STATEMENT OF ENVIRONMENTAL EFFECTS TO ACCOMPANY A DEVELOPMENT APPLICATION TO REPAIR AN EXISTING SEAWALL PREDOMINANTLY ON BELONGIL BEACH ADJACENT TO BUT ALSO PARTLY ON Nos. 44 and 48 CHILDE STREET, BYRON BAY

Prepared for
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Table of Contents

1. INTRODUCTION 1
   - 1.1 Overview 1
   - 1.2 Background 1
   - 1.3 Purpose of this Statement of Environmental Effects 2
   - 1.4 Concurrent DAs 2
2. THE SITE 4
   - 2.1 Location 4
   - 2.2 Improvements 4
     - 2.2.1 No. 44 Childe Street 4
     - 2.2.2 No. 48 Childe Street 4
   - 2.3 Ownership 4
   - 2.4 Existing sea wall 5
3. BELONGIL BEACH AND SURROUNDS 9
   - 3.1 Belongil Beach 9
     - 3.1.1 General 9
     - 3.1.2 Belongil interim stabilisation works 9
   - 3.2 To the North 11
   - 3.3 To the East 11
   - 3.4 To the South 11
   - 3.5 To the West 12
4. THE PROPOSAL 13
   - 4.1 Works 13
   - 4.2 Construction Management 13
5. STATUTORY PLANNING FRAMEWORK AND CONTROLS 15
   - 5.1 Threatened Species Conservation Act 1995 (“TSC Act”) 15
   - 5.2 Coastal Protection Act 1979 15
   - 5.3 Crown Lands Act 1989 16
   - 5.4 Marine Estate Management Act 2014 (the “MEM Act 2014”) 17
   - 5.5 State Environmental Planning Policy (Infrastructure) 2007 18
   - 5.6 State Environmental Planning Policy No 71—Coastal Protection 19
     - 5.6.1 Application of Policy 19
     - 5.6.2 Matters for Consideration 20
     - 5.6.3 Significant Coastal Development (Part 3) 24
     - 5.6.4 Development Control (Part 4) 24

5.6.5 Master Plans (Part 5) 25
5.7 Byron Local Environmental Plan 2014 25
5.8 Byron Local Environmental Plan 1988 25
5.8.1 Zoning 25
5.8.2 Objectives: 7F1 (Coastal Land Zone) 25
5.8.3 Objectives: 7F2 (Urban Coastal Land Zone) 26
5.8.4 Clause 32 - Development within Zone No 7 (f2) (Urban Coastal Land Zone) 26
5.8.5 Clause 33 – Development within Zone No 7 (f1) (Coastal Lands Zone) 27
5.9 Draft Environmental Planning Instruments 28
5.10 Byron Development Control Plan 2014 ("BDCP 2014") 28
5.11 Byron Shire Development Control Plan 2010 (DCP 2010) 28
5.11.1 Chapter 1: Part J Coastal Erosion Lands 28
6. ASSESSMENT OF ENVIRONMENTAL EFFECTS 31
6.1 Statutory Planning Considerations 31
6.2 Section 79C(1)(a) – Statutory Planning Considerations 31
6.3 Section 79C(b) – Environmental, Social and Economic Impacts 32
6.3.1 Impacts on the natural environment 32
6.3.2 Impacts on the built environment 33
6.3.3 Social and Economic Impacts 34
6.4 Section 79C(c) – The suitability of the site 34
6.5 Section 79C(d) – Submissions 34
6.6 Section 79C(e) – Public interest 34
7. CONCLUSION 35

FIGURES

Figure 1: Location

Figure 2: Site

Figure 3A: Aerial Photograph – Detail

Figure 3B: Aerial Photo – Wider Area

Figure 3C: Aerial Photo – Byron Bay Township

Figure 4: Zoning Map – Byron LEP 2014

Figure 5: Zoning Map – Byron LEP 1988

APPENDICES

Appendix 1: Supreme Court Orders dated 12 August 2016

Appendix 2: Certificates of Title and Deposited Plans

Appendix 3: Report on the Sea Wall prepared by International Coastal Management

Appendix 4: DA drawings prepared by International Coastal Management

1. INTRODUCTION

1.1 Overview

This Statement of Environmental Effects ("SEE") has been prepared for King and Wood Mallesons on behalf of Therese Leonard and Robert Watson ("the Applicants") to accompany a Development Application ("DA") lodged pursuant to Section 78A of the Environmental Planning and Assessment Act 1979, for repairs to an existing sea wall ("the proposal") which is predominantly on Belongil Beach adjacent to but also partly on No's 44 and 48 Childe Street, Byron Bay.

1.2 Background

During the 1960's and 1970's, Byron Shire Council ("the Council") constructed an artificial headland protected by a rock seawall adjacent to the car park generally at the northern end of Jonson Street, Byron Bay ("the Jonson Street structure"), as shown on the aerial photo below. This structure extended more than 90m seaward of the dune escarpment.



Jonson Street Structure: Source: Nearmap ©

NSW Supreme Court proceedings against the Council, by a number of Belongil residents who owned properties adjacent to Belongil Beach, including the Applicants for this DA, are a significant backdrop to this proposal. These proceedings concerned the erosion impact of the Jonson Street Structure on their properties.

The Supreme Court proceedings were commenced in December 2010 and came to a conclusion on the making of final orders in August 2016.

Evidence was filed in the Court proceedings that the Council had rebuilt the Jonson Street Structure, most recently in the 1970's.

The evidence also showed that the Council had received many reports over decades advising the Council that the effect of the Jonson Street structure was to trap sand travelling westwards along the coast in the ocean. The effect of trapping the sand was to increase the size of Main

Beach adjacent to the Byron Bay Town Centre and to deprive the beach on the western side of the Jonson Street structure of sand which it otherwise would have received naturally.

The evidence from experts (on behalf of the residents) was that the impact of the Jonson Street structure was to cause erosion of Belongil Beach by more than 25 to 30 metres in beach width.

No contradictory evidence was filed by the Council in the proceedings. A joint application was made for the final Orders which were made by the Supreme Court on 12 August 2016. Those final Orders are provided in **Appendix 1**.

The effect of the final Orders is that the protection currently in place and marked in Schedule 1 to the final Orders are subject to a permanent injunction which prevents the removal of that protection.

The claims which the resident plaintiffs made in the Supreme Court proceedings were that the Council was under a duty to protect from the danger that it had created by the building of the Jonson Street structure and owed a statutory obligation of support. The Court also took into account the need to repair the sea walls which it had ordered to be kept in place.

The final Orders provide that the permanent injunction will apply to the sea walls as they are **and** as repaired provided that the initial application is made within one year of the final Orders and work commenced will be in one year of all necessary consents being in place.

It is clearly in the public interest that the sea walls remain in a good state of repair as contemplated by the Court Orders.

The purpose of this DA is to seek consent to carry out the repairs contemplated in the final Court Orders. The sea walls, including the one to which this SEE relates, need repair. They act to minimise the erosion impact of the Jonson Street structure on the subject property on Belongil Beach, on its related dunal system and on the Belongil estuary, wetlands and littoral forest, all being environmentally sensitive areas.

1.3 Purpose of this Statement of Environmental Effects

The purpose of this SEE is to:-

- describe the site to which the DA relates;
- describe the characteristics of the surrounding locality;
- describe the proposal;
- define the statutory planning framework within which the DA is to be assessed and determined; and
- assess the proposal in light of all relevant heads of consideration listed in Section 79C of the Act.

1.4 Concurrent DAs

Four other concurrent DAs have been lodged to repair sea walls adjacent to the properties along Belongil Beach those other properties being:-

- Lot 2 in Section 2 in DP 1623, and Lot 1 in SP 65430 – commonly known as Units 1 and 2, 1 Don Street and 1 and 1A Don Street (a.k.a. 2 Don Street), Byron Bay;

- Lots 21 and 22 in Section 3 in DP 1623 - commonly known as Nos. 14A and 14B Childe Street, Byron Bay;
- Lots 32-36 in Section 2 in DP 1623 – commonly known as No. 2/28 Childe Street, Byron Bay; and
- Lots 32 and 33 in Section 3 in DP 1623 – commonly known as 6 Childe Street, Byron Bay.

2. THE SITE

2.1 Location

This DA relates to the existing sea wall on the Belongil Beach foreshore adjacent to and partly on 44 and 48 Childe Street (see **Figures 1, 2, 3A, 3B** and **3C**).

2.2 Improvements

2.2.1 No. 44 Childe Street

Erected on Lots 21, 22, 23 and 57 in Section 2 in DP 1623 is a residential dwelling, known as 44 Childe Street. Vehicular access to the dwelling, from Childe Street, is provided through Lot 57. The photo, below, illustrates the location of the site, located behind (i.e. to the south-west of) the existing sea wall. No. 44 Childe Street is indicated in orange on the photo.



2.2.2 No. 48 Childe Street

Erected on Lots 18, 19, 20, 59, 60 and 61 in Section 2 in DP 1623 is a residential dwelling. The property has a tennis court. The photo, above, illustrates the location of the site, located behind (i.e. to the south-west of) the existing sea wall. No. 48 Childe Street is indicated in red on the photo.

2.3 Ownership

Lots 21, 22, 23 and 57 in Section 2 in DP 1623 (No. 44 Childe Street) are owned by Therese Joan Leonard.

Lots 18, 19, 20, 59, 60 and 61 in Section 2 in DP 1623 (No. 48 Childe Street) are owned by Robert Charles Gregory Watson.

2.4 Existing sea wall

A "Byron Bay Erosion Protection Structures – Risk Assessment" was undertaken by Worley Parsons in 2013 on behalf of Council ("the 2013 Risk Assessment Report"). It describes the existing sea wall as follows:-

> *"This structure consists primarily of rock revetment protection of varying sizes, styles and slopes. The purpose of this structure is to provide erosion protection to the private property on the landward side.*

The existing sea wall is identified in the 2013 Risk Assessment Report as shown below:-



Source: "Byron Bay Erosion Protection Structures – Risk Assessment" by Worley Parsons in 2013

As outlined in the 2013 Risk Assessment Report:-

> *"The risk assessment examines the design and capability of the structures to withstand a large coastal storm event, assesses the physical impact of the natural coastal processes interacting with the structures and assesses the environmental impact of the natural coastal processes interacting with the structures.*
>
> *The overall Risk Assessment has assessed each structure as "good", "fair" or "poor" in terms of the following criteria and based on the results of the detailed investigations:*
>
> - *Resilience of the structure against coastal processes – including the structure hydraulic stability against direct wave attack under various*

storm events, degree of wave overtopping, observed condition of the structure, geotechnical stability and resilience against the impact of climate change, including consequence of failure of the structure (for example, is the structure backed by high value residential or commercial development which is likely to be impacted by coastal hazards, or is there very little or no development at risk?).

- *Impact of the structure on coastal processes and foreshore alignment, downdrift, updrift and in front of the structure*
- *Ecological impact of the structure – including the impact on the beach habitat, and ecological processes.*
- *Impact of the structure on the public use and beach amenity, including visual amenity, availability and use of public facilities, impact on items of cultural heritage and impact on access onto and along the beach.*
- *Consequence of failure of the structure, public and private landholder safety under a range of conditions (stormy/calm, eroded/accreted) at each structure."*

The 2013 Risk Assessment Report discusses the works that have been undertaken along the foreshore:-

> *"Various erosion protection structures have been constructed along the Byron Bay foreshore, by public authorities and individual residents. On Main Beach, these include the Jonson Street Protection Works, ad hoc works immediately to the west of the Jonson Street Protection Works, interim beach access stabilisation works immediately to the east of the Jonson Street Protection Works and in front of the Byron Surf Life Saving Club (SLSC). At Belongil Beach, a number of interim beach access stabilisation works have been constructed by Byron Shire Council, including at Manfred Street,* ***Don Street*** *and Border Street. On either side of these interim works, erosion protection works are located adjacent to and on private landholdings. These have largely been constructed in an ad hoc fashion, and several have been identified by previous studies as being degraded and not compliant with contemporary coastal engineering standards."* (our emphasis)

The 2013 Risk Assessment Report does not include any recommendations on how to improve the sea wall nor does it identify how to make the existing sea wall safe.

The 2013 Risk Assessment Report identifies the existing sea wall as "rock revetment" in a "fair condition":-



Mapped extent of rock seawall between Manfred Street and Old Jetty site – Source: Worley Parsons Risk Assessment 2013

When discussing the "Structure Rating for Hydraulic Stability" the 2013 Risk Assessment Report states:-

> *"Rock armour is too small to withstand estimated wave heights at this structure for events greater than the 1 year ARI."*

When discussing the "Climate Change resilience rating" the 2013 Risk Assessment Report states:-

> *"This structure would be subject to increased future scour and higher wave attack due to its seaward position. It would also be subject to an increased frequency of wave overtopping."*

When discussing the "Structure Rating for Impact on Coastal Ecology" the 2013 Risk Assessment Report states:-

> *"These works have caused damage to the natural dune environment during their installation. In addition they encroach onto the beach berm and have led to a reduction in beach width in front of them. Some of the materials used in their construction (e.g. haybales and twine) have become dislodged from the structure and pose a hazard to marine life."*

When discussing the "Structure Rating for access along the beach" the 2013 Risk Assessment Report states:-

> *"This rock protection regularly obstructs pedestrian access along the beach at most tide levels even when the beach is in an accreted state."*

The repair works, proposed as part of this DA, would improve the public use and amenity rating of the part of the beach nearest to the sea wall.

The 2013 risk assessment report states as follows in relation to the existing sea wall:-

- *"Structure slope 1V:1.5H*
- *Revetment crest approximately 5 m AHD, but varying along shoreline*
- *Revetment armour diameter varying between 300 mm and 1000 mm, with median rock diameter of around 600 mm*
- *Upper portions of the slope consisted variously of haybales, rock landscaping, or private gardens*
- *The structure contained smaller rocks within the main revetment armour*
- *The toe of the structure was below the beach level of 0 m AHD.*

…

The condition of this structure, while variable along its length, was considered to be fair.

In some areas, the structure was seaward of the main embankment (in front of Lots 26, 27 and 28 of DP 1623), encapsulating areas of the beach berm behind them and acting more as a breakwater than a revetment (Figure 59). Evidence of car bodies dumped here in the 1970's can still be seen in Figure 59, despite ongoing efforts to remove this debris as the debris has emerged. Tree stumps also were observed within the revetment armour.

While the structure is ad-hoc in nature, along most of its length it has been somewhat effective in controlling erosion of the embankment during large storm events. Some fracturing was observed within individual primary armourstones during the site visit, as well as large voids between armourstones and exposed areas of smaller sized rock.

The structure has had a marked impact on beach amenity, as the structure extends onto the beach berm and pedestrian access along the beach is obstructed at most times (except during very low tides). Access from the properties along the embankment onto the beach has been affected adversely by storm events, with access steps at some locations having been destroyed in previous storms.

Some debris from private accessways onto the beach remains and may pose a hazard to beachgoers. Debris from the haybales on the upper part of the slope has littered the beach in some areas and poses a hazard to birds and marine life."

The current stage of repair is updated by the International Coastal Management ("ICM") report at **Appendix 3**.

3. BELONGIL BEACH AND SURROUNDS

3.1 Belongil Beach

3.1.1 General

Belongil Beach is located to the west/north-west of the Byron Bay township and runs from the Jonson Street structure/ Main Beach car park to the mouth of Belongil Creek (see **Figure 1**). The part of the beach to which this DA relates is to the south-east of Manfred Street and to the north-west of Don Street (see **Figure 2**).

The area of land immediately adjacent and seaward to the site is a public road known as The Esplanade which is vested in Council. See Order 2 of the Court Orders at **Appendix 1** regarding the Council's consent.

The beach adjacent to the public road forms part of Lot 48 in DP 729057. It is owned by the State of NSW.

3.1.2 Belongil interim stabilisation works

On 21 May 2015, Council resolved to proceed with Belongil Beach access stabilisation works involving the installation of interim beach access stabilisation ("BAS") works at Manfred, Border and Don Streets.

The BAS works for Don Street are to be located at the northern end of the road reserve, as illustrated on the diagram below, taken from the Review of Environmental Factors ("REF") prepared by Umwelt:-



To date, only the interim wall at Manfred Street has been built.

In the Land & Environment Court proceedings in September 2015 [2015] NSW LEC157, Craig J found:-

> *"…One of the purposes of constructing the proposed rock rubble wall [at Manfred St] is to protect infrastructure that may be affected by breach of the present wall. There is potential for significant effct upon public assets … if a major storm occurs that breaches the existing wall."* (para 80).

And if wall was not constructed:-

> *"it will leave oopen a possibility, that is not fanciful and is consistent with past events, of irreversible environmental damage to the public and private doman."* (para 82).

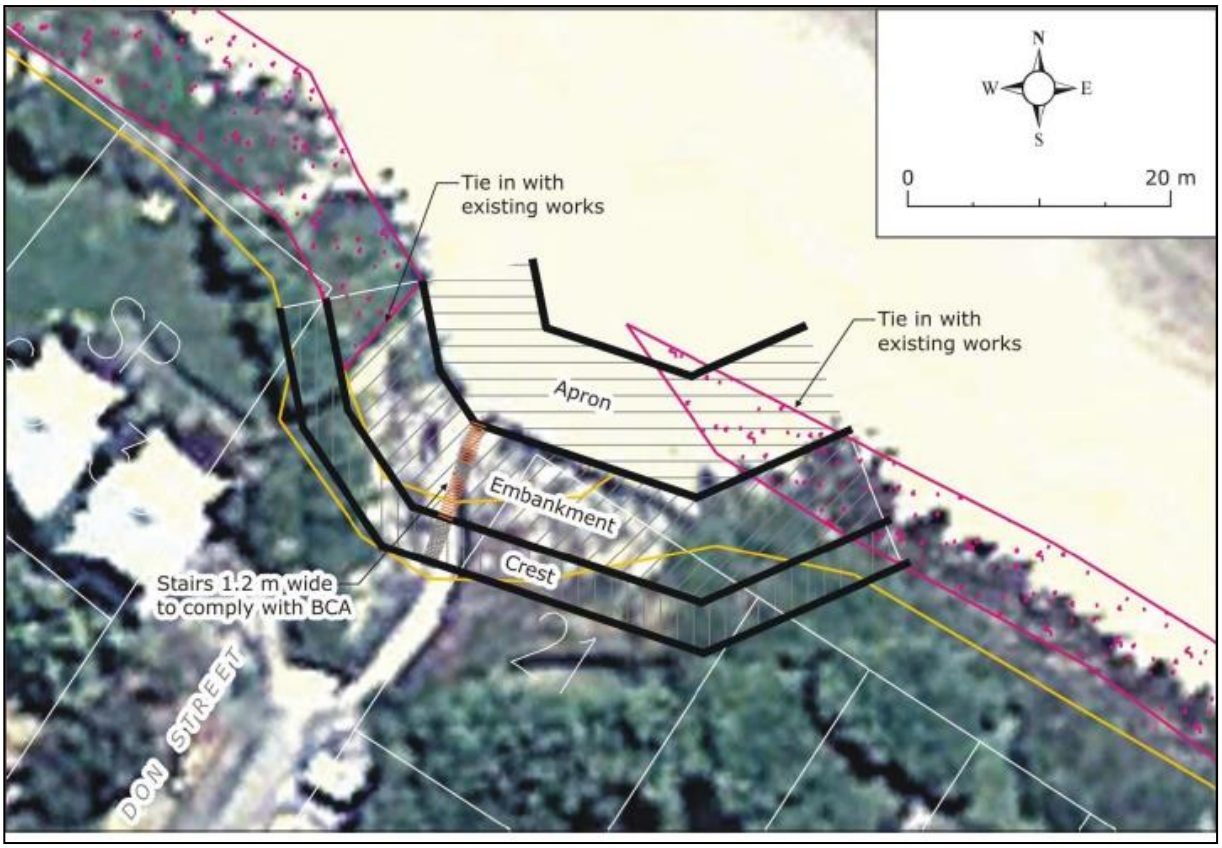
Source: REF prepared by Umwelt

The REF states:-

> *"At present, erosion limiting structures (or coffee rock) account for approximately 1727 m (65%) of the foreshore between the southern vegetation line at Belongil Creek mouth to Byron Bay SLSC. Of this, alongshore lengths for the Manfred St works comprise approximately 100 m (6%), Don Street 22 m (1.3%) and Border Street 40 m (2.3%). It is noted that the actual crest length may be longer than the alongshore lengths due to the curvature and/or flanking protection. In summary, these structures comprise less than 10% of the existing hard protection works or structures along this section of coast.*

A functioning seawall can fail through erosion at its end – a 'flanking failure'. At Belongil, the increased recession is likely to occur predominantly on the northern side of structures due to the predominant northward littoral drift, and is evident on Belongil Spit beyond the northernmost limit of protection works."

The design of the Don Street structure is outlined below:-



Source: Final Draft Technical Report – WRL 2013

3.2 To the North

To the north, beyond Belongil Beach, is the Pacific Ocean.

3.3 To the East

To the east is coastal bushland, the central cleared part of which is used for car parking by beach-goers. Beyond the bushland are Units 1 and 2, 1 Don Street and 1A Don Street (a.k.a. 2 Don Street), Byron Bay which is the subject of a concurrent DA.

3.4 To the South

To the south of the site is Childe Street, beyond which are various residential properties.

3.5 To the West

To the west of the dwelling on No. 44 Childe Street is a residential dwelling (No. 40 Childe Street). To the west of Lot 57 in Section 2 in DP 1623 (which provides the vehicular access to No. 44 Childe Street), is a residential dwelling (No. 42 Childe Street). On the eastern side of Lot 57 in Section 2 in DP 1623 is a residential dwelling (No. 46 Childe Street).

4. THE PROPOSAL

4.1 Works

The proposal is for repairs to an existing sea wall to make it safe and effective ("the proposal").

International Coastal Management ("ICM") has prepared a report on the works to be undertaken on the sea wall (see **Appendix 3**).

The required works to "repair and make safe" are described in the ICM report and drawings (see **Appendices 3** and **4**).

The DA drawing package prepared by ICM (see **Appendix 4**) details the works that are proposed as part of the DA to which this SEE relates.

4.2 Construction Management

As outlined in the ICM report in **Appendix 3**, the proposed method of carrying out the works is as follows:-

"Pre-Construction

- *All approvals and notifications.*
- *Safety fencing and signage is to be erected as per the drawing 007 to restrict public access to the work area.*
- *Construction of a temporary construction track from the sealed section of Manfred Street or alternatively the access track at the Old Jetty Site that is used for access by BSC for maintenance of Belongil Creek mouth or alternatively from the sealed section of Don Street along the southern boundary or 1 Don Street over the existing SFGC wall (covered with 1200gsm non-woven geotextile) onto the beach.*

Construction (5 days per week, 7am to 6pm. Estimated repair time 1 week)

- *Access onto the fenced works area for equipment and materials will be by temporary construction track.*
- *The works shall be carried out in 10 - 15m sections starting from the NW end.*
- *The toe of the existing wall will be excavated with a 20-30t hydraulic excavator to about -1m AHD and re-profiled to the original stable slope of about 1V:1.5H with the repaired crest at +6m AHD.*
- *The works are to have the rocks well interlocked and are to be tied smoothly into adjacent rock walls to the SE and NW.*
- *The crest and toe of the works shall be tapered smoothly into the adjacent crest and toe without interference with the existing structures.*
- *The wall is to be progressively surveyed and final "as constructed" drawings prepared.*

Post-Construction

- *The beach is to be groomed and left in a clean condition free from rock or rubble.*
- *The access track is to be removed and the area impacted by the track revegetated and restored to the original condition.*
- *The safety fencing is to be removed."*

5. STATUTORY PLANNING FRAMEWORK AND CONTROLS

5.1 Threatened Species Conservation Act 1995 ("TSC Act")

The TSC Act identifies a seven part test of significance when determining whether a proposed development is likely to have a significant impact on a threatened species or its habitat. Such an analysis was undertaken by Worley Parsons in March 2013 as part of a Marine Ecology and Habitat Assessment of the existing sea walls (see Section 6.3.1 of this SEE for details).

5.2 Coastal Protection Act 1979

Coastal Protection works are defined in the Coastal Protection Act 1979 ("CP Act") as:-

> *"activities or works to reduce the impact of coastal hazards on land adjacent to tidal waters and includes seawalls, revetments, groynes and beach nourishment."*

The repairs to the existing seawall are considered "coastal protection works" under the CP Act.

The proposal meets the objectives of the CP Act by protecting and maintaining the boundaries of land adjacent to the beach from further coastal erosion.

Section 55M(1) of the CP Act provides that, before granting consent under the Environmental Planning and Assessment Act 1979 (EP&A Act) to development for the purpose of "coastal protection works", the consent authority must be 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."*

In relation to maintenance as refered to in Clause 55M(1)(b)(ii) above, the walls should be inspected after storm events and any loose rocks secured and any displaced rocks replaced to their previous position.

The ICM report in **Appendix 3** address each of the provisions in Section 55M(1) of the CP Act In relation to each of these provisions, the Section 4 of the ICM report states:-

> *"Re (a) (i);*
>
> *The proposed works are to make safe existing works by restacking of the wall to restore a stable slope without loose rocks that could be dislodged during erosion events.*

The proposed works will make public access safer by moving dislodged rock from the base of the existing wall and replacing these on the repaired slope.

The completed repair works will improve public access along the beach.

Re (a) (ii);

The proposed repair works will improve public safety by restacking loose rock. Thus the repair works will not "pose a threat to public safety".

Re (b) (i);

The proposed repair works will restore a stable slope. Large rocks at the toe will be moved landward onto the steeper mid and upper slope of the wall. The footprint of the repair wall will be smaller and will not extend as far seaward. The repaired wall face will also be less reflective during erosion events. As a result, any impacts on the beach or adjacent land will be the same, or less than at present. Thus, any repairs will not cause "any increased erosion of the beach or adjacent land".

Re (b) (ii);

The proposed repair works can and should be maintained by the landowners after each erosion event that impacts the wall."

Section 55M(2) of the CP Act states:-

> *"(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. Section 80A (6) of the Environmental Planning and Assessment Act 1979 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."*

The effect of the Orders is that the protection currently in place and marked in Schedule 1 to the Orders (see **Appendix 1**) is subject to a permanent injunction which prevents the removal of that protection.

In relation to funding as referred to in Section 55M(2), the applicants are prepared to provide adequate funding, by entering into legally binding obligations, for restoration of the beach and maintenance of the works as required by section 55M in the circumstances of this application.

5.3 Crown Lands Act 1989

The land seaward of these properties is vested in the Council. Under the terms of the Supreme Court orders, the Council undertook to the Court that consent and access would not be unreasonably withheld.

5.4 Marine Estate Management Act 2014 (the "MEM Act 2014")

The MEM Act 2014, in Section 56, requires:-

> *"Development affecting marine parks and aquatic reserves – application of EPA Act*
>
> *(1) In determining a development application under Part 4 of the Environmental Planning and Assessment Act 1979 for the carrying out of development on land that is in the locality of a marine park or an aquatic reserve, the consent authority must take into consideration the objects of this Act, the permissible uses of the area concerned under the regulations or the management rules and any advice given to it by the relevant Ministers about the impact on the marine park or aquatic reserve of development in the locality.*
>
> *(2) If the consent authority is of the opinion that development proposed in the development application is likely to have an effect on the plants or animals within the marine park or aquatic reserve and their habitat, the consent authority must consult with the relevant Ministers before finally determining the application."*

Insofar as Clause 56(1) refers to the objects of the MEM Act, those objects are as follows:-

> *"(a) to provide for the management of the marine estate of New South Wales consistent with the principles of ecologically sustainable development in a manner that:-*
>
> *(i) promotes a biologically diverse, healthy and productive marine estate; and*
>
> *(ii) facilitates:*
>
> - *Economic opportunities for the people of New South Wales, including opportunities for regional communities; and*
> - *The cultural, social and recreational use of the marine estate; and*
> - *The maintenance of ecosystem integrity; and*
> - *The use of the marine estate for scientific research and education.*
>
> *(b) to promote the co-ordination of the exercise, by public authorities, of functions in relation to the marine estate,*
>
> *(c) to provide for the declaration and management of a comprehensive system of marine parks and aquatic reserves."*

Whilst the proposed works are in the locality of the Marine Park nothing in the proposed works gives rise to any conflict with the objects of the MEM Act. Furthermore, the proposed works are unlikely to have an effect on the plants and animals in the Marine Park or their habitat.

5.5 State Environmental Planning Policy (Infrastructure) 2007

Clause 129A of SEPP (Infrastructure) 2007 states:-

> *"129A Development with consent*
>
> *(1) Development for the purposes of a sea wall or beach nourishment may be carried out by any person with consent on the open coast or entrance to a coastal lake.*
>
> *(2) If a coastal zone management plan does not apply to the land on which any such development is to be carried out, the Coastal Panel has the function of determining a development application for development to which this clause applies.*
>
> *(3) Before determining a development application for development to which this clause applies, the consent authority must take the following matters into consideration:*
>
> *(a) the provisions of any coastal zone management plan applying to the land,*
>
> *(b) the matters set out in clause 8 of State Environmental Planning Policy No 71—Coastal Protection,*
>
> *(c) any guidelines for assessing and managing the impacts of coastal protection works that are issued by the Director-General for the purposes of this clause and published in the Gazette.*
>
> *Note. Section 55M of the Coastal Protection Act 1979 sets out preconditions to the granting of development consent relating to coastal protection works."*

In relation to Clause 129A(1), the proposed works to the sea wall, which is on the open coast, can be carried out by any person with consent.

In relation to Clause 129A(2), and (3)(a) a coastal zone management plan has not been adopted. Therefore, the Coastal Panel has the function of determining the DA to which this SEE relates.

Insofar as Clause 129A(3)(b) is concerned, the relevant provisions of SEPP No. 71 is considered below.

In relation to Clause 129A(3)(c), no guidelines for assessing and managing the impacts of coastal protection works have been issued by the Director-General for the purposes of this clause.

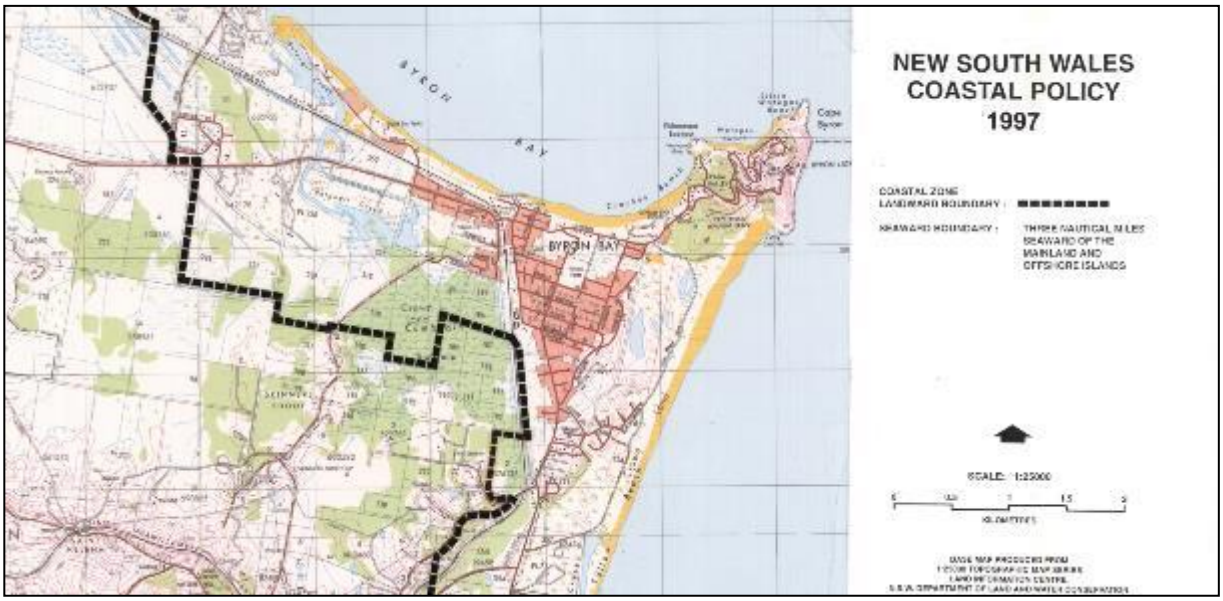
5.6 State Environmental Planning Policy No 71—Coastal Protection

5.6.1 Application of Policy

SEPP No. 71 applies to land the whole or any part of which is within the "coastal zone". The definition of "coastal zone" in SEPP No. 71 is the same as in the Coastal Protection Act 1979, which is as follows:-

> *"(a) the area within the coastal waters of the State as defined in Part 10 of the Interpretation Act 1987 (including any land within those waters), and*
>
> *(b) the area of land and the waters that lie between the western boundary of the coastal zone (as shown on the maps outlining the coastal zone) and the landward boundary of the coastal waters of the State, and*
>
> *(c) the seabed (if any) and the subsoil beneath, and the airspace above, the areas referred to in paragraphs (a) and (b).*
>
> *Note. The coastal zone consists of the area between the western boundary of the coastal zone shown on the maps outlining the coastal zone and the outermost boundary of the coastal waters of the State. The coastal waters of the State extend, generally, to 3 nautical miles from the coastline of the State."*

The land to which this SEE relates is shown on the maps outlining the coastal zone, as outlined overleaf:-



Coastal Zone Map

The site is located within the area of land that lies between the western boundary of the coastal zone and the landward boundary of the coastal waters of the State and therefore the SEPP applies.

5.6.2 Matters for Consideration

Clause 7 of SEPP No. 71 states that the matters in Clause 8 of the SEPP should be "taken into account by a consent authority when it determines a development application to carry out development on land to which this Policy applies". The matters for consideration in Clause 8 of the SEPP are addressed in the table below:-

Matter for Consideration	**Response**
"(a) the aims of this Policy set out in clause 2," Which are as follows:- *(a) "to protect and manage the natural, cultural, recreational and economic attributes of the New South Wales coast, and* *(b) to protect and improve existing public access to and along coastal foreshores to the extent that this is compatible with the natural attributes of the coastal foreshore, and* *(c) to ensure that new opportunities for public access to and along coastal foreshores are identified and realised to the extent that this is compatible with the natural attributes of the coastal foreshore, and* *(d) to protect and preserve Aboriginal cultural heritage, and Aboriginal places, values, customs, beliefs and traditional knowledge, and* *(e) to ensure that the visual amenity of the coast is protected, and* *(f) to protect and preserve beach environments and beach amenity, and* *(g) to protect and preserve native coastal vegetation, and* *(h) to protect and preserve the marine environment of New South Wales, and* *(i) to protect and preserve rock platforms, and* *(j) to manage the coastal zone in accordance with the principles of ecologically sustainable development (within the meaning of section 6 (2) of the Protection of*	Consent is sought to the proposed repairs to the existing sea wall to ensure that the sea wall adjacent to the subject properties remains stable and to avoid loose rocks and concrete from dislodging during erosion events, which could iaffect public access to and along the beach and which could also have an adverse impact on public safety. The proposal encourages a strategic approach to coastal management as it is in accordance with a Court injunction. Council has agreed that consent and access for these works will not be unreasonably withheld. This is noted in the court orders.

Matter for Consideration	Response
the Environment Administration Act 1991), and *(k) to ensure that the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area, and* *(l) to encourage a strategic approach to coastal management."*	
(b) "existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved,"	The completed works will have a similar footprint and configuration as the existing sea wall and will not reduce public access along the beach. The proposed works will have a positive impact on public safety and will be an improvement to public access along the beach. There is an existing access onto the beach from the Old Jetty Site. The works will not impact on this existing access but are consistent with it.
(c) opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability,	The existing pedestrian access from the Old Jetty Site to the beach will be maintained.
(d) the suitability of development given its type, location and design and its relationship with the surrounding area,	The suitability of the works have been the subject of NSW Supreme Court proceedings and this DA is being lodged to carry out the repair works as contemplated by the Orders of the court. The repairs to the sea wall are entirely suitable for this location.
(e) any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and	The proposed repairs to the sea wall will have the positive effect of better protecting the coastal foreshore and will have no effect on overshadowing or

Matter for Consideration	Response
any significant loss of views from a public place to the coastal foreshore,	loss of views from public places to the coastal foreshore.
(f) the scenic qualities of the New South Wales coast, and means to protect and improve these qualities,	The proposed works are being carried out to ensure that the structural integrity of the coastline is protected. The existing dune is estimated to be 5,000-6,000 years old. The walls protect the dune from the erosion danger caused by the Council made structure.
(g) measures to conserve animals (within the meaning of the Threatened Species Conservation Act 1995) and plants (within the meaning of that Act), and their habitats,	Loose rock and concrete have the ability, during storm events, to enter into the water and these materials could have a negative impact upon animals and plants either on land (during surges) or in the water, as confirmed by the risk assessment report prepared by Worley Parsons. This risk will be reduced considerably with the carrying out of the proposal and the effect will be positive.
(h) measures to conserve fish (within the meaning of Part 7A of the Fisheries Management Act 1994) and marine vegetation (within the meaning of that Part), and their habitats	N/A
(i) existing wildlife corridors and the impact of development on these corridors,	N/A
(j) the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards,	The works are being carried out to limit the impact of coastal processes and hazards on the site due to the Council made structure at Jonson St. The works themselves will create no change to coastal processes.

Matter for Consideration	Response
(k) measures to reduce the potential for conflict between land-based and water-based coastal activities,	N/A
(l) measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals,	N/A
(m) likely impacts of development on the water quality of coastal waterbodies,	The current sea wall contains loose material which could affect the water quality if left to wash into the sea. The proposed works will have a positive impact on water quality.
(n) the conservation and preservation of items of heritage, archaeological or historic significance,	N/A – there are no items of heritage significance in close proximity to the sea wall
(o) only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities,	N/A
(p) only in cases in which a development application in relation to proposed development is determined:	
(i) the cumulative impacts of the proposed development on the environment, and	In regards to (i), this is addressed in the discussion of the Worley Parsons report below.
(ii) measures to ensure that water and energy usage by the proposed development is efficient.	Point (ii) is not relevant to this DA.
Note. Clause 92 of the Environmental Planning and Assessment Regulation 2000 requires the	The NSW Coastal Policy is discussed in Section 6.2 below.

Matter for Consideration	Response
Government Coastal Policy (as defined in that clause) to be taken into consideration by a consent authority when determining development applications in the local government areas identified in that clause or on land to which the Government Coastal Policy applies.	

5.6.3 Significant Coastal Development (Part 3)

Part 3 of SEPP 71 relates to "significant coastal development". Part 3(1) of the SEPP states:-

> *"(1) This Part applies to:*
>
> *(a), (b) (Repealed)*
>
> *(c) development within 100m below mean high water mark of the sea, a bay or an estuary, and*
>
> *(d) development on land described in Schedule 3, subject to subclause (2)."* (our emphasis)

The proposed works to the sea wall will be carried out above the mean high water mark and therefore this part of SEPP 71 does not apply.

5.6.4 Development Control (Part 4)

Part 4 of SEPP 71 states:-

> ***"12 Application of Part***
>
> *This Part applies to all development on land to which this Policy applies.*
>
> ***13 Flexible zone provisions***
>
> *A provision of an environmental planning instrument that allows development within a zone to be consented to as if it were in a neighbouring zone, or a similar provision, has no effect.*
>
> ***14 Public access***
>
> *A consent authority must not consent to an application to carry out development on land to which this Policy applies if, in the opinion of the consent authority, the development will, or is likely to, result in the impeding or diminishing, to any extent, of the physical, land-based right of access of the public to or along the coastal foreshore.*
>
> ***15 Effluent disposal***
>
> *The consent authority must not consent to a development application to carry out development on land to which this Policy applies in which effluent is proposed to be disposed of by means of a non-reticulated system if the consent*

authority is satisfied the proposal will, or is likely to, have a negative effect on the water quality of the sea or any nearby beach, or an estuary, a coastal lake, a coastal creek or other similar body of water, or a rock platform.

16 Stormwater

The consent authority must not grant consent to a development application to carry out development on land to which this Policy applies if the consent authority is of the opinion that the development will, or is likely to, discharge untreated stormwater into the sea, a beach, or an estuary, a coastal lake, a coastal creek or other similar body of water, or onto a rock platform."

The proposed repairs to the sea wall are not reliant on flexible zone provisions.

The completed works will have a similar footprint to the existing sea wall and will not reduce public access along the beach when compared with the existing situation.

As outlined above, the works will have a positive impact on public safety and this is an improvement to public access along the beach.

Clauses 15 and 16, above, are not relevant to this DA.

5.6.5 Master Plans (Part 5)

Part 5 of SEPP 71 specifies when a master plan is required. These requirements relate to DAs that involve subdivision. The DA to which this SEE relates does not propose subdivision and therefore Part 5 of SEPP 71 is not a relevant consideration.

5.7 Byron Local Environmental Plan 2014

Bryon LEP 2014 does not apply as the site is identified as "deferred matter" on the zoning map (see **Figure 4**).

5.8 Byron Local Environmental Plan 1988

5.8.1 Zoning

The privately owned land is zoned 7F2 (Urban Coastal Land Zone) (see **Figure 5**).

The public land (i.e. the beach) adjacent to Nos. 44 and 48 Childe Street is zoned 7F1 (Coastal Land Zone), also as shown in **Figure 5**.

Beach and coastal restoration works are permissible in both zones. However, the proposed works are also permissible with consent pursuant to the Infrastructure SEPP (see Section 5.4 of this SEE).

5.8.2 Objectives: 7F1 (Coastal Land Zone)

The objectives of the 7F1 Coastal Land zone are as follows:-

"(a) to identify and protect environmentally sensitive coastal land,

(b) to enable development for certain purposes where such development does not have a detrimental effect on the habitat, landscape or scenic quality of the locality,

(c) to prevent development which would adversely affect, or be adversely affected by, coastal processes, and

(d) to enable the careful control of noxious plants and weeds by means not likely to be significantly detrimental to the native ecosystem."

The proposed repairs to the existing sea wall are consistent with the above objectives and are being carried out to repair existing protection, which must remain in place due to the Supreme Court order. The works will have no impact on coastal processes, as they are already in place.

5.8.3 Objectives: 7F2 (Urban Coastal Land Zone)

The objectives of the 7F2 Urban Coastal Land zone are as follows:-

"(a) to identify urban land likely to be influenced by coastal processes,

(b) to permit urban development within the zone subject to the council having due consideration to the intensity of that development and the likelihood of such development being adversely affected by, or adversely affecting, coastal processes,

(c) to permit urban development within the zone subject to the council having due consideration to:

(i) the need to relocate buildings in the long term,

(ii) the need for development consent to be limited to a particular period,

(iii) the form, bulk, intensity and nature of the development, and

(iv) continued safe public access to the site, and

(d) to allow detailed provisions to be made, by means of a development control plan, to set aside specific areas within the zone for different land uses and intensities of development."

The proposal is not inconsistent with the above objectives. The DA seeks approval for works which are subject to Orders of the NSW Supreme Court. The repair works have been designed to ensure that this small part of the coastline is better equipped to withstand coastal processes/storm events, avoid potential safety issues if the wall is not repaired and to limit the possibility of soil erosion on the Applicant's properties. The threat of coastal erosion has been caused by the impact of the Council built Jonson Street structure.

The proposed repairs to the sea wall are intended to preserve the status quo and improve public safety. They are contemplated by the Court Orders.

5.8.4 Clause 32 - Development within Zone No 7 (f2) (Urban Coastal Land Zone)

Clause 32 of BLEP 1988 states:-

"(1) This clause applies to all land within Zone No 7 (f2).

(2) A person shall not carry out development (other than exempt development) on land to which this clause applies except with the consent of the Council.

(3) The Council, in deciding whether to grant consent to development referred to in subclause (2), shall take into consideration:

(a) the likelihood of the proposed development adversely affecting, or being adversely affected by, coastal processes,

(b) the need to relocate buildings in the long term,

(c) the need for the development consent to be limited to a particular period,

(d) the form, bulk, intensity and nature of the development, and

(e) continued safe public access to the site.

(4) The council shall not consent to the carrying out of development on land shown edged heavy black and stippled on the map marked "Byron Local Environmental Plan 1988 (Amendment No 66)" for the purpose of clubs, commercial premises, hostels, hotels, motels, residential flat buildings, shops or tourist facilities or for a purpose that would otherwise be permissible with consent under clause 17 (Dual occupancy).

(5) The Council must not consent to the subdivision of land within Zone No 7 (f2) other than:

(a) a subdivision under the Strata Schemes (Freehold Development) Act 1973, or

(b) a subdivision to excise an allotment that is, or that the Council is satisfied is intended to be, used for a public purpose, or

(c) a subdivision that, in the opinion of the Council, is only a boundary adjustment where no additional lots are created."

The Infrastructure SEPP prevails to the extent of any inconsistency with BLEP 1988 and therefore the Coastal Panel remains the relevant consent authority for the DA, despite the provisions in Clause 32(2) in BLEP 1988.

The matters referred to in Clause 32(3) have been addressed above in the consideration of the other Environmental Planning Instruments which are applicable to the land.

There is no need to limit the development consent to a particular period. The Supreme Court injunction to which these works relate is permanent.

5.8.5 Clause 33 – Development within Zone No 7 (f1) (Coastal Lands Zone)

Clause 33 of BLEP 1988 states:-

"(1) This clause applies to all land within Zone No 7 (f1).

(2) A person shall not carry out development for any purpose on land to which this clause applies except with the consent of the council.

(3) (Repealed)

(4) The Council, in deciding whether to grant consent to development referred to in subclause (2), shall take into consideration:

(a) the likelihood of the proposed development adversely affecting, or being adversely affected by, coastal processes,

(b) the likelihood of the proposed development adversely affecting any dune or beach of the shoreline or foreshore,

(c) the likelihood of the proposed development adversely affecting the landscape, scenic or environmental quality of the locality of the land, and

(d) whether adequate safeguards and rehabilitation measures have been, or will be, made to protect the environment."

The proposal seeks to create adequate safeguards to protect the coastline and limit the effect of coastal processes on the Applicant's lands. A wall is already present at the site and, by court order, must remain. The wall is in a bad state of repair. These repairs will have no adverse impact on coastal processes. The matters referred to in Clause 33(4) have been addressed above in the consideration of the various other Environmental Planning Instruments applicable to the land.

5.9 Draft Environmental Planning Instruments

The draft Coastal Management State Environmental Planning Policy ("Draft SEPP') and draft maps of the coastal management are currently on exhibition, closing on 23 December 2016. In accordance with s79C(1)(a)(ii) of the *Environmental Planning and Assessment Act, 1979*, the consent authority is to take into consideration such proposed instruments as are of relevance to the development. However, Clause 24 of the draft SEPP states:-

"24 Savings and transitional provisions

This Policy does not apply to a development application lodged, but not finally determined, immediately before the commencement of this policy in relation to land to which this Policy applies."

As such, the Draft SEPP is of no relevance and does not need to be taken into account.

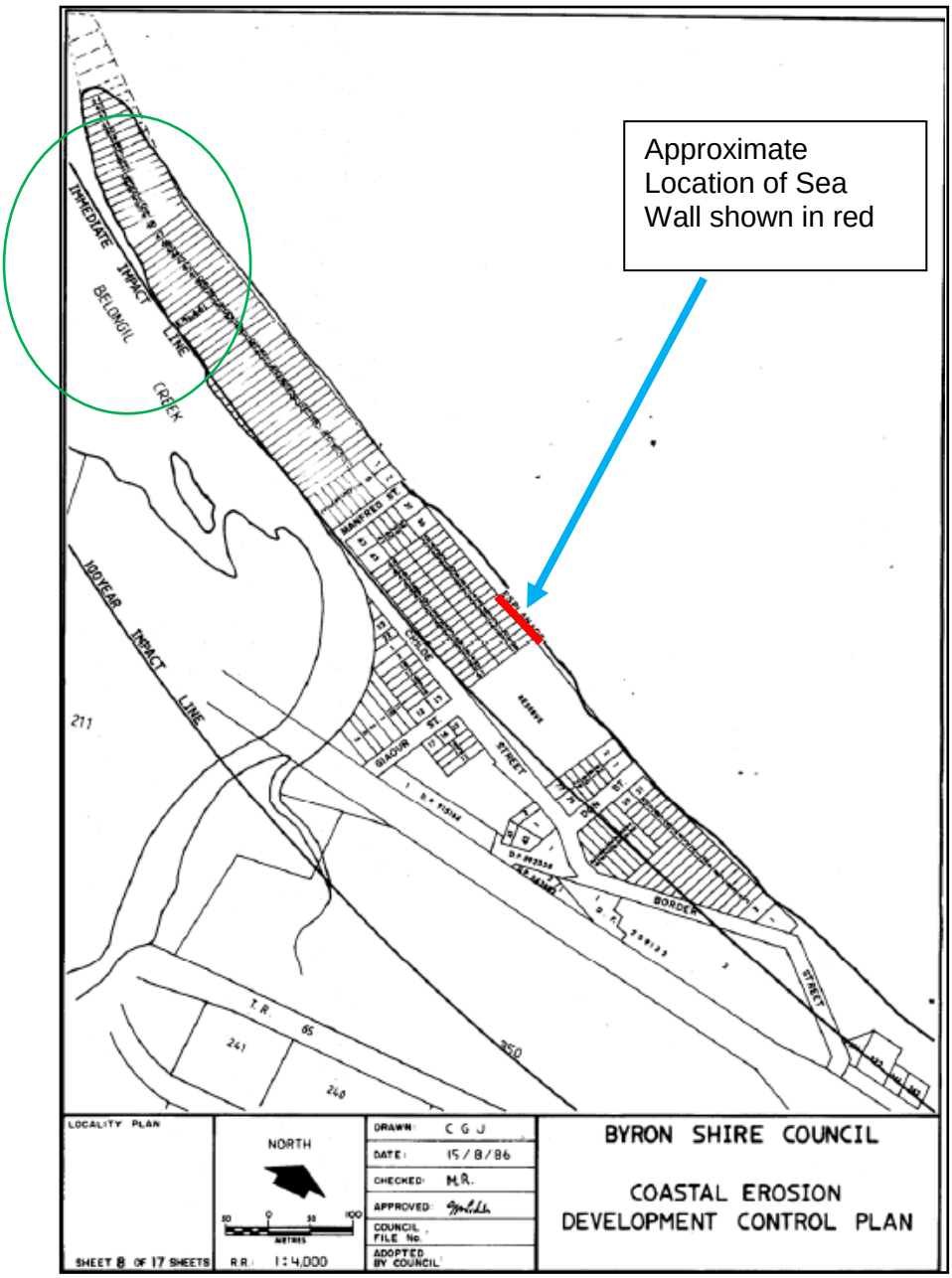
5.10 Byron Development Control Plan 2014 ("BDCP 2014")

BDCP 2014 does not apply to land which is still covered by Byron Local Environmental Plan 1988. Byron DCP 2010 continues to apply to land which is covered by BLEP 1988.

5.11 Byron Shire Development Control Plan 2010 (DCP 2010)

5.11.1 Chapter 1: Part J Coastal Erosion Lands

The relevant map, from Part J of DCP 2010 is provided overleaf:-



Source: Coastal Erosion Map – Part J – DCP 2010

The site is located in "Precinct 1" which comprises land between the Beach Escarpment and the "Immediate Impact Line". (See notation in green circle on the above map).

The "element objective" for development in Precinct 1 is as follows:-

> *"Element Objective*
>
> *To ensure the impact of coastal processes on potential development is minimised by limiting development and ensuring any development is only temporary."*

When considering this provision, it is important to have regard to Section 74C(5) of the Environmental Planning and Assessment Act 1979 (the Act), which states:-

> *"(5) A provision of a development control plan (whenever made) has no effect to the extent that:*
>
> *(a) it is the same or substantially the same as a provision of an environmental planning instrument applying to the same land, or*
>
> *(b) it is inconsistent or incompatible with a provision of any such instrument."* (our emphasis)

The "element objective" for Precinct 1 in the DCP (i.e. that any development be only temporary in Precinct 1) is inconsistent with the relevant provisions in the Infrastructure SEPP which allow a seawall, of a permanent nature, to be erected on the land. Therefore, the above objective, as well as the performance criteria and prescriptive measures which sit underneath the above objective, has no effect.

Additionally however, the proposed works are contempled by the Orders of the Supreme Court of NSW.

6. ASSESSMENT OF ENVIRONMENTAL EFFECTS

6.1 Statutory Planning Considerations

In determining the subject DA, the Coastal Panel is required to consider those relevant matters listed in Section 79C of the *Environmental Planning and Assessment Act, 1979* ("the Act"). Each of the relevant matters is addressed below.

6.2 Section 79C(1)(a) – Statutory Planning Considerations

Section 79C(a) of the Act requires the consent authority to take into consideration:-

> *"(a) the provisions of:*
>
> *(i) any environmental planning instrument; and*
>
> *(ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved); and*
>
> *(iii) any development control plan; and*
>
> *(iiia) any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and*
>
> *(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and*
>
> *(v) any coastal zone management plan (within the meaning of the Coastal Protection Act 1979),*
>
> *that apply to the land to which the development application relates,"*

In relation to **Section 79C(1)(a)(i) and (a)(iii)** of the Act, these matters are addressed in Section 5 of this SEE.

In relation to **Section 79C(1)(a)(ii)**, there are no draft instruments which are applicable other than the draft Coastal Management SEPP which is discussed in Section 5.8 of this SEE above.

In relation to **Section 79C(1)(a)(iii)(a)**, no planning agreement is proposed.

In relation to **Section 79C(1)(a)(iv)**, Clause 92 of the regulation requires:-

> *"in the case of a development application for the carrying out of development:*
>
> *(i) in a local government area referred to in the Table to this clause, and*
>
> *(ii) on land to which the Government Coastal Policy applies, the provisions of that Policy."*

Byron Shire is a local government area referred to in the "Table" to Clause 92 and the NSW Coastal Policy 1997 thus applies and as such must be considered by the Coastal Panel.

The NSW Coastal Policy 1997 has nine goals which are designed to guide decision making:-

- *"Protecting, rehabilitating and improving the natural environment of the coastal zone.*
- *Recognising and accommodating the natural processes of the coastal zone.*
- *Protecting and enhancing the aesthetic qualities of the coastal zone.*
- *Protecting and conserving the cultural heritage of the coastal zone.*
- *Providing for ecologically sustainable development and use of resources.*
- *Providing for ecologically sustainable human settlement in the coastal zone.*
- *Providing for appropriate public access and use.*
- *Providing information to enable effective management of the coastal zone.*
- *Providing for integrated planning and management of the coastal zone."*

The proposal is consistent with the above goals, where they are relevant, particularly insofar as the proposed works are intended to better protect the beach, the dunal system, and the associated environmentally sensitive areas.

In relation to **Section 79C(1)(a)(v)**, a coastal zone management plan does not apply to the land. Additionally, a draft Coastal Zone Management Plan ("CZMP") was prepared by Byron Shire Council for that part of the coastline that is a beach from south of Tyagarah Nature Reserve to Cape Byron (which includes Belongil Beach) and submitted to the Minister under Section 55G of the *Coastal Proection Act 1979*. That draft CZMP is with the Minister and provides for a rock wall along Belongil Beach.

6.3 Section 79C(b) – Environmental, Social and Economic Impacts

Section 79C(1)(b) requires the consent authority to consider:-

> *"(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality."*

The relevant matters are addressed below.

6.3.1 Impacts on the natural environment

As part of the 2013 Risk Assessment Report a Marine Ecology and Habitat Assessment was undertaken. (It forms **Appendix 3** of that Report). It contains an analysis of the marine ecology and habitat assessments for the structure in the Byron Bay embayment of which the subject sea wall forms part. The report includes an assessment of significance under the Environmental Protection and Biodiversity Conservation Act 1999 for 52 threatened species, 41 migratory species, 63 listed marine species and 13 whale and other cetaceans that are known to occur, or have the potential to occur in a 5km radius of the embayment. The report also states at page 26 of **Appendix C**:-

> *"An Assessment of Significance under the EPBC Act 1999 for each of these species was undertaken. The results of the assessment indicate that no species were listed as 'known to occur' or 'likely to occur' under the EPBC Act 1999 are impacted significantly as a result of the presence of the works at Byron Bay."*

The report also includes a search of the NPWS Atlas of NSW Wildlife Database as at 16 April 2012. It identifies 14 marine species (reptiles and mammals, excluding birds), and 60 marine bird species (or those species known to use coastal beach environments) listed under the Threatened Species Conservation Act 1995 ("TSC Act 1995"). Excluding bird species, an "assessment of significance" under the TSC Act 1995 was undertaken. The report states at pg 23 of Appendix C:-

> *"For each of these species an assessment of significance under the TSC Act 1995 was undertaken. The results of this assessment indicated that no significant impacts are expected to occur as a result of the presence of the existing works on threatened species listed under the TSC Act 1995 that have potential to occur at the study site."*

In relation to dune vegetation the report states at page 18 in **Appendix C**:-

> *"The presence of the erosion protection structures on the dune affects the primary plant zone, as grasses and creepers are not usually able to grow on the rock or geotextile substrate provided by the structures. The structures can therefore hinder the creation of incipient foredunes. The secondary vegetation zone is also affected, as these species are often not able to grow at the crest of the erosion protection structures. Despite the anthropogenic disturbance to the dunes, the typical zonation of vegetation described in Figure 7 was observed, particularly in the area behind Belongil Beach (Figure 8a 8b and 8c)."*

Having regard to the above findings of the 2013 Risk Assessment Report it can reasonably be concluded that the proposed repairs to the subject sea wall are unlikely to have a significant impact on any threatened or endangered species, or on flora and fauna generally.

Having regard to all of the above, it can reasonably be concluded that the proposal will have no adverse impacts on any native flora, fauna, wildlife corridors or critical habitat.

The potential exists for impacts associated with construction works, however any such impacts will be of a minor and of relatively short duration. **Appendix 3** includes the proposed construction methodology, which has been established to minimise potential impacts associated with the construction works for the repairs to the existing sea wall. The Applicant agrees to accept a condition of development consent requiring a site-specific construction management plan to be prepared before works commence on the site.

The proposed repairs to the existing sea wall will help protect the adjacent properties and surrounding land from wave attack and coastal erosion due to Council built Jonson Street structure and will improve public safety by removing unstable materials from the wall.

6.3.2 Impacts on the built environment

The proposed works will not result in any loss of views from a public place and will not change the visual character of the beach environs, given the identified selection of construction materials.

The finished sea walls will have an improved visual appearance when compared with the existing sea wall.

The repaired sea wall will have the same footprint as the existing sea wall and will not reduce public access to the beach or any new impact

Approval is sought also for ongoing maintenance. See Section 4 of the ICM report in **Appendix 3**.

6.3.3 Social and Economic Impacts

The proposal will result in positive social and economic effects by assisting to protection of the adjacent properties and surrounding land from wave attack and coastal erosion and will improve public safety by removing unsuitable materials from the existing wall. A long rock wall is in place in this area already. This application relates only to repair.

6.4 Section 79C(c) – The suitability of the site

Section 79C(c) requires the consent authority to consider:

> *"(c) the suitability of the site for the development."*

The information provided above in this SEE demonstrates that the site is suitable for the proposed repairs to the existing sea wall.

6.5 Section 79C(d) – Submissions

Section 79C(d) requires the consent authority to consider:

> *"(d) any submissions made in accordance with this Act or the regulations".*

Any relevant submissions received during the notification of the DA will need to be considered in the determination of the DA.

6.6 Section 79C(e) – Public interest

Section 79C(e) requires the consent authority to consider:

> *"(e) the public interest".*

The public interest is best served by the orderly and economic use of land for permissible purposes in a form which is cognisant of and does not impact unreasonably on development on surrounding land. The proposal is therefore in the public interest.

The public interest also requires the enforcement of the NSW Supreme Court Order. It is in no-one's interest that the sea walls remain unrepaired.

7. CONCLUSION

This SEE, including the plans which form part of it, demonstrate that the proposal is one which has merit and which is consistent with, and contemplated by, the Orders of the NSW Supreme Court. It is also consistent with Council resolutions to upgrade the Jonson Street works and undertake protective sea wall works at various locations along Belongil Beach. The effect of the court orders are that the walls must stay in position. It is in no-one's interest that the walls remain in an unrepaired state. The walls need repair. Repair of the walls should be permitted as soon as possible to avoid public safety dangers arising from the current poor state of repair.

The proposal displays a high degree of consistency and conformity with the objectives and requirements of the controls in the relevant planning documents, other than Part J of Council's DCP 2010 which, insofar as it promotes no protection of beach-front properties, is inconsistent with the final orders of the Supreme Court of NSW. The proposal is consistent with the current draft CZMP sent to the Minister by the Council for certification.

Minimising further erosion impacts from the Jonson Street works is important not only for the adjacent private properties but also for Belongil Beach generally, the surrounding built environment and infrastructure, the adjacent dunal system, and other associated environmentally sensitive areas including the littoral forest, estuary and wetlands.

The proposal warrants approval.

APPENDICES

APPENDIX 1

Supreme Court Orders dated 12 August 2016

APPENDIX 2

Certificates of Title and Deposited Plans

APPENDIX 3

Report on the Sea Wall prepared by International Coastal Management

APPENDIX 4

DA drawings prepared by International Coastal Management