Development Watch Inc
PO Box 1076, Coolum Beach, QLD, 4573
ABN 53 627 632 278
www.developmentwatch.org.au

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

Dear Sir/Madam,

Submission on Sustainable Planning and Other Legislation Amendment Bill 2012 (Qld)

I am writing on behalf of Development Watch Inc an organisation whose principal objects are

1. To prevent inappropriate development in the Coolum area of the Sunshine Coast, Qld
2. To contribute to the formulation of relevant planning schemes, policies and regulations and monitor their application in the Coolum area.

To that end, we have initiated appeals and elected to co-respond in developer-initiated appeals. We are presently participating in four appeals in the Planning and Environment Court.

I object in the strongest possible terms to changes proposed in the SPOLA Bill in relation to the awarding of costs in the Planning and Environment Court (P&E Court).

The existing arrangements have each party bearing their own costs except for limited exceptions, such as where the P&E Court can rule that an appeal was "frivolous" or "vexatious".

There does not appear to be any valid justification provided for the changes with court data indicating less than 3% of development applications being appealed, less than 0.1% being taken to trial by third party appellants and over 90% of these being resolved without a full hearing. We understand that the number of appeals is declining and an increasing number being resolved so there doesn't seem to be any substance to suggestions that the P&E Court is being clogged.

Planning decisions often have a direct impact on a whole community who now run the risk of being made personally bankrupt or their community association wound up if, as the Bill proposes, a P&E Court ruling goes against them.

Clearly ordinary Queenslanders will be scared off from taking part in appeals if they run the risk of a crippling P&E Court cost order which would be in the order of $100 000 to $1million.

The present 'own costs' rule reflects the obligation on the Court to advance the purposes of the *Sustainable Planning Act 2009* (and its predecessors) by "*providing opportunities for community involvement in decision making*".

Community groups are always reluctant to enter the complexities and expense of the Court process and do so as a last resort attempt to protect their environment, amenity or lifestyle.

Development Watch has been a co-respondent in a number of appeals brought by developers against a Council decision to refuse a development application. In one case, Council wanted to withdraw from the appeal. However, we put forward a strong case to the Court that resulted in Council changing its mind and then vigorously and successfully defending the matter. We would not have joined in the appeal if there was the possibility of costs being awarded against us. If the Bill proceeds Development Watch will no longer be able to participate effectively in this decision making process.

The change to cost orders will effectively slam the door on any community involvement in Court appeals.

Another impact for the community will be its reluctance to instigate P&E Court action for breach of conditions of development. In some cases non compliance can have direct impacts on community health and amenity, for example, noise, from the improper operation of a quarry. The community will again be scared off by the possibility of a costs order from taking action to protect its rights.

The changes proposed are contrary to the LNP's stated philosophy outlined in its policy on empowering local government. The policy states *"The LNP aims to* ***empower Queensland communities with the responsibility for planning and development at the local level****, through decision making by local governments that are transparent and ultimately accountable to local people.*"[1] (emphasis added). Local communities endorse plans for their region and local areas. They expect Councils and developers to respect those plans and abide by them. The change to the "own cost" arrangement will mean that it will be easier for developers to bypass the endorsed community vision for their locality.

Significantly the proposed change to the "own costs" arrangement will also have consequences for Council decision making on development applications. Councils will be less willing to reject inappropriate applications because they may incur very significant costs if the P&E Court rules against them in a subsequent appeal. Clearly the proposed change cripples the Council's ability to represent its ratepayers and uphold the local planning schemes. The proposed Bill undermines the LNP's stated policy to *"..restore the power and authority for Councils to make better planning and development assessment decisions*" and that "*An LNP Government recognises Local Government as a primary authority for integrated local and regional land use planning and management*".[2]

The proposed Bill also shifts the cost burden from commercial operators to ratepayers. If Councils have to pay all the costs when there is a P&E Court ruling against them, ratepayers will be meeting those costs. This will increase the burden of living costs that the Newman Government has committed to alleviate.

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[1] LNP "Empowering Queensland Local Government" 2012 p3
[2] LNP "Empowering Queensland Local Government" 2012 p3

DW requests that the State Development Infrastructure and Industry Committee reject the changes to the awarding of costs proposed in the Bill and require amendments that would continue to facilitate the present community involvement in the Court process.

The Committee and members of Development Watch have authorised this submission.

Yours sincerely

Ms Marian Kroon

President