

Natural Resources Legislation Amendment Bill 2004

Explanatory Notes for Amendments to be moved during consideration in detail by The Honourable Stephen Robertson MP

Title of the Bill

Natural Resources Legislation Amendment Bill 2004.

Objectives of the Amendments

The proposed amendments insert, after clause 42, a new part 6 that amends certain transitional provisions of the *Vegetation Management Act 1999*. The amendments are needed to clarify restrictions on changing vegetation clearing applications that were received before midday on 16 May 2003 and any approvals arising from such applications. At that time, applications could be made under the *Integrated Planning Act 1997* (for clearing freehold land) and under the *Land Act 1994* (for clearing leasehold and other State lands).

The relevant provisions impose restrictions on changing broadscale clearing applications as part of the Government's policy commitment to implement a phase out of broadscale clearing of remnant vegetation by the end of 2006 under a cap of 500,000 hectares.

However, limitations were recently identified in the transitional provisions in the course of a hearing before the Planning and Environment Court, which could potentially undermine the intent to limit clearing under the phase out to 500,000 hectares and these are addressed in these amendments.

Achievement of the Objectives

The transitional provisions of the *Vegetation Management Act 1999* relating to vegetation clearing applications that were received before 16 May 2003 are clarified.

Consistency with Fundamental Legislative Principles

There are no FLP issues.

Consultation

The Department of the Premier and Cabinet has been consulted on the proposed amendments.

Notes on Provisions

Part 6 Amendment of Vegetation Management Act 1999

Clause 43, which inserts a new Part 6, specifies that this part amends the *Vegetation Management Act 1999*.

Amendment of s 22H (Modifying Planning Act effect on changing broadscale application)

Clause 44 amends section 22H to clarify that a broadscale application entered into the ballot, may not be amended after the ballot application period has ended in a way that changes the size of the area proposed to be cleared.

Replacement of ss 76 (Existing applications (pre VACA) and development approvals) and 77 (Existing applications (pre VACA) and permits under the Land Act 1994)

Clause 45 replaces existing section 76 to clarify the intent of the provisions. Section 76 relates to broadscale clearing applications for clearing freehold land under the *Integrated Planning Act 1997* received before midday on 16 May 2003.

Subsection (1)(a) provides that, up until an existing application is decided, the application cannot be changed to increase the size of the area proposed to be cleared. However, subject to this restriction, an application can be

changed to move the location of the area proposed to be cleared at any time before the application is decided.

Subsection (1)(b) provides that, after an existing application has been decided, the application cannot be amended to either increase the size of the area proposed to be cleared or change the location of the area proposed to be cleared. This means that an applicant cannot amend the application in the way stated during the course of an appeal before the Planning and Environment Court.

Subsection (1)(c) provides that, after the development approval has had effect, the approval cannot be changed in any that:

- increases the size of the area approved to be cleared; or
- changes the location of the area approved to be cleared; or
- extends the currency period for the approval.

Subsection (2) provides that subsection (1)(b)(ii) does not apply to an application decided before the commencement of the section if an appeal was started before the commencement of the section. This means that any applications that have been decided before the commencement of this section but which are on appeal are not affected by the stated restriction.

Subsection (3) provides that subsection (1)(c) applies to development approvals that have had effect before the commencement of the section.

Subsection (4) clarifies that the currency period for a development approval for an existing application must end no later than 31 December 2006. This date is when all broadscale clearing must cease. The provision reinforces the Department's policy in only issuing approvals for broadscale clearing up until the end of 2006. The provision also binds the Planning and Environment Court.

Subsection (5) provides definitions necessary for the effective operation of the section.

Clause 45 also replaces existing section 77 to clarify the intent of the provisions. Section 77 relates to broadscale clearing applications for clearing State lands under the *Land Act 1994* received before midday on 16 May 2003.

Subsection (1) provides that an existing application (pre VACA) must be dealt with under the *Land Act 1994*, as in force on 20 May 2004. This provision is needed to ensure applications are assessed against the applicable assessment code and legislation current at the time these applications were made but which have now been repealed.

Subsection (2)(a) provides that, up until an existing application is decided, the application cannot be changed to increase the size of the area proposed to be cleared. However, subject to this restriction, an application can be changed to move the location of the area proposed to be cleared at any time before the application is decided.

Subsection (2)(b) provides that, after an existing application has been decided, the application cannot be amended to either increase the size of the area proposed to be cleared or change the location of the area proposed to be cleared. This means that an applicant cannot amend the application in the way stated during an internal review or during the course of an appeal before the Land Court.

Subsection (2)(c) provides that, after the end of the appeal period, the tree clearing permit cannot be changed in any that:

- increases the size of the area approved to be cleared; or
- changes the location of the area approved to be cleared; or
- extends the term of the permit.

Subsection (3) provides that subsection (2)(b)(ii) does not apply to an application decided before the commencement of the section if an appeal was started before the commencement of the section. This means that any applications that have been decided before the commencement of this section but which are on appeal are not affected by the stated restriction.

Subsection (4) provides that subsection (2)(c) applies to a tree clearing permit that has been issued before the commencement of the section.

Subsection (5) clarifies that despite the *Land Act 1994*, the term of a tree clearing permit for an existing application must end no later than 31 December 2006. This date is when all broadscale clearing must cease. The provision reinforces the Department's policy in only issuing approvals for broadscale clearing up until the end of 2006. The provision also binds the Land Court.

Subsection (6) provides definitions necessary for the effective operation of the section.

Amendment of s 78 (Existing applications (post VACA) under the Land Act 1994)

Clause 46 amends section 78 to clarify that existing applications for clearing State lands, that were received after midday on 16 May 2003 but before the new vegetation management framework commenced, must be

refused unless they meet the assessment criteria applicable at the time the applications were made.