

Natural Environment Referral Response - Biodiversity

Application Number:	DA2021/1813
Date:	02/11/2021
Responsible Officer	Maxwell Duncan
Land to be developed (Address):	Lot 2 DP 218836 , 7 Bruce Avenue 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

The application seeks approval for the substantial demolition of the existing dwelling house and construction of a new dwelling house including landscaping. Council's Natural Environment Unit - Biodiversity referral team have reviewed the application for consistency against the relevant environmental legislation and controls, including:

Biodiversity Conservation Act 2016 (BC Act) State Environmental Planning Policy (Coastal Management) 2018

- Coastal Environment Area

Manly Local Environmental Plan (MLEP)

- Clause 6.5 (Terrestrial Biodiversity)

Manly Development Control Plan (MDCP)

- Clause 3.3.1. a) iv) Landscaping Design
- Clause 5.4.2 (Threatened Species and Critical Habitat Lands)

The proposed development is located within known habitat for the endangered populations of Long-nosed Bandicoots at North Head and Little Penguins at Manly. The site also occurs approximately 100m north-east of the Area of Outstanding Biodiversity Value for Little Penguins (AOBV; formerly Little Penguin Critical Habitat) declared under the Biodiversity Conservation Act 2016 (BC Act), and within close proximity to an active penguin nest on another property. Assessments of Significance (AoS) for Little Penguins and Long-nosed Bandicoots, prepared in accordance with Section 7.3 of the BC Act,

have been submitted with the DA. The assessments conclude that the proposal is unlikely to result in a significant impact to threatened entities, subject to the following ameliorative conditions:

- Maintenance of current wildlife access to habitat on the property;
- Timing restrictions on demolition, excavation and rock removal to avoid the penguin breeding season;
- Pre-work surveys of potential penguin breeding habitat and restrictions on work if penguins/active nests are recorded;
- Ground protection to reduce noise and visual disturbance to wildlife;
- Restrictions on pneumatic hammers to reduce noise and vibration impacts;
- Sediment control to protect water quality within North Harbour;
- Landscaping to maintain habitat quality on site;
- Wildlife-exclusion fencing and pre-work surveys to prevent injury to animals which may attempt to shelter in stockpiles.

It is also noted that the proposal occurs largely within the approved footprint of DA2018/0639.

Council's Biodiversity Section supports the recommended ameliorative measures and the ecologist's conclusion that the proposal is unlikely to result in significant impact to threatened entities, subject to these measures as conditioned.

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 Bright Lighting – Bandicoot and Penguin Habitat

No bright lighting or motion detectors are to be installed to illuminate the lawn or garden areas. A modest amount of low lighting may be used for safety purposes only.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to issue of a Construction Certificate.

Reason: Bright lighting disturbs Long-nosed Bandicoots and disrupts normal Bandicoot foraging, sheltering and nesting activity.

Access to Undercroft Areas – Bandicoot Habitat

Where concealing material is required for any undercroft areas (e.g. under the house, stairs or balcony), gaps are to be established to allow Long-nosed Bandicoot access. Gaps are to be at least 150mm high and 300mm wide.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to issue of the Construction Certificate.

Reason: To maintain bandicoot access to existing and proposed habitat within and surrounding the site.

Preparation of CEMP

A Construction Environmental Management Plan (CEMP) is to be prepared outlining all measures for the protection of native fauna and vegetation during the construction phase. Measures to be addressed in the CEMP include, but are not limited to, all conditions of this consent addressing construction-related biodiversity impacts.

The CEMP is to be provided to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure conditions for the prevention of construction-related biodiversity impacts are complied with during the construction phase.

No Artificial Lighting – Penguin Habitat

No artificial light is to be directed toward or illuminate the Area of Outstanding Biodiversity Value (formerly Little Penguin Critical Habitat) at any time during or post-construction.

No bright lighting or motion detectors which illuminate the formed back yard or foreshore areas are to be installed. Low intensity lighting may be used in the formed back yard for safety purposes only.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to issue of a Construction Certificate.

Reason: Artificial light can prevent penguins from returning to shore and result in abandonment of chicks.

Fencing for Wildlife Passage

Any new permanent fencing (with the exception of swimming pool fencing) is to be made passable to native fauna through the provision of access gaps or raised fencing to provide appropriate ground clearance. Any access gaps are to be a minimum of 150mm wide x 100mm high at ground level and spaced at a minimum of 6m intervals.

Plans are to be certified as complying with this condition and provided to the Certifying Authority prior to issue of the Construction Certificate.

Reason: To preserve wildlife corridors.

Runoff and Sediment Control – Penguin Habitat

Appropriate runoff and sedimentation control devices must be installed prior to and maintained for the duration of works.

Reason: To prevent impacts to Little Penguins and their habitat, including the Area of Outstanding Biodiversity Value, in accordance with the Biodiversity Conservation Act 2016.

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 Terrestrial Biodiversity Report (GIS Environmental 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 Section 6 of the Terrestrial Biodiversity Report (GIS Environmental 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.

Site Induction Required – Penguin and Bandicoot Habitat

All workers, including site inspectors and sub-contractors, are to be made aware of the potential presence of relevant threatened species and endangered ecological communities through a site induction prior to commencement of works. The site induction is to include information about their conservation significance, potential activities on-site, means of identification and the measures to be implemented for their protection. A confirmation of induction is to be signed by every worker and the site manager.

Evidence of the site induction is to be documented and provided to the Principal Certifying Authority.

Reason: To prevent impacts to threatened species, endangered ecological communities and their habitats in accordance with the Biodiversity Conservation Act 2016.

Fauna Protection Fencing – Penguin and Bandicoot Habitat

Temporary fencing is to be installed around all work areas (including demolition, storage and construction areas) prior to the commencement of works. The fencing is to be designed to minimise the possibility of ground-dwelling native fauna (including relevant threatened species) accessing the work areas. Fencing is to be maintained for the duration of works.

Reason: To prevent impacts to ground-dwelling native fauna, including relevant threatened species.

Runoff and Sediment Control – Penguin Habitat

Appropriate runoff and sedimentation control devices must be installed prior to and maintained for the duration of works.

Reason: To prevent impacts to Little Penguins and their habitat, including the Area of Outstanding Biodiversity Value, in accordance with the Biodiversity Conservation Act 2016.

Works within 3m of known penguin nest

There are to be no construction works within 3m of the known penguin nest (including the eastern stairs, garden bed and boat shed level patio) while there are penguins using this nest. Construction works include, but are not limited to, placement or removal of scaffolding, plumbing or fencing. When construction works are to occur within 3m of this nest, the absence of nesting penguins is to be

confirmed by weekly inspections by a suitably qualified ecologist. Absence of nesting penguins from the known nest is to be confirmed in writing by the site ecologist and forwarded to Council should works within 3m of the known nest site occur.

Reason: To protect penguins nesting on the foreshore and their habitat

Pre-demolition check of penguin habitat

Prior to commencement of demolition works, a suitably qualified ecologist is to confirm that no penguins are breeding or moulting on the site or within 20m of the site. If penguins or bandicoots are found on the site, works must cease and advice must be sought from the site ecologist.

Reason: Wildlife protection

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

Construction Hours – Manly LEP Clause 6.5

Construction hours are to be adhered to, with no construction vehicles or heavy machinery used outside the hours of 7:00am and 5:00pm.

Compliance must be certified by the Project Ecologist.

Reason: Noise and vibration can disturb local native fauna (including threatened species) and prevent access to their natural habitats.

Works to be undertaken outside penguin breeding season

No demolition, excavation or rock removal works are to be undertaken on the property during the penguin breeding season (1 July to 29 February) or if there are penguins nesting within 20m of the property at any time of year.

Compliance must be certified by the Project Ecologist.

Reason: To prevent disturbance to nesting penguins on the foreshore

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 Section 6 of the Terrestrial Biodiversity Report (GIS Environmental 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.

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

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.

Little Penguin Protection

During the Little Penguin breeding season (1 July to 29 February), plywood hoarding is to be fixed along the southern 15m of the north-eastern boundary to a height of at least 1.5m from the existing ground level. The boards are to be in place before the start of the penguin breeding season and are to remain in place for the duration of the breeding season each year.

Reason: To reduce noise and visual disturbance to Little Penguin nesting within known breeding habitat.