

9 December 2013

Victorian Coastal Council
PO Box 500
East Melbourne VIC 3002By email: submissions@vcc.vic.gov.au

Dear Madam/Sir

Submission on the Draft Victorian Coastal Strategy 2013

The National Environmental Law Association ('NELA') welcomes this opportunity to comment on the Draft Victorian Coastal Strategy 2013 ('the draft Strategy').

NELA is Australia's leading national environmental law organisation with a membership base that includes legal practitioners, law firms, academics, judges and policy makers.

This submission first makes general comments about marine and coastal management and the principles that should guide the draft Strategy, and then comments on a few specific parts of the draft Strategy.

Part 1: General Principles**Integrated Management**

Marine and coastal environments in Victoria are threatened by a whole range of pressures, including urban coastal development, fishing, shipping, offshore oil and gas industry activity, and climate change. Management of the marine environment is fragmented across state and Commonwealth jurisdictions and sectors. Further, there is limited integration across the land catchment-coastal-marine continuum.

NELA believes that state and federal governments need to adopt a more integrated and strategic approach to managing Australia's coastal and marine environments to optimise the economic and social benefits to be drawn from them, while still protecting the integrity of these environments. NELA's proposal for integrated oceans management is set out in *Managing Australia's ocean resources: the next step*, National Environmental Law Review 2012:2, available at http://www.nela.org.au/NELA/Documents/NELR_Cover_2012_2.pdf

NELA advocates a national system of marine spatial planning and management covering state and Commonwealth waters, and applying to all sectors that use our ocean resources. A key element of NELA's proposal is regional oceans plans that establish marine-use zones and set out a clear approach for the management of marine environments, similar to planning and management approaches applied to land.

NELA also supports integration across the land catchment-coastal-marine continuum. It advocates a national approach to coastal zone management, with the necessary institutions, processes and funding to deliver it. We understand that this would require legislative and policy change and is beyond the scope of the draft Strategy.

NELA supports the integrated approach to marine management used to guide the draft Strategy. NELA believes that marine environments need to be seen as an integral aspect of coastal management and this should be fully reflected in the draft Strategy.

Science Based Decision Making

Policy and guidance on decision-making in coastal and marine management provided in the draft Strategy should emphasise that decisions should be based on the best available science. This is consistent with recommendation 2 of the Australian Committee for the International Union for the Conservation of Nature marine symposium, held in Melbourne earlier this year (Australian Committee for IUCN, *Conserving Australia's Marine Environment: Key Directions Statement*, Australian Committee for IUCN, Sydney, 2013).

NELA further notes that cooperation and information sharing between government agencies, and adequate resourcing of government agencies to conduct research, are essential to ensuring science based decision making.

Part 2: Specific aspects of the draft Strategy

Framework for an integrated management approach

For the reasons discussed above, under the heading 'Integrated Management', NELA supports Action 1 on page 33 of the draft Strategy, which provides for the development of a framework for an integrated management approach to Victoria's marine environments.

Action 1 on page 33 of the draft Strategy only provides for the development of a framework. It does not specify how, once developed, the framework will be coordinated and put into practice, so that the agreed objectives are achieved. If decisions on coordination and implementation of the framework are to be made as part of the framework development, the Department of Primary Industries and Environment should be given responsibility for coordinating implementation of the framework, after it has been developed.

In addition, the Action only requires that the "important environmental, social, cultural and economic features of marine environments" be identified in the framework. It does not require that the framework set out a management approach to protect these features. NELA is of the view that the requirement to develop a management approach to protect important features of marine environments should be made explicit in the Action.

Coastal Action Plans

NELA supports the proposal for the preparation of integrated Coastal Action Plans, as per the Minister's direction, on the basis that they have the potential to allow for integrated spatial planning and management of coastal and marine environments.

Further, NELA supports the proposed action in the draft Strategy (Action 2, page 33) requiring that, as part of the development of the integrated Coastal Action Plans, marine areas with significant environmental, social, cultural and economic values, as well as potential threats, be identified and mapped.

Action 2 on page 33 only requires that the Coastal Action Plans identify and map the values of marine areas and potential threats. It does not, as currently worded, require that the Coastal Action Plans set out how these marine values and potential threats are managed. NELA is of the view that the Action should also require that the Coastal Action Plans set out actions to manage the values and threats that are identified and mapped, as well as means of implementing any management actions. We further submit that any management of the values and threats identified in the Coastal Action Plans should be consistent with the integrated management approach required in Action, page 33.

We note that Regional Coastal Boards are primarily responsible for preparing the Coastal Action Plans. Preparation of these plans will require significant resources if they are to be based on the best available science and consider public opinion. Further resources will be required if any management actions identified in the Coastal Action Plans are to be implemented.

NELA understands that Regional Coastal Boards are under-resourced and seeks clarification on how the preparation of the Coastal Action Plans and their implementation would be resourced.

NELA is of the view that it would be preferable that Coastal Action Plans be consistent across regions, in terms of their lay-out, and plans and actions to protect similar marine values and address similar threats. It is suggested that some sort of mechanism to encourage coordination between Regional Coastal Boards, so that the Coastal Action Plans are consistent, be included in the draft Strategy.

Coastal Energy Resources

NELA believes the draft Strategy should provide more information about the current regulatory framework for assessment and approval and tenure allocation for renewable marine energy projects to provide essential context for the discussion of this important issue.

The former Department of Sustainability and Environment published a [Marine Energy Discussion paper](#) in 2010 which discussed the legislative, tenure and impact assessment issues for managing wave, tidal, thermal ocean and offshore wind energy. It explained that the existing assessment and approvals framework provides a consistent approach across the state for all proposed coastal dependent developments. But it pointed out the framework is land focused, with no single system capturing the catchment-coast-ocean continuum.

The regulatory framework applicable to establishing a marine energy facility includes the *Environment Effects Act*, the *Environment and Planning Act*, the *Environment Protection and Biodiversity Act* (Clth), the *Marine Act*, the *Heritage Act*, as well as the *Land Act* and *Crown Land Reserves Act* - tenure under one or both of these Acts is required to construct and operate a marine energy facility in Victoria.

NELA supports the Policy for decision making in the draft Strategy but would like it to go further in some aspects.

The Policy for decision making in the draft Strategy says -

1. In planning and decision-making about the use of coastal Crown land for energy resources, the full suite of ecosystem services and community values provided by marine and coastal environments will be considered
2. When considering the use and development of coastal Crown land for the purpose of harvesting marine energy, the following principles will be used to assist in decision-making
 - a. leasing and licencing arrangements should maximise the public benefits derived from private use of coastal Crown land
 - b. negative impacts on environmental, social, cultural and economic values should be minimised

NELA strongly supports (1) but would like see the potential for consideration to be given to cumulative impacts resulting from multiple facilities in an area, and the option of strategic impact assessment to identify areas where development should not be allowed.

NELA supports (2), consistent with the legislative provisions. NELA would like to see this principle taken further by the Strategy supporting a framework for allocating tenure that ensures the Victorian public receives the best outcome from private use of coastal Crown land.

The 2010 Discussion paper proposed options for developing a tenure framework that balanced the needs of proponents and those of the state. It points out that the state has responsibility to allocate

occupation rights over Crown land and because of market imperfections or where there is no market at all, 'governments generally have a role in assisting the allocation of natural resources where private markets cannot.' NELA supports a system of allocating coastal Crown land tenure in a way that ensures Victoria's natural resources are allocated to their highest value, best use and at least cost, while achieving the government's policy objectives.

NELA would like to see the draft Strategy articulate other principles for decision making to underpin the development of marine energy in Victoria such as supporting national consistency, minimising delays, maximising transparency and creating an attractive environment for investment.

Petroleum and gas developments provide a useful example of the need for greater integration in marine and coastal planning. As stated in the draft Strategy, much of the gas and petroleum production is located in Commonwealth waters, whereas the onshore infrastructure required to refine, store and distribute gas and petroleum is located onshore. As a result, exploration and petroleum tenements can be issued by the Commonwealth with no prior consideration of the impacts on the coast. A more integrated system could allow for more efficient and strategic development of coastal and land based infrastructure to service the offshore industry, while minimising environmental impacts.

We encourage you to contact us if you wish to discuss this submission.

Yours faithfully

Amanda Cornwall

President

National Environment Law Association