

Natural Environment Referral Response - Biodiversity

Application Number:	DA2024/0492
Proposed Development:	Community title subdivision comprising of 13 lots and new road access
Date:	27/09/2024
Responsible Officer	Thomas Prosser
Land to be developed (Address):	Lot 1 DP 524083 , 21 A Warili Road FRENCHS FOREST NSW 2086 Lot 1 DP 1298188 , 49 Blackbutts Road FRENCHS FOREST NSW 2086

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

- NSW Biodiversity Conservation Act 2016
- Warringah DCP - Clause E2 Prescribed Vegetation
- Warringah DCP - Clause E6 Retaining unique environmental features

An amended Flora and Fauna Assessment (Ecological Consultants Australia Pty Ltd TA Kingfisher Urban Ecology and Wetlands, August 2024) has been submitted with the application and confirms that a total of 0.2ha will be cleared and therefore the proposal will not trigger entry into the Biodiversity Offsets Scheme via the clearing pathway. Calculations for area clearing have also been provided and no objections are raised. Furthermore, the FFA has addressed the issues raised in relation to the Avoidance and Minimisation of Impacts to the natural environment satisfying the requirements of the Biodiversity Guidelines for Development Applications.

As established in the RFI response from the applicant, amendments to the submitted landscape plan will be required given the findings of the FFA. Historically, the Plant Community Type present on site would have been Sydney Coastal Shale-Sandstone Forest which is related to Duffys Forest Endangered Ecological Community and amendment of the Landscape plan will be conditioned to remove species that are not present in the scientific determination of Duffys Forest (i.e. Tristaniopsis

laurina, Banksia robur, Acacia terminalis).

It is noted that the Landscape Referral has been completed and only approved tree removals related to direct impacts from the proposed civil works under the application which include the following: 7, 10, 60, 64, 72, 74, 75, 77, 79, 81, 82, 120 and 121. Removal of additional prescribed trees will be dealt with at the time of future applications resulting from the proposed subdivision.

Standard conditions will be recommended and will be complemented with conditions recommended in the submitted Flora and Fauna Assessment. The development is designed, sited and will be managed to avoid any significant adverse environmental impact.

AMENDED COMMENTS

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

- NSW Biodiversity Conservation Act 2016
- Warringah DCP - Clause E2 Prescribed Vegetation
- Warringah DCP - Clause E6 Retaining unique environmental features

An Arboricultural Impact Assessment (AIA) has been prepared and submitted with the application (The Tree Guardian, March 2024). The report has assessed the condition of a total of 149 trees and an additional 52 trees that have been grouped (trees 21 - group of 6 trees, 32 - group of 3 trees, 41 - group of 18 trees, 51 - group of 5 trees, 52 - group of 7 trees, 70 - group of 2 trees, 90 - group of 2 trees, 94 - group of 2 trees, 120 - group of 8 trees, 141 - group of 7 trees, 146 - group of 3 trees) number of trees that could potentially be impacted by the proposed subdivision.

The AIA outlines that a separate development application was lodged for demolition of the existing structures on site and recommended the removal of 91 trees with 55 being exempt by species, height and/or location, 20 within the demolition footprint, 8 subject to major encroachments and 8 were in poor health. This application has been determined and therefore trees approved for removal under that separate DA will not be considered as part of this application.

The following trees have been proposed for removal under this development application: 7, 14, 15, 16, 17, 18, 19, 20, 22, 25, 27, 29, 30, 31, 34, 35, 36, 37, 38, 39, 41 (grouping of 18 trees), 42, 43, 44, 45, 46, 47, 52 (grouping of 7 trees), 53, 54, 57, 59, 67, 71, 72, 74, 75, 77, 79, 81, 83, 84, 85, 86, 88, 89, 91, 96, 97, 98, 99, 100, 103, 104, 105, 106, 121.

As trees 41 and 52 are groupings, it has to be assumed that all trees within those groupings will be removed as specific tree protection measures cannot be conditioned, therefore it is considered that a total of 75 prescribed trees are being proposed for removal.

A Flora and Fauna Assessment (Ecological Consultants Australia Pty Ltd TA Kingfisher Urban Ecology and Wetlands, April 2024) has been submitted with the application and concluded that the application would not trigger entry into the Biodiversity Offsets Scheme (BOS) as the proposal does not exceed the clearing threshold (0.2 ha). However:

- No map including these calculations has been provided and the inclusion of *Figure 7.2 Trees retained after demolition* would allow for consideration that the total impact of demolition works and subdivision works have been considered separately in the calculation of the clearing thresholds.
- The report considers in its results that a total of 88 prescribed trees, 45 exotic trees and a grouping of an additional 18 trees are proposed for removal (total of 151 trees). These numbers are inconsistent with those presented in the AIA.

- The report has also failed to adequately address and discuss the Avoidance and Minimisation strategies explored by the development as required in Council's Biodiversity Requirements for Development Applications: [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://files-preprod-d9.northernbeaches.nsw.gov.au/nbc-prod-files/media/files/2024-05/Biodiversity%20Requirements%20for%20Development%20Applications%20-%202024.pdf?1715582608](https://files-preprod-d9.northernbeaches.nsw.gov.au/nbc-prod-files/media/files/2024-05/Biodiversity%20Requirements%20for%20Development%20Applications%20-%202024.pdf?1715582608)

Furthermore, a Landscape Plan (Taylor Brammer, April 2024) has been submitted with the application and includes a planting schedule that is consistent with the Native Planting Guide available on Council's website. The Planting guide includes a total of 14 trees to be planted.

Council's Biodiversity Referrals team do not support the application in its current form due to the following:

- The proposal to subdivide the lot into 13 lots for residential development is found to be inconsistent with the requirements of the Environmental Planning and Assessment Act Section 4.1.5 (1) (b).
- The proposal is also inconsistent with the objectives of WDCP cl. E2 and cl. E6 as the majority of trees on site are appear to be proposed for removal.
- The information provided with the subdivision application is unclear. The total number of trees to be removed for the purposes of demolition of existing structures and the number of trees proposed to be removed due to the proposed subdivision is inconsistent in the reports (Arboricultural Impact Assessment and Flora and Fauna Assessment) submitted with the application.
- The submitted Flora and Fauna Assessment has not adequately demonstrated whether the application exceeds the Biodiversity Offsets Scheme and has failed to adequately address the Avoidance and Minimisation strategies explored to reduce impacts to the natural environment.
- The application in its current form would require substantial removal of prescribed trees that are not compensated by the proposed Landscape planting schedule.

The applicant is encouraged to retain prescribed vegetation and consider alternative designs that will avoid and minimise impacts to the natural environment. Reports submitted with the application should be consistent with each other for evaluation of impacts to the natural environment to be clearly discernible.

In addition to the incorporation of the landscaping elements already included in the application, consideration should be given to the removal of a dwelling within proposed Lot 3 to form a community title lot which would allow for the retention of a number of prescribed trees including trees 15, 16, 17, 18, 19, 20, 21, 22, 29, 30, 34, 36, 37, 43, 45, 46, 47, 48 and 49.

ORIGINAL COMMENTS

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

- NSW Biodiversity Conservation Act 2016
- Warringah DCP - Clause E2 Prescribed Vegetation
- Warringah DCP - Clause E6 Retaining unique environmental features

An Arboricultural Impact Assessment (AIA) has been prepared and submitted with the application (The Tree Guardian, March 2024). The report has assessed the condition of a total of 149 trees and an additional 52 trees that have been grouped (trees 21 - group of 6 trees, 32 - group of 3 trees, 41 - group of 18 trees, 51 - group of 5 trees, 52 - group of 7 trees, 70 - group of 2 trees, 90 - group of 2

trees, 94 - group of 2 trees, 120 - group of 8 trees, 141 - group of 7 trees, 146 - group of 3 trees) number of trees that could potentially be impacted by the proposed subdivision.

The AIA outlines that a separate development application has been lodged for demolition of the existing structures on site and recommended the removal of 91 trees with 55 being exempt by species, height and/or location, 20 within the demolition footprint, 8 subject to major encroachments and 8 were in poor health. This application is yet to be determined and therefore approved tree removals for the purposes of demolition are unconfirmed. Additional information to be noted is the following:

- In addition to the 91 trees proposed for removal for the Demolition DA (undetermined), the current DA will require the removal of an additional 42 prescribed trees (17, 22, 25, 27, 30, 31, 34, 35, 36, 37, 38, 41 (grouping of 18), 42, 43, 44, 45, 46, 52, 53, 54, 57, 59, 60, 64, 67, 71, 74, 75, 77, 79, 83, 85, 86, 88, 89, 91, 100, 101, 104, 105, 106 & 114).
- An overlap of 24 of these trees are proposed to be removed in the Demolition DA (62, 64, 83, 84, 85, 86, 88, 89, 91, 96, 97, 98, 99, 100, 101, 103, 104, 105, 106, 107, 108, 110, 114 and 137). These trees include grouping 41 where the specific number of trees to be retained has not been confirmed and therefore, for the purpose of calculation of impacts they are assumed to be proposed for removal.

A Flora and Fauna Assessment (Ecological Consultants Australia Pty Ltd TA Kingfisher Urban Ecology and Wetlands, April 2024) has been submitted with the application and concluded that the application would not trigger entry into the Biodiversity Offsets Scheme (BOS) as the proposal does not exceed the clearing threshold (0.2 ha). However:

- No map including these calculations has been provided and the inclusion of *Figure 7.2 Trees retained after demolition* would allow for consideration that the total impact of demolition works and subdivision works have been considered separately in the calculation of the clearing thresholds.
- The report considers in its results that a total of 88 prescribed trees, 45 exotic trees and a grouping of an additional 18 trees are proposed for removal (total of 151 trees). These numbers are inconsistent with those presented in the AIA.
- The report has also failed to adequately address and discuss the Avoidance and Minimisation strategies explored by the development as required in Council's Biodiversity Requirements for Development Applications: [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://files-preprod-d9.northernbeaches.nsw.gov.au/nbc-prod-files/media/files/2024-05/Biodiversity%20Requirements%20for%20Development%20Applications%20-%202024.pdf?1715582608](https://files-preprod-d9.northernbeaches.nsw.gov.au/nbc-prod-files/media/files/2024-05/Biodiversity%20Requirements%20for%20Development%20Applications%20-%202024.pdf?1715582608)

Furthermore, a Landscape Plan (Taylor Brammer, April 2024) has been submitted with the application and includes a planting schedule that is consistent with the Native Planting Guide available on Council's website. The Planting guide includes a total of 14 trees to be planted.

Council's Biodiversity Referrals team do not support the application in its current form due to the following:

- The proposal to subdivide the lot into 13 lots for residential development is found to be inconsistent with the requirements of the Environmental Planning and Assessment Act Section 4.1.5 (1) (b).
- The proposal is also inconsistent with the objectives of WDCP cl. E2 and cl. E6 as the majority of trees on site are appear to be proposed for removal.

- The information provided with the subdivision application is unclear. The total number of trees to be removed for the purposes of demolition of existing structures and the number of trees proposed to be removed due to the proposed subdivision is inconsistent in the reports (Arboricultural Impact Assessment and Flora and Fauna Assessment) submitted with the application.
- The submitted Flora and Fauna Assessment has not adequately demonstrated whether the application exceeds the Biodiversity Offsets Scheme and has failed to adequately address the Avoidance and Minimisation strategies explored to reduce impacts to the natural environment.
- The application in its current form would require substantial removal of prescribed trees that are not compensated by the proposed Landscape planting schedule.

The applicant is encouraged to retain prescribed vegetation and consider alternative designs that will avoid and minimise impacts to the natural environment. Reports submitted with the application should be consistent with each other for evaluation of impacts to the natural environment to be clearly discernible.

In addition to the incorporation of the landscaping elements already included in the application, consideration should be given to the removal of a dwelling within proposed Lot 3 to form a community title lot which would allow for the retention of a number of prescribed trees including trees 15, 16, 17, 18, 19, 20, 21, 22, 29, 30, 34, 36, 37, 43, 45, 46, 47, 48 and 49.

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

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.

Installation of Nest Boxes

A minimum of 2 nest boxes are to be installed in retained trees / throughout the trees within areas of retained native vegetation / on the site as recommended in the approved Flora and Fauna Assessment (Ecological Consultants Australia Pty Ltd TA Kingfisher Urban Ecology and Wetlands, September 2024).

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:

- The submitted landscape plan will have to be consistent with the Duffys Forest Ecological community determination as established within the submitted Flora and Fauna Assessment.

Compliance with these measures is to be certified by the Project Ecologist in writing to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To maintain and replace habitat 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 **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 Certifier prior to issue of Construction Certificate.

Reason: To protect native vegetation and wildlife.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

Compliance with Ecologist's Recommendations – During Construction

All impact mitigation measures specified in the approved Flora and Fauna Assessment Report/Biodiversity Development Assessment Report are to be implemented at the appropriate stage of development.

Compliance with these measures is to be certified by the Project Ecologist in writing to the Principal Certifier prior to issue of any Occupation Certificate.

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

Wildlife Protection

If construction activity associated with this development results in injury or displacement of a native mammal, bird, reptile or amphibian, a licensed 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

Compliance with Ecologist's Recommendations – Post Construction

All impact mitigation measures specified in the approved Flora and Fauna Assessment Report/Biodiversity Development Assessment Report are to be implemented at the appropriate stage of development.

Written and photographic evidence of compliance is to be prepared by the Project Ecologist and provided to the Principal Certifier prior to issue of any Occupation Certificate.

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

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) within the development footprint are to be removed using an appropriate control method.

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

Compliance with Ecologist's Recommendations – Ongoing

All impact mitigation measures specified in the approved Flora and Fauna Assessment Report/Biodiversity Development Assessment Report are to be implemented at the appropriate stage of development.

Successful establishment/initiation of ongoing biodiversity measures is to be certified by the Project Ecologist in writing to the Principal Certifier 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, soil and/or watercourses, are to remain undisturbed except where affected by necessary works detailed on

approved plans.

Reason: To protect wildlife habitat.