

Trinder, Rachael

From: Dave Maguire <david.maguire@dpi.nsw.gov.au>
Sent: Friday, 7 February 2025 11:05 AM
To: Development Support Officer
Cc: Karen Ellis
Subject: FW: attn Rachel Trinder re Elements and 23 Bayshore Dve
Attachments: DA Comments Elements geobag extension 2023 CNR_Final comments.pdf; Let to BSC Planner - DA Elements request to extend geobag wall - August 2024.pdf; EIS 23 Marine Pde Joe Davidson.docx

Hi Rachel

As discussed this morning I have uploaded most recent comments/correspondence regarding additional coastal protection works proposed at 145 Bayshore Drive (Elements) via CNR portal. These have been provided previously and I confirm have nothing further to add at this time.

Also attached and uploaded via CNR is correspondence relevant to 23 Marine Parade (Wategos) – the content of this letter can be considered our comments on the proposal.

Ordinarily would approach this differently however extraordinary staff circumstances of late – I thought it best to meet the CNR deadlines with appropriate info.

Please contact me if any clarification or discussion will assist
Dave

Dave Maguire

A/Manager | Cape Byron Marine Park
Aboriginal Fishing and Marine Conservation | Fisheries & Forestry
Department of Primary Industries & Regional Development

M: 0408 601 252 E: david.maguire@dpi.nsw.gov.au

Website – dpird.nsw.gov.au

Arakwal Depot | 22 Tallow Beach Rd | Byron Bay| NSW | 2481



**Department of Primary Industries
and Regional Development**

We stand on Country that always was and always will be Aboriginal land. We acknowledge the Traditional Custodians of the land and waters, and we show our respect for Elders past, present and emerging. We are committed to providing places in which Aboriginal people are included socially, culturally and economically through thoughtful and collaborative approaches to our work.

.

From: Dave Maguire
Sent: Thursday, 6 February 2025 4:00 PM

To: dso@byron.nsw.gov.au
Cc: Karen Ellis
Subject: attn Rachel Trinder re Elements

Hi Rachel

As discussed attached is the most recent correspondence I could locate re the elements Geobag proposal. Pls contact me as necessary I understood the proposal had been refused?
Dave

Dave Maguire

A/Manager | Cape Byron Marine Park
Aboriginal Fishing and Marine Conservation | Fisheries & Forestry
Department of Primary Industries & Regional Development

M: 0408 601 252 E: david.maguire@dpi.nsw.gov.au

Website – dpird.nsw.gov.au

Arakwal Depot | 22 Tallow Beach Rd | Byron Bay| NSW | 2481



**Department of Primary Industries
and Regional Development**

We stand on Country that always was and always will be Aboriginal land. We acknowledge the Traditional Custodians of the land and waters, and we show our respect for Elders past, present and emerging. We are committed to providing places in which Aboriginal people are included socially, culturally and economically through thoughtful and collaborative approaches to our work.

.



Joe Davidson
Director
Joe Davidson Town Planning Studio
PO Box 238
Brunswick Heads NSW 2483
joe@jdtownplanning.com.au

RE : Consultation regarding the preparation of an Environmental Impact Statement Involving proposed alterations and additions to an existing dwelling, construction of a new dwelling to create a dual occupancy (detached) development and strata subdivision to create two lots at No. 23 Marine Parade, Byron Bay - Lot 4 DP 244699

I refer to correspondence from Council seeking comments on the proposal indicated above.

The development site is adjacent to the Cape Byron Marine Park and close to Sanctuary and Habitat Protection Zones, both of which are managed as protected areas under marine parks legislation. In accordance with section 56 of the *Marine Estate Management Act 2014* (the MEM Act), before determining a development application under Part 4 of the *Environmental Planning and Assessment Act 1979* for the carrying out of development that is in the locality of a marine park, a consent authority must take into consideration the objects of the Marine Estate Management Act, and any advice given to it by the relevant Ministers.

In considering the objects of the MEM Act, the consent authority must consider the waters of the nearby Sanctuary Zone when identifying potential impacts associated with the proposed development, including but not limited to, stormwater and nutrient inputs resulting from runoff from the development as well as building debris, silt run off, plastic litter, and contaminated or potential acid sulphate soils.

It is my expectation that activities will be planned and executed in accordance with the intent of MEM legislation and the level of protection afforded adjacent waters and consideration must be given to mitigating any impacts on CBMP associated with the input of foreign materials into the Marine Park.

It is understood that the proposed works will be confined within the boundaries of the property. I would also expect that the management of any potential impacts, particularly stormwater runoff during and post construction, is in accordance with requirements of the State Environmental Planning Policies and additionally all works must be undertaken in accordance with or exceeding the recommendation 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 New South Wales Marine Estate Threat and Risk Assessment Final Report (August 2017) identifies urban stormwater discharge as a priority threat to the environmental assets of the Marine Estate (Table ES 1-2) and it is appropriate to apply contemporary best practice to new developments. The CBMP has consistently advised that any new or replacement stormwater works that discharge to the marine park should include gross pollutant traps.

Consideration also needs to be given to the potential for additional light pollution to nearby waterways resulting from this development. Artificial light from foreshore development may interrupt nesting, roosting and breeding behaviours in seabirds and shorebirds and other biota.


Cape Byron Marine Park

Arakwal Depot, Tallow Beach Rd, Byron Bay, NSW 2481
PO Box 127, Byron Bay, NSW 2481, Australia
Tel: 02 6620 9305 Fax: 02 6620 9333
Email: andrew.page@dpi.nsw.gov.au Web: www.dpi.nsw.gov.au
ABN: 72 189 919 072

Refer to the National Light Pollution Guidelines for Wildlife Including Marine Turtles, Seabirds and Migratory Shorebirds for more information. It is recommended that any approvals for new developments require that lighting does not spill onto the beach and preferably, that lights from the development are not visible from the beach.

If you require further information or clarification of any of the above, please contact me on Ph 6620 9305 or email andrew.page@dpi.nsw.gov.au

Yours sincerely

A handwritten signature in black ink that reads "Andrew Page". The signature is written in a cursive, flowing style.

Andrew Page
Manager, Cape Byron Marine Park

18/03/2024



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
PO Box 219
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

Department of Planning and Environment



Contact: Department of Planning and Environment-Water

Phone: 1300081047

Email: waterlicensing.servicedesk@dpie.nsw.gov.au

Our ref: IDAS-2025-10032 (IDAS-2023-10681)

Your ref: 10.2023.287.2

6 February 2025

The General Manager
BYRON SHIRE COUNCIL
70 STATION STREET MULLUMBIMBY 2482

Attention: Patricia Docherty

Uploaded to the ePlanning Portal

Dear Sir/Madam

Re: IDAS-2025-10032 (IDAS-2023-10681) - Section 4.55 Modification Referral – General Terms of Approval
Dev Ref: 10.2023.287.2
Description: Extension to existing coastal protection works
Location: Lot 1, DP1215893, 145 BAYSHORE DRIVE BYRON BAY 2481

The Department of Planning and Environment-Water has reviewed documents for the above application to modify a DA Consent and considers that, for the purposes of the Water Management Act 2000 (WM Act), previously issued General Terms of Approval are adequate, remain current, and no further assessment by this agency is necessary.

Should the proposed development be varied in any way that results in development extending onto land that is waterfront land, or encompassing works that are defined as controlled activities, then the Department of Planning and Environment-Water should be notified.

If you have any questions regarding this correspondence, please use Water Assist to obtain further information or make an enquiry:
<https://www.dpie.nsw.gov.au/water/water-assist>

Yours Sincerely

For
Patrick Pahlow
Team Leader
Licensing and Approvals
Department of Planning and Environment-Water