

Natural Environment Referral Response - Biodiversity

Application Number:	DA2024/0262
Proposed Development:	Demolition works and construction of a dwelling house, horse arena, stables and paddocks
Date:	17/05/2024
Responsible Officer	Anne-Marie Young
Land to be developed (Address):	Lot 6 DP 749791 , 113 Orchard Street WARRIEWOOD NSW 2102

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

Council's Biodiversity Referrals team have assessed the Development Application for compliance against the following applicable provisions:

- NSW Biodiversity Conservation Act 2016
- NSW Biodiversity Conservation Regulation 2017
- Pittwater LEP 2014 cl. 7.6 Biodiversity Protection
- Pittwater 21 DCP cl. B4.18 Heathland/Woodland Vegetation
- Planning for Bushfire Protection 2019 - Bush Fire Prone Land

Council's Biodiversity referrals team are unable to complete the assessment of the Development Application as there is insufficient information within the BDAR to make a determination. Upon submission of the required amendments, Council's Biodiversity referrals team will recommence assessment.

Biodiversity Values Map and Entry into the Biodiversity Offset Scheme (BOS)

The majority of the site is identified on the NSW Department of Climate Change, Energy, the Environment and Water (DCCEEW) Biodiversity Values Map (BV Map). Under the NSW Biodiversity Conservation Act 2016, any removal of native vegetation from within BV mapped areas will trigger the Biodiversity Offset Scheme (BOS) and the requirement for a Biodiversity Development Assessment Report (BDAR). As the proposed development is located within the BV Map and the proposal requires the removal of native vegetation, the BOS is triggered. A BDAR (Kingfisher Urban Ecology and Wetlands, February 2024) has been prepared and submitted with the Development Application. The

BDAR has identified that the Development Application triggers the BOS due to the removal of native vegetation within the BV map as well as exceeding the area clearing threshold. The Ecologist has assessed the proposal under the Streamlined Assessment - Small Area Module which is reflected in the Biodiversity Offsets and Agreement Management System (BOAMS).

It is noted that the BDAR and associated fieldwork was undertaken by Kingfisher Urban Ecology and Wetlands and certified by Accredited Assessor Kathryn Duchatel (BAAS17054).

Council's review of the BDAR has identified a number of outstanding issues and errors with the BDAR, as outlined below. Review of the BDAR also included a site assessment including an audit of BAM Plots 1 and 3.

Native Vegetation Surveys

- The Ecologist has selected Belrose Coastal Slopes as the Mitchell Landscape in BOAMS. However, the BDAR has identified that the correct Mitchell Landscape is Sydney - Newcastle Barriers and Beaches. This is to be amended in BOAMS.
- The Ecologist has applied three different Vegetation Zones within PCT 3176: VZ1 - Moderate, VZ2 - Low (Sandstone Boulders) and VZ3 - Low. In accordance with the BAM Operational Manual (Stage 1), the assessor must stratify areas of each PCT that are in different broad condition states into separate Vegetation Zones (VZ). Council's Biodiversity Referrals team do not agree with the stratification of vegetation and have identified two VZs rather than three, these being VZ1 Moderate (east) and VZ2 Moderate (west), based largely on landscape position, presence of sandstone outcropping within the west of the site and slight differences in the Vegetation Integrity (VI) scores for each of the plots (undertaken by Council). Vegetation mapping is to be reviewed, to include all native vegetation within the site, including the south-eastern corner of Plot 4, which has not been mapped.
- Furthermore, the Ecologist has identified five Management Zones (MZ) within each of the VZs, including new structures, footprint, APZ, 10 and 50. Council do not agree with the proposed MZs, and have instead identified two MZs to reflect either wholesale clearing or partial clearing (in accordance with future clearing entitlements). Council have identified that the development footprint (including the APZ) and the residual 10/50 area that extends past the APZ are the two proposed MZs. This is because the future VI score of the development footprint (including the APZ) will be 0 (reflective of wholesale clearing) and the future VI score of the residual area of the 10/50 clearing entitlement that extends past the APZ being reduced in BOAMS to clear all understory species (reflective of partial clearing).
- The Ecologist has miscalculated the full impact of native vegetation clearing in BOAMS within a number of MZs. Only two MZs have had the future VI score reduced to 0, including for 'structures' and '10' (of the 10/50). See Table 3.4 of the BDAR. The total area of the footprint, APZ and structures MZs should all be reduced to 0. The remaining MZ '50' (of the 10/50) has been correctly calculated by the Ecologist, reflecting the removal of understory and the retention of trees. This miscalculation within the MZs appears to intentionally underestimate the clearing impact and as a result reduces the generation of Ecosystem Credits required by the proposal.
- Council's Biodiversity Officers undertook BAM Plots in the same location as the Ecologist had undertaken Plot 1 and Plot 3 and revealed a significant difference in the structure and composition of vegetation within the plots. A number of species were not identified within the BAM Plots by the Ecologist, reducing native species richness. Furthermore, the Ecologist had calculated a much lower cover percentage for many of the species recorded in the plot. Misrepresentation of vegetation condition has the potential to influence credit obligations, and in this instance, the result of the plots being undertaken at a low standard has meant that two VZs have such a low VI score that credits are not generated to offset the vegetation within

those areas. As such, the proposed offset area for vegetation within the site is only 0.14 ha out of a total of 0.80 ha that is being impacted.

- It is noted that two of the BAM plots undertaken by the Ecologist (Plots 2 and 3) are not entirely within the boundary of the subject site. Any additional or future plots are to be located within the boundaries of the lot.
- Council's Biodiversity Officers calculated VI scores of 48.7 (Plot 1) and 43 (Plot 3). This depicts a more accurate representation of the moderate condition of vegetation found on site. As such, the Ecologist is required to revise the BAM plots and resubmit plot data.

Bat Surveys

The Ecologist identified that targeted surveys were required for Large-eared pied bat, which is listed as threatened species under the BC Act, and is classified as a candidate Serious And Irreversible Impacts (SAII) species in accordance with the BAM (2020). One Anabat Swift detector was utilised for targeted survey and was installed on site between the 11/11/2022 and 17/11/2022, within the required survey period. However, the survey does not meet the minimum survey effort as prescribed in the 'Species credit' threatened bats and their habitats NSW guide for the Biodiversity Assessment Method (DPIE 2021). The minimum survey effort is four Anabat detectors over four nights or one device for 16 nights (or equivalent). As the survey does not meet the minimum requirements, the species is assumed present and species credits will be required to be generated for Large-eared pied bat and an SAI assessment for the species is to be included in the BDAR.

Furthermore, the Ecologist has not included a map of the location of the Anabat Detector within the BDAR and has not specified the name, details or experience of the threatened bat surveyor who analysed the results of the survey. This information is required to be included in the BDAR in accordance with the 'Species credit' threatened bats and their habitats NSW guide for the Biodiversity Assessment Method (DPIE 2021).

The Ecologist also stated in the BDAR that two species credit bat species potentially occurred within the site, but could not be confidently identified, including Southern Myotis and Eastern Cave Bat which are also candidate SAI species. As such, additional targeted survey is required to be undertaken in accordance with the guidelines, or, they are to be assumed present on site. If the latter is decided, species polygons must be mapped in accordance with the guidelines in order to calculate species credits. Note: suitable habitat is located on site for Eastern Cave Bat and Large-eared Pied Bat in accordance with requirements listed in the Threatened Biodiversity Database Collection (TBDC).

Avoid and Minimise

The Ecologist has made no attempt to describe strategies in which the proposal has avoided and minimised impacts on biodiversity values associated with the proposals location or design. Rather, they have included screenshots of impacts associated with tree loss taken directly from the submitted Arborist Report. There are also no maps of alternative footprints considered by the proposal to avoid or minimise impacts to biodiversity. This should be provided given the previous Development Applications submitted in the past for the site. Council believe that there is potential to avoid and minimise, particularly with the location of the proposed dwelling. For example, If the dwelling was located closer to the road or within the footprint of the existing dwelling, the APZ and future 10/50 clearing entitlements would not extend so far into remnant native vegetation within the western portion of the site. There has been no consideration of this within the BDAR and there are no alternative designs discussed within the report.

Clearing for Asset Protection Zones

Advice provided by Council's Biodiversity Referrals team for the previously withdrawn Development Application (DA2023/1127) was that *"the bushfire consultant and arborist are to confirm if tree removal is required in addition to the 25 trees proposed for removal in order for the APZ to meet the minimum*

requirements of Planning for Bushfire Protection. Additional tree removal may not be supported (29/09/2023)". This has not been addressed in the current application. From review of the Arborist Report, after consideration of the trees proposed for removal for the development footprint, it is unclear if canopy cover has been reduced enough to meet the minimum APZ requirements. As such, further tree removal may be required, in which case it must be considered in the impact assessment.

Biodiversity Management Plan (BMP)

Council's Biodiversity referrals team previously requested that a Biodiversity Management Plan (BMP) be submitted with the application in order to clarify proposed impact mitigation measures. This has not been submitted with the current application and is required to be included with the application in order for Council's Biodiversity Referrals team to complete the referral. We note that the BDAR states that the preparation of a BMP will be via a condition of consent, however is considered that review of the full BMP is required prior to determination in order to demonstrate how any retained vegetation and wildlife habitat will be protected and managed.

Compliance with Council's LEP and DCP

The BDAR has considered the applicable LEP and DCP controls, however has only considered the loss of trees as a potential impact. It is important to note that a key element of the BOS is the consideration of the future potential for native vegetation clearing within the property as a result of clearing entitlements such as APZs and 10/50. In addition, applicable local planning controls require consideration of impacts to all native vegetation. From calculations within the BDAR, it is estimated that up to 80% of native vegetation within the site will be modified. As such, the full impacts of the vegetation clearing should be reassessed by the Ecologist for compliance against the LEP and DCP controls.

Required Documentation

In summary, the application requires the following:

- Amended BDAR
- Species credits generated for Large-eared Pied Bat, Eastern Cave Bat, Southern Myotis
- Biodiversity Management Plan
- Updated Bushfire and Arborist Reports confirming whether the proposed tree removal satisfies the minimum APZ requirements in accordance with Planning for Bushfire Protection 2019. The amended BDAR must also be consistent with the conclusions of the updated Bushfire and Arborist Reports
- Upon resubmission, shapefiles are to be cleaned and tidied in order for them to be adequately analysed. The shapefiles currently consists of numerous polygons for one management zone which makes calculation of areas unnecessarily difficult.

The proposal is therefore unsupported.

Note: Should you have any concerns with the referral comments above, please discuss these with the Responsible Officer.

Recommended Natural Environment Conditions:

Nil.