



# Blue Mountains Conservation Society Inc

ABN 38 686 119 087

PO Box 29 Wentworth Falls NSW 2782

Phone: (02) 4757 1872

E-Mail: [bmcs@bluemountains.org.au](mailto:bmcs@bluemountains.org.au) Web Site: [www.bluemountains.org.au](http://www.bluemountains.org.au)

## Nature Conservation Saves for Tomorrow

17 May 2019

General Manager, Dr Rosemary Dillon

Blue Mountains City Council

By email to: [council@bmcc.nsw.gov.au](mailto:council@bmcc.nsw.gov.au)

Cc:

[wlangevad@bmcc.nsw.gov.au](mailto:wlangevad@bmcc.nsw.gov.au)

[RBles@bmcc.nsw.gov.au](mailto:RBles@bmcc.nsw.gov.au)

[kbarrett@bmcc.nsw.gov.au](mailto:kbarrett@bmcc.nsw.gov.au)

All Blue Mountains City Councillors

Trish Doyle [ElectorateOffice.BlueMountains@parliament.nsw.gov.au](mailto:ElectorateOffice.BlueMountains@parliament.nsw.gov.au)

### Site Clearing at 10 Great Western Highway, Wentworth Falls - Flora and Fauna Park

The Blue Mountains Conservation Society (BMCS) is a community-based volunteer organisation with over 800 members. Its mission is to help conserve the natural environment of the Greater Blue Mountains, and to increase awareness of the natural environment in general.

The Society wishes to report what we believe to be unlawful land clearing at 10 Great Western Highway Wentworth Falls (Bodington Hill) over an unknown period to 8<sup>th</sup> May 2019. During that time approximately 2-4 ha of trees and vegetation was clear-felled, without any effective erosion controls put in place (none were visible on 9<sup>th</sup> May). The trees and vegetation have been mostly removed from the site with what appears to be just a thin layer of trittered vegetation remaining over parts of the site. The clearing has left a highly visible cleared scar on this environmentally sensitive site and significant visual landmark in a Protected Area - land between towns. The hydrology of the site has been severely disturbed, with natural and built drainage systems reportedly damaged or smashed, and clear-felling and bulldozing occurring on drainage lines and watercourses.

Our immediate concern is the risk of a major silt pollution event in the next heavy rains, impacting the large hanging swamp immediately downhill and the on-site creeks (whose drainage lines have been severely impacted by the clearing works) flowing into Bedford Creek.

Below is a photo taken from the turn-in from the highway on 9<sup>th</sup> May 2019. Note that the strip of E2 (formerly 7(e)) land along the boundary with the highway has been cleared of vegetation, including the wildlife corridor leading to the wildlife tunnel under the highway further up the fence line (at the 'Wentworth Falls' sign).



The BMCS details below issues and concerns with the clearing of the site under the following matters:

1. Area of surveyed and actual clearing appears to be in breach of the development consent
2. The issuing of the Construction Certificate for vegetation clearing works only appears to be in breach of the EPA Act
3. The clearing appears to be in breach of conditions of consent in the 1989 development approval
4. Clearing appears to have occurred in environmentally protected land under LEP No.79 (also mapped in LEP 2015).
5. The clearing may be in breach of other legislation applying to the site and the development
6. The clearing may be in breach of NSW Land and Environment Court and Supreme Court judgements
7. Summary of questions and requested actions to be taken by Council

### **1. Area of surveyed and actual clearing appears to be in breach of the development consent**

The survey of the site prepared by Matthew Freeburn, surveyor shows the “proposed location of CC site clearance” (green hatching) protruding into the mapped Blue Mountains Swamp on the site (compare with BMCC interactive map ‘vegetation community’) and proceeding across the highway and the concrete barriers to bushland on the other side of the highway. The hatching shows that the strip of 7(e) Environment Protection land mapped under Blue Mountains LEP No. 79 (now E2 under LEP 2015) on the boundary of the property at the highway was also to be cleared as well as what appears to be land within the site. We believe this is unlawful without proper approval because it breaches the consent issued under LEP No. 79 (under which the flora and fauna park was approved), which clearly shows the strip of 7(e) along the highway. The current equivalent E2 zoning under LEP 2015 now covers this area.

The survey of the proposed area for clearing issued with the Construction Certificate seems to have been used as a guide by the clearing contractors, though whether the clearing extends beyond the “proposed location of site clearance” (green hatching) is unknown. The survey map appears to indicate that the blue area has been surveyed and includes the area to be cleared. Apart from an access road from the highway, there are clearly no works approved in the development consent to be located in the environmental protection area along the highway boundary.

The survey issued to Yates Beaggi Lawyers and referenced as the “approved plan” (survey plan) in the Construction Certificate, does not appear to be based on any particular conditions of consent and does not reference any approved development consent plans showing the area to be cleared (before any other works occur). The Construction Certificate therefore seems to have been issued based on a survey plan that is not consistent with the development consent and therefore may be in breach of the *Environmental Planning and Assessment Act 1979* (EPA Act).

Similarly, the aerial location plan (p.2) of the Traffic and Construction Management Plan by Road and Rail NSW, submitted with the Construction Certificate, appears to be a Google maps satellite image showing non-existent roads on the site: the once-mooted but specifically prohibited in LEP No.79 and in the conditions of development consent (the Miller St access), and a road out of the property to the south. This aerial map also seems to incorporate an overlay showing the location of the current E3 zone on the site, not the Rural 1(c3) development zone shown in LEP No.79 upon which basis the development application was approved.

The Construction Certificate and documents it refers to appears to be based on a mix of what was mapped under LEP No.79, what is mapped under LEP 2015 and what may have been indicated in the 1989 consent, but ultimately on no specific development consent plans issued under LEP No.79 on which it should have been based.

**Question:** Can Council verify on what development consent plans or conditions surveyed for clearing and actual cleared area has been based, and whether it is an accurate representation of what was approved in the 1989 development consent conditions and plans and therefore not in breach of the development consent?

**Question:** Can Council require the developer to rehabilitate the site?

## **2. The issuing of the Construction Certificate for vegetation clearing works only appears to be in breach of the EPA Act**

The Construction Certificate (number CC-18191 for “*Building Work*” dated 22 November 2018) was issued by David Blackett of Blackett Maguire & Goldsmith to applicant Mr Farshed Amirbeaggi from Aesthete No 14 Pty Ltd and Yates Beaggi Lawyers to clear what appears to be approximately 2.5 hectares of vegetation at 10 Great Western Highway, Wentworth Falls. The approximate area cleared is shown on a survey issued to Yates Beaggi Lawyers, and attached with the Construction Certificate dated 15 March 2018. The cleared area can also largely be seen from the highway. The certificate and attachments are application X/1171/2018 on the BMCC website.

The type of Construction Certificate issued is defined as “Building Work” on the certificate, but the description of works to be done is stated on the certificate as “*site clearing - removal of vegetation only*” (the only has been underlined by the certifier on the Construction Certificate). The BCA categorization provided on the certificate states “*n/a site clearing works only*”. The certificate also states: “*Note: This Construction Certificate excludes any external ancillary services, structures or civil works required by relevant authorities*”. The issue of the Construction Certificate was based on legal advice provided on 2 May 2018 to the certifier from Yates Beaggi Lawyers, according to the documents listed in the ‘Documentation Relied On’ included on the Construction Certificate.

There are no provisions in the *Environmental Planning and Assessment Act 1979* under Part 6 – Building and subdivision certification - that provide for a Construction Certificate to be issued for site clearing **only** with no building or civil works, as stated on the certificate issued for 10 Great Western Highway Wentworth Falls. There are also no provisions under Part 8, Division 2 (Construction Certificates) of the *Environmental Planning and Assessment Regulation 2000*, or under Schedule 1, Part 3 (Construction Certificates) of the EPA Regulation. It is noted both the EPA Act and EPA Regulation refer only to building and subdivision work with regard to Construction Certificates and require among other matters the classification of building work under the BCA. The EPA Act and Regulation do not allow for “*n/a site clearing works only*” to be provided as the BCA classification, as is the case with the Construction Certificate issued to applicant Mr Farshad Amirbeaggi by Mr David Blackett for site/vegetation clearing at 10 Great Western Highway, Wentworth Falls.

The BMCS would also like to bring to Council’s attention an example of disciplinary action taken against a private certifier by the NSW Government Building Professionals Board (BPB) for issuing a construction certificate for site clearing only at St Georges Basin on the South Coast. This is Disciplinary Action No 366 that can be found in the BPB’s Register of Disciplinary Actions L-Z under Moore: <http://bpb.nsw.gov.au/register-disciplinary-decisions-l-z>. This disciplinary action was also used as a case study in the BPB’s publication: *Summary of Selected Complaints & Investigations* dated 6 September 2012 (p.5), *Case study 4: Pre-conditions to the issue of a construction certificate*. The complaint stated in this publication is summarised as: *An accredited certifier issued a CC for the clearing of vegetation, contrary to the requirements of the EP&A Act, which requires the issue of a CC for building work or subdivision work only.* <http://bpb.nsw.gov.au/sites/default/files/public/Archive/Summary%20of%20complaints%20and%20investigations%20edition%206.pdf>. There have been no amendments made to the EPA Act or Regulation to permit issue of a Construction Certificate for site clearing only since this disciplinary action was taken in 2012.

In addition to this and as detailed above, the area surveyed for clearing does not appear to have been based on any development consent plans showing that area or specific conditions of consent. This means that even if a Construction Certificate could be issued for site clearing only, which BMCS contends it cannot, the area approved for clearing is not consistent with and is therefore in breach of the development consent.

#### Questions:

- Can Council confirm whether the Construction Certificate issued to the developer of 10 GWH Wentworth Falls for site/vegetation clearing only should not have been issued by the private certifier, because such a Construction Certificate cannot be validly issued under Part 6 of the *Environmental Planning & Assessment Act 1979* (EPA Act) and Part 8 of the EPA Regulation for site clearing only?

- Can Council also confirm that if the Construction Certificate was issued in breach of the EPA Act, site clearing work at 10 GWH Wentworth Falls has been carried out under an invalid (construction certificate) approval?
- Can Council confirm that the area surveyed for clearing for the Construction Certificate and actually cleared is not based on any development consent, or approved plans or conditions, on which it should have been based?
- Can Council confirm whether, if the Construction Certificate approval was issued in breach of the EPA Act and Regulation, and is therefore an invalid approval, the site clearing was carried out in contravention of the 1989 development consent for a Flora and Fauna Park on the site that contains 49 conditions of consent, many of which must be complied with prior to issue of a Construction Certificate?
- If all the above is correct, the Blue Mountains Conservation Society requests that Council take action against the developer, Mr Farshad Amirbeaggi, for site clearing in contravention of the 1989 development consent number 8192, under an invalid Construction Certificate approval. The Blue Mountains Conservation Society also requests that Council file a complaint with the NSW Government Building Professionals Board against the private certifier, Mr David Blackett, requesting the BPB take disciplinary action for issuing a Construction Certificate for site clearing only and inconsistent with the development consent, both of which are in breach of the EPA Act and Regulation.
- Can Council require that any future proposed work on the site is first submitted to Council for approval as per the development consent conditions and not be approved by a private certifier?

### 3. The clearing appears to be in breach of conditions of consent in the 1989 development approval

Below are many of the 49 conditions of the 1989 consent for the flora and fauna park that require compliance, in many cases prior to the issue of any construction certificate/building approval. The listed conditions include many that have already been negated (cannot be complied with now) by the site clearing that has occurred on the site. We believe this to be in breach of the development consent.

- Condition 4: "Full engineering plans and details are to be prepared by a suitably qualified Consulting Engineer for all roadworks referred to in Condition Nos. 1 to 3 above, and be submitted to, and approved by, the Roads and Traffic Authority ... and be completed prior to the opening of the flora and fauna park"
- Condition 6 pertaining to landscaping of the road reserve on the full frontage of the site requiring approval by the Roads and Traffic authority and to be completed prior to the opening of the park
- Condition 7: "Full details shall be lodged, for Council approval, **at the building application stage**, indicating the proposed site entry treatment [including signage, landscaping, gates and the like]", none of which were to be located in the Environmental Protection zone.
- Condition 12: "A revised car and coach parking layout shall be submitted to Council for approval", including relocating the areas encroaching within the Environmental Protection zone.

- Condition 14: “All detail required in Conditions 7-13 above [relating to access and parking] shall be submitted to and approved by Council, **prior to the release of a building application** [sic]”
- Condition 15: “The location and design of the main building shall be in accordance with the plans submitted, ensuring that the structure is a minimum of 100m from the highway property boundary ...” and that the roof top does not exceed 12m above the natural ground level
- Condition 20: “**Building application plans** shall include the necessary detail to ensure compliance with the requirements of Conditions 18-19 above” [relating to building]
- Condition 21: “All sections of the development shall be contained within the Rural 1(c3) zone, as defined by Local Environmental Plan No.79. Accordingly, the following proposals located within the Environmental Protection Zone shall be relocated and/or deleted and plans **submitted with the building application**, amended accordingly, prior to approval thereof:
  - The park gates located immediately behind the property boundary;
  - The security fencing (and slashed area) as shown surrounding the property boundaries, and within the environmental protection zone
- Condition 26: “The required detail contained in Conditions Nos. 21-25 above [relating to site planning/landscaping] shall be **submitted to and approved by Council and prior to release of building application approval**”
- Condition 28: “Full design details and cross-sections of the purification lagoon are to be submitted prior to its construction”.
- Condition 29: “Hydrological and environmental reports shall be submitted **prior to building approval**, that provides further specific detail on the following ...” (includes design and management of the purification lagoon, ensuring effectiveness of lagoon to ensure no adverse environmental impact etc. taking into account the climate, hydrology and ecological aspects of this area.
- Condition 30: “To ensure the effective continuing operation of the system, the submission of details of an ongoing maintenance programme for all elements in the stormwater management system, **for Council approval prior to the issue of a building permit**”
 

*(Note: The hydrology of the site has now been severely disturbed by the recent vegetation clearing, with natural and built drainage systems reportedly damaged or smashed, and clear-felling and bulldozing occurring on drainage lines and watercourses).*
- Condition 31 pertaining to all work referred to in Condition 28 to be carried out in accordance with all requirement of the Soil Conservation Service of NSW
- Condition 32: “No construction of the buildings, roadways or carparks is to begin until the purification lagoon, with amendments, is constructed, planted to macrophytes and is operational”
- Condition 40” “Approved plans/documents from the Water Board are to be submitted to Council **prior to release of building approval**”, relating to connection to the sewer.
- Condition 41: “**Minimal disturbance shall occur to the site** during construction works ...”

- Condition 45: “Details [of noise control measures] are to be **submitted with the Building Application**”
- Condition 49: “The applicant shall have prepared and submitted a detailed Archaeological Survey of the total site. The survey shall be prepared by a suitably qualified person, and be in a format acceptable to the National Parks and Wildlife Service. **The applicant shall liaise with the National Parks and Wildlife Service prior to the preparation of the survey**”.

*(Note: The list of documents attached to the Construction Certificate includes an item identified as ‘Aboriginal Cultural Heritage Due Diligence Assessment’. A due diligence assessment is not a “detailed Archaeological Survey of the total site”).*

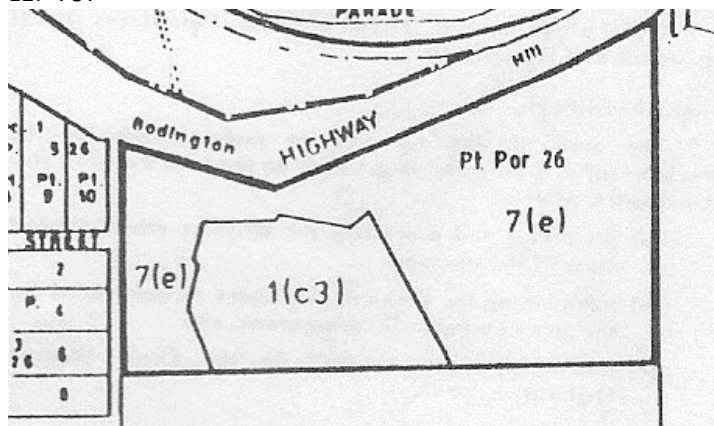
#### **4. Clearing appears to have occurred in environmentally protected land under LEP No.79 (also mapped in LEP 2015).**

Although the BMCS understands that the provisions of the current LEP 2015 and DCP 2015 cannot be retrospectively applied to a consent already granted, the LEP 2015 protected layers and the E2 Environmental Conservation zone confirm the environmental values of the site. These values include Protected areas – slope constraint, land between towns, protected vegetation, and LEP listed scheduled communities (Blue Mountains Swamp).

##### **a) Clearing in E2/7(e) zones**

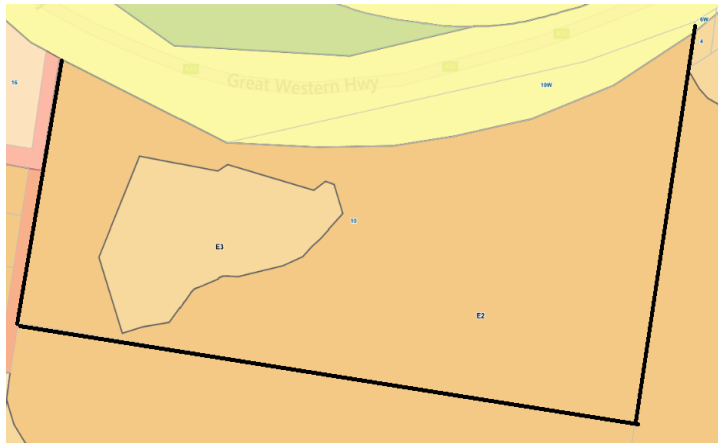
Regarding the environmental protection zones, the site-specific amending LEP under which the development consent was granted (LEP No.79) clearly shows the strip of vegetation along the highway boundary, which was protected by the 7(e) environmental protection zone. This was in recognition of the site’s impending designation as a Land Between Towns area in LEP 1991.

LEP 79:

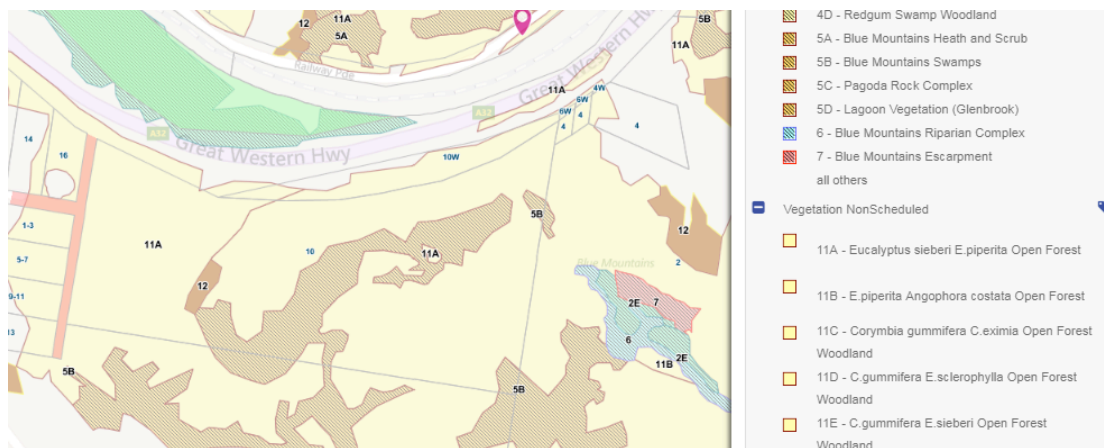


That strip of environmental protection zoning is current in LEP 2015:





The shape of the development zone changed in LEP 2015 in recognition of the large hanging swamp (see below), which had not been correctly mapped at the time LEP 79 was made.



The survey plan accompanying the Construction Certificate shows clearing of a section of the E2 zone along the highway, while the original site plans for the Flora and Fauna Park show only an access roadway through the 7(e)/E2 zone of a minimum of 7m wide (Condition 11). This section of the 7(e)/E2 zone has been cleared when no part of the development was intended to be sited there. Condition 21 states “All sections of the development shall be contained within the Rural 1(c3) zone, as defined in the Local Environmental Plan No.79”. The condition goes on to stipulate the relocation of gates, fences etc. out of the 7(e) zone into the 1(c3) zone. (see LEP 79 above).

#### **b) Area to be cleared according to the original development approval**

As noted above there appears to be no “site/vegetation clearing plan” with the DA consent, identifying the exact area that can be cleared of vegetation prior to any other works or any other requirements. The area marked for clearing in the survey provided with the construction certificate does not reference any DA consent plans on which the area to be cleared is based.

The original site plan provided in the development application was wrong, regarding the location of natural features on the site. The developer conceded, in later court proceedings, that the site plan was not based on a survey of the site (a survey was never done) (Justice Pearlman’s decision, BMCC vs Cariste Pty Ltd 1993). The location of the buildings, dam etc were subsequently moved to their correct position in the site plan lodged with the 1992



building application, which was never determined and approved because of the court cases, and which the current construction certificate does not reference. Therefore the site plan in the development approval that is apparently being relied on in the case of the current construction certificate is inaccurate and cannot be used to determine the area to be cleared.

**Question:** Can Council confirm that no area of protected land (zoned 7(e) Environmental Protection under LEP No.79 should have been cleared with the exception of the entry gates.

**Question:** Can Council require this area to be rehabilitated immediately?

## **5. The clearing may be in breach of other legislation applying to the site and the development**

The BMCS is very concerned about the serious environmental destruction that has occurred on the site in this visually significant area and believes that there may have been breaches of the *Biodiversity Conservation Act 2016* and *Water Management Act 2000* (excavation within 40m of a watercourse) as well as breaches of the EPA Act as documented above.

### **a) Potential breach of the Biodiversity Conservation Act 2016**

The BMCS believes that the vegetation clearing is likely in breach of Part 2 Protection of animals and plants – Division 1 Offences, 2.4 Damaging habitat of threatened species or ecological community (Blue Mountains swamps in the Sydney Basin Bioregion). 5B Blue Mountains Swamp is extensively mapped in the E2 area in the ‘vegetation communities’ map (see above).

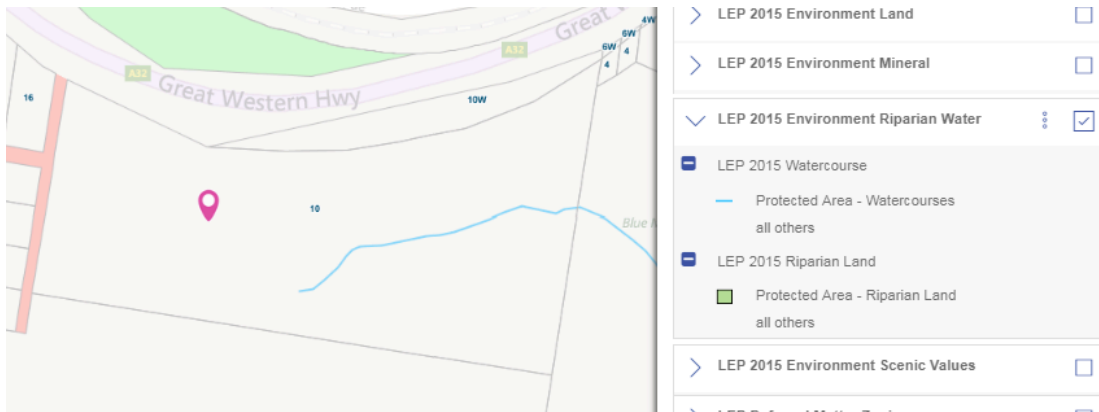
**Question:** It is unclear whether the vegetation clearing intruded into the swamps on the site. Can Council ascertain this through a site inspection?

### **b) Potential breach of the Water Management Act 2000**

The BMCS also wishes to draw the Council’s attention to a potential breach of the *Water Management Act 2000* Section 91 if any excavation works occur within 40m of the watercourse on the site (below) was done without consent.

**Question:** Can Council confirm whether the listed threatened species Blue Mountains Swamps in the Sydney Basin Bioregion has been cleared?

**Question:** Can Council confirm through a site inspection if any excavation works were undertaken within 40m of the watercourse on the site?



### c) Heritage values of Bodington Hill

Bodington Hill is a highly environmentally sensitive and visually significant site and an iconic Blue Mountains landform. It marks the transition from the lower to the upper mountains in terms of vegetation and climate. Bodington Hill was listed as a heritage item in LEP 1991.

The BMCS contends that the environmental damage from what we believe was unlawful clear felling of a large area of vegetation is of such seriousness to warrant Council's rigorous investigation.

## 6. The clearing may be in breach of NSW Land and Environment Court and Supreme Court judgements

### a) Rezoning of site

The site was rezoned to enable its use as a Flora and Fauna Park under Blue Mountains LEP No.79, approved in November 1988 and gazetted in March 1989. The rezoning was subject to a major campaign opposing the proposal and was passed on the casting vote of the then mayor, Ralph Williams. LEP No.79 contained a 12 month sunset clause for development approval to be granted in recognition of the incompatibility of LEP No.79 with the new Environmental Management Plan (which became LEP 1991). Specifically, LEP No.79 granted approval for highway access to a non-residential development in a proposed Land Between Towns area that would otherwise be prohibited in LEP 1991. And, anticipating the Land Between Towns designation, LEP No.79 stated that "the council shall not grant consent to [a development application] unless it is satisfied that the visual impact of the development will not prejudice the planning principles recommended for the future of the area, being a visual and environmental buffer between Bullaburra and Wentworth Falls". Other provisions of LEP No. 79 mainly related to traffic safety on the highway and site access.

Provision for the Flora and Fauna Park (essentially LEP No.79) was included in Schedule 1 of LEP 1991, again in controversial circumstances.

The DA was approved by Council on 21<sup>st</sup> November 1989 with 49 conditions after another major community campaign against the proposal. The conditions of consent required further approvals and plans to be submitted at the building application stage, many of which have been listed above.

**b) Appeal against development approval by the Coalition of Residents for the Environment (40058 of 1990)**

The development approval was subsequently the subject of an appeal in the Land and Environment Court by the Coalition of Residents for the Environment (CORE). CORE's appeal was lost but the judgement in the case clearly confirmed that certain conditions of approval that were the subject of the appeal, as well as other conditions, had to be met before building approval was granted.

In his judgement dismissing CORE's appeal against the granting of development consent, Justice Hemmings found that sufficient information was provided by the applicant for Council to assess and determine the development application, and that the details could be considered at the building application stage. Justice Hemmings stated that "these [conditions 28 to 31] and a number of other conditions require the submission of technical material **either before or as part of a future building application**" (judgement p.9). The "final design details are required by the condition [condition 28] to be submitted prior to "construction". Condition 29 similarly requires the provision of 'further specific detail', and condition 30 requires submission for approval of details of a maintenance programme **prior to issue of the building permit**" (judgement p.12).

The other conditions requiring the submission of technical material "either before or as part of a future building application" were "buildings", as defined in the Local Government Act 1919 (judgement p.9), and "working drawings and specifications and the resolution of technical matters with respect to the building, its drainage and services" (judgement p.10). Finally, Justice Hemmings stated that "I am satisfied that by its own conditions Council intended that all final designs and further technical material be **submitted for consideration with the building application**" (judgement p.12).

**c) Circumstances around the finding of 'commencement' of the development by the NSW Supreme Court, Court of appeal.**

Just weeks before the extended original development approval was due to expire (23<sup>rd</sup> November 1992) the developer cleared an area on the site and laid a sewer line, began excavation of a trench for the purification lagoon and a small dam, laid some concrete footings and a few courses of bricks and erected a pole. When these works were reported, the Blue Mountains City Council ordered a stop to the works and commenced proceedings in the Land and Environment Court alleging that the works were not in compliance with the conditions of development consent. The court found in Council's favour (Justice Pearlman, 40227 of 1992, 19<sup>th</sup> April 1993).

The developer appealed Justice Pearlman's decision in the NSW Supreme Court, Court of Appeal, which found in the developer's favour (Clarke, Beazley and Simos, 18<sup>th</sup> November 1996). Regarding the requirement for building approval to have been granted before the works commenced, the judges found that the works that were done on the site were not 'buildings' of 'structures' under the Local Government Act 1919 and therefore did not require building approval. Therefore the works had legally 'commenced'.

*Note: This judgement of 'commencement' did not mean that works defined as future 'buildings' or 'structures' under the Act did not require building approval.*

## **7. Summary of questions and requested actions to be taken by Council**

### **Questions:**

- Can Council verify on what development consent plans or conditions surveyed for clearing and actual cleared area has been based, and whether it is an accurate representation of what was approved in the 1989 development consent conditions and plans and therefore not in breach of the development consent?
- Can Council confirm whether the construction certificate issued to the developer of 10 GWH Wentworth Falls for site/vegetation clearing only should not have been issued by the private certifier, as such a Construction Certificate cannot be issued under Part 6 of the *Environmental Planning & Assessment Act 1979* (EPA Act) and Part 8 of the EPA Regulation, and is therefore invalid?
- Can Council also confirm that if the Construction Certificate was issued in breach of the EPA Act, site clearing work at 10 GWH Wentworth Falls has been carried out under an invalid (construction certificate) approval?
- Can Council confirm that the area surveyed for clearing for the construction certificate and actually cleared is not based on any development consent approved plans or conditions on which it should have been based?
- Can Council confirm whether, if the Construction Certificate approval was issued in breach of the EPA Act and Regulation and is therefore an invalid approval, this means the site clearing was carried out in contravention of the 1989 development consent for a Flora and Fauna Park on the site that contains 49 conditions of consent, many of which must be complied with prior to issue of a construction certificate (see above)?
- Can Council require that any future proposed work on the site is first submitted to Council for approval as per the development consent conditions and not to a private certifier.
- Can Council confirm that no area of protected land (zoned 7(e) Environmental Protection under LEP No.79 should have been cleared with the exception of the highway access road and entry gates.
- Can Council confirm whether the listed threatened species Blue Mountains Swamps in the Sydney Basin Bioregion has been cleared?
- Can Council confirm through a site inspection whether any excavation works were undertaken within 40m of the watercourse on the site?

### **Requested actions:**

- That Council seeks its own legal advice in regard to the validity of the Construction Certificate, which we believe was issued contrary to the EPA Act, and the apparent unlawful clearing of bushland contrary to the conditions of development consent.
- If the legal opinion is that the Construction Certificate was wrongfully issued and the clearing unlawful, the BMCS requests that Council take action against the developer, Mr Farshad Amirbeaggi, for site clearing in contravention of the 1989 development consent and under an invalid Construction Certificate approval.
- BMCS requests that Council file a complaint with the NSW Government Building Professionals Board against the private certifier, Mr David Blackett, requesting the BPB take disciplinary action for issuing a construction certificate for site clearing only

and that is inconsistent with the development consent, both of which are in breach of the EPA Act and Regulation.

- BMCS requests that Council order the developer rehabilitate the site and take action to ensure that any future actions on the site are in accordance with all conditions of the development consent.
- BMCS requests that Council takes action to ensure there are no further works carried out that potentially breach the development consent.
- BMCS requests that all future proposals on the site are submitted to Council for approval and not to a private certifier.
- BMCS requests that any future actions proposed to be taken on the site are publicly exhibited and notified.

BMCS understands that the approval to clear was issued by a private certifier (as detailed above). However it is noted that the NSW Government Building Professionals Board Complaint form 'Complaint Against an accredited certifier' states the following:

***The council can take independent enforcement action at any time, even when a private certifier has been appointed as the principal certifying authority***

We look forward to your response to our enquiries.

If you have queries in regard to the issues raised in this letter please contact me.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Lachlan Garland', with a stylized flourish at the end.

Lachlan Garland  
President  
Blue Mountains Conservation Society  
mobile 0415 317 078 or email [president@bluemountains.org.au](mailto:president@bluemountains.org.au)