

COUNCIL ASSESSMENT REPORT

NORTHERN REGIONAL PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSNTH-405, PAN-498663, 10.2023.287.2
PROPOSAL	<p>Section 8.2 (S8.2) review of determination (refusal) of Development Application (DA) 10.2023.287.1 for Coastal Protection Works, in the form of temporary extension of an existing geobag wall.</p> <p>DA 10.2023.287.1 was refused on 26 September 2024 by the Northern Regional Planning Panel (NRPP). The review period ends on 26 March 2025 after which time there will be no jurisdiction for the review to be determined.</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 under Byron LEP 1988.</p> <p>The S8.2 application has not fully resolved all of the issues raised in the original reasons for refusal, in particular Section 2.12 of State Environmental Planning Policy (Resilience and Hazards) 2021.</p>
ADDRESS	Lot 1 DP1215893 144 Bayshore Drive, Byron Bay
APPLICANT	Kate Singleton, Planners North
OWNER	Ganra Pty Ltd
S8.2 LODGEMENT DATE	13 January 2025 (fees paid)
APPLICATION TYPE	S8.2 Review of determination (refusal) - 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</i></p>

	<p><i>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 (SEPP B&C) • State Environmental Planning Policy (Planning Systems) 2021 (SEPP PS) • State Environmental Planning Policy (Resilience and Hazards) 2021 (SEPP R&H) • Coastal Management Act 2016 (CM Act) • Byron Local Environmental Plan 1988 (BLEP 1988)
TOTAL & UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS	<p>Section 8.2 Review</p> <p>1 Unique Submissions</p> <p>1 Support</p> <p>ongoing erosion, primarily caused by the [Belongil] creek being forced to run parallel to the beach as the sand spit grows - purported to be arising from hard revetment seawalls erected in front of properties on the dunes between Kendall Street and [Belongil] estuary outlet. Does not consider this being caused by the sandbagging on the subject site.</p> <p>Note. Original Application</p> <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"> • Section 8.2 review application was accompanied by the same plans and documents submitted with the development application and the following additional documents (attached on the planning portal):

	<ol style="list-style-type: none"> 1. Statement of Environmental Effects prepared by Planners North, dated December 2024 ("December 2024 SEE"); 2. Monitoring and Management/Maintenance Plan and Geobag Structure Removal Plan prepared by RoyalHaskoning DHV, dated 16 December 2024; and 3. Submission prepared by King & Wood Mallesons Lawyers dated 16 December 2024. <ul style="list-style-type: none"> • One Public Submission of Support was received (attached) • Cape Byron Marine Park and Department of Climate Change, Energy, Environment and Water comments were received in relation to the S8.2 Review application. Their position is unchanged. Not supported.(attached) • Department of Planning and Environment-Water comments previously issued General Terms of Approval are adequate, remain current, and no further assessment by this agency is required - Water Management Act 2000 s89 - water use approval and Water Management Act 2000 s90(2) water management work approval.
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)	N/A
RECOMMENDATION	<p>Pursuant to Section 4.15(1)(a)(i) the application has not demonstrated compliance with Section 2.12 of the Resilience and Hazards SEPP 2021 (R&H SEPP).</p> <p>The original reasons for refusal with regards to R&H SEPP are upheld.</p> <p>Other comments regarding S27 of the Coastal Management Act 2016 and Coastal Management Program are noted.</p>
DRAFT CONDITIONS TO APPLICANT	NO
SCHEDULED MEETING DATE	No panel date confirmed at time of report being written
PLAN VERSION	Final
PREPARED BY	Patricia Docherty
DATE OF REPORT	17 March 2025

Background Issues:

The NRPP refused the original DA on 26 September 2024 and the S8.2 review is being presented to the NRPP for determination prior to 26 March 2025.

Issues raised in the original determination (refusal):

- Section 2.12 of State Environmental Planning Policy (Resilience and Hazards) 2021 (SEPP R&H)
- Section 27 of CM Act Coastal Management Act 2016 (CM Act)
- Status of Coastal Management Program (CMP)

The S8.2 Review is required to be determined by the NRPP and a decision to be made within the period in which any appeal may be made to the Court (six months) pursuant to Section 8.3 2(a) and (5):

8.3 Application for and conduct of review

(cf previous ss 82A(2)–(4) (6), 82B(2)–(4))

(1) An applicant for development consent may request a consent authority to review a determination or decision made by the consent authority. The consent authority is to review the determination or decision if duly requested to do so under this Division.

(2) A determination or decision cannot be reviewed under this Division—

(a) after the period within which any appeal may be made to the Court has expired if no appeal was made, or

(b) after the Court has disposed of an appeal against the determination or decision.

(3) In requesting a review, the applicant may amend the proposed development the subject of the original application for development consent or for modification of development consent. The consent authority may review the matter having regard to the amended development, but only if it is satisfied that it is substantially the same development.

...

(5) The review of a determination or decision made by a local planning panel is also to be conducted by the panel...

Note original development application, photos and proposal details below:



Figure 1: Existing geobag wall in foreground; site of proposed extension to the right (source: Coastal Engineering Assessment, Royal HaskoningDHV, May 2023)



Figure 2: Revegetation works above existing geobag wall



Figure 4: Erosion at western end of existing geobag wall



Figure 5: Western end of existing geobag wall (from above)



Figure 6: Open space area directly above existing erosion area



Figure 7: Existing geobag wall



Figure 8: Viewing platform undermined by existing erosion



Figure 9: Western end of existing geobag wall – original report

The application sought development consent for the extension of existing coastal protection works, in the form of a geobag wall, as shown in **Figure 10**.

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 stepped 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 would 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.

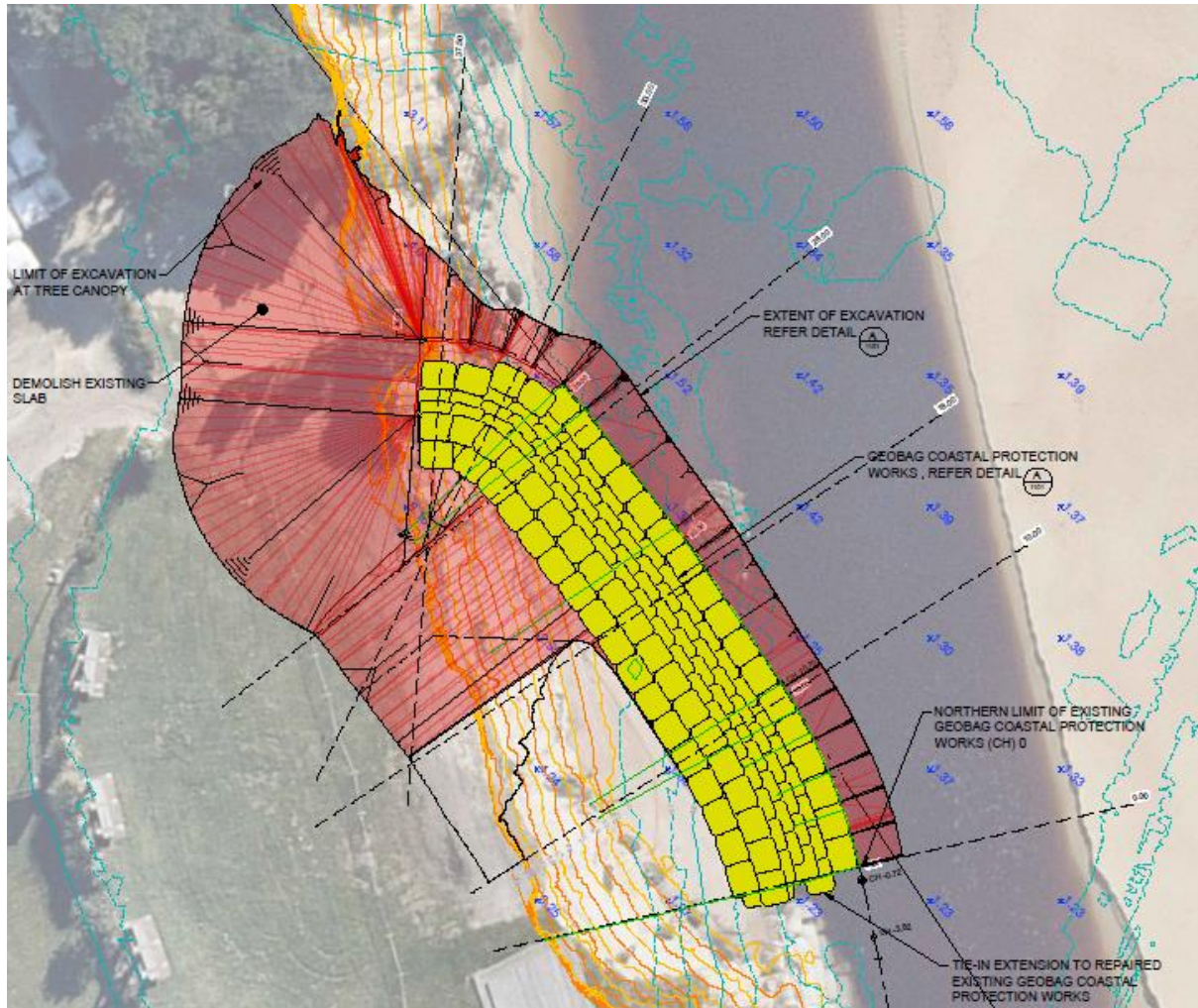


Figure 10: Proposed geobag wall

Review Request by the Applicant:

The application for review of the determination made no changes to the proposed works. The S8.2 review application made reference to the same plans and documents submitted with the development application and the following additional documents:

- Statement of Environmental Effects prepared by Planners North, dated December 2024 ("December 2024 SEE");
- Monitoring and Management/Maintenance Plan and Geobag Structure Removal Plan prepared by RoyalHaskoning DHV, dated 16 December 2024; and
- Submission prepared by King & Wood Mallesons Lawyers dated 16 December 2024.

The additional information provided with the application presented the following four key points with regards the NRPP decision and its reasoning in making the determination to refuse the application in the December 2024 SEE:

- (a) Failure to give requisite priority to Section 27 of the Coastal Management Act;*
- (b) Incorrect interpretation and application of Section 2.12 of State Environment Planning Policy (Resilience and Hazards) 2021;*
- (c) Failure to have regard to the detailed outline maintenance plan which had been submitted and impose conditions accordingly;*
- (d) Taking account as relevant a concern not to pre-empt the coastal management program of Byron Shire Council which was under preparation which the Council itself submitted was not a relevant factor and which was not a relevant factor given the temporary nature of the works proposed and the uncertainty of timing re a coastal management program of Byron Shire Council.*

The applicant's reasoning with consideration for all information provided in the original application and the S8.2 review is considered in this report.

In summary, the following arguments are advanced by the authors of the documents submitted with the S8.2 review:

1. Section 2.12 of SEPP R&H is inconsistent with section 27 of the CM Act and the CM Act therefore prevails;
2. There was no evidence before the Panel that there would be an increased risk of coastal hazards within the meaning of section 2.12 of SEPP R&H and the provision did not prevent the grant of development consent;
3. Insufficient reasons were provided by the Panel in support of its conclusion that the Applicant's Monitoring and Management/Maintenance Plan was not adequate;
4. The proposed works do not pre-empt the outcome of the CMP as suggested by the Panel having regard to their minor and temporary nature; and
5. The Panel's refusal of the subject development application is inconsistent with its approval of Development Application No. 10.2021.698.1 for similar coastal protection works at the Reflections Holiday Park at Clarkes Beach on 29 June 2022.

Original reasons for determination (refusal):

DA 10.2013.287.1 (planning portal reference PAN-355981) was lodged in October 2023, seeking consent of the NRPP for an extension to existing coastal protection works, in the form of a geobag wall on private land at 144 Bayshore Drive, Byron Bay. The temporary works are proposed for a period of 5 years.

The NRPP refused the proposed development on 26 September 2024 for the following reasons:

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 0.75m³ 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.

Recommendation:

That the NRPP, pursuant to Section 8.4 of the Environmental Planning & Assessment Act 1979, being the consent authority uphold the refusal of application 10.2023.281.1, for the reasons as follows:

Pursuant to Section 4.15(1)(a)(i) the application has not demonstrated compliance with Section 2.12 of the Resilience and Hazards SEPP 2021 (R&H SEPP).

The original reasons for refusal with regards to R&H SEPP are upheld. Other comments regarding S27 of the Coastal Management Act 2016 and Coastal Management Program are noted.

Reasoning for recommendation:

This section of the report outlines the reasoning for the recommendation with consideration for the applicant's documents submitted with the S8.2 review.

Applicant Reason 1:

(a) Failure to give requisite priority to Section 27 of the Coastal Management Act. Section 2.12 of SEPP R&H is inconsistent with section 27 of the CM Act and the CM Act therefore prevails. Legal opinion on behalf of the applicant submitted with the S8.2 application.

Applicant Reason 2:

(b) Incorrect interpretation and application of Section 2.12 of State Environment Planning Policy (Resilience and Hazards) 2021 - There was no evidence before the Panel that there would be an increased risk of coastal hazards within the meaning of section 2.12 of SEPP R&H and the provision did not prevent the grant of development consent.

Consideration:

It is contended by the Applicant that there is an inherent inconsistency between:

- section 2.12 of SEPP R&H, which prevents the grant of development consent to any proposed development that causes increased risk of coastal hazards on the subject land or other land; and
- section 27 of the CM Act which contemplates that development consent may be granted for coastal protection works that cause increased erosion of the beach or adjacent land if conditions are imposed on the consent that provide for restoration of the beach or adjacent land.

On review of the application it is considered that the CM Act does not override section 2.12 of SEPP R&H and hence, the CM Act does not enable the granting of development consent to DA10.2023.287.1, subject to conditions, in circumstances where the consent authority is not satisfied that the proposed development is not likely to cause increased risk of coastal hazards on the land or other land.

The land is within the coastal zone as defined in section 5 of the CM Act because it contains land within the coastal environment area and coastal use area. Chapter 2 of SEPP R&H therefore also applies to the land. Section 2.12 of SEPP R&H:

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.*

Section 5 of the [Coastal Management Act 2016](#) provides that the **coastal zone** means the area of land comprised of the following coastal management areas—

- (a) the coastal wetlands and littoral rainforests area,
- (b) the coastal vulnerability area,
- (c) the coastal environment area,
- (d) the coastal use area.

The land is in the coastal environment area and coastal use area.

Coastal hazards include erosion under the definition of the CM Act:

coastal hazard means the following—

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

It is considered that there is no inherent inconsistency between section 27 of the CM Act and section 2.12 of SEPP R&H that would result in the Act overriding or setting aside the operation of the SEPP. The strong presumption is that the legislature would not intend to contradict itself and that preference should therefore be afforded to a harmonious interpretation of both.

Section 27(1)(b) of the CM Act is not a provision purporting to allow or permit development for coastal protection works but is a provision that seeks to impose a requirement for particular conditions to be imposed if development consent for those works is to be granted. Further, the provision does not say that development consent cannot be refused for coastal protection works that will or are likely to cause increased beach erosion.

Section 2.12 of SEPP R&H is dealing with a different and distinguishable matter in so far as it restricts the power of a consent authority to grant development consent to any development (which would include coastal protection works) if there is in fact a likelihood of that development causing increased risk of coastal hazards on the land to which the development application relates or other land within the coastal zone.

It is reasonably arguable that there is no inconsistency or “actual contrariety” between section 2.12 of SEPP R&H which seeks to restrict or prohibit the granting of consent to development that is considered to be likely to cause increased risk of coastal hazards on land within the coastal zone or other land and section 27(1)(b) of the CM Act which seeks to deal with any erosion impacts on the beach or land that are in fact caused by the works once the development is implemented (irrespective of whether the erosion impacts were contemplated or likely).

Section 27 of the CM Act and section 2.12 of SEPP R&H can be read harmoniously and the NRPP being the consent authority would not have power to grant consent unless it is satisfied of the matters set out in both provisions.

Based on the information provided with S8.2, confirming that there would be erosion in the form of end-effects, it follows that the application for review does not provide the consent authority with justification to form a positive opinion of satisfaction that the proposed development is not likely to cause increased risk of coastal hazards on land within the coastal zone or other land. As such, the consent authority would not have the power to approve the development application.

The original and current s8.2 review application proposes a 40m long extension to the western end of an existing geobag coastal protection wall, to address erosion that has occurred in this location, during erosion events in February 2022.

Current Situation March 2025



Figure 11: Western end – terminus of existing geobag wall recent – taken 12/3/2025



Figure 12: Repair works to the existing geobag wall (photo taken 12/03/25).



Figure 13: Sand accretion of the beach berm and part of the existing geobag wall. No wave run-up or debris noted from TC Alfred (photo taken 12/03/25).



Figure 14: Sand accretion of the beach berm and part of the existing geobag wall visible. Wave run-up and debris line noted from TC Alfred (photo taken 12/03/25).



Figure 15: Western extent of geobag wall showing debris line from wave run-up during TC Alfred (photo taken 12/03/25).



Figure 16: Beach berm at Belongil entrance and some visible parts of the geobag wall in foreground, with TC debris on beach (photo taken 12/03/25).

The main reason for refusal is failure to satisfy the provisions of the SEPP R&H due to identification of likely end effects, being erosion around the terminus of the geobag wall evident from the current situation. It and that it is considered the extension of the geobag wall will likely have similar end effects on other land, being the adjacent crown reserve (Lot 407 DP729057).) shown in Figure 17 below (location of interface with proposal).



Figure 17: crown land lot edge highlighted yellow

The detailed reasons with regards to SEPP R&H provided in the NRPP determination are considered to be valid (reproduced in its entirety 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.

The applicant's SEE and Outline of Monitoring and Management/Maintenance Plan and Geo Bag Structure Removal Plan still identify that end effects are inevitable. This is considered further in the following consideration of the applicant's reasoning below with regards documents submitted in support of S27 of the CM Act.

Applicant Reason 3:

(c) Failure to have regard to the detailed outline maintenance plan which had been submitted and impose conditions accordingly - Insufficient reasons were provided by the Panel in support of its conclusion that the Applicant's Monitoring and Management/Maintenance Plan (MMP) was not adequate. Additional Plan including a Geobag Structure removal Plan submitted with the S8.2 application as extension to the original Monitoring and Management/Maintenance Plan.

Consideration:

It is not considered by the applicant that the NRPP failed to have regard to the outline maintenance plan submitted with the original application. In reading the reasons for refusal, the NRPP outlined that it had considered the plan. The finding of the NRPP was that they did not find that the proposed works would satisfy that the proposed development is not likely to cause increased risk of coastal hazards on the land or other land. It acknowledged that such conditions could be imposed if the application was supported. This is a moot point because the first reason for refusal negates any purpose of providing conditions of consent where the consent authority recommends an application for refusal.

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.

It is however further noted that the amended documents including the Monitoring and Management/Maintenance Plan and Geobag Structure Removal Plan prepared by RoyalHaskoning DHV, dated 16 December 2024, identifies end effects.

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 original application concluded 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 provided an outline for a Monitoring and Management/Maintenance Plan dated May 2024, and an extension of this document dated December 2024, was submitted with the S8.2 Review application. It is acknowledged that a Monitoring and Management/ Maintenance Plan could be implemented in the event of an erosion event that results in 'end effects'. A further detailed addendum to this plan was submitted, dated December 2024, outlining a detailed draft proposal for both the proposed Monitoring and Management/Maintenance Plan and the Geobag Structure Removal Plan. The document is an expansion to the original Monitoring and Management/ Maintenance Plan. This additional document also stated:

“The area subject to the Monitoring and Management/Maintenance Plan is to comprise the footprint of the extension to the existing geobag coastal protection works plus the beach adjacent to the works (to approximately low tide mark) plus the frontal dune system extending from the commencement of the proposed extension works northwards for a distance of approximately 160m beyond the northern limit of the proposed works (inclusive of the existing public beach accessway opposite the end of Bayshore Drive)...

Monitoring and Inspection Activities - *inspection by the Coastal Engineer shall consider the following checklist as a minimum:*

- *structural: Number of displaced geobags*
- *serviceability: Number of geobags with tearing, vandalism, deterioration, or deformation*
- *erosion: Evidence of erosion above the crest of the works, below the toe of the works, and due to end effects...*

Scope of Management/Maintenance Activities including the following:

...no part of the coastal protection works as a consequence of maintenance shall extend beyond the approved extent...

- *restoration of increased erosion caused by the presence of the works, through importation of nourishment sand and/or beach scraping in consultation with Council*
- *restoration of public beach access where such access has been adversely impacted by the presence of the works, in consultation with Council*
- *revegetation where vegetation has been lost due to the presence of the works*

With regards timing of activities, the December 2024 document indicates that:

management/maintenance activities recommended by the Coastal Engineer shall be carried out as soon as practicable following submission of the Coastal Engineer's report to Council, subject to factors such as beach state, inclement weather, safety considerations, and procurement of a Contractor. The expectation would be that the activities would be commenced within a period of 1 to 2 months from submission of the report.

It is considered that the latest report confirms that anticipated end effects could be caused by the development and that it could take 1-2 months for management/maintenance activities to commence once any said effects are known and reported.

The main reason for refusal is failure to satisfy the provisions of the SEPP R&H due to identification of likely end effects, being erosion around the terminus of the geobag wall evident from the current situation and that the extension of the geobag wall will likely have similar end effects on other land, being the adjacent crown reserve (Lot 407 DP729057).

It is acknowledged that S 27 of the CM Act makes provision for conditions to be imposed in circumstances when all relevant matters for consideration are otherwise satisfied.

However the provisions of the SEPP R&H are applicable to the proposed development and are not resolved as outlined in this report, in the particular circumstances of this site and with consideration for all relevant information received in relation to the original application and the section 8.2 review.

Applicant Reasoning 4:

Taking account as relevant a concern not to pre-empt the coastal management program of Byron Shire Council which was under preparation which the Council itself submitted was not a relevant factor and which was not a relevant factor given the temporary nature of the works proposed and the uncertainty of timing re a coastal management program of Byron Shire Council - The proposed works do not pre-empt the outcome of the CMP as suggested by the Panel having regard to their minor and temporary nature

Consideration:

The Panel notes a Coastal Management Program (CMP) is in preparation by Council currently in Stage 3, management options identification and evaluation. While there is no clear date for the finalisation and/or certification of the CMP a decision made in isolation of consideration of a coastal management approach for the entire Belongil entrance area and adjacent embayment beaches may pre-empt a new policy direction for the CMP and Council's existing coastal hazard management approach. Council has an existing local coastal hazard management approach comprising development control on coastal lands through the LEP 1988 and DCP 2010. The approach considers the ambulatory nature of the coastline with the intention to relocate or retreat assets and infrastructure out of the immediate coastal hazard zone over time to maintain a 20m wide coastal buffer. This management approach or planned retreat policy has been subject to inconsistent implementation over time and subject to court appeals and litigation.

The Applicant's land is known to be subject to this policy approach, with conditions of consent for development to be removed from site if any components come within 20 metres of the coastal erosion escarpment. As part of the conditions of consent, submission of a management plan to cover the dunal and estuarine areas, specifically to address pedestrian access to the beach and to the creek was required. A requirement of the plan was that careful management of the habitat values of the Belongil Creek estuary and environs is undertaken to reduce the potential of the area to degrade due to increased disturbance associated with higher visitation levels resulting from this and any future development on this site.

The management plan specifically draws reference to soft dune stabilisation methods for dunal management. Removal of rubbish and waste is also mentioned in the plan.

The application for extension to the geobag wall is in contradiction to the original sentiment of the coastal hazard management for the site.

However, it is noted that the comments provided by the NRPP in its decision are generally notes with regard context and timing. They are not considered to be a detailed reason for refusal. The main reason for refusal is failure to satisfy the provisions s2.12 of the H SEPP due to identification of likely end effects, being erosion around the terminus of the geobag wall evident from the current situation and that the extension of the geobag wall will have similar end effects on other land, being the crown reserve which comprises significant environmental values.

Applicant Reasoning 5

The Panel's refusal of the subject development application is inconsistent with its approval of Development Application No. 10.2021.698.1 for similar coastal protection works at the Reflections Holiday Park at Clarkes Beach on 29 June 2022.

Consideration:

The separate previous DA for coastal protection works at Clarkes Beach is not comparable to the current situation and the particular circumstances of the site at Belongil Beach. There is a distinct difference between the two applications and the particular circumstances of the site. The purpose and intention of DA 10.2021.698.1 was to provide for temporary measures to give the occupants time to vacate the land (retreat) and relocate the buildings and assets from the area. The circumstances are therefore not directly comparable to the proposed temporary works at the subject site on which there are no buildings that need to be protected temporarily in the vicinity of the works, while arrangements are made for permanent relocation of assets.

Conclusion

This S8.2 Review application has been considered in accordance with the requirements of the EP&A Act and the Regulations. Following a thorough assessment of the relevant planning controls, issues raised in the applicant's S8.2 review application, public submission and the key issues identified in this report, it is considered that the NRPP refusal must be upheld.

It is recommended that the NRPP, pursuant to Section 8.4 of the Environmental Planning & Assessment Act 1979, being the consent authority uphold the refusal of application 10.2023.281.1, for the reason as follows:

1. Pursuant to Section 4.15(1)(a)(i) the application has not demonstrated compliance with Section 2.12 of the Resilience and Hazards SEPP 2021 (R&H SEPP).

The original reason for refusal with regards to SEPP R&H are upheld. Other comments regarding S27 of the Coastal Management Act 2016 and Coastal Management Program are noted.

The following attachments are provided:

- Attachment A: Statement of Environmental Effects prepared by Planners North, dated December 2024, including Monitoring and Management/Maintenance Plan and Geobag Structure Removal Plan prepared by RoyalHaskoning DHV, dated 16 December 2024
- Attachment B: Redacted submission of support
- Attachment C: Agency comments