



General Manager
Byron Shire Council
PO Box 219
MULLUMBIMBY NSW 2482

REF: OUT21/17550

via the CNR Portal

Dear Sir/Madam

**Advice pursuant to s56 of the Marine Estate Management Act 2014 – coastal protection works
Clarks Beach – DA 10.2021698.1**

I refer to Development Application DA 10.2021698.1 for the retention of 2 x sandbag walls approximately 70m in length lodged by Reflections Holiday Parks with a combined overall length of 140 metres. It is understood that no new works are intended - the application refers to emergency coastal protection works installed in 2019 that remain in place.

Sections 55 and 56 of the *Marine Estate Management Act 2014* (MEM Act) require that determining authorities do not carry out or grant approval to carry out activities that are likely to have an effect on the marine park unless the consent authority has consulted with the Department of Primary Industries (DPI) Fisheries.

The EIS dated October 2021 provided in support of this proposal notes that marine estate legislation focuses on “managing fishing practices”. This is not correct. Marine parks exist to conserve environmental, social, cultural, and economic values, and marine estate legislation extends to all activities that may affect the marine park. This includes any coastal protection works, whether above or below mean high water. Proponents for any activity are consistently advised that every possible effort must be made to avoid any impact to the values of Cape Byron Marine Park (“the marine park”) including the beach, wildlife, natural environment, water quality and effects on other users.

I also note that the illustration of marine park zoning in the survey plan is not accurate.

Our expectation is that relevant NSW Legislation and Policy guidance is adhered to for proposals within or potentially affecting the Cape Byron Marine Park. Byron Bay and its beaches are an iconic destination with significant values to all stakeholders.

Coastal protection work proposals are usually subject to independent advice or assessment by multiple agencies. DPI Fisheries understands that the works in question were emergency coastal protection works (generally expected to be removed/approved/modified after 90 days), and that no independent agencies were invited to comment on specific site designs for the works.

It is not fully clear what planning has taken place since the installation of the temporary coastal protection works in 2019. I understand that the proposal requests the temporary coastal protection works remain in situ for a period of five years. Also, I note from information supporting the application for development approval (DA) that small sections of the temporary coastal protection works have lost their integrity and that there is a 23% chance of failure within five years.

The implications for current coastal planning initiatives associated with this proposal are beyond the scope of this commentary.

Based on the facts available our priority advice is to ensure that displaced or damaged geobags and other foreign material do not pollute the beach or the marine park. It is recommended that any consent issued requires monitoring to ensure that damaged or displaced bags or parts thereof are removed immediately

and the consent, if issued, needs to include specific means to provide for this. Potential impacts to the marine park, public access and safety, dune rehabilitation works and amenity values also need to be considered and provided for.

The advice of Department of Planning Industry and Environment (DPIE) (Environment, Energy and Science Group) coastal management experts and engineers regarding the most appropriate and efficient options for future management or intervention is a key source of guidance. All future coastal protection (or other) works implemented at this site should be in accordance with any advice provided by the DPIE coastal management team. I note that Byron Shire Council is in the process of preparing a Coastal Management Program for Cape Byron to South Golden Beach in the north of the Shire. The purpose of this CMP is to define and describe the long-term management strategy for the Byron Bay embayment and beyond. This is the process that should be followed to determine how to manage the site over the medium to longer term.

It is critical that any planning initiatives or future works considers the short and long term effects of the works on the values of the marine park, such as local scouring, down drift erosion, the entry of pollutants, pests, disease or other unnatural material to the marine park, and loss of public access or amenity. In 2016, the NSW Government undertook a statewide Threat and Risk Assessment (TARA) to assess and prioritise the threats to social, economic and environmental values of the marine estate. The TARA includes identification of threats to marine estate values, risk assessment of those threats, and identification of available evidence to support the assessment. It can be accessed at

https://www.marine.nsw.gov.au/key-initiatives/threat-and-risk-assessment?SQ_VARIATION_679441=0.

Beach nourishment and grooming has been identified as a priority threat for the northern region of NSW, including Byron Bay. It is essential that these threats are carefully considered and managed.

I am advised by the Bundjalung of Byron Bay Aboriginal Corporation RNTBC (Arakwal) that the locality of the works is culturally significant. My advice is that any initiatives involving works should not proceed without the endorsement of the Corporation.

Any future or additional works below mean high water, including access to undertake any works, will require a marine park permit. Any future or additional works above mean high water will require additional advice under section 55 of the MEM Act. This may include discharge of the contents of geofabric bags.

If you have any queries concerning the above, please do not hesitate to contact me by telephone 02-6620 9309 or email andrew.page@dpi.nsw.gov.au.

Yours sincerely



Andrew Page
Manager, Cape Byron Marine Park

2 December 2021