

## CLAUSE NOTES

### *Brickmakers Point Landslip Bill 2020*

- Clause 1**      Short Title
- Provides the title of the proposed Act.
- Clause 2**      Commencement
- Provides that the Act will commence on proclamation.
- Clause 3**      Interpretation
- This clause defines certain terms for the purposes of the Act, including 'affected property' and 'eligible owners.'
- 'Affected properties' are the five properties (and any improvements) that have been impacted by the Brickmakers Point Landslide.
- 'Eligible owners' are all persons who are the owners of the affected properties, with the exception of the Crown and the Council, or a person who has instituted proceedings against the Crown or the Council (or their representative) in respect of alleged or actual damage caused by earth movement in or in the vicinity of the affected property.
- Clause 4**      Act to bind Crown
- Requires the Crown to comply with the Act in the same way as any other person.
- Clause 5**      Applications
- Provides that eligible owners may apply to the Minister for the Crown to purchase an affected property within 24 months after the day on which the Act commences (unless a later day is agreed by the Minister). The clause also specifies that where there are multiple eligible owners in relation to an affected property, that all such owners must jointly make an application for it to be valid.
- Clause 6**      Valuation of affected properties to which applications relate
- Subsection (1) requires the Minister is to request a valuation from the Valuer-General as soon as practicable after receiving an application under clause 5(1).
- Subsection (2) requires the Valuer-General is to undertake a valuation under section 51 of *Valuation of Land Act 2001* and provide that valuation to the Minister within 60 days.
- Subsection (3) requires the Valuer-General to assess the properties based on the value that the properties would have had on 1 May 2016, as though they had not been affected by the landslide.

Subsection (4) allows the Valuer-General to request additional information, deemed necessary to make valuations, directly from eligible owners.

#### **Clause 7**

##### **Offers to purchase affected properties**

Subsection (1) requires the Minister to send a written offer to an eligible owner within 30 days of receiving a valuation of the affected property from the Valuer-General.

Subsection (2) specifies that:

- the purchase price is to be 75 per cent of the value of the property as assessed under clause 6(2);
- the property is to be transferred free of mortgage or charge, or leases or licences; and
- that offers may be made subject to any terms and conditions the Minister considers appropriate, which may include (but are not limited to) the salvage of materials, fixtures and fittings.

#### **Clause 8**

##### **Acceptance of offer to purchase**

This clause provides eligible owners with 90 days to accept the Minister's offer to purchase.

Eligible owners may apply for, and the Minister may grant, an extension to the time period for the acceptance of an offer. However, a nil response from an eligible owner in relation to an offer is taken to be a rejection of the offer after 90 days, or after the longer period agreed by the Minister has lapsed.

#### **Clause 9**

##### **Purchase, sale and transfer of affected property**

Subsection (1) provides that if an offer to purchase is accepted the Crown must purchase the property in accordance with that offer.

Subsection (2) enables the Crown to transfer a purchased property to the Council.

#### **Clause 10**

##### **Duties, rates and charges on affected property held by the Crown**

Provides that, despite any other legislation, the Crown is not liable for the payment of stamp duty, rates or service charges in relation to an affected property that it purchases, owns, or transfers.

#### **Clause 11**

##### **Covenants to be of no effect**

Provides that certain covenants in relation to a property purchased by the Crown cease to have effect immediately prior to that purchase.

#### **Clause 12**

##### **Council moneys**

Is a doubts removal clause to ensure that the Council is duly authorised to provide monies to the Crown for the purposes of contributing to the costs of

purchasing affected properties, despite any provisions under the *Local Government Act 1993* or any other Act.

**Clause 13**      Indemnity

Provides that where the Crown purchases an affected property, the persons from whom the property was purchased have no right of legal action against the Crown, the Council or their representatives.

The Crown and the Council are further indemnified against any action (except an action for personal injury) in relation to any works taken in good faith designed to prevent, manage or mitigate landslide on, or in the vicinity of, an affected property.

**Clause 14**      Regulations

This clause provides that the Governor may make regulations for the purposes of this Act.

**Clause 15**      Administration of Act

This is a formal clause assigning administration of the Act to the Minister for Environment and Parks and the Department of Premier and Cabinet until provision is made under section 4 of the *Administrative Arrangements Act 1990*.