STATE DEVELOPMENT, INFRASTRUCTURE AND INDUSTRY COMMITTEE

Sub-Committee Members present:

Mr GE Malone MP (Chair)
Mr MJ Hart MP
Mr R Katter MP
Ms KN Millard MP
Mr BC Young MP

Staff present:

Dr K Munro (Research Director)
Ms M Westcott (Principal Research Officer)
Ms R Campillo (Executive Assistant)

PUBLIC HEARING—INQUIRY INTO THE SUSTAINABLE PLANNING AND OTHER LEGISLATION AMENDMENT BILL 2012

TRANSCRIPT OF PROCEEDINGS

THURSDAY, 25 OCTOBER 2012

Brisbane

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Committee met at 9.03 am

CHAIR: Good morning, ladies and gentlemen. I declare the public briefing of the committee's inquiry into the Sustainable Planning and Other Legislation Amendment Bill 2012 open. Thank you for your interest and your attendance here today. I want to introduce the members of the committee. My name is Ted Malone, the member for Mirani and chair of the committee. I have with me Mr Michael Hart, the member for Burleigh; Mr Bruce Young, the member for Keppel; and Ms Kerry Millard, the member for Sandgate. The State Development, Infrastructure and Industry Committee is a committee of the Queensland parliament and, as such, represents the parliament. It is an all-party committee which adopts a non-partisan approach to its proceedings.

In relation to media coverage, the committee has resolved to allow television coverage and photography during the hearing. The committee has also agreed to the live broadcast of the hearing via the Parliamentary Service website and to receivers throughout the parliamentary precinct. The program for today is as follows: from 9 to 9.45 am we will hear from legal organisations; from 9.45 to 10.30 am we will hear from local government; from 10.30 to 11.15 am we will hear from environmental organisations; from 11.15 to 11.30 am we will break for morning tea; from 11.30 to 12 noon we will hear from community groups; from 12 noon to 12.30 pm we will hear from industry groups; and from 12.30 to 1 pm we will hear from planning organisations.

Although the committee is not swearing in witnesses, I remind all witnesses that these meetings are a formal process of the parliament and, as such, any person intentionally misleading the committee is committing a serious offence. Hansard will be making a transcript of today's hearing and it is the committee's intention that the transcript of the hearing be published. Before we commence, I ask that mobiles and pagers be switched off or put on silent mode.

BAKER-JONES, Mr Mark, Special Counsel, Environment and Planning

CONNOR, Mr Michael, Queensland Law Society

LITSTER, Mr Rod, Senior Counsel, Queensland Bar Association

McGRATH, Dr Chris, Senior Lecturer, University of Queensland

MILNE, Mr Robert, Principal, Milne Legal

WEBB, Mr Troy, President, Queensland Environmental Law Association

CHAIR: I welcome representatives from various legal organisations. You have about two minutes each to make an opening statement to the committee and introduce your organisation and concisely summarise the main issues you wish to raise in relation to the bill. This will then be followed by questions and discussion by the committee.

Mr Litster: I represent the Bar Association of Queensland and we are here to make submissions particularly about the proposed cost provisions in relation to the SPA amendment bill. The Bar Association has provided a submission dated 18 October in which we draw attention to the fact that the bill represents a radical change to the operation of the Planning and Environment Court in terms of the question of costs. We have acknowledged the policy position against the continuation of the existing position, which is currently that each party bear their own costs. What the Bar Association is concerned about is that it is a step too far to enshrine in the legislation that costs will follow the event unless other orders are made by the court. We have made our submission focused towards a more general discretion to be included within the legislation.

Litigation in the Planning and Environment Court is not litigation where people are litigating for personal rights, per se; they are litigating over provisions within planning schemes. Those planning schemes are often confused, contradictory and can quite easily be construed in a multiplicity of ways. It is the job of the court to reach a view about whether or not a provision means a certain thing, and that can often mean that it will rule in favour of certain provisions and not others. The provisions within the act that deal with the decision-making process require that the primary focus of the decision is on whether or not there is conflict with planning schemes. If there is a finding that there is a conflict with the planning schemes, then the court will go on to consider whether there are grounds to override the planning scheme in those circumstances. Grounds are defined by the act as matters of public interest.

So the litigation is of a character which is plainly public interest. It is not about private rights, albeit it will protect private rights. But the people who are debating these things in the court very often are debating them from a public perspective—that is, the individual type submitters or the opponents to development.

But more significant than that, one has a scenario where local governments are necessarily always part of the proceedings, whichever way it goes. The problem with the current provision is that the identification in proceedings of this character is to identify what the event is that gives rise to the order for costs.

During the course of proceedings in the Planning and Environment Court, regularly development applications will be changed in ways that ameliorate the impacts. Anyone who has had anything to do with local government at any stage will realise that an application often changes to meet concerns raised by the local authority, raised by state government departments and raised by concerned residents. Those things happen within the court process. What then is the event should that development be approved?

These are the problems that we foreshadow, and we are concerned that much time of the court will be taken up with arguments about costs and arguments about the events, which do not currently occur. We think it is far more preferable that the court return to a position which existed prior to the 1991 act which was that the court had a power to order costs or make such orders as it thought fit of any proceedings before it and no general provision with respect to costs following the event.

Mr Connor: I am a representative of the Queensland Law Society. Mr Chairman and honourable members, the society commends to the committee the submission it prepared dated 12 October 2012, and it should be noted from the outset that the society supports the vast majority of reforms proposed by the bill. Given time constraints today, though, the focus will be on the matter that most concerns the society and its members and the reform that is not supported by the society. That is the proposed amendment to section 457 of the Sustainable Planning Act regarding costs and the creation of a presumption that costs follow the event. The society and its members support reform to these provisions, but uniformly they contend that the reform proposed in the bill goes too far. There are six things to say about that.

The first is that the reforms mentioned by the Deputy Premier when he introduced the bill to parliament are unlikely to be achieved by the proposed amendment, and the amendment may even work against achieving those outcomes which the Deputy Premier was keen to achieve.

Notwithstanding that the Deputy Premier had in mind that the reforms were introduced to address concerns identified by stakeholders, from what I can see from the submissions made to the committee there is now clear evidence before the committee that stakeholders and peak bodies do not support the change proposed in the bill because uniformly they say it goes too far.

The third thing is that proceedings in the Planning and Environment Court are not analogous to proceedings in other civil courts in Queensland and it is wrong to think that a uniform approach to costs will in the circumstances work, particularly where there are not always clear winners or losers in proceedings of this kind, partially for the reasons mentioned by Mr Litster on behalf of the Queensland Bar Association.

Fourthly, and unfortunately, the reform will unintentionally introduce an element of who has the deepest pockets in litigation of this kind whereas the Planning and Environment Court and its statutory predecessors have always been a refuge where people of all resources and financial capabilities were entitled to a fair hearing.

I can tell you from personal experience, having worked in this area for 25 years and worked during times when there was a cost provision, that the reform as proposed will affect the decision making of local governments. It is an unfortunate outcome but a fact of life that when local governments are considering decisions one eye will be placed upon whether a decision will not be in accordance with a planning scheme or the public interest but whether the decision will be capable of being defended in court or whether it will expose a local authority to a large cost claim.

There is a need for reform and the QLS supports it. But the manner in which it is done has to respect the fact that the majority of contested hearings in this court are closely fought battles about planning merits, what planning schemes mean, or emerge from a genuine contest between contradictory evidence from technical experts.

Finally, just as a personal observation, we have to bear steadily in mind that, despite what we might like to think, Queensland is not seen to be an easy place to do development. It has the largest legislation regulating development in all of the Australian states. It has planning schemes that run to volumes and are difficult to read, even for lawyers, and have different outcomes and point in different directions. The Planning and Environment Court has always been seen as a refuge in a storm from that multiplicity of legislation and this will just make developing in Queensland less attractive to those who have a choice, and I can tell you from my own experience that people make choices about these matters. That is the submission on behalf of the Queensland Law Society.

Dr McGrath: I am a representative of eight academics from Griffith Law School, the University of Queensland and the Queensland University of Technology. Our submission is No. 83, dated 12 October 2012. In essence, we focus on the proposed costs rule change and our submission to the committee is that the proposed change is counterproductive and unnecessary. I want to illustrate that with a story. Years ago I was a barrister acting for a developer client in Northgate. I believe that is quite close to the seat of the honourable member for Sandgate. The client, a long-term resident in the area who had two houses, wanted to amalgamate the two houses and construct 10 units. It was a low-density residential housing area and he was proposing some units. The local residents—the neighbours—hated the idea. They hated the idea of units coming into the area. But it was supported by the planning scheme. The Brisbane city

planning scheme allows, where you have over 3,000 square metres within a low-density residential area, to go to medium density. The development application was great. The Brisbane City Council ticked it off. There was an appeal. The neighbours had made a submission and appealed to the Planning and Environment Court.

We got to the compulsory dispute resolution procedures in the Planning and Environment Court. In that the registrar brought us in—I was there, obviously, for the developer and the residents all came in as a big group. The council was represented. You could really see during that process that the residents had a lot of their questions answered. They did not trust the council, they did not trust us—the developer—but they really trusted the registrar and they got some really good, clear resolution from that dispute resolution procedure that their case basically had no chance of winning. We agreed with them to add a couple of extra parking places and one of those reflective mirrors. They were concerned about traffic coming in. So we added one of those in. So we slightly changed the development application to meet their concerns and they agreed or consented to the appeal being resolved by consent with minor modifications. We then went back to the court and it was resolved by consent.

That is a really typical story. They were unrepresented, but you could see that the process allayed a lot of their fears about the proposal. They got a chance to be heard. That is really valuable. In my view and in the view of my colleagues, the P&E Court serves a really valuable community purpose in allowing these people to come in and have their views heard and to have these things resolved. In most of these cases where you have neighbours appeal—when their case really has no basis to it; they just do not like what is proposed, even though it is consistent with the planning scheme—the vast majority of those are resolved by consent.

I go back to the two points of our submission: it will be counterproductive, because it will stop the opportunity like that for local residents to be heard; and it is also unnecessary, given that there are about 23,000 development applications a year in Queensland, based on 2008 figures, and only about two per cent of those are appealed to the Planning and Environment Court—and of that two per cent, about 90 per cent of those are resolved by consent. So you are talking about a fraction of the overall development applications that go to a contested hearing in the Planning and Environment Court. The change to the cost rules will not affect that, but it will affect neighbours—people in the community—from being able to be heard in an independent tribunal that they trust. Those are my submissions.

Mr Webb: I appear on behalf of the Queensland Environmental Law Association, QELA. QELA's submission is No. 94, dated 12 October 2012, and is focused solely on the change to the costs power of the Planning and Environment Court proposed in the bill. QELA does not support the changes in their present form, which provide a discretion to the court in relation to costs with the presumption that costs follow the event. In short, QELA considers that the proposal will have little to do with stimulating development or ensuring better planning outcomes but will have unintended adverse consequences. QELA considers that the current wording in the bill will impact a number of stakeholders, with smaller developers, local governments, residents and community interest groups being the most disadvantaged.

Working out when an event is triggered in the Planning and Environment Court is more difficult than in other litigation and there will be arguments about this. It is tempting to view the question of costs narrowly as being associated only with the dispute resolution provisions of the Sustainable Planning Act. However, QELA considers that the proposed change will impact all levels of the development system. It is not just a question of whether a party will litigate or continue to litigate. Where there is uncertainty of outcome in relation to who pays the costs if there is a dispute, this impacts on investment in a project, even at the inception stage. It impacts on assessment management decisions. It distracts from what the focus should be, which is planning outcomes and ecologically sustainable development.

A litigant cannot control whether they win or lose a case. However, a litigant can control their conduct. Therefore, if there is a broadening of the court's discretion on costs it should be geared towards discouraging conduct that is not considered to be acceptable by current community standards. QELA has suggested that a costs sanction at the discretion of the court might relate to unreasonable conduct of a party. The suggestion is that the court rules might elaborate upon or provide guidance on what that type of conduct might entail. The precise wording of the suggested amendment to the bill is set out on page 7 of the QELA submission. Thank you. That is my submission.

Mr Baker-Jones: Good morning, Mr Chairman and honourable members of the committee. I appear this morning on behalf of Mr Stephen Keim SC and Mr David Fahl, both barristers-at-law. There is a commonality in our submissions and the submissions of my colleagues here today. As legal professionals practising in planning and environment law, we are concerned that the amendments proposed under the Sustainable Planning and Other Legislation Amendment Bill that require the unsuccessful party in a proceeding to pay the costs of the proceeding in the Planning and Environment Court could in practical effect create a denial of access to the court by creating a strong disincentive to the parties who entertain proper and legitimate concerns about proposed development to pursue those rights before the court.

The primary concern we have relates to the proposal to require costs to follow the event, which effectively is 'the loser pays'. We believe that this will all but deny concerned members of the public the opportunity to utilise the court process to raise and argue concerns that are in the interests of the general public. In addition, it will provide a disincentive to assessment managers, which are commonly local

government, to exercise their discretion to refuse development applications because of the risk that the assessment managers will face of bearing the applicant's costs should it be drawn without choice into an appeal of the decision.

There are other unsatisfactory and unintended outcomes that will result from the amendments and I will go into those later. The current act provides the court with sufficient power, we say, to deal with frivolous and vexatious litigants and is currently exercised by the court where appropriate. Therefore, we recommend that the reforms proposed in clause 61 of the bill not be implemented as drafted but, if they are, that there is a mechanism put in place for a party to be declared a public interest party at the beginning of the proceedings if they meet certain criteria. This will allow a submitter or local authority who is motivated only by environmental or public interest concern or who raises a significant and important question of law to have peace of mind that they will not be exposed to an order for costs at the conclusion of proceedings. Thank you.

Mr Milne: Good morning, Mr Chairman and honourable members. From the viewpoint of small to medium property developers, the creation of a costs jurisdiction would make it more difficult to challenge local government decision making. This would make small and medium scale development less attractive in Queensland compared to other states, including New South Wales and Victoria. However, if the existing ADR procedures of the court, being the use of mediation and the joint expert reporting process, were to incorporate case appraisal then in my opinion the process would be manifestly improved across-the-board for reasons including that cases would be resolved rapidly and at a fraction of the current cost; the existing mediation process would be made more efficient; access to justice would be improved in terms of access to an independent and knowledgeable decision maker and, accordingly, there would be a proper check on the decisions of local government; and costs would be awarded by the court if a party does not accept the case appraisal decision and does not obtain a better result from the hearing or, if the party did not act reasonably in the ADR process, the case appraiser would be able to order costs within that process.

The bolting on of case appraisal to the existing process is the next logical step in ADR in the court, and all the necessary rules for case appraisal already exist in the Uniform Civil Procedure Rules and have already been applied successfully in appeals in this court. This could be achieved by the act or the court's rules stating that there is a presumption in favour of the use of all of the recognised forms of ADR, being mediation, the joint expert reporting process and case appraisal. I believe that this process would be more efficient and less costly and, therefore, more attractive to investors than the non-judicial appeals processes in New South Wales and Victoria, which would contribute to making Queensland more attractive to small and medium property developers. The costs jurisdiction without the moderating effect of case appraisal would benefit only lawyers, with appeals being fought harder and longer and costs disputes becoming commonplace.

In my written submissions I have already submitted that the costs rules about commercial competitors would more effectively stop these types of appeals if a commercial competitor were to face an order for penalty costs to reflect the commercial benefit that the entity has obtained by delaying a competing development. Thank you.

CHAIR: Thank you, Robert. We might just tease out some issues that you have raised. I take on board what Robert has just said. Is there a consensus in terms of strengthening dispute resolution? That is what you are suggesting, is it not—that there be a stronger form of dispute resolution that can make a ruling that will be, hopefully, supported by both parties? Is there some consensus among the legal profession in regard to that?

Dr McGrath: I respect Mr Milne's views—he is a very experienced solicitor—but I disagree with him on this point. I do not see that case appraisal will reduce the costs of litigants. In my view, the existing mediation system within the court is excellent. The registrars really do a good job. That is reflected in the 90 per cent of appeals that are resolved by consent. It is an outstanding figure.

Mr Litster: I would concur that the existing system is working exceptionally well. 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. The addition of case appraisal is something which would add to the suite of measures and would not be seen as inappropriate. It is one of the suite of measures that is available in other litigation. It would not be the case that parties would be obliged to engage in case appraisal; it should be something that is an option. I think that is what Mr Milne was really suggesting—that it be afforded as an option. It certainly, I believe, would be supported by the Bar Association as the introduction of an option. Indeed, there is some potential scope for it to already exist under the Uniform Civil Procedure Rules in that those rules do make provision and the Planning and Environment Court Rules refer to those rules and defer to them on those matters. It is not something that is used at the present time but express reference to it, in my submission, would not hurt.

Mr Connor: In broad terms, the society supports the submissions made on behalf of the Bar Association. We just have to bear in mind that one of the criticisms of the court is that the proceedings are expensive. So an obligation to undertake a case appraisal just adds to the expense of a party where there is a genuine dispute between a developer and a council or others. If it remains an option for parties to participate in if they are willing or if it is ordered by the court then it is something that the society supports.

Mr Webb: I also concur with Mr Litster and Mr Connor in this respect, given my experience with the current ADR Registrar and the mediation process that does occur with that, which is free for all participants in the system. Case appraisal by an external barrister or somebody of that nature remains an option but it usually has to be paid, so I support the current ADR system.

Mr Milne: I think there is a consensus across not only the legal profession but everyone involved in the court that the existing ADR procedures are excellent. In terms of responding to the question of the costs of ADR increasing if case appraisal were brought into the equation, in my view the ADR Registrar now when dealing in a mediation generally reaches a point where he could make a decision and he is not required to provide reasons for those decisions. Under the existing Uniform Civil Procedure Rules he can state his decision. I cannot pretend to read his mind, but it is certainly the case in the existing mediations that he puts a great deal of work into explaining the law and the facts to less experienced litigants, but currently he does not have the power to impose a decision upon the parties, which takes up a great deal of his time, and in some cases the information and advice that he provides is not accepted when it should be. Case appraisal, including the ability to impose interim decisions as part of the mediation process, I think would greatly deal with that problem. Thank you.

Mr Litster: Might I just make one further observation. I had not understood that what Robert was suggesting was case appraisal by the existing registrar. Were that to occur there is a potential difficulty. Firstly, the existing registrar is underresourced. He conducts sometimes up to four mediations a day. He works extremely hard to do the task that has been visited on him. To require him to take it to that next level will require more resourcing. There would have to be additional registrars—appropriately qualified, appropriately experienced—brought into the process.

Case appraisals should not be confined only to the registrar. Case appraisals should be allowed to be undertaken by independent case appraisers, be they solicitors, town planners, lawyers, people who are experienced in the jurisdiction if the parties agree or the court otherwise orders. That would be a sensible way of expanding the way in which the disputes could be resolved through case appraisal. Confining it only to the registrar would, I suspect, prove unworkable unless significant resources are pointed in the direction of the court and the registrar.

Dr McGrath: Could I add that I also did not appreciate, as Mr Litster did not, that the proposal was to have case appraisals done by the registrar. In my view, again while respecting my colleague's experience, that would turn a process whereby the parties can come together and have a completely without prejudice, off-the-record meeting where they can exchange views and one can say, 'Well, I am willing to give ground on this if you put this forward,' in a completely non-adversarial environment, into an environment where the person sitting at the top of the table is actually holding a gun and is going to shoot one. It would be counterproductive to the mediation process that currently exists if that was bolted onto the existing registrar's role.

Mr Connor: The Law Society adopts the submissions made by the Bar Association. Mediations, by their nature, are informal proceedings at which, as Dr McGrath points out, parties are often more focused on achieving a middle ground than maintaining some position. I think many councils and developers would be seriously concerned that for multimillion dollar projects an appraisal would be made at a mediation by a registrar, no matter how gifted he is, about complex issues that might be litigated in courts over many days.

CHAIR: Just going back to that issue, is there any need for strengthening the mediation platform in terms of extra resources or do you believe that the mediation process is currently sufficiently resourced? From what I am hearing it is working very well. Is there any need to take it the next step and give it extra resources so that it can actually work even better?

Mr Connor: There is no doubt that during busy periods Mr Taylor is stretched to the limit. It would help if there were further resources, including potentially another registrar or part-time registrar who could help him. It is the ability of the registrar to have time to consider the issues and to provide a reasonable period for parties to be heard in front of him which is important and which has proved successful. At some times Mr Taylor's resources are stretched to breaking point.

CHAIR: I think the view of the government, quite frankly, is to try to keep as many of the cases out of court as possible. What I am looking for is an alternative to that and I am listening to what you are saying in terms of the resources.

Mr Litster: I would concur with what Michael Connor says in relation to the resources of the registrar. Can I point out, in relation to the statistics that Chris McGrath has quoted, that at the present time all of these cases come into the court through appeal processes but very few of them proceed to hearing. Very few of the cases that ultimately go to the court seeking some form of adjudication actually proceed to hearing. The costs power as it is presently framed has, as other speakers have indicated, the potential to dissuade people from having a go, as it were, to require that the schemes be complied with because they are at risk. That is the problem that will occur as a result of the costs mechanism: people, be it developers or opponents to development, will factor in the fact that they may be at risk of a costs order on an uncertain outcome because their lawyers will be telling them, 'We cannot tell you that you will definitely win.' We have to say that to them now because schemes are complex documents. They are contradictory, they are internally in conflict, they are not drafted with the precision of legislative acts. They operate as law but they do not have the precision of the laws of this parliament. So people cannot be told that they are clearly winners, and that will factor into the concerns.

So far as the registrar goes, yes, in my personal opinion there is scope to introduce more resources, such as additional registrars. That has been spoken about for some time with the department. There is a difficulty in securing people who are appropriately qualified. The registrar that presently is in the position is extremely well qualified. He is in his late sixties. He has had many years of experience in the development industry on both sides. Finding someone appropriately qualified like that is a difficulty that has to be overcome. Also, giving the resources to ensure there are additional people being trained up in that role is something that should be looked at because the system works and it works well and it is cutting down the number of cases that actually take up judges' time in the court.

Dr McGrath: Can I add to or slightly widen that. There has been a great deal of justified praise for the registrar, but I am sure all of my colleagues would concur in pointing out that the court is exceptional in its whole process, particularly the main judge, Judge Rackemann, who is the principal judge who runs the busy Brisbane court. The case management that exists there is exceptional in pushing cases on to get them to hearing in an efficient manner. In addition, the court has adopted procedures like having the experts hold conclaves. They all get together in the absence of the lawyers, bat out an agreed position and points that they disagree on. That has been instituted over the last few years and it has really helped, in my view and I believe in the view of my colleagues, in narrowing down issues and reducing the issues that go on to the contested hearings. The registrar is just a component of the overall excellent system that currently exists in this court.

Mr Baker-Jones: May I revisit the point of the ADR process. I concur with my colleagues that it is working efficiently and it does serve a great process in that it removes a lot of matters from the court that may otherwise end up there. I also tend to agree that it appears to be underresourced and further resources would aid it. To link the costs award with the ADR process I think would destabilise that already excellent process because it would cause instability in that it would potentially make the field between the parties uneven by adding this either incentive or disincentive to an award of costs. I believe that the cost awards should be decoupled, delinked or remain away from the ADR process in order to preserve a very effective process.

Mr Milne: To address the resourcing issue, certainly extra resourcing for the court is always welcome, but the Uniform Civil Procedure Rules already provide for the parties to share the ADR costs. If case appraisal were to be encouraged, a panel of barristers could be established. In a particular case appraisal I was involved in Mr Keim, as he then was, was the case appraiser. I do not see there being a significant burden in terms of resources.

For the reasons I discussed earlier, I think the existing ADR Registrar's time would be better used. For example, I often see him spending perhaps half an hour in a mediation asking the other parties to go outside so he can explain the law and the facts and the principles to less experienced litigants only to find that he has, in effect, got nowhere. That is quite frustrating for everyone involved. In those sorts of circumstances, he should have the power to impose a decision on the parties when that decision is clear. The existing Uniform Civil Procedure Rules provide that if he considers a case is too important or too complex then it will not be dealt with that way and can be referred to the court, and that would be appropriate on the larger, more complex matters. His discretion in the past has proven to be well exercised, and I would be confident he could exercise similar discretion in those matters in the future.

CHAIR: Thank you very much. I have not asked my colleagues if they have any questions. Michael?

Mr HART: Mark, with regard to the concept you put forward for a public interest party or something similar being exempt from orders of cost, is there any precedent in any of the courts in Australia, or the world for that matter, that would cover this sort of thing? How narrow would the definition of a particular party or this position applying to a particular party need to be? Can I have some input from the other members as to whether they would agree that this may go some way towards assisting with the issue that you have?

Mr Baker-Jones: There is a precedent in case law. My colleagues will be aware of the matter. It is a High Court decision, Oshlack v Richmond River Council. The matter dealt with costs, but the High Court identified three criteria that could be used to establish whether litigation was public interest litigation or not. So certainly there is case law there. There is a means by which a public interest party and public interest litigation can be identified.

Mr Litster: There is already a similar type of provision within the Judicial Review Act, section 49, which provides that a party can, early in proceedings, ask the court to determine that it ought not be exposed to costs. That has been used by environmental groups when challenging decisions by government. For example, with the Hinchinbrook harbour, I was involved in proceedings where an environmental group used that and the court in fact determined that it was appropriate that they not be exposed to costs but agitate the issues that they had brought before the Supreme Court in that case. I am not sure that the power conferred by that section could be immediately transferred in terms to the type of litigation we are dealing with, but that is certainly an example of the sort of thing that I think Mark is talking about. It does already exist within Queensland legislation in not dissimilar types of circumstances, where what is a concern in the relevant litigation is the reasonableness or appropriateness or proper conduct of decisions and the proper outcome. There are differences between the types of litigation, which would mean that you would need to consider that fairly carefully, but there is that provision.

Dr McGrath: The concern that I would have with making a rule that, basically, the loser pays the winner's costs but there are exceptions such as public interest is that, particularly for local governments, it creates difficulties. Generally, if you are a resident you want your local government, or if there are concurrence agencies involved you want them, to take the run. They have the resources, they have the lawyers and you do not want to be going to court. If you do go to court, you want to be there just supporting them so you are a public face saying, 'Yes, we oppose this,' but you want your local government to take the running. If a cost rule comes into the court—and there already have been submissions—that will deter local governments. They will be thinking about costs when they decide matters and whether they decide to resolve appeals.

I think particularly of the Sunshine Coast. Brisbane is such a big and hairy beast with great resources already, but particularly with the Sunshine Coast councils around Noosa, where there can be extremely valuable developments, there is a lot of money involved. There is a pot of gold from the developers' perspective. If they get their land zoned to something that allows a big development to go ahead, there can be millions there for the developer. But if councils resist it on the basis that it is bad planning, all they get at the end of the day is that their constituents, their residents, are protected from a bad planning decision. If they win, they do not get a multimillion dollar development; they just get it left as it should be under the planning scheme. So the threat to local governments is a real one with changing the cost rule, and that is a major concern. That is why we have said, in terms of it being counterproductive, that that would be an aspect of that. The change to the costs rule would be counterproductive, particularly for Sunshine Coast councils.

Mr HART: Just as a follow-up on that, Chris, don't you think that at the end of the day, if there are costs involved and a local council is taking a developer to court, they would only do that on the basis that they think they have a chance of winning? Therefore, they may well look at their planning regulations and maybe do some more sensible sorts of things with their planning to start with?

Dr McGrath: Yes, honourable member. Often, though, the very small percentage of things that actually go on to a contested hearing in the court are often very difficult. There will be multiple experts. There are many issues at play. No-one can say for certain what will be the outcome of it. You can have great lawyers such as Mr Litster and you can have great teams behind you, but you cannot guarantee that there is going to be a win. No-one really knows. If you are trying to weigh up, 'Do we settle?,' the paramount thing from a local government's perspective, in my view, should be good planning decisions rather than being driven by resources.

It is important to recognise the difference between the big councils, such as Brisbane City Council and the Gold Coast—even the Sunshine Coast councils are pretty big—and those in the regional areas such as Townsville and Cairns, where resources are a massive issue for them. It is really important that they have the public interest—I am using those words again, 'public interest'. Their interests should be in good planning decisions and not with one eye on, 'If we lose this we are going to suffer a $1 million cost bill.' The costs can seriously get well over $1 million or $2 million. If you go for a few days in court with multiple witnesses, you are looking at a hell of a lot of money.

CHAIR: Gentlemen, we are running out of time. We have local government coming in next.

Mr Litster: I can be brief in response to the member's question. The problem with councils doing things with their planning instruments to make it clearer is that the regime has moved over the past 20 years from a position where councils used to be able to identify developments that were prohibited. They used to be able to say quite clearly that things were prohibited. We have moved to a different model of planning in this state, which means that council schemes do not prohibit development; they identify the controls that will be required to be imposed on development, and the decision rules that are contained within the Sustainable Planning Act push local governments and the court into deciding whether or not there is conflict with the planning instrument. Then, even if there is conflict, that does not mean that there is an absolute refusal either. It goes on to consider whether there are matters of public interest—not matters personal to the individual participant's proceedings but matters of public interest—that are sufficient to outweigh the negative result of the first question.

So the system is one where schemes no longer preclude people from developing in particular ways. Even though there may be things that turn their face against development, there is still an opportunity for public interest matters—for example, the need for additional retail facilities, the need for an additional dental practice in a residential area—and those types of considerations to come into play. It is not so simple that you can simply redraft the planning schemes to make it clearer and, therefore, make it more certain as to your outcomes.

CHAIR: Thank you very much, gentlemen. Our discussions have been very fruitful. Thank you very much for appearing before the committee this morning. Certainly we have cleared up a lot of issues. I appreciate your time with us this morning. We are moving onto local government, so I am assuming that we will have a similar number of issues raised again. I appreciate your coming in this morning. Thank you very much.

BRADBY, Ms Linda, Manager, Strategic Planning, Moreton Bay Regional Council

HANNAN, Mr Luke, Manager, Planning, Environment and Social Policy, Local Government Association of Queensland

JONES, Mr Anthony, Acting Executive Director, Council of Mayors South-East Queensland

PIPER, Mr Ron, Project Director, Urban Development, Sunshine Coast Regional Council

CHAIR: Good morning, ladies and gentlemen. Welcome. You have about two minutes to make an opening statement to the committee, to introduce your organisation and to concisely summarise the main issues that you wish to raise in relation to the bill. This will be followed by questions from and discussions with the committee.

Mr Hannan: The Local Government Association of Queensland and the Council of Mayors South-East Queensland welcome the introduction of the Sustainable Planning and Other Legislation Amendment Bill 2012 and we appreciate the opportunity to address the committee today. Prior to the state election in March, the LGAQ and Council of Mayors SEQ were active in advocacy to all parties on reforms sought to the Sustainable Planning Act 2009 and other legislation impacting on local government. The LGAQ and Council of Mayors SEQ congratulate the state government, and in particular the Assistant Minister for Planning Reform, Mr Ian Walker MP, for the early and collaborative engagement with local government to identify ways to improve the Queensland planning and development system.

It is recognised that this bill represents the short-term initiatives of a longer term planning reform agenda in Queensland. The LGAQ and Council of Mayors SEQ have worked closely in representing the collective views of local government in the development of the planning reform agenda. On this basis, it was considered appropriate to provide a joint submission on the bill in this instance. The LGAQ and Council of Mayors SEQ support the intention of the amendments proposed in this bill in principle, but through our submission have sought further clarity regarding the implications of the new cost provisions, the finalisation of the Queensland planning provisions and the transition of the master planning framework.

The proposed amendment to section 457 of the Sustainable Planning Act provides that 'costs of a proceeding, including an application in a proceeding, are in the discretion of the court but follow the event, unless the court orders otherwise'. It is understood that the specific factors guiding the exercise of the court's discretion under section 457 are to be contained in the amendments to the Planning and Environment Court rules.

The LGAQ and Council of Mayors SEQ maintain that it is important that any rules governing the court's discretion about costs should not be based simply on a party's level of success in a proceeding. Doing so has the potential to inhibit decision making and public participation in the planning process. Our submission also highlights the obvious difficulties in determining the event and what that is in the context of planning cases, particularly in relation to appeals against decisions on development applications. Unlike matters of commercial law, where there tends to be a clear outcome in favour of one party, it is common in planning law for cases to be largely determined by way of compromise. Any increased risk of costs being awarded against councils is concerning. As such, the LGAQ and Council of Mayors SEQ seek further consultation on the details of the subsequent amendments to the Planning and Environment Court rules.

The bill also seeks to enable the amendment of the Queensland planning provisions to allow its application to IPA planning schemes. The LGAQ and Council of Mayors SEQ seek further consultation on the finalisation of these amendments to the Queensland planning provisions, particularly with regard to determining the definition and the scope of the low-risk operational works.

The LGAQ and Council of Mayors SEQ also recognise the ongoing challenges with the existing master planning and structure planning arrangements. The amendments to these provisions are supported, provided that in parallel the state government implements an agreed streamlined plan-making process. Further recognising the prescribed transition time frame in the planning schemes and the potential impacts for councils, the LGAQ and Council of Mayors SEQ request the provision of suitable resources to support those affected councils to ensure a timely transition and to reduce any potential impacts. That concludes my opening statement.

Mr Piper: Thank for the opportunity to present to the committee. As I am sure you are aware—and I would not be here if we had not—we have lodged a submission. We would like to congratulate you on some of the reforms that have been put forward. Council supports a lot of the reforms. There are seven key areas of those reforms, five of which we are generally, if not totally, supportive of, but there are some that we do have reservations about, particularly in relation to operational works where there is a cap on the level of assessment of operational works. We do not have a problem with that, but we have a problem with the mechanism that the bill proposes to use for that.

There are two main issues that council has concerns about. One is the costs in the Planning and Environment Court. Our submission covers that pretty fully. Having looked through the other submissions I can see that there are numerous submissions on that, and I am sure there will be numerous speakers on that. I will not dwell on that. Obviously, I would hope that the committee takes due recognition of council's views in our submission.

Our main concern is with regard to the removal of the master planning and structure planning provisions. The Sunshine Coast Regional Council and its predecessors—the Caloundra City Council, the Maroochy Shire Council and the Noosa Shire Council—have a long and successful record with planning assessment of major developments, particularly through master planning processes such as with Kawana Waters, Pelican Waters, Twin Waters, Brightwater, Coolum Ridges, Peregian Springs—and the list goes on—and more recently with Maroochydore and Palmview. We have invested considerable time and financial resources into producing structure plans under the current provisions of the SPA. We believe that there should be an opportunity to utilise those provisions in our case where we have gone a long way down the track.

The bill, as it stands, proposes to omit the planning and master planning arrangements based on the state government's assessment that these processes are considered inefficient and cannot be addressed. However, the council has done a lot of work and has produced two structure plans. In particular, we are concerned that the examples given in the explanatory notes and through the bill are that there can be 'effective use of section 242'. We would probably not try to argue that the effective use is right, but the problem we have is ineffective use. How do you put a ring around that? We believe that, in the best case scenario, you could put the case that it is a reasonable way to move forward, but we do not believe it is nearly as significant or as comprehensive as the master planning provisions. I understand why people have not gone into it, because our council did have to do a lot of work in a short time and it used significant resources. But we feel that, having done that, we should be able to retain it.

As we read the bill, section 242 approvals open up the opportunity to vary and override the integrated land use and infrastructure planning outcomes for Maroochydore and Palmview, and these are very significant for the community. These have been through a long process of community consultation. We have heard a lot about empowering communities and empowering local governments. We have demonstrated that these have been through several layers of community consultation and do reflect the community's views on the Sunshine Coast.

As I touched on earlier, section 242 approvals could be seen as effective use but they can certainly be used in a tactical manner by people. In my view and council's view it is almost counterintuitive to talk about what can be done under a section 242 approval and master planning at the same time. It is either a master plan or it is not. We believe that section 242 opens up the opportunity to look at things in a fragmented way and not look at the big picture.

We would therefore respectfully submit that we would like to see the state government—through the state government's intention to empower local governments—enable the relevant local governments to opt in or opt out of the proposal as it is written. We see a method for doing that being the procedures that are in place at the moment that cover the master planning for Springfield in Ipswich city, North Lakes in the Moreton Bay region and Kawana Waters on the Sunshine Coast. The master plans that were put in place were preserved through the Integrated Planning Act and in the SPA. We would like to see that as an option available to us, given the work we have put into it. I will leave it at that.

CHAIR: Thank you very much.

Ms Bradby: Thank you very much for allowing me to speak today. The council is generally supportive of the changes in the bill, with the exception of three concerns. One is around the court costs, which others have already spoken about. Moreton Bay Regional Council does bring forward another solution. That is, proceeding with the amendments however removing that costs could be awarded to the three levels of government. The reason for that is that every development application that is impact assessable can be appealed and council would be a participant in those appeals. The concern is that decisions to join the appeals or defend conditions would be made on potential costs rather than the merits of the appeal.

The other issue is with regard to the omission of chapter 4, the partnership provisions. Similar to the Sunshine Coast Regional Council, we have some significant concern about that. Moreton Bay is in a unique situation in that the Caboolture West area was declared as a master plan area only last year. That was as a result of the Moreton Bay Regional Council working very closely with the previous Queensland government to get that declared. I do know that Mayor Sutherland has recently met with Assistant Minister Ian Walker and reaffirmed Moreton Bay's desire to continue down that path.

The declaration process was not done just by Moreton Bay; it was done in consultation with a consortium of developers. I think that is where the uniqueness of this particular partnership provision in the legislation allows a true partnership between the two levels of government and developers to move forward.

The challenge with the deletion of section 134 is that it does allow preliminary approvals to come forward. If you take that into consideration with the potential awarding of costs in court, it does put council in a very precarious position with regard to incremental development applications coming forward and potentially having to defend them in the Planning and Environment Court should they refuse them. My understanding of the spirit of chapter 4 is that it is about partnerships. It is not about processes or systems; it is about those people who deliver development in a streamlined fashion doing so in partnership—so that is state government, local government, the development industry and the community.

The concept of master planning is that you get all the hard yards out of the way and everyone knows where you are heading. So when development applications do come in they are streamlined. The master planning provisions in chapter 4 deliver what this government is seeking, which is streamlined development.

The challenge that we have in Caboolture West compared to other areas like Springfield and North Lakes, for example, is that there is a very large number of developers that are interested in that area. The provision in part 4 is a mechanism to bring that forward. I am aware there is some criticism of how other areas have been developed across the state with regard to the master plan provisions. My view is that there are teething problems. It is a relatively new provision in the legislation and council did not embrace the declaration without analysing the history, looking at how it happened in other areas and where the process is now. We believe that the partnership provisions and the principle and the spirit are really what needs to be maintained. Omitting that part throws the baby out with the bathwater and does not allow those provisions to go on.

The third element is the new section 55A with regard to the IPA standard provisions. It is not so much the example in the explanatory notes that concerns us; it is more that it is silent on how it could be used into the future. Moreton Bay has embraced a new SPA planning scheme, and if we are required to take two steps back and be making amendments to the existing three planning schemes it delays our program of delivery on the planning scheme that we would like to bring forward for the new Moreton Bay region. Thank you very much for listening to me today and I look forward to our conversation.

Mr Jones: I would like to emphasise Mr Hannan's earlier comments. It is a joint submission between the LGAQ and the Council of Mayors SEQ. One more point I would like to make is the support for the Assistant Minister for Planning Reform, Mr Ian Walker, who has been tremendous in working collaboratively with SEQ councils and other stakeholders in preparing many of these reforms. I will leave it at that. Thank you.

CHAIR: Thank you very much. Colleagues, do you have any questions?

Mr YOUNG: Ron, could you elaborate on section 242? You touched on it, but I just want further clarification.

Mr Piper: Under section 242, which is effectively a section of the SPA that allows you to override the planning scheme or the processes that are already in place for a developer to make an application, our main concern is that that could easily result in an outcome that is not a master planned outcome. We could be looking at an area such as Palmview, where we are talking about 7,000 or 8,000 dwellings. We could have an application under section 242 for 300 dwellings, with connections through road networks or whatever, that would say, 'For these 300 dwellings this all works. This should be approved.' In the context of the whole of the structure plan, that might not be the case. It probably would not be the case, to be honest.

Looking at it in isolation and going through the Planning and Environment Court, that could easily get up as a stand-alone 300 lot that would be built. Then another section 242 application may come in. That is incremental planning; that is not master planning in my view. But to be fair, someone could lodge a section 242 application for 4,000 dwellings or so and that would be master planning. I accept that that would be a master planning process. But I do not see any mechanism that says, 'You have to do an application for the whole area.' The current master planning provisions and structure planning provisions do actually identify areas so you have some context as to how things fit in. As we read the proposals, a lot of that would fall away. Yes, the good guys will do the good thing but we are not totally convinced that that guarantees an outcome. Owners change. We can talk to current owners of blocks of land and they say, 'This is what is going to happen,' and I do not doubt that everything is genuine and everything is going to move forward. But ownership changes and people have different views. I guess that is our main concern.

Mr YOUNG: So you are saying there is scope for section 242 so that people who fit outside master plans do have an avenue to go down.

Mr Piper: Not under the current provisions, under chapter 4 of the SPA. Under a master planned area or a structure planned area, you cannot lodge a section 242 application. I believe opening up that up to say that you can is counterintuitive to a master planning approach.

Mr YOUNG: Thanks, Ron.

Mr HART: With regard to master planning situations that have been in place for 20 and 30 years that are no longer working, how would you suggest the government goes about fixing those sorts of issues? Do you have any of those sorts of issues in your areas?

Mr Piper: It is a constant thing that comes up, particularly with the example I gave of Kawana Waters. There are master planning provisions there. They were done under the old Planning and Environment Act, even before IPA. The reality is that if you are a major developer and you have paid a lot of money for a big block of land you will hear developers talk about locking in some certainty. I think with Kawana Waters—and Linda may answer in the case of North Lakes, although North Lakes is a lot closer to being finished—there is no doubt that, under that certainty principle, everyone is looking for certainty. I quite often hear people refer to Kawana as still being under the old regime. I do not hear anyone mentioning Robina, which has its own act. No-one goes around changing that act, because there is certainty there about what goes ahead. No-one goes around saying, 'Let's change the Sanctuary Cove Resort Act,' because there is certainty. These are anomalies, because they are covered by other acts.

To be honest, I believe it comes more from participants who are not necessarily in the tent rather than the ones in the tent, if you follow me. I am talking about someone who buys a block of land in a master planned community. It can be quite complex. They really do have to work with the master developer. That is the whole point that I was trying to make about master planning rather than individual, ad hoc developments. You only have to go to somewhere like Kellyville in Sydney to see what happens when you have little pockets all over the place and nothing is tied together. At some stage one day maybe it will all come good but not at the moment.

Ms Bradby: Section 242 allows preliminary approval to be brought forward outside the planning scheme. So that is when the planning scheme is not envisaging that that development is going to happen. The bill proposes to omit section 134 so that where there is a declared master plan area over an area of land you cannot bring forward preliminary approval for a section 242 application. So with the omission of part 4 it means that preliminary approvals outside the planning scheme may be brought forward.

In South-East Queensland the consequence of that is still protected, I suppose, by the SEQ SPRP, which brings forward minimum lot sizes et cetera outside the urban footprint. In other areas of the state they do not enjoy that. Notwithstanding the fact that the review of the SEQ Regional Plan is ready to commence, that concern about preliminary approvals outside the planning scheme being able to be brought forward aggravates or concerns that issue further. Having section 134 there now, which is where there is a declared master plan, provides council with some security while they do their structure planning through the partnerships provisions.

The second question was about older master plan areas and some of the challenges there. I have to say that my experience is only in South-East Queensland with master plan areas. North Lakes is not caught in the omission of part 4 because the bill does not amend section 857 of the SPA which relates to development control plans repealed under the Local Government (Planning and Environment) Act. Therefore the status quo of North Lakes remains, notwithstanding the fact that if it had been impacted upon it is nearly finished—that is, its residential land is nearly finished. It is really only its commercial/ employment development that still has some time to go.

The other area I am familiar with is Springfield. Once again, that is outside the current master plan provisions. Both of those developments enjoy one landowner. That is the difference. That is really where part 4 comes into its own, where you have a large number of developers that all want to develop together but they need to have some guidance with regard to the structure of that area. So when you have one major developer that holds the whole area, it is much easier to negotiate through section 242 or through an infrastructure agreement. When you have many developers, there is a risk that you end up with incremental development and you do not get the best community or place out of that development proposal and you start getting contests. So there are winners and losers in that situation.

CHAIR: Thank you very much, Linda. I refer to the previous witnesses from the legal profession. They were putting the case that local government could be in a very difficult position in terms of awarding costs. In a court case that involves a major developer taking a council to court, the court costs would be awarded to the loser. There is the potential that the developer could gain millions of dollars in a project whereas if the local government lost the case they would be compromised by the fact that they were spending ratepayers' funds on that court case. There is no win-win situation for local government in terms of getting a kickback or a financial gain out of going to court. For the record, could you clarify your concerns in relation to that?

Mr Hannan: As per the LGAQ and Council of Mayors SEQ submission, we have raised a particular example where a council would refuse a development application and have that decision overturned by the court but only after the developer has made substantial changes to the proposal through the appeal process. In those circumstances, while council has not been successful in defending its decision, the council has clearly achieved a better outcome for the community by eliciting those changes to the development proposal.

It would be concerning if council would be required to pay those costs in those circumstances due to the event being the overturning of its original decision. So, yes, we share those concerns that councils could be in a compromised position. But, as per our original recommendation in our submission, we would hope that, if the court rules are going to be in detail, those sorts of particular circumstances would actually be explicitly recognised in the amendments to the court rules; hence our position to be involved in the drafting of those amendments to the court rules.

CHAIR: Are there any other comments?

Mr Piper: As I said, I think our submission is actually quite comprehensive and gives some very specific legal examples. I support what Luke said. We certainly have concerns that you end up moving to something that is very blurry. It sounds like a very simple solution to what is a very complex issue. We think there would be a lot of blurring in relation to those costs. Who won? Was a building or the conditions modified? Was the proposal modified? I would certainly hate to think that we would get into a situation where one of the considerations is more about the financial implications of approving or refusing an application rather than the merits of the actual application from the point of view of public interest.

Ms Bradby: Just to add to that, as you know, local governments have limited sources for revenue. Developers can pass costs on to the end price. So councils are there representing the broader community good as well, and that is funded through ratepayers' rates et cetera. The implications to council are significant. I could see that decisions would be made about whether to pursue court action on the basis of potential costs as opposed to the outcome that you are seeking.

CHAIR: Thank you very much, Linda. May I commend local government for their submissions. They were excellently put together. The committee was very pleased to receive those submissions. We have run out of time for the local government presentation here today. I thank you all for attending here today before the committee. We have gained valuable insight into your position. Thank you very much.

BERWICK, Mr Mike, Chair, Queensland Regional Natural Resource Management Groups Collective

CHAMBERLAIN, Mrs Jill, President, Wildlife Preservation Society of Queensland and Representative, Take Action for Pumicestone Passage Inc.

DONATIU, Mr Paul, Executive Coordinator, National Parks Association of Queensland

PENTON, Mr Geoff, Chief Executive Officer, Queensland Murray-Darling Committee

RYAN, Mr Sean, Senior Solicitor, Environmental Defenders Office

CHAIR: I now call on the representatives of the environmental organisations. Welcome. You have two minutes or thereabouts to make an opening statement to the committee and introduce your organisation and concisely summarise the main issues you wish to raise in relation to the bill. We will then follow up with a question-and-answer discussion with the committee.

Mr Ryan: I represent the Environmental Defenders Office of Queensland and North Queensland. Thank you for the opportunity to appear and comment before the committee. The Environmental Defenders Office is a non-profit community legal centre which specialises in public interest environmental law. We help those who cannot afford commercial legal services understand and access their legal rights to protect the environment. Our offices have been helping Queenslanders for over 20 years, and our clients include those in both urban and rural contexts. For the last six years we have published a community litigants handbook which has helped those access the Planning and Environment Court and navigate its procedures.

We have put in two submissions to the committee. Today I want to speak about our dominant one, which is the one in relation to costs as that is the central issue for us and our clients. I have been running planning and environment litigation for over seven years, both for developers and councils in my previous private law firm capacity and most recently for the Environmental Defenders Office for community groups. It saddened me to realise that our clients can be correct as to the law and right on the facts, but more often than not the issue that determines whether or not they proceed with their trial is the issue of costs. For a commercial developer, it is simply a cost-benefit equation. They consider the profits they can make from their development proceeding, or from preventing their commercial competitor proceeding, and weigh that against the costs of the trial to determine whether or not it is rational to proceed.

The costs of running litigation in the Planning and Environment Court can be substantial. A one-week trial can easily cost $200,000 or more. So that makes the benefit of running a full-blown trial rational only for the larger developers. Small developers, councils and community groups can manage their costs to some extent. They can reduce their issues or go with lesser barristers at smaller law firms, but for the council and community groups they have no prospect of financial reward at the end of that litigation—only the warm, fuzzy feeling that they have protected the environment or have helped with a planning scheme et cetera.

The council and particularly our clients, the community groups, are at a real cost disadvantage in the Planning and Environment Court as it presently stands but those costs can be managed. Our concern with the bill is that it makes our clients potentially liable for the costs of the other side, and those are costs they cannot control. The costs can also be very significant. One of our clients had a costs order against it, not in the Planning and Environment Court but in the Federal Court, for over a million dollars. So that risk of a very substantial costs order is too much for most of our clients to bear. Most often, even if they have good legal prospects and good facts they will decide not to proceed because they simply cannot handle that risk.

In our view, this bill as it presently stands will exaggerate the cost disadvantage in the Planning and Environment Court and substantially curtail access to justice for our clients and most of those who are not wealthy enough to run full-blown litigation in the Planning and Environment Court. In our view, the clause that changes the existing cost rule that is in section 457 of the Sustainable Planning Act—and that is clause 61 of the amending act—should be deleted. However, if the government is committed to making some changes to the existing cost provisions, we suggest that the existing discretion of the Planning and Environment Court under section 457(2) be expanded to include specifically matters such as commercial competitors, which is one of the stated reasons for the bill. We have included as an attachment to our submission our suggested changes. Obviously that is for a parliamentary draftsperson to work out the detail, so it is only illustrative. Those are my submissions.

Mr Penton: The Queensland Murray-Darling Committee is a community organisation. We work west of the range in South-West Queensland covering the Queensland section of the Murray-Darling Basin. We comprise six local governments, the agricultural sector, the conservation sector et cetera so we are a representative based organisation. My brief background is 13 years in state government in Queensland and with the Queensland Murray-Darling Committee in a number of roles since 2002.

Our submission on the draft bill covers three or four main points. Firstly, regarding the relationship between the planning act and the statutory regional planning process that is kicking off, at the moment the intent described through the statutory planning process is that that is not the place to create new policy or

new legislation. It will rely on existing legislation like the current act to be the backbone of that planning process. The amendments proposed, in our view, reduce the potential effectiveness of that regional planning process.

The next point is that of community involvement. We feel there are a few elements of the changed bill that look to reduce community involvement in planning processes. In our view, that is a step backwards. Without going into the specific details, like the previous speaker did with one element of that such as the appeals process, certainly the timing and the opportunity for community involvement, in our view, should be being streamlined and enhanced rather than just reduced.

The next point would be the potential cost to local government. Our understanding is that one of the intents here is to provide greater opportunity for local government to manage within their patch as opposed to having blanket state regulatory arrangements. The risk we see with that is the cost to local government in managing and defending the local planning decisions against proposed developments. History would show, particularly west of the range, with local governments with small discretionary budgets that their opportunities to appeal and use the Planning and Environment Court are quite costly and become quite limited. Our view is that local governments need the state framework and need that state level of protection.

The last point is the overall issue of the perception of reducing the level of public transparency with planning decisions. In our view, there are a number of proposed changes here that have the potential public perception of reducing transparency in decision making.

Mr Donatiu: Thank you for the opportunity to be present today. The National Parks Association of Queensland is a non-government organisation that essentially promotes the preservation and good management of protected areas in Queensland. NPAQ has some key concerns about this proposal to introduce a Sustainable Planning and Other Legislation Amendment Bill. Some of my comments this morning will reflect those made by Sean earlier. In particular, we believe the bill will deny all but the most wealthy the ability to make legitimate cases before the Queensland Planning and Environment Court, largely through this fear of large court costs. It will tip the scales of negotiation and dispute resolution in favour of large councils and particularly developers who can afford the risk of going to trial. It overturns a 20-year-plus rule which has facilitated community involvement in planning decisions that essentially affect everyone.

The current rule that each party to proceedings in the court bears its own costs has been in place, as you know, for over 20 years. All parties must pay for their own legal assistance or expert witnesses and volunteer their own time. Apart from limited exceptions, the parties do not currently have to pay the other side's costs if they lose. This rule enables ordinary citizens or groups to dispute planning decisions or to seek to protect the environment without fear of crippling cost orders. This also protects local governments and state agencies from the risk of such costs. Individuals now will really hesitate to go to court for fear of losing their possessions, potentially their house or their property. The proposed change to costs following the event will disadvantage poor and middle-income people, mums and dads, non-profit community groups and non-profit environmental groups. We believe that the current costs rule is best left alone. It has worked well to date and there really are no compelling reasons to change it.

Mrs Chamberlain: I am Jill Chamberlain. I am the president of the Sunshine Coast and Hinterland branch of the Wildlife Preservation Society. I am also representing another environmental group, TAPP—Take Action for Pumicestone Passage—because their representative could not be here today. Both of our groups are concerned with the environment and how best to safeguard it and protect it from various issues that might affect it. We would have liked to have more public consultation on this proposed bill before it went before parliament, but that did not happen. So we are asking that clause 61 be deleted and that the own-costs ruling, which has worked satisfactorily for 20 years, be reinstated.

To award costs in the event that litigants are unsuccessful and require them to bear the other party's costs as well as their own would effectively prevent individuals, community groups and not-for-profit organisations from appealing planning decisions adversely affecting the whole community and/or the environment which are of considerable public interest for fear of losing their appeal—there being no guarantee of success—and being ordered to pay costs running to hundreds of thousands of dollars. For example, in 1985 the Wildlife Preservation Society took a case before the then local government court and the other party's costs amounted to $135,555.48—and these are 1986 costs, so you can imagine what it would be nowadays. If the costs had been awarded against the society they would have had to find those costs as well as pay their own costs.

The proposed amendment awarding costs after the event is not going to stop wealthy individuals and companies, as the other speakers have said, who can afford to lose and pay costs from appealing decisions. Neither will it prevent the court awarding costs against frivolous, vexatious or obstructive appeals. But it will totally intimidate and frustrate any community group or individual who may have solid grounds for appealing and who manages to raise the money for their appeal but cannot risk the cost of losing. We therefore ask that the own-costs rule be reinstated and the iniquitous clause 61 be deleted. In other words, 'if it ain't broke, don't fix it'.

Mr Berwick: I am here as chair of the Regional Groups Collective, which represents the 14 natural resource management regions in Queensland. I chair the Wet Tropics region. I was mayor of Douglas shire for 17 years. So I have had a bit of exposure to planning. I was made an honorary fellow of the Planning Institute due to my work.

While the RGC has been grouped with conservation sectors—and we are reasonably comfortable there—it could equally be with community or primary industry. For example, the RGC has been working with its round table partners, which are Queensland Resources Council, Queensland Farmers Federation, Queensland Conservation Council, Tourism Queensland, AgForce and LGAQ. I have a letter that we have written collectively on what we think is best planning as a context for where we see planning. I would like to table that today if that is possible.

NRM plans provide an understanding of the agricultural and natural landscaping in which urban, industrial, mining and infrastructure developments all occur. Those plans are informed by science; they are developed in partnership with community, industry and government; and they are founded on the ethic of a healthy landscape. The RGC proposes that the role and function of an NRM plan is defined in legislation providing a clearer mandate for better alignment between the two planning schemes. Indeed, that is something that is evolving right around Australia in that direction and we think we can make a positive contribution.

Whilst accepting the need for ongoing reform and improved efficiency of process, the RGC has some specific concerns that are generally expressed by our round table partners, and we are continuing to work on that. The proposed repeal of the state planning regulatory provisions and the devolution of decision making, either down to local government or up to the minister, in our view effectively disempowers the fundamental role of planning in resolving conflict in contested landscapes. We think it is going to lead to a greater exposure of councils and communities to unsustainable legal costs where currently an application outside of the urban footprint cannot be properly made. We think it will dilute the planning protection to agricultural and environmental assets outside the urban footprint. We believe it may result in development approvals in flood plains and coastal hazard zones and expose councils to massive legal liabilities in the event of property damage or loss of life.

Finally, we think the loss of agricultural production in periurban areas is going to be quite significant, and Australia-wide 25 per cent of agricultural production is in periurban areas. That will occur through either the loss of land or conflict with urban land use because they find it very difficult to co-exist.

As far as the own-costs rule goes, we would support all of the things that have been said by all of these groups. I do not need to go into that. Finally, as a general comment, the RGC believes the role and function of land-use plans should be regularly reviewed should they be found wanting—and they usually are because they always need to be upgraded—rather than rendering them toothless and giving too much discretionary power up and down the line. We think that will lead to a lot of unnecessary conflict.

CHAIR: Mr Berwick has sought leave to table a document. Do I have leave from the committee to accept that document? The document is accepted. Leave is granted. I might ask my colleagues if they have any questions.

Mr HART: During the previous discussions with the legal fraternity it was suggested that, with regard to the cost issue, there is a possibility that a party be declared a public interest party or something similar and, therefore, be exempt from any order for costs. Can I have your input as to whether that would fix the issue as you perceive it—if, before any sort of court case, it could be determined that you are a public interest party and, therefore, exempt from costs? Would that fix your issue?

Mr Ryan: That would certainly be of benefit to a lot of our clients. It certainly would not help the small developers, not that they are clients of ours. It would depend on who determines the public interest and the criteria by which they determine the public interest. That would be a change that could assist our clients.

Mr Berwick: I would agree with that. However, I think the removal of the state planning regulatory provisions and the cost implications would not refer to councils. I know from my experience on councils that when you get into disputed territory councils are very limited in how much they can spend on defending court cases. Ratepayers do not like you doing that. They see it as wasted money—and indeed it is. When little councils are up against big developers—in my case it is Woolworths, McDonald's and people like that—unless you are prepared to spend a lot of money and go hard you are going to give up.

Mr Penton: I certainly would agree with that. There may be an opportunity to account for community not-for-profit organisations as a broad category. Community not-for-profit organisations may fit into that as a broad definition. If that was able to be done upfront as part of the bill so that people knew where they stood even before initiating action and not having that assessment done during the process, that may be a step forward but that does not necessarily solve the issue of individuals or councils and so forth.

Mr HART: It has also been suggested that all three levels of government be exempt. How do you feel about that?

Mr Penton: Certainly considering the comments that a number of us have made about local governments, that would certainly be a step in the right direction, yes.

Mr Berwick: It sounds good. It would need a bit of consideration. I have not thought of that one before, but on the surface it sounds like it would help a lot.

Mr Ryan: I would wonder how it would interact with the existing areas of discretion. If a community group was appealing a council's decision and that council defaulted in procedural requirements of the act, presently the community group would be able to recover some of their costs for that action. If it was a

blanket immunity against recovering costs from local government, it would not have the protections that are currently in place. Provided it was subject to those existing requirements for the council to abide by—the procedures of the court et cetera—then it should be acceptable.

Mrs Chamberlain: As a person who does not know much about laws or parliamentary procedure, I think this would have to be well promulgated to the community groups or individuals so they know exactly where they stand, whether they have the right to appeal and whether they would be exempt from costs.

Mr YOUNG: I wish to touch briefly on the comments from the Bar Association that in the process of mediation you could appeal under section 49 and a determination could be made before proceeding as to who was going to be exposed to costs. People can then make a decision as to whether they wish to proceed. I think that has some footing with public interest groups, especially where you have community concerns. I acknowledge that.

CHAIR: Are there any comments on that?

Mrs Chamberlain: I think that would be very helpful. As I have said, most community groups do not have much knowledge of things like this. If they could find out where they would be exposed to costs, that would be helpful.

Mr Ryan: If there was a guideline, as suggested earlier, about public interest being one of the criteria for exemption from costs and not-for-profit is one of the factors in that, provided that those were some presumptions in favour of protection against costs, certainly that application process would be helpful for our clients.

Mr Berwick: Would a local government be defined as a public interest group?

CHAIR: I do not think so. We do not actually have any more questions. Are there any other comments you would like to make?

Mr Ryan: I have perhaps just a general comment. A few of the suggestions that have come up today might be usefully discussed with the community in a more open forum. If the government was minded to proceed with those kinds of reforms we would suggest that it be by way of a discussion paper that could then be seen in its full detail and worked through thoroughly with communities so that the issues are worked out prior to it turning to law.

Mr Berwick: This issue has come up at a round table, which I described before, since you called for submissions. We are all finding it a bit difficult to find a single spot where all the proposed changes to the planning act itself, the regulations underneath and their implications are located; it all seems to be in scattered places. When we met as a round table we were all able to fill each other in on bits of details that we had found here and there. One thing we are calling for—and the LGAQ is going to draft a letter for our consideration—is a single site where we can get our minds around the extent of these changes and their implications. It has been quite difficult with the short consultation period and the fact that the information is very scattered. I will give you one example. The repeal of the state planning regulatory provisions was not known and public comment was not sought on that. There was simply a letter from the minister to mayors. I just happened to see one of those letters. It was the only way that any of us even knew that that happened. That is a fundamental and far-reaching change to the way that regional plans are running Queensland.

CHAIR: Thank you very much. We respect and we acknowledge the submissions you put before the committee. They are well researched and have provided quite a substantial background as to where the individual organisations are coming from. We are pleased that you came in today to brief the committee on your submissions. Thank you very much for doing that.

Proceedings suspended from 10.59 am to 11.37 am

CHRISTESEN, Mr Ian, President, Organisation Sunshine Coast Association of Residents

JURISEVIC, Mr Joe, Treasurer, Noosa Residents and Ratepayers Association

LYONS, Mr Murray, Member, Sippy Downs and District Community Association Inc.

PATTERSON, Mr Dick, Vice-President, Noosa Waters Residents Association

WRIGHT, Mrs Johanne, President, EDV Residents Group

CHAIR: Good morning, ladies and gentlemen. I now reconvene the hearing of the parliamentary committee and call on representatives of various community organisations. I welcome you to the committee. You have two minutes or thereabouts to make an opening statement to the committee, to introduce your organisation and concisely summarise the main issues you wish to raise in relation to the bill. This will be followed by questions and discussion with the committee.

Mr Lyons: Good morning. Today I am representing the Sippy Downs and District Community Association. The Sippy Downs and District Community Association represents a community of 9,000 people encompassing Chancellor Park Estate, which was a court approved development resulting in poor planning and infrastructure that has cost council and ratepayers several million dollars to rectify. We do not want to see the same mistakes made in future development at Palmview, located on our southern boundary.

Our submission relates specifically to the amendments that remove master planning and structure planning provisions and to the changes to section 242. The Palmview Structure Plan was finalised in November 2010 and is incorporated in the new Sunshine Coast draft planning scheme, which was recently signed off by the state government. It will rely on the current master planning provisions for effective implementation. Whilst we are not in favour of all of the elements of the structure plan, particularly the Greenlink transit corridor, we strongly support the master plan approach and agreed sequencing of development and infrastructure. Over 1,200 submissions were received by council in support of the sequencing as per the finalised structure plan, which was agreed to by all parties, including all landowners.

Palmview is intended to house 17,000 residents. Of particular concern is the impact on the local Sippy Downs road network. The only existing road access to Palmview is through Sippy Downs. However, the structure plan clearly identifies a critical new linkage as the first road in the development sequence. We are also very concerned about the potential for the Palmview developer to lodge preliminary applications under section 242 for part of the structure plan area. A developer could apply for development in small stages in order to avoid the requirements of a structure plan. This would undermine councils' ability to strategically plan growth, and I would be pleased to give actual examples of this.

In summary, we ask that the committee ensure that sequencing of development and road networks in existing structure plans is upheld and any preliminary approval applications made under section 242 for development covered by a structure plan should be assessed in accordance to the structure plan, not in isolation. We call on the parliament to ensure that their local communities are protected and that the proposed amendments do not allow a return to ad hoc development and its associated problems. At this point I would seek leave to tender a map with regard to the Palmview Structure Plan.

CHAIR: Is leave granted? Leave is granted. Thank you.

Mrs Wright: I am the president of the EDV Residents Group, representing some 3,000 residents in the southern Noosa hinterland. Two of our objectives which I think are relevant to our submission are (1) to advocate on behalf of the residents of the Noosa hinterland on contentious local issues and (2) to keep the EDV residents informed about government decisions that affect our lifestyle. This bill is a critical bill. As planning legislation has direct impacts socially, economically and environmentally on communities, it is of great public interest, and it is deeply disappointing to us that the time frame provided for consultation has been so tight. Due to this time limitation, our group elected to focus on one issue only—namely, the own-costs provisions which apply to the Queensland Planning and Environment Court.

Even though there is broad support for the reform rationale, it is often the case that the devil is in the detail, and drafting clauses without informed input from all stakeholders may lead to unintended negative consequences. We argue that the section in the bill that relates to costs is an example which suffers from this limited consultation process. Not only is it in direct contravention of the current act's commitment to community participation in decision making; it also mitigates against the stated reform objectives of re-empowering local government and continuing to protect the natural environment, as it is often the community as a co-respondent with council which fights to protect the fundamentals of our local planning schemes, as my colleagues will amply demonstrate. We argue that changing the existing cost provisions will effectively eliminate individuals and community groups from the appeal process, as the potential threat of incurring high costs would prohibit their involvement. This would be a significant retrograde step and we believe an unintended outcome of drafting. We would strongly submit that this section of the bill be struck out. Thank you for your time.

Mr Patterson: I am vice-president of the Noosa Waters Residents Association. We represent the interests of the Noosa Waters residents in all matters that affect or could affect our estate. The proposal to award costs against the losing party in the Planning and Environment Court will effectively lock community organisations and individuals out of this process—people who may genuinely be impacted by a planning decision. The risk of being hit with crippling costs would be just too great. It pushes the planning process too far—far too far—in favour of the well-resourced developer, and we have some experience. A developer appealed against the refusal of his application for a retail complex on zoned residential land in Noosa Waters. Our association and some affected residents became co-respondents supporting the local council. Under the now proposed cost arrangements, we certainly would not have been able to take this action. The financial risks to our small association would have been just unacceptable. We were directly impacted. We had genuine concerns, yet we would have been effectively locked out of the court process. This is not justice. The draft cost changes are unnecessary and strongly against the wider public interest. This is covered in our submission and I would be happy to answer any questions from the committee. Thank you very much.

Mr Jurisevic: Good morning, Mr Chairman and committee members. Thank you for the opportunity. I am currently the treasurer of the Noosa Residents and Ratepayers Association. Our primary aims are to work for the benefit of residents and ratepayers to ensure that rates are kept at a reasonable level while maintaining an appropriate level of service and to protect the region's amenities and quality of life based on sustainability and a balance between the natural and built environment.

Our association was formed in 1970 to give the community a voice to oppose developments and planning decisions that might threaten the environmental values and character of Noosa. Throughout it 42-year existence, the association has worked with the community, council and partner organisations to achieve many positive outcomes and has fought numerous battles to protect and preserve those values in the wider public interest. This has seen Noosa declared an iconic place under the Iconic Queensland Places Act 2008 and awarded international recognition by UNESCO as a biosphere reserve. There is no doubt that, had it not been for the passion and dedication of past and current champions, the environmental values and character of Noosa would not exist today. Had amendment 61 been in place in the past, local individuals, community groups and even councils would not have had the means to compete with the financial resources of major developers whose values did not match those of Noosa.

Our region is a living tribute to the benefits of community participation in the planning process. We contend that the financial threat posed by the proposed amendment will prevent all but the very wealthy from daring to participate in any way with objections to unsuitable developments, effectively taking away residents' and ratepayers' democratic rights and leaving the field open to major developers and, consequently, allowing planning decisions against the public interest to go unchallenged. We therefore urge that the proposed amendment be withdrawn and the existing own-costs rule be allowed to stand.

In thanking you for allowing us to present our submission, I would like to leave with you a heartfelt sentiment expressed nearly 50 years ago by the founder of the Noosa Parks Association, Dr Arthur Harrold: 'Noosa shire has three basic natural attributes which attract people to the area. These are its beaches, its river and the national park. These can be developed intelligently or they can be ruined. Which is it to be?' We believe part of the answer rests in your capable hands. Thank you.

CHAIR: Thank you very much.

Mr Christesen: I am the president of OSCAR, which is the peak body for community groups on the Sunshine Coast. We have over 20 community organisations as members. As our submission shows, we have grave concerns about the changes proposed to the existing own-costs rules. Having been personally involved in policy development at a state and local government level for almost two decades, the first step in any policy change is the identification that there is a problem that needs resolving. As far as I am aware, no report, no investigation and no evidence has been presented to support the case that there is an existing problem with the present own-costs rule, which has been in place in Queensland since 1980.

The Sustainable Planning Act states that to advance the objects of the act it should provide opportunities for community involvement in decision making. Clearly, any move to restrict access to the courts and, therefore, the decision-making process by the community is contrary to the intention of the Sustainable Planning Act. Even if the community has a very strong case, no Planning and Environment Court case could be viewed as being 100 per cent certain. The fact that there is even a small risk that an individual could lose everything or a community group could lose its assets and be wound up will be enough to remove the community from the Planning and Environment Court rooms.

I would like to remind the committee that a community group or individual does not enter into the cost, complexity and stress of a court case lightly. They only subject themselves to the duress because of a strong desire to protect their lifestyle, amenity or environment. They do not do it for any pecuniary advantage. In fact, the cost of thousands of dollars means that entering the court process will have a negative financial impact on them.

An important issue for the community is that councils also need to defend their planning schemes, and many less resourced councils may be more cautious in defending their decisions which, again, will negatively impact on the communities they are supposed to represent. There are many cases brought by the community before the courts that have shown that a council has got it badly wrong. I refer the committee to the submission made by the Tamborine Mountain Progress Association for a relevant case,

where the judge was scathing of the council's decision, which was successfully appealed by a community group. There are numerous similar examples where councils have got it wrong and the communities are the only ones who appeal these decisions. This will disappear.

This bill proposes a solution to a nonproblem that requires no action and will produce substantial harm to the public and communities throughout Queensland. The proposed changes to the own-costs rule are unlikely to affect third-party appeals by wealthy commercial competitors, who can afford the risk of losing appeals they run in 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. I thank you very much for the opportunity today. I am happy to answer any questions.

CHAIR: Thank you very much. Do any of my colleagues have questions?

Mr HART: Good morning. Previous panels have brought up a couple of interesting points with regard to the costs issue that most of the panels seem to have. One of those was that all three levels of government be exempt from any costs order and, additional to that, that there be the possibility of declaring one particular party a public interest party and that that be defined somehow before the court case starts and that they also be exempt from an order for costs. Would those two items go some way towards rectifying that particular issue that you have just put forward to us? Can I have input from all of you on that?

Mrs Wright: I am sure my colleagues would wish to respond to that. I think the point that Ian has made is the real point. 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. Even if you make councils exempt, how does a community stand in relation to that particular council? All that would happen, if minor amendments are made, is that it would just exacerbate or create other sorts of problems. Our perspective is: please remove it.

Mr Patterson: 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.

Mr Christesen: I think attempting to exempt some parties from the possibility of costs being awarded could have some flow-on unintended consequences. For example, in the Planning and Environment Court matters are not necessarily black and white. You could go into a court case situation and there might be five matters that are being examined. The court might agree that three of those issues are in somebody's favour and two are against. What happens in those particular instances? It starts getting more complex by saying, 'Okay, councils and public interest groups will this and that.' The present situation has been there since 1980. I have yet to hear any major complaints or any major problems with the existing situation. So the status quo in my opinion should be retained.

Mr Jurisevic: 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. The question asked back is: why the need to change the status quo when the status quo has been working and working quite successfully in the main for the better part of 20 years, as Ian has pointed out? We see no reason to change the status quo.

Mr YOUNG: I think the thrust of all the concerns that people have had is predominantly in and around costs. One of the issues that came out this morning—and I said this to the last group, and this came from the Bar Association of Queensland—was that in the process of mediation prior to going to court section 49 is available, which is that you can discuss whether the parties are going to be exposed to costs. Does that allay any of your fears?

Mr Christesen: By the time you get to mediation you already have gone a substantial way into the court process. You have already incurred costs—both parties. At that late stage then to be sitting down and asking, 'Who is going to be awarded costs?' or whether costs are relevant in that situation—again, I do not know what problem, with respect, you are trying to solve by doing that. I have not had articulated the problem that we are trying to solve here. Again, I come back to the same thing: if we cannot articulate what the problem is, we should just maintain the status quo.

Mr YOUNG: Thank you. I think the comment was in relation to community not-for-profit groups that were interested in community outcomes and environmental outcomes.

Mrs Wright: If I may just support Ian. It seems to me that, again, it is one of those things that it is hard to comment on unless you can see how that flows through in the system. I am quite certain, in talking with a lot of our members who have been co-respondents previously, that there would be serious consideration by that community group about going into something that is so unknown. I think they would probably stay away from it. So, again, I support the concept 'if it ain't broke, don't fix it'.

CHAIR: Ladies and gentlemen, I do not have any questions because I believe you have presented a good submission to the inquiry. I think you have enunciated your concerns very well to us. So unless you have further comment, I am very happy to receive your submissions and your back-up vocal support of that. I think that was excellent. I really appreciate you making the time to come to meet with us. Are there any other comments that you would like to make?

Mrs Wright: Mr Chairman, on behalf of the group I would like to thank Dr Kathy Munro for her support and help to us in getting ourselves organised for coming before you.

CHAIR: We all accept that Kathy has made a big commitment to put together this inquiry. Thank you again for your kind words. We really appreciate you making your time available to do to meet with us. Thank you very much.

HOUSTON-JONES, Ms Desiree, Technical Director, Planning, RPS

JOHNSTONE, Mr Aaron, State Director, Cement Concrete and Aggregates Australia

STORK, Mr Tim, Legal Counsel, Property, Planning and Environment, Ergon Energy

van der MERWE, Mr Wouter, Development Manager, Coomera Resort Pty Ltd

CHAIR: I now call representatives from the industry organisations. You have two minutes or thereabouts to make an opening statement to the committee, introduce your organisation and concisely summarise the main issues which you wish to raise in relation to the bill. We will then follow that with questions and discussions with the committee.

Ms Houston-Jones: Mr Chairman, honourable members, my name is Desiree Houston-Jones and I represent RPS. RPS is a large multidisciplinary consultancy with a large national footprint. Within Queensland we have a state-wide footprint of 12 offices across urban and regional communities. We operate in the development, resource industry and energy sectors with public and private enterprise, large and small. We welcome the state government's current reflection on the planning system, as well as the government's consultative approach to identifying and prioritising those matters that require attention. We are clearly supportive of the proposed amendments to the planning legislation.

I have spent my entire career guiding and assisting clients to design and create appropriate development throughout Queensland. Over the last 10 years it has become progressively harder, more complex and expensive, with impacts on project viability as well as, for example, businesses such as ours and others and their capacity to grow and employ more staff and so on. These amendments commence a legislative reform exercise which we see will bring real benefits.

I will focus briefly on what I suspect is the most contentious of the proposed amendments regarding court costs and just add a little further explanation to the point we raised in the submission. RPS strongly supports the intention to widen the ability of the court to award costs where warranted. Our support is based on the presumption that judges will be likely to exercise their discretion on costs. We have a planning process in Queensland which, put simply, works through the high-level strategic aspirations, issues and competing priorities. It engages the public in consultation to drive appropriate land uses for different locations with consideration of potential impacts and opportunities.

We see appropriate land-use proposals exposed to submitter appeals where not-in-my-back-yard responses to proposals tie up justifiable projects. We also perceive occasions where some local governments do not back themselves in their strategic planning but refuse a proposal or impose unreasonable conditions to have the courts decide an otherwise justifiable but perhaps locally contentious project. We elect and pay our elected representatives to make these tough decisions. We of course support genuine third-party appeals when, for whatever reason, the issue raised or concern has slipped through the planning process safety net. As mentioned, we would fully expect that the court would exercise its discretion in such cases.

The subheading of the bill's explanatory note says 'give the Planning and Environment Court general discretion in relation to costs'. This perhaps best articulates the intention of the proposed amendment. The wording of the proposed amendment itself, however, does not establish the discretion of the court as the default position in regard to costs. The default position is for costs to follow the event. This may have unintended negative consequences. We believe the default position needs to be reconsidered and the wording revisited to strongly discourage unreasonable behaviour. In any case, court rules, directions and guidelines will be important in guiding the court's discretion. Thank you.

Mr Johnstone: My name is Aaron Johnstone. I am the state director for CCAA, the peak body for the cement, premix concrete and aggregate industries. Our industry provides construction materials to the building sector, to state and local governments and to major contractors. We have a major interest in planning reform. The nature of construction materials means that our industry's operations need to be based in certain areas. Quarries, for example, can only be located in particular geological regions not too close to sensitive uses yet not too far away to make transportation costs prohibitive. Concrete plants need to be located in areas near end use due to the time limited nature of premix concrete, and cement facilities need to be based near strategic freight and port sites. At the same time, our community needs construction materials for roads, bridges, houses and community facilities. Next to water, concrete is the second most used building product on the planet. When the population grows so too does the need for construction materials.

Our industry has been very frustrated in recent years by the inability of planning processes to ensure a consistent, streamlined and coordinated approach to planning and development. This has impacted the construction industry in general, but also has affected our industry's ability to supply materials in an efficient and cost-effective manner to Queensland communities. As such, our industry strongly supports the bill and the clear drive and willingness of the government to improve planning processes. We are confident the new legislation should result in the reduction of complexity with such processes and help increase certainty and confidence for our industry. The bill is important in that it better ensures that a full

range of state interests are taken into account during the state interest checks, not just environmental concerns. Importantly, however, the legislation ensures that appropriate checks and balances remain in place so that community amenity and environmental values are maintained.

While we are strongly supportive of the legislation, there are a couple of areas to monitor such as the role of the state referral agency and how that gets implemented. These are outlined further in our submission. In saying that, we strongly believe the bill will play a critical role in helping to allow the construction industry to prosper once again in Queensland and to ensure our industry has a better system for having their development applications assessed in a more timely, consistent and transparent manner. This will ensure our industry can continue to supply Queensland with the construction materials it needs for the future.

Mr Stork: Mr Chair, honourable members, my name is Tim Stork. I am the legal counsel for property, planning and environment at Ergon Energy. Ergon Energy Corporation Ltd is an electricity entity under the Electricity Act. Ergon's submission is submission 14. I should say that I made a personal submission about the bill. It is on a different matter to Ergon Energy's submission. I do not represent anything other than Ergon Energy today.

In general terms, Ergon Energy is an advice agency under the Sustainable Planning Act where development is proposed within 100 metres of a substation or on land where Ergon Energy has an easement. It assesses development against the purposes of the Electricity Act and the Electrical Safety Act and, in short, those purposes are to promote the efficient and economical supply and use of electricity and to preserve the safety of people and property.

I can say that Ergon Energy, in all the responses it has made as an advice agency under the Sustainable Planning Act, has not been a roadblock to development. I understand that the purposes of the single state development assessment concurrence agency are to remove conflicts within departments but I can say that Ergon Energy has not been a roadblock. It has not recommended refusal in the last 12 months, as far as I know. It has also never recommended conditions that were appealed or disputed by a developer.

What Ergon Energy would like to see retained is the existing structure where the single state concurrence agency does not act, so it remains as a referral agency in those situations, and where the chief executive is the concurrence agency there ought to be a protocol put in place where Ergon Energy can raise its concerns. It is important that Ergon Energy and other electricity entities are involved in the process of development assessment early on, because the rectification of issues associated with development in proximity to electricity infrastructure can be costly afterwards and it can also create safety concerns. It has a direct impact from a cost perspective on Ergon Energy. I am more than happy to illustrate our concerns with some examples of what happens when Ergon Energy or an electricity entity is not referred a development—and that does happen, although the current system is pretty good at that. In our submission we also made comment about the resource entitlement issues, but I rely on the submission in that regard. I do not intend to take you any further through that. Thank you.

Mr van der Merwe: My name is Wouter van der Merwe. I represent Coomera Resort today as spokesperson. Coomera Resort owns approximately 212 hectares within the Coomera Town Centre Structure Plan area on the Gold Coast. Approximately 157 hectares of Coomera Resort land is identified within masterplan unit 2, precinct 4, which is medium-density residential; precinct 5, which is high-density residential; and precinct 9, open space. The Coomera Town Centre Structure Plan was adopted as an amendment to the Gold Coast City Council's planning scheme on 17 September 2010 and took effect on 15 October 2010.

Our submission focuses on the clauses of the bill which propose amendments to the provision of the SPA relating to master planned areas. We want to raise two issues: firstly, the third-party appeals in relation to future applications and, secondly, the level of assessment of certain future applications.

I turn to the first issue that we are raising, the third-party appeals in relation to future applications. As a consequence of the bill's amendment, Coomera Resort will now be required to make a section 242 preliminary approval application to achieve the types of things that would presently be the subject of a master plan application. For instance, this relates to identifying the size and location of nodes, lowering levels of assessment for development within the nodes and including particular development codes such as, for instance, the small lot code. Such section 242 applications will be subject to impact assessable and third-party appeals. Presently, although the structure plan and the SPA require public notification of the master planning application, third-party appeal rights do not flow from the making of such a submission. I refer you to section 166 of the SPA in that regard.

We submit that the bill does not, contrary to the explanatory notes, preserve the use and development rights established by existing structure plans and master plans through transitional provisions. The effect of the bill is to put Coomera Resort in a worse position than it is presently—that is, to subject development applications to the risk of third-party appeals. We submit that an appropriate amendment to the bill is required to ensure that the development in master planned areas is not disadvantaged by the bill.

The second issue that we want to raise is the level of assessment of certain future applications. We have a particular concern in relation to development applications where applicants purely seek to implement the planning intent of an endorsed structure plan. The proposed section 898 of the transitional

provisions provide that existing structure plans for master planned areas continue, in effect. The current requirements in relation to the contents of a structure plan are set out in section 141 of the SPA. The existing Coomera Town Centre Structure Plan obviously complies with these requirements. These requirements will allow for a lack of synergy between the development intent, the mapping and the table of development. This results in the requirement for impact assessable application, even where applicants seek to purely implement the planning intent set out in the structure plan.

For example, the planning intent for precincts 4 and 5 in the Coomera Town Centre Structure Plan area is very comprehensive and includes the requirement for multiple-use nodes that are to be located within the residential precincts. These uses are to include convenience shopping facilities and a public transport stop. It also requires higher density residential development around the nodes in support of the walkable outcomes and it requires a variety of built form. However, when we turn to the mapping of the structure plan, it does not include spatial or geographical locations of the nodes. When we look at the table of development for precincts 4 and 5, the table of development makes no distinction between the levels of assessment for uses, whether they are located within or outside the node. For instance, the level of assessment for a convenience shop is set as impact assessable across the entire precinct 4. So we have the situation where the planning intent prescribes that there needs to be a convenience shopping centre inside the node and then the application for such a convenience shop is impact assessable.

In the case where the local government currently does not have a structure plan for a declared master planned area in effect, on the commencement of the act proposed section 901 applies. It requires the local government to amend its planning scheme or to make a temporary local planning instrument and sets out the relevant requirements for these amendments. These requirements are essentially identical to those in section 141, so it follows that even for new structure plans and TLPIs, the proposed amendment of the SPA will again allow the situation to arise that impact assessable applications are required even when applicants seek to purely implement planning intent endorsed by the local government. We submit that the SPA should be amended to ensure that, in the event where an applicant seeks to simply implement the development intent endorsed by local government, such an application should be code assessable. Thank you.

CHAIR: Thank you very much for that. The committee has made some inquiries with the department and I understand that they recognise there are inconsistencies in the bill and will be moving to rectify those, as I understand it. Thank you very much for your submission so that we can work through that. Do any of my colleagues have any questions of the submitters?

Mr HART: Desiree, I think previous panels have all been quite upset about the cost factor going forward. They are very concerned that a lot of community groups and maybe local government might not enter into any challenging of the planning approvals through the courts if there is a chance that costs could be awarded against them. Can I have your comments? Do you think they would be adversely affected by the changes that we are proposing to make?

Ms Houston-Jones: As I mentioned, I would suggest that the wording probably needs to be looked at to match the intention, which is articulated probably in the explanatory note and possibly best in the subheading. From our perspective, we would be relying on the court and the discretion of the court, which is the intention that that be exercised, and also that appropriate rules and directions and guidelines are set up to address those kinds of situations. At the same time, this is obviously a significant change, but there needs to be room for genuine third-party appeal without such concerns. Also, as I mentioned, there is a planning process in place that should bring all of those competing issues together and early on in the planning process make some of those decisions so that that does also give some greater certainty to all groups, I would suggest.

Mr HART: Following on from that, it has been suggested that there is a possibility that maybe early on in a court case one of the parties is declared a public interest party and, therefore, exempt from any order for costs. Also, it has been suggested that we should give consideration to all three levels of government being exempt from costs. Could I have your reaction to those two things?

Ms Houston-Jones: I would have to consider that further, I suppose. As I mentioned in my introduction, we do see instances where perhaps if local government was on some occasions—I am not saying that this is happening all the time, but if there was more preparedness to stand behind their strategic planning and make a tough decision, some of those items would not go to court. The other thing that I would say, too, is that I think this is a little bit hand in glove for some matters with the alternative resolution processes that are being introduced and encouragement for parties to use mediation, and then that has a consequence on how costs are. I think we definitely believe that that is a very positive initiative.

Mr HART: Does anybody else have any comments on that?

Mr Johnstone: I did not refer to it in my opening remarks, but we are very comfortable with what is outlined in the bill in terms of third-party costs. As outlined in the explanatory notes, it is a measured response. It is in the discretion of the Planning and Environment Court to make its call on this matter. There are other provisions such as the alternative dispute resolution processes early on. There is a whole other raft of issues in terms of the earlier planning processes where some of these issues should have been resolved earlier on. Also, companies make significant investments in such matters on a new project. They also need some level of certainty that the rules are going to be fair on planning matters and that they have confidence in a process in which there are areas where it is not worthy of being taken forward. We are very comfortable with what is in the bill in this matter.

Mr YOUNG: Tim, my question is to you in relation to your example about electricity infrastructure. You were going to give us a brief example?

Mr Stork: I can, thank you, member for Keppel. One example is a substation that was built 30 years ago on the edge of a town. There was no referral to the relevant electricity entity of a development application for subdivision. Once the subdivision occurred and houses were built and occupants moved in, there were a series of complaints made about the noise that came from the substation; they are not always quiet. There were complaints made about how it looked, some visual amenity complaints; they are not always pretty, either. There were also complaints made about dust from clearing of the grounds. Those are impacts that should be addressed largely by a developer within the development by appropriate landscaping and appropriate acoustic treatments. That would be the case if it were an industrial development that was existing and a residential development nearby—you probably would not see it, but if there were competing interests like that. What actually happened was Ergon Energy had to go into the substation, replace some of the gear inside it and had to put landscaping in around the substation and put gravel around the substation. That came at a fair cost to Ergon Energy and it should not really have had to come at Ergon Energy's cost.

Another good example, which caused a bit of a safety and reliability concern, is a referral was missed for development that was filling adjacent to a substation. The filling resulted in additional stormwater flowing onto the substation land and created some concern about inundation during heavy weather events. That has some fairly obvious safety and reliability concerns. Those are concerns that would have been addressed had the application been appropriately referred.

CHAIR: Thank you very much, Tim. Unless you have further comment, I think the presentations you made today have supported your submissions and we are glad we were able to clear up the Coomera Resort issue. Hopefully, that will come through in the bill. We respect the submissions that you made. They were great submissions and we thank you for taking the opportunity to come today to present before the committee. Thank you very much. I will now call on the planning organisations to come forward.

HACKER, Mrs Jennifer, Vice-Chairman, Rural Environment Planning Association Inc.

ISLES, Ms Kate, President, Queensland Division, Planning Institute of Australia

MACDERMOTT, Ms Kathy, Queensland Executive Director, Property Council of Australia

VIT, Ms Marina, Chief Executive Officer, Urban Development Institute of Australia (Queensland)

WOOD, Ms Lavinia, President, Community Alliance for Responsible Planning

CHAIR: Good afternoon ladies. I welcome you all to the committee hearing. I am allowing roughly two to three minutes to make an opening statement to the committee to introduce your organisation and concisely summarise the issues you wish to raise in relation to the bill. This will be followed by questions and discussion.

Mrs Hacker: Thank you for the opportunity to speak today. I represent the Rural Environment Planning Association Inc., REPA. REPA is a community association based in the western suburbs of Brisbane. REPA was formed in 1973 to address planning issues in the district and produced its strategic plan for Brookfield, Pullenvale, Moggill and the adjoining suburbs. REPA has been involved in a number of Planning and Environment Court cases during the intervening 39 years.

REPA is extremely concerned that the proposal for the costs of a proceeding to follow the event, as stated in current SPOLA Bill at clause 61, will deter associations such as ours from participating in Planning and Environment Court cases. It will certainly deter individuals. Planning matters are different from those heard in other jurisdictions. Planning matters affect the whole community in which a proposal is located, not just the parties to an appeal.

One of the purposes of the Sustainable Planning Act 2009 section 5(1) (g) is 'providing opportunities for community involvement in decision making'. The proposal to change the existing own-costs rule provides a serious disincentive to community involvement. It effectively disenfranchises the community from participating in planning actions. I know that you have heard this before, but I feel we have to reinforce it.

The proposal for the costs of a proceeding to follow the event will have adverse financial implications for local authorities as they are the respondents to almost all appeals. It will discourage cash-strapped local authorities from upholding their planning systems. Furthermore, particularly when cases have been resolved through the alternative dispute resolution process, there may be no clear winner. A compromise is often achieved where each party has conceded on some issues.

REPA understands that the current own-costs rule has worked well in the Planning and Environment Court. Why change it? The current own-costs arrangements have clearly stood the test of time. Their removal can really be interpreted in only one way—namely, to remove the opportunity for community groups to be heard in the court established to deal with such very local issues. For the community to have a say, these proposed changes should not proceed.

Ms MacDermott: The Property Council is the peak industry group. We represent nationally 2,200 members, and that is companies. In Queensland it is 360 members. Our members work across all sectors of property—office, retail, residential, tourism and retirement living. They are property owners, investors, managers and professional services associated with the property industry—law, finance, accounting, engineering, town planning and project management.

For Queensland to have a strong and resilient economy we need a planning system that provides clarity, certainty and efficiency for all stakeholders. The amendments in the Sustainable Planning and Other Legislation Amendment Bill 2012 provide logical and considered first steps in improving efficiencies and providing certainty in Queensland's planning system, and we commend these.

The Property Council would like to acknowledge the outstanding level of engagement undertaken by Assistant Minister Ian Walker with the industry in delivering these reforms. We welcome the amendments and we welcome the collaborative approach taken by the assistant minister and the government in their development.

I would like to raise three issues today. Firstly, we commend the establishment of the Department of State Development, Infrastructure and Planning as a single state assessment manager and referral agency. This one-stop shop for development assessment referrals will make a tremendous difference. However, the Property Council does urge caution to ensure that the department is adequately staffed to cope with the increased workload. We would like to point out that since the inception of Development Facilitation Services, formerly the major projects office, it has worked very closely with industry to provide a single point of contact for development proponents to resolve internal government conflicts. Development Facilitation Services has done an outstanding job in engaging with industry. We feel it is imperative that their role is maintained to ensure a streamlined transition to the single assessment and referral agency.

The Property Council is supportive of the proposed amendments to the Planning and Environment Court's costs powers to having a general discretion to award costs. However, 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 the local government's refusal or an applicant appeal against local government conditions where there is a genuine dispute to be heard by the court. The Property Council supports the intention of the new costs powers in potentially discouraging unmerited submitter appeals. However, the court requires greater flexibility with respect to costs powers and removing the presumption that costs follow the event. We feel this will result in fairer outcomes. We think that sometimes it will be difficult to define when an event occurs.

Finally, the amendments within the SPOLA Bill provide a welcome first tranche of reform. We do feel that further reform is needed to ensure there is continuous improvement in the system, particularly in the area of infrastructure charging. Thank you for the opportunity to speak today.

Ms Vit: The Urban Development Institute of Australia (Queensland) is the peak body for the Queensland development industry. The UDIA has applauded the amendments to the Sustainable Planning Act introduced to the parliament last month in its fundamental design to streamline the development process and cut red tape. The changes to the SPA will seek to reduce complexity and general inefficiencies in the planning system which have plagued development, hampered housing supply and damaged affordability, and, as such, are a good first step in delivering a planning system that will be more efficient, effective, predictable and transparent.

The institute has made strong representations to the government relating to the problems which have been endemic to the planning system. Over the past decade Queensland's planning system has become increasingly complex and costly, adversely affecting housing supply and affordability. It is gratifying to see that our communications to government have not fallen on deaf ears. In fact, some of the changes to the legislation are consistent with the pre-election UDIA document outlining 22 recommendations to improve the planning system.

In particular, we have welcomed changes that will remove unnecessary red tape and reduce holding costs, including making the Department of State Development, Infrastructure and Planning the single agency that can make state planning policies and the single agency that tests development applications against state interests, reducing the level of assessment required for development applications for certain low-risk operational works, changing dispute resolution processes so that residents can raise their legitimate concerns through mediation rather than going through a costly court process and greater powers to award costs in court for vexatious and commercially motivated appeals.

The UDIA's submission refers to suggestions for implementing certain aspects of the bill to ensure the success of the reforms. For example, in relation to the single referral agency this would include ensuring that government continues with its review of referral triggers to reduce their number and the duplication of these triggers. We have also recommended some changes to the bill in relation to the awarding of costs in the Planning and Environment Court. The institute is very supportive of the concept of the court being given discretionary powers in relation to awarding costs. But while the court remains a public interest court, the use of the term 'follow the event' may well limit the court's discretionary ability. We look forward to working with the government to deliver further reforms to planning over the coming months and years.

Ms Isles: I thank the committee for the opportunity to provide a submission and to now speak to the submission on the SPOLA Bill. The Planning Institute of Australia is the peak body representing the planning profession in Australia and, therefore, planning reform agenda is core to our business. In Queensland we have 1,200 members acting across local government, state government, industry and planning law.

We have welcomed the open and transparent engagement with the Queensland government on all aspects of the reform, including the regulatory amendments proposed to the Sustainable Planning Act. As per our submission, we acknowledge and support many of the proposed amendments as these accord with a discussion paper that we presented to the government in June. Specifically, these relate to the central coordination of state interests, the review of structure planning and master planning provisions, the review of the need for the state resource entitlements, amendments to the mandatory supporting information provisions of the IDAS process, setting maximum levels of assessment for low-risk operational works, the empowerment of the alternative dispute resolution register and a review of the Planning and Environment Court rules pertaining to costs.

However, in relation to the costs, I acknowledge and note that of all the discussions that we have had to date, like many other groups, the Planning Institute also has concerns regarding specifically the wording of section 457(1). Whilst we support the overall intention where there is clearly vexatious or an obstructional attempt to delay the process, we also support the removal but follow the event in that particular section. Many of the other proposed changes including master planning and structure planning as well as the central coordination of state interests will, however, require appropriate administration and operational matters which are beyond the legislation itself.

We also acknowledge that further reform is likely, and PIA welcomes the opportunity to continue the engagement. Many of these other reforms have been raised in our discussion paper and in our submission itself. However, overall, the Planning Institute is about leading effective planning for people and places.

Therefore, whilst there will always remain a role for legislation, good planning is beyond this. A stronger focus and investment in an upfront plan-making process will reduce the back end—that is, the court and negotiation process. We therefore support holistic reform that supports and embraces the collective education of the broader industry that supports quality planning upfront. I thank the committee for the opportunity to be here today.

Ms Wood: Thank you for the opportunity to address the committee today. My name is Lavinia Wood. I am the president of CARP, the Community Alliance for Responsible Planning Redlands Inc. CARP is an alliance of community organisations and individuals formed in 2004 when it became apparent our community had been disenfranchised by the then pro-development council. CARP's role is to inform and empower the community, enabling the voice of the people to be heard over the voices of self-interest in achieving genuinely sustainable planning outcomes.

Our community respectfully asks that you delete clause 61 of the SPOLA Bill to retain the current own-costs rules unchanged. In support of this we say that we know the price of democracy is eternal vigilance and the community indeed remains vigilant. We are engaged and willing to discharge our responsibility to participate in the democratic process. We do so because we see clearly the influence wielded by those with affluence during the election process, resulting in councils increasingly dominated by those with short-term, profit based perspectives. When the community acts we are not motivated by profit or personal gain; we act as protectors of the collective good. When the community appeals to the Planning and Environment Court we do so as guardians of the future. We act with the purpose of safeguarding a lasting, intragenerational legacy of environmental, social and economic wellbeing.

The level of risk created by the proposed removal of the own-costs legislation creates an insurmountable impediment to community participation. In a single step we are excluded and the democratic process is destroyed. Clearly, the dire consequences of this own-costs amendment in shutting down participative democracy are far worse than any problems the amendment was intended to resolve. It is in this context that the community of the Redlands and indeed, as we have heard consistently, all Queensland communities beseech you to retain the current own-costs rules and in so doing actively support and welcome our contribution in shaping the future. Thank you.

CHAIR: Thank you, Lavinia. My apologies. I did not introduce the member for Mount Isa, who joined us just before this last session. Welcome, Rob Katter, member for Mount Isa. Thank you all for your comments. Do my colleagues have any questions?

Mr HART: I will ask the same question I have asked of every other panel. It was suggested earlier in the day that one way to overcome the cost issue that everybody is bringing up might be to declare one of the parties a public interest party before the litigation actually starts and in that way exempt them from an order of cost. So I would like some feedback from all of you with regard to that. Also, it has been suggested that maybe all three levels of government be exempt from any order of cost. Could I get your input on those two particular issues please?

Mrs Hacker: 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?

Ms MacDermott: We believe that, if the phrase 'costs ... follow the event' was omitted and you leave it to the court's discretion, the court is the right avenue to look at who should carry the costs. Exempting parties or exempting levels of government I think just creates another layer of confusion and complexity. The awarding of costs by the court will work well.

Ms Vit: I would agree with what Kathy said. In terms of exempting certain parties, it would add layers of complexity. It is a public interest court by its very nature so declaring a certain party of public interest would seem to be unnecessary. It would seem to be a very simple matter of removing a few words in the current bill to ensure that the outcomes are fair—that people with legitimate concerns are still able to bring their legitimate concerns forward and be treated in a fair and just way.

Ms Isles: I would concur with those comments, particularly in relation to the nature of the court and how it has been established. I do not think the declaration of a public interest will remove the debate that is currently before us. I think I would probably re-emphasise our further point upfront that the ADR and the role of the ADR will hopefully empower and reduce the amount that actually goes to a full court. Where we see emphasis there is that we need to ensure that the ADR actually has the right resources in terms of a second registrar. The other thing is that if we get the plan-making right upfront we are actually reducing the burden on the court anyway.

Ms Wood: We would support the position that was made earlier by the environmental groups and community organisations that this legislation has been working well over the balance of 30 years and that any tinkering—I think that was the language that was also used—only causes unintended downstream consequences and adds layers and layers of complexity, even if done with the best of goodwill. So we would decline to support any suggestions along those lines.

CHAIR: In respect of Kathy's remarks about the registrar, would there be support for a second registrar and more resources in that regard? I understand that particular area is rather busy. Do any of the panellists have an opinion on that?

Ms Isles: We absolutely support it.

Mrs Hacker: It is a good idea.

CHAIR: It is interesting because it has been raised before that the ADR is a very busy area. It probably does need extra support and resources.

Mr HART: Marina, the UDIA raised an issue with section 648F(2) relating to adopted infrastructure charges notices. Can you elaborate on that for us and tell us exactly what you are suggesting we should be doing there?

Ms Vit: The process for adopted infrastructure charges notices is actually quite a cumbersome one. If there is a change in relation to infrastructure charging, you have to go through a very complicated process of either going through a full assessment process again or going through an infrastructure agreement, an IA, which is usually quite a costly exercise to undertake. So our suggestion in this instance would be to allow the issue of a new infrastructure charges notice, because you are not allowed to do that currently.

Mr YOUNG: Kate, you said that we should look closer at section 457(1); is that right?

Ms Isles: Yes.

CHAIR: Do any other panel members have the same concerns as the UDIA in terms of section 648F(2) of the SPA? Do any other panel members have concerns along those lines—that local authorities cannot alter infrastructure charges and issue a new AICN in relation to a permissible change that alters the intensity of a development, however small those changes may be?

Ms MacDermott: We support the UDIA's position.

Ms Isles: The Planning Institute also supports the UDIA's position.

CHAIR: Are there any further comments from panel members? Are there any further questions from committee members? Ladies, thank you very much for attending today. Your submissions were gratefully received by the committee. Thank you very much for making the time today to come and verbalise your submissions. We really do thank you very much for that. We now have to report to the government in respect of the bill. Thank you again for your attendance here today.

Ms Wood: We appreciate the opportunity. Thank you.

CHAIR: Pursuant to section 50(2)(a) of the Parliament of Queensland Act 2001, the committee authorises the publication of the public evidence given before the committee here today. I now declare the meeting closed.

Committee adjourned at 12.56 pm