



Section 4.15 Assessment Report

Environmental Planning & Assessment Act 1979

Conflict of interest declaration

I have considered the potential for a conflict of interest under the Code of Conduct and to the best of my knowledge no pecuniary and/or significant non-pecuniary conflict of interest exists.

Note: If you determine that a non-pecuniary conflict of interest is less than significant and does not require further action, you must provide a written explanation of why you consider that the conflict does not require further action in the circumstances. This statement should then be countersigned by the Manager.

Assessing Officer	Peter Woodworth	21/05/2022
Delegation Level Required	DA21/2330 is a regionally significant development and must be determined by the Regional Planning Panel.	
Variations Proposed	<input type="checkbox"/> Clause 4.6 exception <input type="checkbox"/> DCP departure	
Councillor Representations	<i>Councillor</i>	<i>Date</i>
Report Recommendation	Refusal	

DA Number	DA21/2330
PAN	PAN-161523
Property Address	82 Cyrus St HYAMS BEACH - Lot 1 DP 1222535
Proposal	Retaining wall / seawall
Applicant(s)	SET Consultants Pty Ltd
Owner(s)	Real Estate Capital Investors Pty Ltd
Owner's consent provided?	Yes
Date Lodged	8/11/2021
Date of site inspection	25/01/2022 (Initial site inspection undertaken by assessing officer) 26/07/2022 (Site inspection undertaken by Regional Planning Panel)

Date clock stopped	25/11/2021
Date clock started	10/12/2021
Related Application in NSW Planning Portal?	<input type="checkbox"/> Concurrence and/or external agency referral <input type="checkbox"/> Section 68 <input type="checkbox"/> Section 138 <input type="checkbox"/> Construction Certificate <p><i>Note: s138 and CC applications will not be incorporated into the Development Consent and will be determined separately.</i></p>
Number of submissions	<p>1</p> <p><i>Note: where submissions are received Council must give notice of the determination decision to all submitters.</i></p>

1. Detailed Proposal

The proposal includes:

- Construction of a retaining wall / seawall along the rear boundary of the property

The proposed seawall is to be constructed on top of an existing concrete mass footing which is subject to a separate Building Information Certificate as a development application can only consider prospective works (refer to the “red” coloured seawall as identified in Figure 1 below).

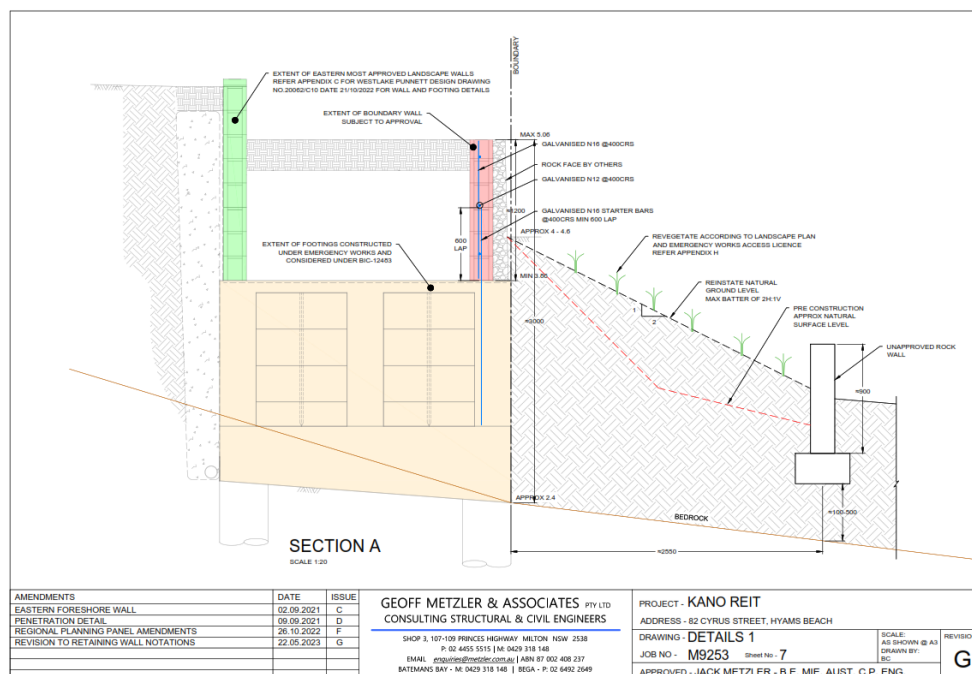


Figure 1: Extract from plans noting the extent of proposed seawall (red) that is being considered by this application

2. Subject Site and Surrounds

Site Description



Figure 2: Aerial imagery of subject site

The subject site is located on the eastern side of Cyrus Street and also has a frontage to Hyams Beach. The allotment is rectangular in shape and gradually slopes away from the street with a steep drop-off at the eastern end of the site.

The site contains an existing dual occupancy development which comprise the “Boat House” (westernmost dwelling at the front of the site, closest to Cyrus Street) and the “Beach House” (easternmost dwelling at the rear of the site, closest to Hyams Beach) as referred to in this application. The eastern part of the site slopes down to Hyams beach and includes a boardwalk and deck areas (currently under construction). This eastern part of the site is highly modified by a series of retaining walls and various landscaping works.

The site benefits from a series of development approvals relating to the dual occupancy development and boardwalk, deck and retaining walls on the eastern portion of the site. A summary of the approval history of the subject site is included in D22/234237.

Since lodgement of the application, a landslip has occurred on site. As a result, the landowner constructed an approximate 540mm topping slab over mass concrete footings. As the current

development application can only consider prospective work, these footings and slab are not part of the development application and are subject to a separate Building Information Certificate. These footings and topping slab fall outside of any approval for the site and as such the Certifier issued a Written Directions Notice for the stop works and to obtain a BIC. An order was subsequently issued by Council's Compliance Team for the pouring of the remainder of the topping slab over the northern portion of the exposed footings in order to stabilize the site.

The surrounding area is residential in character and the subject site is adjoined by low density residential development to the north, south and west, and Hyams Beach to the east. Hyams Beach is a popular recreational area and tourist destination.

The watercourse to the south of the site is in a state of flux and changes shape, orientation and location over time. This has been observed during the course of the assessment.



Figure 3: Aerial imagery of Hyams Beach noting watercourse location 24/6/2022



Figure 4: Aerial imagery of Hyams Beach noting watercourse location 30/7/2022




Figure 5: Aerial imagery of Hyams Beach noting watercourse location 30/11/2022

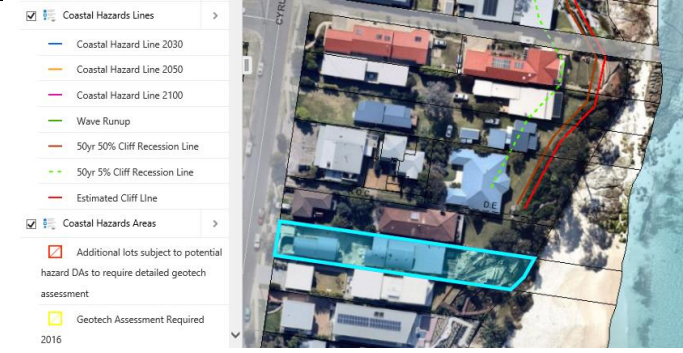


Figure 6: Aerial imagery of Hyams Beach noting watercourse location 2/2/2023

Summary of Site and Constraints

GIS Map Layer		
	<i>Lot Area</i>	1081m ²
	<i>Zone</i>	R2 Low Density Residential
	<i>Does the land have a dwelling entitlement?</i> <i>Note: for rural land refer to clause 4.2D of Shoalhaven LEP 2014.</i>	Yes
Topography	<i>Fall direction of land</i>	Fall of land away from street
	<i>Slope of land >20%?</i>	Yes The eastern part of the land has a slope of approximately 30%, although this area has been highly modified by a series of retaining walls to address cliff instability.  <p>Figure 7: Aerial imagery of eastern part of site showing contours (approximately 30% slope).</p>
Site Inspection	<i>Works within proximity to electricity infrastructure?</i>	No
	<i>Is the development adjacent to a classified road?</i>	No
	<i>Is the development adjacent to a rail corridor?</i>	No
Utility Network	<i>Access to reticulated sewer?</i>	Yes
	<i>Does the proposal require a new connection to a pressure sewer main (i.e. a new dwelling connection)?</i>	No

	<input checked="" type="checkbox"/> Sewer Pressure Mains > <div> <div>— Rising Main</div> <div>— Surcharge Main</div> <div>— Low Pressure Sewer Main</div> <div>— Under Construction</div> </div>	
	<p><i>Building over sewer policy applicable?</i></p> <p><i>Note: Zones of influence can differ based on soil type (e.g., sandy soils vs clay soils). If unsure discuss with Shoalhaven Water.</i></p>	Yes - Referral to Shoalhaven Water required
	<i>Access to reticulated water?</i>	Yes
	<i>Does the proposal impact on any critical water or sewer infrastructure (e.g. REMS, water, sewer layers)?</i>	No
	<i>Does the proposal increase dwelling density and demand on water or sewer services (e.g. secondary dwelling, dual occupancy, multi dwelling housing, subdivision)?</i>	No
Environmental Layers	<i>Aboriginal Cultural Heritage</i>	No
	<i>Bush Fire</i>	Yes
	<i>Coastal Hazard Lines (applies to location of proposed development)</i>	<p>No</p> <p>The coastal hazard lines mapping do not extend to the subject property. It is noted that cliff recession lines, cliff instability and landslide risks have been identified for the properties to the north of the site that overlook Hyams Point in Shoalhaven City Council's Coastal Zone Management Plan 2018.</p> <p>The location of the works proposed by this application are located on the eastern part of the site which may be subject to coastal erosion processes and hazards.</p>

		 <p>Figure 8: GIS mapping showing coastal hazard lines on properties to the north of the subject site.</p>
	Coastal Hazard Area	No
	Potentially Contaminated Land	No
	Flood Note: There are several catchments that have not have flood studies conducted. Sites outside of the flood study area may still be subject to flooding. Refer to advisory note on p.3 of Chapter G9 of Shoalhaven DCP 2014.	No
	Development within 40m of a watercourse?	No
	SEPP (Coastal Management) 2018	Yes <ul style="list-style-type: none"> Coastal Environment area Coastal Use Area
	SEPP (Sydney Drinking Water Catchment 2011) (e.g. NorBE)	No
Shoalhaven LEP 2014	Acid Sulfate Soils	Class 5
	Terrestrial Biodiversity	No
	Coastal Risk Planning	No
	Does the subject site contain a heritage item? Note: Schedule 5 of Shoalhaven LEP identifies Local and State significant items.	No

	<i>Is the subject site adjacent to or in the vicinity of a heritage item?</i>	No
	<i>Scenic Protection</i>	No
BV Map	<u>Biodiversity Values Map</u>	No

Site Inspection Observations

Refer to site inspection report.

Deposited Plan and 88B Instrument

There are no identified restrictions on the use of the land that would limit or prohibit the proposed development.

3. Background

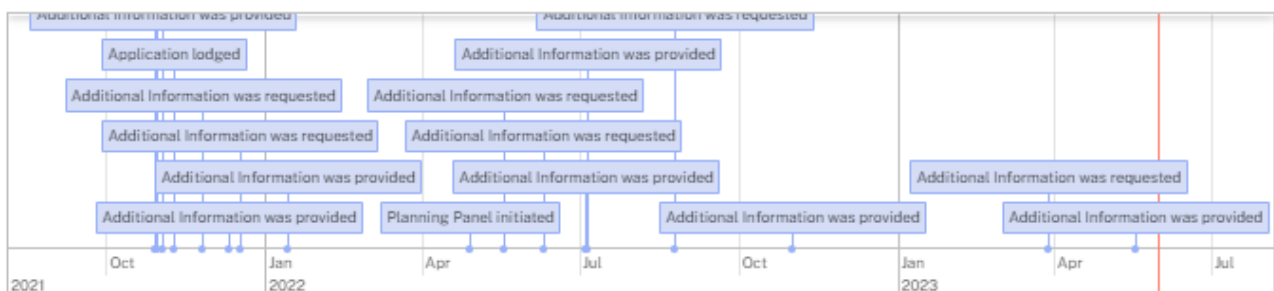
Pre-Lodgement Information

There were various pre-lodgement discussions between the landowner and Council officers prior to lodgement. These discussions were for information only and to provide context as part of other previous applications about what the future intent was for the property. The pre-lodgement discussions did not provide any advice or indication of the assessment of the current application.

Post-Lodgement Information

Reference number	Milestone	Date
1	Application submitted	28/10/2021
2	Additional Information was requested	29/10/2021
3	Additional Information was provided	02/11/2021
4	Application lodged	08/11/2021
5	Additional Information was requested	25/11/2021
6	Additional Information was provided	10/12/2021
7	Additional Information was requested	16/12/2021
8	Additional Information was provided	13/01/2022
9	Planning Panel initiated	28/04/2022
10	Additional Information was requested	18/05/2022
11	Additional Information was requested	09/06/2022
12	Additional Information was provided	04/07/2022
13	Additional Information was provided	05/07/2022
14	Additional Information was requested	24/08/2022
15	Additional Information was provided	31/10/2022
16	Additional Information was requested	28/03/2023
17	Additional Information was provided	17/05/2023

Timeline



During the course of the assessment, the site experienced a landslip in June 2022 with the following photos taken 27/6/2022 supplied to Council (D22/277202):



Figure 9: Photo of landslide area

As a result of the land slippage, the landowner constructed an approximate 540mm topping slab over mass concrete footings which is subject to a separate Building information Certificate (BIC).

A Written Directions Notice (WDN) (D22/489465) was issued by the Certifier (Council) for CC21/2195 on 21/11/2022 advising the following:

<p>Steps to be taken to remedy the non-compliance</p>	<ol style="list-style-type: none"> 1. Clearly identify the boundary within the vicinity of works and keep this in place until all works are completed on site. 2. Cease all other construction works on site until emergency stabilisation works are completed in accordance with Engineering Drawing No.20062/C01Q dated 21 October 2022 and letter dated 11 November 2022 3. Relocate all site fencing and sediment measures to the western side of the retaining wall that is located on Council property. 4. Remove any stormwater outlets that are located over Council land. 5. Provide in writing a timeline for works to be completed as required in Engineers Letter – Emergency Stabilisation Ref 20062.08 dated 11 November 2022. 6. Lodge a Building Information Certificate Application for the works carried out without consent as per Survey dated 10 November 2022 by SET Consultants.
<p>Date by which the person responsible for the aspect of development must demonstrate they have remedied the non-compliance</p>	<p>Items 1, 2, 3, 4 & 5 – Immediately</p> <p>Item 6 before further works other than emergency works are carried out.</p>

At the time of the issue of the WDN, the footings for the slab had been poured and to stabilise the site, an order (2022/9571) was issued by Council's Compliance Team to complete the top slab over the northern portion of the exposed waffle pod footings:

Section 4.15 Assessment Report - DA21/2330

Order No	Order Type	Recipient	Stage	Status	Date
2022/9571	The land or premises are not in a safe or healthy condition (71962E)	Real Estate Capital Investors Pty Ltd	Formal	Active	19 Dec 2022



Figure 10: Photo of subject site on 5/12/2022 showing site as constructed



Figure 11: Photo of subject site on 5/12/2022 noting waffle pod footings on northern portion of site and starter bars

Site History and Previous Approvals

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Darts - since 1st July 2005					
Application	Appl. Date	Application Type	Proposal	Status	Completed
CC21/2195	16/12/2021	Construction Certificate	Dwelling Alterations & Additions	Approved	11/03/2022
CC21/2185	16/12/2021	Construction Certificate	Dwelling Alterations & Additions	Approved	02/03/2022
RW21/1758	15/11/2021	S138 Approval	Driveway Construction	Approved	17/12/2021
DA21/2330	08/11/2021	Development Application	Retaining Wall	Incomplete	
DA21/1984	20/08/2021	Development Application	Dwelling Alterations & Additions	Approved	29/10/2021
DA21/1847	02/08/2021	Development Application	Dwelling Alterations & Additions	Approved	02/11/2021
DS21/1186	29/06/2021	Section 96 Amendment	Modification to Approved Plans	Approved	04/08/2021
BC20/1055	20/08/2020	Building Information Certificate	Retaining Walls in Foreshore Garden	Approved	16/12/2020
DS20/1328	15/07/2020	Section 96 Amendment	Foreshore Deck, Pedestrian Gate, Gas Bottle Storage, Relocation of Bin Storage - S4.55 Modification Foreshore Deck, Pedestrian Gate, Bin Storage, Canoe Storage	Approved	16/12/2020
DS20/1327	15/07/2020	Section 96 Amendment	Covered Alfresco Court Yard, Garbage Bin Enclosure & BBQ Area - S4.55 Modification to include Covered Alfresco Courtyard & Lounge Beach House	Approved	16/12/2020
CC20/1405	08/05/2020	Construction Certificate	Covered Alfresco Courtyard	Approved	19/05/2020
CC20/1403	08/05/2020	Construction Certificate	Dwelling Additions - Deck & Stairs, Pedestrian Gate, Gas Bottle Storage & Relocation of Bin Storage	Approved	19/05/2020
DS19/1348	09/08/2019	Section 96 Amendment	Proposed Deck, new pedestrian gate, gas bottle storage and relocation of bin storage.- S4.55 (1A) Amend Condition 4	Approved	19/09/2019
DA19/1298	28/03/2019	Development Application	Dwelling Additions - Deck & Stairs, Pedestrian Gate, Gas Bottle Storage & Relocation of Bin Storage	Approved	12/06/2019
DS16/1475	01/11/2016	Section 96 Amendment	Addition of Pedestrian Gate to Front Fence	Surrendered	06/11/2018
DA15/2263	30/09/2015	Development Application	Covered Alfresco Court Yard ONLY - Garbage Bin Enclosure & BBQ Area now SURRENDERED	Approved	22/01/2016
DS15/1133	08/04/2015	Section 96 Amendment	New Dwelling - S96 Replace frosted glass with clear glass panels	Approved	20/01/2016
DA11/1262	21/03/2011	Development Application	Privacy Screen	Approved	02/11/2011
QC09/1289	23/03/2009	Final Occupation Certificate	Dual Occupancy (1 new unit) - Detached	Approved	19/02/2009
QC09/1288	20/03/2009	Final Occupation Certificate	New Dwelling (Urban)	Approved	19/02/2009
QC05/3872	19/12/2005	Interim Occupation Certificate	Dual Occupancy (1 new unit) - Detached	Approved	25/10/2004
QC05/3871	19/12/2005	Interim Occupation Certificate	New Dwelling (Urban)	Approved	21/10/2005
DS05/3144	07/09/2005	Section 96 Amendment	Section 96 - New Awnings	Approved	25/10/2005

Plain Sailing - since 2nd September 1996				
Application	Appl. Date	Proposal	Status	Status Date
DS05-1192	12/04/2005	Section 96 Amendment	Approved (O)	26/07/2005
DA05-1508	21/03/2005	Dwelling Additions (Urban)	Refused (T)	16/06/2005
DS05-1039	27/01/2005	Section 96 Amendment	Approved (O)	18/03/2005
DA04-1807	16/11/2004	New Dwelling (Urban)	Approved (T)	03/11/2004
DA04-1807	13/04/2004	New Dwelling (Urban)	Approved (T)	19/10/2004
DR04-1350	13/04/2004	Sewer Application	Approved (P)	19/10/2004
DA03-1431	18/08/2003	Dual Occupancy (1 new unit) - Detached	Approved (T)	12/08/2003
DA03-1431	24/02/2003	Dual Occupancy (1 new unit) - Detached	Approved (T)	06/08/2003
DR03-1206	24/02/2003	Sewer Application	Approved (P)	06/08/2003
DA99-1139	22/01/1999	Dwelling Additions (Urban)	Approved (T)	08/08/2003

Old Applications prior to 2nd Sept 1996				
Application	Proposal	Decision	Owner	Original Lot
BA76/0024	T/Frame Dwelling	Approved	Smith HE&EB	

BA data prior to the 2nd Sept 1996				
Application	Appl. Date	Proposal	Status	Status Date
BA83/2393	28/11/1983	URBAN DWELLING ADDITIONS	Approved	22/12/1983
SD01/1679	03/10/1985			

4. Consultation and Referrals

Internal Referrals	
Referral	Comments
Development Engineer	No objection subject to recommended conditions.
City Services – Property	No objection.
Coastal Management	The proposal is not supported by Council's Coastal Management Team, see D23/195124.

External Referrals – N/A

5. Other Approvals

Integrated Development – N/A

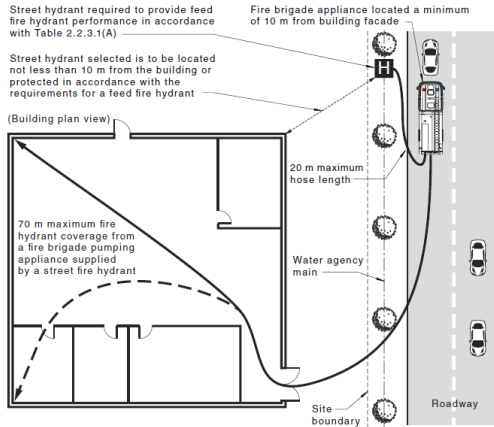
6. Statutory Considerations

Environmental Planning and Assessment Act 1979

Section 4.14 Consultation and development consent – certain bush fire prone land

<i>Is the development site mapped as bush fire prone land?</i>	Yes - Complete below table and assessment against Planning for Bush Fire Protection
<i>Is there vegetation within 140m of the proposed development that would form a bush fire hazard as identified in Planning for Bush Fire Protection?</i> <i>Note: The bush fire mapping cannot be relied upon solely for identifying bush fire hazards.</i>	Yes - Complete below table and assessment against Planning for Bush Fire Protection

Integrated Development	<i>Does the application involve subdivision of bush fire prone land for a residential or rural residential purpose?</i>	No
	<i>Does the application involve development of bush fire prone land for a special fire protection purpose?</i>	No
Asset Protection Zones	<i>Are APZ distances in accordance with Appendix 1 of PBP?</i>	Yes
	<i>Will APZs be managed in accordance with Appendix 4 of PBP?</i>	Yes - Recommended conditions of consent will require compliance with PBP
	<i>Are APZs wholly contained within the boundaries of the development site or covered by an appropriate instrument?</i>	Yes
	<i>Are APZs located on lands with a slope <18 degrees?</i>	Yes
Access	<i>Is there appropriate access to the development site (all-weather access for two-wheel drive)?</i> <i>Note: Where a proposal increases residential density in bush fire prone areas (e.g. dual occupancy, secondary dwelling) a</i>	Yes - Recommended conditions of consent will require compliance with PBP.

	<p>wider carriageway width may be required in accordance with section 8.2.1 of PBP 2019.</p>										
	<p>Is there appropriate access for firefighting vehicles?</p> <p><i>Note: to ensure adequate firefighting vehicle access a clear unobstructed area should be provided around buildings.</i></p> <p><i>Note: As per Table 7.4a of PBP 2019, where a dwelling is located more than 200m from a public road, at least one alternative property access must be provided.</i></p>	<p>Yes - Recommended conditions of consent will require compliance with PBP.</p>									
	<p>Is there appropriate access to water supply?</p> <p><i>Note: AS2419.1:2017 requires a hydrant to be within 20m of a hardstand area where a firefighting area can park and the most disadvantaged part of the development site to be within 70m range from the location of the fire fighting vehicle (i.e. most disadvantaged part of development site to be within 90m range from any water hydrant). The street hydrant must be located at least 10m from the building.</i></p> <div><p>AS 2419.1:2017 158</p><p>FIGURE E7 EXAMPLE OF STREET FIRE HYDRANT COVERAGE</p></div>	<p>Yes - Site is connected to reticulated water and there is a water hydrant within range of the most disadvantaged part of the development site.</p>									
Water Supplies	<p>Is the development site connected to reticulated water?</p>	<p>Yes - Recommended conditions of consent will require compliance with PBP.</p>									
	<p>Is there a suitable static water supply where no reticulated water is available?</p> <p><i>Note: Table 5.3D of PBP 2019 requires a dedicated static water supply where reticulated water is not available.</i></p> <p>Table 5.3d</p> <p>Water supply requirements for non-reticulated developments or where reticulated water supply cannot be guaranteed.</p> <table><tr><th>DEVELOPMENT TYPE</th><th>WATER REQUIREMENTS</th></tr><tr><td>Residential lots (<1,000m²)</td><td>5,000L/lot</td></tr><tr><td>Rural-residential lots (1,000-10,000m²)</td><td>10,000L/lot</td></tr><tr><td>Large rural/lifestyle lots (>10,000m²)</td><td>20,000L/lot</td></tr><tr><td>Multi-dwelling housing (including dual occupancies)</td><td>5,000L/dwelling</td></tr></table>	DEVELOPMENT TYPE	WATER REQUIREMENTS	Residential lots (<1,000m ²)	5,000L/lot	Rural-residential lots (1,000-10,000m ²)	10,000L/lot	Large rural/lifestyle lots (>10,000m ²)	20,000L/lot	Multi-dwelling housing (including dual occupancies)	5,000L/dwelling
DEVELOPMENT TYPE	WATER REQUIREMENTS										
Residential lots (<1,000m ²)	5,000L/lot										
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Large rural/lifestyle lots (>10,000m ²)	20,000L/lot										
Multi-dwelling housing (including dual occupancies)	5,000L/dwelling										

	<i>Is water supply infrastructure adequate?</i>	Yes - Recommended conditions of consent will require compliance with PBP.
Electricity Services	<i>Is the location and type of electrical infrastructure adequate?</i>	Yes - Recommended conditions of consent will require compliance with PBP.
Gas Services	<i>Is the location and type of gas infrastructure adequate?</i>	N/A
Construction Standards	<i>Will the proposed dwelling be constructed to an appropriate BAL?</i>	N/A
	<i>Are materials to be used in proposed fencing appropriate?</i> <i>Note: Section 7.6 of PBP 2019 requires fences and gates within bush fire prone areas to be constructed from either hardwood or non-combustible material. Where fences are within 6m of a building or in areas >BAL-29, fences should be made from non-combustible material only.</i>	Yes - Recommended conditions of consent will require compliance with PBP.
	<i>Will any class 10a structures be constructed to an appropriate BAL?</i> <i>Note: Section 8.3.2 of PBP 2019 specifies that there are no bush fire protection requirements for class 10a buildings located >6m from a dwelling in bush fire prone areas. Where a class 10a building is <6m from a dwelling the appropriate BAL is to be applied.</i>	N/A - There are no class 10a buildings proposed <6m of a dwelling
Landscaping	<i>Is any proposed landscaping appropriate and consistent with any APZ requirements?</i>	Yes - Recommended conditions of consent will require compliance with PBP.
<p>The proposal is for a seawall along the rear property boundary.</p> <p>Council is satisfied that the proposed development complies with Planning for Bush Fire Protection 2019 subject to conditions.</p> <p>Recommended conditions of consent will require the proposed</p>		

Biodiversity Conservation Act 1979

<i>Does the application include works or vegetation removal within the Biodiversity Values mapped area?</i>	No
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<p><i>Does the application involve clearing of native vegetation above the area clearing threshold?</i></p> <div style="border: 1px solid black; padding: 5px;"> <p>Area clearing threshold</p> <p>The area threshold varies depending on the minimum lot size (shown in the Lot Size Maps made under the relevant Local Environmental Plan (LEP)), or actual lot size (where there is no minimum lot size provided for the relevant land under the LEP).</p> <table border="1"> <thead> <tr> <th>Minimum lot size associated with the property</th><th>Threshold for clearing, above which the BAM and offsets scheme apply</th></tr> </thead> <tbody> <tr> <td>Less than 1 ha</td><td>0.25 ha or more</td></tr> <tr> <td>1 ha to less than 40 ha</td><td>0.5 ha or more</td></tr> <tr> <td>40 ha to less than 1000 ha</td><td>1 ha or more</td></tr> <tr> <td>1000 ha or more</td><td>2 ha or more</td></tr> </tbody> </table> <p>The area threshold applies to all proposed native vegetation clearing associated with a proposal, regardless of whether this clearing is across multiple lots. In the case of a subdivision, the proposed clearing must include all future clearing likely to be required for the intended use of the land after it is subdivided.</p> <p>If the land on which the proposed development is located has different minimum lot sizes the smaller or smallest of those minimum lot sizes is used to determine the area clearing threshold.</p> </div>	Minimum lot size associated with the property	Threshold for clearing, above which the BAM and offsets scheme apply	Less than 1 ha	0.25 ha or more	1 ha to less than 40 ha	0.5 ha or more	40 ha to less than 1000 ha	1 ha or more	1000 ha or more	2 ha or more	No
Minimum lot size associated with the property	Threshold for clearing, above which the BAM and offsets scheme apply										
Less than 1 ha	0.25 ha or more										
1 ha to less than 40 ha	0.5 ha or more										
40 ha to less than 1000 ha	1 ha or more										
1000 ha or more	2 ha or more										
<p><i>Will the proposed development have a significant impact on threatened species or ecological communities, or their habitats, according to the test in section 7.3 of the Biodiversity Conservation Act 2016 (i.e. 'test of significance')?</i></p> <p><i>Note: Consideration should be given to the site's proximity to NPWS land (see guidelines) and other natural areas, as well as any area that may contain threatened species, vulnerable or endangered ecological communities or other vulnerable habitats.</i></p>	No										
<p><i>If the application exceeds the Biodiversity Offsets Scheme Threshold (i.e. if yes to any of the above), has the application been supported by a Biodiversity Development Assessment Report (BDAR)?</i></p>	N/A										

Fisheries Management Act 1994

The proposed development would not have a significant impact on the matters for consideration under Part 7A of the *Fisheries Management Act 1994*.

Local Government Act 1993

<p><i>Do the proposed works require approval under Section 68 of the Local Government Act 1993?</i></p>	No
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Coastal Management Act 2016

27 Granting of development consent relating to coastal protection works

Council is satisfied the proposed development would not unreasonably limit public access along or the use of the adjoining beach and headland. However, the proposed works and potential scouring and end effects may undermine the existing stairway access to Hyams Beach from the adjoining property at 80 Cyrus Street.



Figure 12: Photo of existing stairway access at 80 Cyrus Street

Furthermore, the potential scouring impacts to this adjoining land may pose safety risk for the residents of 80 Cyrus Street and the general public.

If consent is granted for the proposed works, a condition of consent can be imposed in accordance with 4.17(6)(d) of the Environmental Planning Assessment Act 1979 requiring the arrangement of a security in relation to the coastal protection works for maintenance of the works and/or the restoration of the beach and land adjacent the beach if any increased erosion is caused by the presence of the works.

7. Statement of Compliance/Assessment

The following provides an assessment of the submitted application against the matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

(a) Any planning instrument, draft instrument, DCP and regulations that apply to the land

(i) Environmental planning instrument

This report assesses the proposed development/use against relevant State, Regional and Local Environmental Planning Instruments and policies in accordance with Section 4.15 (1) of the *Environmental Planning and Assessment Act 1979*. The following planning instruments and controls apply to the proposed development:

Environmental Planning Instrument
<i>Shoalhaven Local Environmental Plan 2014</i>
<i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i>

Environmental Planning Instrument*State Environmental Planning Policy (Planning Systems) 2021**State Environmental Planning Policy (Resilience and Hazards) 2021**State Environmental Planning Policy (Biodiversity and Conservation) 2021***Chapter 3 Koala habitat protection 2020**

Question	Yes		No	
1. Does the subject site have a site area >1ha or does the site form part of a landholding >1ha in area?	<input type="checkbox"/>	Proceed to Question 2	<input checked="" type="checkbox"/>	Assessment under SEPP not required.

Chapter 4 Koala habitat protection 2021

Question	Yes		No	
1. Is there an approved koala plan of management for the subject land?	<input type="checkbox"/>	Proceed to Question 2	<input checked="" type="checkbox"/>	Proceed to Question 3
2. Is the proposed development consistent with the approved koala plan of management that applies to the land?	<input type="checkbox"/>	Proposal satisfactory under SEPP.	<input type="checkbox"/>	Application cannot be supported.
3. Has information been provided to Council by a suitably qualified consultant that demonstrates that the land the subject of the development application: a) Does not include any trees belonging to the koala use tree species listed in Schedule 2 of the SEPP for the relevant koala management area, or b) Is not core koala habitat, or c) There are no trees with a diameter at breast height over bark of more than 10cm, or d) The land only includes horticultural or agricultural plantations	<input type="checkbox"/>	Proposal satisfactory under SEPP as (a), (b), (c) or (d) is satisfied.	<input checked="" type="checkbox"/>	Proceed to Question 4
4. Is the proposed development likely to have an impact on koalas or koala habitat?	<input type="checkbox"/>	Proceed to Question 5	<input checked="" type="checkbox"/>	Proposal satisfactory under SEPP.

State Environmental Planning Policy (Resilience and Hazards) 2021**Chapter 2 Coastal management**

Section 2.12 of State Environmental Planning Policy (resilience and Hazards) 2021 specifies that development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied the proposed development is not likely to cause increased risk of coastal hazards on that land or other land. The application has failed to demonstrate to the satisfaction of Council that the proposed development is not likely to cause increased risk of coastal hazards on adjoining land, specifically with regard to end effects, scouring, wave reflection forces, and changes to local hydrology.

The subject land is mapped as “coastal environment area” and “coastal use area” under the SEPP.

13 Development on land within the coastal environment area

Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:

Consideration	Comment
<i>the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment</i>	<p>Council considers the proposed development is incompatible with the adjoining coastal area and may have an adverse impact on the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment.</p> <p>The proposed development may result in amplified erosion effects on the beach and adjoining properties, end effects at either end of the proposed sea wall and potential alteration to local hydrology.</p>
<i>Coastal environmental values and natural coastal processes,</i>	<p>The proposed development is incompatible with coastal environment values and natural coastal processes.</p> <p>The current Coastal Zone Management Plan (CZMP) and draft Coastal Management Program (CMP) are the key planning documents for Council, providing a key opportunity to plan strategically for coastal hazards and mitigation measures to avoid potential issues with ad-hoc seawall construction for private development.</p> <p>Works such as those which are proposed by the applicant are not currently supported as management options / actions through either the final CZMP or the draft CMP.</p>
<i>The water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,</i>	<p>Hard structures such as the proposed seawall installed on this property and potential structures on neighbouring properties at Hyams Beach, may result in unforeseen impacts to Hyams Creek such as amplified</p>

	<p>erosion effects on the beach and changes to local hydrology.</p> <p>The proposed development, if approved, would set the precedent for similar ad-hoc developments on adjacent properties that could have adverse effects on the surrounding coastal ecosystems.</p> <p>The proposal in consideration of the impacts of the development and cumulative impacts from this seawall and other structures, e.g. the slab and footings on which the seawall is proposed to be located that is subject to a separate building information certificate, as well as potential future structures that this development may set a precedent for may have an adverse impact on the water quality of the marine estate.</p>
<i>Marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,</i>	Council is satisfied the proposed development would not have a significant adverse impact on marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms.
<i>Existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,</i>	Council is satisfied that the proposed development would not unreasonably limit public access along or the use of the adjoining beach and headland, however, the proposed works and potential scouring and end effects may undermine the existing stairway access to Hyams Beach from the adjoining property at 80 Cyrus Street.
<i>Aboriginal cultural heritage, practices and places,</i>	There are no identified impacts.
<i>The use of the surf zone.</i>	The proposal will not compromise the use of the surf zone.

It is considered the proposal may have an adverse impact on the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment for the following reasons:

- a) The adjoining watercourse to the south is in a state of flux, with at times the watercourse running parallel and in close proximity to the location of the proposed seawall. The proposed seawall on top of footings sited to bedrock may have hydrological impacts. The application has failed to demonstrate that the proposal will not cause an adverse impact to the adjoining watercourse.
- b) The addition of ununified or uniformed seawall development has not considered the area of the coastline holistically and this could have an adverse impact on the natural watercourse processes and movements.





- c) The application has failed to demonstrate that the development will not have an adverse impact on coastal environmental values and natural coastal processes, particularly with regard to the natural changes to the adjoining watercourse over time.
- d) The construction of the proposed seawall may also result in scouring and end effects at either side of the wall.
- e) The application has failed to demonstrate the proposal will not have an adverse impact on the water quality of adjoining watercourses discharging to the marine estate or marine vegetation, or the coastal environment.

These issues cannot be resolved through conditions of consent.

14 Development on land within the coastal use area

Development consent must not be granted to development on land that is within the coastal use area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:

Consideration	Comment
<i>existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,</i>	The proposal will not restrict access.
<i>Overshadowing, wind funnelling and the loss of views from public places to foreshores,</i>	The proposal will not impact on overshadowing and wind funnelling and will not result in the loss of views from public places to foreshores.
<i>The visual amenity and scenic qualities of the coast, including coastal headlands,</i>	<p>The proposed seawall would be constructed along a prominent part of Hyams Beach. The seawall will have a height of approximately 1m above the existing ground line, however it is also noted that this existing ground line changes with natural erosion, scour and sand accretion processes.</p> <p>The seawall itself, which is being considered by DA21/2330, has an approximate height of 1.2m which is then attached to an approximately 1.8m deep waffle pod footing and slab. As such, in extreme scour events which erode the beach to bedrock, a 3m high wall may be visible from the beach and public domain.</p> <p>It is also noted the proposed seawall will be located behind an unapproved rock wall with the area between the unapproved rock wall and proposed seawall reinstated to natural ground level and revegetated in accordance with Council orders.</p> <p>The design of proposed seawall along the rear boundary is not compatible with other development observed on adjoining properties which are typically timber retaining walls of a</p>

	<p>lower profile, however considering the likelihood of erosion scour events at the area directly in front of the proposed seawall as well as screening from the existing rock wall and required revegetation of the beach area, the proposed development is not considered unreasonable in this instance.</p>
<div data-bbox="172 472 751 902"></div> <div data-bbox="167 918 245 943">EXISTING</div> <div data-bbox="177 985 767 1424"></div> <div data-bbox="173 1442 252 1464">EXISTING</div>	<div data-bbox="844 465 1430 902"></div> <div data-bbox="841 918 933 943">PROPOSED</div> <div data-bbox="857 983 1442 1424"></div> <div data-bbox="860 1442 954 1464">PROPOSED</div> <p><i>Figure 13: Extracts from architectural plans showing photomontages of existing conditions and overlaying proposed seawall</i></p>
<p><i>Aboriginal cultural heritage, practices and places,</i></p>	<p>There are no identified impacts.</p>
<p><i>Cultural and built environment heritage, and</i></p>	<p>The proposal is considered appropriate with regard to cultural and built environmental heritage.</p>

It is considered that the proposal is satisfactory with regard to the matters for consideration under section 14 discussed above.

Chapter 4 Remediation of land

Question	Yes		No	
1. Does the proposal result in a new land use being a residential, educational, recreational, hospital, childcare or other use that may result in exposure to contaminated land?	<input type="checkbox"/>	Proceed to Question 2	<input checked="" type="checkbox"/>	Assessment under SEPP 55 and DCP not required.

State Environmental Planning Policy (Planning Systems) 2021

The application is for a seawall for coastal protection. The works are not coastal protection works identified in a certifier coastal management program and therefore the proposal is considered regionally significant development under 8A of State Environmental Planning Policy (Planning Systems) 2021.

Shoalhaven Local Environmental Plan Local Environmental Plan 2014**Land Zoning**

The land is zoned R2 Low Density Residential under the *Shoalhaven Local Environmental Plan 2014*.

Characterisation and Permissibility

The proposal is best characterised as coastal protection works ancillary to the residential use of the land under *Shoalhaven Local Environmental Plan 2014*. The proposal is permitted within the zone with the consent of Council.

Zone objectives

Objective	Comment
To provide for the housing needs of the community within a low density residential environment.	The proposal is not inconsistent with the objectives of the zone.
To enable other land uses that provide facilities or services to meet the day to day needs of residents.	
To provide an environment primarily for detached housing and to ensure that other development is compatible with that environment.	

Applicable Clauses

Clause	Comments	Complies/Consistent
Part 4 Principal development standards		
4.3	The set by the Height of Buildings Map is 7.5m The proposed seawall is proposed to have approximately 1m of exposed rock face above existing ground level with a top of retaining wall at	Complies

	<p>RL5.06. It is appreciated that due to the nature of the coastal environment and coastal erosion and accretion, the exact height of the seawall above existing ground level may fluctuate over time (including during the assessment period). At the time of preparation of the DA documents the existing ground level at the eastern boundary of the site ranged between RL 4 – 4.6 and as such the seawall would have an overall height ranging 1.06m – 0.46m.</p> <p>Council is satisfied that the proposed development does not exceed the building height limit.</p>					
Part 7 Additional local provision						
7.1	<p>The subject land is mapped as acid sulfate soils:</p> <table><tr><th>Class</th><th>Commentary</th></tr><tr><td>Class 5</td><td>The proposal does not involve work within 400m of adjacent Class 1, 2, 3 or 4 land that is below 5m AHD and by which the water table is likely to be lowered below 1m AHD on adjacent Class 1, 2, 3 or 4 land.</td></tr></table>	Class	Commentary	Class 5	The proposal does not involve work within 400m of adjacent Class 1, 2, 3 or 4 land that is below 5m AHD and by which the water table is likely to be lowered below 1m AHD on adjacent Class 1, 2, 3 or 4 land.	Complies
Class	Commentary					
Class 5	The proposal does not involve work within 400m of adjacent Class 1, 2, 3 or 4 land that is below 5m AHD and by which the water table is likely to be lowered below 1m AHD on adjacent Class 1, 2, 3 or 4 land.					
7.2	<p>The proposal involves some cut and filling and construction of a seawall.</p> <p>The application has not satisfactorily demonstrated that the earthworks and proposed seawall will not have a detrimental impact on the drainage patterns of the beach and coastal area or that the earthworks will not have an adverse impact on the adjoining waterway and its natural state of flux.</p> <p>Compliance with clause 7.2 cannot be resolved through conditions of consent.</p>	Does not comply				
7.4	<p>The subject site is not mapped as “Coastal Risk Planning Area” on the Coastal Risk Planning Map.</p>	N/A				
7.7	<p>The proposed works are not located on land with a slope of >20% and are not located on land identified as a “sensitive area”.</p>	N/A				
7.11	<p>All relevant services are available to the site.</p>	Complies				
7.20	<p>The application has not satisfactorily demonstrated that the application will not have a significant adverse impact on the natural values of the area and has not demonstrated that the proposal will not have an adverse impact on coastal processes, the surrounding coastal environment or the adjoining natural watercourse and its movements. Accordingly, the proposal is not considered satisfactory with regard to clause 7.20 (3).</p> <p>Compliance with clause 7.20 cannot be resolved through conditions of consent.</p>	Does not comply				

ii) Draft Environmental Planning Instrument

The proposal is not inconsistent with any [draft environmental planning instruments](#).

iii) Any Development Control Plan

Shoalhaven Development Control Plan 2014

Generic DCP Chapter	Relevant
<u>G1:</u> Site Analysis, Sustainable Design and Building Materials	
A suitable site analysis plan and schedule of proposed materials has been submitted as part of the application and is deemed acceptable.	
<u>G2:</u> Sustainable Stormwater Management and Erosion/Sediment Control	
<i>Has the application been supported by appropriate erosion and sediment control details?</i>	Yes
<i>Does the development require on site detention (OSD) to be provided?</i> <i>Note: OSD may not be suitable in instances where a development appropriately relies on a charged drainage line to the street as it may compromise the effectiveness of the drainage system.</i>	No
<i>Has the application been supported appropriate stormwater drainage details?</i>	Yes – The proposed seawall will not obstruct stormwater drainage and stormwater overflow from the existing buildings will be appropriately directed to a stormwater headwall outlet
<u>G3:</u> Landscaping Design Guidelines	
Existing/proposed landscaping is appropriate.	
<u>G4:</u> Tree and Vegetation Management	
<i>Have any trees proposed to be removed been clearly shown on the site plan (where required)?</i>	N/A
<u>G5:</u> Biodiversity Impact Assessment	
<i>Is the proposal biodiversity compliant development?</i>	Yes
<u>G6:</u> Coastal Management Areas	
<p>See Appendix A for detailed commentary considering the requirements of Chapter G6.</p> <p>The application is not considered suitable with regard to the considerations set out in Chapter G6 of Shoalhaven DCP 2014. The non-compliances with the applicable performance criteria cannot be adequately resolved through conditions of consent.</p>	

<u>G7:</u> Waste Minimisation and Management Controls	
<i>Has the application been supported by an appropriate waste minimisation and management plan?</i>	Yes
<u>G21:</u> Car Parking and Traffic	
The proposed development does not give rise to additional parking requirements. Existing vehicle parking and vehicle manoeuvring areas are maintained on site.	
<u>G26:</u> Acid Sulphate Soils and Geotechnical (Site Stability) Guidelines	
<i>Is the development suitable with regard to acid sulfate soils?</i>	Yes
<i>Does the application involve the erection of any buildings or structures on land with a slope >20% or on land with stability problems?</i>	No
Area Specific DCP Chapter – N/A	

iiia) Any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4

There are no planning agreements applying to this application.

iv) Environmental Planning and Assessment Regulation 2021

Clause 62	<i>Does the application result in a change of use of an existing building but does not propose any building works?</i>	No
Clause 64 <i>Partial Upgrade</i>	<i>Does the application involve alterations or additions to an existing building?</i>	No
Clause 64 <i>Total Upgrade</i>	<i>Does the application involve building works and result in conversion of a building or part of a building from non-habitable to a habitable use?</i>	No

The proposal ensures compliance with the applicable requirements within the Regulations subject to recommended conditions of consent.

Any coastal zone management plan

Works such as those which are proposed by the applicant are not currently supported as management options / actions through either the Coastal Zone Management Plan or the draft Coastal Management Program. The proposed development is not compatible with either the Coastal Zone Management Plan or the draft Coastal Management Program.

Other Shoalhaven Council Policies

Shoalhaven Contribution Plan 2019 & Section 64 Contributions

<i>Is the development site an “<u>old subdivision property</u>” identified in Shoalhaven Contributions Plan 2019?</i>	No
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<i>Is the proposed development considered to increase the demand for community facilities in accordance with the Shoalhaven Contributions Plan 2019?</i>	No
<i>Is the proposed development considered to increase the demand for on water and sewer services (i.e. s64 Contributions)</i>	No

(b) The Likely impacts of that development, including environmental impacts on the natural and built environments, and social and economic impacts in the locality

Head of Consideration	Comment
Natural Environment	<p><u>Coastal environment and coastal processes</u></p> <p>The proposed development may have a significant adverse impact on the natural environment. The application has not satisfactorily demonstrated that the proposed coastal protection works will not have an adverse impact on adjoining properties and the adjoining coastline. The proposed works may have an adverse impact on local hydrology and natural coastal processes.</p>
Built Environment	<p>The proposed development will not have a significant adverse impact on the built environment.</p>
Social Impacts	<p><u>Public Safety</u></p> <p>Potential scouring and end effects at either side of the proposed seawall may result in increased erosion and impact on the stability of adjoining properties, in particular in the area of the existing stairway access from 80 Cyrus Street. These impacts may undermine the stability of the adjoining stairway and may result in public safety concerns.</p> <p>The proposed development may have a negative social impact in the locality.</p>
Economic Impacts	<p>The proposed development will not have a negative economic impact in the locality.</p>

(c) Suitability of the site for the development

The site is not considered suitable for the proposed development.

- The proposal is not consistent with the requirements of the Coastal Management Act 2017.
- The proposal is not consistent with the objectives and requirements of *State Environmental Planning Policy (Resilience and Hazards) 2021*.
- The proposal is not consistent with the objectives and requirements of *Shoalhaven LEP 2014*.
- The proposal is not consistent with the objectives and requirements of the *Shoalhaven Development Control Plan 2014*.
- The proposal is not consistent with the Coastal Zone Management Plan or the draft Coastal Management Program.

- The intended use is not compatible with management actions for this area of the coastline and the development may have an adverse impact on adjoining properties and the adjoining coastal environment.
- The proposal may have an adverse impact on the natural environment and natural coastal processes.
- The proposal may pose potential risk to public safety, particular access to Hyams Beach from 80 Cyrus Street.

(d) Submissions made in accordance with the Act or the regulations

The DA was notified in accordance with Council's Community Consultation Policy for Development Applications. One submission was received by Council objecting to the proposal. The concerns raised are outlined below:

Summary of Public Submissions	
Submission 1 - D23/167050	
Objection Raised	Comment
Completion of substantial works of seawall	It is noted that the footings which originally formed part of the application have already been constructed. A development application can only consider prospective works and the constructed footings are subject to a separate building information certificate. The application is for the construction of a 1.2m high seawall on top of the existing footings.
Seawall effects on neighbouring properties in regards to wave wash or wave reflection	Council contends that the application has not satisfactorily demonstrated that the proposed works will not have a significant adverse impact on adjoining properties and the adjoining coastline, particularly with regard to erosion, scouring and end effects.
Height of seawall	The proposed seawall is proposed to have approximately 1m of exposed rock face above reinstated ground level with a top of retaining wall at RL5.06. It is appreciated that due to the nature of the coastal environment and coastal erosion and accretion, the exact height of the seawall above existing ground level may fluctuate over time (including during the assessment period). The reinstated ground level at the eastern boundary of the site would range between RL 4.0 – 4.6 and as such the seawall would have an overall height ranging 1.06m – 0.46m (i.e. seawall height (RL5.06) minus reinstated ground level (between RL4.0 and RL4.6) equals a overall height of the seawall of between 1.06m to 0.46m above the reinstated ground level.
Coastal Hazard Risk Assessment Report and seawall effects on neighbouring properties (e.g. erosion, flanking erosion, wave reflection.	Council contends that the application has not satisfactorily demonstrated that the proposed works will not have a significant adverse impact on adjoining properties and the adjoining coastline, particularly with regard to erosion, scouring and end effects.

(e) The Public Interest

The public interest has been taken into consideration, including assessment of the application with consideration of relevant policies and process. The proposal is not considered to be in the public interest.

Delegations

Are any clause 4.6 exceptions proposed?	No
Are any DCP performance-based solutions proposed?	No

Guidelines for use of Delegated Authority

Note: Ensure that all delegations in D21/472049 and officer's instrument of delegation are complied with.

Variations to Development Standards					
Level of Delegation	Assessing Officer	Team Supervisor/ Senior Planner	Lead	Manager/ Director	Elected Council
Extent of clause 4.6 exception	Nil	<2%	<5%	<10%	>10% OR non-numerical development standard
DCP Performance Based Solutions					
Level of Delegation	Assessing Officer	Team Supervisor	Lead	Manager	
Extent of DCP performance-based solutions	≤25%	≤50%	≤75%	100%	

Cost Limits for use of Delegated Authority

Level of Delegation	Assessing Officer	Team Supervisor	Lead	Manager	Director
Cost of Development / Works Proposed	≤\$1.5 million	≤\$5 million	≤\$7.5 million	≤\$10 million	≤\$30 million

The application is considered Regionally Significant Development under 8A of State Environmental Planning Policy (Planning Systems) 2021 and must be determined by the Regional Planning Panel.

Recommendation

This application has been assessed having regard for Section 4.15 (Matters for consideration) under the *Environmental Planning and Assessment Act 1979*. As such, it is recommended that DA21/2330 be refused for the following reasons:

- 1) The development application has not satisfactorily demonstrated compliance with the relevant provisions of section 27 of the Coastal Management Act 2016.
- 2) The proposal has failed to demonstrate it will not likely cause increased risk of coastal hazards to the adjoining coastal land as required by State Environmental Planning Policy (Hazards and Resilience) 2021(section 4.15(1)(a)(i) of Environmental Planning and Assessment Act, 1979).
- 3) The proposal is inconsistent with the objectives and requirements of State Environmental Planning Policy (Hazards and Resilience) 2021, being that the proposal is considered to be unsuitable having regard to the considerations for development within the “coastal environment area” and “coastal use area” (section 4.15(1)(a)(i) of Environmental Planning and Assessment Act, 1979).
- 4) The development application has not satisfactorily demonstrated compliance with the relevant provisions of clause 7.2 and 7.20 Shoalhaven Local Environmental Plan 2014. (Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act, 1979)
- 5) The proposal is considered unsuitable with regard to the provisions of Chapters G6 Shoalhaven Development Control Plan 2014. (Section 4.15(1)(a)(iii) of Environmental Planning and Assessment Act, 1979)
- 6) The development application has not adequately demonstrated that the proposal will not have adverse amenity impacts on the natural environment in the locality and will not have an adverse social impact. (Section 4.15(1)(b) of Environmental Planning and Assessment Act, 1979)
- 7) The information submitted with the development application does not satisfactorily demonstrate that the site is suitable for the proposed use. (Section 4.15(1)(c) of Environmental Planning and Assessment Act, 1979)
- 8) Having regard to the above matters to address the relevant provisions of Environmental Planning and Assessment Act 1979 and Coastal Management Act 2018, the granting of development consent is not considered to be in the public interest. (Section 4.15(1)(e) of Environmental Planning and Assessment Act, 1979)

The application is not satisfactory with regard to the heads of consideration of s4.15 of Environmental Planning and Assessment Act 1979 and as such the application is recommended for refusal. The reasons for refusal cannot be adequately addressed through conditions of consent.



Peter Woodworth

Team Supervisor - Development Assessment

City Development

2/06/2023

Appendix A – Assessment Checklist: Chapter G12: Dwelling Houses and Other Low Density Residential Development

G6: Coastal Management Areas		
5.1 – Areas of Coastal Risk		
5.1.1 – Areas of beach erosion and/or oceanic inundation		
<p>N/A – The subject site is not affected by mapped hazard lines. Section 5.1.3 applies to development on the subject site.</p> <p><i>Note: The submitted Coastal Hazard Risk Assessment Report addresses P1.1 – P1.7 of Chapter G6. The applicable performance criteria are P3.1 – P3.7.</i></p>		
5.1.2 – Areas of cliff/slope instability		
<p>N/A – The subject site is not affected by mapped cliff/slope instability lines. Section 5.1.3 applies to development on the subject site.</p> <p><i>Note: The submitted Coastal Hazard Risk Assessment Report addresses P1.1 – P1.7 of Chapter G6. The applicable performance criteria are P3.1 – P3.7.</i></p>		
5.1.3 – Other areas of potential coastal hazard risk		
<p>Although the subject site is not directly identified in the coastal hazard mapping, it is noted that the properties to the north of the site are mapped and by extrapolating the likely impacts and status of the coastal environment, it is considered that a geotechnical and coastal hazards must be adequately considered.</p> <p>The application has been supported by a Coastal Hazard Risk Assessment Report which provides an assessment against the relevant performance criteria in Chapter G6. This is considered below:</p> <p><i>Note: The submitted Coastal Hazard Risk Assessment Report addresses P1.1 – P1.7 of Chapter G6. The applicable performance criteria are P3.1 – P3.7.</i></p>		
Performance Criteria	Applicant's Comments <i>from Coastal Hazard Risk Assessment Report (Ref: M9253, Rev C) prepared by Geoff Mezler & Assocaites Pty LTD and dated 11/5/2023</i>	Council Comments

<p>P3.1 Development avoids or minimises exposure to immediate coastal risks within the immediate hazard area or floodway.</p>	<p>The proposed development of the boundary wall reduces the coastal risk to the site by protecting the existing embankment and structures within the site.</p>	<p>Council is not satisfied that this has been adequately addressed. In a significant storm event, such as which the structure has been designed for, the proposed development is likely to increase coastal erosion effects on the beach due to wave reflection forces.</p>
<p>P3.2 Development provides for the safety of residents, workers or other occupants on-site from risks associated with coastal processes.</p>	<p>There are no coastal processes which pose an immediate risk to residents, workers or other occupants. Habitable structures are set back from the top of the embankment outside the area of risk of coastal processes.</p>	<p>The application has not adequately demonstrated that the development will not pose a risk to the safety of residents, workers or other occupants. In particular, scouring and end effects at the ends of the proposed seawall may undermine the structural integrity of existing stairway access from 80 Cyrus Street to Hyams Beach.</p>
<p>P3.3 Development does not increase coastal risks to properties adjoining or within the locality of the site.</p>	<p>The proposed development does not alter the existing levels within an area that could be inundated. There is potential for localised end effects in the north eastern and south eastern corners of the wall. It is noted that without the construction of the boundary wall, coastal erosion would potentially extend further into the site and have greater impacts to the adjoining properties.</p>	<p>Council is not satisfied that this has been adequately addressed. As noted by the applicant, the proposed development has the potential for localised end effects in the north-eastern and south-eastern corners of the wall. The proposed development has not adequately addressed end effects in the design of the structure to mitigate coastal hazard risk on adjoining properties. Hence, Council is not satisfied that the proposed development does not increase coastal risks to properties adjoining or within the locality of the site.</p>
<p>P3.4 Infrastructure, services and utilities on-site maintain their function and achieve their intended design performance.</p>	<p>The development provides additional protection to the site infrastructure, utilities and services.</p>	<p>The development maintains adequate infrastructure, services and utilities to the property.</p>

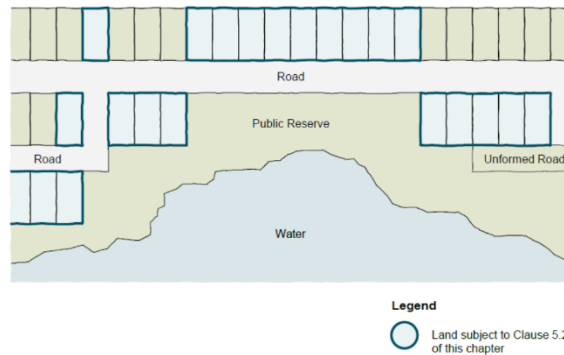
<p>P3.5 Development accommodates natural coastal processes including those associated with projected sea level rise.</p>	<p>The design of the boundary wall accounts for projected sea level rises and other coastal processes that may impact the wall and the site.</p> <p>The development provides a foreshore vegetation and management plan which is not currently in place for the wider Hyams Beach frontage.</p>	<p>Council is not satisfied that this has been adequately addressed. Council has an existing legislated and certified Coastal Zone Management Plan (CZMP) which does not list any relevant management options/actions for the site. Council is currently developing it's Coastal Management Program (CMP) for Jervis Bay which will cover Hyams Beach and hence the site. The current CZMP and future CMP are the key planning documents for Council, providing a key opportunity to plan strategically for coastal hazards and mitigation measures to avoid potential issues with ad hoc seawall construction for private development. Works such as those which are proposed by the applicant are not currently supported as management options / actions through either the final CZMP or the draft CMP.</p>
<p>P3.6 Coastal ecosystems are protected from development impacts.</p>	<p>The proposed development does not directly impact surrounding ecosystems. Ecosystems are enhanced by revegetating and stabilising the foreshore frontage to the site.</p>	<p>Council is not satisfied that this has been adequately addressed. The proposed development, if approved, would set the precedent for similar developments of adjacent properties that could have adverse effects on the surrounding coastal ecosystems. If hard structures were installed on this property and neighbouring properties at Hyams Beach, there would be unforeseen impacts to Hyams Creek such as amplified erosion effects on the beach.</p>

<p>P3.7 Existing public beach, foreshore or waterfront access and amenity is maintained.</p>	<p>The condition and access to the foreshore is unchanged for the present day condition. The visual appearance of the wall may change as sea levels rise following major storm events although the wall will not significantly impact natural erosion and accretion rates. Revegetation of the foreshore and rehabilitation works will improve the visual amenity from the foreshore.</p>	<p>Council is satisfied that the proposed development would not unreasonably limit public access along or the use of the adjoining beach and headland, however, the proposed works and potential scouring and end effects may undermine the existing stairway access to Hyams Beach from the adjoining property at 80 Cyrus Street.</p> <p>Council is satisfied that the proposed development would not have an unreasonable impact on visual amenity.</p>
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The non-compliances with the above performance criteria cannot be adequately resolved through conditions of consent.

5.2 – Development in Foreshore Areas

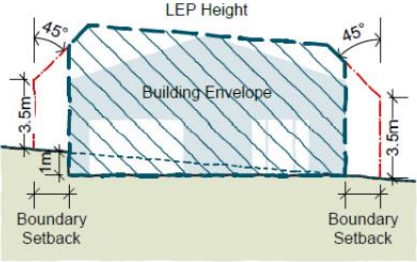
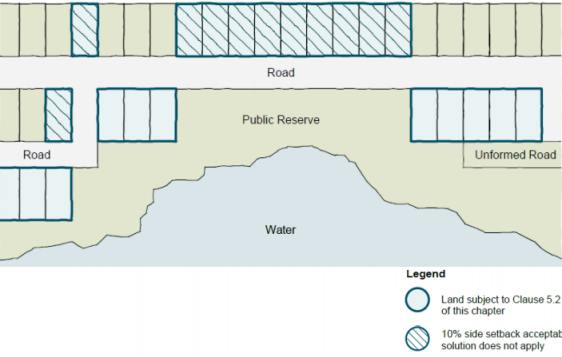
Is the subject site located in a foreshore area?



Yes

Is the development contained within the coastal area building envelope?

Yes

	
<p><i>Has the development been sited to provide a viewing corridor to the foreshore equivalent to 10% of the lot width (up to a maximum 3.5m) along one side setback (where applicable).</i></p> 	<p>Satisfactory – the proposal is for a seawall at the rear of the site and does not impact on any existing view corridors.</p>
<p><i>Are proposed colours and materials sympathetic to the coastal environment?</i></p>	<p>Yes</p>
<p><i>Is any proposed landscaping appropriate for the coastal environment?</i></p>	<p>Yes</p>
<p><i>Is cut and fill limited to 1m?</i></p>	<p>The proposal is only for the top portion of the seawall and the footings and slab are considered separately through a BIC process. The proposed seawall has a height of 1.06m and the application will result with filling between this seawall and the adjoining retaining walls to the west.</p>

<i>Are areas of fill and retaining walls appropriately located?</i>	No – The application has not demonstrated that the seawall and associated earthworks will not have an adverse impact on the surrounding coastal environment.
<i>Is stormwater resulting from the development appropriately discharged and not directed onto adjoining properties?</i>	Yes – The stormwater design has been reviewed by Council's Development Engineers with no objection being raised.
5.3 – Building on Sand Dunes	
N/A – the application does not involve any development on a sand dune area.	