Developer Donations (Anti-Corruption) Bill.

Second Reading

Ms LEE RHIANNON [2.57 p.m.]: I move:

That this bill be now read a second time.

I am proud to introduce the Developer Donations (Anti-Corruption) Bill on behalf of the Greens. Our democracy in New South Wales is quite literally up for sale; its very essence is being destroyed by massive developer donations. Members of Parliament are elected to represent the people but, increasingly, members of Parliament are representing their corporate donors first and their constituents as an afterthought. Nobody believes that developers give something for nothing. Nobody believes that developer donations are about altruism. In fact, it is a misnomer to even call them donations. They are not donations, they are purchases. Developers are buying influence, they are buying access, and they are buying government policy. When it comes to planning policy the Carr Labor Government has been bought and paid for. The Carr Labor Government represents its developer mates, not the people of New South Wales.

The title of this bill has been chosen quite deliberately. The Greens believe that donations by large developers amount to corruption. The *Macquarie Dictionary* defines "bribe" as "anything given or serving to persuade or induce". To suggest that developer donations are not given in order "to persuade or induce" is akin to asking us to believe in the tooth fairy. Anyone who suggests that those donations do not persuade or induce the Labor Government to take certain action has not been paying attention. Section 8 of the Independent Commission Against Corruption Act defines "corruption" as follows:

Corrupt conduct is any conduct of any person that adversely affects, or could adversely affect, either directly or indirectly, the honest and impartial exercise of official functions by any public official.

Under that definition developers certainly have something to worry about. Section 8 also states:

Corrupt conduct is any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions.

Does favouritism towards developers count as "partial exercise of official functions"? I am not a lawyer but I know the commonsense answer. Who are these big developers making these very large donations? They are the companies whose names we see every day on the sides of cranes, on construction hoardings, and in the real estate section of the newspaper. Some time ago my office began an extensive research project to work out how much developers are giving, and their identity. The results are published on my web site, *www.lee.greens.org.au*. I thank Dr Norman Thompson, who has voluntarily given many hundreds of hours of his time to do this research. It was painstaking research because our donor declaration laws are so weak. The record is often only the name of a company, with no way of working out who is behind the donation.

The research is quite remarkable. Over the past four years the New South Wales branch of the Australian Labor Party has received donations from at least 80 companies involved in the property industry. For instance, the Walker Corporation gave $165,000; McRoss, also associated with Lang Walker, gave another $122,000; Meriton donated $294,500; Multiplex donated $258,350; the Mirvac Group donated $98,000; Leightons gave $147,550; the Lend Lease Group gave $241,850; and Paynter Dixon Construction Pty Ltd gave $298,450. Eric Roozendaal must be flat out banking the cheques. It is little wonder that he needs to relax with a night at the Colosseum, where I understand he is going tonight. Of course, these are only donations to the New South Wales branch of the ALP. Hundreds of thousands of dollars also flow to the national office of the ALP and to their branches.

I understand that Lend Lease now has a policy of not donating to political parties. If that is the case, I congratulate that company on its change of heart. It is reassuring that some developers, whether they are convinced by the arguments or public relations considerations, are cutting the flow of donations. I hope that is a sign of the times. The people of New South Wales in general, and the communities fighting inappropriate development in particular, have a right to know just what the Labor Government sold in return for these massive donations. What did Labor give to developers in return? Was it private certification, State environmental planning policy 5, some harbour foreshore, hectares of endangered Cumberland plain woodland in Western Sydney, Aboriginal heritage at Sandon Point, the new coastal State environmental planning policy 71, or development applications that the various planning Ministers have called in and approved—hundreds and hundreds every year?

We can only surmise exactly what policies, what decisions and what parts of our State Labor has sold. However, we know one thing: the developers have bought access to power. I will always remember one episode of *Stateline* from a year or two ago in which Quentin Dempster interviewed Harry Triguboff, the owner of Meriton, the giant apartment builder. Quentin asked what access Triguboff has to the Premier. Triguboff replied along the following lines, "Oh well, I

can always pick up the phone and ring him but I do not do it often." The most disturbing aspect of that interview, which I clearly remember, was the casual, offhand manner in which he said it, as if it was no big deal and only what any multimillion dollar developer would expect.

Nothing more dramatically illustrates the access that developers have to power in New South Wales than the obscene fundraising dinners that Labor holds. With tables costing tens of thousands of dollars they are priced well out of the range of ordinary people—the sort of people who are campaigning against Labor's development atrocities, but also the people who elected Labor to office, the ones who staff the polling booths. At those dinners big donors are lavished with attention. Ministers and members of Parliament are spread around the room, allocated to different tables. These dinners are selling access, plain and simple. And it does not come cheap. In the latest edition of the *Sydney* magazine, which is published by the *Sydney Morning Herald*, there is a fascinating interview with former Prime Minister Mr Paul Keating. In it Mr Keating takes a swipe at Labor's relationship with developers and fundraising dinners in particular. Mr Keating is quoted as saying:

Party fundraisers are at their beck and call, more's the pity. A handy implement for party fundraisers and politicians in NSW would be a hipflask of mace for all the cadgers and developers who cross their doors looking for government favours.

It is amazing how honest Labor leaders can become after leaving office, but I still very much welcome Mr Keating's contribution to the debate. As it happens, a Labor fundraising dinner is to be held tonight. It is billed as "A Night at the Colosseum" and features a State-of-origin great debate between Bob "The Gladiator" Carr and Steve "Maximus" Bracks. Interestingly, Graham Richardson was going to feature as the master of ceremonies until the Swiss bank account revelations forced him into hiding. The invitation offers an emperor's table of 10 for $11,000, with a senior Labor representative guaranteed, or an imperial table of 12 for $3,300.

The Hon. Rick Colless: Whom do you get for that—Costa?

Ms LEE RHIANNON: No, you do not get a senior Labor representative at your table. One can also purchase an individual ticket for $275. Could there be a better example of selling access? People who can afford $11,000 for a table of 10—$1,100 a seat—can spend the whole evening lobbying a senior Labor representative. Those who can afford a bit less can still get in the door and do their best to get the ear of power. Those who cannot afford at least $275, or those who think the whole thing stinks, can stand out in the street and join the Greens protest.

The Hon. Rick Colless: How much does that cost?

Ms LEE RHIANNON: It is free, of course. The back of the invitation for tonight's dinner is especially revealing. It features the logos of sponsors of the dinner—Multiplex, the developer; Stockland, the developer of the disastrous Sandon Point development at Bulli; St Hillers Pty Ltd, also a developer; Aussie Home Loans; the Tenix Group, a defence contractor; British American Tobacco, the global mass murderer; and the Manildra Group. Of course, it was only three months ago that Federal Labor returned a $50,000 donation from Manildra in light of the ethanol scandal. How hypocritical does that now appear?

The Hon. John Ryan: Is Manildra going?

Ms LEE RHIANNON: Yes, Manildra is going.

The Hon. John Ryan: That is called recycling.

Ms LEE RHIANNON: Yes. I wonder if the $50,000 that Manildra received back from Federal Labor will be used to attend the State Labor banquet. Labor certainly lives up to its side of the deal; its track record since 1995 demonstrates a long record of shameless capitulation to developer greed. Time and time again local communities have had inappropriate, destructive developments imposed on them. From Bega Valley to the Tweed, coastal communities and environments have suffered from developers moving in, exploiting weak planning laws and wreaking havoc. In the Illawarra the beautiful escarpment is under threat and public land and Aboriginal heritage at Sandon Point has been desecrated.

The Hon. Tony Burke: Point of order: My point of order relates to relevance. We were told that all of this information was disclosed on the New South Wales Greens web site. I have just been to the clean up politics link on the Greens web site, which says, "Greens MLC Lee Rhiannon's campaign donations page". When I clicked on the link I got the message, "The page cannot be found". In terms of misleading the Parliament, I am concerned about the speech we are currently hearing.

Ms LEE RHIANNON: To the point of order: Clearly, it is not a point of order. The web site is accessible. If the honourable member cannot use the web, or if there is a problem with a firewall, that is not a point of order.

The DEPUTY-PRESIDENT (The Hon. Amanda Fazio): Order! The matter raised by the Hon. Tony Burke was in response to a comment made by Ms Lee Rhiannon earlier in her speech. I do not think it was a genuine point of order and I rule that way. Ms Lee Rhiannon may proceed.

Ms LEE RHIANNON: In Sydney, shoddy, lowest-common denominator developments have become the norm, maximising developer profits at the expense of quality design, residential amenity, community facilities and the environment.

The Hon. Jan Burnswoods: Point of order: My point of order relates to the definition of "public funding". Does the fact that the former staffer Dan Cass, the campaign director for the Greens in the coming by-election, used the parliamentary office facilities and parliamentary funds of the office of Lee Rhiannon disqualify the member from making this sanctimonious speech?

Ms LEE RHIANNON: To the point of order: Clearly, that is not a point of order. The member is trying to waste time. On the specific allegations, which I will answer at a later time, Dan Cass took holidays throughout that period. The honourable member knows that, but she is trying to stop me making this speech.

The DEPUTY-PRESIDENT (The Hon. Amanda Fazio): Order! I am advised that pursuant to the standing orders no point of order is involved. Ms Lee Rhiannon may proceed.

Ms LEE RHIANNON: Recent days have seen a wonderfully illustrative example of the power of the donors. The Collex waste facility at Clyde was always a disaster—a disaster for waste management, for local residents and for the environment. The Government has pushed ahead regardless, with utter disrespect for the residents nearby. Earlier this week two courageous individuals won a stunning victory against Collex and the Government in the Land and Environment Court. I warmly congratulate John Drake and his colleague on the stand they took. Consent for the facility was refused.

Anyone at all familiar with the Land and Environment Court will understand what a remarkable event this is. The rules of the court are so biased in favour of developers and against objectors and residents that to achieve such a win is truly stunning. The case was reminiscent of the movie *The Castle*, with two local men representing themselves against a phalanx of high-priced lawyers and experts. It was a wonderful win for commonsense and community values. The only people for whom the Clyde waste facility is not a disaster are the ex-Woodlawn mine workers. They were left without their entitlements when the mine ceased, and in a despicably cynical move Collex and the Government linked the paying of the entitlements to the Clyde project.

The Woodlawn workers should get their entitlements. Labor should have legislated years ago to better protect workers entitlements. But it is a completely separate issue to the merits of the Clyde waste station. How has the Government reacted to the Land and Environment Court decision? Has it resolved to reconsider the project? Has it taken any notice at all of what the Land and Environment Court judge had to say? Absolutely not! Labor's reaction has been to foreshadow special legislation to override the court decision. What an absolute disgrace! What a treacherous betrayal of residents in a strong Labor voting area!

Why has Labor reacted in this way? Again, let us follow the money trail—maybe it has an answer. In 1998-99 Collex donated $33,450 to the Labor Party in New South Wales; in 2000-01, $52,200; and in 2001-02, $3,300. That is $88,950 over four years. That is why Labor is listening to Collex and not to residents. That is why it is prepared to overrule the judicial process. Labor is governing for its wealthy donors, not for ordinary people, not even Labor voters.

I have spoken at some length about Labor's development sins, but it is worth noting that lack of opportunity is about the only thing stopping the Coalition from showing the same faults. It is commonsense that developers will want to donate to a party that can actually deliver for them in the short term, so for the time being the Coalition has lost out in the developer donation stakes. Nevertheless, it has received some fairly hefty donations over the past four years: $111,500 from Lend Lease, $150,667 from Meriton, $261,500 from Multiplex and $74,833 from Stockland. When one is wondering why the Opposition does not take the Government on with regard to overdevelopment and strengthening the development instrumentalities in this State that are so weak, perhaps the answer lies here.

Oppositions cannot sell access to power or government policy, but they do have something to offer—silence. The Opposition's silence on the Sandon Point development in particular has been absolutely disgraceful. But then again Stockland has been generous—$75,000 worth of generosity. Sometimes money talks and sometimes it is whisper quiet. Of course, sometimes oppositions can support a Government decision. Yesterday John Brogden came out in support of the Government's disgraceful position on the Clyde waste facility, despite the widespread community support for the court's decision. Over the past four years Collex has given the New South Wales Liberals $32,742.

The Greens position on these issues is considered radical in this Parliament, but we are in step with public opinion. The public understands that politics is increasingly being conducted for the benefit of the wealthy donors and not them. If one were to step out into Macquarie Street, Hunter Street in Newcastle, Keira Street in Wollongong or any street in any town in New South Wales and ask passers-by whether the actions of governments and oppositions are influenced by the corporate donations they receive, one would get nearly 100 per cent agreement. It is one of those issues about which the major parties are in total self-serving denial, thus creating an enormous gulf between mainstream politics and ordinary people.

It is these sorts of issues that cause people to be so disillusioned with politics and so in contempt of their representatives. It is the Greens who are striving to reunite the Australian people with their parliaments by addressing the root causes of their disenchantment. This bill is the result of an extensive drafting and consultation process that

took more than 12 months. It is bold and far-reaching. It seeks to completely reform the process for receiving and declaring all donations in State and local politics, to ban donations from large developers in particular and to make the ministerial call-in power accountable.

As the law currently stands, parties, candidates and groups in State and local elections only have to declare their donations once every four years following an election. Once every four years? What a joke! What goes down in four years? We know in this place. That deprives the public of any opportunity to assess whether their actions have been influenced by their donations, or even to discover where their financial support has come from. The bill would replace this with a system of continuous disclosure.

The Hon. Tony Burke: Like your web page.

Ms LEE RHIANNON: I am happy to give the member a lesson on the web later. All donations will have to be declared to the State Electoral Office within 21 days of receipt. The State Electoral Office will then have a further 14 days to make the donation record publicly available, both at its office and on the Internet. This way the public will get to see quite quickly what money has changed hands, and to compare it to the Government's actions during that period. It will end forever parties accepting controversial donations and not having to disclose them for up to four years.

As a further reform, all donations will have to be made and declared by means of a standard donors form approved by the Electoral Funding Authority. It will be an offence, with a maximum penalty of 20 penalty units, for a party, a person acting on behalf of a party, a group, a person acting on behalf of a group, an independent member of Parliament or a person acting on behalf of an independent member of Parliament, a candidate or a person acting on behalf of a candidate, to accept a donation that exceeds $1,000 if the donation is not accompanied by a completed donors form. This also applies to donations that, when added to donations received from the same source in the preceding 12 months, would exceed $1,000. In other words, there will not be any loophole where donors can give $999 repeatedly without having to disclose anything.

As a minimum, the donors form must require the donors to state the amount of the donation; details of all donations made by the donor to the recipient in the preceding 12 months; the donor's postal, residential and head office address; and, if the donor is a corporation, details of that corporation, including the names of all directors and a description of its basic activities. This last point is quite crucial, as our research has shown. All too often, under the current rules, the only information given is a nondescript company name and it can be almost impossible to work out exactly what that company does or who is behind it. Money can easily be passed through obscure shelf companies. Requiring the list of directors to be disclosed would greatly assist in joining all the dots together. The donors form will also require donors to state that they are not major developers. That is the mechanism that will be used to ban developer donations. It will be an offence for a major developer to make a donation, with the maximum penalty of 20 penalty units. That is how we can clean up the system and bring the planning system into balance.

The final feature of the donors form will be a requirement to state that the donor has not been convicted of an offence involving bribery or corruption. Again, it will be an offence for a person convicted of an offence involving bribery or corruption to make a donation, with a maximum penalty of 20 penalty units. Surely we can all agree that anyone who has actually been convicted of bribery or corruption is not an appropriate person to be contributing financially in our political system. The form will further require the donor to state that he or she is not making the donation on behalf of a major developer or a person convicted of a bribery or corruption offence. This is important. Money can easily be passed through third parties unless there is a mechanism to prevent it.

A major developer is defined in the bill as a person or corporation who has, in the past five years, lodged a development application or applications relating to the carrying out of development on any one or more parcels of land if the estimated cost of carrying out the development totals $5 million or more. The Environmental Planning and Assessment Regulation requires those submitting development applications to include an estimated cost of carrying out the development, and it is this estimated cost that will be the relevant figure.

An exemption is contained in the bill if the developer intends to occupy at least 75 per cent of the total floor area of any buildings on the land for at least 12 months after the development has been carried out. In other words, if a manufacturer is building itself a new factory on land it already owns, it will not qualify as a major developer. If a wealthy individual is building himself or herself an expensive new house, that person will not be a major developer, and so on. This is important because the essence of being a developer is the development of land for sale, not for self-use. An intention to occupy at least 75 per cent of the total floor area must be evidenced in writing and submitted with the original development application.

One final important aspect of the definition of major developer is that, if a corporation meets the definition of major developer, each and every director of that company is also defined as such. This is needed because generally a corporation and its directors cannot be considered independent players. The interests of one are generally the interests of both. The ability of the directors of major developer companies to make political donations would be an enormous loophole.

The Developer Donations (Anti-Corruption) Bill also seeks to amend the Environmental Planning and Assessment Act to make accountable the ministerial call-in power. Currently, the Minister for Infrastructure and Planning can call in any development application in New South Wales and make himself or herself the consent authority for the application. The

Minister can arbitrarily remove the development application from a council at any time, without ever having to account for that action. It is a discretionary power that is wide open to abuse and almost tailormade for the granting of political favours. Is some community-oriented council giving you a hard time? Just call the Minister and remind him about your fat donation and get him to call it in. Magic—problem solved. The call-in power as it currently stands is so corruption-prone that reform is desperately needed. The call-in power is widely used, despite its relative obscurity. In March 2002 I asked the then Minister for Planning how many developments he had acted on as the consent authority. The answer, when it was grudgingly given, was that in the preceding three years he had acted as the consent authority on around 1,200 development applications—around 400 per year on average. This is a widely used and widely abused power, and it is about time that some light was shone upon it.

The bill amends the Environmental Planning and Assessment Act to require the Minister to publish in the *Government Gazette* any use of the call-in power, and to allow either House to disallow that use in the same manner as a regulation. This would achieve two important things. First, Parliament and the public would be automatically made aware every time this dangerous and fundamentally undemocratic power is used. Second, the ability of Parliament to disallow its use would make the Minister far more cautious—knowing that at any time he or she might be required to provide Parliament with a defence of his or her actions. If the Minister can mount a good case, fair enough, and the call-in will probably stand. But if it is exposed as arbitrary, as favouritism, as corruption, then the public at large will have been done a great favour and it will be one more step towards cleaning up the planning process in New South Wales.

Why target developers? Why not any of the other categories of donors who are corrupting politics in New South Wales? Why not poker machine interests, clubs, tobacco interests or anything else? The answer is that, while this bill is cleaning up the process of receiving and declaring all donations, at this point in New South Wales's history developers simply are the biggest donors and the biggest problem. Planning policy is central to the future of New South Wales. The loss of native habitat, bushland and public open space, and the loss of our coastal communities and cities, would be devastating. Planning controls the amenity issues of noise, sunlight, privacy and design, and the sustainability of our community facilities and services. The Greens believe that the links between wealthy interests and government policy are nowhere clearer or more dangerous that in planning—with disastrous consequences for New South Wales.

If this bill is passed, it will restore public confidence in the planning system. It will allow the community to feel confident that planning issues are being considered on their merits, not on financial influence. Removing the distorting financial influence of big developers will inevitably affect the whole planning system—rules, laws, policies and individual decisions will come to better reflect the community's wishes. New South Wales might finally get the planning system it deserves—one based on community needs, not developer greed. I commend the Greens bill to the House

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