

Supplementary Information for the House of Representatives Standing Committee on Climate Change, Water, Environment and the Arts Inquiry into climate change and environmental impacts on coastal communities

Following the SA government submission to the Inquiry the Committee heard evidence from Leanne Burch, Murray Townsend and Tony Huppatz from SA's Department for Environment and Heritage on 8 October 2008. At that hearing the Committee requested further information:

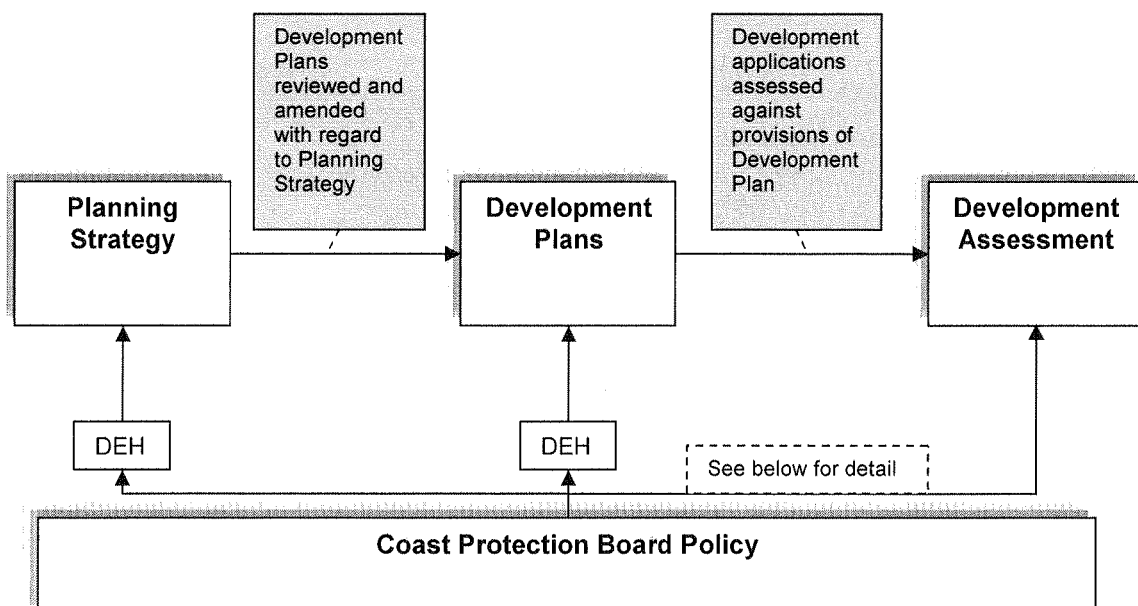
1. How the Coast Protection Board interacts with the SA development control system (including a flow chart)
2. Whether or not decisions on major developments could be subject to appeal.
3. Leanne Burch also offered to provide further information in response to the following question from the Chair:

Do you indemnify councils that act consistently with your state provisions? Is there a policy that takes the legal liability off councils and onto the state government if they follow your directions?

That information follows:

1. How the Coast Protection Board interacts with the SA development control system

Note: Development Act 1993 effectively sets up 3 tier system:



1.1. Input to Planning Strategy

The Department for Environment and Heritage (DEH) provides input to the various volumes of the Planning Strategy, including the Metropolitan Adelaide, Outer Metropolitan Adelaide and Regional volumes. Under a new State Government approach to regional land use planning, the entire Regional volume of the Planning Strategy is being updated on a region-by-region basis over a two year period.

The Planning Strategy for Regional SA (January 2003) will therefore be gradually replaced by various stand-alone volumes of the Planning Strategy titled 'Regional Land Use Frameworks' (one for each country planning region). It is expected that the last of these will be completed by mid 2009.

<http://www.planning.sa.gov.au/index.cfm?objectid=A1338ACE-96B8-CC2B-6441074DC0CE0767>

1.2. Input to Development Plan reviews and amendments:

In accordance with Coast Protection Board Policy, the Department for Environment and Heritage (DEH), in the responses it provides to Planning SA and Councils, seeks to ensure that the:

- Council Wide coastal areas provisions are appropriate.
- Appropriate coastal zones are put in place.
- Coastal zone Objectives and Principles are appropriate.

The Coastal and Marine Planning Checklist at

http://www.environment.sa.gov.au/coasts/pdfs/planning_package.pdf assists planning authorities by identifies a range of issues that are relevant when drafting policy relating to development in coastal areas.

1.2.1. Appropriate Council Wide provisions

DEH seeks the maintenance of the technical integrity of the provisions included by the Minister's 'Regional Coastal Areas Policies Amendment' in

1994 and has contributed to Planning SA's 'Better Development Plans' Project which included a review of those provisions.

1.2.2. Why establish Coastal Zones?

DEH seeks to have land which includes the following sensitive features included within specific coastal zones (eg Coastal Conservation or Urban Coastal Zones):

- Coastal dunes, coastal wetlands, samphire (tidal saltmarsh) and mangrove areas,
- Coastal geological features,
- Coastal heritage, cultural, scientific, environmental or educational features,
- Existing development that does not comply with Council Wide Coastal Areas objectives and principles of development control, (eg is exposed to seawater flooding or erosion hazard) and where there are no provisions to resolve the deficiency (such as a council managed seawall or levee bank or a strategy to redevelop unsatisfactory areas); and
- Coast protection measures such as erosion buffer areas, seawalls and levee banks.
- Coastal landscapes with high scenic quality.

The Department for Environment and Heritage can provide assistance in the identification of these sensitive features by providing mapping and technical information.

The establishment of coastal zones is the best way to ensure that sensitive coastal features are protected from the adverse impacts of development, that development is not placed in areas at risk of coastal hazards and that relevant development applications are referred to the Coast Protection Board.

The inclusion of the word 'coastal' in the name of the zone ensures that all development applications for land within the zone would be subject to referral to the Coast Protection Board in accord with Schedule 8 of the Development Regulations (see part 1(a)).

Land not containing any of the features listed above can be excluded from coastal zones provided that any re-zoning does not pose a threat to the adjoining sensitive areas.

By identifying Coastal Zone boundaries to *only* contain the above listed coastal features, planning authorities can ensure that only those developments that require notification to the Coast Protection Board are referred, rather than large volumes of applications which have no impact on coastal or marine issues and therefore do not require referral and assessment by the Board. Establishing coastal zones provides clarity as to whether referral is required. Schedule 8 of the Development Regulations provides that where no coastal zone (or similar exists) between the subject land and the coast, development within 100 metres landward of the mean high water mark in urban areas, and development within 500 metres landward of the high water mark in rural areas, must be referred to the Coast Protection Board. In some areas, this can lead to a large volume of development applications being referred that would otherwise not be referred if a coastal zone was appropriately identified.

1.2.3. What forms of development are appropriate in coastal zones?

Development which is inherently at odds with the sensitive features of a properly established coastal zone are unsuitable and should be listed as non-complying development. Planning SA's *Better Development Plans* Project, to which the Branch is providing input, is examining appropriate coastal zone provisions. However it is appropriate that, at the least, such developments as second dwellings, land division which creates extra allotments, farming and intensive animal keeping are listed as non-complying development. It is inappropriate that farming (as is currently the case in some Development Plans) is listed as a complying form of development.

1.3. Coast Protection Board interaction with development assessment

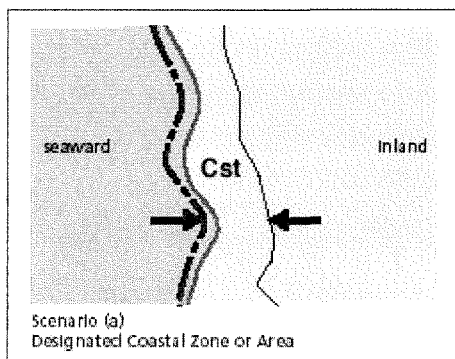
Attachment 1 contains a flow chart which includes the Coast Protection Board input (and some of the 'non-complying development' assessment procedures) for

the standard development assessment process for coastal development. Note that Crown development and public infrastructure are processed differently pursuant to Section 49 and 49A of the *Development Act 1993* and developments declared to be major developments and projects are processed differently pursuant to Division 2 of the Act.

The *Development Act 1993* (Section 37) and its Regulations (Regulation 24 and Schedule 8) require that, with some minor exceptions, applications for development on 'coastal land' (which includes land in Development Plan coastal zones) are referred by the relevant planning authority (the council or the Development Assessment Commission) to the Board for 'advice' or 'direction'.

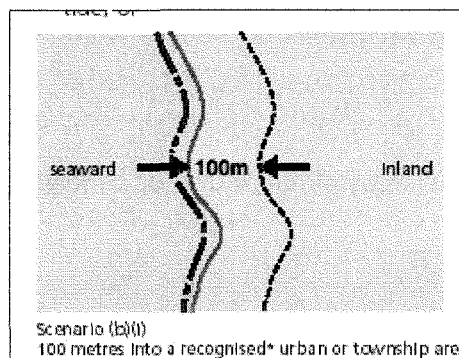
'Coastal land' is:

(a) land situated in a zone or area defined in the relevant Development Plan where the name of the zone or area includes the word "Coast" or "Coastal", or which indicates or suggests in some other way that the zone or area is situated on the coast; ...

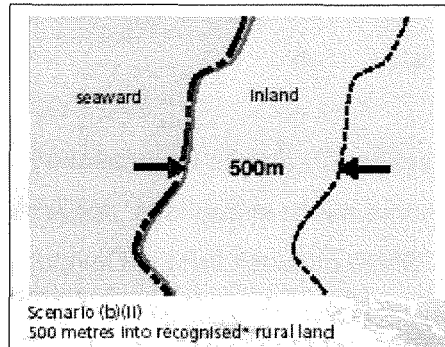


(b) where paragraph (a) does not apply:

- i. land that is situated in an area that, in the opinion of the relevant authority, comprises a township or an urban area and that is within 100 metres of the coast measured from mean high water mark on the sea shore at spring tide; or ..'

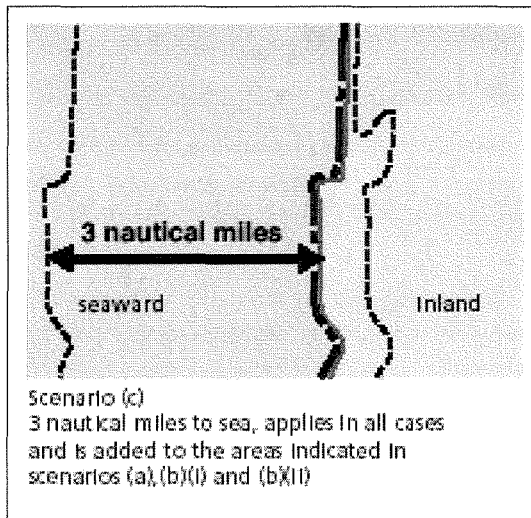


- ii. land that is situated in an area that, in the opinion of the relevant authority, comprises rural land and that is within 500 metres landward of the coast from mean high water mark on the sea shore at spring tide;



if there is no zone or area of a kind referred to in paragraph (a) between the land and the coast;

- (c) an area three nautical miles seaward of the mean high water mark on the sea shore at spring tide'



1.3.1. When is the planning authority subject to the direction of the board?

The Coast Protection Board may direct refusal or conditions if the proposed development involves:

- Excavating or filling of land of more than 9 cubic metres within 100 metres landward or three nautical miles seaward of the mean high water mark, or:

- Construction of coastal protection works within 100 metres landward or one kilometre seaward of the mean high water mark.

However, for the remainder of applications (approximately 85%), planning authorities need only have 'regard' to Board advice.

2. Are decisions on major developments subject to appeal?

The Governor makes the decision on the final proposal (on the advice of the Minister and Cabinet). There are no appeal rights established by the Development Act against the decision of the Governor.

Section 48E of the Development Act, which was legislated in 1996, also removes rights of judicial appeal:

48E—Protection from proceedings

No proceeding for judicial review or for a declaration, injunction, writ, order or other remedy may be brought to challenge or question—

- (a) a decision or determination of the Governor, the Minister or the Development Assessment Commission under this Division; or
- (b) proceedings or procedures under this Division; or
- (c) an act, omission, matter or thing incidental or relating to the operation of this Division.

3. Are councils that act consistently with state provisions/advice indemnified?

Rather than such a specific exemption, Section 99 of the *Development Act 1993* does provide a more general exemption from liability:

99 Exemption from certain action

No act or omission in good faith in relation to a particular development by—

- (a) the Minister, the Development Assessment Commission, a council or other authority under this Act; or
- (b) an authorised officer; or

(c) a private certifier,
after the development has been approved under this Act subjects that person
or body to any liability.

An Issues paper on *Climate Change: What are Local Governments Liable for?*
written by Phillipa England is provided as Attachment 2. A discussion on local
governments taking the advice of Referral Agencies is included on page 12 of that
paper.

Contact details:

Tony Huppatz

Senior Planner

Coastal Management Branch

Department for Environment and Heritage

Level 1, 1 Richmond Road, Keswick

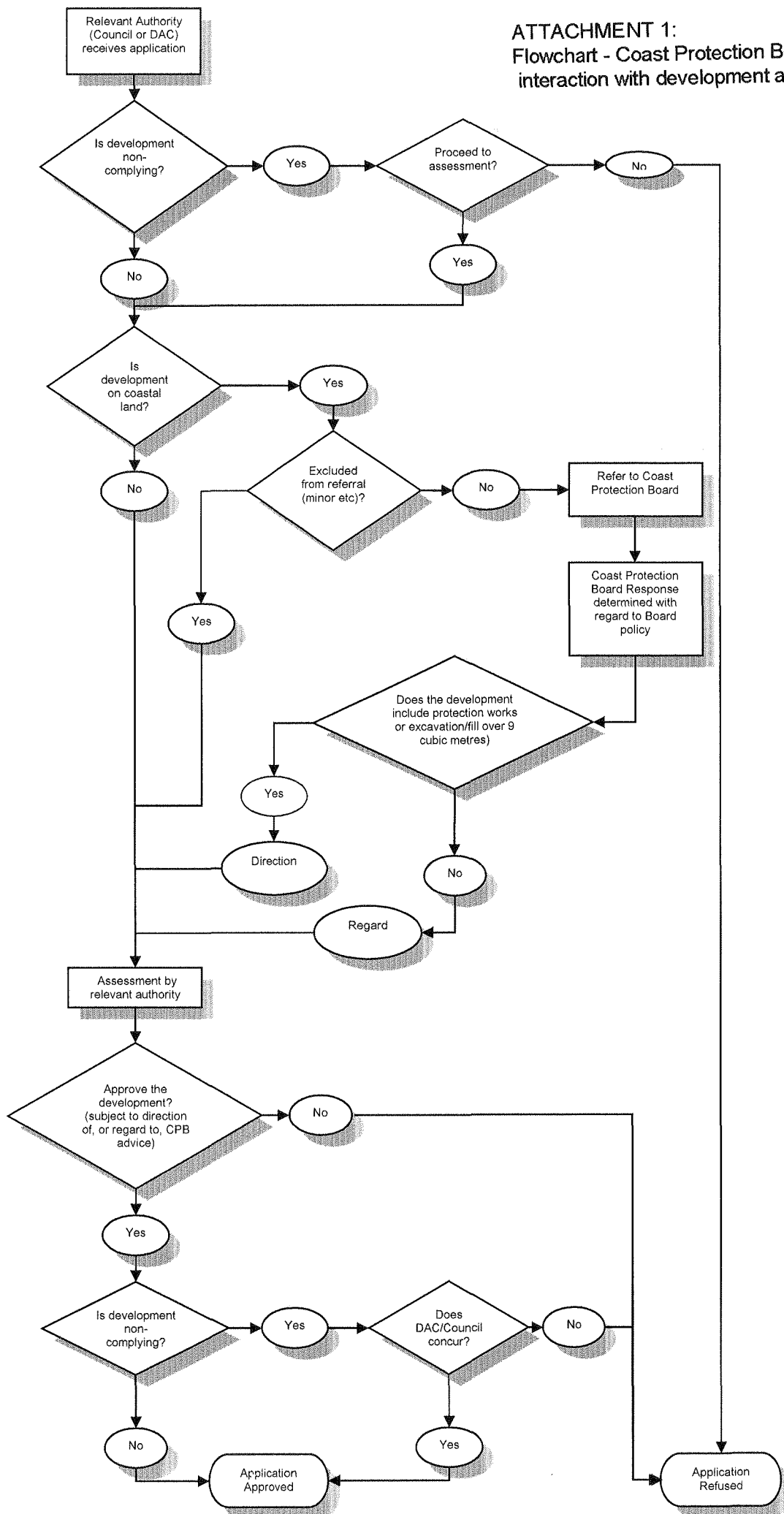
GPO Box 1047 Adelaide SA 5001

Phone: 8124 4885

Fax: 8124 4920

Email: huppatz.tony@saugov.sa.gov.au

ATTACHMENT 1:
Flowchart - Coast Protection Board
interaction with development assessment process



ATTACHMENT 2:

England, P. (2007) Climate change: what are local governments liable for? Urban Research Program, Griffith University. Issues Paper 6. ISBN 978-1-921291-02-9.

http://www.griffith.edu.au/__data/assets/pdf_file/0011/48566/urp-ip06-england-2007.pdf

