

Submission to - *Lake Malbena: the EPBC assessment of the proposed helicopter-accessed tourist accommodation proposal.*

**Meg Webb MLC
Independent Member for Nelson
October 2022**

19 October 2022

To Wild Drake Pty Ltd,

Public Comment on EPBC Referral:
Referral No: 2018/8177

This is a submission to the assessment of the proposed helicopter-accessed tourist accommodation proposal at Lake Malbena as a controlled action under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC referral no. 2018/8177).

As a multi-generational Tasmanian, and an elected representative to the Tasmanian Parliament, I hold a deep and keen interest in the integrity, health and considered custodianship of Tasmania's unique natural and cultural heritage. Further I am committed to the implementation of good governance principles, and the genuine inclusion of the Tasmanian community in decision-making processes surrounding their public land and heritage.

In that regard, I cannot support the proposed helicopter-accessed tourist accommodation proposal at Lake Malbena within our unique lutruwita / Tasmanian Wilderness World Heritage Area (TWWHA). This proposal risks serious negative impacts upon the biodiversity, natural and cultural values integral to the TWWHA, while also presenting a deeply flawed and inappropriate process which disenfranchises multiple sectors of the Tasmanian community, and particularly the Tasmanian Aboriginal community.

As such, this submission contends the proponent has not, and cannot, secure a viable social licence for this proposal.

This submission will elaborate below on the proposal's lack of social licence due to:

1. the fundamentally flawed and inappropriate process;
2. incompatibility with the recognised lutruwita/TWWHA natural and cultural values; and
3. concerns over the disenfranchisement of the community from control of, and access to, much-valued public spaces.

Background - Summary

Wild Drake's initial application for the helicopter accessed tourist accommodation proposal for Hall Island, Lake Malbena was through the Tasmanian Government's controversial Expressions of Interest process. Despite the perceived shortcomings of that EOI process, the proposal requires approval under both state and federal legislation, as well as the state Parks and Wildlife Service's non-statutory Reserve Activity Assessment (RAA).

- 2018 – The proposal was submitted to both the local council, the Central Highlands Council, and the Federal Environment Minister under the *Environmental Protection and Biodiversity Conservation Act 1999 (EPBC Act)*.
- 14 March 2018 - the Level 3 RAA process completed to Step 7 where it was signed off as 'endorsed for external assessment', but was withheld from the public.
- July 2018 – RAA finally made public when included in the additional information provided for the Federal Government assessment.
- 26 February 2019 - the Central Highlands Council voted to deny a development application planning permit for the proposal.
- 18 December 2019 - An appeal by the proponent against the Central Highlands Council rejection of a planning permit saw the Tasmanian Tribunal issue a permit with conditions.
- January 2020 - The Wilderness Society (Tasmania) filed proceedings appealing the Tribunal's decision in the Tasmanian Supreme Court which dismissed the appeal in July that year.
- 15 September 2021 – the Full Court of the Tasmanian Supreme Court found in favour of the Wilderness Society's appeal against the 2020 decision, revoking the Tribunal's 2019 permit.

The proposal also required assessment under the EPBC Act due to its location within the TWWHA. The initial process was to establish whether the proposal should be considered a 'controlled action' or not.

- 28 March 2018 - a valid referral was received by the then-Federal Environment Minister in accordance with section 68 of the *EPBC Act*.
- 31 August 2018 – following a public consultation process, a delegate of the then-Minister decided that the proposed action was not a controlled action under section 75 (1) of the *EPBC Act*, meaning the proposal did not require approval under that Act.
- 17 October 2018 - The Wilderness Society (Tasmania) commenced proceedings in the Federal Court of Australia seeking review of this decision.
- 4 December 2019 - following a hearing and publication of reasons, Justice Mortimer overturned the decision made on 31 August 2018.
- 16 September 2020 - then-Minister, the Hon. Sussan Ley, determined under section 75 of the *EPBC Act* that the proposed action is a controlled action and as such does require formal assessment under the Act, precipitating the current process according to the "assessment on preliminary documentation" process laid down by the *EPBC Act*.
- 18 November 2020 - then-Minister, the Hon. Sussan Ley, released her 'Statement of Reasons' for the September 2020 decision, which found '*that the impact on the world heritage values of the TWWHA from the use of helicopters is likely to be significant*'.

Despite withdrawing its appeal to the Tribunal in December 2021, meaning the Central Highlands Council's 2019 rejection of the DA 'stands', the proponent stated it still intends to seek national approvals under the EPBC Act as a controlled action – hence this current process.

Social Licence

“Social licence to operate” is not a new concept. Across a range of sectors including community advocates, NGOs, business, academics and policy makers, the concept is broadly recognised as the community support or otherwise, and the degree of that support, for a particular development proposal, project or particular company within a local region.

Although some may argue ‘social licence’ is contestable, intangible and fluid it is recognised as reflecting, and being determined by, local context. The perceived legitimacy of a particular project or broader industry is reliant upon whether the majority of the local community considers its impact upon local environment, economy, and social fabric reflects that local community’s social values – with the potential benefits outweigh risks?

Strong community sentiment has been expressed through state and federal assessment processes outlined in the above Background Summary, indicating a consistent withholding of social licence due to a clear perception the proposal is inconsistent with key social, environmental and local economic values.

The initial 2018 referral under the EPBC Act public consultation process received 1,822 submissions. In her Statement of Reasons, former Minister Sussan Ley MP noted that despite the high volume of submissions received, “no comments are supportive of the proposed action in its current form” (18 November 2020).

The Central Highlands Council received a similarly high number of submissions, totalling 1,346, in response to the proposal’s advertised Development Application process. Of the total submissions received, only three were in support of the proposal.

Significantly, in context of this latest round of submissions, it has been identified that credibility not only of the proponent but also of the assessment process is crucial: “having a strong social licence is about not only being seen to be doing the right thing; it’s about actually doing the right thing. It’s also about transparency. It’s important that government and industry approvals and processes are seen as fair” (H. Luke, Southern Cross University, published in the Conversation, March 2018).

Additional to the identified unacceptable risks to the TWWHA’s unique globally-recognised natural and cultural heritage values, the flawed and highly inappropriate historic and current processes are also inconsistent with community values and expectations of good governance principles implemented in the public interest. In this context, the procedural ‘short cuts’ in both the State government processes, such as the EOI mechanism, further undermines the credibility of both the proposal and the decision-making processes – making the achievement of social licence even more remote.

1. The fundamentally flawed and inappropriate process

Arguably, the assessment process for this proposal has been fundamentally flawed ever since it arose through the Tasmanian government’s controversial EOI process, facilitated by the quiet – and non-consulted – rezoning of Halls Island in the 2016 TWWHA Management Plan from ‘wilderness’, which prevented development, to ‘self-reliant recreation’.

That rezoning and EOI process basically guaranteed any proposal for Halls Island would be on a collision course with not only the community’s values and expectations regarding appropriate access to the TWWHA, but also the World Heritage Management values for which the TWWHA is formally listed. To some extent, this is corroborated by the judicial appeals consistently finding in favour of community opponents to the proposal.

Although many Tasmanian organisations and individuals argued for this proposal to be classified as a ‘controlled action’ under the EPBC Act, and therefore subject to environmental assessment, it is worth noting that for many, this is the third round of submissions they have provided; on a proposal which has had its local government DA rejected by council and has no current state approval applications underway.

Further, this latest 'assessment' process under the EPBC Act, has increased community concerns over the lack of transparency and fairness in what is a fundamentally flawed and inappropriate process. People have been, rightfully, shocked to discover that their submissions are to be sent to the proponent rather than to an independent expertise-based authority.

The proponent is then responsible for collating submissions received, and providing the federal environment agency a document including a "summary of the comments received and how those comments have been addressed". This is not independent, rigorous or expertise-based.

Instead, there is a clear perception of a conflict of interest in having the proponent receive submissions on their proposal, and then provide the decision-maker, the Minister, with a summary.

A process built around such an egregious conflict of interest is clearly going to undermine community trust and confidence, and undermines any sense of credibility.

This latest step provided for under the EPBC Act is both fundamentally flawed, and also compounds the legacy of inappropriate process decisions surrounding this proposal and the perception that private interests and profits have been prioritised over the public interest, and good, equitable governance.

2. Incompatibility with the recognised lutruwita/TWWHA natural and cultural values

lutruwita /Tasmanian Wilderness World Heritage Area (TWWHA) is unique in its status as the world's highest-rated World Heritage wilderness. The TWWHA is one of only two sites in the world to meet seven out of ten World Heritage criteria, including Aboriginal cultural and natural values recognised for their extraordinary global significance.

As stated above, the strong concerns over the potential and unacceptable impacts the proposal presents to the natural, wilderness, and cultural heritage values of Halls Island and the broader TWWHA have been thoroughly, and repeatedly, raised throughout a range of public consultation and judicial mechanisms since 2018.

Although I do not intend repeating those considered arguments presented previously and which are on the public record courtesy of previous consultation and submission processes, I do wish to emphasise a few key matters of consideration.

Aboriginal Heritage

The Tasmanian Aboriginal community has been unified in opposing this proposal. The area concerned is a significant cultural landscape containing rock art, tool artefacts and evidence of continued habitation since at least the end of the last ice age, 10-12,000 years ago.

The proponent has undertaken no significant consultation with the Tasmanian Aboriginal community in the seven years they have been pursuing this project.

The United Nations Educational, Scientific and Cultural Organisation (UNESCO) has been unequivocal in stating that no development should happen within the lutruwita/TWWHA without a "comprehensive cultural heritage assessment" having been completed over the TWWHA.

Not only has the Tasmanian government failed to complete this, they have barely begun - and this area has only had a 'desktop assessment' done, which is dubious at best and entirely disrespectful to the Tasmanian Aboriginal community.

Further, the recent *Australia State of the environment 2021* emphasises the need to provide greater recognition and empowerment of Indigenous land management practices:

“Indigenous people have cared for Country across generations for tens of thousands of years. With decreasing health of Country, Indigenous people continue to seek a larger role in managing its recovery back to health. Indigenous people seek greater participation in Australia’s environmental management system. Respectful use of Indigenous knowledge, recognition of Indigenous knowledge rights, and Indigenous and non-Indigenous knowledge systems working together will lead to positive change.” ([Overview: Key findings. In: Australia State of the environment 2021, Australian Government](#))

And also, *“Greater inclusion of Indigenous people, including in decision-making roles, to ensure that Indigenous rights are respected.”* ([Overview: Management approaches. In: Australia State of the environment 2021, Australian Government](#))

The current proposal is inconsistent with these recognised inclusive principles.

Wilderness Quality

The Wilderness Quality Assessment (WQA) made by the Tasmanian Parks and Wildlife Service states this proposal will ‘adversely affect’ 1150ha of high-quality wilderness and ‘somewhat affect’ a further 4000ha of high quality wilderness.

This is completely unacceptable erosion of the intrinsic value of a globally recognized public asset for the supposed benefit of a private interest.

National Parks are reserves created to protect areas of identified high natural and cultural value - to erode them so irresponsibly defies logic at a time when our natural world is under increasing threat, as has also been identified starkly in the *Australia State of the environment 2021 report*.

Further, under the EPBC Act, and as a signatory to the UNESCO World Heritage Convention, the federal government is responsible for ensuring the protection of World Heritage values. UNESCO also requires any development that impacts upon the World Heritage Area’s Outstanding Universal Values to be referred back to the World Heritage Committee for review.

As acknowledged by the former Federal Environment Minister’s 2020 Statement of Reasons, this proposal risks significant negative impact on the attributes of lutruwita/TWWHA that “embodies, manifests, shows, or contributes to the Outstanding Universal Value and/or integrity of the property, “ and as such must be considered fundamentally incompatible with, and inappropriate for, the TWWHA.

3. Concerns over the disenfranchisement of the community from control of, and access to, much-valued public spaces.

The proposed location for the helicopter-access tourism and accommodation development is Halls Island on Lake Malbena within lutruwita / Tasmania’s Walls of Jerusalem National Park.

This National Park location has previously been accessible to all Tasmanians and visitors (for the minimal price of the Parks access fee). However, the sudden exposure in 2018 that the state government had granted a secret 20 year “exclusive possession” lease over the entire island to the proponents has effectively privatised the site.

This is contrary to the position of UNESCO which states, “World Heritage sites belong to all the peoples of the world, irrespective of the territory on which they are located.”

It also sets a worrying and dangerous precedent for potential future incursions of private commercial interests into previously accessible and deeply-valued public places.

Social Values

The disturbing disenfranchisement of the Tasmanian community, and specifically the Tasmanian Aboriginal community from having a say over, and access to, these significant areas is unconscionable and untenable. This in itself, would prevent any meaningful social licence being achieved.

Many community members hold a direct connection with the immediate Halls Island /Lake Malbena location, and/or the broader Walls of Jerusalem National Park.

Bushwalking and fly fishing is a uniquely Tasmanian lifestyle, enjoyed by tens of thousands every year, in fact people have flocked to the area around Lake Malbena for at least seven decades on these endeavours. The attraction is simple - a peaceful, remote, pristine escape into a wild natural landscape. A landscape that sings with the voices of its original inhabitants, the palawa /pakana, along with the sounds of nature. The wind, water lapping on rocky shores of glacial lakes, the birds, the frogs and the buzz of insects.

The social values these connections reflect span cultural ties to the land, appreciation for its rare and scenic beauty, through to a range of nature-based recreational pursuits such as fly fishing. It is understandable that the community members now feel disenfranchised and sidelined from both the actual geographic location to which they once had direct access, as well as the decision-making and management processes to which it is subjected.

Further, I reiterate that helicopter tourism in such a fragile place is incompatible with the World Heritage Area Management Plan, as is the lack of transparent process, the flawed community consultation, and the flagrant disregard for Aboriginal cultural agency.

Helicopter tourism is anathema to all that is unique about the Tasmanian wilderness.

Economic Impact

It is my view this proposal will have a net negative impact on the Tasmanian economy both directly due to less visitation to the area concerned because of the impacts detailed in this submission and elsewhere but also longer term through brand damage.

Tasmania is the 'wilderness state' - we literally bank on that branding. Degrading the wilderness through tacky projects such as helicopter tourism damages our claim to that brand.

The Precautionary Principle

Tasmania is the envy of other international and national jurisdictions with its contiguous tracts of pristine wilderness and natural reserves, clean air and waters. Tasmania as a tourism 'product' has grown steadily in popularity for decades, and will continue to do so if managed sensibly with its core assets at the centre of its branding.

Conclusion

This proposal for helicopter accessed tourism and accommodation into the Walls of Jerusalem National Park of the TWWHA is clearly a project has been mired in secrecy and flawed, inappropriate process.

The 2020 Ministerial Statement of Reasons for determining the proposal to be a controlled action clearly states the range of serious risks the helicopter-accessed tourism project poses to key TWWHA values and protection criteria. The identified negative impacts risk corroding irreparably the very values for which this sensitive area has received global recognition.

The absence of any rigorous, independent, expertise-based environmental and cultural assessment of the proposal's immediate, short-term and long-term impacts, provides sound grounds for this inappropriate proposal to be rejected as incompatible with the natural and cultural values of the unique TWWHA, and also incompatible with the Tasmanian community's expressed social, recreational and local economic values.

Of equal importance is the principle of protecting in the public interest, our public spaces and public nature reserves. Privatising access to such special areas of public land benefitting private profit while alienating citizens is also incompatible with TWWHA management principles, and principles of good governance.

It's my view that for reasons detailed in this submission, this helicopter-accessed tourism proposal for Halls Island, Lake Malbena, must not proceed. It has been consistently and fiercely opposed by many community groups including Tasmanian Aboriginal representatives, organisations from trout lodges and bushwalking clubs to rafting communities, ecologists, bird watchers, hunters and anglers, to mention a few. Consistent feedback from this wide cross-section of community since 2018, makes it clear this project is deeply unpopular, and as such it will not secure social licence. The very notion of privatising a World Heritage listed property for private use is profoundly upsetting to many, many people, locally, nationally and globally.

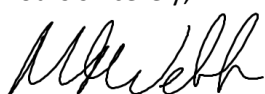
I formally lodge my objection to this helicopter-accessed tourism and accommodation proposal on the grounds it is fundamentally incompatible with the following:

- The *EPBC Act's* stated principles of ecological sustainable development;
- The World Heritage Convention obligations, to which Australia is a signatory;
- The Australian World Heritage management principles (specifically 3.04);
- The TWWHA Management Plan; and
- The principles of fair and good governance in the public interest.

The Federal Environment Minister should reject this proposal outright and also issue a clear statement that privatization of public World Heritage and national park assets is unacceptable policy.

Lastly, in recognition of the EPBC Act requirement that this specific submission must be provided to Wild Drake Pty Ltd as the proponent, I formally request as part of my submission, that this submission document is forwarded in its entirety to the federal government agency when the proponent provides the stipulated summary.

Yours sincerely,



Meg Webb MLC
Independent Member for Nelson