

Bastion Point

Dear Editor,

I write to clarify some misinformation that was reported in the Mouth last week in the article headed "Madden Decision Upheld." As someone who has been closely involved in the Supreme Court case, attended all court proceedings, and has read the full judgment, I believe I am in a position to do so.

Cr. Freshwater incorrectly states that the court upheld Minister Madden's decision to approve the development of an ocean access ramp at Bastion Point.

This is clearly not the case. Justice Osborn confirmed that Minister Madden had given an assessment – **Not An Approval**. The Justice also stated: "It will be for the ultimate decision maker to decide whether the basis disclosed for the opinion in the assessment should be accepted." In other words, Madden cannot give an approval as he is not the ulti-

mate decision maker and his opinion in the assessment is not binding for the decision maker.

Whilst Justice Osborn was unable to give a judgment on the merits of the Minister's assessment, he certainly indicated during the proceedings that he had some difficulties with it. He stated that building a breakwater to solve safety issues between boats and swimmers and surfers was akin to "...using a sledge hammer to crack a nut" and that the "Panel's reasons for its factual conclusions are far more replete...than the Minister's reasons." Justice Osborn explicitly stated in his judgment that the "Panel's assessment was...a careful, fair and balanced evaluation." It should be noted that the Inquiry Panel considered that the proposed development introduced a level of risk that is unacceptable and recommended that the development should not proceed.

The court case was specifically concerned with administrative process, and whether Minister Madden had assessed the environment effects as required by the Act. It was not about whether the proposed boat ramp should go ahead or not. The judgment shows that Minister Madden performed his role according to how he is legally required, but this does not mean it was a good assessment, a final decision, or an approval.

Cr. Freshwater said he hoped opponents to the ramp would now accept the umpire's decision and step back from the issue. Minister Madden is not the umpire. The final decision maker is Minister for the Environment, Gavin Jennings. In due course, he will consider Minister Madden's assessment of the environment effects, along with other relevant information.

People will therefore most certainly continue to advocate for a low-key upgrade at the present site, without breakwaters, as recommended by the Inquiry Panel. This would be a safer, less damaging, less costly and more acceptable alternative to the ill-conceived plan the Council is pushing ahead with.

It is also worth noting that Justice Osborn found the issues raised by the Friends of Mallacoota were well worth debating, and no costs were awarded against the group.

Jenny Mason