



Legislative Assembly Hansard,

Extract from NSW Legislative Assembly Hansard and Papers Thursday, 2 March 2006.

Second Reading

Mr CHRIS HARTCHER (Gosford) [10.02 a.m.]: I move:

That this bill be been now read a second time.

Careel Bay is a significant wetland estuary on Pittwater in the metropolitan Sydney region. It is one of the most valued coastal areas in New South Wales, with special ecological significance. Careel Bay provides a habitat of high conservation significance for a variety of water birds. These include migratory waders from the Northern Hemisphere such as the Eastern Curlew, Whimbrel and Bar-tailed Godwit. Australia has two specific bilateral international agreements, which have been entered into between the Governments of Australia, Japan and China to deal with migratory wading birds and their environments

The international obligation to protect these species and their habitat is enshrined in international agreements including the Japan-Australia and China-Australia Migratory Birds agreements and the Bonn Convention on the Conservation of Migratory Species of Wild Animals. Since 1972 there has been a decline in numbers and variety of migratory waders using Careel Bay, and this must be viewed with concern. The most significant is the Eastern Curlew. In about 1997 new flight paths proposed by the Federal Government had placed the north-south approach right over Careel Bay. The international treaties expressly forbid noise pollution where it can be avoided, and subsequently the paths were relocated offshore, east of the coastline.

Since early 2004 there has been continuous, escalating debate on the proposed development for Careel Bay Marina by Austral Monsoon Industries [AMI] at a cost of approximately \$6.5 million. The proposed development involved two stages, redevelopment of the existing boat maintenance facility leased by AMI from the Department of Lands and development of a 37-berth floating marina beyond the current leased area. The proposed boat travel lift is approximately 75 tonnes, which is highly inappropriate for a shallow and small bay such as Careel Bay. This type of development often triggers the downgrading of beautiful areas, such as Careel Bay. Classified as State significant development under Part 3A of the Environmental Planning and Assessment Act as amended 2005, the development application was lodged with the State Government, the responsible Minister being the Minister for Planning as the relevant consent authority. Community groups such as the Careel Bay Protection Association, chaired by Mr David Poppleton, and the Pittwater Environment Trust as well as individuals have lobbied tirelessly for years against this development. They garnered more than 5,000 signatures of opposition to the development, regarding inappropriate development proposals, potential loss of aesthetic values, loss of coastal amenities and loss of traditional public access.

Key objections to the development were the scale of the marina, which is considered to be out of keeping with the character of the area; the threat to marine ecology; the effects on residential amenities; and the increase in traffic. On 25 February 2006 the State Government, through the Minister for Planning, announced refusal of the development application, but gave no indication of protection for Careel Bay from future development applications. Careel Bay contains valuable and irreplaceable marine habitats. Careel Bay is home to the largest mangrove system in Sydney, environmentally sensitive sea grasses and migratory birds. Careel Bay is, indeed, one of the jewels in the crown of the natural assets of the eastern coastline of New South Wales. It is extraordinary that it is still in existence in such an undisturbed state, given its proximity to metropolitan Sydney. We need to protect our natural assets not only for present but also for future generations. The purpose of the bill is to ensure the protection and preservation of Careel Bay for the future.

The bill introduces the provisions necessary to protect Careel Bay on Pittwater and prohibit any redevelopment of the marina at that bay that is inconsistent with the existing character of Careel Bay. Passing this bill will ensure that any future upgrades for Careel Bay based on improvements and expansion of any current facilities will meet occupational health and safety standards for usage patterns and will not alienate public space. Passing the bill will ensure a reduction in risks of pollution, implementation of appropriate planning and use standards to guarantee the maintenance and enhancement of the ecological integrity of Careel Bay. It will provide protection of significant heritage sites and amenities, and the preservation of biological diversity and ecological integrity. Under the bill the community will be part of any future use proposals for Careel Bay. The consent authority will be the council and not the Minister, which will ensure Careel Bay is not subjected to any undue influences and allow transparency in future proposals for the bay.

Passing to the specific sections of the bill, clause 1 sets out the name and the short title of the proposed Act. Clause 2 provides that the bill will commence on the date of the signification of Royal assent. Significantly, clause 3 defines certain terms for the purposes of the proposed Act. In particular, Careel Bay marina

development is defined to mean "development for the purposes of a marina, the upgrade of a marina or the erection of new facilities at a marina, in Careel Bay". Clause 4 provides that any existing declaration under section 75B of the Environmental Planning and Assessment Act 1979 that development for the purposes of marinas is a project to which Part 3A of the Act applies is revoked to the extent to which it applies to Careel Bay marina development. Such a declaration is currently made by State Environmental Planning Policy (Major Projects) 2005.

Clause 4 also provides that such a development or a declaration that has the effect of making Careel Bay marina development a project or part of a project to which Part 3A of the Environmental Planning and Assessment Act applies cannot be made after the commencement of the proposed Act. Clause 5 provides that Pittwater Council is the consent authority in relation to any Careel Bay marina development. Careel Bay marina development may be carried out only with the development consent under Part 4 of the Environmental Planning and Assessment Act. Clause 6 provides that Careel Bay marina development may be carried out only on land or coastal water that is within the area presently covered by a marina when the proposed Act commences.

Clause 7 provides that Pittwater Council must not consent to Careel Bay marina development unless the development is, in the opinion of Pittwater Council, consistent with the character of Careel Bay as at the commencement of the proposed Act and that Pittwater Council has had regard to the advice on the development application provided by the community forum established in accordance with proposed section 8. Clause 8 provides that if Pittwater Council receives an application for consent to Careel Bay marina development it must establish a community forum in relation to the development application, made up of residents and councillors of Pittwater Council. The function of a community forum is to advise Pittwater Council on the development application and in particular on the plans for the development, the assessment of the development application and the future monitoring of the proposed development. Clause 8 provides that the committee, which will be established by Pittwater Council, must have an equal number of residents of Pittwater local government area and councillors of Pittwater Council. In any case the committee is to have at least six members and not more than eight members.

Clause 9 provides that the proposed Act will apply despite any provision of any other Act or any regulation or environmental planning instrument. What the bill will do is twofold. It will make permanent the protection granted by the Minister in his decision last Friday when he resolved to refuse the development application. It will ensure that Pittwater Council is the only consent authority for Careel Bay, that is, it is inappropriate for the Minister or for any other authority to be involved in decisions relating to Careel Bay. It provides that Pittwater Council must consult with the local community through the community consultation process established by the Act. It will prohibit Pittwater Council from approving any development that is outside the existing marina. While it will essentially allow for an upgrading of the existing marina, if that is so determined by Pittwater Council, it does not allow for any expansion of the marina.

This legislation will protect the ambience, character and aesthetic values of Careel Bay. It will protect the peace and quiet of the residents; it will protect an area that has only narrow road access from excessive traffic. It will protect an area of great natural beauty on Pittwater, and it will protect significantly the migratory birds which have used it for countless centuries past as a habitat on their road from the northern hemisphere to Antarctica or to Australia during the appropriate seasons. The significance of the area is spelt out in a statement issued by Pittwater Council, which states:

Why is Careel Bay important?

Careel Bay contains the largest stand of mangroves, one of the last remnants of saltmarsh, and the most extensive sea grass beds in Pittwater. These act as a silt-stabiliser and fish nursery and are essential to the ecology of Pittwater and nearby coastal waters. These ecosystems provide habitat for some unusual resident and visiting bird species.

The bay is a stop-off site on the East-Asian/Australasian Flyaway for migratory wading birds, which arrive in spring from their breeding grounds in Mongolia and Siberia. The Australian people and the Federal Government are committed to a number of international agreements for the protection of these birds and their habitats. These agreements include JAMBA (Japan-Australia Migratory Bird Agreement) and CAMBA (China-Australia Migratory Bird Agreement).

Why do migrating birds come to Careel Bay?

Careel Bay has a combination of seagrass beds and mudflats rich in marine life on which the birds feed, a sandspit where they can roost at high tide and a stand of mangroves which is used as a roosting area. The birds spend the summer resting, moulting and feeding to build up the fat reserves necessary for the long trip back to the northern hemisphere where they breed. Some immature birds may remain over winter ... in their first year.

The main threat to these birds was the proposed aircraft flyover zone—they would have been affected by noise pollution—which was abandoned. In Careel Bay the birds, while feeding and roosting, are disturbed by people, uncontrolled dogs and night patrolling cats. The statement continued:

In 1973, the mangroves and tidal flats were saved from marina development by strong local protest and environmental surveys. But each year as human activity increases, that species and numbers of birds decrease.

In the statement the council further acknowledged that a number of studies had been undertaken and reports completed, including a study in May of 1997 entitled "Environmental Studies of Benthic Assemblages in Wetland Habitats in Careel Bay". Other studies are the "Bird Habitat Study of Careel Bay", the "Careel Bay Estuarine Wetlands Process Study", the "Recreational Use of Careel Bay" and the "Careel Bay Wetlands Plan of Management". When the significance of this area is understood—its extraordinary importance for migrating birds, its great beauty as part of Pittwater and its significance to the local habitants—it seems amazing that a development application could have been lodged which would have substantially, both directly and indirectly, affected the habitat and the area.

The Minister was right to refuse the development application. It is right for the Parliament to express its support for the preservation of Careel Bay not only in principle but also in statutory form by making the protection permanent, which is what the Careel Bay Protection Bill will achieve. I acknowledge the assistance of Parliamentary Counsel in preparing the legislation. The courteous and competent assistance provided by Parliamentary Counsel is always welcomed by members of this House. I acknowledge also the great effort put in by residents of Careel Bay, such as those who organised the Careel Bay Action Group. I specifically acknowledge the work of Mr David Poppleton and John Sheehan. I received a letter from John Sheehan that was written as a result of information supplied to him by the Careel Bay Pittwater Protection Association. He said:

My name is John Sheehan and together with my wife Yolanda and our two boys we purchased our land at No 3 Shore Brace in November 1991, and after building our house we moved in October 1993. We look over Careel Bay and from our deck have a fairly clear view of the existing Careel Bay wharf. Understandably I followed with some interest the debate concerning Austral Monsoon Development Application for a marina and other facilities to replace the existing Careel Bay boatshed.

Before proceeding further, it is worthwhile that I mention that I am a Chartered Town Planner in private practice and I also have a Masters Degree in Environmental Law, and I am currently reading for my doctorate in a specialised area of property rights (native title).

He goes on to state.

s79C of the environmental planning and assessment act places on obligation on the consent authority be it the Pittwater Council or in this case the Minister for Planning the Hon Frank Sartor, and those issues in s.79C must be demonstrated to have been considered by the consent authority. Nevertheless the Minister has the power to call in development applications and on this occasion he has.

The letter goes to raise the significance of the Japan-Australia Migratory Bird Agreement and the China-Australia Migratory Bird Agreement, and he quotes Article (vi) of the Australian Government and Japanese Government agreement where the two agree to take any measures necessary to carry out the purpose of the agreement. He states:

It has been troubling me for some time that the Minister for Planning, the Hon Frank Sartor in calling in the Austral-Monsoon development application may or may not be aware of the need to refer the development application to the Australian Government, presumably Environment Australia, before proceeding to a consideration of section 79 of the *Environmental Planning And Assessment Act*.

The point is that while the State Government and the council have an interest in Careel Bay, so in fact does the Australian Government under its treaty-making powers. The Australian Government has entered into a treaty with both Japan and China for the protection of migratory birds that come from those areas. The Australian Government's constitutional power to enforce that treaty is established by the High Court decision in the Tasmanian dams case of 1983. It is appropriate therefore that if there is to be any consideration of development at Careel Bay not only the council and the state Government should be notified, but the Australian Government also. He goes on to state:

Arguably, it appears whether a development consent can be issued by the Minister [for Planning] under his calling [in] powers as this may be overridden by *Articles vi and vii of ... [the Japan-Australia Migratory Bird Agreement]* and similar provisions in ... [the China-Australia Migratory Bird Agreement].

This legislation would have the significant effect of removing those problems, but one would hope that anybody who has any interest in deciding upon the development of marinas on the eastern coast of Australia in the Sydney region would give due protection and due regard to the importance of Careel Bay and would ensure that the future of Careel Bay is a matter of not just individual importance or council importance, but of great importance to the people of this State, through the State, constituted by the people of Australia acting through the Australian Government, acknowledging the Japan and Australia migratory birds agreements.

This is significant legislation. I hope all members of the House approach it in a spirit of support and acknowledge

that the protection of our environment is of paramount significance. It is a matter that all of us have an interest in—supporting all of the State. This bill and the support that can be given to this bill will be a test of whether people in the community and members of the House are prepared to extend that support to Careel Bay. I commend the bill to the House.