

5. DA No. 2007.0277: Staged subdivision to create three concessional lots and a residue – Lot 379 DP 1011111, 2511 Yellow Pinch Drive, Yellow Pinch

Group Manager, Planning Development and Environmental Services

Applicant	RW Surveying and Valuations
Owner	F & C Severs
Site	Lot 379 DP 1011111, 2511 Yellow Pinch Drive, Yellow Pinch
Zone	1(a) Rural General Zone
Site area	80.49 ha
Proposed development	Staged subdivision of land to create three concessional lots and a residue. Stage 1: Lots 1 & 2 Stage 2: Lot 3 & Residue Lot 4

PRECIS

Council is in receipt of a Development Application from F & C Severs C/- RW Surveying and Valuations, seeking approval for the staged subdivision of land to create three concessional lots and a residue.

10 The application is reported to Council as two submissions were received during the notification period objecting to the proposed subdivision. The concerns raised during the notification period have been assessed and a revised subdivision layout has been lodged by the applicant.

The subdivision is recommended for approval subject to the conditions outlined in the draft consent at the end of this report.

DESCRIPTION OF THE PROPOSAL

The proposal is for a staged four lot subdivision comprising three concessional lots and a residue lot.

Access would be obtained from Yellow Pinch Drive (formerly the Princes Highway).

20 [Attached Subdivision Plan]

DESCRIPTION OF THE SITE

The site is described as Lot 379 DP 1011111 which is located at the northern end of Yellow Pinch Drive approximately 5km southeast of Wolumla. The land forms part of an existing holding covering 80.49 hectares.

The topography of the land ranges from undulating to hilly with an average 10° slope falling towards Merimbula Creek, which traverses the property. The land to the south of the creek remains fully cleared with a number of scattered farm dams. North of the creek becomes progressively forested with some minor cleared areas.

[Locality Plan]

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PLANNING ASSESSMENT

The proposal has been assessed in accordance with the Matters for Consideration under Section 79C of the Environmental Planning and Assessment Act 1979. Staff highlight the key issues of the proposal in this report for Council's consideration.

The application for subdivision has been lodged in accordance with Clauses 12 and 16 of the Bega Valley LEP 2002 (BVLEP 2002) and the proposed layout satisfies the requirements for each lot to be exercised for the purpose of a dwelling house. A full planning assessment is attached to the application file.

Zoning

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The land is located within the 1(a) Rural General Zone and has the entitlement to subdivide under the provisions of the BVLEP 2002 as they existed prior to the introduction of the State Environmental Policy (Rural Lands) (SEPP) 2008 on the 9th May 2008.

Part 6 of the SEPP (Rural Lands) 2008 states that if a Development Application has been made before the commencement of this Policy in relation to land to which this Policy applies and the application has not been fully determined, the application must be determined as if this Policy had not commenced. The application was lodged on the 15th May 2007 prior to the introduction of the SEPP.

ISSUES

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Two submissions were received during the notification period objecting to the proposed development. The objections relate to access, existing development, entitlement to subdivide and environmental impact. The issues raised in the submission are addressed in detail in the report.

Access

The subdivision design has been amended by relocating proposed Lot 2 closer to the existing access and dwelling house to the east. This has provided greater separation

from the intersection with the Princes Highway and safer sight distances for the access onto Yellow Pinch Drive.

60 The creek crossing would require the construction of a bridge to provide flood free access to proposed Lot 3. The standard of bridge construction has been assessed by the Development Engineer and referred to the Department of Water and Energy who issued their General Terms of Approval subject to conditions. The conditions have been included in the draft consent.

Environmental

The site consists of predominantly cleared land on the southern side of Merimbula Creek and forested land to the north.

The original subdivision plan included two concessional lots on the northern side and one concessional lot on the southern side of Merimbula Creek. After inspecting the site and completing a preliminary assessment of the subdivision, it was considered that the original design did not adequately address the environmental characteristics of the site.

70 The design was subsequently amended by relocating the smaller concessional lot onto the southern side of Merimbula Creek. This reduced the amount of clearing required to provide for asset protection zones, access and future building envelopes on the northern side of Merimbula Creek. The majority of the forested land would be left within the residue, which already retains the existing homestead which is located within the cleared land on the southern side of Merimbula Creek.

The riparian areas adjacent to Merimbula Creek would also be retained within the residual allotment.

Consultation

80 The application has been referred to the NSW Rural Fire Service (RFS) and the NSW Department of Water and Energy (DWE). Both authorities granted General Terms of Approval subject to conditions being placed on the consent. The conditions are included in the draft consent.

Submissions

The application has been notified in accordance with Council's Development Control Plan No. 3 – Notification Policy for a period of 14 days from 21 June 2007 to 5 July 2007. A total of two submissions were received objecting to the development as submitted. The grounds for objections are outlined below followed by staff comment.

Letter 1

90 The proposed right of carriageway which has to cross over the Yellow Pinch Creek (the plan wrongly states Merimbula Creek) to access Lots 2 & 3 has no reference in the application relating to any detail of studies undertaken regarding this important water course that affects every land owner along its banks. There

is also no detail as to the type and size of bridge construction necessary to give access to Lots 2 & 3.

It is also of interest to us that the applicants have listed that the property services just one dwelling when in fact it already supports three dwellings fully occupied and one granny flat attached to the end of the main dwelling. This is a concern to us also regarding the lack of detail as to the sewerage affects on the creek if and when three more properties are added into such a cluster on this section of Yellow Pinch Creek.

Lots 2 & 3 show a buffer to this water course of only 40 metres which in time of rain feeds very strongly into Yellow Pinch Creek the water envelope on Lot 2 is another serious concern we would like more information on.

The next issue of concern raised was if this DA was to be approved would Lot 4 of 62.80 ha when sold be open in the future to another Integrated Development Subdivision application.

» **Comment:**

The matters raised in the letter have formed part of the assessment and were forwarded to the applicant who has redesigned the subdivision to take into account the issues raised.

Lot 2 has been relocated adjacent to Yellow Pinch Drive, reducing the amount of vegetation clearance and providing cleared effluent fields with more generous setbacks from Merimbula Creek.

Details of the bridge construction has been provided by the applicant to confirm that flood free access is provided to proposed Lot 3. The Development Engineer has assessed the proposal and provided draft conditions of consent.

The proposal was forwarded to the Department of Water and Energy (DWE) who granted General Terms of Approval, with detailed conditions guiding the disturbance of riparian areas, which have been retained within the residue.

An investigation has been undertaken into the development history of the site. Approvals have been issued for the original dwelling with subsequent approval for conversion to dual occupancy and alterations and additions to the dwelling (BA 109/62, 490/93, 210/86 and DA 86.11107). An approval also exists for a caretakers cottage (22/73).

Letter 2

The proposed development of a four (4) concessional lot subdivision would appear to be illegal. As former owners of Lot 379 we know that all concessional allotments have been used!

Council advised us that permission for further subdivision had to come from both the Department of Environment and Planning and the Bega Valley Shire, and was most unlikely to be granted. Has the department now consented to such

further subdivision, or has there been a change in the rules for granting concessional allotments?

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Incidentally, the correct address of the property is not 2511 Princes Highway. It is no longer on the Princes Highway and has been designated Yellow Pinch Drive, Yellow Pinch for several years!

We question whether appropriate approvals were applied for, and granted, for certain clearing works and the construction of three (3) farm dams on the property recently?

Bega Valley Shire Council told us several years ago that the construction of any further dwellings on land adjoining Merimbula Creek would never be allowed. Has this policy been changed?

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The Upper Merimbula Creek Land Care Group were directed, in 1966, to fence off the creek along the subject property to prevent stock from entering the wildlife corridor so it could revert to natural bush land. This was done to the best of our ability: we would object strongly to any policy change in this environmental matter.

In any event, if the above requirements were to have been relaxed a detailed Environmental Impact Study would have been required (with a recommendation to allow further development to proceed) before any requests for any kind of subdivisions would have been considered.

No doubt such a study would have confirmed that aboriginal middens exist along the creek and that "blackfellow's bread" would have been found where they are known to exist.

►► **Comment:**

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Farm dams do not require consent under Clause 78 of the Bega Valley Local Environmental Plan 2002 and would not be classified as artificial water bodies under Schedule 3 for designated development under the Environmental Planning and Assessment Regulation 2000.

A Statement of Environmental Effects was lodged with the Development Application. The subdivision layout has been redesigned to reduce the amount of clearing required to accommodate for the future building envelopes. The riparian areas have been retained within the residue allotment.

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The subdivision was referred to the Aboriginal Land Council in accordance with the Memorandum of Understanding, however no concerns were raised. In any event the riparian areas would be retained within the residue allotment, as would the majority of the forested areas.

The property is the largest parcel within an Existing Holding covering a total area of 101.94 ha, which has an entitlement of 3 allotments and a residue remaining. The ability to subdivide is also dependant on the design of the subdivision, as Merimbula Creek runs through the property and is a perennial stream. The riparian areas have therefore been contained within the residue.

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A satisfactory effluent disposal report was lodged with the application to subdivide with the transpiration area being setback from the creek.

CONCLUSION

The proposed subdivision has been assessed in accordance with the relevant Clauses of the Bega Valley Local Environmental Plan 2002.

The proposal has been referred to the relevant agencies who responded with their General Terms of Approval. The revised subdivision layout ensures that the majority of the forested land would be retained within the residue and provide suitable building envelopes for each of the proposed concessional lots. The redesign also satisfactorily addresses the concerns raised by neighbouring residences during the exhibition period.

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The subdivision has been redesigned to ensure that the subdivision is more in keeping with the inherent environmental constraints of the land.

RECOMMENDATION

1. That Development Application No. 2007.0277 for a four lot subdivision to create three concessional allotments and a residue on Lot 379 DP 1011111, Yellow Pinch Drive, Yellow Pinch, be approved subject to the conditions outlined in the draft consent.
2. That those persons who made a submission be notified of Council's decision.



