



# Elements of Byron

Proposal to extend existing coastal protection  
works at Lot 1 DP1215893  
Bayshore Drive, Belongil

**PLANNERS NORTH** October 2023

## COMPLIANCE AND USAGE STATEMENT

This Statement of Environmental Effects has been prepared and submitted under Part 4 of the *Environmental Planning and Assessment Act 1979* by:

### Preparation

Name: Kate Singleton  
Company: PLANNERS NORTH  
Address: 6 Porter Street Byron Bay, Bundjalung Country, NSW, 2481  
Postal Address: P.O. Box 538 Lennox Head Bundjalung Country, NSW 2478  
In respect of: Development Application

### Application

Proponent: Elements of Byron  
Address: C/ - PLANNERS NORTH  
P.O. Box 538, Lennox Head Bundjalung Country, NSW 2478  
Land to be developed: Lot 1 DP1215893, Bayshore Drive, Byron Bay NSW  
Proposed development: Proposal to extend existing coastal protection works  
Environmental Assessment: Statement of Environmental Effects

### Certificate

I certify that I have prepared the content of this Development Application and to the best of my knowledge:

- it is in accordance with the Act and Regulations, and
- it is true in all material particulars and does not, by its presentation or omission of information, materially mislead.

### Notice

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Kate Singleton RPIA  
**PARTNERSHIP PRINCIPAL**



ABN 56 291 496 553  
6 Porter Street,  
Byron Bay NSW 2481  
T: 1300 66 00 87



Ref: 1315.4256  
**Date: October 2023**

## EXECUTIVE SUMMARY

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PLANNERS NORTH and Royal HaskoningDHV have been engaged by Elements of Byron to provide Town Planning and Coastal Engineering advice with respect to the preparation and lodgement of a Development Application with Byron Shire Council for works on land described as Lot 1 DP1215893. Development consent is sought to undertake works to extend the existing coastal protection works approved on the subject land.

The existing geobags comprise a total length of 210 metres with a crest level of 1.41 metres AHD. Following recent foreshore erosion in 2022 a need for an extension of the existing works was identified. The proposed extension of the existing geobag coastal protection works will comprise a temporary structure with a proposed lifespan of 5 years. The works seek to undertake alterations and additions, including extension along the northern shoreline for a distance of 40 linear metres with an overall approximate height of 2.1m. The proposal provides for a return at the northern limit of the extension to mitigate out-flanking risk and the use of existing geotextile sandbags currently stockpiled on site.

Where the works are located seaward of the existing erosion escarpment. The area between the crest of the works and the escarpment will be back filled and battered back at a stable slope. The two geobags at the crest will be left exposed to facilitate alongshore pedestrian access unless the crest level is below the existing beach berm level at the time of construction. Where the works are located wholly with the dunal system they will be completely back filled. At the completion of works, vegetation of the dune areas will be undertaken using suitable species.

The proposal to extend the existing coastal protection works is a product of many factors. These factors include:

- the opportunity to prevent further coastal erosion of the site and make provision for effective coastal protection works on private land; and
- the ability to understand the impacts of the proposal based on past and current performance.

The proposed development is permissible in accordance with the provisions of Byron Local Environmental Plan 1988 (BLEP88) and of the Coastal Management Act 2016.

In our opinion, the development can be seen to satisfy a legitimate need and the proposed development will be maintained and managed in a manner that mitigates potential adverse impacts on the surrounding environment. We submit that approval of this application would be consistent with the provisions of relevant statutory instruments and policy documents, in the public interest within the meaning of Section 4.151(e) of the Act.

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## 1. INTRODUCTION

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*This section of the report identifies the nature of client instructions, relevant background information and the structure of the report.*

### 1.1 BACKGROUND

PLANNERS NORTH and Royal HaskoningDHV have been engaged by Elements of Byron to provide Town Planning and coastal engineering advice with respect to the preparation and lodgement of a Development Application with Byron Shire Council in relation to land described as Lot 1 DP1215893.

### 1.2 STRUCTURE OF REPORT AND ITS SCOPE

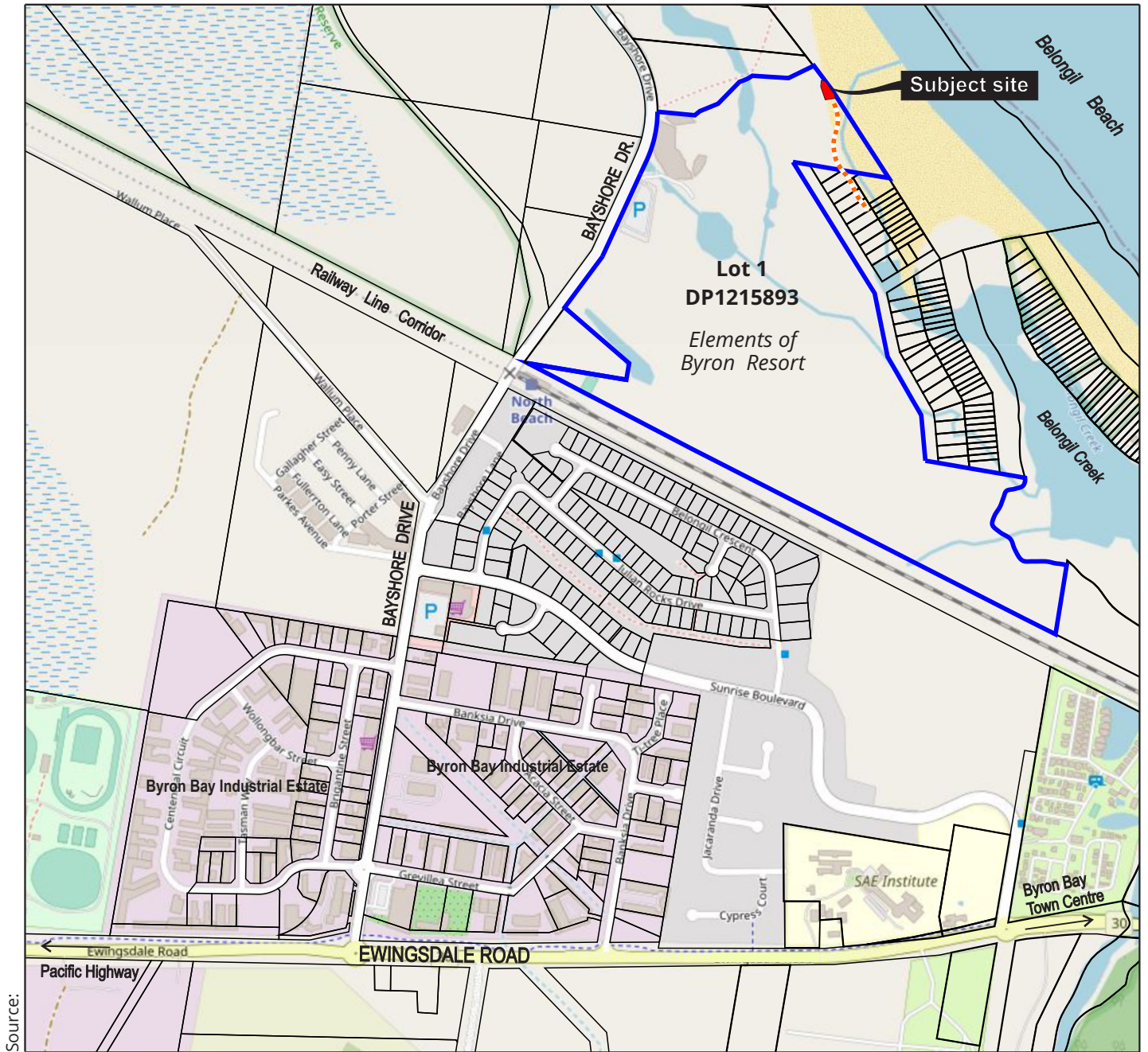
Section 2 of this report describes the physical characteristics of the subject land and its planning context. Section 3 describes in detail the development proposal. Having regard to the provisions of Section 4.15(1) (a) of the Environmental Planning and Assessment Act 1979 and Section 27 of the Coastal Management Act 2016 sets out an examination of the statutory and policy planning status relating to the land, with particular regard to the proposal described in Section 3. Section 5 looks at the environmental interactions of the proposal. The final section of the report undertakes a general review of the project and summation as to the appropriateness of the project having regard to the planning controls applying to the land and land use needs in the locality and matters set out for consideration in Section 4.15(1)(e) of the Environmental Planning and Assessment Act.

The subject application is accompanied by plans prepared by Royal HaskoningDHV, a Coastal Engineering Report prepared by Royal HaskoningDHV, and an Ecological Assessment prepared by Biodiversity Assessments and Solutions.

### 1.3 FURTHER INFORMATION

Should Council require any additional information, or wish to clarify any matter raised by this proposal or submissions made to same, Council is requested to consult with **Kate Singleton** prior to determination of this application.

## ADDITIONS TO EXISTING COASTAL PROTECTION WORKS



11

0

200m

1 : 10 000 @ A4

### Legend



### Proposed extension to Geobag Coastal Protection works



### Existing Geobag Coastal Protection works



Property boundary

# Plan 1.1

## SITE LOCALITY

## **2. THE SITE AND ITS CONTEXT**

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*This section of the report identifies the subject site and describes its environmental planning context.*

### **2.1 CADASTRAL DESCRIPTION**

The subject site is described in Real Property terms as Lot 1 DP1215893.

The subject site comprises land in private ownership which forms part of the existing Belongil coastline.

### **2.2 SITE CONTEXT**

The subject site is located on the New South Wales coastline in an area known as Belongil Beach.

The site forms part of the Elements of Byron Resort and associated facilities.

### **2.3 SITE HISTORY**

The existing temporary coastal protection works were constructed on the land in accordance with the provisions of Part 3 of the Coastal Protection Regulation 2011. A subsequent Development Application to seeking consent for the works to remain in place permanently was returned by the NSW Coastal Council on the basis that the retention of the temporary works did not require consent. In addition to the proposed works, it is noted that the following development consents apply in relation to the existing Elements of Byron Resort Site.

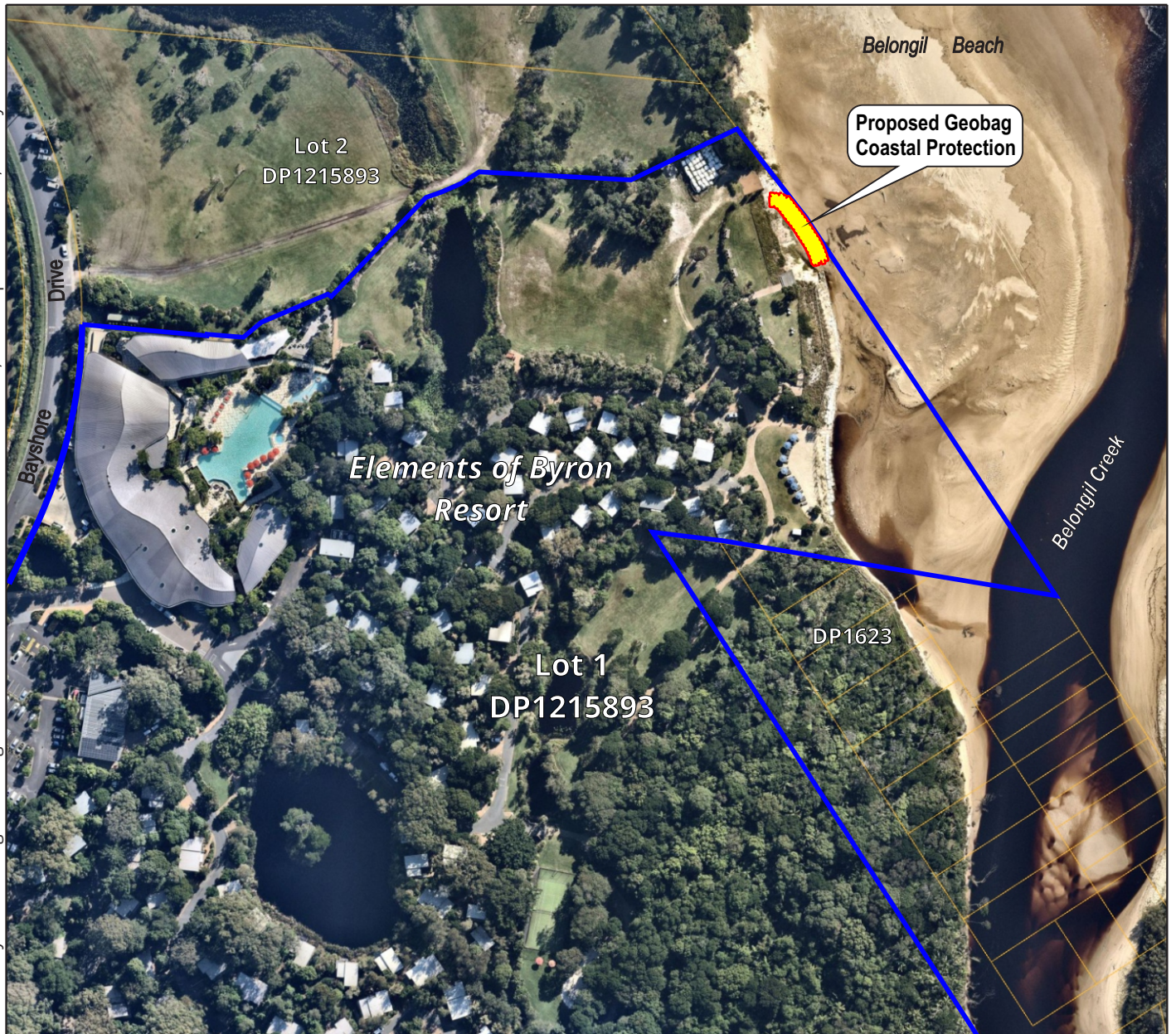
Development Consent 87/208 for tourist accommodation comprising 161 × 2 and 3 room cabins and the use of an existing 32 cabins on the site was approved by Council on 11 August 1987. Section 96 Application 5.1987.208.2 to modify the design of Cabin 82 was approved by Council on December 2012. Section 96 Application 5.1987.208.3 for the modification of the approval incorporating design modernisation and reconstruction of 75 cabins, including site modification to this location and footprints was approved on 22 November 2013.

Section 96 Application No. 5.1987208.5 to modify the design and siting of the remaining 96 tourist accommodation cabins was approved by Council on 17 March 2016.





# ADDITIONS TO EXISTING COASTAL PROTECTION WORKS

Source: Royal HaskoningDHV - Dwg No. PA3267-RHD-00-XX-DR-ME-1000 Rev. P02; Nearmap Aerial Photo, 18 May 2023



0 50m  
1 : 2500 @ A4

## Legend

-  Proposed extension to Geobag Coastal Protection works
-  Property boundary

**Plan 2.1**  
**THE**  
**SITE**

## 3. THE DEVELOPMENT PROPOSAL

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*This section defines the site planning objectives utilised in schematic design. Further, this section describes the project by way of text, mapping and statistical information.*

### 3.1 SITE PLANNING OBJECTIVES

The primary objective of this proposal is to extend the existing coastal protection works on the subject land to manage ongoing coastal erosion issues.

For the purposes of project design, the following site planning objectives have been adopted:

- a. To provide for the extension of the existing coastal protection works on private land.
- b. To ensure the protection works do not result in significant adverse impacts on the existing natural or built environment.
- c. To ensure the works are adequately maintained and managed.

### 3.2 GENERAL DESCRIPTION OF PROPOSAL

The Development Consent is sought to undertake works to extend the existing coastal protection works approved on the subject land. The existing temporary coastal protection works were undertaken in accordance with Part 4C of the Coastal Protection Act 1979 and Part 3 of the Coastal Protection Regulation 2011.

The existing geobags comprise a total length of 210 metres with a crest level of RL 1.41m AHD. The sand filled geotextile bags comprise 0.75m<sup>3</sup> and small returns are constructed at each end of the works to mitigate the risk of out-flanking. The existing bags were filled with sand imported from a commercial sand extraction operation at Chinderah.

Following recent foreshore erosion in 2022, a need for the extension of the existing works was identified.

The proposed extension of the existing geobag coastal protection works is intended to comprise a temporary structure with a proposed lifespan of 5 years while the Coastal Management Program (CMP) for the Byron Shire Northern Coastline is completed.

The proposed works seek to undertake alterations and additions to the existing coastal protection works to be constructed in the following configuration:

- Extend along the northern shoreline of 40 linear metres;
- Comprise 0.75m<sup>3</sup> geobags arranged in a step profile 5 units high and typically 2 units wide;
- Slope of approximately 1V:1.5H;
- Overall approximate height of 2.1metres;
- Encapsulated self healing toe comprising an additional geobag incorporated in the bottom layer on the seaward side and tied back to the double layer structure;
- Westward return at the northern limit of the extension to mitigate the out-flanking risk; and
- Use of existing geotextile sandbags currently stockpiled on site.

Where the works are located seaward of the existing erosion escarpment, the area between the crest of the works and the escarpment will be back filled and battered back at a stable slope. The two geobags at the crest will be left exposed to facilitate along shore pedestrian access unless the crest level is below the existing beach berm level at the time of construction. Where the works are located wholly with the dunal system they will be completely back filled. At the completion of works, vegetation of the dune areas will be undertaken using suitable species.

## ADDITIONS TO EXISTING COASTAL PROTECTION WORKS

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It is anticipated the works will take no longer than 4 weeks to complete.

The Coastal Engineering Assessment prepared by Royal HaskoningDHV details the design and construction of the proposed extension.

### **3.3 ANCILLARY APPROVALS**

No Ancillary approvals are sought in association with the application.

## 4. STATUTORY AND POLICY PLANNING

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*Section 4 documents the range of planning controls applicable in the subject case pursuant to Section 4.15 of the Act and the provisions of the Coastal Protection Act 1979.*

### 4.1 STATUTORY CONSIDERATIONS

Pursuant to the Environmental Planning & Assessment Act, 1979, a number of statutes are potentially applicable to any single development proposal. This section reviews the range of instruments and notes their application in terms of the subject development application proposal.

#### 4.1.1 DEEMED ENVIRONMENTAL PLANNING INSTRUMENTS

No deemed environmental planning instruments apply to the subject land.

#### 4.1.2 LOCAL ENVIRONMENTAL PLANS

Name: Byron Local Environmental Plan 1988 (BLEP88)

*Application in Subject Case:*

**Zone:** The land is zoned 7(f1) (Coastal Lands Zone).

**Permissibility:** Beach and coastal restoration works are permissible with development consent in the 7(f1) zone. Beach and Coastal Restoration Works are defined as follows:

**"beach and coastal restoration works"** means structures or works to restore the coastline from the effects of coastal erosion.

**Concurrence:** No concurrence is required for the proposed development in accordance with the provisions of BLEP88.

**Advertising:** The proposal does not trigger any requirement for advertising in accordance with the provisions of BLEP88.

**Special Provisions Applicable:** The following provisions of BLEP88 are applicable to Council's consideration of the subject proposal:

**Clause 9 - Zone Objectives & Development Control Table:** The objectives and land use table for the 7(f1) (Coastal Lands Zone) are set out below.

**subclause (3)** *Except as otherwise provided by this plan, the council shall not grant consent to the carrying out of development on land to which this plan applies unless the Council is of the opinion that the carrying out of the development is consistent with the objectives of the zone within which the development is proposed to be carried out.*

#### Zone Objectives

##### 1 Objectives of zone

*The objectives of the zone are:*

- (a) to identify and protect environmentally sensitive coastal land,*
- (b) to enable development for certain purposes where such development does not have a detrimental effect on the habitat, landscape or scenic quality of the locality,*
- (c) to prevent development which would adversely affect, or be adversely affected by, coastal processes, and*
- (d) to enable the careful control of noxious plants and weeds by means not likely to be significantly detrimental to the native ecosystem.*



## **2 Without development consent**

*Nil.*

## **3 Only with development consent**

*Agriculture (other than animal establishments); beach and coastal restoration works; building of levees, drains or clearing of land; bushfire hazard reduction; clearing of land; community buildings; drainage; environmental facilities; forestry; home industries; markets; roads; primitive camping grounds; surf lifesaving facilities; utility installations.*

## **4 Prohibited**

*Any purpose other than a purpose specified in item 2 or 3.*

### **Comment:**

The proposed beach and coastal restoration works are permissible with development consent.

The proposed coastal protection works are sited to avoid the littoral rainforest and coastal wetlands areas on the subject land. As detailed in the Ecological Assessment prepared by Biodiversity Assessments and Solutions, the proposed extension of the existing coastal protection works, and the potential impacts of the construction occupation phases of the proposal, are considered to be negligible. Potential adverse impacts are able to be mitigated sufficiently to ensure that direct and indirect impacts on biodiversity values will be avoided and minimised.

The proposed works are not anticipated to have a significant impact on the landscape or scenic quality of the locality. The existing geobag wall demonstrates that on completion the works are not intrusive in terms of the visual impacts on the coastal location. The works comprise an extension to existing works to prevent adverse impacts by coastal processes. The proposal is consistent with enabling the careful control of noxious plants and weeds.

It is concluded that the proposed development is consistent with the objectives of the 7(f1) (Coastal Lands Zone).

## **33 Development within Zone No 7 (f1) (Coastal Lands Zone)**

*(1) This clause applies to all land within Zone No 7 (f1).*

*(2) A person shall not carry out development for any purpose on land to which this clause applies except with the consent of the council.*

*(3) (Repealed)*

*(4) The Council, in deciding whether to grant consent to development referred to in subclause (2), shall take into consideration:*

*(a) the likelihood of the proposed development adversely affecting, or being adversely affected by, coastal processes,*

*(b) the likelihood of the proposed development adversely affecting any dune or beach of the shoreline or foreshore,*

*(c) the likelihood of the proposed development adversely affecting the landscape, scenic or environmental quality of the locality of the land, and*

*(d) whether adequate safeguards and rehabilitation measures have been, or will be, made to protect the environment.*

*(e) (Repealed)*



## Comment:

The purpose of the proposed works is to appropriately manage the effects of coastal processes on the subject land. The existing coastal protection works have been in situ since 2015 and it is evident that they have not resulted in significant adverse impacts on the dune or beach of the shoreline or foreshore. The proposed works will blend into the surrounds and not impact on the landscape, scenic or environmental quality of the land.

As detailed in the Coastal Engineering Assessment prepared by Royal HaskoningDHV, restoration works will be undertaken at the completion of the duration of the coastal protection works. It is also anticipated that in accordance with the provisions of the Coastal Management Act 2016 Section 27(2)(a), legal binding obligations may be imposed to ensure this outcome.

### 4.1.3 DEVELOPMENT CONTROL PLANS

Name: Byron Development Control Plan 2010 (BDCP10)

*Application in Subject Case:*

The following provisions of BDCP10 are applicable to the proposed development:

#### Chapter 1, Part J – Coastal Erosions Lands

##### J2.5 Element – Beach Protection

###### *Element Objective*

*To ensure that works proposed by property owners to protect land from coastal processes will not have adverse effects on other land or on other processes*

###### *Performance Criteria*

*And work proposed by individual property owners to protect land from erosion must be designed to ensure that the work will not cause adverse impacts on other lands or on coastal processes*

###### *Prescriptive Measures*

*Any work carried out by individual property owners to protect land from erosion will require the consent of Council.*

*Council will consider consent for such works only where such works will have no adverse effect on any adjoining properties or on any coastal processes.*

*Rock, concrete and like hard materials must not be used for the construction of beach protection works.*

## Comment:

The works proposed will not have significant adverse impacts on other land or on coastal processes as detailed in the Coastal Engineering Assessment prepared by RoyalHaskoningDHV. The work has been designed so as not to cause adverse impacts on other lands or on coastal processes. The provisions of the Coastal Management Act 2016 require applications to address potential impacts on immediately adjoining land. As detailed in the Coastal Engineering Assessment a westward return will be included at the northern limit of the extension to mitigate the risk of out-flanking. The proposed works do not comprise rock, concrete or like hard materials.

### Chapter 17 Public Exhibition & Notification of Development Applications

Chapter 17 of BDCP10 provides for public exhibition and notification of applications. The proposed development is not listed in the tables provided in Section 4 of Chapter 17. The development is therefore identified as Level 1 advertising in accordance with the provisions of Chapter 17. However, the Byron Shire Community Participation Plan 2019 (BSCPP 2019) requires that any development identified as Community Significant Development undergo a process of pre lodgement community consultation.

Community Significant Development includes any development application that will be referred to the Regional Planning Panel. As detailed below, State Environmental Planning Policy (Planning Systems) 2021, Part 2.4 identifies Regionally Significant Development as development in Schedule 6 which includes the coastal protection works proposed.

Community consultation has been undertaken in relation to the proposed works in accordance with the requirements of BSCPP 2019 however it is proposed that the report documenting the consultation will be submitted following the formal Council notification of the development application. The community consultation report will also document the outcome of further consultation undertaken during the Council notification process of the development application.

#### **4.1.4 STATE ENVIRONMENTAL PLANNING POLICIES**

The following State Environmental Planning Policies apply to this development:

- SEPP (Biodiversity and Conservation) 2021
- SEPP (Building Sustainability Index: BASIX) 2004
- SEPP (Exempt and Complying Development Codes) 2008
- SEPP (Housing) 2021
- SEPP (Industry and Employment) 2021
- SEPP (Planning Systems) 2021
- SEPP (Primary Production) 2021
- SEPP (Resilience and Hazards) 2021
- SEPP (Resources and Energy) 2021
- SEPP (Transport and Infrastructure) 2021
- SEPP No 65—Design Quality of Residential Apartment Development

Of the above SEPPs, the following are particularly relevant to the proposed development.

#### **State Environmental Planning Policy (Planning Systems) 2021**

**Title:** State Environmental Planning Policy (Planning Systems) 2021

**Published:** 1 March 2022

#### **Abstract:**

The aim of this policy is to define State and regional development, specify controls in relation to Aboriginal land and Concurrence arrangements.

#### **Part 2.4 Regionally significant development**

*2.19 Declaration of regionally significant development: section 4.5(b)*

*(1) Development specified in Schedule 6 is declared to be regionally significant development for the purposes of the Act.*

*(2) However, the following development is not declared to be regionally significant development—*

*(a) complying development,*

*(b) development for which development consent is not required,*

*(c) development that is State significant development,*

*(d) development for which a person or body other than a council is the consent authority,*

(e) development within the area of the City of Sydney.

## **Schedule 6 Regionally significant development**

### **A Certain coastal protection works**

(1) The following development on land within the coastal zone that is directly adjacent to, or is under the waters of, the open ocean, the entrance to an estuary or the entrance to a coastal lake that is open to the ocean—

(a) development for the purpose of coastal protection works carried out by a person other than a public authority, other than coastal protection works identified in the relevant certified coastal management program,

(b) development for the purpose of coastal protection works carried out by or on behalf of a public authority (other than development that may be carried out without development consent under clause 19(2)(a) of [State Environmental Planning Policy \(Coastal Management\) 2018](#)).

(2) Words and expressions used in this section have (in relation to coastal protection works) the same meaning as they have in [State Environmental Planning Policy \(Coastal Management\) 2018](#).

Environmental Planning and Assessment Act 1979 No 203

### **Comment:**

The proposed works are identified as Regionally Significant Development in accordance with the provisions of Clause 4.5 of the Environmental Planning and Assessment Act 1979. The application will be determined by the Regional Planning Panel.

**Title:** State Environmental Planning Policy (Resilience and Hazards) 2021

**Published:** 1 March 2022

### **Abstract:**

The aim of this policy is to specify specific arrangements for Coastal management; hazardous and offensive development and remediation of land.

## **Chapter 2 Coastal management**

Part 2.2 Development controls for coastal management areas

Division 1 Coastal wetlands and littoral rainforests area

### **2.7 Development on certain land within coastal wetlands and littoral rainforests area**

(1) The following may be carried out on land identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent—

(a) the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,

(b) the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,

(c) the carrying out of any of the following—

(i) earthworks (including the depositing of material on land),

(ii) constructing a levee,

(iii) draining the land,

(iv) environmental protection works,

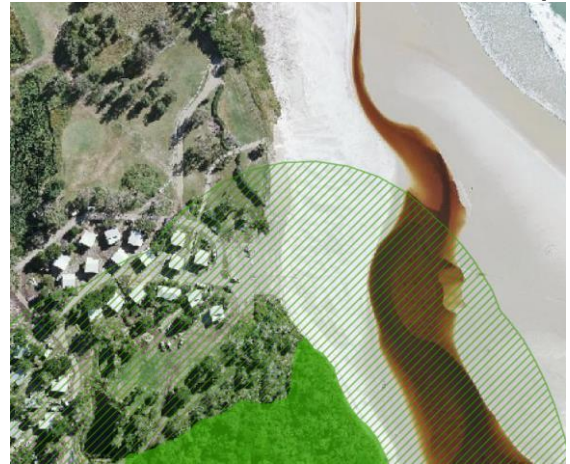
(d) any other development.

Note—

Clause 2.14 provides that, for the avoidance of doubt, nothing in this Part—

- (a) permits the carrying out of development that is prohibited development under another environmental planning instrument, or
- (b) permits the carrying out of development without development consent where another environmental planning instrument provides that the development may be carried out only with development consent.
- (2) Development for which consent is required by subsection (1), other than development for the purpose of environmental protection works, is declared to be designated development for the purposes of the Act.
- (3) Despite subsection (1), development for the purpose of environmental protection works on land identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map may be carried out by or on behalf of a public authority without development consent if the development is identified in—
  - (a) the relevant certified coastal management program, or
  - (b) a plan of management prepared and adopted under Division 2 of Part 2 of Chapter 6 of the Local Government Act 1993, or
  - (c) a plan of management under Division 3.6 of the Crown Land Management Act 2016.
- (4) A consent authority must not grant consent for development referred to in subsection (1) unless the consent authority is satisfied that sufficient measures have been, or will be, taken to protect, and where possible enhance, the biophysical, hydrological and ecological integrity of the coastal wetland or littoral rainforest.
- (5) Nothing in this section requires consent for the damage or removal of a priority weed within the meaning of clause 32 of Schedule 7 to the Biosecurity Act 2015.
- (6) This section does not apply to the carrying out of development on land reserved under the National Parks and Wildlife Act 1974 if the proposed development is consistent with a plan of management prepared under that Act for the land concerned.

**Coastal Wetlands and Littoral Rainforest Map**



Legend:

- Coastal Wetlands
- Proximity Area for Coastal Wetlands
- Littoral Rainforest
- Proximity Area for Littoral Rainforest

**Comment:**

No works are not located on that part of the site mapped as littoral rainforest or coastal wetland.

## 2.8 Development on land in proximity to coastal wetlands or littoral rainforest

Note—

The Coastal Wetlands and Littoral Rainforests Area Map identifies certain land that is inside the coastal wetlands and littoral rainforests area as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” or both.

- (1) Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on—

- (a) *the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or*
- (b) *the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.*
- (2) *This section does not apply to land that is identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map.*

**Comment:**

The proposed additions to the existing coastal protection works are not located within the proximity area for littoral rainforest or coastal wetlands.

**Division 2 Coastal vulnerability area**

Note—

At the commencement of this Chapter, no Coastal Vulnerability Area Map was adopted and therefore no coastal vulnerability area has been identified.

**2.9 Development on land within the coastal vulnerability area**

*Development consent must not be granted to development on land that is within the area identified as “coastal vulnerability area” on the Coastal Vulnerability Area Map unless the consent authority is satisfied that—*

- (a) *if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and*
- (b) *the proposed development—*
  - (i) *is not likely to alter coastal processes to the detriment of the natural environment or other land, and*
  - (ii) *is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and*
  - (iii) *incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and*
- (c) *measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.*

**Comment:**

No vulnerability area mapping has been prepared for Byron Shire. Notwithstanding this, the Coastal Engineering Assessment includes consideration of the provisions of Clause 2.9 in the assessment. The assessment recommends a suitable condition be imposed to ensure maintenance of the works over their design life. The assessment states that the works proposed are not likely to alter coastal processes to the detriment of the natural environment or other land in respect of the additional scour/erosion immediately seaward of the works or due to “locking up” behind the works. It is recommended that a condition be imposed to restore the land in the event that end effects occur as a result of the works.

The assessment also concludes that public amenity, access to and the use of the beach and foreshore would not be likely to be reduced. The works are located wholly on private land.

**Division 3 Coastal environment area**

**2.10 Development on land within the coastal environment area**

- (1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following—*

## ADDITIONS TO EXISTING COASTAL PROTECTION WORKS

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- (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
- (b) *coastal environmental values and natural coastal processes,*
- (c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
- (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
- (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
- (f) *Aboriginal cultural heritage, practices and places,*
- (g) *the use of the surf zone.*
- (2) *Development consent must not be granted to development on land to which this section applies unless the consent authority is satisfied that—*
  - (a) *the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or*
  - (b) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
  - (c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*
- (3) *This section does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.*

**Coastal Environment Area Map**



Legend:  Coastal Environment Area

### **Comment:**

The proposed development is not likely to adversely impact on the integrity or resilience of the biophysical, hydrological or ecological environment. Further, as detailed in the Coastal Engineering Report, the proposal is not likely to cause adverse impact on natural coastal processes. The proposal comprises an extension to existing works and is not likely to conflict with coastal environmental values.

As detailed in the Ecological Assessment, the proposal is not likely to adversely impact on marine vegetation, native vegetation or fauna and their habitats. The works are located wholly within private property and will not adversely impact on public open space or safe access to and along the foreshore and beach. Adverse impacts in relation to aboriginal cultural heritage are not likely to result from the proposed extension. It is concluded that the potential impacts of the proposed development are not likely to be significant.

Division 4 Coastal use area

### **2.11 Development on land within the coastal use area**

- (1) *Development consent must not be granted to development on land that is within the coastal use area unless the consent authority—*
  - (a) *has considered whether the proposed development is likely to cause an adverse impact on the following—*
    - (i) *existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*



- (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
- (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
- (iv) Aboriginal cultural heritage, practices and places,
- (v) cultural and built environment heritage, and
- (b) is satisfied that—

- (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
- (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
- (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and
- (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.
- (2) This section does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.

**Coastal Use Area Map**



Legend:  Coastal Use Area

**Comment:**

The proposed extension to the existing coastal protection works is not likely to result in an adverse impact in terms of access to and along the foreshore. The proposal will not result in overshadowing impacts or wind funnelling. The siting and design of the works will ensure there is no loss to views from public places to the foreshore. The visual amenity and scenic qualities of the coast will not be detrimentally impacted upon given the design and location of the works to match existing. Previous reports undertaken concerning the subject site do not raise any concerns in relation to potential impacts of the works on aboriginal cultural heritage, practices and places. There are no built environmental heritage sites within proximity to the proposed works. The design, siting and management of the works is consistent with avoiding adverse impacts in relation to the matters set out at (a). The proposed works will not adversely impact on the locality in terms of their bulk, scale or size.

Division 5 General

**2.12 Development in coastal zone generally—development not to increase risk of coastal hazards**

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

**Comment:**

As provided in the Engineering Assessment, the proposed development is not likely to cause an increased risk in coastal hazards on the subject land or other land. Measures are proposed to address potential end effects to the north.

**2.13 Development in coastal zone generally—coastal management programs to be considered**

Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.

**Comment:**

Whilst the Coastal Management Program Northern Coastline has commenced, there is presently no CMP applicable to the subject site.

**2.14 Other development controls not affected**

Subject to section 2.5, for the avoidance of doubt, nothing in this Part—

- (a) permits the carrying out of development that is prohibited development under another environmental planning instrument, or
- (b) permits the carrying out of development without development consent where another environmental planning instrument provides that the development may be carried out only with development consent.

**Comment:**

Noted

**2.15 Hierarchy of development controls if overlapping**

*If a single parcel of land is identified by this Chapter as being within more than one coastal management area and the development controls of those coastal management areas are inconsistent, the development controls of the highest of the following coastal management areas (set out highest to lowest) prevail to the extent of the inconsistency—*

- (a) *the coastal wetlands and littoral rainforests area,*
- (b) *the coastal vulnerability area,*
- (c) *the coastal environment area,*
- (d) *the coastal use area.*

**Comment:**

Noted

Part 2.3 Miscellaneous

**2.16 Coastal protection works**

*Note—*

*Section 4 (1) of the Coastal Management Act 2016 defines coastal protection works to mean—*

- (a) *beach nourishment activities or works, and*
- (b) *activities or works to reduce the impact of coastal hazards on land adjacent to tidal waters, including (but not limited to) seawalls, revetments and groynes.*

*Section 27 of the Coastal Management Act 2016 also contains provisions dealing with the granting of development consent to development for the purpose of coastal protection works.*

- (1) *Coastal protection works by person other than public authority Development for the purpose of coastal protection works may be carried out on land to which this Chapter applies by a person other than a public authority only with development consent.*

*Note—*

*See clause 8A of Schedule 7 to State Environmental Planning Policy (State and Regional Development) 2011, which declares certain development for the purpose of coastal protection works to be regionally significant development for which a Sydney district or regional planning panel is the consent authority.*



## ADDITIONS TO EXISTING COASTAL PROTECTION WORKS

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- (2) *Coastal protection works by public authority Development for the purpose of coastal protection works may be carried out on land to which this Chapter applies by or on behalf of a public authority—*
- (a) *without development consent—if the coastal protection works are—*
- (i) *identified in the relevant certified coastal management program, or*
- (ii) *beach nourishment, or*
- (iii) *the placing of sandbags for a period of not more than 90 days, or*
- (iv) *routine maintenance works or repairs to any existing coastal protection works, or*
- (b) *with development consent—in any other case.*

*Note—*

*See clause 8A of Schedule 7 to State Environmental Planning Policy (State and Regional Development) 2011, which declares certain development for the purpose of coastal protection works to be regionally significant development for which a Sydney district or regional planning panel is the consent authority.*

- (3) *Emergency coastal protection works by public authority Development for the purpose of emergency coastal protection works carried out on land to which this Chapter applies is exempt development if it is carried out by or on behalf of a public authority in accordance with a coastal zone emergency action subplan (or a coastal zone management plan under the Coastal Protection Act 1979 containing an emergency action subplan that continues to have effect under clause 4 of Schedule 3 to the Coastal Management Act 2016).*
- (4) *In this section, emergency coastal protection works means works comprising the placement of sand, or the placing of sandbags for a period of not more than 90 days, on a beach, or a sand dune adjacent to a beach, to mitigate the effects of coastal hazards on land.*

### **Comment:**

The proposed works require development consent in accordance with the provisions of Clause 2.6. The development will not be undertaken by a public authority.

### **Chapter 4 Remediation of Land**

Clause 4.6 of the SEPP outlines the contamination and remediation to be considered in determining development applications as follows:

#### **4.6 Contamination and remediation to be considered in determining development application**

- (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 subsection (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 subsection (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,*

(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—*

(i) *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*

(ii) *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).*

## **Comment**

The previous site history does not indicate a likelihood of contamination from past land use practice. Given the location and nature of the proposed works it is considered unlikely that the site is contaminated and unsuitable for the proposed use for the purpose of coastal protection works.

## **4.1.5 COASTAL MANAGEMENT ACT 2016**

The following provisions of the Coastal Management Act 2016 apply to the proposal:

### **27 Granting of development consent relating to coastal protection works**

(1) *Development consent must not be granted under the [Environmental Planning and Assessment Act 1979](#) to development for the purpose of coastal protection works, unless the consent authority is satisfied that—*

(a) *the works will not, over the life of the works—*

(i) *unreasonably limit or be likely to unreasonably limit public access to or the use of a beach or headland, or*

(ii) *pose or be likely to pose a threat to public safety, and*

(b) *satisfactory arrangements have been made (by conditions imposed on the consent) for the following for the life of the works—*

(i) *the restoration of a beach, or land adjacent to the beach, if any increased erosion of the beach or adjacent land is caused by the presence of the works,*

(ii) *the maintenance of the works.*

(2) *The arrangements referred to in subsection (1) (b) are to secure adequate funding for the carrying out of any such restoration and maintenance, including by either or both of the following—*

(a) *by legally binding obligations (including by way of financial assurance or bond) of all or any of the following—*

(i) *the owner or owners from time to time of the land protected by the works,*

(ii) *if the coastal protection works are constructed by or on behalf of landowners or by landowners jointly with a council or public authority—the council or public authority,*

#### **Note—**

Section 80A (6) of the [Environmental Planning and Assessment Act 1979](#) provides that a development consent may be granted subject to a condition, or a consent authority may enter into an agreement with an applicant, that the applicant must provide security for the payment of the cost of making good any damage caused to any property of the consent authority as a consequence of the doing of anything to which the consent relates.

(b) *by payment to the relevant council of an annual charge for coastal protection services (within the meaning of the [Local Government Act 1993](#)).*

(3) *The funding obligations referred to in subsection (2) (a) are to include the percentage share of the total funding of each landowner, council or public authority concerned.*

## **Comment**

The provisions of Section 27 are addressed in detail in the Coastal Engineering Assessment prepared by Royal HaskoningDHV. The proposed works will not be likely to unreasonably limit public access to or the

use of the beach and are located wholly on private land. The public beach access dedicated by the proponent is located approximately 160m to the north of the proposed northern limit of the extension to the existing coastal protection works.

The proposed works are not likely to pose a threat to public safety and are designed in accordance with accepted engineering practice and relevant design guidelines to maximise stability. It is anticipated that relevant conditions of consent will be imposed to ensure restoration works are undertaken. The maintenance of the proposed works is able to be adequately addressed via condition of consent. Similarly, any appropriate funding arrangements are also able to be addressed via appropriate condition of consent.

## 4.1.6 THE MARINE ESTATE MANAGEMENT ACT 2014

The following provisions of the Marine Estate Management Act 2014 apply to the proposed development.

### 55 Development within marine parks and aquatic reserves—application of EPA Act

*(1) Before determining a development application under Part 4 of the Environmental Planning and Assessment Act 1979 for the carrying out of development within a marine park or an aquatic reserve, a consent authority must:*

*(a) take into consideration:*

*(i) if there are management rules for the marine park or aquatic reserve, the purposes of the zone within which the area concerned is situated as specified in those management rules, and*

*(ii) the permissible uses of the area concerned under the regulations or those management rules, and*

*(iii) if a management plan for the marine park or aquatic reserve has been made, the objectives of the marine park or aquatic reserve, and*

*(iv) any relevant marine park or aquatic reserve notifications, and*

*(b) if the consent authority intends to grant consent to the carrying out of the development, obtain the concurrence of the relevant Ministers to the granting of the consent.*

*(2) A Minister who is a determining authority must not carry out, or grant approval to carry out, an activity (within the meaning of Part 5 of the Environmental Planning and Assessment Act 1979) within a marine park or an aquatic reserve unless the Minister has:*

*(a) taken into consideration:*

*(i) if there are management rules for the marine park or aquatic reserve, the purposes of the zone within which the area concerned is situated as specified in those management rules, and*

*(ii) the permissible uses of the area concerned under the regulations or the management rules, and*

*(iii) if a management plan for the marine park or aquatic reserve has been made, the objectives of the marine park or aquatic reserve, and*

*(iv) any relevant marine park or aquatic reserve notifications, and*

*(b) in the case of an activity for which an environmental impact statement is required to be prepared under Division 3 of that Part, consulted with the relevant Ministers on the carrying out of the activity or the granting of approval.*

*(3) A determining authority (not being a Minister) must not carry out, or grant approval to carry out, an activity (within the meaning of Part 5 of the Environmental Planning and Assessment Act 1979) unless the determining authority has:*

*(a) taken into consideration:*

- (i) if there are management rules for the marine park or aquatic reserve, the purposes of the zone within which the area concerned is situated as specified in those management rules, and*
- (ii) the permissible uses of the area concerned under the regulations or the management rules, and*
- (iii) if a management plan for the marine park or aquatic reserve has been made, the objectives of the marine park or aquatic reserve, and*
- (iv) any relevant marine park or aquatic reserve notifications, and*
- (b) in the case of an activity for which an environmental impact statement is required to be prepared under Division 3 of that Part, obtained the concurrence of the relevant Ministers to the carrying out of the activity or the granting of approval.*
- (4) In deciding whether or not concurrence should be granted under this section, the relevant Ministers must take into consideration:*
  - (a) if there are management rules for the marine park or aquatic reserve, the purposes of the zone within which the area concerned is situated as specified in those management rules, and*
  - (b) the permissible uses of the area concerned under the regulations or the management rules, and*
  - (c) if a management plan for the marine park or aquatic reserve has been made, the objectives of the marine park or aquatic reserve, and*
  - (d) any relevant marine park or aquatic reserve notifications.*
- (5) The provisions of section 79B (8), (9), (10) and (11) of the Environmental Planning and Assessment Act 1979, and the regulations under that Act, apply to and in respect of a requirement under this section to obtain the concurrence of the relevant Ministers in the same way as they apply to a requirement to obtain concurrence imposed on a consent authority by an environmental planning instrument under that Act.*
- (6) For the purposes of applying those provisions, a reference in those provisions to the matters stated pursuant to section 30 (3) of the Environmental Planning and Assessment Act 1979 (however expressed) is to be read as a reference to the purposes of marine parks or aquatic reserves and the permissible uses of the area concerned under the regulations.*

**Comment:**

The subject site is located adjacent to the Cape Byron Marine Park Sanctuary zone on the Cape Byron Marine Park zoning map. The map also identifies threatened shore bird habitat in proximity to the subject site. It is anticipated that the Development Application will be referred to the Marine Park Authority for consultation. It is submitted that the proposed works are not likely to conflict with the Marine Park Sanctuary Reserve given it is anticipated minimal environmental impact will result from the proposed extension to the existing geobag works.

**56 Development affecting marine parks and aquatic reserves—application of EPA Act**

- (1) In determining a development application under Part 4 of the Environmental Planning and Assessment Act 1979 for the carrying out of development on land that is in the locality of a marine park or an aquatic reserve, the consent authority must take into consideration the objects of this Act, the permissible uses of the area concerned under the regulations or the management rules and any advice given to it by the relevant Ministers about the impact on the marine park or aquatic reserve of development in the locality.*
- (2) If the consent authority is of the opinion that development proposed in the development application is likely to have an effect on the plants or animals within the marine park or aquatic reserve and their habitat, the consent authority must consult with the relevant Ministers before finally determining the application.*
- (3) A determining authority must not carry out, or grant an approval to carry out, an activity on land that is in the locality of a marine park or an aquatic reserve in purported compliance with Part 5 of the Environmental Planning and Assessment Act 1979 unless:*

(a) the determining authority has taken into consideration the purposes of marine parks or aquatic reserves, the regulations and any advice given to it by the relevant Ministers on the impact on the marine park or aquatic reserve of the carrying out of an activity in the locality, and

(b) if the determining authority is of the opinion that the proposed activity is likely to have an effect on the plants or animals within the marine park or aquatic reserve or their habitat, the determining authority has consulted with the relevant Ministers.

## Comment:

As detailed in the Ecological Assessment prepared by Biodiversity Assessments and Solutions Pty Ltd, the proposed extension to the existing coastal protection works is not considered likely to have an adverse impact on plants and animals within the Marine Park or aquatic reserve and their habitat.

## 4.1.7 CERTIFIED DRAFT PLANS

No Certified Draft Plans apply to the proposed development.

## 4.1.8 SPECIFIC ENVIRONMENTAL PLANNING & ASSESSMENT ACT REQUIREMENTS

The following provisions of the Environmental Planning and Assessment Act 1979 are applicable to the proposed development:

### 4.5 Designation of consent authority

For the purposes of this Act, the **consent authority** is as follows—

(a) in the case of State significant development—the Independent Planning Commission (if the development is of a kind for which the Commission is declared the consent authority by an environmental planning instrument) or the Minister (if the development is not of that kind),

(b) in the case of development of a kind that is declared by an environmental planning instrument as regionally significant development—the Sydney district or regional planning panel for the area in which the development is to be carried out,

(c) in the case of development of a kind that is declared by an environmental planning instrument as development for which a public authority (other than a council) is the consent authority—that public authority,

(d) in the case of any other development—the council of the area in which the development is to be carried out.

## Comment

As identified earlier in this report, the proposed works comprise Regionally Significant Development and the Regional Planning Panel is the consent authority.

## 4.1.9 INTEGRATED DEVELOPMENT CONSIDERATIONS

Integrated development, pursuant to Section 4.46 of the EP & A Act 1979, is development (not being State significant development or complying development) that, in order for it to be carried out, requires development consent and one or more of the following approvals:

| Act                                       | Provision     | Approval  |
|---|---------------|---|
| <a href="#">Water Management Act 2000</a> | ss 89, 90, 91 | water use approval, water management work approval or activity approval under Part 3 of Chapter 3 |

The proposed works potentially require a controlled activity approval given their proximity to the estuary.

## **4.2 CONTRIBUTION PLANS**

No Developer Contribution Plans apply to the proposed development.

## **4.3 LOCAL POLICY CONTROLS**

Other than the provisions described in the above, it is understood that no specific policy of Council is applicable to the subject project.

## **4.4 STATE GOVERNMENT POLICY**

No State Government policy documents have particular relevance to the subject application.

## **4.5 ANCILLARY LEGISLATION**

The applicant is aware that in addition to the consent authority's approval of the subject application, the provisions of the following statutes may regulate development in the manner proposed:

Coastal Management Act 2016 No 20

Fisheries Act 1935 No 58

Fisheries Management Act 1994 No 38

Soil Conservation Act 1938 No 10

### **4.15(1)(b) ENVIRONMENTAL IMPACTS**

Section 4.15(1)(b) requires that the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality, be considered.

#### **Comment:**

As detailed in the accompanying Coastal Engineering and Ecological assessments, the proposed impacts of the development on the existing natural and built environment are not likely to be significant. The proposed works have been assessed in relation to key legislative requirements including the Coastal Management Act 2016, relevant State Environmental Planning Policies and Byron Local Environmental Plan 1988. Further, given the temporary nature of the works, it is submitted that the duration of any potential impacts will be relatively short term.

### **4.15(1)(c) SUITABILITY OF SITE**

Section 4.15(1)(c) requires that the suitability of the site for the development, be considered.

#### **Comment:**

The subject site is considered suitable for the proposed development comprising privately owned land adjacent to the coastal zone. The proposed works have been appropriately sited to avoid areas of environmental significance and maintain public access to the coast. Further, having regard for the duration of the proposed works, it is submitted that the proposed minor extension of the existing coastal environmental protection works are suitable for the subject land.



## 4.15(1)(d) SUBMISSIONS

Section 4.15(1)(d) requires that any submissions made in accordance with this Act or the regulations, be considered.

### Comment:

Any submissions received in response to the notification of the application will be considered in due course.

## 4.15(1)(e) PUBLIC INTEREST

Section 4.15(1)(e) requires that requires that the public interest be considered.

### Comment:

The proposed extension of the existing coastal protection works is considered to be consistent with maintaining the public access having regard for the siting of the works on private land and the minimal adverse impacts resulting from the proposal.

## PART 7 OF BIODIVERSITY CONSERVATION ACT 2016 AND PART 7A OF FISHERIES MANAGEMENT ACT 1994

Pursuant to Section 1.7, "This Act has effect subject to the provisions of Part 7 of the Biodiversity Conservation Act 2016 and Part 7A of the Fisheries Management Act 1994 that relate to the operation of this Act in connection with the terrestrial and aquatic environment."

The subject land is not identified as critical habitat. As detailed in the Ecological Assessment accompanying the application, the development is not likely to significantly impact on threatened species, populations or ecological communities or their habitats. The Ecological Assessment accompanying the application contains a detailed assessment under Part 7 of the *Biodiversity Conservation Act 2016* (BC Act). The assessment concludes the proposed development would not have a significant effect on threatened species or endangered ecological communities pursuant to the BC Act.

The subject site is not mapped on the Biodiversity Values Map and the proposed works do not exceed the clearing thresholds identified for triggering the requirement for a Biodiversity Assessment Report.



Biodiversity Values Map (Non-EPI)

- Biodiversity Values
- Biodiversity Values added in the last 90 days

## 5. CONCLUSION

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The proposal to undertake additions to the existing coastal protection measures is a product of many factors. These factors include:

- the need for the ongoing coastal management in relation to the subject site; and
- the measured effectiveness of the works to date and site opportunities presented by the site.

The proposed development application is permissible under the BLEP88 and is consistent with the relevant legislation including the New South Wales Coastal Management Act 2016 and State Environmental Planning Policy (Resilience and Hazards) 2021.

In our opinion, the development can be seen to satisfy a legitimate need and the proposed coastal protection works are capable of maintenance and management in a manner which mitigates potential adverse impacts. It is concluded that approval of the proposal would be in the public interest within the meaning of Section 4.15(1) (e) of the Act.

Yours faithfully,

**PLANNERS NORTH**

A handwritten signature in black ink, appearing to read 'Kate Singleton', written over a circular stamp or seal.

**Kate Singleton RPIA**

PARTNERSHIP PRINCIPAL

(m) 0438 803 021

(e) kate@plannersnorth.com.au