Speech by

Hon. D. WELLS

MEMBER FOR MURRUMBA

Hansard 5 December 2001

COASTAL PROTECTION AND MANAGEMENT AND OTHER LEGISLATION AMENDMENT BILL

Hon. D. M. WELLS (Murrumba—ALP) (Minister for Environment) (3.18 p.m.), in reply: At the outset, may I acknowledge that the land that we are making decisions about today are the traditional lands of the Aboriginal people of Australia, including their most revered sites. May I thank honourable members who have participated in this debate today: the honourable members for Capalaba, Pumicestone, Burnett, Redlands, Kawana, Nudgee, Barron River, Thuringowa, Mudgeeraba, Mulgrave, Indooroopilly and Glass House. From the other side may I acknowledge the contributions of the honourable members for Keppel, Hinchinbrook, Mirani, Gladstone and Caloundra.

May I also thank the very many people who were involved in the prolonged consultation with respect to this legislation and the plan that the honourable members have spoken of, including the Urban Development Institute—the UDIA—the Local Government Association of Queensland, the Environmental Defenders Office, many environmental groups, the Extractive Industry Association and port authorities. A large number of groups from all over Queensland have been involved in consultation under a succession of ministers. It did not start with Minister Barton, and I acknowledge his presence in the chamber, nor was it completed under Mr Littleproud, although the matter was pushed strongly ahead with him. In the context of this debate, I would like to give Mr Littleproud an honourable mention because he is part author of the propositions that I have heard that the National Party may very well soon be voting on. I would like to acknowledge Mr Welford and the contribution that he made to getting this legislation into the House.

I would also like to mention the Scrutiny of Legislation Committee and the matters that it raised, because these are very germane to the matters that were raised by the members for Caloundra, Nicklin and Gladstone. The issue raised by the Scrutiny of Legislation Committee was compensation. It concerned dredging and the material that was taken when dredging occurs. The Scrutiny of Legislation Committee asked whether there was going to be compensation in these circumstances, and referred to the Legislative Standards Act. Section 43A of the Legislative Standards Act states that the Scrutiny of Legislation Committee has to have regard to whether the legislation makes rights or liberties or obligations dependent upon administrative power only if the power is sufficiently defined and subject to appropriate review.

The first question to ask is: is the taking of sand, and the chief executive's decision—whether or not somebody can take sand as a result of dredging—a liberty, a right or an obligation? The answer is that it is not. The sand that gets taken is the property of the Crown. The chief executive, acting for the Crown, does not need some sort of Court of Appeal to give further consideration to his decision any more than any private citizen requires a Court of Appeal to determine whether their decision was right when they say to somebody, 'You can have this which is mine,' or 'You cannot have this which is mine.' It is not an issue that requires appeal processes or bureaucracies. This stuff is the property of the state of Queensland and it is not necessary to have any sort of appeal process in there. That is the only question about appeal processes that needs to be considered. We are talking about stuff that is the property of the people of Queensland.

The other issue that was raised by the Scrutiny of Legislation Committee, and which was echoed by a number of members opposite, was the issue of compensation when land is acquired. The term 'compulsory acquisition' was used when referring to the Scrutiny of Legislation Committee's

mandate under the Legislative Standards Act—whether the legislation provides for compulsory acquisition of property only with fair compensation. In circumstances where a developer comes to the government and says, 'I want to turn this into a canal estate,' or 'I want to turn this into some other sort of estate,' the Crown can, if it chooses, say, 'Yes, you may do that in consideration that you provide for the benefit of the public generally a strip of land along the coast or along the waterway.' In other words, it is not a compulsory acquisition; it is a trade. There is no inherent right in anybody to develop land anywhere. That is a right that is accorded under law according to rules that are prescribed by the people of Queensland through this parliament and through the ministers who are authorised by this parliament. We are not talking about a compulsory acquisition of any kind. There is no Legislative Standards Act problem here. There is a simple matter of the surrender of land in return for some other benefit.

This could have been phrased differently, if we wanted to, in these sorts of acts. It is not a change from the previous legislation. It could have been phrased that if some developer wants to develop an area of land by the sea, then they have to pay something that might have been called headworks charges, to use a local government phrase. But that is not what the scheme of the legislation set out to do. The scheme of the legislation always set out to maximise the community's access to the sea. It always set out to ensure that the beautiful coastline, which is the birthright of everybody who lives here, is maximally available to the people of this state. For that reason, the trade-off was the surrender of land.

But there is no question of compensation, because there is no question of compulsory acquisition. It is not compulsory, because nobody has to develop. Nobody is going to take their land away. However, if somebody wants to conduct a development, then it is incumbent upon the chief executive to consider whether an appropriate surrender of a strip of land is desirable, in the interests of the ecology of the place, to protect the sand dunes, to protect the erosion-prone area—because, after all, this applies only to areas declared under the act—or whether some other action is necessary to be taken. So that is the answer to the questions that the honourable members were asking that arose out of the Scrutiny of Legislation Committee's determinations.

At this stage, can I say that the scheme of this whole arrangement can be clarified quite simply. Honourable members opposite have been speaking about the legislation. They have been speaking about the regulations. They have been speaking about the plan. Today, we have before us the legislation. The plan, which was put out previously, is not part of the law of the land. The state coastal management plan is a plan. It is a policy statement. It is a policy document. It is not required to be treated in the same manner that a piece of legislation is required to be treated. It is a document of policy for guidance for local councils.

Honourable members opposite ask: why does it not come here as a regulation? The reason for that is that it is not a regulation, it is not a law; it is a plan, it is a document of guidance. It is very difficult to put a set of principles into regulatory form or into legislative form. Typically, legislation is a set of rules. The state coastal management plan is not a set of rules; it is a set of principles; it is a set of aspirations. If the honourable members opposite would like to go into the jurisprudence of this, I suggest that they read Ronald Dworkin's *Taking Rights Seriously*, which is the landmark jurisprudential document in the matter. But if they are not interested, I will draw this distinction. The plan is a set of principles and the regulations are a set of rules. The principles are sometimes aspirational, sometimes more precisely prescriptive. But they are always in the nature of a plan. If the other side should some day in the future—many years distant, perhaps— constitute the government, they will be able to change the plan. But this is a plan.

The honourable member for Nicklin asked: why is this not subject to the usual regulatory framework? The answer to that question is that it is subject to the usual regulatory framework—to exactly the same regulatory framework as is every other piece of legislation. When the regulations under this legislation are brought in, they will be brought into the House, laid before honourable members, and honourable members can consider them in exactly the same way as every other regulation made under every other act. The perception that the honourable members opposite have that there is some deviation, some difference, in the manner in which the regulations under this act are going to be treated is absolutely not correct. It is absolutely not true. It will be the perfectly standard format. All the usual things are going to happen. So honourable members should relax about that.

I do not know where this misconception came from in the minds of honourable members on the other side of the House. It may very well be that at the briefing which my department offered to honourable members opposite they asked to see the regulations and the answer they got was no. There is very good reason for the answer being no—that is, they were not written yet and we cannot actually discuss things that are not written yet. If honourable members would like a briefing on the regulations when they are available, I am happy to give them that briefing. I can assure them that, should this legislation become an act—should the parliament decide, in its wisdom, to favour this piece of legislation—those regulations will be laid before the House in the normal way.

I will now refer in more detail to some of the specific points raised by honourable members on the other side of the House. The honourable member for Caloundra indicated a concern about the management of the northern end of Bribie Island, as did the honourable member for Pumicestone. The honourable member for Caloundra wants more patrols to check erosion, to check the effect of four-wheel drives, to check the effect of illegal camping and she wants more rangers at the north end of Bribie Island. These sound like things that are reasonably worth while looking into. I will ask my department to look at this and get back to the honourable member for Caloundra. I thank her very much for raising those issues.

The honourable member for Caloundra also made a number of other points, and I want to address those. First of all, I thank her for her in-principle support for what we are doing here and I hope I can satisfy her on the details. The state plan also addresses the quality issue relating to sewerage outfalls, which the honourable member raised. It addresses it in the way I described in my preceding remarks. The honourable member spoke of the importance of protecting shorebird roosts. I agree that that is very important and reassure her that the coastal plan addresses those issues. I have already addressed the matter relating to the erosion-prone areas—that is, that the surrender of land in return for the right to develop only affects the erosion-prone area 40 metres in. The purpose of this is to provide for public access where there is no erosion-prone area. In other words, what we are doing is maintaining the status quo from the previous legislation introduced by the previous government in which the honourable member for Caloundra was the Deputy Premier.

I now turn to the issues raised by the honourable member for Gladstone, and the honourable member asked me to address these points. Elizabeth, if you are watching this on one of the monitors, this is for you. The member raised the issue of extractive industry. I refer to the remarks I made previously with respect to compensation and the issue of appeal rights. The chief executive will decide whether somebody can or cannot in an erosion-prone zone take away sand or other material that might be dredged, because it is the property of the Crown. In other words, it is the property of the state of Queensland. It belongs to all of us. It does not belong to somebody who might happen to be enterprising enough to go out and get it; it belongs to us. Therefore, it is appropriate that our representative in the Public Service—under this act, the chief executive—should make the decision and not be subject to appeal rights. It is not owned by the person who wants to take it; rather, it is owned by the people.

The other issue that the honourable member for Gladstone raised related to land surrender. I think I have addressed that, but I will address it once more. It only applies when the landowner applies for an increased development right—that is, land subdivision or something like that. The provision allows sensitive erosion-zone land to become public land and saves the taxpayers having to pay for the restoration of the area which occurred when development was allowed to take a course that did not involve that kind of protective action. So I made that point before, but I wanted to spell it out again.

The honourable member for Nicklin asked me specifically about the regulations. Again, in my general remarks earlier I indicated that the regulations would be treated in exactly the normal way. I want to make it clear that regulations must be tabled in parliament for 14 sitting days. Since the honourable member for Nicklin said that that was his chief concern with the bill, and he has my assurance, I look forward with hope to the pleasure of his company in any divisions that we may have on the bill.

Mr Wellington: You'll have it.

Mr WELLS: I thank the member.

I turn to some of the issues raised by honourable members of the National Party. Let me deal first with the honourable member for Hinchinbrook. He spoke at some length about the regional plans that may be made in the future, not under this legislation but dovetailed with the legislation. He wondered whether there was going to be adequate consultation and whether the people involved in this determination were going to come up with the correct answer. All I can say to the honourable member for Hinchinbrook is that Brian Littleproud thought so. Some 15 out of the 24 people on this committee were people who were originally appointed by a National Party Environment Minister. Those people proved to be so effective at their job that they were continued when my predecessor, the honourable and learned Attorney-General, became Environment Minister. So I hope that that gives honourable members on the other side some confidence.

The honourable member for Mirani said that half of Queensland could be affected by the bill. This was a perception that was out there in consultation land at some stage or other. It was a misperception then, and it is a misperception now. The way it works is that the bill covers areas called controlled districts. The controlled districts include title areas, erosion-prone areas—that is, areas close to the coastline—and 40 metres along rivers to the tidal limit. Any change to the existing districts has to be done through regulations and the regulations have to be tabled. The honourable member for Mirani should know and should rest in peace and in comfort with the tremendous solace of knowing that in fact not half of Queensland is going to be immediately affected by this legislation. What we are talking

about is basically 40 metres from the shoreline. That is all. So the proposition that it could have an effect on half of Queensland is just not a true proposition.

The honourable member for Mirani also asked about sand extraction on the Pioneer River. This caused concern because the sand extraction undermined the bridges. My department commissioned an independent study which showed that the level of sand extraction was unsustainable. That is the story in relation to the dredging of the Pioneer River. He also asked about McEwens Beach. He would be pleased to know—and I am sure somebody will pass it on to him—that a study is currently under way to discover the reason for the erosion.

Many more good points were made by many more members, but I am referring just now in the brief time allowed to us to those questions honourable members asked and which they anticipated that I might answer in the summing up to the second reading. I trust that I have answered the issues that have been raised. If honourable members have other issues that they would like to raise, I would invite them either to interject or to raise them during the debate on the clauses. In view of the fact that I hear nothing other than silence coming from the other side of the House, let me sum up by saying this: our beaches, shorelines and coasts are not just tourist attractions. These are not just things of economic value. These are things that are part of the spirit of Australia and they are part of our national soul. They are part of the life and experience of our families. They are part of what makes us special. That is what this legislation is about. This legislation is about what makes Queensland special. It is part of what makes Queensland the great place it is to live. We need to protect our shoreline and we need to do so not just for next Sunday afternoon, the Christmas holidays or the next time we go to the beach. We need to do so for the ages and the generations.

This country and coastline of ours is unique. We live in an area of maximum biodiversity. Our coastline, including the Great Barrier Reef and the rainforest that comes down to the Great Barrier Reef on part of our coast, are areas of maximum biodiversity compared with other countries and regions of the world. They make us stand out. They make us unique. Through this piece of legislation we are protecting this uniqueness.

What we are doing here today is the culmination of the work of 10 years. What we are doing here today is giving a voice to the consultation that has been going on for 10 years. There has finally been synthesised a consensus that goes from the greens right across to the developers, so much so that some of the developers have become quite green in the process, and I would congratulate them on that.

What we are achieving here is a synthesis. We have a document which has been agreed upon and which I have brought into the parliament after the extensive consultation of my predecessors, both Labor and conservative. I would urge all honourable members to consider supporting this bill, because this is a bill that should bring us together. This is a bill that we should all be able to celebrate rather than to have as something which is divisive between us. When we vote for this piece of legislation, we will be voting not only for next Sunday afternoon but also for the lifestyle and future of our children, our children's children and our children's children's children.
