

COUNCIL ASSESSMENT REPORT

NORTHERN REGIONAL PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PSNTH-264
PROPOSAL	<p>Coastal Protection Works, in the form of an extension to an existing geobag wall.</p> <p>The extension would be approx. 40m long and comprise approx. 200 x 0.75m³ geobags arranged in a stepped profile, 5 units high and 2 units wide.</p> <p>The extension is proposed as a temporary structure, with a life of 5 years, pending completion of Council's Coastal Management Program for the area.</p> <p>The proposal is defined as <i>beach and coastal restoration works</i> and is permitted in the site's 7(f1) Coastal Lands zoning.</p>
ADDRESS	Lot 1 DP1215893 144 Bayshore Drive, Byron Bay
APPLICANT	Ms Kate Singleton, Planners North
OWNER	Ganra Pty Ltd
DA LODGEMENT DATE	20 October 2023
APPLICATION TYPE	Development application - Integrated
REGIONALLY SIGNIFICANT CRITERIA	<p>Clause 8A (1) (a), Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021: Certain coastal protection works</p> <p><i>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>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>
CIV	\$106,150 (excluding GST)
CLAUSE 4.6 REQUESTS	None

KEY SEPP/LEP	<ul style="list-style-type: none"> • State Environmental Planning Policy (Biodiversity and Conservation) 2021 • State Environmental Planning Policy (Planning Systems) 2021 • State Environmental Planning Policy (Resilience and Hazards) 2021 • Coastal Management Act 2016 • Byron Local Environmental Plan 1988
TOTAL & UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS	<p>33 Unique Submissions</p> <p>32 Support</p> <p>Protection of beach</p> <p>Soft vs hard protection</p> <p>1 Objection</p> <p>Potential loss of public beach & beach access</p> <p>End effects – continued erosion</p> <p>“False sense of security” – property will continue to erode</p>
DOCUMENTS SUBMITTED FOR CONSIDERATION	<ul style="list-style-type: none"> • Statement of Environmental Effects • Preliminary Engineering Drawings • Coastal Engineering Assessment • Department of Climate Change, Energy, the Environment and Water comments • Cape Byron Marine Park comments • Draft Conditions of Consent
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)	N/A
RECOMMENDATION	Approval
DRAFT CONDITIONS TO APPLICANT	NO
SCHEDULED MEETING DATE	18 September 2024
PLAN VERSION	Select Date Version No
PREPARED BY	Rob van Iersel
DATE OF REPORT	10 September 2024

EXECUTIVE SUMMARY

Development Application 10.2013.287.1 (planning portal reference PAN-355981) was lodged in October 2023, seeking consent for an extension to existing coastal protection works, in the form of a geobag wall on private land at Bayshore Drive, Byron Bay.

The proposed works

The current application proposes a 40m long extension to the northern end of an existing geobag coastal protection wall, to address erosion that has occurred in this location, mainly during erosion events in February 2022.

It will comprise 200 bags arranged in a stepped profile to match the existing configuration. The bags are stored on-site, left over from the previous works.

Approx 800m³ of sand will be imported from a commercial sand extraction operation in Chinderah to back-fill the completed wall to re-establish the dune profile, which will be re-vegetated.

The site

The property is Lot 1 DP1215893 and is occupied by the Elements of Byron resort. The proposed works are located at the eastern edge of the property, at the edge of a coastal dune above Belongil Beach.

An existing 210m long geobag wall was constructed in March 2015 at the eastern end of the property to address coastal erosion adjacent to an open space area used by the resort as an outdoor events space.

The geobag wall was constructed as “Temporary Coastal Protection Works” in accordance with Part 4C of the *Coastal Protection Act 1979*, Part 3 of the *Coastal Protection Regulation 2011* and the Code of Practice associated with that legislation, which were in place at that time.

The open space area immediately above the existing erosion was used as a private relaxation space for resort guests, as a location for group yoga classes, and for events associated with the resort.

The works area is wholly within private land with the entrance to Belongil Estuary located partially along the base of the existing erosion escarpment.

North of the Belongil Entrance, which is intermittently open and closed and somewhat mobile, is Belongil Beach, currently consisting of a sandy beach approx. 100m to the surf line. The beach area is Crown Land and is part of the Cape Byron Marine Park.

Beach access is by way of a public access easement across land owned by the resort, located on a separate lot approx. 165m to the north of the proposed works.

Legislation

The site of the proposed works is within a “deferred area” under *Byron Local Environmental Plan 2014*, retaining the zoning of 7(f1) Coastal Lands under *Byron Local Environmental Plan 1988*.

The works are defined as *beach and coastal restoration works*, which are permissible with consent in the 7(f1) zone.

Clause 33 of the LEP sets out a range of considerations for development proposed in the 7(f1) zone, relating to the potential for adverse impacts on coastal processes and the coastal and scenic environment.

The site is mapped as coastal use area and coastal environment area for the purpose of *State Environmental Planning Policy (Resilience and Hazards) 2021* but is not within a mapped area of coastal wetlands or littoral rainforests.

The SEPP establishes a range of considerations relevant to development in the coastal use and coastal environment areas and for coast protection works.

Clause 2.12 of the SEPP specifies that a development consent for coastal protection works should not be issued 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.*

Section 27 of the *Coastal Management Act 2016* outlines a range of matters that must be satisfied before a consent authority issues a development consent for coastal protection works.

The application is integrated development as it proposes a “Controlled Activity” pursuant to Section 91 of the *Water Management Act 2000*. The Department of Climate Change, Energy, the Environment and Water – Water Operations has provided General Terms of Approval (GTAs).

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

- Section 27 of the *Coastal Management Act 2016*, in that the works as proposed will not:
 - unreasonably limit or be likely to unreasonably limit public access to or the use of the adjoining beach, or
 - pose or be likely to pose a threat to public safety; andsatisfactory arrangements can be made (by conditions imposed on the consent) for the maintenance of the works over the propose 5-year life of the works.
- Clause 4.8(2) of the *State Environmental Planning Policy (Biodiversity and Conservation) 2021* as the application is consistent with an approved koala management plan that applies to the land;
- Clauses 2.10, 2.11, 2.12 of *State Environmental Planning Policy (Resilience and Hazards) 2021* relating to development controls for coastal management areas;
- Clause 33 of *Byron Local Environmental Plan 1988* relating to development on land zoned 7(f1) Coastal Lands.

Application process

Comments on the application were received from Crown Lands, the Marine Parks Authority and the Department of Climate Change, Energy, the Environment and Water, all of whom expressed concerns regarding the proposed works, primarily related to potential to increase risks of coastal hazards that might impacts public lands.

The authorities expressed the view that coastal protection measures in this location should not be considered in advance of an endorsed Coastal Management Program for the wider embayment.

The application was exhibited for public comment in late 2023/ early 2024, resulting in 32 submissions in support of the proposal and 1 submission in opposition.

Support was primarily expressed in terms of the need to protect the area of beach from further erosion and a preference for what was seen as “soft” protection as opposed to “hard” works such as rock walls.

The objection expressed a concern that the works would result in an eventual loss of beach, beach access and local amenity. It also expressed a view that the works provide a “false sense of security” and that ongoing coastal recession is inevitable in this locality.

The application is referred to the Northern Regional Planning Panel (‘the Panel’) as the development is ‘regionally significant development’, pursuant to Section 2.19(1) and Clause 8A (1)(b) of Schedule 6 of *State Environmental Planning Policy (Planning Systems) 2021*, as

the proposal is coastal protection works directly adjacent to the ocean carried out by a person other than a public authority.

A briefing was held with the Panel on 12 March 2024 where key issues were discussed, including:

- justification for the works in advance of the Coastal Management Program currently being developed by Byron Shire Council and the State Government;
- need for the works to protect open space areas;
- management of “end effects” erosion;
- clarification of previous temporary works being able to remain in perpetuity;
- clarification of legal property boundary given movement of mean high water associated with beach recession/ erosion
- ability to construct works from with private property and avoidance of work on Crown Land (beach); and
- legislative requirements for no impact on natural processes.

Key Issues

1. Pre-determining Coastal Management Program Options

Byron Shire Council has a long-held policy of “planned retreat” in managing coastal processes in the Shire, documented in Part J of Byron Development Control Plan 2010.

Council is in the process of developing a Coastal Management Program, in accordance with the requirements and provisions of the *Coastal Management Act 2016*.

Stage 3 of a 4-stage development of that Program is currently in progress, studying coastal risks, vulnerability and opportunities.

There is, as yet, no timeframe for the completion of the Coastal Management Program, but later stages of the work will review the planned retreat policy together with other relevant management options.

The extension to the existing geobag wall is proposed as a temporary measure, pending completion of the Coastal Management Program. A period of 5 years is proposed in the application.

At the end of that 5-year period, the 40m extension to the wall would need to be removed, whether or not alternative management options have been adopted through a Coastal Management Program.

A condition of any development consent is recommended to the effect that the wall must be removed once a Coastal Management Program is adopted, or at 5 years from the date of the consent, whichever is the sooner.

Such a condition could be enforced.

2. End Effects Erosion

Given the nature of coastal processes in this location, and the erosion experience immediately north of the existing geobag wall, it is reasonable to assume that there will be some erosion north of the proposed extension during the 5-year lifespan of a consent.

The coastal engineering advice submitted with the application concludes that any such erosion is not expected to impact areas outside the subject lot or unreasonably limit public access to the beach over the 5-year lifespan of the proposal for the following reasons:

- The limited design life is unlikely to be sufficient for the end effect to fully develop;

- The ability for sand above the (low) crest level of the works, and below and behind the works, to be released into the active coastal system during wave overtopping and severe erosion events; and
- The relatively limited end effects observed to the north of the existing 210m long geobag coastal protection works since their construction in March 2015, comprising a distance of approximately 60m.

Notwithstanding that, the proponents have provided an outline for a Monitoring and Management/ Maintenance Plan which could be implemented in the event of an erosion event that results in 'end effects'.

3. Legality of Existing Geobag Wall as a Permanent Structure

The existing geobag wall was constructed in 2015 as "Temporary Coastal Protection Works" in accordance with Part 4C of the *Coastal Protection Act 1979*, Part 3 of the *Coastal Protection Regulation 2011* and the Code of Practice associated with that legislation, which were in place at that time.

At that time, clause 55O of the Coastal Protection Act stipulated that regulatory approval was not required under any legislation for *temporary coastal protection works*.

Within that legislation, *temporary coastal protection works* provided for fabric bags filled with sand to be placed on a beach or a dune adjacent to a beach to mitigate the effects of wave erosion.

The definition did not stipulate a time frame for "temporary", but a 2-year period was specified in the Act for temporary works on public land. There was no timeframe mentioned for works on private land.

The Regulation specified the *Code of Practice under the Coastal Protection Act 1979* as containing the requirements for placement, maintenance and removal of temporary protection works.

In terms of placement, the Code stated:

Works may only be placed where the most landward part of an escarpment is within 20 metres of the most seaward wall of a building

It is not clear whether that was the case when the existing wall was constructed in 2015.

The documentation submitted with the current application includes a letter to the applicant from the Secretariat of the NSW Coastal Panel dated 18 January 2017 regarding a development application which proposed to make the temporary works permanent (Appendix A to Coastal Engineering Assessment Report).

The letter states:

the works which you are seeking development consent for constitute existing TCPW placed in accordance with Part 4C of the Coastal Protection Act 1979, Part 3 of the Coastal Protection Regulation 2011 and the Code of Practice under the NSW Coastal Protection Act 1979.

As the TCPW are located on private land, they are not limited to the 2 year (maximum duration) period imposed for TCPW located on public land. Provided that there are no proposed changes to the works that would otherwise make them inconsistent with the requirements for TCPW, then development consent for the existing works is not required as the works are already permissible under the Coastal Protection Act 1979.

Based on this letter, the proponents have taken the position that the existing geobag wall remains a legally approved structure, although the requirement that temporary works may

only be placed where the erosion escarpment is within 20m of a building does not seem to have ever been tested.

The validity of the letter has been questioned, on the basis that it was written by the (then) Coastal Panel secretariate and it is not clear whether the matter was considered by the Panel itself. Council has no information on the internal delegations of the Coastal Panel for making decisions and providing written advice.

Council has contacted senior staff of the Department who were previously involved with the Coastal Panel. At the time of writing this report, Council had not yet received a response.

4. Legal Property Boundary

The “Doctrine of Erosion and Accretion” is applied where property boundaries are linked to natural features, such a bank or bed of a creek or a tidal mark.

That is not the case for this property.

The doctrine is described on the NSW Land Registry services webpage as:

Natural feature boundaries are, at common law, ambulatory in nature, and are subject to the doctrine of accretion and erosion. The doctrine applies to boundaries of both tidal and non-tidal waters including rivers, streams, the sea and inlets to the sea. It also applies to other natural feature boundaries such as cliff faces and ridgelines. The doctrine allows for the movement of a boundary where the change in the position of the bank, shoreline or other natural feature has been natural, gradual and imperceptible.

The title of any land alienated by such erosion is vested in the Crown. It also notes that the change in position of the bank (or in this case erosion escarpment) must only be discernible over a significant period of time not as a result of a sudden storm or flood.

In cases where erosion has occurred suddenly, the former definition of the boundary will not change.

The doctrine does not strictly apply in this case, as the eastern property boundary is not set to a tidal mark or other natural feature and is a defined registered boundary under deposited Plan DP1215893 dated 4/1/2018. In any case, the erosion in this case is a result of a sudden storm, and, while natural, is not gradual and imperceptible.

Conclusion

Following consideration of the matters for consideration under Section 4.15(1) of the EP&A Act, the provisions of the relevant State Environmental Planning Policies, Byron LEP 1988, and Byron DCP 2010, the proposal can be supported on the basis of a time-limited consent of a maximum of 5 years.

Following a detailed assessment of the proposal, pursuant to Section 4.16(1)(b) of the EP&A Act, DA 10.2023.287.1 is recommended for approval, subject to the conditions contained at Attachment A of this report.

1. THE SITE AND LOCALITY

1.1 The Site

Property Description	Lot 1 DP1215893
Address	144 Bayshore Drive, Byron Bay
Zoning	Part C2 Environmental Conservation / Part C3 Environmental Management / Part SP2 Infrastructure / Part SP3 Tourist / Part DM

Deferred Matter (zoned 7(f1) Coastal Lands under Byron LEP 1988)

NOTE: Coastal protection works are proposed wholly within the 7(f1) zone

Mapped Constraints Bushfire Prone Land
 Coastal Erosion Precinct 1
 High Environmental Value vegetation

Lot 1 DP1215893 was registered in January 2018 as a Plan of Subdivision of Lots 1, 2, 7-11 DP243218, Lot 1 DP190757, and Lot 1 DP780243.

The property has an area of 32.73ha and contains the Elements of Byron resort.

The proposed works are located at the north-eastern edge of the property.

Various easements are in place over the property, but none located in the vicinity of the proposed works.

The whole of the property is generally flat, with levels around 2.0m – 4.0m AHD. The site of the proposed coastal protection works is located at the highest part of the site, being the remnant dune system with levels around 8.0m AHD.

The proposed works are located adjacent to beachfront open space associated with the resort, directly adjacent to an existing 210m long geobag wall, which was constructed in March 2015 as Temporary Coastal Protection Works in accordance with Part 4C of the *Coastal Protection Act 1979*, Part 3 of the *Coastal Protection Regulation 2011* and the Code of Practice associated with that legislation, which was in place at that time.



Figure 1: Lot 1 DP1215893



Figure 2: The site and location of proposed works



Existing geobag wall in foreground; site of proposed extension to the right (source: Coastal Engineering Assessment, Royal HaskoningDHV, May 2023)



Revegetation works above existing geobag wall



Erosion at western end of existing geobag wall



Western end of existing geobag wall (from above)



Open space area directly above existing erosion area



Existing geobag wall



Viewing platform undermined by existing erosion



Western end of existing geobag wall

1.2 The Locality

Adjoining development

- North: Vacant land in the same ownership, part of which was recently rezoned to C4 Environmental Living to facilitate a subdivision to create residential lots.

Part of the dune system on this land is zoned C2 Environmental Conservation, with the remainder a deferred matter under *Byron Local Environmental Plan 2014*, retaining its zoning of 7(f1) Coastal Lands under *Byron Local Environmental Plan 1988*.

- North-east: Belongil beach front is immediately adjacent to site of the works. At the moment, Belongil Creek is located immediately below the existing geobag wall and the site of the proposed extension. Belongil beach is part of the Cape Byron Marine Park.
- South: Cabins within the Elements resort and the Belongil estuary.

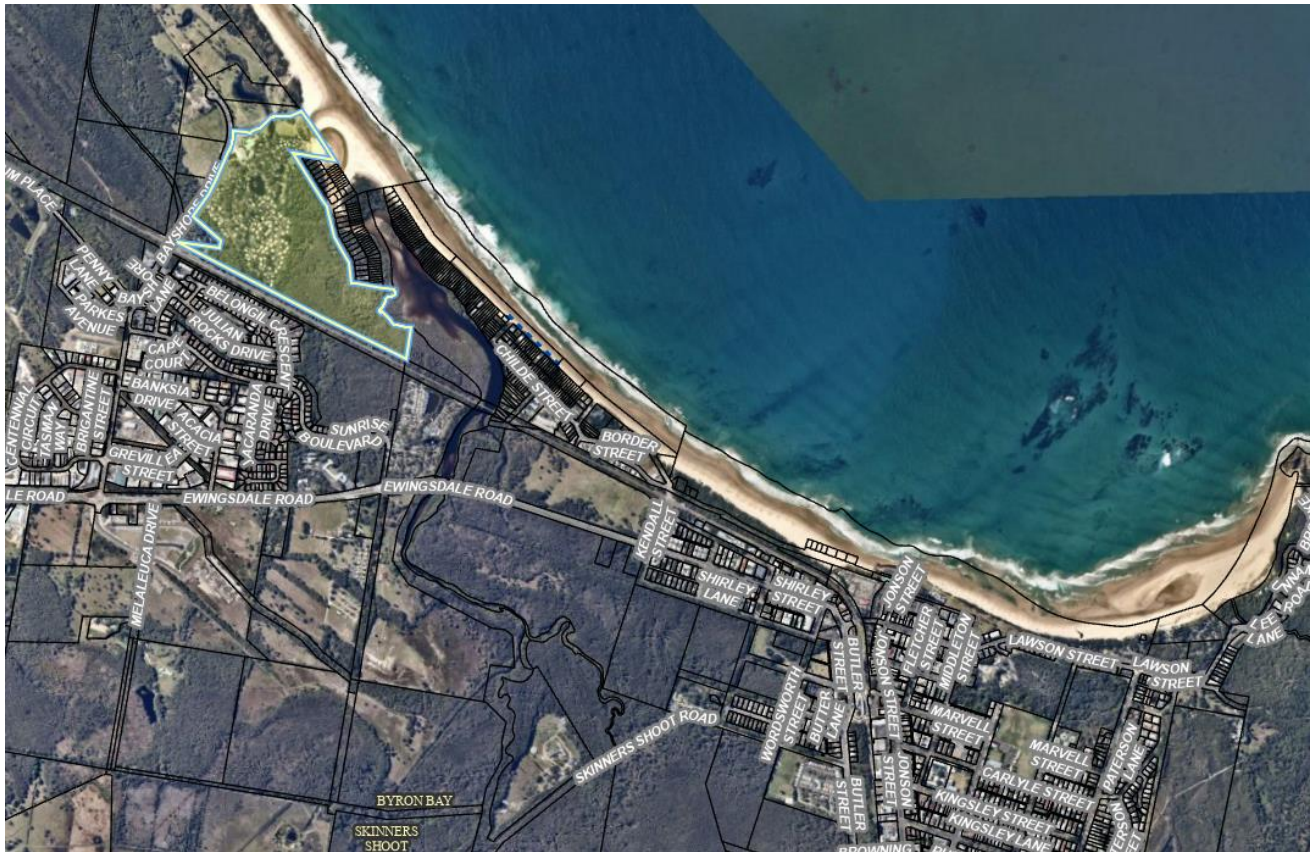


Figure 3: Site Locality

2. THE PROPOSAL AND BACKGROUND

2.1 The Proposal

The application seeks development consent for the extension of existing coastal protection works, in the form of a geobag wall, as shown in **Figure 4**.

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

- Extend along the northern shoreline of 40 linear metres;
- Comprise approx. 200 x 0.75m³ geobags, arranged in a step profile 5 units high and typically 2 units wide;
- Slope of approximately 1V:1.5H;
- Overall approximate height of 2.1metres;
- Encapsulated self-healing toe comprising an additional geobag incorporated in the bottom layer on the seaward side and tied back to the double layer structure;
- Westward return at the northern limit of the extension to mitigate the out-flanking risk; and
- Use of existing geotextile sandbags currently stockpiled on site.

Approx 800m³ of sand will be imported, from a commercial extraction operation at Chinderah, to place over the geobag wall to assist with the re-establishment of the dune profile on the private land.

The extension is proposed as a temporary structure, with a life of 5 years, or pending completion of Council's Coastal Management Program for the area.

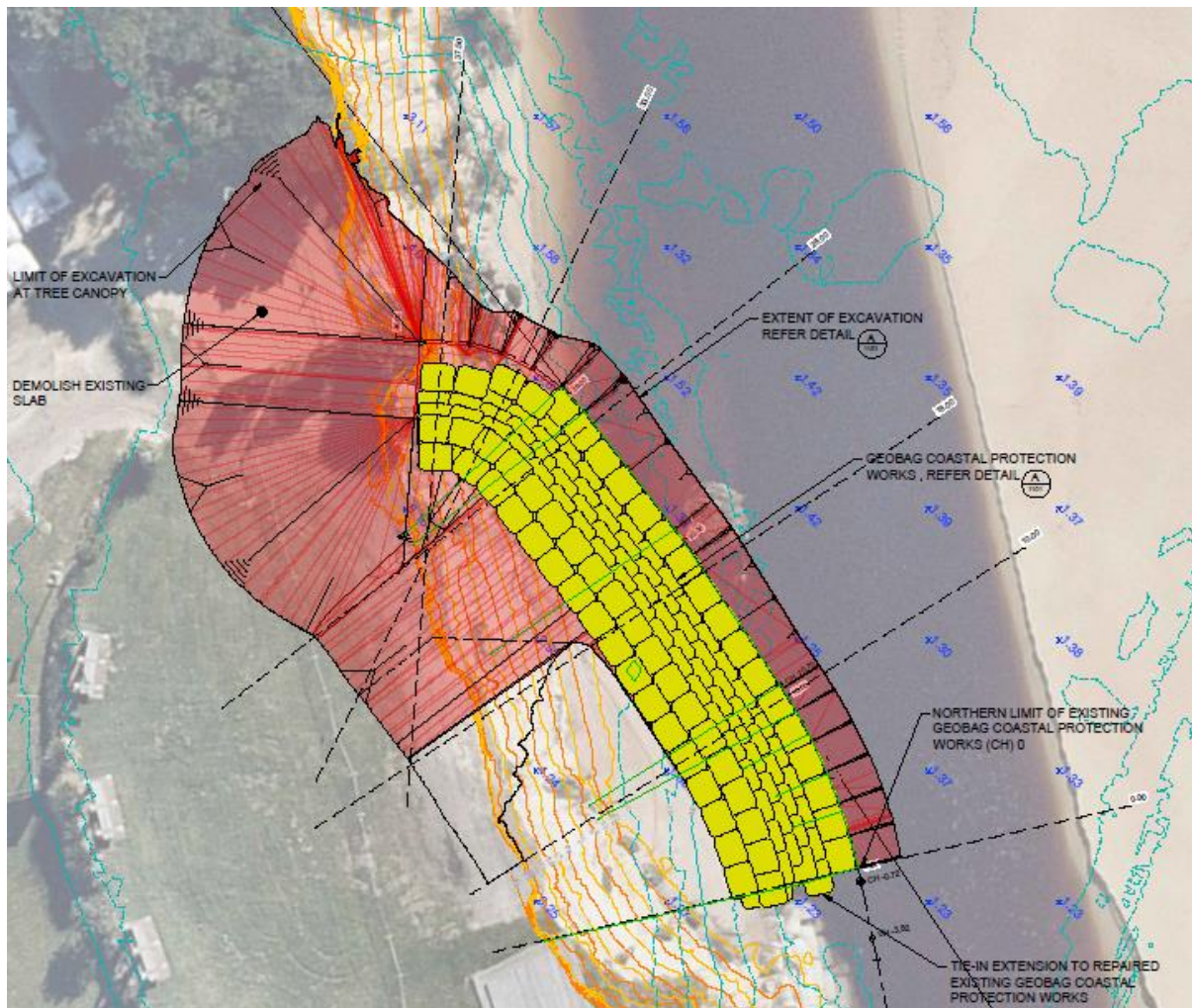


Figure 4: Proposed geobag wall

2.2 Background

Tourism development

The site has a long history of tourism development, most recently associated with Elements of Byron.

Up until the early to mid 1980s, the site contained the “Globetrotters Caravan Park”. Later that decade, Building Application No. 85/2470 was issued for the construction of 32 holiday cabins within the site.

Development Consent 87/208 was issued on 11 August 1987 for “*the construction of 161 x 2 and 3 bedroom cabins and the 32 existing cabins for Lots 7-11, D.P. 243218, and Part Portion 118, Parish of Byron, Bayshore Drive, Byron Bay.*”

Development consent 10.2013.562.1 was issued in June 2014 for “*North Byron Beach Resort Central Facilities Buildings*”, including resort lobby and administration, restaurant, café, conference facilities and day spa. The property description at that time was Lot 1 DP243218, Lot 8 DP243218, Lot 9 DP243218, Lot 10 DP243218, and Lot 11 DP243218.

The consent included the following conditions relevant to coastal erosion:

5. Coastal Erosion

The development must cease if at any time the coastal erosion escarpment comes within 50 metres of any building associated with this development. The buildings and works used in connection with the development must be removed immediately to an approved location by the owner of the land. The owner must return the landform of the subject land to the predevelopment state and suitably revegetate the land. In this condition coastal erosion escarpment means the landward limit of erosion in the dune system caused by storm waves. Note: at the end of a storm the escarpment may be nearly vertical; as it dries out, the escarpment slumps to a typical slope of 1 vertical to 1.5 horizontal.

16. S.88E Restriction to be placed on title – Coastal erosion

Documentary evidence is to be provided to the Principal Certifying Authority that a restriction-as-to-user, pursuant to the provisions of S.88E of the Conveyancing Act, 1919, has been placed on the title to the land, the subject of this consent, stating:-

The development granted via development consent number 10.2013.562 must cease if at any time the coastal erosion escarpment comes within 50 metres of the building subject of the consent. The development the subject of this consent must be demolished and removed immediately. Further the landowner must suitably revegetate the land.

In this restriction coastal erosion escarpment means the landward limit of erosion in the dune system caused by storm waves.

Please note: Documents requiring the endorsement of Council associated with the creation or cancellation of easements, restrictions, covenants are subject to fees listed within Council's Fees & Charges.

There is no such restriction on the title of Lot 1 DP1215893, which is subject of the current application.

Existing protection works

Coastal protection works, in the form of a 210m long geobag wall, were constructed in March 2015, as Temporary Coastal Protection Works in accordance with Part 4C of the *Coastal Protection Act 1979*, Part 3 of the *Coastal Protection Regulation 2011* and the Code of Practice associated with that legislation.

The legislation at that time allowed the works to be undertaken without development consent under the *Environmental Planning and Assessment Act 1979*.

In January 2017, an officer of the NSW Coastal Panel advised the landowners that the temporary works, being located on private land, were not limited to the 2 year (maximum duration) period imposed for temporary works on public land.

The *Coastal Protection Act 1979* has since been replaced by the *Coastal Management Act 2016*, which no longer contains provisions allowing temporary Coastal Protection Works without consent.

Current Application

The current application was lodged in October 2023. **Table 1** provides a chronology of the development application since lodgement:

Table 1: Chronology of Application

Date	Event
20/10/2023	Application lodged
24/10/2023	DA referred internally to Development Engineer, Ecologist & Coast & Biodiversity Coordinator

Date	Event
25/10/2023	DA referred to external agencies including DPE Water, DPI Marine Parks & DPI Fisheries
27/10/2023	DA referred to Bundjalung of Byron Bay Aboriginal Corp (Arakwal) and Tweed Byron Aboriginal Land Council
31/10/2023	Commencement of Public Exhibition
03/11/2023	Request for Information – ecological matters
27/11/2023	DA re-advertised (error in initial notification)
27/11/2023	Response from DPE Marine Parks & Fisheries raising a number of concerns
29/01/2024	Site inspection attended by applicant and coastal engineer (Greg Britton), Council staff and officers from Dept Climate Change, Energy, the Environment and Water
09/02/2024	Response from Dept Climate Change, Energy, the Environment and Water raising a number of concerns
12/02/2024	Request for Further Information sent to applicant – request response to agency concerns
12/03/2024	Panel Briefing Meeting
04/06/2024	Panel Site Inspection
12/07/2024	Applicant's response to request for further information
15/07/2024	Additional information referred to Cape Byron Marine Park, DCCEEW & Crown Lands
01/08/2024	DCCEEW response
09/08/2024	Cape Byron Marine Park response

3. STATUTORY CONSIDERATIONS

When determining a development application, the consent authority must take into consideration the matters outlined in Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* ('EP&A Act'). These matters as are of relevance to the development application include the following:

- (a) *the provisions of any environmental planning instrument, proposed instrument, development control plan, planning agreement and the regulations*
 - (i) *any environmental planning instrument, and*
 - (ii) *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*

- (iii) *any development control plan, and*
- (iiia) *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, and*
- (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*
that apply to the land to which the development application relates,
- (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,*
- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest.*

These matters are further considered below.

It is noted that the proposal is considered to be Integrated Development (s4.46) as it is a Controlled Activity pursuant to s91 of the *Water Management Act 2000*, given the proximity to the Belongil Estuary.

3.1 Coastal Management Act 2016

Section 27 of the Act relates to development consent for Coast protection works, and is addressed below:

- 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*

A 5-year development consent is recommended, after which time the proposed geobag extension will need to be removed and the site rehabilitated.

The Coastal Engineer's assessment concludes that any end effects erosion would not extend the 160m to the north that would impact on the existing beach access.

Given the location of the works, wholly within the private property, they will not impact on the use of the adjacent beach or access along it.

- ii. *pose or be likely to pose a threat to public safety*

The works are located wholly within private land and will address an existing unstable erosion escarpment. There are no significant public safety risks.

- 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.*

An appropriate condition of approval is recommended, requiring the preparation, approval and implementation of a Monitoring and Maintenance / Management Plan,

based on the framework provided by the applicant's Coastal Engineer, to address the matters above

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,

A condition of consent is recommended requiring a bond payable by the landowner in relation to the works.

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

Not proposed in this case. A bond is preferred.

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.*

The bond will be a requirement on the owner of Elements of Byron resort, with no input from any other landowner or authority.

3.2 Environmental Planning Instruments, proposed instrument, development control plan, planning agreement and the regulations

The relevant environmental planning instruments, proposed instruments, development control plans, planning agreements and the matters for consideration under the Regulation are considered below.

(a) Section 4.15(1)(a)(i) - Provisions of Environmental Planning Instruments

The following Environmental Planning Instruments are relevant to this application:

- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*
- *State Environmental Planning Policy (Planning Systems) 2021*
- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *Byron Local Environmental Plan 1988;*

A summary of the key matters for consideration arising from these State Environmental Planning Policies are outlined in **Table 2** and considered in more detail below.

Table 2: Summary of Applicable Environmental Planning Instruments

EPI	Matters for Consideration	Comply (Y/N)
State Environmental Planning Policy (Biodiversity & Conservation) 2021	<p>Chapter 3: Koala Habitat Protection 2021</p> <p>Council's Byron Coast Comprehensive Management Plan is an approved koala management plan for the purposes of this SEPP.</p> <p>Clause 10 of the SEPP therefore applies and requires that Council's determination of the development application must be consistent</p>	Y

EPI	Matters for Consideration	Comply (Y/N)
	<p>with the approved koala plan of management that applies to the land.</p> <p>In accordance with the approved Plan, the subject site is within the <i>South Byron Coast Koala Management Area</i> and the <i>West Byron Koala Management Precinct</i>.</p> <p>There is no potential koala habitat mapped at the site of the proposed works, but areas are mapped on an adjacent site to the west.</p> <p>The proposed works will have no direct or indirect impact on these mapped areas.</p>	
State Environmental Planning Policy (Planning Systems) 2021	<p>Chapter 2: State and Regional Development</p> <p>The development constitutes Regionally Significant Development, by way of Section 2.19(1) and sub-Clause 8A of Schedule 6, as it is <i>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>	Y
State Environmental Planning Policy (Resilience & Hazards) 2021	<p>Chapter 2 Coastal Management</p> <p>A number of clauses in this Chapter of the SEPP apply to this development and are considered in more detail below.</p>	See discussion below
Byron LEP 1988	See discussion below	
Byron DCP 2010	<p>Part J: Coastal Erosion Lands</p> <p>Objectives:</p> <ul style="list-style-type: none"> <i>To make provision for the orderly and economic development of land within the coastal erosion zones.</i> <i>To ensure that such development is carried out in a manner which does not adversely affect coastal processes and which will not be adversely affected by coastal processes</i> <p>J2.1 Precinct 1 – from Beach Escarpment to the Immediate Impact Line:</p> <p>No relevant provisions – controls relate to new and existing buildings.</p> <p>J2.5 Beach Protection</p> <p><i>Any work proposed by individual property owners to protect land from erosion must be designed to ensure that the work will not cause adverse impacts on other lands or on coastal processes.</i></p>	Y

EPI	Matters for Consideration	Comply (Y/N)
	<p>As above, it is accepted that the extension to the geobag wall is highly likely to result in end effect erosion at its northern end during the 5-year life of the project.</p> <p>The applicant's Coastal Engineering expert has provided an assessment of the potential for such erosion, concluding that it is unlikely to extend outside of the subject property during the 5-year life of the structure.</p>	

State Environmental Planning Policy (Resilience and Hazards) 2021

2.7 Development of certain land within coastal wetlands and littoral rainforests area

The wider property contains areas mapped under this SEPP as Coastal Wetlands and Littoral Rainforests, although none of these mapped areas are within or close to the area proposed for the coastal protection works (see **Figure 5**).

The provisions of clause 2.7 are not applicable to this application.

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

As shown in **Figure 6**, the site of the proposed works, while not within, is close to the areas mapped as in proximity to littoral rainforest.

The provisions of clause 2.8 are not applicable to this application.

2.10 Development on land in the coastal environment area

Figure 7 shows that the area of proposed works, and the majority of the whole property, is mapped within the coastal environment area.

The provisions of clause 2.10 are addressed below:

1(a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment

Construction 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 escarpment can rebuild and stabilise over time.

Removal of the geobag structure in five years will be subject to a management plan to minimise any negative impacts.



Figure 5: Coastal Wetland and Littoral Rainforest Mapping



Figure 6: Works area close to land mapped as in proximity to Littoral Rainforest



Figure 7: Coastal Environment Area

1(b) coastal environmental values and natural coastal processes

The coastal values of this locality include:

- a sandy beach that is accessible at both low and high tide;
- an ocean beach that is safe for swimming and surfing;
- access from Bayshore Drive by way of a public pedestrian way through private land located approx. 165m north of the work site;
- a natural backdrop of vegetated sand dunes; and
- the entrance to the Belongil Estuary, which is mobile along the beach depending on rainfall and ocean conditions.

The mouth of the Belongil Estuary is currently located directly below the site of the proposed protection works.

The natural coastal processes in this location are a factor of coastal recession. Sand will come and go but, overall, the beach is predicted to continue to recede due to a sand deficit.

The process at this location is compounded by the entrance to the Belongil Estuary, which is intermittently open and closed to the sea, with its location mobile, generally moving north-west, along the beach.

The geobag structure is designed to slow down the recession and accelerate short-term accretion in this location.

The coastal engineering report submitted with the application indicates that that an erosion “end effect” is likely to occur off the northern end of the geobag structure.

Additional information from the coastal engineer concludes that the increased erosion is not expected to “unreasonably limit public access to the beach (primarily in relation to the existing public access 160m to the north) over the proposed design life of the extension works (5 years) for a number of reasons:

- the limited design life, which may not be sufficient time for the end effect to fully develop;
- the ability for sand above the (low) crest level of the works, and below and behind the works, to be released into the active coastal system during wave overtopping and severe erosion events; and
- the relatively limited end effects observed to the north of the existing 210m long geobag coastal protection works since their construction in March 2015, comprising a distance of approximately 60m”.

In addressing end effects, the proponents propose:

- the proposed works and the adjacent land (the beach and dunes) should be subject to a monitoring and management/maintenance plan; and
- a condition of consent should be imposed to ensure that, for the life of the extension works, restoration of the beach and land adjacent to the beach, including the public accessway to the beach located to the north (if required), is carried out by the owner of Elements of Byron Resort in the event of any increased erosion caused by the presence of the works.

These matters raise the potential for the proponents to undertake maintenance and/or repair works outside of their site, on the adjacent beach, which is Crown Land and part of the Cape Byron Marine Park.

In considering this potential, Cape Byron Marine Park reiterates that any physical works outside of the property boundary would require a Marine Park Permit. They also advise that they do not support the temporary works as proposed, in advance of the Coastal Management Program process and adoption.

Crown Lands were also invited to comment on the proponent’s suggested condition, but did not provide a response.

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 development on any of the sensitive coastal lakes

No sensitive coastal lakes are located in this area.

The geobags could be washed into the ocean or into the Belongil Estuary in the event of a significant erosion event. However, the risk is considered to be minimal given that the wall will be back-filled and covered with sand then planted with coastal vegetation.

During normal conditions, the geobag wall will not impact on water quality within the adjacent Marine Park.

1(d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms

No marine vegetation will be impacted by the proposed works, and no terrestrial vegetation needs to be cleared.

The potential for the works to impact on the habitat of the Bush Stone-curlew has been assessed and Council’s consulting ecologist agrees that risks of impact are very minor.

The works site is not near any undeveloped headlands or rock platforms.

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

The works site is approx. 165m south of the nearest public beach access. The works will not impede that access and it is not considered likely that any “end effects” erosion would occur that far north of the wall within the intended 5-year lifespan.

1(f) Aboriginal cultural heritage, practices and places

The works are wholly within private land. Given that the protection works are, in effect, reclamation works, disturbance of the existing sub-surface will not occur and it is not likely that they would disturb any unknown Aboriginal items that might exist in the works site.

1(g) the use of the surf zone

The location of the geobag wall extension is currently separated from the surf zone by the entrance to the Belongil Estuary and a wide sandy beach.

A major erosion event could result in the surf zone migrating to the toe of the wall, but because this is a 'soft' structure rather than a hard revetment wall, recovery of some beach in front of the wall would be expected.

2.11 Development on land in the coastal use area

The site of the proposed works is mapped within the coastal use area. The provisions of clause 2.11 are addressed below:

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,

The works site is approx. 165m south of the nearest public beach access. The works will not impede that access and it is not considered likely that any "end effects" erosion would occur that far north of the wall within the intended 5-year lifespan.

Similarly, outside of a significantly large erosion event, the extension to the existing geobag wall is unlikely to result in a loss of the beach in front of the wall to the extent that it would impede access along the beach.

1(a) (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,

The extension to the existing geobag wall will not have any impact in relation to these matters.

1(a)(iii) the visual amenity and scenic qualities of the coast, including coastal headlands,

The extension to the existing geobag wall will improve the visual amenity at this location by replacing the current eroded dune face with a stabilised and vegetated face.

1(a)(iv) Aboriginal cultural heritage, practices and places,

As above.

1(a)(v) cultural and built environment heritage

The works will not impact on any known heritage areas.

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.

The coastal engineering assessment submitted with the application accepts that "end effects" erosion is likely to occur.

It notes that, given the 5-year lifespan of the proposed geobag wall, this erosion is likely to be minimal, affecting private land at the resort and not impacting on beach access.

However, the wording of this clause requires that the consent authority must be satisfied that increased risk of coastal hazards is not likely due to the proposal, whether that risk relates to land upon which the development is carried out or any other land.

The coastal engineering assessment submitted with the application concludes that there will be no net loss of sand because:

- sand used to fill the geobags was sourced from a commercial sand extraction operation and not from this beach compartment; and
- 800m³ of sand will be imported to the site to address the volume of sand “locked up: behind the proposed works.

The proponent has also provided an outline for a Monitoring and Management/ Maintenance Plan which would manage the potential for increased erosion caused by the presence of the works.

While some end effect erosion is likely from the northern end of the geobag wall extension, this erosion risk currently exists at this site and it is argued that the wall does not increase the risk, it simply moves it a little further northward.

2.12 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.

There is currently no certified coastal management program that applies to this land.

The application has been made on the basis that the proposed geobag extension would remain in place for 5 years pending completion of the coastal management program currently underway.

Given the history of coastal planning in Byron Shire, it is not known whether an endorsed coastal management program can be achieved in this 5-year timeframe.

If that cannot be achieved, it raises an issue in that the consent would lapse, with a requirement for the works to be removed. While the works could be removed relatively easily, it would leave the dune face exposed, leading to further erosion risks at the site.

In those circumstances, it would be expected that the landowner would seek to retain to wall until permanent management measures are adopted within an endorsed coastal management program.

The question here is whether the temporary works as proposed (regardless of how temporary they may be) lock a future coastal management program into a geobag wall as the only management solution at this location.

Management options for the Byron coast have not yet been identified and analysed. The coastal processes at this site are perhaps the most complex of the whole embayment given the presence of the Belongil entrance.

However, it will remain possible to remove the geobags should final management options be adopted that require this. Such removal would not likely to be cost-prohibitive or physically difficult.

Byron Local Environmental Plan 1988

The relevant local environmental plan applying to the site is the *Byron Local Environmental Plan 1988* (‘the LEP’). The aims of the LEP include:

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*

The proposal is not inconsistent with these aims.

The works will protect private land in a manner that minimizes potential impacts on public land, particularly coastal impacts in this location. See discussion above.

Zoning and Permissibility (Part 2)

Lot 1 is zoned Part C2 Environmental Conservation / Part C3 Environmental Management / Part SP2 Infrastructure / Part SP3 Tourist / Part DM Deferred Matter under Byron LEP 2014.

The DM area retains the zoning of 7(f1) Coastal Lands pursuant to Clause 8 of the Byron LEP 1988.

The proposed coastal protection works are located wholly within the deferred 7(f1) area.

According to the definitions in Clause 5 (contained in the Dictionary), the proposal satisfies the definition of *beach and coastal restoration works*, which means *structures or works to restore the coastline from the effects of coastal erosion*.

Beach and coastal protection works are permissible with consent in the Land Use Table in Clause 9.

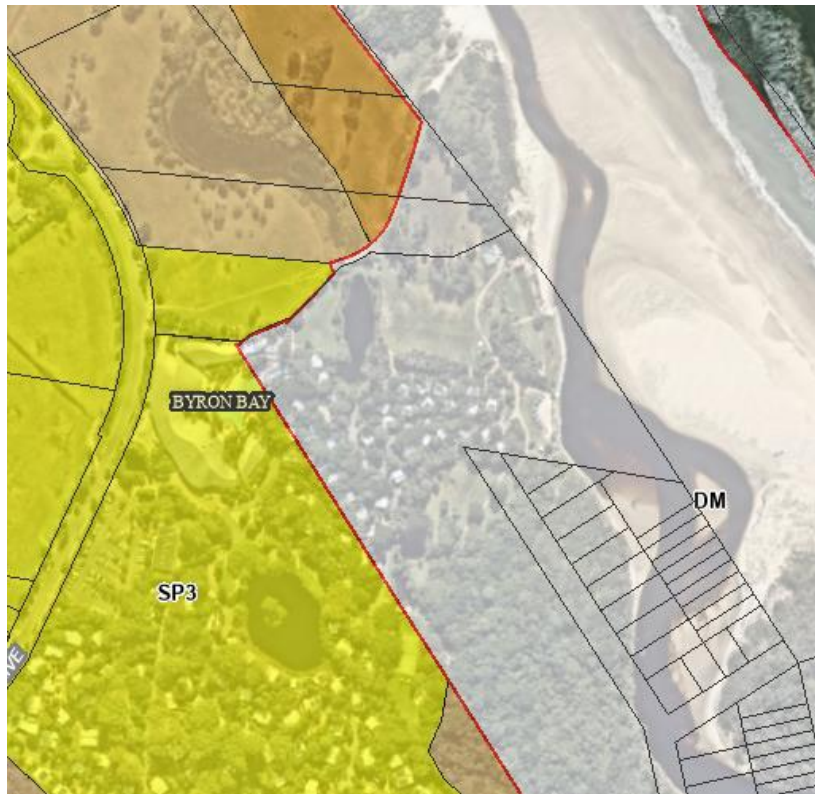
The zone objectives include the following (pursuant to the Land Use Table in Clause 9):

- to identify and protect environmentally sensitive coastal land,*
- 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,*
- to prevent development which would adversely affect, or be adversely affected by, coastal processes, and*
- to enable the careful control of noxious plants and weeds by means not likely to be significantly detrimental to the native ecosystem.*

The works are located away from environmentally sensitive coastal land, i.e. land mapped as coastal wetland and/ or littoral rainforest.

The works are unlikely to result in detrimental impacts on habitat, landscape or scenic quality.

The works address and an area currently impacted by coastal processes. While there is potential for end effects erosion, the risk is manageable and is unlikely to impact public areas or public beach access over the 5-year life of the structure.



Byron LEP 2014



Byron LEP 1988

Special Provisions (Part 3)

Clause 33 Development within Zone No 7(f1) Coastal Lands Zone

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.*

It is accepted that the extension to the geobag wall is likely to result in end effect erosion at its northern end during the 5-year life of the project.

See discussion above. It is considered that the potential for end effects can be managed during the project lifespan.

At the end of the 5-year period, the extension of the geobag wall would need to be removed, which could be undertaken reasonably easily, without significant impact.

In the absence of any other coastal management measures that might be adopted through an endorsed Coastal Management Program, that would expose the dune face at this location to further erosion risk.

(b) Section 4.15 (1)(a)(ii) - Provisions of any Proposed Instruments

There are no proposed instruments which have been the subject of public consultation under the EP&A Act, that are relevant to the proposal.

(c) Section 4.15(1)(a)(iii) - Provisions of any Development Control Plan

The following Development Control Plan is relevant to this application:

- *Byron Development Control Plan 2010* ('the DCP')

Part J of this DCP deals with Coastal Erosion Lands. The objectives of this Part are:

To make provision for the orderly and economic development of land within the coastal erosion zones.

To ensure that such development is carried out in a manner which does not adversely affect coastal processes and which will not be adversely affected by coastal processes.

To provide guidelines for determination of the merits of development on coastal lands as required by section 79C(a)(iv) of the Environmental Planning and Assessment Act 1979

The Part establishes three precincts, based on previous coastal hazard studies which identified erosion impact lines – immediate impact, 50-year erosion line and 100-year erosion line.

The site of the proposed works is within Precinct 1 – *from the beach escarpment to the immediate impact line.*

The controls within this precinct relate to new buildings, which must be designed to be removeable. There are no controls specifically relevant to the placement of temporary coastal protection works.

Part J2.5 relates to Beach Protection, with the objective to ensure that works proposed by property owners to protect land from coastal processes will not have adverse effects on other land or on coastal processes.

The coastal engineering assessment submitted in support of this proposal acknowledges that there will be a likelihood of end effects erosion off the northern end of the geobag wall. It concludes, however, that this erosion is not likely to affect land outside of the subject property over the 5-year life of the proposed structure.

(d) Section 4.15(1)(a)(iia) – Planning agreements under Section 7.4 of the EP&A Act

There are no Planning Agreements relevant to this application.

(e) Section 4.15(1)(a)(iv) - Provisions of Regulations

Section 61 of the 2021 EP&A Regulation contains matters that must be taken into consideration by a consent authority in determining a development application. None of the matters are relevant to the proposal.

Section 62 (consideration of fire safety) and Section 64 (consent authority may require upgrade of buildings) of the 2021 EP&A Regulation are not relevant to the proposal.

3.3 Section 4.15(1)(b) - Likely Impacts of Development

The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality must be considered.

In this regard, potential impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls outlined above and the Key Issues section below.

The consideration of impacts on the natural and built environments includes the following:

- Context and setting – The proposal is considered to be generally consistent with the context of the site, in that it is an extension to an existing geobag wall, which will be covered with sand.
On completion, the proposal would improve the visual amenity such that it more consistent with its local setting.
- Access – the application includes a construction methodology demonstrating that the proposed works can be constructed from within the subject property, avoiding the need for machinery to access the beach.
- Public Domain – as above: construction will not require access to the beach. The Coastal Engineering concludes that any end effects erosion would also be expected to be wholly within the subject property, with no impacts on the adjoining public land.

However, the application includes an outlined of a Monitoring and Management/ Maintenance Plan that raises the potential for works on the adjacent beach should a significant erosion event occur within the 5-year life of the structure.

Cape Byron Marine Park have reviewed that proposal and provide the following comments:

Our consistent position since the resort development was proposed in 2013 has been that construction close to the shoreline ie. Near the northern/western bank of Belongil Creek is not supported

Any consent should contain conditions requiring remediation of any natural or other values degraded or otherwise affected by the works.

Noting that the CMP should address longer term management strategies we recommend that any consent issued requires future removal of geobags installed as temporary protection and includes guidance and conditions to ensure appropriate restoration of the site.

- Flora and fauna impacts – there is a slight risk that construction of the works could impact on trees within a small stand of littoral rainforest immediately north of the works site. This area has been impacted by erosion, with some trees lost in the past and there is potential for more trees to be impacted in the future from end effects erosion. The trees would be impacted by erosion with or without the proposed extension to the existing wall.

Any loss of trees associated with the construction of the wall can be offset by additional planting within other nearby areas of littoral rainforest.

An assessment of potential impacts has been provided in relation to the threatened Bush Stone-curlew, as there have been previous sightings of the bird in the grounds of the resort.

The assessment concludes that the proposed development is unlikely to result in any impacts on this species.

Accordingly, it is considered that the proposal will not result in any significant adverse impacts in the locality as outlined above.

3.4 Section 4.15(1)(c) - Suitability of the site

There are no aspects of this site that would render it unsuitable for the development as proposed, other than the fact it will continue to be subject to beach recession over the longer term.

The works are proposed as a temporary measure pending completion of a Coastal Management Program, which would lock in a longer-term strategy to deal with beach recession.

Should that program result in a continuation of Council's "Planned Retreat" policy, the works will be able to be removed.

A condition is proposed limiting the life of a development consent to a period of 5 years, after which the structure will need to be removed

3.5 Section 4.15(1)(d) - Public Submissions

These submissions are considered in Section 5 of this report.

3.6 Section 4.15(1)(e) - Public interest

The works are proposed wholly within private land. They will not impact the adjoining public beach in any way, other than to maintain the beach 'back-drop' as a vegetated dune.

Byron Shire Council has consistently protected its "planned retreat" policy as a way to balance public and private interests in relation to coastal erosion.

While the works are not consistent with that policy, the intention that any consent be time-limited provides a way in which the immediate erosion can be remedied while allowing further time for the Coastal Management Program to run its course.

4. REFERRALS AND SUBMISSIONS

4.1 Agency Referrals and Concurrence

The development application has been referred to various agencies for

comment/concurrence/referral as required by the EP&A Act and outlined below in Table 3.

Table 3: Concurrence and Referrals to agencies

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
Concurrence Requirements (s4.13 of EP&A Act)			
N/A			
Referral/Consultation Agencies			
DCCEEW - BCS	Coastal Processes Biodiversity	See details below	Not fully
DPI – Cape Byron Marine Park	S56 Marine Estate Management Act 2014	See details below	Not fully
Crown Lands			
Integrated Development (S 4.46 of the EP&A Act)			
DCCEEW - Water	S91 Water Management Act 2000	GTA's provided	Y
DPI - Fisheries	S219 Fisheries Management Act 1994	DPI Fisheries advised that there are no objections to Council issuing development consent.	Y

Department of Climate Change, Energy, the Environment and Water – Biodiversity, Conservation and Science

See full correspondence attached.

In summary, BCS is of the view that the most appropriate pathway to consider and give effect to the management of coastal hazards at the subject location is through the development and implementation of the Byron Shire Open Coast – Coastal Management Program (CMP).

BCS recommended that:

1. *The proponent works closely with the Byron Shire Council, Department of Primary Industries (DPI) - Marine Parks Authority, DPI - Crown Lands, National Parks and Wildlife Service, Bundjalung of Byron Bay Aboriginal Corporation (Arakwal) and other relevant stakeholders, to develop a long-term strategy for the management of coastal hazard risks at the Belongil Estuary entrance and open coast through the development of the CMP.*
2. *In the interim, the proponent:*
 - a. *relocates all non-critical, non-coastal dependent development and infrastructure from areas affected by current or projected future coastal hazards impacts and risk over the short to medium term, thereby removing coastal hazards impacts and risks to existing infrastructure and avoiding the need for new works that may exacerbate risks and impacts in the location such as enhanced 'end-effect' erosion, changes in wave and hydraulic interactions at the dune face, and risks to public safety and access.*

- b. *considers seeking approval for 'soft' maintenance works to reduce erosion impacts to the subject land, including dune restoration works (beach nourishment, beach scraping, dune reprofiling and revegetation) along the foreshore impacted by erosion.*

The applicant provided the following response to the matters raised by the Department:

In relation to the submission that the proponent should wait for the completion of the Coastal Management Program (CMP) it is noted that the proponent has been waiting for the adoption and implementation of a CMP for many years now. Discussions with Department officers on site have indicated that the timeline for the implementation of the CMP remains uncertain. It is also noted that the impact on the site is significant and continues to affect the ongoing operation of Elements Resort and associated activities. Correspondence provided from the resort at Attachment A details the impact on operations and ancillary events held at the resort.

As the application proposes the works are intended to be temporary with a lifespan of 5 years. In the event that the CMP is endorsed and implemented prior to this time, the proposed temporary works may be removed within a shorter time period.

It is also important to note that the proposal provides for what is considered to be a relatively minor extension to the existing protection works. Given the proposed short term nature of the works and their relationship to the existing protection works, it is submitted that the works are appropriate in the subject circumstances and in the context of similar approvals by the Regional Planning Panel in Byron Bay. The proponent will continue to work with relevant government agencies to progress a long term solution for the management of this area.

Resort Management provided a letter describing the use of the area immediately above the erosion area and its importance to them. They advise that the open space area, labelled by them as "heart of the bay" was previously used as a private relaxation space for resort guests, for daily yoga classes and as a venue for weddings and events.

They advise that the inability to use this space over the last two years has impacted their conference and events bookings.

The applicant's response was sent to the Department in July, including the proponent's Construction Methodology Statement and outline for a Monitoring and Management/Maintenance Plan.

In response, the Department provides a number of recommended conditions of consent to be considered should Council recommend approval of the application, including:

- requirement for the import of 800m³ of sand, sourced outside of the local beach system,
- the development and implementation of an ongoing monitoring and management program addressing end effects,
- the removal of the coastal protection works and site restoration after 5 years (or upon adoption of a Coastal Management Program if earlier).

Department of Primary Industries – Cape Byron Marine Park

See full correspondence attached.

The Department advises that any works outside the property boundary and within the CBMP, including vehicle or machinery access to undertake works, will require a marine park permit.

The Department also raised the following points:

- *Any proposal to construct coastal protection works should demonstrate that the works will not increase coastal hazards to or adjacent to the development location. The current proposal only considers one approach to dealing with the end effect erosion from the previous works which is to extend the existing geo-bag wall by 40m consequently enhancing the wall's end effect and transferring, and increasing, the resultant erosion northwards.*
- *Alternative approaches such as beach scraping and dune restoration, and/or retreat of non-coastal dependant infrastructure, and/or realignment of the existing geo-bag wall landward from its current alignment, together with the use of alternative design features to mitigate the end effect of the realigned wall should also be considered. This would enable the selection of an approach that best addresses the interests of Elements Resort and also serves the public interest and the long-term protection of the values of Belongil Creek and surrounds.*
- *Coastal areas adjacent to the proposed works provide significant roosting and nesting habitat for a variety of resident and migratory bird species including the critically endangered Beach Stone Curlew, Pied Oyster Catcher (endangered) and Little Tern (endangered) as well as various other migratory waders. It is not appropriate that the habitat of these species be degraded – any works proposed should include opportunities for habitat enhancement and protection. Developers undertaking works adjacent to CBMP are consistently advised that riparian areas and coastal dunes should be retained, restored and/or revegetated wherever possible with appropriate native species.*

See commentary above regarding these matters.

The advice of the Marine Park authority in response to additional information is outlined above.

Council Officer Referrals

The development application has been referred to various Council officers for technical review as outlined Table 4.

Table 4: Consideration of Council Referrals

Officer	Comments	Resolved
Engineering	Comments not finalised. Council staff happy to relay on Council and State Government expert staff	Y
Ecologist	Council's Ecologist has reviewed the applicant's information regarding potential biodiversity impacts and has raised no significant issues	Y
Coast & Biodiversity Coordinator	<p>The proposal seeks temporary CPWs at the site for 5 years while the CMP is being prepared. This appears to be a fair and reasonable approach for a private property owner to protect their land in the interim while long-term management of the location is being considered.</p> <p>Should Council recommend the proposal be approved, staff agree with the recommendations by BCS and the information provided by the applicant in response to the additional information request.</p> <p>A condition of consent should be imposed that requires soft stabilisation works to be applied to the full length of the CPWs (existing plus new ~250m) to improve environmental and</p>	Y

Officer	Comments	Resolved
	public amenity. A key objective should be to cover/hide the CPWs during the life of the works.	

The issues raised by Council officers are considered in the Key Issues section of this report.

4.2 Community Consultation

The proposal was notified in accordance with the Council's Community Participation Plan from 31 October 2023 until 27 November 2023. The notification included the following:

- A sign placed on the site;
- Notification letters sent to adjoining and adjacent properties - five letters;
- Notification on the Council's website.

The Council received a total of 33 unique submissions, comprising 1 objection and 32 submissions in favour of the proposal.

33 Unique Submissions

32 Support

Acknowledge need for protection of beach

Acknowledge preference for soft vs hard protection

Believe works will improve beach amenity

1 Objection

Potential loss of public beach & beach access

End effects – continued erosion

“False sense of security” – property will continue to erode.

5. KEY ISSUES

5.1 Pre-determining Coastal Management Program Options

Byron Shire Council has a long-held policy of “planned retreat” in managing coastal processes in the Shire, documented in Part J of Byron Development Control Plan 2010.

Council is in the process of developing a Coastal Management Program, in accordance with the requirements and provisions of the *Coastal Management Act 2016*.

Stage 3 of the four-stage Program has commenced, studying coastal risks, vulnerability and opportunities.

There is, as yet, no timeframe for the completion of the Coastal Management Program, but later stages of the work will review the planned retreat policy together with other relevant management options.

The extension to the existing geobag wall is proposed as a temporary measure, pending completion of the Coastal Management Program. A period of 5 years is proposed in the application.

At the end of that 5-year period, the 40m extension to the wall would need to be removed, whether or not alternative management options have been adopted through a Coastal Management Program.

A condition of any development consent is recommended to the effect that the wall must be removed once a Coastal Management Program is adopted, or at 5 years from the date of the consent, whichever is the sooner.

Such a condition could be enforced.

5.2 End Effects Erosion

Given the nature of coastal processes in this location, and the erosion experience immediately north of the existing geobag wall, it is reasonable to assume that there will be some erosion north of the proposed extension during the 5-year lifespan of a consent.

The coastal engineering advice submitted with the application concludes that any such erosion is not expected to impact areas outside the subject lot or unreasonably limit public access to the beach over the 5-year lifespan of the proposal for the following reasons:

- The limited design life is unlikely to be sufficient for the end effect to fully develop;
- The ability for sand above the (low) crest level of the works, and below and behind the works, to be released into the active coastal system during wave overtopping and severe erosion events; and
- The relatively limited end effects observed to the north of the existing 210m long geobag coastal protection works since their construction in March 2015, comprising a distance of approximately 60m.

Notwithstanding that, the proponents have provided an outline for a Monitoring and Management/ Maintenance Plan which could be implemented in the event of an erosion event that results in 'end effects'.

5.3 Legality of Existing Geobag Wall as a Permanent Structure

The existing geobag wall was constructed in 2015 as "*Temporary Coastal Protection Works*" in accordance with Part 4C of the *Coastal Protection Act 1979*, Part 3 of the *Coastal Protection Regulation 2011* and the Code of Practice associated with that legislation, which were in place at that time.

At that time, clause 55O of the Coastal Protection Act stipulated that regulatory approval was not required under any legislation for *temporary coastal protection works*.

Within that legislation, *temporary coastal protection works* provided for fabric bags filled with sand to be placed on a beach or a dune adjacent to a beach to mitigate the effects of wave erosion.

The definition did not stipulate a time frame for "temporary", but a 2-year period was specified for temporary works on public land. There was no timeframe mentioned for works on private land.

The Regulation specified the *Code of Practice under the Coastal Protection Act 1979* as containing the requirements for placement, maintenance and removal of temporary protection works.

In terms of placement, the Code stated:

Works may only be placed where the most landward part of an escarpment is within 20 metres of the most seaward wall of a building

It is not clear whether this was the case when the existing wall was constructed in 2015.

The documentation submitted with the current application includes a letter to the applicant from the Secretariat of the NSW Coastal Panel dated 18 January 2017 regarding a development application which proposed to make the temporary works permanent (Appendix A to Coastal Engineering Assessment Report).

The letter states:

the works which you are seeking development consent for constitute existing TCPW placed in accordance with Part 4C of the Coastal Protection Act 1979, Part 3 of the Coastal Protection Regulation 2011 and the Code of Practice under the NSW Coastal Protection Act 1979.

As the TCPW are located on private land, they are not limited to the 2 year (maximum duration) period imposed for TCPW located on public land. Provided that there are no proposed changes to the works that would otherwise make them inconsistent with the requirements for TCPW, then development consent for the existing works is not required as the works are already permissible under the Coastal Protection Act 1979.

Based on this letter, the proponent has taken the position that the geobag wall remains a legally approved structure, although the requirement that temporary works may only be placed where the erosion escarpment is within 20m of a building does not seem to have ever been tested.

The validity of the letter has been questioned, on the basis that it was written by the (then) Coastal Panel secretariate and it is not clear whether the matter was considered by the Panel itself. Council has no information on the internal delegations of the Coastal Panel for making decisions and providing written advice.

Council has contacted senior staff of the Department who were previously involved with the Coastal Panel. At the time of writing this report, Council had not yet received a response.

5.4 Legal Property Boundary

The “Doctrine of Erosion and Accretion” is applied where property boundaries are linked to natural features, such a bank or bed of a creek or a tidal mark.

That is not the case for this property.

The doctrine is described on the NSW Land Registry services webpage as:

Natural feature boundaries are, at common law, ambulatory in nature, and are subject to the doctrine of accretion and erosion. The doctrine applies to boundaries of both tidal and non-tidal waters including rivers, streams, the sea and inlets to the sea. It also applies to other natural feature boundaries such as cliff faces and ridgelines. The doctrine allows for the movement of a boundary where the change in the position of the bank, shoreline or other natural feature has been natural, gradual and imperceptible.

The title of any land alienated by such erosion is vested in the Crown. It also notes that the change in position of the bank (or in this case erosion escarpment) must only be discernible over a significant period of time not as a result of a sudden storm or flood.

In cases where erosion has occurred suddenly, the former definition of the boundary will not change.

The doctrine does not strictly apply in this case, as the eastern property boundary is not set to a tidal mark or other natural feature and is a defined registered boundary under deposited Plan DP1215893 dated 4/1/2018. In any case, the erosion in this case is a result of a sudden storm, and, while natural, is not gradual and imperceptible.

6. CONCLUSION

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 submissions and the key issues identified in this report, it is considered that the application can be supported.

It is considered that the key issues as outlined in Section 5 have been resolved satisfactorily through amendments to the proposal and/or in the recommended draft conditions at **Attachment A**.

7. RECOMMENDATION

That the Development Application DA10.2023.287.1 for Coastal Protection Works at Lot 1 DP1215893, 144 Bayshore Drive, Byron Bay, be APPROVED pursuant to Section 4.16(1)(a) of the *Environmental Planning and Assessment Act 1979* subject to the draft conditions of consent attached to this report at Attachment A.

The following attachments are provided:

- Attachment A: Draft Conditions of consent
- Attachment B: Statement of Environmental Effects
- Attachment C: Preliminary Engineering Drawings
- Attachment D: Coastal Engineering Assessment
- Attachment E: Department of Climate Change, Energy, the Environment and Water comments
- Attachment F: Cape Byron Marine Park comments