

COPY OF COUNCIL REPORT DATED 15 DECEMBER 2011

8.2 DA 2011/414 - Sundowner Motor Inn, Ballina

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File Reference	DA 2011/414
Applicant	Newton Denny Chapelle (C/- Wantana Pty Limited, Brown & Mills)
Property	Lot 1 DP 499510 & Lot 10 DP 244352, No. 274 River Street, Ballina
Proposal	To Undertake the following: <ul style="list-style-type: none">• Demolition of all existing buildings on the lands (to slab level);• Removal of three (3) advanced Norfolk Island Pine trees;• Consolidation of the two (2) existing allotments into one (1) allotment; and• Dedication of foreshore land for public access to the Richmond River.
Effect of Planning Instrument	The lands are zoned 3 – Business under the provisions of the Ballina LEP 1987.
Locality Plan	The subject lands are depicted on the locality plan attached.

Introduction

The subject proposal incorporates four components:

- Demolition of all existing buildings on the lands (to slab level);
- Removal of three mature Norfolk Island Pine trees;
- Consolidation of the two existing allotments into one allotment; and
- Dedication of foreshore land for public access to the Richmond River.

The land that the application applies to comprises Lot 1, the northern-most lot having dual street frontage to River Street and Kerr Street, Ballina and Lot 10, the southern-most lot. The southern, western and eastern boundaries of Lot 10 have direct frontage to the Richmond River. The "Sundowner Motor Inn" and the associated refreshment room "By the River" currently stand predominantly on Lot 1. This site forms an integral and highly visible component of the western gateway into the Ballina Town Centre.

The applicants have prepared and submitted this application in order to have the Council provide a level of certainty for the current owners and prospective purchasers of the site about its 'developable' area.

The site is level, riverfront land and is in what is currently a 16m high (5 storey) redevelopment area of the Ballina Town Centre. Most relevantly for the purposes of this application, the lands are constrained for redevelopment by the following factors:

- The current standing older motel buildings
- Past waterfront usage in the area that has led to a level of contamination of the site and its environs
- Three substantial Norfolk Island Pines that are listed in Council's planning controls as having local landscape significance that warrants their retention
- The configuration of the site in two separate allotments, the waterfront one of which has virtually no direct street/road frontage and access and
- The State Government's state-wide planning provisions that require councils to obtain public waterfront access at the time of redevelopment of foreshore and river frontage lands.

It is the aim of the applicants to have the above factors resolved to varying degrees.

Two previous applications were made that sought to address some individual matters. One, for removal of the pine trees, was refused, and the other, seeking consent to demolish the motel and carry out a consolidation subdivision, was withdrawn and replaced by the current more comprehensive proposal.

Further specific discussion on the identified matters (and other relevant issues) will be outlined in the report.

Public Exhibition

The application was not publically advertised.

Report

The application has been assessed in accordance with the relevant heads of consideration under Section 79C of the EP&A Act.

Only those matters of contention and of development/planning significance will be specifically addressed as part of this report.

Ballina Combined DCP

Chapter 2 of the Council's Combined DCP contains provisions directly relevant to the assessment of the application.

Excerpts from the DCP are attached for Council's reference and consideration and comprise:

- 'Ballina Town Centre Structure Plan' map that illustrates the "Desired public open space" and "Desired foreshore pathway" in relation to the subject lands
- Section 2.3.7 'Foreshore Open Space'. Council's attention is particularly drawn to the part entitled 'Between War Memorial Park and Kerr Street (Barlows and Sundowner Site)' being pages 14 & 15 of the Chapter and

- Section 3.8.3 'Other Development Controls'. Council's attention is specifically drawn to part (c) 'Norfolk Island Pines'.

With respect to the resolution of the extent and configuration of Foreshore Open space for the subject lands the DCP states:

"Detailed planning and design for this site has not been possible in the preparation of this DCP. This would more effectively and appropriately be undertaken by collaboration between the land owners, Ballina Shire Council and relevant government agencies."

What the DCP does do, is identify several objectives to guide future planning and design of the site. Relevantly these include:

- Provide a public open space network that connects the War Memorial Park with Kerr Street
- Provide continuous public access along the foreshore
- Retain references to the landscape setting by protecting existing Norfolk Island Pines
- Provide public open space that accommodates active and passive recreation
- Ensure that buildings do not dominate the entire river edge but rather a transition area is provided between the riverbank and the main bulk of buildings and
- Determine the extent and configuration of public parkland having regard to:
 - The alignment of the riverbank to the west and east of the site
 - The landscape and historical features on the site
 - Vistas along the foreshore, from the land to the river and from the river to the land
 - The area required for usable and effective public open space
 - Other objectives for the site identified above

Approval and implementation of the current application would, with the exception of retention of the Norfolk Island Pines, materially advance the objectives of the DCP set out above.

Dedication of Land

The application proposes the dedication of approximately 600m² of foreshore land to Council comprising a six metre wide strip along the southern (waterfront) boundary of Lot 10 and four metre wide strips partially along the eastern and western boundaries of Lot 10 and Lot 1 (copy of illustrative plan attached).

The applicant has based the proposed four metre and six metre width dimensions of foreshore land to be dedicated to the Council on a number of matters, including reference to other local developments particularly those in the Fawcett Street area.

The examples referenced by the applicant are not considered to be particularly relevant to the comprehensive merit assessment of the current proposal however as the Combined DCP Chapter 2 had not been adopted at the time of determination of the other developments.

During the assessment of the previously withdrawn and current proposal, Council planners advised the applicant that land dedication was considered to be a substantial public interest matter and was required to be addressed in order to meet and enhance public access to, and the amenity of, coastal waterfronts in accordance with the provisions of:

- State Environmental Planning Policy No. 71 – Coastal Protection
- The NSW Coastal Policy and
- Council's Combined DCP Chapter 2.

Additionally and consistent with State Government Planning provisions, Council's Combined DCP, Chapter 2 (and more specifically the Structure Plan contained therein) identifies in the long-term strategy for the Town Centre, the need for key open space areas and pedestrian linkages to and along foreshore areas.

The Structure Plan, which has been adopted and in effect since 2006, clearly identifies the area that includes Lot 10 and lands located immediately to the east as "Desired Public/Private Open Space" (copy attached).

The width of the 'Desired Public/Private Open Space' identified within Combined DCP, Chapter 2 has been shown illustratively on the 'Structure Plan' map as an extrapolation of the existing width of the open space area further to the east (i.e. the RSL War Memorial Park open space area immediately adjacent to the RSL car park).

The Memorial Park is approximately 30 metres in width at its narrowest point. This is substantially wider than the 6 metres proposed for land dedication in the subject application and would equate to an area of approximately 1280m² within the site rather than the 600m² currently proposed.

Relationship with 'Ballina Gateway' Project

The subject land comprised part of the previous 'Ballina Gateway' project that was approved by the then State Government.

For reference, the 'Ballina Gateway' project was a mixed use development comprising an 84 room tourist hotel, 85 residential apartments distributed through 4 multi-storey buildings, an amenities block with swimming pool, gymnasium, and approximately 1200m² of ground floor retail, including a destination café on the waterfront.

As part of the 'Ballina Gateway' approval, 18 metres of public foreshore open space fronting the southern boundary of Richmond River (including the four metre wide approved boardwalk) was to be dedicated to Council and an additional 9.57 metres wide strip was to be dedicated along the western boundary fronting the Richmond River (including the 4 metre approved boardwalk).

Also, an additional 10 metres of private open space (landscaped terrace areas) was to be provided in the approved design plans, thereby furnishing approximately a 28 metre wide public/private open space area or setback along the southern boundary foreshore of Lot 10 as part of the overall, integrated development of the whole 'Gateway' site.

The current, subject application has to be distinguished from the 'Ballina Gateway' project consent because it does not apply to the whole 'Gateway' site and it is not for the redevelopment of the land for a new end land-use.

Consequently neither the need nor the opportunity to assess and/or negotiate a final detailed development outcome with respect to bulk and scale of buildings, intensity of use, traffic access, parking, open space provision, architectural design, public accessibility, etc., for the lands that are the subject of the current application are yet there.

Additional requirements and refinements of development conditions for the subject lands will, of necessity, occur at the time of submission of a re-development application. Therefore a direct translation of the land dedication and foreshore access provisions of the 'Ballina Gateway' development consent across to the current smaller land consolidation and demolition of buildings application should not be made.

By way of comment, during assessment of the application Council staff enquired of the applicant that, if the dedication of the land to the width of the Memorial Park was not supported by the landowners at this early stage then, as an alternative, an easement could be proposed indicating the required width and area of open space illustrated by the Structure Plan.

The width of the easement could then be further considered and varied by Council once a design for comprehensive re-development of the site was submitted and matters such as setbacks, landscaped open space, potential contamination, etc, were able to be reasonably considered in the context of the design, the site, and the locality.

In the interim, such an easement would highlight to prospective developers that this requirement is a key item to be considered in any design for the future re-development of the site and would also allow for suitable public access to the foreshore to occur across private lands in the interim period.

The applicant declined this suggestion.

Section 94 Contribution Plan – Open Space

Although DCP 2 clearly identifies Lot 10 (and other adjoining lands) for intended or desired public/private open space, the Ballina Shire Contributions Plan 2008 is silent in this regard.

As there is no re-development proposed as part of this application, this matter is not particularly relevant at this time.

Notwithstanding this, if the land dedication as proposed by the applicant is accepted by Council as part of this application (free of cost), the recognition of credits for such provision may be applicable to a future re-development application for the site under the Ballina Shire Contributions Plan 2008 (or its equivalent at the time of determination).

For further clarity, should Council still wish to have these lands secured for use as public open space as outlined within DCP 2, the lands should also be identified within the Ballina Shire Contributions Plan 2008.

Potential Contamination of the Site(s)/Locality

Similar to the land dedication and retention of trees matters, Council planners requested the applicant to provide further information about the potential contamination of the site(s).

The submitted Statement of Environmental Effects only provides a brief assessment and commentary on State Environmental Planning Policy No. 55 – Remediation of Land. This is not considered sufficient and does not comply with the requirements of the *NSW EPA Guidelines for Consultants Reporting on Contaminated Sites* and Council's Management of Contaminated Land Policy.

A preliminary site contamination assessment has not been undertaken on the subject site(s) as part of this application as it does not propose disturbance to the existing surface of the land or redevelopment of the site(s) for any purpose.

The current application does, however, reference the site investigation works report of Coffey Geosciences dated 25 November 2005 that was prepared as part of the 'Ballina Gateway' project. The Coffey Report recommended that further investigations be undertaken on the sites, including the sites subject to this current application.

The Coffey Report established the existence of tributyltin in sediments below the slipways including that slipway immediately to the east of the subject site and adjacent to the land proposed to be dedicated to Council to provide public access to the Richmond River foreshore. There is insufficient data at this time to assess the vertical and horizontal extent of the tributyltin or the presence of other contaminants. Additional investigation, sampling and analysis are required.

In the absence of a contamination report for the subject sites, particularly the area proposed to be dedicated to Council, a level of uncertainty about the condition of the land exists. This uncertainty should be resolved and the lands certified as being sufficiently clean of contaminants to be suitable for future use for open space purposes before the Council takes on any ownership obligations.

A preliminary contamination report on the proposed dedication of land area may provide a level of confidence with which Council could be confident that the proposed land is not affected by contamination and is suitable for its intended use.

In consideration that the proposed demolition component of the application is for all existing buildings on the land that are not in contact with ground level and that no disturbance of land, is proposed to occur, it is considered that the land in its current state, is suitable for allowing the demolition component of the development application and consolidation of allotments to proceed. In any event the full extent of contamination cannot be surveyed until the site is cleared of structures.

Additionally there appears to be a number of underground tanks on the subject sites whose use and condition cannot be verified and further investigations are required.

The extent of tributyltin and other contamination of the riverbed will determine whether the river silt should be disturbed by the proposed demolition of the timber jetties and any other foreshore works that may be necessary to secure the waterfront land from future erosion

Revetment Wall Structural Adequacy

Although the applicant has confirmed that the existing timber jetties along the southern boundary and within the south-eastern corner will be demolished, the SEE has not had any regard for the structural adequacy of the existing revetment wall. The wall is likely within the area proposed to be dedicated to the Council.

If it is accepted without Council knowing the full structural adequacy of the wall, the community may inherit an asset that requires substantial work and expenditure of public monies in the immediate future.

In the absence of certification from a practising structural/specialist engineer describing the condition of the wall, verifying that it will withstand the force of a maximum probable flood, and confirming the stability of the riverfront/bed adjacent to the site, the necessary level of certainty as to the acceptability of the revetment wall to be transferred into Council's ownership is not there.

If works are found to be required to place the wall into an acceptable condition then such may, depending on the extent of work required, trigger integrated development and the need for separate approvals from other Government Agencies prior to the dedication of lands.

It should also be noted that the relatively narrow width of the land dedication may present access difficulties for future maintenance of the riverbank rock revetment.

To be fair, the wall has been in existence for a substantial period of time and appears to generally be in a good state of repair.

In the absence of accredited certification regarding land contamination, structural adequacy of the wall, and boundary identification survey, the land dedication should not proceed. If the Council is minded to approve the application, these requirements may be addressed by pre-commencement conditioning of any consent.

Norfolk Island Pines Removal

Two existing and substantial Norfolk Island Pine trees are centrally located and in close proximity to the existing common boundary between Lot 1 and Lot 10. The remaining advanced Norfolk Island Pine tree is located along the northern River Street frontage of Lot 1.

The application proposes to remove all three of the mature Norfolk Island Pines for various reasons (including that they do not exhibit significant landscape qualities) and to compensate for this by providing a 5m radius area in the very south western corner of the site where a replacement tree can be planted.

The contention of the applicant that the existing trees do not have significant landscape value is not supported. Such a proposition is at odds with DCP Chapter 2.

The Norfolk Island Pines have landscape/scenic value not only to the site, but to the entrance to the Ballina Central Business District, to the river, and to the surrounding locality due to their dominating height in what currently is a flat, low level urban/riverside landscape.

This said, the tree on the River Street frontage of the site is not as fully foliated as the other two and is not as attractive.

The applicant also contends that the removal of the trees is required as redevelopment of the site is "unviable" if they are retained.

Viability of land for development is dependent upon a range of factors; not just the available land area and only some of these come within the ambit of the Council's responsibilities.

It would generally be the case that the value (as opposed to viability) of land as a component of assessing a purchase price of land for development purposes would be concluded having regard for a whole range of factors. These would include all the planning controls applying to the identified land, but also other commercial considerations such as the state of the economy, entrepreneurial opportunity in the locality, finance issues, taxation, and the physical on-site constraints to building and construction.

The two trees towards the river occupy a substantial area of land given the overall size of the site. If they are required to be retained any development designer would need to allocate a substantial area to their protection.

Depending on the approach of the prospective developer and their designers this could, however, be seen as a design opportunity as much as a development constraint. In this regard the application does not provide any perspective other than that applying to the positioning of the trees within the site and the area they occupy as presenting a substantial physical constraint to future development options.

There is not a great deal of information to support the nominated replacement tree area as being well suited for off-set planting. It is right on the revetment wall and is currently exposed to winds off the river. Hence it may be difficult to achieve vigorous and healthy tree growth and as any large tree matures it may damage the revetment and or hinder future maintenance work.

It is also difficult to ascertain how pedestrian access would still be provided around the tree once it reaches maturity (i.e. within the six metre land dedication width). Council should also note that the applicant is not proposing to plant a tree within this area, so no physical offset for the removal of the three advanced species is proposed at this time.

Council Officers have considered the particular merits of this and other matters as they relate to the current proposal. Without a clear indication of the re-development of the site (as was the case with the Minister approved "Ballina Gateway" proposal) Council planners aren't really in a position to support the removal of the three trees.

Should the Council be minded to improve the "viability" of the site for redevelopment because of the substantial land area occupied by the trees and approve their removal, it could give consideration to approving one but not all trees to be removed, deferring a decision and requesting additional off-set sites be identified, and/or, by conditioning, require a higher ratio of off-set planting, at the cost of the landholders, elsewhere on public land.

Council's Arborist has conducted a further inspection of the trees and confirmed that the previous advice provided in May still remains, being:

"All trees appear to be in good health and sound structural condition with little to nil deadwood....From an arboricultural perspective I can see no structural or ill health issues that would warrant the removal of these trees. As a genus Araucaria's are a heavily lignified tree and not highly prone to failure of branches."

Although it is acknowledged that the trees were previously nominated for removal as part of the "Ballina Gateway" project (determined by the Minister of Planning), the trees can only be removed under that approval if the consent is enacted and the construction commenced. As the sites that were the subject of that application no longer comprise an agreed single development entity and the consent lapses on 20 June 2012, it is unlikely that this will eventuate.

Options

From the contents and discussion contained within this report there are three options available to the Council in determining this application.

Option 1

Council could refuse the application on the grounds that the applicant has not provided sufficient information and justification in addressing the planning and development assessment issues identified in this report and as required to be considered under the provisions of s79C of the Environmental Planning & Assessment Act to warrant approving departures from the planning controls for the area.

There has also been insufficient documentation and investigation to give Council a reasonable level of confidence that the site(s) are free from contamination and that the revetment wall is within a sound and reasonable structural condition. This is particularly relevant in that Council should not accept the dedication of lands (particularly for public purposes) until it is satisfied that any such land is suited for its intended purpose and won't become an unreasonable cost burden for the local community.

In the event that Council decides to refuse the application, it should be noted that it may be some time until public access to the foreshore will be achieved in this locality.

This would be of some concern as the experience is that completing public land acquisitions of this type is difficult as they are usually long underfunded processes that carry a high risk of failure. Equally, a refusal would not provide any clarifying guidance to the landholders, or prospective purchasers, about what the Council's future requirements will be as far as interpreting the areas of land dedication needed for foreshore public access.

Option 2

Council could grant consent to aspects of the application applying suitable conditioning to address land identification survey, contaminated land and revetment wall condition certification and conditioning that identifies what, if any, trees are approved for removal and that detail replacement/off-set tree planting requirements.

This would give the applicant and others guidance about what is considered reasonable in relation to the matters of contention (i.e. the land dedication and removal of the trees).

Council Officers are generally supportive of the demolition of the nominated buildings/structures (to slab level) and the consolidation of the two allotments into one.

Option 3

Council could grant consent to the application as submitted. However due to the significant variations to Council's DCP 2 in relation to the removal of the three Norfolk Island Pines, identified as significant landscape items of interest and the potential dedication of contaminated lands and acquisition of a substantial asset that may not be structurally sound for public purposes; this option is not supported at this time.

Conclusions

There are many commercial, entrepreneurial and government factors that go to the question of determining the development potential or "viability", of land. These are wide ranging and are all factors in the calculations that a prudent prospective developer would be expected to make in order to assess what could be reasonably expected to be able to be built on land.

The planning controls applying to the subject land include the Business zoning, the 16m height allowances, parking and traffic management requirements, foreshore public access, building lines, and infrastructure provision, as well as the identified protection of the trees. These local planning controls lie in that part of the development potential equation that the Council has responsibility for. They are a mixture of both incentives and costs as they give relative advantages and disadvantages to different landholdings.

It is a key responsibility of the Council to decide on its local planning controls and, in their preparation and implementation, strike a suitable balance between public and private interest for land across the Shire as a whole.

Having regard for the current and intended Draft Ballina Local Environmental Plan 2011 zoning and development standards applying to the site it is considered that the landholders can comply with the required land dedication and retain the trees in accordance with DCP 2, whilst still catering for and accommodating a substantial future re-development for the western gateway of the Ballina Town Centre. Such may not maximise the value of this land by giving it advantages over other lands but that is not the purpose of public planning policy.

The crux of the matter before the Council with this application is whether or not the combination of the applicable planning controls has struck the right balance for the land at this time. Clearly the applicant doesn't think they do. In this regard it could be argued that, due to the happenstance of history, this land has trees on it that occupy a substantial area and that other landholdings don't have such constraints. Such is not considered to be a valid argument on its own as all lands have differing characteristics and it is these that contribute to the normal variations in land values.

It is clearly in the interest of and would be of direct benefit to the local community and the owners of the site to have the land dedication, tree removal, revetment wall and potential land contamination matters resolved and confirmed as far as they can be at this time.

In reviewing the options the fundamental questions are:

- a) does Council wish to refuse the application to ensure the protection of the Norfolk Pines? OR
- b) does Council wish to accept the removal of the Norfolk Pines on the basis that foreshore land will be dedicated to the public? Such a dedication would be entirely dependent on Council ensuring that the revetment wall was in a satisfactory condition and there were no contamination issues with the land.

This then becomes a matter of public value of these assets and the difficulty from a staff recommendation perspective is to try and determine which item (the land or the trees) has the higher community value.

Due to the difficulty of this issue the recommendations that follow provide for both options. This thus allows Councillors to determine which item is of the higher value to the community.

RECOMMENDATION

Option A

That development application 2011/414 be **APPROVED** subject to the application of suitable conditions of consent, as determined by the General Manager, addressing site identification survey, revetment wall and contaminated land certification, replacement tree planting, standard demolition safeguards, submission of a subdivision certificate application and other relevant standard requirements.

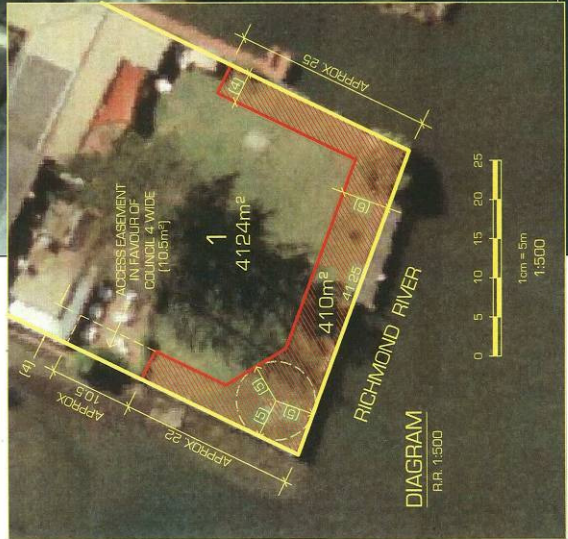
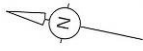
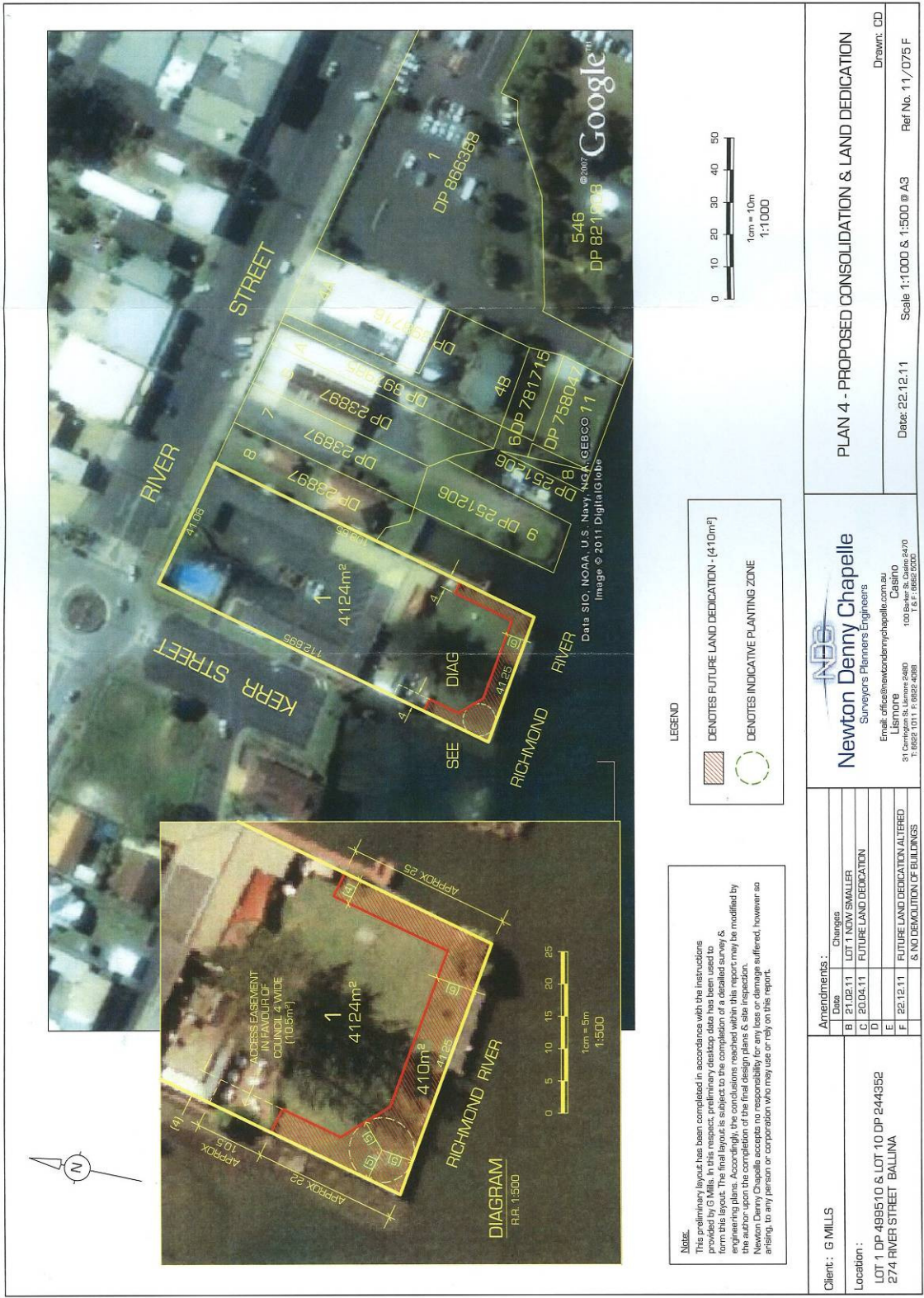
OR

Option B

That development application 2011/414 be **REFUSED** as the application is inconsistent with local planning controls and is not in the public interest.

Attachment(s)

1. Locality Plan
2. Required Land Dedication Area within the DCP 2 Structure Plan
3. Retention of the Three (3) Norfolk Island Pine Trees as Significant Landscape Items of Interest within the DCP 2 Structure Plan
4. Proposed Tree Removal by the Applicant
5. Proposed Land Dedication Area Nominated by the Applicant
6. Except from DCP Chapter 2.



Note:
This preliminary layout has been completed in accordance with the instructions provided by G.Mills. In this respect, preliminary desktop data has been used to form this layout. The final layout is subject to the completion of a detailed survey & the site plan is subject to the completion of the final design plans & site inspection. Newton Denny Chapelle accepts no responsibility for any loss or damage suffered, however so arising, to any person or corporation who may use or rely on this report.

LEGEND

DENOTES FUTURE LAND DEDICATION - (410m²)

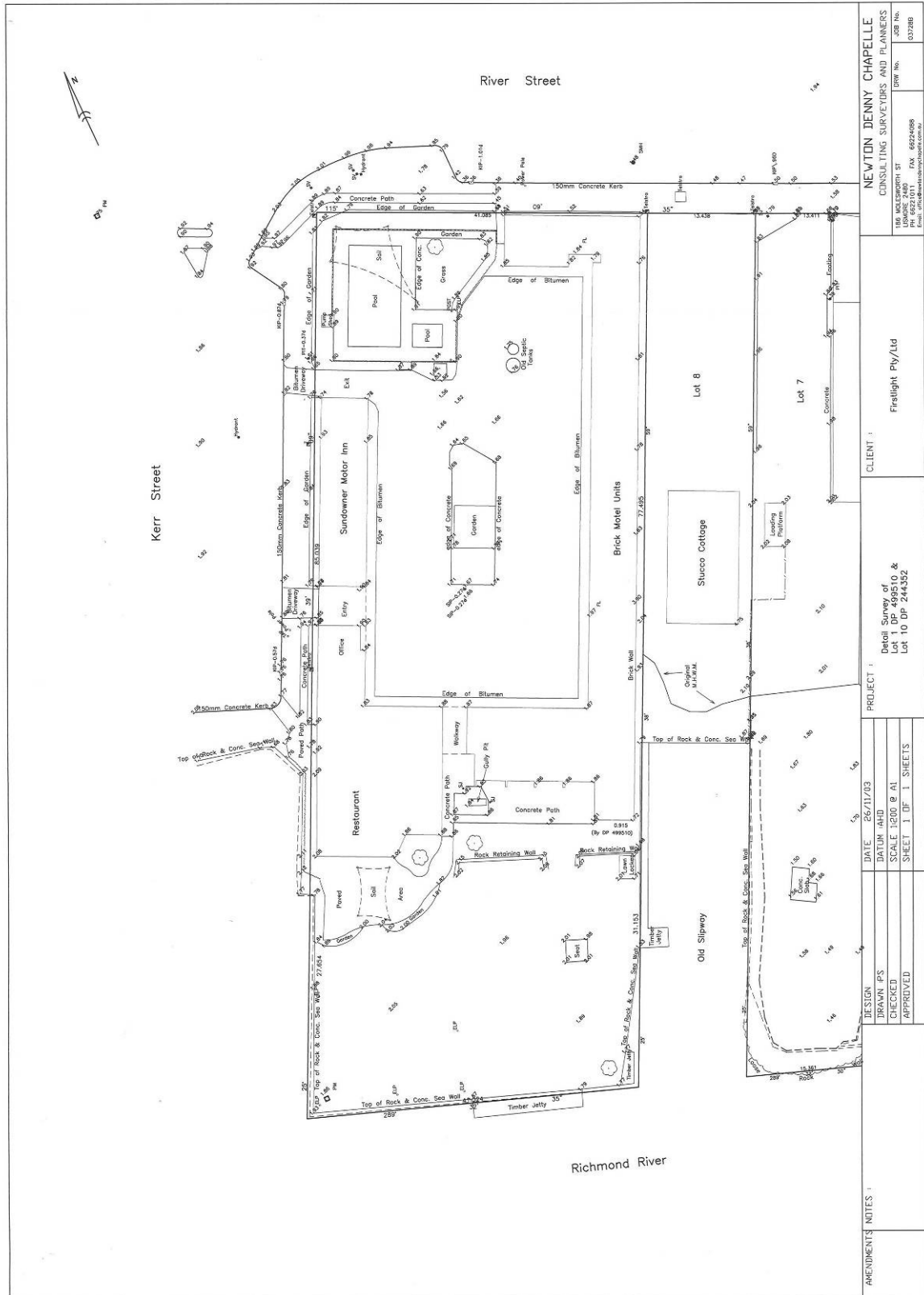
DENOTES INDICATIVE PLANTING ZONE



Client : G MILLS	Amendments :												
Location : LOT 1 DP 499510 & LOT 10 DP 244352 274 RIVER STREET BALLINA	<table border="1"> <thead> <tr> <th>Date</th> <th>Changes</th> </tr> </thead> <tbody> <tr> <td>B 21.02.11</td> <td>LOT 1 NOW SMALLER</td> </tr> <tr> <td>C 20.04.11</td> <td>FUTURE LAND DEDICATION</td> </tr> <tr> <td>D </td> <td></td> </tr> <tr> <td>E 22.12.11</td> <td>FUTURE LAND DEDICATION ALTERED & NO DEMOLITION OF BUILDINGS</td> </tr> <tr> <td>F </td> <td></td> </tr> </tbody> </table>	Date	Changes	B 21.02.11	LOT 1 NOW SMALLER	C 20.04.11	FUTURE LAND DEDICATION	D		E 22.12.11	FUTURE LAND DEDICATION ALTERED & NO DEMOLITION OF BUILDINGS	F	
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PLAN 4 - PROPOSED CONSOLIDATION & LAND DEDICATION
 Drawn: CD
 Date: 22.12.11
 Scale: 1:1000 & 1:500 @ A3
 Ref. No. 11/075 F



AMENDMENTS NOTES :	DESIGN	DATE	26/11/03
	DRAWN	DATUM	ahd
	CHECKED	SCALE	1:200 @ AL
	APPROVED	SHEET	1 OF 1 SHEETS
PROJECT :			
Detail Survey of Lot 1 DP 499510 & Lot 10 DP 244352			
CLIENT :			
Freight Pty/Ltd			
NEWTON DENNY CHAPPELLE CONSULTING SURVEYORS AND PLANNERS			
188 WILSON STREET LINDISFIELD NSW 2456 Ph: 067525088 Fax: 067525089 Email: n.denny@ndc.com.au		JOB No.	037280

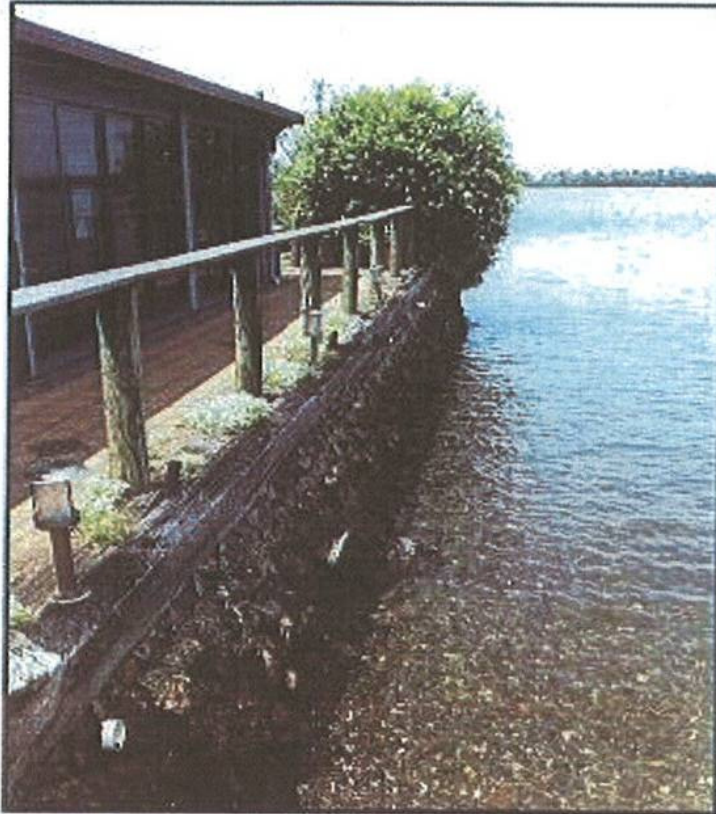


Plate 1 - Existing pedestrian access.



Plate 2 - Existing Pedestrian Path.

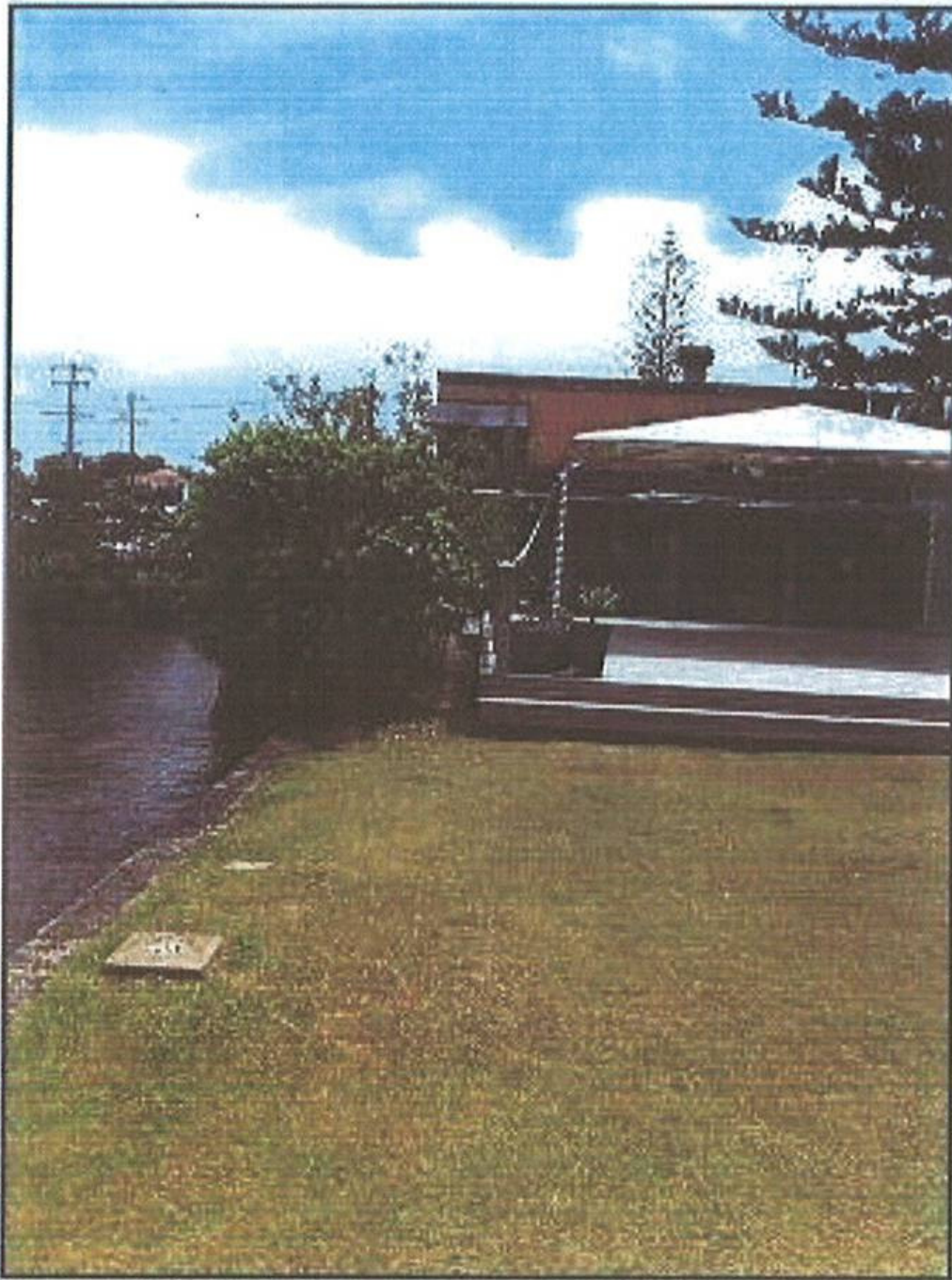


Plate 3 - Existing Deck

Figure 2.1 Ballina Town Centre Structure Plan

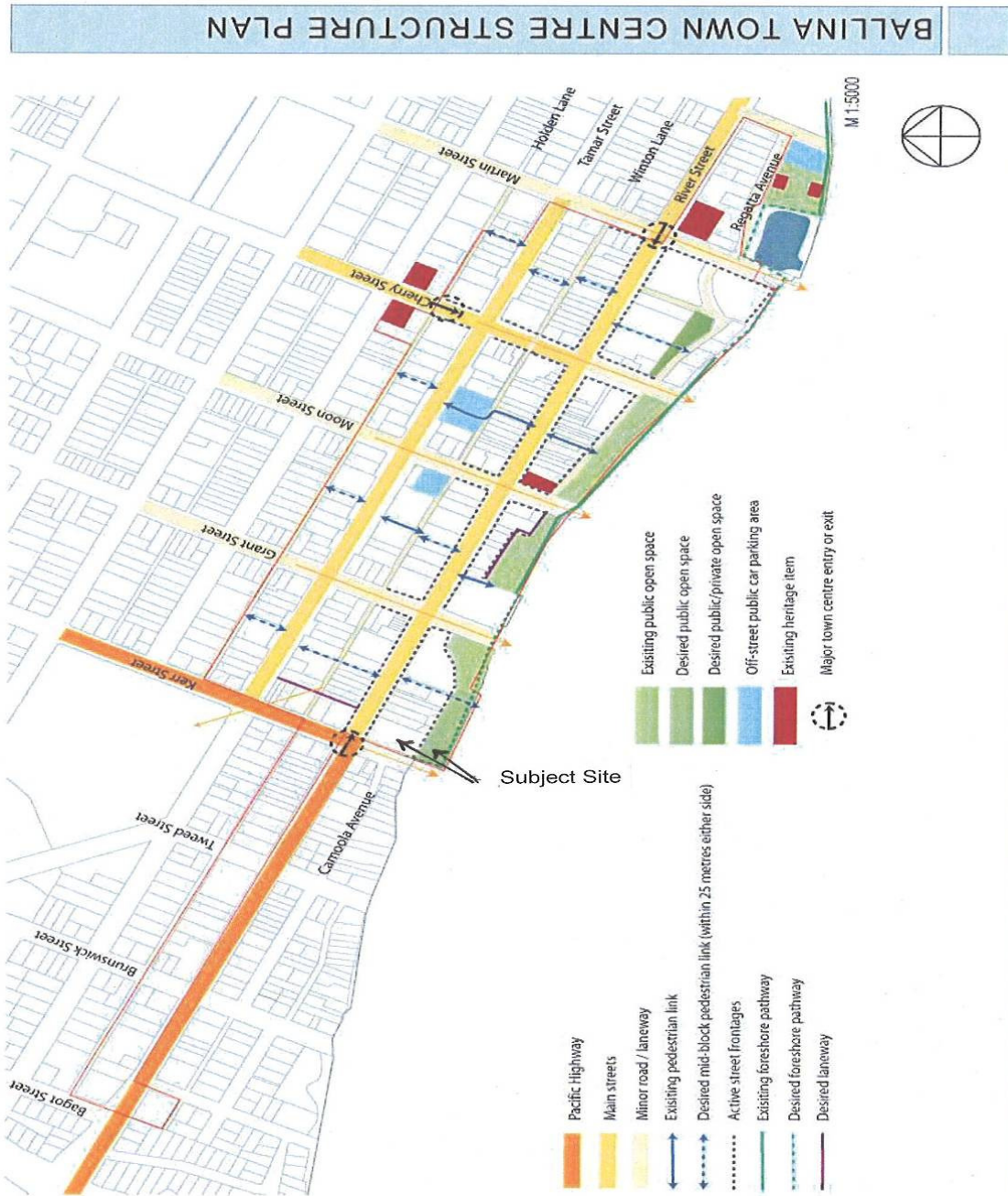


Figure 2.2 Existing heritage items and buildings and items of interest



Captain Cook Park

Vehicular access is currently provided informally across Crown Land on the river side of private allotments. A new laneway is to be created along the river frontage of these allotments to facilitate the provision of active frontages to Fawcett Park and servicing and vehicular access to buildings. The laneway is to be provided within public land.

2.3.7 Foreshore open space

With the Richmond River being a highly valued and significant feature in the Town Centre it is critical that public access be provided along the entire river frontage. The provision of continuous public open space along the river frontage would provide an important local and regional asset.

Attractive, safe and active public access is currently provided in Fawcett Park however flanking buildings do not all address the park. A narrow strip of uninviting public foreshore space has been provided between Martin Street and Cherry Street because of the poor surveillance, no active frontages and bland treatment provided to ground floor car park walls. Access is discontinuous at the west end of the foreshore as the RSL Club is not setback from the river and private land extends to the riverfront. The War Memorial Park is currently underutilised because it is disconnected with other foreshore open space and River Street.

The following controls are proposed to enhance and complete a river foreshore public open space system in the Town Centre.

Between Martin and Cherry Streets (Ramada, Pelican Moorings, Golden Eagle and Dockside frontage)

As river frontage buildings redevelop, active uses are desired to be provided along the ground level on the riverside of sites. To support these uses with an appropriate riverfront public domain, buildings should either be set further back from the river bank or the foreshore path could be extended over the edge of the river. Where this is not possible the car parking is to be provided as a sub-basement or basement in order to avoid the provision of a tall blank wall to the foreshore pathway. Any podium wall (e.g. sub-basement wall) should be setback to allow space for landscape treatments which provide amenity and facilitate surveillance to the foreshore pathway. The foreshore pathway should be visible from the inside of upper floor buildings in order to provide passive surveillance.

Between Cherry Street and the RSL Club (Fawcett Park)

Fawcett Park is the Ballina's most central park. It is used for passive and active recreation and is the focus of key civic events.

Active street frontages are required along the ground level of buildings which face north and south. Upper floors must be orientated towards Fawcett Park in order to provide passive surveillance. Buildings will be required to be setback along the north side of Fawcett Street in order to provide adequate footpath space for a transition between buildings and the street and amenity for outdoor dining. Further controls in regards to the lane widening are provided in Section 3.6.3.

Between Fawcett Park and War Memorial Park (RSL Club frontage)

As the RSL Club site is redeveloped it is preferable for the building to be setback from the riverbank to enable the provision of a public open space connection between Fawcett Park and War Memorial Park. Where this is not possible a pathway which extends over the river edge may be an alternative.

Active uses are required along the riverfront of this site and preferably fronting Fawcett Park and War Memorial Park as well. This is to ensure that both parkland and river views may be had from the buildings and to provide surveillance to these important public open spaces.

War Memorial Park

This park should serve as Ballina's most important passive and reflective open space area. It has the potential to provide a highly attractive outlook from surrounding buildings and transition between new buildings and the riverfront.

It is desirable that buildings fronting War Memorial Park have active frontages on the ground floor. Upper floors along the park frontage must be orientated towards the park in order to provide views from the buildings and passive surveillance to the park.

Between War Memorial Park and Kerr Street (Barlows and Sundowner Site)

This site has the potential to deliver a unique foreshore space which provides a highly attractive outlook from buildings which has references to Ballina's history and landscape. The provision of public open space along the riverfront would enable a continuous foreshore open space network to be provided in the Town Centre – a unique and valuable local and regional asset.

The provision of an interesting and unique riverfront parkland would serve as a key attraction at the west end of River Street. It would enhance the experience of on-site residents and tourists and encourage pedestrians to move to and through the site.

Retention and adaptation of the slipways would maintain a strong historical link to the cultural landscape of Ballina's riverfront. The slipways are a relic from a time when the shipbuilding industry dominated the riverfront along the Town Centre. They will provide both an interesting visual and recreational element in the site and avoid the need for potentially costly and problematic site remediation.

Detailed planning and design for this site has not been possible in the preparation of this DCP. This would more effectively and appropriately be undertaken by collaboration between the land owners, Ballina Shire Council and relevant government agencies. Accordingly, resolution of the extent and configuration of public open space that should be provided has not been possible. Instead several objectives have been formulated to guide future planning and design on the site. These objectives are based upon the Coastal Design Guidelines for NSW (UDAS 2003), the statutory provisions of State Environmental Planning Policy No. 71 – Coastal Protection and North Coast Regional Environmental Plan. The following objectives and strategies must be taken into consideration when assessing development applications on the site:

- Provide a public open space network that connects the War Memorial Park with Kerr Street
- Provide continuous public access along the foreshore
- Retain references to Ballina's history and the marine setting, by preferably retaining and adapting the existing slipways
- Retain references to the landscape setting by protecting the existing Norfolk Island Pines
- Provide public open space that accommodates active and passive recreation
- Provide active uses (and preferably active frontages) at the interface between the private and public domain
- Consider the provision of a new public laneway through the site to provide an edge between buildings and open space, reflect the traditional subdivision pattern in the Town Centre, provide access to ground floor commercial uses and on-street public car parking to aid access to foreshore parkland (Refer to Section 2.3.6)
- Ensure that buildings do not dominate the entire river edge but rather that a transition area is provided between the riverbank and the main bulk of buildings
- Determine the extent and configuration of public parkland having regard to:
 - the alignment of the riverbank to the west and east of the site
 - the landscape and historical features on the site
 - vistas along the foreshore, from the land to the river and from the river to the land
 - the area required for usable and effective public open space
 - other objectives for the site identified above

2.3.8 Other Open Space

North side of Fawcett Street between Cherry Street and Fawcett Lane

The Structure Plan proposes an area of open space at the rear of the Yeates House / Woolworths / Ballina Boulevard / Mc Gintys Hotel properties. This open space would be achieved as part of the redevelopment of the sites. Given the narrow width of Fawcett Street (compared to other streets in the Town Centre), it is considered important to provide meaningful separation between tall buildings on both sides of the street. It also provides an attractive open space area somewhat sheltered from the southerly winds experienced along the riverfront.

3.8.3 Other development controls

(a) Land Use

Objective

- Achieve the desired future character of the precinct

Controls

- Ground floor – must be commercial around the street, park and river edges and along mid-block pedestrian links. Elsewhere on the ground floor may be commercial or residential
- Other storeys – may be either commercial or residential

Refer to definitions of 'commercial' and 'residential' uses in the Glossary.

(b) Public Open Space

Objective

- To achieve the public open space objectives of the Town Centre Structure Plan

Control

- Part of the foreshore located between War Memorial Park and Kerr Street is to be dedicated to Council for public open space purposes in accordance with the strategy and objectives described in the Structure Plan, other relevant planning instruments, strategies and guidelines and Council policy

(c) Norfolk Island Pines

Objective

- To retain elements of the natural landscape as references for building form, markers for the edges between buildings and open spaces and an attractive outlook for residents

Controls

- Existing Norfolk Island Pines must be retained
- Buildings must be setback from the existing Norfolk Island Pines in order to ensure their protection. The setback is to be determined by Council. This will be based on an assessment prepared by a qualified Arborist, to be submitted to Council with a Development Application

(d) Deep Soil Zone

Objectives

- To provide adequate space for the planting of substantial trees and to assist with drainage
- To deliver an attractive outlook for apartment residents

Control

- A deep soil zone shall be provided in accordance with Section 4.14.8 - Deep Soil Zones