

Newsletter....6th May, 2013

**Gillion Pty. Ltd. vs SRRC, DTMR, Power Pde residents & others, TMPA, EHVA.....**

On Friday, 3rd May, Judge Robertson entered the court at 9.30 am, and before we could sit down, he announced that the Appeal was dismissed.

Gillion had appealed in the Planning & Environment Court against Council's refusal for a development permit for a material change of use for commercial groundwater extraction at the Power Parade site. The operation of this activity was declared unlawful by the court in 2010 and since then nineteen extensions for permitted operations have been granted whilst the Development Application was considered by Council and then the Appeal was heard.

In his judgement, Judge Robertson found in favour of Mrs. Gill's argument that closure of the business would result in a hard impact on her.

However, he did not accept that Gillion's submission demonstrated a strong and sustained demand for the groundwater beneath the subject land. The consideration of need was dismissed.

But the main issue in this case was the conflict with the planning scheme and the judge found that the grounds were not sufficient "to overcome what is a significant conflict with the Planning Scheme".

Returning to court in the afternoon, Gillion's barrister requested six weeks' suspension of the enforcement order – in other words to allow Gillion to continue trading because of hardship. Council's barrister argued very strongly that Gillion's operation should be discontinued immediately. He stated that Gillion had already had two and a half years' benefit from what is an unlawful operation. The residents' barrister, next in line, argued the same line, at which time Mrs. Gill left the court room in distress.

The six weeks' extension was granted.

Gillion's barrister announced that they would be appealing. This will be heard in the Supreme Court before three different judges. They will be looking to see if Judge Robertson made an error in law (not fact) in the steps he took coming to his decision. Council will need to respond. In the Supreme Court, unlike in the Planning & Environment Court, a decision as to what proportion of the winner's costs is to be borne by the loser is made by the court. The winner needs to apply to the court for cost recovery.

During one of the breaks outside the court room, Council's barrister (one we'd not met before) brought up the subject of residents' participation. He said that it really impacts on a judge to see the whole back row filled with residents, showing a strong community interest in the case. This barrister also understood the strength of proformas, particularly from the Tamborine Mountain community, which was truly heartening.

To fight this far, a core group of residents has made a huge effort on behalf the whole community. Residents have consistently indicated over the years that the question of water is a top priority, so we all should be grateful to these battlers. Unfortunately, small home businesses extracting water, originally for local use, have ballooned out to undesirable proportions. And vast quantities are being sold commercially off the mountain.

*From the ninety four page judgement some other points were:*

The judge found that there was no pre-existing lawful use right. This meant that if Gillion lost the appeal it could not revert to some pre-existing level of usage.

Gillion has agreed to route her 15.3 m reticulated water tanker (304 RNE) along Hartley and Long Roads, Gallery Walk then the Oxenford road. This decision doesn't affect other tankers. The judge found that this haul route's safety concerns can be appropriately conditioned by DTMR and that it is a suitable "short term" solution. According to DTMR, this is a safer route than at present being used,

The judge added that “most resident driveways occur along McDonnell Road and there is no doubt that sightlines for many will be extremely limited.”

The judge also considered that the intersection at Geissman Road and Eagle Heights Road needs upgrading, irrespective of Gillion’s proposal.

The residents’ barrister referred to this section as “chaos corner” with tourists parking and backing out. The judge agreed with DTMR that all these facilities are within the road reserve of a State controlled road. DTMR has overall control of the section which would include any associated issues of safety which it can address if such issues arose.

He agreed that widening Power Parade at the extraction site would contribute adversely to the perception of locals as to the nature of the road and the local amenity.

It is only after the grounds of the appeal are known, that the residents can decide to what to do next.

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The lack of reticulated water and sewerage on the mountain is a threshold which limits undesirable rampant development on this plateau. We do not know when this can change. The consequences of large scale aquifer extraction and increasing large heavy tanker usage of the unsuitable mountain roads could see future high cost demands on both levels of government. Development pressure on Kuranda saw a four lane highway emerge, escalating a complete change in that area’s resident amenity. Much rests on the outcome of this case.

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Annual SRRC budget: Councillors are commencing budget deliberations on Wednesday, 8th May. Draft budget details are confidential, but Cr. Waistell has said that he is unhappy with what he has read. He said that rates had to be fair and affordable and distribution of rates should be fair rather than equal. These principles have not been met. His desire to see drainage recognized as a priority issue has not been met.

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The Power Parade fund raising for the final stages of the court case, as well as funding advice as to what to do next is continuing. Flyers are being distributed across the mountain informing residents of the issues and advertising the sale of tickets for the Kia Car Raffle. Anyone wishing to purchase a ticket should contact Norelle – [norelle@creativeasset.com.au](mailto:norelle@creativeasset.com.au) (ph. 5545-2852) or Stuart on 0411 256 258.

Groups of two and three people are banding together to buy a ticket. Win the car, sell it, and voila – thousands of dollars each. Better odds and return than “scratch-its” (or whatever they are called).....

Jeanette Lockey,  
President, TMPA