STATE DEVELOPMENT, INFRASTRUCTURE AND INDUSTRY COMMITTEE

Members present:

Mr GE Malone MP (Chair)
Mr MJ Hart MP
Mr SA Holswich MP
Ms KN Millard MP
Mr TS Mulherin MP

Staff present:

Dr K Munro (Research Director)
Ms M Telford (Principal Research Officer)

PUBLIC BRIEFING—SUSTAINABLE PLANNING AND OTHER LEGISLATION AMENDMENT BILL

TRANSCRIPT OF PROCEEDINGS

FRIDAY, 5 OCTOBER 2012

Brisbane

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Committee meet at 10.45 am

COUTTS Mr James, Executive Director, Planning Services, Department of State Development, Infrastructure and Planning.

SAUNDERS, Ms Julie, Director, Planning Support, Department of State Development, Infrastructure and Planning.

WILDE, Ms Natalie, Director, Planning Policy and Legislation, Department of State Development, Infrastructure and Planning.

CHAIR: We will now move to the public briefing from the Department of State Development, Infrastructure and Planning on the Sustainable Planning and Other Legislation Amendment Bill. Good morning ladies and gentlemen. Thank you for coming to brief the committee on the Sustainable Planning and Other Legislation Amendment Bill. Thank you also for providing the committee with a written briefing on the bill. I would like to introduce the members of the committee present today. I have on my left Michael Hart, the member for Burleigh; Seath Holswich, the member for Pine Rivers; on my right Ms Kerry Millard, the member for Sandgate; and Tim Mulherin, the member for Mackay and deputy chair of the committee. Other committee members who could not be here today are Mr Rob Katter, the member for Mount Isa, Mr Scott Driscoll, the member for Redcliffe and Mr Bruce Young, the member for Keppel. My name is Ted Malone. I am the member for Mirani and Chair of the committee. The committee's responsibility under the Parliament of Queensland Act is to examine the policy to be given effect by the legislation and the application of fundamental legislative principles.

Although the committee is not swearing in witnesses, I remind all that the briefing is a formal process of parliament and as such any person intentionally misleading the committee is committing a serious offence. Hansard will be making a transcript of today's briefing. I therefore ask you to please identify yourself when you first speak and to speak clearly and at a reasonable pace. The committee's intention is that the transcript of the hearing will be published. Before we commence may I ask that mobile phones be switched off or put on silent mode. Would you like to make a brief opening statement?

Mr Coutts: Thank you very much. I will introduce myself first. I am James Coutts, Executive Director of Planning Services in the planning group of the department. I have here with me today my colleagues and I will ask them to introduce themselves.

Ms Wilde: Natalie Wilde, Director of Planning Policy and Legislation in the department.

Ms Saunders: Julie Saunders, Director of Planning Support.

Mr Coutts: Both Natalie and Julie have had quite a strong role in preparing the legislation, so they are here to answer any questions of detail that I am not as fully across as they are. I will give a very brief introduction if that is acceptable.

I suppose the starting point for what you see in the bill before you came out of a series of conversations or forums that were held between May and July this year. They were described as planning reform forums held with a range of stakeholders that you would expect to be interested in the planning legislation for this state. They spanned groups such as the Local Government Association of Queensland—obviously a very directly affected stakeholder. As a complementary group of that, we also had invited the Council of Mayors South East Queensland to join those conversations. We also spoke to the Planning Institute of Australia, given that it is a matter of significant interest to planners; to environmental interests, such as the Queensland Conservation Council and the Environmental Defenders Office; and then to a range of industry interests including the Property Council of Australia, the Urban Development Institute of Australia and the construction industry, if you describe it loosely in that way, under the Housing Industry Association, Australian Master Builders Association and the Australian Institute of Building Surveyors. So it was quite a comprehensive range of conversations that were had with groups of that kind.

The forums were conducted to put to them a number of probing questions around what was the planning system that they felt needed to be in place, reflecting on the planning system we currently have obviously, to continue to deliver the sort of work that each of those bodies feels is necessary for the future of the state in a planning sense. They were also asked to observe in the process what might be the better or more effective ways that that process could be managed and if they could provide—and many of them did—us advice about what they thought could be realistically achieved in the short term and what might be some longer term objectives—so perhaps in the immediate six-month period, which is where we are now, and over the next couple of years.

Probably the four key areas of the planning and development system, if you can call it that, that became the focus of the discussions—and none of these would be expected I suppose, but it is nonetheless instructive that these are the sorts of matters they focused on—were the plan-making process that is embodied in the act and the planning tools that the act puts forward. There was mention of the development assessment process and how that operates and whether there are matters in the act that could be attended to that would, while retaining the fundamental intention of the outcomes of good development assessment, ensure that the process was not being an unnecessary impediment to appropriate approvals.

There was mention also of the need to reconsider the way in which referrals are managed particularly by state agencies, and there were comments from many of the stakeholders around the way in which appeals and third party rights are promoted and protected in the act and whether there are some preferred ways of doing that. So each of the proposals that came forward and embodied in the bill you have before you are based on those discussions and what came out of those forums and the analysis that obviously the department undertook following that as to how those interests might be best reflected in the bill, bearing in mind that in some instances those interests were not necessarily coincidental; they were sometimes competing.

It would be fair to say that, given our span of interest in those forums is quite long term, not all of the issues that were raised at the forums are being addressed in this batch of legislative amendments. We also wrote to every local government in Queensland asking for submissions on what they considered to be the key issues that ought to be picked up, given that they will be the first and foremost users of the act in terms of scheme preparation. One can say, perhaps not surprisingly, that the local governments who did respond to that came back with much the same range of comments about the issues that needed to be attended to.

So having had that consultation process and worked out what matters that were raised with us were capable of being attended to in the immediate time frame that was suggested by some of them, there was a follow-up conversation with the stakeholders at the end of August to go through the proposals and to gauge from them whether there was a level of satisfaction with the way in which we had understood their ideas and incorporated them in the batch of amendments. There was a general view that what was proposed in the bill would head in that direction.

I might just say in closing this introductory statement that we requested the Office of Parliamentary Counsel to give us advice on this matter and they have advised us that there are no fundamental legislative principles that have been raised as part of this batch of amendments. I am happy to expand and elaborate more on the proposals in the bill but probably more than happy also to take whatever questions the committee think appropriate.

CHAIR: Do Natalie or Julie want to make comment at this stage?

Ms Wilde: No.

Ms Saunders: No.

CHAIR: I am particularly interested in the program to reduce red tape. I see that in your submission you have listed four key areas in respect of that matter. Would somebody like to talk about the pros and cons of red tape? From my perspective, and I think everybody else's, sometimes you can reduce red tape but on the other side of the panel is the possibility that you might overlook something. Can you go through that process a little bit?

Mr Coutts: There are probably eight core matters that we are attending to, and I would say that probably half of those would be loosely described as being around red tape and even the rest would have some benefit in terms of process. Red tape is, I guess, a euphemistic term for where legislation is seen to perhaps go too far in its fundamental purposes and sets in place too many hurdles to jump over or some unnecessary steps. In reflecting on the comments received, probably the vast majority of the comments were that we could achieve equal, if not superior, outcomes with less process or fewer steps to go through. I can go through them in turn.

One of the key notions is that at the present time the act requires an applicant to submit their application to a range of concurrence agencies in the state where that is set out under the act. It is curious that the act does that in the way that it does because, if you are a familiar with the way the act works with local government, there is an assessment manager in local government. So, if you are submitting an application to a local government, you do not submit it to the transport department and the parks department and the engineering department. You submit it to the assessment manager who sits in the development assessment area and all of the council's comments on a range of matters are coordinated properly by that central agency in council. We do not do that in the state, or we have not.

The aim of this bill is to say that that really needs to change. At the present time applicants are required to go to agencies separately and there is no point of coordination of that within the state. If you have had anything to do with an application that has found its way through the state system and dealt with multiple agencies, that can result in a lot of wheel spinning from an applicant's point of view and a lack of clarity, and there can be a lack of focus. So that is probably one of the primary aspects. There will be a coordinated approach to the management of that. It is euphemistically called a single state assessment

manager, or a single assessment referral agency. The way that works in the amendment bill is that the chief executive of the Department of State Development, Infrastructure and Planning becomes the concurrence agency for the state and coordinates all the other agencies' input.

It is not an endeavour to undermine the authority of other agencies. They have their responsibilities in their respective acts. The endeavour there is to ensure that matters that result in delay or conflict between agencies can be effectively managed and dealt with more expeditiously and that time frames are adhered to more strictly.

Mr MULHERIN: What are the time frames that the chief executive officer will impose on development?

Mr Coutts: It is the same time frames that currently apply under the integrated development assessment system. We are not looking to extend the time frames to provide for this. We acknowledge that will mean that we will have to have really good systems to make sure that works properly, and that is what we are focusing on at the moment.

Mr MULHERIN: I can understand the rationale behind having the chief executive officer of the planning department to coordinate the response across the whole of government. From reading the explanatory notes, this will not prevent the local government as the assessment manager from stalling a project. How will this change prevent local government from playing politics with local projects?

Mr Coutts: This particular change will have no effect on the way in which a local government will deal with a matter.

Mr MULHERIN: So you can still have those delays at the local government level.

Mr Coutts: In relation to this element, yes. As I said, this is particularly targeted at state agencies, concurrence agencies and advice agencies' dealings with applications. As an observation, however—having worked in local government and observed the way in which it typically operates—where you do find state agency input, it can actually complicate the matters for local government where it is a quite complex and difficult application.

So I would have thought that the mere existence of a more coordinated approach to state matters will assist local government to deal with some of those more complex ones more easily. My personal experience with the large and complex applications that have been of significance to local government and state is that local government has usually been ready and willing to deal with the application well before the state has organised what it considers its important matters, which in some respects has been an excuse for local governments to drag the chain, and sometimes they have not been able to proceed with what they think is an appropriate outcome without the state saying what it thinks, and I am particularly thinking there of matters such as, say, the state road network. If you are trying to resolve what the local road network needs to be to respond to a proposal, you almost cannot do that without understanding what the state intends its network to be and the complementary components that the state would need to sort out become the critical factor in determining what local government can do. The expectation with this—hope—is that by expediting the way the state deals with it councils will be able to deal with matters of a similar kind more expeditiously as well. I guess I am conscious that I had not finished giving the answer to that question because I had only touched on the first of those red-tape reduction matters. Would you like me to carry on or are you happy for me to continue answering questions?

CHAIR: Yes, certainly.

Mr Coutts: I am happy to continue answering questions at an appropriate time. Another aspect to red-tape reduction that I think is a really important one is in relation to master planning and structure planning arrangements that are in the current act. Now with the benefit of several years worth of observing their effect in operation—and this was raised by stakeholders—it is now relatively easy to conclude that they have not been the sort of expedited process that everybody had anticipated and hoped they would be when they were introduced. So this batch of amendments effectively removes that. In removing those provisions of the act we are very conscious that we do not want to undo the good work that has already been done in some of those areas. So if you are an investor in an area that has been subject to master planning, you do not want to lose the effect of the effort you put in to establishing the right outcomes there. So the way in which it has been handled makes sure that all work done to date is appropriately recognised, and local government has a period of time to transition those plans. We think that will reduce the level of frustration and the delay that has been caused in most of those master planned areas to get things happening much more quickly.

Another aspect that was raised as a continual frustration and very much of a red-tape nature is the fact that at the present time the act links getting resource entitlement from the state with your development application. This changes that. It does not mean you do not have to get resource entitlement; it just does not link the two together. If you are a developer wanting to undertake a development proposal, it can be a source of enormous frustration. It is kind of a chicken and egg thing: do you prepare your development proposal and get all of your financials sorted out and get your approvals in place and that will be the basis of deciding whether you want to proceed and therefore acquire a property from the state; or do you try to acquire the property and then figure out whether you have a viable development? Really, those two things being linked does not work at all effectively for any party in the process. So this is not to prevent the need

to get state resource entitlement; it just does not link it to the DA process, which has been enormously frustrating and a last-minute hitch for a lot of applications where what constituted a state resource was not very clear.

Another red-tape reduction element, as I guess most of these are, is that the supporting information that the act sets down that has to be submitted with an application is quite prescriptive, and sometimes unnecessarily so. There are times when, perhaps mischievously, the assessment manager is saying, 'Well, I'm not going to accept your application because you haven't ticked every one of these boxes', and in some instances that information is simply not useful or relevant. But it also frustrates the situation where an applicant and a council will have sat down and worked out in a prelodgement discussion precisely what they want to do about a proposal and then their application is held up because they forgot to put a north point on the plan when they have been looking at the plan for six months and know which way is up. So there are simple little things like that where this is saying that the assessment manager has the ability to make a sensible judgement about what information should or should not be submitted with the application, and the discretion is there. So if all this information is absolutely essential at the time of application, fine. If it is not, then let it go through to the keeper.

The other aspect which is perhaps not red-tape reduction but could end up assisting and we think will end up in assisting are the Queensland planning provisions, which were set about to try to make sure that if you are—industry is particularly interested in this, but I think councils are too—looking at a scheme in Queensland you pick it up and you know the way the scheme is structured. I have been a consultant in the private sector and know how frustrating it is. You can step over an imaginary line on the ground and you are picking up two documents and you cannot recognise one compared to the other. It is great as a consultant. You get paid a lot by a client to work out the differences and similarities between schemes, but it is really silly that a client has to do that. They should have a similar content and format and style and should be easily able to be interpreted. At the present point in time that requirement to comply with those provisions only exists in SPA schemes. This now extends it to schemes that are a little bit older and requires those schemes to be formatted in the same way, which we think will assist in the process given how many councils are still going through scheme amendments.

Perhaps of the red-tape reduction ones to do with the court process, I think the very significant aspect there is to enable alternative dispute resolution processes so that the alternative dispute resolution registrar can be used more consistently for the more minor matters. So that, we think, will enable more speedy consideration of those minor matters through the court system, which I think everybody would agree is overdue and welcomed. That one is welcomed across-the-board by all parties. I am happy to take any other questions.

CHAIR: Thank you very much, James, for that very comprehensive answer.

Mr MULHERIN: James, in what instances would a development proceed with a structured plan but no master plan for an area? What would be an example of that?

Mr Coutts: I am sorry, but I am not quite clear with the question.

Mr MULHERIN: If you refer to page 41 of the explanatory notes on subdivision 3, I just repeat the question: in what instances would a development proceed with a structure plan but no master plan for an area?

Mr Coutts: With your leave, I will consult that section. The way the amendment is set up, once these amendments are in place and this bill becomes an act, at the present point in time under a structure plan that is prepared subsequent master plan applications are lodged. You can understand why people find this process confusing. It is called a master plan process by which you produce a structure plan under which you lodge master plan applications. Even as a planner I find that horrendously confusing. The way this is set up is that once this bill is introduced the structure plan will be used as the guiding principle for the assessment of applications. There will be no longer a need to submit a master plan application because the master plans are triggered by the way the structure plan works. It is a bit complicated to describe, but the way most structure plans are set up is that they identify the precincts that the various parties involved in preparing the structure plan felt that a master plan needed to be prepared for. It has been a very problematic part of the way the structure plan process has worked in that it typically requires the coordination and agreement of a multitude of landowners to the lodgement of a master plan application, and it is an extremely difficult thing to find all landowners prepared to do the same thing at precisely the same time. It has been one of the key aspects that has caused a huge amount of frustration. If I am understanding your question correctly, this simply sets aside the need for a master plan application. You can go ahead and lodge an application independent of, say, an adjoining property owner provided you are consistent with the structure plan's intent. That to us is critical to how you would be able to proceed with a proposal in a structure plan area.

Mr MULHERIN: With the removal of the master plan and structure planning arrangements, the legislation involves transitional arrangements but there is little detail in the explanatory notes of how the government will use section 242, the partnership approach, with industry which would allow variations to a structure plan area and codes for the commencement of a master plan. Is the department able to provide further advice on how this approach would work in practice?

Mr Coutts: The 242 application launched under SPA would be an application lodged with the council and the way the bill sets up the arrangement is that the structure plan has ongoing effect to guide the way in which a section 242 application would be assessed by the council. So the provisions of the existing act in relation to the master planning process talk about a partnership. We are not saying that partnership does not exist, but it is not the basis on which you would go forward with a section 242 application. That becomes a matter for an applicant to prepare a proposal for a site and submit to the council, provided that is generally in accordance with the structure plan that had either already been adopted by the council or is in the process of being adopted by the council. The council can then consider that as a code assessable application rather than kicking it into an advertised application.

That was the other oddly curious thing about the master plan process under the current act—that is, the council, usually in conjunction with multiple applicants, the state government and the community, has produced a structure plan for an area, been through an extraordinary amount of community consultation yet the master plan process then requires them to consult with the community all over again. It has to submit a master plan application for an area much bigger than their own property, submit that to the council, the council sends it to the state, the state says, 'We're happy with that. Now you can go out and have the public have yet another bite at the cherry when the public and community at large has already seen the structure plan and said it is all okay.' This returns the situation to a process of what you would consider normality so that where there is an existing structure plan section 242 enables an applicant to lodge an application and the structure plan is used to assess that as if it was any other application and inform the consideration of it.

Mr MULHERIN: So if someone submits under section 242, will council have to deal with that, even if it is out of sync with the urban footprint?

Mr Coutts: It should not be out of sync with that planning because for it to be in a structure planning process it has to have involved the council and state up till now. We are not talking about creating new structure plans. This basically says, 'We don't do it anymore,' but where there has been one, and the vast majority of them are progressed to some degree, if not already in the scheme—

Mr MULHERIN: So you can guarantee that a developer will not come to a council and say, 'I'm going to submit a section 242 that's outside the urban footprint'? If you remove that state planning policy provision which gave protection to local government to reject a development application if it was outside the urban footprint, what protection will council have to say, 'No, it's outside our urban footprint,' or the developer says, 'Well, we're going to see you in court,' and then council have to fund the court action?

Mr Coutts: I might ask Julie to provide more detail about that.

Ms Saunders: I suppose it depends which specific declared master plan area you are speaking about, as the regional plan regulatory provisions would also apply. For instance, in the Caboolture West area there is an urban footprint sitting there, so I suppose the urban footprint would also be a factor within the 242 application assessment. In relation to other areas that do not have a regional plan regulatory provision attached to them that provides that sort of comfort to local governments, then, yes, there is the potential that an applicant can lodge an application. We have spoken with all of the councils and we did provide the opportunity to provide a temporary local planning instrument which is a temporary measure to give councils additional protection as we drop away that provision. All of the councils have come back and said that they are happy with their current arrangements and do not want to take that provision up.

Mr MULHERIN: So what would happen, say, with the Gold Coast City Council and the cane-growing area around Rocky Point? What would happen if someone came along and wanted to have an urban settlement there rather than agricultural pursuits and it is outside the existing town plan? Could the developer use 242 to get that application assessed by council?

Ms Saunders: These provisions apply only to declared master planning areas. So the only one in the Gold Coast area is the Coomera Town Centre and in general planning there are other areas that local councils call structure planned areas, but they are not specifically declared under the legislation. So in the instance in that area, these provisions do not apply to that area.

Mr HART: With regard to places such as the Robina area on the Gold Coast that had its own specific act, does this change the impact on those areas at all?

Mr Coutts: No, there is no interrelationship. The act that was created to enable the Robina development to proceed remains in place. It is unaffected, as far as I am aware, by any of these provisions.

Mr HART: As far as existing master planned areas that are complete, what happens to them when this has been removed? Can they completely destroy the structure that they have?

Mr Coutts: No. As I mentioned before, we are very conscious that a lot of people—councils included—invest a huge amount of time. In fact, in terms of value for money, it is a disproportionately huge amount of time in trying to get these plans correct and in place. So the bill is set up to recognise effectively the work and agreements that have been reached to date and it gives the structure plan continuing effect and the council has three years to transition it into their schemes. Some of them are already in schemes. Some of them are not yet, but it gives them an opportunity to transition and it means that the use and development rights established are protected. So applicants can lodge applications confident that the work that they have invested and the councils have invested and the state agencies have invested is not wasted in that they can lodge an application.

Mr HART: Is there any provision, if a mistake is made when this was originally conceived, to undo that—to fix it in this process?

Mr Coutts: One of the reasons we are doing this is that the master planning process under this provision of the act was very prescriptive. It is arguable that no master planning process of this kind should ever be legislated for. Having done multiple master plans myself, I cannot imagine how you could actually make them work properly under legislation. So by dropping these away, it undoes a lot of those issues that were causing problems.

Mr HART: Can I just give you a specific example?

Mr Coutts: Sure.

Mr HART: This committee has heard about—and I think it was probably legislated anyway—the Hervey Bay marina area.

CHAIR: The Great Sandy Straits.

Mr HART: With the buildings and the marinas all being locked together. Does this facilitate the undoing of any of that sort of development?

Mr Coutts: No. Unfortunately not, perhaps. As Julie mentioned, this particular provision relates only to an area where there is a declared master plan process in place. Aspects like that are usually tied up in a combination of use rights and tenure matters. I am familiar with the site that you are talking about and that is where tenure issues and land use planning tend to be a tension with each other and it is difficult to separate one from another. Unfortunately, that will not assist in addressing those matters. Areas like those are probably best addressed by a facilitative approach to dealing with them. State agencies are involved in that—in looking at tenure and use arrangements. Local governments are very interested in the possibilities of seeing development occur. An element of this bill that would assist is that the single concurrence agency arrangement would provide a more focused approach to have agencies sit around the table and work out what is the appropriate way forward. The current industry support unit that sits within the major projects office of my department has a remit to assist in resolving issues of that kind. This will give the opportunity for that to be used more broadly through a similar type of facilitative role.

Mr HART: Right.

Mr HOLSWICH: I want to ask a question about giving the Planning and Environment Court a general discretion in relation to costs. What potential impact could that decision have on the ability of, say, not-for-profit interest groups that, obviously by their very nature, are not financial organisations to be able to lodge actions if they know that, if they lose, then they are up for substantial costs that they may not be able to afford?

Mr Coutts: Without knowing the specific circumstances, it would be hard for me to say, but could I portray the situation as I see it at the moment. Win or lose, those groups are up for a lot of money to go to court right now. So if you are in one of those groups and you see a matter that concerns you, you have to be prepared to find a lot of money to go to court and, even if you win, you are still going to pay a lot of money. By introducing a set of rules into the court that enable costs to be awarded after the event, if that organisation felt that it had a very strong case and a very strong chance of winning that case, then it can go to court more confident that, if it wins, it will not be paying its costs. So there is an advantage to those that seem to have a very strong case. Nobody can be assured when you enter into it as to the way the legal argument would end up falling on one side or the other, but, having been involved in many appeals myself, I think you always have a pretty good feeling about whether the law is on your side or not when you enter into a matter.

When we discussed this issue or when this issue was raised with us by parties, it was not just one sector that raised it with us. You might anticipate that it was, but it was across-the-board from a number of sectors. I was surprised myself to hear local government talk about it. A typical example that local government might experience is that an applicant lodges an application, that application is okay, but not great. The council says, 'We're fine, but you have to fulfil a range of quite rigorous conditions.' The applicant will appeal those conditions and in the court hearing process will decide to completely amend their plans to address those conditions. Then the appeal is upheld and the council would pay. No. That is not the way it is intended to work.

At the present point in time we are working with the court to work out the rules by which costs would be awarded. The discretion would always remain with the judge, but the notion that costs follow the event is a very deliberate way of saying to those whose case is poor and arguably vexatious from the outset, 'Don't waste your time.' I do not have statistics to support this, but my sense is that commercial interests will be probably arguably more affected by this than will environmental interests—for instance, along the line of the question you asked—because commercial interests are frequently in the courts appealing matters simply to hold the outcome up. They know they are not going to win but they know that if they can buy two years, then they have two years of preferred trading time to the circumstance of the eventual outcome of a development being approved and proceeding. So the feedback we had from industry is that some were supportive outright, some were supportive on the basis that vexatious appeals were not penalised—and we said, 'What's the point of that?' So clearly, this is really trying to enable those cases, where there is a clear point of delineation as to right and wrong, to be separated out and to go through a system rather than those who are simply there to frustrate a development outcome, or an outcome of another kind, that really, on any sensible measure, had no chance of success from the outset.

I know that is a longwinded answer to your question, but it is certainly a matter that we want to make sure is handled appropriately and sensibly, because the court is a very important part of the process. It is the ultimate arbiter and we simply want to make sure that, as the ultimate arbiter, it is being used responsibly by those who have the appropriate case to bring forward rather than being used vexatiously or frivolously for inappropriate purposes.

Mr HART: Just to expand on that, that is the court costs. Does that apply to any sort of arbitration process that occurs as well?

Mr Coutts: In the bill we have allowed for, as I said, the registrars to be used in an arbitration process. The outcome of that, for the more minor matters, would be without cost penalty. So the notion is that if there are matters that are fairly straightforward that can be resolved through that without a cost-penalty basis and, therefore, the much more truncated, sensible discourse that would occur between parties negotiating an outcome, that would not result in a cost penalty. So we have been mindful that there are many instances of matters of relative minor importance going through a longwinded process as not being beneficial to anybody and so have complemented it with this other dispute resolution procedure.

Mr MULHERIN: But these changes are not going to stop the big end of town—their pockets are deep—if they can see a commercial advantage in delaying a development for a couple of years, knowing full well that they will lose and they will have to pay the other side's costs. But if you have a farmer whose neighbour might want to have an intensive livestock operation and he gets legal advice that he has a fair chance of winning, but not a 100 per cent chance of winning, but if did he not win that his costs would double, or treble, it really impacts on the little guy rather than on the big end of town. There was a case out on the Darling Downs recently, where a farmer went to the Planning and Environment Court and it still cost him $150,000. But if he were to have lost that appeal against local government approval for this feedlot operation, he would not be have been able to pay for it. So do you recognise that there is a disadvantage? Has the department done any modelling or gathered information around the number of frivolous or vexatious claims have?

Mr Coutts: I am not aware of any. We do not have statistics about it, no.

Mr MULHERIN: So you have not gathered any statistics in putting this legislation in? So there is no basis, only hearsay from the people who you have spoken to?

Mr Coutts: No, we have gone beyond hearsay of those we have spoken to—in other words, those who raised the issue with us, which, as I said, came from a range of different quarters. We have in the process involved representatives of the court to have their opinion about the matter to make sure that—

Mr MULHERIN: Could you come back to the committee with the number of frivolous or vexatious claims that—

Mr Coutts: We will do our best to do that. But the question is—

Mr MULHERIN: So you do not have that information?

Mr Coutts: Part of the reason we do not is that the courts do not necessarily of themselves determine whether something was vexatious or frivolous. At the moment, they are not seeking to award costs. So they do not come to a decision about whether something was a waste of their time; they deal with the matter in front of them. So for us to gather statistics, it would be our judgement of whether somebody was wasting their time to start with. We could happily try. I suspect we will fail in our endeavour.

Mr MULHERIN: It is just that you used the words 'frivolous and vexatious'. So I thought you must have had some basis.

Mr Coutts: In the discussions we have had with those operating in the court system, they clearly recognise a situation where an applicant or even a council—and I can think of some instances where councils knowingly enter into a situation where they are quite unsure of the grounds they are standing on—does not have a strong case but are just continuing anyway. But the system itself does not spit out statistics. It says, 'We decided in favour of this, because it was a rubbish appeal.' I do not believe that we will find those statistics, but we will have a look and try to uncover those if we can, because it would be useful.

Mr MULHERIN: If the court says there is, they must have some understanding of the level of frivolous and vexatious claims they deal it.

CHAIR: It would actually call for an opinion by somebody which might not be able to stand up to better scrutiny.

Mr Coutts: That is right. As I said, our endeavour to find information of this in the past has not been terribly fruitful. So whether we would be able to do so now, we can certainly try.

Mr MULHERIN: But you acknowledge in the case of that farmer—

Mr Coutts: It is difficult for me to say to what extent paying costs will matter to the big end of town, if that is what you call it. My sense is that there will be some whose pockets are so deep that it does not matter.

Right now we are dealing with quite different times than we have seen in the relatively recent past and even developers who I think would be regarded by many to have very deep pockets are working to incredibly fine margins and they are trying to justify rates of return on development to boards and to their shareholders to proceed and anything that a board or a shareholder senses is wasted cost, and

deliberately wasted cost, is going to reflect quite poorly on companies that continue to do it. While I appreciate your view that it has the potential to affect the smaller property owners and smaller interests, and that might well be the case, I could not say for certain that it would not be a very significant deterrent even to large investors and developers if they felt that the costs were going to flow against them, because the large investors and developers are by and large dealing with very, very large developments.

Mr MULHERIN: I am talking about an owner of a similar type of development, like a regional shopping centre and someone wants to place another regional shopping centre on the opposite side of the highway. You will often find that the current owner will object about a development within five or 10 kilometres of their centre. They may not have a leg to stand on, but they will take it to the Planning and Environment Court to give them extra time to adjust their business model. That is the sort of situation I was referring to when I mentioned deeper pockets.

CHAIR: We have to be fairly careful. The question is calling for an opinion.

Mr Coutts: I am not in a position to express a view on how big business deals with these things.

Ms Wilde: If I could just add that the provisions for the awarding of costs has not removed the ability for appellants to go through some form of mediation. That right still exists and it is still very much encouraged that they try that avenue first prior to them seeking further progression through the court system and then potentially entering into a situation where they may have to pay costs. We have certainly not closed the door on that process in stating costs.

Ms Saunders: My understanding is that the bill also allows for the registrar to deal with specific matters and determine those. They do not have to go to a judge. That cannot occur at the moment. For example, if that farmer has a specific issue on odour with the intensive lot next door and it can be dealt with, depending on what the rules are that are set around the registrar, and that person may be able to determine that outcome without having to go to an appeal scenario. It depends on the scope and scale potentially of the appeal and what route it travels through the system.

Mr HART: The bill provides for certain provisions of the Queensland planning provisions that apply to the Integrated Planning Act that was repealed. In the explanatory notes it states that it is intended that the Queensland planning provisions will provide a maximum level of assessment for certain low-risk operational works which will apply to local government areas. Can you give us some examples of what you would classify as a low-risk operational work?

Mr Coutts: At the present point in time, if you have a SPA scheme—and there are very few of those in place—those schemes, which comply with the Queensland planning provisions, do deal with a range of operational works. I do have a specific list. For instance, carparking allowance, things like sediment and erosion control, relatively minor things like electrical drawings of internal electrical reticulation and landscaping elements are to be dealt with as self assessable or compliance assessable, whereas an IPA scheme does not give somebody that flexibility because they pre-dated the existence of the Queensland planning provisions. So what you have is a situation again where you step over an imaginary line and something that is self assessable on one side of that line becomes code assessable or sometimes even worse than that. The idea of this is trying to get a standardised arrangement and give councils access to that in places where they have very good processes in place to deal with these things much more expeditiously.

Particularly in the regional areas of Queensland, where we are seeing quite heated development markets in some regional areas, there are a number of locations where, because their scheme is an older one, it can take quite a long time. You think you have got your planning approval and then it will take you sometimes months to get your works approval at a time when you want to be able to get your developments underway and people occupying dwellings. So this enables them to take advantage of the same way of reducing the level of assessment that will apply to those simple straightforward matters that everybody would expect to be dealt with much more expeditiously.

Mr HART: With regard to the forums you held with the local government, I assume that they were happy with all of these amendments flowing through—if not ecstatic with it. Are they starting to plan to make any necessary changes on their end of things for when this particular bit of legislation passes through?

Mr Coutts: I think a lot of what is in here applies to the way the state does its business, but those matters that do affect councils are certainly being responded to positively by them. I think there are about 43 councils in Queensland in the middle of preparing a planning scheme at the present point in time. The related aspects of this, of course, are that complementing the work that is in this bill are a range of other matters like the processes for making and amending local planning instruments. That is in the process of consultation with local government and we are looking to make sure that that is as streamlined and effective for local government as it can be. We have also been looking at the Queensland planning provisions themselves. We have had workshops with local councils to go through line by line the aspects of those elements that relate to the way in which they prepare schemes under this legislation to make sure that the process is suiting the way they would like to prepare schemes—provided that does not offend what the state wants to see achieved from a state perspective.

I would say at the present time the level of cooperation and understanding between state and councils is extremely high. It does not mean we do not continue to have our issues of discussion and debate, but I think that the dialogue is very positive at the present time and I think the councils are responding very strongly to their opportunity to have yet another look at some of these instruments and make sure that they are tailored to their purposes.

CHAIR: I will have to make that the last question. I would like to thank you, James, along with Natalie and Julie, for attending the hearing here today. I believe we have gained some valuable information that we can use in the process of preparing our report. We appreciate your time here today. I move pursuant to section 50(2)(a) of the Parliament of Queensland Act 2001 that the committee authorise the publication of public evidence given before it here this day. That having been agreed to, I declare the hearing closed.

Committee adjourned at 11.37 am