To whom it may concern,

The following submission outlines my concerns in relation to the Sustainable Planning and Other Legislation Amendment Bill 2012 proposed by the Newman LNP Government. Furthermore it contains a recommendation that I make in addressing my concerns and ensuring my (and others) rights are retained.

Currently, without amendment, the Act enables concerned citizens and groups to challenge a proposed development in the Planning and Environment Court. Most importantly, in these challenges the current legislation stipulates that each party pays their own costs unless the Court deems one party to have been frivolous or vexatious with the Courts time.

I am concerned with the provision to;

> "Provide that the losing party in a proceeding pays the costs of the proceeding in the Planning and Environment Court of Queensland, unless the court orders otherwise. "

I believe that such a change will severely impact on the ability of average citizens, such as myself, to actively engage in the in development consultation process. I do not want my right to challenge a development that impacts on my community or my own home because I am unable to risk paying hundreds of thousands, if not millions of dollars if the case is ruled against me. I also fail to see any problems with the current system aside from the fact that it allows concerned individuals and groups to challenge developments that may have serious impacts on the community which means that developers cannot do what they please when they please. The current system allows for a natural consideration and monitoring of the development industry, by the community, in a way that is considered and relevant. To take away these rights by making it financially unviable will only benefit the developers and take away from a beneficial and considered process of active engagement by the community.

In particular, I raise the following concerns for consideration in the submission process;

- The loser (of the challenge) will be automatically required to pay the legal fees of **BOTH** parties.
- The current system (without proposed changes) sees the default position of the court as having each party bear their own costs.
- If the court deems one side to have been frivolous or vexatious the Court can order them to pay the other parties legal costs as well as their own which will still apply under the new conditions.
- The legal costs that may be accrued in these cases can be **hundreds of thousands**, even **millions of dollars** for large developers.
- Community groups and individuals may not be able to afford, or willing to take on the risk of losing even when they have a strong case due to the financial risk involved.

- Sean Ryan (Senior Solicitor EDO) suggests that in courts where this change is already in place local groups and individuals are less likely to take the risk irrespective of the strength of their case.
- Premier Newman promised **no change to the ability for people to legally challenge developments on environmental grounds** – technically he is keeping his promise however the risk of taking action makes taking action unviable for the average person.
- The proposed changes may have a potential **<u>suppressing effect</u>** on community engagement around local and broader development.
- The Government is making it the communities fault if they cannot afford the potential risk of paying both sides.
- This subtle and suppressing change to the legislation may see these applications go through without genuinely accessible opportunities for communities and individuals to have their say.
- Of the 17,000 development applications (approx) made per year only 10% are appealed by community groups and individuals however these 10% of cases will be the most serious affected by the changes.
- It has also been suggested that it may motivate people to solve their disputes pre-court however Sean Ryan again disputes this noting that the majority of these cases do not go to trial and that third party appeals (individual and community) will be most severely affected.
- It has been suggested that this may reduce pressure on the courts however Sean Ryan of the Environmental Defenders Officer (now without funding from the Newman Government) states that the impact will be negligible and does not justify the changes to the legislation.
- There is already a decline in appeals going to court or trial so this legislation will not promote any beneficial changes to the system.
- This legislation has been introduced to parliament and given the balance of power they are likely to be accepted – it is therefore critical that we as the community make a lot of noise.

(Sean Ryan – Senior Solicitor with EDO in an interview with Steve Austin 612ABC)

I seek to have this exclusionary and unnecessary amendment scrapped from the Sustainable Planning and Other Legislation Amendments Bill 2012 to ensure that the people can continue to engage in the development and growth of their local communities. By removing this amendment the Newman LNP Government can prove its commitment to consultation and engagement with the wider Queensland community around issues that have a direct impact upon them.

I would like to thank the State Development, Infrastructure and Industry Committee for their consideration of my concerns with the proposed Sustainable Planning and Other Legislation Amendment Bill 2012.

Alison Dower

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