Parliamentary Committees

Forest Wind Farm Development Bill 2020

Report No. 1, 56th Parliament

State Development, Tourism, Innovation and Manufacturing Committee

July 2020

State Development, Tourism, Innovation and Manufacturing Committee

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Acknowledgements

The committee acknowledges the assistance provided by representatives from the Department of State Development, Tourism and Innovation, and Queensland Treasury.

Contents

Abbreviations

Bill	Forest Wind Farm Development Bill 2020
Cherish	Cherish Enterprises Pty Ltd
code	State Code 23 – *Wind farm development*
committee/SDTIMC	State Development, Tourism, Innovation and Manufacturing Committee
Council/ICC	Ipswich City Council
department/DSDTI	Department of State Development, Tourism and Innovation
EPBC Act	*Environmental Protection and Biodiversity Conservation Act 1999* (Cth)
FLPs	fundamental legislative principles
FMOP	Fire Management and Operations Plan
Forestry Act	*Forestry Act 1959*
FPIC	free, prior and informed consent
FWH	Forest Wind Holdings Pty Limited – Proponent of Forest Wind proposal
HQP	HQPlantations – Plantation Licence holder
HRA	*Human Rights Act 2019*
ICCPR	International Covenant on Civil and Political Rights
ILUAs	Indigenous Land Use Agreements
Land Act	*Land Act 1994*
LSA	*Legislative Standards Act 1992*
LGP&E Act	*Local Government (Planning and Environment) Act 1990*
LUCMP	Land Use Concept Master Plan
Planning Act	*Planning Act 2016*
Property Council	Property Council of Australia
QFES	Queensland Fire and Emergency Services
SARA	State Assessment and Referral Agency
SCG	Springfield City Group Pty Limited

SSP	Springfield Structure Plan
SDAP	State Development Assessment Provisions
SDCP	Springfield Development Control Plan
SPA	*Sustainable Planning Act 2009*
UDIA	Urban Development Institute of Australia (Qld.)
UNDRIP	UN Declaration on the Rights of Indigenous Peoples
UNESCO	United Nations Education, Scientific and Cultural Organisation
WBBEC	Wide Bay Burnett Environment Council

Chair's foreword

This report presents a summary of the State Development, Tourism, Innovation and Manufacturing Committee's examination of the Forest Wind Farm Development Bill 2020, a special purpose Bill which provides a tenure pathway for a large-scale renewable energy project – Forest Wind – in the Toolara, Tuan and Neerdie State forests.

The committee has recommended that the Bill be passed.

The committee conducted its inquiry during the exceptional and uncertain circumstances caused by the COVID-19 pandemic. For this reason the committee could not travel to the Wide Bay-Burnett Region, or hold hearings in the local area, to see and hear first-hand, matters relevant to the Bill. I therefore give special thanks on behalf of the committee, to all those submitters and witnesses who took the time to engage with the committee on this issue.

Central to the committee's consideration of this Bill, has been the potential economic and renewable energy benefits arising from the project. The creation of more than 400 jobs and enough clean energy to power one in four Queensland homes, is no doubt welcome news for the region and State as a whole. Green jobs in regional Queensland will help support local economies and have flow-on effects for small business and employment.

The committee heard advice that the proposal had been subject to a rigorous assessment process and that development approval had been granted subject to a range of conditions designed to safeguard the community and natural environment from unacceptable adverse impacts. The committee also welcomed assurances that bush fire management, and decommissioning and remediation responsibilities are being comprehensively considered. Of course, meaningful and ongoing engagement with the local community will be necessary to take this project forward.

In addition, the Bill proposes amendments to the *Planning Act 2016* to facilitate the effective operation of the Springfield Structure Plan following recent court decisions. The committee has recommended a number of minor adjustments to this part of the Bill to address some of the issues raised by inquiry stakeholders.

On behalf of the committee, thank you to representatives from the Department of State Development, Tourism and Innovation, and Queensland Treasury for their assistance during the inquiry.

I also thank my fellow committee members and parliamentary service staff for their cooperative and professional support throughout.

I commend this report to the House.

Duncan Pegg MP

Chair

Recommendations

Recommendation 1 **3**

The committee recommends the Forest Wind Farm Development Bill 2020 be passed.

Recommendation 2 **33**

The committee recommends that the Queensland Government consider the following minor amendments to Part 8, Division 4 of the Bill relating to the operation of the Springfield Structure Plan:

- update section 275W(3) Restrictions on approving plan applications, to require precinct plans to be 'generally consistent with' rather than 'consistent with' the Land Use Concept Master Plan
- amend sections 275X-Z to remove potential duplicative consultation processes to those required by the existing Springfield Structure Plan
- amend the Bill to provide Queensland Urban Utilities with copies of plan approval applications where there are possible impacts to water or wastewater infrastructure and services
- expand the scope of transitional arrangements proposed under section 353(1), to include development approvals resulting from development applications made but not decided before commencement of the Bill
- amend the Bill to include explicit reference to section 316 of the *Planning Act 2016*, and if required, relevant provisions in the Bill, in section 231 of the *Planning Act 2016*, to put beyond any doubt the validity of appeal processes under the Springfield Structure Plan.

1 Introduction

1.1 Role of the committee

The State Development, Tourism, Innovation and Manufacturing Committee (committee/SDTIMC) is a portfolio committee of the Legislative Assembly which was established on 21 May 2020 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.[1]

The committee's primary areas of responsibility include:

- State Development, Tourism and Innovation
- Regional Development and Manufacturing.

The functions of a portfolio committee include the examination of bills in its portfolio area to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles
- matters arising under the *Human Rights Act 2019*.[2]

On 20 May 2020, the Hon Kate Jones MP, Minister for State Development, Tourism and Innovation, introduced the Forest Wind Farm Development Bill 2020 (Bill) into the Queensland Parliament. On 21 May 2020, the Bill was transferred to this committee for examination and report by 3 July 2020.

1.2 Inquiry process

On 25 and 26 May 2020, the committee invited stakeholders and subscribers to make written submissions on the Bill. The committee also advertised the call for submissions on the Queensland Parliament social media platforms. Twenty one submissions were received. A list of submitters is provided at Appendix A.

The committee received a public briefing about the Bill from representatives from the Department of State Development, Tourism and Innovation (department/DSDTI) and the Planning Group within Queensland Treasury on 1 June 2020. A list of officials participating in the briefing is provided at Appendix B.

The committee received a written response to issues raised in submissions from the department and Queensland Treasury. This is published on the committee's website.

The committee also conducted a public hearing in Brisbane on 15 June 2020. A list of witnesses is provided at Appendix C.

All inquiry documents including submissions, transcripts of proceedings, answers to questions on notice, tabled documents and public correspondence are available on the committee's website.

1.3 Policy objectives of the Bill

The Bill has two distinct and unrelated policy objectives.

The primary objective of the Bill is to 'provide tenure within the Toolara, Tuan and Neerdie State forests to enable a proposed major renewable energy project for Queensland to occur'.[3] The explanatory notes state that 'without the introduction of this special purpose legislation, the development would not be able to proceed'.[4]

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1 *Parliament of Queensland Act 2001*, section 88 and Standing Order 194.

2 *Parliament of Queensland Act 2001*, s 93; and *Human Rights Act 2019*, ss 39, 40, 41 and 57.

3 Explanatory notes, p 1.

4 Explanatory notes, p 2.

Under the current legislative framework, *the Forestry Act 1959* (Forestry Act) prohibits the development of inconsistent and incompatible uses, including the grant of tenure for projects such as wind farms.[5] The Bill establishes a legislative framework for the proposed development to coexist with a plantation licence that exists over the project area, and to otherwise be undertaken in the State forests through exempting the project from certain provisions in the Forestry Act and the *Land Act 1994* (Land Act).[6]

Chapter 2 of the report discusses the committee's examination of this aspect of the Bill.

The second objective of the Bill is to amend the *Planning Act 2016* (Planning Act) to 'ensure the correct administration of the Springfield Structure Plan', a development control plan within the Ipswich Planning Scheme, following decisions in the Planning and Environment Court and the Court of Appeal.[7]

The Bill also updates dispute and difference resolution procedures outlined in the Springfield Structure Plan in relation to decisions made by Ipswich City Council.[8]

Chapter 3 of the report discusses the committee's examination of this aspect of the Bill.

1.4 Government consultation on the Bill

According to the explanatory notes, 'consultation with relevant State Government agencies has occurred and there is broad support for the Bill'.[9]

The explanatory notes also state that 'the legislative framework and process required to complete the project will provide opportunity for current, and any future stakeholders to communicate their concerns to relevant proponents'.[10] Consultation activities undertaken by the proponent of the project is discussed further in the next chapter.

Exposure drafts of the Bill were provided to Forest Wind Holdings Pty Limited (the proponent of the wind farm proposal) and HQPlantations (the plantation licence holder) between December 2019 and February 2020.[11] No information is provided in the explanatory notes as to the outcomes of this consultation.[12]

There was no specific mention in the explanatory notes as to whether consultation was undertaken, and feedback received, relating to the proposed amendments relating to the Planning Act.

1.4.1.1 Committee comment

It is unclear to the committee as to whether consultation was undertaken relating to proposed amendments to the Planning Act contained in the Bill.

1.5 Should the Bill be passed?

Standing Order 132(1) requires the committee to determine whether or not to recommend that the Bill be passed.

5 Explanatory notes, p 1.

6 Explanatory notes, p 1.

7 Explanatory notes, pp 1-2.

8 Explanatory notes, p 2.

9 Explanatory notes, p 7.

10 Explanatory notes, p 7.

11 Explanatory notes, p 7.

12 Explanatory notes, p 7.

Recommendation 1

The committee recommends the Forest Wind Farm Development Bill 2020 be passed.

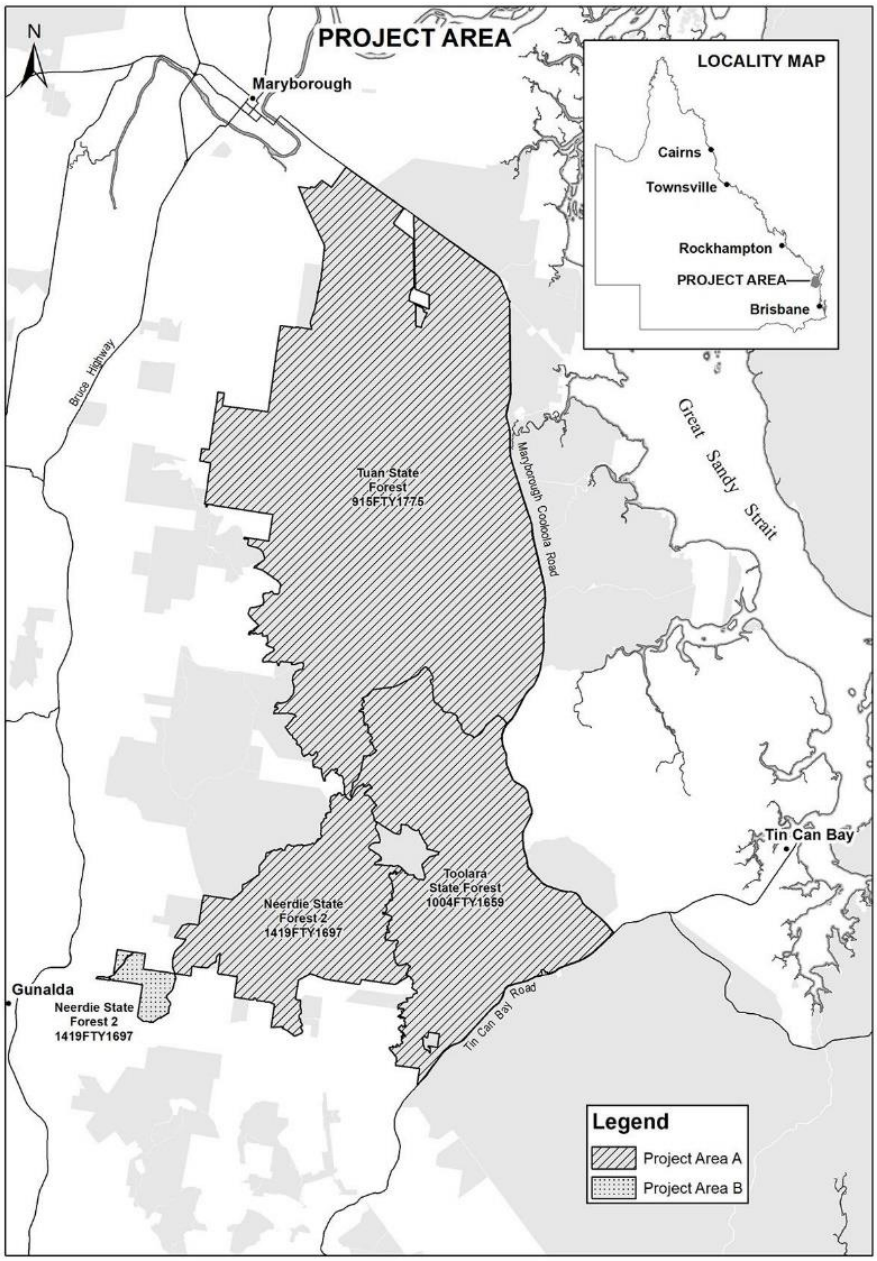
2 Facilitating tenure for wind farm development

This chapter discusses the committee's examination and issues raised in regard to the primary objective of the Bill: to facilitate a tenure pathway for the development of a proposed wind farm in State forests located in the Wide Bay Burnett region of Queensland.

2.1 The Forest Wind proposal

The Forest Wind project known as 'Forest Wind' is a proposal for a major clean energy infrastructure project in Queensland. The project proposes the development and construction of a large wind farm comprising up to 226 wind turbines in the Toolara, Tuan and Neerdie State forests, located in the Gympie and Fraser Coast local government areas. A map of the project area is provided below.

Map: Proposed wind farm project area



Source: Forest Wind Farm Development Bill 2020, Schedule 1, p 64.

The Forest Wind proposal was submitted under the State government's Exclusive Transactions process by Forest Wind Holdings Pty Limited (FWH), a special purpose company jointly owned by Queensland-based renewables firm CleanSight FW Holdings Pty Ltd and Siemens Project Ventures GmbH.[13] The Exclusive Transactions process provides the private sector with the opportunity to bring forward large complex projects to the government for consideration.[14]

Currently, the proposal is being considered under the 'transaction management phase' of the Exclusive Transaction process, 'where key commercial terms and negotiations and arrangements are being settled to allow the project to continue'.[15]

The wind farm is to be fully funded and financed by the private sector, with an estimated private capital investment of $2 billion.[16]

The proposed project area is currently the subject of a plantation licence under the Forestry Act.[17] The plantation licence is held by HQPlantations (HQP) from 2010 for a period of 99 years.

The proposal comprises a wind farm with up to 226 wind turbines and related and/or ancillary uses including battery storage, meteorological masts, substations, operation and construction compounds, concrete batching plants, site entrances, electricity infrastructure and the manufacture and assembly of wind turbine components.[18] A proposed exclusion zone of 3,000m is proposed between the wind turbines and the closest local residents.[19]

The proposal also includes an overhead transmission corridor to transmit generated electricity to on-site substations and onto an existing Powerlink substation at Woolooga, which is the transmission connection point to the National Electricity Market.[20]

It is proposed that the project will be developed across multiple stages with construction expected to commence at the end of 2020, with the first stage expected to be operational by late 2023.[21]

2.1.1 Anticipated project benefits

Upon completion, the proposal is anticipated to deliver up to 1,200 megawatts of renewable energy. This represents 12 percent of Queensland's installed energy capacity, and according to the explanatory notes, will make significant contributions towards the Queensland government's Renewable Energy Targets, which seek to generate 50 percent renewable energy by 2030.[22]

The project is also anticipated to deliver significant economic benefits to local area. The project is expected to create up to 516 jobs, comprising 444 full time equivalent direct jobs during the

13 DSDTI, questions on notice dated 12 June 2020, p 1.

14 Public briefing transcript, Brisbane, 1 June 2020, p 3.

15 Public briefing transcript, Brisbane, 1 June 2020, p 3.

16 Explanatory notes, p 1.

17 Public briefing transcript, Brisbane, 1 June 2020, p 2.

18 Queensland Government, DSDTI, *SARA Decisions*, https://planning.dsdmip.qld.gov.au/planning/better-development/the-development-assessment-process/the-states-role/sara-decisions, Forest Wind Development Application 1912-14632 SDA.

19 FWH, *Project Overview*, https://www.forestwind.com.au/project-overview.

20 Queensland Government, DSDTI, *SARA Decisions*, https://planning.dsdmip.qld.gov.au/planning/better-development/the-development-assessment-process/the-states-role/sara-decisions, Forest Wind Development Application 1912-14632 SDA.

21 FWH, *Project Overview*, https://www.forestwind.com.au/project-overview.

22 Explanatory notes, p 1.

construction phase, peaking at over 600 jobs, and 50 direct long-term operational roles, mostly located in the Wide Bay Burnett region.[23]

2.1.2 Development assessment process

FWH submitted a development application to the Queensland Government in 2019.

State code 23: Wind farm development (the code) contained in the State Development Assessment Provisions (SDAP) is the planning guideline which applies to a material change of use for a new or expanding wind farm. According to the code, it is 'intended to protect individuals, communities and the environment from adverse impacts as a result of the construction, operation and decommissioning of wind farm development'.[24]

Forest Wind Holdings states that the application was made consistent with the code, and was supported by 'detailed technical assessments, including noise, ecology, aviation, shadow flicker, landscape, traffic and transport, and construction' reports to demonstrate compliance with the code.[25]

The development assessment process was undertaken by the State Assessment and Referral Agency (SARA). The project was approved by SARA on 21 February 2020, subject to a range of conditions.[26] Attachment 3 of the decision notice sets out the reasons for the SARA decision:

> *The development complies with State code 23: Wind farm development (State code 23) of the State Development Assessment Provisions. Specifically, the development:*
>
> - *is appropriately located, sited, designed and operated to ensure:*
>   - *the safety, operational integrity and efficiency of air services and aircraft operations*
>   - *risks to human health, wellbeing and quality of life are minimised by ensuring acceptable levels of amenity and acoustic emissions at sensitive land uses*
>   - *development avoids, or minimises and mitigates, adverse impacts on the natural environment (fauna and flora) and associated ecological processes*
>   - *development does not unreasonably impact on the character, scenic amenity and landscape values of the locality*
>   - *the safe and efficient operation of local transport networks and road infrastructure.*
> - *minimises contributions to greenhouse gas emissions*.[27]

As noted above, the development approval was subject to a range of conditions intended to 'ensure that the project is constructed and operated in accordance with the assessment outcomes', and 'safeguard the community and the natural environment from unacceptable adverse impacts relating to the construction and operation of the wind farm'.[28]

Conditions relevant to issues raised by inquiry participants are summarised in the table below.

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23 FWH, submission 5, p 1.

24 State Code 23, p 23-1. http://www.dlgrma.qld.gov.au/resources/guideline/planning/wind-farm-state-code-planning-guideline.pdf.

25 FWH, *Development process*, https://www.forestwind.com.au/development-process-1.

26 Queensland Government, DSDTI, *Development assessment process*, Decision, Attachment 1 – Assessment manager conditions, https://planning.dsdmip.qld.gov.au/planning/better-development/the-development-assessment-process/the-states-role/sara-decisions.

27 Queensland Government, DSDTI, *SARA Decision Notice – Forest Wind*, https://dsdmipprd.blob.core.windows.net/mydas/ZgU3qxHfULlINlllRBRHow22eU849w60/AM10-N_Decision-approval_with_conditions.pdf

28 DSDTI, correspondence, dated 12 June 2020, p 6.

No.	Condition
7.	Preparation and implementation of a Vegetation and Fauna Management Plan, certified by a suitably qualified ecologist.
8.	Preparation and implementation of a Bird and Bat Management Plan, certified by a suitably qualified ecologist.
9.	Preparation and implementation of a Bushfire Management Plan, certified by a suitably qualified person and in consultation with Queensland Fire and Emergency Services.
11.	Preparation and implementation of a Construction Environmental Management Plan, prepared by a suitably qualified person.
12.	Preparation of a Noise Impact Assessment, prepared by a suitably qualified acoustic consultant.
14	Preparation and implementation of a Noise Management Plan.
15	Preparation of a Noise Monitoring Report.
17.	Preparation and implementation of a Decommissioning and Rehabilitation Management Plan, prepared by a suitably qualified person.
18.	Preparation and implementation of a Complaint Investigation and Response Plan.

The introduction of the Bill followed completion of the assessment project.

2.1.2.1 Committee comment

The committee notes that development approval was granted for the proposal by the State Assessment and Referral Agency in February of this year. The committee notes that the development has been assessed as being consistent with State code 23: *Wind farm development* and that the approval is subject to a range of conditions intended to safeguard the community and natural environment from unacceptable adverse impacts.

The committee acknowledges that the development assessment process is not within the scope of this inquiry and the committee does not intend to examine the efficacy of this process. The committee is however mindful that the views of local community members relating to the development process and the proposal generally provide important context to understanding the full impact of the Bill.

2.2 What does the Bill propose

The primary objective of this Bill is to outline a tenure pathway and legal framework to enable the development and operation of a wind farm in the project area. Specifically, the Bill will:

2.2.1.1 Modify the application of certain provisions of the Forestry Act and the Land Act

The Forestry Act prohibits the development of inconsistent and incompatible uses such as wind farms, including the grant of tenure for projects of this kind. Queensland State forests are permanently reserved for the production of timber and associated products and to protect watershed therein.[29]

The Bill includes a number of provisions which exempt the development from or modify sections of the Forestry Act to allow the development to occur on State forest land.[30]

[29] Explanatory notes, p 3.

[30] Explanatory notes, p 3.

The Bill also provides a tenure pathway for the proponent of a development agreement to obtain tenure to access, occupy, develop and manage the land for the purpose of development and operating the wind farm project, including conditions precedent to tenure.

The Bill enables the grant of tenure in the form of access licences and project leases for each stage of the project. A term lease under the Land Act can be granted for a specified term only for the project while minimising the impact on HQP's plantation licence.[31]

The Bill will also:

- *limit construction and operation of a wind farm to specific parts of the forest*
- *permit development and use of road access into the project area*
- *set out a range of conditions that will be relevant to the grant of both access rights and leases for the project*
- *prescribe the key conditions and other elements of those licences*
- *provide that compensation is not otherwise payable by or on behalf of the State in relation to the enactment or operation of the proposed Bill, and*
- *require the planation licensee's compliance with its remediation responsibilities in the project area, as a condition of tenure.*[32]

The Bill does not in itself grant tenure for the project, but rather gives the state the power to grant tenure. Provisions in the Bill enable the Minister responsible for the act to grant access licences for the development of the project; and the Minister under the Land Act to grant project leases provided the requirements in the Bill and the project agreements are met.[33]

Under the Bill, the conditions precedent to the grant of tenure address potential significant risks to the State. These are mandatory conditions precedent which must be met prior to the grant of tenure and cannot be altered or waived under a development agreement.

Prior to the grant of tenure, the Bill will require the applicant to satisfy additional conditions precedent imposed under a development agreement. As the project will be developed in stages and over time, there may be additional risks to the State which emerge. By allowing the State to impose additional conditions precedent under the development agreements, the Bill secures the State's ability to respond to and address any additional risks which may emerge from time to time.

At the public briefing, the department spoke about the importance of tenure certainty, which was sought by project investors:

> *It is clear from commercial discussions that, in the absence of providing tenure certainty or a pathway to tenure certainty where there are rights and responsibilities of each of the parties including the state and current plantation holders, we will be unable to move the commercial terms forward. There are significant state benefits associated with the project. This bill provides tenure to support those ongoing commercial negotiations which will be required to ensure that the project is further developed.*[34]

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31 Explanatory notes, p 3.

32 DSDTI, public briefing transcript, Brisbane, 1 June 2020, p 2.

33 Hon Kate Jones MP, Minister for State Development, Tourism and Innovation, Introductory speech, Transcript of Proceedings, 20 May 2020, p 973.

34 DSDTI, public briefing transcript, Brisbane, 1 June 2020, p 5.

2.3 Development agreements

Should the Bill be passed, development agreements, which the State will be part of, will be entered into. Some development agreements may not be entered into immediately as the project will occur in stages.[35] These agreements will include a suite of project documents which will outline each party's obligations (including that of the plantation licensee), in respect of the development and long-term occupation and use of parts of the State forests.[36]

According to the explanatory notes, negotiations between the State, FWH and the plantation licensee about the project agreements (including proposed developments agreements) have not yet concluded.[37]

2.4 Stakeholder views

This section discusses inquiry stakeholder views together with the corresponding views of the Department of State Development, Tourism and Innovation.

2.4.1 Support for the Bill

A number of stakeholders outlined their support for the Bill, largely due to the potential renewable energy generation and economic benefits for the region should the proposal proceed.

2.4.1.1 Renewable energy

Wide Bay Burnett Environment Council (WBBEC) voiced its support for such projects:

> *The Bill proposes to provide tenure …to enable a renewable energy project for the Wide Bay Burnett region to occur. WBBEC* [Wide Bay Burnett Environment Council] *supports renewable energy projects in the region, for greenhouse gas reduction, sustainable economic development and local job creation*.[38]

In its submission, WBBEC referred to the vegetation at creek crossings and vegetation clearing being disturbed due to power line access to the site from Woolooga substation through to the pine plantation area.[39]

In response to this issue, the department stated:

> *Any clearing of native vegetation due to power line access to the site from the Woolooga substation (approximately 30 kilometres from the project area) is also outside the scope of the Bill, as the Bill is limited to the areas described in Schedule 1 of the Bill. Nevertheless, Forest Wind Holdings will be required to consider offset requirements in order to comply with the requirements under both State and Federal legislation.*
>
> *Conditions for the assessment, monitoring and mitigation of impacts on the natural environment are considered in the applicable State and Federal planning and environmental approvals for the project.*[40]

35 DSDTI, correspondence dated 12 June 2020, p 4.

36 DSDTI, correspondence dated 12 June 2020, p 2.

37 Explanatory notes, p 7.

38 Submission 1, p 1.

39 WBBEC, submission 1, p 1.

40 DSDTI, correspondence dated 12 June 2020, p 2.

Mr Phil Brown outlined his support, noting a range of benefits of energy generated by wind farms, stating:

- *As a form of renewable energy, electricity produced by wind farms is consistent with achieving the Queensland government's 50% renewable energy target by 2030*
- *Wind farms generate most of their energy at night, when solar farms cease generating electricity…*[41]

2.4.1.2 Economic benefits

FWH described the potential economic benefits for the regional community, in particular employment opportunities:

> *As a starting point, at the moment probably around 20 people in our region are working on the project. Once we get to construction it could be up to 440 full-time jobs, peaking at 600 jobs during construction, and up to 50 full-time operational roles for a 1,200-megawatt project. Eighty per cent of the jobs created during construction are expected to be in Queensland.*[42]
>
> *Approximately half of the jobs created during construction we expect to be filled by people in the Wide Bay region. During the operational phase, we would expect around 90 per cent of those people to be in the Wide Bay, Gympie and Maryborough area.* [43]

Queensland Timber also anticipated benefits for the forest and timber sector from opportunities associated with the project:

> *… initiatives by governments and industry to grow the plantation forest industry further develop downstream timber processing and value added opportunities in the sector.*
>
> *Some of the priorities for improving growth of the forests and forest processing sector include greater resource security to help underpin capital investment, the removal of barriers to new plantation forest investment and enhanced productivity of existing plantations, and improved manufacturing competitiveness through lower input costs such as energy.*[44]

Will Gerhard, Gympie Regional Council focussed on the potential economy and renewable energy opportunities for the local Gympie and Wide Bay region. Some of these include:

- *Working with the First Nations People to achieve improved economic and employment outcomes*
- *Gympie businesses working with global engineering group, Siemens*
- *Improved upskilling opportunities for the local workforce*
- *Opportunities for other sectors to work in partnership Siemens subcontractors, ie: construction suppliers, transport & haulage, logistics, hospitality, accommodation, etc;*
- *Incentive for project suppliers to be located in Gympie, potentially relocating their businesses*
- *Opportunity to host renewable energy tours, attracting visitors to the region*
- *Place downward pressure on electricity prices in the local region and Queensland.*[45]

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41 Submission 2, p 1.

42 Mr Pennay, FWH, Public hearing transcript, Brisbane, 15 June 2020, p 13.

43 Mr Pennay, FWH, Public hearing transcript, Brisbane, 15 June 2020, p 14.

44 Submission 11, p 2.

45 Submission 4, pp 1-2; submission 18, pp 1-2; Gympie Regional Council, public hearing transcript, Brisbane, 15 June 2020, pp 7-8.

2.4.2 Bushfire risks and risk management strategies

One submitter expressed concern about bushfire risks associated with the proposed development, resulting from the construction of the project (welding, cutting and grinding in high fire conditions); and the combustion of wind farms.[46]

Timber Queensland also noted the risk from bush fire as a result of the development of wind farms, advising:

> *With wind farms on the estate, there are concerns around those activities on the plantation in that you may increase fire risk with machinery and all sorts of things, so a commitment around having better fire management capability from the proponent or an arrangement with HQPlantations for us is critical to be able to detect those fires early and manage the risks so that we do not lose that broader estate. Fire for us would probably be the bigger threat than the immediate reduction in the area from the clearing.*[47]

In response, the department noted that a condition of the Forest Wind development approval was that the proponent prepare and provide to the SARA a Bushfire Management Plan, prepared in consultation with the Queensland Fire and Emergency Services (QFES). This plan is required address construction, operations, and include, at minimum, a fire hazard analysis and mitigation strategies to achieve the development outcomes in Part E of the State Planning Policy July 2019 – Natural Hazards, Risk and Resilience.[48]

The department also advised that ultimately, it is HQP (plantation licence holder) that 'remains responsible for the management of its plantation licence area for the term of its plantation licence. This includes ensuring that the principles and conditions of the Fire Management and Operations Plan (FMOP) between the State and HQP (a related agreement under section 61QB of the Forestry Act) are complied with.[49]

The FMOP outlines the fire management responsibilities of HQP and respective government agencies on the plantation licence area and adjacent State land, as well as fire management obligations on designated joint management areas.[50]

The department advised that FWH is working with HQP to 'develop a Fire Management and Fire Action Master Operations Plan to prepare and respond to fire events within or near the project area. It also intends to have operators of the wind farm trained in both forest and wind asset fire response'.[51]

Timber Queensland and HQP advised that they were reassured with the commitment made by FWH for additional fire management and safety capability to manage such risks.[52]

HQP advised that it had conducted 'extensive conversations' with FWH about bush fire and provided the committee with the following update:

> *…it* [bush fire risk] *is probably the most significant issue for us. We have, if you like, agreed a set of principles to date on how fire will be managed and we will be preparing with them a detailed fire management plan process. It will cover aspects like fire protection or fuel management*

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46 Name suppressed, submission 15, pp 1-4.

47 Mr Mick Stephens, Chief Executive Officer, Timber Queensland, public hearing transcript, Brisbane, 15 June 2020, pp 2-3.

48 DSDTI, correspondence dated 12 June 2020, p 3.

49 DSDTI, correspondence dated 12 June 2020, p 3.

50 DSDTI, correspondence dated 12 June 2020, p 3.

51 DSDTI, correspondence dated 12 June 2020, p 3.

52 Submission 11, p 2; HQP, public hearing transcript, Brisbane, 15 June 2020, p 2.

zones around each turbine, a hard stand area in the immediate vicinity of the turbine and then regular reduction of fine fuels which survive.

Forest Wind will have staff on site all of the time and they will assist us with protection activities and a whole range of things. We do not envisage that our fuel reduction burning program will be impacted by the turbines. If we need to close a few turbines down so that we can conduct fuel reduction burns, that is called an eligible outage and we have agreed that that is in their best interests and ours. We are pretty comfortable on the fire front.

I will also flag that if you go back 10 or 15 years the technology with turbines was a lot different to what it is today and historically there were fires that had been initiated by turbines, but as the technology has developed there are a lot of safety mechanisms in place now and we are comfortable that we do not consider the turbines a fire risk for our business.[53]

The committee sought further information from the Commissioner, Queensland Fire and Emergency Services (QFES). The Commissioner confirmed that:

… in December 2019, Queensland Fire and Emergency Services (QFES) was contacted as part of the State Assessment Referral Agency's request for Third Party advice for the consideration of the Forest Wind, wind farm project. The wind farm area has been identified in the Bushfire Prone area within the State Planning Policy Interactive Mapping System.

In response, QFES provided advice on QFES' Bushfire Resilient Communities technical guidelines which support the State Planning Policy,… and other guidance material relating to bushfire specific natural, hazards, risk and resilience. Further, QFES highlighted regulatory amendments to operational work for necessary firebreaks and fire management lines, in line with guidance material on the management of bushfire risk under the Queensland's Planning Framework.

QFES North Coast Region will continue to provide advice to the proponent on preparation of a Bushfire Management Plan and Safety and Emergency Management Plan as indicated by the development approval issued by SARA, noting that the land holder has responsibility for maintaining their land.[54]

2.4.2.1 Committee comment

The committee is acutely aware of the importance of addressing bushfire risks and the interest in these matters by project stakeholders and the local community.

The committee is satisfied that bush fire risks are being addressed appropriately.

2.4.3 Decommissioning and remediation of land

Part 6 of the Bill deals with remediation responsibilities.

One submitter expressed concern that the Bill does not make clear the proponent's role and responsibilities in relation to decommissioning and remediation of project land, including costs, which may result in the State being left with commercial or financial obligations at the end of project life.[55]

In response to this issue, the department confirmed that, should the Bill be passed:

Access Licences and Project Leases will contain conditions about the remediation of the land. Development agreements, will also render the proponent responsible for managing the land, including decommissioning and remediation responsibilities at the end of the project lifetime, as

[53] HQP, public hearing transcript, Brisbane, 15 June 2020, p 3.

[54] Correspondence, Commissioner, Queensland Fire and Rescue Services, 26 June 2020, p 1.

[55] Name suppressed, submission 15, pp 4-5.

required by clause 6(c)(iv) of the Bill. The development agreements will also contain requirements about insurance, indemnities and security in this respect.[56]

The department also confirmed that Clause 54 within the Bill exists to protect the State in the event that a relevant entity does not comply with its remediation obligations:

Ultimately, HQP remains responsible for the management of its plantation licence area for the term of its licence. Clause 54 of the Bill states that HQP is also responsible for remediating the land where the relevant proponent fails to do so in accordance with the relevant project instrument (development agreement, Access Licence or Project Lease), thereby reflecting the commercial arrangement's between the parties. The intention of this clause is to protect the State in the event that a relevant proponent does not comply with its remediation obligations, including costs. HQP has agreed to this specific condition. It is intended that the relevant development agreement will deal with any commercial or financial considerations in these circumstances.[57]

FWH also confirmed to the committee that it understood that remediation responsibilities as discussed above would be a requirement of any future agreement.[58]

2.4.3.1 Committee comment

It is the committee's view that the Bill, and subsequent advice from the department, make clear the obligations by relevant entities for the purposes of remediation of land in the project area.

For the avoidance of any doubt, the committee strongly agrees that the State should not be responsible for any costs or other liabilities resulting from the decommissioning or remediation of the land at the end of the project lifetime, and fully supports the Government's intention to include such conditions within Access Licences, Project Leases, and Development Agreements, as relevant.

2.4.4 Forest productivity

According to the explanatory notes, 'the cardinal principle of management of State forests in the Forestry Act is that Queensland State forests are to be permanently reserved for the production of timber and associated products in perpetuity and to protect the watershed therein'.[59]

At the public briefing, in relation to the plantation licence area, the committee asked the department about the potential impact on the timber and associated production resulting from the proposed development.[60] The department advised:

… there has been detailed negotiation with the current plantation licence holder, who holds that licence for 99 years. We estimate that the project will require the permanent clearing of about 493 hectares, which represents 0.6 per cent of the plantation area. Based on those figures, the impact is likely to be extremely minimal. The capacity for us to deliver significant economic benefit in addition to the forestry outcomes that we are delivering is a key element of the proposal that we are putting forward. In addition, I can advise the committee that, as part of the commercial negotiations and discussions, the prospect of offsetting some or all of that plantation access water with the plantation holder is being discussed. It has not been agreed but it is being considered.[61]

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56 DSDTI, correspondence dated 12 June 2020, pp 3-4.

57 DSDTI, correspondence dated 12 June 2020, pp 3-4.

58 FWH, public hearing transcript, Brisbane, 15 June 2020, pp 11-12, 14.

59 Explanatory notes, p 3.

60 DSDTI, public briefing transcript, Brisbane, 1 June 2020, p 5.

61 DSDTI, public briefing transcript, Brisbane, 1 June 2020, p 5.

Mr Stephens, Chief Executive Officer, Timber Queensland, explained why protection of forestry productivity was important for the timber industry:

> *… in terms of growing our industry we have had challenges around land costs for new plantations. It is very important to rely on our existing plantation base and add value to that through improved productivity or management of those areas going forward. If we were to lose plantation area, it would be a direct hit on the industry. The commitment from the proponent that they would match those areas is very important for us because there are difficulties around new plantation investment, given land costs in particular. You have high up-front costs with a long time period before you have the returns. We are working with governments around incentives around carbon offsets, for example, and getting better market access for plantations, because they can provide carbon sequestration and provide an extra incentive. We are dealing with some market access issues around that.*[62]

Mr Robertson, advised that HQPlantations had conducted discussions with FWH regarding land offsets, stating: 'While we have identified that there are areas in the vicinity of those plantations, we have not progressed that any further and the ball really is with Forest Wind to source that land for us to re-establish and maintain productivity'.[63]

2.4.5 Primacy of plantation land use

Timber Queensland submitted that it would like to see the Bill ensure the primacy of plantation land use within the Plantation Licence Area in the Tuan, Toolara and Neerdie State forests.[64]

In response to this issue, the department provided the following information:

> *The Bill provides that plantation land use within the Plantation Licence Area of the three State forests will coexist with the proposed development, rather than enjoy "primacy". While ecological offsets are outside the scope of the Bill. Forest Wind Holdings Pty Limited has committed to a 'no net loss of forest product' outcomes for the timber industry and is currently investigation land capable of growing the same volume of timber as the reduction of net commercially plantable area.*[65]

2.4.6 Community feedback

The committee asked a representative from Gympie Regional Council if feedback on the proposed development had been received. In answers to questions on notice, Mr Dale Watson, Gympie Regional Council advised:

> *Gympie Regional Council wishes to express in principle support for the proposed Forest Wind Farm Development Bill 2020. Council supports the Bill's intention to provide access to land and facilitate tenure for a major renewable energy project to occur within the Toolara, Tuan and Neerdie State forests, and to provide for the renewable energy project to coexist with the plantation licence.*
>
> *Gympie Regional Council recently submitted feedback on the Forest Wind "Material change of use for a wind farm (up to 226 wind turbines) and ancillary uses" application (SARA reference: 1912-14632 SDA). The timeline and outcomes of the feedback and response involved:*
>
> - *Council's development assessment team were referred to the application for comment on 19 December 2019;*

[62] Timber Queensland, public hearing transcript, Brisbane, 15 June 2020, p 2.

[63] HQP, public hearing transcript, Brisbane, 15 June 2020, p 3.

[64] Submission 11, p 2.

[65] DSDTI, correspondence dated 12 June 2020, p 2.

- *Council provided suggested items for inclusion in any request for further information by the State on 9 January 2020;*
- *In response to the items identified by Council, a meeting was organised by the Applicant with Council's development assessment staff on 5 February 2020;*
- *The Applicant supplied a copy of the minutes summarising the meeting on 18 February 2020;*
- *Council's development assessment team, including environmental planners, were satisfied that the information provided addressed the issues raised and no objection was offered to the proposal.*

Gympie Regional Council has received no formal community feedback regarding the Forest Wind Farm development. Some informal commentary has centred around the Gympie and Fraser Coast regional communities and businesses benefiting from a greater downward pressure on energy prices and potential for economic benefits specific to the region.[66]

Mr Gerhard, further added that Gympie Regional Council had received three responses from the community regarding the environmental and other impacts of the proposal since the committee's public hearing.[67]

The committee received five submissions from individuals who expressed concerns about the impact of the wind farm proposal. Their views are summarised below.

2.4.6.1 Impact on health

Mr Lamprey raised a concern that wind turbine noise may cause health problems:

Despite the information propagated by wind turbine operators and wind turbine manufacturers and their various enablers, there is ample evidence that wind turbine noise, including frequencies the human ear can't hear, causes health problems for many people.[68]

Mr Lamprey therefore sought the separation distance between residents and the wind turbines to be extended from the current distance of approximately 3,200m to at least 5,000m, and preferably 10,000m.[69] Mr Lamprey spoke about his concern at the public hearing:

All we are seeking is that we can have a further offset than the three kilometres which is proposed. I would not think it is reasonable, in a 200-square-kilometre area that the turbines have to be so close to our properties...[70]

FWH responded to this concern at the public hearing noting that it had not only complied with, but doubled requirements set out in State code 23: Wind farm development, the planning guideline for wind farm development in the state:

We are pleased to have complied with the code and received the development approval in February, but we went over and beyond the code. Traditionally, on projects we have worked on we have been around 700 metres from homes. The code required 1,500 metres from homes. We doubled 1,500 to three kilometres. We are at least 3,000 metres from homes as we have the site designed today for the purpose of the development application.[71]

66 Mr Dale Watson, Gympie Regional Council, correspondence received

67 Gympie Regional Council, correspondence dated 22 June 2020, Attachments 1 -3.

68 Mr Rodney Lamprey, correspondence dated 16 June 2020, p 1; submission 7.

69 Submission 7, p 1.

70 Mr Rodney Lamprey, public hearing transcript, Brisbane, 15 June 2020, p 4.

71 FWH, public hearing transcript, Brisbane, 15 June 2020, p 10.

Regarding concerns around noise caused by wind farms, Mr Pennay, FWH stated:

> *Although they are larger, wind turbines are no louder than they ever have been. I have worked on projects where we have been 700 metres from houses. We are looking at three-plus kilometres. We do not see noise as being an issue. We have undertaken quite a considerable assessment of noise by a third-party independent consultant. That has also been assessed by the state under the planning process for which they engaged a third-party professional to consider noise. The application was approved. There are a range of conditions attached to that application that the project must meet. We have no concerns in meeting those.*[72]

2.4.6.2 Impact on environment

Mrs Christine Olsen, a local resident, spoke at the public hearing about the scale of the proposed development and the potential impact it will have on the environment and local community:

> *The problem is that the benefits of so-called clean energy are offset by the impact it has on the environment and local communities. The sheer size and scale of Forest Wind's proposal should ring alarm bells. It will be amongst the largest onshore installation in the world. The Forest Wind proposal is completely without precedence so far in Australia. It is breaking new ground on two significant fronts: its massive scale and the sensitivity of the proposed site.*[73]

Talking further about the size and scale of the proposed development, Mrs Olsen noted that the wind farm will have twice as many turbines as the largest wind farm in Queensland, Coopers Gap and that each tower could be as high as 245 meters.*[74]*

Mrs Olsen continued that the location of the proposed wind farm is 'enormously sensitive':

> *…There are over 900 homes in the coastal communities within five kilometres. The site occupies the heart of the Australian nominated UNESCO Great Sandy Biosphere. It is an outstanding area of beauty. It is in the immediate vicinity of the Fraser Island World Heritage site; adjacent to Poona National Park; in the vicinity of the Great Sandy Strait Ramsar wetlands and directly on recognised bird, bat and insect migration routes; and, in particular, is adjacent to the potentially internationally recognised East Asian-Australasian flyway for our migrating shorebirds. It includes environmentally sensitive areas and matters of state environmental significance. It contains many bird and bat species of ecological significance: two threatened bat species and 23 threatened bird species potentially occur, and four species of bird conservation significance were actually recorded by the limited surveys carried out*.[75]

FWH was asked to respond to these issues. In relation to the location of the site, Mr Pennay stated:

> *We have to look at how we can best optimise this site. There are a range of views in the community, of course, and there are a range of technical, environmental and commercial factors that we need to consider. We also need to consider the views of the plantation and the state government as key land stakeholders where they may or may not want turbines, likewise the traditional owners. That is the context of how we have developed it to date. It is not to say it is a final design. We continue to design it*.[76]

FWH also responded to concerns about the impact on bird migration routes, noting that a key focus going forward would be to bring in independent experts to assess the impact of the proposal:

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72 Mr Pennay, FWH, public hearing transcript, Brisbane, 15 June 2020, p 13.

73 Ms Christine Olsen, public hearing transcript, Brisbane, 15 June 2020, p 5.

74 Ms Christine Olsen, public hearing transcript, Brisbane, 15 June 2020, p 5.

75 Ms Christine Olsen, public hearing transcript, Brisbane, 15 June 2020, p 5.

76 FWH, public hearing transcript, Brisbane, 15 June 2020, p 10.

> *We can bring in independent experts who can look at the data that we have collected and also the data that has been collected by the state departments over a long period of time and assess how the project will or will not impact upon those migratory birds. So far, our assessment shows that migratory birds do not fly over the site, because it is an exotic pine plantation and does not have a food source. The migratory birds have not been observed flying over the plantation, which is set back from the Ramsar wetland area.*[77]

In relation to these matters, the department advised that the Bill does not alter the State's existing processes for the progression of such projects, nor does it reduce or amend any rights in relation to those processes. This includes the consideration of environmental matters and the grant of development approval.[78]

The department advised that a detailed assessment of the project's impact on the natural environment, including the associated ecological processes, acoustic impacts and impacts on visual amenity was undertaken and that 'SARA conducted a rigorous assessment of the application to ensure that adverse impacts on the health and wellbeing of the surrounding community and environment are avoided'.[79]

The department also advised that the project is presently undergoing the referral and assessment process of the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) through the federal Department of Agriculture, Water and the Environment. This process will ensure that any matters of national environmental significance, if applicable, are also addressed. The EPBC Act prescribes statutory timeframes for the referral process, including timeframes for public consultation.[80]

2.4.6.3 Consultation on Forest Wind proposal

Some inquiry participants raised concern about the consultation process undertaken by the Forest Wind proponent and the SARA.[81]

By way of example, Carole and Bruce Bringans, who reside near the proposed project area, stated that 'to date information regarding the proposal has been totally unsatisfactory', further adding that they only found out about the project in January of this year.[82] Another submitter voiced concerns that no community engagement had taken place with local residents prior to the lodgement of the development application in December 2019, further adding that the consultation process undertaken as part of the development assessment process was also inadequate.[83]

In response to a question from the committee on how the consultation process could have been improved, Ms Olsen responded:

> *From my point of view, I cannot Zoom as I have an old computer. I would like to meet face-to-face in Boonooroo Hall, right at the heart of our little community.*[84]

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77 Ms Jane Daniels, Stakeholder Engagement Manager, FWH, public hearing transcript, Brisbane, 15 June 2020, p 13.

78 DSDTI, correspondence dated 12 June 2020, p 6.

79 DSDTI, correspondence dated 12 June 2020, p 6.

80 DSDTI, correspondence dated 12 June 2020, p 6

81 See for example, submissions 7, 13, 15, 16.

82 Submission 13, p 1.

83 Name suppressed, Submission 16, p 2.

84 Ms Christine Olsen, public hearing transcript, Brisbane, 15 June 2020, p 5.

Mr Lamprey agreed:

> *Similarly, I would like to have some face-to-face consultation. I would also like some delegates from the state government to act on our behalf or help moderate or mediate how we are going to move forward with this. I think a lot of the replies from the developer have been generic. As I have said before, I do not think it is too unreasonable that the community is taken into consideration and we have some input into the location of these wind farm turbines.*[85]

At the public hearing, FWH provided a detailed response to the committee on its community consultation activities. Ms Daniels, Stakeholder Engagement Manager, FWH, stated:

> *Forest Wind knows that community engagement and consultation are important to successfully build a social licence to operate and build support for a project. It is certainly a key objective of ours now as we proceed through the remaining development stages of the project.*
>
> *…*
>
> *There is still a process to go in our consultation program before the construction commences, so there is ample opportunity for community to have their say and for us to address their concerns.*[86]

Ms Daniels of FWH, advised that the following consultation activities had taken place:

- Formal announcement of project in December 2019 once commercial, technical and legal feasibility of project confirmed, so as to not raise community expectations prematurely
- Letters hand delivered to residents more highly impacted by the proposal
- Project website launched (which has now seen over 10,000 unique visitors)
- Information packs sent to 900 residential and postal addresses within five kilometres of the site inviting residents to community information sessions and providing general information
- Three community information sessions held in three locations at which over 200 people attended – feedback forms collected indicated that the majority of those who attended supported the project
- Updates posted to residents on 10 March 2020
- Various media interviews with newspapers and television
- A visit to the Coopers Gap Wind Farm visit with community was planned but was postponed due to COVID-19
- Online session held (due to COVID-19 restrictions) with 17 people
- Online session held for those wanting to understand business opportunities with 700 participants
- Meetings with local councils and regular updates
- Briefings with local members of state parliament
- Briefings with local high school principals and deputy principals interested in participating in the skills and vocational training development for the project, to identify what career pathways there are in areas of high youth unemployment

[85] Mr Rodney Lamprey, public hearing transcript, Brisbane, 15 June 2020, p 5.

[86] Ms Jane Daniels, Stakeholder Engagement Manager, FWH, public hearing transcript, Brisbane, 15 June 2020, p 10.

- regular engagement and consultation with the First Nation Kabi Kabi and Butchulla people
- engagement with 'environment and local chambers of commerce'.[87]

Ms Daniels continued that consultation processes had indicated that there 'is strong support for the project'.[88]

FWH advised that it also intends to establish a community consultative committee to guide consultation activities going forward. Ms Daniels explained:

> *Over the last six weeks we have been calling for nominations for a Forest Wind community consultative committee. That is the mechanism through which we would like to be receiving and managing that consultation process. We have received a number of nominations for those positions and we intend to establish that committee in the next month.*[89]

2.4.6.4 Committee comment

The committee acknowledges that Forest Wind Holdings has conducted a series of community engagement and information activities and appreciates that with an infrastructure project of this type, impacts and differing community opinions are inevitable.

The committee acknowledges the concerns of local residents, particularly as they relate to potential health, environmental and other impacts resulting from the proposal. While the consultation activities undertaken by the proponent fall outside of the technical scope of this Bill, this inquiry has provided an opportunity for these concerns to be raised and discussed in a public forum.

Genuine and meaningful consultation, in a manner accessible for all those who wish to participate, is fundamental to successful project design and delivery. The committee trusts that those responsible for undertaking consultation going forward take note of the feedback received and take steps to address issues raised.

2.4.6.5 Other issues

Mr Keith Wilson submitted that the wind turbine blade should be manufactured in Queensland and that the turbine design should be bladeless.[90] In response to this issue, the department noted this matter was outside the scope of the Bill, however provided the following information:

> *… the turbine design, wind farm configuration and supply chain are currently being optimised by Siemens Gamesa Renewable Energy, Forest Wind Holding's selected turbine supplier and Engineering, Procurement and Construction and Operations and Management contractor. The Forest Wind project with its 1200 megawatt potential capacity has already attracted a large global energy investment and technology provider, which is currently evaluating supply chain options in the Wide Bay region and Queensland. The potential to establish local manufacturing and assembly facilities is under consideration as part of this process.*[91]

87 FWH, public hearing transcript, Brisbane, 15 June 2020, pp 10-11.

88 FWH, public hearing transcript, Brisbane, 15 June 2020, p 11.

89 FWH, public hearing transcript, Brisbane, 15 June 2020, p 11.

90 Submission 3, p 1.

91 DSDTI, correspondence dated 12 June 2020, p 5.

2.5 Committee conclusion

The Forest Wind Farm Development Bill 2020 is a special purpose Bill to enable a tenure pathway for a large-scale renewable energy project - Forest Wind - in the Toolara, Tuan and Neerdie State forests within the Wide Bay Burnett region of Queensland.

The committee notes that the passage of this Bill does not guarantee the delivery of the project, but rather, enables the proponent of this privately funded proposal, to access tenure needed to develop and construct the proposal. It will also enable the proposal to co-exist with the current plantation licence, in a manner that protects both the integrity of the operation of the state's forests and environmental values.

Central to the committee's consideration of this Bill, has been the potential economic benefits, and renewable energy to be delivered by Forest Wind. The committee heard that the project could deliver upwards of 400 jobs and generate enough clean energy to supply one in four Queensland homes. The committee also welcomed assurances from public representatives that bush fire management, and remediation responsibilities are being comprehensively considered.

With a project such as this, there will always be difference in opinions. The committee heard from a small number of local residents who voiced concerns about the impact of the proposal. It is now incumbent on relevant parties to work with local communities, in a meaningful and sensitive way, to take this project forward.

3 Proposed amendments to Planning Act

This chapter examines matters relating to the second objective of the Bill: amendment of the *Planning Act 2016* to facilitate the effective administration of the Springfield Structure Plan.

3.1 Springfield Structure Plan

Greater Springfield is a master planned community located on 2,860 hectares of former forestry land in the Ipswich local government area. Greater Springfield was established in the early 1990s in a region which previously displayed limited growth and development and is now home to 43,000 residents, supports over 20,000 jobs, and has a student population of 10,000 and 11 schools.[92] Mr Russell Luhrs, from Springfield City Group Pty Limited (SCG) explained that one of the unusual aspects of Greater Springfield is that it was delivered by SCG, a small private company. Acting as master developer, SCG has partnered with public and private sector entities to deliver the community as it is today.[93]

The Springfield Structure Plan (SSP) was approved in 1997 and is part of the Ipswich Planning Scheme. The SSP exists to guide the nature and extent of development in the SSP area as outlined in the map overleaf.

The Minister for State Development, Tourism and Innovation also referred to the unique planning arrangements in place for the Springfield area:

> *The Springfield Structure Plan differs in several respects from the usual planning arrangements in Queensland. In particular, it provides for the approval of a hierarchy of more detailed plans for development. The Springfield Structure Plan also contains dispute resolution arrangements in relation to these plan approval processes. The Planning Act 2016 explicitly validates these plan approval processes and dispute resolution arrangements. The Planning Act 2016 also requires that development carried out under the development control plans, including the Springfield Structure Plan, must comply with the plans.*[94]

According to the explanatory notes, the SSP was originally prepared as a Development Control Plan under the now repealed *Local Government (Planning and Environment) Act 1990* (LGP&E Act). This Act set out requirements for development control plans. This included a requirement to set out criteria for their implementation, and a requirement for precinct plans and area development plans to be approved could take place.[95]

The SSP includes the requirement for a hierarchy of plans to be prepared, including the requirement for precinct plans and area development plans in residential open space and town centre areas to be approved before development of a premises could take place.[96] Precinct plans and area development plans identify necessary infrastructure for Springfield and are facilitated primarily by the principal developer, SCG, through the Infrastructure Agreement between the SCG, the Ipswich City Council and Queensland Urban Utilities (Urban Utilities).[97]

The LGP&E Act was repealed and has since been replaced by the *Integrated Planning Act 1997,* then the *Sustainable Planning Act 2009* (SPA), and most recently the Planning Act. In transitioning provisions relating to development control plans, the Planning Act and the repealed acts before it included 'grandfathering' provisions which seek to continue the recognition of the development

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92 SCG, submission 12, p 1.

93 SCG, submission 12, p 1.

94 Hon Kate Jones, Minister for State Development, Tourism and Innovation, Introduction Speech, *Forest Wind Development Bill 2020*, Transcript of Proceedings, 20 May 2020, p 973

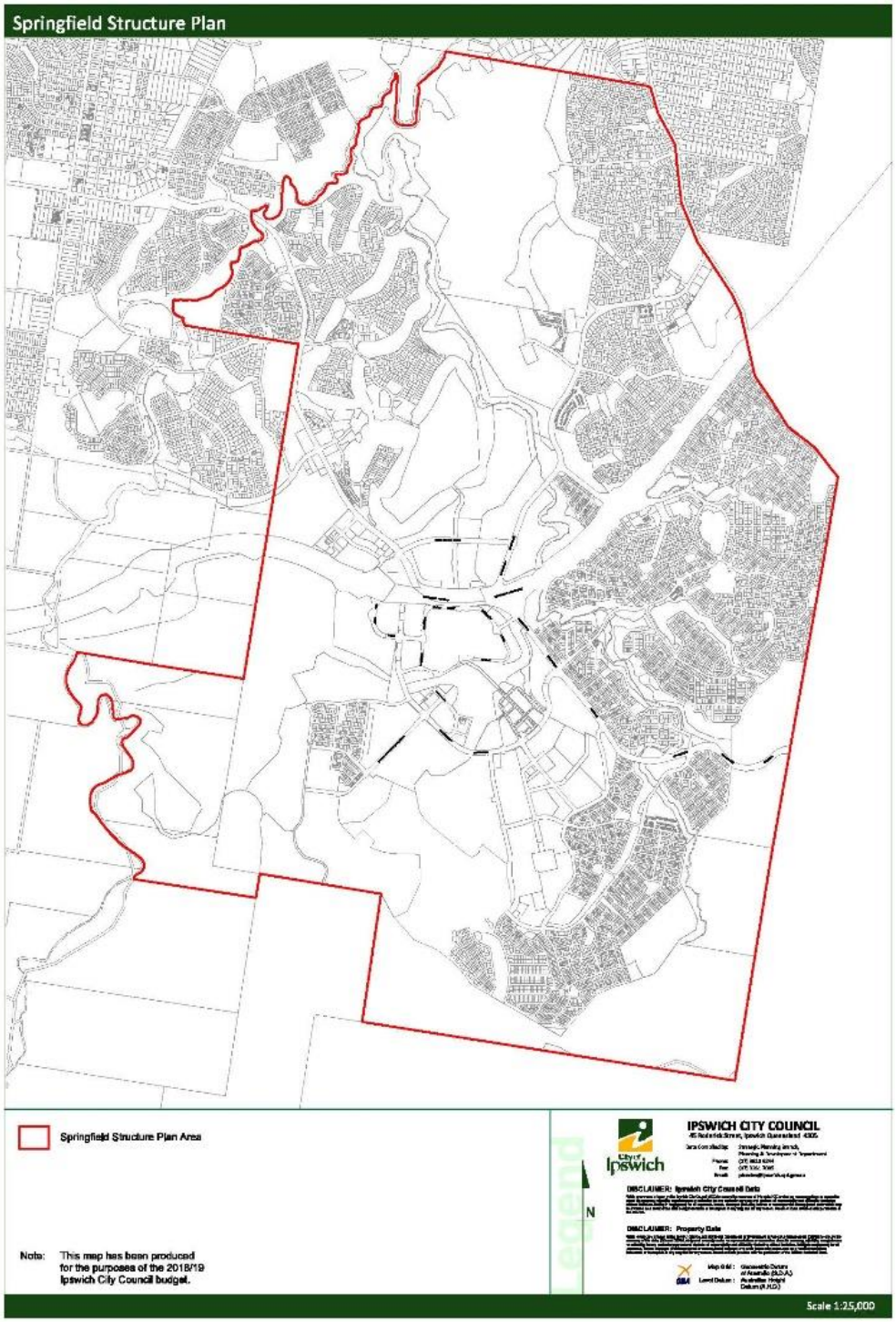
95 Explanatory notes, pp 1-2.

96 Mr Carey, DSDTI, public briefing transcript, Brisbane, 1 June 2020, p 2.

97 Mr Carey, DSDTI, public briefing transcript, Brisbane, 1 June 2020, p 2.

control plans as part of the local government planning scheme to facilitate their implementation within the legislative framework'.[98]

Springfield Structure Plan Area



Source: https://www.ipswich.qld.gov.au/__data/assets/pdf_file/0007/97243/Ipswich-City-Council-Springfield-Structure-Plan-2018.pdf

98 DSDTI, public briefing transcript, Brisbane, 1 June 2020, p 2.

3.1.1 Recent court decisions

Mr Carey, A/Deputy Director-General, DSDTI, explained that changes to the Planning Act were required following decisions in the Planning and Environment Court (2017)[99] and the Court of Appeal (2018)[100] to ensure the efficient and effective operation of the SSP, stating:

> *Following decisions in the Planning and Environment Court and the Court of Appeal, it has become evident that, although approval of an area development plan is a necessary precondition to assessment and approval of a development application, the requirements for the preparation and approval of precinct plans are no longer mandatory.*
>
> *Consequently, Springfield City Group as the entity responsible for the delivery of major infrastructure under the Springfield Structure Plan may no longer have sufficient input and oversight into the provision of required infrastructure.*
>
> *Changes to the Planning Act are proposed to address these issues and to ensure the efficient and effective operation of the Springfield Structure Plan. This reinstates a long held and accepted practice for the development of the Springfield area.*[101]

3.2 What does the Bill propose

The Bill proposes a number of amendments to the Planning Act to 'ensure that Springfield Structure Plan processes are preserved and operate as intended'.[102] These include:

3.2.1.1 Plan applications can be made by third parties

The Bill proposes to insert a new section 275V which will allow applications to make or amend precinct plans, make area development plans, or to amend the town centre concept plan under the SSP, to be made by third parties. Currently, applications are required to be made by SCG, the principal developer.[103]

3.2.1.2 The views of Springfield City Group must be sought by third parties making applications

For applications submitted by third parties, new sections 275X (Requirements before making non-SCG plan applications) and 275Y (Requirements in relation to making and assessing non-SCG plan applications) set out provisions which require SCG's views to be sought and considered by the applicant.[104]

3.2.1.3 Springfield City Group must provide a statement to Ipswich City Council

Proposed new section 275Z (SCG must give statements about particular matters) establishes obligations of SCG in relation to non-SCG applications, including that SCG must give a statement to Ipswich City Council in response to any plan applications not made by SCG. The statement must include advice on whether the approval of the plan application could result in an adverse impact on the structure plan area, advise on whether the plan application and associated development will be services by adequate infrastructure, and options for adding any matters identified.[105]

According to the explanatory notes, 'the provisions are mandatory upon SCG, because although SCG is a private entity which would not normally be compelled to provide representations, SCG exercises important planning functions under the SSP, which would normally be exercised by a body such as a

99 Cherish Enterprises Pty Limited v Ipswich City Council [2017] QPEC 38.

100 Springfield Land Corporation Pty Ltd v Cherish Enterprises Pty Ltd & anor [2018] QCA 323.

101 DSDTI, public briefing transcript, Brisbane, 1 June 2020, p 2.

102 Explanatory notes, p 1.

103 Explanatory notes, p 21.

104 Explanatory notes, p 22.

105 Explanatory notes, p 23.

local government. Consequently, SCG's input is a particularly important factor in the local government's assessment of a non-SCG plan application.'[106]

Proposed new Section 275Z(2) provides that the local government must have regard to representations made by SCG.[107]

3.2.1.4 All relevant layers of planning documents under the SSP to be in effect prior to development within the SSP occurring

Proposed new section 275ZB (Restrictions on starting development in structure plan area) establishes limitations on starting development in the SSP area and requires that relevant layers of planning documents to be in effect prior to development occurring.[108]

3.2.1.5 Update dispute resolution procedures

Section 275ZE of the Bill proposes a number of amendments to the dispute and difference resolution procedures as outlined in section 11 of the SSP. Mr Carey, from the department explained:

> *The current procedures provide that any person may give notice to Ipswich City Council disputing a decision about development approved under the Springfield Structure Plan. This bill limits the dispute resolution to parties who have a particular interest in the subject land. However, it broadens the ground on which a notice of 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, Springfield City Group as master developer and a submitter for a development application in the Springfield Structure Plan area. The bill also sets the time frames associated with this dispute resolution process.*[109]

3.2.1.6 Provides transitional provisions for existing applications and disputes

Clause 76 sets out transitional provisions which relate to the new provisions relating to the Springfield Structure Plan.

3.3 Stakeholder views

This section presents a summary of issues raised by stakeholders and corresponding responses from Queensland Treasury.

3.3.1 Support for the Bill

Stakeholders, including SCG, Greater Springfield Chamber of Commerce, Urban Development Institute of Australia, Queensland (UDIA), and the Property Council of Australia (Property Council) and Lendlease, expressed support for the Bill.[110]

SCG stated:

> *A key success factor in the implementation of the Springfield Structure Plan has been the plan making hierarchy, which has developed as the community has grown. Two recent and completely different decisions of Queensland's Planning and Environment Court and the Court of Appeal respectively caused some uncertainty about how this hierarchy operated in practice,*

106 Explanatory notes, p 23.

107 Explanatory notes, p 23.

108 Explanatory notes, p 23.

109 DSDTI, public briefing transcript, Brisbane, 1 June 2020, p 2.

110 UDIA, submission 6, p 1; Greater Springfield Chamber of Commerce, submission 8, p 1; Property Council, submission 9, p 1.; Lendlease, submission 21, p 1.

and potentially caused the link between the orderly planning of the growth of Greater Springfield and its infrastructure development to be compromised.[111]

The Bill clarifies the plan making hierarchy, confirming the implementation of an orderly planning process consistent with what has been undertaken in practice since 1998. Looking to the future, the Bill provides for a new, mature evolution of the older plan making processes, acknowledging and rebuilding the important link between planning and infrastructure, with new consultation between Springfield City Group, as provider of most of the infrastructure, and Ipswich City Council.[112]

The UDIA agreed, stating:

Greater Springfield is an important example of the results that can be achieved with an integrated planning and infrastructure framework in a critical growth area. ... Part 8, Division 4 will both modernise and protect the framework that has been so successful to date, as well as clarifying uncertainty created by recent court decisions.[113]

Greater Springfield Chamber of Commerce made a similar point:

An efficient and effective planning framework is crucial to sensible, sustainable economic development and the creation of jobs. This will be particularly the case following the easing of lockdown restrictions following the COVID-19 pandemic, with the anticipated economic fall-out and job losses. Greater Springfield has already created 200,000 jobs with many more anticipated as the community expands. The court decisions of 2017-18 potentially jeopardised the efficiency of the framework and hence this anticipated job growth, so the Bill's provisions should have a positive effect in that regard.[114]

Similarly, the Property Council stated:

The coordination of planning in conjunction with the integration of infrastructure frameworks has been a long-term advocacy issue for the Property Council. In recent years new growth areas have lacked a level of detail and coordination that was provided through the previous DCP framework. The Bills provisions to preserve the successful integrated planning and infrastructure framework, and the critical role of the master developer as curator of the current framework for the SSP will build on the demonstrated success of Greater Springfield and provide clarity to the uncertainty created by court decisions in 2017-2018.[115]

3.3.1.1 Dispute resolution process more efficient

SCG also outlined its support for amendments to the dispute resolution process stating that the changes to the dispute resolution process protect the roles of both the Council and SCG, while making the processes clearer and more streamlined and providing appropriate expansion of certain types of disputes, and that the changes will also clarify the relationship between certain aspects of Planning Act processes and the SSP.[116]

Further, SCG pointed out that Urban Utilities, as the provider of water supply and wastewater services, will also be able to be involved in the resolution of issues related to its infrastructure.[117]

111 SCG, submission 10, p 2.

112 Submission 10, p 2.

113 UDIA, submission 6, p 1.

114 Greater Springfield Chamber of Commerce, submission 8, p 1.

115 Property Council, submission 9, p 1.

116 SCG, submission 10, p 2.

117 SCG, submission 10, p 2.

3.3.2 Concerns

A number of concerns were raised by Cherish Enterprises Pty Ltd (Cherish), a local landowner, and party to court cases referred to at the start of the chapter.

3.3.2.1 Appropriateness of powers afforded to Springfield City Group

Cherish submitted that the powers afforded to SCG under the amendments will retain and to some extent enhance the powers of a direct commercial competitor to influence and obstruct Cherish. Cherish stated:

> *… Cherish and SCG are direct commercial competitors in the market for developing greenfield sites for residential purposes, and ultimately selling developed lots to residential end users. The powers which are given to SCG under the current Structure Plan, and which it will largely retain, and to some extent have enhanced if the proposed amendments are passed in their current form, are powers to directly influence and potentially obstruct proposed development by its primary commercial competitor.*[118]

Cherish pointed out that due to the size of its holding - it originally owned about 10 percent of the total area covered by the SSP, with 158 hectares of that land remaining undeveloped – currently in the Community Residential designation within the SSP compared to other existing and likely holdings in the SSP area, it is the only entity other than SCG, which is likely to be required to make a precinct plan application in the future.[119]

Conversely, SCG supported amendments relating to its role in providing comment on plan applications noting that they were 'entirely appropriate given the maturity of the development of the community in 2020'.[120] Further adding:

> *By having Springfield City Group comment on plan applications, the Bill recognises Springfield City Group's master developer role and responsibilities, and its critical commitments, both past and future, to the provision of infrastructure under the SIA, and demonstrates a clear appreciation of the links between orderly planning and the provision of infrastructure.*[121]

In response to this issue, Queensland Treasury advised that:

> *The SSP as it was originally understood to apply provided SCG with an effective veto over competitors' development plans by reserving to SCG alone the ability to apply for a precinct plan. The court findings established that precinct plans, which were the basis of this effective veto, were no longer obligatory. The Bill does not seek to re-instate the effective veto. Under the amendments, any person including Cherish may apply to the council for approval of the plan.*[122]

Queensland Treasury further added that under the Bill, SCG has an entitlement to be provided with the details of plan approval applications, and SCG must provide a statement to Council about the compatibility of the proposed plan and the adequacy of infrastructure. Ipswich City Council will then consider those SCG representations in making a final decision.[123]

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118 Cherish Enterprises, submission 12, p 5.

119 Cherish Enterprises, submission 12, p 4.

120 SCG, submission 10, p 3.

121 SCG, submission 10, p 3.

122 Department, correspondence dated 12 June 2020, p 10.

123 Department, correspondence dated 12 June 2020, p 10.

3.3.2.2 Review process

As noted above, Section 11 of the SSP sets out the process by which disputes or differences regarding decisions by Ipswich City Council are decided.[124] The provisions of the Bill modify aspects of the scope and procedure of the dispute resolution process under section 11, but do not in themselves confer those rights.

Cherish submitted that its ability to develop its land is not subject to appropriate review, a fundamental legislative principle due to the vague, imprecise and lengthy nature of the review process under section 11. Cherish also noted that it was the only entity involved in the SSP area that does not have access to merits review in the Planning and Environment Court for its development proposals.[125] This issue is discussed further in chapter 4, which considers the Bill's application of fundamental legislative principles.

Also relating to the review process, Mirvac submitted that there 'are no planning benefits or considerable disadvantage to applicants, submitters or the wider community achieved by the retention of the plan and the dispute resolution process in its current form'.[126]

In response, Queensland Treasury stated, 'the plan approval processes under the SSP are subject to the dispute resolution processes under the SSP, section 11. Conventional plan making and approval processes under the Planning Act, chapter 2, which are similar in some respects to those under the SSP, are not subject to merits review'.[127] Queensland Treasury further added that the Bill makes modifications to the review process, 'but does not adversely affect landowners' access to the review mechanism'.[128]

3.3.2.3 Perceived inconsistencies between Bill and existing planning instruments

Cherish submitted that there is a direct inconsistency between the effect of the SSP (section 2.4) which confers a right to make a development application, the table of development in the SSP (in particular columns 3 and 4) and the Bill, clause 275ZB, meaning that a development approval could be obtained which could then not be acted upon because the development is not 'shown on, or consistent with' the relevant area development plan or precinct plan.[129]

Cherish indicated that it considers this inconsistency breaches the fundamental legislative principle set out in *Legislative Standards Act 1992* section 4(3)(k) that requires legislation to be unambiguous and drafted in a sufficiently clear and precise way.[130]

Queensland Treasury provided a detailed response to this issue.[131]

> *The SSP, section 2.2.4.1 prevents development taking place unless the development is "shown on or consistent with" the relevant area development plan. The effect of the Bill, section 275ZB is to extend this requirement to some "higher level" plans, such as precinct plans.*
>
> *The right to make a development application is conferred under the Planning Act, section 50. The role of the SS, section 2.4 is to establish categories of assessment for development in*

124 SSP, January 2006, p 90.

125 DSDTI, correspondence dated 12 June 2020, p 10.

126 Mr Theo van Veenendaal, Mirvac Retail, public hearing transcript, Brisbane, p 22.

127 Department, correspondence dated 12 June 2020, p 10.

128 Department, correspondence dated 12 June 2020, p 10.

129 Cherish Enterprises, submission 12, p 19.

130 Cherish Enterprises, submission 12, p 7.

131 Department, correspondence dated 12 June 2020, pp 10-11.

particular designations under the SSP, in order to establish when a development approval is required.

Cherish's submission draws particular attention to columns 3 and 4 of the table of development in the SSP, which refer to development requirement impact assessment. Development of this type would typically be inconsistent to some degree with the planning intent for the premises, expressed through precinct plans and area development plans. The submission indicates that an application could be made and approved for development of this type, which could not then be undertaken because of the limitations under the proposed section 275ZB.

For premises outside the SSP area, the Planning Act provides flexibility to approve development applications for development requirement impact assessment, by enabling the assessment manger to consider a range of relevant factors in addition to the planning scheme. These rules also apply in the SSP area, however any development approved under such processes is subject to the additional requirement that it cannot start unless the development is consistent with specified plans under the SSP, such as the area development plans and precinct plans.

Under the current SSP, this limitation applies to area development plans only. Applications may currently be made to amend area development plans in order to align them with development proposed under a development application.

As indicated above, the Bill extends this limitation to other plan types such as precinct plans. However, the Bill also provides for any person to make application to amend a precinct plan to town centre concept plan, similar to the provisions already included in the SSP in relation to area development plans.

For proposed development inconsistent with any of these plan types, the intent of the Bill is that a person may seek to amend the relevant plan or plans so that development proposed under a development application is consistent with those plans. The intent of the Bill in preventing development from starting until it is consistent with the relevant plans, as opposed for example to preventing development applications being made for the development, is to facilitate consideration of concurrent applications for both plan amendment and development approval. [132]

3.3.3 Suggested technical and minor amendments

Some inquiry participants offered some minor and technical amendment suggestions.

3.3.3.1 Superseded planning schemes and compensation

SCG submitted that it would support the inclusion of provisions in the Bill clarifying the point made in the explanatory notes that the superseded planning scheme and compensation arrangements under the Planning Act would not apply in relation to the amendments in the Bill.

[132] Department, correspondence dated 12 June 2020, pp 10-11.

In response, Queensland Treasury noted the 'Clause 275U of the Bill establishes that the provisions of proposed chapter 7, part 4C prevail to the extent of any inconsistency with the Ipswich planning scheme, including the Springfield Structure Plan. Queensland Treasury stated:

> *As the provisions do not amend the planning scheme, they do not create a **superseded planning scheme** for the purpose of the Planning Act, chapter 2, part 4, division 1 (section 29(2)).*
>
> *Consequently, the superseded planning scheme and compensation arrangements under the Planning Act do not apply in relation to the provisions of the Bill.*[133]

3.3.3.2 Restrictions on approving plan applications

Proposed section 275W(1) deals with restrictions on approving plan applications and states that the local government may approve a plan application only if satisfied that the premises to which the application relates are serviced by adequate infrastructure or will, within a *reasonable* period, be serviced by adequate infrastructure.[134]

SCG noted that it is 'concerned that a "one size fits all" approach may in this respect limit flexibility for the local government in approving some plans' and recommended minor modifications to the Bill to address the following issues:

- *Assessment under section 275W should not be an opportunity to revisit any timing provided in existing approvals or infrastructure agreements because a different view of 'reasonable' is proposed. Current section 2.2.4.1 captures this concept in relation to infrastructure agreements but the proposed new section does not.*
- *The concept of 'interim infrastructure' is used often in Greater Springfield, with cost effective interim measures used to open up areas for development and the final state infrastructure being provided later. Ideally, this concept would be expressly captured in the proposed section.*
- *The concept of 'adequate' infrastructure is appropriate for assessment of Area Development Plans (the last plan in the hierarchy for development to actually commence), but the meaning of 'adequate' and a 'reasonable period' may be quite different for the higher order, more conceptual, plans, with more generalised depictions of proposed development and potentially very long delivery timeframes*.[135]

In response, Queensland Treasury noted that applications for higher order plans or amendments are required under the SSP to be accompanied by relevant information about the impact of the proposed plan or amendment on infrastructure. 'These matters will consequently be a consideration of the Council in assessing the applications'.[136] Queensland Treasury further noted that 'the existing Springfield infrastructure agreements provide an additional framework with which to consider the adequacy of existing or proposed infrastructure in the context of plan applications'.[137] 'Consequently SCG's concerns could be addressed through modifications to section 275W(1)'.[138]

3.3.3.3 Restrictions on starting development in structure plan area

SCG expressed a concern that clause 275ZB of the Bill does not adequately reflect the arrangements under the SSP that allow for an area development plan application identified as 'for reconfiguration

133 DSDTI, correspondence dated 12 June 2020, p 7.

134 Bill, p 53.

135 SCG, submission 10, p 6.

136 DSDTI, correspondence dated 12 June 2020, p 8.

137 DSDTI, correspondence dated 12 June 2020, p 8.

138 DSDTI, correspondence dated 12 June 2020, p 8.

purposes only to be approved subject to a condition requiring approval of a further areas development plan for the premises, and without their being a higher order in place'.[139]

SCG advised that the arrangements outlined in the SSP are 'extremely important to all landowners and developers in Greater Springfield' as:

> *… it permits 'superlots' to be subdivided and sold before the higher order plans have been prepared for the subdivided sites (management lots). There is no risk that changes of use can occur on these lots before the planning hierarchy has been completed, as it is only Area Development Plans for reconfiguration that can be approved without the higher order plans being approved…SCG suggests that an appropriate amendment be made to address this critical issue.*[140]

In response, Queensland Treasury acknowledged that, owing to clause 275U of the Bill, the provisions of clause 275ZB may effectively invalidate the current arrangements under the SSP allowing for creation of superlots outside the usual plan hierarchy. Further adding that SCG's concerns could be addressed through modifications to the Bill to preserve the current arrangements under the SSP, section 2.2.4.1 allowing for the creation of superlots.[141]

Similarly, SCG identified two further exceptions to the requirement under the SSP for a relevant hierarchy of plans to be in place prior to development. Springfield noted that these exemptions 'provide flexibility for all developers in Greater Springfield, which may be impacted by proposed section 275ZB in its current form'.[142] These are:

- Section 2.6, which provides for the development for specified "interim purposes" such as agriculture, turf farms, forestry and other uses of a temporary nature approved by the council; and
- Section 10.2.1, which allows for some operational work to occur in accordance with engineering drawings approved by the council, and without an area development plan being in effect.[143]

In response Queensland Treasury noted that the concerns could be addressed through inclusion of provision in the Bill reflecting these exceptions.[144]

3.3.3.4 Committee comment

The committee notes the issues raised regarding the potential for the Bill to invalidate current provisions within the SSP as a result of requiring a relevant hierarchy of plan to be in place prior to development. It is unclear to the committee whether this is an intentional or unintended consequence of the Bill.

3.3.3.5 Role of Urban Utilities

Urban Utilities is the water and wastewater assessment and servicing authority for the SSP area and has legislated rights and liabilities and operates in accordance with the Springfield Infrastructure Agreement.

139 DSDTI, correspondence dated 12 June 2020, p 8.

140 SCG, Submission 10, Attachment 1, p 1.

141 DSDTI, correspondence dated 12 June 2020, p 8.

142 SCG, Submission 10, Attachment 1, p 3.

143 SCG, Submission 10, Attachment 1, p 3.

144 DSDTI, correspondence dated 12 June 2020, p 8.

Urban Utilities submitted that it is 'concerned that the proposed amendments fail to recognise Urban Utilities as a critical stakeholder and second assessment authority for development proposed in the SSP area'.[145] Urban Utilities continued:

> *Much is recognised in the Bill as requiring the views/opinions, notices, plan copies and dispute resolution of both SCG and ICC. However, this should be expanded to include Urban Utilities where there are possible impacts to water or wastewater infrastructure and services. For example, while a non-SCG plan copy must be provided to SCG or ICC* [Ipswich City Council] *within a certified timeframe, there should be an obligation to notify Urban Utilities of proposed water and wastewater network and services impacts'.*[146]

In response, Queensland Treasury noted that there may be value in providing Urban Utilities with copies of plan approval applications.[147]

3.3.3.6 Committee comment

The committee agrees that Urban Utilities should be provided with copies of plan approval applications, where there are possible impacts to water or wastewater infrastructure and services, and recommends that the Bill be amended accordingly. (See recommendation 2)

3.3.3.7 Judicial Review

SCG suggested that the dispute resolutions within the Bill, once enacted would be inconsistent with the provisions in section 231 of the Planning Act – relating to Judicial Review – which exclude any form of legal challenge under the Planning Act, other than under chapter 6, schedule 1, or the Planning and Environment Court Act 2016:

> *SCG notes that the effect of this section is to remove various types of review of decisions made under the Planning Act. At present this section may not operate to remove review of decisions under the SSP. However, if the Bill is passed, decisions of the local government under the proposed new sections of the Planning Act introduced by the Bill will then be removed from review by section 231, which appears to be an unintended consequence. SCG requests that decisions under the new proposed sections be excluded from the operation of section 231.*[148]

In response, Queensland Treasury noted that the 'provisions modified aspects of the scope and procedure of the dispute resolution process under section 11, but do not in themselves confer those rights'. Consequently, the Bill does not in the department's view 'act to affect the existing source of the dispute resolution rights under the SCG, section 11'.[149]

That said, Queensland Treasury did consider that 'there may be value in explicitly referencing the Planning Act, section 316 and, if necessary, the relevant provisions of the Bill, in the planning Act, section 231 to put beyond doubt the validity of appeal process'.[150]

3.3.3.8 Land Use Concept Master Plan

Cherish submitted that given the generality of the Land Use Concept Master Plan (LUCMP) and the long planning horizon, it would be more appropriate for section 275W(3) of the Bill to require precinct plans to be 'generally consistent' with the LUCMP, instead of 'consistent'.[151]

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145 Urban Utilities, submission 20, p 1.

146 Urban Utilities, submission 20, pp 1-2.

147 DSDTI, correspondence dated 12 June 2020, p 20.

148 SCG, submission 10, p 6.

149 DSDTI, correspondence dated 12 June 2020, p 9.

150 DSDTI, correspondence dated 12 June 2020, p 9.

151 Cherish, Submission 12, p 16.

Queensland Treasury subsequently advised that 'there may be value in such an amendment'.[152]

3.3.3.9 Duplicated consultation process

Ipswich City Council considered that the consultation process proposed in sections 275X-Z of the Bill duplicated those which the council is required to engage in under the Springfield Structure Plan:

> *As a consequence of including these sections, the Bill duplicates the consultation process provided for by section 2.2.4.6 of the Springfield Structure Plan. Council submits that this results in an inefficient outcome by requiring an applicant to provide the non-SCG plan application to SCG which is additional to those requirements for the Council under the Springfield structure plan. Council submits that that the Bill be amended to address this issue by preventing Council from having to duplicate this process.*[153]

Queensland Treasury considered that an appropriate minor amendment to the Bill could address this apparent duplication.[154]

3.3.3.10 Transitional arrangements

Ipswich City Council contended that transitional arrangements under proposed section 353(1), which exclude existing development approvals from proposed section 275ZB, should be expanded to include development approvals resulting from development applications made but not decided before the commencement:

> *The Council submits that this would allow the Council to continue to assess the properly made development application following the commencement of the Bill and allow the applicant to proceed with the development under that development approval, if given by the Council.*[155]

In response, Queensland Treasury stated that 'there may be value in undertaking such an amendment'.[156]

3.3.3.11 Committee comment

The committee welcomes the feedback from inquiry stakeholders regarding technical and minor amendments to the Bill. This is an important component of the inquiry process and results in the need for fewer legislative amendments going forward, and better outcomes overall. The committee recommends that the government consider a number of minor adjustments to Part 8, Division 4 of the Bill relating to the operation of the Springfield Structure Plan, as detailed in Recommendation 2 below.

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152 DSDTI, correspondence dated 12 June 2020, page 14.

153 Ipswich City Council, submission 17, p 2.

154 DSDTI, correspondence dated 12 June 2020, p 17.

155 Ipswich City Council, submission 17, p 3.

156 DSDTI, correspondence, dated 12 June 2020, p 19.

Recommendation 2

The committee recommends that the Queensland Government consider the following minor amendments to Part 8, Division 4 of the Bill relating to the operation of the Springfield Structure Plan:

- update section 275W(3) Restrictions on approving plan applications, to require precinct plans to be 'generally consistent with' rather than 'consistent with' the Land Use Concept Master Plan
- amend sections 275X-Z to remove potential duplicative consultation processes to those required by the existing Springfield Structure Plan
- amend the Bill to provide Queensland Urban Utilities with copies of plan approval applications where there are possible impacts to water or wastewater infrastructure and services
- expand the scope of transitional arrangements proposed under section 353(1), to include development approvals resulting from development applications made but not decided before commencement of the Bill
- amend the Bill to include explicit reference to section 316 of the *Planning Act 2016*, and if required, relevant provisions in the Bill, in section 231 of the *Planning Act 2016*, to put beyond any doubt the validity of appeal processes under the Springfield Structure Plan.

3.4 Committee conclusion

The Bill proposes amendments to the *Planning Act 2016* to facilitate the effective operation of the Springfield Structure Plan.

The committee heard from stakeholders that proposed amendments will address the uncertainty caused by recent decisions in the Planning and Environment Court and the Court of Appeal and provide for the orderly planning of development of land in Springfield.

Some minor modifications to the Bill were suggested by stakeholders, and the committee considers that there may be merit in the government exploring these further.

4 Compliance with the *Legislative Standards Act 1992*

4.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) states that 'fundamental legislative principles' are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals
- the institution of Parliament.

The committee has examined the application of the fundamental legislative principles (FLPs) to the Bill. The committee brings the following to the attention of the Legislative Assembly.

4.2 Rights and liberties of individuals

Section 4(2)(a) of the LSA requires that legislation has sufficient regard to the rights and liberties of individuals. The following FLPs are discussed within this section.

Administrative power - Section 4(3)(a) LSA

Are rights, obligations and liberties of individuals dependent on administrative power only if the power is sufficiently defined and subject to appropriate review?

Natural justice - Section 4(3)(b) LSA

Is the Bill consistent with the principles of natural justice?

Rights and liberties – Section 4(3)(g) LSA

Does the Bill adversely affect rights and liberties, or impose obligations, retrospectively?

4.2.1 Potential fundamental legislative principle issues

There are a number of issues of possible breaches of FLPs which, though not canvassed in the explanatory notes, are raised in a submission from Cherish. It is useful to deal with these, and issues identified within the explanatory notes together.

The issues arise from the provisions which amend the Planning Act, contained in Division 4 of Part 8 of the Bill (clause 75 and 76). These provisions, and the concerns raised by Cherish, are considered below, in the context of FLPs (not from a policy viewpoint).

4.2.1.1 Administrative power

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review:

> *Depending on the seriousness of a decision and its consequences, it is generally inappropriate to provide for administrative decision-making in legislation without providing for a review process. If individual rights and liberties are in jeopardy, a merits-based review is the most appropriate type of review.*[157]

[157] Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 18.

4.2.1.2 Natural justice

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation is consistent with principles of natural justice.[158] These principles have been developed by the common law and include the following:

- nothing should be done to a person that will deprive them of a right, interest, or legitimate expectation of a benefit without the person being given an adequate opportunity to present their case to the decision-maker
- the decision maker must be unbiased
- procedural fairness should be afforded to the person, including fair procedures that are appropriate and adapted to the circumstances of the particular case.[159]

4.2.1.3 Retrospectivity

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation does not adversely affect rights and liberties, or impose obligations retrospectively.[160] Strong argument is required to justify an adverse effect on rights and liberties, or imposition of obligations, retrospectively.

4.2.1.4 Committee comment

General observations - rights and liberties - individuals and corporations

At the outset, it should be noted the *Legislative Standards Act 1992* refers to fundamental legislative principles as including having sufficient regard to rights and liberties of individuals.[161] There are examples in the past where a committee has not considered a legislative provision to breach fundamental legislative principles, on the basis that any impact would be on a corporation.[162] These examples do not necessarily establish a broad principle, and might be seen as depending on the nature of the specific provisions and the nature of the entities likely to be affected in each instance. A committee could elect to take a broader approach where considered appropriate, looking in effect at impact on any individuals behind the corporate entity, or individuals that might otherwise be affected, albeit indirectly.

In the present case, it is not fully clear who might be affected, and whether affected parties will include corporations or individuals. Here, it might be noted while Cherish is clearly a corporate entity, the submission refers to Cherish having a single director and beneficial owner.[163] Furthermore, Cherish states that it:

> *… is in a unique position in this regard ... it remains, so far as is known… the only non-SCG landowner in respect of whose land a new Precinct Plan could realistically be proposed or approved.*[164]

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158 LSA, section 4(3)(b).

159 Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook,* p 25.

160 LSA, Section 4(3)(g).

161 LSA, Section 4(2).

162 See the examples in the Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, at p 55, 148 and 166.

163 Submission 12, p 33.

164 Submission 12, p 4.

4.2.1.5 Administrative review

Cherish states:

> *Cherish's ability to develop its land is not subject to "appropriate review" within the meaning of s 4(3)(a), because … disputes about the approval of the relevant development plans must be referred to a purported "expert determination" process … which is vague, imprecise and inherently inappropriate for the resolution of disputes about the application of planning scheme provisions.*[165]

Further:

> *.. in the context of disputes about development approvals which involve applying relevant provisions of a planning scheme to proposed development, appropriate review "must and can only mean a right to appeal on the merits to the Planning and Environment Court, but there is no such right conferred by the existing Springfield Structure Plan, or by this Bill …* [166]

The review arrangements are not created by this Bill. As Cherish notes:

> *… the existing situation, not changed by the Bill, is that Cherish is the only significant "greenfield" landowner in Queensland that does not have a right of appeal to the Planning and Environment Court, on the merits, in respect of a refusal of its development proposals.*[167]

4.2.1.6 Committee comment

On analysis, the committee notes that the concern raised by Cherish is not so much that there is no review process available, but that the existing review mechanism does not amount to *appropriate* review (the current process is lengthy, costly, and imprecise) and the only appropriate review is the Planning and Environment Court.[168] The committee understands that the Bill does not change that existing arrangement and therefore provides no further comment on this matter.

4.2.1.7 Natural justice

Cherish states that the existing and proposed statutory framework is not consistent with the principles of natural justice because:

> *… in practical and legal terms, it potentially allows one commercial competitor to heavily influence the outcome of development proposals proposed by an opposing competitor (on land owned in freehold by that competitor) without any effective independent review mechanism (for the reasons just given). It is submitted to be inconsistent with the principles of natural justice that a particular land developer, which is a competitor to Cherish, should retain such a high degree of influence over the scope and nature of development on the Cherish land.*[169]

4.2.1.8 Committee comment

The committee considers that it is doubtful that the first proposition (influence of a competitor) is an issue of natural justice. The issue of a review mechanism becomes more one of whether there is an appropriate mechanism in place. The committee provides comment on this above.

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165 Submission 12, p 5.

166 Submission 12, p 6.

167 Submission 12, p 6.

168 Cherish, submission 12, pp 31 and 32. See also at p 6 and p 29-33.

169 Submission 12, p 6.

4.2.1.9 Retrospectivity

Cherish opposes some aspects of the retrospective operation of the provisions, which it regards as adverse in impact on Cherish:

> *… proposed s 352 retrospectively and adversely affects Cherish's rights with respect to obtaining approval to carry out development on its land, without that adverse retrospective operation being disclosed (so far as Cherish is aware) in any published document or otherwise to the Committee at the initial briefing. As proposed, s 352 adversely affects substantive development rights which Cherish currently holds pursuant to the DCP (as interpreted by the Court of Appeal), directly contrary to s 4(3)(g). Ordinarily, retrospective legislation with adverse impacts is subject to explicit disclosure, reasoned justification and very close scrutiny. That has not occurred here.*[170]

The explanatory notes do in some respects canvass the issue of retrospectivity, but do not expressly explain how an issue of retrospectivity arises.[171]

The explanatory notes refer to the Planning Act amendments as limiting the classes of persons who will be able to give a dispute notice and state:

> *… these persons constitute the majority of persons likely to be affected by decisions under the SSP, or within the SSP area. Also, as the SSP forms part of Ipswich City Council's planning scheme under the Planning Act, aggrieved persons may still seek a review of decisions made in relation to the SSP, for example under the Planning and Environment Court Act 2016, part 2, division 3.*[172]

4.2.1.10 Committee comment

Having considered the policy intent of the Planning Act amendments, the likely impact of those amendments on individuals (as opposed to corporations); and the 'restorative' nature of the amendments, in that they aim to re-instate a position which existed previously, the committee is of the view that the provisions are justified and are appropriate in the circumstances.

The committee is satisfied that any potential breach of fundamental legislative principles is sufficiently justified and that the provisions have sufficient regard for the rights and liberties of individuals.

4.3 Institution of Parliament

Section 4(2)(b) of the LSA requires legislation to have sufficient regard to the institution of Parliament.

Delegation of legislative power – Section 4(4)(a) LSA

Does the Bill allow the delegation of legislative power only in appropriate cases and to appropriate persons?

Scrutiny by the Legislative Assembly – Section 4(4)(b) LSA

Does the Bill sufficiently subject the exercise of a proposed delegated legislative power (instrument) to the scrutiny of the Legislative Assembly?

4.3.1 Summary of provisions

Clause 9 states the mandatory conditions precedent which must be satisfied before an access licence can be given. There may be additional conditions precedent contained in a development agreement. This is intended to allow flexibility in setting additional conditions to deal with changing or new circumstances as they arise at each stage of the project.

[170] Submission 12, p 7.

[171] Explanatory notes, p 7.

[172] Explanatory notes, p 7.

Similarly, **clause 28** specifies the mandatory conditions precedent which must be satisfied before a project lease can be given or renewed. There may be additional conditions precedent contained in a development agreement. This is intended to allow flexibility in setting additional conditions in a development agreement, to deal with changing or new circumstances as they arise at each stage of the project.

Clause 23 provides the circumstances in which an access licence may be transferred to another entity. Clause 23 also states that the licence may not be transferred if the relevant development agreement provides that the licence may not be transferred.

Clause 24 provides for the circumstances in which the holder of an access licence may mortgage the licence, including only with the Minister's approval and in compliance with the relevant development agreement.

Clause 42 provides for the circumstances in which a project lease may be transferred by a lessee to the new proponent for a relevant development agreement, and where the Minister must approve the transfer. The provision is intended to ensure that the development agreement and project lease remain interconnected.

4.3.2 Potential fundamental legislative principle issues

4.3.2.1 Delegation of legislative power and scrutiny by the Legislative Assembly

The issue of whether delegated legislative power is sufficiently subjected to the scrutiny of the Legislative Assembly often arises when the power to regulate an activity is contained in a guideline or similar instrument that is not subordinate legislation and therefore is not subject to parliamentary scrutiny.

> *For Parliament to confer on someone other than Parliament the power to legislate as the delegate of Parliament, without a mechanism being in place to monitor the use of the power, raises obvious issues about the safe and satisfactory nature of the delegation.*[173]

In considering the appropriateness of delegated matters being dealt with through an alternative process, committees have considered:

- the importance of the subject dealt with
- the practicality or otherwise of including those matters entirely in subordinate legislation
- the commercial or technical nature of the subject matter
- whether the provisions were mandatory rules or merely to be had regard to.

In some cases, concerns have been eased where a provision requires that a document be tabled.

4.3.2.2 Fundamental legislative principle issue

The explanatory notes highlight a potential breach of this fundamental legislative principle in relation to the development agreements that are anticipated to be drawn up and finalised, should the Bill be passed:

> *Clauses in the Bill which refer to the satisfaction of conditions contained in a development agreement potentially involve a delegation of legislative power, by allowing a development agreement to specify additional pre-conditions to the exercise of the statutory power (Henry VIII provisions). Arguably, this arrangement infringes on the fundamental legislative principle that legislation has sufficient regard to the institution of the Queensland Parliament. However, it is*

[173] Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC* Notebook, p 154.

considered that this possible breach is justified and appropriate, having regard to the policy objectives of the Bill.[174]

The explanatory notes provide the following justification, which centres on concerns relating to the protection of commercially sensitive material as a need for flexibility during the negotiation process:

The State will be a party to each development agreement. Negotiations between the State, FWH and the plantation licensee about the project agreements (including proposed development agreements) have not yet concluded. Development agreements for the purpose of the Bill will be entered into following passage of the Bill, and some development agreements may not be entered into for a number of years, because the project will occur in stages.

Each development agreement will contain commercially sensitive information and the parties may suffer loss if the commercially sensitive information is disclosed.

For these reasons, the proposed development agreements will not be tabled in Parliament with the Bill.

Although Parliament will not have an opportunity to review the proposed development agreements, as the State will be a party to the development agreements, the State will have the ability to influence the content of those agreements, to ensure that the State's interests are protected.

The potential conflict with fundamental legislative principles is justified and appropriate to protect the interests of the State by ensuring the State will have sufficient ability to respond to potential changing and new project circumstances, as the project develops.[175]

4.3.2.3 Committee comment

The committee notes that the Bill provides for a development agreement to specify additional pre-conditions to the exercise of the statutory power (Henry VIII provisions) and the rationale provided in the explanatory notes for this approach. The committee is satisfied that in this instance, any delegation of legislative power is appropriate and justified, such that there is sufficient regard for the institution of Parliament.

4.4 Explanatory notes

Part 4 of the LSA requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

4.4.1.1 Committee comment

Explanatory notes were tabled with the introduction of the Bill. The notes are fairly detailed and contain the information required by Part 4 and a sufficient level of background information and commentary to facilitate understanding of the Bill's aims and origins.

The committee reiterates its comment made in chapter 1 of this report, that it is unclear within the explanatory notes what consultation occurred in relation to the proposed amendments to the *Planning Act 2016*, and the results of any such consultation.

[174] Explanatory notes, p 6.

[175] Explanatory notes, p 7.

5 Compliance with the *Human Rights Act 2019*

The portfolio committee responsible for examining a Bill must consider and report to the Legislative Assembly about whether the Bill is not compatible with human rights, and consider and report to the Legislative Assembly about the statement of compatibility tabled for the Bill.[176]

A Bill is compatible with human rights if the Bill:

(a) does not limit a human right, or
(b) limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the *Human Rights Act 2019* (HRA).[177]

The HRA protects fundamental human rights drawn from international human rights law.[178] Section 13 of the HRA provides that a human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

The committee has examined the Bill for human rights compatibility. The committee brings the following to the attention of the Legislative Assembly.

5.1 Rights of Aboriginal peoples (section 28 of the HRA)

S 28	**Cultural rights – Aboriginal peoples and Torres Strait Islander peoples** (2) Aboriginal peoples and Torres Strait Islander peoples must not be denied the right, with other members of their community *** (d) to maintain and strengthen their distinctive spiritual, material and economic relationship with the land, territories, waters, coastal seas and other resources with which they have a connection under Aboriginal tradition or Island custom; and (e) to conserve and protect the environment and productive capacity of their land, territories, waters, coastal seas and other resources.

5.1.1.1 *Nature of the right*

Section 28 of the HRA has no counterpart in any comparable legislation or constitutional provisions overseas or in Victoria – the second Australian jurisdiction to pass a version of a Bill of Rights.[179] The explanatory note to the HRA states that s 28 was modelled on Article 27 of the *International Covenant on Civil and Political Rights* (ICCPR)[180] and Articles 8, 25, 29 and 31 of the *UN Declaration on the Rights of Indigenous Peoples* (UNDRIP).[181]

176 HRA, s 39.

177 HRA, s 8.

178 The human rights protected by the HRA are set out in sections 15 to 37 of the Act. A right or freedom not included in the Act that arises or is recognised under another law must not be taken to be abrogated or limited only because the right or freedom is not included in this Act or is only partly included; HRA, s 12.

179 Similar rights are protected in s 27(2) of the *Human Rights Act* 2004 (ACT), but its wording is less expansive.

180 *International Covenant on Civil and Political Rights*, adopted 16 Dec. 1966, entered into force 23 Mar. 1976, 999 UNTS 171.

181 *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (Sept 13, 2007), 46 ILM 1013 (2007).

Sections 28(2)(d) and (e) are the most relevant subsections of s28 to the Bill. The wording of s 28(2)(d) closely mirrors the wording of Article 25 of the UNDRIP and that of s28(2)(e) closely reflects the wording of Article 29(1) of the UNDRIP.[182]

Section 28(2)(d)

The nature of the unique relationship that Indigenous peoples have with their lands, which is the subject of both Article 25 and s 28(2)(d), has been described by the Inter-American Court of Human Rights. In the *Awas Tingni Case* the Court remarked:

> *... the close ties of Indigenous peoples with the land must be recognised and understood as the fundamental basis for their cultures, their spiritual life, their integrity and their economic survival. For Indigenous communities relations to the land is not merely a matter of possession and production but a material and spiritual element, which they must fully enjoy, even to preserve their cultural legacy and transmit it to future generations.*[183]

The fundamental problem with assessing whether the Bill might be relevant to some of the interests protected by s28(2)(d) is that what is required is knowledge about what the spiritual relationship of Indigenous people is to the project area as defined in the Bill.

Clauses 9 and 28 of the Bill appear to assume that any problems with such knowledge of the spiritual relationship of Indigenous people with the project area would be solved by the creation of Indigenous Land Use Agreements (ILUAs) under the *Native Title Act 1993* (Cth) between the proponent and Indigenous people. However, ILUAs would only have as parties those who either have obtained native title or those who are claiming native title. For various technical reasons of native title law this may not include all Indigenous persons who have a spiritual connection with the land in the project area in Indigenous law and custom and who might have rights under s 28(2)(d).

Section 28(2)(d) on its face does not require the government to investigate who might hold Indigenous spiritual connections to the land the subject of the Bill. As a result, whether the Bill falls within the scope of this right may only become apparent if any Indigenous people come forward claiming a breach of the right who are able to provide information about connection with the relevant land.

Section 28(2)(e)

This provision is reflective of at least two streams of development which have occurred in international human rights law in relation to the rights of Indigenous peoples. The first of these streams have consisted of a number of cases where international human rights bodies have stated that states are under an obligation to protect the environment on Indigenous lands and territories.[184] The second stream of jurisprudential development has concerned the reading of Article 29 with other provisions of the UNDRIP to require Indigenous people to be consulted as part of the decision-making process as part of the free, prior and informed consent (FPIC) by Indigenous peoples. However, the wording of s28(2)(e) does not explicitly encompass an implication of FPIC.

Whether the Bill falls within the scope of the right in s28(2)(e) would depend on whether the land encompassed within the claim area is part of the "lands and territories" of any Indigenous peoples. This appears unlikely. For that reason, it is likely that the Bill does not fall within the scope of the right.

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182 Indigenous rights in international human rights law can also be created through the application of the right to property. This will be further explored in the section below in relation to the right to property.

183 Case of the Mayagna (Sumo) Awas Tingni Community v Nicaragua, IACtHR Series C No 79 (21 August, 2001) para. 149.

184 See *Social and Economic Rights Action Centre and Centre for Economic and Social Rights* v *Nigeria*, Communication No. 155/96 (2002)("the Ogoni Case") para.52 in the African Commission of Human and Peoples' Rights and the precautionary measures requested by the Inter-American Commission on Human Rights in *(Sipakepense and Mam) of the Sipacapa and San Miguel Ixtahuacan Municipalities in the Department of San Marcos, Guatemala* (PM 260-07).

If this is wrong, however, it is likely that the Bill would only fall within the scope of this right in relation to that part of the project land where such a relationship could be shown.

5.1.1.2 *Nature of the purpose of the limitation*

The purpose of the Bill is best stated as enabling the establishment and operation of a particular wind farm so as to allow Queensland to expand its renewable energy generation, create jobs and lower greenhouse gas emissions.

5.1.1.3 *The relationship between the limitation and its purpose?*

The limitation on the rights contained in s28(2)(d) and (e) by the Bill bears a clear logical connection to the purpose of the Bill as set out above.

5.1.1.4 *Are there less restrictive and reasonably available ways to achieve the purpose?*

The Statement of Compatibility for the Bill states that the Government undertook an in depth analysis of other legislation that could have been used to provide the necessary tenure for the project and came to the conclusion that the legislation proposed in the Bill was the only viable solution to achieve the policy objectives of the Bill.[185] Furthermore, there is no other obvious legislation that could have achieved the objectives of the Bill with less restriction on the relevant rights.

5.1.1.5 *The balance between the importance of the purpose of the limitation and the importance of preserving the human right*

The purpose of the Bill is very pressing and the limitation has a high importance within the meaning of s13 of the HRA. In the context of scientific evidence about climate change and the importance of lowering emissions of greenhouse gases as well the COVID-19 economic crisis and the importance in that crisis of job creation, the importance of the limitation on the rights in s28 by the Bill would seem great. While the rights contained in s28(2)(d) and (e), being rights of Indigenous people, also have considerable importance if they were asserted in circumstances the balance would favour the restriction on the rights in the Bill.

5.1.1.6 Committee comment

The committee is satisfied that the limit on the human right regarding section 28 (Cultural rights) is reasonable and justifiable.

5.1.2 Property (section 24 of HRA)

S 24	**Property** (1) All persons have the right to own property alone or in association with others. (2) A person must not be arbitrarily deprived of the person's property.

5.1.2.1 Nature of the right

The explanatory note to the HRA states that s 24 was modelled on Article 17 of the *Universal Declaration of Human Rights* (UDHR).[186] It is clear from the drafting history of the UDHR that the rights recognised in Article 17 were intended to extend beyond property rights as traditionally understood in Australian law.[187] This would seem to be confirmed by the judgment by Bell J in *PJB* v *Melbourne*

185 Explanatory notes, p 5.

186 *Universal Declaration of Human Rights*, adopted 10. Dec. 1948, GA Res.217A (III), UN Doc.A/810. At 71 (1948).

187 See J. Morsink *The Universal Declaration of Human Rights: Origins, Drafting and Intent* (University of Pennsylvania Press, Philidelphia, 1999) p130ff.

Health (Patrick's Case)[188] in which at [87] he remarked that the right should be interpreted liberally and beneficially to encompass economic interests and deprivation in a broad sense.[189] In line with such a wide view of property rights, the Inter-American Court of Human Rights has held that the right to property may give rise to rights in Indigenous peoples to traditional lands, even where the land is held through land titles under domestic law by third parties.[190]

Provisions of the Bill may fall within the scope of the right to property where they are in relation to current holders of pine plantation licences, those who have a licence issued under the Bill and then it is cancelled, those applying for development approval under relevant planning laws and on the part of Indigenous people.

5.1.2.2 The relationship between the limitation and its purpose?

The limitation on property rights appears to be closely connected to the purpose of the limitation.

5.1.2.3 Are there less restrictive and reasonably available ways to achieve the purpose?

See answer above in relation to s28 of the HRA.

5.1.2.4 The balance between the importance of the purpose of the limitation and the importance of preserving the human right

The importance of the purpose of the limitation is weighty and serves pressing social needs. In contrast, the importance of the property rights in the circumstances appear much less pressing. The balance is thus likely to favour the limitation.

5.1.2.5 Committee comment

The committee is satisfied that the limit on the human right regarding section 24 (Property) is reasonable and justifiable.

5.1.3 Fair hearing (section 31 of HRA)

S 31	**Fair hearing** (1) A person charged with a criminal offence or a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing. (2) However, a court or tribunal may exclude members of media organisations, other persons or the general public from all or part of a hearing in the public interest or the interests of justice. (3) All judgments or decisions made by a court or tribunal in a proceeding must be publicly available.

This right is not addressed in the statement of compatibility.

5.1.3.1 Nature of right

The equivalent provision in the Victorian Charter has been given a wider interpretation that encompasses any decision-making procedure in the administrative content that may involve a civil

188 *PJB* v *Melbourne Health (Patrick's Case)* (2011) 39 VR 373; [2011] VSC 327 at [87].

189 See the similar view of the European Court of Human Rights in *Brosset-Triboulet and Others* v *France* [GC] no.34078/02, para.71, 29 March 2010.

190 Case of the Indigenous Community of Yakye Axa v Paraguay (Merits, Reparations and Costs), IACtHR Series C No 125) (17 June 2005) para. 120ff and Case of the Indigenous Community Sawhoyamaxa v Paraguay (Merits, Reparations and Costs), IACt HR Series C No 146 (29 March 2006) para. 133ff.

right or obligation.[191] Under the *Human Rights Act 2004* (ACT) it has also been stated to encompass third party objectors in planning laws.[192]

In this Bill, the effect of clause 75 is to take away the ability of third parties to issue a dispute notice under section 11.1.1 of the Springfield Structure Plan. This amounts to the removal of a third-party objector provision.

At page 7 of the explanatory note to the Bill it states that despite this, a third-party objector could still seek judicial review of a decision that might have been the subject of a dispute notice.[193] The European Court of Human Rights has found that fair trial provisions could be satisfied by the availability of judicial review alone, even if there is no possibility of merits review.[194] However, on the basis of the Victorian and ACT cases, the limitation of who might access the dispute notice provisions may be sufficient for the provisions of the Bill to fall within the scope of the right.

5.1.3.2 The relationship between the limitation and its purpose

The limitation on those who can issue dispute notices and the purpose of the limitation appears reasonably related, as the limitation of those who can object to the proposal would speed up the process of establishment and operation of the project.

5.1.3.3 Are there less restrictive and reasonably available ways to achieve the purpose?

As amending the Structure Plan would not clearly limit the right less and the method used furthers the purpose of the limitation, there do not appear to have been less restrictive ways that would have been available to achieve the purpose.

5.1.3.4 The balance between the importance of the purpose of the limitation and the importance of preserving the human right

Given the importance of the purpose of the limitation and the pressing needs it is related to, the balance favours the restriction.

5.1.3.5 Committee comment

The committee notes that this right is not addressed in the statement of compatibility. The committee is satisfied that the limit on the human right regarding section 31 (Fair hearing) in clause 75 of the Bill is reasonable and justifiable.

5.1.4 Freedom of movement (section 19 of HRA)

S 19	**Freedom of movement** Every person lawfully within Queensland has the right to move freely within Queensland and to enter and leave it, and has the freedom of choose where to live.

5.1.4.1 Nature of right

The right of freedom of movement includes a right to move unhindered through the State. To the extent that the Bill creates tenures that would restrict access to State Forests that were previously open to the public, the Bill falls within the scope the right.

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191 See Secretary, *Department of Human Resources v Sanding* (2011) 36 VR 221; [2011] VSC 42 at [172]-[173] and *Kracke v Mental Health Review Board* (2009) VCAT 646 at [420]-[439].

192 See *Capital Property Projects (ACT) Pty Ltd v Australian Capital Territory Planning and Land Authority* (2008) 2 ACTLR 44; [2008] ACTCA 9. See also the decision of the European Court of Human Rights in *Holy Monasteries v Greece* (1994) 20 EHRR 1 at para.85.

193 Under Part 2, Division 3 of the Planning and Environment Court Act 2016.

194 See *Zumtobel v Austria,* 3 September 1993, 17 EHRR 116 at para.32.

5.1.4.2 The relationship between the limitation and its purpose?

The restriction on freedom of movement in the project area created by the Bill is closely related to its purpose in establishing and operating a wind farm.

5.1.4.3 Are there less restrictive and reasonably available ways to achieve the purpose?

Given that allowing access by the public to the construction or operation of the wind farm creates danger of injury to persons who might access the site as well as a possible delay or interference with the establishment or operation of the wind farm, there is no obvious less restrictive and reasonably available way to achieve the purpose of the legislation.

5.1.4.4 The balance between the importance of the purpose of the limitation and the importance of preserving the human right

The Supreme Court of Victoria in *DPP v Kaba*[195] referred to statements that freedom of movement is one of the most qualified of human rights. The equivalent right in the CCPR commentary indicates that private property rights are both the most common limits on the right and seen as one of the most legitimate limits on this right.[196] Given these factors as well as the importance of the limitations in the Bill and the pressing social needs that they further, the balance must be seen to favour the limitation

5.1.4.5 Committee comment

The committee is satisfied that the limit on the human right regarding section 19 (Freedom of movement) in clauses 8, 12, 14, 28, 31 and 37 of the Bill is reasonable and justifiable

5.1.5 Recognition and equality before the law (section 15 of the HRA)

S 15	**Recognition and equality before the law** (1) Every person has the right to recognition as a person before the law. (2) Every person has the right to enjoy the person's human rights without discrimination. (3) Every person is equal before the law and is entitled to the equal protection of the law without discrimination. (4) Every person has the right to equal and effective protection against discrimination. (5) Measures taken for the purpose of assisting or advancing persons or groups of persons disadvantaged because of discrimination do not constitute discrimination.

5.1.5.1 Nature of right

Clauses 74 to 77 of the Bill limit the ability of classes of persons to commence and participate in dispute resolution procedures under the Springfield Structure Plan. They also allow applications to certain plans that are currently only allowed to be made by one party to be made by any party provided that if such applications are prepared by third parties, the views of a named party must be sought and considered. They also ensure that existing approvals remain unaffected by the new plan application processes.

Because these provisions differentiate between landowners, in line with the jurisprudence of the UN Human Rights Committee,[197] the Bill is likely to fall within the scope of the right.

195 *DPP v Kaba* (2014) 44 VR 526; [2014] VSC 52 at [117].

196 M. Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary* (2nd ed) (NP Engel Publisher, Kehl, 2005) p281.

197 See *Pohl* v *Austria* (Communication 1160/03) at para.8.7.

5.1.5.2 The relationship between the limitation and its purpose?

The provisions appear to be within the range of reasonable measures that the government could take for the purposes of fostering the speedy establishment of the wind farm project.

5.1.5.3 Are there less restrictive and reasonably available ways to achieve the purpose?

No such less restrictive measures are reasonably apparent.

5.1.5.4 The balance between the importance of the purpose of the limitation and the importance of preserving the human right

The right to equal protection of the law is fundamental to individuals, society and democracy[198] and so its preservation must have significant weight. However, the purpose of the Bill, being of great importance in addressing the pressing social needs appear greater. The balance thus favours the limitation.

5.1.5.5 Committee comment

The committee is satisfied that the limit on the human right regarding section 15 (Recognition and equality before the law) in clauses 74 to 77 are reasonable and justifiable.

5.1.6 Committee comment

The committee is required to provide a conclusion on the compatibility of the Bill with the HRA.

The committee is satisfied that the limit on the human rights regarding sections 28 (Cultural rights); section 24 (Property); 31 (Fair hearing); 19 (Freedom of movement) and section 15(Equality before the law) as a result of the Bill, are reasonable and justifiable.

5.2 Statement of compatibility

Section 38 of the HRA requires that a member who introduces a Bill in the Legislative Assembly must prepare and table a statement of the Bill's compatibility with human rights.

5.2.1.1 Committee comment

A statement of compatibility was tabled with the introduction of the Bill as required by s 38 of the HRA. The statement contained a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights.

The committee did however, identify a number of supplementary issues that were not referred to within the statement. For example, 31 (Right to a fair hearing); s 28 (Rights of Aboriginal Peoples) and s 24 (Right to property). Discussion on these rights is provided within this chapter to facilitate further understanding of the compatibility of the Bill with human rights.

[198] *Re Lifestyle Communities Ltd (No 3)*(2009) 31 VAR 286; (2009) VCAT 1869 at [107] per Bell J.

Appendix A – Submitters

Sub #	Submitter
001	Wide Bay Burnett Environment Council Inc.
002	Phil Browne
003	Keith Wilson
004	Gympie Regional Council – Corporate and Community Services Department (Economic Development)
005	Forest Wind Holdings Pty Limited
006	Urban Development Institute of Australia, Queensland
007	Rodney Lamprey
008	Greater Springfield Chamber of Commerce
009	Property Council of Australia
010	Springfield City Group
011	Timber Queensland
012	Cherish Enterprises Pty Ltd
013	Carole and Bruce Bringans
014	Lester and Christine Olsen
015	Name suppressed
016	Name suppressed
017	Ipswich City Council
018	Gympie Regional Council – Planning & Development Department (Sustainability)
019	Mirvac Retail
020	Urban Utilities
021	Lendlease Communities (Australia) Limited

Appendix B – Officials at public departmental briefing

Department of State Development, Tourism and Innovation

- Michael Carey, A/Deputy Director-General, Investment Facilitation and Partnerships
- Chris Le Serve, Executive Director, Investment Facilitation and Partnerships
- Steffen Poetzsch, Director, Investment Facilitation and Partnerships

Queensland Treasury

- Kerry Doss, Deputy Director-General, Planning Group
- Christopher Aston, Executive Director, Planning Group
- Jesse Chadwick, Director, Planning Group

Appendix C – Witnesses at public hearing

HQPlantations

- Islay Robertson, Chief Operating Officer

Timber Queensland

- Mick Stephens, Chief Executive

Community representatives

- Rodney and Vicki Lamprey
- Lester and Christine Olsen

Gympie Regional Council

- Will Gerhard, Senior Advisor, Gympie Futures

Forest Wind Holdings

- James Pennay, Project Director, Forest Wind Project
- Jane Daniels, Stakeholder Engagement Manager

Cherish Enterprises Pty Ltd

- Johnson Lin, Project Manager
- Stephen Fynes-Clinton, Legal Representative

Mirvac Retail

- Theo van Veenendaal, Development Consultant

Urban Development Institute of Australia

- Martin Zaltron, Manager of Policy

Ipswich City Council

- Peter Tabulo, General Manager (Planning and Regulatory Services)

Springfield City Group Pty Ltd

- Russell Luhrs, Chief Operating Officer

Statement of Reservation

STATEMENT OF RESERVATION – FOREST WIND FARM DEVELOPMENT BILL 2020

The Forest Wind project is a major proposed development in the Gympie and Fraser Coast local government areas. If undertaken, the project will have a significant and lasting impact upon residents, businesses and visitors.

Any project of this scale and impact needs to be undertaken with the support of the local community. Unfortunately, instead of working with the community, it is our opinion the committee's consideration of the proposed Bill has revealed that the Palaszczuk Labor Government has been progressing this project for three years in secret.

> **Mr KRAUSE:** So you have no inkling at all at this point? When did Forest Wind Holdings first engage with the department under the investment facilitation process for exclusive transactions?
>
> **Mr Carey:** We have been engaged with Forest Wind for a number of years to get the project to this point. A key element to understand in relation to the bill is that this bill provides the tenure certainty needed to allow the project to continue and to move forward.
>
> **Mr KRAUSE:** When was the first engagement?
>
> **Mr Carey:** I am advised that we have been engaged with them for three years.

Source: Public Briefing Monday, 1 June 2020

Instead of keeping local landholders informed and involved over the three years that the government had been dealing with the project proponent, the committee heard from residents that their first in person meeting was only held at the start of 2020. Concerningly as the below excerpt reveals, even the consultation that was undertaken left residents feeling disengaged.

> **Mr KRAUSE:** Apart from the letterbox information flyer, have you had any face-to-face consultation with either the department or the proponent of this?
>
> **Ms Olsen:** We both met James Pennay and his group in the Poona Hall in February. My husband and I attended for one hour and 45 minutes—for the entire session. We walked in. There were people just standing around. We were not really sure who they were. There were A4 pieces of paper spread out all over the desk and it was left to us to grab the paper, work it out and hand them out to each other. We said, 'Have you read this? Have you seen this? We can put in an opinion on why the wind farm should be here and put in our concerns.'
>
> What horrified me most was the map that was put up. It had the wind farm photo imposed on the site map. Eckert Road is just three minutes walk from the front of my house. We could stand in Eckert Road at the community hall, look across to Tuan and see wind turbines. I came to live here to look across the water to see Fraser Island and to watch and listen to the birds, not to listen to or see wind turbines. When I drive to town they will be on my left on the Maryborough road. It is a one-entry road. When I drive to Tin Can Bay, they will be on my right, also a one-entry road. If I go out in my boat to Fraser Island—that is why we retired here: we can do a day trip to Fraser Island—coming back to land I will see wind turbines.
>
> **Mr KRAUSE:** Just quickly, is that the only session you have had?
>
> **Ms Olsen:** I have had emails from Mr Pennay regarding my concerns. He responded after I complained to the Wind Farm Commissioner and tried to negotiate some of the issues that I had raised. There was a meeting on Saturday. It was a Zoom conference meeting. As I said, I am on the phone to you this morning. My computer is old. I cannot Zoom, so I could not attend the Zoom conference.

Source: Public Hearing Monday, 15 June 2020

While the project proponent may profess that there is still a process to go in their consultation program before construction starts, the reality is that the Palaszczuk Labor Government is introducing this Bill with what appears to be a predetermined approval outcome. This is just one example of many where regional Queensland communities are ridden roughshod over by a Brisbane centric Labor Government. We note that Labor's Member for Maryborough Bruce Saunders MP appears to have done nothing to represent the concerns of residents on this project. Instead of being Maryborough's representative in Brisbane, Labor's Bruce Saunders is clearly the Queensland Labor Party's Brisbane representative in Maryborough.

Furthermore, the committee heard from the project proponent that the transmission line corridor through the property of private landholders is still yet to be agreed to. The prospect of high voltage lines cutting family properties is an ever-present stress for local residents. As the below excerpt outlines, neither the project proponent or the potential landowners appear to have any clear idea of what properties will be impacted and what compensation will be offered.

> **Mr KRAUSE:** Do landholders who have transmission lines going by their place have a right of appeal in relation to that?
>
> **Mr Pennay:** The transmission line easements will be resolved through direct private negotiations with those landowners. There is no form of compulsory acquisition that would lead to an appeal. We need to come to an arrangement with those landowners. Otherwise, we will need to go next door.
>
> **Mr KRAUSE:** Next door to the government or next door to the neighbour?
>
> **Mr Pennay:** We will have to come to an arrangement with each landowner.
>
> **Mr KRAUSE:** You do not expect there to be any compulsion on the part of any landholders in terms of transmission lines?
>
> **Mr Pennay:** No, we do not have any compulsory acquisition powers.

Source: Public Hearing Monday, 15 June 2020

Unsurprisingly this bungled consultation process from the Palaszczuk Labor Government is a product of their 'Exclusive Transactions' process. The same process which was established after the former Labor Minister and current Treasurer's Cameron Dick MP monumental market led proposal failure. Labor's market led proposal program was slammed by the Queensland Auditor General for creating "undue pressure" to push projects that haven't cleared the most basic of hurdles. From the committee's consideration of the proposed Bill, it is clear that while the program's name may have changed to 'exclusive transactions' the same ham-fisted Labor mismanagement is still present.

Jon Krause MP
Member for Scenic Rim

Mark Boothman MP
Member for Theodore