

BEACH PROTECTION LEGISLATION AMENDMENT BILL 2003

EXPLANATORY NOTES

GENERAL OUTLINE

Short Title

The short title of the Bill is the *Beach Protection Legislation Amendment Bill 2003*.

Policy Objectives of the Legislation

The policy objective of the Bill is to provide certainty for persons who own land which may have been registered by the Registrar of Titles without regard to the requirements of section 45 of the *Beach Protection Act 1968* and to ensure that persons who are presently unable to register lots 82 to 96 on plan SP 143333 at Monterey Keys, are allowed to do so while also ensuring that no future subdivision of land occurs on this development until land is surrendered to the State in accordance with the stated requirements of the Governor in Council.

Reasons for the Bill

The Bill incorporates legislative changes necessary to remove uncertainty in relation to the legality of the registration of instruments of title for allotments where consent for the subdivision was required from the Governor in Council under the *Beach Protection Act 1968* but not given. The Bill also provides for dealings, which are specific to the Monterey Keys development on the Gold Coast. It is considered desirable to remove any uncertainty regarding these issues before the *Beach Protection Act 1968* is repealed on 20 October 2003 by the commencement of the *Coastal Protection and Management and Other Legislation Amendment Act 2001*.

Achieving the Objective

The objective of the Bill will be achieved by enacting amendments to the *Beach Protection Act 1968* and the *Coastal Protection and Management and Other Legislation Amendment Act 2001* to:

- (a) protect the interests of purchasers of land for lots 82 to 96 on plan SP 143333 at Monterey Keys where the developer of the land has not complied with Governor in Council consent requirements pursuant to Section 45 of the *Beach Protection Act 1968*, and
- (b) prevent any further subdivision of land described as lot 100 on SP 143333 until such time as the developer has complied with a condition of a Governor in Council consent requiring surrender of land to the State, and
- (c) remove any uncertainty in relation to land for which an instrument of title has been recorded by the Registrar of Titles without the developer providing the requisite certification from the Beach Protection Authority under the *Beach Protection Act 1968*, stating that the consent has been given by the Governor in Council and that any terms and conditions have been complied with.

Alternatives to the Bill

Legislative amendment was considered to be the most effective and efficient way to achieve the above objectives. An alternative which would reduce the uncertainty on the legality of the registration of the plans, would be for the Registrar of Titles to take action under section 26 of the *Land Titles Act 1994* to either:

- (a) apply to the Supreme Court for direction: or
- (b) state a case for decision by the Supreme Court,

on whether it is lawful to register a plan which has a Governor in Council consent under the *Beach Protection Act 1968* where a condition of consent has not been complied with.

Resolution of the issues as outlined above, would mean that the Court rather than the Government made the decision as to whether Section 45 of the *Beach Protection Act 1968* allows registration of part of a relevant subdivision, or whether the whole of the subdivision must be registered at the same time.

Administrative costs and savings to Government

Clarifying the requirements with respect to the status of the existing titles which have been registered without the certification of the secretary of the Beach Protection Authority will provide clarity to Government and the community and should provide savings to Government through reductions in legal costs.

Consistency with Fundamental Legislative Principles

Section 4(3)(a) of the *Legislative Standards Act 1992* requires legislation to have sufficient regard for the rights and liberties of individuals. The proposed amendments clarify the earlier position where the consent of the Governor in Council had been given subject to a condition of surrendering land to the State and, if the applicant had proceeded according to plan, a case for compensation would not arise under the *Beach Protection Act 1968*. The proposed amendment is also beneficial because it ensures the public is protected from being placed in the same position as the current land owners at Monterey Keys.

Consultation

Limited consultation has occurred with stakeholders affected by the actions taken by the developers of Monterey Keys. The provisions of the Bill have been developed by the Environmental Protection Agency in conjunction with the Departments of Natural Resources and Mines, the Department of the Premier and Cabinet, the Department of Local Government and Planning, and Crown Law.

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Clause 1 Short title

Clause 1 sets out the short title of the proposed Act.

PART 2—AMENDMENT OF BEACH PROTECTION ACT 1968

Clause 2 Act amended in pt 2

Clause 2 provides that part 2 amends the *Beach Protection Act 1968*.

Clause 3 Insertion of new sections 61, 62 and 63

Clause 3 inserts new sections 61, 62 and 63 after section 60 of the *Beach Protection Act 1968*

61 Particular plan of subdivision may be registered

Section 61 declares that despite the requirements of section 45 of the *Beach Protection Act 1968* the Registrar of Titles, may register the plan of subdivision SP 143333 which has been lodged with the Register of Titles under the *Land Title Act 1994* and which establishes lots 82 to 96 and lot 100. This will allow those persons who have paid deposits for lots 82 to 96 on plan SP 143333 to obtain title for these lots, thereby reducing any uncertainty about the legality of such an action on behalf of the Registrar of Titles and protecting the interests of those persons where the developer has not yet complied with Governor in Council consent requirements pursuant to Section 45 of the *Beach Protection Act 1968*.

62 Validation of particular plans of subdivision

Section 62 (1) provides explicit direction that in circumstances where a plan of subdivision has been registered under the *Land Title Act 1994* and the requirements of section 45 of the *Beach Protection Act 1968* applied to any part of the plan (certification by the secretary of the Beach Protection Authority that the necessary consent had been given by the Governor in Council and that any condition have been complied with) then 62 (2) applies.

Section 62(2) declares that if an indefeasible title has been created under the *Land Title Act 1994* following registration of the plan, then the titles are and remain lawfully created titles despite any requirements which may not have been fulfilled under section 45 of the *Beach Protection Act 1968*. This section will ensure that, in those circumstances where the plan of subdivision should have been

forwarded to the secretary of the Beach Protection Authority to certify that the consent of the Governor in Council had been obtained for the subdivision and that the conditions of the consent had been complied with, and the Registrar of Titles registered titles without this certification, the registration of the titles is lawful. As this situation has already occurred for other subdivisions without significant impacts on coastal management, it is desirable to clarify the legality of such registrations prior to the repeal of the *Beach Protection Act 1968* on 20 October 2003.

63 Protection of erosion prone area

Section 63(1) declares that after the plan of subdivision SP 143333 has been registered in accordance with section 61 of the *Beach Protection Act 1968*, no further subdivision of land comprising lot 100 on plan SP 143333 may occur until such time as the developer has surrendered land referred to as the “erosion prone area” to the State as a reserve for ‘Beach Protection and Coastal Management’ purposes. This will further enhance the protection of Queensland’s coastal environment by making it clear that no further subdivision of land on SP 143333 may occur until the stated requirements of the Governor in Council condition requiring land to be surrendered to the State, has been complied with.

Section 63(2) provides the definition of “erosion prone area” for the purpose of section 63(1) by reference to a strip of land along Saltwater Creek which is (a) designated in various maps; and (b) mentioned in the consent of the Governor in Council given on 19 September 2002. This definition is different to the definition of erosion prone area in other parts of the *Coastal Protection and Management Act 1995*.

PART 3—AMENDMENT OF COASTAL PROTECTION AND MANAGEMENT AND OTHER LEGISLATION AMENDMENT ACT 2001

Clause 4 Act amended in pt 4

Clause 4 provides that part 3 amends the *Coastal Protection and Management and Other Legislation Amendment Act 2001*.

Clause 5 Insertion of new s 19A

Clause 5 inserts section 19A of the Act in Chapter 2, after section 19.

19A Insertion of new ch6, pt3

Section 19A inserts a new chapter 6, part 3.

**PART 3—TRANSITIONAL PROVISIONS FOR
BEACH PROTECTION LEGISLATION
AMENDMENT ACT 2003**

The Coastal Protection and Management and Other Legislation Amendment Act 2001 will insert a new Section 122 in the *Coastal Protection Management Act 1995*. Section 122(1) declares that after the plan of subdivision SP 143333 has been registered in accordance with section 61 of the *Beach Protection Act 1968*, no further subdivision of land comprising lot 100 on plan SP 143333 may occur until such time as the developer has surrendered land referred to as the “erosion prone area” to the State as a reserve for ‘Beach Protection and Coastal Management’ purposes. This will further enhance the protection of Queensland’s coastal environment by making it clear that no further subdivision of land on SP 143333 may occur until the stated requirements of the Governor in Council condition requiring land to be surrendered to the State, has been complied with. It is considered necessary to place this section in the *Coastal Protection and Management and Other Legislation Amendment Act 2001* as section 63 of the *Beach Protection Act 1968* will cease to have any effect when the Act is repealed on 20 October 2003.

Section 122(2) provides the definition of “erosion prone area” for the purpose of section 122(1) by reference to a strip of land along Saltwater Creek which is (a) designated in various maps; and (b) mentioned in the consent of the Governor in Council given on 19 September 2002. This definition is different to the definition of erosion prone area in other parts of the *Coastal Protection and Management Act 1995*.