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| **CONSENT CONDITIONS – Coastal Protection Works – Byron Beach Cafe**  NORTHERN REGIONAL PLANNING PANEL | |

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| PANEL REFERENCE & DA NUMBER | PAN 128905 – Byron Shire DA 10.2021.630.1 |
| PROPOSAL | Development consent is sought to retain the existing temporary coastal protection works (geobag structure) for a period of up to 5 years. Associated works that are part of this application include beach nourishment, revegetation, dune forming fencing, regular monitoring and maintenance of the works. A temporary machinery compound is also proposed. |
| ADDRESS | Lot 18 DP 1269368 and Lot 9 DP 1049827  Massinger Street, Byron Bay |
| APPLICANT | Applicant: Robyn Campbell, Hydrosphere Consulting Pty Ltd  Owner: NSW Department of Planning & Environment - Crown Lands |
| APPLICATION TYPE (DA, Concept DA, MOD, Integrated, Designated) | Integrated Development; Crown Development and Designated Development |
| DETERMINATION DATE | 21 June 2022 |
| CONSENT TO OPERATE FROM | 21 June 2022 |
| CONSENT TO LAPSE ON | 21 June 2027 |

**PART A: GENERAL**

**A1 Approved Plans and Supporting Documentation**

The development must be implemented in accordance with the approved plans, specifications and supporting documentation listed below which have been endorsed by Council’s approved stamp, except where amended by conditions of this consent:

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| **Plan/Report Title** | **Reference No** | **Revision** | **Prepared by** | **Date** |
| Clarkes Beach Interim Geobags Concept Geometry | WRL 2020065:D2R2  Sheet 1 | 2 | UNSW Water Research Laboratory | 20/08/21 |
| Clarkes Beach Interim Geobags Details | WRL 2020065:D2R2  Sheet 2 | 2 | UNSW Water Research Laboratory | 20/08/21 |
| Plan of 'work-as-executed'  Soil Conservation Services Clarkes Beach | BYR060-3.DWG | 2 | Byron Bay surveying | 15/01/21 |
| Byron coastal protection works- Beach Profile Locations | Figure 1 | 0 | Hydrosphere Consulting | 12/08/21 |
| Byron coastal protection works- Clarkes beach and tide levels | Figure 2 | 0 | Hydrosphere Consulting | 12/08/21 |
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In the event of any inconsistency between conditions of this approval and the drawings/documents referred to above, the conditions prevail. In the event of any inconsistency between the approved plans and the supporting documentation, the approved plans prevail.

Reason: To ensure the development proceeds in the manner assessed by Council and all parties are aware of the approved plans and supporting documentation that applies to the development.

**A2 Time Limited Consent**

The coastal protection works (geobag structure) must be removed by the 5th anniversary of the determination date of the development consent.

The coastal protection works (geobag structure) can be removed 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.

**A3 Marine Park Permit and Advice**

A marine park permit (pursuant to Section 55 of the Marine Estate Management Act 2014) is to be obtained for the geobag structure as it is located partly below the mean high tide line. (Note the marine park permit is issued by a delegate of the Minister responsible for marine parks and represents the Minister’s concurrence).

Any future or additional works below mean high water, including vehicle or machinery access to undertake any works, will also require a marine park permit.

Any future or additional works above mean high water will require additional advice under section 55 of the MEM Act. This will include discharge of the contents of geofabric bags and removal of the bags and any other structures.

**A4 Requirements of Heritage NSW and AHIP**

Development must be in accordance with:

1. The supporting documentation provided on the CNR Planning Portal to inform any approved development decision.

(Please note that any modification of the above development that will result in impacts to Aboriginal cultural heritage must be referred to Heritage NSW to determine whether changes to these general terms of approval are required)

1. A s.90 Aboriginal Heritage Impact Permit (AHIP) for the proposed works must be sought and granted prior to the commencement of works.
2. The AHIP application must be accompanied by appropriate documentation and mapping as outlined in Applying for an Aboriginal Heritage Impact Permit: Guide for applicants (2011).
3. Consultation with the Aboriginal community undertaken as part of the AHIP application must be in accordance with the Aboriginal cultural heritage consultation requirements for proponents (2010).
4. The AHIP application must be completed with reference to the requirements of the Guide to investigating, assessing and reporting on Aboriginal cultural heritage in NSW (2011).
5. The AHIP application must include complete records satisfying the requirements of the Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales (2010).
6. Long term management of Aboriginal objects must be considered as part of the AHIP application.

Reason: To ensure compliance with Section 4.47(3) of the *Environmental Planning and Assessment Act 1979* and theconditions of Government agencies are complied with.

**PART B: PRIOR TO THE WORKS COMMENCING**

**B1 Coastal Protection Works Management Plan**

Within six months of the date of this consent, the applicant must prepare and submit to Council a Coastal Protection Works Management Plan (‘CPWMP’) for the area comprising the geobag structure as well as an area of approximately 250 m west of the structure and approximately 50 m in all other directions around that structure. It should include but not be limited to the matters identified in section 3.4 of the EIS prepared by Hydrosphere dated 29 September 2021.

The CPWMP must be endorsed by Council’s Director Sustainable Environment & Economy (or delegate).

The CPWMP must be prepared in consultation with a suitably qualified and experienced coastal engineer in conjunction with an ecologist and BoBBAC and must be for a period of five years. It must be prepared in consultation with the Crown Lands Holiday Park owners/managers.

The primary objective of the plan must be management and maintenance of coastal protection works, restoration of the dune and beach, management of Aboriginal middens, regeneration of native vegetation and weed management.

The CPWMP must detail a monitoring program including a list of quantifiable performance indicators to provide a means of measuring the status and progress of management actions. These performance indicators are to be assessed at six-monthly intervals and detailed in monitoring reports for the duration of the geobag structure.

Implementation of the CPWMP must commence immediately following issue of a notice from Council that it has been approved. In preparing and implementing the CPWMP the following must be addressed:

* the site must be regularly monitored for signs of erosion in front of and beside the geobag structure
* any end effect is repaired with beach nourishment and then stabilised and maintained when it is safe to do so
* any loss of sand landward of the geobag structure is replaced with beach nourishment when it is safe to do so
* 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

The requirements of the approved CPWMP must be complied with and maintained for the duration of the construction works. This includes, but is not limited to, the following:

(a) All practicable measures shall be undertaken to prevent and minimise harm to the environment and the amenity of the area as a result of any monitoring or maintenance.

(b) All materials and equipment must be stored wholly within the machinery compound unless an approval to store them elsewhere has been granted.

(c) During maintenance, care must be taken to protect Council’s infrastructure, including signs, footpaths, vehicle access, kerb, gutter and drainage pits etc.

(d) The subject land shall also be made safe for pedestrian and vehicular traffic at all times.

Reason: To ensure the development does not adversely impact on the coastal environment, Aboriginal middens and biodiversity.

**B2 Traffic Management Plan**

Within six months of the date of this consent, the applicant must prepare and submit to Council a Traffic Management Plan. It shall be consistent with *RMS Traffic Control at Work Sites Manual RTA (2010*) and *QA Specification G10 Control of Traffic (RTA, 2008).*

The Traffic Management Plan must be endorsed by Council’s Director Sustainable Environment & Economy (or delegate).

It needs to address likely vehicle movements in and around the proposed machinery compound, the vehicle access to Clarkes Beach (via the “kayak hire” vehicle access point), Clarkes Beach and the wider reserve and public road system. It needs to address public access and safety issues during maintenance.

Reason: To ensure the safety of pedestrians and traffic is maintained during maintenance works.

**B3 Geobag Structure Removal Plan**

Within six months of the date of this consent, the applicant must prepare and submit to Council a Geobag Structure Removal Plan.

The Geobag Structure Removal Plan must be endorsed by Council’s Director Sustainable Environment & Economy (or delegate).

The objective of this plan is to outline the process for decommissioning the geobag structure and rehabilitating the land. It must consider a range of beach state scenarios that may exist at the time at which the geobag structure is removed. It must be prepared in consultation with the Crown Lands Holiday Park owners/managers.

It must include, but not be limited to, the following:

1. Expected timeline for geobag removal and site rehabilitation;
2. Details of site rehabilitation; and
3. Details on waste management and recycling of all materials arising from the decommissioning;
4. 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.

Reason: To ensure the removal of the geobag structure occurs in an orderly manner and that the amenity of the area is maintained while the structure is being decommissioned, and to ensure the site is rehabilitated and maintained for a reasonable period after the geobags have been removed.

**B4 Emergency Management Plan**

Within three months of the date of this consent, the applicant must prepare and submit to Council for approval an Emergency Management Plan (EMP). It must be prepared in consultation with the Crown Lands Holiday Park owners/managers.

The EMP must be endorsed by Council’s Director Sustainable Environment & Economy (or delegate).

The endorsed EMP for the development shall be activated in an emergency at any time while the geobag structure is in place.

The objective of the EMP is to prescribe what action will be taken if the geobag structure fails. It must include, but not be limited to, the following:

(a) What action will be taken to keep the community safe;

(b) What action will be taken to stop the geobags ending up in the Cape Byron Marine Park;

(c) What action will be taken in relation to structures or buildings in proximity to the beach.

Reason: To ensure the protection of human life, the environment and adjoining property in the event of a coastal erosion emergency.

**PART C: OPERATIONAL CONDITIONS**

**C1 Construction Hours**

The hours of maintenance and decommissioning work shall be limited where possible to daylight hours. Work can take place seven days per week.

Reason: To ensure the amenity of the area is maintained during maintenance works.

**C2 Sediment and Erosion Control**

Appropriate sedimentation and erosion controls must be installed and maintained at all times during any maintenance operations to limit impacts on adjacent vegetation, Clarkes Beach and the Cape Byron Marine Park.

Reason: To ensure the water quality of the area is maintained during maintenance works.

**C3 Aboriginal Midden Management**

All Aboriginal middens shall be managed in accordance with the AHIP issued by Heritage NSW. All decisions concerning the middens will be made in conjunction with representatives of the Bundjalung of Byron Bay Aboriginal Corporation (BoBBAC).

Pedestrian access to the midden area will be restricted while the middens remain in place.

If any Aboriginal items or cultural heritage objects (including human remains) are located during the works, all work would cease near the artefact and the BoBBAC Aboriginal Sites Officer must be immediately notified. The find is also required to be reported to the Heritage NSW.

All staff and contractors must be made aware of their responsibilities under the National Parks and Wildlife (NPW) Act 1974 and must be informed of the procedures in the event of unearthing an object.

Reason: To protect Aboriginal cultural heritage on the site**.**

**C4 Biodiversity Protection and Management**

Existing trees and native vegetation on the site are to be retained and protected from damage during any maintenance work, with the exception of the trees that have died or collapsed onto the beach. Dead or collapsed tree removal shall be carried out by an appropriately qualified person to avoid any risk to life or damage to property and must have with adequate public liability insurance.

In order to protect the biodiversity values that remain on the subject land the following shall be complied with:

* No native trees are to be cleared for this development. Trees that have been severely damaged or killed by coastal erosion can be used for dune stabilization or relocated into adjacent areas of habitat
* 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

Reason: To protect biodiversity on the site.

**C5 Beach Nourishment and Dune Restoration**

Beach nourishment shall be undertaken using only “suitable sand” to address any end effect or erosion behind the geobag structure over the 5 year consent period. Nourishment for end effect shall be undertaken as soon as possible after an event.

A minimum of 1,500 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. This sand can be imported as required for dune restoration activities with the remainder imported once the sandbags have been removed.

In this condition “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.

Dune restoration and stabilisation works including dune forming fencing and revegetation will be undertaken and maintained over the life of the geobag structure.

Reason: To protect beach structure and maintain coastal processes

**C6 Vehicle Beach Access Requirements**

Vehicle access to Clarkes Beach will only be via the “kayak hire” vehicle access point at approximately Easting 560692 and Northing 6831449 (GDA 2020 – MGA 56).

Use of heavy vehicles in the reserve and on Clarkes Beach will be subject to a Traffic Management Plan that addresses the safety issues related to the locality.

Reason: To ensure safe, practical and legal vehicle access is provided to the beach.

**C7 Public Pedestrian Beach Access Requirements**

Public pedestrian access to Clarkes Beach (in proximity to the works) will only be via the existing ambulant access point at approximately Easting 560750 and Northing 6831449 (GDA 2020 – MGA 56).

If this public access is affected by “end effects” then its maintenance by beach nourishment is the responsibility of Crown lands (shared with Crown Lands Holiday Park owners/managers).

Reason: To ensure safe, practical and legal public pedestrian access is provided to the beach.

**C8 Machinery Compound**

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 at approximately Easting 560681 and Northing 6831387 (GDA 2020 – MGA 56).

Refuelling and maintenance of machinery will 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 is to be removed and the site rehabilitated within 14 days of maintenance works being completed.

Reason: To ensure that a machinery compound does not cause a nuisance, or unnecessary disturbance to the public reserve.

**C9 Consideration of Adjacent Geobags at Reflections Clarkes Beach Holiday Park**

The landowner shall communicate with the Crown Lands Holiday Park owners/managers and co-ordinate maintenance and ultimately geobag removal.

Reason: To ensure the two geobag structures are managed in a co-ordinated way both in maintenance and removal.

**C10** **Visual Impact and Beach Amenity**

Dune stabilisation and restoration works or maintenance shall use screening and dune forming fencing material with sandy, earth or green tones to reduce visual impacts.

Any screening or dune forming material currently in use that is not sandy, earth or green tones will be replaced.

Reason: To ensure screening and fencing does not impact unnecessarily on the scenic amenity of the locality.

**C11 Discovery of Aboriginal Objects**

While any work is being carried out, all such works must cease immediately if an Aboriginal object is unexpectedly discovered. The applicant must notify Heritage NSW, BoBBAC and Byron Shire Council immediately.

In this condition: “Aboriginal object” means any deposit, object or material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of the area that comprises New South Wales, being habitation before or concurrent with (or both) the occupation of that area by persons of non-Aboriginal extraction and includes Aboriginal remains.

Reason: To ensure the protection of Aboriginal objects of potential significance during works.

**C12 Discovery of Contamination**

Should any contaminated, scheduled, hazardous or asbestos containing material be discovered before or during works, the applicant and contractor shall ensure the appropriate regulatory authority is notified and that such material is contained, encapsulated, sealed, handled or otherwise disposed of to the requirements of such Authority.

Reason: To ensure contamination discovered during construction is dealt with as quickly as possible and to protect the health of the community and the environment.

**C13 Implementation of Management Plan Recommendations**

The requirements and recommendations of the following approved management plans must be implemented at the appropriate time and maintained as required during the life of the development:

(a) Coastal Protection Works Management Plan

(b) Traffic Management Plan

(c) Emergency Management Plan

(d) Geobag Structure Removal Plan

Reason: To ensure the development does not adversely impact on the environment

**C14 Annual Progress Report**

The NSW Department of Planning & Environment - Crown Lands shall supply a Progress Report to Council every year for 5 years on the status of achieving planned relocation or reconfiguration of the Beach Café and any other assets protected by the geobag structure.

The report is to be provided on the anniversary of the determination date of this development consent.

Reason: To ensure progress on long term issues

**C15 Works-As-Executed Plans**

Following completion of the geobag structure removal works and importation of sand, Work-as-Executed Drawings, together with a Work-As-Executed Certification Report, are to be submitted to Council. Two categories of Work-as-Executed Drawings are to be submitted to Council.

Amended Design Work-as-Executed Drawings and Summary Work-as-Executed Drawings.

Amended Design Work-as-Executed Drawings, being certified copies of all approved design plans with as constructed departures, deletions and additions clearly noted and detailed on the plans, are to be submitted to Council in the following formats:-

a) One (1) paper copy at the same scale and format as the approved design plans, but, marked appropriately for as constructed information and with original signatures; and

b) An electronic copy of above in PDF format and provided to Council on USB or via email

Summary Work-as-Executed Drawings are to be prepared on a background plan of development lot and site works. Such drawings are to be submitted to Council in the following formats:-

a) One (1) paper copy of each drawing with original signatures and in accordance with Council’s requirements.

b) Electronic copy of the above in AutoCAD DWG or DXF format and provided to Council on CD, DVD or via email. The AutoCAD (DWG or DXF) files are to be spatially referenced to MGA Zone 56.

c) Electronic copy of above in PDF format and provided to Council on USB or via email.

Reason: To document what the site looks like after the geobags have been removed