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Director of Parks and Wildlife

By email: twwhamanagementplan@dpiwwe.tas.gov.au

Dear Sir,

DRAFT TWWHA MANAGEMENT PLAN

EDO Tasmania is a non-profit community legal service providing specialist advice regarding environmental and planning law matters. We welcome the opportunity to comment on the Tasmanian Wilderness World Heritage Area (*TWWHA*) draft management plan (*the draft plan*).

A large number of submissions address concerns regarding the significant expansion of the commercial uses which the draft plan will allow within the TWWHA, and the impact such uses will have on the natural and cultural values of the TWWHA. Our submission does not seek to repeat that discussion, but we acknowledge the considerable, sustained efforts of individuals and conservation organisations that have protected the natural and cultural values which the draft plan now seeks to exploit for their tourism potential.

Instead, our submission focuses on a few key concerns within our areas of expertise:

- The flawed process by which the draft plan has been developed;
- The compatibility of extractive industries, forestry and mining, with the protection of world heritage values;
- The need to ensure that any management plan for the TWWHA covers all land within the listed World Heritage Area;
- The role of various responsible authorities in respect of managing activities within the TWWHA; and
- The assessment process for future developments (particularly, the opportunity for public participation in the assessment processes).

As a general comment, we strongly support co-management arrangements that genuinely respect the Tasmanian Aboriginal community and ensure that cultural heritage values are protected appropriately (in some cases, through inclusive management planning, in others through land hand-backs). However, we question whether the draft plan reflects such an approach. We commend the Minister for the recent commencement of roundtable discussions, but note that considerable work is required before the government can claim to have implemented respectful management arrangements. What is needed to achieve this must be determined by the Tasmanian Aboriginal community, but should include adoption of contemporary Aboriginal cultural heritage legislation to replace the archaic *Aboriginal Relics Act 1975* and mandate consideration of impacts on Aboriginal cultural heritage in planning and development decisions.

This is a brief submission only. We urge the government to encourage the Planning Commission to hold public hearings in respect of the draft plan, and would welcome the opportunity to expand on these concerns at any hearing.

Process for review of the management plan

The existing management plan has served as a reasonable management tool to protect the natural and cultural values of the TWWHA while allowing a range of appropriate activities to facilitate public engagement with the area.

Despite this, the plan is outdated and there is little question that it is in need of review. However, it is critical that the review be undertaken in a structured manner that properly identifies and addresses the management objectives for this internationally significant asset. Ad hoc policy development is not consistent with the objective of the Resource Management and Planning System (to which the *National Parks and Reserves Management Act 2002 (NPRMA)* is subject) to provide for “fair, orderly and sustainable use” of land.

We have a number of concerns regarding the process that has been followed, and its potential to compromise management of the TWWHA. These include:

■ ***No Statement of Outstanding Universal Values***

While the State government is not bound by the World Heritage Convention, the government is a signatory to the Australian World Heritage management principles and has committed to managing the World Heritage values of world heritage areas under its control. Since the abolition of the various co-management committees and councils for the TWWHA, the State government is principally responsible for ensuring that its management plans effectively protect and preserve the Outstanding Universal Values (***OUVs***) for properties within Tasmania.

Consistent with previous World Heritage Committee decisions, Australia is to submit a reviewed Statement of OUVs for its world heritage properties (including the TWWHA). To date, no final revised Statement of OUVs has been approved by the World Heritage Committee. The draft plan states that a draft Statement would be submitted to the Committee in February 2015, however this Statement has not been made publicly available.

In the absence of a clear articulation of OUVs, it is not possible to determine whether the proposed management plan is adequate to protect those values and to satisfy Australia’s obligations under the World Heritage Convention.

This is particularly true in relation to cultural heritage values. The draft plan purports to protect such values. However, there is no clear expression of those values, developed in consultation with the Tasmanian Aboriginal community, against which to assess the success of the draft plan in achieving its purported aim.

■ ***Expressions of Interest***

Significantly, running the Expressions of Interest process concurrently with the review of the management plan has undermined the rigour of the review. Any proposal for use or development in the TWWHA should be assessed against clear criteria in an approved management plan. The current review process for the draft plan is an appropriate forum for a public conversation about what those criteria should be – the outcome of this conversation should not be pre-judged.

It is clear that a number of the projects proposed through the EOI process would not be consistent with the existing management plan. Their acceptance for consideration by the government is indicative of an intention to implement the draft plan, irrespective of public comments received during the statutory consultation period. At the very least, it suggests that management policies may be influenced by tourism interests, rather than guided by the principal management objectives directed to protecting the natural and cultural heritage values for which the area attained its World heritage listing.

In this way, the EOI process is premature and jeopardises the fair and transparent assessment of the draft plan.

- ***Proposed legislative changes***

The draft plan also flags future legislative changes to the NPRMA, without providing clear details regarding such changes. This approach further undermines the transparency of the consultation process. The proposed amendments have the potential to alter the assessment process to which future development activities are subject, a matter which should be clearly understood when discussing any draft plan.

As discussed below, some confusion exists regarding the application of the *Land Use Planning and Approvals Act 1993* to use and development within reserved areas. A clear understanding of the application of the planning process is integral to the public's assessment of the draft plan and the rigour of the assessment any future development will be subject to, particularly given the Minister's repeated assurances that developments will be subject to "the normal planning process". If any legislative amendments are proposed to clarify the application of LUPAA, such amendments should be disclosed prior to the review of the draft plan.

- ***Subsequent policy development***

The draft plan refers to a wide range of management policies and strategies that are yet to be developed (such as the Tourism Master Plan, rehabilitation plans, communication strategies, biosecurity plans, walker safety plans and strategies to manage cultural heritage places and landscapes within the TWWHA).

Such plans are generally intended to be developed by bodies other than the Parks and Wildlife Service (and who are not bound by the same objectives as PWS), and will prevail over the general provisions of the management plan.

This ad hoc approach to planning threatens to fragment management decisions and compromise the overall management of natural and cultural values within the TWWHA by the principal management authority, Parks and Wildlife Service.

Instead, various strategies should have been developed to inform the draft plan, and implemented by explicitly setting out key actions in the management plan itself. Deferring such decisions to external bodies after the management plan has been finalised is neither orderly, nor sustainable.

- ***Exclusion of Future Potential Production Forest land***

Section 18 of the *Nature Conservation Act 2002* provides that Future Potential Forest Production Land (***FPPF land***), as defined under the *Forestry (Rebuilding the Forest Industry) Act 2014*, cannot be reserved in any reserve class without approval from both Houses of Parliament. As a management plan may only regulate development on reserved land, the draft Plan will not apply to any FPPF land situated within the TWWHA. The draft plan estimates that this amounts to approximately 25,000 ha of land, adhered to the TWWHA as part of the 2013 extension.

Consistent with the Operational Guidelines for the World Heritage Convention, World Heritage Areas should be managed under the terms of an approved management plan. The 2013 extension of the TWWHA was subject to comprehensive review by the World Heritage Committee in 2013, and resoundingly endorsed in 2014 when the World Heritage Committee rejected the application to exclude some 170,000ha of that extension.

It is therefore clear that the areas covered by the FPPF land within the TWWHA are considered to have, or contribute to, World Heritage values. The strategic management of activities within the TWWHA that may compromise those values relies on the entire area being managed under a consistent framework. The exclusion of the FPPF land area from the management plan will jeopardise the coordinated management of impacts and protection of world heritage values.

The State government should introduce a proclamation to allow the FPPF land to be included in the management plan.

We submit that the appropriate approach to the review ought to have been:

1. Comprehensive consultation with Tasmanian Aboriginal communities, as directed by the World Heritage Committee in the past and for which national and State funding has been allocated;
2. Finalisation of the Statement of Outstanding Universal Values;
3. Introduction of any legislative changes intended to affect the manner in which activities in the TWWHA are assessed and managed;
4. Proclamation allowing Future Potential Production Forest land to be included in the management plan;
5. Development of key strategies to support and inform the draft plan, including cultural heritage policies, tourism master plan, biosecurity codes and walking track strategies;
6. Release of the draft plan, and any supporting strategies or policies for comment;
7. Finalisation of the draft plan, having regard to all public comments;
8. Inviting expressions of interest for tourism development that is consistent with the revised management plan.

It is regrettable that the draft plan has been released before key issues which should influence the content of the plan, and assist in the assessment of whether the draft plan achieves its objectives, have been finalised (or, at least, made public). The concurrent EOI process has further confused the issues and threatened to compromise an objective assessment of appropriate management policies for the TWWHA.

Extractive industries

The draft plan explicitly provides that special species timber harvesting will be allowed in all zones (other than Visitor Services) in regional reserves and conservation areas within the TWWHA.

Given previous statements from the World Heritage Committee regarding forestry activities in the TWWHA, the 2014 refusal to amend the boundaries to exclude areas desired for forestry activities, and the current Conservation Agreement between the Federal and the Tasmanian governments seeking to protect areas adjacent to the TWWHA from forestry to avoid impacts on world heritage values, it is clear that forestry is considered incompatible with World Heritage values.

Contrary to the existing management plan, which expressly restricts mining (other than in the Adamsfield Conservation Area), the draft plan does not explicitly deal with mining. Instead, the government will rely on:

- the management objectives of Conservation Areas and Regional Reserves; and
- the provisions of the Mineral Exploration Code of Practice, which purports to restrict mining on reserve areas other than Regional Reserves and Conservation Areas. Notably, the Code is not statutory.

The IUCN's statement regarding mining in World Heritage Areas, states:

The World Heritage Committee, which is the decision making body of the World Heritage Convention, has long held the position that mineral and oil/gas exploration and exploitation is incompatible with World Heritage status. IUCN's position is that mineral and oil/gas exploration and exploitation (including associated infrastructure and activities) is incompatible with the Outstanding Universal Value of World Heritage Sites and should not be permitted within these sites. Mineral and oil/gas exploration and exploitation outside World Heritage Sites should not, under any circumstances, have negative impacts on their Outstanding Universal Value.

Irrespective of whether it is appropriate to allow mining and forestry activities in Regional Reserves and Conservation Areas (incidentally, we do not believe this is appropriate), we submit that different rules must apply where those reserves are also World Heritage areas and National Heritage places. World Heritage and National heritage objectives should prevail over the terms of the underlying tenure, in recognition of their national and international significance.

Section 27 of the NPRMA explicitly provides for management plans to nominate any management objectives for a reserve class that will not apply to the area. Therefore, there is nothing to prevent the management plan from restricting the application of management objectives for Regional Reserves and Conservation Areas that would otherwise allow for exploitation of natural resources.

We submit that forestry and mining activities should be prohibited throughout the TWWHA, and the management plan should explicitly implement such a restriction.

Statutory powers

The Statutory Powers provisions of the draft plan refer to amendments to the NPRMA which will allow the Director to issue permits for the exercise of statutory powers in respect of activities in reserves, and to impose conditions on the exercise of such powers.

We understand that the purpose of the amending legislation is to address a concern that statutory powers are currently unable to be conditionally authorised. To that extent, we support the proposed amendment to give the Director powers to impose conditions on how such powers are exercised, to better protect natural and cultural values of reserved areas.

However, we strongly object to the draft plan being released in advance of clear details of the proposed amendments. In the absence of these details, it is not possible to ascertain the extent of the changes that may be introduced by the amendments or the additional powers that may be given to the Director.

In particular, while we understand the advantage of the proposed approach in respect of entities such as Hydro Tasmania and TasNetworks, we would object to such permits being issued to limit or otherwise affect the operation of statutory powers under the *Threatened Species Protection Act 1995* or the *Land Use Planning and Approvals Act 1993* in the TWWHA (subject to the discussion below).

Assessment process

Section 35 of the NPRMA has long created confusion in respect of any limitations it places on the operation of the *Land Use Planning and Approvals Act 1993* (*LUPAA*). It remains EDO Tasmania's position that LUPAA continues to apply and may require permits to be issued in respect of development on reserved land (depending on the terms of individual planning schemes).

It is critical that this matter is resolved, to clarify the assessment process to which any future development proposals (included those under the EOI process) are subject. We strongly support LUPAA's continued application to such developments and urge the government to clarify this through amendments to the draft plan to state that statutory powers under LUPAA may be exercised in the TWWHA. This is particularly important given the broad range of uses that are made discretionary by the draft plan.

Any amendments which are contrary to that outcome would be inconsistent with the RMPS and contradict repeated assurances by Minister Groom that EOI proposals will be subject to "the normal planning process".

The draft plan relies heavily on the Reserve Activity Assessment process. Currently, many interim planning schemes provide that use and development on reserved land will be permitted provided a satisfactory Reserve Activity Assessment has been completed. Critically, this means that a use or development that is subject to a positive RAA will not generally be subject to public comment or provide for third party rights of appeal (even where LUPAA applies). It does, however, mean that planning authorities retain some involvement in the permitting process, and powers for monitoring and enforcement.

Clause 98 of the Operational Guidelines for the World Heritage Convention provides:

98. Legislative and regulatory measures at national and local levels should assure the survival of the property and its protection against development and change that might negatively impact the Outstanding Universal Value, or the integrity and/or authenticity of the property. States Parties should also assure the full and effective implementation of such measures.

We are concerned that the RAA process is currently completely non-statutory and unenforceable. While there are guidelines available for the application of the process and to guide the selection of the appropriate level of assessment, there is nothing to require that a particular process be followed or that public comment be invited (or considered).


As a result, there are no clear legislative criteria for the assessment of most development in the TWWHA, and no guarantee that public participation will be invited in respect of even significant developments. This is an important departure from the current management plan, and inconsistent with the RMPS objectives encouraging public participation in resource management decisions. It is also inconsistent with the Operational Guidelines requiring clear legislative measures to protect the TWWHA against potentially damaging developments.

Importantly, if it is the government's view that LUPAA does not apply, the RAA is also effectively delegated responsibility for assessing strategic infrastructure and regional concerns (though, there is no guarantee that such matters would be considered). The PWS does not have the resources, the expertise or the statutory powers to properly assess these matters. Furthermore, the absence of planning permits will complicate monitoring and enforcement. This compounds the need for clarity regarding the interaction of LUPAA and the NPRMA.

For these reasons, we urge the government to amend the draft plan to confirm the assessment process, the criteria for assessment, the requirement for public involvement and the enforcement provisions. Without this clarification, it is not appropriate to adopt a management plan that lacks any legislative basis for the comprehensive, transparent assessment of developments that may detract from the natural and cultural heritage values of the TWWHA.

Please do not hesitate to contact me on **6223 2770** if you wish to discuss any matter raised in this submission.

Kind regards,



Jess Feehely
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