

Inala Shopping Centre Freeholding Bill 2006

Explanatory Notes

Short Title

Inala Shopping Centre Freeholding Bill 2006

General Outline

Objective of the Bill

The objective of the Bill is to give the existing holders of State Housing Perpetual Town Leases of the Inala Shopping Centre, Brisbane, the opportunity to acquire freehold titles in respect of their leased lands under a self-governing community titles scheme, upon payment of an amount equal to an agreed unimproved value for their lands, thereby enabling the State to terminate its involvement in the management of the centre.

Reasons for the objectives and how they will be achieved

The Inala Shopping Centre (the 'Centre') consists of 20 perpetual town leases under the *Housing Act 2003* (formerly the *State Housing Act 1945*), a public road which is used as a car parking area and freehold land vested in the State, as represented by the Department of Housing (the 'department').

The department has, for a number of years, sought to divest itself from the its role in the Centre and to place it in the hands of private operators in the belief that its future as part of the Inala and surrounding community is better secured under appropriate tenure and management arrangements. For many years, the department has been the de-facto manager of the Centre and, in that role, has provided essential services such as car park maintenance, security and cleaning of common areas. A management role is not consistent with the department's core activities.

After lengthy negotiations with the lessees in the Centre about the future tenure and management arrangements, the lessees have agreed to the conversion of the Centre to a layered community titles scheme under the *Body Corporate and Community Management Act 1997*. As part of this

agreement, the existing leases will be cancelled and the lessees will purchase freehold titles to their lots.

The Bill will, by bringing the Centre under the *Body Corporate and Community Management Act 1997*, allow the lessees, through a body corporate structure, to control expenditure within the Centre and to make collective decisions relating to the management and future of the Centre.

Consistency with Fundamental Legislative Principles

The Bill is generally consistent with the *Legislative Standards Act 1992*. The lessees have agreed to the introduction of a community titles scheme in a form proposed and explained by the department and have been advised, and have had the opportunity, to obtain independent legal and financial advice in relation to their rights and obligations under the proposed community titles scheme. Any adverse impact on the existing registered sub lessees (whose interests will be preserved under the community titles scheme) in relation to being required to contribute under their sub leases to outgoings for the community titles scheme which are payable by the lessees will depend on whether the terms of the existing sub leases contemplate the sub lessees having to contribute to such costs.

Consultation

Consultations have been undertaken with all lessees. Lessees were invited to apply to convert their leases in terms proposed under the Bill according to a detailed invitation issued by the department.

Consultation has also been undertaken with the Department of the Premier and Cabinet, Queensland Treasury, Queensland Transport, Department of State Development, Trade and Innovation, Department of Natural Resources, Mines and Water and the Brisbane City Council.

Notes on Provisions

Part 1—Preliminary

Short title

Clause 1 sets out the short title as the Inala Shopping Centre Freeholding Act 2006.

Commencement

Clause 2 provides for the commencement of the Act, other than section 32(2) and part 6, division 2, on a day to be fixed by proclamation. Section 32(2) and part 6, division 2 will commence 1 year after part 2 commences.

Acts bind all persons

Clause 3 provides that the Act binds all persons, including the State.

Dictionary

Clause 4 provides that the dictionary in schedule 5 defines particular words used in the Act.

Part 2—Preparation of shopping centre land for creation of community titles schemes

Land shown on sch 1 plan

Clause 5 defines ‘shopping centre land’ and ‘excluded land’.

Permanent closure of road

Clause 6 permanently closes those parts of the shopping centre land and excluded land that are, before the commencement of the Act, dedicated as a road for public use. Those parts become unallocated State land. Clause 6

applies despite provisions in the *Land Act 1994* dealing with the closure of roads.

Issue of deeds of grant for shopping centre land and excluded land

Clause 7 provides for the issuing of deeds of grant to the State for the shopping centre land and the excluded land. However, any shopping centre lease will continue until it is cancelled under section 15 or it is otherwise terminated.

Preparation and registration of plan of survey

Clause 8 requires the departmental chief executive to prepare and lodge for registration a plan of survey creating 1 lot for the shopping centre land and 1 lot for the excluded land that generally corresponds with the plan in schedule 1.

Part 3—Establishment of community titles scheme

Plans of subdivision for community titles scheme

Clause 9 requires the departmental chief executive to lodge 2 plans of subdivision for registration in relation to the shopping centre land. The first plan (SP169871) will subdivide the shopping centre land into a principal community titles scheme as shown in schedule 2. The second plan (SP169873) will subdivide lot 22 in the principal community titles scheme into a subsidiary community titles scheme as shown in schedule 3. The plans of subdivision are taken to have been approved by the Brisbane City Council under section 50 of the *Land Title Act 1994*.

Community management statements for community titles schemes

Clause 10 requires the departmental chief executive to lodge a community management statement for each community titles scheme. The statements are taken to have been endorsed by the Brisbane City Council under section 60 of the *Body Corporate and Community Management Act 1997*.

Date of establishment of community titles scheme

Clause 11 provides that, despite the *Body Corporate and Community Management Act 1997*, the principal and subsidiary community titles schemes are taken to be established on the conversion day. The conversion day is 60 days after the first community management statement for the subsidiary community titles scheme is recorded by the registrar of titles.

Before the conversion day, an easement (for example, for access purposes) may be registered over freehold land to be included in the principal or subsidiary community titles scheme while that land is held by the State. Any such easement will not take precedence over the rights and obligations of a lessee under a shopping centre lease.

State as original owner for community titles schemes

Clause 12 provides that the State can not be prosecuted for not complying with an obligation under the *Body Corporate and Community Management Act 1997* where the State is acting as the original owner for the principal or subsidiary community titles scheme.

As the improvements in the shopping centre have been built by lessees, certain obligations imposed on an original owner of a community titles scheme under the *Body Corporate and Community Management Act 1997* relating to the provision of documents to the body corporate at a first annual general meeting will not apply to the State (as the original owner).

Notice to lessees of recording of community management statements etc.

Clause 13 requires the departmental chief executive, within 7 days of the recording of the community management statements for the principal and subsidiary community titles schemes, to give each lessee a notice stating that the statements have been recorded, the conversion day and other information the lessee is required to give the chief executive before the conversion day, and a tax invoice. The other information generally relates to information that must be provided to public authorities when a change of ownership of land is effected.

Requirement for lessees to pay conversion cost and provide information

Clause 14 requires each lessee to pay to the departmental chief executive, before the conversion day, the conversion cost for a lot in a community

titles scheme. The conversion cost consists of an amount equal to the unimproved value of the land contained in the lease that was in force under the *Valuation of Land Act 1944* on 30 June 2003, applicable GST and transfer duty under the *Duties Act 2001*. Although a freehold lot to be acquired by a lessee may differ in size from the land contained in a shopping centre lease, a lessee is not required to pay anything more for the additional land (except for any applicable transfer duty).

Part 4—Transfer of lots from State to lessees

Termination of shopping centre leases and transfer of lots to lessees

Clause 15 provides that all shopping centre leases that are still in force on the conversion day are cancelled on that day. On the same day, a lot in the principal or subsidiary community titles scheme is transferred from the State to each person who was, immediately before the conversion day, a lessee of a relevant lease (as shown in schedule 4) for the lot. A lot is transferred even if the transferee has not complied with clause 14.

All sub leases and other interests to which a shopping centre lease was subject before the conversion day are taken, from the conversion day, to be held in relation to each relevant lot.

Because of the special nature of the conversion of leases to freehold lots under the Bill, the *Land Sales Act 1984* and chapter 5, parts 1 to 3 of the *Body Corporate and Community Management Act 1997* do not apply.

Transfer lot for which a relevant lease is not in force immediately before the conversion day

Clause 16 applies where more than 1 lease is to be converted into only 1 lot and 1 of those leases is not in force before the conversion day (because, for example, it was forfeited). If 1 lease still exists at the conversion day, a transfer lot is transferred to the persons who were the lessees of the existing lease and those who were the lessees of the lease that no longer exists.

If there is no relevant lease for a transfer lot at the conversion day, the lot is not a transfer lot. Accordingly, the lot is not transferred to anyone under clause 15.

Co-ownership of transfer lots

Clause 17 provides that if a transfer lot is transferred to more than 1 person the persons take the same individual interests in the lot as they had in the relevant lease or leases for the lot immediately before their cancellation. Because of the different holdings in relation to SHPTLs 1201 and 1462, (which will comprise lot 3) special provision needs to be made for how lot 3 is to be held (that is, how all of the lessees named on the SHPTLs 1201 and 1462 are to share the freehold of lot 3).

Recording conversion of title etc.

Clause 18 requires the departmental chief executive to give relevant notices to registering authorities in relation to the cancellation of leases and the transfer of transfer lots. The relevant registering authority is required to record the cancellations and transfers.

A statutory covenant in favour of the State for taxi rank purposes must be registered before the transfer of lot 20 from the State. This covenant is effective even though the covenant is entered into by the State with the State.

Creation of chief executive's charge

Clause 19 provides that if the conversion cost under clause 14 is not paid to the departmental chief executive before the conversion day, a transfer lot is transferred to the relevant person subject to a charge in favour of the chief executive that secures payment of the conversion cost.

Enforcement of chief executive's charge—notice of intention to sell lot

Clause 20 provides that if the departmental chief executive decides to enforce payment of the conversion cost, a written notice of intention to sell a lot must be issued to the registered owner and any mortgagee. The notice of intention must include all the matters mentioned in subsection (3) and provide the registered owner with at least 14 days to pay the 'demand amount'. The 'demand amount' is the unpaid conversion cost and any interest, which the chief executive may decide to apply from the day the payment period ends. If the registered owner does not pay the demand amount within the payment period, the chief executive may sell the lot or allow a mortgagee of the lot to sell it.

Release of chief executive's charge on payment of conversion cost etc.

Clause 21 provides for the circumstances in which the chief executive's charge may be released in respect of a lot.

Sale of lot by chief executive

Clause 22 provides that if the chief executive may sell a lot under clause 20, it may be sold by public auction or private contract. Clause 22 also provides how the chief executive must apply the proceeds of any sale and how the registrar of titles must register a purchaser as the new registered owner of the lot.

Priority of local government charge preserved

Clause 23 provides that where a lot to be sold by the chief executive is subject to a local government charge (for example, for the non-payment of rates), the chief executive must, before selling the lot, give written notice of the chief executive's intention to sell to the relevant local government. The provision ensures that the chief executive may only sell the lot subject to the local government charge or on conditions agreed by the local government.

Chief executive's charge not affected by mortgagee sale

Clause 24 provides that if a transfer lot which is subject to the chief executive's charge is sold by a mortgagee, the chief executive's charge is not released by the sale and, despite the *Property Law Act 1974*, the lot is transferred to the purchaser subject to the charge.

No compensation

Clause 25 makes it clear that no compensation is payable to any person in relation to any action taken under part 4 of the Bill.

Part 5—Miscellaneous provisions

Particular proceedings not affected by cancellation of shopping centre leases

Clause 26 deals with legal proceedings by the lessee of SHPTL 1252 against the lessee of SHPTL 1803. The clause ensures that, despite the cancellation of the leases under the Bill, effect may be given to an order of a court requiring the lessee of SHPTL 1803 to grant an easement over its land in favour of the lessee of SHPTL 1252. The provision is not intended to alter any party's rights in respect of the proceedings.

Although the easement is to be registered after the conversion day, and therefore in the freehold land register under the *Land Title Act 1994*, the easement must first be capable of being registered under the *Land Act 1994* (which applies to the SHPTLs). This means the approval of the Minister administering the *Land Act 1994* is required. Subsection (5) ensures that the easement can only be registered in the freehold land register if, in ordinary circumstances, it had been granted over freehold land.

Exempt development

Clause 27 provides that any development under this Act that would be assessable or self-assessable development under the *Integrated Planning Act 1997* (including under the Brisbane City Council's planning scheme) is taken to be exempt development for that Act.

Provision for survey plan if particular access easement created

Clause 28 provides that the Brisbane City Council is taken to have approved any plan of survey that would ordinarily be required for an access easement under section 83(2) of the *Land Title Act 1994*.

Notice of change of ownership of transfer lot

Clause 29 provides that information relating to the transfer of a lot must be given by the departmental chief executive to the chief executive (valuation) under the *Valuation of Land Act 1944*.

Payment of costs—adjustment of lot entitlement schedule for subsidiary scheme

Clause 30 provides that if, within 3 months after the conversion day, the first owner of a lot in the subsidiary community titles scheme applies to the Commissioner for Body Corporate and Community Management for an adjustment of the lot entitlement schedule for that scheme and the application is dealt with by specialist adjudication under chapter 6, part 8 of the *Body Corporate and Community Management Act 1997*, the chief executive will pay for the costs of the adjudication. The provision does not apply to the payment of an applicant's or another party's own costs.

Part 6—Amendments of Acts

Part 6 amends provisions in the *Housing Act 2003* and the *Housing (Freeholding of Land) Act 1957* that relate to the shopping centre leases in the shopping centre.

Schedules 1 to 3

Schedules 1 to 3 contain plans of the shopping centre land, excluded land and the proposed subdivisions of the centre into the principal and subsidiary community titles schemes.

Schedule 4

Schedule 4 shows the transfer lots and the relevant leases.

Schedule 5

Schedule 5 defines words used in the Bill.