

Natural Environment Referral Response - Biodiversity

Application Number:	DA2022/1516
Proposed Development:	Retaining walls, decking, associated landscape works and tree removal
Date:	22/12/2022
Responsible Officer	Michael French
Land to be developed (Address):	Lot 1 DP 214956 , 30 Herbert Avenue 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

Additional Information Comment 22/12/2022

This DA includes a request to remove a 30m tall Eucalyptus punctata and further detailed assessment indicates that the tree is assessed as a High Risk with the likelihood of failure Probable and the consequences of failure High. Council's Landscape team have approved its removal and have conditioned replacement with 2 x E. punctata in addition to the trees proposed in the Landscape Plan.

Based on this fact the proposal and the findings of the BDAR are acceptable, a Serious and Irreversible Impact will not result, and the recommended Biodiversity credit obligation and additional impact mitigation measures will be included within suitable consent conditions.

Original Referral Comments

The submitted Biodiversity Development Assessment Report (Kingfisher 2022) considered the measures implemented in order to avoid and minimise impacts of the development, as required in accordance with the Biodiversity Conservation Act 2016 and the Biodiversity Assessment Method. The BDAR is provided as the direct impacts of the proposal will result in the clearing of native vegetation within the area mapped on the Biodiversity Values Map.

Kingfisher state that a 'Do nothing' option would not save the Grey Gum as, according the Arborist Report, it has a fungal infection that makes it unsafe to leave in situ. This is unclear and the Landscape Referral does not support the removal as the Arborist did not undertake a detailed assessment of the extent of decay and structural compromise that the tree is susceptible to. In addition, Kingfisher state that the proposed location of the development, which includes construction of retaining walls and a boardwalk. cannot be located elsewhere on the site. The loss of native vegetation and fauna habitat, including Tree 7 and Tree 4 appears to result from the retaining wall construction that is proposed in order to provide a level lawn area. Development located along the western boundary, where there is

evidence of recent vegetation removal, may be an alternate location that will avoid and minimise impacts, while allowing the retention of Tree 7.

If the removal of Tree 7 is justified, then the findings of the BDAR are acknowledged, including the current condition of the native vegetation community on site, the direct impact on Pittwater Spotted Gum Forest (PSGF) (PCT1214) that will result, the range of proposed mitigation measures, and the calculated ecosystem and species credit species credits that will be retired to offset the impacts of the development. In relation to payment into the Fund to offset any credit obligation, the recent changes to the method used to calculate the cost of biodiversity credits should be noted, and the likely increase in offset costs discussed between the applicant and the accredited assessor.

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, no vegetation is to be cleared prior to issue of a Construction Certificate.

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

Reason: To protect native vegetation.

Notification of determination to which the Biodiversity Offset Scheme applies

The applicant or Project Ecologist, on behalf of 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 bam.support@environment.nsw.gov.au. The LMBC Service Centre arranges for determination outcomes to be recorded in the Biodiversity Offset and Agreement Management System (BOAMS).

Council's Manager Bushland and Biodiversity and the Certifier must be copied into the notification email to confirm compliance.

Reason: To ensure the NSW Department of Planning and Environment are notified of determinations where the Biodiversity Offsets Scheme applies and Council are notified for compliance.

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 A must be retired to offset the impacts of the development.

The requirement to retire credits outlined in Table A 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 A requirements must be provided to the Manager Bushland and Biodiversity of Northern Beaches Council and to the Certifier prior to release of construction certification.

Table A 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
Pittwater Spotted Gum Forest PCT 1214	Pittwater and Wagstaffe Spotted Gum Forest in the Sydney Basin Bioregion	1	YES	Pittwater From a location within 100km of the impact site	Pittwater and Wagstaffe Spotted Gum Forest in the Sydney Basin Bioregion

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

Like for like credit retirement conditions - Species credit retirement conditions

Prior to issue of the relevant Construction Certificate the class and number of species credits in Table B must be retired to offset the impacts of development.

The requirement to retire credits outlined in Table B 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 B requirements must be provided to the Manager Bushland and Biodiversity of Northern Beaches Council and the Certifier prior to release of construction certification.

Table B Species credits required to be retired – like for like

Impacted species credit species	Number of species credits	IBRA sub-region
Chalinolobus dwyeri Large-eared Pied Bat	1	Pittwater

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

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

The approved BDAR includes mitigation measures in section 12, 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.

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 Certifier and Council prior to issue of Construction Certificate.

Reason: To - compliance with the approved BDAR.

Project Ecologist

A Project Ecologist is to be employed for the duration of the approved works.

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

Employment of a Project Ecologist is to provide an engagement letter, which is to be submitted to and certified by the Certifier 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

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

The approved BDAR includes mitigation measures in section 12, 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.

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 keep details of compliance, including written and photographic evidence.

Reason: To ensure compliance with the approved BDAR.

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

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

The approved BDAR includes mitigation measures in section 12, 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.

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 Certifier and Council's Bushland Manager 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.

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

Compliance with Ecologist's Recommendations – Ongoing

All ongoing biodiversity-related measures are to be implemented in accordance with the Biodiversity Development Assessment Report (Kingfisher 2022) and these conditions of consent.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures.