

Mrs Jennifer Peat



9th October 2012-10-09

State Development, Infrastructure and Industry Committee
Parliament House
Brisbane Qld 4000
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Submission on the Sustainable Planning and Other Legislation Amendment Bill 2012

I submit that amendment of s 457 (Costs) of the Sustainable Planning Act 2009 is not in the best interests of justice within the Queensland legal system.

As I hold strongly to the view that the provisions of a local Planning Scheme should be interpreted and administered in a fair and equitable manner that is comprehensible to members of the general public, I have been involved in various appeals to the Planning and Environment Court as

- i) a member of an applicant community organisation
- ii) a member of a co-respondent community organisation
- iii) an individual unrepresented co-respondent and
- iv) a legally represented co-respondent.

I have argued both with and against the position of our local Council and I have experienced favourable and unfavourable decisions of the Court.

It is my opinion that community members can provide valuable insights into the assessment of development applications and into appeals. Planning Officers within Councils cannot be expected to have the expertise to assess all aspects of the technical reports which may accompany development applications. Neither can they be expected to understand fully and give appropriate weight to all individual and local community concerns. Sometimes they just get it wrong!

Example 1:

On Tamborine Mountain over several years Council allowed a number of “minor changes” to a development approval originally given by the Planning and Environment Court until the cumulative effect meant the proposed development bore little resemblance to the original plan. The local community group, Tamborine Mountain Progress Association Inc., spent

almost a year approaching Council and seeking independent legal advice as to the lawfulness of the final design, which was held by the community to be totally inappropriate to the site and Tamborine Mountain in general. Despite being informed of the legal advice obtained by the community Council held firmly to the view that all was in order. An application to the Planning and Environment Court by the Association was generally upheld with the judge commenting at one point, "Council's decision is, with respect, inexplicable and incomprehensible". *Tamborine Mountain Progress Association Inc. v Scenic Rim Regional Council and Anor* [2009] QPEC. 3122/2008

Example 2:

From minutes of an onsite meeting to discuss a proposal for a commercial development in a residential zone, albeit adjacent to a commercial zone,

"Council Officers advised the Applicant that the submitted application in its' (*sic*) current form would be unlikely to be supported.....", i.e without a supermarket included, and

"The Applicant agreed with Council's request to amend the current proposal to reflect a development that is predominantly of a Supermarket nature....."

The supposed need for a supermarket was not mentioned during the development of a new Planning Scheme which was taking place at the time. Approximately 1000 submissions were made during the Public Notification stage with well over 900 being opposed to the idea. A decision was delayed while the proposal was sent out for a peer review twice and twice it came back with a recommendation for refusal. Council Officers still prepared a report recommending approval but the developer appealed against a deemed refusal. Referring to the officers' report the judge commented

"[47] The Planning Officers' report considered the submissions but dealt with them rather peremptorily. ..."

The appeal was eventually allowed but there is still much disquiet in the community about the development's impacts. *Gaven Developments Pty Ltd v Scenic Rim Regional Council & Ors* [2010] QPEC 51

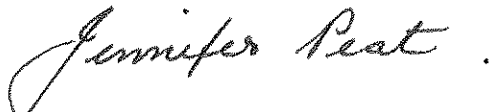
In both these examples residents were seeking to protect their community within their understanding of the relevant Planning Scheme. There was strong support from a population of approximately 7,000 people. Neither action was undertaken lightly and there was no financial benefit for the community participants. That the outcomes were different demonstrates how difficult it is to assess the probabilities in advance. The examples also demonstrate that Councils are not always correct.

If costs were to follow the event, as proposed in the amendments, community groups and individuals could not risk having to pay a developer's costs in addition to their own; costs over which they would have no control. Therefore they would be denied the opportunity to put forward their quite valid arguments and have them tested and evaluated against the weight of opposing arguments.

Councils, too, would be in an invidious situation, knowing refusal of a development application might well be contested with no surety of outcome. They would be risking indeterminate amounts of rate-payers monies, whereas a developer, with much to gain and tax deductible write-offs, could consider hundreds of thousands of dollars well spent in an all-out effort to overwhelm a Council's ability to pay both its costs and the developer's in the event of a development approval. Whilst this could be a one-off situation for the developer, it could occur many times in a financial year for a Council determined to try to uphold the intents of its Planning Scheme.

When coupled with the proposal that Councils could accept development applications without all the mandatory requirements, Councils would be left with little ability, financially, to oppose applications, no matter how inconsistent with a Planning Scheme or detrimental to the well-being of residents and/or the natural environment.

I consider that the proposed amendments do not promote equity but instead give unrestrained power to those who are perceived to have the funds to use the threat of court action as an overpowering disincentive to opposition, in every possible stage of a development application. I therefore submit that they should not be implemented.

A handwritten signature in cursive script that reads "Jennifer Peat".

Jennifer Peat