

In the Planning and Environment Court
Held at: Cairns

No. 234 of 2005

Between: **COMMUNITY FOR COASTAL AND CASSOWARY
CONSERVATION INC**

Appellant

And: **JOHNSTONE SHIRE COUNCIL**

Respondent

And: **JOHN & LEE-ANN CAVANAH &
WELLACIA PTY LTD (ACN 067 609 198)**

Co-Respondents

NOTICE OF APPEAL

Filed on: 3 September 2005

Filed by: Environmental Defenders Office of Northern Queensland Inc
Service Address: Level 1, 96-98 Lake Street, Cairns Qld 4870
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The Community for Coastal and Cassowary Conservation Inc (“C4”), of Mission Beach, in the State of Queensland, appeals to the Planning and Environment Court at Cairns under section 4.1.28 of the *Integrated Planning Act 1997*, against the decision of the Respondent on or about 4 August 2005 to approve the Co-Respondents’ development application made on 20 December 2004 for preliminary approval for a material change of use (uses consistent with the Rural Residential and Conservation Zone) and a development permit for a reconfiguration of a lot (1 lot into 21 lots plus balance), for land described as Lot 2 on RP732173, situated at Lot 2, Alexander Drive, Mission Beach in the State of Queensland, and C4 seeks the following orders or judgment:

1. An order that the appeal be allowed and the development application be refused;
2. Such further or other orders as the Court considers appropriate.

The grounds of the appeal are that:

1. The proposed development conflicts with the relevant planning scheme provisions and there are not sufficient planning grounds to justify approving the development application despite the conflict.

NOTICE OF APPEAL

Filed on behalf of the Appellant
Form PEC-2

Environmental Defender’s office of
Northern Queensland Inc
Level 1, 96-98 Lake Street
Cairns Qld 4870
Telephone: (07) 4031 4766
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Particulars

- (a) The land was identified in the Strategic Plan as Preferred Dominant Land Use – Conservation and included in the Rural Conservation Zone of the *Johnstone Shire Council Transitional Planning Scheme 1997* (“**the Transitional Planning Scheme**”) and, consequently, the proposed development conflicts with the following provisions of that planning scheme:
- (i) Section 5.1.1 of the Strategic Plan because the proposed development conflicts with the conservation of significant cassowary habitat.
 - (ii) Section 5.1.1.1 of the Strategic Plan because the proposed development does not maintain and enhance wildlife species representation and is not consistent with the maintenance of the habitat function of the land and the integrity of the habitat system as a whole.
 - (iii) Section 5.1.1.2 (2) of the Strategic Plan because the proposed development is not consistent with the Conservation Incentives Framework and the land is not identified as a priority area in Regulatory Map R5 – Potential Bonus Development Right Areas.
 - (iv) Section 5.1.1.2 (5) of the Strategic Plan because the proposed development will effectively rezone land away from a conservation zone and the land has significance to the habitat system identified on the Strategic Plan Map as Preferred Dominant Land Use - Conservation.
 - (v) Section 5.2.11.1 of the Strategic Plan because the proposed development is not in response to genuine market need, does not utilise the existing land bank of Rural Residential land in the Shire in an orderly and economic manner, and does not minimise the impact of rural residential uses on good quality agricultural land.
 - (vi) Section 3.3.1 for the Rural Conservation Zone because the proposed development will adversely affect good quality agricultural land.
 - (vii) Section 3.4.2 for the Rural Conservation Zone because the reconfiguration of a lot / subdivision will exceed the density of 1 dwelling unit or concessional lot per 5 hectares of site lot area subject to a maximum of 4 bonus lots or dwelling units per site, in circumstances where the higher density development will not maintain the substantial habitat function of the area.
 - (viii) There is no formal protection of the area for conservation purposes because the decision notice does not place the area into the conservation zoning and merely places it in the Conservation designation which provides no formal zoning protection of the area; the Conservation covenant over the conservation area can be revoked by the Covenantor (s.1.16).

- (ix) Section 3.2, Part D of the Rural Conservation Zoning because the buffer of the subdivision from Mackness Creek is between 8metres and 15metres in parts, and not 20metres as required.
 - (x) Section 2.4.1.2(7) of the Mission Beach Coastal Area Development Control Plan.
 - (xi) Such further or other provisions of the Transitional Planning Scheme as may be identified in an expert planning report in the course of proceedings.
- (b) The land was identified in the Rural Zone (Rural Conservation Zone/Precinct) under the *Johnstone Shire Council Planning Scheme 2005* (as advertised at the date of the lodgment of the development application) (“**the Draft IPA Planning Scheme**”) and, consequently, the proposed development conflicts with the following provisions of that planning scheme:
- (i) Section 4.2 of Part 4 (Zones) because the proposed development does not protect good quality agricultural land in lot sizes of greater than 30 hectares.
 - (ii) Section 4.2 of Part 4 (Zones) because the proposed development does not protect good quality agricultural land from alienation.
 - (iii) Section 4.2 of Part 4 (Zones) because the proposed development does not protect good quality agricultural land for rural production through separation of incompatible land uses.
 - (iv) Section 4.2 of Part 4 (Zones) because the proposed development does not protect the ecosystem function of existing habitat by promoting the protection from removal and destruction of habitat in the rural conservation precinct.
 - (v) Section 4.2.2 (Rural Zone Code) S5 (Reconfiguration of a Lot) because the proposed development does not retain lots at a viable size to ensure the long term agricultural viability of the land.
 - (vi) Section 4.2.2 (Rural Zone Code) P9 and P10 because the proposed development does not maintain lots with a minimum area of 60 or 30 hectares and lots do not have a minimum frontage of 150 metres.
 - (vii) Planning Scheme Policy 4 (Protection of Habitat Values), Part 1 (High Density Development), because the proposed development does not maintain the capacity of the habitat system on the lot and adjacent lots able to withstand the likely impacts of the proposed development and maintain habitat integrity in the long term and the proposed development will alienate good quality agricultural land.

- (viii) Planning Scheme Policy 4 (Protection of Habitat Values), Part 2 (Appropriate density of development), because the proposed development does exceeds 1 allotment per hectare in area for each 5 hectares of habitat protected up to a maximum of 4 additional lots.
 - (ix) Such further or other provisions of the Draft IPA Planning Scheme as may be identified in an expert planning report in the course of proceedings.
2. The proposed development will compromise achievement of the desired environmental outcomes for the relevant planning scheme area.

Particulars

- (a) The proposed development conflicts with the following desired environmental outcomes of the Draft IPA Planning Scheme:
 - (i) Section 3.1.1(2) of Part 3 (Desired environmental outcomes) because the development will not protect and enhance the ecological systems and environmental qualities of the land or the planning scheme area.
 - (ii) Section 3.1.2(6) of Part 3 because the development will not protect, manage sustainably and use efficiently the natural resources (good quality agricultural land and native fauna) of the planning scheme area.
3. The proposed development conflicts with State Planning Policy 1/92 (Development and the Conservation of Agricultural Land) (“**SPP 1/92**”).

Particulars

- (a) The land contains Class A1 (crop land) good quality agricultural land within the meaning of SPP 1/92 and, contrary to policy principle 1 of SPP 1/92 and paragraph 4.12 of the planning guidelines for the identification of good quality agricultural land under SPP 1/92, there is no overriding need for the proposed development in terms of public benefit and other sites of poor agricultural quality are suitable for the particular purpose.
4. The proposed development will adversely impact on the environment.

Particulars

- (a) The land is of high conservation value and the proposed development and subsequent use of the land will adversely impact on this conservation value.
- (b) The land contains remnant vegetation that is essential habitat for the endangered Southern Cassowary and the proposed development and subsequent use of the land will adversely impact on this habitat and the local population of this species.
- (c) The land contains cleared areas, until recently utilized as crop land, that is utilized by the local population of Southern Cassowary and the proposed

development and subsequent use of the land will adversely impact on this habitat and the local population of this species.

- (d) The land contains habitat for other threatened species and the proposed development and subsequent use of the land will adversely impact on these species.

5. There is no need for the proposed development.

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Solicitor for the Appellant

To: Johnstone Shire Council
c/ MacDonnells Solicitors
Cnr Shields and Grafton Street
Cairns QLD 4870

To: John and Lee Cavanah and Wellacia Pty Ltd
c/ Ian Walker (Partner)
Attention: Kerri Nicholls
Deacons Lawyers
Level 17, 175 Eagle Street
GPO Box 407
Brisbane Qld 4000

NB. If you wish to be heard on this appeal you must, within ten business days of receipt of this notice of appeal, file an entry of appearance in the Registry of the Court. The entry of appearance should be in the form set out in form PEC-6 for the Planning and Environment Court.

And to: Environmental Protection Agency
PO Box 2066
Cairns QLD 4870

And to: Department of Natural Resources and Mines
PO Box 210
Atherton QLD 4883

NB. As concurrence or referral agencies you are entitled, within ten business days after this notice is given to elect to become a Co-Respondent by Election to the appeal by filing a Notice of Election in the Planning and Environment Court at Cairns and then be entitled to be heard in the appeal as a party to the appeal.

And to: Chief Executive
Department of Local Government and Planning
PO Box 31
Brisbane Albert Street QLD 4002

NB. As the Chief Executive you are entitled, within ten business days after this notice is given to elect to become a Co-Respondent by Election to the appeal by filing a Notice of Election in the Planning and Environment Court at Cairns and then be entitled to be heard in the appeal as a party to the appeal.