ITEM 8  
MT KEMBLA MINE MEMORIAL PATHWAY - LAND PROPOSAL FOR STAGES 3 AND 4

This report recommends a response to a request to Council to provide comment on a proposal for the construction of Stages 3 and 4 of the Mine Memorial Pathway and potential handover of additional assets to Council.

Recommendation

1. Council acknowledge the desirability of proposed Stages 3 and 4 of the Mt Kembla Mine Memorial Pathway and the community’s efforts in the project to date.

2. Council decline the offer for the transfer of land or portions of land associated with Stages 3 and 4 of the Mt Kembla Mine Memorial Pathway.

Attachments

Concept alignment for Stages 3 and 4 of the Mine Memorial Pathway

Report Authorisations

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Background

The Mt Kembla Mine Memorial Pathway is a community led project for the construction of a continuous pathway along the historic coal transport route, from the Mt Kembla Mine to the eastern edge of the village of Mt Kembla, to provide a useable memorial/historical link to the mining heritage of the village and the impacts of mine disasters on the local community.

To date Stages 1 and 2 have been completed and consist of:

Stage 1 – a formal shared path along the original mine rail line from an entry structure adjacent to 200 Cordeaux Road to the mine memorial at Stones Road, including interpretative installations and a formal memorial at Stones Road. This stage was designed in consultation with the community and constructed by Council utilising funds from the Dendrobium Community Enhancement Fund provided under the Conditions of Consent for the Dendrobium Mine.

The Pathway is on land sold to Council for a nominal fee and remains the responsibility of Council.
Stage 2 – a formal shared path along and parallel to the original Mt Kembla rail line from Stones Road west to Kirkwood Place. This stage was designed in consultation with the community and constructed as a part of subdivision works by Illawarra Coal to enable to rehabilitation mine affected lands and the sale of surplus lands for residential opportunities.

Upon approval of the subdivision certificate, ownership of the pathway and associated structures will be transferred to Council and a Right of Way will be formed for a portion of an elevated section of the pathway that will encroach on adjacent private land and will be formed in favour of Council.

The final proposed stages of the Pathway are (with reference to the attachment):

Stage 3 – a walking track from Kirkwood Place to the site of the former Bradford Breaker site, adjacent to the Dendrobium Mine plant storage area, incorporating some stairs, boardwalks, interpretive signage picnic and viewing facilities. Through land owned by Illawarra Coal.

Stage 4 – a walking track from site of the former Bradford Breaker site, adjacent to the Dendrobium Mine plant storage area to the former Pit Track (parallel to Harry Graham Drive) and hence potentially linking to the Pit Pony Stables and Mt Kembla Mine Picnic Area, incorporating some stairs, boardwalks, interpretive signage picnic and viewing facilities. Through land owned by Illawarra Coal.

The construction of both of these stages is proposed to be predominately funded by the Dendrobium Community Enhancement Program Trust, with the ultimate landownership to be resolved as Illawarra Coal.

Illawarra Coal has sought to reach an agreement with the National Parks & Wildlife Service for the transfer of land containing the future Stages 3 and 4 to the Service. This offer has been rejected due to the “nature of the site and low conservation values”.

The route of the proposed Stages 3 and 4 has been inspected by Council officers along with a representative of Illawarra Coal and a local resident representing the Mt Kembla Pathway Group. The site being described by officers as:

- Containing a number of places with iconic view lines such as the former Bradford Breaker landing area.
- An interesting and attractive trekking route.
- A disturbed site traversing areas currently used by the Dendrobium Mine.
- Challenging topography, condition and access for construction and maintenance activities.
- Isolated and not available for passive surveillance.
- A reasonably challenging route that would require built assets to make it accessible for an average walker.
• Having limited daily declinational attributes and hence likely to have a generally low daily patronage.

Dendrobium Coal and sections of the local community have expressed a desire to pursue the implementation of the Pathway and as a result Dendrobium Coal has approached Council with three options for the ownership of Stages 3 and 4 (with reference to the attached plan):

1. An area of land to be transferred to Wollongong City Council.
2. A corridor of land be transferred to Wollongong City Council.
3. Stages 3 and 4 are constructed on Illawarra Coal property and managed under lease agreement (or similar) by Wollongong City Council.

All three options would impose operational costs on Council as well as responsibility for the on-going operation and maintenance of the built and natural assets. The quantum of these costs cannot be determined at this time as the path is not designed.

**Council’s Pathway Network**

Council constructs and maintains pedestrian, shared and bicycle paths for recreational opportunities and transport connections across the City. Non-constructed pathways are restricted to unformed pedestrian routes along the footway area of the road reserve and a few specific tracks in areas such as at the Mt Keira Summit Park.

Council’s paths are generally a part of an overall network and take into account connectivity, usage demand and type and, generally, Crime Prevention Through Environmental Design considerations.

Stages 1 and 2 of the Pathway are generally consistent with the type of path and facilities along the path that Council would construct for the wider community. Stages 3 and 4 would provide a vastly different facility that is not generally provided and would normally be recommended against due to their isolated nature.

Current priorities for the pathway network are for the replacement of degraded paths and the completion of missing links to connect to the wider network. With respect to Figtree/Unanderra to Mt Kembla, these priorities are being delivered through the construction of new facilities at the eastern end of Cordeaux Road between Central Road and the Princes Highway. In the future, as funds become available, Council will be looking for opportunities to extend the pathway along Cordeaux Road to complete the link from William James Drive to the bottom of Bushel’s Hill (adjacent to 200 Cordeaux Road) to connect to the Mt Kembla Mine Memorial Pathway.

**Alternative management options**

Under the Section 88A Conveyancing Act 1919 it is possible to create a “right of pedestrian access” easement on a property in favour of an authority, such as Council, that will allow members of the public to travel across the easement that connects to a public road without transferring ownership to Council.
Such an easement provides access without ownership; however, advice on transfer of responsibility and liability for such a right of way is that a responsibility for ensuring the useability and appropriateness of the access for the intended use, in this case pedestrian access for the general public and Council staff, is transferred to the benefiting party i.e. Council. Council would become liable for the reasonable care and control of the access, including maintenance and or liability, for use of the pathway as though it were the owner.

Proposal

The underlying goal of providing a continuous pathway is laudable and would provide an interesting and challenging walk for a section of the community. However, the transfer of land or maintenance responsibilities to Council to provide a track, that is not currently contemplated under the path expansion and renewal program, would result in the creation of an additional unfunded service with additional ongoing operational costs and liability risks for Council and hence the community, that would increases Council’s existing challenges in moving to be a sustainable authority.

Given Council’s existing risk profile, it is not appropriate to accept additional risks for an additional service that does not result in other financial, social, environmental or economic benefit for the wider community. Accordingly, it is proposed to decline BHP Billiton/ Illawarra Coal’s offer of the land, or part thereof, for the future stages of the memorial pathway.

Consultation and Communication

This report is in response to representation by Illawarra Coal and supported by representatives of the Mt Kembla Pathway Group.

The Property + Recreation, Governance + Information and City Works Divisions attended the site inspection and were consulted in the preparation of this report.

Planning and Policy Impact

This report relates to the commitments of Council as contained within the Strategic Management Plans:

Wollongong 2022 Community Goal and Objective – objective 6 We have sustainable, affordable and accessible transport under the Community Goal 6.1 Walking, cycling and public transport is an accessible and well resourced means of transport, and the use of private cars is reduced.

It specifically delivers on core business activities as detailed in the Transport Services Service Plan 2012-13.
**Risk Assessment**

Entering into an agreement to either own or accept operating and maintenance responsibility for the proposed Stages 3 and 4 of the Pathway would increase Council’s financial, organisational and public liability risks.

**Financial Implications**

There are no immediate financial implications arising from this report.

A decision to accept the offer of land would result in an as yet un-quantifiable increase in operational costs and risk liability.

**Conclusion**

The underlying goal of providing a continuous pathway through the construction of Stages 3 and 4 is laudable and would provide an interesting and challenging walk for a section of the community. However, the offer of transfer of land, lease or forming a right of way would place additional maintenance costs and liability risks on Council for an isolated track with an unknown value of constructed assets on land with other quantified risks represents an avoidable risk that should be avoided.
Figure 1: Plan showing Stages 3 and 4 relative to Stage 2, and the potential area of land for transfer.