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State Development, Infrastructure and Industry Committee

Dear Committee Members,

I wish to comment on the Sustainable Planning OLA Bill being considered.

I am very concerned that the Bill provides that the "own cost" rule will be removed from the Planning and Environment Court and, instead, that the loser of the case pays all the costs.

I have been involved in a case before the Planning and Environment Court of the last 3 years. Without in any way debating the merits of the case, I wish to tell you of my circumstances, the extent of my involvement and the effect that the proposed legislation would have had if it had been the rule.

1. **Background**

Over the past 25 years I have been concerned about development in a particular area. I have been very active in this concern with numerous letters, publicity, fundraising, forming an organisation and doing everything that I could do, as a citizen, to ensure the environmental integrity of an area along with appropriate public use.

I was a teacher but am now retired on a part pension.

An application was made by a developer for a substantial development, the application was refused by the council on the instructions of DERM, the developer appealed and I joined the action as an agent for a number of people who nominated as Co-respondents by Election.

I could not afford to employ experts or a solicitor and this was the case with all of the people for whom I acted as an agent.

I have no legal training and relied, initially, on The Community Litigant's Handbook. The judge was very understanding and helpful as were all the other parties when I made errors and I tried very hard to not waste the time of the court and the other parties.

2. **Extent of Case**

After 2 years and over 20 appearances in the preliminaries, the case commenced in January 2012 and ended in June with 34 days of evidence and 4 days of submissions. The developer and DERM employed QC's and there were numerous expert witnesses employed for extended periods.

Costs for the developer would have been several millions of dollars.

It would not be appropriate for me to comment on the actual case as His Honour has reserved his decision.

But I can say that, because of my long involvement with and knowledge of the area, I was able to bring important information before the court, both in statements and in cross examination, that otherwise would not have been known to the court.

3. Effect of Bill

Had the bill been in effect at the time of the commencement of the appeal, neither I nor any of the parties that I represent would have been a party to the case. None of us could have carried the costs had we received an adverse decision. Although we believed that our case was very well based, and we still do, we could not have carried the risk of an adverse decision. We would also not have engaged as we would not have been able to satisfy the implied commitment of carrying adverse costs on losing. Although we believed that the risk of an adverse finding was small, the extent of the damage to us, would have meant that we were not parties.

As far as I and the parties I represent are concerned, we would have been denied our chance to put our community case when it was decided in court. It should be noted that the application to develop attracted over 800 objections from a relatively small community and this reflects the concern that there was in the community about this development. A meeting that was independently chaired and held in the local area voted very strongly against the development (around 120 to 20). If it is the aim of the planning process to involve the local community it would be a very retrograde step to effectively deny the local community representation at the place of decision, the court.

I believe that the community parties in this case contributed substantially to the information before the court. I also think that the other parties would believe this. We do not have the judgement of the court which may assist you in assessing the value of our contribution to the court. If it becomes available in the future while you still have this matter under deliberation, I will seek to send it to you with reference to our contribution.

The Planning and Environment Court allows and encourages community litigants so that it is a place that is accessible to all. The judges and practitioners of that court have worked to encourage and assist community litigants. Evidently there is an opinion that the community litigants add something of value. Also the ability to access the court by anyone is valuable in itself. We, who are not rich or trained in legal matters can have our view and information heard by a court. This is a privilege that I value highly and I have sought to use the privilege for the advantage of the court process and the community.

There is almost no hope of community litigants taking part if the “own costs” rule is discarded.

4. Timeframe

I received word of this proposed change on 10 October and immediately prepared this response. There are many other people who, I believe would appreciate the opportunity to make a response but with a date of 12 October as the close it is very unlikely that I will be able to contact others and they then get their response in by the date. It would assist if the committee could extend the date.

5. Conclusion

The basis for a democracy is the community and it is essential that communities have the maximum involvement in matters that are important to them. Planning is such an area. Planning is an area of conflicting views and, if it comes before a court, the court must decide. But the benefit of having a

full range of views before the court will be lost if the own costs rule is changed. It would be retrograde step to remove the community's right to put information before the court and participate in the process. And the community will be more likely to accept judgements that are against their views if they have had opportunity to contribute.

It may be argued that community, and other parties, waste the time of the court and the time and resources of the other parties. But the court, presently, has the power to order costs against any party that wastes time and resources. It is not a "free for all" The court has ordered costs against community litigants when it felt that they were wasting time and resources in the past. In my case, I certainly did not want to abuse the privilege but, even if I had, I was well aware of the potential awarding of catastrophic costs.

There is an old saying, "If it isn't broke, don't fix it" The current system works. It has the advantage s both from the greater access to information and views that it provides to the court and the important matter of community participation.

Please keep the "own costs" rule in the Planning and Environment Court.

Yours faithfully,

Reg Lawler

10 October 2012