Inquiry into the Environmental Effects Statement process in Victoria
Submission no. 51

Executive Officer
Environment and Natural Resources Committee
Parliament House
Spring Street, East Melbourne VIC 300
enrc@parliament.vic.gov.au

10 May 2010

Dear Sir/Madam,

Thank you for allowing our submission to the investigation of the EIS process. We respond to the terms of reference from a community aspect in relation to experiences at Port Campbell in which an EIS would appear to be warranted.

Although we believe the Planning & Environment Act 1987 is basically a sound planning document, it needs strengthening in the environmental impact and climate change areas.

The weaknesses in the current system allow environmentally damaging developments to slip through cracks creating the potential for catastrophic environmental impacts.

The EIS process appears to be the only means of ensuring fully integrated environmental assessments of proposed developments. But as outlined below the EIS system needs to be strengthened and ensure greater certainty and accountability.

Case Study
The Port Campbell Community Group Inc. has formerly requested the Minister for Planning to call a proposed development in, as it appears it will have significant environmental impacts. Significant expert concerns have been raised regarding the risks and impacts of a 4 storey, 97 apartment hotel with a 10 shop retail strip and 200 seat restaurant with an approx 6000m2 site coverage. The proposal also requires an extensive excavation within 40 meters of the foreshore cliffs and 4 major caverns on Port Campbell’s fragile limestone headland.

The proposal will take up almost half of the Port Campbell foreshore, and its reception relies on the port’s small cul-de-sac which has limited infrastructure. It will also block significant public viewlines. There has been significant specialists’ concerns (see attached list) which note it the development is likely to accelerate collapse of the Port Campbell headland and have significant impact on State/National significant heritage.

Ms Colleen Hartland, Member of the Legislative Assembly, brought to the Minister’s attention that the Port Campbell proposal is a matter deserving an EIS
http://tex.parliament.vic.gov.au/bin/texhtmlt?form=VicHansard.dumpall&db=hansard91&dodraft=0&house=COUNCIL&speech=71566&activity=NULL&title=PLANNING:+WHITTEN+OVAL,+FOOTSCRAY&date1=29&date2=October&date3=2008&query=true%0a%09and+%28+members+contains+'HARTLAND'+%29%0a

Ms Hartland: "Why did the minister step in there [Western football oval] but not in Port Campbell, where the local community is worried that a new development will cause the Great Ocean Road and the headland to crumble into the sea caves? The Port Campbell issue fits the criterion of being of genuine state significance, but the minister has resisted many requests by
members of the community and this Parliament to step in and take control. " (29 October 2008 LEGISLATIVE COUNCIL)

Ministerial Intervention
The PCCG requested ministerial intervention 20 May 2005 (prior to the September 2005 VCAT hearing); 5 December 2005; 19 December 2005 (prior to the VCAT decision of March 2006); 18 February 2006 (in which we noted s97B P&E Act 1987 does not ‘preclude’ ministerial intervention). The Minister refused to call it in. The response was that the minister could not call in a matter as the responsible authority had made a decision (Ref. DSE019693).

However, it appears that the Minister can call in a development after the responsible authority has made a decision, as legal advice given to us was the EES Act 1978 does not consider the situation where a decision has been made regarding a development under another Act.

Development Assessment against EIS Criteria
The Port Campbell Community Group Inc believes the proposed Southern Ocean Beach House development meets EIS criteria:

- **The character of the receiving environment**
The limestone headland is clearly fragile and volatile. The headland has 4 major visible caverns, other caverns opening up in the bay, and a tunnel was found running into the development site in November 2009.

  Caverns are formed by water draining from the land, and specialists have noted that joint lines would cross the development site and converge in an area where the development proposes to egress its reception which will include tourist buses. This will be an area of geological weakness.

- **The potential impacts of the proposal on the environment**
Significant specialist concerns state the development is likely to accelerate collapse of the Port Campbell headland, which in turn will make the port and development itself unviable.

  Headland collapse will open the bay to greater storm surge and sea attack and erosion of the lower section of the township, which includes the business zone.

- **Resilience of the environment to cope with change**
The fragile limestone caverned cliffs are not resilient to large excavations and concrete foundations. Specialists have written that changes to the natural groundwater of the headland will accelerate cavern collapse. Indeed VCAT wrote:

  *It is self evident that the coastline is fragile and volatile, demonstrated through major and minor incidents and subsidence that have occurred in recent years. The fragility of the locale is well known and it is incumbent on the proponent to satisfy itself and the necessary building regulations that the proposed development can be properly secured and engineered. That is not a matter that we need to resolve in this planning permit process although we accept the notion put forward in the Council’s draft conditions of a geotechnical report being submitted.*

VCAT do not appear to consider the impact of the development on the natural geological environment. Leaving the potential environmental impacts for a small Council to consider is a risk.

• **Confidence of the prediction of impacts**

Seven (7) geo-specialists have raised concerns including that the proposed development foundation is high risk and may collapse the headland in tens of years. Significant heritage and environmental organisations have also submitted concerns regarding the impact of this development in what is now a small cul-de-sac adjoining the small port facility which is necessary for sea search and rescue and a small professional fishing fleet and high recreational usage.

Mr R Brown geotechnical specialist concerns include:

> I see this large proposed development as an environmental threat to the Port Campbell National Park and a high liability risk.

> An Environmental Impact Statement should be carried out to fully assess the overall impact of the proposed development on this section of headland.

Mr Kenneally MA engineering with wide experience in karst limestone agrees with Mr Brown and writes:

> An EIS to international standards, i.e. world’s best practice, warranted by an area as important and sensitive as this, is necessary to responsibly determine the appropriateness or not of this development.

> Hence it is imperative that further engineering investigations into the geological, and geotechnical aspects be undertaken and their implications be incorporated into an EIS. The recommendation of Mr. Brown that an Environmental Impact Statement be carried out is unreservedly supported. The investigations into the impact must also include a more detailed and realistic study of the geology of the area of interest so that the geological and hydrogeological processes and systems are properly investigated and fully understood.

• **Presence of planning or policy framework or other procedures which provide mechanisms for managing potential environmental impacts**

There appear to be no appropriate planning or policy frameworks which will consider or manage potential impacts. Indeed as noted above VCAT writes the geotechnical issues are “not a matter that we need to resolve in this planning permit process”.

Following specialist advice, DSE has conducted a preliminary Coastal Risk Assessment (CRA) 2008. But four (4) geo-specialists have written the CRA was inadequate and misleading. Also, the CRA was limited to Crown land on the Port Campbell headland and did not take into account the potential for the proposed development’s impact on the Crown land and National Park. DSE has advised it will do a further CRA. The timing of this is unknown.

VCAT has directed Council as responsible authority to consider the proposed development’s geotechnical report. But Council does not have the expertise to consider the impact of the development on the environment. Even if Council have a geotechnical expert write the
proposal’s geo-reports are adequate (and the report will have a disclaimer), this report would be contrary to seven (7) geotechnical specialists’ reports.

Dr S. White karst specialist has written:

In karst areas, problems may be initiated from outside the site itself. Although these may not be able to be detailed the issue is a significant one with respect to risk assessment. Geological processes do not necessarily stop at cadastral boundaries. The intersection of estimated joint directions is very close to the southwest corner of the development. A 10m deep excavation this close to a potential void may result in collapse. Such collapse is also more likely during heavy rain (Report to VCAT October 2009).

However, VCAT refused to hear geotechnical evidence saying that the subdivision into 102 new titles for an owner’s corporation was of a permitted building. VCAT failed to consider that under the Subdivision Act 1988 that all subdivision is considered as ‘land’.

The only way to have full confidence and certainty for potential subdivision owners and adjoining land owners is to conduct an integrated geological impact assessment that crosses title boundaries, and it seems that the only process to do this is an EIS.

- **Other statutory decision-making processes which may provide a forum to address the relevant issues of concern**

  We requested VCAT call an EIS, but the Tribunal was ‘not persuaded’ that an environmental effects statement was required [http://www.austlii.edu.au/au/cases/vic/VCAT/2005/2481.html](http://www.austlii.edu.au/au/cases/vic/VCAT/2005/2481.html) and generally did not seem to understand the implications of a large foundation in this fragile position. Since the hearing DSE Coastal Planner John Ginivan has advised that VCAT does not have the model to assess geotechnical issues or whether an environmental impact statement is required.

  Corangamite Shire Council also does not have the expertise to assess complex environmental issues including geotechnical issues. Nor are small Councils likely to call an EIS as they would realise that it is a time consuming and costly process.

  Without our Group’s work to seek specialist advice, the geotechnical issue had the potential to be approved without appropriate testing. Catastrophic headland collapse could eventuate and significant loss of public and private land and potentially loss of life. The Port Campbell Community Group Inc is still monitoring this.

  VCAT is currently making decisions considering climate change and requesting coastal hazard assessments. This seems a move in the right direction, but it would appear a referral to a specialist panel is required.

  But one must ask is the EES process the way to go when it appears so ‘flexible’ to the extent that it may lack transparency and accountability and may result in subjective, flawed decisions that may have catastrophic environmental impacts. One must ask why a development, such as at Bastion Point, was passed contrary to the extensive Planning Panel recommendation.
• **The degree of public interest.**
There is a high level of public interest in the Port Campbell proposal which has been
demonstrated in numerous petitions, a high level of written specialist concern, and wide-
spread community involvement in a Parliamentary Select Committee Inquiry into Public
Land Use.

**Recommendations**

**Decision-makers**
The EIS process must ensure:
• There is consistency in calling an EIS.
• All decision-makers have tight, foolproof assessment criteria they must follow to
ascertain whether an EIS is required to give greater certainty to the community, decision-
makers and proponents.
• Triggers for EIS must be integral to the P&E Act and EES Act for developments over a
certain scale or within a certain distance of the coast or other vulnerable assets, so that
small Councils will have to follow the EIS pathway when required.
• All developments valued at over $5million and/or within a certain distance of the coast or
other vulnerable features or assets must submit an EIS which is open to full panel
assessment including public submissions and public hearings.
• Coastal Crown land is a valuable buffer zone in times of climate change. Any proposal to
use or develop Coastal Crown land must have an EIS that is fully open to public
submissions and hearings.
• In this time of coastal climate change impacts and accompanying litigation, there needs to
be greater precautions and planning procedures when considering any development
within a certain distance of the coastline.
• Ecological sustainable development principles are incorporated into the EIS and full
consideration of climate change.

**Public Participation**
The EIS process must:
• Be equitable and accessible and guarantee full community consultation and participation
in the EIS process including public hearings.
• Demonstrate that public submissions are equitably and fully considered in decisions.

**Accountability**
The EIS process must:
• Have clear prescriptive legislation to ensure decisions are transparent, accountable, open
to public review, and fully monitored and enforced.
• Ensure terminology such as ‘environment’, ‘ecological’ ‘natural’, ‘social’ etc must be
fully explained to ensure full understanding by all parties and certainty of decisions.

**Ministerial Level**
The EIS process must ensure:
• Legislation clearly regulates when and on what grounds the Minister can intervene, as it
does not appear clear as to why some develops are called in and yet others, which are
potentially environmental disasters, such as at Port Campbell, are not called in.
• Legislation must determine how a Minister must respond and report to ensure full accountability.
• Equity must be ensured by independence of EIS when government is the proponent.
• The Minister must demonstrate that there will be no potential adverse environmental effects.
• Ensure there is a clear ministerial legislated assessment framework.
• Ensure the Minister fully outlines reasons for a decision.
• There should be no discretionary powers.

Summary - What planning system is available and suitable to assess a situation such as at Port Campbell?

Neither Council nor VCAT appear to have the skills to determine the environmental impacts of the proposed Port Campbell development.

The EIS process is the only planning method to ensure an integrated environmental assessment of proposed developments such as at Port Campbell. But the current EIS appears to be not adequately detailed or accountable and is therefore flawed and a risk.

Too often decision-makers fail to listen to or appropriately respond to local knowledge and specialist recommendations, sometimes due to their lack of expertise or fear of time/cost restraints. It can result, as at Port Campbell, in a long drawn out case in which catastrophic environmental damage and public risk and litigation may occur.

It would appear an EIS is required at Port Campbell, but the EIS process needs greater controls as listed above.

We are happy to discuss any of these issues further.

Yours sincerely

Dr Marion Manifold

Secretary
Port Campbell Community Group Inc.
A0051688U
Written concerns re social, infrastructure and/or environmental impact of Southern Ocean Beach House proposal, Subdivision or use and development of further Crown land raised by:

- Dr Eric Bird - world renown coastal geomorphologist
- Prof Brian Finlayson - geomorphologist & hydrogeologist (University of Melbourne)
- Russell Brown - geotechnical engineer who has mapped sea caverns and closed Great Ocean Road on headland for VicRoads
- Dr Susan White - Geological Society of Australia
- Mark Stuecky – Hydrologist, Environmental & Earth Sciences
- Damien Kenneally – Civil Engineer MA
- Neville Rosengren - Geomorphologist
- National Trust
- Western Coastal Board
- Australian Conservation Foundation
- Victorian National Parks Association
- Environment Victoria
- Friends of the Earth
- Protectors of Public Lands Inc
- Nina Hall PhD Researcher - Marine Protected Areas
- Garry Moore B.Juris, LL.B (Hons), LL.M, PhD Researcher – border changes in consequence of climate change, rising sea levels, intensified storm surges and coastal erosion.
- Allan Willingham - Heritage Architect
- Dr Linden Gillbank - School of Philosophy, Anthropology and Social Inquiry, University of Melbourne.
- Heytesbury & District Historical Society
- Returned Services League
- Mike Scott - Town Planner, Planisphere: “It will change the character of Port Campbell forever”.
- Allan Wyatt - Environmental Resources Management
- John Slykhuis – Landscape Consultant
- Bill O’Shea - Landscaping and Revegetation Specialist
- Port Campbell Community Group Inc
- Port Campbell Professional Fishermen’s Association
- Port Campbell Boat Club
- Seafood Industry Victoria
- VRFish
- Boating Industry of Victoria Association
- Protectors of Public Lands Inc
- Victorian Coastal Alliance Inc
- Parliamentary Select Committee First Interim Report, December 2007
- Parliamentary Select Committee Interim Report, July 2008
- Parliamentary Select Committee Minority Report, July 2008
- Parliamentary Select Committee Report, September 2008
- 2004 Petition to Council (approx 890 signatures) requesting to refuse permit to SOBH.
- 20 June 2007 Petition to Legislative Assembly (685 signatures) requesting no Crown land be given to SOBH.
- Mr Peter Kavanagh, Member for Western Province - questions to Minister for Planning
- Mr Terry Mulder, State Member for Polwarth, has written to Hon Mr Thwaites requesting investigation on environmental, cultural and infrastructure grounds.
- Ms Jennie George, Federal MP - encouraged thorough environmental assessment.
- Hon David Hawker, Federal Member for Wannon
- Ms Colleen Hartland Greens MP – questions to Minister for Planning
- Natalie Atherden – Greens Member for Polwarth. Letter to newspaper
- Mr Matthew Guy Shadow Minister for Planning
- Mr Peter Ryan MLA, Nationals Leader
- Mr David Davis, Shadow Minister for Environment & Climate Change
- Corangamite Shire - 19 October 2005 VCAT submission:
  - ‘The intensity of use and development of the land is too great and will have a negative impact on the amenity of the surrounding area and the low scale, coastal character of the township of Port Campbell’.
  - “The Proposal does not adequately address and mitigate the impact it will have on the character and amenity of the Port Campbell township” (142).
  - ‘The land use proposed for the site provides inadequate car parking especially for staff, on the land and will put an unreasonable burden on the public car parking provided close to the development site’ (143.2).
  - Re ‘Parking provision’: ‘Council does not believe this issue can be overcome to Council’s satisfaction through the use of a parking management plan’ (162).