

Natural Environment Referral Response - Biodiversity

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

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 refusal

Recommended Natural Environment Conditions:

Nil.