

Briefing for the  
**Minister for Environment and Climate Change**

RECEIVED  
 MINISTER'S OFFICE  
 - 4 JAN 2013

<b>Subject:</b>	MALLACOOTA OCEAN ACCESS BOAT RAMP
<b>Timing:</b>	15 January 2013 for decision, otherwise the application for consent will be deemed to have been refused.

**Recommendations:**

1. That you consider the East Gippsland Shire Council's application (**Attachment 1**), and information that was requested in relation to this application (**Attachments 2a and 2b**), to use and develop coastal Crown-land at Bastion Point pursuant to the *Coastal Management Act 1995* (CM Act).
2. That you note that the CM Act provides three options in considering consent of an application:
  - Option 1: Consent to the use or development (not recommended);
  - Option 2: Consent to the use or development subject to conditions (recommended); or,
  - Option 3: Refuse consent to the use or development (not recommended).
3. That you agree to the recommended option - Option 2.
4. Subject to your agreement to Option 2, you sign the consent at **Attachment 3** and the letter to East Gippsland Shire Council at **Attachment 4**.
5. Subject to your agreement to Option 2, you approve the removal of 0.13 hectares of very high conservation significance native vegetation (**Attachments 9 and 10**).
6. That you note that other environmental and land management approvals will be required.

**Comments**

Recommendation 1:	<input checked="" type="radio"/> Approved	<input type="radio"/> Not Approved	<input type="radio"/> Noted	<input type="radio"/> Returned for Review
Recommendation 2:	<input type="radio"/> Approved	<input type="radio"/> Not Approved	<input checked="" type="radio"/> Noted	<input type="radio"/> Returned for Review
Recommendation 3:	<input checked="" type="radio"/> Approved	<input type="radio"/> Not Approved	<input type="radio"/> Noted	<input type="radio"/> Returned for Review
Recommendation 4:	<input checked="" type="radio"/> Approved	<input type="radio"/> Not Approved	<input type="radio"/> Noted	<input type="radio"/> Returned for Review
Recommendation 5:	<input checked="" type="radio"/> Approved	<input type="radio"/> Not Approved	<input type="radio"/> Noted	<input type="radio"/> Returned for Review
Recommendation 6:	<input type="radio"/> Approved	<input type="radio"/> Not Approved	<input checked="" type="radio"/> Noted	<input type="radio"/> Returned for Review

Signed: 

Date: 14/1/13

The Hon Ryan Smith MP, Minister for Environment and Climate Change

<b>Reference:</b>	MBR021902
<b>Approved By:</b>	§25: Irrelevant [redacted] Gippsland §25: Irrelevant [redacted]





# Department of Sustainability and Environment

**TO:** Minister for Environment and Climate Change  
**FROM:** Gippsland  
**SUBJECT:** Mallacoota Ocean Access Boat Ramp

**Ref:** MBR021902

**File:** CA/12/3026

## RECOMMENDATIONS

1. That you consider the East Gippsland Shire Council's application (**Attachment 1**), and information that was requested in relation to this application (**Attachments 2a and 2b**), to use and develop coastal Crown land at Bastion Point pursuant to the *Coastal Management Act 1995* (CM Act).
2. That you note that the CM Act provides three options in considering consent of an application:
  - Option 1: Consent to the use or development (not recommended);
  - Option 2: Consent to the use or development subject to conditions (recommended); or,
  - Option 3: Refuse consent to the use or development (not recommended).
3. That you agree to the recommended option - Option 2.
4. Subject to your agreement to Option 2, you sign the consent at **Attachment 3** and the letter to East Gippsland Shire Council at **Attachment 4**.
5. Subject to your agreement to Option 2, you approve the removal of 0.13 hectares of very high conservation significance native vegetation (**Attachments 9 and 10**).
6. That you note that other environmental and land management approvals will be required.

## KEY ISSUES

### Proposal by East Gippsland Shire

7. The East Gippsland Shire Council (the Council) is the proponent for a proposal to upgrade the boat launching facilities at Bastion Point (the 'Project'). The proposed design is a refined version of what is commonly known as Option 3B.

§25: Irrelevant

**Approved by:** \_\_\_\_\_ **Date:** 3 January 2013

§25: Irrelevant \_\_\_\_\_ Gippsland §25: Irrelevant \_\_\_\_\_

§25: Irrelevant \_\_\_\_\_

Endorsed by: §25: Irrelevant \_\_\_\_\_ Land & Fire ☎ (03) §25: Irrelevant \_\_\_\_\_ Signature: \_\_\_\_\_ Date: 4/1/13

Reviewed by: §25: Irrelevant \_\_\_\_\_ Land Division ☎ (03) §25: Irrelevant \_\_\_\_\_

Reviewed by: §25: Irrelevant \_\_\_\_\_ Gippsland ☎ (03) §25: Irrelevant \_\_\_\_\_

Reviewed by: §25: Irrelevant \_\_\_\_\_ Public Land, Gippsland ☎ (03) §25: Irrelevant \_\_\_\_\_

Prepared by: §25: Irrelevant \_\_\_\_\_ Major Projects & Environmental Approvals ☎ (03) §25: Irrelevant \_\_\_\_\_

8. The proposal for option 3B was subject to a 2009 Assessment by the Minister for Planning under the *Environment Effects Act 1978* (EE Act).
9. The Assessment is provided at **Attachment 5** for your consideration. In relation to the question of a 'clear overall societal benefit', the Minister stated that:
  - *Current safety concerns that have been identified during the Inquiry process are such that 'do nothing' is not an option.*
  - *Of the options considered, option 3B, including access provided along the base of the headland, via the existing access track leading off an expanded existing car park is preferable in terms of minimising overall impact.*
10. The Minister also stated that *this Assessment will be made available to decision-makers under Victorian law, in particular the Minister for Environment and Climate Change, who must consider this Assessment before deciding whether to allow the proposal to proceed under the Coastal Management Act 1995* (CM Act). The CM Act (s 40 (2c)) requires regard to any relevant coastal recommendation in making a decision.
11. The Project has \$6.2 million of funding from the Victorian Government (\$3.1 million from the Department of Transport (DoT) and \$3.1 million from Regional Development Victoria (RDV)). The Council's initial contribution is \$0.3 million.
12. The Project requires the use and development of foreshore, intertidal and subtidal areas of coastal Crown land for the construction, maintenance and operation of the Project. Consequently, for the Council to proceed with its Project, it requires consent for use or development under the CM Act, for which you are responsible.

#### **Application for consent**

13. On 22 September 2010, the Department of Sustainability and Environment (DSE) received an application from the Council seeking consent under the CM Act for its Project. The application is provided at **Attachment 1** for your consideration.
14. The application was made in an appropriate form and manner.

#### **Time for decision**

15. The CM Act allows for additional information on the application to be requested. **Attachment 2a and 2b** sets out the additional information that was requested for your consideration and includes:
  - Based on a preliminary assessment of the application, further information was requested on 7 October 2010, and a response to the request was received on 16 October 2012 in the form of a revised application. (**Attachment 2a**)
  - Further information was requested on 30 October 2012. A response to this request was received on 18 December 2012. (**Attachment 2b**)
16. Unless further information is requested on the application, a decision is required by 15 January 2013, otherwise the application for consent will be deemed to have been refused.

#### **Consideration of the application**

17. The CM Act provides three options when considering an application:
  - Option 1: Consent to the use or development.
  - Option 2: consent to the use or development subject to conditions.
  - Option 3: refuse consent to the use or development.

18. A decision under the CM Act must have regard to:

- The Victorian Coastal Strategy.
- Relevant Coastal Action Plans.
- Any relevant coastal recommendation.
- The purposes for which land was reserved, in the case of land reserved or deemed to be reserved under the *Crown Land (Reserves) Act 1978*.

**Attachment 6** provides a checklist of the information relevant to the application.

19. This brief recommends that you agree to Option 2 and that consent with conditions set out in **Attachment 3** is given. The recommended conditions:

- recognise that the Council has yet to resolve all construction and operational details, which is not unusual for such projects;
- ensure that the Council gives effect to the Victorian Coastal Strategy by providing effective safeguards to protect environmental and cultural values during capital and maintenance works, and address relevant maritime safety matters;
- provide transparency for the Council's accountability through public reporting; and,
- notes that the Council will require other approvals, including a lease(s) to construct, maintain and operate the Project.

#### **Views of opponents to proposal**

20. On 14 November 2012, *Save Bastion Point* provided DSE with an outline of its views on why consent should not be given, see **Attachment 7 and 8**. On 1 January 2012 further information was provided (**Attachment 13**). Matters raised draw on:

- findings by the panel appointed by the Minister for Planning to inform his Assessment. It is the Minister's Assessment that contains the recommendations that you must take into account, rather than the report by a panel appointed by the Minister.
- the integrity of the proponent's business case. The business case, is a matter for the Council. The community's interests are addressed by requiring an operational environmental management plan as a consent condition.
- the Victorian Coastal Strategy. The strategy contains high-order principles and strategies to be applied in the context of long-term planning of the 2000 km long Victorian coast for the next 100 years rather than prescribing site specific decisions such as this proposal.

21. On 12 December 2012, the Member for Southern Metropolitan in adjournment debate asked you to not consent to option 3B, but support option H2. In the debate reference was made to the Croajingolong National Park and the UNESCO biosphere reserve. The proposal is not in the park or the reserve. There are also no indirect impacts on the park or reserve. Designating areas of active human use, supported by a network of protected areas, are features of the international biosphere reserve program.

#### **Other approvals**

##### **Removal of very high conservation significance native vegetation**

22. The Council has also applied for a planning permit to remove 0.13 hectares of very high conservation significance native vegetation to enable vehicle access and parking (see **Attachment 9** - loss area is shaded blue and green).

23. The application (SP437474) was referred to DSE by the Department of Planning and Community Development (DPCD) under the *Planning and Environment Act 1987*.
24. DSE is satisfied that *Victoria's Native Vegetation Management – A Framework for Action* has been appropriately applied and that the Council has identified a suitable offset (**Attachment 10**).
25. Should you endorse the vegetation removal, DSE will provide DPCD with a 'no-objection' letter requesting that the Council be required to submit an Offset Plan, to the satisfaction of DSE, prior to construction works as a condition of the planning permit.

#### Other DSE authorisations

26. Additional authorisations administered by DSE will be required for the Project to proceed, including:
  - Revocation of the Council as the committee of management for a portion of the Crown land required for the proposal.
  - Authorisation of a lease(s) under the *Land Act 1958* and the *Crown Land (Reserves) Act 1978*.

#### Authorisations administered by DPCD

27. For the Project to proceed, the Council will require a planning permit pursuant to the *Planning and Environment Act 1987*. The responsible authority for this decision is the Minister for Planning.

#### Authorisation administered by the Commonwealth

28. A desk top review by DSE indicates that Commonwealth approvals under the *Environment Protection and Biodiversity Conservation Act 1999* or *Environment Protection (Sea Dumping) Act 1981* would not be required. It is the Council's duty as the proponent, however, to make its own evaluation of the Commonwealth approvals it may require.

#### **Funding Deed**

29. RDV, who is responsible for the State funding agreement with the Council, advised that it will seek to ensure that Council provides evidence (prior to the release of any funding) that it has complied with Condition 2 of the consent and also engaged a consultant to address Condition 3, with progress on the maritime safety operational manual to be demonstrated during project construction.

#### **CONTEXT**

30. A limited open access launch facility has existed at Bastion Point since the 1960s, providing across-the-beach launching of boats. The ramp is used by commercial and recreational fishers. Bastion Point is 1 km south east of Mallacoota and provides direct access to the Tasman Sea.
31. There has been long-term dissatisfaction with the launching facility as a result of safety and other issues, particularly at peak visitor times. The Council has been a long standing advocate for an upgrade of the facility that has become a contentious issue for some Mallacoota residents and other stakeholders.
32. The Council's proposed upgrade was subject to an assessment by the Minister for Planning under the EE Act. The Friends of Mallacoota lodged an appeal with the Supreme Court contesting the Minister's authority to make this decision. On 27 May 2010, the Supreme Court upheld the validity of the assessment under the EE Act.
33. Following the Minister for Planning's assessment, government agencies further refined options to provide improved facility design and operational outcomes for the Council's consideration (see **Attachment 11**). The key differences between Option 3B and Option H2 are shown in

**Attachment 12.** The Council did not accept the agency-recommended refined option H2, and, in August 2010, resolved to apply for CM Act consent based on its preferred option, Option 3B.

**Purpose of the Coastal Management Act**

34. A purpose of the CM Act is to provide a co-ordinated approach to approvals for the use and development of coastal Crown land, including the:

- construction or exterior alteration or exterior decoration of a building;
- demolition or removal of a building or works;
- construction or carrying out of works;
- subdivision or consolidation of land, including buildings or airspace;
- placing or relocation of a building or works on land; and,
- construction or putting up for display of signs or hoardings.

35. 'Use' includes use or proposed use for the purpose for which the land has been or is being or may be developed.

36. In accordance with requirements of the *Aboriginal Heritage Act 2006*, a Cultural Heritage Management Plan for the proposal was approved in August 2011. Consequently, there is no requirement arising from that act that prevents a decision on this proposal.

**Removal of vegetation for vehicle access and parking**

37. The vegetation to be removed is Coastal Dune Scrub Ecological Vegetation Class (EVC 160), which has a conservation status of least concern in the East Gippsland Lowland bioregion. The site has been assessed as the best 50 per cent habitat for rare and threatened flora species such as *Lagonia pusilla* (rare), *Melaleuca armillaris* (rare), *Angophora floribunda* (rare) and *Pterostylis alveata*, which is listed as vulnerable in Victoria. This has elevated the conservation significance to very high.

**CONSULTATION**

38. DoT, DPCD and RDV were consulted in preparing this brief.

39. DoT advises that a maritime safety operational manual is only one element of the marine safety operational and design matters referred to in the Assessment. It considers that it would be simpler and more comprehensive for the Council to undertake the safety design and operations of the boat ramp in accordance with the Assessment. DoT also considers that this requirement could be built into the funding agreement between DoT and RDV.

40. DSE supports DoT's proposal to condition its funding and has advised DoT that given the purposes of the CM Act, inclusion of a maritime safety operational manual is appropriate.



**Minister for  
Environment and Climate Change**

Ref: MBR021902

File: CA/12/3026

8 Nicholson Street  
PO Box 500  
East Melbourne Victoria 8002  
Australia  
Telephone: (03) 9637 8890  
Facsimile: (03) 9637 8100  
DX 210098

s25: Irrelevant

East Gippsland Shire Council  
PO Box 1618  
273 Main Street  
BAIRNSDALE VIC 3875

14 JAN 2013

Dear s25: Irrelevant

**BASTION POINT OCEAN ACCESS BOAT RAMP**

Thank you for your application for consent dated 20 September 2010 for the use and development of coastal Crown land under Division 4 of the *Coastal Management Act 1995* ("CM Act") to upgrade ocean access facilities at Bastion Point, Mallacoota ("Project"). Your original application was received on 22 September 2010 and your further information received on 16 October 2012.

I have noted that the 2009 assessment under the *Environment Effects Act 1978* found that the Council's proposal for the Project was acceptable, and Government has provided funding to enable the Project to proceed.

After considering the application and taking into account the matters required by the CM Act, I consent to the Council's application subject to conditions, in accordance with section 40(1)(b) of the CM Act.

I draw the Council's attention to the consent conditions. These conditions are intended to ensure that Council's use and development of coastal Crown land during the construction, maintenance and operation of the Project meets contemporary standards for environmental protection and operational safety as expected by the assessment under the *Environment Effects Act 1978* and the objectives of the CM Act.

I also draw Council's attention to the Consent condition 8. To meet this condition, Council will be required to enter into a lease(s) for the Project (that covers the land required for vehicle parking, boat ramp, breakwater, finger jetty and vehicle staging area, and other associated areas) in order to undertake the Project on Crown land.

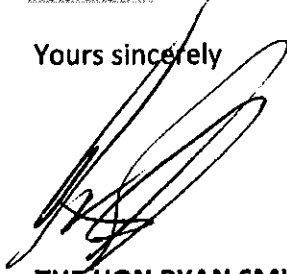
**Privacy Statement**

Any personal information about you or a third party in your correspondence will be protected under the provisions of the *Information Privacy Act 2000*. It will only be used or disclosed to appropriate Ministerial, Statutory Authority, or departmental staff in regard to the purpose for which it was provided, unless required or authorised by law. Enquiries about access to information about you held by the Department should be directed to the Manager Privacy, Department of Sustainability & Environment, PO Box 500, East Melbourne, 8002.



For further information on this matter please contact §25: Irrelevant  
§25: Irrelevant Gippsland, on ph (03) §25: Irrelevant  
Irrelevant

Yours sincerely



**THE HON RYAN SMITH MP**  
Minister for Environment and Climate Change



**SECTION 40 COASTAL MANAGEMENT ACT 1995**  
**CONSENT FOR USE AND DEVELOPMENT OF COASTAL CROWN LAND**

**Applicant:** East Gippsland Shire Council

**Address of land:** Seabed at Bastion Point and other Coastal Crown Land in the vicinity.

**Consent for:** Use and development of land for the Bastion Point Ocean Access Project.

I consent to the proposed use and development pursuant to Section 40(1)(b) of the *Coastal Management Act 1995*, as outlined in the application for consent under the *Coastal Management Act 1995* for the Mallacoota Ocean Access Boat Ramp, in accordance with the following conditions of this consent.

1. All project works (construction, maintenance and operation) must be consistent with the document titled: *Application for Coastal Management Act Consent Permit to Remove Native Vegetation: Mallacoota Ocean Access Boat Ramp* October 2012.
2. To ensure that coastal Crown land is effectively protected during project works, prior to the commencement of any construction works, the East Gippsland Shire Council must provide to the satisfaction of the Regional Director Gippsland of the Department of Sustainability and Environment:
  - An environmental management plan and supporting risk register for construction, maintenance and operation works.
  - A project communication plan (construction, maintenance and operation).
3. To ensure that matters raised in the 2009 Assessment by the Minister for Planning under the *Environment Effects Act 1978* of the Bastion Point Ocean Access Boat Ramp are addressed, prior to the completion of the construction works the East Gippsland Shire Council must publicly release a maritime safety operational manual for the operation of the project that has been prepared to the satisfaction of a recognised maritime safety expert.
4. The East Gippsland Shire Council must appoint an auditor approved by the Regional Director Gippsland of the Department of Sustainability and Environment, to undertake an annual audit of the performance of the Project.
5. To ensure that the public are kept informed of the project's performance, the East Gippsland Shire Council must by 31 March of each year publicly release an annual performance audit for the previous calendar year referred to in condition 4.
6. The environmental management plan and supporting risk register, project communication plan and maritime safety operational manual may be revised with the written approval of the Regional Director Gippsland of the Department of Sustainability and Environment.
7. This consent does not authorise any construction works outside the period between 1 February 2013 and 1 March 2016.
8. This Consent is subject to any other Project approvals that may be issued by the Minister for Environment and Climate Change, including lease(s) for the construction, maintenance and operation, and any other approvals that the East Gippsland Shire Council may require.

  
The Hon Ryan Smith MP  
Minister for Environment and Climate Change

Issue Date: 14/1/13