

Natural Environment Referral Response - Biodiversity

Application Number:	DA2020/0962
Date:	22/10/2020
Responsible Officer	Rebecca Englund
Land to be developed (Address):	Lot 1 DP 1170245 , 0 Wharves And Jetties 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 following biodiversity-related provisions apply to the development:

- NSW Biodiversity Conservation Act 2016 (BC Act)
- SEPP (Coastal Management) Coastal Environment Area

The development site is proximal to known nesting habitat for individuals associated with a broader local occurrence of Little Penguins which nest around Manly Point and North Head. Penguins have also been regularly recorded at the location of the proposed new piles transiting between nesting habitat under the wharf and foraging habitat within Manly Cove and the wider harbour. As such, the application is required to be accompanied by a 'test of significance' for impacts to the threatened penguin population, prepared in accordance with Section 7.3 of the BC Act. The submitted biodiversity assessment (ERM Sydney, 26 June 2020) includes the required test of significance which assesses potential impacts including: i) loss of habitat, ii) disturbance to individuals from light, vibration and noise during construction, iii) increased pollution; and iv) ongoing disturbance due to increased human presence/activity, light and noise following construction. These impacts and potential mitigation measures are addressed below.

Loss of Habitat

The proposed works are 60-70m from known nest sites and are located below the mean high water mark; as such, they will not result in a loss of penguin nesting habitat. Installation of new piles and overshadowing of seagrass (both by the barge during construction and permanently due to the increased building envelope) has the potential to result in a minor reduction in penguin foraging habitat (i.e. seagrass beds). Potential impact to seagrass and required mitigation measures will be addressed by Council's Riparian referral body. It is concluded that the proposal will not result in a loss of penguin nesting habitat and, subject to support of Council's Riparian referral body and application of their recommended conditions, is unlikely to have a notable impact on potential foraging habitat.

Construction-related Disturbance

Noise, vibration, human activity and disruption of access routes have the potential to disturb penguins and interfere with natural nesting behaviour including feeding of chicks. This impact can be effectively mitigated through timing restrictions to ensure that works are undertaken outside of the penguin breeding season.

Increased Pollution

The proposal has the potential to increase pollution into the harbour through increased waste and rubbish (e.g. napkins, bottles, food) being deposited into the water from dining areas. The application should therefore be referred to Council's Waste referral body for assessment.

Ongoing Disturbance

The proposed development may result in an increase in human activity within the existing pedestrian walkway and deck areas; however, it is considered that conversion of the existing public area to a formalised dining area is unlikely to substantially increase the overall number of people occupying the area at any given time as the area is currently heavily used by the public. Furthermore, ongoing monitoring of penguin nesting behaviour at Manly Wharf over several years has provided strong evidence that penguins which utilise this site as nesting habitat are resilient to disturbance associated with human activity, noise and lighting.

Conclusion

Council's Biodiversity referral body consider that the proposal can be undertaken without impact to the endangered population of Little Penguins at Manly.

Nb. Given that the subject site is within an environmentally sensitive area, further detailed consideration of the public benefit implications of the proposal may be warranted.

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

Preparation of CEMP

A Construction Environmental Management Plan (CEMP) is to be prepared outlining all measures for the protection of native flora and fauna 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.

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 these conditions of consent, the Construction Environmental Management Plan and the approved biodiversity report.

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 NSW Biodiversity Conservation Act 2016 (<https://customer.lmbc.nsw.gov.au/assessment/AccreditedAssessor>)

Evidence of engagement of the Project Ecologist is to be provided to the Principal Certifying Authority Prior to issue of Construction Certificate.

Reason: To ensure biodiversity protection measures are complied with.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

Timing Restrictions - Little Penguin Habitat

No works are to be undertaken during the declared penguin breeding season (1 July - 28 February) unless written confirmation that penguins are not nesting or moulting under Manly Wharf is obtained from the Department of Planning, Industry and Environment (DPIE) Little Penguin Recovery Program Coordinator. Written evidence of compliance is to be provided to the Certifying Authority prior to any Occupation Certificate.

Reason: To avoid construction-related impacts to Little Penguins.

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.

Ecologist to Induct Site Manager – Penguin and Bandicoot Habitat

Prior to commencement of construction works, the project ecologist is to meet with the site manager to:

- a) advise of conditions to be implemented for protection of relevant threatened species and endangered ecological communities;
- b) ensure that all workers are appropriately briefed on required protective measures; and
- c) inspect protective measures to confirm their adequacy and advise the proponent and site manager of the inspection results and their implications.

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

CEMP to be Implemented

Construction is to be undertaken in accordance with the Construction Environmental Management Plan (CEMP). All workers are to be made aware of the content of the CEMP.

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

Report Dead or Injured Penguins

Any injured or dead Little Penguins 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 Little Penguins and record any mortality events.

CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE

Project Ecologist Certification

Works are to be carried out in accordance with these conditions of consent, the Construction Environmental Management Plan and the approved biodiversity report. Compliance with biodiversity conditions is to be certified in writing by the Project Ecologist prior to any Occupation Certificate.

Reason: To ensure biodiversity protection measures are complied with.

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

Dead or Injured Wildlife

If construction activity associated with this development results in injury or death of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To mitigate potential impacts to native wildlife resulting from construction activity.