

Forest Wind Farm Development Bill 2020

Statement of Compatibility

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019* (the Act), I, Kate Jones Minister for State Development, Tourism and Innovation make this statement of compatibility with respect to the Forest Wind Farm Development Bill 2020 (the Bill).

In my opinion, the Bill is compatible with the human rights protected by the Act. I base my opinion on the reasons outlined in this statement.

Overview of the Bill

The Bill is intended to provide access to the required land and facilitate tenure for a wind farm proposed to occur within the Toolara, Tuan and Neerdie State forests. These forests are subject to a plantation licence (plantation licence) granted under part 6D of the *Forestry Act 1959* (Forestry Act).

The wind farm, if fully developed, would be a major renewable energy project for Queensland. The Bill establishes a legislative framework for the development to coexist with the plantation licence and to otherwise be undertaken in the State forests through facilitating the grant of tenure and exempting the development from or modifying the application of certain provisions of the Forestry Act and the *Land Act 1994* (Land Act).

The Bill also proposes to make amendments to the *Planning Act 2016* (Planning Act) to ensure the correct administration of the Springfield Structure Plan (SPP) following a recent Court of Appeal decision.

Human Rights Issues

Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

In my opinion, the human rights recognised in the Act that are relevant to the Bill are:

- Recognition and equality before the law (section 15);
- Freedom of movement (section 19);
- Property rights (section 24); and
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28).

The clauses of the Bill that are relevant to these rights are:

- Clause 8 – authority given by access licences;
- Clause 9 – conditions precedent for giving access licences;
- Clause 12 – deciding licence applications;
- Clause 14 – conditions of access licences;
- Clause 21 – cancellation of access licences;
- Clause 28 – conditions precedent for giving and renewing project leases;

- Clause 31 – deciding lease applications;
- Clause 33 – when Land Act Minister must give project leases;
- Clause 37 – conditions of project leases;
- Clause 44 – deciding renewal applications;
- Clause 46 – when Land Act Minister must give new project leases;
- Clause 57 – no compensation payable by the State;
- Clause 65 – amendment of s 61RI (Events that are not compensation events); and
- Clauses 74 to 77 – insertion of new chapter 7, part 4C and new chapter 8, part 8 in the *Planning Act 2016*.

Clauses 12, 31, 33 and 46 of the Bill facilitate the wind farm project by providing a process for the giving of access licences and project leases over relevant parts of the project area. The access licences and project leases will authorise the holder to restrict access to the land by other users and change the physical landscape of the three State plantation forests (i.e. clearing trees and erecting wind turbines and ancillary infrastructure).

These clauses may engage human rights by potentially limiting the right to the freedom of movement, the cultural rights of Aboriginal peoples and Torres Strait Islander peoples and, to the extent native title exists in relation to land or waters the subject of an access licence or project lease, the property rights of the individuals who hold the native title rights and interests.

Clauses 12, 31, 33 and 46 of the Bill permit the grant of access licences and project leases over areas that are subject to the plantation licence.

Clauses 14 and 37 of the Bill authorise the holder of an access licence or project lease to interfere, in particular circumstances, with the use of the relevant land by other persons that is authorised by another statutory authority.

Clause 21 of the Bill gives the Minister power to cancel an access licence in particular circumstances.

Clause 57 of the Bill provides that the State is not liable to pay any compensation to a person in relation to the enactment or operation of the Bill.

Clauses 74 to 77 of the Bill introduce new provisions in the *Planning Act 2016* to ensure the correct administration of the Springfield Structure Plan. Included in these provisions is the requirement that certain planning documents, such as precinct plans and area development plans are approved before development may commence on land.

These clauses have a limiting effect on:

- the right to recognition and equality before the law recognised in section 15 of the Act; and
- the property rights recognised in section 24 of the Act, in particular the right of individuals not to be arbitrarily deprived of their property.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

Cultural rights – Aboriginal peoples and Torres Strait Islander peoples

The project area is located in the Toolara, Tuan and Neerdie State forests. State forests are generally accessible to the public for recreational purposes. Other activities such as stock grazing and camping, may also be permitted in State forests provided the necessary permits and authorities are obtained.

The Aboriginal peoples and Torres Strait Islander peoples whose cultural rights will be affected may include, but are not necessarily limited to:

- the Butchulla People, whose native title rights and interests in relation to part of the project area are recognised in the native title determination made by the Federal Court of Australia in *Cronin & Ors on behalf of the Butchulla People (Land & Sea Claim #2) v State of Queensland & Ors* [2019] FCA 2082 (Butchulla Determination #2); and
- the Kabi Kabi People, whose application for a native title determination is presently before the Federal Court as *Douglas & Ors on behalf of the Kabi Kabi First Nation Traditional Owners Native Title Claim Group v State of Queensland & Ors* (Federal Court No. QUD 20/2019).

Clauses 8 and 12 of the Bill provide the process for the giving of an access licence that will permit the holder to undertake authorised activities within the area of State forest to which the access licence relates. The authorised activities may include works relating to the construction and installation of wind turbines, electricity infrastructure. The access licence holder will be able to exclude persons from the area during construction and the wind farm will also necessarily change the physical landscape of the relevant parts of the State forest.

Clauses 31, 33, 44 and 46 of the Bill provide the process for the giving and renewal of a project lease, which is a particular type of lease under section 15(2)(b) of the Land Act. The grant of a project lease will authorise the lease holder to operate the wind turbines and associated infrastructure.

The Bill therefore enables the creation of rights and interests that will limit the ability of relevant Aboriginal peoples and Torres Strait Islander peoples to enjoy and exercise their cultural rights, as identified in section 28 of the Act, by limiting their access to the relevant parts of the project area and by the changes to the physical landscape.

(a) The nature of the right

Section 28 of the Act provides for the distinct cultural rights held by Aboriginal peoples and Torres Strait Islander peoples as Australia's first people. The core value underpinning the various rights identified in section 28 is recognition and respect for Aboriginal peoples' and Torres Strait Islander peoples' identity, both as individuals and in common with their communities.

The right recognises that spiritual, economic and material connection with traditional lands and waters are an essential component of that identity and is inextricably connected to Aboriginal peoples' and Torres Strait Islander peoples' cultural heritage, language and kinship ties.

- (b) The nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The primary purpose underlying the grant of an access licence is to authorise the project proponent to construct and install the wind turbines and associated infrastructure. Similarly, the primary purpose underlying the grant (and renewal) of project leases is to authorise the operation of the wind farm and give the project proponent secure, long term tenure for the operation.

These purposes are consistent with a free and democratic society in which individuals and corporations require authorisation to deal with natural resources belonging to the State and in which they are also entitled to expect protection of their property and financial investments. Without such protection, it would not be economically feasible for individuals and corporations to undertake projects of this kind that have a clear public, as well as private, benefit.

There is a secondary, but nevertheless important, purpose underlying the grant of access licences and project leases, which is the protection of the health and safety of members of the public. Allowing people who do not have the necessary training and protective equipment to enter and move around construction sites and, ultimately, parts of the wind farm where infrastructure is operated, would create an unacceptable risk of personal injury or even death. This is also clearly a purpose consistent with a free and democratic society based on human dignity.

- (c) The relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The wind farm project requires significant capital expenditure to construct, operate and maintain the necessary infrastructure. It would be difficult, if not impossible, for the project proponent to secure the financial support and investment required for a project of this scale if it did not have long term security of tenure for the assets and the ability to protect them from trespass and the risk of damage. The grant of access licences and project leases under which the holder can construct and operate infrastructure and exclude other persons will be effective to give the project proponent the certainty and security it requires.

The safety risks associated with construction sites are well-known and for that reason it is essential that the access licence holder have the ability to control entry to the site to ensure that all persons on the site have received appropriate safety training and protective equipment. However, the safety risks will not end with the construction stage. The infrastructure on the project area will include large wind turbines and associated electricity infrastructure that also pose health and safety risks to persons who do not have appropriate training. Giving the access licence holder and project lease holder the ability to control entry to the site and limit it to persons with the appropriate training and safety equipment will help reduce the risks to public safety.

- (d) Whether there are any less restrictive and reasonably available ways to achieve the purpose of the Bill

Under clauses 9 and 28 of the Bill, it is statutory condition precedent (**ILUA requirement**) to the giving of an access licence or project lease (respectively) for a

development agreement that, if native title exists in relation to part of the agreement area under the development agreement, an Indigenous Land Use Agreement (ILUA) in relation to the project be registered under the *Native Title Act 1993* (Cwlth) and in effect for the relevant part of the agreement area. The ILUA requirement provides that the ILUA (or ILUAs) must include the consent of the parties to the giving of the access licence or project lease and provide for the payment of any compensation entitlements under the *Native Title Act 1993* (Cwlth) arising in relation to the grant (and renewal) of the access licence and project lease. It is not contemplated that the State will be a party to any ILUA.

It is possible (and perhaps likely) that the native title parties to the ILUA (or ILUAs) represent Aboriginal peoples and Torres Strait Islander peoples who also have cultural rights under section 28 of the Act that may be limited by the project. The ILUA requirement therefore operates to ensure that the project cannot proceed without the free and informed consent of these individuals and communities. It also enables them to negotiate the terms on which that consent is given.

There may be Aboriginal peoples and Torres Strait Islander peoples who do not have or claim native title rights and interests in relation to the project area but who nevertheless have cultural rights under section 28 of the Act that may be limited by the giving of access licences and leases. However, the government is not aware of any Aboriginal or Torres Strait Islander persons who may have, or who assert, such cultural rights in relation to the project area and is therefore not in a position to say whether there are any such persons. The government has, however, been kept informed by the project proponent about the community consultation it has undertaken since the project announcement on 19 December 2019, including three community information sessions. The reports received from the project proponent to date have not identified any concerns about cultural rights of Aboriginal peoples or Torres Strait Islander peoples.

In depth analysis of available legislation for the grant of tenure was undertaken. No suitable alternatives were identified that would achieve the policy objective, which is to enable a major renewable energy project for Queensland to occur and co-exist with the plantation licence in the State forests.

The special purpose legislation proposed under the Bill is therefore considered the only viable solution to achieve the intended policy objectives.

In the circumstances, therefore, I am satisfied that the inclusion of the ILUA requirements has the effect of making the Bill in its current form the least restrictive way in terms of limitation of the rights identified in section 28 of the Act that is reasonably available to facilitate the project.

- (e) The balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Facilitating the project will have significant environmental benefits for Queensland. The successful delivery of a large-scale renewable energy project of this kind will contribute to achieving the Queensland Renewable Energy Target and reducing

greenhouse gas emissions. As previously stated, the project will also have economic benefits for the region, creating short and long-term employment opportunities. Given the importance of the cultural rights of Aboriginal peoples and Torres Strait Islander peoples articulated in section 28 of the Act, any limitation of those rights must be carefully considered.

Here, the Aboriginal peoples whom the State is aware may have cultural rights under section 28 of the Act that may be limited as a result of the project implementation have, through the ILUA requirements, the opportunity to manage the project's effect on their ability to exercise and enjoy such rights.

Accordingly, I am satisfied that that the limit the Bill may impose on the cultural rights of Aboriginal peoples and Torres Strait Islander peoples under section 28 of the Act is reasonable and demonstrably justifiable in accordance with section 13 of the Act.

Freedom of movement

The project area is located in State forests, which are generally accessible to the public for recreational purposes. Other activities such as stock grazing and camping, may also be permitted in State forests provided the necessary permits and authorities are obtained.

Clauses 8, 12, 14, 28, 31 and 37 of the Bill, which relate to the grants of access licences and project leases for the construction and operation of the wind farm, may restrict an individual's right to move freely within Queensland by limiting access to the project area, including construction areas, wind turbine sites and ancillary infrastructure locations.

(a) The nature of the right

Section 19 of the Act recognises the right of every person lawfully within Queensland to move freely within Queensland and to enter and leave it, and to choose freely where to live. The underlying value of the right is freedom, which is a necessary precondition for a free and democratic society and the right serves to protect individuals' liberty to choose where they live and travel within the State.

(b) The nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The underlying purposes of granting access licences and project leases that will restrict free movement are set out above in the discussion of the Bill's effect on the cultural rights of Aboriginal peoples.

(c) The relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitations on the freedom of movement imposed by the granting of access licences and project leases will be effective to achieve the purposes of the limitation, for the same reasons that are set out above in relation to the discussion of the limitation on the cultural rights of Aboriginal peoples as articulated in section 28 of the Act.

(d) Whether there are any less restrictive and reasonably available ways to achieve the purpose of the Bill

The Bill includes provisions to safeguard the rights of persons who have existing statutory authorities to use the project area. Clauses 14 and 37 provide that it is a condition of each access licence and project lease respectively that the holder must not interfere with another person's lawful use of the relevant part of the project area. A use is lawful if it is authorised under an agreement, approval, licence, permit or other authority granted under an Act. The holder is only permitted to interfere with such uses if:

- the other person consents to the interference; or
- the access licence holder or project lease holder has taken all reasonable steps to obtain the other person's consent and the interference is reasonably required to carry out an activity authorised under the access licence or project lease.

In depth analysis of available legislation for the grant of tenure was undertaken. No suitable alternatives were identified that would achieve the policy objective, which is to enable a major renewable energy project for Queensland to occur and co-exist with the plantation licence in the State forests.

The special purpose legislation proposed under the Bill is therefore considered the only viable solution to achieve the intended policy objectives.

I am therefore satisfied that the limitations imposed on the right to freedom of movement by the Bill are the least restrictive way reasonably available to achieve the dual purposes of security for the project proponent and the protection of public safety.

(e) The balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Without the ability to give the project proponent security and certainty of tenure for the life of the project, it is unlikely that the project could attract the necessary level of financial support and investment it requires. The consequence would be the loss of an opportunity to make a significant contribution toward achieving the Queensland Renewable Energy Target and transitioning Queensland to a low-carbon energy sector.

Giving access licences and project leases will limit freedom of movement, including the previous ability of members of the public to access relevant areas of the three State forests for recreational purposes. However, the Bill does provide as far as possible for the continued ability of persons holding other types of statutory authorities permitting use of the areas to have continued access to the areas. Moreover, limiting the access

by members of the general public will protect their safety by preventing access to infrastructure that is hazardous to people without the appropriate knowledge and training.

On balance, I consider that the limitations the Bill allows to be imposed on the right to freedom of movement are reasonable and demonstrably justifiable in accordance with section 13 of the Act and that the Bill is compatible with the right.

Property rights

There may be persons who hold existing approvals under an Act to use the areas within the State forests that will be affected by the project. To the extent those approvals (defined in the Bill as 'existing approvals') constitute property rights, clauses 14 and 37 of Bill authorise their limitation by allowing the holder of an access licence or project lease to interfere with their exercise in particular circumstances. Clause 57 of the Bill expressly excludes the State from any liability to pay compensation to these persons for loss and damage arising from the exercise by an access licence holder or project lease holder of its statutory right of interference.

Clause 21 of the Bill gives the Minister power to cancel an access licence in particular circumstances and clause 57 specifically excludes the State from any liability to compensate an access licence holder if the access licence is cancelled.

Clauses 12, 31 and 44 of the Bill authorise the giving of access licences, and the giving and renewal of project leases. While the Bill itself, if enacted, will not constitute a future act within the meaning of the *Native Title Act 1993* (Cwlth), the giving of an access licence, and the giving or renewal of a project lease, would likely be a future act if native title exists in relation to the land for which the access licence or project lease is given. Accordingly, there is potential for acts authorised by the Bill, if enacted, to limit the property rights of individual native title holders.

The Bill also potentially affects the interests of the holders of the plantation licence under the Forestry Act, and the holders of any plantation sublicense granted under the plantation licence. These interests may be affected by the grant of an access licence or project lease over land that is subject to the plantation licence. Clause 65 also amends the Forestry Act to provide that the plantation licensee or a plantation sublicensee cannot claim compensation under the Forestry Act in relation to the grant of particular licences or permits under that Act to a proponent for a development agreement.

Interference with the exercise of rights under an existing approval

(a) The nature of the right

Section 24 of the Act protects the right of all persons to own property (alone or with others) and provides that people have a right not to be arbitrarily deprived of their property. The ability to own and protect property historically underpins many of the structures essential to maintaining a free and democratic society based on human dignity, equality and freedom.

- (b) The nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of granting access licences and project leases that authorise the holder to interfere with the exercise of rights under existing approvals is to give the project proponent tenure with a degree of certainty and security required to attract investment necessary to deliver the project, and ultimately facilitate the production of sustainable energy. This is consistent with a democratic society in which choices must be made in some circumstances to balance competing rights to use finite resources.

- (c) The relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limiting effect of the Bill on the property rights of holders of existing approvals as a consequence of the grant of an access licence or project lease will help achieve the purpose of giving the project proponent secure and certain tenure.

- (d) Whether there are any less restrictive and reasonably available ways to achieve the purpose of the Bill

Legislative safeguards built into clauses 14 and 37 of the Bill restrict the circumstances in which the holder of an access licence or project lease can interfere with the rights of holders of existing approvals. The access licence holder or project lease holder is only permitted to do so if:

- the existing approval holder has consented; or
- the access licence holder or project lease holder has made **all** reasonable efforts to secure the consent of the existing approval holder **and** the interference is reasonably required to enable the access licence holder or project lease holder to carry out an authorised activity.

Interference with the rights of an existing approval holder without that person's consent will therefore be rare, as the access licence holder or project lease holder must make **all reasonable efforts** to secure the consent. While the Bill prevents the State being liable to compensate existing approval holders, the requirement for consent gives existing approval holders the opportunity to negotiate compensation with the project proponent.

In depth analysis of available legislation for the grant of tenure was undertaken. No suitable alternatives were identified that would achieve the policy objective, which is to enable a major renewable energy project for Queensland to occur and co-exist with the plantation licence in the State forests.

The special purpose legislation proposed under the Bill is therefore considered the only viable solution to achieve the intended policy objectives.

In the circumstances, I am satisfied that the Bill limits the property rights of existing approval holders in the least restrictive way reasonably available to achieve the purpose.

- (e) The balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Taking into account the importance of the wind farm project (which has been discussed above) the safeguards the Bill includes to mitigate the limitation of property rights of holders of existing approvals and various other property rights, I am satisfied that the limitation is reasonable and demonstrably justifiable in accordance with section 13 of the Act and that this the Bill is in this respect compatible with the rights identified in section 24 of the Act.

Cancellation of an access licence

- (a) The nature of the right

The comments above in relation to the nature of the right apply equally in the context of the property rights of the holder of an access licence.

- (b) The nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of giving the Minister power under clause 21 of the Bill to cancel an access licence is to prevent an access licence holder from continuing to enjoy the benefit of the licence in circumstances where the holder has failed to comply with the licence conditions.

Prior to cancellation, the access licence holder will be given an opportunity to remedy the non-compliance. The Minister may cancel the access licence where the access licence holder has been given a compliance notice, the access licence holder has failed to comply with the compliance notice and mutually agreed conditions precedent under the development agreement to the giving of a cancellation notice have been met.

- (c) The relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The power to cancel an access licence will be effective to prevent continued non-compliance with access licence conditions and to bring the access licence to an end, where opportunities to remedy under the Bill and the development agreement have been exhausted.

- (d) Whether there are any less restrictive and reasonably available ways to achieve the purpose of the Bill

Clause 21 limits the circumstances where the Minister may cancel an access licence. While no compensation is payable by the State, the holder of the access licence has the opportunity to negotiate the conditions precedent for the giving of a cancellation notice as part of its entry into the development agreement and also has an opportunity to remedy the non-compliance with a condition of the licence under clause 21.

In depth analysis of available legislation for the grant of tenure was undertaken. No suitable alternatives were identified that would achieve the policy objective, which is to enable a major renewable energy project for Queensland to occur and co-exist with the plantation licence in the State forests.

The special purpose legislation proposed under the Bill is therefore considered the only viable solution to achieve the intended policy objectives.

In the circumstances, I am satisfied that this is the least restrictive way reasonably available to achieve compliance with access licence conditions and to give effect to an agreement between the State and the access licence holder as to when an access licence should be cancelled.

- (e) The balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Taking into account the importance of the wind farm project (which has been discussed above) and the fact that the power in the Bill to cancel an access licence may only be exercised if the requirements of clause 21 have been met, I am satisfied that each of the limitation on this right is reasonable and demonstrably justifiable in accordance with section 13 of the Act and that the Bill in this respect is compatible with the rights identified in section 24 of the Act.

Effect on native title rights and interests

- (a) The nature of the right

Section 24 of the Act protects the right of all persons to own property (alone or with others) and provides that people have a right not to be arbitrarily deprived of their property. The ability to own and protect property historically underpins many of the structures essential to maintaining a free and democratic society based on human dignity, equality and freedom.

- (b) The nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Grants of access licences and project leases are likely to be future acts that affect any native title rights and interests that exist in relation to relevant land. The purpose of granting access licences and project leases is to give the project proponent tenure with a degree of certainty and security required to attract investment necessary to deliver the project, and ultimately facilitate the production of sustainable energy. This is consistent with a democratic society in which choices must be made in some circumstances to balance competing rights to use finite resources.

- (c) The relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The giving of access licences, and the giving and renewal of project leases, will help achieve the purpose of giving the project proponent secure and certain tenure.

- (d) Whether there are any less restrictive and reasonably available ways to achieve the purpose of the Bill

In depth analysis of available legislation for the grant of tenure was undertaken. No suitable alternatives were identified that would achieve the policy objective, which is to enable a major renewable energy project for Queensland to occur and co-exist with the plantation licence in the State forests.

The special purpose legislation proposed under the Bill is therefore considered the only viable solution to achieve the intended policy objectives.

Clauses 9 and 28 of the Bill provide that it is a condition precedent for the giving of an access licence, or the giving or renewal of a project lease, respectively, that if native title exists in relation to a part of the agreement area for a development agreement, there must be an ILUA registered under the *Native Title Act 1993* (Cwlth) and in effect for the part of the agreement area. The ILUA must provide that the parties consent to the giving of the access licence, or the giving or renewal of a project lease and must also provide for the payment of compensation for the effect of giving or renewal on the native title.

These provisions give the holders of any native title rights and interests that could be affected by the giving of an access licence, or the giving or renewal of a project lease, the ability to negotiate the terms of their consent to the proposed future act. They also ensure that the native title holders will receive compensation for the effects on their native title.

In the circumstances, I am satisfied that to the extent that the giving of an access licence, or the giving or renewal of a project lease, under the Bill (if enacted) is a future act and limits property rights consisting of native title rights and interests, the Bill is the least restrictive way reasonably available to achieve the purpose.

- (e) The balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

I am satisfied that any limitation on property rights that are native title rights and interests resulting from the giving of an access licence, or the giving or renewal of a project lease, is reasonable and demonstrably justifiable in accordance with section 13 of the Act. I have reached this view taking into account both:

- (a) the importance of the wind farm project (which has been discussed above); and
- (b) the Bill's requirement that, if native title exists in relation to any part of an agreement area for a development agreement, an access licence or project lease cannot be granted or renewed until there is a registered ILUA in effect for the part of the agreement area that records the native title holders' consent to the giving or renewal and provides for payment of compensation for the effect on the native title.

I am therefore satisfied that the Bill is, in this respect, compatible with the human rights identified in section 24 of the Act.

Grant of an access licence or project lease over land subject to the plantation licence and any plantation sublicense

The Bill affects the interests of the plantation licensee or a plantation sublicensee by authorising the grant of access licences and project leases within the area subject to the plantation licence, but this aspect of the Bill may not engage the property rights identified in section 24 of the Act.

This is because under sections 61QA and 61QU of the Forestry Act, a plantation licence or sublicense may **only** be granted to a corporation. The plantation licensee is one of the largest private timber plantation companies in Australia. Ownership of the company is primarily by a number of institutional and superannuation fund investors. Therefore, to the extent that the Bill affects the interests of the plantation licensee or sublicensee, it does not directly limit the human rights of individuals identified in section 24 of the HR Act.

Nevertheless, the Bill includes an express safeguard for the rights of the plantation licensee or a plantation sublicensee in clause 56(2)(d). The effect of that provision is that the giving of an access licence or project lease does not affect a 'right, obligation or interest of the plantation licensee or plantation sublicensee' under the Forestry Act, the licence or sublicense or a related agreement. Therefore, the primary impact on the interests of the plantation licensee or sublicensee of an access licence or project lease being granted is that physical infrastructure may be located within the area thereby reducing the size of the land available for plantation forestry purposes.

Further, to the extent the plantation licensee or a plantation sublicensee does experience the loss of some productive capacity of its licence area as a consequence of activities under an access licence or project lease, the Bill contemplates that compensation may be separately negotiated by the project proponent and the plantation licensee or sublicensee in connection with a development agreement. This mitigates the effect of the plantation licensee or sublicensee being excluded under the Bill from seeking compensation from the State.

In depth analysis of available legislation for the grant of tenure was undertaken. No suitable alternatives were identified that would achieve the policy objective, which is to enable a major renewable energy project for Queensland to occur and co-exist with the plantation licence in the State forests.

The special purpose legislation proposed under the Bill is therefore considered the only viable solution to achieve the intended policy objectives.

Having regard to the importance of the project for the State, the need for the project to be located within the chosen area and the various safeguards on the rights of the plantation licensee and plantation sublicensee, I am therefore satisfied that to the extent that the property rights of individuals associated with the corporate licensee or sublicensee may be limited by the Bill, the limitation is both reasonable and demonstrably justifiable in accordance with section 13 of the Act. I am therefore satisfied that the Bill is in this respect compatible with the rights identified in section 24 of the Act.

Amendments to the Planning Act 2016

The Planning Act currently continues the operation of Development Control Plans, including the plan for the Springfield area, the Springfield structure plan (SSP). This gives effect to the planning and development processes within the Springfield area, including the delivery of infrastructure. The Bill potentially affects the way land can be developed in the Springfield area, by varying the plan-making and dispute resolution processes in respect of the SSP.

(a) The nature of the right

Section 24 of the Act protects the right of all persons to own property (alone or with others) and provides that people have a right not to be arbitrarily deprived of their property. The ability to own and protect property historically underpins many of the structures essential to maintaining a free and democratic society based on human dignity, equality and freedom.

(b) The nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the amendments to the Planning Act is to broadly re-establish the accepted plan approval processes that existed prior to the outcome of the Court of Appeal decision, *Springfield Land Corporation Pty Limited v Cherish Enterprises Pty Ltd & Anor [2018] QCA 266* (Cherish decision). The Bill also provides for some expanded opportunity for additional parties to be involved in planning for Springfield. More specifically, the amendments are to:

- Require all 'layers' of planning documents under the SSP to be in effect prior to development within the SSP area occurring.
- Allow any local area plans under the SSP (that are currently required to be prepared or amended by Springfield City Group Pty Limited (SCG)) to be prepared or amended by any person – subject to a requirement that, if prepared by a third party, SCG's views must be sought and considered. It should be noted that SCG will have an 'advice' role only.
- Update the dispute resolution procedures to:
 - clarify or expand the application of these provisions to include disputes involving local area plans and infrastructure; and
 - amend who may commence and participate in the dispute resolution procedures.

(c) The relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limiting effect of the Bill on the right to develop property in the Springfield area will help to achieve the purpose of clarifying the long-established plan-making processes that were historically established under the SSP and allow for plan applications to be made by non-SCG parties.

(d) Whether there are any less restrictive and reasonably available ways to achieve the purpose of the Bill

In the circumstances, I am satisfied that the Bill limits the property rights of existing approval holders in the least restrictive way reasonably available to achieve the purpose in relation to the Planning Act amendments.

I am satisfied the Bill limits the property rights of landowners in the Springfield area in the least restrictive way reasonably available to achieve the purpose, as it re-establishes the position that was the accepted position prior to the Cherish decision in respect of mandatory plan-making processes.

(e) The balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Taking into account the importance of implementing a balanced approach for future development in the Springfield area, the safeguards in the Bill ensure that the local government retains ultimate discretion to mitigate the limitation on property rights. I am satisfied that the limitation is reasonable and demonstrably justifiable in accordance with section 13 of the Act and that this the Bill is in this respect compatible with the rights identified in section 24 of the Act.

Recognition and equality before the law

In relation to the Planning Act amendments, clauses 74 to 77 of the Bill includes provisions that:

- allow applications to certain plans that are currently only allowed to be made by SCG to be made by any person, subject to a requirement that, if prepared by a third party, SCG's views must be sought and considered;
- limit the classes of person who may commence and participate in dispute resolution procedures under the SSP; and
- ensure that existing approvals remain unaffected by the new plan application processes.

(a) The nature of the right

Section 15 of the Act encompasses the right to recognition as a person before the law, the right to enjoy human rights without discrimination.

(b) The nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The Planning Act amendments within clause 75 of the Bill operate to allow SCG to review and comment on plan applications made by all other entities in the Springfield area. It is considered appropriate given SCG's role in the historical development and infrastructure provision for the area. Also, the amendments operate to confirm that any person may made a plan application, not just SCG, so in this respect the Bill enhances the right of others to make a plan application.

The transitional provisions in clause 76 of the Bill preserve existing approvals prior to the commencement of the Bill so that they remain unaffected by the new plan application processes.

Other provisions introduced by clause 75 of the Bill operate to limit the dispute resolution procedures to parties who have a particular interest in the land the subject of the decision, and broaden the grounds on which notice of a dispute may be given, specifically to include disputes about the provision and use of infrastructure. It is proposed that the parties who will be able to use the dispute resolution procedures will be an applicant, landowner, SCG as master developer, and a submitter for a development application in the SSP area.

(c) The relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The clarification of SCG's role in plan making processes and the role of interested parties in dispute resolution procedures under the SSP helps to achieve the purpose of providing greater certainty about plan making procedures in the Springfield area. It is noted that under the amendments within clause 75 of the Bill, the local government retains ultimate discretion to decide plan applications and development applications under the SSP.

(d) Whether there are any less restrictive and reasonably available ways to achieve the purpose of the Bill

In relation to the amendments to the Planning Act, most of the objectives could be achieved through amendments to the SSP itself, however legislative amendments:

- provide greater certainty over the role of local area plans in the SSP;
- provide clarity about the ability of the SSP to prohibit development from starting in circumstances under which a local area plan had not been approved for the premises, which was a matter raised, but not determined in, the court proceedings; and
- clarify that the superseded planning scheme and compensation arrangements under the Planning Act do not apply in respect of the changes.

(e) The balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Having regard to the purpose of the Planning Act amendments in clause 75 of the Bill as described above, I am satisfied that any limitation on the right to recognition and equality before the law is reasonable and demonstrably justifiable in accordance with section 13 of the Act.

Conclusion

In my opinion, the Bill is compatible with human rights under the Act because it limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the Act.

Kate Jones

Minister for State Development, Tourism and Innovation

© The State of Queensland 2020