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South Australian Productivity Commission
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I am writing to the South Australian Productivity Commission (SAPC) in relation to the Development Referrals Regulatory Review draft report currently on public consultation.

The Coast Protection Board (the Board) is a prescribed referral body under the *Planning, Development and Infrastructure Act 2016*, and before that the *Development Act 1993*, ensuring coastal development is informed by independent, evidence-based assessment to facilitate economic and sustainable coastal development while protecting the coastal environment. The Board receives approximately 150 development referrals per year. The Department for Environment and Water (DEW) provides the Board with planning, policy and technical support. The Board's compliance with making responses within the statutory time frame is very high. In the 2020-21 year, the rate of responses made on time was over 96%. While the Board is not within the scope of the current inquiry, it retains an interest as a referral body.

In the Board's experience, pre-lodgement advice places applicants in a better position to submit a compliant development application in accord with planning legislation and regulation. This reduces the need for "Requests for Further Information", which 'stop the clock' on the statutory referral period until addressed.

The Development Referrals Regulatory Review draft report seeks the "formalisation" of pre-lodgement arrangements. The draft report (p.13) states:

For Code assessed developments, the Commission recommends referral bodies formalise their pre-lodgement arrangements to facilitate more frequent and earlier engagement by:

- *producing and publishing guidance material to make clear to applicants and their consultants or agents what can be expected from the pre-lodgement process with that referral body;*
- *ensuring suitably experienced staff are involved in pre-lodgement engagements with applicants that can identify key issues, information requirements and show-stoppers; and that remaining staff are trained and mentored in these skills;*
- *where pre-lodgement agreements are not used, record and share the outcomes of the pre-lodgement process with the applicant to support a clear and mutual understanding between the parties, including the extent to which pre-lodgement*

advice can be relied upon in relation to any subsequent development application and assessment process;

- *supporting an evidence-based approach to calculating the value of pre-lodgement activity in the referrals process by capturing the following metrics:*
 - *applicant name/company, type of proposed development activity etc;*
 - *the duration of the pre-lodgement process;*
 - *the number of instances of interaction between the referral body and applicant during the pre-lodgement period;*
 - *the number of requests for information (RFIs) required by a referral authority for a development application that was subject to a pre-lodgement process;*
and
 - *the referral response time of a development application that was subject to a pre-lodgement process with the referral body.*

In response to the above draft recommendations:

- A forthcoming update of the DEW *Coastal Planning Information Package* will provide information on coastal planning processes, policy and minimum information requirements. This update will be in response to the recent planning reform, but will also consider final SAPC recommendations on development referrals and pre-lodgement processes. The amended *Coastal Planning Information Package* will be reissued through a ‘roadshow’ to inform coastal councils and promote pre-lodgement activity.
- Suitably qualified and experienced DEW staff already support the Board in pre-lodgement engagements with potential applicants on a daily basis (via telephone, meetings and or email correspondence).
- Formal pre-lodgement “agreements” are not used in practice.¹ DEW staff provide pre-lodgement advice to applicants and record this advice, which underpins any subsequent development application and referral assessment process. The intended outcome of pre-lodgement advice is a “mutual understanding between the parties” on the type and extent of information required to enable assessment. In some cases, depending on the information received, it is possible to provide preliminary advice as to whether the Board is likely, or unlikely, to support the proposal. This provides a higher degree of certainty for the applicant to consider further investment and lodgement.
- There is a risk that adoption of a formal pre-lodgement may be counterproductive. Pre-lodgement is currently an iterative process which enable a developer to innovatively alter and amend development concepts in consultation with referral

¹Section 123 of the *Planning, Development and Infrastructure Act 2016* (PDI Act) enables prescribed referral bodies to formalise preliminary advice via an “agreement”. If a development application is submitted and the planning authority determines that the application is in accord with the agreement, it is not referred to the prescribed referral body. When entering into such an agreement, the prescribed referral body may apply the same fee and exercise the same power it would typically apply via the standard referral process. No applicant has ever sought a preliminary agreement from the Board in accord with Section 123 of the PDI Act, nor via similar provisions under the *Development Act 1993*. This process appears, in effect, to replicate the referral process which raises questions about its value from an efficiency and cost perspective.

bodies to move towards a final proposal and a formal application. Once a formal submission is made, the referral body is required to assess the proposal as submitted. A formal pre-lodgement process could become a de facto referral process, with a loss of flexibility, and without the statutory limits on timeframes that keep the referral bodies on-task. Recently, the Board has received complaints about the formal referral process duplicating informal pre-lodgement processes, and the additional time incurred.

- Calculating the value of pre-lodgement activity in the referrals process by capturing certain metrics as proposed in the SAPC draft report, is likely to be resource intensive and of questionable value. If this is to be implemented, such metrics need to be carefully designed and the purpose clarified - it is already broadly acknowledged that pre-lodgement activity is of value to applicants and regulators.

In conclusion, the Board supports the intent of the *Development Referrals Regulatory Review* draft report. However, the Board expresses caution with respect to the extent of 'formalising' pre-lodgement activity (given statutory pre-lodgement agreements have proved unsuccessful) and quantifying the value of pre-lodgement activity (likely to be resource intensive).

The Board supports DEW's current pre-lodgement practice and commitment of resources to update the Coastal Planning Information Package to better promote pre-lodgement activity. The Board will also undertake a formal review of the *Planning and Design Code* (by 19 March 2022), to help determine the general operational effectiveness of the new referral triggers, with a focus on reducing any unnecessary referrals. This work aligns with the intent of the *Development Referrals Regulatory Review* draft report – to improve referral processes to raise the competitiveness of the state as an investment destination.

The Board thanks the SAPC for the opportunity to comment on the draft report.

For further information, please contact me at DEWNRCoastProtectionBoard@sa.gov.au.

Yours sincerely



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Presiding Member
COAST PROTECTION BOARD