



Submission to Victorian Coastal Council

in response to

Draft Victorian Coastal Strategy 2007

prepared by

**Environment Defenders Office (Victoria) Ltd
31 January 2008**

The Environment Defenders Office (Victoria) Ltd ('EDO') welcomes the opportunity to make a submission with respect to the 2007 Draft Victorian Coastal Strategy ('2007 Draft Strategy').

Reflecting our interest and expertise, we have reviewed the Draft from a legal perspective and identified five key issues with the 2007 Draft Strategy: firstly, guiding the exercise of discretion by decision-makers; secondly, the need for strategic planning at a state-wide scale; thirdly, the increased focus on climate change; fourthly, the need for long-term measurable outcomes; and fifthly, the need for accountability for the implementation of outcomes proposed with the 2007 Draft Strategy. We have included analysis of recent Victorian Civil and Administrative Tribunal ('VCAT') decisions which have considered the *2002 Victorian Coastal Strategy* ('2002 Strategy') as an indication of the how it has been applied.

The need to guide the exercise of discretion by decision makers

1. Whilst we recognise that the important role of the Strategy in providing a framework for other more specific strategies and plans such as Coastal Action Plans, Coastal Management Plans and Local Policy in Planning Schemes, we also consider that the Strategy should be specific enough to provide direct guidance to decision makers where appropriate. In some VCAT cases, the provisions in the 2002 Strategy have been considered as broad over-arching policies rather than acting as a direct guide to decision making in planning cases.¹ The resulting emphasis on "flexible" decision making or ad hoc exceptions can result in the undermining of the Strategy. We recommend that whilst the Strategy should retain the broad scope, it should also contain provisions that are sufficiently certain to act as a guide to planners and decision makers.
2. In terms of consistent decision making particularly with respect to coastal infrastructure, the objectives of the 2002 Strategy have been considered difficult to apply because of broadly worded principles without specific guidelines of what was considered appropriate development.² The 2007 Draft Strategy contains the inclusion of criteria for coastal

¹ *McCulloch v Bass Coast SC* [2007] VCAT 363 (9 March 2007)

² *McCulloch v Bass Coast SC* [2007] VCAT 363 (9 March 2007)

dependent development and a more detailed description of the approach to coastal planning and development, and this has been an important improvement.

3. A frequently challenged provision of the 2002 Strategy at VCAT has been the limiting of the development of areas outside defined recreational and activity nodes.³ The key difficulty in the application of this provision has been the interpretation of the 'Coastal development' guidelines, which outline preferred locations for development rather than specifically identify appropriate and inappropriate locations for development.⁴ This uncertainty that has been experienced by decision makers in attempting to apply the 2002 Strategy should be acknowledged and rectified in the 2007 Draft Strategy.
4. The revision of coastal settlement framework within the 2007 Draft Strategy is positive, particularly with regard to limiting development outside existing activity and recreational nodes. The inclusion of Spatial Growth Management Analysis to classify settlements as having low, moderate or high spatial growth capacity in accordance with the *Coastal Spaces Recommendation Report* is also valuable. However, this has potential to be problematic as the towns classified as having high spatial growth capacity provides for development to extend beyond current zoned urban limits with the maximum limits to growth being defined by Strategic Planning undertaken by individual settlements. For example, the classification of Apollo Bay as having a high growth potential has been used as a rationale for the extensive Great Ocean Green development outside existing settlement boundaries. The Strategy should provide greater clarity as to what is appropriate in such cases and in particular make it clear that although a town has potential for growth, this should not come at a detriment to coastal and landscape values nor in areas vulnerable to impacts of climate change.
5. The 2007 Draft Strategy needs to contain a mechanism to provide community groups with relevant information and opportunities for consultation and participation in decision making processes. Although the community has been recognised as a principle stakeholder as many of the outcomes and actions in the strategy depend on community

³ *Ridgeway v Colac Otway SC* [2003] VCAT 1272 (16 September 2003); *James v Colac Otway SC* [2004] VCAT 2584 (20 December 2004); *Beacon Point Holdings v Colac Otway SC* [2005] VCAT 2871 (19 January 2006)

⁴ *Beacon Point Holdings v Colac Otway SC* [2005] VCAT 2871 (19 January 2006)

support, the criteria for public land use and development does not include any specific provisions to ensure that development is consistent with community values. We recommend that similar to the provisions for private land development, the criteria for development of public land should include a provision such as: "Developments must be consistent with the 'character' of the settlement and not contradictory to community values". The Strategy should also contain specific steps that must be undertaken to ensure that the public at large is notified of the proposed development at an early stage and given ample opportunity to participate in the decision making process.

The need for an emphasis on Integrated Management of the coast on a state-wide scale

6. We welcome the increased focus on integrated management of the coastal zone within the 2007 Draft Strategy. However, to implement the system of Integrated Coastal Zone Management (ICZM) the strategy should contain a clear statement as to the functions and responsibilities of the local government, catchment management authorities, regional coastal boards, community groups, private land holders, and other stakeholders to ensure consistent decision making on a state-wide scale.
7. The focus on improving marine management in the 2007 Draft Strategy is also to be welcomed.
 - The new actions suggested within the 2007 Draft Strategy particularly in response to marine targets should be accompanied by a priority system. Some actions must be completed before others are able to be undertaken effectively. For example, the research advocated in areas such as biodiversity research (2.1.3) and modeling predicted vulnerability to climate change (2.2.1) needs to be completed before an effective management strategy can be outlined.
 - Whilst marine environments are important for industries such as fishing and transport it is essential that environmental and community values are as keenly protected as economic values.
 - The 2007 Draft Strategy needs to encompass the catchment-coast-marine spectrum and recognise the interrelations between the different ecosystems with the spectrum. In improving marine

management it is necessary to define a process of decision-making that integrates the role of catchment authority and local government in setting and monitoring marine management targets. The Senate Inquiry into Marine and Coastal Pollution⁵ found that the greatest threat to marine environments in Australia is from catchment use including increased nutrient loads and runoff. In terms of planning and management the 2007 Draft Strategy should promote better collaboration between Catchment Management Authorities and the Regional Coastal Boards in planning and decision-making. At present the lead agent for generating a planning framework in the nearshore and marine environment are land managers and the local government (section 2.3). This is unsatisfactory as it precludes a consistent catchment-coast strategy and consistency of management on a state level.

- We recommend that statewide marine environment targets are set to ensure consistency at a state level. The targets must be defined to ensure that they are measurable and must be accompanied by a commitment to monitoring and reporting to ensure accountability. Within the Integrated Coastal Zone Management Strategy, roles and responsibilities need to be defined to promote both the co-operation between the various stakeholders and accountability for specific actions.

A stronger and clearer focus on climate change impacts

8. Whilst we welcome the increased focus on climate change in the 2007 Draft Strategy, it is important that the strategy sets out more definitive actions with respect to planning for the impacts of climate change and sea level rise. Whilst there remains uncertainty with regard to what the specific impacts of climate change will be, we know the overall effects will be significant and far-reaching. A Precautionary Principle approach must be adopted in these circumstances.
9. The Strategy must outline a mechanism for which the recommendations regarding the impacts of climate change are implemented. As discussed in the *Coastal Spaces Recommendation Report* there has been no

⁵ Parliament of Australia, Senate, *Inquiry into Marine and Coastal Pollution*, 2003 <http://wopared.aph.gov.au/senate/committee/ecita_ctte/completed_inquiries/1996-99/marine/report/c02.htm> viewed 16 January 2008.

mechanism to ensure that recommendations regarding climate change within the Strategy are implemented via future subdivision and development approvals, such as avoiding the development of low lying areas and ensuring development is set back from the coastline.⁶ The Great Ocean Green development at Apollo Bay on the Otway Coast in South-Western Victoria is a pertinent example of development that is inconsistent with the 2007 Draft Strategy position on climate change and sea level rise. The proposed site for the Great Ocean Green development is the Barham River Flats, a flood plain adjacent to an estuary. Although development at this site is contradictory to the provisions of the Strategy in terms of development of an area vulnerable to the effects of climate change, it has been recommended for approval by a State-Government appointed planning panel regardless. The Strategy must outline mechanisms to ensure that decision makers adopt recommendations regarding vulnerability to climate change.

10. An approach based on the Precautionary Principle has been advocated in the Strategy when considering the feasibility of coastal development. There remains an inconsistency between two sets of guidelines regarding the interpretation of the precautionary principle. The 2007 Draft Strategy defines the Precautionary Principle as consistent with *National Strategy for Ecologically Sustainable Development* which uses the definition in principle 15 of the *Rio Declaration*⁷. The *Coastal Recommendations Report* defined the Precautionary Principle in terms of 'taking action now despite a level of uncertainty, to minimise future risks'⁸ which encompassed both risks to infrastructure and environmental degradation. In terms of planning for the impacts of climate change it should be standard practice to adopt an approach based on the Precautionary Principle for areas likely to be vulnerable to climate change including sandy shorelines, estuaries and other low-lying coastal areas.⁹

⁶ Department of Sustainability and Environment (2006) *Coastal Spaces Recommendations: April 2006*, Victorian Government, Melbourne, 9.

⁷ 'Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation' United Nations Conference on Environment and Development, Rio, 1992 (the "*Rio Declaration*").

⁸ Department of Sustainability and Environment (2006) *Coastal Spaces Recommendations: April 2006*, Victorian Government, Melbourne, 9.

⁹ Department of Sustainability and Environment (2006) *Coastal Spaces Recommendations: April 2006*, Victorian Government, Melbourne, 9.

11. The sea level rise allowance suggested in the Strategy of 0.4 to 0.8m is not a sufficient guide for planners as it is too broad in range. We recommend that an upper limit be put in for sea level rise, in the form of a planning allowance, based on an approach consistent with the Precautionary Principle, subject to revision with available information.
12. Whilst it is recognised that further research is necessary to predict vulnerability of coastal areas and adaptation options, this should not preclude the 2007 Draft Strategy from setting out clearly defined planning strategies limiting development of low lying coastal areas and areas vulnerable to the impacts of climate change and strategies to ensure that these recommendations are adopted by decision makers.

Long-term, measurable targets

13. Decision-making processes and policy instruments used to provide coastal policy should be based on a clear statement of long term targets. Whilst we acknowledge that extensive research is suggested in the 2007 Draft Strategy and that long term targets may need to be revised, the Strategy should include clearly defined outcomes and time frames for their completion. Accountability for the completion of outcomes is important and will not be able to occur unless the objectives are clearly defined and time-lines are included for their completion.
14. Many of the new actions and outcomes proposed in the 2007 Draft Strategy are not clearly defined with measurable targets or are expressed in terms of future actions without any commitment to any particular outcome. In particular reference to implementation and institutional arrangements, it is not sufficient for targets to 'consider improvements to Victoria's marine, institutional, planning and management and decision making framework' (2.3.1) or 'consider improvements to Victoria's coastal planning and management arrangements' (3.11.1) without ensuring that these improvements are made and implemented. The inclusion of these commitments indicate that these issues have been recognised as important and require attention and this should be reflected in the Strategy by clear definitive targets and time lines for completion.
15. The 2007 Draft Strategy provides a 5 year implementation period for new actions and outcomes within the 20 year vision of the strategy. The

lack of priority targets for the completion of new actions is particularly problematic with respect to research such as modeling predicted vulnerability of the coast to climate change and monitoring and reporting on the marine environments which would need to be completed prior to the development and integration of settlement plans into local government policy.

16. Our recommendation is that the 2007 Draft Strategy should include time lines for the completion of research and monitoring systems and priority system for the completion of new actions. There also needs to be a mechanism by which the recommendations and outcomes made by the report are enforced.

Accountability for implementation of outcomes of the Strategy

17. The new actions and policies suggested within the 2007 Draft Strategy need to be accompanied by mechanisms to ensure that the recommendations for the strategy are put into practice.
18. The *Coastal Spaces Recommendation Report*¹⁰ found that of the 87 settlements within two-kilometers of Victoria's coastline only 18% have included strategic settlement plans into local planning schemes. The 2002 Strategy has been most successful where it was given effect in regional and local strategies as this provides statutory direction and weight to decision making. The 2007 Draft Strategy should provide time limits for the implementation of coastal settlement framework into local government planning schemes to ensure consistency with the principles of the Strategy.
19. The 2007 Draft Strategy should put in place appropriate resources and mechanisms to enable the timely adoption of the policy outlined in the Strategy within local planning regulations. This requires additional resources to ensure that local governments have the capacity to implement the outcomes and actions proposed in the Strategy.

Thank you for the opportunity to provide these comments.

¹⁰ Department of Sustainability and Environment (2006) *Coastal Spaces Recommendations: April 2006*, Victorian Government, Melbourne.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'B Sydes', with a long horizontal flourish extending to the right.

Brendan Sydes

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