

State Government or Agency - Submissions

Aboriginal Victoria

Barwon Water

Corangamite CMA

East Gippsland CMA

EPA

Glenelg Hopkins CMA

Melbourne Water

Port Phillip & Westernport CMA

Victorian Aboriginal Heritage Council

West Gippsland CMA



Marine Coastal Act Consultation Paper: Aboriginal Victoria's Submission

Thank you for inviting comment on the proposed Marine and Coastal Act (MCA). The Consultation Paper highlights the shift in marine and coastal thought and planning over the past ten years. It gives apt attention to climate change and the volatile nature of marine and coastal environments, and the importance of working with this volatility in policy over the planning and use of such environments. While these changes are appreciated and necessary, it is important to consider them in light of other relevant legislation. Rather than promoting 'greater roles for Traditional Owners' (page 51 of the Consultation Paper) it is more constructive to hold a position where Traditional Owners (TOs) have more power, weight and contribution in planning from the outset. In other words, the MCA Consultation Paper needs to go beyond the acknowledgement of Country and its intangible and tangible significance to TOs. The paper needs to readily apply, act and reflect the position given in section 1.3 throughout the paper and eventual Act (page 14 of the Consultation Paper). This can be better achieved in several ways, especially through broadening the scope of the drivers for change and implementation through the proposed reforms.

This submission will set out a number of considerations which if implemented will improve "Community involvement"- one of the key drivers for change proposed by the MCA Consultation Paper.

The coastal regions of Victoria are recognised as areas of cultural heritage sensitivity due to the presence of Aboriginal cultural heritage. As the primary guardians, keepers and knowledge holders of Aboriginal cultural heritage,¹ TO groups are key stakeholders in any activity which affects, or is likely to affect, their cultural heritage. It is submitted that legislative reform and governance structures outlined in the MCA or set up as a result of the reforms, needs to reflect this.

A greater role for Traditional Owners

The draft Consultation Paper outlines governance and institutional arrangements which provide a greater role for TO groups in the formal management and planning of marine and coastal areas.

¹ *Aboriginal Heritage Act 2006* (Vic) s 3(b)

Whilst arrangements actively involving Traditional Owner Land Management Boards (TOLMBs) are rightly considered by the MCA Consultation Paper, TOLMBs are only available to those TO groups who have successfully negotiated recognition and settlement agreements (RSAs) with the State under the *Traditional Owner Settlement Act 2010* (TOS Act). Currently, only one TO group has such an agreement over coastal country. The TOLMB-focused stakeholder engagement strategy presented by the MCA Consultation Paper therefore excludes many key stakeholders – namely, TO groups without TOLMBs, RSAs and Registered Aboriginal Parties (RAPs).

The *Aboriginal Heritage Act 2006* (AHA) – not the TOS Act – is the Victorian legislation which manages and protects Aboriginal cultural heritage. Therefore, any legislation which manages impacts on land in Victoria must be consistent with the AHA and recognise the statutory decision-making processes and structures within that legislation. Recognition of TOs' links to country under the TOS Act are designed to complement the system of Aboriginal participation in the management of cultural heritage under the AHA. Obtaining RAP status under the AHA provides TO groups with statutory roles over the management of cultural heritage in their appointed RAP area. Governance and institutional arrangements in the proposed MCA must formally recognise and reflect the fact that relevant RAPs are key stakeholders in their appointed RAP areas; and in non-appointed RAP areas, relevant TO groups are key stakeholders and ought to be provided opportunity for involvement.

Further, TO groups who are not RAPs also have rights under Victorian law (e.g. the *Charter of Human Rights and Responsibilities Act 2006*) and other instruments (e.g. the United Nations Declaration on the Rights of Indigenous Peoples) to, at minimum, be consulted and involved in decisions affecting their cultural heritage. The proposed MCA needs to also account for these rights in its systems and processes.

It is noted the summary of the proposed system of possible future institutional arrangements makes no mention of RAPs nor other TO groups. Whilst future RSAs under the TOS Act may lead to greater numbers of TOLMBs, this limited proposal would not conform to the AHA nor other instruments mentioned above. Therefore, provisions for appropriate consultation with TO groups, TO involvement, collaboration and inclusion in both institutional arrangements and more immediate management and planning, needs to be proposed.

Involvement, Governance and Aboriginal Self-Determination

Any involvement, formal governance structures and processes either prescribed or resulting from the MCA must ensure to provide and promote Aboriginal self-determination.

AV suggests decision-making bodies under the proposed MCA ought to include relevant TO groups and have policies in place to ensure these groups are consulted, kept informed and provided real opportunity to voice opinions and influence any decisions which may impact upon their cultural

heritage. In matters which impact upon cultural heritage a TO-led approach is recommended. Such an approach will ensure TO groups are empowered with the opportunity to determine what their own priorities are, and have the requisite control to forge their own process pathways towards resolving questions of cultural heritage on coastal country.²

This is consistent with the right to self-determination, as contained in article 1 of the International Covenant on Civil and Political Rights³. Australia's adoption of the United Nations Declaration on the Rights of Aboriginal Peoples (UNDRIP) further explains the right to self-determination as it applies to Indigenous peoples⁴. The UNDRIP provides not only for the right "to freely determine political status and freely pursue economic, social, and cultural development"⁵, but also for the right to "autonomy or self-government in matters relating to internal and local affairs"⁶. More relevant is the right for Indigenous peoples under UNDRIP to "maintain, control, protect and develop their cultural heritage" and the attendant State responsibility to "take effective measures to recognize and protect the exercise of these rights"⁷. Thus the right for Indigenous peoples to participate in decision making processes, and control those processes⁸, ought to be reflected in the proposed MCA.

The proposed Marine Coastal Council

If the Victorian Coastal Council is replaced with a Marine and Coastal Council (MCC), as proposed on page 40 of the Consultation Paper, membership ought to include TO representation with a focus on knowledge of Aboriginal cultural heritage management. Allocation of positions on the MCC for a number of TO groups identifying representatives or a member of the Victorian Aboriginal Heritage Council (VAHC) would ensure this. Appointed advisory groups comprising relevant TO groups, or via consultation with relevant TO groups for particular projects/proposals brought to the MCC's attention could provide further assistance. A formal relationship between the proposed MCC and the VAHC should also be considered to inform the statewide strategic management of Victoria's marine and coastal areas.

It is noted the Consultation Paper proposes the role of the MCC would be to provide "system-wide insight...for high risk, potentially high-impact proposals" (page 40 of the Consultation Paper). The AHA contains compulsory processes to follow in cases of high impact activities in areas of cultural heritage sensitivity which must be accommodated in this role. Under the *Aboriginal Heritage*

² Michael Gordon, 'The long hard road to empowerment' (2015) 74 (3) *Meanjin* 91, 91.

³ *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 1.

⁴ Megan Davis, 'Indigenous constitutional recognition from the point of view of self-determination and its exercise through democratic participation' (2015) 8 (19) *Indigenous Law Bulletin*, 10, 10.

⁵ *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN GAOR, 61st sess, 107th plen mtg, Supp No 49, UN Doc A/RES/61/295 (13 September 2007) art 3.

⁶ *Ibid*, art 4.

⁷ *Ibid*, art 31.

⁸ Davis, above n 4, 10.

Regulations 2007 (the Regulations) (r.27 and r.28), Coastal Crown Land and Coastal Land in Victoria are areas of cultural heritage sensitivity. This includes land within 200 metres of the high water mark of the coastal waters of Victoria or any sea within the limits of Victoria⁹. The MCC would need to be aware of the AHA and the Regulations processes, requirements and its penalty and enforcement provisions.

Aligning Definitions

The definition of ‘Tradition Owner’ contained in Appendix Five of the Consultation Paper is inconsistent with the s7 definition of the AHA and ought to be amended to ensure legislative alignment.

Aligning Planning Legislation

Provisions of the AHA and the Regulations must be given greater consideration in terms of being “relevant legislation” for the purposes of guiding the drafting of the proposed MCA.

In aligning relevant planning and land management legislation it is necessary for the MCA to reflect the objective that management of cultural heritage is promoted as an integral part of land and natural resource management as expressed in section 3(d) of the AHA.

Compliance

Incorporation of already existing mechanisms within the AHA to the coastal management plans (page 27 of the Consultation Paper) would help to strengthen them, especially through cultural heritage management plans (CHMPs), cultural heritage permits (CHPs), and Aboriginal cultural heritage land management agreements (ACHLMAs).

CHMPs are either mandatory or voluntary (depending on the cultural sensitivity of the area and if the proposed activity is ‘high impact’, refer to Division 5 of the Regulations). These are comprehensive plans that take into account every possible activity and/or ancillary work to be undertaken as part of a development or high impact activity, the potential of these activities to harm known/unknown Aboriginal cultural heritage and management conditions to avoid, minimise and/or mitigate such harm. Engaging in activities requiring a CHMP without one is illegal under section 46 of the AHA.

Cultural heritage permits must also be considered in planning for coastal and marine management activities. CHPs must be sought if the proposed activity will or is likely to harm Aboriginal cultural heritage. An approved CHP, with conditions over the specific management of cultural heritage,

⁹ *Aboriginal Heritage Regulations 2007* (Vic) r 28

permits the works specified in the permit. CHPs are suited to activities that are unlikely to be ongoing, including isolated, one-off activities.

ACHLMAs are voluntary agreements between public land managers and a RAP for the management and protection of Aboriginal cultural heritage during land management activities within a specific area, for an agreed duration¹⁰. ACHLMAs allow for a strategic, joint-approach to land and cultural heritage management, similar to that of the Gunai Kurnai TOLMB noted throughout the paper, but are available to all RAPs and public land managers.¹¹

Applying for CHPs or seeking to enter into an ACHLMA for activities that do not trigger CHMPs would ensure that Aboriginal cultural heritage values are considered and managed accordingly. In short, cultural heritage management mechanisms within the AHA provide a constructive avenue through which Aboriginal self-determination in coastal land management can be achieved and ensure that TO groups are appropriately involved in decisions affecting their cultural heritage. Information sheets about CHPs, CHMPs, ACHLMAs, enforcement and compliance provisions under the AHA, and protocols for managing the discovery of Aboriginal Ancestral Remains are included in the appendices of this submission.

Improving Knowledge

The Consultation Paper acknowledges the importance of Country to Aboriginal people. This vision is important and should be elaborated further. The importance of connection to Country together with desired TO engagement and constructive involvement, espoused at certain points throughout the paper, needs to be holistically approached and take a more prominent position within the policy. The Consultation Paper places much emphasis on the need to include scientific knowledge and research throughout the Regional and Strategic Partnerships (RASP) consultation stage and planning (page 45 of the Consultation Paper). In light of this, significance and knowledge of Country can be more readily included in the MCA through equal emphasis on TOs' knowledge of place, and coastal and marine management. Understanding of Aboriginal knowledge in cultural heritage and natural resource management is the cultural right and responsibility of TOs. This experiential knowledge should be considered similar to scientific knowledge and TO group interests reflected as much as the interests of the wider community. Through the preparation and negotiation of ACHLMAs, there is capacity to promote and encourage the inclusion of cultural knowledge of place and/or practices in the management of coastal and marine spaces.

¹⁰ *Aboriginal Heritage Act 2006* (Vic) s 74A.

¹¹ *Aboriginal Heritage Act 2006* (Vic) s 74A-74J.

Conclusion

By implementing the submissions above and drafting the MCA legislation in line with existing mechanisms within the AHA, the MCA would be in a better position to reflect the State Government's approach to Aboriginal self-determination. Likewise, attention to Aboriginal cultural heritage management mechanisms throughout the drafting and eventual legislation will better facilitate a whole-of-Government approach to cultural heritage management. Most important is the need to implement this submission into the objectives outlined in the Consultation Paper summary. AV recommends including protecting and enhancing Country and Aboriginal cultural heritage as 'features of significance' in the first objective. Second, by ensuring that membership decision-making bodies and stakeholder reference groups include relevant TO groups and having this evident in your fourth objective will promote Aboriginal self-determination, better cultural heritage management outcomes and compliance with the AHA.

Third, it is important to understand that knowledge is not a commodity to be traded or 'acknowledge(d)' and then 'use(d)' by the state government to 'inform coastal and marine management' but is very much an aspect of the living culture of TOs. The fifth objective, while potentially well meaning, is therefore highly problematic. AV recommends including relevant TO groups throughout the objectives rather than in a single point in order to demonstrate the State Government's emphasis and dedication to the importance of Aboriginal self-determination.

Relevant information sheets:

Appendix A: CHPs

Appendix B: CHMPs

Appendix C: ACHLMAs

Appendix D: Enforcement

Appendix E: Ancestral Remains

Appendix A – Information sheet on Cultural Heritage Permits

Part 3 of the *Aboriginal Heritage Act 2006* is concerned with the protection of Aboriginal cultural heritage, including cultural heritage permits.

When is a cultural heritage permit required?

A person must apply to an approval body under the *Aboriginal Heritage Act 2006* (the Act) if they propose to:

- Disturb or excavate land to uncover or discover Aboriginal cultural heritage;
- Carry out research on an Aboriginal place or Aboriginal object, including removing an Aboriginal object from Victoria for the purposes of that research;
- Carry out an activity that will, or is likely to, harm Aboriginal cultural heritage;
- Sell an Aboriginal object (where it was not made for the purpose of sale);
- Remove an Aboriginal cultural heritage from Victoria;
- Rehabilitate land at an Aboriginal place, including land containing burial grounds for Aboriginal Ancestral Remains;
- Inter Aboriginal Ancestral Remains at an Aboriginal place.

Restrictions on the grant of a cultural heritage permit

A cultural heritage permit may not be granted for an activity which requires a cultural heritage management plan.

A cultural heritage permit must not be granted in relation to Aboriginal ancestral remains or an Aboriginal object that is a secret sacred object if the permit relates to:

- an activity that will, or is likely to, harm Aboriginal cultural heritage;
- buy or sell an Aboriginal object, or;
- remove an Aboriginal object from Victoria.

A cultural heritage permit may not be granted in respect of Aboriginal intangible heritage.

What is required for a cultural heritage permit application?

An application for a cultural heritage permit must be made using the approved form. The detail required for the application varies depending on the purpose for which a cultural heritage permit is being sought.

Approved forms can be accessed on the Aboriginal Victoria website:

<http://www.dpc.vic.gov.au/index.php/aboriginal-affairs/aboriginal-affairs-overview>

(Follow the links: *Aboriginal Cultural Heritage > Heritage Tools > Aboriginal Heritage Management - Guides, Forms and Practice Notes*).

An application fee is payable, the amount of which depends on the type of cultural heritage permit being applied for.

Who grants a cultural heritage permit?

The Act prescribes an **approval body** for a cultural heritage permit. An approval body is:

- the relevant Registered Aboriginal Party (RAP) for the area to which the permit application relates; or
- if there is no relevant RAP – the Secretary, Department of Premier and Cabinet; or

- if the applicant is a RAP or the Secretary – the Victorian Aboriginal Heritage Council (VAHC).

An applicant must apply to the RAP for the area to which the Aboriginal cultural heritage permit application relates. Where no RAP is appointed for the area, the application must be made to the Secretary, DPC. If the applicant is a RAP, the RAP must apply to the VAHC.

If the approval body is the Secretary, the Secretary must consult with and consider the views of any Aboriginal person or Aboriginal body that the Secretary considers relevant to the application.

If the application is to rehabilitate land containing burials of Aboriginal Ancestral Remains or to inter Aboriginal Ancestral Remains, and there is no relevant RAP, the Secretary must consult with the VAHC in considering the application.

An approval body must consider every cultural heritage permit application made using the approved form and accompanied by the prescribed fee (if any).

What is the timeframe for deciding on a cultural heritage permit application?

An approval body must decide to grant or to refuse to grant a cultural heritage permit within 30 days of receiving an application.

'Stop the clock' mechanism

An approval body may, in writing, request the applicant to provide any additional information that the approval body necessarily requires to decide upon the cultural heritage permit. If an approval body requests additional information from an applicant, the period of time in which the approval body has to make a decision ceases to run at the time the approval body makes the request for the additional information. The period of time in which the approval body has to make a decision recommences when the applicant provides the additional information requested.

If an approval body fails to decide a cultural heritage permit application within the prescribed timeframe, the approval body is taken to have refused to grant the cultural heritage permit.

What must an approval body consider when deciding on a cultural heritage permit?

(The stuff below only applies to a permit to harm, add other things here, or change heading?)

If the grant of a cultural heritage permit would allow harm or allow an act that is likely to harm Aboriginal cultural heritage before granting the cultural heritage permit the approval body must give consideration to:

- the nature of the Aboriginal cultural heritage,
- the impact, or likely impact, of the activity on the Aboriginal cultural heritage; and
- the extent to which any harm to the Aboriginal cultural heritage could be minimised.

What conditions may be imposed on a cultural heritage permit?

An approval body may include in a cultural heritage permit any condition that the body reasonably considers appropriate to the Aboriginal cultural heritage that is the subject of the application.

Conditions may include:

- that the activity authorised by the permit be supervised by a heritage advisor;
- that any Aboriginal cultural heritage found be conserved in a particular way;
- that specified things are to be done to the satisfaction of the approval body.

A cultural heritage permit cannot include a condition that the applicant pay or give money or money's worth to the RAP.

Can a cultural heritage permit be transferred to another party?

The holder of a cultural heritage permit may transfer a cultural heritage permit to another party with the written consent of the approval body. An application must be made to the approval body using the approved form with the required fee.

If the approval body is the Secretary, the Secretary must consult with any Aboriginal person or body that the Secretary considers relevant before approving the transfer of a cultural heritage permit.

Can a cultural heritage permit be amended?

A cultural heritage permit may be amended upon application to an approval body. An application to amend a cultural heritage permit must be made using the approved form and be accompanied by the prescribed fee, as if a new application is being made.

When does a cultural heritage permit take effect?

A cultural heritage permit granted by an approval body takes effect after a copy is lodged with the Secretary.

How is a cultural heritage permit enforced?

It is an offence to fail to comply with a cultural heritage permit.

Authorised Officers or Aboriginal Heritage Officers may check that a cultural heritage permit is being complied with.

Authorised Officers and Aboriginal Heritage Officers are appointed by the Minister for Aboriginal Affairs to monitor compliance with the Act and to apply enforcement measures when necessary.

Improvement notices may also be issued where there has been a contravention in relation to the conditions of a cultural heritage permit. It is an offence to fail to comply with an improvement notice.

Can a decision to refuse a Cultural Heritage Permit be appealed?

Applicants may appeal a decision to refuse a cultural heritage permit or the inclusion of a specific condition at the Victorian Civil and Administrative Tribunal (VCAT) under section 121 of the Act.

Appendix B – Information sheet for Cultural heritage management plans

Large scale developments and many activities in culturally sensitive landscapes – for example coastal dunes or areas near water – can cause significant harm to Aboriginal cultural heritage. The *Aboriginal Heritage Act 2006* prescribes, in regulations, the circumstances in which the preparation of a Cultural Heritage Management Plan is required.

What is a Cultural Heritage Management Plan?

A Cultural Heritage Management Plan (Management Plan) assesses whether a project will have any impact on Aboriginal cultural heritage values and, as appropriate, outlines management recommendations.

A Management Plan is a written report containing the results of the assessment and conditions to be complied with before, during and after an activity to manage and protect Aboriginal cultural heritage in the area.

Preparation of a Management Plan is commissioned and paid for by the project proponent (sponsor).

Preparing a Management Plan involves a heritage advisor (an archaeologist or other heritage specialist) working with Aboriginal community representatives to identify and assess cultural heritage values in relation to a proposed development or activity.

Why was this system introduced?

Most large infrastructure development projects in Victoria – such as freeways, rail developments, pipelines and mines – were already preceded by an Aboriginal cultural heritage assessment.

However, previously many land developments also went ahead with no consideration of their potential impacts on Aboriginal cultural heritage. This resulted in the unregulated destruction of numerous places of significance around the state each year.

The *Aboriginal Heritage Act 2006* introduced guidance to developers, industry and others on the circumstances that trigger the need for an approved Management Plan, allowing heritage to be considered in the planning stages of a project.

For certain activities, Government agencies, local councils and other authorities need to check whether there is an approved Management Plan for activities before issuing statutory approvals such as a work authority, licence or planning permit.

What sort of activity requires a Cultural Heritage Management Plan?

Examples of activities that require preparation of a Management Plan include:

- Developments that require an Environment Effects Statement.
- Larger scale residential or industrial subdivisions on areas of cultural heritage sensitivity, which have not previously been subject to significant ground disturbance.
- Substantial infrastructure or resource development projects on areas of cultural heritage sensitivity, which have not previously been subject to significant ground disturbance.

Other circumstances requiring a Management Plan are prescribed in the Regulations. In addition, the relevant Minister may require the preparation of a Management Plan.

Who approves a Cultural Heritage Management Plan?

Where a Registered Aboriginal Party (RAP) exists they must be notified of a proponent's intention to prepare a Management Plan and they then evaluate the Plan.

Once a Management Plan has been approved by a RAP, it must be lodged with the Secretary to the Department of Premier and Cabinet (DPC) to take effect.

What if there is no Registered Aboriginal Party?

Where there is no RAP, the Secretary, DPC evaluates any Management Plan in that area.

What if there is more than one Registered Aboriginal Party?

If there is more than one RAP, each relevant RAP has equal powers regarding the Management Plan procedure and outcome for their registered area.

How much will the preparation of a Cultural Heritage Management Plan cost?

Preparing a Management Plan involves costs to undertaking on-ground assessment work, consulting with the RAP, and writing the Management Plan report.

These costs are not regulated and will vary depending on the size of the activity, the complexity of the Aboriginal heritage issues involved, and general market forces.

Understanding the requirements, obtaining a number of competitive quotes, and taking into consideration the experience and ability of people employed to do a job may reduce costs and result in better outcomes.

How much will evaluation of a Cultural Heritage Management Plan cost?

A fee is charged by the RAP responsible for evaluating the Management Plan.

Evaluation costs are greater for more complex Management Plans and less where plans are simpler. Evaluation costs are tabulated in the regulations.

Can a decision to reject a Cultural Heritage Management Plan be appealed?

Yes, there are appeal rights. If a decision is made by a RAP not to approve a Management Plan, this may be appealed at the Victorian Civil and Administrative Tribunal (VCAT).

Where more than one RAP is involved in an evaluation and they do not agree on an aspect of the assessment or report, the Act has a process for resolving this kind of dispute, facilitated through the Victorian Aboriginal Heritage Council.

How does the requirement to prepare a Cultural Heritage Management Plan relate to planning approvals?

Authorities like state government agencies and local councils are not able to make decisions on prescribed planning applications until an approved Management Plan has been completed, if one is required.

If an approved Management Plan is required but is not included with an application, the authority must refer the application back to the proponent for preparation of a Plan.

The Act encourages project proponents to consider Aboriginal cultural heritage and work with RAPs before applying to an authority for an approval. Understanding the cultural heritage management issues at an early stage means that there is maximum flexibility in dealing with these issues and removes delays.

Can I do a Cultural Heritage Management Plan even if I don't have to?

The Act allows for voluntary Management Plans to be prepared. Once approved, these provide the same benefits in terms of certainty as required Plans.

What are the consequences of non-compliance with conditions of a Cultural Heritage Management Plan?

Failure to comply with a condition of an approved Management Plan knowingly, recklessly or negligently is an offence under the Act.

Can an approved Cultural Heritage Management Plan be amended?

Management Plans, approved under Division 4, which are less than 5 years from their original approval date are able to be amended.

An application to amend an approved Management Plan must be made in the prescribed form and accompanied by the prescribed fee.

Who approves a proposal for amendment to an approved Cultural Heritage Amendment Plan?

An application to amend must be made to the relevant authority.

The relevant authority in areas with RAP will be the relevant RAP.

In areas where there is no RAP, the relevant authority is the Secretary.

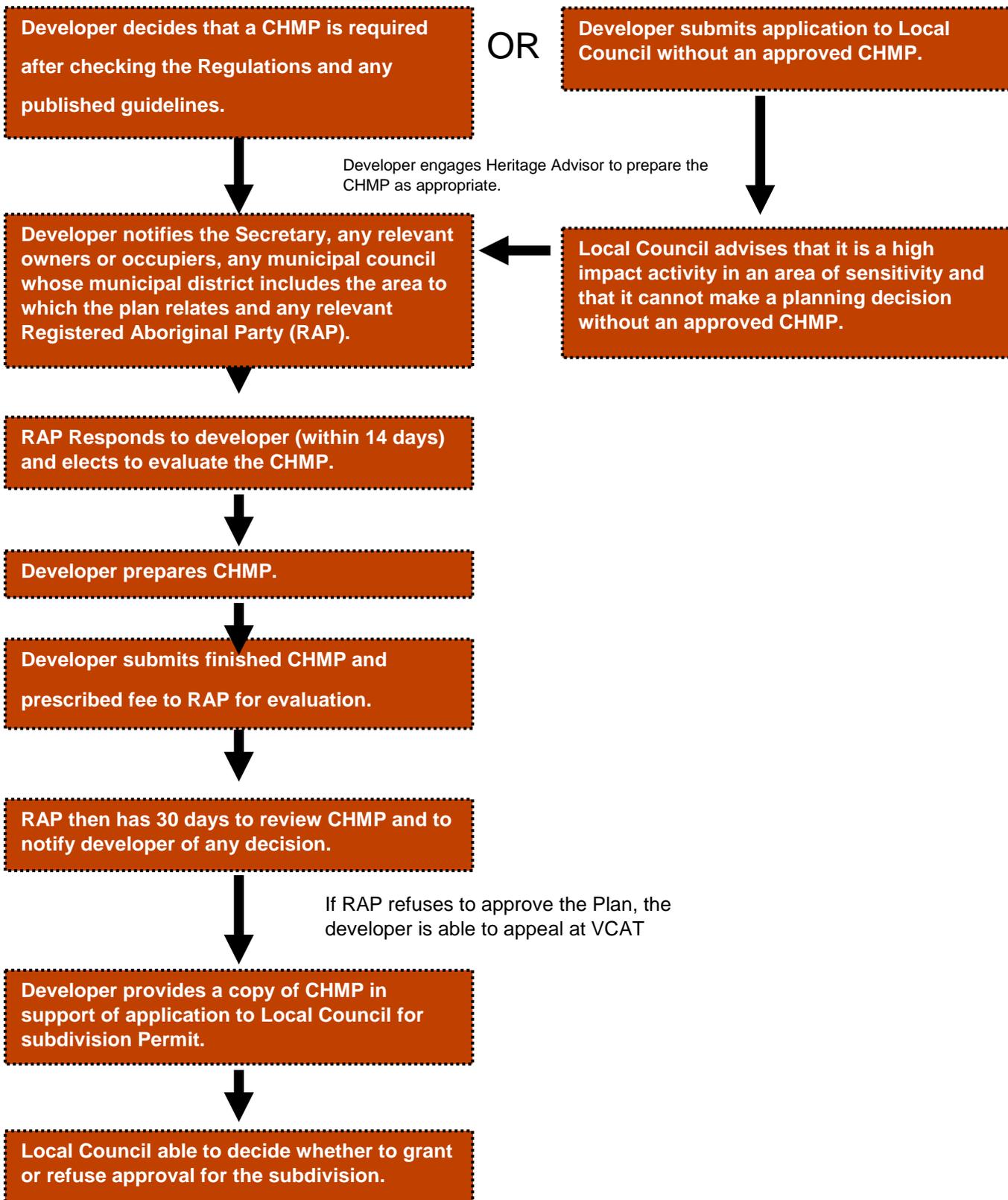
If the applicant is a RAP, the relevant authority is the Victorian Aboriginal Heritage Council.

Can a decision to reject a proposed amendment to an approved Cultural Heritage Management Plan be appealed?

Yes, there are appeal rights. If a decision is made by the relevant authority not to approve a proposed amendment, it may be appealed at the Victorian Civil and Administrative Tribunal (VCAT).

Cultural Heritage Management Plan (CHMP) Process

The following diagram is an example of the process a developer would follow when seeking approvals in a RAP area for a large scale subdivision.



Appendix C – Information sheet on Aboriginal cultural heritage land management agreements

Aboriginal cultural heritage land management agreements (ACHLMAs) are voluntary agreements made between a Registered Aboriginal Party (RAP) and a public land manager. These agreements are designed to facilitate a proactive, holistic approach to managing and protecting Aboriginal cultural heritage and cultural landscapes during land management activities within a specific area, for an agreed duration.

Who can enter into an ACHLMA?

A RAP and a ‘public land manager’, as defined by the Aboriginal Heritage Act 2006 (the Act). A public land manager is:

- a committee of management;
- the Secretary to the Department of Environment, Land, Water and Planning;
- a municipal council;
- Parks Victoria;
- VicRoads;
- VicTrack; or
- a water authority.

When can an ACHLMA not be applied?

For any activity for which a cultural heritage management plan is required under the Act (e.g. high impact activity in an area of cultural heritage sensitivity – see the Aboriginal Heritage Regulations 2007 (Regulations)).

Prior to starting negotiations

It is the RAP’s responsibility to submit a written notice of intention to enter into an ACHLMA with a public land manager to the Secretary, Department of Premier and Cabinet. From here, the required heritage assessments can be legally undertaken.

What does an ACHLMA look like and what is to be included in an ACHLMA?

An ACHLMA must be prepared in accordance with the prescribed standards, as set out in the Regulations. An agreement must be in the approved form and include all the information set out in Schedule 4 of the Regulations, including:

Parties to the agreement

- the name of the public land manager and RAP;

Agreement Area

- a description of the extent of the area to be covered by the agreement;
- map(s), indicating the boundaries of the agreement area and the location of the agreement area in the regional context; and
- the natural features of and salient prominent structures and infrastructure in the agreement area.

Land management activities

A list of land management activities permissible under the agreement and, for each activity:

- a description of the activity, including the nature and extent of the activity;

- a description of permissible ancillary works associated with the activity; and
- a description of the likely impact on the land and Aboriginal cultural heritage of the activity and any associated ancillary works;

Aboriginal cultural heritage assessment (of the agreement area)

- The method of and persons involved in the assessment(s);
- A summary of any information provided by the RAP or other person about the Aboriginal cultural heritage, a transcript of an oral information and any obstacles encountered in completing the assessment
- An ACHLMA must include a detailed description of the Aboriginal cultural heritage found, including the Victorian Aboriginal Heritage Register numbers;
- a map(s) of the agreement area which show the location of that Aboriginal cultural heritage.
- a statement of the cultural heritage significance of the Aboriginal cultural and places of particular significance.

What conditions may be included in an ACHLMA?

An agreement must outline the approach and conditions for Aboriginal cultural heritage management in the agreement area. The cultural heritage management ‘approach’ is negotiated between the parties and might be based on the nature of the land management activity and/or the nature of the Aboriginal cultural heritage. It is an offence for either party to an ACHLMA to fail to comply with the conditions of an ACHLMA. The following conditions must be incorporated into an ACHLMA:

- a) any payments required to be made by the public land manager to a RAP;
- b) any cultural heritage management actions required to be undertaken by the public land manager or any other person;
- c) any consultation that must be undertaken by the public land manager or some other person with a RAP;
- d) any other conditions agreed between the parties to the agreement.

When is the ACHLMA ready?

It is the responsibility of the public land manager to lodge a copy of all the relevant documentation (including any site records, photographs, maps and plans relating to the ACHLMA) and a copy of the agreement with the Secretary, Department of Premier and Cabinet within 14 days of entering into the agreement.

Is there a time limit on how long an ACHLMA is valid?

No. As long as the details of when and how it comes into effect and when and how it ends is specified in the ACHLMA.

It is recommended that provisions for reviews of the ACHLMA on a regular basis are documented in the agreement.

Can an ACHLMA be amended?

Yes, but a notice of intention to amend an ACHLMA must be lodged by the RAP, as if a new agreement was being prepared.

Appendix D – Information sheet on enforcement under the *Aboriginal Heritage Act 2006*

The *Aboriginal Heritage Act 2006* includes a range of enforcement provisions to provide better protection for Aboriginal cultural heritage in Victoria. These provide appropriate penalties and clear powers for Authorised Officers and Aboriginal Heritage Officers.

Authorised Officers and Aboriginal Heritage Officers

Authorised Officers and Aboriginal Heritage Officers appointed under the *Aboriginal Heritage Act 2006* (the Act) have substantial responsibilities and enforcement provisions.

Authorised Officers must be employees of the Victorian Public Service or an inspector, enforcement officer or authorised officer under another Act. This provides accountability and access to regular training, resources and professional support.

Aboriginal Heritage Officers must be employees of a Registered Aboriginal Party.

Authorised Officers and Aboriginal Heritage Officers are trained to an appropriate standard comparable to other authorised officers operating under similar Victorian legislation.

The Act provides clear guidance for Authorised Officers and Aboriginal Heritage Officers regarding the exercise of their powers.

How are Authorised Officers and Aboriginal Heritage Officers appointed?

Authorised Officers and Aboriginal Heritage Officers are appointed by the Minister for Aboriginal Affairs after consultation with the Victorian Aboriginal Heritage Council. This consultation ensures the Council has a role in advising the Minister about the suitability of candidates.

Candidates must complete a course of training specified by the Minister. The Minister must be satisfied candidates have appropriate knowledge and experience in protecting Aboriginal cultural heritage.

What powers do Authorised Officers and Aboriginal Heritage Officers have?

Authorised Officers and Aboriginal Heritage Officers have powers of entry, search and seizure in prescribed circumstances so they can enforce the provisions of the Act effectively.

What responsibilities do Authorised Officers and Aboriginal Heritage Officers have?

Authorised Officers and Aboriginal Heritage Officers have appropriate powers to gather relevant information to assist the investigation of offences and prosecutions.

Authorised Officers are responsible for directing and overseeing cultural heritage audits and have the power to issue stop orders in emergency situations, which can have effect for up to 30 days.

Authorised Officers and Aboriginal Heritage Officers have the power to serve improvement notices and issue 24-hour stop orders.

Penalties

The *Aboriginal Heritage Act 2006* includes substantial penalties to provide an effective deterrent against harming Aboriginal cultural heritage.

Harming Aboriginal cultural heritage:

- The maximum penalty currently exceeds **\$279,000** for an individual or **\$1.55 million** for a corporation.

Breaching stop orders or protection declarations:

- The maximum penalty currently exceeds **\$279,000** for an individual or **\$1.55 million** for a corporation.

Unlawful possession of Aboriginal objects including Aboriginal ancestral remains:

- The maximum penalty exceeds **\$18,600** for an individual or **\$93,200** for a corporation.

Appendix E – Example Contingency for the Discovery of Aboriginal Ancestral Remains

If any suspected human remains are found during any activity, works must cease. The Victoria Police and the State Coroner's Office should be notified immediately. If there are reasonable grounds to believe the remains are Aboriginal, the Coronial Admissions and Enquiries hotline must be contacted immediately on 1300 888 544. This advice has been developed further and is described in the following 5 step contingency plan. Any such discovery at the activity area must follow these steps.

1) Discovery:

- If suspected human remains are discovered, all activity in the vicinity must stop; and,
- The remains must be left in place, and protected from harm or damage.

2) Notification:

- Once suspected human skeletal remains have been found, the Coroner's Office and the Victoria Police must be notified immediately;
- If there is reasonable grounds to believe the remains are Aboriginal Ancestral Remains, the Coronial Admissions and Enquiries hotline must be immediately notified on 1300 888 544; and
- All details of the location and nature of the human remains must be provided to the relevant authorities.
- If it is confirmed by these authorities the discovered remains are Aboriginal Ancestral Remains, the person responsible for the activity must report the existence of them to the Council in accordance with section 17 of the Act.

3) Impact Mitigation or Salvage:

- The Council, after taking reasonable steps to consult with any Aboriginal person or body with an interest in the Aboriginal Ancestral Remains, will determine the appropriate course of action as required by section 18(2)(b) of the Act;
- An appropriate impact mitigation or salvage strategy as determined by the Secretary must be implemented by the Sponsor.

4) Curation and further analysis:

- The treatment of salvaged Aboriginal Ancestral Remains must be in accordance with the direction of the Secretary.

5) Reburial:

- Any reburial site(s) must be fully documented by an experienced and qualified archaeologist, clearly marked and all details provided to AV;
- Appropriate management measures must be implemented to ensure the remains are not disturbed in the future.

Our Ref: F083907
Enquiries To: Katrina Sharpe

17 October 2016

Marine and Coastal Act Consultation
Policy and Strategy Unit
Department of Environment, Land, Water and Planning
PO Box 500
East Melbourne VIC 3002

Dear Sir/Madam

Re: Review of the Marine and Coastal Act - consultation paper

Thank you for the opportunity to comment on the consultation paper for the new *Marine and Coastal Act* (MACA) (August 2016), replacing the *Coastal Management Act 1995*.

Barwon Water's mission is to deliver quality and affordable water and sewerage services that strengthen the economy, promote liveability and protect the environment. Our service region is home to some of Victoria's most iconic marine and coastal environments, stretching from Little River, in Port Phillip Bay, across the Bellarine Peninsula and along the Great Ocean Road to Cape Otway.

Many of Barwon Water's water and sewer assets are located in coastal and marine areas. These are an integral part of our systems, which provide essential water and sewerage services to a permanent population of over 280,000 people across an 8,100 square kilometre service area.

As an organisation that has numerous interactions with coastal crown land, Barwon Water supports the vision for the new Act to provide an effective and integrated framework for the management and planning of our coastal and marine environments. Barwon Water's key role in coastal management is as an owner and operator of water and sewerage infrastructure, such as pipes and pump stations, occupying coastal crown land. Barwon Water is also the Committee of Management for the Black Rock Foreshore Reserve near Breamlea.

We provide the following comments in response to the consultation paper:

Proposed Reforms

Section 3.6 - Transitioning from smaller Committees of Management (CoMs)

Barwon Water supports the proposal to rationalise smaller CoM-managed areas into larger category 1 or local government CoMs, such as the Barwon Coast Committee, Bellarine Bayside Committee, Great Ocean Road Coast Committee and Otway Coast Committee.

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However, if Barwon Water is to transition from its CoM role at the Black Rock Foreshore Reserve, specific arrangements will need to be put in place to ensure Barwon Water can continue to operate, maintain, renew and upgrade its sewerage assets that occupy the reserve, without restriction. Barwon Water's current appointment as CoM dates from 1961, although its management of the reserve probably dates back to the establishment of the wastewater outfall circa 1913-1915. In its current role as CoM, Barwon Water has unimpeded ability to operate and maintain Geelong's outfall pipeline and associated infrastructure. It is critical that this ability is maintained.

The reserve covers a 1.6km stretch of coastline adjoining the Black Rock Water Reclamation Plant, which services a population of more than 240,000 people across Geelong and surrounding areas. In addition to Barwon Water's sewerage assets, the reserve supports significant flora, fauna, cultural heritage and landscape values. This includes nesting sites of the Hooded Plover, and Orange Bellied Parrot habitat in the adjoining saltmarsh habitat of the Breamlea Flora and Fauna Reserve. It is known for its unique outcrop of rocks, which is popular for fisherman, dog walkers and photographers.

Barwon Water has been working collaboratively with the adjacent land managers, Barwon Coast Committee and City of Greater Geelong (CoGG), to implement land management activities, supporting various cross-tenure programs including pest plant and animal control, and Hooded Plover protection and awareness.

Subject to suitable arrangements being put in place for continued, unrestricted operation, maintenance, renewal and upgrades to its assets, Barwon Water would support the transition of general management responsibility for Black Rock Foreshore Reserve to a category 1 CoM. This would reduce fragmentation and improve consistency in the management of coastal areas, advancing the achievement of integrated marine and coastal outcomes.

Section 3.3: Strengthening the role of coastal Catchment Management Authorities

This proposal will see coastal CMAs providing expert advice on issues such as coastal erosion, coastal flooding and inundation. CMAs are well placed to extend their roles to provide coastal NRM planning and advice, given they already carry out a similar role for inland natural resource management.

Barwon Water is facing a range of coastal climate change risks, such as coastal erosion and coastal inundation. Currently, understanding and planning to adapt to these risks requires collaboration with numerous coastal management stakeholders, however no one organisation is consistently leading or coordinating coastal climate change planning activities in our region. Establishing this role within a regional body will enable a more strategic, consistent and prioritised approach to coastal hazard planning and management, whilst continuing to facilitate collaboration across the range of stakeholders.

In establishing this role, it is critical that sufficient financial and human resources are allocated. Care must be taken to ensure this does not detract from existing CMA responsibilities, such as catchment and waterway health.

It is suggested that a small 'project control group' or similar, comprising a representative each from the CMA and key local governments, oversee the delivery of this role in each region.

Section 5.2: Keeping a consent provision in the new Act

Barwon Water periodically requires approval for works on coastal crown land, under the consent provision of the *Coastal Management Act 1995*.

Barwon Water undertakes environmental planning for such works on a site-by-site basis, covering the full range of environmental values, risks, approval requirements and control measures. Typically, this involves numerous stakeholder discussions and approval requirements, for example cultural heritage management plans, planning permits, native title notifications, flora and fauna guarantee permits, land manager agreement and DELWP consent.

Whilst Barwon Water has been successful in obtaining coastal management consent where required, this can be time consuming and expensive compared to the scale of works, impacts and risks, and somewhat duplicative of other approval requirements.

Of particular concern is the lack of exemptions for emergency works on existing assets or provisions for minor works such as maintenance activities. This is particularly relevant for works on assets that pre-date the Coastal Management Act.

Barwon Water requests the inclusion of suitable exemptions for emergency works and provisions for ongoing maintenance of existing assets. Barwon Water supports the proposed inclusion of simplified consent provisions for low impact works and proposal to reduce duplication in the processing and consideration of use and development applications.

Should you have any queries or wish to discuss, please contact Katrina Sharpe, Environmental Planner on 5226 2403 or email katrina.sharpe@barwonwater.vic.gov.au.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Tony Overman', followed by a horizontal line.

Tony Overman
Acting Manager Strategy, Environment and Regulation

28 October 2016

Marine and Coastal Act Consultation
Policy and Strategy Unit
Department of Environment, Land, Water and Planning
PO Box 500
EAST MELBOURNE VIC 3002

Dear Sir/Madam,

RE: Corangamite CMA submission regarding Marine and Coastal Act Consultation Paper

Thank you for providing the opportunity for the Corangamite Catchment Management Authority (CMA) to review the Marine and Coastal Act Consultation Paper, and I am pleased to provide the following main comments.

The Corangamite CMA supports the proposal to boost the role of coastal CMAs. Regional Catchment Strategies for coastal CMAs already include strategic natural resource management planning for coasts, estuaries and marine areas. The Corangamite CMA also has a Marine and Coastal Biodiversity Strategy (2009) to guide regional coastal investment and the Corangamite Waterway Strategy (2014-22), which includes estuaries and coastal wetlands. The Corangamite NRM Plan for Climate Change (2016) also considers coastal and marine assets. The Consultation Paper's proposal is therefore consistent with the strategic direction the Corangamite CMA provides to the region.

Corangamite CMA also provides several key programs and initiatives relevant to marine and coastal management including:

- The Coastal program, which is funded by the Australian government and includes small grants and a Coastal Tender project that provide incentives to private and public land managers to deliver on ground action to protect coastal and marine values.
- The Otway and coastal waterway restoration program, which is funded by the Victorian government and delivers major works and other priority actions to protect and enhance the region's coastal estuaries and rivers.
- The Corangamite EstuaryWatch program, which was initiated by the Corangamite CMA and provides an innovative citizen science program that now operates state-wide with funding support from the Victorian government. Corangamite CMA also coordinates the state-wide EstuaryWatch program on behalf of DELWP.
- The Corangamite Landcare program, which provides support and community grants to all NRM community groups including many working on the coast.
- The Corangamite Indigenous participation program, which is funded by the Australian government and supports coastal Traditional Owners.
- The NRM Planning Portal, which is a new regional initiative that provides easy community access to significant biophysical data and an opportunity for the community to include local priorities. The pilot process completed in 2015 included the Surf Coast and Inland Plains Landcare Network (SCIPN) and the CMA is currently working with the Bellarine Catchment Group to finalise the portal for the their communities on the Bellarine peninsula.

Estuary management is also a key function of coastal CMAs, which includes the establishment of Estuary Management Plans and regulatory functions regarding artificial estuary mouth openings. The Corangamite CMA is also about to commence facilitating the development of a new Management Plan for Port Phillip Bay (Western Shoreline) and Bellarine Peninsula Ramsar site, directly relevant to the protection of high value coastal and marine areas, including Swan Bay and Limeburners Bay.

Broadening the role of CMAs recognises that the catchment scale approach; from the mountain range to the sea, is as important as managing areas immediately adjacent to the coast. It is logical that this broad approach could be applied through a single catchment manager in partnership with other agencies, groups and individuals.

The Corangamite CMA supports the concept of Regional and Strategic Partnerships (RASPs) and believes the CMAs can play an important role in these. In this region, the planning and integration of coastal priorities is conducted in partnership with government agencies, community groups and individuals consistent with the consultative and delivery processes in place for other programs. An example of a recent similar process in the Corangamite CMA region was the *Bellarine Peninsula – Corio Bay local hazard assessment*, which commenced as a coastal management issue across two municipalities relevant to a number of organisations. The interested parties collaborated to identify funding opportunities and a potential project lead. The process was well managed and achieved the desired objectives.

Consideration should be given to increasing alignment with the Draft Victorian Biodiversity Strategy recommendation regarding regional biodiversity strategies. The Corangamite CMA supports regional biodiversity strategies being developed for all of Victoria and led by CMAs. Coastal CMAs could include the marine zone in these strategies. As noted above, the Corangamite CMA has a Marine and Coastal Biodiversity Strategy which is due for renewal. It is proposed that this be replaced by a regional biodiversity strategy that includes the marine zone.

There is also potential for the Corangamite CMA and other coastal CMAs to play a key role in community engagement and implementation programs for marine and coastal areas. As shown above, the CMAs have strong partnerships and provide strategic support for Landcare and EstuaryWatch volunteers, a large range of community interest groups and coastal land owners and managers. This type of support; such as coordination of community grants, could be extended to a coastal and marine context. For example, better integration of coastal grants with Landcare grants and the provision of support to Coastcare by CMAs in the same way that Landcare and Estuarywatch is currently supported. This alignment at the delivery end will provide the community with a consistent and efficient approach for local area investment and coordination.

Under the guidance of the Victorian Floodplain Management Strategy (2016) CMAs have been allocated a clear role in advising on coastal inundation, and some CMAs have already participated in studies and development of planning scheme amendments to incorporate planning controls for coastal inundation and to act as a referral authority under the *Planning and Environment Act 1987*.

Whilst CMAs do not immediately have all the skills required to provide guidance in coastal erosion, this can be developed over time. The timing proposed in the paper provides government the opportunity to establish clear mechanisms in coastal planning arrangements for CMAs by strengthening provisions under the *Planning and Environment Act 1987*.

The suggestion to amend coastal CMAs is not supported as all CMAs have a strong investment in the branding and profile of the name Catchment Management Authority and a change could be confusing to the community and rebranding is a costly exercise. Inclusion of 'coastal' to the name could also cause undue ambiguity around inland catchment management and the authority's role in this area.

There are several matters that will need to be addressed in order for this transition to occur effectively and efficiently and Corangamite CMA welcomes the opportunity to work through these. Some of these matters include the following:

- A review of the functions of CMAs listed in the Catchment and Land Protection Act may be required to ensure that CMAs are appropriately authorised to undertake the new marine and coastal related roles.
- A clarification of the boundaries of CMAs may be required to ensure regions extend to 3 nautical miles offshore. Previous advice received by the Corangamite CMA suggests our existing gazetted boundary ceases at the low tide water mark (refer attached DSE correspondence).
- A clarification of the boundary between the Corangamite CMA and the Port Phillip and Western Port CMA may be required to ensure there is a practical, logical and workable arrangement in place for coastal and marine management along the south western shoreline of Port Phillip Bay and Corio Bay.

- It will be important to ensure that financial allocations to CMAs are commensurate with the increased and expanded roles and enable an appropriate level of staffing expertise and operational capacity to fulfil these new responsibilities.

Thank you for the opportunity to provide comment.

Please contact our Executive Manager – Integrated Catchment and Strategy, Trent Wallis, on (03) 5232 9100 or trent.wallis@ccma.vic.gov.au if you have any queries regarding this submission.

Yours sincerely



Gareth Smith
Chief Executive Officer

Enc: Correspondence - Department of Sustainability and Environment - dated 26 June 2009.



Department of Sustainability and Environment

STK/31-0001
09/1731 ATT

Office of the Secretary

Ref: SEC005703

File: CS/34/0079

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Mr Donald A Forsyth
Chief Executive Officer
Corangamite Catchment Management Authority
PO Box 159
COLAC VIC 3250



Dear Mr Forsyth

CORANGAMITE CATCHMENT MANAGEMENT AUTHORITY COASTAL BOUNDARY

Thank you for your letter of 22 May 2009 seeking clarification of the boundary jurisdiction relative to the coastal boundary, specifically querying whether the Corangamite Catchment Management Authority (CMA) boundaries include the three nautical mile offshore limit.

I note your letter states that in recent times, the Corangamite CMA has been asked to include the three nautical mile offshore limit as a part of its considerations on its maps and in review of environmental direction under the Regional Catchment Strategy (RCS).

As you will be aware, section 10 of the *Catchment and Land Protection Act 1994* provides that the areas and boundaries of catchment and land protection regions are determined on the recommendation of the Governor in Council, which must be published in the Government Gazette. A copy of the relevant Order by the Governor in Council fixing the area/boundary of the Corangamite CMA was provided to the Chairperson, Dr Peter Greig on 1 May 2009. This Order defines the boundaries of the Corangamite catchment and land protection region as ending at the low tide line and not including the three nautical mile limit.

I am advised that in the review and finalisation of the RCS Guidelines, discussions have been limited to the catchment management of impacts on marine environments and feasible ways to reduce or manage these detrimental impacts.

I trust this information provides the clarification you are seeking.

Yours sincerely


PETER HARRIS
Secretary

26 / 6 / 09

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, 3002.





File Ref.: A/010/010

20th October 2016

Marine and Coastal Act Consultation
Policy and Strategy Unit
Department of Environment, Land, Water and Planning
PO Box 500
EAST MELBOURNE VIC 3002

Dear Sir/Madam,

RE: East Gippsland CMA submission regarding Marine and Coastal Act Consultation Paper

The East Gippsland Catchment Management Authority (EGCMA) thanks you for the opportunity to comment on the Marine and Coastal Act Consultation Paper and is pleased to provide the following main comments:

The EGCMA supports the proposal to boost the role of coastal CMAs. Regional Catchment Strategies for coastal CMAs already include strategic natural resource management planning for coasts, estuaries and marine areas, and thus the proposal is consistent with the overview that CMAs provide.

Broadening the role of CMA's recognises that the catchment scale approach; from mountain ranges to the sea, is as important as managing areas immediately adjacent to the coast. It is logical that this broad approach can be applied through the one catchment manager in partnership with other agencies, groups and individuals.

In this region the planning and integration of coastal priorities is conducted in partnership with government agencies, community groups and individuals consistent with the consultative and delivery processes in place for other programs.

The process for negotiating priorities and the lead organisations for plans or projects is already managed collaboratively. For instance, the East Gippsland Shire Council is the agreed lead agency for the Lakes Entrance Climate Change Adaption project currently in early stages. Gippsland Ports was lead for the Gippsland Lakes Boating infrastructure strategy. As such future coastal township planning, infrastructure and facilities plans would likely be led by Gippsland Coastal Board or East Gippsland Shire Council.

The EGCMA tends to lead and implement coastal natural resource planning and delivery. Two examples are the Gippsland Lakes RAMSAR Site Management Plan and the East Gippsland Coastal Invasive Plant and Animal Plan. Both these plans have implementation arrangements that involve partner agencies and groups.

The East and West Gippsland CMA's jointly manage the Gippsland Lakes program and host the Gippsland Lakes Coordinating Committee. This program (\$10mill for next 4 years) involves multiple partners and engagement processes.

These examples highlight that at the East Gippsland regional level the concept of Regional and Strategic Partnerships (RASPs) will work effectively in defining priorities, defining lead agency roles and working cooperatively.

There is also potential for the EGCMA and other coastal CMAs to play a key role in community engagement and implementation programs for marine and coastal areas. As shown above, the CMAs have strong partnerships and provide strategic support for Landcare, a large range of community interest groups and coastal land owners and managers. This type of support; including coordination of community grants, could be extended to a coastal and marine context.

For example, Coastcare can be supported by CMAs in the same way that Landcare currently is. This alignment at the delivery end will provide community with a consistent and efficient approach for local area investment and coordination.

Under the guidance of the Victorian Floodplain Management Strategy (2016) CMAs have been allocated a clear role in advising on coastal inundation, and some CMAs have already participated in studies and development of planning scheme amendments to incorporate planning controls for coastal inundation and act as a referral authority under the *Planning and Environment Act 1987*.

Whilst CMA's do not immediately have all the skills required to provide guidance in coastal erosion, this can be developed over time. The timing proposed in the paper provides government the opportunity to establish clear mechanisms in coastal planning arrangements for CMAs by strengthening provisions under the *Planning and Environment Act 1987*.

The EGCMA thanks you for the opportunity to provide comment.

Yours sincerely,



Graeme Dear
Chief Executive Officer

Our Ref:

Jeremy Reiger, Manager Policy and Strategy.
Marine and Coastal Act
Expert Panel
Marine.CoastalAct@delwp.vic.gov.au

Dear Jeremy

Marine and Coastal Act Consultation Paper

Thank you for the opportunity for EPA Victoria (EPA) to make comment on the *Marine and Coastal Act Consultation Paper*. Overall, EPA is broadly supportive of the vision and objectives proposed for the new Marine and Coastal Act.

Victoria possesses valuable and unique coastal and marine environments that will face increasing pressures as Victoria's population grows and our climate changes. Effectively managing marine and coastal environments requires an integrated and risk-based approach that considers the relative costs and benefits of multiple overlapping uses, pressures, and values. EPA considers that a new Marine and Coastal Act and policy can help ensure the protection of marine habitats and ecosystem processes, as well as integrate responsibilities across catchments, coasts and marine waters.

The development of a new Marine and Coastal Act and policy provides an important opportunity to develop an overarching spatial planning framework and improved governance and management arrangements that clearly identifies the roles, responsibilities, legislative instruments and appropriate processes for managing, approving and regulating activities in coastal and marine environments.

Currently, important issues affecting marine and coastal environments are managed by a range of different legislative instruments, with roles and responsibilities spread across different organisations. This can lead to inconsistencies, inefficiencies and a lack of awareness of the appropriate planning and management tools. Pressures on marine environments typically arise from the impacts of multiple activities (e.g. diffuse pollution), which will continue to require cross-agency collaboration to manage. This could be better facilitated by a marine spatial and planning framework, and strengthen and clarify existing arrangements to address the issues arising from current legislative overlaps and gaps.

EPA supports the goal identified in the Consultation Paper for a Marine and Coastal Act that improves and clearly articulates governance and management arrangements to strengthen the management of coastal and marine environments. However, the Consultation Paper does not provide a good sense of where the boundaries will be drawn between the new Marine and Coastal Act and policy and other existing acts, regulatory instruments and policies that are relevant to coastal and marine planning, management and protection.

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There are several questions that the Consultation Paper raises for EPA, including:

- Will the Marine and Coastal Act and its associated policy develop standards for the protection of marine habitats and ecosystem processes, or, will it refer to existing standards (for example, those in State Environment Protection Policies)?
- Will implementation plans be developed for specific issues or for geographic areas, and how will responsibilities and pathways for implementation be determined?
- How will issues be brought to the attention of the Minister for implementation plans to be developed?

It is also unclear which agency will be responsible for administering many of the activities proposed to be enabled by the Marine and Coastal Act. For example, it is unclear which agency will be responsible for administering any consent and approval processes proposed for marine waters, or which agency will be responsible to collect, manage and hold responsibility any monitoring data for State of Coasts/Marine reporting.

In addition, the delegation and demarcation of powers and responsibilities will need to be made clear in the new Marine and Coastal Act. Government agencies working under other legislation should also be recognised in the Marine and Coastal Act and policy to enable clear links where responsibilities and roles differ.

Strong consideration needs to be given to existing and developing legislation and policy during the development of the Marine and Coastal Act to avoid inconsistencies arising between different legislative instruments that may pose challenges to the effective management and protection of coastal and marine environments. The Marine and Coastal Act, policy and strategies should align and link clearly to other relevant legislation, policy and regulations, such as the *State Environment Protection Policy (Waters of Victoria)*. There may also need to be some harmonisation of relevant sections of Acts and statutory policies to ensure that they complement one another.

The Marine and Coastal Act would also benefit from a more focused approach to tackling key activities and issues that are currently not well managed and regulated in coastal and marine environments (e.g. pollution and waste generating activities that are not subject to works approval and licensing by EPA) as it is developed more fully. Case studies of how the Marine and Coastal Act will address key issues and overcome existing management challenges would be very useful as a proof of concept for how the Act will work, as this is still unclear in the Consultation Paper.

EPA notes that the new Act appears to be strongly driven by a catchment and coastal perspective, but considers that marine issues do not have a particularly strong focus in the Consultation Paper. EPA encourages stronger consideration of the key threats and gaps in the management and regulation of marine areas so as to inform the development of appropriate frameworks and processes for managing them in a new Marine and Coastal Act.



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EPA has provided further responses to the questions identified in the Consultation Paper in the attached document.

Kind regards



Leonardo Ribon
Team Leader-Water
Policy and Regulation
EPA Victoria

October 2016



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Marine and Coastal Act

Consultation Paper August 2016

EPA Victoria responses to key questions

Question 1. Is the Vision set out in the Victorian Coastal Strategy 2014 the appropriate vision to be used for the development of a new marine and coastal system? If not, how can it be improved?

EPA supports the vision proposed for the new Marine and Coastal Acts to protect and maintain the health of coasts and marine environments. EPA considers that such a vision will be important for supporting the environmental, economic, traditional owner and social values for Victorians now and in the future. This aligns broadly with EPA's vision for an environment that supports a liveable and prosperous Victoria.

However, the vision set out in the Victorian Coastal Strategy 2104 is coastal focussed and should be broadened to better recognise and encompass marine issues. Coastal issues typically occur, and are dealt with at a local scale (e.g. beaches, local council/shires). Victoria's marine waters, particularly its bays, are the receiving environments for widespread pressures arising from whole catchment, coastal and marine sources. Marine waters are dynamic and well-connected over large distances which mean that threats (e.g. marine pests, marine infrastructure) can affect large areas. Consequently, marine issues occur at much larger scales than many coastal areas and require a greater regional and broad-scale approach to management and planning.

The vision for the Marine and Coastal Act should better reflect and address these differences in scale between coastal and marine issues and better consider appropriate management frameworks.

Question 2: Do you think coastal and marine management arrangements are overly complex? If so, how has it negatively affected outcomes? Give specific examples if possible.

Marine management arrangements can be complex in Victoria. For example, there are many excellent coastal and marine monitoring programs in Victoria that provide valuable information about the uses, health and condition of these environments. These monitoring programs are managed by different organisations with different responsibilities and focuses, but are not adequately co-ordinated and integrated due to a lack of an overarching monitoring, evaluation and reporting (MER) framework.

The Marine and Coastal Act provides an opportunity to develop a clearer MER framework that integrates various monitoring efforts to provide a more complete and holistic view of Victoria's marine and coastal environments.

Question 3: Other jurisdictions have made legislative changes to better deal with the impacts of accretion and erosion. Are there any aspects of the approaches used in other jurisdictions, for instance NSW and Queensland, that would be relevant for Victoria to help achieve the above improvements?

EPA has not traditionally been involved in coastal protection issues, so makes no comment on legislative changes based on other jurisdiction. However, we consider coastal erosion as a key source of reduced water quality that is a threat to marine values in some key marine embayments.

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Question 4: Do you think the seven Drivers for Change encompass the key issues? If not, what other key issues need to be addressed to improve Victoria's coastal and marine management system?

EPA considers that the Drivers for Change outlined in the Consultation Paper encompass most relevant issues, although they are still very high level at this stage. Land use change, including urban population growth, is a major pressure on many marine embayments that should be considered in any spatial planning or monitoring frameworks and management arrangements.

"Driver 6 - Improving Knowledge" should be broadened to also include improving the communication of knowledge, which should be supported by improved monitoring, evaluation and reporting arrangements.

Question 5: Do you think these objectives for a new marine and coastal system are appropriate to form the basis of the objectives for a new Marine and Coastal Act? Are there any issues that need to be considered when finalising these objectives?

The objectives outlined in the Consultation Paper form a suitable basis for the Marine and Coastal Act. These objectives align strongly with EPA's key principals and objectives in marine waters, which are to protect marine beneficial uses from pollution and waste entering marine waters, as defined in the *Environment Protection Act 1970* and *State Environment Protection Policies (Waters of Victoria)* [SEPP (WoV)] and its associated Schedules.

The beneficial uses for marine environments identified in SEPP (WoV) for protection include aquatic ecosystems; primary and secondary contact recreation; aesthetic enjoyment; spiritual and cultural values (aboriginal and non-aboriginal); aquaculture; industrial and commercial use; and fish, crustacea and molluscs for human consumption (recreational and commercial use).

Question 6: Do you think the required skills for the Marine and Coastal Authority members should be legislated? If so, what skills, backgrounds and expertise should be represented? Should there be a minimum number of members? Is the maximum of 11 members still appropriate?

EPA considers that further information is required than that provided for in the Consultation Paper to adequately answer this question. In particular, details on the limits of the responsibilities of members, and the scope of the Marine and Coastal Act and policy would inform the necessary mix of expertise.

For example, the Consultation Paper does not provide details on the scale and/or types of uses and developments the Marine and Coastal Council will provide consent on, and what might be referred elsewhere. It is unclear whether the Marine and Coastal Council would provide advice on consents to all proposed marine and coastal development or just large-scale and significant projects. It is unclear whether there will be a referral process for approvals or advice to other organisations with statutory and management responsibilities or relevant expertise. These are important considerations when determining the skill sets needed for members of a Marine and Coastal Council, and whether these skills need to be referenced in legislation.

Noting this, EPA considers that the Marine and Coastal Council should comprise members with a balance of expertise in both coastal and marine environments, economic, traditional owner and social issues. Currently, the 11 members on the Victorian Coastal Council focus predominantly on coastal issues, and the new Marine



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and Coastal Council may require an increase in the number of members to encompass greater marine expertise.

Question 7: Do you agree with the recommended time frames and approach for a new marine and coastal strategy and marine and coastal policy? Why?

No response to Question 7

Question 8: Do you think the proposed reforms would provide for greater efficiency in the advisory functions for natural resource management in marine and coastal areas? What other changes would be useful to help recognition of an enhanced focus on coastal and marine issues by Catchment Management Authorities (e.g. Coastal in the title)? Why?

EPA is supportive of extending the role of Catchment Management Authorities (CMA) into coastal and marine environments. A significant pressure on Victoria's embayments is pollution entering from surrounding catchments, waterways and stormwater. Catchment management and improvement therefore plays a critical role in protecting and maintaining the health of marine embayments.

Extending the co-ordination and advisory role of the CMA's into coastal and marine areas would provide for better integrated management of impacts to marine environments from sources in the catchment. In addition, giving CMA's co-ordinating roles across coastal and marine areas is likely to improve oversight and efficiency in managing these areas.

Noting this, while coasts may be a natural extension of catchments in many ways, a challenge for CMA's in this changing role will be take on responsibilities for marine impacts. Many marine issues occur on regional scales and are unrelated to catchment based issues (e.g. many marine pests), and are likely to require different resources, skill sets and expertise to manage. It is unclear how far the responsibilities of CMA's will extend into marine environments and where the boundaries between coasts and marine responsibilities will sit.

Further consideration will need to be given as to whether CMA's will be responsible out to state waters and for solely marine related impacts, or whether they will focus mostly on catchment and coastal related impacts to marine environments. Consideration will also need to be given to ensuring CMA's have dedicated expertise and resources necessary to enable them to effectively deal with coastal and marine issues.

Question 9: What issues would need to be considered to enable a smooth transition from smaller CoMs (Committee of Management) to larger coastal managers or local government? What process should be followed? How would you ensure that the benefits of local input, knowledge and effort were not lost as part of the process?

No response to Question 9.

Question 10: Do you think Victoria needs a marine spatial planning framework? If so, what would be the key elements and who should be involved?

Victoria's marine and coastal environments would benefit greatly from an integrated eco-system based spatial planning framework to allocate uses and development in the marine environments, as outlined in the Consultation Paper. The key elements of the spatial planning framework should include:



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- tools to clearly identify and analyse environmental, economic, traditional owner and social values, existing uses, pressures and threats in coastal and marine areas to inform risk-based decisions for future uses and developments
- a planning process that is open, transparent and involves the community, and incorporates community values
- a risk-based decision framework that ensures the protection and maintenance of healthy marine and coastal ecosystems, critical ecosystem services and community values and achieves the objectives outlined in the Consultation Paper
- a risk-based consents/approvals process that address clearly articulated policy requirements legislated under the Marine and Coastal Act and is protective of the marine environment
- a clear compliance and enforcement policy to support marine spatial planning, management of approvals and requirements of the Marine and Coastal Act
- a management framework to support planning decisions and the consent/approvals process. Coastal and marine uses and developments approved through a spatial planning framework should have an associated management plan to ensure that they comply with the conditions of approval and meet the objectives of the Marine and Coastal Act
- an ongoing Monitoring, Evaluation and Reporting component that assesses the condition of marine environments, economic and social values and effectiveness of management actions, planning decisions and implementation.

The spatial planning process should involve all relevant stakeholders including community, industry, government and research

Question 11: Do you think there is a need to legislate for an EMP to be prepared for Port Phillip Bay? What other areas would benefit from an EMP?

Schedule F6 (Waters of Port Phillip Bay) to *SEPP (Waters of Victoria)* established the requirement for the development of the original Port Phillip Bay Environmental Management Plan (EMP), which has the primary role on protecting the beneficial uses of Port Phillip Bay from the pollution of waters. EPA considers that setting this requirement in statutory policy was one factor in ensuring government commitment to its development and implementation.

EPA considers that all high priority and stressed marine regions in the state, including the other major embayments in Victoria (i.e. Western Port and Corner Inlet), would also benefit from having an EMP to drive management actions. In general, these areas currently lack clear management arrangements between coastal and marine areas and at the scale of the embayment. An EMP for these areas will be an important step towards coordinating management and planning processes and protecting environmental values.

EPA notes that while the pollution of waters is a critical component of managing Port Phillip Bay, there are a range of broader pressures and issue beyond water quality that could also be included in an EMP.



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Glenelg Hopkins



C M A

21 October 2016

Marine and Coastal Act Consultation
Policy and Strategy Unit
Department of Environment, Land, Water and Planning

Our File: EV-02-0001

Dear Project Team

Comments on Marine and Coastal Act Consultation Paper

Congratulations on advancing the arrangements for managing marine and coastal areas in Victoria. These sectors have always been the subject of intense and sometimes impassioned interests from a large range of interest groups and stakeholders and I appreciate the careful and thorough approach that you have taken to developing consensus on the best options for future management. Glenelg Hopkins CMA is pleased to provide comments on the Consultation Paper and these are attached.

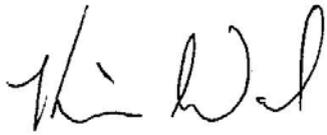
Glenelg Hopkins CMA Board has taken a significant interest in this process and has discussed the proposals in your Paper and agreed on the content of the CMA's submission. I trust that you will find these comments constructive and supportive, as this was the orientation that the Board intended to provide.

In addition to the comments provided in the attachment, the Board would like to provide some general comments on the proposal. The special values of the coast are very evident in western Victoria, where we have not yet experienced the same level of urban development and intensity of recreational use as some other parts of the Victorian coast. We would like to ensure that the principles espoused in the Victorian Coastal Strategy are encapsulated in the Marine and Coastal Act, to ensure that coastal values are protected and urban settlements and associated recreational use are appropriately planned and managed. We would also like to see a strong emphasis in the new Act on maintaining coastal values in the face of increasing coastal change associated with climate change. To achieve this, any commission given to future coastal managers must be sufficiently strong to allow the necessary planning to adequately facilitate effective coastal adaptation.

A final comment is that the CMA recognises that the Consultation Paper does not foreshadow a mandate to incorporate integrated planning for fisheries, aquaculture, ports and energy development. We consider it imperative that arrangements for marine and coastal planning for all uses are planned in an integrated way. As there is no single integrating authority proposed for future arrangements, how this integration might occur should be given due consideration in parallel with the development of the new Act.

I look forward to contributing to further discussions with you on how to best develop and implement the new arrangements for marine and coastal areas.

Yours sincerely

A handwritten signature in black ink, appearing to read 'K. Wood', written in a cursive style.

Kevin Wood
CEO

Glenelg Hopkins CMA Response to Marine and Coastal Act Consultation Paper

Section of Discussion Paper	Comment
Part 1. The current system	
<p>1. Vision for a healthy coast and marine environment <i>"A healthy coast and marine environment appreciated by all, now and in the future"</i></p> <p>1.2 Economic values</p>	<p>The vision proposed in the Consultation Paper to be used for the development of a new Marine and Coastal Act is supported.</p> <p>The economic values referred to in this section, while admittedly referred to as "economic values of selected commercial activities", do not acknowledge the primary production values associated with agricultural industries in the terrestrial coastal zone. In many cases these can be quite substantial. This omission arises due to the narrow definition of the coast, which in the entire paper appears to be restricted to the narrow strip of Crown land and other public land in coastal parks. This is an important qualification which is discussed in more detail in the next section.</p>
<p>2. The current marine and coastal system</p>	<p>The definition of 'coast' is not provided in the paper which limits discussion of issues and all other arrangements that currently exist or are proposed. Most of the discussion in the paper is restricted to the public land on the coast and while this, and the marine waters, are the areas that support most recreational activities on the coast, they are not the only areas important to coastal values or will be important to adapting to coastal change. The freehold land adjacent to the coastal strip in public ownership is also very important in influencing many values on the coast, such as:</p> <ul style="list-style-type: none"> • access for recreational use • commercial activities supporting recreational use • agricultural activities that impact on the coast (in regional areas) • buffers to protect the foreshore from overuse, and • supporting important coastal biodiversity values.

	<p>Appendix 4 shows maps that have a ‘Coastal Compartment Boundary (secondary)’ that is not defined nor discussed in the Consultation Paper, but these appear to be relevant in this discussion of the areas adjacent to the coast that are important to impacting on and supporting coastal values.</p> <p>It would be appropriate to utilise the definition of the coast provided in the Victorian Coastal Strategy 2013 which is defined to “...encompass coastal, estuarine and marine environments on both public and private land, including:</p> <ul style="list-style-type: none"> • coastal hinterland – land directly influenced by the sea or directly influencing the coastline, and with critical impacts on the foreshore and nearshore environment (these influences range from visual to drainage impacts) and • catchments – rivers and drainage systems that affect the coastal zone, including estuaries”. <p>While we are not suggesting that the Consultation Paper should discuss arrangements for the whole of the catchment draining to the coast, it should at least acknowledge the coastal hinterland, including private land, and its importance in planning for the future of coastal areas. CMAs have been working on a number of programs in this coastal ‘hinterland’ and we consider that this activity contributes to improving and protecting coastal values, as well as fostering community involvement in the protection of these values as well. Including the coastal hinterland in planning will also be critical in developing coastal adaptation plans in the future.</p>
<p>3. The case for change: how the system can be improved</p>	<p>We agree with all seven of the listed ‘Drivers for Change’ as the most important elements to deal with in developing new arrangements for the coast, and we provide several specific comments on some of these for your consideration.</p> <p>For ‘Driver 3 - Integrating planning systems’, CMAs support improvements to planning and decision making systems and have already developed an improved arrangement for estuary openings that rationalises permits for works under both the <i>Water Act 1989</i> and the <i>Coastal Management Act 1995</i>.</p> <p>For ‘Driver 4 – Adapting to climate change’, one of the most important issues to resolve from our experience in working with coastal agencies and stakeholders, is the lack of clear leads in regard to adapting to and planning for climate change. With so many agencies with interests in the coastal area, and the limited expertise and experience available to apply to this issue, it is important for specific leads to be allocated to plan for the future in this area.</p> <p>For ‘Driver 5 – Sustainable resourcing’, given the limited area of influence for the coast adopted in the Consultation Paper, the funding contribution and opportunities associated with existing investment in water-related projects is not acknowledged. A significant investment in coastal areas, particularly estuaries, remnant vegetation and coastal wetlands, occurs through the current water investment program, funded through the</p>

<p><i>The role of coastal CMAs would be strengthened to deliver integrated natural resource management across catchment, coasts and marine environments. Coastal CMAs would develop Regional Catchment Strategies and Regional Floodplain Management Strategies with a stronger marine and coastal component and provide expert advice on coastal flooding and erosion. Membership of coastal CMAs would be reviewed to ensure appropriate skills and expertise. Community reference groups on coastal NRM issues would be encouraged.</i></p>	<p>overview that CMAs provide. Glenelg Hopkins CMA also convenes a coastal advisory group to aid in co-ordination of agency coastal planning and works, manage coastal planning and works, and assist coastal community groups to build capacity and also to undertake works. Under the guidance of the Victorian Floodplain Management Strategy (2016) CMAs have been allocated a clear role in advising on coastal inundation, and some CMAs have already participated in studies and the development of planning scheme amendments to incorporate planning controls for coastal inundation, and act as a referral authority under the <i>Planning and Environment Act 1987</i>. The development of expertise and resourcing to undertake this role has been made possible through appropriate funding from the Victorian Water Group Investment Fund, and it would be important that this continues if the functions are strengthened as the Consultation Paper recommends.</p> <p>The proposed role in providing guidance in coastal erosion can be developed over time but it is important to recognise that CMAs do not currently have skills in this area. It will also be important to establish clear mechanisms in coastal planning arrangements for CMAs to provide this input as is the case for floodplain management ‘advice’ provided currently, which utilises specific provisions under the <i>Planning and Environment Act 1987</i>. In order to establish these new arrangements acknowledgement must be given of the accountabilities for coastal hazard assessments already proposed in the Victorian Floodplain Management Strategy (Section 15 Managing Coastal Flooding) and whether those need to change.</p> <p>Glenelg Hopkins CMA appreciates there is a desire to maintain an identifiable emphasis on coasts through a potential change in name for coastal CMAs, and this is a matter for government to consider in the context of the rest of the proposed reforms. However, it is not the model preferred by the CMA as all CMAs have a strong investment in the branding and profile of the name Catchment Management Authority and a change could be confusing to the community.</p>
<p>3.4 Providing for Regional and Strategic Partnerships (RASPs)</p> <p><i>Enable Regional and Strategic Partnerships (RASPs) to deal with regional or issue based planning that crosses jurisdictional boundaries.</i></p> <p><i>The Act would enable the Minister administering the new Act to initiate a RASP if identified in the Marine and Coastal Strategy or recommended by</i></p>	<p>The proposed process for RASPs appears to be a good one and fulfils a need that currently exists for leadership in undertaking detailed assessments and planning on coastal issues. It is recognised that one body would not be the most appropriate to lead all planning investigations for all significant coastal issues, however it is expected that priority RASPs would need to be recommended either in the Marine and Coastal Strategy or the Policy.</p> <p>There is also a potential barrier to efficient conduct of RASPs by requiring Ministerial initiation. At face value they do however appear conceptually to be an effective vehicle for conducting coastal adaptation studies and planning exercises, which do not currently have an effective process in place for them to occur.</p>

<p><i>the Marine and Coastal Council in response to a request from, and after consultation with, relevant agencies and affected communities. The RASP would be initiated by the partner agencies coming together to solve a shared problem rather than being imposed from above. There would be flexibility to appoint lead agency depending on the issue, skills and resources required and capacity to bring the community along. A prescribed process for a RASP to develop a plan or output would protect people's rights and ensure affected communities have an opportunity to have their say.</i></p>	<p>CMA's have demonstrated effective leadership of co-ordinated coastal projects (for example Corner Inlet Connections) and would be supportive of strengthening the capability to undertake similar coastal planning projects if resourced to do so. In particular, it is logical that CMA's lead the development of RASPs relating to coastal erosion and inundation and coastal adaptation for natural environment values (outside of coastal parks).</p>
<p>3.5 Phasing out Regional Coastal Boards</p> <p><i>Reduce the complexity of advisory bodies by phasing out the Regional Coastal Boards.</i></p> <p><i>The Regional Coastal Boards would be phased out in June 2018. Functions performed by strengthened Catchment Management Authorities on the coast, the Marine and Coastal Council and the Regional and Strategic Partnerships.</i></p>	<p>The concept of transitioning Regional Coastal Board functions to CMA's is supported. CMA's have excellent experience in NRM issues associated with coastal management, and could readily take on this responsibility that had been undertaken by Coastal Boards. However, CMA's have limited capacity in recreation and facilities management and these aspects of coastal management would be best led by Councils or other partners potentially through RASPs. It would be valuable to explicitly mention how non-NRM issues currently incorporated in to the Coastal Action Plans will be accommodated in the proposed model. CMA's are happy to work with DELWP to progress the transition arrangements and identify the associated resource requirements.</p>
<p>3.6 Transitioning from smaller Committees of Management</p>	<p>Glenelg Hopkins CMA supports the proposal to transition from smaller Category 2 COMs. In our experience some smaller COMs have difficulties in bringing the required level of expertise to appropriate planning for the future of important coastal reserves and may have a limited issue focus. Any model however should enable local community input.</p>
<p>3.7 Maintaining and promoting volunteers in coastal land management at the local scale</p>	<p>The role of volunteers in coastal land management is well appreciated by CMA's and we have been working with these groups for many years to achieve significant NRM outcomes, both on the coast and in the rest of the catchment. CMA's are well equipped to work with these groups and have also rolled out a variety of grant programs as part of Coastcare, Estuary Watch, Landcare and National Landcare Programme coastal community grants. There is logic in supporting CMA's to be the major focus for the community grant support programs due</p>

	<p>to our strong links with community groups, our existing processes for grant administration and distribution, our strong existing reporting and governance arrangements, and the economies of scale that can be achieved by combining different grant and coastal group support programs.</p>
3.9 Strengthening the role of Parks Victoria	<p>The recognition of the need to 'enhance' Parks Victoria to participate in strategy, policy and planning is agreed. Parks Victoria should continue management of Ports and protected areas.</p>
4.2 Development of a Marine Spatial Framework	<p>Marine spatial planning framework that incorporates recent marine mapping could be a useful tool to inform policy and strategy development.</p> <p>Mapping fixed natural values is an important first step but the need to recognise fixed boundaries is not always applicable in the marine environment where species distribution, dispersal and impacts act over various spatial scales. Further information would be required to populate the framework, particularly if it is to be used as a guide for marine development.</p>
5.1 Strengthening Coastal Management Plans	<p>The proposal to further link Coastal Management Plans to Regional Catchment Strategies by consulting and involving CMAs in their preparation and endorsement has merit and CMAs would welcome the opportunity to work with DELWP to refine the specific mechanisms through which this could occur. The use of coastal compartments rather than local government areas would provide a more valid boundary for management of some issues such as coastal erosion. The selection of the boundary should be guided by the issue to be addressed.</p>
5.2 Keeping a consent provision in the new Act	<p>At present under the <i>Coastal Management Act 1995</i> the department (DELWP) considers development proposals as the landowner, from a policy perspective (is it an appropriate coastal use, does it comply with appropriate and design criteria) and with regard to impacts on the coastal environment, including coastal processes and erosion.</p> <p>Careful planning of the new arrangements will be required to ensure that the respective roles of DELWP, CMAs and Councils are clear, and that all aspects of coastal development are use continue to be well planned and efficiently managed.</p> <p>While the proposed new Act would articulate consent provisions associated with DELWP approvals, it may be more relevant to include some of the criteria around these consents in associated regulations and in the proposed coastal policy, rather than in the Act itself. From CMA experience in managing waterway consents authorised under the <i>Water Act 1989</i>, detailed provisions covering exemptions and performance criteria are best relegated to subordinate legislative instruments.</p>

<p>6.1 Introducing legislation that recognises climate change</p>	<p>CMA support recognition of climate change in the objectives of the new Marine and Coastal Act and the inclusion of strong policy direction in the Marine and Coastal Strategy and Policy. We agree that RASPs offer an opportunity to undertake more detailed planning for adapting to climate change but there is a risk that with no clear lead identified for such an important matter that climate adaptation planning for coastal settlements and environments may not be given appropriate priority. The proposed Marine and Coastal Strategy provides an ideal opportunity to identify priority RASPs and lead agencies to undertake the important task of adaptation planning. The Strategy could also consider provisions to mandate consideration of coastal adaptation planning in all Coastal Management Plans, and coastal municipal planning schemes.</p>
<p>7. Sustainable resourcing of the proposed system</p>	<p>Support in the form of resources for transitioning to new roles, particularly those proposed for CMAs, is essential to ensure that skills to provide new advisory services and undertake statutory responsibilities are developed and professionally implemented.</p> <p>The Marine and Coastal Council and DELWP could undertake investigations to measure costs and revenue along the coast, reviewing fees and charges to identify where the beneficiary pays principle could be applied.</p>
<p>8. Improving knowledge and the condition of marine and coastal areas</p>	<p>Condition monitoring is needed to monitor management outcomes over time. However, there is a need to align various condition measures for reporting in documents such as State of the Environment, VCMC and the RCS and those identified for the State of the Marine and Coasts Report.</p>

21 November 2016

Associate Professor Geoff Wescott
Chair
Expert Panel (Marine and Coastal Act)
Department of Environment, Land Water and Planning
8 Nicholson Street
East Melbourne, VIC 3001

Dear Mr Wescott

Marine and Coastal Act: Consultation Paper

Melbourne Water appreciates the opportunity to share its views on the expert panel's *Marine and Coastal Act Consultation Paper*.

We commend the intent to simplify marine and coastal management arrangements and support the consultative approach adopted by the expert panel. We also believe further analysis and guidance is required to establish clear roles and responsibilities.

Recognising that some of the matters referred to in the consultation paper extend beyond our legislated mandate, we are committed to working with others to address the challenges noted by the expert panel.

Melbourne Water's role

Melbourne Water's vision is to 'enhance life and liveability' and our purpose is to serve our customers by supplying quality, fit-for-purpose water and reliably treating Melbourne's sewerage.

We are the caretaker of river health for the Port Phillip and Westernport region. We have responsibility for managing waterways, major drainage systems and floodplains. We therefore have responsibility for ensuring that the water bodies within the Port Phillip and Westernport region are protected and improved on behalf of the community.

We also provide bulk water and sewerage services in the Melbourne metropolitan area. As part of this role, we manage the Eastern Treatment Plant and the Western Treatment Plant, which both discharge highly treated effluent to the marine environment.

Acknowledging the impact that our assets can have on the health of the bays, Melbourne Water modernises its treatment plants and improves the health of waterways, thereby improving the quality of the water flowing into bays. We actively support the State in planning for Climate Change and sea level rise and we have taken a leadership role by improving scientific knowledge about marine environments. Examples include the Port Phillip Bay Environment Study and the Western Port Environment Scientific Review. We also contribute to the development of improvement programs. The Port Phillip Bay Environmental Management Plan, impact studies on receiving water, as well as incorporating sea level rise into planning controls are examples of these contributions.

We do not typically manage coastal assets, nor do our functions extend to planning for, or delivering services for the primary purpose of supporting recreational activity on the coasts.

General Commentary

As noted above, Melbourne Water supports the expert panel's exploration of a new system for Victoria's marine and coastal areas. We are committed to working with Government, stakeholders and the broader community to co-design an institutional system that is innovative, efficient and reflects the importance of Victoria's coasts and marine environments.

The expert panel makes clear the complexity of the current institutional arrangements, with at least 60 entities responsible for the delivery of coastal management services in Victoria. The system is also unduly reliant on the work of volunteers and local governments who are both challenged by competing funding commitments. Transitioning smaller Category 2 Committees of Management to larger Category 1 Committees of Management, or local government, is a positive step towards ameliorating the risks of funding shortfalls and harnessing cost-sharing opportunities.

Melbourne Water supports the intent to integrate marine management and coastal management. The proposal to establish the Victorian Marine and Coastal Council is welcomed and creates the conditions for a more holistic approach, taking into account a broader range of biodiversity and eco-system values.

Melbourne Water also feels further detail could be provided in some areas of the consultation paper. For example, the functions of the Port Phillip and Westernport Catchment Management Authority are not clear under this institutional framework. Also, impacted agencies will benefit from greater clarity regarding accountabilities and the alignment between policy, strategy and service delivery. Greater clarity about funding streams is also critical to the achievement of the State's coastal and marine aspirations.

With regards to the consultation paper's encouragement that Melbourne Water 'provide advice on coastal erosion matters', we are interested in exploring:

- the form that this advice will take and the scope
- the implications of providing the advice, particularly if it is envisaged we would have a role as a referral agency for coastal infrastructure and recognising the array of other organisations involved in coastal management activities
- how the responsibilities would more broadly work between us and the CMA for our region
- relevant responsibilities for strategic planning, as well as responsibilities for delivering service in accordance with this advice.

Concluding Remarks

Melbourne Water appreciates the risks of a fragmented approach to coastal and marine management and acknowledges the social and economic opportunities identified in the consultation paper. We have long been an advocate for a whole-of catchment approach to waterway investments and decision-making but this has not classically extended beyond the catchment itself.

Consistent with funding and legislative obligations, our role advising on and protecting the health of the bays is limited. We note the expert panel's encouragement that Melbourne Water play an enhanced role but we are unclear about the breadth of this role and whether we have a mandate to fulfil any proposed future obligations. We are however committed to working closely with the Port Phillip and Westernport CMA and other terrestrial and marine managers to progress reforms that will protect the health of the coast and bay in perpetuity.

If you would like to discuss these comments further, please contact Ben Furmage, General Manager Customer and Strategy on 9679 7210.

Yours sincerely



Michael Wandmaker
Managing Director

Date: 18th October 2016
Our Ref: BRD/07

Marine and Coastal Act Consultation
Policy and Strategy Unit
Department of Environment, Land, Water and Planning
PO Box 500
EAST MELBOURNE VIC 3002

Dear Sir/Madam,

PPWCMA submission regarding Marine and Coastal Act Consultation Paper

The Port Phillip and Westernport Catchment Management Authority (PPWCMA) welcomes the opportunity to comment on the Marine and Coastal Act Consultation Paper and is pleased to provide the following main comments:

1. The PPWCMA supports the proposal to boost the role of coastal CMAs. Regional Catchment Strategies for coastal CMAs already include strategic natural resource management planning for coasts, estuaries and marine areas, and thus the proposal is consistent with the overview that CMAs provide. However, a number of matters will need to be addressed in order for this transition to occur effectively and efficiently including the following:
 - Clarification will be required of the specific marine and coast-related roles that CMAs will fulfil, including for the PPWCMA.
 - A review of the functions of CMAs listed in the CALP Act may be required to ensure that CMAs are appropriately authorised to undertake the new marine and coast-related roles.
 - A clarification of the boundaries of CMAs may be required to ensure the regions extend to 3 nautical miles offshore.
 - A clarification of the boundary between the PPW and Corangamite CMAs may be required to ensure there is a logical and workable arrangement in place for coastal and marine management along the south western shoreline of Port Phillip Bay.
 - It will be very important to ensure that financial allocations to CMAs are commensurate with the boosted roles and enable an appropriate level of staffing expertise and operational capacity to fulfil the responsibilities. A starting consideration could be that the corporate allocations made to CMAs be increased at least in line with the allocations currently provided to the Coastal Boards. This could improve the marine and coastal service by leveraging off the governance and administration infrastructure and processes currently in place within CMAs.
2. The PPWCMA considers that changing the names of the coastal CMAs would probably provide only minor benefits in comparison to the cost and potential confusion for stakeholders.

3. The PPWCMA considers that the concept of Regional and Strategic Partnerships (RASPs) has merit and notes that CMAs could play a role in the development and/or implementation of relevant RASPs. As an example of a current program reflecting how a future RASP may operate, the PPWCMA is currently convening a Western Port Ramsar Coordination Committee that is effectively overseeing various environmental works by a number of organisations around Western Port and ensuring coordination amongst partners.
4. There is potential for the PPWCMA and other coastal CMAs to play a key role in community engagement and implementation programs for marine and coastal areas. The CMAs have strong partnerships with Landcare and provide strategic support for Landcare (funded through the Victorian Landcare Program). This type of support, including coordination of community grants, could be extended to a coastal and marine context. For example, Coastcare could be strategically supported by CMAs in the same way that Landcare currently is.

The PPWCMA looks forward to the next phase of this process.

Yours sincerely,

A handwritten signature in black ink that reads "David Buntine". The signature is written in a cursive, flowing style.

David Buntine
CEO
Port Phillip & Westernport CMA

Ref: F15/2086

Victorian Aboriginal Heritage Council
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2 November 2016

Associate Professor Geoff Wescott
Chair - Expert Panel
Marine and Coastal Act Consultation
Policy and Strategy Unit
Department of Environment, Land, Water and Planning
PO Box East
Melbourne VIC 3002

Dear Associate Professor Wescott

MARINE AND COASTAL ACT CONSULTATION PAPER AUGUST 2016

The Victorian Aboriginal Heritage Council (**Council**) welcomes the opportunity to comment on the Marine and Coastal Act Consultation Paper (**Paper**). The Council has various functions under the *Aboriginal Heritage Act 2006 (AHA)* with regard to the protection and management of Aboriginal cultural heritage in Victoria.

Victoria's coastal lands have been occupied and cared for by Traditional Owners for thousands of years. Extensive and often sensitive Aboriginal cultural heritage that exists across Victoria's coastline evidences this; heritage that is both tangible and intangible, such as shell middens and songlines. Equally important are Victoria's seas, which Traditional Owners consider to be inseparable from the coast.

Despite the impacts of colonisation in Victoria, many Traditional Owners continue to have strong associations to their traditional coastal areas and seas and have cultural responsibilities to care for coastal environments. Their responsibilities have been passed down from generation to generation and include access to and the use and management of resources. These associations and responsibilities are recognised by international, federal and state laws, such as the United Nations Declaration on the Right of Indigenous Peoples and the *Charter of Human Rights and Responsibilities Act 2006*. These rights to access and use resources have been defined to include commercial as well as cultural purposes. The Council expects that all Victorian legislation meet, as a minimum, international standards and best practice with respect to Traditional Owners cultural rights and obligations.

One of the Council's functions is to provide advice regarding Aboriginal cultural heritage. To this end, the Council makes the following responses to the Paper:

Appropriate recognition of Traditional Owners

1. Council recommends using terminology that is aligned with current Aboriginal cultural heritage legislation and policies, as outlined below:
 - The definition of Traditional Owners in the Paper (page 89) is inaccurate. Traditional Owners are the primary guardians, keepers and knowledge holders of Aboriginal cultural heritage for their country, and it is up to the Traditional Owner group to determine who can speak for country. Traditional Owner Corporations are legally recognised through the *Native Title Act 1993* (Cth) as native title holders, the *Traditional Owner Settlement Act 2010* (Vic) as Traditional Owner group entities, and the AHA as Registered Aboriginal Parties (**RAPs**). Registered native title claimants and RAP applicants are not legally recognised as Traditional Owner entities or groups as a decision has not yet been made on their claim/application. In these circumstances where decisions have not yet been made, which apply to approximately 40% of Victoria, Council's advice is that consultation must be as inclusive as possible of all parties who assert rights and interests.
 - The Paper incorrectly defines RAPs as 'the voice of Aboriginal people'(page 85): RAPs are organisations that represent the Traditional Owners of the area for which the RAP has been appointed and hold decision-making responsibilities under the AHA for the protection, management and preservation of Aboriginal cultural heritage in their appointed areas.
2. Council is in strong agreement that one of the objectives proposed in the new Marine and Coastal Act (**MACA**) acknowledges Traditional Owners' rights and aspirations for land and sea Country, and the use of these rights and aspirations to inform coastal and marine management. Ensuring Traditional Owners are properly empowered and resourced to assert their rights will require effective legislation, thorough implementation and capacity building within government agencies so all parties understand the nature of these rights and aspirations.

Compliance with relevant legislation

3. Council is concerned that the Paper does not refer to the AHA. The AHA is a statutory framework that all Victorians have to comply with. Through it, Aboriginal people's relationships with land and waters is recognised by the State and Aboriginal cultural heritage is protected.
4. The Paper refers to Coastal Management Plans, but it is unclear how Coastal Management Plans align with provisions under the AHA and use mechanisms provided by the AHA to protect and manage Aboriginal cultural heritage, such as Public Land Aboriginal Heritage Agreements, Cultural Heritage Management Plans and Cultural Heritage Permits. Caring for coastal and marine environments requires early consideration to be given to the AHA, to identify activities that have the potential to harm Aboriginal cultural heritage, which can range from the construction of bathing boxes to revegetation works. Developing a system that drives early engagement with Traditional Owners is one way of ensuring this occurs.
5. While the Paper states that a 'majority of marine areas in Victoria out to three nautical miles are not covered by the planning system', it is important to note that under the AHA, Traditional Owners' rights and responsibilities include marine areas out to three nautical miles.
6. Council welcomes the proposal that the new Act clarify liability for the impacts of natural coastal processes where the land manager of coastal crown land has not or has omitted doing something in good faith. Precious and irreplaceable cultural heritage are being affected by failure or neglect where timely rehabilitation and ameliorative works would have ensured lessened, or avoided, the impacts.

Governance and institutional arrangements

7. The Paper frequently refers to Traditional Owner Land Management Boards (**TOLMBs**) as the tool through which Traditional Owners are engaged and enter into partnerships with land managers regarding coastal management. It is important to note that TOLMBs comprise members of both the State and Traditional Owner groups that have successfully negotiated a Recognition and Settlement Agreement under the *Traditional Owner Settlement Act 2010*. Traditional Owner Corporations who are native title holders, Traditional Owner group entities under the *Traditional Owner Settlement Act 2010*, and/or RAPs must be included in the governance and institutional arrangements proposed under the MACA.
8. The paper presents options for specifying membership on the Marine and Coastal Council. Council strongly believes that membership rules should require at least one position be held by a Victorian Traditional Owner. Council further believes that the MACA should require a minimum of one position on the board of each regional structure, such as Catchment Management Authorities (**CMAs**), be allocated to a representative from each RAP in that area. These structures would need to be resourced to ensure they are effective but the benefit, in Council's experience, is that structures of this kind ensure decisions are informed by the expertise and skills of Traditional Owners.
9. In noting the proposal that expert advisory groups or sub-committees be created on specific issues or regional-based matters, Council recommends the establishment of an advisory group or sub-committee which is concerned with the protection and management of Aboriginal cultural heritage.
10. Council notes that Committees of Management (**CoMs**) are currently responsible for the management of approximately 30 per cent of public land along the coast and that members are appointed by the Minister for Environment, Climate Change and Water. Council is interested to learn about the recruitment of Traditional Owners to CoMs and how CoMs engage with RAPs and other Traditional Owner groups as a stakeholder and in complying with the AHA.
11. Council welcomes recognition in the Paper of the need to balance encouraging participation and overburdening community members with too much responsibility without the necessary expertise, support or resources to undertake the task. Further, Council welcomes the proposal outlined (page 27) to establish funding and resource allocation that is resilient to medium to longer term future challenges and changes. Council is interested to learn about how the proposal will be enshrined in the MACA. Council's view is that ensuring success in community engagement and participation requires better support for all community CoMs. Council notes this view is supported by the findings of the Victorian Environmental Assessment Council's Historic Places Investigation Final Report.

Improving knowledge

12. Council agrees with the proposal to improve collective knowledge and understanding of Victoria's coastal and marine areas. Improved understandings build respect and lead to collaborative actions for effective protection of our coastal and marine areas into the future. This is particularly important as these areas are increasingly vulnerable to the effects of climate change and intensive development. Ideally, improving knowledge would not only be considered in the development of the MACA, but in the ongoing development, review and implementation of policies and practices. Relevantly, Council's own functions include promoting understanding and awareness of Aboriginal cultural heritage and with better resourcing, Council believes it would be able to contribute to the achievement of the proposed outcomes in respect of Victoria's coastal and marine areas.

13. Traditional Owner knowledge is foundational to understanding our marine and coastal landscapes, from knowledge of Aboriginal place names and heritage places, to knowledge about sustainable resource use.
14. The Paper states that CMAs should ensure they have the expertise and resourcing to provide expert advice on issues. Council stresses that RAPs, who are recognised by the AHA as a primary source of advice and knowledge on matters relating to their heritage in their appointed areas, are ideally placed to provide information about Aboriginal cultural heritage. The Council has supported the recent development by the CMAs of an Indigenous Participation Guideline which is a good beginning for more consistent engagement by CMAs, but nothing replaces strong partnerships with RAPs and the direct engagement of Traditional Owners.

In its commitment to realising its vision of a community that understands and respects Aboriginal cultural heritage and the cultural responsibilities of Traditional Owners, Council works with various agencies. Of particular relevance to the matters discussed and proposed in the Paper is Council's input to the Victorian Coastal Strategy 2014 and representation on the Victorian Environmental Assessment Council's Marine Investigation and Statewide Assessment of Public Land.

Council would welcome any future opportunities to work with the Expert Panel regarding the development of the MACA. Council would also appreciate receiving updates on its progress, as appropriate.

If you have any queries about this letter, please do not hesitate to contact me through the Council's Secretariat (Natasha Zанrosso on 8392 5393 or at Natasha.zanrosso@dpc.vic.gov.au).

Yours sincerely



Eleanor Bourke
Chair
Victorian Aboriginal Heritage Council

WGCMA Response to Marine and Coastal Act Review

Section of Discussion Paper (Relevant to WGCMA)	WGCMA Comment
<p>Part 2 Section 3 – Clearer Institutional Arrangements</p> <p>3.3 Boosting the role of coastal Catchment Management Authorities</p> <p><i>The role of coastal CMAs would be strengthened to deliver integrated natural resource management across catchment, coasts and marine environments. Coastal CMAs would develop Regional Catchment Strategies and Regional Floodplain Management Strategies with a stronger marine and coastal component and provide expert advice on coastal flooding and erosion. Membership of coastal CMAs would be reviewed to ensure appropriate skills and expertise. Community reference groups on coastal NRM issues would be encouraged.</i></p>	<p>The WGCMA support this concept.</p> <p>It makes sense for the CMA Boards to have some knowledge of Coast and Marine issues however the focus should remain on governance, risk and strategy (as it would for any Board). It is worth noting WGCMA has an Advisory Committee structure that provides advice to the Board. This could be expanded or refined to ensure coastal and marine input and perspective is received.</p> <p>A higher priority need is likely to be operational knowledge and application of which consideration of appropriate resourcing to CMAs needs to be thought through.</p> <p>We note the idea of a change of name to include a coastal acknowledgement but believe this would add confusion given the catchment to coast and integration focus of CMAs. Highlighting one specific landscape in a name is not advised.</p>
<p>3.4 Providing for Regional and Strategic Partnerships (RASPs)</p> <p><i>Enable Regional and Strategic Partnerships (RASPs) to deal with regional or issue based planning that crosses jurisdictional boundaries.</i></p> <p><i>The Act would enable the Minister administering the new Act to initiate a RASP if identified in the Marine and Coastal Strategy or recommended by the Marine and Coastal Council in response to a request from, and after consultation with, relevant agencies and affected communities. The RASP would be initiated by the partner agencies coming together to solve a shared problem rather than being imposed from above. There would be flexibility to appoint lead agency depending on the issue, skills and resources required and capacity to bring the community along. A prescribed process for a RASP to develop a plan or output would protect people's rights and ensure affected communities have an</i></p>	<p>This concept has merit and CMAs could play a role in their use. More detail is needed to understand how they can be activated.</p> <p>Examples such as Corner Inlet Connections are evidence that CMAs can lead coordinated effort if resourced to do so around this type of concept.</p> <p>http://www.wgcma.vic.gov.au/our-region/projects/corner-inlet-connections</p>

<p><i>opportunity to have their say.</i></p>	
<p>3.5 Phasing out Regional Coastal Boards</p> <p><i>Reduce the complexity of advisory bodies by phasing out the Regional Coastal Boards.</i></p> <p><i>The Regional Coastal Boards would be phased out in June 2018. Functions performed by strengthened Catchment Management Authorities on the coast, the Marine and Coastal Council and the Regional and Strategic Partnerships.</i></p>	<p>See comment for 3.3 above.</p> <p>CMA's have good experience on NRM issues associated with coastal management, however, limited capacity in the socio-economic and infrastructure management at this point in time.</p>
<p>General Comments Against other Sections and recommendations</p>	<p>There is potential for WGCMA to play a role in community engagement and delivery programs.</p> <p>The WGCMA has strong partnerships with Landcare and leverage of volunteer effort through this partnership could be extended in a coastal context (noting many of the Landcare groups in WGCMA are currently addressing coastal challenges). An example is saltmarsh protection.</p> <p>http://www.wgcma.vic.gov.au/our-region/projects/coastal-saltmarsh-protection-project</p>