

Second Reading

The Hon. PENNY SHARPE (Parliamentary Secretary) [4.55 p.m.], on behalf of the Hon. John Robertson: I move:

That this bill be now read a second time.

Coastal erosion is a real issue facing many coastal land owners and local councils. Some 40 houses have been lost to erosion in recent decades and around 200 are currently under threat. Projected sea level rise in the future will significantly increase the number of houses at risk. The New South Wales Government announced a coastal erosion reform package last October to strengthen the current approach to managing erosion risks. It builds on current arrangements for coastal management under the Coastal Protection Act, the Environmental Planning and Assessment Act and the Local Government Act. These reforms comprise an integrated package of legislation, including this bill, and supporting guidelines.

As members may recall, an exposure bill was released in March this year to begin the consultation process on this difficult policy issue. Extensive public consultation was undertaken with councils, the Local Government and Shires Associations, beachfront owners, environmental groups, the Opposition, the Greens and relevant government agencies. The Department of Environment, Climate Change and Water ran 10 workshops from Ballina to Moruya, with almost every coastal council attending at least one workshop. In July the department supported the Local Government and Shires Associations at a further series of workshops to explain and further explore aspects of the bill introduced in June. As a result of this extensive consultation the bill was refined substantially to address legitimate concerns that were raised. All matters were carefully considered.

On 11 June 2010 Parliamentary Secretary and member for Drummoyne, Angela D'Amore, introduced a previous version of this bill. After the previous version of this bill was introduced, some stakeholder groups raised further concerns with the bill. In response, the bill was deferred to allow further consideration. That is why it has been put forward in this session. During the winter recess further consultation was undertaken with stakeholders, particularly local government. As part of this process, in August the Minister for Climate Change and the Environment travelled to a number of at-risk beaches and met with local councils and affected property owners to see at close hand the challenges that we face. The Minister thanks all concerned for their insights and constructive contributions during this consultation process. For the record, the shadow Minister for the Environment and Climate Change, the Hon. Catherine Cusack, was invited to travel with the Minister to these inspections. She declined to attend on both days of the Minister's visits.

The bill responds to the feedback received during these further consultations. There is no doubt that there are some greatly differing perspectives on this issue that may well be irreconcilable. Some want no interventions at all to protect private or public properties on the beachfront. Others want to have absolute freedom to protect all property, with small regard for potential negative consequences, such as, further beach erosion and prohibitive costs to the community. Yet others suggest that the Government should mine sand from offshore areas to continuously nourish beaches, despite the prohibitive costs and potential environmental impacts. After considering all these points of view and the many comments, the Government remains convinced that the fundamentals of the previous bill are sound. This new bill includes a series of incremental improvements to the previous bill to address stakeholder concerns. For the convenience of the House, a new bill is being introduced rather than a set of amendments to the previous bill. Consequently, the previous bill has been withdrawn.

I make it clear that this bill is framework legislation. It does not seek to solve erosion problems at individual locations. Its aim is to provide more tools and options for councils and landowners, extending the current arrangements under the Coastal Protection Act, the Environmental Planning and Assessment Act and the Local Government Act. It reinforces coastal zone management planning as the way that local solutions can be developed for local erosion problems.

Councils currently prepare coastal zone management plans with grants and support from government. The bill improves the arrangements for coastal planning to ensure long term and emergency planning is completed faster and to appropriate standards. These plans will identify the most appropriate local response to erosion issues developed in consultation with local communities. The Minister will ask councils in coastal erosion hotspots to prepare coastal erosion emergency action subplans by the middle of next year. The Minister will direct these councils also to finalise their coastal zone management plans by the end of next year or later if necessary.

This bill establishes the NSW Coastal Panel, which will be able to provide expert advice to councils and the Minister on significant coastal issues. It will determine also development applications for coastal works where there is no certified coastal management plan, as will be provided by the proposed Infrastructure State Environmental Planning Policy [SEPP] amendments. Three of the seven panel members will be nominated by the Local Government and Shires Associations and three by State government agencies. The Minister will

appoint the panel's chair with the concurrence of the Local Government and Shires Associations. Councils currently have some powers under the Coastal Protection Act to order the removal of material dumped on a beach that is causing erosion. This bill expands these order powers including the ability to issue a stop-work order if a person is about to dump rocks on a beach illegally.

Councils will be able to require an administration fee to be issued when they issue an order. This fee is the same as the fee a council charges when issuing a pollution prevention notice under the Protection of the Environment Operations Act. The maximum penalty under the Coastal Protection Act is only \$11,000 and does not effectively discourage offences under this Act. This bill significantly increases maximum penalties under the Act to nearly \$250,000 for an individual and nearly \$500,000 for a corporation. This will support councils' enforcement activities under this Act. The Local Government Act currently provides councils with exemptions from liability for coastal management decisions if they act in good faith. Councils have been calling for improvements to these arrangements, particularly in response to climate change impacts. This bill responds to those concerns by expanding these exemptions from liability. This aims to ensure that councils acting in good faith are not caught up in unjustified court cases.

Landowners who want to build works to protect their property currently can lodge a development application for those works. This bill provides an additional option for landowners by allowing them to place sand or sandbags as emergency works, under strict conditions. The emergency works provisions are an important part of this bill. We have seen rocks and building debris placed in an emergency at locations such as Belongil and Collaroy-Narrabeen beaches. Some of these rocks have been on our beaches for more than 30 years, impacting on the community's enjoyment of the beaches and presenting a public safety risk. The message from history is clear: if we do not provide an appropriate way for landowners to reduce erosion threats to their properties in an emergency, many landowners will do the wrong thing and we will live with the consequences for many years.

The emergency works provisions allow landowners with properties at risk to place sandbags on a beach, provided that the works are certified by an authorised officer of a local council or of the Department of Environment, Climate Change and Water. The exposure bill did not require a certificate from an authorised officer. This provision has been added in response to evidence that without some form of quality control, inappropriate works and materials can be introduced onto our beaches and waterfront areas. The certification process can be expeditious, and by allowing a range of authorised officers it provides for flexibility, especially in an emergency context.

Landowners will be able to place emergency works once for any parcel of land and may also place them on adjacent private land, with that owner's agreement. The emergency works can normally be placed for up to 12 months. This provides the landowner with an opportunity to consider longer-term options for managing erosion risks. These options may include lodging a development application for longer-term coastal protection works. If a development application is lodged the emergency works can remain until the development application is determined. The bill includes strict controls on emergency works so that they do not cause erosion of neighbouring land, do not present a public safety risk or unreasonably impact on access to a beach. Orders can be issued by authorised officers to remove the works if these criteria are not met.

It is important that any emergency works placed by landowners are consistent with council's emergency response arrangements. That is why the Minister will be encouraging councils to finalise their emergency subplans as soon as possible. The emergency works will therefore need to be placed in accordance with council's emergency action subplan. Lodging a development application remains the preferred pathway for landowners wanting to reduce erosion threats to their property. This process allows a thorough assessment of any proposed works. It allows also for appeals to the Land and Environment Court. The emergency works arrangements in this bill strike the right balance—they allow landowners to place works temporarily while they go through a proper development application process for longer-term works.

This bill will be accompanied by complementary amendments to the State Environmental Planning Policy (Infrastructure). A copy of the policy outcomes statement for proposed amendments to the State Environmental Planning Policy (Infrastructure) relating to coastal protection was tabled in the other place. This bill and proposed amendments to the Infrastructure SEPP improve the arrangements for landowners wanting to build long-term works such as a seawall. The proposed Infrastructure SEPP amendments will allow landowners to apply for consent to build seawalls. Landowners will be required to satisfy the consent authority that there will be suitable arrangements in place to ensure any seawall will be adequately maintained and any beach erosion impacts managed. This aims to achieve the appropriate balance between private property protection and protection of our beaches.

The bill will allow councils also to levy a coastal protection service charge on landowners who have voluntarily contributed to building a new seawall or upgrading an existing seawall. This provision will not apply retrospectively. The charge covers the cost to council of maintaining the works and managing any off-site erosion impacts. The charge will not apply to existing seawalls. Landowners will be able to request an independent review of the costs of the charge every three years. Councils will normally be able to charge a fee to cover their reasonable cost of providing this review. The fee will not apply in the first year the charge is levied or if the charge increases above the rate pegging increase. This is in addition to the ability for the Minister to

direct a council to undertake an independent review. There is no requirement for landowners to spend money to protect their property from erosion. The emergency and long-term property protection arrangements are entirely voluntary. Moreover, nothing in the bill prevents local councils from carrying out such works.

Another part of the bill will allow details of lands vulnerability to erosion and the expected council response to managing this erosion to be listed on section 149 certificates. This will help future purchasers better understand the erosion problems associated with a particular parcel of land. I take this opportunity to set the record straight about some comments that have been made in the media in relation to this bill. Many of these comments relate to the emergency works provisions. I reinforce the statement that these emergency works provisions are in addition to the ability of a landowner to lodge a development application for emergency or longer-term works. If landowners consider that the emergency works requirements in this bill are not suitable, they should consider lodging a development application for their preferred works. If they are refused they can exercise their legal appeal rights just as for any normal development application.

One claim that has been made frequently is that the bill takes away landowners' property rights. This is not true. Landowners currently have the right to apply for development consent to construct a seawall to protect their property: the bill does not change that. The bill expands the ability of landowners to protect their property. The emergency works provisions in the bill provide new streamlined arrangements for landowners to place sandbags to reduce immediate erosion threats to their houses. This is intended as an interim measure while the normal approval processes are pursued—an avenue not previously available to owners.

Concerns have been raised about the fact that the controls on emergency works are too stringent. The bill's emergency works provisions have been developed to minimise the risks of any emergency works placed by landowners impacting on our beaches or beach users, such as causing erosion elsewhere on the beach, risking public safety, or unreasonably reducing public access to a beach. They strike the right balance between these two perspectives. If a landowner wants to place different emergency works he or she is invited to lodge a development application for those works.

There are concerns also that the emergency works cannot be used to protect vacant property. The aim of the streamlined approval process for emergency works is to enable landowners to reduce erosion threats to their homes. This may include works on adjacent vacant land if it is to protect erosion threats to their homes. If a landowner wants to protect vacant land from erosion, which does not involve protecting a house, he or she can follow the normal development application process. There are reports also that the requirement for a house to be within 10 metres of an erosion escarpment before emergency works can be placed is too restrictive. That requirement will be changed.

Other concerns that have been raised include that the Minister's draft requirements limit the height of emergency works to 1.5 metres, which may be too low to be effective in some locations. The height of the works has been limited to reduce the likelihood of these works causing erosion impacts or presenting public safety risks. If a landowner wants to construct larger works he or she can lodge a development application supported by appropriate engineering advice. Some landowners have raised concerns also about emergency works being able to be placed only once on each parcel of land. These emergency works arrangements are intended to give landowners an opportunity relatively easily to place works while they are considering longer-term arrangements.

This may include lodging a development application for placing large sandbags, or other works, again in the future. The reason for the once-only provision is to prevent the 12-month limit on emergency works being artificially extended by new works prior to the expiration of the 12-month period. Nothing in the bill prevents an owner responsible for emergency works from repairing those works. However, this cannot restart the clock and trigger a new 12-month period. I emphasise that the emergency works provision is designed purely as an interim measure to allow owners to seek approval for more permanent works. The media has also reported that plans for permanent protection need to be lodged with council within seven days after emergency works are placed. That is not the case; landowners can lodge a development application at any time within the 12-month period after the works are placed.

Another issue raised is that the legislation privatises the protection of private property, transferring responsibility from the State Government to residents and councils. With the passage of this bill the Government, through the Minister and the Department of Environment, Climate Change and Water, will remain involved in a number of ways. Departmental officers may authorise emergency works, which currently is not the case. An expert coastal panel will also be created and its members appointed by the Minister from the Department of Environment, Climate Change and Water, the Department of Planning and the Department of Lands. The Minister must also certify a coastal zone management plan. If a council does not have a certified coastal plan, the coastal panel will be the consent authority for any application for works under the Infrastructure SEPP amendments.

The Minister may direct a council to prepare a coastal plan or to revise a coastal plan. If a council does not make or revise a coastal plan, the Minister may independently make the plan. The Minister may also intervene to require a council to justify a coastal protection service charge for the maintenance of coastal works. State Government authorised officers will be appointed to ensure compliance with the Coastal Protection Act, including issuing orders to stop unlawful works on beaches. The Government will continue to provide grants and technical

support to councils to help them prepare coastal plans. The Minister will continue to issue concurrences for some offshore activities that may present a risk to our coastline. The Government is not reducing the amount that it spends on coastal management in response to this bill. Nearly \$4 million is spent annually on coastal management projects. Councils currently can seek a special rate variation to fund coastal protection works, and the bill does not change that arrangement. The bill and the proposed Infrastructure SEPP amendments provide landowners with additional options to protect their property.

Another claim made is that surfing would become an extreme sport as board riders dodged stone groynes and other walls established to defend homes. Again this is incorrect. The Government is not proposing to allow landowners to construct artificial reefs that may present a risk to surfers. It has been said also that public land should not be used to protect private property. The Government's preference is for any emergency works to be located on private property. However, this may not be practical in certain circumstances and the use of public land for these temporary works is permitted under strict conditions.

Some diverse and even extreme views have been expressed about how best to balance the impacts of coastal erosion and sea level rises on our coastline with the interests of communities and beach users. The Government's goal is to achieve a reasonable, workable solution to the real challenges that we face. It recognises that managing coastal erosion is difficult and often contentious, and that different solutions are appropriate in different circumstances. This bill is not a one-size-fits-all solution. It provides additional management options for landowners and councils, building on the current coastal management framework, along with a strengthened regulatory framework to ensure that the public's enjoyment of beaches is not compromised.

I emphasise that this is framework legislation, within which the individual challenges that face our beaches can be more flexibly addressed. It is not legislation designed to solve specific beach erosion problems in its own right. This new bill represents a key component of the Government's strategy of managing coastal erosion risks. It strikes the right balance between protecting private property, public assets and beaches from coastal erosion. I commend the bill to the House.