



## Agenda Report for Decision

**Meeting Date: 3 July 2025**

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| <b>Item Name</b>  | State Commission Assessment Panel (SCAP) Decision Review<br>Request: 30713 Flinders Hwy, Eba Anchorage (near Streaky Bay)<br>DA 25003022 |    |
| <b>Presenters</b>   | Paul and Nadia Bellerby  |    |
| <b>Purpose of Report</b>  | Decision   |    |
| <b>Item Number</b>  | 5.1  |    |
| <b>Strategic Plan Reference</b>   | 4. Discharging Statutory Obligations   |    |
| <b>Work Plan Reference</b>  | 4.3 Ensure the State Commission Assessment Panel continues to<br>operate effectively   |    |
| <b>Confidentiality</b>  | Not Confidential (Release Immediately)   |    |
| <b>Related Decisions</b>  | N/A  |    |
| <b>Conflicts Declared</b>   | Nil  |    |
| <b>Is the Report author aware of any potential undeclared conflict?</b> |  | NO |

### Recommendation

It is recommended that the State Planning Commission (the Commission) resolves to:

1. Approve the designation of this item as Not Confidential (Release Immediately)
2. Note the Decision Review Request (including additional documents) from Ms Nadia Bellerby on behalf of Paul and Nadia Bellerby (the Applicants) to the Commission (**Appendix A**)
3. Note Development Application DA 25003022 documentation for Restricted Development – Dwelling, with associated deck, pool, shed and ground mounted solar panels in a Conservation Zone (**Appendix B**).
4. Note the Assessment Report to refuse to proceed to assessment and Minutes from the SCAP meeting held on 9 April 2025 (**Appendix C**).
5. Authorise the Chair of the Commission to sign the letter to the Applicant advising of the Commission's decision not to proceed to assess DA 25003022 (**Attachment 1**).
6. Affirm the decision of the SCAP to refuse to proceed to assess DA 25003022 under Section 110 of the Planning, Development and Infrastructure Act 2016 (the Act) (**Attachment 2**).
7. Authorise the Chair to make any minor amendments to the letters required.

## Background

On 18 February 2025, the applicant lodged a development application (DA 25003022) seeking Planning Consent for the development of a single storey 3-bedroom dwelling, deck, pool, ground mounted solar panels and associated outbuilding for residential purposes. The subject site is at 30713 Flinders Hwy Eba Anchorage. The site is approximately 12km north of Streaky Bay township on the west coast of South Australia. The site is 1480.6ha in size on an irregularly shaped allotment and is located on the coast.

The application was categorised as Restricted Development for a dwelling in the Conservation Zone, according to Table 4 of the Planning and Design Code (the Code). Applications for Restricted Development are assessed by the Commission as the relevant authority, in accordance with section 110 of the *Planning, Development and Infrastructure Act 2016* (the Act).

The decision was delegated to the State Commission Assessment Panel (SCAP) in accordance with section 30(3) of the Act.

Pursuant to Section 110 (14) of the Act, the SCAP must first decide whether to proceed with an assessment of the Restricted Development application or to refuse the application without proceeding to an assessment.

Section 5 of the Commission's *Practice Direction 4 Restricted Development* (the Practice Direction) dated December 2022, prescribes the circumstances under which the Commission would assess restricted development:

*For the purposes of section 109(1)(a)(i) of the Act, the Commission, acting through its delegate under section 30(3) of the Act, will proceed to assess an application for restricted development unless it appears to the delegate that there is no reasonable prospect of a favourable assessment.*

The subject land is located on the far west coast and straddles both the Conservation Zone and Rural Zone, with the majority of the land in the Conservation Zone, however the location of the proposed development is wholly within the Conservation Zone. The applicants were asked to consider relocating the proposed development to that portion of the subject land within the Rural Zone, which they declined. If the proposed development were to be considered in the Rural Zone, it would be assessed as a Performance assessed development by the District Council of Streaky Bay.

The Desired Outcomes of the Zone seeks *the conservation and enhancement of the natural environment and natural ecological processes for their ability to reduce the effects of climate change, for their historic, scientific, landscape, habitat, biodiversity, carbon storage and cultural values and provision of opportunities for the public to experience these through low impact recreational and tourism opportunities.*

The SCAP considered that the application for a dwelling and outbuilding had no reasonable prospect of a favourable assessment, having regard to the relevant policies of the Conservation Zone. Accordingly, on 9 April 2025 the SCAP refused the application without proceeding to an assessment (**Appendix C**).

On 6 May 2025, the applicant submitted a request for the Commission to review the SCAP decision as permitted under section 110(15) of the Act (**Appendix A**).

## Discussion

The Assessment Report (**Appendix C**) that was presented to the SCAP on 9 April 2025 recommended that the application should not proceed to an assessment. Following a review of the proposal the SCAP formed the view that the application should not proceed to an assessment for the following reasons:

- a) The proposed development would not conserve and enhance the natural environment and natural ecological processes to provide opportunities for the public to experience these through low-impact recreational and tourism development.
- b) The development would fail to conserve and enhance the landscape, habitat, and biodiversity values within the surrounding coastal environment through the introduction of a residential dwelling.

The applicant considers that the SCAP's decision, concluding that the proposal has no reasonable prospect of a favourable assessment against the provisions of the Conservation Zone is unfair considering the environmental credibility of the applicants and the proposed conservation measures that are to be undertaken on the subject land. The applicants are seeking that the application be permitted to proceed to a full assessment. The applicant requests to review the decision to not proceed to assessment is contained in **Appendix A**. It is also possible that the applicants will table further information for the Commission to consider related to the conservation work proposed on the land.

With the development application the applicant provided a data report for clearance of native vegetation, a report relating to the nearby White bellied Sea Eagle (WBSE) nest and guard roosts and other information related to the historical use of the site including some of the first explorers to the area. However, this information was not presented to the SCAP as the application needed to 'get over' the first hurdle of the SCAP agreement to proceed to assessment which was refused. These environmental documents are of relevance only to the assessment phase should the SCAP have agreed to proceed to assessment.

The applicant has also provided further additional information to support their position that the application should be allowed to proceed to assessment. These documents are included in **Appendix B**.

The applicant has requested a review to put their case to the State Planning Commission concerning their environmental and conservation credentials and plans for the subject land.

Pursuant to Section 110(18) of the Act, the Commission may either affirm the decision of the SCAP or refer the matter back to the SCAP with a direction that the application for planning consent be assessed.

In accordance with Section 110(19) of the Act, no appeal to the Environment, Resources and Development Court (ERDC) lies against the decision of the SCAP to refuse the application without proceeding to an assessment or the review decision made by the Commission.

## Conclusion

The SCAP, having regard to the Code, Practice Direction 4, a recent court case (Carter Brothers Pty Ltd v State Planning Commission SAERDC 17) and the Act, determined that the application for a dwelling and outbuilding at 30713 Flinders Hwy Eba Anchorage, had insufficient planning merit to have a reasonable prospect of a favourable assessment.

In accordance with the Applicant's request, the Commission is tasked with the administrative review of this decision.

Should the Commission affirm the decision of the SCAP to refuse to proceed to assess DA 25003022, draft letters to the Applicant and Presiding Member of the SCAP are provided for consideration (**Attachments 1 and 2**).

Procedural Matters

*Delegation*

Under Section 110(15) of the Act, a review of a decision by the Commission's delegate must be undertaken 'by the Commission itself'.

*Procedures for a Review*

Under Section 110 (17) of the Act, on an application for review, the Commission may adopt such procedures as the Commission thinks fit and is not bound by the rules of evidence and may inform itself as it thinks fit.

**Attachments:**

1. Letter to Applicant from SPC (#23299007)
2. Letter from SPC Chair to SCAP presiding member (#23299016)

**Appendices:**

- A. Application to the State Planning Commission – Decision Review Request and attachments (#23298961)
- B. Development Application 25003022 and supporting documents (#23298974)
- C. Assessment Report and Minutes of SCAP dated 9 April 2025 (#23298981)

Prepared by: Karen Ferguson, Senior Planner

Endorsed by: Troy Fountain and Andy Humphries

Date: 20 June 2025

23299007

15 July 2025

Paul and Nadia Bellerby  
Level 10  
83 Pirie Street  
Adelaide SA 5000GPO Box 1815  
Adelaide SA 50011800 752 664  
saplanningcommission@sa.gov.auBy email: 

Dear Mr and Ms Bellerby,

**Decision Review Request – Development Application 25003022 – Proposed Dwelling, with associated deck, pool, shed and ground mounted solar panels and Outbuilding at 30713 Flinders HWY Eba Anchorage SA 5680.**

I refer to your request dated 6 May 2025 for the State Planning Commission (Commission) to review a decision of the State Commission Assessment panel (SCAP) to refuse Development Application (DA) 25003022 without proceeding to make an assessment, pursuant to section 110(14) of the *Planning, Development and Infrastructure Act, 2016* (the Act).

At its meeting held on 3 July 2025, the Commission reviewed the decision of the SCAP (from its meeting held on 9 April 2025), taking into consideration your decision review request, the original Development Application documentation, the SCAP Assessment Report and the Commission's *Practice Direction 4 – Restricted Development*.

*For the purposes of section 109(1)(a)(i) of the Act, the Commission, acting through its delegate under section 30(3) of the Act, will proceed to assess an application for restricted development unless it appears to the delegate that there is no reasonable prospect of a favourable assessment.*

Following this review, the Commission resolved to affirm the decision of the SCAP not to proceed to assess DA 25003022.

Pursuant to Section 110 (19) of the Act, there is no appeal to the Environment, Resources and Development Court against this decision to refuse the application without making an assessment, either against the initial decision by the SCAP or the subsequent decision by the Commission.

Yours sincerely

**Craig Holden**  
Chair

23299016

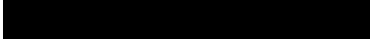
15 July 2025

Ms Rebecca Thomas  
Presiding Member  
State Commission Assessment Panel (SCAP)

Level 10  
83 Pirie Street  
Adelaide SA 5000

GPO Box 1815  
Adelaide SA 5001

1800 752 664  
saplanningcommission@sa.gov.au

By email: 

Dear Presiding Member

**Decision Review Request – Development Application 25003022 – Proposed Dwelling and Outbuilding at 30713 Flinders HWY Eba Anchorage SA 5680.**

I refer to a deputation request the State Planning Commission received of 6 May 2025 for the State Planning Commission (Commission) to review a decision of the State Commission Assessment panel (SCAP) to refuse Development Application (DA) 25003022 without proceeding to make an assessment, pursuant to section 110(14) of the *Planning, Development and Infrastructure Act, 2016* (the Act).

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*For the purposes of section 109(1)(a)(i) of the Act, the Commission, acting through its delegate under section 30(3) of the Act, will proceed to assess an application for restricted development unless it appears to the delegate that there is no reasonable prospect of a favourable assessment.*

Following this review, the Commission resolved to affirm the decision of the SCAP not to proceed to assess DA 25003022.

Pursuant to Section 110 (19) of the Act, there is no appeal to the Environment, Resources and Development Court against this decision to refuse the application without making an assessment, either against the initial decision by the SCAP or the subsequent decision by the Commission.

Yours sincerely



**Craig Holden**  
Chair