

Lake Malbena Tourism Development Proposal – Background & Summary

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Tasmanian
National Parks
Association



An independent Voice for Tasmania's Parks



Lake Malbena. Photo: Loic Auderset

Halls Island is about 400 metres from east to west, and 250 metres north to south. It is almost entirely forested and located in Lake Malbena (above) on Tasmania's Central Plateau. The area is about as remote and isolated as anywhere on the plateau – there are no formal walking tracks in the vicinity and the easiest access route requires several hours of mostly cross-country walking from a former logging road and a packraft or similar to cross the lake.

In the early 1950s a Launceston lawyer named Reg Hall chose the island that now bears his name as the perfect location on which to build a tiny shack to serve as a base for exploring and enjoying some of the most remote parts of the Central Plateau. Being a lawyer, he chose to obtain a lease for his shack, something that few others would have bothered with in those days. Although a private hut, it was open to all comers and treated with respect.

When the hut (right) was constructed in the 1950s the island was Unallocated Crown Land but it has subsequently progressed through various categories of reservation until it became part of the Walls of Jerusalem National Park and was incorporated into the Tasmanian Wilderness World Heritage Area (TWWHA) in 1989.



Reg Hall himself died in 1981 but his daughter continued the lease until she transferred it to professional trout guide Daniel Hackett in 2016 with the intention of ensuring the long-term preservation of her father's now-historic hut. Mr Hackett has committed to maintaining the old hut but his company, Wild Drake, has applied for permission to construct helicopter-accessed tourist accommodation on the island. [His proposal includes three twin-share accommodation buildings and a communal hut](#), each larger than the historic hut. Despite Mr Hackett's background as a trout guide the primary theme of this proposal is 'cultural immersion', not fishing (Malbena itself is not considered to provide good fishing, unlike some of the nearby lakes).

Wild Drake's initial application was through the Tasmanian Government's [Expressions of Interest process](#). In the 1999 Management Plan for the TWWHA Halls Island was zoned 'Wilderness', which effectively ruled out any possibility of development. However, it was changed to 'Self-Reliant Recreation' in the 2016 plan without the change being foreshadowed in the 2014 draft plan (i.e. there was no opportunity for the public to comment on the proposed change). This rezoning allows the consideration of 'standing camps' but not huts. Many objectors questioned the description of the proposed accommodation as a 'standing camp'.

The proposal has drawn outrage from a wide range of people for a range of reasons including the alienation of public land within a national park for the benefit of a private developer, but the most common theme is the [impact of both the development itself and the helicopter access on the wilderness character of the area](#).

The proposal requires approval under both state and federal legislation, as well as the [Tasmanian] Parks and Wildlife Service's non-statutory Reserve Activity Assessment (RAA). As a Level 3 RAA, public comment was not required. The RAA was completed to Step 7 where it was signed off as 'endorsed for external assessment' on 14 March 2018. It was not made public until July 2018 when it was included in the additional information provided for the Federal Government assessment.

The Federal Government had initially decided that approval under the *Environment Protection and Biodiversity Conservation Act, 1999* (EPBC Act) was not required. This was successfully challenged by The Wilderness Society (TWS). The case was heard in the Federal Court on 26 March 2019 with the [decision released on 12 November 2019](#). The key outcome of this challenge was the federal Minister's decision on 17 September 2020 <https://tnpa.org.au/lk-malbena-development-is-a-controlled-action/> that "the likely impacts to the unique values of the Tasmanian Wilderness World Heritage Area (TWWHA) warrant a formal assessment". This was followed on 18 November 2020 by the Minister's '[Statement of Reasons](#)' for her decision which 'found that the impact on the world heritage values of the TWWHA from the use of helicopters is likely to be significant'. The Minister accepted that the wilderness-impact assessments 'provide a useful demonstration of the possible extent of the impacts on exceptional natural beauty associated with the relatively undisturbed nature of the property, and the scale of the undisturbed landscapes'.

The other approval required before the development could proceed was from local government. When Central Highlands Council (CHC) advertised the Development Application (DA) it received 1346 submissions; only 3 supported the proposal!

At a public meeting attended by around 100 representors on 26 February 2019 the [CHC decided to refuse the DA](#). A common theme of comments by the mayor and councillors was inadequacy of the RAA and the failure of process – the state and federal governments had shirked their responsibilities – a small rural council should never have been required to make key decisions about impacts on World Heritage values.

As anticipated, the proponent, Wild Drake, appealed the council's decision to refuse a permit in the Resource Management and Planning Appeal Tribunal (RMPAT). The Tasmanian National Parks Association, The Wilderness Society (Tasmania) and two individuals with long connections to the area (the joined parties) made the expensive commitment of joining the appeal to defend Council's decision (the RMPAT hearing required the engagement of highly experienced lawyers and expert witnesses).

RMPAT heard this appeal from 24-28 June 2019, with an additional hearing on August 8-9 2019 to hear further evidence about wedge-tailed eagles and for the legal representatives to present closing submissions. [The decision was released on 21 October 2019](#). RMPAT's key

finding was that it isn't required to assess the proposal against the management plan; all that is required is for a Management Plan to exist and that a Reserve Activity Assessment has been completed by the Parks and Wildlife Service up to Step 7.

RMPAT required Council to provide draft conditions of approval and offered the parties an opportunity to comment on these, prior to [RMPAT's final decision \(18 December 2019\)](#) which required that CHC's refusal of a permit be set aside and replaced with an approval subject to conditions set out in RMPAT's final decision.

On 14 January 2020 the same appellants as previously [filed an appeal to the Supreme Court of Tasmania](#) against the RMPAT decision.

The appeal contended that RMPAT improperly delegated its assessment of the Lake Malbena proposal to Tasmania's Parks and Wildlife Service and did not undertake its own assessment of the proposal against the Tasmanian Wilderness World Heritage Area Management Plan. Note that the appeal related entirely to this legal question, not the merits of the proposal itself.

The Supreme Court's decision was handed down on 6 July 2020. Neither of our grounds of appeal succeeded. The court's full decision can be read [here](#) and a media release made with The Wilderness Society can be read [here](#).

TNPA and TWS chose to [challenge this decision](#) by appealing to the full bench of the Supreme Court (3 judges, rather than the single judge responsible for the previous decision). The case was heard on 2 October 2020 but a backlog of cases resulting from the COVID shutdown earlier in 2020 meant that the [decision](#) was not handed down until 15 September 2021.

In a 2:1 majority decision the ruling set aside both the outcome of our initial appeal to the Supreme Court and the original decision of RMPAT to grant a permit for the proposal. It requires RMPAT to make its own decision on whether the proposal complies with the "prescriptive requirements" of the Tasmanian Wilderness World Heritage Area Management Plan 2016, rather than relying on the Parks and Wildlife Service's Reserve Activity Assessment.

Wild Drake did not appeal this decision to the High Court so the matter returned to RMPAT (now renamed TASCAT – Tasmanian Civil and Administrative Tribunal) for determination. The directions hearing for the redetermination was scheduled for 9 December 2021, but postponed to 17 December. On 15 December, Wild Drake withdrew its appeal so the February 2019 refusal of the proposal by Central Highlands Council stands.

Unfortunately, this may not mean the end of the proposal. Wild Drake has stated it still intends to seek approval under the EPBC Act (see previously). The implications of such a move are not clear except that the proposal has not yet been abandoned. EPBC approval is not a foregone conclusion (Wild Drake has yet to provide the additional information requested by the Federal Minister) and the proposal will still need state approval. Wild Drake's own media statement says it will be seeking the necessary state approvals after it has secured EPBC approval.



Lake Malbena, with Halls Island at far right. Photo: Grant Dixon

A significant part of our motivation for initiating these legal actions was the implications for the processes by which all tourism developments within our national parks and reserves gain approval, particularly the numerous proposals that are currently going through the Tasmanian Government's controversial Expressions of Interest process, many of which are likely to pose similar threats to Tasmania's wilderness and our reserve estate. It appears that our actions have already prompted the state government to revise the RAA process (see [here](#)).

We also hope that these legal actions will also set a national precedent. The supposed success of the Tasmanian government's policy of 'unlocking our national parks' is often quoted by mainland State Governments and Parks Services seeking to follow suit. A final outcome in our favour may cause them to reconsider.