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6 July 2015

Mr Axel Von Krusenstierna
Manager
Wellington Park Management Trust

By email: axel@wellingtonpark.org.au

Dear Mr Von Krusenstierna

Wellington Park Management Plan 2013 -Draft Amending Plan

I confirm we act on behalf of Phil Stigant who is the spokesperson for the Residents Opposed to the Cable Car group.

Mr Stigant has instructed us to write to you on the group's behalf following the release of the Tasmanian Planning Commission's findings contained in the *Review of the Wellington Park Management Trust's report and representations: draft Amending Plan for the Pinnacle Specific Area* (the Report).

The Trust indicated during the Commission hearing into this matter that following the release of the Report it would make a final determination on the amendment.

It remains ROCC's position that this type of amendment is not permitted by the *Wellington Park Act 1993* (Tas) (the Act). ROCC respectfully suggests that the appropriate course is for the Trust to take no further action on this matter or to in effect abandon the amendment. The Trust is not legally obliged to deal with the Mt Wellington Cableway Company (MWCC) "formal request" at all. It is within the Trust's discretion to take no further action or abandon the amendment. As submitted by ROCC during the hearing if the MWCC wishes to proceed with the cable car proposal it ought to be pursuant to the recently reviewed *Wellington Park Management Plan 2013*.

Whilst the Report does not specifically address this issue we note that it does raise serious questions about the legality of any subsequent decision by the Trust to progress the amendment. In particular:

- 1) The Commission has found the Trust process contained errors of law which cannot be cured now that the Commission process has concluded, in particular:
 - a. A failure to comply with the Act in relation to comprehensive treatment of the representations. The Commission at page 6 of the Report states:

...the Act requires that the Trust summarises the representations, and therefore the Panel expects that the summaries (contained in the Response Table of the Trust's report) comprehensively include all the issues raised, whether grouped, or against individual representors. The Panel finds that the examples of omissions raised above **were not in accordance with the Act** and that if the summaries were deficient, then there could not be any responses to those omitted issues. (emphasis added)

- b. A failure to comply with the Act in relation to the requirements of s 24(b)(ii), the Commission at page 7 of the Report states:

As part of the statutory process set out under section 24A(b)(ii) of the Act², the Trust must include in its report to the Commission commentary regarding the merits of the representations and whether or not they warrant modification of the (draft) plan. Whilst the Trust may have considered the merits of each of the representations, this is not clear in its general discussion of the issues raised or in any of its detailed responses to the representations.

...
Therefore the Panel considers that, in relation to section 24A(b)(ii), the Trust's responses have not included an opinion on the merits of the representations as to whether the representations are of sufficient merit, or not to warrant modification of the Draft Plan.

- 2) The Commission has also found that the Trust has inadequately dealt with the issues raised by representors. The Commission report states the Trust's response is inadequate in relation to the following issues:
- a. The proposed amendment would not further the vision and objectives of the Management Plan
 - b. The reasons for the proposed amendment have not been provided
 - c. Development in the proposed extended PSA is contrary to Wellington Park Management Plan and will adversely affect conservation values
 - d. Inadequate reasons for the boundary choice had been provided
 - e. The Pinnacle Specific Area had been extended in the 2013 Management Plan review
 - f. Wellington Park is a special place in which a cable car and increased development area on the summit would be inappropriate

The Trust is required to consider the Commission report under s 24(9) of the Act. ROCC submits that in light of the Commission's findings a decision to approve the amendment is one that no reasonable decision maker could make.

Please provide your assurance that this amendment will not be determined as foreshadowed and that it will be abandoned.

Please contact me if you would like to discuss this.

Kind regards,

Environmental Defenders Office (Tas) Inc.

Per:



Adam Beeson
Lawyer

Cc: Dr Christine Mucha (cmucha@iinet.net.au); Ald Damon Thomas (damon.thomas@bigpond.com); Ald Philip Cocker (philip_council@netspace.net.au) Ms Rita Warrenner (rita.warrenner@tourism.tas.gov.au) Ald Haydyn Nielsen (haydyn.nielsen@gcc.tas.gov.au) Ashley Rushton (ashley.rushton@parks.tas.gov.au) Lance Stapleton (lance.stapleton@taswater.com.au), Dr John Whittington (John.Whittington@dpipwe.tas.gov.au)