



Speech by

Hon. D. WELLS

MEMBER FOR MURRUMBA

Hansard 15 October 2003

BEACH PROTECTION LEGISLATION AMENDMENT BILL

Hon. D. M. WELLS (Murrumba—ALP) (Minister for Environment) (10.03 p.m.), in reply: This is the line in the estuarine sand that one cannot go across. This is a line that any government must draw and say, 'Go across that line and you will be attempting to show that our legislation and the rule of law in our state is not worth the paper it is printed upon.' Had we not taken this stand at this point, then our attempts to protect our coastline and our riverine areas would have come to nothing. That is why it was necessary to take this stand on this day on this particular issue.

A catalyst for the government taking the position it has taken is this letter, which I will table. It is a letter from Monterey Keys to a couple of the purchasers. It states—

As you are aware, we are experiencing a delay in obtaining registration for the abovementioned plan.

That is their plan. The delay is being caused by the Beach Protection Authority. How did the Beach Protection Authority—the advisers, the decision-making body in my department advised by engineers which has been operating for many years—cause this delay? They caused this delay by insisting on the law of Queensland which, under the Beach Protection Act, says that erosion-prone land must be surrendered to the Crown in the right of the state of Queensland—to the people of Queensland. They caused this delay by saying to the developer, 'No, we must acquire this land in order that it might be protected for the benefit of the environment.'

The developer, back in 1998, which was a date that the honourable Leader of the Opposition mentioned, said, 'Well, please don't take it to Executive Council at this stage. Please let us make further submissions. We would like to have a covenant, a set of agreements, whereby we promise to protect this land for environmental purposes; nevertheless, have it as part of the land which we own and on-sell to purchasers.' In an attempt to bend over backwards to assist and to be reasonable and to hear the other side and to take the point of view on board, the Beach Protection Authority said, 'Okay, we will hear your submissions.' They came back with the submissions and the Beach Protection Authority again said, 'No, it is land acquisition. It is acquisition of this erosion-prone land.'

The matter subsequently came to me. I said, 'No, it should go to Executive Council.' They made further representations. I said, 'No, take it to Executive Council.' It went to Executive Council over a year ago. The Executive Council of the state of Queensland, elected by this parliament and representing the people of Queensland, said over a year ago, 'Land surrender'. The response of the developer in these circumstances was to go on as if nothing had happened and describe this decision of law, this formal act of governance by the Executive Council of Queensland, as a delay and continue to enter into arrangements for the sale of land to various people, 15 of whom are affected.

This was a decision to sell land to people when the developer knew that that land could not be registered, or at least would have been able to get legal advice to the effect that that land could not be registered. They entered into a contract for the sale of land that could not be registered because by law the registrar of titles must not register land that has been the subject of a decision by Executive Council to the effect that there must be land surrender. This was over a year ago. During that period of time the government—my department—sought to make it clear to this developer that it was a requirement of law that the land should be surrendered.

Notwithstanding that fact, the people got a letter like this. The letter went on, and this is why I say this was a catalyst, to state—

The seller is prepared to enter into an agreement with you which will guarantee the contract is not terminated by the seller.

The contract said that the seller could terminate it in December. So they were prepared to enter into an agreement that would guarantee that the contract is not terminated by the seller. What is that agreement? If members read down a little further, they would see that a condition of granting this extension is that interest would be payable to the seller and calculated at the rate of 10 per cent of the purchase price per annum payable in equal monthly instalments. In these circumstances, the people would be able to get their land if they paid an additional 10 per cent. If they did not pay the additional 10 per cent, what would happen? Of course, the contract would be cancelled and the developer would undoubtedly have the option of entering into an agreement at 2004 prices with somebody else.

The effect that this has had on a number of the purchasers has been drawn to my attention. One of them wrote—

I have great concern for my husband. He had a small heart attack four weeks ago and finding out about this problem has brought on a lot of stress and at the moment he does not need this. We've already moved my son to Helensvale State School to be closer to our block of land. I've already moved him twice in three months. I cannot afford to move him again. He's already struggling at school. We have to travel one hour to take my son to school every day. I would really appreciate it if something could be done.

Another person writes—

My parents, who have always effectively placed all their earnings into a mortgage to eventually step their way into their waterfront home, have now at the age of 60 and 62 had their lifetime goal taken away from them. My father, who has had treatment for depression in the past, is now suffering from major depression due to all that has taken place. My mother has also been seeing a heart specialist in the past few months and does not need all this unnecessary stress and has also been suffering from depression. How might I make them feel positive and motivated when they fear losing their home? My parents have sold a property which they have had to undersell to avoid bridging financing costs to enable them to settle on their block of land and build at Monterey Keys.

They are the consequences for the people who have been offered this extremely unusual proposal that they can keep the contracts they have entered into provided they pay an extra 10 per cent.

The Leader of the Opposition asked a number of questions, and they were questions which can reasonably be asked. They are questions which an honourable mind could entertain. Let me answer them. He asked: why is the minister seeking to subvert the course of law by virtue of the fact that there is a judicial review application? Well, I am not. The parliament is making the law. This is the law and this law, if passed by this parliament, will say that land surrender is what is required for the protection of our coast. That is what this law will say. The judicial review application that the developer is undertaking the developer may continue to undertake if he wishes, but it is not a merits review.

Judicial review is not a merits review. Judicial review is a review of the process. The most that a successful judicial review application by the developer could achieve would be to make the minister and Executive Council go back to make the decision again. If they made the same decision, then nothing would be further advanced. If this parliament makes a decision, if this parliament sends a signal to the world that we will insist on the integrity of our coastline and our riverine areas, if we send a signal that we will insist on preserving that which is the heritage of the people of this state, if we send a signal that this parliament is prepared to stand on this line in the estuarine sand in order to protect the rights of the public to go on to what they own and to protect our natural heritage from being destroyed, then this state will be better off.

The Leader of the Opposition asked if this is erosion-prone land. Whether it is erosion-prone land is a matter which is determined by the Beach Protection Authority. The Beach Protection Authority is operating under a statute, the Beach Protection Act. It is advised by engineers. These are not matters that we make a decision about by looking at how high the tide is on a particular occasion. It is not eroded land that is referred to in the legislation; it is erosion-prone land. In fact, anything that is subject to tidal influences could be argued to be erosion-prone land. The small strip that the government is seeking and has determined will be surrendered to the people of Queensland—the small strip along the littoral of that creek—is not a great imposition and is not a great area of land. It is not as if the people who purchased the land will be unable to go on it. They will be free to come and go on it. It does not impede their right of passage or anything like that. That small strip is to remain in the possession of the people of Queensland in order that it can be protected and in order that our coastlines and littorals can be protected.

The Leader of the Opposition asked, and asked very fairly I think, if we are going to step in every time something like this happens. No, we are not. This is an unusual case. A very proper decision made by the Executive Council of Queensland is being used by this particular developer as a reason—an excuse—for impoverishing Australian citizens. I read the letter out to the member. A decision by the Executive Council that he should surrender the land is being used as a reason by this developer as to why he should put an extra 10 per cent on the sale price of the land. The government of Queensland is not going to have its appropriate and proper decision-making processes used as a reason for taking additional money from Australian citizens.

Tonight I am inviting the parliament to send a very strong message that the government takes its coastal management seriously. I am asking the parliament to endorse the policies that I bring to

bear in respect of these matters, and the policy is this: there is a prima facie presumption that where there is erosion-prone land there will be surrender of that land to the people of Queensland, not a covenant. This does not mean that we rule out covenants in all circumstances. There may be circumstances where covenants would be appropriate, particularly if they were in conjunction with land surrender or perhaps where, in an unusual set of circumstances, there was actually a better outcome for the environment if there was a covenant.

But the prima facie position is that there must be land surrender. Depending on all the particular facts of the case, that is what we need to subscribe to tonight, and that is what I am inviting the parliament to do. Stand up for Queensland's coastline. Stand at the line in the estuarine sand that says, 'This belongs to the people. This is the right of the people of Queensland. This is where degradation of our coastline and degradation of our littorals ends.' That is what I am asking the parliament to do tonight.