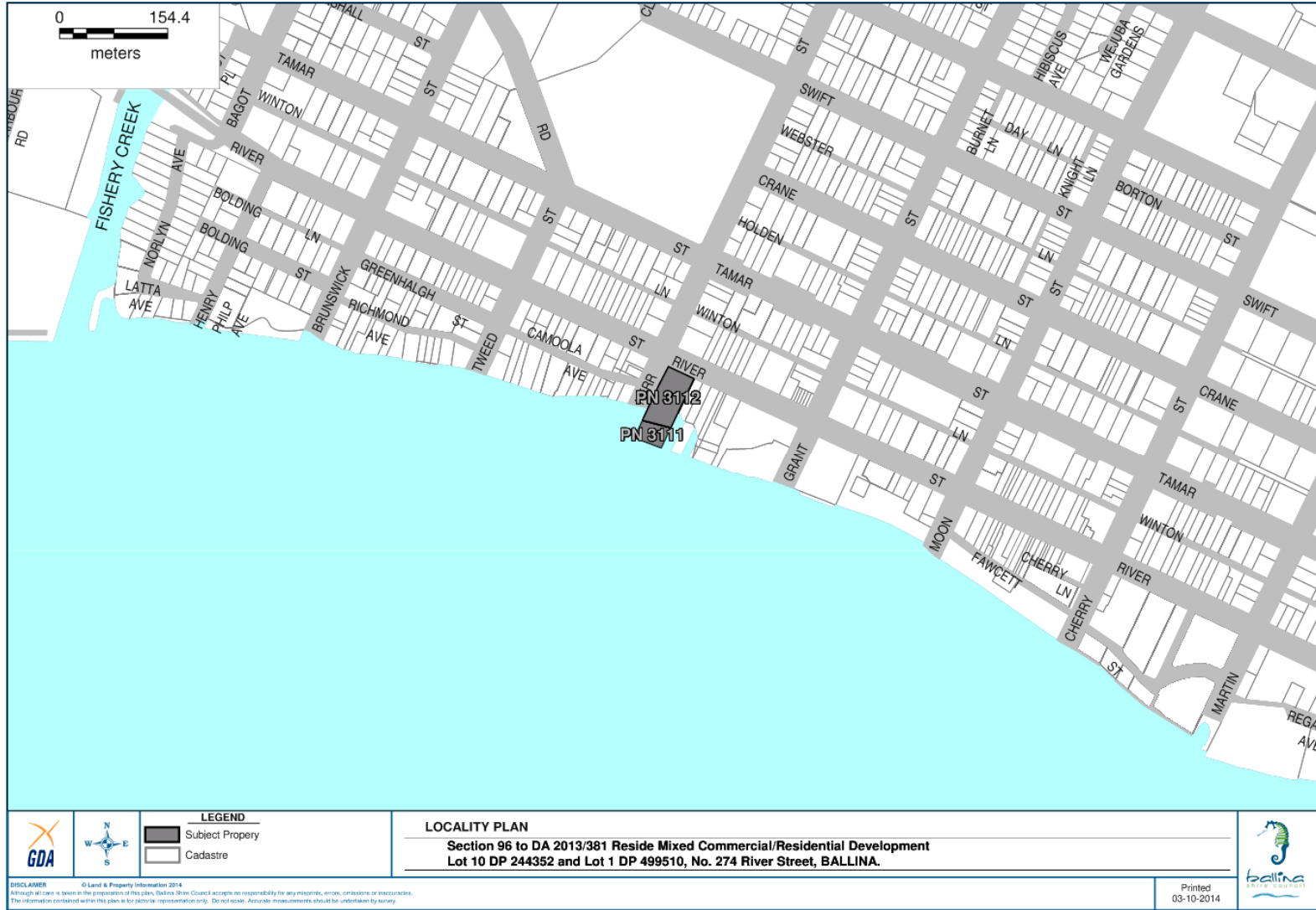


8.3 **DA 2013/381 - Reside Living - 274 River Street, Ballina - Section 96.DOC**



8.3 DA 2013/381 - Reside Living - 274 River Street, Ballina - Section 96.DOC

8.1 DA 2013/381 - Shop Top Housing (Reside Living), River Street, Ballina

8.1 DA 2013/381 - Shop Top Housing (Reside Living), River Street, Ballina

Applicant	Planners North (on behalf of Reside@Ballina Pty Ltd)
Property	Lot 1 DP 499510 and Lot 10 DP 244352 No. 274 River Street, Ballina
Proposal	To undertake the following development: <ul style="list-style-type: none">• Demolition of the Existing Sundowner Motel and Restaurant;• Erection and Strata Title Subdivision of a Multi-Level Mixed Commercial and Residential Building (Shop Top Housing) with an Overall Height of 23.6m Australian Height Datum (AHD), comprising:<ul style="list-style-type: none">– Six Commercial Tenancies (Business and Retail Premises) at Ground Level facing River Street and the Richmond River,– A Restaurant at Ground Level facing the Richmond River,– 34 Residential Apartments (Dwellings) located on Levels Two to Six,– Two Levels of Car Parking and Site Access from Kerr Street;• The Dedication of Land for Foreshore Public Access, involving the Construction of a Public Walkway; and• Vegetation Management Works involving the Removal of One Norfolk Island Pine Tree
Effect of Planning Instrument	The land is zoned B3 Commercial Core under the provisions of the Ballina LEP 2012
Locality Plan	The subject land is depicted on the locality plan attached

Introduction

Council is in receipt of Development Application 2013/381 for Lot 1 DP 499510 and Lot 10 DP 244352, No. 274 River Street, Ballina, seeking consent for the Demolition of an Existing Motel and Restaurant and the subsequent Erection and Strata Title Subdivision of a Multi-Level Mixed Commercial and Residential Building with an Overall Height of 23.6m AHD involving the Dedication of Land for Foreshore Public Access (and the Construction of a Public Walkway therein) and the Removal of One Norfolk Island Pine tree.

This report seeks Council's determination of this development application. The key issues arising from the assessment of this application and requiring particular consideration in Council's determination of Development Application 2013/381 are:

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- Compliance with the relevant statutory provisions (in particular building height – Ballina Local Environmental Plan 2012);
- Provision of adequate car parking and loading/unloading facilities;
- Appropriate public foreshore land dedication; and
- The issues raised in submissions as part of the exhibition/notification process.

Details of the proposal

Commercial Tenancies

The proposal involves the provision of six commercial tenancies, with a total area of 771m².

Five of the commercial tenancies will front River and Kerr Streets and will be set behind the existing Norfolk Pine Tree adjacent to River Street. The building is setback approximately 7.5 metres from the trunk of the tree (1.5 to two metres from the drip line), with a deck/elevated walkway and awning being 4.5 metres from the trunk of the tree.

A component of the commercial floor space (12.5 metre frontage) will be located on the front property boundary. Awnings (2.75 metre in width) are provided over the River and Kerr Street road reserves (and footpaths), however all steps and ramps will be provided on private property to provide access into the commercial tenancies.

The River and Kerr Street elevations of the commercial floor space are to consist solely of aluminium framed glazing.

The applicant has not nominated specific tenancy types (i.e. retail, commercial, office, café etc.).

The sixth commercial tenancy is to front the Richmond River (to the south and east) and has setbacks of minimum 16 metres (to the south) and 5.5 metres (to the east). An area of landscaped open space has been provided to the south of the tenancy, between the proposed building and the proposed public boardwalk. The applicant has not nominated this landscaped open space area for commercial use associated with this tenancy. Richmond River elevations of this tenancy are to consist solely of aluminium framed glazing.

Restaurant

A restaurant is to be provided as part of the development and this tenancy will front the Richmond River (both to the west and the south). The restaurant has an area of 201m² and has ground floor setbacks of eight metres (to the west) and 14 metres (to the south). The entry to this section of the development (which includes the restaurant and the lobby to access residential apartments) will have an awning which extends over the start of the boardwalk and the Kerr Street road reserve.

It was originally proposed that landscaping to the restaurant will include the provision of a private courtyard elevated 0.5 metres above the proposed public boardwalk to be utilised for outdoor dining and functions. However, as a result of changes made to the proposal, the applicant has not confirmed that this arrangement will continue.

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Richmond River elevations of the restaurant are to consist solely of aluminium framed glazing.

Residential Apartments

The proposal involves the provision of 34 residential apartments (dwellings) comprising:

- Five x one bedroom apartments (located on Levels Two and Three of the building)
- 12 x two bedroom apartments (located on Levels Two to Six of the building)
- 17 x three bedroom apartments (located on Levels Two to Six of the building).

Four apartments (located on Levels Two, Three and Four of the building) have been designated as "Adaptable Housing" apartments – they have been designed such that they can be easily modified in the future to become accessible to both occupants and visitors with disabilities, if so required.

Each apartment has been provided with typical dwelling facilities [bedroom, bathroom, ensuite (excluding one bedroom apartments), kitchen, dining and living rooms etc.] and a balcony. Storage lockers are provided on each floor also. Apartments 13 and 14 (Level Three) have each been provided with a private unroofed grassed courtyard area.

All apartments are able to be accessed via the lobby off Kerr Street and the eastern section of the boardwalk.

A large north facing communal open space area for the residents has been provided on Level Three of the building. This area contains grassed, paved and deck areas, a pool, vegetable gardens and green arbour, a communal kitchen and barbeque area. The perimeter of this communal open space area is to be landscaped with two to three metre wide raised gardens.

A raised podium/courtyard garden area has been provided in the centre of Level Four of the building, which continues as an atrium through Levels Five and Six. The landscaping plans show that shade tolerant coastal rainforest plants including tall palms are to be planted in this area.

The elevations of the residential levels of the building are of contemporary design and comprise rendered block work, extensive glazing, vertical fixed screens, glass louvers and adjustable sliding shutters.

Two Levels of Car Parking and Site Access from Kerr Street

Car parking is to be provided on both the Ground Floor and Level Two of the development. 39 car parking spaces are to be provided on the ground floor (public accessible parking) and 66 car parking spaces are to be provided on Level Two (residents' parking), being a total of 105 spaces overall.

Disabled car parking spaces have been provided on both levels (total of four spaces) and three x adaptable disabled parking spaces have been provided on Level Two.

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Two driveways (seven metre wide combined entry/exit and six metre wide exit only) are to be provided off Kerr Street, in similar locations to that of the existing driveways.

On-street car parking is to be maintained along the Kerr Street frontage of the site, however is to be reconfigured to 60 degree parking. Plans provided with the application also show formalised parking being provided in the street adjacent to the River. The number of remarked on-street car parking spaces is 14 spaces.

Small Rigid Vehicles (SRVs) are proposed to service the commercial and restaurant areas via the ground level parking area. Garbage servicing is proposed via the street system with kerbside collection through a private waste collection company.

No provision has been made on site for servicing of the proposed development by Medium Rigid Vehicles (MRVs).

New footpath paving is proposed to be provided along both Kerr and River Streets.

Dedication of Land for Foreshore Public Access, involving the Construction of a Public Walkway

The plans for the development show a four metre wide timber boardwalk as being constructed along the river frontage of the land. The boardwalk area and the south eastern corner of the property, which contains an existing Pandanus tree, are proposed to be dedicated to Council. The total area of land is 541m².

The proposed boardwalk does include provision for a future pedestrian link to the site to the east.

The existing timber jetties along the southern and south eastern sections of the revetment wall are to be demolished.

Vegetation Management Works involving the Removal of One Norfolk Island Pine Tree

An existing Norfolk Island Pine Tree (25 metres in height) is proposed to be removed from the southern central area of the subject site. The application notes that a second Norfolk Island Pine Tree (25 metres in height), exists adjacent to the first tree, however its removal is 'exempt development' (as the tree is within three metres of an approved structure and under the general provisions of the Ballina Shire DCP 2012 may be removed without development consent).

The proposal is seeking to retain the existing Norfolk Island Pine tree (28m in height) adjacent to River Street. Landscaping plans for the development show this area to be a "Community Green Space", with an elevated walkway, timber bench seats, grassed and paved areas and bicycle parking. It is also noted on the plans that this space may provide for additional sculpture or art.

A Pandanus tree (three metres in height) is to be retained in the south eastern corner of the site and will be part of the land proposed to be dedicated to Council. The landscaping plans depict this area as being planted with low

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native groundcovers, with timber wharf seats on the edge of the timber boardwalk.

Description of the Subject Site

The subject site is located at the western entrance or 'gateway' to the Ballina Town Centre.

The site is relatively level and contains an existing motel development (Sundowner Motel) comprising 26 motel units, a restaurant/function room (By The River) with a floor area of 180m², a manager's residence and associated swimming pool and car parking area. The area of the subject site is 4,547m².

Three large Norfolk Island Pine Trees (ranging in height from 25 to 28 metres) are located on the site, the largest of which is located adjacent to the River Street frontage of the site. The other two Norfolk Island Pine Trees are located in the central/southern part of the site, adjacent to the restaurant/function room and south facing motel units.

The area of the site immediately adjacent to the Richmond River is undeveloped, comprising a grassed/lawn area. The site also contains a rock and concrete seawall along its southern, south-western and south-eastern boundaries.

It is noted that the subject site was included in a Major Project Approval (MP05_0009) granted by the former Department of Planning in June 2007. The land relevant to this approval spanned from west of the Ballina RSL car park to Kerr Street.

MP 05_0009 involved a staged mixed use (residential, tourist and retail) development comprising seven separate buildings, the tallest having a height of 19 metres (six storeys). The development included an 84 room hotel, 85 residential apartments (distributed over four buildings), an amenities building with a pool and gym and approximately 1200m² of ground floor retail space including a café adjacent to the Richmond River and basement car parking. The two buildings approved for the subject site (No. 274 River Street) were to be five storeys (hotel) and four to five storeys (residential apartments) in height.

Reportable Political Donations

Details of known reportable political donations are as follows:

- Nil

Public Exhibition

The application was placed on public exhibition from 16 October to 31 October 2013. A total of 31 submissions were received, comprising 25 submission of support and six (including two letters from one resident) submissions raising concern or objecting to the proposed development.

The amended proposal was notified to those persons who made submissions raising concerns or objecting to the proposal from 3 March 2014 to 14 March

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2014. It was advised as part of the re-notification process that previous submissions would still stand, unless otherwise stated. One additional submission was received as a result of the re-notification process.

The following issues of concern were raised within the submissions.

1. The height of the proposal is unacceptable.

Comment: An assessment of the height of the proposal is provided in the Ballina Local Environmental Plan 2012 section of this report.

2. The surrounding road network will not be able to handle the increase in traffic.

Comment: This matter has been considered by Council's Engineers who have concluded that the surrounding road network can handle the increase in traffic as generated by the proposed development. Refer to the Roads, Traffic, Access and Car Parking section of this report for further discussion.

3. Do we need more vacant retail premises?

Comment: The proposed commercial tenancies are appropriately located and permissible within the B3 Commercial Core Zone under the provisions of the Ballina Local Environmental Plan 2012. The commercial viability of the proposal is not a relevant planning consideration in the assessment of the application.

4. Solar impacts on surrounding properties.

Comment: The Ballina Shire Development Control Plan 2012 section of this report provides discussion in relation to solar impacts upon the property to the east of the site.

Issues have also been raised in relation to a motel development approved (but not yet constructed) to the west of the subject site, on the western side of Kerr Street. Given the location of the residential tower on the subject site (in the central/southern section of the site) and the distance between the residential tower and the approved motel site (some 30 or so metres), it is not considered that unreasonable solar access issues will occur for either the manager's residence within the motel development or the proposed motel units.

5. The proposal will remove all summer breeze from the approved motel development on the western side of Kerr Street.

Comment: It is considered that due to the separation between the two properties and the buildings located therein, as provided by Kerr Street (some 15 to 20 metres), it is unlikely that the proposal will impact unreasonably on summer breeze currently enjoyed by the property to the east.

6. Privacy impacts on surrounding properties.

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Comment: Potential privacy impacts on the property to the east of the subject site has been discussed in the Ballina Shire Development Control Plan 2012 section of this report.

With respect to other surrounding properties and their existing or approved development (i.e. residential and tourist/motel uses), the communal open space area of Level Three of the proposed development has been designed such that residents will not be able to stand at the edge of the building and peer over to adjoining sites. This has been achieved through the provision of 2.5 to three metre wide planter boxes around the perimeter of this area.

The apartments have been designed to capture and focus on views of the Richmond River. In relation to balconies provided to the western facing apartments, these balconies are located adjacent to the Richmond River (and are set back from the property boundary), rather than facing actual properties. The balconies provided for north-west facing apartments are designed such that the main balcony area is provided on the northern elevation.

It is not considered that the proposal will result in unreasonable privacy impacts on surrounding properties.

7. Noise impacts on surrounding properties.

Comment: An assessment of the proposal has been undertaken by Council's Public and Environmental Section in relation to noise impacts resulting from the proposed development. Refer to the noise section of this report for discussion.

8. Camoola Ave should be made a one way street.

Comment: This matter has been previously considered by Council's Local Traffic Committee who are currently undertaking a 'mail box drop' of Camoola Street residents to determine what the best outcome should be.

9. Building mass and negative visual impact.

Comment: It is acknowledged that the size, scale and mass of the proposed development is different (significantly larger) to that of the existing motel and restaurant developments on the subject site.

In designing the proposal, it is considered that the architect has considered the existing scale of development to the north and west of the subject site, through the provision of a lower scale at both the northern and north-western areas of the site (appearing as a three storey building – two storeys and the communal open space area). The bulkier or larger area of the development has been concentrated in the centre and southern sections of the site, which has given consideration to impacts surrounding properties, and to take advantage of the views to the Richmond River.

The mass of the building therefore is generally considered appropriate for the site. Refer to the Ballina Local Environmental Plan 2012 section of this report for discussion in relation to the height of the development.

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From a visual perspective, it is considered that the proposed development presents as an attractive addition to the Ballina Town Centre and contains the appropriate components for a gateway site. The development has a scale which demonstrates that the subject site marks the entrance to the Ballina Town Centre (and has retained an important landscape element – Norfolk Island Pine tree).

The proposed development is of a contemporary built form and a range of materials and articulations have been utilised, including vertical fixed screens, glass louvres, adjustable sliding shutters, extensive balconies and a public artwork to reduce its bulk and scale. In this regard, it is considered that the proposed development will not have a negative visual impact.

10. Chemicals and ventilation from proposed car park and service area vents.

Comment: An assessment of this matter has been provided in the Venting of Level Two Car Parking Area section of this report.

11. View loss to surrounding properties.

Comment: It is acknowledged that existing views across the site will change as a result of the construction of the proposed development. In this regard, views that may be enjoyed from properties to the west of the site, to the east across this site, will change. For those properties that adjoin the Richmond River, these properties will still retain a view of the River, direct south and west, however this view will no longer extend east up to the RSL site and beyond as the proposed development will obstruct this view line.

From the location and orientation of properties to the west of the site, it is not considered that total view loss to the Richmond River will occur. All properties will maintain some view of the River. In this regard, it is not considered that the proposal will cause an unacceptable view loss to surrounding properties.

12. All pine trees should be retained.

Comment: An assessment in relation to the Norfolk Island Pine trees to be removed from the subject site has been provided in the Ballina Shire Development Control Plan 2012 section of this report.

13. Can the site area provide foundations capable of meeting all the criteria necessary to ensure its permanence?

Comment: This matter has been considered in Council's assessment of the proposed development and the geotechnical conditions of the site appear to be capable of supporting the proposed development. Further in depth consideration (and reporting) will be required in relation to this matter as part of the issue of a Construction Certificate by a Principal Certifying Authority (PCA) for the development.

14. Request advice as to whether the units are to be strata titled or intended as holiday accommodation?

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Comment: The residential apartments will be strata subdivided and used for long term residential use. The development application does not seek any type of tourist approval.

15. Building a high rise residential development reaching seven stories is not the answer for the site.

Comment: The application seeks consent for a six storey development not seven. Refer to the Ballina Local Environmental Plan 2012 section of this report for discussion on the height of the proposed development.

Report

The proposed development has been assessed under the heads of consideration in Section 79 (C) of the Environmental Planning and Assessment Act 1979. The following matters are of particular relevance in Council's determination of the Application.

Applicable Planning Instruments

State Environmental Planning Policy No. 55 – Remediation of Land

Clause 7 of State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55) provides that contamination and remediation are to be considered in the determination of development applications.

- (1) *A consent authority must not consent to the carrying out of any development on land unless:*
 - (a) *it has considered whether the land is contaminated, and*
 - (b) *if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
 - (c) *if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*
- (2) *Before determining an application for consent to carry out development that would involve a change of use on any of the land specified in subclause (4), the consent authority must consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines.*
- (3) *The applicant for development consent must carry out the investigation required by subclause (2) and must provide a report on it to the consent authority. The consent authority may require the applicant to carry out, and provide a report on, a detailed investigation (as referred to in the contaminated land planning guidelines) if it considers that the findings of the preliminary investigation warrant such an investigation.*
- (4) *The land concerned is:*
 - (a) *land that is within an investigation area,*

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- (b) *land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out,*
- (c) *to the extent to which it is proposed to carry out development on it for residential, educational, recreational or child care purposes, or for the purposes of a hospital—land:*
- (d) *in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and*
- (e) *on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge).*

The applicant has provided the following information in the Statement of Environmental Effects (lodged with the development application) in relation to land contamination.

“Soil testing was undertaken in association with the previously approved State Government approval. No dip sites or other historical uses of a contaminating kind (ANZECC, 1992 & DUAP, EPA 1988) have ever been known to have been located on this land. The Director General’s report assessing the previous approved development concluded that conditions of approval were adequate to ensure that this issue could be dealt with in an appropriate manner.”

Further to this, the applicant has stated (via letter dated 5 November 2013) that they are relying on the Preliminary Assessment undertaken for the State Government Approval MP05_0009 (Ballina Gateway Project).

The Preliminary Assessment that the applicant is relying on was not submitted with the subject development application.

Council’s Public and Environmental Health Section have provided the following comments in relation to SEPP 55 and the proposed development.

“The site has been previously approved for a large-scale mixed use development, “The Ballina Gateway Project”. The Preliminary Site Investigation prepared by Coffey’s (as submitted with that application) is being relied upon for this development application. This investigation indicates that the subject site would appear to be suitable for the intended use (residential and commercial landuses), however additional land contamination investigation is required in relation to the subject site, and if necessary, a Remedial Action Plan will need to be developed.

It is also noted that the full extent of land contamination cannot be determined until the site is cleared of structures and further detailed sampling is required as part of a Detailed Site Investigation. This additional sampling would be required to occur in conjunction with the demolition phase of the development.

The preliminary investigation prepared for the Ballina Gateway Project established the existence of tributyltin (TBT) in sediments below the slipway activities. As limited information has been submitted to Council in relation to the revetment wall and there is insufficient data to assess the vertical and

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horizontal extent of the TBT, additional sampling and analysis is required to be undertaken and submitted to Council as part of the Detailed Site Investigation. If the proposed development is granted development consent, this investigation would be required to be submitted prior to the issue of a Construction Certificate.”

State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development

An assessment of the proposal has been undertaken with respect to State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development (SEPP 65).

Under the provisions of SEPP 65, the proposed development may be defined as a **residential flat building**, which means a building that comprises or includes:

- (a) 3 or more storeys (not including levels below ground level provided for car parking or storage, or both, that protrude less than 1.2 metres above ground level), and
- (b) 4 or more self-contained dwellings (whether or not the building includes uses for other purposes, such as shops), but does not include a Class 1a building or a Class 1b building under the Building Code of Australia.

Clause 4 of SEPP 65 provides that the proposed development, therefore, is required to be assessed in accordance with the provisions of this policy.

The submitted documentation for the proposal complies with the requirements of Part 4 of SEPP 65 (as stated in the Environmental Planning and Assessment Regulations 2000), which has included the provision of a Design Verification Statement prepared by the registered architect responsible for the preparation of the proposed development.

Clause 30 (2) of SEPP 65 states:

- (2) *In determining a development application for consent to carry out residential flat development, a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration):*
 - (a) *the advice (if any) obtained in accordance with subclause (1), and*
 - (b) *the design quality of the residential flat development when evaluated in accordance with the design quality principles, and*
 - (c) *the publication Residential Flat Design Code (a publication of the Department of Planning, September 2002).*

Comment: Refer to assessment below in relation to the Design Quality Principles and the Residential Flat Code.

Part Two of SEPP 65 sets out the “Design Quality Principles” that provide a basis for evaluation of the merit of the design of the proposed development.

Design Quality Principles

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- Principle One: Context

Comment: It is considered that the design of the proposed development has given consideration to the context of the site and surrounding locality.

The site is located at the western entrance of the Ballina Town Centre, and as such marks a change in building controls, from low rise residential development, to higher rise commercial, tourist, mixed use development. The design of the proposal has considered this change in the built form and has provided a lower scale built form facing the north western corner and River Street (similar to existing commercial/retail development within the western area of the Ballina Town Centre), with the higher form (residential tower) located in the central and southern part of the site.

The design has also recessed the north western corner of the development around an existing Norfolk Island Pine tree, which includes a landscaped courtyard. The architect has stated that this will assist in forming a landmark gateway to the townships commercial precinct. It is also considered that the retention of the Norfolk Island Pine tree in this location will soften and reduce the impacts of the built form of the development.

- Principle Two: Scale

Comment: The proposed development will have the appearance of both a three storey development (at the River Street frontage) and a six storey development (along the Richmond River and the southern section of Kerr Street). The three storey design, principally involves the provision of two levels (ground floor and Level Two) with a four metre high steel mesh screen above, screening part of the second storey car parking level and the residential communal open space area on Level Three. The scale of this part of the development is considered to be consistent with the controls for the Ballina Town Centre.

The six storey component (ground floor plus Levels Two to Six) is provided in the central and southern sections of the site and exceeds the height provisions within the Ballina Local Environmental Plan 2012 (further discussion with respect to scale and height are provided in that section of this report). The applicant has stated that the residential tower has been positioned in order to maximize views of the river and solar access for occupants.

- Principle Three: Built Form

Comment: The architect for the proposal has provided that the arrangement for the built form of the development has been determined by the following:

- Preservation of the Norfolk Island Pine tree at the front of the site and encompassing the commercial/retail tenancies around the tree;
- Provision of a podium level to conceal the Level Two car park and provide a raised communal open space area for residents;
- Provision of a residential tower with an atrium to maximise natural solar access, ventilation and views of the Richmond River; and
- Provision of a public/pedestrian boardwalk along the Richmond River.

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- Principle Four: Density

Comment: The proposed development results in a total of six commercial tenancies and a restaurant on the ground floor and 34 residential apartments above. The architect for the development has indicated that this can be seen to be a fairly low density, that is appropriate and sustainable, meeting expectations for this precinct of the town. It is noted that if the entire site was designed to Council's controls (in terms of height), the density of development would be a lot higher than is proposed as part of this application.

- Principle Five: Resource, Energy and Water Efficiency

Comment: A BASIX report has been submitted for the development, which has addressed this principle. The architect has commented that the design of the development incorporates good passive solar design principles and nearly all of the spaces open into large outdoor living spaces with adjustable solar and wind control devices. These aspects of the proposed development have been shown on the development plans.

- Principle Six: Landscape

Comment: A landscape design and accompanying plans were lodged with the application. It is considered that the plans have addressed and had regard for the requirements of this principle, in that:

- The landscape design has integrated the built form with the proposed landscaping elements, including retained and proposed vegetation, new outdoor furniture etc.
- The treatment of the public space adjacent to River Street has allowed for the retention of the Norfolk Island Pine tree and created a focal point of this landscape item, whilst providing an area which can be utilised by both the public and employees of the commercial tenancies.
- The proposed communal open space area for the residential tower (on Level Three) incorporates a green perimeter (two to three metre wide raised gardens which provides a green edge to the area), picnic area, food propagation areas (raised gardens and an arbour), plus turfed, deck and tiled areas. These aspects seek to provide usability and social opportunity for future residents of the development.

- Principle Seven: Amenity

Comment: The proposal has generally been designed to optimise amenity for residents of the apartments, through appropriate room dimensions, access to sunlight, ventilation, visual and acoustic privacy, storage, layout and outlook. Four of the apartments have been designated as "Adaptable Housing" and as such will enable ease of access for all age groups and degrees of mobility.

- Principle Eight: Safety and security

Comment: A Crime Prevention Through Environmental Design (CPTED) report has been submitted with the application. Generally, the proposal has had due regard for the principles of CPTED. Refer to the Ballina Shire Development Control Plan 2012 section of this report for further discussion.

- Principle Nine: Social dimensions and housing affordability

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Comment: The architect for the proposal has stated that the development includes a range of housing stock, from one bedroom (59m²) apartments to three bedroom (130m²) apartments. This range has been aimed at the retirement market and has been designed accordingly.

- Principle 10: Aesthetics

Comment: The proposed development is of a contemporary design. The architect has stated that the proposal was designed to respond to the subtropical coastal conditions, through the combination of different types of screening effects across the façade. It has also been stated by the architect that the unique mirrored pitch roof form is a significant design feature, which will form a backdrop to the Norfolk Island Pine tree (seen as centrepiece to the design).

Residential Flat Design Code

The proposal has been assessed against the provisions of the Residential Flat Design Code (produced by planningNSW in 2002). For the most part, the design of the proposal has responded to the “better design practice guidelines” and/or “rules of thumb” for each control listed in the code. It must be noted that the “better design practice guidelines” and/or “rules of thumb” are provided as recommendations – a guide for Council assessment and decision making, and are not stated as minimum requirements. Given the length of Residential Flat Design Code, these guidelines and rules of thumb are not reproduced as part of the report. Where the application has not met the guidelines/rules of thumb, a comment has been made in the comments section of the following table.

Control	Proposal	Comment
Part One – Local Context		
Building Height	23.6m AHD	Refer to the Ballina Local Environmental Plan 2012 section of this report for discussion.
Building Depth	Maximum building depth is over 50m for Levels Three, Four, Five and Six	The purpose of this control is to provide for dual aspect apartments and to provide amenity through sun access and ventilation. 17 of the 34 apartments (50%) are single aspect, with five apartments facing east or north and 12 apartments facing west or south. A central atrium has been provided through Levels Four, Five and Six, which will provide some internal amenity to apartments. It must be noted however, that none of apartments have a real aspect to this atrium.
Street Setbacks	Residential component has a minimum four metre setback (to balconies) for Levels Three to Six for Kerr Street, for a maximum length of 16 metres.	Considered satisfactory and consistent with provisions of Ballina Shire DCP 2012.

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Control	Proposal	Comment
Part One – Local Context		
	Courtyard landscaping on Level Three is zero to one metre from Kerr Street for approximately 53 metres.	
Side and Rear Setbacks	<p><u>Side Setbacks</u> Courtyard landscaping on Level Three is 1.5 metres from eastern boundary for approximately 50 metres.</p> <p>Residential component on Levels Three to Six have a minimum four metre setback to eastern boundary.</p> <p><u>Rear Setbacks</u> Residential component on Levels Two to Six have a minimum 11 metre setback to the Richmond River.</p>	Considered satisfactory and consistent with provisions of Ballina Shire DCP 2012.
Part Two – Site Design		
Deep Soil Zones (DSZ)	<p>Landscape plans show 18.8% or 859m² of land is a DSZ. This area has been shown to include:</p> <ul style="list-style-type: none"> – the communal open space area adjacent to the Norfolk Island Pine tree (including an elevated timber deck), – The area to the rear of the commercial tenancies facing the Richmond River, and – An area of land to be dedicated as a public walkway, including the timber boardwalk. 	<p>Ballina Shire DCP 2012 requirement is for 15% of site area to be provided as DSZ.</p> <p>The applicant has stated that the areas where timber decking is provided will provide for vegetation growth (accommodating root systems of existing and future vegetation).</p> <p>It is noted that Council staff are seeking the public walkway adjacent to the Richmond River to be of a concrete construction for maintenance purposes (refer to the Land Dedication section of this report for further detail). In this regard, that land may not be able to be included in the DSZ calculations.</p>
Landscape Design	The original landscape design has demonstrated controls have been achieved.	Considered satisfactory, however revised landscaping plans will be required should the proposal be granted consent (can be applied as a condition of consent).
Open Space	<p><u>Communal Open Space</u> The proposal provides for a communal open space area on Level Three, being approximately 30% of site area.</p> <p><u>Private Open Space</u> The proposal provides balconies for each apartment, which have a minimum dimension of four metres. In</p>	<p>Communal open space complies with requirements of minimum 25-30% of site area.</p> <p>Private open space complies with minimum requirements, with exception of Unit 15. It is noted that Unit 15 is adjacent to the communal open space area on Level Three.</p>

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Control	Proposal	Comment
Part One – Local Context		
	terms of area, each apartment has a balcony of a min. 25m ² area, except for Unit 15 which has a balcony of 20m ² area.	
Orientation	11 units (32%) have less than three hours direct sunlight mid-winter (including five units that will have no solar access). Sliding shutters have been provided to each apartment which can be adjusted to deal with environmental conditions (sunlight, wind etc.)	The architect has argued that the lack of direct sunlight to these 11 units is ameliorated by all living and bedroom spaces having extensive glazing (providing a high level of daylight across the river front).
Planting on structure	Depth provided for communal open space is one metre, therefore can accommodate medium trees. Depth provided for atrium (in centre of Levels Four to Six) is 700mm, therefore can accommodate small trees.	Considered satisfactory, however revised landscaping plans will need to address the depth requirements of the code with respect to the type of vegetation to be planted in the atrium.
Stormwater management	On-site detention is to be provided. A rainwater tank is to be provided.	Considered satisfactory. Refer to the Ballina Shire Development Control Plan 2012 section of this report for further discussion.
Safety	Parking for different uses (ground floor is commercial and restaurant tenancies and Level Two is residential) has been separated. Direct access from car parking to apartment lobbies. Access is shared between residents and ground floor restaurant and commercial tenancy facing the Richmond River.	Considered satisfactory. Refer to CPTED section of report for further discussion.
Visual Privacy	All apartments have full internal visual privacy. External privacy concerns for the adjoining eastern residence at No. 272 River Street, as four apartments have an eastern aspect.	Considered satisfactory. The four apartments that enjoy an eastern aspect are all at least four metres (to their balcony) from the eastern boundary. Other than Unit 15's balcony, which has a 2.5 metre frontage to No. 272 River Street, the three remaining units have their narrowest part of the balcony (not main part) facing east.
Parking	Underground parking is not provided. Parking areas are screened from street view. Bicycle parking has been provided within the car parking area on the ground floor.	Considered satisfactory. Refer to Ballina Shire Development Control Plan 2012 section of this report for further discussion.

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Control	Proposal	Comment
Part One – Local Context		
Vehicle Access	Driveway widths are six metres (exit only) and seven metres (entry/exit). Driveways are provided off Kerr Street, approximately six metres from entry into the lobby for the residential apartments.	Considered satisfactory. Refer to Ballina Shire Development Control Plan 2012 section of this report for further discussion.
Part Three – Building Design		
Apartment Layout	A variety of apartment mix, layout and size have been provided within the development. 60% of apartments are naturally cross ventilated. Storage facilities for apartments have been provided in accordance with applicable rates and areas. Nine apartments are 8.8 metres from glass line (or window) to back of kitchen. Apartments designated as "affordable housing" are 105m ² and exceed the minimum size requirement of 70m ² .	Considered satisfactory. Minor variation sought to eight metre requirement for depth of apartments (nine units have a depth of 8.8 metres). Architect has stated that use of light coloured internal finishes will ensure adequate daylight is achieved in the kitchen.
Ceiling heights	Ground level has a ceiling height of 3.4m. Level Two has a ceiling height of 3.5 metres Levels Three, Four and Five have ceiling heights of 2.8 metres. Level Six has a ceiling height of 2.55 metres.	Considered satisfactory. Level Six does not achieve the minimum 2.7 ceiling height, however all apartments on Level Six have large window areas to achieve the required sunlight levels.
Mixed Use	Commercial and restaurant uses have been provided on the ground floor, with residential uses provided on Levels Two to Six. An acoustic report has been provided which addresses noise between uses within the building.	Considered satisfactory. Refer to the Noise section of this report for further discussion.
Acoustic privacy	For the most part, the residential component of the development has been designed to minimise noise transmission between apartments.	Considered satisfactory. The development will be required to comply with the Building Code of Australia, in terms of construction and acoustic privacy between apartments.
Daylight	23 apartments (68%) will have	Considered satisfactory.

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Control	Proposal	Comment
Part One – Local Context		
access	<p>more than three hours of direct sunlight mid-winter.</p> <p>Five apartments are single aspect (south).</p> <p>Seven apartments are single aspect (west).</p>	<p>Large amounts of glazing have been provided to all apartments, this should enable satisfactory solar access during winter to the single aspect (south and west) apartments.</p>
Natural ventilation	<p>The development does not meet the building depth provisions in relation to natural ventilation (should be 10 to 18 metres, development is 50 metres).</p> <p>The development does not meet the cross ventilation provisions (should be 60% of apartments, proposal has 50% of apartments).</p> <p>The majority of kitchens are not located adjacent to openable windows, however dining areas are.</p>	<p>The proposal does incorporate an atrium within Levels Four to Six that will provide some ventilation into the centre of the residential tower.</p> <p>The development does incorporate large expanses of openable glazing, which will assist with ventilation.</p>
Energy Efficiency	<p>A BASIX Certificate has been provided for all apartments.</p> <p>Five apartments have a southern aspect only.</p>	<p>Considered satisfactory.</p> <p>Large amounts of glazing have been provided to all apartments, this should enable satisfactory solar access during winter to the five south facing apartments.</p>

Ballina Local Environmental Plan 2012

Under the provisions of the Ballina Local Environmental Plan (BLEP) 2012, the proposed development is defined as:

Shop Top Housing, which means, “one or more dwellings located above ground floor retail premises or business premises”.

Retail premises means “a building or place used for the purpose of selling items by retailing, or hiring or displaying items for the purpose of selling them or hiring them out, whether the items are goods or materials (or whether also sold by wholesale), and includes any of the following:

- (a) Bulky goods premises,
- (b) Cellar door premises,
- (c) Food and drink premises,
- (d) Garden centres
- (e) Hardware and building supplies,
- (f) Kiosks
- (g) Landscaping material supplies,
- (h) Markets,
- (i) Plant nurseries,
- (j) Roadside stalls,

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(k) Rural supplies,
(l) Shops,
(m) Timber yards,
(n) Vehicles sales or hire premises,
but does not include highway service centres, service stations, industrial retail outlets or restricted premises".

Business premises means "a building or place at or on which:

(a) an occupation, profession or trade (other than an industry) is carried on for the provision of services directly to members of the public on a regular basis, or

(b) a service is provided directly to members of the public on a regular basis,

and includes a funeral home and, without limitation, premises such as banks, post offices, hairdressers, dry cleaners, travel agencies, internet access facilities, betting agencies and the like, but does not include an entertainment facility, home business, home occupation, home occupation (sex services), medical centre, restricted premises, sex services premises or veterinary hospital".

Food and Drink Premises means "premises that are used for the preparation and retail sale of food or drink (or both) for immediate consumption on or off the premises, and includes any of the following:

(a) a restaurant or cafe,

(b) take away food and drink premises,

(c) a pub."

The subject land is zoned B3 Commercial Core. The only form of residential development permitted with development consent in the B3 zone is "Shop Top Housing". Retail Premises and Business Premises are also permissible within the B3 zone.

The objectives of the B3 zone are:

- To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.
- To encourage appropriate employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.
- To maintain a distinct retail hierarchy as identified in Council's strategic planning framework.
- To enable residential and tourist development that is compatible with the commercial nature of activities in the zone.
- To ensure a safe and accessible built environment.
- To encourage development that recognises natural, cultural and built heritage.
- To encourage development that achieves the efficient use of resources such as energy and water.

The proposed development is considered to have had adequate regard for and is generally consistent with the objectives of the zone.

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Clause 4.3 (Height of Buildings) and Clause 4.3A (Exceptions to height of buildings)

Clause 4.3 – Height of Buildings states:

- (1) *The objectives of this clause are as follows:*
 - (a) *to ensure that the height of buildings is compatible with the bulk, scale and character of the locality,*
 - (b) *to minimise adverse impacts on existing or future amenity of adjoining properties and the scenic or landscape quality of the locality,*
 - (c) *to protect significant views from public places.*
- (2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

The Height of Buildings Map in relation to the subject property (and the Ballina Town Centre) provides for a maximum height of 18m.

Clause 4.3A – Exceptions to Height of Buildings of the BLEP 2012 states:

- (1) *The objective of this clause is to align building height and flood planning provisions and provide for a consistent point of reference for the measurement of building heights in flood prone areas.*
- (2) *This clause applies to land identified as "Minimum fill level" on the Building Height Allowance Map.*
- (3) *The height of a building on land to which this clause applies is not to exceed the maximum height shown for that land on the Height of Buildings Map plus the minimum fill level shown for that land on the Building Height Allowance Map.*

In the Dictionary to the BLEP 2012, **building height** (or **height of building**) means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

The minimum fill level shown for the subject land on the Building Height Allowance Map is 2.0m AHD. The intention of Clause 4.3A is for building height to be measured from the ground level that would be established following filling to Council's stipulated minimum fill level for flood mitigation. This provision was provided within the BLEP 2012 so that landholders who are required to fill land to meet Council's flood policy are not unreasonably disadvantaged in terms of overall building height.

Under the provisions of the BLEP 2012, the maximum building height allowable for the site would be 18m, measured from the minimum fill level of 2.0m AHD. This would give a development an overall maximum height of 20m AHD.

The amended proposed building now has a maximum building height of 21.6m (i.e. to the top of the roof). From a filled ground level of 2.0m AHD (Building Height Allowance Map), the overall height of the building therefore will be 23.6m AHD.

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[Note: the original proposal provided for a height of 23 metres, on top of the 2.0m minimum fill level, with an overall height of approximately 25m AHD.]

The applicant has advised that in order to achieve the revised building height for the development, the floor to ceiling heights for each level of the building have been reduced.

The amended proposal exceeds the maximum building height standard by 3.6 metres.

The applicant's rationale for the building height of the proposed development is two fold:

- Their interpretation of Clause 4.3A of the BLEP 2012, accounting for 1.8m (i.e. 21.8m AHD); and
- Their interpretation of Clause 5.6, allowing for the remaining 1.8m. Refer to Attachment 11.

Council staff have obtained legal advice in relation to the proposal and the building height clauses of the BLEP 2012. The advice has confirmed Council's interpretation of Clauses 4.3 and 4.3A.

It has been acknowledged by Council, through the preparation of a Planning Proposal, that there is potential ambiguity in these clauses and that this may lead to outcomes that are not consistent with the Council's intent (i.e. the Council's envisaged building height standard may be exceeded in certain circumstances). This has been as a result of changes made by the Parliamentary Counsel Office to Clause 4.3A prior to the finalisation and gazettal of the BLEP 2012.

Planning Proposal 13/010 Building Height Allowance Provision seeks to rectify and address these issues (as reported to Council's Ordinary Meeting on 27 February 2014). This planning proposal was prepared by Council (and subsequently placed on public exhibition) after the lodgement of DA 2013/381. In this regard, the subject development application was prepared on the basis of the current wording of Clauses 4.3A and the Building Height Allowance Maps.

Planning Proposal 13/010 seeks to modify the provisions of Clause 4.3A in the following manner:

- (2) *This clause applies to land identified as "Minimum Level Australian Height Datum (AHD)" on the Building Height Allowance Map.*
- (3) *The maximum height of a building on land to which this clause applies is to be measured from the minimum level AHD permitted for that land on the Building Height Allowance Map.*

The legend of the Building Height Allowance Maps is proposed to be modified to include a reference to AHD (Australian Height Datum) when referring to minimum fill levels.

It is noted that Planning Proposal 13/010 is currently with Parliamentary Counsel for finalisation. In this regard, the making of this plan is imminent and certain. Council needs to consider the weight that it puts on this Planning Proposal in determining this application.

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The applicant has provided the following arguments (via letter dated 21 February 2014) in support of their proposal:

“Council recently placed on exhibition a Planning Proposal relating to the Building Height Allowance provision set out at Clause 4.3A of the Ballina Local Environmental Plan 2012 (BLEP 2012). The Planning Proposal describes the intent of Clause 4.3A. Clearly the clause as currently drafted is very much at odds with that intent. The Building Height Allowance Map referenced by Clause 4.3A does not refer to its level as being a level to Australian Height Datum, but instead refers to it as being a minimum “fill” level measured in metres.

Under the BLEP 2012 the term “fill” means “the depositing of soil, rock or other similar extractive material...”. Thus, the statutory meaning under BLEP 2012 of the sentence “The height of a building....is not to exceed the maximum height shown....on the Height of Buildings Map plus the minimum fill level shown....on the Building Height Allowance Map” is that a building height cannot exceed the sum of the height and allowance map provisions above the existing surface level.

We respectfully submit that this proponent should not be penalised as a consequence of what is said to be poor legal drafting by the Parliamentary Counsel in relating to Clauses 4.3 and 4.3A. We request that the application should be processed on the basis of the clauses as drafted, not the ‘intent’ as described in the Planning Proposal.

In the event that Council seeks to apply its intended meaning to Clauses 4.3 & 4.3A rather than the strict reading of the clauses, we have attached herewith as Annexure B a request for exception to development standards 4.3 & 4.3A pursuant to Clause 4.6 of the Ballina Local Environmental Plan 2012.”

Clause 4.6 – Exceptions to development standards

Clause 4.6 states:

- (1) *The objectives of this clause are as follows:*
 - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has*

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considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.

(4) Development consent must not be granted for development that contravenes a development standard unless:

- (a) the consent authority is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
- (b) the concurrence of the Director-General has been obtained.

(5) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

The Clause 4.6 variation request is not for the entire 3.6m exceedance, but only for a 1.8m portion, which represents both part of Level Six of the building and part of the Roof that is not considered to be an Architectural Roof Feature. The remaining 1.8 metres, comprising the upper portion of the roof, is addressed in relation to Clause 5.6 of the BLEP 2012.

The applicant has provided the following statement in support of the height standard variation:

"First and foremost as previously addressed in this submission, we respectfully submit that the current strict reading of Clauses 4.3 and 4.3A results in a building height limit for the site of 20m. Council has recently exhibited a Planning Proposal relating to the building height provisions set out at Clause 4.3A of the BLEP 2012, to address the wording of the Clause to reflect Council's intent.

It is our view that this application should not be penalised as a consequence of what is said to be poor legal drafting by the Parliamentary Counsel in relation to the provisions of Clauses 4.3 & 4.3A.

Notwithstanding the above, we submit that in any case the consideration of the subject application as if a height limit of 18.2m applies to the land, still enables the Council to conclude that the proposed variation warrants support. In this regard, we turn to the objectives of Clause 4.3 Building Height.

In relation to objective (a) of Clause 4.3, it is submitted that the height of the building is compatible with the bulk, scale and character of the locality. The height of the proposed building as amended is not dissimilar to that of existing buildings within the Ballina Town Centre. Further, the building design incorporates a design which reflects the maximum permitted over only one part of the site. That is, the planning controls would permit a building of a

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similar height across the entire site. The building design seeks to deliver Council's planning objectives in relation to the creation of a landmark site at the entry to town whilst maintaining a building of a compatible bulk, scale and character with existing surrounding development.

In relation to objective (b) of Clause 4.3, the proposed portion of the building above the maximum height of 18.2m advised by Council will not result in significant adverse impacts on the existing or future amenity of adjoining properties, or the scenic or landscape quality of the locality. That part of the building above the 18.2m contributes to the streetscape and reduces the impact of the building on the visual amenity of the area when considered in comparison to say a building with a flat roof form.

This building is not inconsistent with the protection of significant view for public places. The development incorporates the dedication of a public walkway adjacent to the Richmond River which will indeed provide increased opportunities for the public in this regard.

Further as noted above, the proposed variation sought is also minor in numeric terms. A variation of less than 10% is proposed over less than 50% of the site.

It is submitted that strict compliance with the development standard is both unreasonable and unnecessary in this particular case."

The variation that is sought is 1.8m, which represents 10% of the development standard of 18m.

It must be noted that Council has assumed concurrence from Planning and Infrastructure (P&I) NSW (in accordance with Planning Circular 08/003) to determine the variation to the development standards within Clauses 4.3 and 4.3A.

With regard to the criteria in Clause 4.6 of the BLEP 2012, consideration must be had of the following:

Subclause (4)(a)(i)

- The subject site is not considered to contain any real physical constraints that would impact upon its development potential. The site is relatively flat and has a good aspect with views to the Richmond River. The existence of two large Norfolk Island Pines in the rear section of the site may be considered as constraints; however these trees are proposed to be removed (with one not requiring development consent due to its proximity to existing development on the site). The lot size and configuration also do not unreasonably constrain development. In this regard, there is no real impediment in designing a development that complies with the development standards within Clauses 4.3 and 4.3A.
- In reviewing the development plans, it would appear that for the proposed development to comply with the 20m AHD height limit requirement, the top storey (Level Six) of the building would need to be deleted. This would then mean that the entire building including the roof would be within the 20m AHD height limit.

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- To date, Council has consistently kept to and applied the building heights as included within the planning instruments applying to the Shire (Ballina LEP 1987 and Ballina LEP 2012). The current building height development standards were developed through extensive consultation as part of the new BLEP 2012, with consideration given to roof heights, to ensure all built elements could be contained within the 18m standard, and still being able to provide a five storey building.
- The degree of variation (1.8m) is not overly discernible in terms of viewing the proposed development.
- Council has acknowledged that there is potential ambiguity in relation to the wording of Clause 4.3A and as such has prepared a planning proposal to address this issue. In this regard, the current wording is proposed to be amended to more accurately reflect Council's intent and provide certainty in its interpretation. In this regard, a consistent height limit will be able to be applied across the Ballina Town Centre and is unlikely that a precedent would be set.
- Each future development would be considered on its merits and there is the availability of using a Clause 4.6 variation to argue a case for non-compliances with the building height limits within Clauses 4.3 and 4.3A. The avenues for misinterpretation would not be available for future developers/consultants.
- In terms of the height of other buildings within the Ballina Town Centre, a mixed use development spanning across the current site and properties to the east (up to the Ballina RSL car park) was approved by the Department of Planning in 2007 (Major Project 05_0009 – Ballina Gateway Project). This development comprised seven separate buildings, the tallest having a height of 19m (six storeys), as measured from the ground level to the ceiling of the top most floor.

At the time of approval, ground level was taken as being filled ground level, with Council's requirement being 1.8m minimum fill level (resulting in the height as being 20.8m AHD to the ceiling). As a comparison to the development proposed via DA 2013/381, the development plans show the proposed building to have a height of 18.55m, as measured from the 1.8m natural ground level to the ceiling of the topmost floor (resulting in the height being 20.35m AHD to the ceiling).

At the time of the assessment of MP 05_0009, Council's submission to the NSW Department of Planning expressed its opposition to the height exceedance, being approximately three metres.

Subclause (4)(a)(ii)

- The underlying objectives of Clauses 4.3 and 4.3A, being:

*“(a) ensure that the height of buildings is compatible with the bulk, scale and character of the locality,
(b) to minimise adverse impacts on existing or future amenity of adjoining properties and the scenic or landscape quality of the locality,*

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(c) to protect significant views from public places”.

and

“to align building height and flood planning provisions and provide for a consistent point of reference for the measurement of building heights in flood prone areas”.

It must be noted that the applicant's interpretation does not allow for a consistent point of reference for the measurement of building height in flood prone areas.

- The underlying objectives of the B3 Commercial Core Zone (as previously stated within this report).

The points made by the applicant to justify the proposed Clause 4.6 variation to the building height standard are noted. It is considered, however, that a development may be designed over the site that is compliant with the building height standard of 18m (on top of the 2.0m AHD minimum fill level) and also to have had due regard for the objectives of both Clauses 4.3 and 4.3A.

The additional 1.8m for which the variation has been lodged, will enable the developer to obtain an additional floor within the building, being seven additional apartments. Clearly, this is a commercial decision for the developers, which will have flow on effects to the housing market within Ballina.

It is considered that for the principal reason whereby the variation may warrant support is in relation to the interpretation of the current wording of Clause 4.3A. The current wording of the clause has been interpreted (and therefore provided an expectation) in this case such that a development can be constructed on the site to a height, beyond the intent of the clause.

As previously stated the Planning Proposal (13/010 Building Height Allowance Provision) rectifying these issues is currently with Parliamentary Counsel for finalisation. As a result of the revisions to Clause 4.3A, it is not envisaged that there would be opportunities for a misinterpretation of the clause and therefore a consistent height limit would be able to be applied across the Ballina Town Centre. In this regard, it is not considered that the support of this Clause 4.6 variation to the building height standard would set a precedent. Whilst due consideration is given to Planning Proposal 13/010 in the assessment of this application, the development application was lodged prior to the preparation of this Planning Proposal.

In view of the abovementioned points, it is considered that a variation to Clause 4.6 can be substantiated in the circumstances of this case.

Clause 5.6 – Architectural Roof Feature

The applicant has sought to utilise the provisions of Clause 5.6 in relation to the design of the roof of the residential tower.

Clause 5.6 states:

(1) The objectives of this clause are as follows:

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- (a) to ensure that architectural roof features to which this clause applies are decorative elements only,*
- (b) to ensure that the majority of roof features are contained within the prescribed building height.*
- (2) Development that includes an architectural roof feature that exceeds, or causes a building to exceed, the height limits set by clause 4.3 may be carried out, but only with development consent.*
- (3) Development consent must not be granted to any such development unless the consent authority is satisfied that:*
 - (a) the architectural roof feature:*
 - (i) comprises a decorative element on the uppermost portion of a building, and*
 - (ii) is not an Advertising structures, and*
 - (iii) does not include floor space area and is not reasonably capable of modification to include floor space area, and*
 - (iv) will cause minimal overshadowing, and*
 - (b) any building identification signage or equipment for servicing the building (such as plant, lift motor rooms, fire stairs and the like) contained in or supported by the roof feature is fully integrated into the design of the roof feature.*

The applicant has sought to utilise the provisions of this clause with respect to the upper portion of the roof (1.8m) that exceeds the building height limit within Clauses 4.3 & 4.3A. The applicant has presented development plans that illustrate those areas of the roof that exceed the building height limit that are considered as architectural roof features. Inter-related with this is the applicant's reliance on the ambiguity with Clauses 4.3 & 4.3A, with the height limit relied on by the applicant as 21.8m AHD (being 20m on top of natural ground level of 1.8m).

The proposed roof design is explained by the applicant as *"a feature roof form which is a key design element in identifying and land marking the residential component of the site. This aesthetic device comprises an elegant, lightweight capitol overhanging whilst simultaneously protecting the residence from the intense sun and rain. The proposed roof 'wings' define the main entrance of the residential portion of the development and add interest to the building and the streetscape in general"*.

In terms of an overall height exceedance for the architectural roof features, this equates to 1.8m, when utilising the applicant's interpretation of the provisions of Clauses 4.3 and 4.3A. The applicant has provided a floor plan of the roof demonstrating the height exceedance and the area of the roof to be considered an architectural roof feature. The overall area has been illustrated as 10.9%.

From the plans submitted the "identified architectural roof features" are shown to be decorative elements on the upper most portion of the building, are not advertising structures, do not include floor space area, are not capable of being modified to include floor space area and will cause minimal overshadowing (given their location within the building's roof form). The plans also show that all equipment for servicing the building is contained in or supported by the roof feature and are fully integrated into the design of the roof feature.

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If, in Council's assessment and determination of this development, it is not agreed that this 1.8m height exceedance is an architectural roof feature, then a variation to the building height standard of 3.6m would be applicable, resulting in a 20% of the 18m building height development standard.

Clause 5.5 – Development within the coastal zone

The subject site is located within the coastal zone.

Clause 5.5 states:

- (1) *The objectives of this clause are as follows:*
- (a) *to provide for the protection of the coastal environment of the State for the benefit of both present and future generations through promoting the principles of ecologically sustainable development,*
 - (b) *to implement the principles in the NSW Coastal Policy, and in particular to:*
 - (i) *protect, enhance, maintain and restore the coastal environment, its associated ecosystems, ecological processes and biological diversity and its water quality, and*
 - (ii) *protect and preserve the natural, cultural, recreational and economic attributes of the NSW coast, and*
 - (iii) *provide opportunities for pedestrian public access to and along the coastal foreshore, and*
 - (iv) *recognise and accommodate coastal processes and climate change, and*
 - (v) *protect amenity and scenic quality, and*
 - (vi) *protect and preserve rock platforms, beach environments and beach amenity, and*
 - (vii) *protect and preserve native coastal vegetation, and*
 - (viii) *protect and preserve the marine environment, and*
 - (ix) *ensure that the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area, and*
 - (x) *ensure that decisions in relation to new development consider the broader and cumulative impacts on the catchment, and*
 - (xi) *protect Aboriginal cultural places, values and customs, and*
 - (xii) *protect and preserve items of heritage, archaeological or historical significance.*

Comment: The proposed development is generally considered to have had regard for the above objectives.

- (2) *Development consent must not be granted to development on land that is wholly or partly within the coastal zone unless the consent authority has considered:*
- (a) *existing public access to and along the coastal foreshore for pedestrians (including persons with a disability) with a view to:*
 - (i) *maintaining existing public access and, where possible, improving that access, and*
 - (ii) *identifying opportunities for new public access, and*

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Comment: The subject site adjoins the Richmond River, and as such is adjacent to a river foreshore as opposed to a coastal foreshore (as is defined in SEPP 71).

At present there is no public access along the River frontage of the site. The proposal provides for a four metre wide boardwalk to be constructed along the River frontage of the site, with this land being proposed to be dedicated to Council.

It must be noted that the area of land to be dedicated for public access proposed as part of this application is not as generous as that approved via Major Project 05_0009 (Ballina Gateway Project). It must also be noted that the proposed building is setback from the boardwalk:

- a minimum of 10 metres at ground floor for southern elevation and zero metres for the eastern and western elevations;
- a minimum of seven metres at Levels Two to Six for the southern elevation and four metres for the eastern and western elevations.

It is considered that the proposed development will provide a better outcome than existing developments to the east of the site (i.e. Ramada Hotel, Pelican Moorings etc.) where the built form of some of these developments adjoins the public boardwalk/walkway.

(b) the suitability of the proposed development, its relationship with the surrounding area and its impact on the natural scenic quality, taking into account:

- (i) the type of the proposed development and any associated land uses or activities (including compatibility of any land-based and water-based coastal activities), and*
- (ii) the location, and*
- (iii) the bulk, scale, size and overall built form design of any building or work involved, and*

Comment: The type of development proposed is considered satisfactory in relation to the subject site and surrounding locality. The provisions of the BLEP 2012 and the Ballina Shire DCP 2012 have identified that the subject site is suitable for redevelopment for multi-storey commercial, residential and tourist development.

In terms of the location of the building on the site, the proposal is considered satisfactory, however it would have been preferable for a greater setback to be provided to the River, with reference to the provision of a larger area for public access. It is acknowledged however, that the site is being developed in isolation, compared to the previous multi storey development approved for the site (MP 05_0009) and the current developers are seeking to maximise their return with respect to the proposed development.

If an increased setback were to be provided to the southern frontage of the site, this may have resulted in the tallest elements of the building being located further north within the site, which may result in impacts on surrounding dwellings to the east and west of the site.

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A development at the subject site would be required to have a strong physical presence and be of a good design, which is required for the entry into the Town Centre. It is considered that the development achieves this, and provides a positive interface from the lower storey residential development to the west of the site, to the Town Centre, whereby larger scale and taller buildings are permissible (two storeys at River Street elevation).

The building is larger and bulkier in the southern section of the site and exceeds the height limits in accordance with Council's interpretations of Clauses 4.3 & 4.3A. If the building were reduced by 1.8m in height, it would result in a compliant building, however the bulk, scale and size of the building would only be of minor difference.

(c) the impact of the proposed development on the amenity of the coastal foreshore including:

- (i) any significant overshadowing of the coastal foreshore, and*
- (ii) any loss of views from a public place to the coastal foreshore, and*

Comment: The site is not adjacent to a coastal foreshore. However, it is noted that some overshadowing will occur to the Richmond River foreshore. The overshadowing however, will be less than that of existing developments in the eastern area of the Ballina Town Centre, given their built form adjoins the boardwalk/walkway. It is acknowledged that any building compliant with Council's height limit would cause overshadowing of the River foreshore.

(d) how the visual amenity and scenic qualities of the coast, including coastal headlands, can be protected, and

Comment: The site is not adjacent to the coast.

(e) how biodiversity and ecosystems, including:

- (i) native coastal vegetation and existing wildlife corridors, and*
- (ii) rock platforms, and*
- (iii) water quality of coastal waterbodies, and*
- (iv) native fauna and native flora, and their habitats, can be conserved, and*

Comment: The proposal does involve the removal of one Norfolk Island Pine tree in the southern section of the site. It is noted that a second Norfolk Island Pine tree is to be removed, however the consent of Council is not required for such. Further discussion in relation to the removal of the Norfolk Island Pine trees are provided in the Ballina Shire Development Control Plan 2012 section of this report.

It is also noted that the existing Norfolk Island Pine tree adjacent to the River Street frontage and an existing Pandanus tree adjacent to the Richmond River frontage are to be retained.

(f) the cumulative impacts of the proposed development and other development on the coastal catchment.

Comment: The subject site is part of the Ballina Town Centre, which has been identified as being suitable for multi storey commercial, residential and tourist

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development. It is expected that land to the east of the site will, in time, be redeveloped in a similar manner to that being proposed as part of this application.

The cumulative impacts of such development have been expected and anticipated for this area of the Shire and generally should not be negative, subject to compliance with the provisions of Council's planning instruments. Where overdevelopment of a site is proposed, negative cumulative impacts may occur.

- (3) *Development consent must not be granted to development on land that is wholly or partly within the coastal zone unless the consent authority is satisfied that:*
- (a) *the proposed development will not impede or diminish, where practicable, the physical, land-based right of access of the public to or along the coastal foreshore, and*
 - (b) *if effluent from the development is disposed of by a non-reticulated system, it will not have a negative effect on the water quality of the sea, or any beach, estuary, coastal lake, coastal creek or other similar body of water, or a rock platform, and*
 - (c) *the proposed development will not discharge untreated stormwater into the sea, or any beach, estuary, coastal lake, coastal creek or other similar body of water, or a rock platform, and*
 - (d) *the proposed development will not:*
 - (i) *be significantly affected by coastal hazards, or*
 - (ii) *have a significant impact on coastal hazards, or*
 - (iii) *increase the risk of coastal hazards in relation to any other land.*

Comment: Refer to comments above regarding public access.

Effluent is to be disposed of via Council's reticulated system.

Stormwater management has been addressed by the applicant, refer to the Ballina Shire Development Control Plan 2012 section of this report for further discussion.

In terms of coastal hazards, no significant impacts have been identified. Refer to the Ballina Shire Development Control Plan 2012 section of this report for discussion on flooding.

Clause 5.9 – Preservation of trees or vegetation

The proposal involves the removal of one Norfolk Island Pine tree.

Clause 5.9 (2) and (3) state:

- (2) *This clause applies to species or kinds of trees or other vegetation that are prescribed for the purposes of this clause by a development control plan made by the Council.*

Note. *A development control plan may prescribe the trees or other vegetation to which this clause applies by reference to species, size, location or other manner.*

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- (3) *A person must not ringbark, cut down, top, lop, remove, injure or wilfully destroy any tree or other vegetation to which any such development control plan applies without the authority conferred by:*
- (a) *development consent, or*
 - (b) *a permit granted by the Council.*

Chapter 2b of the Ballina Shire DCP 2012 contains provisions whereby consent must be sought for the removal of vegetation within the Ballina Shire. Refer to the Ballina Shire Development Control Plan 2012 section of this report for discussion on the removal of the Norfolk Island Pine tree.

Clause 7.1 – Acid Sulfate Soils

The subject land is shown as Class 2 on the Acid Sulfate Soils Map.

The applicant has provided the following information in relation to the proposal and Acid Sulfate Soils disturbance.

“The Engineering Services Report prepared by Newton Denny Chapelle addresses the issue of acid sulfate soils on the site. The report notes that the subject land is identified as containing potential acid sulfate soils Class 2, where works below the ground surface will trigger the requirement for an acid sulfate soils assessment to be undertaken. The report notes that the anticipated disturbance of acid sulfate soils will be minimal, being limited to the stripping of surface soils, excavation for the basement/wine storage areas and localised trench excavations to allow the installation of stormwater and sewer infrastructure as well as piered footings. The reports concludes that a Construction Management Plan will be lodged with a Construction Certificate and include the implementation strategies, monitoring, auditing and reporting criteria for the management of acid sulfate soils”.

It is noted that the proposal has been amended to remove the basement/wine storage areas. In this regard, it is expected that only stripping of surface soils and localised trench excavations (for installation of stormwater and sewer infrastructure) will occur.

Council's Public and Environmental Health Section have reviewed the submitted documentation and have advised that additional information will be required to be submitted to Council as part of the Construction Certificate process in the event that development consent is granted to the proposal. Conditions are able to be imposed on the development requiring the submission of this information.

Clause 7.2 – Flood Planning

The subject site is identified as being within a Flood Planning Area on the Flood Planning Map.

Clause 7.2 (3) states:

- (3) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:*

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- (a) *is compatible with the flood hazard of the land, and*
- (b) *will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and*
- (c) *incorporates appropriate measures to manage risk to life from flood, and*
- (d) *will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and*
- (e) *is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.*

The proposal seeks to provide a minimum fill level of 2m AHD, with habitable floors designed at 500mm above the minimum fill level of 2.0m AHD.

Refer to the Ballina Shire Development Control Plan 2012 section of this report for discussion on the flood hazard of the land.

The proposal has included the installation of a "slot in split system flood barrier" to ensure that a level of flood protection is provided. Given the existing street levels of 1.8m, the flood barrier system has been designed to be a minimum of 900mm height (to protect the ground level car parking area to a height in excess of RL 2.5m AHD). Council's Civil Services Group have not raised an objection to the installation of this additional system, which will provide additional flood protection for the car parking area.

The adjoining property to the east does not fall towards the subject site. As such, filling will not cause drainage problems for the adjoining property and dish gutters will not be required along the eastern boundary."

The provisions of Clause 7.2 (3) have been considered in the assessment of this application and it is concluded that the proposal will not create flooding issues for surrounding properties or reduce the stability of the riverbank. The proposal is unlikely to result in unsustainable social and economic costs to the community as a consequence of flooding.

Clause 7.7 – Essential Services

Clause 7.7 (2) states:

- (2) *Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:*
 - (a) *the supply of water,*
 - (b) *the supply of electricity,*
 - (c) *the disposal and management of sewage,*
 - (d) *stormwater drainage or on-site conservation,*
 - (e) *suitable vehicular access,*
 - (f) *telecommunication services.*

The proposed development is able to be adequately serviced in accordance with the requirements of this clause.

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Draft Environmental Planning Instruments

Planning Proposal 13/010 Building Height Allowance Provision

Planning Proposal 13/010 Building Height Allowance Provision (Ballina Local Environmental Plan 2012 – Draft Amendment No. 13) is a matter for consideration (under Section 79C of the Environmental Planning & Assessment Act 1979) in Council's assessment of the proposed development.

Refer to the Ballina Local Environmental Plan 2012 section of this report (specifically Clauses 4.3 and 4.3A and 4.6) for discussion on Planning Proposal 13/010 and the proposed development.

Ballina Shire Development Control Plan 2012

Chapter 2 – General and Environmental Considerations

Clause 3.4 – Potentially Contaminated Land

As stated in the SEPP 55 section of this report, the applicant is relying on the preliminary contamination assessment undertaken for the Ballina Gateway Project (MP05_0009).

Council's Public and Environmental Health Section have advised a detailed assessment will be required to be undertaken by the applicant. In the event that the application is granted consent, this assessment will be required to be submitted as part the construction certificate process (to be imposed as a condition of consent).

Clause 3.7 – Waste Management

A Site Waste Minimisation and Management Plan (SWMMP) has been prepared for the proposal, in accordance with the requirements of Clause 3.7. This plan has not addressed construction waste, which has been proposed to be addressed as part of the construction certificate process.

Council's Public and Environmental Health Section have reviewed the submitted SWMMP and have not raised any concerns with the document. In the event that the application is granted consent, the applicant will be required to address construction waste issues as part of the construction certificate process (to be imposed as a condition of consent).

Clause 3.9 – Stormwater Management

As part of the application, the applicant has included an Engineering Services Report (prepared by Newton Denny Chapelle) which addresses stormwater management for the proposal.

This report has been reviewed by Council's Civil Services Group. The following comments have been received:

"The stormwater report is considered to be generally acceptable. The report suggests 74% of the existing site is impervious, which equates to 1182m² of pervious area. This is consistent with the pervious area of the site as shown on the aerial photos.

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The stormwater report also states that the new building will consist of 1568m² landscaped area with an additional 859m² of ground level deep soil landscaped area. Based on the plans, the 859m² is correct, however the landscaped area figure appears to be closer to 1000m² (when based on the submitted plans). This equates to a total pervious area of approximately 1859m² or 69% of the site being impervious.

Whilst the vegetated landscaped area on Level Three (i.e. part of the communal open space area) is not a deep soil zone, it will provide a degree of permeability and reduce runoff from the site. It is therefore anticipated that the combination of these areas will result in an equivalent pervious area to the existing site. As a result, there will be no increase in the stormwater flows from the site and therefore, no technical requirement to provide detention. Despite this, the application proposes to provide a 40,000L reuse tank at the site, connected to the toilets, laundry and external plumbing.

At some stage in the future, Council intends to extend the reticulated recycled water network to the site for the connection of toilets and external plumbing.

In relation to water quality, the application proposes:

- to connect the car parking area drainage to a Humeceptor or Cleanwater oil/water treatment system*
- to direct roof water to the water reuse tank, and*
- to direct the terrace areas to the landscaped areas.*

The music model for the site confirms that the proposed design complies with the water quality targets of Clause 3.9. The proposed design is therefore acceptable”.

Clause 3.10 – Sediment and Erosion Control

The applicant has advised that conventional erosion and sediment controls will be implemented in accordance with Landcom’s “Soils and Construction, Volume 1 – Managing Urban Stormwater: Soils and Construction” (i.e. the Blue Book).

Council’s Public and Environmental Health Section have sought to impose conditions in relation to sediment and erosion control, should the proposal be granted development consent.

Clause 3.11 – Provision of Services

As advised in the Ballina Local Environmental Plan 2012 section of this report, the proposed development is able to be connected to all required services (water, electricity, sewage, stormwater and drainage, road access and telecommunications). Council staff have not raised any particular issue in relation to the servicing of the proposed development and would seek to impose conditions in relation to the required servicing, should the proposal be granted development consent.

Clause 3.15 – Crime Prevention Through Environmental Design

The application was accompanied by a Crime Prevention Through Environmental Design (CPTED) report, prepared by Davis Sommerville and Leith Architects. The report has provided consideration for the CPTED principles, being surveillance, access control, territorial reinforcement (ownership) and space management.

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The report has concluded:

"The design of this mixed use development Reside Living at Ballina, has incorporated treatments to ensure that the CPTED principles have been thoroughly considered.

The main features to increase the safety of the users of the development include:

- *natural surveillance of public spaces, in particular the car park,*
- *clearly defined access control, and*
- *an overall understanding of public versus private ownership to facilitate public investment in care of the whole building, therefore decreasing the probability of vandalism.*

The premises will have an onsite manager who will maintain the upkeep of the building and ensure it remains well looked after and cared for, maintaining items such as lighting and landscaping, which has a significant impact on the safety of the development."

The application was referred to the Crime Prevention Officer, Richmond Local Area Command of the NSW Police for assessment.

The following recommendations were received.

- Ground floor roller shutter to be secured at all times to strict unauthorised vehicular access. Residents to have security pass/key that enables access into restricted areas.
- Clear signage regarding public and private areas to be placed on all prudent areas.
- The foyer entrance to be located and secured at all times. A security buzzer with facial identification to be installed so residents can identify visitors before allowing access.
- The bin areas on the ground floor is not in a suitable location. A *garbage area surrounded by blank walls provides an entrapment opportunity*. If a different area can't be identified, lattice or some other type of transparent material should be used to enhance casual surveillance into the area.
- Provide even/uniform illumination of car parks and pedestrian routes from car park to commercial areas at all times.
- Lighting of the boardwalk at all times (lighting must not spill to surrounding areas).
- Monitored security alarms installed in all business premises with key holder's information passed onto local police upon new leases/ownerships.

A number of conditions have also been provided by the Crime Prevention Officer with respect to the installation and use of CCTV.

The applicant has provided the following response in relation to the comments from the Crime Prevention Officer:

"It is considered that the recommendations can generally be dealt with via appropriate conditions of consent. However, it is noted in relation to the bin

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area on the ground floor that the majority of residential refuse will be disposed of via the proposed garbage chutes. Only tenants and staff will be provided with access to this area which will be controlled via appropriate security measures such as a code or swipe card. It is considered that this will adequately address the concerns of NSW Police in relation to opportunities for entrapment."

The above comments from the applicant are noted. However, it is considered that the security measures proposed by the applicant do not address the concerns raised by the Crime Prevention Officer. The bin area will be accessible to all residential apartments and the ground floor tenancies (commercial and restaurant) facing the Richmond River (resulting in potentially up to 100 persons accessing this area). It is considered appropriate for conditions to be imposed, on any consent granted, requiring the use of a transparent material to enhance casual surveillance into the bin area.

Clause 3.16 – Public Art

The proposal has included a public art printed screen, to be attached to the western elevation of the building. This public art screen has been located to obscure the car parking areas and to be highly visible from Kerr Street and traffic travelling east along River Street.

The public art screen, as is shown on the development plans:

- is to be located above ground. The applicant has advised that the reason for this is to ensure it will not be easily vandalised or damaged.
- is to be 9.8 metres long by 5.9 metres high.
- will be permanent but will have the ability to be renewed as a means of revitalising the streetscape.

The applicant has advised that a competition will be held to select the artwork with community representatives, including a voting panel. It has also be advised that maintenance will be part of the whole building management schedule and that the building Owner's Corporation Management plan will include maintenance of the screen.

The proposed public art printed screen (and the information supplied by the applicant) is considered to satisfy the requirements of Clause 3.16.

Clause 3.18 – Protection of Foreshore and Public Open Space Areas

The controls within this clause of Chapter 2 that are relevant to the proposal are:

- Public access to public open space and foreshore areas is to be maximised,
- Buildings are to be located to provide an outlook to public open space and foreshore areas, without appearing to privatise that space,
- Development is to be designed to minimise adverse impacts on views to and from public open space (having regard to public spaces not private property),
- Development should be designed to maximise opportunities for casual surveillance of public open space,
- Development is to be screened utilising landscaping or existing landscape elements.

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The proposed development is seeking to provide a new public access along the frontage of the Richmond River in the form of a four metre wide boardwalk. The boardwalk area and the south eastern corner of the property, which contains an existing Pandanus tree, are proposed to be dedicated to Council. The total area of land is 541m².

Currently, public access is not provided to this area of the subject site.

It is noted that the area of land proposed to be dedicated to Council for public access is less than that required as part of the approval for the Ballina Gateway Project. Refer to comments in the Land Dedication and Public Access section of this report for further discussion.

The proposed development provides for an outlook to the Richmond River foreshore and public boardwalk. The proposed landscape treatment to this area will result in this area appearing and functioning as public space.

The outlook from the proposed ground floor restaurant and commercial tenancy and also from the residential apartments on Levels Two to Six will provide adequate casual surveillance to the foreshore and public boardwalk area.

A landscaping plan was lodged with the application, which provided concept details of the treatment of the foreshore area. A Pandanus tree (three metres in height) is to be retained in the south eastern corner of the site and will be part of the land proposed to be dedicated to Council. The landscaping plans depict this area as being planted with low native groundcovers, with timber wharf seats on the edge of the timber boardwalk.

Further details will be required to be lodged for Council's assessment as part of the Construction Certificate process (should the proposal be granted consent). It is noted that Council's Civil Services Group will require the public access to be constructed as a concrete path (for maintenance reasons). This requirement is to be imposed as a condition of consent.

The controls in Clause 3.18 also refer to overshadowing of beach areas and adjacent open space. It is noted that the subject land is not adjoining the beach and as such these provisions are not directly applicable. The applicant has provided information in relation to overshadowing of the Richmond River as a result of the proposed building, which states that *"a building built to Council's height control casts a shadow of approximately 44 metres on June 21. Any structure on the land is likely to overshadow the proposed dedicated public access and foreshore area given the location of the subject site"*.

Clause 3.19 – Car Parking and Access

A car parking and access assessment of the proposal has been undertaken by Council's Civil Services Group. This assessment relates to the controls within Chapters 2, 4, 6 and 6a of the Ballina Shire DCP 2012 Refer to the Roads, Traffic, Access and Car Parking section of this report.

Chapter 2a – Vegetation Management

The subject site contains three large Norfolk Island Pine trees.

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The first tree is located at the front of the site, adjacent to River Street. This tree is to be retained and incorporated into the development (as described previously in this report).

The second and third trees are located in the central/southern section of the site. These trees are both approximately 25 metres in height.

Under the provisions of the Ballina Shire DCP 2012, vegetation management works are described as *any activity or work that affects vegetation and includes the undertaking of any of the following actions with regard to vegetation: burning, clearing, cutting down, destroying, felling, injuring, killing, logging, lopping, poisoning, pruning, removing, ringbarking, slashing, thinning, topping, digging up or uprooting.*

Clause 3.1.2 of Chapter 2a states:

- 3.1.2 *Development Control*
Development consent is required for vegetation management works on land located within an urban zone when the vegetation management works will affect:
- a) *Any tree (either native or non-native) with a height of six metres or greater;*
 - b) *Any tree of the species Pandanus tectorius (Screw Pine) with a height of three metres or greater and located in the localities of East Ballina, Lennox Head or Skennars Head;*
 - c) *Any vegetation located on land identified as Significant Urban Bushland on the Significant Urban Bushland Map; and*
 - d) *Any tree with a height of three metres or greater on land containing an Item of Environmental Heritage as specified in Schedule 5 of the Ballina Local Environmental Plan 2012.*

The proposed development involves the removal of one Norfolk Island Pine tree, in the central/southern section of the site, that has a height of approximately 25 metres.

Clause 3.3 – Exemptions of Chapter 2a provides that development consent is not required for vegetation management works that *“involve vegetation where the trunk of the tree or base of the vegetation at ground level is within three metres of the nearest external edge of an existing permanent approved structure located within the same property and is not on land identified as containing an item of environmental heritage”*.

The western Norfolk Island Pine tree located in the central/southern section of the site is located within three metres of the approved restaurant building. The applicant is relying on the above provisions to enable removal of this tree without the need for development consent.

Council staff have undertaken an inspection of the site with respect to the location of the western Norfolk Island Pine tree. The inspection has confirmed that this tree is located within three metres of the restaurant building. As such

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the above provisions are able to be relied on in terms of removal of the western Norfolk Island Pine tree.

The eastern Norfolk Island Pine tree in the central/southern area of the site has been nominated for removal as part of this application. A tree report was lodged with the application (prepared by Northern Tree Care). This report states:

"This tree is a mature aged tree in good condition. It is growing in the footprint of the proposed new development. The tree is protected by Council's Development Control Plan 2012. The tree conflicts with the requirements of the proposed development. It is considered that the development is more important than the tree. Planning approval should be sought for the removal of the tree."

Clause 4.2.1 of Chapter 2a states:

Section 4.2.1 – Urban Zones

In determining an application under this Chapter for vegetation management works on land within urban zones, an assessment has been undertaken having regard for the following:

- a) *whether the tree or other vegetation contributes to the aesthetic qualities of the locality and comprises an important component of the skyline;*

Comment: The subject tree does contribute to the aesthetic qualities of the locality and comprises an important component of the skyline. The Norfolk Island Pine trees located on the subject site are clearly visible in the landscape, being the tallest trees in the western area of the Ballina Town Centre.

- b) *whether the tree or other vegetation makes a significant contribution to the amenity and character of the locality;*

Comment: The subject tree does make a significant contribution to the amenity and character of the locality. The three Norfolk Island Pine trees located at the subject site define and signify the western entry to the Ballina Town Centre. This is particularly due to their dominating height, in what currently is a flat, low level urban/riverside landscape. It is acknowledged that the three Norfolk Island Pine trees on the subject site provide a higher contribution to the amenity and character of this area of the Ballina Town Centre, than one tree on its own.

- c) *whether the tree or other vegetation is important from a cultural and/or heritage perspective;*

Comment: Chapter 2a of the Ballina Shire DCP 2012 and the Ballina Local Environmental Plan 2012 do not provide any specific provision in relation to the subject site or the protection of Norfolk Island Pine Trees.

- d) *whether the growth habit (crown or root) or mature size of the tree or other vegetation is undesirable in a given situation (e.g. under power lines, on*

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top of or under retaining walls or banks, over sewer lines, close to roads or driveways etc.) such that it unreasonably interferes with infrastructure or sight distances;

Comment: The growth habit or size of the subject tree may be undesirable in the context of maximising development on the subject site. It is acknowledged that a tree protection area would be required around the tree (if it were to be retained) in order to both protect the tree and limit damage to nearby development.

- e) *whether the tree or other vegetation is causing damage to public or private utilities and services including kerb and guttering and the aesthetic value of the tree or other vegetation is not greater than the effect of damage caused by the tree;*

Comment: It is not known whether the subject tree is currently causing damage to any utilities or services. This is not the reason for removal of the tree.

- f) *whether the tree or other vegetation is interfering with, or may interfere with, the efficiency of a solar or communication appliance;*

Comment: The tree is not currently interfering with the efficiency of a solar or communication appliance. This is not the reason for removal of the tree.

- g) *whether the tree or other vegetation is in an overcrowded situation where the overcrowding is detrimental to tree growth and the judicious removal of tree(s) will result in improved growth of other trees;*

Comment: The subject tree is not in an overcrowded situation.

- h) *whether the species and/or growth form of the tree or other vegetation is ecologically significant in the local or regional context and its ability in providing habitat for native fauna; and*

Comment: The subject tree possibly provides habitat for native fauna and birdlife. It is not considered the tree is significant from an ecological perspective.

- i) *whether, based on supporting documentation submitted with the application, the tree or other vegetation is dying or diseased and its safe useful life expectancy is diminished.*

Comment: The submitted tree report does not identify that the subject tree is dying or diseased or that its safe useful life expectancy is diminished.

The applicant has provided the following comments in support of the removal of the eastern Norfolk Island Pine tree:

"It is submitted that given the existing planning controls applying to the site including the permitted height limit, the proposed removal of the Norfolk Island Pine tree will not result in significant impacts on the visual amenity of the area. The construction of a building meeting the requirements of the LEP and DCP

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in relation to this site would effectively obscure the trees as viewed from the entry to the Town Centre.

It is also submitted that as the removal of the second Norfolk Island Pine tree is exempt from requiring development consent, the retention of a single tree in this part of the site will do little to enhance the overall design of the development. It is proposed to retain the Norfolk Island Pine tree adjacent to River Street and the design of the proposed building will potentially improve the health of this existing tree. Further, the existing Pandanus tree located in the south east corner of the site, in the area proposed to be dedicated for public access, will also contribute to the amenity of the site.

Whilst the Norfolk Island Pine tree proposed to be removed presently contributes to the aesthetic qualities for the locality, this contribution is made in the context of the existing single storey development on the site. It is noted that the building height controls and the identified objectives for the establishment of a landmark building on this site would diminish the aesthetic contribution of the tree in this regard. Similarly, as previously noted, the contribution presently made by the tree is also made in the context of its siting adjacent to a second Norfolk Island Pine tree which is not affected by the requirement to obtain development consent for its removal.

It is our view that the contribution of a single tree in this location is less significant".

In the assessment of this aspect of the proposal, Council staff requested that the applicant provide copies of the preliminary concept plans for the site. These plans involved the retention of the two Norfolk Island Pine trees in the central/southern section of the site and included:

- basement level parking,
- ground floor commercial uses, with car parking and a restaurant provided around the two Norfolk Island Pine trees (note: car parking is provided adjacent to the riverfront),
- Level Two as containing residential apartments and a landscaped podium surrounding the two Norfolk Island Pine trees,
- Levels Three to Six containing residential apartments.
- The bulk and height of the built form provided in the northern section of the site.

The applicant has stated that "for a variety of reasons this scheme was not pursued by the Proponent and accordingly this material is provided to you for your information but should not be regarded as forming part of the Development Application material".

It is acknowledged that the proponents have undertaken investigations, prior to the preparation and design of the subject proposal, to retain the two Norfolk Island Pine trees within the central/southern section of the site as part of their intended development of the site. For reasons not specified to Council, these investigations have not been pursued beyond a preliminary concept design. Nevertheless, the proponent has chosen to pursue the current proposal and Council must decide whether the erection of the subject development outweighs the removal of one Norfolk Pine tree.

Chapter 2b – Floodplain Management

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As previously discussed within this report, the subject land has been identified as being affected by flooding.

The applicant has stated in their application that *"the proposed development has been designed to meet the minimum fill and floor levels identified in the BLEP 2012. The car parking area has been provided with proprietary demountable flood barriers which can be installed during flood events."*

The current Ballina LEP 2012 provisions provide that the minimum fill level shown for the subject land on the Building Height Allowance Map is 2.0m AHD. In this regard, the proposal has been designed based on this requirement. The minimum fill level of 2.0m has been shown on the development plans, with a minimum floor level of 0.5m above that level, being 2.5m AHD.

The Flood Planning Maps within Chapter 2b of the Ballina Shire DCP 2012 show that a small section of the northern part of the subject site (approximately 10%) is required to be filled to 2.0m AHD, with the remaining majority (approximately 90%) of the site required to be filled to 2.1m AHD. Council's Civil Services Group has advised that in the circumstances of the subject property, the 2.1m AHD requirement should be applied. This is at odds with the Building Height Allowance Map within the BLEP 2012 (as discussed above).

The minimum floor level specified by the provisions of Chapter 2b is the minimum fill level (of 2.1m AHD) plus 0.5m AHD, which results in a 2.6m AHD minimum floor level.

Council's Strategic and Community Facilities Group are aware of the inconsistencies between the flood mapping within the BLEP 2012 and the Ballina Shire DCP 2012. This matter is currently under review and is likely to result in an update to the mapping within the BLEP 2012.

It is noted that the statutory document that Council is required to assess the proposal against is the BLEP 2012 and that under Section 79C of the Environmental Planning and Assessment Act 1979, Council is required to be more flexible in applying the provisions of the Ballina Shire DCP 2012 (and allow reasonable alternative solutions that achieve the objectives of standards that are not complied with).

However, the most recent information that Council has in relation to flooding and filling of the land to reduce flood hazards is that contained within Chapter 2b of the Ballina Shire DCP 2012. As previously stated, this is a minimum fill level of 2.1m AHD and a minimum floor level of 2.6m AHD. Given the potential implications of flooding and climate change in the future, it would appear appropriate and responsible for Council to impose or require compliance with these levels via a consent condition requiring a minimum fill level of 2.1m AHD and a minimum floor level of 2.6m AHD.

In relation to the previous discussion in this report regarding the building height of the proposal, a condition requiring an additional 0.1m of fill and 0.1m floor height (resulting in a minimum fill level of 2.1m AHD and a minimum floor level of 2.6m AHD), will mean that the building will exceed the height limit by a

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further 0.1m. In the circumstances of this case (including the discussion regarding building height within the Ballina Local Environmental Plan 2012 section of this report) and the inconsistencies between the flood mapping within the BLEP 2012 and the Ballina Shire DCP 2012 for the site, the additional 0.1m is not considered to be an issue of great consequence for the development.

Council's Civil Services Group have reviewed the use of the proposed flood barrier technology for the car parking area and have supported its use for this area of the development. It is noted that the flood barrier may provide some immunity to the building also.

Chapter 4 – Residential and Tourist Development

The following table provides an assessment of the proposal against the relevant applicable controls of Chapter 4.

Control	Proposal & Assessment/Comment
A. <i>Element - Building Height</i> (to comply with provisions of BLEP 2012)	Overall building height of 23.6m AHD. Refer to previous comments in the Ballina Local Environmental Plan 2012 section of this report
G. <i>Element - Landscaping and Open Space</i>	Refer to assessment and comments provided below.
H. <i>Element - Vehicular Access and Parking</i>	Refer to the Roads, Traffic, Access and Parking section of this report for discussion and assessment against these provisions.
I. <i>Element - Overlooking and Privacy</i> <ul style="list-style-type: none"> • Windows in habitable rooms (other than bedrooms) must have a privacy screen if less than three metres from a side or rear boundary. • A balcony must have a privacy screen if setback less than three metres from a side or rear boundary (and has an area more than three m²). • Direct views between habitable rooms (other than bedrooms) shall be screened where: <ul style="list-style-type: none"> ○ First floor windows are within a nine metre radius from any part of the window of an adjacent dwelling on the same site, and ○ Other floor windows are within a 12 metre radius of an adjacent dwelling on the same site, and ○ Direct views from habitable rooms (excluding bedrooms) of dwellings into the principal area of private open space of other dwellings on the same site shall be screened or obscured where they are within a 12 metre radius. • Roof top terraces and associated structures shall be designed such 	<p>No habitable rooms or balconies are within three metres of the eastern property boundary.</p> <p>The proposal has been designed such that there is no direct view from any habitable rooms into any adjoining apartments on the same site.</p> <p>Adjustable shutters have also been provided as part of the design of each apartment, to assist with any privacy issues within (or external to) the development.</p> <p>The proposed communal open space area to be located on Level Three does not comprise a roof top terrace. It is well below the applicable height limit for the site and is not anticipated to obstruct views from surrounding properties.</p> <p>It is noted that there is potential for overlooking into the rear yard of the property to the east of the site. In designing this aspect of the proposal, the architect has set the communal space area 1.5 metres off the eastern property boundary, with three metre wide planter beds provided adjacent, giving an overall setback of 4.5 metres to actual space where residents can stand.</p>

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Control	Proposal & Assessment/Comment
<p>that their size and location does not unreasonably impact upon the privacy of adjoining dwellings.</p> <ul style="list-style-type: none"> • Awnings and coverings on roof top terraces must be within the applicable height limits and must not obstruct views from surrounding properties. • Roof terraces are to be appropriately located and screened to prevent direct views into habitable rooms or private open space on adjoining dwellings. 	
<p><i>J. Element - Solar Access</i></p> <ul style="list-style-type: none"> • Dwellings are to be orientated with the main indoor and outdoor living spaces and major window areas facing towards the north and east. • Windows of living area of dwellings and private open space facing north, north east or north west must receive at least three hours of direct sunlight between 9:00am and 3:00pm on 21 June. • New buildings must maintain at least three hours of direct sunlight to the windows of living areas that face north, north east or north west for existing adjacent dwellings and their areas of private open space between 9:00am and 3:00pm on 21 June. • Building are to be designed, where practicable, to include a north or west facing roof where a solar hot water system or collector can be installed. • New buildings must not result in overshadowing of beaches or adjacent public foreshore open space before 3.00pm on 21 June or 6:30pm on 21 December. 	<p>The proposal has provided for 11 apartments to have main indoor and outdoor living spaces and major window areas facing towards the north and east. For these apartments at least three hours of direct sunlight will be achieved to the required areas mid-winter</p> <p>The applicant has stated for those apartments that are not oriented north and east, the southern river views will compensate for any perceived loss of amenity.</p> <p>It is noted for the west and south-west facing apartments (total of 12 apartments), these apartments will also enjoy three hours of direct sunlight into the required areas mid-winter.</p> <p>Six apartments face east and south-east and will receive some direct sunlight into the required areas, but it will be less than three hours.</p> <p>The remaining five apartments face south and will not enjoy any direct sunlight into the required areas mid-winter.</p> <p>In relation to the existing dwelling house located at No. 272 River Street (to the east of the subject property), shadow diagrams have been provided by the applicant. Refer to Attachment 12. This plan shows that some overshadowing of living area windows will occur from at least 12 noon onwards mid-winter and that for the most part the dwelling will have at least three hours of direct sunlight at this time.</p> <p>The proposal has provided for north and west facing roof areas.</p> <p>The subject site is not located adjacent to a beach or its foreshore. However, is located adjacent to the Richmond River and the</p>

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Control	Proposal & Assessment/Comment
	proposal has been noted by the applicant to overshadow the River and its foreshore (including new public boardwalk). The applicant has stated that all buildings in this riverfront location result in similar impacts upon the River and adjacent foreshore.
<p>L. Element - Roof Pitch</p> <ul style="list-style-type: none"> • Roofs of dwellings are to have a minimum pitch of five degrees; and • Council may consider a variation to this control to maintain views or to correspond with adjoining building design that is consistent with the character of the locality. 	<p>The proposal will have a combination of roof pitches – the dominant angle is 10 degrees, with a five degree section to lower the roof on the western façade. These roofs are the most noticeable from River and Kerr Street.</p> <p>On the east façade, the roof pitch is three degrees. The applicant has stated that this is required to reduce the bulk of the building on the adjoining property and reduce overshadowing.</p> <p>A variation to the five degree roof pitch requirement for the eastern roof is therefore sought by the applicant. No objections are raised in relation to variation, given the roof design will reduce impacts upon the neighbouring eastern property.</p>
<p>M. Element - Adaptable Housing</p> <ul style="list-style-type: none"> • At least 10% of all dwellings must be designed in accordance with the Australian Adaptable Housing Standard (AS 4299-1995) • Car parking and garages allocated to Adaptable Housing Dwellings must comply with the dimensions in AS 4299-1995. 	<p>Four apartments (Units four, nine, 14 and 17) have been designed as Adaptable Housing under AS 4299-1995.</p> <p>The car parking spaces for these apartments have been designed to the more recent AS 2890.6 2009 (refer to the Roads, Traffic, Access and Car Parking section of this report for further discussion).</p>

Landscaping and Open Space

The following controls within Chapter 4 are relevant to the proposal in relation to landscaped open space.

- To be considered as private open space, balconies must contain a minimum area of 25m² and a minimum width of 2.5 metres.

Comment: Each apartment is to be provided with a balcony complying with these requirements, with the exception of Unit 15. Unit 15 is to have balcony with an area of 20m², with only 11m² of the balcony area complying with the minimum width of 2.5 metres. It is noted that Unit 15 is a one bedroom apartment located on Level Three of the building, adjacent to the communal open space area.

The balcony is provided on the eastern elevation of the building and has been demonstrated as having an area adequate to contain outdoor furniture. In the circumstances of the case, the proposed balcony area for Unit 15 is accepted.

- Private open space must be directly accessible from a living area.

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Comment: The balcony for each apartment complies with this requirement.

- Where practicable, private open space is to be located to the north or east of the dwelling and is required to have appropriate orientation and provisions to allow for winter sun and summer shade.

Comment: Approximately half of the apartments are oriented to the west and/or south only and in this regard, there is no opportunity to provide for eastern or northern facing balconies for these apartments.

It is noted that adjustable shutters have been provided to all balconies to provide for summer shade, where required.

- Landscaped open space comprising landscaped areas and private open space is to be provided for each dwelling in accordance with the following table.

Dwelling Size	Minimum landscaped open space area per dwelling
<60m ² total dwelling GFA	50m ²
60-85m ² total dwelling GFA	70m ²
>85m ² total dwelling GFA	90m ²

Note: Landscaped open space may comprise both private open space (e.g. balconies) and landscaped areas (part of the site used for growing plants, grasses and trees but does not include any building, structure or hard paved area).

Comment: The total area of landscaped open space required for the development is 2,880m², being for four apartments with area of <60m² GFA (200m²), one apartment with an area of 60-85m² GFA (70m²) and 29 apartments with an area >85m² GFA (2,610m²).

The total area of private open space (balconies) provided for the apartments is 1,199m² (excluding Unit 15, given it does not meet the minimum area requirements).

This results in a requirement of 1,681m² of landscaped area to be provided as part of the development.

The applicant has stated that a total of 3,204m² of landscaped open space (comprising 1,199m² of private open space and 2005m² of landscaped area) has been incorporated into the development.

The calculation of 2,005m² of landscaped area includes both lawn/paved areas (approximate area of 370m²) adjacent to the restaurant and commercial tenancy facing the Richmond River. It is expected that these area will undoubtedly be utilised by the ground

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floor commercial/restaurant tenancies, rather than be available for use by residents of the development.

The applicant has provided the following discussion in relation to their calculations for the provision of landscaped area for the development:

"The provision of landscaping and open space for shop top housing is not specifically addressed in Chapter 4 (as it details requirements for residential and tourist development), however the proposal has been designed to address these provisions in order to provide for generous private open space and landscaped areas.

The provisions of the DCP relate to the provision of part of a site for growing plants and grasses and do not require the landscaped area to be allocated to a particular land use. It is submitted that the proposed development fully complies with the provisions of the DCP in relation to landscaped area."

It is noted that the applicant has not provided exact calculations as to which areas of the development have been included as landscaped areas. It would appear that the timber boardwalk (to be located within the land to be dedicated to Council) has been included in these calculations.

The proposed development is non-compliant with the landscaped area provisions of Chapter 4 by at least 50m². In the overall scheme of the development, this variation is relatively minor and given the generously sized balconies for the apartments, the large communal open space area provided on Level Three and the land dedication (and public walkway provided therein), it is considered the proposal has been provided with adequate landscaped open space.

- At least 75% of the landscaped open space area must be covered by pervious surfaces that are defined as landscaped areas, such as lawn or landscaping.

Comment: A total of 2,160m² of the landscaped open space area for the development (i.e. 75% of 2,880m²) would be required to be covered by pervious surfaces. The proposal does not comply with this requirement and the applicant has provided the following information in support of their case.

"We submit that the provision of the DCP requiring 75% of the landscaped open space to be covered by pervious surfaces such as lawn or landscaping is not reasonable to apply to mixed use developments, such as that proposed, in a commercial, business core zone. The total landscaped open space area comprising landscaped area and private open space generated by the development is some 2,880m² (as amended). Should 75% of this area comprise pervious surfaces, this would equate to some 2,160m² (as amended) or 47% of the site area. This provision is not consistent or compatible with the height and density provisions

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of Council's planning controls as they apply to the Ballina Town Centre. It is respectfully submitted that the intent of the provision is that 75% of the landscaped open space be covered by pervious surfaces and that the landscaped open space calculation includes the subtraction of complying private open space areas.

Notwithstanding our view that the intention of the provision is not to provide for 50% of the site area as grass or lawn, it is submitted that the development is consistent with the objectives of 3.1.3 Element G which seeks to ensure that dwellings are provided with private open space which is useable and meets the needs of the occupant, ensures that landscaped areas are an integral component of residential development proposals, preserves and retains existing and mature native vegetation where ever practical, maximises the liveability and amenity of dwellings, and supports landscape design that incorporates a planting of landscape species indigenous to the part of the shire in which they are being planted. As detailed in the Statement of Environmental Effects the proposal provides for generous common and private landscaped areas for residents of the building.

In the circumstances of the subject proposal, it is considered that an adequate level of pervious surfaces have been provided.

- Development applications for multi dwelling housing, residential flat buildings or tourist and visitor accommodation are to be supported by landscaping plans detailing all proposed private open space areas and landscaped areas.

Comment: Landscaping plans were lodged with the application. These plans have not been amended since the lodgement of the original proposal. Revised plans will be required as part of the Construction Certificate process should Council grant development consent to the proposal.

From the assessment provided above, the proposal is considered to generally comply with the requirements of Chapter 4 that are relevant to the development. There are some non-compliances identified, in relation to solar access, roof pitch and landscaped open space. It is not considered that a variation to these provisions are fatal to the design of the proposal, given the development type (shop top housing), its location (in the Ballina Town Centre on the Richmond River) and the various positive aspects of the proposal, including the generous communal landscaped area for residents and the design's integration with the River, providing views for at least 85% of the residential apartments.

Chapter 6 – Commercial Development

The following table provides an assessment of the proposal against the relevant applicable controls of Chapter 6.

Control	Proposal & Assessment/Comment
A. <i>Element - Building Height</i> (to comply with provisions of BLEP 2012)	Overall building height of 23.6m AHD. Refer to previous comments in the Ballina Local Environmental Plan 2012

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<p><i>C. Element - Roof Form</i></p> <ul style="list-style-type: none"> • Roof forms are to be varied where practical and shall include the use of skillions, gables and hips • Roofs are to have a minimum pitch of five degrees, unless, in the opinion of Council, it is considered necessary to maintain views or to fulfil a particular building design. • Parapets and flat roofs should be avoided. • Roof forms shall be consistent with or complementary to existing surrounding developments. • Lift over runs and other visually prominent infrastructure shall, as far as practicable, be concealed within roof structures. • All roof plant is to be represented on development application plans and elevations. • Roofing colours, materials and finishes shall have a low reflectivity index. 	<p>section of this report</p> <p>A variety of roof forms have been used within the proposed roof design, including skillions, hips and small parapets (to conceal flatter roofs over decks). These are considered to be generally consistent with other roof forms in the locality.</p> <p>As stated previously in this report, the proposal will have a combination of roof pitches – the dominant angle is 10 degrees, with a five degree section to lower the roof on the western façade. These roofs are the most noticeable from River and Kerr Street. On the east façade, the roof pitch is three degrees. The applicant has stated that this is required to reduce the bulk of the building on the adjoining property and reduce overshadowing.</p> <p>Lift over runs have been concealed behind screens on the roof plant area.</p> <p>Roof materials are proposed to be colorbond, with low reflectivity. Conditions are able to be imposed on any consent granted in relation to this requirement.</p>
<p><i>D. Element - Building Setbacks</i></p> <ul style="list-style-type: none"> • Building lines or setbacks shall comply with the detailed requirements established for each precinct outlined in Chapters 6a – 6d. 	<p>Refer to discussion in Chapter 6a section of this report.</p>
<p><i>F. Element - Awnings</i></p> <ul style="list-style-type: none"> • Awnings providing continuous shelter from the weather are to be provided for the full extent of an active street frontage. • Awnings are to: <ul style="list-style-type: none"> – be horizontal or near horizontal with a pitch not exceeding 10% – provide a minimum 3.2 metres and maximum 4.2 metres clearance from the finished ground level at the property boundary – provide a minimum width of 2.5 metres (unless constrained by narrow pavements, street trees, infrastructure or the like) – be set back at least one metre from the kerb. • All contiguous awnings must be of consistent height and depth and of complementary design and materials. • New awnings shall be designed to be 	<p>Continuous awnings have been provided for all active street frontages – Kerr and River Streets.</p> <p>The proposed awnings comply with the required pitch, clearance, width and setback requirements.</p> <p>The proposed awnings are of consistent height and depth and are to be constructed of precast concrete.</p> <p>The proposed awnings wrap around the River/Kerr Street corner and follows the building line with a recessed section to retain the Norfolk Island Pine tree.</p> <p>Conditions can be applied to any consent granted with respect to under awning lighting.</p>

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<p>consistent with and complementary to existing adjoining awning structures and be integrated into the building design.</p> <ul style="list-style-type: none"> • Awnings shall wrap around street corners and contribute to the articulation and focal design of corner buildings. • Under awning lighting shall comply with Australian Standard 1158 – Lighting for roads and public spaces. 	
<p><i>G. Element - Landscaping</i></p> <ul style="list-style-type: none"> • Development applications for new buildings in a business zone must be supported by a landscape plan that details the following, where applicable: <ul style="list-style-type: none"> – existing vegetation; – existing vegetation proposed to be removed; – proposed general planting and landscape treatment for all public, private and car parking areas of the site; – design details of hard landscaping elements and major earthworks (cut and fill) and any mounding; – street trees; – existing and proposed street furniture including proposed signage; and • A species list comprising native vegetation that is consistent with the Ballina Shire Urban Garden Guide is to be provided as part of the landscape plan. 	<p>The landscaping plan submitted with the original application addressed all requirements as listed and was generally considered satisfactory.</p> <p>The amended proposal has not included an update to the original landscape plan. It will be required as a condition of any consent granted that an updated plan be submitted as part of the Construction Certificate process.</p>
<p><i>H. Element - Gateways and Landmark Sites</i></p> <ul style="list-style-type: none"> • The design of buildings on corner sites or at the ends of a business/commercial zone shall emphasise the corner as a focal point through design elements such as: <ul style="list-style-type: none"> – increased wall heights. – splayed corner details. – expression of junction of building planes. – contrasting building materials. • Shopfronts are to wrap around corners and entrances shall be located centrally to the corner. 	<p>The applicant has stated that a key landmark of this development is the preserved Norfolk Island Pine tree and the new landscaping treatment, which is framed by lower rise commercial space at the corner of the site.</p> <p>Increased wall heights have not been utilised, so as to make the existing Norfolk Island Pine a more dominant feature (and the provision of a communal open space area on Level Three).</p> <p>Shop fronts wrap around the River/Kerr Street corner. Entrances to commercial tenancies will be provided close to the corner.</p>
<p><i>I. Element - Vehicular Access and Parking</i></p>	<p>Refer to the Roads, Traffic, Access and Parking section of this report for discussion and assessment against these provisions.</p>
<p><i>J. Element – Waste Storage Facilities</i></p> <ul style="list-style-type: none"> • Waste storage facilities are to be physically and visually integrated into 	<p>Waste storage facilities have been located in the ground floor car parking area.</p>

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<p>the design of the development at ground or basement level and are to be of a size appropriate to the scale of the development.</p> <ul style="list-style-type: none"> • Waste storage facilities shall meet the following design requirements: <ul style="list-style-type: none"> – located behind the building line or setback and screened from the street or a public place. – accessed from a rear lane or secondary street frontage wherever possible. – easily accessible for all tenancies/occupancies in the building. – can be adequately serviced by waste collection vehicles, having regard for safety and ease of manoeuvring. – has water and drainage facilities for cleaning and maintenance, where necessary. – does not immediately adjoin habitable rooms or outdoor seating/recreation areas. – shall be appropriately screened and oriented when located adjacent to sensitive adjoining land uses. • Where storage and handling of putrescible (organic) or food waste is anticipated, waste storage areas must incorporate an appropriate roofed and screened area that is connected to the sewer system. 	<p>The waste storage facilities are considered to meet the design requirements.</p> <p>In terms of the waste storage facilities being serviced by waste collection vehicles, refer to the Loading/Unloading section of this report for discussion.</p> <p>The applicant has advised that in terms of organic or food waste for the residential apartments, there will be composting units installed within the Level Three Communal Open Space Area.</p> <p>Council is able to impose conditions in relation to trade waste for the proposed restaurant.</p>
<p><i>K. Element - Pedestrian Entries and Access</i></p> <ul style="list-style-type: none"> • Development is to comply with Australian Standard 1428 – Design for Access and Mobility. • Secure and convenient parking and storage areas for bicycles are to be provided close to the entrance of the development. 	<p>The applicant has stated that the proposal has been designed to comply with AS1428.</p> <p>Bicycle storage has been provided in the ground floor car parking area in two locations, with potential for further storage in the communal green space at the front of the site (around the Norfolk Island Pine tree).</p>
<p><i>L. Element - Energy Efficiency</i></p> <ul style="list-style-type: none"> • Any residential accommodation component of new commercial buildings is to demonstrate compliance with State Environmental Planning Policy – Building Sustainability Index (BASIX) and State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development. • All non-residential development is to comply with the Building Code of Australia Class 5 to 9 energy efficiency provisions. • Mechanical space heating and cooling is 	<p>A BASIX Certificate has been submitted for all apartments. It is noted that this certificate will need to be updated to reflect the amended proposal. This is able to be achieved via a condition of consent, should the proposal be approved.</p> <p>Council's Building Services Section have advised that a condition will imposed on any consent granted requiring compliance with the Building Code of Australia.</p>

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<p>to be designed to target only those spaces which require heating or cooling, not the whole building.</p> <ul style="list-style-type: none"> Development is to be designed to reduce reliance on artificial lighting. 	<p>The applicant has advised that mechanical ventilation will be targeted to specific spaces.</p> <p>An atrium has been provided in the centre of the residential tower, to provide light into this area.</p>
<p><i>M. Element - Water Efficiency</i></p> <ul style="list-style-type: none"> Development must incorporate the following <ul style="list-style-type: none"> Use at least AAA rated shower roses, taps and appliances. Use of dual flush toilets; six litres or less for a full flush and three litres or less for a half flush. Use of waterless urinals. Install sensor operated taps, or automatic shut-off taps, especially in public areas. 	<p>These controls can be imposed as conditions of consent, should the proposal be granted approval.</p>
<p><i>Mixed Use Development</i></p>	
<p><i>A. Element - Building Design</i></p> <ul style="list-style-type: none"> Development shall be designed to locate loading bays, waste storage/collection areas and any other noise and odour generating aspects of buildings away from residential areas. Vehicular circulation areas must be legible and differentiate between the commercial service requirements, such as loading areas, and residential access. Residential components are to be provided with direct access to street level with entrances clearly distinguishable from entries to commercial premises. Secure entries are to be provided to all entrances to private areas, including car parks and internal courtyards. All car parking required for the residential component of a development, including any required visitor car parking, must be provided on site. Section 94 Contributions for car parking spaces will not be accepted for any residential component of a development. Car parking provided for the residential component of the development is to be clearly delineated and provided separate to general customer parking. All car parking spaces required for the commercial component of the development are to be accessible car parking. Car parking spaces provided for the residential component of the development may be in the form of secured parking. Acoustic separation is to be provided wherever possible between loud 	<p>Loading bays, waste storage areas have been located away from adjoining residential uses. Refer to the loading/unloading section of this report in relation for additional discussion.</p> <p>Designated residential car parking spaces have been provided on Level Two, with commercial servicing to the development occurring on the Ground Floor.</p> <p>The residential apartments have a shared access (with the ground floor tenancies facing the Richmond River) off Kerr Street and is recognisable as the residential access point to the development.</p> <p>Secure entry has been provided to the ramp entry to the Level Two car parking area.</p> <p>Car parking for the residential apartments is provided in the Level Two car parking area.</p> <p>The car parking spaces provided on the ground floor are to be accessible car parking (and a condition can be imposed on any consent granting requiring such).</p> <p>Council's Public and Environmental Health Section have undertaken an assessment of the proposal with respect to noise and have not raised any concerns in relation to the</p>

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Control	Proposal & Assessment/Comment
<p>commercial uses, such as cafes and restaurants, and residential uses. This may be achieved by utilising intermediate quiet-use barriers such as offices.</p> <ul style="list-style-type: none"> • Mechanical plant is to be located on the roof or visually and acoustically isolated from residential uses. • To allow for their adaptive use, mixed use buildings are to incorporate the following flexible design requirements: <ul style="list-style-type: none"> – buildings are to have a simple and efficient structural grid. – the number of internal apartment structural walls are to be minimised. – ceiling heights for the ground and first floors are to be 3.6 metres. • The shop top housing component of any mixed use development is to comply with the provisions of Chapter 4 – Residential Development. 	<p>proposed acoustic separation.</p> <p>All mechanical plant is to be located on the roof.</p> <p>Adaptive reuse of the building would appear possible in accordance with the flexible design requirements.</p> <p>The proposal has been assessed against the provisions of Chapter 4 – Residential Development.</p>

From the assessment provided above, the proposal is considered to generally comply with the requirements of Chapter 6 that are relevant to the development.

Chapter 6a – Commercial Development Ballina Town Centre

The following table provides an assessment of the proposal against the relevant applicable controls of Chapter 6a.

Control	Proposal & Assessment/Comment
<p><i>Structure Plan</i></p> <ul style="list-style-type: none"> • New development within the Ballina Town Centre will need to consider applicable elements nominated in the Structure Plan. 	<p>For the most part, the proposal has had due regard for the elements within the Structure Plan.</p> <p>It is noted that the Structure Plan has designated the River frontage of the site as "desired open space", with a width of approximately 40 metres. The proposal seeks to provide only four metres of public open space. Refer to the Land Dedication section of this report for further discussion.</p>
<p><i>Riverside West Precinct</i></p> <p><u>Desired Future Character</u></p> <p>A mix of higher and lower scale buildings create an appropriate interface with the riverfront, War Memorial Park and new foreshore public open space. Buildings in this precinct have a distinct base, middle and top and display horizontal patterns, significant articulation, the use of lightweight elements and carefully designed rooftops. Established mature trees have been protected to provide reference for building height.</p>	<p>The proposed development is considered to be generally consistent with the desired future character for the Riverside West Precinct.</p> <p>The height of the proposal is slightly less than the height of the Norfolk Island Pine trees on the site.</p>
<p>Front setbacks (including balconies)</p>	<p>The proposal complies with the required</p>

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Control	Proposal & Assessment/Comment
<p>River Street:</p> <ul style="list-style-type: none"> Zero setback (i.e. build to frontage – building articulation and balconies included) up to and including the third storey. Four metre setback for storeys above the third storey. 	setbacks.
<p><u>Side setbacks (including balconies)</u></p> <ul style="list-style-type: none"> Merit based and in accordance with BCA standards. 	Side setbacks for the development are considered appropriate and no issues have been raised by Council's Building Services Section with respect to BCA standards.
<p><u>Building Depth</u></p> <ul style="list-style-type: none"> Commercial - determined on the merit of the development. Residential - Residential storeys are to have a maximum depth of 18 metres, glass line to glass line and 24 metres including balconies. 	<p>Commercial – considered appropriate in the context of the development.</p> <p>Residential – the proposal does not comply with this requirement, with the development having a maximum depth of 50 metres. The applicant has advised that the building elevation has been broken down into distinct elements via the use of:</p> <ul style="list-style-type: none"> fixed mesh screens to provide for creeper vines adjustable sliding shutters the architectural roof feature.
<p><u>Balconies</u></p> <ul style="list-style-type: none"> Balconies must have a minimum depth of two metres and a maximum depth of three metres. 	All balconies meet the minimum depth requirements. However, some balconies exceed the maximum depth requirement. No objection is raised to this exceedance.
<p><u>Floor to Ceiling Heights</u></p> <ul style="list-style-type: none"> Ground floor – Minimum of 3.6 metres. Other storeys – Minimum of 2.7 metres. 	<p>The amended proposal does not comply with the floor to ceiling heights for the ground floor, being 3.4 metres.</p> <p>Level Six also has been amended such that it does not comply with the floor to ceiling heights required, being 2.550m.</p> <p>It is noted that the floor to ceiling heights were reduced in order to reduce the overall building height of the proposal.</p>
<p><u>Public Open Space</u></p> <ul style="list-style-type: none"> A section of the foreshore located between War Memorial Park and Kerr Street is to be dedicated to Council for public open space in accordance with the requirements of the Ballina Town Centre Structure Plan. 	Refer to the Land Dedication section of this report for further discussion
<p><u>Deep Soil Zone</u></p> <ul style="list-style-type: none"> A deep soil zone comprising 15% of the total site area and containing a minimum width of six metres to enable sufficient root zone for larger trees is to be provided. No structures, works or excavations that may restrict vegetation growth are permitted in the deep soil zone (including, but not limited to car 	<p>Landscape plans show 18.8% or 859m² of land is a DSZ.</p> <p>This area has been shown to include:</p> <ul style="list-style-type: none"> the communal open space area adjacent to the Norfolk Island Pine tree (including an elevated timber deck), The area to the rear of the commercial tenancies facing the Richmond River, and An area of land to be dedicated as a

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Control	Proposal & Assessment/Comment
<p>parking, hard paving, patios, decks and drying areas).</p>	<p>public walkway, including the timber boardwalk.</p> <p>The applicant has stated that the areas where timber decking is provided will provide for vegetation growth (accommodating root systems of existing and future vegetation).</p> <p>It is noted that Council staff are seeking the public walkway adjacent to the Richmond River to be of a concrete construction for maintenance purposes (refer to the Land Dedication section of this report for further detail). In this regard, that land may not be able to be included in the DSZ calculations.</p> <p>In accordance with the recommendations from the Local Traffic Development Committee (minimum 2.5 metre wide public footpath), this would result in the loss of 137.5m². The approximate area of DSZ provided would be 721.5m² or 15.8%, which is compliant with the minimum requirement of 15%.</p>
<i>Western Entrance Precinct</i>	
<p><u>Desired Future Character</u></p> <p>The Western Entrance Precinct provides a sense of arrival to the Town Centre with the built form addressing the highly prominent Kerr and River Street corner. Buildings are designed to give definition to this corner. Transitions in building form are provided to surrounding residential areas, the Highway Strip Precinct and the Town Centre Core Precinct.</p> <p>Ground floor uses include a mix of commercial uses, such as take-away outlets, convenience shopping and household services for nearby residents. These commercial uses are supported by a north-south rear lane which aids circular and pedestrian access. The lane also provides a transition in the scale of built form to the lower rise Town Centre Core. Upper floors accommodate a mix of apartment sizes.</p>	<p>The proposed development is considered to be generally consistent with the desired future character for the Western Entrance Precinct.</p> <p>The built form of the proposed development, including the retention of the Norfolk Island Pine tree, is considered to provide definition to the corner of the site.</p> <p>The design of the development is such that it provides a transition from the low scale residential development to the west to a higher scale, as is permitted for development in the Ballina Town Centre.</p> <p>The ground floor of the proposal includes commercial tenancies and the upper floors comprise residential uses with a mix of apartment sizes.</p>
<p><u>Front setbacks (including balconies)</u></p> <p>River Street:</p> <ul style="list-style-type: none"> • Zero setback (i.e. build to frontage – building articulation and balconies included) up to and including the third storey. • Four metre setback for storeys above the third storey. 	<p>The proposal complies with the required setbacks.</p>
<p><u>Side setbacks (including balconies)</u></p>	<p>The proposal complies with the required</p>

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Control	Proposal & Assessment/Comment
<ul style="list-style-type: none"> Zero metres, except Kerr Street (east side between Winton Lane and Tamar Street) which must be subject to a six metre setback to the eastern boundary 	setbacks.
<p><u>Building Depth</u></p> <ul style="list-style-type: none"> Commercial - determined on the merit of the development. Residential - Residential storeys are to have a maximum depth of 18 metres, glass line to glass line and 24 metres including balconies. 	<p>Commercial – considered appropriate in the context of the development.</p> <p>Residential – the proposal does not comply with this requirement, with the development having a maximum depth of 50 metres. The applicant has advised that the building elevation has been broken down into distinct elements via the use of:</p> <ul style="list-style-type: none"> fixed mesh screens to provide for creeper vines adjustable sliding shutters the architectural roof feature.
<p><u>Balconies</u></p> <p>Balconies must have a minimum depth of two metres and a maximum depth of three metres.</p>	<p>All balconies meet the minimum depth requirements. However, some balconies exceed the maximum depth requirement. No objection is raised to this exceedance.</p>
<p><u>Floor to Ceiling Heights</u></p> <ul style="list-style-type: none"> Ground floor – Minimum of 3.6 metres. Other storeys – Minimum of 2.7 metres. 	<p>The amended proposal does not comply with the floor to ceiling heights for the ground floor, being 3.4 metres.</p> <p>Level Six also has been amended such that it does not comply with the floor to ceiling heights required, being 2.550m.</p> <p>It is noted that the floor to ceiling heights were reduced in order to reduce the overall building height of the proposal.</p>
<p><u>Housing Choice</u></p> <ul style="list-style-type: none"> Where residential dwellings are proposed, a mix of studio, one bedroom, two bedroom and three bedroom apartments is required. Studio and one bedroom apartments must not be greater than 25% and not less than 10% of the total mix of apartments within each development. Three bedroom apartments are not to be more than 75% of the total mix of apartments within each development. 	<p>The proposal contains five (15%) x one bedroom apartments, 12 (35%) x two bedroom apartments and 17 (50%) x three bedroom apartments.</p>
<p><u>Deep Soil Zone</u></p> <ul style="list-style-type: none"> A deep soil zone comprising 15% of the total site area and containing a minimum width of six metres to enable sufficient root zone for larger trees is to be provided. No structures, works or excavations that may restrict vegetation growth are permitted in the deep soil zone (including, but not limited to car parking, hard paving, patios, decks 	<p>The proposal is considered to comply with this requirement.</p> <p>Refer to discussion provided above.</p>

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Control	Proposal & Assessment/Comment
and drying areas).	
<u>Part 5 Car Parking</u>	Refer to the Roads, Traffic, Access and Car Parking section of this report for assessment and discussion.

From the assessment provided above, the proposal is considered to generally comply with the requirements of Chapter 6a that are relevant to the development.

Roads, Traffic, Access and Car Parking

The following comments have been provided by Council's Civil Services Group in relation to roads, traffic, access and car parking for the proposed development (with reference to Chapters 2, 4, 6 and 6a of the Ballina Shire DCP 2012).

External Roads and Traffic

The existing external road network is constructed to a suitable standard to service the proposed development.

The applicant's revised proposal includes new line marking arrangements along the Kerr Street frontage of the site, which would result in the provision of eight car parking spaces and one disabled car parking space. The proposed design will reduce the number of car parking spaces at the southern end of Kerr Street from seven to five. In total, the proposed alterations would provide one additional car parking space within Kerr Street and is therefore considered acceptable.

Pedestrian and Cyclist Requirements

There is an existing footpath along the full length of the River Street frontage of the site. The developer will be required to provide a shared path along the full length of the site's Kerr Street frontage. This is able to be imposed as a condition of any consent granted.

Local Development Traffic Committee

The application was referred to the Local Development Traffic Committee meeting held on 11 December 2014. The Committee provided comments such that they:

- supported the original proposal for a single six metre wide driveway access;
- concurred with the requirement to provide car parking in accordance with the minimum rates specified within Council's DCP;
- concurred with the recommendation that an on-site loading bay be provided to accommodate medium rigid vehicles;
- recommended that the disabled car parking spaces for the adaptable housing units be in accordance with AS2890.6 2009; and
- recommended that a 2.5 metre wide public footpath be provided along the river frontage with signage requiring cyclists to dismount.

Note: an amended proposal was received from the applicant in February 2014. The amended proposal has not been referred to the Local Development Traffic Committee for further comment.

8.1 **DA 2013/381 - Shop Top Housing (Reside Living), River Street, Ballina**Site Access, Internal Driveways and Parking Design

The proposal consists of both residential and commercial uses. Residential uses are classified as Class 1 under Australian Standard (AS) 2890.1 whilst commercial are classified as Class 3. Class 1 car parking spaces are required to be a minimum of 2.4m wide by 5.4m long whilst Class 3 spaces are required to be 2.6m wide by 5.4m long.

The car parking for the commercial tenancies is to be provided on the ground floor and complies with the minimum dimension requirements as specified above. The car parking for the residential apartments is to be provided on Level Two and complies with the minimum dimension requirements specified above.

The applicant has submitted a revised driveway design with two driveways consisting of an entry exit at the southern end of Kerr Street and an exit only to the north of this access. The revised design complies with the requirements of AS2890.1.

The access driveway proposed to be located at the southern end of Kerr Street is located over an existing kerb inlet pit. The applicant has proposed that the pit be modified to accommodate the construction of the driveway. This is considered acceptable and the modification works must be completed by the applicant.

There are sufficient sight distances at both access driveway points given the locality and speed of traffic.

Car Parking

In terms of parking numbers and the requirements of the Ballina Shire DCP 2012 (Chapters 2, 4, 6 and 6a – refer to note below), the total number of spaces generated by the development are shown in the table below.

Council requirement		Proposed Gross Floor Areas/No. of Dwellings	Required No. of Parking Spaces
Use	Rate		
Dwellings (residential apartments)	2 spaces per dwelling	34 dwellings	68 spaces
Commercial	One space per 25m ² ground floor and One space per 40m ² first floor	771m ²	30.8 spaces
Restaurant	One space per 25m ² ground floor and one space per 40m ² first floor	201m ²	8 spaces
		Total Required	107 spaces

Note: Chapter 2 – General and Environmental Considerations of the Ballina Shire DCP 2012 provides the car parking rate for a dwelling as two spaces per dwelling. The proposal has been assessed at the car parking rate for dwellings, rather than for the multi-unit housing or residential flat developments. The reasons for this are:

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- the Ballina Shire DCP 2012 does not currently include car parking rates for shop top housing,
- the definition of shop top housing is "one or more dwellings located above ground floor retail premises or business premises",
- multi-unit housing and residential flat developments are prohibited in the B3 Commercial Core Zone.

Chapter 6a – Commercial Development Ballina Town Centre provides the car parking rate for commercial and restaurant uses as one space per 25m² ground floor and one space per 40m² first floor.

The proposal provides a total of 105 car parking spaces. The engineering consultants for the proposal (Newton Denny Chapelle) have allowed for a 'joint use parking credit for the residential component and after-hours peak', which has enabled a reduction of two spaces.

Newton Denny Chapelle have argued that:

- the application involves a fine dining restaurant that will service the residential demands of the shop top housing apartments;
- the peak use of the restaurant will be in the evening, where the commercial parking areas would be available for shared use by the restaurant at those times;
- Council has previously recognised a complementary/joint use of restaurants and residential/tourist accommodation and have allowed a discount of the parking demands for those developments.

It should be noted that this has been applied by Council in the instances of restaurants/tourist accommodation given that it is likely that tourists will use the on-site restaurant. There are no known instances in the Ballina Shire where this has been applied to restaurants/residential apartments.

The proposal also includes stacked car parking spaces, being:

- Four stacked spaces on the ground floor level, which have been designated as staff parking (spaces 22-29). Clause 3.19 states that stacked parking is not permitted for commercial developments; however consideration may be given where a dedicated parking attendant is on site at all times. The application has not referenced a parking attendant for the ground floor car parking area.
- Nine stacked car parking spaces on Level Two, designated for use by the residential apartments within the development. H. Element Vehicular Access and Parking within Clause 3.1.3 of Chapter 4 – Residential and Tourist Development provides that stacked car parking spaces are permissible for dwellings.

The car parking design also includes one small car space, nominated on the plans as parking space number 32 on the ground floor. Given the number of car parking spaces within the development, the allocation of one space as a small space is acceptable. The proposed space complies with the minimum requirements of section 2.4 of AS2890.1 for a small car parking space.

As the four 'commercial' stacked car parking spaces are not permissible under the provisions of Clause 3.19, the proposal has technically provided a total of 101 complying car parking spaces. The proposed design does not, therefore, comply with the minimum car parking requirement of 107 spaces as specified within the Ballina Shire DCP 2012. The subject site is located within the

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Ballina Town Centre and is therefore able to provide the additional six spaces via Section 94 Developer Contributions under the Ballina CBD Car Parking Contribution Plan.

It should also be noted that the car parking assessment for the proposed development does not include any external alfresco dining in relation to the proposed restaurant (or other commercial tenancy adjacent to the Richmond River). These areas would generate car parking spaces in addition to the 107 car parking spaces required. Conditions should be applied to any consent granted to restrict external alfresco dining at the site as part of the subject proposal. Should a future operator of the restaurant (or commercial tenancy) seek to undertake external alfresco dining, it will be a requirement that a development application be submitted and payment of contributions for associated car parking, roads, water and sewer will be required as part of an approval for that application.

The Engineering Services Report (as amended) prepared by Newton Denny Chappelle has indicated that the proposed design would require modification at Construction Certificate stage to relocate columns to ensure that all car parking spaces comply with the column location spacing requirements of AS2890.1 2004. Conditions are able to be imposed of any consent granted in relation to this requirement.

Conditions can also be imposed to require that:

- the car parking spaces on the ground level be nominated as common property for the commercial tenancies under the strata plan.
- no boom gates, roller doors or other controls be installed at the ground level car park entry and that all spaces within the ground floor car parking area remain open and available to residents, customers and visitors at all times.

Disabled Car Parking Spaces

The original application proposed to provide four disabled car parking spaces in accordance with the Adaptable Housing Standard AS 4299.1995. Whilst AS 4299.1995 nominates a complying disabled parking space as being 3.8 metres in width, AS 2890.6 2009 supersedes AS 4299.1995, resulting in off-street disabled car parking spaces requiring a total width of 4.8 metres (consisting of the parking space and shared area).

The applicant was advised that the car parking design required modification to provide disabled spaces for the adaptable housing apartments that comply with AS 2890.6 2009. The amended proposal includes four disabled spaces that comply with the minimum dimension requirements of AS 2890.6 2009.

The only other possible non-compliance with AS 2890.6 relates to the headroom provisions. Multi-storey developments often have limited headroom clearance due to service pipes, etc. Conditions should be applied to any consent granted to requiring that a minimum height clearance of 2.5 metres be maintained from the entry driveway through to the disabled car parking spaces.

The standard residential apartments within the facility are not required to provide any disabled car parking spaces.

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In relation to the commercial tenancies of the proposed development, two disabled car parking spaces have been provided on the ground floor. These disabled car parking spaces comply with the dimension requirements of AS 2890.6.2009.

Table D3.5 of the Building Code of Australia (BCA), "Car parking spaces for people with disabilities", requires the provision of one disabled car parking space per 50 car parking spaces or part thereof for the commercial components of the development. The proposed design therefore complies with the BCA requirements.

The development therefore complies with the requirements of the BCA, the adaptable housing code and AS 2890.6 2009.

Bicycle and Scooter Parking

Bicycle racks have been proposed on the ground floor capable of servicing a minimum of ten bicycles. This is considered acceptable.

Loading/Unloading Activities

A loading bay space for a Small Rigid Vehicle (SRV) is provided within the ground floor car parking area, which complies with the minimum size requirement of AS2890.1. SRVs will be able to enter the site in a forward direction, safely manoeuvre and unload within the loading bay and then leave the site in a forward direction.

Council staff have written to the applicant on several occasions regarding the provision of on-site loading/unloading facilities for Medium Rigid Vehicles (MRVs). Due to the nature of the development (six commercial tenancies, a restaurant and 34 residential apartments), it is to be expected that MRVs will visit the site.

Clause 3.1.3, I. Element – Vehicular Access and Parking in Chapter 6 – Commercial Development of the Ballina Shire DCP 2012 states that "Service areas and loading bays should be designed to cater for the vehicles and servicing operations anticipated to occur in a particular development. Designs shall comply with Australian Standard 2890.2 Part 2 Off street commercial vehicle facilities."

The Australian Standard for off-street commercial vehicle facilities, AS2890.2, states that the design of service areas shall include provision for the largest design vehicle likely to use the facility, and provision for any specialist vehicles for which provision must be made.

The applicant and Newton Denny Chapelle have insisted that servicing of MRVs is not required for this development and that a Loading/Unloading Management Plan restricting service vehicle operations at the site to SRVs will be appropriate. Council staff have advised the applicant that this proposal is unrealistic, impractical and unenforceable, particularly in relation to waste collection and furniture delivery and removalists. As a result these activities would then occur within the adjoining street system.

Given the River Street frontage of the site is signposted as a "No Stopping" zone, any service vehicles would therefore seek to load/unload adjacent to the

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Kerr Street frontage of the site. It is considered that this will create safety risks for service vehicle drivers and the general public, as loading/unloading would occur on-street adjacent to traffic and pedestrians. There will also be amenity issues due to traffic obstruction\delays and noise where service vehicles double park, when the shoulder parking is already occupied by other vehicles.

The applicant has provided the following additional comments in relation to concerns raised by Council staff regarding the servicing of the development by MRVs.

“Council officers will recall that the Development Application as originally submitted provided for the servicing of the commercial uses on site via Small Rigid Vehicle (SRV) within the proposed car park, catering for an anticipated 85% of service vehicle deliveries. The initial proposal also provided for Medium Rigid Vehicle (MRV) deliveries via a designated shared space within the road reserve. This concept was not accepted by Council officers.

In response to this advice Newton Denny Chapelle provided for the management of service delivery vehicles via a Loading/Unloading Management Plan.

As previously submitted, Newton Denny Chapelle are of the view that the servicing of the commercial tenancies including the restaurant can be adequately addressed via the provision of a SRV space within the site in conjunction with a management plan for loading/unloading. The issue that is arising is interpretation of an applicable standard.

Previous responses by Newton Denny Chapelle in letter dated 20th February 2014 clearly show that the development planning controls seek an 'adequate' level of service vehicle management. As this is a subjective description, our proposal has relied upon a traffic survey of service vehicles of a similar facility to gauge likely demands. It was noted in the survey of servicing vehicles that larger vehicles were infrequent and by implementing a management plan for to curtail such vehicles is a reasonable and feasible approach. It is clarified that no specialist service vehicles are proposed for regular delivers to the site and that as the design vehicle is that of a Small Rigid Vehicle, the proposal fully complies with meeting the AS2890.2 requirements inclusive of height clearances to 3.5 metres.

In relation to the garbage servicing of the development, as outlined in the Waste Management Plan submitted with the Development Application, waste collection will occur kerb side so there is not requirement for the car park to cater for a garbage truck. In relation to the provision of a loading space for removal vehicles to cater for people moving in and out of the proposed units, we submit that this requirement is overly onerous, has not been imposed on similar residential developments within the Shire, and is inconsistent with the requirements of the DCP.

Notwithstanding this, the vehicle servicing management plan proposed for the site is able to incorporate a specific "traffic control plan for removalist trucks larger than SRV size" should Council wishes to implement controls upon such infrequent deliveries/pick-ups”.

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Three options exist in relation to the provision of servicing for MRVs for the development and Council will need to consider carefully which option is the most appropriate in the circumstances of the subject development:

1. Loading/unloading facilities for MRVs provided within the development site.

This would require the design of the proposal to be modified, which may involve:

- raising of the floor to ceiling heights for the ground floor car parking area. This would result in an increased overall building height for the development.
- the provision of a loading bay on site parallel to Kerr Street (similar to a Porte Cochere arrangement). This would result in a redesign to the western façade of the development, which may be potentially unattractive for this “gateway” site, and would impact upon the circulation of the ground floor and Level Two car parking areas requiring major redesign.

2. A designated loading bay provided in the street system of Kerr Street (between the two driveways) for MRVs (including garbage collection).

This could be imposed as a condition of consent, however the location of designated loading bays within the road reserve is not a typical arrangement for the servicing of commercial/residential developments. This has not been previously approved by Council for other developments in the Shire and may set a precedent or expectation for other commercial/tourist/residential developments in the Ballina Town Centre (and other towns). Also, the proponent would need to pay a contribution for the car parking spaces lost as a result of providing this designated loading bay within the street system.

3. Utilisation of the street system (i.e. no designated loading bay). As discussed above, this will create safety risks for service vehicle drivers and the general public (loading/unloading would occur on-street adjacent to traffic and pedestrians) and amenity issues (traffic obstruction\delays and noise where service vehicles double park, when the shoulder parking is already occupied by other vehicles). Also, Council’s Parking Officers issue fines for “double parking” elsewhere in the Shire and in the event that no designated MRV loading bay be provided (either on-site or on-street), an environment would be created where Council fines could be issued.

This option is the least supported of the three provided.

Noise

As part of the range of technical documentation submitted to support the proposal, the applicant has lodged an Environmental Noise Impact Report (ENIR), prepared by CRG Acoustical Consultants (dated 27 September 2013).

The ENIR has provided an assessment in relation to:

- the impacts of road traffic noise upon the proposed residential apartments;

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- the impacts of off-site commercial activities to the east and north of the site upon the proposed on-site residential apartments;
- the impacts of on-site commercial activity noise emissions (i.e. vehicle activities, patron noise, deliveries, waste collection and mechanical plant) upon surrounding off-site residential properties and the proposed on-site residential apartments; and
- the impacts of on-site construction activity noise upon surrounding properties.

The ENIR concludes that based on the adopted noise limit criterion, overall the proposed development will generally be within acceptable levels of Council's requirements, subject to acoustic treatments (as recommended in the ENIR) being integrated into the design, construction and operation of the development.

These recommendations are as follows:

- In relation to road traffic noise impacts upon the proposed residential apartments – building shell treatments in order to achieve the required indoor noise levels.
- In relation to on-site and off-site commercial noise activity impacts:
 - Limitation of hours of operation for the proposed restaurant between 7am and midnight;
 - Limitation of hours of operation of some of the commercial tenancies;
 - No amplified sound to be undertaken unless a specific assessment is conducted;
 - Use of the on-site communal open space area on Level Three of the development to be restricted between 7am and 10pm;
 - Waste collection and deliveries to the site to be restricted between 7am and 6pm;
 - Acoustic louvres to be installed on the eastern wall of the ground floor and Level Two car parking areas;
 - Construction of a 1.8 metre high solid balustrade along the northern perimeter of the Level Three communal recreational area.
 - Apartments located within close proximity to the restaurant tenancy to have 6.38mm laminate glass in acoustic grade operable frames;
 - Car park and delivery hard stand areas to be finished with surfaces that prevent tyre squeal;
 - Drainage grating over trafficable areas to be well secured to prevent rattling; and
 - Mechanical plant to be designed and installed to comply with low level noise criteria.
- In relation to on-site construction activity:
 - Limitations on hours of construction;
 - Limitations on the arrival and queuing of trucks and equipment;
 - Restrictions on the use of alarm bells/paging systems;
 - Siting of equipment to ensure minimal impact on noise sensitive dwellings; and
 - The establishment of management plans/processes to handle complaints arising from construction.

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Council's Public and Environmental Health section have reviewed the ENIR in relation to the monitoring undertaken, the assessment of noise impacts and recommendations provided to address noise issues. In the event the proposal is granted development consent, conditions are to be imposed to address noise issues arising as part of the construction and operational phases of the development, including the recommendations as provided in the ENIR.

The noise report has stated the following in relation to the approved motel development to be located on the western side of Kerr Street:

"An acoustic assessment report for the proposed motel has been compiled by Ambience Audio Services (dated 13 February 2013) and includes significant levels of acoustic building shell treatments to mitigate road traffic noise to inside motel rooms. These acoustic treatments at the motel development will mitigate noise emissions from the subject site development and therefore, additional acoustic treatments to the subject site would not be warranted if the offsite motel development is constructed".

Council's Public and Environmental Health section have reviewed the noise report in relation to the concerns raised in the submission and have not provided any comments contrary to that included within the ENIR prepared by CRG Acoustical Consultants.

Land Dedication

As stated in the description of the proposal, the land to be dedicated to Council as part of the subject application consists of a minimum 3.7 to four metre wide strip of land plus the south eastern corner of the site containing an existing Pandanus tree. This will act as a pedestrian linkage along the foreshore area. The total area of land is 541m².

Revetment Wall

As minimal information was provided in the Statement of Environmental Effects (SEE) with respect to the existing revetment wall and the proposed dedication of land for public purposes, Council staff requested details as to the structural adequacy of the revetment wall and land contamination assessment.

The applicant has stated (via letter dated 5 November 2013) "in order to evaluate structural adequacy, we firstly need from Council guidance in relation to the revetment wall requirements. In the past, different revetment wall treatments have been adopted by Council adjacent to the Richmond River and it seems to us that Council is evolving its view in relation to the most appropriate approach to revetment walling in this location. Rather than second guessing Council's opinion as to the appropriate revetment walling in the subject circumstances, our client's preferred position is to obtain Development Consent Conditions from Council which specify its revetment wall treatment requirements and then the proponent will undertake the requisite studies as to structural adequacy and the like".

Council staff have reviewed this response and as a result of the unforthcoming information are able to impose conditions on the development (in the event that it is granted development consent) requiring:

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- The preparation and completion of a Detailed Site Investigation in accordance with SEPP 55 and OEG guidelines for Consultants reporting on contaminated sites for the subject site (including the land to be dedicated to Council) and the revetment wall.
- Completion of a geotechnical assessment to investigate how the stability of the riverfront will be maintained during and after construction of the development, which must address:
 - A pre-construction survey of the riverbank frontage of the site,
 - The loads associated with the required site filling and proposed new building,
 - The settlement likely to occur as a result of the development,
 - The flood forces associated with a probable maximum flood event,
 - The retaining wall/revetment wall structure requirements to ensure riverbank stability.
- Submission of a design from a certified practising Engineer for a retaining wall/revetment structure along the Richmond River frontage that meets the following minimum requirements:
 - The retaining wall/revetment structure must provide a minimum anticipated service life of 50 years,
 - The retaining wall/revetment structure must extend to a minimum height of RL 2.1m AHD,
 - The retaining wall/revetment structure must adequately support the proposed adjoining building and site filling,
 - The retaining wall/revetment structure must be able to withstand the hydraulic flood forces associated with a probable maximum flood event.

Public Access

The applicant has maintained their position of dedicating a minimum 3.7 to four metre wide strip of land plus the south eastern corner of the site containing an existing Pandanus tree for public access. The applicant has stated (via letter dated 5 November 2013) that "Council has no provisions in its DCP/S94 plan statutory planning regime to require the dedication of land adjacent to the coastal foreshore. Despite this, the proponent seeks to dedicate free of cost and construct free of cost, a boardwalk consistent with like facilities in the Town Centre. The proposed provides for a comprehensive free of cost provision of public access to the foreshore. This is more than a mere 'enhancement of public access' as no public access currently exists at this time, nor is likely to in the future pursuant to any Contribution Plan made by the Council."

In terms of the treatment of the public walkway within this dedicated area of land, the Local Traffic Development Committee (at their meeting held on 11 December 2013) recommended that a public footpath be constructed at a minimum width of 2.5 metres (within the four metre wide dedicated area) with signage indicating that cyclists must dismount. Council's Civil Services Group have advised that the path is to be constructed of concrete (for maintenance reasons). The applicant has maintained that their proposal is for a timber boardwalk.

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A decision will need to be made by the Council as to whether the proposal is adequate/appropriate, in the circumstances of the case, that being:

- The site is being developed on its own. In this regard, is the previous land dedication approved as part of the Gateway Development (being a 14 metre wide corridor along the southern boundary of the properties and a 5.57 metre wide corridor along the western boundary of the subject site (to the Richmond River/Kerr Street corner) a relevant consideration? Should this be required of the applicant and what will that mean for the design of the development?

In terms of the Ballina Gateway Project, the subject site was only part of the entire development. An increase in the area of land to be dedicated for the subject proposal will result in either a reduced building footprint (if the building is reduced in size to still provide private open space adjacent to the ground floor tenancies) or the location of the building on the new property boundary (resulting in a potentially similar appearance to those buildings abutting public open space in the eastern end of the Ballina Town Centre).

- Whilst only four metres of land is being dedicated along the southern frontage of the site, the proposed building has a 14 metre setback (at ground floor) and an 11 metre setback (at Level Two) to the River. Will this setback contribute to the amenity of the river frontage of the site?

It is considered that the setbacks provided to the southern elevation of the building will contribute to the amenity of the river frontage of the site. Whilst they will be in private ownership, there is potential for these areas to be enjoyed by visitors to the restaurant and commercial tenancies (only as designated open space as part of the subject application). Also this area is to be landscaped, which will provide a softening of the built form in this section of the site.

- The Ballina Shire DCP 2012 does not prescribe a specific width or land area to be dedicated along the riverfront. However, Section 4.5 (Controls applying to the Riverside West Precinct) of Chapter 6a states "a section of the foreshore located between War Memorial Park and Kerr Street is to be dedicated to Council for public open space in accordance with the requirements of the Ballina Town Centre Structure Plan". The Ballina Town Centre Structure Plan shows the southern 40 or so metres of the subject land as being "desired public open space".

The applicant's arguments in relation to the provisions of the Ballina Shire DCP 2012 and the acquisition of this land are noted. There are no current provisions whereby Council can require the dedication of land adjacent to the coastal foreshore via a Section 94 plan.

Venting of Level Two Car Parking Area

The design of the eastern elevation of the proposed development is such that it directly vents exhaust fumes to the adjoining allotment. Refer to Attachment 10.

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Council staff requested the applicant (via letter dated 6 December 2013) provide advice in relation to impacts upon the adjoining allotment, with regard to its current residential occupation and at such time as it developed in the future (and any impacts this may have on the car parking areas of the proposed development).

The information provided by the applicant in February 2014 advises that *"The car parking area is ventilated to the adjoining objector property. However, the amount of traffic generated within the car parking area would be minuscule compared to the volume and proximity of traffic traversing River Street immediately adjacent to the premises. The Building Code of Australia governs the situation in relation to ventilation and the proposed development is designed in accordance with that Standard. With respect to chemicals, cleaning products are regulated by State and Federal Statutes. No novel or unusual cleaning products are proposed in relation to the maintenance of the car parking precinct."*

Subsequent to the receipt of the above advice, Council staff requested further information from the applicant, as the material provided did not satisfactorily address ventilation for the car parking area at such time as the property to the east is developed. In particular, concerns were raised with respect to:

- the impacts any future development on the adjoining eastern allotment may have on the ventilation system for the car parking areas of the subject development (i.e. does the ventilation system have a reliance on the eastern vents, in terms of compliance with the BCA?); and
- whether the operation of the car parking areas of the subject development will restrict the future development potential of the adjoining eastern allotment. Any future development on this allotment should have a reasonable expectation to build to the side boundary and therefore it is likely that the vents will be in direct conflict with this 'development potential'.

The applicant provided the following advice in their letter dated 3 April 2014:

"We note Council officer's concerns in relation to the future development of the property to the east in regard to the provision of ventilation for the car parking on the boundary. It is submitted that the proposed development is not required to make provision for construction to the boundary on the adjacent property. There is not approved Development Application over this land and the design of the proposed building to the boundary and provision of ventilation on the boundary is consistent with all requirements of Council's Development Control Plan in this regard."

In terms of planning principles it is not considered that the potential future development of an adjacent site should be given such weight in the subject circumstances as to require a redesign of the proposed building. It is also noted that this issue was not raised by the adjoining landowner in their submission to the Development Application."

In terms of satisfying the provisions of the Building Code of Australia, it is considered that there are options whereby the proposal can provide either passive ventilation (comprising venting to either the northern or western elevations or the roof of the car parking area – into the perimeter of the

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communal open space area) or mechanical ventilation. If the proposal is granted development consent, it is recommended that conditions be imposed in relation to this matter to protect the development rights of the adjoining property and also to reduce the potential for conflicts between landowners at such time as the property to the east is redeveloped.

Conclusion

The proposed development has been assessed and consideration has been given to all the relevant matters listed in Section 79C of the Environmental Planning and Assessment Act 1979, including the provisions of the Ballina Local Environmental Plan 2012, Planning Proposal 13/010, the Ballina Shire Development Control Plan 2012 and submissions made in response to the exhibition and notification of the proposed development.

The key issues for consideration in the determination of this development application are:

- Building height;
- Adequate loading/unloading facilities;
- Provision of adequate car parking;
- Dedication of foreshore open space;
- The removal of Norfolk Island Pine trees; and
- The issues raised in the submissions as part of the exhibition and notification processes.

The height of the proposed development has been identified as non-compliant with the building height controls within the Ballina Local Environmental Plan 2012. This non-compliance has been stated as being 1.8m, or 10% of the building height development standard (18m). The applicant has argued that the current wording of Clause 4.3A permits an additional 2 metres to be added to the 18 metre height limit for the site, on top of the existing ground level (1.8m AHD). The applicant has therefore indicated that the proposal has been designed to this "maximum height" of 20 metres, on top of existing ground level. In addition to this, the proposal contains an Architectural Roof Feature of an additional height of 1.8m. Overall, the proposal will have a building height of 23.6m AHD.

Council has acknowledged that there is ambiguity in the wording of Clause 4.3A and has taken steps to rectify this issue through the preparation of Planning Proposal 13/010. This proposal has amended the wording of the clause to more accurately reflect Council's intent with respect to building height for flood affected land and to provide certainty in its interpretation. Planning Proposal 13/010 is with Parliamentary Counsel for finalisation and therefore the making of this plan is imminent and certain.

Despite the range of matters to be considered in varying the building height development standard, Council staff are of the opinion that the principal reason whereby the variation may be supported is due to the potential uncertainty in the interpretation of Clause 4.3A. The use or reliance on the other matters as reasons to vary the building height development standard would potentially create precedence and may result in subsequent proponents attempting to use the same arguments for variances to building height for their

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developments. This would erode the building height standards as set for the Ballina Town Centre.

The loading and unloading facilities for the proposed development have been assessed as being inadequate by Council's Civil Services Group. It has been maintained by Council staff since the lodgement of the application that the proposed development is required to be serviced by the largest vehicle likely to use the facility, being Medium Rigid Vehicles (MRVs) and that this servicing is required to occur on site, rather than within Council's street system. The applicant and their traffic consultants, have argued that an adequate level of servicing can occur via the provision of a Small Rigid Vehicle (SRV) space within the site in conjunction with a management plan for loading/unloading.

Three options have been presented in the report in relation to the provision of servicing for MRVs for the proposed development. The first option presented (a dedicated MRV facility provided on site) will result in a major redesign of the proposal. In this regard, the proposal as presented would need to be amended and considered for determination at a later stage. The second option presented (a dedicated MRV facility located within the Kerr Street road reserve) could be imposed as a condition of consent, however this is not a typical arrangement for servicing of commercial/residential developments and may set a precedent or expectation for other like developments. There are financial implications for the proponent through payment for lost car parking spaces in Kerr Street. The third option presented (no MRV facility at all) will result in utilisation of the street system and therefore safety risks and inconvenience to road users. There are financial implications for both MRV drivers and Council (resourcing) through the issue of fines on a regular basis.

Council's Civil Services Group have comprehensively assessed the parking requirements of the proposed development. As stated in the report, the proposal has not provided the required number of car parking spaces for the commercial component of the development and as such Section 94 Developer Contributions will be required to be paid for the six spaces as part of any consent granted.

The land proposed to be dedicated to Council has not undergone rigorous contamination or structural adequacy testing as part of the subject application. Council staff consider that these matters are able to be satisfactorily addressed via consent conditions, however the Council will need to be satisfied that this is an acceptable outcome, given this land is to become a public asset (or liability?).

The area of land to be dedicated to Council in terms of public access has also been addressed in this report, with reference provided to the Ballina Town Centre Structure Plan in Chapter 6a of the Ballina Shire Development Control Plan 2012 and the State Government Approval for the Ballina Gateway Project. It is acknowledged that under the Structure Plan, a wider area of land was envisaged to be dedicated to Council as public open space. However, there is presently no mechanism to require such to occur.

Under the Ballina Gateway Project, a 14m wide tract of land was required to be dedicated to Council (with the public boardwalk to be erected over the Richmond River). However, this proposal is only seeking to develop one site within the land subject to the Gateway development. The four metre wide land

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dedication will be complemented by the setbacks provided to the proposed building (14 metres at ground floor level and 11 metres at Level Two). It is considered that this area of undeveloped land will contribute positively to the amenity of the River front and will not result in the dominating presence of the built form at the eastern end of the Ballina Town Centre.

The removal of the western (and eastern) Norfolk Island Pine tree in the central/southern section of the subject site is somewhat inevitable in the redevelopment of the land. A key consideration for Council in assessing the removal of the tree is whether the contribution of this single Norfolk Pine tree is of such significance that it outweighs the approval of the proposed development. It is considered that this is not the case.

The issues raised in the submissions have been addressed within this report. The issues regarding the impacts of the proposal on solar access and privacy of adjoining and nearby properties have been particularly assessed. It is considered that the proposal will not unreasonably result in a loss of solar access or privacy for those adjoining and nearby properties.

It is considered that the proposed development will allow for a range of positive outcomes, including:

- The provision of public access along the Richmond River frontage of the site;
- The dedication of 541m² of public foreshore open space to Council;
- The provision of active frontages to River and Kerr Streets;
- The provision of new retail, restaurant and business opportunities along River Street and the Richmond River, with potential to boost the local economy;
- The provisions of medium density permanent residential accommodation within the Ballina Town Centre; and
- The provision of a well-designed, architecturally distinctive, contemporary building that has had due regard for the context of the site and the locality and will reinforce the site as the Gateway to the Ballina Town Centre.

Having regard for the outcomes of the assessment undertaken, Council has the following options with regard to determining the subject application:

Option One

That Council approve the development application subject to standard conditions of consent for this type of development and those specifically outlined within this report. Should Council choose to proceed with this option, it must be satisfied that the proposal is consistent with the provisions of the relevant Environmental Planning Instruments (EPIs), draft EPIs, Ballina Shire Development Control Plan 2012, and is worthy of variation to development standards and development controls where requested and/or identified.

Option Two

That Council refuse the development application, in consideration that the proposed development does not comply with the building height development standard for the site, does not provide adequate loading/unloading facilities for

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Medium Rigid Vehicles and the variations sought in relation to the identified controls within the Ballina Shire Development Control Plan 2012 are not supported.

Option Three

That Council defer determination of the proposal until such time as the proposal is amended to comply with the applicable building height development standard for the site and has provided adequate loading/unloading facilities for Medium Rigid Vehicles.

Option one is the recommended approach for the reasons outlined in this report.

RECOMMENDATIONS

That DA 2013/381 to undertake the following development:

- Demolition of the Existing Sundowner Motel and Restaurant;
- Erection and Strata Title Subdivision of a Multi-Level Mixed Commercial and Residential Building (Shop Top Housing) with an Overall Height of 23.6m Australian Height Datum (AHD), comprising:
 - Six Commercial Tenancies (Business and Retail Premises) at Ground Level facing River Street and the Richmond River,
 - A Restaurant at Ground Level facing the Richmond River,
 - 34 Residential Apartments (Dwellings) located on Levels Two to Six,
 - Two Levels of Car Parking and Site Access from Kerr Street;
- The Dedication of Land for Foreshore Public Access, involving the Construction of a Public Walkway; and
- Vegetation Management Works involving the Removal of One Norfolk Island Pine Tree,

at Lot 1 DP 499510 and Lot 10 DP 244352, No. 274 River Street, Ballina be **APPROVED** subject to the imposition of the attached recommended non-standard conditions.

Attachment(s)

1. Locality Plan
2. Ground Floor Plan
3. Levels Two to Six
4. Roof Plan
5. Northern Elevation
6. Southern Elevation
7. Western Elevation 1
8. Western Elevation 2
9. Eastern Elevation 1
10. Eastern Elevation 2
11. Section Through
12. Shadow Diagram (No. 272 River Street)
13. Photomontage of proposed development
14. Submissions

8.3 DA 2013/381 - Reside Living - 274 River Street, Ballina - Section 96.DOC

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15. Draft Conditions of Consent

