

GREENSLOPES BRANCH Australian Labor Party



Friday, 12 October 2012

To whom it may concern,

The following submission outlines the concerns of the Greenslopes Branch of the Australian Labor Party in relation to the Sustainable Planning and Other Legislation Amendment Bill 2012 proposed by the Newman LNP Government. Furthermore we make recommendations that would address our concerns and ensure the rights of the community 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.

Our Branch is 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. “

We believe that such a change will severely impact on the ability of average citizens to actively engage in the in development consultation process.

In particular, the following concerns are being raised 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 Environmental Defender's Office) 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 **suppressing effect** on community engagement around local and broader development.
- The Government is making it the community's' 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 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.

The Greenslopes ALP Branch seeks 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 show its commitment to consultation and engagement with the wider Queensland community around issues that have a direct impact upon them.

The Greenslopes ALP Branch thanks the State Development, Infrastructure and Industry Committee for their consideration of our concerns with the proposed Sustainable Planning and Other Legislation Amendment Bill 2012.

Yours Sincerely,

Joseph Kelly
President

Submitted on behalf of the members of the Greenslopes Branch of the Australian Labor Party