



Law Council
OF AUSTRALIA

Martyn Hagan
Secretary-General

7 March 2014

Ms Christine McDonald
Committee Secretary
Senate Standing Committees on Environment and Communications
PO Box 6100
Parliament House
Canberra ACT 2600
By email: ec.sen@aph.gov.au

Dear Ms McDonald

Tasmanian Wilderness World Heritage Area

The Law Council of Australia welcomes the opportunity to respond to the Committee's inquiry into the Australian Government's proposed Tasmanian Wilderness World Heritage Area boundary adjustment.

I am pleased to enclose a submission prepared by the Australian Environment and Planning Law Group (AEPLG) of the Legal Practice Section of the Law Council following consultations within the Law Council. The Chair of the AEPLG is Western Australian barrister Mr Greg McIntyre SC.

The Committee would welcome the opportunity to discuss the submission further. In the first instance, please contact the Law Council Secretariat on (02) 62463722 or <lps@lawcouncil.asn.au>.

Yours sincerely

MARTYN HAGAN
Secretary-General

Enc.

Tasmanian Wilderness World Heritage Area – ‘minor modification’ proposal

Senate Standing Committee on Environment and Communications

7 March 2014

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Executive Summary

1. This submission outlines the views of the Law Council of Australia in relation to the Australian Government's proposal for a minor modification of the boundaries of the Tasmanian Wilderness World Heritage Area (TWWHA).
2. The views expressed rely on the expertise and experience of senior lawyers practising in the field of environmental law who are members of the Law Council's Australian Environment and Planning Law Group, and in the Law Council Secretariat.
3. The Law Council does not seek to make any comments regarding the ecological integrity of the areas proposed to be removed, nor the social or economic implications referred to by the Australian Government in the dossier provided to the World Heritage Committee in support of its request, other than to note that the World Heritage Committee will be looking for 'exceptional circumstances' justifying the boundary reduction.¹
4. The terms of the World Heritage Convention² provide for a World Heritage listed property to contain some degraded areas. Article 5(d) of the World Heritage Convention imposes an obligation on State Parties to take steps to rehabilitate those areas within a listed property that require management to improve the overall values of the property.³
5. The Law Council comments on the duties of State Parties to the World Heritage Convention in relation to rehabilitation and management of areas within a listed property, and the inclusion of degraded areas within the boundaries of World Heritage Areas.
6. The Law Council notes that it would be unusual for the boundary of a World Heritage Area, determined following recommendations from and consideration by the international treaty body with the relevant responsibility – the World Heritage Committee – to be modified without evidence of a significant change in ecological conditions which compromises the world heritage values of the area. In the absence of such a significant change, the existing boundary should be retained.
7. The Law Council strongly supports ongoing consultation with Tasmanian Aboriginal communities regarding the management of the listed property and recommends that the Standing Committee urge the Australian Government to undertake the cultural heritage protection studies, reporting, and consultation activities requested by the World Heritage Committee; and ensure adequate resources are made available for the identification of cultural heritage values in the TWWHA and development of management strategies to protect those values.

¹ Australian Government, *Proposal for a Minor Modification to the Boundary of the Tasmanian Wilderness World Heritage Area (Australia)* (2014) <<http://www.environment.gov.au/system/files/pages/f99dbb51-03c2-4eb2-a66e-87c4044117b4/files/twwha-2014-proposal-dossier.pdf>>.

² United Nations Educational, Scientific and Cultural Organisation (UNESCO), *Convention Concerning the Protection of the World Cultural and Natural Heritage* (World Heritage Convention), 16 November 1972 [1975] [ATS 47](#) (entered into force: 17 December 1975). As at 19 September 2012 there were 190 States parties to the Convention.

³ Art. 5(d) provides: To ensure that effective and active measures are taken for the protection, conservation and presentation of the cultural and natural heritage situated on its territory, each State Party to this Convention shall endeavor, in so far as possible, and as appropriate for each country:...d. to take the appropriate legal, scientific, technical, administrative and financial measures necessary for the identification, protection, conservation, presentation and rehabilitation of this heritage

Submission

Purpose

8. The Law Council of Australia writes to outline its views regarding the Australian Government's proposal for a minor modification of the boundaries of the Tasmanian Wilderness World Heritage Area (TWWHA) on the basis that the area includes logged and degraded areas of forest.
9. This submission was prepared for the Law Council by the Australian Environment and Planning Law Group in the Law Council's Legal Practice Section.

Tasmanian Wilderness World Heritage Area

10. The 'Western Tasmania Wilderness National Parks' was inscribed on the World Heritage List in 1982.⁴ The property was listed as a mixed property of 'outstanding universal value' under cultural heritage criteria (iii), (iv) and (vi), and under all four natural heritage criteria (vii), (viii), (ix) and (x) of the World Heritage Convention and its Operational Guidelines.⁵
11. In 1989, the World Heritage Committee (the *Committee*) approved the nomination of approximately 607,000 additional hectares and the property was renamed the 'Tasmanian Wilderness World Heritage Area'.⁶
12. The International Union for the Conservation of Nature (IUCN) provides technical advice to inform decisions by the World Heritage Committee that implement the World Heritage Convention. The IUCN's 2013 evaluation report in respect of the expanded TWWHA noted:

*The property is mostly undisturbed wilderness, encompassing most of the last temperate rain forest remaining in Australia, as well as extensive tracts of tall eucalypt forest. A high proportion of Tasmania's karst areas, glacial landscapes and known archaeological sites also occurs within the nominated area.*⁷

Background to the 2013 extension of the TWWHA

13. Since its original inscription in the World Heritage List, concerns have been expressed about the impacts of commercial logging in areas adjacent to the boundaries of the TWWHA on the Outstanding Universal Values of the listed property. These concerns have been noted in World Heritage Committee decisions and reports to the Committee

⁴ UNESCO, World Heritage Convention, World Heritage Committee, Sixth Session, Paris, 13–17 December 1982 <whc.unesco.org/archive/repcom82.htm#181>.

⁵ UNESCO, World Heritage Convention 'The Operational Guidelines for the Implementation of the World Heritage Convention' (2013) <whc.unesco.org/en/guidelines>.

⁶ UNESCO, World Heritage Convention, Bureau of the World Heritage Committee, Paris, 27–30 June 1989, Session XIII, Paris, 11–15 December 1989 UN Doc. SC-89/CONF.004/12 <<http://whc.unesco.org/archive/repcom89.htm#181>>.

⁷ International Union for the Conservation of Nature (IUCN), *World Heritage Nomination 507: Tasmanian Wilderness (Revision to Existing Property Inscribed in 1982)* (1989), <http://whc.unesco.org/archive/advisory_body_evaluation/181quater.pdf>, 5.

since at least 1989.⁸ The unresolved issue of commercial logging in areas adjacent to the World Heritage property was discussed in some detail in the IUCN's 2006 State of Conservation Report, where it was noted that:

*there is forested land outside the property which may have World Heritage values and which would contribute to the integrity of the property.*⁹

14. The World Heritage Committee has made numerous recommendations relation to the management of property adjacent to the listed world heritage area, including in Decision 30COM 7B.32 that Australia manage the forestry areas outside the inscribed property in order to protect cultural sites of potential Outstanding Universal Value.¹⁰

15. In 2007, the World Heritage Committee recommended that Australia:

*consider the extension of the World Heritage property to include critical old-growth forests to the east and north of the property, or at least to manage these forests in a manner which is consistent with a potential World Heritage value.*¹¹

16. In 2008, the World Heritage Committee advised Australia that it:

*5. Reiterates its request to the State Party to consider, at its own discretion, extension of the property to include appropriate areas of tall eucalyptus forest, having regard to the advice of IUCN; and also further requests the State Party to consider, at its own discretion, extension of the property to include appropriate cultural sites reflecting the wider context of Aboriginal land-use practices, and the possibility of re-nominating the property as a cultural landscape.*¹²

17. In 2012, the Committee advised Australia that it:

3. Welcomes the State Party's commitment under the Tasmanian Forests Intergovernmental Agreement to provide interim protection to forests adjacent to the property from logging activities while assessments are undertaken to identify the values of these area, including the Upper Florentine, and areas within the Styx, Huon, Picton and Counsel River Valleys;

4. Also welcomes the State Party's intention to provide legislative protection to areas that are identified as being of conservation value, which may possibly include their nomination for inclusion within the property, in line with the Committee's requests at its 32nd (Quebec City, 2008) and 34th (Brasilia, 2010) sessions that the State Party consider, at its own discretion, the potential for additional areas of Outstanding Universal Value to be added to the property;

⁸ For example: 'Tasmanian Wilderness (Australia) (C/N 181 bis) Decision 30 COM 7B.32', UNESCO, World Heritage Convention, World Heritage Committee, Thirtieth Session Vilnius, Lithuania, 8–16 July 2006, UN Doc. WHC-06/30.COM/19 <whc.unesco.org/archive/2006/whc06-30com-19e.pdf>.

⁹ UNESCO, World Heritage Convention, State of Conservation (SOC) Tasmanian Wilderness (2006), Tasmanian Wilderness (Australia) (C/N 181quinquies) <<http://whc.unesco.org/en/soc/1157>>

¹⁰ Above n8.

¹¹ UNESCO, World Heritage Convention, World Heritage Committee, 'Decision 31 COM 7B.43', Thirty-first session, Christchurch, New Zealand, 23 June-2 July 2007 UN Doc WHC07/31.COM/24 <whc.unesco.org/archive/2007/whc07-31com-24e.pdf>.

¹² UNESCO, World Heritage Convention, World Heritage Committee, Committee Decisions 32COM 7B.41 Tasmanian Wilderness (Australia) (C/N 181 bis) <whc.unesco.org/en/decisions/1647>.

5. Takes note however that a number of forest reserves adjoining the property appear to have been exempted from interim protection and that logging and road construction is ongoing in parts of the Styx, Huon, Picton and Counsel Areas, and requests the State Party to clarify in writing to the World Heritage Centre by 1 February 2013 that areas of Decisions report – 36th session of the World Heritage Committee (Saint-Petersburg, 2012) page 86 potential Outstanding Universal Value are not exempted from interim protection, in order to retain their potential for possible addition to the World Heritage property;

6. Also takes note that the property's existing monitoring structures together with the revision of the State of Tasmanian World Heritage Area Report in 2014 should provide comprehensive data on the impacts of adjacent forestry operations on the property's integrity and values, and that this should inform the management of these impacts, and of adjoining forest reserves, within the framework of the 2015 Tasmanian Wilderness World Heritage Management Plan review;

7. Notes the continuing commitment of the State Party to resource support for Aboriginal cultural heritage, and reiterates its recommendation to increase property staff with cultural heritage specialists, in order to ensure the adequate protection and management of cultural sites both within the property and immediately outside the boundaries;

8. Welcomes the re-formed property Area Advisory Committee and recommends that it should include representatives of all stakeholders, including the Aboriginal community¹³

18. On 1 February 2013, the then Federal Minister for Environment, the Hon Tony Burke MP, submitted a request for a minor boundary modification to extend the TWWHA by approximately 170,000 hectares. The dossier submitted in support of the request said:

*The proposed addition to the property includes areas along the northern and eastern boundary, encompassing extensive stands of magnificent tall eucalypt forest, associated rainforest, significant karst and glacial landforms as well as alpine and sub-alpine environments.... These additions include those proposed by the Tasmanian Forest Agreement 2012, and those from other existing state managed reserves, together with small areas of privately owned land already managed for conservation.*¹⁴...

Australia notes concerns have been expressed in past decisions of the World Heritage Committee and by environment groups in relation to the potential for logging activities adjacent to the world heritage property to compromise options for future extensions to the world heritage property to the east and the north of the property

The Australian and Tasmanian governments have strongly supported the efforts of the forestry industry, unions and environment groups in their bid to

¹³ 'Decision 36 COM 7B.36, Tasmanian Wilderness (Australia) (C/N 181 ter)', UNESCO, World Heritage Convention, World Heritage Committee, Thirty-sixth session Saint Petersburg, Russian Federation, 24 June–6 July 2012, UN Doc 12/36.COM19 <whc.unesco.org/archive/2012/whc12-36com-19e.pdf>, 85–86.

¹⁴ Australian Government, *Proposal for a Minor Modification to the Boundary of the Tasmanian Wilderness World Heritage Area* (Australia) Property ID 181bis, *Proposal for a Minor Boundary Modification*, For submission to the World Heritage Committee 1 February 2013 <<http://www.environment.gov.au/system/files/pages/f99dbb51-03c2-4eb2-a66e-87c4044117b4/files/twwha-dossier.pdf>>, 5.

*develop a constructive way forward to secure a sustainable future for the timber industry and its workers while working to protect high conservation value public native forests including in areas to the north and east of the Tasmanian Wilderness*¹⁵

*The various parcels of land are included in a more rational and contiguous boundary. The proposed new boundaries recognise connectivity and improve integrity of natural heritage, notably karst systems, glacial landforms, and areas of better developed tall eucalypt forest combined with rainforest on different geology and more productive soils...*¹⁶

19. In its Evaluation Report in respect of the proposed extension, the IUCN noted that it was appropriate to consider the proposal as a minor boundary modification for the following reasons:

(a) the clear and established position of the World Heritage Committee noted in its past decisions,

(b) the degree of past consideration of these issues by the Committee and Advisory Bodies, including via both evaluation and monitoring missions, and

*(c) clear analysis provided in the proposal regarding its values, integrity, protection and management.*¹⁷

20. The extension proposed by the former Australian Government in February 2013 (the *2013 Extension*) was unanimously approved by the Committee at the 37th Session in June 2013, although further study was recommended regarding the cultural heritage values in the extended listed area.¹⁸ In approving the application, the Committee expressly recalled its previous decisions recommending extension of the TWWHA.¹⁹

Proposed ‘minor modification’ to the boundary of the TWWHA

21. On 18 December 2013, Federal Minister for Environment, the Hon Greg Hunt MP (the Minister), wrote to the World Heritage Committee advising that the Australian Government intended to undertake a review of the 2013 Extension with a view to submitting a further application for a minor boundary modification. The letter noted:

The Australian Government is concerned that the extension approved by the World Heritage Committee in June 2013 includes a number of pine and eucalypt plantations along with some areas of forest that have previously been

¹⁵ Ibid 7.

¹⁶ Ibid 8.

¹⁷ IUCN World Heritage Evaluations 2013, Addendum: Evaluation of Nominations of Natural and Mixed Properties to the World Heritage List, *Report for the World Heritage Committee, 37th Session Phnom Penh, Cambodia, 16–27 June 2013* (UN Doc WHC-13/37.COM/INF.8B2.Add) <<http://whc.unesco.org/archive/2013/whc13-37com-8B2inf-Add-en.pdf>>, 3.

¹⁸ ‘Committee Decisions 37COM 8B.44 Mixed properties – Examination of minor boundary modifications – Tasmanian Wilderness (Australia)’, UNESCO, World Heritage Convention, World Heritage Committee, 37th session Phnom Penh, Cambodia 16–27 June 2013, Decisions Adopted by the World Heritage Committee at its 37th Session (Phnom Penh, 2013) <<http://whc.unesco.org/en/decisions/5174>>

¹⁹ Ibid Paragraph 2: *Recalling Decision 32 COM 7B.41, Decision 34 COM 7B.38, Decision 34 COM 8B.46 and Decision 36 COM 8B.45.*

*subject to heavy logging. These areas detract from the overall outstanding universal values of the property.*²⁰

22. On 31 January 2014, the Minister requested a minor modification to reduce the TWWHA by 74,039 hectares. The dossier supporting the request provides the following justification for the request:

The Australian Government believes that the excision of these areas from the property will enhance the credibility of the World Heritage List by excluding areas that detract from the Outstanding Universal Value and the overall integrity of the property...

The proposed excisions do not include any areas of National Park that were protected under state law at the time of the 1 February 2013 request to the Committee for a minor boundary modification ...

*The proposed minor boundary modification seeks to remove a number of areas in the extension approved by the Committee in June 2013 that contain pine and eucalypt plantations and previously logged forest. The Australian Government considers these areas detract from the Outstanding Universal Value of the property and its overall integrity and that the assessment work that included such areas in the property did not sufficiently take this in to account.*²¹

Removing areas from the World Heritage List

23. There is no explicit provision in the World Heritage Convention regarding the removal of parts of a listed property from the World Heritage List. However, the Operational Guidelines for the Convention provide some guidance on the deletion of a listed property from the World Heritage List. The introductory paragraphs note:

*When a property inscribed on the World Heritage List is threatened by serious and specific dangers, the Committee considers placing it on the List of World Heritage in Danger. When the Outstanding Universal Value of the property which justified its inscription on the World Heritage List is destroyed, the Committee considers deleting the property from the World Heritage List.*²²

24. Paragraphs 192–196 of the Operational Guidelines describe the procedure for deletion of properties from the List in more detail. The procedures discussed are limited to the following circumstances:

- *where the property has deteriorated to the extent that it has lost those characteristics which determined its inclusion in the World Heritage List; and*
- *where the intrinsic qualities of a World Heritage site were already threatened at the time of its nomination by action of man and where the necessary corrective measures as outlined by the State Party at*

²⁰ Letter from Hon Greg Hunt MP to the Chair of the World Heritage Centre, 18 December 2013 <<http://www.environment.gov.au/system/files/pages/f99dbb51-03c2-4eb2-a66e-87c4044117b4/files/twwha-2014-proposal-additional-letter.pdf>>.

²¹ Above n1, 5.

²² Above n5, 2, para 9.

*the time, have not been taken within the time proposed (see paragraph 116).*²³

25. The Law Council notes that, to date, only two properties have been removed from the World Heritage List: the Arabian Oryx Sanctuary in Oman in 2007, and the Dresden Elbe Valley in Germany in 2009.²⁴ In both situations, the World Heritage Committee expressed concern that destruction resulting from State Party action (or inaction) had irreversibly damaged the Outstanding Universal Value and integrity of the listed property.
26. The Law Council understands that there have been only a limited number of requests to modify boundaries to excise areas from a listed property. These include:

(a) Selous Game Reserve, Tanzania

In 2011, the Tanzanian government sought to exclude an area from the Selous Game Reserve to facilitate mining. In view of the 'exceptional' economic situation facing Tanzania, the World Heritage Committee in 2012 took an 'exceptional and unique' decision to approve the request, including with the conditions that the Government of Tanzania:

a) Provide additional valuable wildlife forest area to compensate for the excised area of Selous Game Reserve for inclusion into the property to the effect of further maintaining and enhancing the OUV of the property ...

c) Not to engage in any mining activity within the Selous Game Reserve World Heritage property after exclusion of the Mkuju River Mining site as per the decision of the 36th session of the World Heritage Committee ...

*f) Not to undertake any development activities within Selous Game Reserve, and its buffer zone without prior approval of the World Heritage Committee in accordance with the Operational Guidelines for the implementation of the World Heritage Convention*²⁵

(b) Mt Nimba Nature Reserve, Côte d'Ivoire/Guinea

In 1991, the Government of Guinea sought to reduce the size of the Mt Nimba Nature Reserve by approximately 30% to allow for an iron-ore mining project. The World Heritage Committee rejected Guinea's application to reduce the size of the Reserve would seriously endanger the integrity of the values for which Mt Nimba was originally granted World Heritage status and a major threat to the site.²⁶ The property was subsequently added to the In-Danger list in 1992, and has remained there since.

(c) Willandra Lakes, Australia

In 1995, after consultation with scientists, landholders, Aboriginal communities and archeologists, the Australian Government proposed revised boundaries for the

²³ Ibid para 192.

²⁴ UNESCO, 'Dresden is deleted from UNESCO's World Heritage List', <<http://whc.unesco.org/en/news/522/>>.

²⁵ UNESCO, 'Committee Decisions 36COM 8B.43 Natural Properties – Examination of minor boundary modifications - Selous Game Reserve (United Republic of Tanzania)' <<http://whc.unesco.org/en/decisions/4814>>.

²⁶ UNESCO, 'Committee Decisions 15COM VIII SOC: Mt. Nimba Nature Reserve (Côte d'Ivoire/Guinea)', <whc.unesco.org/en/decisions/3494>.

Willandra Lakes region (inscribed for its fossil remains and Aboriginal heritage values).

The World Heritage Committee was satisfied that the revised boundaries better reflected the areas in which the cultural and natural values of the property were located (rather than just following large cadastral boundaries) and would allow for improved management of those values.²⁷

27. The Law Council considers that these examples demonstrate that boundary modifications will be considered only in exceptional circumstances and where there is clear evidence of management strategies to improve management of Outstanding Universal Values across the balance of the listed property.

Inclusion of degraded areas in a World Heritage listed property

28. As noted above, Article 5 of the Convention Concerning the Protection of The World Cultural and Natural Heritage (the **World Heritage Convention**), obliges State Parties to endeavour:

(d) to take the appropriate legal, scientific, technical, administrative and financial measures necessary for the identification, protection, conservation, presentation and rehabilitation of this heritage (emphasis added).

29. It is the view of the Law Council that the World Heritage Convention contemplates inclusion of areas in a listed property even where some areas within the property are not pristine or would not, if assessed in isolation, demonstrate Outstanding Universal Values. In accordance with the Operational Guidelines²⁸ and past practice of the World Heritage Committee, disturbed areas may be included in a listed property to provide a buffer zone for areas of Outstanding Universal Value, to establish the most efficient management boundary, or to provide an opportunity to restore the natural values of the disturbed area.
30. Article 5(d) emphasises the obligation on State Parties to make an effort to rehabilitate those areas within a listed property that require management to improve the overall natural and cultural values of the property.
31. The World Heritage Convention provides for listed heritage properties to be included in the World Heritage In-Danger list where the natural and cultural heritage values of the property are ‘threatened by serious and specific dangers.’²⁹ Inclusion on the In-Danger list is intended to highlight risks, reinforce a State Party’s obligation to protect and conserve its heritage areas and encourage improved management practices. The World Heritage Convention provides a number of opportunities to obtain various types of technical assistance and loans to assist with rehabilitation efforts, with a view to removing a property from the In-Danger list.³⁰
32. The World Heritage Convention is unambiguously directed at protecting areas that have been recognised by the Committee as having Outstanding Universal Values. The Law Council considers that the existence of the In-Danger listing process is indicative of the preference for retaining properties with recognised values on the Heritage List, subject to active management and improvement of areas that are

²⁷ UNESCO, Committee Decisions 19COM VIII.B.1 Revision of Boundaries: Willandra Lakes Region (Australia) <<http://whc.unesco.org/en/decisions/3077>>.

²⁸ Above n5.

²⁹ Art. 11.4.

³⁰ Art. 22.

disturbed, or at risk of disturbance, rather than excising those areas. Excision should be treated as a last resort.

33. The inclusion of disturbed areas within the boundaries of a World Heritage Area has the benefit of creating efficient boundaries to facilitate management of activities within the listed property. The Law Council notes that including disturbed areas within the boundaries of a World Heritage Area may also be beneficial in providing a buffer area that allows activities *outside* the World Heritage Area to be conducted with lower risk to the Outstanding Universal Values, thereby reducing the regulatory burden in respect of impact assessment.

34. The Law Council does not intend to comment specifically on the extent to which the areas proposed for excision from the 2013 Extension affect the overall integrity of the TWWHA or its Outstanding Universal Values. However, the Law Council notes the view of the IUCN in its Evaluation Report of the 2013 Extension:

IUCN has considered the proposal, including through consultation with IUCN representatives involved in the original extension, and concurs with the assessment of the State Party that the proposal will both add to the integrity of the property as currently inscribed, in relation to its natural values, as well as facilitating improved protection and management, in recognition of the issues that have been noted previously regarding the property's boundary.³¹

35. The Law Council further notes that it is open for the World Heritage Committee to accept an area for inclusion in the World Heritage List which contains some degradation, and that the existence of degraded areas does not, of itself, justify excision of such areas from a World Heritage property.

36. In this respect, the Law Council draws the Senate Standing Committee's attention to the following matters:

- The Operational Guidelines discuss integrity of properties nominated under natural heritage criteria in the following terms:

For all properties nominated under criteria (vii) - (x), bio-physical processes and landform features should be relatively intact. However, it is recognized that no area is totally pristine and that all natural areas are in a dynamic state, and to some extent involve contact with people. Human activities, including those of traditional societies and local communities, often occur in natural areas. These activities may be consistent with the Outstanding Universal Value of the area where they are ecologically sustainable.³²

37. The World Heritage Committee publication, *Managing Natural World Heritage Resource Manual*, notes the requirements of the Operational Guidelines in respect of boundary design, quoted below, then notes that in 'exceptional circumstances' processes are in place to make boundary amendments. This may occur for example, to ensure the better conservation of outstanding universal value, to better understand ecological processes associated with the site, or to manage threats facing the property. The Operational Guidelines provide:

³¹ Above n17, section 3.

³² Above n5, paragraph 90.

Effective boundaries

*For properties nominated under criteria (vii)–(x), boundaries should reflect the spatial requirements of habitats, species, processes or phenomena that provide the basis for their inscription on the World Heritage List. The boundaries should include sufficient areas immediately adjacent to the area of Outstanding Universal Value in order to protect the property's heritage values from direct effect of human encroachments and impacts of resource use outside of the nominated area.*³³

- The *Tasmanian Wilderness World Heritage Area Management Plan 1999* (which is under review)³⁴ notes that many areas within the TWWHA have been subject to disturbance from past land uses, including mineral exploration and extraction, hydro-electric development, forestry, road infrastructure and grazing. The Management Plan outlines a range of management approaches to restore disturbed areas.
- The Melaleuca-Cox Bight area, which had been excluded from previous extensions of the TWHA due to ongoing mining activities, was included within the boundary extension area nominated by the Australian Government in 2012.³⁵ A *Melaleuca Site and Rehabilitation Plan 2013* was developed to reverse the historic degradation of the area and rehabilitate and protect the natural world heritage values of the surrounding area. The Rehabilitation Plan is expected to be included in the TWHA Management Plan when its review is completed in 2014.
- The dossier provided in support of the Australian Government's request for the 2013 Extension noted:

*Incorporation of adjacent areas will provide greater integrity for the natural landscape values of the property once managed for the purpose of conservation within a single management arrangement...*³⁶

*The proposed additions will markedly improve the conservation of the natural values of the property along the northern and eastern borders. Sweeping landscapes of exceptional natural beauty, especially associated with tall eucalypt forests, will now be protected. Significant features, notably remarkable karst systems and glacial features extending beyond the existing boundary, will be brought into the property. The boundary will be more robust and manageable. Active management of threats and incursions in the new additions can improve conservation of the existing property.*³⁷

³³ UNESCO World Heritage Centre, ICCROM, ICOMOS, IUCN, *Managing Natural World Heritage* (2012) <<http://whc.unesco.org/uploads/activities/documents/activity-703-1.pdf>>, para 101.

³⁴ Tasmanian Parks and Wildlife Service, *Tasmanian Wilderness World Heritage Area Management Plan 1999*, <<http://www.parks.tas.gov.au/index.aspx?base=5957#1a>>.

³⁵ Australian Government, Department of the Environment, 'Boundary map showing 2010, 2012 and 2013 extensions' <<http://www.environment.gov.au/system/files/pages/f99dbb51-03c2-4eb2-a66e-87c4044117b4/files/map-boundary-2010-12-13.pdf>>.

³⁶ Above n14, 9.

³⁷ *Ibid*, 11.

Within some of the proposed additions there are areas that have been previously logged and are in the process of revegetation, and there is also infrastructure associated with previous forest harvesting, including roads, bridges etc... Some exotic species and disease infestations, particularly associated with gravel roads and disturbed areas, have been recorded in the proposed additions and will require prompt attention. However, with careful management, there are opportunities to minimise the impacts of disturbances, to progressively restore the condition of any degraded areas and improve the resilience of the existing property.³⁸

Cultural heritage values

38. The 2013 Extension request sought recognition of the additional 170,000 hectares on the basis of Outstanding Universal Values relating to natural heritage only (criteria (vii), (viii), (ix) and (x)). The Australian Government submission noted that further study and consultation with the Tasmanian Aboriginal community was required before the cultural values of the extension area could be appropriately identified:

The Tasmanian Wilderness is a mixed property which has important cultural values. Additional work is required to identify cultural values that would enhance criteria (iii), (v), and (vi). Further evaluation must involve consultation with the Tasmanian Aboriginal community which has not yet taken place. It is for this reason that this proposal for a minor boundary modification is made on the basis of the four natural criteria (vii), (vii), (ix) and (x) for which the property is inscribed.³⁹

39. Because the TWWHA is a mixed property (that is, listed for both cultural and natural heritage values, the 2013 Extension proposal was assessed by the cultural heritage Advisory Body (ICOMOS). The ICOMOS Evaluation report notes:

ICOMOS understands that the proposed extension covers a forest area which contains well-documented Aboriginal heritage places, including caves with occupation deposits and painted art dating to the Pleistocene era, and rock shelters with evidence of Holocene occupation of the highlands of Tasmania that might complement and strengthen the Outstanding Universal Value of the existing TWWHA. ICOMOS is concerned that there is potential for any continued logging to impact on cultural elements in the absence of the appropriate study, identification, location and protection of cultural heritage...

The current minor boundary modification is of considerable size and within the various areas there appear to be significant cultural attributes that relate to those in other parts of the property. ICOMOS does not consider that it would be appropriate to add these areas to this mixed property without an understanding of the cultural attributes that they contain or an evaluation as to how these might be considered to support the Outstanding Universal Value of the property.⁴⁰

³⁸ Ibid, 21.

³⁹ Ibid, 10.

⁴⁰ UNESCO, World Heritage Convention, World Heritage Committee 2013 Addendum Evaluations of Nominations of Cultural and Mixed Properties ICOMOS report for the World Heritage Committee, 37th ordinary session, Phnom Penh, June 2013, UN Doc WHC-13/37.COM.8B1.Add <<http://whc.unesco.org/archive/2013/whc13-37com-8B1infAdd-en.pdf>>, 1–2.

40. ICOMOS recommended Australia undertake further study and consultation with the Tasmanian Aboriginal community in order to provide more detailed information on the cultural value of the additional areas and how these relate to the Outstanding Universal Value of the existing property. It also asked that Australia provide detailed information on the legal provisions and management arrangements that protect the cultural heritage in the extended property and in particular for the control of access to archaeological sites and sites of cultural significance.⁴¹

41. Having regard to the ICOMOS report, the World Heritage Committee determination in relation to the 2013 Extension requested the Australian Government to address the following concerns regarding the cultural values of the property:

a) Undertake further study and consultation with the Tasmanian Aboriginal community in order to provide more detailed information on the cultural value of the additional areas and how these relate to the Outstanding Universal Value of the existing property;

b) Provide detailed information on the legal provisions for the protection of cultural heritage in the extended property;

c) Provide detailed information on the management arrangements for cultural heritage and in particular for the control of access to archaeological sites and sites of cultural significance.⁴²

42. The Law Council recognises that Aboriginal peoples possess distinct cultures and identities and unique relationships with their lands, waters and resources⁴³ and supports Indigenous engagement in land management.

43. The Law Council strongly supports ongoing consultation with Tasmanian Aboriginal communities regarding the management of the listed property and recommends that the Standing Committee urge the Australian Government to

(a) undertake the cultural heritage protection studies, reporting, and consultation activities requested by the World Heritage Committee; and

(b) ensure adequate resources are made available for the identification of cultural heritage values in the TWWHA and development of management strategies to protect those values.

⁴¹ Ibid 2.

⁴² Above n18, para 4.

⁴³ Law Council of Australia, *Policy Statement on Indigenous Australians and the Legal Profession* (2010) <www.lawcouncil.asn.au/lawcouncil/images/LCA-PDF/a-z-docs/PolicyStatementIndigenousAustralians.pdf> and other Law Council statements and activities at <http://www.lawcouncil.asn.au/lawcouncil/index.php/divisions/civil-justice/indigenous-legal-issues>.

Attachment A: Profile of the Law Council of Australia

The Law Council of Australia exists to represent the legal profession at the national level, to speak on behalf of its Constituent Bodies on national issues, and to promote the administration of justice, access to justice and general improvement of the law.

The Law Council advises governments, courts and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community. The Law Council also represents the Australian legal profession overseas, and maintains close relationships with legal professional bodies throughout the world.

The Law Council was established in 1933, and represents 16 Australian State and Territory law societies and bar associations and the Large Law Firm Group, which are known collectively as the Council's Constituent Bodies. The Law Council's Constituent Bodies are:

- Australian Capital Territory Bar Association
- Australian Capital Territory Law Society
- Bar Association of Queensland Inc
- Law Institute of Victoria
- Law Society of New South Wales
- Law Society of South Australia
- Law Society of Tasmania
- Law Society Northern Territory
- Law Society of Western Australia
- New South Wales Bar Association
- Northern Territory Bar Association
- Queensland Law Society
- South Australian Bar Association
- Tasmanian Independent Bar
- The Large Law Firm Group (LLFG)
- The Victorian Bar Inc
- Western Australian Bar Association

Through this representation, the Law Council effectively acts on behalf of approximately 60,000 lawyers across Australia.

The Law Council is governed by a board of 17 Directors – one from each of the Constituent Bodies and six elected Executives. The Directors meet quarterly to set objectives, policy and priorities for the Law Council. Between the meetings of Directors, policies and governance responsibility for the Law Council is exercised by the elected Executive, led by the President who serves a 12-month term. The Council's six Executive are nominated and elected by the board of Directors. Members of the 2013 Executive are:

- Mr Michael Colbran QC, President
- Mr Duncan McConnel President-Elect
- Ms Leanne Topfer, Treasurer
- Ms Fiona McLeod SC, Executive Member
- Mr Justin Dowd, Executive Member
- Dr Christopher Kendall, Executive Member

The Secretariat serves the Law Council nationally and is based in Canberra.