

## Natural Environment Referral Response - Biodiversity

<b>Application Number:</b>	DA2021/2624
<b>Date:</b>	25/02/2022
<b>Responsible Officer</b>	Kye Miles
<b>Land to be developed (Address):</b>	Lot 55 DP 24563 , 122 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 proposal as submitted cannot be supported due to insufficient information and apparent inconsistency with local planning controls.

The following biodiversity-related provisions apply to the site:

- NSW Biodiversity Conservation Act 2016 (BC Act)
- Pittwater LEP 2014 Clause 7.6 (Biodiversity Protection)
- Pittwater 21 DCP 2014 Clause B4.4 (Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor)
- Pittwater 21 DCP 2014 Clause B4.7 (Pittwater Spotted Gum Forest – Endangered Ecological Community)
- SEPP (Coastal Management) 2018 - Clause 13 Development on land within the coastal environment area

### NSW Biodiversity Conservation Act 2016 (BC Act)

As per written and verbal pre-lodgement advice provided by Council in October 2021, the site is identified on the Department of Planning and Environment's (DPE) Biodiversity Values (BV) Map. Impact to native vegetation identified on the BV Map triggers entry into the Biodiversity Offsets Scheme (BOS) and the requirement for a Biodiversity Development Assessment Report (BDAR). Specific pre-lodgement advice provided to the applicant is as follows:

*"As the site is located within DPIE's BV Map, the applicant will be required to engage an Accredited Assessor under the BAM (<https://customer.lmbc.nsw.gov.au/assessment/AccreditedAssessor>) to determine whether a Biodiversity Development Assessment Report (BDAR) is required.*

*If the Accredited Assessor determines that a **BDAR is NOT required**, a concise letter report should be submitted within the DA explaining why the BAM does not apply.*

*If the Accredited Assessor determines that a BDAR is required, the BDAR should demonstrate what measures have been taken to avoid and minimise before offsetting of vegetation is applied. Council may not support the proposal, unless minimisation of impacts is clearly demonstrated in accordance with the BAM. The BDAR must address the Serious and Irreversible Impact (SAIL) guidelines for the candidate SAIL Pittwater Spotted Gum Forest EEC, and any other applicable SAIL candidates. Advice provided to Council by DPIE is that "The approval authority must not grant approval if they determine the proposal is likely to have a serious and irreversible impact on biodiversity values". In addition to the BC Act, the BDAR must also address the requirements of relevant State Environmental Planning Policies, and the Commonwealth Environment Protection Biodiversity Conservation Act 1999 (EPBC Act).*

*A BDAR submitted with the DA must be finalised and signed by the Accredited Assessor within 14 days of the DA lodgement date in accordance with 6.15 of the Biodiversity Conservation Act 2016. The assessor is requested to add Northern Beaches Council as a case party to the BAM assessment in BOAMS and submit the case to the consent authority in BOAMS prior to the lodgement of the DA (per DPIE's Release notes – Consent Authority user access to BOAMS, March 2020). This will assist assessment of the DA and allow Council's Biodiversity Officers to view the BAM Calculator and electronically approve credit requirements."*

Contrary to this advice, the submitted "Ecological Letter" (Kingfisher Urban Ecology, 14 December 2021) submitted with the DA does not address whether the proposal triggers the requirement for a BDAR. However, it is evident from the submitted plans that the proposal will require removal of native trees within the BV Map area and that **a BDAR therefore is required**. In accordance with the NSW BC Act, the current proposal cannot be assessed without a BDAR.

### **Local Planning Controls**

As per written pre-lodgement advice, "any proposal to remove existing trees of moderate to high retention value will not be supported by Council if an alternative design arrangement is available, as assessed by Council". It is unclear why the garage and driveway have been proposed for relocation from the existing approved location (now proposed to accommodate a deck), at the expense of an additional four locally native trees. Further information to justify the removal of Trees 9, 10, 11, and 12 is required in order to assess consistency with PLEP Clause 7.6 and DCP Clause B4.7.

### **Conclusion**

The proposed removal of native trees identified on the NSW Biodiversity Values Maps triggers entry into the NSW Biodiversity Offsets Scheme and as such, requires submission of a Biodiversity Development Assessment Report (BDAR) prepared by an accredited assessor. In addition, the extent of additional tree removal proposed appears to be unjustified and inconsistent with local biodiversity controls.

The applicant may wish to consider redesigning the proposal to avoid any removal of native trees above what is already approved. This is likely to avoid the requirement for a BDAR (assuming no other prescribed impacts) and demonstrate greater consistency with local controls.

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.