

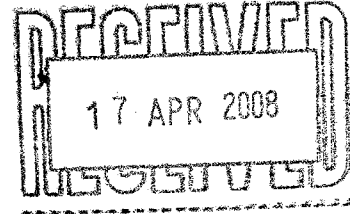


Department of Planning and Community Development

Enquiries: 03 9637 9690
Contact: Nicole Maloney

14 April 2008

As Addressed



Dear Sir/Madam

**RE: OCEAN ACCESS BOAT RAMP, BASTION POINT, MALLACOOTA
ENVIRONMENT EFFECTS STATEMENT
EAST GIPPSLAND PLANNING SCHEME, PERMIT APPLICATION 162/2007/P
INQUIRY DIRECTIONS**

A directions hearing was held on this matter on Monday 31st March in Melbourne. Following this hearing the project will now proceed to a full public hearing on the Environment Effects Statement.

Hearing arrangements

The Inquiry hearings will commence in Mallacoota on **Monday 14th July 2008**. An outline of the hearing is provided below in Table 1 and a detailed timetable will be circulated in May based on the original timetable from September 2007.

Subject to exhibition of further materials, the timetable will be constructed based on the original 'request to be heard' forms received last year.

Representation at the hearing

The Inquiry notes that some parties (for example the Save Bastion Point Campaign) are representing other groups. Clear authorisation to represent other parties at the hearing is needed.

1. The Inquiry directs that where a submission is being made on behalf of another group or individual, written authorisation to make that submission must be provided at the hearing.

Table 1 – Hearing Outline

Item	Location	Date
Site Inspection and opening submissions	Mallacoota	Monday 14 th July
Submissions	Mallacoota	Tuesday 15 th July
Submissions	Mallacoota	Wednesday 16 th July
Submissions	Mallacoota	Tuesday 22 nd July
Submissions	Mallacoota	Wednesday 23 rd July
Submissions	Melbourne	Monday 28 th July
Submissions / Aboriginal Cultural Heritage Expert Theme Day	Melbourne	Tuesday 29 th July
Marine and Terrestrial Ecology Expert Theme Day	Melbourne	Wednesday 30 th July
Coastal Processes, Coastal Engineering Expert Theme Day	Melbourne	Thursday 31 st July
Coastal Management, Coastal Geomorphology Expert Theme Day	Melbourne	Monday 4 th August
Economics and Planning Expert Theme Day	Melbourne	Tuesday 5 th August
Tourism and Recreation Expert Theme Day	Melbourne	Wednesday 6 th August
Biosphere, Landscape, Arts Expert Theme Day	Melbourne	
Marine Safety and Boat Operations Expert Theme Day	Melbourne	Thursday 7 th August
Reserve Day	Melbourne	Monday 11 th August
Reserve Day	Melbourne	Tuesday 12 th August

Group membership

Where a submission from an incorporated group is being presented, a copy of the group membership list (financial members) should be provided for the public table in the hearing room. Where a group is not incorporated (eg a coalition or similar), a list of active members and supporters should be provided.

Expert witnesses

A number of parties are proposing to call people with 'expertise' in some fields, such as boat handling in the local conditions at Mallacoota. In general, the Inquiry will treat such people as 'submitters' but acknowledge their experience as appropriate. Cross examination of such people will generally not be allowed by the Inquiry.

As advised previously, the Inquiry is proposing to hear expert evidence from parties in a series of 'theme' days to ensure to the greatest extent possible that experts on a particular subject are all present for that discussion.

At the request of the major parties calling evidence, these sessions will be held in Melbourne to minimise costs. The theme days are as proposed in Table 1. East

Gippsland Shire Council have indicated they will call experts in a number of areas including:

- Native vegetation
- Coastal engineering/coastal processes
- Aboriginal cultural heritage
- Planning (peer review)

The Save Bastion Point Campaign has indicated it will call experts across a range of fields including:

- Economics/Cost Benefit Analysis
- Beach recreation
- Surfing economics
- Coastal management
- Beach safety
- Seamanship and marine safety
- Coastal geomorphology
- Marine habitat
- Geology/geo-scientific values
- World biosphere reserve
- Landscape architecture
- Heritage conservation
- Tourism
- Local and regional arts values
- Local government policy and strategy

The Inquiry needs to be clear on the number and subject of experts to be called to ensure the timetable can be finalised accurately.

- 2. The Inquiry directs that all parties provide a complete list of expert evidence to be called (with names if possible) by close of business on Friday 6th June. The information should be provided identifying approximately how long is needed for the initial expert presentation and which theme it will be delivered under, from Table 1 above.**
- 3. The Inquiry directs that copies of expert witness statements be circulated by close of business on Friday 27th June 2008.**

Copies should be circulated directly to parties as shown in Table 2. Generally only those parties calling expert evidence are entitled to receive expert witness statements. Expert witness statements should cover to the maximum extent possible, the material to be delivered at the hearing presentation.

Table 2 – Expert Evidence Circulation

Organisation	Address	Number of copies of expert evidence to be provided
Planning Panels Victoria	Level 1 8 Nicholson Street East Melbourne VIC 3002	4 hard copies plus electronic copy
East Gippsland Shire Council	Mr Mathew Sherwell Maddocks 140 William Street Melbourne VIC 3000	2 hard copies for Council use 1 hard copy for display in Mallacoota (Outreach Centre or other appropriate venue) 1 hard copy for display in Bairnsdale (Council offices) 1 hard copy for display in the hearing room (5 copies in total)
Save Bastion Point Campaign	PO Box 192 Mallacoota 3892	2 hard copies
Department of Planning and Community Development	Mr Andrew Horner DPCD 71 Hotham Street Traralgon VIC 3844	1 hard copy
Department of Sustainability and Environment	Mr Anthony Costigan DSE 71 Hotham Street Traralgon VIC 3844	1 hard copy

Hearing presentations and cross examination

The Inquiry hearing is intended to be conducted in a relatively informal manner. However, people attending the hearing should be courteous and allow submitters to speak without being interrupted or distracted. Only the Inquiry may ask questions of submitters. If a submitter would like a point clarified, a request must be put to the Chair.

However, if a submitter wants to comment on another submission, the comments should be made as part of their own submission. Cross-examination will only be allowed of expert witnesses and must be directed towards established matters of fact or professional opinion. Submitters and advocates will not be subject to cross-examination.

Written Submissions at the Hearing

If further written material is to be provided to the Inquiry, a minimum of 10 copies (hard copy) are required at the hearing:

- 3 copies for the Inquiry;
- 1 copy for DPCD;
- 1 copy for DSE if related to their environment portfolios;
- 2 copies for East Gippsland Shire Council;
- 2 copies for other major submitters
- 1 copy for the 'public table' at the entrance to the hearing room.

If photographs or maps are part of a submission, only one copy is required. The East Gippsland Shire Council is to establish a public document table for the duration of the hearing. A copy of each submission and all relevant reports, maps and plans referred to in submissions is to be available for all parties to view.

- 4. The Inquiry directs that the East Gippsland Shire Council establish and maintain a public documents table during the hearing.**

Matters to be addressed in submissions to the Inquiry

Having undertaken an initial review of the exhibited material and submissions, the Inquiry indicates, without prejudice to its deliberations or eventual findings, that in addition to the general merits of the proposal and issues raised by submitters, it is particularly interested in the following matters and the assumptions on which they may rest.

- Response to Assessment Guidelines including consideration of objective based performance approach and how it is met by preferred option
- Project description and assessment (Option 3) and how it relates to other possible facilities (eg fish cleaning, boat wash down, amenities block etc...)
- Planning context of the proposal and its relationship to the future growth of Mallacoota
- Coastal Processes, modelling, wave climate and sand movement, in context of submissions on this issue
- Impacts on Aboriginal cultural heritage values and local Aboriginal community input to date
- Social and economic impacts behind economic case in relation to other economic activities in Mallacoota
- Safety and risk management in relation to beach use and the marine environment
- Ecological and geological significance of the area and likely impact and management
- Visual amenity and landscape
- Impact on native vegetation
- Alternatives considered and rationale for the rejection of those alternatives (or alternative design elements) not taken forward for full assessment.

Material to be provided at the hearing

Plans and aerial photography of the subject site should be provided to assist in the understanding of key issues in submissions.

5. The Inquiry directs that East Gippsland Shire Council provide an A0 size aerial photograph of the subject site for use in the Mallacoota and Melbourne hearings.
6. The Inquiry directs that East Gippsland Shire Council provide A0 size plans of the subject site showing key features and issues for use in the Mallacoota and Melbourne hearings.

Draft planning permit conditions

A draft set of 'without prejudice' planning permit conditions for the vegetation removal were circulated late in 2007. DPCD should liaise with East Gippsland Shire Council and advise the Inquiry as soon as possible whether this is still the preferred set of conditions for the planning permit if issued.

The requirement for the preparation of draft conditions is **not** an indication that the Inquiry is likely to recommend approval of the permit application to the Minister for Planning. Rather, the draft conditions provide guidance to the Inquiry and submitters as to the conditions and the wording of conditions that may be applied, if the Inquiry were to recommend approval.

Site inspection

The Inquiry will undertake an accompanied inspection of the boat ramp site and surrounding areas on the morning of Day 1 of the hearing (Monday 14th July). The Inquiry proposes to limit the numbers on the inspection to minimise impact and for safety reasons. A maximum of two representatives from the major submitter groups can accompany the Inquiry.

The Inquiry is interested in gaining from the site inspection:

- A general appreciation of the site and the position of launching ramp and breakwater in the landscape including named features/areas (eg the Nursery surf area) where possible
- Existing use patterns
- Environmental features (remnant vegetation, coastal habitat etc...) that may be material in its consideration of environmental effects
- Cultural heritage features that may be material in its consideration of environmental effects

To assist with the site inspection the Inquiry would like the following marked:

- Marker buoy indicating the approximate end of the proposed breakwater (if this can be achieved safely)
- Height indication of breakwater at the beach end

At the request of submitters the Inquiry will also view the launch of a commercial craft from the existing ramp (weather and safety permitting).

The site inspection is not an opportunity to make submissions to the Inquiry but rather an opportunity for members of the Inquiry to gain a good appreciation of the site and issues.

7. **The Inquiry directs that East Gippsland Shire prepare a draft itinerary for the site inspection in consultation with DPCD, DSE, Save Bastion Point and other submitter groups (as appropriate) and provide it to the Inquiry by close of business on Friday 27th June 2008.**

New reports

CES Report prepared for DSE

The Inquiry is unclear as to the status of this report but its position in principle is that if the material is to be considered in the public hearing it should be placed on exhibition and the community given the chance to comment on it prior to the hearing. At the directions hearing the East Gippsland Shire Council indicated they would consider their position in relation to the material and advise the Inquiry.

8. **The Inquiry directs that East Gippsland Shire advise the Inquiry of their position on the CES Report (Supplementary Report dated January 2008) by Friday 23rd May 2008.**

Ancillary facilities report

East Gippsland Shire Council indicated they are preparing material on ancillary facilities which should be available in mid May. When this material has been prepared the Inquiry will require its exhibition for public comment.

9. **The Inquiry directs that the two reports mentioned above be placed on public exhibition as soon as possible for at least four weeks prior to the commencement of the main hearing. The proposed details of the exhibition should be discussed with the Inquiry.**

Submissions on this new material will be received by the Inquiry and alterations made to the timetable accordingly to accommodate any new requests to be heard.

Additional reports required

The Inquiry notes that there are a range of other reports that it is interested in including:

- Mallacoota Foreshore Management Plan
- LCC East Gippsland Area Recommendations and East Gippsland Area Review Recommendations
- DSE Site Assessment Report of 2005
- Any relevant service or management agreements between DSE, EGSC and Gippsland Ports

10. East Gippsland Shire Council should provide 3 copies of the reports above to the Inquiry and make copies available on the public table during the hearing.

Additional agencies, organisations and individuals to be contacted

The Inquiry notes for the benefit of all parties that it will be contacting the following to ascertain their views on the project:

- Marine Safety Victoria (marine safety)
- Parks Victoria
- Aboriginal Affairs Victoria (Aboriginal heritage issues)
- Department of Primary Industry (fisheries issues)
- Gippsland Ports
- Gunnai-Kurnai People
- Others as the Inquiry considers necessary

Copies of any correspondence received from these agencies by the Inquiry will be circulated to parties and be made available for inspection during the hearing.

Additional Inquiry Member

Following the passing of Dr Leon Collett last year, the Inquiry is in the process of requesting the appointment of a third member. Parties will be advised when this has occurred.

Correspondence from DSE and Save Bastion Point


Recent correspondence from DSE and the Save Bastion Point Group is attached for information.

Provision of material to the Inquiry

Where possible, all material requested by the Inquiry and submissions made to the Inquiry should be provided in hard copy form and electronic form (preferably MS Word or unlocked PDF files).

Please contact Nicole Maloney in our office on 03 9637 9690 with any queries.

Yours faithfully



Nick Wimbush
INQUIRY CHAIR



Department of Sustainability and Environment

PO Box 500
East Melbourne Victoria 3002
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Facsimile: (03) 9637 8100
ABN 90 719 052 204

10 April 2008

Maria Marshall
Partner
Maddocks Lawyers
140 William Street
MELBOURNE VIC 3000

By email: maria.marshall@maddocks.com.au

Dear Ms Marshall,

OCEAN ACCESS BOAT RAMP – BASTION POINT, MALLACOOTA EAST GIPPSLAND PLANNING SCHEME, PERMIT APPLICATION 162/2007P

This letter reflects amendments to our letter of 20 March 2008 that were agreed between our respective counsel on 31 March 2008.

I refer to your client's written list of questions of clarification, provided to the Department of Sustainability and Environment (Department) on 6 March 2008. The Department has reviewed its submission to the Inquiry in this matter dated 5 September 2007 and its role in this matter. The Department had raised matters relating to cultural heritage, useability of the ramp, marine safety and the safety of other users, as matters for consideration by the Panel, but did not wish to claim expertise in these specific areas and is not able to comment on policies relating to these matters in the course of the panel hearing, other than outlining to the Panel the relevant policy framework in a neutral manner.

Comments made in the submission, that the Department does not support or endorse any of the options set out in the EES, were not intended as Departmental advice in relation to the Proposal, as the responsible governmental authority.

Instead, the Department's concern in this matter is only with its responsibilities in relation to the use of Crown land (under the *Coastal Management Act 1995*) and in relation to the impact on native vegetation by the proposed Project (in the context of the native vegetation framework, the *Planning and Environment Act 1989* and the *Fauna Guarantee Act 1988*). These are the only matters the Department will refer to in the Panel hearing.

The Department is committed to this proposal proceeding in the form recommended by the Panel and intends to take a constructive role in achieving this outcome throughout the remainder of the panel process.

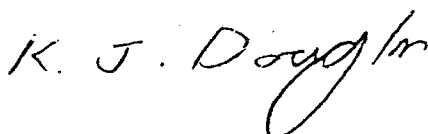
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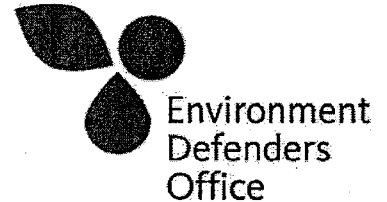
The Department will follow the recommendations of the Panel in this matter. The Department, however, notes it cannot fetter the Minister's decision under section 40 of the *Coastal Management Act 1995*.

Yours sincerely



Kirsty Douglas
Director, Legal Services

CC: *Nicole Maloney, Panel Coordinator, Planning Panels Victoria*
Kate Nelson, East Gippsland Shire Council
Alan Freitag, Department of Planning and Community Development
Adrian Williams, Department of Planning and Community Development
Brendan Sydes, Environment Defender's Office



3 April 2008

Nicole Maloney
Planning Panels Victoria
Department of Planning and Community Development

By email and facsimile: Nicole.Maloney@dpcd.vic.gov.au; 92083680

Dear Nicole

**Ocean Access Boat Ramp, Bastion Point, Mallacoota
Environmental Effects Statement
East Gippsland Planning Scheme, Permit Application 162/2007/P**

I refer to the Directions Hearing of 31 March 2008.

At the request of the Panel, I confirm that the following groups will no longer be making separate submissions at the Panel Hearing, to commence 14 July 2008:

- Mallacoota Coast Action/Coast Care
- Friends of Mallacoota
- Surfrider Foundation, Far East Gippsland

Instead, the content of the submissions of the above bodies will be addressed in the submissions of my client, the Save Bastion Point Campaign. I advise that my client will now require six hours for submissions, rather than four and a half, as originally estimated.

I refer to the undertaking of the Panel at the Directions Hearing of 31 March 2008 that they will be contacting certain agencies, organisation and individuals to ascertain their views on the project. I request that the Panel include the Bidwal and Monaro people on this list of people to contact. The Bidwal and Monaro people are those with a specific interest and relationship to Bastion Point.

Yours faithfully

Elizabeth McKinnon
Solicitor

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