

Natural Environment Referral Response - Biodiversity

Application Number:	DA2021/0064
Date:	09/07/2021
Responsible Officer	Kye Miles
Land to be developed (Address):	Lot 5 DP 12797 , 41 Wallumatta Road NEWPORT NSW 2106

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

Updated Comments (9th July 2021)

The applicant has provided the following additional or amended reports/plans to support the application:

- Flora and Fauna Impact Assessment Report (Total Earth Care, July 2021)
- Amended Landscape Plan (A Total Concept, July 2021)
- Amended Bushfire Hazard Assessment Report (Control Line Consulting, Jan 2021)
- Amended Architectural Plans (Belli Design Building Plans, May 2021).

The Flora and Fauna Impact Assessment (FFIA) confirmed that Pittwater Spotted Gum Forest EEC occurs within the subject site, and approximately 0.013ha will be removed as a result of the proposed development. The report provides confirmation that entry into the BOS is not triggered and as such a BDAR is not required, and delivered assessment of potential impacts to threatened entities within the subject site, including 5-part tests confirming no significant impact as a result of the proposed development for the following:

- Pittwater and Wagstaffe Spotted Gum Forest in the Sydney Basin Bioregion Endangered Ecological Community
- Large Bent-winged Bat (*Miniopterus orioanae oceanensis*)
- Little Bent-winged Bat (*Miniopterus australis*)
- Powerful Owl (*Ninox Strenua*)
- Grey-headed Flying-fox (*Pteropus poliocephalus*)

A number of mitigation measures were recommended by the Ecologist and will be conditioned within these conditions of consent.

The amended Landscape Plans and Architectural plans still display discrepancies and should be updated for consistency.

In accordance with the recommendations of the submitted Arboricultural Impact Assessment, the following trees are permitted to be removed with consent; Trees 10, 11, 15, 20, 27 & 28. No additional tree removal is permitted without further assessment.

Original biodiversity comments required a 1:1 replacement ratio for canopy trees that require removal, and it is noted that in the updated landscape plan only three (3) canopy trees have been proposed for planting. Three (3) additional canopy trees, including three (3) *Corymbia maculata* are to be included in the landscape plan in an appropriate location within the subject site. This is to ensure that no net canopy loss is achieved as a result of the proposed development, in accordance with cl.B4.7 of the P21DCP.

Subject to these conditions of consent, Council's biodiversity referrals team are satisfied that the proposed development complies with the relevant biodiversity provisions.

Original Comments (7th April 2021)

Council's biodiversity referrals team have assessed the Development Application for compliance against the following applicable biodiversity related provisions:

- Biodiversity Conservation Act 2016 (BC Act)
- Pittwater LEP cl. 7.6 Biodiversity Protection
- Pittwater 21 DCP cl. B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community
- Coastal Management SEPP (2018) cl. 11 Development on land in proximity to littoral rainforest

The Statement of Environmental Effects (SEE) submitted with the development application has not addressed the applicable biodiversity provisions listed above. The SEE is to be amended and resubmitted to include discussion relating to the proposals impact on the above listed provisions.

The Arborist Report (The Ents Tree Consultancy 2020) has identified that six (6) trees will require removal in order to facilitate the proposed development, including Trees 10, 11, 15, 20, 27 & 28, all of which are Prescribed trees. In accordance with cl. B4.7 of the P21DCP, an Ecological Impact Assessment (EIA) is required to be prepared to assess the biodiversity impacts on Pittwater Spotted Gum Forest Endangered Ecological Community that has been mapped on the Subject Site. A 5-part Test pursuant to Section 7.3 of the Biodiversity Conservation Act 2016 (BC Act) is required to be included in the EIA. The EIA will also need to address any potential impacts associated with the establishment and on-going maintenance required for the Asset Protection Zone (APZ) as prescribed by the Bushfire Consultant. This includes identifying which trees (if any) require removal.

The Bushfire Hazard Assessment (Control Line Consulting 2020) provides conflicting advice in relation to the vegetation required for removal in order to achieve APZ requirements in accordance with Planning for Bushfire Protection 2019. On page 6, the report notes "*The proposed scope of works does necessitate the removal of some vegetation as required to satisfy the recommendations for asset protection zones*" whilst on page 10 the report states "*The maintenance of the majority of area upon the subject allotment currently would satisfy the requirements of an inner protection area of an asset protection zone as contained in Planning for Bush Fire Protection 2019*". Clarification as to the species

and number of trees and/or vegetation required for removal in order to achieve PBP is to be included in the updated Bushfire Hazard Assessment and resubmitted to Council for assessment.

The Landscape Plan (A Total Concept 2020) submitted with the application has not provided adequate replacement plantings for the loss of six (6) prescribed trees within the site. The plan is to be amended to ensure that at least 80% of any new planting incorporates native vegetation (as per species listed in Pittwater Spotted Gum Endangered Ecological Community), and include a replacement ratio of at least 1:1 for native trees proposed for removal.

Upon amendment and resubmission of updated documentation, Council's biodiversity referrals team will assess the Development Application for compliance against biodiversity provisions listed above.

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

Compliance with Ecologist's Recommendations – Pre-construction

All pre-construction biodiversity-related measures specified in the Flora and Fauna Impact Assessment Report (Total Earth Care, July 2021) and these conditions of consent are to be implemented at the appropriate stage of the development. Compliance with pre-construction measures are to be certified by the Project Ecologist and provided to the Certifying Authority prior to issue of the Construction Certificate.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures.

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 Certifying Authority prior to issue of Construction Certificate.

Reason: To protect native vegetation.

Amendment of Landscape Plans

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

- Provision of an additional three (3) *Corymbia maculata* for planting within the site, in addition to the three (3) replacement canopy trees.

The amended Landscape Plan is to be certified by a qualified landscape architect and provided to the Certifying Authority 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 the Flora and Fauna Impact Assessment Report (Total Earth Care, July 2021).

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**Compliance with Ecologist's Recommendations – During Construction**

All biodiversity-related measures are to be implemented during construction in accordance with Flora and Fauna Impact Assessment Report (Total Earth Care, July 2021)

Compliance with these measures is to be certified by the Project Ecologist in writing to the Principal Certifying Authority.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures.

Impacts to Protected Native Wildlife

Habitat for native wildlife including all vegetation proposed for removal is to be inspected for native wildlife by the Project Ecologist prior to removal. If native wildlife is found within habitat to be removed, the wildlife is to be safely relocated by the Project Ecologist.

Any incidents in which native wildlife are injured or killed as a result of works are to be recorded, in addition to details of any action taken in response.

Written evidence of compliance (including records of inspections and any wildlife incidents) is to be prepared by the Project Ecologist and provided to the Principal Certifying Authority

Reason: To protect native wildlife.

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.

Temporary Protection Fencing – Exclusion Zones

Prior to the commencement of any works onsite, temporary mesh construction fencing is to be erected and maintained for the duration of construction activities to delineate the southern portion of the site

mapped within the BV mapped area. This is to ensure no removal of vegetation from within the BV mapped area.

Details demonstrating compliance must be prepared by the Project Ecologist and submitted to the Principal Certifying Authority prior to any commencement.

Reason: To protect native vegetation.

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

Compliance with Ecologist's Recommendations – Post Construction

All biodiversity-related measures are to be implemented at the appropriate stage of development in accordance with the Flora and Fauna Impact Assessment (Total Earth Care, July 2021).

Satisfactory establishment/initiation of post-construction measures is to be certified by the Project Ecologist and provided to the Principal Certifying Authority prior to issue of any Occupation Certificate.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures.

Protection of Habitat Features

All natural landscape features, including any rock outcrops, native vegetation and/or watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans.

Details demonstrating compliance are to be 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 amended and approved Landscape Plans 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.

Replacement of Canopy Trees

At least six (6) locally native canopy trees are to be planted on site to replace protected trees approved for removal. Species are to have a minimum mature height of 8.5m. Three (3) are to be *Corymbia maculata*.

Tree plantings are to be retained for the life of the development and/or for their safe natural life. Trees that die or are removed must be replaced with another locally native canopy tree.

Replacement plantings are to be certified as being completed in accordance with these conditions of consent by a qualified landscape architect, and details submitted to the Principal Certifying Authority prior to issue of any Occupation Certificate.

Reason: To establish appropriate native landscaping.

No Weeds Imported On To The Site

No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan 2021 – 2026) 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.