

Natural Environment Referral Response - Biodiversity

Application Number:	DA2023/1818
Proposed Development:	Construction of a dwelling house, detached garage and a secondary dwelling (Proposed Lot 2)
Date:	13/02/2024
Responsible Officer	Stephanie Gelder
Land to be developed (Address):	Lot 2 DP 1237357 , 12 A John Street AVALON BEACH NSW 2107

Reasons for referral

This application seeks consent development on land, or within 40m of land, containing:

- All Development Applications on
- Actual or potential threatened species, populations, ecological communities, or their habitats;
- Wildlife corridors;
- Vegetation query stipulating that a Flora and Fauna Assessment is required;
- Vegetation query - X type located in both A & C Wards;

And as such, Council's Natural Environment Unit officers are required to consider the likely potential environmental impacts.

Officer comments

Amended Biodiversity Referral Comments

The proposal is for the construction of a residential dwelling within the approved subdivision in DA2021/0420. The subdivision application included the assessment of the potential impacts to biodiversity values, and included a biodiversity credit obligation to offset the impacts to biodiversity values as well as a range of mitigation measures. While the plans submitted for the dwelling show amended building footprints, the Biodiversity Planning team do not consider that this will result in a significant increase to the impacts to biodiversity or require additional biodiversity offsets above those already calculated.

As stated in the SEE, a deferred commencement condition will be included that ensures the retirement of credits or payment into the Biodiversity Conservation Fund in order to satisfy the biodiversity credit obligation. The implementation of the approved Riparian Plan and Coastal Impacts Assessment (Kingfisher 2021b) and Landscape Plan (as amended) will also be required.

The submitted arborist report (Naturally Trees, May 2023) is inconsistent with the approved subdivision plans as Tree 22 (*Syzygium paniculatum*) which was shown to be retained and transplanted in the approved subdivision plans is now being proposed for removal. The transplantation of Tree 22 is required as per the approved subdivision and will also be included as part of the deferred commencement conditions. The submitted proposed landscape plan (THW Architects 15/10/19) is also inconsistent with the approved subdivision plans as it has not included transplantation of Tree 22 as per the approved subdivision development (DA2021/0420).

Original Biodiversity referral Comments

The comments in this referral relate to the following applicable controls and provisions:

- Biodiversity Conservation Act 2016 (BC Act)
- Biodiversity Conservation Regulation 2017
- State Environmental Planning Policy (Coastal Management)
 - Coastal Wetlands & Proximity Area
 - Coastal Environment Area
- Pittwater Local Environmental Plan (PLEP) - Clause 7.6 Biodiversity Protection

Areas of the site are identified on the NSW Department of Climate Change, Energy, the Environment and Water's (DCCEEW) Biodiversity Values Map (BV Map). Under the NSW Biodiversity Conservation Act 2016, any removal of native vegetation from within mapped areas will trigger the Biodiversity Offsets Scheme (BOS) and the requirement for a Biodiversity Development Assessment Report (BDAR).

The proposal follows up on the approved subdivision in DA2021/0420. Therefore, evidence of the retirement of credits or payment into the Biodiversity Conservation Fund is to be submitted with the application. The evidence that can be supplied is the following:

- A copy of the confirmation email (from the BOS Credits team) to show that the correct type and number of credits have been retired, and from a relevant IBRA sub-region as per the offset rules,
- or If paid into the Biodiversity Conservation Fund, a copy of the section 6.33 statement.

It is noted that the original BDAR submitted with the subdivision DA2021/0420 (Ecological Consultants Australia TA Kingfisher Urban Ecology and Wetlands, December 2023) has been submitted with the application, however is based off of preliminary plans as shown on page 3 of the BDAR. A new BDAR will have to be submitted by the accredited assessor **ONLY** if there are additional impacts that were not included in the offset calculations under the approved subdivision (DA2021/0420). Should the applicant lodge a new BDAR, Council will have to be added to the case as a case party in the Biodiversity Offsets and Agreement Management System (BOAMS). **Otherwise**, a signed letter prepared by a **BAM accredited assessor**, confirming that no additional impacts to those proposed at the subdivision stage can be submitted.

Additionally, the submitted Riparian Plan and Coastal Impacts Assessment (Ecological Consultants Australia TA Kingfisher Urban Ecology and Wetlands, December 2023) has also included preliminary plans as shown on Figure 4.1 (page 11). Plans shown in the assessment report will have to be final to ensure that the recommended impacts and their mitigation measures are consistent with each other.

The submitted arborist report (Naturally Trees, May 2023) has been found to be inconsistent with the approved subdivision plans as Tree 22 (*Syzygium paniculatum*) which was shown to be retained and transplanted in the approved subdivision plans is now being proposed for removal.

The submitted landscape plan (THW Architects, October 2019) is found to be inconsistent with the approved subdivision plans as it has not considered like for like tree replacements for the removal of Tree 22 and shows its removal. The landscape plan will have to be amended to include three (3) *Syzygium paniculatum* as conditioned in DA2021/0420 as per the recommendations found in the approved BDAR for DA2021/0420.

The Biodiversity referral will recommence once the following documents have been submitted with the application:

- Evidence of retirement of credits or payment into the fund as conditioned in DA2021/0420
- AND a letter from a BAM Accredited Assessor confirming the proposal does not trigger entry into the

BOS and that no additional impacts to the proposed in the subdivision stage are taking place

- OR a new BDAR relating to the impacts of the proposal of Lot **12A John Street only**. If this is the case, Council will have to be added as a case party in BOAMS.
- Amended landscape plans including the three (3) *Syzygium paniculatum* to compensate for the removal of Tree 22 as per recommendations in the approved BDAR submitted with DA2021/0420.

The proposal is therefore supported.

Note: Should you have any concerns with the referral comments above, please discuss these with the Responsible Officer.

Recommended Natural Environment Conditions:

DEFERRED COMMENCEMENT CONDITIONS

Like for like credit retirement conditions - Ecosystem credit retirement conditions

Prior to issue of the relevant Construction Certificate the class and number of ecosystem credits in Table 1 must be retired to offset the impacts of the development.

The requirement to retire credits outlined in Table 1 may be satisfied by payment to the Biodiversity Conservation Fund of an amount equivalent to the class and number of ecosystem credits, as calculated by the Biodiversity Offsets Payment Calculator.

Evidence of the retirement of credits or payment to the Biodiversity Conservation Fund in satisfaction of Table 1 requirements must be provided to the Manager Bushland and Biodiversity of Northern Beaches Council and to the Certifying Authority prior to release of construction certification.

Table 1 Ecosystem credits required to be retired – like for like

Impacted Plant Community Type	TEC	Number of ecosystem credits	Containing HBT	IB sul
1234- Estuarine Swamp Oak forest	Swamp Oak Floodplain Forest of the New South Wales North	1	No	Pi Cu Sy Ca Wy an Yel or IBF

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Reason: To offset the residual biodiversity impacts of the development in accordance with the NSW Biodiversity Offset Scheme.

Transplant Tree 22

To ensure consistency with the approved subdivision plans, Tree 22 (*Syzygium paniculatum*) is to be transplanted into the riparian zone

Reason: To ensure consistency with the approved subdivision plans.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

Compliance with approved BDAR impact mitigation table to minimise impacts – Prior to Construction

The approved BDAR (Kingfisher 2021a) includes mitigation measures, which must to be implemented before, during and after construction to avoid and minimise the impacts of the proposal, including action, outcome, timing and responsibility.

All biodiversity-related measures are to be implemented prior to construction, as specified in the approved BDAR and these conditions of consent.

The Project Ecologist is required to provide details of compliance, including written and photographic evidence, and provide to the Certifying Authority and Council prior to issue of Construction Certificate.

Reason: To confirm compliance with the approved BDAR.

No Clearing of Vegetation

Unless otherwise exempt, no vegetation is to be cleared prior to issue of a Construction Certificate.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to issue of Construction Certificate.

Reason: To protect native vegetation.

Engagement of Project Ecologist

A Project Ecologist is to be employed for the duration of the approved works to ensure all biodiversity protection measures are carried out in accordance with **XX** Report (reference).

The Project Ecologist must have one of the following memberships / accreditation:

- Practising member of the NSW Ecological Consultants Association (<https://www.ecansw.org.au/find-a-consultant/>) OR
- Biodiversity Assessment Method Accredited Assessor under the relevant legislation (<https://customer.lmbc.nsw.gov.au/assessment/AccreditedAssessor>)

Evidence of engagement of the Project Ecologist is to be provided to the Principal Certifier prior to issue of Construction Certificate.

Reason: To protect native vegetation and wildlife.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

Compliance with Ecologist's Recommendations – During Construction

All biodiversity-related measures are to be implemented during construction in accordance with the approved Biodiversity Development Assessment Report (Kingfisher 2021a), and the Riparian Plan and Coastal Impacts Assessment (Kingfisher 2021b). These reports were approved as part of the Subdivision application.

Compliance with these measures is to be certified by the Project Ecologist in writing to the Principal Certifying Authority.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures.

Wildlife Protection

If construction activity associated with this development results in injury or displacement of a native mammal, bird, reptile or amphibian, a licensed wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To protect native wildlife.

Protection of Habitat Features

All natural landscape features, including any rock outcrops, native vegetation and/or watercourses, are to remain undisturbed during the construction works, except where affected by necessary works detailed on approved plans.

Reason: To protect wildlife habitat.

CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE

Implementation of Riparian Plan and Coastal Impacts Assessment

All works and measures detailed within the approved Riparian Plan and Coastal Impacts Assessment (Kingfisher 2021) are to be undertaken.

Written details demonstrating compliance are to be certified by the Project Ecologist and provided to the Principal Certifying Authority prior to issue of any Occupation Certificate.

Reason: To protect native vegetation, wildlife and habitats.

Protection of Habitat Features – Certified by Ecologist

All natural landscape features, including any rock outcrops, native vegetation, soil and/or watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans.

Written details demonstrating compliance are to be certified by the Project Ecologist and provided to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To protect wildlife habitat.

Planting Areas of Native Vegetation

The Vegetated Riparian Zone proposed for revegetation mapped within the approved Riparian Plan and Coastal Impacts Assessment (Kingfisher 2021b) is to be planted with locally native species at the densities provided within 3.1.3 of the report:

- 1 tree per 4m²
- 2 shrubs per 4m²
- 4 groundcovers per m²
- 1 vine per 20m²

The Project Ecologist is to provide written certification of compliance to the Principal Certifying Authority prior to issue of any Occupation Certificate.

Reason: To protect and maintain native vegetation and wildlife habitat.

Reason: To ensure compliance with the requirement to retain and protect native planting on the site.

No Weeds Imported On To The Site

No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan) are to be imported on to the site prior to or during construction works.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To reduce the risk of site works contributing to spread of Priority and environmental weeds.

Priority Weed Removal and Management

All Priority weeds (as specified in the Northern Beaches Local Weed Management Plan) within the development footprint are to be removed using an appropriate control method.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To reduce the risk of site works contributing to spread of Priority weeds.

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES**Protection of Habitat Features**

All natural landscape features, including any rock outcrops, native vegetation, soil and/or watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans.

Reason: To protect wildlife habitat.