

Draft TWWHA Management Plan – Key Issues

Under the *National Parks and Reserves Management Act 2002*, the managing authority for any reserved land is to manage that land in accordance with an approved management plan and in a manner that gives effect to the objectives of the plan.

The *Tasmanian Wilderness World Heritage Area Management Plan 1999* (the **1999 Plan**) currently sets out the values, management objectives and key desired outcomes for activities in the Tasmanian Wilderness World Heritage Area.

The Tasmanian government has released a draft *Tasmanian Wilderness World Heritage Area Management Plan 2015* (the **2015 Draft**) for public comment. This paper briefly outlines some of the key changes proposed by the 2015 Draft and the process for finalising the review of the management plan.

ZONES	
1999 Plan	2015 Draft
<ul style="list-style-type: none"> ■ Visitor Services ■ Recreation ■ Self-Reliant Recreation ■ Wilderness 	<ul style="list-style-type: none"> ■ Visitor Services ■ Recreation ■ Self-Reliant Recreation ■ Remote Recreation

VALUES	
1999 Plan	2015 Draft
Detailed overview of the World Heritage and other natural and cultural values	<p>Detailed overview of the Cultural, Natural and Socio-Economic values of the TWWHA.</p> <p>The 2015 Draft notes that a Statement of Outstanding Universal Value will be presented to the World Heritage Committee for approval at its next meeting in June 2015. The Statement will be available “from mid February 2015” on the Department of Environment website.</p>

ABORIGINAL HERITAGE	
1999 Plan	2015 Draft
<p>Provides for management of the TWWHA to “recognise the rights, and take into account the interests, of Australia’s indigenous peoples.”</p> <p>Objective 8: Identify, protect, conserve and, where appropriate, present Aboriginal values of WHA in partnership with the Aboriginal community</p>	<p>Stronger statements regarding the significance of cultural heritage values and the need for effective co-management arrangements.</p> <p>In a recent speech, the Premier also indicated the possibility that some areas may be handed back to the Aboriginal community, however no detailed negotiations have taken place to date.</p> <p>Aboriginal Land is no subject to the provisions of the TWWHA Management Plan.</p>
<p>Note: The World Heritage Committee has previously requested that the government assess the cultural heritage values of the 2013 extension, in collaboration with the Tasmanian Aboriginal community, with a view to having the area listed for its cultural heritage OUVs in addition to its natural values.</p>	

DISCLAIMER

This document is for information purposes only and is not legal advice. For advice about a specific issue, please contact EDO Tasmania on 6223 2770 or edotas@edo.org.au

WILDERNESS	
1999 Plan	2015 Draft
<p><i>Wilderness</i> is defined as an area that is, or can be restored to be:</p> <ul style="list-style-type: none"> ■ of sufficient size to enable the long-term protection of its natural systems and biological diversity ■ substantially undisturbed by colonial and modern technological society ■ remote at its core from points of mechanised access and other evidence of colonial and modern technological society <p>The 1999 Plan states:</p> <p>"Wilderness is one of the primary ways in which the area's WH and other natural and cultural values are managed, protected and conserved... "To be able to assess the impact of new proposals on wilderness quality is a key requirement of management (from both a public accountability and an environmental impact viewpoint)."</p>	<p>The 2015 Draft states that the change in name from "Wilderness Zone" is "a measure of respect for the perspective of Tasmanian Aboriginal people" concerned that the term 'wilderness' denies their prior occupation and ongoing cultural use of these areas.</p> <p>The 2015 Draft provides the views of members of the Tasmanian Aboriginal community in relation to this tension.</p> <p>The 2015 Draft does not include protection of wilderness quality as a key management objective.</p>

TOURISM ACTIVITIES	
1999 Plan	2015 Draft
<p>Allows for tourist development, including accommodation in the Visitor Services and Recreation Zones.</p> <p>Preference for development outside the TWWHA, or in already disturbed areas.</p> <p>"Much of the experience sought by visitors to the WHA and marketed by the tourism industry is based on the area's wilderness quality. To maintain this, it is important that accommodation has minimal impact on wilderness quality and the WH and other natural and cultural values of the WHA." (p132)</p>	<p>"Accommodation and associated infrastructure for commercial tourism operations" is proposed to be permitted in all zones, subject to a lease / licence issued by the Minister.</p> <p>The process and criteria for approval of tourism proposals is unclear (see below).</p> <p>The 2015 Draft provides (at p66):</p> <p>"Regardless of anything else in this plan, buildings, within the meaning of the NPRMA, may be erected in national parks, State reserves, historic sites, game reserves, conservation areas, regional reserves, and nature recreation areas where that building is:</p> <ul style="list-style-type: none"> ■ A building already appurtenant to a building already on the land; or ■ A building that is intended to be used primarily for providing: <ul style="list-style-type: none"> • tourist accommodation or accommodation for people resorting to that land; or • facilities and conveniences for people resorting to that land."

FORESTRY	
1999 Plan	2015 Draft
<p>Allows salvage of Huon Pine driftwood only</p> <p>Forestry Tasmania must consult with Parks and Wildlife in relation to management of forest reserves within or adjacent to the TWWHA.</p>	<p>“Extraction of special species timber” is permitted in regional reserves and conservation areas in all Zones except Visitor Services. Areas within the TWWHA that are regional reserves and conservation areas include most of the 2013 extension areas, along with a range of other areas within the existing TWWHA (see pp20-22).</p> <p>Clause 3.6.2 provides that extraction proposals will “be considered through the RAA process and any other assessment and approval process or applicable legislative process.” This includes:</p> <ul style="list-style-type: none"> ■ A forest practices plan under the <i>Forest Practices Act 1985</i> ■ Approval from the Crown Land Minister under the <i>Forestry (Rebuilding the Forest Industry) Act 2014</i>. Approval cannot be granted until 25 September 2017 and only if the Minister is satisfied that the harvesting is consistent with the Special Species Management Plan (which has yet to be developed) and that sufficient quantities are not available outside reserved coupes <p>The 2015 Draft will not apply to Potential Future Forest Production Land or Permanent Timber Production Zone land under the <i>Forestry (Rebuilding the Forest Industry) Act 2014</i>.</p>
<p>Note: The exemption for RFA forestry activities under the EPBC Act does <u>not</u> apply in World Heritage areas. Therefore, the Commonwealth Minister remains responsible for assessing any proposed development or logging activity with the potential to significantly impact on the World Heritage values of the TWWHA.</p>	

ASSESSMENT PROCESS	
1999 Plan	2015 Draft
<p>Sets out a detailed process for assessment of Major Impact Proposals, requiring public consultation and advice from the National Parks and Wildlife Advisory Committee.</p>	<p>The 2015 Draft refers to external mechanisms (e.g. Reserve Activity Assessments and the planning process under the <i>Land Use Planning and Approvals Act 1993</i>) for the assessment of development proposals within the TWWHA. These processes are set out below.</p> <p>However, the Statutory Powers provisions of the 2015 Draft also refer to proposed amendments to the <i>National Parks and Reserves Management Act 2002</i> which would give the Director of Parks and Wildlife greater powers to approve</p> <p>Details in relation to these proposed changes <u>have not been released</u>, so the extent of the Director’s intended powers is not clear.</p>

Development approvals

Under current legislation, a development in the TWWHA is likely to need the following:

- A positive Reserve Activity Assessment (**RAA**) by PWS – this is not a statutory process. The internal guidelines for RAAs sets out the various levels of assessment, ranging from a simple desktop analysis to a more detailed environmental impact assessment (a “Level 4 RAA”) which would provide for public comment. As this is essentially an internal administrative process by which the State government, as land manager, decides whether to give consent to a development application being made, it remains unclear whether it is intended to amend LUPAA to exempt from further assessment any development that has received a positive RAA.

Unless changes are made, developments in TWWHA will require a planning permit under LUPAA even if a positive RAA is obtained (see below).

While it is not clear, the current EOI process (also not provided for in legislation) is likely to replace the RAA process for the selected projects – that is, a project which is selected by the Coordinator General is likely to be taken to have received a positive RAA and consent to proceed to the application stage. The Minister has repeatedly stated that such developments will still be subject to “normal planning processes”.

AND

- A planning permit under LUPAA – determined by the local council and, if the impacts trigger the Level 2 process, the EPA. There will generally be opportunities for public involvement in the assessment process, and approvals may be challenged in the Resource Management and Planning Appeal Tribunal by any person who made a representation.

OR

- If a project is declared to be a project of State or regional significance, approval from the Minister or the Planning Commission, depending on the circumstances.

AND

- Approval under the EPBC Act where the activity is likely to have a significant impact on the World heritage values of the TWWHA.

However, the need to obtain Commonwealth approval *may* be removed in future if:

- The bilateral approval agreement (one-stop shop) policy proceeds; and
- A project in the TWWHA is declared to be a project of regional significance or project of State significance. In that case, the approval by the Minister / Commission will be taken to be sufficient to satisfy the requirements of the EPBC Act.

Process for finalising the management plan

- **Public consultation on the draft** – open until 22 March 2015
- **Director of National Parks and Wildlife to review the representations and prepare a report to the Planning Commission.**

The report may be prepared within 30 days of 22 March 2015, unless the Minister allows a longer period. In practice it is very likely that the reporting period will be extended by several months (particularly given the likely volume of representations).

The report will be published online when it is submitted to the Commission.

- **Planning Commission will review the representations and report, and may hold a hearing.**

The Commission must decide whether to hold a hearing within 21 days of receiving the Director's report (unless the Minister agrees to a longer period). There are no criteria for deciding when to hold a hearing. The Minister has no official role in the decision, but would undoubtedly be able to influence the Commission.

A public hearing was held in relation to previous amendments to the TWWHA Management Plan and it is likely that, given the level of public interest, a hearing will be held. However, there is no legislative requirement for this to happen.

If held, the Commission can decide the format for the hearing – any person who made a representation may be invited to appear, or selected individuals / groups only may be invited to clarify issues raised in their representation.

- **Planning Commission makes recommendations to the Minister**

This recommendations report may be delivered within a period agreed by the Minister – again, the period allowed will depend on the volume of representations, the hearing process etc.

- **Minister prepares final management plan for approval**

The Minister is to consider the Commission's report, all representations, and the management objectives for the reserve. The final management plan does not need to be consistent with the Commission's recommendations, and may be amended as the Minister sees fit (having regard to the management objectives, and any direction from the Commonwealth Minister - see below).

- **Parliamentary approval**

The management plan will be tabled in both Houses of Parliament - there is no set time for this to occur. The only provisions of the management plan that require approval are those provisions which create or amend statutory powers (including provisions relating to how developments are approved).

The management plan will be taken to be approved if:

- Each house positively endorses the plan; **OR**
- No motion to disallow the plan is made within 5 sitting days of the plan being tabled; **OR**
- A motion to disallow the plan is made, but defeated.

If the statutory powers provisions of the management plan are NOT approved by either house of parliament, they cannot be given effect. There is no formal process for revision, but it is likely that the Minister would revise the management plan in light of the parliamentary debate and re-table the revised version, rather than commencing the entire review process again.

- **Governor sign off**

Once approved by both houses of parliament, the management plan will be given to the Governor for approval. In some circumstances, the Governor may approve the plan in advance of parliamentary approval, but the statutory powers provisions of the plan will not take effect until / unless they are approved by both Houses

Role of the Commonwealth

As a party to the World Heritage Convention, Australia (i.e the Federal govt) has an obligation to “ensure the identification, protection, conservation, presentation and transmission to future generations” World Heritage values situated in its territory and must “do all it can to the end, to the utmost of its own resources” (Article 4).

Therefore, the ultimate responsibility for ensuring that World Heritage values are adequately protected and conserved rests with the Federal govt.

Management plan

Where a World Heritage area is situated entirely within a State, there is no explicit requirement under the *Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)* for the Minister to “sign off” on the plan. However, the Minister has a role in ensuring that the management plan is adequate to ensure Australia meets its international obligations: Section 321 of the EPBC Act provides:

(2) The Commonwealth must use its best endeavours to ensure a plan for managing the property in a way that is not inconsistent with Australia’s obligations under the [World Heritage Convention](#) or the [Australian World Heritage management principles](#) is prepared and implemented in co-operation with the State or Territory.

Previously, this Commonwealth involvement has been through its role on various Committees, charged with reviewing the management plan. However, as there is currently no body with Commonwealth representation (following the abolition of the TWWHA Advisory Committee), it is not clear how the Commonwealth will “uses its best endeavours” to make sure the TWWHA Management plan meets the required standards. However, Minister Hunt has confirmed that he will liaise with the State government regarding the content of the 2015 Draft.

If the State government was seeking to have the TWWHA management plan formally accredited under the EPBC Act (that is, so that developments approved under the management plan would no longer also require Commonwealth approval – see below), the Commonwealth Minister would only be able to accredit the plan if satisfied that the requirements of EPBC Regulation 2B.01 are met. These include:

- The plan must have been developed in consultation with the community generally and particular interest groups (NB: the public comment period is sufficient to satisfy this requirement)
- Includes a description of the relevant world heritage values of the place
- State what must be done to ensure that the relevant World Heritage values are identified, conserved, protected, presented and transmitted to future generations and, if appropriate, rehabilitated
- Set out the means by which risk management of the property or place will be addressed
- provide for adequate assessment of the impacts on the relevant World Heritage values of any proposed actions provided for under the plan, or that may arise during the life of the plan
- Set out the assessment process for any activities that will impact on values
- Adopt the precautionary principle
- Set out the means by which the plan will prevent or minimise the degradation (including cumulative degradation) of the World Heritage values
- Prevent the approval of actions that will have an “unacceptable or unsustainable impact” on World Heritage values
- Set out mechanisms for monitoring, enforcement and reporting

The State government is NOT currently seeking accreditation. However, these criteria provide some indication of the issues the Commonwealth will consider in determining whether a management plan is consistent with the World Heritage Convention.