

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 was lodged on 13 January 2025.</p> <p>Extension would be approximately 40m long and comprise approximately 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, whichever is the sooner.</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 original DA was primarily refused by the Northern Regional Planning Panel due to it being non-compliant with Section 2.12 of State Environmental Planning Policy (Resilience and Hazards) 2021. It was determined that the proposal was likely to have an increased risk of coastal hazards on that land or other land. The works did not avoid Crown land and raised potential for increased risk of coastal hazards.</p> <p>The plans initially submitted with the S8.2 application in January 2025 did not change the proposal. Before the S8.2 was determined, the applicant lodged an appeal with the NSW Land and Environment Court on 19 March 2025. During legal proceedings, following joint conference between coastal experts, amended plans and documents were submitted and reviewed by Council. The S8.2 application plans were amended, as follows:</p> <p><i>"It is proposed to amend the design of the 40m long temporary extension of the geobag coastal protection works by shifting the alignment of the structure approximately 2m further landward. The amended drawings are attached, namely Drawing Numbers 1000 (Rev P03), 1101 (Rev P03), 1102 (Rev P03), 1103 (Rev P03), 1104 (Rev P02), 1105 (Rev P02), and 1106 (Rev P02). The landward shift of the alignment achieves two outcomes:</i></p>

	<ul style="list-style-type: none"> • it avoids the need for excavation on Crown land to install the works; and • it increases the proportion of the volume of nourishment sand imported to re-establish the dune profile (shown shaded on Drawings 1104, 1105, and 1106) that would be located seaward of the works and therefore 'freely available' to enter the active coastal system at times of erosion events. <p>In summary, the proposal as amended provides for an improved outcome and with the geobags located within the site and then covered with sand with further nourishment as required, it is considered the proposal will not likely cause an increased risk of coastal hazards on that land or other land. The revised plans move the works approximately two metres landward and proposes drip feed to replenish sand throughout the course of five-year limited consent period.</p> <p>This avoids potential impacts presented by the original plans, satisfying Section 56 of the Marine Estate Management Act 2014 (MEM Act), Section 27 of Coastal Management Act 2016 (CM Act) and Section 2.12 of State Environmental Planning Policy (Resilience and Hazards) 2021 (SEPP R&H).</p> <p>The proposed development is integrated development within the meaning of Section 4.46 of the Environmental Planning and Assessment Act 1979 as a "controlled activity" approval is required pursuant to Section 91 of the Water Management Act 2000 requiring General Terms of Approval (GTA's) from the NSW Department of Planning and Environment – Water (DPE – Water).</p> <p>Notification to DPE Water has occurred to refer to amended plans and correspondence is attached dated 31 July 2025, confirming previously issued GTA's are adequate, remain current, and no further assessment by this agency is necessary.</p> <p>Further comments from any other agencies are not required.</p> <p>The amended proposal is not likely to have an effect on the plants or animals within the marine park or aquatic reserve or their habitat and is not likely to increase coastal hazards on the land or other land subject to the recommended conditions of consent attached to this report.</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 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) • Byron Local Environmental Plan 1988 (BLEP 1988) Clause 33 of BLEP 1988 specifies mandatory considerations relating to development in Zone 7(f1) Coastal Lands.
TOTAL & UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS	<p>Section 8.2 Review</p> <p>1 Unique Submission</p> <p>1 Support</p> <p>Points raised (attached): 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>
<p>DOCUMENTS SUBMITTED FOR CONSIDERATION</p>	<p>The S8.2 review application was originally accompanied by the same plans and documents submitted with the development application and the following additional documents (attached) on the NSW Planning Portal:</p> <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 (now superseded); and 3. Submission prepared by King & Wood Mallesons Lawyers dated 16 December 2024. <p>Amended Plans (attached) dated 5 June 2025 were submitted by the applicant on 18 June 2025:</p> <ul style="list-style-type: none"> • PA3267-RHD-00-XX-DR-ME-1000, Rev P03, Dated 05.06.2025 • PA3267-RHD-00-XX-DR-ME-1101, Rev P03, Dated 05.06.2025 • PA3267-RHD-00-XX-DR-ME-1102, Rev P03, Dated 05.06.2025 • PA3267-RHD-00-XX-DR-ME-1103, Rev P03, Dated 05.06.2025 • PA3267-RHD-00-XX-DR-ME-1104, Rev P02, Dated 05.06.2025 • PA3267-RHD-00-XX-DR-ME-1105, Rev P02, Dated 05.06.2025 • PA3267-RHD-00-XX-DR-ME-1106, Rev P02, Dated 05.06.2025 • Monitoring and Management/Maintenance Plan (Maintenance Plan) and a Geobag Structure Removal Plan (Removal Plan), dated 13 June 2025 <p>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 was unchanged. Not supported.</p> <p>Department of Planning and Environment-Water issued General Terms of Approval (GTA) under Water Management Act 2000. Amended plans considered by DPE - Water and previously issued General Terms of Approval are adequate, remain current, and no further assessment by this agency is necessary.</p> <p>One submission of support is attached.</p>

SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)	N/A
RECOMMENDATION	That the Northern Regional Planning Panel, pursuant to Section 8.4 of the Environmental Planning & Assessment Act 1979, being the consent authority approve development application 10.2023.281.1, for Coastal Protection Works at Lot 1 DP1215893, 144 Bayshore Drive, Byron Bay, subject to the draft conditions of consent attached to this report at Attachment A.
DRAFT CONDITIONS TO APPLICANT	Yes
SCHEDULED MEETING DATE	11 August 2025
PLAN VERSION	Final
PREPARED BY	Patricia Docherty
DATE OF REPORT	31 July 2025

Background Issues:

The NRPP refused the original DA on 26 September 2024. 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 Coastal Management Act 2016 (CM Act)
- Status of Coastal Management Program (CMP)

Although the nominal 6-month period for the review to be completed expired in March, the applicant lodged an appeal in the Land and Environment Court, which is yet to be heard. This enables the S8.2 Application matter to be determined pursuant to S8.3(2)(b) of the EPA Act 1979.



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 3: Erosion at western end of existing geobag wall



Figure 4: Western end of existing geobag wall (from above)



Figure 5: Open space area directly above existing erosion area



Figure 6: Existing geobag wall



Figure 7: Viewing platform undermined by existing erosion



Figure 8: Western end of existing geobag wall – original report

The application seeks development consent for the extension of existing coastal protection works, in the form of a geobag wall. The works originally proposed 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;
- Use of existing geotextile sandbags currently stockpiled on site.

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, whichever is the sooner.

The original S8.2 are shown in **Figure 9** below:

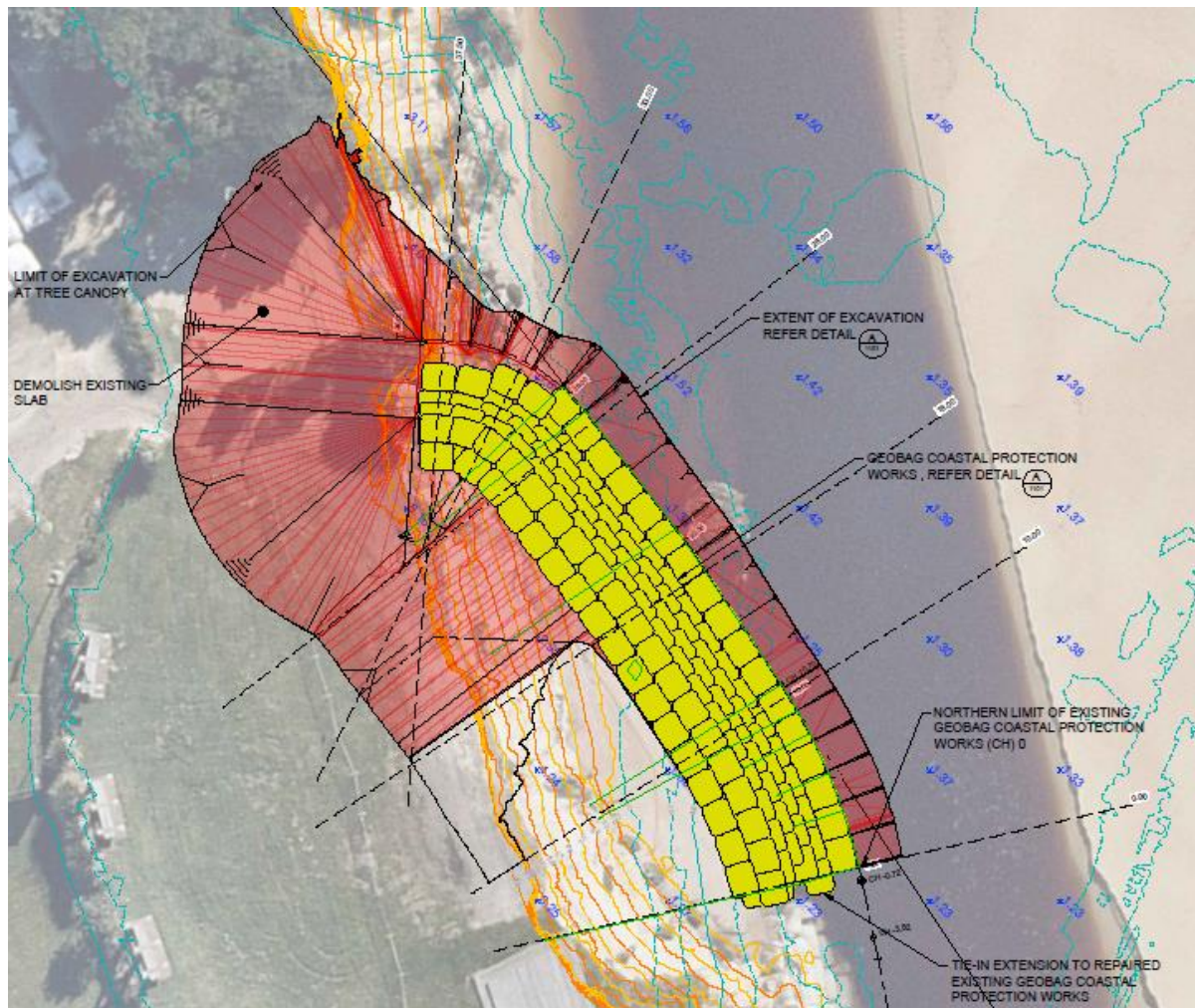


Figure 9: Original proposed geobag wall plan

Site Photos - Situation March 2025 Post Tropical Cyclone Alfred



Figure 10: Western end – terminus of existing geobag wall recent – taken 12/3/2025



Figure 11: Repair works to the existing geobag wall (photo taken 12/03/25).



Figure 12: 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 13: 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 14: Western extent of geobag wall showing debris line from wave run-up during TC Alfred (photo taken 12/03/25).



Figure 15: 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).

Review Request by the Applicant:

The application for review of the determination originally made no changes to the proposed works. The application has been further amended to pull all works back landward within the property boundary and cover the geobag wall with sand to re-establish the sand dune. The applicant describes the latest amendments as follows:

It is proposed to amend the design of the 40m long temporary extension of the geobag coastal protection works by shifting the alignment of the structure approximately 2m further landward. The amended drawings are attached, namely Drawing Numbers 1000 (Rev P03), 1101 (Rev P03), 1102 (Rev P03), 1103 (Rev P03), 1104 (Rev P02), 1105 (Rev P02), and 1106 (Rev P02). The landward shift of the alignment achieves two outcomes:

- *it avoids the need for excavation on Crown land to install the works; and*
- *it increases the proportion of the volume of nourishment sand imported to re-establish the dune profile (shown shaded on Drawings 1104, 1105, and 1106) that would be located seaward of the works and therefore 'freely available' to enter the active coastal system at times of erosion events.*

In this regard it is estimated some 400m³ of sand will be imported and placed seaward of the geobags at the time of construction. A further 450m³ of sand will also then be made available to be "drip fed" into the system as required in terms of management over the temporary life of the development (5 years)

The following extracts from the latest plans are provided below:

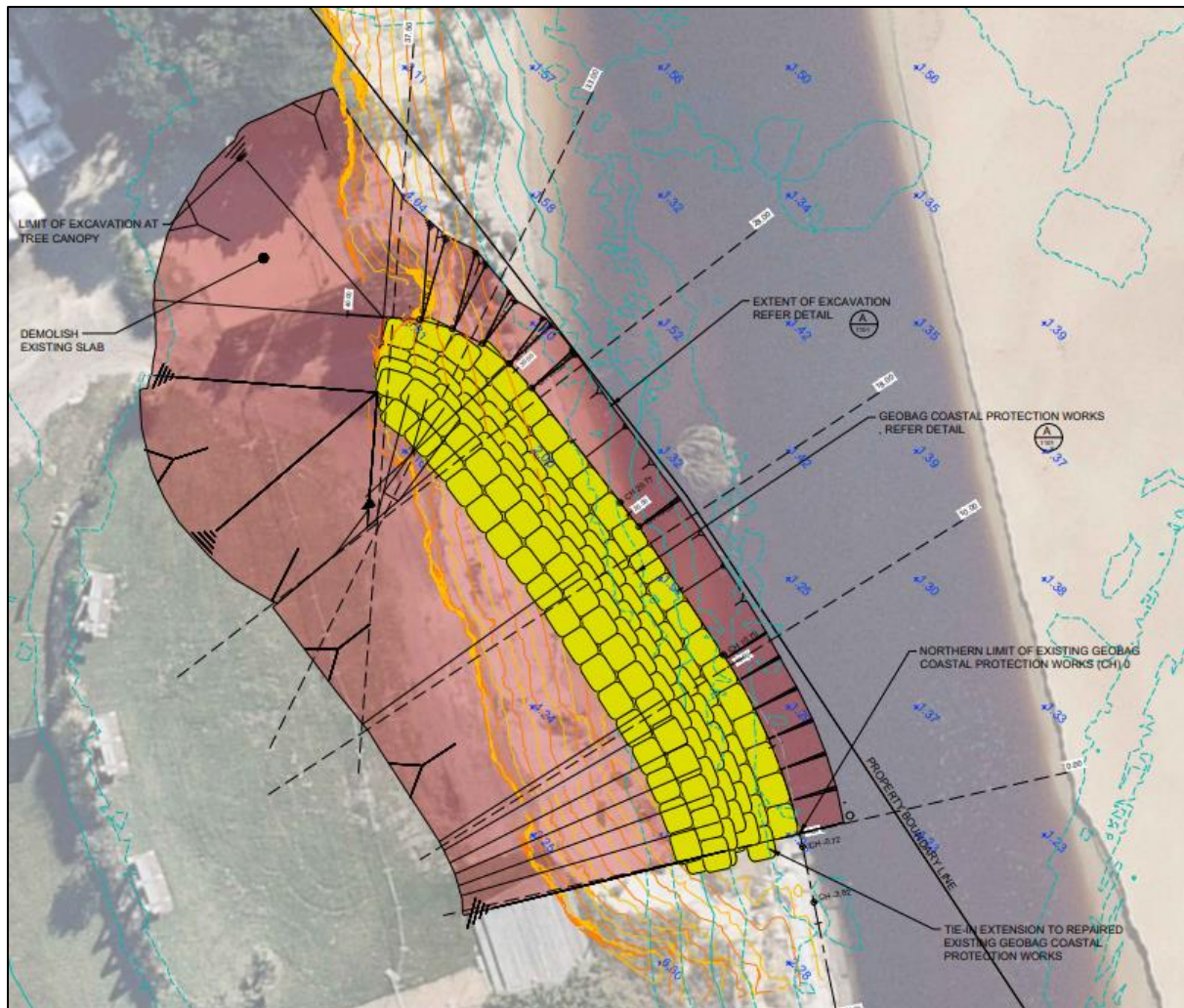


Figure 16: Extract - Proposed Geobag Wall Drawing 1000 Rev P03

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.

In summary, the main reason for refusal was failure to satisfy the provisions of the SEPP R&H and that the proposed location and extension of the geobag wall would be likely to increase risks of coastal hazards on the subject land or other land, being the adjacent crown reserve (Lot 407 DP729057) shown in Figure 18 below (location of interface with proposal).



Figure 18: crown land lot edge highlighted yellow

Assessment

The proposal, as amended, with the geobags located approximately 2 metres landward within the site and then covered with sand with further nourishment as required provides for an improved outcome.

The landward shift of the proposed alignment (compared with the earlier proposal) achieves two outcomes:

- It avoids the need for excavation on Crown land to install the works.
- It increases the proportion of the volume of imported nourishment sand (used to re-establish the dune profile) located seaward of the proposed works and therefore makes this sand 'freely available' to enter the active coastal system at times of erosion events, rather than otherwise being considered as potentially locked up by the proposed works and unavailable.

The volume of sand locked up by the proposed extension of the works (based on sea level rise and recession) is approximately 420 m³ for the 5 year project life.

Section 2.12 of SEPP R&H states:

Development in coastal zone generally – development not to increase the risk of coastal hazards Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

The three relevant coastal hazards listed in the Coastal Management Act 2016 for consideration of Section 2.12 are:

- Coastal lake or watercourse entrance instability (Belongil Creek entrance)
- Shoreline recession
- Beach erosion

It is also relevant that Section 2.12 refers to risk, which is the product of likelihood and consequence.

The proposal is not considered likely to cause increased risk of coastal lake or watercourse entrance instability since the works would not influence Council's mechanical opening procedures for Belongil Creek.

Any potential increased risk of shoreline recession will be removed over the project life by 'drip feeding' imported sand on the seaward side of the geobags, at a volume equivalent to that locked up by the works. This drip feed would be approximately annual or as required over the 5-year project life based on the volume of sand locked up by the measured underlying recession, and recession due to the projected sea level rise over the project life.

The drip feed of imported sand would take place near the northern limit of the 40 m extension of the geobags on private land. As the imported sand would be placed seaward of the geobags it would be freely available to the active coastal system. The volume of imported sand to be drip fed would be based on the results of future monitoring to be carried out, with an agreed estimate of 84 m³ / year – equivalent to 420 m³ for the 5-year project life.

It is agreed that based on the proposed works, the risk of increased beach erosion on 'that land' (the subject private land), would be reduced.

In terms of likelihood of increased beach erosion on adjacent land, this is not considered likely based on:

- The proposed oversupply of the estimated locked-up volume
- The fact that the drip feed volume would be subject to an approved monitoring program and could be adjusted, thus addressing any uncertainty

The potential consequences of erosion have been considered including

- Impacts due to steep erosion scarps
- Impacts on beach access

It is considered that steep scarps due to erosion would occur in any case (irrespective of the works). Any end effect due to recession would be mitigated due to the proposed imported sand nourishment and monitoring. Even without imported sand nourishment, over the life of the works an end effect is unlikely to reach the closest public beach access, located some 160 m north of the northern limit of the proposed works.

The main reason for refusal was 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. It is considered that the amended plans address this issue and that that the proposed extension of the geobag wall will be unlikely to increase risks of coastal hazards on the subject land or other land, being the adjacent crown reserve (Lot 407 DP729057).

It is considered the amended proposal, subject to this S8.2 review, avoids potential impacts presented by the original plans, satisfying Section 56 of the MEM Act, Section 27 of CM Act and Section 2.12 of R&H. The amended proposal is not likely to have an effect on the plants or animals within the marine park or aquatic reserve or their habitat and is not likely to increase coastal hazards on the land or other land subject to the recommended conditions of consent attached to this report.

Recommendation:

That the Northern Regional Planning Panel, pursuant to Section 8.4 of the Environmental Planning & Assessment Act 1979, being the consent authority approve development application 10.2023.281.1, for Coastal Protection Works at Lot 1 DP1215893, 144 Bayshore Drive, Byron Bay, subject to the draft conditions of consent attached to this report at Attachment A.

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:

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:

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.

It is considered that the CM Act does not override Section 2.12 of SEPP R&H and hence, the CM Act would 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.

Section 27 of the CM Act states:

27 Granting of development consent relating to coastal protection works

(1) Development consent must not be granted under the [Environmental Planning and Assessment Act 1979](#) to development for the purpose of coastal protection works, unless the consent authority is satisfied that—

- (a) the works will not, over the life of the works—
 - (i) unreasonably limit or be likely to unreasonably limit public access to or the use of a beach or headland, or
 - (ii) pose or be likely to pose a threat to public safety, and
- (b) satisfactory arrangements have been made (by conditions imposed on the consent) for the following for the life of the works—
 - (i) the restoration of a beach, or land adjacent to the beach, if any increased erosion of the beach or adjacent land is caused by the presence of the works,
 - (ii) the maintenance of the works.

(2) The arrangements referred to in subsection (1) (b) are to secure adequate funding for the carrying out of any such restoration and maintenance, including by either or both of the following—

- (a) by legally binding obligations (including by way of financial assurance or bond) of all or any of the following—
 - (i) the owner or owners from time to time of the land protected by the works,
 - (ii) if the coastal protection works are constructed by or on behalf of landowners or by landowners jointly with a council or public authority—the council or public authority,

Note—

The [Environmental Planning and Assessment Act 1979](#), section 4.17(6) provides that a development consent may be granted subject to a condition, or a consent authority may enter into an agreement with an applicant, that the applicant must provide security for the payment of the cost of making good any damage caused to any property of the consent authority as a consequence of the doing of anything to which the consent relates.

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

(3) The funding obligations referred to in subsection (2) (a) are to include the percentage share of the total funding of each landowner, council or public authority concerned.

The 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 the amended S8.2 application, it is considered that this now provides 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 on the site or other land. As such, the consent

authority has the power to approve the development application and impose conditions of consent to satisfy the legislation.

Applicant Reason 3:

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:

In reading the reasons for refusal, the NRPP outlined that it had considered the plan.

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.

The amended S8.2 review documents and plans, recommended for approval in this report, now address the relevant matters for consideration. The recommendation includes conditions of consent that address Section 27 of the CM Act.

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 in its decision, which are generally notes with regard context and timing. They are not considered to be a detailed reason for refusal. The main reason for refusal was failure to satisfy the provisions Section 2.12 of SEPP R&H. Now satisfied, as above.

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 entirely 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 referenced circumstances are therefore not directly comparable to the proposed temporary works, which are now amended and considered satisfactory subject to recommended conditions of consent.

Conclusion

This S8.2 Review application has been considered in accordance with the requirements of the EP&A Act, EP&A Regulation and the CM Act. Following a thorough assessment of the relevant planning controls, issues raised in the applicant's S8.2 review application, public submission, agency comments and relevant matters for consideration identified in this report, it is recommended that:

Pursuant to Section 8.4 of the Environmental Planning & Assessment Act 1979, the Northern Regional Planning Panel, being the consent authority, approve development application 10.2023.281.1, for Coastal Protection Works at Lot 1 DP1215893, 144 Bayshore Drive, Byron Bay, subject to the draft conditions of consent attached to this report at Attachment A.

The following attachments are provided:

- Attachment A: Recommended conditions of consent
- Attachment B: Plans for Approval
- Attachment C: Monitoring and Management/Maintenance Plan (Maintenance Plan) and a Geobag Structure Removal Plan (Removal Plan), dated 13 June 2025
- Attachment D: Redacted submission of support
- Attachment E: Agency comments