Mount Wellington Cable Car Facilitation Bill 2017

Hobart City Council Submission

City of HOBART

Introduction

The Hobart City Council welcomes the opportunity to provide a submission to the *Mount Wellington Cable Car Facilitation Bill 2017* ("the Bill").

In general the Bill appears to achieve the aims set out by the Minister in his letter of 12 July 2017 to the Lord Mayor, namely that the Bill has been prepared to:

- Allow a planning application involving public land to be lodged and assessed without landowner consent;
- Enable a cable car proponent to access areas of Wellington Park for necessary assessment and preliminary investigations to prepare a planning application; and
- Ensure land acquisition by the government, if required, is undertaken in an open and transparent way.

The Minister also states that the legislation will not change the need for planning and other approvals and confirms that any public land acquired will remain part of Wellington Park and will not be sold to a proponent or private land holder.

Nonetheless, the underlying theme of the legislation and the processes therein suggest that kunanyi/Mt Wellington is the equivalent of land able to be accessed as if for a below ground mining lease, rather than a landform that has multiple environmental, social and cultural values.

The Bill fails to recognise the social, cultural and economic value to the State of kunanyi/ Mount Wellington and further fails to recognise the significant contribution of both local government landholders and the Wellington Park Management Trust in managing the whole of the Park area. This failure is compounded by a number of technical and operational concerns with the Bill, as discussed below.

For the purposes of this document, a summary of the Council's position on the various sections of the Bill are now outlined.

Section 3 – Interpretation

Whilst this section is administrative in nature, the definition of 'project' is very broad and could include 'one or more cable cars', construction of facilities related to the operation or use of such cable cars and may also include any other development and uses forming part of that project.

Conceivably the definition could be broad enough to include ancillary development, although it is not certain whether this is the intention of the Bill. Additionally, the Bill does not provide any limit on the number of cable car proposals/proponents nor is there a sunset provision.

In short, the Bill could conceivably be used to facilitate any cable car proposal, on any land owned by a council within Wellington Park, at any time in the future.

The Bill is further flawed in that it appears to treat all other "developments and uses" connected with the cable car project as ancillary. For instance, is it intended that uses such as restaurants, gift shops, car parking, etc would also be included in the

definition of the project, many of which such uses could have major environmental and other impacts?

Finally, the question arises regarding the interpretation of “project land” as only referring to that land owned by a council. Given there are significant state and private land holdings in kunanyi/Wellington Park, does the definition then preclude such land from a cable car project or is this an unintentional restriction on the location of such cable car projects?

The Council submits that clarity should be provided on the extent of the terms ‘project’ and ‘project land’ in the Bill.

Section 4 – Planning Permits

This section states that landowner consent to lodge a development application is not required in relation to the project.

The Council recently sought advice from Shaun McElwaine SC in relation to the issue of landowner consent under section 52 (1B) of the Land Use Planning and Approvals Act 1993.

Mr McElwaine advised that this section confers on the general manager (or his/her delegate) the power to provide owner consent. The Council cannot direct or dictate to the general manager on this exercise of this statutory obligation, nor is the general manager bound by any council decision.

In Mr McElwaine’s view it was clearly a matter for the general manager to determine whether to provide consent pursuant to section 52(1B) of the Land Use Planning and Approvals Act 1993.

Section 4 of the draft Bill presupposes that a general manager would not provide landowner consent to lodge a development application and on that basis the necessity of this section within the draft Bill is questionable.

The practice has generally been to grant owner consent in order to allow developments to proceed through the planning process. Other land owner issues are then dealt with once the development is free and clear of planning and legal constraints, thus providing for the orderly development of land as required by LUPPA. The Council is well aware of its separate and distinct roles as planning authority and land owner.

Indeed, given Mr McElwaine’s advice, the publicly stated rationale of the need for this legislation has no weight.

Section 5 – Application of certain provisions of *Land Acquisition Act 1993* for purposes of the project

This section applies part of the *Land Acquisition Act* to the acquisition of land for the purposes of the project. The requirement for the proponent to obtain landowner consent is removed (s5(2)) and section 5(3) prevents the Crown from on-selling the land acquired which ensures that any land acquired will remain in public ownership albeit by the Crown.

The Council appreciates the mechanics of the Land Acquisition Act. The Council does, however, seek more detailed clarification on the practical implementation of any acquisition to determine the potential impact on the City's land, including any compensation and ongoing management issues.

The publicly stated rationale for this legislation has been to grant certainty over land access for a project once free and clear of all planning and legal constraints. However Council questions the need for legislation as a tool to achieve this, given the difficulties of repealing legislation, and suggests there are other less binding legal means.

Section 6 – Certain project land remains part of Wellington Park

The land acquired will remain part of Wellington Park.

The Council has no objection to this section.

Section 7 – Minister may issue authority

This section provides the greatest concern for the City of Hobart. This section provides the Minister with the power to grant authority to a proponent to enter land and carry out activities on the land, including testing, that are reasonably required to be carried out prior to lodging a development application.

There are no provisions for consulting with either the Council or the Wellington Park Management Trust as the most knowledgeable and enduring land managers of kunanyi / Mt Wellington.

The lack of these provisions highlights the fact that the legislation is focused on land acquisition for private development and fails to address day to day land management issues.

There are four significant concerns Council wishes to raise:

Work Health and Safety obligations

It is usual practice for the Wellington Park Management Trust, in collaboration with the City of Hobart, to grant permits for the undertaking of activities on the City's land within Wellington Park. The Council would also normally undertake inductions with those third parties and/or their contractors engaged to undertake such activities. This helps to ensure the safety of those parties, but also the public generally.

Environmental Impacts

Any activity within Wellington Park has the potential to have an impact upon natural and cultural values, and the Council's assets, within the reserve (such as fire trails and recreational tracks). If authority to undertake activities is to rest entirely with the Minister, it appears neither the Trust nor the Council will have any substantive input into how potential impacts will be managed. Further, given kunanyi / Mt Wellington contributes up to 25% of the city's water into TasWater's networks, it is not clear how any impacts of geotechnical testing in the water catchment will be managed?

Operational concerns including road closures, works by Council and other activities

Clearly there are potential operational issues associated with a third party providing access given that Pinnacle Road is often closed in adverse weather, and the Council undertakes numerous activities and works on a regular basis (i.e. ongoing helicopter operations associated with track works).

Potential liability arising from carrying out of activities by proponent

This provision also fails to consider potential liability arising as a result of actions by a third party proponent and relies on the Minister imposing appropriate terms and conditions in granting the authority.

It also raises the question is the Minister legally able to address liability toward the Council through the granting of an authority given that the Council will not be a party to the authority being granted?

It is also unclear whether the scope of the Minister's powers in section 7 of the Bill are intended to exempt any of the activities being undertaken by the proponent prior to lodging a development application from obtaining any necessary statutory approvals.

In the first instance, the scope of any such 'activities', including 'testing', is ambiguous. Given the nature of any cable car proposal, it is possible such testing would include activities such as geotechnical testing and other activities that in and of themselves may have a potentially significant impact on the Park's values, and public safety. As such, it is quite possible that activities, including geotechnical testing, that are reasonably required to be carried out prior to lodging a development application may themselves require approval under the statutory management plan (such as a development application and/or a permit from the Trust).

It is unclear whether section 7(3) of the Bill allows this authority to override any other Act. In this context, the Bill would seem targeted at the Wellington Park Act 1993 and the Land Use Planning and Approvals Act 1993, however it could also be construed to override all other acts addressing relevant matters such as threatened species, work health and safety and public liability. It is also unclear in the legislation whether the proponent and/or his agents will liable for remediation of any "activities, including testing" should there be significant damage to the environmental and cultural fabric of the Park.

Section 8 – Regulations

This section provides the Governor with the power to make regulations for the purpose of the Bill.

The Council has no issue with what is being proposed in this section.

Section 9 – Administration of the Act

This section states that the Minister for State Growth is assigned with administration of the Bill.

The Council has no issue with what is being proposed in this section.

Dual Naming

The Council strongly submits that consideration be given to amending the name of the Bill. The title 'Mount Wellington Cable Car Facilitation Bill 2017' is inconsistent with the State Government's own *Aboriginal and Dual Naming Policy* which states:

'Both parts of the dual name are to be shown on all official signage, directories, maps and all official documents and publications without any distinction between the two, other than the sequence. The Aboriginal name will appear first.'

The Council therefore strongly submits that the Bill ought to be titled the *Kunanyi/ Mount Wellington Cable Car Facilitation Bill 2017*.

Once again, the Council has welcomed the opportunity to provide comment on the draft Bill and looks forward to the contents of its submission being given due consideration by the State Government.