



Lake Malbena Assessment

Who (Tasmania or the Commonwealth) is responsible for what?

November 2018

The following relates to the assessment of the [proposed tourism development](#) on Halls Island, Lake Malbena, in the Walls of Jerusalem National Park and Tasmanian Wilderness World Heritage Area.

Most of the considerable media coverage of the assessment of this proposal has focussed on the Commonwealth Minister's responsibilities under the *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act) **but this overlooks the fact that the main mechanism for implementation of the Commonwealth's responsibilities under the World Heritage Convention¹ is the state government's Tasmanian Wilderness World Heritage Area Management Plan 2016 (TWWHAMP).**

In Australia land management is a state responsibility so **the Commonwealth's role is very limited². The TWWHAMP is prepared and implemented under Tasmanian legislation. The main mechanism for the formal assessment of the Malbena proposal against the requirements of the management plan is the Tasmanian Parks & Wildlife Service's Reserve Activity Assessment (RAA).** The procedure for this assessment is not defined in legislation and the assessment is conducted entirely by the PWS³. The RAA for the Lake Malbena proposal was intended to remain secret but was released as part of the supporting documentation for the EPBC assessment. **The RAA is fundamentally flawed (see below). If it had been conducted competently and openly it could have led to the rejection of the proposal, yet it effectively provides the State approval and underpins the Commonwealth approval⁴!**

EPBC Assessment

- The *EPBC Act* requires the Commonwealth Minister to consider if the proposal has significant impacts on World Heritage (WH) values. These values are very broad and do not specifically include wilderness. There is no clear requirement to protect

¹ The World Heritage Convention is an international treaty so implementation is the responsibility of the Commonwealth government.

² The Commonwealth's main mechanism for ensuring the implementation of its world heritage responsibilities was to indicate its agreement with the wording of the TWWHAMP prior to finalisation of the TWWHAMP.

³ The RAA considers the EPBC Assessment to be an "External Assessment". The RAA cannot be finalised until all external assessments have been completed but this is the only role of the EPBC Assessment in the RAA.

⁴ The proposal needs approval by all three tiers of government. Local government approval is largely a formality once PWS has approved the proposal, so it is essentially irrelevant.

wilderness in the *EPBC Act* or the TWWHAMP⁵. There have been many attempts (including the WH nomination document) to argue that wilderness underpins most of the values of the TWWHA, and that managing for wilderness protection protects all values, but I'm not aware that these have been legally tested or widely accepted, so it is unsurprising that wilderness is not acknowledged as a WH value by the Commonwealth. I would expect a large scale forestry or mining proposal to be judged to have significant impacts on several WH values but am unsurprised that a small scale tourism operation (the main impact of which is on wilderness) does not.

- The Commonwealth Minister is also required to act “not inconsistently” with the management plan (*EPBC Act* s137). **The RAA** (which was part of the information supporting the EPBC referral) **is the official state government statement that the proposal is compliant with the TWWHAMP**, so she was probably legally entitled to rely on this and ignore public submissions about impacts on wilderness etc. An appropriate response to the submissions would have been to critically examine the RAA but this would have required the political will for a Commonwealth Liberal Minister to question the action of a State Liberal Minister.
- The only aspect of the Commonwealth Minister's decision that surprised me was the statement that it was not a controlled action. I would have expected the decision to be that it was a controlled action but further assessment was not required subject to compliance with state approval conditions. It is my understanding that this is the basis of the ongoing TWS legal proceedings.

Reserve Activity Assessment (RAA)

The RAA is both the state's assessment against the requirements of the TWWHAMP and the main supporting information provided for the EPBC assessment.

The RAA is the PWS's environmental impact assessment process (details available on PWS website). It is defined only in a PWS policy document, not in legislation. It is the standard process used for the assessment of all proposed developments on reserved land managed by PWS. Four levels of assessment are defined, with only Level 4 requiring formal public consultation. “Level four RAAs are usually large in scale and have high public interest and / or substantial potential for impact on values”. The Malbena proposal may not be large in scale but the level of public interest and potential for impact on values should have guaranteed that the proposal was subject to formal public consultation, which would have focussed attention on the key issues prior to finalisation of the RAA. The RAA would have remained secret if it had not been released as part of the supporting documentation for the EPBC assessment.

The RAA has been signed off (14 March 2018) as “complete from a PWS perspective” (page 47 of copy of RAA released in conjunction with EPBC referral). This should never have occurred for several reasons:

⁵ The TWWHAMP requires (page 177) that “impacts on wilderness values are considered in any assessment of activities in the TWWHA”. The RAA includes a botched attempt to do this. Note that there is no direct relationship between the Wilderness Zone and “wilderness value” (a metric of wilderness) mapped on TWWHAMP page 176, although there is substantial overlap between the Wilderness Zone and areas of high wilderness value.

- The assessment of impact on wilderness quality correctly acknowledges the National Wilderness Inventory (NWI) methodology (referenced in TWWHAMP) but ignores the impact of the helipad on the “remoteness from access” component. A correct assessment would have shown the impact to be substantial.
- No plan of the proposed development appears to have been provided. This should have shown the location of the cabins, the toilet and shower, and the holding tanks for sewage and greywater (plans provided later as part of the EPBC assessment postdate the RAA and still do not show the toilet/shower and holding tanks, which makes even more nonsense of the ‘standing camp’ notion). The PWS’ Standing Camp Policy requires “detailed plans” as part of the assessment. No council would accept, let alone approve, a Development Application for a suburban house without such information.
- The RAA stated that all sewage and greywater would be removed from the TWWHA but no detail was provided on how this is to be accomplished. As an upmarket operation with guests spending 3 nights on the island it is likely that a shower will be provided although this is not acknowledged by the proponent. i.e. the volume of greywater will be substantial and it may not be practical to remove it as backload on helicopter flights which deliver guests (stated intention in RAA). The proponent should have been required to demonstrate exactly how sewage/greywater removal was to be achieved. This is not trivial! The proposal is on an island in a lake in the TWWHA, the impacts of any spill could be substantial, and it is far from obvious that it is practical to fly out all greywater⁶ as proposed (the helipad is not on the island). If proper disposal of sewage/greywater required additional (management only) helicopter trips, this would be a major additional expense with implications for the viability of the proposal (almost 30 years ago the Tasmanian Conservation Trust stopped a proposal for tourist accommodation in the Vale of Belvoir [long before its purchase by Tasmanian Land Conservancy] by using the planning system to require the proponent to properly dispose of effluent – the cost of doing so rendered the proposal unviable).
- The National Parks and Wildlife Advisory Committee (NPWAC) advice that has been made public related specifically to the EPBC assessment. It was very critical of the proposal. It is unclear if NPWAC was asked to provide advice to PWS on the RAA but it is reasonable to assume that if they were, the advice would have been similar. This alone should have been enough to make PWS revisit the RAA. If, as seems likely, NPWAC was not asked to comment on the RAA, one has to question how the PWS is using the committee.

⁶ A possible scenario, based on prior experience, is that post-approval the proponent will “discover” that the operation is unviable unless approval is given for *in situ* disposal of greywater, which would probably require a “French drain” type of system similar to that used by Cradle Huts. On a small island in a lake, this is likely to pose an unacceptable risk of contaminating the lake.

Conclusions

The real lessons (relevant to all other [Expression of Interest proposals](#)) from the Lake Malbena shambles are:

- The RAA process must be open, transparent and challengeable. This can only be achieved by defining it in legislation (but in the short term making all but the most trivial RAAs subject to public comment would be useful).
- The potential for major issues to fall through the cracks between state and federal responsibility.

Author Nick Sawyer was a planner for the [Tasmanian] Parks and Wildlife Service for 7 years and worked on environmental impact assessment for the [Tasmanian] Environment Protection Authority for 10. He has substantial practical experience as a bureaucrat with the interaction (or lack thereof) between state and federal environmental legislation.