



Speech by

Hon. D. WELLS

MEMBER FOR MURRUMBA

Hansard 12 December 2001

REVOCATION OF MARINE PARK AREAS

Hon. D. M. WELLS (Murrumbidgee—ALP) (Minister for Environment) (5.15 p.m.): I move notice of motion No. 1, revocation of marine park, notice given on 17 October 2001 standing in my name—

- (1) That this House agrees that the Proposal requesting the Governor in Council to revoke by regulation the setting apart and declaration of the areas specified in the document previously tabled, viz—
 - (A) A Proposal, under section 22 of the Marine Parks Act 1982, requesting the Governor in Council to revoke by regulation the setting apart and declaration of that part of the Townsville/Whitsunday Marine Park within the area described as Lots 100, 101, 102, 103, 104, 105, 106, 107, 200, 300, 301, 400, 500, 501, 502 and 600 on SP135284, Parish of Magnetic, County of Elphinstone being an area of about 20.5 hectares; and
 - (B) A brief explanation of the Proposal.be carried out.
- (2) That Mr Speaker convey a copy of this Resolution to the Minister for Environment for submission to His Excellency the Governor in Council.

I rise to seek the support of the House for the motion requesting that the Governor in Council revoke that part of the Townsville-Whitsunday Marine Park contained within the Nelly Bay Harbour development area. The House will already be familiar with details of the Nelly Bay Harbour development. Nelly Bay is within the General Use A zone of the Magnetic Island management area of the Townsville-Whitsunday Marine Park.

The object of this zoning under the state marine park zoning plan is to provide opportunities for reasonable general use consistent with the conservation of the marine park. Permissible uses for the area under the zoning plan include the construction and operation of tourist facilities, mooring facilities and other structures; the dumping of spoil, carrying out of reclamation works and harbour works; and the navigation and operation of vessels.

The Townsville-Whitsunday Marine Park zoning plan was introduced in 1987. This Queensland Government plan was designed to complement a Commonwealth zoning plan for the central section of the Great Barrier Reef Marine Park. The existence of the development proposal for Nelly Bay was known to the state and Commonwealth governments at the time of preparation of these zoning plans. At the time, the bays of Magnetic Island were zoned to cater for a range of conservation measures and different uses. Geoffrey Bay, Florence Bay, Radical Bay, Balding Bay and Five Beach Bay are zoned as national park or conservation park and, in these areas, clearly, conservation takes first priority. Nelly Bay and Horseshoe Bay are zoned as General Use A and are quite compatible with levels of development for tourism and community infrastructure.

Any reclamation works or other activities approved in marine parks must be compatible with the objects of the zone in which they are located. Reclamation for tourism purposes is clearly compatible with the General Use A zone. Reclamation of tidal land at Nelly Bay has occurred under marine park approvals granted by the Great Barrier Reef Marine Park Authority and the Queensland Parks and Wildlife Service.

Any development in the Great Barrier Reef Marine Park is subject to the highest possible standard of environmental scrutiny. Substantial reclamation originally occurred under marine park permits in 1989-90. At that time, the developer encountered financial problems and the works were not brought to conclusion. For many years, the development site lay dormant and the Queensland government, in a bid to improve the developed area, called for expressions of interest in completing the

development. The recent permission that allowed the previous reclamation works to be consolidated and stabilised was issued following a formal expression of interest process in 1993-94 under the Land Act 1994 resulting in Nelly Bay Harbour Pty Ltd being selected as the preferred developer and a joint Commonwealth and state government environmental and socioeconomic impact assessment process involving public scrutiny in 1995 and 1998. The impact assessment included consideration of feasible alternatives, impacts on the Magnetic Island community, the likely effects on marine park boundaries and the likely effects on World Heritage values.

The impact assessment clearly identified that some marine park within the Nelly Bay development area would be freeholded to the developer and sold to cover the costs of the works. The previous Commonwealth Minister for Environment and Heritage, after considering the impact assessment, concluded that the Nelly Bay Harbour proposal could be constructed and operated so that its environmental impacts, including impacts on the Great Barrier Reef Marine Park, were acceptable.

There is a clear need for some improvements to be made to the existing marine access to Magnetic Island for the considerable community living on the island and the large number of visitors there throughout the year. Present access is via a long jetty which is open to the elements and subject to closure in extreme weather conditions. The Nelly Bay Harbour development will, for the first time, provide the community and visitors with access that is in keeping with modern comfort and safety expectations.

Section 22 of the Queensland Marine Parks Act 1982 provides that the Governor in Council may, by regulation, revoke the setting apart and declaration of a marine park or area of a marine park following a resolution of the Legislative Assembly after 14 sitting days notice. Under the Marine Parks Act 1982, marine parks can only consist of tidal lands and tidal waters. While the retention of reclaimed or accreted areas within marine parks is currently feasible in the Commonwealth Great Barrier Reef Marine Park, it is not possible in state marine parks.

The definition of the outer marine park boundaries under the zoning plan for the marine park is described by geographical coordinates; namely, an invisible line around Magnetic Island at a distance of 500 metres seaward from the coastline at low water. The reclamation at Nelly Bay has enlarged the area of Magnetic Island, pushing this invisible line further seaward and, therefore, has not affected the legal descriptions under the zoning plan.

Members will recall that on 31 July 2001, with reference to a question on notice from the member for Nicklin about the reclamation of Nelly Bay, I advised that Crown Law opinion was that it was possible to issue a permit to allow for the reclamation work to proceed. I also informed the House at that time that, given the Crown Law advice, the government was of the view that alteration of marine park boundaries through an excision under section 22 was not necessary. While Crown Law has since then confirmed this view, it is now considered desirable to proceed with formal excision under the State Marine Parks Act 1982 in this particular case, so as to remove any doubt over the legitimacy of the processes followed and the subsequent status of the reclaimed land.

The proposed revocation removes that part of the state marine park that occurs within the Nelly Bay development area. It is an area which has been dredged and reclaimed with no natural habitats remaining. Consequently, it has lost most of its previous marine park values and would be adequately managed under other state legislation designed to deal with land-sourced pollution and the management of transport infrastructure.

The presence of the existing Commonwealth Great Barrier Reef Marine Park and the World Heritage area remain unaffected by the proposed revocation. The formal declarations of the state and Commonwealth marine parks in this area overlap. Consequently, while some areas of state marine park are being revoked, the Commonwealth Great Barrier Reef Marine Park will remain in place in the area. The continued existence of the Great Barrier Reef World Heritage area is also not contingent on the boundaries of the state marine park. Prior to the original development in 1989, the inshore position of the Great Barrier Reef World Heritage area at low water mark was formally surveyed. The reclamation works do not extend beyond this surveyed boundary, except for the wave-break island, which can remain in the Great Barrier Reef Marine Park under Commonwealth legislation.

Under the current approvals, potential risks to the environment have been managed and monitored on a full-time basis under an environmental impact management plan and strict conditions imposed by the associated permit conditions and a deed of agreement between the state and Nelly Bay Harbour Pty Ltd. The proposed revocation will mean that management of the development under the provisions of the Marine Parks Act 1982 will no longer be possible. However, the Environmental Protection Agency has not walked away from its commitment to the protection and management of the Nelly Bay environment. Potential impacts on the Great Barrier Reef Marine Park and the Townsville-Whitsunday Marine Park will continue to be managed under the Environmental Protection Act 1994 and the Coastal Protection and Management Act 1995.

The proposed revocation will be achieved through amending the order declaring the marine park and will also amend the relevant zoning plan to clarify an outcome that was determined through the impact assessment and the granting of approvals. I understand that all reclamations approved to date in marine parks have proceeded under permit, without formal resolutions of the parliament. This approach has been based on consistent Crown Law advice. However, it seems to me that procedures for excisions and reclamations in marine parks under Queensland legislation need to be clarified and perhaps some amendments to the Marine Parks Act 1982 may be necessary.

In this case, in the interests of transparent government, because of the public interest in the matter and because there is a court case which is being funded publicly on both sides, I have decided to seek formal excision in parliament. The court case will have one of two results: the government's position will be upheld, in which case no action needs to be taken; alternatively, the conservation group's argument will be upheld, in which case the only thing that can occur is what we are doing now, so we might as well do this now. There is absolutely no option to restore the area to its previous state. The only possible outcome of the court case, if the government loses, is the course being taken today. If we do this, we do not need to go on with an expensive, taxpayer-funded court case.

For those reasons, I have decided to seek formal excision in parliament. This does not necessarily set a precedent for other cases. Recognising that the current legislation may be clarified, the issue will be subject to detailed scrutiny during a review of the Marine Parks Act, which I intend to initiate early next year.
