

Natural Environment Referral Response - Biodiversity

Application Number:	DA2020/1027
Date:	10/02/2021
Responsible Officer	Jordan Davies
Land to be developed (Address):	Lot 1 DP 1129384 , 0 Stuart Street 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

Updated Biodiversity Referral (10 February 2021)

Council's Biodiversity referrals team have assessed the development application against the following provisions:

- NSW *Biodiversity Conservation Act 2016* (BC Act)
- NSW SEPP (Coastal Management) - Coastal Environment Area
- Manly LEP Clause 6.5 (Terrestrial Biodiversity)
- Manly DCP Clause 5.3.2.1 (Threatened Species and Critical Habitat Lands)
- Manly DCP Clause Manly DCP Clause 3.3.1.iv) (Landscaping in Bandicoot Habitat)

Whilst the amended Terrestrial Biodiversity Report (GIS Environmental Consultants 12 January 2021) has made reference to risks associated with increased traffic and noise generation, it has not provided mitigation measures to reduce potential impacts on the endangered Long-Nosed Bandicoot or Little Penguin populations. In light of this, Council's Biodiversity referrals team have proposed conditions of consent to mitigate potential impacts resulting from noise and disturbance associated with operation of the restaurant. This includes a proposed reduction in approved operating hours on some evenings to offset a likely intensification of use and additional traffic as a result of the increased capacity. This restriction will mitigate any potential increase in bandicoot road mortality during dusk/evening hours (when bandicoots are most active), as well as managing disturbance to penguins attempting to come

ashore to nests after dusk.

Any increase in noise associated with operation of the condenser unit will be managed via conditions provided by Council's Environmental Health referral body, which will require preparation of an acoustic report and no increase in noise above background levels at the nearest residential receptors.

Subject to the recommended conditions of consent, it is considered that the proposal can be managed to avoid adverse impacts to the endangered populations of Little Penguins and Long-Nosed Bandicoots.

Initial Biodiversity Referral (25 November 2020)

There is insufficient information to assess the proposal at this time.

The following provisions apply to the subject site:

- NSW *Biodiversity Conservation Act 2016* (BC Act)
- Manly LEP Clause 6.5 (Terrestrial Biodiversity)
- Manly DCP Clause 5.3.2.1 (Threatened Species and Critical Habitat Lands)
- Manly DCP Clause 3.3.1.iv (Landscaping in Bandicoot Habitat)

The subject site is within the declared habitat areas for the endangered populations of Little Penguins at Manly and Long-nosed Bandicoots at North Head. The development footprint is also located less than 200m from known nesting, loafing and foraging habitat for penguins. As such, any development is required to be supported by a 'test of significance' in accordance with Section 7.3 of the BC Act. An ecological impact assessment (GIS Environmental Consultants, 22 May 2020) has been prepared by a suitably qualified ecologist and includes tests of significance for the two endangered populations. An analysis of potential impacts to the endangered populations and other wildlife is provided below:

Removal of Habitat

The submitted ecological assessment states that "the proposal will remove 32m² of vegetation that is foraging habitat for Long-nosed Bandicoots and low value habitat for other native species including the Little Penguin". The report concludes that, given the extent of available habitat within the broader area and the fact that works are generally within the existing footprint, the proposal is unlikely to result in a significant loss of important habitat for either endangered population. The Biodiversity referral body concur with this conclusion.

Noise and Disturbance - Construction Phase

The proposal will result in increased noise and human activity during the construction stage which is likely to temporarily disturb native wildlife and deter their use of the subject site. The ecological report includes some recommendations to mitigate potential construction-related impacts, and it is considered that these could be adequately managed via the ecologist's recommendations and additional conditions of consent to minimise the likelihood of harm to individual animals.

Noise and Disturbance - Ongoing

The proposal includes provision of outdoor seating for an additional 10 patrons to give an overall capacity of 32 patrons. This would presumably result in up to 32 people dining at the subject site during the existing approved operating hours, which are as follows:

- Sunday: 7am to 7pm

- Monday to Tuesday: 7am to 5pm
- Wednesday to Saturday: 7am to 10pm

The ecological report states that "the increase in human use will likely deter penguins", but does not include an assessment of the magnitude or importance of potential impacts associated with intensification of use; nor does it provide mitigation measures to manage these impacts. Given that the existing operating hours allow for evening trading five days a week - which coincides with the time in which breeding penguins return to nests after foraging at sea during the day - it is considered that an increase in capacity during these times is likely to result in greater disturbance to breeding penguins. This impact is potentially compounded by an increase in the number of dogs within the reserve in the evenings should patrons be permitted to bring pets to the restaurant, as research has demonstrated that the scent of predators alone (even if leashed) can deter native wildlife from their habitat. As it is considered that ongoing noise and disturb has the potential to reduce the long-term use and viability of nearby penguin nesting habitat, further assessment and proposed mitigation measures to address this impact are required.

Furthermore, the proposed works include installation of condenser units for the cold storage that will be located externally on a slab adjacent to the northern side of the building. Council's Environmental Health referral body have raised the following concerns relating to noise associated with the new units: "...as the condenser units would be required to run 24/7, without any adequate acoustic treatment there could be potential noise concerns for the residents. This could particularly be an issue during the night when background noise is typically lower". It considered that this additional noise could also serve to disturb/deter penguins, bandicoots and other nocturnally active wildlife which currently utilise Little Manly Reserve, the beach and the rocky foreshore at night. This potential impact has not been addressed in the ecological report.

Traffic

Road mortality is identified as a key threat to the endangered population of Long-nosed Bandicoots at North Head. As discussed above, the proposed seating increase may serve to attract a greater number of patrons during evening hours which may increase rates of road mortality for nocturnally-active bandicoots. This potential impact should be addressed in the ecological report.

Conclusion

The proposed development may result in a number of impacts to the endangered Little Penguin and Long-nosed Bandicoots which have not been addressed in the submitted ecological report. Additional information is therefore required before the Biodiversity referral body can be satisfied that the proposal will not result in a significant impact to the endangered populations.

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

Amend Landscape Drawings – Bandicoot Habitat

The Landscape drawings, submitted in conjunction with the approved Development Application and as amended by these conditions of consent, are to be amended to include native plant species with a low

dense clumping habit to provide Long-nosed Bandicoot habitat. The planting schedule must comprise species including *Lomandra* sp., *Dianella* sp. *Banksia spinulosa*, *Westringia fruticosa*, *Caustis* sp., *Xanthorrhoea* sp., *Isolepis* sp., *Juncus* sp., *Adiantum* sp., *Callistemon* sp., *Grevillea* sp., and tussocky native grasses (e.g. *Themeda* spp.).

Plans are to be amended and submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To compensate for bandicoot habitat impacted/removed as a result of the proposal.

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.

Site Induction Required – Penguin and Bandicoot Habitat

All workers, including site inspectors and sub-contractors, are to be made aware of the potential presence of relevant threatened species and endangered ecological communities through a site induction prior to commencement of works. The site induction is to include information about their conservation significance, potential activities on-site, means of identification and the measures to be implemented for their protection. A confirmation of induction is to be signed by every worker and the site manager.

Evidence of the site induction is to be documented and provided to the Principal Certifying Authority.

Reason: To prevent impacts to threatened species, endangered ecological communities and their habitats in accordance with the Biodiversity Conservation Act 2016.

Fauna Protection Fencing – Penguin and Bandicoot Habitat

Temporary chain wire fencing is to be installed around all work areas (including demolition, storage and construction areas) prior to the commencement of works. The fencing is to be designed to minimise the possibility of ground-dwelling native fauna (including relevant threatened species) accessing the work areas. Fencing is to be maintained for the duration of works.

Reason: To prevent impacts to ground-dwelling native fauna, including relevant threatened species.

Ecologist to Induct Site Manager – Penguin and Bandicoot Habitat

Prior to commencement of construction works, the project ecologist is to meet with the site manager to:

- a) advise of conditions to be implemented for protection of relevant threatened species and endangered ecological communities;

- b) ensure that all workers are appropriately briefed on required protective measures; and
- c) inspect protective measures to confirm their adequacy and advise the proponent and site manager of the inspection results and their implications.

Reason: To prevent impacts to threatened species, endangered ecological communities and their habitats in accordance with the Biodiversity Conservation Act 2016.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

Construction Hours – Manly LEP Clause 6.5

Construction hours are to be adhered to, with no construction vehicles or heavy machinery used outside the hours of 7:00am and 5:00pm.

Reason: Noise and vibration can disturb local native fauna (including threatened species) and prevent access to their natural habitats.

Pre-clearance Survey Required – Bandicoot Habitat

A pre-clearance survey for Long-nosed Bandicoot and Little Penguin presence is required prior to the removal of any vegetation, material or debris stockpiles. Clearing may only proceed if the survey concludes that no wildlife are present within the area to be cleared. A record of each inspection is to be made in the daily inspection register log-book. The log-book is to be made available to the Principal Certifying Authority.

Reason: To avoid injury or death of Long-nosed Bandicoots or Little Penguins which may be sheltering in stockpiles.

Daily Inspections Required – Bandicoot Habitat

An inspection register log-book must be kept on site recording daily inspections of all holes, machinery and construction material stockpiles, checking for Long-nosed Bandicoots. Inspections are to be undertaken each work day prior to commencement of works and works may only proceed once any bandicoot has safely vacated any holes, machinery or stockpiles. The log-book is to be made available to Principal Certifying Authority.

Reason: To avoid injury or death of Long-nosed Bandicoots which may be utilising stockpiles of vegetation, materials or debris.

Works to be Undertaken Outside of Penguin Breeding Season

Demolition and construction works may only be undertaken outside of the formal Little Penguin breeding season (i.e. between 1st March and 31st May) except with written approval of Northern Beaches Council's Biodiversity & Planning Group.

Reason: To mitigate potential construction-related impacts to nearby Little Penguin nesting habitat.

Report Dead or Injured Bandicoots – Bandicoot Habitat

Any injured or dead Long-nosed Bandicoots found within the worksite must be reported to the National Parks & Wildlife Service (9457 9577) or Northern Beaches Council (1300 434 434).

Reason: To prevent impacts to Long-nosed Bandicoots in accordance with the Biodiversity Conservation Act 2016.

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

Certification of Landscape Plan

Landscaping is to be implemented in accordance with the amended Landscape Plans (BJB Architects 2020) and these conditions of consent.

Details demonstrating compliance are to be prepared by the landscape architect and provided to the Principal Certifying Authority prior to issue of the Occupation Certificate.

Reason: To ensure compliance with the requirement to retain and protect significant planting on the site.

No Weeds Imported On To The Site

No Priority or environmental weeds (as specified on the NSW WeedWise website) 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

Bright lighting

No bright lighting or motion detectors are to be installed to illuminate lawn or garden areas. A modest amount of low lighting may be used for safety purposes only. No lighting to be directed toward or to illuminate the water and foreshore at any time both during construction or post construction phase.

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

Reason: To reduce disturbance to Long-nosed Bandicoots and Little Penguins, particularly penguin breeding activities including coming ashore to tend to eggs and chicks.

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

Hours of Operation

The hours of operation of the premises are not to exceed the following:

- Monday and Tuesday: 7:00am to 5:00pm
- Wednesday to Sunday: 7:00am to 7:00pm

The serving of meals is to cease thirty (30) minutes prior to closing time on each day and the premises is to be fully vacated by staff and management one (1) hour after closing time.

Reason: To mitigate potential disturbance to nearby nesting Little Penguins (including penguins arriving ashore to tend to eggs and chicks) associated with restaurant operation and movement of patrons.