

## Natural Environment Referral Response - Biodiversity

<b>Application Number:</b>	DA2021/1005
<b>Date:</b>	13/01/2022
<b>Responsible Officer</b>	Thomas Prosser
<b>Land to be developed (Address):</b>	Lot 16 DP 244776 , 49 - 51 Annam 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

#### Final Biodiversity Referral (13th January 2022)

Council's Biodiversity referrals team note that additional information has been submitted with the application following the updated Biodiversity referral (26th July 2021), including:

Vegetation Management Plan (Fraser Ecological December 2021)

Revised Arboricultural Impact Statement (Advanced Arborist Reporting, November 2021)

The revised documents have addressed Council's previous comments. Council's Biodiversity notes the justification for the removal of trees, which appear to be outside of the development footprint, for asset protection purposes. However trees 117, 141 and 158 are located within the road verge and must be maintained and protected.

#### Updated Biodiversity Referral (15th October 2021)

Council's Biodiversity referrals team note that additional information has been submitted with the application following the original Biodiversity referral (26th July 2021), including:

- Bushland Removal Plan (Luff Pier, March 2021)
- Amended Bushfire Assessment Report (Building Code and Bushfire Hazard Solutions, August 2021)
- Amended Statement of Environmental Effects (Strategic Approvals, September 2021)
- NSW RFS Determination (NSW RFS, October 2021)

Amendments to the proposal include a reduction in the APZ from the entirety of the property as previously recommended by the Bushfire Report and RFS, to the following updated recommendations:

- *"From the start of building works, and in perpetuity to ensure ongoing protection from the impact of bush fires, the property around the building must be maintained as an inner protection area (IPA), in accordance with the requirements of Appendix 4 of Planning for Bush Fire Protection 2019, as follows:*
  - *Northwest for a distance of 11 metres; and,*
  - *To the property boundaries to the northeast, southeast and southwest".*

Subsequently, the amendment in the size of the APZ results in a reduction in the total amount of native vegetation proposed for removal, which is now calculated at 0.22ha (Luff Pier, March 2021). As such, the BOS is not triggered as a result of vegetation clearing thresholds and a BDAR is not required to be prepared and submitted with the application.

Council's Biodiversity referrals team have calculated the slope for the property to be >18 degrees. As such, Section 3.2.2 of Planning for Bushfire Protection (2019) applies to the development. Pursuant to this clause, *"a management plan must be submitted with the DA to provide details on how the APZ will be implemented and maintained. The management plan should include:*

- *The mechanical means necessary to complete the management required;*
- *A schedule for maintenance to occur to ensure the APZ is regularly managed; and*
- *The relevant body responsible for maintaining the APZ".*

This information must be included in the Vegetation Management Plan (VMP).

A VMP is required in accordance with P21DCP cl. B4.4(d) and is to be prepared by a suitably qualified person with the aim of identifying and requiring the retention and management of vegetation for conservation purposes for all areas of the site outside the approved APZ. The VMP must outline the management of the site according to Management Zones, that are chosen based on management objectives and activities. The following details must be included in the VMP at a minimum:

- Replanting of vegetation
- Removal of priority weeds
- Retention and protection of important habitat features (including hollow-bearing trees and large sandstone outcrops)
- Erosion and sediment control and fencing
- Adherence to asset protection zones

The VMP is required to consider the Landscape Plan and requirements of the IPA in accordance with Planning for Bushfire Protection (2019). As such, the consultant preparing the VMP must consult with the Bushfire Consultant, Landscape Architect and Ecologist to ensure achievable outcomes for the site. Details of such consultation must be included within the report.

During a site visit conducted by Council's Biodiversity officers, several hollow-bearing trees were identified within the site. Some hollows were suitable for supporting breeding by threatened species listed under the BC Act including Powerful Owl and Barking Owl, both of which have been recorded within 200m of the Subject Site. As the trees on site were not tagged by the Arborist, it was difficult to determine which trees these were in the Arborist report. Further clarification is required by the Ecologist/Arborist. Hollow-bearing trees within the site must be retained and protected throughout the development and associated APZ works. Such trees are to be identified for retention by the Ecologist and specified within the VMP.

Council's Biodiversity referrals team maintain the request for more information and justification for the removal of the following trees which appear to be outside of the development footprint. Trees 27, 28, 29, 37, 38, 39, 40, 49, 50, 51, 80, 81, 86, 87, 88, 109, 117, 130, 131, 134, 135, 141, 142, 144, 145, 148,

151, 158. Clarification is required to be included in the amended Arborist Report.

The consultant is advised that all reports submitted as part of the application are to be finalised prior to submission. Draft reports will not be accepted. Upon receipt of the VMP and updated Arborist Report, Council's Biodiversity referrals team will recommence assessment.

### **Original Biodiversity Referral (26th July 2021)**

Council's Biodiversity referrals team have assessed the Development Application for compliance against the following applicable biodiversity related controls:

- Biodiversity Conservation Act 2016
- Biodiversity Conservation Regulation 2017
- Pittwater LEP cl. 7.6 Biodiversity Protection
- Pittwater 21 DCP cl. B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor
- Coastal Management SEPP 2018 cl. 11 Development on land in proximity to coastal wetlands or littoral rainforest

The Development Application seeks consent for the construction of a new dwelling house, driveway, associated landscaping and establishment of an Asset Protection Zone (APZ) within a heavily vegetated vacant block.

It is noted that the following biodiversity related reports/documentation have been submitted with the application and have been reviewed as part of this assessment:

- Statement of Environmental Effects (Strategic Approvals, June 2021)
- Flora and Fauna Assessment (Trevor J. Hawkeswood, November 2020)
- Arboricultural Impact Statement (Advanced Arborist Reporting, November 2020)
- Bushfire Assessment Report (Building Code and Bushfire Hazard Solutions, January 2021)
- Landscape Plan (Space Landscape Designs, March 2021)

The Statement of Environmental Effects (SEE) has addressed the provisions of the Warraingah DCP, which do not apply to the proposal. The SEE is to be amended to address the provisions of the Pittwater 21 DCP, including P21 DCP cl. B4.4.

There appears to be confusion regarding the proposed Asset Protection Zone (APZ) prescribed by the Bushfire Consultant. On page 6 of the Bushfire Assessment Report, the consultant has stated "*The existing allotment configuration of the subject site precludes the ability to provide larger Asset Protection Zones. The available Asset Protection Zone (APZ) was measured to be 11 metres to the northeast. The APZ consists of grounds entirely within the subject property*". However on page 11 this is followed by "*All grounds within the subject property are to be maintained in accordance with an Inner Protection Area (IPA) as detailed in the NSW Rural Fire Service's document 'Standards for Asset Protection Zones'*". The report is to be amended to provide clarity regarding the extent to which the APZ is to be established within the site. The size of the APZ will have implications to the biodiversity assessment and whether the proposal triggers the Biodiversity Offset Scheme (BOS).

The Flora and Fauna Assessment states that "this project does not require a BDAR report as the amount of bushland to be removed is less than 0.25 hectare". Vegetation clearing is to be calculated by assessing the area of impact for the whole development including any asset protection zones required by the Rural Fire Service. As the minimum lot size associated with the property is <1ha, the removal of >0.25ha of native vegetation will trigger entry into the BOS. Should the Bushfire Consultant confirm the whole site is to be maintained as an APZ, the BOS will be triggered and a Biodiversity Development

Assessment Report (BDAR) will be required to be prepared by an accredited assessor. Council have referred the Bushfire Report onto the NSW RFS and are currently waiting comment and recommendations. Should the NSW RFS require that the entire site be maintained as an IPA, a BDAR will be required.

To avoid triggering the BOS and the requirement of a BDAR, the applicant would be required to ensure that the APZ (combined with the development footprint) is below the vegetation clearing threshold (<0.25ha). If this cannot be achieved, a BDAR will be required to be submitted.

The updated Flora and Fauna Assessment Report or BDAR is to include targeted surveys for the following threatened species that are known to occur within the broader locality:

- *Rhodamnia rubescens*

Council's Biodiversity referrals team request more information and justification for the removal of the following tree which appear to be outside of the development footprint. Tree 27, 28, 29, 37, 38, 39, 40, 49, 50, 51, 80, 81, 86, 87, 88, 109, 117, 130, 131, 134, 135, 141, 142, 144, 145, 148, 151, 158.

As recommended by the Flora and Fauna Assessment, a Vegetation Management Plan (VMP) is to be prepared by a suitably qualified person to guide the revegetation of the site. The VMP should outline the management of the site according to Management Zones, that are chosen based on management objectives and activities. Details including (but not limited to) replanting, removal of priority weeds, retention and protection of important habitat features, erosion and sediment control, fencing, and adherence to asset protection zones are to be included in the VMP. The VMP is required to consider the Landscape Plan and requirements of the IPA. It is recommended the consultant preparing the VMP discuss with the Bushfire Consultant, Landscape Architect and Ecologist to ensure achievable outcomes for the site.

The consultant is advised that all reports submitted as part of the application are to be finalised prior to submission. Draft reports will not be accepted. Upon receipt of the updated Arborist Report, updated Flora and Fauna Assessment or BDAR, and VMP, Council's Biodiversity referrals team will recommence assessment.

The proposal is therefore supported.

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

#### **Recommended Natural Environment Conditions:**

### **CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE**

#### **No Clearing of Vegetation**

Unless otherwise exempt, no vegetation is to be cleared prior to issue of a Construction Certificate.

Trees 117, 141 & 158 within the road corridor are to be retained.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to issue of Construction Certificate.

Reason: To protect native vegetation.

### **Project Ecologist**

A Project Ecologist is to be employed for the duration of the approved works.

The Project Ecologist must be an accredited assessor under the NSW Biodiversity Conservation Act 2016.

Employment of a Project Ecologist is to provide an engagement letter, which is to be submitted to and certified by the Certifying Authority Prior to issue of Construction Certificate.

Reason: To protect native vegetation and wildlife in accordance with relevant Natural Environment LEP/DCP controls.

### **Compliance with Vegetation Management Plan Recommendations – Pre-Construction**

All pre-construction biodiversity-related measures specified in the approved Vegetation Management Plan (Fraser Ecological 16 December 2021 and these conditions of consent are to be implemented at the appropriate stage of the development. Compliance with pre-construction measures are to be certified by the Project Ecologist prior to issue of the Construction Certificate.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures in accordance with relevant Natural Environment LEP/DCP controls.

## **CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT**

### **Dead or Injured Wildlife**

If construction activity associated with this development results in injury or death of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To protect native wildlife.

### **Protection of Habitat Features**

All natural landscape features, including any rock outcrops, native vegetation and/or watercourses, are to remain undisturbed during the construction works, except where affected by necessary works detailed on approved plans.

Reason: To protect wildlife habitat.

### **Clearing for Asset Protection Zones**

Clearing of vegetation during works for APZ establishment must only occur within the surveyed and marked APZ boundaries. No clearing is to be undertaken outside of the APZ boundaries.

Written certification of compliance is to be submitted to the Principal Certifying Authority.

Reason: To protect native vegetation and wildlife.

## **CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK**

### **Compliance with Ecologist's Recommendations – During Construction**

All biodiversity-related measures are to be implemented during construction in accordance with the

approved VMP and these conditions of consent.

Compliance with these measures is to be certified by the Project Ecologist in writing to the Principal Certifying Authority prior to issue of the Occupation Certificate.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures in accordance with relevant Natural Environment LEP/DCP controls.

## **CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE**

### **No Weeds Imported On To The Site**

No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan 2019 – 2023) are to be imported on to the site prior to or during construction works.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to issue of any Occupation Certificate.

Reason: To reduce the risk of site works contributing to spread of Priority and environmental weeds.

### **Compliance with Ecologist's Recommendations – Post Construction**

All biodiversity-related measures are to be implemented at the appropriate stage of development in accordance with the approved VMP and these conditions of consent.

Satisfactory establishment/initiation of post-construction measures is to be certified by the Project Ecologist prior to issue of any Occupation Certificate.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures in accordance with relevant Natural Environment LEP/DCP controls.

## **ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES**

### **Protection of Habitat Features**

All natural landscape features, including any rock outcrops, native vegetation, soil and/or watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans.

Reason: To protect wildlife habitat.

### **Maintenance of Asset Protection Zones**

Vegetation clearing for ongoing APZ maintenance must only occur within the surveyed and marked APZ boundaries. No clearing is to be undertaken outside of the APZ boundaries.

Reason: To protect native vegetation and wildlife.