



CITY OF HOBART

AGENDA

Special Governance Committee Meeting

Open Portion

Monday, 24 July 2017

at 4.45 pm

Lady Osborne Room, Town Hall

THE MISSION

Our mission is to ensure good governance of our capital City.

THE VALUES

The Council is:

about people	We value people – our community, our customers and colleagues.
professional	We take pride in our work.
enterprising	We look for ways to create value.
responsive	We're accessible and focused on service.
inclusive	We respect diversity in people and ideas.
making a difference	We recognise that everything we do shapes Hobart's future.

ORDER OF BUSINESS

Business listed on the agenda is to be conducted in the order in which it is set out, unless the committee by simple majority determines otherwise.

APOLOGIES AND LEAVE OF ABSENCE

- 1. CO-OPTION OF A COMMITTEE MEMBER IN THE EVENT OF A VACANCY 4**
- 2. INDICATIONS OF PECUNIARY AND CONFLICTS OF INTEREST 4**
- 3. TRANSFER OF AGENDA ITEMS..... 4**
- 4. REPORTS 5**
 - 4.1 Mount Wellington Cable Car Facilitation Bill 2017 5**

Special Governance Committee Meeting (Open Portion) held Monday, 24 July 2017 at 4.45 pm in the Lady Osborne Room, Town Hall.

COMMITTEE MEMBERS

Ruzicka (Chairman)
Deputy Lord Mayor Christie
Cocker
Thomas
Reynolds

Apologies: Nil

Leave of Absence: Nil

ALDERMEN

Lord Mayor Hickey
Zucco
Briscoe
Sexton
Burnet
Denison
Harvey

1. CO-OPTION OF A COMMITTEE MEMBER IN THE EVENT OF A VACANCY

2. INDICATIONS OF PECUNIARY AND CONFLICTS OF INTEREST

Ref: Part 2, Regulation 8(7) of the *Local Government (Meeting Procedures) Regulations 2015*.

Aldermen are requested to indicate where they may have any pecuniary or conflict of interest in respect to any matter appearing on the agenda, or any supplementary item to the agenda, which the committee has resolved to deal with.

3. TRANSFER OF AGENDA ITEMS

Regulation 15 of the *Local Government (Meeting Procedures) Regulations 2015*.

A committee may close a part of a meeting to the public where a matter to be discussed falls within 15(2) of the above regulations.

In the event that the committee transfer an item to the closed portion, the reasons for doing so should be stated.

Are there any items which should be transferred from this agenda to the closed portion of the agenda, or from the closed to the open portion of the agenda?

4 REPORTS

4.1 Mount Wellington Cable Car Facilitation Bill 2017 File Ref: F17/91297; S70-042-03/05

Report of the General Manager of 21 July 2017 and attachments.

Delegation: Council

**REPORT TITLE: MOUNT WELLINGTON CABLE CAR FACILITATION
BILL 2017****REPORT PROVIDED BY:** General Manager**1. Report Purpose and Community Benefit**

- 1.1. The purpose of this report is for the Council to consider draft legislation in relation to facilitating the development of a cable car on kunanyi/Mount Wellington.

2. Report Summary

- 2.1. The Government has released the draft Mount Wellington Cable Car Facilitation Bill 2017 for public consultation. The time for submissions closes on 4 August 2017.
- 2.2. The Bill is intended to facilitate the development of a cable car on Mount Wellington and provides for the acquisition of land for this purpose as well as other powers designed to assist proponents.
- 2.3. A summary of the technical and operational impacts of the Bill has been provided in this report and it is recommended that the Council provides a submission in relation to those areas of concern.

3. Recommendation***That:***

- 1. The City makes a submission in relation to the draft Mount Wellington Cable Car Facilitation Bill 2017 in accordance with the content of this report;***
- 2. Copies of the City's submission be sent to the Minister, opposition party leaders and members of the Legislative Council; and***
- 3. The Council give consideration to developing an appropriate media strategy around this issue.***

4. Background

- 4.1. The *Mount Wellington Cable Car Facilitation Bill 2017* (“the Bill”) has been provided to the City of Hobart as part of the government’s public consultation.
- 4.2. The Minister for State Growth, Matthew Groom MP, wrote to the Lord Mayor on 12 July 2017 prior to the release of the Bill publically. In that letter the Minister states that the Bill has been prepared to:
 - 4.2.1. Allow a planning application involving public land to be lodged and assessed without landowner consent;
 - 4.2.2. Enable a cable car proponent to access areas of Wellington Park for necessary assessment and preliminary investigations to prepare a planning application; and
 - 4.2.3. Ensure land acquisition by the government, if required, is undertaken in an open and transparent way.
- 4.3. The letter 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.
- 4.4. **Attachment A** to this report is a copy of the letter to the Lord Mayor dated 12 July 2017.
- 4.5. The Bill itself is nine sections long and states its purpose is to facilitate the development of facilities in relation to, and the operation of, cable cars on Mount Wellington. A brief outline of the Bill and the impact of it is included as **Attachment B** to this report.
- 4.6. In general the Bill appears to achieve the aims set out by the Minister in his letter of 12 July.
- 4.7. Section 4 of the Bill states that landowner consent to lodge a development application is not required in relation to a project within the scope of the Bill. The law in regard to the granting of landowner consent is clear – the consent of the general manager is an administrative function and not a decision for the Council. The Government has not tested whether the General Manager will provide the consent required in s52(1B) of the *Land Use Planning and Approvals Act 1993* and therefore is this provision really required?
- 4.8. Section 5 of the Bill has the effect of applying certain provisions of the *Land Acquisition Act 1993* (“the Act”) for the purposes of a project within the scope of the Bill.
- 4.9. In essence, Part 1A of the Act is stated to apply to the acquisition of land for the purposes of a project under the Bill. Section 5(2) of the Bill removes the requirement in the Act for the proponent to obtain

landowner consent 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. Section 6 states that any land acquired will remain part of the Wellington Park.

- 4.10. The process of acquisition under the Act relates to the Crown acquiring land for the purposes of infrastructure to be constructed or operated by a person other than the Crown.
- 4.11. This occurs through the Governor making an order on the recommendation of the Minister and the land cannot be acquired until after a planning permit has been issued. The use of the land can only be for the intended purpose and the planning authority is also precluded from issuing a planning permit for any other use without the written consent of the Minister. This applies for a period of ten years.
- 4.12. If land acquired is injuriously affected then the owner of the land is entitled to compensation from the proponent. There is a period of twelve months from the grant of a permit within which to make a claim and if not agreed on, a claim for compensation is to be determined in the same manner as a disputed claim for compensation under the Act.
- 4.13. The acquisition process proposed by the Bill has the effect of subjecting the City of Hobart to the process contained in the Act, which obviously applies to all compulsory acquisition processes in Tasmania.
- 4.14. In a practical sense, what isn't clear is the likely extent of land to be acquired. Whilst it would be anticipated that the land where infrastructure actually rests would be acquired and the aerial components of any cable car would reside by easement it's unclear how access to infrastructure would be facilitated given that the infrastructure may not be located adjacent to existing accesses on the Mountain, and thus may require new vehicle accesses.
- 4.15. The restriction on the Crown on-selling the land is seen as a positive, and having the land remain as part of the Wellington Park is positive from the City's perspective as it ensures that any activities being undertaken on the land remain subject to the statutory Management Plan, the *Wellington Park Act 1993* and the *Wellington Park Regulations 2009*.
- 4.16. Section 7 of the Bill is the most contentious part of the Bill from an operational perspective. It 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.
- 4.17. The contentious part of this section in the Bill is that no provision is made for consultation or engagement with the owner of that land, or the Wellington Park Management Trust, before the Minister grants such an authority. There are really four main issues in this regard:

- 4.17.1. Work, health and safety concerns arise in relation to the undertaking of any activities on the City's land. 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 City 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.
- 4.17.2. Obviously any activity within Wellington Park has the potential to have an impact upon the natural and cultural values, and the City's assets, with 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 City will have any substantive input into how potential impacts will be managed.
- 4.17.3. Clearly there are also potential operational issues associated with a third party providing authority to access given that Pinnacle Road is often closed in adverse weather, and the City under undertakes numerous activities and works on a regular basis (i.e. ongoing helicopter operations associated with track works).
- 4.17.4. The 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. There are also questions as to whether the Minister is 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.
- 4.18. 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.
- 4.19. 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 of the Park's values, and public safety.
- 4.20. 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).

- 4.21. 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* and the *Land Use Planning and Approvals Act*, 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.
- 4.22. The intention of this section of the Bill ought to be clarified.
- 4.23. Generally, the application of the Bill could be quite broad. The definition of “project” in the Bill includes ‘one or more cable cars’, construction of facilities related to the operation or use of such cable cars and includes other development and uses forming part of that project. Conceivably this could be broad enough to include ancillary development, although it is not certain whether this is the intention of the Bill.
- 4.24. Additionally, the Bill does not provide any limit on the number of proposals/proponents, or any sunset period within which proponents can act under the Bill. Following the approval and construction of a cable car, it would then be at the discretion of the Minister as to whether subsequent cable cars were facilitated using the provisions of the Bill.
- 4.25. 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 into the future.
- 4.26. It is considered that a submission in relation to this particular provision ought to be provided as part of the public consultation.

5. Proposal and Implementation

- 5.1. It is proposed that:
 - 5.1.1. The City makes a submission in relation to the draft *Mount Wellington Cable Car Facilitation Bill 2017* in accordance with the content of this report;
 - 5.1.2. Copies of the City’s submission be sent to the Minister, opposition party leaders and members of the Legislative Council; and
 - 5.1.3. The Council give consideration to developing an appropriate media strategy around this issue.

6. Strategic Planning and Policy Considerations

- 6.1. The use of kunanyi/Mount Wellington links across multiple areas of the Capital City Strategic Plan. The consideration of the Bill is therefore strongly aligned to the City’s strategic objectives.

7. Financial Implications**7.1. Funding Source and Impact on Current Year Operating Result**

7.1.1. No funding source is required as a result of this report.

7.2. Impact on Future Years' Financial Result

7.2.1. It is not possible to determine any impact on future years' financial result as a result of the Bill becoming law at this point, as this will not arise until such time as an acquisition of land actually takes place, which is obviously not guaranteed to occur.

7.3. Asset Related Implications

7.3.1. While there is no direct impact on assets as a result of the Bill, if works are undertaken that affect City assets, and/or land is acquired which contains City assets, then there will obviously be some impact. The practical impact of this is not able to be determined at this point, however the financial impact ought to be taken account of in the process of determining compensation payable.

8. Legal, Risk and Legislative Considerations

8.1. These have been addressed in the body of this report.

9. Environmental Considerations

9.1. The potential impacts upon natural and cultural values has been addressed in the body of this report.

10. Delegation

10.1. This matter requires the consideration of the Council.

As signatory to this report, I certify that, pursuant to Section 55(1) of the Local Government Act 1993, I hold no interest, as referred to in Section 49 of the Local Government Act 1993, in matters contained in this report.



N.D Heath
GENERAL MANAGER

Date: 21 July 2017
File Reference: F17/91297; S70-042-03/05

- Attachment A: Correspondence from Minister for State Growth regarding draft Mount Wellington Cable Car Facilitation Bill 2017 - 18 July 2017
↓
- Attachment B: Summary of impact of Mount Wellington Cable Car Facilitation Bill 2017 ↓

Minister for State Growth
Minister for Energy
Minister for Environment and Parks

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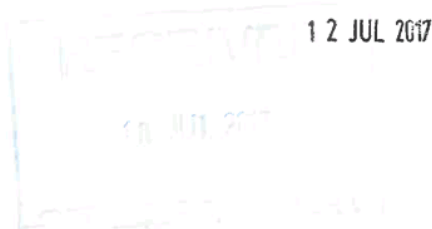
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E-MAILED
14/7/2017



Alderman Sue Hickey
Lord Mayor
Hobart City Council
GPO Box 503
HOBART TAS 7000



Dear Ald Hickey

Sue

Thank you again for our recent meeting to discuss access to the public land associated with the proposed cable car development in kunanyi/Mt Wellington Park.

As discussed at that meeting, my office has been working with the Department of State Growth to prepare draft legislation to facilitate access to public land for that purpose.

We have now prepared a draft Bill and intend to commence public consultation shortly. The draft Bill will be available on the Department of State Growth's website. However, in advance of that release, please find attached an advance copy of the draft Bill, which remains strictly confidential until the date of public release.

The legislation 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 the park for necessary assessment and preliminary investigations needed to prepare a planning application; and
- ensure land acquisition by the government, if required, is undertaken in an open and transparent way.

The legislation will not change the need for planning and other approvals, including protecting Tasmania's natural environment, heritage and Aboriginal cultural values.

The legislation also confirms that any public land acquired will remain part of kunanyi/Mt Wellington Park and will not be sold to a proponent or private land holder.

If you have any queries relating to the draft Bill please contact the Department of State Growth's Director of Policy and Coordination, Anne Beach, on (03) 6166 3476 or anne.beach@stategrowth.tas.gov.au.

Yours sincerely



Matthew Groom MP
Minister for State Growth

Enclosed – Draft *Mount Wellington Cable Car Facilitation Bill 2017*

Drafted in the Office of
Parliamentary Counsel

CONFIDENTIAL

TASMANIA

**MOUNT WELLINGTON CABLE CAR
FACILITATION BILL 2017**

CONTENTS

1. Short title
2. Commencement
3. Interpretation
4. Planning permits
5. Application of certain provisions of *Land Acquisition Act 1993*
for purposes of project
6. Certain project land remains part of Wellington Park
7. Minister may issue authority
8. Regulations
9. Administration of Act

**MOUNT WELLINGTON CABLE CAR
FACILITATION BILL 2017**

*(Brought in by the Minister for State Growth, the Honourable
Matthew Guy Groom)*

A BILL FOR

**An Act to facilitate the development of facilities in relation
to, and the operation of, cable cars on Mount Wellington**

Be it enacted by Her Excellency the Governor of Tasmania, by
and with the advice and consent of the Legislative Council and
House of Assembly, in Parliament assembled, as follows:

1. Short title

This Act may be cited as the *Mount Wellington
Cable Car Facilitation Act 2017*.

2. Commencement

This Act commences on the day on which this
Act receives the Royal Assent.

3. Interpretation

In this Act, unless the contrary intention
appears –

aerial easement means an easement, for the
purposes of the project, that relates to
airspace above project land;

Mount Wellington Cable Car Facilitation Act 2017
Act No. of

s. 3

land has the same meaning as in the *Land Acquisition Act 1993*;

project means all or part of a project consisting of –

- (a) the construction of facilities necessary for the operation of one or more cable cars, including –
 - (i) terminals for the purposes of such cable cars; and
 - (ii) towers, and a cableway between the towers, for the purposes of such cable cars; and
- (b) the construction of facilities related to the operation or use of such cable cars; and
- (c) the use of any facilities, or cable cars, referred to in paragraph (a) or (b) –

and includes other developments and uses forming part of that project;

project land means –

- (a) land, within Wellington Park, that is owned by a council and that is required for the purposes of the project; and
- (b) any airspace to which an aerial easement relates;

Mount Wellington Cable Car Facilitation Act 2017
Act No. of

s. 4

proponent means a person that wishes to undertake all or part of the project;

Wellington Park has the same meaning as in the *Wellington Park Act 1993*.

4. Planning permits

Section 52(1B) of the *Land Use Planning and Approvals Act 1993* does not apply in relation to an application under the *Land Use Planning and Approvals Act 1993* in relation to the project.

5. Application of certain provisions of *Land Acquisition Act 1993* for purposes of project

- (1) Part 1A of the *Land Acquisition Act 1993*, and any other provision of that Act that is relevant to the operation of that Part, applies in relation to project land as if the project were a service prescribed for the purposes of paragraph (i) of the definition of *infrastructure* in section 7A of the *Land Acquisition Act 1993*.
- (2) Despite subsection (1), section 7C(1)(b) of the *Land Acquisition Act 1993* does not apply in relation to project land.
- (3) Despite subsection (1) and section 7D(2)(f) of the *Land Acquisition Act 1993*, an order made under section 7B(2) of the *Land Acquisition Act 1993* may not authorise the sale by the Crown of any project land that is proposed to be acquired under that Act for the purposes of the project.

Mount Wellington Cable Car Facilitation Act 2017
Act No. of

s. 6

- (4) A reference in the *Land Acquisition Act 1993* to land or an easement is to be taken, so far as is necessary for the purposes of the application of Part 1A of that Act to the project land, to include a reference to an aerial easement and to an access easement.

6. Certain project land remains part of Wellington Park

The acquisition, under Part 1A of the *Land Acquisition Act 1993* as applied by section 5, for the purposes of the project, of project land is not to be taken to have the effect that the land ceases to be part of Wellington Park.

7. Minister may issue authority

- (1) The Minister may grant to a proponent, under this subsection, an authority to enter land, and to carry out on the land activities, including testing, that are reasonably required to be carried out before the proponent applies under the *Land Use Planning and Approvals Act 1993* for a permit in relation to the project.
- (2) An authority granted under subsection (1) is subject to the terms and conditions specified on the authority.
- (3) Despite any other Act, a person may enter land, and carry out activities on the land, under and in accordance with an authority granted under subsection (1).

Mount Wellington Cable Car Facilitation Act 2017
Act No. of

s. 8

8. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) The regulations may be made so as to apply differently according to such factors as are specified in the regulations.
- (3) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.

9. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for State Growth; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of State Growth.

Section	Description	Council's Recommended Position
1 – Short Title	This just provides the short title of the Act	N/A
2 – Commencement	Act commences when Royal Assent is provided	N/A
3 – Interpretation	Fairly administrative, although the definition of “project” is very broad and could include ‘one or more cable cars’, construction of facilities <u>related</u> to the operation or use of such cable cars and includes <u>other</u> development and uses forming part of that project. Conceivably this could be broad enough to include ancillary development, although it’s not certain whether this is the intention of the Bill. Additionally, the Bill does not provide any limit on the number of proposals/proponents or any sunset period within which proponents can act.	Suggest including a request for clarification relating to the intention of this definition in Council’s submission.
4 – Planning Permits	This section states that landowner consent to lodge a development application is not required in relation to the project.	This presupposes that a general manager would not provide landowner consent to lodge a development application and on that basis its necessity is questionable.
5 – Application of certain provisions of Land Acquisition Act 1993 for purposes of 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.	No real issue with what is proposed. The mechanics of the Land Acquisition Act will apply to land acquisition. Suggested that clarification be sought on practical implementation of any acquisition to determine potential impact on the City’s land.
6 – Certain project land remains part of Wellington Park	The land acquired will remain part of Wellington Park. This is a positive from Council’s perspective as it will ensure that any activity on the land is still subject to the Management Plan and otherwise subject to the <i>Wellington Park Act 1993</i> and the <i>Wellington Park Regulations 2009</i> .	No objection to this section.

7 – Minister may issue authority	<p>Most contentious part of the Bill. Provides Minister with 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.</p> <p>No provision is made for consultation with either the Council or the Wellington Park Management Trust. Essentially four issues:</p> <p>WHS obligations – Council typically inducts any entities undertaking work on Council's land within Wellington Park to ensure safety of that party/contractors and also public;</p> <p>Environmental impacts of activities;</p> <p>Operational concerns including road closures, works by Council and other activities occurring; and</p> <p>Potential liability arising from carrying out of activities by proponent.</p>	Inclusion of the Council's concerns in submission on Bill is recommended. Also clarification in relation to the scope of the Minister's powers under this section relating to whether other statutory approvals are required for any "activities" undertaken by proponent.
8 – Regulations	This section provides the Governor with the power to make regulations for the purpose of the Bill.	No issue with what is proposed.
9 – Administration of Act	States that Minister for State Growth is assigned with administration of the Bill.	No issue with what is proposed.