

Coast Park Decision – City of Charles Sturt

A community group, the CEPG, initiated legal action against the Council's decisions to construct a path and boardwalk along the coast from Grange to Semaphore Park, the area generally known as Tennyson. Below is a plain English summary of the decision.



We wanted to provide information to our community about the decision last week in the Supreme Court regarding Coast Park.

Charles Sturt has some of the most beautiful beaches in South Australia, running from West Beach right through to Semaphore with 12.5kms of pristine coastline. Being able to walk along our coast and beaches is really important for our residents and visitors into the City. Charles Sturt is responsible for the Coastal Reserves within our City, which includes the Coast Park path within our area. We also have some unique areas where houses have no road between them and the beach. Many of the home owners who enjoy this supported the continuation of the coast park path, however some of those were not, and chose to fight the State Government and Council's decision to extend that path through this area.

The project is part of a broader South Australian project to construct a path that stretches from North haven to Sellicks Beach, most sections of the path are already completed across the state and this is the last section within Charles Sturt. The cost to build the last section of Coast Path is \$6.5million, with half of the cost met by Council and the other half from the State Government.

The Coastal Ecology Protection Group (CEPG), a group made up of concerned community members and including some of the residents who live directly on the coast within the existing dunes system, took action to stop the Coast Path in the Supreme Court.

The decisions handed down in the Supreme Court focused on four elements; three of which were decided in favour of the Plaintiffs (CEPG, Lorimer (Judy) Packer and Donald Howie) and one in favour of City of Charles Sturt.

Three elements related to: the Community Land Management Plan (CLMP), path alignment, and the consultation policy/processes. The fourth element argued related to land dedications and was found in favour of the City of Charles Sturt. A bit of detail on each of the elements is described below, the full (170 page) judgement is available online at: <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/sa/SASC//2017/136.html>

Councils are required by legislation to have a CLMP for all community land owned or managed by Council. Each Council has a number of these plans, and Charles Sturt has 45, covering hundreds of parcels of land. These CLMPs are intended to set out the broad purpose and objectives about how the land shall be used by the community.

The CLMP covering the relevant coastal areas has 2 objectives;

- To protect the coastal dune system and coastal vegetation
- To provide convenient and controlled access to the beach and environs.

The plan also outlines proposals for the coastal areas including:

- To deliver the State Governments Coast Park initiative
- To provide a continuous shared use two-way pathway or trail for walkers, cyclists and other suitable users along the coastal foreshore

We believe that by providing a path and boardwalk as planned, it would protect the dunes and vegetation by preventing uncontrolled activity within the sand dunes. As a part of the Coast Park, we also planned to remove significant amounts of feral weeds and replant indigenous dune vegetation to further protect the dunes.

Referring to the Coast Park plan to provide a continuous, shared use path, Justice Blue ruled that 'access to the beach and environs' means that paths may be allowed in an east west direction (from the houses to the beach) but not parallel along the coast.

In addition, the CLMPs are required to have performance measures and targets. Because there are many of these plans (Charles Sturt has 45) and because they cover hundreds of parcels of land, the measures are kept by Council's at a high level, like 'providing a safe and attractive facility developed appropriately for the area'. Justice Blue has set a precedent decision by saying this was inadequate. This will have significant implications across all Councils in South Australia. Charles Sturt Council passed a resolution last week following the decision, asking the LGA AGM to review these requirements and its best practice guide on CLMPs in light of Justice Blue's decision.

The other two elements in favour of the CEPG were based on the path decision. These elements were:

1. The consultation policy - which includes procedures providing guidance about the level of consultation being considered by council (engage, inform, consult etc.) and also how this will be achieved. Before community land can be developed, a CLMP must be approved, and must have been consulted on with the community. Charles Sturt consulted on the CLMP for Coastal Reserves based on the mandatory requirements of the Local Government Act, and incorporated a number of additional methods over and above that required under the Act. Justice Blue concluded, however, that Council had not consulted in line with the Public Consultation Policy and therefore the CLMP was invalid.
2. Following the very extensive consultation process that had been undertaken, Council then considered two potential alignments known as 2a and 2b. The Council report included the community feedback on these alignments. Council then considered this information together with a letter of feedback from the State Government about the options. This letter stated that an 'on road' Coast Path (e.g. on Military or Seaview Roads) would not be supported or funded as it was at odds with the intent of the project being a continuous path along the coast from North Haven to Sellicks beach. Council considered all of this and created alignment 2c in response to the consultation feedback, it specifically took into account;
 - minimising impact on adjoining residents;
 - minimising impact on the dune environment and
 - minimising risk of storm damage to the path in future.

We did not re-consult on the final path alignment (as we felt we had developed a plan that responded to the feedback). Justice Blue determined that Council had failed its policy requirements, he felt a further additional round of consultation was required. We believed our role was to consider the community feedback and then make a decision, and that a further round of consultation was not necessary.

Finally, the Supreme Court found in favour of Charles Sturt Council regarding land dedications. Land has a dedicated purpose, eg as a road or pathway. The CEPG contested that the purpose of

the land's dedication was not consistent with the Coast Path. This decision was ruled in favour of the Council.

We are extremely disappointed with the decision set down by the Supreme Court. Council was taken to court by the CEPG and so far has been required to spend \$340,000 on legal and expert witness fees. At this point, we have not taken steps to appeal the decision as it is very costly to the broader Charles Sturt community, we will explore options to address and rectify the technicalities cited by Justice Blue.

We remain committed to effectively responding to our broader community who have indicated strongly they want a continuous path and boardwalk along the coast for all to enjoy.

City of Charles Sturt