

Second Reading

The Hon. TONY KELLY (Minister for Lands, Minister for Rural Affairs, Minister for Regional Development, and Vice-President of the Executive Council) [5.02 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.

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. A hotel next door 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.

New South Wales Police 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, New South Wales 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 New South Wales Police, through the Department of Commerce, from entering the site and commencing the work which is required to prevent further damage.

The property developer has effectively challenged the power of New South Wales Police, acting through the Department of Commerce, to undertake the necessary work.

The property owner's application for an interim judgement 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 application for an interim or temporary injunction was refused by the Court—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 New South Wales Police, 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 its decision down 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 which 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 which will ensure that all of the required works can be carried out.

This 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 which 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.

In view of the impending three week recess of Parliament, however, 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 anyway 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 New South Wales Police has issued directions.

As a result, the court proceedings can continue. The Government is not trying to prevent the owner of the site 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 involving 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 had to the interests of all affected parties.

I commend the bill to the House.