



Statement of reasons for a decision on controlled action under the *Environment Protection and Biodiversity Conservation Act 1999*

I, the Honourable SUSSAN LEY MP, Minister for the Environment, provide the following statement of reasons for my decision of 16 September 2020, under section 75 of the *Environment Protection and Biodiversity Conservation Act 1999* (**EPBC Act**), that the **proposed action** by Wild Drake Pty Ltd (the **proponent**) to construct and operate a small-scale tourist operation, including a standing camp, on Halls Island, Lake Malbena and helicopter access (EPBC 2018/8177), is a controlled action under the EPBC Act and the controlling provisions are sections 12, 15A, 15B, 15C, 18 and 18A.

LEGISLATION

1. Relevant excerpts of the EPBC Act are set out in Annexure A.

DESCRIPTION OF THE PROPOSED ACTION

2. The proposed action is to construct and operate a small-scale tourist operation, including a standing camp, on Halls Island, Lake Malbena, approximately 20 km northeast of Derwent Bridge, and to access the camp via helicopter.
3. Wild Drake Pty Ltd proposes to take six tourists per trip, via helicopter from Derwent Bridge, to Halls Island. There will be a maximum of 30 trips per year.
4. Halls Island is within the Walls of Jerusalem National Park in the Meander Valley region of the Tasmanian Wilderness World Heritage Area (**TWWHA**). The national park border runs along the adjacent edge of Lake Malbena and the proposed helicopter landing site is on the mainland opposite Lake Malbena, in the TWWHA Central Highlands region and outside of the national park. Visitors will walk approximately 100 m from the helipad to the edge of Lake Malbena and will cross the lake in a row boat to Halls Island.
5. The original referral documentation refers to 'Stage 2' activities requiring additional State assessment and approval. Stage 2 was said to comprise:
 - a walking route to Mt Oana
 - a walking route to an Aboriginal Heritage site, and cultural interpretation activities at that site, subject to further engagement with the Aboriginal Heritage Council and Aboriginal communities.
 - other additional walking routes.
6. On 7 January 2020, the proponent advised the Department that the referral does not include these Stage 2 activities, and that these potential future activities have not progressed.

DESCRIPTION OF THE ENVIRONMENT

7. Halls Island, an area of approximately 10 ha, is located within Lake Malbena, which is one of many lakes in the high alpine plateau area of the TWWHA. Vegetation comprises *Eucalyptus subcrenulata* forest and woodland (7.8 ha), highland low rainforest and scrub (1.18 ha), lichen lithosphere (0.18 ha), *Athrotaxis selaginoides* rainforest (0.03 ha) and *Sphagnum* peatland (0.6 ha). The *Sphagnum* peatland meets the definition for the

EPBC Act listed endangered Alpine Sphagnum Bogs and Associated Fens Threatened Ecological Community (**TEC**).

8. There is an existing small wooden hut (to remain) on the island, built in 1954. This was used by the previous leaseholder and more recently by bushwalkers. The island has areas of level, exposed sheetrock and the standing camp structures are proposed to be located within this area. There is a natural sheetrock jetty that will be used as the boat jetty. The proposed helipad is to be located on or nearby sheetrock on the adjacent mainland. There are also small patches of the TEC near the proposed helipad site.
9. The Tasmanian Wilderness World Heritage Area Management Plan (2016) (**TWWHA Management Plan**) has been developed in accordance with the *Tasmanian National Parks and Reserve Management Act* (2002) and to meet the requirements of the EPBC Act with respect to management plans for World and National Heritage properties. The TWWHA Management Plan sets out what uses may occur within the TWWHA. It manages activities according to four area Management Zones; Visitor Service, Recreation, Self-Reliant Recreation (**SRRZ**) and Wilderness. The proposed action area is located within the SRRZ. Activities allowable within the SRRZ include commercial aircraft landing, bushwalking, camping, commercial tourism, standing camp accommodation, kayaking and non-motorised vessels.

BACKGROUND

EPBC Act referral and decision-making process

10. On 28 March 2018, a valid referral was received in accordance with section 68 of the EPBC Act.
11. On 24 April 2018, a delegate of the then Minister decided, under section 76(1) of the EPBC Act, to suspend the statutory timeframe for making a decision under section 75 of the EPBC Act to request additional information from the proponent.
12. On 26 June 2018, the proponent provided a response to the additional information request which met the Department's requirements, restarting the referral decision time period under the EPBC Act.
13. On 31 August 2018, a delegate of the then Minister decided that the proposed action was not a controlled action under section 75(1) of the EPBC Act. On 17 October 2018, The Wilderness Society (Tasmania) Inc commenced proceedings in the Federal Court of Australia seeking review of this decision. On 4 December 2019, following a hearing and publication of reasons, Justice Mortimer made orders by consent setting aside the decision made on 31 August 2018.
14. On 5 December 2019, the Environmental Defenders Office (**EDO**) wrote to me on behalf of The Wilderness Society (Tasmania) Inc to provide a submission and further information for my consideration in remaking the decision. This further information comprised expert statements filed in a proceeding before the Tasmanian Resource Management and Planning Appeal Tribunal (**Tasmanian Tribunal**) concerning the proposed action (see further below).
15. On 7 January 2020, the proponent provided the expert evidence it filed in the Tasmanian Tribunal proceedings in response to the submission from the EDO. The proponent subsequently provided further information about the proposed action on 7 February, 24 February, 2 April and 5 June 2020. This information included a document dated 4 March 2020 and entitled 'Wilderness Quality Assessment' which was prepared by the Tasmanian Parks and Wildlife Services (**PWS**).

16. On 16 September 2020, I decided to accept the referral under section 74A of the EPBC Act, and made a decision in accordance with section 75 of the EPBC Act that the proposed action is a controlled action.

State and local government assessment process

17. The PWS is undertaking a 'Reserve Activity Assessment' (**RAA**) of the proposed action. The RAA process is the system PWS uses to assess whether activities proposed on PWS-managed land are environmentally, socially and economically acceptable. Undertaking an RAA is a condition of the proponent's lease over Halls Island.
18. The RAA has no status under the EPBC Act, and the RAA process requires referral of the action under the EPBC Act. The RAA process will be finalised after the EPBC Act approval decision.
19. The proponent applied for a planning permit through the Central Highlands Council Development Application process and in February 2019 the Central Highlands Council refused to grant a permit. This decision was appealed by the proponent in the Tasmanian Tribunal. On 21 October 2019, that Tribunal ruled that the development could proceed, and on 18 December 2019 the Tribunal issued a permit with conditions.
20. In January 2020, The Wilderness Society (Tasmania) Inc filed proceedings appealing the Tribunal's decision in the Tasmanian Supreme Court and in July 2020, the Tasmanian Supreme Court dismissed the appeal. I understand that The Wilderness Society (Tasmania) Inc has filed an application to appeal this decision to the Full Court of the Tasmanian Supreme Court.

MATERIAL OR EVIDENCE ON WHICH MY FINDINGS ARE BASED

Recommendation brief

21. In making my decision, I took into account a recommendation brief prepared by officers of the Department, which had the following attachments:
- the referral documentation and attachments that were submitted in accordance with section 68 of the EPBC Act
 - decision notice
 - letters to the proponent and other relevant parties
 - the additional information provided by the proponent in accordance with section 76 of the EPBC Act, and following setting aside of 31 August 2018 decision
 - the Environmental Reporting Tool (**ERT**) reports dated May 2020
 - public comments (refer below for more detail)
 - Ministerial comments (refer below for more detail)
 - TWWHA Management Plan
 - World Heritage Management Principles
 - the *Environment Protection and Biodiversity Conservation Act 1999 (Cth) Policy Statement: Staged Developments – Split referrals: Section 74A of the EPBC Act*.
 - Tasmanian PWS Fly Neighbourly Advice

- advice from Heritage Branch dated 8 May 2020
- fee schedule (with justifications).

Public comments

22. In accordance with section 74(3) of the EPBC Act, the referral was published on the Department's website on 29 March 2018 and public comments were invited for a period of 10 business days until 17 April 2018. Fifty public comments were received on the referral during the public comment period, and 4 public comments were received after the public comment period. These 4 public comments were treated as if they were made within the public comment period and I have considered the 54 public comments in the course of making this decision.
23. No comments are supportive of the proposed action in its current form. Many of the submissions raised issues relating to State Government regulatory processes, Stage 2 activities, the revision of the TWWHA Management Plan and other matters that are outside the scope of this recommendation, such as continuing access to the existing hut on Halls Island for bushwalkers, concern that approving the proposed action would be contrary to the public's concept of wilderness and general opposition to more commercial tourist operations within the TWWHA. Key matters relevant to matters of national environmental significance raised in submissions were:
- helicopter noise
 - impacts on the Wedge-tailed Eagle from the helicopter flight path
 - potential increased risk of fire
 - damage to the sensitive bogs and vegetation from trampling, construction of infrastructure and the helipad
 - erosion from the boat landing site
 - impacts on physical wilderness values
 - impacts from the standing camp to visual amenity and undisturbed nature of the environment; and
 - impacts to aboriginal cultural heritage – mostly relating to Stage 2 (not referred).
24. The additional information provided by the proponent was published on the Department's website on 5 July 2018 and public comments were invited until 19 July 2018. Eight hundred and eighty-six submissions were received, of which 808 were 'campaign' submissions based on an email template. The matters raised were substantially the same as in the initial comment period.
25. On 5 December 2019, the EDO wrote to me on behalf of The Wilderness Society (Tasmania) Inc to provide a further submission and additional information for my consideration. On 7 January 2020, the proponent provided additional information in response to the submission from the EDO.
26. On 29 January 2020, the Hobart Walking Club provided a further 'submission' on the referral, which reiterates the concerns raised in the submission it made during the first public comment period.
27. In the period between March and August 2020 a further campaign resulted in approximately 330 submissions made in opposition to the proposal. While these were not received within

a public comment period, I have considered them in the course of making this decision. They do not raise new matters beyond those raised in the initial public comment period.

28. Further discussion of issues raised in the public submissions is included in my findings below.

Comments from Commonwealth Ministers

29. On 29 March 2018, in accordance with section 74(1) of the EPBC Act, comments on the referral were invited from Senator the Hon Nigel Scullion, former Minister for Indigenous Affairs. No comments were received in response to that invitation.

Comments from State Ministers

30. On 29 March 2018, in accordance with section 74(2) of the EPBC Act, the following State ministerial delegates were invited to comment on the referral:
- a. Wes Ford, Director, Environmental Protection Authority, as delegated contact for the then Tasmanian Minister for Environment, the Hon Elise Archer MP, and
 - b. Kathryn Lambert, Tasmanian Department of Primary Industries, Parks, Water and Environment (**DPIPWE**), as delegated contact for the then Tasmanian Minister for Environment, The Hon Elise Archer MP.
31. On 6 April 2018, Ms Alice Holeywell-Jones, (Acting General Manager, Natural and Cultural Heritage) responded on behalf of DPIPWE. The key matters raised were:
- a. the proposed management measures should be sufficient to minimise impacts from the increased number of visitors to the Halls Island
 - b. it is recommended to be clearly stated that no helicopter refuelling operations or fuel storage be undertaken on site
 - c. no sewage, grey water and sediment be allowed to enter the lake or streams
 - d. where possible, helicopters do not fly within 1 km line-of-sight of known eagles' nests during the breeding season (June to January inclusive) and specifically that tours do not include a 'viewing' of a nest, and
 - e. the proponent should implement a biosecurity hygiene plan.
32. On 9 April 2018, Mr Ford responded and noted that he did not intend to provide any comment on the referral and the referral would not be assessed under the bilateral agreement between the Tasmanian and Australian governments.

FINDINGS ON MATERIAL QUESTIONS OF FACT

Section 74A

33. Before determining whether the proposed action is a controlled action, I considered whether the proposed action is a component of a larger action the proponent proposes to take, and if so, whether I should reject the referral of the proposed action under section 74A of the EPBC Act.
34. I accepted the Department's assessment that because the Stage 2 activities may go ahead at some point in the future, the referred action (construction and operation of the standing camp) and the activities described as Stage 2 comprise a larger action proposed to be undertaken by the same person.

35. Consistently with the *Policy Statement Staged Development – Split referrals: Section 74A of the EPBC Act*, I decided not to refuse to accept the referral under section 74A, because splitting the project does not prejudice the achievement of the objects of the EPBC Act. I came to this view on the basis that:
- a. The proposed Stage 2 activities are presently merely hypothetical, and would require separate authorisation under both State legislation and the EPBC Act.
 - b. There could accordingly be a significant delay between completion of the referred action and commencement of the Stage 2 Activities, if they proceed at all.
 - c. The referred action is a standalone action, and is not dependent on Stage 2, and the Stage 2 activities as described in the referral would be undertaken outside the footprint of the referred area.
36. Written notice of my decision to accept the referral was provided to the proponent on 16 September 2020 in accordance with section 74A(4).

Protected matters that are controlling provisions

37. In deciding whether the proposed action is a controlled action, and which provisions of Part 3 are controlling provisions for the action, I considered all adverse impacts that the proposed action has or will have, or is likely to have, on matters protected under Part 3 of the EPBC Act. I did not consider any beneficial impacts that the proposed action has or will have, or is likely to have, on matters protected under Part 3 of the EPBC Act.

Listed threatened species and communities (s18 & s18A)

Tasmanian Wedge-tailed Eagle (*Aquila audax fleayi*) – Endangered

38. The Tasmanian Wedge-tailed Eagle (*Aquila audax fleayi*), is endemic to Tasmania and is known to occur in all habitats throughout the state. A population decline is inferred due to loss of nesting habitat, nest disturbance from land clearance and other inappropriate land management practices and from unnatural mortality, including persecution. Further information can be found in the Threatened Tasmanian Eagles Recovery Plan: 2006-2010 at <http://www.environment.gov.au/resource/threatened-tasmanian-eagles-recovery-plan-2006-2010>. There is no listing advice or Approved Conservation Advice for the species.
39. The locations of most active Wedge-tailed Eagle nests are known and recorded by DPIPWE. Mapping included in the referral indicates known nesting sites approximately 2 km from Halls Island, and 4 km from the proposed helicopter flight route.
40. The Threatened Tasmanian Eagles Recovery Plan (the Plan) identifies nest disturbance as a threat affecting eagle species in Tasmania. The Plan does not specifically identify management actions for helicopter flights, but does recommend implementing breeding season buffers of 500 m and 1000 m in line-of-sight to protect nests from potential disturbance.
41. The helicopter flight from Derwent Bridge to the proposed action area is approximately 11 minutes one way. It is proposed that helicopters be used to:
- transport materials to the proposed action area, using slings to deposit and collect goods
 - maintain and re-supply the standing camp once it is operational, again using slings – approximately 8 trips taking 4 hours per year

- transport visitors to and from the standing camp from Derwent Bridge – up to 120 return trips per year (four return flights for each of the 30 bookings), primarily between November and May, totalling approximately 44 hours per year.
42. The regular and on-going use of helicopters during the construction and operation of the proposed action will create noise and visual disturbance, over and above existing potential disturbances to the species in the area.
43. In a submission received on 6 April 2018, DPIPWE state:
- While it is acknowledged that helicopters are constrained by their operational parameters and their capacity to avoid flying near eagles nest is constrained by conditions; it is recommended that, where possible, helicopters do not fly within 1 km line-of-sight of known eagles nests during the breeding season June to January inclusive), and specifically that tours do not include a 'viewing' of the nest.
44. The Freycinet Peninsula Fly Neighbourly Advice (**FNA**) issued by the DPIPWE (approved 28 June 2012) Annexes 'Guidelines for flying in the vicinity of eagle nests' which describes how timing, proximity, altitude, speed/ time and flight path affect the impact of flights on the species. FNAs are a voluntary code of practice negotiated between aircraft operators and authorities to reduce disturbance caused by aircraft. The Freycinet Peninsula FNA identifies various management measures to avoid impacts to the Wedge-tailed Eagle from helicopter flights, including:
- not circling around or hovering near eagles nests or potential nests
 - flying as high, swiftly and directly over the nests as possible during breeding season (July to January), and
 - avoiding flying within 1,000 m of the nests, horizontally or vertically, particularly from July to January.
45. The proponent engaged wildlife biologist and raptor specialist Nick Mooney to prepare a report entitled '*Assessment for Minimum Impact on Nesting Eagles of the Proposed Helicopter Flight Route from Derwent Bridge to Halls Island, Lake Malbena*' (26 September 2017). Mr Mooney designed a flightpath to meet the prescriptions of the Freycinet Peninsula FNA and to avoid identified nests. He considered two possible management options: undertaking active searches and tailoring the route to avoid nests, and overflying potential nesting habitat by at least 1000 m and surveying the area immediately around the take-off and landing sites for nests. Both of these options would be dependent on favourable weather. Mr Mooney made the following recommendations:
- Helicopter operations follow the proposed route, climbing and descending steeply to stay within the end point 'safe zones'.
 - Wherever possible, use flight landing and take-off routes at Derwent Bridge already established by PWS helicopter use.
 - Transient operational height be 1000+ m.
 - Close manoeuvring, hovering and other 'lingering' to be avoided en route and minimised during landing and take-off.
 - During weather conditions not allowing 1000+ m overflight, the route chosen [i.e. the flightpath Mr Mooney designed] to be followed (since it has a very low chance of encountering nests).

- Eagles flying at or above operational heights to be circumvented. The Department understands that by circumventing eagles Mr Mooney means that eagles observed flying in the flight path of a helicopter will be avoided by flying around them.
46. These recommendations are reflected in the Customised Fly Neighbourly Advice Subplan provided by the proponent.
 47. More recently, Mr Mooney prepared an expert report for the Tasmanian Tribunal. In that report, he concludes that the proposed activity will have 'little or no measurable impact on either wedge-tailed eagles or white-bellied sea eagles' in light of the 'minimisation, mitigation and amelioration' measures proposed, which include:
 - 'fly predictable routes at transit speeds at 1000 m plus whenever possible'
 - 'standard operating procedure of moderate angles of ascent to and descent from 1000 m plus transit'
 - 'biannual nest searches of route' and biannual or annual nest monitoring around the take-off and landing sites.
 48. In relation to nest surveys, the Director of the proponent has subsequently clarified with the Department that the proposal is to conduct a biennial (i.e. once every 2 years) survey of the lift-off and landing zones from the ground, and a biennial survey of the flight route as part of an operational helicopter flight. The survey of the flight route would involve having an eagle expert in the helicopter on an operational trip (with visitors), and flying at treetop level to identify any nests. The Department considered that conducting a survey for nests every 2 years was appropriate, because it would appropriately balance the requirement to identify new eagle nests with the need to limit the use of helicopters in the TWWHA (see further below), and was consistent with common practice in the TWWHA.
 49. Particularly in light of the expert advice put forward by the proponent about the recommended frequency of surveys, I was not satisfied on the basis of the information before me that the measures proposed to be taken by the proponent would effectively address the risk of disturbance to the Tasmanian Wedge-tailed Eagle. The effectiveness of the other measures the proponent proposes to take to limit the potential impact on the Wedge-tailed Eagle (avoiding known eagle nests, and not circling nests) is dependent on effectively identifying known nests along that flight route. Further, although the proponent has indicated that helicopters will generally fly at an altitude of more than 1000 m, this is contingent on operational safety conditions permitting that altitude, and does not address the risk of disturbance during take-off and landing, or while the helicopter is carrying a sling.
 50. The proposed action will involve regular and on-going use of helicopters in and near the TWWHA. Even taking into account the proponent's commitment to limit flight time to 48 hours per year, the proposed action will involve considerable helicopter use over a particular flight path each year, and will therefore create a new and substantial source of visual and noise disturbance. I consider that the measures proposed to be undertaken by the proponent to avoid helicopter flights overflying nests of the Tasmanian Wedge-tail Eagle may not effectively avoid disturbance to this endangered species from the use of helicopters.

Conclusion

51. On the basis of the above information, I was satisfied that the proposed action is likely to adversely affect habitat critical to the survival of the species or disrupt the breeding cycle of a population, and therefore have a significant impact on the Tasmanian Wedge-tailed Eagle.

52. I accordingly decided that sections 18 and 18A are controlling provisions for the proposed action.

Other listed threatened species

53. The Department's Environment Reporting Tool indicates that a total of 20 threatened species and two ecological communities may occur within 5 km of the proposed action. The recommendation brief included information and advice about the likely impacts of the proposed action on the Alpine *Sphagnum* Bogs and Associated Fens threatened ecological community, the Spotted-tail Quoll (Tasmanian population) (*Dasyurus maculatus maculatus*), Tasmanian Devil (*Sarcophilus harrisii*) and Masked Owl (Tasmanian) (*Tyto novaehollandiae castanops*).

54. I have considered the adverse impacts of the proposed action on these listed threatened species and communities, and have not considered any beneficial impacts. Having decided that sections 18 and 18A are controlling provisions for the action on the basis of the likely impact on the Tasmanian Wedge-tailed Eagle, it is not necessary for the purposes of this decision for me to reach a concluded view on whether the proposed action will or is likely to also have a significant impact on other listed threatened species and communities. I note that the potential impacts of the proposed action on all relevant listed threatened species and communities will be considered further as part of the assessment process before any decision is made whether or not to approve the taking of the proposed action, including any conditions which are necessary or convenient to protect listed threatened species and communities.

World Heritage values of a World Heritage property (s12 & 15A)

55. The Tasmanian Wilderness was included on the World Heritage List in 1982 under three cultural heritage criteria (iii, iv and vi) and four natural heritage criteria (vii, viii, ix and x):

Criterion (iii) Bear a unique or at least exceptional testimony to a cultural tradition or to a civilisation which is living, or which has disappeared

Criterion (iv) An outstanding example of a type of building, architectural or technological ensemble or landscape which illustrates (a) significant stage(s) in human history

Criterion (vi) Directly or tangibly associated with events or living traditions, with ideas or with beliefs, with artistic and literary works of outstanding universal significance

Criterion (vii) contain superlative natural phenomena or areas of exceptional natural beauty and aesthetic importance

Criterion (viii) be outstanding examples representing major stages of earth's history, including the record of life, significant on-going geological processes in the development of landforms, or significant geomorphic or physiographic features

Criterion (ix) be outstanding examples representing significant on-going ecological and biological processes in the evolution and development of terrestrial, fresh water, coastal and marine ecosystems and communities of plants and animals

Criterion (x) contain the most important and significant natural habitats for in-situ conservation of biological diversity, including those containing threatened species of Outstanding Universal Value from the point of view of science or conservation.

56. A Statement of Outstanding Universal Value is the key reference for the future protection and management of a World Heritage property, and has been a requirement of the World Heritage Committee only since 2007. A Statement of Outstanding Universal Value was not required when the Tasmanian Wilderness was included on the World Heritage List. The Department has been working with the Tasmanian Government and the World

Heritage technical advisory bodies to develop the Statement of Outstanding Universal Value for the TWWHA and it is close to finalisation. In the meantime, examples of attributes and values that contribute to the property's World Heritage values or Outstanding Universal Value are identified under each criterion.

Conflicting information about likely impacts of proposed action as a result of helicopter use

57. There is conflicting material before me about the precise impacts of the proposed action arising from the use of helicopter use, particularly in relation to noise.

58. In the referral information the proponent states:

A helicopter flight-path has been developed to ensure minimal airtime (11 minutes each way from Derwent Bridge), and minimal potential impacts on other users in the area. The flight path avoids overflying the TWWHA Wilderness Zone, or any recognised walking routes for any extended distances. Additional Fly Neighbourly practices have been specifically developed to further minimise potential impacts. ...

Required usage levels have been designed to minimise and limit use, mitigate any point impacts to other users in the TWWHA, and in doing so protect the Wilderness Character of the TWWHA. The flight path avoids lengthy crossing of the TWWHA Wilderness Zone, walking routes and key recreational fishing waters, and customised Fly Neighbourly prescriptions further minimise impacts to other users.

59. Additional material provided by the proponent on 26 June 2018, titled 'Halls Island – Amendments and further information in relation to helicopter use. Prepared by the Proponent 11/01/2017 for inclusion in Halls Island RAA' relevantly stated:

To the user on the ground, each helicopter trip would produce a point-impact: a specific noise footprint and potential visual impact to those within audible / visual range of the flight path. A brief desktop study of helicopter sound-monitoring studies indicates that a discernible noise footprint is detectable within an approximate 4km lateral distance of a B2/B3 Squirrel helicopter. With the recommended manufacturer's flight speed of just over 200km/h, we can then determine that each flight would potentially create a point-impact (noise footprint and visual impact) of a maximum 2 minutes per trip, in the unlikely event that a user is directly under the flight path. This noise footprint when graphed is a bell-shaped curve, with maximum noise experienced when directly overhead, graduating to no noise at either end of the 4km lateral distance.

...

In summary, careful flight-path selection combined with the documented low-usage of the area ensures that it is unlikely that other users will be over-flown by helicopter operations relating to Halls Island. In the unlikely event that this does occur, by using the Halls Island specific FNA prescriptions, the overall potential impact on wilderness values to other users will be minimised to a ~2 minute, once-off point-impact. Due to the location of the flight corridor, there are no anticipated impacts to any Wilderness Zones in the TWWHA.

60. In the further material provided on 7 February 2020, the proponent stated that it would be impractical to nominate a specific flight path, because of the possibility of eagle nests being identified along the flight path (and having to be avoided).

61. In correspondence received on 5 June 2020, the proponent committed to not flying over the Wilderness Zone or any recognised walking route. There are no recognised walking routes in the immediate vicinity of Halls Island. I understand that people do access Halls Island on foot, but this is not via any formally recognised or managed walking track.

62. The proponent has also proposed that:

- Helicopter operation will be limited to no more than 60 flying days per calendar year and no more than 48 flying hours per calendar year.
 - Wherever operational safety considerations permit, helicopters will fly at altitude of more than 1000 m (other than when conducting the aerial survey of eagle nests every 2 years) except for take-off and landing.
63. The submission provided by the EDO on 5 December 2019 referred to and enclosed reports prepared by Gustaf Reutersward dated 5 June 2019 and 17 June 2019, and noted that:
- The modelling showed that helicopter noise with a volume of 10dBA or more has the potential to be audible up to 16km away from the proposed flight path, and helicopter noise of a volume of 20 dBA or more is likely to audible up to 11km from the flight path;
- The likely length of time a person likely to be within an audible distance of a flight (i.e. a person within 11km of the flight path) would experience the aircraft noise would be 5 ½ minutes per flight, or 7 ½ minutes if the helicopter is sling-loading material (noting there would be multiple flights per day). This evidence refutes the 2-minute estimate relied upon in Wild Drake's Referral.
64. The proponent provided the Department with a copy of a 'Response to Statements of Evidence' filed in the Resource Management and Planning Appeal Tribunal dated 19 June 2019 in which the Director of the proponent disagrees with the assessment methodology used by Mr Reutersward, and noted that the area is already impacted by noise from mechanised activities such as helicopter use and commercial logging.
65. On 2 April 2020, the proponent provided a Wilderness Quality Assessment prepared by PWS which assesses the change in Wilderness Quality likely to result from the proposed action. In this assessment the PWS use an established model which defines Wilderness Quality on a scale from 0 to 20 using four parameters:
- Apparent Naturalness – Remoteness from features that impinge on the perception of naturalness such as settlements, roads, impoundments and transmission lines.
 - Remoteness from Settlement – Remoteness from towns, settlements and isolated residences.
 - Time Remoteness – Walking times from points of mechanised access such as roads, airstrips, motorised vessels.
 - Biophysical Naturalness – The extent to which a defined area (the grid square) is free from evidence of changes caused by modern technological society.
66. Output values from the model are based on a grid cell lattice size of 500 m x 500 m (representing 25 ha).
67. Areas with a Wilderness Quality equal to or greater than 12 are considered high quality wilderness areas, and this value was the threshold for inclusion into the Wilderness Zone boundaries for the property in 2015.
68. The PWS assessment predicts that, if the proposed action is undertaken, the Wilderness Quality of 700 ha of land in the vicinity of Hall's Island would decrease to 10–12. Further, the Wilderness Quality of 1150 ha would decrease from their current level of 16–18 (which results in subsequent increases in the area of land within wilderness quality classes 10–12, 12–14 and 14–16). A total of 4200 ha of land would have a reduction of Wilderness Quality of 1 or more. The main element of the proposed action likely to impact Wilderness Quality is

the landing of helicopters to transport clients to the standing camp, which will result in a decrease of the Time Remoteness parameter of the model.

69. When the proponent provided the Wilderness Quality Assessment, it noted in covering correspondence that the potential impacts to the Time Remoteness parameter are potential or perceived in nature and temporal in their occurrence, as the parameter will only be affected while helicopters are operating.
70. On 5 December 2019, the EDO provided an assessment of wilderness impacts undertaken by Mr Martin Hawes using the same methodology as that employed in the PWS assessment. Mr Hawes' assessment was that 'time remoteness' would be measurably affected by the proposed action, and that the proposed action would result in values of Wilderness Quality being reduced by at least 1 (on the scale of 0 to 20) over an area of 4900 ha, and by at least 2 over 2200 ha. He assessed that the loss of Wilderness Quality in the immediate vicinity of Lake Malbena would be 3.9. Mr Hawes' assessment states:

Hawes et al (2018) argue that remoteness, including Time Remoteness, is a defining characteristic of wilderness and is a crucial ingredient of what can broadly be termed the 'wilderness experience'. There is a huge difference in the perceived wildness of a place that one can access and leave by helicopter, compared to a place that can only be accessed by hours or days of non-mechanised travel. Similarly, for visitors who access a place like Lake Malbena on foot (and potentially also by pack-raft), the sense of solitude and isolation would be dramatically impacted by the arrival of helicopters – disgorging clients fresh from civilisation – and even by the knowledge that such landings can occur there.

In quantitative terms, TR would be reduced to the lowest category (0-0.5 days) within half a day's walk from the helipad. This encompasses an area that is at present partly within the current 0.5-1.0 day zone and partly in the 1-2 day zone. Between a half day and a full day's walk of the helipad, TR would be reduced in areas that are currently in the 1-2 day category. The latter are mostly located west of a line running roughly north-south and intersecting the lake along its eastern shore – hence they are located mostly within the Wilderness Zone and the Walls of Jerusalem National Park.

71. While the proponent called into question the data underlying the assessment provided by the EDO in correspondence dated 2 April 2020, the Department advised me that the outcomes of the PWS assessment are broadly consistent with the outcomes of Mr Hawes' assessment, in that they both show a reduction in wilderness quality as a result of the proposed action, specifically that component of wilderness characterised by Time Remoteness.

Findings about impact of proposed action on natural criterion (vii) as a result of helicopter use

72. The use of helicopters during the construction of the camp, to transport guests and goods to and from the standing camp, and to conduct surveys for Tasmanian Wedge-tailed eagles, will create on-going noise and visual impacts in the TWWHA, and will create a new point of mechanised access to the TWWHA. On the basis of the information about the impacts of helicopter use summarised above, I found that the relatively undisturbed nature of the TWWHA means that the impacts from helicopter use are likely to have a significant impact on the natural heritage values of the TWWHA.
73. I had regard to the Department's Significant Impact Guidelines which provide that an action is likely to have a significant impact on a natural heritage values of a World Heritage property if there is a real chance or possibility that the action will, in relation to 'wilderness, natural beauty or rare or unique environment values':

- involve construction of buildings, roads, or other structures, vegetation clearance, or other actions with substantial, long-term or permanent impacts on relevant values, and
 - introduce noise, odours, pollutants or other intrusive elements with substantial, long-term or permanent impacts on relevant values.
74. The key values and attributes of the TWWHA that were used to justify inclusion of the TWWHA on the basis of natural criterion (vii), and are relevant to the proposed action, are:
- view fields and sites of exceptional natural beauty associated with the relatively undisturbed nature of the property; and
 - the scale of the undisturbed landscapes.
75. The Wilderness Quality Assessments undertaken by the PWS (provided by the proponent) and by Mr Hawes (provided by the EDO) both recognise that there will be a reduction in the 'Wilderness Quality' in the vicinity of the proposed action area as a result of the proposed action. Although the parameters of the Wilderness Quality Assessments submitted by the proponent and the EDO do not relate directly to the attributes and values associated with natural criterion (vii), the Department has advised, and I accept, that these assessments provide a useful demonstration of the possible extent of the impacts on exceptional natural beauty associated with the relatively undisturbed nature of the property, and the scale of the undisturbed landscapes.
76. I found that the anticipated loss of 700 ha of 'high quality wilderness area', and the reduction in 'Wilderness Quality' over at least 4200 ha, would constitute a significant impact on these key values or attributes. I consider that the scale of the projected reductions in 'Wilderness Quality', including the size of the total area effected, mean that the impact on relevant values is substantial. I do not consider that the fact that the proposed action area is situated on the edge of the Wilderness Zone, immediately adjacent to areas of lower Wilderness Quality, or the total size of the TWWHA, diminishes these impacts, or otherwise means that they are not substantial.
77. Furthermore, while the visual and noise impacts from helicopters would be temporary or transient in the sense that they would only occur when helicopters are in flight, the intention is that helicopters will be used on an ongoing basis, for as long as the standing camp continues to operate. While the impacts of helicopter use may not be permanent (in the sense that they could be reversed), I consider that if the proposed action is undertaken, this regular helicopter use is likely to have an ongoing impact on the relevant values.
78. In making my decision, I note that the proponent has committed to not overflying the Wilderness Zone and recognised walking paths, to limiting total flying time, and, where operational and safety considerations permit, to flying at an altitude of more than 1000 m. Although I consider that these measures would ameliorate the impacts arising from helicopter use, I am not presently satisfied on the basis of the information available to me that taking the proposed action in accordance with these measures would mean that it is not likely to have a significant impact on the world heritage values of the TWWHA.

Conclusion about impact of proposed action on natural criterion (vii)

79. Having considered the advice in the recommendation brief and the attached material, I found that the impact on the world heritage values of the TWWHA from the use of helicopters is likely to be significant.
80. I accordingly decided that sections 12 and 15A are controlling provisions for the proposed action.

Other impacts of the proposed action on world heritage values

81. The recommendation brief included information and advice about other likely impacts of the proposed action on natural heritage criterion (vii), and the other relevant cultural and natural heritage criteria. These impacts included:
- a. in relation to cultural heritage criteria (iii), (iv) and (vi) – disturbance impacts to Indigenous archaeological sites from construction and operation;
 - b. in relation to natural heritage criterion (vii) – visual impacts from the standing camp; and
 - c. in relation to natural heritage criteria (vii), (ix) and (x) – impacts to ecological and biological systems from trampling of vegetation, unmanaged fires, introduction of pests, weeds and pathogens, sediment and erosion, and contamination of Lake Malbena from construction and operations.
82. As noted above at [23], the public comments also raised concerns about these potential impacts of the proposed action.
83. I have considered the adverse impacts of the proposed action on each of the criteria above, and have not considered any beneficial impacts. Having decided that sections 12 and 15A are controlling provisions for the action on the basis of the likely impact on natural heritage criterion (vii) as a result of helicopter use, it is not necessary for the purposes of this decision for me to reach a concluded view on whether the proposed action will or is likely to also have significant impacts of the kinds identified at [81]. I note that the potential impacts of the proposed action on all relevant world heritage values will be considered further as part of the assessment process before any decision is made whether or not to approve the taking of the proposed action, including any conditions which are necessary or convenient to protect world heritage values.

National Heritage places (s15B & 15C)

84. The National Heritage values for the Tasmanian Wilderness National Heritage Place are substantially the same as the World Heritage values or Outstanding Universal Value for the TWWHA.
85. On the basis of my consideration of the impacts on natural criterion (vii) as a result of helicopter use and the findings above concerning world heritage values, I found that the proposed action is likely to have a significant impact on the national heritage values for the Tasmanian Wilderness National Heritage Place.
86. I accordingly decided that sections 15B and 15C are controlling provisions for the proposed action.

Protected matters that are not controlling provisions

Ramsar Wetlands (s16 & s17B)

87. The ERT report did not identify any Ramsar listed wetland of international importance within or adjacent to the proposed action area.
88. I was satisfied on the basis of the nature, scale and location of the proposed action that it will not have a significant impact on the ecological character of a Ramsar wetland.
89. For these reasons, I decided that sections 16 and 17B are not controlling provisions for the proposed action.

Listed migratory species (s20 and s20A)

90. The flora and fauna assessment undertaken by North Barker concluded that of the eight migratory species listed in the ERT, only the Japanese Snipe (*Gallinago hardwickii*) and the Satin Flycatcher (*Myiagra cyanoleuca*) have a moderate likelihood of utilising the island. The Japanese Snipe is a non-breeding migratory species that may use the on-island bogs for foraging. The Satin Flycatcher may roost or nest in the *E. subcrenulata* forest.
91. I accept the Department's advice that the proposed action area does not provide important habitat that would support an ecologically significant proportion of a population of migratory species. I accordingly found that a significant impact on listed migratory species as a result of the proposed action is unlikely, and decided that sections 20 and 20A are not controlling provisions for the proposed action.

Nuclear action (s21 & s22A)

92. I noted and agreed with the Department's advice that the proposed action does not meet the definition of nuclear action in the EPBC Act. On this basis, I decided that sections 21 and 22A are not controlling provisions for the proposed action.

Commonwealth marine environment (s23 & s24A)

93. The proposed action does not occur in a Commonwealth marine area.
94. I was satisfied on the basis of the nature, scale and location of the proposed action that it will not have a significant impact on the environment in a Commonwealth marine area.
95. For these reasons, I decided that sections 23 and 24A are not controlling provisions for the proposed action.

Great Barrier Reef Marine Park (s24B & s24C)

96. The proposed action is not being undertaken in the Great Barrier Reef Marine Park.
97. I was satisfied on the basis of the nature, scale and location of the proposed action that it is unlikely to have a significant impact on the Great Barrier Reef Marine Park.
98. For these reasons, I decided that sections 24B and 24C are not controlling provisions for the proposed action.

A water resource, in relation to coal seam gas development and large coal mining development (s24D & 24E)

99. I noted and agreed with the Department's advice that the proposed action is not a coal seam gas or a large coal mining development. On this basis, I decided that sections 24D and 24E are not controlling provisions for the proposed action.

Commonwealth land (s26 & s27A)

100. The proposed action is not being undertaken on Commonwealth land.
101. I was satisfied on the basis of the nature, scale and location of the proposed action that it is unlikely to have a significant impact on the environment on Commonwealth land.
102. For these reasons, I decided that sections 26 and 27A are not controlling provisions for the proposed action.

Commonwealth Heritage places overseas (s27B & s27C)

103. I noted and agreed with the Department's advice that the proposed action is not being undertaken outside the Australian jurisdiction as defined in the EPBC Act. For this reason, I decided that sections 27B and 27C are not controlling provisions for the proposed action.

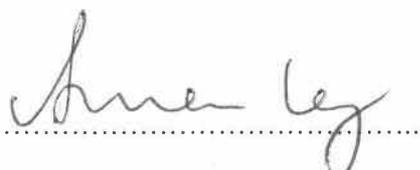
Commonwealth action (s28)

104. The person proposing to take the action is not the Commonwealth, nor is it a Commonwealth agency (as defined in the EPBC Act). Therefore, I decided that section 28 is not a controlling provision for the proposed action.

CONCLUSION

105. I considered that the quality and quantity of information before me was sufficient for me to make a decision under section 75 of the EPBC Act.
106. In making my decision, I took into account the information provided in the recommendation brief and its attachments, including the referral and submissions from relevant Commonwealth and State Ministers, as well as the matters required to be taken into account under sections 75(1A) and 75(2) of the EPBC Act.
107. In making my decision under section 75 of the EPBC Act, I took account of the precautionary principle as required by section 391. The precautionary principle is that a lack of full scientific certainty should not be used as a reason for postponing a measure to prevent degradation of the environment where there are threats of serious or irreversible environmental damage.
108. I noted that there were no relevant bioregional plans to consider under section 176 of the EPBC Act. I also noted that there was no Commonwealth reserve management plan that is relevant to my decision, for the purposes of section 362(2) of the EPBC Act.
109. I considered that the proposed action will or is likely to have a significant impact on a listed threatened species, a World Heritage property and a National Heritage place, as outlined above at [37] to [52] and [55] to [80]. Accordingly, I determined that the proposed action is a controlled action and that sections 12, 15A, 15B, 15C, 18 and 18A are controlling provisions for the action.
110. In relation to the other relevant matters of national environmental significance, I was satisfied that there is sufficient scientific information to conclude that the proposed is unlikely to have a significant impact on those matters.

Signed



**The Hon Sussan Ley MP
Minister for the Environment**

Date: 9/11/20

ANNEXURE A - LEGISLATION

Section 68 of the EPBC Act relevantly provides:

- (1) A person proposing to take an action that the person thinks may be or is a controlled action must refer the proposal to the Minister for the Minister's decision whether or not the action is a controlled action.
- (2) A person proposing to take an action that the person thinks is not a controlled action may refer the proposal to the Minister for the Minister's decision whether or not the action is a controlled action.

Section 74 of the EPBC Act relevantly provides:

Inviting other Commonwealth Ministers to provide information

- (1) As soon as practicable after receiving a referral of a proposal to take an action, the Minister (the **Environment Minister**) must:
 - (a) inform any other Minister whom the Environment Minister believes has administrative responsibilities relating to the proposal; and
 - (b) invite each other Minister informed to give the Environment Minister within 10 business days information that relates to the proposed action and is relevant to deciding whether or not the proposed action is a controlled action.

...

Inviting comments from appropriate State or Territory Minister

- (2) As soon as practicable after receiving, from the person proposing to take an action or from a Commonwealth agency, a referral of a proposal to take an action in a State or self-governing Territory, the Environment Minister must, if he or she thinks the action may have an impact on a matter protected by a provision of Division 1 of Part 3 (about matters of national environmental significance):
 - (a) inform the appropriate Minister of the State or Territory; and
 - (b) invite that Minister to give the Environment Minister within 10 business days:
 - (i) comments on whether the proposed action is a controlled action; and
 - (ii) information relevant to deciding which approach would be appropriate to assess the relevant impacts of the action (including if the action could be assessed under a bilateral agreement).

Inviting public comment

- (3) As soon as practicable after receiving a referral of a proposal to take an action, the Environment Minister must cause to be published on the Internet:
 - (a) the referral; and
 - (b) an invitation for anyone to give the Minister comments within 10 business days (measured in Canberra) on whether the action is a controlled action.

Section 74A of the EPBC Act relevantly provides:

- (1) If the Minister receives a referral in relation to a proposal to take an action by a person, and the Minister is satisfied the action that is the subject of the referral is a component of a larger action the person proposes to take, the Minister may decide not to accept the referral.
- (2) If the Minister decides not to accept a referral under subsection (1), the Minister:
 - (a) must give written notice of the decision to the person who referred the proposal to the Minister; and
 - (b) must give written notice of the decision to the person who is proposing to take the action that was the subject of the referral; and
 - (c) may, under section 70, request of the person proposing to take the action that was subject of the referral, that they refer the proposal to take the larger action, to the Minister.
- ...
- (3) If the Minister decides to accept a referral under subsection (1), the Minister must, at the time of making a decision under section 75:
 - (a) give written notice of the decision to the person who referred the proposal to the Minister;
 - (b) publish in accordance with the regulations (if any), a copy or summary of the decision.

Section 75 of the EPBC Act relevantly provides:

Is the action a controlled action?

- (1) The Minister must decide:
 - (a) whether the action that is the subject of a proposal referred to the Minister is a controlled action; and
 - (b) which provisions of Part 3 (if any) are controlling provisions for the action.

(1AA) To avoid doubt, the Minister is not permitted to make a decision under subsection (1) in relation to an action that was the subject of a referral that was not accepted under subsection 74A(1).

Minister must consider public comment

- (1A) In making a decision under subsection (1) about the action, the Minister must consider the comments (if any) received:
 - (a) in response to the invitation under subsection 74(3) for anyone to give the Minister comments on whether the action is a controlled action; and
 - (b) within the period specified in the invitation.

Considerations in decision

- (2) If, when the Minister makes a decision under subsection (1), it is relevant for the Minister to consider the impacts of an action:
- (a) the Minister must consider all adverse impacts (if any) the action:
 - (i) has or will have; or
 - (ii) is likely to have;on the matter protected by each provision of Part 3; and
 - (b) must not consider any beneficial impacts the action:
 - (i) has or will have; or
 - (ii) is likely to have;on the matter protected by each provision of Part 3.

...

Designating a proponent of the action

- (3) If the Minister decides that the action is a controlled action, the Minister must designate a person as proponent of the action.

...

Timing of decision and designation

- (5) The Minister must make the decisions under subsection (1) and, if applicable, the designation under subsection (3), within 20 business days after the Minister receives the referral of the proposal to take the action.

Section 176 of the EPBC Act relevantly provides:

- (1) The Minister may prepare a bioregional plan for a bioregion that is within a Commonwealth area. In preparing the plan, the Minister must carry out public consultation on a draft of the plan in accordance with the regulations.

...

- (5) Subject to this Act, the Minister must have regard to a bioregional plan in making any decision under this Act to which the plan is relevant.

Section 391 of the EPBC Act relevantly provides:

Taking account of precautionary principle

- (1) The Minister must take account of the precautionary principle in making a decision listed in the table in subsection (3), to the extent he or she can do so consistently with the other provisions of this Act.

Precautionary principle

- (2) The **precautionary principle** is that lack of full scientific certainty should not be used as a reason for postponing a measure to prevent degradation of the environment where there are threats of serious or irreversible environmental damage.

Decisions in which precautionary principle must be considered

(3) The decisions are:

Decisions in which precautionary principle must be considered		
Item	Section decision is made under	Nature of decision
1	75	whether an action is a controlled action

Section 527E of the EPBC Act relevantly provides:

- (1) For the purposes of this Act, an event or circumstance is an **impact** of an action taken by a person if:
- (a) the event or circumstance is a direct consequence of the action; or
 - (b) for an event or circumstances that is an indirect consequence of the action – subject to subsection (2), the action is a substantial cause of that event or circumstance.
- (2) For the purposes of paragraph (1)(b), if:
- (a) a person (the **primary person**) takes an action (the **primary action**); and
 - (b) as a consequence of the primary action, another person (the **secondary person**) takes another action (the **secondary action**); and
 - (c) the secondary action is not taken at the direction or request of the primary person; and
 - (d) an event or circumstance is a consequence of the secondary action;
- then that event or circumstance is an **impact** of the primary action only if:
- (e) the primary action facilitates, to a major extent, the secondary action; and
 - (f) the secondary action is:
 - (i) within the contemplation of the primary person; or
 - (ii) a reasonably foreseeable consequence of the primary action; and
 - (g) the event or circumstances is:
 - (i) within the contemplation of the primary person; or
 - (ii) a reasonably foreseeable consequence of the secondary action.