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Sunshine Coast & Hinterland

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9 October 2012

State Development, Infrastructure and Industry Committee
Queensland Parliament
Parliament House
Brisbane QLD 4000

sdiic@parliament.qld.gov.au

Dear Sir/Madam,

RE: Sustainable Planning and Other Legislation Amendment Bill 2012 (Qld)

I am writing on behalf of the Sunshine Coast and Hinterland Branch of the Wildlife Preservation Society of Queensland to state our total opposition to the changes proposed in the SPOLA Bill in relation to the awarding of costs in the Planning and Environment Court (P&E Court).

The existing arrangements have each party bearing their own costs except for limited exceptions, such as where the P&E Court can rule that an appeal was "frivolous" or "vexatious". Planning decisions often have a direct impact on a whole community.

If the community, or community association, decides to appeal the decision, they will now, if these changes go ahead, run the risk of being made personally bankrupt or their community association wound up if, as the Bill proposes, a P&E Court ruling goes against them.

Clearly ordinary Queenslanders will be scared off from taking part in appeals if they run the risk of a crippling P&E Court cost order which would be in the order of $100,000 to $1 million.

The 'own costs' rule reflects the obligation on the Court to advance the purposes of the *Sustainable Planning Act 2009* (and its predecessors) by "*providing opportunities for community involvement in decision making*".

There does not appear to be any valid justification provided for the changes with court data indicating less than 3% of development applications being appealed and over 90% of these being resolved without a full hearing.

Community groups are always reluctant to become involved in the complexities and expense of the Court process and do so as a last resort in an attempt to protect their local environment, amenity or lifestyle.

For example, a community group, the Yandina Creek Progress Association, was a co-respondent in a P&E Court appeal against a quarry in a rural residential area. They raised over $80 000 and had their own legal representation and were successful with Council in having the quarry application rejected. We understand that they have indicated that if there was the possibility of bearing costs of the other party they would have not proceeded with the legal appeal process.

Some years ago, the Caloundra Branch, as it then was, of the Wildlife Preservation Society of Queensland appealed a Council decision for a residential development close to the Pumicestone Passage. The appeal was unsuccessful and each party paid their own costs.

If these proposed changes had been in place there would have been no way that the Branch would have even considered an appeal, knowing that if the judgement went against them, they would have had to find many thousands of dollars to pay court costs.

The proposed change to cost orders will therefore effectively shut the door on any community involvement in Court appeals.

Another impact for the community will be their reluctance to instigate P&E Court action for breach of conditions of development. In some cases non compliance can have direct impacts on their health and amenity.

For example, noise, vibration and dust from the improper operation of a quarry.

The community will again be scared off from taking action to protect their rights by the possibility of a costs order.

We request that the State Development Infrastructure and Industry Committee reject the present position of the Bill and require amendments which would continue to allow community involvement in the Court process.

Yours faithfully,

Jill Chamberlain

Jill Chamberlain OAM
President