

PHILIP J GIFFARD

12 October 2012

The Research Director
State Development, Infrastructure and Industry Committee
BRISBANE QLD

Email: sdiic@parliament.qld.gov.au

**Re. Submission to an Inquiry into the Sustainable Planning and Other
Amendment Bill 2012.**

Thankyou for the opportunity to make a submission as above.

I do not attempt to review all the proposed amendments and have restricted myself to aspects which have been of critical relevance and concern to our community.

Tamborine Mountain is a locality under pressure from tourism and is exposed to irreversible damage from approval of unwise and/or insensitive developments.

While serving as a Beaudesert Shire Councillor, I was also elected to sit on the Planning and Development Committee. As a result, I gained a good insight into the possibilities for imprudent decisions.

For a considerable period I have authored a Council Watch column in a local newspaper and this is also now published on line by a community organisation. I have earned a very high profile among residents for my clear explanations of the dangers and possibilities of flawed process.

While I have not had time to prepare an exhaustive response to the proposed legislative changes, I believe extracts as below from recent editions of my column are particularly relevant and reflect concerns within our community.

Council Watch - Published 18 September 2012

It seems we have a very disturbing set of circumstances looming on the horizon. For some time, it has been common knowledge, accompanied by comment in the mass media, that there is to be a revision of State Government legislation related to the ground rules concerning development approvals. These changes could have a radical and damaging effect on the balance of community and developer interests. A very significant rumoured change is that the loser could be made liable for the winner's costs in the Planning and Environment

Court. The effects could be profound.

At present development applications are usually decided by the relevant Shire or City Council. The applicant can appeal the result to the Planning and Environment Court. At present, each party is liable for its own costs with the opposing party's costs not being awarded whichever side wins or loses. Even under these circumstances, some Councils seem reluctant to reject an application due to the costs that the Council could incur in defending its decision against an appeal. Developers often seem more willing to take the risk due to the potential profits should the development proceed.

Also, it is possible for community groups or individuals to become directly involved in the Court hearings since their liability for costs is clear - just whatever they wish to spend. I have personally been involved in such circumstances when I believed I could effectively put a point of view based on my own particular expertise or knowledge. In the Scenic Rim situation, this opportunity has been particularly significant since, for some reason that it is difficult to understand, the Council is unwilling to cooperate with local groups or individuals in presenting a concerted defence against appeals.

Now consider the situation if the ground rules are changed so that costs are awarded. Faced with the possibility of the dissatisfied applicant appearing at an appeal with an extended array of very expensive legal luminaries and expert witnesses, the Council would become more reluctant than ever to reject an application or even apply stringent conditions. The almost open-ended cost of a successful appeal would certainly bias the approval decision or even whether to defend an appeal. As for community groups or individuals, the risk of appearing would probably be unacceptable. I know it would in my case.

To add a further bitter taste, there is also the suggestion that the significance of local and state planning schemes could be watered down. This raises the possibilities of Council planners being even more flexible in their recommendations to Councils and more frequent over-riding decisions by Ministers. Unfortunately, on Tamborine mountain, we already have a history of recommendations being made even though there was clear and admitted conflict with local Planning Schemes.

Can we depend on Council to avoid the depressing scenario above? There must be doubts after seeing a recent interview with the Mayor of the Scenic Rim, Cr John Brent, as reported by the Beaudesert Times. I quote "Cr Brent is one of several mayors across the state pushing for changes to the (Local Government) Act, which he says imposes unnecessary red tape on Councillors and makes it difficult for them to properly represent the needs of ratepayers. Cr Brent, who has strong State Government connections, told the Times he was confident an amended Local Government Act would be tabled in State Parliament within the month". Further, "Cr Brent said he wanted to see council's body corporate status returned and conflict of interest provisions, misconduct guidelines and material personal interest guidelines reviewed. He said many elements of the act were restrictive and bureaucratic and the act had stripped Councillors of their right to properly represent the community which had elected them".

A statement like that could be interpreted as meaning that a project approval should be happily accepted as properly representing community interest even if passed by Council by a vote of 4 to 3 with watered down conflict of interest, misconduct and personal interest provisions applying. Add to that the possibilities of vulnerable planning schemes and of costs being awarded in the Planning and Environment Court, and the outlook for the community having a last line of defence if not properly represented in Council becomes very depressing indeed. I believe we have very good reason to be aware and worried.

Phil Giffard.

Council Watch - Published 2 October 2012.

It seems we have a very disturbing set of circumstances looming on the horizon. For some time, it has been common knowledge, accompanied by comment in the mass media, that there is to be a revision of State Government legislation related to the ground rules concerning development approvals. These changes could have a radical and damaging effect on the balance of community and developer interests. A very significant rumoured change is that the loser could be made liable for the winner's costs in the Planning and Environment Court. The effects could be profound.

At present development applications are usually decided by the relevant Shire or City Council. The applicant can appeal the result to the Planning and Environment Court. At present, each party is liable for its own costs with the opposing party's costs not being awarded whichever side wins or loses. Even under these circumstances, some Councils seem reluctant to reject an application due to the costs that the Council could incur in defending its decision against an appeal. Developers often seem more willing to take the risk due to the potential profits should the development proceed.

Also, it is possible for community groups or individuals to become directly involved in the Court hearings since their liability for costs is clear - just whatever they wish to spend. I have personally been involved in such circumstances when I believed I could effectively put a point of view based on my own particular expertise or knowledge. In the Scenic Rim situation, this opportunity has been particularly significant since, for some reason that it is difficult to understand, the Council is unwilling to cooperate with local groups or individuals in presenting a concerted defence against appeals.

Now consider the situation if the ground rules are changed so that costs are awarded. Faced with the possibility of the dissatisfied applicant appearing at an appeal with an extended array of very expensive legal luminaries and expert witnesses, the Council would become more reluctant than ever to reject an application or even apply stringent conditions. The almost open-ended cost of a successful appeal would certainly bias the approval decision or even whether to defend an appeal. As for community groups or individuals, the risk of appearing would probably be unacceptable. I know it would in my case.

To add a further bitter taste, there is also the suggestion that the significance of local and state planning schemes could be watered down. This raises the possibilities of Council planners being even more flexible in their recommendations to Councils and more frequent over-riding decisions by Ministers. Unfortunately, on Tamborine mountain, we already have a history of recommendations being made even though there was clear and admitted conflict with local Planning Schemes.

Can we depend on Council to avoid the depressing scenario above? There must be doubts after seeing a recent interview with the Mayor of the Scenic Rim, Cr John Brent, as reported by the Beaudesert Times. I quote "Cr Brent is one of several mayors across the state pushing for changes to the (Local Government) Act, which he says imposes unnecessary red tape on Councillors and makes it difficult for them to properly represent the needs of ratepayers. Cr Brent, who has strong State Government connections, told the Times he was confident an amended Local Government Act would be tabled in State Parliament within the month". Further, "Cr Brent said he wanted to see council's body corporate status returned and conflict of interest provisions, misconduct guidelines and material personal interest guidelines reviewed. He said many elements of the act were restrictive and bureaucratic and the act had stripped Councillors of their right to properly represent the community which had elected them".

A statement like that could be interpreted as meaning that a project approval should be happily accepted as properly representing community interest even if passed by Council by a vote of 4 to 3 with watered down conflict of interest, misconduct and personal interest provisions applying. Add to that the possibilities of vulnerable planning schemes and of costs being awarded in the Planning and Environment Court, and the outlook for the community having a last line of defence if not properly represented in Council becomes very depressing indeed. I believe we have very good reason to be aware and worried.

Phil Giffard.

I trust the matters raised can be given due consideration.

Yours Faithfully

Philip J Giffard BE