

Natural Environment Referral Response - Biodiversity

Application Number:	DA2018/1989
Responsible Officer	Alex Keller
Land to be developed (Address):	<p>Lot 8 DP 629464 , 102 Cabarita Road AVALON BEACH NSW 2107</p> <p>Lot 15 DP 858130 , 100 Cabarita Road AVALON BEACH NSW 2107</p> <p>Lot 14 DP 858130 , 96 Cabarita Road AVALON BEACH NSW 2107</p> <p>Lot 9 DP 629464 , 104 Cabarita Road AVALON BEACH NSW 2107</p>

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 Comments

It has been discussed and agreed with Council development assessment planners that a s88b restriction on title will be conditioned to ensure the permanent protection of portions of the Pittwater Spotted Gum Forest Endangered Ecological Community (EEC) vegetation that has been recorded and mapped on site. The restriction is proposed over two separate areas, namely a portion of Lot 2 of the Stage 1 (Lot 11 of the Stage 2) subdivision, as well as portions of lots 2-5 (Stage 2). As some of the highest quality PSGF EEC on the site occurs within Lot 2 (Stage 1), a proposed area subject to the restriction has been identified and mapped by Council. The second area will be in accordance with the 'Environment Protection Area' mapped within the Biodiversity Development Assessment Report.

Original Comments

I have reviewed the Stage 1 & 2 subdivision plans, the Biodiversity Development Assessment Report and SEE, and provide the following comments. A brief site inspection was also conducted. The site contains vegetation characteristic of the Pittwater Spotted Gum Forest Endangered Ecological Community (PSGF EEC), Swamp Oak Floodplain Forest EEC, and habitat for several threatened species. The site is also mapped on the Pittwater LEP Biodiversity layer and Wildlife Corridor layer.

The two stage subdivision, subsequent residential dwelling development, and biodiversity development assessment report (BDAR) rely on 'permanent' conservation of a 1125sqm area within proposed lot 1 (Stage 1). This 1125 sqm environment protection area is to be retained (lots 2 - 5 Stage 2 community title subdivision) and improved, along with a native revegetation area (lots 2 - 6) and landscaping. The

BDAR sets out the overall impacts, mitigation and offset strategy proposed as part of the subdivision development. While the principle of including avoid and minimise measures on site is supported in general, the development does not include any permanent protection measures such as inclusion of the EEC vegetation within the community association property (Lot 1), or a restriction on title such as a s88b instrument (or similar). While the environment protection area (lots 2 -5 Stage 2) is proposed to be managed in accordance with a Bushland Management Plan (to be provided), and is referred to within the draft community management statement, it will be reliant on the community association and ten separate owners to avoid impacts to the endangered vegetation community into the future. The burden of implementing the BMP which applies to the EPA area will be the responsibility of four owners, however it is unclear if this will be an individual, joint or even a community association responsibility

Section 7.1 (3) of the *Biodiversity Conservation Regulation 2017*, in relation to the biodiversity offsets scheme threshold states that if a proposed development involves the subdivision of land, the subdivision is taken to involve the clearing of native vegetation that, in the opinion of the relevant consent authority is required or likely to be required for the purposes for which the land is to be subdivided. Council believes that the clearing of native vegetation likely to be required for a residential subdivision, construction of at least nine dwelling, services, roads etc will be greater than that considered. It is unrealistic to rely on the avoidance and minimisation of impacts without any formal protection mechanism. In particular the ongoing protection of parts of the site, especially those directly adjoining proposed building envelopes, is considered to be unrealistic once new owners require areas for outdoor recreation, further alterations and additions etc or other 'operational' impacts.

The area of EEC to be considered under the avoid, minimise, offset hierarchy should include Lot 2 of the Stage 1 subdivision, as well as portions of lots 2-5 (Stage 2) that have already been proposed. As some of the highest quality PSGF EEC on the site occurs within Lot 2 (Stage 1) It is recommended that a building envelope is provided for that lot so that the overall impacts to the EEC as a result of the Stage 1 subdivision, and any subsequent development, can be considered. It is also unclear why proposed Lot 10 (Stage 2) does not contain any conservation management areas as identified on other lots within the Stage 2 subdivision, as the biodiversity values should also contribute to the overall avoid and minimise strategy.

In summary, the full extent of construction and operational impacts likely to be required is understated, and therefore the conclusions of the BDAR and the extent of residual impacts offset is not supported. As discussed, for areas on the site (Stage 1 and 2) where construction and operational impacts will be avoided, a suitable mechanism to permanently protect the EEC and threatened species habitat is required. The BMP proposed to manage the EEC areas must also be provided as part of an application.

Referral Body Recommendation

Recommended for approval, subject to conditions

Recommended Natural Environment Conditions:

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

Delineation Environment Protection Area

Prior to the issue of the Construction certificate, the extent of the Environment Protection Area within Lot 2 (Stage 1 subdivision) / Lot 11 (Stage 2 subdivision) must be surveyed and marked on a Plan.

The survey must be undertaken by a registered surveyor and Plan prepared to the satisfaction of

Council's Manager Bushland & Biodiversity.

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

Reason: Bushland Protection.

Compliance with Ecologist's Recommendations – Pre-construction

All pre-construction biodiversity-related measures specified in the approved Biodiversity Development Assessment Report (GIS Environmental December 2018), Biodiversity Management Plan (GIS Environmental April 2019) and these conditions of consent are to be implemented at the appropriate stage of the development. Compliance with pre-construction measures is to be certified by the project ecologist prior to issue of the Construction Certificate.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures in accordance with relevant Natural Environment LEP/DCP controls (DACNECPCC1)

Like for like credit retirement conditions - Species credit retirement conditions

Prior to issue of the relevant construction certificate the class and number of species credits in Table 3 must be retired to offset the impacts of development.

The requirement to retire credits outlined in Table 3 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 3 requirements must be provided to the Manager Bushland & Biodiversity of Northern Beaches Council prior to release of construction certification.

Table 3 Species credits required to be retired – like for like

Impacted species credit species	Number of species credits	IBRA sub-region
Chalinolobus dwyeri/ Large-eared Pied Bat	11	Pittwater
Myotis macropus/ Southern Myotis	7	Pittwater
Syzygium paniculatum / Magenta Lilly Pilly	2	Pittwater

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

Variation rule credit retirement conditions - Species credit retirement conditions

Prior to issue of the relevant construction certificate the class and number of species credits in Table 4 must be retired to offset the impacts of development.

Evidence of the retirement of credits in satisfaction of Table 4 requirements is to be provided to the Manager Bushland & Biodiversity of Northern Beaches Council prior to release of construction

certification.

Table 4 Species credits required to be retired – variation rules

Impacted species credit species	Number of species credits	IBRA sub-region
Chalinolobus dwyeri/ Large-eared Pied Bat	11	Pittwater, Cumberland, Sydney Cataract, Wyong and Yengo.
Myotis macropus/ Southern Myotis	7	Pittwater, Cumberland, Sydney Cataract, Wyong and Yengo.
Syzygium paniculatum/ Magenta Lilly Pilly	2	Pittwater

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

Notification of determination to which the Biodiversity Offset Scheme applies

The applicant, or Project Ecologist on behalf of the applicant, must download and complete the “Biodiversity Offsets Scheme – Notification of Determination” form.

The completed form and attachments, including a copy of the determination and any conditions of approval, must be emailed to NSW DPIE <bam.support@environment.nsw.gov.au>. The Department arranges for determination outcomes to be recorded in the Biodiversity Offset and Agreement Management System (BOAMS).

Council's Manager Bushland & Biodiversity and the Principal Certifying Authority must be copied into the notification email to confirm compliance.

Reason: To ensure the NSW Department of Planning, Industry and Environment are notified of determinations where the Biodiversity Offsets Scheme applies, and Council are notified for compliance.

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 & Biodiversity of Northern Beaches Council prior to release of construction certification.

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

Impacted Plant Community Type	TEC	Number of	Containing
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		ecosystem credits	HBT
1214-Spotted Gum - Grey Ironbark open forest in the Pittwater and Wagstaffe area, Sydney Basin Bioregion	Pittwater and Wagstaffe Spotted Gum Forest in the Sydney Basin Bioregion	7	YES

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

Variation rule credit retirement conditions - Ecosystem credit retirement conditions

Prior to issue of the relevant construction certificate the class and number of species credits in Table 2 must be retired to offset the impacts of development.

Evidence of the retirement of credits in satisfaction of Table 2 requirements is to be provided to the Manager Bushland & Biodiversity of Northern Beaches Council prior to release of construction certification.

Table 2 Ecosystem credits required to be retired – variation rules

Impacted plant community type	Number of ecosystem credits	IBRA sub-region	Approved variation plant community type (s) that be used to offset the impacts from development
1214-Spotted Gum - Grey Ironbark open forest in the Pittwater and Wagstaffe area, Sydney Basin Bioregion	7	Pittwater, Cumberland, Sydney Cataract, Wyong and Yengo. or From a location within 100km of the impact site	Any PCT from Wet Sclerophyll Forests (Grassy subformation), Tier 3 or higher, containing HBT (including artificial)

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

Project Ecologist

A Project Ecologist is to be employed for the duration of the approved works to ensure all bushland biodiversity protection measures are carried out according to the conditions of consent, BDAR (GIS Environmental) and the Biodiversity Management Plan Parts 1 and 2 (GIS Environmental April 2019).

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 assessor accreditation under the NSW Biodiversity Conservation Act

2016 (<https://customer.lmbc.nsw.gov.au/assessment/AccreditedAssessor>)

Employment of a project ecologist is to be certified by the Principal Certifying Authority Prior to issue of Construction Certificate.

Reason: To protect native vegetation and wildlife in accordance with relevant Natural Environment LEP/DCP controls.

Implementation of Biodiversity Management Plan

All requirements in the Biodiversity Management Plan (GIS Environmental 5 April 2019) are to be implemented prior, during and post construction.

Details demonstrating pre-construction compliance are to be certified by the project ecologist and submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Biodiversity/Vegetation Conservation and Management.

Native Vegetation Protection Covenant

Areas of retained native vegetation and trees are to be protected, conserved, rehabilitated and managed through the use of a Section 88B (Conveyancing Act 1919) Instrument in which Northern Beaches Council shall be named as the sole authority to release or modify the restriction.

The instrument is to be written and registered on the title so that the owners are bound to manage and protect the areas in perpetuity according to

- a) the area mapped on Lots 2 - 5 as Environment Protection Area in Figure 1.5 of the Biodiversity Development Assessment Report (GIS Environmental) prepared for the approved development; and
- b) the Environment Protection Area within Lot 11.

The draft instrument is to be acceptable to Council prior to the issue of the Construction Certificate and lodgement with the NSW Department of Lands.

Reason: To protect native vegetation proposed for retention in accordance with relevant Natural Environment LEP/DCP controls.

Amend Biodiversity Management Plan

The Biodiversity Management Plan Parts 1 & 2 and Ongoing Maintenance Manual, submitted in conjunction with the approved Development Application and as amended by these conditions of consent, is to be amended to include the Environment Protection Area within Lot 2 (Stage 1)/Lot 11 (Stage 2).

The BMPs are to be amended and submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Biodiversity/Vegetation Conservation and Management.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

Bushland Protection Fencing and Signage

Prior to the commencement of any onsite building works or commencement of vegetation clearance/modification, the boundary between the Conservation Management Areas and the construction area as shown on Biodiversity Management Plan (BMP) Part 1a (GIS Environmental 5/4/19) - is to be surveyed and marked clearly on the ground.

A temporary 2.0 metre steel mesh fence (or similar), incorporating BMP signage, is to be erected on the surveyed boundary between the Conservation Management Areas and the construction area for the duration of construction work.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to commencement of works.

Reason: To ensure that the vegetation in the restricted development area is protected during and after construction.

Protection Fencing

Protection fencing measures (including sedimentation fences) are to be installed in accordance with all approved plans including those specified in the Arborist Report and/or Bushland Management Plan. Protection measures are to be maintained for the duration of the works. Protection fencing that is no longer required is to be removed once all works are completed.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to commencement of works.

Reason: Environmental Protection

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

Tree Hollow Inspection by Ecologist

During any vegetation clearance for Asset Protection Zones and construction works the Project Ecologist is to be physically present to re-locate any displaced fauna that may be disturbed during this activity.

All tree hollows proposed for clearing are to be inspected by the project ecologist prior to removal. Inspection of tree hollows is to be facilitated by a qualified and experienced tree climber or arborist with the use of an elevated work platform where necessary.

Details prepared by the project ecologist in writing demonstrating compliance are to be submitted to the Principal Certifying Authority prior to commencement of tree removals

Reason: To protect native wildlife in accordance with Section 2.1 of the NSW Biodiversity Conservation Act 2016 and relevant Natural Environment LEP/DCP controls.

Compliance with Ecologist's Recommendations – During Construction

All biodiversity-related measures are to be implemented during construction, as specified in the approved ecological report (BDAR GIS Environmental December 2018), Biodiversity Management Plan (GIS Environmental April 2019) and these conditions of consent.

Compliance with these measures is to be certified by the project ecologist in writing to the Principal Certifying Authority prior to issue of the Occupation Certificate.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures in accordance with relevant Natural Environment LEP/DCP controls (DACNEEDW1)

Fencing for Wildlife Passage

Any new fencing (with the exception of swimming pool fencing) is to be made passable to native

wildlife. Hole dimensions are to be a minimum of 150mm wide x 100mm high at ground level spaced at 6 metre intervals.

Reason: Management of wildlife corridors

Vegetation Clearing Protocols

Clearing of native vegetation is to be undertaken in accordance with the protocols and recommendations specified in the approved Biodiversity Management Plan. Details confirming compliance are to be certified by the project ecologist and submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To protect native vegetation in accordance with relevant Natural Environment LEP/DCP controls. (DACNEEDW2)

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

Weed Removal and Management

No weeds are to be imported on to the site.

All invasive and priority weeds on the site are to be removed and managed continuously, in accordance with the Biosecurity Act 2015.

Details demonstrating the removal and management of weeds are to be prepared by the project ecologist in writing and submitted to the Principal Certifying Authority prior to occupation certificate.

Reason: Weed management and biosecurity

Compliance with Ecologist's Recommendations – Post Construction

All biodiversity-related measures are to be implemented at the appropriate stage of development, as specified in the approved ecological report, Biodiversity Management Plan Ongoing Maintenance Manual (GIS Environmental April 2019) and these conditions of consent. Satisfactory establishment/initiation of post-construction measures is to be certified by the project ecologist prior to issue of any Occupation Certificate

Reason: To confirm compliance with wildlife and habitat protection/replacement measures in accordance with relevant Natural Environment LEP/DCP controls. (DACNEFPOC1)

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

Control of Weeds

Prior to the completion of works, all priority weeds (as listed under the Biosecurity Act 2015) are to be removed/controlled within the subject site using an appropriately registered control method. Information on weeds of the Northern Beaches can be found at the NSW WeedWise website (<http://weeds.dpi.nsw.gov.au/>). All environmental weeds are to be removed and controlled. Refer to Council website http://www.pittwater.nsw.gov.au/environment/noxious_weeds

Reason: Weed management.

No Planting Environmental Weeds

No environmental weeds are to be planted on the site. Information on weeds of the Northern Beaches

can be found at the NSW WeedWise website (<http://weeds.dpi.nsw.gov.au/>).

Reason: Weed management.

Works to cease if item found

If any Aboriginal Engravings or Relics are unearthed all work is to cease immediately and the Aboriginal Heritage Office (AHO) and Office of Environment and Heritage (OEH) are to be notified.

Reason: To protect Aboriginal Heritage.

Dead or Injured Wildlife

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

Reason: To protect native wildlife in accordance with Section 2.1 of the NSW Biodiversity Conservation Act 2016

Domestic Animals Exclusion

For the life of the development, cats are to be kept in a cat run and/or inside the dwelling such that they are prevented from entering wildlife habitat areas at all times. Dogs are to be kept in an enclosed area such that they cannot enter areas of bushland, unrestrained, on surrounding properties.

Reason: Wildlife protection

Fencing for Wildlife Passage

Any new fencing (with the exception of swimming pool fencing) is to be made passable to native wildlife. Hole dimensions are to be a minimum of 150mm wide x 100mm high at ground level spaced at 6 metre intervals.

Reason: Management of wildlife corridors