

In the Planning and Environment Court
Held at: Cairns

No _____ of 2021

Between: **COMMUNITY FOR COASTAL AND CASSOWARY CONSERVATION INC IA13634** Appellant

And: **CASSOWARY COAST REGIONAL COUNCIL** Respondent

And: **MISSION HELICOPTERS PTY LTD ACN 636 565 083** Co-Respondent

NOTICE OF APPEAL

Filed on: 05 / 03 / 2021

Filed by: Holding Redlich
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COMMUNITY FOR COASTAL AND CASSOWARY CONSERVATION INC *cl-*
Holding Redlich, Level 1, 15 Lake Street, Cairns QLD 4870 in the State of Queensland
appeals to the Planning and Environment Court at Cairns at its next sittings, against
the Respondent's decision made on 21 January 2021 to approve a Development
Application for a Material Change of Use for Air Services (Aviation Facility)
(**Development Application**) in respect of land located at 2224 Tully-Mission Beach
Road, Mission Beach QLD 4852 and described as Lot 3 on RP732964 (**Land**).

The Appellant seeks the following orders or judgment:

1. the appeal be allowed;
2. the Development Application be refused; and
3. such further or other orders as the Court considers appropriate.

NOTICE OF APPEAL

Filed on behalf of the Appellant

Form PEC-1

Holding Redlich

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Background

The Land

4. The Land has an area of approximately 11.16 hectares and is:
 - (a) located at, and has frontage to, Tully-Mission Beach Road;
 - (b) more particularly described as Lot 3 on RP 732964;
 - (c) predominantly vacant agricultural land with an existing raw material supply yard located in the northern portion of the site;
 - (d) cleared of vegetation except for an area mapped as containing High Environmental Significance (**HES**) adjacent to a creek that traverses the site in an east-west direction;
 - (e) mapped as a cassowary habitat corridor;
 - (f) classified as Agricultural Land Class A and B;
 - (g) adjoined on its eastern and southern boundaries by land within the Environmental Management and Conservation Zone;
 - (h) adjoined on its northern boundary by land within the Township Zone and Greater Mission Beach business precinct;
 - (i) includes access to the adjoining State controlled road via a sealed access in the northern portion of the lot;
 - (j) included in the Rural Zone under the Cassowary Coast Regional Council Planning Scheme 2015 (v.4) (**Planning Scheme**);
 - (k) within the Regional Landscape and Rural Production Area of the Far North Queensland Regional Plan 2019-2031 (**Regional Plan**);
 - (l) included in the Mission Beach Habitat Network Action Plan; and
 - (m) subject to the following codes and overlays:
 - (i) Rural Zone Code;
 - (ii) Agricultural Land Overlay;
 - (iii) Coastal Protection Overlay Code;
 - (iv) Environmental Significance Overlay Code;

- (v) Flood Hazard Overlay Code;
 - (vi) Scenic Amenity Overlay Code;
 - (vii) Waterway Corridor and Wetlands Overlay Code;
 - (viii) Advertising Devices Overlay Code;
 - (ix) Design for Safety Overlay Code;
 - (x) Excavation and Filling Overlay Code;
 - (xi) Infrastructure Works Overlay Code;
 - (xii) Landscaping Overlay Code; and
 - (xiii) Parking and Access Overlay Code.
5. Section 2.1 of the Planning Scheme provides that State interests in the State Planning Policy are appropriately integrated into the Planning Scheme including in the areas of economic growth, agriculture, tourism and the environment.
 6. Section 2.2 of the Planning Scheme provides that the Minister has identified that the Planning Scheme, specifically the strategic framework, appropriately advances the Regional Plan, as it applies in the Planning Scheme area.

Development Application

7. The Co-Respondent is Mission Helicopters Pty Ltd.
8. On 19 February 2020, the Co-Respondent (through its town planning consultants) lodged the Development Application with the Respondent along with a planning assessment report (**Planning Report**).
9. The Development Application describes the proposed use of the development as an Aviation Facility with a gross floor area of 1302 square metres for Air Services.
10. The Planning Scheme definition for 'Air Services' is-

Premises used for any of the following:

 - *the arrival and departure of aircraft;*
 - *the housing, servicing, refuelling, maintenance and repair of aircraft;*

- *the assembly and dispersal of passengers or goods on or from an aircraft;*
 - *any ancillary activities directly serving the needs of passengers and visitors to the use;*
 - *associated training and education facilities;*
 - *aviation facilities.*
11. The Development Application proposes the construction of an Aviation Facility comprising a single-story building, parking spaces, an external helicopter landing pad and walkways.
 12. The Department of State Development, Infrastructure, Local Government and Planning, through the State Assessment and Referral Agency (**SARA**), was a referral agency for the Development Application as the proposed development is located near a State Transport Corridor. The referral included an application for road access.
 13. On 3 April 2020 SARA approved the proposed development and road access subject to conditions.
 14. The Development Application was subject to impact assessment requiring public notification in accordance with the *Planning Act 2016 (Qld)* (**Planning Act**).
 15. The Development Application was publicly notified during the period of 16 April 2020 to 8 May 2020.
 16. There were 62 properly made submissions about the Development Application during public notification, 55 of which raised objections against the Development Application.
 17. The Appellant lodged a properly made submission about the Development Application.
 18. By letter dated 6 March 2020 the Respondent issued an Information Request to the Co-Respondent.
 19. On or about 30 March 2020 the Co-Respondent responded to the Information Request.

20. In responding to the Information Request the Co-Respondent amended the Development Application by removing a proposed fuel storage area.

Respondent's Decision

21. On 21 January 2021 the Respondent approved the Development Application subject to conditions.
22. On or about 5 February 2021, the Appellant received notification of the Respondent's decision to approve the Development Application subject to conditions (**Development Approval**).

GROUNDS OF APPEAL

23. The Development Application should be refused as a result of the non-compliances with the Planning Scheme set out below.

A. Unacceptable environmental and ecological impacts

24. The southern cassowary is listed as an endangered species under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) and *Nature Conservation Act 1992* (Qld).
25. The proposed development will result in the following unacceptable environmental and ecological impacts–
- (a) Disruption and fragmentation to the connectivity of cassowary corridors which are important regional scale habitat links;
 - (b) Disturbance of mapped areas of HES and habitat of the endangered southern cassowary; and
 - (c) Contribution to the ongoing decline of the local southern cassowary population.
26. In addition, having regard to the lack of sufficient detail in the Development Application regarding–
- (a) The local ecology of matters of national, State and local environmental significance that are likely to be adversely impacted upon by the proposed development;

- (b) The nature, magnitude, duration and likelihood of potential adverse impacts on matters of national, State and local environmental significance;
- (c) The likely effectiveness of measures that are proposed to avoid or minimise to the greatest extent practical the potential for adverse impact on matters of national, State and local environmental significance; and
- (d) The precautionary principle;

There is a lack of scientific certainty concerning the potential for serious and irreversible impacts on identified matters of national, State and local environmental significance.

27. The proposed development does not comply with the following assessment benchmarks—
- (a) The strategic outcomes of the Planning Scheme at sections 3.4.1(1), 3.4.1(4), 3.4.1(5), 3.4.1(6), 3.4.1(7);
 - (b) The specific outcomes of the Planning Scheme at sections 3.4.2.1(1) and 3.4.2.1(2);
 - (c) The purpose of the Environmental Significance Code set out at 8.2.5.2; and
 - (d) Performance Outcomes 2 and 5 of the Environmental Significance Code.
28. The design and operation of the proposed development does not conserve, enhance or restore habitat necessary for the survival of the endangered southern cassowary in the Mission Beach area.
29. The conditions imposed by the Respondent do not adequately address the non-compliances or adequately mitigate the impacts of the proposed development.

B. Preservation of Good Quality Agricultural Land

30. The proposed development does not comply with the clear intent of the Planning Scheme for land in the Rural Zone.

31. The Development Application should be refused as the proposed development will compromise the potential use of the land for agricultural activities or non-agricultural activities compatible with agriculture.
32. The proposed development does not comply with the following assessment benchmarks–
 - (a) The strategic outcomes of the Planning Scheme at sections 3.6.1(3), 3.6.1(4), 3.6.1(5), 3.9.1(3) and 3.9.1(9);
 - (b) The specific outcomes of the Planning Scheme at sections 3.6.2.1(6) and 3.6.2.1(7);
 - (c) The purpose of the Rural Zone Code set out at 6.2.4.2; and
 - (d) Performance Outcome 8 of the Rural Zone Code.

C. Character and Amenity of the Mission Beach Area

33. In the absence of a detailed assessment showing otherwise, the proposed development will result in the following unacceptable impacts on the character and amenity of the Mission Beach area–
 - (a) Sensitive land uses being exposed to industrial air, noise and odour emissions that impact on human health, wellbeing and amenity;
 - (b) Disruption of the green, open space and vegetated landscape characteristic to the Mission Beach area; and
 - (c) Negative impacts on the impression of the region provided to passing motorists and tourists.
34. In addition, having regard to the lack of sufficient detail in the Development Application regarding–
 - (a) The nature, magnitude, duration and likelihood of noise and dust that will emanate from the proposed development and impact on sensitive land uses and the local community; and
 - (b) The likely effectiveness of proposed measures to avoid or minimise to the greatest extent practical the potential for adverse impacts of noise and dust on the character and amenity of the area;

The proposed development does not maintain, protect or enhance the Mission Beach landscape and compromises the character and amenity integral to local tourism and recreational industries.

The Development Application is inconsistent with the reasonable community expectations for the Land having regard to the Planning Scheme.

35. The proposed development does not comply with the following assessment benchmarks—
- (a) The strategic outcomes of the Planning Scheme at sections 3.6.1(1), 3.6.1(2), 3.6.1(5) and 3.9.1(12);
 - (b) The specific outcome of the Planning Scheme at section 3.6.2.1(3);
 - (c) The purpose of the Scenic Amenity Code set out at 8.2.10.2(1), 8.2.10.2(2)(c), 8.2.10.2(2)(e) and 8.2.10.2(2)(f);
 - (d) Performance Outcomes 1, 3, 4 and 15 of the Scenic Amenity Code;
 - (e) The purpose of the Rural Zone Code set out at 6.2.4.2(1) and 6.2.4.2(2)(c); and
 - (f) Performance Outcome 5 of the Rural Zone Code.

Relevant Matters

- 36. There is no demonstrated economic, planning or community need for the proposed development.
- 37. The proposed development does not comply with the strategic outcomes of the Planning Scheme at sections 3.9.1(1), 3.9.1(9) and 3.9.1(12).
- 38. There are no relevant matters that justify approval of the Development Application.
- 39. The Respondent's conditions do not adequately address the deficiencies in the Development Application or non-compliances with the Planning Scheme.
- 40. The Development Application is not in the public interest.
- 41. The proposed development does not advance the purpose of the Planning Act which aims to facilitate the achievement of ecological sustainability by protecting ecological processes and natural systems at a local, regional, State and wider level.

42. In the premises, the Development Application should be refused.

Relief Sought

43. In the circumstances:

- (a) The appeal should be allowed; and
- (b) The Development Application should be refused.

Holding Redlich
Holding Redlich
Solicitors for the Appellant

If you are named as a respondent in this notice of appeal and wish to be heard in this appeal you must:

- (a) within 10 business days after being served with a copy of this Notice of Appeal, file an Entry of Appearance in the Registry where this notice of appeal was filed or where the court file is kept; and
- (b) serve a copy of the Entry of Appearance on each other party.

The Entry of Appearance should be in Form PEC – 5 for the Planning and Environment Court.

If you are entitled to elect to be a party to this appeal and you wish to be heard in this appeal you must:

- (a) within 10 business days of receipt of this Notice of Appeal, file a Notice of Election in the Registry where this Notice of Appeal was filed or where the court file is kept; and
- (b) serve a copy of the Notice of Election on each other party.

The Notice of Election should be in Form PEC – 6 for the Planning and Environment Court.