

Natural Environment Referral Response - Biodiversity

Application Number:	DA2018/1654
Responsible Officer	Luke Perry
Land to be developed (Address):	Lot 3 DP 805710 , 181 Forest Way BELROSE NSW 2085

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

This proposal was assessed against Clause 56 and 58 within WLEP2000, as well as the environmental assessment requirements under the NSW *Environmental Protection & Assessment Act 1979* and NSW *Biodiversity Conservation Act 2016* (NSW BC Act 2016).

Council's Natural Environment – Biodiversity section does not support the application. The proposal in its current form is considered to be inconsistent with legislation listed above and the supporting documents also have insufficient information regarding the total extent of “clearing of native vegetation” and all impacts have not been assessed. The meaning of “native vegetation” and “clearing” are defined within the *Local Land Services Act 2013*, within Part 5A s. 60B and 60C respectively.

The native vegetation of the site contains a mixture of remnant and regrowth native vegetation (following past clearing), including Duffys Forest EEC, and cascading sandstone cliffs and outcrops. Land immediately north of the site contains Duffys Forest Ecological Community in the Sydney Basin Bioregion, an Endangered Ecological Community under the *BC Act 2016*, as well as *Grevillea caleyi*, listed as Critically Endangered under the *BC Act 2016* and *EPBC Act 1999*.

The proposal includes the removal of at least 45 trees within the immediate development footprint, and additional unquantified clearing and ongoing modification of native vegetation for the required APZ, as well as potential indirect impacts to distinctive environmental features on the site and surrounding land. As such, the proposal is considered inconsistent with Clauses 56 and 58 of the WLEP2000.

Under the *BC Act 2016*, the flora and fauna assessment (Cumberland Ecology 2018) does not assess the all direct impacts of works where threatened entities *Grevillea caleyi* individuals and Duffys Forest EEC are known to occur. There is insufficient information regarding extent of clearing of native vegetation and assessment of these direct and indirect impacts. The report also only assesses the proposed building footprint. Generally, the construction footprint will be larger, requiring further vegetation clearing. The vegetation clearing and modification required for APZ establishment and

emergency vehicle access is also not assessed.

Specifically, the Flora and Fauna Assessment report (Cumberland Ecology 2018) submitted does not include all impacts to native vegetation which must include, but not limited to, an assessment of:

- the direct impact of all native vegetation to be cleared including; the development and construction footprint, additional clearing footprint for the installation of emergency vehicle access, perimeter fencing, construction of the bioretention basin, bioretention trench and associated structures, and APZ establishment, and;
- the indirect impacts associated ongoing removal of native vegetation on the whole property for APZ maintenance.

It is estimated that if the total native vegetation clearing impacts were included in the impact assessment, a Biodiversity Development Assessment Report (BDAR) would be triggered under the *Biodiversity Conservation Act 2016*, based on the 0.5 ha threshold for this property.

Detailed comments

Previous DA2017/0697 was recommended for refusal based on potential impacts to known individuals of *Grevillea caleyi* (Critically Endangered under the *BC Act 2016* and *EPBC Act 1999*) within the road reserve immediately north of the property. As stated by Council in PLM2016/0097, Council's Natural Environment Unit does not support the use or expansion of the unformed road reserve to the north of the property; this includes use as temporary or permanent access to the site or as a storage area. It is strongly advised that the applicant avoids these areas entirely.

Council's Natural Environment Unit notes that within this DA2018/1654 the proposed main access has now been relocated as recommended, however a turning circle for emergency vehicles is still proposed in the north-western corner of the property, accessed directly from the unformed road reserve. This is contrary to previous advice, and is not supported by Council. The unformed road reserve would require works including an upgrade and road widening to comply with Planning for Bushfire Protection (2006) as required the RFS referral. The construction and operation impacts to the threatened entities have not been assessed.

Any future development applications must avoid access via the unformed road reserve completely.

Assessment against WLEP 2000

Clause 56 Retaining distinctive environmental features on sites

This clause states that the development is to be designed to retain and complement any distinctive environmental features of its site and on adjoining nearby land.

This proposal is not consistent with Clause 56 as the whole of the property is proposed to be managed as an APZ, which is approximately 1 ha of native vegetation including 0.08 ha of Duffys Forest EEC, and will also impact on distinctive environmental features such as cliffs and exposed bedrock. Trees to be removed as part of the APZ have not been included within the Flora and Fauna Impact Assessment, and all trees on the property have not been assessed in the Arboricultural Impact Assessment Report.

Based on the scale of impacts proposed, the proposal is considered to be inconsistent with Clause 56 WLEP 2000. It is recommended that the position and design of any future development applications demonstrate that the environmental features of the site and adjoining land have been retained and that impacts have been avoided and minimised.

Clause 58 Protection of existing flora

This development is not sited and designed to minimise the impact on remnant indigenous flora. As stated above, the whole of the property will be managed as an APZ, which will result in the ongoing modification of approximately 1 ha of native vegetation including 0.08ha of Duffys Forest EEC. Trees to be removed as part of the APZ have not been included within the Flora and Fauna Impact Assessment, and all trees on the property have not been assessed in the Arboricultural Impact Assessment Report.

In addition, there are known individuals of *Grevillea caleyi*, listed as Critically Endangered under the *BC Act 2016* and *EPBC Act 1999*, within the unnamed road reserve immediately to the north of the site. Despite previous Council advice to avoid this area completely, the current proposal includes the emergency vehicle access in the north western corner. The proposal also includes a 2.2m colour bond fence along the northern boundary which will fragment the patch of Duffys Forest EEC onsite, as well as potentially indirectly impact on *Grevillea caleyi* and its habitat.

Based on the scale of impacts proposed, the proposal is considered to be inconsistent with Clause 58 WLEP 2000.

Assessment against the NSW BC Act 2016

It is Council's understanding that a BDAR is required for the application on the basis of the clearing threshold (estimated over 0.5ha of native vegetation clearing including within the proposed APZ). As there is no minimum lot size under the WLEP 2000, the actual lot size must be used when applying the area trigger.

The Flora and Fauna Assessment report assesses the removal of 0.32 ha of native vegetation (all vegetation except areas mapped as "Exotic Grassland – Mown Lawn"). This area calculation only includes the direct removal of native vegetation within the immediate development footprint. The impacts of the APZ have not been measured quantitatively; however the report notes that,

"In addition to the 0.001 ha impact, additional scattered DFEC canopy trees (up to the northern boundary of the subject land) may be cleared for the purpose of establishing the APZs."

And,

"the area calculation for DFEC only estimates the current proposed development impact. As such, Cumberland Ecology cannot estimate the additional trees that require clearing and/or trimming for the purpose of APZs."

These statements conflict with the Bushfire Protection Assessment Addendum (Travers, August 2018), which requires "*Native trees and shrubs should be retained as clumps in landscape beds and should not exceed a covering of more than 20% of the IPA*", and also the Arboricultural Impact Assessment Report (Sturt Noble Arboriculture, August 2018) which identifies at least two (2) trees, *Corymbia gummifera* and *Eucalyptus sieberi*, to be removed within Duffys Forest EEC.

The site's current native vegetation is in a state of regrowth following clearing in 2014. Cumberland Ecology has mapped approximately 0.62 ha of native vegetation within the IPA. It is estimated that the total clearing area of native vegetation for the APZ (to comply with the Bushfire Protection Assessment Addendum) would be approximately 0.5 ha, which includes additional ongoing modification of Duffys Forest EEC not currently assessed. This impact combined with the direct removal of native vegetation for the proposal footprint, would exceed the clearing threshold for entry into the Biodiversity Offsets Scheme.

The 2.2m high colour bond fence which is proposed along the northern boundary of the property, is likely to impact Duffys Forest EEC during construction and operation, and result in physical fragmentation from other areas of Duffys Forest EEC within the road reserve. It is also noted that OEH's Threatened Biodiversity Database notes that "no slashing, trittering or tree removal" is recommended for manual hazard reduction.

Therefore, Council strongly recommends discussions between the applicants' experts, to firstly quantify APZ impacts in terms of individual trees and shrubs, and area of understorey modification, and these impacts, as well as all other direct and indirect impacts, are to be addressed within a BDAR. Any future development application must include an Arboricultural Impact Assessment Report that assesses all trees on the property, and a formal BDAR and offset calculation (if required). Please note that any likely impacts to Duffys Forest EEC or *Grevillea caleyi*, must be addressed as per SAll requirements.

Referral Body Recommendation

Recommended for refusal

Recommended Natural Environment Conditions:

Nil.