



tasmanian conservation trust inc



Mole Creek Caving Club Incorporated.



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## **THE TASMANIAN WILDERNESS: eNGO advice re State Party State of Conservation Report**

Dear Dr Rössler,

As non-government organisations with a long interest in the listing, extension and management of the Tasmanian Wilderness World Heritage Area (TWWHA), and engagement with the 2015 Reactive Monitoring Mission (RMM), we write to you with advice regarding the status of this property. We continue to hold significant concerns with regards to the management of the Tasmanian Wilderness, the serious present and emerging threats, and the protection of Outstanding Universal Value (OUV). We urge you to do all you can to ensure both the letter and spirit of past Committee decisions and the recommendations of the RMM are fully implemented.

### Summary

- It is regrettable that stands of irreplaceable rainforest, oldgrowth forest and ancient conifers were lost in the Tasmanian Wilderness in the bushfires of 2016 and 2019.
- Gratitude is expressed to professional and volunteer firefighters who put themselves in harm's way to defend ancient forests within the Tasmanian Wilderness.
- Given the damaging bushfires of 2016, 2019 and 2020, the State Party is urged to increase fire-fighting capacity, in particular through investment in additional aviation resources, remote area firefighting capacity and assistance to state-based firefighting agencies.

- Given the outcomes of recent legal cases pertaining to the proposed tourist development at Lake Malbena, the State Party should be applying more rigorous assessments of the impacts on OUV of proposed developments, particularly impacts on wilderness character.
- The State Party should ensure that a thorough assessment of the Lake Malbena proposal, that considers all potential impacts on OUV including impacts on wilderness, is carried out with full public participation and transparency.
- All planning instruments for the property should have protection of OUV as an explicit objective of management.
- The State Party is urged to ensure maximum transparency and public participation in the assessment of proposed developments within the property.
- The State Party is encouraged to expedite the gazettal of FPPF lands within the property as national park, as recommended by the 2015 RMM, and as agreed by the State Party in April 2016 in response to that recommendation.

### **State of Conservation Report**

We have closely reviewed the State Party's 2019 State of Conservation Report (SOC) and hold significant concerns regarding the accuracy, integrity and reliability of the advice it offers the World Heritage Centre. While we welcome government actions to rule out logging and mining within the property, the proliferation of proposed new, private commercial tourism developments and their impact on wilderness character and other values are of immediate concern.

Currently, we are aware of ten individual project proposals involving the development of at least 29 geographically-separate, privately-owned commercial tourism accommodation precincts across the extent of the property.<sup>iii</sup> These developments are targeted at some of the most cherished and iconic natural features within the property, most of them being proposed within areas with high wilderness character. Furthermore, many of these proposals have driven site-specific changes to the TWWHA Management Plan to allow their statutory approval. Many of these changes occurred in a secretive manner, with no opportunity for public comment and no avenue for third party appeal.

The analysis below follows the format of the SOC report and addresses relevant sections as expressed in the report.

### **Legislative Protection**

Given the assessment and statutory approval of the Lake Malbena tourist accommodation development is the first under the new TWWHA management plan, we are now in a definitive position to advise on the application of legislative arrangements that are supposed to protect OUV.

Unfortunately, the application of these laws demonstrates a prioritisation of the facilitation of commercial development above the protection of OUV, particularly wilderness character.

For example, under Australia's *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) on the 31 August 2018, the Lake Malbena development was deemed not a controlled action<sup>iii</sup>, meaning it did not require detailed assessment nor formal approval under the EPBC Act.

This decision was made by the State Party despite the explicit written advice of three of government's own statutory advisory bodies. The National Parks and Wildlife Advisory Council (NPWAC), Tasmanian Aboriginal Heritage Council (TAHC) and Australian Heritage Council (AHC) all advised the project NOT be progressed, in part because of likely impact on wilderness character.

Some examples of advice from these entities' submissions to the EPBC process include:

NPWAC 13 July 2018:

*'NPWAC does not support this project progressing at this time and reiterates that contentious projects such as this should not be considered until there is an agreed framework to guide assessment.'*

TAHC 18 July 2018:

*'...at the present time Council is opposed to the referral...Further in light of our concerns and the matters raised above, we believe that it is your obligation as Minister to not approve this project proposal.'*

AHC 13 July 2018:

*'The additional information provided allows for a better assessment of the proposal. However, cumulative impact on both world heritage and natural heritage values would be considerable, noting the impact of helicopters on the outstanding natural aesthetic value of the wilderness area in which it is situated.'*

The decision that the Lake Malbena development was not a controlled action was also made in the face of expert advice from consultant Martin Hawes, commissioned by the Wilderness Society. This analysis demonstrated the development would have a negative impact on wilderness character in an area of high wilderness value.<sup>iv</sup> Over the course of the EPBC process, the State Party did not commission its own, independent assessment of the development's impact on wilderness.

Similarly, Tasmania's *National Parks and Reserve Management Act 2002* specifies management objectives of the various reserve categories it covers. For national parks, there is an explicit management objective to '(j) to preserve the natural, primitive and remote character of wilderness areas.'<sup>v</sup>

Despite being a confidential process that was not offered for community consultation or publicly released, a leaked copy of the Parks and Wildlife Service's assessment of the Lake Malbena development (a Reserve Activity Assessment - RAA) demonstrated a wilderness impact assessment was not conducted.

This is despite the findings of the Hawes wilderness assessment that ‘...*the fact that the development would be located outside the Wilderness Zone would not prevent it from negatively impacting WC (Wilderness Character) in the area. Losses would occur both inside and outside the Wilderness Zone and the Walls of Jerusalem National Park. Indeed, the heaviest losses would occur inside the Wilderness Zone and inside the National Park.*

We contend that while legislative protection frameworks that provide for the protection of OUV appear robust and credible, their application is not. This was confirmed following legal challenge in the Federal Court. The Court ‘set aside’ the EPBC decision following a judicial review challenge by the Wilderness Society.

It should be noted that under the EPBC Act, the merit of a decision cannot be challenged under judicial review. Only the process by which a decision is made is open to review.

This sequence of events makes it clear that, while the EPBC Act and other legislative protections may look good on paper, their proper application depends on the attitude of the minister at the time. It is not an automatic or reliable means of protecting World Heritage properties in Australia, and cannot be relied upon to demonstrate the protection of OUV.

### **Effective Management and Planning**

As previously expressed to the World Heritage Centre, eNGOs believe the 2016 TWWHA Management plan was finalised with weakened provisions for the protection of OUV so that pre-existing and subsequently proposed commercial tourism developments can be statutorily approved.

We welcome the concern raised by the centre and advisory bodies in their 2018 analysis and conclusions with regard to zoning changes embedded in the 2016 TWWHA Management Plan. As well as the case of Lake Malbena, specific changes to management zoning were enshrined Management Plan to facilitate several other commercial accommodation developments, including a lodge near Cradle Mountain and additional commercial huts on the Overland Track.

Additionally, the 2016 Management Plan was finalised without a long-standing, overarching management objective to ‘*maintain or enhance wilderness quality*’ (as applied in the award-winning 1999 plan). The 2016 plan contains only the lesser objective to ‘*protect and conserve the natural landscapes...particularly in areas of exceptional natural beauty, and aesthetic and cultural importance.*’ (pg.35)

An explicit ‘Key Desirable Outcome’ that “*wilderness is managed for the protection of the integrity and the natural and cultural values of the TWWHA and the quality of the recreational experience it provides*” (pg.175), is articulated in the TWWHA Management Plan, however we note that there are no stated actions or strategies to be employed to achieve the ‘Key Desired Outcome’ and the Lake Malbena approval demonstrates that it was not achieved.

The approval of the Lake Malbena development under the 2016 Management Plan, with helicopter access into a high value wilderness areas demonstrates the inefficacy of this Key Desirable Outcome.

The 2016 Management Plan also abandoned a longstanding prohibition on the construction of huts in the Southwest National Park. Under the 'Management Prescriptions' section of 'Huts and Shacks, the 1999 Management Plan states *'in the Southwest National Park, development of infrastructure, including huts, is not allowed in view of the natural character of the area'*(pg. 154).

We note that there are two separate tourist accommodation proposals in the Southwest National Park (from the same proponent) that have been accepted via the Tasmanian Government's Expressions of Interest (EOI) process. This includes six huts on the South Coast Track and one accommodation complex in the vicinity of South East Cape. Governments have provided \$3 million in subsidies for the South Coast hut proposal – in advance of any statutory environmental assessment.<sup>vi</sup>

There is an additional proposal for the Southwest National Park that involves multiple huts on the route to Federation Peak.<sup>vii</sup> This proposal sits outside of the EOI, has received no statutory approval and it demonstrably contravenes even the 2016 TWWHA Management Plan, yet it has attracted a State Party grant totalling AUD 70,000.<sup>viii</sup>

## **Funding**

It is well accepted by civil society stakeholders that core, recurrent funding for the Tasmanian Parks and Wildlife Service (PWS) is woefully inadequate and compromises its ability to adequately manage reserved land in Tasmania, including the TWWHA.

Funding detailed in the SOC report is largely project specific, with the bulk of the commitments articulated (in number and quantity) targeted at specific infrastructure projects, some of which we hold significant concerns about.

Some confusion and contention emerged in the wake of the devastating 2019 fires in the TWWHA with the Tasmanian Premier taking the unprecedented step of writing to the Australian Prime Minister seeking a federal contribution to the firefighting effort.<sup>ix</sup> To our knowledge, this issue has not been resolved and the State Party has made no commitment to underwrite or refund all costs associated with fighting fires within the property.

This is of serious concern, not only because of the ultimate responsibility of the State Party for upholding the World Heritage Convention and protecting OUV. It is also of concern because of potential impact on decisions with regards to the deployment of resources to fight fires, particularly when multiple fires burn across multiple tenures and there is a demonstrable competition for resources. This scenario played out in 2019, when requests for resources to assist fighting fires within the TWWHA were rejected due to competing requirements elsewhere.<sup>x</sup>

It has become clear in the last three months, with devastating fires burning across numerous Australian World Heritage properties, that State Party funding for fighting bushfires within World Heritage properties is an issue of national concern, and not one which can be left to the limited resources of individual management agencies.

### **Assessment criteria for commercial tourism proposals**

The 2016 TWWHA Management Plan was finalised with ‘*additional assessment criteria*’ for commercial tourism development. While we note the Committee’s 2018 decision that ‘welcomed’ the specific inclusion of these criteria in the Management Plan, we again point to the first real test of these criteria, the Lake Malbena development, to highlight their inadequacies and the likely impact on OUV, including Integrity.

As previously advised, these criteria do not set thresholds or standards that new commercial tourism developments must meet. Instead, they simply dictate that an RAA must ‘consider’ or ‘identify’ certain things, such as likely impact on World Heritage Value. They offer no requirement that World Heritage Values actually be protected.

In the case of Lake Malbena the RAA, a non-statutory assessment carried out by the PWS, this ‘consideration’ did not formally assess impact on values such as wilderness. We take this as a violation of Committee decision 39 COM 7B.35. Through a range of vague and demonstrably incorrect ‘considerations’ of the impacts on wilderness and conditions imposed to supposedly mitigate those impacts, the RAA determined there would be a ‘low level’ impact on wilderness.

This determination contradicts the advice of NPWAC and AHC and the findings of a technical wilderness assessment commissioned by the Wilderness Society.

We note also the lack of independence and transparency in the RAA process. PWS is an agency within a department of the Tasmanian Government; and the RAA is non-statutory, meaning it cannot be legally challenged by a third party. It does not guarantee community consultation and in the case of the Lake Malbena RAA, the process was not opened for public input.

It is unclear as to whether the RAA did not seek the advice of the Tasmanian Government’s statutory advisory bodies (NPWAC and TAHC) or simply ignored their advice because the leaked RAA documentation makes no reference to the advice of these bodies (despite addressing the view of other, less expert entities). However, the subsequent EPBC process (that did consult the community) revealed NPWAC, TAHC (and AHC) expressed explicit, written opposition to approval of this project.

As mentioned above, the application of the EPBC Act failed to ensure a credible assessment of the impacts of this development and deemed it did not require detailed assessment nor formal approval. Proceedings of the Federal Court challenge to the EPBC approval revealed the EPBC process relied heavily on the discredited RAA, the judgment finding that the RAA ‘*was used to avoid a controlled action designation*’ by the State Party. ie. it was relied upon to actively avoid a detailed assessment and the need for approval<sup>xi</sup> under national environment law.<sup>xii</sup>

In addition, the court found that through the Tasmanian RAA process, Government advised and worked with the proponent to split the project into 'stages' so as to navigate the federal EPPC process. This avoided the need for consideration of proposed activities such as a visit to a sensitive Aboriginal art site and repeated walks with clients into the Wilderness Zone. As a result, these elements of the original proposal have not been assessed at all.

It should also be noted that assessments of several other developments within the Tasmanian Wilderness have not been made public, nor have the environmental conditions that apply to such developments. An example is the Maydena mountain bike trails.

We also note the notion of assessing the cumulative impacts of multiple developments, while expressed as a principle in the SOC report, is not being applied on the ground. By way of example, the PWS is currently undertaking a Reserve Activity Assessment (RAA) for its own public works (tracks, tent platforms etc) within the Walls of Jerusalem National Park Recreation Zone. This includes the establishment of new public camping platforms at Wild Dog Creek.<sup>xiii</sup> However, via the Tasmanian Government's EOI process, a proposal was received in 2019 to construct privately owned, accommodation units termed 'puffer pods' at the Wild Dog Creek campsite. The proposal states the intention "*to construct one "Wilderness puffer pod" in the Wild Dog Creek area in the Walls of Jerusalem National Park, adjacent to the existing camping ground.*"<sup>xiv</sup> The RAA currently considering the new, PWS-auspiced, public tent platforms makes no mention of the private 'puffer pods', and the cumulative impacts of both developments is escaping assessment.

All of the above indicates that the State Party and Tasmanian Government have failed to honour their undertakings to implement the recommendations of the 2015 RMM and Decision 39 COM 7B.35.

### **Tourism Master Plan**

A draft Tourism Master Plan (TMP) has not been developed by December 2019 as promised in both previous SOC reports and in response to the 2015 RMM.

While the process to develop a TMP has commenced and a 'strategic paper' has been provided to the World Heritage Centre, the process lacks credibility and eNGOs have chosen not to participate.

The TMP has been pre-empted by the aforementioned significant, controversial changes to the TWWHA Management Plan that weaken protection for OUV and provide for the statutory approval of proposed, private commercial tourism developments, such as the Lake Malbena development and South Coast Track huts. The TMP has also been pre-empted by the provision of taxpayer subsidies to major developments within the property, including over AUD1 million for the Maydena bike trails and AUD 3 million for the proposed South Coast Huts. A further AUD 70,000 was allocated to a proposal at Lake Geeves that would violate the zoning of the 2016 Management Plan.

The TMP was first requested by the RMM following its 2015 mission, alongside a request to review the draft TWWHA Management plan, to ensure it *'would be in line with the primary goal of protecting the property's OUV including its wilderness character and cultural attributes.'* While there has been a four year delay in initiating the TMP, the TWWHA Management Plan was finalised in 2016 with changes that *'concern'* the World Heritage Centre and provide for developments that statutory advisory bodies to Government conclude will damage OUV, including wilderness character.

Noting that both the RMM and Committee decisions identified the TMP be developed *'in consultation and negotiation' with relevant stakeholders'* (emphasis added), we make the point there is no opportunity for negotiation when the overarching management framework has already been changed to accommodate specific, private commercial developments, including ones that will damage OUV.

The TMP has been rendered irrelevant by a fait accompli in the form of government support for tourist developments that impact on OUV. That government support has come in the form of changes to the management plan and taxpayer subsidies.

Without a commitment to review and amend the TWWHA Management Plan in light of the conclusions of a TMP, the TMP itself is irrelevant and it will have no value with regards to its objective, as identified by the RMM and Committee, namely, *'to refine the balance between legitimate tourism development and conservation of cultural and natural attributes.'*

ENGOS do not support the TMP process or have any confidence in its likely conclusions. They have written to the Tasmanian Premier to express their concerns and outline a series of recommendations.

### **Designation of land zoned for potential timber production as reserves**

ENGOS note the SOC report articulation of a 'two stage process' with regards to the reservation of Permanent Timber Production Zone (PTPZ) and Future Potential Production Forest (FPPF) zoned land within the property. As part of stage 1, *'reserve class will be determined...'*(pg 11)

This is inconsistent with Recommendation 11 of the RMM report that explicitly states that FPPF land *'should be granted status of national park'*. All 20 of the recommendations of the RMM were unconditionally accepted by the Tasmanian Government and State Party (see SOC Report of the State Party, 2016). The four-year delay in implementing this recommendation is a symptom of government recalcitrance when it comes to undertaking necessary measures to protect OUV.

In addition to concerns regarding the delay in implementation of this recommendation, eNGOs believe the consultation process will be deliberately politicised as a mechanism to generate local hostility towards new national parks more broadly and settle on a reserve tenure for FPPF land within the property that offers a lesser level of legislated protection for contained values.

## **Impact of wildfires**

The summer of 2018/19 was again a horror year for Tasmania and the TWWHA suffered significant damage from wildfires. To date, despite the unprecedented extent of wildfires on mainland Australia, Tasmania and the TWWHA have thus far (mid-February) largely escaped damage over the 2019/20 summer.

Publication of specific vegetation fire impact figures in the SOC report is the first such official assessment published and eNGOs have no way to independently verify the figures.

None-the-less, the statistics stated are of serious concern and we lament the loss of yet more fire-sensitive vegetation. Ancient lifeforms that are part of the property's OUV, including Athrotaxis conifers at Crooked Lake in the Denison Range, were killed. It is very unlikely that this relict vegetation will ever recover.

Evidence points to climate-related increases in fire risk, including more dry lightning strikes, longer and more extreme fire seasons and dryer vegetation and soil conditions.

What the figures do not show is the significant danger the fires presented to extensive stands of fire sensitive vegetation that contribute to OUV. By good fortune more than firefighting efforts, large stands of King Billy pine on Mt Bobs were largely spared damage. Other such areas also came perilously close to destruction. With slightly different weather conditions, the statistics reported in the SOC report could have been significantly worse.

ENGOS believe that firefighting capacity and focus in the TWWHA are still lacking. While some improvement in knowledge, resourcing and coordination have been made, more can, should and will need to be done if we are to avoid catastrophic impacts on World Heritage values and OUV.

It should be noted that the massive fires on mainland Australia (exceeding four million ha in extent) have severely damaged at least two other World Heritage properties – the Blue Mountains and the Gondwana Rainforests<sup>xv</sup>. The State Party has come under sustained criticism for its lack of preparedness for these fires. The Australian Government failed to act on November 2019 warnings that a fire event of almost unprecedented seriousness was upon us. This included a failure to obtain sufficient aerial fire-fighting aircraft.

It has therefore become painfully clear that responsibility for safeguarding the OUV of World Heritage properties is a national priority and the responsibility of the State Party. It's a responsibility the State Party has failed to honour.

## **Proposed Tourism Development – Halls Island, Lake Malbena, Walls of Jerusalem**

As per above, much has already been said about the Lake Malbena development as the first tangible example of the inadequacies of the TWWHA Management Plan

(including a zone change and so called strict criteria), the failure of various assessment processes and the very present threat new, private commercial tourism developments are to OUV, including wilderness character.

However, given the SOC report explicitly states that *'the proposal is an allowable activity under the 2016 Management Plan zoning for this area'* we wish to bring to your attention contrary written advice from two statutory advisory bodies to the State Party. This written advice was offered as part of the EPBC assessment consultation for the Lake Malbena development.

On 17 April, 2018 NPWAC formally advised that:

*"The National Parks and Wildlife Advisory Council (NPWAC) has reviewed the Hall's Island proposal out-of-session and is unable to support this project as it is currently presented for the following reasons:*

- The buildings and tracks do not conform to the zoning prescriptions, which were designed to protect world and national heritage values and are likely to have significant potential impacts on WHA values.*
- The 2016 TWWHA Management Plan permits huts only in the Visitor Services or Recreation Zones. The proposal to construct "multiple huts" (described as such by the proponent in the EPBC referral) within the Self-Reliant Recreation Zone is not permitted.*
- The proponent presents these structures as a "standing camp". NPWAC notes that while the definition of a standing camp is yet to be finally resolved, the three accommodation and one communal huts proposed are substantial structures, designed to be erected semi-permanently at best and do not meet the general perception of a "standing camp".*
- The cumulative impact of helicopter flights on world heritage values will be considerable, particularly noting the impact of noise on the outstanding natural aesthetic value of the wilderness area in which it is situated. There is also the potential impact of these helicopter flight paths on endangered fauna."*

Similarly, in undated advice from early 2018, the Australian Heritage Council advised that *"the buildings, helipad and tracks do not conform to the zoning prescriptions in the TWWHA Management Plan..."*

The SOC report offers only a limited update with regards the various approval processes. Specifically, with regards the Federal Court challenge to the State Party's EPBC assessment decision, the SOC report identifies that on 12 November 2019 there was a Federal Court decision, but fails to declare that decision.

The challenge to the decision was upheld on two of three grounds and the Federal Court has formally 'set aside' the State Party's decision. The implications of this are that the decision will need to be remade. The Wilderness Society, as applicant, has formally requested the expert advice heard by the court, the Hawes Wilderness Impact Assessment and the formal advice of NPWAC, AHC and TAHC be considered as the decision is remade.

Given the unequivocal advice of these experts and entities, eNGOs believe the development should be deemed 'unacceptable' due to negative impacts on World Heritage values, especially wilderness character.

Similarly, legal uncertainty surrounds the local government assessment of the development. While the local council did not approve the development application for this proposal, an appeal to the relevant planning tribunal was nevertheless upheld. This in turn has been appealed to Tasmania's Supreme Court and is yet to be heard.

## Conclusions

We again thank the World Heritage Centre and the advisory bodies for their work on the Tasmanian Wilderness and willingness to offer clear advice, in line with the primary goal of protecting OUV.

This advice has been critical in achieving past committee decisions that counter the express intentions of the State Party and Tasmanian Government. For example, this includes the rejection of an attempt to delist over 70,000 ha of tall eucalypt forests within the property and the prohibition on logging and mining within the property in 2016.

We write to seek your urgent intervention and assistance in countering a more surreptitious attempt from Government to prioritise private commercial tourism development above the protection of OUV and the State Party's obligations to the World Heritage Convention.

Yours sincerely,



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