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6th October, 2012

State Development, Infrastructure and Industry Committee
Queensland Parliament
Parliament House
Brisbane QLD 4000
(sent by email to sdiic@parliament.qld.gov.au)

Dear Sir/Madam,

Sustainable Planning and Other Legislation Amendment Bill 2012 (Qld)

The EDV Residents' Group Inc. is a community based organisation on the Sunshine Coast, in the hinterland of Noosa. We represent the interests of some 3,000 residents and have a membership and supporter base in the hundreds. One of our objects is to lobby on behalf of our community with respect to key government decisions that will impact on us.

Although we support the stated objectives of the State Government Planning Reform Process (streamlining planning; cutting red tape; re-empowering local government; and continuing to protect the natural environment) we have some major concerns that a number of the proposed legislative changes will not in fact achieve these objectives, and indeed create unintended financial risks for local governments, and local communities and in some instances even the state government.

Of particular concern are the proposed amendments to the long standing provision of "own costs" which apply to the Queensland Planning and Environment Court.

Our Group condemns any attempt by the Queensland Government to change the Planning and Environment legislation so as to award legal and Court costs of **both** parties to a development appeal against the losing party. Our grounds for this are three fold:

- Such a change would discriminate against the community in favour of the wealthy developer and would result inevitably in wealthy developers dominating the P&E Court process
- Such a change could influence smaller and less wealthy Councils from making decisions based solely on the planning merits of a development application to making decisions based on the risks of the litigation costs
- Such a change does not support the intent of either the reform process or the objects in legislation

This submission elaborates in more detail on the first and last dot point as we are sure that local authorities will be examining the impact of this legislation on their own operations.

The desirability of community participation in planning decision-making is specifically cited in the "PURPOSES" to the sustainable Planning Act 2009. Section 5 (g) on page 44 of the Act

states..."providing opportunities for community involvement in decision-making". However, it is abundantly clear that the proposed change to the existing rule on costs will effectively obliterate any such community involvement, and be at odds with the intent of the legislation.

This is a significant retrograde step and does not seem warranted by the court data which shows that 97% of development approvals were not the subject of any appeal, and that for every 1000 of these only 3 were the subject of a full appeal hearing by the Court. Accordingly, it makes no sense at all to change the established protocol on costs which is inherently fairer and non-discriminatory. It will do little to reduce "red tape" but its impact on the community will be significant.

No community group becomes involved in an appeal process unless the proposal has significant disadvantages with resultant negative impact on existing amenity and lifestyle. To place the potential of a large cost burden on a community group will effectively contravene the intent of the Act.

P&E cases can turn on esoteric legal technicalities which do not reflect the real issues underlying genuine community concern. Hence, well-reasoned and well-supported community protest will in some cases be extinguished by such a technicality and would result in the financial decimation of such a community group.

In non-P&E cases the losing party must pay the cost of both parties. Experienced litigants know that legal costs are often intentionally ramped up (e.g. by obfuscation and by engaging QCs) by the party with the deeper pocket with a view to intimidating or bankrupting the losing party. Many people believe that this is what Anna Bligh's government did to the Court challenge by Friends of Noosa in respect of the Council amalgamation. Such a tactic shows contempt for the Court process and a cynical disregard for community concern.

EDV respectfully urges a rejection of any clause in the legislation which would change the existing protocol and effectively extinguish community involvement, in clear contravention of the unambiguous statement of purpose in the Sustainable Planning Act.

Yours Faithfully



Johanne Wright
PRESIDENT

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