

Our Ref: JSL:19/0092/00
Your Ref: Eskil Juliard

PO Box 146
St Ives NSW 2075

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T (02) 8095 7977
F (02) 8095 7979
M 0420 904 111

E mail@schmidt-liermann.com.au

Panel Members
Development Determination Panel
Northern Beaches Council
PO Box 882
MONA VALE NSW 1660

By Hand

Dear Panel Members,

Submissions – Northern Beaches Council Development Determination Panel – Item 3.3 (DA 2019/0055 – 9 Minkara Road Bayview)

1. We act for the Applicant, Joshua Caine Dick, to Development Application Number DA 2019/0055 (**Development Application**).
2. We are instructed to make the following submission on behalf of the Applicant having regard for a number of matters raised as possible grounds for refusal of the Development Application as noted in the Development Assessment Report (**DAR**) provided to Panel Members with respect to Item 3.3 of the Agenda for today's Panel meeting.
3. Our comments are confined to the following matters:
 - 3.1. Bushfire Risk Assessment
 - 3.2. Biodiversity Protection/ Environment

Submissions:

Bushfire Risk Assessment

4. **section 4.14(1)** of the *Environmental Planning and Assessment Act 1979 (EPA Act)* relevantly provides that:

development consent cannot be granted for the carrying out of development for any purpose (other than a subdivision of land that could lawfully be used for residential or rural residential purposes or development for a special fire protection purpose) on bush fire prone land (being land for the time being recorded as bush fire prone land on a relevant map certified under section 10.3 (2)) unless the consent authority:

- (a) ***is satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection prepared by the NSW Rural Fire Service in co-operation with the Department (or, if another document is prescribed by the regulations for the purposes of this paragraph, that document) that are relevant to the development (the relevant specifications and requirements), or***
- (b) ***has been provided with a certificate by a person who is recognised by the NSW Rural Fire Service as a qualified consultant in bush fire risk assessment stating that the development conforms to the relevant specifications and requirements.***
5. The requirements of section 4.14(1)(b) have been satisfied in that a Bushfire Assessment Report and accompanying Bushfire Risk Assessment Certificate (**Certificate**) has been provided to Council.
 6. The Certificate has been prepared by a certified practitioner (Ronald Coffey) and identifies a BAL Rating of "BAL 29".
 7. A BAL Rating of FZ requires referral to NSW RFS.
 8. No such referral is required.
 9. Whilst Council has referred the matter to the RFS, the referral is not needed.
 10. In circumstances where a referral response is still pending (having regard for additional information provided to the RFS) there are no ground under the EPA Act for the Development to be refused as the Certificate clearly provides that the proposed development conforms to the relevant specifications and requirements (noted as *Planning for Bush Fire Protection* with ISBN 0 9751033 2 6 and dated December 2006) pursuant to clause 272 of the *Environmental Planning and Assessment Regulation 2000*.
 11. The requirements of clause B3.2 Bushfire Hazard of the Pittwater 21 DCP have been satisfied.
 12. The requirement for referral to the RFS is only triggered by section 4.14(1A) of the EPA Act " *If the consent authority is satisfied that the development does not conform to the relevant specifications and requirements*" and where it can only then grant consent to the carrying out of the development if it has consulted with the RFS.
 13. The Panel is at liberty to rely on the Certificate and the Bushfire Assessment Report as evidence to inform its consent to the Development Application in satisfaction of the preconditions to consent under section 4.14 of the EPA Act and clause B3.2 Bushfire Hazard of the Pittwater 21 DCP.

Biodiversity and Environmental Impact

14. Section 4.15 of the EPA sets out the matters for consideration in determining a development Application which, with respect to the environmental impacts also requires the consideration of the applicable planning controls noted in the Pittwater LEP 2014 and the Pittwater 21 DCP.

Consideration of Clause 7.6 factors (Pittwater LEP 2014):

15. Clause 7.6 of the Pittwater LEP provides that before determining the Development Application, the Consent authority must **consider**:
 - (a) *whether the development is likely to have:*
 - (i) *any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and*
 - (ii) *any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and*
 - (iii) *any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and*
 - (iv) *any adverse impact on the habitat elements providing connectivity on the land, and*
 - (b) *any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*
16. Clause 7.6 of the Pittwater LEP 2014 is not to be interpreted so as to preclude the development of land for a permissible use but rather to consider the impacts of the development and the possible inclusion of appropriate measures to mitigate the impacts of the development.
17. The Land is zoned RU2 Rural Landscape.
18. The DAR confirms that the proposed Development is permissible and is consistent with the aims of the Pittwater LEP 2014 and its zone objective.
19. The Applicant submitted a detailed *Biodiversity Development Assessment Report (BDAR)* prepared by Nicholas Skelton and Sophia Mueller Sewell dated December 2018.
20. The BDAR assesses the impact of the development proposal on the bushland that was present in December 2015 and recommendations to ameliorate ecological impacts during and after construction of the development and has regard for all applicable planning controls, the EPA Act and the *Biodiversity Conservation Act 2016*.
21. The BDAR has been prepared at the request of Council and adopts the Streamlined Assessment Model as required in the specific circumstances applicable to the development proposal. It assesses the land due to the development that would have occurred before the clearing of the central part of the property.
22. The BDAR offers clear guidelines on Ameliorative Conditions and Recommendations as noted on page 68 and 69 of the BDAR (**Recommendations**). These Recommendations can be adopted as a component of the conditions of consent to the Development Application if approved.
23. The Applicant contends that the Referral Response approaches its assessment of the BDAR and the development in a manner that gives inadequate weight to the Recommendations of the BDAR and ignores the opportunity for those Recommendations to be incorporated as a requirement of conditions of consent.

24. In particular, the Referral Response cites several grounds for refusal of the Development Application that include inter alia the failure to provide a Biodiversity Management Plan, Arborist Report and Landscape Plan. The Applicant contends that the requirement for these plans (if considered appropriate by the Panel) can be framed as a condition in any consent for the development and do not preclude the Panel from approving the Development Application.

Consideration of Clause B4.18 Heathland/Woodland Vegetation factors (Pittwater 21 DCP)

25. The proposed development is subject to the controls set out in Clause B4.18 Heathland/Woodland Vegetation of the Pittwater 21 DCP.
26. The Outcomes sought to be achieved by the control can be conditioned as part of any consent to the Development Application as noted in the Recommendations contained in the BDAR and otherwise as considered appropriate.
27. Clause B4.18 provides that Variation to the Controls is permissible.
28. The Referral Response indicates the requirement for a Biodiversity Management Plan in order to satisfy the requirements of clause B4.18. In that regard it is noted that the requirement for a Plan of Management (**POM**) can be incorporated as a condition of consent and where the content of the POM can include tasks to be completed prior to and during construction, as well as ongoing long-term management, to minimise impacts to biodiversity values.

Concluding Remarks

29. The Panel can be satisfied that:
- 29.1. the Bushfire Risk Assessment has been properly undertaken by an appropriately qualified consultant and appropriately certified in accordance with the requirement of the EPA Act.
- 29.2. the conservation of the environment and biodiversity values can be appropriately conditioned having regard for the Recommendations of the BDAR and incorporated as part of:
- 29.2.1. a Biodiversity Management Plan (that can include tasks to be completed prior to and during construction as well as after construction);
- 29.2.2. an Arborist Report; and
- 29.2.3. Landscape Plan
- for the land, whilst still allowing for the permissible development of the land to proceed, having regard for the condition of the land and limited clearing undertaken and aims for future environmental conservation and promotion of biodiversity values.

30. The Applicant thanks the Panel in advance for taking these submissions into consideration.

Yours sincerely,



Joerg Schmidt-Liermann

Direct: 02 8095 7978

Email: joerg@schmidt-liermann.com.au