

## Natural Environment Referral Response - Biodiversity

<b>Application Number:</b>	DA2020/0484
<b>Date:</b>	14/10/2020
<b>Responsible Officer</b>	Lashta Haidari
<b>Land to be developed (Address):</b>	Lot 7335 DP 1152473 , 7335 / 1152473 Hakea Avenue FRENCHS FOREST NSW 2086 Lot 7336 DP 1152473 , 7335 / 1152473 Hakea Avenue 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

#### Updated Biodiversity Referral Comments (14 October 2020)

This updated biodiversity referral is provided based on the following additional information:

- Email advice to Council - RFS Planning and Environment Services (East) (13 October 2020)
- Addendum - Arboricultural Impact Assessment (ArborSafe Tree Consultancy, 29 September 2020)
- Revised Bushfire Assessment (Sydney Bushfire Consultants, 7 October 2020)
- Peer Review of Revised Bushfire Assessment (Travers Bushfire and Ecology, 7 October 2020)
- Advice regarding hollow-bearing trees (Travers Bushfire and Ecology, 30 September 2020)

#### Revised assessment of impacts to Coastal Upland Swamp and riparian vegetation

Email advice received by Council 13 October 2020 from the RFS Planning and Environment Services branch states that: "NSW RFS has reviewed the revised consultant's report for the below mentioned proposal and would raise no objection to the revised conditions proposed being implemented in a revised Bush Fire Safety Authority". This advice is in reference to the revised bushfire assessment and peer review reports prepared by Sydney Bushfire Consultants (7 October 2020) and Travers Bushfire and Ecology (7 October 2020) respectively. The additional bushfire reports propose an Asset Protection Zone (APZ) around the new chapel and existing function centre of up to 25m. Subject to RFS concurrence and a revised Bush Fire Safety Authority that is consistent with the APZs shown in Schedule 1 of the bushfire assessment peer review (Travers Bushfire and Ecology, 7 October 2020) and Appendix 1 of the revised bushfire assessment (Sydney Bushfire Consultants, 7 October 2020), it is considered that the proposal is unlikely to impact upon the Coastal Upland Swamp endangered ecological community to the north-west of the development. Impacts to riparian vegetation are also decreased by reduction of the APZ (relative to the initial RFS recommendation of a 67m APZ).

Should a new Bush Fire Safety Authority not be issued prior to determination, a deferred commencement condition should be applied to ensure that approved APZs are consistent with recommendations of the new bushfire reports. Support for the proposal is contingent upon RFS support for the reduced APZs.

#### Revised assessment of impacts to Tree 207

The addendum to the Arboricultural Impact Assessment (Arborsafe Tree Consultancy, 29 September 2020) states that: "Tree 207 is now recommended for retention, with minimal negative impacts to the tree's ongoing health or stability considered likely following the completion of the development". It is stated that this assumption is based on implementation of general tree protection measures outlined in the original arborist report, in addition to three new recommendations specifically targeted to retention of Tree 207. These recommendations are supported. The report further states that "In the original Arboricultural Impact Assessment an ash garden was proposed within the tree's northern TPZ. The current plans do not detail or show this, but the intent is to possibly incorporate a garden into the area at some future time". Based on this statement, and consideration of submitted plans which indicate the ash garden as "To Be Confirmed", it is assumed that the ash garden does not comprise part of this application and may be addressed in a future development application. This is appropriate as the current application does not provide sufficient information (architectural or arboricultural) to enable an adequate assessment of the ash garden's impacts on existing significant trees. Subject to recommended conditions, Council's Biodiversity referral body are satisfied that Tree 207 can be safely retained.

#### Impacts to hollow-bearing Tree 202

Additional information prepared by Travers Bushfire and Ecology (30 September 2020) confirms that Tree 202 (*Angophora costata*) is the one hollow-bearing tree indicated for removal in the original biodiversity report (Travers Bushfire and Ecology, April 2020) but identified for retention in the original arborist report (Arborecare Tree Consultancy, 27 March 2020). An amended biodiversity report (Travers Bushfire and Ecology, September 2020) has been prepared to confirm that no hollow-bearing trees are proposed for removal.

#### Conclusion

Subject to recommended conditions to ensure consistency with the conclusions and statements of the additional information listed above, it is considered that the proposal can achieve consistency with relevant controls and is therefore supported.

#### **Biodiversity Referral Comments (18 September 2020)**

The Biodiversity referral body cannot support the proposal in its current form. The application has been assessed against the following provisions:

- NSW Biodiversity Conservation Act 2016
- WDCP Clause E2 (Prescribed Vegetation)
- WDCP Clause E3 (Threatened Species, Populations, Ecological Communities or High Conservation Habitat)
- WDCP Clause E4 (Wildlife Corridors)
- WDCP Clause E5 (Native Vegetation)
- WDCP Clause E6 (Retaining unique environmental features)

In accordance with pre-lodgement advice provided by Council in January 2020, a Biodiversity Impact Assessment (Travers Bushfire and Ecology, April 2020) has been submitted with the DA and assesses potential impacts to native fauna and vegetation including two threatened ecological communities identified on site; these are: i) Coastal Upland Swamp Endangered Ecological Community (CUS) and ii) Duffys Forest Critically Endangered Ecological Community (DFEC). The biodiversity report also includes five-part tests for threatened species including two bent-wing bat species, the grey-headed

lying-fox, and two planted threatened tree species. The report also states that one hollow-bearing tree will be removed, although this tree is not identified within the biodiversity or arboricultural reports nor is it indicated on any plans.

A patch of Coastal Upland Swamp (PCT1804) occurs immediately north of the proposed chapel and new access road. In addressing potential impacts to this community, the biodiversity report states that a *"20m conservation buffer is to be placed around the CUS within the study area. This buffer is to exclude all development and APZs. With the implementation of this buffer, the extent of CUS will not be reduced or directly impacted"*. It is noted that neither the CUS nor the proposed conservation buffer is indicated on any of the submitted plans, including the combined constraints analysis submitted as additional information on 28 July 2020.

The bushfire report (Sydney Bushfire Consultants, 19 March 2020) states that the proposal does not meet the definition of either Residential or Special Fire Protection Purposes (SFPP) development and does not identify any required bushfire APZs. However, the RFS referral response received 3 June 2020 seeks to apply bushfire protection standards consistent with that of a SFPP development, including a condition requiring establishment of an Inner Protection Area (IPA) for a distance of 67m from the function centre and proposed chapel. Implementation of a 67m IPA from the development site would impact approximately 0.5ha of native vegetation, including a large proportion of the CUS and riparian vegetation along the creekline. It is noted that this may also potentially trigger entry into the Biodiversity Offset Scheme (BOS) by way of the area clearing threshold, which is 0.5ha for the subject site. It is therefore considered that the submitted information does not adequately reflect potential impacts of the proposal (taking into account RFS conditions), which are likely to result in a significant impact to CUS and riparian vegetation.

Further concern is raised regarding the proposal to remove Tree 207 (Blackbutt - *Eucalyptus pilularis*), the largest and most significant tree of the 43 specimens assessed in the arborist report, which describes the tree as an outstanding example of the species and ascribes it a useful life expectancy of 25-50 years. Whilst it is acknowledged that many other significant trees exist and are actively managed across the broader subject site, it is considered that an alternative design solution to allow for retention of this highly significant tree is warranted.

It is acknowledged that relocation of the proposed northern toilet block will serve to avoid impacts to DFEC, and this design solution is supported.

Given the above issues, it is considered that the proposal as submitted cannot comply with relevant controls. Further assessment against the NSW Biodiversity Offset Scheme (BOS) may also be required.

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 commencement of works. Details demonstrating compliance are to be recorded.

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

### **Delineation of Asset Protection Zones**

Prior to the commencement of any vegetation clearance/modification, the boundaries of the bushfire Asset Protection Zone (APZ) identified in 'Appendix 1 - Bushfire Protection Measures' (Peer Review of Approved Bushfire Protection Measures - Travers Bushfire and Ecology, 7 October 2020) are to be clearly marked by way of temporary fencing, flagging tape or markers. Clearing of vegetation for APZ establishment must only occur within the approved and marked APZ boundaries. Details demonstrating compliance are to be recorded.

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

### **Prepare a Hygiene Protocol**

A Hygiene Protocol is to be prepared by the Project Arborist to minimise the risk of spreading soil-borne pathogens during tree removal and soil excavation works. The protocol is to be written in accordance with industry standards including government guidelines "Arrive Clean Leave Clean" and current best practice for preventing the spread of soil-borne pathogens. Details demonstrating compliance are to be recorded.

**Reason:** To prevent the spread of pathogens which protects natural features and habitats.

### **Preparation of a Vegetation Clearing Protocol**

The Project Ecologist is to prepare a Vegetation Clearing Protocol which includes (at a minimum): measures to maximise retention of significant native vegetation during APZ establishment (i.e. prioritised removal of weeds before native vegetation), procedures for pre-clearance surveys and relocation of displaced or injured fauna, and relocation of log hollow sections onsite to provide fauna habitat. The Vegetation Clearing Protocol must also include procedures for stop work and formal impact assessment in the event that threatened fauna species are found during the pre-clearance survey. Details demonstrating compliance are to be recorded.

**Reason:** To protect native wildlife and habitats.

## **CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK**

### **Vegetation Clearing Protocols**

Any clearing of native vegetation is to be undertaken in accordance with the Vegetation Clearing Protocol prepared by the Project Ecologist. Written certification of compliance is to be prepared by the Project Ecologist and recorded.

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

### **Clearing for Asset Protection Zones – Project Ecologist to Certify**

Clearing of vegetation for APZ establishment must only occur within the surveyed and permanently marked APZ boundaries. No clearing is to be undertaken outside of the APZ boundaries. Written certification of compliance is to be prepared by the Project Ecologist and recorded.

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

### **Hygiene Protocol**

The Project Arborist is to provide a site induction to site workers (including demolition, construction and tree works staff) to ensure staff are aware of soil pathogens and implementation of the Hygiene Protocol. Details demonstrating compliance (including photographic evidence) are to be prepared by the Project Arborist and recorded.

Reason: To prevent the spread of pathogens which protects natural features and habitats in accordance with relevant Natural Environment LEP/DCP controls.