

**Submission to Parliamentary Enquiry into Development of Public  
Land**

**CONSENT FOR USE AND DEVELOPMENT OF PUBLIC  
LAND**

**for**

**SOUTHERN OCEAN BEACH HOUSE PROPOSAL, PORT  
CAMPBELL**



**Port Campbell Community Group**

**Member of Protectors of Public Lands Inc. & Victorian Coastal Alliance Inc.**

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## **TERMS OF REFERENCE:**

- 2003 Nationally significant coastal Crown land and public open space appear to be developed for a private development proposal – Southern Ocean Beach House (**SOBH**).
- 2006 Further nationally significant coastal Crown land and public assets consented for use and development for Southern Ocean Beach House.
- The submission outlines issues relating to the consent for the use and development of highly sensitive coastal public land.

## **SOUTHERN OCEAN BEACH HOUSE: 2-10 Lord Street, Port Campbell Headland**

The proposed development the Southern Ocean Beach House (**SOBH**) by Riverland Retreat is for a Residential Hotel approx: 97 keys (130 rooms), 10 shops including a 200 seat restaurant, 4 storeys incl ground floor; approx 14.6 meters high.

The proposed SOBH covers an area 6261m<sup>2</sup> and has approx 95% site coverage.

The proposed SOBH appears to block public viewlines to and from the National Park and War Memorial and Memorial Reserve. There appears to be no onsite vegetation screening adjacent to the National Park as it appears to have a 0meter setback; it appears to rely on public land to screen the development.

The SOBH proposal has approx 106 onsite car park spaces; this is approx 156 car spaces short of the Scheme's requirements. The SOBH reception drop off relies on a roundabout-car park that was developed through the Port Facility and Memorial Reserve in 2003. It appears this roundabout may have been developed for the SOBH. The SOBH also requires 4 out of the 14 car park spaces in the Port car park and further Crown land for its bus egress.

The proposed SOBH sits on a headland which has "serious geotechnical problems" and is of "very high conservation significance". The headland is surrounded by 27 meter high limestone cliffs on the seaward side and 14 - 6 meter cliffs on the bay side. The cliffs are undermined by 4 large sea caverns. The sea caverns are mainly formed by water drainage from the land along lineations. It appears that lineations are likely to run through the proposed SOBH development site. The sea caves also have active sea erosion. The SOBH proposal is as the developer wrote "a stone's throw" from the foreshore. The foreshore's 6 meter high cliffs shows signs of accelerated erosion.

In 2002 DSE recommended a "full environmental assessment" of the headland to attempt to realign the Great Ocean Road though the Memorial Reserve. However, VicRoads deemed even if the Great Ocean Road was moved north, i.e., through the SOBH site, it would have a limited life span as the caverns could collapse at any time, i.e., "immediately". Although the high risk was known since early 1990s, it appears that the Great Ocean Road was eventually closed to implement the development's needed reception drop off area.

The SOBH proposal appears to rely on an approx 10 meter deep excavation next to Crown land, and it appears to be within meters of the largest sea cavern; the SOBH also appears to rely on the removal of in excess of 20,000 tons of soil.

The SOBH developer also appears to have bought properties behind the development, which it also appears could extend the residential hotel on this headland.

## **PORT CAMPBELL COMMUNITY GROUP**

Port Campbell Community Group was formed in 2003 to ensure: appropriate development on this nationally significant headland; to monitor impacts on an 1880's heritage Port and other significant cultural heritage (listed later); and to ensure the landscape is preserved for future generations. Port Campbell Community Group is a member of Protectors of Public Lands Inc. & Victorian Coastal Alliance Inc.

### **SUMMARY OF ISSUES:**

1. September 2003 an area of nationally significant naturally vegetated public coastal Crown land appears to have been compromised and developed for the purposes of the Southern Ocean Beach House's (SOBH) reception and bus egress.
2. September 2003 the roadway to the Port Facility appears to have been compromised for an overly wide footpath for the SOBH.
3. 8 August 2006 consent was given to the SOBH for use and development of more coastal Crown land and 4 car parks in the Port Facility. This compounds the 2003 problem.
4. 2003 & 2006 Corangamite Shire Council and DSE assessment processes appear to fail to consider necessary impacts on environment, infrastructure and cultural assets in the development of land for the SOBH.
5. There appears to have been no full independent and open assessment of the SOBH's potential environmental, infrastructure or cultural impacts before the consent to use and develop surrounding coastal Crown.
6. The application for coastal Crown land appears to be incomplete.
7. There appears to be gaps and oversights in the consultancy process re the headland's in/stability before the consent for coastal Crown land was given for the 2003 large general purpose car park-roundabout.
8. Public viewlines to and from the National Park appear to be compromised by a proposed private development.
9. Public land appears to be compromised to screen SOBH development.
10. The SOBH's balcony further appears to impact on public viewlines.

### **LAND STATUS**

- Coastal Crown Land (See Slide 1-2).
- State Government. Coastal Spaces Landscape Assessment: 'Nationally Significant' landscape overlay (See Slide 3-4)
- Corangamite Planning Scheme: 'International Significance' (See Slide 5).
- Land Conservation Council (LCC) 1996 historic register: Public Purposes Reserve (Historical). Other adjoining LCC registered sites: Foreshore, Rocket Shed, Beacon Steps, Jetty & Cutting.
- Adjoins Port Campbell National Park – 'National Significance'; Australian Heritage Database listed in Register of National Estate.
- Public Park Memorial Reserve (Council, DSE and other documents)
- Victorian Heritage Council - recommended: War Memorial and Reserve and adjoining Jetty, Jetty Cutting, Beacon Steps, Rocket Shed, Norfolk Island Pines, Kitty Pool "for inclusion in the schedule of the Heritage Overlay of the Shire of Corangamite planning scheme" (Decision 13 April 2007: Reason17).

## **EXECUTIVE SUMMARY**

There appears to be many issues regarding process which compromises the 2003 & 2006 consent for use and development of nationally significant public land for a private development – the Southern Ocean Beach House (SOBH):

- Consent relies on documents which appear to have not met appropriate consultation;
- Authorities at times appear to have been misadvised;
- Appears to be oversights in process and assessments including Risk Assessments.
- Appears to be no Strategic Plan for this significant public land.
- Ombudsman appears to have been misadvised, and Ombudsman's noted his limited investigation and restricted time frame of investigation.
- Seeming failure to take advice from relevant Coastal Board and Environmental and Heritage Organisations.

There appears to be unsatisfactory failures in process and inappropriate assessment and consideration of:

- Geological/geotechnical issues and environmental impacts;
- National significance of land;
- Land Zoning;
- Purpose for which the land was reserved;
- Existing land use/Change of use;
- Developer Contribution to the Scheme;
- Impact of an increase of an already overscale private development footprint on a nationally significant landscape/public land;
- Committee of Management;
- Road Safety Audit;
- Parking Strategy;
- Impacts on highly significant coastal flora;
- Impacts on Flora & Fauna Guarantee Act 1998 (FFG) & Environment Protection and Biodiversity Conservation Act 1999 (EPBC);
- Impacts on significant documented Aboriginal Heritage Site;
- Impacts on significant European heritage: War Memorial; Memorial Reserve, Port, Jetty, Jetty Cutting, Beacon Steps, Rocket Shed and Apparatus.
- Community/stakeholder and adjoining landholder consultation;
- Occupational, Health & Safety impacts on a Port Facility;
- Impact on public viewlines;
- Impact on public land for screening private development;
- Conflict of Interests;
- Relevant Government policy including: Victorian Coastal Strategy 2002, Siting and Design Guidelines for the Victorian Coast 1998, Landscape Settings Types for the Victorian Coast 1998; Coastal Spaces Landscape Significance; Port Campbell National Park and Bay of Islands Coastal Park Management Plan 1998.

The consent for use and development of the public land – the footpath and roadway and the change of Port Facility to a general purpose roundabout and car park appears to be for a private development's reception and appears to favour the Southern Ocean Beach House proposal and disadvantages public land and public interest.

The assessment for the use and development of this public land has not taken into account a strategic plan for the area. The ensuing problems to this nationally significant environment and a heritage port are immense, multiple, and need to be thoroughly assessed with the appropriate specialist and stakeholder consultation to achieve a sustainable long term plan.

## **DOCUMENTS**

Documents are attached in the accompanying Appendix or PowerPoint. Other documents are available on request.

## 1. GEOLOGICAL & GEOTECHNICAL ISSUES

The State Government recognises the area is geologically high risk and to “Avoid any development at cliff edge” (See Slide 6), but this seems to have been ignored in the 2003 and 2006 assessment and consent for use and development of the area.

There is no strategic plan for when the headland collapses. The SOBH development, the roundabout and possibly the Port will be unviable when the caverns collapse.

### 1.1. STATUTORY PROCESS

- There appears to be shortfalls in the statutory process which may compromise geological testing.
- VCAT Orders re geological testing appear ambiguous. ‘Detailed testing’ is not adequate. The last ‘detailed testing was 2 meter bore holes – one into the development’s septic tank area. This type of testing may be adequate for a small suburban house, but not a large scale development in a known geologically unstable area.
- It is an important part of the statutory process to assess off-site impacts. Yet Corangamite Council have written that off-site impacts on the surrounding public land will not be required to be considered (See Appendix 1 Email from Mrs Grainger 30 March 2007). This is counter to State Government policy where off-site impacts must be assessed: “The use and management of the coast will be designed to work with nature rather than against it, to minimise impacts which occur downstream or off-site, reducing long term community costs” (p.20 Victorian Coastal Strategy - VCS).

### 1.2. GEOLOGICAL EVIDENCE

- Evidence has been supplied from Mr Russell Brown who tested the area for VicRoads.
- Mr Brown’s evidence is supported by:
  - Dr Eric Bird, world renown coastal geomorphologist;
  - Dr Susan White, Geological Society of Australia;
  - Prof Brian Finlayson, University of Melbourne;
  - Mark Stuckey, Environmental & Earth Sciences (Documents already supplied; précis in Appendix 1).

(Further evidence from FOI reports presented following).

It is amiss as it appears Council have not replied to Mr Brown’s letters.

### 1.3. GENERAL GEOLOGICAL BACKGROUND

- The headland is a narrow strip of land bordered by cliffs on the seaward and bay side and undercut by 4 sea caverns (See Slides 7-9). Please note Slide 9 – photo taken in 1970s before existing southern wing of Southern Ocean Motel built. Also note small sand coloured Port Boat Trailer Facility.
- The sea caverns are formed by ground water draining from the land along lineations, and also from sea wave erosion.
- Dr Eric Bird’s diagram, from his book *The Coast of Victoria*, demonstrates the process of Apostle formation which is occurring on this headland (see Slide 10).
- Slides 11-13 shows recent apostle collapse.

- An approx 10 meter deep excavation removing in excess of 20,000 tons of earth has been proposed next to the public land to seat a proposed private development (See Slides 14-15. The Green X marks the area of deep excavation; Yellow – Crown land and car parks consented for use & development in 2006; Pink – sea caverns).
- The sea caves are usually under constant sea attack, however on the rare low tide they are accessible (See Slide 16 – photo inside largest cave – 45 meters deep).
- The cross section of largest cavern and its adjacent smaller cavern demonstrates the instability of the headland (VicRoads FOI) (See Slide 17).
- The area is likely to have sinkholes.
- When a large cement foundation is embedded in drainage lineations, groundwater will accelerate around it causing accelerated and increased erosion, and potentially accelerated sea cave collapse.
- Port Campbell coastline is renown for its catastrophic cliff collapses – see recent fall a few kms west of Port Campbell (See Slide 18).
- The headland has had recent cliff collapses and many impending cliff collapses including a section of Beacon Steps (See Slides 19-26).
- Sinkholes are known to occur as far north as the football ground and cemetery. (See Slides 26-28) for examples of sinkhole and land collapse.

#### 1.4. KNOWN PRIOR GEOLOGICAL INSTABILITY (See below and highlighted in Appendix 1):

1.4-1. (VicRoads FOI) 15 May 1995 VicRoads to Shire Engineer (See Appendix 1):

- “The option of a minor realignment at the caves has been discarded because of environmental difficulties, as well as not being a permanent solution”.

1.4-2. (VicRoads FOI) Council Meeting Minutes 20 February 1992 (See Appendix 1).

- Re a suggested realignment through the Memorial Reserve: **“Dept Conservation and Environment Officers have indicated that a full environmental assessment would be required...”** But it appears a **“full environmental assessment”** has never been done in the consent for use and development of this area.

1.4-3. (VicRoads FOI) 14 February 1992. VicRoads to Shire Engineer. p.1 (See Appendix 1).

- “VicRoads has been meeting regularly since July 1991 to consider options regarding the Great Ocean Road at Beacon Steps, where percolating ground water and wave action has completely and partly undercut the road”

1.4-4. (VicRoads FOI) 23 August 1991. VicRoads Warrnambool. GOR Realignment Working Party. Minutes. (See Appendix 1)

- “.... asked if the material at Port Campbell was the same as that tested at the Murphys, and was advised the material was basically of the same nature, very variable, in layers of soft and hard cemented bands, which trapped water and weakened the soft layers. A thin calcified crust covers the surface of the undercuts. Assessments are conservative, but difficult to put a time factor on possible future collapse. **Most of the joints in the area are vertical, criss-crossed with horizontal cracks, which caused entire blocks to drop out. A study conducted at Melb. Uni. formed the impression that there was little gradual deterioration, just sudden complete collapse”.**

- “... enquired if coring or seismic survey would achieve better results in determining where the risk of collapse was imminent, or not. .... **advised there were risks associated with boring through the calcified layer.** Tests to date done mainly to characterise and determine strength, **is not keen to disturb area too much**, but agreed a little more testing could be done”.
- .... “stated it was unknown where vertical joints were exactly, but it was known they were all through the area. .... asked if it was possible to fill the cracks with cement, but was advised this would probably hasten the process of collapse by forcing the cracks open”.

#### **1.5. WESTERN COASTAL BOARD** (Letter 13/2/06) wrote:

“The Board expects that any approval for the site would ensure that this issue [geological] is thoroughly investigated prior to commencement, monitored through the life of the development through publicly-accessible reporting and include appropriate permit conditions to prevent future geotechnical issues arising”.

#### **1.6. DSE – COASTAL RISK PROGRAM (CRP)**

Following discussions with Ms Genevieve Overell DSE Deputy Secretary, DSE say they will do a Coastal Risk Program Assessment. However, we are greatly concerned and losing faith as there appears to be many failures of process in the past.

##### Possible problems with a Coastal Risk Program (CRP)

- A CRP appears to have already been undertaken by VicRoads and the area already designated as High Risk.
- The terms of reference for the DSE study do not appear to have been established and may be basic.
- There is no guarantee the CRP will include the development’s impact on the surrounding public land.
- There is no guarantee the CRP will answer how the development or port will be viable when the caves collapse.
- We have requested a full open and transparent process, but have had no guarantee.

#### **1.7. COUNCIL DOCUMENTS**

1.7-1. Council’s 6 June 2003 Application to DSE for use and development of coastal Crown land clearly notes the inherent high risk of the area:

- “The reasons for the above changes have been substantially driven by the inherent dangers and unsafeness of this section of road due to **serious** geotechnical problems caused by undermining from caves and wave action. In simple terms, the road has been assessed as an unacceptable risk to road users. This section of road **must** be closed in the interests of **public safety**” (Document’s bold text) ([See Appendix 1](#)).
- “This closure [GOR] is considered necessary due to unacceptable risk to public safety” (p.4).

We must ask: why this **serious, unacceptable risk to public safety** was seemingly ignored for 5-11 years and in the previous 12 November 2002 application by Council for this land, and only brought to the fore when it appears the area was needed to fulfil the design for the proposed private development.

- 1.7-2. We have asked Council as the Responsible Authority: who is liable if the development's geological impact on the surrounding public land is not assessed fully and there is loss of life or property damage. We do not appear to have had an answer.
- 1.7-3. Council have written they may use 'in house' assessment. But Council do not have any specialist geotechnical staff.
- 1.7-4. Any specialist will have to counter the 5 specialists' advice, and there will always be a disclaimer on their advice, i.e., no guarantee.
- 1.7-5. We have requested Corangamite CEO (17 June 2007) that the walking trail to Beacon Steps has signage, as are all cliffed and undercut publicly accessible points in the National Park, stating that "this area may collapse without warning", as the walking trail traverses sea caverns which VicRoads noted may collapse "immediately". There has not been a response to this request.
- 1.7-6. Corangamite CEO has written the Shire "has emergency management planning processes in place... to respond to accidents/natural disasters" (Letter 29 August 2007). But appropriate management could divert a disaster.

## 1.8. VICTORIAN COASTAL STRATEGY (VCS)

The use of public land to extend the footprint of a proposed development (which appears to have a zero meter setback from unstable public land) does not appear to meet the requirements of the VCS:

- "Protection of significant environmental features";
- "Coastal and marine features of ecological, geological, geomorphological, cultural, landscape, scientific and historic significance will be protected"
- "Natural dynamic processes and systems which shape and maintain the coastline and its living resources must be respected and adverse activities avoided or minimised";
- "Risk will be actively managed";
- "The use and management of the coast will be designed to work with nature rather than against it, to minimise impacts which occur downstream **or off-site**, reducing long term community costs" (p.20 VCS).
- "Proposals for new industry or large scale expansion to existing coastal industry or infrastructure **should be subject to appropriate environmental assessment to determine whether the likely effects on the environment, including cumulative and long term effects, are acceptable and have appropriate mitigation and management measures**" (6.2.2).
- "Is set back from the coast as far as practicable in line with vulnerable assets" ( 68.5);
- "Enhances protection and rehabilitation of the natural environment and biodiversity" (68.1);
- "Where there are threats of serious irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation (the precautionary principle – National Strategy for Ecologically Sustainable development 1992) (4. p.21)."
- "Results in increased public benefit, having regard to environmental, social and economic implications" (68.2);

## **2.HERITAGE**

The headland contains rich heritage: Jetty 1880-2000, Jetty Cutting 1880, Rocket Shed 1930, Rocket Apparatus 1880s, Beacon Steps 1880, Aboriginal Steps pre & post colonial, *Purroitchihoorrong* (including Aboriginal Midden & Scattered Artifacts, Sea Caverns, Fossils, Great Ocean Road Walking Trail, War Memorial and Public Memorial Reserve, National Park, Port Access to Marine National Parks and Commonwealth and State listed Heritage Shipwrecks (See Slides 31-102 & Appendix 2 Tales from Australia's Shipwreck Coast).

### **2.1. LIST OF CONCERNS**

See attached list of concerns re environmental, infrastructure &/or social impacts on surrounding public land (Appendix 2).

Department of Primary Industries (DPI) 20 February 2003 letter to Corangamite Shire notes Council's lack of assessment of "potential existence of cultural heritage sites' (5).

No or limited impact assessment of heritage features appears to have been made in the consent for use and development of public land.

### **2.2. FLORA & FAUNA IMPACT ASSESSMENT**

It appears due process has not been followed and the public land's high quality vegetation and Flora & Fauna Guarantee Act 1998 (FFG) & Environment Protection and Biodiversity Conservation Act 1999 (EPBC) listed species have been compromised for a private development.

#### **2.2-1. Vegetation Assessment**

- 20 February 2003 Department of Primary Industries (DPI) letter to Corangamite Shire notes Council's lack of consideration of "the offsets required in respect to **the removal of high quality native vegetation for the proposed car park**" (4);
- The DPI letter to Council notes the area's highly quality native vegetation, yet DSE's later advice to the Ombudsman appears to contradict this. The Ombudsman wrote: "The Department advised me that, in its opinion, as the land was not undeveloped coastal Crown land but had served as a car park for approximately 50 years..." (19/9/07). (See Appendix 3).
- An Ecology Australia assessment was conducted 8 October 2003 (p.7) and submitted November 2003 (See Appendix 2) which appears to be after the land was bulldozed. The Report which appears to be after the vegetation was bulldozed.
- The Ecology Australia Report notes the "objectives of the study are to provide a Net gain assessment of the area impacted by a 300 sq m extension of the Car Park onto adjacent native vegetation. The expansion is necessary to cater for increased usage and better traffic control, which is causing vehicles parking on to overflow onto streets and unsealed boundaries of the car park, resulting in safety and land degradation concerns". The assessor does not appear to have been advised of a large scale development needs, or the closing of the GOR.
- The Report stated the vegetation was of "**Very High conservation significance**".
- The Net gain appears to have been calculated on the Great Ocean Road to the east of the sea caverns being part of the revegetated area. This area has been left as roadway, therefore Net gain appears to have not been met.

DSE letters from 2005 onwards appear to ignore the fact that very high conservation natural vegetation was bulldozed in 2003 for what appears to be development of public land for a private development. DSE continue to state that it was just a car park for 50 years, but the documents prove it was highly significant natural vegetation pre September 2003.

### **2.2-2. FFG Assessment**

- Documents attached to the Council Application for use and development of Crown land 6 June 2003 show the area has FFG listed species – Rufous Bristlebird *Dasyornis broadbentii caryochrous* (See Slides 31-32). However, FFG appears to be ignored in the Assessment.

### **2.2-3. EPBC assessment**

- No EPBC assessment was done even though Southern Brown Bandicoot *Isodon obesulus* have been sited on the headland. A mammal specialist has written to Heritage Victoria confirming what appears to be evidence of Southern Brown Bandicoot habitation. (See Slides 33-34).
- The area is also documented as known or potential habitat of the Metallic Sun Orchid *Thelymitra epipactoides*. (See Slides 35).
- Other EPBC listed species are viewed from this headland including migratory Southern Right Whales *Eubalaena australis* (See Slides 36-37).

## **2.3. PUBLIC PARK MEMORIAL RESERVE & WAR MEMORIAL**

The historical use of this land as a “Public Park Memorial Reserve” does not appear to have been taken into consideration in the 2003 and 2006 consent for use and development (See Slides 39-40), nor the old Great Ocean Road’s heritage and links to WW1 (See Slides 41-42).

- Gazetted - Public Park 1 January 1.1.1910.
- War Memorial unveiled Empire Day, May 24, 1921. It seems the area became a Memorial Reserve about this time.
- Shire of Heytesbury documents lost in a fire in 1930s.
- Local Planning Policies Framework Draft 1992 (adopted by Council) calls it “Public Park Memorial Reserve” (See Slides 43-45). This document notes the land’s association to the War Memorial.
- 1997. Land Conservation Council, Historic Places: South Western Final recommendations, 1997, refer to it as PC0008 Public Park (Historical) Port Campbell. The LCC document is a reference document in the Corangamite Planning Scheme (1999), and it is policy that the report be taken into consideration when assessing and evaluating applications for use and development.
- 8 August 2006 DSE Assessment for consent for use and development refer to the “Port Campbell Public Park Memorial Reserve” (8, p.2).
- Michelle Grainger, Corangamite Planning Officer, refers to land as "Memorial Reserve" (Email to me 5 October 2006) (See Appendix 2).
- 26 March 2007. Heritage Council of Victoria notes the area as “War Memorial Reserve” (Letter to RSL Camperdown Sub Branch).
- 10 May 2007 Heritage Council of Victoria recommended the area including the “War Memorial & Reserve”... “for inclusion in the schedule of the Heritage Overlay of the Shire of Corangamite planning scheme”. (Decision 13 April 2007: Reason17). Ms Chris

Gallagher. Chair Heritage Council of Victoria wrote “we see local listing as no less important than State listing. It simply involves administration by a different body. Both State and local government heritage systems are essential components of Victoria’s cultural heritage protection system” (Letter to M. Manifold 10 May 2007).

The development of this area has impacted on the Memorial Reserve and if it accelerates sea cavern collapse may impact on the long term viability of the War Memorial.

#### **2.4. JETTY, JETTY CRANE & JETTY CUTTING**

The historical and ongoing use of the Jetty, Jetty Crane and Jetty Cutting (See Slides 45-50) is threatened by the use and development of coastal Crown land for a private development.

The Jetty & Cutting are of significance for:

- Their role as rare examples of direct ocean coastal access;
- A long ongoing cultural heritage of a distinct coastal port related to Victoria’s exploration and discovery (Slide 51);
- Access to and maintenance and research of Arches Marine Sanctuary and Twelve Apostles Marine National Park (See Slide 52).
- Use in development of off-shore gas plants (See Slide 53)
- Access to and research of Commonwealth and State Heritage Shipwrecks and Shipwreck Museum (See Slides 54- 74);
- A long history of salvage and cliff and sea rescue via Rocket Shed and Rocket Apparatus, and in recent years by inflatable rubber boat (See Slides 75-94);
- Access to one of Australia’s largest waves at Two Mile (See Slide 95);
- Access to significant professional fishing industry (See Slides 96-7), and large recreational boating industry and tourism charter boat.

#### **2.5. ABORIGINAL CULTURAL ASSESSMENT**

The Aboriginal Cultural Assessment appears to have been compromised by the Council’s ‘urgency’ to have the site assessed (See Appendix 2).

Like the sudden closing of the GOR before appropriate consultation processes appear to have been completed, one must ask why the ‘urgency’ to bulldoze this area? The ‘urgency’ appears to correlate with a private development’s need to be assured of their reception drop-off and roadway to fulfil the proposed design.

The haste appears to have compromised the headland’s significant recorded Aboriginal heritage:

- Aboriginal Steps. Oral history relates that these steps are Aboriginal (See Slide 98). The Port Campbell Management Plan notes that “Aborigines constructed the first steps cut into the soft limestone cliffs to gain access to the shoreline for harvesting shellfish and other foods” (Parks Victoria 1998, 17). The Aborigines cut steps pre-colonial times, but also Dr Daniel Curdie lent Aborigines ‘tommy hawks’ with which to cut steps in the cliff in order to reach new fishing spots” (Duruz, 1971, 2).
- Aboriginal Camp Site on the headland, Point Sturgess, recorded by anthropologist Aldo Massola in 1960s.

- Smyth recorded in 1878 that Port Campbell was called *Purroitchihoorrong* (Smyth, 1878) ‘the spirit that mocks you’ (Duruz, 1972). This is locally believed to refer to the largest sea cavern where there is a very strong echo.
- Scattered artifacts, flint chips and midden material can be found across much of the headland, and Heytesbury Historical Society, Port Campbell, has stone axes found at Port Campbell and a flint core on the reef. (See Slides 99-102).

The Aboriginal steps, caverns and remaining artifacts are of national and state significance and according to the Victorian Coastal Strategy “Aboriginal and other sites of cultural, historic or scientific value will also be protected”.

Council have now been advised of this heritage, but do not appear to be implementing strategies to safeguard it, such as registering these sites with the appropriate body.

### 3. CROWN LAND ASSESSMENT PROCESS

#### 3.1. Department of Primary Industries (DPI) 20 February 2003 letter to Corangamite Council:

- DPI clearly notes that Council's permit application 02/146 to develop Port Campbell's significant headland was for a private development. DPI note the application's lack of detail, incorrect information, lack of consultation with the owner, and the inappropriateness to give public land "set aside for public use" to a private enterprise (See Appendix 3).
- DPI also clearly outlines how the assessment should comply with specific documents and notes the expected detrimental effect of the development.

#### 3.2. DSE VCAT SUBMISSION 2003

- DSE note how they "clearly interpreted the application to include the use and development of the adjoining Public Park Reserve being the fisherman's car park [was for the SOBH]. However the Shire then advised that the development of the car park was part of a wider traffic management proposal for Port Campbell..." p.1 (See Appendix 3).
- The Shire appears to have changed their request and wrote to DPI saying the request for this land was for the closure of the Great Ocean Road. I have suggested the Committee attain the Shire's initial request Shire correspondence dated 12 November 2002 to DPI/DSE. (Our FOI has not come through as yet).

#### 3.3. GREAT OCEAN ROAD (GOR) Closure - September 9 2003

Why did the Shire abruptly close the GOR the second day of the 2003 VCAT Hearing for the SOBH when:

- The 'serious', 'unacceptable risk to public safety' was known for many years.
- VicRoads had advised the Shire to close the Great Ocean Road in 1998 (VicRoads rescinded their responsibility 19 November 1998).
- The closing of the road appears to coincide with the needs of a private development.
- The abrupt closure of the GOR in September 2003 meant that draft plans which had not undergone a full consultation process were implemented.
- Submissions were called for the closing of the Great Ocean Road and Streetscape implementation but the road was closed and streetscape implemented before submissions were received.

#### 3.4. LAND ZONING - PPRZ

Why was the Memorial Reserve – an area of highly sensitive land – not also zoned PCRZ? As PPRZ it allows it to be further developed more easily into a roadway.

- **8 August 2006** when land given to SOBH development the land was still PPRZ and its purpose still a Public Park Memorial Reserve. All the land surrounding it was changed to PCRZ – a high environmental zone in the Planning Scheme. Ie. "to protect and conserve the natural environment and natural processes for their historic, scientific, landscape, habitat or cultural values; to provide facilities which assist in public education and interpretation of the natural environment with minimal degradation of the natural environment or natural processes; and to provide for appropriate resource based uses" SPPF Clause 36.03).

- 28 September 2006 part of Memorial Reserve was changed to PUZ6 following Amendment C13 which had its own problems – see later). Note the back boundary of the PUZ corresponds with the private development’s back boundary.
- One must ask why this significant land was left PRCZ when all the land surrounding it was zoned PCRZ.
- It appears there has been a lack of understanding of the area’s environmental sensitivity when changing these zones.
- Also note the mistake in the Council’s zoning – the Great Ocean Road that links Cairns Street has been zoned PCRZ ([See Slide 103](#)).

### **3.5. ‘PURPOSE FOR WHICH LAND RESERVED’ - Public Park Memorial Reserve**

The ‘historical’ ‘purpose’ of the land is “Public Park Memorial Reserve”.

Ombudsman 19 September 2007: “The Department advised it also considered the historical use of the area as a car park and noted that the intended use was of a similar nature” (Appendix... p.2. 15/6/07). This implies the historical use or “existing use” is of importance, as it is in planning. But the historical use does not appear to have been considered.

Council believe the land is not Memorial Reserve but just Public Park ([See Appendix 3](#)). The area is zoned as a ‘Public Park’ PPRZ (Public Park & Resource Zone), but its ‘purpose’ under the planning scheme is an historical Memorial Reserve.

The RSL have not been consulted regarding changes to the Memorial Reserve and have written their concerns.

### **3.6. ‘EXISTING USE’**

It appears the Shire has tried to accommodate competing interests without due consideration of the land’s ‘existing use’ as a naturally vegetated Memorial Reserve since 1921 and in small part as a Port Facility for Boat Trailers Only for over 50 years ([See Slides 104-105](#)). The changes appear to have been made without appropriate community consultation.

Any diminishment of the land’s availability of this function from private enterprise is contrary to public interest and the reason why the land is reserved.

### **3.7. ‘CHANGE OF USE’**

- DSE Letter to Council (20 January 2006) notes: ‘The proposed loss of 5 car parking spaces is deemed as a “change of use” to the car park’ ([See Appendix 3](#)).
- DSE letter Elaine Carbines Parliamentary Secretary for the Environment (nd. REF DSE029070) notes change to 4 car parks out of 37 car spaces, but it is actually a loss of 4 out of 14 car spaces ([See Appendix 3](#)).
- The change of use from a Memorial Reserve or naturally vegetated parkland to a car park or development egress, is also a ‘change of use’.

### **3.8. SOBH APPLICATION FOR CROWN LAND**

The **29 May 2006** Riverland Retreat Application for consent to use and develop coastal Crown land appears incomplete. It appears to cursorily refer to traffic and parking, but it

appears to fail to provide full necessary information as noted in DPI's 20 February 2003 letter:

- “Description of the current use of the land”;
- “An assessment of potential impacts and benefits of the proposal”;
- “A statement of support from the committee of management for the land (if the committee is not the applicant”.
- How it relates to government policy....
- States “we are not seeking any exclusive use of Crown land”. Yet it appears that they are seeking exclusive use. (This also appears to have been noted by the Shire who have circled the word ‘exclusive and appear to have made notes regarding this). (See Appendix 3).
- 9 June 2006 DSE (Ballarat) response to Riverland Retreat request (FOI from Shire but not provided by DSE):
  - further information incl: ‘estimated cost of works’; ‘written consent of public land manager’; ‘public benefit’.
  - “The department is of the view that by removing four car parking spaces public parking capacity will be reduced and the public will consequently be disadvantaged. Should the proposal be approved, the area the four spaces would otherwise compromise would be exclusively utilised by buses servicing the hotel. In return for such exclusive access, the applicant is required to demonstrate what public benefit or compensation for lost car parking will be derived as a result of this project proceeding”

**However, no further Application appears to have been provided to DSE, yet DSE consented to the use and development of public land. This appears inappropriate.**

### **3.9. DSE CONSENT - USE & DEVELOPMENT OF COASTAL CROWN LAND 2006**

13 April 2006. DSE letter (Ballarat) to Shire. DSE raise concerns:

- PCPFA & VRFish have raised concerns re proposed changes – shortage of parking and ‘traffic safety issues’.
- DSE “understand that council has completed a traffic safety audit and a parking utilisation survey for the town precinct and the findings of both of these reports indicate that the proposed change of use will not adversely affect these user groups” (p.1).

Problems: Council should have advised DSE that:

- The road safety audit did not assess the development as the auditor was not advised of the SOBH development.
- Council had noted in their VCAT submission the impact of parking and traffic.

DSE wrote they “will only consent to any development or change of use if council endorses such a proposal and can demonstrate that public interest will not be compromised” (p.1). but this does not appear to have been done

DSE asked that “council, not the developer, makes application for consent” for application for Crown land. WHY would DSE ask Council to do that? It seems because the 2003 Application for the SOBH development appears to have come from Council.

**31 March 2006 Ian Voigt, Regional Director DSE writes:**

- “I am advised that council has completed a traffic safety audit and a parking utilisation survey and the findings indicate that the proposed change of use will not adversely affect users of the car park, including commercial users”
- “No Crown land will be lost” ([See Appendix 3](#)).

**However, Mr Voigt appears to be misadvised as neither the traffic safety audit and a parking utilisation survey were complete. Also it seems Crown land will be lost, and more land may be necessary than requested.**

**7 July 2006. DSE letter to Shire:**

- “have you got a FINAL of the traffic safety report” [letter’s capitals].

**Council advised that the Parking Strategy “is still just in draft form” (31 July 2007). Council has confused the Road Safety Audit with the Parking Strategy, but neither were complete – both were just drafts. Also the Road Safety Auditor was not advised of the proposed development as VicRoads CEO believed.**

**This Application for the consent for use and development of environmentally and culturally significant Crown land appears to have been mismanaged.**

**8 August 2006 DSE Consent. Due process does not appear to have been followed:**

- Appears to misinterpret the long term ‘existing use’ of the land.
- The change of use and development was not publicly advertised.
- Legislation requires adjoining landowners be consulted. The adjoining R1Z in Hennessy Street, the RSL and Parks Victoria appear to have not been consulted.
- Failed to consider relevant Coastal Action Plan – South West Victoria Regional Coastal Action Plan 2002. The assessment said there was no relevant Coastal Action Plan.
- Appears to fail to consider geological instability of area.
- Appears to fail to consider impact on Aboriginal and European cultural heritage, FFG and EPBC listed species.
- Road assessment appears to be based on a sketch ‘drawing’ of the SOBH’s needs rather than engineered specifications ([See Slide 106](#)).
- DSE appear to ignore Council’s advice that: there are traffic concerns; the parking strategy is incomplete; the landscape is nationally significant and should be National Park (See Council letter to DSE 31 July 2006).
- Appears to fail to consider the proposed development relies on public land to screen the development. There is no on-site vegetation screening as requested in DSE’s 2003 VCAT submission ([See Appendix 3](#)).
- DSE’s summary of ‘consultation’ appears unsatisfactory. DSE write “the hotel development has been subject to two contentious and emotive VCAT hearings and considerable community discussion and debate. There has been considerable lobbying by a small group of Port Campbell residents over this matter, with some reference to the change of use of the car park for this purpose. The VCAT members considered the potential impacts on the adjacent car park at length and hence the Port Campbell

community is exceptionally well informed regarding this proposal” (Assessment 8 August 2006). DSE refused to attend the VCAT hearing despite being requested. How would DSE know whether it was an ‘emotive’ hearing or not? Is it reasonable to refer to ‘emotive’ in a supposedly objective assessment?

- In one instance the author notes that a small number of community members were involved in the objection to the SOBH development, but in another instance appears to surmise that all the Port Campbell community will be ‘exceptionally well informed’. This appears contradictory.
- The author appears to confuse the issue of the SOBH VCAT application with the assessment of whether it is appropriate this extra Crown land should be developed.
- VCAT wrote: “We have expressed concern about the loss of spaces in the Fishermen’s car park and will seek to examine whether this can be minimised...”, and they note these issues could be addressed by way of a parking management plan” (Reason 80, 24 Nov 2005). However, VCAT do not consent to this use and development. VCAT passed the responsibility and decision as to whether this Crown land should or shouldn’t be developed to DSE and Council: VCAT wrote in its Decision Reason 28 (14 March 2006):
  - “The design includes the removal of some vegetation and change in the car park area. That involves a separate consent process”.
  - “If the permission is not granted for the use/development of the car park by the crown land manager or relevant authority, then the current proposal will be required to be revised (as there is scope to do so but it is dictated by the current circumstances as put to us in these proceedings) or it will not proceed”.

VCAT have made it clear that this public land did not have to be given to the development.

**The Ombudsman wrote he was not satisfied with this assessment and sought further details.**

### **3.10. COUNCIL ‘CONSENT’ – USE & DEVELOPMENT OF PUBLIC LAND**

Council is the Committee of Management for the Memorial Reserve and Port Facility.

20 April 2006 Council recognise the significance of the Memorial Reserve when they write a response to DSE’s request for Council to make an application for the public land for the SOBH development:

- “Council also considers that the Public Park land and the portion of the Old Great Ocean Road at the end of Lord Street should be managed by Parks Victoria. These lands are adjacent and integral to the National Park and common sense would dictate that they be managed by the one Authority”;
- **“it is premature to conclude that future developments, like the one proposed, will not impact on parking demand, nor adversely affect current users of parking spaces”;**
- “Council doesn’t think it appropriate to make the application on behalf of the developers” (20 April 2006).

23 June 2006 Council letter to Riverland Retreat:

- “Council could provide you with a quote of works necessary but it is unlikely that Council would be able to carry out the project on your behalf”.

It appears that the developer asked Council to do the works for them.

- “preliminary advice and would like to be given the opportunity to consider any submissions which may be received from the public ...”

**However, the Application was never publicly advertised which appears to compromise this application.**

31 July 2006 Council again reiterate to DSE:

- “With regards the Parking Strategy for Port Campbell it is still in draft form;
- [Crown land] should be handed back from Council to DSE for management as part of Port Campbell National Park. Council only assumed responsibility for this area when the realignment of the Great Ocean Road occurred and has no formal management plan”

**There appears to be no further Council correspondence between DSE & Council. Council do not appear to have consented to use and development of Crown land, yet DSE appear to have consented the use and development 8 August 2007.**

### **3.11. FREEDOM OF INFORMATION (FOI) DOCUMENTS**

- There appear to be significant gaps in FOI documents received, i.e., missing documents.
- Problem with Council FOI request – Council seemed to want to limit the search.

### **3.12. COMMITTEE OF MANAGEMENT**

Under the code of good governance one would expect that for a Nationally Significant geological high risk area landscape which protects Port Campbell from the sea, and which contains highly significant heritage, it would be mandatory to have a Committee of Management with clearly defined:

- Roles & responsibilities;
- Strategic planning;
- Ensuring compliance with relevant strategies and policies;
- And accountable Risk Management to safeguard public assets.

However, Council:

- “has no formal management plan or strategy” and want to hand the headland to DSE (Council to DSE 31/7/06) ([See Appendix 3](#));
- do not appear to be encouraging the community to participate as a Committee of Management (Email from Michael Noelker DSE 3/8/07), even though Corangamite Shire’s Environmental Strategy 2006/7 encourages the community to participate in the ownership of their assets. ([See Appendix 3](#)).

### **3.13. PARKS VICTORIA**

It appears a failure in process that Parks Victoria as adjoining landholders were not asked to comment on the possible impacts on the National Park of the SOBH and the use and development of adjoining coastal Crown land.

The Port Campbell National Park Management Plan recognises that “the impact of roadworks, paving, buildings and foot traffic on vegetation, soils and land surfaces, can alter runoff, infiltration and water tables” (Parks Victoria, 1998: 12).

Port Campbell National Park Management Plan, 1998, notes the area's "high geological and geomorphological significance" and aims and strategies include:

- "Protect significant and sensitive geological and geomorphological features and land forming processes".
- "Minimise impacts of visitors and other activities on the significant geological and geomorphological processes".
- "Develop an inventory of geological and geomorphological sites, and their sensitivity to disturbance, to assist in planning visitor facilities including roads, tracks and viewing platforms".
- "Determine the impact of land uses, both inside and outside the Parks, on their significant geological and geomorphological features and land-forming processes".
- "Ensure that future developments do not impact adversely on the Parks' significant geological and geomorphological features and land-forming processes" (Parks Victoria, 1998: 12).

### **3.12. PUBLIC VIEWLINES**

The Southern Ocean Beach House appears to block public viewlines to and from the headland National Park and Memorial Reserve ([See Slide 107](#)), and the development will have a significant impact from the National Park across the Bay.

The montages seem to underestimate the height according to the marker indicated on the light pole in the Port Facility and on the heights on original plans (23.9 reduced level) compared with R1Z home floor level (21.44), ie. the development is 2.46 metres higher than the verandah deck level of home at 7 Hennessy Street. This will also interrupt public viewlines from the PCRZ of Hennessy Street ([See Slide 108](#)).

- Department of Primary Industries (DPI) 20 February 2003 letter to Corangamite Shire notes Council's application "does not fully consider potential negative impacts on existing view sheds from locations along the Great Ocean Road, locations within the surrounding Port Campbell National park and from within the township".
- National Trust letter 9 February 2006 note the SOBH "blocks public view lines from the National Park and War Memorial towards the town" ([See Appendix 3](#)).
- Western Coastal Board also expressed concern re viewlines (WCB 13 February 2006).
- Heytesbury Historical Society notes impact on War Memorial viewlines in letter to VCAT ([See Appendix 3](#)).
- *Siting and Design Guidelines for Structures on the Victorian Coast* 1998 state: "Structures should not impair existing views to the water or along the coast and should enrich views to and from the coast" (p.26).

### **3.13. WRITTEN CONCERNS re 2006 Consent for Use and Development of Coastal Crown Land for SOBH**

DSE's assessment for consent for use and development has not made it clear how these organisations' concerns have been taken into account:

- Western Coastal Board;
- National Trust;
- Australian Conservation Foundation;

- Environment Victoria;
- Friends of the Earth;
- Protectors of Public Lands Inc. ([See Appendix 3](#)).

### **3.14. MINISTER FOR PLANNING**

The Honourable Minister has written to the Australian Conservation Foundation: “The Department will only consent to a change of use or development of the car park if it is convinced that public interest will not be compromised as a result” (31 August 2006 – [See Appendix 3](#)). This letter is written after the consent had been issued, and indicates that the consent can be rescinded.

The Minister has consistently written that he cannot intervene, but we are advised that the Minister is able to intervene.

#### **4. PORT FACILITY**

The Port is an integral part of the community and insists that the Port Facility must be retained and operates in a safe manner. It is imperative that the area be retained as a safe working environment for:

- Professional fishermen who have over long and wide vehicles
- Recreational fishermen
- Gas companies who use the Port.
- Safety vehicles and emergency services for sea rescue operations.

#### **4.1. PORT AREA IMPACTS**

Corangamite Shire. 19 October 2005 VCAT submission made it clear that the SOBH would have a high impact on its surrounds, which includes the Port Facility:

- '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' (143.3).
- "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).

The impact to an environmentally sensitive area (excavation and changes to drainage), and bus impact on an important Port Facility are recognisable ([See Slides 109-113](#)).

Why would the Shire ignore their own advice and permit public land to be given to the SOBH which will only have a further impact?

#### **4.2. DEVELOPER CONTRIBUTIONS TO THE SCHEME (DCS)**

- Council calculated the SOBH was approx 156 car parks short of the Scheme's requirements.
- In VCAT the Council waived 112 car parks and requested \$160,000 to compensate for 40 car parks (26 October 2005). Council's DCS request demonstrates they acknowledge the potential high impact on the surrounding amenity. The DCS was overturned by VCAT.
- Yet Council accepted a Developer Contribution to the Scheme of \$25,000 in the transaction for this public land in 2006.
- This appears to have been before either a Developer Contribution to the Scheme or Parking Precinct Plan were implemented in the Corangamite Planning Scheme.
- This cursory DCS makes the 'contribution to the Scheme' so uncertain in its practical operation as to be invalid. Council will never be able to purchase any suitable land in the immediate area for the Port Facility. There must be some real connection or nexus between the Contribution to the Scheme, the area compromised and the community's needs.

### **4.3. PORT BOAT TRAILER FACILITY – COUNCIL ASSESSMENT**

While the professional users have now been temporarily assured of their current parking allocation, this has time limitations and, despite many requests, areas had not been marked for Recreational Fishermen until word of the impending Parliamentary Inquiry. The boat trailer parking has not been guaranteed.

- Council assessment of the Port appears to have been compromised to accommodate a private development.
- We have already witnessed the instance where the sign “Car Park for Boat Trailers Only” was removed seemingly without due regard for the long term ‘existing use’ of the area ([See Slide 104](#)).
- The Port Facility was changed to general purpose roadway before submissions were received.
- Victorian Recreational Fishing Peak Body, Boating Industry Australia, Sea Food Industry Victoria and Port Campbell Professional Fishermen’s Association & Port Campbell Boat Club have clearly noted problems with Council’s response to the Port, and they note the OHS issues of boat trailer parking in a general purpose roundabout.
- Port Campbell Master Plan, 2000 notes “during a recent emergency concerning sailors lost at sea, emergency vehicles were unable to park in the space due to the presence of other vehicles” (p.16).

### **4.4. ISSUES WITH PORT FACILITY AS MULTI USE ROAD RESERVE**

- The turning circle into this roundabout from Lord Street and in the roundabout does not meet AustRoads standards for tourist buses (12.5m radius) ([See Slides 114-118](#)).
- There are incompatible uses in combining a general traffic roadway and roundabout, parking and reversing area for boat trailers for professional fishermen and the 50 or more recreational fishermen’s boat trailers, parking area for general traffic, and the proposed reception-drop off zone for a major resort.
- It is not appropriate to reverse fishing boats and trailers into oncoming traffic in a general traffic roundabout.
- There are OHS issues in this mixed usage. The design is a threat to safe and proper functioning of the Port Facility including safety vehicles and emergency services.
- Mr. Terrill, VCAT Member, recognised that there would be insufficient space for reversing trailers in the FCP when the central section is full. He also recognised there would be insufficient space for manoeuvring, reversing and parking both professional and recreational fishing trailers. This has proven correct.
- The gradient is steep (approx 1:14 or 7%) for multiple uses.
- If the Fishermen’s car park is not full, general traffic often drives the shortest possible circuit around the western light pole. Large trucks are also doing this. The traffic is unpredictable for pedestrians and Port users.
- Many vehicles are driving around the roundabout in reverse demonstrating design deficits.

[Other confidential documents have been supplied which support the issues raised.](#)

### **4.4. GENERAL PURPOSE ROUNDABOUT – GEOTECHNICAL ISSUES**

Mr Brown noted to DSE at onsite meeting (9/1/06) that from a geotechnical perspective as a Boat Trailer Only Park the area was low risk, but as a general purpose roundabout it was high

risk. The roundabouts proximity to the sea caverns and possible lineations is a problem. The roundabout may be unviable in the near future.

#### **4.5. LORD STREET ROADWAY**

- The Lord Street roadway is too narrow in parts (3 meters wide). Professional fishermen's vehicles are up to 3.2 m wide and have to access their workplace (the pier) via a 'shared zone', ie. legally a footpath, that is narrower than their vehicles.
- There is insufficient space for boat trailers to reverse down the boat ramp to the jetty. The trucks and trailers have to pull into the middle of the road to reverse down the ramp.
- The 'Shared Zone' appears to have been suggested by the development ([See Slide 119](#)).

#### **4.6. PROBLEMS – STREETSCAPE / PORT FACILITY DESIGN**

- 31 August-1 September 2001. UDF Draft 2001 formally displayed to public at Surf Life Saving Club. Streetscape suggestions a part of this. Suggestions including App 5. Pier Carpark & access Road 30/5/01 ([See Slide 120](#)).
- Between September 1 and November 2002 the Streetscape changed dramatically without community consultation. There were some Council discussions with the Port Campbell Professional Fishermen's Association (PCPFA), but they are only a small part of the community and do not represent all community concerns for important community capital. It appears from documents supplied the PCPFA also had issues with due process.
- November 2002. Streetscape available for public viewing (under counter at Information Center). No formal consultation process. Not opened for submissions. Design vastly different to designs shown in public display in UDF Draft. Designs appear to suit SOBH proposal.
- 15 February 2003. Shire letter to DPI requesting Port Facility and naturally vegetated Crown land for SOBH development.
- 20 February 2003. DPI letter to Shire – saying it is 'generally not appropriate [to give Crown land to a private development] and conflicts with Government policy'.
- March 2003. UDF Consultant is still working on streetscape design – see dates on plans.
- 9 September 2003. GOR closure and final roundabout plans appear to have to been passed by Council..
- 28 October 2003 Ms J. Brazier letter to Cr Gstrein – “works are already well underway – excavations complete & kerbing already laid – yet Council has not had a chance to consider the community's view”.
- Over the next 12 months Council received 10 submissions (some from various group representatives) regarding streetscape safety issues. After community requests a Streetscape Forum 'Focus Group' was implemented by Council to resolve community concerns.
- 19 May 2005. Invitation to join Streetscape Focus Group Monday 6 June 2005. It also notes “A tentative meeting date of, 20 June at 2pm has also been set for a follow up meeting”.
- 2 June 2005 Focus Group Memo – Streetscape Review. Meeting a response to community submissions and a “starting point for discussions”.
- 6 June 2005 Streetscape Forum Meeting. Issued with a questionnaire which appeared directional and somewhat loaded. We were advised there would be a further meeting to discuss the results of the questionnaire. Despite requests, this meeting did not eventuate.

- 23 August 2005. Officer's Report and recommendations submitted to Council without notification to Focus Group who were waiting for next meeting. This lack of due process was noted by Cr Cumming, Ms Hanna, Ms Brazier and Dr Manifold. Officer's Report and recommendations to Council – appears selective and partial in its parameters.
- 12 December 2005. Community representatives and stakeholders requested meeting with Mayor, Councillor, Shire Officer. Shire Officer when asked whether Consultant was designing at same time appears to have stated something to the effect: the consultant rang up and said he was designing the SOBH and asked if he should design it in conjunction with the roadworks. It appears the Shire Officer said yes, that was ok.

#### **4.7. VICTORIAN COASTAL STRATEGY RECOMMENDATIONS**

- “coastal and bay locations that have natural benefits, such as sheltered boating locations due to protection from prevailing winds and sea conditions, shall be identified through a recreational boating strategy or regional boating plans. Planning should give priority to maritime related uses at the locations” (VCS 4.1.2).
- “Ensure appropriate local port infrastructure for commercial fishing and recreation” (VCS 6.3);
- “The network of local ports will continue to be maintained and strengthened with community and local user input, improved safety and risk management arrangements” (VCS 6.3.1);
- “Proposals for new industry or large scale expansion to existing coastal industry or infrastructure should be subject to appropriate environmental assessment to determine whether the likely effects on the environment, including cumulative and long term effects, are acceptable and have appropriate mitigation and management measures (VCS 6.2.2).

## 5. URBAN DESIGN FRAMEWORK (UDF) PROCESS

The process for the UDF appears to not fulfil Government guidelines as outlined in the Practice Note which states:

- ‘consultation is a key element’;
- UDF Draft April 2001 not shown to public
- UDF Draft May 2001 shown to public (August 2001), but there was no public feedback process available. We were advised the submission process would come later. There was no public feedback process following the UDF Draft 2001. (See Slides 121-122) re UDF Draft suggested roundabout and streetscape – note narrow footpaths, wider roadway).
- UDF March 2002 – never shown to the public. This document had significant changes to the Draft (See approximation of current roundabout compared with what was proposed. (See Slide 123). Revisions to these documents appear to have been made without the appropriate community consultation process.
- November 2002. SOBH Development’s Plan shows: Wide Footpath, ‘Shared Zone’, ‘Proposed Bus Drop Off Zone’ and ‘Realigned Car Park (By Others)’ (See Slide 124).
- There appears to be a conflict of interests.
- Note porte cochere driveway sketch (Slide 125) – appears to be a single carriageway. If porte cochere blocked by a car, buses or other vehicles will need to park in Port Facility.

There appears to be a break down in important steps in the Urban Design Framework process: (See Slide 126)

It has been suggested that the community had time to comment with Amendment C13 in 2005. But this was after all the streetscape works were implemented.

## **6. AMENDMENT C13 – COUNCIL PROCESS**

There appear to be problems with Council process re the Amendment C13 process which appear to support a private development and compromise public land:

1. The Panel appear to be misadvised by Council regarding the purpose to which the public land was reserved.

Council advised the Panel: “It is further acknowledged that the car park has a multi-purpose role; providing for other beach and foreshore users and visitors to Port Campbell”.

While other people sometimes use this area, they have done so ‘illegally’ as the signs noted ‘Car Park for Boat Trailers Only’.

2. While an ‘associated use’ has been adopted by the Council for the boat trailer parking area, this is in no way a guarantee of on an ongoing Port Facility for Boat Trailers Only. The area is now a Road Reserve. Once the pressures of a large hotel development take over, the ‘use’ can be changed to whatever the managers deem suitable.

Other issues re Amendment C 13 which potentially impact on public land

1. The proposed development threatened to take Council and C13 Panel Report to VCAT.
2. The Panel Report was changed significantly to advantage the developers.
3. The Panel advised that the Report could not be appealed. Yet, the developers were given the opportunity to appeal the Panel Report, but the community were not. There appears to be a lack procedural fairness and natural justice.
4. Panel Member Lester Townsend phoned (19 October 2006) to resolve enquiries. Mr Townsend said there was “no right of appeal to the Panel’s Report”. How could the developers appeal?
5. Had the issue gone to VCAT, other community members could have made a submission. This would have been a transparent and fair process.

## 7. ROAD SAFETY AUDIT

Again, there appear to be major lapses in process and communication by Council which has disadvantaged the community/stakeholders and impact on public land.

- The Road Safety Audit was implemented after discussions with Dean Zabrieszack Acting Regional Manager VicRoads regarding concerns on the current roadway and the proposed Southern Ocean Beach House's impact. The SOBH development should have been included in the brief. Yet Corangamite Council keeps reiterating it was an audit solely of the existing road conditions.
- VicRoads CEO confirms that the Road Safety Audit is "of the development proposal" ([See Appendix 4](#)).
- The Auditor Phillip Jordan has stated that he was not advised of the development. He said the AustRoads Orange Book 2002 - Road Safety Guide - should be known to all planners and it recommends auditing of developments. He said VicRoads have some internal policies: if its a job costing X\$s its a job that should be audited ([Phone conversation](#)). Mr Jordan recommended that all such scale developments have road safety audits in the design stage ([See Appendix 4](#)).

- Mr Ian Voigt DSE Regional Director wrote 31 March 2006: "I am advised that council has completed a traffic safety audit and parking utilisation survey for the town precinct and the findings indicate that the proposed change of use [of the FCP] will not adversely affect users of the car park, including commercial users".

The SOBH egress through the Port Facility (and need for further public land) was not considered, and Mr Voigt appears to have been incorrectly advised.

- Port users have clearly outlined how the redesign and process of the Port Facility has impacted on them. ([Documents already supplied](#)).
- Council have clearly noted that the Road Safety Audit did not consider impacts of the SOBH.
- The Ombudsman has made it clear that the Road Safety Audit was on existing conditions only and not on the SOBH development's impact.
- Showing his lack of understanding of the SOBH and his expectations for the Port area, Road Safety Audit 4.2. Phillip Jordan recommends "Discourage as much through traffic as possible by placing a sign (to face entering traffic in Lord Street south of Cairns Street) reading NO THROUGH ROAD". (his capitals). He would not have written this if he had known a major hotel complex would be situated in the cul-de-sac Port.
- It is a 'Draft' Audit. Council haven't completed the process.

## 8. PARKING STRATEGY PLAN PROCESS

Council appear to have advise DSE that the Parking Strategy Plan indicated no adverse impacts when it was only in a draft stage.

The Ombudsman states the Department “advised me it knew the road safety audit was a draft, however, it ultimately relied on the Council having completed sufficient work to guide the Department in this area” (p.3 Ombudsman letter to M. Manifold. 19 September 2007 – [See Appendix 5](#)).

- DSE are guided by Council’s incomplete consultation.
- DSE appear to confuse the Parking Strategy Plan with the Road Safety Audit which are two different things.
- Council have not followed due process.
- The Parking Precinct Plan did not consider the impact of the SOBH on the surrounding area.

The seeming lack of process and lack of advice given to DSE appears to support a private development.

We must ask why a development which Council noted was lacking 156 car parking spaces by the Scheme’s requirements and would have a major impact on the surrounding area would be permitted by Council to allow the further increase of the development’s footprint by giving public land to the development.

### Parking Strategy Plan Process

- The community had no success in getting any areas set aside for Boat Trailers Only until the Ombudsman began to investigate in 2006.
- Then the Parking Strategy Plan Draft November 2006 showed suggested areas for ‘boat and trailer use’. However, please note this may be deceptive as it is different to ‘Boat Trailers Only’; it could include other trailers. Also note the ‘Recommendations’ on page 16 are those from the community, not the Council ([See Slide 127](#)). The Council Report noted:
  - “It is also recognised that all parking in Port Campbell will be at times under pressure, and it is impractical to assume that the demand for parking spaces associated with the Port will be accommodated”;
  - “Any recommendation to restrict single vehicle access to the Fishermen’s car park should also recognise that this area needs to be shared with other users” (p.15). This is unacceptable.
- Parking Strategy Plan March 2007 extends the possible area for boat and trailer use, i.e., it could also be caravan use, following the community’s ‘recommendations’ ([See Slide 128](#)). The Strategy also notes:
  - “Any recommendation to restrict single vehicle access to the Fishermen’s car park should also recognise that this area needs to be shared with other users”;
  - “as development occurs there will be an increase on demands from single vehicles for the Fishermen’s Car park. This issue should be addresses as part of this strategy by providing specific parking areas in the Fishermen’s Car park for both professional and amateur fishermen” (p.15).
- Even though Council were advised (11/7/07) that Minister Madden answered to Questions from Ms Colleen Hartland MP saying “no boat trailer parks will be lost as a result of this use” [ie. the use and development of the area]. (Minister's Answer to

Question 310, 24 May 2007), no spaces were appropriately marked for recreational fishermen.

- Despite many requests to Council since 2003, reservation for recreational fishermen was only implemented October 2007 – it seems after news of the Parliamentary Inquiry.

## **SPECIFIC REQUESTS:**

1. Rescind the 2006 permit to the Southern Ocean Beach House for use and development of coastal Crown land.
2. Full assessments of the Southern Ocean Beach House impact on the surrounding public land:
  - Environment;
  - Infrastructure;
  - Cultural Heritage and Social Capitalof this Nationally Significant unstable headland and heritage port with full public and independent specialist consultation process.
3. The Public Memorial Park Reserve and Public Conservation Reserve (Cnr. Cairns Street and GOR) be gazetted as part of Port Campbell National Park as recommended by VNPA.
4. The community be permitted to become part of a Committee of Management for the headland.
5. An Environment, Infrastructure and Cultural Impact Management Plan for the headland public land with stakeholder, community and specialist input.
6. The Western Coastal Board to become a legislated part of the assessment process of coastal Crown land.
7. A Strategic Plan for the headland/public land, including plans for when the caverns collapse.
8. The SOBH to provide vegetated landscape screening on its own land rather than rely on public land to screen its built form from the National Park.
9. Gazettal of a safe area for port operation including: boat trailer parking separated from general purpose car park roundabout.
10. Gazettal of a marked zone for trailer reversing to Jetty separated from Shared Zone.
11. Signage for the Great Ocean Road walking trail to Beacon Steps, as are all cliffed and undercut publicly accessible points in the National Park, stating that “this area may collapse without warning”, as the walking trail traverses sea caverns which VicRoads noted may collapse “immediately”.
12. Aboriginal Cultural Heritage of the headland to be recorded with appropriate Departments.
13. Preparation of a Planning Amendment to the Local Planning Scheme to include the area’s significant European Cultural Heritage.
14. An independent Road Safety Audit with full open stakeholder and specialist consultation on the impact of the proposed SOBH on public land
15. An independent Traffic Management Assessment with full open stakeholder and specialist consultation on the impact of the proposed SOBH on public land.

**GENERAL REQUESTS:**

1. Legislation to prohibit large developments and excavation/earthworks within 100 meters of the coast and significant environmental features.
2. Legislation to ensure (coastal) Crown land meets rigorous detailed documented assessment with inclusion of stakeholder and specialist participation.
3. Legislation to ensure all developments on the coast have vegetated landscape screening on their own land rather than rely on public land to screen the development.
4. Legislation to ensure Coastal Boards are part of coastal Crown land assessment process.
5. Legislation to ensure all applications for change of use and development of Crown land and public land are advertised.
6. Ensure full open and inclusive Hazard and Risk Assessments are undertaken before any changes to public coastal land.
7. Ensure full open and inclusive Archaeological and Heritage Assessments are undertaken and Management Plans.
8. Ensure full open and inclusive Hazard and Risk Assessment are undertaken before any changes to public coastal land.
9. Ensure full open and inclusive Archaeological and Heritage Assessments are undertaken before any changes to public coastal land.
10. Ensure full open and inclusive Management Plans are undertaken before any changes to public coastal land.