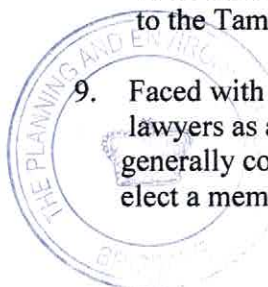


Between:	SDA PROPERTY NOMINEES PTY. LTD. ACN 634 072 030 ATF SDA HOLDINGS TRUST	Appellant
And:	SCENIC RIM REGIONAL COUNCIL	Respondent
And:	AMANDA HAY	Eighth Co-Respondent By Election
And:	TAMBORINE MOUNTAIN PROGRESS PROGRESS ASSOCIATION INC.	Twentieth Co-Respondent By Election

RESPONSE TO APPELLANT'S AND RESPONDENT'S COSTS SUBMISSIONS

1. This lengthy appeal (2/8/21 to 15/9/22) concluded with the Court judgment on 6th October, 2022.
2. The eventual court judgment was a product of what and how material was fed into the court. It was minus local knowledge and community expectations. The judgment relied heavily on Mr. Ovenden's final position. This was not revealed till the day before the appeal concluded, the date when I finally received the information I sought
3. It is on behalf of my community as President of a 107 year old community organization that I maintained my position in the appeal. I have no personal gain and indeed have stayed with the appeal at great personal cost.
4. Except for a couple of appearances via phone, I attended approximately 22 court appearances each requiring an entire day for the 5 hour round trip. My costs covering this plus the horrendous volume of printer paper, hundreds of hours examining emails, experts' reports, previous court decisions and hours spent seeking guidance from supportive town planners and solicitors is a venture that I have taken very seriously.
5. My position rested on the planning scheme submission forwarded to Council – as per my Affidavit of 16th November, 2021 filed with this court. This was much the same as Council's reasons for refusal at Council's meeting of 3rd August, 2021. This further allied with submissions from two independent town planners. Confirmation was supplied by a town planning lawyer and input into my progress during the appeal was provided by a long time Council planner, now in private practice. I felt I was on very strong ground.
6. Moreover, encouraged by His Honour that I need just one point to win, I was able to stand firm throughout the appeal.
7. **The planning scheme is the expression of the public interest and community expectations.**
8. To enable residents to have their say in court, TMPA's approach in this appeal has been exactly the same as conducted for more than a decade. What was at stake in my view was the potential **harm** to be done to the immediate neighbours, residents of the extremely quiet cul-de-sac but also to the Tamborine Mountain community (myself included) in general
9. Faced with the daunting need to suddenly access the local planning scheme described by planners and lawyers as a nightmare to negotiate, many residents, motivated to have a say in court and generally constrained through age, infirmity, financial constraints or other unavailability, have chosen to elect a member of TMPA executive to act as their agent in court..



- 10 These residents through their objection submissions to Council, including key points in the planning scheme, reveal they know exactly what their concerns are. Many are highly skilled people in their respective fields.
- 11 TMPA is responsible for pro forma objections submitted by 221 residents to Council. The points in a pro forma, here compiled by a town planner, help ensure that a Council town planner will consider their objection to the development. The community has accepted, via media explanations, that this is a legal process that informs Council of their views according to community values in the planning scheme
- 12 The purpose of this exercise is solely to show Council the strength of community expectations for their eventual recommendation from their town planners to approve or refuse a development application.
- 13 Whilst the pro formas reinforce the significant community objection to this development application, **why were these pro formas included in the Appellant's Appeal Book?**
- 14 Altogether 243 submitters voiced their objections to Council. This is a significant number. Of these 243 original submitters to Council, 43 residents from across the community elected to Co-Respond with Ms Hay as their agent. This further firmed my position to support the local community in this appeal. Miss Hay's position was supported by TMPA and independent Co-Respondent, Corlia Roos.
- 15 The statement that all the 43 Co-Respondents who chose to use an agent to deal with confronting court requirements were happy with the development following the Minor Change and reports of all sixteen experts **is a bizarre stretch of the imagination by the Appellant..**
- 16 In the wake of the clumsy failed attempt (Oct, Nov 21) by the Appellant to exclude TMPA and its town planning submission from these proceedings before the appeal got underway, (overturned by Judge Rackemann on 2nd December, 2021) any letters for settlements by the appellant (21/7, 30/8, 11/9, 22)) were viewed with suspicion. In fact they were taken wholly as evidence that the Appellant was not confident of winning the case.
- 17 I viewed all correspondence from the Appellant with suspicion
- 18 In view of the intimidating nature of the Appellant's offer to settle letters and his perceived deliberately harmful route to eliminate TMPA and its planning scheme from the appeal in Oct./Nov, 2021, I agreed with Miss Hay to pull the Co-Respondents out of the appeal. The court was not a safe place.
- 19 The Appellant, from the start of the appeal displayed a propensity to dismiss lay witness statements, make misleading statements demeaning of TMPA and dismiss facts stated by TMPA as heresay.
- 20 My points of concern were outlined in my lay witness statements and repeated.
- 21 In the body of Council's reasons for refusal at its meeting of 3rd August, 2021 is a statement that this development application could not be conditioned
- 22 Council's planners, in dealing with all 243 submissions from the Tamborine Mountain community would have viewed the objection submission from a senior State government town planner who happens to live on Tamborine Mountain. Here he set out exactly the problems including the topography of the subject site. His submission is amongst the 243 eventually pronounced by the court as worthless.
- 23 My expectation to stay with the appeal rested on my conviction that a court visit to the site would reveal exactly what the problem was.

- 24 Rather than entry to the site being at the point where a large house was to be built as being suggested at that time by the Appellant, the road entry to the site was half way up the road frontage where one clearly would need an elevator to descend from road level to the actual site itself. In the State government town planner's submission he reveals the exact details and the extreme gradient at access point and across the site, with the level of risk not addressed.
- 25 During the past decade or more, TMPA, when siding with Council, generally has not engaged any experts, e.g. in the long running Gillion water extraction case. TMPA as a volunteer organization does not accumulate funds with any excess being donated to mountain not-for-profit organizations. All our appeals are funded by the broad Tamborine Mountain community. For this reason my position was not fronted by an expert. I agreed in general with Council's town planner's original position.
- 26 On 23rd August, the Respondent informed me that Council no longer maintained refusal of this development but sought imposition of reasonable and relevant conditions. This is different from actually supporting the development application. Council's town planner Mr. Ovenden in his Position Statement of the same date contained the following: **Clearly community expectations mattered.**
- 6.4 With regard to reasonable community expectations, this needs to be considered **objectively** in the context of the relevant assessment benchmarks in the planning scheme, and expert evidence.
- 6.5 I note that matters raised in objections to the proposal included matters of scale, form, intensity, building height, site cover, economic and social need, the compatibility of the use with the topography of the site, and amenity, amongst other matters. The expectations of the submitters in relation to those matters appear to be that development of the site would be at a reduced scale, form, intensity, building and site cover.
- 6.6 The matters in the submissions, and the expectations of the submitters, should be considered in light of the treatment of those issues by the planning scheme, particularly in the context of the relevant zoning and precinct, and in the relevant assessment benchmarks. The potential impact of the proposal on the character, amenity and the visual amenity of the site and area **pervades** the relevant assessment benchmarks. This is the lens through which community expectations around matters of height, bulk and scale should be considered. **(my emphasis)**
- 27 As my position rested on strong planning points on behalf of the community, I needed to know Mr Ovenden's Reasons for Change. This was also requested by the Court. **His Reasons for Change were not supplied to me till 14th September, the second last day of the appeal.**
- 28 . The time frame after first notification of a change and the final full response did not afford me time to seek my own town planning expert.
- 29 A commercial development of such huge scale and intensity on a residential site further opens the door for perceived inappropriate development on the entire plateau .
30. This is a major concern for the community and, understandably, in the wake of a recent plebiscite (currently being examined by State Government), where Tamborine Mountain residents by a strong majority voted to leave Scenic Rim, and its Council, and join the Gold Coast, resident letters in both local papers (delivered free to every household on the mountain) have accused Council not only of incompetence, but its pursuit of community leaders as vindictive and perfidious..
- 31 I am mindful that Council regularly does not run in tandem with the Tamborine Mountain community's views and values and I agree with this observation.
- 32 Several minutes before trial started (13/9) I received from Appellant and Respondent a vast amount of new material to which I was not given an opportunity to fully examine and reply.

33 Here, as per Planning and Environment Court Act 2016, Part 2, Division 2, Section 10 at 10(2) both King and Co and MacDonnells Law failed to act in an expeditious way.

(2) The parties to a P 7 E Court proceeding impliedly undertake to the court and each other to proceed in an expeditious way.

34 On 23rd August I was notified by the Respondent's legal representatives that Council no longer maintained its refusal of the development application and instead would seek the imposition of reasonable and relevant conditions. I was not informed by Council's legal representative that at this point I became liable to costs.

36 Here, as per Planning and Environment Court Act 2016, Part 2, Division 2, Section 10 at 10(2) King and Co failed to act in an expeditious way.

(2) The parties to a P & E Court proceeding impliedly undertake to the court and each other to proceed in an expeditious way.


37 My position in the court, at great personal expense, was in response to community expectations and the potential **harm** this development would do to immediate neighbours, an extremely quiet cul-de-sac and to the Tamborine Mountain community in general. In where they choose to live, most residents rely on the local planning scheme for some certainty in their lives.

Their expectations matter.

38 That this can easily be over ridden by how many like minded experts one can afford plus the injection of a heavy bias against the opposing submitters, tends to lead to my conclusion that Justice can be bought..

39 The situation is inequitable and sends the wrong message that community people are not welcome in the court system.

40 I am mindful of the quote by Judge Rackemann at his judgment on 2nd December, 2021 - *"wetting the saliva of lawyers with one hand on the guillotine can only frustrate rather than meet the ends of justice"*.

Jeanette Lockey, 
for Tamborine Mountain Progress Association,
Co-Respondent No.20

25th November 2022