Forest Wind Farm Development Bill 2020

Explanatory Notes

FOR

Amendments To Be Moved During Consideration In Detail By The Honourable Kate Jones, Minister For State Development, Tourism and Innovation

Title of the Bill

Forest Wind Farm Development Bill 2020

Objectives of the Amendments

The objective of proposed amendments is to—

1. address a recommendation made by the State Development, Tourism, Innovation and Manufacturing Committee (the Committee) following its consideration of the Forest Wind Farm Development Bill 2020 (the Bill) for making the following five minor amendments to the Bill in relation to the Springfield Structure Plan (SSP) –

    - 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 under the SSP;
    - amend sections 275X-Z to remove potential duplicative consultation processes to those required by the existing SSP;
    - 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 proposed 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; and

2. address the following three additional matters raised in submissions to the Committee -
    - clarify and limit the scope of proposed section 275W(1) of the *Planning Act 216* (clause 75 of the Bill), setting out infrastructure-related assessment criteria for the local government, to more closely reflect the scope of assessment under the current SSP;
    - provide for the following three minor exceptions under proposed section 275ZB of the *Planning Act 2016* (clause 75 of the Bill), which prevents development starting until all required plans are in effect. The exceptions are all currently provided for under the SSP:
        - approval of an area development plan endorsed 'For Reconfiguration Purposes Only' to facilitate creation of 'superlots' which may be on-sold for development, subject to the requirement that a further area development plan must be approved before development other than the reconfiguration may occur;
        - approval of 'interim uses' specified under the SSP, section 2.6; and
        - approval of particular operational work in accordance with engineering drawings, provided for under the SSP, section 10.2.1.
    - provide additional transitional arrangements in relation to an area development plan application made under the SSP but not decided before 20 May 2020 (introduction of the Bill) to exclude any approval of the area development plan from the effect of proposed section 275ZB of the *Planning Act 2016* (clause 75 of the Bill) which prevents development starting until all required plans under the SSP are in effect.

Achievement of the Objectives

The amendments achieve the objectives set out above by making appropriate amendments to the provisions of part 8 division 4 of the Bill. The amendments:

- improve the efficiency and effectiveness of the provisions by introducing appropriate flexibility in their operation and removing potential duplication with the operation of the SSP;
- improve the clarity of the provisions, for example by confirming the availability of dispute resolution arrangements;
- improve the accountability of planning processes under the SSP, for example by providing for appropriate involvement by Queensland Urban Utilities; and
- advance the achievement of fundamental legislative principles by extending transitional arrangements in relation to development assessment and plan making processes.

Alternative Ways of Achieving Policy Objectives

There is no alternative way to achieve these objectives other than by amending the Bill.

Estimated Cost for Government Implementation

There are no additional anticipated costs for government arising from the amendments.

Consistency with Fundamental Legislative Principles

No breaches of fundamental legislative principles have been identified. The amendments include provisions extending transitional protection to particular plan making and development assessment processes.

Consultation

The proposed amendments result in part from the recommendations made in the Committee's Report on the Bill, which tabled on 3 July 2020. The balance of the proposed amendments also result from matters raised in submissions to the Committee. Twenty-one submissions were received by the Committee about the Bill, of which nine concerned the proposed amendments to the *Planning Act 2016*. Key stakeholders who made submissions include Springfield City Group Pty Ltd, which is the largest landholder in the SSP area, Cherish Enterprises Pty Ltd, which owns significant holdings in the SSP area, and the Ipswich City Council.

Notes on provisions

Amendment 1

Amendment 1 inserts a new clause 74A, (Amendment of s 231 (Non-appealable decisions and matters)) after clause 74. The new clause includes a reference to the Planning Act 2016, section 316(2) in the Planning Act 2016, section 231(1).

Although sections 231(1) and 316 each stand on their own, the intended effect of amendment 1 is to clarify the relationship between the two sections and put beyond doubt that dispute resolution arrangements under development control plans are appealable matters for section 231.

The Planning Act 2016, section 231(1) establishes the scope of appealable matters under the Act with reference to stated provisions of the Act and the Planning and Environment Court Act 2016.

The Planning Act 2016, section 316 is a transitional provision which validates aspects of development control plans, including the SSP. Section 316(2) 'calls up' the validating provisions of the repealed *Sustainable Planning Act 2009*, section 857. The matters validated include appeal arrangements under the development control plans, including the SSP.

It is unnecessary to also include a reference to proposed chapter 7, part 4C, division 5 (Dispute resolution) under the Bill in the Planning Act 2016, section 231, as this division merely modifies procedural aspects of the dispute resolution process established under the SSP, section 11.

Amendment 2

Amendment 2 amends clause 75 by inserting a new definition for ***Queensland Urban Utilities*** in proposed section 275T (Definitions for part).

The definition relates to amendments 6, 8, 9, and 10 below, which establish a role for Queensland Urban Utilities in relation to assessment of non-SCG plan applications.

Amendment 3

Amendment 3 amends cause 75 by replacing proposed section 275W(1), paragraphs (a) and (b) with new paragraphs (a) – (d).

Proposed section 275W(1) establishes matters the local government must satisfy itself of in assessing a non-SCG plan application in relation to the availability of infrastructure.

A submission to the Committee from Springfield City Group Pty Ltd expressed concern that the criteria under proposed section 275W(1) were wider in scope than those under the SSP, and may allow for the introduction of considerations beyond the scope of existing

infrastructure agreements. The submission also pointed out that the proposed provisions did not contemplate the possibility of interim infrastructure.

Amendment 3 modifies the assessment criteria under proposed section 275W(1) to more closely reflect those in the SSP, and reinforce the key role of existing infrastructure agreements in guiding decision making about the nature and timing of infrastructure.

Amendment 4

Amendment 4 amends clause 75 by replacing the term 'consistent' with 'generally consistent' in proposed section 275W(3).

The term 'generally consistent' is intended to better reflect the likely relationship between plans the subject of non-SCG plan applications, such as precinct plans or area development plans, which may be particularly detailed in nature, and the Land Use Concept Master Plan under the SSP, which is very broad in scope. These differences will inevitably result in discrepancies that should not frustrate the approval of plans.

Amendment 5

Amendment 5 amends clause 75 by replacing the term 'consistent' with 'generally consistent' in proposed section 275W(5)(c). The intent of the amendment is the same as for amendment 4 above.

Amendment 6

Amendment 6 amends clause 75 by amending proposed section 275X to require an applicant for a non-SCG plan application to also give a copy of the application to Queensland Urban Utilities.

This amendment relates to amendment numbers 2, 8, 9, 10 and 19, which establish a role for Queensland Urban Utilities in relation to assessment of non-SCG plan applications.

Amendment 7

Amendment 7 amends clause 75 by replacing proposed section 275Z(1)(b) for consistency with amendment 3 above.

Amendment 8

Amendment 8 amends clause 75 by inserting a new section 275ZAA after proposed section 275Z.

New section 275ZAA(1) allows for Queensland Urban Utilities to make representations to the applicant and the local government in relation to a non-SCG plan application within 10 business days after receiving a copy of the application under proposed section 275Y(2).

New section 275ZAA(2) requires the local government to have regard to any representations made by Queensland Urban Utilities in deciding a non-SCG plan application.

This amendment relates to amendment numbers 2, 6, 9, 10 and 19, which establish a role for Queensland Urban Utilities in relation to assessment of non-SCG plan applications.

Amendment 9

Amendment 9 amends clause 75 by replacing the term 'SCG' with 'particular entities' in the heading of proposed section 275ZA.

This amendment relates to amendment numbers 2, 6, 8, 10 and 19, which establish a role for Queensland Urban Utilities in relation to assessment of non-SCG plan applications.

Amendment 10

Amendment 10 amends clause 75 by amending proposed section 275ZA to require the local government to give a copy of its decision about a non-SCG plan application to Queensland Urban Utilities.

This amendment relates to amendment numbers 2, 6, 8, 9, and 19, which establish a role for Queensland Urban Utilities in relation to assessment of non-SCG plan applications.

Amendment 11

Amendment 11 amends clause 75 by inserting a new section 275ZAB (Application of Springfield Structure Plan, s 2.2.4.6) after proposed section 275ZA.

This amendment reduces the substantial duplication of consultation requirements with Springfield City Group to clarify that sections 275X and 275Z apply instead of the SSP 2.2.4.6 for non-SCG applications.

The SSP, section 2.2.4.6 requires the local government to seek the views of Springfield City Group Pty Ltd about area development plan applications it has received from applicants other than Springfield City Group.

However proposed section 275X also requires an applicant for a non-SCG plan application to give a copy of the proposed application to Springfield City Group Pty Ltd, and section 275Z requires Springfield City Group Pty Ltd to provide its views about the application to the local government.

The SSP, section 2.2.4.6 does not conflict with proposed sections 275X and 275Z of the Bill, as their respective requirements apply at different times in the plan assessment process, and section 275X involves the applicant giving material to Springfield City Group Pty Ltd, while the SSP, section 2.2.4.6 involves the local government giving essentially the same material to Springfield City Group, albeit at a different time. Consequently, proposed section 275U, which provides that a provision of proposed chapter 7, part 4C prevails over a provision of the SSP to the extent of any inconsistency, would be unlikely to apply.

Proposed section 275ZAB achieves this by providing that the SSP, section 2.2.4.6 does not apply in relation to a non-SCG plan application.

Amendment 12

Amendment 12 amends clause 75 by inserting the term 'other than a reconfiguration plan' after the term 'area development plan' in proposed section 275ZB(1)(a).

The term ‘reconfiguration plan’ is defined under clause 17 (below). Clause 17 is intended to facilitate particular types of development in the SSP area as minor exceptions to the restriction on development starting until all required plans are in effect under proposed section 275ZB(1)-(3). One of these exceptions is intended to be reconfiguring a lot in accordance with a reconfiguration plan (see clause 17).

Proposed section 275ZB(1) affects development (other than reconfiguration of lot):

- within the community residential or open space designation
- where the area development plan for the premises is a reconfiguration plan.

This development cannot begin until all required plans are in effect.

Amendment 13

Amendment 13 amends clause 75 to add a definition of ***applicable plan*** in proposed section 275ZB(2)(a).

The insertion of the definition is necessary due to the inclusion of a reference to reconfiguration plans in proposed section 275ZB(2)(a)(iii) (see amendments 14 and 15 below)

Amendment 14

Amendment 14 amends clause 75 by inserting the term ‘other than a reconfiguration plan’ after ‘plan’ in proposed section 275ZB(2)(a)(iii).

This amendment has the same effect for premises in the town centre designation under the SSP as amendment 12 has for premises in the community residential or open space designations.

Amendment 15

Amendment 15 amends clause 75 by replacing the term ‘plans mentioned in paragraph (a)’ with the term ‘applicable plans’ in proposed section 275ZB(2)(b) to retain the function of reconfiguration plans while ensuring that area development plans are required.

The amendment relates to amendments 13 and 14 and preserves the effect of proposed section 275ZB(2)(a) as amended by amendment 14. If the current term ‘plans mentioned in paragraph (a)’ were retained, the inclusion of the term ‘other than a reconfiguration plan’ in proposed section 275ZB(2)(a)(iii) would change the meaning of proposed section 275ZB(2) contrary to intent.

Amendment 16

Amendment 16 amends clause 75 by inserting the term ‘other than a reconfiguration plan’ after ‘plan’ in proposed section 275ZB(3)(a).

Amendment 16 has the same effect for premises in the conservation designation or the regional transport corridor designation under the SSP as amendment 12 has for premises in the community residential or open space designations.

Amendment 17

Amendment 17 amends clause 75 by replacing proposed section 275ZB(4) with new subsections (4) – (7) providing for several exceptions to the requirements under section 275ZB that development may not start until a full hierarchy of plans under the SSP is in effect for the premises. In summary the exceptions are:

- Reconfiguring a lot consistent with a 'reconfiguration plan' applying to the premises. 'Reconfiguration plan' is defined under proposed subsection (7) as an area development plan, the application for which states the plan is for reconfiguring a lot only. The singular reference to 'lot' is not intended to imply that only a single lot may be reconfigured. The *Acts Interpretation Act 1954*, section 32C provides that words in the singular include words in the plural.

  This exception is intended to reflect the arrangements currently included under the SSP, section 2.2.4.1 in relation to applications for area development plans designated 'for reconfiguration purposes only', which may be used to create so-called 'superlots' for sale to development interests.

  Amendments 12 – 16 above have the effect that, even if there is an area development plan in the form of a reconfiguration plan in effect for premises, development of the premises for purposes other than reconfiguration in accordance with the reconfiguration plan may not start until there is a full hierarchy of plans in effect for the premises, including another area development plan providing for development other than the reconfiguration the subject of the reconfiguration plan.

- Development under a development approval if the application for the approval was made before the commencement.

  Proposed section 353(1) of the Bill already provides that proposed section 275ZB does not apply in relation to a development approval given before the commencement.

  In response to a submission to the Committee made by Ipswich City Council, the Committee's report recommends that the transitional effect of proposed section 353(1) be extended to apply to development approvals resulting from development applications made, but not decided, before the commencement.

  This recommendation is given effect through amendment 17 (proposed section 275ZB(5)(b)(i)) which includes the effect of proposed former section 353(1) (which is consequentially removed under amendment 18 below) and extends that effect to also include development applications made, but not decided, before the commencement.

  Notwithstanding that proposed section 275ZB would not apply to development under any approval, the application for which was made before commencement, any relevant, lawful provisions of the SSP would continue to apply. For example, the SSP, section 2.2.4.1

prevents any such development taking place unless it is consistent with an area development plan for the premises.

- Development under a development approval for an 'interim use' under the SSP, section 2.6.

- Development under a development approval for particular operational works in accordance with engineering drawings approved by the local government under the SSP, section 10.2.1.

- Development under a development approval if the development is shown on or consistent with an area development plan (other than a reconfiguration plan) applying to the premises, and the application for the area development plan was made before 20 May 2020 (the day the Bill was introduced to Parliament) and decided on or after 20 May 2020.

Amendment 18

Amendment 18 amends clause 76 by replacing proposed section 353. Proposed section 353(1) provided that proposed section 275ZB did not apply in relation to a development approval given before the commencement. The effect of section 353(1) is now reflected in amendment 17 (proposed section 275ZB(5)(b)(i)). Consequently, there is no longer any need for proposed section 353(1) and the function of section 353(2) has been retained.

Amendment 19

Amendment 19 amends clause 77 by inserting a definition reference for ***Queensland Urban Utilities*** in the *Planning Act 2016*, schedule 2.

This amendment relates to amendment numbers 2, 6, 8, 9, and 10, which establish a role for Queensland Urban Utilities in relation to assessment of non-SCG plan applications.