

## **Newsletter.....December, 2021**

Since the October newsletter the same issues have dragged on, mostly without any satisfactory solution.

Water issues & 11 Holt Road.....TMPA is to continue discussions with the Minister for Water regarding our back up aquifer water supply. There is no resolution in sight to effectively counter the continuing unresolved risk to a large population's supplementary potable water supply. To make matters worse, whilst the water Moratorium, in its second year, prohibited further extraction sites for off mountain water sales, a fourth additional off mountain extractor has managed to sneak in.

This is 11 Holt Road which ex-Councillor Nigel Waistell has been pursuing doggedly. The big question here is why Council sought legal advice in 2020 (when the property changed hands) which overturned the 2014 Council's legal advice confirming this site was for local supply only. For any change to have happened a new development application needed to have been submitted. This was not done suggesting this operation is unlawful.

More than a dozen letters from Nigel, with about six from Council and about four from the Ombudsman have kept this issue fermenting with still no resolution in sight.

In the last episode, correspondence to Nigel from the Ombudsman stated there was, according to Council, a further step he could take – issue an "Administrative Action Complaint" to Council. This he did.

Council then replied that Nigel was deemed not a person directly affected by the operations at 11 Holt Road and therefore Counsel could not consider his application for an Administrative Action Complaint.

In November, Council issued a Show Cause Notice to the owner of 11 Holt Road stating they are acting contrary to the approval of 2004 and have to show cause why they shouldn't stop. (But the question remained as to why Council had allowed this off mountain operation in the first place.)

Nigel then submitted a question to Council briefly setting out the situation, expressing concern that local supply had been cut and asked the question what are the criteria used to determine if a resident is deemed to be an affected person when submitting an Administration Action Complaint.

Mid December, Nigel received a letter from the Ombudsman who has now decided not to further investigate his complaint because in the Ombudsman's view Nigel has not sufficient direct interest in the administrative action taken in this matter. Reasons given included Nigel did not have an interest greater than that of other individual residents/ratepayers, or a sufficient direct interest requiring more than an intellectual interest in the issues and that Nigel was not directly affected by the 2020 Council decision to a greater extent than other residents/ratepayers of the area. (???)

Further, the Ombudsman stated he considered the 2020 decision of Council has been superseded by the current enforcement proceedings and any investigation of that decision (considered unlawful) is unlikely to result in any meaningful outcome.

We now have to rely on the Show Cause Notice that Council issued. Nigel's question regarding criteria used to determine if a resident is deemed to be an affected person when submitting an Administrative Action Complaint will remain unanswered (for the time being) as the mayor has decided this question will not be accepted for Public Question Time.

If your head is spinning by now, it's called ducking and weaving till you are in a position which looks like it might let you off the hook.

Eagles Retreat Place.....This matter is now in the Planning & Environment court with proceedings to start mid-January. This is the proposed development on the eastern escarpment for cabins, three of which just happen to be on the approved tennis court. A Minor Change application has now been forwarded to Council for removal of this tennis court approval as the resident's sporting facilities are being placed inside the house. Whether Council can deal with this whilst there are court proceedings in place is another matter.

The court action was activated on 2nd August by the developer on a deemed refusal by Council immediately after Council unaccountably missed the required determination date. In court we now have the developer versus Council, TMPA and forty four individuals.

In early October TMPA received at the same time four emails from the developer's lawyers. Two were affidavits by their lawyer; one was a letter to TMPA stating our submission to Council was incorrectly made plus a court Order for Impending Proceedings, effectively to knock TMPA out of the court case.

As this was a complex development application, TMPA had engaged a highly qualified town planner who compiled an excellent submission in October, 2020. . On Council's subsequent list of all the submitters, TMPA's submission was deemed properly made. Now challenged, TMPA sought legal aid. With a local lawyer's guidance, TMPA and our planner submitted affidavits to the court and other parties. All this took time and included declarations from the management committee.

In court at the end of October, an Order was made for exchanges of documents in a time frame which covered November. Final exchanges were to be made on Monday 29th November. Court was scheduled for two hours for Thursday 2nd December.

Voluminous exchanges took place on the afternoon of the 29th Nov., but it was not until late that night (and final chance for exchange of documents) that the developer's Counsel revealed in an email they were accusing TMPA of two violations and not just one. (I didn't read this email till the following morning.)

Tuesday and Wednesday before the court session were spent checking through the huge volume of documents (it needed a wheeled carry-on bag to get them into court) to check for any trace of this second accusation. There was nothing there. On the eve of the court appearance, we emailed the judge stating our long history, we always acted professionally and if the ruling went against us, we sought the court's excusal,

Court started on the Thursday with Judge Rackemann in fine form tearing strips off the developer's barrister and starting off by stating the accusations were "bad points" and "why on God's earth would you (developer's barrister) raise such an issue". There was much much more.

The judge also stated the issues were "never properly articulated" and you (the barrister) "should have a long hard look at yourself". To his great credit, the judge must have spent much time before court proceedings started to wade through all the documents to confirm that the developer's legal team supplied TMPA with only one issue whereas eventually they claimed two (apparently to damage TMPA).. He directed the court to two pages of a fifty seven page developer's lawyer's affidavit (one of many) where in correspondence to Council's lawyers there were a few words and just a hint of the second issue. Nothing was ever articulated to TMPA, confirmed when the judge checked. He made an order that TMPA be taken to have made a properly made submission and finished off with a statement from an earlier case - *...."Wetting the saliva of lawyers with one hand on the guillotine can only frustrate rather than meet the ends of justice."*

This episode showed shades of the trickery used to fell a large number of koala habitat trees to put in the extra cabins. I guess we should be prepared for anything when the actual court case starts in January.

Parliamentary inquiry into the Office of the Independent Assessor As per the last newsletter, there has been even more media exposure regarding the serious effect this new department has been having on Council and Councillor activities. The resultant inquiry invited submissions and TMPA's is *attached*. Some of this was published in the Fassifern Guardian.

Another large development in Canungra .....This is for 188 residences in Finch Road Canungra. With “reticulated water” coming from a small creek and the QUU’s community tank having to be filled by trucked in water, the subdivisions already in the pipeline will increase Canungra’s population many fold. Amanda worked hard at getting an appeal up against Council’s approval but after a couple of wasted weeks then with Christmas approaching she wasn’t able to secure an available planner in the allotted time slot. The lodged appeal was successfully removed which is a pity as advice from a favourite ex-Council planner suggested this case “had legs”.

Onsens and Young St development applications....these are still to come up for Council deliberations. Meanwhile the Onsens “house” continues to be built. This “house” was approved by a private certifier in April. According to the Gross Floor Area now available on line for the “house”, the residential use here is now subordinate to the business use which includes two bars, the onsens, observation deck, reception area etc. One onsen has now been replaced by a “powder room” and a massage room and there appears to be no dedicated kitchen for residential use.

15-19 St. James Court dog noise.....twenty four neighbours around the rim at Cliff Way in Eagle Heights are being subjected to continuous barking, howling and whimpering from dog kennels on a lower level beneath them (acting like an amphitheatre). Many letters have been written and residents are unhappy about the lack of communication from Council and the time taken to resolve this disturbing issue. To support these residents, TMPA has written to Council twice outlining this wholly unsatisfactory situation and urging it to speedily fix this problem..

Zamia functions Thanks to a great effort by Hilary, two thoroughly enjoyable wildlife afternoons were presented in the Zamia on 16th Oct and 27th Nov. The first featured a wildlife demonstrator from Aussie Bush Buddies who introduced the audience to a tawny frogmouth, large black headed python, a young crocodile and a beautiful glossy black cockatoo. Brought up from birth, these creatures could all be handled & stroked by members of the audience. The expressions on the kids’ faces were a joy to behold.

On the 27th November, Stefan Hattingh, an owl specialist, presented sections of his feature length film “Rats, cats – and owls”. Recordings of many different owl calls were played and like last time people were entranced by the beautiful birds. To top off the year, a 106th birthday and pre-Christmas cake was cut and distributed amongst the attendees.

With 2022 already upon us, what does the future hold for Tamborine Mountain? Unfortunately, this is not good news. The State government’s *SEQ Regional Plan (Shaping SEQ)* is in a collision course with the century old unique character of Tamborine Mountain forged by residents over so many decades. Paralysis has set in with State bureaucrats unable to deal with something that doesn’t fall within the Plan. This is like the (medical) MMM situation. Unable to breach the boundaries of this Plan, Tamborine Mountain is being developed like any other suburb in south east Queensland. Just cramming in more housing doesn’t bode well for our long held “green behind the gold” reputation. This urbanization doesn’t even consider our lack of reticulated water, no sewerage & minimal infrastructure.

To make matters worse, due to its unique attractive location, no urban area elsewhere experiences huge inappropriate development pressure as Tamborine Mountain.. Add to this there is a treasure trove of available large grants supported by Council which seem to absolve it from its obligations to its residents. Council values the mountain only as a rate base. With a Council that does not protect this valuable SEQ asset the mountain’s future is currently galloping towards a dog’s breakfast far worse than you would find anywhere on the Gold Coast.

So fingers crossed, & hoping for some light (any light) at the end of the tunnel, TMPA wishes everyone a safe, healthy and peaceful 2022.

Jeanette