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CEO Michael Whittaker
Sunshine Coast Regional Council

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Dear Mr Whittaker

Subject: Costs of defending decisions of Council in the P&E Court

At the January General Meeting of OSCAR the following motion was passed:

That OSCAR ask both the Sunshine Coast Regional Council and the Noosa Council to provide information on the number of development applications rejected by Council as non-compliant [with their respective Planning Schemes], only to have the decision appealed by the applicant. Information to include the cost of any legal action and/or legal representation.

The motion was considered in that context of a discussion that canvassed a number of issues, including:

- Appreciation by OSCAR member that both Councils have independently, or jointly with community groups, defended developer appeals in the Planning and Environment Court against Council planning decisions on development applications that were not consistent with the Planning Scheme in each LGA.
- Issues and examples addressed in the background information included below.

Accordingly, I would like to request that the following information be provided to OSCAR; any such information will be disseminated to our membership and used in the current campaign we are involved with, along with other peak organisations in Queensland, which is aimed at achieving reform in State planning legislation.

We understand there are confidentiality aspects in such a request and are not expecting, or indeed requesting, details of individual cases but rather we are asking if you can provide general information in relation to:

- 1 The number of appeals the Council has been a party to when defending a decision to refuse a development application on the basis on non-compliance with the Planning Scheme in the term of this Council (ie since April 2016).
- 2 An estimate of the total cost to Council of defending its decisions on development applications in court (again during this term of Council). An indication of the proportion of the Council's

total Legal Fees, reported in your financial accounts since April, which can be attributed to such legal action would also be appreciated.

As already indicated, we are not asking you to identify individual cases (unless you wish to do so) and we do not expect an itemisation of the costs incurred in each instance. The purpose of this request is to better support, through evidence, our arguments for planning law reform at the State level.

OSCAR looks forward to your response on this request

Yours sincerely



Greg Smith
President

Background material

There are recent examples of developers submitting development applications which are not compliant with the local planning schemes only for developers to appeal the council's decision that correctly rejects the application as non-compliant.

Two recent examples are the proposed Scanlon development on the old caravan park site at Peregrine Beach, and the Bunnings proposal for a hardware store and ancillary facilities at Coolumberrig.

In both cases local resident/community groups joined with the relevant Council to contest the developer's appeal. The proposed Scanlon development at Peregrine Beach should never have dragged on by the developer at great cost to Noosa ratepayers and to local residents (through the Peregrine Beach Community Association) who dug deep to uphold the Noosa Plan. The Bunnings application at Coolumberrig has been rejected by the Sunshine Coast Council on a number of occasions and Council's rejection has been upheld by the courts each time. Coolumberrig Residents Association joined with their Council to fight to uphold the integrity of their planning scheme. Again there were costs to the community.

Issues

Contesting a developer's appeal can be a costly business for councils (and ratepayers ultimately pick up the cost) and for resident/community groups (who need to raise funds or secure pro bono assistance from legally qualified sympathisers).

Developers invariably have greater financial and human resources than either councils or community groups and can "out fund" both by going through the appeal process time and time again, often on technicalities.