

DATE OF DETERMINATION	27 October 2023
DATE OF PANEL DECISION	27 October 2023
DATE OF PANEL MEETING	18 July 2023
PANEL MEMBERS	Chris Wilson (Chair), Greg Britton, Doug Lord
APOLOGIES	None
DECLARATIONS OF INTEREST	None

Papers circulated electronically on 21 June 2023-

MATTER DETERMINED

PPSSTH-151 – Shoalhaven – DA21/2330 at 82 Cyrus Street, Hyams Beach 2540 – Retaining wall / seawall (as described in Schedule 1).

PANEL CONSIDERATION AND DECISION

The Panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at meetings and briefings and the matters observed at site inspections listed at item 8 in Schedule 1.

The Panel also considered the matters set out in the Record of Deferral dated 26 July 2023.

Development application

The Panel determined to refuse the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

REASONS FOR THE DECISION

The Panel determined to refuse the application for the following reason:

1. The Panel cannot grant development consent under section 4.16 of the *Environmental Planning and Assessment Act 1979* as it cannot be satisfied that the proposal includes satisfactory arrangements for the life of the proposed works for their maintenance or for restoration of the beach or land adjacent, as required by section 27(1)(b) of the *Coastal Management Act 2016*.
2. The Panel considers the stability of the proposed wall is dependent on the footings which form part of the unauthorised works. The Panel is not satisfied that the unauthorised works can be maintained over their lifetime to ensure the structural integrity of the proposed sea wall, as required by s 27(1)(b)(ii) of the CM Act. As the maintenance of the proposed sea wall and the unauthorised works are inextricably linked, the potential impacts of the proposed wall have not been fully addressed and, as a result, the development is not in the public interest.
3. The structural stability of the proposed works, in their context, is unknown, and the works over their assumed design life pose, or could pose, a threat to public safety due to instability within the foundations, inappropriate materials incorporated in the works as completed, or potential structural instability during storm events which could potentially lead to dislodgement and movement from the structure, which is not in the public interest.

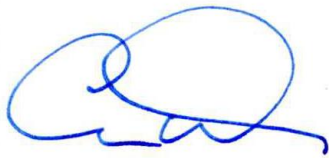

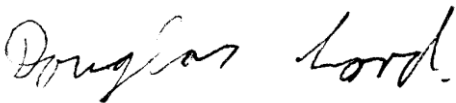
4. Pursuant to the provisions of section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, it is considered that in the circumstances of the case, approval of the development would set an undesirable precedent for similar inappropriate development and is therefore not in the public interest.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered written submissions made during public exhibition and a further submission in support of the development which was received by Council outside the exhibition period. The Panel notes that issues of concern included:

- Completion of substantial works of sea wall.
- Seawall effects on neighbouring properties regarding wave wash or wave reflection.
- Height of the seawall.
- The Coastal Hazard Risk Assessment Report and seawall effects on neighbouring properties (erosion, flanking erosions, wave reflection).

The Panel considers that concerns raised by the community have been addressed in the Assessment Report and the decision of the Panel and that no new issues requiring assessment were raised.

PANEL MEMBERS	
 Chris Wilson (Chair)	 Greg Britton
 Doug Lord	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSTH-151 – Shoalhaven – DA21/2330
2	PROPOSED DEVELOPMENT	Retaining wall / seawall
3	STREET ADDRESS	82 Cyrus Street, Hyams Beach 2540 - Lot 1 DP 1222535
4	APPLICANT/OWNER	Set Consultants Pty Ltd / Real Estate Capital Investors Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	Certain Coastal Protection Works
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> Environmental planning instruments: <ul style="list-style-type: none"> State Environmental Planning Policy (Biodiversity and Conservation) (2021) State Environmental Planning Policy (Planning Systems) 2021 State Environmental Planning Policy (Resilience and Hazards) 2021 Shoalhaven Local Environmental Plan 2014 Draft environmental planning instruments: Nil <i>Coastal Management Act (2016)</i> Development control plans: <ul style="list-style-type: none"> Shoalhaven Development Control Plan 2014 Planning agreements: Nil Relevant provisions of the <i>Environmental Planning and Assessment Regulation 2000</i> The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality The suitability of the site for the development Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations The public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> Council Assessment Report: 27 June 2023 Written submissions during public exhibition: 1 Further submission in support received outside exhibition period Total number of unique submissions received by way of objection: 1 Applicant response to additional information request dated 18 July 2023
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> Briefing: 25 May 2022 <ul style="list-style-type: none"> <u>Panel members</u>: Chris Wilson (Acting Chair), Greg Britton, Doug Lord <u>Council assessment staff</u>: Peter Woodworth, Cathy Bern, Rebecca Lockart <u>Other</u>: Verity Rollason (DPE), Amanda Moylan (DPE) Site inspection: 26 July 2022 <ul style="list-style-type: none"> <u>Panel members</u>: Chris Wilson (Acting Chair), Greg Britton, Doug Lord <u>Council assessment staff</u>: Nigel Smith, Peter Woodworth <u>Applicant representatives</u>: David Cannon (SET), Tiana Phillips-Manard, Geoff Metzler, Jack Metzler, other members of applicant team observing Briefing: 4 April 2023 <ul style="list-style-type: none"> <u>Panel members</u>: Chris Wilson (Chair), Greg Britton, Doug Lord <u>Council assessment staff</u>: Peter Woodworth <u>Other</u>: Amanda Moylan (DPE)

		<ul style="list-style-type: none"> • Final briefing to discuss council's recommendation: 18 July 2023 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Chris Wilson (Chair), Greg Britton, Doug Lord ○ <u>Council assessment staff</u>: Peter Woodworth, Cathy Bern, Rebecca Lockart ○ <u>Applicant representatives</u>: David Cannon (Set Consultants), Mark Davoren, Andrew Dyer Jack Metzler, Geoff Metzler. ○ <u>Other</u>: Amanda Moylan (DPE)
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	NA