



# FEASIBILITY OF CONCESSIONS FOR TOURISM AND ECOSYSTEM SERVICES IN MONGOLIA'S PROTECTED AREAS

**FINAL REPORT**

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## Executive Summary

Successful concession agreements are essentially partnerships that contribute to the conservation of natural and cultural values; enhance visitor satisfaction and appreciation of protected areas; and provide benefits for local communities.

Concession management is integral to the broader objectives of biodiversity protection and restoration, protection and revitalisation of culture and heritage, education and public enjoyment of Mongolia's protected areas. The existing regulatory and policy framework for managing concessions is weak. It is dependent upon a number of regulatory and governance arrangements that fail to provide the necessary checks and balances required to maximise the benefits and minimise the risks of concessions in Mongolia's protected areas.

A concession strategy is required to assist with the efficient management of commercial and traditional uses, the ongoing conservation of protected areas, increase the choice and quality of facilities and services through investment, and generate income for Mongolia's protected area network.

This strategy is intended to assist the PAAD's and MEGD officers in the proper discharge of their delegated authorities with respect to managing land uses across all reserve types within their jurisdiction. The Concession Strategy has been designed to be efficient, equitable and simple to administer. It provides broad policy directions in key areas and recommendations relating to procedures, documentation and standards relating to concession management. It recognises the invaluable role played by local communities and a range of partners in managing and promoting the protected area network and encouraging visitors to appreciate, understand and enjoy them.

### Strategy Vision

Mongolia's protected area network will have a transparent and effective concession system that enhances and promotes conservation, sustainable development and provides tangible benefits to local communities.

### Objectives

This strategy has been prepared to fill this gap and has the following objectives:

- › enhance and promote conservation
- › control and monitor commercial activities and over commercialisation
- › improve the quality of the visitor experience in protected areas
- › promote sustainable development, poverty alleviation & employment creation
- › support the development of capacity, skills and access to capital for citizens to develop alternative livelihoods
- › increase the economic return to the Central and Local Governments for effective management of the SPAN
- › improve transparency and effectiveness of concession administration.
- › Implementation of the strategy has the potential to offer significant benefits to Mongolia's protected areas including:
  - › Increased investment from the private sector and public-private sector partnerships (PPPs)

- Efficient management and conservation of protected areas
- Development and provision of quality visitor facilities and services
- Increased government revenues
- Community development, training and employment generation.

The strategy recognises the important role local communities play in concession management. Granting concessions directly to communities may be one way of helping to generate income, offset costs of lost access to resources, provide for education and training and help to gain the support of local communities in conservation. In addition, local people are often excellent guardians of their resources, since it is their livelihoods that are at stake. Local businesses, too, may be used for services (such as certain operation and maintenance services) in a cost-effective manner for the protected area agency. It is also possible to share revenues with the local community, whether derived from concessions or visitor fees.

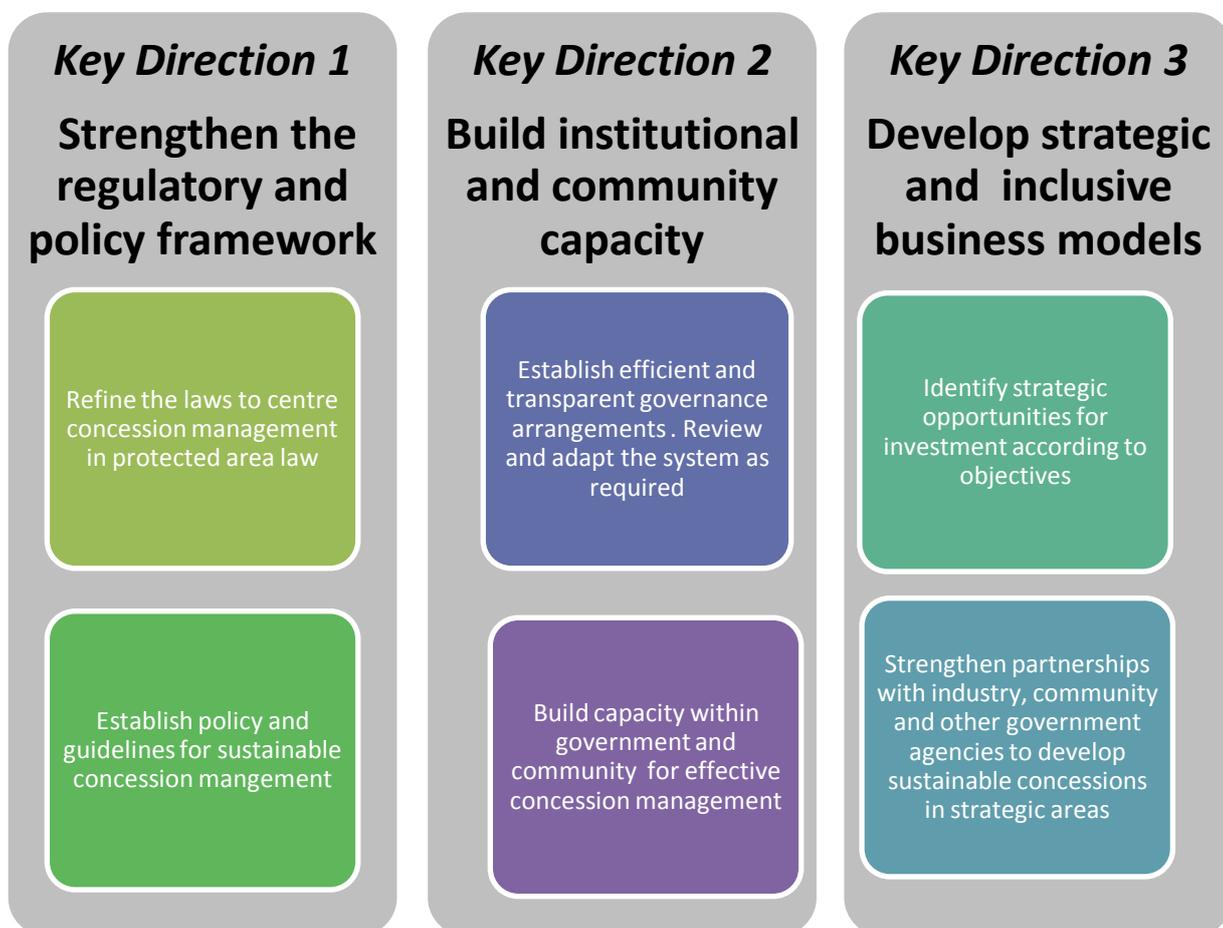
### **Challenges**

Lessons from other protected areas around the world demonstrate that while there are clear benefits arising from concessions there are also a number challenges. Challenges include:

- Conflicting goals—protected areas have a legislative mandate to protect and conserve, and this goal can be viewed as incongruous with the profit motives of commercial tourism businesses
- Policy and institutional barriers—these constraints can deter or restrict private sector engagement in protected areas
- Sourcing private operators—protected area managers may be unfamiliar with how to secure suitable private sector participation, and the business methods and priorities of this sector
- Maintenance of partnerships—maintaining long-lasting commercial partnerships can pose a challenge for protected area managers
- Conflicting use— protected areas manager must ensure that commercial activities are appropriate, and do not conflict with other users and activities within protected areas
- Over-commercialisation— protected areas have traditionally been absent of commercial activities and both protected areas staff and the public may object to protected areas agencies entering into corporate agreements or private partnerships.

### **Key Directions and Actions**

Three key directions and action plans have been developed to establish an effective concession strategy for Mongolia’s protected areas. Each direction has an action plan that lists recommended actions in order of priority and represents the core process towards implementing this strategy. Clear and measurable responsibilities will ensure accountability for the delivery of individual actions.



The first priority is to create a regulatory framework that clearly defines the environmental, financial and social objectives of the concession system and the responsibilities under which the concessionaires are required to operate. This action will require legislative reform to the Law on Special Protected Areas. The recommended changes will anchor concession management in the protected area legislation and recognise concession activities as a legitimate land use. This more balanced approach will assist with the ongoing conservation of protected areas, investment in new facilities and services, provide security of tenure for concessionaires and recognise the legitimacy and ongoing role of local communities in concession management.

It is recommended that the legislative changes stipulate:

- › The full range of activities that concessions can be granted
- › Manner and conditions under which different types of concession activities can operate in a protected area and adjacent to protected areas
- › Terms (5 years, 10 years and longer) and conditions including sustainability performance standards which a concessionaire in a protected area is obliged to fulfil
- › Fees and revenue sharing arrangements with local governments
- › Foreign investment opportunities
- › Competitive allocation of concessions

- Beginning and duration of the concession, as well as, the terms under which the concession agreement will be terminated before due time
- Mechanism for government led concession development, as well as, industry/community led concession development
- Supervision over the concession activities
- Conditions for improving the protection of environment and nature during concession activities in a protected area.

**Other priority actions include:**

- Create an enabling regulatory and institutional framework for use across protected areas that allows for appropriate sustainable opportunities through both government-led and investor-led approaches
- Establish clear policy and procedures based on principles set out in this strategy to regulate access and activities of users and to ensure they are appropriate to the management objectives of the site and the resource, and result in ecologically sustainable and culturally appropriate use
- Create a concession management framework that is efficient, equitable, simple to administer and be enforceable and review and adapt the system as required
- Centralise co-ordination of the concession management system
- Adopt a proactive approach to investment in protected areas by initiating Public-Private Partnerships (PPPs) that promote sustainable tourism and traditional use, generates employment and other socio economic benefits
- Undertake strategic planning to direct investment in areas where it is most needed in order to encourage high quality natural and cultural experiences for visitors through quality visitor/tourist infrastructure, facilities & services within the protected areas and the ongoing livelihood of local communities. Use this approach to limit concession activity in other areas
- Use concession activities to generate revenues to the government that can be channelled for management and conservation of the protected area network
- Increase investment in concession management training, quality assurance and business development by staff and community and develop industry 'ownership' of standards and quality of service
- Establish community consultative groups to assist with the development and management of concessions on Mongolia's protected areas
- Trial the new concession management framework in Orkhon Valley National Park and Ikh Nart Nature Reserve subject to the legislative reforms being made.

Implementation of the key actions contained in the Concessions Strategy will be critical to maximise the benefits of concessions and overcome the challenges. These actions are summarised below and steps to be undertaken to implement each action are provided in the summary tables at the end of the Chapter 8.

### **What will make implementation of the concession strategy successful?**

*Political support* - A mandate for establishing a concession management framework as well as strong political backing is vital for overcoming opposition to improved transparency from entrenched interests and providing the necessary resources required for sound governance.

*Government cooperation* - A ministerial agreement between the Minister for the Environment, Minister for Finance and other relevant ministers for successful implementation of the strategy and to ensure any ambiguities in responsibilities between agencies are clarified and institutional capacity enhanced.

*Donor/contractor support to train government staff* - The continued support of the donor agencies is crucial for the ongoing development of the protected area network due to a lack of institutional capacity. To this end the ongoing support for the development of administrative processes, systems, training and capacity building to government staff and communities on concession management is essential.

# Table of Contents

<b>EXECUTIVE SUMMARY</b> .....	<b>I</b>
<b>1 INTRODUCTION</b> .....	<b>2</b>
1.1 BACKGROUND .....	2
1.2 THE BUSINESS CASE FOR MORE EFFECTIVE MANAGEMENT OF CONCESSIONS IN MONGOLIA’S PROTECTED AREAS..	3
1.3 OVERCOMING THE BARRIERS TO THE BUSINESS CASE .....	6
1.4 REPORT STRUCTURE .....	7
<b>2 BEST PRACTICE CONCESSION MANAGEMENT</b> .....	<b>8</b>
2.1 BEST PRACTICE APPROACHES TO CONCESSION MANAGEMENT IN PROTECTED AREAS .....	8
2.2 CHALLENGES OF CONCESSION MANAGEMENT IN PROTECTED AREAS .....	9
2.3 ESTABLISHING CONCESSIONS.....	10
2.4 CONTENT OF CONCESSION AGREEMENTS .....	12
2.5 FEES .....	12
2.6 BEST PRACTICE CONCESSION MANAGEMENT .....	13
2.7 CASE STUDIES: CONCESSIONS OPERATING IN PROTECTED AREAS AROUND THE WORLD .....	14
<b>3 CURRENT APPROACH TO CONCESSION MANAGEMENT IN MONGOLIA’S PROTECTED AREAS</b> .....	<b>32</b>
3.1 REGULATORY FRAMEWORK .....	32
3.2 OTHER ISSUES .....	42
<b>4 THE NEED FOR CHANGE - CONCESSION MANAGEMENT IN A NEW MARKET ECONOMY</b> .....	<b>45</b>
4.1 SUMMARY OF ISSUES AND CONSTRAINTS OF CURRENT SYSTEM .....	45
<b>5 A CONCESSION STRATEGY FOR MONGOLIA’S PROTECTED AREAS</b> .....	<b>48</b>
5.1 KEY DIRECTIONS AND ACTION PLANS.....	49
<b>6 RECOMMENDATIONS FOR STRENGTHENING THE REGULATORY AND POLICY FRAMEWORK</b> .....	<b>59</b>
6.1 RECOMMENDED LEGISLATIVE REFORMS .....	59
6.2 RECOMMENDED POLICY & PROCEDURES.....	60
6.3 ESTABLISHING GUIDELINES FOR APPLICANTS .....	67
6.4 GUIDELINES FOR SITE SELECTION .....	68
6.5 GUIDELINES FOR CONCESSION ASSESSMENT.....	70
6.6 CONCEPT DEVELOPMENT (FOR MORE COMPLEX CONCESSIONS).....	71
6.7 CONCEPT FINALISATION AND CONCESSION AGREEMENT/APPROVAL .....	73
<b>7 CONCESSION MANAGEMENT STRATEGY AND SPAN DEMONSTRATION SITES</b> .....	<b>78</b>
7.1 ORKHON VALLEY NATIONAL PARK.....	78
7.2 IKH NART NATURE RESERVE .....	84
<b>8 IMPLEMENTATION STRATEGY</b> .....	<b>87</b>
8.1 RECOMMENDATIONS .....	87
8.2 OTHER RECOMMENDATIONS.....	87
<b>REFERENCES</b> .....	<b>94</b>

# 1 INTRODUCTION

## 1.1 Background

Protected area agencies around the world employ a variety of strategies and philosophies for awarding and managing concessions. The strategies, and often the philosophy, are often shaped by requests from individuals or entities (commercial and non-commercial) to use the natural resources within or adjacent to a protected area for private benefit. Uses include ecotourism facilities and services such as accommodation or guided tourist activities and other uses such as natural resource harvesting including wood collection and livestock grazing for local communities. Concessions can also be generated by protected area agencies in response to demand from the public for improved visitor services and recreational opportunities.

Mongolia's Law on Special Protected Areas (1994) provides for the establishment and management of its protected area network. The purpose of law is to:

**regulate the use and procurement of land for special protection and the preservation and conservation of the specific traits of natural zones, unique formations, rare and endangered plants and animals, and historic and cultural monuments and natural beauty, as well as allow research and investigate evolution**

99 protected areas have been established in Mongolia under the legislation and these areas are classified into four types of reserves:

- › 20 Strictly Protected Areas, IUCN category Ia and Ib
- › 32 National Protected areas, IUCN category II
- › 34 Nature Reserves, IUCN category III
- › 13 National Monuments, IUCN category III

These protected areas provide local communities and visitors with a stream of benefits which can be divided into use and non-use benefits which in turn can be sub-divided into direct, indirect, option, bequest and existence benefits. Concessions are the agreements made between the government and the users who receive a direct private benefit from the protected area.

Concessions provide:

- › A legal right to carry out the activity in a protected area
- › A formal relationship between the concessionaire and the protected area agency so that both parties are aware of their obligations
- › Security of tenure for the term of the concession.

Concessions are awarded to the private sector, NGOs and to other not-for-profit enterprises, as well as to community groups. In each case, the concessionaire provides specified services in the protected area under an agreement. Table 1 lists some of the different types of benefits generated by protected areas in Mongolia. The array of benefits flowing from a protected area will largely be determined by the ecological character of the area but are also affected by how accessible it is to stakeholders and customer bases, and by the institutional structure and policy environment of the protected area.

**Table 1. Use and non use benefits From Mongolia's Protected Area Network**

Use			Non use	
Direct Use ( <i>as per Law on Special Protected Areas</i> )	Indirect Use	Option	Bequest	Existence
<ul style="list-style-type: none"> <li>› Ecotourism</li> <li>› Recreation</li> <li>› Fishing</li> <li>› Accommodation</li> <li>› Natural resource harvesting for local use</li> <li>› Wood harvesting</li> <li>› Grazing livestock</li> <li>› Traditional animal husbandry</li> <li>› Photography/video</li> <li>› Mineral Water and other treatments and sanitation resources</li> <li>› Forest Maintenance and Cleaning</li> <li>› Research</li> <li>› Education</li> <li>› Worshipping/traditional ceremonies</li> </ul>	<ul style="list-style-type: none"> <li>› Ecosystem services</li> <li>› Climate stabilisation</li> <li>› Flood control</li> <li>› Groundwater recharge</li> <li>› Carbon sequestering</li> <li>› Agriculture</li> <li>› Habitat</li> <li>› Nutrient retention</li> <li>› Natural disaster prevention</li> <li>› Watershed protection</li> <li>› Natural services</li> </ul>	<ul style="list-style-type: none"> <li>› Future information</li> <li>› Future uses (indirect &amp; direct)</li> </ul>	<ul style="list-style-type: none"> <li>› Use and Non use values for legacy</li> </ul>	<ul style="list-style-type: none"> <li>› Biodiversity</li> <li>› Ritual or spiritual Values</li> <li>› Culture, heritage</li> <li>› Community values</li> <li>› Landscape</li> </ul>

The existing framework for managing concessions for uses identified in Table 1 is weak and is dependent upon a number of regulatory and governance arrangements that fail to ensure that concessions:

- › improve the quality of the visitor experience in protected areas
- › enhance and promote conservation
- › control and monitor commercial activities and over commercialisation
- › promote sustainable development, poverty alleviation & employment creation
- › support the development of capacity, skills and access to capital for citizens to develop alternative livelihoods
- › increase the economic return to the protected area administration (PAAD) for sustained and effective management and as well to the Central and Local governments.

Concession management is integral to the broader objectives of biodiversity protection and restoration, protection and revitalisation of culture and heritage, education and public enjoyment of Mongolia's protected areas.

## **1.2 The business case for more effective management of concessions in Mongolia's protected areas**

This project is aimed at establishing a concession strategy that will assist with the efficient management of commercial and traditional uses, the ongoing conservation of protected areas, increase the choice and quality of facilities and services through investment, and generate income for Mongolia's protected area network.

A well-structured concession framework has the potential to offer significant benefits to Mongolia's protected areas including:

- Increased investment from the private sector and public-private sector partnerships (PPPs)
- Efficient management and conservation of protected areas
- Development and provision of quality visitor facilities and services
- Increased government revenues
- Community development and employment generation.

### Increased investment from the private sector and public private partnerships

Mongolia's travel and tourism sector contributed around US\$256.3 million to the country's gross domestic product in 2011, accounting for almost 4 % of Mongolia's GDP total. It has significant potential for future growth according to the World Travel and Tourism Council (WTTC) which has forecast that the contribution to GDP will rise by 7.3 % in 2012.

These figures suggest that there are potential opportunities for investment in the development and management of tourism facilities and services by the private sector in and adjacent to Mongolia's protected areas. Strong demand has already been shown by the private sector for such concessions with 80% of tourism operations taking place within or adjacent to Mongolia's protected areas<sup>1</sup>. If the growth scenarios for the tourism sector are realised it is expected that the private sector will continue to seek development rights for new facilities and services within these protected areas.

Whilst investment can bring major economic benefits to the tourism sector, investors are concerned primarily with the private returns to investment and less concerned about the social returns that Government and local communities tend to seek. Concessions must be awarded in such a way that any negative externalities are prevented, so that the protection and conservation the protected area network is ensured. Public-Private Partnerships (PPPs) can create joint investments that ensure both private and social returns to investment are realised and created in a concession agreement.

Finally, the management of facilities and services that are currently provided by government can also be outsourced to the private or not for profit sector under a concession agreement. This can often reduce public sector costs and allow the private sector to manage the facilities potentially more efficiently. However, the revenue streams from publicly providing such services and facilities will also stop, and it is therefore important that the concession fees compensate for the loss of such revenues.

At a broad level, concessions are a form of *public-private partnership* (PPP). In basic terms, PPPs refer to any arrangement whereby the public and private sectors work together to provide a service. PPPs are most commonly associated with governments working in partnership with the private sector to create and operate large-scale public infrastructure projects such as roads, buildings, and some social services. Smaller scale PPPs are directly relevant to Mongolia's protected areas.

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<sup>1</sup> Financial Sustainability Options for Mongolia's Specially Protected Areas, Report for Strengthening Protected Area Network UNDP 2011

A concession strategy will provide for partnerships that provide for investment and address the negative externalities that may arise.

### **Efficient management and conservation of protected areas**

The protected area may also benefit from certain management activities undertaken by the concessionaire, such as taking responsibility for certain maintenance and operational responsibilities as part of their agreement requirements such as maintaining tracks or signs, or gathering and sharing information about the protected area resources. This is particularly relevant for local communities living in or adjacent to a protected area.

Tourism concessions operated by private enterprise are able to offer a level and type of visitor experience, service and innovation that is often difficult for government agencies to provide to protected and natural area visitors within their in-house resources and expertise. For instance, commercial accommodation and guided tours may provide opportunities for visitors to experience, learn and become advocates for unique places they may not otherwise be able to visit. By establishing a concession for the operation and provision of visitor facilities and services in some areas, the MEGD/PAAD can focus its efforts and resources on the management and conservation of the protected areas.

### **Development and provision of quality visitor facilities and services**

Concessions can be specifically designed and awarded so as to increase the choice and overall quality of visitor facilities and services in protected areas whilst ensuring the efficient management and conservation of these areas. Eco tourism concessions in protected areas should aim to compliment the national tourism policy and development strategies for the sector.

Introducing the private sector can bring much needed finance, expertise and innovation that the public sector cannot provide due to budgetary and capacity constraints.

A well-structured concession strategy will allow activities to take place in a manner that ensures the protected area remains conserved through managing impacts on the resources, as well as providing guided visits and tours that increase awareness of environmental protection and conservation for domestic and international visitors.

### **Increased government revenues**

Protected areas in Mongolia are financed primarily from the public funds, relying on a mix of state budgets, income from entrance fees, tourism activities and donor aid to support management costs. Institutionally, the PAAD has extremely limited capacity to grow and develop new revenue streams.

There are a number of fiscal benefits that result from awarding concessions both in terms of revenue and reduced expenditure. In addition to the direct revenues that concession fees can provide to the government, increased private sector activity has the potential to also bring increased revenues from taxation.

### **Community development and employment generation**

About 30% of Mongolia's population depends on nomadic or semi-nomadic grazing for livelihood. Protected area management in Mongolia consents to people living within and around these areas as local people are vital links to nature conservation and to tourism in these protected areas. Strengthening this link is fundamental to achieving conservation objectives and a concession strategy should provide for this on-going traditional use.

Concessions in and near protected areas can act as catalysts to stimulate local tourism development, resulting in social and economic benefits for local communities and increased revenue for reserve management. Such benefits may flow from the use of local produce and suppliers, employment of local people and stimulus for local business formation.

It is important to note that the impact on employment in local communities may be limited if the residents possess little experiential expertise and skills, and investors may not be willing to invest in training if skilled labour at a competitive wage are available from elsewhere. It is important that the local communities benefit from concessionaire investments.

Local communities may well be best placed in some circumstances to develop facilities and services under a concession where their land, local knowledge and/or products give them a competitive advantage over others. A concession strategy can provide for local communities to be directly awarded concession agreements if it is in the best interest of the protected area and the local community.

### **1.3 Overcoming the Barriers to the Business Case**

The success of concessions in delivering benefits to the protected area network and local communities living within and adjacent to these areas will depend on a number of factors that must be addressed in both the Concessions Strategy and accompanying guidelines.

A review of Mongolian *Land Law* and proposed changes to the *Law on Special Protected Areas* and the *Law on Buffer Zones* is currently underway. To ensure the conservation and protection of areas in which concessions are awarded, the regulatory framework must clearly define the environmental, financial and social objectives of the concession system and the responsibilities under which the concessionaires are required to operate. The legislative review provides the much need opportunity to seek amendments to the Law on Special Protected Areas and other relevant legislation to ensure the regulatory framework for concession management in protected areas provides for effective management.

Assessments by WWF and UNDP in 2009 identified insufficient financial and human resources, and limited policy frameworks to manage the protection of ecosystems and the services they provide in Mongolia. Policy makers and the public have limited access to knowledge on the value of the protected area network which leads to challenges in obtaining wider political and financial support for their effective protection. Conservation efforts require huge amounts of financial support making it more difficult especially for less developed countries where most of the revenue is utilized for meeting more pressing socio-economic needs.

Recognising these limitations this strategy is intended to assist the PAAD's and MEGD officers in the proper discharge of their delegated authorities with respect to the managing land uses across all reserve types within their jurisdiction. The Concession Strategy has been designed to be efficient, equitable and simple to administer. It provides broad policy directions in key areas and recommendations relating to procedures, documentation and standards relating to concession management. It recognises the invaluable role played by local communities and a range of partners in managing and promoting the protected area network and encouraging visitors to appreciate, understand and enjoy them.

Accordingly, this strategy will form the basis for administration of the Department's concession program on the protected area network.

The term ‘*Concession*’ is used in this document to collectively describe sustainable activities in, or close by, protected areas in Mongolia. Concessions include activities which do not rely on a specific parcel of land to undertake the use (eg. a guided tourism product without infrastructure, traditional uses such as forest cleaning or wood harvesting), and also where the activity requires a site located within a protected area or adjacent area to undertake the use. ‘*Concessionaire*’ is used to describe the entity owning the concession right.

## 1.4 Report Structure

This report is structured as follows:

<b>Section 2</b>	Provides international examples of concessions operating in protected areas and identifies the characteristics of best practice concession management that can be considered for Mongolia’s Concession Strategy.
<b>Section 3</b>	Describes the existing approach to concessions and the various authorities involved in the approval and management process. The existing regulatory framework is summarised and issues likely to impact on the effective implementation of a concession strategy for Mongolia’s protected are identified.
<b>Section 4</b>	This section also provides an overview of the opportunities and constraints of the current system and summarises the key issues and the desired approach.
<b>Section 5</b>	Presents the Concession Strategy – Vision, Objectives, Key Directions and Actions
<b>Section 6</b>	<b>Provides detail on the suggested amendments to the legislation and suggested content of the Concession Policy and Guidelines</b>
<b>Section 7</b>	Describes how the strategy can be applied to Ikh Nart Nature Reserve and Orkhon Valley National Protected area
<b>Section 8</b>	Provides the key actions for implementation
<b>Appendices</b>	Supporting documentation

## 2 BEST PRACTICE CONCESSION MANAGEMENT

### 2.1 Best Practice Approaches to Concession Management in Protected Areas

**This section presents international examples of concessions operating in protected areas and identifies the characteristics of best practice concession management that can be considered for Mongolia's Concession Strategy.**

Successful concession agreements are essentially a partnership in achieving sustainable outcomes which make positive contributions to conservation of natural and cultural values; enhance visitor appeal, satisfaction and appreciation of natural areas; and provide benefits for local communities. In achieving these outcomes, governments and private investors play different roles and have different needs and perspectives, as summarised in Table 2.

Protected area agencies around the world have partnered with the private and not for profit sector in a number of ways and some of these partnerships are centred on concession agreements including:

- ▶ Land partnerships—where governments provide incentives for conservation and tourism infrastructure on private lands adjacent to protected areas
- ▶ Planning partnerships—where local governments combine with protected areas agencies to promote low-impact 'gateways' to protected areas
- ▶ Local partnerships—where tourism interests assist directly with basic visitor infrastructure in National Protected areas
- ▶ Investment partnerships—development of limited commercial tourism infrastructure inside protected areas (where it helps to reduce visitor impacts)
- ▶ Community partnerships—where local residents and businesses volunteer services to protected area agencies
- ▶ Government partnerships – where government agencies work together to up skill protected area staff and community
- ▶ Research partnerships—where a proportion of visitor fees goes to provide management information to protected areas agencies.

**Table 2. Government and investor perspective on concessions**

Governments	Entity seeking use of protected area
Seek outcomes that contribute to natural area management objectives – eg. conservation of values, provision of visitor infrastructure and services, delivery of visitor interpretation.	Seek locations and opportunities that reflect the desired benefit. For example a tourism enterprise will seek a sense of place of the destination and can deliver exceptional experiences to nature tourism markets. A local community enterprise will seek best potential for resource use.
Seek government revenue returns.	A commercial, social or community return on is fundamental – without this the success of the enterprise and the achievement of government objectives in doubtful in the long term. Seek fee and charges rates that enable a reasonable investment return and not prohibitive to livelihood.
Seek benefits for local communities This might be achieved in many ways – for example. through local economic stimulus; direct employment or contract; use of local suppliers.	Likely to be the main objective for resource use by local communities. May be a goal of investors, but will need to be feasible for the enterprise. May seek incentives for local initiatives.
Must apply decision-making processes and project approval requirements established under legislation and government policies. Processes have cost implications in terms of staff, time and site and other investigations.	Seek cost-effectiveness and a level of certainty about potential outcomes of approval processes.
Regulate tourism operations through lease, licence, permit or agreement conditions, as well as through legislation and planning regulations.	Concerned that terms and conditions are compatible with the viability of the enterprise/use
Must meet public probity requirements in decision-making processes for Concession applications and subsequent administration of tourism leases, licences, permits or agreements.	Concerned that processes protect on-going use and intellectual property.
Must deal fairly with public views about Concession according to legislative and policy requirements and consultation and appeal processes.	Concerned at costs resulting from public opposition.

## 2.2 Challenges of concession management in protected areas

While there are clear benefits arising from concessions in protected areas there are also a number of lessons to be learned from the challenges. The main challenges discussed in the literature include:

- Conflicting goals—protected areas have a legislative mandate to protect and conserve, and this goal can be viewed as incongruous with the profit motives of commercial tourism businesses
- Policy and institutional barriers—these constraints can deter or restrict private sector engagement in protected areas
- Sourcing private operators—protected area managers may be unfamiliar with how to secure suitable private sector participation, and the business methods and priorities of this sector
- Maintenance of partnerships—maintaining long-lasting commercial partnerships can pose a challenge for protected area managers

- Conflicting use— protected areas manager must ensure that commercial activities are appropriate, and do not conflict with other users and activities within protected areas
- Corruption - in developing countries government officials and political leaders using positional power to approve land use or activities outside decision making framework.

Over-commercialisation— protected areas have traditionally been absent of commercial activities and both protected areas staff and the public may object to protected areas agencies entering into corporate agreements or private partnerships.

Concessions in protected areas around the world most commonly relate to the following activities:

- |                           |   |
|---------------------------|---|
| ‣ Accommodation           | ‣ Camp-site maintenance                       |
| ‣ Tour operations         | ‣ Information provision                       |
| ‣ Waste collection        | ‣ Hunting, grazing and other traditional uses |
| ‣ Transport services      |   |
| ‣ Traditional handicrafts |   |
| ‣ Site maintenance        |   |

### **2.3 Establishing Concessions**

Both proactive (government led) and reactive (private/NFP/NGO led) approaches to concessions are used to achieve various objectives. Both approaches have advantages and disadvantages and these are summarised in Table 3

**Table 3. Investor and government led processes - advantages and disadvantages**

Approach	Advantages	Disadvantages
Investor-led	<p>Encourages entrepreneurial approach and innovation by investors.</p> <p>Holistic approach not limited by set sites – enables investors to respond better to experiential opportunities.</p>	<p>Potential for appearance of a lack of transparency.</p> <p>Potential workload impacts on government agencies and delays due to ad hoc nature of approaches.</p> <p>Potential for delays and blockages in considering proposals if clear processes are not in place and followed.</p>
Government-led (landscape/ protected area scale)	<p>Encourages entrepreneurial approach and innovation by investors within boundaries.</p> <p>Can focus on a protected area’s priority areas for development, resulting in a higher likelihood for outcomes from the government point of view.</p> <p>Transparent process under EOI procedures.</p> <p>Workload management advantages for government agencies.</p> <p>Likely to be specific processes and timelines for consideration of proposals under an EOI.</p>	<p>Dealing with commercial and intellectual property issues – investors may be concerned about confidentiality of details and ideas provided and reluctant to provide them in a competitive process.</p> <p>An open process may deter some desirable investors from applying due to the benefit/cost ratio of investment in the application and the level of competition – small, resource poor but highly competent operators may be particularly deterred.</p> <p>Delays and blockages in reaching decisions can occur if processes are not well managed.</p>
Government-led (single site)	<p>Easier to pre-package for government.</p> <p>Transparent process under expression of interest procedures.</p> <p>Preferred process for government when specifically seeking interest in adaptive re-use of an existing development site.</p> <p>Likely to be specific processes and timelines for consideration of proposals under an EOI.</p>	<p>Limits opportunities and constrains vision for investor.</p> <p>Depending on boundaries, potentially limits flexibility for infrastructure and facility siting.</p> <p>Risk of poor site choice and overlooking of potentially better sites – agencies may not look for the right site or commercial attributes; there is a history of choosing compromise sites.</p> <p>Dealing with commercial and intellectual property issues – investors may be concerned about confidentiality of details and ideas provided and reluctant to provide them in a competitive process.</p> <p>An open process may deter some desirable investors from applying due to the benefit/cost ratio of investment in the application and the level of competition – small, resource poor but highly competent operators may be particular deterred.</p> <p>Delays and blockages in reaching decisions can occur if processes are not well managed</p>

## 2.4 Content of Concession Agreements

From the point of view of a protected area agency, the goal of a contract is to further the objectives associated with the conservation of the protected area, provide access to resources in a way that is compatible with the legislation, and to provide for certain needs of visitors. Therefore, concession agreements tend to detail the services required, their timing and their quality.

The following are among the more common issues addressed in a concession agreement:

1. *Suitability* - Skills and Qualifications of applicant
2. *Operational details and Performance Standards* - such as hours of operation, the range of services, and the level of service that must be outlined in the contract
3. *Fees* - In some jurisdictions, it is recognized that the protected area concession has a monopoly and, therefore, regulation of prices is required. In others, competition is encouraged through the development of multiple concession operators in different locales in the protected area
4. *Monitoring and Enforcement* - procedures and actions that will follow if the concessionaire fails to meet agreed standards.

## 2.5 Fees

A concession fee is the monetary consideration paid to protected area agency by a concessionaire for the privileges granted by a concession contract. The concessionaire is normally required to pay a concession fee in recognition of the revenue generated from their activity, since these arise from the rights extended under the concession.

The method of fee setting for concessions varies. Depending on the legislation and other circumstances, concession fees may be set at a market value. The market value is considered to be the price a willing buyer will pay a willing seller for a concession opportunity. In practice, almost all concession fees are set through one of the following general types of mechanisms:

- › by comparison to fees set for similar concession activities in similar circumstances, and in direct negotiation with the applicant
- › by specific valuation of the opportunity, and in direct negotiation with the applicant; or
- › by offering the opportunity on the open market.

Exclusive concession opportunities tend to attract higher fees than non-exclusive opportunities.

In terms of deciding the amount of the concession fee, one approach is to use a formula that links to the income of the concessionaire. In this way, the concession fee represents a sharing of the income from the business, based on the notion that each party should receive an income in proportion to the investment it has made to the business. The site manager "invests" the land and other resources (on behalf of the taxpayer). The concessionaire invests capital and business expertise. Normally this outcome is achieved through formulae such as a percentage of gross income, or a per capita fee in the case of tour operators.

## 2.6 Best Practice Concession Management

An analysis of concessions in protected areas around the world indicates that the most effective concession systems are generally characterised by a number of features. These features are summarised below. Case studies are provided in Section 2.6 to demonstrate the application of concession management best practice in protected area agencies around the world.

Best Practice Feature - Concession Management	Examples
Clear regulatory and policy framework for the protected area agency to effectively manage the concession system	Case studies 1 and 9
A strategic coordinated and organisation-wide approach is taken to the identification and development of concession arrangements	Case study 4
The objectives of the agency's concession system are stated clearly and primarily seek to enhance and promote conservation. Objectives may also include increased investment, restrict development, increase the revenue and reduce costs to government and enhance socio economic benefits to local communities	Case studies 1 and 9
Strategic planning is utilized to guide decisions relating to concessions that are consistent with legislation, policy, corporate direction and address cost benefit outcomes	Case study 2
Agencies use inclusive business models with the local community, local and regional governments, the private sector and not for profit/NGO sector and other central government agencies to develop partnerships and effective concession agreements	Case studies 4 and 10
Both proactive (government led) and reactive (private/NFP/NGO led) approaches to concessions are used	Case studies 2,3 and 11
The sourcing and selection of potential Lessees is facilitated in a manner which is clear, inviting and encouraging, and provides applicants with good insight into the nature of partnerships with the agency	Case studies 3,7,8 and 11
Simple and transparent methods for assessing and awarding concessions are in place for both agency staff, the private sector and other stakeholders and a framework for accountable decision making exists	Case study 1 and 6
Various concession agreements are available to address different types of uses such as ecotourism, traditional uses, research, easements, telecommunications	Case study 10
Flexible tenure options and pricing mechanisms that reflect the level of investment and benefits gained by both parties over the life of the agreement are available	Case study 5
Mechanisms that enable local communities to be directly awarded concessions are available	Case studies 5,12 and 13)
Terms and conditions of the concession agreement reflect the agency's conservation, sustainability, economic and social objectives	(Case studies 6,12 and 13

Best Practice Feature - Concession Management	Examples
Performance standards are set and maintained and good performance is recognized and valued	Case studies 6 and 11
Enforcement, compliance and mechanisms for termination are in place	Case study 6
A mechanism for regular programmed review of concession legislation, policy and procedure is in place	Case studies 1 and 6
Management of complex concessions is centralized and simple concessions are delegated subject to quality safeguards and agency wide standards being in place	Case study 8
Capacity of staff within the protected area agency to manage concessions is critical to success	Case studies 6 and 8

## 2.7 Case Studies: Concessions operating in protected areas around the world

The following examples present different approaches used by protected area agencies to manage concession activity and seek private sector/NGO investment in ecotourism and other services.

### Australia

There are over 2,000 concessions operating in protected areas in Australia. Almost all of these are for guided tours, soft adventure activities (rafting, mountain bike riding), accommodation including permanent and semi-permanent structures, campgrounds, transport services, food and beverage outlets.

For the smaller operations, a commercial activity licence is generally issued following an application and approval process. Fees are charged to submit an application, and then for every year the licence is in operation (annual fee). In some circumstances a 'per head' fee is charged for each client. Concessions are usually for a period of 1 year, 5 years and in some cases up to 10 years.

For larger enterprises the concession agreement is usually in the form of a lease. Concession terms and conditions recognise the levels and timeframe of investment and can be anywhere from ten years to forty five years. The concession terms and conditions reflect the concessionaire's commitment to the environmental, management and social outcomes of government.

Some jurisdictions have implemented a site selection and investment process for protected areas and other government land. In these cases the government identifies sites that have commercial potential and pre-release site clearance is conducted to reduce costs to private sector and provide some incentive for investment. The level of Government support for infrastructure related to the private tourism developments varies depending on the situation and availability of funds. In some cases significant government investment occurs where there is a clear benefit to the protected area and the community.

Legislative and decision-making frameworks for assessment and approval of new private investment proposals include sustainability criteria. Performance-based concession conditions and audits are generally used to monitor and ensure lessee compliance with sustainability requirements.

## Case Study 1. Establishing A Framework for Sustainable Concessions in Protected Areas

### NSW National Parks and Wildlife Service, Australia

A new legislative and policy framework has been developed to clarify permissible development, establish criteria for assessment of tourism proposals, and decision-making roles and other requirements in the protected area network.

#### Legislative amendments

- › Clarified developments which are permissible within parks and reserves for sustainable visitor or tourist use (include accommodation and ancillary facilities)
- › Strengthened environmental controls on developments
- › Established criteria and a decision-making framework for issue of leases and licences
- › Established criteria for assessment of development proposals (contained in the Act) - must be consistent with the Act; must be allowable under the relevant Plan of Management, must meet 3 sustainability criteria
  - › (i) Compatibility with the natural and cultural values of the land and its surroundings
  - › (ii) Provision for the sustainable and efficient use of natural resources, energy and water
  - › (iii) Appropriate built form and scale, including bulk, height, footprint, setbacks and density
- › Decision-making framework for granting of a concession (contained in the Act)
- › Roles of, and matters to be considered by, Minister and Department
- › Development and publication of detailed sustainability assessment criteria – to determine whether the proposal is suitable for the site
- › Public accountability and transparency provisions – public exhibition of concession proposals; referral of concessions over 10 years to Community Advisory Council

#### Best practice features:

- › Clear regulatory and policy framework for the protected area agency to effectively manage the concession system
- › The objectives of the agency's concession system are stated clearly and primarily seek to enhance and promote conservation
- › Simple and transparent methods for assessing and awarding concessions are in place for both agency staff, the private sector and other stakeholders and a framework for accountable decision making exists.

Source: Department of Environment, Climate Change and Water NSW *Sustainability assessment criteria for visitor use and tourism in New South Wales national parks and Sustainability Guidelines for visitor use and tourism in NSW national parks* 2011.

## Case Study 2. Government Led Strategic Planning for Tourism Investment

### Northern Territory Parks and Wildlife Service Australia

Litchfield National Park, located 120 kilometres south of Darwin, has become an iconic attraction for residents, and tourists. It is one of the key drivers of tourism in the region and receives over 270,000 visitors a year in 2009. The Park is renowned for its spectacular waterfalls; safe swimming, walking, camping and 4WD opportunities; its rugged landscapes; high biodiversity and Aboriginal cultural heritage.

A draft Plan of Management, released for community consultation seeks to improve the range of visitor experiences and supporting infrastructure and services in the Park, in line with one of the key departmental priorities of conservation. The Draft Plan was prepared with input from a Stakeholder Reference Group, which included representatives from tourism and Aboriginal interests.

The Draft Plan of Management identifies the Experiential Traveller market (travellers seeking 'fun, adventure and freedom, who like to 'relax, recharge, get back to nature and immerse themselves in local culture') as an increasing target market for Litchfield National Park. A site in the Park is identified as potentially suitable for high-end exclusive commercial eco-accommodation that could provide an immersive experience. The potential site was chosen due to its attractive landscape features and views, central location, ease of year-round access, and lack of high current visitor use. Alternative potential sites for development have also been identified should the first site be unsuitable after further investigation.

Should this proposal be accepted in the final Plan, that Plan of Management would signal to industry/community both the Government commitment to an Eco-Opportunity and the broad management objectives for the site and the surrounding area. It is proposed in the Draft Plan that the Parks and Wildlife Service and the successful site proponent would cooperate in planning (eg. for visitor infrastructure) for nearby areas.

The proposed eco-accommodation in Litchfield National Park is envisaged as one of the Government's proposed 'Signature Lodges' aimed at meeting market gaps for niche high-end experiences and becoming a draw card for a destination. Under the Signature Lodge initiative, the Government proposes to offer pre-prepared sites at key locations to private investors under an Expression of Interest process. The aim is for the Government to pre-prepare sites by conducting initial site suitability investigations such as 'in principle' approval from traditional Aboriginal owners and other relevant agencies; sacred site clearances; engineering and environmental pre-feasibility studies to assess site constraints and potential; and identifying actions needed for establishing essential services.

#### Best practice features :

- › Strategic planning is utilized to guide decisions relating to concessions that are consistent with legislation, policy, corporate direction and protected area
- › Both proactive (government led) and reactive (private/NFP/NGO led) approaches to concessions are used.

Sources: Department of Natural Resources, Environment, the Arts and Sport (NRETAS) (May 2011), Litchfield National Park Draft Plan of Management. NRETAS (September 2011), Annual Report 2010-11.

### Case Study 3. Facilitating Private Sector Investment by Government

#### Southern Ocean Lodge, Kangaroo Island, Australia

**Concession type:** Tourist eco accommodation issued by protected area agency

**Concessionaire:** Baillie Lodges

**Benefits:** Internationally recognised luxury accommodation in conservation area, revenue return to government and tourism profile to region.

**Details:** The Southern Ocean Lodge, which opened in 2008, is a \$12 million development of a luxury eco-lodge on private land in a remote and spectacular setting on Kangaroo Island. The project concept gained high level support within the South Australian Government as an iconic development with the potential to attract further tourism and investment to the region and the State.

The project was declared to have Major Project Development status and approval and planning processes were conducted under the provisions of the Major Projects Act and guided by the Premiers Department. The various planning and approval requirements and related consultation included:

- development approval involving the Kangaroo Island Council and the SA Department of Planning and Local Government, and frequent liaison with those agencies
- consideration of bushfire management and liaison with fire authorities
- vegetation clearance approval under the Native Vegetation Act and meetings, communications and submissions to the Native Vegetation Council
- liaison with the Commonwealth Government on processes under the *Environment Protection and Biodiversity Conservation Act 1999*
- consultation and public meetings on Kangaroo Island.

In the case of this project, the developer also employed its own project manager to coordinate its liaison with agencies and fulfilment of planning and approval requirements.

The South Australian Government also played a significant role in ensuring the feasibility of Southern Ocean Lodge in its early stages. Government financial contributions of \$1 million over 2 years was directed towards the provision of critical infrastructure and essential services – such as an access road, water supply, electricity connection and generation, wastewater treatment and bushfire management measures.

#### Best practice features:

- The sourcing and selection of potential concessions is facilitated in a manner which is clear, inviting and encouraging, and provides applicants with good insight into the nature of partnerships with the agency
- Both proactive (government led) and reactive (private/NFP/NGO led) approaches to concessions are used

Sources: The Allen Consulting Group (2011), *Framework Guide to Facilitate Tourism Investment*, Melbourne. L.E.K. Consulting (2011), *Tourism Investment and Regulation Review: Final Report, 3 August 2011*.

## Case Study 4. Planning for Investment by Local Community and Government

### Cradle Valley, Tasmania

**Concession Type** - Wildlife Sanctuary and Art and Craft Galleries

**Concessionaire:** Various issued by Government

**Benefits:** Partnership approach between government, local government and private sector identified infrastructure gaps and encouraged investment which resulted in improved infrastructure and services for visitors, increased return to government and tourism profile to region.

**Details:** With increasing visitation to the Cradle Mountain-Lake St Clair National Park (part of the Tasmanian Wilderness World Heritage Area), a cooperative approach was taken by government, business and land managers to rationalise and integrate planning for a visitor precinct adjoining the main Park entrance at Cradle Mountain and associated visitor services in the precinct and the Park. A range of accommodation and other visitor facilities were already in existence on private land at the Park entrance. A visitor information centre, Waldheim Chalet, road access to Dove Lake (a popular viewing point) and trailheads for the popular walking track network existed within the Park.

The Cradle Mountain Tourism Development Plan was released in 2003 as a partnership between Kentish Council, the Cradle Coast Authority, Tourism Tasmania, the Tasmanian Department of Economic Development, the Tasmanian Parks and Wildlife Service, Cradle Tourism Associated and the Friends of Cradle. The Development Plan aimed to establish an integrated approach to both public and private tourism development; the provision of sustainable and high quality facilities, infrastructure (such as sewerage and wastewater systems) and services compatible with World heritage values and environmental protection; and brand values for promotion of the area.

For its part, the Parks and Wildlife Service has developed facility, service and access improvements services within the adjacent Park (eg. improved walking track links, a sealed road, a Park shuttle bus system) to cater for increased visitor numbers and a range of quality experiences that showcase Cradle Valley and its World Heritage values.

The Development Plan flagged the potential for new commercial visitor opportunities that could be integrated into the area, leveraging off the existing appeal of the area and taking advantage of the infrastructure base. In response, new products have been developed by private investors in the visitor precinct – including the Tasmanian Devil Sanctuary (which offers visitors tours and also participates in conservation programs for Tasmanian Devils) and the Wilderness Gallery (which is located at the Cradle Mountain Chateau and provides a facility for exhibitions and events).

#### **Best practice features:**

- Agency used inclusive business models with the local community, local and regional governments, the private sector and not for profit/NGO sector and other central government agencies to develop partnerships and effective concession agreements
- A strategic and coordinated approach is taken to the identification and development of concession arrangements with local community.

Sources: Meredith Wray et al (2010), *Sustainable regional tourism destinations: best practice management, development and marketing*, CRC for Sustainable Tourism Pty Ltd; Parks and Wildlife Service Tasmania (2006), *Pencil Pine-Cradle Valley Visitor Services Zone Plan 2006*.

## Case Study 5. Concessions Awarded Directly to Local Community

### Kakadu National Park, Australia

**Concession Type** – Camping, guided walks and interpretation

**Concessionaire:** Local Aboriginal communities

**Benefits:** Partnership approach between government and local community which resulted in improved infrastructure and services for visitors in a number of areas, income for local communities, employment, education and training

**Background:** Kakadu National Park is jointly managed by the Australian Government and the Traditional Owners, the Aboriginal people of the region. The Aboriginal people are generally offered the first opportunity to be considered for contracts such as maintenance of facilities or track works. They are commonly engaged to provide guided walks and talks to visitors.

In a recent situation, one Aboriginal family was offered the rights to establish a safari style camp in an established campground. A Government grant was gained to purchase and construct tents. To assist in making the business viable, the family was given the contract to undertake the campground maintenance including cleaning of facilities, rubbish collection, fees and compliance.

In a similar situation in a different area, another family was assisted to establish a kiosk at a busy campsite. In addition to the campground maintenance contract, they were engaged to deliver guided ranger talks several times each week.

In each of these situations, as the businesses were seasonal, in the off season, the contractors were offered jobs working for the Park to ensure year round income.

A business plan for an indigenous community is currently being developed in the remote Kimberley where an agreement is being established between the community and Department of Parks and Wildlife to manage a campground on behalf of Government. In this situation, the Parks agency will provide the initial infrastructure and training of the community to manage the site, with all revenue being returned to the community in the first few years.

#### Best practice features:

- Mechanism that enabled local communities to be directly awarded concessions for visitor services
- Flexible tenure options and pricing mechanisms that reflect the level of investment and benefits gained by both parties over the life of the agreement that were appropriate to the community

Source: TRC Tourism 2013

## Case Study 6. Tour Operator Concession System Developed by Protected Area Agency

### NSW National Parks and Wildlife Service Parks Eco Pass

The Parks Eco pass licensing system is administered centrally by a licensing coordinator and all licensing information and forms are available on-line.

Under the new system there are four concession categories for commercial recreation and tour operators (1 year, 3 year and 10 year concession).

Concession conditions specify how, when and where certain activities can be undertaken to minimise impacts on natural and cultural values, manage potential issues associated with other visitor uses and minimise risks to public safety. All concessions will contain general, activity and site specific conditions.

All concessionaires must comply with the requirements outlined in their concession conditions regarding safety, public liability insurance and environmental protection. As part of these requirements, operators are expected to:

- demonstrate a high standard of appropriate behaviour towards parks and reserves and their management
- have a sound understanding of safety and environmental issues related to proposed activities
- have extensive knowledge of, and experience and skills in, all proposed activities
- meet the general and specific standards for the type of activity proposed, and carry comprehensive safety and recovery equipment for those activities
- demonstrate financial viability
- provide a quality service to clients
- hold the minimum required level of public liability insurance; and
- comply with the mandatory requirements of other authorities such as the Ministry of Transport.

All concession agreements contain a provision that the concession holder should ensure the sustainable and culturally appropriate use of sites by informing and educating clients, and carrying out their operations in a sustainable way. In particular, they should:

- explain to customers how negative impacts on sites can be avoided
- build understanding of natural and cultural heritage conservation management
- provide quality visitor experiences, interpretation and education
- honor historic places and promote respect for Aboriginal sites
- minimize visitor impacts on sites
- observe rules to protect values and public safety
- encourage active involvement in conservation activities
- adopt environmental practices which support environmental sustainability
- report damage, illegal activities and potential problems

#### Best practice features:

- Terms and conditions of the concession agreement reflect the agency's conservation, sustainability, economic and social objectives
- Performance standards are set and maintained and good performance is recognized and valued
- Enforcement, compliance and mechanisms for termination are in place.

Source: NSW National Parks and Wildlife Service, Parks Eco Pass Guidelines for Applicants, 2013

## **New Zealand**

Unlike Australia, central and local government agencies in New Zealand are generally not trying to actively leverage private sector investment in ecotourism accommodation. For the most part, the Department of Conservation (DOC) continues to respond to applications for investment from the private sector, rather than seek expressions of interest or undertake due diligence for investors. The private sector is guided by DOC's comprehensive policy and plans that give generally clear signals as to where commercial activity will be permitted. The key guiding legal documents are (i) the General Policy for National Parks, Reserves and Conservation Areas (ii) regional Conservation Management Strategies and (iii) National Park Management Plans. In 2011, DOC established a central Business Unit to improve systems and relationships with the private sector. Overall, its approach is to improve the policy, management and enabling environment for conservation and business partnerships.

The most significant examples of private accommodation in New Zealand's national Parks (for instance, The Hermitage Hotel, The Chateau Tongariro, Milford Track huts) were purchased by the private sector when government sold its accommodation assets in 1991 (when the Tourist Hotel Commission was disbanded under new legislation). There have been some exceptions since then, such as the Caroline Hut and Mount Cook Alpine Backpacker Lodge, Mount Cook National Park, which were granted permission under the Mt Cook National Park Management Plan in the mid 1990's in response to their applications.

DOC manages over 4,000 commercial activity concessions in protected areas but almost all of these are for land, water and aerial tours, campgrounds and transport operators, ski areas and food outlets – some including permanent and semi-permanent structures / facilities - rather than private ecotourism accommodation.

There are many examples of world-class ecotourism accommodation on the boundary of many national Parks in New Zealand or on parcels of private land within protected areas. Lodges such as Awaroa (Abel Tasman National Park), Fiordland Lodge (Fiordland National Park), Arthur's Pass and Moeraki Wilderness Lodges (Arthur's Pass and South West New Zealand World Heritage Area) plus others, have to a large extent catered for the demand to have private lodges in or near protected areas. The other factor catering to demand stems from over 900 public huts spread throughout New Zealand protected areas and conservation areas. DOC manages over 90% of these - outdoor recreation clubs or conservation groups manage the rest.

## Case Study 7. Facilitating Private Sector Investment in Protected Areas

### Denniston, New Zealand

Once home to over 1,500 people, the closure of its famous, dramatically steep rail incline in the late 1960s slowly reduced the isolated West Coast coal mining community of Denniston on New Zealand's South Island to a ghost town. The site of the town and mine is now designated as a Historic Place. Several decades later, community and government partners had a vision to restore the site and create a world class sustainable tourism venture taking advantage of Denniston's spectacular and rugged location, unique stories and historic significance.

Led by the Department of Conservation (DOC) and Development West Coast, the original plan was to attract an operator earlier in the process to partner with Denniston Heritage Trust (DHT) (which consists of Solid Energy New Zealand Limited, Friends of the Hill Trust, Buller District Council, Department of Conservation and Development West Coast).

However, early requests for Expressions of Interest (EOI) from tourism operators were not successful, largely because of the scale of the proposed development. As a consequence DOC took the lead to develop the infrastructure. Since the initial EOI process, DOC and others spent an estimated NZ\$3 million in Denniston restoring and recreating some of the original features of the site and developing the tourism experience, including marketing collateral. The tourism product involves a re-creation of the 'real' underground mining experience, the major highlight of an interactive tour product and a major draw card for the site.

After operating the tourism experience itself for several months, DOC released a second EOI request in late 2009, seeking an investor to operate the site as a self-sufficient operation under a Government concession. The operation was envisaged as a partnership, which was prepared to offer an 'appropriate' level of support and assistance to the operators.

A successful proponent was obtained from the second EOI process. The new operator was able to start running the business immediately, as initial marketing, website and tours had been established. Significant infrastructure works had been completed or were underway and plans commissioned for other aspects of the development.

### Best practice features

- The sourcing and selection of potential concessionaires is facilitated in a manner which is clear, inviting and encouraging, and provides applicants with good insight into the nature of partnerships with the agency.

Source: DOC & DHT (2010), *Tourism Operator Expression of Interest: for the operation of the historic Denniston tourism experience*. DOC and operator websites - [www.doc.govt.nz](http://www.doc.govt.nz) and [www.dennistonmineexperience.co.nz](http://www.dennistonmineexperience.co.nz).

## Canada

Generally, Canada is more like New Zealand as the private sector usually drives the development of ecotourism investment in Parks. Large private sector corporations like Brewster Travel who operate in the Canadian Rockies National Park tend to dominate the visitor operations in national parks.

Management plans are becoming more open to new business opportunities. For instance, the 2010 Jasper National Park Management Plan has improved the policy setting providing existing and new businesses with better commercial arrangements within which to operate. Jasper is currently looking at private sector proposals for via ferrata, paragliding and mountain biking. Park managers are keen to use the demand for and quality of visitor experiences in their assessment criteria however at the moment, most commercial applications are assessed against environmental criteria.

Resource rentals for tour operations in Jasper National Park are typically based on 10% of Gross Turnover. Parks Canada manages the entire protected area including the township of Jasper. Residents have 42 year automatically renewable leases on their houses. In recent years they have created an official town council that now issues business plan licences, though Parks Canada issue planning rights. Many commercial accommodation operations have licences of occupation for 21 years. Should the concession be terminated, the assets revert to Parks Canada.

The famous Jasper Resort Hotel at Fairmont has a major concession with several associated business licences (e.g. golf, horse riding, restaurants, boating and retail stores).

The Brewster Discovery Walk is an interesting case study ([www.glacierdiscoverywalk.ca](http://www.glacierdiscoverywalk.ca)). Brewster Travel has been operating in Canadian protected areas for 120 years. The Discovery Walk has been the most significant business proposal in the protected area since the Jasper Gondola in the 1960s. Brewster approached Parks Canada about taking over a public viewpoint to establish a new visitor experience (the Discovery Walk). Parks Canada adopted a passive role in the process and had to assess the application based on the tools they had – mostly environmental factors. The large cantilevered walk is in an area zoned for development and it met the environmental criteria in terms of not infringing on wilderness (the protected area maintains about 97% of its total area as Wilderness status).

Brewster Travel was able to use existing infrastructure and thus minimised the environmental footprint. They will shuttle people from the existing Icefield Parkway Visitor Centre to the Discovery Walk platform. It would have been extremely difficult for any new business to meet the criteria.

The Discovery Walk venture will be attached to the Brewster Master Concession and cannot be sold separately. Brewster Travel is also required to: improve other public viewpoints, build a new public link trail and prepare a Visitor Experience Strategy for the whole area to show how the new walk contributes to the range of opportunities in the protected area as a whole.

### Best practice features

- › A regulatory and policy framework is in place to effectively manage the concession system
- › Various concession agreements are available to address different types of uses such as ecotourism, traditional uses, research, easements, telecommunications.

## Case Study 8. Government Capacity to Manage Concessions

### Government of Alberta - Tourism, Parks and Recreation

Alberta is a significant nature tourism destination, containing extensive protected areas - which include a range of provincial Parks throughout the province and five Parks Canada-managed protected areas (of which Banff and Jasper National Parks are part of the Canadian Rocky Mountains World Heritage Site) and Dinosaur Provincial Park (a World Heritage Area).

The Tourism, Parks and Recreation Ministry of the Government of Alberta takes a proactive approach to attracting tourism investment, including in and near its provincial Parks and other natural areas. The Ministry's website contains detailed information about tourism investment opportunities. A special unit in the Department, the Tourism Business, Research and Investment Branch, facilitates investment and supports investors during the application development and operational phases. The Branch's role is described as:

- Assessing and matching investment interests and financial resources with appropriate tourism business investment opportunities
- Providing contacts and facilitating meetings to assist with business interests
- Providing information to substantiate the business case or feasibility study
- Providing detailed information on tourism sectors of interest
- Organizing tourism investment trips to Alberta
- Providing information and assistance with regards to crown land leasing opportunities through the Alberta Tourism Recreation Leasing process.

Business information and advisory services are also provided for developing new and expanded tourism products. The Branch can:

- Offer financial advice and facilitate client/entrepreneur access to capital
- Guide clients through the regulatory processes involved in tourism development projects
- Work with government departments in an advocacy role to represent the interests of the tourism industry in key policy areas such as improved air access, highway signage and product development
- Provide advice on tourism-related economic impact assessments.

The Government of Alberta international offices in several countries also provide investor advice and assistance.

### Best practice features

- The sourcing and selection of potential concessionaires is facilitated in a manner which is clear, inviting and encouraging, and provides applicants with good insight into the nature of partnerships with the agency
- Management of complex concessions is centralized and simple concessions are delegated subject to quality safeguards and agency wide standards being in place
- The agency has the capacity to manage concessions professionally.

Source: Government of Alberta, Tourism, Parks and Recreation website, [www.tpr.alberta.ca](http://www.tpr.alberta.ca).

## USA

The US example is quite different to New Zealand and Australia as the US Federal government owns all the visitor assets in National Parks and contracts the private sector to operate these through a transparent public concessions process. The NPS administers more than 500 concession contracts that, in total, gross over \$US1 billion annually. NPS concessioners employ more than 25,000 people in a variety of fields during peak seasons, providing services ranging from food service and lodging, to white-water rafting adventures and motor coach tours.

The tenders are very specific and clearly outline the product, markets, historical gross revenue and pricing. The infrastructure is traditional, has been there a long time, is driven by government's perception of what the visitor wants and caters to a very dominant domestic market. As a result the level of innovation is low.

Advice on concessions management in the National Park System is provided by the Concessions Management Advisory Board which was established by law in 1998. It is composed of seven members appointed by the Secretary of the Interior. Advisory Board members must be United States citizens and not employed by the Federal Government. Board members are by law designated to have a specific expertise in the following areas: hospitality, tourism, accounting, outfitting and guide industries, non-profit conservation Parks and recreation programs, traditional arts and crafts, and State Parks and recreation programs.

The Advisory board holds open, public, meetings on issues concerning concessions and must provide reports of its activities to the Government.

Since 2000, the *GreenLine* newsletter has furthered environmental compliance within concession operations by educating concessioner and protected area staff on topical environmental issues and sound environmental management practices within national Parks. Through the newsletter, NPS staff have familiarized concessionaires with environmental regulations and initiatives, provided information on current best management practices, and recognized concessioners who demonstrate environmental excellence throughout their operations.

### Best practice features

- › A regulatory and policy framework is in place to effectively manage the concession system
- › The objectives of the agency's concession system are stated clearly. Objectives include increased investment in visitor services and infrastructure, increased revenue and reduced costs to government.
- › Performance standards are set and maintained and good performance is recognized and valued
- › Enforcement, compliance and mechanisms for termination are in place
- › A mechanism for regular programmed review of concession legislation, policy and procedure is in place
- › Management of complex concessions is centralized and simple concessions are delegated subject to quality safeguards and agency wide standards being in place
- › Sufficient resources within the protected area agency are made available to effectively manage concessions.

## Case Study 9. Major Concessions Offered to Private Sector

### US Parks Service

#### Concession Type - Accommodation, Transport, Food and Beverage, Store

**Concessionaire:** Xanterra Parks & Resorts, Inc. the largest national and state park concessioner in the United States

**Benefits:** Partnership approach between government and which resulted in improved infrastructure and services for visitors across the nation, major revenue source for Government and reduction of operational costs.

**Details:** In August 2012 the US National Park Service selected Xanterra Parks & Resorts, Inc. (Xanterra) to provide a variety of visitor services in Glacier National Park for the next 16 years.

The new protected area concessions contract is anticipated to begin in January 2014 and includes lodging, food and beverage, retail, transportation and other visitor services within the protected area.

The new contract includes a minimum franchise fee of 1% that will be returned to the government each year based on annual gross receipts. The contract also includes a repair and maintenance reserve of 2.35% and a Red Bus Rehabilitation Reserve equal to 2.5%, each respective of annual gross receipts. The annual gross receipts are expected to be approximately \$18,500,000.

The contract requires replacement of much of the lodging furnishings throughout the protected area, remodelling selected guest rooms in the Many Glacier Hotel and Lake McDonald Lodge, improved food and beverage services at Heidi's in Many Glacier and the Two Medicine Campstore, improved sustainable and healthy choice food options, the addition of two accessible tour buses to the Red Bus Fleet, and the provision of administrative and support facilities located outside of the protected area.

The competitive process for the concessions contract was initiated December 11, 2012 with the release of a prospectus. All offers had to be submitted to the agency by April 16, 2013. An evaluation panel of National Park Service and technical experts outside Glacier National Park performed a comprehensive analysis of the proposals and selected the best responsive proposal based on factors identified in the prospectus.

Xanterra Parks & Resorts, Inc. provides a variety of visitor services in several national and state protected areas across the country, including Crater Lake, Death Valley, Grand Canyon, Petrified Forest, Rocky Mountain, Yellowstone and Zion National Parks, and Mount Rushmore.

#### Best practice features

- › A regulatory and policy framework is in place to effectively manage the concession system
- › The objectives of the agency's concession system are stated clearly. Objectives include increased investment in visitor services and infrastructure, increased revenue and reduced costs to government.

Source: US Parks Service Concession Management Guidelines website [www.nps.gov](http://www.nps.gov) 2013

## Case Study 10. Innovative Corporate Financing and Partnerships in Protected Areas

### US Parks Service

#### Profit Sharing

*Profit sharing:* Grand Teton Alpine Spring Water and Yellowstone Springs Spring Water are owners of a bottled water company that sends profits from natural spring water bottled from west Yellowstone region to two national Parks (Grand Teton and Yellowstone). Regional distributors also make a direct contribution to the protected areas. Payments go to projects, not administration.

#### Corporate donations

*Corporate Incentives:* Spanish Peaks Brewing Company donated 10¢ for each case of Black Dog Ale sold to Horizon Air, to the Yellowstone Park Foundation, in 1998.

#### Scientific research and royalties

Yellowstone National Park made an agreement with Diversa Corporation to share scientific data and royalties from the company's bio-prospecting in the Park's geothermal pools. Diversa will pay NPS US\$100,000 over five years and 0.5%–10% in royalties for any commercial sales of pharmaceuticals it produces. Any revenue gained would be used for research and conservation in Yellowstone.

#### Renting equipment

The Ohio State Park system offers camping gear such as cooking stoves, tents and cots for rent to its visitors in an effort to increase revenues, attract visitors, and reduce dependence on tax dollars.

#### Best practice features

- Various concession agreements are available to address different types of uses such as, research, rental equipment and royalties which benefit conservation
- Agencies use inclusive business models with the local community, local and regional governments, the private sector and not for profit/NGO sector and other central government agencies to develop partnerships and effective concession agreements

Source: Paul F. J. Eagles, Stephen F. McCool and Christopher D. Haynes *Tourism in Protected Areas; Best Practice Protected Area Guidelines Series No. 8 World Commission on Protected Areas* Prepared for the United Nations Environment Programme, World Tourism Organization and IUCN – The World Conservation Union. 2002)

## **RSA (South Africa)**

There is a mixture of models used historically in South Africa so investment in protected areas for ecotourism is both government driven and private sector led.

Since adopting a Commercialisation Strategy in 2000, SANParks (RSA government protected areas agency) has been driven largely by government identifying and promoting opportunities.

With the assistance of the International Finance Corporation (IFC - the commercial arm of the World Bank) they structured and implemented the initial landmark public- private partnerships for setting up nine ecotourism concessions, seven of which are in the famous Kruger National Park, and awarding concessions to private operators for retail and restaurant facilities in several national Parks. The transactions closed in 2000 and 2001, respectively.

The highly successful SANParks ecotourism public-private partnerships have generated more than US\$20 million in revenues to date. They have also developed infrastructure and assets worth more than US\$36 million that will revert to SANParks at the end of the contractual periods.

The approach was successful because each site was in an exceptional location with known tourism demand and outstanding experiences on offer.

IFC structured the green-field concessions as design, build, operate, and transfer projects, each with a 20-year term. In these concessions the private operator was granted exclusive use of the land allocated to build accommodation facilities and provide ecotourism activities, while SANParks retained ownership of the land and all buildings thereon. The ecotourism concession contracts had no right of renewal or first refusal on expiration. The concessionaires pay SANParks an annual fee calculated as a percentage of the turnover bid during the tender process.

SANParks continue to promote expressions of interest processes for opportunities within Parks - some attract a lot of interest and others none.

### **Best practice features**

- › Strategic planning is utilized to guide decisions relating to concessions that are consistent with legislation, policy, corporate direction and address cost benefit outcomes
- › Both proactive (government led) and reactive (private/NFP/NGO led) approaches to concessions are used
- › The sourcing and selection of potential concessions is facilitated in a manner which is clear, inviting and encouraging, and provides applicants with good insight into the nature of partnerships with the agency.

## Case Study 11. Foreign Investment in Protected Areas

### Kenya Wildlife Service

Under the Wildlife Management Act, the Director of the Kenya Wildlife Service (KWS) is empowered to authorise private sector investors to develop facilities and infrastructure (such as accommodation) within protected areas and secure financial returns from those areas. Development of further opportunities for wildlife and nature tourism is key aim of the Kenyan Government, as these are the primary attractions for a high percentage of both foreign and domestic visitors. In pursuit of this aim, the KWS has a policy to 'aggressively involve the private sector in utilizing the protected areas tourism potential by optimizing their capacity for tourist accommodation and other facilities' and to 'providing the required additional beds by developing high end tourist accommodation facilities in our protected areas through public private partnerships'.

The KWS website seeks investment in a range of tourist accommodation types - lodges (of solid construction); eco lodges (of semi-permanent construction blending well with the environment); luxury tented camps; cottages (providing self-catering facilities); and camps (raised sleeping platforms). In some cases, specific sites for developments are identified. Key parameters for each accommodation type are provided to guide potential investors, including:

- protected area types or protected area zones suitable for the facility
- maximum allowable visitor beds
- the proposed area for the site
- the proposed concession period and renewal period
- proposed annual rental rates.

Other operating conditions are also included – such as the expected standard of services; compliance with requirements of the Environmental Impact Assessment Report and the relevant regulations dealing waste disposal, refuse management and with management of impacts on wildlife and natural habitats. The Government of Kenya also provides a range of incentives to foreign and other investors which address the particular risks and conditions of investment in Kenya. They include:

- tax incentives in the form of depreciation allowances on investment in hotels, motor vehicles and trucks and computers and office equipment
- the ability to carry forward losses for offset against future taxable profits
- remission from custom duties on capital goods.

In addition, the Government of Kenya actively promotes the suitability and stability of the country for investment, providing guarantees against expropriation of private property. It also facilitates guarantees against non-commercial risk (through the World Bank-affiliated Multilateral Investment Guarantee Agency).

### Best practice features

- The sourcing and selection of potential concessions is facilitated in a manner which is clear, inviting and encouraging, and provides applicants with good insight into the nature of partnerships with the agency
- Both proactive (government led) and reactive (private/NFP/NGO led) approaches to concessions are used
- Performance standards are set and maintained and good performance is recognized and valued

**Source:** Kenya Wildlife Service website, [www.kws.org/tourism/investment\\_procedures](http://www.kws.org/tourism/investment_procedures).

## Case Study 12. Awarding Concessions Directly to Local Communities

### iSimangaliso Wetland Park, South Africa

#### Concession Type -Transport and Interpretation

#### Concessionaire: Local community

**Benefits:** Partnership approach between government and which resulted in improved infrastructure and services for visitors and socioeconomic benefits for the community.

**Details:** The Santa Lucia is a double-decker, shallow-craft catamaran with a capacity of 80 persons which offers 90 minute cruises, three times daily on the St. Lucia estuary. This gives visitors the opportunity of exploring the natural wonders of this unique estuary, which forms part of South Africa's first proclaimed World Heritage Site. The boat was constructed for the Nature Conservation Service at a cost of R0.6m in 1993 and has operated almost daily (except for bad weather and maintenance) ever since. The payback period was 9 months. Local industry/community were given the opportunity to provide additional boats and a number of concessions were awarded to private operators on a tender basis.

To capitalise on the popularity of these launch tours, the NCS has constructed a craft-market at the launch point in which women from the local community are able to market their wares. As a result of this success in the highly popular Hluhluwe-Umfolozzi Park, the NCS has recently launched a similar boat on the Hluhluwe Dam.

Members of the local community have been recruited and trained to serve as guides for this operation.

#### Best Practice Features

- Local communities were directly awarded concessions
- Terms and conditions of the concession agreement reflect the agency's conservation, sustainability, economic and social objectives
- Providing other opportunities such as craft markets increases socioeconomic benefits to communities.

Source: Paul F. J. Eagles, Stephen F. McCool and Christopher D. Haynes *Tourism in Protected Areas; Best Practice Protected Area Guidelines Series No. 8 World Commission on Protected Areas* Prepared for the United Nations Environment Programme, World Tourism Organization and IUCN – The World Conservation Union. 2002) (*Contribution from Alan Martin, KwaZulu-Natal Nature Conservation Service*).

## Case Study 13. Concessions for Community Use of Natural Resources

### Zimbabwe, South Africa

Zimbabwe has established an innovative approach to ensuring local communities derive benefits from conservation. CAMPFIRE (Communal Areas Management Programme for Indigenous Resources) was designed and managed entirely by Africans, began in the mid 1980's. It encourages local communities to make their own decisions about wildlife management and control. It aims to help people manage natural resources so that plants, animals and people - the whole ecosystem - all benefit. It helps provide legal ways for such communities to raise money by using local, natural resources in a sustainable way. As a result, many communities now actively protect local wildlife, seeing it as a valuable asset. In some areas locals have even provided them with emergency food and water in times of shortage.

Five main activities help provide extra income to local communities: trophy hunting, selling wild animals, tourism and selling wild meat. Each village taking part in the CAMPFIRE project (now covering 26 districts) has a wildlife committee responsible for counting animals, anti-poaching activities, conflicts which arise through 'problem animals' and environmental education. Game scouts are trained to help stop poaching and manage wildlife.

For hunting concessions to be granted and wildlife managed sustainably, local communities need to monitor their wildlife populations and manage their habitats, protecting them from poaching or alternative forms of land use e.g. farming.

Tour operators must, by law, keep detailed records of animals killed e.g. size, weight, length of certain animals and/or horns and tusks. This helps check that young animals are not being taken, putting future numbers at risk. New quotas are not issued until operators produce these records for analysis by the Department for National Parks. Local communities may also apply to kill (or sell concessions on) what are known as 'problem animals'.

Income is collected and distributed by District Councils, using guidelines produced by CAMPFIRE. They suggest that: 80% of the money is given directly to local communities who should collectively decide how it should be spent. 20% is used by the District Councils for administration and managing the local CAMPFIRE projects.

District Councils are accountable to the government via the Department for National Parks. Over US\$1.4 million was raised by 26 Districts which ran CAMPFIRE projects in 1993, although amounts vary considerably from project to project. In good years money is used for the general community e.g. building and equipping clinics and schools, constructing fences, drilling wells, building roads, paying guides and funding local sports teams. In bad, usually drought years money is given directly to local people or used to buy maize and other foodstuffs. Since 1989 over 250,000 Zimbabweans have been involved in CAMPFIRE projects.

### Best Practice Features

- Local communities were directly awarded concessions
- Revenue directly benefits local communities
- Terms and conditions of the concession agreement reflect the agency's conservation, sustainability, economic and social objectives.

Source: South Africa Parks [www.sanparks.org/](http://www.sanparks.org/) 2013

### 3 CURRENT APPROACH TO CONCESSION MANAGEMENT IN MONGOLIA'S PROTECTED AREAS

The section describes the existing approach to concession management in Mongolia's protected areas and the various authorities involved in the approval and management process. The existing regulatory framework is summarised and issues likely to impact on the effective implementation of a concession strategy for Mongolia's protected areas identified.

#### 3.1 Regulatory Framework

The Law on Special Protected Areas and the Law on Land are the main legal instruments used to authorise a range of uses within the protected area network. Permits for tourism and other land uses are issued in accordance with these laws.

Article 33 of the Law on Special Protected Areas states that:

land within limited use zones of strictly protected areas, national conservation protected areas, nature reserves and monuments may be used by citizens and economic entities through the use of environmentally safe methods according to a contract designating a specific purpose, terms, and conditions.

Other legislation that may affect or impact on the Law on Special Protected Areas includes:

- › Constitution
- › State Administration and Public Financing Law
- › Law on Environmental Protection
- › Law on Fauna
- › Law on Hunting
- › Law on Natural Plants
- › Law on Special Protected Areas' Buffer Zones
- › Law on Forests
- › Law on Water
- › Law on Land
- › Law on Concessions
- › Law on Tourism

Citizens or economic entities submit their requests for land use to the protection area administration or, in the event such protection area administration has not been established, to the sum or düüreg governor. Details of the proposed land use, allocation & amount of land required are submitted in the form of an application according to the procedures set out in the Law on Land.

Other agencies are also involved in the management of the protected area network. For example thirteen nature reserves and national monuments are managed by local soum and aimag governments. The roles and responsibilities of the various institutions involved in the management of the protected area network is summarised in Appendix 1.

The protected area administration or relevant governor is required to submit the citizens', economic entities' or organizations' request for land use along with their recommendations to the central government organization (MEGD). The MEGD then makes a decision on the application, issues a land use certificate to the applicants and a tripartite agreement/contract is made between the applicants, soum Governor, & PAAD. The Director PAAD approves the land use contract where relevant.

Land use contract holders are obliged to allocate and spend certain amounts of funding for conservation, preservation, and restoration of natural conditions in accordance with guidance and assignments provided by respective protected area administrations.

Land use fees associated with contract are paid in accordance with the rates specified in the *Law on Land Use Fees*. Land use fees are based on a per hectare rate of the land occupied and the law requires that land use fees inside protected areas are three times higher than other areas. The value of the fee is set by each soum.

The *Law on Reinvestment of Natural Resource Fees* states that 30% of land use fees are to be set aside for conservation of the relevant resource. Four Protected Area Administrations have reached agreement with their respective soums to receive this percentage of land use fee revenue

### **Permitted land uses – Strictly Protected Areas and National Protected areas**

Permitted activities within special protected areas vary according to the reserve category and the protection zone. The range of activities are summarised in Tables 4 and 5.

**Table 4 Permitted Use - Strictly Projected areas by Zone**

Strictly Protected Areas	Pristine Zone	Conservation Zone	Limited Use Zone
	<ul style="list-style-type: none"> <li>› Protection activities conformant with the need to preserve original natural features</li> <li>› Research and investigation activities</li> </ul>	<ul style="list-style-type: none"> <li>› As per Pristine Zone and:</li> <li>› Biotechnological measures making use of environmentally safe technologies to enhance flora and fauna reproduction and to mitigate damages caused by natural disasters</li> </ul>	<ul style="list-style-type: none"> <li>› As per Pristine and Conservation Zones and Soil and plant cover restoration;</li> <li>› Forest maintenance and cleaning;</li> <li>› Animal inventories and activities to regulate animal population numbers, age, sex and structure, following an approved program and methods;</li> <li>› Use of mineral water and other treatment and sanitation resources;</li> <li>› Ecotourism activities</li> <li>› Use of accommodations constructed according to appropriate procedures</li> <li>› Photography, making audio or video recordings and using these for commercial purposes;</li> <li>› Worshipping natural sacred sites and conducting other traditional ceremonies;</li> <li>› In the case of local residents, the collection and use of associated natural resources and medicinal and food plants, according to established regulations, for household needs</li> </ul>

**Table 5 Permitted - National Conservation Protected area by Zone**

National Conservation Protected area	Special zones	Travel and tourism zones	Limited use zones
	<ul style="list-style-type: none"> <li>› In addition to protection measures aimed at preserving natural features, measures using environmentally safe technologies for the conducting of research and investigation, enhancement of flora and fauna reproduction, restoration of soil and elimination of damages caused by natural disasters may also be undertaken in special zones.</li> </ul>	<ul style="list-style-type: none"> <li>› The following activities may be conducted in travel and tourism zones using valid permits and environmentally safe technologies:</li> <li>› Activities as per Special Zones</li> <li>› Fishing in designated areas.</li> <li>› Activities as per limited use zones in Strictly Protected Areas using environmentally safe technologies and with appropriate concessions or permits:</li> </ul>	<ul style="list-style-type: none"> <li>› The following activities may be conducted in limited use zones:</li> <li>› Activities described in limited use zones in Strictly Protected Areas</li> <li>› Activities described in Special Zone and Travel and Tourism Zone in this table</li> <li>› The following activities:</li> <li>› Traditional animal husbandry;</li> <li>› Authorized construction of buildings for travellers and others, using approved proposals and plans;</li> <li>› Construction of roads and road stations following the appropriate procedures and using approved proposals and plans;</li> <li>› Support and maintenance of fields required for sport facilities and public activities;</li> <li>› Conducting ecological assessments for and developing the settled areas in the territory according to approved general plans.</li> </ul>

## Permitted Uses in Nature Reserves

Traditional household activities may be carried out in nature reserves provided they do not have a negative impact on the natural features, the condition and location of certain types of natural resources, population levels, and the reproduction of flora and fauna for which the reserve is under protection.

The Law on Special Protected Areas states that it is prohibited in nature reserves to engage in any activities for commercial purposes that change the natural original condition and which are likely to have negative environmental impacts such as the construction of buildings, the digging of land, the use of explosives, the exploration and mining of natural resources, the hunting and trapping of animals, or the harvest of wood and reeds.

## Permitted Uses in National Monuments

Protection measures such as constructing fences, posting warning signs and assigning local residents to be responsible for the protection of the land is permitted within the territory of monuments.

Within an area extending 0.1-3.0 km of natural or cultural and historical monuments, the Law on Special Protected Area states that it is prohibited to construct buildings that degrade the view and scenery, to plough or dig land, to use explosives, to explore or mine natural resources, to touch, disturb or remove natural or cultural and historical relics, or conduct any other activities which might cause damage to them.

### Comment

The Law on Special Protected Areas provides for a wide range of uses (commercial and non-commercial). Uses that derive a private benefit are directly relevant to the concession strategy (refer Table 1). These uses need to be adequately managed under a concession system designed to meet the objectives of PAAD/MEGD.

The Law on Land is intended to provide for the full range of permitted uses and activities (both commercial and non-commercial) that occur within protected areas. The current regulatory framework to manage these uses (Law on Land) is suitable for some land uses but not for all the activities permissible under the Law on Special Protected Areas. It is most relevant to activities and uses that directly utilise the resources of the protected area; however its applicability to enterprises that commonly occur in protected areas around the world such as tour operations, transport services, sale of traditional handicrafts, information provision, education, outdoor adventure activities is not clear. Ensuring the regulatory and policy framework is clear on these activities is essential.

Local communities have a significant role to play in the on-going management and protection of the protected areas and this role will need to be recognised in the concession strategy and be part of an inclusive business model that incorporates traditional uses.

## Applications and Approvals for Land Utilisation

Article 35 of the Law on Special Protected Areas requires that applications for land utilisation in protected areas follow the procedures in the Law of Mongolia on Land for land utilisation licences.

Applications are made by citizens or economic entities to the protection area administration or, in the event such protection area administration has not been established, to the soum or düüreg governor. The protected area administration or relevant governor is required to submit the citizens', economic entities' or organizations' request for land use along with their recommendations to the central government organization in this case the MEGD.

According to Article 36 of the *Law on Special Protected Areas* the central government organisation has the power to make decisions on land utilization in limited use zones of strictly protected areas, national conservation protected areas, nature reserves and monuments on the basis of the recommendations of the protected areas administration and of the soum and District Governors. Under Article 30 PAAD has the power to 'issue permissions to activities allowed within the protection regime of the area, and to monitor such activities'.

Article 37 of the Law on Special Protected Areas states that following the decision made by the central organisation the soum or düüreg governors may solely, or in cooperation with the protected area administration, conclude a contract on land use with a citizen or economic entity.

It also states that in addition to provisions set out the Law on Land, the following must be reflected in the land use contract:

- › The measures on and assets to be spent for preserving, conserving and restoring the natural original condition of the land
- › The land payment amount and terms
- › The rights and obligations and responsibilities of parties regarding land use and conservation
- › The conditions and procedures for returning the land upon expiration of the land use contract and the procedures for the restoration, maintenance and issuance of the land.

Ministry records show that there are 202 genuine tourism operations that hold occupation rights in Mongolia. However, the actual number of licences is closer to 800 as this system is used to authorise approximately 300 house and building construction in Bogd Khan Mountain Strictly Protected Area and other desirable locations. This indicates that there are a large number of developments that are currently being authorised outside the current land use approval framework.

#### **Comment**

The current process of land use approval in protected areas is reactive to individual submissions. There is currently no scope for government to lead a process to increase private sector investment or control concessions in or adjacent to protected areas.

Objectives relating to the role of concessions in Mongolia's protected areas need to be clearly stated.

Objectives are important for applicants, government agencies and PAAD staff. The absence of objectives to guide the management of concessions within protected areas across Mongolia makes decision making difficult for managers and creates uncertainty for potential investors.

It is noted that in the absence of such strategies Plans of Management for protected areas and local government land use planning documents play an important role in guiding recommendations by PAAD and soum managers and may also be of some assistance to applicants.

It is understood that wherever possible PAAD staff seek to work cooperatively with the Soums and District Governors in commenting on the land utilisation applications. This relationship is important in the on-going management of concessions in and adjacent to protected areas. On-going dialogue on land management issues both within and outside the protected area network will assist with the implementation of an effective concession strategy.

The requirement that Central Government makes the final decision on land use in protected areas is warranted in some but not all cases. A two tier approach where minor land use applications are delegated to PAAD or soum administration, subject to guidelines and controls should be considered. Applications for land use that are likely to have significant socio economic benefits, environmental impacts or other threshold criteria should be referred to the central government for consideration.

The framework for decision making by Central Government on what land uses are approved should be transparent for investors, local community, local government and PAAD staff. Approvals granted by central government officials in the absence of a decision making framework will compromise the effectiveness of the concession strategy and the ongoing protection of the protected area network.

Land use contracts should outline environmental performance standards, fees, roles and obligations, monitoring and evaluation, renewal rights and dispute resolution. Standard conditions for land use in protected areas would be useful.

### Eligible Applicants for Land Use

The *Law on Special Protected Areas* (Article 33) states that land can be used by citizens, business entities and organizations of Mongolia in limited zones of conservation areas and national protected areas, nature reserves and monuments for certain purposes for certain periods under certain conditions on the basis of agreement in manners that are not harmful to environment.

Legal persons of foreign countries, international organizations, foreign citizens, stateless persons and business entities with foreign investment shall be prohibited from using land in the special protected areas. This does not apply to project activities that are conducted by foreign and international organizations in the relevant zones of the special protected areas under this law.

#### Comment

Consideration should be given as to how the restriction on foreigners from using land in Mongolia's protected areas will affect the type and quality of infrastructure and services offered to visitors, and how this may change if the restriction was removed and replaced with clear policy and guidelines on when foreign investment may be permitted.

Tourism enterprises with associated foreign investment using land in protected areas may provide significant opportunities for local communities. It is not clear from the legislation if foreign-affiliated businesses can operate tourism ventures, suggesting that clear guidelines are necessary for investors and government representatives.

### Competition

The Law on Special Protected Areas states that where two or more persons request to use the same land, the decision to grant use of the land must be based on land use designation, environmental impacts and the expenses for environmental conservation measures.

Where citizens or economic entities request to use the same land for travel and tourism business, the decision to grant use of the land must be based on whether the facilities for those activities reach international standards. The law requires that the decision shall clearly state the land use designation, the location of the zone, the location of the land, its boundaries and area, and whether the land is to be used solely or jointly. It also states that in the case of an objection on land use, the reason and justification must be set out in the decision of central government organization.

#### **Comment**

The criteria to determine the suitability of one land use application over another is not sufficiently clear or comprehensive. For example, in some cases there may be also be local community considerations that should be taken into account (ie will the community benefit more from one application over the other). . In the case of travel and tourism services, the criteria for international standard is subjective. Performance criteria that establish the standard of land use /activity would be a useful inclusion, with competing entities able to demonstrate how they perform against these criteria.

Once the criteria are established, a mechanism that allows the PAAD to allocate the land use contract through a competitive process that manage demand would be useful where there is more than one interested entity in a particular area of land or a particular activity.

The requirement for transparency in the decision making framework is critical.

#### **Term of Land Use**

Article 34 of the Law on Special Protected Areas states that the term of the land use contract shall not exceed 5 years and contract extensions shall not exceed 5 years at a time.

It also states that the area of the land to be used by citizens, economic entities or organizations shall be established by the protection area administration or the sum or düüreg governor within the limits set out by central government organization.

#### **Comment**

Short concession agreement terms, uncertainty about renewal and delays in land use-related decisions are cited by investors as disincentives to applications for tourism ventures in protected and natural areas in many jurisdictions. Short term agreements and a lack of renewal rights can cause investors difficulty in obtaining finance for improvements and other initiatives and discouraged investment in maintenance and high standards of service.

Consideration should be given to a broader range of terms for various land uses relevant to the scale of investment and level of risk involved in the activity to both PAAD and the entity.

#### **Rights and Obligations**

Article 38 of the Law on Special Protected Areas states that citizens or economic entities using land in special protected areas have the rights described in article 45 of the Law on Land. In addition to the rights described in article 45 of the Law on Land, citizens and economic entities using land in special protected areas have the following obligations:

- › Taking measures to preserve the land and restore it to its original condition at their own expense
- › Entering and leaving the land using established roads

- Where the land characteristics and land use designation are to be modified by activities prescribed by law or contract, relevant plans and proposals must be submitted to the central government organization for approval
- Upon expiration of the land use contract, restoring and maintaining the land, and returning it to the protected area administration or the sum or düüreg governor.

#### **Comment**

The law establishes the basis of obligations for land users in protected area. It is important these obligations are included in the concession agreement.

Performance standards that meet PAAD sustainability objectives should be explicitly stated, with requirements for concession holders to demonstrate that they are meeting these standards on an ongoing basis throughout the life of the concession agreement.

#### **Land Use Contract Expiration and Release of Land**

Article 40 of the Law on Special Protected Areas states that the right to use land in special protected areas terminates in the following cases:

- For the reasons described in article 39 of the Law on Land
- In the event of persistent or serious violations of the protection regime of the special protected area.

It also states that citizens and economic entities shall release the land and issue it to the local protected area administration or sum or düüreg governor within 90 days of the expiration of the land use contract if not otherwise provided by a contract as described in article 37 of the Law on Special Protected Areas.

#### **Comment**

The requirements for contract expiration and termination are essential inclusion in any concession agreement. It is suggested that this clause should also apply to activities that do not involve land possession. For example, if a tourism enterprise that does not occupy land but uses the land on for short periods of time (eg tour group) the land use contract will also be terminated.

#### **Fees Payable**

The Law of Mongolia land fees requires all land users to pay land fees. The principles of land use fee payable and the amount and percentage of land fees payable based on a per hectare rate. Each local government is responsible for setting the fees according to these principles.

Article 7 in the Law on Land Fees refers to establishes that the land use fee for specially protected areas is three times higher than the established agricultural land rate, or city, village, or other settled place rate.

The other relevant law is the law on the Environment and the Restoration of Natural Resources. This law defines the percentage and extent of fees paid for natural resource use to be applied for the protection of the environment and the restoration of natural resources.

It specifies that a percentage of resource use fees derived from Land fee revenues; Water and mineral water use fee revenues; Timber and fuel wood harvesting fee revenues; Game resource use payments and on hunting and trapping concession fee revenues; and Natural flora use fee revenues will be used for the restoration of natural resources.

Aimag, capital city, sum and düüreg Citizens' representative Assemblies are required to approve environmental protection and natural resource restoration plans and implement these using funds from the fee revenues. It is understood that four protected area administrations have reached agreement with their respective soums to receive this percentage of land use fee revenue.

The minimum amounts of fee revenues to be spent on an annual basis on environmental protection and natural resource restoration measures as designated are as follows:

Natural plant use fee revenues	30%
Game resource use payments	50%
Land fee revenues	30%
Timber and fuelwood harvesting fee revenues	85%
Water and springs use fee revenues	35%

In addition Article 19 of the Law on Tourism states that the tourism fund shall be set up for the purposes of financing expenses necessary for the infrastructure development, the domestic and the international promotion of Mongolia, the elimination of possible negative tourism impacts on the environment, the restoration of cultural properties, and the protection and the cultivation of historical, cultural and natural heritage. It states that the tourism fund shall be formed from the following sources:

- 20.1.1. Capital allocated from the State central budget in one particular year
- 20.1.2. Assistance and charity by native and foreign citizens and organizations
- 20.1.3. Other legitimate sources.

This law provides support for managing the impacts of tourism on the environment, however it is unclear how funds (if any) are allocated and if any are allocated to protected areas where 80% of the nation's tourism activity occurs.

#### **Comment**

Land use fees associated with licences are paid in accordance with the Law on Land Use Fees. The legislation recognises the value of protected areas by setting a high fee for uses within these areas. Fees are based on a per hectare rate for the area of land occupied, rather than a percentage of gross annual turnover or similar system used in other countries.

The current fee structure is ineffective in acting as a revenue source or as an incentive for quality concessions as only a small proportion of the revenue is actually returned to the protected area network. PAAD Directors are required to negotiate with local authorities to secure percentages of land fees that are payable by citizens and enterprises for commercial and traditional use of protected areas in order to offset the costs of managing the impact of these uses in the protected area where the development is occurring.

Fees vary for each protected area as each soum sets the land use fee at a different level. For example, Khugnu Khan Tourism Camp pays 360,000 MNT per annum for three hectares. The 202 camps occupy approximately 500 hectares. If the above operation were typical, and given that 30 percent of the land use fees is supposed to be used for rehabilitation and protection, then the PAAD could expect to receive 20 million MNET from the 202 tourism businesses. Clearly, this is an inefficient mechanism on which to base fees.

The establishment of a new regulatory framework for concession fees in protected areas is required.

The framework should establish the application fee, annual fees or rental as required and exemptions or exclusions from such fees and charges. Where relevant revenue sharing plans should be drafted with local governments and local communities. These plans should set out the term and conditions for the expenditure of revenue that benefits the protected area and the local community.

### **Organizations Conducting Research and Investigations in Special Protected Areas and their Duties**

Article 41 of the Law on Special Protected Areas states that organizations and foreign and international research organizations with permission from the central government organization may conduct research and investigations in special protected areas on a contractual basis.

It states the research and investigation obligations for organizations acting in special protected areas as follows:

- Complying with the legislation regarding special protected areas and the protection regime of the area
- Obtaining the appropriate permits to conduct research and investigation activities and pay the required fees
- Carrying out research and investigation activities using environmentally safe technologies
- Reporting to the special protected area administration and the central government organization on the research and investigation activities
- In the event damage has been caused to the environment in the process of carrying out research and investigation activities, taking measures to restore the environment and return the area to the protected area administration or sum or düreg governor.

#### **Comment**

The Law provides a strong basis for the management of research activities in protected areas. Similar clauses should be included for other types of land uses that are not adequately addressed in the Law on Special Protected Areas or the Land on Law (see previous section).

### **Monitoring and Compliance**

Article 42 of the Law on Special Protected Areas states that the professional inspections organization, the protected area administration and governors at all levels shall control the implementation of the legislation concerning special protected areas within their respective areas of authority. It also states that State environmental inspectors shall control the implementation of the legislation regarding special protected areas and take actions against violators within their authority.

It is noted that in Article 31 that the officials responsible for protection within the protected area administration and rangers have the same rights and obligations as a state environmental inspector.

The law also states that the Rangers working in special protected areas have the following plenary rights:

1. Inspecting the implementation of this Law and other legislation on the protection of the environment, stopping any violations and taking appropriate action against guilty parties
2. Gaining access to the premises of economic entities and carrying out inspections in order to monitor the implementation of the legislation
3. Inspecting and temporarily confiscating documents of a person suspected in violation of legislation, and, if deemed necessary, carrying out an inspection of his or her vehicle and confiscating guns and tools as well as any items hunted, collected or processed
4. Bringing temporary injunctions against citizens or economic entities that have violated the laws, regulations or protection regimes by conducting activities with negative impacts, and requiring them to take specific actions within a certain period of time.

#### **Comment**

The monitoring and compliance clauses of the Law on Special Protected Areas provide a strong regulatory framework for managing concessions in protected areas. Strengthening the capacity of the protected area administration to undertake this function is essential.

Establishing performance criteria and environmental reporting requirements for concession holders with recognition or PAAD certified operators and incentives for good performance is a useful way to assist with compliance efforts.

### **3.2 Other Issues**

Other matters which are relevant to the development and implementation of a concessions strategy are summarised below.

#### **Knowledge and Awareness of Protected Areas**

There is a good understanding and respect for nature conservation and environmental sustainability and the benefits of protected areas within the Mongolian community. This can be attributed to education and to traditional lifestyle of many communities whose wellbeing and livelihood are dependent upon the environment and the sustainable use of its natural resources.

Education, building relationships with concessionaires and the support of local communities will be important in getting a concession system to work. This will include payment of fees, adherence to environmental and management licence conditions, partnerships for concessionaires to assist in protected area management (such as entrance fee collection on behalf of PAAD in remote areas, conservation-relation actions).

#### **Accountability and transparency in decision making**

Reforming the management of concessions must contribute to a basic set of development principles, namely reduction of severe poverty, the achievement of the Millennium Development Goals (MDGs), and progress in good governance and transparent fiscal management of the public sector.

Violation of good governance principles is common in managing concessions in developing countries. Reasons include:

- › lack of policy and regulatory framework
- › the fragmented and inefficient institutional arrangements combined with the lack of
- › clarity of role and functions of stakeholders at central and local government level
- › the strong resistance to transparent procedures and independent audit in many countries because of vested interests of political leaders and officials at central level and in local government
- › power-related political interference in concession allocation and management
- › the lack of information on existing concessions
- › the weak statistical information, reliability of information, and analysis of concessions.

Weak governance in managing concessions has enormous consequences on all sectors – economic development, poverty alleviation, the environment, political legitimacy, and development cooperation. It has both direct and indirect impacts on the conservation of the protected area network, on access to land and on revenue generation for the state. It directly diverts public funds and assets away from the public sectors into the hands of a select few. Moreover, it directly undermines the public's trust in the ruling government and governance processes – a factor essential for good governance.

### **Organisational Capacity**

The management capacity of PAAD is limited by inadequate numbers of staff and lack of expertise in administrative, financial, economic and management planning. Poor pay and lack of capacity contributes to high staff turnover, loss of institutional knowledge, difficulty in consolidating improvements and a lack of incentive for rangers to enforce the law.

Low capacity is likely to affect the ability of PAAD and its Ministry to deal with the Ministry of Finance (MOF) and other central government agencies to seek financial and regulatory reforms that will give effect to a concession strategy.

This may affect the ability of PAAD to implement a concession system. The establishment of a Commercial Business Unit, improvements in staff training and expertise in concession management will be necessary.

### **Lack of strategic context for concession management**

The report on Financial Sustainability Options for Mongolia's Specially Protected Areas, (UNDP 2011) states that there are few management plans and business plans for protected areas and that there is a 'lack of agreed functions and outputs across the protected areas system'. This means there is no firm context for conservation and tourism management.

While the *Law on Special Protected Areas* provides general guidance on what activities and developments can take place in different types of protected areas and zones within them, detailed implementation of a concession strategy will be difficult without management and business plans in place. It will also be difficult to decide on the nature, location and management requirements for concessions and associated protection of values and the visitor experience and the performance standards required of concessionaires.

## State budget processes and return of revenue to PAAD

Mongolia's state budget processes implemented by the Ministry of Finance (MOF) affect the amount of the core budget allocated to PAAD and its ability to retain revenue earned. This in turn is affecting PAAD's resources to implement improvements in its management capacity and to use future income from any concessions system for conservation management.

The *Law on Special Protected Areas* provides for PAs to be funded from:

- state and local budgets
- income from tourism and other activities and services
- donations and aid from citizens, business entities and organisations
- income from fines for damages on special protected areas.

In practice, this is overridden by the *State Administration and Public Financing Law* and MOF processes which allocate budgets to state ministries in a central process (as is common in many other countries) and require all revenue earned to be centralised in the state financial system.

The MOF allocates departmental budgets on the basis of their annual budget bids, taking account the previous years' costs and performance. The PAAD budget is included in the overall budget for the MNET. If the ministry has a budget surplus, then theoretically some revenue is returned the following financial year to the sources that generated it. However, it appears that PAAD has not had revenue returned in recent years. Moreover, the system provides no incentive for PAAD to increase its revenue earnings, as it is unable to utilise any surplus it makes above its projected earnings. If PAAD falls short of its projected revenue target, then it is required to cut its expenditure in the next year to address the shortfall in its overall budget.

## 4 THE NEED FOR CHANGE - CONCESSION MANAGEMENT IN A NEW MARKET ECONOMY

**This section establishes the need to change by identifying the weaknesses of the current system and opportunities for the development of a new concession management framework for Mongolia's protected areas.**

### 4.1 Summary of issues and constraints of current system

In order for a concession strategy to be effective, the legal, policy, regulatory and institutional framework affecting Mongolia's protected area network need to be clearly defined. Institutional responsibilities must be clear and an enabling policy and legal framework in place. The current system has several drawbacks including:

- Complex regulatory environment with no guidelines for acceptable performance standards relevant to protected areas
- Confused governance arrangements for awarding licences, fee setting and collection and monitoring of activities
- Lack of a strategic, coordinated and organisation-wide approach to the identification, development and management of concession arrangements
- Political influence in approval process
- Lack of business tools to enable effective concession management
- The current system covers land utilisation applicable to commercial activities that occupy land and does not apply to (or is not used for) tourist and other activities that do not occupy land (such as tours, guiding). In addition the system does not 'capture the value from these other commercial activities'
- A concessions system should cover a range of activities on PA land – including tourism accommodation and facilities, tours, guiding, retail activities, trophy hunting and non-tourism activities such as telecommunications, grazing, wood harvesting, power generation, wind farms, filming
- The current system is reactive rather than proactive. There is no tender mechanisms or proactive planning for concession activities
- Lack of an effective mechanism to source and select potential concessionaires in a manner which is clear, inviting and encouraging, and provides applicants with good insight into the nature of partnerships that PAAD/MEGD are seeking
- Partnerships with concessions are not publicly and openly recognised and promoted on an on-going basis.
- Contracts place little no effective limit on the operation of concessions; they do not outline environmental performance standards, fees, roles and obligations or dispute arrangements
- No mechanism or guidelines in place to respond to in a timely and efficient way to issues or requests so that concessions can continue to operate in a professional manner
- Lack of structure for issue resolution associated with concession issues
- No mechanism for PAAD/MEGD to capitalise on local community skills, knowledge and services, and utilises these assets in a concession agreement

- Lack of mechanism to measure and recognise of effective partnerships and foster joint long-term objectives with partners
- No central record of contracts or an IT system to support the concession system
- Under-resourcing of PAAD to manage concessions
- Land use fees are set under the land law that the Ministry has little or no control over
- Foreign investment is prohibited restricting potential for investment
- Without management plans in many protected areas may not have clear zones on where concessions can and cannot be developed
- Fees do not recognise the value of the business opportunity or its potential impact on the natural environment
- Revenue from concession activity is not guaranteed to be returned to PAAD.

Table 6 sets out the benchmark standard of international best practice, the current situation of Mongolia's concession system and the desired outcome that the Concession Strategy should aim to achieve.

**Table 6 Current and Desired State - Concession Management in Mongolia's protected areas**

Best Practice	Current State	Desired Outcome
Clear legal power and capacity of the protected area agency to effectively manage the concession system	Legal framework is blurred with other legislation and entities involved in decision making	Clear legal basis for concessions in protected areas Clear policy and guidelines. Transparent decision making Agency has capacity to undertake effective concession management
The objectives relating to the purpose of a concession system are clear and primarily seek to enhance and promote conservation.	Objectives of concessions not clear	Objectives of concession management system clear to staff, other government agencies and applicants
Both proactive (government led) and reactive (private/NFP/NGO led) approach to concessions are used to achieve objectives	Reactive process only	Both proactive (government led) and reactive (private/NFP/NGO led) approaches used achieve objectives and invite and control investment
Strategic planning is utilized to guide for commercial activity that accords with legislation, policy, corporate direction and which addresses cost benefit outcomes	No strategic planning to determine level of investment required across protected areas	Strategic planning in place to determine level and type of commercial/NGO activity across Mongolia's Protected Area Network
Agencies have a healthy relationship with the local community, local and regional governments, the private sector and not for profit/NGO sector to develop partnerships and effective concession agreements	Healthy relationships exist amongst key stakeholders	Relationships maintained and broadened to include a range of sectors including tourism and education. Partnerships with local communities are fostered and benefit from the concession management framework
Simple and transparent methods for assessing and awarding concessions are in place for both agency staff, the private sector and other	Current application process is simple but assessment process is not comprehensive. Decision making is not	Simple procedures and performance standards available for staff and stakeholders for assessing and awarding

Best Practice	Current State	Desired Outcome
stakeholders and a framework for accountable decision making exists	transparent No standard procedures - Performance standards lacking	concessions
Various concession agreements are available to address different types of uses such as ecotourism, traditional uses, research,, easements, telecommunications	Only one type of agreement is available	A range of concession agreements available that reflect range of uses in Mongolia's protected area network – simple and complex
Flexible tenure options and pricing mechanisms that reflect the level of investment and benefits gained by both parties over the life of the agreement are available and mechanisms for local communities to be directly awarded concessions are available	Limited flexibility	A range of tenures and fees available for use that reflect nature of the use and level of investment
Terms and conditions of the concession agreement reflect the agency's conservation, sustainability, economic and social objectives and performance standards are set and maintained	Terms and conditions do not reflect agency goals and objectives	Terms and conditions clearly reflect the agency's objectives
Enforcement, compliance and mechanisms for termination are in place	Mechanisms in place however it is not clear how effective these are	Enforcement, compliance and mechanisms for termination are in place
A mechanism for regular programmed review of concession legislation, policy and procedure is in place	No programmed review in place	A mechanism for regular programmed review of concession legislation, policy and procedure is in place
Management of complex concessions is centralized and resources are provided to effectively manage the system	All concession decisions are currently centralized. No delegation. Information management system not established	Major concessions centralised and simple concessions are delegated to regional directors, subject to quality safeguards and agency wide standards being in place

## 5 A CONCESSION STRATEGY FOR MONGOLIA'S PROTECTED AREAS

### Presents the Concession Strategy – Vision, Objectives, Key Directions and Actions

#### Vision

Mongolia's protected area network will have a transparent and effective concession system that enhances and promotes conservation, sustainable development and provides tangible benefits to local communities.

#### Objectives:

Mongolia's Protected Area Concession Strategy will:

- › enhance and promote conservation
- › promote sustainable development, poverty alleviation & employment creation
- › control and monitor commercial activities and over commercialisation
- › improve the quality of the visitor experience in protected areas
- › support the development of capacity, skills and access to capital for citizens to develop alternative livelihoods
- › increase the economic return to the Central and Local Governments for effective management of the SPAN
- › improve transparency and effectiveness of concession administration.

#### Desired Outcomes

- › Clear legal basis for the establishment of concessions in Mongolia's protected areas
- › A concession policy and guidelines together with simple procedures for assessing and awarding concessions is available for use by government and industry
- › Government has capacity to undertake effective concession management and good governance ensures transparent decision making
- › Both proactive (government led) and reactive (private/NFP/NGO led) approaches are used to achieve objectives to invite and control investment
- › Strategic planning is in place to determine the level and type of commercial/NGO activity across Mongolia's Protected Area Network
- › Partnerships are maintained and broadened with sectors that are likely to be the best fit for concession opportunities in Mongolia's protected areas such as tourism and education
- › Concessions with local communities are fostered and socioeconomic benefits identifiable
- › A range of concession agreements, simple and complex, are available that reflect the nature of the use and level of investment in Mongolia's protected areas
- › Terms and conditions of concession agreements clearly reflect the agency's objectives
- › Enforcement, compliance and mechanisms for termination are in place
- › A mechanism for regular programmed review of concession legislation, policy and procedure is in place.

## 5.1 Key directions and action plans

Three key directions and action plans have been developed to establish an effective concession strategy for Mongolia's protected areas. Each direction has an action plan that lists recommended actions in order of priority and represents the core process towards implementing this strategy. Clear and measurable responsibilities will ensure accountability for the delivery of individual actions.



## **Key Direction 1** Strengthen the regulatory and policy framework for concession management

The first and foremost priority is to develop an effective regulatory and institutional framework to manage concessions within Mongolia's protected areas. To ensure the conservation and protection of areas in which concessions are awarded, the policy and legislative framework must clearly define the environmental, financial and social as well as corporate responsibilities under which the concessionaires operate. As such, the concession guidelines and individual agreements must reflect this. Furthermore, a strong monitoring unit that measures compliance with agreements must be established.

### **Action 1.1 Adopt the concession management strategy and link to whole of Government priorities.**

Endorsement of the concession management strategy and strong political backing is vital for overcoming opposition to improved transparency from entrenched interests and providing the necessary resources required for sound governance.

A ministerial agreement between the Minister for the Environment, Minister for Finance and other relevant ministers for endorsement and successful implementation of the strategy and to ensure any ambiguities in responsibilities between agencies are clarified and institutional capacity enhanced.

Steps to be undertaken to implement Action 1.1 are set out in Table 7.

### **Action 1.2 Refine the laws to centre concession management in protected area law**

The first action will be to refine the legislation to centre concession management in protected area law. PAAD and its Ministry will require full legal authority to manage concessions in its protected areas and management decisions will need to be based on sound business principles.

The respective rights and obligations of users and protected area managers need to be clearly articulated to provide greater certainty for environmental, social and business planning.

Details on how the legislation should be amended are provided in Section X

Steps to be undertaken to implement Action 1.2 are set out in Table 7.

### **Action 1.3 -Establish policy and guidelines for sustainable concessions management**

Policy and guidelines are required to regulate access and activities of users and to ensure they are appropriate to the management objectives of the site and the resource, and result in ecologically sustainable and culturally appropriate use.

Suggested contents of the policy and guidelines are provided in Chapter 6.

Steps to be undertaken to implement Action 1.3 are set out in Table 7.

**Table 7. Implementation of Key Direction 1 Strengthen the Regulatory and Policy Framework**

<b>Key Direction 1 Strengthen the Regulatory and Policy Framework</b>		
<b>Action</b>	<b>Steps</b>	<b>Priority</b>
<b>1.1 Adopt this concession management strategy and link to whole of Government priorities.</b>	<i>Brief relevant Ministers and heads of agencies and local government authorities on the strategy and seek input</i>	Immediate
	<i>Seek Ministerial support and political sponsor or champion for the concession strategy sponsor</i>	Immediate
	<i>Brief PAAD and other relevant government staff on strategy and contents</i>	Immediate
	<i>Identify budget implications for implementation of the concession strategy and prepare business case for enhancement as required for 2014/15 budget and hypothecation of revenues to PAAD and local communities</i>	Immediate
<b>1.2 Refine the laws to centre concession management in protected area law</b>	<i>Prepare amendments to the Law on Special Protected Areas (and other relevant laws) as recommended in this strategy in Section 5.1.1 and 5.2.2</i>	High
	<i>Actively communicate the benefits of the Concession Strategy to Ministers and advisors to ensure smooth passage of legislation</i>	Immediate
<b>1.3 Establish policy and guidelines for sustainable concessions management</b>	<i>Prepare Draft Concessions Policy as per the recommendations contained in Section 5.2 in consultation with industry, community and other government agencies.</i>	High
	<i>Prepare Guidelines for Applicants as per Section 5.3 in consultation with industry and community and other government agencies</i>	High
	<i>Prepare Guidelines for Site Selection as per Section 5.4 in consultation with industry and community and other government agencies</i>	High
	<i>Prepare Assessment Criteria for Concession Applications as per Section 5.5 in consultation with industry and community and other government agencies</i>	High
	<i>Prepare Concession Agreement template for small, medium and large concessions as per recommendation in section 5.7</i>	High
	<i>Trial policy, guidelines, assessment criteria and concession template for establishment of concessions in Orkhon Valley and Ik Naht Nature Reserve seeking feedback from industry and government, and review as required</i>	High
	<i>Review the regulatory and policy framework within two years of operations to ensure framework coherent, and providing mechanisms for enforcement and achieving stated objectives</i>	Medium

## Key Direction 2 **Build institutional and community capacity for implementation**

### **Action 2.1 - Establish efficient and transparent governance arrangements**

Creating a concession management system that is efficient, equitable, simple to administer and be enforceable is essential. The development of policy and guidelines as outlined in Key Direction 1 is fundamental to good governance. The next step is to establish the administration and governance arrangements and build capacity to achieve the objectives of the concession strategy.

#### **Concession Management Coordination**

Centralised co-ordination of the concession management system is essential to ensure the effective management of concessions and to build capacity within the agency. A case management approach to decision-making through all the steps in processing proposals (where a particular officer or unit is dedicated to coordinating the process) will assist in streamlining a process for both governments and investors. It will also be important that adequate government resources and appropriately experienced staff (or contracted expertise) are dedicated to the process from the relevant agencies as required (see the function of the Tourism Business, Research and Investment Branch in Case Study 6: Alberta Tourism, Protected areas and Recreation Ministry).

A more effective and regulated government approach to managing concessions, where responsibilities are clearly defined, means more stability for industry. In turn, this creates a more attractive investment environment. The private sector will also benefit from the transparency. A dedicated team of qualified staff would be expected to undertake the following tasks.

#### **Administration**

- prepare and maintain the concession management , operating standards, codes of conduct and guidelines for concessionaires in consultation with relevant stakeholders
- monitor and regularly review policies, procedures, guidelines, strategies and as they relate to concession management
- prepare and maintain appropriate sets of concession conditions applicable to the range of activities and locations where activities occur in conjunction with the regions
- provide input to development of codes of conduct and accreditation schemes
- manage concession operations in accordance with policy and procedures
- receive & process concession applications in accordance with policy and procedures
- liaise with field staff and other private and public sector agencies in determining the eligibility and suitability of applications received
- prepare standard concession agreements according to standard terms and conditions (as per Appendix X) and attach appropriate Special Conditions and Site Specific Conditions after consultation with the relevant region and communities
- liaise with regions on performance monitoring, compliance and enforcement matters
- monitor status of concessions with regions - applications pending and valid, concessions due for renewal/review, debts outstanding and compliance with conditions
- provide accurate and timely information to staff, potential and existing concessionaires and external stakeholders regarding the concession management in the protected area network

- › provide policy and technical advice to the PAAD Executive and Minister
- › provide in-house consultative/advisory service to regions and other government agencies and direct assistance when requested.

### **Development of concession opportunities**

- › investigate and develop new concession opportunities in association with regions
- › manage the tender/ EOI development for commercially allocated licences
- › manage the assessment process for competitively allocated licences
- › manage the development of a competitively allocated licence for the successful applicant/s

### **Liaise with client, industry and interest groups**

- › liaise with prospective operators, including presentations at industry forums for prospective operators
- › initiate and conduct industry forums consisting of tour operators and peak interest groups to assist with the roll out of the new system and ongoing consultation on key issues and market intelligence
- › prepare and implement communication strategy for concessionaires
- › develop and promote training for concessionaires, including cultural awareness training in consultation with local communities where relevant

### **Information services**

- › address public, business, concession enquiries
- › supply documents to internal & external stakeholders as requested
- › supply of concession information to internal & external stakeholders as requested
- › develop customer information on internet for visitors and potential and existing concessionaires
- › market and promote opportunities for concessions through internet links with Tourism agencies

### **Systems**

- › perform user manager role for the concession management system (CMS)
- › maintain concession database and relevant information on internet
- › maintain concession revenue records
- › provide advice and support on concession matters to Minister/Executive
- › prepare an annual management report regarding concession activities
- › train and mentor relevant regional field staff with respect to commercial recreation and tour operator licensing

### **Transparency**

If resources are to be governed successfully, government must be held to account for its actions. This requires publicly available information on the concessions operating in protected areas. However, solely publicizing information is not sufficient. The process through which information is made public is equally important. Thus, as making information publicly available is often a laborious bureaucratic process, the wider reforms and policies introduced as part of transparency initiatives present an opportunity for broader gains in government capacity. Furthermore, transparency needs to be systematically applied across the entire decision chain (from the decision to establish a concession) otherwise corruption and misallocation are likely to relocate

from transparent domains to weaker links in the chain. Information systems are vital first steps towards establishing good governance and transparency. Indeed, it being a first step from an initially low level of transparency means that larger gains from reforms can be expected.

Making information available not only to the public but also coordinating that information between the different government departments allows for intra-government checks and balances to be established, ultimately enhancing the effectiveness and efficiency of public policy.

Appointment of an independent third party to oversee decision-making on major concessions in protected areas is used in some jurisdictions to provide an independent assessment and a check on public accountability. In other places, a probity auditor is appointed to make an independent assessment that processes are conducted with due regard to legislative requirements, codes of ethics and conduct, policy and guidelines, and with due regard to confidentiality and conflict of interest issues, transparency, accountability, and value for money.

Steps to be undertaken to implement Action 2.1 are set out in Table 8.

### **Action 2.2 - Build capacity within government and community management**

Traditionally staffed for conservation, land and natural resource management purposes, protected areas and other land management agencies may lack depth in staff tourism expertise and experience. Thus, there may be limited understanding of the commercial requirements for concessions during the development of opportunities for release to investors and during assessment of concession applications.

Increasing investment in concession management training, quality assurance and business development by staff and community and developing industry 'ownership' of standards and quality of service are critical to an effective system. Establishing community consultative groups to assist with the development and management of concessions on Mongolia's protected areas. Community Consultative Groups will assist with building capacity and partnerships with local communities.

Equipping staff to understand and engage with the tourism industry, local government and communities will be important to assist them in dealing effectively with concessions. This might be achieved through:

- clear government policies on contribution that concessions can make to sustainable use and protection of values
- employing staff with specific skills and tourism facilitation duties (see Case Study 6: Alberta Tourism, Protected areas and Recreation Ministry)
- educating staff about the benefits of concessions to protected area management
- partnerships with tourism and local government agencies (as occurs in other places where the protected area agency works with the Government's tourism agency in the selection and initial assessment of site suitability)
- engaging commercial expertise as needed ( eg. on site selection, advice in assessing an application and negotiating concession terms and conditions)
- establishing performance indicators for business and community contributions to protected area management and monitoring outcomes.

Close communication between protected area agencies, tourism organisations, local government, economic development organisations and communities on issues related to concessions in protected areas can assist in developing a climate that encourages investment and coordinate local/regional/state tourism strategies and initiatives. It can also improve community/agency dialogue and understanding of sustainable tourism development issues and help to minimise potential delays due to community concerns and opposition. Steps to be undertaken to implement Action 2.2 are set out in Table 8.

**Table 8. Implementation of Key Direction 2 Build institutional and community capacity for implementation**

<b>Key Direction 2. Build institutional and community capacity</b>			
<b>Action</b>	<b>Steps</b>	<b>Priority</b>	
<b>2.1 Establish efficient and transparent governance arrangements.</b>	<i>Establish a concession management unit within MOGD /PAAD with professional staff responsible for the development and implementation of concession policy and guidelines and approval procedures</i>	High	
	<i>Ensure adequate resources provided for Concession Management Strategy implementation</i>		
	<b>Review and adapt the system as required</b>	<i>Develop and apply a comprehensive accountability chain: including delegated authority to regional directors, performance benchmarks, fiscal control, conflict of interest rules. Develop this is consultation with the anticorruption framework of the government.</i>	High
		<i>Establish concession consultative groups with representatives from industry, local government and communities in key protected areas regions. The role of the group will be to strategically plan for concessions and to oversee the approval and management of concessions with PAAD/MEGD.</i>	Medium
		<i>Develop transparent fiscal management procedures including valuation of concessions and revenue transparency, and reporting.</i>	High
		<i>Mobilize complementary governance support: from anticorruption agencies to support professional concession management staff from power pressure and vested interest groups in government.</i>	High
		<i>Establish website for concession management within protected areas to provide information to industry and community on concession management policy and procedures.</i>	Medium
		<i>Establish an electronic Concession Management System as a means for government to collect, organize, maintain and deliver data on concessions in protected areas in an integrated and effective way.</i>	Medium
<i>Review the concession strategy guidelines and templates within two years of operations with industry and other areas of government to ensure framework coherent, and providing mechanisms for enforcement and achieving stated objectives</i>		Medium	
<b>2.2 Build capacity within government and community</b>	<i>Communicate strategy to local government and local community representatives and seek feedback on contents.</i>	High	
	<i>Design and implement a capacity building strategy and specific training modules for staff in PAAD and other areas of government involved in managing concessions</i>	High	
	<i>Establish meeting program of community consultative groups to discuss strategy implementation, opportunities for concessions to be offered to local communities and to oversee the approval and management of concessions with PAAD/MEGD.</i>	High	
	<i>Directly award concessions to local communities once policy and guidelines are finalised for 1 year and review for on-going concession agreement</i>	High	
	<i>Provide support and advice for community concessions to ensure achieving objectives of conservation and socioeconomic benefits to communities</i>	High	

**3.1 Identify strategic opportunities for investment according to objectives**

While clear processes and guidelines are important to develop confidence in processes, they will not of themselves guarantee investor interest. Successful private sector developments in other countries are frequently associated with proactive signalling by governments of their readiness to consider proposals and a high level commitment to facilitating consideration of investment proposals. For instance, in the province of Alberta, Canada, the Tourism, Protected areas and Recreation Ministry actively seeks investment in tourism opportunities. It provides detailed on-line prospectus about potential investment opportunities and the application process and a specific branch in the Department has the role of assisting investment applicants and facilitating applications (see Case Study 8: Alberta Tourism, Protected areas and Recreation Ministry).

Identifying strategic opportunities for concessions across the protected area network will help to direct investment in areas where it is most needed, encourage high quality visitor/tourist infrastructure, facilities & services and generate socio economic benefits for the on-going livelihood of local communities. The approach can also be used to limit concession activity in other areas

In addition to encouraging consistency in concession processes and policies in PAAD/MEGD, there is benefit in a national marketing approach to attracting investment in Mongolia's protected areas.

The benefits of such an approach are:

- › a co-ordinated approach designed to avoid duplication of effort
- › a more unified outside (international Investor) view of nationwide opportunities
- › less confusion at both Government and investor level of what opportunities exist and how best to materialise them
- › a clearer path for industry/community and investors with an idea or a desire to develop in protected or natural areas.

With initiatives being taken to improve marketing of Mongolian tourism opportunities, leverage may be gained for attracting investment by including them in these initiatives. A national approach to tourism investment in protected areas is required if international investors or significant Mongolian investors are to be attracted

Specific needs related to attracting investment in protected and natural areas under national tourism initiatives will include:

- › central coordination between tourism and MEGD/PAAD
- › funding support
- › the development of an Investment Prospectus for use in promoting investment,. For natural areas it will need to identify
- › those regions that wish to attract investment into protected and natural areas
- › any specific sites that are open for investment and what approvals are in place and still outstanding
- › protected areas or areas where there is a clear need/desire for investment.

It may be necessary to review plans of management/planning regulations that require change to allow concessions and prioritising for destinations that are likely to be attractive to investors.

When making the prospectus, PAAD needs to conduct a needs assessment, e.g. what is needed, the level of need, and what is not necessary. This forms a framework of assessing the value contributed by the applicants. Example of content of a prospectus is outlined below:

- The physical location and the size of the operation
- The planning, designing and construction of the property required to help conserve the natural and cultural environment
- The layout and the service desired for facilities
- The market opportunity built on the protected area's future development
- The existing and planned facilities provided by the agency
- The contract policy, agreement, and terms and conditions
- The requirements of initial investment, total investment expected and financial capability; and,
- The requirements of bid plan (format, items, deadline, the references) and the selection procedures.

Steps to be undertaken to implement Action 3.1 are set out in Table 9.

### **3.2 Strengthen partnerships with industry, community and other government agencies and to develop sustainable concessions in strategic areas**

The regulatory and policy framework should provide for a proactive approach to investment in protected areas by the private sector or Public-Private Partnerships (PPPs) that promotes sustainable tourism and traditional use, generates employment and other socio economic benefits.

Concession activities that generate revenues to the government should be channelled for management and conservation of the protected area network. The way to achieve this is by planning and partnering with others. Strategic planning can be used to encourage 'partnerships' between communities, private business, local governments and the PAAD/MEGD and create certainty for industry investment and security.

Steps to be undertaken to implement Action 3.2 are set out in Table 9.

**Table 9 Implementation of Key Direction 3 Build Strategic and Inclusive Business Models**

<b>Key Direction 3 Develop strategic and inclusive business models</b>		
<b>Action</b>	<b>Steps</b>	<b>Priority</b>
<b>3.1 Identify strategic opportunities for investment according to objectives</b>	<i>Work with government agencies, tourism organisations, local communities and tourism industry at a regional/local level to identify opportunities for concession activity.</i>	Medium
	<i>Review plans of management/planning regulations that require change to allow concessions</i>	Medium
	<i>Develop and communicate investment opportunities and concessions available for communities and industry in key regions through a ‘prospectus’ that is distributed to industry and community through government networks</i>	Medium
	<i>Offer concession agreements to local communities and industry using the established policy and guidelines</i>	Medium
<b>3.2 Strengthen partnerships with industry, community and other government agencies and to develop sustainable concessions in strategic areas</b>	<i>Establish community consultative committees as per recommendations 2.1 and 2.2 to build understanding and potential partnerships – involve existing concession holders</i>	Medium
	<i>Establish regular communication with existing concession holders through a newsletter to showcase good performance and provide updates on the protected area network to build support</i>	Medium
	<i>Over time build network of concession holders in Mongolia’s protected area network and use as a education forum for government and concession holders to exchange information and build partnerships for feedback and further investment</i>	Medium

## 6 Recommendations for Strengthening the Regulatory and Policy Framework

### 6.1 Recommended legislative reforms

Provides detail on the suggested amendments to the legislation and suggested content of the Concession Policy and Guidelines

It is recommended that the Law on Special Protected Areas (and other relevant laws) be amended to anchor concession management in the protected area legislation and stipulate the following:

- The full range of activities that concessions can be granted
- Manner and conditions under which different types of concession activities can operate in a protected area and adjacent to protected areas
- Terms (5 years, 10 years and longer) and conditions including sustainability performance standards which a concessionaire in a protected area is obliged to fulfil
- Fees and revenue sharing arrangements with local governments
- Foreign investment opportunities
- Competitive allocation of concessions
- Beginning and duration of the concession, as well as, the terms under which the concession agreement will be terminated before due time
- Mechanism for government led concession development, as well as, industry/community led concession development
- Supervision over the concession activities; and,
- Conditions for improving the protection of environment and nature during concession activities in a protected area.

An Australian protected areas agency has recently developed a comprehensive decision-making framework for visitor and tourist development proposals in protected areas and reserves, established under amendments to the *National Protected areas and Wildlife Act 1974*. The framework clarifies the legislative framework of decision-making, permissible tourism development in protected areas and reserves, and includes detailed criteria for assessment of proposals and guidelines for the decision-making process (see Case Study 1: NSW framework for tourism development in protected areas).

#### Recommended Principles of a new regulatory framework

- It is understood that the Ministry of Economic Development and the State Property Committee are currently responsible for concession issues. It is recommended that legislative amendment be made to provide PAAD and MEGD full responsibility for responding to and coordinating all aspects of concession management within the protected area network. The legislation should allow PAAD/MEGD to coordinate their employees, partners and other Government agencies (as required) to respond to or progress concession opportunities within protected areas.

- In protected areas and reserves nominated by PAAD/MEGD and aimag/soums decision making about concessions will be shared with the local community through a consultative committee. Projects instigated by the PAAD/MEGD will be progressed in conjunction with the respective consultative committees for the protected area or reserve in which they are proposed. Externally driven proposals will be presented to consultative committees only after PAAD/MEGD deems that the proposal complies, or has the capacity to comply, with the policy principles and objectives and that sufficient information has been obtained from the proponent to warrant further discussion.
- Concession activities must be determined within a framework of strategic plans, management plans and business plans.
- Concession activities must deliver benefits to the PAAD/MEGD, community partners (where relevant) and private proponents. Benefits derived from a development may include a mix of financial and non-financial outcomes.
- Provision for exclusive access to part of a protected area or reserve may be granted where there is no existing public access to a site. For sites with existing public access, exclusive access may be considered if this can be offset so there is a net benefit in terms of available visitor experiences offered.
- Risk management strategies will be established for all concessions to protect the interests of, and any investment made by, PAAD and its Ministry in the event of possible business failure or non-compliance with operational terms and conditions for a development.
- The assessment and selection process and subsequent approval mechanisms used to facilitate a concession opportunity will reflect the scale and complexity of the development opportunity; the level of investment required and associated return on investment that will be sought by all stakeholders.
- A proportion of revenue generated from a concession that is hypothecated back to PAAD will be retained by the protected area or reserve in which it is situated to offset the costs of protected area management activities and the additional administrative and management requirements imposed by the concession activity.
- The protection of natural, cultural and recreational values of a protected area or reserve is paramount and a concession activity will only be approved if the application has demonstrated that the development poses no significant threat to these values.
- High level environmental standards will be applied to all concessions. This principle will influence the selection of development proposals, construction of the development, operating terms and conditions of a completed development and where relevant, decommissioning of the development and site rehabilitation.
- A commercial tourism development must enhance the natural and/or cultural tourism experience within the protected area or reserve in which it is situated.
- Commercial tourism development opportunities in protected areas must facilitate the involvement of local community in direct or indirect delivery of the product or service, subject to community interest, capacity and availability. Proposals that provide training, employment and/or business development outcomes and enhance visitor experience through the presentation of Mongolian culture and contact with a local community's will be considered favourably.

## 6.2 Recommended Policy & Procedures

These policy and procedures are intended to guide the establishment and management of concession activities. Guidelines are included for the key steps in the concession management framework:

- Concession Establishment
- Guidelines for applicants
- Enabling Investment

- Site Selection
- Assessing Applications
- Concept development and Finalisation
- Finalisation of the Concession Agreement.

The following discussion focusses on two types of concession agreements (i) a concession agreement in the form of a licence/permit commonly held for minor activity based concessions. (ii) concession agreement in the form of a 'lease' as commonly held by major concessions.

Figure 1 suggests a process to be adopted for the review of all concessions.

### **Concession Establishment**

There will be a number of ways in which concession proposals and agreements will originate in Mongolia's protected areas. These are described below. Concession proposals will be either minor or simple concessions or large and more complex. Regardless of their complexity, concessions will be assessed and managed in a consistent manner in accordance with the guidelines.

#### ***Existing interests***

Many property interests administered by the MEGD/PAAD may originate from interests in land which pre-existed the land's reservation, ie, they are inherited. In its management of the reserved area and its dealing with such land the MEGD/PAAD may be obliged to respect the continuing rights of the existing interest holder. Alternatively the MEGD/PAAD may find that it can properly terminate the interest.

Where land brought under the administration of the Law on Special Protected Areas is subject to an existing occupancy or use which is permissible under the Law but is not covered by a concession agreement or other right and a decision is taken by the MEGD/PAAD to continue that occupancy or use, steps should be taken to regularise it to bring it within the concession management framework.

The presence of an existing interest within reserved lands is a factor which must be taken into account before a decision is taken to grant any new tenure under the Law, particularly to another party, affecting that land.

#### ***New proposals***

Alternatively, concession agreements may originate as new proposals. They may be of a commercial or non-commercial nature. They may be:

- an *investor-led approach* – where an investor approaches government with an investment proposal on their own initiative or in response to a broad signal from MEGD/PAAD that it is open to receiving concession proposals without specifying specific sites and be subsequently effected through the calling of expressions of interest or through direct negotiation.
- or a *government-led approach* - where government calls for expressions of interest from investors, either in relation to a specific site or over an array of sites or a landscape.

These two approaches have advantages and disadvantages for MEGD/PAAD and investors, which should be taken into account when selecting the method (see Table 3).

Figures 2 and 3 provide a suggested outline of stages in investor-led and government-led processes to be adopted by MEGD/PAAD for complex or larger land based concessions.

#### ***Choosing the right approach to achieve the desired objectives***

MEGD/PAAD may adopt a combination of these approaches to achieve its objectives. Examples are shown below:

- a) **Using concessions to attract investment** - The MEGD/PAAD may identify, promote and market selected opportunities for new activities within areas reserved under the *Law on Special Protected Areas*).
- b) **Using concessions to control or limit development** - In some instances MGD/PAAD may choose to allocate access rights to one or a small number of operators through competitive allocation. Competitive allocation of concessions may be used as a mechanism to:
  - manage access to sites where capacity may be limited for environmental, cultural, social or visitor safety reasons
  - manage access to sites where demand for licences exceeds acceptable limits
  - seek an operator to deliver an identified opportunity on behalf of government.

Many operators support the process of competitively allocating licences as it provides a competitive advantage through limiting the size of the market. Potential operators are usually assessed on their ability to demonstrate past performance as well as their commitment to more sustainable practices in the future.

- c) **Using concessions to improve or sustain the livelihood of local communities** - MGD/PAAD may seek to directly award a concession agreement for a particular use in special circumstances:
  - where a suitable commercial opportunity has been identified by the MEGD/PAAD;
  - where there are safety, environmental and cultural issues in relation to a particular activity or site
  - where protected area objectives can be best achieved through the granting of such a concession agreement
  - where the proposed activity is consistent with the plan of management for the area.

Similarly, non-commercial tenures and rights within reserved lands including traditional uses or services may originate as new proposals.. Private interests may also seek such rights. Care must be taken to ensure that what is proposed is an activity which falls within the scope of the Law. It must not be assumed that because an activity was permitted in the past it will be permitted in the future.

**Figure 1. Concession Application, Assessment and Management Process**

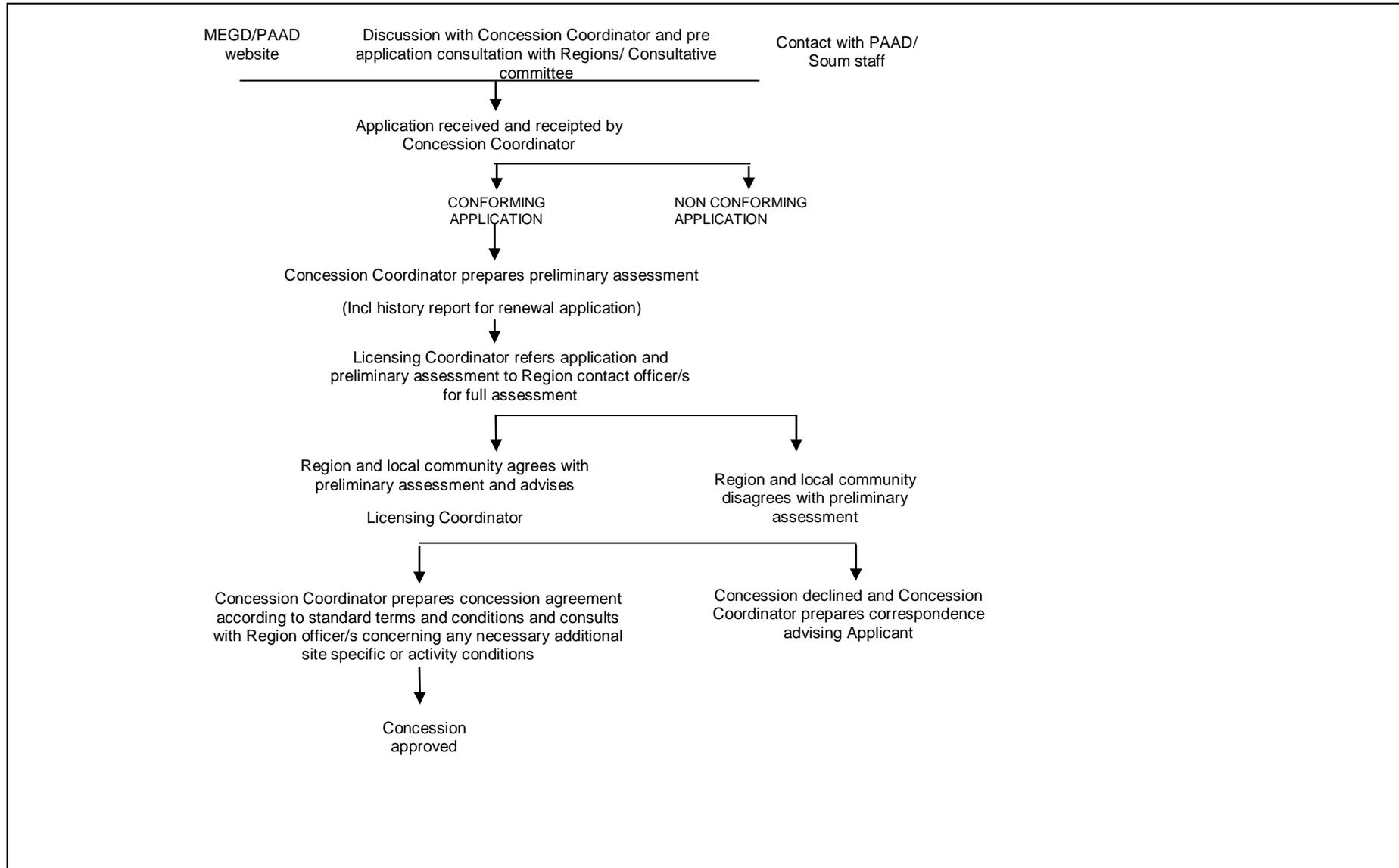
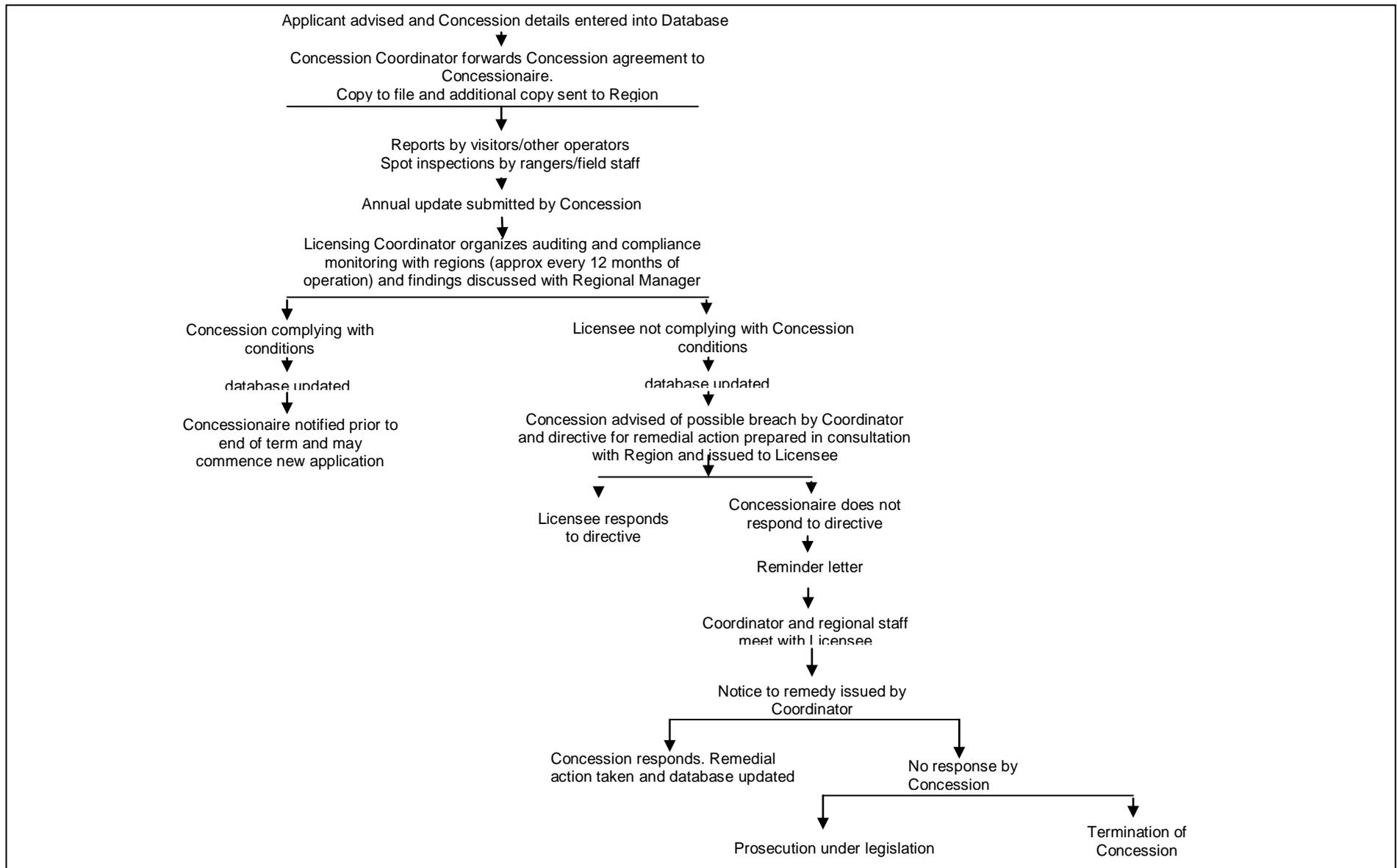
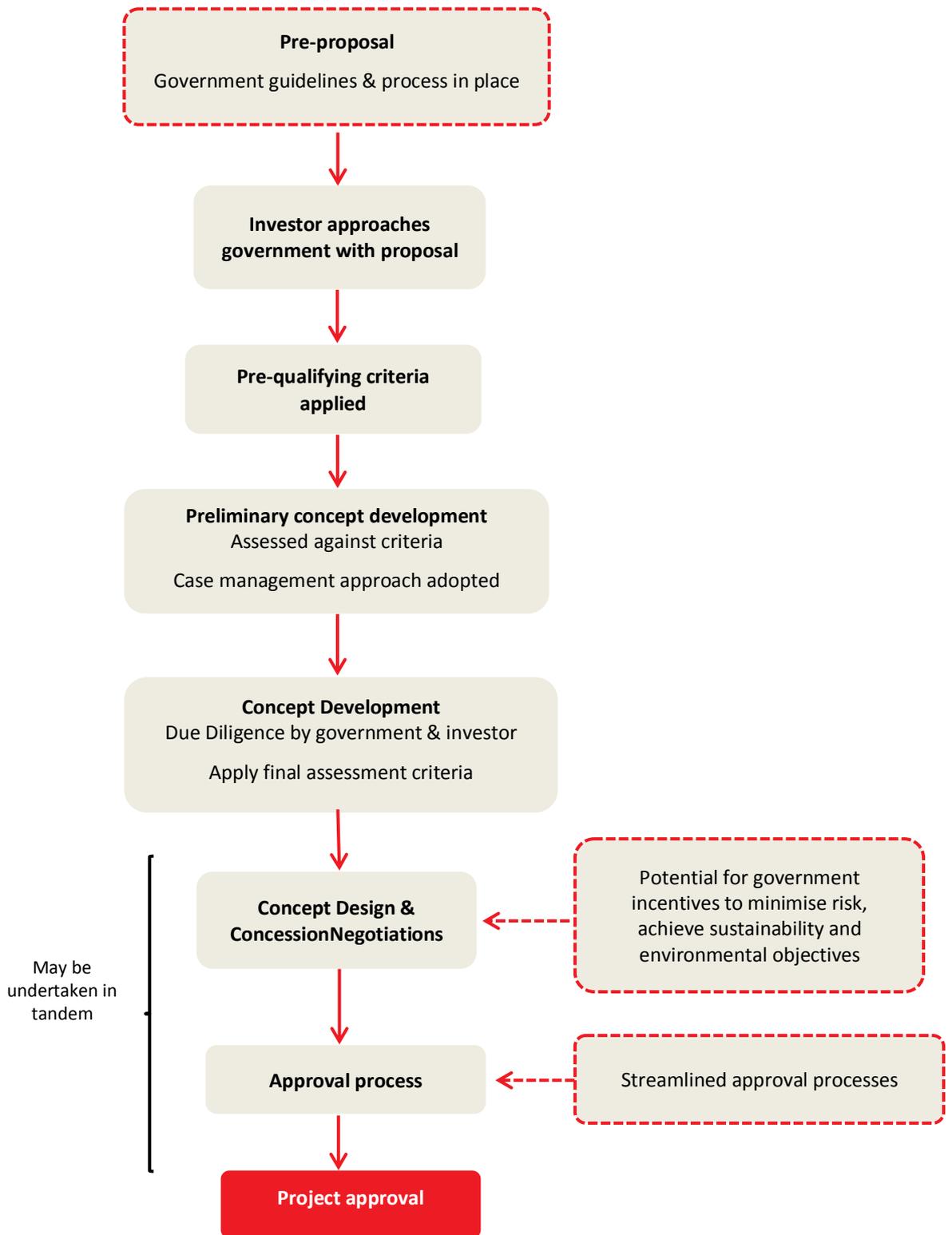


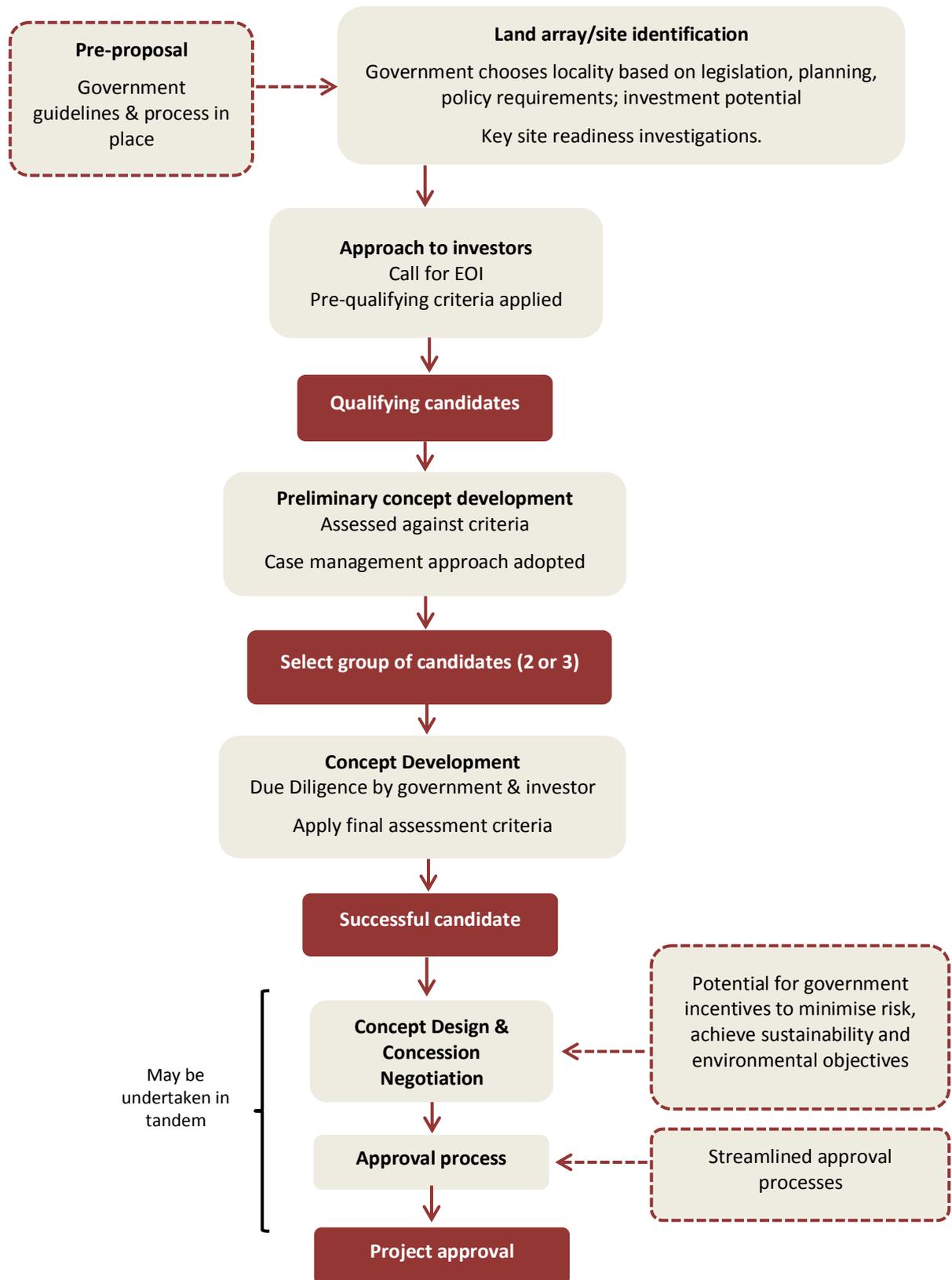
Figure 2. Management of Concession Agreement



**Figure 3. Decision process for investor led process**



**Figure 4. Decision process for government led process**



### 6.3 Establishing Guidelines for Applicants

The establishment and publication of clear processes for consideration of concession proposals is essential for adequate and timely consideration of proposals, whether initiated by industry/community or by government. Clear processes and guidelines encourage confidence in making an application. They save time and assist in planning the process and allocation of resources for all parties. Applicants should have an idea of the types of proposals that may be acceptable; potentially acceptable locations (especially important for investor-led approaches); and the government requirements and decision-making steps involved. Government agencies and staff have clarity in the steps to be followed and are assisted in allocating staff responsibilities and budgets.

It is desirable that the information released about concession processes addresses and is clear on key steps of the process, particularly aspects which have been perceived by industry/community as inhibiting the uptake of opportunities. Key aspects are:

- the broad types of developments or activities sought (eg. relationship to management objectives, visitor experiences)
- the legislative, planning and policy requirements affecting concession approval and operations
- the types of tenure available and the length of concession agreements
- the steps that will be applied in decision-making and objectives, standards and/or criteria that will be used to make decisions at critical phases
- the range of approvals required (eg. environmental assessment, planning approvals), and their relationship to the concession assessment process steps.

While processes for consideration of concession proposals may be set out in documentation such as a prospectus, the development of PAAD-wide processes and guidelines have the advantage of being in place ready to apply to unsolicited proposals by industry/community. In developing such processes and guidelines, jurisdictions also have an opportunity to address and find solutions to background issues affecting potential opportunities (such as legislation issues, planning, and tenure) and to build more streamlined assessment and approval processes.

#### Key Recommendations – Guidelines for Applicants

*Information needs to be readily accessible to interested parties regardless of whether a process is Government or investor led.*

- Clear advice must be provided that articulates that only sustainable, landscape appropriate developments and activities that assist with the ongoing conservation of the protected area and that enhance the visitor experience are appropriate.
- Legislative requirements related to developments on public land, issue of leases and licences and project approvals should be readily available and specified.
- The steps that will be applied to the process (whether investor or Government initiated), including relationships to environmental impact assessment and other approvals, should be clearly described.
- Clear objectives, standards, and criteria should be applied to consideration of proposals at all stages of the decision-making process.
- Guidelines for decision-making processes should be published to ensure availability to potential investors and the public.

## 6.4 Guidelines for site selection

Site selection is a critical element in achieving a sustainable concession in most cases. Selecting the wrong site may result in little or no interest from suitable investors and therefore waste resources preparing the site to take to market. Alternatively an inappropriate site may lead to ongoing management challenges for the operator or worse, a situation where the concession compromises the nature and/or cultural values of the protected area.

### Criteria to Assessing Site Suitability

There will never be a definitive list capturing the elements of an 'ideal' site for all commercial developments. This is because all protected areas are unique, as is each concession activity. With this in mind, two key criteria are fundamental to assessing the suitability of sites for commercial developments in protected areas:

#### *Fit for purpose*

This is an assessment of the physical attributes of the site and their match with the proposed activities. This could include elements such as:

- Whether the footprint is adequate for the scale of the development/activity and the associated services
- The topography, soil type and vegetation of the site being suitable for the type of development proposed, the associated construction and resulting increase in visitation; and
- Ensuring the site is not situated in an area at high risk of being impacted by natural disasters (eg floods, storm surge, and fire) nor in a highly sensitive area.

#### *Destination appropriateness*

This element attempts to capture the non-tangible elements of a site which will be necessary for the concession to be successful. These are likely to include:

- Tourism significance of the site: location selection should reflect the values of the protected area or the 'sense of place' in which the development is proposed. For example, if visitors are drawn to the protected area to see a particular landscape, then a site should be selected that reflects that landscape. If it is not practical for the iconic landscape to be offered for a commercial development, then the proximity to that attraction should be considered
- Uniqueness of the site: locations which offer an opportunity similar to other developments in the local area should be avoided. Ideally sites should offer investors something unique, unless like sites are over-crowded
- Compatibility with visitor needs and other protected area operations: the site provides a buffer from conflicting uses of protected area estate. For example, a site for adventure tourism experiences in not selected nearby known bird nesting habitats or established bird hides.

Other site selection criteria which should be considered to determine their relevance to the particular activities associated with the proposed commercial development include:

1. **Access:** access to the site by a mode of transport appropriate to the style of tourism experience to be established is critical. If year-round access is not possible, the likely impact of the duration of seasonal access on the viability of the proposed commercial development should be assessed. Access by road will be relevant by most commercial developments, although the required standard of that road access may vary depending on the nature of the development. In some circumstances other forms of access (eg helicopter, boat, walking) may be relevant to the

delivery of the proposed tourism experience. In such circumstances, the practicalities of access during construction should also be taken into account

2. **Flexibility of the site:** where possible, the site offered should be as broad as possible to allow for investors/entrepreneurs to be innovative and design the commercial development to reflect the needs and preferences of their target market. An overly restrictive site may limit the appeal for investors
3. **Attractive to visitors:** most commercial developments will require a site which relates to the experiential aspects to be offered by the tourism operator. Most developments in protected areas will require attractive surrounds
4. **Ability to access necessary essential services:** the ability to access or establish access to relevant services such as power, water, sewerage or the capacity of the site to support self-contained service infrastructure must form part of site selection for most commercial development categories
5. **Proximity to established business in direct competition to the proposed commercial development:** existing businesses in or nearby the site should be taken into consideration when identifying sites for new commercial developments. New developments should not negatively impact or directly compete with existing tourism products. However, sites which support commercial developments suited to a new target market should not be considered competitive. For example, a site suited to an up-market lodge accommodation would not be seen to be in direct competition to a nearby caravan protected area.

### Development Barriers which may Impact on Site Suitability

Barriers which may impact on the viability of concession need to be considered and include those listed below.

- Access impediments (seasonal, quality of road, etc)
- Tenure
- Politics among relevant clan groups
- Lack of access to water
- Known sacred sites
- Threats to visitor safety that would impose additional management costs
- Politically sensitive areas where proposed developments are likely to receive significant resistance from stakeholder groups.

### Key Recommendations - Site Selection

- A site should reflect a sense of the place, relate to the experiential aspects of the product, and be attractive to visitors.
- A site should have:
  - ease of access for transport of visitors and services (not necessarily by road)
  - access to a water supply
  - a footprint adequate to the scale of the development and able to encompass self-contained sustainable infrastructure

- reliable access to the experiential undertakings of the protected area or natural area surrounding, or adjacent to, the site
- There should be flexibility for specific site choice and design within the boundaries of a designated development area
- A site should be compatible with the requirements of government legislation, policies and protected area management and cultural heritage plans
- Development of a site should be compatible with other protected area operations or visitor needs
- There should be a demonstrable need for the proposed experience, including benefits for the local community
- A site should be capable of sustainable development that:
  - is compatible with the natural and cultural values of the land and its surroundings
  - utilises sustainable and efficient use of natural resources, energy and water that protects ecological integrity and environmental quality
  - is of appropriate form and scale to maintain the quality of the visual landscape
  - adds to the overall visitor offer and is appropriate to the visitor use and character of the site and its surrounds.
- Community support for the opportunities needs to be fostered through transparent processes, community consultation and promotion of community benefits.

## 6.5 Guidelines for Concession Assessment

It is desirable that governments establish and publicise clear criteria for assessing concession applications at each step in the process. These criteria should be capable of application to either responses to Expressions of Interest or investor-led approaches. The use of assessment criteria:

- provides a more transparent and accountable decision-making process
- assists the efficiency and effectiveness of government decision-making and use of agency resources – objectives for concessions are established in advance to guide decision-makers and resources are expended in proportion to whether applications meet those objectives
- ensures that investors are informed in advance of government objectives for concessions and the desired characteristics of ventures.

An example of assessment criteria is presented in Appendix 2 together with an example of an assessment report to be completed by PAAD staff (Appendix 3).

- Decision-making frameworks developed for concessions should be applicable to both investor-led approaches and government-led or equivalent processes and should be developed and published up-front
- In a Government led approach to investors, the first stage is to seek interest and evaluate interested parties on their business and capacity to deliver sustainable, landscape appropriate uses and experiences for visitors
- Pre-qualifying selection criteria are needed to assess applicants before deciding whether to proceed with more detailed development and assessment of proposals
- Where there are several applicants, an additional assessment stage following preliminary concept submission is required to reduce the applicants to a select group (ideally 2 or 3).

Prequalifying criteria need to focus on three areas only:

- operator reputation, experience and capacity to deliver triple bottom line outcomes
- sustainable business model
- suitable concept for the protected area
- Avoid detailed sustainability criteria at the early stages

Preliminary Concept Assessment criteria need to focus on the capacity of the concept to achieve sustainable outcomes. Key criteria should cover:

- commercial viability and sustainability of the project over time
- compatibility with natural and cultural values of a site/area
- provision for the sustainable and efficient use of natural resources, energy and water, including waste management and avoidance of pollution
- form and scale of buildings and structures appropriate to the site character and landscape setting and which minimise the environmental footprint
- potential partnerships and contribution to local communities.

Information on the relative roles of the investor and the land manager in bringing the proposal to fruition and suggested support mechanisms and/or financial incentives might also be sought.

- Ensure political support and government commitment to the process, including a case management approach by one officer between government agencies.
- Provide details of what the likely lease/concession/agreement terms will be at this stage of the process.
- Appoint a probity auditor and establish a confidentiality process to ensure transparency and protect the intellectual property of the proponent(s) for large or controversial uses.
- In a government-led process, use a two or three stage approach that allows for government confidence in the suitability of available site options and negotiation of a government/investor approach to site readiness investigation (due diligence).
- Minimise the cost to investors in the first stage through targeted information requirements and be clear on the assessment criteria as well as the time and potential costs in proceeding through the process.
- Short list to a maximum of three proponents.

## **6.6 Concept Development (for more complex concessions)**

At this stage a small number of proponents (in the case of a government-led process) or the single proponent in an investor-led process are invited to develop their concepts for a site in more detail. This will include development of a concept plan about the use of the site or area; proposed visitor opportunities; and the way they will achieve environmental, social and economic sustainability. Further site investigation will be needed to assess opportunities and constraints for proposed developments.

There are several key considerations which will affect a successful outcome from this stage.

## Clear, consistent and timely processes

It is important that the proponent or proponents are clear about the requirements of the Concept Development stage and the way that decisions will be made on the concepts they prepare. They will be weighing the benefit-cost of investing time and resources in competing further. The time involved and complexity of processes may preclude or dissuade some good operators (particularly small operators) from the process. A possible incentive to operators to continue at this stage may be an arrangement to provide Government financial assistance to the final qualifying proponent to prepare their detailed concept design at the next stage. A case management approach (see section 4.5) should continue at this stage.

A partnership approach to the remaining site investigations (due diligence) can also assist proponents, while ensuring that site clearances meet appropriate environmental and other standards. It is suggested that, at this stage, governments conduct studies or provide data on matters related to site clearances and visitor use. Contact with local communities and management of any approval processes is also best managed by government through the relevant agencies or community organisations. Proponents would concentrate on investigating site, infrastructure and services options; market analysis and other aspects of the feasibility of their concepts.

## Protection of confidential material and intellectual property

Confidence in the protection of their confidential commercial information and the intellectual property present in their development concepts may affect proponents' perception of the benefit-cost of proceeding at this stage of the process. Information on proponents' commercial operations and the site proposal details needs to be treated as commercial-in-confidence information.

## Public and stakeholder understanding

At this stage of the concession process, it is advisable for Governments to continue to inform stakeholders and the community about the process and the potential benefits of the concession and (as appropriate) begin detailed consultations on matters potentially affecting local communities and stakeholders (eg. site clearance, local herders, and recreational use).

The community may have concerns about the impacts of development on natural and cultural values and public use of areas and seek knowledge about how decisions are made and an input into the process. A lack of transparency in decision-making may reduce public confidence in, and support for, commercial investment in tourism in public land. Processes which inform the public and stakeholders about potential developments at an early stage and throughout the process and provide opportunities for public input will also assist in testing public reactions and addressing public concerns prior to end of the end of the process (when public concerns may emerge and cause delays).

### Key Recommendations– Concept Development Stage

- ▶ A case management approach for government procurement and approval processes is important to provide clarity and consistency and reduce costs and time for investors.
- ▶ Investors need to be confident that their commercial-in-confidence and intellectual property are protected.
- ▶ Processes related to procurement, approval and administration of concessions should meet government probity requirements for equity, transparency and consistency.
- ▶ Adequate resources and appropriately experienced government staff are required to oversee successful concession processes.

## Final assessment criteria

Clear criteria and a transparent process for applying them are needed for making decisions on the final proponent who will proceed to the concept design and concession negotiation stage.

The assessment needs to focus on long term benefits and there needs to be recognition that large concession projects in most cases require several years to establish themselves and achieve financial viability. There also needs to be recognition of the wider community benefits and the multiplier effects of a project as opposed to just the financial returns to government. In most cases, financial returns to government may take several years to become material. With this in mind, some of the final assessment criteria that might be applied are described below.

- A re-evaluation of the proposal against environmental and financial sustainability criteria.
- Return on investment (social and conservation) to government and the community.
- Benefits to local communities.
- Measures to manage impacts and relationships with other visitors and users to the area, including minimal impact practices related to client activities.
- On-ground needs of operator and protected area staff and the potential for an effective long term relationship.
- Level of improved protected area perception and appreciation by the public as a result of the project.

## 6.7 Concept Finalisation and Concession Agreement/Approval

During this stage, the final proponent works with government agencies to shape the final concept and site design. This is the proposal that will be subject to statutory environmental impact assessment and other planning approval, as well as the issue of tenure or an agreement under the relevant legislation.

It is acknowledged that other types of tenure or agreement may be offered depending on the product and the jurisdiction. The principles outlined in relation to concession agreements are also intended to apply to other forms of tenure or agreements.

There will be considerable overlap between actions taken on finalising the concept design and meeting the requirements for final project approvals. Typically, a number of agencies will have interests, legislation and requirements relevant to site design and project approval. Depending on the location and nature of the development, formal approval may be required under various legislation and local government planning requirements.

A case management approach will be critical at this stage to facilitate the process and avoid unnecessary delays by ensuring that all necessary information is provided to the developer; encouraging a common approach to the development by government agencies; and streamline consultation and approval processes.

### Concession Agreement Content

Ideally, government will have clearly identified the terms and conditions early in the process (refer Guidelines), leaving the finer details for major concessions only to be negotiated at this stage. The concession agreement will ideally incorporate measures which meet both the government's objectives (eg. sustainable outcomes) and the investor's aims (eg. a commercial return and certainty, provision of a quality product that meets market demand, sustainability objectives).

Content of the concession agreement that will impact on the success of the venture and achievement of both government and investor objectives include:

- the length of tenure
- environmental, social and economic sustainability conditions
- measures to assist and encourage the desired environmental, social and economic outcomes of the venture.

### **Length of tenure**

The commercial viability of a tourism development is strongly linked to a length of tenure that enables an adequate return on the investment. For activity based concession this is less of a concern and can be limited to 5 years. For larger or more complex concessions the length of tenure may affect the ability to gain finance and make on-going improvements in infrastructure and services.

Short concession agreement terms, uncertainty about renewal and delays in lease-related decisions have been cited by investors as disincentives to applications for tourism ventures in protected and natural areas in many jurisdictions. Short term agreements and a lack of renewal rights can cause investors difficulty in obtaining finance for improvements and other initiatives and discouraged investment in maintenance and high standards of service.

Concession agreement duration varies in protected areas around the world with some legislation prescribing maximum terms from 10 to 50 years and in other cases this is left to concession policy

For large or major concessions, site tenure appropriate to generating an adequate return on capital investment is likely to be a minimum of 20 years, with 30 to 50 years for projects involving major infrastructure. The possibility of, or incentives for concession agreement renewal on expiry is also desirable to many investors, and can act as an incentive for continual improvement of a product throughout the period of the agreement.

For some concessions, the visitor experience offered and its attractiveness to markets may be closely linked to off-site activities (such as walking, 4WD and canoeing tours) also operated by the proponent. To assist in protecting the overall experiential offer, it is desirable that any permits or licences for these associated activities in protected areas be tied to the tenure period for the main site.

### **Sustainability conditions**

The concession agreement for a site or activity will be a major regulatory tool for ensuring the development achieves environmental, social and economic sustainability objectives and the conservation of the values on and near the site. This might be achieved through conditions in the agreement related to the product and its operations - eg. specific measures for protection of natural and cultural values, avoidance of pollution, site access arrangements, and relationships to other visitors. The concession may also clarify the relative responsibilities of management agencies and concession holder in environmental management and compliance with legislation and regulations.

Ideally, a concession agreement will include some form of monitoring and reporting on compliance and procedures and penalties for dealing with non-compliance and penalties. To ensure the effectiveness of such procedures and the ability of an operator to deal with issues, it is desirable that such provisions are commercially fair and not so onerous that approval of finance for improvements is affected. A formal notification of breaches by the management agency is desirable, including details of the action required and a timeframe for its performance.

## Feasibility and performance measures

The early years of operation of a tourism venture may see minimal returns as a venture establishes itself and attracts clients, particularly if it is a pioneering development in an area with little established tourism infrastructure. Financial leniency provisions in the first 5 years of operation are desirable to assist developers make their initial capital investments in the site and establish themselves in the market place.

The viability of concession may also be affected should governments later approve competing developments in the vicinity and be perceived by developers as undermining their pioneering efforts and vision. Developer confidence and future viability will be enhanced by:

- an exclusive arrangement (eg. exclusive use of a site or the exclusive operator of a product/activity)
- a competition-free zone around a site
- the option for the developer to take up nearby development opportunities should they arise.

Provisions in a concession agreement may also encourage high standards of operation or the achievement of sustainability outcomes. For instance, agreement renewal may be made subject to achievement of environmental and other targets or community benefits (eg. employment and training). Similarly, the length of a agreement could be linked to the extent of the financial and/or environmental, social and economic commitments which an investor is prepared to make.

Other measures (not necessarily written into an agreement) that have been offered by governments elsewhere for concessions include both on-site assistance with project development or its operation and general incentives to attractive investment. Some examples are:

- assistance with the construction of critical infrastructure and access to a site (see Case Study 3: Southern Ocean Lodge Kangaroo Island)
- access road maintenance
- bushfire risk management to protect a development site and its infrastructure
- provision for an operator's use of protected area facilities and infrastructure (eg. sewage treatment plants, water supply, power generation, freight and transport services, surplus housing and buildings)
- tax incentives for investment in specified developments (see Case Study 11: Kenya Wildlife Service).

## Suggested Agreement Content

Appendix 4 outlines the contents and generic conditions of a typical concession. Key elements of any agreement for government and investor parties are summarised in Table 10 below, together with examples of measures that might facilitate sustainable eco-opportunity products. This is not meant to be prescriptive, as it will be important to maintain flexibility in negotiation of conditions to meet the needs of each particular situation.

**Table 10. Key aspects of Concession Agreement**

Clause	Possible Content
Agreement purpose	Description of products, activities and ancillary services to be provided on the site.
Agreement duration	Commensurate with the scale and purpose of the development and realistic commercial returns that assist provision of a quality product.
Agreement extension	Renewal might be subject to achievement of environmental and other targets as a way to encourage best practice operations. 'First Right of Refusal' for the concessionaire over renewal of the agreement or for development of any future tourism sites released at the destination can provide comfort to investors that their efforts are not undermined by competitors utilising their initial vision.
Rent	Rate that will bring government a return for use of land over time Possible staged introduction of rental recognising long lead times for construction and establishment of operations Flexibility in determining rent method to fit specific circumstances. Operators may favour a percentage of takings method rather than a fixed rental.
Default provisions	Covering situations resulting in agreement termination or breach of agreement conditions and subsequent remedy, compensation or agreement termination Breach provisions can be used as a way to achieve compliance with environmental and other measures to protect natural and cultural values. However, it is important that such provisions are commercially fair and not so onerous that approval of finance for improvements is affected. A formal notification of breaches by the land management agency is desirable, including details of the action required and a timeframe for its performance.
Liaison	Regular meetings (say quarterly) are a good way to assist communication and cooperative working relationships. It is also useful to communicate broadly with concessionaires via a newsletter to discuss issues of mutual interest, and to act as a tool to recognise good performing concessionaires (refer US Parks Service Greenline)
Legislation and regulation	An outline of the obligations of both parties to comply with relevant legislation and regulations.
Development construction	Clarity on the development works, commencement and completion times, construction methods and materials, environmental conditions and rehabilitation requirements. Preparation of an Environmental Management Plan by the developer covering all aspects of construction is best practice for construction works.
Environmentally sustainable operations and management	Depending on the development, conditions may cover aspects such as: <ul style="list-style-type: none"> <li>› maximum visitor and staff numbers on the site</li> <li>› access arrangements and transport measures</li> <li>› drainage, soil, water and ecosystem management</li> <li>› waste, water and energy management</li> <li>› noise and air quality</li> <li>› cultural heritage management</li> <li>› bushfire preparedness and management</li> <li>› minimal impact requirements for visitor activities (unless covered by a separate licence)</li> <li>› requirements for carrying out maintenance and improvements</li> <li>› staff training and awareness</li> <li>› monitoring, reporting and audit (and responsibilities for their conduct).</li> </ul> Preparation of an Environmental Management Plan for operations, management and maintenance is considered best practice for sustainable operations. It is also a condition of eco-certification in many countries.
Relationships with communities and other visitors	Management of potential impacts on, and liaison with, local communities. Management of potential impacts of the development and its clients on other visitors and their activities as well as other users
Partnership opportunities	Agreed arrangements to work with government in matters such as protected area management, interpretation, delivering benefits to local communities. Examples include species monitoring, weed management, local sourcing of goods services and produce, local employment and training

### Key Recommendations – Final Concept and Concession Agreement

- Adequate resources and appropriately experienced government staff are required to negotiate successful concession agreements and to work with the investor and Government to shape the final concept.
- There should be site tenure appropriate to the capital investment and return on that investment (eg. 30 to 50 years for major infrastructure), and ideally the possibility of, or incentives for, tenure extension.
- Government assistance in many cases will be important to ensure higher levels of concession conversion.
- An exclusive arrangement, competition-free exclusion zone around a development or possible option for the developer to take up any nearby development opportunities is desirable to improve product viability in the marketplace in some situations.
- Financial leniency provisions in the first 5 years of operation are desirable to assist developers in making capital investments on the site and in establishing themselves in the marketplace.
- Case management and cross departmental coordination is important to ensure that all government agencies get behind the new development.
- Support for other State agencies (eg. Tourism and Cultural Department, or similar) should be encouraged.
- Any smaller concessions that are linked to a major concession experiential offering should be connected to the tenure period where possible.

## 7 Concession Management Strategy and SPAN demonstration sites

### 7.1 Orkhon Valley National Park

#### Current Situation

Orkhon Valley National Park is one of the SPAN projects two demonstration sites. Located 360km from Ulaanbaatar the park was established in 1996, and then rezoned in 2006. It covers an area of 353,000 hectares.

There are 21 ger camps operating in the park on five year licences. The park receives no income at all from these camps. When an application is made for a new ger camp the park sends a recommendation to the Director on whether a licence should be approved. Other tourism business opportunities underway in the park include:

- 14 day horse treks (joint French and Mongolian company)
- The sale of pure spring water to visitors by a local family in the peak season
- Horse transport to the Tuvkhun Temple (T15,000 for foreign visitors, T7,000 for locals – 70% of foreigners walk)
- Camping (no fee is charged) near the Tuvkhan Temple
- Various tour operators bringing visitors into the park.

The park receives approximately 30,000 visitors per annum. Park income, generated through entry fees is approximately T21m. Little income is returned to this park.

Orkhon Valley National Park Tourism Management Plan 2012 – 2015 is very comprehensive in its analysis of the current status of tourism development in the park. It establishes the strengths and weaknesses of the current offer and planning goals and objectives.

The strengths and weaknesses analysis is very useful in determining how concessions can be best utilised to address the current management issues:

STRENGTHS	WEAKNESSES
‣ Large high wilderness plateau and plenty of historical and cultural resources	‣ Lack of information sharing for tourists
‣ Recognized as a cultural and historical landscape of ancient Mongolia	‣ Overcrowd of tourism accommodation in the certain place
‣ Recognized by the UNESCO World Heritage as a cultural landscape in 2004	‣ Poor quality of the accommodations
‣ Relatively close to Ulaanbaatar	‣ Not active tourism sector
‣ Quite well developed infrastructure	‣ Lack of tourism marketing and promotion policy
‣ Cross junction of the vertical and horizontal tourism routes of Mongolia	‣ No integrated information and data collections about international and domestic visitors
‣ Employers and local people are bit experienced and involved in tourism business	‣ Lack of local level tourism policy

Describes how the strategy can be applied to Ikh Nart Nature Reserve and Orkhon Valley National Protected area

OPPORTUNITIES	THREATS
<ul style="list-style-type: none"> <li>› High possibilities to develop eco tourism, cultural, adventure and religious tourism</li> <li>› Possible extension of the Park administration activities to cooperate with other Park administrations</li> <li>› Attract Asian tourists though cultural and religious tourism</li> <li>› Increase number of tourists while improve the quality of the tourism services</li> <li>› Receive mass tourists though developing the tourism programs for foreigners who work at the mining sectors</li> <li>› National level Program, such as Tourism National Complex would be built in OVNP</li> </ul>	<ul style="list-style-type: none"> <li>› Damage and erosion of the historical and cultural sites due to natural and human impacts</li> <li>› Lose the tourists to other promoting tourism regions</li> <li>› Environmental pollutions</li> <li>› Negative impacts due to unorganized domestic visitors</li> </ul>

The Plan's goals and objectives and key actions are summarized below. The actions highlighted in the table can be assisted by implementation of a concession strategy.

**Goal 1: To protect the natural wilderness, historical sites and cultural heritages**

No	Action	Outcomes	Responsibility	timeframe	priority
1.1	Developing the training and study programs on the conservation of natural, historical and cultural sites to increase the awareness of the Protected areas values	To reduce the tourism pressure and extend the trip itineraries based on the detailed study of the destinations and attractions,	PA of OVNP , "SPAN" project, Secondary schools, NGOs and Local governments	From October, 2012	Most significant
1.2	Transferring the protection functions to local communities regarding to collaborative agreement	To keep the protection rules during the tourism peak season	PA of OVNP, "SPAN" project, Local governments and local communities	From October, 2012	Most significant
1.3	Tourism carrying capacity based policy in the Tubkhun temple, Ulaantsutgalan waterfall and Khuisiin Naiman nuur	Regarding to the plan, examination of the waste management tool would be helpful to reduce environmental negative impacts	PA of OVNP, Department of the Nature and Tourism, Uburkhangai aimag, Local governments, "SPAN" project	From October, 2012	Most significant
1.4	Developing the tourism regulation policy of OVNP and monitoring of the implementation	Tourism regulation rules based on the TCC, tourism impacts and tourists' needs	PA and Management Council	2013	Most significant
1.5	Spending the certain amount of the accumulations of the entrance fees in the OVNP	30 percent of the income, which is generated from entrance fee will be spend for the tourism development in the Protected Area	Ministry of Nature, Environment and Tourism, PA of OVNP, Management Council	From 2013	significant

**Goal 2: To strengthen the collaboration and partnership between the all type of the stakeholders in tourism**

No	Action	Outcomes	Responsibility	timeframe	priority
2.1	Strengthening the Management Council operational activities	Establish the subgroup on Tourism Policy and "Foundation of Cash Flow"	PA and Management Council and the Projects	From 2012	High significant
2.2	Cooperating with tourism related stakeholders and local communities	Community Planning partnership development. Improve the additional income sources for local residents Waste management improvement in the main destinations	PA of OVNP, "SPAN" project Local governments and local communities	From 2012	significant
2.3	Developing and proofing the service standard for Local Guest houses /Eco Ger	Improved services of Local Guest Houses	PA of OVNP, Department of the Nature and Tourism, Uburkhangai aimag, Local governments, "SPAN" project	2012-2014	significant
2.4	Supporting and promoting the natural conservation related activities of the Tourism organizations	For improving the service quality and awareness of environmental value keeping	PA of OVNP, Management Council, NGOs and Tourism organizations	From 2013	significant
2.5	Strengthening and developing the information sharing and knowledge gaining activities and advertisements on the Protected Areas' values, natural, biodiversity and historical sites and nomadic lifestyle	Develop the study programs for the guides about new itineraries and skill gaining and tourism safety. Open the internet websites for tourism sustainable development in OVNP. Increased number of tourists and positive changes of domestic tourists travelling attitude.	PA of OVNP, "World Heritage-Nomads of Orkhon River" NGO and the projects	From 2012	Most significant
2.6	Branding: Clearance and acceptance	Creating the branding of OVNP. Develop the essence of the brand, based on the OVNP' core values		urgent	significant
2.7	To take tourists survey questionnaire every 2 year and maintenance the tourism plan at the result	Regarding to the result of the survey, Tourism management plan should be updated		2012 and 2014	significant

**Goal 3: To develop an environmental and local friendly tourism infrastructure**

No	Action	Explanations	Responsibility	timeframe	priority
3.1	Creating the directional and information signings of tourism itineraries and roads and camping sites	Through organizing the independent visitors dynamics, environmental negative impacts and waste generation issues would be solved  Create the camping sites in the planned locations	PA of OVNP	From 2012	significant
3.2	Strengthen the tourism information centre activities	Establish the seasonal information centres in Tubkhun temple, Ulaan tsutgalan waterfall and Khuisiin naiman nuur	PA of OVNP, "World Heritage-Nomads of Orkhon River" NGO	From 2013	significant

**Goal 1: To protect the natural wilderness, historical sites and cultural heritages**

There is also a recently approved management plan for the park which establishes the key threats to biodiversity and actions to address these threats. Importantly it recognises that tourism is creating a number of issues some of which can also be addressed by the concession strategy. For example:

- There are cases of domestic and foreign tourists staying in places not allowed lighting fires and leaving their rubbish behind
- There is no single route for tourists to visit historical and cultural monuments in the OVNP
- No proper measures taken on protecting historical and cultural monuments (as well as no general registration of them)
- Gathering of too many tourist camps in one area is having a negative impact on natural values
- Traditional ways of worshipping mountain are not being followed anymore
- It suggests the following way to address these issues
- The OVNP Administration should implement "Community-based, environmentally friendly" policy
- identifying new places for sightseeing and placing posts
- Conducting trainings on developing environmentally friendly eco-tourism for local people (making handcrafts or providing camels or horses etc)
- Maintaining Eco-Gers at Tuvkhun monastery, Uurtiin tokhoi, Water fall and Khuisiin 8 lakes
- Involving local herdsmen in developing natural and historical tourism
- There are areas available for setting tourist camps in Khujirt, Khotont and Khashaat Souns
- In order to develop tourism in the areas of historical and cultural monuments in the OVNP it is necessary to control numbers
- Involving local community members in conserving and protecting historical and cultural monuments in the OVNP.

## Concession Management Strategy – Recommendations

The plan of management identifies the issues associated with concessions and the protection of the protected area's values.

MEGD/PAAD may adopt a combination of approaches address the issues and recommendations in the management plan. These approaches are only relevant if the regulatory framework outlined in the previous chapter has been amended. The following actions are recommended and detailed steps are presented in Table 11 below.

1. *Establish concessions for all tour operators using the park to protect values* – By issuing a permit for operators PAAD will control the route that operators can take to the historical and cultural monuments and establish performance standards for protecting historical and cultural monuments
2. *Use concessions to attract investment in the right places*– It is recognised that there are many existing tourist camps operating in the park – it is expected that these concessions will be renewed in the next 5 years. The opportunity to allocate access rights to one or a small number of operators through competitive allocation process will arise over this period. Competitive allocation of tourist camp concessions may be used as a mechanism to:
  - › manage access to sites where capacity may be limited for environmental, cultural, social or visitor safety reasons;
  - › manage access to sites where demand for licences exceeds acceptable limits and redirect tourist camps to Khujirt, Khotont and Khashaat Soums
  - › Many operators are likely to support the process of competitively allocating licences as it provides a competitive advantage through limiting the size of the market. Potential operators are usually assessed on their ability to demonstrate past performance as well as their commitment to more sustainable practices in the future.
3. *Use concessions to enhance or sustain the livelihood of local communities* – By directly awarding an exclusive concession agreement for a particular use in special circumstances by particular local communities:
  - › where a suitable commercial opportunity has been identified by the local community consultative group, MEGD/PAAD (for example sale of handicrafts at Waterfall);
  - › where there are safety, environmental and cultural issues in relation to a particular activity or site (access to Tuvkhun monastery)

The plan of management indicates that the protected area objectives can be best achieved through the granting of such a concession agreement.

4. *Inviting Investment* – at a later stage it is recommended that a prospectus be developed for the park. The prospectus can identify other opportunities such as establishing higher value accommodation (in pristine areas) and activity options such as cultural tours, guided walking and visits to the hot springs. According to the park's manager there are some spectacular locations in the park that can only be reached by horse. This level of exclusivity can, if marketed and run well, be very attractive for visitors.

A business plan should be prepared in consultation with the local community for the park. The business plan should identify opportunities and how revenue from the business opportunities in the park will be used for the on-going protection of its values

If the full revenue potential of the park is reached then it is important for the benefits from the park to benefit the local people either through jobs in the tourism sector or even by the park putting some of its income into community projects i.e. school programs – that in turn benefit the park.

**Table 11. Key Actions –Concession Strategy Implementation – Orkhon Valley**

<b>Key Direction</b>	<b>Action</b>	<b>Priority</b>
<b>Strengthen the regulatory and policy framework</b>	Establish trial concession agreements for up to 1 year for all existing users of the park using the policy and guidelines according to Key Direction 1. Arrangements for fees and revenue sharing to be negotiated with local government and local communities.	<i>High</i>
	Establish formal communication network with existing concession holders and build partnership of information exchange and how the trial concession agreement is operating. This information should be used as part of the review of policy and procedures as per Key Direction 1.	<i>Medium</i>
	Determine number and type of concessions operating in the park once the concession system has been established. Identify types of concessions that would benefit from a competitive allocation process to control number and quality etc of concessions.	<i>Medium</i>
	Consult with community and concession holders on the need to establish a competitive process for particular concessions.	<i>Medium</i>
	Provide as much advance notice of competitive process (at least 6 months) for concession holders that will be subject to process.	<i>Medium</i>
	Prepare information and documentation and administer process as per policy and guidelines for concession holders	<i>Medium</i>
<b>Build institutional and community capacity</b>	Establish community consultative group to assist with concession establishment and management – local community, government and local industry representatives	<i>High</i>
	Build capacity of consultative group by educating the group on the concession strategy and benefits	<i>High</i>
<b>Develop strategic and inclusive business models</b>	Prepare a business plan with the consultative group for the park, identifying key markets, gaps in current offer, and best opportunities for concessions to be offered by community and industry and capacity building requirements to meet concession requirements. This will include all uses – resources use, tourism etc Opportunities for local community to be directly awarded concessions should be investigated in consultation with local communities. Other opportunities that assist with conservation efforts (law enforcement, research) should also be considered.	<i>High</i>
	Use existing network of concession holders ( ) to expand and create innovative partnerships that offer opportunities for local communities.	<i>Medium</i>

## 7.2 Ikh Nart Nature Reserve

The Ikh Nart Chuluu (Ikh Nart Stone) is a rocky area supporting diversity of the Gobi and steppe landscape geographically located in the northwest of Dornogovi aimag territory. The area is distributed by the easternmost populations of some endangered species such as Argali sheep and ibex. To ensure the sustainable regeneration of Argali sheep population, Ikh Nart Stone vicinity was taken under state protection with a category of Nature Reserve in 1996.

Ikh Nart NR lies in territories of Bichigt Bagh of Dalanjargalan Soum and Nart Bagh of Airag Soum of Dornogovi Aimag. Bichigt Bagh of Dalanjargalan soum is within the nature reserve and has 124 households and 414 people. There are 28 winter settlements of herders located inside and 12 winter settlements outside the reserve. Nart Bagh is located in the reserve and has 211 households and 371 people.

The main livelihood source of local communities is livestock products and raw materials (e.g. skins, hides, wool, cashmere, meat, milk, and dairy products) and about 60 per cent of household incomes are generated from trades of wool and cashmere.

Herders seek for another income generating sources except for the animal husbandry. For instance, female members of 25 households in Bichigt Bagh established a community based organization “Ikh Nart-Our Future”, where they produce souvenirs and hand made products including products made of wool and sell them to visitors and tourists.

### Argali Research Centre

This excellent scientific centre is supported by Denver Zoo with a budget of approx US\$150k per annum. The centre employs 5 staff, a camp manager and two drivers. There are three main research programs, argali and ibex, carnivore and the vulture projects. The centre also holds public open days, has trained local teachers, runs a school exchange program to the USA, supported the development of the management plan with professional facilitators (US\$25,000), helped provide signs and boundary markers, supported a study tour to other ecotourism operations in Mongolia, undertook a ranger training needs assessment and developed a ranger training manual; and supported first aid and law enforcement training for the rangers. Earthwatch volunteers pay US\$2,000 plus airfares to spend 11 days at the centre and these programs are popular.

In the resort of Khalzan Mountain a mineral spring is operated by the state. This facility is used for treating ailments such as skin complaints, constant headaches, digestion, type two diabetes and heart disease. It cannot be used to treat cancer or liver diseases. They are reputedly the second most medicinal mineral springs in the world.

A tour company “Nomadic Journeys” opened “Ulaan Khad” ger camp in 2008. The camp is located at one of few natural springs left in Ikh Nart area. The foreign owned company runs regular scheduled tours around Mongolia. It was not permitted to construct a camp within the park due to the restrictions on foreign investment in the Law on Special Protected Areas. The camp has 8 gers including ger-restaurant, ger-kitchen, and ger-washing. A visitor’s ger has 2-3 beds. Generally 10-15 per cent of the ger beds are only occupied by tourists and visitors a year. The highest numbers (162 visitors or 366 beds) of visitors were recorded in 2011 at the camp. It is understood that a Mongolian Tour operator has established tourist camps in the park. The operation runs from the end of and closes in September. The company has established an Environmental Trust Fund with the local soum for payment of land use fees associated with the operation.

Although Ikh Nart NR administration has no specific structure dealing with conservation tasks and no approved conservation plan for the NR, the park administration has been handling its

conservation tasks through support and assistance of local governmental and non-governmental organizations, communities, and international organizations since 2000.

A management plan was prepared for the park in 2012. The plan sets out the goals and objectives for the protection of the reserve. Goal 6 seeks to improve the nature reserve's values and develop certain types of tourism (diversified). The key actions are as follows:

- Prepare a tourism development programme for the NR and have it approved by the management council
- Define tourism zones and develop and comply with procedures for the zones
- Establish routes of hiking and horse trip
- Develop and comply with a procedure for waste management in the NR
- Study and pilot the options to help local communities take part in tourism activities
- Organize training for the individuals, who are interested and willing to run tourism services (e.g. provide tourists with lodge/camping, guide, chief etc)
- Organize a tour for tour operators to present them with the NR tourism products;
- Pilot the land use concession in tourism
- Include community based tourism services in travel agenda for researchers-tourists
- Discuss a proposal to meet the tourists, who are on a tour by Moscow-UB-Beejing-Moscow train, at Gobisumber and Sainshand to take then through the NR

### **Management Strategy – Recommendations**

The plan of management identifies the issues associated with current tourism operations and the socio economic development of the local communities and the protection of the protected area's values.

MEGD/PAAD is recognised as a key partner in the implementation of the management plan. As such it may be able to assist local government and professional non-governmental organization to utilise the concession strategy to some of the key actions in the management plan. These approaches are only relevant if the regulatory framework outlined in the previous chapter has been amended. The following actions are recommended and detailed steps are presented in Table 12 below.

1. Establish concessions for all tour operators using the park to protect values – By issuing a concession, operators will be required to comply with procedures for the defined tourism zones. It will also allow the management authority to establish performance standards for protecting historical and cultural monuments;
2. Use existing concessions to build capacity and attract investment in the right places– It is recognised that there are commercial and not for profit tourism operations in the park. These existing operators could potentially provide assistance in establishing routes for hiking and horse trips; organize training for the individuals who are interested and willing to run tourism services (e.g. provide tourists with lodge/camping, guide, chief etc) and assisting local communities take part in tourism activities;
3. Use concessions to enhance or sustain the livelihood of local communities – By directly awarding an exclusive concession agreement particular local communities :where a suitable opportunity has been identified with existing tour operators (for example sale of handicrafts by Woman's cooperative, horse trekking and guiding)

The plan of management indicates that the protected area objectives can be best achieved through the granting of such a concession agreement.

**Table 12. Key Actions –Concession Strategy Implementation – Ikh Nart Nature Reserve**

<b>Key Direction</b>	<b>Action</b>	<b>Priority</b>
<b>Strengthen the regulatory and policy framework</b>	Establish trial concession agreements for all existing users (Research Centre, Mineral Springs and Tourist Camps) of the reserve using the policy and guidelines according to Key Direction 1.  Arrangements for fees and revenue sharing to be negotiated with local government and research institutions.	<i>High</i>
	Establish formal communication network with existing concession holders (Research Centre, Mineral Springs and Tourist Camps) and build partnership of information exchange and how the trial concession agreement is operating. This information should be used as part of the review of policy and procedures as per Key Direction 1.	<i>Medium</i>
<b>Build institutional and community capacity</b>	Establish community consultative group to assist with concession establishment and management – local community, government and local industry representatives	<i>High</i>
	Build capacity of consultative group by educating the group on the concession strategy and benefits	<i>High</i>
<b>Develop strategic and inclusive business models</b>	Prepare a tourism strategy with the consultative group for the reserve, identifying key markets, gaps in current offer, and best opportunities for concessions to be offered by community and industry and capacity building requirements to meet concession requirements  Opportunities for local community to be awarded concessions to operate interpretation, horse trekking and walking for visitors should be investigated. Other opportunities that assist with conservation efforts (law enforcement, research) should also be considered.	<i>High</i>
	Use existing network of concession holders (Research Centre, Mineral Springs and Tourist Camps) to expand and create innovative partnerships that offer opportunities for local communities.	<i>Medium</i>

## 8 Implementation Strategy

### Provides the key actions for implementation

#### 8.1 Recommendations

Implementing the recommendations of this report will require legislative changes to the Law on Special Protected Areas. Recommended changes will anchor concession management in the protected area legislation and recognise concession activities as a legitimate land use that will enable a balanced approach to assist with the on-going conservation of protected areas, the delivery of innovative new facilities and services, establishment of security of tenure and recognise the legitimacy of local communities in concession management. Recommended changes will stipulate:

- The full range of activities that concessions can be granted
- Manner and conditions under which different types of concession activities can operate in a protected area and adjacent to protected areas
- Terms (5 years, 10 years and longer) and conditions including sustainability performance standards which a concessionaire in a protected area is obliged to fulfil
- Fees and revenue sharing arrangements with local governments
- Foreign investment opportunities
- Competitive allocation of concessions
- Beginning and duration of the concession, as well as, the terms under which the concession agreement will be terminated before due time
- Mechanism for government led concession development, as well as, industry/community led concession development
- Supervision over the concession activities; and
- Conditions for improving the protection of environment and nature during concession activities in a protected area.

#### 8.2 Other Recommendations

1. Create an enabling regulatory and institutional framework for use across protected areas that allows for appropriate sustainable opportunities through both government-led and investor-led approaches
2. Establish clear policy and procedures based on principles set out in this strategy to regulate access and activities of users and to ensure they are appropriate to the management objectives of the site and the resource, and result in ecologically sustainable and culturally appropriate use

3. Centralise co-ordination of the concession management system
4. Adopt a proactive approach to investment in protected areas by initiating Public-Private Partnerships (PPPs) that promote sustainable tourism and traditional use, generates employment and other socio economic benefits
5. Undertake strategic planning to direct investment in areas where it is most needed in order to encourage high quality natural and cultural experiences for visitors through quality visitor/tourist infrastructure, facilities & services within the protected areas and the ongoing livelihood of local communities. Use this approach to limit concession activity in other areas
6. Use concession activities to generate revenues to the government that can be channelled for management and conservation of the protected area network;
7. Increase investment in concession management training, quality assurance and business development by staff and community and develop industry 'ownership' of standards and quality of service
8. Establish community consultative groups to assist with the development and management of concessions on Mongolia's protected areas
9. Create a concession management framework that is efficient, equitable, simple to administer and be enforceable and review and adapt the system as required
10. Trial the new concession management framework in Orkhon Valley National Park and Ik Naht Nature Reserve.

**KEY DIRECTION 1.**

**Strengthen the Regulatory and Policy Framework**

<b>Action</b>	<b>Steps</b>	<b>Priority</b>
<b>1.1 Adopt this concession management strategy and link to whole of Government priorities.</b>	<i>Brief relevant Ministers and heads of agencies and local government authorities on the strategy and seek input</i>	Immediate
	<i>Seek Ministerial support and political sponsor or champion for the concession strategy sponsor</i>	Immediate
	<i>Brief PAAD and other relevant government staff on strategy and contents</i>	Immediate
	<i>Identify budget implications for implementation of the concession strategy and prepare business case for enhancement as required for 2014/15 budget and hypothecation of revenues to PAAD and local communities</i>	Immediate
<b>1.2 Refine the laws to centre concession management in protected area law</b>	<i>Prepare amendments to the Law on Special Protected Areas (and other relevant laws) as recommended in this strategy in Section 5.1.1 and 5.2.2</i>	High
	<i>Actively communicate the benefits of the Concession Strategy to Ministers and advisors to ensure smooth passage of legislation</i>	Immediate
<b>1.3 Establish policy and guidelines for sustainable concessions management</b>	<i>Prepare Draft Concessions Policy as per the recommendations contained in Section 5.2 in consultation with industry, community and other government agencies.</i>	High
	<i>Prepare Guidelines for Applicants as per Section 5.3 in consultation with industry and community and other government agencies</i>	High
	<i>Prepare Guidelines for Site Selection as per Section 5.4 in consultation with industry and community and other government agencies</i>	High
	<i>Prepare Assessment Criteria for Concession Applications as per Section 5.5 in consultation with industry and community and other government agencies</i>	High
	<i>Prepare Concession Agreement template for small, medium and large concessions as per recommendation in section 5.7</i>	High
	<i>Trial policy, guidelines, assessment criteria and concession template for establishment of concessions in Orkhon Valley and Ikh Nart Nature Reserve seeking feedback from industry and government, and review as required</i>	High
	<i>Review the regulatory and policy framework within two years of operations to ensure framework coherent, and providing mechanisms for enforcement and achieving stated objectives</i>	Medium

**KEY DIRECTION 2.**

<b>Build institutional and community capacity</b>			
<b>Action</b>	<b>Steps</b>	<b>Priority</b>	
<b>2.1 Establish efficient and transparent governance arrangements.</b>	<i>Establish a concession management unit within MOGD/PAAD with professional staff responsible for the development and implementation of concession policy and guidelines and approval procedures</i>	High	
	<i>Ensure adequate resources provided for Concession Management Strategy implementation</i>		
	<i>Develop and apply a comprehensive accountability chain: including delegated authority to regional directors, performance benchmarks, fiscal control, conflict of interest rules. Develop this is consultation with the anticorruption framework of the government.</i>	High	
	<i>Establish concession consultative groups with representatives from industry, local government and communities in key protected areas regions. The role of the group will be to strategically plan for concessions and to oversee the approval and management of concessions with PAAD/MEGD.</i>	Medium	
	<i>Develop transparent fiscal management procedures including valuation of concessions and revenue transparency, and reporting.</i>	High	
	<i>Mobilize complementary governance support: from anticorruption agencies to support professional concession management staff from power pressure and vested interest groups in government.</i>	High	
	<i>Establish website for concession management within protected areas to provide information to industry and community on concession management policy and procedures.</i>	Medium	
	<i>Establish an electronic Concession Management System as a means for government to collect, organize, maintain and deliver data on concessions in protected areas in an integrated and effective way.</i>	Medium	
<b>Review and adapt the system as required</b>	<i>Review the concession strategy guidelines and templates within two years of operations with industry and other areas of government to ensure framework coherent, and providing mechanisms for enforcement and achieving stated objectives</i>	Medium	
	<i>Communicate strategy to local government and local community representatives and seek feedback on contents.</i>	High	
	<i>Design and implement a capacity building strategy and specific training modules for staff in PAAD and other areas of government involved in managing concessions</i>	High	
	<i>Establish meeting program of community consultative groups to discuss strategy implementation, opportunities for concessions to be offered to local communities and to oversee the approval and management of concessions with PAAD/MEGD.</i>	High	
	<i>Directly award concessions to local communities once policy and guidelines are finalised for 1 year and review for on-going concession agreement</i>	High	
	<i>Provide support and advice for community concessions to ensure achieving objectives of conservation and socioeconomic benefits to communities</i>	High	
	<b>2.2 Build capacity within government and community</b>		

**KEY DIRECTION 3.**

<b>Develop strategic and inclusive business models</b>		
<b>Action</b>	<b>Steps</b>	<b>Priority</b>
<b>3.1 Identify strategic opportunities for investment according to objectives</b>	<i>Work with government agencies, tourism organisations, local communities and tourism industry at a regional/local level to identify opportunities for concession activity.</i>	Medium
	<i>Review plans of management/planning regulations that require change to allow concessions</i>	Medium
	<i>Develop and communicate investment opportunities and concessions available for communities and industry in key regions through a 'prospectus' that is distributed to industry and community through government networks</i>	Medium
<b>3.2 Strengthen partnerships with industry, community and other government agencies and to develop sustainable concessions in strategic areas</b>	<i>Offer concession agreements to local communities and industry using the established policy and guidelines</i>	Medium
	<i>Establish community consultative committees as per recommendations 2.1 and 2.2 to build understanding and potential partnerships – involve existing concession holders</i>	Medium
	<i>Establish regular communication with existing concession holders through a newsletter to showcase good performance and provide updates on the protected area network to build support</i>	Medium
	<i>Over time build network of concession holders in Mongolia's protected area network and use as a education forum for government and concession holders to exchange information and build partnerships for feedback and further investment</i>	Medium

Orkhon Valley		
Key Direction	Action	Priority
<b>Strengthen the regulatory and policy framework</b>	<i>Establish trial concession agreements for up to 1 year for all existing users of the park using the policy and guidelines according to Key Direction 1.</i>  <i>Arrangements for fees and revenue sharing to be negotiated with local government and local communities.</i>	<i>High</i>
	Establish formal communication network with existing concession holders and build partnership of information exchange and how the trial concession agreement is operating. This information should be used as part of the review of policy and procedures as per Key Direction 1.	<i>Medium</i>
	Determine number and type of concessions operating in the park once the concession system has been established. Identify types of concessions that would benefit from a competitive allocation process to control number and quality etc of concessions.	<i>Medium</i>
	Consult with community and concession holders on the need to establish a competitive process for particular concessions.	<i>Medium</i>
	Provide as much advance notice of competitive process (at least 6 months) for concession holders that will be subject to process.	<i>Medium</i>
	Prepare information and documentation and administer process as per policy and guidelines for concession holders	<i>Medium</i>
<b>Build institutional and community capacity</b>	‣ Establish community consultative group to assist with concession establishment and management – local community, government and local industry representatives	<i>High</i>
	‣ Build capacity of consultative group by educating the group on the concession strategy and benefits	<i>High</i>
<b>Develop strategic and inclusive business models</b>	‣ Prepare a business plan with the consultative group for the park, identifying key markets, gaps in current offer, and best opportunities for concessions to be offered by community and industry and capacity building requirements to meet concession requirements. This will include all uses – resources use, tourism etc	<i>High</i>
	‣ Opportunities for local community to be directly awarded concessions should be investigated in consultation with local communities. Other opportunities that assist with conservation efforts (law enforcement, research) should also be considered.	
	Use existing network of concession holders ( ) to expand and create innovative partnerships that offer opportunities for local communities.	<i>Medium</i>

<b>Ikh Nart Nature Reserve</b>		
<b>Key Direction</b>	<b>Action</b>	<b>Priority</b>
<b>Strengthen the regulatory and policy framework</b>	Establish trial concession agreements for up to 1 year for all existing users of the park using the policy and guidelines according to Key Direction 1.  Arrangements for fees and revenue sharing to be negotiated with local government and local communities.	<i>High</i>
	Establish formal communication network with existing concession holders and build partnership of information exchange and how the trial concession agreement is operating. This information should be used as part of the review of policy and procedures as per Key Direction 1.	<i>Medium</i>
	Determine number and type of concessions operating in the park once the concession system has been established.  Identify types of concessions that would benefit from a competitive allocation process to control number and quality etc of concessions.	<i>Medium</i>
	Consult with community and concession holders on the need to establish a competitive process for particular concessions.	<i>Medium</i>
	Provide as much advance notice of competitive process (at least 6 months) for concession holders that will be subject to process.	<i>Medium</i>
	Prepare information and documentation and administer process as per policy and guidelines for concession holders	<i>Medium</i>
<b>Build institutional and community capacity</b>	‣ Establish community consultative group to assist with concession establishment and management – local community, government and local industry representatives	<i>High</i>
	‣ Build capacity of consultative group by educating the group on the concession strategy and benefits	<i>High</i>
<b>Develop strategic and inclusive business models</b>	‣ Prepare a business plan with the consultative group for the park, identifying key markets, gaps in current offer, and best opportunities for concessions to be offered by community and industry and capacity building requirements to meet concession requirements. This will include all uses – resources use, tourism etc  ‣ Opportunities for local community to be directly awarded concessions should be investigated in consultation with local communities. Other opportunities that assist with conservation efforts (law enforcement, research) should also be considered.	<i>High</i>
	Use existing network of concession holders ( ) to expand and create innovative partnerships that offer opportunities for local communities.	<i>Medium</i>

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## Appendix 1 Roles and Responsibilities

### Mongolia's Protected Area Network

Law on Special Protected Areas Articles 27, 28, 29, and 31 sets out the plenary rights for the various institutions involved in management of protected area network.

Central government	Citizen's Representative Assemblies of Aimags, Capital City and Sums and Duuregs	Governors of Aimags, Capital City and Sums and Duuregs	PAAD
<ul style="list-style-type: none"> <li>‣ Coordinating the implementation of state policies and legislation on special protected areas</li> <li>‣ Approving procedures and programs, granting permission for research and investigation programs to be conducted in special protected areas, and receiving and incorporating the relevant reports and information into the unified databank</li> <li>‣ Establishing procedures and programs for conducting research surveys and keeping records on biodiversity, establishing procedures for taking sample and probes, and conducting observations and hunting or trapping animals for the purpose of regulating herd structures in the protected zones</li> <li>‣ Approving procedures and programs for maintaining and replanting forests, restoring soil and plants, determining areas of land to be rehabilitated and the working methods and technologies</li> <li>‣ Establishing methods and procedures for preventing and combating harmful insects, rodents and fires and implementing measures to reduce damages in the special protected areas caused by natural disasters or other emergencies</li> <li>‣ In cooperation with the relevant certified</li> </ul>	<ul style="list-style-type: none"> <li>‣ Discussing the governor's reports on the implementation of relevant legislation in the special protected areas in their jurisdiction, making decisions as appropriate, and ensuring the implementation of these</li> <li>‣ Submitting proposals to the immediately superior Citizens' Representative Assembly or to the Government of Mongolia concerning the taking certain part of their territory under state special protection</li> <li>‣ Making decisions on taking certain parts of their territory under local protection and defining their boundaries and protection regulations.</li> </ul>	<ul style="list-style-type: none"> <li>‣ Coordinating the implementation of state policies and legislation on special protected areas</li> <li>‣ Preparing proposals for taking certain parts of their own territory under state or local protection and submitting these to the appropriate organization</li> <li>‣ Managing the protection of nature reserves and monuments.</li> </ul>	<ol style="list-style-type: none"> <li>1) Ensuring the implementation of legislation regarding special protected areas and the regulations concerning their protection;</li> <li>2) Entering into contracts with organizations authorized to conduct research and investigations, and granting concessions for and inspecting activities to be conducted within the framework of the protection regime of the area;</li> <li>3) In accordance with appropriate procedures, taking samples for research purposes, controlling wildlife herd structures, restoring natural resources, and cleaning and maintain forests;</li> <li>4) Opening water sources for animals, preparing hay, laying forage and salt licks, building shelters and taking other biotechnical measures according to the appropriate procedures;</li> <li>5) Ensuring the use of mineral waters and other therapeutic minerals as well as natural resources according to the appropriate procedures;</li> <li>6) Defining sites and procedures for posting signs for authorized travel and tourism routes, building necessary accommodations and protected areaing lots, maintaining facilities in cooperation with citizens and economic entities;</li> <li>7) Supervising the maintenance of settlements</li> </ol>

Central government	Citizen's Representative Assemblies of Aimags, Capital City and Sums and Duuregs	Governors of Aimags, Capital City and Sums and Duuregs	PAAD
<p>organization, establishing regulations for the use of mineral water, other minerals and secondary natural resources for treatment and sanitation, and developing a list of procedures for collecting and preparing plants with medicinal, food and technical designations</p> <ul style="list-style-type: none"> <li>‣ Defining travel and tourism routes, directions and procedures</li> <li>‣ In cooperation with the relevant central government organizations, reviewing and approving overall planning for settlements in the authorized zones of the special protected areas and the locations and proposals for creating new tourist resorts and spas</li> <li>‣ Determining the size and procedures for land to be used for specific purposes in the authorized zones of special protected areas as well as the type and number of livestock allowed</li> <li>‣ In agreement with Government of Mongolia, making decisions on the establishment of protected area administrations in strictly protected areas and national conservation protected areas and appointing their chairpersons.</li> </ul>			<p>and construction within the authorized zone and ensure that the approved plans are being followed;</p> <p>8) Regulating the worship of natural sacred sites and other traditional ceremonies;</p> <p>9) Conducting public awareness campaigns on the importance of special protected areas, protection regimes and relevant legislation regarding special protected areas, and keeping records of data and create a databank;</p> <p>10) Identifying areas to be used by citizens and economic entities according to the appropriate procedures, as well as the types and number of livestock permitted in the authorized zones.</p>

## Appendix 2. Example of assessment criteria for concession applications

New Application Assessment Criteria	Must be demonstrated directly to PAAD	Could be demonstrated through industry accreditation
<p>Environmentally sustainable and culturally appropriate practices</p> <ul style="list-style-type: none"> <li>› Is the proposed activity/ route/ site compatible with protected area management plans, policies, and objectives?</li> <li>› Are there potential unacceptable environmental impacts?</li> <li>› Are there potential conflicts with other general protected area users and concessionaires?</li> <li>› Are there potential impacts on protected area facilities and infrastructure?</li> <li>› Has the applicant demonstrated appropriate measures for minimal impact in relation to:               <ul style="list-style-type: none"> <li>› protection of vegetation and wildlife</li> <li>› protection of landscapes and site features</li> <li>› protection of cultural and historic sites</li> <li>› maintenance of water quality</li> <li>› control of noise</li> <li>› minimisation of emissions</li> <li>› waste minimisation/ management</li> <li>› energy minimisation</li> </ul> </li> <li>› Does the application relate to co-managed lands? If so, additional consultative procedures and waiver of Guarantee of Service to be noted and processed accordingly.</li> <li>› Does the activity comply with Aboriginal Cultural Heritage Interpretation requirements?</li> </ul>		
<p>High quality interpretation of the natural environment</p> <ul style="list-style-type: none"> <li>› What is the interpretative/ educational value of the proposed activity?</li> <li>› Is this appropriate to the activity, the client group and the location?</li> <li>› Is the style, variety and content of interpretation of adequate quality?</li> </ul>		
<p>High quality, reliable and appropriate services to their customers/participants</p> <ul style="list-style-type: none"> <li>› Does the applicant have appropriate customer service and operating procedures in place?</li> <li>› Is the applicant proposing to market their operation in a responsible manner?</li> </ul>		
<p>Effective business management systems to ensure ongoing commercial viability</p> <ul style="list-style-type: none"> <li>› Has the applicant demonstrated competence and viability through operations manual and emergency response plan?</li> <li>› Will the activity provide an adequate financial return to the PAAD?</li> <li>› What types and levels of accreditation does the business possess?</li> <li>› What systems does the applicant have in place to demonstrate continuous improvement?</li> </ul>		
<p>Effective risk management</p> <ul style="list-style-type: none"> <li>› Do proposed visitor-guide ratios meet best practice standards?</li> <li>› Does the applicant have an adequate risk management strategy?</li> <li>› Does the applicant have proof of public risk insurance cover?</li> </ul>		

New Application Assessment Criteria	Must be demonstrated directly to PAAD	Could be demonstrated through industry accreditation
<ul style="list-style-type: none"> <li>‣ Is equipment to industry standards?</li> <li>‣ Is an appropriate maintenance and capital development system in place?</li> </ul>		
<p>Appropriately experienced, qualified and trained leaders and guides</p> <ul style="list-style-type: none"> <li>‣ Are leaders and guides sufficiently experienced, qualified and competent for the activities proposed?</li> <li>‣ Is an appropriate staff development training program in place?</li> </ul>		
<p>Legal compliance</p> <ul style="list-style-type: none"> <li>‣ Does the applicant have all appropriate approvals from other agencies?</li> <li>‣ Ministry of Transport</li> <li>‣ Maritime Services</li> <li>‣ Other</li> </ul>		

### Appendix 3. Example of Standard template for Assessment Report

<b>Application Details</b>
Name of Applicant
Application Number
Date of Lodgement
File No.
Date of Assessment
Description of Proposed Activity/s
PAAD Reserve Type
PAAD Reserve Name
Managed by PAAD /Trust or Management Board?
Date Referred to Trust/Board as per above
Specific Sites to be used
Does the applicant currently hold a concession?
Current concession number
Current concession activities
Has the application previously had a concession with PAAD ?
<b>The Application</b>
Application No. ....lodged on .....seeks approval to conduct:
the following activity/s:
at the following location/s:
<b>Information Lodged</b>
The application was accompanied by the following information:
<b>Assessment Report on the Proposed Activity</b>
The activity is/is not permissible under the relevant section of the Act
The activity is/is not consistent with the provisions of the Protected area Plan of Management/Statement of Management Intent
PAAD protected area management policies are relevant to the proposed activity are (list)
The activity is/is not consistent with these PAAD protected area management policies (list)
<b>Environmentally sustainable and culturally appropriate practices</b>
The potential environmental impacts of the activity are (list)
The potential conflicts with other general protected area users and licensees have been assessed as being (list)

The potential impacts on protected area facilities and infrastructure are: (list)
The applicant has/has not demonstrated appropriate measures for minimal impact in relation to:
‣ protection of vegetation and wildlife
‣ protection of landscapes and site features
‣ protection of cultural and historic sites
‣ maintenance of water quality
‣ control of noise
‣ minimisation of emissions
‣ waste minimisation/ management
‣ energy minimisation
The following additional mitigation measures are considered necessary: List
<b>High quality interpretation of the natural and cultural values</b>
There is no/some interpretative/ educational value of the proposed activity – provide details
This is/is not an appropriate to the activity, the client group and the location – provide details
The style, variety and content of interpretation is/is not of adequate quality - provide details
The proposed activity involves/does not involve detailed interpretation of traditional heritage provide details
The applicant has/has not consulted with local communities provide details
Additional concession conditions are considered necessary
Please list
<b>High quality, reliable and appropriate services to their customers/participants</b>
The applicant has/has no or limited appropriate customer service and operating procedures in place. Provide details
The applicant is/is not proposing to market their operation in a responsible manner. Provide details
Additional concession conditions are considered necessary
Please list
<b>Effective business management systems to ensure ongoing commercial viability</b>
The applicant has/has not demonstrated competence and viability through operations manual?
The business has/has no accreditation in place
State which accreditation scheme/s
The applicant has/has no process in place to demonstrate continuous improvement. Provide details
<b>Effective risk management</b>
The proposed visitor-guide ratios does/does not meet best practice standards. Provide details
The applicant has/does not have an adequate emergency response plan and/or risk management

strategy. Provide details
The applicant has proof of public risk insurance cover
An appropriate maintenance and capital development system is/is not place
<b>Appropriately experienced, qualified and trained leaders and guides</b>
Leaders and guides are sufficiently experienced, qualified and competent for the activities proposed. Provide details
An appropriate staff development/training program is/is not in place?
<b>Legal compliance</b>
The applicant has/has not obtained all appropriate approvals from other agencies? Ie Ministry of Transport, Other?
<b>Other Conditions</b>
The conditions set out below are recommended to be imposed on the concession holder in addition to the general and activity conditions contained in the standard licence: (list)
<b>Special Monitoring/Inspections Required by Regional Staff</b>
Please list
<b>Recommendation and Endorsement</b>
Concessions officer has, to the fullest possible extent, considered and taken into account the impact of the proposed activity. It is recommended that this application be approved subject to the conditions set out above/refused for the following reasons: (list)
<b>Attachments</b>
The following documents are attached and marked as indicated
Draft Concession Approval with special conditions
Name
Signature
Date

## Appendix 4. Typical Concession Agreement - Contents and Conditions for MEGD/PAAD Concessions

The following features are typical of Concession Management Agreements in protected areas around the world. Private sector concerns which can often provide serious impediments to concession finalization are highlighted throughout.

### Concession Agreement Contents

- Parties involved – Government agency/Minister and Concession holder
- Recitals – states intent of agreement
- Terms and conditions
- Definitions and Interpretations
  - a) What defines Act (legislation)
  - b) What defines revenue
  - c) What defines rental – base or turnover (for major concessions)
  - d) What defines other payments (for minor or activity bases concessions)
  - e) What defines commencement date
  - f) What defines term and an options
  - g) What defines CPI or annual increases
  - h) What defines the lease
  - i) What defines a licence
  - j) What defines Development
  - k) What defines Environmental harm
  - l) What defines Financial Year and reporting periods
  - m) What defines the area under the terms of the agreement
  - n) What defines the activity under the terms of the agreement
  - o) What defines the Government’s consent
  - p) What defines the Government’s representative
  - q) What defines Concession holder’s rights
  - r) What defines Concession holder’s representative
  - s) What defines Concession holder’s rights
  - t) Plus all other standard legal definitions and interpretations

### Conditions Precedent

- All approvals, authorities, concepts have been obtained by Concession holder,

#### COMMENT:

This can include anything that the Government authority believes critical before occupation of the site is granted. It may include things like: Sacred Sites Clearances, Development Act approvals, Liquor Licencing Act obligations, operator accreditation and anything else specific to the authority’s main concerns or obligations.

- All necessary insurances in place
- Finance is in place for any agreed development or improvements by Concession Holder
- Guarantees in place to ensure Concession Holder

**COMMENT:**

The ability for the concession holder to obtain finance will depend very much on the terms of the agreement and just how onerous the obligations under the agreement are. Banks in particular will be very reluctant to lend money if tenure is too short and if termination provisions are too severe.

**COMMENT:**

In the past, personal guarantees have been common place in protected area concession arrangements. These days, this can be a sticking point. In the past, PA agreements were often entered into by private individuals passionate about nature and conservation. These days, in order to compete on the world stage, investments in PA infrastructure needs to be more sophisticated and requires greater amounts of investment. Not many private sector investors are prepared to provide personal guarantees. If private equity funding is involved, any directors provided from the financier most certainly will not provide personal guarantees. PA authorities should look for other ways to secure their concerns.

**COMMENT:**

If the Government Authority can provide ongoing support in some way, it often makes the project more viable and can remove certain risks associated with remote sites, thereby increasing the likely hood of completion. Examples of Government Authority contribution can include':

- a) Ongoing access road maintenance
- b) Controlled burns to reduce risk of bushfire
- c) Approval for investor project to utilize PA facilities and infrastructure such as land fill sites, Sewerage treatment plants, water supply, power generation source, surplus staff housing, amalgamated freight and transport services, etc

- May involve surrender of any previous leases and licences over the area i.e. free and unencumbered
- Lodgment of a Bank Guarantee.
- Provision of budgets and business plan to Government Authority
- Provision and agreement of any development plans for the site
- The Government Authority agreeing to the provision of certain services or essential infrastructure (in some circumstances)
- The Lessor agreeing to provide financial assistance for the project (in certain circumstances)

### **Any Specific Development Obligations**

The Protected Area Authority (usually the Minister) is unlikely to grant a concession or licence over a part of a Protected Area unless the Operator (Concession Holder) has proposed and agreed certain improvements. These need to be outlined in the concession agreement.

- Time for commencement of works
- Time for completion of works
- In some cases, the minimum investment in works required
- Process for verification of works

- What happens if work commences but for whatever reason is not completed
- Any concessions granted as a result of the works

### **Change of Control**

- The Government Authority will want to make sure of the Credentials of a new operator if the business is sold or control changes

### **Procedures for Development Work**

- All works to be completed in accordance with agreed plans and specs
- Time to carry out works
- Limiting impact on Protected Area and public access during works
- Obligations (if any) to use sustainable infrastructure
- Minimum standards for treatment or removal of waste, dealing with any run off or potential contamination
- Obligations to report Environmental Accidents
- Conditions surrounding ability to remedy any breaches
- Any specific methods to be applied
- Conditions relating to control during construction
- Compliance of sub-contractors and employees

### **Renewal of the Concession Agreement**

- Extension or option periods after completion of the concession agreement
- Conditions and notice periods to trigger renewal

#### **COMMENT:**

Options to extend are a favorable inclusion in the concession agreement arrangements from the private investor's perspective. The investor will prefer extension terms that are largely at his/her discretion. PA authorities can often use leverage in these provisions to extract further investment and the application of best practice principles.

### **Fees, Rental and Rent Reviews**

- Usually outlined in a schedule
- Fees Payable for activity or minor concessions
- Base rent and/or turnover rental for larger or major concessions
- Process and timing for rental/fee reviews
- Manner and timing of rent/fee payment
- Records to be maintained in relation to rental/fee calculations (usually turnover rental for major concessions and per head fee for minor activity based concessions)

COMMENT:

Any tourism development can take a year or more to get established. PA developments can often take considerably longer due to access, seasonality and the higher capital costs of development. Rent free periods of up to 5 years can assist the investor and allow establishment of sustainable operations.

COMMENT:

A staged introduction to rental is also often applied.

COMMENT:

PA authorities should not expect immediate financial returns as a result of PA development. Over the longer term, income from leases and the like can positively impact PA but any attempts to harvest early returns can sink a project.

COMMENT:

Operators will usually prefer a percentage rental structure as opposed to fixed rentals, however; it very much depends on the location and nature of the development. One size does not fit all and leases should retain flexibility in this regard.

## Accounts and Records

- Obligations to maintain and submit certain records:
  - u) Financial trading
  - v) Asset register
  - w) Touring numbers
  - x) Dangerous goods register
  - y) Asbestos register
  - z) Etc.

## Default

- Outline any events and conditions that may lead to default
- Usually two types of events
  1. Automatic default and termination:
    - Bankruptcy
    - Criminal conviction
  2. Default resulting as a breach of concession condition:
    - The majority of events environmental and other, either as a result of damage to the environment by staff or guests, or as a result of inadvertent or accidental actions of the operator.

- Historically, events such as those described above would result in concession termination at the Minister's discretion, sometimes with immediate effect.

**COMMENT:**

It is important that a developer is not scared off by onerous default and termination provisions.

**COMMENT:**

Any defaults which do not fall into the automatic termination provisions outlined above should require notice of breach in writing from the PA authority to the lessor, with the right to remedy the breach. If the breach is incapable of remedy, then some other form of penalty or undertaking which compensates the PA authority in some way. Any such provisions should be commercially fair.

**COMMENT:**

The notice should stipulate a reasonable time and conditions to remedy as well as details of follow up action and time periods for failure to remedy.

**COMMENT:**

Automatic (at Minister's discretion) termination must be avoided, otherwise the Developer will see risk as unacceptable and finance for any improvements required is unlikely to be approved by banks and other legitimate financial institutions.

### **Use of Area/Types of Use Permitted under the Concession Agreement**

- Specified uses allowed
- Obligations for emergency facilities and response
- Obligation to comply with regulations, notices and any agreed plan
- Avoidance of noxious use
- Limitations of use e.g. no collecting fire wood, cutting down trees, domestic pets, planting of noxious plants etc.
- Treatment of any signage or bulk infrastructure required e.g. gas tanks
- Obligations for fire safety and prevention
- Obligations for waste management
- Any obligations to allow public access

**COMMENT:**

Developer will often value and require certain levels or areas of exclusivity. This should be accommodated if possible. If there are no barriers to entry from competitors, the investor is unlikely to proceed.

### **Maintenance, Repair and Alterations**

- Obligations to maintain standards and condition
- Obligations (if any) of how infrastructure will be left (condition) at end of concession agreement
- Government Authority right to inspect

- Obligations (if any) to avoid use of certain materials, chemicals etc.
- Obligations for vermin and pests
- Obligations for erosion

### **Insurances**

- Obligations to insure – type, cover, etc.
- Obligations for reinstatement

### **Indemnities**

- Release – use of the area at Lessees risk
- Indemnity – Concession holder to indemnify Government Authority against claims, action, suit, damage etc. arising as a result of:
  - aa) Breach of Agreement by Concession holder
  - bb) Beach of Performance of Concession holder obligations
  - cc) Breach of Law by Concession holder
  - dd) Negligence of Concession holder etc.

### **Covenants by Government Authority**

- Quiet enjoyment of Concession holder
- Allow Concession holder to remove improvements at concessionend (or not)
- Conditions under which rent abatement might be offered
- Obligations to provide certain infrastructure or services at Concession holder's expense
- Any costs or expenses agreed to be met by Concession holder e.g. approvals, surveys etc.

#### **COMMENT:**

It is not uncommon and usually considered best practice if there are regular (say quarterly) meetings between the Concession holder and government authority where agreed issues are discussed and minuted. This process improves communication and helps develop a more co-operative working relationship.

### **Procedural Matters**

- Waivers
- Notices
- Powers and obligations
- Incidental costs
- Inspection of site and premises
- Resumption – conditions for
- Observance of Statutory Provisions
- Conditions for Assignment
- Valuation
- Dispute Resolution

### **First Right of Refusal**

- It is not unusual for the Concession holder to be granted a first right of refusal over:
  - ee) Extension of concession agreement

ff) Opportunity to develop any other areas released by Protected Area Authority

COMMENT:

The developer will see any measure which enables him/her to retain as much control over the results of their vision and efforts as possible. The investor will look for as many ways to protect his or her intellectual property. A first right of refusal is one way to satisfy such concerns.

### Ownership of the Development

- Will all improvements made by Concession holder vest in the Government Authority with no compensation?
- Will a residual valuation be paid to Concession holder by Government Authority at completion of term?
- Will Concession holder continue to own and depreciate improvements with ability to seek market value at completion?

### Any Specific Conditions

- Is there an airstrip?
- Is there a water course, jetty, etc.?
- Is there a Protected Area landfill site?
- Is there shared power/solar infrastructure?
- Are there related touring permits etc.?
- Are there any sacred sites within or adjacent to leased area and what conditions or restrictions apply?

### Execution Page

#### Site Plans Attached

#### Schedule of Key Information Attached

- Rental/Use Fees Payable
- Rent/Fee Review
- Term

COMMENT:

The investor will want the longest term possible. His bank will insist on a certain minimum term depending on the scale of investment. PA authorities should consider that the investor is not only concerned with initial and ongoing returns from the business; they will be equally concerned with the residual value of the business as a going concern. In other words; in having something to sell as a way of unlocking the value created from their hard work and vision. The longer the term, the better. A minimum of 20 years is considered standard. A maximum of 99 years is not unusual.

### Option Period

- Payment Details
- Permitted Use

