

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2020/0369
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<b>Responsible Officer:</b>	Kye Miles
<b>Land to be developed (Address):</b>	Lot CP SP 677, 1122 Pittwater Road COLLAROY NSW 2097
<b>Proposed Development:</b>	Modification of Development Consent DA2019/1138 granted for construction of coastal protection works
<b>Zoning:</b>	Warringah LEP2011 - Land zoned R2 Low Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	The Owners Of Strata Plan 677
<b>Applicant:</b>	The Owners Of Strata Plan 677

<b>Application Lodged:</b>	14/08/2020
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Other
<b>Notified:</b>	Not Notified
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

### PROPOSED DEVELOPMENT IN DETAIL

The modification seeks the following changes to conditions:

1. Delete Condition 11 - Temporary support of excavation undertaken below the water table
2. Delete Condition 12 - Integration with adjoining works
3. Modify Condition 15 - Performance of coastal protection works
4. Delete Condition 31 - Historic Artefacts and Aboriginal relics
5. Delete Condition 42- Landscape maintenance
6. Modify Condition 45 - Post storm inspection

The applicant's Statement of Environmental Effects provides justification for the above changes.

No amendments to the design of the works are proposed.

Detailed discussion of each of these changes can be found at the end of this report.

## 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

There are no assessment issues.

## SITE DESCRIPTION

<b>Property Description:</b>	Lot CP SP 677 , 1122 Pittwater Road COLLAROY NSW 2097
<b>Detailed Site Description:</b>	<p>The subject site is located on the eastern side of Pittwater Road, the southern side of Ramsay Street and contains the building known as 'Shipmates'. Collaroy Beach is located directly to the east and the 'Flight deck' apartment building is located to the south.</p> <p>The site has an area of 2649sqm and is generally flat, with a gentle slope down towards the beach at the rear (eastern edge) of the site.</p> <p>The site contains an eight storey residential flat building with driveway access from both Pittwater Road and Ramsay Street. 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.</p> <p>The surrounding development consists of detached</p>

dwelling, residential flat buildings, an arterial road and public open space.

Map:



## SITE HISTORY

### DA2019/1138

This application was for the construction of coastal protection works and was approved under delegated authority on 19 March 2020.

Further history of the site is contained within the assessment report for DA2019/1138 and does not need to be repeated here.

## Application History

### 14 August 2020

Modification application received by Council.

### 15 September 2020

Letter sent to applicant regarding the proposed deletion of Condition Nos. 11 (*Temporary support of excavation undertaken below the water table*), 12 (*Integration with adjoining works*) and 46 (*Time limited consent*), as these changes could not be supported.

### 06 October 2020

Additional information submitted to Council in relation to the deletion of Condition Nos. 11 and 12. Additionally, the applicant retracted the proposed deletion of Condition 46.

### 09 October 2020

Council's Senior Environment Officer (Coastal) provided a response to the additional information submitted. In summary, modifications were proposed to the wording of Condition Nos. 11 and 12, in response to the issues raised by the applicant..

### 21 October 2020

The applicant provided a written response to Council agreeing to the above wordings of Condition Nos. 11 and 12.

## 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 DA2019/1138, 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	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 DA2019/1138.
(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 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	Development Application DA2019/1138 did not require concurrence from the relevant Minister, public authority or approval body.
(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	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Warringah Local Environmental Plan 2011 and Warringah Development Control Plan.

Section 4.55 (2) - Other Modifications	Comments
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.	The modification does not propose any changes to the design. Therefore, in accordance with the Northern Beaches Community Consultation Plan, notification was not necessary.

### 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	None applicable.
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)(iia) – 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&amp;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&amp;A Regulation 2000. No Additional information was requested.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition in the original consent.</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>Clause 98 of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent.</p> <p>Clause 98 of the EP&amp;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>
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>(i) <b>Environmental Impact</b> 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) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	The modification does not propose any changes to the design. Therefore, in accordance with the Northern Beaches Community Consultation Plan, notification was not necessary.
Section 4.15 (1) (e) – the public interest	<p>The assessment within this report has found that it is not in the public interest to approve all the condition deletions and changes requested by the applicant.</p> <p>Some modifications to some conditions are reasonable in this case. These have been outlined in the recommendation of this report.</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 was not notified.

## REFERRALS



Internal Referral Body	Comments
NECC (Coast and Catchments)	<p><b>Condition 11: Temporary support of excavation undertaken below the water table</b></p> <p>The reason provided for the condition in the Notice of Determination for DA2019/1138 is to prevent damage to the structure/integrity of the cemented sands present at the site. Sheet piling is not permitted as a measure to provide temporary support of exaction at the toe of the works due to potential damage to the cemented sand. The condition has been amended to allow sheet pilling behind the crest of the works to read as follows:</p> <p><u>Condition 11 - Temporary support of excavation</u></p> <p>The use of sheet piling as a measure to provide temporary support is only permitted behind the crest of the works and must be undertaken in a manner that does not impact the structure/integrity of the cemented sands present at the site.</p> <p>Sheet piling is not permitted as a measure to provide temporary support for excavation at the toe of the works due to potential damage to the cemented sand.</p> <p>Details demonstrating the actions required to ensure compliance with this requirement are to be prepared by a suitably qualified engineer and submitted to Northern Beaches Council for approval prior to issue of the construction certificate.</p> <p>Reason: To prevent damage to the structure/integrity of the cemented sands present at the site.</p> <p>Response: Proposed condition amended</p> <p><b>Condition 12: Integration with adjoining works</b></p> <p>Condition 12 is required to ensure adequate detail to enable works to be constructed without impacting the adjoining works or properties and to be suitably integrated are provided prior to construction commencing. In response to the applicants submissions the condition has been amended to read as follows:</p> <p><u>Condition 12 - Integration with adjoining works</u></p> <p>A detailed plan and cross section(s) at the common boundaries are to be prepared confirming:</p> <ul style="list-style-type: none"> <li>• The works will be retained within the property boundary of 1122 Pittwater Road.</li> <li>• The method for integration with the existing rock works present.</li> <li>• The works will not impact the condition, grade or level of protection provided by the existing rock works present on the adjoining properties.</li> </ul>

Internal Referral Body	Comments
	<p>Details demonstrating the actions required to ensure compliance with this requirement are to be prepared by a suitably qualified coastal engineer and submitted to Northern Beaches Council for approval prior to issue of the construction certificate.</p> <p>Reason: To provide adequate detail to enable works to be constructed without impacting the adjoining works or properties.</p> <p>Response: Proposed condition amended.</p> <p><b>Condition 15: Performance of coastal protection works</b></p> <p>Response: Proposed modification accepted.</p> <p><b>Condition 31: Historic Artefacts and Aboriginal relics</b></p> <p>No comment, not a coastal policy or engineering issue.</p> <p><b>Condition 42: Landscape maintenance</b></p> <p>No comment, not a coastal policy or engineering issue.</p> <p><b>Condition 45: Post storm inspection</b></p> <p>Response: Proposed modification accepted.</p> <p><b>Condition 46 Time limited consent</b></p> <p>No comment. Response to be provided by Development Assessment Officer.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

## 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 DA2018/1878, is required.

### Warringah Local Environmental Plan 2011

Is the development permissible?	Yes
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

The proposal is permissible under State Environmental Planning Policy (Coastal Management) 2018

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

### 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

## 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.

#### **Deletion of Condition 11 - Temporary support of excavation undertaken below the water table**

Council's Senior Environment Officer - Coast has provided the following response in relation to this proposed change:

*"The reason provided for the condition in the Notice of Determination for DA2019/1138 is to prevent damage to the structure/integrity of the cemented sands present at the site. Sheet piling is not permitted as a measure to provide temporary support of exaction at the toe of the works due to potential damage to the cemented sand. The condition has been amended to allow sheet pilling behind the crest of the works"*

#### **Comment:**

Given the above, the deletion of Condition 11 is not recommended, however, the condition is recommended to be modified to address the issues raised by the applicant.

#### **Deletion of Condition 12 - Integration with adjoining works**

Council's Senior Environment Officer - Coast has provided the following response in relation to this proposed change:

*"Condition 12 is required to ensure adequate detail to enable works to be constructed without impacting the adjoining works or properties and to be suitably integrated are provided prior to construction commencing. In response to the applicants submissions the condition has been amended."*

#### **Comment:**

Given the above, the deletion of Condition 12 is not recommended, however, the condition is recommended to be modified to address the issues raised by the applicant.

#### **Modification of Condition 15 - Performance of coastal protection works**

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 15 is recommended.

#### **Deletion of Condition 31 - Historic Artefacts and Aboriginal relics**

The applicant's reasoning for the deletion of condition 31 is:

*"It is widely acknowledged that Collaroy Beach front is littered with tank traps of no historical significance. Council themselves dug up nearly a dozen and recently disposed of them during their own seawall works.*

*Whilst the significance of potential Aboriginal artefacts is acknowledged, the applicant has confirmed via newspaper articles from 1946, that tank traps were often used for coastal protection and have no significance from war time. The tank traps also do not appear on the NSW state heritage register. The applicant therefore considers the condition to be unreasonable, should uncovering of an artefact with no significance halt the construction process indefinitely."*

Comment:

It is agreed that the tank traps are not of historical significance and the condition is unnecessary.

In this regard, the deletion of Condition 31 is recommended.

**Deletion of Condition 42 - Landscape maintenance**

The applicant's reasoning for the deletion of condition 42 is:

*"This condition is not present on any recent seawall approvals and the wording is vague and unreasonable given that the condition will render Shipmates Body Corporate legally obliged to replace planting for no specific time period."*

Comment:

The purpose of condition 42 is to leave the site in a natural looking state, so as to minimise the visual impact of the beach. The wall is entirely on private land.

It is agreed that requiring the applicant to maintain the landscape theme in perpetuity, given the unknown climatic conditions these plants will face, is difficult. In addition, condition 38 requires the planting of vegetation prior to the issue of the occupation certificate.

Given the above, the deletion of Condition 42 is acceptable and recommended.

**Modification to Condition 45 - Post storm inspection**

This application requests modification of condition 45 to delete any requirement for reporting due to mere exposure of coastal protection works. The applicant proposes the condition to read as follows:

*"After any storm event where damage occurs that impacts the support or performance of the works, the owners are to procure, at their cost, inspections by a suitably qualified coastal engineer of the coastal protection works. A detailed report is to be provided by this coastal engineer and any recommendations within the report are to be undertaken as soon as reasonably practicable in accordance with the Maintenance Management Plan or after necessary approvals are obtained, if required."*

Comment:

The applicant's modifications to Condition 45 are acceptable to Council's Coastal Engineer and are 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 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. Mod2020/0369 for Modification of Development Consent DA2019/1138 granted for construction of coastal protection works on land at Lot CP SP 677,1122 Pittwater Road, COLLAROY, subject to the conditions printed below:

### **A. Modify Condition No. 11 - Temporary support of excavation, to read as follows:**

The use of sheet piling as a measure to provide temporary support is only permitted behind the crest of the works and must be undertaken in a manner that does not impact the structure/integrity of the cemented sands present at the site.

Sheet piling is not permitted as a measure to provide temporary support for excavation at the toe of the works due to potential damage to the cemented sand.

Details demonstrating the actions required to ensure compliance with this requirement are to be prepared by a suitably qualified engineer and submitted to Northern Beaches Council for approval prior to issue of the construction certificate.

Reason: To prevent damage to the structure/integrity of the cemented sands present at the site.

**B. Modify Condition No. 12 - Integration with adjoining works, to read as follows:**

A detailed plan and cross section(s) at the common boundaries are to be prepared confirming:

- The works will be retained within the property boundary of 1122 Pittwater Road.
- The method for integration with the existing rock works present.
- The works will not impact the condition, grade or level of protection provided by the existing rock works present on the adjoining properties.

Details demonstrating the actions required to ensure compliance with this requirement are to be prepared by a suitably qualified coastal engineer and submitted to Northern Beaches Council for approval prior to issue of the construction certificate.

Reason: To provide adequate detail to enable works to be constructed without impacting the adjoining works or properties.

**C. Modify Condition No. 15 - Performance of coastal protection works, to read as follows:**

A statement is to be prepared by a suitably qualified coastal engineer that the proposed works:

- Will be constructed entirely within the property boundary of 1122 Pittwater Road (Lot CP SP 677) Pittwater Road, Collaroy.

Details demonstrating the actions required to ensure compliance with this requirement are to be prepared by a suitably qualified coastal engineer and submitted to Northern Beaches Council for approval prior to issue of the construction certificate.

Reason: To ensure ongoing structural integrity and performance of the proposed works.

**D. Delete Condition No. 31 - Historic Artefacts and Aboriginal relics****E. Delete Condition No. 42 - Landscape maintenance****F. Modify Condition No. 45 - Post storm inspection, to read as follows:**

After any storm event where damage occurs that impacts the support or performance of the works, the owners are to procure, at their cost, inspections by a suitably qualified coastal engineer of the coastal protection works. A detailed report is to be provided by this coastal engineer and any recommendations within the report are to be undertaken as soon as reasonably practicable in accordance with the Maintenance Management Plan or after necessary approvals are obtained, if required.

Reason: To ensure the coastal protection works are maintained after a storm event.

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

**Signed**



**Kye Miles, Planner**

The application is determined on 23/10/2020, under the delegated authority of:



**Rodney Piggott, Manager Development Assessments**