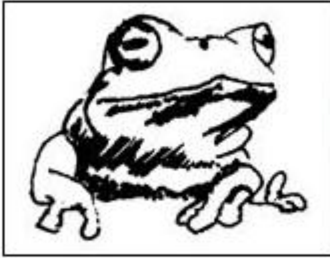

Mackay Conservation Group
156 Wood St., Mackay
P.O. Box 826 Mackay 4740
tel: (07) 4953 0808
e: mcgmail@bigpond.com
web: www.mackayconservationgroup.org.au
ABN: 41 123 973 975

11th 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)

Mackay Conservation Group is a regional environmental NGO covering northern Central Queensland from Bowen to Broadsound and west to the Queensland border. Among our duties we assist land owners and community groups in our region to find and understand relevant government legislation and policies and seek legal assistance if necessary. On rare occasion we also undertake legal cases on inappropriate developments in the Planning and Environment Court. I say rare because such undertakings are expensive even though under the present legislation, each party pays their own costs. We have found such costs against well-financed development companies can exceed $100,000. Such companies can afford to bring in numerous expert witnesses which can considerably delay a case. Community groups are fortunate if they can bring one in or two expert witnesses. This means that if the community group loses and wishes to appeal they face the prospect of meeting not only their own costs but also the costs of the developer.

The record shows that just paying their own costs dissuades many land owners and community groups from going to court for “frivolous” matters. These are not the sectors seeking to “drag out” long court procedures.

The proposed changes in the legislation as outlined in this proposed Bill would present he prospect of a community group facing both their own costs and that of the developer at the initial outset. This will result in far fewer cases from individual landowners and community groups, and even most Councils. It

seems to us that that is the intent of this Bill. But essentially it is a denial of due process and natural justice, and that it is biased in favour of developers and other who are wealthy enough to risk paying costs for both sides.

History shows that just paying their own costs dissuades many land owners and community groups from going to court for more minor matters such as may be handled by an Alternative Dispute Resolution process.

The Bill seeks to introduce an alternative dispute resolution process in the Planning and Environment Court for minor disputes. We see the merit in that but where does that leave land owners and community groups with more serious grievances and cases that may bring about improvements in environmental and planning outcomes, but who dare not risk unknown costs, especially those demonstrated in the expert witness example? Their voices will be silenced.

Doing away with the “own costs” rule also removes the lack of protection for local governments and State agencies from the risk of such costs.

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.

Contrary to the stated justifications for the proposed change to the cost rule:
- The change won’t discourage large commercial competitors, e.g. 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.

We are concerned about the lack of public consultation on this matter.

Community groups know that as long as they avoid any of the circumstances where the Court has power to award costs, such as “frivolous or vexatious” actions 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.

The Queensland Planning and Environment Court (**QPEC**), unlike other courts, hears planning and environmental matters that affect the whole community and future generations of Queenslanders. In that sense it is the “People’s Court” and should at least initially be affordable to all especially for the poor, those who represent from their own pockets to defend the “commons” and those who cannot speak such as threatened species and rivers and habitats of high ecological significance. We say keep the “own costs” rule.

KEY POINTS

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.

Recommendation:

Delete Clause 61 of the Bill to retain the current costs rules unchanged.

Remove regulatory 'red tape' for development applications involving a state resource;

Currently, where a development application involves a state resource, **evidence of an allocation or an entitlement to the resource is required when the development application is lodged to enable the application to be considered properly made and assessed**. Therefore, without a resource allocation, the development application is determined to have been **not properly made and the application cannot proceed until the allocation is obtained, potentially delaying the development's approval process**.

The Bill streamlines the development application process for applications involving a state resource by decoupling the development application process under the *Sustainable Planning Act 2009* from the allocation or entitlement process under other legislation. This will allow the application_to be assessed without evidence of an allocation or entitlement to the state_resource, and **enable the applicant to apply for a state resource allocation or entitlement prior to, concurrent with, or following the development application and assessment process**.

If we read this correctly a mining or development company could proceed with a development project without evidence of tenure or entitlement to a state resource, yet the application could still be processed! Where would public and landowner notification and consultation (in the case of leasehold lands) fit into this? It gives a developer property rights they are not even entitled to. We would expect such a change in the law to face legal challenges. Who bears legal responsibility if things go wrong: the State or the developer? This hardly seems the way to efficient and streamlined planning as stated as the goal for this Bill.

Provide some flexibility in the requirements for supporting information accompanying a development application;

For a development application to be considered properly made it must be accompanied by all the information required under the mandatory requirements of the Integrated Development Assessment System development application forms. This provision was introduced in the
Sustainable Planning Act 2009 to address the low quality of development applications being made at the time. However, due to improved practices and the greater clarity of what is required for adequate applications, the provisions are now often a barrier to the efficiency of the development assessment process.

The IDAS information is often the most thorough information available to the public for a submission on a development application. Its loss will severely restrict what information is available to the public on a project. This amendment will greatly restrict public access to enough information to understand the locality and impacts of a project, especially at an early stage in the project approval process. As the time for public submissions is severely limited this lack of adequate information at an early stage in the process will adversely affect good planning outcomes especially where community and environmental issues are affected.

The mandatory requirements of a development application (for example, consent of the land owner) must still be included in every application.
However, the mandatory *supporting* information may not always add value to the assessment of every development application and may therefore be unnecessary for some applications.

The Bill provides the assessment manager the discretion to accept those development applications which have sufficient information for assessment as being properly made, which will streamline the development application process for these applications.

An open and transparent development process is what this government committed to and restricting public access in this way is counter to this promise.

provide that certain provisions within the Queensland Planning Provisions also apply to local government planning schemes made under the *Integrated Planning Act 1997* (repealed);
After consultation with the development industry and local governments, it was identified that greater use of compliance assessment would simplify processes for development applications for certain low risk operational works e.g. car parking, sediment and erosion control, electrical drawings/internal electrical reticulation, and landscaping.

The success and efficiency of this depends greatly on the capacity of Councils to ensure compliance. Do they have the capacity to do this?

Sincerely,

Mrs. Patricia Julien,
Coordinator,
Mackay Conservation Group
156 Wood St.
P.O. Box 826
Mackay 4740
Ph: (07) 4966 8025 or (07) 4963 0808
E: pafjulien@hotmail.com