

Resolution of the Northern Beaches Local Planning Panel approved in writing on 10 May 2019.

This resolution follows the Panel meeting held on Wednesday 6 March 2019 when a decision on the development application the subject of this resolution was deferred for further information.

Panel Members

Paul Vergotis	Chair
Brian Kirk	Town Planner
Annelise Tuor	Town Planner
Nick Lawther	Community Representative

Vote: 4/0

Pursuant to Schedule 2, Part 5, Item 26 of the Environmental Planning and Assessment Act 1979 (NSW) the application was resolved as follows:

3.0 DEVELOPMENT APPLICATIONS

3.3 DA2018/1289 - 1150-1168 PITTWATER ROAD, COLLAROY - CONSTRUCTION OF COASTAL PROTECTION WORKS (SEA WALL)

PROCEEDINGS IN BRIEF

A brief description of these proceedings appears in the Panel's minutes of meeting held 6 March 2019.

DECISION ON DEVELOPMENT APPLICATION

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves via deferred commencement** Application No. DA2018/1289 for construction of coastal protection works (sea wall) at SP 2949, Lots A-C DP302895, Lots B and C DP 954998, Lots 71 and 72 DP 1011242, Lot 1 DP 970200 and Lot, 1150-1168 Pittwater Road, Collaroy subject to the conditions set out in 'Attachment C' in the supplementary report prepared by Council staff and subject to the following:

1. The amendment of Condition No 43 to read as follows:

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 owners shall jointly and severally procure, at no cost to Council, a review report, by a suitably qualified independent coastal engineer to ensure the works provide the necessary protection (Review Report).

The Review Report must consider, consistent with the evidence and coastal hazard predictions at the time, whether:

- (a) The works are satisfactory in their current state and recommend an extension to the design life for a further period of time, or
- (b) Upgrades to the works are recommended to extend the design life for a further period of time, or
- (c) Removal and replacement of the structure with an alternative design is recommended, 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, Council may, 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 the 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.

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 and within such 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 s 10.7 Planning Certificate for the affected land and the Council's register of development consents.

A further Review Report will be provided to the Council a minimum twelve (12) months prior to the end of any extended period notified and 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
- Fails to provide written notification of its acceptance of the recommendations in the Review Report within 12 months of lodgement of the 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 the continued use or upgrade or replacement of the works, or any proceedings seeking review of the refusal of the Council to accept the recommendations, has been finally determined by the Council or a Court. Any application, proceedings or appeal, must be lodged within six (6) months of the Council's decision to not accept the findings of the Review Report or the 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 applicable law(s) at the time]

Reason: The development application indicates that the 'coastal protection works' have a design life of 60 years; to satisfy the requirements of s 27 of the Coastal Management Act 2016 (NSW), and to provide a mechanism to review the works and to extend the operation of the consent if required.

Statement of Reasons: This development application was initially presented to the Panel as its meeting held on 6 March 2019 at which time the application was recommended for approval on a deferred commencement basis. The Panel was addressed by the Applicant's coastal engineer and lawyer whom both made oral submissions in response to the draft conditions recommended in the assessment report. In particular the submissions primarily addressed draft conditions 14

and 43 which related to a bank guarantee and a time limitation for the consent to operate respectively.

After hearing and considering the oral submissions made by the Applicant's representatives and after consideration of the remarks in the assessment report, the Panel decided to defer the matter and requested that additional legal advice be sought by the Council in relation to conditions nos. 14 and 43. This advice was subsequently provided and has now been reviewed and considered by the Panel.

The Panel has therefore concluded that condition no. 14 ought to include a requirement for bank guarantee to be provided; and that condition no. 43 imposing a time limitation of the development consent be reaffirmed subject to a review report to be approved by the council and that there be a time limitation imposed if the review report recommends any demolition works to be carried out. Otherwise the Panel is of the view that the proposed development is worthy of approval subject to the balance of the conditions recommended in 'Attachment C' to the supplementary assessment report.

This is the final page of the Minutes comprising 5 pages numbered 1 to 5 of the Northern Beaches Local Planning Panel meeting