VICTORIAN
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ASSOCIATION
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To: Point.Nepean@dse.vic.gov.au

Submission from the Victorian National Parks Association re:
Planning processes applicable to Point Leisure Group's vision for Point Nepean Quarantine Station

The Victorian National Parks Association is deeply concerned about the arrangements for the development and commercial use of the Point Nepean Quarantine Site. We are opposed to the development in its current form and the process to be undertaken for its approval.

The VNPA is not opposed to appropriate and sensitive commercial uses or commercial activities in national parks. There are, in fact, currently some 350 licensed tourist operators and 450 leases and licences in Victoria's parks and reserves.

Exclusive use

What we are opposed to is private enclaves with 99-year leases within publicly-owned parks that restrict access for the general public and are potentially an ongoing threat to the protection of the natural values of the parks. For example, of the 28 facilities and activities listed on page 65 of the Point Nepean Overview documents, 54% (15) will require the community to pay for using them, and 25% (7) will have restricted community use. There is also no information about the amounts to be paid or any assessment of social or economic impacts. This is hardly appropriate in the context of a public park.

Institutional arrangements to protect the public interest

A range of institutional questions have still to be answered in the government's planning. In particular, we do not know how the government and the taxpayer will be protected if there are defaults or failures with the private arrangements.
And how can we be assured that there will be a return to the tax payer? For example, in 2012 the Napthine government spent $13.8 million on a major works program at Point Nepean National Park to upgrade roads and car parks and improve the visitor experience. http://www.premier.vic.gov.au/media-centre/media-releases/5747-major-works-at-point-nepean-add-to-visitor-experience.html . This appears to be a significant infrastructure subsidy for any potential private developer, and begs the question of how the state will obtain a return on this investment.

There are also other institutional issues which have not been resolved or clarified. For example:

- **How long will the lease be for?** The Napthine government has changed the National Parks Act to allow for 99-year leases in national parks, which is tantamount to private ownership. Is this what is proposed for Point Nepean?
- **Does the lease include a bond?** In the United States, a very substantial bond is best practice for proposed commercial uses in national parks. We understand that this can be an amount up to the value of the development – that is, if the development is valued at $100 million, the bond is also $100 million.
- **How much rent is to be charged, and where will this money go?** Will it go to the park manager (Parks Victoria), or back into general revenue? What is the benefit of the lease for park management?

- **What benefit will there be to the park itself**, other than to increase visitation, which could also lead to increased impacts?

At an absolute minimum, the provisions recommended by Mornington Peninsula Shire Council at its meeting on Monday 25 August 2014 should be incorporated into any arrangements. These are:

"It is noted that the proposed lease may be exhibited for comment, however a 28 day period is unlikely to provide sufficient opportunity for Council and the community to effectively consider this key document – a period of at least six weeks is required to allow for assessment and formal reporting. In any event it is considered critical that the lease documents include:

- ***A requirement for appropriate bonds/security to ensure that works once commenced can be satisfactorily completed in the event of a default. It is possible to provide for the release of bonds as works proceed;***

- ***Clear conditions for public review and approval in the event that the lease holder wants to on-sell the lease or sublease***

- ***Provision of a satisfactory progress/review clause to ensure that the project proceeds generally as intended;***

- ***Protection of the Quarantine Station site against being seized by an investor or financial institution if the lease holder goes bankrupt or defaults on a loan;***

- ***A clear statement that when the lease finishes, the assets on the Quarantine Station site should revert back to the State Government; and***

- ***Provision to approve the arrangements for managing public access to different parts of the site, including the requirement for fees, and providing***

reasonable opportunities for community groups to access space within the complex."

Footprint issues

It appears from the limited detail available that proposed new buildings will be largely located within the 'footprint' of existing or previous buildings, and that the height of buildings will be restricted, at least initially.

But there is a huge risk that once one new development occurs, or private operators obtain exclusive access, developments will continue to grow, especially if they are within a 99-year lease period. Ninety-nine years is a very long time, effectively equating to private ownership. And any current regulations or restrictions applying to the development are unlikely to be honoured over that time: the lease period would extend for more than 24 election cycles.

The proposed Special Use Zone includes subdivision provisions, or potential for future subdivision, in certain circumstances. This should be removed. We note that this was opposed by Mornington Peninsula Shire also at its August 2014 meeting.

Jetty and dolphins

The draft master plan continues to include a proposal for a new jetty that would protrude into the Ticonderoga Bay Dolphin Sanctuary. This jetty would damage critical seagrass habitat for the resident Burrunan dolphins, as well as many other marine species that rely on this underwater area for their homes. These dolphins are only found in Port Phillip Bay and the Gippsland Lakes. There is no assessment of these potential impacts, nor does there appear to be any opportunity in the approval process for potential impacts to be publicly assessed.

Process Issues:

A new minimalist **Special Use Zone 5 (SUZ5)** is proposed to replace the existing **PPR Zone.**

The key elements of this change include:

- That the Minister for Environment and Climate Change will be the Responsible (Planning) Authority for approving any development plan for the Quarantine Station site as well as the Minister in charge of the National Parks Act, who has the responsibility for protecting the park's natural and cultural values. Given that they are the same person, this results in a potential conflict of obligations and lack of transparency.

- It appears the zone amendment will not be subject to a planning panel **(but this is unclear)**

- The new Special Use Zone enables the approval of a development plan, but then any use and development of land that is in accordance with an approved development plan will not require any further planning permit (or community consultation). It is not clear if the development plan will be subject to public consultation or environmental assessment.

- Proposals will be exempt from review by third parties in the Victorian Civil and Administrative Tribunal (VCAT) – except by the proponent/ developer.

- While there are provisions for Environmental Audits, these are only for contaminated land, and do not address the large number of additional potential ecological issues.

- There will also be an exemption from all other provisions of the Planning Scheme for any use and/or development that has been approved under a development plan.

- The Heritage Overlay and Environmental Significance Overlay (ESO) 24 (Site of Scientific Significance) are removed. The government has argued that these are not needed because of protections in the National Parks Act, but the Minister is the decision-maker under the National Parks Act as well, which creates a significant conflict of interest and lack of transparency. Other than expensive action in the Supreme Court of Victoria, there are few options to review the Minister's decision under the National Parks Act.

  The ESO 24 includes protections for:
    - Sites of archaeological significance relating to the pre-European history of the Peninsula.
    - Sites of botanical significance. These sites are of special value due to the quality or rarity of the vegetation community, and the condition and diversity of species and the extent of the area, all of which affect the ability of the vegetation community to survive and/or regenerate.
    - Sites of geological significance. These sites are of special value due to the diversity of lithological, geomorphological or petrological features and the unique association or outstanding occurrence of geological forms or processes and their condition.
    - Sites of zoological significance. These sites are of special value due to the vulnerability, rarity and diversity of species, the extent of the population and the degree of habitat modification, all of which affect the ability of the species to survive.

- The new zone includes a generic clause about protecting native vegetation, but it is largely irrelevant as another clause in the State sections of the planning scheme allows the Secretary of the Department to exempt Crown land from these, which he could do on instructions from government.

- It amends the current formal National Park Management Plan from 2009 by allowing camping, serviced camping and geothermal hot springs in the Conservation & Recreation Zone, which is inconsistent with the intent of the plan.

- A development plan **(which has yet to be seen)** is considered to be generally in accordance with the Point Nepean National Park Master Plan (2012) and the Point Nepean Quarantine Station Sustainable Use and Tourism Framework (2012), but not the adopted Park management plan (2009).

Key process issues

- It is creating a protected area for property developers, not protecting a national park for people and natural and cultural heritage.

- These are dramatic changes which ride roughshod over many longstanding planning processes accepted as essential by the community and governments, such as third party appeals to VCAT.

- It puts the Environment Minister in charge of both development planning and the national park, creating an untenable conflict of interest and obligation.

- It not only opens up parks for development, but significantly and unnecessarily fast-tracks what should be carefully considered processes.

- It essentially makes it easier to get approval for a development in a national park than on adjacent private land, and lacks any clear process for assessing ecological impacts on the local environment and in the national park as whole.

For further information:

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