

Natural Environment Referral Response - Biodiversity

Application Number:	DA2021/1522
Date:	17/01/2022
Responsible Officer	Adam Mitchell
Land to be developed (Address):	Lot C DP 381427 , 189 Riverview Road AVALON BEACH NSW 2107 Lot LIC 567410 , 189 Riverview 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

The application seeks approval for the demolition of an existing dwelling, and construction of a new dwelling. Council's Natural Environment Unit - Biodiversity referral team have reviewed the application for consistency against the relevant environmental legislation and controls, including:

Biodiversity Conservation Act 2016 (BC Act) and Regulation 2017 State Environmental Planning Policy (Coastal Management)

- Coastal Environment Area

Pittwater Local Environmental Plan (PLEP)

- 7.6 Biodiversity Protection

Pittwater Development Control Plan (PDCP)

- B4.7 Pittwater Spotted Gum Forest

Updated Recommendation - 11/01/2022

Council's Biodiversity referral team note the submission of an amended Architectural Plan, in combination with an amended Arboricultural Impact Assessment and Management Plan (Botanics 2021) and Biodiversity Development Assessment Report (ACS Environmental 2021).

On review of the amended plans against the concerns raised by Council's Biodiversity referral team (7/10/2021), the following is noted:

1. A finalised Arboricultural Impact Assessment and Management Plan has now been provided.
2. Impact assessment and species identification is now consistent between the submitted Biodiversity Development Assessment Report (BDAR) and Arboricultural impact Assessment.
3. Additional measures to avoid and minimise biodiversity impacts have been included within the proposal, including an amended design and are discussed within the BDAR.

According to the amended Arboricultural Impact Assessment and Management Plan, the application will require the removal of eleven (11) trees, including:

- T1, 2 & 3 - *Ligustrum lucidum* (exempt - species)
- T3b, 10, 11, 20 & 21 - *Allocasuarina torulosa*
- T18 - *Eucalyptus umbra*
- T28 & 37 - *Corymbia maculata*

All trees proposed for removal appear to be located within the site and are located within or in close proximity to the building footprint, with the exception of T37 (*Corymbia maculata*) which is located below the foreshore building line and is not designated for removal in amended Architectural Plans (DurieDesign 2021a; Drawing 001-200 - 001-206) nor the Landscape Plans (DurieDesign 2021b). Inadequate justification is provided for the removal of this tree, and its depicted removal is assumed to be an error and should be amended within the submitted Arboricultural Impact Assessment and Management Plan (Botanics 2021) and 'Existing and Demolition Plan' (DurieDesign 2021a; Drawing 001-120).

Tree 1, 2 and 3 (*Ligustrum lucidum*) are a former noxious weed species and are exempt within the Northern Beaches, therefore no objection is raised to their removal. All other trees proposed for removal are prescribed, and require approval for removal.

The Project Arborist has determined that of the 42 trees assessed, a total of 31 (or 32 including T.37) trees can be safely retained. Of these, it is noted that only 9 are located within the property and above the foreshore building line (i.e. the developable portion of the site), and 3 of them rely on a successful transplantation for survival:

- T7, 8, 13, 22 - *Corymbia maculata* (retained in-situ)
- T27 - *Eucalyptus paniculata* (retained in-situ)
- T29 - *Allocasuarina torulosa* (retained in-situ)
- T19 - *Ceratopetalum gummiferum* (retained via transplantation)
- T9, 16 - Exempt or non-locally native species (retained via transplantation)

Depending on tree species and size, transplantation commonly has a high failure rate, however in this instance no objection is raised by Council's Biodiversity Unit as the species are non-locally native, exempt, or otherwise do not form a part of *Pittwater and Wagstaffe Spotted Gum Forest in the Sydney Basin Bioregion* endangered ecological community (EEC). Below the foreshore building line, and subject to the retention of Tree 37, it is also noted that 7 prescribed trees (*Corymbia maculata*) will also continue to persist (T.31, 32, 33, 34, 35, 36 & 37).

Based on the review undertaken, it is understood that the extent of locally-native and prescribed trees that are proposed for removal to facilitate the application is either 7 of 21 (33%) throughout the entire

property, or 7 of 14 (50%) above the foreshore building line only. It is also noted that the Project Arborist has determined that these 6 of these trees (T.3b, 10, 11, 18, 20, 21) proposed for removal have decay, borers and/or termites. T.18 contains a visible termite nest in the lower canopy which was observed by Council's Biodiversity Officer onsite.

It is understood that the proposed architectural design has been amended to retain high-value trees within the site. Trees of high-significance (Tree 13 & 37) are now proposed for retention, which is consistent with the advice provided by the Biodiversity Officer at pre-lodgement and the previous Biodiversity Unit recommendation (7/10/2021). Several retained trees will be in close proximity (<2m) from the proposed dwelling, and therefore may be subject to a future exemption under PDCP B4.22 as noted by Council's Landscape referral team. However the Council's Biodiversity Unit raise no objection subject to a condition that these trees are maintained in perpetuity.

In a review of the amended proposal against Section 7 of the Biodiversity Assessment Methodology (2020), Council's Biodiversity Officers found:

- The proposed removal of 33% of canopy (tree count) within the site, with the retention of 50% of prescribed trees occurring above the foreshore building line (i.e. developable area of the site)
- The proposed replanting of 6 trees (2 *Angopohora costata*, 1 *Corymbia maculata*, 3 *Livistona australis*), at best resulting in a long-term loss of 4% - 8% of canopy and PSGF EEC within the site depending on the success of the transplantation of Tree 19.
- Adequate evidence of avoidance and minimisation through retention of high value trees, specifically Tree 13 and 27 that are located within the permissible development area and are now planned for retention.

The amended design allows for retention of high-value trees within the site, and although the current design requires the removal of 7 trees, 6 of these are compromised by decay, borers or termites and may otherwise be approved for removal under the s8(1), (2) or (3) *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*, therefore removal of these trees is considered acceptable subject to replanting proposed under the Landscape Plan, and ongoing retention of all high-value trees within the site. A Vegetation Management Plan and Tree Protection Plan will be conditioned to protect all trees proposed for retention and to restore and maintain the currently weed-infested understorey per the recommendation of the Biodiversity Development Assessment Report (ACS Environmental 2021).

Subject to conditions the Bushland and Biodiversity referral team find the application to be consistent against relevant biodiversity controls.

Original Recommendation - 7/10/2021

Council's Biodiversity Unit do not support the proposal in its current form.

The key concerns raised by Biodiversity include:

1. A finalised Arboricultural Impact Assessment is not provided with the application.
2. The Biodiversity Development Assessment Report (BDAR) relies on the unfinalised Arboricultural Impact Assessment, and therefore cannot be relied upon for assessment of nearby tree impacts.
3. The BDAR does not demonstrate adequate avoidance or minimisation of biodiversity impacts in accordance with the Biodiversity Assessment Methodology 2020.
4. The proposed impacts to Pittwater Spotted Gum Forest within the site are considered non-compliant with Clause 13 of the State Environmental Planning Policy (Coastal Management), Clause 7.6 of the Pittwater Local Environmental Plan 2014 and B4.7 of the Pittwater 21 Development Control Plan.

Further detail on point (1) - (4) is provided below.

(1) The recently submitted 'Pre DA Impact Assessment and Management Plan' and 'Tree Table' (Botanics Tree Wise People 2021), appears to be conceptual and does not provide an assessment of all trees within 5m of the proposed works. An updated report, with a clear assessment of short-term and long-term impacts to all trees within 5m of the proposal is required. The report must clearly state which trees are proposed for removal. Impacts to trees within adjoining properties or the road reserve will not be supported, and must be clearly assessed by an AQF5 Arborist in accordance with PDCP 4.22.

Council's Biodiversity Unit have undertaken a review of the submitted plans, and note that the following trees have been recommended for removal regardless of the DA:

- T1 - T3 *Ligustrum lucidum* (exempt - species)
- T16. *Pittosporum undulatum* (exempt - height <8m)
- T18. *Eucalyptus robusta* (prescribed)

No objection is made by Council's Biodiversity Unit to the removal of T1, 2, 3 & 16 given their exempt status within the LGA, however concern is raised over the species identification of T18 and the below referenced trees:

- T5 & 18 *Eucalyptus robusta* (identified by Council's Biodiversity Officers as *Eucalyptus umbra*)
- T8, 10, 11, 20, 21 & 29 *Casuarina glauca* (identified by Council's Biodiversity Officers as *Allocasuarina torulosa*)
- T27 *Eucalyptus microcorys* (identified by Council's Biodiversity Officers as *Eucalyptus paniculata*)

The correct species identification must be included in any finalised Arboricultural Impact Assessment submitted for the application.

T.18, or any other tree determined to be a 'Risk to Life or Property' by an AQF5 Arborist may be approved for removal in accordance with s8(1), (2) or (3) *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*. The planning pathway is separate from a DA Application, and must be resolved prior to lodging a DA should the applicant or their Arborist rely on this approval pathway. This process requires a concurrence from Council's Tree Services team, and a License to Pick or Harm a Threatened Species or Ecological Community from DPIE should the applicant wish to remove a tree diagnostic of the Pittwater Spotted Gum Forest EEC:

<https://www.environment.nsw.gov.au/licences-and-permits/wildlife-licences/licences-to-control-or-harm/licences-to-harm-threatened-species>

If an approval under SEPP (Vegetation in Non-Rural Areas) has not been sought and approved prior to DA lodgement (evidence required), all tree removal will be assessed under Part 4 of the EP&A and will be subject to the Biodiversity Offset Scheme and assessed by Council's Biodiversity Unit as requiring removal to facilitate the application.

2) The Biodiversity Development Assessment Report (BDAR : ACS Environmental 2021) states that 17 native canopy trees are proposed for removal, including, 7 *Corymbia maculata*, 2 *Eucalyptus umbra*, 5 *Allocasuarina torulosa*, 1 *Eucalyptus punctata*, 1 *Ceratopetalum gummiferum* & 1 *Eucalyptus paniculata*. The BDAR makes several references to this information having been collated from the *Tree Table and Pre-DA Impact Assessment and Management Plan for 189 Riverview Road, Avalon*

Beach (Botanics Tree Wise People 2021) however this report appears to be conceptual and does not provide a clear schedule of trees requiring removal. Following finalisation of the Arboricultural Impact Assessment, the BDAR must be updated to reflect the impacts specified by the Arboricultural Report.

(3) The proposal seeks to remove native vegetation from the Department of Planning, Industry and Environment's (DPIE) Biodiversity Values mapping. A BDAR prepared by an Accredited Assessor in accordance with BAM 2020 is noted within the submitted documentation.

Section 4.3.7 of the BDAR provides an assessment of Section 7.1.2 of the BAM (2020) which requires: "*The BDAR or BCAR must document the reasonable measures taken by the proponent to avoid or minimise clearing of native vegetation and threatened species habitat during proposal design, including placement of temporary and permanent ancillary construction and maintenance facilities.*"

The assessment provided by the Accredited Assessor is limited and the impacts to the extent of Pittwater Spotted Gum Forest within the site are understated in favor of retention of cave structures. The same cave structures have also been determined to be '*degraded to the point that the species is unlikely to use the subject land*' in accordance with s.5.2.3(2)(a)(ii) of the *Biodiversity Assessment Methodology 2020* for threatened microbats. While Council's Biodiversity Unit agree that the cave habitat must be retained, the assessment provided by the Assessor that "*Avoidance of impacts have been achieved by avoiding any impact on cave or cliff structures that occur below the Foreshore Building Line*" is considered inaccurate. Further, the position that 'minimisation' of impacts have been achieved through the (unfinalised) Tree Protection Zone Management Plan (Botanics Tree Wise People 2021) which provides measures to avoid impacts to trees in the adjoining properties or road reserve, which would not be permissible without relevant owners consent, is also considered inaccurate.

No evidence of lower impact design options have been presented with the proposal, and therefore it is assumed that none have been considered.

In a review of the proposal against Section 7 of the BAM (2020), Council's Biodiversity Officers found:

1. TPZ Encroachment of over 10% of up to 5 trees proposed for retention, including up to 29.24% encroachment into the TPZ of Tree 23 in the neighbouring property, as detailed in Council's Landscape Unit referral.
2. The proposed removal of 64% of canopy within the site, including all trees above the Foreshore Building Line (the maximum developable area of the site)
3. The proposed replanting of 6 trees, in existing vegetated areas, or otherwise growth restricted by the proposed development, at best resulting in a long-term loss of 42% of canopy and TEC within the site.
4. Limited evidence that impacts to significant biodiversity features such as Tree 13 & Tree 27 have been avoided, in accordance with advice provided by Council's Biodiversity Officer at pre-lodgement.
5. The 'avoided' cave structures cited within the BDAR are located below the Foreshore Building Line, and likely would not have been impacted nor would impacts from ancillary structures (e.g. paths) have been supported by Council in accordance with 4.1.4.5 of the PDCP.

(4) Citing Pittwater DCP B4.7, advice provided by Council's Biodiversity Officer at pre-lodgement meeting:

"At this stage, the proposal is therefore considered to be inconsistent with the control. The applicant is therefore encouraged to redesign the proposal in accordance with arboricultural advice to enable retention of high significance trees, particularly Trees 13 and 27."

Impacts to biodiversity have not substantially changed from those proposed at pre-lodgement, or are

otherwise unclear in the submitted documentation. At present, the application seeks to remove up to 64% of canopy (including TEC), while proposed landscaping will at best, result in a long-term loss of 42% of canopy and is therefore considered inconsistent with PLEP7.6 and PDCP 4.7; *Development shall result in no significant onsite loss of canopy cover or a net loss in native canopy trees.*

The site is subject to cl.13(1)(a) of State Environmental Planning Policy (Coastal Management):
"(1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following: (a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment"

No assessment of the proposal against the cl.13(1)(a) is provided with the application, and the current design is considered likely to have an adverse impact on the integrity and resilience of the ecological environment.

As the plans have not changed substantially since pre-lodgement, the advice provided by Council's Biodiversity Unit remains unchanged: This loss of vegetation is not supported and the footprint of the building should be re-designed to minimise the loss to an acceptable degree. The applicant is encouraged to explore alternative design options that retain the significant biodiversity features within the site and utilise the existing vegetation to compliment the proposed landscaped gardens.

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:

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

Pre-clearance Survey

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

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

Reason: To protect native wildlife.

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 the LMBC Service Centre bam.support@environment.nsw.gov.au. The LMBC Service Centre arranges for determination outcomes to be recorded in the Biodiversity Offset and Agreement Management System (BOAMS).

Council's Manager Bushland and Biodiversity and the 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 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	IBRA sub-region	Plant community type(s) that can be used to offset the impacts from development
1214 - Pittwater Spotted Gum Forest	Pittwater and Wagstaffe Spotted Gum Forest in the Sydney Basin Bioregion	1	NO	Pittwater, Cumberland, Sydney Cataract, Wyong and Yengo. or Any IBRA subregion that is within 100 kilometers of the outer edge of the impacted site.	1214, 1589

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 and Biodiversity of Northern Beaches Council and the Certifying Authority prior to release of construction certification.

Table 2 Ecosystem credits required to be retired – variation rules

Impacted plant community type	Number of ecosystem credits	Containing HB1
1214 - Pittwater Spotted Gum Forest	1	NO

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

Vegetation Management and Tree Protection Plan

Prior to issue of the any Construction Certificate, a Vegetation Management and Tree Protection Plan (VMTPP) must be prepared to the satisfaction of Manager Bushland and Biodiversity of Northern Beaches Council and submitted to the Certifying Authority.

In accordance with the recommendations of the Biodiversity Development Assessment Report, the VMTPP must detail management actions to protect any retained trees occurring within or adjacent to the construction footprint, as well as a weeding program to remove any High Threat Exotics weeds from the property following construction. Measures to remove climbing weeds observed within the canopy of significant trees to be retained must also be included.

The VMTPP is to be prepared by the Project Ecologist in consultation with the Project Arborist, and must include a clear map and table detailing documenting the location and status of all trees to be retained in perpetuity including those within 2m of the future dwelling and Tree 37 (Spotted Gum) below the foreshore building line.

The VMTPP may form part of a Construction Environmental Management Plan.

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

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 Certifying Authority Prior to issue of Construction Certificate.

Reason: To protect native vegetation and wildlife.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

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.

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

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 Certifying Authority prior to issue of any Occupation Certificate.

Reason: To protect wildlife habitat.

Certification of Landscape Plan

Landscaping is to be implemented in accordance with the approved Landscape Plans (DurieDesign 2021) and these conditions of consent.

Details demonstrating compliance are to be prepared by the landscape architect and provided to the Principal Certifying Authority prior to issue of the Occupation Certificate.

Reason: To ensure compliance with the requirement to retain and protect significant 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 2019 – 2023) are to be imported on to the site prior to or during construction works.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority 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 2019 – 2023) within the development footprint are to be removed.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority 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.

Removal of exemption under B4.22 of Pittwater 21 Development Control Plan

The exemption by proxy listed under B4.22 of the Pittwater 21 Development Control Plan is to be removed for the site, specifically:

Council's authorisation of a Vegetation Clearing Permit is not required for:

- *The removal of a tree, where the base of the trunk of the tree at ground level, is located within two (2) metres of an existing approved building (not including decks, pergolas, sheds, patios or the like, even if they are attached to a building).*

All native trees within 2m of the future approved building that would otherwise be considered exempt, must only be cleared following approval via Development Application/Modification, a Vegetation Clearing Permit or is otherwise subject to s8(3)(4) of the State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017.

Reason: Ongoing protection of trees within 2m of the future approved building.