PARLIAMENT OF TASMANIA

LEGISLATIVE COUNCIL

REPORT OF DEBATES

Thursday 31 October 2024

REVISED EDITION

Contents

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The President, **Mr Farrell,** took the Chair at 11.00 a.m., acknowledged the Traditional People and read Prayers.

LEAVE OF ABSENCE

Member for Rosevears - Ms Palmer

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) (by leave) - Mr President, I move -

> That the honourable member for Rosevears, Ms Palmer, be granted leave of absence from the service of the Council for today's sitting.

Motion agreed to.

JUDICIAL COMMISSIONS BILL 2024 (No. 41)

Consideration of Bill as Amended in Committee of the Whole Council

[11.03 a.m.]

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) - Mr President, I move -

> That the bill, as amended in Committee, be now taken into consideration.

Motion agreed to.

Amendments read the first time.

Amendments read the second time.

Amendments agreed to.

Bill, as amended, agreed to.

JUDICIAL COMMISSIONS BILL 2024 (No. 41)

Third Reading

[11.08 a.m.]

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) - Before I move the next motion, I want to say thank you very much to my advisers who are through this all the way. They have done a wonderful job and I do appreciate that.

Mr President, I move -

> That the bill be now read the third time.

Bill read the third time.

MOTION

Validation (State Coastal Policy) Bill 2024 (No. 37) - Referral to Government Administration Committee B - Negatived

Ms O'CONNOR (Hobart) (by leave) - Mr President, I move -

> That the Validation (State Coastal Policy) Bill 2024 (No. 37) be referred to Government Administration Committee B for consideration and report.

I will succinctly make the case for the Council to present this flawed legislation for committee examination so that there can be a genuine exploration of the foundations of this legislation. The situation is no different today from what it was when the government sought to disrupt the budget, to jam it through this place.

We still have not seen the legal advice which the government refers to as the foundation for developing this bill. We know that it is completely within the Attorney-General's capacity to allow members to not only see, but to have, a copy of the Solicitor-General's advice. In fact, we were provided with the Solicitor-General's advice to support debate on the Judicial Commissions Bill yesterday. It is possible. There has been a choice made by the government not to properly inform members about the legal arguments that underpin this bill, legal arguments which have been effectively demolished by a number of key stakeholders, including very esteemed UTAS law professors.

We have not seen any list or had any indication of what coastal assets and structures need to be retrospectively validated. We are being asked to take this legislation on trust. The Greens believe it is no coincidence that the government developed and brought forward this bill pretending it was to protect our way of life - they used those words - after the political Robbins Island wharf approval was challenged in the Supreme Court.

It is a most cynical claim. Even yesterday in the briefing that we had with Dr Rachel Baird, she confirmed that in her view this legislation was to validate the development, and the development that Dr Baird was referring to, of course, was the 500-metre wharf across the Back Banks onto Robbins Island.

We also have the submissions that were presented by esteemed UTAS Professor Jan McDonald, Anja Hilkemeijer, Dr Emille Boulot, and Ms Cleo Hansen-Lohrey that say to support this bill is to undermine the rule of law, and this is a quote from their submission to government.

> Retrospective suspension of the State Coastal Policy undermines the rule of law
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> The *Validation (State Coastal Policy) Bill 2024* would retrospectively remove the application of State Coastal Policy outcome 1.4.2. This would mean that the building of the proposed wharf in the Back Banks dune system will be lawful even if that approval was unlawful at the time of the Council and TASCAT's decisions.

The submission goes on:

> Suspension of (or dispensing with) the law has always been a favoured power of arbitrary rulers. As long ago as 1688 when the English *Bill of Rights* was enacted, the 'crown' has been prohibited from suspending the law. That is because suspending the operation of a law undermines public confidence in the rule of law, namely that the law applies equally to everyone, regardless of wealth, status or special relationships. There is a strong perception amongst the community that the Bill is brought forward at this time to assure an individual developer that - regardless of the outcome of the judicial review proceedings currently before the Court - the building of the proposed wharf at Back Banks dunes can proceed unimpeded by legal requirements.

When I asked the question of Dr Rachel Baird yesterday on the basis of this statement about whether, in her view, it was a subversion or an undermining of the rule of law, her response was to describe that as a political question. It is unarguably not a question of politics. It is about legislation that would effectively remove the grounds for a matter that is before the Supreme Court. That is not a political issue; that is a legal probity issue that we should be very mindful of as we go forward today. It is a very odd response from Dr Baird. In our view, this bill is being brought forward to make that Supreme Court case go away.

Dr Baird also confirmed, however, that there is a very unlikely prospect that any existing structure on the coast on actively mobile landforms would be challenged, and it is our proposition here that the odds of any challenge to an existing structure on a mobile coastal landform - moving coast - are pretty close to zero. What we do know is that there is a Supreme Court case afoot. It needs to be allowed to proceed properly.

There is a local community working hard to save pilitika/Robbins Island and its birds from a hugely impactful industrial wind farm development, and the fact is that the EPA is also before the Supreme Court because it failed to remind the proponent and planning bodies of the need to comply with the State Coastal Policy.

In closing, there are two separate issues here. There is the validity of existing approved developments on actively mobile coastal landforms - that is, moving coastline, like dunes - and that may very well be a legitimate legal issue, if only we could see the legal advice the government tells us confirms this. But we could retrospectively validate to remove any legal uncertainty over wharves or other structures built on moving coastline and remove the Robbins Island wharf proposal from this bill.

If the real issue here was a validity question, then Robbins Island would be excluded from the provisions of this bill because it is a very different thing. We have existing approved structures, and we have something that has not been built yet but has been approved under a flawed process, and these two things are being conflated by the government to mislead us and, more importantly, to mislead Tasmanians into believing there is actual legal risk to existing structures on mobile coastline.

I hope members have taken the opportunity to look at the video sent to all of us by Mr Grant Dixon, an earth scientist who has worked on issues relating to geo-conservation and land management for around 30 years, the author of numerous papers, articles and reports on earth science and nature conservation. It is a short video, but it makes it very clear that the

government's claims - the claims that have been made to us that Back Banks mobile landforms are confined to a certain area that is not relevant to the wharf approval - are not to be believed. I strongly encourage members to look at Grant Dixon's video, because he says - it is really clear - 'actively mobile landforms on the east coast of Robbins Island are far more extensive than the map presented by the State Planning Office suggests'.

There is a community - and it is not just the local community, though they have worked so hard - it is a statewide community that is working hard to defend that beautiful wild island, the life it sustains and its resident and migratory shorebirds.

Pilitika/Robbins Island belongs to the palawa people. It belongs to the birds. It is the wrong place for a wind farm.

That said, the government has not established the need for this bill. A committee could examine these questions thoroughly. It could probably report after the Supreme Court matters are dealt with. Then, we could be sure we are standing on solid legislative ground - not on sand, which this flawed bill is built on. I ask members to support the motion.

[11.19 a.m.]

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) - Mr President, of course the government is not going to support this motion and, hopefully, I will be able to convince some members to think not along those lines.

The government has been very clear about the need for this legislation to be passed. We agreed to postpone debate during the budget session of the parliament to allow time for members to fully consider the information provided in briefings and to seek answers to outstanding questions. I think it has been about eight weeks since it was first introduced to the House of Assembly.

We consider that there has been sufficient time to have a close look at this bill. We do not need to send it off to a committee. I think we need to deal with it one way or the other now. The Greens are using this legislation as a Trojan horse to pursue their own agenda against Robbins Island. They are not interested in the core issues that we seek to address here -

Ms O'Connor - Mr President, that is offensive and wrong.

Mrs HISCUTT - They simply want to use it to push their opposition to Robbins Island. It needs to be exposed for what it is. It is not a genuine interest in the bill. The bill is about removing doubt. It is about removing doubt and providing certainty for developments that have already been subject to a planning process and have received a permit.

We need to remember during this debate that the bill is about validating developments that have already received planning approval - approvals that were given in good faith and have been acted upon in the same way. What this bill is not about is the broader changes to the State Coastal Policy. That is another issue happening elsewhere. It is also not about giving a green light to Robbins Island wind farm development. Let us not confuse the two issues or try to make them one and the same. This is a validation bill. The government does not support this bill going into a committee for further scrutiny. There have been multiple and comprehensive briefings from all sides of the debate.

So, while this bill is unpassed, there is no doubt that there is certain legal risk. The government must move swiftly to prepare legislation to validate past approvals and avoid potential litigation. As the lawmakers in this state, we have a responsibility to act when we become aware of such an issue. We should not be sitting idly by and waiting for something else to happen. We know that an issue exists. I contend that we are duty-bound to address it.

We have given members more time to consider the legislation and to work through their concerns and issues. I hope that people have had time to look at this.

We believe Tasmanians and those with coastal developments deserve certainty.

The idea of the separation of powers is very clear here. The government and the parliament have control of policy and determine the rules. Once those rules are set in place, it is for the courts, through the judiciary, to interpret those rules that we in parliament have made.

Ms O'Connor - Exactly, this matter is before the court.

Mrs HISCUTT - If there is doubt about that or if there is an unintended consequence, as it happened here, it is quite proper for us to address it and try to rectify it. In the event that it occurs that the rules may have been inappropriately written or might be interpreted in a different manner that was not intended, or there is a perverse outcome as a result of the way this parliament has written its laws, it is right and proper for parliament to overcome that error and rectify it as quickly as possible.

This is not interfering with the independence of the judiciary in any way, shape or form. We are the lawmakers, the policymakers, and the judiciary is totally independent and they have to interpret that. The simple fact is that we have a situation where over 20 years of development, well-intentioned people in good faith have undertaken activities. Today they live under the shadow of potential criminality, facing fines of up to $100,000.

I thought of a little story that will help people understand this a bit better. We are not going to use the right names and places of people, because that will give ideas to different people of what they could be doing. Please excuse me while I run through this. I am going to set up a scenario.

Over there, on your left, in the President's Reserve, is a court case happening, talking about something about Robbins Island. Over here we have a heap of other people. All of a sudden, what is happening in this court case has been a different application of the Tasmanian state coastal planning scheme that has been addressed for the last 20 years. Over here, we have Jack Shack-Owner. Now, he put a verandah on his little shack down the east coast somewhere.

Ms O'Connor - Is it built on a sand dune?

Mrs HISCUTT - He is right down on the beach, and he has applied everything in the State Coastal Policy - he received the ticks, he has put the verandah on. Next door to him lives Vindictive Vera. She is watching this court case over here and wondering if she might be able to get rid of that. There is also Gary Golfcourse back here. Gary Golfcourse built his golf course according to the Tasmanian State Coastal Policy. He has the ticks, he has done the coastal policy. He has his golf course down by the beach. I am not going to name any, but we know

a few. Is Vindictive Vera watching here also? Then there is Barry Boardwalk. He has built along the beach.

Ms Forrest - Did Barry Boardwalk meet the approval of the EPA? It is a serious question, Mr President.

Mrs HISCUTT - Barry Boardwalk addressed it to the Tasmanian State Coastal Policy. He is on the sand, and he is thinking about it. Then there is Peter Pier.

Ms O'Connor - If you are going to tell all these stories, you need to be honest about the question.

Mrs HISCUTT - No, it is the same thing. It is the same as Katrina Caravan-Park. She has built down by the beach. She has addressed this. Now, all of a sudden all these people are thinking, heavens above, there has been a different application over here, and that is going to affect them all. This bill before us today is to address that and help these people by making valid what they have addressed in the last 20 years.

Ms O'Connor - ACEN is not a person. It does not get a right of reply.

Ms Forrest - The Philippines multinational wind farm developer is not a person.

Mrs HISCUTT - What about Betty Boat-Ramp? There is one in Penguin. Betty Boat-Ramp was built in Penguin because the fishermen were complaining - I can see I am going to be pulled up here - but all these people are now going to be invalid. This is to address what has been done in the last 20 years and to make it valid. I urge members to think about all this. These are real people with real issues. This bill will address that validation. I urge members to not progress down this path of the Greens and to push - not push, but to progress - with this bill. Thank you.

[11.27 a.m.]

Ms FORREST (Murchison) - Mr President, after that little performance, which I think is somewhat demeaning -

Mrs Hiscutt - No, it is not. It is real people out there.

Mr PRESIDENT - Order.

Ms FORREST - Because the Leader does not have the right of reply, I am happy - with your indulgence, Mr President - to see if she will answer this question before I start into my main contribution. It concerns whether Billy Boat-Ramp and everybody else named in that interesting approach was required to get an approval by the EPA, as under their development application process - noting that perhaps in the day when Billy Boat-Ramp built his boat ramp and Sam Shack-Owner added on his verandah, it may not have even been triggering the *Building Act* at that point, depending on when it was, because of the change that has been made. If all of these fictitious people require the approval of the EPA, then maybe the Leader has a point - maybe.

Mrs Hiscutt - It has to be committed to council anyway. It says here, if you read it.

Ms FORREST - No, I will get to my point, as to why that, to me, is significant here. I was of two minds about supporting this motion. I think maybe the Leader has pushed me into the affirmative by that anyway, but I will make some points as to what I have considered. Knowing that the member for Hobart was intending to bring this motion forward, I gave some thought to whether there was value in a committee inquiry into this. I asked myself, as I always do - and the member for Elwick has been very good at reminding me of this - what is the problem we are trying to fix here? What would a committee referral fix here?

I appreciate the member for Hobart's comments about the matters that she sees as relevant and important to this. What we are trying to fix here is to understand more fully the application and implication, as I understand it, of this bill. I, too, was a bit surprised that the government tried to ram this bill through during the budget session because we give up all our private members' time during the budget session to give priority to the government's delivery of their budget. That is what the budget session is about and I am always happy to consider and scrutinise budget-related legislation, tax-related bills that are reflected in the budget, those sorts of areas. This is not that.

It was right and proper, therefore, that this was delayed until after the budget session was completed. Now, here we are, the week after the budget session being completed, being asked to consider it. The question now becomes: are we in a position where we believe we have enough information to proceed with this bill and if we do not, is a referral to a committee an appropriate step? Will the committee be able to shed a light on this bill as to its appropriateness, whether it should or should not stand, whether it should stand as it is, or whether it should not even be brought into law? Now, if it is referred to a committee, it may or may not make that definitive determination and I would not expect a committee to do that because, at the end of the day, it is up to each member in this House to decide whether a bill should or should not be supported. It would, however, provide a lot more information about what sits behind this bill and whether what the Leader asserts is actually true.

I know this is getting a little bit toward the matter in the bill - well, maybe not because we are not really clear about that, are we? I will go to my electorate, to Robbins Island, because it has been referred to and some people say it is fundamental to this bill.

Would a committee be able to clarify these issues so we can fully understand the matter at hand?

The Leader tells us the bill is about removing doubt from any development that has received a planning permit in good faith and acted on that. Now, I have been to Robbins Island more than once. It is private land; it is privately owned, and there is an area up on the western end - it is a large island, much bigger than people think, as the member for Huon can probably attest from attending the site visit for the energy committee and the member for, well, the Minister for Infrastructure now would also be able to attest, but he is no longer a member of the committee; the member for Pembroke was also there. It is a large island and down the western end there is orange-bellied parrot feeding habitat, and we went there and we looked at that. I do not believe that the representative of ACEN attempted to hide anything on that visit in relation to the presence or otherwise of the orange-bellied parrot or of any shorebirds, the Tasmanian devils and their denning habitat, or about the disruption that the proposed development, particularly the wharf, would cause to that and the mitigation measures they are looking at putting in place in regard to that.

I am not going to express an opinion about that proposal; that is not what I am here to do. However, I will say that what brought this to our attention is the EPA failed to do its job and that is why I asked the Leader: was the EPA required to approve Billy Backstab's position and whoever else we have? I mean, all those fictitious people, was that even a relevant thing to put that - the reason we seem to be here in this place right now is the EPA failed to do its job and so entered a court action in the Supreme Court that was already on foot.

We had a Supreme Court action on foot from a group of concerned local residents. They are entitled to their action. I understand their action, I understand why they do not want to see this project proceed, and I also understand there are members in this community that I represent who support it. Most developments will have this community split, so I am not here to express an opinion about that. I am here to do my job on this bill.

The EPA joined that Supreme Court action. Let us be really clear, that is what happened. Now, as I understand it and I am happy to be corrected if I am wrong, if this bill was to be approved today, the EPA would withdraw from that action. The EPA director said this himself in a briefing we had with him a couple of weeks or so ago.

This bill, in my mind, directly interferes in a judicial process because if it is passed today, the EPA will withdraw. It will not stop the court action because the other action from the concerned residents of my community who have taken that forward will continue. We are always, and we should be and were yesterday, conscious of matters before a judicial process and not interfere in them. We need to be aware of that and, regardless of what the Leader said, there is a current judicial process on foot that would be impacted by this legislation because the EPA director said so himself. Let us be very clear about that.

I have been concerned right from the start about the interference in a judicial process. The judicial process might find, in fact, that even though the EPA has been shown not to have fully considered the relevant section of the State Coastal Policy, the approval still stands. I do not know. I am not going to presume that I know what the court will find. That is not my job. Nor would I suggest that I could have any idea what they will find. In any event, they could do that. They could also say that the EPA failed to do their job - which I hope they do not ever fail in again because it is very disappointing to find ourselves here - and go back and do that work. As I understand it, that is what the process would be.

I do not want to go on about this because we are getting into the actual impact of the bill.

Mr PRESIDENT - No, it is about sending it to a committee.

Ms FORREST - Will a committee be able to establish those matters? Well, because of the time of year we are in - and I understand this matter is going to court later this year, but who knows? You never know if it will be further delayed or whatever. Going to committee would give time to fully consider this matter and give the court time to address the matter. I would say that if the court comes back and says it is all fine, the DA stands as approved, do we actually need this? Maybe we do because of all those shack owners, the boat ramp, the coastal track, the golf course, the caravan park development, and everything else.

We live on an island, I am sure we all know that, where we rely very much, as we have seen with the debacles around our ports, on our connection between the sea and the land. We need to be sure we get this right. What should be happening, and I understand is happening - the

minister has disappeared - is a full and proper review of the Coastal Policy. That is on foot. That should be sorted out through that. This issue of the perhaps ill-defined 'mobile landform,' should be addressed in that process and it should not have taken this long to get to that process either. It is a bit like the environment report that the member for Hobart noted.

I am concerned we are dealing with the bill now because of the legal action that is currently on foot. I am concerned with the retrospective nature of it without some clear indication that it is needed. It is fictitious people with real things that someone might think, 'I am going to go and complain about that neighbour's shack because it has a verandah on it now and I do not like the look of it or it interferes slightly with my view of the ocean'. Will the committee be able to resolve these issues? I am not sure they entirely will, but we will certainly get more information about it and we will have a better understanding of it. The committee may have the desire and capacity to seek legal advice in confidence. I would not expect it to be made public, I do not think that is appropriate, but I do believe the committee should and would have power to receive that in confidence. We know committees take receiving material in confidence very seriously and respect it.

With those points, I will listen to the rest of the debate on this, but I was not convinced by the Leader. I was far more convinced by the member for Hobart and I do not think this is an urgent matter.

Mr PRESIDENT - To remind members, the question is that the Validation (State Coastal Policy) Bill 2024 be referred to Government Administration Committee B for consideration and report.

[11.40 a.m.]

Mr DUIGAN (Windermere - Minister for Parks and Environment) - Mr President, I will seek some advice.

I thank members for their patience. I am happy to speak to this and would be urging members not to support sending this validation bill off to a committee. The critical aspect of this bill, and it is simple in its intent, is to make legal all those developments that were given a planning permit in accordance with the law at the time and with the planning scheme, and to remove the legal uncertainty that exists for those developments, noting that coastal policy applies to all developments within one kilometre of the Tasmanian coast. If you think about that, there are a great number of them.

There will be a great many that have been built since the last time this was validated. There will be a great many more that will be in various stages of planning that will have, like Robbins Island, received an approval fully expecting to be able to use that approval, given it was lawful at the time and complied with the rigorous planning approvals that it had to meet - EPA-derived or not. It is simply the government doing what it should do and that is validating, making legal, those decisions that were, at the time, legal and given in good faith.

The member for Hobart has tried to imply that, around Robbins Island, the Supreme Court case will not go ahead on the basis of this validation. That is absolutely not the case. That will continue under the name of the Circular Head Coastal Awareness Network. That will continue. Those people will absolutely have their day in court, as it should be.

By and large, this is a very simple thing. It has sought to be conflated into something else. It is not that. It is the government seeking to do what it should do, and that is to validate, make legal decisions that have already been made on that basis. I would, with those few words, ask members not to allow this bill to be used for the political purposes sought by the Greens.

[11.44 a.m.]

Mr EDMUNDS (Pembroke) - Mr President, at the risk of bringing the House down, I will stand up as Luke the Legislator today. It has been a big week of debate in this Chamber and this one has been no less enthralling; in fact, it has been more so. To get serious again, I note the concerns and arguments put forward by members, and I will continue to listen if there are more that come forward.

On this, I think that we have had a long time to consider the legislation and plenty of information volunteered our way, and time to consider the matters in our own time. At this stage, I am not convinced the committee - and I know the member for Murchison was talking about this as well - will necessarily uncover any extra information that would inform my vote on this issue. As things stand - pending the rest of the debate - I am still of the opinion that I am happy to debate the bill today.

[11.45 a.m.]

Mr GAFFNEY (Mersey) - Mr President, it is an interesting situation we find ourselves in. I listened to the member who introduced the call for a committee. I listened to the member for Murchison, who actually formalised some of the thoughts I was having when the member was speaking.

The timing of this - we have found an issue with the coastal policy after 20 years and have been in power for the last 10 - it is quite astonishing that it happens at the same time we have a major development happening on the north-west coast, or potentially.

The fact that the community group that has gone through what it felt was a proper process, playing the game correctly - and, in fact, the information we received had advice from former ministers Jaensch and Barnett that the process will be fair and valid and - just do that. And, so, they have gone into this with good faith; they have gone through the proper process. They have looked at the tribunal's decision, they have gone to the Supreme Court - that is where the hearing was - thinking that the EPA, which realised it had made an error, was going to be with them in that boat, having that debate - and then, suddenly, if we pass this, that is not the situation.

The game rules have changed. No matter what happens, that community group is always going to feel dudded by this government and by this process, because the other group that had made an error is not going to be with them at the table at the Supreme Court if we pass this bill.

Therefore, in my mind, one process for us to delay that, so that the group and the EPA can be in the Supreme Court - and that is where the judgment will be made - is if we accept the committee process. It may not be the best way, but it will delay this so that there is no interference in justice, which may be the situation if we pass this legislation - and that is another debate. At the moment, we have on the table: do we go into the committee process? I do not know if it is the best way of doing it, but I do know it will delay it, because what I want to see is both the EPA and the Circular Head network together at the table with the Supreme Court making its decision, or having the hearing early in 2025.

If it has been 20 years in the making, what is another three or four months for planning legislation and coastal policy? We have to have a much bigger look at our coastal policy. We are dabbling with a little piece here when we have climate rise, we have inundation, we have areas under threat, all the way around our state. And, yet, we are picking this little piece of legislation to 'okay, let us do this because of this. Oh, we just found out about this a few months ago and we must have validated it, because otherwise people might not be able to sell their jetties or wharves that they have owned for the last 20 years' that, as the member for Murchison highlighted, did not need an EPA assessment on that building back then - not that I am aware of or have heard of any, and nor could the government, when questioned on that, show us one piece of jetty or structure that has actually fallen under this, or has been questioned about it.

In light of that, I am inclined to support the inquiry because I want it to go through to the Supreme Court with the players that are involved at the moment. That community group on the north-west coast out of Smithton, Robbins Island, thought that was a fair and proper process and that is the game plan they have played. Then suddenly, at the death knell, the government has changed its thoughts and pulled the rug out from under them. So, the EPA, as we heard, from the director, would not be involved in that determination or that discussion at the Supreme Court level.

Ms Rattray - You can always adjourn the debate.

Mr GAFFNEY - Yes. But at the moment we are discussing the committee.

Ms Rattray - That is another option.

Mr GAFFNEY - We are in the committee process. That is where we are at the moment, and I would be supporting the committee because that is what is on the table. I am very concerned that we have not given this due process.

[11.51 a.m.]

Ms WEBB (Nelson) - Mr President, this is a really important question for us to consider at this point in time, whether a committee process is warranted here and what benefit it would bring and what detriment it might hold. It has been very valuable to hear contributions on this from the members who have spoken so far. Turning my mind to it, there are a few things that I would like to comment on so that it is clear why I vote the way I vote on this motion.

In general, committee processes are valuable not just because they might make individual members here be better informed on their vote, and I appreciate that the member for Pembroke said that he did not feel that it would necessarily change his vote or give him more information than he already had and needed to make a vote. That is fine. It is a valid outcome of a committee process that it might help inform our votes. But there are other things that are valuable about a committee process, particularly on something that has some complexity to it or some sensitivity to it going through this place, and that would include the value of having an on-the-record, publicly accountable consideration of issues.

The committee process provides for there to be a collection of evidence in a publicly accountable way, whether that is through submissions that are made from various interested stakeholder groups or experts, through hearings that are held on which evidence can be tested and interrogated further and also tested against each other.

It is different in a committee process from informal off-the-record briefings that we receive when we are considering legislation. This would be a really good example of that difference because, while we have received a reasonable amount of information about this bill from a range of stakeholders and experts who have different opinions or different perspectives on this - and we have been able to engage with that in our own ways behind the scenes as we have considered this bill - none of that is on the public record. There has been no formal, accountable way that we have been able to test that against each other readily, where we can have an expert in front of us and say, 'Here is the information we have received in submissions. Can I ask you about this aspect? What would you say to respond to that aspect?' - and do that publicly accountable testing.

A committee process provides that, and that is not warranted for all legislation, but there are particular times that it is warranted. What comes out of a committee process is a public record of how consideration has been given to that bill and the public suite of evidence for that. Then it does come back to this place still, and there may be recommendations from the committee process that then help inform this debate.

There certainly would be a large and accountable suite of evidence to come back to this place to assist as well. I think that has a great deal of value. It is particularly valuable when there is an issue that is contentious that is connected to this bill. That is, without question, the the situation we find ourselves in, because it is unavoidable that matters to do with that particular wind farm development on Robbins Island have become entangled with this bill. It has triggered it off because of things that have arisen out of that and it is entangled now as a contentious matter connected to this bill. Again, the more we can, in a relatively dispassionate and accountable public way, consider that soberly and in good faith, the better we are placed to be seen to be undertaking good process and making good decisions. Those are my thoughts about the value of a committee process.

The detriment of a committee process is that it makes it a longer process to consider this bill and sometimes that might be problematic. In this case, the government would argue that it is problematic because this is an urgent matter that needs to be resolved. Others would say, because of the Supreme Court process afoot, it is appropriate for this to be delayed beyond that and pushed through.

I am concerned that we are considering this while the Supreme Court case is afoot, and I will pick up on something the minister said, because I think he was incorrect when he spoke about the fact that this bill was about validating lawfully made approvals.

Ms O'Connor - Issued permits.

Ms WEBB - Lawfully issued permits. In fact, we have a Supreme Court case afoot because there is a question over whether there was a lawfully issued permit. That is why the Supreme Court case is afoot and the EPA is involved in it. The EPA has come forward to say actually it did not, as the member for Murchison said, do its job and have consideration for the State Coastal Policy as part of that process.

There is literally a question over the lawfulness of the process on one particular permit that would be affected by this bill. Let us be very careful about claims about what the bill is affecting or not affecting. I think it is highly relevant that there is a question before the court on the lawfulness of a decision and a decision-making process, and this bill would materially

affect that to the extent that it would allow, or probably provide for, the necessity for the EPA to withdraw from that process that it is currently involved in. That does concern me greatly.

I am also concerned - and we will discuss this, no doubt, more when we get to the second reading so I will not labour it here - but I will mention it because it is instrumental in my thinking about a committee, which is the question. We are addressing this issue because the government says a clear and present legal danger and risk has been identified and yet they have not shared that advice with us. We know that there are mechanisms for them to share that advice if they wish to do so; there are established ways that can happen entirely confidentially for members of parliament, that in the past have been proven to be appropriate and respected, and that have never been jeopardised by any breaching of confidentiality. There are established ways that confidential legal information to the government and legal advice to the government can be shared with parliamentary members.

That has always been available to the government to share that advice. It has been requested. It would put to rest in many people's minds a lack of clarity about, or question over, the urgency and the degree of legal risk that we are talking about here and would clear up some parameters.

We have had legal advice now or people with different legal perspectives giving us information and their own advice, but it is all based on a supposition about what the government's legal advice might say. They have not even been able to give clarity to us through their advice because they are having to guess at what the government's legal advice might be.

That comes to mind too because, again, while the government obviously has resisted sharing that advice with us through well-established and understood ways, a committee process may provide them with a more discreet way that they might feel more comfortable sharing that advice into the discussion and the mix.

Again, no committee, in my understanding, has ever breached confidentiality where it has been presented with evidence in confidential circumstances. The government does not have a need to fear or avoid that opportunity if it were to arise through a committee.

On that basis, I am inclined to support this move to send this bill to a committee because I am concerned about us ever legislating while there is an active court case afoot in a way that will materially impact that court case, and I think that is what is going to happen here. Furthermore, I am concerned that because of the particular sorts of contention there are over why and how this has arisen and has been progressed by the government, remembering a consultation process of a mere handful of days and a tabling of a bill another mere handful of days after the closure of that consultation process, which of course looks like a sham, unavoidably, unfortunately, just simply because of the calendar.

Because of the contention that is there, I think there is every additional reason for us to be seen to be making good decisions based on good evidence in accountable ways. I thank the member for Hobart for bringing the motion to send this to a committee. I will support it and I hope other members give it good consideration too.

[12.00 p.m.]

Ms THOMAS (Elwick) - Mr President, I thank the member for Hobart for bringing this for our consideration, and other members for their contributions. The last time we were here in

this place considering where to go with this, there were a few things that I felt were missing in full consideration of this problem or, as it was described to us yesterday, a mischief - I quite like that term 'mischief' - that I will be trying to solve here.

I feel as though the mischief or the problem has been conflated and the debate so far has not really been apples and apples because of the Supreme Court action that is afoot. We keep hearing about the Robbins Island development. We have had a lot of correspondence from interested stakeholders. This is an issue of high public interest because of the conflation with the Robbins Island development.

I have found it difficult in my mind to try to separate - in pure form - the bill that is before us and the argument that is put forward about its validation of past development approvals that perhaps have not considered the State Coastal Policy from the other issue that one of those development approvals is currently subject to a court appeal. That is what a lot of the noise has been about. It has been very difficult in my mind to be able to separate the two and then we have heard from the government that this is not about Robbins Island. Then we have heard that maybe it is, so I am still not convinced in my mind of the exact distinction here.

For me, the purpose of sending it to a committee would be to make more fully informed decisions and to be clear about the problem definition, which is really important to me. The information that I referred to last time when I spoke and I think we were considering - it is testing my memory now - sending it to a committee, and then that motion was withdrawn by the member for Hobart and the matter was adjourned. The Leader adjourned, I recall, so we could have more time to consider. Therefore, perhaps the government could have more time to consider what might be needed to help us feel fully informed.

I recall at that time I said we need to see the advice. I need to see the advice. Surely, as members of parliament, we can be trusted with advice to help inform decisions. We need to see the advice that says there is a legal risk here, that we are putting property owners at significant risk. What is the risk? What is the quantity of the risk? What is the likely impact?

I am not convinced that if we do not pass this bill today that the government is going to stand up the actively mobile landform police and go around Tasmania to identify Betty Boat-Ramp here and Gary Golf Course there and Karen Caravan-Park and the DPP is going to prosecute those approvals.

I still have questions in my mind about the urgency and the real risk here; we have not been provided with that data. The government has had that time, and with respect to the Minister for Energy and Renewables, not Housing and Planning, I ask the question again. I understand it has been considered, but it is not convention to provide that advice.

We do not have any data on the number of DAs. I understand it would be hard to gather that data. I know it is difficult to gather that data, but we have heard very vague terms about the types of DAs that we might be validating here. What is the real risk? I am still not sure what the real risk is if we do not pass this bill today, if we wait and see what the outcome of the Supreme Court action is.

Should the Supreme Court action find that the DA for the Robbins Island development is unlawful because it did not give due regard to the State Coastal Policy, can we then consider whether we validate or pass DAs anyway? Or, whether we require them to be tested again?

Can we then, knowing that information, come back, and considering this question, be fully informed? Is there anything to stop us from letting this action play out then come back with this bill before us? I am not sure, that is perhaps a question and I am not sure if there is any opportunity for another member of the government to answer that. What would be the issue if we wait and see this play out and then come back and seek to validate, should it find that all past DAs, or set a precedent that all past DAs where the State Coastal Policy has not been considered are in fact unlawful? Then can we pass a validation bill or consider a validation bill? If there was no Supreme Court action here, would we be having this debate? Probably not.

Mrs Hiscutt - It is because the definition has changed.

Mr Duigan - Yes, the application has changed.

Ms Forrest - The definition has changed?

Ms THOMAS - The application of the policy has changed. The definition has not changed. The application has changed, or is in question, and will change in question again. The problem, again, is conflated by the action that is underway.

I still have questions. I understand in a pure form, if there were not a Supreme Court action before us, perhaps it would be quite a straightforward question for us to be considering. However, that is not the scenario we find ourselves in. It is still a dilemma for me. I am not convinced of the urgency here today, and I would like to be more fully informed of all the facts.

At this point I am inclined to support the motion to send the bill to a committee.

[12.07 p.m.]

Mr VINCENT (Prosser) - Mr President, I appreciate everybody's contribution. It has been somewhat confusing about the timing involved and everybody has their own interpretation of the timing, but I will see if I can clarify that.

The bill is in response to the legal technicality that has been identified through the assessment of the Robbins Island wind farm. Advice received during the Supreme Court appeal against TASCAT's decision to approve the wind farm brought the issue with the application of outcome 1.4.2 to the attention of the government. The government does not hide the fact that it does support wind farm developments to help boost our renewable energy supply. The government also supports other development, including development on the actively mobile landforms that facilitates the recreational use of our coasts, and provision of infrastructure that serves a public benefit. The bill will remove the risk of these developments and the potential threat of legal challenge.

In relation to the claim of the court case, the bill only validates the Robbins Island wind farm permit in so far as outcome 1.4.2 of the State Coastal Policy applies. Other matters that are subject to appeal in the Supreme Court are not affected by the validation legislation.

The Supreme Court should be allowed to do its job. The Supreme Court will be required to do its job in considering all other grounds of appeal with the exception of outcomes 1.4.1 and 1.4.2 of the State Coastal Policy. These outcomes have only been brought by way of the EPA's appeal on the advice received by the government. The matters raised by other appellants will continue to be considered by the Supreme Court.

Deferring to a comprehensive review of the State Coastal Policy, it is important that government acts to address issues as they arise. This validation bill does just that. Yes, we could defer consideration of the issue until after a comprehensive review of the State Coastal Policy, but that does not address the issue before us now.

People have acted in good faith and made decisions, issuing planning permits and acting on these permits. We want to remove any doubt that these permits are invalid because of the outcomes of 1.4.1 and 1.4.2 of the State Coastal Policy. We do not want to defer this issue and have people operate under this cloud of uncertainty for 12 or more months.

When it comes to urgency, the government begs to differ. There are a known number of previously issued permits that may be at risk of legal challenges due to an incorrect interpretation of the State Coastal Policy. We know this, and it is important that we act now to validate existing permits and provide certainty for everyone who has acted in good faith.

It is important that the government acts now and moves to create a more reasonable and contemporary assessment framework for development on actively mobile landforms and it would be remiss of the government to not act swiftly as that would leave people at risk of legal challenges and offences for acting on previously issued permits.

Planning where permits were issued in good faith: what has come to light is that the State Coastal Policy may not have applied as it was thought it had applied before with planning authorities. For those reasons we do not support this bill going to a committee.

[12.12 p.m.]

Ms ARMITAGE (Launceston) - Mr President, I appreciated hearing the varied views from members. I have also read the second reading speeches from the other place and I found those to be quite informative. I have appreciated the many briefings that we have had.

From my own perspective, I am comfortable with the bill as it is and I am comfortable to proceed. I have listened and I do not have any theories about what it is for or what it is not for apart from what is put before me. I do not have an issue - I believe Robbins Island is a separate issue. I can see the need for us to proceed for those areas that need to be validated for those people that have acted in good faith. I appreciate some members may feel the need for a committee and our committee process serves a very good purpose on many occasions for giving us more information and allowing us to delve into areas if we are not comfortable.

Members feel the need for a committee and that is up to them. My personal belief in this particular bill is I do not feel the need for it to go to the committee, so I will not be supporting it. I have already mentioned to the member for Hobart that I did not feel the need. I feel comfortable with the bill before us. I will not be supporting the committee and I will be proceeding if it goes that way.

[12.13 p.m.]

Ms O'CONNOR (Hobart) - Mr President, I thank all of my colleagues for their contributions. Some very strong arguments were put for supporting this referral to committee, particularly by the members for Murchison, Mersey, Nelson and Elwick. So many questions have still not been answered. Sure, we have had briefings, we have had assurances, and we have had time but there are still all these outstanding questions.

I found the Leader of Government Business's comments on the Greens' motives here offensive and, with respect, beneath you. I am sure the words were written somewhere by a staffer in some minister's office, but the Greens always care about making sure legislation is robust and the foundation for it is solid. Our track record in this place over decades demonstrates that, and I am unapologetic about the fact that part of my motivation for making sure that we thoroughly and properly examine this bill through a committee process is my deep fear for Robbins Island and its migratory and resident shorebirds.

I ask members to remember that the wharf approval is necessary for that development to go ahead. It is a wind farm in completely the wrong place. It is a proposal that has been knocked back before. The place should have Ramsar listing; it is of international significance in a world where we are trashing habitats for resident and migratory shorebirds everywhere we look. The war on nature is going so well. I take offence to the Leader of Government Business's comments about our motivation. We are very upfront about this, unlike the government. The minister for Energy stood up here with a little handful of notes, not the Solicitor-General's advice, and said the same things he said before, extremely unpersuasive. We should reject the notion that because it is a convention for solicitor-general's advice not to be provided it cannot be provided. I will not go over those arguments again, which have been made very well by others.

We should allow a proper judicial court process to proceed uncontaminated by the interference, or the government's attempts to interfere, in the process through a retrospective validation bill. The foundation for this bill has not been established and we have a responsibility to make sure that we are grilling government over the legal foundation of this bill. A committee process is the place where that can be done properly and where those assertions can be tested. We have not been able to properly test the government's assertions about the need for this bill because not only have we not been provided with the Solicitor-General's advice, we have not even been provided with a summary of that advice. All we get are the bland reassurances from a minister here who was texting the proponent of this proposal earlier this year - the fix was in and here we are. The fix was in.

We know this bill is about making sure the wharf approval stands, so that a Philippines-based multinational can put massive turbines on a migratory and resident shorebird habitat and a habitat for the critically endangered Tasmanian devil. Pretending that there is a question mark over whether the dunes on Back Banks are actually 'mobile' - we are not fools and we should not allow government to treat us so. I commend the motion to members.

Mr PRESIDENT - The question is that the Validation (State Coastal Policy) Bill 2024 No. 37 be referred to Government Administration Committee B for consideration and report.

The Council divided -

AYES 4	**NOES 8**
Ms Forrest	Ms Armitage
Ms O'Connor	Mr Duigan
Ms Thomas (Teller)	Mr Edmunds
Ms Webb	Mr Harriss (Teller)
	Mrs Hiscutt

Ms Lovell
Ms Rattray
Mr Vincent

Pair: Mr Gaffney

Pair: Ms Palmer

Motion negatived.

VALIDATION (STATE COASTAL POLICY) BILL 2024 (No. 37)

Second Reading

[12.23 p.m.]

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) - Mr President, I move -

That the bill be now read the second time.

The State Coastal Policy has been a crucial component of the state's resource management and planning system. For nearly 30 years, it has enabled many developments while protecting our coastal areas. It is essential that we provide certainty and strive to balance sustainability and reasonable development in these areas.

In recent months, there have been concerns about how the State Coastal Policy has been applied to development on actively mobile landforms. The recent approval of the Robbins Island wind farm, specifically the wharf needed for its construction, by the Tasmanian Civil and Administrative Tribunal, has raised questions about the application of Outcome 1.4.2 of the State Coastal Policy.

Outcome 1.4.2 prohibits all development on actively mobile land unless it aligns with Outcome 1.4.1 of the policy, which focuses on works for the protection of land, property and human life.

The ongoing concerns with the operation of the current State Coastal Policy are compounded by the lack of a definitive description of actively mobile landforms or an accepted map of their locations. Tasmania hosts numerous developments on potentially actively mobile landforms that provide access to our beaches, recreation facilities, or work to help conserve areas of fragile environments.

The proposed bill provides that previous permits for developments on actively mobile landforms issued under the *Land Use Planning and Approvals Act 1993* from 16 April 2003 until the date of commencement of this bill are validated. The introduction of this bill ensures that previous decisions under the State Coastal Policy and Tasmania's resource management and planning system do not give rise to unintended consequences in terms of liability for the owners or managers of infrastructure on our coasts.

This bill also establishes that no action can be taken against individuals or organisations that have acted in line with permits that were issued under the *Land Use Planning and*

Approvals Act. The bill will ensure that our communities have no doubt about the validity and protection of their coastal infrastructure.

Separate to the bill, the government believes it is time to update the State Coastal Policy to include more contemporary planning controls for actively mobile land. This will improve how we assess proposals on actively mobile landforms.

A position paper is being released for public comment to outline these issues and the need for a more sophisticated policy setting in line with recent planning reforms that have contemporised the state's planning system.

Furthermore, an amendment to the State Coastal Policy should clarify what constitutes an actively mobile landform so that we have some certainty where it should apply to ensure we can protect our coastal environment while allowing sensible and sustainable recreational and other infrastructure that benefits the community and their connection and enjoyment of our coasts. With the introduction of the Tasmanian Planning Scheme across the state, we now have statewide mapping of coastal hazards and detailed planning requirements for assessing development in these areas.

In addition, the new Tasmanian planning policies offer a more detailed set of guidelines to guide future land use in the coastal zone. These will soon be brought into effect.

I commend the bill to the House.

[12.28 p.m.]

Ms FORREST (Murchison) - Mr President, I do not intend to speak very long on this because I have made a number of comments in my contribution on the proposed referral to a committee. If we are worried about approval of coastal projects, whether they are caravan parks, jetties, coastal pathways, shacks with or without verandahs or anything in our coastal areas, which is a lot of development, I am not aware of any that are under immediate threat of demolition. We are seeking to validate permits that those projects would have.

I am aware of a legal action that is currently on foot that is named up in the second reading speech as relevant to this debate. I have always taken the approach, and I know most or all other members, take it seriously about not crossing a judicial process, particularly one that is currently live. This is currently live. It is related to a development on a coastline that should have had an assessment under the coastal policy but did not. A court is to make a decision about whether, in fact, it needed to, or whether, in fact, the work done was adequate or not. So, it is relevant.

I am concerned about proceeding with this at this point; I am not able to support this bill.

I move -

That the debate stand adjourned.

The purpose of this is to enable that process to complete before we consider this bill so there is no ambiguity, there is no concern, there is no current legal process that we cut across and I imagine we can come back to this early next year. It would be nice to see the sitting schedule, I might my add, knowing when we are coming back and I could name up the date.

But, as you know, we do not have that yet. Well, it is not quite December yet, I suppose we do not need to know until then. Anyway, that was a narky comment and not relevant to the bill.

I am concerned that cutting across a live legal process, as effectively named up in this bill, we should have very serious concerns about. So, if this motion to adjourn is not supported, then I can indicate now I will not be supporting the bill.

[12.30 p.m.]

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) - Mr President, I really believe that we have had this debate because had it been passed to a committee, as was previously tried to be moved to, it would have been the same outcome. It still would have been a delay. So, I do believe that we have had that debate.

Members have had time. If the member for Murchison feels that she cannot move forward with this, I respect that, but other members feel they can. The government feels that there has been plenty of time to do that, so I will speak against adjourning the debate at this stage.

[12.31 p.m.]

Ms O'CONNOR (Hobart) - Mr President, I thank the member for Murchison for proposing that we adjourn the debate. I will not speak for too long on this question either, but the arguments have been laid out. What we are contemplating here is legally questionable given there are matters before the Supreme Court. What we are seeing here, which the government does not properly acknowledge, is that there is a real level of concern in the Chamber about this legislation and the arguments that have been made to support it.

You might expect - it is one thing for a green MLC to get up and rail to prevent this legislation, knowing that it is part of what would be a desecration of pilitika/Robbins Island, but it is quite another when sometimes more moderate and reasonable voices than mine are expressing very similar concerns. It is regrettable that there does not seem to be a mood more broadly in the Chamber to make sure we get this right, to make sure that we are not being led into interfering in a judicial process.

We still have not seen a foundational argument put by the government for this legislation and, in fact, they had to resort to comic caricatures of fictitious characters on the coast who might be affected because it is all part of what has become a bogeyman campaign. It is a bogeyman campaign though, is it not? Creating this sort of scare campaign around structures on the coast that have existed since the State Coastal Policy was enacted in 1996 without a single legal question being asked.

I do not think we should buy the arguments that should this bill pass, it will not cut the sand out from underneath the local community who has taken the matter to the Supreme Court. Of course, because we do not have the time through a committee process, for example, to bring in representatives of that local community and other legal experts, we cannot exactly examine the question of whether or not the passage of this bill would remove a foundational premise for the judicial review launched by the local community group.

I hope members understand, if they could not support a referral to a committee - because there is an uncertain end date in a committee unless we established a date and reported to it - to adjourn the debate until there has been a proper examination of the matters before the Supreme Court is the appropriate and responsible thing to do in response to this odious bill.

[12.34 p.m.]

Mr GAFFNEY - Mr President, I rise to support the member for Murchison's adjournment, but I will put on the Table that this is something that I was considering myself if we did not go to committee. The speech I have for that is along those lines because I was hoping that I would not have to make this speech. I do support the adjournment and I can give a bit of background here.

I rise to support the adjournment of this debate on the Validation (State Coastal Policy) Bill 2024 until the challenge by the Circular Head Coastal Awareness Network Inc (CAN) is resolved in the Supreme Court in the new year. I note I chose to be the final speaker in this debate to allow all members the opportunity to place on record their thoughts before being asked to consider this adjournment. It can be frustrating sometimes, I suppose, when members spend a lot of time preparing their speech to enhance and influence the debate but not have the capacity to do so, but this is where we are.

I invite members to consider this adjournment as to allow a local Tasmanian group, which has, in its opinion and after receiving advice, followed proper process to have its case and its issue heard without seemingly having the goalposts moved late into the game. I am referring to the Circular Head Coastal Awareness Network. I imagine we have all received emails and/or correspondence from them as a collective or indeed as individuals.

As we know, the Validation (State Coastal Policy) Bill is proposed by the state government to validate planning permits for all developments built or approved to be built on actively mobile landforms under the current Tasmanian State Coastal Policy during a period from 2003 until the bill obtains royal assent. The validation bill will provide for retrospective blanket approval for all coastal developments on actively mobile landforms statewide since 2003. Such a broad-brush approval undermines previous assessments and permits issued, potentially leading to unintended legal consequences.

Donald Hay, a committee member of the Circular Head Coastal Awareness Network, forwarded the following email:

> Dear Politician,
>
> Circular Head Coastal Awareness Network is a group of concerned residents opposed to the Robbins Island Wind Farm. We have been labelled a group of 6 noisy nimby's by ACEN, but in truth we are a large group of concerned citizens, opposing the mass destruction of the Robbins Island area, which will affect the Ramsar Proposed wetlands. The group is very diverse, and is evident by its support base, for example, over 1200 petitions were submitted in response to the Bridge/Causeway proposal. These were discarded, as the powers that be stated they were not correctly submitted. The Facebook page we run to keep members and interested parties up to date has been viewed 2592 times in the last 28 days. We are obviously bigger than the 6 nimby's as stated by ACEN.
>
> The Circular Head Coastal Awareness Network condemns the Rockliff Governments plans to ram through an amendment to the State Coastal Policy. It is obvious that this move is to free the Robbins island Wind farm from any scrutiny regarding its effect on Coastal Dunes. The Coastal Policy was put in

> place to protect the coastal environment, any amendments should be carefully considered to maintain that protection.
>
> It seems it is the government's intent is to block the Supreme Court of Tasmania from hearing legitimate challenges to the Robbins Island Project.
>
> The Circular Head Coastal Awareness Network has opposed this project from the outset On Environmental, Social, And Economic grounds. We had early meetings with Roger Jaensch, as minister for Planning, and with then Minister for Energy, Guy Barnett. They both advised us to trust the process and we have. We have persisted with meagre resources along the correct legal path.
>
> We now find the government wants to change the goal posts to free big business to build a wind farm in the most highly regarded environmental site in Tasmania. We ask all Politicians to consider why the government are persisting with the destroying the extraordinary wetlands and bird habitat of Robbins Island. When they have, for so long, ignored the Whale Back Ridge project. The environmental damage is far lower than Robbins Island, it will produce 3 times the power, is close to existing transmission corridors and positive social benefit.
>
> Regards,
> Donald Hay

We have heard some justification for this action from the government. However, put yourself in the shoes of the Circular Head community group. The government has confirmed that the bill will also validate the approval for the pilitika/Robbins Island wind farm that is currently being challenged in the Supreme Court.

I appreciate receiving a large proportion of the following time line and information from the combined submission of the Planning Matters and Tasmanian Conservation Trust September 2024 documents. Some of this information has already been voiced in the Chambers by members, and this will support the reason why I think we should go to adjournment.

I am trying to convince members who have already indicated they are not supportive of the committee process that they might be supportive of an adjournment delay for reasonable and proper process from a community organisation that does not have the resources, physical or financial, when pitted against government and bureaucracy.

In seeking an adjournment, it seems appropriate to articulate the reasons, especially the time line leading to the need for this adjournment. Personally, I encourage community members, as I imagine we all do, to become actively involved in debates that will impact on their community, their region and, indeed, this state, for not only this generation but generations to follow.

On 17 February 2023, the Circular Head Council approved the Robbins Island wind farm.

In March to September 2023, the decision was appealed to Tasmanian Civil and Administrative Tribunal by numerous parties…

On 27 November 2023, the Tasmanian Civil and Administrative Tribunal refused the appeal and ordered that a permit be issued for the Robbins Island wind farm. I am pleased that we have the opportunity to put this on the record because those people listening may not be fully aware of the time line of what happened and what is going on.

In December of 2023, the Tasmanian Civil and Administrative Tribunal decision was then appealed to the Supreme Court. There are currently two appeals being run in the Tasmanian Supreme Court regarding the proposed Robbins Island wind farm.

In December of 2023, the Circular Head Coastal Awareness Network Inc initiated a Supreme Court challenge to the Tasmanian Civil and Administrative Tribunal decision.

In March of 2024, the Environment Protection Authority and state government received legal advice that the EPA had erred in law regarding the interpretation of the Tasmanian State Coastal Policy in not requiring the Robbins Island wind farm proponent ACEN to assess the proposal against the Tasmanian State Coastal Policy 1996.

Also in March of 2024, the Environment Protection Authority commenced a proceeding in the Supreme Court to appeal the Tasmanian Civil and Administrative Tribunal's decision to approve a wind farm at Robbins Island and correct its error in law in not applying clause 1.4.2 of the Tasmanian State Coastal Policy 1996. The Circular Head Coastal Awareness Network Inc joined as a party to the appeal.

As we have just heard, in March 2024, it is believed that the state government received advice that put in doubt the approval of the Robbins Island wind farm - specifically the assessment by the EPA of the wharf proposed at Back Banks mobile frontal dunes on Robbins Island. Based on advice, the government then claims that all planning permits issued from 2003 onwards that involved development on actively mobile landforms are also in legal doubt.

However, the state government claimed it received advice that supported the need for legislation to validate the permits for developments built, or proposed, on actively mobile landforms. Has the government refused to release its advice, or even to release a summary, that explains the legal reasons? Indeed, to the best of my knowledge, the government has not even stated who provided that advice.

On 4 May 2024, the Department of Justice, on behalf of the Environment Protection Authority advised that the state government was seeking retrospectivity of amendments to the Tasmanian State Coastal Policy 1996 which might render worthless the Environment Protection Authority's Supreme Court case. This means the EPA would cease involvement in the Supreme Court case.

On 6 May 2024, the EPA's Supreme Court case was listed for a directions hearing. The Environment Protection Authority requested an adjournment, causing it to be adjourned to 28 June 2024. On 6 May 2024, Mr Nick Duigan, Minister for Parks and Environment, issued his first media release, 'Changes to the Tasmanian State Coastal Policy proposed'.

On 17 May 2023, the Environment Protection Authority released its only official statement (via an email to the Tasmanian Conservation Trust):

> 'The EPA required ACEN Australia to provide information about the application of the State Coastal Policy on the proposed development of the [Robbins Island] wind farm, including the construction of the [500 metre long] wharf… ACEN Australia did not provide any information addressing clause 1.4.2 of the Policy. The Board was not aware of its legal obligations in relation to the application of clause 1.4.2 at the time it undertook its assessment and made its decision. The Board received advice in March 2024 that it was required to have regard to clause 1.4.2 and in not doing so it had erred at law, and hence had no option other than to lodge the appeal. As the matter is now before the Supreme Court, the EPA will not be commenting further.'

For those listening, ACEN Australia is the listed energy platform for the Ayala Group, which has owned facilities in the Philippines, Vietnam, Indonesia, India and Australia, and ACEN headquarters are currently in the Philippines.

As of 27 May 2024 it was the understanding of the Planning Matters Alliance and the TCT that the Tasmanian Planning Commission had no knowledge of what was proposed in relation to any changes to the Tasmanian State Coastal Policy 1996. Indeed, the commission can only become involved if the minister gives it a written direction under section 15A of the *State Policies and Projects Act 1993*. The Tasmanian Planning Commission is required to consider any proposed amendment in accordance with the requirements of section 15A.

In June 2024, the state government made claims that there are a range of structures built on actively mobile landforms, including boat ramps and jetties, that are at legal risk and require validation.

When asked the question on 19 June 2024 in the other place, the state government could not identify or substantiate one single example of a structure, such as a boat ramp or jetty, that may be at legal risk and requires validation of its permit.

At the same time the state government was questioned about claims that it was to be 'defending Tasmania's way of life' by proposing the Validation bill. I hope the state government is not suggesting that the CHCAN and many other Tasmanians are also not defending the Tasmanian way of life, and proper process.

Some believe that this type of motherhood statement seems to be a smokescreen to disguise the real reason for the validation bill, which is to ensure the Robbins Island wharf can be constructed.

The state government also claimed that the validation legislation is required to address uncertainty regarding application of the Tasmanian State Coastal Policy, that the policy does not include a definitive description of an actively mobile landform and that there are no accepted maps of these landforms.

However, submissions to the draft validation bill by legal experts question whether the Tasmanian State Coastal Policy suffers from such uncertainty. Hence the importance of an

independent umpire to continue, and the need for, the judgment through the Supreme Court process.

Therefore, in support of the member's request for an adjournment, on 28 June 2024, the Supreme Court held a directions hearing in the Environment Protection Authority appeal, that is the Environment Protection Authority's concerns regarding the Tasmanian State Coastal Policy 1996.

At this hearing, as to the Environment Protection Authority appeal, it was decided that a hearing would be listed for 23 September 2024, at which the Supreme Court will hear argument as to whether the Environment Protection Authority's application for leave to appeal out of time should be heard together or separately from its appeal.

The Circular Head Coastal Awareness Network appeal was not a part of this directions hearing, as the next stage of their appeal is set down for 4 November 2024.

In supporting the member's need for adjournment or request for adjournment, I am trying to support those members who perhaps would not support going into committee to look for an adjournment.

From 16 July to 1 August 2024, the draft validation bill was released for public consultation. The validation bill was tabled in the parliament on 7 August 2024. The Tasmanian government released the draft validation bill for a two-week period, from 16 July to 1 August, for public comment.

A total of 402 submissions were received, in such a short time. A total of 387 submissions, or 96.8 per cent - 368 from members of the public and 19 from community groups statewide - indicated their clear and unambiguous opposition to the validation bill.

On 31 July 2024, the government was questioned about the advice but would not release it or a summary of the legal reasons to justify the validation of past permits. Submissions to the draft validation bill by legal experts question whether the Tasmanian State Coastal Policy actually suffers from such uncertainty.

It is claimed that the wording of the Tasmanian State Coastal Policy, along with other technical documents, is sufficient to define actively mobile landforms, and that extensive mapping of hazardous coastal areas in Tasmania already exists.

A number of those submissions received from professional organisations, local councils and legal experts pointed out potential risks with the legislation that may have been unintended, such as liability associated with structures that have been built on actively mobile landforms and may be transferred from the proponents or local councils to the state government, with financial implications for Tasmanian taxpayers. Does the validation bill apply to works that have occurred illegally during the validation period, or future works that did not obtain a planning permit? In addition, uncertainty exists about permits issued before the validation period - that is, 1996-2003.

There is no evidence that the state government has considered these potential problems, let alone delivered a response to them. The only substantive change to the draft legislation that

was released for public comment was an extension to the validation period from 2009 to 2003. Not a single change was made by the state government in response to the 402 submissions it received as part of its consultation process.

The state government tabled the final legislation in parliament on 7 August 2024, just three business days after the public submission period ended. It is hard to imagine that all submissions were read, let alone the arguments identified, and that the submissions were properly considered.

It appears that public submissions raised serious concerns about the validation bill that were ignored. The state government undertook the bare minimum of public consultation, and has not fully considered the concerns of the community or key experts and professional organisations.

Early in September 2024, the state government released an *Amendment to the State Coastal Policy 1996 - Development on Actively Mobile Landforms* position paper for public consultation from 9 September to 21 October 2024, proposing changes to the Tasmanian State Coastal Policy to establish a new assessment process for future projects proposed for actively mobile landforms.

On 23 September 2024, the Supreme Court would hear argument as to whether the Environment Protection Authority's application for leave to appeal out of time should be heard together with or separately from its appeal.

On 4 November, which is not that far away, a final Supreme Court hearing has been set down for the related case brought on by the Circular Head Coastal Awareness Network. Both the Tasmanian State Coastal Policy, as amended, and the Environment Protection Authority proceeding may come to an end and not be part of 4 November hearing.

I am nearly finished here to support this adjournment.

Mr PRESIDENT - Yes. If we can make it to supporting the adjournment, that would be really good.

Mr GAFFNEY - It all does, I think, and I am getting there.

Ms Forrest - You will not need to speak on the bill, Mr President, if we get there.

Mr GAFFNEY - As per the submission made by the University of Tasmania's faculty of law staff on the bill - and this is really important about this adjournment - as part of the system of checks and balances inherent in Tasmania's separations of powers is the role of the Supreme Court of Tasmania to determine whether the decision of TASCAT should stand and, if required, to make appropriate orders to correct errors in the application of the law.

It is critical that this parliament not amend legislation while the court case is ongoing. The court case taken by the Circular Head Coastal Awareness Network Inc may be prejudiced by the proposed validation bill, as it could remove a key ground they rely on. If the validation bill is passed, the EPA's Supreme Court case will be redundant as it will have no case to answer about not having undertaken an assessment under the Tasmanian State Coastal Policy. If allowed to continue, the outcome of the Supreme Court case may clarify whether the

government needs to propose validating legislation and, if so, provide guidance on how this ought to be done.

The argument has been presented that the retrospective suspension of the State Coastal Policy undermines the rule of law. The validation bill would retrospectively remove the application of key parts of the Tasmanian State Coastal Policy. This would mean that the building of the proposed Robbins Island wharf would be lawful even if that approval was unlawful at the time of the Circular Head Council and TASCAT's decision.

The University of Tasmania legal experts state that 'Suspension of (or dispensing with) the law has always been a favoured power of arbitrary rulers', and 'That is because suspending the operation of law undermines public confidence in the rule of law'.

Impacts of the Robbins Island wharf will not be assessed if the validation bill passes this parliament. The EPA's Supreme Court case will be redundant. If this were to happen, it would mean the impact of the road and wharf infrastructure through the mobile frontal sand dunes on Robbins Island would not be assessed by the EPA.

No condition would be required on the development to minimise impacts or ensure it can be constructed safely. In regard to the road and wharf infrastructure, the documents provided during this assessment process revealed that the proposal would need to shift an estimated 150,000 tonnes of sand by digging down 14 metres over half a kilometre distance, and the impact of this will be assessed.

It is for those reasons, which I have outlined at quite some length, that I support the motion to adjourn this debate until after the Supreme Court assessment and judgment is made in early 2025. It is at that stage that this place should be assessing - on the information from that case - whether this policy needs addressing and supporting. At that stage we can make a good decision, knowing that we have all the facts in front of us, as is the purview of the Supreme Court.

Therefore, with those few words, I support the motion to adjourn.

[12.57 p.m.]

Mr DUIGAN (Windermere - Minister for Energy and Renewables) - Mr President, I rise to urge members not to support the adjourning of this debate. It is critical to understand that the government has provided members with a great deal more time to consider what is contained in this very simple validation bill, and I think it is critically important to reinforce the point that this bill will not and does not affect the appeal being lodged by the Circular Head Coastal Awareness Network.

Ms Forrest - How can you say that if the EPA is going to withdraw? It is fanciful.

Mr DUIGAN - That appeal will continue on its merits, absolutely, as it was prior to the EPA being asked to join that action and, as I have said before, it is incumbent on the government to remove this element of risk that has been identified by the new application.

Ms Forrest - So, if the EPA withdraws, you will come back to your comments.

Mrs HISCUTT - Point of order, Mr President.

Mr PRESIDENT - I will just remind members that we have listened to other speakers with respect and silence, so please keep your interjections to a minimum and allow the minister to address the Chamber.

Mr DUIGAN - Thank you very much, Mr President. As I was saying, these appeals will still be considered by the Supreme Court. That is the fact of the matter and to suggest otherwise is to conflate this bill into something which it is not.

Ms O'Connor - Rich coming from you.

Mr PRESIDENT - Order.

Mr DUIGAN - This is a validation bill for coastal policy and LUPAA permits which have been given to projects which were assessed - and let us be very clear about the wharf on Robbins Island: it has been assessed, it has been assessed by the Circular Head Council, it has been further and reassessed.

Sitting suspended from 1 p.m. to 2.30 p.m.

QUESTIONS

King Island Ambulance Facility

Ms FORREST question to LEADER of the GOVERNMENT in the LEGISLATIVE COUNCIL, Mrs HISCUTT

[2.31 p.m.]

With regard to the progress of the ambulance facility on King Island, noting it was part of the Liberal election promises and added to the Budget 2024-25, recently, both the Premier and the minister, Mr Ellis, assured King Island media that the project would start soon. My questions are:

(1) Have plans been finalised?

(2) What is the expected starting date for construction works?

(3) What is the date that this facility is expected to be available to the King Island ambulance volunteers to occupy?

ANSWER

Mr President, the Tasmanian government continues to progress our commitment to build a new ambulance station on King Island, as per our election commitment.

An initial concept design has been developed in consultation with Ambulance Tasmania with a detailed design expected to be completed by March 2025. We expect construction will commence in June 2025, with the new station to be operational by June 2026.

Police Offences Act Section 14B - Number of Convictions

Ms O'CONNOR question to LEADER of the GOVERNMENT in the LEGISLATIVE COUNCIL, Mrs HISCUTT

[2.32 p.m.]

My question without notice is - and there will be a bit of déjà vu here because it is a slight administrative issue, but I think the government is ready for it:

(1) Since their commencement, how many people have been convicted under section 14B(2AA) and (2AB) of the *Police Offences Act*?

(2) Since their commencement, how many corporations have been convicted under section 14B(2AC) of the *Police Offences Act*?

ANSWER

Mr President, in response to:

(1) Section 14B of the *Police Offences Act 1935* - the act - provides that it is an offence for a person to enter or remain on land, or in a building, structure, premises, vehicle, aircraft or vessel without the consent of the owner. This offence is known as 'trespass' and, on conviction, is punishable to a fine or term of imprisonment.

The data that is available in CRIMES relates to section 14B(1) 'trespass'; and section 14B(1) and (2A)(a) 'Trespass on land in possession of a firearm', and is outlined in this table that is easy enough for me to talk about. All complaints related to persons, not corporations.

Talking about persons, section 14B(1) - Trespass: 2020-21, 732; 2021-22, 654; 2022-23, 695; 2023-24, 968; 2024-25, 334 - a total of 3382.

Section 14B(1) and (2A)(a), which is 'Trespass on land in possession of a firearm', in 2020-21, one.

Just looking at that, I might read that again, because I think the figures that I first gave you were of a person. Is it the particular different trespasses you want?

Ms O'Connor - Yes.

Mrs HISCUTT - Okay.

Section 14B(1), trespass: 731. I note that there is one difference there. The next one was 652. Then 693.

Ms O'Connor - I see. Did you add the firearm ones on inadvertently?

Mrs HISCUTT - Yes.

Ms O'Connor - Okay, thank you.

Mrs HISCUTT - And 968, which is the same; 329, being a total of 3372.

Then the next section:

> Section 14B(1) and (2A)(a), which is 'trespass on land in possession of a firearm', in 2020-21, one; 2021-22, two; 2022-23, two; 2023-24, one; 2024-25, five. The total is 11.

Yes, that is right.

Section 14B(2AA) and (2AB) of the act further provides for matters that the court must consider when imposing a penalty on conviction under section 14B of the act. The Magistrates Court does not record data relating to the application of section 14B(2AA) and (2AB) of the act.

> (2) Section 14B(2AC) of the *Police Offences Act 1935* provides for separate penalties for the offence under section 14B if the person convicted under section 14B is a body corporate. As stated above in response to question (1), the Magistrates Court does not record data relating to the application of section 14B(2AC).

Ms O'Connor - Thank you, Leader. I might get some clarity over that data a bit later.

Mrs HISCUTT - Just before you start, through you, Mr President, the answer will be sent to you.

State of the Climate Report 2024 - Impacts on Key Infrastructure

Ms O'CONNOR question to MINISTER for INFRASTRUCURE, Mr VINCENT

[2.37 p.m.]

The CSIRO and Bureau of Meteorology have just today released the eighth biennial State of the Climate Report 2024. It states that observations, reconstructions of past climate and climate modelling continue to provide a consistent picture of ongoing long-term climate change interacting with underlying natural variability.

Associated changes in weather and climate extremes such as extreme heat, heavy rainfall, coastal inundation, fire weather and drought exacerbate existing pressures on the health and wellbeing of our communities and ecosystems. The Bureau of Meteorology for this coming summer forecasts for Tasmania from December to February for our state to be 2.5 to 4 times more likely to be unusually warm and an 80 per cent chance of exceeding the median maximum temperatures. As Minister for Infrastructure, you would be aware of the risks not only to communities but also to our infrastructure that extreme weather events present.

What will you do as minister to make sure that our key infrastructure is protected from severe weather events to the greatest extent possible? Will you contemplate doing an audit of key infrastructure to better protect it in the future?

ANSWER

Mr President, there is a bit in that, so I will seek some advice.

Thank you to the member for Hobart for the question. There is a fair bit in that but most departments do, wherever possible, in planning future infrastructure, make sure that they take those into account as best as possible. I know in my area of the causeways, there is certainly planning involved for that regarding the height and other engineering to allow for - as much as we can - those events should they happen.

Most organisations also, as far as I have been told so far, have as much planning as they have in place for that, but it certainly is a question that I can ask as I move around the areas that I am responsible for.

State of the Climate Report 2024 - Impact on Key Infrastructure

Ms O'CONNOR question to MINISTER for INFRASTRUCURE, Mr VINCENT

[2.40 p.m.]

Thank you for your answer, minister. You referred principally to infrastructure that will be built in the future. Most of the infrastructure we are talking about here, and the infrastructure that is heavily damaged, potentially, and has seen increasing floods for example, is existing infrastructure. The question really relates to planning and management for - it is called 'ruggedising', that is sort of climate talk - ruggedising our key infrastructure that exists. I do not expect you to answer that today, but it could be an ongoing conversation.

ANSWER

Mr President, I will take that on notice.

Fuel Reduction Burns - Impact - Whaleback Ridge

Ms FORREST question to MINISTER for PARKS, Mr DUIGAN

[2.41 p.m.]

On a recent visit to Whaleback Ridge, there was evidence that significant fuel-reduction burns have been undertaken in that area. Concerns have been expressed with regard to the extent of those burns, both in the area burnt and the ferocity of the burn, as we might determine it, such that now the surrounding land is eroding.

Are you, as minister, aware of that and what advice have you provided, or will you provide, to Parks and Wildlife about future burns in that area, considering the sensitive nature of that part of the landscape?

ANSWER

Mr President, I thank the member for the question. I am aware of fuel-reduction burning that was undertaken in the area of Whaleback Ridge a little time ago. Obviously, it is a very

large responsibility for the Parks and Wildlife Service and the fuel-reduction burning is critical as we think about the fire risks that are present in our state. Parks and Wildlife Service bears responsibility for the largest areas of fuel-reduction burning, often in some of those wilder, more remote areas.

I have been to the north-west coast and visited park staff and the fire teams are out doing that work and I thank them very much for it. It is, of course, by its very nature, something of an inexact science. There are risks associated with burning the countryside and it does not always, as much as pre-planning goes into it, go exactly where you want it to go, noting that weather conditions are changeable here in Tasmania.

As to the erosion that you are speaking about in that area, I need to take that on notice and will provide some information back to you if you are happy for that to be the case.

Northern Suburbs Multipurpose Courts Facility - Location

Ms THOMAS question to MINISTER for SPORT and EVENTS, Mr DUIGAN

[2.43 p.m.]

Last Wednesday, about 35 minutes after you had taken on the portfolio of Sport, I asked you about the multipurpose sports facility in the northern suburbs. You committed that the community should be informed or advised of where the location of the multipurpose court facility will be in the coming weeks. I wonder, in the past week, have you received a full briefing on that matter and are you able to provide any further information about when, specifically, the community will know where that location is or even tell us where the location may be going?

ANSWER

Mr President, I thank the member for the question and interest in the area. It is obviously very interesting to me as the new Minister for Sport and Events, and as we look to roll out what will be a great development in the northern suburbs of Hobart and one that has been talked about for some time. I understand that there is a great deal of community interest and, potentially, a level of frustration as we work toward making that announcement about where that facility will be built. I have received some information. I am advised that there is a little piece of work remaining before I am able to make the announcement, but I certainly look forward to making it in the future.

Answer to Question - 24-Hour Truck Fuel Depot - Driveway Crossing Permit

[2.45 p.m.]

Mr VINCENT (Prosser - Minister for Infrastructure) - Mr President, I have a couple of answers to a couple of questions put yesterday. First, for the member for Hobart in relation to the crossover. The Department of State Growth advises that work permits for access are issued by the department for properties that are legally allowed to have an access onto a state road, which is the case for the property at 26A Tannery Road. This process is separate from the development application process, where the council is the authority responsible for reviewing and approving what is to be developed on the property. The Department of State Growth has

reviewed the proposed access to this location and deems it acceptable and has approved a works permit for the access to be constructed. Therefore, there are no grounds for the department to revoke the work permit.

Answer to Question - *Spirit of Tasmania* Vessels - Berthing Costs in Tasmania

Mr VINCENT (Prosser - Minister for Infrastructure) - Another one here for the member for Rumney.

My office has confirmed with TasPorts this morning that it has received no request from TT-Line for the information about the costs associated with potential berthing of the new *Spirit of Tasmania* vessels in Tasmanian ports. I am advised that TasPorts contacted TT-Line earlier this year requesting details on a potential Hobart berthing arrangement, but no response was provided.

In anticipation of a request for information from TT-Line, TasPorts' senior management undertook preliminary planning in relation to providing a forward schedule for berth availability around cruise-ship visits. This information was not requested from TT-Line, but TasPorts remains willing to progress this matter.

Also, it is worth noting, in relation to the costs of any such berthing arrangements, there have been no discussions between TasPorts and TT-Line. However, it is important to keep in mind, competitive law and legal requirements for TasPorts to treat all port customers equitably in relation to port charges. Thank you.

Northern Suburbs Multipurpose Courts - Project Time Line

Ms THOMAS question to MINISTER for SPORT and EVENTS, Mr DUIGAN

[2.47 p.m.]

My question is a follow-up. The multipurpose courts project in the northern suburbs was promised in 2018, six years ago. I have asked questions repeatedly in this place about the certainty on location and when the people of the northern suburbs can expect to know where the facility is going to be and when to expect the project to be commenced and completed. Continually the response is 'end of August', 'coming weeks', 'very, very soon'. Can you be more specific on when the people of the northern suburbs can expect to be advised of the location and when this important, long-awaited project will start? What piece of work could possibly still need to be done before a location is decided? How long do you expect this piece of work to take and when, more specifically, do you commit to making this announcement?

ANSWER

Mr President. I have nothing further to add to my previous answer.

Bass Highway Roadworks

Ms FORREST question to MINISTER for INFRASTRUCTURE, Mr VINCENT

[2.49 p.m.]

I have given the minister a little bit of time to get his feet under the desk. My question is about correspondence in mid-June to a constituent of mine who lives in Flowerdale. His driveway connects with roadworks that are now completed - although full of potholes - on the Bass Highway around Wynyard, basically the Tollymore Road intersection, where this issue is, an address at 17006 Bass Highway, Flowerdale. The owner of the property's driveway has increased in steepness because of the dropping of the level of the road. He was visited on 16 May 2024 by the department's traffic engineer, who observed that the sightlines could perhaps do with some improvement, and said that there was going to be some review, or that they will investigate what may be done to increase the line of sight. This letter to my constituents is from 14 June 2024. My question is, has that review of potentially increasing the line of sight occurred?

The second part of my question relates to this: there was concern raised that if anyone pulls into this driveway, which is on the main Bass Highway, and they are sitting to turn right into their driveway when heading in a westerly direction, whilst the road is wide enough for two ordinary vehicles to pass - so one could go around the outside of the one stopped to turn right into the driveway - the people who live at this property often tow a caravan, which is often wider than a regular vehicle.

I ask the Minister for Infrastructure if he can update me, either now or soon, as to what that investigation found in regards to sightlines, apart from saying you should indicate earlier and slow down to give cars plenty of time to pass - not entirely helpful when you are coming down around the corner and on a bit of a slope. It is not all that helpful.

ANSWER

Mr President, I will seek some advice.

Thank you for that question. I even have trouble remembering back that far these days. It seems that is a lifetime ago. There is some correspondence relating to that matter. If it is okay, I will get back to you with more information as soon as I possibly can.

Ms Forrest - Just to clarify, there is correspondence ready to go. Is that what you said?

Mr VINCENT - No. There has been correspondence received relating to it. I am not sure where the report into that section of road is, so I will follow that up and come back to you.

Answer to Question - Northern Suburbs Multipurpose Courts Facility

[2.52 p.m.]

Mr DUIGAN (Windermere - Minister for Sport and Events) - Mr President, I want to provide some further information that has just come to light in regard to a question asked by the member for Elwick. I am able to advise that my office has received advice this morning about the northern suburbs basketball facilities. Once I have had an opportunity to read that

advice, I will be able to make a decision - and I believe I can commit to making a decision in the coming week.

Ms Thomas - Wonderful. Breaking news. Thank you.

VALIDATION (STATE COASTAL POLICY) BILL 2024 (No. 37)

Second Reading

Resumed from above (page 28).

Mr PRESIDENT - I will just remind honourable members, as this is a serious issue before the Council and will have implications whatever way it goes, that we do listen to all contributions in an orderly manner.

[2.54 p.m.]

Mr DUIGAN (Windermere - Minister for Parks and Environment) - Mr President, as I was saying before the lunchbreak around the notion that the wharf aspect of the Robbins Island development had not been assessed, I would remind members that this has not only been assessed and passed by the Circular Head Council, it was subsequently reviewed by TASCAT and again approved.

In regard to the list of things and why there is a need to do this, I think it is important that we understand that this is not about Robbins Island or the wind farm project there. It is captured in this, that is true. The government makes no secret of that fact. We have been talking about that fact routinely, and that is one of the very many things that has been assessed through our planning laws deemed to be lawful, and should be validated.

For members to consider, as they looked at something as mundane as the real estate guide, and looked at every property built since 2003 within one kilometre of the coast, that by virtue of this particular legal risk, if you were seeking to sell those homes now - which people in the real estate guide would be doing - there is legal risk in that, because your permit may or may not be valid. That is material. It is material for all of those people, and it is material for people who are likewise conducting works on things like golf courses in the dunes and so on and so forth.

While this very simple validation bill remains unpassed, there is doubt, there is uncertainty and there is legal risk. The government moved swiftly to prepare legislation to validate past approvals and avoid potential litigation. As the lawmakers in this state, we have a responsibility to act when we become aware of an issue such as this. It is incumbent on us to do exactly that. We should not be sitting idly by and waiting for the courts to identify a problem that we have been made aware of. That is the job of the government and us as lawmakers.

In fact, it could be considered entirely disrespectful to the courts to have identified this deficiency and then allow a court process to run its course, only then to immediately invalidate the court decision. Should the court case find in favour of the EPA appeal, those permits that would be immediately invalidated would still need to come back to parliament, so this will not go away - we will be doing a validation one way or the other. They would come back to

parliament to be validated, or be resubmitted through the planning process, including for existing developments.

If we accept the advice that the EPA appeal has merit, and the government believes this to be the case, then it is a waste of the court's time and contrary to parliament's role not to provide certainty in this case. We know issues exist, and I contend we are duty-bound to address them. We believe there has been sufficient time to understand this legislation, simple as it is, and the government is not prepared to indulge further delay. I believe Tasmanians -

Ms O'Connor - It is not up to the government, by the way.

Mr DUIGAN - Those with coastal developments deserve this certainty.

Ms O'Connor - It is up to the parliament.

Mr DUIGAN - This is not, in any way, interfering in the independence of the judiciary. We are the lawmakers, the policymakers, and the judiciary independently interprets what we create. The simple fact is that we have a situation here where 20 years of development, well-intentioned and in good faith, has undertaken activities that today live under the shadow of potential legal activity.

I ask members to not adjourn this debate. I believe we need to deal with it. The member for Mersey was talking about the submissions that were received in response to the validation bill, and I think it is important to recognise that the very large majority of those submissions were talking about subsequent changes to coastal policy, which the government will need to address. It has been highlighted in the State of the Environment Report 2024. It is on our schedule. There is a discussion paper out there for public comment. We need to continue our work here.

Robbins Island is a whole separate deal. The court case continues unaffected. The EPBC referral to the federal government continues unaffected.

We seek to make those things which were deemed legal in the first place to be legal now.

[2.59 p.m.]

Ms RATTRAY (McIntyre) - Mr President, I have really struggled with coming to a decision on whether to support the adjournment, because I had addressed my mind a number of weeks ago to a position on this. I have been listening to the debate, and we have two very different views. I am not going to go down my second reading contribution, whenever that might be called for, but I just want to ask a question regarding some information that I received over the lunchbreak, because it has been claimed that the validation bill will not stop the Circular Head community group. Forgive me for not recalling their full title.

Mr Duigan - Coastal Awareness Network.

Ms RATTRAY - Thank you. It is continuing its court case. It may weaken its case and that is arguable.

Ms O'Connor - Yes, it will. It is like cutting off one of its legs.

Mr Duigan - It is nothing to do with it.

Ms O'Connor - Rubbish.

Ms RATTRAY - Mr President, I thought I had the Floor here.

Mr PRESIDENT - Order.

Ms RATTRAY - Thank you. I have listened to other people's contributions and, as the President has already requested, I expect somebody to listen to mine - and not cut me off in my contribution.

Ms O'Connor - I apologise. Sorry, I got frustrated.

Ms RATTRAY - It may weaken its case - this is the Circular Head community group. That is arguable, but what is certain is that the EPA will withdraw from the court proceedings and will not have any answer for not applying the law. The EPA's grounds regarding the coastal policy will not be addressed by the court. So, I would really appreciate a response be provided if there is anyone left from the government who is able to make a contribution about that, because I had given a lot of thought to my support or otherwise to this validation bill previously, but this is a separate motion that we are dealing with here, and I am struggling to come to what I believe is the right decision or the most appropriate decision.

Can I have some understanding of: if we proceed with the validation bill while the court case is on foot, will it impact negatively on the Circular Head Coastal Awareness Network and what they might do in the future? That is what I am struggling with.

Mrs Hiscutt - Through you, Mr President, I cannot stand again. That is up to the courts.

Ms Forrest - Exactly, and that is why we should not interfere.

Ms RATTRAY - I appreciate the honourable Leader's interjection, after my asking that nobody interject, to provide that information. I will continue to listen to the debate. I still have not arrived at a firm decision on whether to move forward or support the adjournment; a couple of things are floating around in my mind. How long does a court case take? It could take months and months and months. It actually could take years.

Is that a feature of what is being requested here, that something does take a very long time? I am not saying it is intentional by anyone. I am not saying that. I am just saying that we are all well aware of how long a court process can take. So, adjourning it might be adjourning it for years.

I am struggling with where to land on this, and it is not that I have not given the entire validation bill due consideration. I recall waking up about 3 a.m. and started to write some notes recently. That is how much it was figuring in my mind as to whether this is something to be supported or not.

As I said, that is an aside. I am not going to get into a second reading contribution. But, again, I appreciate that we have some very differing views here, and somewhere along the line

we all have to make a decision on where we land. I thank the House for the opportunity to share some of my thoughts.

[3.04 p.m.]

Mr EDMUNDS (Pembroke) - Mr President, I rise very briefly just to say that I will not be supporting the adjournment and for similar reasons to those I laid out when we discussed whether we would go to a committee or not.

Mr PRESIDENT - The question is that the debate stand adjourned.

The Council divided -

AYES 4	**NOES 8**
Ms Forrest	Ms Armitage
Ms O'Connor	Mr Duigan
Ms Thomas (Teller)	Mr Edmunds
Ms Webb	Mr Harriss
	Mrs Hiscutt
	Ms Lovell
	Ms Rattray
	Mr Vincent (Teller)
PAIR: Mr Gaffney	PAIR: Ms Palmer

Motion negatived.

Mr PRESIDENT - Just to clarify, because of the motion, the member for Murchison is still on her feet as second reading contributor, so the member for Murchison gets the call and then all other members from then on, in which to make a second reading contribution.

[3.09 p.m.]

Ms FORREST - Mr President, my contribution will be brief as I have said most of the things that need to be said as part of this entire debate; once, in relation to potential referral to the committee and again in my previous comments in this debate.

I will just say that if we are concerned or worried about the approval of other projects, or the validity of other projects, none has been identified or is at immediate risk of demolition that we have been told about. So, to me it is not an urgent matter.

During the contribution on the proposed adjournment, to say that this has no impact on Robbins Island is disingenuous at best. The second reading speech itself says, 'In recent months, there have been concerns about how the State Coastal Policy has been applied to development on actively mobile landforms. The recent approval of' - not some development down in Hobart or on the east coast, King Island, or in the central Midlands; it is on a coastal area, the Robbins Island wind farm. To say this is not the trigger or impacted is disingenuous at best. I reserve my judgment on whether it is more than that until a later time because I can count.

Anyway, we are fundamentally interfering in a live court process, such that the EPA director himself, the retiring Wes Ford, said the EPA would withdraw from that action if this

bill proceeds. If that is not an impact on a live proceeding, I do not know what is. I will voting against the bill.

If this were not happening now and we were at a point when the court decision had already been made, I would probably be quite happy to support this bill - particularly if I could get a bit more information about what is actually at risk here. But, it is more important for there to be a proper review of the State Coastal Policy that clearly outlines what we are talking about and absolutely ensures that developments on our coastal areas, of which there are many - and my electorate has more than its fair share of coastline. You are talking all of King Island and pretty much all the west coast down to a certain other member's area down there and meeting up with other members there -

Mr PRESIDENT - And?

Ms FORREST - No, you do not have any coastline we share.

Ms O'Connor - You have a lot of rivers.

Ms FORREST - A lot of rivers, but not coastal. Lakes have a shore, not a coastline. In any event, Mr President, we really have to get that right because we, as an island, rely on access to the sea for a lot of things that we do. Every wharf that has to be built, just ask the people who are trying to work out how to build a wharf for a new ship in Devonport how complicated that can be.

I am very concerned, deeply concerned, about impacting and interfering in a current live court process. I cannot believe that we would suggest that it is anything but that. Regardless of the project that is subject to that legal action and whether the DA that was issued was valid or not, that is not the point. Whether it is a legal process related to that project or any other coastal project, my view would be the same. It is not about that project; it is about interfering in a live legal action. I will not be supporting the bill.

[3.14 p.m.]

Ms RATTRAY (McIntyre) - Mr President, I indicated in my contribution to the motion to adjourn the debate that I had made a decision about this. I have already prepared something, so I am happy to present it today.

First, let me take this opportunity to acknowledge the many representations through the briefing process here in parliament and outside of this place. Thanks to the individuals, groups, and organisations who facilitated Webex meetings - sharing their views, often gathering with like-minded people from their community - and to the conveners of various public meetings. I will mention one that I attended on a coolish evening in August when interested people gathered at the newly refurbished Panorama Hotel at St Helens to learn more about the coastal policy and the way it interacts with developments and current community expectations in particular. I do so because there was a lot of discussion at that public meeting about those issues and there was a strong desire at that meeting to not have any development, especially on Robbins Island.

I have followed the debate regarding this bill with a great deal of interest, as I do with all of the bills that come before us, and that includes the deliberations downstairs as well as the discussions arising during the earlier motion moved in the Chamber by the member for Hobart

to refer the bill to Government Administration Committee B and the subsequent discussions and contributions today.

We certainly have an interesting situation and everyone has their particular view on it. On one hand, we have the government arguing that concerns have arisen about how the State Coastal Policy has been applied to development works - which is not defined - on 'actively mobile landforms' - which I understand is also not defined - that cast doubt on a range of developments for which permits have been legitimately issued to the effect that they potentially may have been illegally approved. We are now being asked to validate those permits.

For mayors and elected representatives that is a key part of the listening process. There is an elevated level of interest in and community expectations for our coastline across the state. Government and the parliament have an obligation to address those elevated expectations. One could conclude, through the many and varied structures that have been established across the state under the previous and current coastal policy that these met the planning requirements at the time and that this validation bill, if it passes, confirms this.

On the other hand, there is a strong contention this bill is purely to facilitate the Robbins Island wind farm project and that, by bringing in such legislation, we are second-guessing the outcomes of the current Supreme Court case. As I understand it, the problem arises if certain points in the coastal policy that relate to coastal hazards, in particular 1.4.1 and 1.4.2, are interpreted in a strict sense. If 1.4.2 prohibits all development on 'actively mobile land forms' unless it aligns with 1.4.1, which only allows work for the protection of land, property and human life in areas at risk from natural coastal processes.

It has been put forward that because of the lack of a definition of key terms such as 'development' and 'works' and 'actively mobile landforms', projects or developments could potentially be challenged in court, notwithstanding that they may have proceeded in good faith under permit. The government has been firm in its information that this validation bill is not about facilitating the Robbins Island wind farm project and have advised members of this through the briefing process and the second reading speech, and through the Solicitor-General's advice that supports its position.

I would like to make a few comments about the Solicitor-General's advice that the government has received. In the earlier debate on the motion to refer this bill to Committee B, I suggested it might be possible for members to pursue that option, perhaps through making it available in the Clerk's office. I believe there is a precedent for that to occur, although I accept that it is not usual to make the Solicitor-General's advice to government public and I accept the government's reservations in doing so.

I am a bit each way on this. Seeing the advice in detail may be useful, or it may just complicate matters further. As we know, legal opinions are often complex and complicated and need a very legalistic mind to decipher them - something that I do not possess.

The relationship between the Solicitor-General and the government is different. It is an independent office, and I do not doubt that the advice given by the Solicitor-General is done without fear or favour. The Solicitor-General is called upon to give advice no matter who is in government, and the government is bound to follow that advice. It does not, as a general rule, seek second opinions.

If a minister of the Crown tells me in parliament that the Solicitor-General has given advice that there is a risk, then I accept that, and I do not necessarily need to see that advice in detail and in person. I am quite confident that if a minister were to make a public statement - and there have been plenty made - about Solicitor-General advice that is contrary or contradictory to that advice, or misinterprets that advice, then I expect that the Solicitor-General would have something to say about that.

I acknowledge the government of the day requires strong processes around advice. Members also need to be comfortable all information is provided when making decisions about legislation, especially legislation that, rightly or wrongly, has given a number of members in our communities cause for concern.

I have a couple of questions for the Leader and the government about the time frame expected to review the current coastal policy, because if the current coastal policy had been reviewed in a much more timely manner, then I daresay we would not need to be having this discussion and debate today.

I am really interested if the government is prepared to provide a commitment for when the coastal policy will be reviewed and what sort of time frame that is likely to look like. I would suggest that some of the groundwork has already commenced, through the various groups and organisations during the course of this process, that sees our House here today considering this bill. That message came loud and clear from the public meeting that I attended - that there are many, many communities who are willing and able. We heard about the 405 representations to the validation bill itself. A large number of those were referencing the Tasmanian State Coastal Policy.

Mrs Hiscutt - Were they all proformas?

Ms RATTRAY - I did not read the 405. If others did, congratulations.

Ms O'Connor - There were three in support of the bill.

Ms RATTRAY - I was making the point that a lot of my information from what was provided - and again, I take that information on face value - was that a lot of those submissions were speaking directly to the State Coastal Policy. That is what we were told and I took that on face value.

I have also indicated that there are plenty of those groups, plenty of people in our communities, who would probably resubmit those submissions, perhaps with some tweaking, to a review of the State Coastal Policy.

This validation bill, in my mind, is not just about one project. It is essentially a doubts removal exercise that will assist to clarify matters for previous infrastructure and a future development.

Mr President, at this stage of the bill, I am prepared to support it into the Committee stage. I note that we do have an amendment that is being circulated by the member for Nelson, who I do not think has a lunch hour ever, because she seems to manage to put together an amendment very regularly in this place. I acknowledge her work.

[3.26 p.m.]

Ms ARMITAGE (Launceston) - Mr President, I thank the member for McIntyre for a very well-articulated contribution. I listened intently.

Ms Rattray - 3.00 a.m. is a good time to start.

Ms ARMITAGE - Absolutely. Maybe you need to wake up at 3 a.m. every morning. I really appreciated your comments. I thought they were very good and informative. I, too, thank everyone for the briefings that we have had, and for all the submissions and emails - probably hundreds of emails - that we have received with regard to this matter. I thought 402, but it could be 405. It could be. I was only going from something that I read in the other place, but that is alright. I always find it enlightening to read as much as you can find about the bills coming before us.

For nearly three decades, Tasmania's State Coastal Policy has played a pivotal role within the broader resource management and planning system, facilitating development while safeguarding the state's precious coastal environments. However, recent concerns have arisen regarding the policy's clarity and application, particularly in relation to developments on actively mobile landforms.

Recent cases have highlighted ambiguities within the policy, specifically about how it addresses development on actively mobile landforms. Under outcome 1.4.2 of the State Coastal Policy, such developments are prohibited, unless they meet specific criteria related to natural hazard management as laid out in outcome 1.4.1. However, confusion has arisen due to the lack of a clear definition or map of what constitutes an actively mobile landform. It is important, I believe, that this is resolved as best as possible.

To address these issues, we have this bill, which is aimed at validating development permits issued for mobile landforms dating back to April 2003. This bill seeks to protect people and organisations from liability concerning projects previously approved under potentially unclear guidelines. Without such validation, these projects could face legal challenges due to the policy's ambiguous wording, or as we are told. It is evident that there is a need to revise the State Coastal Policy. These revisions will need to address the assessment process for coastal developments and provide much-needed clarity regarding the definition of 'actively mobile landforms'.

One of the core issues revolves around how outcome 1.4.1 and outcome 1.4.2 of the State Coastal Policy are interpreted. These sections of the policy are rigid in their prohibition of developments on mobile landforms unless the development is specifically intended to mitigate risks from natural coastal processes. If interpreted strictly, this could mean that no development is allowed on such landforms unless it pertains to engineering or remediation designed to protect property, land or human life, as has been mentioned. Moreover, without clear definitions, the policy could be interpreted more broadly than intended and could geographically extend into areas which it is not supposed to. This lack of clarity poses a significant risk. Projects that were legally approved in the past, such as wharfs, houses and pathways near the coast could be retroactively deemed illegal if challenged. The bill's purpose is to mitigate this risk by ensuring that such projects remain legally protected, preventing delays and legal disputes that could jeopardise future developments. We have heard in briefings that this is basically a tidy-up or housekeeping.

I understand that some opponents of the bill state that it could legitimise developments that should be more carefully scrutinised. However, the government maintains that the bill's purpose is not limited to a single project, but rather aims to remove uncertainty surrounding a wide range of coastal developments.

Balancing these two approaches is important; however, timing is a crucial factor. If the State Coastal Policy is not updated swiftly, new developments could be caught in a legal grey area vulnerable to court rulings that would force the government to intervene with corrective legislation. As such, I believe it is essential to address the policy's ambiguities now before further confusion arises.

The State Coastal Policy remains a critical tool for balancing development with coastal protection, but it needs urgent revision. The bill proposed by the government, in my opinion, is a necessary step to protect past developments and ensure that future projects are not mired in legal uncertainty. By updating the policy and providing clear definitions for key terms, Tasmania can continue to encourage sustainable development along its coasts while safeguarding its unique and dynamic landscapes from undue harm.

I do note as well the proposed amendments by the member for Nelson, and it will be interesting. I look forward to actually hearing the argument that goes with those. I, too, like the member for McIntyre, am not sure when the member for Nelson actually sleeps or when she gets to go home -

Ms Rattray - I was thinking more like lunch. Surely, she gets to go home.

Ms ARMITAGE - I am not sure she gets to go home. She always seems to be in her office. I have to say that I certainly respect the amount of work put into the amendments, because we know that it takes some considerable time.

Also, for members putting up motions, whether it be to defer or to go to committee, it all takes a lot of time and, while I certainly did not support them, I still respect the right of people to do that and take on board everyone has a difference of opinion.

At the moment, I am certainly listening to the arguments that are here, and I look forward to hearing some argument to do with the amendments. I will keep an open mind, certainly vote it into Committee - into this Committee - the 'second opinion' Committee - and look forward to hearing other members' contributions.

[3.32 p.m.]

Mr EDMUNDS (Pembroke) - Mr President, like the member for Launceston, I also thank members for their contributions which have helped better inform my position on this policy. I also thank everyone who has provided briefings throughout this process and indeed those who made other representations, typically via email.

We are here debating whether to provide clarity in the policy and definitive description of what is an actively mobile landform and what are appropriate developments and works on these fragile landforms. The term 'actively mobile landform' has not been well defined in the existing State Coastal Policy, meaning it has and could continue to be interpreted to include any area subject to movement created by water, wind or gravity, such as wind banks, sand dunes or potential landslip areas.

The timescale for what is actively mobile is also not defined in the existing State Coastal Policy. Given this uncertainty and, potentially, the impact of a reinterpretation of numerous proposed and existing developments, I support reform of the State Coastal Policy.

Legal advice has suggested that there may be wide-ranging impacts of legal challenges to recreational and critical infrastructure, including, as we have heard, wharfs, jetties, lookouts, boardwalks, coastal trails, golf clubs and others across the state if policy changes are not made.

I really appreciated the comments about this particular advice by the member for McIntyre. I think that was really well put, and I endorse the way that it was put. I will not try to put it better. It is for those reasons that I support progressing this bill.

I will make brief comment about Robbins Island, principally because, as the Energy Committee, we were able to visit the site, and it was good to do that. It is obviously completely separate to what we are -

Ms O'Connor - Not completely separate.

Mr EDMUNDS - No, but any of the work done by that committee is separate to what we are debating today. It is relevant, sorry. It is relevant, but I did not visit it to inform my position on this. I would like to put it on the record, and I think it is something that - I did not want to not say it, member for Hobart, because I did not want anyone finger-pointing, 'Well, what about when you went and visited it?'.

Ms O'Connor - Actually, it was really good. You got on-ground knowledge and experience of the place.

Mr EDMUNDS - Yes, and again, without wanting to talk about that project, I mean we are not here discussing a planning matter or anything, but I thought the way they explained some of the issues that they have faced on the island and how they have dealt with them was very informative. I do support new wind developments. I have sort of lost my train of thought here.

That project has already navigated a pretty rigorous approvals process and, as we have heard, the issue of the coastal policy does not change the fundamental reasons it was approved. I do not believe necessarily that project approval has been fast-tracked. It has been in the planning system for seven years.

Ms Forrest - The passage of this bill or not will not change that, because the legal action will continue. That is the point.

Mr EDMUNDS - Yes, and I acknowledge the comments -

Ms Forrest - There are problems about that for the community and for the proponents.

Mr EDMUNDS - Yes, and I acknowledge the comments made by other members before I got up to speak. I thought I should lay out why I support the bill through this stage.

[3.37 p.m.]

Mr GAFFNEY (Mersey) - Mr President, my contribution will be short because most of it was delivered recently. Just two things. I find it incredulous. If we had any other issue before the Supreme Court scheduled for a hearing, would you be prepared to change legislation so that one group or representative would then no longer be required to give evidence or appear in front of the Supreme Court and then claim that the non-appearance would not impact the result of the Supreme Court's deliberations? I do not understand how that transpires in one's head. We have a hearing scheduled with two groups supposedly to give evidence. We change the legislation over here so that one of those groups is then no longer required to give evidence, and then we say that does not impact on the deliberations of the Supreme Court.

I will find a way to understand how that can be viewed and how the whole idea of the Supreme Court is to deliberate on the efficacy of the process that has been undertaken. I do not think why they are going through that deliberation, whether that take two months or two years, and I am certain that it is not going to take the latter. I do not see how any of the properties, the jetties that have been sitting there for 20 years, are going to come under threat while we are waiting for the Supreme Court to ensure the proper process has been undertaken.

It is ludicrous. There has not been one given by the minister or by the government other than the Robbins Island project. To use that as a reason for us to accept the bill as it stands does not cut it with me, and I do not think it cuts it in a pub test either. I do not think it is good process.

As far as I am aware, the hearing is scheduled for February, and all we are saying is that we can hold on for three or four months and then, as a body, make a deliberation on the input we would have from that decision, which will not only help us, but also inform the government about what it needs to do with the State Coastal Policy, which has been going on since 2007, or 2006.

When I was mayor of Latrobe, we had this issue out at Port Sorell with the Rubicon Estuary and we were investigating the State Coastal Policy then. So, for people to sit here and think, 'Oh yes, we should get on with this and get it done within a short amount of time', that is not possible. We only have to look at the planning processes we have had involved now for decades trying to get to that. This is not a quick process and I find it strange that we do not allow three or four months for the Supreme Court to at least give a decision or conduct a hearing or deliberation with both the complainants who are supposed to be giving evidence - I say evidence as in inquiry evidence, not as in the legal term - and how that process would unfold. Thank you, Mr President.

[3.41 p.m.]

Ms O'CONNOR (Hobart) - Mr President, I have made a number of arguments against this bill and will not be supporting it, but I have heard a couple of interesting things in here this afternoon. I have heard a Labor member taking a Liberal minister on trust. I have heard a Labor member accepting the word of a Liberal minister that there is legal advice that provides a legal foundation for this bill, on trust. I will file that one because I am not sure I have seen it in my 15 or 16 years in parliament, such trust.

Ms Forrest - It is gripping about this place, you are being surprised constantly.

Ms O'CONNOR - I am. Well, you know, member for Murchison, every day is a school day. That was quite interesting. Then we had the bogeyman presented by the minister himself, who told us to have a look at the real estate guide and have a look at how many places are built on the coast. We are not talking about every structure on the coast, we are talking about structures that have been built on 'mobile land', on actively mobile landforms. I will not read out the submission that was presented to us by Professors Jan McDonald and Anja Hilkemeijer again, but it makes it clear that there are no strong grounds to say that there is uncertainty or ambiguity around the term 'actively mobile landforms'. The commonsense understanding of it is 'moving land'.

Again, we have been thrown up this issue. That said, however, I will acknowledge that it has been raised before by people with expertise, for example, Dr Chris Sharples, who made it clear that, in his view, there was some ambiguity over this term in the policy. That was in 2004. So, 20 years ago, a coastal expert made it clear that there was a question mark over this definition. For 20 years successive governments were quite comfortable letting that perception of ambiguity stand. In all that time, nobody, as far as I know, challenged an approval on the basis that 'that development was in contravention of the State Coastal Policy'.

A lot of Tasmania, when you look at the coastal hazard mapping, is hard shoreline, and a lot of that work was undertaken when I had the privilege of being the minister for climate change. We have had a good understanding for some time now of the vulnerabilities to sea-level rise, storm surge, erosion and coastal landslip. Very significant agency resources and money have gone into coastal hazard mapping. There is no doubt that it is a bogeyman that we are being presented with here, which is why we are subject to 'Vindictive Vera' stories in here because that is the best they can do.

I simply say to members who are prepared to take a minister on their word that, in this place and in the other place, we see on a semi-regular basis ministers who are quite prepared, either through concealment or obfuscation in their language, to not give a full and frank answer. I have watched a minister of the Crown approach the lectern in response to a Greens' question about changes to the *Residential Tenancy Act*, which we knew were true, and tell a bare-faced lie to parliament. There were no consequences for that, of course, because it is not like the old days when a minister misled parliament they excused themselves as a cabinet minister or were told by the premier, in the case of Steven Kons, that they had to go.

Ms Forrest - You also had a bit of a shredding problem.

Ms O'CONNOR - Yes, quite a shredding problem. Thank goodness for the slightly obsessive nature of the former member for Bass, Kim Booth, who spent many hours putting together a shredded document.

Ms Forrest - Lots of sticky tape.

Ms O'CONNOR - Yes. The minister tells us that the issues exist because of advice that we have never seen.

Mr Duigan - As is the convention with advice provided to government.

Ms O'CONNOR - I do not know, you were not in the Chamber much yesterday, minister, but we had in our hands a copy of Solicitor-General's advice that was provided to us

to support our understanding of the Judicial Commissions Bill. I have seen Solicitor-General's advice on any number of occasions when the Attorney-General decides that it is probably in the government's interest to release it. The corollary of that is that maybe the government has decided it is not in its interest to release the legal advice that it says it has that was the foundation for this bill.

What we do have is a set of texts, or a text exchange, going back to late last year when, on Saturday 26 November, in the evening, the minister texted David Pollington from ACEN Australia. He said:

> Hi David, Nick Duigan here, hope you're well. Really looking forward to a positive outcome tomorrow, Robbins is such an important project for the state. Will give you a call tomorrow when we know more.
>
> All the best,
> Nick

And then the proponent says:

> Good Evening Nick
>
> Thanks for the message. We are anxiously awaiting the TASCAT decision at 10 tomorrow.
> Would be pleased to speak tomorrow post the decision announcement.
>
> Regards
> David

Very polite, all very cosy.

Mr Duigan - First interaction.

Ms Forrest - You would hope that the minister was polite in his communication.

Ms O'CONNOR - What it tells us is there are catalytic sets of circumstances and conversations happening between a government minister and the proponent going back to last year. Then, this year, we are told that there is an issue with previous approvals for developments on the coast that require an urgent validation bill. It is a bit hard to swallow.

When I was talking to my son about this legislation a few weeks ago, he reminded me of the Sermon on the Mount from the book of Matthew, which I think is appropriate. I am definitely not a religious person, but these words are from the book of Matthew 7:24-27:

> Therefore everyone who hears these words of Mine and acts on them may be compared to a wise man who built his house on the rock. And the rain fell, and the floods came, and the winds blew and slammed against that house; and yet it did not fall, for it had been founded on the rock. Everyone who hears these words of Mine and does not act on them will be like a foolish man who built his house on the sand. The rain fell, and the floods came, and the

winds blew and slammed against that house; and it fell - and great was its fall.

The fact of the matter is that the State Coastal Policy of 1996 has held us in very good stead over the journey. It is part of the reason that we have one of the most beautiful, unspoiled coastlines, not just in Australia but anywhere in the world. That State Coastal Policy is a document that we should respect. It has been through a review process. In fact, I found a submission I wrote for the then member for Franklin, Nick McKim, on 11 November 2005.

Ms Forrest - My, how things have changed.

Ms O'CONNOR - I was unemployed at the time, and the member for Franklin offered to pay me to do a presentation to prepare the draft submission for the Greens to present on the review of the State Coastal Policy 1996. It has this beautiful little section that came from the former DPIPWE (Department of Primary Industries, Parks, Water and Environment) coastal policy unit, which we do not have anymore, greatly regrettably. It says this:

> Tasmania has more coastline per unit land area than any other state in Australia - about 4900 kilometres not including Macquarie Island. No place in Tasmania is more than 115 kilometres from the sea, and most population centres and major industries are on, or near, the coast. The principal landmass is surrounded by islands and is indented by a myriad of bays and estuaries.
>
> Describing the diverse coastal, estuarine and marine environments of Tasmania's coastline is a challenge, for they include rocky reefs, sandy beaches, sea cliffs, headlands, river estuaries, harbours and open coast. Our rich variety of marine life includes delicate basket stars and sea dragons, kelp forests, seagrass beds, sponge gardens, rarely-seen endemic handfish, crustaceans, plankton, fairy penguins, great white sharks and migrating whales.

I do not like calling something that is a natural treasure an 'asset', but our coastline is the most precious asset for us all, and for our children and grandchildren. There is a history here that we should also remind ourselves of, and that is of the palawa of Robbins Island. Here is an excerpt from a submission that was made by the Aboriginal Land Council of Tasmania to the planning process. It is a short description written by Michael Mansell about life on Robbins Island.

> Our people lived on Robbins Island since the time of the seas rising. They were Parpertloihener people. with their own dialect and history, their warriors and major events carved over centuries into the petroglyphs at Preminghana to where they travelled for cultural and social exchanges. In return, the Tarkiner came to Robbins Island for dogwood spears when the three stars come. Great ceremonies were held among the two peoples on these occasions.
>
> …
>
> Robbins Island not only contained a number of villages but also burial grounds among the dunes away from the villages situated among the trees

> and the bushes, sheltered from the fresh westerlies, with plenty of water in the running creeks. Kangaroo was abundant. Kunikong grew along the foreshore. Sheoak and kangaroo apples were in plentiful supply.

Robbins Island and Robbins Passage has a human history of occupation of over 1000 generations. I note that the Aboriginal Land Council of Tasmania does not support the Robbins Island wind farm proposal. We can pretend in here that this legislation has nothing to do with that but, of course, it does. We are not silly.

I have been through enough of the bill, so people know my view, but I encourage members to have a think about this. The State Coastal Policy was written, in part, to protect communities and coastal infrastructure from the impacts of extreme weather events. This is before we had a really deep understanding of how fast the climate is changing.

It is foolish, it is the Sermon on the Mount, for us as a parliament to contemplate making changes to law that make it easier to place communities, people and property potentially in harm's way. That is what the State Coastal Policy provisions 1.4.1 and 1.4.2 were designed to prevent.

We need to be not stupid here and make sure we are not weakening a document that has provided us very good protection over many years.

Finally, on Robbins Island itself - I do not know if members have had a really good look at some of the documents for what is proposed, but that wharf is half-a-kilometre long. It is a half-kilometre-long wharf from Bass Strait, across fragile dunes, across the beach, most certainly across mobile landforms. I do hope members have taken the opportunity, at this point, to have a look at the video that was sent through to us by Grant Dixon. That wharf is a massive piece of coastal infrastructure that is proposed, most certainly, in contravention of the State Coastal Policy and designed to industrialise a place that should have Ramsar listing. There have been a couple of attempts before to get a wind farm up on pilitika/Robbins Island and they have failed because it is the wrong place for wind turbines. I do not think there is any member in this House who does not support more wind energy. We need all forms of renewable -

Mr Duigan - Honestly.

Ms O'CONNOR - Well, you can snicker. It is pretty childish, minister. You can snicker, but you need to be able to have wind farms that are in the right place, so that you are not damaging biodiversity in the process. Also, you need to have wind farm proposals that take the community with them, and they need to be properly planned. What we have at the moment is a situation where developers turn around, wander around the state, literally sniff the breeze, and come and see the government with a proposal for a wind farm, which we have up at pilitika/Robbins Island, and there is another one the same company wants to build in the north-east. They want to build a massive wharf onto mobile landforms as well, and this validation bill, in part, is obviously a foil for that as well.

Obviously, the Greens do not support the bill and will not support the bill. I really hope members scrutinise this very carefully through the Committee. We have not been given the answers that we are entitled to as responsible legislators. We have never seen the Solicitor-General's advice or any other advice that the government says it has to support this

legislation. This legislation should not be supported. It is subverting and undermining a Supreme Court case, as other members have made very clear.

It is poor law with no solid foundation. We should reject it.

[3.57 p.m.]

Ms WEBB (Nelson) - Mr President, I rise to speak on the Validation (State Coastal Policy) Bill 2024 and thank other members for their contributions. It has been interesting to listen to them, as it was interesting to listen to the various motions that were attempted in relation to this bill throughout today.

It has given us a lot to think about and a lot of pause for thought, quite frankly. At the outset, it needs to be said this bill has been contentious as soon as it raised its head in the public arena. There is no denying that. It has been contentious in the community and it has been contentious throughout its journey in the other place, and during the consideration of the bill so far by this Chamber.

I have already indicated this morning that my preference is that this bill be sent to a committee for thorough examination within the context of the entire State Coastal Policy, and to tease out exactly what is meant by legal risk, real and hypothetical. Let us hear what Louise the Lawyer may be able to put on the table without hyperbole, hot air and pressure, for example.

However, I think it is worthwhile to ensure those concerns about appropriate process and consideration are being placed on the public record in a comprehensive manner. I want to take the opportunity to make my contribution to that now. I thank other members for the thoroughness of their contributions already.

One key area of concern that remains is the apparent haste with which the validation bill was driven through parliament: first, through the incredibly brief public consultation process; subsequently through the Assembly; and now here. Just to remind you, the exposure draft bill was out for public comment for barely 16 days. Despite that brief time frame, it garnered more than 400 public submissions. Yet barely six days later, two of which were a weekend, leaving three working days for the consideration of all those submissions, apparently, the government introduced a bill into the parliament.

It was notable that there was no change attributable to any of those 400-plus submissions between the draft exposure bill and the version tabled in parliament six days after the public consultation closed.

Mr Duigan - Through you, minister, I believe there was a change.

Ms WEBB - One, was there?

Ms O'Connor - It was a change to the date the validation came into effect. It was a date change.

Mr Duigan - Dealing with the uncertainty around the date, but there was a change. There was a change.

Ms WEBB - The point I am making stands.

Mrs O'Connor - Sure, okay, you changed the numbers.

Mr PRESIDENT - Order.

Ms WEBB - The point I am making stands: that I think it is notable and telling, the time frame of that consultation then the tabled bill and the unavoidable perception it presents to us about what consideration was given to public consultation.

As I flagged during the truncated September debate that we began, the government only has itself to blame for the degree of community angst and disquiet since then, after such a blatant and disrespectful manner in which that so-called consultation process was treated. It is on the government if people felt that the process had been reduced to nothing but a sham or a PR exercise, because that is exactly what it looked like and, I imagine, to many people, felt like.

Now that the Chamber has determined, in its wisdom, to recommence debate on this bill today, I recognise the government will keep pointing to the fact that the previous debate in this place was adjourned during the budget session as if that was some great gesture of compromise or generosity on the government's behalf to grant more time.

However, let us be clear: there was no great generous gesture by the government at the time. This Chamber actually put its foot down at that point and said it was inappropriate to bring on non-budgetary business during the formal State Budget consideration session.

This bill should not have been attempted to be brought on for debate until the budget deliberations were complete. Let us be very clear about events and facts here. The government tried to bring it on during the budget session, the Chamber was on the cusp of saying no and the Leader at the time, I think, actually used the phrase 'reading the room' and the pause button was pushed.

Many of us here subsequently sought to put to good use the intervening period of time by seeking further input and advice, also hoping that we might be provided the specific information many members here had requested and spoken about - namely that formal legal advice which precipitated the bill before us, and a list or audit or some form of indication of the current structures on our coastline which are now apparently at imminent risk, owned by unspecified persons, whose names may or may not include alliteration.

Apparently, these unidentified structures warrant urgent legislative redress and, as has already been identified by other members, this urgency happens to occur at the timing of a juncture of a specific private development proposal which is the subject of a court challenge, which is partly why there is consternation arising here.

We have been told by the government that there is a considerable degree of urgency regarding this bill. However, the specifics of why it is urgent and for whom it is urgent remain somewhat oblique - in September, when we began discussing this, and it remains so now as we recommence.

I still believe the actual validation bill was pulled together in an unconscionable rush by the government in an attempt to undo potentially certain mistakes when it came to a certain planning authority and regulator's failure to consider the State Coastal Policy when determining

a development application. Subsequently, parliament is being asked to stamp its approval on this attempt to undo that error, and for that reason alone I hold serious concerns about the bill itself, its impetus and also the process by which it brings us to this point here and now.

That leads me to the concern which I believe was the crux of the matter during the previous debate and during the numerous briefings that we have had on this bill: whether we are confident beyond a shadow of doubt about the need for this holus bolus validation.

We have been told the reason for, and the catalyst behind, this retrospective validation bill is legal advice received by the government from the office of the Solicitor-General. We have been told there is a serious and unacceptable degree of legal risk that has now been identified. However, we have only been told about that serious and unacceptably high degree of legal risk, second hand, as it were.

Members here previously today reiterated numerous requests that have been made for access to that legal advice to enable us to assess it firsthand to assist us in being able to evaluate whether the validation bill appropriately addresses and resolves all matters identified in that legal advice. The legal advice, we are told, is the catalyst for the bill and, therefore, the reason we are all having to spend valuable time and energy here today on the matter.

I do not need to remind members of the oaths that we all take upon entrance to this place to make decisions to the best of our ability on behalf of the Tasmanian community and in the public interest. Those oaths and commitments place the responsibility squarely on each and every one of us here to make decisions that are as fully informed as possible, and I know that we all take that very seriously, and to interrogate assertions made by those on the government benches, no matter which party stripe. When they come to us saying this is needed and for these reasons you must not stand in our way, we must interrogate such assertions.

We have a responsibility ourselves to ensure that we have left no stone unturned when we are evaluating the merits or otherwise of legislation put through this place. It must be noted there is precedent, as has been already mentioned today, in this place of the government attempting to facilitate that interrogative responsibility we hold by the facilitation of briefings relating to bills coming through this place.

That is a very good practice and I acknowledge that. However, I am sure I am not alone when I state that there is a growing sense of frustration over the convenient blocking of access to the most fundamental justification plank of the government's argument for a particular course of action, and that plank being their legal advice.

It is no surprise that we have received responses and advice from a range of stakeholders with legal qualifications and expertise, from the Environmental Defenders Office through to UTAS Law School academics Ms Anja Hilkemeijer, Professor Jan McDonald, Dr Emille Boulot and Ms Cleo Hansen-Lohrey. I thank Ms Anja Hilkemeijer and Professor Jan McDonald for the briefing they provided in person to members last month and, likewise, most recently, Dr Rachel Baird for providing us with information and a briefing yesterday.

However, these legal experts have all had to qualify their input into this debate, particularly when faced with hypothetical legal scenarios and queries regarding the legal uncertainty versus certainty, which were put to them by members during briefings. The reason I think many of us have attempted to run these queries and scenarios by the legal experts is

because of the glaring absence at the core of the fundamental material provided to justify not only the alleged need for the validation bill but the timing of the bill's debate.

Basically, members and those legal experts who have provided us with their time and expertise via the briefings have had to resort to shadowboxing that formal legal advice withheld from us. Could you imagine how much more constructive those briefings could have been with, for example, Professor Jan McDonald, Ms Hilkemeijer and Dr Baird if questions based on speculating about the unknown, at worst, or second-hand information, at best, which is the case with the government's relied-upon formal legal advice?

If those questions were indeed unnecessary and we actually had that more fundamental information, in an appropriate manner, members might have been able to utilise those briefings to interrogate whether and how well the validation bill addresses the matters in the government's legal advice. For all we know, the legal advice may have fully clarified some or all of the range of questions that we have been raising so far throughout briefings and the like.

This palpable frustration over the government's intransigence on this matter of providing confidential access to critical legal advice is also fuelled by what we know is an indisputable fact that there is a precedent of the government providing similar access on other occasions, and in particular when it is in its interest to do so. We have the established precedent of confidential access being provided to sensitive documents where they were secured, for example, in the Clerk's office, with MPs being able to view that on a strictly confidential basis. As far as I am aware, as I mentioned earlier in a contribution, there has been no concern raised or accusation made that any MP who utilised that confidential access mechanism at other times ever leaked or misused the information.

Basically, this refusal by the government places members here in an invidious position of being told by the government, 'Trust us, take it on trust that this contentious bill that is causing considerable community angst and disquiet, trust us that it is needed. We are not going to trust you, though, with the evidence justifying our claim that this bill is needed and it is needed now.' That is the crux of the particular matter. We are being asked by the government to trust it while at the same time it is telling us that it does not trust us.

Ms O'Connor - That is right. Very good.

Ms WEBB - I have a specific question on this matter for the Leader for which I would like a specific answer. Why cannot the government's legal advice be provided to members in the same restricted and confidential manner as we have precedent for regarding other sensitive documents requested by parliament, other than the stock standard excuse of legal privilege, which, as we know, can be waived by the client? Why is this particular request on this particular bill and matter different to those other instances of precedent where access was provided?

It could be an interesting test of the government's resolve should this place require access to the legal advice - which was such an instrumental catalyst for this bill's very existence - before we are prepared to vote on it, but it should not have to come to something as extreme as that. It is disrespectful what has occurred here, quite frankly, and unhelpful in achieving good outcomes for the community.

In a broader sense, I do think that the government needs to rethink its belligerence when it comes to the blanket application of legal privilege and proactively develop a more nuanced

range of options. We know matters of public policy are becoming more complex. As a community, we are becoming more sensitive to a range of intertwining and overlapping ramifications, including legal considerations, and it will assist this place in being able to work effectively and efficiently if we proactively develop inclusive protocols that facilitate access to even sensitive information upon which informed decisions are required. Obviously, that broader protocol development is beyond today's debate, but I did want to make that point and plant that seed.

To reiterate, nobody wants to trivialise the significance of legal privilege, not by any means. However, at the same time, as stated previously, we also took a binding oath to make fair and informed decisions to the best of our ability. It is just as important that we are not hamstrung when attempting to deliver on that responsibility. I think this refusal to provide access to that critical catalyst for the bill - as I have already stated - is hamstringing this debate. In my mind, this is a critical issue that still remains unresolved.

Many of us here will recall instances of governments of all persuasions berating political opponents for wanting to 'move the goalposts' - as is often the phrase used - or of seeking to 'change the rules mid-course' would be another. Yet, any form of retrospective validation is by definition a legislative move of the statutory goal posts. This is also linked to the concerns over the critical legal advice. However, even if the matter of access to that advice is resolved to everyone's satisfaction, the matter of appropriate retrospective validation would remain as a separate consideration. Parliament tends to, and rightly so, take a cautious approach to retrospective validation as it is a form of state-endorsed moving of the statutory goalposts. We should not take that sort of move lightly.

The irony of retrospective validation is that, in its quest to provide certainty born of hindsight, it can actually foster greater uncertainty. However, the outstanding concern in relation to this particular validation bill - just as it was in September and which remains the case now - is the glaring absence of an itemised list of coastal infrastructure apparently identified to now be at legal risk. This audit has been requested on numerous occasions, yet it does not appear to exist. Again, this raises considerable questions over the actual, and degree of, identified uncertainty warranting the bill.

Yesterday, Dr Baird raised the point that should the assessment of the State Coastal Policy issues be correct, then there is a risk that now-identified unapproved developments could decrease in value and be difficult to insure. Despite that point, providing potentially justified retrospective validation would only justify those developments that have been constructed and therefore have value and are insurable.

Yet, concerns have been raised that the current bill is designed to specifically target the only development to have been challenged on this basis in the last 30 years, it would appear, which has not even been constructed and is not insurable at this point, a classic example of potential overreach.

It raises the point of what other developments might be in the pipeline that have either been given planning approval, or will get planning approval before the royal assent is received in the knowledge of this uncertainty about the actively mobile landforms which could now receive the benefit of this retrospective validation process, even though construction has not commenced and nor are there yet any insurance concerns.

It is a matter of legislative and policy coherence that any retrospective validation should apply only to those developments which fall into specifically defined categories. For example, substantially commenced; or, if not existing, those which are itemised by a compiled audit which should receive the benefit of legislative retrospective validation. It appears a nonsensical tautology for a retrospective validation bill to also apply to currently non-commenced structures and developments.

The fact this bill is about amending the State Coastal Policy to facilitate the proposed pilitika/Robbins Island wharf project is evident by the fact it is framed as a validation bill, not specifically as a retrospective validation bill, because the proposed suspension of the specific outcomes of the State Coastal Policy looks forward as much as it looks back to 16 April 2003, as specified in clause 3 of the bill. Again, I still consider the question surrounding the lack of clearly identified coastal structures deemed to be at legal risk without this validation bill has yet to be adequately resolved.

Another key consideration that has been raised numerous times this morning and still remains pertinent, to my mind, is the very real question over the appropriateness or otherwise of the timing of this validation bill in light of the current related Supreme Court action underway. This is another step that some may argue is not that unusual for governments to seek to do in attempts to clarify laws for specific and usually commercial reasons, while legal cases are underway. However, it is another step which should not be taken lightly.

Therefore, despite it already haven been raised earlier today, it still warrants being revisited in the context of this substantive second reading debate and contribution, and I note many other members have raised this similar concern. The separation of powers is a fundamental principle upon which our system of governance is built and depends.

Again, the government's formal legal advice may have discussed appropriateness or otherwise of seeking parliamentary intervention in this matter while related cases are before the courts. However, we do not know whether that was included in the legal advice provided because we have not seen it.

The written submission provided by UTAS law school academics mentioned previously - Ms Anja Hilkemeijer, Professor Jan McDonald, Dr Emille Boulot, and Ms Cleo Hansen-Lohrey - states:

> The Tasmanian Government's explanation of this Bill is that Parliament should pre-empt the Supreme Court's decision and retrospectively remove the operation of Outcome 1.4 of the State Coastal Policy because of uncertainty as to the scope of its application. The Government points to two things as evidence of that 'uncertainty': first, that that Outcome 1.4 in the State Coastal Policy does not include a 'definitive description' of 'actively mobile land forms'; and second, that there is no accepted map of those land forms.
>
> Turning to the first of these, it is important to note that uncertainty always exists within the law and that it is the role of the courts to construe terms in legislation.

To reiterate, it is the role of the courts to construe terms in legislation, so nothing to panic about. In this context, the courts' processes are a baked-in component of our legislative system. Therefore, why has the government gone into this panic, it would seem, as that is what the rushed development of this bill and the pressure applied on this place in the parliament to not delay debate on it demonstrates? It feels like some form of panic.

As we have heard, their speculation is to shore up - no pun intended - the proposed pilitika/Robbins Island wind farm, despite the protestations of the government that it is due to the sudden and urgent risk faced by all the unidentified currently existing coastal structures.

Suffice to say, we may not need to wait too much longer to find out what the Supreme Court has to say on the matter. That decision may prove that no validation is necessary, or it may provide a published justification for law reform that we hear, as legislators, is currently being denied by pre-empting that decision.

There is no guarantee that even with this validation bill we will not find ourselves here again with further amendments required. As has also been previously stated, but worth reiterating, the government has already flagged a review of the State Coastal Policy. In fact, we know that there is every likelihood further amendments are going to come through this place at a later date. Yet again, we are being asked to take a piecemeal and ad hoc approach to this significant component of our statutes, planning, and environmental protection frameworks; potentially unnecessary, and definitely looking somewhat irresponsible. On this outstanding and significant question regarding the appropriateness or not of seeking to pre-empt a live matter before the courts, I remain unsatisfied.

When looking at the bill before us, it is a slight thing, physically, a few pages. Anyone familiar with public debate and context and who just happened to pick up the document could be forgiven for wondering, 'Is this it?' However, we have heard via stakeholders outside the Chamber, as well as raised during members' contributions, the crux is in the detail regarding the actual or potential developments on actively mobile landforms. We have heard various degrees of assertions from the government that this validation bill will not alter or amend the actual State Coastal Policy 1996. However, what it does seek to do is to override outcome 1.4 of the policy in so much as it relates to developments and structures on actively mobile landforms and which have LUPAA permits.

The government is arguing that we, as legislators, should pre-empt the upcoming Supreme Court decision and retrospectively remove the operation of outcome 1.4 in these contexts due to apparent advice highlighting uncertainty on the scope of outcome 1.4's application, but technically outcome 1.4 will remain in the policy in print, but not in effect for these structures or developments as defined in the bill.

This means the government is relying, as we have heard through briefings from the department and others, upon convincing us, as legislators, that the policy does not contain a sufficient definitive description of 'actively mobile landforms' and, further, we do not have a definitive map of such landforms. It is the basis of the apparent identified uncertainty.

However, as we have heard from stakeholders with legal expertise, wording of the Tasmanian State Coastal Policy along with other technical documents should be sufficient to define 'actively mobile landforms' and that extensive mapping of hazardous coastal areas in Tasmania already exists. Further, we have only just this week been provided with visual

evidence of such landforms. This was in a video link circulated to all members by Mr Grant Dixon. His credentials were detailed in an accompanying email. I appreciated the opportunity to view that and to hear from him.

For those listening, I am going to take the opportunity to summarise Mr Dixon's credentials and the footage provided. Mr Dixon is an earth scientist with 35 years of expertise in geoconservation and land management and is a published author of multiple papers in those areas of study. The brief barely two-minute video clip provided shows an active and erodible shoreline. This is the location covered by the pilitika/Robbins Island wind farm permit, which will be validated by the validation bill.

Mr Dixon describes this area as consisting of:

> A sand cliff up to 5 metres high, scattered with toppled vegetation from the dune system behind, extends the 10-kilometre length of the beach. The dune system itself, while partially vegetated, cannot be considered stable. Furthermore, dune sand mobility can change significantly over short time periods. Incipient sand blows already exist near the proposed wharf site and blowouts elsewhere have developed rapidly.

Even if we are to accept the government's assurances at face value that this validation bill is not about the pilitika/Robbins Island wind farm development proposals, any changes to the scope of the application of outcome 1.4 of the State Coastal Policy will definitely have an impact on that development proposal as it is currently conceived and for the location proposed. How could it not? We have seen a tangible example of an actively mobile landform in the vicinity of an actual development proposal, unlike the apparent list of other structures and developments that could be at risk but for which we have not been provided with equivalent tangible examples.

Mr Dixon also states:

> The State Planning Office presented a map suggesting a relative paucity of actively mobile landforms on Robbins Island, but there are a range of technical, spatial and scale issues with this present dune mobility GIS layer such that it is not accurate nor fit for purpose.
>
> Also, percentage of vegetation cover is not a reliable indicator of existing or potential dune mobility and dunes are also not the only coastal landform that may be actively mobile in any case. Actively mobile landforms on the east coast of Robbins Island are far more extensive than the map presented by the State Planning Office suggests.

He was referring there to maps that we were shown during briefing sessions that we had on this bill.

Clearly, it is all very well for the government to try to claim this validation bill will not have any bearing on the current Supreme Court action underway. It will definitely have consequential bearing for this one particular wind farm development proposal and the court action that is occurring.

While I am discussing the footage, I also wish to place on record the fact that this visual evidence was obtained via drone footage just this weekend gone. I think it is important to clarify that point as apparently it has been inferred by the government that Mr Dixon has had plenty of time to provide members a briefing on this footage and its implications. Yet, the footage was only obtained this last weekend. In fact, it was new and very timely. I appreciate his efforts.

Ms O'Connor - Good on him.

Ms WEBB - As we have heard it raised numerous times, the government has relied upon unsubstantiated claims that there are a range of structures built on actively mobile landforms, including boat ramps and jetties and the like, that are at legal risk and require validation. We have not been provided with one single identified example of a structure such as a boat ramp or a jetty that may be at legal risk and requires validation of its permit. Yet, ironically, we do now have a clear visual example of a landform at risk which the coastal policy explicitly is meant to protect, which it is hard to argue otherwise is at risk of further damage should the validation bill in its current form be passed and that particular development validated. This is a very serious potential ramification. I could stand here and cite swathes of significant evidence and expertise-based submissions and other material that raised, considered and substantiated concerns about the bill. However, I am aware that members have had access to the same materials, and many have already cited quite a lot of them during the debate so far.

I do not want to repeat too much from others' contributions and thank you for the indulgence where I have overlapped already.

Before I close, I want to highlight concerns raised regarding the risk of unintended legal consequences as raised by some stakeholders. This is an important line of examination, and it would be remiss of us not to acknowledge on the public record as, again, it is an area of this debate that has not been fully addressed by the government.

I remind members of the EDO submission of 1 August, which articulated these concerns quite succinctly. As such, I will quote from the submission:

> EDO is concerned that the proposed validation of permits under the Bill may endorse permits for developments on actively mobile landforms that were never properly assessed by planning authorities or implemented by developers. This may have unintended negative consequences for lutruwita/Tasmania's coasts and communities, potentially exposing them to harm or impacts from developments that should never have been built. A correlated issue is that, where developments have been built on these actively mobile landforms and result in some harm or loss to life, property or the environment, it is unclear who will be held liable for the remediation or mitigation of those harms. Will it be the councils that erroneously approved the permits for the developments? The developers? Or will the Tasmanian Government ultimately pick up the tab for those losses given that, through the Bill, it proposes to 'validate' the permits?

The EDO then went on to formally recommend that further information concerning the legal liability for harms arising from development on actively mobile landforms should be released before the bill is tabled in parliament. Well, good luck with that. We cannot even get

that information before the bill. We certainly have not been provided with that information before the bill is debated in parliament.

Planning Matters Alliance Tasmania (PMAT) also highlights these concerns by raising the following three points:

> Firstly, liability associated with structures that have been built on actively mobile landforms may be transferred from the proponents or local councils to the state government with financial implications for Tasmanian taxpayers.
>
> Secondly, does the validation bill apply to works that have occurred illegally during the validation period or future works that do not obtain a planning permit?
>
> And thirdly, uncertainty existed about permits issued before the validation period, say, for example from 1996 to 2003, and what the status of that is.

I hope the Leader, in her summation, will be able to answer the following specific question for the government: Can the government provide any evidence demonstrating whether and how it may have considered and/or consulted on the potential risks of unintended legal consequences of the implementation of this validation bill?

To conclude, I believe there are key and pertinent matters still unresolved regarding this bill. To reiterate, I specifically hold reservations regarding the purported legal justifications for both the need for the validation bill and its timing. The lack of legal advice could have been resolved by the government one way or the other if it had chosen to do so.

Having a formal legal advice void on the one hand makes me feel the need even more urgently to not pre-empt a judicial process currently underway. Nothing the government has said has convinced me that this debate could not be deferred until after the upcoming Supreme Court action, nor that this debate may not be further informed by any Supreme Court decision and determination.

Further, I hear the considerable concerns raised by the range of community-based stakeholders, academics and individuals in relation to this bill and particularly those concerns regarding the broad sweep and scope of the bill - that it will be applied beyond just those unidentified current alliterative coastal structure owners and will be also applying to proposals yet to have their approvals confirmed and also yet to have commenced substantially, such as the proposed wind farm development on pulitika/Robbins Island.

Therefore, I cannot support the bill in its current form. However, I will foreshadow my intention to move an amendment should the bill pass into the Committee stage. That amendment has been circulated to members this afternoon, I will not detail the argument in support of that amendment now. Suffice to say it intends to clarify that the validation only applies to those types of established coastal structures we have heard are the urgent reason we need to deal with this bill, but it will exclude those developments that have not substantially commenced. This may also assist in mitigating the pervasive sense of unease held by many of us in this Chamber of interfering with a court action currently underway. It is also consistent with the government's stated priority purpose of this bill and its necessity to provide certainty

to minimise legal risk for those existing structures. However, as I said, I only wish to foreshadow my potential amendment now, and will leave my substantive prosecution of that argument for the appropriate time should it arise.

To conclude, I wish to state and place on the public record my deep appreciation and thanks for the time and effort made by all stakeholders and members of the community who contacted me directly as well as those who made themselves available to provide briefings and materials for consideration of this Chamber. I have personally found the high level of committed engagement, professionalism and generosity by individuals and community groups on this matter inspiring and informative. Equally, the expertise and the information provided by people in their professional capacity and those advisers from the department are also greatly appreciated.

To reiterate, I will not be supporting the bill in its current form and, therefore, although I will not be voting in support on the second reading, I do reserve the right to seek to amend the bill should it progress to the committee stage for consideration.

[4.31 p.m.]

Ms THOMAS (Elwick) - Mr President, I will start with an account of my understanding of how and why we are here considering this bill today, before asking some questions and outlining my concerns with what we are being asked to do.

In recent months, there have been concerns raised about how the State Coastal Policy has been applied to development on actively mobile landforms triggered by the approval of the Robbins Island wind farm development application, specifically the wharf needed for its construction by the Circular Head Council and upheld by TASCAT on appeal.

The development application for the Robbins Island project was approved, but it was later identified that it was not assessed in accordance with the State Coastal Policy, specifically outcomes 1.4.1 and 1.4.2 of the State Coastal Policy. Outcome 1.4.2 of the State Coastal Policy prohibits all development on actively mobile land unless it aligns with outcome 1.4.1 of the policy, which focuses on works for the purpose of protecting land, property and human life.

The development application was for a project that includes construction of a built structure on actively mobile land, specifically a wharf. There is an argument, then, that according to planning law, it ought to have been assessed in accordance with not only the relevant local planning scheme provisions, but also with the State Coastal Policy.

Our complicated multilayered Tasmanian planning system includes a number of layers that highly skilled and dedicated planning experts in local government and private practice must assess applications against. Whilst the validity of this development approval is now being tested in the Supreme Court, the government is seeking to validate this development approval and any other development applications that have been permitted since 16 April 2003.

We are extrapolating this failure to assess one development application to an assumption that all or most development applications involving development on actively mobile landforms were not assessed in accordance with the requirements of the State Coastal Policy. We are assuming that planning officers and consultants have not given regard to the State Coastal Policy. They have applied the relevant criteria in local planning schemes to determine the

suitability of a development in a coastal area, and they are robust criteria, I will add, but they have not applied the State Coastal Policy lens to their assessment.

I suggest this is a big assumption. I ask, what evidence do we have of this? I fear this could be offensive to planning officers and consultants. How do we know they have not applied this lens and, in fact, in many cases, determined that the development on actively mobile land was appropriate for the purpose of protecting land, property and human life, as outcome 1.4.2 of the State Coastal Policy requires? How do we know they have not? Have we asked them all? What analysis of development approvals has been undertaken to quantify and qualify this problem, or this mischief, that we are seeking to address?

I also have a question for the Leader in relation to the limitation of validation. Why does this bill only seek to validate development approvals since 16 April 2003? What about DAs issued prior to this date between 1996, when the State Coastal Policy came into being, and 15 April 2003?

I note that a review of the State Coastal Policy is also on foot and I feel waiting for the outcome of this is perhaps equally, if not even more, important than waiting for the outcome of the Supreme Court action. This review could well find that outcomes 1.4.1 and 1.4.2 of the State Coastal Policy should remain. It could find that the provisions in the State Coastal Policy are necessary and important and must be applied going forward. Until the review is done, and done properly, we just do not know.

I have another important question for the Leader. If we pass this bill today and validate all development approvals granted since April 2003, what will be the rule for any development applications currently under assessment? Do we expect planning officers and consultants to assess applications for development in coastal areas in accordance with the State Coastal Policy, as it currently applies, using the interpretation that the advice the government has - that we have not seen - appears to specify?

Until the State Coastal Policy review is complete, does the blanket prohibition that we are hearing about on development on actively mobile landforms continue to apply? If so, is this fair? Is it fair that in October 2024 you could hold a valid permit -if we are to pass this bill today - to develop on an actively mobile landform whether the works had started or not? But if you applied after October 2023, too bad because the parliament validated all past permits, but in doing so essentially clarified that development on actively mobile landforms going forward is prohibited. It will only be allowed again if and when changes to the State Coastal Policy are made. You have to wait a few years until that decision about the review of the policy is made. I look forward to clarity from the Leader's answer on that one.

I want to put it on the record that I am supportive of renewable energy projects in Tasmania and I understand the need to encourage and enable investment in renewable energy projects to support our economy and our environment, but that is not what we are debating here. In fact, if the government came out and said that this bill is important because we need to validate the Robbins Island wind farm DA because it is an important project, and told us all the reasons for that and provided all the evidence that it is a suitable development for the site, then I might well be inclined to support it. If the government was prepared to share the legal advice demonstrating the legal risks associated with this problem, I might well be inclined to support it. I might not, too. Until I have seen it, I cannot be sure, but my point is, as I have said

throughout contributions on this matter, we are all equal decision-makers in this place. We all have one equal vote. We all have the right to equal information to help inform our decisions.

We must be assured any projects on our coastlines meet the requirements of laws that have been made to protect the Tasmanian way of life, which is not just about access to coastlines for recreational purposes, but also for the appropriate preservation of coastlines to ensure sustainability and enjoyment for generations to come.

Retrospectively changing the need to apply the law in response to a realisation that it has not been applied in one instance is effectively using a sledgehammer to crack a nut that is not yet ready for cracking. It sets a dangerous precedent and undermines the integrity of lawmaking and the planning system more broadly. It is also somewhat offensive, as I have said, to those working in our planning system as the government is effectively saying, 'We are not sure whether you have done your job properly since 2003. In case you have not, we will apply a blanket rule to cover off any oversights.'

In conclusion, I cannot be confident right now that the problem is sufficiently defined or demonstrated here. I do not have enough evidence, so I am finding it difficult to support the proposed legislation.

[4.39 p.m.]

Mr DUIGAN (Windermere - Minister for Energy and Renewables) - Mr President, I am very pleased to rise to speak to this validation bill, although I feel like I have covered a bit of the ground already. It is an important piece of legislation, as I have already said, providing certainty to those very many planning permits that have been assessed and approved since 2003 up until the present day, and this, of course, is what we are seeking to do. I thank other members for their thoughts on this one.

One of the common themes on this has been the notion and the fact that government has not shared the legal advice. It is important that we understand and recognise that legal privilege is the cornerstone of our legal system, and compromising legal privilege serves ultimately to undermine that very system. It is fundamentally critical that the government can have frank and fearless legal advice provided to it. The sharing of that advice has the unfortunate but inevitable effect of shrinking and compromising the advice that would subsequently be provided to government or legal clients. It is an important function of government to protect its ability to get solid, frank, fearless legal advice.

People have made light - well, not light of the fact - but have inferred that it has been 'often' provided. My advice is that it is very 'unusually' provided. I believe the member for McIntyre was saying that in her long time in this place, it has been provided a couple of times. It is not convention. It is not convention for a very good reason. While it might be convenient for the government to lay it on the table to set members' minds at ease, it does, as I say, serve to undermine the status of the legal opinion which we are able to glean. That is an important function of government.

This bill is about removing doubt and and providing certainty to the developments that have already been subject to a planning process and received a permit. The planning permits may have changed and the planning provisions may have changed from 2003 to 2024, where we are now, but they have all been assessed against the approvals process at the time and provided with a permit. That is what this bill seeks to do. We need to remember during this

debate that the bill is about validating developments that have already received their approvals. They are approved developments.

Those approvals were given in good faith and have been acted upon, in the main. There may be a number of those that are yet to be acted upon. Obviously, the Robbins Island wharf is one of those that has yet to be acted upon. It is important to recognise that a number of submissions were about broader changes to coastal policy, and it is important to recognise that this bill does not deal with those. This is about just validating those things.

It is also not about giving a green light to Robbins Island. It is not that. I am Minister for Energy and Renewables and I am very keen to see renewable energy in Tasmania. I make no apology for that. Robbins Island is a substantial wind farm development, 700 megawatts. The Tasmanian government has a renewable energy target of 200 per cent by 2040. I heard members talking yesterday, and maybe the day before, about the State of the Environment Report. Renewable energy is the single most profound action Tasmania can take in terms of reducing the amount of carbon Australia produces. That is a fact. I would stand behind that. We stand ready to help decarbonise, take 30 gigawatts of coal-fired generation out of the Australian market. It is not as much as I would like it to be. It is not a green light for Robbins Island. Robbins will need to continue to pursue its approvals pathways, its court cases, all those things.

I ask members not to confuse and conflate those two things. This is a validation bill, and in any amendments to the State Coastal Policy that will be coming as identified in the State of the Environment Report, a look at the State Coastal Policy is required. I believe the government is committed to doing that. I would expect that to be very, very noisy when we come to do that because, obviously, Tasmanians value their coasts and if you look at coastal policy over the last 25 years, most people would agree that it has served us well. It has been applied in a particular way up until March this year when its interpretation changed and there was the notion that it should be applied, noting that outcome 1.4.2 is essentially a blanket ban on coastal development on actively mobile landforms. If it had been applied, there would be nothing in those spaces. Essentially, it has not been applied in those instances or in any instance.

As we have heard, this validation bill removes uncertainty that developments which may be on actively mobile landforms may now be considered unlawful given recent contested legal interpretation of how the State Coastal Policy may or may not have been applied at the time of these developments when they were assessed under LUPAA. These developments, and any actions associated with them, could now be considered unlawful. I know everybody wants to see a list and have these things applied, but you know, beauty will be in the eye of the beholder for somebody who comes along and tries to test the legality of the situation. It relates specifically to development on actively mobile landforms.

In the current context, there is no definitive description of an actively mobile landform or accepted map of their location, making planning decisions highly subjective and this could potentially impact the legality of all existing coastal developments. As we have heard, examples could include jetties, and I am sure we can all think of recent examples. I was talking about the real estate guide and I think, if you look through that, you would find examples: golf courses on dunes; walkways along the coastlines; fences; and all those things that we have been talking about ad nauseam here over the last few days.

It is not just development or putting up these types of infrastructure. The uncertainty and potential offence extends to the maintenance of those assets and potentially even their removal. Raking a bunker at Barnbougle Dunes might just be outside the law.

Ms O'Connor - Oh, come on. Show us the advice then.

Mr DUIGAN - No. It means their existence, use, or even removal or maintenance could be legally questioned despite meeting all the requirements for being approved at the time of their development. These developments provide access and recreation, and help conserve areas of fragile environment.

There has been quite a bit of chat about this being retrospective legislation and I think it is important to refute that. I do not think this is retrospective in any way. This is validating decisions which have been made. Senior law lecturer Dr Rachel Baird, who provided us with a briefing yesterday, made particular note of this aspect, saying:

> The proposed parliamentary action is not the same as retrospective approvals under planning law to unauthorised building works. In the instance being contemplated by the bill, the approvals have been obtained in good faith and due to uncertainty in the State Coastal Policy, there is now legal uncertainty over their approvals.

Obviously, that is what the government has been saying and I feel as though I have been talking about it a long time, as I say, since March this year.

Ms O'Connor - You could only find one expert.

Mr DUIGAN - We are saying future action cannot be taken against a development that was previously approved and we are not going back in time and changing previous decisions. These developments have been approved and they have been given an approved planning permit, let us be very clear on that.

What is at risk if we do not pass this bill? Well, it exposes a whole range of developments on our coastline to legal challenge and uncertainty.

Ms O'Connor - So you say.

Mr DUIGAN - If this does not pass and we let a court decide on the Robbins Island matter, we need to be very clear that this only settles it for one project. It does not remove the doubt or uncertainty for many of the other developments which may apply and, as I have said previously, following a court decision further action will still be needed in the parliament. We will be back debating this again.

We are not addressing the core concern if we do not pass the bill. To again quote Dr Baird:

> It places Tasmania and the Tasmanians who enjoy the developments, such as the 150-odd boat ramps, in legal limbo.

As I mentioned, the government has been hesitant to name up potential places that this could apply to, as you would appreciate, because we do not want to be providing, as I have heard others refer to it, a hit list. That is one of the risks. It is also an enormous body of work to look around our coastlines and through our planning authorities to see what has been approved in the time frame that this bill refers to. I am aware that others have chosen to raise some examples that might be affected such as sand ladders and steps to some of our beaches, Wineglass Bay and The Hazards, fencing to protect dune habitat at Sandy Bay, or upgrading the jetty and boat-launching facilities at Jubilee Beach at Swansea. There is an endless number of things and, therefore, we are in the situation where someone who is acting in good faith or simply doing their job with a development that has had the appropriate planning permit from the relevant planning authority could find themselves doing something which is now deemed to be illegal.

I will now move on to Robbins Island, which has been central to a lot of the debate we have had today, and I have already touched on it. I know a lot of people are passionate about the project. I have met with the Circular Head Coastal Awareness Network (CHCAN). I understand that they are passionate about the project. I do not think there has ever been a wind farm that has been in the right place, according to people who oppose them. They are a challenge, no doubt, but what is important here is that we separate our views on what we are being asked to consider today.

We are not overriding the state policy for a big development. The government and I do not shy away from the fact that we support the Robbins Island wind project. The member for Hobart helpfully read out a text message that I sent to one of the proponents and, as the Energy and Renewables minister, I stand by it.

As we have heard a number of times today, this legislation does not approve the Robbins Island wind farm.

Ms O'Connor - It approves the wharf. You cannot do it without the wharf.

Mr DUIGAN - The project will still need to be assessed on its merits. The court action taken by the Circular Head Coastal Awareness Network can proceed as it was scoped and intended from day one.

The federal Environment minister, Tanya Plibersek, will still make her assessment of the project under the EPBC Act. The validation bill does not reach into any of that. It merely ensures the wharf infrastructure associated with the wind farm is not rejected as it was not by the council and by TASCAT under 0utcome 1.4.2 of the coastal policy.

There is no clear evidence that any part of the Robbins Island proposal, including the wharf, is located on an actively mobile landform. No evidence was put before TASCAT that it would be subject to unacceptable risks for coastal hazard. These are the considerations we would expect in undertaking a proper risk-based assessment.

When talking about Robbins Island, I think we should also reflect on the contribution of Dr Baird. She refers specifically to this matter in her briefing paper, noting that ordinary legislation to address legal uncertainty in the law is not remarkable. However, there is a tension on this bill due to the Robbins Island approval. I do not think there is any other way to slice this bill than have it viewed in that context.

As for the EPA evidence, members heard very clearly at our previous briefing with Wes Ford, the Director of the EPA, that the Robbins Island wharf proposal was thoroughly and rigorously assessed and interrogated by the appropriate authorities. While that is somewhat esoteric to this, it is important in the context of this debate. It is wrong to claim that the wharf development has not been assessed, and it is also wrong to say that this bill stops further assessment of the Robbins Island project.

We have heard that the wharf is referred to 150 times in the 150-page environmental assessment report and, as Mr Ford told us, 13 specific conditions were applied by the EPA to the wharf. It has been assessed to the highest standard of the Tasmanian Planning Commission at the time, and we can be satisfied that detailed assessments of the proposed wharf and other wind farm infrastructure was undertaken by Circular Head Council, the EPA, and TASCAT.

I reiterate that the bill does not affect the other grounds for legal action being pursued by the Circular Head Coastal Awareness Network, which has been asserted by a number of members. That is not the case. That legal action can continue. It predated the EPA joining the appeal, and it can continue unabated.

To address a specific point brought up by the member for McIntyre around amending the State Coastal Policy and the broader discussion that we will need to have on this particular issue post the validation of things that have already been assessed, the government has released its position paper explaining the issues with outcome 1.4.2 of the State Coastal Policy and provided an example of an amendment to address the issues, which was open for public comment. I believe that public consultation has concluded, and we are working on what future amendments to the coastal policy will look like. That is a body of work that we understand we need to do in light of what has been uncovered through this process. We are committed to doing that and getting on with it.

As I mentioned, one of the recommendations of the State of the Environment Report was to look at coastal policy, so the government is pretty well aware of it. It needs to do some work there. We need to make legal all those decisions that have been assessed and ticked by our planning processes in the last 21 years.

Mr Gaffney - Just the one question that was asked by the member for Elwick about why it did not go back to 1996.

Mrs Hiscutt - She asked the question of me.

Mr DUIGAN - Okay, and you have that, thank you.

[4.57 p.m.]

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) - Madam Deputy President, I have a few general remarks, then some specific answers for members.

The core of this bill is about removing doubt and providing certainty. Tasmania's unique natural environment remains one of our greatest assets. We are fortunate to live in such a pristine part of the world where communities share a passion for ensuring we leave our places in better condition than we found them. I further believe that my part of the world is the best in the world. We want to see Tasmania's coastline protected for future generations. To ensure

this, planning authorities need to be clear about when and how to apply the State Coastal Policy and that is not the case at the moment.

While some opponents would have us believe this bill is solely about one development, Robbins Island, it is very clear that it is not. It is about much more than that. It is about all coastal developments, potentially anything within one kilometre of the coastline that received a LUPAA permit from 2003, and I have a very good answer for the member for Elwick about that in a moment. All of that is under a cloud. Not only are these developments potentially unlawful, it could also be unlawful to conduct maintenance or even remove them.

The State Coastal Policy was introduced almost 30 years ago. The planning scheme has continued to evolve during that time and many other planning instruments are now in place. Many planning authorities have applied interim planning schemes under the *Land Use Planning and Approvals Act 1993* and considered this is sufficient to protect our coastlines.

This approach has meant that the State Coastal Policy has not necessarily been applied directly to a lot of developments, but used as a guide instead. Further complicating this, there is no definition or mapping of what is an actively mobile landform, making it difficult for both developers and planning authorities to know when and how to apply the policy.

Tasmania has a lot of development that could be considered built on actively mobile landforms, including boardwalks through to dunes - as mentioned by the minister earlier - even fencing, lookouts, boat launching facilities, bridges, jetties, and even Gary the Golf Course.

Rather than going back and interrogating every single permit issued on our coastlines under LUPAA and asking councils and planning authorities to reassess whether or not a mobile landform exists - which would be highly subjective - the government has chosen to use this bill to address the legal risks and the uncertainty.

This bill simply seeks to validate previous decisions made by planning authorities to avoid legal challenge and remove any doubt concerning the validity of those permits. It is not about taking away protections or changing planning decisions, rather it is about making sure the State Coastal Policy is applied when considering developments on our coast. It will protect our coastlines and provide certainty. That is why this change is so important, and I certainly urge members to support this bill if we get through to the Committee stage.

Regarding particular questions that members asked, the one that I will present first is from the member for Elwick, because it was a very good question: why does the bill only validate permits back to 2003? The validation bill only validates permits issued back to 2003, rather than 1996 when the State Coastal Policy was first enacted. This is because all actions related to the State Coastal Policy that were done prior to 16 April 2003 were validated by the earlier *State Coastal Policy Validation Act 2003*. It sought to clarify the spatial application of the State Coastal Policy and to validate any previous decisions made in relation to it. So, there is no need to validate permits between 1996 and 2003 because this has already been done.

The member for Elwick also asked, what happens between the validation period and the State Coastal Policy being amended? As the bill is about validating things that have happened in the past, we do not intend to validate any decisions that are made beyond this bill coming into effect. This presents a risk to people intentionally contravening the State Coastal Policy. We are not suggesting that any of our decision-makers would intentionally do this, but it is an

approach that we do think is appropriate to take. With this issue now front and centre, we believe the risks are now low for future decisions not to consider the State Coastal Policy, where relevant, until it can be appropriately amended.

Ms O'Connor - They might have thought that in 2003.

Mrs HISCUTT - The Tasmanian Planning Scheme is now in effect in most parts of Tasmania; this ensures that outcome 1.4.2 is adequately considered in decision-making, particularly in areas that may be subject to coastal erosion. Implementation of the State Coastal Policy - as an interim state policy - would also assist with reducing the gap.

The member for Nelson raised the issue of the unintended consequences of the validation bill. The scope of the validation bill is very narrow, in that it only validates previously issued permits to the extent of outcomes 1.4.1 and 1.4.2 of the State Coastal Policy. These are all permits that have been issued in good faith; it is not providing for any new approvals as these approvals have already been issued. It is simply protecting what is already there.

Assertions that there will be liability for structures built on actively mobile landforms are not correct.

Ms O'Connor - Are you telling us that it is potentially a threat in reverse?

Mrs HISCUTT - There has been no suggestion that relevant coastal hazard matters have not been considered and that life and property are at risk. It is just that outcome 1.4.2 of the State Coastal Policy may not have been applied to the letter of the law, with the outright prohibition on most developments on actively mobile landforms. The bill does not validate any other things that may have been done illegally.

The bill is intentionally limited to planning permits as the principal means of receiving approval for development in Tasmania. There is also no need to extend beyond 2003, as all other actions related to the State Coastal Policy prior to this were validated by the *State Coastal Policy Validation Act 2003*.

The member for Nelson also raised questions about liability associated with validating past approvals. Issues have been raised regarding who is liable for development on actively mobile landforms validated by this bill that results in harm or loss of life, property or the environment.

It is difficult to cast a blanket response to the issues of liability without understanding the elements that led to the claim. This is typically something that is dealt with through the courts on a case-by-case basis. We can, however, say that it is a long bow to draw that the bill increases exposure to liability. To the contrary, I would suggest that the removal of the risk of the development being found to be invalid would actually decrease the risk of being found liable, because it provides greater certainty regarding the development's legal status.

I hope that members can see that this bill is about validating what has been done, and I certainly urge members to help those people to make them feel comfortable that what they have done is legal.

Mr PRESIDENT - The question is -

That the bill be read the second time.

The Council divided -

AYES 8	NOES 4
Ms Armitage	Ms Forrest
Mr Duigan	Ms O'Connor (Teller)
Mr Edmunds	Ms Thomas
Mr Harriss	Ms Webb
Mrs Hiscutt	
Ms Lovell (Teller)	
Ms Rattray	
Mr Vincent	
PAIR: Ms Palmer	PAIR: Mr Gaffney

Motion agreed to.

Bill read the second time.

VALIDATION (STATE COASTAL POLICY) BILL 2024 (No. 37)

In Committee

Clauses 1 and 2 agreed to.

Clause 3 -
Interpretation

Ms O'CONNOR - Madam Chair, this is the interpretation section of the odious validation bill. We had a contribution from the member for Pembroke where he alluded to uncertainty over the definition of 'development'. We have a definition of 'development' here that is the same as the definition in LUPAA. I just note that.

However, would the Leader of Government Business confirm that there is no uncertainty in the government's mind about what the definition of an 'actively mobile landform' is? Not really, because you have a definitional term in there: 'LUPA permit' is 'a permit, within the meaning of the *Land Use Planning and Approvals Act 1993*, that is issued under that Act in respect of development on an actively mobile landform'.

Does the Leader of Government Business agree that there is no real uncertainty in the government's mind about the definition of 'actively mobile landform'?

Mrs HISCUTT - Madam Chair, the whole purpose of this bill is because there is no certainty. You can allude or say whatever you like, but that is the fact.

Ms O'CONNOR - Madam Chair, I was not alluding to anything, Leader. I understand you are frustrated because this is taking longer than you would like. My question was quite reasonable. There is a definition in this bill that includes the term 'actively mobile landform'. We have had the bogeyman put out there about a lack of clarity about what that term means, even though any commonsense application of your brain will tell you - no, not your brain, Leader, I know you have a great brain, it is not meant to be insulting. Any commonsense application of our mind, our collective minds or individual minds, would tell us that an actively mobile landform is a moving landform, for whatever reason. Is it still the government's contention that it is uncertain about what an actively mobile landform is? If so, why did it use it in the definitions in this bill?

Mrs HISCUTT - Madam Chair, I am seeking advice. This links it to the relevant part of the State Coastal Policy and needs to be read in conjunction with the other parts of the bill, for example, the outcomes 1.4.1 and 1.4.2. It makes it consistent with the State Coastal Policy. We still contend that there is doubt on what an actively mobile landform is, and I could go into farming situations but I will not.

Ms O'CONNOR - Madam Chair, can I ask why the government, given that there is this claimed uncertainty about what the term means, did not seek to provide a definition of an 'actively mobile land form' within the Interpretation section of this bill? Did it want to keep the bogeyman out there?

Mrs HISCUTT - Madam Chair, it is best that it be done through another form to the State Coastal Policy itself, which is being looked at now. It certainly is.

Clause 3 agreed to.

Clause 4 agreed to.

Clause 5 agreed to.

New Clause A -

Ms WEBB - Madam Chair, I move -

That the following new clause be inserted in the bill to follow clause 3:

A. Non-application of Act

(1) This Act does not apply in respect of development on an actively mobile landform that has not substantially commenced, as determined under the *Land Use Planning and Approvals Act 1993*, before the end of the validation period.

(3) For the purposes of subsection (1), any work or activity carried out in relation to a development before a LUPA permit is first issued, or purportedly issued, in respect of the development is not to be taken into account when determining whether development has substantially commenced.

Ms WEBB - Madam Chair, I move -

That the new clause A be read a second time.

I will speak fairly succinctly. I know members have probably given it some consideration already. Essentially, by inserting this new clause A, it is seeking to refine and slightly reframe the bill's proposed validation scope. I believe it is consistent with the government's stated intent of the proposed bill.

There are two things that I would like to emphasise about it. One is that this amendment is taking the government at its word, to some extent, regarding that very clear claim the government has been making to us about the need to remove doubt for the apparent existing coastal development structures, over which they have said that legal risk exists. Taking the government at its word on that: that the legal risk does exist, or could exist, for those structures, within the validation period defined in the bill.

The amendment leaves those structures covered by this bill and seeks to remove from those any that have not been substantially commenced. It still covers things that are definitely there: structures that have had their permits issued and that have been developed and exist. It does not cover things for which a permit has been issued but for which there has not been substantial commencement. That term is used to line up with the way it is already used under LUPAA in the amendment.

The amendment does not stand in the way of removing doubt on those existing coastal structures that we have heard about - the jetties, the wharves, the fences, the signs, the golf courses, et cetera. It seeks to make clear that it is only constrained, though, to those existing structures, in that sense.

We have heard the government and the minister state really clearly that this bill is not about the proposed Robbins Island wind farm. It just happens to be captured by the validation scope proposed by the bill. The amendment seeks to take that explanation at face value. If the bill is not about assisting the Robbins Island wind farm development, there could be no problem narrowing the scope to ensure that the bill's scope only applies to existing developments but will not apply to those which have not substantially commenced, as per LUPAA, by the end of the validation period.

That lines up, too, with the sorts of issues raised in briefings by people like Dr Rachel Baird about the issue being that if the legal risk is there over existing structures, there are potential difficulties with resale or with insurance, all those risks exist in relation to structures that are there, not structures that have not yet commenced.

The other aspect of it is that the proposed amendment is deliberately worded in a manner to mitigate concerns about any apparent singling-out of specific developments for special treatment.

The proposed amendment seeks to exclude all such developments which have not substantially commenced before the end of the validation period. Again, in the same way that the bill is not about Robbins Island wind farm, this amendment is consistent with the government's stated intent for the bill in that it just clarifies the scope and is trying to give effect to the intent of removing doubt for existing structures.

The intent of my moving the amendment as well is to take the government on face value about that, and still allow the bill to give effect to that validation of existing structures, but also recognise the concerns about developments that have not yet commenced. That would capture Robbins Island wind farm. Given that this is the difficulty people have expressed around conflicts with Supreme Court action already underway, this would, to some extent, mitigate that because it allows that to play out. It may be that as a result of that Supreme Court case, and the conclusion of it, there is another effort, then, to validate that particular permit issued for that particular development which has not yet commenced, as a result of the information and the findings made through the Supreme Court case. It does not preclude it in the future from being validated; it just does not put it in this one.

That is probably enough to say on the face of it. It is basically trying to accept the government's rationale, to some extent, on the substantial matters, and give effect to that still, but address some concerns.

Ms O'CONNOR - Madam Chair, I think this is a win-win amendment that has been put forward by the member for Nelson. It gives us an opportunity to collectively, potentially, pass a much cleaner and more honest bill.

If we take at face value the assertion by the government, in the absence of legal advice, that there is potential legal risk for pre-existing structures, then the retrospective validation of those pre-existing structures is a sound move. As the member for Nelson was saying, it has been an expressed concern in briefings and in here. Even from members who are indicating that they are prepared to support the bill, there has been a level of unease about the way these two issues - and they are two quite separate issues - have been conflated in this bill. This is an opportunity for members to support this amendment, as the member for Nelson said, to 'hold government to their word', and then we can do the responsible thing and remove pilitika/Robbins Island wind farm from the bill. Do what the government says is so urgent and retrospectively validate the approvals for pre-existing structures on soft coast. If we do this, we will not allow the parliament to interfere with an ongoing court case and judicial process.

Again, what is the rush here in terms of the Robbins Island wind farm development? It does not even have Commonwealth *Environment Protection and Biodiversity Conservation Act* approval, so it cannot begin construction of its wharf or its road, as I understand it, until that approval is given. The way that the federal government is going at the moment, gutlessly avoiding making big decisions on environmental issues like the Maugean skate in Macquarie Harbour, that EPBC approval could be well out after the next federal election. There is no rush here for ACEN because they cannot build yet.

If we take this out, we also remove a lot of public concern about the foundation for this bill and what it seeks to enable. It will remove that cynicism within the community. We have all received hundreds of emails, hundreds of pieces of correspondence, heartfelt correspondence, and yes, I agree with the minister, a lot of it was about the State Coastal Policy more broadly. However, overwhelmingly they are concerned about the validation bill and the fact that we are using an instrument of the parliament to provide a retrospective rubber stamp approval for a wharf which was not assessed under the State Coastal Policy.

I hope members see this as a real opportunity for us to tidy up the bill and make it have the effect that government says that we need to have in place, that is, approve existing structures

without contaminating it with the Robbins Island wharf. It is a win, win, win. I hope members support it.

Mr GAFFNEY - Madam Chair, I really appreciate the work done by the member for Nelson and the comments taken by the member for Hobart. As the government just stated a few minutes ago they have already commenced work on their State Coastal Policy. That work is already being undertaken and will be further strengthened and guided by the deliberations and the debate which will occur in the Supreme Court. That was one of the main concerns for me: that we were interfering.

As the members for Nelson and Hobart just iterated, this would give all of the Tasmanians out there who may have built in the last 20 years, as has been highlighted by the government's concern about this bill, some security by the fact that yes, it has been validated.

This one, which is a different kettle of fish altogether, which has not gone through that rigour at a certain level, it allows that to occur with the thoughts of the Supreme Court and with the work being done by the state on the State Coastal Policy to update it to a more contemporary piece of work. I congratulate the member for Nelson for her work. Hopefully, those people who have had some concerns may reconsider this and support this new clause A.

Mr DUIGAN - Madam Chair, I do not wish to pre-empt anything the Leader may say but I feel it is important to put a couple of things as they occur to me. This potential amendment, we need to recognise, would also capture any development within one kilometre of the Tasmanian coastline: people's homes, their beach houses that they have been through the planning process, getting planning approval for however long that process has taken them, from March this year to now. It captures all that and would make that not valid or not able to be considered as well. That would send all those people back to the beginning of the queue again. I promise you that there will be a huge backlash in all your communities around a decision like that that we are going to make here today - wherever coastal policy needs to be applied. There will be a great many things within one kilometre of the Tasmanian coastline on the way around as people build houses on dunes all over the place.

Mr Gaffney - You have legal advice that says this?

Mr DUIGAN - This is what coastal policy is; it applies to developments -

Mr Gaffney - I know what this is.

Madam CHAIR - Order, order, you have calls.

Mr DUIGAN - Any development, whatever development you like within one kilometre of the coast of Tasmania. So, if you have been building your dream beach home retreat and coastal policy potentially has not been applied, in that instance in the new application of coastal policy, then you are in trouble with this amendment. That is a lot of people, I would contend.

The other thing I would mention in regard to Robbins Island, which this fairly obviously seeks to pluck out in a very prejudicial way, is how you would look at that approval being any different from any other approval. It is important to recognise in the context of a wind farm on Robbins Island particularly, which has been in the planning and approvals phase for some seven years, that substantial commencement is not necessarily the build. That is the easy bit, in a lot

of ways. The approvals process is the difficult part. This project has been in the works for seven years, going methodically through and ticking the boxes. To say it has not achieved substantial commencement, I think, is entirely false. They have done a great deal of work.

Ms O'Connor - It redefines substantial commencement.

Mr DUIGAN - What I am saying is that there has been a great deal of work done in good faith, as we keep saying in relation to this bill. To then suddenly, out of thin air, pick that one approval and make it invalid, is hugely problematic. It would be, in my view, entirely contestable in a court and that is not a place we should go.

Mrs HISCUTT - Madam Chair, we have made it very clear that this bill is not just about Robbins Island, nor is it about one particular development and, as the minister has eloquently said, for that matter any other development without substantial commencement. Robbins Island was the trigger, yet what this amendment is suggesting we do is to make it about one project.

Ironically, it is proposing that we single out developments. This is the very thing that the member who proposes this amendment, along with the other opponents to the validation bill, have accused the government of doing. It is our responsibility in this place to treat everyone as equal before the law. You cannot give somebody special treatment, but this is what this amendment does. The member is seeking to single out developments that have been assessed in the same way as myriad other developments. The government will not support this amendment and encourages all members to vote against it. It is important for the bill to validate all planning permits that have been issued during the validation period, regardless of whether or not the development has substantially commenced. The purpose of the bill is to protect existing permits, including those that have or have not been acted upon, from the threat of legal challenge associated with the interpretation and application of the State Coastal Policy.

These applicants have been through an approval process with all parties believing that they have acted in good faith and, as the minister said, some have been doing it for seven years. Planning permits have been issued based on honest decisions against what was thought to be a correct interpretation of the State Coastal Policy. Even if they have not substantially commenced their development, it is conceivable that individuals have already invested significant time and money into obtaining a permit and preparing to commence the development. Applicants and decision-makers have acted in good faith, based on what they have believed to be a legal approval given by a planning permit. I do not think anybody can dispute that having to revisit an assessment process will frustrate the system and cause unnecessary costs to the community.

It is totally unfair to single them out as not having the same protections as those who have commenced. They should also be afforded the protections that this bill provides. Our planning system is based on consistency and fairness, and this bill is no different. Limiting the bill to only those developments that have substantially commenced adds a further layer of ambiguity. You would need to determine whether something was substantially commenced. Normally, the courts are the only authority that can determine this. This does not help with providing certainty to the community. We should not be singling out any applications based on substantial development. I urge you to vote against this amendment.

Ms FORREST - Madam Deputy Chair, it has been a long week with a lot of heavy stuff we have been dealing with. For me, this amendment is problematic. It was drafted in good faith by the member for Nelson very quickly over the lunchbreak.

Ms Webb - It was adjusted from a previous draft that I circulated a long time ago.

Mrs Hiscutt - It was based on somebody's down in the other place, was it not?

Ms Webb - I had previously circulated an amendment. This is a slight redrafting of that and I circulated that.

Ms FORREST - Anyway, the first I saw of it and was able to pay attention to it, because I have been doing nothing else for the last few weeks, was when it came through today. I was not aware of it before then. In any event, to give due attention to it, I have not been able to because I was not aware this was something that was going to proceeded with until today after we came back. I think this bill is, as members would know by now, problematic anyway for a whole range of reasons to support or personally try to slow this down because there is an ongoing court process that could be resolved in the not-too-distant future. It is on foot, it is ready to go. I agree that the CHCAN's action will continue. The EPA joined it. If this bill passes, the EPA will withdraw from it. It will affect the matter before the court. It will not stop it. I have never said anything other than that. I hope you were not suggesting that I had, because I have not, and the record will reflect that. I am very well aware of the fact that the EPBC approval, particularly relating to devil habitat et cetera, is yet to be provided by the federal minister. Such uncertainty is really difficult for the community that I represent, regardless of their view on this project. Whether they are for it or against it, this ongoing dragging on is really harming my community and I will just say I am a bit sick of that, too.

But it is also detrimental to the proponent. We have a duty of care to proponents, in some respects, to at least give them a process they can follow and get a yes or a no; if it is a no, it is a no; and, if it is a yes, it is a yes.

Anyone building a house will understand that you put your heart and soul into it and, if you have neighbours who want to keep picking at every edge because you have gone close to the boundary or you have done something else, then I can understand the pain. I have had that pain with regard to a build: it cost a lot of money. You end up in the former RMPAT. It would be TASCAT if we were doing it now.

I do not disagree with the minister on this, in that I do not know - and this is what the problem for me is with the amendment: I do not know what else could be pulled into this. I do not know whether there are DAs that have been approved that would need to consider the coastal policy and may not have done so adequately. I know that the proposal on Robbins Island with regard to the wharf proposal as part of that proposal does. That fits into this section. Yes, it does. Clearly it does. If that was all it was, then that might be something that this House can consider.

But when we do not know - because I have not had the time to even do any sort of check - I know how difficult neighbours can be when you are wanting to build a place, on the coast or anywhere.

The fact that they are building a nice deck - and the member for Huon has probably seen this in his own previous career - dealing with neighbours who do not like the appearance or the profile or some aspect of the building, they will do everything they can to stop it.

I am concerned that there may be other developments caught up in this. It might not be the house, it could be some other structure that is on coastal land. It could be a major tourism development that is seeking to have access to the water because it is near the water. You would expect, if you are a tourism asset on the coast, you would want to be able to assist your patrons to access the water because that is one of the selling points of it.

So, we do not know. I do not know. If I knew all the answers to that, I would probably be happy to support this. But I do not support the bill because of the unholy rush - and I say it is an unholy rush when there is no rush unless you are going to take out the Robbins Island project on its own, because we have heard in our briefings and in here that the effect of this is to validate the DA for Robbins Island.

Mr Duigan - The wharf.

Ms FORREST - The wharf part of it, the component -

Mr Duigan - Everything will be on the road.

Ms FORREST - Without the wharf it is a dead duck. Well, they cannot do it on the road. Unless they want to take out half the houses of Smithton, which is what will happen if they have to take the turbines and all the bits through the town. You simply cannot do it unless you are going to build a brand new road and major highway through the middle of Smithton or round the back. You cannot do it. They have done the modelling; you cannot do it. Do we really want all those big things on the road? I know what a challenge it was - and all power to Granville Harbour Wind Farm, when they moved all theirs down from the Burnie port area near the old APPM.

Yeah, they were all on the ground there for some time. They had an open day. We would go and look at how big they were, standing inside the unit that sits on top of the turbine. Whatever, I cannot remember what it is called but someone will know.

Mrs Hiscutt -You should have seen them go through the Howth roundabout.

Ms FORREST - Which port did they come into?

Mrs Hiscutt - They were going towards Burnie.

Ms FORREST - I thought they came into the Burnie port.

In any event, they had to go down the west coast. They had to build special trailers to get them down there. They started at 1 a.m., they drove down - I am probably getting off-track, Madam Deputy Chair.

Madam DEPUTY CHAIR - I think there has been a lot of that today.

Ms FORREST - They drove the front end of the truck around the corner, and then they had to go and drive the back end of it around -

Madam DEPUTY CHAIR - With a remote control.

Ms FORREST - Yes, a remote control to get it around the corner. Now, how many corners are there between Burnie and Granville Harbour? A lot. But they cannot even use that technology to get them to through to Robbins Island on the current Bass Highway or through the town of Smithton without taking out houses. You can take out fences - they are easy to repair - but not houses.

Anyway, I am just not sure about this amendment without due time to fully consider it - and I wish we were not, because we should not be doing it right now, right here - but, if I am pushed. I will not support it to proceed with this bill, but I do not support the bill anyway, so I will still vote against in the third reading.

Mrs Hiscutt - Whilst the honourable member is on her feet: for clarity, the original amendment was sent on 17 September from my office.

Ms FORREST - Was it? Well, I apologise for missing that.

Ms O'CONNOR - Madam Deputy Chair, the minister made some statements before that really needed to be challenged. To say that there will be this massive backlash because there may be all these development applications where building has not been started on soft coast, on actively mobile landforms, you made it sound like there would be hundreds or thousands, and I think it is disingenuous to say that, because, as I said earlier, and you would have seen the coastal hazards mapping, a lot of Tasmania's coastline is hard shoreline.

The soft, actively mobile coastal areas are well understood by government and local planning authorities - well understood. Local government has access to all the coastal hazards maps and makes its planning decisions accordingly. You are entitled to your view and your position, obviously, but I do not think it is a legitimate statement to make that there will be this massive backlash.

It is well understood everywhere except in some parts of the government what the coastal hazards are. The mapping has been available for nearly a decade, and it is in a constant state of evolution and improvement.

We heard for the first time from the Leader of Government Business that Robbins Island wharf was the trigger for this legislation, and that has not been something -

Mrs Hiscutt - It was not the wharf, it was the - what was the word?

Ms O'CONNOR - I wrote it down. I might have paraphrased you incorrectly, Leader, but you said Robbins Island was the trigger.

Mrs Hiscutt - The trigger.

Ms O'CONNOR - This was not made clear to the Council; more importantly, it was not made clear to anyone in the Tasmanian community when this validation bill was first

announced. We were told it was necessary to protect the Tasmanian way of life, but it was not; it is not about that. It is clearly primarily about retrospectively validating an approval which did not take into account the State Coastal Policy.

It is also challengeable for the Leader of Government Business to say that this is prejudicial to a developer. Yes, we are trying to single out a single developer. Yes, that is true, because that developer is currently involved in matters before the Supreme Court, and that makes their circumstances at this current time quite unique. It is not the same as everyone - going back to 2003 - who may have built a structure on the coast that was not compliant with outcome 1.4.2 in relation to 1.4.1. This validation bill actually is beneficial singularly to that developer.

In closing, because I still think members should support this, I challenge - and normally I do not; it is not easy to challenge anything that the member for Murchison says - but we do not owe a duty of care to proponents. We do not owe a duty of care to multinational corporations. We owe a duty of care to our communities, our electorates, and this island. That is where our duty of care fundamentally lies; it is not to multinational corporations. What we owe them is fair and reasonable treatment, transparency in our processes, and good planning laws and processes.

Madam CHAIR - Which is what I was referring to when I meant that. But anyway, poor turn of phrase.

Ms O'CONNOR - No, it is all fine. Again, what we have seen here today from the minister and the Leader of Government Business is creating bogeymen and clutching at straws. We finally had the confession today out of the government that this is about Robbins Island. We finally had it because I have gone back and had a look at some of your earlier media statements and after we asked questions of you in this place - and no, it was always not about Robbins Island. Now, it clearly is about the Robbins Island wharf.

I understand the matters that were raised by the member for Murchison, but because we are operating in a vacuum of solid information and we are having to deal with assertions that are made by the minister and the Leader of Government Business, how would we know other than to apply the commonsense test, which is that given local planning authorities have access to the coastal hazards maps, it is highly unlikely that this is a huge issue for developments that have been approved and where substantial commencement has not happened.

I thought your attempt to redefine 'substantial commencement' was kind of admirable in its way. It is a well-understood principle of what 'substantial commencement' was. I refer you back to the debate on the Pulp Mill Assessment Bill and the permits that were issued and the fact that there was a huge problem with substantial commencement from Gunns' point of view, even though they had been doing reports, studies, manipulating the government of the day for many years before that. Nice try is all I will say. Nice try.

Because we do not have enough credible information at our disposal, we are having to take it all on a promise. It is very hard to challenge this other than to just apply the old commonsense test.

Madam CHAIR - Before I call the Leader, I want to note, as you referred to it, that the amendment that was sent on 17 September was quite different in its nature. It specifically

named up Robbins Island, so that is why I did not equate the two. It was quite different wording, so it is not the same.

Ms Webb - It is not quite different wording. There are two extra bits in there that did name Robbins Island.

Mrs HISCUTT - Madam Chair, what came into question following the TASCAT judgment was how planning authorities were applying the State Coastal Policy. This relates specifically to development on actively mobile landforms. The Robbins Island appeal process brought to light the issue with the application of the SCP.

Ms WEBB - Madam Chair, I will make a couple of extra comments in response to some of the contributions. I thank members for the contributions. It is useful to have the debate, I think. Just to be clear, the initial version of the amendment that I sent around had a definition to define 'Robbins Island wind farm', and it mentioned it specifically in another subclause to clarify that it was captured by these two central parts of the new clause A that are in this amendment before us. I felt it was more appropriate to take that out because by definition it fits into these two subclauses of new clause A and did not need to be specified in a version. I felt it was a cleaner version to present members with this one that we see before us today.

The actual effect and intent of what we are looking at now is exactly the same as what I circulated on 17 September. It is just a more refined version of that without needing to name a specific development because it is literally captured in what is there already.

A couple of things to mention, just to remind people that although the minister does refer to the fact that the coastal area is a kilometre in from the coast all around, this does apply to development on actively mobile landforms, which is not the whole area that is covered by the coastal zone. Let us be really clear about that. It is a more specific defined area.

Mrs Hiscutt - Does it include erosion on red dirt?

Ms WEBB - I am clarifying that we need to be careful about what we are claiming is the scope of what this captures. It is, purposefully, trying to say just those developments and in respect of what it is excluding, that is those developments which have not substantially commenced on actively mobile landform areas. That is limited.

Because we have never been provided with a list or some sort of audit or estimate of how many permits that have been issued would be covered by the bill altogether, we still cannot see how many of those might be in a category that is not substantially commenced. Therefore, it is difficult to know the full effect of the amendment just because it is difficult to know the full effect of the bill.

That comes back to the government not being able to provide us with that sort of data or evidence. Unfortunately, I cannot derive data or evidence that is captured by this amendment because we were not provided with data or evidence from the government on the initial bill. That is tricky, right?

Furthermore, because it is about this new clause A, this amendment is saying that the validation does not capture developments on actively mobile landforms that have not substantially commenced. It may well be quite good to not capture those because maybe if the

State Coastal Policy has not been applied in a full way for the consideration of those developments, it might actually be beneficial for them not to necessarily have commenced yet. There might be better consideration to be given to those developments under future arrangements as we look ahead.

I am not saying that in an informed way either - just as a possibility. I am not putting that out there as my advised opinion. It is something that I think we can come back to and say, okay, this is trying to accept the government's face value claims about legal risk. The sorts of legal risks about not being able to have resale value or not being able to insure would apply to things that actually exist, things that have been built. This is to exclude things where nothing has been built yet, nothing has been constructed.

It is difficult in a way. It is tricky because the minister said, on the one hand, this could apply to many different permits issued and, on the other hand, he said it was targeted at one. What we are trying to do is allow a Supreme Court case to play out and this because of the -

Mr Duigan - Which it will.

Ms WEBB - In the form that it is now, it will be changed by this bill if it goes through. So, the existing case that is afoot -

Mr Duigan - Which is not the form it was in originally.

Ms WEBB - If that is the form that it is in now, under the legal circumstances we have now, so allowing that to play out. Also, it takes on face value the legal risk that the government says exists.

Again, to other members' comments about this, I do not think this amendment fixes all the issues of this bill by any means, but it does try to give comfort on both sides of things that have been identified as issues.

I am going to leave it at that. People will have had a chance to think about it and no doubt will have opinions on it. I am going to encourage people to support it and we will see where we get.

Mr GAFFNEY - Madam Chair, to put on the record, I want to ask the Leader, you have heard members of this place now try to send it to a committee, you have heard people in this place now try to get an adjournment, and you have heard members try to get an amendment. Is there anything else, Leader, because you have access to more legal advice than we do, that we could try?

Madam CHAIR - I will take that as a rhetorical question, shall I?

Mr GAFFNEY - I thought I might try it because we have exhausted our avenues of saying we think there is an issue with this. I hope people listening will understand that we have no other avenues available to us.

Madam CHAIR - Vote down the third reading.

Ms O'CONNOR - Madam Chair, third and final call. I want to note and remind members that I think we have been treated with real disrespect by the government here because we are being asked to pass a really consequential bill - I know this is not on you, Leader - that retrospectively reaches back more than 20 years, that would undermine a Supreme Court process that has raised cynicism within the community, and no effort was made by the government to assuage any of our fears, other than by words. We still really do not know. How offensive it is for me, as a legislator, to be put in a position where we are being asked to pass legislation - obviously, I am not going to support it - and being treated like gumbies.

The only logical explanation for the government not providing the advice - and I do not think it has been confirmed that it is the Solicitor-General's advice.

Ms Rattray - Yes, it has.

Ms O'CONNOR - Did you not say Crown Law? Was it from the Solicitor-General or was it out of Crown Law generally?

Ms Rattray - My understanding, from my contribution, was it was from the Solicitor-General.

Ms O'CONNOR - I know you said that. I noted that, member for McIntyre, but I am not sure we have had it confirmed that the Solicitor-General -

Madam CHAIR - Who is the member for Hobart directing her question to, just to be clear?

Ms O'CONNOR - I was directing a question to the government, generally, and I will ask the question.

Madam CHAIR - Of the Leader?

Ms O'CONNOR - That is right, but it is the minister who has made a number of statements here, Madam Chair, that are wild exaggerations. The bill itself seems to be built on a wild exaggeration about the level of legal risk.

Anyway, my question to the Leader of Government Business is: is it a fact that the advice that was provided to the government - you do not have to show us the advice; we know that you will not - which we have not had confirmed was from the Solicitor-General, was ambiguous in its assessment of risk? The government seized on the ambiguity expressed in the advice in order to look after ACEN. The only logical conclusion to reach, given that we are this far in and have not seen that advice, is that the advice does not, in fact, unequivocally support the government's position. That is the logical conclusion.

Can the Leader of Government Business confirm two things: one, was the advice underpinning this bill from the Solicitor-General? That is a question you should be able to ask, because it is not asking you to show us the advice. We know that you refuse to do so. Two, can you confirm that the advice itself was ambiguous? It was equivocal in terms of its identification of potential legal risk.

Mrs HISCUTT - It was the Solicitor-General's advice. I have not read it. I do not know but based on that, this is what the government is doing.

Madam CHAIR - The question is -

That new Clause A be agreed to.

The Committee divided -

AYES 3	NOES 9
Ms O'Connor	Ms Armitage
Ms Thomas	Mr Duigan
Ms Webb (Teller)	Mr Edmunds (Teller)
	Mr Farrell
	Mr Harriss
	Mrs Hiscutt
	Ms Lovell
	Ms Rattray
	Mr Vincent
PAIR: Mr Gaffney	PAIR: Ms Palmer

New Clause A negatived.

Title agreed to.

Bill agreed to without amendment.

Bill reported without amendment.

[6.10 p.m.]

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) - Mr President, I move -

That the third reading of the bill be made an Order of the Day for tomorrow.

Ms O'Connor - Divide. Can I do that?

Mr PRESIDENT - No.

Ms Forrest - You can do it on the third reading.

Ms O'Connor - I will do it tomorrow.

Motion agreed to.

SUSPENSION OF SITTING

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) - Mr President, I move -

> That the sitting be suspended until the ringing of the division bells.

This is for the purpose of a short discussion.

Motion agreed to.

Sitting suspended from 6.10 p.m. until 6.20 p.m.

ADJOURNMENT

[6.20 p.m.]

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) - Mr President, I move -

> That, at its rising, the Council adjourn until 11 a.m. on Tuesday 19 November 2024.

Motion agreed to.

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) - Mr President, I move -

> That the Council do now adjourn.

Motion agreed to.

The Council adjourned at 6.20 p.m.