WESTERN AND CROWN LANDS AMENDMENT (SPECIAL PURPOSE LEASES) BILL 2008

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Bill received from the Legislative Council and introduced.

Agreement in Principle

Mr JOHN AQUILINA (Riverstone—Leader of the House) [11.32 a.m.]: I move:

That this Bill be now agreed to in principle.

The Western and Crown Lands Amendment (Special Purpose Leases) Bill 2008 has been drafted in response to a proposed investment in renewable energy in the Western Division. The bill creates a simple and practical way to allow large-scale development in the Western Division on Crown land that is part of a lease used for a contrary purpose such as pastoralism or agriculture. The current legislation for the Western Lands Division is restrictive when it comes to the conditions and purposes required for leases of Crown land. For example, it is currently impossible for individuals or businesses to obtain a lease of Crown land under the more flexible leasing provisions of section 34 of the Crown Lands Act—a right that is enjoyed by people everywhere else in New South Wales.

The bill also allows the Minister, as long as any pre-existing lessee gives their consent, to grant a second lease, called a "special purpose lease", to a developer over a parcel of land that is within the boundaries of the existing lease. Once a special purpose lease expires, a pre-existing lessee with longer-term tenure like a perpetual lease, called a "general purpose lease" in the bill, will be able to exercise their rights over the whole land again. Under the current Western Lands Act 1901, if the required land is already held under, say, a perpetual lease, then the Minister can only grant another lease over the same land by compulsorily acquiring or withdrawing the relevant parcel. However, compulsory withdrawal or acquisition is often undesirable for many leaseholders, regardless of compensation. Many leaseholders dislike the idea of their tenure being diluted if part of the land is withdrawn. Leaseholders have sometimes invested considerable effort and money in improvements. Others have held the same lease in their family for generations and have a strong emotional attachment to the land. Other groups fear that compulsory acquisition or withdrawal of land from one group of leases might undermine the security of tenure holders elsewhere in the Western Division by introducing an element of risk to potential investors and mortgagees. Even though compulsory acquisition or withdrawal is sometimes necessary, alternative mechanisms to facilitate a development without the need to compulsorily acquire should be available to the State.

Providing flexibility and a suite of options is what this bill is all about. On the one hand it recognises the importance of the State providing a direct and secure form of tenure for State significant developments that have a large public benefit component. On the other hand the bill recognises the importance of preserving perpetual lessees' property rights by providing an alternative to compulsory acquisition or withdrawal. The Government believes subleasing is inappropriate when it comes to massive investments like the wind farm at Silverton, and legally questionable. For small-scale developments that are consistent with and do not overwhelm the ordinary activities allowed under a general purpose lease, subleasing may be a viable option. However, the Government is of the view that where large scale and critical infrastructure of importance to the State and the community as a whole is involved, developments on Crown land should be facilitated by a direct lease from the State. A direct lease from the State gives the people of New South Wales greater control over big projects at both the construction and operational phases of development. A direct lease from the ultimate landowner also gives developers greater security of tenure than if they had to acquire a mere sub-lease from the general purpose lessee. There are also advantages for a proponent if the relevant land is already leased out to different individuals under many different leases. A direct lease from the State saves the proponent from having to negotiate and administer numerous and complicated sub-leases with each and every general purpose lessee.

The bill has been drafted in light of a massive $2 billion, 500-turbine wind farm proposal at Silverton near Broken Hill. The proposed wind farm will be the biggest in Australia generating up to 1,000 megawatts of electricity, capable of supplying 4.5 per cent of the entire State's energy needs, and saving approximately three million tonnes of greenhouse gas emissions per year. The developers propose to build the wind farm on 32,000 hectares of Crown land currently leased under 17 separate perpetual leases for grazing. This bill will allow the Silverton wind farm proponents to obtain a single and secure form of tenure directly from the State in the form of a special purpose lease. It will allow the holders of the 17 perpetual leases to negotiate fair compensation and shared access and usage rights in return for their consent. It will also give the Government a degree of control over the project that will allow it, amongst other things, to charge a fair rent on behalf of the people of New South Wales. Any revenue generated can then be used to fund new infrastructure and facilities across Western New

South Wales.

There are a number of other provisions in the bill that also protect the interests of pre-existing lessees. There are provisions that require the special purpose lessee to refrain from doing things within certain minimum distances of the general purpose lessee's dwelling house or garden. Of course any development under a special purpose lease will still have to meet all the standard planning requirements under the Environmental Planning and Assessment Act 1979.

I also take the opportunity to allay some concerns recently expressed on behalf of western lands pastoral lessees. The bill will ensure that the parallel lease mechanism can be activated only after careful consideration. A special purpose lease can be granted only for an approved purpose. The bill specifies one such purpose being the construction and operation of facilities for the harnessing of energy from any source, including the sun or wind, and its conversion into electrical energy. The Governor must first proclaim any additional purpose and, as an additional step, the bill stipulates that consultation with the Minster for Planning must also occur.

The bill has been drafted with flexibility in mind, and the Government believes it should not be confined to particular projects. It is for this reason that a mechanism to proclaim new purposes has been included. It would be a tall order indeed to try to state exhaustively what those purposes might be. To arbitrarily limit the power to apply only to public purposes might also work against the interest of existing lessees. The Office of the Registrar General further advises me that it is anticipated that a special purpose lease will be capable of registration without any need for a separate certificate of title to issue in the name of the parallel lessee.

The Government moved eight amendments in another place, four of which are mere technical issues and four in response to concerns of the leaseholders themselves. Four of these in no way affect the thrust of the legislation and address structural inconsistencies within the bill. The four amendments were identified as necessary only to overcome a technical problem in the drafting clauses 35XD (1) (c) (ii) and 44D (c) (ii) contain provisions which purport to restrict the conduct of the lessee through the mechanism of an addition to the existing perpetual lease. In fact, any restriction on the conduct of the special purpose lessee should be through addition to the terms of the special purpose lease, and the four amendments are necessary to achieve that end.

Importantly, there is no expansion of the intended scope of the bill's operation. The other four amendments are a result of ongoing consultation with western lands leaseholders. In response to these concerns, these amendments put beyond doubt that the provisions of the bill applying specifically to the underlying western lands lease do not continue to apply to the underlying lease after a termination of a special purpose lease. These additional subsections to sections 35XD and 35XE of the Western Lands Act, as well as sections 440 and 44E of the Crown Lands Act, leave beyond doubt that the rights and entitlements of existing lessees prior to the imposition of a second lease remain unaffected once those parallel leases expire.

The Western and Crown Lands Amendment (Special Purpose Leases) Bill 2008 enables long-term security of tenure to be given to developers of critical infrastructure, whilst preserving the tenure of existing leaseholders. General purpose leaseholders, such as graziers and farmers, will be able to negotiate for adequate compensation in return for their consent, whilst retaining the right to repossess the land once the special purpose lease expires. This is a win-win situation for all stakeholders, for developers, the Western Lands Act lessees and the Government. I commend the bill to the House.

Debate adjourned on motion by Mr John Turner and set down as an order of the day for a later hour.