

Our Reference: J6963

21 December 2021

Byron Shire Council
Via: NSW Planning Portal & email

Attention: Chris Larkin – Manager Sustainable Environment and Economy

**Response to Request for Further Information
Reflections Holiday Park Coastal Protection Works, Clarkes Beach, Byron Bay**

Dear Chris,

I refer to the abovementioned application (the Proposal), and Council's request for further information dated 9 and 20 December 2021. In relation to the matters raised, we provide the following information as per your request under clause 54 of the *Environmental Planning and Assessment Regulation 2000*.

1. Please clarify why the application states that it is for a five year period but removal of the geobag structure at the end of five years is not proposed. Is this an application for the geobag structure to remain permanently in place or for an unspecified period?

Comment: The scope of the Proposal is for the ongoing use of the sandbags for a 5x year period. The geobag structure is not intended to remain permanently in place, however is not intended to be disturbed whilst still buried within the beach. We anticipate this outcome will be enforced via a condition within any development consent issued.

During the 5x year use period, Reflections will work through a masterplanning exercise for the subject site, to form the blueprint of a new Plan of Management. The masterplan process provides the ideal planning pathway to investigate and provide solutions to the interface, extensive built assets and operations of the Holiday Park with ongoing coastal hazards. To ensure a technically and stakeholder driven masterplan however requires a greater timeframe than that was available to resolve the unauthorised use of the sandbags.

Once complete, the resolved masterplan will be implemented by further planning process/es, which will include removal of exposed geobags and detail of the interface outcome/s. This future planning process will involve fit for purpose assessment, including but not limited to the increased risk of harm to the Aboriginal middens and exposure of tracts of littoral rainforest to erosion threats as the geobags are removed.

2. SEPP (Coastal Management) 2018 in its General Provisions specifies that any development is not to increase the risk of coastal hazards as follows:

*"15 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."*

Given that there is a likelihood that the geobags will be exposed to wave action in the next five years and the engineering reports indicate that this will create an "end effect" and cause sand to be lost from the beach. Please explain how the application is consistent with clause 15 of the SEPP.

Comment: The potential coastal risk from the ongoing use of the sandbags for a period of approximately 5x years is largely limited to end effects and sand lock up. Each of these risks have been considered through the supporting coastal assessments, which have drawn on physical monitoring of time periods when the geofabric sandbags were exposed to wave action, as well as theoretical modelling. The coastal assessments prescribed a coordinated monitoring program, which as articulated within Section 4 of the submitted EIS. This active monitoring program is to be

supported by a mitigation framework to be developed with key stakeholders, including Council, as to when coastal interventions are needed to mitigate coastal impact and coastal risks.

The implementation of a monitoring program by Reflections and NSW Crown Lands, and development of a framework for rectification works, such as beach nourishment activities are committed to within the Proposal. No immediate need to formally obtain consent for mitigation activities through the current proposal has been identified given that planning pathways facilitate these works without development consent (i.e. via Part 5 of the *Environmental Planning and Assessment Act 1979*). This approach enables a fit for purpose response to any coastal risk that arises.

In light of the above, clause 15 of the Coastal Management is considered to be satisfied, and we welcome enforcement of such through conditions of any development consent.

3. Please clarify how it was concluded that no BAM or BDAR is triggered with this application given that works are proposed on land mapped on the NSW Biodiversity Values Map.

Comment: As detailed previously, the scope of the Proposal is confined to the use of the existing sandbags, not their removal. Accordingly, the proposal includes no formal works, and does not include vegetation removal, implementing the avoid, minimise, mitigate framework. As no native vegetation is proposed to be removed, the requirement for a BDAR is not triggered under the *Biodiversity Conservation Act 2016*, or the *Biodiversity Conservation Regulation 2017*.

In addition to the above, as Council is aware, a notable portion of the mapped high value biodiversity area has since been lost to erosion. Reflections encourages Council to pursue updated ecological mapping of the area to inform future housekeeping amendments to the the Biodiversity Values Map, as well as the Littoral Rainforest mapping within the Coastal Management SEPP.

4. It is noted that the application is designated development because the geobag structure is partly within a littoral rainforest mapped under SEPP Coastal Management. That part of the structure not in the mapped littoral rainforest is in proximity to it. Please supply a detailed assessment of the impacts of the development with specific reference to clause 10 (4)

"A consent authority must not grant consent for development referred to in subclause (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."

And clause 11(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."

Comment: As is detailed within this correspondence and the application package, the Proposal seeks to continue the use of the existing sandbags for an approximately 5x year period. Again, portions of the littoral rainforest have previously succumb to coastal erosion post-mapping under the Coastal Management SEPP and pre placement of the sandbags. This timing which has resulted in the mapping anomaly and conflict currently in place.

The existing sandbags provide protection to the remaining portion of littoral rainforest sited on top of the dune, at the interface with the eroded escarpment by maintaining the desired angle of repose. Should the sandbags be removed

and the dune again subject to wave action, the structural integrity of the vegetation is anticipated to be undermined and ultimately lost to erosion. This action would result in reduced habitat areas and likely accelerate further coastal erosion.

At this time, limited opportunity to augment the littoral rainforest has been identified, whilst retaining current park operations within the immediate timeline of this assessment. However, opportunity to enhance the biophysical, hydrological and ecological integrity of the littoral rainforest will continue to be explored through the preparation of a masterplan and Plan of Management for the Reflections Holiday Park.

The proposal has been assessed to ensure the integrity and resilience of the biophysical, hydrological and ecological environments, including the remaining littoral rainforest, are upheld. Further, no impacts of significance are identified on environmental values or coastal processes have been identified. Finally, the ongoing use of the geofabric sandbags, which are ultimately permeable, are not identified as affecting the quantity or quality of surface or ground water flows to or from the littoral rainforest.

5. Given this is application is to maintain the geobag structure (etc) and there are multiple middens on the subject land in close proximity, can you confirm if you are seeking an AHIP from Heritage NSW and if you intend to salvage any midden material that is exposed. It is noted that the ACHAR supplied with the DA recommended an AHIP be obtained.

Comment: An existing AHIP is in place (AHIMS Permit ID: 4538) to facilitate harm to the immediately adjoining midden.

As a precautionary approach, an extension to the existing AHIP is to be sought separate to the subject application. This extension will provide appropriate measures should extreme weather events or other instances arise where ongoing salvage is required, or harm may occur as a result of revegetation works. This formal extension is to be lodged early in the new year.

Notwithstanding the above, retention of the sandbag walls and their continued use is not identified as causing harm, rather, it is the removal of the sandbags or impact through other activities, such as revegetation works, which generate harm. As the scope of the Proposal is limited to ongoing use, the proposal does not form 'integrated development' for the purposes of the *Environmental Planning and Assessment Act 1979*.

At this time we are confident the existing AHIP remains fit-for purpose, however welcome further advices and discussion from Heritage NSW once the time extension is formally sought.

Should you require any further particulars of the proposal, please do not hesitate to contact Josh Townsend of our office via email (josh@planitconsulting.com.au) or telephone (02) 6674 5001 during business hours.

Yours sincerely



Josh Townsend
PLANIT CONSULTING