

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2022/0322
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Responsible Officer:	Kye Miles
Land to be developed (Address):	Lot CP SP 1977, 1114 - 1118 Pittwater Road COLLAROY NSW 2097
Proposed Development:	Modification of Development Consent DA2017/0947 granted for Construction of coastal protection works
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes, under State Environmental Planning Policy (Resilience and Hazards) 2021
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	The Owners of Strata Plan 1977
Applicant:	Horton Coastal Engineering Pty Ltd

Application Lodged:	27/06/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	06/07/2022 to 20/07/2022
Advertised:	06/07/2022
Submissions Received:	2
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

Modification of Development Consent DA2017/0947 granted for Construction of coastal protection works. The modifications comprise;

- Reallocating the seawall entirely within the subject site.
- Various changes to engineering notes, as detailed within the statement of modification.
- Modification to approved conditions*.

**Refer to 'ASSESSMENT OF PROPOSED CHANGES TO THE CONDITIONS' for detailed commentary.*

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 6.2 Earthworks
 Warringah Local Environmental Plan 2011 - 6.5 Coastline hazards
 Warringah Development Control Plan - B9 Rear Boundary Setbacks
 Warringah Development Control Plan - D3 Noise
 Warringah Development Control Plan - E7 Development on land adjoining public open space

SITE DESCRIPTION

Property Description:	Lot CP SP 1977 , 1114 - 1118 Pittwater Road COLLAROY NSW 2097
Detailed Site Description:	<p>The subject site is located on the eastern side of Pittwater Road and contains the residential flat building known as 'Flight Deck'.</p> <p>Collaroy Beach is located directly to the east, the residential flat building known as 'Shipmates' is to the north and a private property (No. 1112 Pittwater Road) is located to the south.</p> <p>The site has an area of approximately 2,890sqm and is generally flat, with a slope down towards the beach at the rear (eastern edge) of the site.</p> <p>The site contains a 13 storey residential flat building with garaged and open parking spaces, associated paved areas and minimal landscaping. Driveway access is obtained from Pittwater Road.</p>

The site also contains a loose rock barrier near the eastern boundary that previously provided some protection from coastal erosion during storms. This rock barrier was damaged during the large storms in June 2016.

The surrounding development consists of detached dwellings, residential flat buildings, an arterial road and public open space.

Map:



SITE HISTORY

Storm Event and Severe Erosion

In June 2016, a large storm caused severe coastal erosion to the eastern side (i.e. the beach side) of the subject site.

Prelodgement Meeting (PLM2017/0030)

A prelodgement meeting was held on 3 April 2017 to discuss the construction of coastal protection works on and over the eastern boundary of the site.

Relevant comments provided in the minutes included:

"Council is supportive of the proposal in concept. Fully detailed plans and reports, as listed above, will need to be submitted for assessment."

Please ensure that all plans and supporting documentation include sufficient detail so that any member of the public can clearly understand the design and characteristics of the proposal (particularly as it relates to it being designed as a predominantly sand covered structure).

As mentioned above, it is strongly recommended that discussions with the Crown occur soon to obtain owners consent to avoid delays in any determination."

Development Application (DA2017/0947)

Application for the construction of coastal protection works, in the form of a rock revetment structure. The NBLPP granted a DCC approval on 19 June 2019.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2017/0947, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>The consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2017/0947 for the following reasons:</p> <ul style="list-style-type: none"> • The proposed modifications largely relate to condition changes. • The design refinements include removing any encroachment upon the adjoining crown land.
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval	Development Application DA2017/0947 did not require concurrence from the relevant Minister, public authority or approval body.

Section 4.55 (2) - Other Modifications	Comments
proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on “Notification & Submissions Received” in this report.

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to satisfying the S4.55 provisions of the EP&A Act.</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p>Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
<p>Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</p>	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
<p>Section 4.15 (1) (c) – the suitability of the site for the development</p>	<p>The site is considered suitable for the proposed development.</p>
<p>Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</p>	<p>See discussion on “Notification & Submissions Received” in this report.</p>
<p>Section 4.15 (1) (e) – the public interest</p>	<p>No matters have arisen in this assessment that would justify the refusal of the application in the public interest.</p>

COASTAL MANAGEMENT ACT 2016

Section 27 of the Coastal Management Act 2016 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,

(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.

Comment

A detailed assessment of Section 27 was carried out for the original application. In summary, consent was granted by Council subject to conditions, as it was satisfied;

- That the works will not, over the life of the works, unreasonably limit or be likely to unreasonably limit public access to or the use of the beach.
- That the proposed works will not pose a risk to public safety for the entirety of the certified design life (60 years).
- That there are satisfactory arrangements for the restoration of the 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, and for the maintenance of the works.

The modification does not include any significant changes to the design of the works. In fact, the proposed modification will remove any encroachment upon public land, as the coastal protection works will be contained entirely within the property boundaries. It is noted that modifications are proposed to the conditions (Maintenance Obligations and Public Safety and Time Limited Consent) that were imposed to satisfy Section 27 of the Coastal Management Act 2016, however, these are minor wording changes to better reflect recent Seawall consents issued by Council.

In this regard, no further assessment, beyond that already conducted in the report for DA2017/0947, is required.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 06/07/2022 to 20/07/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 2 submission/s from:

Name:	Address:
Fred Lambrusco	1 / 1161 - 1171 Pittwater Road COLLAROY NSW 2097

Name:	Address:
Glenn Robert Wood	1126 Pittwater Road COLLAROY NSW 2097

The following issues were raised in the submissions:

- **Construction access**

The above issues are addressed as follows:

- **Construction access**

The submissions raised concerns that proposal will unreasonably restrict public access during the construction of the coastal protection works.

Comment:

The parent application (DA2017/0947) included conditions for a Construction Management Plan to be prepared prior to the issue of the Construction Certificate. This condition includes provisions for construction access across public parks or reserves, subject to approval from Council. This will ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process in a manner that respects adjoining owner's property rights and protects amenity in the locality, without unreasonable inconvenience to the community

REFERRALS

Internal Referral Body	Comments
NECC (Coast and Catchments)	<p>The application seeks a modification to development consent DA2017/0947 for the construction of upgraded coastal protection works. It proposes to move the approved works (rock revetment) landward and off Crown Land. This would result in the coastal protection works being contained entirely within the boundaries of the property. This results in a better outcome for public access and reduces the interaction of the works with coastal processes.</p> <ul style="list-style-type: none"> • The proposed modification to the siting of the works is supported. <p>The application also seeks modification to a number of drawings and conditions associated with the consent to DA2017/0947. Generally all requested changes to approved drawings and conditions are supported with the exception of:</p> <ul style="list-style-type: none"> • Proposed amendment to Condition 4 not a coastal referral matter, no comment • Proposed modification to condition 38 not supported: Reason – Failure of the works may result in additional temporary loss

Internal Referral Body	Comments
	<p>of sand during a storm event that may require actions such a beach scraping to rectify.</p> <p>Additional conditions relating to the temporary bund design, construction and maintenance have been added to clarify requirements and reflect improvements identified from previous construction of coastal protection works.</p>
NECC (Development Engineering)	<p>The proposed modification to relocate the seawall structure to be wholly within the site and the proposed modification to conditions does not alter the original assessment of the application by Development Engineering.</p> <p>No modified or additional conditions of consent recommended.</p>
Parks, reserves, beaches, foreshore	<p>The application is for the modification of development consent DA2017/0947 for the construction of upgraded coastal protection works. The modification proposal is to remove the portion of proposed works upon Crown Land under development consent DA2017/0947, and to contain the works instead wholly within the boundaries of the property.</p> <p>Parks Reserves and Foreshores Referral was not sought at development application under DA2017/0947, and the modification is therefore assessed in terms of the impact to the foreshore of the approved development against the proposed modification.</p> <p>Public access to the foreshore is not impacted by the proposed modification, and the proposed modification, as viewed from the foreshore is essentially the same as the approved development works and with no encroachment into the public foreshore, and as such Parks, Reserves and Foreshores raise no concerns with the modification proposal.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

The site is subject to Chapter 2 of the SEPP. Accordingly, an assessment under Chapter 2 has been carried out as follows:

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

- 1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:
 - a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,
 - b) coastal environmental values and natural coastal processes,
 - c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,
 - d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,
 - e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
 - f) Aboriginal cultural heritage, practices and places,
 - g) the use of the surf zone.

Comment:

The modification has been assessed by Council's internal coastal experts, who raised no objection subject to conditions.

The modification maintains the most appropriate design (a rock revetment structure) for this site to align with the adjoining coastal protection works, minimise the impact on coastal processes, maximise the usable space for the private property owners, and minimise the visual impact on the beach.

In addition, the approved conditions relating to public safety, access to the beach, and Aboriginal cultural heritage will remain under this modification application.

- 2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:
 - a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or
 - b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:

Based on the above factors, Council is satisfied that the proposal is designed, sited and will be

managed to avoid an adverse impact upon the matters referred to in subsection (1).

Division 4 Coastal use area

2.11 Development on land within the coastal use area

- 1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:
 - a) has considered whether the proposed development is likely to cause an adverse impact on the following:
 - i) existing, safe access to and along the foreshore, beach, headland or rock
 - ii) platform for members of the public, including persons with a disability,
 - iii) overshadowing, wind funnelling and the loss of views from public places to
 - iv) foreshores,
 - v) the visual amenity and scenic qualities of the coast, including coastal headlands, Aboriginal cultural heritage, practices and places, cultural and built environment heritage, and
 - b) is satisfied that:
 - i) the development is designed, sited and will be managed to avoid an adverse
 - ii) impact referred to in paragraph (a), or
 - iii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or if that impact cannot be minimised—the development will be managed to mitigate that impact, and
 - c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

(a) The modified works are located entirely within private land and will not have an unreasonable impact on the public access to the beach. The modified works are generally at the height of the fore-dune and will not cause unreasonable impacts to the visual amenity and scenic qualities of the coast, or any unreasonable overshadowing, wind funnelling or the loss of views from public places to the foreshore. Conditions of consent have been included to protect public safety, access to the beach, and Aboriginal cultural heritage.

(b) The works are the best fit for the circumstances of the site and the overall alignment of works along Collaroy/Narrabeen Beach, ensuring a contiguous wall, best suited to cause the least impact on coastal processes. The impacts from the works will be managed by the conditions of consent, ensuring on-going maintenance and action in the event of a storm that causes any damage to the works.

(c) The coastal protection works will link with other protection works to the north and south that, overall, run for approximately 1.5km along Collaroy/Narrabeen Beach. The proposed works will fit with this overall alignment, ensuring a contiguous wall, best suited to cause the least impact on coastal processes.

Division 5 General

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.

Comment:

The modification works have been assessed by Council's internal coastal experts who have confirmed that, subject to conditions, the proposed development is not likely to cause increased risk of coastal hazards.

2.13 Development in coastal zone generally—coastal management programs to be considered

Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.

Comment:

The Coastal Zone Management Plan for Collaroy-Narrabeen Beach and Fishermans Beach applies to the subject site and was gazetted in the Government Gazette of the State of New South Wales on 19 July 2013.

The modified coastal protection works are consistent with the relevant provisions of the certified coastal management program.

As such, it is considered that the application complies with the requirements of Chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021.

SEPP (Planning Systems) 2021

Schedule 6, part 8A of State Environmental Planning Policy (Planning Systems) 2021 provides that the following development is regionally significant development to which the regional planning panel (which in this case is the Sydney North Planning Panel) is the consent authority for the following:

Schedule 6

8A Certain coastal protection works

(1) The following 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—

(a) 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,

(b) development for the purpose of coastal protection works carried out by or on behalf of a public authority (other than development that may be carried out without development consent under clause 19(2)(a) of State Environmental Planning Policy (Coastal Management) 2018).

(2) Words and expressions used in this section have (in relation to coastal protection works) the same meaning as they have in State Environmental Planning Policy (Coastal Management) 2018.

Comment

Notwithstanding the provisions of Clause 8A of Schedule 6 of the SEPP, it is noted that with regard to the requirements of 8(1)(a) above, the works are proposed by a person other than a public authority and are coastal protection works which are otherwise identified and allowed for within the Council's certified coastal management program. As such, the proposed development as to be modified, is not regionally significant development to which the Sydney North Planning Panel would be the consent authority.

Warringah Local Environmental Plan 2011

Is the development permissible?	No
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	Complies
Height of Buildings:	8.5m	The coastal protection works will sit at a maximum RL of 6.0m AHD.	No change	N/A

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	N/A
5.3 Development near zone boundaries	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes
6.5 Coastline hazards	Yes

Detailed Assessment

6.2 Earthworks

The objectives of Clause 6.2 - 'Earthworks' require development:

- (a) to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land, and
- (b) to allow earthworks of a minor nature without requiring separate development consent.

In this regard, before granting development consent for earthworks, Council must consider the following matters:

- (a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality

Comment: The modified proposal is unlikely to unreasonably disrupt existing drainage patterns and soil stability in the locality.

- (b) the effect of the proposed development on the likely future use or redevelopment of the land

Comment: The modified proposal will not unreasonably limit the likely future use or redevelopment of the land.

(c) the quality of the fill or the soil to be excavated, or both

Comment: The excavated material will be processed according to the Waste Management Plan for the development. A condition was included in the recommendation of the original report requiring any fill to be of a suitable quality.

(d) the effect of the proposed development on the existing and likely amenity of adjoining properties

Comment: The proposed earthworks will not result in unreasonable amenity impacts on adjoining properties. Conditions have been included in the recommendation of this report to limit impacts during excavation/construction.

(e) the source of any fill material and the destination of any excavated material

Comment: The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

(f) the likelihood of disturbing relics

Comment: Suitable conditions were included in the original consent to protect any uncovered relics during the construction of the coastal protection works.

(g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area

Comment: The suitable conditions have been imposed to avoid any adverse impacts upon the surrounding environmentally sensitive areas.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WLEP 2011, WDCCP and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

6.5 Coastline hazards

Under this clause, development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:

(a) will not significantly adversely affect coastal hazards, and

Comment: The modified development has been assessed by Council's Coastal Engineers. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development will not significantly adversely affect coastal hazards.

(b) will not result in significant detrimental increases in coastal risks to other development or properties, and

Comment: Conditions to ensure appropriate integration with adjoining private land have been included in the recommendation. As such, the proposal will not result in significant detrimental increases in coastal risks to other development or properties.

(c) will not significantly alter coastal hazards to the detriment of the environment, and

Comment: The modified development has been assessed by Council's Coastal Engineers. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development will not significantly alter coastal hazards to the detriment of the environment.

(d) incorporates appropriate measures to manage risk to life from coastal risks, and

Comment: The modified development has been assessed by Council's Coastal Engineers. The Engineers have confirmed that the works, subject to conditions, are consistent with the Collaroy-Narrabeen Beach Coastal Protection Works Specifications. Therefore, Council is satisfied that the development incorporates appropriate measures to manage risk to life from coastal risks.

(e) avoids or minimises exposure to coastal hazards, and

Comment: The coastal protection works will minimise exposure to coastal hazards through the appropriate location and integration of the works with adjoining protection works. The wall is designed to only come into effect during large coastal storms.

(f) makes provision for relocation, modification or removal of the development to adapt to coastal hazards and NSW sea level rise planning benchmarks.

Comment: Actions required to retrofit works have been identified. These actions are recommended to be conditioned as part of a maintenance plan. Therefore, Council is satisfied that the development makes provision for relocation, modification or removal of the development to adapt to coastal hazards and NSW sea level rise planning benchmarks.

(4) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the foundations of the development have been designed to be constructed having regard to coastal risk.

Comment: The modified development has been assessed by Council's Coastal Engineers. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the foundations of the development have been designed to be constructed having regard to coastal risk.

Warringah Development Control Plan

Built Form Controls

Standard	Requirement	Approved	Proposed	Complies
B1 Wall height	7.2m	6.0m AHD	No change	N/A
B3 Side Boundary Envelope	4m - North	No encroachments	No change	N/A
	4m - South	No encroachments	No change	N/A
B5 Side Boundary Setbacks	0.9m - North	Nil	No change	N/A
	0.9m - South	Nil	No change	N/A
B7 Front Boundary Setbacks	6.5m - West	Pittwater Road - Minimum of 43.38m	No change	N/A

B9 Rear Boundary Setbacks	6m - East	The coastal protection wall is proposed across the rear boundary and onto adjacent crown land.	The coastal protection wall is proposed across the rear boundary	No
D1 Landscaped Open Space and Bushland Setting	40%	Approximately 3.1% (88.81sqm)	No change	N/A

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	No	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D3 Noise	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E4 Wildlife Corridors	Yes	Yes
E5 Native Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E7 Development on land adjoining public open space	Yes	Yes
E9 Coastline Hazard	Yes	Yes

Detailed Assessment

B9 Rear Boundary Setbacks

The original development application for the coastal protection works was approved with variations to rear setback. The approved variations under DA2017/0947 include the proposed seawall across the rear boundary and onto adjacent crown land. The modification proposes to remove the encroachment onto the adjacent crown land.

As the proposal seeks to increase upon the approved rear setback control, the variation to the control as detailed in the assessment of DA2017/0947 is considered relevant.

D3 Noise

The proposal seeks to extend the approved construction hours for DA2017/0947. These extended construction hours are required to fast-track the works, due to the risk of the sites being more exposed to coastal erosion while the works are being undertaken. Suitable conditions have been imposed to

ensure essential construction works are expedited, while mitigating the amenity impacts of noise on residents.

E7 Development on land adjoining public open space

Merit consideration:

The development is considered against the underlying Objectives of the Control as follows:

- *To protect and preserve bushland adjoining parks, bushland reserves and other public open spaces.*

Comment:

The coastal protection works will assist in preserving the public beach and will link with other neighbouring coastal protection works to form a network of coastal protection.

- *To ensure that development responds to its adjacent surroundings to preserve and enhance the natural qualities of the environment.*

Comment:

The coastal protection works will link with the neighbouring private coastal protection works. The proposed works will form part of a continuous 1.3km length of protection works and includes a revetment design to minimise visual impacts.

From a coastal engineering and processes perspective, this is the ideal outcome in these circumstances, given the demolition of all development on the foredune is not a reasonable proposition.

In this regard, the proposed works will be the best option to rebuild and enhance the natural qualities of this environment.

- *Development on land adjoining open space is to complement the landscape character and public use and enjoyment of the adjoining parks, bushland reserves and other public open spaces.*

Comment:

As previously discussed, the works will complement neighbouring protection works, help preserve private and public land and ensure the beach is usable for longer periods of time (due to less damage during large coastal storms).

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in section 1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

Section 7.12 contributions were levied on the Development Application.

ASSESSMENT OF PROPOSED CHANGES TO THE CONDITIONS

The following is an assessment of each condition change proposed by the applicant.

Deletion of Condition 1 - Lawful occupation of the works on Crown Land

The modified seawall no longer encroaches Crown Land.

Comment:

Given the above, the deleted of Condition 1 is recommended.

Modification of Condition 4 (a) - General Requirements

As discussed in 'Part D3 Noise' of this report the applicant's justification for the modification of this condition is acceptable, with consideration of the dynamic working conditions along the coastline. However, it is recommended that the flexible construction hours are tailored more suitably to preserve neighbourhood amenity.

Comment:

Given the above, the modification of Condition 4 (a) is recommended.

Modification of Condition 8 - Maintenance Management Plan for Coastal Protection Works

The applicant's justification for the modification of this condition is:

"please modify this to a condition to be satisfied prior to the issue of the Occupation Certificate, as it has been for the 1150-1168, 1172 and 1174-1182 seawall consents, to allow time to develop and obtain approval for the MMP."

Comment:

The applicant's modification of Condition 8 is acceptable, as it is consistent with recent Seawall consents issued by Council.

Modification of Condition 10 - Maintenance Obligations and Public Safety

The applicant's justification for the modification of this condition is:

"please modify this to a condition to be satisfied prior to the issue of the Occupation Certificate, as it has been for the 1172 and 1174-1182 seawall consents, to allow time to obtain the bank guarantee."

Comment:

The applicant's modification of Condition 10 is acceptable, as it is consistent with recent Seawall consents issued by Council.

Modification of Condition 13 - Construction Management Program

The applicant's justification for the modification of this condition is acceptable to Council's Coastal Engineer.

Comment:

Given the above, the modification of Condition 13 is recommended.

Modification of Condition 15 - Waste Management Plan

The applicant's justification for the modification of this condition is:

"Please modify Condition 15 as follows (as per the 1150-1168 [Mod2020/0439] and 1172 seawall consents, where this wording was applied as a standard Waste Management Plan is not applicable for a unique seawall project)."

Comment:

The applicant's modifications to Condition 15 are acceptable and are recommended.

Modification of Condition 25 - Site Supervision

The applicant's justification for the modification of this condition is acceptable to Council's Coastal Engineer.

Comment:

Given the above, the modification of Condition 25 is recommended.

Modification of Condition 26 - Installation and Maintenance of Sediment Control

The applicant's justification for the modification of this condition is acceptable to Council's Coastal Engineer.

Comment:

Given the above, the modification of Condition 26 is recommended.

Deletion of Condition 30 - Site fencing requirements

The applicant's justification for the modification of this condition is:

"Please delete Condition 30, as it is not practical to install site safety fencing on a beach. This condition was not required in the 1172 and 1174-1182 consents, and was removed as part of Mod2020/0439 for 1150-1168."

Comment:

The applicant's deletion of Condition 30 is acceptable, as it is consistent with recent Seawall consents issued by Council.

Modification of Condition 38 - Ongoing maintenance of the Coastal Protection Works and public safety

Council's Coastal Engineer does not support the modification of this condition, as;

"Failure of the works may result in additional temporary loss of sand during a storm event that may require actions such a beach scraping to rectify."

Comment:

Given the above, the modification of Condition 38 is not recommended.

Deletion of Condition 41 - Compliance with the requirements of the Department of Industry – Crown Land for occupation of public land

The following modification removes the occupation of public land.

Comment:

Given the above, the deletion of Condition 41 is recommended.

Modification of Condition 42 - Time limited consent

The applicant's justification for the modification of this condition is acceptable to Council's Coastal Engineer.

Comment:

Given the above, the modification of Condition 42 is recommended.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2022/0322 for Modification of Development Consent DA2017/0947 granted for Construction of coastal protection works on land at Lot CP SP 1977,1114 - 1118 Pittwater Road, COLLAROY, subject to the conditions printed below:

A. Delete Condition 1 - Lawful occupation of the works on Crown Land.

B. Add Condition 2A, to read as follows:

Condition 2A Modification of Consent - Approved Plans and supporting Documentation

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
S.01 Revision D	10 March 2022	Horton Coastal Engineering Pty Ltd
S.02 Revision D	10 March 2022	Horton Coastal Engineering Pty Ltd
S.03 Revision D	10 March 2022	Horton Coastal Engineering Pty Ltd
S.10 Revision D	10 March 2022	Horton Coastal Engineering Pty Ltd
S.20 Revision D	10 March 2022	Horton Coastal Engineering Pty Ltd

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

Reason: To ensure the work is carried out in accordance with the determination of Council and

approved plans.

C. Modify Condition 4 (a), to read as follows to read as follows:

Condition 4 (a) - General Requirements

Unless authorised by Council:

All works are restricted to:

- 6.30 am to 7.00 pm inclusive Monday to Friday,
- 8.00 am to 6.00 pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

D. Modify Condition 8, to read as follows:

Condition 32A - Maintenance Management Plan for Coastal Protection Works

A Maintenance Management Plan (MMP) is to be prepared for the maintenance of the coastal protection works for their intended design life. The MMP is to be prepared by a suitably qualified coastal engineer and is to be approved by Council in writing prior to issue of the occupation certificate. The MMP must be complied with at all times.

The MMP may be modified from time to time by the agreement of all landowners at the time and with the approval of Council. These modifications to the MMP must also be made (if necessary) each time the design life is extended in accordance with condition 42 (Time limited consent). This is to ensure the MMP continues to be suitable in perpetuity.

Reason: To ensure a plan is in place for the on-going maintenance and adaptation of the works.

E. Modify Condition 10, to read as follows:

Condition 32B - Maintenance Obligations and Public Safety

The owners of 1114 -1118 (SP 1977), Pittwater Road, Collaroy must provide an irrevocable bank guarantee (or other suitable legally binding obligation) to Council prior to the issue of any occupation certificate in the amount of \$1000 per lineal metre of work (based on the length of the seaward property boundary) to undertake maintenance of the coastal protection works in the event that they are damaged as a result of coastal storm, including to undertake any works required to remove any threat to public safety arising from the coastal protection works including the removal of rocks or debris, that have become dislodged from the works, from the public beach and adjacent public land.

In this condition "maintenance" means the restoration of the works to a standard in accordance with the approved plans and specifications following any damage caused by a coastal storm and implementation of the MMP.

The bank guarantee (or other suitable legally binding obligation) is to be replenished if drawn upon and increased to allow for Consumer Price Index (CPI) every 10 years from the date of establishment.

The bank guarantee (or other suitable legally binding obligation) is to be in the favour of Council. The funds may be accessed by the owners, for the undertaking of works referred to in this condition and in the approved MMP, with the written consent of Council.

The bank guarantee is to be released to the landowners at the time, if the coastal protection works are

removed.

Reason: To satisfy the requirements of Section 55M of the Coastal Protection Act 1979 and to ensure the coastal protection works will not pose any threat to public safety.

F. Modify Condition 13, to read as follows:

Condition 13 - Construction Management Plan

A Construction Management Plan is to be prepared. The CMP should include the following:

- (a) The proposed method of access to and egress from the site for demolition, excavation and construction vehicles, including access routes through any Council owned or managed land and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed without Council's Consent being granted;
- (b) The proposed method of loading and unloading demolition, excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site;
- (c) The location and operation of any heavy plant (eg: excavators);
- (d) Provision for all construction materials to be stored on site, at all times, showing the location of excavated materials, construction materials and waste containers during the construction period;
- (e) A Traffic Control Plan for any activities involving the management of vehicle and pedestrian traffic, if required;
- (f) The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve. To minimise the trafficking of sand onto the road;
- (g) The way that the roadway (including any footpath) will be kept in a serviceable condition for the duration of construction.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Council must be notified of start date of works as soon as possible and within a reasonable time prior to the start of works.

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process in a manner that respects adjoining owner's property rights and protects amenity in the locality, without unreasonable inconvenience to the community.

G. Modify Condition 15, to read as follows:

Condition 15 - Waste Management Plan

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with the Approved Plans and Supporting Documentation.

Details demonstrating compliance must be provided to the Certifying Authority prior to the issue of the

Construction Certificate.

Reason: To ensure that any demolition and construction waste, including excavated material, is reused, recycled or disposed of in an environmentally friendly manner.

H. Add Condition 15A, to read as follows:

Condition 15A - Temporary bund design

The design for any temporary bund constructed on the beach to provide protection from coastal processes shall be undertaken by a suitably qualified coastal engineer and submitted to council for approval prior to construction of the bund. The design requirements are to be included in the construction contract.

Reason: To prevent pollution of the beach

I. Add Condition 15B, to read as follows:

Condition 15B - Temporary bund construction

Any temporary bund constructed on the beach to provide protection from coastal processes may only be constructed from sand and suitable rocks present on the beach at the commencement of the works, or suitable rocks imported to site as part of the final coastal protection works. No other construction materials or imported material is to be used in construction of the bund.

Reason: To prevent pollution of the beach.

J. Add Condition 15C, to read as follows:

Condition 15C - Temporary bund maintenance and safety

A maintenance plan shall be prepared for any temporary bund by a suitably qualified coastal engineer and submitted to council for approval. The maintenance requirements are to be included in the construction contract. It is the responsibility of the contractor undertaking the construction works to ensure that the any temporary bund constructed on the beach is maintained at all times, and to undertake any required repairs and maintenance of the bund after storms, to ensure public safety. This includes after hours, weekends, public holidays, holiday periods and if the contractor is notified by Council of an issue with the temporary bund.

The bund is to be monitored for any voids that form. If voids are identified, access is to be restricted until voids are repaired.

Where wave conditions allow it, the contractor is to use signage and flagging or similar to delineate the bund as a construction site to restrict public access. The bund area adjoining the public beach and the area inside the bund is to have additional safety warnings if required after hours, with the understanding that the public may enter. All sharp objects are to be removed or capped, ponded water drained, and loose objects removed, from inside the bund after hours.

The bund shall be completely removed at the completion of the works. If directed by Council, the bund materials shall be screened during removal of the bund to remove unsuitable material that could have entered the bund.

Reason: To prevent pollution of the beach

K. Modify Condition 25, to read as follows:

Condition 25 - Site Supervision

A suitably qualified coastal engineer is to be employed to review and check the work of the construction contractor for the duration of the approved works.

Reason: To ensure appropriate construction of coastal protection works.

L. Modify Condition 26, to read as follows:

Condition 26 - Installation and Maintenance of Sediment Control

Prior to any works commencing on site, including demolition, sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site.

M. Delete Condition 30 - Site fencing requirement.

N. Delete Condition 41 - Compliance with the requirements of the Department of Industry – Crown Land for occupation of public land.

O. Modify Condition 42, to read as follows:

Condition 42 - Time limited consent

The consent operates for 60 calendar years from the date of the issue of the occupation certificate and such other period as may be extended with the written approval of Council in accordance with the following.

A minimum of three (3) years prior to the date of 60 years after the issue of the occupation certificate for the works, the owner/s shall procure, at no cost to Council, a Review Report, by a suitably qualified independent coastal engineer.

The report must review the performance of the works using the evidence and coastal hazard predictions known at that time. The report must consider whether:

- (a) The works are satisfactory in their current state and do not result in a threat to public safety, in which case the report can recommend an extension to the consent, or
- (b) Upgrades to the works are recommended to ensure they will not result in a threat to public safety to extend the consent for a further period of time, or
- (c) Removal and replacement of the structure with an alternative design is recommended to ensure they do not result in a threat to public safety, or
- (d) Demolition and removal of the coastal protection works in the interest of public safety is recommended.

The Review Report shall be submitted to Council for approval not later than twelve (12) months prior to the date of 60 years after the issue of the occupation certificate in the first instance, or 12 months prior

to the end of such other period identified in any written approval from Council, in accordance with this condition.

If the Review Report concludes that the structure is satisfactory in accordance with (a) above, and Council accepts the findings of the report, Council will, in writing, approve an extension of the term of the development consent for the period recommended in the Review Report, or such lesser time as Council considers appropriate.

If the Review Report recommends any upgrades or alterations to the works in accordance with (b) above, those upgrades must be dealt with under the planning laws at that time.

If the Review Report recommends removal and replacement of the structure with an alternative design in accordance with (c) above, the replacement structure will be the subject of a further development application for consent to Council, if required by the planning laws at that time. For the avoidance of doubt, nothing shall oblige the owners to replace the protection works if they instead choose to remove the works which will be removed at the expense of the owners.

If the Review Report recommends demolition and removal of the coastal protection works in the interest of public safety, such removal will be undertaken by the owners at their own expense and within such reasonable time period required by Council. Any written approval from the Council extending the period of operation of this consent is to be recorded on the s10.7 Planning Certificate for the land and Council's register of development consents.

A further Review Report will be provided to Council a minimum of twelve (12) months prior to the end of any extended period notified identified in writing by the Council in accordance with this condition, with the above process repeated for such extension.

In the event that,

- The Council does not accept the recommendations of the Review Report (including an amended or replacement Report) in writing, or
- The Council fails to provide written notification of its acceptance of the recommendations within the Review Report within 12 months of lodgement of the Review Report, or
- An application for the continued use, upgrade or replacement of the works is made,

this consent will continue to operate until any application to modify this condition, or for the continued use or upgrade or replacement of the works, or any proceedings seeking review of the refusal of Council to accept the recommendations, has been finally determined by Council or the Court. Any application, proceedings or appeal, must be lodged within 6 months of Council's decision to not accept the findings of the Review Report or Council's failure to notify of its acceptance of the Review Report, whichever is the later.

Note: This continued operation or extension may need to be facilitated by a formal application to modify the consent having regard to the planning laws at the time.

Reason: The development application indicated the Coastal Protection works have a design life of 60 years; to satisfy the requirements of Section 27 of the Coastal Management Act 2016, and to provide a mechanism to review the works and extend the operation of the consent.

In signing this report, I declare that I do not have a Conflict of Interest.

Signed



Kye Miles, Planner

The application is determined on 10/02/2023, under the delegated authority of:



Adam Richardson, Manager Development Assessments