

## DETERMINATION AND STATEMENT OF REASONS

### NORTHERN REGIONAL PLANNING PANEL

<b>DATE OF DETERMINATION</b>	26 September 2024
<b>DATE OF PANEL DECISION</b>	26 September 2024
<b>DATE OF PANEL BRIEFING</b>	24 September 2024
<b>PANEL MEMBERS</b>	Dianne Leeson (Chair), Angus Gordon, Douglas Lord and David Brown
<b>APOLOGIES</b>	Ian Pickles and Joe Vescio
<b>DECLARATIONS OF INTEREST</b>	Simon Richardson declared a non-pecuniary interest as he has previously assessed the overarching development and this particular matter of coastal protection in his capacity as Mayor. He declared a non-prejudicial willingness to assess the matter before the Panel and intended to take part in the ongoing assessment. The Panel Chair acknowledged the declaration of a non-pecuniary interest but considered that the perception of conflict remains. He did not participate on the panel.

Papers circulated electronically on 10 September 2024.

#### MATTER DETERMINED

PPSNTH-264 – Byron – 10.2023.287.1 – 144 Bayshore Drive, Byron Bay (Lot 1 DP 1215893) – Coastal Protection Works, in the form of an extension to an existing geobag wall. The extension would be approx. 40m long and comprise approx. 200 x 0.75m<sup>3</sup> geobags arranged in a stepped profile, 5 units high and 2 units wide. 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. The proposal is defined as beach and coastal restoration works and is permitted in the site's 7(f1) Coastal Lands zoning (as described in Schedule 1).

#### PANEL CONSIDERATION AND DECISION

The Panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at meetings and briefings and the matters observed at site inspections listed at item 8 in Schedule 1.

#### Development application

The Panel determined to refuse the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

#### REASONS FOR THE DECISION

The Panel determined to refuse the application for the reasons outlined below:

#### Resilience and Hazards SEPP

Section 2.12 (Division 5) of the Resilience and Hazards SEPP (the SEPP), provides that *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 Panel is not satisfied, pursuant to Division 5 section 2.12, that the proposed development is not likely to cause increased risk of coastal hazards on the subject land or other land. As this is a necessary pre-requisite to the granting of consent, the Panel determined to refuse the Application.

In reaching its decision, the Panel notes the Applicant's Statement of Environmental Effects and the appended Coastal Engineering Assessment acknowledge the proposed works will likely result in additional or compounding "end effect" or erosion; a view shared by the Department of Primary Industries and the Department of Climate Change, Energy the Environment and Water (BCS) in their submissions.

The Panel further notes that the degradation of the area proposed to be protected is at least partially attributable to the existing works to the south, giving weight to the likelihood of increased coastal hazard risk beyond the northern limit of the proposed works.

### **s.27 Coastal Management Act 2016**

Section 27 of the Coastal Management Act provides that:

*(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 –*

*...*

*(b) satisfactory arrangements have been made (by conditions imposed on the consent) for the following for 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.*

The Panel considers that s. 27(1)(b)(i) provides for any uncertainty that increased erosion will occur as a result of works should they be approved whereas the SEPP requires satisfaction that the works are not likely to cause increased risk. As indicated above, the Panel is not satisfied that increased risk and erosion will not occur.

In consideration of s.27 Council has recommended condition B1 for a Monitoring and Management/Maintenance Plan. Notwithstanding the Panel's decision to refuse the Application, the Panel considers insufficient documentation was provided to demonstrate the proposed methods and therefore prospects of viable and ongoing maintenance and remediation.

### **Coastal Management Program**

The Panel notes a Coastal Management Program ('the Program') is in preparation by Council, and currently at Stage 3 studying risks, vulnerability and opportunities. The purpose of the Program is to set the long-term strategy for the coordinated management of land within the coastal zone, in accordance with the Act, and consequently afford greater consistency and certainty in decision making.

Whilst there is no clear date for finalisation of the CMP, the Panel has two related concerns with approving the proposed works before the Program is adopted:

1. A decision made in isolation of an holistic approach to coastal management in the area, noting Council's policy of 'planned retreat' as outlined in Part J of the Byron Development Control Plan 2010) and clause 33 of Byron LEP 1988, and
2. Pre-empting the ultimate direction of the Program with respect to Belongil Creek area through construction of works.

In forming its decision and with regard to the above concerns, the Panel notes that the area where the works are proposed is largely undeveloped open space with no habitable buildings or critical infrastructure in the immediate vicinity that require urgent protection.

## CONDITIONS

Not applicable.

## CONSIDERATION OF COMMUNITY VIEWS

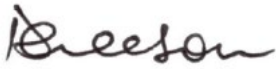

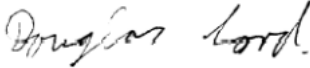

In coming to its decision, the Panel considered written submissions made during public exhibition. The Panel notes that 32 of the 33 submissions were supportive with submissions focused on:

- Protection of the beach
- Visual amenity
- Preference for soft v hard protection

Issues of concern in the submission of objection included:

- Potential loss of public beach and beach access
- End effects – continued erosion
- ‘False sense of security’ – property will continue to erode

The Panel considers that concerns raised by the community have been adequately addressed in the Assessment Report.

PANEL MEMBERS	
 Dianne Leeson (Chair)	 Angus Gordon
 Douglas Lord	 David Brown

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSNTH-264 – Byron – 10.2013.287.1
2	PROPOSED DEVELOPMENT	Coastal Protection Works, in the form of an extension to an existing geobag wall. The extension would be approx. 40m long and comprise approx. 200 x 0.75m <sup>3</sup> geobags arranged in a stepped profile, 5 units high and 2 units wide. 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. The proposal is defined as beach and coastal restoration works and is permitted in the site's 7(f1) Coastal Lands zoning.
3	STREET ADDRESS	144 Bayshore Drive, Byron Bay (Lot 1 DP 1215893)
4	APPLICANT/OWNER	Kate Singleton (Planners North) Ganra Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	Certain Coastal Protection Works
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> <li>Environmental planning instruments: <ul style="list-style-type: none"> <li>State Environmental Planning Policy (Planning Systems) 2021</li> <li>State Environmental Planning Policy (Resilience and Hazards) 2021</li> <li>State Environmental Planning Policy (Biodiversity and Conservation) 2021</li> <li>Coastal Management Act, 2016</li> <li>Byron Local Environmental Plan 1988</li> </ul> </li> <li>Draft environmental planning instruments: Nil</li> <li>Development control plans: <ul style="list-style-type: none"> <li>Byron Development Control Plan 2010</li> </ul> </li> <li>Planning agreements: Nil</li> <li>Relevant provisions of the <i>Environmental Planning and Assessment Regulation 2021</i></li> <li>Coastal zone management plan: Nil</li> <li>The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</li> <li>The suitability of the site for the development</li> <li>Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations</li> <li>The public interest, including the principles of ecologically sustainable development</li> </ul>
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> <li>Council Assessment Report: 10 September 2024</li> <li>Written submissions during public exhibition: 33</li> <li>Total number of unique submissions received by way of objection: 1</li> </ul>
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> <li>Briefing: 12 March 2024 <ul style="list-style-type: none"> <li><u>Panel members</u>: Dianne Leeson (Chair), Douglas Lord, Angus Gordon, Joe Vescio</li> <li><u>Council assessment staff</u>: Rob Van Iersel, Chris Larkin</li> <li><u>Department staff</u>: Carolyn Hunt</li> </ul> </li> <li>Site inspection: 4 June 2024 <ul style="list-style-type: none"> <li><u>Panel members</u>: Dianne Leeson (Chair), Angus Gordon, Douglas Lord and Ian Pickles</li> <li><u>Council assessment staff</u>: Chris Larkin</li> <li><u>Applicant representatives</u>: Kate Singleton, Brian Flannery, Jeremy Holmes, Michael Skinner, Dion McPhee</li> </ul> </li> <li>Applicant Briefing: 17 September 2024</li> </ul>

		<ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Dianne Leeson (Chair), Douglas Lord, Angus Gordon, David Brown</li> <li>○ <u>Applicant representatives</u>: Greg Britton, Adam Gosling, Kate Singleton, Jeremy Holmes and Brian Flannery</li> <li>○ <u>Council assessment staff</u>: Chris Larkin, Rob van Iersel and Shannon Burt</li> <li>○ <u>Department staff</u>: Carolyn Hunt and Lisa Ellis</li> </ul> <ul style="list-style-type: none"> <li>● Briefing to discuss Council's recommendation: 17 September 2024 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Dianne Leeson (Chair), Angus Gordon, Douglas Lord, David Brown</li> <li>○ <u>Council assessment staff</u>: Chris Larkin, Rob van Iersel and Shannon Burt</li> <li>○ <u>Department staff</u>: Carolyn Hunt and Lisa Ellis</li> </ul> </li> <li>● Final briefing to discuss Council's recommendation: 24 September 2024 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Dianne Leeson (Chair), Angus Gordon, Douglas Lord, David Brown</li> <li>○ <u>Council assessment staff</u>: Chris Larkin, Rob van Iersel</li> <li>○ <u>Department staff</u>: Tim Mahoney and Lisa Ellis</li> </ul> </li> </ul>
9	<b>COUNCIL RECOMMENDATION</b>	Approval
10	<b>DRAFT CONDITIONS</b>	Attached to the Council Assessment Report