

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

Bill introduced, read a first time and ordered to be printed on motion by the Hon. Tony Kelly.

Second Reading

The Hon. TONY KELLY (Minister for Lands, Minister for Rural Affairs, Minister for Regional Development, and Vice-President of the Executive Council) [3.51 p.m.]: I move:

That this bill be now read a second time.

It gives me great pleasure to introduce this innovative bill, which has been drafted in response to a proposed investment in renewable energy in the Western Division. A key function of responsible government is to constantly look at improving legislation in response to changing needs and demands. The Western Lands and Crown Lands Amendment (Special Purpose Leases) Bill 2008 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 elsewhere in New South Wales. This point was raised recently in the five-yearly review of the Western Lands Act 1901, which is soon to be tabled in Parliament. The bill addresses the need for greater flexibility.

Besides mirroring similar provisions in the Crown Lands Act, the bill will allow the Minister, so long as any pre-existing lessees give 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, pre-existing lessees with longer-term tenure, such as a perpetual lease—called "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, the Minister can grant another lease over the same land only 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, and obviously bought it for that purpose. 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.

The bill provides flexibility and a suite of options. 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 proposed at Silverton and is legally questionable. For small-scale developments that are consistent with and do not overwhelm the ordinary activities allowed under a general purpose lease, that may be a viable option.

However, the Government considers 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 and capable of supplying 4.5 per cent of the entire State's energy needs. It will save 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 which is currently leased under 17 separate perpetual leases for grazing. The 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. The holders of the 17 perpetual leases will be able to negotiate fair compensation directly with the proponents and shared access and usage rights in return for their consent. The bill also will 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 be used to fund new infrastructure and facilities across western New South Wales.

I will refer to some of the important provisions in the bill. Schedule 1 inserts part 9E into the Western Lands Act 1901. Part 9E gives the Minister power under proposed section 35XC (1) to grant a special purpose lease in accordance with sections 34 or 34A of the Crown Lands Act. Such a lease can be granted only in respect of Crown land within a "development district", declared by notification in the *Government Gazette*, for an "approved purpose". Under proposed section 35XB, an approved purpose that is not already in the bill must be proclaimed under section 44B (4) (b) of the Crown Lands Act 1989. Proposed section 44B (4) (b), which will be inserted by this bill into the Crown Lands Act 1989, says that a proclamation by the Governor has to be made on a recommendation by the Minister. Subsection (5) of section 44B requires the Minister to first consult with the Minister administering the Environmental Planning and Assessment Act 1979 before recommending to the Governor to proclaim an approved purpose. The scheme provides a safeguard of a number of approval steps before a special purpose lease can be granted. Even then it can be granted only for a specific purpose. The intention behind part 9E is to facilitate leasing for large-scale developments that do not fit easily within the traditional framework of the Western Lands Act 1901, in consultation with the Minister for Planning.

Another important provision within part 9E is proposed section 35XC (3), which limits the term of any special purpose lease, including any option, to 100 years. Subsection (4) of that provision allows a special purpose lease to be granted in respect of land that is already subject to a standard Western Lands Act lease or a general purpose lease. This novel provision will allow a special purpose lease to sit on top of or parallel to the underlying general purpose lease held by someone like a grazier or a farmer. Proposed section 35XC (4) requires general purpose lessees to give their consent before the Minister can grant a special purpose lease on top of their general purpose lease. Existing general purpose leaseholders will be able to negotiate fair compensation in return for giving their consent. Proposed section 35XC (5) makes a general purpose lessee's consent irrevocable and binding on his or her successors in title.

Another important provision to be introduced by the bill is proposed section 35XE (b), which inserts a number of compulsory conditions into a special purpose lease that has been granted on top of a general purpose lease, including strong protective measures in favour of the general purpose lessee. That section effectively prohibits a special purpose lessee from carrying out activities that directly interfere with the lessee's enjoyment of his or her improvements unless consent has been given. For example, proposed section 35XE (b) (i) prevents a special purpose lessee from doing anything on or within 200 metres of land upon which a dwelling house is situated.

The bill enables long-term security of tenure to be given to developers of critical infrastructure whilst preserving the tenure of existing leaseholders. General purpose leaseholders, like 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, developers, Western Lands Act lessees and the Government. I commend the bill to the House.