

## Message from the Mayor



*A weekly  
Update from  
Cassowary  
Coast Regional  
Council Mayor,  
Bill Shannon*

### Presumptive strike by minister on Mission Beach development

In my column last week I pointed out how difficult it is for local government to deliver prompt and decisive decisions in contentious planning matters.

I discussed the three year process necessary to change a local government plan and the need for council to sometimes make compensation payments.

This week's landmark decision by the federal Minister for the Environment, Peter Garrett, to reject an application for a residential development at Rockingham Close, Mission Beach is a timely one, in favour of conservation in an environmentally sensitive, uncleared area.

The proposed Rockingham Close development of 40 residential blocks has been ruled out completely on the grounds that it is cassowary habitat.

It in effect means the 24 hectare site may only be able to be used for a single residence.

This is the second time only that the powers vested in the Commonwealth under the Environmental Protection and Biodiversity Conservation Act (EPBC) Act 1999 have been used.

Clearly it does set a precedent in Mission Beach and in our region.

Looking at the legalities, the rejection has been made without the possibility of compensation to the developer.

The federal and state governments can, in certain circumstances, decide the fate of development applications, without fear of compensation issues.

Local government can only reject applications in the knowledge that, if a developer suffers damage as a result of an adverse decision and is unable to realise the potential full value of a property, then council may have to compensate for that loss.

In this instance I personally therefore welcome the Minister's action because of these limitations on council.

This federal move may prompt the state government to use its powers to similarly determine planning outcomes, in the knowledge that local government's powers, time frames and compensation obligations are severely limiting.

Landowners and developers hoping to capitalise on an area's potential will obviously be fearful about their rights being taken away without redress.

These federal and state powers are however only likely to be used in exceptional circumstances.

In this particular case the developers would have been well aware both of the existence of cassowary habitat and of the 1999 EPBC Act and therefore of the real obstacles to the development progressing.

The application had not been considered by council, nor had council officers determined their recommendations.

Any recommendation from council officers to proceed, had one been made, would no doubt have been highly conditional, given the sensitive nature of this habitat.

Council would then have had to consider the recommendation and vote on the issue.

The Minister has claimed that the local planning scheme would have allowed the development.

In the event this was not tested and the presumptive strike by the Minister cuts short the whole process.

It is interesting that despite the application already being lodged with council, there was no advice received from the Minister's office regarding this decision.

Our first notification was through journalists asking for comment on Peter Garrett's media release!