

## DEVELOPMENT APPLICATION SUPPLEMENTARY REPORT

<b>Application Number:</b>	DA2017/0947
<b>Land to be developed (Address):</b>	Lot 7351 DP 1166942 and Lot CP SP 1977, 1114 - 1118 Pittwater Road COLLAROY
<b>Proposed Development:</b>	Construction of coastal protection works

### PURPOSE OF THIS REPORT:

DA2017/0947 is before the Northern Beaches Local Planning Panel on Wednesday 19 June 2019 with a recommendation for approval, subject to conditions.

It has been identified that the report includes assessments against the *Coastal Management Act 2016* and the *State Environmental Planning Policy (Coastal Management) 2018*. The application was lodged before the commencement of the Act and the SEPP and therefore these assessments are not relevant.

Both the *Coastal Management Act 2016* and the *SEPP (Coastal Management) 2018* included savings provisions. The relevant clause in the Act is as follows:

#### **5 General saving**

*Subject to this Schedule and the regulations:*

*(a) anything begun before the repeal date under a provision of the former Act for which there is a corresponding provision in this Act may be continued and completed under the former Act as if this Act had not been enacted, and*

In this regard, DA2017/0947 is required to be assessed against the *Coastal Protection Act 1979* and *State Environmental Planning Policy 71 – Coastal Protection*. These were the pieces of legislation in force at the time of lodgement

This supplementary report will provide an assessment against the *Coastal Protection Act 1979* and *SEPP 71*.

This report will also identify other references to the *Coastal Management Act 2016* and the *SEPP (Coastal Management) 2018* that need to be amended.

It should be noted that the relevant sections of the *Coastal Protection Act 1979* (55M) and the *Coastal Management Act 2016* (27) are nearly identical.

## COASTAL PROTECTION ACT 1979 ASSESSMENT

Section 55M of the *Coastal Protection Act 1979* states:

### **55M Granting of development consent relating to coastal protection works**

*(1) Consent must not be granted under the Environmental Planning and Assessment Act 1979 to development for the purpose of coastal protection works, unless the consent authority is satisfied that:*

*(a) the works will not, over the life of the works:*

*(i) unreasonably limit or be likely to unreasonably limit public access to or the use of a beach or headland, or*

*(ii) pose or be likely to pose a threat to public safety, and*

*(b) satisfactory arrangements have been made (by conditions imposed on the consent) for the following for the life of the works:*

*(i) the restoration of a beach, or land adjacent to the beach, if any increased erosion of the beach or adjacent land is caused by the presence of the works,*

*(ii) the maintenance of the works.*

*(2) The arrangements referred to in subsection (1) (b) are to secure adequate funding for the carrying out of any such restoration and maintenance, including by either or both of the following:*

*(a) by legally binding obligations (including by way of financial assurance or bond) of all or any of the following:*

*(i) the owner or owners from time to time of the land protected by the works,*

*(ii) if the coastal protection works are constructed by or on behalf of landowners or by landowners jointly with a council or public authority—the council or public authority,*

*(b) by payment to the relevant council of an annual charge for coastal protection services (within the meaning of the Local Government Act 1993).*

*(3) The funding obligations referred to in subsection (2) (a) are to include the percentage share of the total funding of each landowner, council or public authority concerned.*

Comment:

### **Background**

In order for Section 55M to be satisfied, the consent authority must form the opinion that the above matters are achieved over the life of the works.

### **Information provided by the applicant**

To assist Council, the applicant has submitted coastal engineering advice (prepared by a suitably qualified coastal engineer) that states that the structure has a design life of 60 years. This advice has been reviewed and agreed with by Council's internal and external coastal experts.

### **What is the "Design Life"?**

A "Design Life" of 60 years does not mean that the structure will fail in year 61. Instead, it means that, given the amount of information currently available, coastal hazards and processes (including the effects of sea level rise and climate change), beyond 60 years from now are too unknown to make accurate predictions at the time of granting consent (i.e. June-July 2019). It is possible that the works, as approved, will exist indefinitely. However, the

unknown state of the coast beyond 2079, raises the question of how a consent authority can be satisfied that the works will meet the requirements of section 27 over the life of the works.

**Satisfying Clause 1(a)(i) - "*unreasonably limit or be likely to unreasonably limit public access to or the use of a beach or headland*"**

The works are located on both private land and Crown land. The site does not adjoin road reserves to the north or south. This means that no public access is currently obtained over the private component of the subject site.

A portion of the works does sit on public land. However, the design and location of the works have been determined by Council's internal and external coastal experts, to be the most appropriate for the site. This is in order to best link up with other similar coastal protection works (seawalls) along this section of Collaroy and Narrabeen Beach, and to minimise the impacts to coastal processes.

The portion of the works on the public beach will be covered in sand and vegetation for the majority of the time, only being revealed during large storms that will likely prohibit public access to the beach anyway.

In this regard, the consent authority can be satisfied that the works will not, over the life of the works, unreasonably limit or be likely to unreasonably limit public access to or the use of the beach.

**Satisfying Clause 1(a)(ii) - "*pose or be likely to pose a threat to public safety*"**

As discussed above, beyond 60 years, the state of coastal hazards (incorporating sea level rise and other impacts of climate change) is too uncertain to be able to make accurate predictions as to whether the works will afford the appropriate level of protection to the property behind and not adversely impact public safety in the event that they are damaged beyond repair.

If the works are damaged beyond repair at some stage in the future, new coastal protection works that are designed and constructed in accordance with the prevailing coastal hazard forecasts of the time would be required. Such works could vary so significantly from those approved as part of this consent that a new Development Application would be required.

The key point is that; at the time of granting any consent, the coastal experts (and therefore Council) cannot be certain of the future coastal hazards. This uncertainty means that Council cannot be satisfied that the works will not, over the life of the works, pose a risk to public safety. This is the test that needs to be met. If this test is not met, Section 55M states that development consent must not be granted.

Given it is effectively impossible to forecast the state of the coast for the life of the works, a method needs to be found of being able to grant consent for the time period that Council (or another consent authority) can be satisfied that the works will not pose a risk to public safety.

The solution is to grant a time limited consent, via a condition that specifies the consent only operates for 60 years, in accordance with the design life as explained in the Coastal Engineering Report accompanying the Development Application. The condition includes a mechanism whereby the owners of the works can obtain a report by a suitably qualified coastal engineer that can recommend an extension to the design life. If the findings of this

report are acceptable to Council, Council can extend the operation of the consent for a reasonable time period. This process can be repeated in perpetuity.

In this way, each review will be conducted based on the best and most current knowledge of coastal processes available at that time, and, as such, any extension granted will be based on updated information.

Consent can therefore be granted by Council, as the consent authority, being satisfied that, for 60 years, the proposed works will not pose a risk to public safety. As such, a 60 year time limited consent condition will allow Clause 1(a)(ii) to be satisfied and allow development consent to be granted.

**Satisfying Clauses 1(b)(i) & (ii) and 2(a)(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, the maintenance of the works and the owner or owners from time to time of the land protected by the works*"**

A single condition has been recommended to provide satisfactory arrangements to secure adequate funding in a legally binding manner for the restoration of the beach, or land adjacent to the beach, if any increased erosion of the beach or adjacent land is caused by the presence of the works, and for the maintenance of the works.

This condition requires an irrevocable bank guarantee (or other suitable legally binding obligation) in the amount of \$1000 per lineal metre of work to Council prior to the issue of any Construction Certificate. This money is intended to be used as a last resort for the owners to undertake maintenance of the coastal protection works in the event that they are damaged as a result of coastal storm, including to undertake any works required to remove any threat to public safety arising from the coastal protection works including the removal of rocks or debris, that have become dislodged from the works, from the public beach and adjacent public land and implement the Maintenance Management Plan (MMP).

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

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

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

This condition will satisfy Clauses 1(b)(i) & (ii) and 2(a)(i) of Section 55M.

## **Conclusion**

It is considered that the two conditions outlined above will be sufficient to satisfy Section 55M of the *Coastal Protection Act 1979* and can be viewed in full at the end of this report.

Having satisfied the clauses within Section 55M of the *Coastal Protection Act 1979*, a time-limited development consent can be granted.

## STATE ENVIRONMENTAL PLANNING POLICY 71 – COASTAL PROTECTION ASSESSMENT

Following the lodgement of this DA, SEPP 71 has been repealed and replaced by the *State Environmental Planning Policy (Coastal Management) 2018*.

Clause 21 of SEPP (Coastal Management) 2018 states:

*"The former planning provisions continue to apply (and this Policy does not apply) to a development application lodged, but not finally determined, immediately before the commencement of this Policy in relation to land to which this Policy applies."*

In this regard, SEPP 71 applies to this application.

The application has been assessed against the relevant sections of SEPP 71, below.

Matters for Consideration	
Is the development located in an area identified as being within:	
100m of the coastline mean high water mark?	Yes
A Sensitive Coastal Location under SEPP 71?	Yes
A Zone of Wave Impact under WLEP 2011?	Yes
A Zone of Slope Adjustment under WLEP 2011?	Yes
A Reduced Foundation Capacity under WLEP 2011?	Yes

### Requirements under SEPP 71 – Coastal Protection

The proposal has been identified as being located within a Sensitive Coastal Location as identified on the Coastal Zone map gazetted on the 18 November 2005. Accordingly, pursuant to Section 4.15(a)(i) of the Environmental Planning and Assessment Act 1979, the provisions of State Environmental Planning Policy No.71 – Coastal Protection are to be considered.

Only the relevant sections of State Environmental Planning Policy No.71 – Coastal Protection are identified below.

Assessment Consideration	Answer	Further Assessment Comment
<p>Is the development acceptable with regard to the SEPP 71 Policy aims detailed as follows:</p> <p><i>(a) to protect and manage the natural, cultural, recreational and economic attributes of the New South Wales coast, and...</i></p> <p><i>(f) to protect and preserve beach environments and beach amenity, and</i></p> <p><i>(g) to protect and preserve native coastal vegetation, and</i></p> <p><i>(h) to protect and preserve the marine environment of New South Wales, and</i></p> <p><i>(i) to protect and preserve rock platforms, and</i></p> <p><i>(j) to manage the coastal zone in accordance with the principles of ecologically sustainable development (within the meaning of section 6 (2) of the Protection of the Environment Administration Act 1991), and...</i></p> <p><i>(l) to encourage a strategic approach to coastal management.</i></p>	<p>Yes (subject to conditions)</p>	<p>The proposal is for coastal protection works (a seawall).</p> <p>The wall has been designed in a way to allow the natural processes and functions of the beach to continue. The wall will only come into effect (and be able to be seen) during and after large coastal storms that cause significant erosion. At all other times, the wall has been designed to be covered with sand and vegetation.</p> <p>The wall will have a minimal effect on coastal vegetation, will serve to protect life and property (including public infrastructure) and therefore is consistent with the aims of this policy.</p>
<p>Does the development implement measures to conserve animals (within the meaning of the <i>Threatened Species Conservation Act 1995</i>) and plants (within the meaning of that Act), and their habitats?</p>	<p>No</p>	<p>The development is of such a nature that no measures to conserve animals, plants and their habitats are necessary. Local native vegetation will be planted on top of the wall post construction.</p>
<p>Does the development implement measures to conserve fish (within the meaning of Part 7A of the <i>Fisheries Management Act</i></p>	<p>No</p>	<p>The development is of such a nature that no measures to conserve fish, marine vegetation and their habitats are necessary.</p>

Assessment Consideration	Answer	Further Assessment Comment
1994) and marine vegetation (within the meaning of that Part), and their habitats?		
Does the development take into consideration existing wildlife corridors and the impact of development on these corridors?	Yes	The wall has been designed in a way to allow the natural processes and functions of the beach to continue. The wall will only come into effect (and be able to be seen) during and after large coastal storms that cause significant erosion. At all other times, the wall has been designed to be covered with sand and vegetation.
Are the likely impact of coastal processes and coastal hazards on the development and any likely impacts of the development on coastal processes and coastal hazards acceptable?	Yes (subject to condition)	The impacts from and on the development are acceptable.  Conditions have been recommended by Council's Natural Environment - Coastal Officers to ensure impacts are managed during the life of the works.
Are the likely impacts of development on the water quality of coastal waterbodies acceptable?	Yes	N/A
Is the development acceptable with regard to:  <i>(i) the cumulative impacts of the proposed development on the environment, and</i>  <i>(ii) measures to ensure that water and energy usage by the proposed development is efficient</i>	Yes	Council's Natural Environment - Coastal Officer and the applicant's experts have assessed the cumulative impacts of the proposed development on the environment. These impacts are acceptable.
Does the development, include a non-reticulated system?	No, the development does not propose a	N/A

Assessment Consideration	Answer	Further Assessment Comment
<p>Yes/No</p> <p>If Yes:</p> <p>Will the system, or is likely to, result in a negative effect on the water quality of the sea or any nearby beach, or an estuary, a coastal lake, a coastal creek or other similar body of water, or a rock platform?</p>	<p>non-reticulated system.</p>	
<p>Does the development seek consent, or result in, untreated stormwater being discharged into the sea, a beach, or an estuary, a coastal lake, a coastal creek or other similar body of water, or onto a rock platform?</p>	<p>No</p>	<p>N/A</p>

**OTHER REFERENCES TO THE COASTAL MANAGEMENT ACT 2016 and SEPP (COASTAL MANAGEMENT) 2018 IN THE ASSESSMENT REPORT**

1. The cover page states that the development is permissible under *State Environmental Planning Policy (Coastal Management) 2018*.

This should state that the development is permissible under Clause 129A in the *State Environmental Planning Policy (Infrastructure) 2007*.

Further detail of Clause 129A is as follows:

**129A Development with consent**

*(1) Development for the purposes of a sea wall or beach nourishment may be carried out by any person with consent on the open coast or entrance to a coastal lake.*

Comment: This subclause permits the development.

*(2) If a coastal zone management plan does not apply to the land on which any such development is to be carried out, the Coastal Panel has the function of determining a development application for development to which this clause applies.*

Comment: A coastal zone management plan applies to this site and Council therefore has the delegation to determine the application.

*(3) Before determining a development application for development to which this clause applies, the consent authority must take the following matters into consideration:*

- (a) the provisions of any coastal zone management plan applying to the land,*
- (b) the matters set out in clause 8 of State Environmental Planning Policy No 71—Coastal Protection,*
- (c) any guidelines for assessing and managing the impacts of coastal protection works that are issued by the Secretary for the purposes of this clause and published in the Gazette.*

*Note. Section 55M of the Coastal Protection Act 1979 sets out preconditions to the granting of development consent relating to coastal protection works.*

Comment:

- (a) The coastal zone management plan has been considered in the assessment by Council's Coastal Officer.
- (b) The matters in clause 8 of *State Environmental Planning Policy No 71—Coastal Protection* have been considered above.
- (c) Draft guidelines were on public exhibition in early 2011. These guidelines were not subsequently issued by the Secretary or published in the Gazette.

Section 55M has been addressed above.

2. The executive summary states:

*“However, the State Environmental Planning Policy (Coastal Management) 2018 permits coastal protection works with consent on this land. The Coastal Management Act 2016 is also relevant to this application, specifically Section 27”*

This should read:

*“However, the State Environmental Planning Policy (Infrastructure) 2007 permits coastal protection works with consent on this land. The Coastal Protection Act 1979 and State Environmental Planning Policy 71 – Coastal Protection are also relevant to this application, specifically Section 55M of the Coastal Protection Act 1979”*

3. The proposed development in detail section states in a note:

**“Note:** *The development is prohibited under the Warringah Local Environment Plan*

*2011, but is permitted with consent under the State Environmental Planning Policy (Coastal Management) 2018, hence the application is lodged under the SEPP.”*

This should read:

**“Note:** *The development is prohibited under the Warringah Local Environment Plan 2011, but is permitted with consent under the State Environmental Planning Policy (Infrastructure) 2007.”*

4. The assessment of Section 4.15 (1) (e) – the public interest states:

*“The proposed coastal protection works are permitted with consent under the State Environmental Planning Policy (Coastal Management) 2018”*

This should read:

*“The proposed coastal protection works are permitted with consent under the State Environmental Planning Policy (Infrastructure) 2007”*

5. Under the Internal Referral Body table, in the NECC (Coast and Catchments) section, the two references to “SEPP Coastal Management 2018” should be read “SEPP 71 – Coastal Protection.
6. The reason for Condition 10 references “Section 27 of the Coastal Management Act 2016”. This should be replaced with “Section 55M of the Coastal Protection Act 1979”
7. The reason for Condition 38 references “Section 27 of the Coastal Management Act 2016”. This should be replaced with “Section 55M of the Coastal Protection Act 1979”
8. The reason for Condition 42 references “Section 27 of the Coastal Management Act 2016”. This should be replaced with “Section 55M of the Coastal Protection Act 1979”

## CONCLUSION

The assessments against the *Coastal Management Act 2016* and the *SEPP (Coastal Management) 2018* in the report for DA2017/0947 are not relevant and were inserted in error.

The above assessments against the *Coastal Protection Act 1979* and *SEPP 71 – Coastal Protection* should be considered as replacements.

The eight additional references to either the *Coastal Management Act 2016* or the *SEPP (Coastal Management) 2018*, should be replaced as outlined above.

The above assessments and recommended changes to the assessment report have found that the proposal remains acceptable against the relevant coastal legislation.

## **RECOMMENDATION**

That the Local Planning Panel:

- a) Consider the above assessments against *Coastal Protection Act 1979* and the *State Environmental Planning Policy 71 – Coastal Protection*.
- b) Note the assessments against the *Coastal Management Act 2016* and the *State Environmental Planning Policy (Coastal Management) 2018* were inserted in error.
- c) Note the changes to references in the assessment report, including the amendments to three conditions, as listed above; and
- d) Determine the development application for the construction of coastal protection works on Lot 7351 DP 1166942 and Lot CP SP 1977, 1114 - 1118 Pittwater Road Collaroy, by way of approval subject to the conditions of consent.