brisbanetimes.com.au

Print this article | Close this window

Court cost shake-up amid planning overhaul

Daniel Hurst
Published: September 13, 2012 - 5:23PM

Residents and companies challenging development decisions face greater risk of having to pay the court costs of their opponents, under changes introduced to Queensland Parliament today.

As foreshadowed by brisbanetimes.com.au, a Newman government bill unveiled today would change the Planning and Environment Court system to increase the chances of the losing party having to pay the legal costs of the winning party.

Amendments to the Sustainable Planning Act would also pave the way for the state government to provide a single response to proposed developments, rather than the current practice in which the relevant council may have to obtain clearance from several different state departments.

Under the bill, Deputy Premier Jeff Seeney's Department of State Development, Infrastructure and Planning could become the single state assessment manager and referral agency "where relevant".

Mr Seeney said his department's chief executive would streamline the state government's role in development assessment and ensure the state's interests in a development were "properly balanced" and conditions were "not onerous on the applicant".

The new system for state development checks would begin early next year, he said.

The bill would also give councils the option of accepting a development application when the proponent had failed to provide "mandatory supporting information" that was not central to the decision.

"Under the current system, development applicants are required to submit certain mandatory supporting information with a development application, which does not always add value," Mr Seeney said.

"The bill gives local governments discretion to accept applications that do not provide all of the mandatory supporting information. This will reduce red tape, delays and risks to applicants."

The bill would also remove the master planning and structure planning system set up by the Sustainable Planning Act 2009, with Mr Seeney arguing such schemes had proved "ineffective".

"By removing master and structure planning provisions we are helping to streamline plan-making processes and enable local governments to carry out more effective and strategic planning," Mr Seeney said.

He said the government would ensure more focused regional plans were in place and enable local councils to carry out integrated land use and infrastructure planning.

Environmental groups have previously argued the mooted changes to court cost arrangements would make it harder for community groups to challenge development decisions.

The Planning and Environment Court currently operates as an essentially "cost-free jurisdiction" in that each party normally pays only its own legal costs, regardless of the outcome, according to the government's explanatory notes.

There are some exceptions under the current system – for example, the court can order the loser to pay the costs of the winner if the case was considered to be “frivolous or vexatious”.

The government says it is now rare for cost orders to be made under the exception, even where the opponent is a commercial competitor, despite the norm in court proceedings being that the losing party pays the winning party's costs.

It says unsatisfactory side effects include applicants being reluctant to challenge conditions placed on their development because the cost of litigating outweighs the benefit of a successful outcome, and commercial competitors fighting in court for the purposes of delay without facing the risk of paying costs.

The government's explanatory notes say another downside is “developments approved by the council being litigated by third parties on weak town planning grounds – even though these grounds might not fall into the category of 'frivolous or vexatious'”.

Under the proposed changes, the awarding of costs would occur following the court outcome, but the Planning and Environment Court would maintain discretion.

The bill would also encourage parties to take part in early mediation as an early resolution could be found with each party bearing their own costs.

Minor disputes could be determined by the Alternative Dispute Resolution registrar on the basis each party would cover their own costs.

“In exercising its discretion, the Planning and Environment Court will be able to take into account factors other than the mere fact of success, because in planning cases there are many and varied ways in which a successful outcome can occur,” the government's notes state.

Wildlife Queensland president Simon Baltais has **previously argued** the changes to the cost procedure would make it riskier for community groups to try to overturn development decisions.

“So it [the court] has always been a good avenue for local councils and local communities where the risk of going in to an appeal process if you were to lose – at least you did not have to pay for the other side's costs,” he said on Sunday.

“Now removing those cost provisions it effectively becomes impossible for community groups to stop inappropriate development.”

Local Government Minister David Crisafulli today also introduced a separate bill to Parliament to give councils greater powers.

It would remove the need for ministerial approval of proposed local laws, clarify that community engagement was not mandatory before making interim local laws and scrap long-term community plan and financial plan requirements.

The bill would also overturn the legal requirement for a councillor to resign if they choose to nominate as a candidate for election to State Parliament and would cease to be a councillor only if successfully elected.

The bill would also axe rules banning a person from being able to simultaneously service as a councillor or senior councillor and hold a full-time government job, and would also make clear that councillors must not make decisions to their financial benefit.

It would also change conflict of interest rules, exempting councillors from having to disclose a conflict of interest at a meeting if the matter was an “ordinary business matter”.

The bill would scrap the requirement for a councillor to report another councillor's material personal interest, conflict of interest or misconduct.

The new law would make clear that a councillor only had a material personal interest in relation to their parent, child or sibling if the councillor knew, or should reasonably know, that their parent child or sibling stood to gain a benefit or suffer a loss.

Local Government Association of Queensland president Paul Bell said the legislation freed councils of “the red tape and unnecessary regulation that had tied up day-to-day business of local government for so long”.

The bills have been sent to parliamentary committees for checking and will later come back to Parliament for debate and vote.