



The Parliamentary Officer
 Environment Resources and Development Committee
 Email : ERDC.Assembly@parliament.sa.gov.au

Dear Sir/Madam,

**Parliamentary Inquiry into Coast Protection Board
 Environment, Resources and Development Committee**

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Introduction

The Western Adelaide Coastal Residents' Association (WACRA) appreciates the opportunity to make this submission to the Parliamentary Inquiry into the Coast Protection Board (CPB). We welcome the inquiry because the Coast Protection Act 1972 (CP Act) is close to 50 years old and much has changed since its enactment, including natural factors (climate change, increased frequency and intensity of storm events, sea level rise etc), knowledge about and technologies for protecting coastlines, and community expectations about the role of regulators and the need for community engagement. In this sense, a review of the Act and of the CPB is actually long overdue.

WACRA (www.wacra.org.au) is an incorporated association representing residents along the metropolitan coast from Semaphore Park to West Beach. Our stated objectives are to:

- Encourage, represent and advocate for residents to build and maintain a healthy, safe, joyous, equitable community,
- Protect our residential character and cultural heritage,
- Promote the protection of our biological diversity and the maintenance of indigenous species, and
- Work cooperatively with governments, other resident associations, groups and peak organisations to protect, enhance and conserve our environment.

WACRA has been vitally involved in major issues affecting the coast for over 46 years, initially from 1975 as the Grange Ratepayers Association, then as the Henley and Grange Residents' Association and, since 2006 in its current form. In particular, we have vigorously engaged with the CPB and the Department of Environment and Water (DEW) or its predecessors over major developments including Holdfast Shores, Adelaide Shores, the Glenelg to Kingston Park sand back-passing pipeline, the Patawalonga sand by-passing pipeline, the Torrens Outlet to West Beach Parks sand back-passing pipeline, the Barcoo Storm Water Outlet, the Patawalonga Lake dredging and reversed sea water flow and, most recently, the proposed mass fill at West Beach and sand back-passing pipeline from Semaphore Beach to West Beach. Through the course of these and other engagements with the CPB, we have gained extensive experience with the operations of the Board and that experience provides the basis for the comments made in this submission.

Prologue

The long title of the CP Act refers to "the conservation and protection of the beaches and coast of" South Australia. WACRA does not have a concluded view about the preferred shape of the agency to be responsible for those activities but considers that, whether that agency is the CPB or some replacement of it, there are certain good governance principles that must be written into its charter and which must be complied with by the agency. These include:

- Transparency – as to the membership of the agency (selection criteria and appointment processes), operating budget, decision-making processes and reporting

- Evidence-based decision making – the agency must rely on comprehensive and independent economic, social, environmental and scientific input as an integral part of all decision making
- Accountability – there must be a clear annunciation of the agency’s expected deliverables and regular reporting on its performance in achieving them
- Community consultation/engagement/communication – the agency must genuinely consult with the community on issues affecting the community, remain engaged with the community throughout projects and maintain effective communication with relevant elements of the community. WACRA commends to the Committee the Planning Institute Australia’s Policy on Public Participation – see <https://www.planning.org.au/policy/public-participation-0611> - which adapts the International Association for Public Participation (IAP2) values, the overarching principle of which is **Public participation is based on the belief that those who are affected by a decision have a right to be involved in the decision-making process.** WACRA is aware that a previous government set up a Community Engagement Section within the Premier’s Department that managed the State-wide implementation and operation of the IAP2 model that we understand has now been disbanded. WACRA recommends that this model be reintroduced throughout the Public Service in addition to the present process of encouraging community to HaveYourSay.
- Relationship with other relevant State and Local Government bodies – there must be clarity about the roles of and relationships between the agency, other State government agencies (eg DEW, Department of Infrastructure and Transport, Environment Protection Authority, and especially Green Adelaide and the other seven Landscape Management Boards which have coastal responsibilities) and relevant Councils.

References in the submission to “Agency” are to the body, in whatever form, that will be responsible for administration of the CP Act in the future. References to “CPB” are to the Coast Protection Board as currently constituted.

WACRA’s experience is that the CPB’s performance against the above principles over several decades has been poor. Some examples of this are referred to later in this submission.

The reflections and suggestions in this submission are based on the following sources:

- Very extensive time invested by numerous WACRA members over many years in endeavouring to work constructively with the CPB. The insights we have gained reflect the lived experience of advocating on behalf of the community on numerous projects, some of which are referred to below.
- Our understanding of recent developments towards improved management of coastal zones in, for example, N.S.W and in S.A.’s recently appointed Landscape Management Boards
- Our reference to contemporary literature on coastal management, for example,
 - Nick Harvey and Brian Caton 2010 COASTAL MANAGEMENT IN AUSTRALIA Uni of Adelaide Press

- Richard Kenchington, Laura Stocker, David Wood Eds 2012 SUSTAINABLE COASTAL MANAGEMENT AND CLIMATE ADAPTATION Global Lessons from Regional Approaches in Australia, CSIRO
- NSW Coastal Management Toolkit - <https://www.environment.nsw.gov.au/topics/water/coasts/coastal-management/toolkit>

Terms of Reference

The Terms of Reference (TOR) of the inquiry state that “the Committee will consider the current status and potential for reform to the Coast Protection Act 1972 and its associated regulations,” including four specific aspects. The following submission will address those specific aspects by relying on some of WACRA’s historical and more recent interactions with the CPB and will make suggestions for reform of the CPB’s operations which will imply the need for reform of the Act.

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

- Structure
 - The structure of the CPB is currently somewhat opaque. Section 8 of the CP Act prescribes that three members will be appointed because of the positions they hold in the Public Service and three because of the qualifications they hold in local government, technical problems of coast protection and biological sciences/environmental protection. The precise selection criteria for the latter three members are not prescribed in the Act or referred to in the CPB page of the DEW Website. These criteria, and the probity guidelines applying to them, should be made public. The names and profiles of the members are not published (although their names appear in the minutes of CPB meetings). The identity of CPB members and their profiles should be made public, as is effectively done in respect of the members of each of the eight regional Landscape Boards established under the Landscape South Australia Act 2019.
 - Section 18 of the CP Act provides for the appointment of Advisory Committees and the minutes of CPB meetings show that an Advisory Committee exists but its precise role and qualifications of its members and the selection criteria for their appointment is not public but should be. If the Advisory Committee meets formally, minutes of the meetings should be published, along with copies of any reports it provides to the CPB.
 - There is currently insufficient transparency of the operations of the CPB. The Board minutes published on the CPB page of the DEW website are in short form and provide little insight into the decisions taken at meetings. At the time of writing of this submission, the last minutes published relate to the CPB’s meeting on 30 October 2020. The next meeting was scheduled for 4 December 2020 and it is assumed that the Board has met at least once in 2021 but no minutes of these meetings have been published.

- Consideration should be given to broadening the membership of the Agency to include greater regional representation. Currently, one member is appointed on the basis of his/her experience in local government but representation from non-metropolitan parts of the State would be beneficial.
- A reconsideration should be undertaken of the necessary skillsets to be held by Agency members. WACRA supports the City of Charles Sturt's suggestion that those skillsets should include financial and asset management, risk assessment and coastal adaptation planning. WACRA considers that the Agency skillsets should recognise that the coastal zone is a multifactorial, complex ecosystem whose management requires a wide range of skills, including engineering, geological, biological and coastal sciences and human relations. If these skills are not available within the Agency membership, they must be accessible to the Agency through Advisory Committees or the like. Section 14B of the SA Environmental Protection Act 1993 provides a useful model for prescribing requisite skillsets within legislation.
- Section 7 of the CP Act provides that the CPB is "subject to the control and direction of the Minister". The nature and extent of that control, in practice, is unclear. More transparency into the relationship between the Agency and the Minister is desirable. By way of contrast, section 11 of the Environment Protection Act 1993 provides that the EPA "is subject to the direction of the Minister except in relation to—
 - (a) the making of a recommendation or report to the Minister; or
 - (b) the performance of its functions under Part 6 or Part 6A;
 - or (c) the enforcement of this Act."

This may be a useful model for redefining the relationship between the Agency and the Minister.

- A review should be undertaken as to appropriateness of the current service agreement under which the CPB is reliant on the staffing and expertise of DEW. WACRA considers that the Agency should have its own sufficient resources (and substantial budget) and its membership have sufficient expertise to be able to assess and test the appropriateness of advice received from DEW.
- Functions
 - The current functions of the CPB are set out in Section 14 of CP Act. They reflect a 1970's mindset. The functions of any new Agency should reflect the fact that the coastal zone is a multifactorial, complex ecosystem.
 - WACRA notes with approval the suggestions made by the City of Charles Sturt for additional functions to be adopted by the CPB and, in particular, endorses:
 - the need for emphasis on the CPB's duty of care to the community in relation to climate change and associated coastal impacts such as sea level rise and increased storm frequency, and
 - the call for development of Coastal Adaptation Plans relevant to each local council area to allow for consistency and best practice management to be applied.

- Powers

- Currently, the powers of the CPB under the CP Act, as they relate to sand management, are largely unfettered– eg

S.21(1): “The Board is hereby authorised to execute all works in relation to land constituting or forming part of a coast protection district, as may be necessary or expedient for the purpose of implementing an approved management plan.”

S.21A: “The Board is authorised (and shall be deemed always to have been authorised) to remove sand and other material from one part of the coast (not being private land) to another part of the coast for the purpose of protecting, restoring and developing the coast or any part of the coast.”

- Decisions of the CPB under these provisions can affect a wide range of people in the affected areas – residents, beach-goers and holiday makers, business owners, environmentalists and conservationists, fishers, tourism operators, Councils etc. The decisions are administrative decisions made by an agency of the Crown but are not of the type that are typically reviewable by the South Australian Civil and Administrative Tribunal – eg the issue of permits, licences, leases, valuation/rent determinations etc. Nevertheless, the inability to challenge or seek external review of CPB decisions has led to deep dissatisfaction and frustration amongst wide sections of the community which have been adversely affected by those decisions. This has been particularly the case where there is a perception that the decisions have ignored relevant scientific advice or have been based on insufficient or wrong information. Given the complexity of the systems which the Agency will be required to manage, and the realisation that climate change will make that management task very difficult, citizens can rightly expect practical and effective means of review of Agency functions to be included in the Act. WACRA encourages the Committee to consider what forms of review of Agency decisions might be included in the CP Act.

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 authority, powers and responsibilities of the CPB under these Regulations and the Planning, Development and Infrastructure Act 2016 are significant and important. The precise operation of those powers and responsibilities are yet to be fully understood because, as Dr Townsend of the DEW stated in evidence to the Committee on 15 February 2021, the new planning system is still “unfolding”. But, as the long title of the Act makes clear, they are directed to “the use, development and management of *land and buildings*, including by providing a planning system to regulate development within the State, rules with respect to the design, construction and use of *buildings*, and other initiatives to facilitate the development of *infrastructure, facilities and environments* that will benefit the community”. (Emphasis added). For current purposes, we stress that this aspect remains distinct from the CPB’s powers and obligations under the Coast Protection Act 1972.
- In September 2020, the CPB advised WACRA that “the Development Act displaced the usefulness of District Management Plans from a development control perspective”. WACRA pointed out that, while this is no doubt correct in relation to “development” as

defined in section 4 of that Act (building work, roads, fortifications etc), our immediate concerns in relation to sand management were with the “coast” as defined in section 4 of the CP Act, the long title of which is “An Act to make provision for the conservation and protection of the beaches and coast of this State ...”. In that regard, the CP Act still refers to the Management Plans and so we considered that the Development Act did not displace them for these purposes. They remain important and should guide the Board’s decision-making. Similarly, the CPB’s new authority under the Planning, Development and Infrastructure (General) Regulations 2017 should not detract from its obligations to have and effectively implement a Metropolitan District Management Plan under the CP Act.

- In the same letter in September 2020, the CBP advised WACRA that “The Board considers the Metropolitan CPD Management Plan to be fit for purpose and has no plans in the immediate future to initiate preparation of a new Plan to replace it.” WACRA’s response noted that this seemed a curious conclusion in light of the severe deterioration that has occurred to Metropolitan beaches since the drafting of the Management plan in 1982 and appears to be contrary to the original intention for the effect of the Management Plan which is apparent from the following two quotes from it:
 - “1.4 The Coast Protection Act states that the management plan will be written in general terms but, because of this, it is anticipated that policies will go out of date over time. *So that the management plans retain their usefulness, they will be reviewed regularly, either as a result of changes that have taken place or as new knowledge and policy emerge.*” (page 9 – emphasis added)
 - “3 Metropolitan Coast Protection District: A major review of alternative protection strategies for Adelaide beaches commenced in 1982. *This and ongoing work will lead to regular reviews of the Management Plan.*” (page 25 – emphasis added)
- The Management Plans were clearly intended to be reviewed regularly. It seems incongruous to conclude that the Plan, which is 39 years old, is fit for purpose when the beaches are in such an endangered condition and given that community expectations about management of the coast have changed significantly in the intervening period.

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 CP Act currently makes no reference to community engagement- merely to consultation with any council affected by a management plan (Section 20(2)) and to the power of “any other person” to make written representations in relation to a management plan (Section 20(5)). This is an indication of how far out of date it is. Nor, to the best of our knowledge, does the CPB have a published policy on community engagement. This is in marked contrast to, for example, the N.S.W. Coastal Management Act 2016, section 16 of which requires councils to engage in community consultation before adopting a coastal management program and that State’s Office of Heritage and Environment’s 35 page “Guidelines for Community and Stakeholder Engagement in Coastal Management” which expressly reference the IAP2 principles. (See the link to the NSW Coastal Management Toolkit above.)

Two examples of WACRA's experience with purported community engagement by the CPG and DEW follow.

- The CRG experience as contrasted with the 2016 Nuclear Consultation Process

WACRA was invited to be a member of a Community Reference Group (CRG) convened by DEW in relation to the *Securing the Future of Our Coastline* strategy, involving representatives from several community groups interested in conserving and protecting our coast. It was our understanding that we would be an active part of a participatory process that examined and contributed to the decisions and justifications for coastal protection, in particular, preventing sand erosion at West Beach. It was a surprise to find that decisions for this had been pre-determined and the outcome, to establish a pipeline, was a forgone conclusion. Upon advice from the CPB, the Minister had announced that a pipeline from the Northern beaches of Adelaide to West Beach would be the method adopted for replenishing sand at West Beach. Only one consultant was presented to the CRG by DEW to discuss whether sand extraction from Semaphore and Largs, incorporating a pipeline, was the only solution for sand management. This was despite numerous CRG members seeking more evidence-based research to justify the expenditure of a \$48.4 million pipeline project.

WACRA has, in the past, been involved in many community engagement projects with local and State organizations. One example is the 2016 Nuclear Consultation Process (NCP) which determined whether or not S.A. should pursue the development of a high level nuclear waste storage and disposal facility.

In contrast to the sand project CRG, the NCP established a Citizens Jury. This comprised a six step process aimed at ensuring as many people as possible were included in the decision-making and given information needed to make a sober judgement. Invitations were first sent out to 25,000 randomly selected South Australians and whittled down to 54 people to sit on the first jury. This group identified key questions regarding the economic and environmental impact issues of the proposed project. They were provided with extensive evidence-based research that debated the 'pros' and 'cons' of the proposal. Their findings went to a second jury of 350 people who considered the findings and the outcomes of broader State-wide consultations. The Citizens Jury recommendations were then presented to the Government. The exercise built public trust, understanding and confidence in the consultation process. It became clear that, despite expert opinions around this topic, decisions could not be made by ignoring public views.

The above example is in direct contrast to the "pipeline" project where the outcome, the decision to install a pipeline, has been pre-determined and the evidence-based research is questionable.

Many members of the CRG have questioned the viability of the pipeline as being the only option to replenish sand at West Beach. Calls for a more extensive study engaging experts outside of the Coast Protection Branch were initially discounted. It was clear that the CPB chose to rely on the expertise of the Department and older studies that they had conducted in the past.

It is evident from DEW advice that, despite strong repeated Departmental guarantees substantial volumes of sand for the proposed mass fill at West Beach would be available from external sources such as quarries and Port Stanvac, those sources now appear to be not viable.

- A further example of defective purported community engagement was the Impact Assessment Group (IAG) convened as a sub-group of the CRG to assess the impact of the interim carting of sand from Semaphore/Largs to West Beach (Phase 1) and of the proposed pipeline (Phase 2). WACRA and other participating community associations were critical of the manner in which the assessment was conducted but, more importantly, the IAG process suffered from a fundamental flaw from the outset because, as we explained to the CPB in October 2020 in relation to Phase 1: “it came after the decision to mine and cart sand had been made, rather than as a part of the decision-making decision as to whether, where and how to mine and cart sand. The same shortcoming will apply to any assessment of Phase 2, being the proposed pipeline.”

Both the CRG and the IAG processes are flawed attempts at community engagement because they present decisions – the decision to construct a pipeline and the decision to cart sand from Semaphore/Largs – as a *fait accompli* and then ask the community to co-design the pipeline or assess the impact of the carting. The proper approach would be to engage the community to participate in the determining whether either of those two strategies is the best solution to the problem. Both processes fail the IAP2 overarching principle that ***Public participation is based on the belief that those who are affected by a decision have a right to be involved in the decision-making process.*** We take that to mean being involved from the outset in formulating the decision, not merely being involved in commenting on aspects of a decision already made.

b. Evidence-based decision making

WACRA has experienced numerous failures of the CPB to properly rely on evidence to support its decision making.

- 1997/98 Adelaide Shores, West Beach Boat Launching Facility and Barcoo Outlet

Accepted marine and coastal science is that hard structures are not conducive to good coastal management as they impede natural sand drift - in this case, South to North, within Gulf St Vincent. When the Western Adelaide community became aware of the State Government’s plans for Adelaide Shores and the Barcoo Outlet, there was a public outcry and over 600 residents campaigned for over six months, calling for the Government to consult with the community and to understand and be guided by the coastal science. The community was fearful of the loss of West Beach and beaches to the North. The CPB ignored the community’s calls. The Government’s determination to proceed with the development was supported by presentations to Parliamentary Committees, public media statements and publications by senior members of the CPB. The Government attitude towards the community was the absolute antithesis of the principles of Public Participation advocated by Planning Institute Australia.

An independent scientific report by Manly Hydraulics Re. Expert Engineering Advice: Proposed West Beach Boat Harbour Development 01 Dec, 1997 was commissioned by the City of Charles Sturt. That report reinforced our understanding of the adverse consequences for West Beach and beyond if the development went ahead. Every warning contained in that report has proven to be correct and its predictions of adverse consequences have come to fruition, as witnessed by the current state of West Beach. The CPB patently failed to take into account the available scientific evidence in proceeding with the project.

Had expert and community opinion been properly taken into account it would not have been necessary for almost 200 western suburb citizens to take direct political action to make their views clear in a session of the SA Parliament in 1997. That action led the political parties to agree on a clause inserted within the Local Government Act 1934 [Holdfast Shores Amendment Bill 1997] s.886bb Coast Protection at West Beach. Section[1] sets down various definitions, section[2] places various responsibilities on the Minister to ensure effective management of sand etc:

[a] in order to maintain the navigability of any entrance or access channel associated with any such boating facility

[b] in order to protect or, if necessary, restore the coast on account of the obstruction of coastal processes due to the construction of any such boating facility

[c] The Crown is liable for costs associated with any works or operations undertaken for the purpose of any sand management required under sub section[2]

- 2005 Dredging Operations at Outer Harbour

In 2005, the Government announced a major dredging of 70,000 m³ by suction dredge to take place in the spring and summer months. A number of community organisations were concerned about the likely impacts and attempted to have an input to the operation but were effectively shut out. It amounted to an “announce and defend” position adopted by the Government. The results of the dredging were catastrophic with loss of sea grasses in Gulf St Vincent from dumping and huge turbid plumes of sediments moving mainly South along the coast from Outer Harbour to Brighton beach. Most of the beaches within this section of the coast were unusable due to the turbidity dangers. High tides and wind events agitated the sediments and this persisted for up to six years after the dredging.

- 2018 Dredging Operations at Outer Harbour

In 2018, the Government announced that larger container ships were unable to enter the harbour. Immediately the community organisations which were so badly affected by the 2005 dredging set actions in place by first taking their collective concerns to the Conservation Council of S.A. and requested key representatives from the EPA to address the member groups on what was being proposed. Almost immediately, an engagement and consultation structure was negotiated that included the private operator Flinders Ports and a series of meetings took place with the EPA and ALL parties on numerous occasions. In addition to this, the EPA dedicated two very senior highly qualified staff to work with the community by outlining the process, constant and accessible monitoring reports and testing program. Flinders Ports also played a constructive role by providing data and turbidity levels on the methodology of their proposed operation. The CPB played a minor role in the process.

The outcome was successful and above the expectations of the community. The process was in marked contrast to the 2005 process and showed conclusively that well-structured managed engagement and ongoing transparent consultation is achievable and can be successful.

- 2020/21 *Securing the Future of Our Coastline* Strategy

This CPB strategy has three main elements:

- Interim carting of sand from Semaphore and Largs beaches to West Beach
- A mass fill of 500,000m³ of external sand on West Beach

- Construction of a sand pumping pipeline from Semaphore Beach to West Beach

WACRA has written extensively to the CPB to express our concern about a perceived failure of process in designing this strategy.

The CPB relies heavily on the 2018 DHI West Beach Coastal Processes Modelling report as the basis for the strategy. But, crucially, DHI expressly noted at page 22 of its report that it did not consider in detail the economic, social and environmental consequences of its recommendations. Indeed, one of the report's three recommendations was:

“Further analysis of the long-term mass nourishment and large scale backpassing options is undertaken to evaluate the full financial, social and environmental implications of these options to provide a long term, sustainable solution to the management of the West Beach sediment cell.”

That further analysis has still not been undertaken. Unless that analysis is undertaken, the decision to proceed with this strategy cannot be said to be properly and fully evidence-based.

WACRA has persistently called on the CPB to ensure that all potential solutions – not just the pipeline - are fully investigated, including some technologies that have come to light since the DHI report. We have also called for an Environment Impact Statement to be conducted into the proposed strategy. Both requests have been rejected by the CPB. WACRA is not opposed to the strategy, or the proposed pipeline, *per se*. We are, however, concerned that the process for arriving at the strategy has been flawed and we continue to insist that a proper evidence-based process be undertaken before proceeding with the strategy.

- WACRA notes that West Beach is now almost beyond recovery as a result of repeated failures to take expert scientific advice and because of placing development as a priority to the detriment of coastal environmental protection.

c. Managing review or appeal of decisions

- Please refer to our comments under Powers in relation to TOR 1 above.

TOR 4. Any other relevant matter.

- WACRA applauds the Committee for undertaking this inquiry into the CPB. If the Committee is not already familiar with it, WACRA commends the 2019 Multicultural Legislative Review (see <https://www.dpc.sa.gov.au/responsibilities/multicultural-affairs/policy/multicultural-legislative-review>) as a successful model for inquiry, consultation, review and reform of institutions and legislation.

Conclusion

WACRA thanks the Committee for its consideration of this submission and would be pleased to respond to any questions the Committee may have in relation to it. WACRA also respectfully requests the opportunity to appear before the Committee to address the matters raised in the Terms of Reference.

For and on behalf of WACRA

Bert Brown	Jim Douglas	Richard Smith	Geoff Short
Acting Chair	Committee Member	Committee Member	Committee Member

19 March 2021