

TWEED RIVER ENTRANCE SAND BYPASSING PROJECT AGREEMENT BILL 1997

EXPLANATORY NOTES

The Tweed River Entrance Sand Bypassing Project Agreement Bill has been drafted to be consistent with current legislative practice and in modern language. As a consequence particular sections and clauses require little or no specific further explanation and in these Explanatory Notes those parts may be repeated or summarised in general terms only.

GENERAL OUTLINE

The Bill's Short Title

Tweed River Entrance Sand Bypassing Project Agreement Act 1997

Reasons for the Bill

There is a Deed of Agreement which requires that Queensland and New South Wales take steps to have that Agreement ratified by its Parliament. The New South Wales Parliament passed the *Tweed River Entrance Sand Bypassing Act 1995* (NSW), which commenced on 22 November 1995.

The Tweed River Entrance Sand Bypassing Project agreements are:

- (a) the Heads of Agreement signed on 31 March 1994 by the Premiers of New South Wales and Queensland (Schedule 2 of the Bill); and
- (b) the formal Deed of Agreement signed by the responsible Ministers on 2 March 1995, as amended (clause 10.3 only) by the Deed of Further Agreement Number 1 signed on 16 September 1997 (Schedule 1 of the draft Bill is the Deed of Agreement, as amended to incorporate the Deed of Further Agreement Number

1.).

Section 6 of the Deed of Agreement provides requirements for ratification and submission to Parliament as follows:

- “1. Each Party shall promptly take every practicable step to have this Agreement ratified by its Parliament.
2. Each Party, so far as its jurisdiction extends and so far as it may be necessary, shall provide for or secure the execution and enforcement of the provisions of this Agreement and any Acts ratifying it.
3. If either Party is unable to secure ratification of this Agreement because any provision is unacceptable to its Parliament, the Parties shall negotiate in good faith to achieve a solution, including by amendment of this Agreement, which promotes the purpose of this Agreement.”

Objectives of the Legislation

The objective of the Bill is to ratify agreements between the States of Queensland and New South Wales, and to secure the execution and enforcement of those agreements to implement the Tweed River Entrance Sand Bypassing Project. The Project objectives are to:

- (a) improve and maintain the southern Gold Coast beaches (in Queensland); and
- (b) improve and maintain the navigability of the Tweed River entrance (in New South Wales).

The way in which the policy objectives are to be achieved in the Bill

The policy objectives are achieved by ratifying the agreements entered into, and ensuring that sufficient authority exists for the State of Queensland to fulfil its obligations under the agreements.

Alternatives to the Bill

The policy objectives can only be achieved by a new Act of Parliament.

Assessment of the administrative cost to Government

The cost of undertaking the Project itself has previously been committed by the signing of the legally-binding Deed of Agreement with New South Wales. Estimates in 1990 dollars are given in the Heads of Agreement.

The costs of the project may vary substantially from year to year, and each State is liable to meet the actual costs of the project as they become due (clause 14 of the Deed of Agreement). In relation to appropriation, each State has agreed to submit to its respective Parliament annually through the budgetary process for the appropriation of all funds necessary or required for the purposes of the project (clause 21 of the Deed of Agreement).

The cost of administering the Bill itself is expected to be minor.

Consistency with Fundamental Legislative Principles

The Bill is considered to comply with fundamental legislative principles. Drafting to achieve this has resulted in some differences between this Bill and the New South Wales Act.

In Queensland, any amendment to the terms of the Deed of Agreement will require an Amendment Act.

It is important that the project is able to proceed as agreed between the States. Accordingly, so that the State is able to carry out its obligations under the Deed of Agreement to secure the execution and enforcement of the provisions of the agreement, and for synergy with the cognate New South Wales legislation, the Bill provides that an injunction may not impede the project. In recognition of fundamental legislative principles, actions for damages are not excluded.

Consultation

Consultation in relation to the draft Bill was carried out with key stakeholders which comprised the following:

- Queensland State Government
 - Department of the Premier and Cabinet
 - Office of the Queensland Parliamentary Counsel
 - Department of Economic Development and Trade
 - Treasury Department

- Department of Tourism, Small Business and Industry
- Department of Natural Resources
- Department of Justice
- Department of Mines and Energy
- Department of Transport
- Department of Local Government and Planning
- Local Government and Statutory Authorities
 - Gold Coast City Council
 - Beach Protection Authority
- New South Wales Government
 - through the New South Wales Department of Land and Water Conservation
- Tweed River Entrance Sand Bypassing Project
 - Working Group

Organisations consulted supported the Bill, or raised no objection.

NOTES ON PROVISIONS

PART 1 - PRELIMINARY

Clause 1 states the short title of the Act.

Clause 2 defines the agreements.

Clause 3 provides that the Act applies to all persons including the State.

Clause 4 states the purpose of the Act.

PART 2 - RATIFYING AND IMPLEMENTING THE AGREEMENTS

- Clause 5* ratifies the agreements.
- Clause 6* ensures that the State is able to carry out its obligations under the Deed of Agreement to secure the execution and enforcement of the provisions of the agreement, and, to the extent that any of the terms may be inconsistent with existing laws, ensures that (within the specific limits of the project) the terms of the Deed of Agreement are paramount to the extent of that inconsistency. (It is noted that the project objectives are to enhance the coastal environment, and that compliance with other laws is intended.)
- Clause 7* provides that a proceeding for an injunction may not impede the project, thus ensuring that the State is able to carry out its obligations under the Deed of Agreement to secure the execution and enforcement of the provisions of the agreement.

PART 3 - MISCELLANEOUS

- Clause 8* ensures that the Minister administering this Act is empowered to enter into contracts or commercial activities on behalf of New South Wales or as a joint party.
- Clause 9* provides that the Gold Coast City Council will contribute one-half of the State's share of the project costs, as provided by Council decision and agreed between the Council and the State.

SCHEDULE 1

Schedule 1 is the legally-binding Deed of Agreement, which is the formal contract between the States of New South Wales and Queensland. The Deed of Agreement was signed by the then New South Wales Deputy Premier and Minister for Public Works and the then Queensland Minister

for Environment and Heritage on behalf of the respective States on 2 March 1995. Subsequently, by the execution of the Deed of Further Agreement Number 1 on 16 September 1997, the Ministers responsible for the implementation of the project (the New South Wales Minister for Land and Water Conservation and the Queensland Minister for Environment) agreed to amend the Deed of Agreement so as to amend and clarify certain prescribed dates in Clause 10.3. The Deed of Agreement contained in Schedule 1 is the current version as amended.

SCHEDULE 2

Schedule 2 is the Heads of Agreement signed by the then Premiers of New South Wales and Queensland on behalf of their respective States on 31 March 1994. The Heads of Agreement is the in-principle policy agreement between the States of New South Wales and Queensland. From this policy basis, the Deed of Agreement was developed.