

ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979**DETERMINATION OF DEVELOPMENT APPLICATION NO. 234-5-2003****(FILE NO. 234-5-2003)*****ERECTION OF A TOURIST FACILITY (HOTEL) COMPRISING A SIX (6) LEVEL BUILDING WITH 107 SUITES, ASSOCIATED FACILITIES AND CARPARKING ON TWO LEVELS AND STRATA SUBDIVISION OF THE 107 HOTEL SUITES INTO 58 STRATA UNITS USING A TWO KEY SYSTEM***

I, the Minister for Infrastructure and Planning, pursuant to Section 80 (1) (a) of the *Environmental Planning & Assessment Act, 1979*, and clause 88A of the Environmental Planning and Assessment Act 1979, determine the development application referred to in the attached Schedule 1, by granting consent to the application subject to the conditions of consent in the attached Schedule 2.

The reasons for the imposition of conditions are:

- To encourage good urban design;
- To provide for an appropriate treatment of the public domain;
- To preserve the amenity of adjoining properties in addition to creating appropriate amenity for the proposed development;
- To protect the environment in particular the water quality of the Richmond River;
- To provide infrastructure and services to meet the demand created by the development

Craig Knowles MP
Minister for Infrastructure and Planning
Minister for Natural Resources

Sydney,

2003

SCHEDULE 1**PART A—TABLE**

Application made by:	SJ Connelly Pty Limited Suite 7, Level 1 64 Ballina Street PO Box 538 LENNOX HEAD NSW 2478
Application made to:	Minister for Infrastructure and Planning
Development Application:	234-5-2003
On land comprising:	Lot 5 DP 1040822 Cnr Fawcett Street and Martin Street BALLINA NSW
For the carrying out of:	Development described in Condition A1, Part A, Schedule 2
Estimated Cost of Works	\$18.8M
Type of development:	Integrated Development Section 88A State Significant Development
S.119 Public inquiry held:	No
BCA building class:	3,5,6,7,9b & 10b
Approval Body / Bodies:	Department of Infrastructure, Planning and Natural Resources (previously Department of Land and Water Conservation) Rural Fire Service Ballina Shire Council
Determination made on:	
Determination:	A deferred commencement consent is granted subject to the conditions in the attached Schedule 2.
Date of commencement of consent:	A letter will advise you of the effective date of commencement of this consent once you satisfy the relevant conditions in this consent.
Date consent is liable to lapse	This consent will lapse 5 years from the date of commencement of consent, unless: <ul style="list-style-type: none"> ▪ a shorter period of time is specified by the Regulations or a condition in Schedule 2, or ▪ the development has substantially commenced.

PART B—NOTES RELATING TO THE DETERMINATION OF DA NO. 234-5-2003***Responsibility for other approvals / agreements***

The applicant is solely responsible for ensuring that all additional consents and agreements are obtained from other authorities, as relevant.

Appeals

The applicant has the right to appeal to the Land and Environment Court under Section 97 of the *Environmental Planning and Assessment Act, 1979*. The right to appeal is only valid:

- (1) for a development application, within 12 months after the date on which the applicant received this notice, or
- (2) for a modification to the consent, within 3 months after the date on which the application received this notice.

Appeals—Third Party

A third party right to appeal to this development consent is available under Section 123, subject to Section 101, of the *Environmental Planning and Assessment Act, 1979*.

Legal notices

Any advice or notice to the consent authority shall be served on the Director-General.

PART C—DEFINITIONS

In this consent,

Act means the *Environmental Planning and Assessment Act, 1979* (as amended).

Applicant means SJ Connelly Pty Limited or any party acting upon this consent.

Approval Body has the same meaning as within Division 5 of Part 4 of the Act,

BCA means the Building Code of Australia.

Certifying Authority has the same meaning as Part 4A of the Act.

Council means Ballina Shire Council

DA No. 234-5-2003 means the development application and supporting documentation submitted by the applicant on 12 February 2003.

Department means the Department of Infrastructure, Planning and Natural Resources or its successors.

Director, Urban Assessments means the Director of the Urban Assessments Branch (or its successors) within the Department.

Director-General means the Director-General of the Department.

Minister means the Minister for Infrastructure and Planning.

PCA means a Principal Certifying Authority and has the same meaning as Part 4A of the Act.

Regulations means the *Environmental Planning and Assessment Regulations, 2000* (as amended).

Subject Site has the same meaning as the land identified in Part A of this schedule.

SCHEDULE 2
CONDITIONS OF CONSENT
DEVELOPMENT APPLICATION NO. 234-5-2003

PART A—ADMINISTRATIVE CONDITIONS

A1 Development Description

Development consent is granted only to carrying out the development described in detail below:

- (1) Erection of a Tourist Facility (Hotel) comprising a six (6) level building with 107 suites, associated facilities and carparking on two levels and the subsequent strata subdivision of the 107 hotel suites into 58 strata units using a two key system.

A2 Development in Accordance with Plans

The development shall be generally in accordance with development application number 234-5-2003 submitted by the applicant on 12 February 2003, and in accordance with the supporting documentation submitted with that application, including, but not limited to, the following:

Architectural (or Design) Drawings prepared by Ainsely Bell Murchison Architects			
Drawing No.	Revision	Name of Plan	Date
2119 SK01	A1	Locality plan	24.01.03
2119 SK 02	A2	Site plan	08.09.03
2119 SK 03	A7	(Ground) Level 1	04.09.03
2119 SK 04	A7	(Ground) Level 1	04.09.03
2119 SK 05	A8	Level 2	05.09.03
2119 SK 06	A7	Level 2	04.09.03
2119 SK 07	A5	Level 3	28.08.03
2119 SK 08	A2	Levels 4 & 5	02.05.03
2119 SK 09	A1	Level 6	24.01.03
2119 SK 10	A1	Roof plan	24.01.03
2119 SK 11	A1	Sections Sheet 1 of 2	24.01.03
2119 SK 12	A1	Sections Sheet 2 of 2	24.01.03
2119 SK 13	A3	Elevations	04.09.03
2119 SK 14	A1	Elevations	04.09.03
2119 SK 200	A1	Area Schedule	24.01.03
2119 SK 201	A1	Room Schedule	24.01.03
2119 SK 203	A1	Room status report	24.01.03
2119 SK 50 – 64 (inclusive)	A1	Unit plans	24.01.03
2119 SK 210	A1	Sun Shadow diagrams – Summer	Undated
2119 SK 211	A1	Sun Shadow Diagrams - Winter	Undated
2119 SK 212	A2	Sun Shadow Diagrams – Equinox March	Undated
2119 SK 213	A2	Sun Shadow Diagrams – Equinox	Undated

		September	
2119 SK 250	A2	View from Southeast corner	Undated
2119 SK 251	A2	View across from Richmond River	Undated
2119 SK 252	A2	View from Martin Street View from Richmond River	Undated
Landscape Design Report – Landscape Philosophy (Revision G) dated February 2003 prepared by EDAW			
Statement of Environmental Effects prepared by SJ Connelly Pty Limited dated February 2003 (as amended)			
MSA Building Consultants & Accredited Private Building Inspectors – Building Code of Australia Assessment Report			
Soil and Water Management Plan prepared by Coffey Geosciences Pty Ltd dated April 2002			
Environmental Noise Impact report prepared by TTM Acoustics dated 10 January 2003			
Traffic Engineering Report prepared by TTM Traffic dated 31 January 2003			
Stormwater Quality Assessment prepared by Ardill Payne & Partners dated 18 December 2002			
Acid Sulphate Soil Investigation prepared by Ardill Payne & Partners dated 18 December 2002			
Heritage Report prepared by Allan Lovell Architects dated July 2002			

except as modified by any condition in this consent.

A3 Lapsing of Consent

The development consent shall lapse 5 years after the determination date in Part A of Schedule 1 of this consent.

A4 Surrender of Consent

In order for the development of land to proceed in a coordinated and orderly manner and to avoid potential conflicts with this consent, the Applicant shall, within 12 months of the date of commencement of this consent and in the manner prescribed by Clause 97 of the Regulation, surrender the development consents described below:

Ballina Council Development Application No. 2002/914	
Development Description	To carry out development entailing the construction of a Tourist Facility (Hotel/Motel) for short-term holiday accommodation comprising a five (5) level building with 96 rooms associated resort facilities, carparking and loading/unloading areas.
Date	18 October 2002

A5 Prescribed Conditions

The Applicant shall comply with the prescribed conditions of development consent under clause 98 of the Regulation.

A6 Deferred commencement conditions

- (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. Such design shall be certified by a suitably qualified engineer stating that the proposed retaining wall shall withstand the flood forces of a maximum probable flood.

- (ii) A bond shall be lodged with Council in an amount of 130% of the estimated construction cost of the Richmond River retaining wall as required above.

Upon satisfaction of the above conditions and acknowledgement by the Director, Urban Assessments of his satisfaction of compliance with the above conditions, this consent shall begin to operate subject to the matters hereunder.

A7 *Tourist Accommodation Use and Strata Subdivision*

The development is to remain for short-term temporary accommodation. Investor lots are to be burdened by way of a Restriction on use pursuant to Section 88B of the Real Property Act, requiring that the lots are to be used for short term accommodation only. Permanent or long term accommodation is to be expressly prohibited. The restriction on use shall include a definition of short and long term accommodation.

PART B—PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

Design Details and Changes

B1 Additional Details

In order to ensure the proposed development is of a high quality and provides for an appropriate treatment of the public domain, additional details in regard to the following matters shall be submitted to and approved by the Director, Urban Assessments prior to the issue of a Construction Certificate:

- (1) Final design details of the proposed external materials and finishes, including schedules and a sample board of materials and colours;
- (2) detailed treatment of the western wall of the building adjacent to the Pelican Moorings Development with proposed treatment to ensure high quality public domain and encourage public use of space as through connection to the river frontage;
- (3) a detailed Landscape Plan generally in accordance with the Landscape Philosophy prepared by EDAW (submitted with the DA) incorporating, in addition to other matters generally required, the following:
 - (a) Proposed paving treatment including in particular treatment of the western walkway, the public walkway adjacent to the river frontage and the Fawcett and Martin Street frontages);
 - (b) Proposed planting locations, areas, dimensions, species types, numbers to be used and procurement size;
 - (c) Locations, functions and dimensions of proposed physical structures including watering systems;
 - (d) Unimpeded access to the river frontage of a minimum depth of 8m (5m adjacent to the café terrace) for use by the public;
 - (e) A public walkway as shown on development application drawing 2199 SK03 which is at grade for its full extent with no changes in level between the river walkway and the proposed café terrace; and
 - (f) Deletion of the proposed planter boxes in the south eastern corner of the site adjacent to the proposed café terrace.

B2 Reflectivity

The visible light reflectivity from building materials used on the facades of the buildings shall not exceed 20% and shall be designed so as not to result in glare that causes any nuisance or interference to any person or place. A report demonstrating compliance with these requirements is to be submitted to the satisfaction of the Certifying Authority prior to the issue of a Construction Certificate.

B3 Outdoor Lighting

All outdoor lighting shall comply with, where relevant, AS/NZ1158.3: 1999 *Pedestrian Area (Category P) Lighting* and AS4282: 1997 *Control of the Obtrusive Effects of Outdoor Lighting*. Details demonstrating compliance with these requirements are to be submitted to the satisfaction of the Certifying Authority prior to the issue of a Construction Certificate.

B4 Treatment of Vehicular Entry

In order to improve the appearance of the building when viewed from the street, any part of the walls and ceilings of vehicular entry points including the loading dock that are visible from the street shall be finished in high quality materials and no service ducts or pipes are to be visible. Details shall be submitted to and approved by the Director, Urban Assessments prior to the issue of a Construction Certificate.

B5 Disabled Access

Access and facilities for people with disabilities shall be provided in accordance with Part D3 of the BCA's Access Policy. Prior to the issue of a Construction Certificate, a certificate certifying compliance with this condition from an appropriately qualified person shall be provided to the Certifying Authority.

Remediation / Demolition / Earthworks**B6 Land Contamination**

- (1) As indicated in the Site Audit report No. SA 75 CM Jewell & Associates April 2000, there is to be no disturbance of the river sediment for construction of walkways, decks or the like.
- (2) The Development is to be carried out so as to ensure that all works are conducted strictly in accordance with the Soil and Water Management Plan prepared by Coffey Geosciences Pty Ltd dated April 2002. No soil is to be removed from the site without the prior written approval of the Council.
- (3) A detailed Occupational Health and Safety Plan is to be formulated in concert with the Soil and Water Management Plan. Consultation with the NSW Work-Cover Authority during its preparation is recommended.

B7 Acid Sulphate Soil Management Plan

An Acid Sulphate Soil Management Plan shall be prepared by a suitably qualified person in accordance with the *Acid Sulphate Soil Assessment Guidelines* (Acid Sulphate Soil Management Advisory Committee, 1998). The Management Plan shall be submitted to and approved by the Council prior to the issue of a Construction Certificate.

B8 Erosion and Sedimentation Control

Soil erosion and sediment control measures shall be designed in accordance with the document *Managing Urban Stormwater—Soils & Construction* (NSW Department of Housing, 1998.) Details are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

B9 Dilapidation Reports

A Dilapidation Report detailing the current structural condition of the adjoining buildings, infrastructure and roads shall be prepared and endorsed by a qualified structural engineer. The report shall be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

A second Dilapidation Report shall be prepared by a suitably qualified person at the completion of the works to ascertain if any structural damage has occurred to the adjoining buildings, infrastructure and roads. The report shall also be submitted to the satisfaction of the Certifying Authority and should be compared with the earlier report to ascertain if any change has occurred

A copy of both reports is to be forwarded to the Director, Urban Assessments and the relevant council.

Traffic & Parking

B10 Traffic Control Devices

- (1) In order to ensure that vehicles exit the site in a safe manner, suitable traffic control device eg, signage, speed hump, line marking, traffic signals shall be installed and shall be clearly visible at the upper threshold of the driveway. Details of the type, location and operation of the device are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.
- (2) A 30m public transport zone shall be provided in Martin Street (south of River Street) able to cater for buses and taxis, inclusive of a bus shelter and J Pole signage. A minimum pathway width of 1.35m shall connect the public transport zone to the development frontage.
- (3) A 'No Stopping' zone shall be installed for a distance of 6m either side of the driveway entrance to the car parking area and the loading dock facility.

B11 Number of Car Spaces

The minimum number of car spaces to be provided on site for the development shall comply with the table below. Details confirming the parking numbers shall be submitted to the satisfaction of the Certifying Authority prior to the issue of a Construction Certificate.

Car parking allocation	Number
Car parking spaces	94
Number of car spaces to be disabled spaces	2

B12 Number of Bicycle Spaces

A minimum of 10 bicycle spaces are to be provided for the development. Details shall be submitted to the satisfaction of the Certifying Authority prior to the issue of a Construction Certificate.

B13 Loading / Unloading

Prior to the issue of a Construction Certificate, a 1:50 scale drawing is to be submitted for the approval of Council's Engineer which demonstrates that a Large Rigid Vehicle can enter and leave the site in a forward direction without impacting upon the street road reserve and that such drawing be undertaken using software that depicts a driven vehicle swept path. The swept path shall demonstrate a minimum 300mm clearance from all objects.

B14 Car Park and Service Vehicle Layout

- (1) The layout of the car park shall comply with Australian Standard AS2890.1: 1993 *Parking Facilities Part 1: Off Street Parking*. All parking spaces are to be linemarked and the proposed lighting shall at least comply with the minimum requirements of the Standard. Pedestrian access with the car park is to be clearly designated.
- (2) The layout of the service vehicle area shall comply with Australian Standard AS2890.2: 1989 *Off Street Parking Part 2 – Commercial Vehicles Facilities*.

- (3) Details demonstrating compliance with these requirements shall be submitted to the satisfaction of the Certifying Authority prior the issue of a Construction Certificate.

B15 Footpaths

- (1) A 4.5m wide paved footpath shall be provided on the western boundary of the site, connecting Fawcett Street to the Richmond River boardwalk. The footpath pavement treatment shall be consistent with that proposed for the public walkway along the site's river frontage.
- (2) The footpath treatment for pathways in Martin Street and Fawcett Street shall be consistent with that proposed for the River Street Beautification Project unless otherwise approved by the Director, Urban Assessments. The extent of paving shall be as per the submitted drawing number 2119 SK 03 being a nominal 1.5m width in Fawcett Street and 5m width between the building and the proposed new Martin Street kerb line.

B16 Road Pavements and alignments

- (1) Martin Street pavement shall be reconstructed from the intersection of Fawcett Street to the proposed Porte Cochere (inclusive). These works shall include the provision of traffic islands at Fawcett Street/Regatta Avenue/Martin Street intersection to define turning movements. The pavement profile shall consist of at least 300mm compacted thickness of road base quality material plus a minimum 25mm asphalt wearing surface. Inspection of the road works by Councils Engineer (phone 6686 4444) is required at the time of excavation and prior to sealing of the works. Should the inspection of the excavated subgrade reveal unsuitable material, such material shall be excavated for a depth of 700mm and replaced with sand or equivalent. Reconstruction works shall also include but are not limited to, the provision of kerb and gutter, stormwater pits, relocation of services, manholes and pipework to the satisfaction of Council's Engineer.
- (2) The turning facility at the southern end of Martin Street shall be constructed to accommodate the turning requirements of a 12.5m bus/coach.

Landscaping

B17 Landscape Bond

A landscaping bond in an amount of \$10,000.00 shall be lodged with Council prior to the issue of a Construction Certificate. This bond is refundable 4 months after Council's receipt of a written notice advising the approved site landscaping has been implemented and upon inspection, Council is satisfied that the landscaping appears to be well established.

Ecologically Sustainable Development (ESD) – Commercial

B18 SEDA Rating

The design of the building shall achieve a 4.5 star rating under the Sustainable Energy Development Authority's (SEDA's) Australian Building Greenhouse Rating. Prior to the issue of a Construction Certificate, the Applicant shall submit to the Council the following information:

- (1) Evidence that a Commitment Agreement has been entered into with SEDA, to deliver this star rating for the base building (central services such as air

conditioning, lifts and common lighting and common areas of the building) or for the whole building where the Applicant is to occupy the building; and

- (2) An independent energy assessment that follows the guidelines in SEDA's *Australian Building Greenhouse Rating Scheme Design Energy Efficiency Review* and the *Energy Efficiency Design Review.xls* (spreadsheet) (the Applicant should contact SEDA to obtain the current version of these documents.)
- (3) A computer building simulation prepared in accordance with the guidelines of SEDA's Validation Protocol for the Use of Computer Building Simulation in Commitment Ratings (Applicants should contact SEDA to obtain the current version of this document.) The computer building simulation is required to demonstrate to the satisfaction of the Council that the building can reasonably be expected to achieve the proposed rating under realistic operating conditions.

Health

B19 Mechanical Ventilation

All mechanical ventilation systems shall be installed in accordance with Part F4.5 of the Building Code of Australia and shall comply with Australian Standards AS1668.2 and AS3666 *Microbial Control of Air Handling and Water Systems of Building*, to ensure adequate levels of health and amenity to the occupants of the building and to ensure environment protection. Details shall be submitted to the satisfaction of the Certifying Authority prior to the issue of a Construction Certificate.

B20 Design of Food Premises

The fitout of the food premises shall be carried out in accordance with *The National Code for the Construction and Fitout of Food Premises*. Details of compliance with the relevant provisions of the Code shall be prepared by a suitably qualified person and submitted to the satisfaction of the Certifying Authority prior to the issue of a Construction Certificate.

Waste Management

B21 Storage and Handling of Waste

The design and management of facilities for the storage and handling of waste including liquid trade waste must comply with the requirements of Council's Policy. Details are to be submitted to the satisfaction of the Certifying Authority prior to the issue of a Construction Certificate.

Monetary Contributions and Contributions-in-lieu

B22 Monetary Contributions

In accordance with Division 6 of Part 4 of the Act, the Applicant shall pay the following monetary contributions:

(1) Amount of Contribution

Contribution Category	Rate of Contribution	Amount
Water Supply mains and storage within Ballina Shire	\$158.00 per motel room	\$16,906.00
Sewerage Works	\$1648 per serviced dwelling in addition to the first	\$176,336.00

Water Supply mains and storage within Rous County District	\$779.00 per serviced dwelling	\$83,353.00
Shire wide road improvements	\$1200 per ERA – credit of 1 Based on 70% of traffic for 107 suites	\$88,474.00
Car Parking	14 car parking spaces at a rate of \$12,681/space	\$177,534.00
TOTAL		\$542,603.00

(2) Timing and Method of Payment

The contribution shall be paid in the form of cash or bank cheque, made out to Ballina Shire Council. For accounting purposes, the contribution may require separate payment for each of the categories above and you are advised to check with Ballina Shire Council.

Evidence of the payment to Ballina Shire Council shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate. In regard to the Shire wide road improvements contribution and car parking contribution, 50% is to be paid prior to the issue of a Construction Certificate and 50% prior to the issue of an Occupation Certificate.

(3) Indexing

The contribution for land will be adjusted in accordance with the latest annual valuations.

The above payments will be adjusted according to the relative change in the Consumer Price Index using the following formula.

$$\text{Contribution at Time of Payment} = C \times \frac{\text{CPI}_2}{\text{CPI}_1}$$

where:

C is the original contribution amount shown above

CPI₂ is the Consumer Price Index: All Groups Index for Sydney available from the Australian Bureau of Statistics at the time of payment; and

CPI₁ is the Consumer Price Index: All Groups Index for Sydney available from the Australian Bureau of Statistics at the date on which the consent operates.

Subdivision Works

B23 Stormwater and Drainage Works Design

Final design plans of the stormwater drainage systems within the proposed subdivision, prepared by a qualified practicing Civil Engineer and in accordance with the requirements of Ballina Shire Council shall be submitted to the Certifying Authority prior to issue of a Construction Certificate. The hydrology and hydraulic calculations shall be based on models described in the current edition of Australian Rainfall and Runoff.

B24 Road Design

Kerb and gutter, stormwater drainage, full road width pavement including traffic facilities (roundabouts, median islands etc.) and paved footpaths shall be constructed along the full length of the new roads. All Roads shall be designed in consultation with the relevant requirements of Ballina Shire Council and the RTA. Final road design plans shall be

prepared by a qualified practising Civil Engineer and submitted to the Certifying Authority prior to the issue of a Construction Certificate.

Compliance

B25 Compliance Report

Prior to the issue of a Construction Certificate, the Applicant, or any party acting upon this consent, shall submit to the Department a report addressing compliance with all relevant conditions of this consent.

Administration

B26 Inspection Fees

Where Council is not the Certifying Authority, the following fees /contributions/ charges are to be paid to Council prior to the issue of a Construction Certificate:

- (a) \$75.00 – administrative certificate handling and registration fee
- (b) \$2310.00 – plumbing, drainage and water service inspection fee.
- (c) Road inspection fee: \$2460. Road Maintenance Bond: \$5,000. The road maintenance bond is taken and may be used by Council to cover the cost of any damage to Council's assets (eg. drainage systems, footpaths, kerb and guttering etc) arising from private development work. The bond will be refunded upon completion of the development should no such damage occur.

Safety

B27 Lobby area of Dual Keyed Apartments

Prior to the issue of a Construction Certificate, the applicant shall submit details of the proposed C.A.M Security Device which is to be fitted to each room door for dual keyed apartments to provide surveillance to the shared lobby areas.

PART C—PRIOR TO COMMENCEMENT OF WORKS

Excavation Works

C1 Notice to be Given Prior to Excavation

The PCA and Council shall be given written notice, at least 48 hours prior to the commencement of excavation, shoring or underpinning works on the site.

Structural Works

C2 Structural Details

Prior to the commencement of construction, the Applicant shall submit to the satisfaction of the PCA structural drawings prepared and signed by a suitably qualified practising Structural Engineer that comply with:

- (1) the relevant clauses of the Building Code of Australia,
- (2) the relevant development consent,
- (3) drawings and specifications comprising the Construction Certificate, and
- (4) the relevant Australian Standards listed in the BCA (Specification A1.3).

Construction Management

C3 Construction Management Plan

Prior to the commencement of any works on the site, a Construction Management Plan shall be submitted to and approved by the Council. The Plan shall address, but not be limited to, the following matters where relevant:

- (1) hours of work,
- (2) contact details of site manager,
- (3) traffic and pedestrian management (see also C4 below),
- (4) noise management (see also C5 below),
- (5) waste management (see also C6 below), and
- (6) erosion and sediment control particularly detailing measures to minimise sediment in feed into the Richmond River from works both during and post construction(see also B8 and B23).

The Applicant shall submit a copy of the approved plan to Council.

C4 Traffic & Pedestrian Management Plan

Prior to the commencement of any works on the site, a Traffic and Pedestrian Management Plan prepared by a suitably qualified person shall be submitted to and approved by the Council. The Plan shall address, but not be limited to, the following matters:

- (1) ingress and egress of vehicles to the site,

- (2) loading and unloading, including construction zones,
- (3) predicted traffic volumes, types and routes,
- (4) pedestrian and traffic management methods, and
- (5) material storage areas, haulage routes and road signage requirements.

The Applicant shall submit a copy of the approved plan to Council.

C5 Noise Management Plan

Prior to the commencement of any works on the site, a Noise Management Plan prepared by a suitably qualified person shall be submitted to and approved by the Council. The Plan shall address, but not be limited to, the following matters:

- (1) anticipated airborne noise for all major noise generating activities and duration of these activities,
- (2) predicted noise levels at sensitive receivers,
- (3) specific physical and managerial measures for controlling noise,
- (4) noise monitoring and reporting procedures,
- (5) measures for dealing with exceedances,
- (6) arrangements to inform residents of noisy activities likely to affect their amenity, including provision of a 24 hour contact point for residents, and
- (7) establishment of a system to handle and respond to complaints.

The Applicant shall submit a copy of the approved plan to Council.

C6 Construction Waste Management Plan

Prior to the commencement of works, the Applicant shall submit to the satisfaction of the PCA a Waste Management Plan prepared by a suitably qualified person in accordance with Ballina Shire Council's requirements. The Applicant shall submit a copy of the plan to the Council.

C7 Contact Telephone Number

Prior to the commencement of the works, the Applicant shall forward to the Department and Council a 24 hour telephone number to be operated for the duration of the construction works.

Hazardous Materials

C8 Removal of Hazardous Materials

All hazardous materials shall be removed from the site and shall be disposed of at an approved waste disposal facility in accordance with the requirements of the relevant legislation, codes, standards and guidelines, prior to the commencement of any building works. Details demonstrating compliance with the relevant legislative requirements, particularly the method of containment and control of emission of fibres to the air, are to be submitted to the satisfaction of the PCA prior to the removal of any hazardous materials.

Compliance

C9 Compliance Report

Prior to the commencement of works, the Applicant, or any party acting upon this consent, shall submit to the Department a report addressing compliance with all relevant conditions of this consent.

Filling of Land

C10 Minimum Fill and Floor Levels

The whole allotment is to be filled to a minimum level of RL 1.8m with the finished floor height of the building at RL 2.1 metres above AHD. A surveyor's certificate verifying compliance with this requirement is to be submitted to Council at completion of footings / slab formwork (prior to concrete pour) or completion of the floor prior to work proceeding beyond these stages. All filling under the building is to be carried out in accordance with Australian Standard AS 2870-1996.

PART D—DURING CONSTRUCTION

Site Maintenance

D1 Erosion and Sediment Control

All erosion and sediment control measures are to be effectively maintained at or above design capacity for the duration of the construction works and until such time as all ground disturbed by the works has been stabilised and rehabilitated so that it no longer acts as a source of sediment.

D2 Disposal of Seepage and Stormwater

- (1) Any seepage or rainwater collected on-site during construction shall not be pumped to the street stormwater system unless separate prior approval is given in writing by Council.
- (2) Stormwater quality control pit inserts being “Enviropod” or equivalent shall be installed in Fawcett Street and Martin Street drainage systems that area within 30m of the development site.
- (3) A maintenance period of stormwater quality control devices within road reserves shall be for a minimum of 6 months after issue of the occupation certificate for the development.
- (4) A works as executed plan for the stormwater management devices together with a maintenance schedule is to be submitted and approved by Council.
- (5) Existing stormwater and sewer infrastructure services that are disturbed or damaged during development works. Thereby reducing the operating life or function of the services shall be replaced at nil cost to Council.

Structural Works

D3 Setting Out of Structures

The building shall be set out by a registered surveyor to verify the correct position of the structure in relation to property boundaries and the approved alignment levels. The registered surveyor shall submit a plan to the PCA certifying that structural works are in accordance with the approved development application.

Construction Management

D4 Approved Plans to be On-site

A copy of the approved and certified plans, specifications and documents incorporating conditions of approval and certification shall be kept on the site at all times and shall be readily available for perusal by any officer of the Department, Council or the PCA.

D5 Site Notice

A site notice(s) shall be prominently displayed at the boundaries of the site for the purposes of informing the public of project details. The notice(s) is to satisfy all but not be limited to, the following requirements:

- (1) Minimum dimensions of the notice are to measure 841mm x 594mm (A1) with any text on the notice to be a minimum of 30 point type size;

- (2) The notice is to be durable and weatherproof and is to be displayed throughout the works period;
- (3) The approved hours of work, the name of the site/project manager, the responsible managing company (if any), its address and 24 hour contact phone number for any inquiries, including construction/noise complaint are to be displayed on the site notice; and
- (4) The notice(s) is to be mounted at eye level on the perimeter hoardings/fencing and is to state that unauthorised entry to the site is not permitted.

D6 Hours of Work

The hours of construction, including the delivery of materials to and from the site, shall be restricted as follows:

- (1) between 7:00 am and 6:00 pm, Mondays to Fridays inclusive;
- (2) between 8:00 am and 1:00 pm, Saturdays;
- (3) no work on Sundays and public holidays.

Works may be undertaken outside these hours where:

- (1) the delivery of materials is required outside these hours by the Police or other authorities;
- (2) it is required in an emergency to avoid the loss of life, damage to property and/or to prevent environmental harm; or
- (3) approval is obtained by the Council prior to the carrying out of these works and residents likely to be affected by the works are notified of the timing and duration of these works at least 48 hours prior to the commencement of the works.

D7 Contact Telephone Number

The applicant shall ensure that the 24 hour contact telephone number is continually attended by a person with authority over the works for the duration of the development.

D8 Noise Control

All work, including demolition, excavation and building work must comply with Australian Standard AS2436: 1981 *Guide to Noise Control on Construction, Maintenance and Demolition Sites*.

D9 External Lighting

External Lighting shall comply with AS4282: 1997 *Control of the Obtrusive Effects of Outdoor Lighting*. Upon installation of lighting, but before it is finally commissioned, the applicant shall submit to the consent authority evidence from an independent qualified practitioner demonstrating compliance in accordance with this condition.

D10 Dirt and Dust Control Measures

Adequate measures shall be taken to prevent dirt and dust from affecting the amenity of the neighbourhood during construction. In particular, the following measures must be adopted:

- (1) All vehicles carrying spoil or rubble to or from the site shall at all times be covered to prevent the escape of dust or other material,
- (2) Covers are to be adequately secured,
- (3) Cleaning of footpaths must be carried out regularly,
- (4) Roadways must be kept clean,
- (5) Gates are closed between vehicle movements,
- (6) Gates are fitted with shade cloth,
- (7) The site is hosed down when necessary, and
- (8) Wheel washes shall be installed for all vehicles exiting the site.

Heritage**D11 Excavation – Geological / Archaeological relics**

Upon excavation of the building envelope Council is to be contacted and given sufficient time to arrange a thorough inspection and if required investigation and recording or any geological / archaeological relics.

Ecologically Sustainable Development**D12 Water Conservation**

Water saving showerheads shall be fitted to all showers within the development to reduce water consumption and promote energy efficiency.

Compliance**D13 Compliance Report**

The Applicant, or any party acting upon this consent, shall, for the duration of construction period, submit to the Department a three monthly report addressing compliance with all relevant conditions of this consent.

PART E—PRIOR TO SUBDIVISION OR STRATA SUBDIVISION

Easements

E1 Access

Documentary easements for access must be created over the appropriate lots in the subdivision to provide for public access and access to lifts, lobbies, fire stairs, service areas, loading areas and car parking areas, and created pursuant to Section 88B of the *Conveyancing Act 1919*.

E2 Services

Documentary easements for services, drainage, support and shelter, use of plant, equipment, loading areas and service rooms, repairs, maintenance or any other encumbrances and indemnities required for joint or reciprocal use of part or all of the proposed lots as a consequence of the subdivision, must be created over the appropriate lots in the subdivision pursuant to Section 88B of the *Conveyancing Act 1919*.

E3 Car parking restrictions

The on-site car parking spaces, exclusive of service spaces, are not to be used by those other than a visitor, an occupant or tenant of the subject building. Any visitor, occupant, tenant, lessee or registered proprietor of the development site or part thereof shall not enter into an agreement to lease, license or transfer ownership of any car parking spaces to those other than a visitor, an occupant, tenant or lessee of the building.

These requirements are to be enforced through the following:

- (1) restrictive covenant placed on title pursuant to Section 88B of the *Conveyancing Act, 1919*,
- (2) restriction on use under Section 68 of the *Strata Schemes (Leasehold Development) Act, 1986* to all lots comprising in part or whole car parking spaces, and
- (3) signs visible at exits (excluding fire stairs and individual unit entries) from car parking areas.

All costs associated with the above requirements are to be borne solely by the applicant.

E4 Common areas and facilities

No right of exclusive use and enjoyment of the whole or any specified part of the designated common area or similar in the approved plans will be conferred on any person or persons without the prior consent of the relevant consent authority.

These requirements are to be made, at no cost to Council or the consent authority, and a restrictive covenant placed on title pursuant to Section 88E of the *Conveyancing Act, 1919*.

E5 Other Details Required prior to Issue of Subdivision Certificate

The applicant shall submit to the satisfaction of the consent authority, the following information, prior to the issue of the Subdivision Certificate:

- (1) Documentary evidence of the payment of the contributions in accordance with condition B22, and

- (2) Documentary evidence that the property has been developed in accordance with plans approved by Development Application No. 234-5-2003 and of compliance (or a Compliance Certificate) with the conditions of that consent.

E6 Application under Section 37 of Strata Titles (Freehold Development) Act, 1973

Section 37 of the *Strata Titles (Freehold Development) Act, 1973* requires an application to be submitted to the consent authority for approval prior to the issue of the certified strata plan of subdivision.

E7 Compliance with Conditions

The applicant will be required to submit, documentary evidence that the property has been developed in accordance with plans approved by Development Application No. 234-5-2003 and of compliance (or a Compliance Certificate) with the conditions of that consent, prior to the issuing of Strata Plan of Subdivision.

PART F—PRIOR TO OCCUPATION OR COMMENCEMENT OF USE***Approved Use******F1 Tourist Accommodation Use and Strata Subdivision***

The development is to remain for short-term temporary accommodation. Investor lots are to be burdened by way of a Restriction on use pursuant to Section 88B of the Real Property Act, requiring that the lots are to be used for short term accommodation only. Permanent or long term accommodation is to be expressly prohibited. The restriction on use shall include a definition of short and long term accommodation.

Engineering***F2 Fire Safety Certificate***

A Fire Safety Certificate shall be furnished to the PCA for all the Essential Fire or Other Safety Measures forming part of this approval prior to issue of an Occupation Certificate. A copy of the Fire Safety certificate must be submitted to the consent authority and Council by the PCA.

F3 Annual Fire Safety Statement

An Annual Fire Safety Statement must be provided to Council and the NSW Fire Brigade commencing within 12 months after the date on which the consent authority initial Fire Safety Certificate is received.

F4 Mechanical Ventilation

Following completion, installation and testing of all the mechanical ventilation systems, the applicant shall provide evidence to the satisfaction of the PCA, prior to the issue of the Occupation Certificate, that the installation and performance of the mechanical systems complies with:

- (1) The Building Code of Australia;
- (2) Australian Standard AS1668 and other relevant codes;
- (3) The development consent and any relevant modifications; and,
- (4) Any dispensation granted by the New South Wales Fire Brigade.

F5 Structural Inspection Certificate

A Structural Inspection Certificate or a Compliance Certificate must be submitted to the satisfaction of the PCA prior to the issue of an Occupation Certificate and/or use of the premises. A copy of the Certificate with an electronic set of final drawings (contact consent authority for specific electronic format) shall be submitted to the consent authority and the Council after:

- (1) The site has been periodically inspected and the Certifier is satisfied that the Structural Works is deemed to comply with the final Design Drawings; and,
- (2) The drawings listed on the Inspection Certificate have been checked with those listed on the final Design Certificate/s.

F6 Road Damage

The cost of repairing any damage caused to Council or other Public Authority's assets in the vicinity of the subject site as a result of construction works associated with the approved development, is to be met in full by the applicant/developer prior to the issue of an Occupation Certificate.

Note: Should the cost of damage repair work not exceed the road maintenance bond, Council will automatically call up the bond to recover the costs. Should the repair costs exceed the bond amount, a separate invoice will be issued.

Easements**F7 Registration of Easements**

Prior to the issue of an Occupation Certificate, the applicant shall provide to the PCA evidence that all easements required by this consent, approvals, and other consents have been or will be registered on the certificates of title.

F8 Public Access to Public Domain

Easements to provide 24 hour unrestricted public access shall be created in respect of all areas of the public domain (including but not limited to footpaths and pedestrian/cycleways) with the exception of the area of outdoor seating for the proposed café terrace pursuant to Section 88B of the Conveyancing Act 1919. The café outdoor seating area (maximum width 3m) shall be the subject of an easement which provides for unrestricted public access at all time other than when the area is in use as a café. The terms of the easements shall require that public access will be provided to coincide with occupation of the development approved by this consent on land adjoining the public domain. Evidence that easements satisfying this condition of consent have been registered on title must be submitted to the Director, Urban Assessments prior to the release of any related Occupation Certificate.

Water and Sewer**F9 Local Area Gravity Sewer Main**

The development shall be required to augment the local area gravity sewer mains and pump station to accommodate the additional sewer load of the proposal to the satisfaction of Council's engineer, or alternatively make a contribution in an amount of \$33,200 prior to the issue of the occupation certificate. Such contribution amount shall be adjusted in accordance with the CPI index from the date of the consent.

Drawings**F10 Submission of "works-as-executed" drawings**

Prior to release of the Subdivision certificate, the applicant shall submit to Council a copy of a "works-as-executed" (WAE) drawing and a computer disk copy of the WAE information. Separate drawings shall be provided for sewer and stormwater drainage. Such drawings are to be at a scale of 1:500 on transparent material. The applicant shall be deemed to have indemnified all persons using such drawings against any claim or action in respect of breach of copyright.

F11 List of Public Infrastructure

In connection with the "Works-as-executed" drawings the proponent shall submit a listing of all road, stormwater and sewer assets generated by the development. The format of the list shall conform to the proforma in Council's Subdivision Code (as current at the time).

F12 Remediation and Validation Report

Following the completion of remediation works on the site a Remediation and Validation Report is to be prepared by a suitably qualified environmental consultant. This report, together with a final site audit statement by an Environmental Protection Agency accredited environmental consultant, including Notice of Completion statement, pursuant to clauses 17(2) and 18 of *State Environmental Planning Policy No.55—Remediation of Land*, is to be submitted to the satisfaction of the consent authority prior to occupation of the building.

F13 Compliance with National Code for Construction and fitout of food premises

An applicant shall obtain a certificate from a suitably qualified tradesperson, certifying that the kitchen, food storage and food preparation areas have been fitted in accordance with the *National Code for the Construction and Fitout of Food Premises*. The applicant shall provide evidence of receipt of the certificate to the satisfaction of the PCA prior to the occupation of the building(s) or commencement of the use.

F14 Other Details Required prior to Issue of Occupation Certificate

The applicant shall submit to the satisfaction of the consent authority, the following information, prior to the issue of the Occupation Certificate:

- (1) Documentary evidence of the payment of the contributions in accordance with condition B22, and
- (2) Documentary evidence that the property has been developed in accordance with plans approved by Development Application No. 234-5-2003 and of compliance (or a Compliance Certificate) with the conditions of that consent.

PART G—POST OCCUPATION

Fire Safety

G1 Annual Fire Safety Certification

The owner of the building shall certify to Council every year that the essential services installed in the building for the purpose of fire safety have been inspected and at the time of inspection are capable of operating to the required minimum standard. This purpose of this condition is to ensure that there is adequate safety of persons in the building in the event of fire and for the prevention of fire, the suppression of fire and the prevention of spread of fire.

Traffic and Parking

G2 Loading and Unloading

All loading and unloading of service vehicles in connection with the use of the premises shall be carried out wholly within the site at all times.

G3 Unobstructed Driveways and Parking Areas

All driveways and parking areas shall be unobstructed at all times. Driveways and car spaces shall not be used for the manufacture, storage or display of goods, materials or any other equipment and shall be used solely for vehicular access and for the parking of vehicles associated with the use of the premises.

G4 Vehicular Access

Signs shall be exhibited in a prominent location on the site advising that all vehicles entering or leaving the site are to be driven in a forward direction at all times.

Noise

G5 Noise Control – Music and Entertainment

Any recorded music, live music or other entertainment played or provided within the premises shall be controlled to comply with the requirements of the *Environmental Noise Control Manual* (1985) and the *Protection of the Environment Operations Act, 1997*. Noise shall not exceed 5dB(A) above the background noise level when measured at the boundary of the nearest residential property.

G6 Noise Control – Plant and Machinery

Noise associated with the operation of any plant, machinery or other equipment on the site, shall not exceed 5dB(A) above the background noise level when measured at the boundary of the site.

Hazardous Materials

G7 Storage of Hazardous or Toxic Material

Any hazardous or toxic materials must be stored in accordance with Workcover Authority requirements and all tanks, drums and containers of toxic and hazardous materials shall be stored in a bunded area. The bund walls and floors shall be constructed of impervious materials and shall be of sufficient size to contain 110% of the volume of the largest tank plus the volume displaced by any additional tanks within the bunded area.

Public Access

G8 Public Way to be Unobstructed

The public way must not be obstructed by any materials, vehicles, refuse, skips or the like, under any circumstances.

Compliance

G9 Compliance Report

The Applicant, or any party acting upon this consent, shall submit to the Department a three monthly report addressing compliance with all relevant conditions of this consent up to the date of issue of the occupation certificate.

PART H—GENERAL TERMS

Department of Infrastructure, Planning, and Natural Resources (Natural Resources Division)

H1 Part 3A Permit (Rivers and Foreshore Improvement Act, 1948) requirements

- (1) Erosion and sediment control measures shall be provided for the duration of works to ensure that silts and sediments do not enter the adjacent waterway.
- (2) Any Acid Sulphate Soils found during construction to be treated in accordance with the recommendations provided by Ardill Payne in their report accompanying the Development Application dated 18 December 2002.

Rural Fire Service

No specific conditions.

Ballina Shire Council

No specific conditions

ADVISORY NOTES

AN1 Compliance Certificate, Water Supply Authority Act, 2000

Prior to issuing a subdivision certificate, a Compliance Certificate shall be provided to the consent authority showing that the development has met with the detailed requirements of the relevant water supply authority for the region that the subject site is located within.

The developer shall obtain the Compliance Certificate from the relevant local water supply authority and produce this to the satisfaction of:

- (1) the PCA before release of the Construction Certificate,
- (2) the consent authority before the release of the subdivision certificate, and
- (3) the PCA prior to occupation.

AN2 Requirements of Public Authorities for Connection to Services

The applicant shall comply with the requirements of any public authorities (e.g. Energy Australia, Telstra Australia, AGL, etc) in regard to the connection to, relocation and/or adjustment of the services affected by the construction of the proposed structure. Any costs in the relocation, adjustment or support of services shall be the responsibility of the applicant. Details of compliance with the requirements of any relevant public authorities are to be submitted to the satisfaction of the PCA prior to the issue of the Construction Certificate.

AN3 Compliance with Building Code of Australia

The applicant is advised to consult with the PCA about any modifications needed to comply with the BCA prior to submitting the application for a Construction Certificate.

AN4 Structural Capability for Existing Structures

The structural capabilities of an existing structure will need to meet the requirements of the BCA and may require engaging a structural engineer.

AN5 Application for Hoardings and Scaffolding

A separate application shall be made to Council for approval under Section 68 of the *Local Government Act, 1993*, to erect a hoarding or scaffolding in a public place. Such an application shall include:

- (1) Architectural, construction and structural details of the design in accordance with Council's Policy or requirements,
- (2) Structural certification prepared and signed by a suitably qualified practising structural engineer.

The applicant shall provide evidence of the issue of a Structural Works Inspection Certificate and structural certification shall be submitted to the satisfaction of the PCA prior to the commencement of works.

AN6 Use of Mobile Cranes

The applicant shall obtain all necessary permits required for the use of mobile cranes on or surrounding the site, prior to the commencement of works. In particular, the following matters shall be complied with to the satisfaction of the PCA:

- (1) For special operations including the delivery of materials, hoisting of plant and equipment and erection and dismantling of on site tower cranes which warrant the on street use of mobile cranes, permits must be obtained from Council:
 - (a) at least 48 hours prior to the works for partial road closures which, in the opinion of Council will create minimal traffic disruptions, and
 - (b) at least 4 weeks prior to the works for full road closures and partial road closures which, in the opinion of Council, will create significant traffic disruptions.
- (2) The use of mobile cranes must comply with the approved hours of construction and shall not be delivered to the site prior to 7.30am or 8.30am on Saturdays without the prior approval of Council.

AN7 Movement of Trucks Transporting Waste Material

The applicant shall notify the Roads and Traffic Authority's Traffic Management Centre (TMC) of the truck route(s) to be followed by trucks transporting waste material from the site, prior to the commencement of the removal of any waste material from the site.

AN8 Construction Inspections

Compliance certificate/s shall be issued by the PCA and submitted to the Department in accordance with the mandatory inspection requirements of the *Building Legislation Amendment—Quality of Construction Act, 2002* for each stage of construction, such as the following:

- (1) Foundations,
- (2) Footings,
- (3) Damp proof courses and waterproofing installation,
- (4) Structural concrete, including placing of reinforcement and formwork prior to pouring,
- (5) Structural beam and column framing,
- (6) Timber wall and roof framing, and
- (7) Stormwater disposal.

Any Compliance Certificate issued for the above stages of construction shall certify that all relevant ancillary or dependent work has been undertaken in accordance with the Building Code of Australia and any other conditions of consent.

AN9 Noise Generation

Any noise generated during the construction of the development shall not exceed the limits specified in the *Protection of the Environment Operations Act, 1997* or exceed approved noise limits for the site.

AN10 Excavation – Aboriginal Relics

Should any Aboriginal relics be unexpectedly discovered then all excavations or disturbance to the area is to stop immediately and the National Parks and Wildlife Service shall be informed in accordance with Section 91 of the *National Parks and Wildlife Act, 1974*.

AN11 Excavation – Historical Relics

Should any historical relics be unexpectedly discovered then all excavations or disturbance to the area is to stop immediately and the Heritage Council of NSW shall be informed in accordance with Section 146 of the *Heritage Act, 1977*.

AN12 Application under Part 4A of the Act

An application under Part 4A of the Act shall be submitted to the consent authority along with a plan of subdivision prepared by a registered surveyor, for certification prior to the issue of the Subdivision Certificate.

AN13 Street Numbering

Street numbers and the building name(s), if any, will need to be clearly displayed at either end of the ground level frontages in accordance with Council's Policy, prior to the occupation of the building(s) or commencement of the use.

If street numbers or a change to street numbers are required, a separate application shall be made to Council.

AN14 Signage

A separate development application shall be submitted at the appropriate time for any proposed signs.

AN15 Place of Public Entertainment

The applicant may be required to obtain approval for the use of the premises as a "Place of Public Entertainment" under the provisions of the *Local Government Act, 1993*. The applicant shall provide evidence of receipt of the approval to the satisfaction of the PCA prior to the occupation of the building(s) or commencement of the use.