



Coastal Protection Amendment Bill

Second Reading

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COASTAL PROTECTION AMENDMENT BILL

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Second Reading

The Hon. HENRY TSANG (Parliamentary Secretary) [9.15 p.m.]: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

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, I note that when the bill was before the Legislative Assembly, the Opposition while generally supporting the bill raised two concerns.

The first of these concerned the exclusion of Sydney Harbour and Botany Bay from the modified doctrine of erosion and accretion. The government proposes to move an amendment to Section 55N to have the modified doctrine of erosion and accretion apply to lands adjoining the tidal waters of Sydney Harbour, Botany Bay and their tributaries. The second issue covered the non-payment of compensation for easements taken over privately owned waterfront land using amendments to the Crown Land Act. The Government proposes to move an amendment to delete all reference to easements from the bill in light of the unnecessary concerns that those provisions were creating.

By way of explanation the easement provisions of section 58A were not fundamental to the amendment bill. These provisions were originally included to provide an additional guarantee of public foreshore access for those rare instances where a property owner sought to deny access on the grounds that the land above MHWL was private property. The section was a safeguard against such behaviour. The principal impediment to public foreshore access is addressed by section 55N which significantly changes the basis on which MHWL boundaries can be amended and prevents the ad hoc construction of seawalls and fences on such amended boundaries. 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, although as noted earlier they are included in the modified doctrine of erosion and accretion. 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 was made 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. 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.

The Hon. RICK COLLESS [9.16 p.m.]: I lead for the Opposition on the Coastal Protection Amendment Bill. Basically, the bill is divided into four components. The first three components deal with amendments to the Coastal Protection Act 1979, and the fourth component deals with an amendment to the Crown Land Act 1989. The amendments to the Coastal Protection Act are designed to redefine the land that comprises the coastal zone to include the area from Newcastle to Shellharbour, except for the waters of Sydney Harbour and Botany Bay and 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 coastal processes, including coastal wave and wind action.

The second component of the bill requires local councils within the coastal zone to prepare a coastal management plan if directed to do so by the Minister. The third component deals with the modification of the doctrine of erosion and accretion. The fourth component deals with an amendment to the Crown Land Act with respect to easements for public access created by the Minister over foreshore land within the coastal zone. The Opposition supports the general intention of the legislation but has a number of concerns, and I will deal with them in more detail shortly. The Opposition welcomes the inclusion of the Central Coast into the coastal zone. I simply cannot understand why it was excluded in the first place. The Central Coast region is under enormous pressure from population growth and resultant development.

The Opposition welcomes this aspect of the legislation. However, we are disappointed that the bill proposes to continue some exclusions. The Minister has offered no explanation for this reasoning. It would make more sense if we had statewide coastal policy, and by "statewide" I mean exactly that-statewide. Clearly, given the exemptions provided by it, the present policy is not a statewide policy. The Coalition would like to put on record the contribution to this legislation, over a long period, of the Chairman of the Coastal Council, Professor Bruce Thom. He is to be commended. It seems that the Government intends to have the exemptions remain in the legislation until such time as the coastal policy undergoes a further review, which I understand will take place in the future. Given the implications of part 4B, which relates to erosion and accretion, I believe the time has come for the entire metropolitan area of Sydney to be included in the coastal zone.

The second component of the bill deals with coastal management plans. Essentially, the Opposition does not have difficulty with this proposal. Proposed section 55B requires a council within the coastal zone to prepare a coastal management plan if directed to do so by the Minister. Under the legislation as it currently stands such plans are not statutory plans and, therefore, ministerial authority in that regard does not exist. Councils can choose to ignore the Minister because under the current legislation a coastal plan is simply a council document.

Anyone who has been monitoring the state of our coastal beaches and towns will be familiar with the problems being experienced by Byron Bay and the enormous headaches caused to the local council by erosion, poor water quality and population growth. The shadow Minister in his speech during the second reading debate in another place used Byron Shire Council as an example. It appears that the council has been working on a coastal management plan for a number of years-possibly as many as four or five years-without making much progress. The Minister's predecessor wrote to the council telling it to develop a plan but the council ignored that directive. Under the new legislation, it would be required to comply.

Proposed section 55C sets out details that must be dealt with in coastal management plans. The Coalition does not have too many difficulties with that provision, although we fear that it may not provide sufficient guidance for councils about what must be included in the plans. However, this minimum requirement goes a long way towards clarifying who is responsible for coastal management plans, particularly in emergency situations. It will eliminate the confusion that has existed until now about who is responsible for what, especially during times of emergency. Plans were often put in place to address a particular emergency only to prove totally inadequate and unsuitable in the long term.

The Coalition is concerned about the vagueness of proposed section 55C (1) (b), which refers to works undertaken for the protection of property affected, or likely to be affected, by coastal erosion. It is difficult to speculate about what land might or might not be affected by coastal erosion. This point was made by several stakeholders. We acknowledge that it is difficult to legislate for such a concept. As the shadow Minister acknowledged in his speech during the second reading debate in the other place, coastal management plans are linked through section 733 of the Local Government Act, which limits liability to councils if the plan is made in good faith.

A comparison could be made between flood management plans, which are currently developed by the Department of Land and Water Conservation, and these types of plans. There is a clear similarity that is covered by the legislation. Proposed sections 55B to 55M encapsulate procedures for making coastal management plans: what should be included, the public consultation process, submissions, approvals by the Minister, and the gazettal and commencement of the plans. We have no difficulty with those provisions. Proposed section 55I deals with the amendment and repeal of plans, should that be required. Proposed sections 55K to 55M deal with the enforcement aspects of the plans. Again, we have no serious concerns with that part of the legislation.

However, the Coalition has a real concern about the implementation of some of these plans. I acknowledge that the Minister said in his second reading speech that the State Government will provide a 50 per cent subsidy for the development of coastal management plans, but we have a major concern about the apparent funding sources that will support councils in implementing the works identified in the coastal management plans. This is an important issue because, if councils are asked to develop a coastal management plan and no source of funding is identified to assist the carrying out of that plan, they could be put in a position of having to take the cheaper, and sometimes more unsuitable, option. I call on the Government to assure councils that it will be a full partner to them, providing finance and resources.

The shadow Minister noted in his speech during the second reading stage of the bill in the other place that the State Government is contributing \$4 million to improve the situation north of the Tweed River in Queensland yet no such support has been forthcoming in our State. Indeed, I remind the House that following a severe storm and erosion in Byron Bay in 1999, the shadow Minister suggested that a task force be established. That idea was supported by everyone, including the Coastal Council of New South Wales. However, the concept foundered at the end of the day because agreement could not be reached about funding the task force recommendations. Hence the grounds for concern. This is a major concern to the Coalition as it is yet another unfunded mandate imposed on local government and local communities through a wide range of measures introduced by this Government.

While we acknowledge that coastal management plans are necessary, the absence of any commitment from the Government to provide funding to help councils implement these plans will result in councils preparing only plans that they can finance. That will not necessarily be in the State's best interests. More and more demands are being placed on local councils, whose budgets are being stretched further and further. Unless the Government provides financial support to help councils implement the plans, it is unreasonable for it to place restrictions on councils-particularly in relation to coastal management when correction processes may involve significant sums.

Part 4B of the bill deals with accretion and erosion. The current legislation allows a property owner to extend a property boundary if he or she can show that the accretion is slow and imperceptible. Under the new bill, a property owner will have to demonstrate that the process is irreversible. That is an important difference. If there is accretion beyond one's land that can be shown to be slow and imperceptible, \$100 can be paid to obtain an extension of the freehold title on that land previously owned by the Crown. This can improve the value of a person's property, in some cases by tens of thousands of dollars.

The effect of the bill is that the principle of accretion will still exist but that property owners can extend their boundary only if they can show that the accretion is irreversible. In other words, land forms and what is happening to the coastline can never be classed as erosion. In the past, property owners extended their boundaries through an accretion process. If a big storm event suddenly caused massive erosion on private land or on land adjacent to a boundary, a property owner lost what was previously public access to the foreshore because of that erosion event. This is particularly true of beachfront properties from which people access the beach on a daily basis.

One key tenet of the New South Wales coastal policy is continued public access. Therefore, the Coalition supports what the Government is trying to do with this legislation. The Government is saying that property owners cannot simply apply to have the upside without considering the downside-that is, erosion. This legislation is very good in that respect. However, by exempting Sydney Harbour and Botany Bay in one section of the legislation the Government is effectively creating two classes of shoreline residents in New South Wales. The Government is saying that property owners who live adjacent to Sydney Harbour and Botany Bay can enjoy the benefits of accretion under the old rules because they will not be affected by the new rules-they will be exempt. However, everyone else in New South Wales must abide by the new legislation. This is also the case with other natural resource management legislation.

The Coalition believes there is no justification for having two classes of residents when it comes to accretion. Indeed, the Act, as it is currently written, discriminates against people who do not live adjacent to Botany Bay or Sydney Harbour. The Government should not allow the exemption to continue. It should remove reference to Botany Bay and Sydney Harbour from part 4B. People who live adjacent to Sydney Harbour and Botany Bay should be treated in the same way as everyone else when it comes to accretion and erosion. To that end, the National Party will move an amendment to proposed section 55N (1) (b) to include the tidal waters of Sydney Harbour and Botany Bay to ensure that all citizens of New South Wales are treated equally.

I turn now to the provisions in schedule 2, which have the potential to create at least one problem. Schedule 2 amends the Crown Lands Act 1989 to enable the Minister to create an easement on foreshore land within the coastal zone. This is proposed to occur if two conditions exist. The first condition applies in order to secure continued-note that word-public access to a beach, headland or waterway. The second condition applies when the easement is part of a coastal management plan. The Minister can create an easement on private land in two instances only: first, when the easement is continued public access to a beach, headland or a waterway; and,

second, when the easement is part of a plan and identified as such. The Coalition is concerned that proposed section 58A (3) provides that compensation will never be payable.

The State will never have to compensate a land-holder in that circumstance. I can foresee a situation in which a private land-holder, through no fault of his own, loses a personal benefit as a result of coastal movements and, in the process of protecting an existing public access, an easement is created that causes real problems for the land-holder. For example, if there is a major erosion event a private land-holder with public access beyond his property may lose that public access-similar to what is happening in other parts of New South Wales in other situations.

Under this legislation, if it happened that the Minister could step in and create an easement through private property to enable public access to a waterway, beach or whatever, the private landowner would lose his land, which could be worth a significant amount of money. For example, in the extreme case, if on property adjoining a lakefront there is considerable accretion and a block of land on the other side of that accretion is sold, the owner of the lakeside property would lose his water frontage for which he has already paid good money. That could result in a significant loss to the owner. A less extreme consequence would be that the land-holder would have to erect a fence to protect his property from people wandering over his land or to keep small children away from the danger of the waterway.

There may be security issues involved. Indeed a fence may have to be moved back two to three metres to prevent people wandering across the land at all hours, while at the same time maintaining public access. The property owner could be significantly out of pocket through no fault of his own but simply because of erosion. Such property owners should be protected. The Government must acknowledge that proposed section 58A, which states specifically that under no circumstance will a government ever have to pay compensation to other land-holders, is wrong. The National Party has received a number of representations in relation to that provision, as a result of which considerable pressure has been put on the Government to remove it from the bill. I acknowledge that the Government will move an amendment in Committee to do just that.

In his second reading speech in the other place the shadow Minister called for clarification from the Minister of the term informal access. Access may be made available because the landowner is trying to do the right and neighbourly thing, or perhaps access has not been identified on a local environmental plan or a development control plan. The Local Government and Shires Association of New South Wales-now known as Lgov-has indicated its support for the inclusion of the urban areas of Sydney, Newcastle, the Illawarra and the Central Coast in the definition of "coastal zone". The association's comments are recorded in the second reading speech of the shadow Ministers, along with those of the Institute of Surveyors of New South Wales. When commenting on coastal management plans, Lgov stated:

The preparation of a coastal management plan and actions which may be required resulting from such a plan will be onerous on councils in terms of human and financial resources. The comprehensive public consultation process required under section 55E and F will be expensive, and attention is further drawn to section 55C (1c) which may require a council to undertake costly, or ongoing engineering works to remove coastal responsibilities for emergency actions on public and private land.

It is suggested that some assurance be given in the Bill that the Minister's guidelines referred to in section 55D are prepared in a timely manner, certainly prior to the issuing of any directions to prepare coastal management plans, and are developed in consultation with Local Government.

It is further proposed that the Bill includes provision for the commitment of funds by the State Government to assist local councils to prepare coastline management plans.

Mr Gordon from Pittwater Council also referred to the definition of the coastal zone. He said:

Currently a coastal zone is defined as one kilometre inland. This means that a house one kilometre west from Narrabeen Lagoon will be covered by the coastal policy and any development application on the property will require assessment under the coastal policy.

He said further:

The coastal zone should be redefined on a locality basis. The Minister should appoint an expert panel to advise him on the establishment of the coastal zone. The Minister should invite coastal councils to provide a definition of what they think should constitute the coastal zone. This should be assessed by the expert panel, and determined by the Minister in respect of each council area that is currently mentioned in the exemption.

The Institute of Surveyors of New South Wales has also had something to say about this. It stated:

(1) The bill confers extraordinary powers on the Minister to affect the quiet enjoyment of a property to which a fee simple title is held.

(2) The proposal to interfere with the Common Law Rights which are part and parcel of the title which has been purchased in good faith by the proprietor should only be accepted in proven extraordinary circumstances and the recommendations to the Minister and the actions by the Minister should be subject to review by the courts. Political favours or whims should be contestable.

The Bill will probably devalue some properties.

If there is no compensation clause, properties could potentially be devalued. The institute stated further:

There are no indications as to terms of easements which are proposed. Is it the intention that the easements are to be for pedestrians only? Are vehicles to be allowed? Will loitering (eg picnickers) be permitted? What of damage by users? What width of easement is generally proposed?

It would be useful if the Minister could define the legal definition of easement. Are we referring to pedestrian easements? Is it not correct that an easement is "a width of land"-a term referred to in the bill? I am advised that the concerns I have raised will be addressed by an amendment that will remove schedule 2 from the bill. I commend the Government for taking those concerns on board. Because of the considerable amount of work it has done in the Lake Macquarie area the National Party has received numerous representations from local people there, and pressure has been put on the Government to remove that provision. I congratulate the Government on yielding to those representations.

The Opposition does not oppose this bill. We will be moving some amendments, depending on what happens with schedule 2, to address the concerns I have expressed, to make it possible in circumstances where it is warranted for compensation to be paid to private landowners who will be disadvantaged by the creation of an easement on their land. We will seek also to have the tidal waters of Botany Bay and Sydney Harbour included in the provision.. I look forward to the further debate in Committee.

The Hon. IAN COHEN [9.37 p.m.]: The Greens welcome the opportunity for reform regarding coastal areas of New South Wales. We hope further proposals for improvement will be put forward as a result of the Coastal Council working with the Government. The New South Wales coastal zone is unique in the world. It is complex and dynamic, and enormously attractive to human use. But it is also under tremendous pressure as a result. Population pressures and protest and community action in the region could also be said to be unique. There really is a crush of values involved. I have been reminding the Government for a long time, in relation to many issues affecting our coastline, that once coastline is lost, it is lost forever.

The coastal zone encompasses natural resources of extraordinary value. These resources include the marine environment, rivers and estuaries, sandy beaches, rocky headland and platforms, coastal heaths, mangroves, littoral rainforest, forests, wetlands and salt marshes, extensive floodplains and all their dependent plant and animal species. Coastal ecosystems are characterised by complex interactions between the flora and fauna and the physical elements of both terrestrial and marine ecosystems. These resources, which have their own intrinsic value, also provide an environment for settlement and economic activities. The coastal zone offers the most moderate and aesthetically pleasing conditions for human settlement, resulting in a massive concentration of population and industry on the New South Wales coast.

Population settlement, industry and the associated activities pose real threats to the potential survival of many coastal species, natural features, processes and resources. Our coastline is under threat, with 4,000 square kilometres of high-risk acid sulfate soils within the New South Wales coastal catchment. Management of the coastal zone has been fragmented and ad hoc due to a lack of co-ordination, agreed management objectives and publicly enforceable standards. Local community groups have sought to defend important coastal areas and to protest improper planning and development approval processes via local education and protest actions and proceedings in the New South Wales Land and Environment Court. These actions have brought many community groups into conflict with local councils, State government agencies and developers. The coastal areas of New South Wales are included in the territories of Aboriginal people who are dispossessed of their traditional lands. Aboriginal people have a special right to involvement in coastal management and are entitled to recover ownership and control of traditional coastal lands. This right was formally recognised in the Commonwealth Resource Assessment Commission's report on its coastal zone inquiry.

The Hon. Rick Colless: As long as it is not your land.

The Hon. IAN COHEN: I have been involved in areas of land on the North Coast. I have worked with Aboriginal people and I would like to explain a little later about the traditional custodians in the Byron area. We have worked together on the first successful indigenous land rights agreement.

The Hon. Michael Costa: Is it land that you own?

The Hon. IAN COHEN: No. My first involvement in protest action was at Middle Head in 1980 to stop sandmining on what was a beautiful stretch of coastline on the Mid North Coast. Magnificent sand dunes that should have been saved, an area that should have been national park, were ripped apart by the then Wran Government. The protests lasted for some six months. I was arrested along with about 150 other people. I have been a surfer on this coastline for over 30 years and I have watched the New South Wales coastline change dramatically. As a politician I have waited for action by government to protect the coast. During the 1995 election campaign I travelled the coast of New South Wales inspecting with local communities specific developments that were of concern to them. I will be doing the same for the 2003 election.

In 1995 the Australian Labor Party campaigned strongly on the issue of coastal protection but it took to the end of 1997 until we saw the coastal policy. The ALP had raised many coastal issues in its pre-election policies. The ALP also recognised the issue of inappropriate development and positioned itself on the status of various specific developments and defined some key inappropriate types of development. It claimed that there would be no more ocean outfalls, no more canal estates and no more sandmining. Sandmining is still continuing and it seems that the Government's interpretation of "no more ocean outfalls" is to aggregate a number of outfalls into what are

essentially mega outfalls. We still have the same problem. I am still dealing with the same problem, particularly at Lennox Head on the North Coast and Kiama on the Illawarra Coast. The Government is still hell-bent on pumping sewage into the ocean.

There was also a commitment to a policy, and legislative action, to protect the fragile coast. These were issues that the community had lobbied for action on. The bill is another step in achieving some of the needed goals of protection. The coastal policy of 1997 entitled "A Sustainable Future for the NSW Coast" confirmed nine goals for achieving this by identifying the key aspects. First was the protection and rehabilitation of the natural environment, including acquisition and management strategies to ensure protection of significant coastal areas. Second was recognising and accommodating natural processes and climate change. I will relate a local story on this issue later and speak about the difficulty of achieving a process for accepting the natural processes. Third was protecting and enhancing the aesthetic qualities of the coastal zone. I acknowledge the work done and the recently released design guidelines and the useful process of the Coastal Council's roadshow to speak to communities about these issues.

The fourth goal was to protect and conserve cultural heritage. That is a significant issue when considering the importance of Aboriginal rights and relationship to the coast but it is an area that still needs considerable work to ensure that it happens in a meaningful and respectful way in the planning to protect and conserve. The fifth goal was to promote ecologically sustainable development. So many of our society's most valuable resources are based in the coastal zone-from minerals to fish to tourism. For the long-term economic viability of these industries it is vital that we protect them now. The sixth goal was to promote compact and contained urban development. This is certainly the ticket item: how to contain and control, and ensure that communities are not destroyed as a result of demands for development and the rush to inhabit the coast.

The seventh goal was to increase public access to foreshores. This is one of the key issues of the bill, to ensure that access to certain public areas remains intact. The issue of easements over private land is a concept that arises from the increasing pressures on certain areas, especially where coastal erosion or inappropriate past practices have isolated certain areas. It will be an interesting process to watch how this will be taken up by local government in the writing of the coastal management plans, and whether government is willing to support calls for this action of private easements. Eighth was the co-ordination and integration of data and information collection. Ninth was to facilitate consistent and complementary decision making that recognises the three spheres of government.

The Coastal Protection Amendment Bill attempts to address a few of the current challenges facing our coastline. While the Greens welcome the opportunity to restore community access to foreshore areas and the requirement of local councils to develop coastal management plans, we are disappointed that these requirements are not coupled with substantial funding and that the Government has excluded coastal areas of metropolitan Sydney. I am also very concerned that restoring foreshore access will be left to local governments without a directive from the State.

Amendment provisions within the bill relating to the redefining of the coastal zone are of integral importance. The high-water mark boundaries move with the lateral position of the shoreline. They are ambulatory and subject to the common law doctrines of accretion and erosion. The maintenance of coastal processes is best achieved if the shoreline is allowed to fluctuate as nature intended. This, of course, is more likely to happen if the area under fluctuation is not in private ownership. Foreshore access in many coastal areas has been eroded over the past decades. In the interests of social justice the Greens welcome the modification of the doctrine of erosion and accretion to restore some foreshore areas to being available for public use. It is imperative that the interests of the public at large be restored and the continual grab of foreshore land by greedy developers be halted.

New South Wales is suffering extensive overdevelopment of coastal areas. Along with a definition of the coastal area, the modification of erosion and accretion will go some way towards preserving our precious coastal areas for future generations. On the New South Wales coast approximately 50,000 property titles are ambulatory, most in the greater metropolitan region. For this reason, in addition to consistency, the Greens believe that for the bill to be truly effective it is vital that it extends to all areas of the New South Wales coastline. This would undoubtedly provide coastal councils with more power to prevent inappropriate developments. The Greens welcome an amendment to provide for the inclusion of the entire metropolitan area.

I turn to the issue of compensation, as raised by the honourable member for Ballina, Don Page, in the other place. The modification of the principle of accretion and erosion is a positive step in restoring public access and should not be hindered by the requirement for compensation to be paid. The Greens, and I suspect other crossbenchers, are fundamentally opposed to the payment of compensation whereby an easement is created for public access over foreshore land.

Preparation of coastal management plans is to be directed by the Minister but may be undertaken by local councils. The Greens see it as a good initiative yet are concerned that such a requirement will not be coupled with funding. Coastal management plans are essential for ensuring that access is maintained, areas are protected from the elements and the best course of action is taken where emergencies occur. Providing these plans with legal status can only be a good thing. However, we need to be aware that the types of plans that are likely to be produced, and implementation of them, will reflect the funding available to councils. The situation should not eventuate whereby ratepayers are funding what should be a core requirement of the State. What we will see is a piecemeal approach with limited results.

I acknowledge the need for the Government to set time frames for the completion of coastline management plans but still have some reservations about the quality of the planning that is going on and what sort of plans would

be imposed if local government is less than effective in the production of these vital documents.

I turn now to my local area, Byron shire, which has some of the most beautiful and threatened coastline that I have come across in my 30 years of surfing and enjoying the beach and ocean culture. Alongside the ecological significance of certain areas, some of which have been protected under this and previous governments, the divisive issue of coastal erosion is very difficult to deal with in an equitable way. Byron Shire Council has spent more than three years trying to implement a plan, following a history of coastal erosion. In 1978 an extensive investigation was undertaken and documented in the report entitled "Byron Bay to Hastings Point Erosion Study". That document assisted the council in the late 1980s to define the principle of planned retreat in its planning instruments. The principle is clear, based on recognition that natural processes cause erosion of fragile areas of coast.

The study gave clear guidance on the problem and those purchasing land within the erosion zone were made aware of the need for constraints and conditions on any building on those areas. In short, a condition of consent was that if the erosion continued the removal of buildings would be required. It all sounded reasonable in 1999, when some of the millionaires row residences were impacted on. What were basically workers cottages for the nearby abattoir in the past were upgraded. They were supposed to be removable dwellings but they became part of what is known as millionaires row. Residents were impacted upon by the huge swells and storms. The response by owners was to build rock walls.

A frenzy of activity resulted in the dunes being breached by heavy equipment being used to bring large rocks to the beach to create rock walls. I watched that happen. I watched the development and argued with the landowners who were coming across their properties with bulldozers loaded with rocks and with trucks dumping rocks. It was a major confrontation and disagreement with the landowners who were insisting on their right to protect their land but who had no real thought about adjoining landowners who chose not to do that. Where does it end? Where there is hard rock reinforcement along a coastline there will be cavitation with the long-shore drift in times of storms. Unfortunately that risk was not properly recognised and the very powerful landowners got in the way with their rather heavy-handed tactics.

In this House and other places I have often expressed my concern regarding the lack of responsibility or direction to consider the impact of prior works that may accelerate the erosion of areas of coastline. It is quite clear in Byron Bay that that is occurring, and I would appreciate the Government taking a stand on this. The past works sanctioned by government through public works were for the building of groynes and jetties that now impact on areas. It is essential for us to consider, with our present knowledge, whether these works are appropriate and to take a position on their value or on whether they need to be considered in the future management process to secure a sustainable future.

I find it of great interest to study the ocean and the surf. Coastal dune morphology, while a very physical science in some ways, is not quite clearly or completely understood. I have had many debates about the right way to approach it in Byron Bay and other areas that have serious coastal erosion. We need to get back as close as possible to a natural coastline at Byron Bay, where the receding coastline has a number of rock walls that impact further along the long-shore drift. Many theories have been put forward to solve that problem, but one way of dealing with it is to get it back to a smooth, natural curve. I would like to see the car park, the swimming pool and rock walls pared back to an almost natural alignment with the beach.

I have asked the State Government to participate in that refurbishment. Unfortunately, some people, including potentially the mayor of Byron Shire Council, seem to be reticent about seeking the support of the State Government to participate in that type of policy. We are left with a pending disaster involving erosion following substantial storms. That could occur this year following the cyclone season that generally hits the North Coast in late January or February. The coastline is suffering from this ongoing problem. The Government needs to act in concert with councils rather than create a turf war.

It is not only on the North Coast that we have major problems. In recent times I have been involved with a significant number of problems associated with development at Sandon Point. That development was facilitated by the Government. I feel an overwhelming sense of frustration at the poor policies of the Government that resulted in another community confrontation with developers over government land being sold for development despite strong and consistent community protests. The site is of indigenous importance and involves some environmental issues. The land offers an exceptional recreation area in an increasingly urbanised zone. The local people recognise the important features of an area that has been degraded in some respects. In this essentially safe Labor seat there is still a potential to resurrect the land but unfortunately the developers have been given a carte blanche opportunity. The Government feels that it can ignore the community.

In the next few elections we may see some surprises in that area. Sandon Point is a coastal floodplain of some 60 hectares. The area is fed by a 660-hectare high-energy funnel-shaped catchment and is affected significantly by run-off. The diversion of floodwater is a problem in the area near the Illawarra escarpment. Water across the railway line has caused major problems. That magnificent coastline contains many endangered species. Once they are gone, they are gone forever. However, I am pleased to say that we have had some success in talking to the Federal Government. The newly elected Senator, Kerry Nettle, asked a question of the Federal Minister for the Environment. The Senator asked:

Can the Minister tell the Senate if it is a requirement of the Environment Protection and Biodiversity Conservation Act [EPBC Act] for a population survey to be undertaken of a protected migratory bird species

that could be affected by a proposed residential development, such as the one at Sandon Point, just to the north of Wollongong?

On behalf of the Minister, Senator Hill answered, in part:

The underlying issue in the question is whether there is to be a Commonwealth involvement in protecting the birds, as it might amount to a matter of national environmental significance under the terms of the EPBC Act. That would depend on the circumstances: If it is an endangered species under the Commonwealth legislation, then it could certainly trigger the Commonwealth legislation. Whether the proposed action would be of such consequence that it might have a significantly detrimental effect upon this species is another matter to be determined.

At least in this instance the Minister has an open mind on a very important area at Sandon Point. Other areas of great importance include Redhead, which contains a koala habitat. Rezoning and development of an area of more than 66 hectares would impact what is home to several threatened species, including the grey-headed flying fox, the New Holland mouse, and a threatened plant species, *Sennacclinus*. It is feared that a development on this highly scenic headland will threaten the State's only mangrove community in the rock platform, which is estimated to be 2,000 years old. The State Government's coastal protection package gave the Minister for Planning the authority to call in inappropriate developments for more detailed assessments. It was hoped that the rezoning would not allow such a development to proceed. An editorial in the *Sydney Morning Herald* about the consequences of coastal development states:

The consequences of allowing the developers too free a rein are on display along the Gold and Sunshine coasts. The ugly ribbon development of Queensland's southern coast has been driven by developers catering to previous generations of retirees looking for winter warmth. With the baby boomers moving into retirement, demographers expect the NSW coast, especially those areas closer to Sydney, to come under similar population pressure. They predict the coastal population to grow by 500,000 people within 20 years.

A development on the Far South Coast will test the State Government's resolve. Developers are planning a 2,000-house estate, shopping centre, a possible golf course and a marina on fragile Twofold Bay. The new development is aimed at Victorian retirees. Yet across Twofold Bay, the long-established town of Eden has the infrastructure and the facilities and is anxious to attract new residents.

This is a call on the State Government through its reform to curb the development binge in coastal towns. It will certainly be exposed as hollow if the Twofold Bay proposal, unamended, receives the go-ahead. Many areas up and down the coast are at risk. I draw the attention of honourable members to the tragedy of Kurnell, with its magnificent sand dunes that have been mined over the years and reduced to very little of what they were, even in the last five years. A lake on the Kurnell peninsula has doubled in size. It looks about one kilometre long and one kilometre wide. It has been created on 160 hectares of land owned by Besmaw Pty Ltd because of a rule that allows sand mining up to 12 metres below sea level. The lake appears to be about half the size of Narrabeen Lakes. This is typical of the destruction of our coast. Prawn farms in sensitive areas on the mid North Coast just south of Crescent Head, aquaculture and, obviously, the avalanche of applications for massive developments in the Tweed shire that have raised the eye of the conservation movement are impacting on our coastal regions. The local community has been at odds with the developers and the Government.

The Hon. Rick Colless: People want to live there.

The Hon. IAN COHEN: If the honourable member thinks that is a reason to destroy irreplaceable coastal areas-

The Hon. Rick Colless: I didn't say that.

The Hon. IAN COHEN: That might be his opinion, but the fact is that people can live in areas-

The Hon. Rick Colless: I didn't say that.

The Hon. IAN COHEN: He is very sensitive.

The Hon. Michael Egan: Who?

The Hon. IAN COHEN: The honourable member. He does not even live on the coast.

The Hon. Rick Colless: I am stating the fact. You want to live there.

The Hon. IAN COHEN: People want to live there.

The Hon. Rick Colless: You want to live there.

The Hon. IAN COHEN: I do live there, but I live on a property that is 98 per cent bush. I have not cleared any land since I have been there. I have made great attempts to live sensitively on the land.

The Hon. Michael Egan: But not everyone can live on 95 acres.

The Hon. IAN COHEN: I did not say I live on 95 acres. I said that 98 per cent was bush.

The Hon. Michael Egan: How many acres do you live on?

The Hon. IAN COHEN: I live on 33 acres.

The Hon. Michael Egan: Not everyone can live on 33 acres.

The Hon. IAN COHEN: I actually live on about one-quarter of an acre; the rest is rainforest.

The Hon. Michael Egan: But the argument is the same: not everyone can live on a quarter of an acre.

The Hon. IAN COHEN: We are losing valuable, irreplaceable coastal habitat-

The Hon. Michael Egan: I agree with that.

The Hon. IAN COHEN: -with the pressure of development that is often encouraged by the honourable member's Government. I plead with the Government to embrace anything that might protect our coastal habitat and the area in which the vast majority of people live. Socially it is important to maintain coastal recreation areas. Australian culture, even in the 1950s, was to go to the beach. Our culture is very egalitarian. Therefore it is important that we recognise the public nature of our beaches. I have seen private beaches in the United States of America where miles of coastline are locked up and sold to exclusive enclaves consisting of a few very rich and powerful people. Many rich and powerful people in this country would like to do the same thing to our coastline. It is important to maintain public access to our coastline. It is also important to maintain a desire to resolve the problems of our coastline and, in some instances, undo the heavy engineering of the past and, in others, consider the most effective way of working with nature rather than against it.

Our exceptional coastline has a very high level of wave dynamism. Unless we work with those processes, we will not win. It is a bit like King Canute. It is incumbent on the Government to consider areas that should not be developed but protected. In some small way the Government is working well by increasing national parks. But development holds sway in many other areas. It is destroying the nature of our coastline. This challenge is as important as saving the rainforest in the 1980s and 1990s. It is incumbent upon us to work together as the community to create a sustainable coastline. Many of our endangered species, both marine and terrestrial, are just hanging on, surviving the pressure from development. I commend the bill to the House. The Greens will do whatever they can to support the protection of our coastline.

Debate adjourned on motion by the Hon. Richard Jones.

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