Tasmanian National Parks Association

An independent Voice for Tasmania's Parks

12 November 2018

PROPOSAL – PLANNING LEGISLATION FOR RESERVED LAND

Rationale

Legislation is required because only a legislated process can provide consistency and certainty for all parties, guarantee that requirements will be followed and provide opportunity for legal challenge if they are not. A rigorous process is more likely to deliver social licence for proposals.

Timing

It is acknowledged that the development and approval of legislation is inevitably a slow process. In the interim, many of the requirements most crucial to the credibility of the assessment process could be introduced almost immediately, by quite minor amendments to the Reserve Activity Assessment process.

Summary

We call for legislation which defines[i] an open and transparent process with opportunity for meaningful public scrutiny, appeal rights, and clearly defined relationship with other legislation[ii].

Scope

Applicable to all developments (including those by PWS) proposed on land reserved under *Nature Conservation Act 2002*[iii] or the *Wellington Park Act 1993* and all Crown Land reserved for public purposes.

Requirements in detail

The legislation must include requirements for the following:

- Explicit criteria to set the level of assessment[iv] and public notification of the decision on the proposed level of assessment for all proposed developments (however minor).
- For major proposals and those subject to a very high level of public interest, the possibility of public comment on assessment guidelines[v].
- On-line availability[vi] of sufficient information regarding proposed development to permit informed consideration of merits and impacts of proposal.
- Explicit statement that the proponent is responsible for the preparation of the assessment documentation. Except for very minor proposals, this will be a full Environmental Impact Statement[vii] (EIS)[viii].
- Public comment on final development proposal and EIS[ix].
- Assessment by an independent panel with appropriate expertise[x].
- Publication of assessment report (including official response to public comment) and permit conditions[xi].

- Third party appeal rights[xii].
- Clearly defined relationship to other Tasmanian legislation to avoid ambiguity or duplication of process.
- Sufficiently rigorous to potentially be the subject of an assessment bilateral[xiii] with the federal government under the *EPBC Act*.
- Authority to require a bond to cover costs of clean-up and/or removal of infrastructure in the event of proposal closing or being shut down by the regulator.
- When operational:
    - Monitoring and evaluation of project to ensure compliance with proposal objectives and permit conditions.
    - Authority to require termination of proposal in the event of non-compliance including the option of civil enforcement by a third party[xiv].

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[i] We avoid calling for a specific solution because there are several possible mechanisms for achieving these objectives, the most obvious being:

- a requirement under *LUPAA* to refer the assessment to a referral agency (analogous to the referral of the assessment of industrial activities to the EPA);
- the definition of a separate assessment process under the *NPRMA;* or
- the definition of a separate assessment process in a statutory management plan (there was such a process in the 1999 Tasmanian Wilderness World Heritage Area Management Plan and it was used on several occasions during the life [1999-2016] of the plan).

[ii] None of these requirements are particularly onerous. All already apply in other development assessment processes in Tasmania.

[iii] This includes national parks and most other conservation reserves.

[iv] The process needs to cater for all development proposals from large commercial and industrial operations to minor works by PWS for management purposes. Different levels of scrutiny (as in the current RAA process) are appropriate but public notification of the level of assessment of all proposals is essential to ensure that all proposals categorised appropriately.

[v] This reflects current EPA process. Stakeholder consultation by proponent prior to finalisation of development proposal should be encouraged.

[vi] Important that information is not only available for scrutiny in Council offices.

[vii] The key point is that the proponent's description of their proposal and assessment of its impacts are clearly separate from the assessment report (which evaluates the claims made by the proponent).

[viii] This is necessary to avoid the current situation where PWS sometimes prepares the assessment documentation on behalf of external proponents.

[ix] This step, and the following three, reflect the current EPA assessment process.

[x] This would probably require the establishment of a new authority. NPWAC is an advisory body so it would require major redefinition of their role if they were to become the independent decision-making panel.

[xi] The order of these steps reflects the current EPA assessment process.

[xii] These can be provided through RMPAT to avoid any requirement to set up another appeal process.

[xiii] This would allow the Federal Minister to rely on material provided in the State process when making his/ her decision.

[xiv] In the event that the regulator fails to act.