

DATE OF DETERMINATION	11 August 2025
DATE OF PANEL DECISION	11 August 2025
DATE OF PANEL BRIEFING	28 July 2025
PANEL MEMBERS	Grant Christmas (A/Chair), Angus Gordon, Greg Britton, Vivian Straw
APOLOGIES	Cr Mick Johnson
DECLARATIONS OF INTEREST	None

Briefing held at Bay Pavilions, 12 Vesper St, Batemans Bay NSW and by videoconference on 28 July 2025, opened at 1:30pm and closed at 4pm.

Papers circulated electronically on 18 July 2025.

MATTER DETERMINED

PPSSTH-516 – EUROBODALLA SHIRE – REV0011/25 at 217A Beach Road, Denhams Beach – Review of Determination of Application DA0095-24 (PPSSTH-414) for an attached dual occupancy, relocation of sewer main including coastal and environmental cliff works, beach storage shed and retaining walls (as described in Schedule 1).

BACKGROUND

On the 13 February 2025 the Southern Regional Planning Panel refused PPSSTH-414 for an attached dual occupancy, relocation of sewer main including coastal and environmental cliff works, beach storage shed and use of the seawall/retaining wall. The Panel members were Chris Wilson (Chair), Doug Lord and Bruce Thom.

The (original) Panel's reasons for refusal were:

- For the reasons in the Council 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 the 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.

Following this determination, the Applicant requested a review of the decision under Division 8.2 of the *Environmental Planning and Assessment Act 1979*. The request for review was lodged with amended documents. The main amendments to the proposed development are:

- a) Use of as-built works including removal of the term 'coastal protection works' from the description of development for which consent is being sought;
- b) Submission of additional specialist reports - engineering; wave action and coastal engineering works; flora and fauna assessment and arborist reports;
- c) Revised plans (minor built form amendments including deletion of the proposed beach storage shed, reduction in the overall height of the dual occupancy building, and re-location of the stormwater drainage system to the northern boundary).

PANEL CONSIDERATION AND DECISION

The Review Panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at the briefing and meeting and the matters observed at the site inspection listed at item 8 in Schedule 1.

REVIEW OF DEVELOPMENT APPLICATION

The Review Panel determined to confirm the decision to refuse consent to the development application (but for different reasons) pursuant to section 8.4 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

In addition to the above the Review Panel notes the following:

- (a) The seawalls/retaining walls are described as sandstone walls in the Council's Development Control Order dated 1 August 2025 whereas, on inspection, and based on the information in the Applicant's documents, the walls in question are in fact constructed using hollow concrete "vertiblocks".
- (b) In some places, the Applicant's documentation suggests the hollow blocks were filled with concrete and had reinforcing bars, whereas in other diagrams they do not appear to be filled with concrete rather they rely on their interlocking design. As an engineering matter, the Panel would expect a reinforced concrete block wall to be more able to resist forces from both down slope pressure and from wave attack given that there is no information on the life of the reinforcing used. Irrespective, the reasons for refusal are not substantially altered by whether the walls are vertiblock or sandstone.
- (c) The Applicant supplied further "as built" information, including photographs of the walls. It seems there are a number of inconsistencies in the information supplied. One example is the apparent inclusion of a subsoil drain shown in the middle of a section drawn through the base of the landward wall, which is shown to be filled with concrete; further it would appear the subsoil drain is aligned along, rather than across, the landward wall. Another is the apparent lack of analysis regarding the design of the landward wall's ability to resist rotation and clearly the lack of design aimed at integrating the ends of the wall(s) into the adjacent properties.
- (d) The Coastal Management Act uses the term "adjacent land" however the Resilience and Hazards SEPP uses the term "other land" which encompasses both adjacent land and also other land in the embayment. In consideration of both terms, the Panel is of the view that the walls will have an adverse impact not only to the immediately adjacent land but also to other land in the embayment as it creates a discontinuous straight foreshore in an otherwise curved embayment.

REASONS FOR THE DECISION

The Review Panel determined to confirm the decision to refuse consent to the development application for the following reasons:

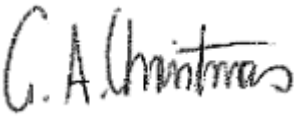
- There is insufficient information (as required by section 27(1)(b) of the *Coastal Management Act 2016*) to enable the Panel to be satisfied that the proposal includes satisfactory arrangements for the life of the seawalls/retaining walls (being either maintenance or for the restoration of the beach or land adjacent).
- There is insufficient information (as required by section 27(1)(b) of the *Coastal Management Act 2016*) regarding the structural integrity of the seawalls/retaining walls noting that the structures are inextricably linked to the integrity of the proposed dual occupancy and could pose, a threat to public safety.
- The Review Panel 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*.
- Given the Council has refused to issue Building Information Certificates for the erosion protection works, vegetation removal, refurbishment of existing pathways and for erosion and coastal protection seawalls/retaining walls, and as the Council has issued a Development Control Order for the demolition of these works, the Review Panel cannot support the proposed dual occupancy where the seawalls/retaining walls may be required to be demolished or require rectification and where the impact on the stability of the land supporting the dual occupancy is unknown. Further, as the Council has refused to issue Building Information Certificates for the relevant structures, development consent should not be granted to the use of those structures.
- 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 Review Panel considered written submissions made during the public exhibition. The Panel notes that issues of concern included:

- Role of Council and SRPP in respect to the review, “as-built” works and Building Information Certificates (BIC)
- The modification is no longer ‘substantially the same development’
- Extent of works is not appropriate and does not conserve the character and environmental quality of the area
- Numerous non compliances with DCP and LEP including front and side setbacks and building height
- Unauthorised works have resulted in significant impacts
- Consideration of environmental impacts associated with the lodged BICs
- Beach storage shed
- Height of stormwater system
- Visual impact, character and scale
- Vehicle manoeuvring and sewer
- Overshadowing
- Landscaping
- Urban design
- Character and environmental impacts
- Sewer easement
- Over development of the site
- Impacts of unauthorised works
- Unauthorised vegetation removal
- Reasons for refusal set out in original application remain relevant
- Impact of height variation

The Review Panel considers that concerns raised by the community have been adequately addressed in the Council Assessment Report.

PANEL MEMBERS	
 Grant Christmas (A/Chair)	 Angus Gordon
 Greg Britton	 Vivian Straw

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSTH-516 – EUROBODALLA SHIRE - REV0011/25
2	PROPOSED DEVELOPMENT (AS AMENDED)	Review of Determination of Application DA0095-24 (PPSSTH-414) for an attached dual occupancy, relocation of sewer main including coastal and environmental cliff works, stormwater management works 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	- Environmental planning instruments: - 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: - Eurobodalla Residential Zones Development Control Plan - Planning agreements: Nil - Relevant provisions of the <i>Environmental Planning and Assessment Regulation 2021</i> - Coastal zone management plan: 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	- Council Assessment Report: 17 July 2025 - Supplementary information received from Council: - BIC refusal letter - C0104/25 (BIC-42402) and C0105/25 (BIC-38555) dated 1 August 2025 - Development Control Order 3 (Demolish Works Order) pursuant to Part 1 of Schedule 5 of the <i>Environmental Planning and Assessment Act 1979</i> (the 'Act') dated 1 August 2025 - Supplementary information received from the Applicant: - Photographs of wall construction and as built retaining wall provided by the Applicant - Applicant presentation to the Panel (28 July 2025) - Coastal Hazard Assessment prepared by UNSW Water Research Laboratory (27 July 2025) - Claim against performance criteria contained in Eurobodalla DCP relating to front setback concession

		○ Claim against performance criteria contained in Eurobodalla DCP relating to side setback due to proposed building height ○ Beatty Hughes & Associates DA0095/24 / REV0011/25: <i>Summary Assessment material provided in relation to coastal protection works component (Undated)</i> • Written submissions during public exhibition: 5 • Checklist of Coastal Management Act provisions provided by the Applicant during the final briefing and uploaded to the portal • Coastal Management Assessment prepared by James Carley and provided by the Applicant during the final briefing and uploaded to the portal • Total number of unique submissions received by way of objection: 5
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	• Site inspection: 28 July 2025 ○ <u>Panel members</u>: Grant Christmas (Chair), Angus Gordon, Greg Britton, Vivian Straw ○ <u>Council assessment staff</u>: David Meagher, Catherine Watkins ○ <u>Applicant representatives</u>: Natalie Colbert, Ballanda Sack • Final briefing to discuss Council's recommendation: 28 July 2025 ○ <u>Panel members</u>: Grant Christmas (Chair), Angus Gordon, Greg Britton, Vivian Straw ○ <u>Council assessment staff</u>: David Meagher, Catherine Watkins ○ <u>Applicant representatives</u>: Natalie Colbert, Ballanda Sack, Nabil Adhami, Angus Harker, James Carley
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	N/A