

## Natural Environment Referral Response - Biodiversity

<b>Application Number:</b>	DA2022/1975
<b>Proposed Development:</b>	Construction of a dwelling house
<b>Date:</b>	15/12/2023
<b>Responsible Officer</b>	Thomas Prosser
<b>Land to be developed (Address):</b>	Lot 34 DP 20097 , 231 - 233 McCarrs Creek Road CHURCH POINT NSW 2105 Lot 35 DP 20097 , 231 - 233 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

#### AMENDED COMMENTS

The proposal seeks approval for the construction of a new dwelling over two lots.

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

- Planning for Bushfire Protection 2019
- NSW Biodiversity Conservation Act 2016
- SEPP (Resilience and Hazards) - Coastal Environment Area
- Pittwater LEP Clause 7.6 - Biodiversity Protection
- Pittwater DCP Clause B4.2 - Flora and Fauna Conservation Category 1 and Wildlife Corridor

This updated referral considers the following amended plans:

- Updated Arboricultural Impact Assessment (Blues Bros Arboriculture, August 2023)
- Updated Architectural Plans (Wincrest Bespoke, February 2023)
- Updated Bushfire Report (Bushfire Consulting Services Pty Ltd, September 2023)
- Updated landscape plans (Contour Landscape Architecture, August 2023)

The site has a number of constraints including bush fire risk, steep topography and intact native vegetation, however the C4 (Environmental Living) zoning under Pittwater LEP 2014 permits dwelling houses with consent. The site is identified on the Northern Beaches Bush Fire Prone Land Map (2020)

as Category 1 Vegetation (highest risk) and the proposed development is rated as having a Bushfire Attack Level (BAL) of Flame Zone (FZ). The bushfire report's conditions specify that the property must be maintained in perpetuity as an inner protection area in accordance with Appendix 4 of Planning for Bush Fire Protection 2019.

The revised plans and documents continue to identify trees on neighbouring properties for removal. Non-site trees include Trees 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 14, 22, 23, 24, 25. As landowners' consent has not been provided for their removal, these trees must be retained irrespective of condition. Any future removal (or canopy pruning greater than 10%) of these trees would require an approved Tree Permit application, including landowners' consent.

With regard to trees on the subject site, the amended Arboricultural Impact Assessment (AIA) and the architectural plans now identify Trees 16 and 18 for retention, with all other trees on site proposed for removal. This represents a loss of at least 90% of total tree canopy on the site, which is a significant non-compliance with objectives of PDCP Clause B4.2 for 'no significant on site loss or canopy cover' and 'no net loss of native canopy trees'. Furthermore, recommendations of the bushfire report would require the pruning of Tree 16, which may lead to future deterioration of the tree and potentially its removal.

Therefore, the Biodiversity Referrals Section is still not satisfied that the proposal complies with applicable controls, particularly Clauses 7.6 of the Pittwater LEP (Biodiversity Protection) and B4.2 of the Pittwater DCP, as it has not demonstrated that it has been designed to avoid or minimise adverse environmental impact. The applicant is encouraged to consider a redesign of the proposal (e.g. relocation of the garage) to allow for the retention of trees and greater retention of native understory vegetation and natural landscape features.

#### ORIGINAL COMMENTS:

The proposal seeks approval for the construction of a dwelling house.

The comments on this referral relate to the following provisions:

The proposed development has been assessed against the following applicable biodiversity-related controls:

I NSW Biodiversity Conservation Act 2016

I SEPP (Resilience and Hazards) - Coastal Environment Area

I Pittwater LEP Clause 7.6 - Biodiversity Protection

I Pittwater DCP Clause B4.2 - Flora and Fauna Conservation Category 1 and Wildlife Corridor

The proposal has been submitted with an Arboricultural Impact Assessment report (AIA), a Bushfire report and a Flora and Fauna Assessment report (FFA).

- The AIA report states that a total of 10 trees are to be removed to allow for the development under its current design (Trees 1, 8, 9, 10, 13, 14, 15, 20, 21 and 22), with the retention of only one native tree (Tree 16). The report also states that trees 12 and 19 should be considered for removal due to poor condition and risk that they can pose. As per the Landscape Referral response, trees 4, 8, 9, 10 and 14, which are outside of the property boundary have been proposed for removal and no owners consent has been submitted with the application.
- The Bushfire report has recommended that the entirety of the site be managed as an Asset Protection Zone and has applied/granted a Bushfire risk level of BAL FZ to the site. Conditions shall apply to ensure that clearing is undertaken in the appropriate areas and in order to reduce

impacts to native vegetation and biodiversity. It is noted that the 10/50 Clearing Exemption does not apply to the property and as such, any future proposals to remove these retained trees will require approval or a relevant exemption under Part 2 of SEPP (Biodiversity and Conservation) 2021 or Part 4 of the NSW Environmental Planning and Assessment Act 1979.

- The FFA report has determined that the Biodiversity Offset Scheme (BOS) is not triggered by the proposal and a Biodiversity Development Assessment Report (BDAR) is not required and the reasoning is outlined within the FFA report. The FFA report concluded that the site currently has a high biodiversity value (high species richness) with a low presence of weeds due to indirect disturbance from the vicinity to roads. Vegetation present on the site was identified by the ecologist as Turpentine-Roughbarked Apple-forest Oak Moist Shrubby tall open forest of the Central Coast (Central Coast Escarpment Moist Forest PCT 1565). Lastly, the presence of native protected fauna has been noted. A 5-Part test was undertaken for Southern Brown Bandicoot (*Isodon obesulus obesulus*) after which the ecologist concluded that the proposed development is not likely to have a significant effect to any threatened species, population or ecological community.
- The proposed landscaping within the submitted Landscape Plan is found to be compliant with controls set out in PDCP B4.2. However, due to recent Hazard Reductions burn taking place in the area, the retention of native vegetation on the property as per p.28 of the Master Plans is unlikely due to the extent of works proposed. Amendments to the landscaping plan will be requested as well as like for like replacements for the loss of canopy trees, which have not been provided. The selection and distribution of species will have to comply with the recommendations of the Bushfire report.
- It is noted that the development is proposed to take place over two lots which are being consolidated and only one tree has been proposed for retention, failing to demonstrate how appropriate measures to avoid and minimise impacts on biodiversity have been taken. Neighbouring single lot developments have successfully retained more trees through alternative designs in order to retain vegetation. The proposal to remove all existing trees on site appears excessive for construction of a new residential development and has not been adequately justified. Whilst it is acknowledged that Planning for Bushfire Protection 2019 requires the establishment of new Asset Protection Zones (APZ), this still allows for canopy coverage of up to 15% within the Inner Protection Area and does not necessitate the removal of all trees on site.

Therefore at this stage, the Biodiversity Referrals Section is not satisfied that the proposal complies with cl 2.10 of the Resilience and Hazards SEPP (Coastal Environment Area) or cl 7.6 of the Pittwater LEP (Biodiversity Protection), as it is not demonstrated that it has been designed to avoid or minimise adverse environmental impact. The applicant is encouraged to consider a redesign of the proposal to allow for the retention of trees and greater retention of native understory vegetation and natural landscape features.

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:**

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

**Preparation of a Tree Removal Protocol**

The Project Ecologist is to prepare a Tree Removal Protocol which includes the provision of (at a minimum):

- a pre-clearance survey
- direct supervision of tree removal
- protocol for rescue of fauna and relocation of log hollow sections onsite to provide fauna habitat

The Tree Removal Protocol must also include procedures for stop work and formal impact assessment in the event that threatened fauna species are found during the pre-clearance survey.

The Tree Removal Protocol is to be submitted to the Certifier prior to issue of Construction Certificate.

Reason: To protect native wildlife.

**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 Certifier prior to issue of Construction Certificate.

Reason: To protect native vegetation.

**Pre-clearance Survey**

A pre-clearance survey is to be undertaken by the Project Ecologist prior to any tree removals.

The survey is to include stag-watch of hollows/cavities over at least two consecutive nights, immediately prior to tree removal, and where possible, camera probing to search for evidence of fauna activity.

Details demonstrating compliance are to be prepared by the Project Ecologist and submitted to the Certifier prior to issue of Construction Certificate.

Reason: To protect native wildlife.

**Installation of Nest Boxes**

A minimum of 2 nest boxes suitable 2are to be installed in retained trees / throughout the trees within areas of retained native vegetation / on the site.

Nest boxes must be attached in accordance with industry best practice (e.g. expandable tree sensitive methods).

Written certification of compliance is to be prepared by the Project Ecologist and submitted to the

Certifier prior to issue of the Construction Certificate.

Reason: To maintain wildlife habitat.

### **Amendment of Landscape Plans**

The submitted Landscape Plan is to be amended in accordance with the following:

- Inclusion of additional canopy species to compensate for the loss of canopy trees approved for removal.
- Inclusion of additional ground-cover and mid-story species to provide habitat for identified threatened fauna on site.

The amended Landscape Plan is to be certified by a qualified landscape architect and provided to the Certifier prior to issue of the Construction Certificate.

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

### **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 Flora and Fauna Assessment at 231-233 McCarrs Creek Road Report.

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 Certifier prior to issue of Construction Certificate.

Reason: To protect native vegetation and wildlife.

## **CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK**

### **Wildlife Protection**

If construction activity associated with this development results in injury or displacement 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.

### **Tree Hollow Inspection by Ecologist**

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 tree climber or arborist with the use of an elevated work platform where necessary.

The Project Ecologist is to provide written certification of compliance to the Principal Certifier prior to commencement of tree removals.

Reason: To protect native wildlife.

#### **Fauna and Tree Hollow Relocation**

The Project Ecologist is to be present to:

- a) relocate any displaced fauna that may be disturbed during any tree clearance and/or construction works; and
- b) direct the project arborist to salvage any tree hollows within the development area and place them within areas of retained native vegetation on the site.

Reason: To protect native wildlife.

#### **Relocation of Logs and Coarse Woody Debris – Certified by Ecologist**

All logs and branches are to be salvaged from cleared trees and reused as fauna habitat within areas of retained native vegetation on the site.

Reason: To protect wildlife habitat.

#### **Clearing for Asset Protection Zones**

Clearing of vegetation for APZ establishment must prioritise removal of exotic and invasive species in the first instance, with removal of locally native vegetation undertaken only where required to achieve required inner protection area standards.

Written certification of compliance is to be prepared by the Project Ecologist and submitted to the Principal Certifying Authority.

Reason: To protect native vegetation and wildlife.

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

#### **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.

#### **Fauna and Tree Hollow Relocation**

The Project Ecologist is to certify in writing that:

- a) any fauna that was displaced or disturbed during tree clearing and/or construction works was safely and appropriately relocated; and
- b) any tree hollows were salvaged from trees by the project arborist and placed within areas of retained native vegetation on the site.

Written certification of compliance is to be prepared by the Project Ecologist and provided to the

Principal Certifier prior to the issue of any Occupation Certificate.

Reason: To protect native wildlife.

### **New Vegetation Planting**

Landscaping is to incorporate a minimum 80% locally native vegetation species as a proportion of the total number of plants. Locally native species are to be consistent with the relevant section of the Native Gardening Booklet available on Council's website.

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

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 2021 – 2026) within the development footprint are to be removed.

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.

### **Maintenance of Asset Protection Zones**

Vegetation clearing for ongoing APZ maintenance must only occur within the surveyed and marked APZ boundaries. No clearing is to be undertaken outside of the APZ boundaries.

Reason: To protect native vegetation and wildlife.

### **Control of Domestic Dogs/Cats**

Domestic dogs and cats are to be kept from entering wildlife habitat areas at all times.

Dogs and cats are to be kept in an enclosed area and/or inside the dwelling, or on a leash such that they cannot enter areas of wildlife habitat, bushland or foreshore unrestrained, on the site or on

surrounding properties or reserves.

Reason: To protect native wildlife in accordance.

### **Retained trees and Vegetation**

Future removal of any retained prescribed (i.e. protected under PDCP B4.22) trees or native vegetation on the site will require either an applicable exemption or approval under Part 2 of the SEPP (Biodiversity and Conservation) 2021 or Part 4 of the Environmental Planning and Assessment Act 1979, unless amendments to the 10/50 Clearing Code result in the property becoming eligible for use of the Code.

Reason: To maintain biodiversity values on site and ensure compliance with relevant bush fire risk management provisions including applicable restrictions.<insert condition - if pasting use the 'paste plain text button' above>