

## CLAUSE NOTES

### *Theatre Royal Precinct Redevelopment Bill 2016*

#### Part 1 – Preliminary

*Provisions in Part 1 of the Bill deal with technical and procedural matters, including citation and commencement of the Act and definitions used in the Act*

- Clause 1** Short title and citation.
- Clause 2** Provides for the *Theatre Royal Precinct Redevelopment Act 2016* is to commence on the date on which the Act receives Royal Assent
- Clause 3** Sets out the definitions of terms used in the Bill.
- Clause 4** Provides that the Act binds the Crown in right of Tasmania.

#### Part 2 – Development Agreement

*Provisions in Part 2 of the Bill provide for the Parliament's ratification of the Project Development Agreement – including supplementary agreements - and authorises the parties to the Agreement to perform their respective obligations and exercise their respective rights. By ratifying the Development Agreement and authorising the exercise of all relevant rights and obligations, the Bill will ensure that there is no doubt as to either the Crown's, the University's or the Theatre Royal Management Board's ability to comply with the terms of the Development Agreement.*

- Clause 5** Ratifies the Development Agreement entered into by the Crown, the Theatre Royal Management Board (TRMB) and the University of Tasmania (the University) on 1 February 2016, and any supplementary agreement that is made between the parties prior to the commencement of the Act.
- Clause 6** Provides that, where a supplementary agreement varies the preliminary strata plan for the project such that the TRMB forms the view that the variation will adversely affect the operation of the Theatre Royal, the supplementary agreement must be laid before both Houses of Parliament, with confirmation of the Minister and the TRMB's approval of the supplementary agreement, along with a statement of reasons.
- Clause 7** Provides that the Minister may enter into supplementary agreements and perform all relevant obligations and exercise all relevant rights under the Development Agreement, notwithstanding anything in the *Crown Lands Act 1976*, the *Land Acquisition Act 1993* or the *Theatre Royal Management Act 1986*.
- Clause 8** Provides that the University may enter into supplementary agreements and perform all relevant obligations and exercise all relevant rights under the Development Agreement, notwithstanding anything in the *University of Tasmania Act 1992*.

**Clause 9** Provides that the TRMB may enter into supplementary agreements and perform all relevant obligations and exercise all relevant rights under the Development Agreement or a supplementary agreement, notwithstanding anything in the *Theatre Royal Management Act 1986*.

### **Part 3 – Consolidation of Project Site**

*Provisions in Part 3 of the Bill provide for the establishment of a 'clean', consolidated title to the Project site prior to construction by extinguishing any historical legal encumbrances and correcting any title encroachments in respect of the Theatre Royal, the adjoining Crown land (Wapping 4) and the right-of-way land that crosses the adjoining Crown land.*

**Clause 10** Corrects and clarifies the boundaries of the 'Theatre Royal pre-development land' – being the land on which the current Theatre Royal building is located.

Contemporary surveys indicate that parts of the existing Theatre Royal building are outside the documented title boundaries adjoining Sun Street, Sackville Street and Campbell Street. This clause effectively re-defines the boundaries of the Theatre Royal Land by reference to a new site survey plan.

**Clause 11** Provides that any land that is within the boundaries of the Theatre Royal pre-development land and is not Crown land immediately before commencement of the Act, automatically vests in the Crown upon the Act's commencement.

**Clause 12** Provides that the Theatre Royal pre-development land is, on the commencement of the Act, freed from any encumbrances – e.g. limitations and public or private rights - on that land that existed immediately prior to the Act's commencement.

**Clause 13** Corrects and clarifies the boundaries of the 'pre-development adjoining Crown land – being the lot generally known as 'Wapping 4'.

**Clause 14** Provides that any land that is within the boundaries of the pre-development adjoining Crown land and which is not Crown land immediately before commencement of the Act, automatically vests in the Crown upon the Act's commencement.

**Clause 15** Provides that the pre-development adjoining Crown land is, on the commencement of the Act, freed from any encumbrances – e.g. easements and other public or private rights - on that land that existed immediately prior to the Act's commencement.

**Clause 16** Defines the 'acquired council land - being the small parcels of council land upon which the proposed new building will encroach and which will be acquired as part of the redevelopment project under clause 17 of the Bill – by reference to a new site survey plan.

**Clause 17** Provides for the vesting in the Crown of the acquired council land and for the provision of compensation to the Hobart City Council for this land.

The amount of compensation is to be approved by the Valuer-General and agreed between the parties. The Valuer-General's approval of the compensation amount is to be based on the same principles that apply to valuations undertaken under the

*Land Acquisition Act 1993.*

Any disputed claim for compensation is to be dealt with under the *Land Acquisition Act 1993*.

- Clause 18** Provides that the acquired council land is, on the day the right-of-way land is surrendered by the University to the Crown, freed from any encumbrances – e.g. limitations and public and private rights – on that land that existed immediately prior to the surrender day.
- Clause 19** Defines the ‘right of way land’ – being the strip of land that crosses the Wapping 4 site previously used for fire egress from the Theatre Royal - by reference to a new site survey plan.
- Clause 20** Provides for the continued use of part of the right of way land for the purposes of the Theatre Royal until the right-of-way land is surrendered by the University to the Crown.
- Clause 21** Provides that the right of way land is, on the day the land is surrendered by the University to the Crown, freed from any encumbrances – e.g. limitations and public and private rights – on that land that existed immediately prior to the surrender day.
- Clause 22** Provides that the Minister may, by order, declare certain land including any adjoining Crown land and council land upon which part of the new building encroaches, is taken to be part of the project site. It enables the vesting in the Crown of any such council land with associated compensation consistent with the Clause 17 and allows the Crown to recover any compensation costs from the University.
- This provision is designed to deal with the unlikely situation where the University inadvertently constructs part of the new building outside the title boundaries of the Project site.
- Clause 23** Provides that the Minister may issue an order to preserve a limitation or right relating to all or part of the land within the project site or the land adjoining the project site, even where such a limitation or right has already been extinguished. The clause provides that an order made by the Minister is not a statutory rule or subordinate legislation.

#### **Part 4 – Land and Airspace Titles in Relation to Certain Land**

*Provisions in Part 4 of the Bill provide for the creation of titles (including airspace titles) for the project site, for the amendment, extinguishment and rearrangement of existing titles in relation to affected land and for the creation of easements.*

- Clause 24** Provides that the Minister and the Director-General of Lands may do all things necessary and convenient to create titles and airspace titles in relation to the project site. The clause also provides the Minister with the power to direct the Recorder of Titles to create, re-arrange or extinguish any folio of the register in relation to any land or airspace titles created within the project site.
- Clause 25** Provides that airspace titles within the project site may be created by the Recorder of Titles for the relevant purpose despite anything in the *Local Government (Highways) Act 1982*. The relevant purpose is to allow a structure within the project site to overhang a highway if that structure overhangs the highway by more than a prescribed height.
- The clause provides that any interest or estate created by an airspace title vests in the Crown but may be disposed of in prescribed circumstances. The clause provides that compensation is payable to the Hobart City Council where airspace titles are created for parts of the proposed building that overhang council land, and that any compensation paid by the Crown is recoverable from the University.
- Clause 26** Provides for the amendment, extinguishment and rearrangement by the Recorder of Titles of existing titles in relation to land affected by the operation of Part 3 or Part 4 of the Act.
- Clause 27** Provides for the creation of a single title for all or the part of the land and all or some of the airspace titles, but only where the Minister is satisfied that the Recorder of Titles has done everything necessary to establish a title under clause 22. The clause provides for the Recorder of Titles to create, re-arrange or extinguish any folio of the register in response to a direction from the Minister.
- Clause 28** Provides that the Minister may direct the Recorder of Titles to place on Register a notice that this Act applies in relation to all or part of the land within the project site or an airspace title. The clause also provides for the amendment or removal of the notice placed on Register.
- Clause 29** Provides that the Minister may create easements in relation to the project site for (but not limited to) the purposes of access or infrastructure provision. The clause provides for the Minister to direct the Recorder of Titles to record on the folio of the Register any easement created and for the Recorder to comply with any such direction.

## **Part 5 – Strata Title Development of Project Site**

*The provisions in Part 5 of the Bill modify the application of the Strata Titles Act 1998 to the redevelopment project to facilitate a specially tailored ownership and governance framework, which will include equal rights for the Crown and the University with respect to the operation of the body corporate and places protections around the strata scheme so that it may only be modified with the approval of the Parliament.*

- Clause 30** Provides that:
- A strata plan may be registered under the *Strata Titles Act 1998*, even where foundations of a building on the project site fall outside the boundaries shown on the plan or extend under an adjoining highway;
  - Section 5(4) of the *Strata Titles Act 1998* – which provides that a strata plan must be certified as being within the site boundaries - does not apply to the proposed registered strata plan;
  - References to a 'body corporate' in Sections 95 and 96 of the *Strata Titles Act 1998* – which deal with compliance and enforcement in respect of breaches of a by-law – are taken to include the owner of a strata lot.
- Clause 31** Provides that any material variations proposed in respect of the registered strata plan – including changes to the size of the Theatre Royal lot or changes to unit entitlements under the plan - must be placed before and approved by both Houses of Parliament. Approval is by either the non-moving or defeat of a notice of disallowance.
- Clause 32** Provides for the creation of by-laws specific to the unique strata scheme being proposed. The clause provides:
- for additional matters that may be included in by-laws for the registered strata plan;;
  - that the first by-laws must be agreed by the Minister and the University;
  - that section 91(3)(a), (b) and (d) of the *Strata Titles Act 1998* – which provide that certain by-laws are void – does not apply to the by-laws; and
  - that the by-laws may only be varied if the variation is approved by unanimous resolution of all the lot owners and the variation is laid before and approved by both Houses of Parliament.
- Clause 33** Provides that, despite anything in the *Strata Titles Act 1998*, the Crown and University are to have equal voting entitlements at meetings of the body corporate.
- The clause also provides that, despite anything the *Strata Titles Act 1998*, a change to the by-laws may only be made by unanimous resolution of the lot owners, and where such a change has not been disallowed by the Parliament.
- Clause 34** Provides that, despite section 82 of the *Strata Titles Act*, which requires lot owners in body corporate to contribute to a sinking fund to cover various costs (insurance etc), the fund that is established is not required to provide for future capital upgrades.

**Clause 35** Provides that the dispute resolution processes established under Part 9 of the Strata Titles Act do not apply in relation to the registered strata plan, the by-laws or a lot shown on the strata plan. A separate, specific dispute resolution process in relation to these matters is established under Part 6 of this Act.

## **Part 6 – Dispute Resolution in relation to the Registered Strata Plan**

*The provisions in Part 6 of the Bill provide establishment of a dedicated dispute resolution process with respect to the application of the by-laws or other relevant matters in relation to the body corporate and common property. The process will empower the Resource Management and Appeal Tribunal (RMPAT) to make rulings and issue binding orders on a range of matters.*

**Clause 36** Defines relevant terms used in Part 6.

**Clause 37** Establishes the suite of circumstances and reasons where a lot owner may apply to the Resource Management Planning and Appeal Tribunal (the Appeal Tribunal) and prescribes the process for making, lodgement and acceptance of an application

**Clause 38** Prescribes the notice obligations of the Appeal Tribunal and the body corporate with respect to giving notice of an application to the Appeal Tribunal.

**Clause 39** Provides for the modified application of relevant RMPAT Act provisions to the handling of disputes regarding the strata plan, by-laws or lots.

**Clause 40** Provides that the Appeal Tribunal has the power to make orders requiring a party to undertake a particular course of action or to pay monetary compensation not exceeding \$5 000 to another party. The clause provides for orders to be made subject to certain conditions and for orders to be made on an interim basis.

**Clause 41** Provides that the Appeal Tribunal has the power to make orders with respect to addressing a failure by the body corporate to implement a proposal of an owner to repair or alter the common property.

**Clause 42** Provides that the Appeal Tribunal has the power to make orders with respect to addressing the unreasonable acquisition or non-acquisition by the body corporate of personal property.

**Clause 43** Provides that the Appeal Tribunal has the power to make orders with respect to addressing the taking out of unreasonable insurance by the body corporate – either too much or too little.

**Clause 44** Provides that the Appeal Tribunal has the power to make orders with respect to addressing the issue where an officer of the body corporate is withholding or refusing to make available for inspection documents to which an applicant is entitled.

- Clause 45** Provides that the Appeal Tribunal has the power to make orders to adjust the rate of interest and remit accrued interest where the Tribunal determines that interest on late payment charged by the body corporate is unreasonable.
- Clause 46** Provides that the Appeal Tribunal has the power, by order, to invalidate the outcomes of a meeting of the body corporate where there has been non-compliance with requirements of the Strata Titles Act and to make orders with respect to the holding of meetings.
- Clause 47** Provides that the Appeal Tribunal has the power, by order, to re-determine the allocation of contributions and expenses levied by the body corporate where it deems such contributions or expenses are unreasonable.
- Clause 48** Provides that the Appeal Tribunal has the power to appoint an administrator where the body corporate has seriously failed in the proper performance of one or more of its duties. The Clause also sets out the arrangements that apply where an administrator is appointed.
- Clause 49** Provides that the Appeal Tribunal has the power in certain circumstances, by order, to terminate or shorten an agreement for the provision of services to the body corporate.

## **Part 7 – Theatre Royal Land**

*The provisions in Part 7 of the Bill place a range of conditions on dealings in relation to Theatre Royal and other land and ensures that the Theatre Royal Management Board has responsibility for, and operational control of, the existing and redeveloped theatre complex, including the new front-of-house-common property and the Studio Theatre.*

- Clause 50** Provides that no part of the Theatre Royal building or lot may be disposed of or transferred unless required to do so under the Development Agreement.
- Clause 51** Provides that the Minister may not transfer or dispose of the pre-development adjoining Crown land, the acquired council land or the right of way land, except if required to do so under the Development Agreement or where the Minister is satisfied that the Development Agreement has been terminated, rescinded or abandoned.
- Clause 52** Provides that the Minister administering the *Crown Lands Act 1976* must lease to the TRMB the Theatre Royal pre-development land or lot, on the terms and conditions specified by the Minister. The Clause provides for the variation and amendment of the lease.
- Clause 53** Provides that the Minister cannot surrender the Crown's lease of the studio theatre unless the surrender is approved by both Houses of Parliament.

**Clause 54** Provides that the Minister administering the *Crown Lands Act 1976* must sub lease the studio theatre to the TRMB – on terms and conditions determined by the Minister - as soon as practicable after the Crown leases the theatre from the University. The sublease may be varied if the Minister believes it is necessary to assist the Board perform its obligations or functions under the TRM Act.

**Clause 55** Provides that the TRMB is to have management responsibilities for the area of land that comprises the 'Theatre Royal management area', which will include, at the completion of the project, the Theatre Royal lot, the studio theatre and the 'front-of-house' common property.

## **Part 8 – Miscellaneous**

*The provisions in Part 8 of the Bill impose restrictions on the future use and disposal of the parts of the strata scheme owned by the University and provide for a range of other miscellaneous matters.*

**Clause 56** Provides that, after completion of the project, the use of the UTAS lot is to be limited to 'education, for the performing arts, or other cultural or public uses' or for a purpose approved by the body corporate.

**Clause 57** Prevents the University from transferring or disposing of the Studio Theatre lot (except to the Crown). This provides certainty that either the University or the Crown will continue to own the Studio Theatre.

The clause also provides the Crown with first right of refusal in the event that the University wishes to sell any part of the UTAS lot to another party.

**Clause 58** Provides that certain documents required to be laid before both Houses of Parliament may be laid before Parliament before the commencement of the Act and will be taken to have been laid before the Parliament for the purposes of the Act.

**Clause 59** Provides that state tax – including, for example, stamp duties - is not payable in relation to any binding agreement linked to the Development Agreement.

**Clause 60** Provides that no compensation is payable by the Crown except as provided under Clause 17.

**Clause 61** Provides that any power provided under the Act is in addition to existing powers with respect to land and to alter or otherwise deal with the Register.

**Clause 62** Provides for a regulation-making power under the Act, including with respect to savings or transitional matters.

**Clause 63** Assigns the administration of this Act to the Minister for Environment, Parks and Heritage, supported by the Department of State Growth.



## Part 9 – Theatre Royal Management Act 1986 Amended

*Part 9 of the Bill provides for the revocation of a section of the Theatre Royal Management Act 1986 which would otherwise prevent the Project proceeding.*

**Clause 64** Provides that the *Theatre Royal Management Act 1986* is referred to as the Principal Act for the purposes of the repeal of section 15 of that Act.

**Clause 65** Repeals section 15 of the TRM Act. Section 15 provides that the Minister shall lease the Theatre Royal to the TRMB.