1 April 2010

The Secretary
Standing Committee on Finance and Public Administration
Legislative Council
Parliament of Victoria
Spring Street
East Melbourne 3002

By email: sean.marshall@parliament.vic.gov.au

Dear Secretary,

Submission to Inquiry into Victorian Government Decision Making, Consultation and Approval Processes

Thank you for agreeing to accept our submission past the due date of 26 March 2010.

I write to inform the Committee on a process I have been extensively involved in over the past six years, mostly through my involvement in the Save Bastion Point Campaign ("SBPC") and the Friends of Mallacoota ("FoM"). This is relevant to how the Victorian Government makes decisions and in particular how the Minister for Planning treats the processes of community consultation in his various approval decisions under Victorian legislation.

The experience is one of a community participating extensively and in good faith in a government-run consultation process over a long period of time, the result of which was essentially ignored by the Minister for Planning when it came time for his decision.

The facts are as follows:
- Currently there is an ocean access boat ramp at Bastion Point in Mallacoota in far east Gippsland. It is old and in a state of disrepair. Proposals for upgrading the boat ramp have existed for a long time, at least since 1988. The SBPC and FoM, along with most of the rest
of the community, recognises the need for improved ocean access in Mallacoota, but are concerned that any upgraded facility must be appropriate and sympathetic to the local environment. Both groups have consistently and actively been involved in the debate surrounding the East Gippsland Shire Council’s proposal to upgrade the boat ramp at Bastion Point.

- On 17 August 2000, the then Minister for Planning, the Hon. John Thwaites, decided that an Environment Effects Statement (EES) under the Environment Effects Act 1978 was required for the boat ramp proposal. The East Gippsland Shire Council (‘EGSC’) was required to prepare this EES.
- The EES was exhibited between 4 and 16 July 2007 and detailed an ocean access boat ramp facility that was extremely large and high impact, and excessive to what was required at the site. Written submissions were invited from interested members of the public, and both groups put in extensive written submissions against the proposal.
- On 11 September 2007, an EES Inquiry (the Inquiry) was appointed to consider the EES prepared by EGSC. The Inquiry initially consisted of Mr. Nick Wimbush (Chair), Mr. Robin Saunders and Mr. Leon Collett, but Mr. Barry La Fontaine subsequently replaced Mr. Collett. The Inquiry held directions hearings on 12 September 2007 in Mallacoota and on 20 February and 31 March 2008 in Melbourne. SBPC (a coalition of community groups, including FoM, opposed to the proposal) attended those hearings and made submissions on how the Inquiry should be conducted.
- The Inquiry hearings were conducted over 14 days between the dates of 14 July and 7 August 2008, with the first 5 hearing days taking place in Mallacoota. SBPC and individual members, including myself, made submissions to the Inquiry at the public hearings. SBPC acted as the main opponent at the Inquiry hearings, and engaged the Environment Defenders Office and Ms. Emily Porter, barrister, to represent it at the hearings. SBPC also engaged seven experts to provide written and oral evidence to the Inquiry on the issues of native vegetation, coastal geomorphology, marine ecology, geology, economics and social impact. Overall, SBPC spent approximately $50,000 on appearing and calling evidence at the Inquiry. SBPC is a not for profit community group and relied entirely on donations and fundraising events to raise these funds to participate in this process.
- In October 2008, the Panel Inquiry provided its report on the EES to the Minister for Planning. This was not released to the public at this time. This report was 198 pages long and contained an extensive series of well thought out, well reasoned recommendations. The Panel Inquiry recommended against all options proposed by East Gippsland Shire Council for an ocean access boat ramp at Bastion Point, concluding that there were unresolved environmental effects associated with the project and also that the facility would result in no overall societal benefit. They were also concerned about the safety of what was proposed, in that boats exiting the proposed facility might be put at risk. This Panel Inquiry report is
available on the Department for Planning and Community Development website.¹ Some relevant quotes from the report of the Panel Inquiry are as follows:

- "The overwhelming weight of information received during the Panel is that Option 3 is likely to lead to more inexperienced boat operators putting to sea in unsuitable conditions" (p 47)
- "The Panel finds that while the advantages for safety arising from Option 3 are considerable, they are more than offset by the unacceptable risks introduced by Option 3". (p 148)
- "The environment effects of Options 1, 2 and 3 as exhibited, Options 3a and 3b, and Option LS1 are such that there is no overall societal benefit in progressing these options further and they should be discarded". (at p 4)
- "The Panel finds that Option 3 meets none of the evaluation objectives well, and most poorly. Overall it is unacceptable; having no demonstrated overall societal benefit, and should not be considered further" and "The Panel finds that the Do nothing option meets all of the evaluation objectives well ... Overall it has considerable net community benefit, and is the only acceptable option presented in the EES". (p 151)

- On 11 June 2009, more than seven months after receipt of the Inquiry report, the Minister for Planning released his 13-page assessment concluding that the proposed boat ramp facility should go ahead. This is also available on the DPCD website.
- Both the Inquiry report and the Minister’s assessment were made publicly available on 11 June 2009. It was not until this date that I, or anyone else in the FoM or SBPC, knew what the Inquiry had recommended to the Minister for Planning.

When the announcement was made, I, the members of SBPC and FoM and many others in the community were extremely shocked. We all felt so disillusioned and frustrated that all of our work and efforts that had resulted in such a comprehensive set of Inquiry recommendations had been essentially ignored by the Minister for Planning in a 13-page cursory response with no further explanation. The feelings in the community range from disbelief, to outrage and anger at the mockery the Minister for Planning made of the democratic process. A process that we believed in.

As a result, the Friends of Mallacoota, of which I am Deputy Coordinator, has filed proceedings in the Supreme Court of Victoria for Judicial Review of the assessment of the Minister for Planning. The members of FoM and SBPC believe they have been denied natural justice in the way the Minister for Planning made his decision. I have attached the media release put out by the group the day we initiated these proceedings.

¹http://www.dse.vic.gov.au/DSE/nrenpl.nsf/LinkView/A684ED3F5775D64DCA256F2A000EDE6592FBC7C133A6F520CA2572DA007FAB8B
In the instance of the Bastion Point ocean access boat-ramp, the Minister for Planning followed a statutory process to consult, (including appointing a Panel Inquiry and undertaking a long and costly hearing) the whole time having already made his decision that the project would proceed. He merely ‘went through the motions’ of consultation, enticing the community to raise and expend significant funds and volunteer hours to participate in the EES process, the result of which would ultimately be ignored by the Minister and his Department. The groups participated in these processes in good faith that their contribution would be worthwhile and would in some way influence the outcome. The result acts as a total disincentive for these community groups and others across Victoria to participate in public planning processes in future. Public confidence in these processes has been significantly undermined. This is contrary to the public interest and must be rectified.

Myself or another representative of FoM or SBPC are available to further to brief the Committee on the above issues at any time. If this is desirable please contact me on (03) 51580720.

Yours faithfully

Jenny Mason
On behalf of  Save Bastion Point Campaign and  Friends of Mallacoota
MEDIA RELEASE

Community group takes Planning Minister to Supreme Court

Friends of Mallacoota today stood up for many Victorian communities when they announced their decision to take the Planning Minister to the Supreme Court to challenge his approval of an extensive boat ramp and breakwater development at their local beach in the state’s far-east.

Planning Minister Justin Madden approved the development under the Environment Effects Act in June this year, despite strong community opposition and his own expert Panel of Inquiry’s recommendation to reject the proposal.

The legal action was filed this week by the Environment Defenders Office (EDO) on behalf of the Friends of Mallacoota, a member group of the Save Bastion Point Campaign.

EDO solicitor Elizabeth McKinnon said they will be arguing that the Minister failed to make an assessment of how the proposed boat ramp would impact on the environment, as the Act requires him to do.

“We believe there are grounds to seek Judicial Review in that the Minister fundamentally misunderstood his task under the Act,” she said.

“Obviously no community group wants to wind up in the Supreme Court. However, the Minister’s decision in this instance is so extraordinary that the Friends of Mallacoota and the community feel they have been left with no other option.”

Friends of Mallacoota said the decision to take legal action against the Minister was not easy but they had been left with little choice.

“We feel compelled to apply for a Judicial Review of the Minister’s decision because the government has consistently ignored the community’s strongly expressed wishes and his own expert Panel’s recommendations,” spokesman for Friends of Mallacoota Leo op den Brouw said.

“Most of the Mallacoota community and many holiday makers from around Victoria do not want the development to go ahead because it will be unsafe and will irreversibly damage the much-loved Bastion Point environment and surrounding coastline.”

Mr op den Brouw questioned why the Minister had bothered undertaking an Environmental Effects Statement (EES) process if he was just going to ignore the findings of the Inquiry Panel.

“Save Bastion Point spent more than $50,000 and countless hours putting together our submission to the EES and arranged for seven experts to represent us at the Panel hearings,” he said.

“We have also outlined a smarter and safer low-key development that would improve ocean access and protect the area’s outstanding attractions. But Minister Madden has ignored our concerns and our efforts to find a more suitable option for the community. This just isn’t right.

“Many communities around Victoria have experienced the token manner in which the Government consults communities in relation to proposed developments. We hope this legal action will send a clear message to the government that a transparent and accountable processes needs to be upheld.”

Ms McKinnon said the legal action was based on the argument that the Minister for Planning was not a law unto himself, and can be held accountable for his actions in administering environmental impact assessment in Victoria.

“Therefore, of course the legal action seeks to defend the integrity of the Independent Panel’s findings and save the Mallacoota coast from destructive development, the case is also an important test of the credibility of environmental assessment laws in Victoria,” she said.

To arrange interviews please contact: Sacha Myers, media officer, on 0417 017 844.
More information: http://savebastionpoint.org/