Prospective own costs order in public interest judicial review matter
By Larissa Brown

In *Alliance to Save Hinchinbrook Inc v Cook & Ors* [2005] QSC 355, his Honour Justice Jones of the Queensland Supreme Court granted a prospective application by environment group Alliance to Save Hinchinbrook Inc. ("ASH") under section 49(1)(e) of the *Judicial Review Act 1991* (Qld), for each party to bear their own costs.

The proceedings involve judicial review of a decision by the Queensland Environmental Protection Agency (EPA) and Queensland Parks and Wildlife Service to approve the building of two rockwall breakwaters into the Hinchinbrook Channel at Oyster Point. On 1 December 2005 his Honour Justice Jones found the case involved or affected the public interest because the decision to approve the breakwaters may have a drastic impact on the natural environment of the area. In ordering that each party bear their own costs in the proceedings, his Honour found that ASH had a reasonable basis for the review application and also noted ASH did not stand to financially gain from the proceedings.

This costs decision sets a good precedent for ensuring substantive access to justice for the community in public interest environmental judicial review cases in state courts, and means the merits of this particular case will be heard without fear of crippling costs orders.

The judgment is available from:

http://www.courts.qld.gov.au/qjudgment/QSC%202005/QSC05-355.pdf

This decision comes on the heels of the Queensland Environment Minister's October 2005 decision to reject the application by Cardwell Properties Pty Ltd to construct controversial Port Hinchinbrook Stage 2, a canal-style estate also involving Cardwell Properties Pty Ltd. In recent developments, in late January 2006 it was reported that developer Keith Williams had sold his stake in the development.

For updates on other recent Planning and Environment Court and relevant Court of Appeal cases, see Deacons Lawyers' website www.deacons.com.au and follow links to updates by the Environment and Planning section, or Corrs Chambers Westgarth's website www.corrs.com.au and follow links to the Planning Environment and Local Government Practice Area.

Relationship between the Soil and Land Conservation Act 1945 and Environment Protection Act 1986 considered
By Merinda Logie

In the recent case of *Burns and Commissioner of Soil and Land Conservation* [2006] WASAT 83, the State Administrative Tribunal considered whether a decision to discharge a soil conservation notice could have the effect of causing or permitting the proposal to be implemented and therefore whether the Tribunal was precluded from discharging the notice.

This case highlighted the potential for conflict between the *Soil and Land Conservation Act* and the *Environmental Protection Act* (**EP Act**), at the same time clarifying their effects on each other and the role of the Tribunal in such matters.

The substantive proceedings involved an application by Mr Burns pursuant to section 39 of the *Soil and Land Conservation Act* for a review of the decision of the Commissioner for Soil and Land Conservation not to discharge a soil conservation notice under section 38 of that Act. Mr Burns had applied to clear 99.8% of his 1000 hectare property. Mr Burns subsequently lodged an application for review of this decision.