

# Save Bastion Point

protect this coastal environment  
from inappropriate development



Friends  
of  
Mallacoota  
Inc.



## MEDIA RELEASE

Thursday, 27 May 2010

### Bastion Point Decision in Jennings Hands

Environment groups call upon Minister for the Environment, Gavin Jennings to reject the environmentally damaging Bastion Point Boat Harbour proposal in the wake of a Supreme Court decision today.

The Honourable Justice Osborn, of the Supreme Court of Victoria, delivered his judgment on the case *Friends of Mallacoota vs Minister of Planning and Anor*. The court case which looked at administrative process, not the merits of the case, found that Justin Madden had acted within the legal bounds of his responsibility.

"Minister Madden may have acted legally, but that does not condone the proposed development," said spokesperson for Friends of Mallacoota, Mr. Op den Brouw.

Justice Osborn, during the court proceedings was critical of aspects of the Minister's assessment. He said that .. "the panel's reasons for its factual conclusions are far more replete...than the minister's reasons". He also said that building the breakwater to solve safety issues between boats, swimmers and surfers was akin to "...using a sledgehammer to crack a nut", and that the Minister "doesn't ...give very good reasons if any for rejecting the panel's principal conclusions about safety...."<sup>1</sup>

"The judgment given today throws into question the law as it presently stands", said Mr. Op den Brouw. "What is the point of having an in-depth Panel Inquiry and hearing the views of the community, if the Minister can then just ignore them?"

Friends of Mallacoota were represented by the Environment Defenders Office (EDO).

"Regretfully, the judgment today confirms that the environment is not adequately protected by Victorian laws. It confirms that the Ministers discretion is so extensive that he can turn his back on his own Panel's recommendations and the overwhelming objections of the community," said EDO solicitor Elizabeth McKinnon. "This is unacceptable and must be rectified through immediate reform of the *Act*," she concluded.

The Save Bastion Point campaign will continue to lobby Minister Jennings to accept the Panel's recommendations and reject the proposal under the *Coastal Management Act*.

Justice Osborn found 'there is nothing in the material before the Court which supports the view that the Panel's assessment was other than a careful, fair and balanced evaluation of all the material before it.'<sup>2</sup>

"Justice Osborn confirmed today that the Minister provided an assessment – not an approval – under the *Act*," said Mr. Op den Brouw.

"The Minister of Planning assessment is thus not binding on the Minister for the Environment or the East Gippsland Shire Council," he said.

"We appeal to Minister Jennings to give full consideration to the Panel's conclusions and to knock this ill-conceived proposal on the head, once and for all. There is a low impact alternative possible that the Panel recommended, which has broad community support and would protect Bastion Point and its unique values," concluded Mr. Op den Brouw.

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<sup>1</sup> Transcript from Proceedings, May 10, 2010.

<sup>2</sup> Judgment of Osborn J, *Friends of Mallacoota v Minister of Planning and Minister for Environment and Climate Change*, p17, para 32.