

30 October 2007

The Hon Gavin Jennings  
Minister for Environment and Climate Change  
Level 22, 50 Lonsdale Street  
Melbourne VIC 3000

Dear Minister

## REACHING A SUSTAINABLE SOLUTION TO OCEAN ACCESS AT BASTION POINT

For several years the Save Bastion Point Campaign (SBPC) has worked to expose the significant environmental, safety, social and economic impacts of ocean access proposals for Bastion Point, Mallacoota, and to ensure a sustainable solution for the area.

While the SBPC shares the widely held concern about the lateness of the DSE submission to the Panel Inquiry into ocean access at Bastion Point, we do believe that the issues raised in the submission were not new to the proponent. In addition, the submission was consistent with many of our major concerns, as well as those of 87% of submitters to the Panel Inquiry who also opposed the proposal.

The response of the East Gippsland Shire Council (Council) to your Department's submission has led to adjournment of the Panel Inquiry and subsequent discussions between your Department and the Council. In the event of these discussions, the SBPC urges you to consider the following matters to ensure that a transparent and inclusive consultation and assessment process is established which results in a sustainable solution with wide community support.

### Problems with the current process

The situation of a proponent seeking to delay a Panel Inquiry with respect to an exhibited EES is highly unusual. It is not something contemplated by the *Ministerial Guidelines for the Assessment of Environmental Effects under the Environment Effects Act 1978*.

We request that you assume responsibility for resolving the current situation. This is the appropriate course because:

1. the Council has failed to satisfactorily manage the EES process –
  - it is apparent that the Council does not have the financial resources to continue with the EES without further government financial support;
  - it has not indicated who will undertake the proposed works; and
  - it has no commitment to the long term management of the site.
2. apart from some matters under the *Planning and Environment Act 1987*, principal responsibility for all key regulatory approvals rests with you as the Minister for Environment.

It is unsatisfactory to leave responsibility for the proposal and the EES in the hands of the Council, who have described themselves as a "reluctant proponent". The Council has not demonstrated a

commitment to consideration of any low impact solutions and has failed to meet reasonable expectations with respect to community consultation.

The Minister for Planning has ultimate responsibility for the administration of the EES process under the *Environment Effects Act 1978*. In terms of the public process provided for by this Act and the Ministerial Guidelines, the present situation is highly unsatisfactory. The Minister has appointed an independent panel to consider submissions and evidence with respect to an exhibited EES. For the whole process to be deferred while the proponent conducts discussions with your Department about the conduct of the EES casts serious doubt on the adequacy of the process to date and potentially undermines the integrity of the Panel Inquiry.

If the process proceeds to a panel hearing, the Minister for Planning will need to prepare an assessment of the acceptability of the project in response to the Panel's recommendations. However, ultimate responsibility for whether any development occurs will depend on decisions by you in a number of capacities:

- as Minister responsible for the necessary approval under the *Coastal Management Act 1995*;
- as Minister responsible for the administration of the site as public land under the *Crown Land (Reserves) Act 1978*; and
- a planning permit is required with respect to any native vegetation proposed for removal as part of the development. Under the East Gippsland Shire Planning Scheme and the Native Vegetation Framework, the proposal to remove native vegetation of "very high" conservation significance would require approval of the Minister for Environment. The Native Vegetation Framework specifies that such approval will only be forthcoming where there are "exceptional circumstances" when considered from a Statewide perspective.

There is considerable doubt that you will be in a position ultimately to approve the Council's preferred development under any of these legislative regimes, even with further refinement of the proposal. Factors supporting this conclusion include:

- The fundamental problems raised in DSE's submission are unlikely to be addressed by a further refinement of the Council's preferred option.
- The Council's preferred option and indeed all of the options investigated as part of the EES process are inconsistent with strategies developed under the *Coastal Management Act 1995* as evidenced by the Gippsland Coastal Board submission.
- The Council is unwilling to commit to being responsible for their preferred option as Crown Land manager under the *Crown Land (Reserves) Act 1978*.
- There is a lack of any basis in the EES material put forward by the Council for you to approve the removal of very high conservation significance vegetation on the site. Even if there was a basis for such approval, the proponents' own material makes it clear that the necessary offsets to compensate for any vegetation removal are unattainable.

### **A process forward**

The *Environment Effects Act 1978* does not require the continued pursuit of a development proposal if it is clearly untenable. In such cases, the appropriate course and best practice in terms of environmental impact assessment is for the proposal and hence the EES to be abandoned.

The Council is correct in stating that simply abandoning the issue at this point would be unsatisfactory. However, persisting with attempts to remedy the defects in the EES or to convince DSE to change its position will not solve the issue.

Instead, an appropriate solution is for you, as the Minister for Environment, to intervene to establish a process in line with your responsibilities under coastal management and crown land legislation to

consider what, if any, low impact option might be viable within the environmental constraints imposed by the site. Given the significant community concern, any process must be both public and accountable.

This course of action would be consistent with the broad opposition to any significant redevelopment of the site evidenced in the EES submissions, as well as the Council's limitations and reluctance as EES proponent.

### **A sustainable solution**

The SBPC does not support the recommendations in Coastal Engineering Solutions' *Mallacoota Boat Ramp – Concepts for Upgrading Existing Facility* for the East Gippsland Shire, 1999, as referenced in the DSE submission. These were engineering solutions based on limited site observations. No consideration was given to constraints posed by the site, government policies and strategies, ecologically sustainable development principles, wilderness coast values or the interests of the broad range of other users that frequent Bastion Point.

The SBPC believes that the following matters are fundamental to any long-term and sustainable solution at Bastion Point:

1. Containment of ocean access from Bastion Point within the site of the existing boat ramp and access road.
2. Assessment of modes of improved ocean access that do not include breakwaters or any other high impact construction or facility. Possibilities include tractor assisted beach launching or a new ramp facility that is slightly longer, wider and steeper in gradient than the existing ramp.
3. Recognition of the shared use of Bastion Point. The area is utilised by a wide group of users and lends itself to a vast number of purposes in addition to boating.
4. Implementation of a safety/risk management plan for launch/ retrieval ocean access as well as land-based safety issues.
5. Implementation of an environment management plan during both the construction phase and for the ongoing use of the Bastion Point area.
6. Implementation of a cultural heritage management plan to ensure ocean access does not destroy or impact upon Aboriginal cultural heritage sites.
7. Designation of parking areas for boat trailers and vehicles to cater for peak period usage. Congestion problems only occur a few weeks per year, therefore this parking may be alternative or temporary. Planning for future expansion of parking must be away from the foreshore. Vehicle and pedestrian access routes also need to be rationalised.

We wish to discuss these matters with you further. We would greatly appreciate your staff contacting Ros Macvean (0418427768) to determine a suitable time and date for a meeting.

Yours sincerely



Ros Macvean  
Coordinator

CC –  
The Hon Justin Madden, Minister for Planning  
Mr Neville Penrose, Regional Director, Gippsland Dpt Sustainability and Environment  
Mr Andrew Horner, Environmental Planner, Gippsland, Dpt Planning and Community Development  
Panel, Bastion Point Ocean Access EES, Planning Panels Victoria, Dpt Planning and Community Development  
Mr Steve Kozlowski, CEO & Ms Kate Nelson, Director Planning and Community, East Gippsland Shire Council  
Mayor & all Councillors, East Gippsland Shire Council