

30th August, 2021

Mr. Glenn Butcher MP,
Minister for Regional Development & Manufacturing,
Minister for Water,
P.O. Box 15009,
CITY EAST, Qld., 4002.....by email Gladstone@parliament.qld.gov.au

Dear Mr. Butcher,

Tamborine Mountain & its water problems

Thank you for your letter of 7th April notifying us of the welcome extension for a further 12 months of the water moratorium beyond the original expiry date of 5th March, 2021.

With considerable community interest in the state of our available aquifer water on Tamborine Mountain the moratorium went some way to allay fears but worries still persist.

We note that considerable effort has been made to work with the various agencies involved to build transparency and accountability to deliver better community confidence in the water industry.

The community appreciates the gathering of further data to move forward to better assess and manage any risk to the region's groundwater resources.

However, Tamborine Mountain residents are not comfortable that the moratorium is achieving its purpose, namely to safeguard the ongoing availability of aquifer water to mountain residents..

Off mountain commercial extractors claim they are acting sustainably using only a small relative volume and that the resource is "indefinitely sustainable". They rely on the Todd Report for this stance. This view does not convince residents that the aquifer is remaining in a healthy position.

As explained in the TMPA letter to Minister Lynham, 2nd August, 2020, (copy attached for your convenience) such assurances do not hold with the community. **The Todd Report studies cover only surface bores** – i.e. those used by residents, businesses etc. here. These studies keep check of only the volumes taken by the off mountain commercial extractors.

A large number of 28,000 litre tankers take water off the mountain each week. From their 24/7 patrol some years ago, residents counted 87 in one week. These tankers do not stop during times of drought. They operate every week of the year.

In times of drought, surface bores used by residents, businesses etc. drop their levels with some drying up altogether. Some people deepen their bores to attain a satisfactory flow.

It is not difficult for residents to deduce that for round the year extraction the off mountain commercial extractors are tapping into deep ancient water. That it takes an estimated 25 to 100 years for rainwater to seep through to these layers leads to views that the off mountain commercial extractors are "sucking the mountain dry". Sustainability by using the Todd Report doesn't wash with mountain residents who rely on the aquifer as an essential resource. Tamborine Mountain does not have reticulated water.

Relying on Scenic Rim Regional Council to rein in expanding troublesome water extraction is another problem. Several sites are worrying residents. They are described in detail as follows:

a) 11 Holt Road

This has been one of two sites supplying water to local residents only. Council in 2004 granted this owner permission to supply local water using 13,000 litre trucks (half size).

Due to fluctuating climate conditions these two sites have operated to full capacity only in the rarer drought periods. As there is not enough demand in other times, both operators have had a second line of business.

A prospective buyer of this property in 2014 sought Council's approval to extract water for off mountain sales. Council sought legal advice which stated:

- Development Approval only approves the supply of water to Mt. Tamborine residents.
- The driveway construction should not be interpreted as authorizing any particular truck capacity
- Trust capacity stated in the report to Council is in the vicinity of 13,000 litres
- If the site wants to operate a Commercial Ground Water Extraction then a Material Change of Use (impact inconsistent) is required; and
- Application would need to show overriding need.

In advising the applicant Council added that

- Use must be operated in accordance with the conditions of approval; and
- Use must contain some form of public interest or fulfill a public responsibility rather than a commercial for profit operation.

This site was sold in 2020. Towards the end of the year neighbours were noticing a full size 28,000 litre truck operating from this property. Residents state there are three such truck movements now each day. This size truck is used for off mountain deliveries as it is unsuitable for our narrow roads and the many nooks and crannies here.

Ex Councillor, Nigel Waistell with continuing concerns about the mountain's local supply contacted Council. In October he received a response from Council stating the operation was lawful, stating:

- That any truck size could be used
- The construction of the driveway for a 28,000 litre truck by default permits trucks of this size
- That no Material Change of Use had been submitted and was not required.

This is contrary to legal advice received in 2014.

Mr. Waistell outlined his concerns in a meeting with Council in December, but received no response. This matter is once again going to the Ombudsman.

Despite the moratorium, in addition to the three long established large extractors for off mountain sales we now have a fourth.

Council now considers the new owner is "conducting the use lawfully".

"The D A does not have a condition in relation to number of truck movements" and

"The simple answer is Council has no power to regulate the number of truck movements that occur at this property"..

It is peculiar that Council has now chosen legal advice which contradicts legal advice it received in 2014 and so increase off mountain commercial extraction in spite of the moratorium..

b)...2 Holt Road

As stated, in 2015 a 24/7 monitoring by residents of all 28,000 litre tankers moving water off the mountain counted 87. As this apparently far exceeded permitted extractions, Council was persuaded to mount surveillance on this particular site and amassed solid information.

This owner was issued with two show cause notices, followed by an enforcement notice in November, 2015. The owner immediately took the matter to the Planning & Environment Court. Robert & Robert claimed no excess extraction took place (Case 4540/15 Robert & Robert v SRRC filed 20th November, 2015).

Council filed a counter claim on 13th April, 2016 stating the developer intensified his land use and caused a material increase in the intensity of scale. (Case 1395/16 SRRC v Robert & Robert).

Both cases were heard by the one judge over two days in the May 2016 sitting of the Planning & Environment Court.

The Court sitting was scheduled for three days, but day one was wasted as Council did not have its case finally prepared for the Court to begin. This and other gaps in Council evidence resulted in a displeased judge issuing an unusual Order in favour of the Roberts.

He dismissed Council's claim and ordered that the Defendant be allowed for the purposes of a Minor Public Utility truck movements to and from this property be limited to 12 x 28,000 litre capacity truck movements per week and 40 x 14,000 truck movements per week. The judge didn't specify where the small tanker loads were to go. However it was generally considered that it would be unviable to take the small tankers off the mountain.

In December, 2020 a Material Change of Use was received for this site requesting a minor change. This sought to increase time slots in which tanks can enter and leave. Stated usage was as per court order – 12 x 28,000 and 40 x 14,000 per week. Originally this application extended to suggestions of permitted truck sizes to gain flexibility of transferring the loads because some buyers would not accept 14,000 litres but wanted the 28,000 litres.

Subsequently the applicant amended the application to just address timings acknowledging that the numbers of trucks in question needed to go back to the Planning & Environment Court.

In March 2021 Council approved the Material Change of Use.

In July 2021 this water extractor has just lodged an application in the Planning & Environment Court (1894/21, Robert v SRRC) seeking the following change:

"Within 7 days of the date of this Order, truck movements to and from the Land for the purposes of the Minor Public Utility be limited to a maximum of 52 truck movements per week using either a rigid truck or an articulated vehicle of carrying capacity no greater than 28,000 litres and a length of no greater than 15 metres, and provided that no more than 896000 litres of water per week is transported from the site." and

“The composition of trucks authorised by the Order equates to a maximum of 896,000 litres of water per week being transported from the Land. The Applicants seek greater flexibility with respect to the composition of trucks used to transport the water from the Land, whilst not exceeding the maximum volume of water permitted to be extracted each week as a consequence of the Order.”

Whilst this very broad request covers everything from the original Order to an unknown quantity of variations it is capped by the allowable volume of 896000 litres per week. According to evidence from a senior Sydney person in the Australia wide bottling industry during the Power Parade water case (Case No 2424 of 2015, Gillion Pty. Ltd. v SRRC & Ors, *the third case*) the rapidly expanding industry will take all the water it can get.

It is difficult to imagine that the water bottling factories would accept any old lot of water that lands in its lap at irregular times. A contract needs to be met. This and the fact that the maximum 52 truck movements a week is in the application raises alarm bells. Considering the high demand for water for bottling, this is either a cost saving exercise or it isn't – large tankers or half sized ones. On Tamborine Mountain it is impossible to use the 28,000 litre tankers to deliver water to locals. The roads are too narrow and there are a great many places where these tankers could not access.

With a contract in place in times of drought how could a large tanker load be cancelled to allow a local deliverer with a small truck in to fulfill resident requirements?

Residents are well acquainted with tactics developers use in order to get developments through which excessively breach planning schemes or attract large public objections. If a developer lists a portion of, or a soft version of a final vision in a development application Council is more inclined to approve this. Subsequently via a Material Change of Use or a Minor Change further changes are requested. Now not open for community input, these jumps eventually get ticked off by Council. The developer's original objective is now up and running.

The changes sought at No. 2 have enough wide coverage and wriggle room, for a final result not welcome by the community especially adding in the vagaries of the courts. Through experience trust is missing.

Residents are not confident Council will inject enough effort into this case to achieve a clearer and better result for residents bearing in mind the critical importance for Tamborine Mountain residents to have permanent access to potable water.

Council has been seriously stung and has incurred large legal costs by flaws in its operations. The long running Gillion Pty. Ltd. case (through three Court processes) lasted about a decade simply because the very original Council direction was for approval. The Court in three separate cases rejected the developer's appeals on planning grounds. It is hugely unlikely Council will approve any further development applications for off mountain commercial water extraction. This is why some people have questioned the purpose of the moratorium.

However, that Council capitulated to the No. 11 Holt Road off mountain water extraction expansion is still being examined. Add to this the current issue of No. 2 Holt Road and it is understandable residents don't have much faith in Council good management of our groundwater resources.

And then we have 9-27 Curtis Road

The resident at this address was granted a Minor Public Utility permit in 2004 as per his planned operation. This was for 1 x 28,000 litre tanker per day OR 4 x 3,000 litre trucks per day for local deliveries.

No request to change this approval has since been received by Council.

The property changed hands about 2015 and again in 2019.

The operation at this site changed after the first sale when multiple 28,000 litre tankers began to take loads off the mountain. TMPA asked Council about the legality of this change.

Council's reply was that there was no condition attached to Development Approval No. 400593 (July, 2004) that limits truck movements for the development to those specified in the original arrangement. However, Condition vi) states that the maximum number of deliveries per week shall be thirty.

So a small scale mainly local delivery service was expanded to 30 x 28,000 litre tankers allowed to take water off the mountain for commercial sale. In effect, it can be argued that Council gifted the applicant usage of the site larger than the original applicant's development application which attracted Development Approval No. 400593 of July 2004.

Both No 11 Holt Road and the 9-27 Curtis Road sites now have off mountain commercial extraction contrary to the original intention.

Council's apparent bias in favour of the off mountain commercial extractors has led to the suspicion that the eventual size of the No. 2 Holt Road operation will exceed its original usage. Council has a duty of care to ensure residents have a potable water supply but cracks in the system have already diminished the availability of this resource.

We have a serious problem during times of drought. Quite a few residences run out of the water collected in their rainwater tanks. In a long drought, a wait of six weeks for water delivery is not unusual. Many are families with children or new arrivals who are not used to country conditions. The original two local suppliers, whilst very busy during this period, have needed a second source of income for the rest of the year. Now that 11 Holt Road is concentrating on off mountain deliveries with a 28,000 litre tank availability of local supplies has been seriously depleted. The impact will be felt when the next drought arrives.

Opening up another Minor Public Utility is in itself a minefield. The major off mountain extractors started by buying properties with just such a permit for solely local deliveries. In 2007 a new code was included in the upgraded planning scheme – "Commercial Ground Water Extraction". However permits with conditions attaching to the Minor Public Utilities were already granted to all off mountain commercial extractors except the Gillion Pty. Ltd. site.

The term Minor Public Utility was coined in the mid 1980s. Whilst at that time it meant local supply only, the terminology used was pretty loose. Consequently in the Planning and Environment Court today, this term has no defining meaning. Judges see it also covering the largest of our off mountain commercial extractors. Permitting a new site to cater for just locals opens the door to the same situation where large off mountain extractors buy in, gradually expand, leading to a repeat of the growth of the off mountain industry as outlined. It can't be guaranteed that a repeat of No. 11 Holt Road or 9-27 Curtis Road situations won't occur again.

The status of sustainability by the off mountain commercial water extractors has to be established. The precautionary principle needs to be applied or everyone loses – residents, our rainforests relying on ancient water in the centre of the mountain, and eventually the extractors needing to go so deep they run out of supply.

I am forwarding a copy of this letter to the Premier and the Leader of the Opposition as all this ties in with correspondence to them about the changing nature of Tamborine Mountain. With the door open for an increase in the population and the changing environmental character of Tamborine Mountain, newer more urbanized residents are saying we need reticulated water here. Today, most residents don't want this as it acts as a cap on population, but with the current trend, the future prospects for retaining a valuable South East Queensland key asset doesn't look too good.

Thank you Minister for your direction to benefit the residents of Tamborine Mountain. Your attention to this matter has been appreciated.

Yours sincerely,
 Jeanette Lockey,
 Hon. President,
 Tamborine Mountain Progress Assn.

cc: Premier
 Leader of the Opposition
 Scenic Rim State Member