

Natural Environment Referral Response - Biodiversity

Application Number:	DA2021/2364
Date:	27/04/2022
Responsible Officer	Adam Mitchell
Land to be developed (Address):	Lot 17 DP 8595 , 121 Pacific Road PALM BEACH NSW 2108

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 application seeks approval for the demolition of the existing building and construction of a new two storey dwelling house, garage, carport, swimming pool and cabana. The application also seeks to establish an Asset Protection Zone (APZ) over the entirety of the site in perpetuity.

Council's Natural Environment Unit - Biodiversity referral team have reviewed the application for consistency against the relevant environmental legislation and controls, including:

Biodiversity Conservation Act 2016 (BC Act)
Biodiversity Conservation Regulation 2017
State Environmental Planning Policy (Coastal Management) 2018

- s11 Proximity to Littoral Rainforest

Pittwater Local Environmental Plan (PLEP)

- 7.6 Biodiversity Protection

Pittwater Development Control Plan (PDCP)

- B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor

Final Recommendation - 24/04/2022

Additional information is provided with the application including an amended Bushfire Risk Assessment (dated 19/04/2022).

The proposed Asset Protection Zone is amended to:

1. *At the commencement of building works and in perpetuity the area to the west of the proposed dwelling up to the property boundary shall be managed as an Asset Protection Zone in accordance with the requirements of Planning for Bushfire Protection, the RFS document Standards for Asset Protection Zones and in a manner that does not create a bushfire hazard to the property.*
2. *In addition, the area to the north, south and east of the buildings shall be managed as an Asset Protection Area to a distance of at least 5m or to the property boundary.*

As the site currently benefits from the 10/50 clearing eligibility, and the proposed APZ does not extend beyond this area, no objection is raised by Council's Biodiversity Referral Team and the BOS is not triggered. Subject to conditions the Bushland and Biodiversity referral team find the application to be consistent against relevant environmental controls.

Updated Recommendation - 8/04/2022

Additional information is provided with the application including an Arboriculture Addendum (The Tree MD 2022).

Of relevance to the previous Biodiversity Referral, the following information is provided in relation to concerns raised about Tree 2, 4 and 14:

- Tree 2 (*Corymbia maculata*) - approved for removal under DA2020/0133, therefore no objection is raised.
- Tree 4 (*Eucalyptus paniculata*) - now proposed for retention, therefore no objection is raised.
- Tree 14 (*Corymbia maculata*) - approved for removal under DA2020/0133, therefore no objection is raised.

No clarification or justification is provided to the expected impacts of APZ establishment within DPE's Biodiversity Values map, therefore the Biodiversity referral team are still unable to support the application.

Concern is however raised over the recommended Asset Protection Zone (Bushfire Planning Services 2021):

"At the commencement of building works and in perpetuity the entire property shall be managed as an Asset Protection Zone in accordance with the requirements of Planning for Bushfire Protection, the RFS document Standards for Asset Protection Zones and in a manner that does not create a bushfire hazard to the property." that will extend into native vegetation that does not benefit from the 10/50 clearing eligibility. Both the establishment, and maintenance in perpetuity of an APZ over native vegetation is considered to constitute "clearing" as defined under s60C of the Local Land Services Act 2013, and therefore will trigger the BOS and will require assessment under the Biodiversity Assessment Methodology 2020 due to its location within DPE's Biodiversity Values mapping. Previous applications within the same property have determined a BAL of 'LOW', therefore no (known) APZ has been approved within the property to date.

The application must therefore either:

1. be accompanied by a Biodiversity Development Assessment Report (BDAR) prepared by an Accredited Assessor (<https://customer.lmbc.nsw.gov.au/assessment/AccreditedAssessor>), or
2. be accompanied by a 'Vegetation Management Plan' that includes the locations of all native

vegetation, including trees within the site and a statement from the Bushfire Practitioner that all can be retained without modification and comply with Planning for Bushfire Protection 2019.

On receipt of the requested information, the Biodiversity referral team can reassess.

Original Recommendation - 20/12/2021

The site is located within the Department of Planning, Industry and Environment's (DPIE) Biodiversity Values mapping:

<https://www.lmbc.nsw.gov.au/Maps/index.html?viewer=BOSETMap>

Any removal of native vegetation from within mapped areas will trigger the Biodiversity Offset Scheme (BOS).

On review of the submitted Arboriculture Impact Assessment Report (The Tree MD 2021) It is noted that the application seeks to remove native trees (T.2, 4, 14) that are located within DPIE's Biodiversity Values mapping, and that appear to be located >10m from the existing dwelling and therefore do not benefit from the 10/50 Clearing Eligibility.

Further, concern is however raised over the recommended Asset Protection Zone (Bushfire Planning Services 2021):

- *"At the commencement of building works and in perpetuity the entire property shall be managed as an Asset Protection Zone in accordance with the requirements of Planning for Bushfire Protection, the RFS document Standards for Asset Protection Zones and in a manner that does not create a bushfire hazard to the property."*

that will extend into native vegetation that does not benefit from the 10/50 clearing eligibility. Both the establishment, and maintenance in perpetuity of an APZ over native vegetation is considered to constitute "clearing" as defined under s60C of the Local Land Services Act 2013, and therefore will trigger the BOS and will require assessment under the Biodiversity Assessment Methodology 2020 due to its location within DPIE's Biodiversity Values mapping.

Previous applications within the same property have determined a BAL of 'LOW', therefore no (known) APZ has been approved within the property to date.

The proposal must be accompanied by a Biodiversity Development Assessment Report (BDAR) prepared by an Accredited Assessor:

<https://customer.lmbc.nsw.gov.au/assessment/AccreditedAssessor>

Alternatively, the applicant is encouraged to a more sensitive design that allows retention of Tree 2 and 4, and increases the setback of the proposed dwelling to >100m from the hazard or as recommended by the Bushfire Practitioner to remove the requirement for establishment of an APZ, if possible.

On receipt of the required BDAR or redesign, Council's Natural Environment Unit - Biodiversity can reassess the application.

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****No Clearing of Vegetation**

Unless otherwise exempt, or previously approved for removal (i.e. Tree 2 and Tree 14), no vegetation is to be cleared prior to issue of a Construction Certificate.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to issue of Construction Certificate.

Reason: To protect native vegetation.

Delineation of Asset Protection Zones

Prior to the commencement of any vegetation clearance/modification, the boundaries of the bushfire Asset Protection Zone (APZ) are to be surveyed and clearly marked by way of temporary fencing, flagging tape or markers. Clearing of vegetation for APZ establishment must only occur within the marked APZ boundaries.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to issue of the Construction Certificate.

Reason: To protect native vegetation and wildlife.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT**Clearing for Asset Protection Zones**

Clearing of vegetation during works for APZ establishment must only occur within the surveyed and marked APZ boundaries. No clearing is to be undertaken outside of the APZ boundaries.

Written certification of compliance is to be submitted to the Principal Certifying Authority.

Reason: To protect native vegetation and wildlife.

**CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE
OCCUPATION CERTIFICATE****Clearing for Asset Protection Zones**

Clearing of vegetation for APZ establishment must only occur within the surveyed and marked APZ boundaries. No clearing is to be undertaken outside of the APZ boundaries.

Written certification of compliance is to be submitted to the Principal Certifying Authority prior to issue of the Occupation Certificate.

Reason: To protect native vegetation and wildlife.

No Weeds Imported On To The Site

No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan 2019 – 2023) are to be imported on to the site prior to or during construction works.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to issue of any Occupation Certificate.

Reason: To reduce the risk of site works contributing to spread of Priority and environmental weeds.

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

Protection of Habitat Features

All natural landscape features, including any rock outcrops, native vegetation, soil and/or watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans.

Reason: To protect wildlife habitat.

Maintenance of Asset Protection Zones

Vegetation clearing for ongoing APZ maintenance must only occur within the surveyed and marked APZ boundaries. No clearing is to be undertaken outside of the APZ boundaries.

Reason: To protect native vegetation and wildlife.