

Natural Environment Referral Response - Biodiversity

Application Number:	DA2018/1574
Responsible Officer	Rebecca Englund
Land to be developed (Address):	Lot 11 DP 577062 , 23 Fisher Road DEE WHY 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

Amended Comment (following receipt of amended plans) 21/05/2019

The updated architectural package and landscape plan were reviewed and assessed against relevant controls. The revised plans do not indicate the retention of any additional trees (still 55 to be removed), however, the applicant has responded to draft conditions relating to landscaping and retention of natural rock features. The Planting Schedule has been updated to reflect locally native species and includes the provision of 59 replacement canopy tree plantings that will reach a minimum height of 8m. Replacement canopy species are indicated to be of a semi-advanced pot size (75L or 100L). Three proposed apartments have been removed from the north-western corner of the site, which reduces impacts to the natural rock escarpment in this area.

The proposed replacement canopy trees across the site and further retention of the natural rock in the north-western corner will help to mitigate impacts to biodiversity.

Amended Comment (following receipt of amended plans) 21/03/2019

The revised plans and reports were reviewed and assessed against the relevant controls.

Assessment against E2 Prescribed Vegetation

The revised plans do not indicate the retention of any additional trees (still 55 to be removed). No additional information regarding the 5 trees proposed to be retained with reported major Tree Protection Zone encroachments has been provided, including T90 within the adjacent property at 25 Fisher Road.

The revised Landscape Plan does not specify how many trees are being planted to offset this canopy loss. The information provided for this assessment does not demonstrate how the proposal achieves compliance with the objectives of E2 Prescribed Vegetation, which requires development to minimise impacts to remnant canopy trees.

Assessment against E6 Retaining unique environmental features

The amended plans indicate deletion of Apartment A.LG1 in order to retain some part of the natural

rock formations in the north-west corner of the site. This change is supported and will assist in improving compliance with the control. However, the majority of this significant environmental feature will be permanently removed. As stated in the original comments, the previous approved DA generally avoided any external impacts to this significant environmental feature, except an entrance to basement car parking in the northeast corner of the site.

As previously determined, Council's Natural Environment – Biodiversity section does not support the application. The proposal has an unacceptable impact to local native trees and unique environmental features and is therefore inconsistent with applicable Natural Environment controls.

Original Comment 07/12/2019

This proposal was assessed against Warringah LEP 2011 and Clauses E2, and E6 within the Warringah DCP 2011.

Council's Natural Environment – Biodiversity section does not support the application. The proposal has an unacceptable impact to significant trees and environmental features.

The Arborist assessment (Bluegum, August 2018) reports that 55 trees to be removed as a result of the proposal, 14 and 35 of these trees having a high and medium retention value respectively. Another 15 high and medium retention value trees will have TPZ encroachment; at least 5 of these trees will incur a significant 15-30% encroachment.

This site was the subject of a previous approved DA (DA2011/1274).

In terms of biodiversity impacts the current proposal will remove 16 significant local native trees and 8 significant local native and habitat trees will incur TPZ encroachment.

The current proposal compared to the previously approved DA, will remove an additional 7 local native trees, as well as result in significant TPZ encroachment to at least 7 local native trees. The excavation of the basement carpark is likely to impact on the TPZ of additional significant trees that have not been assessed in the submitted Arborist Report.

The Landscape Plan does not specify how many trees are being planted to replace this loss. It is also unclear what the long-term impacts of shading will have on the vegetation to be retained along the southern rocky escarpment.

During the site inspection it was noted that 8 significant local native trees have been removed since the approved DA, 4 of these since the Arborist Report was finalised (Bluegum, August 2018).

The current proposal will result in additional impacts to significant environmental features, namely the rocky escarpment along the northern boundary, which will be entirely removed.

Detailed comments

Assessment against E2 Prescribed Vegetation

The proposal in its current form is not sited and designed to minimise the impact on remnant native vegetation, including significant local native canopy trees. The current proposal has been expanded compared to the previously approved development, and will directly remove an additional 7 local native trees, as well as result in significant TPZ encroachment to at least 7 local native trees. This point clearly demonstrates that this clause has not been addressed.

It is also unclear what long-term impacts of shading will have on the vegetation to be retained in the southern rocky escarpment.

The following high- and medium-significance local native trees are proposed for removal:

T6A – *Angophora costata*
T10 – *Angophora costata*
T37 – *Elaeocarpus reticulatis*
T38 – *Angophora costata*
T40A – *Angophora costata*
T41 – *Angophora costata*
T43 – *Casuarina glauca*
T62 – *Casuarina glauca*
T67 – *Melaleuca armillaris*
T69 – *Eucalyptus haemastoma*
T70 – *Eucalyptus haemastoma*
T71 – *Eucalyptus haemastoma*
T105 – *Angophora costata*
T109 – *Angophora costata*
T110 – *Eucalyptus umbra*
T119A – *Eucalyptus robusta*

The following high- and medium-significance local native trees are proposed for retention with identified TPZ encroachment:

T7 – *Angophora costata*
T17 – *Angophora costata*
T54 – *Eucalyptus microcorys*
T56 – *Corymbia eximia*
T58 – *Eucalyptus microcorys*
T72 – *Corymbia citriodora* (29m high, not local native but provides habitat to local fauna)
T90 – *Eucalyptus grandis* (29m high, not local native but provides habitat to local fauna)
T107 – *Angophora costata*

During the site inspection the following local native trees had already been removed:

T6
T39
T40 – removed since Arborist Report
T42 – removed since Arborist Report
T44 – removed since Arborist Report
T45 – removed since Arborist Report
T46
T59
T117

Assessment against E6 Retaining unique environmental features

The site contains two significant environmental features, being the rocky escarpments generally located along the southern and northern boundaries of the site. These features provide known habitat for urban tolerant species, including *Intelligama lesueurii* Eastern Water Dragon (Kingfisher, April 2018).

The escarpment located along St David Avenue, the southern boundary of the site, and its vegetation was recommended for protection in the PLM for this application. Trees to be retained in this area are surrounded by large sandstone boulder, and sandwiched between a steep drop down the escarpment to the south and proposed deep excavation to the immediately adjacent to the north. The supporting documents do not demonstrate how trees proposed to be retained can be practically retained due to these site limitations. The Landscaping Plan does not clearly specify how much planting will be incorporated into this area.

The other rocky escarpment is located generally along the northern boundary. This escarpment will be permanently removed from the landscape due to the proposed basement carpark. The previous

approved DA generally avoided any external impacts to this significant environmental feature, except an entrance to basement car parking in the northeast corner of the site. The current proposed impacts to this habitat feature are not supported.

The rocky escarpment along St David Ave will be subjected to shading all day at winter solstice, and most of the day during March and September. This is likely to result in ongoing indirect impacts of shading to this bushland vegetation, as well as reducing habitat quality for basking reptiles.

Referral Body Recommendation

Recommended for refusal

Recommended Natural Environment Conditions:

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

Engage a 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 according to the conditions of consent and the submitted Flora and Fauna Report (Ecological Consultants Australia Pty Ltd, April 2018).

The Project Ecologist must have one of the following memberships/accreditation,

- Practising member of the NSW Ecological Consultants Association OR
- Biodiversity Assessment Method assessor accreditation under the NSW Biodiversity Conservation Act 2016

Employment of a project ecologist is to be certified by the Principal Certifying Authority Prior to issue of Construction Certificate.

Reason: To protect native vegetation and wildlife in accordance with relevant Natural Environment LEP/DCP controls.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

Tree Clearing Protocols

The Project Ecologist is to be present to:

- a) relocate any displaced fauna that may be disturbed during any tree clearance and/or construction works;
- b) direct the tree removal contractor to salvage any tree hollows within the development area and place them within areas of retained native vegetation on the site.
- c) certify in writing that the above has been undertaken and submit this to the Principal Certifying Authority prior to issue of the Occupation Certificate.

Reason: To protect native wildlife in accordance with Sections 2.1 and 2.4 of the NSW Biodiversity Conservation Act 2016 and relevant Natural Environment LEP/DCP controls.

Implementation of Landscape Plan

Landscaping is to be implemented in accordance with the approved Landscape Plans (Context, Revised E, April 2019) and these conditions of consent. The new landscaping is to be certified in accordance with approved Landscape Plans and these conditions of consent by a qualified landscape architect, arborist or ecologist prior to issue of the Occupation Certificate.

Reason: To ensure landscaping is consistent with relevant Natural Environment LEP/DCP controls.

Compliance with Ecologist's Recommendations – During Construction

All biodiversity-related measures are to be implemented during construction, as specified in the approved Flora and Fauna report (Ecological Consultants Pty Ltd, April 2018) and these conditions of consent. Compliance with these measures is to be certified by the project ecologist prior to issue of the Occupation Certificate.

Specifically:

- Vegetated areas outside of approved disturbance zones to be protected from any impact of development.
- Dead wood including upright dead trees and fallen logs on the ground should be retained or relocated onsite and protected during works as they provide high quality habitat for threatened fauna species.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures in accordance with relevant Natural Environment LEP/DCP controls. (DACNEEDW2)

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

Replacement of Canopy Trees

At least 59 locally native canopy trees are to be planted on site to replace trees approved for removal, as per the approved landscape plan (Context, Rev E, April 2019). These trees must not be planted within 200mm of any dwelling or within the TPZ of any tree to be retained. Species are to have a minimum mature height of 8.5m and be consistent with these consent conditions. 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)

Certification of Landscape Plan

Landscaping is to be implemented in accordance with the approved Landscape Plans (Context, Rev E, April 2019) and these conditions of consent. The new landscaping is to be certified as complete and in accordance with approved Landscape Plans and these conditions of consent by a qualified landscape architect, arborist or ecologist prior to issue of any Occupation Certificate.

Reason: To ensure landscaping is consistent with relevant Natural Environment LEP/DCP controls. (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.

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: To manage the spread of environmental weeds in accordance with relevant Natural Environment LEP/DCP controls and the NSW *Biosecurity Act 2015*.

Replacement of Canopy Trees

Tree replacement plantings required under this consent 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.

Reason: To replace locally native trees in accordance with relevant Natural Environment LEP/DCP controls. (DACNEGOG2)

Works to cease if Aboriginal Heritage 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.