Legislative Assembly

20/03/2002

Coastal Protection Amendment Bill

Hansard

Extract

Second Reading

Mr AQUILINA (Riverstone—Minister for Land and Water Conservation, and Minister for Fair Trading) [11.06 a.m.]: I move:

That this bill be now read a second time.

The effective management of our New South Wales coastal areas is of immense importance to the New South Wales Government and to all Australians. It is the coastal zone which provides a home to a large percentage of our State's population; it is the coastal zone which gives us vital transport links. It is a major source of food and raw materials, it contains valuable and irreplaceable habitats, and it is a magnet for tourism and local recreation. Unfortunately, it is our use of the coastal zone which is leading to serious problems of habitat degradation, declining water quality and resource depletion. There are increasing concerns within the community about population pressures, inappropriate development, loss of aesthetic values, loss of coastal amenity and the loss of traditional public access. In June 2001 this Government responded to these concerns by announcing a package of comprehensive and balanced measures to safeguard the New South Wales coastal zone for present and future generations.

An important part of the proposals was to ensure the protection of our State's beaches and headlands by requiring local councils to prepare coastal plans of management for any beaches where emergency works might be needed to combat storm erosion or where there were likely to be public access constraints. In this legislation—the Coastal Protection Amendment Bill—the Carr Government delivers this protection to the people of New South Wales. The proposed amendments to the Coastal Protection Act have arisen from the landmark report prepared by a subcommittee of the Coastal Council of New South Wales, chaired by Professor Bruce Thom for my predecessor, the Hon. Richard Amery. The report essentially dealt with two issues. The first was the impact of emergency actions taken by either councils or individual property owners in response to storm erosion. The second issue was the problem that the redetermination of private property boundaries, defined by reference to mean high-water marks, created in terms of both coastal amenity and public access to the foreshore. The review reinforced the Government's concerns that ad hoc actions by both individuals and authorities in response to storm erosion or emergencies can create an ongoing loss of beach amenity after the emergency is over.

The review identified a sequential pattern of events where a threat, or a perceived threat, to property due to storm erosion was addressed by either the owner or the local authority through the dumping of a range of materials, many of which were ill-suited to the task. After the storm emergency no attempt was made to clean up these ad hoc works. The result was that the long-term amenity of the beach was irretrievably lost, not from storm damage but from the emergency response. These problems were highlighted during apparent emergencies in 1998 and 1999 at Collaroy-Narrabeen and Byron Bay which led to the placement of ad hoc protective works with no consideration for the long-term impact on the beaches. Following its review the Coastal Council recommended that legislation be put in place to integrate emergency works within the framework of the coastal management process as set out in the Government's coastline management manual, and for the implementation of such works to be linked to the activities of the State Emergency Service.

As I have said, the second issue discussed in the report relates to the amendment of property boundaries which are defined by reference to a mean high-water mark. New South Wales beaches that border the open ocean and estuaries experience both erosion and build up or accretion. A number of problems arise when private ownership of land is defined by the mean high-water mark behind a sandy beach. Erosion of land can result in works by the property owner to protect that land. Accretion of land can result in attempts to redefine the land title, with subsequent moves by the property owner to protect this newly acquired land from future erosion and from access by the wider community. Where the land-water boundary is ambulatory—that is, where it moves with the mean high-water mark and the movement is gradual, natural and imperceptible—the legal doctrine of accretion and erosion applies.

Under this doctrine landowners can apply to have their property title redefined through an administrative process or through the courts. Processes of shoreline accretion and erosion along the New South Wales coast almost inevitably create situations where the accretion takes place gradually and imperceptibly, but erosion occurs rapidly as a result of dramatic storm events. As a result, property owners have time to claim title to the newly accreted land under the doctrine of accretion but do not lose this land under the doctrine of erosion as the loss is usually sudden and dramatic and is readily observed and documented. In New South Wales the doctrine of accretion and erosion has become a one-way activity with owners readily increasing their landholding and never surrendering it. The net effect is that application of the doctrine favours the private landowner at the expense of the public domain. If the issue remains unaddressed we will see a continued loss of public access along the foreshores of our estuaries, in

particular as property owners continue the cycle of protecting their properties from erosion and laying claim to any accretion beyond those protected boundaries.

Let me turn now to the legislation. The Coastal Protection Amendment Bill will amend the Coastal Protection Act 1997 in three major areas. First, it will define the area to which the Act applies. Second, it will give the Minister for Land and Water Conservation the power to direct local government councils to prepare coastal management plans. These will include the specification of appropriate responses to the management of erosion under emergency conditions. Third, it will modify the basis on which land boundaries defined by a mean high-water mark can be adjusted. In addition, the bill proposes an amendment to the Crown Lands Act to allow the Minister for Land and Water Conservation to create easements for access over freehold land where the boundary was defined by reference to mean a high-water mark and a coastal management plan recommended that such an easement or easements would be needed to maintain customary access.

Under the Coastal Protection Act 1997 the coastal zone to which the Act applies is defined as excluding the urban regions of Sydney, Newcastle, Illawarra and the Central Coast, extending from Newcastle in the north to Shellharbour in the south. Item [1] of schedule 1 inserts new section 4A, which significantly extends coastal zone boundaries. The only areas excluded from the zone are those parts of the local government areas of Pittwater, Warringah, Manly, Woollahra, Waverley, Randwick and Sutherland that are not, and are not likely to be, affected by and that do not, and are not likely to, affect coastal processes including coastal wave and wind action. The waters and foreshores of Sydney Harbour and Botany Bay continue to be excluded from the coastal zone. This expansion of the coastal zone to include much of the greater metropolitan region has the strong support of local government councils and is consistent with the coastal package which this Government announced in June 2001.

The bill will introduce a new part 4A into the Act. It deals with the preparation of coastal management plans. It is proposed that the Minister for Land and Water Conservation will have the power to direct a council whose area falls within the coastal zone to prepare a coastal management plan. New part 4A specifies matters that must be dealt with in the coastal management plan and the process for its preparation, approval, gazettal and future amendment, if necessary. Specifically, the bill directs that coastal management plans must include provision for emergency management works during periods of beach erosion and for continuing and undiminished public access to beaches, headlands and waterways.

Honourable members would be aware that local councils have been developing coastal management plans in accordance with the processes set out in the Government's coastal management manual for many years. The development and implementation of these plans has been strongly supported by the Government through the provision of both technical and financial assistance. In 2001-02 around $5 million will be available to councils for these activities on a 50 per cent subsidy basis. It is to be hoped that councils will continue to follow this process with both technical and financial support from the Government and that there will be relatively few instances when the powers to direct councils to prepare a coastal management plan will need to be used.

The Coastal Council of New South Wales is co-ordinating the development of a whole-of-government coastal zone management manual to replace the separate and now outdated manuals currently used for managing the New South Wales coast and its estuaries. A key component of the new manuals will be a section dealing with options to address emergency storm erosion in the overall context of a coastal zone management plan. While it is expected that councils will continue to support the development of management plans, should councils not be prepared to develop and implement them on a voluntary basis it is essential that the Government has the power to direct councils to do so. Further, if a council fails to comply with such a direction, the Minister for Land and Water Conservation will have the power to make the coastal management plan instead of the council. In such cases, the Minister for Land and Water Conservation will be able to recover the cost of the preparation of the plan from the council.

The bill makes provision for substantial penalties for persons carrying out works which do not comply with coastal management plans and allows the Minister for Land and Water Conservation to take action in the Land and Environment Court for an order to remedy or restrain a breach of a coastal management plan. New part 4B modifies the doctrine of erosion and accretion as it applies to land whose boundary is defined by a mean high-water mark. It does this by removing the powers of the courts, the Minister administering the Crown Land Act 1989 and the Registrar General to make a declaration or determination concerning the mean high-water mark boundary if either a perceived trend by way of accretion is not likely to be indefinitely sustained by natural means or if, as a consequence of making such a determination or declaration, public access to a beach, headland or waterway will be, or is likely to be, restricted or denied.

No longer will property owners be able to have a boundary title adjusted simply by showing that any accretion has been slow and imperceptible. Now a property owner must also show that the process is irreversible and that customary public access to the foreshore will not be lost. In conclusion, the bill provides for an amendment to the Crown Lands Act 1989 by the insertion of a new section 58A to enable the Minister to create an easement over private freehold land where the boundary is defined by the mean high-water mark for the purpose of securing continued public access to a beach, headland or waterway, but only if the creation of such an easement is recommended in a coastal management plan. No compensation is payable in such cases.

The purpose of this provision is to ensure that customary access is not lost should a property owner construct protective works or fencing on his mean high-water mark boundary such that erosion immediately outside the works or fencing makes it impossible for a continuation of existing access. This amendment includes a provision that the owner or lessee of the land would not be liable for personal injury or death or loss of property of a person

using the easement unless such loss was caused by the property owner's negligence. The amendments to the Coastal Protection Act I have outlined are soundly based and will ensure that coastal New South Wales remains accessible to the community and is effectively managed. I commend the bill to the House.