



7 April 2017

OUR REF: C17/85

Mr Marc Daley  
NSW Coastal Panel  
PO Box A290  
SYDNEY SOUTH NSW 1232  
[Marc.daley@environment.nsw.gov.au](mailto:Marc.daley@environment.nsw.gov.au)

Dear Mr Daley

**Re: Consultation # C17/85 for coastal protection works, multiple lots on Don Street and Childe Street, Belongil Beach, Byron Bay, Byron LGA**

Thank you for your letter, received on 28 February 2017, requesting input from DPI Fisheries in accordance with s199 of the *Fisheries Management Act 1994* (FM Act), and sections 55 & 56 of the *Marine Estate Management Act 2014* (MEM Act). Section 199 of the FM Act pertains to dredging and reclamation works undertaken or approved by public authorities such as the NSW Coastal Panel. Section 199 requires the proposal be referred to the Minister for Primary Industries. The section also requires that the NSW Coastal Panel consider any matters concerning the proposed works that are raised by the Minister. In this instance, because the works are immediately adjacent to the Cape Byron Marine Park, the matter has also been considered against the objects of the MEM Act and the *Marine Estate Management (Management Rules) Regulation 1999*.

DPI Fisheries is responsible for ensuring that fish stocks are conserved and that there is “no net loss” of key fish habitats upon which they depend. In addition DPI Fisheries is responsible for ensuring the sustainable management of commercial fishing, quality recreational fishing and viable aquaculture within NSW. To achieve this, the Aquatic Environment Unit assesses activities under Part 5 of the *Environmental Planning and Assessment Act 1979* in accordance with the objectives of the FM Act, the aquatic habitat protection and threatened species conservation provisions in Parts 7 and 7A of the FM Act, and the *Policy and Guidelines for Fish Habitat Conservation and Management (2013 Update)*.

**Matters in relation to the *Fisheries Management Act 1994***

DPI Fisheries have reviewed the proposal in light of the abovementioned objectives and has no objections. The location of the wall is above the limit of Highest Astronomical Tide (HAT) and is consequently not within Key Fish Habitat. Therefore, the proposed works do not trigger Part 7 of the FM Act.

Given the proximity of the works to Key Fish Habitat, DPI Fisheries would support the siting of the works as far landward as possible from HAT. In addition, DPI Fisheries highlight that the Infrastructure SEPP requires that exempt developments, complying developments and emergency works are carried out in accordance with all applicable requirements of the Blue Book (Landcom 2004, *Managing Urban Stormwater: Soils and Construction* [4<sup>th</sup> Edition]), available at <http://www.environment.nsw.gov.au/resources/water/BlueBookVol1.pdf>.

**Matters in relation to the *Marine Estate Management Act 2004***

The proposed work sites are located adjacent to and possibly within a Habitat Protection Zone of the Cape Byron Marine Park. Sections 55 & 56 of the MEM Act state that before determining a development application under Part 4 of the *Environmental Planning and Assessment Act 1979* for the carrying out of development that is within a marine park (s55), or is in the locality of a



## Department of Primary Industries

marine park (s56), a consent authority must take into consideration the objects of the MEM Act and any advice given to it by the relevant Ministers. Works or related activities taking place within the marine park will require a Marine Parks permit in which case, the *Marine Estate Management (Management Rules) Regulation 1999* guides the granting of permits for such activities. Consequently, in the event that the proposed activity proceeds clarification of the location of works and associated activities in relation to the boundary of Cape Byron Marine Park, which commences at Mean High Water Mark, will be required to determine how the activity will be regulated under MEM legislation.

Another aspect of this proposal that requires clarification is how rock walls at these locations have affected the beach and foreshore dynamics of Belongil Beach in the past, and projections of how such rock walls will affect these dynamics into the future. Areas that need to be examined in such an analysis include down drift areas from the rock walls, especially Belongil Creek mouth, the estuary and its environs which are of concern principally due to the presence of resident and migratory shorebirds in the vicinity of the creek mouth. Some of these birds are threatened species protected under the *Threatened Species Conservation Act 1995* while others are international migratory species protected under the *Commonwealth Environment Protection and Biodiversity Conservation Act 1999*. Some of these species have nested in and around the Belongil Creek estuary in recent years.

It is also worth noting that Byron Shire Council is in the process of developing a Coastal Zone Management Plan (CZMP) for the Byron Bay embayment. It is therefore considered that any such works intended to protect waterfront property should be considered as part of the CZMP rather than being considered on an individual "ad hoc" basis.

Another planning instrument that requires consideration is State Environmental Planning Policy 71 which aims to "ensure that the visual amenity of the coast is protected." Consequently, due consideration should be given to the visual impact of the proposal, and any impact on the scenic qualities of Belongil Beach and opportunities for future generations. Opportunities for the general public to access, appreciate and enjoy the beach at these locations should not be affected by any consented activities.

If you have any queries regarding the *Fisheries Management Act 1994* comments, please contact Jonathan Yantsch, Fisheries Manager, Aquatic Ecosystems (North Coast) on 0447 537 168 or [jonathan.yantsch@dpi.nsw.gov.au](mailto:jonathan.yantsch@dpi.nsw.gov.au). If you have any queries regarding the *Marine Estate Management Act 2014* comments, please contact Andrew Page, Manager Cape Byron Marine Park on 0439 485 266 or [andrew.page@dpi.nsw.gov.au](mailto:andrew.page@dpi.nsw.gov.au).

Yours sincerely

Jonathan Yantsch  
**Fisheries Manager, Aquatic Ecosystems  
(North Coast)**  
Authorised delegate of the Minister for  
Primary Industries under s199

Andrew Page  
**Manager, Cape Byron Marine Park**  
Delegate of the Department of Primary  
Industries - Marine Parks