



Speech by

**Peter Wellington**

**MEMBER FOR NICKLIN**

Hansard Tuesday, 13 November 2012

---

## **SUSTAINABLE PLANNING AND OTHER LEGISLATION AMENDMENT BILL**

**Mr WELLINGTON** (Nicklin—Ind) (10.23 pm): I rise to participate in the debate on the Sustainable Planning and Other Legislation Amendment Bill 2012. I know that it is 20 past 10 and I understand that the government has three more bills they need to get through before we rise late Thursday night or Friday—whenever it may be. So my contribution will be brief. I realise there are significant amendments to be moved by the Deputy Premier and also the opposition during the debate.

I certainly do support the proposal to increase the use of the alternative dispute resolution process. I think that is certainly a very sensible move and it will be well received in our respective communities. Over the years I have been involved with many community associations that have had to raise significant dollars to go off to court to challenge various applications that have been submitted in the community. Sometimes they have been successful and sometimes they have not been, but it has always cost them a lot of money. That brings me to one of the groups that is currently in dispute with an applicant, and that involves the Yandina Creek Progress Association.

Before I go into that, I note for the purpose of the record that I listened to the deputy opposition leader, Mr Mulherin, make his speech in which he went through many submissions. I have also received many of those submissions. For the purpose of succinctness I do not intend to repeat those submissions. I would like to put on the record one submission I have received from Yandina Creek Progress Association. I will not read it in full; I will simply take some extracts from it. For the benefit of members—

The Yandina Creek Progress Association ... is a not-for-profit community organisation based in the Sunshine Coast hinterland formed to represent the views and address issues concerning local residents. The YCPA has a proven track record of defending our local community from the threat of inappropriate developments in our area that threaten the amenity of residents.

Currently the YCPA are involved in a matter in the Planning and Environment Court as co-respondents with the Sunshine Coast Regional Council ... and other local residents defending an appeal by Parklands Blue Metal Pty Ltd (Appeal No.D247 of 2011). Parklands Blue Metal Pty Ltd made a development application to SCRC for a quarry site in our area. This application was rejected by SCRC in a unanimous vote supported by over 5,000 written submissions by local residents opposing the development. Parklands Blue Metal Pty Ltd has appealed the SCRC rejection of their development application.

That sets the scene. For the benefit of members I will take them to the conclusion. It states—

The proposed change—

in the bill. I am not talking about the amendments; I am just talking about the bill as it has been presented to the community. It continues—

would reverse the current 'own costs' rule which, for over 20 years, has served the important public interest of enabling ordinary citizens to dispute planning decisions affecting the whole community without fear of crippling costs orders.

There has been no report, no investigation and no evidence presented to support the case that there is an existing problem with this rule or that the proposed change will substantially improve perceived problems with QPEC proceedings.

The clear target of the proposed change to SPA is third-party appellants who apparently are presumed to have weak planning grounds or to be motivated by a desire to delay or obstruct proposed developments for ulterior or improper reasons (such as commercial competition). The facts recited above demonstrate that less than 0.1% of development applications are taken to trial by third parties. The facts likewise amply demonstrate that the QPEC is not overburdened with meritless appeals and other proceedings and that it is internationally recognised for its time- and cost-efficient case management and ADR processes. Finally, the evidence

makes it clear that the court has ample tools already available to remedy any abuse of process or waste of time. This includes longstanding discretion to award costs against those litigants who seek to run cases that lack merit meritorious or who seek primarily to delay and obstruct the decision making process in planning and other environmental matters. In other words, there is no problem with the QPEC's 'own costs' rule that requires fixing.

More to the point, the government's proposed solution to a non-problem that requires no action will produce substantial harm to the public and communities throughout Queensland. The proposed change to the QPEC's 'own costs' rule is unlikely to affect third party appeals by wealthy commercial competitors who can afford the risk of losing appeals they run and paying costs. However, the proposed change will be potentially devastating for individuals and community groups that may have strong cases but cannot afford the risk of being wiped out by adverse costs orders if they lose. Given the fact that proceedings in the QPEC are complex and 'expert-driven', meaning that the evidence of numerous experts is ubiquitous and necessary given the nature of the issues typically involved in a planning appeal and other environmental proceedings, costs predictably will be considerably higher than in other, non-specialist jurisdictions.

So their recommendation is to delete clause 61 of the bill to retain the current costs rules unchanged. Their recommendation 2 states—

Alternatively, a few efficient amendments, to the existing costs rules could implement the cost rule change solely in respect of commercial competitors and assisting enforcement by State and local governments without jeopardising access to the Court by ordinary citizens or compromising crucial enforcement of environmental and planning laws by local government and State agencies.

I look forward to the bill proceeding to consideration in detail so that we can undertake greater analysis of the amendments proposed by the Deputy Premier and those proposed by the opposition. I look forward to that debate.