

## Natural Environment Referral Response - Biodiversity

Application Number:	DA2019/1021
Responsible Officer	Kent Bull
Land to be developed (Address):	Lot 2 DP 1019352 , 0 West Esplanade 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

#### General Comments

The following biodiversity provisions apply to the site:

- NSW Biodiversity Conservation Act 2016
- SEPP (Coastal Management) Coastal Environment Area
- Manly LEP Clause 6.5 (Terrestrial Biodiversity)

The proposed development is located within 100m of known breeding habitat for individuals associated with the endangered population of Little Penguins at Manly, as declared under Schedule 1 of the NSW Biodiversity Conservation Act 2016 (BC Act). As such, a test of significance ('five-part test') for impacts to Little Penguins is required to be prepared in accordance with Section 7.3 of the BC Act. The submitted plans and documentation indicate that works will be limited to the existing development footprint. Given that proposed works are generally internal, this assessment has been undertaken by Council's Bushland & Biodiversity staff. The test of significance concludes that, subject to recommended mitigation measures, the proposal can be undertaken without resulting in a significant impact to the endangered population of Little Penguins.

#### Test of Significance for Impacts to Little Penguins ('five-part test')

*Section 7.3 Test for determining whether proposed development or activity likely to significantly affect threatened species or ecological communities, or their habitats:*

(1) The following is to be taken into account for the purposes of determining whether a proposed development or activity is likely to significantly affect threatened species or ecological communities, or their habitats:

(a) in the case of a threatened species, whether the proposed development or activity is likely to have an adverse effect on the life cycle of the species such that a viable local population of the species is likely to be placed at risk of extinction,

**Response:** the proposed development is generally located within the existing building footprint and is therefore unlikely to impact upon the life cycle of any Little Penguins which may attempt to breed within

habitat below and in proximity to the subject site. Construction access is to be limited to the Manly Scenic Walkway.

(b) in the case of an endangered ecological community or critically endangered ecological community, whether the proposed development or activity:

(i) is likely to have an adverse effect on the extent of the ecological community such that its local occurrence is likely to be placed at risk of extinction, or

(ii) is likely to substantially and adversely modify the composition of the ecological community such that its local occurrence is likely to be placed at risk of extinction,

**Response:** no endangered ecological communities or critically endangered ecological communities (listed under the BC Act) have been identified within the subject site.

(c) in relation to the habitat of a threatened species or ecological community:

(i) the extent to which habitat is likely to be removed or modified as a result of the proposed development or activity, and

(ii) whether an area of habitat is likely to become fragmented or isolated from other areas of habitat as a result of the proposed development or activity, and

(iii) the importance of the habitat to be removed, modified, fragmented or isolated to the long-term survival of the species or ecological community in the locality,

**Response:** no penguin habitat is proposed to be removed, modified, fragmented or isolated as a result of the development.

(d) whether the proposed development or activity is likely to have an adverse effect on any declared area of outstanding biodiversity value (either directly or indirectly),

**Response:** The proposed development is not within any declared area of outstanding biodiversity value. Works will be limited to within the existing building footprint and will not be within known penguin habitat.

(e) whether the proposed development or activity is or is part of a key threatening process or is likely to increase the impact of a key threatening process.

**Response:** The proposed development will be limited to works within the existing building footprint and will therefore minimise disturbance to known penguin habitat and penguins potentially attempting to breed, moult and loiter within the vicinity of the subject site.

## Referral Body Recommendation

Recommended for approval, subject to conditions

## Recommended Natural Environment Conditions:

### CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

#### Construction Hours – Manly LEP Clause 6.5

Construction hours are to be adhered to, with no construction vehicles or heavy machinery used outside the hours of 7:00am and 5:00pm.

**Reason:** Noise and vibration can disturb local native fauna (including threatened species) and prevent access to their natural habitats.

#### Protection of penguin habitat

The foreshore and intertidal area below and to the rear of the subject site are to be fully protected for the duration of the works. There shall be no machinery use, storage of construction materials/waste, dumping, or clearing of vegetation, soil, rock or rubble within these areas. A statement confirming compliance with this condition is to be prepared by the Site Manager and provided to the Principal Certifying Authority prior to issue of the Occupation Certificate.

**Reason:** To prevent impacts to known penguin habitat and any penguins which may be breeding, moulting, or loafing in this area.

#### **Slurry and Concrete to be Removed – Penguin Habitat**

All slurry or spilt concrete associated with works (including drilling) is to be contained at the source and within the construction area. Spilt concrete is to be removed before it dries. Slurry and spilt concrete are to be removed offsite.

**Reason:** To prevent construction-related impacts to known penguin habitat.

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

#### **No new artificial lighting**

No new artificial lighting is to be directed toward or illuminate the rocky foreshore behind the cafe at any time during or post-construction. Details demonstrating compliance are to be submitted to the Certifying Authority prior to issue of a Occupation Certificate.

**Reason:** To prevent additional light pollution impacts on known Little Penguin habitat.

#### **Protection of penguin habitat**

No works or construction access are permitted within the foreshore or intertidal zone below and to the rear of the subject site. All construction access is to be via existing formed access to the east and north of the subject site. A written statement of compliance with this condition is to be prepared by the Site Manager and provided to the Principal Certifying Authority prior to issue of the Occupation Certificate.

**Reason:** To prevent disturbance and impact to known penguin habitat and any penguins which may be breeding, moulting or loafing along the foreshore or intertidal zone.

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

#### **Dead or Injured Wildlife – Manly LEP Clause 6.5**

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.