



30 July 2020

PROPOSED LAKE MALBENA DEVELOPMENT

IMPLICATIONS OF APPEAL (27/7/20) TO FULL COURT

The Tasmanian Supreme Court handed down its disappointing decision regarding the Lake Malbena development proposal on 6 July 2020 (see [here](#)). After considering the limited options, The Wilderness Society and ourselves decided to challenge this decision and filed an appeal to the full bench of the Supreme Court on 27 July (see [here](#)).

The ongoing legal proceedings are no longer just about the proposed Lake Malbena development. They also have major implications for the assessment of all developments within national parks and hence the future of the state government's secretive Expressions of Interest process.

On the proposed Lake Malbena development itself

If the appeal to the Full Court is upheld, it is expected that the Full Court will order that the Planning Tribunal make a fresh decision (to [RMPAT's existing decision](#) of December 2019) following consideration of the extensive evidence, including its adverse impacts on the wilderness and ecological values of the area that was presented in the course of the [Planning Appeal hearings](#) in June 2019. It is hoped that this fresh decision would be to uphold the [original decision by Central Highlands Council](#) to reject the proposal.

Wider legal implications

1. The Tribunal's interpretation of the "acceptable solution" in the Central Highlands Council's interim planning scheme was that it is acceptable to rely on the PWS Reserve Activity Assessment (RAA), completed to step 7, to determine compliance with the Tasmanian Wilderness World Heritage Area (TWWHA) management plan.
 - Our appeal to the Supreme Court contended that this was incorrect but the Supreme Court found that all that was required was that the use be "subject to" the Management Plan. i.e. It did not accept our contention but neither did it agree with the Tribunal's view that there needed to be evidence that a RAA had been undertaken by the PWS.

- Our appeal to the Full Court will argue that the Supreme Court did not clearly set out how it is established that a use is “subject to” a management plan, and ignored the detailed submissions outlining why this particular proposal has not been subject to a meaningful legal assessment against the requirements of the management plan.
2. The Supreme Court found that the Tribunal did not have the jurisdiction to assess the compliance of the proposal with the TWWHA management plan.
 - The appeal to the Full Court will argue that the Tribunal not only could but should have conducted its own assessment of the compliance of the proposal with the TWWHA management plan.
 3. The Supreme Court's decision left unanswered questions about what formal rights the community has in the granting of authorisations for inappropriate development in national parks, including rights of independent legal review. This is crucial given that the incoming [Statewide] Tasmanian Planning Scheme envisages that local communities and local councils will not have an opportunity to review the merit of developments in national parks if they have been approved by Tasmania's Parks and Wildlife Service.
 - The appeal to the Full Court is expected to obtain clarification of these rights.