

Privileges Committee

Citizen's Right of Reply

(Leda Holdings Pty Ltd)

Ordered to be printed 23 February 2012

New South Wales Parliamentary Library cataloguing-in-publication data:

New South Wales. Parliament. Legislative Council. Privileges Committee.

Citizen's right of reply (Leda Holdings Pty Ltd) / Legislative Council, Privileges Committee. [Sydney, N.S.W.] : the Committee, 2012. – [vi, 6 p.] ; 30 cm. (Report 58 / Privileges Committee)

Chair: The Hon Trevor Khan MLC.

"Order to be printed 23 February 2012"

ISBN 9781920788438

1. Leda Holdings Pty Ltd.
2. New South Wales. Parliament. Legislative Council.
3. Right of reply—New South Wales.
 - I. Title
 - II. Khan, Trevor.
 - III. Series: New South Wales. Parliament. Legislative Council. Privileges Committee. Report ; 58

328.944 (DDC22)

How to contact the committee

Members of the Privileges Committee can be contacted through the Committee Secretariat. Written correspondence and enquiries should be directed to:

The Clerk

Privileges Committee

Legislative Council

Parliament House, Macquarie Street

Sydney New South Wales 2000

Internet www.parliament.nsw.gov.au

Email privilege@parliament.nsw.gov.au

Telephone (02) 9230 2323

Facsimile (02) 9230 2761

Terms of reference

The inquiry was conducted in accordance with standing orders 202 and 203.

Committee membership

The Hon Trevor Khan MLC	The Nationals	Chair
The Hon Amanda Fazio MLC	Australian Labor Party	Deputy Chair
The Hon John Ajaka MLC	Liberal Party	
The Hon Jenny Gardiner MLC	The Nationals	
The Hon Matthew Mason-Cox MLC	Liberal Party	
Revd the Hon Fred Nile MLC	Christian Democratic Party (Fred Nile Group)	
The Hon Peter Primrose MLC	Australian Labor Party	

Table of contents

Report		1
Appendix 1	Reply to comments by the Hon Cate Faehrmann MLC in the Legislative Council on 9 November 2011	3

Report

- 1.1 Standing orders 202 and 203 of the Legislative Council provide a mechanism for a person who has been adversely referred to by a member of the Legislative Council in proceedings of the House to seek a right of reply through the incorporation of a response in *Hansard* or in the *Minutes of Proceedings*.
- 1.2 On 24 November 2011, the President of the Legislative Council, the Hon Don Harwin MLC, received a submission from Mr Reg van Rij, Regional Manager-Residential, Leda Holdings Pty Ltd, requesting the incorporation of a response under standing orders 202 and 203. The submission was provided on behalf of the Leda Group of companies and its Executive Chairman, Mr Bob Ell.
- 1.3 The submission referred to comments made by the Hon Cate Faehrmann MLC concerning Leda Holdings Pty Ltd during debate in the Council on 9 November 2011.¹ The President, having considered the submission under standing order 202(2), referred it to the Privileges Committee on 25 November 2011.
- 1.4 The Committee met in private session on 21 February 2012, and decided, according to standing order 203, to consider the submission. The response, which the Committee now recommends for incorporation in *Hansard*, has been agreed to by Mr Reg van Rij, on behalf of the Leda Group of companies and Mr Ell, and the Committee, in accordance with standing order 203(4)(b).
- 1.5 The Committee draws attention to standing order 203(3)(b) which requires that, in considering a submission seeking a citizen's right of reply, the Committee must not consider or judge the truth of any statements made in the House or in the submission.
- 1.6 The Committee recommends:

Recommendation 1

That a response by Leda Holdings Pty Ltd, in the terms specified at Appendix 1, as agreed to by Leda Holdings Pty Ltd and the Committee, be incorporated in *Hansard*.

The Hon Trevor Khan MLC
Chair

¹ *LC Hansard* (9/11/2011) 7163-7164.

Appendix 1 Reply to comments by the Hon Cate Faehrmann MLC in the Legislative Council on 9 November 2011

I write on behalf of the Leda Group of companies and its founder and Executive Chairman, Mr Bob Ell, to highlight the errors of fact and the distortions contained in a speech in the Legislative Council on 9 November 2011 by The Greens member, the Hon Cate Faehrmann MLC.

In consequence, the Leda Group and Mr Ell have been adversely affected in reputation and in respect of dealings or associations with others, and injured (with potential for further injury) in occupation and/or trade.

I accordingly request that Leda and Mr Ell be afforded a Citizen's Right of Reply.

Leda's projects in Tweed Shire, planned to commence shortly, will over the next twenty years create 10,000 homes, accommodate a population of some 23,000 and affect 30,000 direct and indirect full-time employment positions.

The particular point of Ms Faehrmann's statement concerned an issue currently being investigated by the National Parks and Wildlife Service, about which, therefore, Leda considers it inappropriate presently to comment, other than to say that the company is providing its full cooperation.

Ms Faehrmann's statement also includes, however, various misrepresentations of Leda and its Executive Chairman.

The first category of misrepresentation made by Ms Faehrmann relates to a so-called 'history of illegal vegetation clearing'. In relation thereto she made the following assertions:

'As well as the recorded conviction for illegal clearing...' (this with reference to an incident in the Gold Coast City Council area some four years ago).

There was no conviction. In fact, Leda has never been convicted or fined for unlawful clearing. In this instance, agreement was reached with Council about required remediation and recorded in mutually agreed Orders, and Council did not seek to prosecute Leda for any alleged offences.

Importantly, most of the clearing that had not yet been approved at the time it occurred subsequently became lawful by the Development Consent issued by Council. The concern was therefore about such clearing having been carried out before its approval was issued. Otherwise, agreed remediation was carried out to relatively small areas where clearing in excess of that required for urban development had inadvertently occurred.

'Once discovered, with legal pressure and the assistance of compliant consultants, he has managed to obtain retrospective approvals under dubious excuses and loopholes.'

Development adversaries would have it that Mr Ell has been guilty irrespective of the outcomes of due process, even in instances where the claims against him had no basis at all.

Characterisation of consultants as 'compliant' is typical of the manner in which ecological reports are simply dismissed by some when they are unable to successfully challenge the evidence with credible science. So, too, is typical the condemnation by development adversaries of proper and justifiable defences as 'dubious excuses and loopholes'.

'... at his Cobaki Lakes holdings - another mega-residential development - his company Project 28 (Leda Holdings) cleared a stand of old-growth scribbly gum and then had a consultant state that the trees were dangerous to human health. Council apparently accepted this claim.'

There is no basis whatsoever for this allegation.

There has never been any clearing of a stand of old-growth scribbly gum.

Leda's consultants are independent, highly credible and experienced professionals. The imputation that they adhere to what Leda would have them say is simply without any basis, and defamatory of them.

Council has never accepted a claim that any trees that had been cleared 'were dangerous to human health' as no consultant has made those comments.

Incidentally, the proprietor of the Cobaki Lakes Holding is Leda Manorstead Pty Ltd, not Project 28 Pty Ltd.

'On another occasion he [Mr Ell] excavated a section of Blacks Creek on the Kings Forest site through a State wetland claiming it was merely "drain clearing". This excuse was also apparently accepted by the Council.'

What is termed Blacks Creek had been constructed as a drain through Kings Forest before 1910, and maintained over the years as an integral part of the agricultural purposes to which the land was put. The land has also been continuously used for agricultural purposes since its zoning for urban purposes in 1988.

Accordingly, the maintenance of the drain is entirely lawful under 'Existing Land Use Rights'. Such Rights as they apply to Kings Forest exist under relevant planning law.

Accordingly, what was accepted by Council was not an 'excuse', but the facts in the context of Existing Land Use Rights provisions.

The second category of misstatements made by Ms Faehrmann concerns allegations of 'tactics of intimidation and bullying employed by Ell ...' In relation thereto the following assertions were made:

'Ell and Leda have sought to silence critics with threats of defamation'

There is no basis for this claim whatsoever. Threats of bringing defamation proceedings have never been made. Defamation proceedings, in as few as two instances throughout Mr Ell's 30-year property development career, were brought because they were felt warranted. On one occasion these proceedings were terminated on mutually agreed terms. It remains for the Court in due course to decide the other, based on the evidence.

Branding as 'intimidation and bullying' actions taken for which the law makes provision is entirely unwarranted.

'Leda recently supplied a 74-page dossier to local media with details of people they consider to be hurdles to their developments'

The dossier is in fact a report, backed by documentary evidence, that goes to specific complaints against Council's development assessment and reporting process as it affected just one of Leda's development projects.

The report was provided confidentially to Councillors and Council's General Manager, marked 'Not for publication'. It was first provided to the media by another party, not by Leda.

Leda is itself seeking independent investigation of the matters raised in the report, pursuant to which it has met with Council's Mayor and Deputy Mayor, with the Member for Tweed and with the Minister for Local Government. Leda's quest for proper, independent investigation of the matters raised could not be more clearly shown.

None of the persons identified in the report, in particular any 'local ecologist' or any Councillor, are in any way 'hurdles' to Leda's Tweed Shire developments, both of which obtained Concept Plan Approval in 2010. Our 5500-lot Cobaki project subsequently obtained a Project Approval (under Part 3A) and Development Approvals by Council for the first 1000 blocks, and Leda is presently attending to the requirements of these approvals prior to the anticipated commencement of works later this year. No external consultant or Councillor in any way presents a 'hurdle' to this.

Leda's 4500-lot Kings Forest project is presently the subject of a Part 3A Project Application which commenced public exhibition on 22 November 2011. 'Local ecologists' and others are free to make submissions to the application, which will be dealt with in the normal course of the assessment process.

Leda's report in no way targets anybody, but simply identifies the members of a small group consistently adverse to Kings Forest's development, and describes their activities relevant to the subject of the report itself.

The third category of erroneous and misleading statements by Ms Faehrmann is connected with the approval of the Kings Forest development.

'The former Government saw fit to give Ell ... approval for 4000 homes ... despite the high conservation value of the site and strong concerted community opposition'

Kings Forest was first zoned for urban expansion in 1988, by a Council of which the then Mayor was Max Boyd.

Commencing in 1998, there were two Local Environment Studies of the Kings Forest expansion. The first was when Max Boyd was Mayor, and the second when the Council was under Administration. Both recommended essentially the same, relatively minor adjustments to the original zonings.

Despite this eight-year process, Council was still unable to resolve the issue. The site was therefore 'called in' by the Minister for Planning, and a State Significant Site Study followed, with the Department of Planning engaging a team of independent ecologists to advise it. Again, essentially the same zoning recommendations were arrived at.

The Minister accordingly resolved the zonings in 2006. The Concept Plan subsequently approved by the Minister simply responded to development of Kings Forest foreshadowed over 20 years before, and allowed a yield less than that anticipated by Council from the outset.

'It was also despite opposition from the then Department of Environment and Conservation'

The 'opposition' of that Department had been in respect of the zoning of a particular, limited part of the site, not of its zoning as a whole.

It was resolved by negotiations with the Department of Planning held in the context of Court Orders to the effect that the Department of Environment and Conservation was 'to use its best endeavours to progress the making of the Local Environment Plan (LEP) for Kings Forest' and to 'participate fully in discussions with the Department of Planning and/or Tweed Shire Council regarding the making of the LEP'.

These matters are comprehensively dealt with in Leda's report referred to earlier.

'It appears that Leda may not be content with the approval granted'

The fact that Leda is content with the current approval is clear from the very limited nature of the modifications subsequently applied for and obtained. The Project Application to be publicly exhibited from 22 November 2011 further confirms this.

'It is thought that they want ... to provide a second access to the Kings Forest Development'

Leda has not previously wanted, does not now want, nor will it in the future want a second access. Again, this is self evident from applications made to date and will be more so from the Project Application to be exhibited, all of which maintain the single access to Kings Forest contemplated in detailed planning for at least the last ten years.

Throughout Ms Faehrmann's speech, the use of terms such as 'it is understood that ...', 'it is thought that ...', 'has a reputation for ...' and 'many other instances ...' are not connected with any identified persons or groups or founded upon any established facts.

It is appalling that a Member makes statements to the Legislative Council having no factual basis and being nothing more than unsupported and damaging assertions.