

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2020/0626
Responsible Officer:	Kye Miles
Land to be developed (Address):	<p>Lot B DP 954998, 1154 Pittwater Road COLLAROY NSW 2097</p> <p>Lot 1 DP 313699, 1156 Pittwater Road COLLAROY NSW 2097</p> <p>Lot C DP 954998, 1156 Pittwater Road COLLAROY NSW 2097</p> <p>Lot 1 DP 1016094, 1158 Pittwater Road COLLAROY NSW 2097</p> <p>Lot C DP 302895, 1160 Pittwater Road COLLAROY NSW 2097</p> <p>Lot B DP 302895, 1162 Pittwater Road COLLAROY NSW 2097</p> <p>Lot A DP 302895, 1164 Pittwater Road COLLAROY NSW 2097</p> <p>Lot 1 DP 970200, 1168 Pittwater Road COLLAROY NSW 2097</p> <p>Lot 71 DP 1011242, 1166 A Pittwater Road COLLAROY NSW 2097</p> <p>Lot 72 DP 1011242, 1166 B Pittwater Road COLLAROY NSW 2097</p> <p>Lot CP SP 2949, 1150 Pittwater Road COLLAROY NSW 2097</p>
Proposed Development:	Modification of Development Consent DA2018/1289 for Construction of coastal protection works (sea wall)
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes, under State Environmental Planning Policy (Coastal Management) 2018
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	<p>Charles Kirk Hoatson</p> <p>Joanne Maree Hoatson</p> <p>Kylie Suzanne Lambert</p> <p>Verlie Pamela Hall</p> <p>Selena Conna</p> <p>The Owners of Strata Plan 2949</p> <p>Kevin John Conna</p> <p>Tod Stephen McGrouther</p> <p>John Bronco Martin (Estate of the Late)</p> <p>Joan Marie Martin</p> <p>Douglas John McGrath</p>

	Neil James Esmond Gibson Joan Susanne Gibson Bruce Frederick William Clement Margot Clare Clement Dianne Dickson
Applicant:	Horton Coastal Engineering Pty Ltd

Application Lodged:	27/11/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Infrastructure
Notified:	04/12/2020 to 18/12/2020
Advertised:	04/12/2020
Submissions Received:	2
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The modification application seeks to amend Condition 4 (a) - *General Requirements*, which reads;

Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

Sand excavation is permitted from:

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday.

Other demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Other demolition and excavation works includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

Note: These hours may be modified if the Environmental Planning and Assessment (COVID-19 Development – Construction Work Days) Order 2020 or other relevant order is in place, and in

accordance with this order.

This current application seeks to amend these hours as follows:

Construction and excavation works can be done during the hours of:

- Monday to Sunday - 6:30 am to 7:30 pm

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 Development Control Plan - D3 Noise

SITE DESCRIPTION

Property Description:	Lot B DP 954998 , 1154 Pittwater Road COLLAROY NSW 2097 Lot 1 DP 313699 , 1156 Pittwater Road COLLAROY NSW 2097 Lot C DP 954998 , 1156 Pittwater Road COLLAROY NSW 2097 Lot 1 DP 1016094 , 1158 Pittwater Road COLLAROY NSW 2097 Lot C DP 302895 , 1160 Pittwater Road COLLAROY NSW 2097 Lot B DP 302895 , 1162 Pittwater Road COLLAROY NSW 2097 Lot A DP 302895 , 1164 Pittwater Road COLLAROY NSW 2097 Lot 1 DP 970200 , 1168 Pittwater Road COLLAROY NSW
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	<p>2097 Lot 71 DP 1011242 , 1166 A Pittwater Road COLLAROY NSW 2097 Lot 72 DP 1011242 , 1166 B Pittwater Road COLLAROY NSW 2097 Lot CP SP 2949 , 1150 Pittwater Road COLLAROY NSW 2097</p>
<p>Detailed Site Description:</p>	<p>The subject site consists of Nos. 1150, 1154, 1156, 1158, 1160, 1162, 1164, 1166A, 1166B and 1168 Pittwater Road. They have a combined area of approximately 6,950.48sqm and are generally flat (sloping down at the eastern end, towards the beach).</p> <p>The site comprises an entire street block containing 10 properties (11 lots) located on the eastern side of Pittwater Road. The site is surrounded by Collaroy Beach to the east, a Council road reserve to the north (Wetherill Street), a Council road reserve to the south (Stuart Street) and Pittwater Road to the west.</p> <p>Each of the residential lots, apart from No. 1150 Pittwater Road, contain a dwelling house and other ancillary structures. No. 1150 Pittwater Road contains a four storey residential flat building. All of the ten residential lots lost land and structures in some form to the ocean during the large storms in June 2016.</p> <p>No. 1150 Pittwater Road obtains driveway access from Stuart Street, No. 1168 Pittwater Road obtains driveway access from Wetherill Street, all other properties have vehicular access from Pittwater Road.</p> <p>The proposed development takes place across all 10 residential properties (11 lots), and will link to future coastal protection works along the eastern boundaries of the adjoining road reserves (Stuart and Wetherill Streets).</p>

Map:



SITE HISTORY

PLM2017/0029

A prelodgement meeting was held on 3 April 2017 to discuss the construction of coastal protection works.

Relevant comments provided in the minutes included:

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

"This application may attract a large amount of public interest. As such, 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 being designed as a predominantly sand covered structure)."

DA2018/1289

Application for the construction of coastal protection works. The wall consisted of a vertical element and a rock toe. This is known as a hybrid design (i.e. a combination of a rock revetment and a vertical wall). The NBLPP granted a DCC approval on 10 May 2019.

MOD2020/0439

Modification application 4.55 (1) for DA2018/1289. The application sought to modify/delete condition(s) Nos. 4 (a), 6, 7, 9, 13, 14, 15, 16, 17, 18, 26, 30, 33, 40, 42, 43. Approval was granted under delegation on 07 October 2020.

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 DA2018/1289, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55(1A) - 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 proposed modification is of minimal environmental impact, and	<p>Yes</p> <p>The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <ul style="list-style-type: none"> • The proposed changes will allow the works to be completed in a more efficient manner by increasing the workable hours at any given low tide. • Suitable conditions have been recommended to ensure a reasonable level of amenity is maintained for adjoining properties.
(b) 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 development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2018/1289 for the following reasons:</p> <ul style="list-style-type: none"> • The proposed changes only relate to the approved construction hours. • The works are considered to be of a minimal environmental impact.
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p>	<p>The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Warringah Local Environment Plan 2011 and Warringah Development Control Plan.</p>

Section 4.55(1A) - Other Modifications	Comments
(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	
(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 4.55 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	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
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 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>Building Act 1989. This matter has been addressed via a condition in the original consent.</p> <p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original 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>

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 04/12/2020 to 18/12/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

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

Name:	Address:
Craig Jackson	PO Box 538 DEE WHY NSW 2099
Sarah Elizabeth Horlyck	128 Wyadra Avenue NORTH MANLY NSW 2100

The following issues were raised in the submissions and each have been addressed below:

- **Working hours on the weekend,**
- **Construction management.**

The matters raised within the submissions are addressed as follows:

- **Working hours on the weekend:** Concern has been raised with the proposed construction hours particularly over weekend.

Comment:

Suitable conditions have been imposed to ensure essential construction works are expedited, while mitigating the amenity impacts of noise on residents. It must be noted that although it has been recommended for no construction work to take place on Sunday, these hours may be modified if the Environmental Planning and Assessment (COVID-19 Development – Construction Work Days) Order 2020 or other relevant order are in place, and in accordance with these orders.

- **Construction management:** The received submission has requested that appropriate signage is displayed around the construction site '*so the community is aware of when the beach can be peacefully used.*'

Comment:

Site fencing and associated signage will be accordance with the relevant Australian Standards, while compliance with the technical requirements of the project's Construction Management Plan will ensure that impacts to adjoining public land are mitigated.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Industrial)	<p>General Comments</p> <p>Construction of a seawall for properties 1150 to 1168 Pittwater Road Collaroy. Applicants seek an extension of hours for construction / excavation works to be 6:30 am to 7 pm 7 days a week to work within low tide periods. Practically, construction works will be alternating in times (with the tides), thus works will not be happening early and late every day.</p> <p>Our main concern is with the impacts to residents adjacent the works, early and late on Sunday in particular.</p> <p>We accept that 6:30 am to 7 pm Monday to Saturday is reasonable, however we recommend that Sunday works are limited to 8 am to 5 pm after 31 March 2021 -the end date of <i>Environmental Planning and Assessment (COVID-19 Development – Construction Work Days) Order 2020</i>.</p>

Internal Referral Body	Comments
	<p>We further recommend that a complaint register be maintained, if noise (and other amenity) issues are significant and detrimental to repose and respite of residents, compliance action will be sought to minimise and mitigate the impact on surrounding residences, Council can intervene to manage noise.</p> <p>Recommendation</p> <p>APPROVAL - subject to conditions</p>
NECC (Coast and Catchments)	The proposed Modification is supported without condition. The proposal to extend working hours does not change the scope of extent of the works.
NECC (Development Engineering)	Development Engineers have no objection to the proposed changes to construction working hours.
Parks, reserves, beaches, foreshore	<p>The modification application is a request to extend the working hours for the project from 6:30am to 7:30pm, to enable a greater period of working at low tide.</p> <p>Parks, Reserves and Foreshores Referral raise no objections to the modification proposal.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs, REPs 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, REPs 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 (Coastal Management) 2018

The site is subject to SEPP Coastal Management (2018).

An assessment under the SEPP was carried out for the original application.

The modification does not include any changes to the design of the works, just amendments to the conditions. In this regard, no further assessment, beyond that already conducted in the report for DA2018/1289, is required.

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

No amendments to the design are proposed under this modification and therefore, there are no changes to any development standards.

Detailed Assessment

Warringah Development Control Plan

Built Form Controls

No amendments to the design are proposed under this modification and therefore, there are no changes to any development standards.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
C8 Demolition and Construction	Yes	Yes
D3 Noise	Yes	Yes

Detailed Assessment

D3 Noise

The proposal seeks to extend the approved construction hours for DA2018/1289. Suitable conditions have been imposed to ensure essential construction works are expedited, while mitigating the amenity impacts of noise on residents.

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 2019

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.

Modification of Condition 4 (a) - General Requirements

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, particularly on the weekends;

Unless authorised by Council:

Building construction and delivery of material hours 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.

Sand excavation and pilling is permitted from:

- 6.30 am to 7.00 pm inclusive Monday to Friday,
- 8.00 am to 6.00 pm inclusive on Saturday

Other demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Other demolition and excavation works includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

Note: These hours may be modified if the Environmental Planning and Assessment (COVID-19 Development – Construction Work Days) Order 2020 or other relevant order is in place, and in accordance with this order.

Comment:

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

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 2000;
- 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. Mod2020/0626 for Modification of Development Consent DA2018/1289 for Construction of coastal protection works (sea wall) on land at Lot B DP 954998, 1154 Pittwater Road, COLLAROY, Lot 1 DP 313699, 1156 Pittwater Road, COLLAROY, Lot C DP 954998, 1156 Pittwater Road, COLLAROY, Lot 1 DP 1016094, 1158 Pittwater Road, COLLAROY, Lot C DP 302895, 1160 Pittwater Road, COLLAROY, Lot B DP 302895, 1162 Pittwater Road, COLLAROY, Lot A DP 302895, 1164 Pittwater Road, COLLAROY, Lot 1 DP 970200, 1168 Pittwater Road, COLLAROY, Lot 71 DP 1011242, 1166 A Pittwater Road, COLLAROY, Lot 72 DP 1011242, 1166 B Pittwater Road, COLLAROY, Lot CP SP 2949, 1150 Pittwater Road, COLLAROY, subject to the conditions printed below:

A. Modify Condition No. 4 (a), to read as follows:

Condition 4 (a) - General Requirements

Unless authorised by Council:

Building construction and delivery of material hours 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.

Sand excavation and pilling is permitted from:

- 6.30 am to 7.00 pm inclusive Monday to Friday,
- 8.00 am to 6.00 pm inclusive on Saturday

Other demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Other demolition and excavation works includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

Note: These hours may be modified if the Environmental Planning and Assessment (COVID-19 Development – Construction Work Days) Order 2020 or other relevant order are in place, and in accordance with these order.

B. Add Condition No. 30, to read as follows:

Condition 30 - Noise Mitigation and Complaints Register

All practicable, feasible and reasonable measures are to be done to mitigate the amenity impacts of noise on residents.

A Complaint Register must be maintained, record details of complaints received, and the action taken to remediate issues.

Reason: Protection of amenity, complaint management of noise.

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

Signed



Kye Miles, Planner

The application is determined on 22/12/2020, under the delegated authority of:



Rodney Piggott, Manager Development Assessments