



Our Refs: OUT 23/19466, IDA23/142

Your Ref: CNR 61593

The General Manager
Byron Shire Council
PO Box 219
Mullumbimby NSW 2482

Via: [CNR Portal](#) CNR 61593

Attention: Rob van Iersel

Dear Mr Arnold

Re : DA 10.2023.287.1 The proposal concerns extending existing coastal protection works at Lot 1 DP1215893 Bayshore Drive Belongil.

Thank you for the referral dated 25 October 2023 seeking comment and General Terms of Approval (GTAs) from the NSW Department of Primary Industries (DPI) Fisheries, on the development application indicated above.

Receipt of the prescribed \$802 fee under cl253 of the *Environmental Planning and Assessment Regulation 2021* (EP&A Regulation) is acknowledged. As the development application was advertised, consistent with cl45 of the EP&A Regulation, DPI Fisheries has provided this response not more than 21 days since DPI Fisheries received, from Council, the last submission made during the submission period.

DPI Fisheries is responsible for administering both the *Marine Estate Management Act 2014* and the *Fisheries Management Act 1994* and provides the following comments on both pieces of legislation.

Marine Estate Management Act 2014 (MEM Act)

Sections 55 & 56 of the MEM Act state that before determining a development application under Part 4 of the *Environmental Planning and Assessment Act 1979* for the carrying out of development that is within a marine park (s55), or is in the locality of a marine park (s56), a consent authority must take into consideration the objects of the MEM Act and any advice given to it by the relevant Ministers. In this instance supporting information indicates that the development and associated works will be within the private property boundaries - please advise me immediately if this understanding is not correct. Advice is generally provided that new development should be no closer than within 50m of the marine park.

Any works outside the property boundary and within the CBMP, including vehicle or machinery access to undertake works, will require a marine park permit.

In 2013 this office provided a response to a request from Byron Shire Council for comments on proposed amendments to DA 87/208 and recommended exercising caution in constructing anything in this dynamic coastal zone and included the following advice from the *Office of Environment and Heritage* –

The proposed most eastern located structures adjacent the Belongil Creek mouth are located within an area that may be subject to coastal inundation, coastal erosion and recession hazard risk over the short to medium term (weeks to decades). This area may also be significantly affected by creek meandering and associated future recession. Land at the creek mouth edge is low and may be overtopped by wave action during an elevated ocean water level storm event, thus leading to a significant coastal inundation risk of subject (seaward) land. The potential coastal erosion impact at this area is uncertain. However, a very large storm or series of closely spaced storms may result in

a significant landward recession of the low-lying land adjacent the proposed development area. This may render the seaward proposed buildings within a zone of reduced foundation capacity, or indeed within the zone of erosion impact. Coastal recession is considered to be affecting the whole creek mouth area (and adjacent coastline) and has been occurring for several years. This recession is expected to continue under projected sea level rise of 40cm by 2050 and 90cm by 2100 (relative to 1990 levels). In determining the suitability of the proposed location of the eastern most buildings, Council is encouraged to consider the uncertain, yet potentially significant risk posed from coastal hazards to this land, and the recession that has occurred over recent years as shown in Figure 1 below. (Fitzgibbon, B. (OEH) 8 October 2013, pers. comm.).



Figure 1: North Byron Beach Resort eastern most land area adjacent Belongil Creek mouth (source: Draft Byron Shire Coastline Hazards Assessment Update, WBM 2013).

In 2015 a 210m long wall of geo-bags was installed along the historically eroding shoreline described in the passage above as “emergency coastal protection works.” It is understood that the current proposal proposes to add an additional 40 linear metres of geo-bags to the northern end of the existing 210m long wall to address erosion of the unprotected dunes which in all likelihood, has at least partially attributed to the “end effect” of the existing geo-bag wall.

The development site is adjacent to Belongil Creek which is zoned Special Purpose in the Cape Byron Marine Park (CBMP). Waters adjacent to the creek are zoned Sanctuary. These zonings are among the highest levels of protection provided within NSW waters. It is my expectation that any activities will be planned and executed in accordance with the intent of MEM legislation and the level of protection afforded these waters and consideration must be given to mitigating any impacts of the works on CBMP and adjacent areas.

In considering the objects of the MEM Act, the consent authority must consider the waters of CBMP when identifying potential impacts associated with the proposed development. The consent authority is also required to consider the following advice provided to it.

- 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.

- I recommend that the consent authority seeks advice from the Department of Planning and Environment's (DPE) Biodiversity and Conservation Division – North East, regarding the most appropriate options for future coastal management in this area, noting the highly protected status of the surrounds and the fact that the estuary and shoreline in question has been subject to coastal erosion, recession and estuary entrance instability as a result of natural coastal processes for many decades. Advice should also be sought from DPE regarding consistency of the proposed development with the relevant provisions of the *Coastal Management Act 2016* and State Environmental Planning Policy (Resilience and Hazards) 2021 development controls.
- 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.
- I would also expect that the management of any potential impacts, particularly stormwater runoff during and post construction, is in accordance with the requirements of State Environmental Planning Policies. In addition, all works must be undertaken in accordance with or exceeding the recommendations of “*Managing Urban Stormwater - Soils and Construction Vol 14th Edition March 2004*” published by the NSW Government (“the Blue Book”) <http://www.environment.nsw.gov.au/stormwater/publications.htm> . The Best Practice Erosion and Sediment Control (BPESC) document provides additional guidance. <https://www.austieca.com.au/publications/best-practice-erosion-and-sediment-control-bpesc-document>.
- It is critical that any planning or future works considers the short and long-term impacts of the works on the values of the marine park, such as interference with natural coastal processes (local scouring, down drift erosion, entrance meandering), environmental values, the entry of pollutants, pests, disease or other unnatural material to the marine park, loss of safe public access to and along the foreshore (estuary and open coast) and impacts to public amenity and aesthetics.
- I note that Byron Shire Council is in the process of preparing a Coastal Management Program (CMP) for the shire's Open Coast, Tallow Creek Estuary and Belongil Creek Estuary. The purpose of these CMPs is to define and describe the long-term management strategies for the shire's coastal zone and will include consideration of natural coastal processes and coastal hazards operating within the Belongil Creek Entrance. The proponent is encouraged to consult with council and DPE's Biodiversity and Conservation Division regarding the development of these CMPs, to determine the most appropriate long-term strategy for managing the coastal hazard risks adjacent to Elements Resort.
- Consultation with the Bundjalung of Byron Bay Aboriginal Corporation RNTBC (Arakwal) regarding the proposal will be required to ensure that any Aboriginal Cultural Heritage risks are appropriately managed.

Fisheries Management Act 1994 (FM Act)

The responsibilities of DPI Fisheries also include ensuring that:

- Fish stocks are conserved and that there is no net loss of key fish habitats upon which they depend. To achieve this, DPI Fisheries seeks to ensure that plans and developments comply with the requirements of the *Fisheries Management Act 1994* (FM Act) (namely the aquatic habitat protection and threatened species conservation provisions in Parts 7 and 7A of the Act, respectively), and the associated Policy and Guidelines for Fish Habitat Conservation and Management (2013 Update) (DPI Fisheries P&G).
- There is sustainable management of commercial fishing and aquaculture, quality recreational fishing and the continuation of Aboriginal cultural fishing within NSW.

DPI Fisheries has reviewed the proposal in light of the provisions of the FM Act indicated above there are no objections to Council issuing development consent.

However, as indicated in my earlier comments in relation to the MEM Act, DPI Fisheries has significant concerns about the environmental sustainability of the current proposal and strongly recommends that the DA is not issued in its current form and the proponent:

1. explores other options to mitigate the likely impacts of the proposed geo—bag wall further downstream, and
2. seeks advice from the Department of Planning and Environment's (DPE) Biodiversity and Conservation Division – North East, regarding the most appropriate options for future coastal management in this area.

If you have any queries regarding these comments please contact me on Ph 6620 9305 or at cape.byron@dpi.nsw.gov.au.

Yours sincerely



Andrew Page
Manager, Cape Byron Marine Park
Delegate — Department of Primary Industries, Marine Parks

27 November 2023

OUT24/12021

Rob Van Iersel
Town Planner – Contractor
Byron Shire Council
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Mullumbimby NSW 2481
rvaniersel@byron.nsw.gov.au

Dear Rob

RE : DA 10.2023.287.1 Coastal Protection Works, Elements of Byron Bay

Thanks for your emails of 24 and 31 July 2024 and the information included regarding the proposed extension of a geobag protection wall adjacent to Elements Resort at Belongil. You have also referred to my previous correspondence and comments regarding this matter, part of which I will reiterate for clarity.

Sections 55 & 56 of the *Marine Estate Management Act 2014* (MEM Act) state that before determining a development application under Part 4 of the *Environmental Planning and Assessment Act 1979* for the carrying out of development that is within a marine park (s55), or is in the locality of a marine park (s56), a consent authority must take into consideration the objects of the MEM Act and any advice given to it by the relevant Ministers.

Our consistent position since the resort development was proposed in 2013 has been that construction close to the shoreline i.e. near the northern/western bank of Belongil Creek is not supported. We understand the evidence indicates this shoreline has been receding for decades and that built infrastructure has been lost due to the recession on multiple occasions. In 2015 a 210m long wall of geo-bags was installed along the historically eroding shoreline as “emergency coastal protection works.”

It is understood that the initial proposal was to add an additional 40 linear metres of geo-bags to the northern end of the existing 210m long wall to address erosion of the unprotected dunes which in all likelihood, is at least partially attributable to the “end effect” of the existing geo-bag wall. We understand the revised proposal includes the 40m wall extension, placement of 800m³ of imported sand and plans for a monitoring program. It was not clear if the proponent has any intentions to relocate infrastructure as recommended by Council. It is also not clear what specific action or remediation is proposed if aspects of the monitoring are unsatisfactory. Any consent issued should contain conditions requiring remediation of any natural or other values degraded or otherwise affected by the works.

Any works outside the resort property boundary and within the CBMP, including vehicle or machinery access to undertake works, would require a marine park permit. In this instance it would be appropriate for all works and related activities to be undertaken within the property boundary and outside of the marine park

There is also uncertainty about the impacts of the existing wall on stream dynamics and how the site will be managed into the future. We understand that the Coastal Management Program for the Open Coast, Tallow Creek Estuary and Belongil Creek Estuary (CMP) is progressing and will assist with guidance for future management. The proposal at hand focusses on furthering “temporary” coastal protection works intended to safeguard resort infrastructure that has been placed on a demonstrably unstable shoreline. 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.

The development site is adjacent to Belongil Creek which is zoned Special Purpose in the Cape Byron Marine Park (CBMP). Waters adjacent to the creek are zoned Sanctuary. These zonings are among the highest levels of protection provided within NSW waters. It is my expectation that any activities will be planned and executed in accordance with the intent of MEM legislation and the level of protection afforded these waters and consideration must be given to mitigating any impacts of works on CBMP and adjacent areas. At the time of writing the temporary works are unsightly and degrade the natural and aesthetic values of the site and may affect opportunities for public enjoyment at the nearby creek and beach.

Consultation with the Bundjalung of Byron Bay Aboriginal Corporation RNTBC (Arakwal) regarding the proposal will be required to ensure that any Aboriginal Cultural Heritage risks are appropriately managed.

We encourage Council to work closely with both the Traditional Owners and officers of the Department of Climate Change, Energy, the Environment and Water regarding the most appropriate options for future coastal management in this area, noting the protected status of adjacent waterways, significant ecological values, public interest and the foreseeable impacts of climate change.

Yours Sincerely



Andrew Page
Manager, Cape Byron Marine Park

9 August 2024