

Transcript of East Gippsland Shire Council Meeting, 7 July 2009

Transcript begins after submissions from public

- UNIDENTIFIED MALE:** ...to the current facility. Thank you for this opportunity to present.
- MADAM MAYOR:** Thank you very much. That concludes the oral submissions. Thank you very much to all those people who did speak this evening. So we do have a notice of motion.
- CR ROWE:** Madam Mayor, prior to going to the notice of motion – sorry, Councillor Gamble, may I move a motion that relates to speaking times for Councillors? I will move that as per section 7.18 of Local Law number 1 an extension of speaking time to ten minutes be granted to all Councillors when speaking on notice of motion 4.1.
- MADAM MAYOR:** Thank you, Councillor Rowe. Do I have a seconder for that motion?
- CR NEALE:** Yes, Madam Mayor.
- MADAM MAYOR:** Thank you, Councillor Neale. Is the motion opposed?
- CR ROWE:** I wouldn't mind making a comment to the motion, if I may?
- MADAM MAYOR:** You'd like to speak?
- CR ROWE:** I won't use the ten minutes that I intend to use in the next one. Just to say that this is without a doubt a very complex issue and I don't believe that limiting Councillors to three minutes, which is what our local law limits us to, will allow enough time to canvass all the issues we need to.
- MADAM MAYOR:** Thank you, Councillor Rowe. Do you wish to speak to the motion, Councillor Neale?
- CR NEALE:** No, that's fine.
- MADAM MAYOR:** Is the motion opposed? Does anyone else wish to speak either for or against the motion? If not, I put the motion to the vote. All those in favour? Thank you, the motion is carried. I now hand over to Councillor Gamble to read the motion.
- CR GAMBLE:** Thank you, Madam Mayor. My motion is that the East Gippsland Shire Council notes the Planning Minister's findings and recommendations and having assessed it's position move to establish a broadly based community advisory committee and appoint an independent facilitator to assist East Gippsland Shire Council in developing the detailed design of the minor upgrade of the existing ramp, taking into account the issues listed in the panel report and the Planning Minister's assessment.

MADAM MAYOR:

Thank you, Councillor Gamble. Do I have a seconder? I would like to second that motion. Councillor Gamble, you wish to speak to the motion?

CR GAMBLE:

Yes, thank you, Madam Mayor. I consider this motion or this – is undoubtedly the most important proposal that has been brought before this Council in many ways. It is more important than just a new boat ramp. We are proposing to destroy a beach and rock pools and reef that has taken more than 65 years to create – total obliteration of this area of the national park. It has been a long saga for all concerned. The Mallacoota community, Councillors past and present, offices in preparation of all submissions since – going back to 1999 anyway, but it goes before that, starting with the concepts of upgrading the existing facility in 1999 by Coastal Engineering Solutions at a total cost, including the minor sea walls either side, of about \$800,000. Now, that has blown out to about \$4,000,000 for this Option 3B. There is a lot of things this community could with \$4,000,000. Now, is this going to be user pays, we could ask. Now, having absorbed all the information available including the Victorian Coastal Strategy 2008 and the previous ones, the Environmental Effects Statements, the panel hearing report, the Planning Minister's Assessment, significant input – literally hundreds – from the Mallacoota community for and against including a recent letter from a surfer lawyer in New York who gave a strong argument for our case, knowledge for the total area and the sea conditions prevailing. All these have been absorbed by all of us over this time. As a boating person all my life, as a Raymond Island boy who had no option but to be a boating person, I believe it is time to change course to avoid the rocky outcrops and the unnecessary dangers associated with this design. Despite all the efforts of the past, the enormous expense – I understand our costs to be in the order of \$600,000 over this time – we could almost have rebuilt the ramp in its present location with wing walls and all. We now have the opportunity to consider all the new information and reassess the direction we are going, which is, at the moment, straight towards the rock pools.

The panel members appointed by the Planning Minister who prepared the searing report are all extremely well credentialed and experienced. There is no question about that. The panel Chair, Nick Wimbush, is a senior panel member with Planning Panels Victoria, was an executive director of Western Coastal Board, that is from Geelong to the West – quite a responsibility – and on numerous planning hearings for the Minister. Very experienced, as are all the other planning members – panel members. The panel sat for 14 days and heard from approximately 70 submitters and 13 expert witnesses while 482 submissions were received with 87% objecting to the new ramp proposal and/or supporting an upgrade of the current ramp. Clearly the

panel concluded that there is no overall societal benefit in progressing the development proposals further and recommends that they be discarded.

The panel found that the landscape and visual values of Bastion Point are very significant and that all proposals will have significant impact on these values through the prominence of the breakwater and a two – and a two lane road construction whether it is cutting down the ramp or along the beach. The panel also contended that the options will impact on the spiritual values associated with the sense of place, especially in relation to the significant Aboriginal cultural heritage at Bastion Point as we have heard tonight. The panel concluded that the elevated two lane road along the beach would create a significant alienation of the foreshore, as one could imagine, especially from the perspective of the values imbedded in the general policy context of the coast and held by many in the community. I understand that up to 8,000 tonnes of rock may be required to construct this breakwater, up to 3,000 cubic metres of reef habitat would be removed and the site would require ongoing dredging. The rock wall would be over three metres high and in the order of 15 to 20 metres wide at the base – that’s a major structure on the beach, almost multi-storey.

The panel found that the inherent wilderness values, significant coastal landscape and natural beauty of this area so close to the township are given prominence in nearly all the policy arguments cited. The principle trust of this policy is, in inverted commas, quoting ‘recognition of the natural significance, wilderness, landscape, quality of the Croajingolong National Park coast which the Bastion Point and beach area sit.’ The Victoria Coastal Strategy delineates the hierarchy of four principles to guide coastal planning, being protection of significant environmental features, sustainable use of natural coastal resources, providing direction for future decision making, and when all of the above provisions have been met, facilitates suitable development of the coast, that is development of the existing site. We should support the panel’s view that these principles are not met by the proposal put forward and that the area will become less desirable as a wilderness destination. It is the unmodified nature of Bastion Point which contributes to its significant landscape and recreational value and strong sense of place within the easy walking distance of the Mallacoota township.

The panel also concluded that the, in inverted commas, ‘The economic case of the proposal based on the increased recreational ocean boating is flawed and that the economic prosperity of Mallacoota rests on sustainable, nature-based tourism and low impact activities comparable with nature-based tourism.’ The panel contended that the significant landscape and social impacts resulting from all the development options

involved in breakwater and ramp at site three will adversely impact on recreational and tourism in Mallacoota. There also appears to be an unacceptable level of uncertainty in relation to the sediment entrapment, which raises the important question regarding the practical operation of the facility, ongoing dredging costs and the need for overall – and indeed the overall project viability. The panel also found that the considerable advantages for safety arising from option three are more than offset by unacceptable risks introduced by the proposal. The panel had little doubt that the risks to inexperienced users in difficult sea conditions would be at the upper end of extreme. We know that the local surf life saving and the local SES units have experienced strong concerns with safety for the boating public using the Council's proposed development. Surely an easier way to deal with the concerns with public safety would simply be to better manage designated swimming and non-swimming areas as managed through the Marine Safety Victoria and Gippsland Ports. And finally to quote from the VCS 2008, Victorian Coastal Strategy, 'The value of informal recreation such as walking, recreation fishing, sailing and site seeing has been estimated to be more than 1.9 billion dollars.' That's not million, that's billion. This shows how significant coastal eco system services are and how protecting natural coastal ecosystems is crucial for their inherent value and their contribution to Victoria's economy.

Now, I say this not only as a Councillor but as an engineer with significant experience in coastal engineering. I was a consulting engineer on the canal development in Paynesville and we were involved with the extensive Environmental Effect Statement for that project, and I think I understand some of the problems that are going to be associated with this development.

MADAM MAYOR:

Thank you, Councillor Gamble. As the seconder of this motion, I would now like to speak. I thank Councillor Gamble for putting this motion to enable Council to debate this issue. I think it's very important that Council reassesses its position at this point. I refer to officer's report to Council at Council meeting of the 23rd of August 2005 and quote, 'Should approval be granted following exhibition and consideration of submissions, Council would need to separately determine to construct the facility and to determine how such construction and maintenance would be funded. I also refer to the Minister's recent assessment and quote, 'Should East Gippsland Shire Council as the proponent seek to implement a new ocean access boat ramp,' close of quotes. This is not a directive, I don't believe, from the Minister. I think the Minister is expecting Council to reassess its position at this point. I also thank Councillor Gamble for his motion because I think that it's a matter of urgency that Council does reconsider its position. We know – well, we – some of the Council staff have been involved in talks already with State

and Federal Government about how such a project, if it was to be approved, would be designed and built, and we are told a decision is imminent on some funding from Regional Development Victoria to take the next step. So it is a matter of urgency. There have been comments that two of the Councillors are not here this evening to take part in this debate, but I think considering that urgency it couldn't be – this decision could not be postponed any longer. I also note that of the nine Councillors, six Councillors have never voted on whether this proposal should proceed so I think it's quite appropriate that this group of Councillors does consider this proposal and decide whether we're committed to going ahead with it. While the decision of the 23rd of August has bound Council to a certain direction, that's something different to being committed to a direction.

I am going to just briefly outline the main reasons why I do not support Council continuing to pursue any of the options exhibited in the EES. The first is that none of the options are supported by the panel's findings; the second is that I don't believe that it's the general wish – the majority wish – of the community, but I do believe there is a way forward. I've placed a great deal of weight on the Minister's independent panel process. When I was first elected to Council in December 2005, this process was already well in train. I did have doubts and misgivings about the options and some aspects of the process, however I was persuaded to let the panel process act as the mechanism for evaluating the relative benefits or otherwise of the proposals, and I understand that the community members thought that way, too, and in fact Council encouraged the community to use the panel process in that way.

The panel process was rigorous and thorough. I note in the Minister's assessment that he thanked the panel members for their work and nowhere in his report was he critical of the panel and the panel process. The panel's recommendations are not line ball. They're strongly negative. The environmental effects of options 1, 2 and 3 as exhibited and 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. I will just outline a number of the points, on the grounds on which I believe we should follow that direction.

The first one is safety, and quoting the panel again: 'That while advantages for safety arising for option 3 are considerable, they are more than offset by the unacceptable risks introduced by option 3.' Council, I believe, may very well increase its risk exposure dramatically if it went ahead and constructed option 3 despite this recommendation from the panel.

The cost of the detailed design and construction, and the cost of maintenance of the facility, is something that hasn't been addressed and as we've heard and Mr Perry so clearly outlined there is a great deal of uncertainty about how much the dredging might cost at option 3B, and also around the amount of sediment transport rates, and if they are higher than estimated then obviously that will severely impact the cost of the dredging. I think there is a very weak economic case and again quoting the panel's report: 'The proposal will not affect off-peak tourism and will negatively affect the marketability of the wilderness coast aspect of Mallacoota. It may result in a drop of tourist numbers in excess of the gains.

I hear the need to grow businesses and the school and so on in Mallacoota but I'm not convinced that building the boat ramp at option 3B is the way to do that. Commenting on the landscape, cultural heritage and visual impacts: these values are very significant and should be given considerable weight in the overall evaluation. Last year, as we all know, this area was named as the Wilderness Coast, one of only very few areas of national significance in Australia. It was also included on the National Trust Register. We live in a different world than we did five or ten years ago. I really believe that our values and the way we value, relate to and respect our environment have changed and will continue to change. This Council knows that. That's why we now tag ourselves as 'naturally magic' and it's also why we have a very strong environmental sustainability strategy and why we look for opportunities to promote nature-based tourism. I believe this is also reflected in the strengthening of community opinion against the exhibited boat ramp proposals.

And finally another reason why the panel report doesn't support the building of option 3B, because I think there is very doubtful strategic support for this option. I think there is doubt that it accords with the Victorian Coastal Strategy, the panel says the proposal does not have strong strategic support, the Gippsland Coastal Board did not support any of the options in its submission to the panel and considered that a minimal upgrade of the existing ramp should have been explored. I've been told that it was a draft of the 2008 Victorian Coastal Strategy which they were referring to and the final strategy is different, but I think if Council was to proceed with the preferred option we would certainly need very clear legal advice to understand whether it did align with the Victorian Coast Strategy.

The second reason I don't think Council should proceed along this path is that I don't believe it's the general wish of the community, and we've seen that with 87% of the 482 submissions to the panel being generally against Council's preferred option. Some people are still referring to

the plebiscite that was conducted nine years ago which apparently indicated community support. I believe that's a falsehood because I think things have changed so much since then.

This Council has a strong commitment to our communities. In passing a new Council plan last week, we committed ourselves to working more closely with them and to develop community plans with each of them. This is a very different way of working than five or ten years ago. We now encourage our communities to work together to determine what sort of place they want to be and how they want to grow and develop. I believe that we have been hearing loud and clear from the people of Mallacoota what their values are.

I do believe there is a way forward. I believe that we're at a place now where we have a unique opportunity. I don't hear – well, I think we did get one letter that said, 'Do nothing,' but apart from that one letter I don't hear anybody saying, 'Do nothing.'

I salute Council for undertaking this most vexed and difficult issue. I believe it was brave and commendable to be the proponent, however I consider that the proposals have been tested and found wanting and should no longer be supported. It's time to work with the community to develop a minor upgrade at the existing site, one which addresses the most important safety issues, which the Minister has highlighted and which we are all very aware of. We can do that by looking at strengthening the safety zone rules and there are a number of ways of doing that. Indeed, the community is already suggesting ways that might be done. This is an option which has not yet been explored. This option is not anti-tourism as the President and Vice President of LEBTA and the submissions from the Regional Business and Tourist Association and Destination Gippsland imply. It would support the values for the development of a different sort of tourism market. The community are calling out loud and clear for Council to work with them to develop up this option with them. I support Councillor Gamble's motion.

CR ROWE: Madam Mayor, may I speak in opposition to the motion?

MADAM MAYOR: Certainly. I was about to invite you.

CR ROWE: Well, firstly I would like to thank the members of the community who have travelled here tonight to express their views on this very important matter. I know it is a long way and it's a long way home again, so thank you. I would also like to highlight my displeasure at this notice of motion being put before Council tonight when, unlike the Mayor, I believe there is no great urgency and at a time when the mover was fully aware after granting them leave of absence that two of his colleagues would not be present here tonight to participate and debate

or vote on this issue. I would like to foreshadow that if this motion is successful this evening then a rescission motion is likely to be lodged to ensure that all Councillors have a chance to participate rather than the insult to democracy that is being forced upon us here today. But on to the question at hand.

The question before us, I believe, is quite a simple one. Do we as a Council continue with the process of resolving the issue of safe blue water access in Mallacoota, or do we stop that process in its tracks to follow a recommendation that is unexamined by science, unexamined by the community and is based on what can only be described as a flawed assessment. The basis of the motion before us is at first glance almost sensible. That is, until one realizes that the recommendation itself drawn directly from the panel is supported by a report that contains bald misstatements of fact, misunderstandings of the process and errors so fundamental that to not question the recommendation would be a dereliction of our duty. I am sure that my colleagues have read the entirety of the panel report, some with more background and intimate knowledge than perhaps others, and so may well have taken the words in the report at face value. I would like to draw my colleagues' attention to page 50 of the report and I have taken the liberty of printing the appropriate part of that page for your reference. I have a large one to pin up on the board so that members of the community can see what it is I'm talking about.

This type of graph is used throughout the report to show the panel's assessment against specific objectives. This particular graph reports against the objectives of safety. Now, in these tables the letters 'A', 'B' and 'C' are used along with traffic light colours to indicate whether an option meets an objective well, partially or poorly. Table 10, which is the bottom line on that sheet is presented as a summary of the table above. As you can see, all but the 'do nothing', which is the one on the far left, option have been shown as C, or red, in table 10 meaning that those options are assessed as meeting the objective poorly. This assessment result has been highlighted to Councillors by those supporting the panel's recommendation, ad nauseum, we have even had it again this evening, and it has also been relied upon by the panel in their final recommendation. That this would be highlighted is to be expected. By the panel's own commentary, this objective safety is a significant one and I agree as do most of the people who have emailed, written and phoned me about the issue in the past five years. The problem is, table 10 is wrong. You could not add up two As, one B and a C and come up with an overall assessment of C. So rather than a summary of the previous table, it appears it is a duplication of the last item – a cut and paste error – although some may suggest a more sinister reasoning. But this error has continued unchecked throughout

the report right down to the final assessment which it informed. So we find ourselves with an assessment that has relied upon a cut and paste error on the most significant objective of safety. The panel report refers throughout to the draft Victorian – I've finished with that one now. The panel report refers throughout to the draft Victorian Coastal Strategy – in fact, holds it up as the doyen of policy and gets rather caught up in a discussion of whether a regional ramp needs to have ocean access or whether inlet access will suffice. A red herring, really, as it wasn't the Coastal Strategy that required Council to revisit the boat ramp in the first place. But, of course, the Coastal Strategy in its final form, as the Mayor indicated, differs from the draft and no longer supports the assertions made in the report.

So we have an assessment that has relied upon a draft government policy that was not adopted and therefore does not exist in any policy sense. The report refers to the very late change of heart by DSE regarding access to the ramp as 'design on the run by Council'. It refers to Council as a 'reluctant proponent'. At no time in my involvement with this issue has Council ever been reluctant to act as the proponent and the only design being done on the run was being done by DSE via an unsigned, last minute submission which was then subsequently contradicted by themselves in a further submission at the panel hearing. The panel report also refers to the tourism marketing of Mallacoota and the negative impact any option other than the 'do nothing' option would have upon the tourism industry and therefore the economy of Mallacoota. Yet we have, and we've heard this evening, the East Gippsland Regional BTA, the Mallacoota and District BTA, Lakes Entrance BTA and Destination Gippsland – all organizations created by the business and tourism community to ensure the ongoing viability of their industry – and these organizations have all written to us exclaiming upon the virtues of option 3 and how imperative it is for their success. How can there be such divergent views? How can the panel make commentary about the tourism industry affects that are in direct conflict with those in the tourist industry and the policy that governs government investment in that particular industry? So we have commentary about the process that is based on misstatements of fact or misunderstandings of the process. Now, there are many more comments I could make about the body of the panel report but I believe you get the gist of what I'm saying.

Finally, the panel report leads us to an option that was neither explored in the EES nor in the panel report. Indeed, under the guidance of DSE it was rejected from the EES process and now the panel has the gall to recommend that it does not need the same science applied to it as all other options. This option apparently does not need an EES process to examine the impacts upon cultural heritage, upon coastal processes,

upon ecology and geology, upon visual amenity, upon the community, the economy and upon safety. This option, apparently, does not need that process – the process that was required and delivered on every other option. The lack of this process effectively rules out any community or stakeholder input despite the rather offensive commentary in the report about Council’s supposed lack of consultation. One rule for the goose and one for the gander, perhaps.

So, we have a recommendation that an alternative option be progressed that has not and will not be tested by science or the community – an option that appears to be above such a public process. Now, the community ballot – we’ve heard a few comments about that this evening. I believe, it is important to mention here, and unlike the Mayor I believe it is still relevant. I would like to highlight just a couple of things about the ballot. I have just got copies of the plan that was included in that ballot. There’s enough for some to go to the members of the community as well. The fact remains that the result was effectively a two to one agreement on providing an upgraded ocean access for boats at the existing site at Bastion Point. This was the map that was included with that particular community ballot. Secondly, what they were voting on was not a minor upgrade, but rather an upgrade that included not one rock wall but two rock walls and no less than two ramps, one much longer and steeper than what is currently here. A copy of the design that you’ve got there, that was 66%, or thereabouts, of the Mallacoota community saying yes to two substantial rock walls at Bastion Point. So we have a recommendation that flies in the face of an independently run community ballot.

So what we as Councillors now have before us is an assessment that has relied upon a cut and paste error on the most significant objective of safety, an assessment that has relied upon a draft government policy that does not now exist, and commentary about the process that is based on misstatements of fact or misunderstandings of the process. All of this has led to a recommendation from the panel and a request now before Council that an alternative option be progressed, an option that has not and will not be tested by science or the community, an option that flies in the face of an independently run community ballot and an option that the responsible Minister has already rejected. I’ve never heard anything more farcical in my life.

The motion before us tonight, it expects us Councillors to accept this loosely formed, baseless, untested recommendation as enough evidence to halter long drawn out, detailed and expensive process in its tracks. A process that is supported by a very large sector of our community, supported by the BTAs of Mallacoota, Lakes Entrance, East Gippsland and Gippsland, supported by a community ballot by local,

state and federal tourism policy, by the biggest user of the ramp itself the abalone co-op and by the State Government through ministerial direction. We are being asked to set aside all of these community members and community organizations, that we set aside the results of an independent community ballot and all of those policy documents and tiers of Government. We are being asked to set them aside and instead take up this loosely formed, baseless, untested recommendation. That would not be serving our community. That would not be taking our obligations seriously. The only responsible and prudent action that we as Councillors can take is to continue with the construction of a safe boat ramp as per the Minister's direction and I would therefore like to take this opportunity to move an amendment to that effect.

MADAM MAYOR:

Would you like to state your amendment, Councillor Rowe?

CR ROWE:

I will, but I prepared these ones earlier so that Councillors and our Governance Officer has the opportunity to read them. I will read the amendment explaining the insertions and deletions, but if I may, **MADAM MAYOR**, after that read the new motion as it would sit with the amendment. With the original motion, we leave that. We remove the words 'East Gippsland Shire'; we leave 'Council notes the Planning Minister's findings and recommendations'; we insert 'in relation to the proposed ocean access boat ramp Bastion Point, Mallacoota'; leave 'and'; and remove 'having reassessed its position moves to'; leave the word 'establish a'; remove 'broadly based'; leave 'community advisory committee'; insert 'as detailed in its decision of the 23rd of August 2005'; remove 'and appoint an independent facilitator'; leave 'to assist'; remove 'East Gippsland Shire'; leave 'Council in'; insert 'working with DSE MSV and Gippsland Ports to'; leave 'develop'; and insert 'specific construction'; remove 'detailed'; leave 'design'; insert 'as highlighted in the Minister's assessment subject to receiving Government financial assistance to undertake the design work'; and remove 'of the minor upgrade of the existing ramp taking into account the issues listed in the panel report and the Planning Minister's assessment'.

Out of all that mess, the motion would now read: 'That Council notes the Planning Minister's findings and recommendations in relation to the proposed ocean access boat ramp, Bastion Point, Mallacoota, and establishes a community advisory committee as detailed in its decision of the 23rd of August 2005 to assist Council in working with DSE, MSV and Gippsland Ports to develop the specific construction design as highlighted in the Minister's assessment subject to receiving Government financial assistance to undertaking the design work.'

CR GAMBLE: Point of order Madam Mayor. That is not an amendment, but totally contrary to my motion. Totally contrary and it's certainly not an amendment.

MADAM MAYOR: Thank you, Councillor Gamble.

(recording blank 34:21 – 36:55)

MADAM MAYOR: Just to rule on the point of order which was raised by Councillor Gamble, which – Councillor Gamble, I assume that you are referring to L7.6 in our local law, meeting procedure. So my understanding of that section of our local government law is that an amendment does need to be related to the original motion and I think the motion that has been – or the amendment that has been moved by Councillor Rowe in some ways aligns with the original motion but I think the intention which is to – which relates to the Minister's assessment rather than the panel's assessment and recommendation is different. So I will therefore – I therefore uphold that point of order.

CR ROWE: I move a motion of no confidence in the Mayor's ruling.

MADAM MAYOR: On what...

CR GAMBLE: Madam Mayor, Councillor Rowe is just playing games here.

MADAM MAYOR: Councillor Gamble...

CR ROWE: Sorry. I have the right to move.

MADAM MAYOR: Councillor Rowe, would you like to refer to the area in the local law that you are...

CR ROWE: It is the exact area that you're referring to: 'a motion having been moved and seconded may be amended by leaving out, inserting or adding words,' which is what I have done, 'that must be relevant to the original motion and framed so as to complement it as an intelligible and consistent whole.' I would suggest that changing the option is still relevant to the motion, which was 'Will this Council proceed with the design phase of the ocean access boat ramp at Mallacoota?' Which particular option is beside the point. It is relevant to the motion. It is just merely stating a different option. It is still showing that we will proceed.

MADAM MAYOR: Okay, so we have Councillor Rowe's motion.

UNIDENTIFIED MALE: (38:44)

MADAM MAYOR: No, I think I need to deal with this one first. So I need a seconder for Councillor Rowe's motion. Do I have a seconder.

CR FRESHWATER: Yeah, I'll second that.

MADAM MAYOR: Thank you, Councillor Freshwater. Do you wish to speak to the motion, Councillor Rowe?

CR ROWE: I believe I already have.

MADAM MAYOR: Councillor Freshwater, you wish to speak to the motion?

CR FRESHWATER: Well, I believe as it was read out just then that what Jane has put forward is quite relevant. It is a true fact. She has stopped within the Act.

MADAM MAYOR: Is the motion opposed?

CR GAMBLE: Yes, I will oppose the motion.

MADAM MAYOR: Thank you. It's just been pointed out to me that this is actually a procedural motion, so actually we probably shouldn't have debate on this motion. I will now put the motion to the vote. All those in favour? Sorry, you're up, Trudy. Against? The motion is carried. So that means we have a new substantive motion?

CR ROWE: We have an amendment that needs a seconder.

MADAM MAYOR: Oh, sorry. Beg your pardon.

CR GAMBLE: May I just ask a question, please, Mayor?

MADAM MAYOR: Yes, Councillor Gamble.

CR GAMBLE: Can this notice of motion – this amendment – be put to the later time (40:10)? I will take it up legally because I don't believe it's right. In my experience, I've been in council for 10 years and believe you can't (40:15) and I believe it's wrong. Is there a means of questioning...

(recording blank 40:21 – 40:30).

CEO KOZLOWSKI: Councillors, any decision of Council probably could be challenged legally in terms of the process by which that decision is made. My advice to you is that what has just occurred is a decision of the majority of the Council to proceed in a particular manner in relation to the meeting and contrary to the Chairperson's advice or ruling and therefore the local law allows for that process to now continue.

(inaudible 41:05).

MADAM MAYOR: So we have an amendment? Do I have a seconder for the amendment?

CR FRESHWATER: I second the amendment, Madam Mayor.

MADAM MAYOR: Thank you, Councillor Freshwater. Do you wish to speak to the amendment, Councillor Rowe?

CR ROWE: I shall. The major points I would like to make have already been made in my previous comments and I won't go through those again, however I would like to read the components of Council's resolution of 23rd of August 2005 which relate to the formation of a community advisory group as I referred to in the amendment, and they are: 'An advisory committee be appointed by East Gippsland Shire from the Mallacoota community to work with design engineers to develop a design for the ramp and associated facilities that meet the visual amenity standards contained in the report of Pryor Knowledge Pty Ltd; the community advisory committee be required to provide advice to Council on the establishment on an environment management plan for the Bastion Point area and in relation to vegetation and habitat regeneration as commented on in the report on terrestrial ecology completed by Biosys Research Pty Ltd; and Council acknowledge its current role as the committee of management for the Crown foreshore land at Bastion Point; and that a community advisory committee be established to provide advice to the committee of management appointed to manage any upgraded facility on future operational matters.'

MADAM MAYOR: Thank you, Councillor Rowe. Councillor Freshwater, you wish to speak to the amendment?

CR FRESHWATER: I do, Madam Mayor. I believe there's been – firstly I will ask how you drew your conclusion that there's been no change in Mallacoota and the VEC report or census that was done. In fact, there is a quite lengthy article in one of the reports here from Pryor that has not only endorsed the VEC plebiscite but suggested that he has also taken into account more recent census done by the government of the population of Mallacoota. The assessment there has been a decline of about forty something people in the town and the age has risen.

MADAM MAYOR: Councillor Freshwater, I am sorry to interrupt. I am asking you to respond to the amendment, to just confine your comments to the amendment, please.

CR FRESHWATER: Well, I believe, Madam Mayor, that we need to go down this process. We need to move on with where we've been. I don't believe that our standing with State or Federal Governments will enhance this Council at all if we fly in the face of a recommendation of a Minister and I believe that we should just keep moving on, go to the next process where there is to be a detailed plan done, with Ports, with MSV. And I would like to say we do have letters, both from Ports, MSV and Australian Volunteer Coastguard supporting site 3. Now, for us to take a panel view that we

do anything different, and I believe we must work with these people and let the process continue. Thank you.

MADAM MAYOR: Thank you. Is the amendment opposed?

CR GAMBLE: I'll have to oppose the amendment, of course, because this makes a mockery of the whole situation where this is not an amendment at all and Councillor Rowe is very clever of course in – I'll give her a compliment there – in manipulating a motion...

CR ROWE: Point of order, Madam Mayor. Please let the debate relate to the amendment.

MADAM MAYOR: Thank you. I agree...

CR GAMBLE: I believe I am.

MADAM MAYOR: I believe with that point of order. Councillor Gamble, could you confine your remarks to the amendment itself.

CR GAMBLE: All right. Well, the amendment which is totally contrary to the original motion is based upon the Minister's assessment as being correct and based upon the panel report as being incorrect, and obviously considering all the work that's gone into the panel report and the people that are on it I totally reject that proposal. This is going to – this proposal, hidden in there, is that the motion supports the Minister's assessment, that is 3B. There's no doubt about that, which is going to totally annihilate and destroy a cultural area in Mallacoota and I strongly oppose that. I think enough's been said.

MADAM MAYOR: Thank you Councillor Gamble. Does anyone else wish to speak either for or against the amendment?

CR NEALE: Thank you, Madam Mayor.

MADAM MAYOR: Thank you, Councillor Neale.

CR NEALE: Given the division in the community with various opinions regarding the ocean access issue at Mallacoota, it is interesting out of all the emails and phone calls that we have all received there has tonight only been four against and eight for tonight, which is interesting in the presentations. Madam Mayor, may I start by sharing with you all a short extract from the Ombudsman's report in the Brimbank Council? And I quote...

MADAM MAYOR: Councillor Neale, sorry to interrupt. We just want debate on the amendment itself.

CR NEALE: Thank you, Madam Mayor.

MADAM MAYOR:

If the amendment is passed, there will be opportunity to debate the new motion, the amended motion.

CR NEALE:

Okay. There seems to me that there are two sides to this discussion and debate. Both sides seem to agree that there is something needed to be done with regard to the current ramp and that closing the facility is not an option due to the importance of the fishing and tourist industry to Mallacoota. The pro-Bastion Point group agree with Council's decision of August 23, 2005 to proceed with the construction of a two lane boat loading and unloading facility, catch weighing facility, toilets and road access to Bastion Point generally in accordance with the concept plans prepared by Coastal Engineering Solutions Pty Ltd. The anti-group believe that a minor upgrade of the existing ramp would suffice and that Council should reverse the decision made in 2005 and set up a local advisory committee to explore this option. In my understanding, Madam Mayor, that the Minister has clearly demonstrated that his support for a site 3B at Bastion Point and that State Government will provide the bulk of the finance for the project at site 3B. The Minister's decision has been reached after considering all the relevant issues by the EES and other extensive examinations of all the proposals. It would be expected that the State Government will have Council as its preferred manager of the new facility. Given this, it is so important to Council that a boating facility that is safe and adequate to meet the needs of the existing users and any future new users of which I have been already advised that as soon as a safe facility is in place those operators will start to use it. Anything that is built must be cost effective, safe, sustainable and environmentally sound. The anti-group maintain that swimming and surfing can be safely integrated with the launching and retrieving of boats in the same area. This is very inconsistent with marine safety regulations and would be totally impossible to manage in a safe and effective manner. At the existing ramp, boarding a boat that is rising and falling in the swell is very difficult and impossible for some, which creates an unacceptable risk. This must be considered as we resolve this issue by providing safe and acceptable facility that is in accordance with the Australian standards of 2009 and going forward as is the practice at most modern launching facilities. The anti-group do not accept a no-go zone swimming and surfing in the vicinity of the existing boat ramp and under marine safety this would not be acceptable and the only reason it is allowed today is because Marine Safety Victoria understand we are in the process of doing something that will alleviate this very unsafe practice. Currently there are more than 20 professional boat operators working from Bastion Point bringing in over 500 tonnes of cray fish, reef fish and abalone annually. This ramp is also used by Parks Victoria to supply Gabo Island, Fisheries and the Water Police. It is also essential to

adequately cater for the emerging increase in recreational fishers and well as the eco-tourism business that we have heard about tonight. In summarising, Madam Mayor, it is my understanding there is an expectation that State Government will fund the project provided the Ministerial recommendation is accepted by Council. This may not be the case if Council were to deviate from the original motion of 2005. There has already been in excess of \$300,000 spent on an EES. Council asked for and received support of approximately \$30,000 from local business houses and residents from Mallacoota and as I see it, the Minister basically agrees with the EES and Council's previous decision to build a new safe facility at 3B and I expect that we will do so. Thank you, Madam Mayor.

MADAM MAYOR: Does anyone else wish to speak, either for or against the amendment?

CR ELLIS: No, at this stage I will support it, giving notice that I wish to add a further amendment when the opportunity arises.

MADAM MAYOR: Thank you, Councillor Ellis. If there are no further comments on this amendment, I will put this amendment to the vote. All those in favour? Against? The motion is carried. We now have a new substantive motion and I will invite people to comment. Councillor Ellis?

CR ELLIS: Thank you, Madam Mayor. I, like the other Councillors, have given this matter an extreme amount of thought and spent many days reading over the last week and researching the issue. I'm cognisant of the responsibilities of Council I have to provide transparent and thoughtful decision making in my role as a Councillor. I possess an unbiased attitude and mind towards the issues before us here tonight and I've pushed myself to look as hard as I can for either side of the argument. I have referred to the recent and signed local government agreements between the Victorian State Government and the Local Government that recognises the autonomy of Local Government to make decision.

I commend Councillor Gamble for bringing his motion before us and creating this debate. I look without any further adieu to some minor points that I'd like to raise. I'll try this on a – beg your pardon. Okay, now I'll move along.

A few things that I've noticed amongst this, that it's difficult to justify a man-made construction on a wilderness coast which one of the proponents suggested to me was 150 kilometres long. I found that no documentation that indemnifies the Shire from any liabilities should we not take proper actions and that also has been pointed out by an opponent. Nor have I been able to clearly identify the end cost of the option 3B. Nor have I been able to identify clear costings of the ongoing maintenance of the options – well, actually, any of the options. Nor can

I identify any industrial, manufacturing or similar benefit to the town in detailed documentation in figures; the abalone industry email arrived only at the last minute to us Councillors. I have, however, identified a number of other points that are worth consideration. It's coincidental, I'm sure, that it is now the tenth anniversary of the push to have the ocean access ramp upgraded. There can be no argument about potential safety issues and I also recognise that it is eco-tourism that is the predominant tourism driver in the far East Gippsland area. Although numerous boards and bodies have influence over Mallacoota area and the greater East Gippsland, the underlying theme is still through those different boards to support the concept of a deep water access at Mallacoota, though there has been no real definitive suggestions in any of the boards' documents that I was able to pursue.

The reality is the proposition is supported not only by the Minister but then by inference the Government of Victoria and from listening to the presentations made here tonight the opposition members that relate to us all here in Gippsland. Any relation made in relation to the ocean access at Mallacoota impacts on the well being of the total East Gippsland region in terms of control and care of waterways, coastal and tourism management from a Government perspective. It is therefore my responsibility as a Councillor to take the greater picture into consideration. Having tried to weigh up all those issues, Madam Mayor, I wish to move an amendment to Councillor Rowe's amendment.

MADAM MAYOR:

Would you state your amendment, Councillor Ellis?

CR ELLIS:

It now will read, effectively accepting the first part of Councillor Rowe's amendment, which is: 'that Council notes the Planning Minister's finding and recommendations in relation to the proposed ocean access ramp, Bastion Point, Mallacoota, and establishes a community advisory committee as detailed in its decision of the 23rd of August 2005 to assist Council in working with DSE, MSV...' and I'll clarify that. It's the Department of Sustainability and Environment, the Marine Safety Victoria. '...and Gippsland Ports to develop the specific construction design as highlighted in the Minister's assessment subject to receiving Government financial assistance to undertake the design work.' My amendment is: 'and that such committee provide a current time, safety and economic analysis of such construction design and that such construction design be brought before Council for final assessment before final submission to the Minister of Environment and Climate Change to seek Coastal Management Act consent.' I will repeat that – and there is one word – sorry, Peter. I'll go back. Just reading back that again: 'and that such committee provide a current time, safety and economic analysis of such construction design and that such construction design – or such design – and reports be brought before

Council for final assessment before final submission to the Minister of Environment and Climate Change to seek Coastal Management Act consent,' which is required by the Minister for Planning's decision which you would all have a copy of. I commend members to support me on this matter.

MADAM MAYOR: Thank you, Councillor Ellis. We'll just ask for a seconder. Do I have a seconder for that amendment?

(recording blank 59:16 – 59:29).

CR ELLIS: This is a situation of complexity that has been handed through to the Shire at our level, the third tier of Government, from a State Government driven responsibility even though we as Councillors have a responsibility for East Gippsland the costings and the total picture is perhaps a big job for a Council and I think that we need to see what is best for the people of East Gippsland as a total and for the community – in particular, the community of Mallacoota. This amendment gives that one last chance to assess the final options in real terms to answer some of the questions I had such as economic benefit, safety issues and perhaps a different design rather than 3B. Perhaps the engineers employed may come up with something that is acceptable to all of the community and of benefit for the total of East Gippsland.

CEO KOZLOWSKI: I was just wondering – I am not clear on part of the wording of the amendment and that was where it – you were referring, Councillor Ellis, to provide a current time, safety and economic analysis. I was just wondering what the time bit means.

CR ELLIS: Current time would be as at now, 2009, or if it takes them until 2010 to get it, 2010. We're looking back on figures that aren't clearly available.

CEO KOZLOWSKI: I think we understand.

MADAM MAYOR: Councillor Anderson, would you like to speak to the amendment?

(recording blank 1:01:21 – 1:03:22)

MADAM MAYOR: Thank you, Councillor Anderson. Is the amendment opposed?

CR GAMBLE: Could I just seek some clarification?

MADAM MAYOR: Yes.

CR GAMBLE: Looking on what Councillor Ellis was saying, that this also included various options, not just the 3B option, but does that mean that he is...

CR ROWE: Point of order, Madam Mayor. Question of clarification for the actual wording of the amendment is appropriate, otherwise it's debate.

MADAM MAYOR: I am very happy if Councillors understand what they're about to vote upon.

CR GAMBLE: I am questioning the wording, construction design is highlighted in the – if you let me finish. 'Construction design is highlighted in Minister's assessment'. Is that to stay there or is that to be removed?

CR ELLIS: The word would be to stay, but it would be challenging, wouldn't it? I would infer...

CR GAMBLE: Just querying that. So the highlights in the Minister's assessment still remains in the motion?

MADAM MAYOR: Yes. I think what might be helpful will be if...

UNIDENTIFIED MALE: (1:04:22)

MADAM MAYOR: Yes, we need the words.

CEO KOZLOWSKI: Councillors, my understanding, and I think we might need it reinforced but correct me where I'm wrong, I understood it was the motion as it currently stands, the substantive motion, plus words at the end that say, 'and such committee provide...' and I've taken the liberty to alter the words around a little bit, '...and such committee provide a safety and economic analysis as at the current date of such construction design and that such design and reports be brought before Council for final assessment prior to submission to the Minister for Environment and Climate Change to seek Coastal Management Act consent.' Is that what it was?

CR ELLIS: Yes, that's correct.

MADAM MAYOR: Councillor Gamble, does that answer your question?

CR GAMBLE: I think it does because it obviously clearly indicates that it specifically refers to scheme 3B, I understand.

MADAM MAYOR: Yes.

CR GAMBLE: Okay.

MADAM MAYOR: That's correct.

CR GAMBLE: Unless you want to amend it.

MADAM MAYOR: Does anybody else wish to speak either for or against the amendment?

CR NEALE: Yes, Madam Mayor.

MADAM MAYOR: Councillor Neale?

CR NEALE: Yes, I'm against the extra piece on the amendment, Madam Mayor. It's really only pedantics. I believe the amended motion that is on the books now covers all that Councillor Gamble is trying to put in – that Councillor Ellis is trying to put in there. It's just really semantics and I'm against adding to it.

MADAM MAYOR: Thankyou. Does anyone else wish to speak for or against the amendment?

CR GAMBLE: Well, I only speak against the amendment for the reasons I've just given: that this is obviously going down exactly the same track and that it's purely for...

MADAM MAYOR: Thank you... Yes.

CR GAMBLE: ...for option 3B.

MADAM MAYOR: Thank you, Councillor Gamble. Councillor Rowe?

CR ROWE: Thank you. I would actually like to speak in support of the amendment. I believe although it will delay the process even more this is a very long process and we're willing to take that extra time to ensure that we do get this the best way we possibly can. To provide an up to date safety and economic analysis of the design after the design has been done, I think, is most appropriate for Council then to be assessing that because we will be able to assess the financial implications for the community as well. Thank you.

MADAM MAYOR: Does anybody else wish to speak for or against the amendment? I don't know that there's anybody left. Right. I will put that amendment to the vote. All those in favour? Against? The amendment is carried. We now have a new substantive motion. Beg your pardon. Does anybody wish to speak on the new substantive motion? I'd just like to make a few comments, if I may, which I should have included when I spoke initially. It's regarding the various tourism plans that have been mentioned and whether or not this proposal actually lines up ...

CR NEALE: Point of order, Madam Mayor. Are we talking about the motion or are we talking something else?

MADAM MAYOR: So I have to just make a ruling on myself. All right. I accept your point of order, Councillor Neale. I now put the motion to the vote. All those in favour? Against? Thank you. The motion is carried. I am now going to call a ten or 15 minute recess. Thank you everybody.

[END AUDIO]