



TASMANIA

BRICKMAKERS POINT LANDSLIP ACT 2021

No. 3 of 2021

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BRICKMAKERS POINT LANDSLIP ACT 2021

No. 3 of 2021

An Act to make provision for the purchase by the Crown of certain land, and improvements, affected by earth movements at Brickmakers Point in Deviot in the West Tamar Council municipal area, and for related purposes

[Royal Assent 22 April 2021]

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

1. Short title

This Act may be cited as the *Brickmakers Point Landslip Act 2021*.

2. Commencement

The provisions of this Act commence on a day or days to be proclaimed.

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3. Interpretation

In this Act, unless the context otherwise requires –

affected property means any of the following properties and includes any improvements to any such property:

- (a) the land situated at 634 Deviot Road, Deviot in Tasmania, comprised in Volume 27525, Folio 2 of the Register kept under section 33 of the *Land Titles Act 1980*;
- (b) the land situated at 648 Deviot Road, Deviot in Tasmania, comprised in Volume 140817, Folio 1 of the Register kept under section 33 of the *Land Titles Act 1980*;
- (c) the land situated at 650 Deviot Road, Deviot in Tasmania, comprised in Volume 140817, Folio 2 of the Register kept under section 33 of the *Land Titles Act 1980*;
- (d) the land situated at 652 Deviot Road, Deviot in Tasmania, comprised in Volume 122703, Folio 2 of the Register kept under section 33 of the *Land Titles Act 1980*;

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- (e) the land situated at 654 Deviot Road, Deviot in Tasmania, comprised in Volume 122703, Folio 1 of the Register kept under section 33 of the *Land Titles Act 1980*;

application means an application made under section 5(1);

Council means the West Tamar Council;

eligible owners, in relation to an affected property, means all of the persons who are the owners of the fee simple of the affected property but does not include –

- (a) the Crown or the Council; or
- (b) a person who has instituted proceedings against –
 - (i) the Crown or the Council; or
 - (ii) a person acting on behalf of the Crown or the Council –

in respect of any damage suffered or alleged to have been suffered as a result of any actual or potential earth movement in, or in the vicinity of, the affected property; or

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- (c) a person, one of whose predecessors in title was a person referred to in paragraph (b);

send, in relation to a document, means –

- (a) to send by post; or
- (b) to send to an electronic address that the person to whom the document is sent has nominated to the sender as an electronic address to which a document under this Act may be sent.

4. Act to bind Crown

This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.

5. Applications

- (1) The eligible owners in relation to an affected property may together apply, to the Minister, for the Crown to purchase the affected property.
- (2) An application may only be made under subsection (1) within 24 months after the day on which this section commences or a later day agreed to by the Minister.
- (3) An application in relation to an affected property is not valid unless it is made by all the eligible owners in relation to the affected property.

6. Valuation of affected properties to which applications relate

- (1) The Minister, as soon as practicable after receiving under section 5(1) an application in relation to an affected property, must request the Valuer-General to make a valuation of the affected property.
- (2) The Valuer-General must make a valuation of an affected property under section 51 of the *Valuation of Land Act 2001*, and provide to the Minister a report of the valuation, within 60 days of receiving a request under subsection (1) in relation to the affected property.
- (3) The Valuer-General must make under subsection (2) a valuation of an affected property based on the value that the property (exclusive of any chattels) would have had on 1 May 2016 if –
 - (a) any dwelling or other structure on the property were at that time undamaged by earth movements; and
 - (b) the value of the property, and other properties in the vicinity of the affected property, were at that time not affected by actual or potential earth movements.
- (4) The Valuer-General, by notice to the eligible owners of an affected property, may require the eligible owners to provide to the Valuer-General information that the Valuer-General requires to make a valuation of the affected property.

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7. Offers to purchase affected properties

- (1) The Minister, within 30 days of receiving a report of the valuation of an affected property under section 6(2), must send to the eligible owners of the affected property a written offer to purchase the affected property.
- (2) An offer to purchase an affected property under subsection (1) is to provide –
 - (a) that the purchase price is to be the amount determined under subsection (3); and
 - (b) that the property is to be transferred by the owners to the purchaser free of any mortgage or other charge and free of any lease or licence giving any person the right to occupy the whole or any part of the property (other than necessary easements for services to other properties) –

and may be made subject to any other terms and conditions that the Minister considers appropriate.

- (3) The purchase price of an affected property is to be determined in accordance with the following formula:

$$A = VA + (VA \times C)$$

where –

A means the purchase price of the affected property;

VA means the amount representing 75% of the amount of the valuation of the affected property made by the Valuer-General under section 6(2);

C means the sum of each percentage change in the CPI, in respect of all groups for Hobart in a quarter, that has been reported by the Australian Bureau of Statistics, in relation to a quarter, on or after 1 June 2016 and before the day on which the offer is made under this section.

- (4) The conditions to which an offer to purchase property under subsection (1) may be made subject under subsection (2) include, but are not limited to including, conditions providing for the salvaging of materials, fixtures and fittings from the property.

8. Acceptance of offer to purchase

- (1) The eligible owners to whom an offer to purchase an affected property is made under section 7(1) may accept the offer or reject the offer.
- (2) An offer to purchase an affected property may only be accepted, or rejected, by all the eligible owners of the property jointly.

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- (3) An offer to purchase an affected property may only be accepted by the eligible owners of the affected property within –
 - (a) 90 days after the offer is received by the eligible owners under section 7(1); or
 - (b) a longer period allowed by the Minister under subsection (6).
- (4) The eligible owners to whom an offer is made under section 7(1) are taken to have rejected the offer if they have not accepted the offer within –
 - (a) 90 days after the offer is received by the owners; or
 - (b) a longer period allowed by the Minister under subsection (6).
- (5) The eligible owners to whom an offer to purchase property is made under section 7(1) may apply to the Minister for an extension of the period of 90 days in which to accept or reject the offer.
- (6) The Minister, on receipt of an application under subsection (5), may extend the period of time under subsections (3) and (4) in which the eligible owners may accept or reject the offer.

9. Purchase, sale and transfer of affected property

- (1) If an offer to purchase an affected property made under section 7(1) is accepted under section 8 by all the eligible owners of the property, the

Crown must purchase the property in accordance with the offer.

- (2) Despite the *Crown Lands Act 1976*, if, as a result of an offer made and accepted in accordance with this Act, an affected property is purchased by the Crown, the Crown may sell or otherwise transfer that property to the Council on the terms and conditions agreed between the Crown and the Council.

10. Duties, rates and charges on affected property held by Crown

- (1) Despite the *Duties Act 2001*, no stamp duty is payable in relation to the purchase, sale, or transfer, by or to the Crown, in accordance with section 9, of an affected property.
- (2) Despite the *Local Government Act 1993*, rates and charges are not payable under that Act, by the Crown, in relation to an affected property for any part of a calendar year, if, in any part of that year, the Crown is the owner of the affected property.
- (3) Despite the *Water and Sewerage Industry Act 2008*, service charges are not payable under that Act, by the Crown, in relation to an affected property for any part of a calendar year if, in any part of that year, the Crown is the owner of the affected property.

11. Covenants to be of no effect

(1) A covenant –

(a) restricting the use of an affected property; or

(b) requiring the owner, or owners, of an affected property to undertake any work or other obligation –

ceases to have effect immediately before any purchase of the property by the Crown under section 9(1).

(2) Subsection (1) does not apply in respect of a covenant relating to the provision of necessary services to other properties.

12. Council moneys

Despite the *Local Government Act 1993* or any other Act, the Council is authorised to grant to the Crown moneys for the purposes of this Act.

13. Indemnity

(1) If the Crown purchases an affected property in accordance with section 9(1), the persons from whom the property was purchased have no right of action against –

(a) the Crown; or

(b) the Council; or

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- (c) a person acting on behalf of the Crown or the Council –

in respect of any damage suffered by those persons as a result of any actual or potential earth movement on the affected property or on any other property in the vicinity of the affected property.

- (2) A person has no right of action against –

- (a) the Crown; or

- (b) the Council; or

- (c) a person acting on behalf of the Crown or the Council –

in respect of any action taken in good faith by, or on behalf of, the Crown or the Council to survey, remedy, prevent or alleviate any actual or potential earth movement on an affected property, or in the vicinity of the affected property, and whether taken before or after the commencement of any provision of this Act.

- (3) This section does not apply in relation to a right of action in relation to personal injuries suffered by a person.

14. Regulations

The Governor may make regulations for the purposes of this Act.

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15. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Environment and Parks; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Premier and Cabinet.

*[Second reading presentation speech made in:–
House of Assembly on 25 March 2020
Legislative Council on 25 March 2020]*