

DATE OF DETERMINATION	13 February 2025
DATE OF PANEL DECISION	13 February 2025
DATE OF PANEL BRIEFING	29 January 2025
PANEL MEMBERS	Chris Wilson (Chair), Doug Lord, Bruce Thom
APOLOGIES	None
DECLARATIONS OF INTEREST	None

Papers circulated electronically on 22 January 2025.

MATTER DETERMINED

PPSSTH-414 – Eurobodalla Shire Council - DA0095/24 at 217A Beach Road, Denhams Beach – Attached dual occupancy, relocation of sewer main including coastal and environmental cliff works, beach storage shed and use of the seawall/retaining wall (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 carefully considered the Applicants request to defer the determination of the application to enable the Applicant to “provide an opportunity to prepare and provide an informed submission to the Panel in respect of the Development Application”. As part of the Panel’s deliberation, it considered the Applicant’s additional information provided on the 7 February 2025.

During the determination briefing the following matters were discussed:

- Clarification as to whether certain works (including the already constructed seawall/retaining wall) were classified as coastal protection works.
- It was noted that Council had provided written advice that the seawall/retaining wall was likely classified as coastal protection works requiring consent despite the Applicant’s view that the works were “emergency works” that did not require development consent.
- The Panel supports Council’s view that development consent was required for the seawall/retaining wall and that the works undertaken did not constitute “emergency works”. It was also noted that the need to obtain consent for the seawall/retaining wall was the reason the Panel was the consent authority.
- The Panel also noted that Council had issued a ‘show cause’ notice in relation to identified unauthorised works (i.e. the construction of the seawall/retaining wall) and was awaiting a response from the applicant.
- Given the contradictory views regarding the need for consent for certain works, the Applicant sought a formal deferral of the Panel’s determination to enable an appropriate response.
- Whilst the Panel afforded the applicant 7 days to provide additional information regarding the characterisation of the development, the Panel noted that Council in its correspondence dated 19 October 2023 and 21 February 2024, had clearly articulated the need to obtain consent for the seawall/retaining wall.

Following consideration of all information before the Panel, including Council's Assessment Report and recommended reasons for refusal, the applicant's request to defer the determination of the Application, and the applicant's further information provided on 7 February 2025, the Panel ultimately determined to refuse the application for the reasons provided below.

In coming to its decision, the Panel notes the following:

- There is ongoing regulatory action by Council regarding potential unauthorised works associated with landscaping and the seawall/retaining wall at the site.
- The Applicant:
 - Now considers the seawall/retaining wall is clearly for the purpose of cliff stability but given its location is most appropriately identified as coastal protection works within the meaning of Section 27 of the *Coastal Management Act*.
 - Is seeking consent for the use of the seawall/retaining wall noting the Panel cannot retrospectively approve the construction of the already built seawall/retaining.
 - Has agreed to prepare a report addressing the impacts (if any) of the seawall/retaining wall on coastal processes and adjoining properties.
 - Has decided to amend the application to remove the small section of the roof over the deck that exceeds the relevant height limit although the Applicant has not sought to formerly amend the development application under Section 37 of the *Environmental Planning and Assessment Regulation 2021*.
- The Panel is of the view there is a clear interrelationship between the stability and integrity of the seawall/retaining wall and the construction of the beach storage shed and the dual occupancy.
- The role of the Panel is to ensure that coastal protection works meet the requirements of the Coastal Management Act 2016, in particular Section 27(1)(b) should it be of a mind to grant consent.
- Given the lack of information regarding the:
 - Structural integrity of the seawall/retaining wall.
 - Potential impacts on coastal processes and neighbouring lands.
 - Uncertainty regarding ongoing maintenance of the seawall/retaining wall,the Panel could not be satisfied that the jurisdictional requirements of Section 27 of the Coastal Management Act 2016 in regard to the development could be met.
- Furthermore, given the paucity of information, the Panel could not be satisfied that these matters could be overcome through the imposition of conditions.

The Panel notes that the Applicant has had ample opportunity to respond to the concerns of both the Council and Panel regarding the assessment of the development application. It is further noted that this has been complicated by works undertaken onsite without appropriate assessment and approval.

The Panel was satisfied that Council had undertaken a thorough assessment of the material available as required under Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

Application to vary a development standard:

The Panel considered a written request from the Applicant, made under cl 4.6 (3) of the Eurobodalla Local Environmental Plan 2012 (LEP), that the Applicant has demonstrated that:

- a) compliance with cl. 4.3 (Height of Buildings) is unreasonable or unnecessary in the circumstances; and
- b) there are sufficient environmental planning grounds to justify contravening the development standard

However, the Panel was not satisfied that:

- a) the Applicants written request adequately addressed the matters required to be addressed under cl 4.6(3) of the LEP; and
- b) the development is in the public interest because it is consistent with the objectives of cl 4.3 (Height of Buildings) of the ELEP 2012 and the objectives for the development in the R2 Low Density residential zone.

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

Consistent with Government policy, a key role of the Panel is to facilitate ecologically sustainable development (ESD) in the coastal zone and promote sustainable land use planning in its decision-making.

This includes:

- avoiding inappropriate development in areas exposed to high levels of risk from coastal hazards or directed towards areas of lower probability of hazards and risk.
- achieving land uses where the impacts and risks can be mitigated, and the development is necessary.
- planning and design development to be safe without increasing the risks or threats elsewhere, and ensuring any residual risks are addressed.

Given the circumstances of the case, the Panel ultimately determined to refuse the application:

- For the reasons outlined in the Council's assessment report.
- Given there is insufficient information (as required by section 27(1)(b) of the *Coastal Management Act 2016*) to enable the Panel to be satisfied that the proposal includes satisfactory arrangements for the life of the seawall/retaining wall (being either maintenance or for restoration of the beach or land adjacent).
- Given there is insufficient information (as required by section 27(1)(b) of the *Coastal Management Act 2016*) regarding the structural integrity of the seawall/retaining wall noting that the structure is inextricably linked to the integrity of the proposed beach storage shed and dual occupancy and could pose, a threat to public safety.
- Had the Panel been of a mind to approve the development application, including the use of the seawall/retaining wall, whilst Council is pursuing regulatory compliance action relating to the unauthorised works, it has the potential to create an anomalous situation where the proposed dual occupancy and beach storage shed are approved but the supporting structure (seawall) may require rectification.
- Pursuant to the provisions of section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, it is considered approval of the development application would set an undesirable precedent for similar inappropriate development and is therefore not in the public interest.


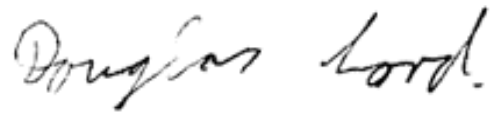

Consideration of Community Views

In coming to its decision, the Panel considered written submissions made during public exhibition.

The Panel notes that issues of concern included:

- Visual Impacts and overshadowing
- Unauthorised vegetation removal and Impact on trees
- View loss
- Unauthorised coastal protection works
- Inadequate information to demonstrate adequate engineering solutions
- Non-compliance with DCP and LEP controls
- Vehicular movements and location of carport

- Character and scale of development
- Lack of hydrological study and potential hydrological impacts on adjoining properties
- Cliff instability and environmental impacts
- Stormwater management impacts

PANEL MEMBERS	
 Christopher Wilson (Chair)	 Douglas Lord
 Bruce Thom	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSTH-414 - EUROBODALLA - DA0095/24
2	PROPOSED DEVELOPMENT	Attached dual occupancy, relocation of sewer main including coastal and environmental cliff works, beach storage shed and retaining walls
3	STREET ADDRESS	Lot 2 DP 773132, 217A Beach Road, Denhams Beach
4	APPLICANT/OWNER	Adhami Pender Architecture / Canplay 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 Sustainable Buildings) 2022 State Environmental Planning Policy (Planning Systems) 2021 State Environmental Planning Policy (Biodiversity and Conservation) 2021 State Environmental Planning Policy (Resilience and Hazards) 2021 Eurobodalla Local Environmental Plan 2012 Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> Eurobodalla Residential Zones Development Control Plan 2011 Planning agreements: Nil <ul style="list-style-type: none"> Relevant provisions of the <i>Environmental Planning and Assessment Regulation 2021</i> Coastal zone management plan: <ul style="list-style-type: none"> Eurobodalla Open Coastal Management Program 2022 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: 22 January 2025 Clause 4.6 contravention of a development standard (Cl.4.3 - Height of Buildings) Written submissions during public exhibition: 5 Total number of unique submissions received by way of objection: 5
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> Briefing: 7 August 2024 <ul style="list-style-type: none"> <u>Panel members</u>: Chris Wilson, Doug Lord, Bruce Thom, Amber Schutz <u>Council assessment staff</u>: Katrena Fuller, David Meagher <u>Applicant representatives</u>: Marah Gerious (Adhami Pender Architecture), Nabil Adhami (Adhami Pender Architecture), Paul Anderson (PM Anderson Consulting), Natalie Colbert (Canplay Pty Ltd) <u>DPHI</u>: Amanda Moylan, Tracey Gillett Site inspection: 29 January 2025 <ul style="list-style-type: none"> <u>Panel members</u>: Chris Wilson (Chair), Doug Lord, Bruce Thom, Mark Brain <u>Council assessment staff</u>: Catherine Watkins, Mark Brain, David Meagher <u>Other</u>: James Levy (landowners of adjoining property)

		<ul style="list-style-type: none"> Final briefing to discuss council's recommendation: 29 January 2025 <ul style="list-style-type: none"> <u>Panel members</u>: Chris Wilson, Doug Lord, Bruce Thom <u>Council assessment staff</u>: Catherine Watkins, David Meagher <u>Applicant representatives</u>: Nabil Adhami (Architect, Adhami Pender Architecture), Paul Anderson (Consulting Planner, PM Anderson Consulting), Natalie Colbert (Owner, Canplay) Ballanda Sack (Betty Hughes & Associates) Angus Harker (Adhami Pender Architecture) <u>Other</u>: Amanda Moylan (DPHI), Nikita Lange (DPHI)
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	NA