

## Agreement in Principle

**Mr NATHAN REES** (Toongabbee—Minister for Emergency Services, Minister for Water) [4.05 p.m.]: I move:

That this bill be now agreed to in principle.

On 6 March 2008 a break in the main waterline under Botany Road at Alexandria was detected. Around the same time subsidence was detected and a retaining wall on an adjacent construction site has moved and is unstable. The Iron Duke Hotel, next to the construction site, has been evacuated and Botany Road is closed. The retaining wall remains at risk of collapse, with the potential to cause substantial damage to Botany Road and adjacent properties. The wall presents a risk to public safety. Botany Road is a major Sydney arterial thoroughfare. It has been closed for over a month causing considerable inconvenience to Sydney commuters. Action needs to be taken as quickly as possible to prevent further damage occurring to the road. Repairs need to commence so that the road can reopen. Advice from the Department of Commerce and WorkCover indicates that there is an unacceptable risk of collapse. The public has been excluded from the area.

The New South Wales Police Force has sought to use powers under the State Emergency and Rescue Management Act to require the owner of the construction site to undertake further work to prevent the retaining wall from causing further damage to Botany Road. Some work was undertaken by the owner of the site to stabilise the wall. However, in view of the continuing risks at the site, the police subsequently required the Department of Commerce to enter the premises to undertake stabilisation work to prevent further damage to the road and adjacent property. The owner of the construction site has commenced proceedings in the Supreme Court to prevent the police, through the Department of Commerce, from entering the site and commencing the work that is required to prevent further damage. The property developer has effectively challenged the power of the police, acting through the Department of Commerce, to undertake the necessary work.

The property owner's made an application for an interim judgement, which was refused by the Supreme Court on Wednesday 9 April 2008. In handing down its decision, the court noted that it was not satisfied that "the emergency" is over. The court also recognised that the Government in acting in this matter is seeking to represent the people of Sydney. The court said that:

There is a real public interest in having Botany Road reopened and in enabling neighbouring businesses to resume operation. It seems to me an intolerable situation that Botany Road has been closed since [6] March and will remain closed into the foreseeable future until sufficient remedial work has been completed to enable it to be reopened.

The court also recognised that the immediate safety concerns, both to persons and property, needed to be addressed. Although the court refused the application for an interim or temporary injunction, and the Department of Commerce has commenced work on the site, the court is still to hear the full case. This will determine whether or not the New South Wales Police Force, acting through the department, has the legal authority to enter the site and authorise the necessary works to be carried out. The hearing of the full case commenced today and it is not known when the court will give its final decision. The court has been advised of the proposed legislation and the proceedings have been adjourned until Monday. The bill will be provided to the court.

If the proceedings continue, there is a risk that if the court hands down its decision while Parliament is not sitting and concludes that there are insufficient powers under the current legislation to undertake the important work, then the current rectification work being undertaken by the Department of Commerce will need to cease. Given that Botany Road is a major arterial road and the significant risk of damage that currently exists, any further delay in progressing these works is unacceptable. Consideration has been given to using powers under other legislation to ensure that further damage to the road is prevented. I am advised that none of these options provides a complete solution that will ensure that all of the required works can be carried out. The bill provides the Department of Commerce with clear legislative authority and a clear obligation to undertake the required work on the construction site to prevent further damage to Botany Road and address immediate safety concerns.

Specifically, the bill authorises and requires the Department of Commerce to carry out emergency works at the site and authorises the Department of Commerce and others to enter the site to carry out the works. In addition, the bill includes provisions to require the property owner and others to provide information to the department to enable the emergency works to be carried out. The bill also provides that the department can recover the costs of the rectification work from the property owner. These provisions are similar to recovery provisions in the current Act, which already apply where the existing directions powers are used. The property owner is not prevented from claiming against any other person or company that might be responsible for the damage.

The Government has delayed introducing this legislation as late as possible in the hope that the matter would be completely resolved by the courts. However, in view of the impending three-week recess of Parliament, the Government has no choice but to introduce this legislation to address the continuing uncertainty. This will ensure that the required works can continue during the parliamentary recess. I note that this bill does not in any way

attempt to interfere with the court proceedings, which are already underway. The bill provides a site-specific solution, which authorises and requires the Department of Commerce to undertake the required works. It does not amend the provisions under which the New South Wales Police Force has issued directions. As a result, the court proceedings can continue.

The Government is not trying to prevent the owner of the site from pursuing its questioning of the limits of the existing powers in the Act in the courts. The Government cannot, however, afford to risk the unnecessary prolonging of a situation where a major road in Sydney remains closed because of risks to public safety. The particular circumstances of this emergency have raised some novel issues. It is not clear that existing legislation is ideally suited to addressing complex circumstances that involve important public property, a number of private properties and potential interests of third party insurers and financiers. The Government will, therefore, review relevant powers with a view to developing a more suitable model to address any similar situations that arise in the future. This review will proceed in consultation with business, including insurers and financiers, to ensure that proper regard is given to the interests of all affected parties. I commend the bill to the House.

**Mr GREG APLIN** (Albury) [4.15 p.m.]: I am pleased to have the opportunity to speak to the State Emergency and Rescue Management Amendment (Botany Emergency Works) Bill. When the Leader of the House sought leave to suspend standing orders he said that the Opposition had had the opportunity to obtain a thorough briefing. I refute that statement and indicate that we simply have a draft copy of the bill, which was handed to us a few hours ago. The New South Wales community heard a news report on 6 March 2008 that a break in a main waterline under Botany Road, Alexandria, had caused great difficulty to early peak hour traffic. Emergency services were required to attend the scene to rectify the problem of subsidence that had resulted from the burst water main and damage to a retaining wall on an adjacent construction site. The retaining wall had moved, become unstable and was at risk of collapse. A single-page briefing from the Department of Commerce, which was given to me a couple of hours ago, states:

Action needs to be taken as quickly as possible to prevent further damage occurring.

As the shadow Leader of the House indicated in a previous speech on this issue, it is now 35 days since this event. It is a matter of concern to all residents and traffic users in the area that the problem persists and the road is closed. In December last year residents wrote a letter to the Roads and Traffic Authority highlighting their concerns about the potential danger of a crack that had appeared in Botany Road—a major arterial road in southern Sydney that carries an enormous amount of traffic. The Roads and Traffic Authority should have been greatly concerned about a crack appearing in the road. Anyone who travels along the road or uses that particular route to access the airport, as I do frequently when I return to my electorate, would know that the damaged road has caused serious traffic concerns. Yet the Roads and Traffic Authority, whilst admitting it received the letter, said that it affected only heavy traffic.

A crack in the road should have been a call to act immediately. As members know, Botany Road leads to heavy and light industrial sites, warehouses and major shopping areas and is the conveyance for a large amount of heavy traffic that delivers goods to properties and sites in and out of Botany Bay. The Roads and Traffic Authority was remiss in not reacting to the letter about the crack in Botany Road, which it admitted it had received in December last year. At the very least, it should have investigated and assessed the potential risks. Further, it should have involved Sydney Water, which would have discovered the water main that lay beneath. The New South Wales Police Force issued a media release on 7 March 2008. I shall place that media release on the record to show the serious nature of the incident and the fact that 35 days later this serious incident has not been addressed correctly. The media release states:

Police are appealing to motorists to avoid Botany Road at Alexandria following its closure due to water damage.

About 4.20 am yesterday (Thursday 6 March 2008) a major water main ruptured beneath Botany Road, approximately 20 metres south of McEvoy Street and adjacent to a construction site.

It actually resulted in serious flooding to the whole area and significant damage to the road and two adjacent properties. The media release continues:

Work crews from Sydney Water repaired the damaged pipe, and the Roads and Traffic Authority conducted an examination of the road surface.

Redfern Local Area Commander says Botany Road will remain closed for an indefinite period after concerns were raised about the structural integrity of a retaining wall on the excavation site.

The local area commander continues in the media release:

An engineering assessment of the wall indicates it has moved and is under undue pressure.

The structure is considered at risk of collapse, and there are real fears that the presence of traffic on Botany Road at this time could cause increased damage to not only the wall, but also the roadway. Expert engineers are continuing to

assess the situation to find the safest and most effective way to fix the wall and any other affected infrastructure.

In the interests of public safety, Botany Road between McEvoy and Retreat Streets, will remain closed in both directions whilst any assessment, and subsequent repair or demolition work is undertaken.

Local businesses in and around the affected area remain open—

I will read that again

Local businesses in and around the affected area remain open, and motorists are expected to be able to access those premises.

That is an important point. After 35 days businesses are suffering huge losses. Some of them have closed and some have put off staff. The ramifications are enormous. The media release continues:

Extensive local diversions and special traffic arrangements are in place, and authorities are asking motorists to avoid the area whenever possible, as traffic delays in streets surrounding Botany Road are expected.

The Roads and Traffic Authority, when assessing the letter back in December, said that the damaged road affected only heavy traffic. A City of Sydney document on road closures relating to the burst water main states:

To ensure safety, Botany Road will be closed for a number of weeks.

From the New South Wales Police Force indicating that Botany Road will be closed for a relatively short period and local businesses will remain open, we move very quickly to the City of Sydney stating:

To ensure safety, Botany Road will be closed for a number of weeks and 24 hour Emergency Clearways have been declared on many surrounding streets. Cars parked in these areas will be towed.

That is a threat. I now come to the important part. Given that the Roads and Traffic Authority considered back in December that the damage affected only heavy traffic, the City of Sydney advises:

Bus routes 309, 310 and 370 in the area have also changed.

So everyone is now affected. I want to deal with the effect of the road closures on businesses. On Monday this week a report appeared in the *Herald Sun*—and the media picked this up across Sydney—concerning the plight of businesses one month on from the burst water main. The report noted that police said businesses in the area would remain open and motorists would still be able to access those businesses. The report stated:

A month after a burst water main forced the closure of a major Sydney road, repairs and compensation claims are still being delayed by finger-pointing and red tape.

That is the point of this bill. This problem should have been fixed by now. Unfortunately, the Government is now forced to take action because groups such as the Roads and Traffic Authority and Sydney Water have taken insufficient action. The report goes on to state:

A 400m stretch of Botany Road at Waterloo is now likely to be closed for months with businesses starting to count the cost and asking how much longer they can survive.

One business affected is the Iron Duke Hotel, which was forced to close immediately after the pipe burst and flooded its cellar. Other businesses in the area claim their profits are down by about 40 per cent. The manager of the Iron Duke Hotel said:

We had to get out immediately and are not even able to trade or enter the building.

The Roads and Traffic Authority claimed that the road could not be reopened because now the issues relate to a retaining wall in an adjacent construction site. The State Government added to the confusion I have been attempting to tease out when the Minister for Roads appeared on Channel 10 and called on the Roads and Traffic Authority to fix the problem immediately. However, the Minister for Police appeared on Channel 9 and said that he would use special powers to order the private contractors to complete repairs. This Government had it both ways. Unfortunately, at the end of the day, the Minister for Roads was probably the one who should have taken the initiative and called on the Roads and Traffic Authority to fix the problem immediately. But the Minister should have made that statement at the beginning of March when the problem first occurred, not at the end of March.

Businesses in the area claim that the water main was sound before it broke and that if it were not for the soil subsidence it probably would not have broken at all. That is also the view of Sydney Water. At the heart of this issue is what caused the problem. We know that the Iron Duke Hotel—which is next to the site; I often pass it when I am in cabs on the way to the airport—was closed by the police under the local disaster plan and the State Emergency and Rescue Management Act that we are debating amendments to this afternoon. The hotel owner and the licensee, Gary Stewart, said that seven staff have lost their jobs and 11 permanent hotel residents have had to be relocated to emergency accommodation. He said that everyone is blaming each other and no-one is accepting liability, while the business owners and the residents—the innocent parties in all of this—are the ones who are suffering.

The initial repair plan—and this was a huge gaping hole that erupted and sprayed water well over McEvoy Street and the surrounding area—required 6,000 cubic metres of sand to be shipped in to fill the hole and to stabilise a retaining wall before the repairs could begin. But that was not a long-term solution and engineers from the Roads and Traffic Authority, the Department of Commerce, Sydney Water and Baseline Constructions—the company at the heart of this—are trying to find another way to repair and reopen the road. Charlie Svinos, the owner of Kafe Neo, estimates he is suffering a loss of \$300 a day from the lack of street traffic and commuters in the area. He claims the area is now looking more like a ghost town.

I now turn to the particular concerns addressed in the bill. Repairs should have been carried out as quickly as possible and the issues surrounding the local disaster should have been remedied. Clause 4 of the bill provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. That is a sensible provision because the whole idea behind this bill is to effect the repairs and then withdraw the bill—that is a natural consequence following the completion of the job. It is unfortunate that it has reached this stage. New section 11 authorises and requires the Director General of the Department of Commerce to carry out certain emergency works, including the shoring up of retaining walls and other stabilisation work at the site in Alexandria surrounded by and including Botany Road, McEvoy Street, Retreat Street and Wyndham Street. That is fairly straightforward and it identifies the area at the heart of this issue. New section 12 provides for relevant persons to have access to the site and applies relevant provisions of the principal Act relating to access and the carrying out of works in the case of emergencies. That is sensible.

I now come to the problem area. New section 13 provides for the costs of carrying out the emergency works to be borne by BBB Constructions Pty Limited, the owner of the site. As the Minister informed the House, legal action concerning this matter is currently before the Supreme Court. The company is concerned that it will be forced to pay for this issue without recourse when it considers that the problem is in someone else's territory. BBB Constructions Pty Limited believes it is highly prejudiced by the events that have arisen. The company points first to the effect of the burst water main because it affected the construction area as well as the surrounding businesses. Secondly, the company claims that the preparedness of the appropriate authorities to accept responsibility for the damage will obviously impact on them because new section 13 specifically provides that it be liable for the costs. The company claims also that if the Government takes over the site under the auspices of this legislation it would impact adversely on the company because it would be less able to claim the costs from anyone found to be liable. New section 13 states:

(1) The costs of carrying out the emergency works under this Part (including any costs incurred before the commencement of this clause) are to be borne by BBB Constructions, and may be recovered in a court of competent jurisdiction.

(2) This clause does not affect any proceedings that may be taken by BBB Constructions or anyone else against any person who may be liable for causing the damage required to be rectified by the emergency works (or for causing the liability of BBB Constructions under this clause) or who has agreed to indemnify or insure a person against liability for any such damage or liability.

One can understand the concern of BBB Constructions Pty Limited given that, under this bill, it will be forced to pay the costs and allow people onto its property. It might not have recourse to claim those costs from anyone found to be liable, whether that be Sydney Water or the Roads and Traffic Authority. We do not run away from the fact that the repair job needs to be done, but we say it should have been done much earlier. The Government is at fault for not forcing action to repair the damage but, understandably, the matter is before the courts and it is regrettable that the situation has not been sorted out in that jurisdiction.

Let us look at what the insurance implications might be. The concern is that if this bill is passed it could result in more general legislation. Some of the concerns that an insurance company may then raise would be that there has been no involvement of the insurer in this process, there has been no opportunity for assessment, there has been no opportunity for competitive quotes and there has been no opportunity to discuss the rectification of this particular area based on the most competitive quote. It must be ensured that the site is returned to its original state and not to an improved state. The Government needs to take those issues on board in presenting this bill to the House. I am sure the upper House will look at those issues most seriously when the bill proceeds there.

I reiterate the facts. The situation at the site has existed now for 35 days. It has caused serious concern to all road users and businesses in that area of Sydney and it should have been sorted out earlier. There are concerns

that the construction company may have to bear the full costs and that it cannot be proven to be the company's liability at this point, given that the matter is before the Supreme Court and given that the Roads and Traffic Authority knew about this problem in December and failed to take action. I understand that concerns may be expressed about new section 13 in the upper House, but I will leave my comments at that.

**Mr NATHAN REES** (Toongabbie—Minister for Emergency Services, Minister for Water) [4.30 p.m.], in reply: I will make a couple of brief points to correct some factual errors. I have been advised that the office of the Leader of the Opposition and the office of the Leader of The Nationals were briefed on this legislation at 10.00 a.m. today and a briefing note was provided at that meeting. A copy of the bill was provided as soon as it was ready, at about 1.30 p.m. I emphasise that the State Emergency and Rescue Management Amendment (Botany Emergency Works) Bill resolves complex legal matters relating to multiple private property holders, government agencies and a set of highly unusual circumstances. Given that legal wrangling is underway and at the same time public safety is potentially compromised, it is appropriate that we pass a bill to ensure that public safety is restored. If it this situation has, as the member for Albury claimed, caused concern for 35 days, he has had ample time to ask a question in this place, but he has not done so.

I pay tribute to the member for Heffron for her representations on this matter. She organised a number of mobile offices at Beaconsfield and Zetland in the weeks straight after the incident and she has provided regular email updates to her constituents. I also put on record my high regard for and appreciation of the Parliamentary Counsel team and the Cabinet Office team, who have resolved a difficult legal matter in a short time frame. I also extend my gratitude to the Opposition for seeing the sense in allowing this bill to pass to let businesses get back on their feet and to restore public safety. I commend the bill to the House.