,
- Reinforcement of the status of the Ballina Central Business District as the retail, commercial and administrative centre of the Shire of Ballina, in accordance with the objectives of the *Ballina LEP* and the *Far North Coast Regional Strategy*.

#### **4.7.3 Conservation of Biological Diversity and Ecological Integrity**

The proposed development site is characterised by seeded grass cover and three Norfolk pines. The proponent undertook an assessment of the development's compliance with following environmental planning instruments;

- *Environment Protection and Biodiversity Conservation Act* (1999) (Cth);
- *Threatened Species Conservation Act* (1995) (NSW);
- *Fisheries Management (Amendment) Act* (1997) (NSW); and
- *State Environmental Planning Policies* (14, 26, 44 and 71).

None of the species recorded are listed as Matters of NES under the EPBC Act, nor as threatened species, populations, ecological communities or critical habitat under the TSC Act. Two Norfolk Island Pines in the site's west represent the most visually prominent vegetation. Although these trees are not native to NSW, and as such are not of high ecological significance, it is accepted that they do make a contribution to the Site's landscape amenity. In order to offset the loss of these trees, and improve site amenity from surrounding areas (including the river), the proponent



proposes to establish endemic native plants within the landscape design. The result will be a built form consistent with the existing character of development along this reach of the Richmond River.

The proponent has also included within their Statement of Commitments, the following commitments to ensure that the quality of stormwater discharged from the site will not have a detrimental impact on the aquatic flora and fauna within the Richmond River:

- To treat and recycle stormwater. Where stormwater is discharged from the site treatment is to be provided such that there is no net increase in pollutant load from the site. Prepare baseline water quality data. Provide primary and secondary level water quality treatment so that stormwater discharge matches or exceeds baseline water quality.
- To demonstrate compliance with DCP 1 Chapter 13 the proponent will model stormwater capture, treatment and disposal using the MUSIC and DRAINS programs. Background baseline data will be gathered by APP. A detailed stormwater treatment train will then be provided to Council for approval based on this model and data collected.

#### **4.7.4 Improved Valuation, Pricing and Incentive Mechanisms**

The building has been designed with ecologically sustainable architecture in mind. Industry best practice is achieved in terms of operational energy efficiency through a passive building design approach. To help minimise embodied energy, preference will be given (at construction) to the sourcing of materials locally, especially heavy materials. The proposed development is intended to make good use of natural resources, energy and water throughout its full life cycle. The proponent has also submitted a separate NatHERS Analysis and BASIX Certificate as part of the Environmental Assessment.

Consequently, the Department is satisfied that the proposal is consistent with the principles of ESD.

## 5 CONSULTATION AND ISSUES RAISED

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### 5.1 PLANNING FOCUS MEETING

The following agencies attended a Planning Focus Meeting held on 7 December 2005 to assist the Department in preparing the Director-General's Environmental Assessment Requirements (DGRs):

- Department of Primary Industries;
- Department of Natural Resources;
- Roads and Traffic Authority;
- Department of Lands; and,
- Ballina Shire Council.

### 5.2 PUBLIC EXHIBITION

The Major Project application was exhibited from 22 September 2006 to 30 October 2006 and was published in the Ballina North Coast Advocate. The Environmental Assessment (EA) was made available to the public in the Department's Information Centre, the Department's North Coast Regional Office and at Ballina Shire Council in Ballina.

A preferred project report was lodged on 12 February 2007 and as the changes to the nature of the project were not significant, it was not re-exhibited but was placed on the Department's website from 22 February 2007.

### 5.3 AGENCY SUBMISSIONS

The Department received a total of 6 submissions in response to the public exhibition of the project from the following agencies:

- Department of Natural Resources;
- Department of Environment and Conservation;
- Department of Primary Industries;
- Roads and Traffic Authority;
- Department of Lands; and,
- Ballina Shire Council.

**Ballina Shire Council** raised the following issues:

- Non compliance with Council's building envelope controls, including building heights contained within the Ballina LEP and Combined DCP;
- Traffic management at the Kerr / River Street roundabout;
- Location of loading zones on River and Kerr Street is unacceptable;
- Further justification required for car parking rates used for dual key access apartments;
- Insufficient stormwater management details to demonstrate compliance with Council's *DCP 1 Chapter 13 Stormwater Management*;
- Insufficient detail regarding basement design and compliance with Council's flood policy;
- Insufficient detail regarding staging of construction;
- Inappropriate landscape treatment of foreshore areas;
- Inadequate Environmental Noise Impact Assessment; and,
- Inadequate assessment of contamination of the site to determine the Remediation Action Plan and remediation measures required.

**Department of Natural Resources** raised the following issues:

- Acid sulfate soil management – variation in liming rates contained within the documentation; and,
- Dewatering management strategy is inadequate.

**Roads and Traffic Authority** raised the following issues:

- Discounting used for the proposed development over estimates the traffic generation from the existing development;
- Proposed northbound slip lane will conflict with existing pedestrian facilities;
- Proposed central median should be continuous from Kerr to Grant Street;

- Road works are preferred to a monetary contribution to the RTA; and,
- Further consideration needs to be given to the management of on-street loading areas.

**Department of Lands** raised the following issues:

- Application as lodged (7 storeys as opposed to 5 storeys) not consented to by the Department;
- Native title should be addressed;
- Contamination within the old slipway areas; and,
- Impacts upon the Crown lands within the reserve located to the east of the site on the foreshore of the Richmond River.

**Department of Primary Industries** raised the following issues:

- Provision of clear access for recreational fishers and others along the Richmond River, which is a Recreational Fishing Haven adjacent to the site;
- The facility should be designed, constructed and managed in a manner that minimise impacts on aquatic habitats; and,
- Sediment contamination as a risk to the surrounding aquatic environment.

**Department of Environment and Conservation** did not raise any issues.

A summary of all agency submissions received can be found in **Appendix D**. Key issues have been discussed in detail in **Section 6**, below.

## 5.4 PUBLIC SUBMISSIONS

72 submissions were received from the public or special interest groups, including 70 objections, 1 in support and 1 identifying potential issues with noise. Objectors raised the following key issues:

- Breaching of 16m building height control
- Impact on local character
- Traffic & Car Parking
- Non-Compliance with Council Planning Controls
- Loss of visual amenity
- Foreshore access
- Flora & Fauna
- Overshadowing
- Bulk & scale of development
- Obstruction of river flows & flooding
- Building on Crown Land (Lot 10 DP244352)
- Need for type of development
- Acoustic Amenity
- Building design / layout

A breakdown of the number of times these issues were raised in submissions is shown in **Figure 21** below.

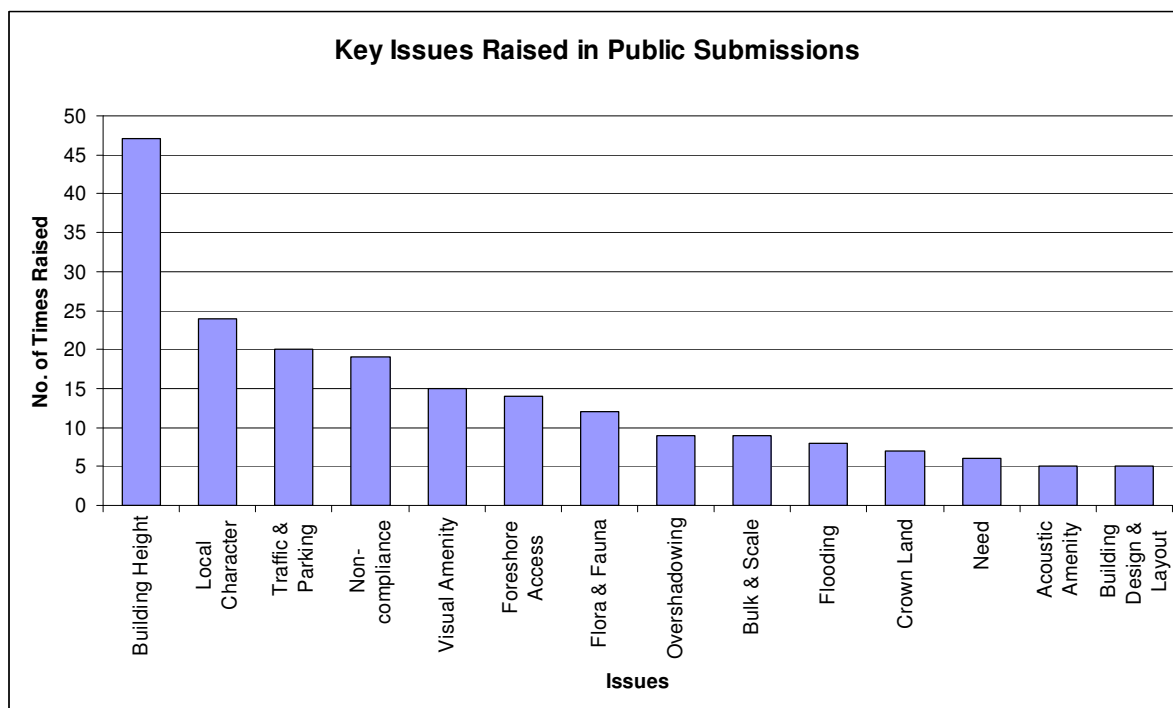


Figure 21: Breakdown of Key Issues Raised in Public Submissions

**Figure 22** shows the location of all objectors. As can be seen, the majority of objectors are located in close proximity to Ballina Town Centre and western Ballina. A summary of all public submissions received can be found in **Appendix E**. Some issues were resolved via the preferred project and the proponent's Statement of Commitments. However, where necessary, some key issues have been resolved via conditions of approval and have been discussed in detail in **Section 6**.

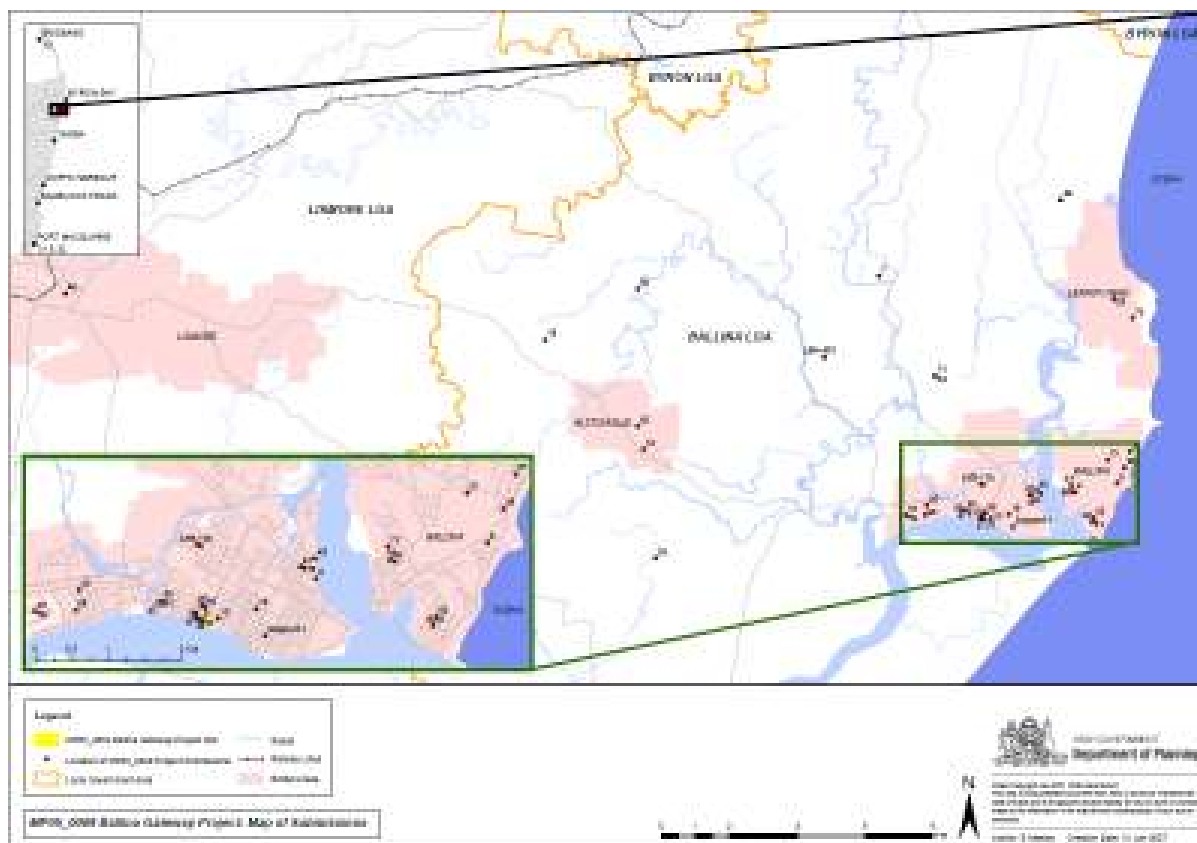


Figure 22: Location of Objectors

## 6 ASSESSMENT OF ENVIRONMENTAL IMPACTS

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Key issues considered in the Department's assessment of the Environmental Assessment and the Preferred Project Report and consideration of the proponent's draft Statement of Commitments include the following:

- Desired future character
- Built Form – building height, bulk, scale and building envelopes
- Overshadowing
- Dedication of foreshore open space
- Section 94 Contributions
- Traffic and Access
- Visual linkages
- Acoustic amenity
- Acid Sulfate Soils
- Groundwater / dewatering
- Stormwater
- Flora and fauna

Some of these issues were resolved following consultation with the Proponent, or were directly addressed via the proponent's Statement of Commitments or the Department's recommended conditions of approval. Significant issues are discussed in detail, below.

### 6.1 DESIRED FUTURE CHARACTER

One of the key issues informing the built form is establishing the appropriate desired future character of Ballina.

#### 6.1.1 State Planning Controls

##### Far North Coast Regional Strategy

The *Far North Coast Regional Strategy* states that Ballina is an emerging regional centre and indicates that the greatest future population growth pressure is around Tweed Heads and Ballina and within the other coastal settlements east of the Pacific Highway. Initiatives to support and maintain the development of inland settlements are necessary to reduce coastal population growth pressure.

Under the *Far North Coast Regional Strategy* Ballina is being planned to become a major regional centre with employment, retail and tourism as important functions of the centre. It will be supported by new land releases in Lennox Head and Cumbalum. The Strategy makes it clear new commercial and retail development should be concentrated in centres such as Ballina, rather than isolated locations.

##### NSW Coastal Design Guidelines

The *NSW Coastal Design Guidelines* state that Ballina is a 'coastal city'. The Guidelines provide general urban characteristics for a coastal city, which includes a full range of buildings heights from low scale to tall. The proponent argues that as a coastal city, buildings in city centres are generally acceptable to be up to 7 storeys. However, the *Coastal Design Guidelines* specify that locations close to the foreshore are not appropriate for tall buildings, buildings close to foreshore edges are generally 3 storeys and that taller buildings are best located closer to the city centre.

##### Consideration

As a significant commercial, retail and residential development in the Ballina Town Centre, the proposal meets the intentions of the *Far North Coast Regional Strategy*.

As the site is located on the western fringe of the commercial area of Ballina, (not the city centre) and on the foreshore of the Richmond River, it is not considered appropriate for 7 storey buildings. The maximum height of buildings along the waterfront in the Preferred Project Report is 4/5 storeys with a 20 metre setback to the Richmond River foreshore. The proposal is considered to be consistent with the *Coastal Design Guidelines*.

### 6.1.2 Local Planning Controls

#### Ballina Combined DCP 2006

Whilst this application was lodged in September 2006, prior to the 1 October 2006 commencement date of the *Ballina Combined DCP*, the DCP is now in force and must be taken into consideration. The proponent and the Department have been made aware of Council's formulation of this plan (in pre-lodgement discussions and correspondence) and a draft copy of the DCP was forwarded to the proponent on 11 July 2006, prior to lodgement of the Environmental Assessment.

The subject site is located within two precincts as described under the *Ballina Town Centre DCP*. The *Western Entrance Precinct* covers only a small portion of the north-western corner of the site (Building A). The remainder of the site is within the *Riverside West Precinct*. The *Ballina Town Centre DCP* seeks to establish the desired future character within the various precincts identified in the plan. To help achieve the desired future character, building envelope controls relating to height, street setbacks, building depth and coverage, building separation distances and other precinct specific controls are established (refer **Figure 23**).



Figure 23: Precincts Map from Ballina Combined DCP

The desired future character of the *Western Entrance Precinct* (Building A) provides for a sense of arrival to the town centre with the built form addressing the highly prominent Kerr and River Street corner. Transitions in building form are provided to surrounding residential areas, the highway strip and the town centre core.

#### Consideration

The Preferred Project responds to the desired future character of the *Riverside West Precinct* and *Western Entrance Precinct*, in particular providing a mix of buildings that provide for an active area of public open space along the waterfront. The design of the corner hotel building addresses its 'gateway' location and provides an appropriate transition with the surrounding development and anticipates the revitalisation of the town centre.

## 6.2 BUILT FORM

### 6.2.1 Local Planning Controls

The *Ballina LEP 1987* and *Chapter 2 – Ballina Town Centre* - of the *Ballina Shire Combined Development Control Plan (2006)* contain the principal local urban design and planning controls for the subject site.

Clause 17(4) of the *Ballina LEP* allows Council to consent to buildings within the CBD up to 16 metres in height. "Height", as defined by the LEP, means the distance measured vertically from any point on the ceiling of the topmost floor of the building to the ground level immediately below that point.

Both the *Ballina LEP* and *Ballina Combined DCP* establish a maximum height limit in the Ballina CBD of 16 metres, which equates to 5 storeys. This height provision has been in place since the introduction of the *Ballina LEP* in 1987 and has been consistently applied without exception during this time.

In relation to height, bulk and scale, the *Ballina Combined DCP* indicates that developments in the *Riverside West Precinct* (Buildings B– G) should incorporate a mix of higher and lower scale buildings that create an appropriate interface with the waterfront. A human scale is to be retained along the River Street frontage with buildings of a greater scale situated within sites.

The preferred project exceeds the height controls specified in the local controls for Building D only, however, the Department has assessed this non-compliance on its merits and considers that this non-compliance is acceptable in this instance.

The project application as exhibited was considered to be of a scale that is incompatible with the existing location. Specifically, the Department had concerns with regard to:

- Building height;
- Precedent that will be set as a result of permitting two 7 storeys buildings on the site;
- Bulk and scale; and,
- Setbacks of the development.

These issues are addressed below.

### 6.2.2 Building Height

#### Issue

The *Ballina LEP 1987* and the *Ballina Combined DCP* set a height limit of 16 metres and 5 storeys, respectively. Height is defined 'the distance measured vertically from any point on the ceiling of the topmost floor of the building to the ground level immediately below that point'.

Building A and Building D in the exhibited proposal exceeded the local height controls by 6 metres (equates to 2 storeys). Building A defines the entry to the Town Centre, located on the corner of River and Kerr Streets, and Building D is centrally located within the site. While the variation in building heights across the site is acknowledged as a positive design element of the exhibited proposal, the proponent has not adequately justified why these buildings should substantially exceed the established height controls.

#### Preferred Project

Following discussions with the proponent and a review of the submissions, it was agreed that the heights of some of the buildings were excessive for their location adjacent to the Richmond River. The preferred project therefore included the following amendments:

- Building A was reduced in height from 22m (7 storeys) to 16m (5 storeys)
- Building D was reduced in height from 22m (7 storeys) to 19m (6 storeys)
- Buildings B and F were amended from 16m (5 storeys) to 13.3m at the front of the buildings to create a 4 storey building with the 5<sup>th</sup> level setback by 7 metres, reducing the bulk of this building and minimising overshadowing of the foreshore open space.
- Building C (on River Street) has been maintained at 10m (3 storeys) to River Street with a 4<sup>th</sup> storey (13m) of Building C setback by 4 metres
- Building E was increased in height from 10m (3 storeys) to 13m (4 storeys).

Further negotiations with the proponent further increased the side setbacks of the upper level of the south-eastern corner waterfront building (Building B). A condition of approval requires a further increase in the side setback of the upper level of the south-western corner waterfront building (Building F) to reduce the overall visual impact of this building along the western foreshore.

#### Consideration

The height control of 16 metres has been consistently applied without exception for the past 20 years. This control has recently been reviewed and adopted as the maximum height control within the *Ballina Combined DCP* (adopted on 24

August 2006) for the site. Considering the “gateway” location of Building A on the corner of River and Kerr Streets and desired future character of the *Western Entrance Precinct*, it is considered acceptable that this building be constructed to the maximum height limit to define the entry and provide a ‘sense of arrival’ to the Ballina Town Centre.

While the waterfront residential buildings, Buildings B and F, comply with Council's DCP height control for the site (5 storeys), the *NSW Coastal Design Guidelines* indicate that buildings close to the foreshore should be a maximum of 3 storeys. However, the combination of a 14 metre setback from the Richmond River foreshore to the built form and the setting back of the upper level of each building to the side and southern boundaries, the visual and overshadowing impacts have been significantly reduced. The heights are considered to be consistent with the *NSW Coastal Design Guidelines* in that they are of a human scale, are appropriate to the predominant form and scale of the surrounding development (present and future) and the visual setting of the town centre.

The roofs are a combination of raking roofs clad in pre-finished steel interspersed with flat concrete roofs. Parapet lines or cantilevered sun screening elements provide a strong termination to the top of the buildings. A condition of approval allows the roof of Buildings B and F to be modulated in the upper most apartments over living areas to enhance solar access, natural lighting and cross-ventilation to these apartments in addition to creating architectural and visual interest to the roof form. The modulations are to be in accordance with the approved plans to a maximum height of 0.3m from the upper most ceiling. Services are to be kept within the roofs or behind parapets to ensure minimal impact on visual amenity.

Although the central building (Building D) exceeds Council's height control by 3 metres (1 storey), there are other 6 storey developments within Ballina, including Pelican Moorings and the Ramada (under construction). Both developments were conditioned to ensure that rooftop structures (lift overruns and cooling towers, etc) to be so constructed so as to not have a ceiling. Pelican Moorings is 6 storeys in total above ground, and therefore reads as a taller building, despite meeting the 16m height control. This building is only setback by 2.7 metres from the river. Building D will therefore not appear to be any higher than these other 6 storey buildings, particularly as it is located within the centre of the site, has its upper level setback 3 metres to create a 6 metre terrace, and is significantly setback (approximately 50 metres) from the river.

Furthermore, Building D provides ceiling heights that comply with SEPP65 requirements and also provides a public benefit by being setback approximately 50 metres from the Richmond River foreshore creating a substantial area of public open space. Additionally, the Floor Space Ratio (FSR) for the project (1.71:1) and site coverage (51%) is also substantially less than other developments, such as the Ramada, which has an FSR in excess of 2.7:1 and a site coverage of 71%.

Building C (on River Street) and Building E have been increased in height from 3 to 4 storeys with the upper level of Building C setback by 4 metres, in accordance with the *Ballina Combined DCP*. These buildings comply with Council's DCP controls and the objectives of the DCP precinct controls for the *Riverside West Precinct*. The height of these buildings is considered appropriate for their location.

In terms of height, the preferred project and the recommended conditions of approval presents a development that is of a human scale and appropriate to a prominent foreshore and gateway location, the desired future character of Ballina and its relationship with the surrounding area.

### 6.2.3 Precedent

#### Issue

Numerous public submissions (67% of submissions) expressed concerns that the exhibited proposal could set a precedent in the Ballina town centre because of the two 7 storey (22m) buildings (Buildings A and D), which exceed the local planning controls by 6 metres (2 storeys).

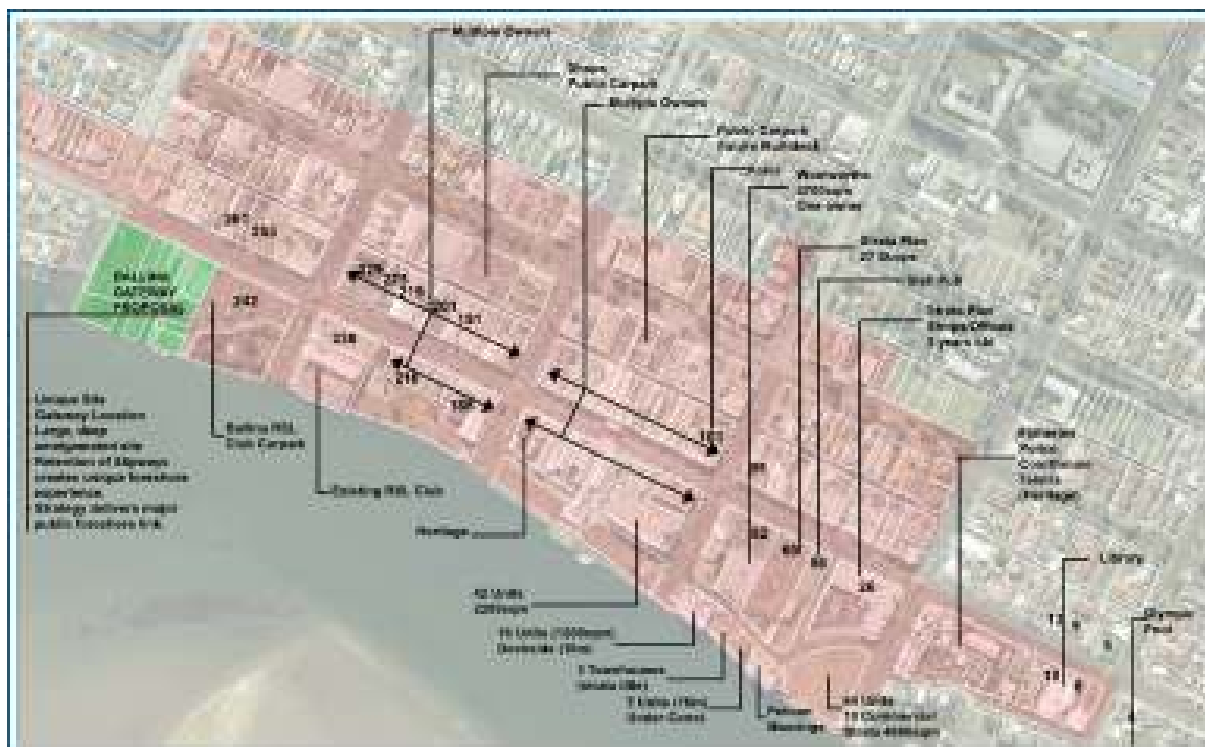
In addition to justifying the height of the buildings, the proponent argued that the development would not set a precedent as the site is a unique site in the CBD due to its size (as a result of the amalgamation of the site) and depth with waterfront access. **Figure 24** provides a summary of the existing ownership throughout the Ballina town centre.

#### Consideration

The argument that the site is a unique site in Ballina is questionable for the following reasons:



- Notwithstanding the inadequacies of this argument, it is accepted that the site is the largest waterfront property in Ballina and that it is the first major development in the revitalisation of the Ballina Town Centre. The development will set a benchmark for Ballina in terms of design and built form. It IS therefore not appropriate that the 'gateway' building on the corner of River and Kerr Streets exceed the local height control as this building should make a transition from the low rise residential properties to the west to the town centre and sets the scene for other development along River Street.



In considering the potential for further buildings to exceed the height control within the surrounding locality, it should be noted that there are already other 6 and 7 storey buildings within Ballina Town Centre. The Ramada (under construction), a 6 storey building, has reduced ceiling heights to achieve the 16 metre limit, while Pelican Moorings, a 7 storey building, has been constructed such that roof structures (lift over-runs and cooling towers) have been constructed without a ceiling.

- the DCP does allow for taller buildings in the centre of sites;
- the impacts from the additional storey would not be visible from River Street;
- the building does not significantly overshadow foreshore open space prior to the times specified in the *North Coast REP* and *NSW Coastal Design Guidelines*;
- the upper level of the building is setback by 6 metres; and,
- the entire building is set back approximately 50m from the Richmond River foreshore.

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#### 6.2.4 Bulk and Scale

##### Issue

The bulk and scale of the exhibited proposal was considered to be inappropriate for the waterfront location, in particular the substantial length and bulk of the 7 storey central residential building, Building D (central building) and the bulk of the 5 storey waterfront residential buildings (B and F) as viewed from the Richmond River foreshore (refer **Figure 25**).



Figure 25: Exhibited Proposal - South Elevation (as viewed from the Richmond River)

Building D, as originally proposed, was up to 70 metres long and 21 metres deep and read as a very large and bulky building when viewed from the foreshore and the Richmond River. The building exceeded the building depth requirements of SEPP 65 by 3 metres and the emphasis on horizontal articulation increased the apparent bulk of the building.

While the buildings were compliant with the 'Maximum Heights and Site Coverage Plan' (the Plan), the bulk and scale of the development was considered to be excessive for its location. Furthermore, the Plan did not purport to comply with SEPP65 requirements and simply set out the maximum extent of certain areas to be developed. The Department advised the proponent that a substantial redesign of Buildings B, D and F was required to ensure that the buildings do not impact negatively on the public foreshore open space and the visual amenity of the foreshore as viewed from the Richmond River. The buildings, as proposed, were incompatible with the local context and would detract from the desired future character of the locality and the Richmond River foreshore.

In particular, the Department considered the specific matters within the *North Coast REP* in granting concurrence for tall buildings. Under the REP, consideration must be given to the 'likely regional implications of the development as regards its social, economic and visual effect and the effect which it will or is likely to have on the amenity of the area'.

The Department recommended a reduction in height and bulk of the central building (Building D) and the 2 waterfront buildings (Building B and F) to reflect the *NSW Coastal Design Guidelines*, the desired future character of Ballina and the *North Coast REP*.

##### Preferred Project

In response to the concerns in regard to the bulk and scale of the development, the proponent has:

- reduced the depth of Building D such that it complies with SEPP 65 building depth requirements
- reduced the height to 6 storeys and has set back the upper level of this building by 6 metres; and,
- set back the upper level of the 2 waterfront buildings by 7 metres.

This reduces the perceived bulkiness of the development as viewed from the Richmond River and foreshore and presents a more human scale of development (refer **Figure 26**).



Figure 26: Preferred Project - South Elevation (as viewed from the Richmond River)

### Consideration

The Ramada Riverside Apartments (approved by Council in October 2000) to the east of the development is 72 metres long and fronts directly onto Fawcett Park. The building is setback approximately 40-45 metres from the river, however, there is no development, only grassed parkland between the building and the Richmond River. Building D in the current proposal at the Ballina Gateway site is setback approximately 50 metres from the Richmond River, however, the proposal includes three buildings in the area between Building D and the Richmond River, which exaggerates the apparent bulk of the development due to the cumulative impact of the 4 buildings.

The proponent argued that other buildings (residential buildings B and F) reduce the bulk and scale of the central building. However, as viewed from the Richmond River, the central 7 storey building (Building D) in the exhibited proposal was 2 storeys higher than the 2 buildings adjacent to the River (Building B & F), therefore, they did not reduce the bulk and scale of the central taller building. Furthermore, the horizontal articulation of all 3 buildings exaggerated the bulkiness of this building resulting in the appearance of a single mass or 'wall of buildings' as viewed from the river.

To further reduce the overall perceived bulk and scale of the waterfront buildings for pedestrians using the north-south link along the eastern and western boundary and foreshore and improve the public amenity of the foreshore area, the Department has amended the design via a condition of approval. The condition requires the south-western corner of waterfront residential Building B to be set back such that this buildings is only 4 storeys where it lies adjacent to the south-western boundary.

The Department also requested that the design be amended to provide a greater width along the western boundary of the development. This has been achieved by the inclusion of a 4 metre wide boardwalk along the western and southern foreshore. This allows the footprint of Building B to remain in its original position while increasing the width of the public walkway to 10 metres. The proponent agreed to undertake these works and has included this within their Statement of Commitments. The proponent will need to ensure that they have extinguished any native title claim on Crown land and gained owners consent from the Department of Lands for this structure

The amendments to the design are sufficient to mitigate the potential impacts of the building on the amenity of the foreshore area and as viewed from the Richmond River.

### **6.2.5 Setbacks**

#### Issue - Foreshore Area

The exhibited project application provided a 20 metre setback from the River to the 2 residential buildings (Building B and F) with 6m of this area to be utilised as a public pedestrian / cycle way for the full extent of the site frontage, 8m to be landscaped for public open space and 6m to be used as private open space in front of Buildings B and F. The proposed café is setback by approximately 10 metres from the Richmond River.

### Consideration

The foreshore area will provide for a high quality public space adjacent to the River that will be attractive to pedestrians and cyclists alike. At present, access is discontinuous at the west end of the foreshore as the RSL Club is not setback from the river and private land extends to the riverfront. The provision of continuous public open space along the river frontage provides an important local and regional asset. The proposed development will encourage pedestrians to walk along the river frontage to the western end of the existing CBD. The foreshore is also activated by the proposed café that is sited between the two existing slipways. This enhances the experience of on-site residents and tourists and encourages pedestrians to move to and through the site. Retention and adaptation of the slipways maintains a strong historical link to the cultural landscape of Ballina's riverfront.

Accordingly it is considered that the public domain treatment on this frontage as amended is appropriate. In order to ensure unimpeded public access conditions of approval are proposed which require a minimum unimpeded public access 24 hours per day of 14m width for the site frontage.

### Issue - Kerr Street

On the Kerr Street frontage the proposed street treatment is less active with the proposed car parking access and loading zone located mid-block. The waterfront building at the south western corner of the site is setback by 6 metres to the Richmond River along the western site boundary. This setback in combination with the 4 metre wide boardwalk encourages public access along the river frontage and reduces the overall bulkiness of this building.

### Consideration

Council's DCP states that buildings should be setback by 6 metres along Kerr Street to allow for deep soil planting. Deep soil zones are to be planted with landscaping that soften the interface with Kerr Street and provide an attractive outlook from ground floor commercial tenancies and lower floor dwellings. The DCP states that deep soil zones shall comprise 15% of the total site area.

The preferred project allows for 3,571m<sup>2</sup> of deep soil zone area, which is 31% of the site area. Therefore, as the area of deep soil exceeds the requirement, the provision of deep soil zones along Kerr Street is considered to be unnecessary. Notwithstanding, the proponent's landscape management plan includes street planting with Tuckeroo Trees along the Kerr Street frontage. A condition of approval ensures that the landscape management plan is implemented prior to the issue of the occupation certificate for each Stage.

### Issue - River Street

The buildings along River Street comply with the zero setback requirements within the *Ballina Combined Town Centre DCP*. The 'gateway' building on the corner of River and Kerr Streets (Building A) has a zero setback to both streets. The zero setback to River Street complies with Council's DCP but the building is non-compliant in relation to the setback to Kerr Street. Street setbacks establish the front building line.

### Consideration

The buildings along the eastern side of the development are setback 6 metres from the site boundary. This provides the key pedestrian link between River Street and the Richmond River with planting of palms and other vegetation. SEPP65 states that *'side and rear setbacks are important tools to ensure that the building height and distance of the building from its boundaries maintain the amenity of neighbouring sites and within the new development.'*

It is considered that the setback along the eastern boundary is in accordance with the intent of the side setback requirements of SEPP65 and the requirements of the *Ballina Combined Town Centre DCP*.

## **6.3 OVERSHADOWING**

### Issue

The exhibited project application would result in overshadowing of the public open space (Buildings A, B, D and F). These shadows would be most significant throughout the day in mid-winter. Summer and equinox shadows would be primarily contained to minor over-shadowing of the site in the early morning and parts of the site and River Street in the afternoon. Adjacent properties would therefore get appropriate sunlight outside these times. There was no over-shadowing of residential properties to the west of the site at any time.

In mid-winter approximately 50% of the river foreshore open space would receive sun before 3pm and there would be overshadowing of the bed of the Richmond River before 12pm mid-winter. The east-west pedestrian link through the site would be also over-shadowed continuously from 9am to 12pm, 50% of the link would be over-shadowed from 12pm until 3pm (refer **Figure 27**).

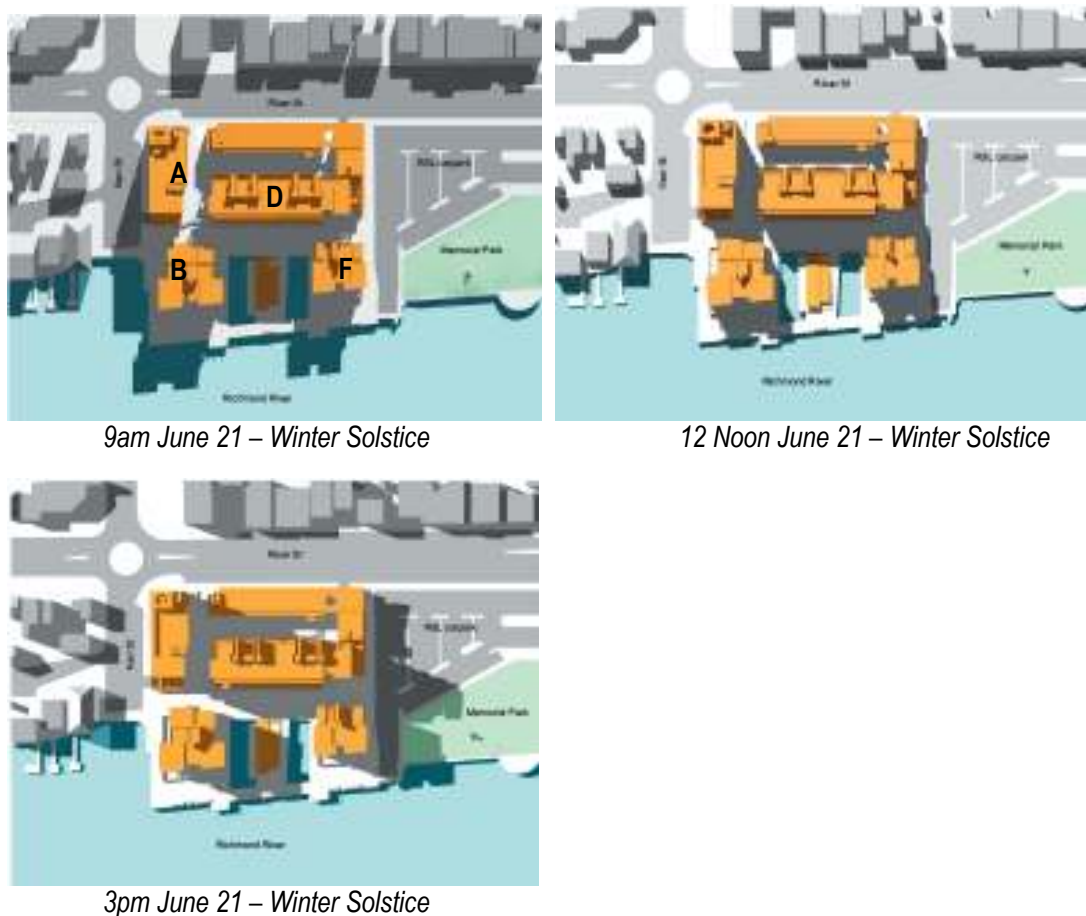


Figure 27: Exhibited Project Application Sun Shadow Diagrams

#### Preferred Project

The preferred project modifies the height of the buildings to reduce the heights of these four buildings as follows

- Building B and Building F reduced in height on the southern side by setting back the upper storey creating two 4/5 storey buildings;
- Building A from 22m (7 storeys) to 16m (5 storeys); and.
- Building D from 22m (7 storeys) to 17.8m (6 storeys).

**Figure 28** illustrates the final impact of the development on the foreshore open space during mid-winter. The addition of the 4 metre wide boardwalk along the western and southern site boundaries over the river also increases the overall area of public open space that has full solar access throughout mid-winter.



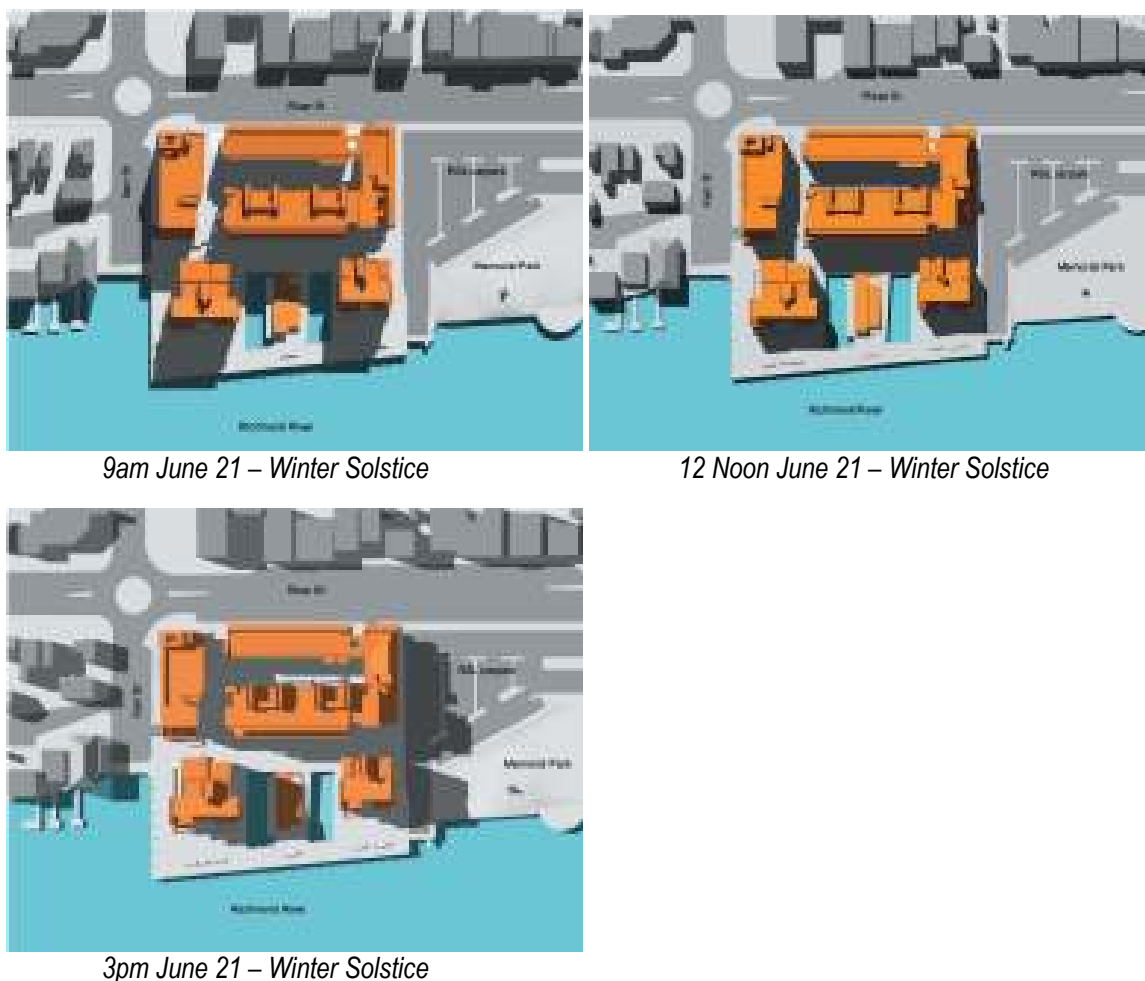


Figure 28: Preferred Project Sun Shadow Diagrams

#### Consideration

The proposed public domain along the foreshore will create an attractive public open space that is currently not accessible to the public. It is acknowledged that, considering the north-south orientation of the site, any proposed development on the site would result in some overshadowing of the river and foreshore during winter. Notwithstanding, it was considered that the project application as exhibited would result in significant and unacceptable overshadowing of the Richmond River foreshore. The extent and impact of the overshadowing would not be in accordance with the intent and provisions of the *North Coast REP*, the *NSW Coastal Design Guidelines*, the *Far North Coast Regional Strategy* and the matters for consideration of SEPP 71 with respect to over-shadowing of the Richmond River foreshore.

The proponent considers that the Department has established a precedent with respect to an acceptable level of overshadowing within the assessment of the Ramada Hotel (DA 234-5-2003). However, the overshadowing caused by the Ramada Hotel impacts upon public open space that only provides access to the riverfront and does not provide for active open space uses as is proposed in the current proposal. Furthermore, shadows caused by the Ramada only occur after 1pm mid-winter, not throughout the day as is the case with the Ballina Gateway buildings.

The preferred project significantly reduces the overshadowing impacts and overall bulk of the development, improving the overall amenity of the foreshore open space, particularly in mid-winter when solar access is critical to the amenity of the foreshore public open space. There is some minor overshadowing from the waterfront buildings in the morning in mid-winter, however, by midday, the shadows recede and do not overshadow the foreshore open space corridor.

## 6.4 DEDICATION OF FORESHORE OPEN SPACE

#### Issue

The proponent offered to dedicate to Ballina Council, free of cost under Section 94 of the *EP&A Act 1979*, an area of 860m<sup>2</sup> of land for the purpose of foreshore public open space (shown in pink in **Figure 29** below). The proponent

proposed that Council purchase an additional 1,178m<sup>2</sup> of land (shown in green in **Figure 29** below) for the purpose of foreshore public open space at market value, as determined in accordance with s56 of the *Land Acquisition (Just Terms Compensation) Act 1991*.

Alternatively, the proponent offered to retain the further area of 1,178m<sup>2</sup> of foreshore land in private ownership, with easements to allow public access across the land. Management and maintenance of the land would be the responsibility of the Body Corporate of the waterfront residential Buildings B and F.

Council advised the Department that it is not in a position to purchase the additional land and understood that one of the positive elements of the exhibited proposal was the dedication of a 14 metre wide public foreshore open space corridor. Furthermore, the perception of the public is that this foreshore land would become public open space managed and maintained by Council.

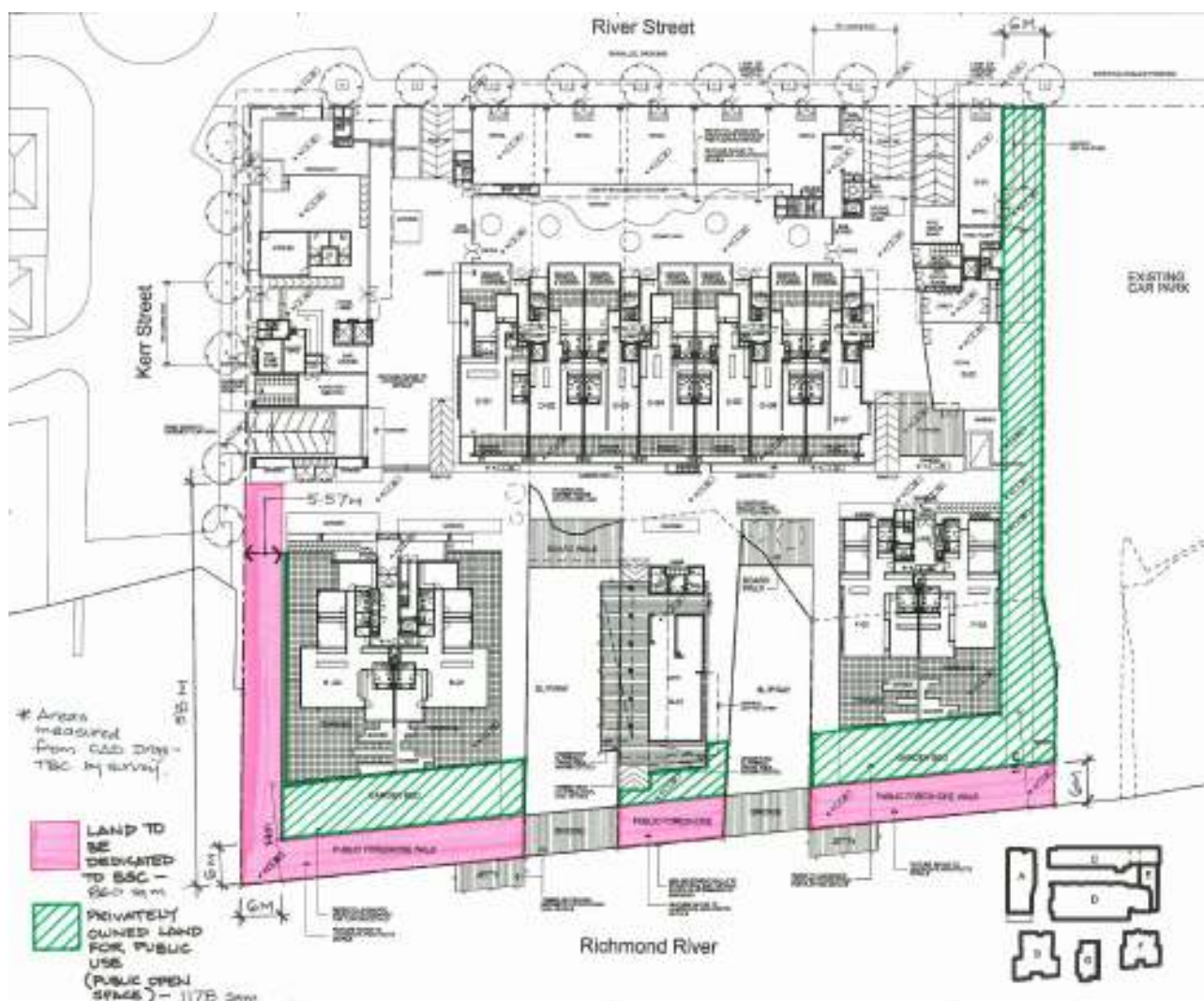


Figure 29: Proponent's Offer of Public Open Space Dedication

#### Consideration

The sale of land to Council or the retention of the land within private ownership is not supported for the following reasons:

- The development has been granted significant concessions in relation to building height;
- The dedication of land for foreshore public open space and access would have been a reasonably anticipated requirement having regard to *NSW Coastal Policy*, *NSW Coastal Design Guidelines* (UDAS 2003), SEPP 71,

Far North Coast Regional Environmental Plan, the Ballina Shire Combined DCP and pre-lodgement advice from Ballina Council and the Department;

- There is an existing precedent for dedication of public foreshore open space on other much smaller river front sites in the Ballina Town Centre established before there was even any formalised framework for such i.e. pre Ballina Combined DCP;
- The site has significant potential to deliver a unique foreshore public open space, given its size (unlikely to have a similar sized redevelopment site on the waterfront in the Ballina Town Centre), strategic location at the western entrance to the Town Centre, connection with the War Memorial Park and would provide a strong historical link to the cultural landscape of Ballina's riverfront and last remaining slipways (Crown land).
- The foreshore area will provide a significant public benefit by enhancing the experience of on-site residents, hotel guests and the wider Ballina community by providing a focal destination point and encouraging pedestrian movement and activity through the site.

Furthermore, should the developer retain ownership of the remaining open space, this could lead to issues associated with management of the public foreshore open space, including responsibility for liability and assumption by the public that the area is not for public use as it will be embellished and maintained differently to other Council owned foreshore areas along the riverfront.

As the proposal (central Building D) exceeds the *Tweed LEP* and *Ballina DCP* height controls, it is considered appropriate that the developer provide a trade-off for non-compliance with the controls (which can be supported due to non-detrimental impacts) by providing a public benefit by dedicating the entire 14 metre wide foreshore open space corridor to Council free of cost. This amounts to an additional area of approximately 584m<sup>2</sup> to that already proposed to be dedicated by the proponent, a total area of 1,444m<sup>2</sup>. The remaining area of open space shall be retained in the ownership of the proponent and will ultimately be managed and maintained by the Body Corporate responsible for the development.

A condition of approval requires the proponent to dedicate a minimum of 1,444m<sup>2</sup>, free of charge to Ballina Shire Council for the purpose of foreshore public open space. The dedicated area incorporates all foreshore areas between the site boundary and property boundaries to Buildings B, D, F and G (refer **Figure 30**). A condition of approval also requires a public right of way for the wider community across all of the remaining through site links accessible during daylight hours (refer **Figure 31**).

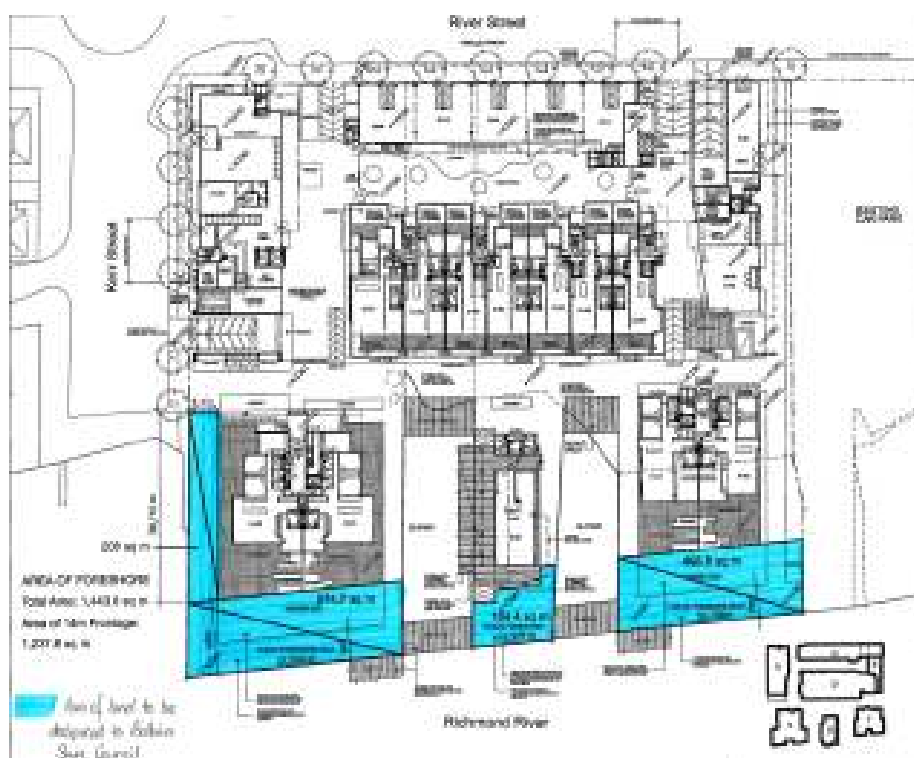


Figure 30: Extent of Foreshore Open Space to be dedicated to Ballina Council (marked in blue)



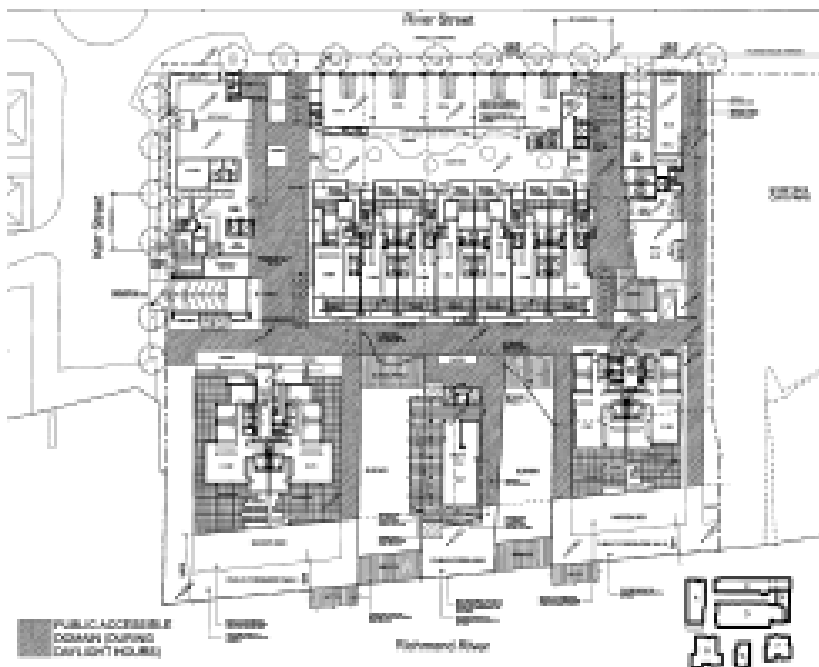


Figure 31: Publicly accessible domain created by easements (during daylight hours)

In respect to the future maintenance and management of the foreshore public open space, the proponent offered to enter into a servicing agreement in addition to preparing a draft Plan of Management addressing the use of remaining public open space with Ballina Shire Council.

A condition of approval requires the proponent to prepare a draft Plan of Management addressing the use of the remaining public open space with Ballina Shire Council.

#### 6.4.1 Foreshore Open Space Amenity

##### Issue

The amenity of the foreshore open space in the exhibited proposal was compromised due to the location of the 5 storey waterfront building in the south-western corner of the site (Building B). The width of the walkway adjacent to this building was only 6 metres. The width of the pedestrian walkway along the southern boundary of the site adjacent to the waterfront buildings is 14 metres with a further 6 metre setback to the built form of the waterfront residential buildings, Buildings B and F.

##### Consideration

The re-location of Building B to the east to respond to these issues would compromise private open space, solar access and views for the residents of Building D. It would also involve moving the building closer toward the western slipway, which could present structural issues during construction and would prevent public access along the eastern side of Building B, which is not desirable.

To improve the amenity of the foreshore for the public, reduce privacy issues for the residents of Building B and reduce the overall bulk of Building B, and improve public access, it was agreed that the proponent would undertake works off-site to construct a 4 metre wide boardwalk over the Richmond River. This has been included within the proponent's Statement of Commitments. The Department of Lands has indicated that they support the construction of the boardwalk, however, any native title claims over the land need to be extinguished before the structure can be built and it would require a licence under the *Crown Lands Act*.

The details of the design are to be undertaken in accordance with Drawing No. CA 2266 ADAZ 1111 submitted with this approval, and are to be submitted to the satisfaction of Council and the Department of Lands. Any native title issues under the *Native Title Act 1993* are to be extinguished via the appropriate process through the Department of Lands and National Native Title Tribunal, prior to construction of the boardwalk. The boardwalk is to be constructed prior to the issue of an Occupation Certificate for Stage 2 of the development.

This will result in a publicly accessible walkway along the foreshore of a total of 10 metres on the western edge, 18 metres along the Richmond River and 6 metres along the eastern site boundary.

## 6.5 SECTION 94 CONTRIBUTIONS

### 6.5.1 Open Space

#### Issue

In regards to the completion of embellishment works to the foreshore open space, the proponent seeks an offset against monetary s94 contributions that would otherwise be levied for open space and community facilities under the applicable contributions plans.

The relevant adopted Section 94 Plan for open space is the *Section 94 Contributions Plan: Public Garden & Recreation Space Enhancement (November 1992)*. The primary purpose of the Plan is to levy developer contributions for enhancement works throughout the shire. The total amount of contributions payable for the entire development is \$63,684 as shown in **Table 4** below.

**Table 4: Section 94 Open Space Contributions**

s94 Ballina Open Space Contributions Plan (1992)					
No. of Units	\$ per unit	Sub-Total	Less Unit Credit	Credit (\$)	Total
85 apartments	\$470	\$39,950	2 at \$654	\$1,380	\$38,570
84 hotel units	\$433	\$36,372.00	26 motel units	\$11,258.00	\$25,114
<b>TOTAL</b>					<b>\$63,684</b>

As the Contributions Plan provides for the embellishment of local parks and allows for contributions in the form of items of "material public benefit" (i.e. 'works in kind'), it is reasonable that the proponent be exempt from paying any open space contributions in exchange for 'works in kind' via the embellishment of the foreshore open space area that is to be dedicated to Council.

### 6.5.2 Road Works and Community Facilities

Contributions have been levied for each stage of the development as outlined in **Tables 5 – 7**. The subject site has a Section 94 Contribution credit based on 2 existing residential dwellings, a 26 unit motel and 1,457sqm of mixed retail. Contributions for each stage are calculated on the difference.

**Table 5: Section 94 Contributions – Stage 1**

s94 Ballina Road Contributions Plan (2002)					
No. of Units	\$ per unit	Sub-Total	Less Unit Credit	Credit (\$)	Total
43.22 ERA *	\$1,297	\$56,062.57	92.36 ERA	\$119,790.92	\$0
s94 Ballina Community Facilities Contributions Plan					
No. of Units	\$ per unit	Sub-Total	Less Unit Credit	Credit (\$)	Total
7.2 ET **	\$1,045	\$7,524.00	2 ET	\$2,090	\$5,434.00
<b>STAGE 1 TOTAL</b>					<b>\$5,434.00</b>

**Table 6: Section 94 Contributions – Stage 2**

s94 Ballina Road Contributions Plan (2002)					
No. of Units	\$ per unit	Sub-Total	Less Unit Credit	Credit (\$)	Total
80.14 ERA *	\$1,297	\$103,940.98	64.86 ERA	\$84,123.42	\$19,817.56
s94 Ballina Community Facilities Contributions Plan					
No. of Units	\$ per unit	Sub-Total	Less Unit Credit	Credit (\$)	Total
9.36 ET **	\$1,045	\$9,781.20	0 ET	\$0	\$9,781.20
<b>STAGE 2 TOTAL</b>					<b>\$29,598.76</b>

**Table 7: Section 94 Contributions – Stage 3**

<b>s94 Ballina Road Contributions Plan (2002)</b>					
<b>No. of Units</b>	<b>\$ per unit</b>	<b>Sub-Total</b>	<b>Less Unit Credit</b>	<b>Credit (\$)</b>	<b>Total</b>
80.22 ERA *	\$1,297	\$104,041.52	0 ERA	\$0	\$104,041.52
<b>s94 Ballina Community Facilities Contributions Plan</b>					
<b>No. of Units</b>	<b>\$ per unit</b>	<b>Sub-Total</b>	<b>Less Unit Credit</b>	<b>Credit (\$)</b>	<b>Total</b>
44.64 ET **	\$1,045	\$46,648.80	0 ET	\$0	\$46,648.80
<b>STAGE 3 TOTAL</b>					<b>\$150,690.32</b>

\* Equivalent Residential Allotments

\*\* Equivalent Tenements

## 6.6 TRAFFIC AND ACCESS

### 6.6.1 Road Works

#### Issue

The existing traffic generation of the site, based on 1,457m<sup>2</sup> of retail, 2 dwelling houses and 26 unit motel, is an existing peak hour credit of 187 trips per hour. The proponent calculated that the proposed Ballina Gateway proposal will generate a peak hour trip generation of 226 trips per hour. This results in an additional demand of 39 trips per hour as a result of the development.

To mitigate the increase in traffic movements, the proponent proposed the following:

- a centralised left turn lane for northbound traffic on the Pacific Highway, including the cost of design, documentation, service relocations and construction; OR
- alternatively the proponent offered Ballina Shire Council, as the local roads authority, an amount of \$150,000 prior to the issue of the construction certificate of Stage 3 of the development towards necessary roadworks as determined by the roads authority.

Council indicated that they would prefer a monetary contribution rather than works to the roundabout. The RTA, although initially in support of works, now also supports the option of a monetary contribution as the RTA is likely going to have funds to bring forward the installation of the traffic signals before the development is constructed.

The RTA contended the calculation of the traffic generated by the existing developments on the site. In particular, the RTA was concerned that the traffic report has discounted the impact of the proposed development by assessing its existing traffic generation as a stand alone development. However, Ballina Shire Council recognises that existing use rights of development lands and in the *s94 Roads Contribution Plan Section 7.1 Calculation of Contributions*, it advises that 'redevelopment proposals will generally be entitled to a credit for any existing right'. The proponent implemented the same rationale basis in assessment of increase in traffic movements, in that the total trips generated less the existing credit entitlements result in the additional trip impacts.

#### Consideration

The Traffic Impact Study (TIS) undertaken used the format advocated by the *Roads and Traffic Authority publication, Guide to Traffic Generating Developments*. Accordingly, it is considered that this assessment is sufficiently comprehensive.

The *Ballina Road Contributions Plan (BRCP) Version 1.0* applies to the whole of the Ballina Local Government Area and sets levies for all traffic generating developments within the LGA. The plan is based on the principle that a development should contribute in proportion to the extent to which it uses capacity in the existing or future transport system. A detailed Network Study and traffic model (prepared by Eppell Olsen & Partners, Transportation & Traffic Engineering & Planning Consultants) were used to identify the additional demand for road infrastructure generated by developments. Council has undertaken its own assessment of the impact of the development in terms of peak hour trip generation in the context of Council's *s94 Roads Contribution Plan* and determined that the proponent should contribute a total of 11% toward the cost of the signalisation of the Pacific Highway / River / Kerr Street intersection. It is acknowledged by Council and the proponent that the signalisation would be in the order of \$2 – \$2.5 million.

A condition of approval requiring the proponent to give a payment to Council of \$220,000 toward the total cost of the intersection upgrade has been attached to the approval. This is to be paid to Council prior to the issue of a Construction Certificate for Stage 2 of the development.

## 6.6.2 Loading Zones

### Issue

The exhibited project application included two on-street loading zones, one on River Street and one on Kerr Street, and one service bay in the basement car park. Given the scale and location of the development, this was considered inadequate and further investigation regarding the provision of an on-site set down and pick area was required in accordance with the *Ballina Combined DCP* and the RTA's *Guide to Traffic Generating Developments*. As the basement loading zone could only accommodate delivery vehicles 2.5m high, it is likely that the proposed loading zones would be saturated by service vehicles and public transport.

Furthermore, the proposed location of the loading zones would impact on the safety and amenity of pedestrians and residents within and adjacent to the site. This is of particular concern to pedestrians and hotel guests on Kerr Street and the pedestrians using the active River Street side of the development. Loading zones should not be located adjacent to sensitive receivers such as the residential area in Kerr Street and Camoola Avenue.

### Preferred Project

The preferred project includes two on-street loading zones, one on River Street and one on Kerr Street. Two service bays for delivery vehicles have also been included in Basement 1 catering for light rigid vans. Headroom in the basement car park has been increased from 2.5 metres to 3.15 metres to accommodate larger vehicles.

The proponent argued that, based on a similar size retail facility in the Ballina CBD, the Seamark, the development's retail areas will generate over 90% of its servicing requirements by using small rigid and courier type vehicles. This was estimated to be between 17-18 deliveries per day. It is anticipated that no service needs would require deliveries by a semi-trailer. Larger trucks, unable to use the basement service bays, would be required in the order of 1 - 2 per day to which use of a single, restricted time controlled on-street loading zone would service the demand.

### Consideration

The proponent's service delivery assessment did not consider the residential and hotel elements of the development. Therefore, the on-street loading zones will be further exacerbated by deliveries to the residential and restaurant components of the development, which could involve semi-trailers at any time of the day. The unloading of large goods on the road side and footpath also raises issues in relation to public and employee safety. The concern is also that this could set a precedent for other developments to maximise their site returns by utilising a community asset.

The RTA suggested that should on-street loading zones be required, time management strategies would be necessary to ensure effective control of load zones. This is particularly if they were to be relied upon to service the more infrequent but larger heavy rigid vehicles. However, the enforcement of the time restrictions would be a matter for Council and would not be easily enforceable.

After further negotiations with the proponent, two options were presented to the Department for an on-site loading zone for heavy rigid vehicles. However, both options would have significant impacts on amenity for the residents in the proposed residential buildings, Kerr Street residents and posed potential conflict with pedestrians on the Kerr Street footpath and the east-west pedestrian link.

Option 1 involved a laneway from Kerr Street along the east-west pedestrian link, around Building E and exiting on to River Street. Not only would this design result in a significant loss of amenity for the residents of Building D, it would also impact negatively on the public east-west and north-south through-site links and significantly reduce the area of public open space. A second access to River Street is also not considered appropriate due to conflict with pedestrians. The second option (Option 2) involved a loading bay at the western end of the east-west pedestrian link, whereby trucks would need to reverse into the bay after turning in Kerr Street. This option was unacceptable as it presents safety concerns for pedestrians on Kerr Street.

The proponent provided no justifiable reason why a development of this size and nature could not make adequate provision for on-site loading and unloading. By not providing on-site loading, the development is contrary to the RTA's *Guidelines for Traffic Generating Developments*, the *EP&A Model Provisions* as adopted in the *Ballina LEP* and various provisions of Council's *Combined DCP*.

Council also suggested that the development incorporate a Porte Cochere arrangement adjacent to the Kerr Street entry to the hotel (Building A) located entirely or at least substantially within the development site. This would be located in the same location as the Kerr Street loading zone and would provide a separate pick up and set down point for hotel patrons. However, it was considered that this arrangement was not appropriate considering the proximity of the structure to the Pacific Highway / River / Kerr Street intersection.

It was therefore considered appropriate to amend the design of the development through a condition that requires an on-site loading zone for heavy rigid vehicles to be incorporated into the development. This could be achieved by a re-design of part of the corner hotel building (Building A), or through the construction of a vehicle turntable in the basement, with access from Kerr Street. This type of loading bay arrangement presents a feasible alternative loading / unloading arrangement for the Ballina Gateway site. The condition of approval requires the proponent to submit a revised set of plans to Ballina Shire Council for approval prior to issue of the Construction Certificate for below ground works for Stage 2 of the development.

### 6.6.3 Central Median

#### Issue

The RTA recommended that the proponent should construct a continuous central median in River Street between Kerr and Grant Street to manage traffic entering and leaving the site via the River Street access and prevent right hand turns in and out of the site. This would also complement future traffic management arrangements when the intersection at River Street and Kerr Street is signalised. This would ensure that all businesses on both sides of the road are treated fairly. A right-turn bay (instead of a median strip) would encourage u-turn movements, so this was not considered an acceptable arrangement.

#### Consideration

Initial modelling results undertaken by Council indicate that during peak times the queue in River Street will be at least 80metres. This will extend beyond the driveway and block access from the right-turn bay. This confirms that a continuous median is required to force right-turners to use the Grant Street roundabout to avoid overspilling of right-turn bay and impacting on eastbound River Street traffic.

This traffic arrangement is required for safety reasons to prevent right hand turns across River Street into and out of the development site, and to ensure the continuous flow of traffic on River Street.

As there is a direct nexus between the requirement for this median strip and the development, a condition of approval requires the development to construct a central median on River Street between Kerr and Grant Street to the satisfaction of Council as the roads authority.

## 6.7 VISUAL LINKAGES

#### Issue

The preferred project incorporates two north-south and one east-west public pedestrian linkages through the site, with additional north-south linkages along the eastern and western boundaries. However, none of the linkages provide a direct visual linkage from River Street (northern site boundary) through the development site to the Richmond River (southern site boundary).

#### Consideration

The desired future character of the *Riverside West Precinct* (within which the majority of the development site is located) encourages pedestrian circulation throughout the site facilitated by buildings that are positioned to provide glimpses of the river and by the attraction of commercial uses at the ground level. The *SEPP 65 Guidelines* recommend consideration of the provision of public through-site access ways in large development sites and configuration of buildings within a site such that they provide for the enjoyment of views.

The current design provides for circulation throughout the site for pedestrians with buildings positioned to allow glimpses of the river. As pedestrians enter the north-western link into the site they will see glimpses of the water as they pass between the hotel Building A and central residential Building D. Those pedestrians using the east-west pedestrian link will have uninterrupted views to the river along the western site boundary and either side of the single storey café that is sited between the two slipways. Furthermore, the building design takes advantage of its waterfront location by providing water views for the majority of new residents within the development.

The buildings on the eastern side of the proposed development are setback by 6 metres from the site boundary, providing a 6 metre wide clear thoroughfare mid-block providing uninterrupted views and access to the river for people approaching the site from the Ballina Town Centre. Similarly, pedestrians approaching the development from the western residential area will appreciate uninterrupted views down Kerr Street to the river and adjacent to the Hotel Building A and waterfront residential Building B.

The development does, therefore, provide visual linkages to the river down the eastern and western boundaries and from key locations within the development through the careful siting and setting back of buildings. The two north-south and one east-west link through the site respond to the intent of the objectives and controls of the *Ballina Combined Town Centre DCP* and *SEPP 65 requirements* to provide public access through large development sites and mid-block views, access to and glimpses of the river.

## 6.8 ACOUSTIC AMENITY

### Issue

The local area is quite busy, with River Street currently carrying all Highway traffic passing through Ballina. It is anticipated that the Ballina Bypass will significantly reduce traffic volumes through the Ballina CBD, which will reduce road traffic noise impact levels accordingly. As no firm traffic volume estimates are currently available, the proponent assessed traffic impacts by assuming a growth of 2.5% per annum increase, with heavy vehicle percentage reducing from 7% to 2%.

The Environmental Noise Impact Assessment (ENIA) undertaken for the project was considered unacceptable for the following reasons:

- The noise logger was only deployed for 3 week days (no weekend days/nights) even though the Department of Environment and Conservation's (DEC's) *Industrial Noise Policy* specifies that monitoring for a commercial development should be undertaken for 7 continuous days.
- The noise logger was deployed mid-way along Kerr Street, which is a side street not a location where major noise impacts are likely to be experienced, i.e. River Street, Ballina RSL (adjacent to the site) and the Ballina Hotel (opposite the site);
- The development did not achieve the noise levels recommended by the INP for the outdoor balconies of the building on River Street (Building C) and may compromise their use from an amenity point of view.
- No operator-attended monitoring had been conducted; and,
- The ENIA used the LA 10 descriptor rather than the LAeq descriptor (a more sensitive measure of noise), which ceased to be relevant in NSW from 2000 when the INP was published.

### Consideration

Additional noise monitoring was undertaken at the site during January and February of this year and a revised ENIA submitted by the proponent. The revised field works and assessment was considered to be satisfactory. The proponent proposes acoustic treatments to building shells to ensure noise from existing and proposed commercial activity intruding into proposed apartments will be below typically accepted criteria. Noise levels on balconies may exceed the criteria specified in the *Industrial Noise Policy*, however, as the area has been designed as an active area, future occupants should reasonably expect noise intruding onto balconies from commercial land uses in the locale.

To provide some respite from external noise from commercial activity, the proponent proposes to mitigate noise from most onsite commercial activities to achieve an acceptable indoor level inside living spaces and in bedrooms (doors and windows assumed to be closed). Control of road noise impacts has been recommended through building shell treatments to achieve indoor noise levels, with outdoor communal open space shielded by the proposed buildings, thereby reducing road traffic noise to within acceptable levels.

This report is considered to be acceptable and adequately addresses the issue of noise mitigation for the new buildings. The proponent's Statement of Commitments and a condition of approval ensures that the development is designed in accordance with the recommendations of this report.

## 6.9 ACID SULFATE SOILS

### Issue

Potential Acid Sulfate Soils (PASS) and Actual Acid Sulfate Soils (ASS) are often found about 3 metres below existing ground level in the Richmond River frontage in Ballina. Soils encountered on the site are considered to be PASS. The soils occur between depths of 0.3 metres and 6 metres below existing ground level. The proposed construction will intersect soil at this depth via basement construction and piling. An acid sulfate management plan (ASSMP) will therefore be required during construction to control the PASS. The proponent submitted such a plan with the EA, which requires holding the PASS in a bunded site where it can be neutralised by the addition of lime through thorough mixing and turning with the PASS.

Due to the staging of the development adequate land area generally exists outside the construction zones to permit a range of treatment techniques to be implemented in a bunded environment. Other projects along the river front which have excavated into PASS zones without sufficient on site treatment areas have disposed of the spoil on playing field sites in West Ballina. In these cases treatment of the PASS has been undertaken on the playing field sites. Towards the final stages of the Gateway project the proponent has indicated that it is possible that some PASS will have to be treated off site as well. If this is the case treatment and disposal of PASS on the playing fields will also be required.

The Department of Natural Resources (DNR) had concerns regarding the management of ASS on the site during construction. In particular it was noted that the recommended liming rates for treatment of ASS varied in the documentation. Furthermore, to ensure that ASS issues were adequately addressed prior to approval being granted, the DNR requested that the following additional information be provided:

- Details of the sampling strategy proposed;
- Details of the intended record keeping procedures for Council / DNR audit purposes; and,
- Advice of who on site is responsible for carrying out the sampling strategy, analysing samples, reporting the data and varying details of the management strategy.

Furthermore, Council discouraged any off-site treatment of ASS from any site at least until the full extent of contamination on of the site is known.

### Consideration

Provided adequate management protocols are in place and a detailed ASS Management Plan is prepared prior to the issue of a Construction Certificate for each stage, there is no technical reason that ASS cannot be treated off-site. Notwithstanding, without knowing the complete extent of contamination across the site, a precautionary approach has been taken and a condition of approval prevents any off-site treatment of ASS without the prior approval of Council.

Further technical advice was received from the applicant on 21 February 2007 which satisfactorily addressed DNR's concerns regarding the management of ASS on the site during construction. Conditions of approval provided by the DNR ensure that ASS are appropriately managed on site. In particular, a detailed ASS Management Plan must be prepared prior to issue of the construction certificate for Stage 1 updated / amended as appropriate for subsequent stages.

## 6.10 GROUNDWATER

### Issue

Construction of the subterranean basement will require dewatering of the site during construction. Depth to groundwater is between 1.75m to 2.15m below existing ground level. Sampling of groundwater by the proponent indicated water quality levels below threshold levels described in ANZECC (2000) except in one instance where an elevated TPH (Total Petroleum Hydrocarbon) sample was recorded. Natural turbidity of the groundwater is high. Groundwater will be monitored and treated during excavation for and construction of the basement for turbidity, dissolved oxygen, acidity and TPH. Measures proposed to be used to address any problems with these parameters will involve:

- Flocculation and settling of suspended solids
- Oxygenation

- Liming
- Pumping to sewer with trade waste license.

As the Richmond River is not yet subject to a water sharing plan, the proponent must obtain a licence from the DNR under Part 5 of the *Water Act 1912* prior to commencement of any dewatering work. The DNR was concerned that the assessment of the proposal's impacts on groundwater was not in accordance with the objectives of the *NSW State Groundwater Policy*. The dewatering management plan was lacking with respect to a range of technical matters, in particular:

- The identification of threshold values for the proposed analytes and specification of associated actions once thresholds are breached;
- The identification of sampling frequency for the proposed analytes;
- Details of the intended record keeping procedures for Council / DNR audit purposes; and,
- Advice of who on site is responsible for carrying out the sampling strategy, analysing samples, reporting the data and varying details of the management strategy.

Furthermore, Council expressed concern that the hydrogeological assessment had been undertaken for a 6 storey development with a single level basement car park. Given the design had significantly changed a revised geotechnical and hydrogeological report, Council requested that a revised report be prepared.

#### Response to Submissions

The proponent's submissions report and other subsequent correspondence dated 21 February 2007 confirmed that during dewatering, groundwater would be treated such that it will be returned to the receiving environment at or above the water quality parameters of the receiving waters and in accordance with licence conditions. Details regarding baseline monitoring, treatment measures, record procedures and sampling frequencies were also provided for consideration.

#### Consideration

The additional technical advice regarding dewatering during construction and groundwater management was provided to DNR which subsequently indicated its support for the proposed groundwater management strategy and mitigation measures.

In relation to Council's concerns, the Department has further reviewed the proponent's Geotechnical Investigation and Site Assessment and is satisfied that as the report confirms that by limiting the deepest portion of the basement to nominally 7 metres below ground level, extending sheet pile walls and using internal dewatering, dewatering rates can be reduced to manageable levels (50 litres per second) and settlement effects on existing buildings should be limited to a 30 metre radius from the deepest dewatering point.

Although the design has changed to incorporate a two level subterranean basement car park, the investigations undertaken were based on limiting the basement to a nominal 7 metres below ground level. The proposed lower basement level is proposed to be at RL -5.325m, with existing ground levels ranging between RL 1.8m to RL 2.0m, the lower basement is limited to approximately 7m below ground level.

Conditions of approval ensure that dewatering during construction is appropriately managed on site. In particular, a detailed Dewatering Management Plan must be prepared prior to issue of the construction certificate for Stage 1 updated / amended as appropriate for subsequent stages.

## **6.11 CONTAMINATION**

#### Issue

The site history identified that the site has been used for a variety of purposes including industrial uses for many years and soil sampling has identified that contamination does exist from these land uses. In addition, the historical search identified 2, potentially 3, underground storage tanks (USTs) and heavy metal contamination surrounding the slipway activities. The preliminary investigation has established the existence of tributyltin (TBT) in sediments below the slipways.



There was insufficient data to assess the vertical and horizontal extent of the TBT and additional sampling and analysis should be undertaken. Council requested that further detailed investigations of the contaminated areas be undertaken prior to approval being given for the proposal.

#### Response to Submissions

The proponent contended Council's concerns regarding the contamination issue. Notwithstanding, the proponent has recommended that despite these encouraging results further investigations are warranted to:

- locate possible UST sites and pipework;
- isolate hot spot contamination areas around the industrial slipway;
- monitor TBT values and extent in the shallow riverbed; and,
- investigate the extend of hazardous building materials.

#### Consideration

The distribution of results from the contamination testing is consistent with prior land uses. That is, where prior land uses were of a residential or commercial nature contamination levels were below threshold levels for residential occupation. The two elevated results were in areas of prior light industrial use.

The proponent has recommend in their report that detailed investigations should be undertaken to confirm the existence or otherwise of the tanks and associated pipework. In addition detailed testing is recommended to isolate areas of elevated hydrocarbon and heavy metals. These investigations would occur in conjunction with the demolition phase of the project. Following these detailed investigations a Remediation Action Plan (RAP) would then be prepared to treat or dispose of soils with elevated levels of contaminants. Coffey advised that following these investigations and the application of conventional remediation measures the site could be made suitable for the intended land use.

Further detailed sampling will also be completed as part of the site remediation during demolition. Areas having TBT levels above high trigger values will be isolated to prevent spreading of the TBT during excavation. Contaminated soil with TBT levels above high trigger values will be placed in a bunded enclosure after excavation, dried and disposed of in a licensed tip.

Council is of the opinion that further investigation is required prior to approval being issued and considers the site unsuitable in its present state for the intended residential development. Notwithstanding, Council agreed that the full extent of contamination cannot be determined until the site is cleared of structures. Therefore, Council recommended that the proponent be required to obtain a formal Site Audit Statement at the conclusion of any remediation work, in accordance with SEPP55.

A condition of approval requires the proponent to obtain a Site Audit Statement prior to issue of a Construction Certificate at the completion of the remediation of the site for each stage of the development.

Another condition of approval requires the proponent to complete SEPP55 contaminated land investigations to isolate contaminated areas and remediate the areas of contamination to threshold levels stipulated as suitable for proposed land uses in the relevant guidelines.

## **6.12 OTHER MATTERS**

### **(i) Public benefits and the public interest**

The proposal is considered to provide many public benefits summarised below and is considered to be in the public interest:

- 14 metre setback to the foreshore creating a new public foreshore open space in accordance with the *Ballina Combined DCP*
- 4 metre wide boardwalk along the Richmond River from Kerr Street to the eastern site boundary;
- Active frontages to River Street in accordance with the *Ballina Combined DCP*
- Activation of the foreshore through use as a café in accordance with the *Ballina Combined DCP*
- North-south pedestrian links from River Street to the Richmond River and a mid-block east-west pedestrian link
- Medium density accommodation close to the city centre
- Improved tourist accommodation close to the city centre

- Additional car parking within the town centre, in accordance with secondary objectives of the *Ballina LEP*

**(ii) Suitability of the site**

The site is considered suitable for the proposed development for the following reasons:

- The site is zoned for residential and commercial development.
- The site lies within Ballina, which is an emerging regional centre on the far north coast of NSW.
- The site is within the Ballina town centre where existing and expected future development includes medium to higher density development.
- The site is accessible to existing services and facilities, within Ballina Town Centre.
- The site is not constrained by any significant environmental and development issues which would preclude the proposal, or that can not be appropriately mitigated.

## 7 CONCLUSION

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The Department has assessed the EA and considered the submissions in response to the exhibited proposal. The key issues related to:

- Desired future character
- Built Form – building height, bulk, scale and building envelopes
- Overshadowing
- Dedication of foreshore open space
- Section 94 Contributions
- Traffic and Access
- Visual linkages
- Acoustic amenity
- Acid Sulfate Soils
- Groundwater / dewatering
- Contamination

The Department has considered these issues and a number of conditions of approval are recommended to ensure the satisfactory addressing of these issues and minimal impacts as a result of the proposal.

The preferred project will allow for a range of positive outcomes, including:

- 14 metre setback to the Richmond River foreshore, creating 14 metres of public foreshore open space
- Dedication of approximately 1,444sqm of public foreshore open space to Ballina Shire Council;
- 4 metre wide pedestrian boardwalk over the Richmond River along the western and southern site boundaries;
- Active frontages to River Street;
- Activation of the foreshore through use as a café;
- Pedestrian links from River Street and Kerr Street to the Richmond River;
- New retail opportunities along River Street to boost the local economy;
- Medium density accommodation close to the city centre;
- Additional car parking within the town centre; and,
- Reinforcement of the status of the Ballina Central Business District as the retail, commercial and administrative centre of the Shire of Ballina, in accordance with the objectives of the Ballina LEP.

Furthermore, the preferred project has largely demonstrated compliance with the existing environmental planning instruments.

On these grounds, the Department considers the site to be suitable for the proposed development and that the project is in the public interest. Consequently, the Department recommends that the preferred project be approved, subject to conditions of approval.

## 8 RECOMMENDATION

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It is recommended that the Minister:

- (A) consider the findings and recommendations of this report;
- (B) approve the carrying out of the project, subject to conditions, under Section 75J of the *Environmental Planning and Assessment Act, 1979*; and
- (C) sign the Determination of Major Project (**tagged A**).

## **APPENDIX A. DIRECTOR-GENERAL'S ENVIRONMENTAL ASSESSMENT REQUIREMENTS**

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## **APPENDIX B. COMPLIANCE WITH ENVIRONMENTAL PLANNING INSTRUMENTS**

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## **APPENDIX C. COMPLIANCE WITH DEVELOPMENT CONTROL PLANS, OTHER PLANS AND POLICIES**

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## APPENDIX D. PUBLIC SUBMISSIONS

### Ballina Gateway Mixed Use Development MP05\_0009

#### Summary of all public submissions received for this application

#### OBJECTIONS (70 submissions)

Details / Comment	No. of times raised
<b>Breaching of 16m building height control</b>	
<ul style="list-style-type: none"> <li>Objection to building heights in excess of the maximum of 16m (5 storey) Council controls. The community and the Council believe that the 16m building height is adequate.</li> <li>A seven storey (22m) building will set a precedent for future developments. All other developments have been restricted in height and even so impose a huge visual and bulk impact to the riverfront.</li> <li>Objection to trade-off on height for provision of foreshore access.</li> <li>Development on the waterfront should be lower than everywhere else in Ballina, not higher. <i>Ballina Shire Council LES – Tall Buildings, October 1983</i>, concluded that “it is to be recommended that all land directly adjacent to the river foreshore be excluded from tall and medium rise building consideration”.</li> </ul>	47
<b>Impact on local character</b>	
<ul style="list-style-type: none"> <li>Objection to Building A as it is out of character with the Ballina locality, in particular the zero setback, height, narrow footpath and bulk.</li> <li>The development depicts a large development totally out of character with surrounding areas. The bulk and scale of development will change the general landscape of the area with the construction of an excessively oversized complex which is not warranted in the area.</li> <li>Concerns regarding the changing characteristic and feel of Ballina as a laid back naturally beautiful and peaceful holiday destination. Concern that Ballina is becoming the new Noosa of the Northern Rivers and a “Gold Coast” style urbanised hub.</li> </ul>	24
<b>Traffic &amp; Car Parking</b>	
<u>Traffic</u>	
<ul style="list-style-type: none"> <li>A comprehensive traffic assessment has not been undertaken. There has been little or no assessment of the impact that the proposed development may have during construction.</li> <li>Inadequate pedestrian access audit. The audit was based on a one hour period on Friday 4<sup>th</sup> August 2006 between 8am – 9am. This is inadequate in determining overall pedestrian access for such a busy street,</li> </ul>	20



Details / Comment	No. of times raised
<ul style="list-style-type: none"> <li>▪ Traffic data is based on outdated information, ie: Eppel, Olsen &amp; Partners traffic modelling was based on data contained in the PARAMICS traffic model, with the data being based on information sources collected during 2002 – 2004, two years out of date. The traffic flow data was based on the Ballina Road Network Study of 2000, six years out of date. Contests that there has been significant change over the last 6 years and these studies would not accurately reflect current traffic trends.</li> <li>▪ Objection to developer not having to upgrade roundabout and install traffic lights immediately to maintain normality to traffic flows in Kerr and River Streets. Other future developments may need to fund the upgrades.</li> <li>▪ Concerns regarding exacerbation of existing traffic, access and parking problems associated with functions at the Blue Room Hotel. The construction of the proposed development has the potential to make these problems totally chaotic.</li> <li>▪ Development should not be commenced before completion of Ballina Bypass, which would ease the congestion in River and Kerr Streets.</li> <li>▪ Camoola Ave is extremely narrow and carries an enormous amount of traffic because it is the only street on the southern side of River Street which gives access via a roundabout to both Kerr and River Streets. The proposed vehicle occupancy of the Gateway project would exacerbate enormously the already impossible car egress from the riverfront.</li> </ul>	
<u>Access</u>	
<ul style="list-style-type: none"> <li>▪ Concerned regarding access to and across River Street and the Pacific Highway during construction.</li> <li>▪ Objection to entry to basement carpark from Kerr Street, opposite Camoola Avenue, resulting in an increase in traffic in Kerr St. Concerns regarding safety and the increased volume and speed of traffic that will need to use the roundabout at Kerr St / Pacific Hwy &amp; River St.</li> </ul>	
<u>Parking</u>	
<ul style="list-style-type: none"> <li>▪ Insufficient car parking spaces (309 spaces) and increased number of cars parking in Camoola Avenue as a result of patrons for the new hotel and restaurant.</li> <li>▪ The application seeks parking “based upon other similar facilities”. Parking requirements are compared to existing similar developments, which may not necessarily have enough parking spaces, eg: the Ramada Hotel under construction.</li> <li>▪ In calculating car parking spaces, consideration should be given to the fact that: (i) there is no public transport in the area, (ii) the two buses/day referred to in the application will run to the shopping centres only, (iii) there are a number of tourist attractions in the area that can only be accessed by motor vehicle, (iv) majority of visitors will be using private or hire vehicles to get around, and not rely on public transport.</li> </ul>	
<b>Non-Compliance with Council Planning Controls</b>	
<ul style="list-style-type: none"> <li>▪ The development does not comply with both the LEP and the Town Centre DCP, in particular setbacks, building separation and envelopes.</li> </ul>	19
<b>Loss of visual amenity</b>	
<ul style="list-style-type: none"> <li>▪ Objection to buildings extending out to the Richmond River past the existing building, thereby restricting views for local residents and River Street users and workers along the river.</li> </ul>	15

Details / Comment	No. of times raised
<ul style="list-style-type: none"> <li>One of Ballina's greatest attributes is its visual amenity, which gives the town its distinctive appearance. An increase in the present maximum building height has the potential to destroy this.</li> <li>Disparity between existing low and high rise has further potential to destroy visual amenity.</li> <li>The present appearance of River Street should be retained.</li> </ul>	
<b>Foreshore access</b>	
<ul style="list-style-type: none"> <li>Public access along the foreshore is a 'given' and should not be used as a trade-off for increased height of buildings.</li> <li>Residents of Ballina would be intimidated and restricted to accessing / using the river by the size, height and presence of the development.</li> <li>Objection to reduction in public access to the foreshore.</li> <li>Objection to any portion of the river being reclaimed in order to provide riverfront access for the development instead of being allowed for on the land.</li> <li>Riverfront land should be given to Council. While the land is under control of private interests there is no guarantee that it will remain accessible to the public.</li> </ul>	14
<b>Flora &amp; Fauna</b>	
<ul style="list-style-type: none"> <li>Question validity of statement that a comprehensive fauna report was unnecessary in the subject circumstances. Upon what grounds does the author of the report make the claim that a comprehensive fauna report is unnecessary?</li> </ul>	
<u>Norfolk Pines</u>	
<ul style="list-style-type: none"> <li>Concern regarding removal of two Norfolk Pines at the rear of the Sundowner Motel.</li> </ul>	12
<u>Osprey Pole</u>	
<ul style="list-style-type: none"> <li>Concern regarding relocation of Osprey nesting pole. The relocation of the osprey pole must constitute a likely significant effect on an endangered species.</li> </ul>	
<b>Overshadowing</b>	
<ul style="list-style-type: none"> <li>Loss of morning sun for residents on Camoola Avenue.</li> <li>Proposal does not comply with North Coast REP, EP&amp;A Act and Coastal Policy overshadowing provisions.</li> <li>Unacceptable building heights will result in increased overshadowing to the CBD and give a "closed in" city feeling that is not wanted on the North Coast.</li> </ul>	9
<b>Bulk &amp; scale of development</b>	
<ul style="list-style-type: none"> <li>Objection to bulk and scale of development as it will destroy the ambience and aesthetics of River Street.</li> <li>The size and scale of the proposed development is inappropriate for the townships and contravenes agreed regulations.</li> </ul>	9

Details / Comment	No. of times raised
<b>Obstruction of river flows &amp; flooding</b>	
<ul style="list-style-type: none"> <li>The drawings suggest that the development will protrude further into the river than the existing structures and if that is the case, appropriate river studies should be conducted to ensure the development does not affect the flow of, or exacerbate flooding of, the Richmond River.</li> <li>The addition of jetties on the plans encroaches still further on the main channel of the river, and this will create even more problems than exist at present in times of heavy rain and floods. The eddy current caused by allowing reclaimed land in the first place and showing as Lot 10 DP 244352 on the plans creates backwaters of dead animals and timber. Any further incursion into the main channel by jetties or wharves, which appear on the project plan, would only exacerbate this problem.</li> </ul>	8
<b>Building on Crown Land (Lot 10 DP244352)</b>	
<ul style="list-style-type: none"> <li>Query regarding ownership of Lot 10 DP 244352. Is this crown land? How did this become freehold land?</li> <li>Council previously agreed that Lot 10 DP 244352 would never be built upon. When initially granted, it was on the condition that it would be used as parkland.</li> <li>Concern regarding stability of buildings on reclaimed land.</li> </ul>	7
<b>Need for type of development</b>	
<ul style="list-style-type: none"> <li>Why is such a development needed in the Ballina area given other current developments and shop vacancies?</li> </ul>	6
<b>Acoustic Amenity</b>	
<ul style="list-style-type: none"> <li>Objection to increase in traffic noise as a result of new development.</li> <li>Concern about increase in noise travelling across the water.</li> <li>Concern regarding noise, vibration (stability of nearby buildings) and shock during construction.</li> </ul>	5
<b>Building design / layout</b>	
<ul style="list-style-type: none"> <li>Objection to block style buildings with large footprints and narrow walkways between tall buildings.</li> <li>Objection to colour scheme, design and layout.</li> </ul>	5
<b>Local Infrastructure</b>	
<ul style="list-style-type: none"> <li>Concern regarding increased loading to the West Ballina STP and the fact that this STP discharges to "The Canal", which is subject to poor tidal flushing.</li> <li>Objection to allow the addition of this large number of new equivalent tenancies while not knowing what effect additional effluent will have on receiving waters.</li> </ul>	3

Details / Comment	No. of times raised
<b>Wind</b>	
<ul style="list-style-type: none"> <li>The precinct's micro-climatic character will be adversely affected through exacerbation of the present wind-tunnel effect that regularly arises on the northern bank of the estuary. Overshadowing of the adjacent section of River Street and its side roads will be substantially less tolerable for users, particularly in cold windy winter conditions.</li> <li>Residents of the new apartments will not be able to open a window or door when the wind is blowing.</li> </ul>	2
<b>Increase in Boating Activity</b>	
<ul style="list-style-type: none"> <li>Concern regarding increase in boating traffic as a result of the development. No current restrictions on the nature of waterway craft being used or enforced regulations on specific activities.</li> <li>Developers should approach the appropriate authorities and encourage them to develop policies for speed limits for boaters, and the waters they occupy for 2km both directions.</li> </ul>	1
<b>Open Space Contributions</b>	
<ul style="list-style-type: none"> <li>Occupancy projections have been used to calculate the area of open space required by the project. However, contribution of land along the riverbank does not fall under, nor meet the requirements of Council's Open Space Contribution Plan, which requires contributions to local and district parks, playing fields and the like. Access to the riverfront does not fall under this plan, so calculations are spurious (false).</li> </ul>	1
<b>Inaccurate population predictions</b>	
<ul style="list-style-type: none"> <li>Question validity of population predictions for the hotel accommodation.</li> </ul>	1
<b>Contradictions within the EA</b>	
<ul style="list-style-type: none"> <li>Contradictory occupancy rates</li> <li>"guestrooms" versus "apartments" used to describe accommodation in the hotel</li> <li>48, 36 and 90 = 174, not 175 rooms/units/apartments</li> <li>Discrepancy in height description – 22m, but described as being compliant with controls</li> </ul>	1
<b>River Revetments</b>	
<ul style="list-style-type: none"> <li>The proximity of the site to the main river channel and the non-uniform alignment of the river bank will cause a severe erosion situation. Timber boardwalks over the existing revetments are inadequate.</li> </ul>	1

## LETTERS OF SUPPORT (1 submission)

Details / Comment	No. of times raised
<b>Local Economy</b>	
<ul style="list-style-type: none"> <li>The project will: (i) act to strengthen the Ballina Town Centre's position in the Shire's retail hierarchy by stimulating spending in the core of the town centre, (ii) act as a "gateway" to the town centre, (iii) generate an increase in tourism through its proposed mixed use, (iv) generate jobs during construction and operation, (v) turnover approximately \$1.7M in retail spending, and (vi) provide an improvement in the provision of convenient parking in the town centre.</li> <li>The development will stimulate further investment and employment generation.</li> </ul>	1
<b>Building Height</b>	
<ul style="list-style-type: none"> <li>Support for a height of 7 storeys, allowing 14metres of waterfront land to be dedicated for public access.</li> </ul>	1

## OTHER (1 submission)

Details / Comment	No. of times raised
<b>Acoustic Amenity</b>	
<ul style="list-style-type: none"> <li>The Ballina Hotel at 253 River Street operates until 3:00am. It is submitted that in any construction of the residential accommodation at the proposed site it should be acoustically attenuated to ensure that persons staying in the accommodation cannot be disturbed from activities occurring outside and reduce the capacity for noise complaints to be made against any existing licensed premises in close proximity.</li> </ul>	1
<b>Tourist Resort Accommodation</b>	
<ul style="list-style-type: none"> <li>It is submitted that Building A be approved only as a tourist resort accommodation and ancillary activities and not as a hotel as defined by the Liquor Act 1982. Trading hours for the site should be restricted as set out at point 6.3 of the Acoustic Report prepared by Carter Rykenskild Group.</li> </ul>	1

## APPENDIX E. AGENCY SUBMISSIONS

### Ballina Gateway Mixed Use Development MP05\_0009

#### Summary of all agency submissions received for this application

Agency	Agency comment
<b>Ballina Shire Council</b>	
	<ul style="list-style-type: none"> <li>- Non compliance with Council's building envelope controls, including building heights contained within the Ballina LEP and Combined DCP</li> <li>- Traffic management at the Kerr / River Street roundabout</li> <li>- Location of loading zones on River and Kerr Street is unacceptable</li> <li>- Further justification required for car parking rates used for dual key access apartments</li> <li>- Insufficient stormwater management details to demonstrate compliance with Council's <i>DCP 1 Chapter 13 Stormwater Management</i></li> <li>- Insufficient detail regarding basement design and compliance with Council's flood policy</li> <li>- Insufficient detail regarding staging of construction</li> <li>- Inappropriate landscape treatment of foreshore areas</li> <li>- Inadequate Environmental Noise Impact Assessment</li> <li>- Inadequate assessment of contamination of the site to determine the Remediation Action Plan and remediation measures required</li> </ul>
<b>Roads and Traffic Authority</b>	
	<ul style="list-style-type: none"> <li>- Discounting used for the proposed development over estimates the traffic generation from the existing development</li> <li>- Proposed northbound slip land will conflict with existing pedestrian facilities</li> <li>- Proposed central median should be continuous from Kerr to Grant Street</li> <li>- Road works are preferred to a monetary contribution to the RTA</li> <li>- Further consideration needs to be given to the management of on-street loading areas</li> </ul>
<b>Department of Natural Resources</b>	
	<ul style="list-style-type: none"> <li>- Acid sulfate soil management – variation in liming rates contained within the documentation</li> <li>- Dewatering management strategy is inadequate</li> </ul>
<b>Department of Primary</b>	

<b>Industries</b>	
	<ul style="list-style-type: none"> <li>- Provision of clear access for recreational fishers and others along the Richmond River, which is a Recreational Fishing Haven adjacent to the site</li> <li>- The facility should be designed, constructed and managed in a manner that minimise impacts on aquatic habitats</li> <li>- Sediment contamination as a risk to the surrounding aquatic environment</li> </ul>
<b>Department of Lands</b>	
	<ul style="list-style-type: none"> <li>- Application as lodged (7 storeys as opposed to 5 storeys) not consented to by the Department</li> <li>- Native title should be addressed</li> <li>- Contamination within the old slipway areas</li> <li>- Impacts upon the Crown lands within the reserve located to the east of the site on the foreshore of the Richmond River</li> </ul>
<b>Department of Environment &amp; Conservation</b>	
	<ul style="list-style-type: none"> <li>- No issues raised</li> </ul>

## **APPENDIX F. RESPONSE TO SUBMISSIONS**

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To be provided on disk.



## **APPENDIX G. ENVIRONMENTAL ASSESSMENT**

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To be provided on disk.