From: [redacted]
To: State Development Infrastructure and Industry Committee
Cc: [redacted]
Subject: Changes to "own costs" rules in Planning and Environment Court
Date: Thursday, 11 October 2012 10:12:18 AM

Dear Sir/Madam,

I James George Primrose of [redacted] wish to submit an objection to the proposed changes in the cost provisions currently in place in the Queensland Planning and Environment Court.

I object to the changes in that:-

The Bill **WILL**:

- deny all but the most wealthy the ability to take legitimate cases before the Queensland Planning and Environment Court, through fear of crippling costs orders;

- tip the scales of negotiation and dispute resolution in favour of large Councils and developers who can afford the risk of going to trial; and

- with negligible consultation, overturn a 20+ year rule which has served an important public interest of community involvement in planning decisions which affect everyone.

The Bill **WILL NOT**:

- reduce appeals by commercial competitors which have too much to gain to be dissuaded from “delay and obstruct” tactics, and are already at risk of costs orders;

- reduce appeals that lack reasonable planning grounds as they are already rare and subject to the risk of costs orders;

- improve early resolution of appeals which are already resolved 95% of the time before trial; or

- meaningfully improve development assessment as less than 0.1% of development applications are delayed by third party trials. The consultation with stakeholders prior to the Bill’s introduction was inadequate considering the importance of the proposed change and the general public, as far as we can tell was not consulted at all. As far as we could observe no rural stakeholders or landholder groups were consulted even as key stakeholders, even though the changes to the costs rules would make it harder for such groups to use the Court.

The Queensland Planning and Environment Court (**QPEC**), unlike commercial courts, hears planning and environmental matters that affect the whole community and future generations of Queenslanders. Examples of those matters include protection of heritage sites, survival of endangered species and protecting landholders from neighbouring developments such as mines and quarries.

The current rule that each party to proceedings in the Court bears its own costs, subject to limited exceptions, has been in place for over 20 years. All parties must pay for their own legal assistance or expert witnesses and volunteer their own time but, apart from limited exceptions, the parties do not currently have to pay the other side's costs if they lose. This is called the 'own costs' rule.

The 'own costs' rule serves the important public interest of enabling ordinary citizens or groups to dispute planning decisions or to seek to protect the environment, which affect the whole community, without fear of crippling costs orders. It also protects local governments and State agencies from the risk of such costs.

There are already protections in place from abuse of this system with the Court having power to award costs in circumstances such as where cases are frivolous or vexations or instituted primarily to delay or obstruct, or if there is delay in meeting the Court timetable. So ordinary citizens know that as long as they avoid any of the circumstances where the Court has power to award costs, they are safe from costs. This provides certainty whereas changing the costs rules by giving the Court a general discretion as to costs, as in the Land Court, would create high levels of uncertainty as to risks.

There is no evidence of widespread problems with this 'own costs' system with less than 0.1% of development applications being taken to trial by 3rd party appellants (including commercial competitors). The Court is internationally recognised for case management that sees 95% of matters resolved prior to trial. The number of appeals is declining and the number of matters resolved is increasing, defeating any argument of the QPEC becoming clogged.

The proposed change to costs following the event will disadvantage poor and middle-income people, mums and dads, non-profit community and non-profit environmental groups. They won't be able to risk

crippling costs orders or risk losing their house or their group even if they have a good legal case and even if they represent many people in the community concerned about a development proposal or seeking to stop illegal activity.

Contrary to the stated justifications for the proposed change to the cost rule:

The change won't discourage large commercial competitors, eg developers of major shopping centres, if they have lots to gain from instituting proceedings.

There is no evidence of a large number of unmeritorious appeals in the Court which has a similar rate of unsuccessful matters as those courts where costs follow the event.

Applicants already have substantial opportunities to challenge conditions of approval in the application, negotiated decision notice and ADR processes and there is no evidence that court costs are significantly curtailing applicant's rights in this regard.

It will not substantially improve early resolution - which is already at 95% - but instead, will favour the wealthy to use the threat of costs to dissuade meritorious actions by the less wealthy.

Even if the change did assist in the stated justification, it would have the unintended consequence of creating a barrier to ordinary citizens from raising valid planning and environmental issues in the QPEC. It would make local governments and State agencies unwilling to go to Court to protect the public interest, as they also would risk of such costs against them. In short it would throw out the baby with the bathwater.

J G Primrose.