

Natural Environment Referral Response - Biodiversity

Application Number:	DA2022/0033
Date:	14/03/2022
Responsible Officer	Daniel Milliken
Land to be developed (Address):	Lot B DP 360797 , 30 A Addison Road MANLY NSW 2095 Lot LIC 30002346 , 30 A Addison Road MANLY NSW 2095

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 a dwelling and detached garage, construction of a new two and part three storey dwelling and associated landscaping.

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) **Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005**

- Foreshore and Waterways Area (Part 3)

Manly Local Environmental Plan (MLEP)

- Clause 6.5 (Terrestrial Biodiversity)

Manly Development Control Plan (MDCP)

- Clause 3.3.1. a) iv) Landscaping Design
- Clause 5.4.2 (Threatened Species and Critical Habitat Lands)

Council's Biodiversity Unit do not have sufficient information to provide a recommendation on the application.

A detailed Construction Schedule is required in order to demonstrate how assumptions made regarding

potential indirect impacts to the AOBV resulting from noise, vibration and water quality can be complied with.

The Flora and Fauna Assessment Report (Narla Environmental 2021) is to be amended to include a Construction Schedule which details the following:

- Each stage or task,
- Equipment required for each stage,
- Location (e.g. foreshore, above foreshore [rear], above foreshore [front], driveway etc.),
- Timing (e.g. outside breeding and moulting period, breeding period or moulting period)
- OSD discharge, including acceptable water-quality parameters for penguins based on literature and/or the expert opinion of a qualified ecological consultant

All high-intensity works with potential to disturb penguins as determined by the Project Ecologist are to be restricted to outside the breeding and moulting periods, particularly those involving demolition, rock sawing and rock hammering or any works below the foreshore building line.

The proposed development is located within known habitat for the endangered populations of Long-nosed Bandicoots at North Head and Little Penguins at Manly. The site also occurs approximately 20m north-east of the Area of Outstanding Biodiversity Value for Little Penguins (AOBV; formerly Little Penguin Critical Habitat) declared under the *Biodiversity Conservation Act 2016* (BC Act), with the nearest recorded nest being approximately 25m from the western property boundary. Tests of Significance for Little Penguins and Long-nosed Bandicoots, prepared in accordance with Section 7.3 of the BC Act, have been included within the submitted Flora and Fauna Assessment Report (Narla Environmental 2021).

On review of the Test of Significance for the Little Penguin population, it is noted that limited consideration is afforded to indirect impacts on Little Penguin and their habitats. Where consideration of indirect impacts is provided, without evidence to the contrary, many of the conclusions appear to be based on assumptions particularly those relating to noise, vibration, light and water-quality impacts. This is of concern as the Flora and Fauna Assessment Report does not recommend restricting development above the foreshore building line to outside the breeding and moulting periods, as would normally be recommended.

The Test of Significance must be prepared in accordance with the *Threatened Species Test of Significance Guidelines* (OEH 2018) which requires short and long-term indirect impacts to be considered. Additionally, s7.3(1)(d) must take into consideration the *Declaration of critical habitat for the Endangered population of Little Penguins at Manly* (NPWS 2002).

The provided Test of Significance within the Flora and Fauna Assessment Report (p52,53) concludes that indirect impacts are avoided by way of mitigation measures. On review of the mitigation measures (p41), the following are noted that relate to indirect impacts to the Little Penguin population:

- (1) *Appropriate erosion and sediment control must be erected and maintained at all times during construction in order to avoid the potential of incurring indirect impacts on biodiversity values. As a minimum, such measures should comply with the relevant industry guidelines such as 'the Blue Book' (Landcom 2004). A erosion and sediment control plan has been produced to mitigate any potential impacts to biodiversity and the environment (Engineering Studio 2021).*
- (2) *Any construction activities in close vicinity of potential Little Penguin habitat (i.e. under rocks on the foreshore and under structures such as stairs) should be undertaken outside peak the peak breeding period (July – February) and moulting period (December – February) for the species to avoid any potential impacts when they are most vulnerable. This will particularly*

- *apply to the any activities required to fix the stairs that access the rock platform / pool area.*
- (3) *Noise and light spill have the potential to interrupt the lifecycle of both the Long-nosed Bandicoot and Little Penguin. Therefore, all construction activities should be restricted to day light hours to avoid potential indirect impacts.*
- (4) *An Onsite Detention Basin (OSD) has been proposed on the middle terrace to allow for the slow release of stormwater into Little Manly Cove. This will be connected to the existing outlet, which the builder will verify the adequacy of to provide scour protection. Such protections will mitigate against potential indirect stormwater impacts the Little Penguin population.*
- (5) *Construction vibration will be undertaken in line with Australian Standard AS 2187: Part 2-2006 and the recommendations of the Geotechnical report (AssetGeoEnviro 2021). Construction should cease and action taken if any unanticipated impacts to natural rock wall on the foreshore are observed.*

The following concerns are raised with regard to each proposed mitigation measure:

- Mitigation Measure (1): the referenced Erosion and Sediment Control Plan (Engineering Studio 2021) does not provide any assurance that it has been prepared to mitigate sedimentation or water-quality impacts to the Little Penguin population. No water-quality parameters are detailed within the Erosion and Sediment Control Plan for acceptable limits prior to discharge of OSD, nor are these parameters certified by the Ecologist as being acceptable to the Little Penguin population.
- Mitigation Measure (2): the recommendation only includes proposed works taking place on the foreshore ("*under rocks on the foreshore and under structures such as stairs*"). No justification is provided for the exception of works above the foreshore from this mitigation measure that include demolition and construction, rock hammering and other high-impact works that would be likely to generate significant noise and vibration impacts.
- Mitigation Measure (3): the recommendation is limited to construction impacts, and must also consider light spill from the operation stage, a threat to the population listed under the Critical Habitat Determination (NPWS 2002).
- Mitigation Measure (4): the recommendation must address impacts arising from OSD discharge, including acceptable water-quality parameters for penguins based on literature and/or the expert opinion of a qualified ecological consultant.
- Mitigation Measure (5): the indirect impacts arising from noise and vibration to penguins and their habitat within the AOBV area are inadequately assessed. No commentary is provided on the acceptable limits of vibration, nor those that will be generated by the proposed development.

Without evidence to support assumptions, particularly as works are proposed to be carried out within sensitive periods of the year (i.e. breeding and moulting), the conclusions of the Flora and Fauna Assessment Report are unsupported by Council's Biodiversity Referral Team based on the advice of OEH (2018) which states: "*All factors must be considered and an overall conclusion must be drawn from all factors in combination. Where there is doubt regarding the likely impacts, or where detailed information is not available, it should be assumed that a significant impact is likely.*"

Evidence in the form of a Construction Schedule is required to be included within the Flora and Fauna Assessment Report to ensure these proposed mitigation measures are sufficient and assumptions correct.

In addition to the above, it is not specified whether construction and operational access is to be solely by Addison Road, or if barge access is proposed which would not be supported due to the likely marine

impacts caused by loading and offloading supplies.

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.