

Independent review of
the **EPBC Act**

Residents Opposed
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Professor Graeme Samuel AC,
EPBC Act Review Secretariat,
Department of the Environment and Energy,
GPO Box 787,
Canberra,
ACT 2601

Dear Professor Samuel,

Residents Opposed To The Cable Car (ROCC) is a community group opposed to the Mount Wellington Cableway Company's (MWCC) proposal to build a cable car development and associated infrastructure on kunanyi/Mt Wellington — a natural area of outstanding diversity mostly free of human-made infrastructure, in the backyard of Hobart, Tasmania's capital city.

The proposed private development includes an access road and base station in the foothills of kunanyi/Mt Wellington, an aerial tramway system up the Eastern face of the mountain and over the iconic dolerite cliffs known as the Organ Pipes. Construction of a large commercial centre with a restaurant, bar, cafe and cinema is planned on the alpine summit.

The proposal is wholly contained within reserved land, set aside for its natural and cultural values.

The access road cuts through the McRobies Gully public bushland reserve on the fringe of the city. The base station for the aerial tramway, the tramway, and the mountain-top complex are all located within Wellington Park. The McRobies Gully bushland reserve is recognised as an area with high priority biodiversity values, and Wellington Park was established in 1993, with the primary purpose of preserving and protecting the fauna and flora, natural beauty, historical and Aboriginal history and water catchment of the mountain in perpetuity.

Background - The MWCC's Proposal

The MWCC's proposal involves building a 2.4km road through the McRobies Gully bushland reserve. Distinguished Professor, Jamie Kirkpatrick, a geographer and conservation ecologist at the University of Tasmania (UTAS), has raised concerns that the proposed road through the reserve runs through a threatened silver peppermint ecological community.¹

The MWCC expect that building this road will involve clearing 5 hectares of forest that is known breeding habitat for the critically endangered swift parrot. The MWCC's Natural Values Report states that "Direct losses to 34 potential nesting trees and up to an additional 56 may be affected by indirect impacts" and "the risk of collision mortality is considered real".²

Associate Professor Menna Jones, an ecologist also at UTAS, has confirmed the existence of healthy populations of five, Federally listed, threatened species in the MWCC's project area. These include the endangered eastern barred bandicoot, eastern bettong, eastern quoll as well as the vulnerable Tasmanian devil and Tasmanian masked owl. These animals will all be impacted by traffic on the proposed access road. If built, such a road would result in the loss of most bettongs and bandicoots within a 2km buffer, most devils within a 5km buffer, and masked-owls would also be highly susceptible to being hit by vehicles on the road.³

BirdLife Tasmania has stated that the MWCC's proposed cable car development would:

"pose a substantial and significant threat to birds' flights, arising from the 'aerial easement', which would introduce significant above-ground infrastructure that would result in bird strikes; and reduce, fragment and alienate the foraging and breeding habitats for four endangered species present on the mountain: the wedge-tailed eagle, grey goshawk, masked owl and swift parrot".⁴

The MWCC's proposal also involves enormous quantities of earth to be cut and filled for construction of the proposed access road, base station, and 4,000m² commercial centre on the fragile alpine summit of the mountain. Proposed excavation to be cut totals 60,700 m³, with 8,500 m³ of material to be removed from the Mountain equating to over 1,400 12 tonne truck loads.⁵

¹ <https://www.abc.net.au/news/2018-08-09/rare-trees-at-site-of-proposed-mount-wellington-cable-car/10090506>

²

https://static1.squarespace.com/static/56505ac8e4b027b507820253/t/5d01e0f29834140001a76f9f/1560404312308/MWCC_NaturalValuesReport_NBES_20190605.pdf

³ <https://vimeo.com/299995305?fbclid=IwAR1GletzkEHUckTWbdqLJoZ9>

⁴ http://www.birdlife.org.au/images/uploads/branches/documents/TAS-Yellow_Throat-95-Sep2017.pdf

⁵ <https://mtwellingtoncablecar.com/downloads>

Context of This Submission

The MWCC's Natural Values Impact Assessment prepared by North Barker Ecosystem Services in June 2019 concludes that no threatened ecological communities and no nationally threatened flora under the Environment Protection and Biodiversity Conservation (EPBC) Act 1999 are likely to be impacted. However, the North Barker report also acknowledges that, "no detailed quantification of the significance of threatened fauna habitats has not [sic] been undertaken. This includes measures described by the Forest Practices Authority, DPIPWE and relevant EPBC survey guidelines".⁶

Correspondence between the MWCC and the Department of the Environment and Energy released under Freedom of Information Laws show that on 26 June 2019 the Department wrote to the MWCC advising how EPBC Act could apply to the proposed construction and operation of a cableway at Mt Wellington. On 15 July 2019 Chris Oldfield, the executive chair of the MWCC, advised the Department that the MWCC had received the departments letter and that the company would be referring the proposed development to the Department for assessment under the EPBC Act. Yet on 29 July 2019 a story in the Australian by Matt Denholm reported Chris Oldfield stating, "you don't need to do this (EPBC referral) until you start construction".⁷

A follow up story in the Australian by Matthew Denholm on 8 October 2019 reported that after the Department of the Environment and Energy warned the MWCC that the project could have an impact on 28 threatened species, Chris Oldfield has since promised that construction will not start without federal approval.⁸

For many years, the heritage values of kunanyi/Mt Wellington have been subject to speculation and informal assessment that they could qualify for National or even World Heritage listing. The landowner, Hobart City Council has previously voted to investigate State Government support for progressing a nomination to the National heritage list. To date, no formal steps have been taken to progress this opportunity to recognise and protect kunanyi/Mt Wellington's values as National Heritage.

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https://static1.squarespace.com/static/56505ac8e4b027b507820253/t/5d01e0f29834140001a76f9f/1560404312308/MWCC_NaturalValuesReport_NBES_20190605.pdf

⁷ <https://www.theaustralian.com.au/nation/federal-environmental-assessment-for-contentious-cablecar-plans/news-story/>

⁸ <https://www.theaustralian.com.au/nation/politics/no-approval-no-start-for-50m-mt-wellington-cableway/news-story/>

General comments:

The Environment Protection and Biodiversity Conservation (EPBC) Act 1999 is clearly inadequate and has demonstrably failed to protect Australia's unique environment and biodiversity:

- Australia leads the world on mammal extinction (Australia's Faunal Extinction Crisis Inquiry Interim Report).⁹
- Since the EPBC Act came into operation in 1999, 7.7 million hectares of threatened species' habitat, an area larger than the size of Tasmania, has been destroyed (ACF Fast-tracking Extinction Report).¹⁰
- Australia is the only developed nation identified as a global deforestation hotspot (WWF 2018 Living Planet Report).¹¹
- The 2016 State of Environment report states that land clearing is still one of the greatest threats to Australia's biodiversity and the outlook for Australia's biodiversity is "poor and worsening" (Australia's State of the Environment Report 2016).¹²
- In a 2020 ranking of 57 countries, Australia is the worst performing country on climate change policy (2020 Climate Change Performance Index).¹³
- The Murray-Darling Basin water resource has been mismanaged and the river system devastated (Good laws are not enough: flawed implementation in the Murray–Darling Basin).¹⁴
- Approval for the Adani mine under the EPBC Act is inconsistent with the need to protect the Great Barrier Reef from climate change (ACF to challenge approval of Adani coal mine).¹⁵
- Recent Tasmanian examples of the application of the EPBC Act demonstrate profound failures, rectified only because of legal challenge by civil society groups. The Tasmanian Aboriginal Centres' challenge of the Tasmanian Government's failure to refer its proposal to construct 4WD tracks across a National Heritage listed Aboriginal Cultural landscape saw that proposal accepted as a controlled action. Similarly, the Wilderness Society's challenge of the determination that the Lake Malbena development not require formal approval under the EPBC Act (contrary to the advice of statutory expert advisory bodies) has resulted in that decision needing to be remade.

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https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Faunalexinction/Interim_report

¹⁰ https://www.acf.org.au/threatened_species_habitat_environment_law

¹¹ https://wwf.panda.org/knowledge_hub/all_publications/living_planet_report_2018/

¹² <https://soe.environment.gov.au/download/reports>

¹³ https://newclimate.org/wp-content/uploads/2019/12/CCPI-2020-Results_Web_Version.pdf

¹⁴ https://www.edonsw.org.au/murray_darling_basin_flawed_implementation

¹⁵ https://www.acf.org.au/acf_to_challenge_approval_of_adani_coal_mine

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We are greatly concerned that if called upon in the context of the cable car proposal, the EPBC Act and its application will fail the values it is designed to protect, and the communities who cherish those values.

ROCC wishes to see the provisions of the EPBC Act strengthened and are deeply concerned about statement from the Federal Environment Minister that changes may be made to the Act in advance of the conclusion of this review. ROCC view cuts to 'green tape' to a reductions in the very provisions designed to protect important natural and cultural values.

Specific issues:

- The EPBC Act does not cover all heritage of national significance. The example of speculation/informal assessment of the National Heritage values of kunanyi/Mt Wellington is a case in point. ROCC believes kunanyi would qualify for National heritage based on natural values and Aboriginal and other cultural heritage. However, there is no compulsion under the EPBC Act to progress assessments despite indicative eligibility.
- The open standing provisions in s487 of the EPBC Act are critical for the credible function of the Act. Providing civil society, including community groups the opportunity to challenge determinations under the Act, without having to demonstrate a direct interest, is an important way to ensure outcomes conform with the objectives of the Act. The Tasmanian examples references above (Tasmanian Aboriginal Centre and the Wilderness Society) demonstrate this.
- Similarly, the injunction powers in s475 are critical as they provide the opportunity to avoid destructive impacts on Matters of National Environmental Significance whilst review processes are playing out.
- The power to refer proposals for assessment under the EPBC Act should be broadened to include civil society groups including Aboriginal groups and community groups. Not referring a proposal for assessment, and hoping it is not 'called in' by the Minister, is the best way to avoid scrutiny under the EPBC Act. While in the case of the MWCC proposal the Federal Government has advised the proponent that referral will be necessary, without the external campaign pressure and requests of groups like ROCC, this may not have been the case.

Recommendations

This review of the EPBC Act should result in the Federal Government acting immediately to strengthen the country's failing national environmental laws, including:

- The EPBC Act must incorporate an overarching principle of protecting Australia's unique environment and biodiversity as the primary principle in all decision-making processes under the Act;

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- Ministerial discretion must be removed from the Act and replaced with independent and transparent decision-making processes, which include community consultation that is not just sought but considered, and also rights of appeal;
- The Act must include clear criteria for decision-making including thresholds for when applications must be refused on environmental grounds;
- The Act needs to be regulated by an independent Environmental Commission that makes decisions in a transparent manner. The new commission would be tasked with coordinating local, state and federal governments to ensure national standards on air and water pollution, waste management, deforestation, preservation of threatened species, and climate change are met and enforced;
- The Act should ensure that Australians have access to transparent, up-to-date information about environmental approvals across the country;
- The Act must be amended to take stock of cumulative impacts that may happen in the future;
- Amendments must ensure that land clearing is directly addressed by the Act;
- Amendments to the Act must incorporate a climate change trigger to reduce human induced global warming/climate change;
- Amendments to the Act should incorporate greater emphasis on Indigenous community leadership, land management techniques and stewardship/respect for country;
- The Act must ensure that any project that significantly affect water resources, involves significant land clearing, impacts threatened species, and impacts climate change must be independently assessed at the federal level;
- A sustainable funding base must be established to support the independent Environmental Commission, to ensure that all conditions of the Act are met and enforced;
- Open standing provisions within s487 should be retained;
- The ability to refer proposals for assessment should be widened to civil society groups.

Thank you for the opportunity to offer this submission and we again urge a strengthening of Australia's national environmental protection laws.

Yours sincerely,



Vica Bayley

Residents Opposed to the Cable Car