

Bayside Project (Amendment) Act 1989

No. 85 of 1989

TABLE OF PROVISIONS

Section

1. Purposes
2. Commencement
3. Principal Act
4. Decontamination work
5. Section 40A inserted—
 40A. Plan may be prepared under *Subdivision Act 1988*
6. Membership of body corporate
7. Exemption from rates
8. Miscellaneous amendments



Victoria

No. 85 of 1989

Bayside Project (Amendment) Act 1989

[Assented to 5 December 1989]

The Parliament of Victoria enacts as follows:

Purposes

1. The purposes of this Act are—
 - (a) to facilitate the decontamination of part of the bayside land; and
 - (b) to enable plans for parts of the bayside land to be certified and registered under the *Subdivision Act* 1988; and
 - (c) to make other minor amendments to the *Bayside Project Act* 1988.

Commencement

2. (1) Section 7 comes into operation on a day to be proclaimed.
- (2) Section 4 (1) is deemed to have come into operation on 1 March 1989.
- (3) Section 8 (1) (a) is deemed to have come into operation on 30 October 1989.
- (4) The rest of this Act comes into operation on the day on which this Act receives the Royal Assent.

Principal Act

No. 67/1988.
Amended by No.
44/1989

3. In this Act the *Bayside Project Act 1988* is called the Principal Act.

Decontamination work

4. (1) Section 40 of the Principal Act is amended as follows:

(a) For "An" substitute "(1) Subject to this section an";

(b) At the end of the section insert:

'(2) An authority or permit under the *Building Control Act 1981* or the *Planning and Environment Act 1987* is not required for the carrying out of decontamination work on the land shown hatched on the plan in Schedule 4, and the carrying out of that work on that land is not a contravention of the *Building Control Act 1981*, the *Planning and Environment Act 1987* or any planning scheme.

(3) Sub-section (1) does not apply to the carrying out of decontamination work.

(4) A reference in sub-section (1) to an authority or permit does not include—

(a) a decision made by the responsible authority in relation to the preparation of a development plan, an open space management prescription or any other plan under a planning scheme applying to any part of the bayside land; or

(b) a decision by the responsible authority that anything which, under a planning scheme, must be to its satisfaction is, or is not, to its satisfaction.

(5) Decontamination work must be carried out to the satisfaction of the Environment Protection Authority and there must be consultation about the work between the Minister administering this Act and the Council of the City of Port Melbourne.

(6) In this section "decontamination work" means—

(a) the demolition of buildings on, or the removal of soil from, contaminated land if necessary to remove or treat the contamination; or

(b) changing the topography of the contaminated land to remove or treat the contamination; or

(c) fencing the contaminated land or carrying out other work for the security of the contaminated land or to restrict access by the public; or

(d) any other work necessary to remove or treat the contamination.'

(2) A person who, after 1 March 1989 and before the date on which this Act receives the Royal Assent, carried out on the land shown

hatched on the plan in Schedule 4 of the Principal Act decontamination work within the meaning of section 40 (5) of the Principal Act must be taken always to have been authorised to carry out the work as if, when it was carried out, sub-section (1) of this section were in operation.

(3) The Administrative Appeals Tribunal may, on application by the Minister administering the *Planning and Environment Act 1987*, the Council of the City of Port Melbourne or the Urban Land Authority, cancel its enforcement Orders made on 19 July 1989 on applications numbered PB9/1007, PB9/1813 and PB9/1494.

Section 40A inserted

5. After section 40 of the Principal Act insert:

Plan may be prepared under *Subdivision Act 1988*

‘40A. (1) A plan of subdivision or consolidation of any part of the bayside land—

- (a) despite anything in the *Subdivision Act 1988*, may be submitted for sealing, sealed, lodged for approval and approved in accordance with this Act; or
- (b) may be submitted for certification, certified, lodged for registration and registered under the *Subdivision Act 1988* and this Act, as modified by the following provisions of this section.

(2) Without limiting section 24 (2) of the *Subdivision Act 1988* a plan registered under that Act may amend a plan approved in accordance with this Act.

(3) This Act applies to a plan under sub-section (1) (b) that is a plan for the purposes of column 1 of an item in Schedule 3 as if—

- (a) any reference to the approval of a plan by the Registrar of Titles under the *Transfer of Land Act 1958* were a reference to the registration of a plan under the *Subdivision Act 1988*; and
- (b) any reference to the sealing of a plan under the *Local Government Act 1988* were a reference to the certification of a plan under the *Subdivision Act 1988*; and
- (c) any reference to “approved” were a reference to “registered”; and
- (d) any reference to “sealed” were a reference to “certified”; and
- (e) for section 16 (1) there were substituted—

“(1) The *Subdivision Act 1988* and the regulations made under that Act (as modified by section 40A of this Act) apply to a body corporate in an item in Schedule 3 created under this Act on the registration of a plan of

subdivision under that Act is a plan referred to in column 1 of that item.”; and

- (f) section 16 (2) did not form part of this Act; and
- (g) any reference to an allotment (other than a primary allotment) were a reference to a lot; and
- (h) any reference to unit entitlement were a reference to lot entitlement; and
- (i) any reference to unit liability were a reference to lot liability; and
- (j) a reference in section 5 (4) to section 98 of the *Transfer of Land Act 1958* were a reference to section 12 of the *Subdivision Act 1988*; and
- (k) after section 6 (2) there were inserted :

“(2A) The Registrar of Titles may issue a single certificate of title under sub-section (1) even though a plan of consolidation has not been registered under the *Subdivision Act 1988*.”; and

- (l) a reference in section 8 (1) to the *Local Government Act 1958* or the *Transfer of Land Act 1958* were a reference to the *Subdivision Act 1988* or the *Planning and Environment Act 1987*; and
- (m) a reference in section 14 (1) to approval under the *Transfer of Land Act 1958* were a reference to registration under the *Subdivision Act 1988*; and
- (n) a reference in sections 17 (1) and 19 (1) to section 15 of the *Strata Titles Act 1967* were a reference to regulations under the *Subdivision Act 1988*; and
- (o) a reference in sections 18 (1), 19 (1) (b) and (2) to section 16 of the *Strata Titles Act 1967* were a reference to regulations under the *Subdivision Act 1988*; and
- (p) a reference in section 19 (1) and (2) to the *Strata Titles Act 1967* or the *Cluster Titles Act 1974* were a reference to the *Subdivision Act 1988*; and
- (q) a reference in section 29 (1) to “approval of that plan of subdivision under the *Transfer of Land Act 1958*” were a reference to “registration of that plan of subdivision under the *Subdivision Act 1988*”; and
- (r) for section 24 (1) (a) there were substituted—

“(a) in accordance with section 32 or 33 of the *Subdivision Act 1988*;”.

(4) The *Subdivision Act 1988* applies to a plan under sub-section (1) (b) that is a plan for the purposes of column 1 of an item in Schedule 3 as if—

- (a) a reference to—
 - (i) a lot included a reference to a primary allotment in column 2 of that item; and

- (ii) common property included a reference to a common allotment in column 4 of that item; and
- (b) after section 29 (1) there were inserted:
 - “(1A) The duties of a body corporate in column 3 of an item in Schedule 3 of the *Bayside Project Act 1988* include the duty to develop or redevelop the common property or construct or alter buildings on the common property.”; and
- (c) a reference to lot entitlement or to lot liability included a reference to the lot entitlement or lot liability of a body corporate in column 3 of that item specified in the plan or the by-laws under the *Bayside Project Act 1988*; and
- (d) the provisions of the regulations applying to the rules and by-laws of bodies corporate did not form part of the regulations made under that Act; and
- (e) section 12 (2) (c) (d) and (e) did not form part of that Act; and
- (f) sections 18, 28, 28A, 29 (1) (3) and (6), 30 (2) (3) (4) (5) and (6), 31, 32 (7), 32 (1) (a) (b) (ba) (bb) (bc) (bd) (be) (c) (d) (f) and (h) did not form part of that Act; and
- (g) a reference to a body corporate included a reference to a body corporate in column 3 of that item; and
- (h) at the end of section 27 (1) there were inserted “or as provided in the *Bayside Project Act 1988*”; and
- (i) in section 27 (3) after “(3)” there were inserted “Subject to the *Bayside Project Act 1988*”; and
- (j) after section 29 (2) there were inserted:
 - “(2A) If a provision of this Act or the regulations (other than a provision mentioned in section 40A of the *Bayside Project Act 1988*) is inconsistent with a provision of that Act or the regulations, rules or by-laws under that Act, the provision of that Act, regulation, rule or by-law prevails.”; and
- (k) in section 30 (1) the words “or his or her interest in the common property” were deleted.’

Membership of body corporate

- 6. (1) The Principal Act is amended as follows:
 - (a) In section 14 (4) (a) (ii) after “allotment” (where first occurring) insert “or lot”;
 - (b) In section 14 (4) (a) (iii) after “allotment” (where first occurring) insert “or lot”;

- (c) In section 14 (4) for paragraph (b) substitute—
 - “(b) if a plan of subdivision of land that forms the whole or part of, or that used to form the whole or part of, a primary allotment in column 2 of that item is registered or approved under an Act—
 - (i) the body or bodies corporate (but not the members of the body or bodies corporate) created under this Act on the registration or approval of that plan or under the Act under which that plan is registered or approved; and
 - (ii) the registered proprietor or registered proprietors for the time being of any lot on that plan, if not included in the membership of any of the bodies corporate referred to in sub-paragraph (i).”.
- (2) In section 26 (2) (b) of the Principal Act—
 - (a) after “1967” omit “or”; and
 - (b) after “1974” insert “, the *Subdivision Act* 1988 or this Act”.

Exemption from rates

7. In section 34 (2) of the Principal Act for “rateable property within the meaning and for the purpose of the *Local Government Act* 1958” substitute “rateable land under the *Local Government Act* 1989”.

Miscellaneous amendments

- 8. (1) The Principal Act is amended as follows:
 - (a) In section 3 (3)—
 - (i) after “1967” (wherever occurring) insert “the *Transfer of Land Act* 1958”; and
 - (ii) after “1974” (where twice occurring) insert “or (except in section 34 (2)) the *Local Government Act* 1958”;
 - (b) In section 6 for sub-section (5) substitute:

“(5) A declaration under section 9AG (1) of the *Sale of Land Act* 1962 must not be made in relation to any part of the bayside land unless a single certificate of title has been issued for that part of the land under this section.”;
 - (c) In section 6 sub-sections (6) to (11) are repealed;
 - (d) In section 29 (1) (c) for “common allotments” substitute “body corporate”;
 - (e) In section 29 (1) after “1958” insert “or registration of that plan of subdivision under the *Subdivision Act* 1988”;
 - (f) In section 31 (1) paragraph (a) is repealed;
 - (g) In section 34 (1) for “section 569H of the *Local Government Act* 1958” substitute “section 21A of the *Building Control Act* 1981”;

(h) After section 34 (1) insert:

“(1A) The provisions of sections 21B and 22A of the *Building Control Act 1981* do not apply to any part of the bayside land until the expiration of 15 years after the date on which the *Bayside Project (Amendment) Act 1989* receives the Royal Assent or such longer period as the Governor in Council by Order approves.

(1B) On the date on which, under sub-section (1A), sections 21B and 22A of the *Building Control Act 1981* apply to the bayside project land, section 7 of this Act is repealed.

(1C) Any declaration under section 7 that is in force immediately before the repeal of that section has effect as if made under section 22A of the *Building Control Act 1981*.

(1D) Subject to this section, the *Building Control Act 1981* continues to apply to a plan of subdivision, of any part of the bayside land (other than a plan to which section 40A (1) (b) applies) as if items 1 and 3 of Schedule 3 of the *Subdivision Act 1988* had not been enacted.

(1E) Section 29 of the *Building Control Act 1981*, as in force before the commencement of the *Subdivision Act 1988* continues to apply to the bayside land as if section 47 (2) of the *Subdivision Act 1988* had not been enacted.”;

(i) In section 38 after “1958” insert “and section 18 of the *Subdivision Act 1988*”;

(j) In column 5 of Schedule 3 for “*common allotments*” substitute “*body corporate*”.

(2) After section 8 (2) of the Principal Act insert:

“(3) If all or any part of the land in a plan of subdivision of any part of the bayside land is not in a municipal district the plan may be sealed—

(a) by the municipality, if any land in the plan is in its municipal district; and

(b) by the Minister administering the *Planning and Environment Act 1987*, if any land in the plan is not in a municipal district.

(4) The provisions of the *Local Government Act 1958* apply to the sealing of a plan under sub-section (3) (b) as if the Minister administering the *Planning and Environment Act 1987* were a municipality.”.

(3) In section 29 (2) of the Principal Act after “Order” (where secondly occurring) insert “and provide for any vesting, divesting, creation, variation or extinguishment of any interest, right or privilege affecting land that is necessary in consequence of that amendment”.

(4) Section 6 (6) to (11) of the Principal Act continues to apply to land in respect of which a declaration is in force immediately before the date of commencement of this section, as if sub-section (1) of this section had not been enacted.

NOTES

1. *Minister's second reading speech—*

Legislative Council: 11 October 1989

Legislative Assembly: 2 November 1989

2. The long title for the Bill for this Act was "A Bill to amend the *Bayside Project Act 1988* and for other purposes."