Sheila & Peter Mason
[redacted]

11 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) Planning Environment Court Costs – Proposed Submission

As Noosa residents and members of both the Noosa Waters Residents Association and the Noosa Residents and Ratepayers Association we, the undersigned, wish to express our concern over the proposals contained in Section 6 of the abovementioned Bill advocating a radical change in the way costs are to be awarded in the Planning and Environment Court.

If implemented, the changes will deny all but the most wealthy the ability to take legitimate cases before the Queensland Planning and Environment Court (QPEC), through fear of crippling costs orders. Furthermore, it will 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.

We would submit that consultation with stakeholders prior to the Bill's introduction was inadequate considering the importance of the proposed change.The general public, as far as we can ascertain, was not consulted at all, and it would appear that few, if any, rural stakeholders or landholder groups were consulted even though the changes to the costs rules would make it harder for such groups to use the Court.

QPEC, unlike commercial courts, hears planning and environmental matters that affect the whole community and future generations of Queenslanders. Examples of those matters include protection of heritage sites, survival of endangered species and protecting landholders from neighbouring developments such as mines and quarries.

The current rule that each party to proceedings in the Court bears its own costs, subject to limited exceptions, has been in place for over 20 years. The 'own costs' rule, whereby all parties must pay for their own legal assistance or expert witnesses and volunteer their own time but, apart from limited exceptions, serves the important public interest of enabling ordinary citizens or groups to dispute planning decisions or to seek to protect the

environment, which affect the whole community, without fear of crippling costs orders. It also protects local governments and State agencies from the risk of such costs.

There are already protections in place from abuse of this system with the Court having power to award costs in circumstances such as where cases are frivolous or vexations or instituted primarily to delay or obstruct, or if there is delay in meeting the Court timetable. Ordinary citizens know that as long as they avoid any of the circumstances where the Court has power to award costs, 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.

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.

The proposed change to costs following the event will disadvantage poor and middle income people, mums and dads, non-profit community and non-profit environmental groups. These are the people who chose you to represent them, and whose rights you have sworn to defend, who won't be able to risk crippling costs orders or risk losing their house or their group even if they have a good legal case and even if they represent many people in the community concerned about a development proposal or seeking to stop illegal activity.

We would contend that the proposed changes to current legislation outlined in this Bill are not only unnecessary but also morally reprehensible. We would therefore urge you not to proceed with the implementation of these changes by deleting Clause 61 of the Bill to retain the current costs rules unchanged.

Your sincerely

(Signed)

Peter & Sheila Mason

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