

Natural Environment Referral Response - Biodiversity

Application Number:	DA2021/1408
Date:	08/10/2021
Responsible Officer	Maxwell Duncan
Land to be developed (Address):	Lot 2 DP 325220 , 16 Addison Road MANLY NSW 2095 Lot LIC 30003605 , 16 Addison Road MANLY NSW 2095

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

Relevant Provisions

The proposal has been assessed against the following provisions:

- NSW Biodiversity Conservation Act 2016 (BC Act)
- NSW Biodiversity Conservation Regulation 2017 (BC Regulation)
- Manly LEP Clause 6.5 (Terrestrial Biodiversity)
- Manly DCP Clause 5.4.2 (Threatened Species and Critical Habitat Lands)
- Manly DCP Clause 3.3.1.a.v (Landscaping Design – bandicoot habitat)

Impact Assessment

The subject site is identified as being within the NSW Biodiversity Values Map (BV Map) and includes areas of the 'Little Penguin Declared Area of Outstanding Biodiversity Value' as declared under the BC Act. Accordingly, the DA has been accompanied by a Biodiversity Development Assessment Report (BDAR), prepared by an accredited assessor in accordance with the NSW Biodiversity Assessment Method.

The BDAR (GIS Environmental Consultants, July 2021) provides a comprehensive assessment of potential impacts to Little Penguins, Long-nosed Bandicoots and other relevant threatened species arising from the proposal. It is considered that the key potential impacts arising from the proposal are associated with demolition, excavation and construction activities; these have been assessed in the BDAR and include:

- Noise and vibration in penguin habitat during demolition, excavation and construction
- Waste management activities and increased human use of penguin habitat areas during

construction

- Sedimentation and run-off into penguin habitat
- Impacts to other threatened species i.e. Long-nosed Bandicoot population, three threatened flora species.

Noise and vibration during demolition, excavation and construction

Construction-related impacts such as noise and vibration will be primarily managed by timing high-impact works (i.e. demolition and excavation) to occur during the penguin non-breeding season. Whilst the BC Regulation defines the Little Penguin breeding season as “the period from 1 July in any year until 28 February in the following year (both dates inclusive)”, penguins may vacate a nest/moult site prior to the end of February and/or may return to nest sites prior to 1 July. The Geotech Report recommends non-percussive excavation techniques, including those for the lower level. If percussive excavation works occur then a detailed penguin monitoring provision to enable adaptive noise and vibration management in response to variable patterns of penguin site usage will need to be developed by the Project Ecologist.

It is considered that, subject to proposed mitigation and monitoring measures (if required), noise/vibration associated with demolition, excavation and construction works are unlikely to impact penguin habitat or behaviour.

Waste management activities and increased human use of the foreshore during construction

In order to avoid disturbing penguin breeding/moulting behaviour, delivery of materials and removal of waste is to be undertaken from Addison Road and not via the foreshore at any time.

Sedimentation and run-off into penguin habitat

Inadequately managed sedimentation and construction run-off has the potential to impact penguin nesting/moulting/loafing habitat at the bottom of the cliff. Appropriate provisions to prevent sedimentation and run-off into penguin habitat will be conditioned.

Impacts to other threatened species

The development footprint is generally confined to the existing built form and is therefore unlikely to result in a permanent loss of wildlife habitat such as foraging resources for Long-nosed Bandicoots (lawn/garden).

Conclusion

The proposed development has been designed, located and will be managed to respond appropriately to important site constraints and avoid adverse environmental impacts. This conclusion is related to the impacts to biodiversity, and does not endorse the permissibility, or otherwise, of the development. It is considered that, subject to recommended conditions, the proposal can be undertaken without adverse impact to the endangered populations of Little Penguins and Long-nosed Bandicoots, other threat-listed species, or their habitats.

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 impact mitigation measures specified in Section 8.4 of the Biodiversity Development Assessment Report (GIS Environmental Consultants), the recommendations in Section 5 of the Geotechnical Report (JK Geotechnics April 2021), and these conditions of consent are to be implemented at the appropriate stage of the development. Compliance with this condition is to be certified by the Project Ecologist in writing to the Principal Certifying Authority prior to any Occupation Certificate.

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

Pre-clearance Survey Required – Penguin and Bandicoot Habitat

A pre-clearance survey for Little Penguin and Long-nosed Bandicoot activity and presence is required prior to the removal of any vegetation, material or debris stockpiles. Clearing may only proceed if the survey concludes that no Little Penguins or Long-nosed Bandicoots are present within the area to be cleared or the immediate vicinity. A record of each inspection is to be made in the daily inspection register log-book. The log-book is to be made available to Principal Certifying Authority.

Reason: To avoid injury or death of Little Penguins or Long-nosed Bandicoots which may be utilising stockpiles of vegetation, materials or debris.

Project Ecologist

A Project Ecologist is to be employed for the duration of the approved works.

The Project Ecologist must be an accredited assessor under the NSW Biodiversity Conservation Act 2016.

Employment of a Project Ecologist is to provide an engagement letter, which is to be submitted to and certified by the Certifying Authority Prior to issue of Construction Certificate.

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

Protect AOBV – Penguin Habitat

The Area of Outstanding Biodiversity Value (formerly Little Penguin Critical Habitat), including rocky cliff and intertidal areas below the formed backyard, are to be fully protected for the duration of the works. There shall be no machinery use, storage of construction materials/waste, dumping, or clearing of vegetation, soil, rock or rubble within these areas.

Reason: To prevent impacts to Little Penguins and the adjoining Area of Outstanding Biodiversity Value.

Report Dead or Injured Penguins or Bandicoots – Penguin and Bandicoot Habitat

Any injured or dead Long-nosed Bandicoots or Little Penguins found within the worksite must be reported to the National Parks & Wildlife Service (9457 9577) or Northern Beaches Council (1300 434 434).

Reason: To prevent impacts to Long-nosed Bandicoots and Little Penguins in accordance with the Biodiversity Conservation Act 2016.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

Construction and Waste Access

Delivery of construction materials and removal of waste is to be via Addison Road and not via water while penguins are occupying the site. Compliance with this condition is to be certified by the Project Ecologist prior to any Occupation Certificate.

Reason: To prevent death or injury to penguins and chicks during breeding, moulting and/or loafing activities.

Compliance with Ecologist Recommendations - During Construction

All during-construction impact mitigation measures specified in Section 8.4 of the Biodiversity Development Assessment Report (GIS Environmental Consultants), the recommendations in Section 5 of the Geotechnical Report (JK Geotechnics April 2021), and these conditions of consent are to be implemented at the appropriate stage of the development. Compliance with this condition is to be certified by the Project Ecologist in writing to the Principal Certifying Authority prior to any Occupation Certificate.

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

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

Compliance with Ecologist's Recommendations – Post Construction

All post-construction impact mitigation measures specified in Section 8.4 of the Biodiversity Development Assessment Report (GIS Environmental Consultants) and these conditions of consent are to be implemented at the appropriate stage of the development. Compliance with this condition is to be certified by the Project Ecologist in writing to the Principal Certifying Authority prior to any Occupation Certificate.

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

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

Companion Animals Prohibited in AOBV

In accordance with Section 3.4 of the NSW Biodiversity Conservation Regulation 2017, companion animals (including cats and dogs) are not permitted within the Little Penguin declared area. Cats and dogs are to be prevented from entering the area below the cliff top at all times.

Reason: To prevent predation of or injury to Little Penguins utilising the area below the cliff top.

Dead or Injured Wildlife – Manly LEP Clause 6.5

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 mitigate potential impacts to native wildlife resulting from construction activity.