

Natural Environment Referral Response - Biodiversity

Application Number:	DA2024/0492
Proposed Development:	Community title subdivision comprising of 13 lots and new road access
Date:	12/07/2024
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 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:

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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.

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- 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.
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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.

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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.