Speech by

Tim Mulherin

MEMBER FOR MACKAY

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SUSTAINABLE PLANNING AND OTHER LEGISLATION AMENDMENT BILL

Mr MULHERIN (Mackay—ALP) (Deputy Leader of the Opposition) (8.45 pm): I rise to speak on the Sustainable Planning and Other Legislation Amendment Bill 2012. The opposition will be moving amendments in the consideration in detail stage to elements of this bill. These amendments will include removing clauses 61 and 59, which amend section 457 of the Sustainable Planning Act to provide the Planning and Environment Court with the discretion in relation to imposing costs. The amendments to be moved in the consideration in detail stage that were circulated this afternoon fail to address the concerns of stakeholders.

At the public hearing into this bill, the proposal of having a consideration of public interest was put to stakeholders. This proposal was rejected by Dr Chris McGrath from the University of Queensland. The Environmental Defenders Office recommended that it go through a proper public consultation process before being considered. Mrs Johanne Wright, president of the EDV Residents Group, said in relation to a proposal to amend clause 61 to include public interest—

It is not broken; it does not need to be fixed. Any tinkering around the edges will produce another set of unintended consequences that you will then have to make other regulations to fix down the line. We would argue strongly that it has not been thought through. It is totally detrimental.

Mr Joe Jurisevic of the Noosa Residents and Ratepayers Association backed up this position. He stated—

I would agree with the comments of the other members of this panel. I would suggest that, in the main, the presentations that have been forwarded to you at this level have all or in the majority been against the costs issue. That is the greatest issue that we all see.

Mr Dick Patterson, Vice-President of the Noosa Waters Residents Association, said—

I would like to support that. As I understand it, in the law already there is flexibility for judges to award costs in certain cases of frivolous or delaying tactics. Maybe that could be spelt out clearer to the judges but, fundamentally, there is no need to go to the complete other end of the scale and shift the costs totally onto the losing party, virtually irrespective of the circumstances.

Ms Lavinia Wood of the Community Alliance for Responsible Planning also backed up this position, as did Jennifer Hacker, Vice-Chairman of the Rural Environment Planning Association, who said it most succinctly in opposing the proposal for these amendments to the Planning and Environment Court—

In my opinion that would only add another layer of complexity to the legal process. We would first have to decide whether a group was acting in the public interest or not. This would be an additional complexity. From what I have understood, the current system works well. Why change it?

It is clear that, no matter how much the Deputy Premier will try to argue otherwise, these amendments still fail to listen to the views of the community in relation to this government's plan to change how costs are awarded in the Planning and Environment Court. The existing arrangements for the Planning and Environment Court are that each party generally pays their own costs. As the Bar Association of Queensland stated in its submission to the committee, this is because the Planning and Environment Court proceedings 'primarily deal with issues of land use and development which necessarily involve matters of broader community concern'.

The explanatory notes to this bill state that these amendments are to prevent commercial competitors fighting in court for the purpose of delay. When the department was asked to provide what evidence or data it had of frivolous or vexatious complaints occurring in the Planning and Environmental Court, it was unable to provide any. There was also no evidence provided that these changes would necessarily prevent a commercial competitor from using the Planning and Environment Court to delay an opponent. A case in point is the issues surrounding the Moreton Bay Regional Council and Costco and Westfield. In fact, the minister had to give notice that he would call that application in because they would go to the court and fight it out.

Instead these changes are all about benefiting developers and the big end of town and removing the rights of community groups and local governments to have a say about the development of their local area. Community groups made this point loud and clear to the committee that these changes will prevent them from initiating legal proceedings to prevent unreasonable developments against developers with deep pockets and to ensure that community voices are heard and recognised.

These changes are an attack on the democratic process and they take Queensland back to the dark days of the white-shoe brigade and raise serious questions of integrity and accountability from this government. One hundred and nine of the 124 public submissions lodged with the State Development, Infrastructure and Industry Committee outright opposed changes to the way costs are awarded in the Planning and Environment Court. These submissions covered a broad range of groups across the community. The refusal of the government members of the committee to listen to the community's requests to not proceed with these amendments is a sign of the arrogance of this government—arrogance that is epitomised by the Deputy Premier, who just two weeks ago stood in this parliament and harped on about how he listens to the input of the community through the committee system. The hypocrisy of the Deputy Premier is truly staggering and it is little wonder that some LNP supporters are calling for him to step down.

Mr SEENEY: Mr Deputy Speaker, I rise to a point of order. I obviously find that offensive and I ask it to be withdrawn. They are unparliamentary remarks in any case.

Mr MULHERIN: I withdraw. The opposition to changes to the Planning and Environment Court include groups in the legal community, local government, community groups and environmental groups. There is strong opposition from the legal community including the Queensland Law Society, the Bar Association of Queensland, eight well-respected legal academics at Griffith University, the Australian Lawyers for Human Rights and the Queensland Environmental Law Association. Griffith University legal academics summarised in their submission—

... this proposed amendment will be counter-productive and is unnecessary for the efficient planning and administration of the State. We urge that the own costs rule should remain for proceedings in the P&E Court as currently exists in similar jurisdictions ...

Even certain long-term supporters of the LNP who have provided financial support in the past are now seeing this government as the worst possible investment in Queensland. The Deputy Premier also likes to lecture the parliament about how this government is re-empowering and listening to local government. Yet the Deputy Premier has refused to listen to the submissions of the Brisbane City Council, the Moreton Bay Regional Council, the Sunshine Coast Regional Council, the Logan City Council, the Local Government Association of Queensland, the Council of Mayors South East Queensland, as well as councillors Nicole Johnston, Greg Rogerson, Paul Bishop, Helen Abrahams and Wendy Boglary who all oppose these amendments.

The Deputy Premier's deaf ears have extended to community groups including the Community Alliance for Responsible Planning Redlands, Residents Association South Sunshine Coast, Development Watch, Take Action for Pumicestone Passage, the Noosa Waters Residents Association, Sippy Downs and District Community Association and the Scenic Rim Rate Payers Association, to name a few.

The environmental groups were also once again ignored by this government including the Rural Environmental Planning Association, the Environmental Defenders Office, the Mackay Conservation Council, the Queensland Murray-Darling Committee, the Capricorn Conservation Council, the Noosa Biosphere Association and the Wildlife Preservation Society of Queensland. I have listed some of these groups to emphasise the point that the community opposition to these legislative amendments is broad and includes groups from all over Queensland representing different interests.

Mr Rod Litster, Senior Counsel for the Bar Association of Queensland, stated in the public hearing that 'the existing system is working exceptionally well' in relation to the Planning and Environment Court and he said—

It is a system which has developed over probably the last 10 years and it is functioning at world-class standards. The court is regularly referred to as being one which is at the top of its game worldwide, and that is something that Queensland has to be proud of.

Or, as Jill Chamberlain from the Sunshine Coast and Hinterland Branch of the Wildlife Preservation Society simply summed it up, 'If it ain't broke, don't fix it.'

Dr Chris McGrath, senior lecturer at the University of Queensland, also advised that changes proposed during the committee hearing of inserting a 'public interest' exemption from the imposition of court costs would be complicated and would 'create difficulties'. This position was backed up by Mr Ron Piper, Project Developer for Urban Development at the Sunshine Coast Regional Council, who advised that providing such an exemption would be 'very blurry' and 'sounds like a very simple solution to what is a very complex issue'.

There was a common concern that changes to the imposition of costs in the Planning and Environment Court will shift the consideration in the approval of developments to financial considerations rather than the public interest of merits of the actual application. The organisations that have supported these amendments are stakeholders representing property developers including the Comiskey Group, RPS Australia, the Property Council of Australia, the Urban Development Institute of Australia (Qld) and the Planning Institute of Australia Queensland Division. The Deputy Premier in his speech in introducing this legislation stated—

... many stakeholders identified a number of circumstances where there were shortcomings in the current cost provisions.

We now know who these stakeholders represented.

The LNP's motivations for changing how costs are awarded in the Planning and Environment Court are questionable considering that there is both no policy evidence in relation to frivolous or vexatious commercial appeals or clear policy justification other than the support of stakeholders in the property industry. Due to the lack of any clear policy justification for the amendments to the Planning and Environment Court at clauses 59 and 61, the opposition will be moving amendments to have them removed from the bill as requested by an overwhelming majority of submissions.

The changes recommended by the committee at recommendation 4 to remove the words 'but follow the event, unless the court orders otherwise' do not address the concerns of the majority of submissions as implied by the committee report but they address the concerns of the Property Council of Australia and other developer representative organisations. The Property Council of Australia submission stated—

While the Property Council is supportive of the P&E Court having a general discretion to award costs, the phrasing 'costs ... follow the event, unless the court orders otherwise' may lead to a developer being liable for costs in the case of an applicant appeal against a local government's refusal or an applicant appeal against local government conditions, where there is a genuine dispute to be heard by the Court.

I will now move on to other issues with the bill. The bill also removes master-planning and structure-planning arrangements in the Sustainable Planning Act 2009. The government has set out at page 4 of the explanatory notes that it is envisaging a 'partnership approach with industry', using section 242 preliminary approvals from the Sustainable Planning Act 2009. A number of issues with this transition were raised during the committee process. Mr Ron Piper from the Sunshine Coast Regional Council and Ms Linda Bradby from the Moreton Bay Regional Council expressed concern at the bill omitting section 134, which protects a declared master planned area from the bringing forward of section 242 applications. The concern is that this will lead to incremental planning and undermine the control of local governments to provide master planning for an area. Coomera Resort also expressed concern that the removal of structure and master plans may remove existing development rights.

The department has advised the committee that in a situation where a section 242 application 'is not consistent with the transitioned structure plan and/or transitioned master plan and seeks to vary certain levels of assessment, the development application will require notification and the normal regulatory provisions of the Sustainable Planning Regulation 2009 will apply'. This is set out at page 53 of the legislation. While this is true, the legislation still removes section 134 of the Sustainable Planning Act, which includes in relation to section 242 approvals—

If the preliminary approval is issued, it is of no effect to the extent it purports to vary the effect of the structure plan area code.

The opposition supports the position of the Moreton Bay Regional Council that section 134 of the Sustainable Planning Act 2009 be maintained and will be moving amendments to this effect.

The Sunshine Coast has also proposed that local government be provided with the flexibility to opt in or opt out of current structures and master-planning arrangements with considerable work already undertaken. The opposition supports this position and will be moving amendments to remove proposed new sections 761A and 761B to allow local governments to keep their existing declared master planned areas and remove a requirement to incorporate them in their planning schemes or make new planning schemes within three years. As advised by the department during public hearings, for areas that do not have a regional plan regulatory provision attached to them, there is the potential that an applicant could lodge a section 242 application that is outside the urban footprint. While South-East Queensland is covered by the South-East Queensland state planning regulatory provision, this is an issue for other parts of the state. The government will need to carefully manage the transition process for this legislation to ensure that development is not allowed outside the urban footprint and offer temporary planning instruments to protect local governments in the instance that a section 242 application is made outside of the urban footprint.

The track record to date of this LNP government in listening to the local communities and local government does not inspire confidence. It is also worth noting that, while this bill makes amendments to make the chief executive of the Sustainable Planning Act the single state assessment manager, it will not prevent a local government as an assessment manager making a decision, whether it be politically motivated or not, to stall a project. Likewise, while this bill will remove a requirement for a proponent to secure a state resource for development approval, it will not change the fact that the state may still be required to consent to the development as landowner. This means that an issue of a state agency delaying a process could still occur.

In relation to the changes to allow for a maximum level of assessment for low-risk operational works, the opposition supports the position of the LGAQ and the Council of Mayors South-East Queensland that further consultation on the Queensland planning provisions and on the definition and scope of low-risk operational risks occur.

To conclude, the refusal to listen to the genuine concern of local government, local community groups, environmental groups and the legal community in relation to the Planning and Environment Court is symptomatic of an arrogant and out-of-touch government that is drunk on power. The opposition will not support parts of this legislation that strip away the legal rights of Queenslanders to favour the deep pockets of wealthy developers.