

Our Ref: Q18WTP07

10 November 2021

Willow Tree Planning Pty Ltd
Suite 7, Level 7, 100 Walker Street
NORTH SYDNEY NSW 2060

Attention: Mr A Cowan

Dear Andrew

Re: 4-10 Inman Road, CROMER NSW 2099
Response to the Natural Environment Team for DA2021/1464

We understand that you have lodged a subdivision DA at the subject site which has prompted a response from Council requesting a Biodiversity Development Assessment Report (BDAR) to assess impacts of the subdivision. The proposal is for subdivision only and follows on from the previous approval for substantial alterations and additions to the existing buildings on the site. In seeking to avoid a BDAR at this point you require a defensible position to respond to Council's ecologist.

Background

In April 2020, *Travers bushfire & ecology* prepared a Biodiversity Development Assessment Report for proposed development within the western portion of the site as shown in Figure 1.



Figure 1 – Location of approved BDAR for the western portion of the site

The outcome of the BDAR was that for works to commence, the land owner / proponent must retire nine (9) ecosystem credits (like-for-like) for PCT 1841 – Smooth-barked Apple – Turpentine – Blackbutt tall open forest on enriched sandstone slopes and gullies of the Sydney region, as well as fourteen (14) species credits species for the Large-eared Pied Bat.

This particular BDAR does not cover any removal or impact of vegetation in the eastern portion of the site. To date, no BDAR has been provided for the eastern portion of the site as the proponent has yet to apply for a DA. Notwithstanding this, *Travers bushfire & ecology* has undertaken a preliminary biodiversity constraints report upon the site in August 2018. The eastern portion of the site contains industrial buildings and offices surrounded by maintained lawns and gardens. There is remnant native vegetation located in the northern portion of the land as indicated in Figure 2. Based on the minimum lot size, the BOS would be triggered if there was a DA that required 0.25 ha or greater of native vegetation be removed or impacted. Based on the preliminary survey, the vegetation was identified as PCT 1250 which aligns to the Sydney Metropolitan CMA 2016 mapping of parts of the site, although would need to be re-verified through updated BAM plots. The vegetation in the western portion of the site was found to be PCT 1841 which is contrary to the DPIE mapping, but does occur locally and is mapped by DPIE approximately 1 km south-west of the site.

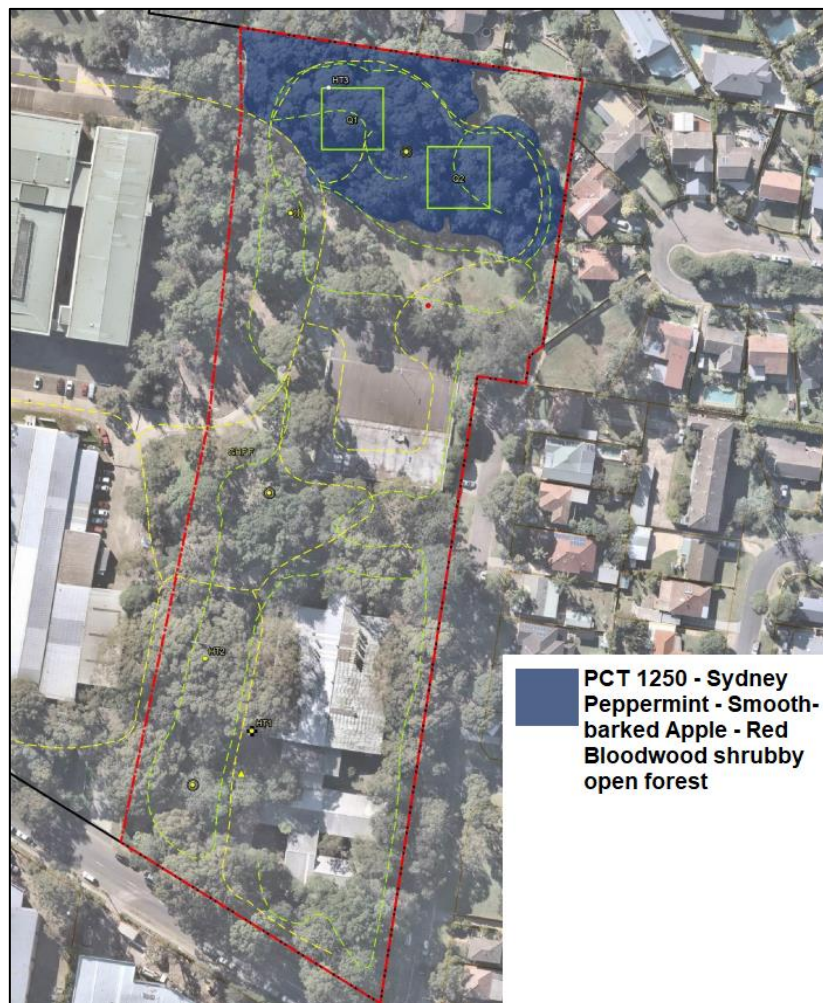


Figure 2 – Existing native vegetation in the eastern portion of the site

Proposed subdivision

Currently, there is an approved BDAR that covers close to 65% of the entire site. The BDAR and the offset requirements do not cover any part of the eastern portion of the site shown in Figure 2, as there is no development proposal at this stage.

A subdivision proposal has been put forward to Northern Beaches Council to divide the lot into three (3) parcels of land as shown in Figure 3. The approved boundary of impacted vegetation from the approved BDAR does not follow the proposed boundary between proposed Lot 1 and 2, in fact it extends a few metres beyond into the western edge of Lot 2. The actual extent is not known without GIS manipulation however would be estimated at 0.25-0.5 ha of the 3.27 ha extent of proposed Lot 2. Proposed Lot 3 was included in the approved BDAR. There was no proposed development for Lot 3 at the time of the BDAR, therefore any future development of the lot may be required to be assessed in another BDAR for DA submission.

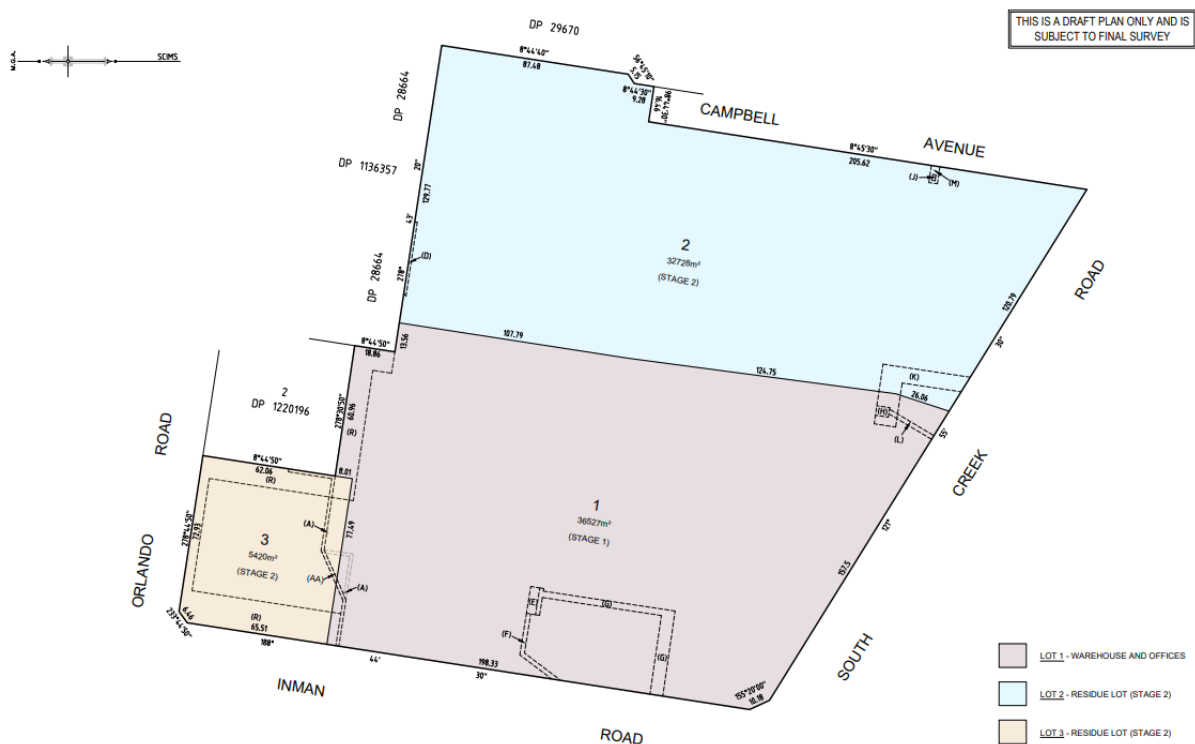


Figure 3 – Proposed subdivision plan

Pursuant to Section 4.15(1)(b) of the *EP&A Act (1979)* there will be no impacts resulting from the proposed development on the basis that there will be no vegetation cleared, built form or infrastructure constructed. Any future proposal on the proposed allotments would be subject to assessment at the time development consent is sought in the future. With reference to case law (*Hoxton Park Residents Action Group Inc v Liverpool City Council [2011] NSWCA 349*, [44] *Australian Coal Alliance Incorporated v Wyong Coal Pty Ltd [2019] NSWLEC 31* at 123), the tests relevant are those impacts once the development has been completed. In the instance of this proposal, the subdivision can be completed without any physical works being carried out.

Accordingly, the clearing of any vegetation or potential traffic impacts under a future hypothetical development consent are not "likely impacts" for the purpose of s 4.15(1)(b) of the *EP&A Act* and are not relevant matters for the purpose of assessing this subdivision

proposal. Where there are no proposed impacts on native vegetation or habitats for threatened species, a BDAR is not required.

A BDAR is required for any development proposal that will clear native vegetation within an area on the BV Map ¹ or if the development will have a prescribed impact on biodiversity values ² under clause 6.1 of the *Biodiversity Conservation Regulation 2017*.



Figure 4 – BV Map (10 Oct 2021)

The proposed subdivision will not physically require ¹ the removal of native vegetation within an area on the BV Map which are typically displayed as purple polygons. There are no purple polygons within the site or on adjacent lots.

Prescribed impacts ² are described under the *BC Regulation Clause 6.1*. The impacts on biodiversity values of the following actions are prescribed (subject to subclause (2)) as biodiversity impacts to be assessed under the biodiversity offsets scheme--

- (a) the impacts of development on the following habitat of threatened species or ecological communities--
 - (i) karst, caves, crevices, cliffs and other geological features of significance,
 - (ii) rocks,
 - (iii) human made structures,
 - (iv) non-native vegetation,
- (b) the impacts of development on the connectivity of different areas of habitat of threatened species that facilitates the movement of those species across their range,
- (c) the impacts of development on movement of threatened species that maintains their lifecycle,
- (d) the impacts of development on water quality, water bodies and hydrological processes that sustain threatened species and threatened ecological communities (including from subsidence or upsidence resulting from underground mining or other development),
- (e) the impacts of wind turbine strikes on protected animals,
- (f) the impacts of vehicle strikes on threatened species of animals or on animals that are part of a threatened ecological community.

The proposed subdivision will be the application of lines on a map, it will not require any physical disturbance to any site features, including those listed as prescribed impacts, therefore it is considered that a BDAR is not required.

The “Guidance for local governments on preparing conditions of consent from the Biodiversity Development Assessment Report” (DPIE 2019) advises that offset requirements will apply to subdivision development applications in the same way they apply to other development types. Staged retirement of credits may be considered if multiple future land releases are proposed. The proposed subdivision development application does not contain any further information to inform of building envelopes, and the existing infrastructure within Lot 3 will continue to be used in the same manner post subdivision until such time that if and when a development proposal is put forward. Only then will it be possible to measure potential impacts and afford the necessary ecological assessment as required by Council.

It should also be noted that the site is not within bushfire prone lands, therefore there will be no requirement for asset protection zones across the proposed lot(s) as part of a subdivision application.

Future development of Lot 3

Until such time a development application is put forward, an assessment on impacts to the site’s ecology is not required.

Currently, none of Lot 3 is mapped as containing BV values (Figure 4), therefore future impacts on the property do not automatically get driven into the BOS. The BOS would be triggered if a) the impact on native vegetation is 0.25 ha or greater, as the minimum lot size is 600 m² or, b) the impact on native vegetation is below 0.25 ha and the test of significance indicates a significant impact upon an entity being tested, or c) the impact is upon an area of outstanding biodiversity value (AOBV). An AOBV is an area with irreplaceable biodiversity values that is of state, national or global importance, of which there are currently only four (4) in NSW. None of these four (4) entities are known to occur on or near the site.

Council states the following:

“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.”

As previously discussed, the approved BDAR for the western portion of the site would cover the proposed boundary line between proposed Lot 2 and 3 such that a fence may be erected to demarcate the boundary without further assessment as the impact on native vegetation has been assessed already. Clearing for the subsequent development of the land is not known at this stage. The land already has substantial development upon it, with native vegetation predominately in the northern portion of the proposed Lot 3. Future development (if at all) is unknown at this stage, nor has it been contemplated in the subject subdivision DA. A BDAR with or without offsetting will be required should an application be put forward.

Conclusion

The subdivision proposal will be completed without any physical works being carried out. There will be no impacts upon native vegetation within proposed Lot 3, or prescribed impacts in accordance with the *BC Regulation*. As such, a BDAR is not required to be undertaken for the subdivision proposal. The current approved BDAR over the western portion of the site covers a development application over parts of Lot 1 and 2. There was assumed vegetation impact to approximately 10m east of the existing buildings that would accommodate a potential fence to separate Lot 2 and 3 as BDAR extent covers the western edge of proposed Lot 3.

Once a proposal has been prepared for future site development, a BDAR will be required. Entry into the BOS is required for impacts upon native vegetation of 0.25 ha or greater. Future development on the land will need to show an avoidance of native vegetation and habitat features regardless of the size of impact. For impacts below 0.25 ha, a BDAR is still required to be assessed by Council with a test of significance.

If you require any further information, please do not hesitate to contact the operations team on (02) 4340 5331 or at servicedesk@traversecolony.com.au

Yours faithfully



Lindsay Holmes
Manager of Ecology – *Travers bushfire & ecology*



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