Rural Environment Planning Association Inc.

11 October 2012

VIA EMAIL (sdiic@parliament.qld.gov.au)
State Development, Infrastructure and Industry Committee
Queensland Parliament
Parliament House
Brisbane QLD 4000

Dear Sir/Madam,

Sustainable Planning and Other Legislation Amendment Bill 2012 (Qld)

The Rural Environment Planning Association Inc. (**REPA**) is a not-for-profit Association formed for the express purpose of promoting sustainable planning in the western Brisbane suburbs of Brookfield, Upper Brookfield, Pullenvale, Pinjarra Hills, Anstead, Bellbowrie, Moggill and parts of Kenmore Hills. REPA was formed in 1973 and has participated in many cases in the Planning and Environment Court, most recently as a Co-Respondent in Appeals 3923/11 and 4834/11. These Appeals have now been withdrawn by the Applicant.

REPA is most concerned that the proposal in Clause 61 of the *Sustainable Planning and Other Legislation Amendment Bill 2012* (**the Bill**) removes the 'own costs' rule from the Planning and Environment Court and provides that:

> *"Costs of a proceeding, including an application in a proceeding, are in the discretion of the court but follow the event, unless the court orders otherwise".*

The current own costs rule in the Planning and Environment Court was included in the *Integrated Planning Act 1997* (**IPA**) which provided that each party bear their own costs in the proceeding. However the Court had the expanded discretion to order costs in circumstances including where the proceeding was frivolous or vexatious, instituted merely to delay or obstruct or the parties defaulted in procedural requirements. The own costs rule is continued with little modification in the *Sustainable Planning Act 2009* (**SPA**) and again reflects the obligation on the Court to advance the purposes of the SPA, including by "*providing opportunities for community involvement in decision making*". The current Clause 61 would actively discourage community involvement.

REPA understands that the current own costs rule has worked well in the Planning and Environment Court. REPA also has been advised that many cases are resolved before they come to Court and that the instigation of the use of Alternative Dispute Resolution (**ADR**) has been particularly effective.

The current own costs rule serves the important public interest of enabling ordinary citizens and associations such as REPA to dispute planning decisions, which affect the whole community, without fear of crippling costs orders. The proposed change would make the Planning and Environment Court similar to the costs rules of the Supreme Court which significantly discourages community litigation due to the fear of unanticipated and potentially excessive costs.

The law-makers have recognised that planning matters are different from general commercial disputes, such as contracts, because the decisions affect the whole community in which the development is located and not just the parties to the appeal. For this reason it is important that the broader community have the opportunity to be involved in decision making and, where appropriate, challenge decisions in court. The law-makers realised that the rule of costs following the event would discourage legitimate appeals due to the fear of crippling costs orders. Therefore the 'own costs' rule in the Planning and Environment Court serves an important public interest by enabling ordinary Queenslanders to raise legitimate concerns in court about planning decisions that affect the whole community.

These types of planning issues are true grass-roots matters. Sadly, the proposal to remove the 'own costs' rule can be interpreted in no other way than as an attempt to stifle the community's capacity to seek redress or to challenge decisions that are seen not to be in the interest of the community.

REPA requests that the original own costs ruling as in the current SPA be maintained.

Yours faithfully,

Jennifer Hacker

Mrs Jennifer Hacker
Vice-Chairman, Rural Environment Planning Association Inc.
41 Gap Creek Road
Kenmore Hills QLD 4069