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5 July, 2013

Agriculture, Resources and Environment Committee
Parliament House
George Street
BRISBANE QLD 4000

By Email: arec@parliament.qld.gov.au

Dear Committee,

**Powerlink Submission
Nature Conservation (Protected Plants) and Other Legislation Amendment Bill 2013**

1. Introduction

- 1.1. Thank you for the opportunity to provide submissions to the *Nature Conservation (Protected Plants) and Other Legislation Amendment Bill 2013 (the Bill)*.
- 1.2. This submission is made on behalf of Queensland Electricity Transmission Corporation Limited trading as Powerlink Queensland (**Powerlink**). This submission has been prepared in consultation and with the support of Ergon Energy Corporation Limited and Energex Limited.
- 1.3. Powerlink is a government owned corporation that owns, operates, develops and maintains Queensland's high voltage electricity transmission network; which transports electricity in bulk from power generators to the regional distribution networks (owned by Energex, Ergon Energy and Essential Energy) which then supply around two million electricity customers.
- 1.4. Powerlink notes that the Bill forms the first stage of legislative amendments and is intended to lay the foundation for subsequent changes to relevant subordinate legislation which collectively will give effect to a new protected plants framework that achieves the policy objectives of regulatory simplification and better conservation outcomes.
- 1.5. Powerlink is supportive of the policy objectives of the Bill however is keen to ensure any changes to the protected plant regime continue to support the efficient and cost effective development and maintenance of electrical infrastructure.
- 1.6. It should be noted that it is difficult to comment on whether the Bill is effective in achieving the policy objectives and whether the proposed changes will support the continued efficient and cost effective development of electrical infrastructure without also having an opportunity to review relevant subordinate legislation and related supporting material such as the proposed codes of practice and assessment guidelines.
- 1.7. Powerlink submits that further consultation should occur prior to the implementation of subordinate legislation and any associated supporting material including proposed

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codes of practice particularly as they may relate to maintenance of existing infrastructure.

- 1.8. Powerlink notes that the Bill follows the release of the Review of Protected plants Legislative Framework – Consultation Regulatory Impact Statement (**Consultation RIS**) and Review of the Protected Plants Legislative Framework under the Nature Conservation Act 1992 - Decision Regulatory Impact Statement (**Decision RIS**).
- 1.9. Powerlink provided submissions to the Consultation RIS which supported option 2 (green tape reduction and regulatory simplification) subject to a number of considerations which Powerlink considers important for ensuring regulatory simplification and cost effectiveness as it applies to electricity infrastructure development and maintenance. Powerlink's submission was prepared in consultation with and the support of the other electricity entities and is attached as Schedule 1. Powerlink has subsequently reviewed the Decision RIS and notes that it recommends the implementation of a revised version of option 2.

2. Submissions

- 2.1. In addition to submissions made to the Consultation RIS, Powerlink makes the following specific comments with respect to the Bill and the Decision RIS.

Exemptions

- 2.2. Currently, Powerlink carries out activities which involve the taking of protected plants necessary to develop or maintain electricity infrastructure in accordance with the following exemptions under the *Nature Conservation (Protected Plants) Conservation Plan 2000 (the Conservation Plan)*.

1. **GIC Exemption** - Section 41(1)(a)(i) the taking happens in the course of an activity under an authority granted or given under another Act by the Governor in Council being taking of protected plants that occurs for the purposes of electricity work (both construction and maintenance) within an easement taken under the *Acquisition of Land Act 1967* that is approved by the Governor in Council.
2. **Class approval** – an approval for taking protected plants granted by the chief executive under section 41(1)(a)(ii) of the Conservation Plan being an approval for taking protected plants in the course of an activity under a transmission authority under the *Electricity Act 1994*. The class approval has been in place since September 2010 and, in brief, operates to allow Powerlink to:-
 - a. take least concern plants in areas which have not been previously cleared (subject to conditions including for example ecological assessments, record keeping and mitigation measures);
 - b. take of parts of endangered, vulnerable or near threatened (**EVNT**) plants where the take does not and is not reasonably expected to cause the death of the plant;
 - c. take whole EVNT or least concern plants in areas which have been previously cleared where the vegetation has not regrown to remnant vegetation.

- 2.3. The current exemptions operate effectively to allow Powerlink to take protected plants without the need to obtain a clearing permit and thereby allow for the efficient development and maintenance of electricity infrastructure.
- 2.4. According to the explanatory notes to the Bill, clause 9 proposes to amend section 89 (Restrictions on taking etc. particular protected plants) to remove certain exemptions that are considered to no longer be required due to a new broader range of exemptions that are to be provided under the new framework and which are to be placed in the subordinate legislation to the *Nature Conservation Act 1992 (NCA)*. It is understood that the Conservation Plan will be repealed and the new exemptions for taking protected plants will be provided in the Wildlife Management Regulation. Powerlink has no objection to the proposed amendments provided the efficiencies provided by the current exemptions enjoyed by Powerlink remain under the new regime.
- 2.5. In Powerlink's submissions to the Consultation RIS, Powerlink provided support to the approach proposed in Ergon Energy's submissions that a new definition for 'low risk clearing activities for electrical infrastructure' be included in the new legislative framework which integrates and is consistent with existing legislative exemptions associated with necessary clearing activities associated with the provision of electricity infrastructure. Powerlink continues to support an approach that exempts certain low risk activities of electricity infrastructure providers and submits that such an approach would assist to achieve policy objectives of providing a simple and efficient regulatory regime and the efficient delivery of essential community infrastructure.
- 2.6. Powerlink notes that the Decision RIS sets out a revised option 21 which summarises additional exemptions to those initially proposed by the Consultation RIS. It appears that a number of the new exemptions proposed may be specifically relevant to Powerlink, in particular (emphasis added):

...

(2) Clearing protected plants outside a known record (whether or not the clearing will encroach into a special biodiversity area) (relevantly):

- *To **establish essential community infrastructure.***
- *For weed control purposes, where the clearing is undertaken in accordance with:*
 - *An applicable code under the VMA; or*
 - *Where the VMA does not apply – the code of practice under the NCA*

(3) Clearing protected plants for a high risk activity, where any of the following applies (relevantly):

- *The clearing is being undertaken to **maintain existing infrastructure** and complies with the code of practice.*
- *The clearing is associated with a 'relevant development activity', and protected plants in the area have been legally cleared in the preceding 10 years.*
- *The impacts on protected plants will be mitigated and/or offset in accordance with a condition of an authority issued under another Act.*

...

- 2.7. Powerlink submits that it is essential that further consultation occur with electricity entities in the development of the subordinate legislation and associated material such as any proposed code of practice to ensure the effectiveness of the proposed

¹ Refer paragraph 4.3.1 Key features of option 2

new broad range of exemptions, including those outlined above, in achieving the policy objectives.

Payment of conservation value

- 2.8. Clause 12 of the Bill proposes to amend section 95 to establish that generally payment of the conservation value for the protected plant is exempt if the plant is taken under an authority and the person pays an amount, if any required by the authority for taking the plant. For the purposes of that section, the Bill proposes to define "authority" to mean a license, permit or other authority issued or given under a regulation or conservation plan. Powerlink is supportive of such an amendment in so far as it seeks to avoid duplication of regulatory costs associated with compensating for the loss of conservation value for the taking of protected plants.
- 2.9. However, Powerlink notes that financial payments could be made to offset the loss of conservation value for taking protected plants to meet requirements under an applicable offset policy, where providing an environmental offset is a condition of an authority or other approval under another Act. Therefore, Powerlink submits that for the amendment to effectively achieve the policy objectives of reducing costs and unnecessary regulatory or administrative burden on business, the exemption needs to be sufficiently broad to avoid potential duplication of payment of conservation value in all instances.
- 2.10. Powerlink suggests the following as a more appropriate definition for the term "authority" for the purposes of section 95:-

authority means a licence, permit or other authority issued or given under this Act or another Act, regulation or conservation plan.

- 2.11. Powerlink notes that the explanatory notes to the Bill provide that the intention of the amendments to clause 95 is that payment for conservation value will not be required in most circumstances however the amendments will allow the chief executive to continue to exercise limited discretion to decide that a monetary payment is payable in some instance. The Bill does not provide guidance regarding the type of circumstances the chief executive may exercise the discretion to require payment of conservation value and whether payment could be required where an exemption applies. Powerlink submits that payment for conservation value should be specifically excluded where an exemption applies.

Assessment guidelines

- 2.12. Clause 19 of the Bill proposes to insert a new section 174B which will operate to allow the chief executive to approve or make assessment guidelines about how applications for an authority under the Act are to be considered. Powerlink is supportive of the introduction of assessment guidelines in so far as the guidelines effectively contribute to ensuring consistency and transparency in decision making, operate to provide certainty to proponents about assessment criteria, create greater efficiency in assessment processes and facilitate integration with other assessment processes.
- 2.13. Powerlink notes that the explanatory notes to the Bill provide that the new provision to allow for the approval and making of assessment guidelines is also intended to form part of the material necessary to facilitate integration with other assessment processes. However, Powerlink is concerned that the clause as currently drafted would not allow for integration with other assessment processes as the clause appears to limit the application of the assessment guidelines to applications and

specifically, authorities considered under the NCA. Powerlink submits that further consideration needs to be given to the drafting of the proposed clause 174B to allow for a broader application of the assessment guidelines and to facilitate further streamlining opportunities.

- 2.14. As outlined in Powerlink's submission to the Consultation RIS (**attached**²) Powerlink supports opportunities to reduce unnecessary and potentially costly duplication of assessment processes and therefore is supportive of proposed changes that will facilitate greater streamlining and allow for integration of the management of protected plants with existing and future development assessment frameworks.
- 2.15. Powerlink notes that the revised option 2 as outlined in the Decision RIS seeks to provide an exemption to all resource activities (rather than just to mining and petroleum activities as initially proposed in the Consultation RIS) where impacts have been addressed through conditions imposed under the *Environment Protection Act 1994 (EP Act)*. The Decision RIS does not explain why assessment frameworks that apply to resource activities under the EP Act have been given consideration for initial integration with protected plant management before other activities assessed in accordance with assessment processes under other Acts.
- 2.16. Powerlink submits that management of protected plants could effectively be integrated into the community infrastructure designation process (**CID**) under the *Sustainable Planning Act 2009 (SPA)* and that such an approach would assist to achieve the policy objectives by significantly reducing regulatory duplication as it applies to electricity entities as community infrastructure providers and associated regulatory costs.

3. Attendance at public hearing and further consultation

- 3.1. Powerlink welcomes the opportunity to attend the public hearing on 7 August 2013 and would like to nominate Teresa Howard as Powerlink's representative.
- 3.2. Powerlink reiterates the importance of ongoing consultation to ensure the success of the legislative framework in achieving its policy objectives and welcomes the opportunity to review relevant subordinate legislation and related supporting material such as the proposed codes of practice prior to its implementation.
- 3.3. Please do not hesitate to contact me if you would like Powerlink to elaborate on any aspect of this submission.

Yours sincerely,



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Environment Strategies Manager

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² Refer (b) Integration with assessment processes under other Acts, paragraph 2.7 - 2.12.

Schedule 1
– Powerlink Submission to Consultation RIS
Protected Plants Legislative Framework Review

- 1.1. Currently, Powerlink carries out activities which involve the taking of protected plants necessary to deliver or maintain infrastructure in accordance with an exemption under section 41(1)(a)(i) and a class exemption under section 41(1)(a)(ii) of the *Nature Conservation (Protected Plants) Conservation Plan 2000 (the Nature Conservation Plan)*.
- 1.2. While there is opportunity for greater streamlining, the current framework is satisfactory as it applies to Powerlink activities and in Powerlink's view achieves an appropriate balance of ensuring the management of protected plants whilst allowing the efficient delivery of essential community infrastructure development and related activities, including maintenance of existing infrastructure.

2. Option 2 – Greentape reduction and regulatory simplification

- 2.1. Powerlink notes that option 2 seeks to achieve the policy objectives of the Review by providing a simplified legislative framework primarily by exempting:-
 - a) low risk clearing activities from permitting and flora survey requirements; and
 - b) impacts on protected plants where those impacts have been approved as part of other assessment processes.

(a) Low risk clearing activities

- 2.2. Powerlink submits that any risk based approach to categorisation of activities should consider the role electricity entities have as essential community infrastructure providers and the lower impact of clearing for linear infrastructure.
- 2.3. Powerlink notes that the cost analysis provided in the Protected Plants RIS did not distinguish between the single site and linear developments in terms of impact or cost. Powerlink submits that linear infrastructure development can involve a smaller scale of impact across a number of ecosystem types and can result in greater costs associated with impact assessment and approval than single site developments.
- 2.4. It should be noted that Powerlink has vegetation clearing maintenance obligations under the *Electricity Act 1994* and *Electrical Safety Act 2002* to ensure electrical safety and supply. Powerlink submits that any changes to regulatory requirements for clearing protected plants needs to ensure that necessary maintenance for electrical infrastructure is not compromised by prohibitive or inefficient regulatory constraints.
- 2.5. Powerlink has consulted with Ergon Energy and Energex regarding the Review and is supportive of the approach proposed in Ergon Energy's submissions to include a definition of "*low risk clearing activities for electrical infrastructure*" which integrates and is consistent with existing legislative exemptions associated with low impact and necessary maintenance clearing activities for electrical infrastructure.

2.6. In addition to the inclusion of an additional definition to exempt low risk clearing activities for electrical infrastructure, Powerlink submits that the management of protected plants could be effectively integrated into the community infrastructure designation process under the *Sustainable Planning Act 2009* (SPA) as a means of achieving greater streamlining and simplification.

(b) Integration with assessment processes under other Acts

2.7. Powerlink notes that Option 2 does not propose full integration with all planning and assessment processes although a key feature of option 2 is providing opportunities for integration with development assessment frameworks for clearing activities, including the provision of exemptions where clearing of protected plants can be mitigated or offset as part of another process. Powerlink notes that wherever integration can be achieved, it is proposed that clearing of protected plants will be assessed against a Protected Plants Assessment Code.

2.8. Powerlink supports opportunities to reduce unnecessary and potentially costly duplication of assessment processes and therefore is supportive of proposed changes that will integrate the management of protected plants with existing development assessment frameworks that support the efficient delivery of community infrastructure.

2.9. As a provider of essential infrastructure, primarily Powerlink seeks Ministerial designation for community infrastructure in accordance with the procedures for environmental assessment and consultation under Chapter 5, Part 2 of the SPA with respect to new development for transmission line and substation projects. Powerlink submits that the management of protected plants could be effectively integrated into the community infrastructure designation process under SPA.

2.10. Under SPA, a Minister may designate community infrastructure if satisfied that adequate community consultation and environmental assessment has been carried out. Powerlink undertakes environmental assessment, public and stakeholder consultation in accordance with guidelines approved under SPA which satisfies that requirement and which includes an Environmental Impact Study (EIS).

2.11. Where Powerlink proposes to clear threatened plants, the designation process would necessarily involve Powerlink consulting with the Department of Environment and Heritage Protection and undertaking an assessment in the EIS of clearing activities against the protected plants legislative framework and associated assessment criteria such as those contained in the proposed Protected Plants Assessment Code.

2.12. Powerlink would welcome the opportunity to have input into the development of any codes associated with the protected plant framework to assist in ensuring the appropriate management of protected plants and the efficient delivery of essential infrastructure.

3. Option 3 – Co-Regulation

3.1. Powerlink notes that Option 3 proposes to facilitate industry co-regulation of clearing by exempting all activities from permitting requirements, developing a self regulatory code in consultation with relevant industries and implementing a monitoring, reporting and compliance framework to support co-regulation.

- 3.2. It is Powerlink's view that the effectiveness of an industry code in achieving the policy objectives of the Review would be dependent on the ability of Powerlink and other relevant industry participants to provide input into its development to ensure code requirements are practical and continue to provide for the efficient delivery of community infrastructure and maintenance of existing infrastructure.
- 3.3. Powerlink welcomes the opportunity to be involved in the development of any codes developed as part of any legislative reform. Powerlink has successfully and collaboratively developed and implemented a number of industry specific self-assessable codes with relevant administering authorities³.

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- ³ *Maintenance works on powerlines and associated infrastructure in a declared Fish Habitat Areas or involving the removal, destruction or damage of Marine Plants Code (MP03);*
 - *Code of Practice – Maintenance of Electricity Corridors in the QPWS Estate*
 - *Self-assessable code – protecting wetlands of high ecological significance in Great Barrier Reef catchments; and*
 - *Guideline – Activities in a watercourse, lake or spring carried out by an entity*