

COUNCIL ASSESSMENT REPORT

Panel Reference	PAN 59030
DA Number	DA 10.2021.698.1
LGA	Byron Shire
Proposed Development	<p>Development consent is sought for the use of existing coastal protection works, being the retention of the existing sand bags within the Project Area on Clarkes Beach for a period of at least five years. This will provide a degree of protection to the Reflections Clarkes Beach Holiday Park site and Aboriginal middens. The two existing sandbag walls include four layers of bags at between 60 – 70m in length. Each two metre length approximates 9 bags so the walls contain approximately 630 bags.</p> <p>Throughout an estimated 5 year period, the proposal includes implementation of a monitoring and maintenance schedule, including the following tasks:</p> <ul style="list-style-type: none"> • an initial UAV LiDAR/optical land survey undertaken at low tide, extending at least 500 m alongshore beyond the sandbags • weekly photo data, as well as additional photos, inspections and survey should weather events expose or damage the sandbags • monthly inspections to document environmental conditions and ensure any public safety risks are identified and mitigated • 3x monthly assessment of end effects through high resolution photography, survey and mapping • annual reporting to collate the abovementioned information <p>In the event of a weather or other event (such as vandalism) affecting the sandbag walls, or public safety, a suite of maintenance measures may be pursued, as follows:</p> <ul style="list-style-type: none"> • erection of safety fencing • beach nourishment • retreat at-risk assets • replacement of sandbags and/or rebuilding of the sandbag wall • revegetation and/or other environmental protection works <p>The specific removal of the sandbag walls at the conclusion a 5 year period is not directly sought by this application.</p> <p>The existing sandbag structure is located on Lot 410 DP729062, which is an approximately 3.9ha irregular shaped parcel. This lot accommodates part of the Clarkes Beach Holiday Park (including White's Cottage), a portion of Clarkes Beach and extends into the bay. It also contains Aboriginal middens located on the immediate dune escarpment.</p> <p>The total development footprint of existing coastal protection works is approximately 500 m².</p>

	<p>It is a Crown development. It would normally be Integrated Development because approvals are required under section 90 of the National Parks and Wildlife Act 1974 (known Aboriginal sites - AHIP). However the applicant has not requested it be treated as Integrated Development.</p> <p>It is Designated Development because it affects land mapped in SEPP (Resilience and Hazards) as littoral rainforest.</p> <p>It requires a marine parks permit as part of the geobag structure is partly below Mean High Water Mark.</p> <p>The development is defined as coastal protection works and is permitted in the 7(f) (1) zone under Byron LEP 1988.</p>
Street Address	1 Lighthouse Road, Byron Bay
Applicant/Owner	<p>Applicant: Josh Townsend, Planit Consulting Pty Ltd</p> <p>Owner: NSW Crown Holidays Parks Land Manager, trading as Reflections Holiday Parks</p>
Date of DA lodgement	4 November 2021
Total number of Submissions	<ul style="list-style-type: none"> No public submissions
Number of Unique Objections	<ul style="list-style-type: none"> No objections raising issues of concern
Recommendation	Approval
Regional Development Criteria (Schedule 6 of the SEPP (Planning Systems) 2021)	<p><i>8A Certain coastal protection works</i></p> <p><i>(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—</i></p> <p><i>(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,</i></p> <p><i>(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 2.16 of State Environmental Planning Policy (Resilience and Hazards) 2021.</i></p> <p><i>(2) Words and expressions used in this clause have (in relation to coastal protection works) the same meaning as they have in State Environmental Planning Policy (Resilience and Hazards) 2021.</i></p>
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> Byron Local Environmental Plan 1988 Byron Development Control Plan 2010 State Environmental Planning Policy (Resilience and Hazards) 2021

	<ul style="list-style-type: none"> • State Environmental Planning Policy (Planning Systems) 2021 • State Environmental Planning Policy (Transport and Infrastructure) 2021 • Coastal Management Act 2016 • Marine Estate Management Act 2014 • NPWS Act 1974
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Schedule of Conditions (Appendix 1) • Plan Set (Appendix 2) • Pre-lodgement Public Submissions (Appendix 3) • Agency Submissions (Appendix 4) • EIS and Appendices (Appendix 5 – under separate cover) • RFI(s) and additional Information Supplied by Applicant (Appendix 6)
Clause 4.6 requests	<ul style="list-style-type: none"> • None
Summary of key issues	<ul style="list-style-type: none"> • Timing and triggers for geobag removal • Erosion in proximity to structures (end effects) • Aboriginal midden protection and management and AHIP • Littoral rainforest protection and management • Visual impact and beach amenity • Marine Park protection • Cape Byron SCA protection • Public access
Report prepared by	Mike Svikis, RPIA (Life Fellow) – Consultant Planner on behalf of Byron Shire Council
Report date	8 June 2022

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?

Yes

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?

Yes

e.g. SEPP - Resilience and Hazards, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?

Not applicable

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)?

Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Not applicable

Conditions

Have draft conditions been provided to the applicant for comment?

Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

Yes

EXECUTIVE SUMMARY

Development Application 10.2021.698.1 (planning portal reference PAN 59030) was lodged with Byron Shire Council on 4 November 2021 as a designated development accompanied by an EIS. It was publicly exhibited from 15 November to 15 December 2021, and no public submissions were received. The pre-lodgement public consultation provides some indication of public opinion. Agency submissions were received from Biodiversity, Conservation and Science Directorate (BCD), DPI Fisheries (Marine Parks) and Heritage NSW.

Development consent is sought to retain and use the existing temporary coastal protection works (geobag structure) for a five-year period to provide a degree of protection to the Reflections Clarkes Beach Holiday Park site and Aboriginal middens. The existing structure is in two sections with a gap of about 20 metres at the location of a drain and beach access point. This 5 year time period will be used to identify suitable long-term solutions for the subject site. The specific removal of the geobags at the conclusion a 5 year period is not directly sought by this development application. But in response to an RFI the applicant stated “The geobag structure is not intended to remain permanently in place, however is not intended to be disturbed whilst still buried within the beach.”

The sandbag structure is physically linked to a similar structure located in front of the adjacent Beach Cafe but this structure is subject to a separate development application (DA 10.2021.630.1). The two sections of existing sandbag walls include 4 layers of bags at between 60 – 70m in length. Each two metre length approximates 9 bags so the walls contain approximately 630 bags. It was installed in July 2019.

In the event of a weather or other event (such as vandalism) affecting the geobag structure, or public safety, a suite of maintenance measures may be pursued, as follows:

- erection of safety fencing
- beach nourishment
- retreat at-risk assets
- replacement of sandbags and/or rebuilding of the sandbag wall
- revegetation and/or other environmental protection works

The works are located on Lot 410 DP729062. The subject land is part of three parcels that contain the Reflections Clarkes Beach Holiday Park. The other two lots are Lot 159 DP 755695 and Lot 306 DP 755695. The overall land area has a long frontage to Lighthouse Road but is accessed from the northern extension of Massinger Street.

The subject land has a long history of being used as a Crown Lands caravan park (known locally as Clarkes Beach Caravan Park). This use predates planning controls for this locality. It was for a long time managed by Byron Shire Council through a Crown Lands Trust, but in recent years has been managed by NSW Crown Holidays Parks Land Manager, trading as Reflections Holiday Parks.

The subject land is a Deferred Matter under Byron LEP 2014 and this LEP does not impose any controls. It is zoned 7(f1) Coastal Land under Byron LEP 1988. Under LEP 1988 the development is defined as beach and coastal restoration works and this use is permitted with consent in the 7(f1) zone. Byron Development Control Plan 2010 applies to the development.

It is a Crown development. The consent authority does not have the ability to refuse this application without the approval of the relevant Minister. If the consent authority agrees to apply conditions to the Crown DA, these conditions need to be approved by the relevant Crown body or the Minister.

It is Integrated Development because approvals are required under section 90 of the National Parks and Wildlife Act 1974 (known Aboriginal sites). The applicant in this case has not lodged it as Integrated Development but Council notified Heritage NSW in case it wanted to make a submission. Heritage NSW has confirmed that an AHIP is required for the proposed works. This will need to be obtained after any approval to proceed.

It is Designated Development because it affects land mapped in SEPP (Resilience and Hazards) 2021 as littoral rainforest. The EIS produced to support the DA is adequate and generally meets the requirements of the SEARs issued on 28 January 2021.

The main planning controls relevant to the proposal include:

- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Planning Systems) 2021
- State Environmental Planning Policy (Transport and Infrastructure) 2021
- Byron Local Environmental Plan 1988
- Byron Development Control Plan 2010

The proposal is consistent with relevant provisions of these planning controls.

Section 55 of the Marine Estate Management Act requires that determining authorities do not determine a development application within a Marine Park (below MHWL) without considering a range of matters and obtaining the concurrence of the Minister for the Environment. This concurrence has been delegated to DPI Fisheries (Marine Parks) who are able to issue a permit. As part of the geobag structure is below MHWL a marine park permit is required. Obtaining this permit is a condition of any approval.

Jurisdictional prerequisites to the grant of consent imposed by the following controls have been satisfied including:

- Clause 4.6 of SEPP (Resilience and Hazards) 2021 (consideration of whether the land is contaminated);
- Clause 4.8 of SEPP (Biodiversity and Conservation) 2021 (approval is consistent with the approved koala plan of management that applies to the land);
- Clause 2.7, 2.10, 2.11 of SEPP (Resilience and Hazards) 2021 (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 littoral rainforest, as well the coastal use and coastal environment provisions).

Key issues are:

- Timing and triggers and method for geobag removal
- Erosion in proximity to structures (end effect)
- Aboriginal midden protection and management and AHIP

- Littoral rainforest protection and management
- Biodiversity
- Visual impact and beach amenity
- Marine Park protection
- Cape Byron SCA protection
- Public beach access
- Vehicle beach access and machinery compound
- Agency submissions and concerns
- Consideration of Adjacent DA for geobags at the Beach Cafe

Timing, triggers and method for geobag removal

A key aspect of this proposed development is that the geobags only protect the dune system when they are exposed. When the beach accretes (as it is now) and covers the geobags in sand then they effectively serve no purpose other than “insurance” against the next major erosion event. They have not been constructed as a permanent protection structure and will eventually disintegrate and potentially enter the marine park and become non-biodegradable rubbish that pollutes the ocean. Approximately 630 bags make up the structure.

One option is to remove the geobags when they are covered in sufficient sand that the beach has to some extent recovered and will remain stable without the geobags in place. This option could be undertaken when the sand above the geobag top layer is at a predetermined level. This was discussed with the applicant and they sought advice from their coastal engineer. The coastal engineer advised that it is preferred that the bags be removed when the top 50 % are fully exposed. The logic being that the excavation required to remove the exposed bags would be smaller and less likely to disrupt the steep dune face.

At first, it does not seem to make sense to remove the bags when they are exposed because they are at that point doing the job of protecting the main dune. However, if a decision has been made to allow for planned retreat of the coast and the Aboriginal middens and Reflections holiday park (including Whites Cottage) have been moved then what happens after the bags are removed is planned retreat. But is this really any different if the geobags are covered in sand and the beach has recovered and is stable? Probably not. The steep dune face will be impacted in both scenarios over time but that is the effect of planned retreat. If long term protection of the dune is required then an option other than geobags will need to be pursued.

Rather than have a trigger based on sand levels it is recommended that a time based trigger be applied so that there is a clear period of time in which planned retreat (or permanent protection) of key assets can be implemented.

It is recommended that consent be time limited with the maximum the bags can remain being 5 years from the date of approval. They can be removed sooner if the Aboriginal middens and Reflections holiday park have been moved and a planned retreat approach is adopted for this locality.

However, it is recommended that a more detailed Geobag Structure Removal Plan be prepared and submitted to Council for approval within six months of the date of this consent. The objective of this is to remove all of the geobag structure and rehabilitate the site. It must include, but not be limited to, the following:

- (a) Expected timeline for geobag removal and rehabilitation;
- (b) Details of site rehabilitation;
- (c) Details on waste management and recycling of all materials arising from the decommissioning; and
- (d) Expected maintenance period for areas disturbed by the geobag removal process including any landscaping and vegetation that needs to be replaced and re-established. A minimum of 3 months is anticipated..

Erosion in proximity to structures (end effect)

Hard structures on sandy beaches that are subject to wave action can result in the loss of the beach in front of the structure from wave action; and an “end effect” which is caused by wave action scouring at the end of the structure. In this case the sand is currently accreting on this part of the beach and the geobags are mostly buried and not affected by wave action. The geobag structures are underlain by a reef/rock layer which limits vertical scour in their vicinity. If the beach scours down to the reef/rock layer, WRL estimated that more than 2% of the geobags would be displaced in a 5 year average recurrence interval (ARI) wave event, necessitating repairs. Overtopping may also erode some of the backfill sand. The waves that impacted the geobags during the December 2020 storm event were approximately 1 to 2 year ARI. The geobag wall was undamaged, however, wave overtopping eroded some of the backfill sand, which was subsequently topped up. WRL observed that the end effects caused by the geobag structures to date are minor, but the potential seawall end effects extend into two beach access points. The end effects observed to date may not be the totality of end effects over the design life of the works. Beach nourishment with clean sand will be required to address end effects.

The applicant has responded to an RFI about the erosion potential further north within the embayment by commissioning a further report by WRL (Appendix 6). This new WRL report is the same for this application as for the Beach Café DA. The report states:

“The distance from the western end of the Clarkes Beach geobags to the eastern end of the Jonson Street protection works is approximately 750 m. The maximum alongshore distance observed to date for end effects from the Clarkes Beach geobags is 20 m. The maximum alongshore end effect distance estimated for the Clarkes Beach geobags for a 20 year ARI erosion event is 170 m to 250 m, noting that a 5 year design life is proposed.

It is proposed to import nourishment sand to offset sand ‘locked up’ by the Clarkes Beach geobags. Local planform change west of the Clarkes Beach geobags may still be observed following storm events, however, there will be no long-term loss of sand from the system.”

A minimum of 2,200 m³ (over five years) of “suitable sand” is required to be placed on Clarkes Beach to compensate for locked up sand within and behind the geobag structure.

Conditions can require that beach nourishment be used to address any end effect or erosion behind the geobag structure over the 5 year consent period.

Aboriginal midden protection and management and AHIP

The development application is supported by a report “Beach Byron Bay Clarkes Beach, Byron Bay NSW: Aboriginal Cultural Heritage Assessment”, by Everick Heritage August 2021. Everick note that there are three known midden sites in the vicinity of the works. At least two sites are located on the Reflections holiday park site. The middens are significant to the Bundjalung of Byron Bay Aboriginal Corporation (BoBBAC). They support retaining the temporary geobags until a permanent solution is in place to protect the middens.

It is important that this assessment recognises that alongside obvious built structures (eg the holiday park) these middens are very important to the local community.

It is recommended that an AHIP is sought for the following activities:

- Decommission of the coastal protection works when triggered or at the end of the agreed consent period;
- Revegetation works to provide medium to long-term stability to the dune face, including the use of fabric material to support the establishment of root structures;
- Restrict pedestrian access to the midden area to protect it in the short term;
- As a mitigation measure it is further recommended that salvage of midden material is undertaken by BoBBAC that has
 - i. Slumped down the dune face and retained around the temporary geobag system; and
 - ii. Is at imminent risk of loss from storm surge and high tides.

BoBBAC would be involved in all works with the potential to impact on the midden.

These matters can be addressed in conditions either on the consent or on the AHIP. Note that this DA has been referred to Heritage NSW and it has confirmed an AHIP is required.

Littoral rainforest protection and management

Part of the subject land is mapped as an area of Littoral Rainforest under SEPP (Resilience and Hazards) that has been impacted heavily by coastal erosion events. The DA is designated because of the SEPP mapping. The location of the geobags is largely clear of substantial native vegetation. A key feature of dune restoration is over time to rehabilitate the site with native plants. There are important stands of coastal bushland and littoral rainforest in the adjacent Reserve (and State Conservation Area) and this will be protected by the proposed works unless the geobag structure is exposed and end effects occur. On balance the works will not harm any littoral rainforest and should assist in preserving and restoring remnants. No threatened flora species would be likely to be impacted by the proposal. Conditions requiring screening and protection of the littoral rainforest can be imposed.

Biodiversity

The application acknowledges that part of the subject land is mapped on the NSW Biodiversity Values Map. However no vegetation is to be cleared. A BAM and BDAR was not undertaken. Vegetation impacts are likely to be minimal. Screening and replanting will have a positive effect.

In this case the development is temporary and the impact on threatened marine turtles or seabirds is ephemeral and dependant on the sand levels on the beach as much as the presence or absence of the geobag structure.

Placing machinery on a beach for maintenance works may impact on fauna that lives in the sand (eg pipis and worms). However, this is also likely to be a temporary impact with minimal impact in the long term.

It is noted that migratory Rainbow Bee-eater birds have nested in the steep dune face over summer. These birds will abandon these nests when the juveniles have fledged. Works on the dune face need to avoid the period of time that these birds are nesting.

It is unlikely that the development will have a significant effect on threatened species or ecological communities subject to conditions.

Visual impact and beach amenity

As the location of the geobag wall stabilises it will reduce visual impacts. As the beach builds up in front of it the impact on beach users will also be minimal. Use of sandy or green tones in screening and fencing material will also reduce visual impacts as will the growth of native vegetation on the dune face. Conditions to address visual impacts are proposed.

Marine Park protection

The ocean to the north of the proposed works site is part of a Habitat Protection Zone in the Cape Byron Marine Park. The Habitat Protection zone extends to “any area of waters of the sea or subject to tidal influence”. Although the geobag wall is currently above tidal influence it was not when it was installed (see survey) and may not be at some time in the future if the beach erodes again. Protecting the Cape Byron Marine Park, particularly from pollution by geobags is an important aspect of this assessment. The Marine Estate Management Act, 2014 and the Cape Byron Marine Park apply to the works. A marine park permit is required because part of the geobag structure is located below Mean High Water Mark. Conditions to address marine park impacts and require a permit are proposed.

Beach Access

The geobag structure occupies public land. Informal access to the dune will be discouraged with fencing and signage to allow it to recover. It is acceptable that the public be excluded from this damaged dune area.

The Reflections Clarkes Beach Holiday Park had two pedestrian beach access points prior to 2019. Since the major erosion events one has been blocked off and the other made useable as an ambulant access. They are not public access points. They are for holiday park users. This development application does not propose any new or renewed beach access on this site.

A pedestrian access immediately west of the Beach Café was destroyed by coastal erosion and a separate process (under Part 5 of the EPA Act, 1979) is being pursued to close this access permanently once the beach has stabilised.

The public are using an access 50 m further to the west to reach the beach. This was a disabled access point but the erosion has made it unsuited to wheel chairs. It is still an ambulant access. Full restoration of this access can also be dealt with under Part 5 of the Act

when the beach has stabilised. However, it is appropriate that if the geobag structure comes back out of the sand and this access is affected by “end effects” then its maintenance by beach nourishment is the responsibility of Reflections (shared with DPE Crown lands). Conditions to address these issues are proposed.

Vehicle beach access and machinery compound

The applicant has indicated that machinery may need to access the beach if geobag maintenance is required. It is proposed that this be limited to the one near the “kayak hire” vehicle access to the west of the Beach Café approximately Easting 560692 and Northing 6831449.

If a machinery compound is required then it will be limited to a maximum of 1000 m² located on the public reserve adjacent to the “kayak hire” vehicle access point.

Refuelling and maintenance of machinery should only be undertaken in the machinery compound. A spill kit will be maintained in the machinery compound at all times when machinery is located on the site. A second kit shall also be available in proximity to machines when they are being used on the beach.

The machinery compound should be removed and the site rehabilitated within 14 days of maintenance works being completed.

Prior to the use of heavy vehicles in the reserve and on Clarkes Beach the applicant needs to prepare a Traffic Management Plan that addresses the safety issues related to the locality.

Conditions to address vehicle beach access, traffic management and the machinery compound are proposed.

Agency submissions and concerns

Agency submissions were received from Biodiversity, Conservation and Science Directorate (BCD), DPI Fisheries (Marine Parks) and Heritage NSW. None of these agencies objected outright to the development or gave reasons that it should be refused. A range of matters raised by the agencies have been incorporated into conditions of approval.

Heritage NSW has a key role to play in issuing an AHIP for the proposed works. The AHIP can also be subject to conditions.

DPI Fisheries (Marine Parks) has a key role to play in issuing a marine park permit for the proposed works which can also be subject to conditions.

Consideration of adjacent DA for geobags at the Beach Cafe

The geobag structure is physically linked to a similar structure located in front of the adjacent Beach Cafe, but this structure is subject to a separate development application (DA 10.2021.630.1). However, it is appropriate that the two developments be considered simultaneously and that any conditions imposed be consistent (not necessarily identical).

In particular the two structures need to be maintained in a consistent manner and preferably at the same time to avoid duplication of impacts. They also need to be removed at the same time to avoid the potential for one wall to be weakened without the other or cause end effects.

Conditions to achieve this are proposed.

NSW Crown Holidays Parks Land Manager response to proposed conditions

The draft conditions were supplied to the applicant and a range of suggested amendments were agreed. The final conditions recommended by this report were supplied to the applicant for consideration on 26 May 2022. On 3 June 2022 the applicant advised that they were happy for them to be supplied to the Regional Planning Panel without amendment. However they are also open to the changes suggested by DPE Crown Lands for consistency between the two approvals.

DPE Crown Lands suggested two changes as follows:

1. *amend condition A1 to expressly include the Environmental Impact Statement and WRL report TR 2021/12, Geobag Walls at Clarkes Beach, Byron Bay (September 2021) as supporting documents endorsed by Council.*

Comment: Inclusion of the EIS and other supporting documentation is not supported because these detailed documents are the work of the applicant and may not be entirely consistent with the position of the determining authority. Parts of the EIS and supporting documentation are inconsistent with proposed conditions and this will create uncertainty. Best practice is to only reference documents in a consent that are required for the interpretation and implementation of the consent. The EIS (etc) is not required to interpret or implement this approval.

2. *amend condition A2 to clearly provide that DPE - Crown Lands will:*
 - *decommission the coastal protection works (geobag structure) and/or cease associated works by the 5th anniversary of the determination date of the development consent, or*
 - *decommission the coastal protection works (geobag structure) and/or cease associated works at any time before the 5th anniversary of the determination date of the development consent if, in the opinion of DPE - Crown Lands, there has been a significant failure of the coastal protection works and/or associated works due to coastal processes, and it is not considered by DPE – Crown Lands to be feasible to repair or reinstate the works due to impacts from coastal processes on the beach and dunal system.”*

Comment: This condition has been amended to incorporate the bulk of the text suggested by DPE Crown Lands. The final conditions recommended by this report contain the amended condition A2.

A briefing was held with the Panel on 9 February 2022 where key issues were discussed.

Following a detailed assessment of the proposal, pursuant to Section 4.16(1)(b) of the EP&A Act, DA 10.2021.698.1 is recommended for approval subject to the conditions at Appendix 1.

1.0 Introduction

Development Application 10.2021.698.1 (planning portal reference PAN 59030) was lodged with Council on 4 November 2021 as a designated development accompanied by an EIS (Appendix 5). The development is designated because it includes works in a Littoral Rainforest mapped in the Resilience and Hazards SEPP. The development would normally be Integrated Development, as per section 4.46 of the *Environmental Planning and Assessment Act 1979*, requiring the general terms of approval proposed to be granted by Heritage NSW. This is in relation to known Aboriginal sites that will require an Aboriginal Heritage Impact Permit pursuant to s.90 of the National Parks and Wildlife Act 1974. However, the applicant has opted not to seek an Integrated approval.

It is a Crown Development and pursuant to Section 4.33 of the EPA Act 1979 it cannot be refused except with the approval of the Minister or have a condition imposed upon it except with the approval of the relevant Crown body or the Minister.

It was publicly exhibited from 15 November to 15 December 2021, and no public submissions were received. The pre-lodgement public consultation provides some indication of public opinion (Appendix 3). Agency submissions were received from Biodiversity, Conservation and Science Directorate (BCD and NPWS), Heritage NSW and DPI – Fisheries (Cape Byron Marine Park) (Appendix 4).

The subject land has a long history of being used as a Crown Lands caravan park (known locally as Clarkes Beach Caravan Park). This use predates planning controls for this locality. It was for a long time managed by Byron Shire Council through a Crown Lands Trust, but in recent years has been managed by NSW Crown Holidays Parks Land Manager, trading as Reflections Holiday Parks.

Clarkes Beach was subject to significant coastal erosion event from mid-July 2019 when an east coast low event occurred coincident with spring high tides. To mitigate the coastal erosion risk to assets at Clarkes Beach Holiday Park, a geotextile sand container (sandbag) revetment was constructed in two sections in July 2019 as emergency coastal protection works. This provided protection to the Clarkes Beach Holiday Park and afforded the opportunity to relocate a number of assets (primarily holiday cabins) away from immediate threat.

In October 2020 coastal and structural/geotechnical engineers determined that the adjacent Beach Café building was at imminent risk of collapse onto the beach. NSW Department of Planning & Environment – Crown Lands (DPE - Crown Lands) constructed a temporary geotextile sand container (geobag) seawall and associated dune nourishment works in front of the Beach Café in November and December 2020. Some sand has also been brought to the site and used to stabilize the dune escarpment. More recently jute cloth has been used to further protect the escarpment. The Beach Café works are subject to a separate development application.

The existing works were authorised under Part 5 of the Environmental Planning and Assessment Act 1979 (EP&A Act), in accordance with section 2.16 of State Environmental Planning Policy (Resilience and Hazards) 2021 which allows for the placing of sandbags by a public authority for a period of not more than 90 days for the purposes of temporary protection from coastal erosion.

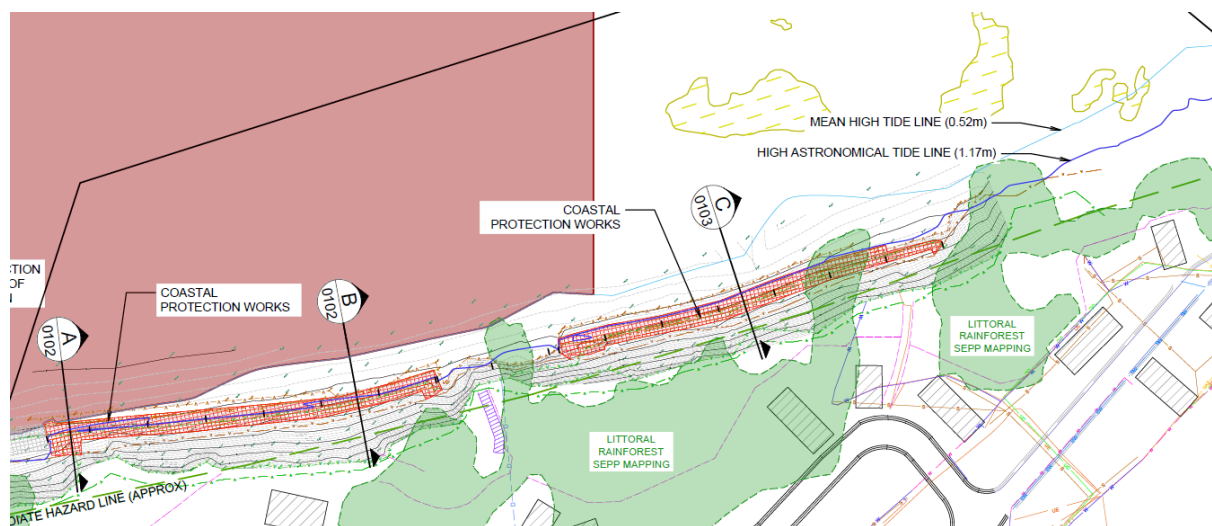
2.0 Details of Proposal

Development consent is sought to retain and use the existing temporary coastal protection works (sandbag structure) to provide a degree of protection to the Reflections Clarkes Beach Holiday Park site and Aboriginal middens from coastal erosion. It is suggested that this will also *“enable a series of strategic and environmental assessments to occur to identify suitable long-term solutions to the subject site, particularly its areas of Aboriginal cultural heritage, recreational and ecological value, as well as built assets and economic generation”*. (EIS p.11).

The sandbag structure is physically linked to a similar structure located in front of the adjacent Beach Cafe but this structure is subject to a separate development application (DA 10.2021.630.1).

The works are located on Lot 410 DP729062 (Figure 1). The subject land is part of three parcels that contain the Reflections Clarkes Beach Holiday Park. The other two lots are Lot 159 DP 755695 and Lot 306 DP 755695. The overall land area has a long frontage to Lighthouse Road but is accessed from the northern extension of Massinger Street.

Figure 1: Subject site and existing works



In the event of a weather or other event (such as vandalism) affecting the sandbag walls, or public safety, a suite of maintenance measures may be pursued, as follows:

- erection of safety fencing
- beach nourishment
- retreat at-risk assets
- replacement of sandbags and/or rebuilding of the sandbag wall
- revegetation and/or other environmental protection works

The specific removal of the sandbag walls at the conclusion a 5 year period is not directly sought by this development application.

Figure 2 shows the geobag structure in place in 2019 before substantive sand accretion.

Figure 2: Subject site and works viewed from the north with holiday park in background



Plate 1 shows the works as they are in February 2022 substantially covered by beach sand.



Plate 1: The Reflections Holiday is located behind the existing coastal protection works proposed to remain for 5 years

3.0 Description of Subject Site and Surrounds

The works are located on Lot 410 DP729062 (Figure 3). The subject land is Crown land managed by Reflections Pty Ltd as Crown Land Manager. It is bounded to the east by Cape Byron State Conservation Area and to the west by Crown Reserve 82000 (R82000), managed by Byron Shire Council (Council) as Crown Land Manager. The Cape Byron Marine Park is immediately north of the subject land. To the south is two other Crown lots managed as part of the holiday park being lots Lot 159 and 306 DP 755695. The overall holiday park area has a long frontage to Lighthouse Road but is accessed from the northern

extension of Massinger Street. At the western end of Lot 410 is an old wooden structure known as “Whites Cottage” which is currently boarded up and not used for any purpose.

The subject land on which the works are located is a public beach because Lot 410 DP729062 now extends well out into the surf zone and is partly below low water mark. Comparison of Figures 3 and 4 show that approximately 25 metres of vegetated dunes have been eroded from in front of the Holiday Park over the last 3 years making parts of it vulnerable to erosion hazard.

Figure 3: Subject site and broader context in 2021 (*Source: Council GIS*)



Figure 4: Subject site and broader context c. 2018 (*Source: SIX web site*)



The nearest development is the Beach Cafe to the west. A public car park is located to the south west. To the south is residential development along Lighthouse Road.

The subject land is a Deferred Matter under Byron LEP 2014 and this LEP does not impose any controls. It is zoned 7(f1) Coastal Land under Byron LEP 1988 (Figure 5). Under LEP 1988 the development is defined as **beach and coastal restoration works** and this use is permitted with consent in the 7(f1) zone.

Zone No 7 (f1) (Coastal Land Zone)

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.

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

Figure 5: Land use zones under Byron LEP 1988 – site is zoned 7(f1) Coastal Lands



4.0 Background of Proposal

The subject land has been used for a beachside camping since the late 1950's. White's cottage which is located on the far western edge of the subject land was erected in 1933 by Elizabeth White of Lismore as a family holiday cottage on a miners lease. It was used by the White family up until 2000 and has since been boarded up by holiday park operators to prevent squatters and vandalism.

The Clarkes Beach caravan park was managed by Byron Shire for many decades and more recently by Reflections Holiday Parks. It has evolved over many decades from a camping area to a caravan park and now has a number of cabins for short term tourist use. It is popular because it is beach front and a short walk to the town centre.

SEARs were issued for the preparation of the EIS on 28 January 2021. Pre lodgement community consultation was held in January /February 2021. The development application was lodged with Council on 4 November 2021 as a designated development accompanied by an EIS prepared by Planit Consulting. It was referred to a range of government agencies.

It was also notified to neighbouring land owners and placed on public exhibition.

A letter requesting further information was issued on 9 December 2021. A response to that RFI was received by Council on 21 December 2021. The matters raised in the RFI and responded to include:

- Removal of the geobags after five years
- Consistency with cl 15 of SEPP (Coastal Management) “Development in coastal zone generally—development not to increase risk of coastal hazards” and the potential for end effects.
- Absence of a BAM or BDAR
- Protection and enhancement of the littoral rainforest on site
- Management of Aboriginal middens on site and need for an AHIP to accompany any works.

A further letter requesting information was issued on 11 February 2022. A response to the second RFI was received by Council on 28 April 2022. The matters raised in the second RFI and responded to include:

- The reasons why the geobag structure was not removed after 90 days as expected pursuant to s.19 (2)(a) of the Coastal Management SEPP.
- The potential impacts of the geobag structures on coastal land further along Main Beach and beyond.
- The reason that a 5 year consent period (specifically) has been requested.

The RFIs, responses and additional information supplied is at Appendix 6.

5.0 Matters for Consideration

The proposed development has been assessed under the heads of consideration in section 4.15 of the *Environmental Planning and Assessment Act 1979*. The assessment has identified the following key issues, which are elaborated upon for the Panel’s consideration.

5.1 Section 4.15(1)(a)(i) provisions of any environmental planning instrument

5.1.1 State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 4 (Koala Habitat Protection 2021) applies to the subject land because Council has prepared and adopted a Koala Plan of Management that applies to the subject land. The SEPP states:

Part 4.2 Development control of koala habitats

4.8 Development assessment process—approved koala plan of management for land

(1) This clause applies to land to which this Policy applies and to which an approved koala plan of management applies.

(2) The council's determination of the development application must be consistent with the approved koala plan of management that applies to the land.

Comment: The subject land is not identified in a Koala Management Precinct and is not in an area known to have a resident Koala population. The applicant has not provided a flora and fauna assessment because the location of the geobags is totally disturbed by past erosion events and contains no trees. They conclude that the locality is not potential or core Koala habitat. No vegetation is proposed to be removed as part of this application. No further assessment is triggered. The consent authority is not prevented from granting consent by this SEPP or the Koala Plan of Management.

5.1.2 State Environmental Planning Policy (Resilience and Hazards) 2021

A number of clauses in this SEPP apply to this development and need to be considered. The location of the geobags partly affects an area mapped as Littoral Rainforest under the SEPP (Figure 6). The area is not affected by Coastal Wetland mapping. The SEPP states:

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.

(2) Development for which consent is required by subclause (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 subclause (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 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.

(5) Nothing in this clause 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 clause 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

Figure 6: SEPP Littoral Rainforest mapping at the site



Comment: This clause provides that any development in the mapped core area requires development consent and that the development application must be accompanied by an EIS. Although the applicant in this case is a public authority it still requires consent because the locality is not identified in a certified coastal management program and has no plan of management. The EIS submitted with this DA fulfils the requirements of this clause. Sub clause 4 provides that a consent authority must be satisfied that the Littoral Rainforest will be protected and where possible enhanced. No vegetation is required to be removed as part of this application. The littoral rainforest was damaged by coastal erosion and dead trees ended up on the beach as a result. The control of erosion by a geobag structure and sand replenishment will act to protect the remaining littoral rainforest. Some salt protection is being provided by a small amount of existing screening at the top of the dune escarpment. This needs to be extended to the full length of the erosion area and the screen needs to be a dark green colour (not bright blue). The littoral rainforest would benefit from rehabilitation of the dune with native vegetation. Subject to conditions requiring additional dune forming fences and vegetation planting the proposed development is compliant with this requirement of the SEPP.

The SEPP also states in relation to littoral rainforest:

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

(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 clause does not apply to land that is identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map.

Comment: This clause identifies an area within 100 metres of a mapped core littoral rainforest area. Most of the geobag structure is located in this area. Sub clause 1 provides that a consent authority must be satisfied that the adjacent Littoral Rainforest will not be significantly impacted in relation to its biophysical, hydrological or ecological integrity. The geobag structure is intended to stabilise the eroded dune face for a period of five years to allow it to recover from the recent severe erosion event. It will have a positive biophysical impact as it will reduce the likelihood of the littoral rainforest collapsing into the ocean over that period. Stabilising the dune face is likely to maintain the hydrology of the subject land. The littoral rainforest buffer would benefit from rehabilitation of the dune with native vegetation. Subject to conditions requiring additional screening, dune forming fencing and vegetation planting the proposed development is compliant with this requirement of the SEPP.

The SEPP also identifies the subject land as being mapped within the coastal environment area (Figure 7) and the following provisions apply to development in this 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—

(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 clause 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 subclause (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 clause does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.*

Figure 7: SEPP Coastal Environment Area mapping at the site



Comment: The following table addresses each subclause within clause 2.10 in relation to impact avoidance, and if relevant impact minimisation and mitigation.

SEPP Clause 2.10	Comment
<i>1(a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment</i>	Retention of the geobag structure and associated dune restoration and vegetation rehabilitation works will have minimal or neutral impacts on hydrology. The bags are porous. The impacts on the ecology will be positive through dune and rainforest plantings and restoration. The biophysical impact will be positive by creating an environment where the steep erosion

	<p>escarpment can rebuild and stabilise over time.</p> <p>Removal of the geobag structure in five years will be subject to a management plan to minimise any negative impacts.</p>
<i>1(b) coastal environmental values and natural coastal processes</i>	<p>The coastal values of this locality include: a white sandy beach that is accessible at both low and high tides; an ocean beach that is safe for swimming and surfing; access to the beach for holiday park users; and a natural backdrop of sand dunes that are vegetated and safe.</p> <p>The proposed works will not cause an adverse impact on these values and if successful will be a significant improvement on the severely degraded beach environment that has been created by natural processes in recent times.</p> <p>The natural coastal process in this location are that the coastline is in recession. Sand will come and go but overall the beach is predicted to move south due to a sand deficit. The geobag structure is designed to slow down the recession and accelerate any short term accretion in this location.</p> <p>The studies produced to support the EIS identified that an erosion “end effect” will occur if wave action impacts on the geobag structure. If a geobag structure exists in front of the Beach Café this “end effect” is moved on to the west. Waves are not able to reach the structure with current sand levels. If the end effect of the geobag structure can be avoided then the likely impact on natural coastal process over say a 5 year period will be minimal. Conditions can be imposed to address any issues that arise over than 5 year period. They can also address the geobag structure removal process.</p>
<i>1(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</i>	<p>The water quality of the marine environment is unlikely to be impacted if the geobag structure is retained for five years and then carefully removed. Conditions will be imposed so that the geotextile bags are</p>

<i>development on any of the sensitive coastal lakes</i>	<p>not washed in the ocean causing pollution if a major erosion event occurs and the structure is destroyed.</p> <p>No sensitive coastal lakes are located in proximity to the subject land.</p>
<i>1(d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms</i>	<p>No marine or other native vegetation will be adversely impacted in any way by the development. No significant fauna impacts are predicted. The issue of marine turtles accessing the beach has been addressed by natural sand accretion that now covers the geobag structure. If sand does not remain (or accrete further) then beach nourishment will be required. The geobags will be removed as a condition of any approval after five years (at the longest).</p> <p>No headlands are in proximity to the works. A rock platform exists in front of the works but only when the beach has been stripped of its sand. It is usually quickly covered as sand slugs migrate around Cape Byron.</p> <p>The development will not impact on the rock platform.</p>
<i>1(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</i>	<p>The geobag structure occupies public land being located on Crown land. Informal access to the dune will be discouraged with fencing and signage to allow it to recover. It is acceptable that the public be excluded from this damaged dune area.</p> <p>A pedestrian access within the frontage of the holiday park was damaged and has been rebuilt. It is now the only access for park users and will be maintained as part of dune maintenance. It was and still is an ambulant access. It is not a public access because the public use the access through the Public Reserve and generally don't walk through the holiday park.</p>
<i>1(f) Aboriginal cultural heritage, practices and places</i>	<p>The Bundjalung of Byron Bay (Arakwal) identify this locality as culturally significant. There are three recorded middens in the vicinity of the works. Two are on the subject land in the dune face.</p>

	<p>Retention of the geobag structure will have minimal impacts on any sites. While the works are in place, they provide temporary protection to any middens remaining in the dune behind the geobag structure.</p> <p>Decommissioning of the structure will be undertaken in consultation with the Bundjalung of Byron Bay Aboriginal Corporation (BoBBAC) and other key stakeholders. It will also trigger an AHIP as it will likely affect Aboriginal middens. This will be addressed as a condition of any approval.</p> <p>On the 5 August 2021 the BoBBAC Board of Directors agreed to have cultural site monitors during any excavation work and suggested the geo bags stay in place for 2 - 5 years.</p> <p>Removing the geobag structure before the long term future of the middens has been decided and implemented will likely result in the loss of these sites in the next erosion event that affects the dune face.</p> <p>The location of the middens is a critical factor in recommending conditional approval for this DA.</p>
<i>1(g) the use of the surf zone</i>	<p>The geobag structure occupies land that will become steadily further from the surf zone as the beach accretes. In its current state it has no impact on the surf zone. If a major erosion event occurs and the beach is lowered a rock shelf is exposed and the beach becomes unsuitable for swimming or surfing at this location.</p>

The SEPP also identifies the subject land as being mapped within the coastal use area (Figure 8) and the following provisions apply to development in this 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 clause does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.*

Figure 8: SEPP Coastal Use Area mapping at the site



Comment: The following table addresses each subclause within clause 2.11 in relation to impact avoidance, and if relevant impact minimisation and mitigation.

SEPP Clause 2.11	Comment
<p><i>1(a) (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,</i></p>	<p>The geobag structure occupies public land being located on Crown land. Informal access to the dune will be discouraged with fencing and signage to allow it to recover. It is acceptable that the public be excluded from this damaged dune area.</p> <p>A pedestrian access within the frontage of the holiday park was damaged and has been rebuilt. It is now the only access for park users and will be maintained as part of dune maintenance. It was and still is an ambulant access.</p> <p>Access along the beach will not be inhibited by the geobag structure unless it is uncovered in a major erosion event and moved around. If this happens in the first five years the geobags will be restored or removed. After five years they will be removed.</p>
<p><i>1(a) (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,</i></p>	<p>The proposed works will not overshadow the beach or create wind funnelling effects.</p> <p>The geobag structure is almost completely covered by sand as at February 2022 and therefore it has no impact on views.</p> <p>Screening at the top of the escarpment and dune forming fencing (required as a condition) will be visible but it will eventually also be covered in sand as the dune recovers. Screens will need to be colours that blend into the environment.</p>
<p><i>1(a)(iii) the visual amenity and scenic qualities of the coast, including coastal headlands,</i></p>	<p>The coastal values of this locality include: a white sandy beach that is accessible at both low and high tides; an ocean beach that is safe for swimming and surfing.</p> <p>The bay and Cape Byron provide an outstanding coastal backdrop to the locality.</p> <p>Dune restoration will have some visual impact initially but this impact is diminished over time as sand returns and vegetation is planted or regrows.</p>

	It is important that dune screening is either green or sand coloured to blend into the backdrop.
<i>1(a)(iv) Aboriginal cultural heritage, practices and places,</i>	<p>The Bundjalung of Byron Bay (Arakwal) identify this locality as culturally significant. There are three recorded middens in the vicinity of the works.</p> <p>Retention of the geobag structure will have minimal impacts on any midden sites. While the works are in place, they provide temporary protection to any middens remaining in the dune behind the geobag structure.</p> <p>Care will be needed with fencing and screening to ensure it avoids disturbing any midden areas.</p> <p>Decommissioning of the structure will be undertaken in consultation with the Bundjalung of Byron Bay Aboriginal Corporation (BoBBAC) and other key stakeholders. It will also trigger an AHIP as it will likely affect Aboriginal middens. This will be addressed as a condition of any approval.</p> <p>On the 5 August 2021 the BoBBAC Board of Directors agree to have cultural site monitors during any excavation work and that the geo bags should stay in place as required for 2 - 5 years.</p>
<i>1(a)(v) cultural and built environment heritage</i>	<p>The proposed works are in proximity to Whites Cottage which is an old holiday cottage on the Reflections site. It is not heritage listed and not currently used. It was recognised in the 2007 Byron Shire Community-Based Heritage Study and recommended for local heritage listing. It will be protected by the geobag structure in any case. Protecting it provides a further period to determine the long term future of this structure. The proposed revision of the plan of management for the holiday park provides an opportunity to consider the long term future of this structure.</p>

	The holiday park is not a heritage listed structure but it has cultural value as one of only a small number of coastal caravan parks in Byron Bay. It has been popular for tourists over many years providing an opportunity to stay in Byron Bay at a reasonable cost.
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In its General Provisions the SEPP specifies that any development is not to increase the risk of coastal hazards as follows:

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.

Seven coastal hazards are defined under the NSW Coastal Management Act (2016) as follows:

The NSW Coastal Management Act (2016) defines seven coastal hazards, namely:

- a) beach erosion*
- b) shoreline recession*
- c) coastal lake or watercourse entrance instability*
- d) coastal inundation*
- e) coastal cliff or slope instability*
- f) tidal inundation*
- g) erosion and inundation of foreshores caused by tidal waters and the action of waves, including the interaction of those waters with catchment floodwaters*

Comment: This provision does not have the option of avoid, mitigate or minimise. It requires that development “is not likely to cause increased risk of coastal hazards”. The initial WRL report on this issue states “The end effects observed to date are minor”; and “Potential seawall end effects extend into two beach access points”; and “Until such time that the interim works can be removed, management of the impacts of the works is best undertaken through the following means” (etc).

The applicant is not stating that there will be no increased risk of coastal hazards rather that the increase will be minor and able to be managed.

The increased risk of coastal hazards can only be avoided if the geobags are totally under the sand surface of the beach and therefore outside the wave zone or they are removed.

This issue was raised in the second RFI in relation to the likelihood of impacts in the embayment beyond the initial end effects (Appendix 6). This new WRL report is the same for this application as for the Beach Café DA. The report states:

“The distance from the western end of the Clarkes Beach geobags to the eastern end of the Jonson Street protection works is approximately 750 m. The maximum alongshore distance observed to date for end effects from the Clarkes Beach geobags is 20 m. The maximum alongshore end effect distance estimated for the Clarkes Beach geobags for a 20 year ARI erosion event is 170 m to 250 m, noting that a 5 year design life is proposed.

It is proposed to import nourishment sand to offset sand ‘locked up’ by the Clarkes Beach geobags. Local planform change west of the Clarkes Beach geobags may still be observed following storm events, however, there will be no long-term loss of sand from the system.”

A minimum of 368 M³ per year (on average) of “suitable sand” is required to be placed on Clarkes Beach to compensate for locked up sand within and behind the Reflections Holiday Park part of the geobag structure.

Conditions can require that beach nourishment be used to address any end effect or erosion behind the geobag structure over the 5 year consent period.

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: No certified coastal management plan applies to the land.

In its Miscellaneous Provisions the SEPP specifies the circumstances in which coastal protection works can be undertaken with or without development consent:

2.16 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 Policy applies by a person other than a public authority only with development consent.

(2) Coastal protection works by public authority Development for the purpose of coastal protection works may be carried out on land to which this Policy 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.

Comment: The applicant in this case is a public authority however a certified coastal management program is not in place, it involves more than beach nourishment and the geobags are to remain for more than 90 days. On this basis development consent for the works is required.

In the second RFI the applicant was asked why it had not removed the geobags after 90 days as it was required to do (Appendix 6). The response in summary, was:

“the sandbag walls had been placed within close proximity and seaward of 2x Aboriginal middens..... Through the preparation of the Aboriginal Cultural Heritage Assessment (ACHA), it was confirmed that removal of the sandbags would harm the Aboriginal Objects, requiring the issue of an Aboriginal Heritage Impact Permit (AHIP).”

“Whilst the 90-day period afforded through... the Resilience & Hazards SEPP) ended on approximately 22 October 2019, an AHIP was still not in place. Accordingly, removing the sandbags at this time, as per the 90 day threshold, would have resulted in a breach of the National Parks & Wildlife Act 1974 as it pertains to Aboriginal Objects.”

“An AHIP was secured on 20 March 2020, which effectively coincided with nationwide lockdowns for the COVID 19 pandemic. Of note, at this time, the threat of coastal erosion still remained high, with the sandbags providing the only line of defence to the Aboriginal Objects and Reflections Holiday Park behind. Reflections Holiday Park commissioned inspections by several coastal and geotechnical consultants, whom advised that removal of the sandbags would result in imminent slumping of the dune. Accordingly, Reflections Holiday Park determined it was not yet safe to progress with the sandbag removal and made the decision to seek development consent to retain the coastal protection works. This decision was largely validated when NSW Crown Lands were forced to pursue similar works in the final quarter of 2020 to mitigate coastal risks immediately adjacent.”

“Whilst Reflections Holiday Park note the sandbag walls have been in place for a period well in excess of the legislated 90 days, active work has been pursued throughout the time period, namely:

- preparation of further specialist assessments,*
- ongoing monitoring and stakeholder engagement,*
- 2x formal community consultation processes and*
- assessment of the subject application itself.*

In this context, undesirable cultural, environmental and public safety outcomes were anticipated if Reflections Holiday Park strictly followed the legislated provisions. Instead, each of the abovementioned steps has been pursued to ensure appropriate levels of public safety, to uphold environmental and cultural attributes of the site and resolve the statutory non-compliance of the sandbags.”

This SEPP includes provisions that appear to permit foreshore management activities without consent in clause 2.164.

2.164 Development permitted without consent

(1) Despite clause 2.164, development for the purpose of waterway or foreshore management activities may be carried out by or on behalf of a public authority without consent on any land.

It also includes clause 2.7 that explains the relationship between SEPP Transport and Infrastructure and SEPP Resilience and Hazards.

2.7 Relationship to other environmental planning instruments

(1) Except as provided by subclause (2), if there is an inconsistency between this Policy and any other environmental planning instrument, whether made before or after the commencement of this Policy, this Policy prevails to the extent of the inconsistency.

*(2) Except as provided by subclauses (3) and (4), if there is an inconsistency between a provision of this Policy and any of the following provisions of another environmental planning instrument, the provision of the **other instrument prevails** to the extent of the inconsistency—*

*(a) clausesand **2.16 of State Environmental Planning Policy (Resilience and Hazards) 2021,***

Comment: The fact that Clause 2.16 of SEPP Resilience and Hazards prevails over SEPP Infrastructure means that coastal protection works (or foreshore management activities) require development consent.

5.1.3 State Environmental Planning Policy (Resilience and Hazards) 2021 (Chapter 4 Remediation of Land)

Clause 4.6 of this SEPP outlines the contamination and remediation to be considered in determining development applications.

(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.

Comment: Council's Unhealthy Building Land mapping layer does not identify that this site is contaminated. There is a history of sandmining in Byron Bay including land to the west of Massinger Street that is now occupied by Clarkes Beach Park, Lawson Street and the Sandhills Estate (Figure 9).

Figure 9: Byron Bay Sandmining area c. 1971



It is unlikely that the dunes where the geobags are located have been sand mined as there is at least three middens located there and these would have been destroyed by sand mining. There is no other evidence of past land use that may have contaminated the site. Further detailed investigation is not warranted.

The proposed use in this application is not a residential or otherwise sensitive use as listed in the SEPP. The holiday park will not enlarge its footprint as a result of the coastal protection works.

On balance, it is unlikely that the site is contaminated or requires remediation to enable it to be used as a location for a coastal protection structure.

5.1.4 State Environmental Planning Policy (Planning Systems) 2021

Clause 2.19 of the SEPP declares certain development to be Regionally Significant if it is identified in Schedule 6.

Schedule 6 is as follows:

8A 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 2.16 of State Environmental Planning Policy (Resilience and Hazards) 2021.*
- (2) *Words and expressions used in this clause have (in relation to coastal protection works) the same meaning as they have in State Environmental Planning Policy (Resilience and Hazards) 2021.*

Comment: The proposed coastal protection works are regionally significant development to be undertaken by a public authority that are not identified in clause 2.16 of State Environmental Planning Policy (Resilience and Hazards) 2021. They do not trigger the State significant development criteria.

5.1.5 Byron Local Environmental Plan 1988 (and 2014)

Byron LEP 2014 identifies the subject land as a Deferred Matter which means that Byron LEP 1988 applies.

Definition, Permissibility and Zone Objectives

The development is defined as *beach and coastal restoration works* and is permitted in the 7(f1) Coastal Lands zone with consent. The development will take place entirely on land in this zone.

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

The objectives of the 7(f1) Coastal Lands zone are as follows:

- (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.*

Comment: The proposed development complies with the majority of these objectives, and the others are not relevant or justifiably inconsistent as follows:

The proposed beach and coastal restoration works are located on land correctly identified as environmentally sensitive coastal land.

The works to stabilise and restore the dune will have a positive impact on habitat restoration, and will over time improve the scenic and landscape quality of the locality as native vegetation returns to the exposed dune face and sand accretes along the beach.

The development is intended to be located in an area affected by coastal processes and that cannot be avoided.

Once the geobags are covered by sand and not subject to tide and wave action then there will be no adverse impact on coastal processes in the vicinity. Conditions can be imposed to address the scenario where the geobags become exposed.

Clause 2 Aim, objectives and guiding principles

*(1) **Aim** The aim of this plan is to promote sustainable development in Byron by furthering the objects of the Environmental Planning and Assessment Act 1979, particularly in regard to—*

(a) the application to proposed development of guiding principles for the management, development and conservation of natural and human made resources (including natural areas, forests, coastal areas, water, agricultural land, extractive resources, towns, villages and cultural amenities) for the purpose of promoting the social and economic welfare of the community, protecting ecological and cultural heritage and achieving a better environment,

(b) the promotion and coordination of the orderly and economic use and development of land,

(c) the provision and coordination of community services and facilities,

(d) the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities and their habitats,

(e) the provision of increased opportunity for public involvement and participation in environmental planning and assessment, and

(f) the protection and promotion of the use and development of land for arts and cultural activity, including music and other performance arts.

(2) Objectives *The objectives of this plan are—*

(a) to enhance individual and community (social and economic) well-being by following a path of economic development that safeguards the welfare of future generations,

(b) to provide for equity within and between generations, and

(c) to protect biodiversity, and re-establish and enhance essential ecological processes and life support systems.

(3) Guiding principles *The objectives can be achieved through the implementation of the following guiding principles—*

(a) The precautionary principle. The precautionary principle means that where there are threats of serious or irreversible damage to the community's ecological, social or economic systems, a lack of complete scientific evidence should not be used as a reason for postponing measures to prevent environmental degradation. In some circumstances this will mean actions will need to be taken to prevent damage even when it is not certain that damage will occur.

(b) The principle of intergenerational equity. This principle means that the present generation must ensure that the health, integrity, ecological diversity, and productivity of the environment is at least maintained or preferably enhanced for the benefit of future generations.

(c) The principle of conserving biological diversity and ecological integrity. This principle aims to protect, restore and conserve the native biological diversity and enhance or repair ecological processes and systems.

(d) The principle of improving the valuation and pricing of social and ecological resources. This principle means that the users of goods and services should pay prices based on the full life cycle costs (including the use of natural resources at their replacement value, the ultimate disposal of any wastes and the repair of any consequent damage).

(e) The principle of eliminating or reducing to harmless levels any discharge into the air, water or land of substances or other effects arising from human activities that are likely to cause harm to the environment.

(f) The principle of encouraging a strong, growing and diversified economy that promotes local self reliance, and recognises and strengthens the local community and its social capital in ways that safeguard the quality of life of future generations.

(g) The principle of providing credible information in open and accountable processes to encourage and assist the effective participation of local communities in decision making.

Clause 2A Implementation of aim, objectives and guiding principles

(1) The Council shall grant consent to the carrying out of development on land to which this plan applies only where the Council is of the opinion that the carrying out of the development is consistent with the aim, objectives and guiding principles of this plan.

(2) Before determining a development application, the council shall have regard to the information, guidelines and recommendations in the following strategies, policies and studies adopted by the council—

- (a) State of the Environment Report,*
- (b) Byron Flora and Fauna Study,*
- (c) Byron Biodiversity Conservation Strategy,*
- (d) Byron Rural Settlement Strategy,*
- (e) Small Towns and Villages Settlement Strategies,*
- (f) Coastline Management Plan.*

Comment: The beach and coastal restoration works will allow the Reflections Clarkes Beach Holiday Park to continue trading in its current location until such time as a decision can be made on its long term future. This is an orderly and economic use of the land assuming that there is a cost benefit for the works against the income generated by the holiday park.

The holiday park is a popular accommodation venue that has high occupation rates.

The works are intended to protect the dune environment and generate habitat over time as the dune recovers.

The public have been consulted prior to DA lodgement and consulted again as part of the EIS exhibition.

As long as the works do not exacerbate coastal hazards there should not be any intergenerational inequity and the biodiversity should be enhanced by the rehabilitation.

Imposing conditions to ensure that the geobag structure is temporary is a precautionary approach pending the finalisation of policy on the future location of the holiday park.

Conditions to require the timely removal of the bags are critical to ensure they do not get washed into the ocean and become a pollution source.

Clause 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.

Comment: The development is intended to be located in an area affected by coastal processes and that cannot be avoided. Once the geobags are covered by sand and not subject to tide and wave action then there will be no adverse impact on coastal processes in the vicinity. Conditions can be imposed to address the scenario where the geobags become exposed.

The key threats posed by structures in the beach zone are loss of the beach in front of the structure from wave action; and the “end effect” which is caused by wave action scouring at the end of the structure. In this case the sand is currently accreting on this part of the beach and the geobags are mostly buried. There is currently no end effect to the west because the structure joins up to the one in front of the Beach Café. There does not appear to be an end effect to the east either. If an end effect occurs this can be repaired with clean sand brought into the site. This can be a condition of approval.

The dune restoration and revegetation works will over time improve the scenic and landscape quality of the locality as native vegetation returns to the exposed dune face and sand accretes along the beach.

The safeguards that can be included as conditions of approval include monitoring and maintenance of the dune restoration, beach access, etc. Plus removal of the geobags after five years.

5.2 Section 4.15(1)(a)(ii) – the provisions of any proposed instrument

No draft planning instruments apply to the subject land. The Council is preparing amendments to address C zones in the LGA but the coastal hazard C zones matter has yet to be resolved. Council's web site states:

“What happens to ‘coastal hazard’ environmental zones?”

Some coastal areas were also identified as a Deferred Matter under the Byron LEP 2014, pending the outcomes of the State Government's coastal management review and the possible adoption of a new coastal zone. This applies to the following zones under the Byron LEP 1988: 7(f1) Coastal lands; and 7(f2) Urban Coastal Lands.

Such areas will be considered under a separate review process and remain as a Deferred Matter under the Byron Local LEP 2014 until appropriate planning controls are developed in consultation with the State Government. These areas will therefore remain subject to the zoning and legislative requirements of the Byron LEP 1988 and the relevant controls in the Byron Development Control Plan (DCP) 2010.”

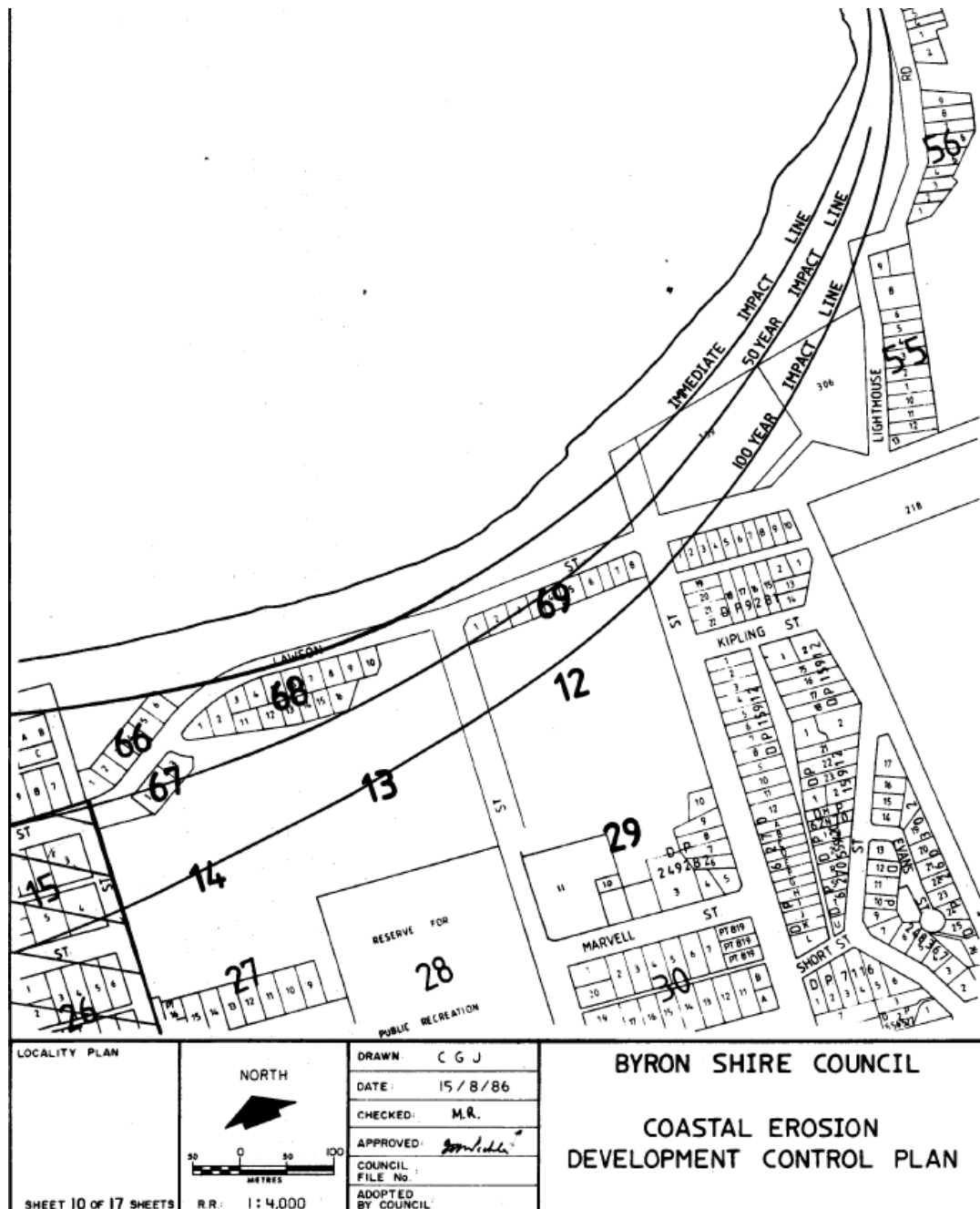
5.3 Section 4.15(1)(a)(iii) – the provisions of any development control plan

5.3.1 Byron Development Control Plan 2010 (DCP 2010)

Chapter 1 Part J – Coastal Erosion Lands

Different controls apply to different hazard category land. The relevant map is at Figure 10.

Figure 10 DCP Part J erosion impact lines



The DCP precincts have been scanned and applied to a recent air photo on the Byron GIS in Figure 11.

Figure 11 DCP erosion precincts map



The western half of the geobag structure is seaward of the Immediate Impact Line so Precinct 1 controls apply under this DCP. The eastern half of the geobag structure is seaward of the 50 year Impact Line so Precinct 2 controls apply under this DCP.

The Precinct 1 controls that apply in this case are:

Element Objective

To ensure the impact of coastal processes on potential development is minimised by limiting development and ensuring any development is only temporary.

Performance Criteria

New buildings or works are to be temporary and able to be readily removed in the event of coastal erosion. Development that is of a community nature, which relates to the use of the beachfront, may be considered, provided that any building is easily removable and does not require a major extension to a service main.

(The balance of controls relate to buildings and dwellings).

Comment:

The proposed development is limited to protecting the dune in proximity to the Reflections Clarkes Beach Holiday Park (in association with the protection for the Beach Cafe). It is not proposed to be temporary but conditions will be imposed to ensure that it is limited to a maximum of five years. The applicant has suggested they need five years to determine the long term future of the holiday park which is also partly in Precinct 1.

The geobag structure is able to be removed by slashing the bags and emptying the sand onto the beach. They are not biodegradable and this cannot be changed easily as the bags are in place and mostly covered in accreting beach sand. There is no requirement for services. Restoring the dune and slowing down the erosion has a community benefit as long

as it does not exacerbate coastal processes elsewhere on Clarkes Beach. This can be achieved with conditions of approval.

The proposed development is consistent with Precinct 1 controls in Chapter 1 Part J of Byron DCP 2010 subject to conditions.

The Precinct 2 controls that apply in this case are:

Element Objective

To ensure the impact of coastal processes on potential development is minimised by ensuring any development is readily relocated as the erosion escarpment nears the development.

Performance Criteria

Development in Precinct 2 must be designed to be relocate or demolished, or to cease operation, should the erosion escarpment come within 50 metres.

(The balance of controls relate to buildings and dwellings).

Comment:

The proposed development is limited to protecting the dune in proximity to the Reflections Clarkes Beach Holiday Park (in association with the protection for the Beach Cafe). It is not proposed to be temporary but conditions will be imposed to ensure that it is limited to a maximum of five years. The applicant has suggested they need five years to determine the long term future of the holiday park which is also partly in Precinct 1.

The geobag structure is able to be removed by slashing the bags and emptying the sand onto the beach. They are not biodegradable and this cannot be changed easily as the bags are in place and mostly covered in accreting beach sand. There is no requirement for services. It is not possible to achieve a 50 metre setback for the geobag structure to the escarpment given that the structure is in front of the escarpment.

The proposed development is justifiably inconsistent with Precinct 2 controls in Chapter 1 Part J of Byron DCP 2010.

Chapter 1 Part F – Waste Minimisation & Management

This chapter requires an applicant to prepare a waste minimisation and management plan in accordance with a Council template.

Comment: The applicant states that waste will not be generated by the development as the geobags may not be removed. Conditions will be imposed to remove the geobags and dune

fencing materials when no longer required. The disposal of this material can be addressed in conditions of approval. A Geobag Structure Removal Plan is recommended.

Chapter 21 – Social Impact Assessment

An SIA is normally required for any designated development in accordance with this chapter. Byron Council officers indicated to the applicant that it is not required in this case.

Comment: The proposed development is consistent with Chapter 21 of Byron DCP 2010.

5.4 Section 4.15(1)(a)(iia) – the provisions of any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4

There is no planning agreement or draft planning agreement applying to this development or the subject site.

5.5 Section 4.15(1)(a)(iv) – the regulations (to the extent that they prescribe matters for the purposes of this paragraph)

There are no prescribed matters in the regulations applying to this development or the subject site.

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

The following assessment addresses the impacts that the development will have on the surrounding natural and built environment, and the social and economic impacts that the proposal may have on the locality.

5.6.1 Coastal Processes

The development application is supported by a report “Geobag walls at Clarkes Beach, Byron Bay” by Water Research Laboratory (WRL), UNSW dated September 2021. The stated purpose of the report is to review:

- Coastal processes and hazards at Clarkes Beach and within the Byron Bay embayment
- The stability of the geobags under wave forces
- Impacts of the geobags on coastal processes and management of the impacts over the life of the works
- Monitoring and future removal of the geobags

A Coastal Assessment was undertaken by BMT in May 2021. The stated purpose of this report is to assess the two development scenarios of:

- Remove Wall (existing/base case) – Reflections seawall to be removed immediately (within a couple of months), followed by dune stabilisation and revegetation; and
- Retain Wall (proposed development case) – Reflections seawall to remain in place temporarily for a period of up to five years.

It also considers what management works may be required to ensure the function, integrity and safety of the Reflections seawall and public space if they are to remain in place.

The applicant summarises how we got to the current situation as follows: Interim geobag (0.75 m³) walls were constructed fronting Reflections Holiday Park in July 2019 in two lengths of approximately 70 m each, separated by a short length (22 m) comprising a stormwater pipe, degraded gabions, coffee rock, boulders and cobbles, with a total effective length of approximately 160 m. In October/November 2020, an approximately 90 m long geobag wall was constructed in front of the Beach Café. The Beach Café wall is contiguous with and westward of the Reflections geobag wall. An additional course of geobags was added to a large section of the crest of the Beach Café geobag wall in December 2020 in response to a large storm wave event that overtopped the geobag wall and eroded some of the backfill. The wall was offset seaward of the base of the erosion escarpment to provide geotechnical stability to the Café building and the sand dune. It was backfilled with compatible sand at a stable angle of repose. Hessian cloth was placed over the exposed dune face. Plates 2 and 3 demonstrate what has happened.

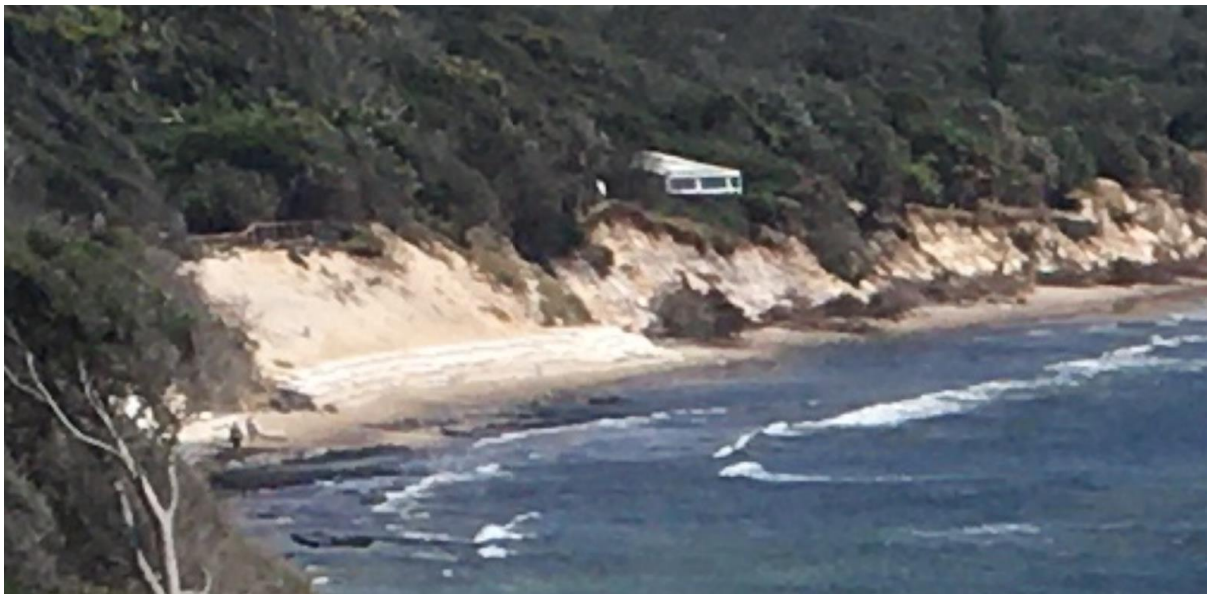


Plate 2 Geobags installed for Reflections seawall but before Beach Café seawall (mid 2020)



Plate 3 Geobags laid for Reflections and Beach Café seawalls plus sand nourishment and accretion (Nov 2021)

Hard structures on sandy beaches that are subject to wave action can result in the loss of the beach in front of the structure from wave action; and an “end effect” which is caused by wave action scouring at the end of the structure. In this case the sand is currently accreting on this part of the beach and the geobags are mostly buried and not affected by wave action. The geobag structures are underlain by a reef/rock layer which limits vertical scour in their vicinity. If the beach scours down to the reef/rock layer, WRL estimated that more than 2% of the geobags would be displaced in a 5 year average recurrence interval (ARI) wave event, necessitating repairs. Overtopping may also erode some of the backfill sand. The waves that impacted the geobags during the December 2020 storm event were approximately 1 to 2 year ARI. The geobag wall was undamaged, however, wave overtopping eroded some of the backfill sand, which was subsequently topped up.

WRL observed that the end effects caused by the geobag structures to date are minor, but the potential seawall end effects extend into two beach access points. End effects only occur at the downdrift side of seawalls where the waves almost always approach from one side, which is the case for Clarkes Beach (a drift aligned beach). The end effects will be west of the Beach Café geobag structure because it is contiguous with the Reflections geobag structure. With Clarkes Beach generally accreting during 2021, the recent observations may be the maximum extent of end effects, however, this trend cannot be extrapolated for the next 5 years. The end effects observed to date may not be the totality of end effects over the design life of the works (WRL page 48).

Figure 12 Observed end effects from combined geobag structure (WRL report)



In protecting the dune and the Reflections Holiday Park there is the potential to exacerbate erosion in front of and to the west of the geobag structure if it becomes exposed to tide and wave action. This can be addressed in a Coastal Protection Works Management Plan ('CPWMP') for the area comprising the geobag structure as well as an area of approximately 250 m in all directions around that structure. As a minimum it would need to address the following issues:

- ensure the site is regularly monitored for signs of erosion in front of and beside the geobag structure
- any existing end effect is repaired with beach nourishment and then stabilised and maintained
- the location and type of fencing or other suitable method of restricting access to the geobag structure and the dune behind it
- the geobag structure must not result in the diversion or concentration of overland surface waters such that substantial stormwater erosion occurs
- A revegetation methodology, including a list of species to be planted during restoration works and measures to ensure their survival
- A weed control methodology that includes a list of weed species presently occurring on the site, as well as those with the potential to invade the site, and specific control strategies for each weed species
- A report on the regular monitoring and the progress of implementing the CPWMP must be submitted to Council's Coastal Officer every six months for the duration of the geobag structure

In Council's second RFI the applicant was asked for advice on the potential impacts of the geobag structures on coastal land further along Main Beach and beyond over the proposed 5 year life of the development.

This issue was raised in the second RFI in relation to the likelihood of impacts in the embayment beyond the initial end effects (Appendix 6). This new WRL report is the same for this application as for the Beach Café DA. The report states:

“The distance from the western end of the Clarkes Beach geobags to the eastern end of the Jonson Street protection works is approximately 750 m. The maximum alongshore distance observed to date for end effects from the Clarkes Beach geobags is 20 m. The maximum alongshore end effect distance estimated for the Clarkes Beach geobags for a 20 year ARI erosion event is 170 m to 250 m, noting that a 5 year design life is proposed.

It is proposed to import nourishment sand to offset sand ‘locked up’ by the Clarkes Beach geobags. Local planform change west of the Clarkes Beach geobags may still be observed following storm events, however, there will be no long-term loss of sand from the system.”

A minimum of 368 M³ per year (on average) of “suitable sand” is required to be placed on Clarkes Beach to compensate for locked up sand within and behind the Reflections Holiday Park part of the geobag structure.

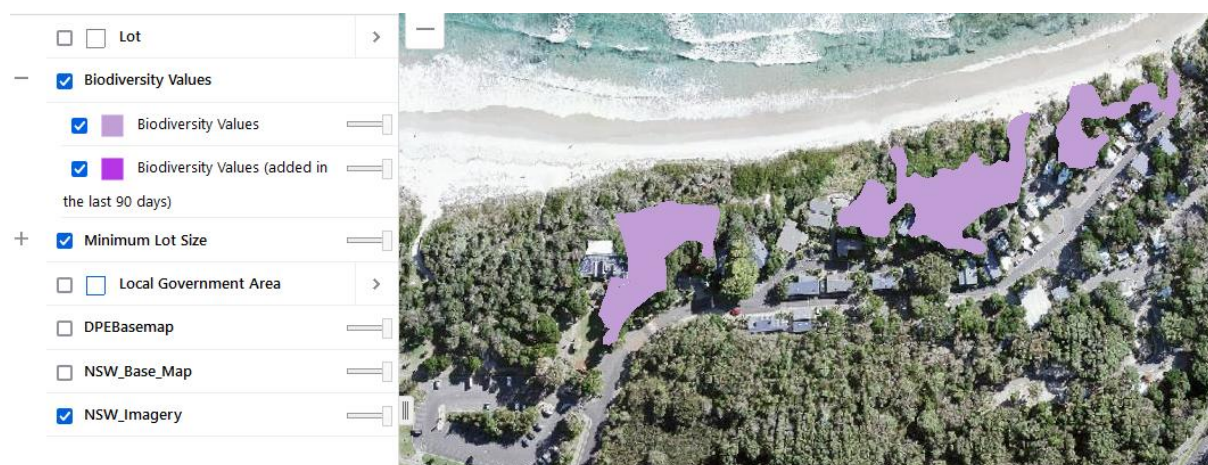
Conditions can require that beach nourishment be used to address any end effect or erosion behind the geobag structure over the 5 year consent period.

5.6.2 Biodiversity

The subject land has been heavily impacted by coastal erosion in 2019 and 2020 and the location of the geobags is clear of substantial native vegetation. Pioneer species such as spinifex and vines are starting to grow down the dune face. A key feature of dune restoration is to rehabilitate the site with native plants. There are important stands of coastal bushland and littoral rainforest on the adjacent land and this will be protected by the proposed works unless the geobag structure is exposed and end effects occur.

It is noted that part of the subject land is mapped on the NSW Biodiversity Values Map (Figure 13). This reflects an area of Littoral Rainforest mapped under SEPP (Resilience and Hazards) that has been impacted heavily by coastal erosion events.

Figure 13 NSW Biodiversity mapping



No vegetation is required to be removed as part of this development application. The control of erosion by a geobag structure and sand replenishment together with screening will act to

protect the remaining littoral rainforest. Some salt protection is being provided by a small amount of existing screening at the top of the dune escarpment in one location. This needs to be extended to the full length of the erosion area and the screen needs to be a dark green colour (not bright blue). The littoral rainforest would benefit from rehabilitation of the dune with native vegetation. Conditions requiring additional screening and vegetation planting are proposed. This will be addressed in the Coastal Protection Works Management Plan.

The biodiversity report did not undertake a Test of Significance (ToS) for any threatened fauna species that have the potential to occur within the development footprint and/or considered to have some potential to be impacted by the proposal. Examples would be shore birds and marine turtles that both use the beach environment.

However, the biodiversity assessment for the adjacent Beach Café geobag seawall (Biodiversity Assessments & Solutions Pty Ltd, June 2021) did undertake a Test of Significance (ToS) for the following species (and as it is immediately next door and a near identical development it is relevant in this case):

- Sooty Oystercatcher (*Haematopus fuliginosus*)
- Pied Oystercatcher (*Haematopus longirostris*)
- Little Tern (*Sternula albifrons*)
- Great Knot (*Calidris tenuirostris*)
- Koala (*Phascolarctos cinereus*)
- Common Blossom-bat (*Syconycteris australis*)
- Loggerhead Turtle (*Caretta caretta*)
- Green Turtle (*Chelonia mydas*)

The ToS concluded that the works would not generate a significant impact. No threatened flora species listed under the BC Act 2016 were recorded at the subject land or in the immediate vicinity. Therefore, it is considered that no threatened flora species would be likely to be impacted by the proposal.

State agencies raised the potential for the geobag structure to be a risk for marine turtles. The geobag structure, when exposed, poses a potential barrier for marine turtles coming ashore to nest in the dunes on Clarkes Beach. The level of disturbance attributed to the barrier is likely to vary substantially with the level of exposure at the time. i.e. it is likely to represent a potential barrier when exposed, and there is potential that nesting marine turtles may abort attempts to come ashore at that location if unable to traverse the structure. The level of threat is significantly reduced, and potentially removed, if sand has been redeposited on the beach and covers the structure. At the time of the biodiversity assessment the structure was only partially visible, with the majority situated below the beach surface. Overall the structure affects a small portion of the overall length of the beach. It affects about 160 metres of a 13km beach (The Pass to Brunswick Heads).

Disturbance to shorebirds is likely more attributable to activities undertaken within the development footprint. This is likely to represent minor short term impacts (noise, workers and machinery). In the context of regular disturbances at the site due to the 'busyness' of the area, it is unlikely that these disturbances would be significant, as shorebirds are likely to generally

favour more isolated and less trafficked beaches and sandflats within the local area over busy locations.

The EIS concludes (page 38) that:

“due to the extremely low likelihood of impact to any of the listed threatened species, populations, ecological communities or their habitats, no Biodiversity Development Assessment Report is required in accordance with Section 7.7 of the BC Act 2016.”

Despite a lack of supporting information in the EIS this conclusion is reasonable. The absence of a BAM and BDAR was not raised as a concern in the BCD agency submission.

However, the subject land is not devoid of biodiversity values.

In order to protect the biodiversity values that remain on the subject land conditions of approval should include:

- No native vegetation is to be cleared for this development. Trees that have been damaged or killed by coastal erosion can be mulched for use as dune stabilization material.
- All native vegetation used in rehabilitation areas is to be endemic to Byron Bay.
- If a marine turtle nest is identified within 30 metres of a work area then it must be notified to NPWS and advice obtained on measures to avoid and mitigate any impacts from proposed works
- If a shorebird nest is identified within 30 metres of a work area then it must be notified to NPWS and advice obtained on measures to avoid and mitigate any impacts from proposed works
- No work is to impact on Rainbow Bee Eater nest/s in the dune face while they are in use
- If unexpected protected or threatened fauna are encountered, then work must stop immediately, and a qualified ecologist or wildlife carer must be contacted and relevant fauna spotter/catcher protocols must be followed to prevent harm to wildlife
- If a Koala is present within 30 metres of a work area, then 24 hours must be provided for the animal to move from the work area of its own volition
- All machinery is to be clean prior to entering the subject land to ensure that weed seeds and propagules are not imported
- Contingencies are required to address the risk of bushfire, including spark arrestors and suspending works in high bushfire danger periods

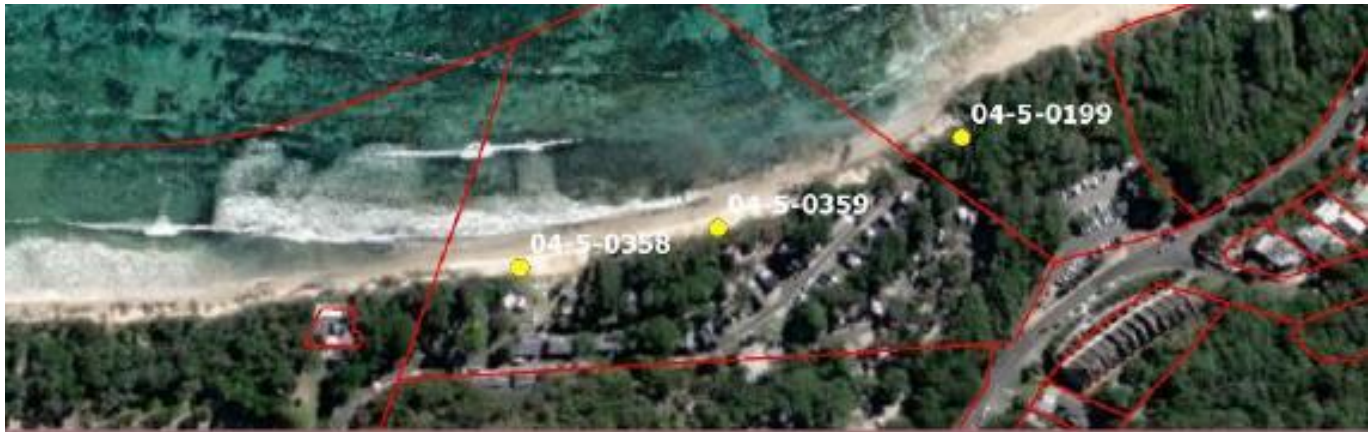
The biodiversity related conditions suggested by BCD have largely been incorporated into the proposed conditions of approval.

5.6.3 Aboriginal Heritage

The development application is supported by a report “Reflections Holiday Park Dune Conservation Works, Byron Bay NSW: Aboriginal Cultural Heritage Assessment Report”, by Everick Heritage August 2021.

Everick note that there are three known sites in the vicinity of the works (Figure 14). The intent of the ACHAR is to understand the potential impacts of the dune stabilisation works on the cultural values of the two midden sites on the subject land known as Clarkes Beach Holiday Park 1 (AHIMS #04-5-0358) and Clarkes Beach Holiday Park 2 (AHIMS #04-5-0359). The third midden is on NPWS land to the east.

Figure 14 Known midden sites at Clarkes Beach



The ACHAR aims to:

- Investigate and articulate the significance of the midden to the Aboriginal community;
- Map and describe the nature and extent of the middens; and
- Discuss appropriate ongoing management options in support of an Aboriginal Heritage Impact Permit ('AHIP').

The report established that the midden is significant to the Bundjalung of Byron Bay Aboriginal Corporation. At a site visit it was advised that the position of BoBBAC was to retain the temporary geobags until a permanent solution was in place. However they are supportive of dune revegetation and restoration works. The expectation was that BoBBAC would be involved in all works with the potential to impact on the midden.

Written support for the proposed mitigation measures was received from Sharon Sloane via email on 05 August 2021. Specifically, that the BoBBAC Board of Directors agree to having cultural site monitors during any excavation work to the proposed path works and the geo bags to stay in place as required for 2 - 5 years.

Due to the installation of the temporary geobags and recent slumping of the dune, archaeologists were not able to physically inspect and map the middens. However they are middens that comprises predominately Eugarie shell which exists at the interface of the old sand dune profile (identifiable by the grey sand layer) which has been buried by a more recent yellow sand deposit within the historic period.

Based on the results of the NPWS dating program it is reasonable to proceed on the basis that the midden lens within the Project Area dates to the period of early contact (approximately 170BP or 1850's) and is not older than 260BP (Everick 2018). The Eugarie

middens were very common along the dune systems, however most of the midden sites have now been lost as a result of historic sand mining and more recently coastal erosion. Any remaining in-situ coastal midden must be considered of high archaeological significance.

The applicant advised that an existing AHIP is in place (AHIMS Permit ID: 4538) the AHIP permits the following proposed works. It expired on 19 March 2022.

Proposed Works

The proposed works include all associated ground disturbance impacts required for the removal of the existing temporary geobag system, revegetation works to provide medium to long-term stability to the dune face, the reinstatement of the Western Beach Access and the installation of semi-permanent fencing and signage around the dune to mitigate impacts from beachgoers. The works also include community collection of Aboriginal objects and scientific dating of shell and non-human bone.

The potential harm from the works include:

- Removal of the existing temporary sandbag system using machinery consistent with an excavator;
- Revegetation works to provide medium to long-term stability to the dune face, including the use of fabric or plastic material to support the establishment of root structures; and
- Active salvage of midden material by BOBBAC that has slumped down the dune face and is at imminent risk of loss from storm surge and high tides.

Everick considered the following management and mitigation options for the Reflections Clarkes Beach Holiday Park 1 and 2 middens:

- a) complete avoidance;
- b) partial avoidance;
- c) harm with salvage and repatriation on-site; and
- d) harm without salvage.

Everick concluded that (c) harm with salvage and repatriation on-site is the most appropriate management response for the Reflections Clarkes Beach Holiday Park 1 (#04-5-0358) and 2 (AHIMS #04-5-0359) middens.

The Everick assessment acknowledges the following:

- the views of the Aboriginal community representatives who have participated in the ACHAR ;
- the degree to which the middens have already been disturbed by coastal erosion and the potential for additional impacts to the midden in the immediate future;
- the proximity to the Clarkes Caravan Park Midden (#04-5-0199) which has been subject to archaeological investigation and radiocarbon dating;
- the potential to retain midden material within the dune system and actively manage the midden as a cultural resource (the shell material is retained 'on country'); and

- the potential for more permanent engineering solutions to protect the sand dune and midden complex.

This option triggers an Aboriginal Heritage Impact Permit (AHIP).

It is recommended that an AHIP is sought for any or all of the following activities:

- Decommission of the coastal protection works (geobag removal);
- Revegetation works to provide medium to long-term stability to the dune face, including the use of fabric or plastic material to support the establishment of root structures;
- Active salvage of midden material undertaken by BoBBAC that has
 - i. Slumped down the dune face and retained around the geobag structure;
 - ii. Is within the construction footprint of any beach access; and
 - ii. Is at imminent risk of loss from storm surge and high tides.

It is recommended that the salvaged midden material be temporally stored within a secure area within the Reflections Clarkes Beach Holiday Park or off site in the office of either BOBBAC or NPWS until such time as a permanent storage area is identified between BoBBAC and the Proponent. Permanent storage should in in compliance with Requirement 26 of the *Code of Practice for Archaeological Investigation in New South Wales (2010)* (CoPAI) or in accordance with instructions from BoBBAC. It is noted that the permanent reburial area must be recorded as a new AHIMS site and managed as an Aboriginal site.

It is also recommended that conditions of approval should include:

- implementation of Unexpected Find Procedure;
- Maintain a field log to record basic data from the archaeological salvage program. This would include dates of salvage, species, volume of material and particulars of the event which resulted in the salvage. Should scientific analysis be undertaken this should also be included within the field log. It is recommended that the field log be attached to the AHIMS Site Recording Form.

Given that an AHIP is required for this development to proceed these detailed matters can be addressed as conditions on the AHIP.

5.6.4 Beach Access (Pedestrian and Vehicle) and the Machinery Compound

The Reflections Clarkes Beach Holiday Park had two pedestrian beach access points. Since the major erosion events one has been blocked off (Plate 4) and the other made useable as an ambulant access (Plate 5). They are not public access points. They are for holiday park users. This development application does not propose any new or renewed beach access.



Plate 4 Blocked pedestrian beach access at eastern end of the holiday park.



Plate 5 Pedestrian access between geobag walls in front of the holiday park (western beach access referenced in AHIP)

A publicly accessible pedestrian beach access is located 50 metres to the west of the Beach Cafe.

Vehicle access to Clarkes Beach is required to conduct maintenance on the geobag structure if it is required over the life of the approval. This should be restricted to the “kayak hire” vehicle access point at approximately Easting 560692 and Northing 6831449.

It is assumed that a machinery compound will be required to support maintenance works. Only one machinery compound not larger than 1000 m² is to be located on the public reserve for maintenance or emergency works or geobag removal. It is to be located adjacent to the “kayak hire” vehicle access point.

5.6.5 Coastal Management Act 2016

The object of this Act is to manage the coastal environment of New South Wales in a manner consistent with the principles of ecologically sustainable development for the social, cultural and economic well-being of the people of the State. It sets the basis for SEPP (Resilience and Hazards) such as littoral rainforest areas, coastal environment area and coastal use area and these matters are dealt with in section 5.1.2 of this report.

It also provides the basis for a certified Coastal Management Program to set the long-term strategy for the co-ordinated management of land within the coastal zone. However Byron Shire does not have a certified Coastal Management Program.

It also has a specific section that relates to Coastal Protection Works as follows:

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,

(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.

Section 27	Comment
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<p><i>1 (a) the works will not, over the life of the works</i></p> <p><i>(i) unreasonably limit or be likely to unreasonably limit public access to or the use of a beach or headland</i></p>	<p>The works, (in combination with the erosion) will limit access by holiday park users to one location. However, the holiday park is not accessible to the wider public with access restricted to park users. Non park users are advised there is no entry. The nearest public access is 50 metres west of the Beach Café and it is not unreasonable to direct the public to this point. Beach access is not part of this DA.</p>
<p><i>1 (a) the works will not, over the life of the works</i></p> <p><i>(ii) pose or be likely to pose a threat to public safety,</i></p>	<p>The use of sand nourishment behind the geobag structure in front of the holiday park has reduced the dune steepness and made it safer for the public as well as holiday park patrons.</p> <p>This will need to be monitored and maintained so that it remains stable. As the beach in front of the geobags accretes the height of the dune effectively reduces making it safer.</p> <p>Conditions addressing maintenance of geobags and screening of the dune are recommended.</p>
<p><i>1 (b) satisfactory arrangements have been made (by conditions imposed on the consent) for the following for the life of the works</i></p> <p><i>(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</i></p>	<p>This clause makes it clear that if there is any erosion of the beach in front of the geobags or any end effect beside them then fixing that impact is the responsibility of the owner of the works. In this case NSW Crown Holidays Parks Land Manager, trading as Reflections Holiday Parks.</p> <p>Conditions addressing maintenance and restoration of the beach and the dune are recommended.</p> <p>Note that this sub clause specifically anticipates that coastal protection works may increase erosion and that this is only acceptable if conditions can be imposed to fix it. This is at odds with SEPP (Resilience and Hazards) (see discussion at section 5.1.2 of this report). However, if there is any inconsistency then this section overrides the SEPP.</p>
<p><i>1 (b) satisfactory arrangements have been made (by conditions imposed on the</i></p>	<p>Conditions addressing maintenance of geobags and the dune are recommended.</p>

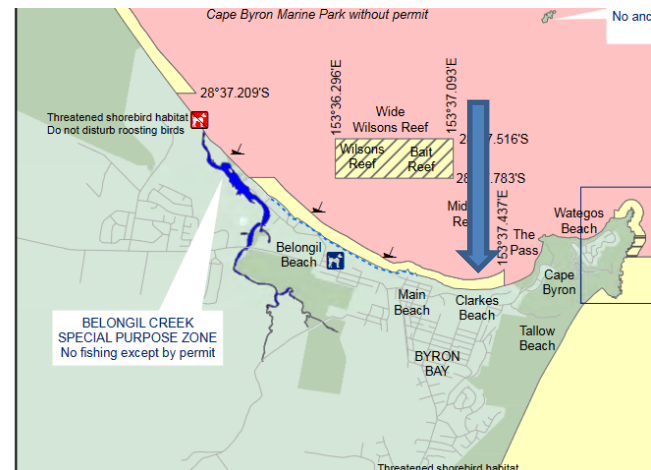
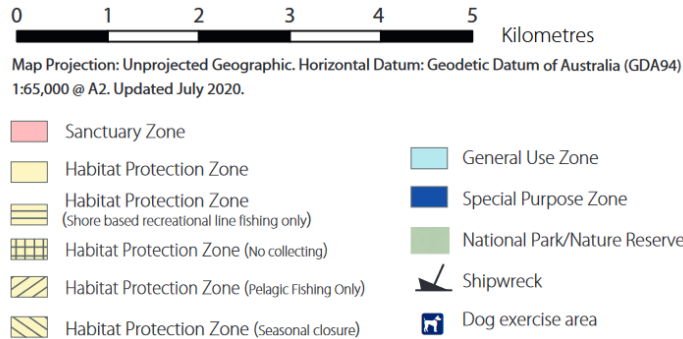
<p><i>consent) for the following for the life of the works</i></p> <p><i>(ii) the maintenance of the works.</i></p>	<p>The maximum life of the works is five years and after this they will be removed.</p>
<p><i>(2) The arrangements referred to in subsection (1) (b) are to secure adequate funding for the carrying out of any such restoration and maintenance, including by either or both of the following—</i></p> <p><i>(a) by legally binding obligations (including by way of financial assurance or bond) of all or any of the following—</i></p> <p><i>(i) the owner or owners from time to time of the land protected by the works,</i></p> <p><i>(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,</i></p> <p><i>(b) by payment to the relevant council of an annual charge for coastal protection services (within the meaning of the Local Government Act 1993).</i></p>	<p>The works are entirely on land owned by NSW Crown lands (being NSW Crown Holidays Parks Land Manager, trading as Reflections Holiday Parks).</p> <p>The application includes a commitment to pay for restoration and maintenance of the works area. This will be recommended as a condition of approval by inclusion in a Geobag Structure Removal Plan.</p>
<p><i>(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.</i></p>	<p>It is not anticipated that Council will be required to pay any share of the cost of restoration and maintenance of the works. No private landowners are affected.</p>

5.6.6 Marine Estate Management Act 2014 and the Cape Byron Marine Park

In NSW, marine parks are declared and managed under the Marine Estate Management Act 2014 (MEM Act) by NSW Department of Primary Industries (DPI). Cape Byron Marine Park extends approximately 37 km along the coastline from the Brunswick River northern training wall to Lennox Head. The ocean to the north of the proposed works site is part of a Habitat Protection Zone (Figure 15). The Habitat Protection zone extends to “any area of waters of the sea or subject to tidal influence”. Although the geobag wall is currently above tidal influence it was not when it was installed and may not be at some time in the future if the beach erodes again.

Figure 15 Cape Byron Marine Park zone map

Cape Byron Marine Park Zoning Map



The supporting information includes a survey that shows that a small part of the geobag wall is seaward of the mean high tide line (Figure 16). It is assumed that the MEM Act 2014 and the Cape Byron Marine Park apply to at least part of the works. A Marine Parks permit is required for any works or activities conducted below mean high water. Section 55 of the MEM Act requires that determining authorities do not determine a development application within a Marine Park (below MHW) without considering a range of matters and obtaining the concurrence of the Minister for the Environment. This concurrence has been delegated to DPI (Fisheries) – Marine Parks.

Figure 16 Mean high tide line and holiday park geobag wall



Section 55 of the MEM Act 2014 states as follows:

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

Section 55 of MEM requirement	Comment
<p><i>(a) (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</i></p> <p><i>(The Marine Estate Management (Management Rules) Regulation 1999 provides that:</i></p> <p><i>1.8 Objects of habitat protection zone</i></p> <p><i>The objects of the habitat protection zone are—</i></p> <p><i>(a) to provide a high level of protection for biological diversity, habitat, ecological processes, natural features and cultural features (both Aboriginal and non-Aboriginal) in the zone, and</i></p> <p><i>(b) where consistent with paragraph (a), to provide opportunities for recreational and commercial activities (including fishing), scientific research, educational activities and other activities, so long as they are ecologically sustainable and do not have a significant impact on any fish populations or on any other animals, plants or habitats.)</i></p>	<p>The proposed development is consistent with the objectives of the habitat protection zone because it does not have excessive habitat impacts and will help support the dune system and associated cultural heritage sites (middens).</p> <p>The development will not provide opportunity for commercial activity although in protecting the holiday park it allows an existing business to continue in proximity to the Marine Park. The general operation of the holiday park has limited opportunity to impact on fish populations or other plants or animals in the Marine Park.</p>

<p><i>(a) (ii) the permissible uses of the area concerned under the regulations or those management rules</i></p> <p><i>(The Marine Estate Management (Management Rules) Regulation 1999 provides that:</i></p> <p><i>1.16 Protection of animals, plants and habitat in habitat protection zone</i></p> <p><i>(1) A person must not, while in the habitat protection zone of a marine park—</i></p> <p><i>(a) harm, or attempt to harm, any animal (other than fish), or</i></p> <p><i>(b) harm, or attempt to harm, any plant, or</i></p> <p><i>(c) damage, take or interfere with, or attempt to damage, take or interfere with, any part of the habitat (including soil, sand, shells or other material occurring naturally within the zone), except with the consent of the relevant Ministers.</i></p> <p><i>(2) Consent is only to be given under subclause (1)—</i></p> <p><i>(a) for research, environmental protection, public health, traditional use or public safety purposes, or</i></p> <p><i>(b) for the purposes of an ecologically sustainable use that does not have a significant impact on fish populations within the zone or on any other animals, plants or habitats.</i></p>	<p>The proposed development will not harm any animal or plant.</p> <p>It will not damage, take or interfere with the habitat of the beach while the geobags are below the sand level.</p> <p>The geobags stabilise the dune face which makes it safer for the public because it's less likely to collapse.</p> <p>The development is sustainable as long as the bags are removed with minimal environmental impact. A 5 year time limitation on the consent will ensure it is removed.</p>
<p><i>(a) (iii) if a management plan for the marine park or aquatic reserve has been made, the objectives of the marine park or aquatic reserve</i></p> <p>The marine park has the Cape Byron Marine Park Operational Plan, September 2010. This adopts the objects of the Marine Parks Act 1997:</p> <p><i>conserve marine biological diversity and marine habitats by declaring and providing</i></p>	<p>The development is consistent with these objectives because it will not cause significant impacts on marine biodiversity. It will lead to dune and beach restoration which is maintenance of ecological processes.</p> <p>It will not affect fish or marine vegetation.</p> <p>It will make the beach a safer place to enjoy and appreciate the marine park.</p>

<p><i>for the management of a comprehensive system of marine parks</i></p> <p><i>maintain ecological processes; and</i></p> <p><i>where consistent with the preceding objects to provide:</i></p> <ul style="list-style-type: none"> <i>– for ecologically sustainable use of fish (including commercial and recreational fishing) and marine vegetation in marine parks, and</i> <i>– opportunities for public appreciation, understanding and enjoyment of marine parks.</i> 	
<i>(a) (iv) any relevant marine park or aquatic reserve notifications</i>	N/A
<i>(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</i>	A condition will be imposed requiring concurrence to be obtained for the geobag wall as it is located partly below the mean high tide line. Concurrence is able to be assumed if a marine park permit is obtained.

Section 56 of the MEM Act states as follows:

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.

56 (1) Is the development consistent with the Objects of the MEM Act, 2014	
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<i>(a) (i) promotes a biologically diverse, healthy and productive marine estate</i>	The development (subject to conditions) should not adversely impact on the marine estate.
<i>(a) (ii) facilitates—</i> <ul style="list-style-type: none"> <i>• economic opportunities for the people of New South Wales, including opportunities for regional communities, and</i> <i>• the cultural, social and recreational use of the marine estate, and</i> <i>• the maintenance of ecosystem integrity, and</i> <i>• the use of the marine estate for scientific research and education</i> 	<p>The development will protect an economically productive coastal holiday park in the short term.</p> <p>Protecting the holiday park provides an opportunity to take a family holiday adjacent to the marine park.</p> <p>Maintaining the beach and dune system is important for marine animals such as turtles and birds.</p> <p>Monitoring of the works over time will provide information on the issue of coastal erosion.</p>
<i>(b) to promote the co-ordination of the exercise, by public authorities, of functions in relation to the marine estate</i>	The two applications for coastal protection works at Clarkes Beach are being assessed simultaneously and in conjunction with the relevant state authorities.
<i>(c) to provide for the declaration and management of a comprehensive system of marine parks and aquatic reserves</i>	The development will not impact on the declaration or management of the marine park.
<i>56(2) Is the development likely to have an effect on the plants or animals within the marine park?</i>	<p>The development (subject to conditions) is unlikely to have a significant impact on plants or animals within the marine park and if successful will have a positive impact on the beach and dune area.</p> <p>On this basis consultation with the relevant Minister is not triggered. Consultation with DPI Fisheries (Marine Parks) has taken place. Note that the concurrence of the Minister is required (pursuant to Section 55 of the MEM Act) because the application is within a Marine Park and partly below MHWL.</p>

Initial contact was made by the applicant with DPI Fisheries (Marine Parks) and a permit was obtained for the temporary works. A new marine park permit will be a condition of any approval for this development.

5.6.7 The Coastal Management Program and a Time Limited Consent

Planning for the Byron coastline has started under the NSW Government's coastal management framework. This involves preparing a Coastal Management Program (CMP).

A CMP is an action plan for Council and other authorities responsible for managing coastal zones to:

- Address coastal hazard risks.
- Preserve habitats and cultural uses.
- Encourage sustainable agricultural, economic and built development in the coastal zone.
- Maintain or improve recreational amenity and resilience.
- Adapt to emerging issues such as population growth and climate change.

A Coastal Management Program will allow Council to access significant State Government funding to do the coastal management actions within the study area.

Byron Council adopted a Scoping Study in 2020 (Stage 1) that included the Clarkes Beach locality (Byron Bay to South Golden Beach).

An outcome of Stage 1 was the identification of studies and activities required to fill key data gaps and to answer questions relating to priority management issues. These include:

- Coastal hazard assessment (funded and in progress).
- Mapping of a coastal vulnerability area identifying all applicable coastal hazards.
- Continue design investigation for the modification of the coastal protection works at Main Beach, Byron Bay (funded and in progress - Main Beach Shoreline Project)
- Assessment of the past effectiveness and likely future utility of existing coastal management strategies

Council will continue to seek State Government grant funding to assist in completing the Stage 2 studies. These will ensure the development of more effective management strategies and actions which will occur in Stage 3 and beyond. Future stages include:

- Identifying and evaluating options.
- Preparing, exhibiting and adopting a CMP.
- Implementing, monitoring and reporting.

Both Crown Lands and Reflections are stakeholders in the CMP process. However the critical decision as to whether the Clarkes Beach locality (the subject of this application) will be protected in the long term will not be made until stage 3 or beyond. The applicant has indicated it may take up to 5 years to get to a decision on protection (or other) options and the geobag structure should be maintained till that time or beyond if necessary.

It is reasonable that the temporary geobag structure remain in place for a period of time to give some security to the Reflections Holiday Park (and Aboriginal middens and Whites Cottage) if or when a major erosion event occurs again. However, it was constructed as a temporary measure and there is an expectation that it will one day be removed. From an engineering perspective it was not built as a permanent structure and will one day have to be removed or it will disintegrate and the non-biodegradable bags will enter the marine park. If it

remains in place until the CMP is finalised then the consent is indefinite as the CMP may never be finalised. Coastline management planning has been underway in Byron Shire for more than 25 years in one form or another and it may continue for another 20 years. So a direct link between the removal of the temporary geobag structure and the completion of the CMP (which is an incomplete process over an unknown time frame) is not legally appropriate and is not recommended.

It is appropriate for the consent to be time limited as is the normal practice with approvals for temporary structures. The geobag structure was initially installed in July 2019 so it will be three years old in July 2022. The applicant has suggested a five year consent (but with no promise of removal after five years). The BoBBAC Board of Directors support a 2 to 5 year consent to allow them time to consider the future of middens in the dunes.

The question as to why 5 years and not a different time frame was put to the applicant in the second RFI (Appendix 6). The applicant responded that five years was favoured for the following reasons:

- It was identified as suitable by coastal specialists considering the construction of the sandbag structure and the risk of failure
- It was identified as suitable by coastal specialists and avoids unacceptable levels of environmental impacts through end effects and sand lock up
- It enables a thorough review of the Plan of Management (PoM) for Reflections Holiday Park
- It allows consideration of Council's ongoing Coastal Management Plan (CMP) investigations and findings as they relate to Clarkes Beach
- It facilitates immediate term approvals necessary to implement actions of the adopted PoM as they relate to the area of coastal risk.

On balance a 5 year approval from say mid 2022 will allow the bags to stay in place for 8 years in total. This will give the BoBBAC 5 more years to deal with the middens and BSC and the wider stakeholder group 5 more years to progress the CMP. It will give Reflections 5 more years to revise its plan of management for the holiday park.

The time limitation on the approval makes it clear that it is a temporary approval and the geobag structure must be removed at the end of the 5 year period. It can still be removed earlier if appropriate. This will be recommended as a condition of approval.

5.6.8 Triggers for Geobag Removal

A key aspect of this proposed development is that the geobags only protect the dune system when they are exposed. When the beach accretes (as it is now) and covers the geobags in sand then they effectively serve no purpose other than "insurance" against the next major erosion event. They have not been constructed as a permanent protection structure and will eventually disintegrate and potentially enter the marine park and become non-biodegradable rubbish that pollutes the ocean. Approximately 630 bags make up the structure.

One option is to remove the geobags when they are covered in sufficient sand that the beach has to some extent recovered and will remain stable without the geobags in place. This option could be undertaken when the sand above the geobag top layer is at a predetermined level. This was discussed with the applicant and they sought advice from their coastal engineer. The

coastal engineer advised that it is preferred that the bags be removed when the top 50 % are fully exposed. The logic being that the excavation required to remove the exposed bags would be smaller and less likely to disrupt the steep dune face.

At first, it does not seem to make sense to remove the bags when they are exposed because they are at that point doing the job of protecting the main dune. However, if a decision has been made to allow for planned retreat of the coast and the Aboriginal middens and Reflections Holiday Park (and Whites Cottage) have been removed then what happens after the bags are removed is planned retreat. But is this really any different if the geobags are covered in sand and the beach has recovered and is stable? Probably not. The steep dune face will be impacted in both scenarios over time but that is the effect of planned retreat. If long term protection of the dune is required then an option other than geobags will need to be pursued.

NSW Crown lands has supplied a suite of actions that it suggests need to be undertaken before the bags are removed after 5 years:

- Geobag and site monitoring program has been implemented in consultation with stakeholders including BoBBAC, Beach Cafe, Byron Shire Council and Cape Byron Marine Park.
- Engagement and consultation has occurred with the BoBBAC, and an AHIP has been obtained for the removal of the geobags.
- All relevant stakeholders have been engaged e.g. BoBBAC, Beach Café, Byron Shire Council, Reflections Holiday Parks, Cape Byron Marine Park.
- Suitably qualified experts have been engaged to assess and mitigate any environmental, geotechnical hazards or public safety risks that may be associated with decommissioning works.
- A detailed decommissioning and environmental management plan has been developed by the contractor, in consultation with experts and stakeholders - outlining removal methods and management of hazards and risks.
- A detailed site rehabilitation plan has been developed, in consultation with relevant experts and stakeholders.

A machine could access the beach at low tide when spring tides and storms are not forecast. The bags could be excavated, slashed and the sand returned to the beach and the bags removed. Some nourishment sand could be added at the completion of bag removal to make up for compaction. Sand catching fences could be replaced and the area generally stabilised.

So the maximum the bags can remain is 5 years but they can be removed sooner if the Aboriginal middens and Reflections Holiday Parks (and Whites Cottage) have been moved and a planned retreat approach is adopted for this locality.

It is appropriate that a Geobag Structure Removal Plan be required as a condition of approval.

The objective of this plan would be to remove all of the geobag structure and restore the land to a stable state. It must include, but not be limited to, the following:

- (a) Expected timeline for geobag removal and site rehabilitation;

- (b) Details of site rehabilitation;
- (c) Details on waste management and recycling of all materials arising from the decommissioning; and
- (d) Expected maintenance period for areas disturbed by the geobag removal process including any landscaping and vegetation that needs to be replaced and re-established. A minimum of 3 months is anticipated.

5.6.9 Social and Economic Impacts

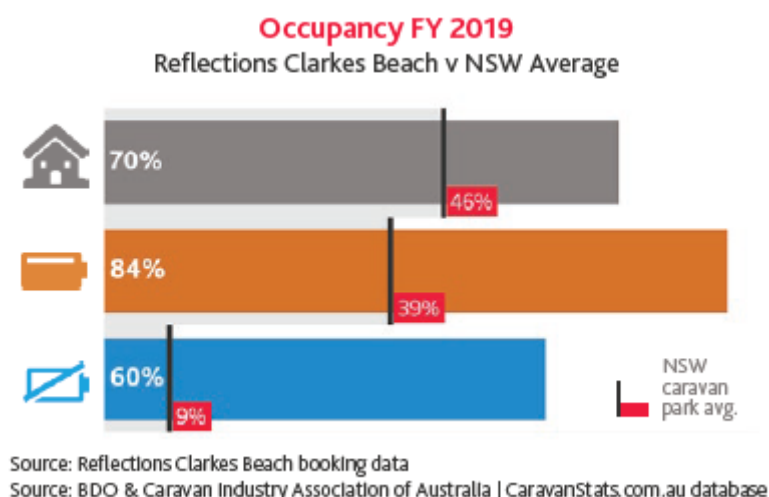
The geobag structure itself has limited socio-economic effects. It has been constructed by Reflections using public funds generated by the holiday park and will be maintained from the same source.

As it stabilises it will have reduced visual impacts and as the beach builds up in front of it the impact on beach users will be minimal. Use of sandy or green tones in screening and fencing material will also reduce visual impacts as will the growth of native vegetation on the dune face.

The applicant has indicated that the cost of removing the geobags is estimated at \$86,500 (exc GST).

The applicant has also provided an economic benefit report (BDO Advisory Nov 2020) that examines the economic contribution of Reflections Holiday Park Clarkes Beach and Beach Byron Bay (the Restaurant) to assess their economic contribution to NSW during 2018/19 (FY-19) and 2019/20 (FY-20). In relation to the Reflections Holiday Park the report notes that occupancy rates are well above state averages (Figure 17)

Figure 17 Occupancy rates of Reflections Holiday Park Clarkes Beach vs NSW



It also concludes that Reflections Holiday Park has a Gross State Product of \$4.5 M generates 22 full time equivalent jobs and results in significant tourism expenditure and jobs beyond the park boundaries.

If the geobag structure is not approved for a further five years (and is removed) and a future erosion event effects the Reflections Holiday Park to the point where it closes then this positive socio-economic benefits will be lost to the Byron community and NSW economy.

5.6.10 Sand Source for Nourishment or Replacement Geobags

The source of sand for sand bags and nourishment has been the Dunloe Park sand quarry which is located in the southern end of Tweed Shire. It has been tested and found to be clean and compatible in grain size with Clarkes Beach sand. It is a potential source of “suitable sand” for future nourishment.

Based on past applications for sand nourishment in Byron Shire “suitable sand” means sand having a concentration of clay and silt of not greater than 2%, a concentration of shell not greater than 10%, a colour similar to existing beach material, a composition principally of quartzose and a similar or more coarse grading to the upper beach sand at the site.

The use of “suitable sand” will be required as a condition of approval.

5.6.11 Integrated Development

Integrated approval is required from Heritage NSW in relation to proposed works (anticipated maintenance works are part of the application) in the form of an AHIP issued under section 90 of the NPWS Act 1974. However, this was not nominated by the applicant.

An AHIP will be required as a condition of approval.

5.6.12 NPWS Guidelines for Development Adjacent to NPWS Service Lands

The goal of these guidelines is to guide consent and planning authorities in their assessment of development applications that are adjacent to land managed by NPWS. This advice aims to avoid any direct or indirect adverse impacts on NPWS parks. NPWS consider that the Reflections Clarkes Beach Holiday Park is adjacent to the Cape Byron SCA.

The following is a summary of issues for proposals adjacent to NPWS land and how this proposal address this issue if relevant.

Issue proposals adjacent to NPWS land	DA response, etc
Erosion and sediment control	Dune stabilisation and revegetation should limit erosion and will be required as a condition of approval. A site management and rehabilitation plan will address this issue over the next 5 years and also after the geobags are removed.

Stormwater runoff	The geobags will not divert stormwater onto the SCA or impact on water quality. Only clean sand will be used in sand nourishment.
Wastewater	Not applicable.
Management implications relating to pests, weeds and edge effects	A Coastal Protection Works Management Plan will address weeds and edge effects over the next 5 years. A Geobag Structure Removal Plan will address these issues after the geobags are removed.
Fire and the location of asset protection zones	Not applicable.
Boundary encroachments and access through NPWS lands	No maintenance or post-geobag removal activity will occur on land managed by NPWS. No access through the SCA is required.
Visual, odour, noise, vibration, air quality and amenity impacts	The geobags are currently buried under sand with minimal visual or amenity impacts. If exposed the impacts will be temporary and minimal.
Threats to ecological connectivity and groundwater-dependent ecosystems	The geobags are porous and are predicted not to impact on groundwater or nearby ecosystems. No vegetation removal is proposed.
Cultural heritage	The site is known to contain Aboriginal midden sites and an ACHAR has been undertaken including consultation with BoBBAC. An AHIP is triggered and required as a condition of consent.
Road network design and its implications for continued access to the park	The development will not obstruct vehicle or pedestrian access to the SCA.

5.7 Section 4.15(1)(c) – the suitability of the site for the development

The subject site is considered appropriate for the continued use of coastal protection works and associated monitoring and maintenance. It is compatible with neighbouring land uses including the Reflections Clarkes Beach Holiday Park, Beach Café, Cape Byron State Conservation Area and Cape Byron Marine Park. The proposal is not anticipated to have any significant negative impacts on the surrounding receiving environments, subject to compliance with the recommended conditions of consent.

The proposed development is considered to be of a suitable scale, form and character and generally complies with State Environmental Planning Policy (Resilience and Hazards) 2021,

other relevant SEPPs, Byron Local Environmental Plan 1988 and Byron Development Control Plan 2010.

5.8 Section 4.15(1)(d) – any submissions made in accordance with this Act or the regulations

The development application and EIS (Council reference DA 10.2021.698.01 and planning portal reference PAN 59030) were placed on public exhibition from 15 November to 15 December 2021, and no public submissions was received. Agency submissions were received from:

- Department of Planning, Industry and Environment (DPIE), Biodiversity, Conservation and Science (BCS) division (BCD and NPWS)
- Heritage NSW
- DPI – Fisheries (Cape Byron Marine Park)

In the absence of any public submissions it is useful to review the early consultation process required while the EIS was in preparation. The applicant's overview of this process and its summary of feedback is at Appendix 3. The engagement was held over a two week period, from 20 January to 5 February 2021, and attracted feedback from State Agency and local stakeholders. In total there were 2x telephone conversations, 6x written submissions received and 397 views and 'impressions' of the online material.

Telephone feedback raised the following issues:

- *the intended development outcome post adoption of Council's Coastal Management Plan*
- *clarification of the status of current approvals*
- *clarification of the lifespan and materials of the existing sandbags*
- *integration and interface with the existing sandbags immediately west.*

The six email submissions included one community submission, one from Arakwal Corporation, one from the operators of the Beach Cafe plus one each from Byron Shire Council, BCD and DPI Fisheries (Marine Parks). The following issues were raised in the community and agency submissions.

Public Submissions (Appendix 3)

Submission issues raised	Response
<p>1 Community submission</p> <p>What are the longer-term ideas after this step? Isn't land loss inevitable and we need to work with nature not against it?</p>	<p>The basis of asking for a five year approval for the geobag structure is to provide time to decide either to protect or retreat (or a combination of the two). This decision is usually made in a CMP but many Councils have difficulty in finalising CMPs because of these very difficult decisions. Reflections has not stated what it intends for this site other than to wait for the CMP to be finalised.</p> <p>The report at Appendix 3 states that Reflections is reviewing its Plan of Management for the holiday park and is considering:</p> <p>“Changing the composition and distribution of sites within the Holiday Park (ie between cabins, caravans and camping sites)</p> <p>Upgrading structural engineering to withstand coastal processes for a longer duration.</p> <p>Relocating sites through planned retreat.”</p>
<p>2 Beach Café submission</p> <p>We are 100% supportive of this development application and for coastal protection works, to be kept in place, until the development of BSC's Coastal Management Plan.</p> <p>Big decisions need to be made across a wider area.</p> <p>The holiday park has environmental and cultural heritage features that need to be enhanced and protected.</p> <p>It is important economically to keep the holiday park as beach side accommodation for families and visitors</p> <p>It is a big employer and should be supported.</p>	<p>The trigger for removal of the geobag structures is a key aspect of this DA. It is not recommended that it be linked to an unknown period of time to finalise the CMP. Though it would be ideal if the CMP could be finalised quickly to provide the strategic basis for decision making in this locality on protect vs retreat (or a combination) options.</p> <p>It is agreed that ideally decisions on coastal hazards and erosion need to be made on a locality basis not a property basis.</p> <p>The environmental and cultural values of the holiday park are important. The Arakwal Corporation has reinforced this position in its submission.</p> <p>The economics and employment aspects of land uses such as the holiday park are also factors to consider, though this application is for the continued use of the geobag structure which may or may not protect the holiday park in a major erosion event.</p>

Submission issues raised	Response
<p>3 Arakwal Corporation</p> <p>Native Title Holders expect to be consulted and involved in all proposals that may impact on their Aboriginal Cultural Heritage.</p> <p>Referring to Aboriginal shell middens simply as an 'Aboriginal Object' does not reflect their cultural value, extent and importance.</p> <p>Any disturbance under an AHIP should be for the purpose of retrieval and preservation.</p> <p>Arakwal Corporation does not support the sandbags at the exclusion of other option available to protect the Aboriginal Cultural Heritage site material at its current location.</p> <p>Management of the midden areas should include dune stabilisation through mature and diverse vegetation coverage and restricted access.</p> <p>Arakwal do not support the removal and/or destruction of the Aboriginal Cultural Heritage site.</p>	<p>Agreed. BoBBAC was involved in the ACHAR and will be involved in the AHIP and all other activities on this site.</p> <p>Noted. The term Aboriginal objects is legally defined as a broad term. In this case the known sites will be referred to as Aboriginal middens. The legally defined term will be used in any consent conditions where appropriate.</p> <p>Noted. It is agreed the any midden disturbance should be for retrieval and preservation under the direction of BoBBAC.</p> <p>The geobags are in place and retaining them for up to 5 years has the benefit of reviewing all options for protection so the Aboriginal middens on the subject land. They are not a permanent solution to protecting the high dune.</p> <p>Conditions will be imposed to revegetate the subject land and to restrict pedestrian access to the Aboriginal midden sites.</p> <p>Noted. The Arakwal (BoBBAC) will have a role in the AHIP that would be required to have any impact on the Aboriginal shell middens on the site.</p>

Agency Submissions (Appendix 4)

Submission issues raised	Response
<p>DPIE – Biodiversity, Conservation and Science Directorate</p> <p>DA fails to give detail on monitoring, maintenance and impact management over the life of the structure. A detailed strategy is required.</p> <p>It also fails to provide detail on the geobag structure removal and timing of removal.</p> <p>The proponent needs to be actively involved in the CMP process to ensure consistency between actions on this site and the CMP</p>	<p>It is agreed that a detailed management strategy is required and this will be included as a condition of consent.</p> <p>It is agreed that a time limit on the life of the structure is required and detail on how the geobags will be removed is required. This will be included as a condition of consent.</p> <p>It is agreed that the proponent has had three years already to consider its position on this site and extending the life of the geobag structure is an opportunity to progress with the CMP and a site based Plan of Management and not wait for others to take the lead.</p>
<p>DPIE - NPWS</p> <p>The property adjoins the Cape Byron SCA but the applicant has not considered the NPWS Guidelines for Development Adjacent to NPWS Service Lands. The NRPP should consider these guidelines.</p> <p>Potential for the geobag walls to impact on the SCA are understated and need to be included in a detailed management strategy over the life of the structure.</p> <p>The development does not address public access to the beach through the site.</p> <p>The development does not address the impacts of pedestrian access on the middens on the site. It does not state that an AHIP is required even though the attached ACHAR does.</p>	<p>This report considers the NPWS Guidelines for Development Adjacent to NPWS Service Lands.</p> <p>It is agreed that a detailed management strategy is required and it needs to address impacts on the Cape Byron SCA. This will be included as a condition of consent.</p> <p>Public access through the Holiday Park is not currently encouraged. A single access has been restored for park users but is it sign posted as not being a public access. This is acceptable because there is no public parking in the holiday park and there is a public access point adjacent to the council public park to the west. Given the presence of middens and the delicate nature of the dune escarpment in its eroded state, public access through the park should not be encouraged at this stage. Long term public access can be addressed in the CMP.</p> <p>It is agreed that an AHIP is required and this would normally be through Integrated Development. It will be a condition of approval. It is agreed that restricting access to the middens on the site is important and this should be done in consultation/collaboration with BOBBAC and NPWS. This will be included as a condition of consent.</p>

Submission issues raised	Response
<p>Heritage NSW</p> <p>This application was not referred to Heritage NSW as Integrated Development despite its potential to impact on Aboriginal middens.</p> <p>An existing AHIP issued on 20 March 2020 expires on 19 March 2022. A new AHIP or a variation to the existing one is required to enable the management of the site as proposed.</p>	<p>It is agreed that an AHIP is required and this would normally be through Integrated Development. It will be a condition of approval.</p> <p>The applicant has indicated it wants to extend its current AHIP and that is fit for purpose. HNSW will need to consider if an extension or a new AHIP is appropriate.</p>
<p>DPI – Fisheries (Cape Byron Marine Park)</p> <p>It is critical that displaced or damaged geobags or any other foreign material do not pollute the beach or the marine park.</p> <p>Public access and safety for beach and marine park users also needs to be addressed.</p> <p>Short and long term park impacts from coastal processes needs to be addressed.</p> <p>Works should not proceed without the support of the BoBBAC.</p> <p>All works below MHWL will require a marine park permit.</p> <p>Removal of works above MHWL will require further consultation.</p>	<p>It is agreed that the geobags need to be kept out of the marine park. This is an important reason why the approval will be time limited. Removing the bags during an erosion event is unlikely to be safe. Geobag removal will be included as a condition of consent.</p> <p>Public access to the beach is an important consideration. But given the presence of middens and the delicate nature of the dune escarpment in its eroded state, public access through the holiday park should not be encouraged at this stage. Long term public access can be addressed in the CMP.</p> <p>The geobag structure is a short term protection measure and a detailed management strategy is required to address coastal processes. This will be included as a condition of consent.</p> <p>Long term impacts will need to be addressed in a CMP.</p> <p>An AHIP is required for all works and this will require the support and input of BoBBAC. This will be included as a condition of consent.</p> <p>A marine park permit will be included as a condition of consent for this application.</p> <p>Further consultation with Cape Byron Marine Parks at the point of bag removal will be included as a condition of consent for this application.</p>

5.9 Section 4.15(1)(e) – the public interest

The proposed development is permitted with consent on the subject land and is substantially already in place.

There were no public objections during the exhibition period. Early pre-lodgement consultation yielded three public submissions, which raised various issues that have been addressed by conditions of consent recommended by this report.

Agency submissions were detailed and constructive and the issues raised have been addressed by conditions of consent recommended by this report.

The proposed development is considered to be of a suitable scale, form and character and generally complies with State Environmental Planning Policy (Resilience and Hazards) 2021, Byron Local Environmental Plan 1988 and Byron Development Control Plan 2010. It is compatible with the surrounding environment and surrounding land uses. If coastal hazards are not extreme in the short term it will provide a valuable opportunity to make decisions for the long term management of this site and the wider locality.

The retention of these coastal protection works in the short term (subject to conditions) without excessive environmental, socioeconomic or cultural heritage impacts is in the public interest.

6.0 Conclusions

This development application has been considered in accordance with the requirements of the EP&A Act and the Regulations as outlined in this report. Following a thorough assessment of the relevant planning controls, issues raised in agency submissions and the key issues identified in this report, it is considered that the application can be supported.

The proposed development is in the public interest as it will avoid negative social and economic impacts in the short term and will not have significant environmental or cultural heritage impacts, subject to the proposed conditions.

The proposed development has been assessed for possible negative impacts to the natural and cultural environments. The negative impacts anticipated will be mitigated by way of conditions.

It is considered that the reports and assessments provided with the application have satisfied the relevant matters within section 4.15 of the *Environmental Planning and Assessment Act 1979*.

It is determined that through the application of the attached conditions, the proposed coastal protection works can achieve the goal of stabilising and protecting the dune system for a short period of time while long term options are considered and adopted by various public authorities in conjunction with landowners, BoBBAC and other stakeholders.

7.0 Recommendation

It is recommended that:

- 1 Development Application DA 10.2021.698.01 be **APPROVED** subject to conditions attached at Appendix 1 and plan set at Appendix 2.

Appendices

Appendix 1: Schedule of Conditions

Appendix 2: Plan Set

Appendix 3: Pre lodgement Public Consultation

Appendix 4: Agency Submissions

Appendix 5: EIS and Appendices

Appendix 6: RFI(s) and additional Information Supplied by Applicant