

5 April 2013



Agriculture, Resources and Environment Committee
Parliament House
Brisbane QLD 4000

Email: arec@parliament.qld.gov.au

By Email

Dear Committee

Powerlink submission on the Land, Water and Other Legislation Amendment Bill 2013

1 Introduction

- 1.1 Thank you for the opportunity to comment on the Land, Water and Other Legislation Amendment Bill 2013 (**Bill**). Powerlink commends the Queensland Government's development of this Bill and supports the policy objectives which it embodies.
- 1.2 In this submission, Powerlink would like to draw your attention to two vegetation clearing issues, which are indirect (and perhaps unintended) consequences of the proposed amendments on Powerlink's operations.
- 1.3 As a Queensland Government Owned Corporation that owns, develops, operates and maintains the state's high voltage electricity transmission network, we enjoy a close working relationship with the State Government and the various state agencies that will be responsible for the implementation of this Bill.
- 1.4 Accordingly, we have already discussed our concerns relating to the proposed amendments to the *Acquisition of Land Act 1967* (Qld) (**ALA**) with the Department of Natural Resources and Mines (**DNRM**) through the development of this Bill.
- 1.5 We look forward to continuing to work with you, the State Government and its agencies in the ongoing development of this Bill, so that Powerlink may continue to deliver the highest quality and best value electricity transmission services possible to Queensland electricity users.

2 Proposed amendments to the *Acquisition of Land Act 1967* (Qld)

- 2.1 Powerlink understands that the purpose of proposed amendments to the ALA is to streamline approvals processes, and we support this objective.
- 2.2 However, the proposed amendments (as currently drafted), may jeopardise certain rights that Powerlink is entitled to which already streamline its operations and improve the delivery of its services to Queensland. Powerlink has two issues of principal concern, namely:
 - (1) The potential loss of an exemption for the taking of protected plants;
 - (2) Limited application of the expedited process to Powerlink.

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Potential Loss of Exemption

- 2.3 Specifically, Powerlink currently utilises an exemption with respect to the taking of protected plants as a result of authorisation by the Governor in Council (pursuant to the *Nature Conservation Act 1992* (Qld) and Section 41(1)(a)(i) of the *Nature Conservation (Protected Plants) Conservation Plan 2000* (Qld)).
- 2.4 Section 9 of the ALA (in conjunction with sections 7 and 8) currently prescribes the process that Powerlink must observe in resuming land. In summary it involves an application to the relevant Minister (section 9(2)) followed by a declaration by gazette notice by the Governor in Council (section 9(7)).
- 2.5 The proposed section 9(7A) provides that 'the Minister *may*' (emphasis added) make declarations (rather than the Governor in Council) in certain circumstances that may impact upon Powerlink's operations. In summary, these are:
- (1) where no objections have been received (proposed section 9(7A)(a)); or
 - (2) if the land is being taken for a multi-parcel purpose and no objections have been received (proposed section 9(7A)(b)).
- 2.6 Should the Minister make a declaration, the Section 41(1)(a)(i) exemption would not be available to Powerlink.
- 2.7 Powerlink has been advised that this concern (the loss of the exemption) will be addressed by the development of a self-assessable Code for the taking of protected plants by DEHP by 2014.¹ There may be a period between the commencement of the ALA amendments and the adoption of the Code in 2014 when the exemption referred to in paragraph 2.3 may not be available to Powerlink. Powerlink has been further advised by DNRM that until the codes are adopted, DNRM would favourably consider any request from Powerlink to have the land resumed by the Governor in Council by Gazette Notice. Powerlink's support for these amendments is subject to these assurances by DEHP and DNRM.

Limited Application of the Expedited Process to Powerlink

- 2.8 Powerlink understands that DNRM's policy position is that the expedited procedure under the ALA should not apply where objections are raised along the particular corridor that might impact upon the location of the corridor and the Minister's approval of the taking of the relevant land.
- 2.9 However, in practice, this is likely to mean that the expedited procedure will very rarely be available to Powerlink (if at all). Therefore, in order to balance DNRM's position with Powerlink's concerns, Powerlink considers that it is important to focus on the nature of the objections to carve out those objections that are not made within time and/or are solely based on matters relating to compensation. This is consistent with the ALA.
- 2.10 Further, Powerlink suggests that the expedited procedure be available to Powerlink in circumstances where an objection is made and Powerlink has heard and considered all objections but decided that it is still appropriate to take the subject land. This gives the Minister comfort that a sufficient part of the process has been undertaken and objections have been dealt with under the ALA but allows Powerlink to take advantage of the expedited procedure (albeit at a later stage than it had hoped).
- 2.11 Therefore Powerlink proposes the following amendment to the Bill:

¹ Since receiving this advice, Powerlink notes the announcement of the Protected Plants Review and the release of the review of the *Protected Plants Legislative Framework - Consultation Regulatory Impact Statement*. Powerlink has made a submission to the review, supporting the Government's preferred option subject to certain key activities being exempted from permitting and flora survey activities and the opportunity to provide further input into the development of the legislation and the Code.

(7A) Without limiting subsection (7), the Minister may, by gazette notice, declare that the land particularised in the notice is taken for the purpose mentioned in the notice if:

- a) no objections were received in response to the notice of intention to resume the land;*
- b) if the land is being taken for a corridor purpose:*
 - a. no objections were received in response to a notice of intention to resume any of the land required to be taken to carry out the corridor purpose; or*
 - b. if objections were received in response to a notice of intention to resume any of the land required to be taken to carry out the corridor purpose, the constructing authority has dealt with such objections in accordance with section 8 and, after due consideration of the objections, is of the opinion that the land in question is required for the purpose for which it is proposed to be taken.*

(7B) For the purposes of subsection (7A), the objection must:

- a) be served upon the constructing authority within the time specified in the notice of intention to resume; and*
- b) not solely pertain to the amount or payment of compensation.*

2.12 There is also a practical issue which we wish to raise. Powerlink's corridors are usually many kilometres long and often traverse a large number of properties. It would be highly unusual for Powerlink not to receive some objections from owners over a long corridor. Powerlink has two options in this situation, namely:

- (1) Delay – to delay making any request for the resumption of any easements until the objection process for properties along the corridor has been fully completed; or
- (2) Part Application – to first make a request to the Department for the resumption of easements over all properties which are not the subject of objections and to follow up with the balance of the properties once the objection process is complete. This approach allows the Department to receive the material and process those applications at least to the point of Gazettal.

2.13 The advantage of the Part Application process is that time is not lost and although the finalisation of all easements will not occur until all applications for the whole of the corridor are made it allows for an effective use of time and resources. Powerlink requests confirmation that the Committee supports this approach to ensure the timely delivery of transmission infrastructure.

3 Proposed amendments to the *Water Act 2000* (Qld)

3.1 Powerlink is supportive of the proposed changes to the *Water Act 2000* (Qld) (**Water Act**) to remove the requirement for a riverine protection permit to destroy vegetation in a watercourse, lake or spring to the extent that it avoids duplication and simplifies the regulation of vegetation clearing activities under the *Water Act* and the *Vegetation Management Act 1999* (Qld) (**VMA**) and the *Sustainable Planning Act 2009* (Qld) (**SPA**) legislative frameworks.

3.2 Currently, Powerlink undertakes clearing activities in a watercourse, lake or spring in accordance with the *Guideline - Activities in a watercourse, lake or spring carried out by an entity* (**Guideline**) (which is approved by the chief executive administering the *Water Act*) or otherwise in accordance with a riverine protection permit granted under the *Water Act*.

3.3 Powerlink notes and is supportive of the retention of the existing exemption in Schedule 24, Part 1, Item 1(2) of the *Sustainable Planning Regulation 2009* (**SPR**) which allows certain clearing within a watercourse or lake which is carried out under the *Guideline*.

3.4 Powerlink notes that the proposed amendments to Part 19 of the *Water Act* are to coincide with consequential amendments to the *SPR*. Powerlink would like to be involved in any further consultation processes in the event that any changes to the *Guideline* or *SPR* are proposed.

3.5 Therefore Powerlink seeks confirmation of the following issues:

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- (1) In the absence of the requirement for a riverine protection permit under the Water Act for vegetation clearing / destruction, will the Guideline remain operative?
 - (2) We note that the Guideline provides: "Clearing of native vegetation in a watercourse or lake does not require assessment under the SPA if the clearing is carried out in accordance with this [G]uideline." If the Guideline is no longer operative under the Water Act, what assessment will be required under the SPA?
 - (3) Furthermore, we note that the commencement of the amendment is proposed to coincide with consequential amendments to the SPR, which will retain an exemption (Schedule 24, part 1, item 1) to allow the clearing of an area of vegetation (less than 0.5 ha) in a watercourse, lake or spring where:
 - (a) the clearing is a necessary and unavoidable part of excavating or placing fill in a watercourse, lake or spring and
 - (b) the excavating or placing of fill is either authorised by a riverine protection permit or carried out under a chief executive approved guideline.
- Clearly this exemption will not be available to Powerlink if the Guideline is no longer operative.
- (4) We note that a riverine protection permit will still be required to excavate or place fill in a watercourse, lake or spring, and therefore we seek clarification whether the Guideline will remain operative in these circumstances?

4 Further consultation

- 4.1 As noted in our introduction, we have had extensive discussions with DNRM about the amendments to the ALA, however, we have not reached a satisfactory position that is consistent with the scope of the proposed review and policy direction and which won't delay the delivery of electricity infrastructure.
- 4.2 We have not discussed the effect of the amendments to the Water Act with DNRM at this stage, but would welcome the opportunity to do so.
- 4.3 Therefore, considering both issues remain unresolved, we would be pleased to make further detailed oral or written submissions to the committee at your convenience.

Yours faithfully



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