Natural Environment Referral Response - Biodiversity

Application Number:	DA2019/0055

Responsible Officer	Julie Edwards
Land to be developed (Address):	Lot 40 DP 28908 , 9 Minkara Road BAYVIEW NSW 2104

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 Natural Environment - Biodiversity Section cannot support the application due to non-compliances with the Pittwater LEP and DCP controls.

This application was assessed against the objectives of Pittwater LEP Clause 7.6 Biodiversity, Pittwater 21 DCP Clause B4.18 Heathland/Woodland Vegetation, and the NSW *Biodiversity Conservation Act 2016*. The property is also mapped as bushfire prone land and "Major Habitat" within Pittwater's wildlife corridor mapping. Any development application must consider proposal options which are compliant with applicable Pittwater LEP and DCP controls, specifically:

- *The development is designed, sited and will be managed to avoid any significant adverse environmental impact.*
- *Development shall retain and enhance habitat and wildlife corridors for threatened species, endangered populations, endangered ecological communities and other locally native species.*
- *Development shall not reduce or degrade habitat for locally native species, threatened species, endangered populations or endangered ecological communities.*

A substantial portion of the native intact bushland on the site was cleared prior to lodgement of this DA. The cleared area is located largely within the footprint of the proposed development. As such, there can be little consideration for ways to avoid and minimise impacts as per the application of mitigation hierarchy.

The proposed development will result in a substantial loss of native vegetation (including canopy trees) and wildlife habitat on the site. The proposal as submitted does not demonstrate that the objectives of relevant Natural Environment controls have been taken into account in designing and siting the development, nor is it evident that the proponent has made an effort to avoid direct or indirect impacts to the site's biodiversity values.

Given that the existing submission does not achieve compliance with LEP and DCP controls, the applicant is encouraged to consider a redesign of the proposal. It is noted that this DA includes additional impacts compared to the previous application. Any new proposal should incorporate a substantially reduced footprint (with reconsideration of the need for non-ancillary elements) and demonstrate feasible measures to avoid impacts to the site's biodiversity values.

Detailed comments

Non-compliance with biodiversity controls and legislation

The property is 2.18 ha and currently contains remnant native bushland (PCT 1783 and PCT 1250), including wildlife habitat large native trees with hollows and sandstone escarpments, and also provides corridor values. The proposal is for a new dwelling with 5 bedrooms, home office, billard room, lounge room, family room, gym, home cinema, retreat, games room, an associated swimming pool and spa, new concrete driveway, unspecified areas of landscaping, an on-site sewerage treatment system and treated water dispersal area, rough boulder wall and Asset Protection Zone (APZ) establishment.

At least 0.528 ha of native bushland, including native trees with hollows, will be removed as a result of the proposal (Skelton 2018). There are inconsistencies within the supporting information which suggests this area is likely to be larger. The proposal will result in a substantial loss of native vegetation inconsistent with the controls. The property and area to be impacted provides habitat for threatened species, which have been identified onsite and records nearby, including, but not limited to:

- *Pseudophryne australis* Red-crowned Toadlet (heard calling within the property during the ecological survey by Nick Skelton)
- *Haliaeetus leucogaster* White-bellied Sea-eagle
- *Lophoictinia isura* Square-tailed Kite
- *Calyptorhynchus lathami* Glossy Black-Cockatoo
- *Ninox connivens* Barking Owl, (owl pellet found onsite during site-inspection for this referral, possibly Barking Owl or Powerful Owl)
- *Ninox strenua* Powerful Owl (as above)
- *Rhodamnia rubescens* Scrub Turpentine
- *Cercartetus nanus* Eastern Pygmy-possum
- *Chalinolobus dwyeri* Large-eared Pied Bat
- *Miniopterus australis* Little Bent-wing Bat
- *Miniopterus schreibersii oceanensis* Eastern Bent-wing Bat
- *Myotis macropus* Southern Myotis

Inadequate supporting information required by controls and considerations for supporting biodiversity information to accompany any new proposals

There is inadequate supporting documentation regarding impacts to biodiversity values on the site. Any new proposals should be accompanied with the following reports, in accordance with Council controls and guidelines as well as assessment against the NSW *Biodiversity Conservation Act 2016*. All reports are to be clear and consistent in terms of total scale of biodiversity impacts (trees and native vegetation).

The submitted **Biodiversity Development Assessment Report** (BDAR, Skelton 2018) must assess all biodiversity impacts including site storage/containers, landscaping, construction, access, stockpiling and APZ impacts, and any likely indirect impacts such as installation of services and stormwater infrastructure, OSD tanks, changes in hydrology, soil disturbance, runoff, waste water disposal, artificial lighting etc. All areas of residual biodiversity impacts must be included in the offset calculation (including the driveway). Skelton states, "*The site contains a high density and variety of hollows including large tree hollows that are suitable for Cockatoos (such as Sulphur Crested Cockatoos and Glossy Black Cockatoos) and small hollows suitable for gliders and Eastern Pygmy Possums.*". These

hollows must be described and provided on a map. No nocturnal survey was completed as per industry standard. The report did not follow survey guidelines for Species Credit microbat species, Large-eared Pied bat requires additional survey as per these guidelines (OEH 2018) and during identified survey season (Nov - Jan).

A **Biodiversity Management Plan** must be provided with the application. A Biodiversity Management Plan is required to be submitted as per Clause B4.18 of the Pittwater 21 DCP in accordance with Council's guidelines. This plan must include tasks to be completed prior to and during construction, as well as ongoing long-term management, to minimise impacts to biodiversity values.

The submitted **Bushfire Assessment Report** must be consistent throughout in terms of APZ requirements, i.e. whether the APZ is as per calculated distances on Page 12 OR is the whole of the property to be managed as an IPA.

An **Arborist Report** must be provided with the application. Council notes that there are trees within 5m of the works. The report must identify the location, species, health and size of all trees within 5m of the proposed development and meet the following requirements:

- Prepared by a suitably qualified arborist with minimum AQF Level 5;
- Prepared based on the actual plans and documentation submitted in support of the DA;
- Take into account all above- and below-ground works and structures that are ancillary to the development, including the APZ;
- A tree protection and management plan with specific tree protection measures to enable safe retention of all trees proposed for retention, including mapping Tree Protection Zones, Structural Root Zones and any encroachments.

A **Landscape Plan**, which is consistent with the plans/reports above, which incorporates a minimum of 80% native plantings consistent with Plant Community Types (PCT) found onsite.

Referral Body Recommendation

Recommended for refusal

Recommended Natural Environment Conditions:

Nil.