

Natural Environment Referral Response - Biodiversity

Application Number:	DA2025/0279
Proposed Development:	Construction of a dwelling house
Date:	25/07/2025
Responsible Officer	Phil Lane
Land to be developed (Address):	Lot 32 DP 20097 , 237 McCarrs Creek Road CHURCH POINT NSW 2105

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

Original Comments

Council's Biodiversity Referrals team have assessed the Development Application for compliance against the following applicable provisions:

- NSW Biodiversity Conservation Act 2016
- NSW Biodiversity Conservation Regulation 2017
- Pittwater LEP 2014 cl. 7.6 Biodiversity Protection
- Pittwater 21 DCP cl. B4.2 Flora and Fauna Conservation Category 1 and Wildlife Corridor
- SEPP (Resilience and Hazards) 2021 - Coastal Environment Area

The following documentation submitted with the application has been reviewed in relation to biodiversity controls:

- Statement of Environmental Effects (BIC Town Planning)
- Flora and Fauna Assessment (Waratah Ecology, February 2025)
- Arboricultural Impact Assessment (Ezigrow, January 2025)
- Architectural Plans (Green Measures, February 2025)
- Bushfire Assessment (Bushfire Planning and Design, September 2024)

The Arborist Report recommends the removal of 21 native prescribed trees to facilitate the proposed development. This includes 20 from within the property and 1 in the road reserve. Only 3 trees are proposed for retention within the site, including Trees 31, 32 and 33. The Arborist has identified that Trees 34 and 35 require removal in order to comply with the recommendations of the bushfire report, which states that "the site will be cleared of bushland vegetation to accommodate for the development and APZ". The Arborist also states "A Canopy Coverage drawing is attached in Appendix 9 which shows the extent of the retained canopy. Canopy Cover has been applied at 75% due to the dappled characteristics of the retained trees, being thin specimens and species types". Appendix 9 is not included in the report. This is required in order for the Bushfire Consultant to determine the trees that can be retained within the IPA. It is not anticipated that all trees would require removal in order to achieve 15%

minimum canopy cover and as such, it is expected that in order to avoid and minimise impacts to biodiversity, consideration be given to the retention of Trees 34 and 35 as they are outside the development area and directly adjacent to a Council Reserve. Consistency across the reports (Bushfire, Arborist and SEE) is required.

The Flora and Fauna Assessment confirms that the NSW Biodiversity Offset Scheme (BOS) is not triggered by either the Biodiversity Values (BV) map or the area clearing threshold. No threatened flora or fauna were identified by the Ecologist on site, and after application of a number of Tests of Significance (5-Part test) for species considered to have a moderate likelihood of occurring on site, it was determined by the Ecologist that a Species Impact Statement or BDAR was not required. A number of recommendations to mitigate impacts on biodiversity have been outlined in the Flora and Fauna Assessment and if approved, will be conditioned accordingly.

The Landscape Plan incorrectly shows that all trees are to be removed from the subject site. Trees 31, 32 and 33 are currently proposed for retention, and in accordance with the above, Trees 34 and 35 are also to be considered for retention. Furthermore, the Landscape Plan does not provide for any replacement canopy trees, only shrubs and groundcovers. This is to be amended to include canopy tree replacements which must also meet the minimum requirements for Planning for Bushfire Protection. Given the slope of the property, it is recommended that the planting density be increased within the proposed terraced area at the rear of the property in order to stabilise the soil and reduce runoff.

At this stage Biodiversity Referral does not support the application based on matters as identified above. Commencement of the biodiversity assessment will recommence upon receipt of amended reports.

Additional Comments (07/07/25)

Amended documentation in response to the above comments is noted and has been reviewed accordingly.

It is noted that the Arborist Report and Landscape Plan have been amended to include the retention of Trees 34 and 35 as requested by Council's Biodiversity Referrals team. Furthermore, it is noted that Council's Landscape Referral have included a number of conditions (should the application be approved) including the requirement for 2 x canopy trees within the front setback and removal of a path at the front of the site for inclusion as landscaped area. These are supported by Biodiversity. It is recommended that the 2 x replacement canopy trees within the front setback be 2 x *Allocasuarina torulosa* as this species is a foraging resource for threatened species, and is fire retardant and should therefore comply with the APZ requirements.

Community submissions have been considered as part of this updated referral. Submissions largely focused on the removal of *Allocasuarina* sp. and potential impacts on the South-eastern Glossy Black-Cockatoo (*Calyptorhynchus lathami lathami*) which is listed as Vulnerable under the NSW Biodiversity Conservation Act 2016 and the Commonwealth Environment Protection and Biodiversity Conservation Act 1999. Submissions report multiple sightings of Glossy Black-Cockatoo in the vicinity of works. As such, the Flora and Fauna Assessment Report is to be amended to include additional information including but not limited to Assessments of Significance under both the BC Act and EPBC Act for Glossy Black-Cockatoos. It is noted that evidence of Glossy Black-Cockatoo presence and use was not detected during site inspections undertaken by the consulting Ecologist and Council Biodiversity Officers. Council Officers confirmed that the site does not contain any habitat suitable for breeding by the species, however suitable breeding habitat is located in the adjoining Council Reserve. No habitat is to be directly impacted in the adjoining Council Reserve as a result of the proposed development, including tree removal or APZ works.

Upon receipt of amended Landscape Plan and Flora and Fauna Assessment Report, Council's

Biodiversity Referrals team will recommence assessment of the application.

Further Comments (25/07/25)

An amended Flora and Fauna Assessment Report (Waratah Ecology, July 2025) has been submitted in response to Council's previous comments.

The Test of Significance (5-Part Test) required under the BC Act and the Significant Impact Criteria required under the EPBC Act, have been amended to include additional information relating to Glossy Black-Cockatoo breeding and foraging habitat. Conclusion of the tests stated that "targeted surveys at dawn and dusk, over a number of days, would be required to definitively determine whether the trees proposed for removal are important to the local population". As such, in its current form, the application does not provide sufficient information to determine whether a significant impact is likely to occur as a result of the removal of suitable potential foraging habitat for the nearby pair of Glossy Black-Cockatoos from within the development site.

Furthermore, the ecologist made the following comments within the EPBC Act Significant Impact Criteria:

- **Criterion (b) reduce the area of occupancy of an important population**, the ecologist states that *"A pair of C. lathami lathami are known to occupy a tree-hollow (in proximity to) the site, there are extensive areas of suitable feeding habitat surrounding the development. However, removal of the trees on site may reduce the area of occupancy of an important population"*.
- **Criterion (d) adversely affect habitat critical to the survival of a species**, the ecologist states that *"The Allocasuarina to be removed represent a small percentage of this tree species throughout the wider locality. However, C. lathami lathami has a highly specialised diet and preference for individual feed trees. It also nests close to, or within, foraging habitat. While the habitat is not considered to be critical to the species as a whole it may be critical to a local population. Targeted surveys would need to be carried out to determine whether the habitat within the study area contains preferred feed trees"*.
- **Criterion (e) disrupt the breeding cycle of an important population**, the ecologist states that *"A tree-hollow (in proximity to) the site is believed to contain an active nest. Whilst the birds were not identified during the site visits, and no evidence of feeding was identified on site (i.e. chewed She-oak seeds), the birds are known to feed on trees in close proximity to their nest. The vegetation removal associated with the proposed development may force the birds to find alternative feed trees or potentially relocate. However, the use of these feed trees to the birds would need to be observed during targeted surveys. Therefore, it cannot be confirmed that the removal of feed trees associated with the proposed development would disrupt the breeding cycle of these birds"*.
- **Criterion (f) Adversely affect habitat critical to the survival of a species; modify, destroy, remove or isolate or decrease the availability or quality of habitat to the extent that the species is likely to decline**, the ecologist states that *"The habitat to be removed is not considered critical to the survival of this species. There are other resources (feed trees) available in the surrounding areas. The importance of habitat within the study area can only be determined through targeted surveys"*.

In order to adequately determine potential impacts to Glossy Black-Cockatoo as a result of the loss of suitable potential feed trees from within the site, additional targeted surveys are required to be undertaken in accordance with the recommendations of the FFA. Recommended survey effort is that surveys be carried out at dawn and dusk over at least 4 days (20 hours total survey effort). This survey effort is in line with the requirements of the 'Survey guidelines for Australia's threatened birds - Guidelines for detecting birds listed as threatened under the Environment Protection and Biodiversity Conservation Act 1999, for Glossy Black-Cockatoo (Kangaroo Island)'. This is considered appropriate in the absence of targeted survey guidelines for the species within NSW.

Upon completion of targeted surveys and an amended FFA, biodiversity referrals will recommence assessment of the application.

The proposal is therefore unsupported.

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

Recommended Natural Environment Conditions:

Nil.