Local Government Amendment (Disqualification from Civic Office) Bill 2016

Second Reading

The Hon. PETER PRIMROSE (15:46): I move: That this bill be now read a second time.

The object of the Local Government Amendment (Disqualification from Civic Office) Bill 2017 is simple. It is to disqualify property developers and real estate agents from holding the office of councillor or mayor of a local council or, in the case of a county council, the office of chairperson or member. This bill is an opportunity for the Parliament to draw a line under the corruption and perceptions of corruption that have bedevilled local government in this State for decades. No political party has been immune. But now the New South Wales Liberals and Nationals have a choice. They can join with the New South Wales Labor Opposition, show that they have learned the same hard lessons that we have learned, and put an end to this corruption in local councils once and for all. Or they can choose to close their eyes until it happens again, because it will happen again—and again, and again.

If this bill fails, then no amount of posturing by the Government about integrity and reform in local government will hide the fact that those opposite had the choice to fix it and were found wanting. This is a watershed issue on which the community will judge Premier Berejiklian. I urge her to make the right choice. What is crystal clear is that throughout this State, in every locality and community you visit, it is the wish of the people of New South Wales that real estate agents and developers not sit on local councils. The message this bill will send is clear: No more; the jig is up. The current legislation does not prevent developers and real estate agents from seeking election to councils. The most recent and much hyped crackdown by the Government on property developers sitting on councils consisted of simply requiring them to declare whether they were a developer on their nomination form.

Recent media reports have confirmed that some candidates seeking election to council, who would fall within the existing definition of "property developer", have not always made that declaration. In any case, this declaration is not publicly available after the period of the election, thus nullifying the claims of transparency. This was promoted as a key part of the Government's so-called reforms to "restore community confidence" in local government, along with measures requiring developer councillors to disclose their income sources. But no government agency was given responsibility for checking such statements, and the Office of Local Government has stated lamely that members of the public and other councillors were best placed to do this monitoring.

In this bill, the existing enforcement provisions in the Local Government Act will apply. It was incredible that it took the surreal wedding of a developer councillor to finally embarrass the Government enough for it to even bring its measures to Parliament last year. The elephant in the room of course—which is obvious to everyone except the Government—is that the real problem is not simply having a mechanism to self-identify if a councillor is a property developer; the real problem is allowing them to be councillors in the first place. The Opposition has no problem with people being developers or real estate agents. These are both perfectly legitimate professions in our community. We need the experience and advice of real estate agents when buying and selling real property, and we need developers to bring together the investment required for the construction of housing estates, shopping centres and other developments of all sizes in our communities.

However, there is just too much of a conflict of interest in being either a developer or a real estate agent and also sitting on a local council. This is stunningly obvious to everyone in New South Wales except members of the New South Wales Government. When someone is involved in a property development business or a real estate business, the conflicts of interest are just too great to overcome when they sit as local councillors. The common sense of the people of New South Wales, born of experience, demands that we sever that link once and for all. How many more local government scandals do we need to have before we, as members of Parliament, decide that a person can be either a property developer or a local councillor, but not both; or that a person can be a real estate agent or a local councillor but not both?

The long title of the bill is "An Act to amend the Local Government Act 1993 to disqualify property developers and real estate agents from holding civic office". New section 275 (10) defines a "property developer" as having the same meaning as it has in section 96GB of the Election Funding, Expenditure and Disclosure Act 1981. This section provides that "property developer" includes a person who is a close associate of a property developer. The precise definition in the Election Funding, Expenditure and Disclosure Act 1981 is:

(1)Each of the following persons is a property developer for the purposes of this Division:

(a)a corporation engaged in a business that regularly involves the making of relevant planning applications by or on behalf of the corporation in connection with the residential or commercial development of land, with the ultimate purpose of the sale or lease of the land for profit,

(b)a person who is a close associate of a corporation referred to in paragraph (a).

(2)Any activity engaged in by a corporation for the dominant purpose of providing commercial premises at which the corporation or a related body corporate of the corporation will carry on business is to be disregarded for the purpose of determining whether the corporation is a property developer unless that business involves the sale or leasing of a substantial part of the premises.

(3)In this section:

close associate of a corporation means each of the following:

(a)a director or officer of the corporation or the spouse of such a director or officer,

(b)a related body corporate of the corporation,

(c)a person whose voting power in the corporation or a related body corporate of the corporation is greater than 20% or the spouse of such a person,

(d)if the corporation or a related body corporate of the corporation is a stapled entity in relation to a stapled security—the other stapled entity in relation to that stapled security,

(e)if the corporation is a trustee, manager or responsible entity in relation to a trust—a person who holds more than 20% of the units in the trust (in the case of a unit trust) or is a beneficiary of the trust (in the case of a discretionary trust).

"Real estate agent" is defined as having the same meaning as it has in the Property, Stock and Business Agents Act 2002. In that Act, the definition is as follows:

" r eal estate agent " means a person (whether or not the person carries on any other business) who, for reward (whether monetary or otherwise), carries on business as an auctioneer of land or as an agent:

(a)for a real estate transaction, or

(b)for inducing or attempting to induce or negotiating with a view to inducing any person to enter into, or to make or accept an offer to enter into, a real estate transaction or a contract for a real estate transaction, or

(c)for the introduction, or arranging for the introduction, of a prospective purchaser, lessee or licensee of land to another licensed agent or to the owner, or the agent of the owner, of land, or

(d)collecting rents payable in respect of any lease of land and otherwise providing property management services in respect of the leasing of any land, or

(e)for any other activity in connection with land that is prescribed by the regulations for the purposes of this definition,

but does not include a person who carries on business as an auctioneer or agent in respect of any parcel of rural land unless the regulations otherwise provide.

These definitions were chosen because they have been endorsed previously by this Parliament. They have been the subject of judicial review as a consequence of numerous legal actions, which have interpreted and defined their meaning in law. Should the Parliament at any time choose to refine or revise the meaning of these terms in their respective Acts, then their meaning in the Act proposed by this bill would consequently change also. New section 275 (8) specifies that if a real estate agent or property developer is an existing councillor or mayor, they are not disqualified from holding civic office as a consequence of the commencement of the proposed Act for the balance of their term of office or for the period of two years, whichever is the shorter period.

New section 275 (9) specifies that a real estate agent or property developer is not disqualified as a consequence of the commencement of the proposed Act from being nominated for election or being elected to a civic office. However, if they are elected they are disqualified from holding that civic office unless they cease being a real estate agent or property developer before the first meeting of the council after the election, or it is an election as mayor by councillors during the period that the person is not disqualified by operation of section 275 (8). In the High Court decision in McCloy v New South Wales in October 2015, it is worth noting the submission made by the New South Wales Government at page 19. I quote from the decision:

New South Wales submits that the degree of dependence of property developers on decisions of government about matters such as the zoning of land and development approvals distinguishes them from actors in other sectors of the economy. Property developers are sufficiently distinct to warrant specific regulation in light of the nature of their business activities and the nature of the

public powers which they might seek to influence in their self-interest, as history in New South Wales shows.

These submissions of New South Wales should be accepted.

The Berejiklian Government should also accept the argument that the New South Wales Government's legal experts made in McCloy—that is, that property developers warrant specific regulation—and support this bill. Further, through its policy of forced council mergers, the Government has made this bill even more important. The Government has forcibly merged dozens of local councils throughout the State, making the honeypot even more enticing. A forcibly merged Canterbury and Bankstown council now covers a population the size of Tasmania. Surely the Government recognises that an elected position on such a mega council would be seen as a lucrative prize for anyone who wants to influence land use planning decisions in that local government area?

Despite promises by the former Premier that spending caps would be introduced for local government elections in time for the September 2016 elections, the Government has still not legislated them. With the next round of local government elections occurring in September 2017, time is running out for the Government to deliver on its promise. This bill provides the other necessary tranche of protections expected by the New South Wales community by disqualifying property developers and real estate agents from sitting in elected positions on local councils. I commend the bill to the House.