

## Natural Environment Referral Response - Biodiversity

<b>Application Number:</b>	DA2020/1162
<b>Date:</b>	04/03/2021
<b>Responsible Officer</b>	Thomas Prosser
<b>Land to be developed (Address):</b>	Lot 33 DP 11462 , 27 Bellevue Avenue AVALON BEACH NSW 2107

### 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 Biodiversity Referral (4 March 2021)**

This updated referral is based on the following additional information:

- Arboricultural Impact Assessment, Revision C (Bradshaw Consulting Arborists, 25 February 2021)
- Flora and Fauna Impact Assessment Report, Version 2.1 (Land Eco Consulting, 1 March 2021)
- Amended Landscape Plans, Issue B (Narelle Sonter Botanica, 26 February 2021)

In response to concerns raised during initial assessment, further work has been undertaken to reduce construction-related and ongoing impacts to prescribed native trees on site and within adjoining land. Further assessment against provisions of the NSW Biodiversity Conservation Act 2016 has also been undertaken, with monitoring for microbats and a 'test of significance' for the Pittwater Spotted Gum Forest EEC being undertaken.

The results of microbat 'anabat' monitoring indicate that microbats may be traversing the site or nearby areas during foraging trips; however, the ecological report concludes that the detected species are unlikely to be utilising the site as breeding habitat. Furthermore, the amended Flora and Fauna Report provides further detail on the vegetation on site and discusses this in context of the broader local occurrence of Pittwater Spotted Gum Forest EEC. The tests of significance conclude that the proposal is unlikely to result in a significant impact to threatened entities; the Biodiversity referral body concurs with this conclusion (subject to conditions).

The updated Landscape Plans appear to include minimal changes in response to previous referral comments, other than proposed retention of two additional trees (T30 and T39). Further amendments to

the Landscape Plans are required in order to provide appropriate compensatory plantings (e.g. substitution of WA *Corymbia* species with a locally native species). This will be conditioned.

It is understood that further assessment regarding the extent of prescribed tree removal proposed and compliance with relevant controls will be undertaken by Council's Landscape referral body.

### **Comments in regard to original plans**

The Biodiversity Referral Body cannot support the proposal as submitted due to inconsistency with the objectives of Pittwater DCP Clause B4.3 (Flora and Fauna Habitat Enhancement Category 2 Land). Additional information relating to the requirement for assessment under s 7.3 of the NSW Biodiversity Conservation Act 2016 is also requested.

### **Impact to Remnant Canopy Trees**

This control aims to achieve development which will "retain and enhance habitat for threatened species and endangered ecological communities" and that results in "no net loss in native canopy trees". The proposed development will result in the removal of 11 out of 15 prescribed native trees on the site, eight of which are assessed as being of very high landscape significance and three of high landscape significance. Only four prescribed native trees on the site are proposed for retention. An additional Cabbage Tree Palm (*Livistona australis*) which is of very high significance but exempt by proximity to the existing building (i.e. not prescribed) is also proposed for removal.

The proposal will remove at least 75% of prescribed native trees on site, and potentially impact upon additional native trees within the adjoining road reserves and property. It is noted that retention of significant trees on adjoining land (particularly Trees 21 and 37) relies on specialised tree protection measures such as the application of low-compression foam to roots and additional irrigation during summer. Concern is raised that these measures may allow retention of the trees within the short term but that the extent of TPZ impacts will serve to accelerate the trees' decline and ultimately shorten their natural life expectancy. It is assumed that impacts to neighbouring and road reserve trees will be further addressed by the Landscape Referral Body.

The proposal to replace 12 or more remnant native trees with one Western Australian dwarf tree cultivar and one Blueberry Ash is also inconsistent with the objectives of the control.

In addition, PDCP Clause B4.3 seeks to retain and enhance threatened species habitat, including built structures which may form roost habitat for threatened microbats. It is not considered that the removal of potential microbat habitat is justified by the statement that "buildings are not protected under the BC Act and therefore can be demolished without assessment" - particularly given that the ecological survey did not establish presence/absence of microbats and that no replacement habitat is proposed.

Finally, the ecological report states that PDCP Clause B4.3 does not apply to the subject site and assesses the proposal against a different B4 control. Applicable planning controls must be addressed, as per pre-lodgement advice.

### **Test of Significance for Pittwater and Wagstaffe Spotted Gum Forest EEC**

The subject site is identified as part of a broader local occurrence of Pittwater Spotted Gum Forest (PCT 1214) in the 'Native Vegetation of the Sydney Metropolitan Area' mapping (OEH, 2016) (Figure 1). Based on this historical mapping, Council provided pre-lodgement advice that the application was to be accompanied by a 'test of significance' for impacts to the Pittwater and Wagstaffe Spotted Gum Forest Endangered Ecological Community (EEC). The ecologist has however determined that vegetation on the subject site is not consistent with the EEC determination, based predominantly on the absence of characteristic Spotted Gum (*Corymbia maculata*) and Ironbark (*Eucalyptus paniculata*) canopy dominants, as well as the absence of shale-derived soils. A test of significance for the EEC has

therefore not been provided.

Whilst the extant canopy layer on the subject site does appear to be dominated by Sydney Red Gum (*Angophora costata*), it is noted that at least four Spotted Gums were recorded on the adjoining property by a Council Tree Services Officer in May 2018. The submitted arborist report also identifies two Spotted Gums (Trees 42 and 43) on the neighbouring property at the time of inspection in February 2019. These two trees are assessed as being of a similar age to dominant canopy trees on the subject site, suggesting that all trees in this area are part of the same remnant cohort. Thus it is considered that vegetation on the site may represent a transitional community between Pittwater Spotted Gum Forest (PCT 1214) and Coastal Enriched Sandstone Dry Forest (PCT 1181).

It is acknowledged that the subject site is located on the periphery of the historically mapped patch (Figure 1). Notwithstanding this, and the fact that vegetation on the subject site may be transitional, this canopy layer is still generally contiguous with vegetation that clearly aligns with the EEC (e.g. Elouera Road). As such, removal of at least 12 native trees from this contiguous patch of vegetation is considered likely to have at least an indirect impact upon the EEC through edge effects and loss of wildlife/pollinator habitat. In accordance with the precautionary principle, it is considered that this impact should be addressed through a test of significance, regardless of whether vegetation on the subject site meets the EEC determination or instead exists as a transitional form intergrading into the non-threatened PCT.

*Figure 1. Mapped local occurrence of Pittwater Spotted Gum Forest (PCT 1214) (OEH, 2016)*





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

#### Preparation of a Tree Removal Protocol

The Project Ecologist is to prepare a Tree Removal Protocol which includes the provision of (at a minimum):

- a pre-clearance survey
- direct supervision of tree removal
- protocol for rescue of fauna and relocation of log hollow sections onsite to provide fauna habitat

The Tree Removal Protocol must also include procedures for stop work and formal impact assessment in the event that threatened fauna species are found during the pre-clearance survey.

The Tree Removal Protocol is to be submitted to the Certifying Authority prior to issue of Construction Certificate.

Reason: To protect native wildlife.

### **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 these conditions of consent. 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

Evidence of engagement is to be provided to the Certifying Authority prior to issue of the Construction Certificate.

**Reason:** To ensure bushland management.

### **Amend Landscape Plans**

The submitted Landscape Plans are to be amended in accordance with the following:

- *Corymbia ficifolia* 'Baby Orange' is to be deleted and replaced with one specimen of a locally native tree species listed in the 'native plant species guide' provided on Council's website. Minimum pot size for this specimen is 25L.
- *Lagerstroemia* 'Natchez' is to be deleted and replaced with two specimens of locally native tree or shrub species listed in the 'native plant species guide' provided on Council's website. Minimum pot size for this specimen is 25L.
- *Cyathea cooperi* is to be deleted and replaced with twenty specimens of a locally native plant species listed in the 'native plant species guide' provided on Council's website.

The Landscape Plans are to be amended by a qualified landscape architect and certified as compliant with this condition by the landscape architect prior to issue of the Construction Certificate.

Reason: To improve consistency with PDCP B4.3 (Flora and Fauna Habitat Enhancement Category 2 Land)

## **CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT**

### **Tree Hollow Inspection by Ecologist**

All tree hollows proposed for clearing are to be inspected by the Project Ecologist prior to removal. Inspection of tree hollows is to be facilitated by a qualified tree climber or arborist with the use of an elevated work platform where necessary.

The Project Ecologist is to provide written certification of compliance to the Principal Certifying Authority prior to commencement of tree removals.

Reason: To protect native wildlife.

#### **Fauna and Tree Hollow Relocation**

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; and
- b) direct the project arborist to salvage any tree hollows within the development area and place them within areas of retained native vegetation on the site.

Reason: To protect native wildlife.

#### **Ecologist to Induct Site Manager**

Prior to commencement of construction works, the project ecologist is to meet with the site manager to:

- a) advise of conditions to be implemented for protection of relevant threatened species and endangered ecological communities;
- b) ensure that all workers are appropriately briefed on required protective measures; and
- c) inspect protective measures to confirm their adequacy and advise the proponent and site manager of the inspection results and their implications.

Reason: To prevent impacts to threatened species, endangered ecological communities and their habitats in accordance with the Biodiversity Conservation Act 2016.

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

#### **Tree Removal Protocol to be Certified as Completed**

The Project Ecologist is to provide written and photographic evidence of implementation and completion of the Tree Removal Protocol to the Principal Certifying Authority prior to issue of Occupation Certificate.

Reason: To protect native wildlife.

#### **Installation of Nest Boxes**

At least two nest boxes designed to suit microbat species are to be appropriately installed in trees not affected by development. Nest box installation is to be certified by an Ecological Consultant / Project Ecologist as being complete and adequate and written evidence provided to the Certifying Authority prior to any Occupation Certificate.

Reason: Wildlife habitat replacement.

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

#### **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.



**Landscape Plan to be Implemented**

Landscaping is to be implemented in accordance with the certified Landscape Plans which have been amended in accordance with these conditions of consent. Compliance with this condition is to be certified by a qualified landscape architect and written evidence of certification provided to the Certifying Authority prior to issue of any Occupation Certificate. Landscaping is to then be maintained for the life of the development.

**Reason:** To improve compliance with PDCP B4.3 (Flora and Fauna Habitat Enhancement Category 2 Land).