

Natural Environment Referral Response - Biodiversity

Application Number:	DA2019/1378
Responsible Officer	Catriona Shirley
Land to be developed (Address):	Lot 79 DP 752017 , 79 Kumarna Street DUFFYS FOREST NSW 2084

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

This application was assessed against Warringah DCP E2 Prescribed vegetation, E5 Native vegetation, and E6 Retaining unique environmental features, as well as relevant provisions of the NSW *Biodiversity Conservation Act 2016*.

The property is 2.02 ha in size and currently vacant land containing native vegetation with a portion in the north-western area that has been subject to past clearing and disturbances and currently contains day yards for at least 3 horses. The south-eastern portion of Kumarna Street road reserve is 0.33 ha and currently contains unsealed vehicle access. The total area encompassing the property and road reserve is 2.35 ha.

The proposal is for construction of a 6-bedroom dwelling, swimming pool, reflection pond, driveway, landscaping and equestrian facilities including covered dressage arena, and a 35 x 13 m stables building which includes 8 stables and 7 paddocks. The property will require onsite sewerage treatment and will rely on onsite collection of water. A sealed road with a turning circle and power poles for connection to utilities is proposed within Kumarna Street, a currently unmade Crown road reserve which provides access to the property. The works will result in substantial clearing of native vegetation for the proposed dwelling and horse facilities and modification of native vegetation for the Asset Protection Zone (APZ).

Warringah DCP Controls

Any development at this site must comply with local controls, specifically:

- *Development is to be situated and designed to minimise the impact on prescribed vegetation, including remnant canopy trees, understorey vegetation, and ground cover species.*
- *To protect and promote the recovery of threatened species, populations and endangered ecological communities.*
- *To protect and enhance the habitat of plants, animals and vegetation communities with high*

conservation significance.

- *Development is to be designed to address any distinctive environmental features of the site and on adjoining nearby land.*

The submitted Biodiversity Development Assessment Report (BDAR) (Hayes Environmental 04/12/2019) surveyed and mapped 2.0 ha of native vegetation within the subject site: 1.3 ha of Duffys Forest Endangered Ecological Community (EEC) (PCT 1786) and 0.7 ha of sandstone woodland (PCT 1783). The proposed development will result in the removal / modification of at least 1.58 ha or 79% of native vegetation within the site; this includes 1.06 ha or 81.5 % of Duffys Forest EEC. The site is also known habitat for threatened species including the Eastern Pygmy Possum (*Cercartetus nanus*) and *Tetratheca glandulosa*. At least 29 hollow-bearing trees occur onsite, at least 21 of which are estimated to be removed as part of the proposal. The total number of trees to be removed is unknown but likely to be significant.

No Arborist Report or Biodiversity Management Plan was provided with the application in accordance with DA lodgement requirements, however submission of these documents would not change the extent of direct impacts of the proposal in its current form and resulting non-compliance.

The proposal as submitted does not demonstrate compliance with any DCP biodiversity controls which apply to the property.

NSW Biodiversity Offsets Scheme

The proposal will result in removal / modification of at least 1.58 ha of native vegetation. As such, it automatically triggers entry into the Biodiversity Offset Scheme (BOS) by way of exceeding the the 0.5 ha area BOS clearing threshold.. Section 7.2 of the BC Act 2016 states that development which exceeds the BOS threshold is "likely to significantly affect threatened species".

The BDAR (Hayes Environmental 04/12/2019) was prepared by an Accredited Assessor and generally complies with the minimum reporting requirements set out by the BOS. The threatened species survey effort was comprehensive, spanning over multiple years since the Pre-Lodgement Meeting.

A fundamental concern is that there has been no genuine effort to avoid direct impacts to threatened entities via a reduction in the development footprint or removal of non-ancillary elements of the proposal, particularly given that Duffys Forest EEC is listed as a "Serious And Irreversible Impacts" (SAII) candidate. The impacts assessed within the BDAR are not considered to be "residual" for the purposes of offsetting as there has been inadequate consideration of avoiding and minimising biodiversity impacts. This results in non-compliance with the BOS assessment requirements set out under Section 6.12 of the BC Act.

Additional comments regarding the BDAR and impact assessment:

- Likely construction-related impacts to retained vegetation at the driveway interface have not been assessed or included in the credit calculation.
- Further indirect impacts appear likely due to inadequate wastewater and stormwater measures proposed.

Conclusion and Recommendations

The proposal in its current form is not supported due to non-compliances with applicable biodiversity provisions of the Warringah DCP and the NSW *Biodiversity Conservation Act 2016* (BC Act 2016). The applicant is encouraged to reconsider non-ancillary elements to reduce the footprint of the proposal in accordance with impact mitigation principles of relevant State and Federal environmental legislation; i.e.

first avoid and then minimise impacts on biodiversity.

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.