

Second Reading

Ms SYLVIA HALE [11.21 a.m.]: I move:

That this bill be now read a second time.

The Environmental Planning and Assessment Amendment (Restoration of Community Participation) Bill 2007 seeks to amend the Environmental Planning and Assessment Act 1979 in three ways: one, add additional objectives to the Act to make the reduction of greenhouse emissions, the mitigation of the effects of climate change and the protection and enhancement of the health and wellbeing of the community overarching objectives of the planning system; two, increase the level of community involvement in the determination of applications for approval of development projects under part 3A of the Act by requiring environmental assessments of part 3A projects, the publishing of submissions relating to part 3A projects and the extension of appeal rights in relation to part 3A projects; and, three, return a measure of community control over decision making, increase accountability and remove conflicts of interest by banning donations from property developers to political parties, officials and candidates.

The first group of amendments relates to the objectives of the Act, which recognise that the planning system inevitably involves a balancing of the interests of a variety of stakeholders and those of the community as a whole. The existing objectives of the Act include encouraging the proper management of natural and artificial resources, the orderly and economic use and development of land, the provision and coordination of communication and utility services, the provision of land for public purposes, the provision and coordination of community services and facilities, the protection of the environment, and the provision and maintenance of affordable housing. It is important that the Act recognise that these existing objectives need to be balanced with what should be the fundamental public interest objective of the planning system—that is, to protect and enhance the health and wellbeing of the population.

Major planning decisions should consider questions of overall community health objectives relating to, for example, promoting physical activity, reducing obesity or improving air quality. Most parties now recognise that a multifaceted response to climate change is required. The climate change amendment to the objectives recognises the central role the planning system must play in that response. Greenhouse gas emissions and mitigation of the effects of climate change are central to planning questions relating to housing and building design, the location of farming, residential and employment lands and the nature and location of transport corridors. By placing these issues within the objects of the Act, planners, developers, councils and community representatives will be encouraged to take them into account when considering key planning issues.

The second group of amendments relates to community involvement in decisions made under part 3A of the Act. These amendments seek to increase transparency, accountability and community involvement in decision making under part 3A, the section of the Act that gives significant discretionary powers to the Minister for Planning to call in developments and approve or refuse them. A common complaint about part 3A is that the Minister is given enormous discretionary powers but there are few, if any, checks and balances on those powers. The proposed amendments make it mandatory for the Minister to publish guidelines with respect to the environmental assessment requirements for approving projects and for the proponent of a project to prepare an environmental assessment of the project.

The proposed amendments require public submissions regarding an environmental assessment of a project to be published on the website of the department, provided to the proponent of the project and included in the director general's report to the Minister on the project. They also extend the circumstances in which an objector to a project can appeal against a determination of the Minister to give approval to a project under part 3A so that appeal rights are the same as for a development being dealt with under part 4 of the Act. These amendments will make the decision-making process by the Minister more transparent and will allow greater scope for the Minister's decisions to be appealed. In situations where the Minister is given wide discretionary powers it is imperative from the point of view of maintaining public confidence in the system that the Minister's decisions are made in a completely transparent way and that they are subject to review.

The final amendments dealing with developer donations seek to restore a measure of community and council control over decision making, increase accountability and remove conflicts of interest by banning donations from property developers to political parties, officials and candidates. The bill makes it an offence for a political party or candidate to accept a donation from a property developer. It also makes it an offence for anyone involved in property development to make a donation to a political party or candidate. Further, it makes it an offence for any person who has made a donation to a political party or candidate to put forward a development application, tender or expression of interest in development work for 12 months after making the donation. It also will be an offence to make a donation for 12 months after a development application process is complete. The purpose of these amendments is, in one simple step, to remove the vast majority of conflicts of interest that have brought the State's planning system into such disrepute.

The New South Wales Greens have been campaigning on the issue of political donations by the property development industry and the corrupting effect of these donations on the State's planning system for more than a decade. I have argued, even before I was elected to Parliament, that developer donations take away the rights of the community by elevating the interests of the donor above the interests of the community, thereby reducing community and local council control over development decisions. There is no doubt that developer donations have this effect. The Independent Commission Against Corruption [ICAC] inquiries into the Tweed, Liverpool, Rockdale, Strathfield and most recently Wollongong councils have provided incontrovertible evidence that political donations have affected decisions relating to developments. In 2003 my colleague Ms Lee Rhiannon introduced a similar private member's bill to ban developer donations. On that occasion, members from the Labor and the Coalition parties voted against the bill. The Greens, the Christian Democratic Party and the rest of the then crossbench voted in favour. I ask the House five years later: Are the citizens of New South Wales better or worse off as a result of that 2003 bill being defeated? Had the Labor and Coalition parties seen fit to support the bill in 2003, we almost certainly would not have seen the scandals that have engulfed the Tweed, Wollongong, Strathfield, Liverpool and Rockdale councils. We would not have seen the community outrage over decisions made under part 3A of the Act that have delivered huge windfalls to developer donors. We would not have seen the planning system dragged into such disrepute by a climate of rampant conflicts of interest and, at times, outright corruption. We would not have seen the Labor and Coalition parties between them rake in more than \$11 million in donations from property developers since voting together to stop the 2003 bill banning such donations.

The Labor and Coalition parties got it wrong in 2003. The votes of Labor and Coalition members may have enabled their parties to continue to rake in millions of dollars in political donations, but at what cost to the democratic fabric of our society? Labor and the Coalition parties may be rolling in campaign coffers overflowing with developer donations, but who pays the environmental, heritage, economic and social costs of the corruption of the planning system that arises from this culture of money politics? Labor and the Coalition parties having got it so wrong in 2003, this bill gives them opportunity to get it right now.

It is clear from the extensive media reporting and comments from the public and across the political spectrum that donations from property developers to political parties and candidates have seriously undermined public faith in the planning system. It is not surprising, given the examples that have emerged, not just of actual corruption at council level but of the extraordinary correlation between favourable decisions by the Government or its Ministers in relation to particular developments and donations to the Labor Party by the proponents of those developments.

One of the more obvious examples of this extraordinary correlation is the Killalea State Park lease agreement. In this case a deal has been agreed and approved by the Minister for Lands for a 50- year lease of a section of the Killalea State Park on the New South Wales South Coast. The developer who has signed this deal is Killalea Coastal Investments Pty Limited, a joint venture of Mariner Land with Babcock and Brown. In the five years since the expression of interest process commenced in 2003, electoral funding figures show that Babcock and Brown has donated more than \$330,000 to the New South Wales Labor Party. Many of the donations coincided with key government decisions relating to the development: a \$20,000 donation in May 2003 as expressions of interest were being received; a \$33,000 donation in July 2003, around the time the proponent was chosen; a \$33,000 donation in July 2004 as probity checks were being undertaken; three donations totalling \$29,500 during late 2004 and early 2005, a period during which changes were made to the Crown Lands Act and the State Park Plan of Management to allow the development to proceed; eight donations totalling \$138,000 between May 2006 and February 2007 as the lease agreement was being negotiated; and a donation of \$20,000 in May 2007, nine days after the lease agreement was signed.

A similar pattern emerges when the donations made by the Stockland group of companies are compared with key decisions made by the Government or its Ministers in relation to that company's highly controversial and contested development at Sandon Point. Since the Sandon Point proposal first emerged in 2003 the Stockland group of companies has made a series of donations to the New South Wales Australia Labor Party totalling more than \$100,000. This includes a \$19,250 donation on 1 July 2006, just two weeks after Stockland lodged a rezoning proposal for the Sandon Point site. In the following months the Minister for Planning announced that Sandon Point would be declared a State significant site under part 3A of the Act, thus removing consent authority from the local council and conferring it on himself.

The relevant Ministers in each of these and numerous other similar cases say that the donations did not have any effect on their decisions because they were not aware of the donations at the time they made the decisions. The problem is that the public finds this extremely difficult to accept, particularly when the Secretary of the New South Wales Australian Labor Party, Mr Karl Bitar, told the *Illawarra Mercury* on 22 March that there is no official policy within the Australian Labor Party of ensuring Ministers are not made aware of donations.

The public also finds it difficult to accept because they see that the Australian Labor Party has a conflict of interest and they do not see how it is acceptable for a Labor Minister to make a decision that provides a financial windfall to a developer who is a substantial donor to the Australian Labor Party. The Ministers say they were unaware, but the potential conflict of interest is so glaring that the public should not and will not and does not

agree that this situation is acceptable. The cause and depth of public concern is clearly demonstrated in the comments of leading current and former politicians from all sides of politics, leading commentators, editorialists and journalists, party officials, academics and the development industry itself.

In recent weeks the Premier, the Leader of the Opposition, the Secretary of the New South Wales Australian Labor Party and the Minister for Planning have all made public statements about the erosion of public confidence in the political system arising from the perceived links between donations and government decisions. In recent years concerns have also been expressed by former New South Wales Premier Bob Carr, former Western Australia Premier and former National President of the Australian Labor Party Dr Carmen Lawrence, and former Prime Minister Paul Keating. Current and former New South Wales Australian Labor Party officials—Karl Bitar, Mark Arbib and Damien O'Connor—are all on record expressing concerns about the public perception that donations are corrupting the political system.

The development industry itself knows that these donations are undermining its standing in the community. Former Chief Executive Officer of the Urban Task Force Terry Barnes told the *Sydney Morning Herald* in November 2006 that he supported a ban on political donations. He said:

We make the donations reluctantly because the system's there and that's how things are done. We really would rather not be spending \$1000 on harbour cruises and all the rest. It's not just about freeing us from the perception—rightly or wrongly—from the community that we're getting preference exchange for money.

The current chief executive of the Urban Task Force, Aaron Gadiel, made the same point, saying a ban on political donations would:

once and for all remove any perception of favouritism in all areas of Government decision making.

Similarly, Wal King, Leighton Holdings chief executive, told the *Sydney Morning Herald* in February 2002 that his reason for making political donations was because:

If you don't do it, there's a chance of getting a black mark against your name. It's like giving your wife flowers—why wouldn't you do it?

Journalists, commentators and editorialists from across the political spectrum have made similar points. Michael Duffy, in an opinion piece in the *Sydney Morning Herald* on 23 May 2007, labelled developer donations "an unofficial tax imposed by the New South Wales political class on the development industry". In the *Sydney Morning Herald* on 1 March, Malcolm Knox said:

The link between money and potential for corrupt conduct is apparent in the tabulation of donations to councils. Of the top 15 council recipients of donations at the 2004 council elections, Wollongong (fourth), Tweed (sixth), Rockdale (ninth), Canada Bay (12th), and Strathfield (13th), have been either sacked or investigated over allegations of corrupt conduct. Lake Macquarie (fifth) and Newcastle (seventh) have either investigated allegations of corruption against councillors internally or faced down allegations in meetings.

In the *Sun-Herald* on 5 November 2006, Alex Mitchell, former President of the New South Wales Parliamentary Press Gallery, said:

In the March election Labor will spend up to \$20 million, with the lion's share coming from developers who have been gifted with more pro-development legislation than at any time in the State's history.

The editorial in the *Sydney Morning Herald* on 10 May 2007 stated:

Political donations raise suspicions of favouritism and undermine faith in the fairness of Government; they warrant serious investigation and reform. Businesses, individuals and interest groups do not throw around money for the good of democracy. Property developers, clubs, hotels and trade unions are among Australia's most generous political donors. Just what advantage they may be buying is impossible for the public to know. Did a tender win because it was the best on the table, or because it had friends in high places?

I have numerous other quotes and I seek leave to table a document containing them.

Leave not granted.

I will read them later. In all of my research into community and political and social leaders' attitudes to donations I could not find anyone who would say that a system that allows large donations from the development industry to political parties and candidates is in the public interest. Of course, the public does not accept that it is anything other than a blatant conflict of interest that a candidate or a representative of a party that has accepted tens of thousands of dollars in donations from a property developer should then make decisions that have the potential to provide enormous financial benefits to that developer. The public perception is that developer donations are little more than bribes.

Attempts to argue that it is possible to quarantine the donations from the decision makers have not been accepted by the media, the public or commentators of different political viewpoints because those arguments are

not credible. No one accepts that any political party should be allowed to solicit donations from a developer at the same time that a Minister from that party is making a decision that could be worth millions of dollars to that developer. It is a blatant and irreconcilable conflict of interest. No amount of disclosure makes it any less of a conflict of interest. The only way to remove the conflicts of interest that have undermined the public's faith in the planning system is to ban political donations by developers entirely.

This bill has been drafted broadly to apply to anyone involved in the property development process, other than home renovators—that is, a person whose sole involvement with property development is the building, renovating or extending of the person's place of residence. It also addresses the issue of third parties by making it an offence to solicit a third party to make a donation or to accept such a donation. This approach makes the legislative framework clearer and easier to understand, enforce and comply with.

An argument has been put forward that banning donations will merely drive them underground. I believe this argument is illogical. It could equally be applied to murder, speeding or any other offence that still occurs despite its illegality. I believe that the vast majority of people involved in the property development industry are honest and abide by the law. For most of them the donations ban will be seen as a welcome lifting of the pressure to donate and a levelling of the playing field between big and small developers. A small number will still seek an advantage by breaking the law, but that number will be significantly smaller than the number who now, reluctantly or otherwise, make political donations in the belief that it is just an accepted cost of doing property business in New South Wales.

It is illogical to argue that there should be no ban on donations because a small number of dishonest people will try to subvert the law, in the same way that it would be illogical to argue that all speeding laws should be rescinded because a small number of people try to get away with speeding. Why should we continue to tolerate a regime that gives a cloak of legality to corruption-promoting activities? The public interest is best served by reducing the likelihood of corruption and the incidence of conflicts of interests arising from developer donations and that is what this bill will achieve. The approach is also consistent with the recent statements by the Premier and the Leader of the Opposition that have been supportive of a ban on political donations. I support moves for a broader ban on political donations—for example, from the hotel or gambling industries—and will welcome any further legislative changes brought forward by the Government. However, it is urgent that donations are removed from the planning system as soon as possible.

The outcomes of the inquiry into electoral funding will not be known for some time. Implementation of any of the recommendations of that inquiry could take months or years or may never be implemented. In the meantime, hundreds of millions of dollars worth of developments will be considered by councillors and Ministers under a system so corrupted in the public mind that the public sees the planning system as little more than a fundraising racket for politicians.

In summary, I ask members to support this bill because, first, it is an important and far-reaching first step in cleaning up a rotten system. Secondly, it is a step that can be taken in New South Wales without requiring us to wait for a national consensus. Thirdly, it does not raise concerns about freedom of speech because it focuses not on banning individuals' or companies' rights to make political donations but on removing potential conflicts of interest. Fourthly, it does not undermine the electoral funding inquiry considering and recommending broader actions in relation to political funding. Fifthly, it can be implemented immediately, thereby demonstrating the determination of this Parliament to address widespread public concern. Sixthly, it will create a fairer system where developers will not feel pressured to make political donations in order to be competitive. Seventhly, it will be welcomed by all the small and large property developers who feel aggrieved that their industry is being mired in scandal and their personal reputations are being tarnished by a system that they do not want or support.

There is no good reason for allowing such a discredited system to continue to undermine public faith in the planning and broader political systems. This bill provides an opportunity to take immediate steps to clean up a corrupted system and begin the process of restoring public faith in the planning process. I sought leave earlier to read into *Hansard* numerous comments about political donations made by various people across the spectrum. I was denied leave to do so, so I will now read some of the more relevant pieces. An article in the *Sydney Morning Herald* of 22 March 2008 states:

There's no example of a minister or MP who has done anything wrong, but there is a perception as far as donations are concerned and the time has come to go further in the reforms.

The Premier said he wants to "wipe the slate clean" and restore public faith in his state's political system after a corruption inquiry this month cast a damaging shadow over some of his ministers' links with property developers.

The Premier is also quoted on 22 March 2008 in news.com:

"I believe it's time to consider a ban on all political donations and move to a system of full public funding (of political parties)," Mr lemma said.

The *Sydney Morning Herald* of 22 March 2008 quotes comments from Karl Bitar, the New South Wales

Australian Labor Party Secretary, about the party's supplementary submission to the Electoral Funding Inquiry:

This supplementary submission by NSW Labor advocates a ban on all private donations to political parties in favour of a system of full public funding. This overhaul of the existing system of funding and disclosure would help restore the public's faith in political decision making.

At the 2003 annual general meeting of the large property developer/investor Mirvac, chairman Adrian Lane candidly admitted that Mirvac makes \$150,000 worth of political donations nationally because it is "critical to have access to the decision makers". Bob Carr is quoted in the 2 February 2003 edition of the *Illawarra Mercury* as stating:

Political parties need money to pay for advertising that is very expensive. In modern government, any significant investor is going to have access at some level to government. We're concerned that without access to a minister or public servants, they'll take that investment to another state (or nation).

John Thorpe of the Australian Hotels Association stated on the ABC TV *Stateline* program on 20 February 2004:

Look, what helps is this—you attend as an observer, as I did, at the ALP national conference. Yes, it costs money. But we did get interviews with ministers, we did get interviews with staffers, and that does help us in our policies and our regulations.

Dr Carmen Lawrence, former Premier of Western Australia and former Australian Labor Party National President, said:

It disturbs me, as it should all citizens, that there are some who are more equal than others. Corporations do not make large donations out of a charitable impulse or a commitment to civic duty.

In 2007, Paul Keating, former Prime Minister, said:

The New South Wales planning Minister—whoever that may be from time to time: they do have a history of not lasting—is the mayor for Triguboff, and the mayor for the other developers who've got projects over a certain value.

At this speech to the Local Government Association conference in 2007, he went on to say:

The wall of money coming at a Minister in these jobs is phenomenal because, as you know, the industry is into political donations, which in my opinion should be outlawed.

Mark Arbib, former New South Wales Labor Party Secretary, stated in the *Australian* of 5 November 2004:

With elections becoming much more expensive, political parties are more and more reliant on corporate donations.

It's time for the party to develop new policies to counter this reliance and to ensure the integrity of Australia's political system is maintained.

The *Australian Financial Review* on 13 October 2003 stated:

According to Lend Lease they no longer make political donations because of the "perception that it seemed to conjure up in the industry of what you got in return."

Genia McCaffery, Mayor of North Sydney and President of the Local Government Association, said she personally supported public funding of elections instead of funding from donations. According to the *Wentworth Courier* of 19 March 2008, Councillor McCaffrey said:

The investigation of Wollongong Council had created a public perception that donations influence policy.

Nick Ebbeck, the Mayor of Ku-ring-gai, said the large amount of money that certain developers had donated to political parties—

[*Time expired.*]