

6. DA No. 2008.0136: Regularisation of unauthorised clearing and construction of a private driveway – Old Mill Road, Wolumla

Group Manager, Planning and Environment

Applicant	R and EC Bloch
Owner	Jans Investments
Site	Lot 130 DP 1017007, Old Mill Road, Wolumla
Zone	1(a) Rural General
Proposed development	Regularise unauthorised clearing and construct a private driveway

PRECIS

This matter was reported to Council at its meeting dated 3rd March 2008 and was deferred in accordance with Council's Code of Meeting Practice following an address on the day.

The previous report is presented to Council along with separate comment on the recent address.

The application seeks approval for the regularisation of unauthorised clearing and to construct a private driveway. The driveway is to improve access to the existing rural dwelling over an easement that has been created on the neighbour's land.

BACKGROUND

Council had previously granted approval under the Roads Act to enable access to the site from Old Mill Road. That approval is limited to rights of access across the Council road reserve only and does not authorise the vegetation clearing or the construction of the driveway on the private land.

The property owner then proceeded to do unauthorised work that involved the clearing of vegetation from the land.

Following a neighbour complaint, a Council officer attended the site and issued a notice on the owner and the contractor to provide temporary environmental management controls. The owner was advised that it would be necessary to obtain development consent.

The objector referred the matter to the NSW Ombudsman, raising a number of concerns in respect to Council's dealings with this application. Advice was received by the objector from the Ombudsman's office indicating it was not able to assist.

30 As the authority responsible for native vegetation, the Department of Environment and Climate Change (DECC) has indicated that it will not be prosecuting for the unauthorised clearing, however it has provided comments in respect to rectification and revegetation which are included in the draft conditions of consent.

DESCRIPTION OF THE SITE

The site was originally a disturbed forest strip approximately 36 x 282 metres that has now been completely cleared. The head of a small water course is traversed by the easement. The creation of the easement did not require the consent of Council.

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.

40 Zoning

The land is zoned 1(a) Rural General under the Bega Valley Local Environmental Plan 2002 and the proposed development is permissible with Council consent.

ISSUES

Council has received a number of submissions from a neighbour that raise concerns over the destruction of native vegetation, dust, safety, bush fire hazard and potential for increased erosion on the adjoining land.

Submissions

50 The objector states that the existing Roads Act 1993 approval for the access onto Old Mill Road contradicts BVSC LEP 2002 16 (7) because it provides an additional access to an arterial road which is unsafe.

▶▶ Comment:

Clause 16(7) relates to subdivision of land in the 1(a) zone, however the application before Council is not for subdivision and, in any event, Old Mill Road is not an arterial road. The safety issue was considered as part of the previous access approval in accordance with Council's policies and procedures.

The objector has raised the concern that the proposed design of the mitigation measures are inadequate for the land area that has been cleared and that increased flows would result that would adversely affect his property.

▶▶ Comment:

60 Initially Council's Engineering officer advised that the mitigation measures were inadequate and the plans were sent back to the applicant's consulting engineer for revision. The revised plans now comply with the industry benchmark for sediment and erosion control designs, "Soils and Construction" 4th Edition 2004.

The objector has identified that the applicant cannot discharge water from water management controls into the creek on his property.

70 **» Comment:**

The applicant is legally able to discharge stormwater over the neighbour's property as it is contained within a natural watercourse. The controls put in place aim to discharge water of good quality, volume and velocity into the creek based on an engineered solution. The objection is not supported.

The objector is concerned that the windrowed timber poses a fire threat.

» Comment:

Both DECC and Council staff agree. The draft consent is conditioned to require details of how the timber will be used as part of the vegetation rehabilitation plan and states that burning is generally an unacceptable option. However it is also noted that the clearing of the easement has provided a significant improvement to bush fire safety on the objector's lot.

The objector is concerned about the destruction of the native vegetation.

80 **» Comment:**

Both DECC and Council staff agree. The draft consent is conditioned to provide a vegetation rehabilitation plan prior to the issue of a construction certificate that will include attention to replanting, stabilisation, regeneration, weed control and suitable fencing.

The objector is concerned that dust caused by vehicle movements will adversely affect the operation of his solar power system.

» Comment:

The draft consent is conditioned to provide dust suppression measures until the site is stabilised.

ADDRESS TO COUNCIL, 3 MARCH 2009

90 The following represents a summary of the address and appropriate staff comment:

Concern that the catchment will be directed to a single drain on the objector's property that will result in the objector's vehicle access being washed away.

» Comment:

The objector has been provided with an engineering design supplied by the applicant that identifies adequate design for stormwater detention on the development site. The design provides increased protection to control stormwater flow with the provision of detention ponds. The ponds have been designed to capture storm flow from the entire catchment and include a factor of safety of an additional 100% storage capacity.

100 Engineering design plan indicating the location of proposed detention ponds has been included as Appendix B.

Concern that the proposal will result in unacceptable erosion and soil loss in the catchment.

» **Comment:**

The proposed system of water catchment provides for control of water flow aimed at reducing erosion that currently exists and that had existed well before the unauthorised works were carried out. The design provides for capture of disturbed sediment that will reduce as the area is revegetated both by works required by the conditions of consent and natural regeneration of the site.

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That there is a legal requirement according to the law of support that the engineering of this driveway must show that it is equivalent to that of the land in its natural state and compensate for the exposure of the entire site.

» **Comment:**

Staff are satisfied that the engineering design satisfies the intent of the law and provides for improved opportunity to reduce erosion of the site that predated the work being undertaken.

For clarification as to the location of the objector and applicant in regard to the development, the site map has been amended to detail the location of each.

CONCLUSION

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If this application had been received prior to the clearing works being undertaken, on balance it is likely that the proposal to construct a driveway would have been supported by Council staff. However the amount of clearing approved for the driveway would have been a lot less than what has now occurred. DECC has chosen not to pursue any legal action (under native vegetation legislation) with the landowner or the person responsible for causing the works to occur or the contractor.

The draft conditions of consent require replanting, stabilisation, regeneration, weed control and suitable fencing. The proposal to construct a private driveway is a permitted use within the zoning of the land and is consistent with the provisions of BVLEP 2002 and Council's adopted policies.

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The issues raised in the submissions and public address to Council have been thoroughly assessed, however staff are of the opinion they do not warrant any further modification to or refusal of the application.

RECOMMENDATION

1. That development application 2008.0136 for the regularisation of unauthorised clearing and construction of a driveway be approved subject to the terms and conditions outlined in the draft consent submitted to Council at its meeting of 3 March 2009.
2. That the person that made the submissions be notified of Council's decision.

DA No. **2008.0136**

18 February 2009

R & EC Bloch
PO Box 514
Merimbula NSW 2548

NOTICE OF DETERMINATION
under Section 81(1)(a) of the *Environmental Planning
and Assessment Act 1979* (as amended).

The development application has been determined by granting consent
under Clauses 12 and 65 of the *Bega Valley Local Environmental
Plan 2002* subject to conditions.

APPLICANT	R and EC Bloch
LAND	Lot 130 in DP No1017007
LOCATION	Old Mill Road, Wolumla
ZONE	1(a) Rural General Zone
PROPOSED DEVELOPMENT	Regularise unauthorised clearing and construct a private driveway.
CLASSIFICATION(S) UNDER BUILDING CODE OF AUSTRALIA	na DRAFT
DETERMINATION MADE ON	18 February 2009
CONSENT TO OPERATE FROM	18 February 2009
CONSENT TO LAPSE ON	18 February 2014

DEVELOPMENT CONSENT

Conditions of approval

1. Development shall take place in accordance with the Approved Development Plan, the application form and any supporting documentation received with the application, except as may be amended in red on the attached plans by the following conditions.

DECC conditions

2. The area of land that was cleared and is not required for the construction or operation of the driveway is to be rehabilitated to allow native vegetation to regenerate.
3. Prior to the issue of a construction certificate the applicant shall provide a rehabilitation plan for acceptance of Council and DECC, prepared by a suitably qualified environmental consultant. As a minimum the plan should detail:
 - A detailed active replanting program to reinstate the vegetation communities across the cleared areas.
 - Facilitation of passive natural regeneration including fencing and weed control.
 - A schedule of works that includes a monitoring program to ensure the success of the works.
 - A timber management plan that details how the windrowed timber is to be used, in this regard burning is not generally considered a suitable option.

Planning conditions

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4. The developer's attention is drawn to the requirements of the *National Parks and Wildlife Act* with respect to the conservation of Aboriginal archaeology.

As a landowner and/or developer you have a responsibility to not disturb or destroy any such item. Should you become aware of the existence of an item during the construction of this development you are required to comply with the *National Parks and Wildlife Act* and contact Council or the National Parks and Wildlife Service immediately for guidance in the conservation or collection of the item(s).

Note: In this respect it is recommended that representatives from the relevant Local Aboriginal Land Council are present during the initial stages of site disturbance.

Building conditions

5.
 - i) CLOSET ACCOMMODATION for workmen to be provided BEFORE building work commences pursuant to Section 79C of the Environmental Planning and Assessment Act.
 - ii) The Builder must at all times maintain on the job, a legible copy of the plans and specifications bearing the stamp and Development Consent of Council.
 - iii) Construction work shall be confined to normal working hours, mainly 7am to 5pm Mondays to Fridays and 8am to 1pm Saturdays (no work on Sundays or Public Holidays). Dust control may be undertaken outside these hours.

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- iv) Signs to be provided at the front of the property or in a prominent location **PRIOR** to the first inspection: -
- Owner's name, lot number and street number
 - Signage to clearly identify the Principal Certifying Authority (PCA) and contact number
 - That unauthorised entry to the work site is prohibited; and
 - The Principal Contractor (the coordinator of the building work).
6. A stabilised access for vehicles and/or temporary constructed access shall be provided and shall consist of a pad of coarse crushed rock, crushed slag or gravel (25mm to 75mm range) having a minimum depth of 200mm, minimum length of 15m and minimum width of 4m.
7. A detailed Erosion Sediment Control Plan for the site is to be submitted to and approved by the Principal Certifying Authority with the application for Construction Certificate. The Erosion and sediment control plan is to include details of:
- Extent of clearing or disturbance
 - Soil stockpile areas
 - Contours of the site
 - Proposed methods to contain or limit sedimentation and erosion
 - Maintenance of physical devices
 - Site access points, buffer zones etc.
- DRAFT**
- Note: Responsibility for the supervision of the installation and maintenance of approved erosion and sediment control measures during and after construction and until the site has been restored to the satisfaction of (the consent authority), must reside with the nominated personnel with appropriate training, or demonstrated knowledge/experience in erosion and sediment control.
- The owner of the property has this responsibility upon completion of any works contract.
8. Dust control is to be provided and maintained to the satisfaction of Councils Environmental Health & Building Surveyor at all times until such time as the site is stabilised.
9. A **Construction Certificate** must be obtained from Council or an Accredited Certifier prior to work commencing. A construction certificate certifies that the provisions of Clauses 79A-79H of the Environmental Planning and Assessment Amendment Regulations, 1998 have been satisfied, including compliance with the Building Code of Australia and conditions of Development Consent.
10. A final **Occupation Certificate** must be issued by the Principal Certifying Authority prior to occupation or use of the development. In issuing an occupation certificate, the Principal Certifying Authority must be satisfied that the requirements of Section 109H of the Environmental Planning and Assessment Act 1997 have been satisfied

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The above conditions are in the public interest to reduce any potential environmental impact and to ensure the proposed development complies with:

- the provisions of the *Environmental Planning and Assessment Act 1979* and Regulations
- any environmental planning instruments applying to the subject land
- Council's codes and policies
- *Section 94 Development Contribution Plan* and *Tree Preservation Order*.

Notes:

1. If you do not agree with this determination you can apply to Council for a review under Section 82A of the *Environmental Planning and Assessment Act 1979* (EP&A Act 1979).

An application for review must be made within one year from the date of this notice, and must be accompanied by the prescribed fee. This provision does not apply to designated development or integrated development. (Please contact Council for details).

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2. If you are dissatisfied with Council's determination, you can appeal to the Land and Environment Court under Section 97 of the EP&A Act 1979 within 12 months from the date of this notice.
3. Before you start any building or subdivision works you must obtain a Construction Certificate from Council or an accredited certifier.
4. The *Native Vegetation Act 2003* requires consent for the clearing of remnant native vegetation or protected regrowth from the Southern Rivers Catchment Management Authority. It is the proponent's responsibility to consult the Southern Rivers Catchment Management Authority to determine the need or otherwise for their approval and you should not construe the granting of this development consent as notification to you that the NSW Native Vegetation Act does not apply. The NSW Native vegetation Act 2003 may have direct application to your proposal and you should obtain advice about this matter directly from the Southern Rivers Catchment Management Authority.
5. It is the applicant's responsibility to advise Council of any changes to contact details in a timely manner. Council will not be held responsible for any lost documents, delays or missed inspections if any of the details are in any way not up-to-date. Should duplicate documents be required they will incur an additional fee in this circumstance.

Jonathon Pyke
Senior Environmental Health & Building Surveyor

FOR BEGA VALLEY SHIRE COUNCIL