Tasmanian National Parks Association

An independent Voice for Tasmania's Parks

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Vanishing Opportunities for Public Involvement in the Future of Tasmania's National Parks – Key Points

In January 2024 the state government called for public comment on two discussion papers:

- *Reserve Activity Assessment Process Reform - Statutory Environmental Impact Assessment Process Consultation Paper* – this proposes a "reform" of the Reserve Activity Assessment (RAA) process used by the Tasmanian Parks and Wildlife Service (PWS) to assess development proposals on reserved land; and
- *Information Sheet - Proposed Management Planning Processes* – this proposes major changes to the process for the preparation and amendment of management plans for reserves.

The TNPA's position is that the provision of commercial infrastructure in Tasmania's reserves is not compatible with their primary roles of protecting nature and providing for nature-based recreation.

Key concerns:

- The intent of the proposed changes appears to be to remove transparency in decision making and any credible opportunity for public involvement in the assessment of a proposed development on reserved land.
- If an assessment process is to provide a proposal with a social licence to operate it needs to be seen as fair by all parties. This requires that the public have confidence that their concerns have been considered. This will not be achieved by any process (e.g. the proposed "Independent Assessment Panel") which does not include the right for the public to challenge a decision in a planning appeal based on the merits of the proposal (merits review).
- The pre-existing right under the *Land Use Planning and Approvals Act, 1993* (LUPAA) for the public to comment on, and seek merits review of, the assessment of a development proposal in a Tasmanian national park or other reserve will be lost when all councils have adopted the State Planning Provisions (SPPs)[1].
- The state government's proposed "reform" of the RAA process proposes an entirely separate alternative to the RAA for the assessment of large and/or controversial proposals by an "Independent Assessment Panel"

[1] The intent of the SPPs appears to be the removal of development proposals on reserved land from any consideration under LUPAA.

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The TNPA acknowledges the First Nation peoples of lutruwita (Tasmania) and their enduring connection to country. We pay our respects to their elders past and present. We also acknowledge that their land was taken, and sovereignty was not ceded.

but no change to the existing RAA process for all other proposals. The proposed new process includes an opportunity for public comment but not the crucial right to merits review.

- The state government has simultaneously proposed major changes to the currently rigorous process for the preparation and amendment of statutory management plans for reserves which prioritise short-term flexibility over long-term certainty and reduce the opportunity for public involvement.

Key responses

- The right to merits review of RAAs for significant development proposals is essential.
- If a proposed development requires a permit under LUPAA the RAA should be integrated with the LUPAA assessment process. This could include the provision of opportunities for public comment and mediation and the right to merits review.
- RAAs currently in progress (especially those related to the Expressions of Interest process) should be halted until these concerns are addressed.

Vanishing Opportunities for Public Involvement in the Future of Tasmania's National Parks

The SPPs have now been adopted by a majority of Tasmanian councils with the remainder likely to follow soon. This apparently mundane news has major, and alarming, implications for the future of Tasmania's national parks and other reserves. A council which has adopted the SPPs is obliged to issue a permit for a proposed development on reserved land if the requisite authority has been granted by the PWS. This removes the only meaningful opportunity for public involvement[2] in the statutory process of assessing a proposed development on reserved land.

The RAA process (equivalent to an environmental impact assessment) plays a major role in determining the future of our parks but it has major shortcomings which, amongst other concerns, facilitate the state government's controversial Expressions of Interest process for tourism developments on reserved land. The TNPA first raised concerns about the inadequacies of the RAA in 2016. We called for a statutory process (prescribed in legislation) which included meaningful public scrutiny, appeal rights, and clearly defined relationship with other legislation. These concerns remain despite some minor tweaks to the process announced in 2019 as the outcome of an earlier review.

The title of the state government's recently announced ***Reserve Activity Assessment Process Reform - Statutory Environmental Impact Assessment Process Consultation Paper*** suggests that it might be the long-awaited proposal to address all of the concerns described above – but it is nothing of the sort!

The proposed process is an entirely separate alternative to the existing RAA process for the assessment of large and/or controversial proposals[3]. It proposes assessment by an "Independent Assessment Panel" and without any right to merits review. It does not propose any reform of the existing RAA process which will still be used to assess the vast majority of development proposals on reserved land and remains subject to the concerns first raised by the TNPA in 2016.

Of equal concern, the consultation paper is accompanied by an ***Information Sheet - Proposed Management Planning Processes*** which proposes major changes to the currently rigorous statutory process for the preparation and amendment of management plans[4] for reserves.

Both proposals (the new RAA process and the changes to management planning) were advertised on the NRE website on 11 January 2024 with comment closing on 8 March although the closing date was subsequently extended to 29 March. It is not apparent why the two proposals were advertised simultaneously; they are almost unrelated. There has been no obvious attempt to draw attention to the proposed changes to management planning; it is not

[2] All of the legal action under Tasmanian legislation by TNPA and others which has successfully halted the proposed helicopter-accessed tourism development on Lake Malbena in the TWWHA originated from the right to appeal the council's decision, which is now lost.

[3] The state government's motivation is most likely the perceived need to "fast-track" the approval of transmission lines or wind farms within conservation areas or regional reserves but the proposed "reform" could be applied to any type of development on any type of reserved land (e.g. a resort in a national park).

[4] A management plan for a national park or other reserve is a statutory document which sets out the "rules" which determine what activities and developments can occur within a park, analogous to the role of a planning scheme in local government.

even explicitly stated in the Information Sheet that comment is sought.

The TNPA is aware that some groups and individuals who had not met personally with the NRE Policy Advisor had not realised that they had the opportunity to comment on the proposed changes to management planning. This should be rectified by providing further opportunity for public comment.

The right to merits review

The TNPA's fundamental concern is that any process to assess proposed developments on reserved land which does not include the right to merits review lacks both integrity and credibility:

- The loss of the right to merits review as remaining councils adopt the SPPs is unacceptable because this could lead to the situation where a controversial proposal on reserved land avoids any credible scrutiny.
- Assessment by an "Independent Assessment Panel" whose decision cannot be challenged is not an acceptable substitute for the loss of the right to merits review:
    - Humans are fallible. Any decision by a group, however well-informed and well-intentioned, may contain errors of fact or overlook the importance of some issues.
    - The knowledge that their decision may be subject to independent review is, on its own, enough to constrain any decision making panel from blatant disregard of its responsibilities, which could take the form of "bending the rules" or worse. The NSW Independent Commission Against Corruption (ICAC) has recommended the expansion of merit-based planning appeals as a deterrent to corruption.
    - There is no guarantee that any "independent assessment panel" will be, or will be seen to be, independent of the state government (see below).

Proposed Management Planning Processes – summary of major specific comments and concerns

- A major role of a management plan for reserved land has traditionally been to provide long-term certainty on management intent. The proposed changes have the potential to prioritise short-term flexibility over long-term certainty.
- The proposal that an environmental impact assessment for a particular proposed development could be used to justify the amendment of a management plan is unacceptable. Management planning for reserved public land is a holistic process which is intended to provide long-term certainty on management intent. It should not be undermined by changes driven by a particular proposed development. This proposal (that an environmental impact assessment can be used to justify the amendment of a management plan) is somewhat analogous to the LUPAA combined development application and planning scheme amendment process (for private land) but reserved public land has a generally has a broader range of values and a much higher level of public interest than private land.

- The TNPA appreciates that it is unrealistic to expect that the resources will be available to make (according to current processes) individual statutory management plans for every reserve in Tasmania.
- The current rigorous processes for making and amending management plans are appropriate, and should continue, for national parks and other significant reserved lands (such as those within a World Heritage Area).
- There may be scope for a simpler management planning process for reserved lands other than national parks and other significant reserved lands. If this is the role of the proposed management statements, they should be subject to public comment as proposed in the information sheet.
- The proposed process for making "minor amendments" of management plans could lead to major changes in the guise of "minor amendments". A much tighter definition of a "minor amendment" than the one contained in the information sheet is required.
- If the management planning process is to maintain public credibility it is essential that the PWS provides a considered public response to public comment. It should be clarified that the review of comments by Tasmanian Planning Commission must address the adequacy of the PWS response.
- The EPBC Act includes requirements for the making of management plans for world heritage areas. Some of the proposed changes may not meet these requirements.

Proposed Reserve Activity Assessment Process Reform – summary of major specific comments and concerns

The proposed new statutory environmental impact assessment process is unacceptable.

- It does not address long-standing concerns with the existing RAA process, despite claiming to be a "reform" of this process.
- It does not include the basic right to merits review[5] (see above).
- Application of the process is discretionary. It will apply only if the Minister decides it should, after taking into account some very vague criteria. Accordingly, before a decision there will be considerable uncertainty as to whether the process will apply.
- There is no guarantee that the "independent assessment panel" will be, or will be seen to be, independent of the state government since the Tasmanian Planning Commission is generally subject to direction by the Minister. If the rules for the appointment of the panel members reflect the current provisions for Development Assessment Panels in LUPAA the Minister has significant influence over the appointment of 2 members of a panel, who could constitute the majority of a quorum of the panel.
- The new statutory environmental impact assessment process is proposed to displace assessment and approval processes under the LUPAA. This would exclude planning authorities (generally local

[5] TNPA's interpretation of Section 3.6 of the consultation paper is that the only "appeal right" is the right to administrative review under the *Judicial Review Act 2000.*

councils) from making decisions on matters on which they may have considerable expertise. It would also exclude the possibility of using the provisions in LUPAA to provide for merits review of decisions of planning authorities.

- The proposal to require proponents to lodge bonds or bank guarantees to cover the costs of addressing environmental harm caused by the proposed development is welcome but it is essential that the bond is adequate to address foreseeable environmental harm.
- Leases, licences and other authorities required for a proposed development should take effect only after the granting of all other approvals. The proposed publication of leases and licences is welcome but a form of this is already in operation.

Suggestions for a different statutory assessment process – general principles

- A major component of the rationale for having an assessment is to provide the proponent with a social licence to operate. This requires the process to be seen as fair by all parties. It will not be achieved by any process which does not include an appropriate level of public scrutiny. In particular, assessment by an "Independent Assessment Panel" without the right to merits review will not be seen as fair.
- The existing PWS RAA process defines three levels of assessment. The entire RAA system needs to be revised and made statutory, not just a process for the assessment of "major" proposals.
- To provide transparency and give the public confidence that all RAAs are being assessed at an appropriate level, all proposals which are to be the subject of a RAA should be published on the PWS website. The information provided should include a brief description of the proposal and its likely impacts, and the proposed level of RAA. The public should be able to comment on the proposed level of RAA[6]. This will also enable PWS to gauge the degree of public interest which can be considered when determining the level of RAA[7].
- The criteria for determining which level of RAA will be required should be as objective as possible in order to provide a high degree of certainty for the public, the proponent and PWS.
- The process should be integrated with (not separated from) processes under LUPAA. This could include the provision of the opportunity for mediation and the right to merit appeal.
- The process should require a clear separation between the persons responsible for the preparation of the environmental impact statement and the persons responsible for its assessment.
- For significant development proposals there needs to be a reasonable opportunity for the public to comment on:
    a) the criteria for assessment; and

[6] The lower levels of RAA assessment do not necessarily need to be subject to further public scrutiny but it is essential that the public are aware of their existence.

[7] e.g. the history of the Lake Malbena proposal would probably have been very different if the original RAA had been subject to public comment before being signed off.

b) a draft report on the assessment; and
c) the information on which the draft assessment report is based.

- The criteria for assessment of the activity or development proposal need to include whether it is consistent with:
  a) the purpose(s) for which the land was reserved; and
  b) the management objectives for the land; and
  c) the management plan (if any) for the land.
- The final assessment report must be published.
- The proponent and anyone who commented as part of the assessment process should be able to seek merits review of the outcomes of the process.
- To facilitate the comment and review processes for RAAs which also require a permit under LUPAA the RAA assessment could be integrated with the LUPAA assessment in a similar manner[8] to the assessment of major industrial proposals by the Board of the Environment Protection Authority under the *Environmental Management and Pollution Control Act 1994*.
- Leases, licences and other authorities should take effect only after the granting of all other approvals.
- If the proposal proceeds it must be subject to the monitoring of compliance with the authorisation and any conditions to which it is subject.

[8] The EPA's assessment of the proponent's environmental impact statement and the council's assessment of compliance with the planning scheme are published jointly for public comment.