



OUR REF: PN17/287 (Ext 1)

16 August 2019

The General Manager
Byron Shire Council
PO Box 219
MULLUMBIMBY NSW 2482
Via email: simon.millichamp@byron.nsw.gov.au

Attention: Mr Simon Millichamp

Dear Mr Millichamp

Re: Permit # PN17/287 (Ext 1) for dredging and reclamation works associated with the construction of the Byron Town Centre Road Bypass within SEPP14 Coastal Wetland, Cumbebin Wetland, Road Reserve adj Lot 4729 DP 1228104, Byron Bay, Byron LGA

I refer to your application dated 1 September 2017 for a permit under Part 7 of the *Fisheries Management Act 1994* (FM Act), and your subsequent request for an extension to the expiry date of issued permit PN17/287. DPI Fisheries, a division within the Department of Primary Industries, assesses applications for dredging and reclamation works, harm marine vegetation and obstruction of fish passage in accordance with Part 7 of the FM Act and the *Policy and Guidelines for Fish Habitat Conservation and Management (2013 Update)*.

DPI Fisheries' original assessment of the application considered the test of significance provided in the completed permit application form for the proposed works as well as the Construction Environmental Management Plan titled *Byron Bay Bypass Construction Environmental Management Plan* and dated August 2017. The Department determined that the proposed works were unlikely to significantly affect threatened species, populations or ecological communities listed under Federal and State legislation (EPBC Act, TSC Act, FM Act) or their habitats, and consequently the proposed works did not require a referral to the Commonwealth or a licence to harm.

Please find enclosed a revised permit, specifically, an extension to the expiry date of the original permit, under Part 7 of the FM Act for dredging and reclamation works associated with the construction of the Byron Town Centre Road Bypass within SEPP14 Coastal Wetland, Cumbebin Wetland, Road Reserve adj Lot 4729 DP 1228104, Byron Bay, Byron LGA.

Please carefully read and note the conditions included in the permit. **If you agree that all the conditions are reasonable, appropriate and achievable, you must sign and date the attached sheet (Acceptance of Conditions) and return it to the Contact Officer as soon as possible. If you believe that you cannot comply with all the conditions then you must not commence work.** Instead, you should contact the Contact Officer listed on the first page of the permit so that your concerns can be considered.

If you intend to have the work undertaken by a contractor, please ensure that the contractor receives a full copy of the permit and understands the importance of abiding by the conditions. As the permit holder and proponent of the works, Council is responsible for ensuring that all conditions are fully adhered to. **Breaching a condition of a permit can incur an on-the-spot fine of up to \$500 or up to \$11,000 through the local court pursuant to clause 259 of the Fisheries Management (General) Regulation 2010.**

The extent of work is to be restricted to that outlined in the application and plans submitted to DPI Fisheries. **If for any reason, other works are required, or the works need to be extended to other areas, you must seek specific approval beforehand.** DPI Fisheries will require justification for these variations and may charge additional assessment fees as outlined in the permit application. Similarly **please note the expiry date on the permit.** If the works are not completed by the expiry date you will need to obtain an extension. **Requests to renew a permit before the expiry date will not incur a fee. Requests to renew a permit that has expired within the last 3 months will incur a \$179 fee. Permits that have expired more than 3 months previously will need to be reapplied for.**

DPI Fisheries places particular importance upon the need to minimise the harm to the natural environment both at the worksite and adjacent waters. We expect implementation of Best Management Practice with respect to erosion and sediment control and aquatic vegetation management. This includes:

- Work scheduling (e.g. installation of protective measures before earthworks commence, suspension of works during rain etc.);
- Deployment of protective measures (e.g. silt curtains, site drainage, separation of “clean” and “dirty” water, silt stop fencing, check dams, sediment traps etc.); and
- Constant maintenance of protective measures (e.g. replacing torn silt-stop fencing, replacing silt-stop fencing which has fallen down or been knocked over, removing accumulated sediment etc.).

Please refer to the publication Landcom (2004), *Managing Urban Stormwater: Soils and Construction* (4th Edition), commonly referred to as “The Blue Book” for guidance (www.environment.nsw.gov.au/resources/water/BlueBookVol1.pdf).

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.

If you have any queries, please contact Jonathan Yantsch, Senior Fisheries Manager, Coastal Systems (North Coast) on 02 6626 1375 or jonathan.yantsch@dpi.nsw.gov.au.

Yours sincerely



Jonathan Yantsch
Senior Fisheries Manager, Coastal Systems (North Coast)
Authorised delegate of the Minister for Primary Industries



Department of Primary Industries

Cc: Patrick Plunkett, **Richmond District Fisheries Officer**
Brad Harrison, **Fisheries Conservation Compliance Officer**
Lisa Hansberry, **Byron Shire Council**

**Permit under Part 7 of the
FISHERIES MANAGEMENT ACT 1994**

Permit	Permit Number	PN17/287 (Ext 1)
	Expiry Date	Unless cancelled or suspended sooner, this permit or updated variations shall remain in force until 13 September 2021
Permit Holder:	Byron Shire Council PO Box 219 MULLUMBIMBY NSW 2482 Responsible Officer: Simon Millichamp Mob: 0439 746 801 Email: simon.millichamp@byron.nsw.gov.au	
Permit Area:	Within a 1.21ha area of the Cumbebin Wetland, Road Reserve adj Lot 4729 DP 1228104, Byron Bay, Byron LGA (Refer to Attachment 1)	
Permit Activity:	Dredging and reclamation works, specifically, placement of approximately 30,00m ³ of fill within SEPP14 Coastal Wetlands in a footprint generally 600m x 20m x 2.5m for the purpose of constructing a new road as proposed in your application of 1 September 2017	
Departmental Contact Officer:	Jonathan Yantsch Senior Fisheries Manager, Coastal Systems (North Coast) 1243 Bruxner Hwy WOLLONGBAR NSW 2477 Ph: 0447 537 168 Email: jonathan.yantsch@dpi.nsw.gov.au	

This permit is subject to the following conditions:

ADMINISTRATIVE CONDITIONS

1. The attached **Acceptance of Conditions** form must be completed and returned to ahp.central@dpi.nsw.gov.au before any works authorised by this permit commence.
Reason – To remove any doubt that the Permit Holder understands and accepts the Conditions before work commences.
2. The attached **Works Notification** form must be completed and sent to ahp.central@dpi.nsw.gov.au and the District Fisheries Officer at Ballina (Phone: 02 6618 1800, mobile: 0417 692 608, email: patrick.plunkett@dpi.nsw.gov.au) at least three (3) days BEFORE the commencement of works authorised by this permit.
Reason - To ensure that local DPI Fisheries staff are aware that works authorised by this permit are about to commence.

3. The permit holder must ensure that all works authorised by this permit are restricted to the permit area and are undertaken in a manner consistent with those described in the application made to DPI Fisheries dated 1 September 2017. In particular, all the actions and recommendations outlined in the CEMP titled *Byron Bay Bypass Construction Environmental Management Plan* and dated August 2017 are to be followed. Other works which have not been described, excepting those activities required by this permit, are not to be undertaken.
Reason – This permit has been granted following an assessment of the potential impacts of the described works upon the aquatic and neighbouring environments. Other works, which were not described in the application have not been assessed and may have significant adverse impacts.
4. This permit (or a true copy), a copy of the determined Part V Assessment, Development Application, Construction Environmental Management Plan (CEMP) and other authorities such as landholder's consent must be carried by the permit holder or sub-contractor operating on-site at all times during work activity in the permit area.
Reason – A DPI Fisheries Compliance Officer may wish to check compliance of works with imposed conditions.

SEDIMENT AND EROSION CONTROL

5. Erosion and sediment mitigation devices are to be erected in a manner consistent with the currently accepted Best Management Practice (i.e. Landcom [2004], *Managing Urban Stormwater: Soils and Construction* [4th Edition]) to prevent the entry of sediment into the waterway, or mobilisation of sediment within the waterway, **prior to** any earthworks being undertaken. **These erosion and sediment devices are to be maintained in good working order for the whole duration of the works and subsequently until the worksite has been stabilised and the risk of erosion and sediment movement from the site is minimal.**
Reason – To ensure that sediment generated by the exposure of soil is not transported into the main water body.
6. The worksite has potential for acid sulfate soils. Excavated soil is to be managed in accordance with the *Managing Acid Sulfate Soil (EPA, 1995)*, *Acid Sulfate Soil Manual* (Acid Sulfate Soil Management Advisory Committee 1998) and consistent with best management practice outlined in *Restoring The Balance: Guidelines for Managing Floodgates and Drainage Systems on Coastal Floodplains* available at: www.dpi.nsw.gov.au/_data/assets/pdf_file/0007/167875/restoring-balance-guidelines.pdf
Reason – Avoid oxidisation, and or appropriately treating potential acid sulfate soils to minimise impacts on aquatic ecosystems.

DEWATERING PLAN

7. Dewatering at the worksite is to be undertaken consistent with accepted Best Management Practice (i.e. Landcom [2004], *Managing Urban Stormwater: Soils and Construction* [4th Edition]). In addition, mitigation controls such as a sediment fence between the sump water release outlet and the waterway are to be employed to ensure that downstream water quality is not adversely affected.
Reason – Minimise turbidity impacts from the site on adjacent waters.

WORK IN WATERS

8. Prior to use at the site, machinery is to be appropriately cleaned, degreased and serviced. Emergency Spill Kits appropriate for containing and cleaning up petroleum and solvent product spills within waterways are to be available on site at all times during works.
Reason – To reduce the threat of an unintended pollution incident impacting upon the aquatic environment.

AVOIDING MOVING OR HARMING SNAGS AND RIPARIAN AND AQUATIC VEGETATION

9. When working near aquatic vegetation¹ on water land² these areas are to be identified and appropriately delineated as “No Go” areas (with the aim of avoiding harm to these areas). Removing, moving or harming aquatic vegetation on water land outside the permit area approved under the authority of this permit is not permitted. Such removal, harm or movement caused to aquatic vegetation is to be documented and reported to the contact officer who may direct that the removed, harmed or damaged aquatic vegetation on water land be restored.
Reason – To ensure that impacts on aquatic habitats and the riparian zone are minimised.
10. Material storage and stockpiling is not to be undertaken on water land, or riparian and aquatic vegetation. Stockpiling must be undertaken in a manner to avoid harm to these types of vegetation or water land. Stockpiles should also be located away from adjacent water land. Stockpiles and dewatering areas should be appropriately controlled by sediment fencing or other materials prescribed in the “Blue Book” (i.e. Landcom 2004, *Managing Urban Stormwater: Soils and Construction* [4th Edition]) to ensure sediments do not enter the waterway.
Reason – To ensure that impacts on aquatic habitats and the riparian zone are minimised. “Degradation of native riparian vegetation along NSW water courses” is listed as a Key Threatening Process under the provisions of the Fisheries Management Act 1994.
11. On completion of the works, the worksite is to be rehabilitated and stabilised including:
- Removal of surplus construction materials and temporary structures (other than silt fences and other erosion and sediment control devices) installed during the course of the works.
- Appropriate maintenance of erosion and sediment control devices until the vegetation has successfully established and the site has stabilised.
Reason – To ensure that habitats are restored as quickly as possible, public safety is not compromised, aesthetic values are not degraded and sediment inputs into the waterway are reduced.

¹ “**Aquatic vegetation**” is defined in the *Fisheries Management (General) Regulation 2010* as ‘native vegetation that inhabits freshwater but does not include noxious weeds within the meaning of the *Noxious Weeds Act 1993*.’

² “**Water land**” is defined in the *Fisheries Management Act 1994* and means land submerged by water:

- a) whether permanently or intermittently, or
- b) whether forming an artificial or natural body of water,

and includes wetlands and any other land prescribed by the regulations.

Wetlands include marshes, mangroves, swamps, or other areas that form a shallow body of water when inundated intermittently or permanently with fresh, brackish or salt water, and where the inundation determines the type and productivity of the soils and the plant and animal communities.

COMPENSATORY / OFF-SET WORKS

12. Offsets for the unavoidable impacts to 1.21ha of SEPP 14 Coastal Wetland are to be undertaken in accordance with the NSW Office of Environment and Heritage BioBanking Statement (Statement ID 19).

FISH KILL CONTINGENCY

13. A visual inspection of the waterway for dead or distressed fish (indicated by fish gasping at the water surface, fish crowding in pools or at the creek's banks) is to be undertaken twice daily during the works. **Observations of dead or distressed fish are to be immediately reported to the Contact Officer by the Permit Holder.** In such a case all works are to cease until the issue is rectified and approval is given to proceed. If requested, the Permit Holder is to commit resources to the satisfaction of the Contact Officer for an effective fish rescue, if in the view of that officer, a fish kill event is imminent and likely to occur within or adjacent to the works area due to conditions associated with weather, water quality and other parameters.
Reason – DPI Fisheries needs to be aware of fish kills so that it can assess the cause and mitigate further incidents in consultation with relevant authorities. They are also potentially contentious incidents from the public perspective. Work practices may need to be modified to reduce the impacts upon the aquatic environment.

IMPORTANT NOTE:

INCONSISTENCY BETWEEN DOCUMENTS

In the event of any inconsistency between the conditions of this approval and:

- the drawings / documents referred to above, the conditions of this approval prevail to the extent of the inconsistency;
- any Government publication referred in this permit, the most recent document, shall prevail to the extent of the inconsistency; and
- the proponent's mitigation measures outlined in the application, the conditions of this approval prevail to the extent of the inconsistency.

STOP WORK ORDERS

A Fisheries Officer or other appropriate delegate who has reasonable cause to suspect that the conditions of this permit have not been complied with, **may order the work to stop immediately**. The order may be given to the permit holder or any person who informs the officer that they are acting in any capacity on behalf of the permit holder. Any damage caused to the habitat outside the specified permit area, or the carrying out of works not in accordance with the conditions specified in this permit and/or the application and that were accepted by the permit holder, could result in a breach of the *Fisheries Management Act 1994* or *Regulations*, and penalties of up to \$220,000 may apply. Orders may also be made requiring work to rectify any damage caused by unauthorised works. Failure to abide by permit conditions may incur a \$500 on-the-spot fine per breach pursuant to clause 259 of the *Fisheries Management (General) Regulations 2010*.

Authorised:



Jonathan Yantsch
Senior Fisheries Manager, Coastal Systems (North Coast)
Authorised delegate of the Minister for Primary Industries

16 August 2019

Attachment 1

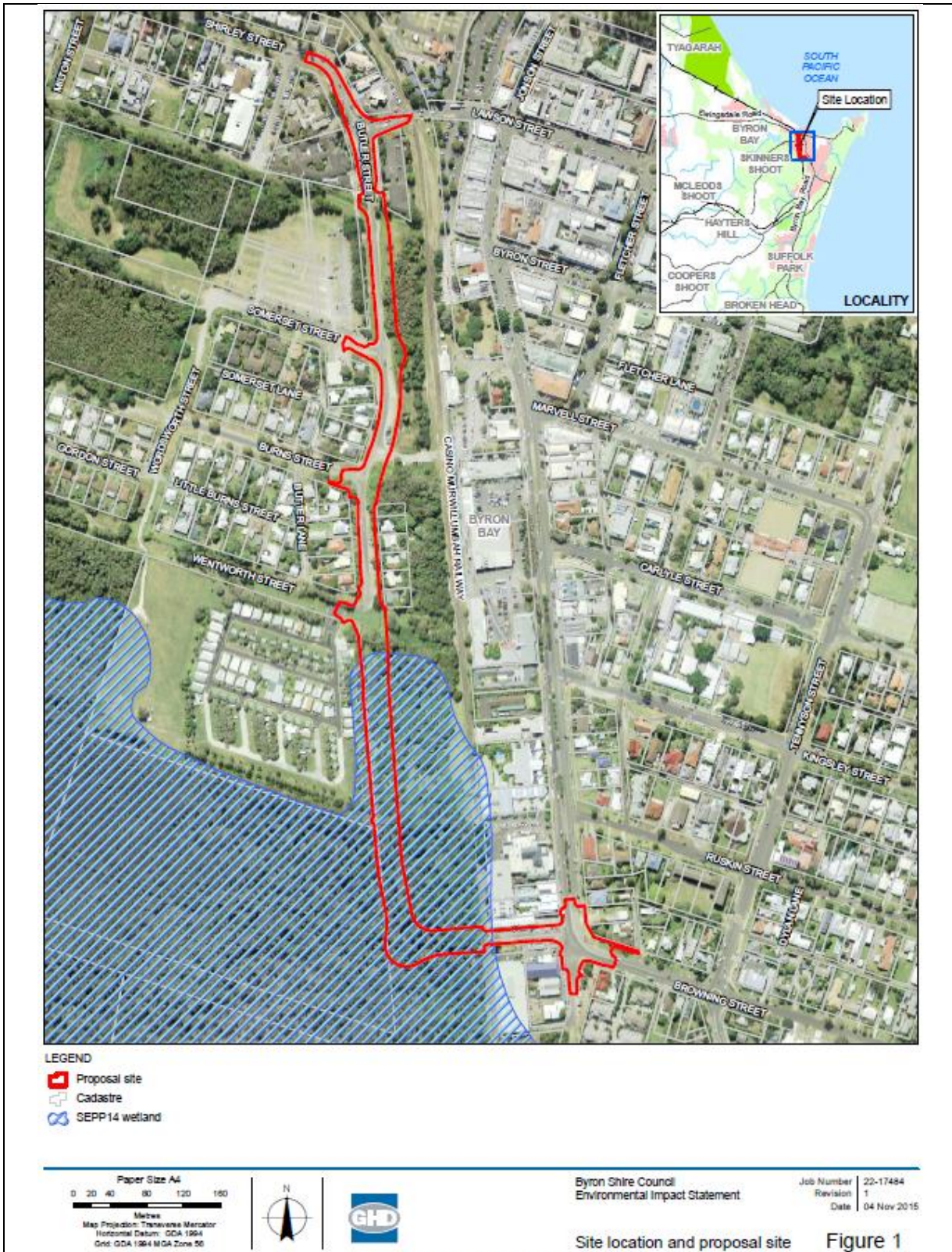


Figure 1: Plan showing location of works including impacts to SEPP14 Coastal Wetlands as described within the *Permit Area* section above.



**Acceptance of Conditions Form specified in
Permit No. PN17/287 (Ext 1) issued under Part 7 of the
*Fisheries Management Act 1994***

PLEASE COPY THIS PAGE AND RETURN TO DPI FISHERIES

In reference to Permit No. PN17/287 (Ext 1) for dredging and reclamation works associated with the construction of the Byron Town Centre Road Bypass within SEPP14 Coastal Wetland, Cumbebin Wetland, Road Reserve adj Lot 4729 DP 1228104, Byron Bay, Byron LGA:

I the undersigned, acknowledge that I have read and understood and agree to comply with the conditions specified. I understand that penalties can be imposed for non-compliance with conditions.

Permit Holder's name: _____

Permit Holder's signature: _____

Date: _____

Please COPY AND SIGN this page and email to:

ahp.central@dpi.nsw.gov.au



**Commence Works Notification Form specified in
Permit No. PN17/287 (Ext 1) issued under Part 7 of the
*Fisheries Management Act 1994***

PLEASE COPY THIS PAGE AND RETURN TO DPI FISHERIES

**In reference to Permit No. PN17/287 (Ext 1) for dredging and reclamation works associated
with the construction of the Byron Town Centre Road Bypass within SEPP14 Coastal
Wetland, Cumbebin Wetland, Road Reserve adj Lot 4729 DP 1228104, Byron Bay, Byron
LGA:**

Commence Works Notification Form

(Note: to be completed and returned 3 days before commencement of works)

Permit Holder's Name: _____

Site Location: _____

Works _____

Commencement Date: _____

Comments:

Project Manager: _____ Date: _____

Please COPY AND SIGN this page and email to:

ahp.central@dpi.nsw.gov.au
patrick.plunkett@dpi.nsw.gov.au