Speech by

Hon. STEVE BREDHAUER

MEMBER FOR COOK

Hansard 13 April 1999

TRANSPORT (SOUTH BANK CORPORATION AREA LAND) BILL

Hon. S. D. BREDHAUER (Cook—ALP) (Minister for Transport and Minister for Main Roads) (2.57 p.m.), in reply: Fancy members of One Nation lecturing me or anybody else in the Parliament about ethics! Fancy One Nation members lecturing anybody in this Parliament, particularly me, about people's property rights! I ask: where do they stand on native title, which does not involve a Supreme Court decision but two High Court decisions that have recognised the rights of indigenous people to land in Australia? They say that the right to land is sacrosanct, but where do they stand on the issue of native title? Where do they stand on the issue of just compensation if that land is taken away? Fancy them coming in here today and giving me a lecture on people's land rights!

I find it absurd that members of One Nation argue that the Government should not have the capacity to acquire land for public purposes on terms of just compensation. It is a nonsense for members of One Nation to suggest that. Even Noble and Elenis do not question our right to acquire land. The dispute is about the level of compensation, and that is the issue that they took to the Supreme Court. This issue is the fact that the last time they spoke to us—and I will go through this in detail in a minute—they wanted compensation for their land that was well in excess of what a Government, which is accountable for taxpayers' money, is able to pay.

When we acquire land, we do so on the basis of its market value. If there is a dispute, we try to negotiate fair terms and compensation. If the dispute is not able to be resolved, the matter goes to the Land Court, which determines the proper valuation, terms and compensation. We have not sought to remove that right through this Bill or through any part of the process undertaken by either us in Government over the past nine months or by the previous Minister, the member for Gregory, under the former coalition Government, when it initiated this acquisition process. Fancy the member coming in here today and suggesting that we should acquire all of the land before undertaking the planning processes in respect of such a major project as the South East Transit Project! Fancy his coming in here and suggesting to the Parliament that we should acquire the land before we have done the design and planning work and determined the route!

Mr Schwarten: You would have to buy Brisbane.

Mr BREDHAUER: The member for Rockhampton, the Minister for Public Works and Housing, is right; we might as well just buy Brisbane. It is a nonsense to suggest that we should acquire the land before finishing the detailed planning. There was a lengthy process of public consultation.

As a Minister, I find introducing this Bill difficult. It is unfortunate that we have had to use legislation to validate the process of acquiring the land held not just by these two people—a point raised by the member for Gladstone—but also the land along the entire route of this corridor through South Bank. I do not take any pleasure from coming in here and saying that we need to validate the corridor by a special Act of Parliament. As the member for Gladstone in particular knows only too well, that is something to which we do not seek recourse often. However, the reality is that in order to deliver certainty in respect of this issue it was necessary for us to introduce the legislation.

Today, much of what we have heard in this debate from members opposite stems from a letter delivered, as I understand it, to a significant number of members of Parliament yesterday evening and/or this morning. Without trying to score points, I point out that, although this letter is addressed to me, I am yet to receive it, other than by way of copies provided to me by other members of Parliament. I have conducted checks on the system in my ministerial office and on the system here. As at 2.30 this afternoon, which is when I came into the House, this undated letter, which is addressed to me and

which has been distributed widely to other members of the Parliament, had not been delivered to me as the person to whom the letter was addressed. The reality is that most of the comments made today by members, including those of the member for Gladstone, related to that letter. I will deal with the issues raised in the letter in some detail.

The issue is securing the alignment. There is no question that the alignment has changed. There have been a couple of occasions when the alignment for the South East Transit Project has changed. The busway alignment for transit through the South Bank site shifted twice during the period from the original Cabinet approval for the SET Project in August 1996 to the ministerial approval of the final alignment in July 1997. These processes were largely in response to concerns by the South Bank Corporation. The overall process of finalisation of the alignment was characterised by extensive public consultation on the options.

The route changed. A busway route was identified in the original South Bank plan. The route changed mainly because the South Bank Corporation objected to the busway going down Grey Street. The previous Government made a decision to change the alignment. There were then various discussions and community consultations about the final alignment. The current alignment was determined as a result of those processes. It is true that they were not progressively reflected in the South Bank Development Plan, for reasons largely associated with the dynamic nature of the alignment selection process and a failure to recognise that it might be necessary.

We did not realise that the South Bank Corporation Act may be found to have precedence over the Acquisition of Land Act, as was found by Justice Moynihan of the Supreme Court. We did not realise that it might be necessary to have the final busway alignment shown on the concept of the busway as being a lawful purpose for the sake of property acquisition.

The assertion has been made that nothing was done. The matter was raised by the Parliamentary Public Works Committee when it inquired into the SET Project. The matter was also raised in this place by the Minister for Families, Youth and Community Care and Minister for Disability Services, the local member for that area, Anna Bligh. The member has made numerous representations to me since I have been the Minister, and I know she made similar representations to the previous Minister, trying to protect the interests of her constituents and make sure they got a fair deal out of this process. Although the honourable member alerted Parliament— rightly as it turns out—to the fact that there could potentially have been a problem with the conflict between the South Bank Corporation Act and the Acquisition of Land Act, when the department took legal advice from Crown Law—and it was independently supported by advice from Queen's Counsel; we did not just rely on the Crown Law advice—the advice to the Government was that the Acquisition of Land Act took precedence over the South Bank Corporation Act and that, through that process, if we followed the procedures laid down in the Acquisition of Land Act, we would properly acquire the land for the entire corridor, including the land owned by the Nobles, Executive Chef and Elenis.

As we had legal advice to that effect, we went through the due processes of the Acquisition of Land Act. Justice Moynihan found differently, and that presented us with a problem. The problem was that we did not have secure tenure over the corridor through South Bank. A number of options were canvassed in relation to how we might deal with that. We looked at whether the busway could be redesigned. However, it effectively could not be redesigned so that we could avoid either of those two properties. How long is the busway?

A Government member: Thirty kilometres long.

Mr BREDHAUER: We would be talking about changing the corridor for a 30 kilometre busway so that it avoids two properties. We did look seriously at whether it could be redesigned that way. It physically was not possible to redesign the corridor to do that. We looked at a range of other mechanisms that we might have been able to use. We looked at the possibility of amending the South Bank Development Plan. However, the problem with the South Bank Development Plan is that, under the South Bank Corporation Act, we would have to go through a process of public consultation. It would have been months and months before an amendment to the South Bank Development Plan could have been effected. The time frames for the project are such that we could not afford that delay. We were also in possession of advice from the lawyers on behalf of these people that, even if we had moved to change the South Bank Development Plan, they would have reserved—and I do not have any problem with this—their legal right to take action in respect of those processes. We would have found ourselves six to eight months down the track with an amendment to the South Bank Development Plan only to finish up back in court, anyway. It was a matter of timing. We explored the other alternatives. Ultimately, we came to the conclusion that the best way to deal with it was to bring in a special Act which validated the process of acquisition. That is what it does.

We are not resuming land. Let us be clear about that. This Bill is not about resuming land at South Bank. This is about validating the process that was used under the Acquisition of Land Act to enable us to secure that corridor. That is why it does not simply relate—this is another matter raised by the member for Gladstone—to the two properties; it relates to the entire corridor through South Bank. If

we do not secure the entire corridor and all of the properties that were required to be resumed through South Bank, we would stand the possibility of a similar challenge to that which was successful in the Supreme Court in the case of Noble and Elenis being undertaken by other parties from whom we have resumed land. That is why we have had to go through this process.

The project officers commenced resumption proceedings in respect of the Noble and Elenis properties prior to February 1998 and served the notice of intention to resume to the property owners on 3 February 1998. During this period and throughout 1998 the property owners were reluctant to speak to the project officers on advice from their solicitor. Moreover, the solicitor was unprepared on a number of occasions to meet with the project officers or the department's legal advisers, and I will say more about that.

Following the issuing of the notice of intention to resume, Noble and Elenis sought judicial review of the resumption process. So we had only issued a notice to resume; we had not actually resumed the land. They then sought judicial review of the issuing of a notice. Crown Law advised us at the time that, since no decision had been made, there was nothing to which judicial review could be applied. This opinion was actually provided to the property owners, but we had no response. Consequently the resumption process was conducted and no formal objection—bear this in mind—to the resumption was raised by Noble and Elenis. So we proceeded through the process—and this was before my time, so I am acting on advice from the department.

The land was proclaimed for transport purposes on 12 June 1998, one day before the Queensland State election in 1998. Between June and October project officers made several attempts but were unable to establish meaningful contact with the owners or their solicitors. Acting on representations from the local member and in my own attempt to try to seek justice for these people, I urged the department to do whatever it could to try to resolve this issue to the satisfaction of the property owners, but we had a lot of trouble actually getting them to respond to attempts we made to contact them to discuss the issue.

On 26 February 1999 at a without prejudice meeting with the owners and their solicitor, a claim was made by the owners as follows: $2.3m in the case of the Noble property and $1.2m in the case of the Elenis property. The verbal advice was that this was not negotiable. We were told, "Here is our demand. You pay it." This is where we get to the nub of it. It is not an issue about whether we have the right to acquire the land; it is an issue about the level of the compensation. The department's valuers had originally assessed the property values as $565,000 in the case of the Noble property and $265,000 in the case of the Elenis property. So their claims were substantially—a number of times—in excess of the valuation of the properties.

It was indicated in Executive Chef's recent letter—that is the letter that members have quoted today—that no formal claim for compensation had been made. However, the project officers were given to believe that the claim I have just referred to was formal and final, that is, the February claim for $2.3m and $1.2m. After that meeting, project officers made a written offer of compensation as follows: Noble, $865,000 and Elenis, $265,000. The revised offer for the Noble property allowed for the cost of relocating the business to an alternative site in the near vicinity.

This offer was made in an effort to effect a negotiated settlement to avoid the continuation of negotiations after special legislation was passed whereby it might be argued that the owners were relatively disadvantaged in their negotiating position compared with their position after the court decision. So when the property owners say that we made the offer and only gave them till the close of business the next day to respond—the issue was that we needed to get the legislation into the Parliament. I was planning to introduce the legislation into the Parliament. We advised them of our revised offers and we advised them to respond by the close of business the following day, hoping that we would be able to negotiate the settlement before the legislation came into the Parliament.

We knew that we would still require the legislation to validate the whole corridor, but we were trying to negotiate an outcome prior to the legislation coming in because we did not want that to be an influencing factor. It is an issue that was picked up this morning by the Scrutiny of Legislation Committee. We have not had time today yet to respond formally to that committee, but let me just say that it is not our intention to affect the value of the property by bringing in this legislation and, in fact, we had specifically sought to resolve the matter prior to the legislation coming into the Parliament so that the legislation could not impact on it. It is my view—and I will write to the Scrutiny of Legislation Committee and I will indicate this—that it will not affect the valuation and that is certainly not our intention.

We are still quite happy—and we have preserved their rights in the Bill—to go to the Land Court and seek a determination. But more than that, I am still happy for us to reach a negotiated settlement. Since I received a copy of the letter which they produced today—and I gave this commitment to the member for Gregory this morning prior to his contribution to the Bill—I have given a commitment and the department has actually written to them today and said, "If you want a negotiated outcome, we are

prepared to negotiate." We have said we are prepared to negotiate. If they want to meet with me personally as part of that process, then I am prepared to do that.

We have tried, for example, to meet with them on a number of occasions. Let me just outline this. We found it difficult to actually set up meetings so that we could discuss or negotiate an outcome. I am advised that South East Transit Project staff arranged meetings between Crown Law, Noble and Elenis or their legal representatives on the following dates between June and November 1998: on 24 August 1998, on 18 September 1998, on 16 October 1998 and on 20 October 1998. So on four occasions meetings were organised between Crown Law, the project officers and the owners of the properties and/or their legal representatives to try to negotiate an outcome on this.

On one occasion that we can establish we were notified by their lawyers that they did not want to proceed with the meeting. On the other three occasions the meetings did not proceed because neither the owners nor their representatives showed up. So on four occasions since I have been the Minister we have actually tried to convene meetings to progress an outcome on this and the meetings have not occurred, but not because we have not been willing to participate and sit down and talk to them but because neither the owners nor their representatives have shown up.

Notwithstanding that, I asked my department to if it could identify properties that would be suitable for the company to move into, particularly as they believed the location, in proximity to South Bank and the Southbank TAFE in particular, was critical to their business. So I asked the department to see whether we could find alternative properties. We do not control the market price of the properties that are available that might suit their business, and it is true to some extent that the properties that were identified were in excess of the compensation that we were offering for their land. But we cannot pay compensation on the basis of how much it is going to cost them to move to the next place. We can only—legally, lawfully and responsibly, I must say—compensate them for the market value of the land that we are acquiring from them.

We acquire land regularly for public purposes—for roads, for transport purposes, for schools, for hospitals—and we cannot pay someone compensation equivalent to how much it is going to cost them to go down the road and buy another house. What we compensate them for is the value of the land that we are acquiring. That is the only prudent way for a Government to act. But we were happy to try to find alternative sites for them. We even contacted the Southbank TAFE to see if there was any possibility of relocating the company onto the premises of the Southbank TAFE. It said that the notion of sharing with commercial operations was okay as far as it was concerned, but it did not have anywhere to accommodate them outside of a redevelopment of some buildings at the TAFE and it did not have the capital program to undertake that. So that was not a possibility at that stage.

But even today I am quite happy for my department to sit down and see if we can work out if there is a place that we can help them to move into. I am not here to stand over people. I am not here to try to deny them their entitlements. What I am here to do is to try to secure the corridor for this major project— $520m—which is going to create jobs, which is going to be an important contributor to our Integrated Regional Transport Plan, which is going to deliver public transport services and which does have time constraints on it. We do need to have the first stage of the busway project completed by September next year when the Olympic soccer tournament is on at the Gabba. That is a constraint that I have to work within.

From working within all of those constraints, we believe that the legislation is the only responsible way to go so that we can secure the corridor. But I am still happy to talk to them to try to settle the matter. Or if they would prefer to go to the Land Court and have the Land Court determine the level of compensation, that right is preserved for them in the legislation. We have not sought to take that right away from them. That is recognised by the Scrutiny of Legislation Committee in its Alert Digest today.

I made no secret of the fact that there were fundamental legislative principles issues in this Bill. In fact, I said to my departmental officers and project officers that in my second-reading speech we should be up front about the fundamental legislative principles issues. There are times when the public interest has to be given a higher priority than the fundamental legislative principles and the rights and liberties of individuals. It does not give me any great joy to do that, but the reality is that there is a public interest here which I believe is of a sufficiently high order to justify the breach of the fundamental legislative principles. We will respond to the Scrutiny of Legislation Committee on the single issue that it has asked us to in today's Alert Digest, but I have given an indication that I do not think it will affect the value.

On the matter of retrospectivity and the other issues, from my reading the Scrutiny of Legislation Committee seemed to be satisfied with the argument I made in my second-reading speech. I know that that argument is disputed to some extent by the letter that arrived today. I said that we have used all mechanisms available to us to resolve this. It is simply not true to say that there were only two attempts and that we did not explore these options fully. We explored alternatives to the legislation. We tried to seek a negotiated settlement on the level of compensation. As I have said, on four occasions the

meeting did not occur because either the owners or their representatives did not show up. We also sought to try to help them to relocate.

I do not believe that we have been unfair in relation to this. Having said that, I still think a special Act of Parliament to validate the acquisition process is not the sort of thing Governments want to do every day. Making that legislation retrospective is not the kind of thing Governments do every day. I acknowledge that it is unusual. In the circumstances I and the Government believe it is warranted.

I appreciate the support I have had from members of the coalition. I say to the member for Gladstone and other members who are concerned about this that I share their concerns. I am not trying to trample on the landowners' rights, as has been suggested. I am quite happy for the department and the project officers to continue to try to negotiate to resolve the level of compensation. As Minister, I cannot prudently agree to the claims for compensation that have been made in respect of these two properties because that would be financially irresponsible of me and it would establish a precedent that we would not be able to sustain in other parts of Queensland.

I think I have covered the issues that were raised. I conclude by saying that the passage of this legislation through the Parliament is necessary so that we can continue with the process of the construction of the South East Transit Project. This particular issue has caused me a lot of anxiety over the last couple of months, since the Supreme Court decision was brought down. People in my department have been fairly closely scrutinised in relation to our processes in respect of this issue. I appreciate the candour with which they have provided me with advice. It has been a difficult issue for them, as it has been for me.

The local member, the member for South Brisbane, has made many representations to me, not just in respect of the South Bank area but also in respect of the project as it affects her entire electorate, as have other members of the Parliament who are affected by the project as it passes through their electorates. We are keen to seek a fair outcome which is within the prudence of this Government to deliver in terms of the level of compensation.

If I can assist to progress that, then I am happy to. If the owners would like me to meet with them or their legal representatives personally then I am prepared to do that, but the passage of this legislation is necessary to secure the integrity of the acquisition process, so that we secure the integrity of the corridor so that the project can proceed.
