

## 5.05. PRELIMINARY APPROVAL FOR STAGING SELF-ASSESSABLE AND CODE ASSESSABLE DEVELOPMENT IN ACCORDANCE WITH A PRECINCT PLAN

**REPORT AUTHOR(S):**  
**GENERAL MANAGER:**  
**DEPARTMENT:**

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Sustainable Communities

### PROPOSAL

Preliminary Approval under section 241 of the Sustainable Planning Act 2009 for staging self-assessable and code assessable development in accordance with a precinct plan, a staging plan & other supporting plans

### APPLICANT

Reef Marina Pty Ltd  
C/- Elizabeth Taylor, Town Planner  
23 Vallely Street  
Freshwater QLD 4870

### LOCATION OF SITE

Wharf Street and Inlet Street, Port Douglas

### PROPERTY

Lot 146 on SR861, Lot 103 on SR500, Part of Lot 126 on SR868 and Inlet Street

### LOCALITY PLAN



<b>LOCALITY</b>	Port Douglas and Environs
<b>PLANNING AREA</b>	Port Douglas Waterfront North
<b>PLANNING SCHEME</b>	Douglas Shire Planning Scheme 2006
<b>REFERRAL AGENCIES</b>	None Applicable
<b>NUMBER OF SUBMITTERS</b>	Not Applicable
<b>STATUTORY ASSESSMENT DEADLINE</b>	24 May 2016
<b>APPLICATION DATE</b>	20 January 2016

### RECOMMENDATION

That Council approves the development application for a preliminary approval under section 241 of the *Sustainable Planning Act 2009* for staging self-assessable and code assessable development in accordance with a precinct plan, a staging plan & other supporting plans over land described as Lot 146 on SR861, Lot 103 on SR500, part of Lot 126 on SR868 and Inlet Street, located at Wharf Street, Port Douglas, subject to the following:

### ASSESSMENT MANAGER CONDITIONS

- The distribution of approved uses is to be in accordance with Precinct Plan V1.11 prepared by Studio Tekton and dated 11 February 2016 and the following Table of Precincts and associated Notes:

Precinct	Corresponding approved land uses
Precinct 1	Holiday accommodation
	Marina (specifically, facilities used to moor and store marine vessels)
	Multi-unit housing
	Short term accommodation
	Staff quarters (associated with Holiday accommodation or Multi-unit housing)
Precinct 2	Caretaker's residence (if associated with a commercial activity)
	Business facilities
	Holiday accommodation
	Marina (Duck Pond)
	Multi-unit housing
	Restaurant
	Shopping facilities
	Short term accommodation
	Staff quarters (associated with Holiday accommodation or Multi-unit housing and Short term accommodation)
	Tavern

<b>Precinct 3</b>	Business facilities
	Caretaker's residence (if associated with commercial premises)
	Car park <sup>i</sup>
	Holiday accommodation
	Health facility
	Indoor sport and entertainment
	Multi-unit housing
	Short term accommodation
	Staff quarters (associated with Holiday accommodation or Multi-unit housing and Short term accommodation)
	Tourist attraction <sup>ii</sup>
<b>Precinct 4</b>	Business facilities
	Car park <sup>i</sup>
	Holiday accommodation
	Indoor sport and entertainment
	Interpretive facility
	Outdoor sport and recreation
	Multi-unit housing
	Restaurant
	Shopping facilities
	Short term accommodation
	Tavern
<b>Precinct 5</b>	Tourist attraction
	Car park <sup>i</sup>
	Marina
	Service industry <sup>iii</sup>

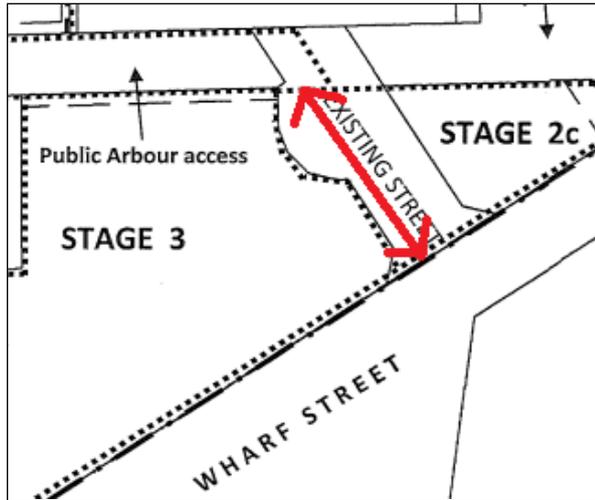
**Notes:**

- i. Car park uses that are part of this preliminary approval are limited to on-ground surface parking (i.e. not involving multi-level structures)
- ii. Tourist attraction includes small-scale Tourist attractions only, such as:
  - Interpretive/educational facilities;
  - Local maritime museum;
  - Aquarium (small scale);
  - Butterfly/bird aviary;
  - Children's activities.
- iii. Service industry includes low-impact Service industry limited to the following:
  - Cleaning or detailing of motor vehicles, not being an automated car washing facility;
  - Catering business;
  - Servicing of small items and appliances such as bicycles, cameras, small electrical goods;
  - Printing;
  - Fishing gear manufacturing.

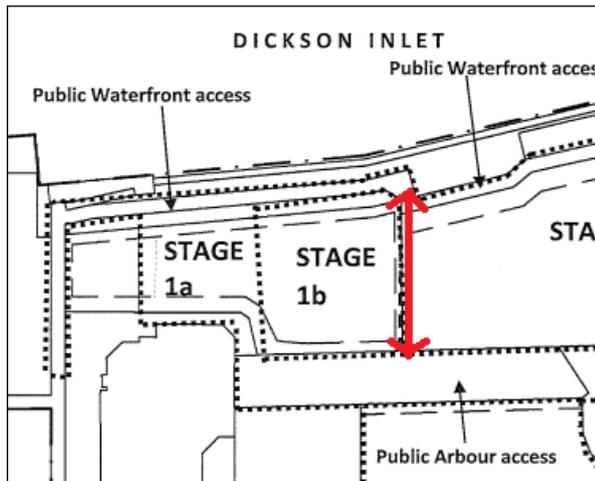
**Staging**

2. The Staging of the proposed development is to be generally in accordance with Staging Plan V1.11 prepared by Studio Tekton dated February 2016 and the following:

- a. The first stage of the Arbour Park is to be completed in association with Stage 1a. In addition, the first stage of the Arbour Park must be provided with connectivity to Wharf Street in the general vicinity of the closed section of Inlet Street at least until such time that access is available via the Public Plaza in Stage 2a (see below).



- b. The public waterfront access in Stage 1a is to be provided with interim connectivity to the Arbour Park adjacent to the common boundary between Stage 1b and 2a until at least such time that full waterfront connectivity is available in Stage 2a (see below).



### **Pedestrian and Vehicular Access**

- 3. Public pedestrian and vehicular access is to be generally in accordance with Access Plan – Vehicular V1.11 prepared by Studio Tekton dated 11 February 2016 and Access Plan – Pedestrian prepared by Studio Tekton dated 11 February 2016. Details of access are to be refined in association with applications of development permits for each stage of the development. The Public Waterfront Access will consist of a 4 metre minimum-width boardwalk located immediately adjacent to land that provides public access to the waterfront (i.e. not positioned behind buildings).**

**Formalised public spaces and pedestrian pathways are to be made accessible to the public via easements or by other equivalent means deemed to be acceptable to Council.**

### **Design controls**

- 4. The proposed form of development is to generally comply with the design controls that apply within the applicable planning scheme at the time of making applications for each development (i.e. building heights, setbacks, landscaping specifications, car parking provisions and other built form design provisions).**

### **Urban Design**

- 5. In addition, the Public Waterfront Access, the Public Arbour Access and the Public Plaza are key urban design components that must be incorporated into the overall future development of the Reef Marina Site. These key urban design elements are to be generally designed to provide a coordinated theme across the Reef Marina Site that reflects the identity of Port Douglas as a distinctive tropical north Queensland seaside resort town in both its urban spaces and built form character.**

**The urban design theme for the Reef Marina Site is to be submitted to Council prior to any future development permits of a significant nature being issued for the site. Amongst other things, the urban design theme for the Reef Marina Site is to address urban design elements such as street furniture, surface treatments, railings, signage, lighting, built form design elements, materials and colours.**

**Future development permits of a significant nature are to reflect the approved urban design theme for the Reef Marina Site.**

### **Interim Use of Later Stages of Development**

- 6. Longer term stages of the development are designed to be landscaped and attractive interim spaces that provide logical connections across precinct boundaries until such time that future stages are developed.**

### **Sight-lines to Dickson Inlet**

- 7. A continuous sight-line is to be maintained to the Duck Pond Basin and through to Dickson Inlet, in association with development of the Public Plaza and Precinct 2.**

## Balley Hooley Rail Line

8. The Balley Hooley rail line and turn table infrastructure is retained and incorporated into future development to maintain its functionality.

## ADVICE

1. This approval, granted under the provisions of the *Sustainable Planning Act 2009*, shall lapse 4 years from the day the approval takes effect in accordance with the provisions of the *Sustainable Planning Act 2009*.
2. Future development permits for uses within Stage 2 will not be permitted to be acted upon until such time that agreement has been reached among all relevant stakeholders sufficient to enable Council to provide written confirmation to the Department of Natural Resources and Mines that such development does not diminish the viability of marine uses that directly serve tourist and fishing operators and private boat owners in line with one of the overarching principles of the Port Douglas Waterfront Master Plan.
3. Charges to be levied for the supply of trunk infrastructure will be calculated in association with future applications for development permits over the land.
4. For information relating to the *Sustainable Planning Act 2009* log on to [www.dilgp.qld.gov.au](http://www.dilgp.qld.gov.au) . To access the *FNQROC Development Manual*, Local Laws and other applicable Policies log on to [www.douglas.qld.gov.au](http://www.douglas.qld.gov.au) .

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## EXECUTIVE SUMMARY

Council is in receipt of an application for a preliminary approval under section 241 of the *Sustainable Planning Act 2009* for staging self-assessable and code assessable development in accordance with a precinct plan, a staging plan & other supporting plans on land located in the Port Douglas Waterfront North Planning Area, known as the Reef Marina site.

A preliminary approval is a legally binding approval that approves development, but does not authorise development to take place. When a preliminary approval is issued, the final detailed design of the development remains outstanding and needs to be submitted for any development permit to be issued. There is no requirement to seek a preliminary approval. However, a preliminary approval assists in the staging of development and in providing certainty where several planning documents are relevant to a site.

The range of uses sought in association with the preliminary approval are either self-assessable or code assessable under the 2006 Douglas Shire Planning Scheme (as amended). Accordingly it is recommended that the preliminary approval be issued subject to conditions.

## TOWN PLANNING CONSIDERATIONS

### Background

The site is located in the Port Douglas Waterfront North Planning Area and is known as the Reef Marina site. The site is bounded by Dickson Inlet to the west, Wharf Street to the east, Reserve land to the north and Closehaven Marina and vacant Reserve land to the south.

Lot 146 on SR861 contains the marina development which has recently undergone significant refurbishment and expansion to the south and a commercial retail complex and associated car parking. Only part of the commercial / retail complex is currently operational.

The Reef Marina Pty Ltd (TRM) has a lease over part of Lot 126 on SR686 which as Reserve for Local Government (Port and harbour) Purposes, with Council as Trustee. TRM also holds a lease over Lot 103 on SR500 being the commonly referred to as the 'duck pond' site.

Inlet Street road reserve is proposed to be closed and incorporated into TRM's site.

Lot 146, part of Lot 126, Lot 103 and inlet Street are currently in the process of being converted to freehold title, through an application to convert SL 9/50240 made by TRM to the State Government.

### Proposal

The applicant has lodged a preliminary approval over the Reef Marina site in order to provide them with certainty in terms of the type, scale and form of future redevelopment and to facilitate staging.

The application is for a material change of use – preliminary approval under Section 241 of the *Sustainable Planning Act 2009*, for staging self-assessable and code assessable development, in accordance with a precinct plan and a staging plan and other supporting plans.

Plans of layout are included in Attachment 1. The plans include the following:

### Context Plan

The Context Plan illustrates the strategic location of the Reef Marina site. The Context plan is a strategic demonstration of how the proposed the Reef Marina site will integrate with surrounding activities. It identifies:

- proposed strong pedestrian connections and linkages to Macrossan Street, via Wharf Street and Grant Street and along the waterfront;
- retention/creation of view corridors through the Reef Marina site to the waterfront;
- proposed vehicular arrival and entry points to the Tourist Centre via Wharf Street to emphasise arrival impact / views;
- focal points providing strong connection and integration between the Reef Marina site and Macrossan Street with the view to establishing a more consolidated Tourist Centre in Port Douglas.

The Context Plan includes a variety of elements that are outside the development site, and will therefore not form part of a development approval.

## Precinct Plan

The precinct plan identifies five precincts to guide the future staged redevelopment of the Reef Marina site:

### Precinct 1

Intent	List of proposed land uses	Level of Assessment
<p>Precinct 1 is to be developed for a mix of both tourist and permanent accommodation uses with inlet and sea views. No commercial uses will be established in this precinct. Precinct 1 includes part of the Arbour Park, which provides strong pedestrian connection to the Tourist Centre and Macrossan Street, via a proposed Public Plaza and Wharf Street. If development in Precinct 2 is delayed, the first stage of the Arbour Park can be provided to provide connectivity to the Tourist Centre, via Inlet Street and Wharf Street.</p> <p>As an alternative pedestrian route to the Arbour Park, a 4 metre wide fixed (not-floating) public pedestrian walkway will provide public access along the waterfront connecting the marina with the proposed Public Plaza. Within Precinct 1, the walkway will be situated over-water adjacent to the existing rock wall. In addition, mooring pontoons outside the public pedestrian walkway will provide direct access to Dickson Inlet to take advantage of the waterfront location of this residential precinct.</p> <p>A service road will be provided to access the accommodation in Precinct 1, the existing marina and Precinct 5 through the main vehicular access in Precinct 4. The service road may be located in Precinct 1 or alternatively, in Precinct 4 and this will be determined at detailed design stage.</p> <p>Car parking associated with residential development in Precinct 1 will be provided in part, on-site (1 space per unit) with the balance of the car parking provided in Precinct 3.</p> <p>Precinct 1 will be accessed via access easements through Precinct 4. Vehicular and pedestrian access and circulation and indicative vehicular access to each stage of the redevelopment of the Reef Marina site is shown on the Access Plan.</p>	Holiday accommodation	Code
	Marina (specifically, facilities used to moor and store marine vessels)	Code
	Multi-unit housing	Code
	Short term accommodation	Code
	Staff quarters (associated with Holiday accommodation or Multi-unit housing)	Code

## Precinct 2

Intent	List of proposed land uses	Level of Assessment
<p>Precinct 2 contains land adjacent to the Inlet, and includes the Duck Pond and the Slipway and part of the Arbour Park and Public Plaza and is proposed to be developed for a mix of both residential, commercial, recreational and marina activities.</p> <p>Inlet and sea views will be available throughout the precinct and the Duck Pond. It is anticipated that activities in the Public Plaza, alfresco dining and access along the waterfront will be a feature of the development.</p> <p>The Duck Pond will be retained in situ but will be refurbished to be used as a small craft basin, with upgraded walkways and berthing facilities for use by private and commercial marine tourist operators adjacent to Stage 2a. The northern side of the Duck Pond, adjacent to Stage 2b, will be used to berth the Reef Marina's four existing commercial trawlers until a permanent relocation solution is realised. This location will be accessed from the Public Plaza and facilitate 'off the trawler' seafood. However, unloading and maintenance facilities is not proposed to be retained due to conflict with public recreational activities in the public plaza.</p> <p>A Public Plaza is proposed at the entry to the precinct and provides connection to the Arbour Park to facilitate pedestrian connectivity between the Reef Marina site and the Tourist Centre.</p> <p>Car parking for commercial activities in Precinct 2 will be provided in Precinct 3, with limited vehicular access across the Arbour Park for service vehicles and residents. All residential accommodation uses in Precinct 2 will be provided with one (1) car parking space on site, with the balance of the car parking being provided in Precinct 3.</p> <p>Precinct 2 has frontage to Wharf Street, but could also gain access via easements through Precinct 3. Vehicular and pedestrian access and circulation and indicative vehicular access to each stage of the redevelopment of the Reef Marina site is shown on the Access Plan.</p>	Caretaker's residence (if associated with a commercial activity)	Self
	Business facilities	Self (in existing building) Code (in new building)
	Holiday accommodation	Code
	Marina (Duck Pond)	Code
	Multi-unit housing	Code
	Restaurant	Self (in existing building) Code (in new building)
	Shopping facilities	Self (in existing building) Code (in new building)
	Short term accommodation	Code
	Staff quarters (associated with Holiday accommodation or Multi-unit housing and Short term accommodation)	Code
	Tavern	Code

### Precinct 3

Intent	List of proposed land uses	Level of Assessment
<p>Precinct 3 will be retained as a car park in the short term. Ultimately this precinct will provide car parking for all commercial premises within the redevelopment and may include other uses above ground and commercial activities at ground level to create an active edge to Wharf Street and the Arbour Park. Commercial activities may also be developed above ground level in association with the redevelopment.</p> <p>Precinct 3 has direct vehicular access to Wharf Street and Inlet Street but could also gain access via access easements, through Precinct 4.</p> <p>Vehicular and pedestrian access and circulation and indicative vehicular access to each stage of the redevelopment of the Reef Marina site is shown on the Access Plan.</p>	Business facilities	Self (in existing building) Code (in new building)
	Caretaker's residence (if associated with commercial premises)	Self
	Car park	Code
	Holiday accommodation	Code
	Health facility	Code
	Indoor sport and entertainment	Code
	Multi-unit housing	Code
	Short term accommodation	Code
	Staff quarters (associated with Holiday accommodation or Multi-unit housing and Short term accommodation)	Code
	Tourist attraction	Code

### Precinct 4

Intent	List of proposed land uses	Level of Assessment
<p>Precinct 4 (Retain/upgrade) is comprised of the existing commercial building adjacent to the marina, the Bally Hooley railway infrastructure (train station and turntable), the adjacent bus parking area which is to be retained and upgraded in the redevelopment and a connection to the waterfront walkway and an events area. The precinct provides direct pedestrian connections via the Arbour Park and Public Plaza to Wharf Street and via Grant Street to the Tourist Centre and Macrossan Street.</p> <p>A service road will be provided to access accommodation premises in Precinct 1, the existing marina and Precinct 5 through the main vehicular access in Precinct 4. The service road may be located in Precinct 4 or alternatively, in Precinct 1 and this will be determined at detailed design stage.</p> <p>It is expected that there will be no expansion of the building footprint in this Precinct in the short to medium term. Any future redevelopment in this precinct, in the short term, will be undertaken within the area under the roof line of the existing building. The north western wing of the building will be demolished and a new main entry created fronting a strong pedestrian link – the Arbour Park – between the Reef Marina site and the Tourist Centre, via Wharf Street.</p> <p>Car parking associated with Precinct 4 is provided in Precinct 3.</p> <p>Precinct 4 has direct vehicular access to Wharf Street. Vehicular and pedestrian access and circulation and indicative vehicular access to each stage of the redevelopment of the Reef Marina site is shown on the Access Plan.</p>	Business facilities	Self (in existing building) Code (in new building)
	Car park	Code
	Holiday accommodation	Code
	Indoor sport and entertainment	Code
	Interpretive facility	Code
	Outdoor sport and recreation	Code
	Multi-unit housing	Code
	Restaurant	Self (in existing building) Code (in new building)
	Shopping facilities	Self (in existing building) Code (in new building)
	Short term accommodation	Code
	Tavern	Code
	Tourist attraction	Code

## Precinct 5

Intent	List of proposed land uses	Level of Assessment
<p>Precinct 5 (Retain/upgrade) is currently developed as a hovercraft landing facility, car park and fuel depot servicing the marina. It is intended that this precinct will remain as the service area for the marina.</p> <p>A service road will be provided to access Precinct 5, the accommodation premises in Precinct 1 and the existing marina through the main vehicular access in Precinct 4.</p> <p>Vehicular and pedestrian access and circulation and indicative vehicular access to each stage of the redevelopment of the Reef Marina site is shown on the Access Plan.</p>	Car park	Code
	Marina	Code
	Service industry	Code

### Staging Plan

The Staging Plan shows the proposed stages of the redevelopment of TRM site. The Staging Plan consists of Stage 1 to 3 with sub-staging which corresponds with the Precinct numbering. The contents of this plan are relatively self-explanatory. It is noted that the development of the linking Arbour Park is split between Stage 1 and Stage 2 of the proposed redevelopment. A condition of approval has been applied to address a potential connection anomaly if Stage 2 is delayed (Condition 2a).

### Access Plan

The Access Plans (Pedestrian and Vehicular) identifies primary pedestrian and vehicular accesses and networks and public areas, proposed to serve the site and to connect the site into the Tourist Centre. The Access Plan is provided to illustrate how the redevelopment can be staged and successfully operate through the redevelopment of the TRM site.

### South Marina Basin Precinct Plan

This plan is provided to show to Council the preferred location for the mooring of the commercial fishing fleet as discussed between the Reef Marina representatives and the commercial fishermen and others on 10 November 2015. The proponent indicates that they are committed to constructing marine infrastructure for the commercial fishermen, as shown on the plan and confirms a commitment to offer long term leases to the fishermen.

The South Marina Basin Precinct Context Plan involves land outside the boundaries of the development application, and while indicative of a potential future outcome with respect to the commercial fishing fleet, cannot form part of a development approval.

### State Planning Requirements

The application is assessed against the relevant sections of Module 10 – Coastal Protection, of the State Development Assessment provisions. Many items contained within this code are better addressed and assessed when individual applications for development permits are lodged with Council. However in broad terms, the proposed uses reflect a coastal dependent development within an urban area that is encouraged by the planning scheme. Future development, at development permit stage, will limit exposure of people and permanent structures to coastal hazard impacts.

## Douglas Shire Planning Scheme Assessment

Douglas Shire Port Douglas and Environs Planning Locality		Code Applicability	Compliance
<b>Locality</b>	Port Douglas and Environs	✓	See comments below
<b>Planning Area</b>	Port Douglas Waterfront North	✓	See comments below
<b>Defined Use*</b>	Various		
<b>Overlay Codes*</b>	Acid Sulfate Soils Code	✗	
	Cultural Heritage and Valuable Sites Code	✗	
	Natural Hazards Code	✗	
<b>General Codes*</b>	Design and Siting of Advertising Devices Code	✗	
	Filling and Excavation Code	✗	
	Landscaping Code	✗	
	Natural Areas and Scenic Amenity Code	✗	
	Reconfiguring a Lot Code	✗	
	Vehicle Parking and Access Code	✗	
	Sustainable Development Code	✗	

\* Note: Many of these codes will become applicable at the time applications are lodged for individual Development Permits.

## Compliance Issues

### Port Douglas and Environs Locality Code

The site is located within the Port Douglas and Environs Locality. The purpose statement for the Locality Code includes the following outcomes:

- *consolidate Port Douglas as the major tourist accommodation and tourist service centre in the Shire;*
- *ensure that tourist development and associated Landscaping is of high quality which reflects and complements the image of Port Douglas as a tropical seaside resort town of international renown;*
- *consolidate the area between Macrossan Street and Marina Mirage as the major tourist, retail, dining and entertainment centre of the Shire;*
- *ensure that all forms of development complement the tropical image of the town by incorporating attractive design and architectural features;*
- *encourage the expansion of residential areas that are pleasant, functional, distinctive and in visually well-defined areas;*
- *protect existing and future residential areas from the intrusion of tourist accommodation and activity;*
- *protect sensitive environments and natural features which give Port Douglas its distinctive character and identity, in particular Four Mile Beach, Dickson Inlet and Flagstaff Hill;*
- *protect the surrounding rural and natural environments from intrusion by urban development;*
- *maintain the distinct rural hinterland, dominant natural environment of the western escarpment, and the existing vegetated hillside of Flagstaff Hill; and*
- *protect primary functions of the port (marine and fishing activities) from incompatible land uses and acknowledge the industrial and commercial land uses associated with the maritime industry, while also providing secondary opportunities for recreational use by residents and tourists.*

The development application is, for the most part consistent with the nominated outcomes in the Port Douglas and Environs Locality Code, where relevant. However, with respect to the last outcome, the future redevelopment of the Reef Marina site, and in particular Stage 2, will diminish the presence of the primary functions of the port (marine and fishing activities) and remove the industrial and commercial land uses associated with the maritime industry.

The proponent puts forward the following view in the development application:

- *the viability of the industrial slipway is marginal and this land use cannot be reinstated at this strategic location, as it will be in conflict with the public/pedestrian/recreational activities sought to activate the waterfront; and*
- *the recently expressed aspirations of the commercial fishermen to relocate to Lot 96, located within the Port Douglas Waterfront South Planning area to create a vibrant and working Fisherman's Wharf, as a key entry feature on Wharf Street to the Port Douglas waterfront and Tourist Centre, necessitates review of this Planning Outcome that dates from 2008, some eight (8) years ago, and may well not express the current aspirations of the key stakeholders.*

At the time of writing the slipway is understood to be not operating. Furthermore, the current application does not involve any proposal to relocate the commercial fishermen to an alternative site.

The applicant has provided a submission with respect to the Commercial Fishermen and the Slipway (see Attachment 2) which strongly advocates for the relocation of the commercial fishing fleet to Lot 96, immediately to the south of the marina basin in the medium to longer timeframe, while offering a short-term solution to accommodate the existing commercial trawler tenants on the northern side of the duck pond basin. Lot 96 is not part of the application and is therefore, outside considerations that are relevant to this application. Furthermore, the applicant contends that slipway is unviable, contrary to maintaining high environmental standards and unable to compete with operations conducted out of Cairns and does not propose to continue this land use activity.

The applicant also contends that it would be unlawful to require as a condition of an approval that either the commercial fishermen or the slipway be relocated to another site as such a condition would not be a reasonable imposition on the current development application and would apply to land outside the scope of the current development application (i.e. be outside the applicant's control).

It is agreed that the applicant's assertions in the regard are valid. Conditions need to not only be relevant, but be reasonable to the development proposal, which in this case is a preliminary approval only. A preliminary approval is a legally binding approval that approves development, but does not authorise any development to take place. When a preliminary approval is issued, the final detailed design of the development remains outstanding and this still needs to be submitted as part of future development application(s). This is the reason that this application does not contain any detailed design drawings. Conditions that attach to a preliminary approval are normally very broad and establish expectations for future downstream applications.

## Port Douglas Waterfront North Planning Area

The land is included within the Port Douglas Waterfront North Planning Area under the planning scheme. The Port Douglas Waterfront North and the Port Douglas South Planning Areas were introduced into the Douglas Shire planning scheme in 2010, to specifically provide a statutory framework to support the Port Douglas Waterfront Master Plan. The Port Douglas Waterfront Master Plan, itself, is a strategic plan prepared to guide the incremental transformation of the Port Douglas Waterfront. It balances development opportunities with environmental preservation, heritage conservation and enhancing public and tourist recreation opportunities. The Master Plan also provides guidance to Council when considering operational matters, where to make physical improvements and outlines different opportunities and constraints that exist in the township.

The purpose statement for the Port Douglas Waterfront Planning Area Code contains the following outcomes:

- *The Port Douglas Waterfront North Planning Area evolves as a revitalised open space and waterside development precinct;*
- *Development within the Port Douglas Waterfront North Planning Area is designed to be sympathetic to the environmentally sensitive Dickson Inlet and mitigates any adverse impacts;*
- *The establishment of mixed-use development is facilitated to promote activity and vitality;*
- *Development contributes to a high quality public realm;*
- *Built form provides an attractive point of arrival from both land and sea;*
- *Pedestrian connectivity is safe, efficient and provides for the needs of all users of the Port Douglas Waterfront;*
- *Parking (and associated infrastructure) does not undermine the relationship between buildings and street;*
- *A sense of place is created through aesthetic streetscapes and innovative public and private open space;*
- *Character is enhanced through the identification of gateway sites, landmarks, main approach routes and pedestrian thoroughfares and view corridors;*
- *A high level of pedestrian and streetscape amenity is facilitated along the waterfront and road network through the use of landscaping, public art and streetscape elements;*
- *The importance of marine-based industries to the area is recognised;*
- *Marine-based industries are protected from incompatible uses;*
- *Marine infrastructure is established to service the tourism, fishing and private boating community;*
- *The functionality of the Balley Hooley tourist rail is retained;*
- *Uses identified as inconsistent uses in the Assessment Table dealing with material change of use for the port Douglas and Environs Locality are not established in the Port Douglas Waterfront North Planning Area.*

The proponent puts forward the following statement in their development application:

*'The proposed staged redevelopment of the site, as outlined in the supporting plans, is compliant with the Outcomes of the Code, subject to consideration being given to the validity of the Outcomes seeking to retain (even in the short term) industrial activities in a public recreational area, as being in conflict with good town planning outcomes.'*

Despite this statement, the purpose of the Port Douglas Waterfront North Planning Area Code is, amongst other things, to recognise the importance of the marine-based industries, to protect marine-based industries from incompatible uses and to establish marine infrastructure to service the tourism, fishing and private boating community.

However, these planning outcomes do not translate into the associated assessment criteria contained within the Code. In fact, the 'code assessable, acceptable solutions' within the Code promote relocation of marine-based infrastructure (slipway) to the Port Douglas Waterfront South Planning Area, or as otherwise approved by Council (A18.1). Furthermore there are no statements in the assessment criteria within the Code that relate to the commercial fishing fleet.

For all intents and purposes, the planning objectives contained within the code promote the retention of the marine-based industries and infrastructure, but to relocate them elsewhere in Dickson Inlet (i.e. to the Port Douglas Waterfront South Planning Area).

It is noted that A3.1 in the assessment criteria within the Port Douglas Waterfront South Planning Area requires the development of land (known as the Marano site) to incorporate a slipway, or alternative functioning facility, with the capacity to service the Port Douglas marine and tourism industry. Despite including provisions to relocate the slipway, neither the Port Douglas Waterfront Master Plan nor the Planning Area Codes in the planning scheme offer a practical solution to solving this planning dilemma, without third party involvement / intervention.

### **Port Douglas Waterfront Master Plan 2009**

The Port Douglas Waterfront Master Plan was adopted by Cairns Regional Council in November 2009 after extensive community consultation on the draft Master Plan. The Master Plan provides a clear strategic direction for the incremental transformation of the Port Douglas Waterfront, including the following objectives:

- *To set out a vision for revitalisation of the waterfront;*
- *To protect and enhance the environmental attributes; and*
- *To provide a flexible framework, expressed through several key strategies that will assist the Council and community in managing change.*

The document refers to the Marina Mirage Redevelopment (TRM site) as follows:

*“A key feature of the master plan is recognition of the redevelopment potential of the existing Marina Mirage site. This site forms the southern ‘bookend’ to the main waterfront area and has been identified through the EBD process as having the potential to become a high quality, distinctly tropical, mixed use development that includes residential and maritime activity. The details for this site will ultimately come forward through the design process being undertaken by the land owner and will be guided by the principles set out in section 5.4.”*

Section 5.4 – Physical Character – identifies the character of ‘Port’ as its tropical, latitude waterside location and mix of tourism and marine industry related activities. With respect to the Marina Mirage site, “Built form within this area will be taller and higher in intensity than the waterfront area to the north but will respect the overall built form strategy for the township. The waterfront area will adopt a ‘harder’ quayside character, softened through the use of natural materials, shade trees and landscaping.

The Schedule of Projects within the Port Douglas Waterfront Master Plan indicates retention of the fishing fleet and other vessels in the Mowbray Street Inlet (Duck Pond) as a short term strategy, whereas marine industry reorganisation (including relocation of existing abrasive marine industries and slipway removal/relocation) as medium to long term strategies.

While it is agreed that Port Douglas may lose a significant part of its vitality as a place and its tourism destination appeal without the presence of a working port at the waterfront, the Port Douglas Waterfront Master Plan and the planning scheme do not offer any clear understanding of how the outcomes can be achieved in the redevelopment process, and as a consequence do not represent readily achievable planning outcomes, without significant third party intervention.

It is recognised that there is a significant local maritime industry (yacht rigging specialist, marine engine and equipment repair, vessel maintenance, cruise vessel maintenance etc.) that relies on the marine facilities at the waterfront. It follows that it is desirable from a planning perspective that the presence of the commercial fishing fleet and associated activities based at the waterfront are not diminished.

However, a 'win-win' outcome for all stakeholders will require intervention that is outside the planning process, and more specifically, outside the capacity of being addressed in association with this particular development application for a preliminary approval.

### **Conditions**

Conditions that attach to this preliminary approval must be relevant and reasonable having regard to the nature of the application. In this case, eight (8) preliminary approval conditions are proposed that relate to the following broad planning objectives that will guide downstream approvals:

- Allocated approved uses to specific precincts (Condition 1);
- Approving staging plans with some minor amendments to ensure connections are not compromised (Condition 2);
- Approving the pedestrian and vehicular access arrangements and clarifying the boardwalk is located on the water's edge (Condition 3);
- Ensuring that the design controls that are applicable at the time of the making applications for development permits are those contained in the planning scheme that applies at that time (i.e. when the new planning scheme is adopted, the planning controls associated with the new planning scheme will apply) (Condition 4);
- Ensuring that a uniform urban design theme is developed and endorsed by Council prior to further development permits of a significant nature being issued (Condition 5);
- Undeveloped stages are to be designed to be attractive interim spaces (Condition 6);
- Maintenance of view vista from Wharf Street, Public Plaza across to Wharf Street (Condition 7); and
- Retention of the Balley Hooley rail infrastructure (Condition 8).

### **Referral Agency Requirements**

There are no referral agencies involved in the assessment of this application.

### **Public Notification / Submissions**

The application is code assessable and not subject to public notification.

## ADOPTED INFRASTRUCTURE CHARGES

A preliminary approval does not trigger Adopted Infrastructure Charges.

## COUNCIL'S ROLE

Council can play a number of different roles in certain circumstances and it is important to be clear about which role is appropriate for a specific purpose or circumstance. The implementation of actions will be a collective effort and Council's involvement will vary from information only through to full responsibility for delivery.

The following area outlines where Council has a clear responsibility to act:

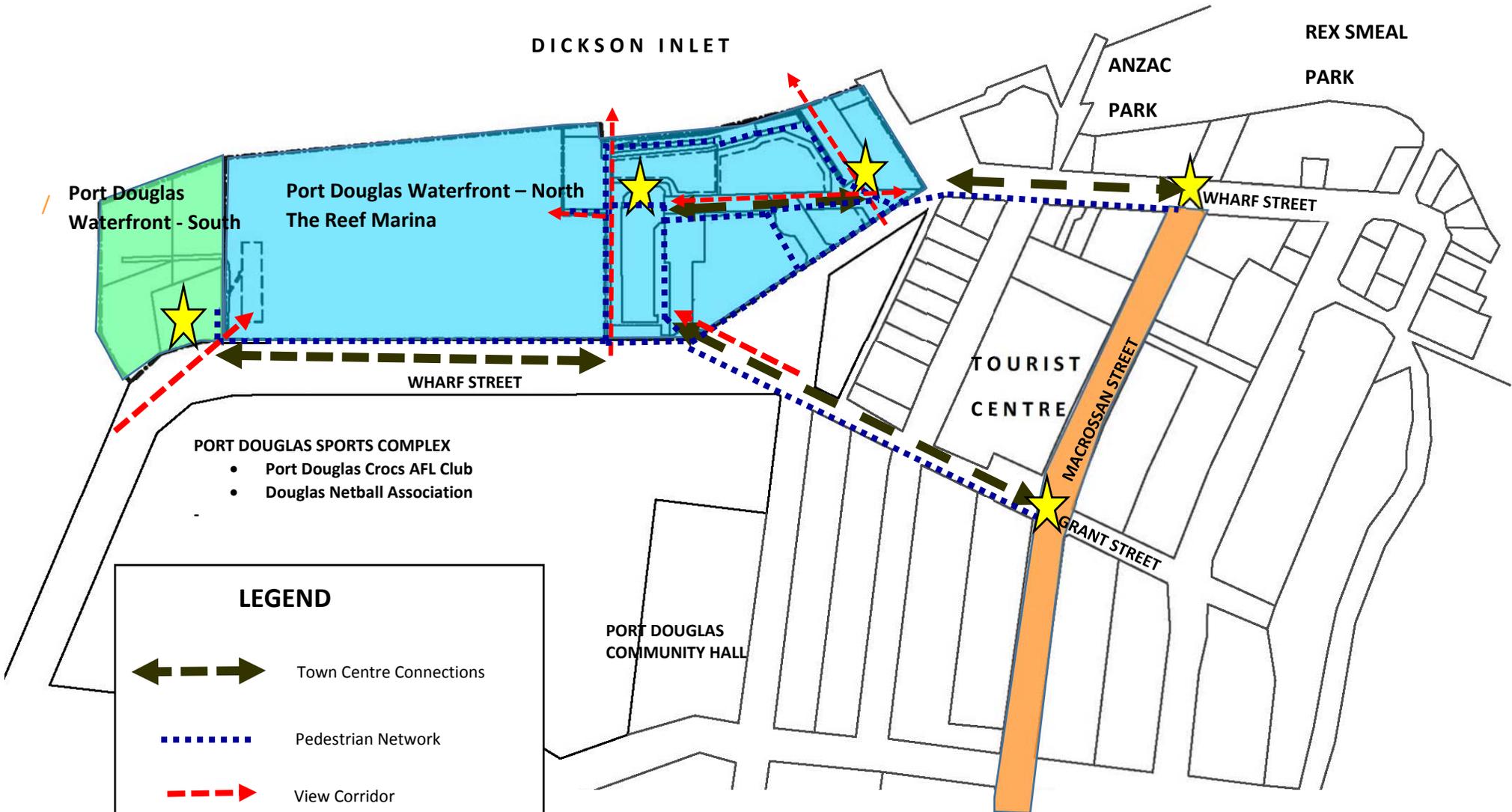
**Regulator:** Meeting the responsibilities associated with regulating activities through legislation or local law.

Under the *Sustainable Planning Act 2009* and the *Sustainable Planning Regulation 2009*, Council is the assessment manager for the application.

## ATTACHMENTS

Attachment 1 – Plan(s)

Attachment 2 – Applicant's submission with respect to the Commercial Fishermen and the Slipway



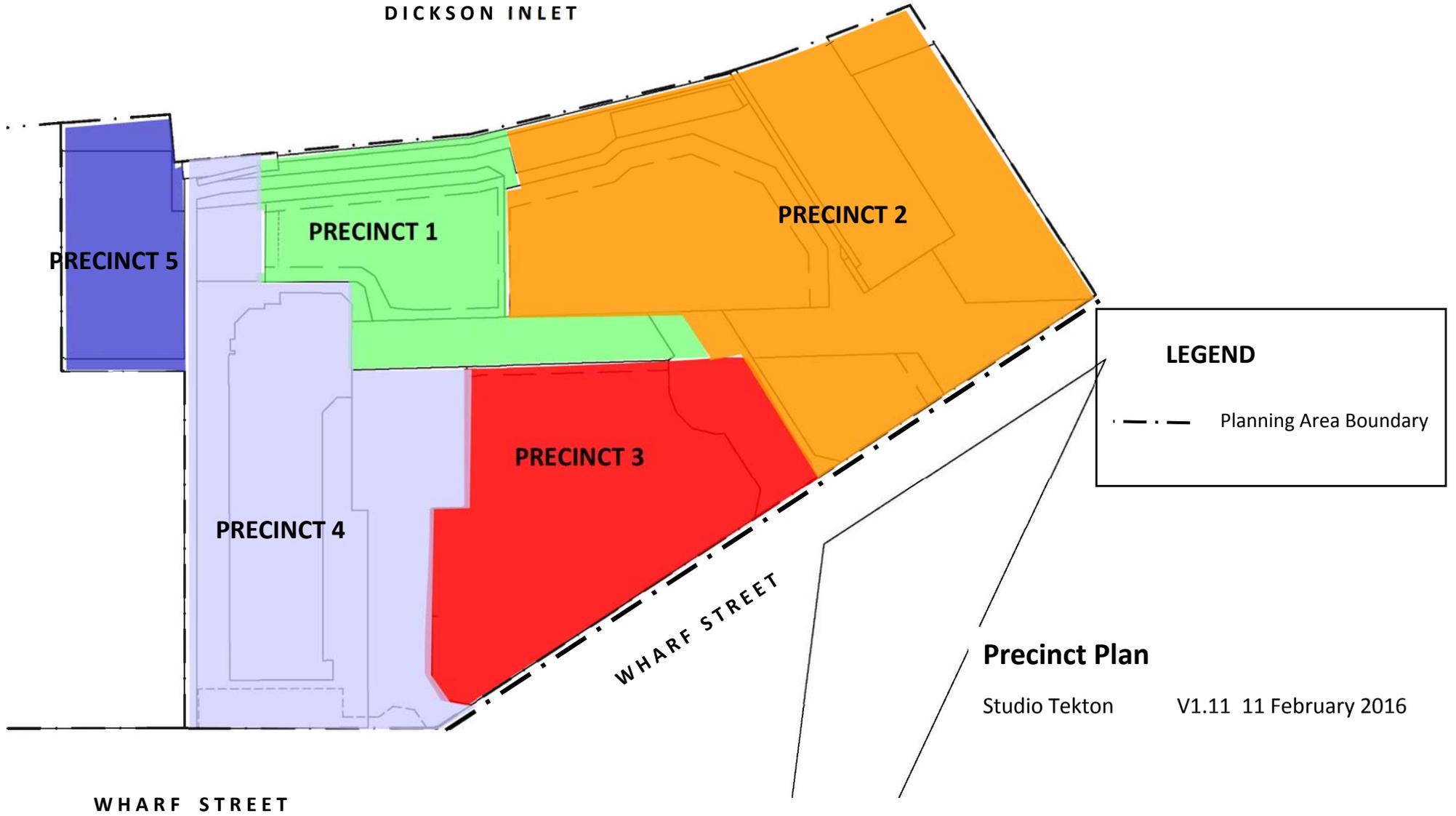
- PORT DOUGLAS SPORTS COMPLEX**
- Port Douglas Crocs AFL Club
  - Douglas Netball Association

**LEGEND**

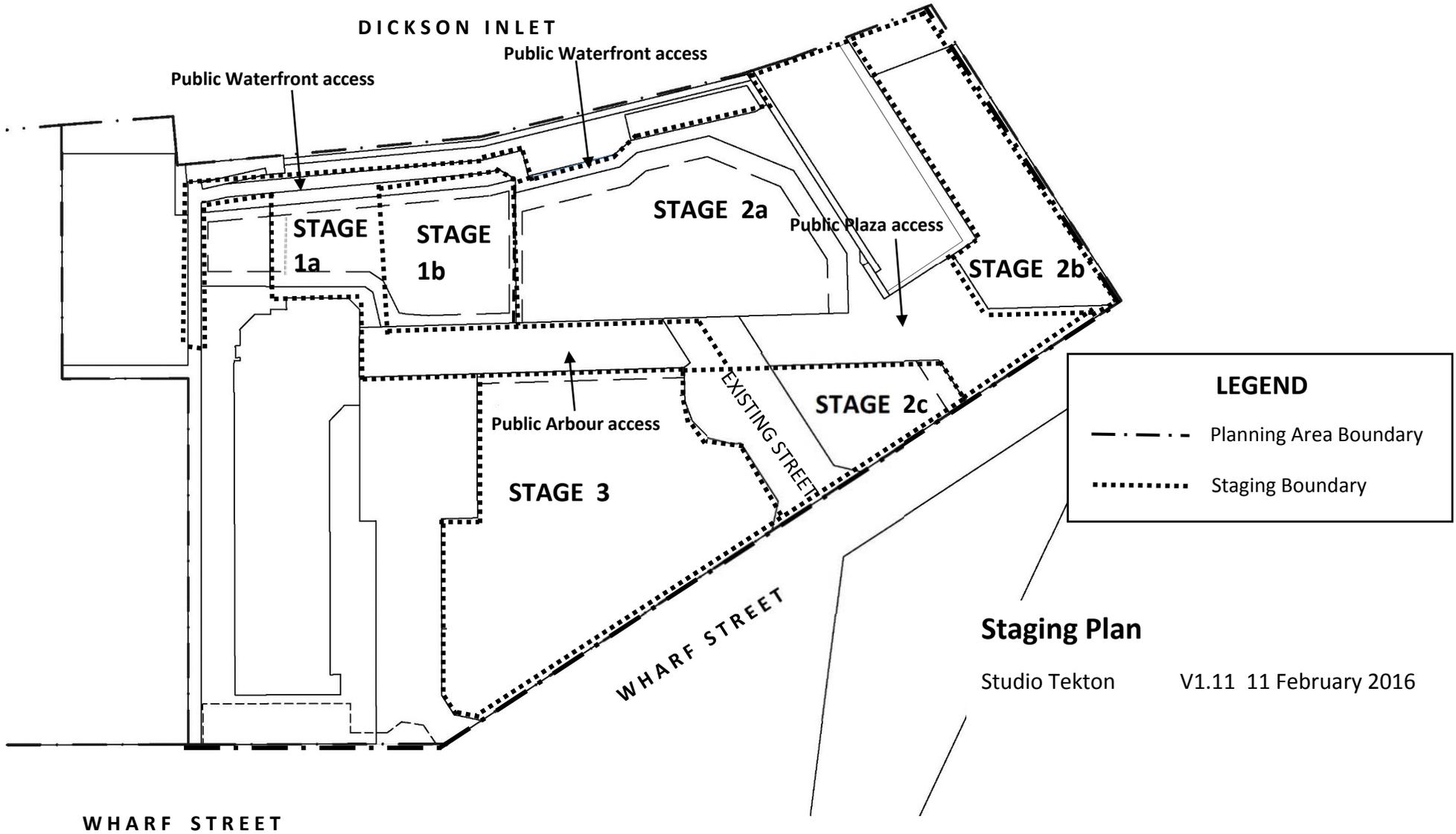
- ↔ Town Centre Connections
- ⋯ Pedestrian Network
- - - View Corridor
- ★ Node – focal place.

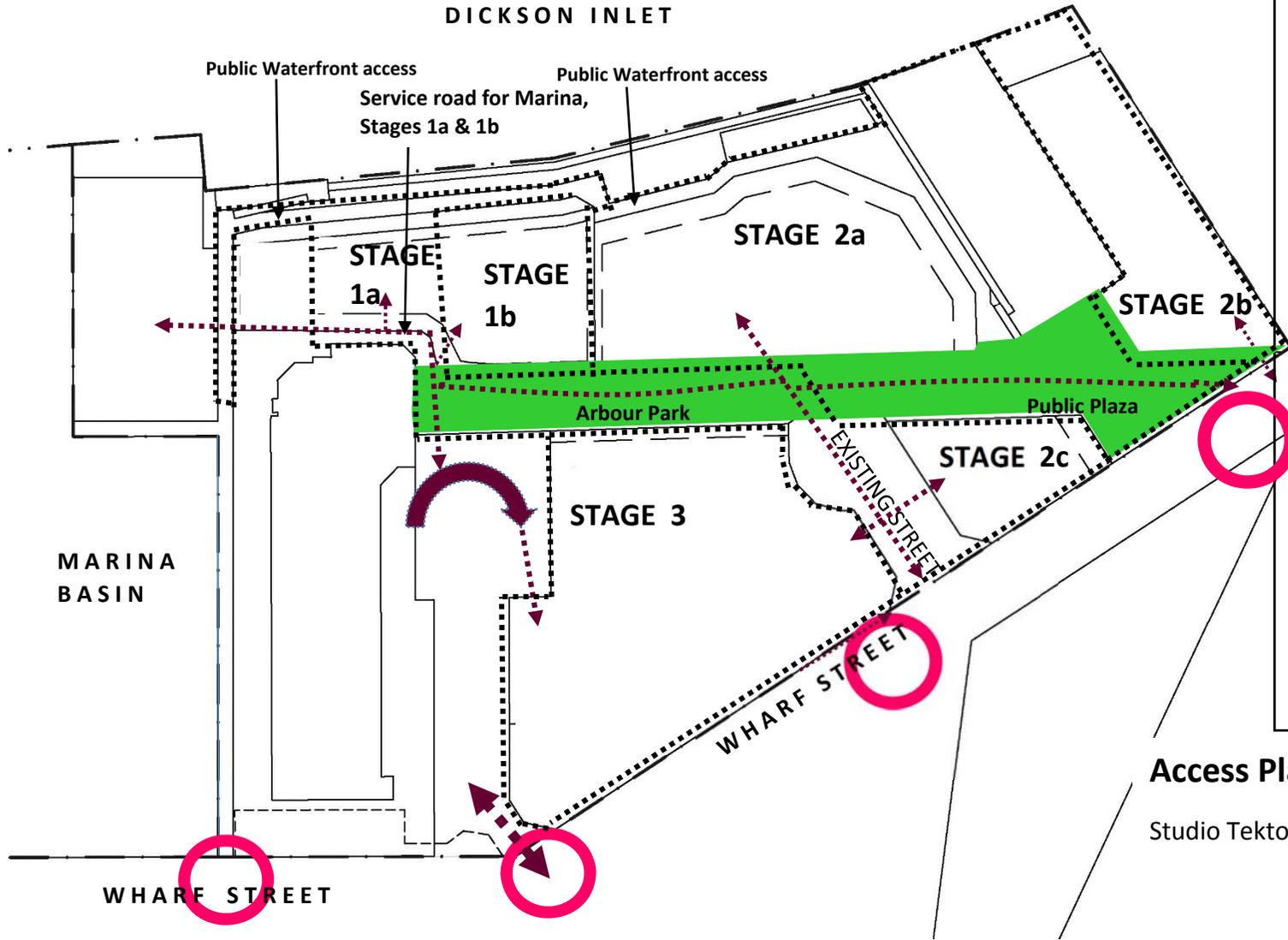
### Context Plan

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WHARF STREET



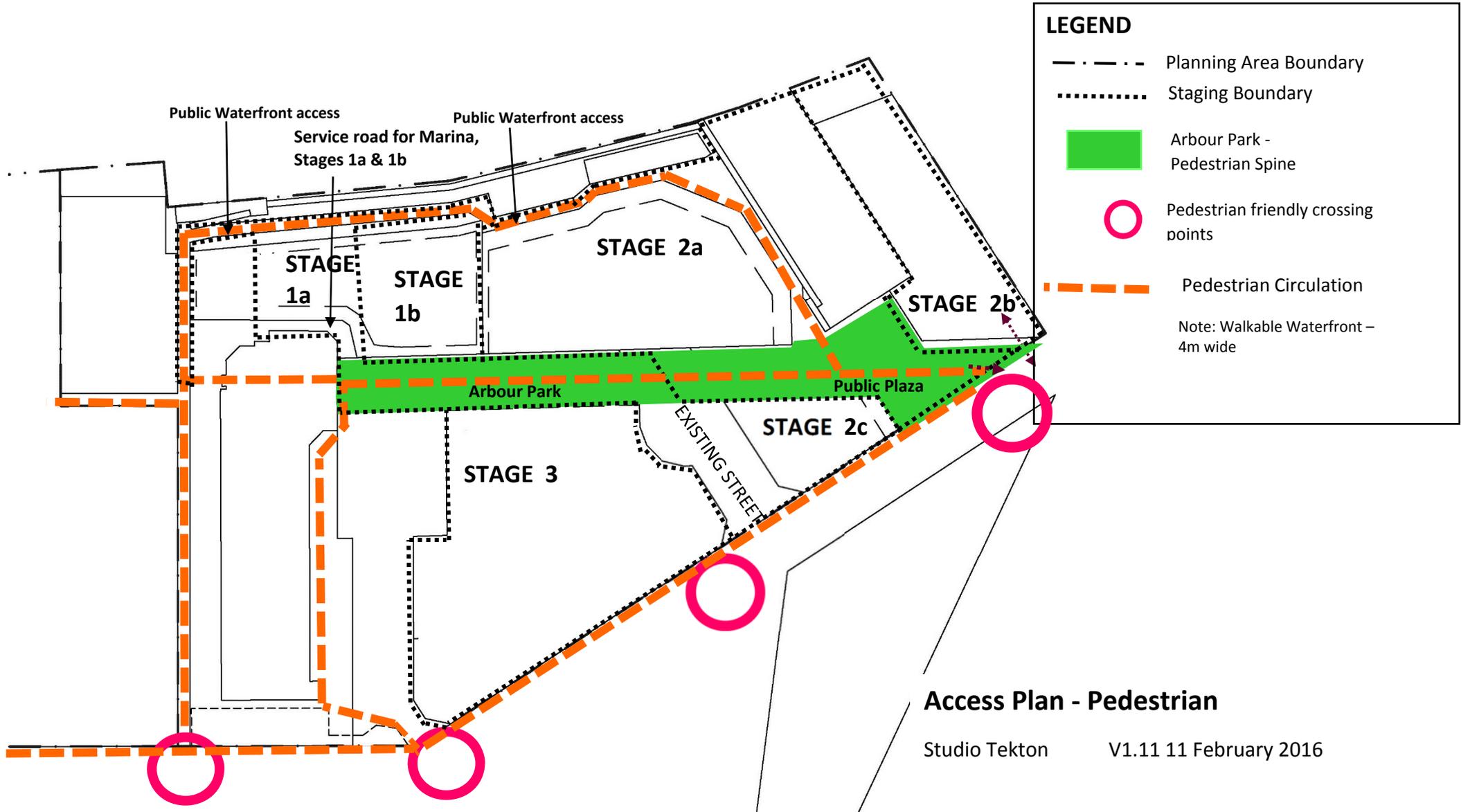


**LEGEND**

- · — · — · — · — Planning Area Boundary
- Staging Boundary
- Arbour Park - Pedestrian Spine
- Pedestrian friendly crossing points
- Primary Traffic Circulation
- Primary Traffic Circulation - internal.
- Low/limited indicative vehicular access

**Access Plan - Vehicular**

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**LEGEND**

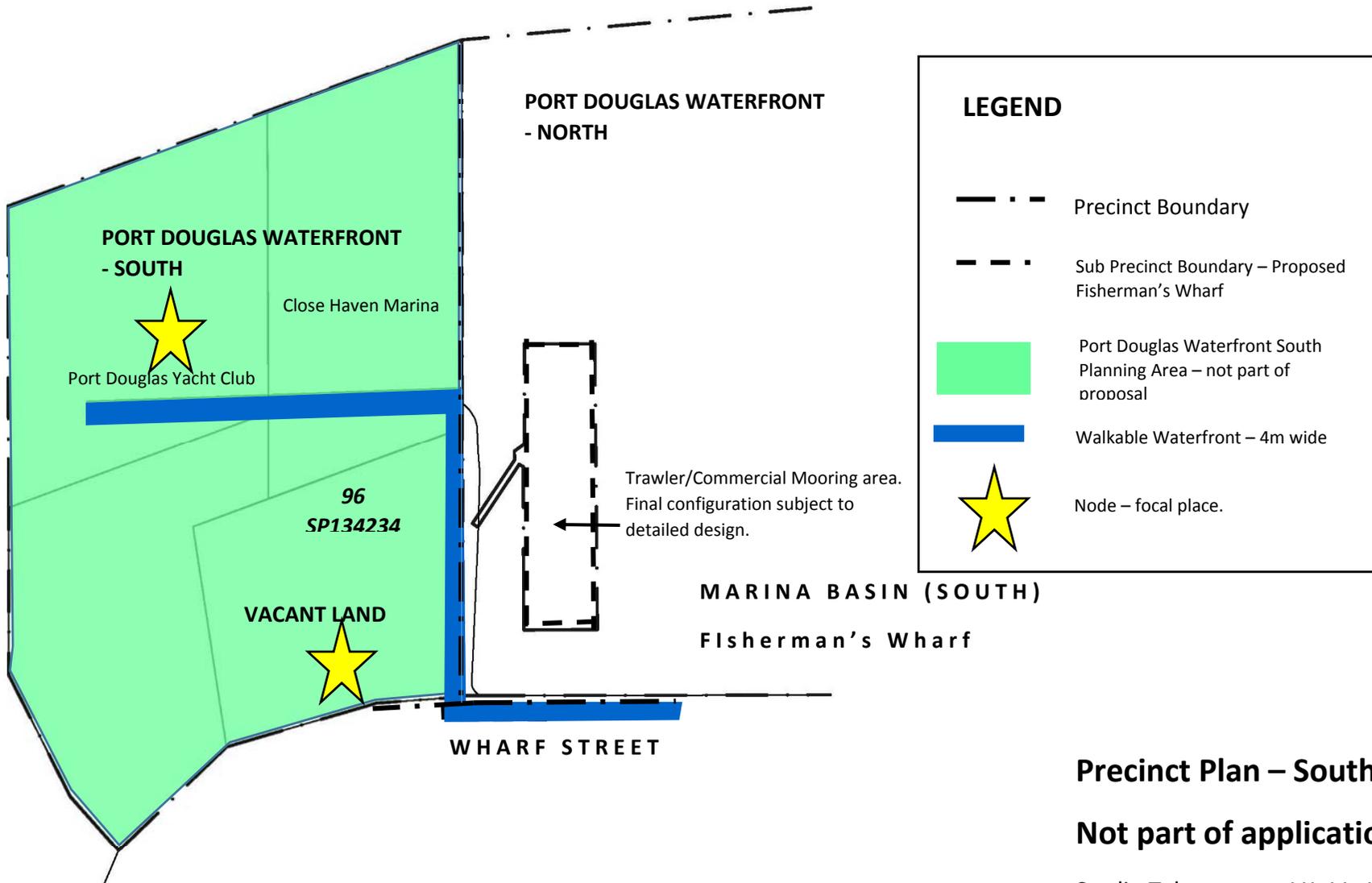
- · — · — Planning Area Boundary
- Staging Boundary
- Arbour Park - Pedestrian Spine
- Pedestrian friendly crossing points
- - - Pedestrian Circulation

Note: Walkable Waterfront – 4m wide

**Access Plan - Pedestrian**

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### Precinct Plan – South Marina Basin

Not part of application

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The Tropical Reef Slipway offers a comprehensive range of ship repair services and was established in 1977. The slipway provides a range of specialist services including:

- 3000 tonne slipway;
- vessels to 100 metres;
- highly qualified staff who can work 24/7;
- deep water berths;
- outlet wharves;
- two cranes;
- three elevated work platforms;
- three work boats;
- 350 tonne dry dock;
- full machine workshop;
- propeller re-pitching.

The BSE Cairns Slipway is a complete marine repair and refit facility that was founded in the early 1970s. The slipway provides a range of specialist services including:

- 1200 tonne slipway;
- 300 metre of fit out berths;
- 3 x 78 metre sheds for undercover refits;
- painting to luxury standard;
- propeller repairs and engine overhauls;
- structural repairs;
- electrical and electronic repairs and installation; and
- marine safety repairs and services.

The Norship Marine Slipway provides a comprehensive refit and repairs service and has a long history in ship building and repair in the marine industry. The slipway provides a range of specialist services including:

- 400 tonne and 160 tonne travel lift machines;
- 50 hard stand bays fully serviced;
- 60 metre and 25 metre wharves – vessels to 85 metres;
- 2 x blast and paint sheds – vessels to 27 metres;
- blast chamber;
- cranes, forklifts and EWPs;
- high pressure water blasters;
- trade workshops and storage units; and
- paint shop – paint and supplies.

The likelihood of anyone establishing a new slipway facility in Port Douglas is remote, given:

- the very limited marine repair services in Port Douglas;
- the range of services offered locally in Cairns and the economies of scale that can be offered; and
- the high cost of achieving stringent environmental standards in establishing a new facility, making the facility commercially unviable.

It is difficult to see how the relevant provisions of the Planning Scheme can be achieved and this brings into question the validity of these provisions.

It is considered to be contrary to good town planning and possibly unlawful, to delay the redevelopment of the Reef marina site, which will generate significant long term investment in Port Douglas and promote Port Douglas tourism: on the basis that the Planning Scheme

requires the retention of unviable marine industrial activities, such as the existing slipway, and also requires the relocation, locally of this unviable maritime industry. This is counter to the 'need' argument, often espoused in planning, where proposed development can be conditioned so it cannot proceed until a population threshold has been reached to ensure commercial development is viable and does not cause economic hardship to existing commercial facilities, in the local area.

Any condition requiring such actions is likely to be unlawful. Under the *Sustainable Planning Act 2009*, at Clause 345, it states:

*345 Conditions must be relevant or reasonable*

*(1) Conditions must-*

- (a) be relevant to, but not an unreasonable imposition on, the development or use of premises as a consequence of development;*
- (b) be reasonably required in relation to the development or use of the premises as a consequence of development.*

It would be an unreasonable imposition on the Reef Marina's development, for Council to impose any condition that specifies that the slipway is to remain operational until it is relocated into Waterfront South – an action that may never be undertaken and thereby totally compromising the achievement of all other objectives for the Port Douglas waterfront redevelopment. Particularly given that the slipway may never be viable elsewhere and the Planning Scheme only envisages it being located on one other specific site.

In addition, Clause 346, states:

*346 Conditions generally*

*(1) A condition may –*

- (a) place a limit on how long a lawful use may continue or works may remain in place; or*
- (b) state development may not start until other development permits or compliance permits, for development on the same premises, have been given and other development on the same premises, including development not covered by the development application on the same premises, including development not covered by the development application have been substantially started or completed; or*
- (c) require compliance with an infrastructure agreement relating to the land; or*
- (d) require a document or work to be subject to compliance assessment;*
- (e) require development, or an aspect of development, to be completed within a particular time; or*
- (f) require the payment of security under an agreement under section 348 to support a condition mentioned in paragraph (e).*

This clause clearly states that a condition may deal with other development permits/compliance permits/ development **on the same premises**. The Council cannot impose a condition that requires the action of a third party on other premises, over which the proponent of the development has no control. This would be considered to be an unlawful condition.