

Gillion Pty. Ltd. v SRRC, DTMR, TMPA, EHVA & 83 resident Co-Respondents: The last session of the Gillion/Power Parade proposed industrial size water extraction Appeal against SRRC refusal in the Planning & Environment Court was held last Friday, 4th April. Each team (Gillion, Council, DTMR and the neighbours' lawyers) plus Scott Guerin and Stuart Wright were allowed approx. 45 minutes for a final concluding statement.

First up, barrister Rob Laidely (for neighbours) was impressive. Without him and the scrupulously careful wide strategy by Cleveland lawyer Ian Neil and his team (McCarthy Durie), I would be far less optimistic of a positive result for Tamborine Mountain residents.

The Council's barrister (one we haven't come across before), was questioned at length about Council's actions in the early stages of this saga which covered a number of years. In his questioning, the judge conveyed a small measure of annoyance at what he perceived to be earlier Council activities. The lady barrister responded firmly. She had formulated a good final written submission preceding this hearing. The interchange was not surprising as in past cases TMPA has witnessed in court the embarrassment of barristers not fully briefed by Council.

At one stage the judge made a quick quip suggesting Council had supported the application, but was quickly told that Council itself had refused it. Clearly, the judge remembered the Council planner's report and that the Director had recommended approval. Phil Giffard, with his usual foresight, had written to Council (prior to any Council final decision) pointing out the flaws in the report and urged Council to rewrite it lest it gave weight to an Appeal by the developer. As usual nothing happened. Now this is a worry, remembering the Gaven case where the judge's decision to approve rested strongly on the Council planner's flawed report, even though Council did not actually approve or reject the application.

The situation here is marginally better in that it would seem that Council finally understood the ramifications of earlier actions (or inaction) and now realizes that it has a very big problem on its hands.

The Dept. of Main Roads barrister confirmed his earlier statements that the Tamborine Mountain Road was unsafe for the heavy vehicles and that the Oxenford Road was "more safe". At one stage, when the T-Junction at Curtis Falls was being discussed, the danger to vehicles angle parked there (and backing out) did not score any weight as being a State controlled road, it was pointed out that usage was available to all, including the tankers. In outlining traffic points, the DTMR barrister frequently praised items in the Gillion reports. Sitting next to the Gillion barrister and with friendly interchanges, the impression coming across was a DTMR inclination towards the developer. This may be unfounded, but is not surprising, given the circumstances of the Gaven (supermarket) case.

Scott and Stuart each put in statements and asked questions which were seen as gaps in the presentations of others. Apart from filling out the case for neighbours and T.M. residents, their presence as community representatives was definitely a valuable exercise. The judge who makes the final decision is by and large an unknown quantity. Whilst Judge Robertson has consistently shown he has been reading up on everything and has a prodigious memory for detail, it has been difficult to guess if or what he has forgotten or omitted (a complex case with a mountain of data).

The judge made a quick observation that over 900 residents objected to the application. He quickly added that most of these objections were pro-formas, suggesting they weren't worth much. Sadly, few experts actually stop to think what the Tamborine Mountain pro-formas are. They are a very small equivalent of Mrs. Gill's development application activity. She pays experts to come up with planning reasons why her goal of financial gain should be approved. The mountain community, in its quest for a particular lifestyle, has learnt to rely on compilation (by TMPA and others) of formal planning reasons important to them why a development should be refused. These are conflicts with the local planning scheme on which residents rely. Without this small demand to be heard, the community is routinely completely ignored. Nobody has ever pointed out that the developer, likewise, did not write his or her own application.

So in another sense the inclusion of two impressive resident co-respondents is reminding the court that the case is not just words and legal banter, but that there is a community that should be considered.

The barrister for Gillion spoke last and it seemed clear the case is resting on planning issues. He put forward his usual long outline of points which completely contradicted the statements of the co-respondents and spoke of the benefit of having Hartley Road as an alternate route during the construction of the T-Junction at Curtis Falls, reminding the court that Gillion will be paying for this.

In the final windup, Stuart was allowed a quick comment to the judge. He pointed out that the Gillion barrister had omitted to point out that the Hartley Road was a council road, i.e. council's responsibility, and that residents' rates would be required for any additional upkeep of this section. (Good evidence of why our people should be present.)

(The water issue has been to the forefront of residents' worries for several decades. At one stage the TMPA & TM News spearheaded a survey of bores and water usage. The collated material was presented to the then Minister maybe seven or eight years ago. An effort by then councillor Phil Gifford to have the extraction of water declared an extractive industry did not get anywhere. State governments over the years have been reluctant to do any survey of just what water we have in our aquifers. It is all very much an unknown quantity.)

Court was adjourned till 3rd May. The (busy) judge said he may have his judgement ready by then, but if not, any court time could be used for any clarifications. So it looks like May for a judgement.

A water extraction business in Bateke Road has just put in a Development Application to Council for an increased size of its activities.

Meanwhile, Council continues to function in much the same manner. Noticeable these days of course is that councillor voting too often runs along the five to two split, rather than the one versus everyone else of the last Council. As we know, our two councillors have useful skills, experience in town planning matters, are mindful of decision consequences, people friendly and articulate, so one can only try to imagine why this occurs. Nevertheless, our intrepid representatives are doing their best for the mountain community.

Following several letters and information to two Noosa residents' associations, the local councillor and a former Noosa mayor written before de-amalgamation voting recently, a reply was received from Tony Wellington lamenting the direction in which Tamborine Mountain has gone and describing similar divisional differences which occurred over the last few years in the newly amalgamated Sunshine Coast Regional Council. There, the voting was often split two to thirteen, with the non-Noosa councillors firmly opposed to proposals Noosa considered were necessary for its community expectations and the iconic local character. More than 80% of Noosa voted to split from its unsympathetic yoke.

Something coming up that should concern mountain residents who value a non urban lifestyle is the proposed changes to the shire planning schemes. A future unified planning scheme being touted by the mayor and council is effectively is a one size fits all formula. The mayor has promised an extensive community consultation process, although harking back to the Beaudesert library proposal, the current Knoll Road waste station issue and the regular unheeded community objections to perceived undesirable development proposals, this statement has a pretty rubbery ring to it.

TMPA, due to the media blackout imposed by a weak Council, will probably issue a special letter box bulletin to alert residents to make an input into the formulation of any new planning scheme. A very extensive community survey was done for the 1997 DCP which was subsequently rewritten (with mostly the same objectives) in 2007. It is even more important now that people stress that we don't want to look like Boonah or Beaudesert or anywhere else for that matter, and that there are very significant differences in resident expectations in the numerous shire communities.

Our battle scarred former councillor, Derek Swanborough, has settled into his new job as Executive Manager of Casino (Northern NSW) Council. Derek and Sue have just moved into a really nice house – five bedrooms, three bathrooms – overlooking the river and beach at Evans Head. He waxes lyrical about the competence and professionalism of the CEO there. Like Derek, this man has had more than thirty years working in Councils - first as a Woollahra councillor, then as CEO of a string of impressive corporations including Perth and Liverpool councils. The change must be staggering.

Although Mayor Brent was finally found guilty of conduct breach concerning Derek (front page coverage in the Boonah Fassifern Guardian) the eventual decision came a year too late to change anything in the council elections. Mayor Brent had worked tirelessly amongst small groups and individuals, mainly in the west of the shire, to spread unsubstantiated insinuations and damaging slurs about his mayoral challenger. One such encountered individual (a stranger) happened to be Derek's brother. Perhaps even smellier was the official attempt by the Local Government Association of Queensland to have Casino Council revoke Derek's appointment. Casino Council, familiarized with much hard evidence of how SRRC operated, sent Derek's credentials to an independent reviewer in Sydney. Reply was to grab someone of such high skills, experience and ability. Confidential advice from Casino Council cannot be printed in this newsletter.

(The Local Govt. Assn. of Qld. was responsible for a draconian media policy and councillor code of conduct which the newly appointed Mayor Brent adopted after the amalgamation. These policies were directly responsible for the fracturing of any relationship between the T.M. councillor and the mayor, plus eventually the rest of the councillors.)

Derek reports that each day now is like a holiday.

Mayor Brent has signaled a go-ahead of what was originally the Beaudesert library project. Although four and a half thousand people shire wide objected to the scheme, half a million dollars had already been spent by Council setting it up prior to commencement of community consultation. Following receipt of all the objections, this scheme morphed into the Beaudesert revitalization plan, which mainly contained the revised library but then had car parking facilities tacked on. It appears that this bundle now has added to it the plans for the partial Beaudesert bypass. Of the four mayoral candidates, Mayor Brent was the only one to support the Beaudesert Revitalisation scheme. However, in his election promises he stated that no rate payers' monies would be used for this project. Now it is anyone's guess which, out of this increased heavyweight mixed bag of tricks, would be first cab off the rank in the event of receipt of some partial grant funding. The huge expense required for all these proposals to eventuate seems to make this a very long term project indeed, but, hey, it should dampen down the objections of at least the Beaudesert residents.

In this vein, an article from the Courier Mail (22/1/13) is of interest:.....

“A Scottish council is staging a free pole dancing class in a library to lure more people to use the service. It will run the session at Mayfield Library in Dalkeith on February 2, which is Love Your Library Day. Other activities include “booky table tennis” in which players use books instead of bats. Other libraries are offering Scottish country dancing, head massages and an Xbox challenge.”

Jeanette Lockey,
President, TMPA

PS. There is at least one individual operating in the community ostensibly collecting funds for the Salvos detox centre. This is a scam, and people should ask to see proper identification of any charity supposedly represented.

To help defray costs of the Power Parade water extraction Appeal, sale of tickets for the Kia Car Raffle is continuing. Anyone wishing to purchase a ticket should contact Norelle – norelle@creativeasset.com.au phone 5545-2852. Only 1999 tickets are being sold, and at \$50, these are very good odds.