

LAND SALES AMENDMENT BILL 2001

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the legislation

The purchase of “off-the-plan” residential building units in Queensland is governed by the *Land Sales Act 1984* (“the Act”), which refers to such units as “proposed lots”.

Due to the construction time required to complete large-scale unit developments, persons who invest money to purchase proposed lots in these developments may have to wait several years before they are able to obtain a registrable instrument of transfer for their lot. The Act is designed to protect the interests of such persons by requiring that money invested be held on trust, and that the money is returnable to the person if the vendor is unable to provide a registrable instrument of transfer within 3.5 years of the money being invested.

The Act originally allowed the vendor 18 months to provide the purchaser of a proposed lot with a registrable instrument of transfer to that lot. This period was increased to 24 months in 1985, to 36 months in 1995, and to the present 3.5 years in 1997. These increases were made in recognition of the ever-growing size of residential unit developments in Queensland.

In October 2001, the Sunland Group Limited (“the Sunland Group”) unveiled an ambitious plan to develop a 78-storey residential unit development on the Gold Coast. Given the scope of this project, it would not be possible for the vendor to provide potential purchasers with a registrable instrument of transfer within the 3.5 year timeframe. Without any certainty that money invested would not be withdrawn by purchasers prior to completion of the units, it was unlikely that the Sunland Group would secure the necessary funding for the development.

Despite the unprecedented nature of this development, it is possible that similar ventures may be proposed from time to time, and therefore it is desirable that the Act be able to accommodate such projects. The Sunland Group development illustrates the need to revisit the period allowed by the

Act for a registrable instrument of transfer to be provided to purchasers of proposed lots.

A further across-the-board increase of the period would not be justified on the strength of the Sunland Group development alone. Therefore, it is proposed to amend the Act to allow the period to only be extended in exceptional circumstances, upon the approval of the Minister. Prior to the 1997 amendment to the Act, a similar Ministerial discretion existed to allow a case-by-case extension of the period. This discretion was removed to promote greater commercial certainty and safeguard the interests of consumers investing in unit developments. These considerations remain highly relevant today, and are reflected in this Bill.

The provisions contained in the Bill:

- allow for the existing 3.5 year period to be extended in exceptional circumstances to accommodate large-scale residential unit developments;
- require that any extension must be by way of an amendment to the Regulation;
- limit the period of extension that may be granted to a maximum of 12 months beyond the existing 3.5 year period; and
- ensure that persons investing in proposed lots are advised in writing, before paying any money, that an extension to the period has been granted.

The Bill does not affect the existing provisions in the Act in relation to money invested being held on trust, and the ability of persons to obtain the return of the money after the expiration of the period within which a registrable instrument of transfer must be provided.

Administrative Cost

As it is not anticipated that applications for extensions will be received on a regular basis, the cost of processing the applications will be negligible.

Fundamental Legislative Principles

It is a fundamental legislative principle that legislation have sufficient regard to the institution of Parliament, in that it subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly. The Bill enables an amendment to the Regulation (granting an extension of

time) to be made upon the recommendation of the Minister, which arguably offends this principle. The *Statutory Instruments Act 1992* allows for Parliament to rigorously scrutinise a regulation, and disallow it if necessary.

Arguably, it is more appropriate for the Minister to adopt a decision-making role in these matters, because a developer that has obtained all necessary approvals should not be required to then obtain what would be, in effect, a further approval from Parliament to proceed. The purpose of the Act is to ensure consumer protection, and not to provide for planning approval.

Consultation

The need for this Bill only became apparent at a very late stage of the planning phase of the Sunland Group development. Given the brief timeframe for introducing the Bill, there has not been the opportunity to conduct the usual consultation

NOTES ON PROVISIONS

Short title

Clause 1 sets out the short title of the Act.

Act amended

Clause 2 provides that this Act amends the *Land Sales Act 1984*.

Insertion of new section 28

Clause 3 introduces a new section 28. That section enables a regulation to prescribe a period of more than 3.5 years but not greater than 4.5 years beyond which a purchaser may require the return of any money invested in a proposed lot. The new period applies only if a notice in an approved form had been given to the purchaser by the vendor or the vendor's agent before the purchaser entered upon the purchase of the proposed lot. The notice

will advise the purchaser of the period prescribed by the regulation. The provision will have no retrospective effect.