

Bega Valley Shire Council Meeting 17.01.2012

Eden Chip Mill's Pellet Plant Development Application

South East Forest Rescue Incorporated (SEFR) v Bega Valley Shire Council (BVSC) and South East Fibre Exports Pty Ltd (SEFE) [2011] NSWLEC 250

We unfortunately need to turn our attention again to a Development Application to establish a wood pellet plant in Eden. SEFE has submitted a further application with the aim of rebutting a finding by Justice Brian Preston in the Land and Environment Court that the Council's decision to approve the SEFE proposal was invalid.

The Judge's Case Notes show that his overturning of the Council's decision resulted from its failure "to consider and form the required mental state of satisfaction"¹ for three specific areas:

1. inadequate access to important documents of zoning objectives;
2. not considering public submissions which related to zoning and ecologically sustainable development (ESD); and
3. not considering the issue of ESD requirements of the NSW Government's Land Environment Protection Act.

I should like to suggest to Councillors that this new application does not go far enough in addressing zoning objectives. It is not sufficient to say that because there is a woodchip mill on the site, that another related use to produce pellets is consistent with zoning objectives. The woodchip mill was approved over four decades ago and no account was taken then of ESD principles. All of the zoning objectives now favour more environmentally benign uses than the woodchip mill or the pellet plant.

Nor is it sufficient to dismiss points raised in the submissions that go to the primary source of the material that would be used in the pellet plant. SEFE relies on the argument that it is using "waste" without considering how that "waste" is derived. Yet ESD principles require consideration of this broader question involving the maintenance of the biological and natural resource base for life, and the impact of proposals on future generations.

I draw the Councillors' attention to the guidelines for applying these principles:

¹ Case Note: South East Forest Rescue Incorporated (SEFR) v Bega Valley Shire Council (BVSC) and South East Fibre Exports Pty Ltd (SEFE) [2011] NSWLEC 250. Preston CJ: 16 December 2011 www.edo.org.au/edonsw/site/casework_key.php#sefri
Plus: "... it could not be said that the matter has been properly considered ..." and "... hence failed to properly consider the public interest". Land and Environment Court New South Wales, Medium Neutral Citation, South East Forest Rescue Incorporated v Bega Valley Shire Council and South East Fibre Exports Pty Ltd [2011] NSWLEC 250

1. "The application of ESD principles in local government requires a shift in priorities, involving the full integration of ecological considerations into development of community goals, economic policies and decision making in every sphere of activity.
2. ... Sustainable social and economic development is dependent on maintaining the biological and natural resource base for life and on avoiding irreversible or costly degradation of biological and environmental factors ..." and
3. that "... the application of ESD principles will help to ensure that we pass on a world with sustainable natural resources ... to our children and our children's children ..." underlying the principle of inter-generational equity.²

Conservationists of the south east of NSW have well-informed knowledge of environmental issues, and of the impact of the continued destruction of natural native forests for the woodchip industry. A forest is not a crop – a crop can be harvested annually – a forest may take centuries to recover and may never attain previous grandeur and biodiverse capacity after logging. If wood pellets are to be made from milling waste, then there has to be logging to begin with and this activity goes against the principles of ESD and as evidenced by these images.

I'd like to respectfully remind the Council that any endeavour which acts contrary to the ESD principles, should not be approved. I would like to reinforce the fact that protection and respect is essential in maintaining healthy and bountiful forests. Any activity which is polluting, not refining; dirty, not clean; adds to a carbon debt, not a credit; augments climate change, not counteracts it; costs the NSW taxpayer, not earns for them; destroys biodiversity, not contributes to it; wrecks water catchments, not improves them; creates dry fire prone sclerophyl forests from moist ones; can only be attributed to the direct action of those who have not properly considered the bigger picture.

As responsible caretakers of this planet, we urgently need to reconsider the impact of the logging industry in this Shire in its entirety. Today we must act to prevent another potential chink in the armour of safeguarding our native forest by upholding the decision of the Land and Environment Court invalidating the initial Council decision to establish a wood pellet plant. Failure to heed this advice could prove to be an expensive exercise for Council and BVSC ratepayers. Judge Preston found that there was "no real prospect that the Council, properly exercising its duty, will not make a different decision." On behalf of the region's conservation alliance, I call on the Council to respect Judge Preston's comments, adhere to the NSW Government's ESD principles and to reject SEFE's application.

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2 February 2012

² State of the Environment Guidelines. 2. Ecologically Sustainable Development: Local Government Context www.dlg.nsw.gov.au