

COASTAL MANAGEMENT ACT 1995

Statement of reasons of the Minister for Environment and Climate Change for decision pursuant to section 40 of the *Coastal Management Act 1995*

Introduction

1. This statement of reasons relates to the decision of the Minister for Environment and Climate Change on 14 January 2013 to consent to the use and development of coastal Crown land at Mallacoota for the proposed Bastion Point Ocean Access Boat Ramp. Pursuant to section 40(1)(b) of the *Coastal Management Act 1995* (**CM Act**), this consent was subject to conditions.
2. Following consideration of the application for consent from East Gippsland Shire Council (**EGSC**), in accordance with the CM Act, the decision was made having regard to:
 - the Victorian Coastal Strategy;
 - the Coastal Action Plans applying to the land;
 - relevant coastal recommendations; and
 - the purposes for which the land was reserved, in the case of that Crown land reserved or deemed to be reserved under the *Crown Land (Reserves) Act 1995*.
3. Further, the decision was made having considered the Minister for Planning's 2009 assessment under the *Environment Effects Act 1978* of the Bastion Point Ocean Access Boat Ramp (**Assessment**).
4. In addition, the decision took into account the views of those who opposed the proposal that was the subject of the application, and whether there was any impact on the Croajingolong National Park. The decision also noted the requirements for removal of native vegetation, Indigenous People's interests, funding for the project and other approvals required for the proposal.
5. Having regard to all this information, particularly the thorough and unequivocal nature of the Assessment, consent was issued subject to conditions.

The application for consent

6. The application is a proposal for the use and development of coastal Crown land for the construction, operation and maintenance of a boat launching facility at Bastion Point. The facility design includes a boat ramp, breakwater and vehicle and trailer access and parking. The proposal is to replace an existing boat launching facility.
7. The proposal to upgrade the existing boat launching facility at Bastion Point has had a lengthy history and various options have been considered during this period. The proponent decided to proceed with an application for consent for, what is commonly referred to as, Option 3B.

The Victorian Coastal Strategy

8. The purpose of the 2008 *Victorian Coastal Strategy* (**the Strategy**) is to provide for the planning of the Victorian coast for the next 100 years and beyond by providing:
 - A vision for the planning, management and use of coastal, estuarine and marine environments.
 - The government's policy commitment for coastal, estuarine and marine environments.
 - A framework for the development and implementation of other specific strategies and plans such as Coastal Action Plans, management plans and planning schemes.
 - A guide for exercising discretion by decision-makers, where appropriate.
9. The Strategy's approach is direction-setting and facilitative, rather than prescribing detail on where, when or how use and development of the coast is to occur. The Strategy provides criteria to assist decision making on use and development.
10. The Strategy establishes a hierarchy of principles. These are:
 - Provide for the protection of significant environmental and cultural values.
 - Undertake integrated planning and provide clear direction for the future.
 - Ensure the sustainable use of natural coastal resources.
 - Suitable development on the coast.
11. The Assessment regarding the consistency of the proposal with the four principles of the Strategy was considered, and accepted as thorough and persuasive. In providing consent under the CM Act, taking into account the four principles, the view was taken that the proposal was consistent with the Strategy.
12. To ensure that the proposal, as implemented, provides the best outcome, conditions are provided to safeguard the environment during construction and maintenance works, provide for safe operation, provide public feedback through annual reporting, and effective management through a lease.
13. The conditions require the preparation and implementation of an environmental management plan, a project communications plan and a maritime safety operational manual. These plans and the manual will set out performance standards, accountabilities for compliance and reporting arrangements. Compliance will be subject to annual independent audits that will provide a basis for public feedback on the project's performance.
14. In addition, it was considered that the consent conditions will also ensure consistency with the objectives of the CM Act:
 - To plan for and manage the use of Victoria's coastal resources on a sustainable basis for recreation, conservation, tourism, commerce and similar uses in appropriate areas.

- To protect and maintain areas of environmental significance on the coast, including its ecological, geomorphological, geological, cultural and landscape features.
 - To facilitate the development of a range of facilities for improved recreation and tourism.
 - To maintain and improve coastal water quality.
 - To improve public awareness and understanding of the coast and to involve the public in coastal planning and management.
15. The consent, including its conditions, is consistent with these objectives having regard to the nature, scale and location of the proposal.
16. The consent is for a proposal to improve recreational and tourism facilities. The requirement for an environmental management plan and an audit of compliance with the plan will ensure that unintended consequences do not arise for areas of environmental significance on the coast, including its ecological, geomorphological, geological, cultural and landscape features, and water quality. The requirement for a communication plan and annual audit of compliance will ensure that the public has access to information and is able to be aware of compliance with the consent requirements and the project's management.

Coastal Action Plans

17. Two Coastal Action Plans (CAPs) were relevant to the proposed Bastion Point Open Access Boat Ramp. These were:
- Integrated Coastal Planning for East Gippsland CAP (2002); and
 - Gippsland Boating CAP (2002).

Integrated Coastal Planning for East Gippsland Coastal Action Plan (2002)

18. The objectives of integrated coastal planning set out in the Integrated Coastal Planning for East Gippsland CAP are particularly relevant, and include the following:
- Consistent planning for coastal and marine areas with close cooperation between government agencies.
 - Incorporation of the principle of ecologically sustainable management and development in all planning activities.
 - Protection of natural, cultural and landscape values in all planning and development activities.
 - A commitment by municipalities and other agencies to facilitate high quality siting and design in all development and improvement projects.
 - A high level of community involvement in planning processes.

- Increased recognition of the high natural, cultural and landscape values of the Gippsland coast.
19. The Assessment addressed these aspects, in particular, the consideration and application of the principles of ecologically sustainable management, protection of the landscape values, and extensive community involvement
20. The Assessment set out the consistency between the proposal and evaluation objectives that formed the framework for the Assessment.
21. The evaluation objectives included:
- avoidance of significant interference with coastal processes related to local patterns of sediment movement;
 - minimisation of detrimental impacts on the character and amenity of Bastion Point, including its attractiveness for recreation, education and tourism; and
 - provision of clear overall societal benefit, taking into account economic impacts, social outcomes and residual environmental impacts.
22. The Assessment also acknowledged the many submitters that took the time and effort to respond to the assessment of the proposal and inform the Inquiry Panel.
23. In setting out specific and integrated responses to evaluation objectives that were relevant to the decision on the proposal under the CM Act, the Assessment was considered, and accepted as thorough and persuasive.
24. It was considered that consent conditions would provide for the protection of values during construction and maintenance of the facility (condition 2), ensuring that proposed siting and design standards are adhered to during construction (condition 4) and that the community continue to be informed of the proponent's compliance with the consent requirements (condition 2).

Gippsland Boating Coastal Action Plan (2002)

25. The Gippsland Boating CAP outlines principles for boating in Gippsland. The Safety principle is of particular relevance, and states:

The Plan encourages the development of facilities that are easy to use and that allow safe access to nearby waters in most conditions, while discouraging facilities that provide easy access to dangerous waters or waters that become dangerous to use in storm conditions. This applies particularly to boat ramps on the open coast where it is difficult or impossible to retrieve boats quickly if storm conditions arise suddenly whilst the boats are at sea, and where there is no alternative shelter.

There are a limited number of locations on the Victorian coast east of Melbourne where there are safe passages from calm water to the open ocean; Western Port Bay, Corner inlet and environs, and Lakes Entrance. The emphasis for upgrading facilities with ocean access will be on locations where these safe passages exist.

26. This CAP also recognises the need to 'finalise assessment process for ocean access at Bastion Point'. This need was given effect when the Minister for Planning made his 2009 Assessment.
27. The Assessment acknowledged that practical operating safety was a serious issue, and that this was particularly the case with inexperienced users.
28. The Assessment set out the consistency between the evaluation objective – to provide efficient, safe infrastructure for the launching and retrieval of commercial and recreational boats under all tides at Mallacoota – that formed part of the framework for the Assessment and CM Act objectives.
29. The Minister for Planning, in his 2009 Assessment, further found that:

Current safety concerns that have been identified during the Inquiry as such as that 'do nothing' is not an option.
30. The Minister further states:

All options considered do present their own challenges in terms of boater use of any facilities. The risks associated with boaters of differing levels of competence and experience using facilities that provide access to open ocean conditions, that are often very changeable, will require implementation of effective management arrangements to mitigate risks to boaters from their own behaviour.
31. It was considered that this safety consideration would be given effect by condition 3 of the consent which requires the preparation and implementation of a maritime safety operational manual. To be acceptable the manual will outline the arrangements to mitigate risks to boaters from their own behaviour and the accountability for implementation. The implementation of the manual is subject to audit as required by condition 4.

Relevant coastal recommendations

32. Two 'relevant coastal recommendations' were applicable to the proposal. These were the *East Gippsland Area Review 1986* and the *Marine, Coastal and Estuarine Investigation (2000)*.

East Gippsland Area Review 1986

33. Recommendation H2 in the *East Gippsland Area Review 1986* was considered to be particularly relevant to the proposal. This recommendation covers the water frontage to Mallacoota Inlet, Bastion Point, the lower part of the Betka River estuary, and ocean frontage to the southern end of Mallacoota aerodrome. Specific recommendations for these areas include:
 - Provide facilities for shipping, fishing, and boating (including harbour facilities) together with necessary navigation aids.
 - Any major coastal development projects should be subjected to a detailed environmental study prior to commencement (examples of such projects would include proposals for jetties, marinas, mining, sea walls, etc.).

- Occupation of coastal public land by individuals or organisations should be phased out, and no new occupation leases should be granted.

34. The proposal was considered to be consistent with recommendation H2 in the *East Gippsland Area Review 1986*. In particular, the proposal caters for boating and has been subject to a detailed environmental study through the Assessment under the *Environment Effects Act 1978*.

Marine, Coastal and Estuarine Investigation (2000)

35. Recommendation 38 of this investigation is particularly relevant. It states that detailed planning for individual coastal reserves, including determination of uses to be permitted and guidelines for development of facilities, be undertaken through existing mechanisms as appropriate, including coastal action plans and reserve management plans. Such planning at the local level would involve public consultation.

36. The proposal is consistent with this recommendation in that an existing mechanism, the Assessment under the *Environment Effects Act 1978*, was used to assess the proposal and provide for public consultation in making that assessment. The Assessment findings were accepted in making a decision on the application for consent.

The purposes for which the land was reserved

37. The proposed works are to be located on parts of Crown Allotment 1K, 1N and 1W within the Parish of Mallacoota. The area that is reserved (Mallacoota Foreshore Reserve) is for the purposes of camping and recreation. The proposal is also to be located on unreserved Crown land.

38. It was considered that the proposal was consistent with the land reservation, and in particular the recreation purpose, in that the vehicle and boat trailer access and parking provides the necessary infrastructure for recreational boating. Further, the proposal provided for pedestrian access and viewing platforms to support existing access to the area for these recreational activities.

The Minister for Planning's 2009 Assessment

39. The Assessment ultimately found that the EGSC's proposal was acceptable. In the Assessment, the Minister for Planning stated that:

- current safety concerns with the existing Mallacoota boat ramp identified during the *Environment Effects Act 1978* inquiry process are such that 'do nothing' is not an option; and
- 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.

40. It was recognised that the assessment process had provided considerable opportunity for public debate on the proposal.

41. Although the Minister for Planning disagreed with the recommendations of the Inquiry Panel, it was considered that the Minister for Planning's 2009 Assessment

was thorough and persuasive. The standing of the Assessment and the unequivocal nature of the assessment findings were accepted.

Other Matters

Save Bastion Point

42. The decision took into account the views on why consent should not be given that were provided to the Department of Sustainability and Environment (**DSE**) by the Save Bastion Point campaign. Matters that were raised included, primarily:
 - consideration of the findings by the Inquiry Panel appointed by the Minister for Planning to inform his 2009 Assessment;
 - the integrity of the EGSC's business case; and
 - the Victorian Coastal Strategy.
43. In relation to the findings of the Inquiry Panel, these were assessed by the Minister for Planning, and through that 2009 Assessment were taken into account in the course of granting approval under the CM Act.
44. In relation to the business case for the proposal, it was considered that the integrity of the EGSC's business case was a matter for the Council. It was noted that the State Government would provide funding to EGSC for the project. Regional Development Victoria, which is responsible for the State funding agreement with the EGSC, advised that it would seek to ensure that EGSC provides evidence (prior to the release of any funding) that it has complied with the relevant conditions in the consent.
45. The Save Bastion Point campaign submitted that the proposal was not consistent with the Victorian Coastal Strategy. The Victorian Coastal Strategy contains high-order principles and strategies to be applied in the context of long-term planning of the 2000km long Victorian coast for the next 100 years rather than prescribing site specific decision such as this proposal. For the reasons set out above, it was considered that the proposal was consistent with the Strategy.

Croajingolong National Park

46. Consideration was given to possible impacts on the Croajingolong National Park and the UNESCO biosphere reserve.
47. The proposed location of the boat ramp and associated infrastructure would not be in the National Park, and would not be in the reserve. Further, it was considered that there would be no indirect impacts on either the National Park or the reserve.

Removal of very high conservation significance native vegetation

48. The proposal involves the removal of 0.13 hectares of very high conservation significance native vegetation. It was noted that the EGSC had also applied for a planning permit to remove this vegetation to enable vehicle access and parking.

49. It was also noted that DSE was satisfied that Victoria's Native Vegetation Management – A Framework for Action had been appropriately applied and that the EGSC has identified a suitable offset.

Indigenous Peoples' Interest

50. It was noted that on 30 October 2012 formal procedural notice under section 24KA of the *Native Title Act 1993* was sent by DSE officers to native title parties extending the opportunity to make a submission on the proposal within a 40 day period. No submissions were received. Accordingly, the proposal does not appear to impact on native title.

Other authorisations

51. The decision was made acknowledging that additional authorisations may be required for the project to proceed, including:
- revocation of the East Gippsland Shire 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*;
 - a planning permit pursuant to the *Planning and Environment Act 1987*; and
 - compliance with the *Environment Protection and Biodiversity Conservation Act 1999* and *Environment Protection (Sea Dumping) Act 1981*.

Conclusion

52. Having regard to the above matters, and in particular the consistency of the proposal with the Victorian Coastal Strategy, relevant CAPs, relevant coastal recommendations, the reservation of the relevant land, and the unequivocal nature of the Minister for Planning's 2009 Assessment, it was considered that consent should be issued, subject to conditions.