

## Natural Environment Referral Response - Biodiversity

<b>Application Number:</b>	DA2021/1522
<b>Date:</b>	07/10/2021
<b>Responsible Officer</b>	Adam Mitchell
<b>Land to be developed (Address):</b>	Lot C DP 381427 , 189 Riverview Road AVALON BEACH NSW 2107 Lot LIC 567410 , 189 Riverview Road 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

The application seeks approval for the demolition of an existing dwelling, and construction of a new dwelling. Council's Natural Environment Unit - Biodiversity referral team have reviewed the application for consistency against the relevant environmental legislation and controls, including:

#### **Biodiversity Conservation Act 2016 (BC Act) and Regulation 2017 State Environmental Planning Policy (Coastal Management)**

- Coastal Environment Area

#### **Pittwater Local Environmental Plan (PLEP)**

- 7.6 Biodiversity Protection

#### **Pittwater Development Control Plan (PDCP)**

- B4.7 Pittwater Spotted Gum Forest

Council's Biodiversity Unit do not support the proposal in its current form.

The key concerns raised by Biodiversity include:

1. A finalised Arboricultural Impact Assessment is not provided with the application.

2. The Biodiversity Development Assessment Report (BDAR) relies on the unfinalised Arboricultural Impact Assessment, and therefore cannot be relied upon for assessment of nearby tree impacts.
3. The BDAR does not demonstrate adequate avoidance or minimisation of biodiversity impacts in accordance with the Biodiversity Assessment Methodology 2020.
4. The proposed impacts to Pittwater Spotted Gum Forest within the site are considered non-compliant with Clause 13 of the State Environmental Planning Policy (Coastal Management), Clause 7.6 of the Pittwater Local Environmental Plan 2014 and B4.7 of the Pittwater 21 Development Control Plan.

Further detail on point (1) - (4) is provided below.

(1) The recently submitted 'Pre DA Impact Assessment and Management Plan' and 'Tree Table' (Botanics Tree Wise People 2021), appears to be conceptual and does not provide an assessment of all trees within 5m of the proposed works. An updated report, with a clear assessment of short-term and long-term impacts to all trees within 5m of the proposal is required. The report must clearly state which trees are proposed for removal. Impacts to trees within adjoining properties or the road reserve will not be supported, and must be clearly assessed by an AQF5 Arborist in accordance with PDGP 4.22.

Council's Biodiversity Unit have undertaken a review of the submitted plans, and note that the following trees have been recommended for removal regardless of the DA:

- T1 - T3 *Ligustrum lucidum* (exempt - species)
- T16. *Pittosporum undulatum* (exempt - height <8m)
- T18. *Eucalyptus robusta* (prescribed)

No objection is made by Council's Biodiversity Unit to the removal of T1, 2, 3 & 16 given their exempt status within the LGA, however concern is raised over the species identification of T18 and the below referenced trees:

- T5 & 18 *Eucalyptus robusta* (identified by Council's Biodiversity Officers as *Eucalyptus umbra*)
- T8, 10, 11, 20, 21 & 29 *Casuarina glauca* (identified by Council's Biodiversity Officers as *Allocasuarina torulosa*)
- T27 *Eucalyptus microcorys* (identified by Council's Biodiversity Officers as *Eucalyptus paniculata*)

The correct species identification must be included in any finalised Arboricultural Impact Assessment submitted for the application.

T.18, or any other tree determined to be a 'Risk to Life or Property' by an AQF5 Arborist may be approved for removal in accordance with (s8(1), (2) or (3) *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*. The planning pathway is separate from a DA Application, and must be resolved prior to lodging a DA should the applicant or their Arborist rely on this approval pathway. This process requires a concurrence from Council's Tree Services team, and a License to Pick or Harm a Threatened Species or Ecological Community from DPIE should the applicant wish to remove a tree diagnostic of the Pittwater Spotted Gum Forest EEC:

<https://www.environment.nsw.gov.au/licences-and-permits/wildlife-licences/licences-to-control-or-harm/licences-to-harm-threatened-species>

If an approval under SEPP (Vegetation in Non-Rural Areas) has not been sought and approved prior to DA lodgement (evidence required), all tree removal will be assessed under Part 4 of the EP&A and will be subject to the Biodiversity Offset Scheme and assessed by Council's Biodiversity Unit as requiring removal to facilitate the application.

**2)** The Biodiversity Development Assessment Report (BDAR : ACS Environmental 2021) states that 17 native canopy trees are proposed for removal, including, 7 *Corymbia maculata*, 2 *Eucalyptus umbra*, 5 *Allocasuarina torulosa*, 1 *Eucalyptus punctata*, 1 *Ceratopetalum gummiferum* & 1 *Eucalyptus paniculata*. The BDAR makes several references to this information having been collated from the *Tree Table and Pre-DA Impact Assessment and Management Plan for 189 Riverview Road, Avalon Beach* (Botanics Tree Wise People 2021) however this report appears to be conceptual and does not provide a clear schedule of trees requiring removal. Following finalisation of the Arboricultural Impact Assessment, the BDAR must be updated to reflect the impacts specified by the Arboricultural Report.

**(3)** The proposal seeks to remove native vegetation from the Department of Planning, Industry and Environment's (DPIE) Biodiversity Values mapping. A BDAR prepared by an Accredited Assessor in accordance with BAM 2020 is noted within the submitted documentation.

Section 4.3.7 of the BDAR provides an assessment of Section 7.1.2 of the BAM (2020) which requires: "*The BDAR or BCAR must document the reasonable measures taken by the proponent to avoid or minimise clearing of native vegetation and threatened species habitat during proposal design, including placement of temporary and permanent ancillary construction and maintenance facilities.*"

The assessment provided by the Accredited Assessor is limited and the impacts to the extent of Pittwater Spotted Gum Forest within the site are understated in favor of retention of cave structures. The same cave structures have also been determined to be '*degraded to the point that the species is unlikely to use the subject land*' in accordance with s.5.2.3(2)(a)(ii) of the *Biodiversity Assessment Methodology 2020* for threatened microbats. While Council's Biodiversity Unit agree that the cave habitat must be retained, the assessment provided by the Assessor that "*Avoidance of impacts have been achieved by avoiding any impact on cave or cliff structures that occur below the Foreshore Building Line*" is considered inaccurate. Further, the position that 'minimisation' of impacts have been achieved through the (unfinalised) Tree Protection Zone Management Plan (Botanics Tree Wise People 2021) which provides measures to avoid impacts to trees in the adjoining properties or road reserve, which would not be permissible without relevant owners consent, is also considered inaccurate.

No evidence of lower impact design options have been presented with the proposal, and therefore it is assumed that none have been considered.

In a review of the proposal against Section 7 of the BAM (2020), Council's Biodiversity Officers found:

1. TPZ Encroachment of over 10% of up to 5 trees proposed for retention, including up to 29.24% encroachment into the TPZ of Tree 23 in the neighbouring property, as detailed in Council's Landscape Unit referral.
2. The proposed removal of 64% of canopy within the site, including all trees above the Foreshore Building Line (the maximum developable area of the site)
3. The proposed replanting of 6 trees, in existing vegetated areas, or otherwise growth restricted by the proposed development, at best resulting in a long-term loss of 42% of canopy and TEC within the site.
4. Limited evidence that impacts to significant biodiversity features such as Tree 13 & Tree 27 have been avoided, in accordance with advice provided by Council's Biodiversity Officer at pre-lodgement.
5. The 'avoided' cave structures cited within the BDAR are located below the Foreshore Building Line, and likely would not have been impacted nor would impacts from ancillary structures (e.g.

paths) have been supported by Council in accordance with 4.1.4.5 of the PDCP.

**(4)** Citing Pittwater DCP B4.7, advice provided by Council's Biodiversity Officer at pre-lodgement meeting:

*"At this stage, the proposal is therefore considered to be inconsistent with the control. The applicant is therefore encouraged to redesign the proposal in accordance with arboricultural advice to enable retention of high significance trees, particularly Trees 13 and 27."*

Impacts to biodiversity have not substantially changed from those proposed at pre-lodgement, or are otherwise unclear in the submitted documentation. At present, the application seeks to remove up to 64% of canopy (including TEC), while proposed landscaping will at best, result in a long-term loss of 42% of canopy and is therefore considered inconsistent with PLEP7.6 and PDCP 4.7; *Development shall result in no significant onsite loss of canopy cover or a net loss in native canopy trees.*

The site is subject to cl.13(1)(a) of State Environmental Planning Policy (Coastal Management):  
*"(1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following: (a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment"*

No assessment of the proposal against the cl.13(1)(a) is provided with the application, and the current design is considered likely to have an adverse impact on the integrity and resilience of the ecological environment.

As the plans have not changed substantially since pre-lodgement, the advice provided by Council's Biodiversity Unit remains unchanged: This loss of vegetation is not supported and the footprint of the building should be re-designed to minimise the loss to an acceptable degree. The applicant is encouraged to explore alternative design options that retain the significant biodiversity features within the site and utilise the existing vegetation to compliment the proposed landscaped gardens.

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.