

Federal Government Clean Energy Grants

The Clean Energy Initiative (CEI) was announced by the Federal Government in the May 2009 Budget. This article provides an overview of the initiative.

The CEI complements the Federal Government's proposed Carbon Pollution Reduction Scheme and associated Renewable Energy Target, by supporting the research, development and demonstration of low emission energy technologies, including industrial scale carbon capture and storage (CCS) and solar energy.

The CEI has the following three components:

- **CSC Flagship Program:** \$2.425 billion of funding has been allocated over nine years to support construction and demonstration of large-scale integrated carbon capture and storage projects in Australia, which may include gasification, post-combustion capture, oxy-firing, transport and storage technologies. The target is to create 1,000 MW of low emission fossil fuel generation.

- **Solar Flagships Program:** \$1.6 billion of funding has been allocated over six years to support construction and demonstration of large-scale solar power stations in Australia, which may include solar thermal, photovoltaic and energy storage technologies. The target size is 1,000 MW of electricity generation.

- **Australian Centre for Renewable Energy:** \$465 million of funding has been allocated to establish a new body, the Australian Centre for Renewable Energy (ACRE), which will promote the development, commercialisation and deployment of renewable technologies, through a commercial investment approach.

CCS Flagships Program

Project funding under the CCS Flagships Program will be subject to a competitive process, in consultation with state governments and industry bodies, with the intention to fund two to four projects across a range of capture technologies and storage geologies.

The National Low Emissions Council will advise the Minister for Resources and

Energy (Minister) on the optimum portfolio design and criteria for project selection. CCS Flagship projects are expected to be industrial scale demonstrations that will contribute to the overall target of 100MW of low emission fossil fuel power generation.

Solar Flagships Program

The Solar Flagship Program will also be subject to a competitive process, with the intention to fund projects across a range of solar energy technologies. An expert committee will make recommendations to the Minister on the projects to be supported. The Solar Flagship Program is expected to comprise up to four solar power stations operating within the energy market, with a total capacity of 1000MW (being the same as an average Australian coal-fired power station).

Australian Centre for Renewable Energy

ACRE will be a new body under the Minister, overseen by a specialist board with expertise in research, venture capital, intellectual property and commercialisation. The objective of ACRE is to promote the development, commercialisation and deployment of renewable technologies.

About Lavan Legal:

Lavan Legal is the largest independently owned law firm in Western Australia. Lavan Legal has more than 200 staff, including 22 partners. Our Planning, Environment and Land Compensation Team offers advice on environmental enforcement and licence conditions, legislation and its impacts on proposed developments, advising government on amendments to planning legislation and sensitive developments which include rail freight facilities and claypit redevelopments. Injurious affection caused by the reservation of land is a frequent issue facing our clients and we represent them in the State Administrative Tribunal for compensation for their land.

We understand the intricate web of environmental laws encompassing all levels of regulation from Commonwealth to Local Government. We service an established client base which includes leading town planners, engineers and environmental consultants, as well as large public and private developers, local councils and State Government authorities.

Our vast experience in land compensation, planning and environmental law allows us to meet all our clients' needs with integrated and highly efficient services.

Timelines

The competitive process for CCS and Solar Flagship Projects will commence in the second half of 2009. ACRE will be established in 2009-2010.

The Department of Resources, Energy and Tourism is expected to release the following CEI program documentation within the next two to three months:

- CCS Flagship Program Guidelines;
- Solar Flagship Program Guidelines; and
- ACRE governance and guidelines.

Conclusion

Lavan Legal will provide an update once the CEI program guidelines have been released. If you wish to look at opportunities for CCS or solar energy grants from the Federal Government, Lavan Legal is able to assist.

Please contact Melanie Palmer or Emma McGrath if you require further advice on the grants available or require assistance in lodging an application for a grant.

Contact:

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Western Desert Lands Aboriginal Corporation, Western Australia and Holocene Pty Ltd [2009] NNTTA 49

Determination by the National Native Title Tribunal (Tribunal)

This case concerned an application under section 35 of the *Native Title Act 1993* (Cth) (NTA) for a future act determination under section 38 NTA. The future act in question was the granting of a mining lease under the *Mining Act 1978* (WA) to Holocene Ltd over land which is the subject of the native title determination of the Western Desert Lands Aboriginal Corporation (WDLAC) in favour of the Martu People.

The NTA provides that native title groups have a 'right to negotiate' in respect of developments that require the grant of mining leases. The 'right to negotiate' requirements in the NTA impose an obligation on those groups, the developer and the State to negotiate in good faith for a minimum of six months. As the project proponent, Holocene Ltd, failed to reach an agreement with the WDLAC within the required timeframe, they applied to the Tribunal under section 35 of the NTA requesting a determination in respect of the grant of the mining lease.

The main issue considered in this case was the effect of the project on Lake Disappointment, in the context of the interests, proposals, opinions or wishes of WDLAC in relation to the management, use or control of the land. Of note was the ultimate Tribunal's finding that Lake Disappointment was a 'site of very great

significance' to the Martu People.

It was argued by WDLAC that the mining lease should not be granted unless agreement could be reached regarding a satisfactory working relationship, protection of heritage, regulation of activities, appropriate involvement and reasonable benefits and compensation including relevant ownership of the project. Although it was noted that a native title party does not have a veto over development proposals, it was recognised that the Tribunal should give considerable weight to their view about the use of the land.

Deputy President Sumner in his conclusion at paragraph 216 of his judgment stated:

'In my view the interests, proposals, opinions and wishes of the native title party [WDLAC] in relation to the use of Lake Disappointment should be given greater weight than the potential economic benefit or public interest in the Project proceeding'.

The final determination was that the mining lease must not be granted.

Consequences

This is the first time anywhere in Australia that it has been determined that a mining lease should not be granted as a result of interests and rights of a native title party in respect of the land on which the project is to be situated.

Although, it seems that a unique set of circumstances led to the Tribunal's determination in this case, it is important that project proponents take steps early in the project development phase with respect to resolving native title issues, including identification of any such 'significant' sites to native title parties. This should include extensive consultation with any native title parties that may have an interest in the project's land.

Whilst the decision did reinforce that native title parties do not have a veto in relation to proposed developments, it is clear following this decision that reaching an agreement with such parties regarding proposed development is likely to provide certainty and security of tenure.

Should you require advice on native title issues associated with your business please do not hesitate to contact Emma McGrath or Melanie Palmer.

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Directions 2031 Spatial Framework for Perth and Peel

Directions 2031 provides a future vision for the growth of the Perth and Peel region and is intended to guide the delivery of housing, infrastructure and services necessary for the expected population growth.

The draft policy identifies several sites that are not currently zoned for further investigation to determine whether they are appropriate for future use in providing the much needed residential and industrial requirements of Perth's growing population.

Directions 2031 identified the following six strategic themes:

- a liveable city;
- a prosperous city;
- an equitable city;
- an accessible city;
- a green city; and
- a responsible city.

The full text of Directions 2031 can be found at the WAPC website www.wapc.gov.au. Submissions close on 26 August 2009.

Should you require any assistance in making a submission please do not hesitate to contact Melanie Palmer or Emma McGrath.

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Emma is a Solicitor in the Planning, Environment and Land Compensation Team within the Property Services Group.

Emma specialises in environmental compliance issues. As a solicitor within the Planning, Environment and Land Compensation Team, she has provided advice regarding planning approvals, environmental licences, heritage matters and environmental licences for various clients including developers and government entities.

Areas of Expertise:

- Environmental Approvals and Compliance;
- Planning approvals and associated litigation;
- Water licences and agreements;
- The proposed emissions trading scheme, and national greenhouse and energy reporting obligations;
- Government processes and policies; and
- Construction and contracts

We want your feedback

If you have topics or issues that you would like the team to write about please let us know. Suggestions can be sent to Asha Clucas at asha.clucas@lavanlegal.com.au

Your personal details

Lavan Legal may use personal information we have collected about you to send materials to you about legal and related issues we think will be of interest, as well as news about Lavan Legal and the services we provide.

If you do not want us to use your personal information for that purpose, or would like us to update your contact details, please email calley.kempson@lavanlegal.com.au providing your name, company name, title, email address, postal address and a contact telephone number.