

## PLANNING REPORT for DA

<b>DA No.:</b>	<i>234-5-2003</i>
<b>Applicant:</b>	<i>SJ Connelly Pty Ltd (on behalf of Slipway Properties Pty Ltd)</i>
<b>Subject Proposal:</b>	<i>Erection of a Tourist Facility (Hotel) comprising a six (6) level building with 107 suites, associated facilities and car parking on two levels. Strata subdivision of the 107 hotel suites into 58 strata units is also proposed using a two key system.</i>
<b>Location of Proposed Development:</b>	<i>Lot 5 DP 1040822 being land at the corner of Martin Street and Fawcett Street, Ballina being land having frontage to the Richmond River. The land was formerly known as part of the "Slipway" site.</i>
<b>Subject Land:</b>	<i>Lot 5 DP 1040822, corner of Martin and Fawcett Streets, Ballina.</i>

### **1.0 Introduction:**

Ballina Council DA No. 2003/779 for the construction of a tourist facility (hotel) at the corner of Martin and Fawcett Streets, Ballina, within the Ballina Local Government Area was forwarded to the Department on 14 May 2003. The development application was called in by the Minister for Infrastructure and Planning (the Minister) under section 88A of the Environmental Planning and Assessment Act 1979 on 8 May 2003, the Minister having determined having regard to matters that in his opinion are of significance for State environmental planning, it is expedient and in the public interest to do so. The DA is registered with the Department as development application number 234-5-2003.

It is recommended that the Minister for Planning grant consent to DA 234-5-2003 subject to the proposed conditions in the Notice of Determination Tagged "A".

### **2.0 Consent Authority:**

The development application is subject to State Environmental Planning Policy No. 71 – Coastal Protection as the land is within the "coastal zone" as defined under the Policy. However under clause 9(2)(a) of SEPP 71 the Minister is not the consent authority as outlined under Part 3 as the Minister is not the consent authority for:

*Development in relation to which, under another environmental planning instrument, development consent cannot be granted without the concurrence of the Minister or the Director-General...*

In this regard it is noted that the North Coast Regional Environmental Plan (NCREP) also applies to the subject land. Clause 51(2) of the NCREP requires that:

*The Council shall not, without the concurrence of the Director (now Director General), grant consent to a development application for the erection of a building over 14 metres in height.*

The proposed development is over 14 metres in height therefore this provision applies and the Council remains the consent authority for the proposal. The development is therefore considered to be “local” development.

Having regard to the above, on 8 May 2003 the Minister used his powers under section 88A of the Environmental Planning and Assessment Act 1979 to “call the development in”. This “call in” makes the Minister the consent authority for the proposed development.

### **3.0 Development Location:**

The subject site forms a waterfront site fronting the Richmond River generally on the periphery of the Ballina CBD. The site is Lot 5 in DP 1040882 and has an area of 4,752 sq.m. The site has a frontage of approximately 53 metres abutting a Council owned road reserve approximately 2.7 metres in width which runs along the river frontage. The site also has a frontage of approximately 78 metres to Martin Street to the east and of 100 metres to Fawcett Street to the north. To the west the site is adjoined by the Pelican Moorings residential flat development which is 6 storeys over 1 level of car parking above ground. A locality plan is tagged “B”.

### **4.0 Urban Context:**

The site is located on the periphery of the Ballina Town Centre at the termination of Martin Street where Martin Street intersects with the Richmond River. Immediately to the south the site is adjoined by the Richmond River, to the west by the Pelican Moorings residential flat building, to the north by Fawcett Street and a new retail development and carpark (currently under construction). On the corner of Martin and River Streets to the north east are the heritage listed Court House and Post Office buildings with both buildings now being used as the Court House complex. In addition across Martin Street from the site to the north east is Telstra, the Naval Wartime Museum and the Boat Harbour development with other mixed uses such as the tourist office, Water Park, commercial development and some detached residential development further to the east.

Further to the west of the site, surrounding development comprises retail and office developments forming the Ballina Town Centre interspersed with recent residential and serviced apartment developments.

Development in the vicinity of the site is predominantly single and two storey with recent high rise developments (maximum 6-7 storeys) fronting the river. Land in the vicinity of the site is relatively flat and cleared of vegetation. Current photographs of the subject site and surrounding development are tagged “C”.

#### **5.0 Historic Context:**

The site, including land now comprising the Fawcett Street link to the north of the site and the adjacent site currently being developed for retail and car parking purposes, was previously used as a slipway. It is understood to contain residual contamination from past boat repair operations. According to the Site Contamination Audit this contamination has been sealed and is not to be disturbed. A previous subdivision of the slipway site resulted in the creation of the subject allotment, the allotment immediately to the north and the construction of the new extension of Fawcett Street dividing the two allotments (DA 1996/252).

The subject site has been the subject of various development applications and consents over time and currently has a valid development consent for the construction of a tourist facility (hotel/motel) comprising a five level building with 96 rooms and associated resort facilities. The development consent (DA 2002/914) was issued by Ballina Shire Council in 2002. To date this development consent has not been taken up.

#### **6.0 Built Form:**

As noted above the site is currently vacant and is adjoined to the west by the Pelican Moorings residential flat building which currently dominates the built form in the locality. Pelican Moorings is 7 storeys in total above ground being one level of car parking and 5 full and 1 part residential levels. The building is cement rendered in construction. Further to the east along the river there are a number of 2 to 3 storey residential developments which are similarly rendered with some red face brickwork. A 4 to 5 storey rendered residential development ‘Dockside Apartments’ is located at the corner of Cherry and Fawcett Streets. Other development in the site vicinity is generally one to two storeys of mixed construction. Another dominant building currently under construction in the vicinity of the site is the “Ramada Riverside Apartments” development on the corner of Fawcett and Cherry Streets fronting Fawcett Park. This development is five storeys above a raised ground level with commercial development at this level and serviced apartments above.

The precinct containing the subject site is currently in a state of transition with a number of major developments currently under construction which will alter the overall built form. Existing buildings are low in scale and quality and do not appear to have any particular relationship with the location adjacent to 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. In this regard a major upgrade of Fawcett Park is underway with pedestrian linkages to the main commercial area.

Along the river frontage with the redevelopment of properties Council has required dedication of a strip of land generally 2.7 metres in width for the purposes of a cycle link. To date this link extends along the river frontage from Cook Park to the subject site with the exception of one property which is currently up for auction. 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 adjoining 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 heritage listed Court House complex (Post Office and Court House buildings) is dominant in the locality located on the corner of Martin Street and River Street. The adjacent Telstra building is sympathetic to the Court House complex being subservient in form with the exception of the existing telecommunications tower which is mounted on the roof.

## **7.0 Site Ownership:**

Lot 5, DP 1040882 which comprises the site is currently owned by Slipway Properties Pty Ltd, a consortium of local business people. Owner's consent has been lodged with the application.

The development application also proposes a porte cochere over the road reserve in Fawcett Street. This land comprises a local road for which Ballina Shire Council is the landowner. Council has provided a letter giving its consent as landowner for the lodgement of the application.

In addition the development application plans show a walkway (note: not referred to as a boardwalk as it is not suspended over the water) on land which is the subject of the land dedication for a cycleway along the river frontage. This land is also in Council's ownership as it has been dedicated as a local road as part of a previous subdivision of the site.

## **8.0 Development Proposal:**

The proposal as submitted seeks approval for the erection of a 6 storey tourist hotel development comprising 107 hotel rooms to be strata subdivided to provide for 58 strata units using a two-key system. Two levels of car parking above ground are also proposed in addition to general hotel areas, commercial and retail development.

The detailed design of the proposed development comprises:

- 107 hotel rooms which are to be strata subdivided into 58 units using a "two-key" system;
- 108 car parking spaces (including 2 disabled spaces) and loading facilities ;
- landscaping and associated site works;
- café fronting the Richmond River;

- hotel amenities and facilities including conference/meeting facilities, lap swimming pool etc; and
- extension/augmentation of the physical infrastructure/utilities required for the development.

Following an initial assessment of the application, discussions were held with the applicant and amended plans were subsequently lodged. The amended plans addressed matters specifically raised in the submissions and the initial assessment. As a result it is considered that re-advertising of the application is not required. The amended plans proposed the following changes to the initial design:

- loading dock reconfiguration and widening of pedestrian link to west of the building (adjacent to Pelican Moorings);
- activation of the north eastern corner of the building through the introduction of a restaurant / retail in this location on ground level. This change has resulted in the removal of 14 car parking spaces with the total number of spaces remaining on site being 94;
- widening of the river front pedestrian / cycle path to a minimum width of 8m resulting in setting back of proposed units on ground floor; and
- reduction of the width of the proposed porte-cochere so that it extends over the footpath only and not over the road in Martin Street.

It is considered that the subject amendments significantly improve the proposed design and public amenity.

A copy of the architectural plans are tagged “D”.

The room mix for the hotel configuration proposed is:

Studios	49
1 Bdrm	51
2 Bdrm	7
Total	107 units (107 keys)

Alternatively for the units to be strata subdivided the configurations is:

1 Bdrm	9
1 Bdrm plus Studio (or 2 Bdrm)	42 (x 2 keys)
2 Bdrm plus Studio (or 3 Bdrm)	7 (x 2 keys)
Total	58 units (107 keys)

Ancillary uses are as outlined in the following table. The table compares the areas of the original development proposal and the areas of the amended proposed as outlined above:

<i>Ancillary use</i>	<i>Original Proposal</i>	<i>Amended Proposal</i>
<i>Conference Rooms</i>	145 sq.m GFA	145 sq.m GFA
<i>Café</i>	141 sq.m + 54 sq.m terrace	141 sq.m + 54 sq.m terrace
<i>Restaurant / retail</i>	Nil	468 sq.m
<i>Office</i>	183 sq.m	Nil
<i>Retail</i>	188 sq.m	Nil

The development equates to a floor space ratio of in excess of 2.7:1 with a maximum height of 16.0m above ground level. The site coverage is 71%.

The application does not seek approval of the construction certificate.

## **9.0 Consultation, Public Exhibition and Notification**

As noted above, the subject development application was originally lodged with Ballina Shire Council. Upon receiving the application Council proceeded to advertise the application in accordance with its policies and procedures. This notification was completed and a detailed assessment of the application undertaken by Council prior to the application being “called in” by the Minister under Section 88A of the EP& A Act, 1979.

Upon the Minister “calling in” the subject application, an assessment of the previous notification organised by Council was undertaken by the Department of Infrastructure, Planning and Natural Resources (DIPNR). Having regard to this review it was determined that the application should be re-advertised primarily for the following reasons:

- the description of the development proposal included in the written and published notices was not accurate as it did not include the strata subdivision component of the application;
- the written and published notice for integrated development must state the approvals that are required and the relevant approval bodies for those approval. Following the issuing of the 88A Direction the Minister became the consent authority for the subject application. Upon this occurring the application became integrated under the Roads Act and the Council became an Approval Body in this regard. This information was not included in the previous advertising information as at the time this was not the case with the Council being the consent authority and as such not an approval body and
- the consent authority must ensure that any accompanying information is available for inspection during the relevant submission period at the place or places specified in the public notice. It appears that the 3D modelling plans were not available at the Council for the full period of the exhibition.

Upon review it was determined that the proposed development was defined as “advertised development” under the North Coast REP. Accordingly the application was placed on exhibition at the Department’s Head Office, Grafton Office and at

Ballina Shire Council for a period of 30 days from 13 June 2003 to 14 July 2003. The application was also referred to the Coastal Council for comment.

As the application is integrated development and requires approvals under various other Acts, the application was referred by Ballina Shire Council to the former Department of Land and Water Conservation (DLWC), NSW Fisheries and the Rural Fire Service for each of these organisation's General Terms of Approval. The advice provided to Council by each of these organisations is considered to be still relevant to the current assessment as the application has not changed notwithstanding the changed consent authority (refer section 11 below). In addition all submission made on the application as a result of Council's notification have been considered in this assessment.

As noted above, upon the Minister becoming the consent authority for the subject application, Ballina Shire Council became an Approval Body under the Roads Act having regard to the proposed porte-cochere on Fawcett Street which extends over the road.

The application was advertised in the Ballina North Coast Advocate on 12 June 2003 and the Lismore Star on 14 and 21 June 2003. Adjoining owners were also notified of the application and invited to comment.

As a result of the consultation a total of 10 objections (including 1 petition containing 1500 signatures which was submitted for the previous application referred to at section 5.0 of this report) to the development and 31 letters of support were received. The main concerns raised in the submissions have been summarised below:

<b>Issue</b>	<b>Response</b>
Height, bulk and scale	<p>Development is considered to be of a height, bulk and scale consistent with other recent development in the area and with relevant planning controls. In particular the development complies with the numeric and performance based controls contained in Ballina LEP 1987, the NCREP and Ballina DCP No. 1. A detailed assessment of compliance is contained in the section 79C Assessment tagged "E".</p> <p>The development responds to the site opportunities and constraints and (as amended) will result in an appropriate relationship between the building and the public domain.</p>
Overdevelopment of site	As noted above the proposed development complies with the maximum height control for the area and is of a built form which is consistent with planning controls for the area and recent development in the locality. The design is of a high quality and incorporates appropriate detailing to ensure that the building will not present as an overdevelopment of the site.
Overshadowing of Crown Land at end of Martin Street	This matter is considered in detail at section 14.5 of this report. In summary it is considered that the proposed overshadowing will be only after 1pm in midwinter and 2pm at the equinox (March / September) therefore it is not considered unacceptable.

Overshadowing of River bank	The proposed development will result in some overshadowing of the river bank however it is considered that given the site orientation with the river to the south any proposed development would result in some overshadowing of the river bank. The proposed public domain along the river frontage (as amended) will create an attractive public space adjacent to the river notwithstanding that some overshadowing will result.
Potential for hotel units to become permanent residential – likely parking and traffic implications	DA is for hotel use only. A condition to preclude residential use is recommended (A7).
Inadequate public access to/along river (building setback)	Agree – revised plans have addressed this issue following discussions with the applicant. Public access now considered appropriate.
Height will create precedent for future development along river bank	Height is consistent with other recently approved developments in the locality and with the planning controls. It is therefore considered that no precedent will be created by approval of the proposed development.
Parking	Parking is addressed in detail at Section 14.4 of this report. In summary it is considered that the proposed parking provision is adequate having regard to the proposed uses and the availability of parking in the local area and subject to the payment of a section 94 contribution for the shortfall of 14 car parking spaces (refer condition B22).
Traffic	The local traffic committee has provided advice which indicates that the existing road network will be able to accommodate the traffic generated by the proposed development.
Conflict between public and private access as a result of units on ground floor fronting the river	The development has been amended following exhibition to address this issue. The amendments include setting the building back from river frontage a minimum of 8m with this area to be publicly accessible. Adjacent to the proposed café the setback will be able to accommodate outdoor seating for a maximum width of 3m leaving unimpeded public access for a width of 5m adjacent to the river in this location. In addition the proposed pathway between the proposed development and Pelican Moorings to the west has been widened (to a minimum width of 4.5m) and the building wall made uniform to improve the attractiveness of this space. The units on the ground floor fronting the river have been similarly setback from the river to ensure that there is no conflict between public and private access and to provide an appropriate width (minimum 8m) public walkway along the river frontage.

The petition, submitted in relation to the previous application sought to have Council ensure that the development application guarantees the following outcomes:

- (1) that the waterfront public access is not restricted;*
- (2) that there is no overshadowing of public open space;*
- (3) that the development doesn't restrict vehicular traffic along the entire length of Martin Street and also to the river;*
- (4) that the building work is confined to the private property.*

These matters have either been addressed by the application (items 1, 3 and 4 above) or are addressed in detail elsewhere in this report.

In addition the following matters were identified in 31 letters in support of the application:

<b>Issue</b>	<b>Response</b>
Enhance Ballina as tourist destination / improve image	Agreed – development will strengthen Ballina as a tourist destination. The proposed building will provide a high quality of accommodation and will also improve the image of Ballina being of a high architectural quality.
Fill gap in current accommodation and conference facility market	Agreed
Strengthen CBD and support existing businesses	Agreed – development has the potential to generate significant flow on effects to existing and future businesses within the town centre and the wider region.
Provide additional amenities for visitors and locals	Agreed
Employment generation and training opportunities (in conjunction with TAFE)	Agreed – NSW TAFE has provided information which indicates that it has entered into an arrangement to undertake hospitality training in order to supply appropriate workers for the subject development.
Consistent with “Port of Ballina” concept	Consistent
Long term benefits	Agree - the proposed development will have significant long term benefits to the local community
Improvement on approved scheme	Agreed – whilst the proposed development provides additional floor space when compared with the previously approved application, the proposal is a significant improvement on that application particularly in terms of design quality and modulation and relationship with the River frontage.
Encourage use of airport	Agreed – the proposed development will attract additional tourists to the Ballina region and will therefore increase demand for the use of the existing airport. This will assist to maintain the airport’s viability.

## **10.0 TECHNICAL ADVICE:**

Technical advice in relation to matters such as BCA compliance, traffic and parking, drainage etc. on the subject application was provided to Council by its internal departments. This advice is considered relevant to the subject assessment.

### Engineering:

Council’s engineers made no objections to the proposed development subject to the imposition of various conditions of consent. Three conditions were proposed which were considered to be significant enough to warrant the issue of a deferred commencement consent. These conditions included:

- (i) The engineering design of the Richmond River retaining wall for the full frontage of the site to the river shall be submitted and approved by Council’s engineer. Such design shall be certified by a suitably qualified engineer

stating that the proposed retaining wall shall withstand flood forces of a maximum probable flood.

- (ii) A bond shall be lodged in an amount of 130% of the estimated construction cost of the Richmond River retaining wall as required in Item (i) above.
- (iii) A lease shall be obtained from the roads authority for the proposed occupancy of the road reserve required for the covered port cochere entrance.

The above deferred commencement conditions have been incorporated into the proposed conditions of consent (Condition A6) with the exception of subclause (iii). This subclause has been deleted following the reduction of the proposed porte cochere. The amended proposal extends only over the footpath therefore no lease is required.

#### Traffic and Parking:

The application was referred to the local Traffic Advisory Committee for comment. The Committee's recommendations were:

- (i) *The development provide for a minimum of 108 car parking spaces.*
- (ii) *A minimum 6m 'No Stopping' zone be required both sides of the access to Fawcett Street. (refer Condition B10)*
- (iii) *Parking spaces and manoeuvring areas be in accordance with AS2890.1 Parking Facilities Part 1: Off Street Car Parking. (refer Condition B14)*
- (iv) *Intersection works incorporating centre medians be required in Fawcett Street/Regatta Av/Martin Street to define turning movements at this location. (refer Condition B16)*
- (v) *Improved functionality of the porte-cochere facilities be required.(Porte cochere shortened for urban design reasons refer section 14.2)*
- (vi) *Provision be made for possible contributions in lieu of parking should aspects of the development become a long-term residential change of use needs to be addressed.(Residential use would require a separate development application)*

Subsequent to the above advice the proposed development has been amended to include additional restaurant / retail floor space and with the reduction of on site car parking spaces to 94. Council has provided advice on these changes which indicates:

- The parking demand for the proposed development is 120 spaces given the increase in retail floor area from 188 m<sup>2</sup> to 468 m<sup>2</sup> (increase of 280 m<sup>2</sup>). This requirement is consistent with the previous position of the Local Traffic Advisory Committee (LTAC). Council is of the opinion that the development should provide this number of spaces.
- Provision exists for the development to make monetary contributions for parking spaces at a rate of \$12,681 per car space if all spaces are not able to be provided on site.
- Deletion of the porte cochere, a previous recommendation of Council's Public Transport Coordination Committee is considered inappropriate. Council does not have an issue with it in the road reserve and considers that it would have positive benefits to the development.

- Section 94 Roads contributions should be revised using assumption of traffic generation. Condition proposed (refer Condition B22).
- In relation to the loading dock a condition of consent is proposed regarding truck manoeuvring (refer Condition B13).
- In relation to section 138 of Roads Act 1993, Council has proposed a condition of consent in relation to roadwork inspections (refer Condition B26).

These issues are addressed further in section 14 of this planning report.

### Urban Design:

In addition specialist urban design advice was provided by Alan Cadogan, Team Leader, Urban Assessments. In summary this advice was as outlined below:

*“The existing context is in a state of flux, and has undergone dramatic change in recent times. Council’s local planning initiatives are aimed at reinvigorating this part of town with a retail/entertainment/leisure focus and the proposed development is considered to be generally in keeping with this broad objective for the area. In general terms it is considered that the design quality of the development is high, and has the potential to be as the architect’s report states “of the highest standard yet seen in Ballina”.*

*Notwithstanding this general view, there are several specific areas in which the design is considered unacceptable, and these are listed below:*

- 1. The level of street activation on Fawcett Street is considered to be unacceptable and must be improved, with an emphasis on the activation of the block corners with active (ideally retail) uses to book-end any inactive parts to the centre of the block.*
- 2. The entire building frontage to the foreshore (including all awnings, changes to ground level etc) must be set back to provide a 24 hour pedestrian and bicycle pathway and landscaped public domain (ideally by dedication, or possibly by easement) not less than 6m wide (not including any boardwalks).*
- 3. The configuration of the public domain connection to Fawcett Street is considered unacceptable and the following changes should be included:*
  - a) the width should be increased to 6m.*
  - b) the loading dock should be relocated to further east on Fawcett Street and its current location used for ideally retail or other uses that have the potential to activate and overlook the link (eg hotel/office/residential).*
  - c) the opportunity for ground level uses to gain water views along this corridor/link should be utilised.*
- 4. The commitment to sustainability and energy efficiency has not been sufficiently demonstrated, and the applicant should be required to provide specific details of their commitment to ESD in the development. In the absence of a rating system for hotel buildings, these should be provided by way of a list of initiatives to which the applicant is prepared to commit.*
- 5. A restriction be placed on the title regarding residential uses, in order to ensure that any future conversion that may be proposed is appropriately redesigned in order to satisfy the residential amenity issues and appropriate sustainability initiatives required by SEPP65 and other*

*relevant policies (in addition to any other valid planning reasons for such a restriction).*

6. *That the porte cochere awning should be reduced so as to not extend over the roadway.*

*It is considered that with appropriate design amendments, these matters can be addressed without compromising the design integrity or viability of the proposal. It is noted however that in order to satisfactorily address these issues some areas of the application that will require substantial redesign. It is further recommended, however, that these issues are of sufficient weight that the application should not be approved if they cannot be satisfactorily resolved.”*

As outlined previously, following the above advice discussions were held with the applicant and amended plans submitted. It is considered that the amended plans satisfactorily address the issues raised in the urban design assessment. In addition conditions of consent are proposed in relation to the following matters:

- Easements for public access (Conditions E1, F7, F8);
- Energy efficiency (Condition B18); and
- Restriction to User (Condition A7, F1).

### Crime Prevention

The application was referred to the NSW Police for comments in relation to the consistency of the application with CPTED (Crime Prevention Through Environmental Design) principles. The NSW Police raised the following issues with the application:

- *The application as submitted appears to have NOT addressed CPTED principals in the submission. No notation of consequence is evident.*
- *Good external lighting of the site and car parking areas is paramount (refer Condition B3, B14).*
- *Pedestrian access within the carpark should be designed and designated; it should be clearly signposted to enhance route direction and safety (refer Condition B14).*
- *External lighting should either be by way of movement or light sensor activated (refer Condition B3, B14).*
- *Car park lighting should be such, as to provide well light areas for staff attending or leaving the premises after hours (refer Condition B14).*
- *The suggested use of “low walls, screens and trellis” should not restrict natural surveillance nor create concealment areas or predator traps (will be addressed as part of future detailed landscape plan – refer Condition B1).*
- *Landscaping should be used in such a manner not to create screened areas, with planting used in conjunction with natural surveillance (will be addressed as part of future detailed landscape plan – refer Condition B1).*
- *Serious concern is rased with the use of the 2 key apartments depicted within drawings SK03 onwards. The entrance area of the units, could, create predator traps within the units themselves, where a vulnerable person may feel compromised within the joint unit foyer area when confronted by a user of the other unit (Condition B27).*

- *Concern is raised of concealment area as depicted in drawing SK04 (wall adjacent to loading dock amended in amended plans to delete concealment area referred to).*
- *The use of video surveillance cameras would be supported to aid in security and to achieve a level of perceived safety to patrons and staff. The use of appropriate signs would be encouraged to remind all users they are under constant surveillance (not proposed at this stage as not considered necessary given design changes which address above concerns).*
- *Security lighting would be recommended in areas of low pedestrian access in hours of darkness (will be addressed as part of future detailed landscape plan – refer Condition B1).*

The above matters as outlined above have either been addressed in amended plans or will be addressed via conditions of consent as identified.

## **11.0 INTEGRATED DEVELOPMENT:**

The subject application is integrated development under the Rural Fires Act 1997, the Rivers and Foreshores Improvement Act 1948 and the Roads Act 1993. The relevant government agencies were consulted regarding their General Terms of Approval.

### Rural Fires Act 1997

The NSW Rural Fire Service has advised that it is prepared to grant a Bush Fire Safety Authority with no specific conditions.

### Rivers and Foreshores Improvement Act 1948

The Department of Land and Water Conservation (now the Department of Infrastructure, Planning and Natural Resources) has provided advice which indicates that a permit under Part 3A of the Rivers and Foreshores Improvement Act will be issued to the proposal following development approval for excavations relating to construction of building foundations, subject to conditions. These conditions have been incorporated into the consent conditions (Condition H1).

### Roads Act 1993

Ballina Shire Council as the local Roads Authority has provided its general terms of approval in relation to works which encroach on Council roads. These terms have been incorporated into the consent conditions.

## **12.0 STATUTORY ASSESSMENT:**

An assessment of the application against the provisions of Section 79C of the Environmental Planning and Assessment Act 1979 has been undertaken. Please refer to Tag “D” for this assessment. After assessing the application against the Heads of Consideration within Section 79C it is considered that the application may be approved, subject to conditions.

### **13.0 STATE ELECTORATE & MEMBER:**

The site is located within the electorate of Ballina. The views of the local member are not known.

### **14.0 CONSIDERATION OF ISSUES:**

The following significant issues were identified in the assessment of the development application:

#### **14.1 *Visual Impact including Height, Bulk and Scale:***

The proposed development will be a substantial development within the Ballina CBD being located on the periphery of the CBD in a highly visible location. The proposed development is consistent with the scale and height of recent development within the CBD and with Council's planning controls in this regard. The development is of a high architectural quality and is well modulated in order to break up the visual bulk of the structure. Having regard to the design quality and existing development within the locality, it is considered that the development is appropriate in terms of height, bulk and scale. It is considered that the proposed development will set a new standard for development in Ballina and will be an asset to the local community both in terms of architectural style and character and having regard to the economic and social impacts that will result.

#### **14.2 *Urban Design***

As advised in comments provided by the specialist urban designer (refer section 10.0) the proposed building is made up of a two storey podium and tower above. It is considered that the external articulation of the tower element is appropriate with the building in plan being composed of interlocking wings with a roof that is varied with a range of compatible styles. There is a good degree of variation in the composition of the facades with an appropriate balance of solid and void, projecting and recessed balconies and areas of vertical emphasis. The silhouette of the building is appropriately broken up by variations to the roof line and the line of the facades at roof level. This helps to achieve an appropriately scaled building by avoiding long lengths of even building mass.

In relation to the proposed materials and finishes it is considered that further detail on this aspect of the proposal is required. In general the following materials and finishes are proposed:

<b>Location</b>	<b>Material</b>	<b>Finish</b>	<b>Description / Colour</b>
External walls and structural columns	Concrete	Applied Finish	White
Steel Roof Struts and Handrails / Mullions	Steel / Aluminium	Powdercoat	To match Bristol 'Agate Grey'
Soffits	Fibre Cement / Concrete	Paint / Applied	Bristol 'Lakeside Mist'

It is considered that these materials are generally appropriate however further details should be submitted for approval. Accordingly a condition of consent is proposed

which requires that these matters be approved by the Director Urban Assessments prior to the issue of a construction certificate (Condition B1).

In front of the main entry to the building foyer, a porte cochere which overhung the road in Martin Street was proposed as part of the original development application. Following the initial assessment this was amended to extend to the kerb only and not over the road. The initial assessment found that the original proposal was inappropriate and excessive and that an awning to the line of the kerb would provide an adequate level of cover while not encroaching on the public domain. As amended it is considered that the proposed entry is appropriate providing a high level of public and patron amenity while at the same time clearly identifying the main building entrance.

Above the proposed café terrace and adjacent to the building frontage along Martin Street (connecting to the proposed porte cochere) an all weather awning is proposed which extends to forward of the building line to the south in front of the proposed terrace. This awning will provide all weather protection to pedestrians and provide a high level of amenity.

#### **14.3 *Treatment adjacent to Public Domain including River and Street Frontages:***

The amended plans for the proposed development provide for an 8 metre setback from the River with this area to be utilised as a public pedestrian / cycle way for the full extent of the site frontage. It is considered that the amenity of this area will provide for a high quality public space adjacent to the River that will be attractive to pedestrians and cyclists alike. The proposed development will act as an attractor encouraging pedestrians along the river frontage to the eastern end of the existing CBD. The space is well designed and provides for a high quality relationship between the building and the public space. 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 consent (Conditions B1, E1, F7, and F8) are proposed which require a minimum unimpeded public access 24 hours per day of 8m width for the site frontage with the exception of adjacent to the café terrace where unimpeded public access is required for a width of 5m (thereby allowing outdoor seating to be located on the remaining 3m width).

In addition to the River frontage it is considered that as amended the public domain treatment of the Martin and Fawcett Street frontages is appropriate. The Martin Street frontage is activated by the proposed café in the south eastern corner of the site, the hotel entrance midblock and the proposed restaurant / retail space in the north eastern corner. The location of active uses on this frontage will provide a human scale to the development and provide an attractive relationship between the development and the street.

On the Fawcett Street frontage the proposed street treatment is less active with the proposed car parking access located midblock and the loading dock located at the western end of the frontage. However the use of a stone faced wall, wall fountain and

landscaping will provide an attractive frontage at the ground level with the active restaurant / retail use returning around the corner of Fawcett and Martin Streets.

#### **14.4 Car-Parking and Traffic Impacts**

The proposed development, as amended, provides for 94 car parking spaces on site. The traffic assessment report submitted with the amended application indicates that this provision is acceptable having regard to the proposed uses, estimates of car parking usage by hotel guests and standard occupancy rates for similar types of development. However, Ballina Shire Council has provided advice which indicates that the proposed development will result in car parking demand for 120 spaces. Using Council's calculation the deficit is therefore 26 spaces. Council has indicated that it considers that it would be appropriate for the applicant to pay a Section 94 Contribution equivalent to 26 car parking spaces if the development is unable to accommodate all car parking on site. In this regard the applicant has provided additional information which seeks to justify the non compliance with the car parking requirements in the light of:

- Council's proposed draft DCP which requires car parking for restaurants at the retail rate of 4 spaces per 100 sq.m of GFA compared with the RTA requirement of 15 spaces per 100 sq.m of GFA;
- Availability of on street car parking in the locality at times of peak restaurant usage.

Given the discrepancy between Council's advice and the proposed car parking provision, an independent assessment of car parking requirements has been undertaken by Masson, Wilson and Twiney Pty Ltd (tagged "F"). This review considered all relevant information and concluded that:

1. the required on site parking provision for the proposed hotel development is estimated to be 108 spaces.
2. the development proposal should be amended to provide a total of 108 on site parking spaces. Alternatively the applicant is required to pay a contribution in lieu of any short fall in on site parking provisions (i.e. 108 spaces less proposed number of spaces provided on site).
3. Alternatively a detailed parking demand analysis be undertaken when the type of restaurant tenancies is known and further details of parking demand and daily / hourly variations are available.
4. All service vehicles shall enter and exit the site in a forward direction.

Conditions of consent consistent with the above have been included in the development consent (Conditions B11, B13 and B22). A requirement has been included which requires payment of a section 94 contribution to the value of 14 car parking spaces in lieu of the shortfall in on site provision.

In addition it is noted that the applicant may prepare a detailed parking analysis at a later date when the type of restaurant tenancies is known and further details of parking demand and daily and hourly variations are available. This information could be

submitted as part of a section 96 application to modify the development consent in regard to the car parking contribution requirement.

#### ***14.5 Overshadowing of River and adjacent public open space (Crown Land)***

The proposed development will result in some overshadowing of the crown land at the end of Martin Street in mid winter after approximately 1pm and after approximately 2pm from March to September. The crown land will therefore have access to sun up to 1pm in midwinter and 2pm from March to September.

The shadows that will result from the proposed development will be primarily over the riverfront in the morning and over the Martin Street road reserve and adjacent crown land in the afternoon. These shadows are most significant in mid winter with summer and equinox shadows being primarily contained to the site or affecting adjacent properties for short periods either in the morning (west) or afternoon (east). Adjacent properties will therefore get appropriate sunlight outside these times.

The crown land at the end of Martin Street is designated as public open space under the LEP however it has not been embellished and is currently vacant land covered in mixed grasses. Whilst at the present time the land does not provide for active open space uses it does provide access to the river front.

Whilst it is noted that the proposed development will result in some overshadowing of the public open space at the end of Martin Street this is not considered significant given that it will only occur after 1pm in Midwinter and after 2pm from March to September. Westerly sun would therefore be blocked by the development after these times. Sunlight will however continue to be available to this land for the remainder of the day. This is considered acceptable given that any significant development of the subject land would result in some shadow impacts.

#### ***14.6 Strata Subdivision and Hotel Management***

The proposed development provides for strata subdivision utilising a two key system. This is considered appropriate given that conditions of consent can be applied to the proposed development to preclude any residential use and ensure that the units are managed as a tourist facility. Any potential future change to the use of the development to allow permanent residential accommodation would require development consent.

#### ***14.7 Landscaping***

The proposed landscaped concept is considered appropriate having regard to the site opportunities and constraints. The proposed landscaping will soften the appearance of the development and will provide for appropriate landscaped open space areas for use by hotel guests including the area adjacent to the proposed swimming pool.

Further details of the proposed landscaping are to be detailed in a landscape plan to be approved by the Director Urban Assessment prior to the issue of a construction certificate. A condition of consent requiring this is proposed (Condition B1).

## 15.0 S 94 CONTRIBUTIONS

Section 94 contributions are included in the proposed conditions (B22). The basis for these is set out in Section 14.4 above and the documents tagged “G”

## 16.0 SUMMARY

Following amendment of the proposed development to address concerns raised through submissions and during the assessment process, it is considered that the amended development is appropriate and should be approved subject to conditions. The amendments undertaken following exhibition specifically address issues raised during the assessment process and do not result in a substantial change to the overall development as exhibited. Accordingly it is considered that re-exhibition is not necessary.

## 17.0 RECOMMENDATION

It is recommended that the Minister for Infrastructure and Planning:

- (a) *Under section 80(1)(a) of the Environmental Planning and Assessment Act, 1979 (EP&A Act, 1979) grant consent to the proposal as described in Schedule 1, subject to the conditions outlined in Schedule 2, by signing the 'Determination of Development Application'.*
- (c) *Authorise the Director Urban Assessment to advise the applicant, Ballina Shire Council, the NSW Coastal Council and objectors of the Minister's determination.*

*Prepared By:*

*Approved By:*

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