

**Newsletter.....July, 2017**

.....bringing you up to date with the activities of TMPA. Unfortunately, it has mainly been more of the same.....much more of the same. The two local character defining court cases have been grinding on relentlessly. The trick has been to separate the two simultaneous cases as emails from all directions continue to fly back and forth.

**Guanaba Experience development**

Correspondence continues to flow between the lawyers, experts and the TMPA group as this case continues.

The developer's Minor Change application was granted by the Court in March. The original Development Application to Council in 2014 now has a new look. This has occurred because Mr. Noort self referred a variation of his project to the Federal Department of Environment. The Fed. Department of Environment approved this, with strict conditions, and the March Court ruling confirmed that this latest variant is now the contested development application.

Site inspections by the experts and lawyers occurred in May. After weeks spent formalizing our experts' positions, a without prejudice mediation session was held on May 25th. A mediation session is standard Court procedure to try to prune down the issues that the final trial has to adjudicate.

On 25th May it was all hands on deck and the Court room was crowded with 34 individuals representing the developer, Council, Council's lawyers, their consultants, SARA (State Assessment and Referral Agency), plus the TMPA team and our experts. Our consensus of opinion was that our people presented their positions very well whilst weaknesses from the other side were evident. However, more information was required from the developer.

After meetings with our traffic experts, the Dept. of Main Roads has now installed traffic counters on Guanaba Road, near Kaiser Road. As a referral agency, they had not objected to the development.

Experts are currently meeting to compile Joint Experts' Reports for the Court. Acoustics issues have been resolved, should the development be approved, with both sides agreeing to noise levels actually lower than the level sought in the original application of 2014.

As a matter of interest, during the 2014/2015 Council process, the developer requested that his original D A noise level be raised. TMPA's acoustics expert set out a report why this should not be approved. This report was sent to Council and Councillors prior to any decision. The requested raised noise level was passed by Council. There is no evidence that anyone (except our two) had read the TMPA expert's report. These reports cost thousands of dollars.

The Needs experts have now completed their discussions whilst the experts' meetings on Traffic, Ecology and Bushfire Management are under way. The Planning experts need to wait till all these other reports are filed. The timetable has now slipped so badly that it seems entirely unlikely that the matter can be ready for a Court hearing in August as anticipated.

Following the finalization of the experts' reports, there is a return mediation session. A timetable is then set for the case to proceed to trial at a date to be set.

## **Gillion Pty. Ltd. (Power Pde) – commercial water extraction**

We are often greeted with amazement that the Gillion (Power parade) water case is still merrily charging along.

Over the years there has now amassed a mountain of correspondence - reports by experts, their meetings, exchange of documents, mediations sessions, revision of time tables, etc. As it is difficult even for us to keep track of this long winded saga, it may be useful to give residents a condensed birds' eye view of this now famous case

*Once upon a time,..... long, long ago.....*

- 2004** Power Pde property/small extraction business bought by Gillion. Business expanded.
- 2007** Planning Scheme introduces new code – “Commercial Ground Water extraction”  
Gillion now without appropriate permit
- 2008** Show Cause Notice issued by Council because of neighbours' complaints.  
Legal proceedings commence.
- 2010\*** Court declares Gillion operation unlawful. Operations to cease \* till a Development Application is applied for & approved by Council
- 2011** Feb. – Gillion files Development Application with Council for permit for commercial water extraction. Nearly 1,000 submissions received objecting to this application.
- 2011** Oct. - Council refuses Gillion Development Application
- 2011** Nov. - Gillion files appeal in Planning & Environment Court.  
83 residents, including former owner of bore site, elect to stand as Co-Respondents (opposing appeal)
- 2013** March - Gillion appeal refused by P & E Court. Council was correct to refuse.
- 2013** Gillion refers the case to the Appeals Court (Supreme Court) claiming P & E judge had erred in law
- 2013** Nov. - Gillion hearing held in the Appeals Court
- 2014** Feb - The three Justices unanimously agreed with decision of P & E Court. (case refused)
- 2014** April - Trading on Power Pde ceased.

**2010\***.....an 8 week suspension of a cease operations order was issued to allow Gillion to continue trading whilst a Development Application was filed

Approx. 20 extensions to this suspension were granted allowing Gillion to trade till April 2014.

Thus ended about five years' of hearings delivering substantial costs to residents who played a major part financing the legal team and experts. Last estimates, several years ago, put Council costs at over \$1m.

But all was not over yet.....

- 2014** July - Gillion re-submits to Council virtually the same Development Application, this time with accent on economic need  
Approx. 1,200 objections filed by residents

- 2015** May - Council refuses Development Application
- 2015** June – Gillion’s files notice of appeal in the P & E Court  
104 residents elect to stand as Co-Respondents (opposing appeal)
- 2015** Dec. – without prejudice conference held to narrow disputed issues
- 2016** Sept. – mediation meeting of all parties held
- 2017** Feb.– planned Court booking for one week’s trial suspended to first determine Gillion’s Minor Change application
- 2017** April - \*Minor Change hearing
- \* Since lodgment of the D A in 2014, Gillion has sold the bottling part of the business. Gillion’s sole proposed operation now is to sell water “at the gate”
- 2017** April - Minor Change approved and Development Application now has a new format.
- The changed D A has required further input from lawyers and experts regarding additional issues in dispute arising from the changed application.  
Amended grounds of appeal, both sides, are to be exchanged before the trial
- 2017** Sept. - proposed one weeks’ trial with date to be set.

and this should be the end of it (???????)

### **New Planning Scheme**

The Planning Act 2016 now replaces the Sustainable Planning Act 2009 (SPA). (3rd July, 2017)

Development applications and planning scheme amendments in progress under SPA will generally continue to be assessed using SPA provisions.

Any development appeals already underway will continue under SPA.

Assessment managers are now required to publish the reasons for their decisions.

TMPA members will be attending the Environmental Defender’s Office presentation setting out and commenting on sections of the new Act as they relate to the environment.

### **Membership & meeting times**

Thank you to those members who have updated their annual subscriptions. All this helps with the vast quantities of monies going out on the court cases. For anyone with a mind to update, banking details are:

BSB 484 799 A/c 083817199; or cheque to address below, or TMPA box, outside greengrocers’, NorthTamborine .....\$15 per person, p.a.

General meetings continue to be held on the first Tuesday of each month at the Creative Arts Centre, Wongawallan Road, Eagle Heights, and 7.30 pm (except January). Everyone welcome.

Jeanette