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23 February 2021

The Parliamentary Officer  
Environment Resources and Development Committee (ERDC)  
[ERDC.Assembly@parliament.sa.gov.au](mailto:ERDC.Assembly@parliament.sa.gov.au)

**Re: Submission to the Parliament of South Australia ERDC Inquiry into the Coast Protection Board and Legislation**

This submission is on behalf of the South Australian Branch of the Australian Coastal Society Ltd (ACS) which is a national 'not for profit' organisation dedicated to healthy coastal ecosystems, vibrant coastal communities and sustainable use of coastal resources. The submission addresses each of the four terms of reference for the ERDC Inquiry and provides a concluding statement on future directions.

***TOR 1- The structure, functions and powers of the Coast Protection Board in accordance with the Coast Protection Act 1972;***

The *Coast Protection Act, 1972* has been virtually unchanged since its inception but over time the structure, functions and powers of the Coast Protection Board (CPB) have adapted to numerous pieces of legislation created or revised over the last 50 years. Most important for coastal development have been three pieces of planning legislation, the *Planning Act 1982*, the *Development Act, 1993*, the *Planning, Development and Infrastructure (PDI) Act, 2016*. In addition, coastally relevant pieces of legislation have been created such as the *Native Vegetation Act, 1991*, the *Environment Protection Act, 1993*, *Aquaculture Act, 2001*, *Marine Parks Act, 2007* and the *Natural Resources Management (NRM) Act, 2004* (recently replaced by the *Landscape South Australia Act, 2019*).

Only one of the six member CPB is required under the coastal Act to have expertise in 'coastal protection'. The requirement for another CPB member to have 'biological expertise' does not specify that this should have a coastal focus. In addition, there is no requirement for a CPB member to have any knowledge of coastal geoscience processes. To compensate the CPB's potential lack of coastal expertise it relies on the specialist coastal scientific, engineering and planning advice of staff in the Coastal Management Branch within the Department for Environment and Water.

The CPB initially had well-recognised functions and powers but some of these appear to have lost authority over time. For example, the CPB; 1) provided authoritative coastal scientific advice for proclamation of 'coast protection districts' and the preparation of district management plans; 2) it had the major responsibility for metropolitan coastal management with strong governmental

financial backing; 3) it took a national lead in responding to the coastal impacts of climate change and; 4) it provided advice to planning authorities for specified coastal development; 5) it developed coastal policies and coastal zoning. Each of these has changed as discussed below:

#### *1) Coast Protection District Management Plans*

The delineation of coast protection districts and the preparation of management plans in accordance with the Act provided useful scientific data resulting in clear objectives and strategies for coastal management. However, the CPB had no power for implementing any strategies from the management plans under the coastal Act. For this reason, all coastal objectives and strategies eventually had to be incorporated into the Development Plan in 1992 as the headpowers for development control rested with the associated planning legislation.

#### *2) Metropolitan Coastal Management*

Initially the CPB had consistent annual funding allocations to maintain the metropolitan beaches through a strategy of coast protection works and sand replenishment. The funding gradually reduced and became more cyclical (rather than annual) in response to major replenishment needs. At times the CPB had to make special funding requests to government for urgent beach replenishment. More recently the replenishment strategy has changed from a sand trucking and carting approach to a major fixed-line sand pumping system which is managed largely as a stand-alone engineering project separate from the CPB.

#### *3) Climate Change*

The CPB performed an important function in its response to climate change and predicted sea-level rise South Australia. As a result of work by the CPB, South Australia, in 1992 became the first Australian state to introduce a comprehensive policy on flooding and erosion guidelines for new residential coastal development.

In the mid-1990s there was a major conflict between expert coastal advice provided by the CPB and political decision-making related to the freeholding of around 1600 coastal shacks. The CPB essentially advised the government against this move as it was inconsistent with government policies on coastal development. An independent review found that only 5% of the 1600 shacks met all the criteria for coastal development. Notwithstanding the advice from the Review and the opposition from the CPB the state government decided to freehold all 1600 shacks through the introduction of a minister's coastal planning document in 1996.

This essentially created two different planning standards for coastal developments in SA, one for shacks and another for all the rest thus undermining the previously accepted expertise of the CPB in its response to climate change.

#### *4) Advice on specified coastal development*

Under the previous planning legislation, the Development Act, 1993, there was a requirement for proposals in coastal zones to be referred to the CPB, including residential development. The CPB was the primary authority providing expert advice on coastal development, however, some of the CPB advice was ignored at the local government level and a significant proportion of coastal development was approved against CPB advice.

In 2004, 19 per cent of development applications reported by planning authorities were approved despite being 'not in accord' with CPB advice. According to the CPB between 2004 and 2013, 276 dwellings and 126 extra allotments were approved contrary to the CPB advice regarding coastal

hazards. This situation has since improved by about half but, according to the CPB, authorities which ignored CPB advice placed individuals and the wider community at increased risk of incurring future costs associated with addressing coastal hazards.

#### *5) CPB policies and coastal zoning*

The CPB has a consolidated set of coastal policies which are not statutory. For this reason it was necessary to incorporate the important sea-level rise policy into planning regulations. The lack of regulations attached to the coastal Act and the lack of provision for a statutory coastal policy is a major shortfall of the Act.

The CPB has lacked power in zoning of coastal hazard areas. There is currently a major state-wide issue where over a third of coastal hazard areas are outside coastal zones. Given the increasing threat of coastal erosion, this needs to be rectified. A related problem is that some councils have been able to re-zone 'coastal' zones to a different zoning category thus preventing the statutory referral of development applications in the zone to the CPB.

#### ***TOR 2- The authority of the Coast Protection Board in accordance with Schedule 9 of the Planning, Development and Infrastructure (General) Regulations 2017, and criteria or triggers for referral;***

The new Planning, Development and Infrastructure (PDI) Regulations are likely to give more powers of direction to the CPB compared to the previous planning legislation where powers of direction were restricted to limited circumstances. Schedule 9 of the Regulations 2016 is intended to ensure that referrals will be for direction; giving referral bodies such as the CPB, the power to direct the planning authority to refuse the development application or direct that conditions are attached if the authority gives it approval.

The PDI Act is linked to a state planning policy incorporating the 'State Planning Policy 13: Coastal Environment' which has an objective 'To protect and enhance the coastal and marine environment and ensure that development is not at risk from coastal hazards.' Under this objective there are 10 separate policies which appear consistent with existing CPB policy. These policies are incorporated into the Planning and Design Code (the Code) which contains development assessment rules and determines assessment pathways. The Code which will supersede all Development Plans includes important referrals to the CPB and should minimise unnecessary referrals.

Given that the Code will not be fully implemented until March 2021, there is no evidence yet of how it will perform with CPB referrals. It will take some time to record and document statistics on coastal development approvals and their compliance with CPB referrals. Thus, the success or otherwise of the referrals system and effectiveness of the triggers will not be known for a few years.

#### ***TOR 3- How protection and development in coastal areas should be managed in the future; including, but not limited to investigating the Board's processes and procedures for:***

##### ***a. Managing community and stakeholder expectations (i.e. communications and community engagement, and handling of complaints)***

The CPB has previously organised regional visits to familiarize itself with local issues, meet stakeholders and engage with the local community. In addition, the Coastal Branch, although it does not have community engagement staff has conducted a number of road shows. This includes the use of a specially equipped caravan as a pop-up information kiosk. The Branch has also held

public meetings, often with a member of the CPB present, to address major coastal issues or projects.

The CPB and Coastal Branch face-to-face community engagement strategies appear to have been very successful in conjunction with more recent web-based community engagement. In the absence of any coastal community engagement staff these strategies appear to be a pragmatic way of managing stakeholder and community expectations in the future.

In reference to complaints on coastal development, these are generally addressed to the Minister. The Coastal Branch prepares the response for the Minister and if this concerns the CPB it may be involved in the response preparation. This approach appears to be efficient under the current administrative structure.

***b. Evidence-based decision making; and***

As the head-powers for coastal development control are in the planning system rather than the coast protection legislation, it is usually local councils who are the decision-making bodies responsible for upholding coastal management strategies and objectives. As local government is under-resourced it relies on the State government through the CPB and the Coastal Branch to provide coastal scientific expertise for evidence-based decision making. Scientific advice is made readily available through the CPB policy document, specialist reports, publications, the department's coastal website and specific advice provided by the CPB on request.

In addition, the former Natural Resource Management (NRM) Boards under the NRM Act were instrumental with the assistance of the Coastal Branch in producing a number of comprehensive regional Coastal Action Plans providing scientific data on coastal conservation which could be used in evidence-based decision making. The production of the action plans highlighted the fact that the CPB saw its role as focusing on coast protection rather than conservation even though both protection and coastal conservation are clearly stated aims of the Coast Protection Act.

In order to resolve this separation of responsibilities it was agreed that the NRM Boards would focus on coastal conservation and that the CPB would focus on protection issues. It was explained also that although the NRM Boards would be responsible for coastal conservation the Coastal Branch and the CPB would still continue involvement with sediment trapping vegetation such as seagrasses, dune vegetation, salt marshes and mangroves due to their protection importance

Although the CPB wasn't formerly involved in the production of the coastal action plans, it supported the work and provided backing for the Coastal Branch to obtain additional funding. After the Northern and Yorke and the Fleurieu plans were prepared the Commonwealth government provided financial support for the preparation of subsequent plans as they could be used by community groups, local government and state government for obtaining commonwealth funding. For example, the SE region community and government obtained significant funding from the Commonwealth for addressing actions in the SE Coastal Action Plan.

Whereas the coastal Act addresses both coast protection and conservation in practice the CPB has focused its attention mainly on providing evidence for decision-making on coast protection. By default, the NRM boards together with the Coastal Branch have filled the gap in providing evidence for decision-making related to coastal conservation. Since the NRM boards have now been replaced by landscape boards, it may be necessary in future for the CPB to assume more responsibility for coastal conservation.

***c. Managing review or appeal of decisions; and***

The Coast Protection Act does not address appeal of decisions, however, there are other avenues where the CPB's decision can be appealed through the Department, the planning system and the ombudsman.

***TOR 4- Any other relevant matter.***

Given the ERDC Committee is considering the current status and potential for reform to the Coast Protection Act 1972 it should be noted that other states such as NSW and VIC have completely revised their coastal legislation in the last 5 years (see Harvey and Clarke, 2019 – copy attached) and introduced innovative reforms. The ERDC Committee in reviewing the SA Coast Protection Act should make itself aware of relevant coastal reforms in NSW and VIC in particular to determine any aspects that may be relevant for South Australia.

The ERDC Committee should take note that there have been previous 'failed' attempts to review the SA coastal legislation. It may be worth considering why they failed and whether any of their findings are still relevant today.

The 1988 Review found;

- That there should be a strengthening of the expert role of both the CPB and the branch and that a high priority should be placed on the metropolitan beach replenishment program. The CPB should narrow its involvement to conservation, land management and engineering aspects
- That the CPB retain its wider interest and be an expert rather than a coordinating body.
- That high priority be given to establishing standards for inclusion in the development plan and control regulations and that planning functions be handled by the planning division of the DEP (*now DEW*) rather than the (*Coastal*) branch

In 1992, Minister for Environment and Planning initiated a review of the Coast Protection Act by commissioning a Green Paper. The rationale for this review included;

- Issues with pressing coastal issues such as subdivision and building on undeveloped coastlines and control of protection works
- The fact that the coastal Act is twenty years old (*then*) and predates present and proposed planning legislation
- State and Local government responsibilities and funding for coastal management need to be reassessed.

The Green Paper provided a discussion around seven objectives of the coastal Act.

It is not clear if the 1992 Ministerial Review Committee delivered on two of its terms of reference outlined in the Green Paper;

TOR 3 - To prepare a White Paper with input from the public consultative process on the discussion paper and the Coastal Management Branch

TOR 4 - To report to the CPB with a view to the Board forwarding a recommendation to the Minister for Environment and Planning for changes to the Coast Protection Act

While the rationale for the 1992 review included the fact that the Coast Protection Act was 20 years old, it should be noted that the Act is now nearly 50 years old and remains virtually unchanged.

In 1998 the SA Coastal and Marine Conference endorsed a resolution that '*there is an urgent need for a new Coastal and Marine Planning and Management Act for coastal lands and waters, to*

replace the Coast Protection Act 1972'. An associated article in the Marine and Coastal Community Network Newsletter, 1999 (attached) argued that the Coastal Act was out of date and it did not address the marine component of coastal management except in indirect ways.

### Future direction

1. The Coast Protection Act is intended '*to make provision for the conservation and protection of the beaches and coast of this State*'. In practice the Coast Protection Board has focused on coast 'protection' rather than 'conservation' and lacked a focus on the marine environment even though the Act defines 'the coast' as extending '*below and within three nautical miles of that mean low water mark*'. The Coast Protection Board needs to widen its scope to include coastal conservation and the nearshore marine environment in line with the purpose of the Act.
2. The Coast Protection Act needs to be revised drawing on lessons of recent coastal legislative reforms introduced in other states which have responded to the need for climate change adaptation, better integration of management across catchment, coast and the marine environment, and the need to recognise the importance of defined geomorphic compartments and sediment supply in coastal planning.
3. The expertise of the Coast Protection Board needs to be broadened to have at least half of its members with coastal expertise. In addition to its member with 'coast protection' expertise, it should include another member with 'coastal geoscience expertise' and ensure that the member with 'biological expertise' is better defined to have 'coastal biological expertise'.
4. The Coast Protection Board policies should be given statutory status so that they are more than just expert coastal advice.
5. The Coast Protection Board needs to given greater authority to ensure that all coastal hazard areas in South Australia are within declared coastal zones and that the coastal zoning cannot be changed by local councils without the approval of the Coast Protection Board.

Yours faithfully,



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