

Natural Environment Referral Response - Biodiversity

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| Application Number: | DA2021/1464 |
| Date: | 26/11/2021 |
| Responsible Officer | Anne-Marie Young |
| Land to be developed (Address): | Lot 1 DP 1220196 , 4 - 10 Inman Road CROMER NSW 2099 |

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

Revised Referral

The applicant is referred to the Office of Environment & Heritage document "Guidance for local government on applying the Biodiversity Offset Scheme threshold" dated 9 July 2019. Council has based their position on the contents of this guidance document, including review of the relevant sections of the Biodiversity Conservation Act , BC Regulation and the EP & A Act. Clause 7.1(3) of the BC Regulation is most relevant, and states that " If proposed development is or involves the subdivision of land, the subdivision is taken to involve the clearing of native vegetation that, in the opinion of the relevant consent authority or other planning approval body, is required or likely to be required for the purposes for which the land is to be subdivided. Once that clearing has been taken into account, the clearing for the purposes of the subsequent development of the land for which it was subdivided is not to be taken into account when determining whether the subsequent development exceeds the threshold."

The applicant is to address the requirements previously outlined in the original referral response, and as well include a Site Plan indicating the likely footprint of the future development for which the subdivision is proposed, including, but not limited to, clearing to construct buildings as well as associated asset protection zones, fence lines, driveways and services. While the applicant states that the current application is a paper subdivision and no vegetation clearing is required, the SEE and Plans for the previously approved development, and the [subdivision](#) application, indicate future development is proposed within the other portions of the site.

The response provided from Travers, includes a map of remnant native vegetation located in the northern portion of the land (Figure 2) that is proposed Lot 2. This figure is not relevant to the determination of native vegetation within the site, as native vegetation is defined in the Local Land Services Act, and would therefore cover a larger portion of the site than the northern portion indicated. Reference to figure 1.7 of the BDAR may be more relevant. The BDAR also shows vegetation that will

be impacted from the approved development, and as no fence, whether or not on the proposed subdivision boundary between proposed Lots 2 & 3, it is unclear if this potential impact to vegetation has been offset or not. A detailed review of the court cases cited has not been conducted with respect to the planning legislation, however on brief inspection neither case appears to consider the NSW Biodiversity Conservation Act, and pre-date the commencement of that legislation with NSW.

I also note that the approved BDAR may potentially be subject to review as part of a Modification of the approved development. While this can be considered independently of the subdivision application, the applicant could also consider provision of one BDAR as part of the subdivision application for the entire site. This BDAR could propose the staged retirement of credits for the (modified) development occurring predominately within proposed Lot 1, and subsequent development of the other two lots.

Original Referral

Entry to the NSW Biodiversity Offset Scheme (BOS) is triggered by developments that meet certain thresholds for significant impacts on biodiversity, including local development that triggers the BOS threshold or is likely to significantly affect threatened species based on the test of significance in section 7.3 of the *Biodiversity Conservation Act 2016*.

The area threshold varies depending on the minimum lot size. The minimum lot size associated with the property is <1 hectare, and the threshold for native vegetation clearing, above which the BAM and offsets scheme applies, is 0.25 ha or more.

As set out in section 7.1(3) of the Biodiversity Conservation Regulation 2017, if proposed development is or involves the subdivision of land, the subdivision is taken to involve the clearing of native vegetation that, in the opinion of the relevant consent authority or other planning approval body, is required or likely to be required for the purposes for which the land is to be subdivided. Once that clearing has been taken into account, the clearing for the purposes of the subsequent development of the land for which it was subdivided is not to be taken into account when determining whether the subsequent development exceeds the threshold.

Based on statements contained within the SEE, such as "The proposal seeks to segregate the Subject Site to facilitate land for the approved built-form and operations from non-developed area for the future development", in the opinion of Council that clearing likely to be required may exceed 0.25 hectares and therefore a Biodiversity Development Assessment Report (BDAR) may be required.

The applicant is to provide further evidence in relation to the BOS triggers, and submit a BDAR in accordance with the legislative requirements and the Biodiversity Assessment Method if required. It is noted that DA2019/1346 included a BDAR, and the consent for that development included a biodiversity offset credit obligation, and the relationship of the current application and the previous consent should also be provided.

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.