

BACKGROUND INFORMATION

Brumby Government Overrode Both Planning and Safety Funding Panels to Plan Bastion Point Breakwater to Secure Ingram Minority Vote

CONTEXT

The Brumby Government suffered from a public perception of a lack of fairness and transparency in their planning decisions, with the Windsor Hotel debacle becoming the flagship media issue. FOI documents sourced concerning Bastion Point planning decisions also raise serious issues in regard to due process.

Whilst in opposition, the Coalition Government described Labor's planning system as bringing more pain and division to the community than any other government in Victorian history¹. The Coalition has committed to fair, consistent and transparent planning system that delivers certainty to all Victorians². The current Government's commitment to review the Bastion Point planning process is shaping up as their first key test in their commitment to restore fairness and transparency in planning³.

FOI DOCUMENT EVIDENCE

The FOI evidence outlined below shows that:

- The ALP ignored the advice of two expert panels
- There appears to have been politically motivated interference in planning decisions to maintain the support of then independent MP Craig Ingram.

FOI documents from the Department of Transport (DoT) demonstrates the extraordinary lengths the Brumby government went to in progressing the Bastion Point breakwater being planned by the East Gippsland Shire Council (EGSC) – which was required to secure the vote of Independent Craig Ingram. Ingram had made the construction of the breakwater a condition of his support in the event of a minority government⁴.

FOI material⁵ demonstrates that the Brumby government rolled two separate Panels who recommended against the development – first Minister for Planning Justin Madden overrode departmental advice to accept the findings of an Independent Planning Panel Inquiry that found the development to be of 'no overall societal benefit', uneconomic and unsafe, and then Transport Minister Pallas overrode a panel assessing grant applications under the Boating Safety and Facilities Program (BSFP).

Four business days before pre-election caretaker mode, on 27 October Minister Tim Pallas announced funding of \$6.5 million for the development – prior to consent under the Coastal Management Act which was the responsibility of the then

¹ The Victorian Liberals Nationals Coalition Plan for Planning, <http://www.vicnats.com/policies/CoalitionPlan/Planning.pdf>, pg 3.

² Ibid, pg2.

³ Bairnsdale Advertiser, *Candidates Leave Door Ajar*, <http://savebastionpoint.org/wp-content/uploads/2008/05/Bairnsdale-Advertiser-Candidates-19-Nov-2010.pdf>, November 19, 2010.

⁴ Melissa Fyffe article on 21 Nov 2010. Construction of Bastion Point is known to be one of Ingram demands for support of minority government, <http://www.theage.com.au/victoria/state-election-2010/how-many-mps-does-it-take-to-change-330000-light-bulbs-20101120-181za.html>

⁵ We have a large amount of documentation on the Madden decision already released under FOI, but are waiting on a VCAT appeal to access further documentation that we believe is consistent with the view that the Department of Planning and Community Development advised Madden to accept the Panel recommendations – even scheduling an early press conference, but this direction was reversed by decisions higher in Government.

Environment Minister Gavin Jennings⁶. This was despite the Independent Panel finding that the breakwater development was unlikely to even be compliant with policies under the Coastal Management Act.

Despite the fact that wealthy abalone licence holders are the major users of the current ramp, the EGSC had stated in its BSFP application⁷ that there was no commercial usage of the existing ramp – thereby avoiding the criterion that commercial users should contribute to the capital cost. Even ramp user fees for commercial users were inexplicably scrapped in October 2010⁸. Craig Ingram is a one-third owner of Ingram Abalone Pty Ltd⁹ and a shareholder in Mallacoota's abalone processing plant.

The BSFP assessment panel described the project a 'Substantial structure to improve access for recreational boaters who would not normally consider boating in the open ocean from the existing facility'. The Panel's overall assessment was: 'Not recommended: The applicant has not referred to the MSV Safety Audit¹⁰ or addressed the ongoing management of this site. The applicant has not established demand – the project does not respond to existing demand by recreational boaters but seeks to increase demand by its presenceThe case of demand from recreational boaters has not been made'.

MSV had previously expressed concerns in regards to increased risks to inexperienced boat users in a letter to the Planning Panel¹¹ and recommended nominating the area as a designated hazardous area. The Planning Panel also raised serious concerns in relation to the safety of the breakwater development options with regard to facility entry and exit^{12 13 14}. Furthermore, Justice Osborne in the Supreme Court case, *Friends of Mallacoota vs Minister for Planning and Anor*, stated that building a breakwater to solve safety issues between boats, swimmers and surfers was akin to "...using a sledgehammer to crack a nut", and that Minister Madden "doesn't ..give very good reasons if any for rejecting the panel's principal conclusions about safety.." ¹⁵.

It was revealed by the Save Bastion Point Campaign in October 2010¹⁶ that the latest projected economic benefits put forward by EGSC for the development were out by \$2.8 million per year or \$56 million over 20 years (almost half its predicted gross

⁶ <http://savebastionpoint.org/2010/10/27/labor-funding-of-breakwater-preempts-environmental-approval-process/>

⁷ MSV funding application, p2, <http://savebastionpoint.org/wp-content/uploads/2010/07/MSV-funding-application-Aug-2010.pdf>

⁸ Buchan Consulting Economic Impact Assessment, version 2, submitted with RDV funding application on 11 October 2010, <http://savebastionpoint.org/wp-content/uploads/2010/07/RDV-Funding-Application-Oct-2010.pdf>

⁹ Quota from the Ingram license was being fished from Cape Conran and not Bastion Point during Ingram's parliamentary term, but the breakwater would likely add value to all Eastern Zone licenses if no ongoing costs were needed to be met by licensees.

¹⁰ <http://savebastionpoint.org/wp-content/uploads/2010/07/AMCS.pdf>

¹¹ Brian Riches, Director of Marine Safety Victoria, Letter to Nick Wimbush, Inquiry Chair, Planning Panels Victoria, July, 2008.

¹² <http://savebastionpoint.org/wp-content/uploads/2010/01/Bastion+Point+EES+Inquiry+Report.pdf>

¹³ SBPC Fact sheet on Mallacoota Ocean Access Boat Ramp Safety Issues

<http://savebastionpoint.org/wp-content/uploads/2010/07/Attachment-5.pdf>

¹⁴ SBPC Fact Sheet: A Better Alternative for Ocean Access at Bastion Point is Possible – Comparison of Designs – Option 3b Vs Alternative Concept <http://savebastionpoint.org/wp-content/uploads/2010/07/Attachment-4.pdf>

¹⁵ Transcript from Proceedings, May 10, 2010

¹⁶ <http://savebastionpoint.org/2010/10/10/annual-2-8-million-black-hole-found-in-council-economic-study/>

benefit) due to a basic calculation error¹⁷. The BSFP panel had questioned the economic credentials of the project even before this mistake was revealed. Despite being alerted to this error and many others in the report, EGSC then submitted a further funding application to Regional Development Victoria without correcting this error in its main supporting economic document.

Emails from DoT obtained by FOI indicate that even in July 2010 there was the imperative that 'an early consideration of the funding of this project must be progressed'¹⁸. Staff discussed¹⁹ how they could be 'seen to be acting appropriately' and access funds from the BSFP program, such as by reducing the money to the program overall, and taking the money before submissions were received. Despite the recommendation of the Panel that funding should not be given, Minister Pallas approved funding of \$1.5 million²⁰ – over half the entire budget for the BSFP for the year and five times higher than the Panel listed as the maximum allowable grant²¹.

A Ministerial Memo²² to Pallas on the Bastion Point development links it with the creation of the Open Ocean Access Policy²³ that promotes development of open ocean access facilities – despite extensive coastal policy documentation that discourages boat ramps in exposed and dangerous ocean areas, and doubt that the Bastion Point development even satisfied many of its requirements.

The development was fast-tracked throughout 2010, with monthly meetings of the Major Projects Victoria team that was planning for construction – they even met on the day of Friends of Mallacoota's Supreme Court challenge on 10 May. Construction start date was set for 4 February 2011.

It was imperative that the development be approved by Council in August 2010 to enable it to proceed to the funding stage – to this end an email shows DoT staff offered the Council CEO or staff advice²⁴ on wording to Councillors. ALP professional fixer, and Regional Development Victoria employee Bill Bolitho who had fast-tracked previous grant applications for the project,²⁵ was on hand at the August Council meeting brandishing a 'Just Build It' sign, should Councillors be wavering in the tight vote to proceed with the development²⁶.

Craig Ingram had labelled the breakwater construction a test of leadership²⁷, yet had been bundled out of office in the states largest swing to the National's Tim Bull, who had pledged to review the project²⁸. Thanks to Tim Bull the Government is now making a comparison of a lower impact alternative development based on the Planning Panel recommendations, and the EGSC breakwater proposal. Had the ALP

¹⁷ SBPC Economics Fact Sheet http://savebastionpoint.org/wp-content/uploads/2010/07/101006_Economics-one-pager.pdf

¹⁸ DoT email 9 July 2010.

¹⁹ Internal email 8 July 2010 Department of Infrastructure/Transport

²⁰ Letter from T. Pallas to Treasurer J.Lenders c.13 October 2010.

²¹ Panel comment, p7 BSFP assessment.

²² Ministerial Briefing 28 Jan 2010

²³ [http://www.transport.vic.gov.au/DOI/DOIElect.nsf/\\$UNIDS+for+Web+Display/CFBF2E0E7AEFD501CA2577C300016553/\\$FILE/OpenOceanAccessPolicyFramework.pdf](http://www.transport.vic.gov.au/DOI/DOIElect.nsf/$UNIDS+for+Web+Display/CFBF2E0E7AEFD501CA2577C300016553/$FILE/OpenOceanAccessPolicyFramework.pdf)

²⁴ Email to EGSC CEO of Director Development, 21 July 2010

²⁵ Bill Bolitho was the assessing officer for the RDV grant for the design phase of the project. The application was signed within one day of receipt, and was based on economic information that was in direct conflict with the Planning Panel findings.

²⁶ Bolitho was later counseled for his behavior, and then took leave to shore up inner city ALP held seats against the Greens.

²⁷ Bairnsdale Advertiser, <http://savebastionpoint.org/wp-content/uploads/2008/05/Bairnsdale-Advertiser-CI-19-Nov.pdf01>

²⁸ Bairnsdale Advertiser, *Candidates Leave Door Ajar*, <http://savebastionpoint.org/wp-content/uploads/2008/05/Bairnsdale-Advertiser-Candidates-19-Nov-2010.pdf>, November 19, 2010.

been returned to Government, the construction of the large scale breakwater project would have commenced on 4 February 2011²⁹.

Any outcomes of the Bastion Point review being undertaken by the Coalition Government need to follow the expert advice of both the Planning and BSFP Panels, which was not to build the EGSC proposal, The Government must not allow the process to become politically motivated and non-transparent again.

PDF's of all referenced documents are available³⁰.

²⁹ See p4, <http://savebastionpoint.org/wp-content/uploads/2010/07/MSV-funding-application-Aug-2010.pdf>

³⁰ www.savebastionpoint.org/resources