

Natural Environment Referral Response - Biodiversity

Application Number:	DA2019/0195
Responsible Officer	Georgia Quinn
Land to be developed (Address):	Lot 6 DP 12463 , 54 Irrubel Road NEWPORT NSW 2106

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

Updated comments 04/06/2019

The applicant has provided the following additional reports/plans to support the application:

- Amended plans (MK Design Associates 15/05/2019)
- Biodiversity Development Assessment Report [BDAR] (GIS Environmental Consultants 15/05/2019) including separate "Mitigation Measures Table" and BAM data to satisfy minimum requirements set by OEH
- Bushfire Risk Assessment, *Asset Protection Zone recommendations* (Coffey 29/05/2019)
- Arboricultural Impact Appraisal and Method Statement report (Naturally Trees 31/05/2019)
- Updated Stormwater Management Plan (Barrenjoey Consulting Engineers, Revision B)
- Site Plan showing waste, recycling materials stockpiling location (MK Design Associates, not dated)
- Revised Landscape Plan (modified by Nick Skelton, 29/05/2019)

The proposed impacts to biodiversity include the removal of 2 trees Turpentine *Syncarpia glomulifera* (T31 and T35) and the remaining vegetation on the property being managed to Inner Protection Area (IPA) standards (totalling 536m²). The Landscape Plan shows the location of 5 replacement canopy tree plantings, 3 *Syncarpia glomulifera* and 2 *Livistona australis*. The bushfire consultant states, "*It is my considered opinion that to comply with the recommendations of the bushfire risk assessment for APZ requirements, detailed above, no additional trees need to be removed; and, the additional planting of new trees, including two Cabbage Tree Palms, does not compromise the integrity of the proposed on site APZ.*". The proposed trenching for utilities and stormwater have been aligned to avoid impacts to existing trees proposed to be retained. All waste/recycling and materials stockpiling are located south of the existing house, outside of mapped Littoral Rainforest EEC.

The BDAR confirms the presence of Littoral Rainforest Endangered Ecological Community (EEC), which is listed as Endangered under the NSW *Biodiversity Conservation (BC) Act 2016* and Critically

Endangered under the Commonwealth *Environment Protection and Biodiversity Conservation* (EPBC) Act 1999. The BDAR satisfies the minimum requirements set out by the Biodiversity Offsets Scheme (BC Act and associated regulation as well as the BAM [OEH 2017] and Operational Manual - Stage 1 [OEH 2018]). The assessed residual impacts of the development (development footprint and Asset Protection Zone) result in the offset requirement of 1 credit for Littoral Rainforest EEC (PCT 1833) under the Biodiversity Offset Scheme. The retirement of offsets will be conditioned as part of the consent. Please note that due to the TEC being listed as Critically Endangered under the EPBC Act 1999, any credits are excluded from application of the variation rules that are established by the Biodiversity Conservation Regulation 2017, as per the ancillary rules.

Council's Natural Environment - Biodiversity section supports the application, subject to conditions.

It should be noted that the submitted ecological reports do not provide an assessment for Littoral Rainforest CEEC against the Commonwealth *EPBC Act 1999*. It is the applicants responsibility to undertake this assessment external to the DA process.

Original comments 04/04/2019

The proposal has been assessed against the Biodiversity Conservation Act, SEPP Coastal Management, Pittwater LEP 7.6, and DCP B4.6.

The rear of the site contains a closed canopy that includes native species such as *Syncarpia glomulifera* and *Livistona australis*, and a disturbed terraced landscape with dispersed natives and exotic plantings as an understorey.

The proposed secondary dwelling is located at the rear of the site within an area that is mapped as Littoral Rainforest on the NSW Biodiversity Values map and triggers the Biodiversity Offsets Scheme under the NSW Biodiversity Conservation Act 2016 and Regulation 2017. As such, the applicant is required to submit a Biodiversity Development Assessment Report (BDAR) prepared by an Accredited Assessor. The BDAR is to include:

- Proposed development footprint;
- Likely construction impacts, including site access for equipment and machinery, material and waste stockpiles;
- Installation of services and stormwater infrastructure, OSD tanks, changes in hydrology;
- Indirect impacts to biodiversity such as soil disturbance, runoff, waste water disposal, artificial lighting;
- Asset Protection Zones and any additional requirements required by the Rural Fire Service and identified in the submitted Bushfire report

The site is also located on the SEPP Coastal Management Littoral Rainforest and buffer area map, the Pittwater LEP Biodiversity map and the DCP Wildlife corridor map. The SEE is to include discussion of how the proposal has been designed, scaled and sited to avoid and mitigate impact to trees and the Littoral Rainforest EEC and must address the provisions of the State Environmental Planning Policy (Coastal Management) 2018.

Significant native trees (*Syncarpia glomulifera* and *Livistona australis*) are located at the rear of the site and on the adjacent neighbours properties, and are within 5m of the proposed secondary dwelling. Pursuant to DCP B4.6, an Arborist report (prepared by a Level 5 AQF Arborist) is required to assess all native trees within 5m of the proposed works, including excavation, fill or changes in soil level. The report is to indicate the location, species, health and size of trees, assess the impact of the proposal upon those trees, identify any trees that cannot be retained and provide management measures for all

trees proposed to be retained. For any trees that cannot be retained, replacement planting is to be provided on a Landscape Plan. It is noted some of the trees may be located within 2m of the proposed secondary dwelling and removal would be permitted without a Council permit once the secondary dwelling is constructed. Thus the Landscape Plan is also to include replacement planting for any trees located within 2m of the proposed works.

There is insufficient information to meet the NSW legislative requirements and to demonstrate compliance with the Pittwater LEP and DCP controls. The following is required:

- BDAR as detailed above
- Revised SEE to address above requirements
- Arborist report as detailed above
- Landscape Plan identifying replacement planting for any trees that cannot be retained, or are within 2m of the secondary dwelling, and 80% of new plantings from the Littoral Rainforest EEC.

Referral Body Recommendation

Recommended for approval, subject to conditions

Recommended Natural Environment Conditions:

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

Engagement of a Project Ecologist and the Mitigation Measures Table

A Project Ecologist is to be employed for the duration of the approved works to ensure all bushland biodiversity protection measures are carried out according to the conditions of consent and the Biodiversity Development Assessment Report (GIS Environmental Consultants 15/05/2019) including separate "Mitigation Measures Tables" (copied below). The Project Ecologist will be required to certify all mitigation measures (including photographic evidence) have been implemented to be submitted to the Principal Certifying Authority prior to issue of Occupation Certificate.

The Project Ecologist must be an accredited assessor under the NSW *Biodiversity Conservation Act 2016*.

The project ecologist is to provide an engagement letter, which is to be submitted to and certified by the Principal Certifying Authority and Council prior to issue of Construction Certificate.

Table 1. Mitigation Measures to be implemented during construction

Action	Outcome	Timing	Responsibility
Sediment controls are to be installed, monitored and only removed when the area has been stabilised	Reduce sediment run off during construction.	Installed prior to construction and maintained during construction	Project manager/ owner with assistance from the Project Ecologist

Minimal to no disturbance of the native plant species in the ground cover	Avoid increased erosion on the Development Site. Reduce impact to native vegetation and habitat within the Development Site. Photos to be taken before works and after works.	During Construction	Everyone entering the site
Works for bushfire protection and works adjacent to the creek are to not reduce riparian habitat values on the site or downstream	Avoid degradation of riparian habitat on site and downstream.	During construction and after construction	Project manager and Bush Regeneration
Landscaping is to only use local native species to the Littoral Rainforest grown from seed stock, tube-stock or cuttings	Avoid introduction of weeds and exotic species. Maintain native Littoral rainforest community on the site	During construction and after construction	Landscaper and Owner
There is to be no earthworks during wet weather	Reduce erosion and sediment runoff	During construction	Builder

Table 2. Mitigation Measures to be implemented after construction

Action	Outcome	Timing	Responsibility
Weeds are to be effectively controlled on the whole of the property in the long-term using industry standard techniques and qualified bush regenerators	Reduction of weeds on the site	after construction and ongoing management	Owner and Bush regeneration contractor
No pesticides or insecticides are to be used on the within the Development Site	Reduce impact to native vegetation and fauna in the site	Before, during and after construction	Owner and bush regeneration contractor
Automatic motion sensing LED lights should be used in outdoor lighting. No direct lights should be faced into adjacent vegetation to the north of the secondary dwelling	Avoid impact to nocturnal fauna in adjacent bushland	During construction and after construction	Builder and owner
Continued maintenance of the APZ is to be achieved by firstly (logs and rocks are to be retained). The weeds, cut material and flash fuel must be removed from the property. There is	Avoid impact to native vegetation and habitat on the site	After construction	Bush regeneration contractor and owner

no need for disturbing native ground cover plants, or the already sparse shrub layer or most of the trees or disturbing or exposing the soil surface. It is recommended that fuel reduction maintenance occurs every September.			
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Reason: To protect native vegetation and wildlife in accordance with relevant Natural Environment LEP/DCP controls. (DACNECPCC2)

Notification of determination to which the Biodiversity Offset Scheme applies

Within two weeks of the date of the Notice of Determination, the applicant must download and complete the “Biodiversity Offsets Scheme – Notification of Determination” form.

The completed form and attachments, including a copy of the determination and any conditions of approval, must be emailed to the LMBC Service Centre at <lmbc.support@environment.nsw.gov.au>.

The LMBC Service Centre currently arranges for determination outcomes to be recorded in the Biodiversity Offset and Agreement Management System (BOAMS).

The Principal Certifying Authority and Council must be copied into the notification email to confirm compliance.

Reason: to ensure the NSW Office of Environment and Heritage are notified of determinations where the Biodiversity Offsets Scheme applies and Council are notified for compliance. (DACNECPCC1)

Compliance with approved BDAR impact mitigation table to minimise impacts – Prior to Construction

The approved BDAR includes two tables of mitigation measures, which must to be implemented before, during and after construction to avoid and minimise the impacts of the proposal, including action, outcome, timing and responsibility. These have been copied into these conditions of consent.

All biodiversity-related measures are to be implemented prior to construction, as specified in the approved BDAR and these conditions of consent.

The Project Ecologist is required to provide details of compliance, including written and photographic evidence, and provide to the Principal Certifying Authority and Council for certification prior to issue of Construction Certificate.

Reason: to ensure measures required to avoid and minimise residual biodiversity impacts are undertaken in accordance with the approved BDAR (DACNECPCC2)

Like for like credit retirement conditions - Ecosystem credit retirement conditions

Prior to issue of the relevant construction certificate the class and number of ecosystem credits in Table 3 below must be retired to offset the impacts of the development. The proponent has provided evidence they have taken reasonable steps to seek like for like credits as per the ancillary rules.

The requirement to retire credits outlined in Table 3 below may be satisfied by payment to the Biodiversity Conservation Fund of an amount equivalent to the class and number of ecosystem credits, as calculated by the Biodiversity Offsets Payment Calculator.

Evidence of the retirement of credits or payment to the Biodiversity Conservation Fund in satisfaction of Table 3 requirements must be provided to the General Manager Environment & Sustainability of Northern Beaches Council prior to release of construction certification.

Table 3 Ecosystem credits required to be retired – like for like

Impacted plant community type	TEC	Number of ecosystem credits	Containing HBT	IBRA sub-region	Plant community type(s) that can be used to offset the impacts from development
1833-Lilly Pilly - Cabbage Tree Palm littoral rainforest on escarpment slopes and gullies of the Sydney basin	Littoral Rainforest in the New South Wales North Coast, Sydney Basin and South East Corner Bioregions	1	YES	Pittwater, Cumberland, Sydney Cataract, Wyong and Yengo. OR Any IBRA subregion that is within 100 kilometers of the outer edge of the impacted site.	Any PCT with the below TEC Littoral Rainforest in the New South Wales North Coast, Sydney Basin and South East Corner Bioregions (including PCT's 670, 751, 910, 1534, 1536, 1537, 1832, 1833)

Reason: To offset the residual biodiversity impacts of the development in accordance with the NSW Biodiversity Offset Scheme. (DACNECPCC3)

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

Compliance with approved BDAR impact mitigation table to minimise impacts – During Construction

The approved BDAR includes two tables of mitigation measures, which must to be implemented before, during and after construction to avoid and minimise the impacts of the proposal, including action, outcome, timing and responsibility. These have been copied into these conditions of consent.

All biodiversity-related measures are to be implemented during construction, as specified in the approved BDAR and these conditions of consent.

The Project Ecologist is required to provide details of compliance, including written and photographic evidence, and provide to the Principal Certifying Authority and Council prior to issue of Occupation

Certificate.

Reason: to ensure measures required to avoid and minimise residual biodiversity impacts are undertaken in accordance with the approved BDAR (DACNEEDW1)

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

Replacement of Canopy Trees

At least 5 locally native canopy trees are to be planted on site to replace trees approved for removal (at least 3 *Syncarpia glomulifera* and 2 Cabage Tree Plams *Livistona australis*. Species are to have a minimum mature height of 8.5m and be consistent with these conditions of consent. Tree plantings are to be retained for the life of the development and/or for their safe natural life. Trees that die or are removed must be replaced with another locally native canopy tree. Replacement plantings are to be certified as complete and in accordance with these conditions of consent by a qualified landscape architect, arborist or ecologist prior to issue of any Occupation Certificate.

Reason: To establish appropriate landscaping in accordance with relevant Natural Environment LEP/DCP controls. (DACNEFPOC1)

Compliance with approved BDAR impact mitigation table to minimise impacts – Occupation Construction

The approved BDAR includes two tables of mitigation measures, which must to be implemented before, during and after construction to avoid and minimise the impacts of the proposal, including action, outcome, timing and responsibility. These have been copied into these conditions of consent.

All biodiversity-related measures are to be implemented immediately after construction, as specified in the approved BDAR and these conditions of consent.

The Project Ecologist is required to provide details of compliance, including written and photographic evidence, and provide to the Principal Certifying Authority and Council prior to issue of Occupation Certificate.

Reason: to ensure measures required to avoid and minimise residual biodiversity impacts are undertaken in accordance with the approved BDAR (DACNEFPOC2)

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

Control of Weeds

Prior to the completion of works, all priority weeds (as listed under the Biosecurity Act 2015) are to be removed/controlled within the subject site using an appropriately registered control method. Information on weeds of the Northern Beaches can be found at the NSW WeedWise website (<http://weeds.dpi.nsw.gov.au/>). All environmental weeds are to be removed and controlled. Refer to Council website http://www.pittwater.nsw.gov.au/environment/noxious_weeds

Reason: Weed management.

Compliance with approved BDAR impact mitigation table to minimise impacts – Post Construction/Ongoing

The approved BDAR includes two tables of mitigation measures, which must to be implemented before, during and after construction to avoid and minimise the impacts of the proposal, including action,

outcome, timing and responsibility. These have been copied into these conditions of consent.

All biodiversity-related measures are to be implemented prior to construction, as specified in the approved BDAR and these conditions of consent.

The Project Ecologist is required to provide details of compliance, including written and photographic evidence, and provide to Council as per the mitigation table.

Reason: to ensure measures required to avoid and minimise residual biodiversity impacts are undertaken in accordance with the approved BDAR (DACNEGOG1)

No Planting Environmental Weeds

No environmental weeds are to be planted on the site. Information on weeds of the Northern Beaches can be found at the NSW WeedWise website (<http://weeds.dpi.nsw.gov.au/>).

Reason: Weed management.

Works to cease if item found

If any Aboriginal Engravings or Relics are unearthed all work is to cease immediately and the Aboriginal Heritage Office (AHO) and Office of Environment and Heritage (OEH) are to be notified.

Reason: To protect Aboriginal Heritage.

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.