



Proposed 4.55 (2) Modification
DA2019/1138

s4.55 Modification to the Approved Coastal Protection Works

1120 - 1122 Pittwater Road, Collaroy

August 2020

© Copyright Barker Ryan Stewart Pty Ltd
2019 All Rights Reserved

Project No.	CC190083
Author	BM
Checked	IS
Approved	IS

Rev No.	Status	Date	Comments
1	Draft	2/6/2020	
2	Final	14/7/2020	

COPYRIGHT

Barker Ryan Stewart reserves all copyright of intellectual property in any or all of Barker Ryan Stewart's documents. No permission, licence or authority is granted by Barker Ryan Stewart to any person or organisation to use any of Barker Ryan Stewart's documents for any purpose without the written consent of Barker Ryan Stewart.

REPORT DISCLAIMER

This report has been prepared for the client identified in section 1.0 only and cannot be relied on or used by any third party. Any representation, statement, opinion or advice, expressed or implied in this report is made in good faith but on the basis that Barker Ryan Stewart are not liable (whether by reason of negligence, lack of care or otherwise) to any person for any damage or loss whatsoever which has occurred or may occur in relation to that person taking or not taking (as the case may be) action in any respect of any representation, statement, or advice referred to above.



SYDNEY
P (02) 9659 0005
E sydney@brs.com.au

CENTRAL COAST
P (02) 4325 5255
E coast@brs.com.au

HUNTER
P (02) 4966 8388
E hunter@brs.com.au

SOUTH EAST QUEENSLAND
P (07) 5582 6555
E seql@brs.com.au

TABLE OF CONTENTS

1	Introduction	4
2	Site Analysis	5
2.1	Site Description	5
2.2	The Locality	5
3	Proposed Modifications	7
4	Statutory Matters	12
5	Section 4.15 Assessment	14
6	Conclusion.....	15

Appendix A – Coastal Assessment Report

1 Introduction

This Section 4.55(2) modification has been prepared on behalf of the owners of Strata Plan 677.

DA2019/1138 was lodged with Northern Beaches Council on 16/10/2019 for upgrades to coastal protection works associated with the Shipmates building. DA2019/1138 was approved by Northern Beaches Council on 19/3/2020 for Construction of coastal protection works.

This section 4.55(2) application seeks to amend development consent DA2019/1138 to remove or amend the conditions outlined in section 3.0 of this report.

2 Site Analysis

2.1 Site Description

The real property description is SP 87659, located at 1120 - 1122 Pittwater Road, Collaroy.

The subject site incorporates an existing seven (7) storey residential flat building with concrete driveways, communal open space orientated to Collaroy Beach in the east and associated landscaping.

The site has immediate frontage in the east to Collaroy Beach as shown in Figure 1. Vehicular access to the site is available from Pittwater Road and Ramsay Street.

The subject site exhibits relatively flat topography that falls away steeply at the eastern beach frontage. The survey indicates a level difference of approximately 2 metres.

The property exhibits an eastern boundary of 29.07m with the existing terminal seawall spanning the entirety of this eastern property boundary.



Figure 1: Aerial view of site (Nearmap)

2.2 The Locality

The surrounding locality is characterised by a mix of residential and commercial development, open space and parkland areas as shown in Figure 2 below. The immediate surrounds are defined by Collaroy-Narrabeen Beach and Pittwater Road, with much of the Collaroy and Narrabeen Foreshore having been impacted by coastal erosion events.

Surrounding development includes:

- To the north: Ramsay Street public beach access, Sulman Reserve and further to single and multi-unit residential dwellings;

- To the west: Pittwater Road and low/medium density residential development;
- To the south: Residential flat building at 1104 Pittwater Road and further to single and multi-unit dwellings
- To the east: Collaroy Beach.

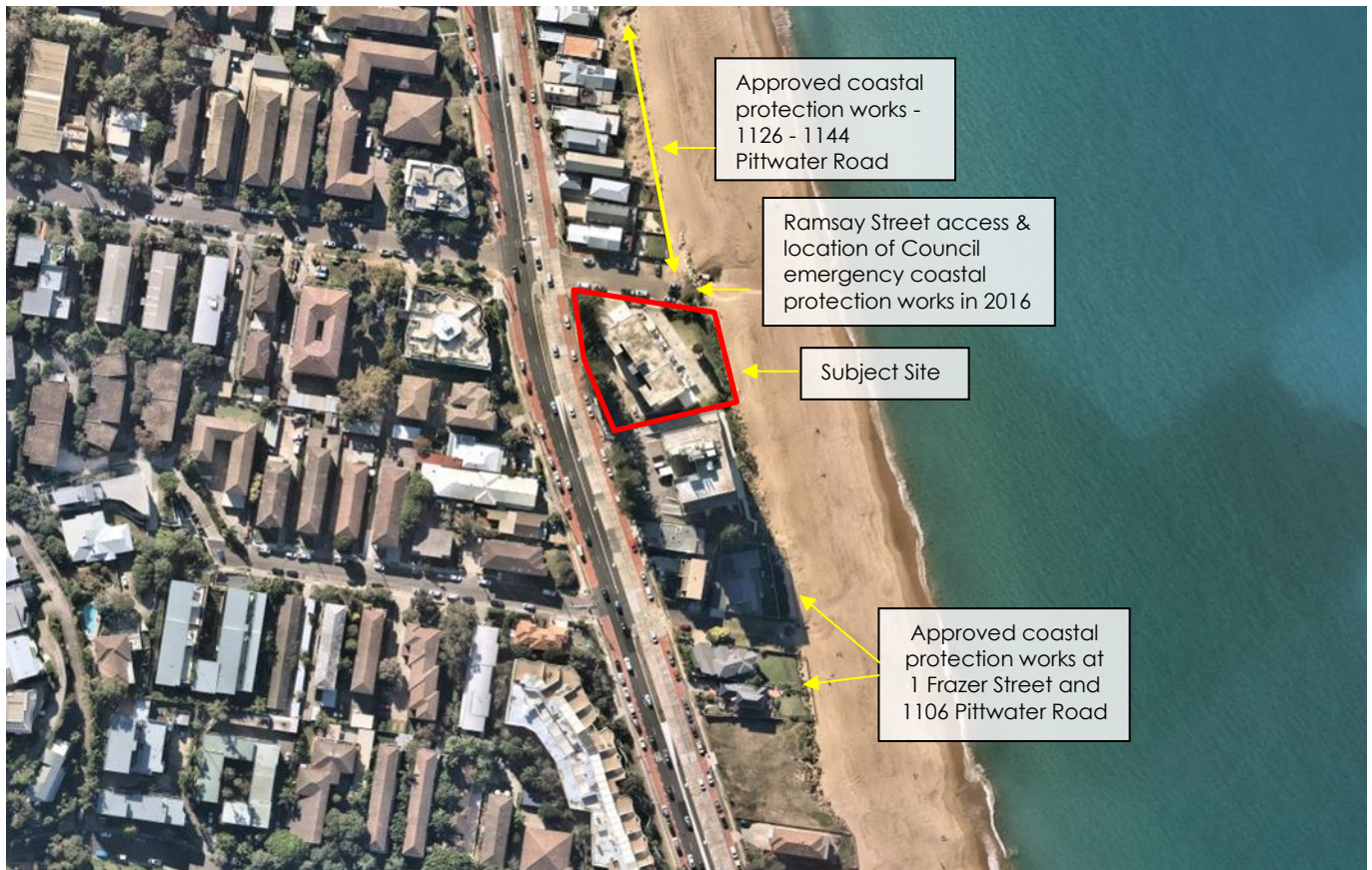


Figure 2: Aerial view of locality (Nearmap)

3 Proposed Modifications

The proposed modifications to Conditions associated with DA2019/1878 are outlined below.

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

This application proposes to delete Condition 11 as follows:

Sheet piling is not permitted as a measure to provide temporary support of exaction due to potential damage to the cemented sand. The measures required to ensure the temporary support of excavation undertaken below the water table are to be confirmed.

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.

Proposed Justification for Deletion of Condition 11:

Condition 11 has not been included in other seawall approvals. Further, the construction team have identified that sheet piling or bracing may be required in some areas, particularly the eastern concrete driveway area. The construction team would carry out these works in accordance with the direction of the qualified coastal engineer onsite should piling be required, therefore Condition 11 is requested for deletion.

Deletion of Condition 12 - Integration with adjoining works

This application proposes deletion of Condition 12 as follows:

A detailed plan and cross section(s) at the common boundaries are to be prepared confirming the method and location for integration of the proposed works with the existing protection or approved works at the adjoining properties, including those approved under DA 2017/0947 and the existing works to the north.

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.

Proposed Justification for Deletion of Condition 12:

The existing works to the north at Ramsay Street comprise of a reactive ad-hoc assortment of boulders placed by Council to address an emergency weather event in 2016. It is unreasonable to request that Shipmates seawall design should be required to integrate with these boulders to the north.

Whilst Council have provided some level of commitment to work constructively with the applicants coastal engineers to implement a solution that facilitates integration of public and private works, Condition 12 does not reflect this commitment and the applicant requests that this condition be modified to acknowledge this.

The approved seawall design to the south associated with the Flight Deck building (DA2017/0947) has not been constructed. It is unreasonable to require the Shipmates engineers to integrate within the adjacent DA2017/0947 design given that revision of the approved neighbouring design could occur throughout the construction certificate process for the adjacent property. It is noted that DA2017/0947 consent also required integration with existing protection at the adjoining properties and if Flight Deck have not commenced construction certificate documentation, it is requested that Shipmates be provided the opportunity to commence final detailed design based on best practice CZMP specification. This would

then require Flight Deck to align with the detailed Shipmates design should the proponents move to construction certificate process first.

Deletion of Condition 15 - Performance of coastal protection works

This application proposes to delete bullet points 2 and 3 from Condition 15 as follows (points to be deleted shown in bold):

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 1106 (Lot 8 DP 5234) Pittwater Road, Collaroy.*
- **Will maintain their structural integrity during the design storm event in the absence of formal coastal protection works being constructed on the adjoining land.***
- **Will not adversely impact coastal processes to the detriment of the adjoining land.***

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.

Proposed Justification for Deletion of Condition 15:

Condition 15 is requesting coastal engineering justification that has already been provided to Council at DA stage. The time and cost associated with preparation of another statement outlining the below is unreasonable given that the submitted Coastal Assessment Report (attached in Appendix A for reference) confirmed the following:

The proposed works at Shipmates are an upgrade to an existing seawall to a “consistent design standard that provides an appropriate level of protection” as per the objective of the certified CZMP (2016) and acts as a short section of what is effectively a much longer continuous erosion protection seawall. As such, the proposed development is not likely to cause an increased risk of coastal hazards on the private property or other land compared to the existing seawall.

The works will increase protection of private property from coastal hazards compared to the existing seawall which is of a lower standard. The proposed works are the upgrade of a short section of an existing seawall and will not result in an increase of coastal hazards to any other land.

Council are the owners of the reserve site to the north and their Review of Environmental Factors for associated works stated that the road ends will be upgraded and funding has been provided to support this. The Flight Deck body corporate to the south have also had seawall upgrades approved which will ensure the contiguous structural protection of this area. The works will provide for an improved level of protection over what is current.

It is also argued that Condition 15 is potentially invalid as it purports to defer consideration of adverse impacts until after the development consent has been issued.

Condition 15 is therefore requested for deletion based on the above justification .

Deletion of Condition 31 - Historic Artefacts and Aboriginal relics

This application proposes to delete Condition 31 as follows:

If any World War Two era tank traps or any Aboriginal relics (or other historic artefacts) are uncovered during the works, Council is to be notified immediately and all excavation or construction work must immediately stop and not recommence until written approval is provided by the Department of Planning Industry and Environment.

Proposed Justification for Deletion of Condition 31:

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.

Deletion of Condition 42 - Landscape maintenance

This application proposes to delete condition 42 as follows:

Trees shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilized as required at the time of planting.

If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan.

Justification for Deletion of Condition 42:

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.

Modification to Condition 45 - Post storm inspection

This application proposes to modify the wording of Condition 45. Condition 45 provides the following:

After any storm event that exposes any part of the coastal protection works to damage that impacts the support or performance of the works (including if directed by Council in writing that such an event has occurred), 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.

This application requests modification of Condition 45 to delete any requirement for reporting due to mere exposure of coastal protection works. The proposed Condition would therefore 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.

The amended condition, upon deletion of reference to Council order, is consistent with the NSW Land and Environment Court Appeal judgement order (2017/307198) for Coastal Protection Works at 1106 and 1104 Pittwater Road, Collaroy. Further, the power to issue a direction in writing represents a potential

duplication of Council's powers under s124 of the Local Government Act 1993 and the proposed modifications to Condition 45 are therefore considered to be reasonable.

Deletion of Condition 46 - Time limited consent

This application proposes to delete Condition 41 as follows:

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:

- The works are satisfactory in their current state (i.e. with no upgrades required) and recommend an extension to the design life for an extra period of time consistent with evidence and coastal hazard predictions known at that time, or*
- Upgrades to the works are required so that they can provide the necessary level of protection, or*
- Removal and replacement of the structure with an alternative design is required, or*
- Demolition and removal of the coastal protection works in the interest of public safety is recommended.*
- The Review Report shall be submitted to the Council for consideration not later than twelve (12) months prior to the end of the design life (i.e. the date of 60 years after the issue of the occupation certificate in the first instance, or the extended design life once the first review has been completed).*

If the Review report concludes that the structure is satisfactory without any upgrades that would require further planning approvals, Council may, in writing, approve an extension of the term of the development consent for the period recommended in the report, or such lesser time as the Council considers appropriate. The development consent cannot be considered to be extended without written approval from Council.

If the Review Report recommends any upgrades to the works, these upgrades must be dealt with under the planning laws at that time. If planning laws at the time allow the recommended upgrades to be undertaken without formal approval, Council will still need to approve any extension to the development consent.

If the Review Report recommends removal and replacement of the structure with an alternative design, the replacement structure will be the subject of a further development application for consent to Council.

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 expense.

Any written approval from the Council extending the design life is to be recorded on the 10.7 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 the extended design life, on each extension, with the above process repeated.

In the event that Council does not accept the findings of the Review Report (including an

amended or replacement report) that may be provided in accordance with this condition, the consent will not lapse until an application to modify this condition, or an appeal against the refusal of Council to accept the findings, has been formally determined by Council, the Land and Environment Court or its successor. Any application or appeal must be lodged within 6 months of Council's decision not to accept the findings.

Justification for the Deletion of Condition 46:

Condition 46 provides consent via a 60 calendar year time limit for approved works. It is argued that the granting of a time limited consent effectively undermines the purpose and utility of granting any development consent. The proposed works have been designed to allow construction entirely within private property boundaries and regardless of coastal processes, the works will remain within private property in perpetuity.

The imposition of Condition 46 pursuant to Section 27 of the *Coastal Management Act 2016*, as outlined in the reasoning provided by Northern Beaches Council, is vague and unjustified. Clause 27 of the Act states the consent should not be granted unless the consent authority is satisfied that:

- (a) *works will not, over the life of the works:*
 - (i) *unreasonably limit or be likely to limit public access to or use of the 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.*

Given that the proposed works are located entirely within private property and a significant distance landward of the eastern property boundary, opportunities for limiting public access to or use of the beach are non-existent. Council have made a commitment to consult with the project engineers to ensure a collective response to the alignment between private and public property is undertaken. The coastal protection works have been designed to tie in with existing seawall structure to the south and suitable maintenance obligations, including an irrevocable bank guarantee associated with Condition 10, will ensure that the coastal protection works will pose no threat to public safety. If required, any maintenance works will be funded by this bank guarantee, thus consistently reinforcing that Clause 27 can be satisfied in perpetuity.

Without design changes that would require a Development Application be submitted to Council, the Shipmates Body Corporate must legally maintain the works in the approved location. Given that coastal protection works will be located entirely within private property, the approved coastal protection works will not inhibit access to or use of the public beach. The location of the subject works adjacent to a Reserve should have no immediate bearing on any conditional imposition of a time limit pursuant to Section 27 of the Act. The approved works do not extend onto Crown land and will continue to remain within private property in perpetuity, as enforced by several conditions provided in the consent.

Satisfactory arrangements have been made, by condition, to ensure the restoration of adjacent private property if erosion is caused by the subject works (Condition 10 - Maintenance Obligations and Public Safety and Condition 45 - Post Storm inspection). These conditions will continue to ensure that Section 27 (b) of the Coastal Protection Act 2016 is satisfied in the future.

Further to the above, coastal protection works associated with DA2014/1250 at 1 Frazer Street, Collaroy were not burdened with time limited consent and it is both unreasonable and inconsistent for Northern Beaches Council to enforce this onerous condition in the present circumstances.

For the reasons discussed above it is requested that Condition 46 be deleted from the consent.

4 Statutory Matters

Under the provisions of Section 4.55(2) of the Environmental Planning and Assessment Act, 1979 the following applies.

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*
- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) 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*
- (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 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 the period prescribed by the regulations or provided by the development control plan, as the case may be.*

Subsections (1) and (1A) do not apply to such a modification

It is our opinion that the proposed modification falls within Section 4.55(2) of the Act. The modification is substantially the same as the originally granted consent and it is considered that the amendment will not cause any adverse environmental impacts as determined in the assessment provided in section 5 below.

The design of the coastal protection works will remain as approved and the location of the works are entirely consistent with the approved engineering plans. The proposed modifications to development consent do not change the nature and extent of the proposed works and primarily deal with the ongoing management of those works and associated administrative matters under the subject consent.

The table below confirms that the Section 4.55(2) modification has been prepared in accordance with clause 115 of the EP&A Regulation 2000.

Table 1: Clause 115 Requirements

CLAUSE 115 REQUIREMENT	COMMENT
(a) the name and address of the applicant,	The applicant is Barker Ryan Stewart Pty Ltd.
(b) a description of the development to be carried out under the consent (as previously modified),	Construction of coastal protection works.
(c) the address, and formal particulars of title, of the land on which the development is to be carried out,	SP 87659, located at 1120 - 1122 Pittwater Road, Collaroy.
(d) a description of the proposed modification to the development consent,	Refer sections 1.0 and 3.0.

CLAUSE 115 REQUIREMENT	COMMENT
(e) a statement that indicates either: (i) that the modification is merely intended to correct a minor error, misdescription or miscalculation, or (ii) that the modification is intended to have some other effect, as specified in the statement,	The purpose of the modification is to facilitate the deletion or modification of the following consent conditions: <ul style="list-style-type: none"> • Deletion of Condition 11; • Deletion of Condition 13 • Modification of Condition 15; • Deletion of Condition 31; • Deletion of Condition 42; • Modification of Condition 45; and • Deletion of Condition 46. Refer section 3.0 for further details.
(f) a description of the expected impacts of the modification,	The proposed modifications will cause negligible environmental impacts. Refer section 5.0 for further details.
(g) an undertaking to the effect that the development (as to be modified) will remain substantially the same as the development that was originally approved,	The proposed changes to the consent will not alter the nature of the development and it is considered that the development will remain substantially the same as the approved development.
(g1) in the case of an application that is accompanied by a biodiversity development assessment report, the reasonable steps taken to obtain the like-for-like biodiversity credits required to be retired under the report to offset the residual impacts on biodiversity values if different biodiversity credits are proposed to be used as offsets in accordance with the variation rules under the Biodiversity Conservation Act 2016,	Not applicable.
(h) if the applicant is not the owner of the land, a statement signed by the owner of the land to the effect that the owner consents to the making of the application	The consent of the Strata Manager is attached.
(i) a statement as to whether the application is being made to the Court (under Section 4.55) or to the consent authority (under Section 4.55AA), and, if the consent authority so requires, must be in the form approved by that authority.	Not applicable.

5 Section 4.15 Assessment

Social & Economic Impact

The proposed modifications to DA2019/1138 will generate additional long term certainty for the private land owners within the Shipmates building. Additional certainty will provide significant social and economic benefits for these property owners looking to protect private assets from coastal processes. The removal of a 60 year time limited consent will allow for the maintenance and growth of the economic market value of the Shipmates properties through deletion of onerous conditions attached to the seawall consent.

Context and Setting

Collaroy and Narrabeen are classified as the most at risk in NSW, and third most at risk in Australia for coastal processes (CZMP, Executive Summary). The Coastal Engineering Advice submitted with the DA and attached in Appendix A has recognised the severity of localised coastal erosion and the works have been designed accordingly. The Coastal Protection works have also been designed according to CZMP specifications and the Coastal Management Act 2016 and with deletion of the proposed conditions, will remain entirely consistent with other Seawall determinations on Collaroy Beach.

The conditions proposed for deletion do not reasonably increase risk to surrounding development or public land and it is argued that the remaining conditions associated with DA2019/1138 will ensure that a legal obligation remains for Shipmates body corporate to maintain the coastal protection works to Council standards.

Deletion of specific conditions will have no impact on the aesthetics or orientation of the coastal frontage from the landward or seaward side of the works. The works will upgrade the existing coastal protection works and have been designed to comply with relevant specifications.

Sustainability

The proposed deletion or modification of conditions will have no impact on the sustainability of the coastal protection works or surrounding property. Conditions will remain in place to enforce suitable maintenance of the works and post storm reporting will ensure the continued sustainability of the seawall upgrade and surrounding development.

Access, Traffic and Parking

Deletion or modification of conditions will have no detrimental impact on access, traffic and parking. As discussed in 3.0, the works are located entirely within private property boundaries and the seawall upgrade will have no ongoing impacts on public access to or use of the beach. Council have acknowledged that upgrade works to the Ramsey Street access can be undertaken concurrently with private works and the alignment is to be determined following consultation between Shipmates engineers and Council. This will ensure high quality access will be retained by Council within the public reserve.

Notwithstanding proposed removal of unreasonable conditions, the body corporate will remain legally obliged to maintain the seawall within the property boundaries to allow adjacent public access to the public reserve.

Public Interest

The deletion of conditions will have no detrimental impact on public access to the beach nor will it facilitate any opportunities for future impacts on the coastal zone. The modifications are therefore in the public interest as they promote reasonable development consent conditions for private land owners that can reinforce the required certainty for owners looking to protect life and property from coastal processes.

6 Conclusion

The proposed modification improves the potential environmental effects as considered under Section 4.15 of the Act and is substantially the same development as that approved by Council.

It is considered that the proposed amendments will:

- Continue to ensure the works will be maintained to Northern Beaches Council standards in perpetuity;
- Will not increase the coastal risk to surrounding properties; and
- Will not limit long term access to or use of the beach within the adjacent Ramsay Street reserve.

The proposed modifications will not cause any unacceptable environmental impacts and should be supported.

Appendix A

Coastal Engineering Advice