

Natural Environment Referral Response - Biodiversity

Application Number:	DA2017/1274
Responsible Officer	Lashta Haidari
Land to be developed (Address):	<p>Lot A DP 339874 , 1825 Pittwater Road BAYVIEW NSW 2104</p> <p>Lot 1 DP 986894 , 1825 Pittwater Road BAYVIEW NSW 2104</p> <p>Lot 2 DP 986894 , 1825 Pittwater Road BAYVIEW NSW 2104</p> <p>Lot 3 DP 986894 , 1825 Pittwater Road BAYVIEW NSW 2104</p> <p>Lot 150 DP 1003518 , 1825 Pittwater Road BAYVIEW NSW 2104</p> <p>Lot 191 DP 1039481 , 1825 Pittwater Road BAYVIEW NSW 2104</p> <p>Lot 300 DP 1139238 , 1825 Pittwater Road BAYVIEW NSW 2104</p> <p>Lot 1 DP 662920 , 52 Cabbage Tree Road BAYVIEW NSW 2104</p> <p>Lot 1 DP 19161 , 52 Cabbage Tree Road BAYVIEW NSW 2104</p>

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

Recommendation

Council's Natural Environment and Climate Change (NECC) - Biodiversity section recommends refusal of the Development Application (DA) based on non-compliance with the *Environmental Planning and Assessment Act 1979* (EP&A Act) and Pittwater 21 Development Control Plan 2014 (DCP) Controls.

These are as follows:

1. Section 5A of the EP&A Act
2. DCP control B4.6 Flora and Fauna Enhancement Category 2 and Wildlife Corridor
3. DCP control C1.1 Landscaping

Details

1. Section 5A of the EP&A Act

Documents reviewed:

Part A Assessment of flora and fauna environmental constraints and opportunities, Part B Vegetation Management Plan and Part C Assessment of significance of the proposal (including all associated appendices and maps) prepared by Ann Clements & Associates Pty Ltd 5 December 2017 (ecology report).

The DA did not provide sufficient information for Council to assess the impact of the development on threatened species under Section 5A of the EP&A Act.

The ecological report did not provide the following information:

- a) Assessment of the likelihood of occurrence for threatened and migratory species identified in database searches (i.e. NSW Bionet search and Commonwealth Protected Matters Search Tool).
- b) Assessment of Significance (7-part test) for known/likely/potential threatened species to determine whether the development will have a significant effect on threatened species, populations or ecological communities or their habitats under Section 5A of the Environmental Planning and Assessment Act 1979.
- c) Conclusions summarising the results of the assessment and the need for a Species Impact Statement.

In particular, the ecology report did not assess the impacts of the development on *Ninox strenua* (Powerful Owl) and threatened microbat species known to occur in the site.

Therefore, the DA does not comply with Section 5A of the EP&A Act.

2. DCP Control B4.6 Flora and Fauna Enhancement Category 2 and Wildlife Corridor

Documents reviewed:

- Waterbrook Landscape DA Report prepared by Site Design and Studios November 2017 (landscape plan)
- Vegetation Management Plan prepared by Ann Clements & Associates Pty Ltd 5 December 2017 (VMP)
- Arboricultural Impact Assessment prepared by Footprint Green Pty Ltd November 2017 (arborist report)
- Planning for Bushfire Protection Rural Fire Service 2006 (PBP)
- Standards for Asset Protection Zones, Rural Fire Service (APZ standards)
- RFS correspondence re APZ conditions for DA2017/1274 dated 30/01/2018 ref D18/100 DA18011011219CC

The DA does not comply with DCP Control B4.6:

- a. Inconsistencies between the landscape plan, VMP, and the bushfire report, RFS APZ conditions 30/01/2018, PBP and APZ Standards.
- b. Insufficient information provided in the arborist report with regards to the extent of tree removal required in the IPA.

a. Inconsistencies between the landscape plan, VMP, and the bushfire report, RFS APZ

conditions 30/01/2018, PBP and APZ Standards.

The RFS APZ conditions 30/01/2018 provided the following conditions for APZs:

At the commencement of building works, and in perpetuity, the area around the proposed buildings shall be managed as outlined within section 4.1.3 and Appendix 5 of Planning for Bushfire Protection 2006, and the NSW Rural Fire Service's document Standards for Asset Protection Zones as follows:

- West: inner Protection Area (IPA) for a distance of 80m
- North West: IPA for a distance of 100m from building D
- South West: IPA for a distance of 80m
- All other directions: IPA to property boundary

The bushfire report (section 7.05 pg. 13) provides the following recommendations regarding management and extent of the APZ:

The proposal will rely on management of the area within the Golf Course Grounds adjacent the development area as an Asset Protection Zone to the northern boundary, for a minimum distance of 100 metres to the northwest south and southeast and 80 metres to the west and southwest of the proposed development. This can include the retention and embellishment of vegetation including that along Cabbage Tree Road however management is to ensure that the area is maintained as either an Asset Protection Zone / Inner Protection Area.

The landscape plan and VMP have designated conservation areas, revegetation areas and bush regeneration areas within the APZ IPA directly adjacent to, and surrounding all dwellings (refer to External landscape strategy 13/11/18 and VMP). This includes management and enhancement of all vegetation designated as part of the APZ IPA to a distance of up to 40 metres from the subject site boundary, directly adjacent to the proposed villas.

The APZ standards provide the following guidance on the management and structural composition of an APZ:

Fuels can be controlled by:

1. Raking or manual removal of fine fuels Ground fuels such as fallen leaves, twigs (less than 6 mm in diameter) and bark should be removed on a regular basis. This is fuel that burns quickly and increases the intensity of a fire. Fine fuels can be removed by hand or with tools such as rakes, hoes and shovels.
2. Mowing or grazing of grass. Grass needs to be kept short and, where possible, green.
3. Removal or pruning of trees, shrubs and understorey. The control of existing vegetation involves both selective fuel reduction (removal, thinning and pruning) and the retention of vegetation. Prune or remove trees so that you do not have a continuous tree canopy leading from the hazard to the asset. Separate tree crowns by two to five metres. A canopy should not overhang within two to five metres of a dwelling. Native trees and shrubs should be retained as clumps or islands and should maintain a covering of no more than 20% of the area.

Designating conservation and bush regeneration areas within an IPA is inconsistent with the APZ standards: these areas must be managed by manual removal of fine fuels/mowing, pruning and removal of trees, maintaining a canopy tree separation of 2-5 m, and maintaining native trees and shrub cover to a system of clumps or islands with an overall cover of 20% of the APZ. It is a contradiction to propose a managed APZ be maintained as a bushland conservation area to minimise the impacts of removal of wildlife corridor vegetation within the subject site: the intended structure and function of the APZ is a simplified form of unmanaged bushland. Whilst it is recognised that retained vegetation within

the APZ can provide some benefits and protection to wildlife, the vegetation must be maintained reduced structure and function and subject to ongoing management in perpetuity and cannot function as a conservation area.

The VMP does not provide any specific detail on how the proposed conservation areas surrounding the development area to be managed. Management objectives appear to be captured broadly in the overall vegetation management objectives provided for the revegetation and enhancement within the retained golf course area to the east of the development site. These objectives refer to techniques such as direct seeding of ground cover and midstorey native species and are generally in direct conflict with management techniques required to achieve APZ standards.

b. Insufficient information provided in the arborist report with regards to the extent of tree removal required in the IPA.

The report does provide information that 16 trees (out of 159) will be required to be removed as part of the APZ. However, an assessment of all trees within the APZ IPA has not been provided in the arborist report and therefore it is not clear how many additional trees will require removal/thinning to comply the RFS APZ standards.. Therefore, to understand the full extent of tree removal required for provision of the APZ, the APZ must be assessed in its entirety and all trees requiring removal to comply with the RFS APZ standards need to be identified.

3. DCP Control C1.1 Landscaping

The DA does not comply with the DCP Control C1.1: All canopy trees, and a majority (more than 50%) of other vegetation, shall be locally native species. It is noted the landscape plan provides recommendations to plant primarily non-native species and cultivated native varieties.

Referral Body Recommendation

Recommended for refusal

Recommended Natural Environment Conditions:

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

Delineation Asset Protection Zone

Prior to the commencement of any onsite building works or commencement of vegetation clearance/modification, the extent of the bush fire Asset Protection Zone must be surveyed and marked on ground.

The clearing of vegetation for Asset Protection Zone establishment is to be confined within Asset Protection Zone boundaries.

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

Reason: Bushland Protection.

A Project Ecologist is to be employed for the duration of the approved works to ensure all bushland protection measures are carried out according to the conditions of consent.

The Project Ecologist will provide certification that conditions relating to the **Vegetation Management Plan** are carried out. The Project Ecologist will ensure that all conditions relating to the biodiversity management of the property are fully implemented.

The Project Ecologist must have one of the following memberships/accreditation,

- Practising member of the NSW Ecological Consultants Association OR
- Biodiversity Assessment Method assessor accreditation under the NSW Biodiversity Conservation Act 2016

OR

- Minimum four consecutive years experience employed as an mid-senior level ecologist/ecological consultant.

Reason: To ensure bushland management.

Implementation of Vegetation Management Plan

All requirements in the Vegetation Management Plan (Ann Clements 2017) are to be implemented prior, during and post construction.

Details demonstrating pre-construction compliance are to be certified by the Project Ecologist and submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Biodiversity/Vegetation Conservation and Management.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

Fauna and Tree Hollow re-location

During any vegetation clearance for Asset Protection Zones and construction works the Project Ecologist is to be present to re-locate any displaced fauna that may be disturbed during this activity.

Tree hollows are to be salvaged from trees within the development area and placed within the Conservation Areas within the Lots. This is to be done by a qualified and experienced Arborist, under the direction of the Project Ecologist.

Details prepared by the project ecologist in writing demonstrating compliance is to be submitted to the Principal Certifying Authority.

Reason: To ensure bushland management in accordance with Local Habitat Strategy 2007. (DACNEE01)

No Material Storage within 5m/calculated Tree Protection Zone (TPZ)

No storage of building materials or building waste, excavated fill or topsoil storage is to occur within 5m or the notional TPZ of trees shown on the approved landscape working drawing(s) as being retained or within protective fenced areas. Drainage is to be arranged such that fill, building materials or contaminants are not washed into protective fenced areas.

Reason: To protect and retain trees proposed for retention.
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Tree Protection during work - No Works within 5m/calculated Tree Protection Zone (TPZ)

The developer or contractor will take all measures to prevent damage to trees and root systems during site works and construction activities including provision of water, sewerage and stormwater drainage services. In particular, works, erection of structures, excavation or changes to soil levels within 5 metres of the trunks or the calculated TPZ of trees to be retained are not permitted, and the storage of spoil, building materials, soils or the driving or parking of any vehicle or machinery within 5 metres of the trunk or the calculated TPZ of a tree to be retained, is not permitted.

Reason: To protect and retain trees/the natural environment proposed for retention.

Tree Protection - Arborist Supervision of Works

All works within 5 metres of the existing trees to be retained including pruning, demolition, excavation, civil works, fencing and the like must be carried out by hand under the supervision of an experienced and minimally AQF Level 5 qualified Arborist. Should roots larger than 50mm be encountered all excavation works are to cease immediately and a qualified Arborist is to advise on the impacts of the roots removal on the tree's survival and report to the Principal Certifying Authority prior to works recommencing. If tree roots are present a pier and beam method of footing construction is to be adopted so as to bridge/span any identified lateral roots.

Reason: To ensure protection and retention of the Urban Forest/Natural Environment.

Arborist Recommendations to be Implemented

As there are existing trees to be retained within 5 metres of proposed development works, all recommendations as outlined in the supplied **Arboricultural Impact Assessment prepared by Footprint Green Pty Ltd**, dated **November 2017** are required to be complied with before and throughout the development period, particularly with regard to the following:

- a) Works, erection/demolition of structures, excavation or changes to soil levels within 5 metres of existing trees are not permitted unless part of the development as approved, and the storage of spoil, building materials, soil or the driving and parking of any vehicle or machinery within 5 metres of the trunk of a tree to be retained is not permitted;
- b) Where specified, tree guards are to be provided to all trees as indicated in the report, and are to be installed prior to the commencement of any work on the site. Tree guard materials and dimensions are specified in the arborist report;
- c) All works within 5 metres of existing trees including demolition, excavation, civil works, fencing and the like must be carried out by hand and under the supervision of an experienced and suitably qualified arborist. In the event that major structural or feeder roots are encountered, the arborist is to advise the builder to carry out appropriate action to ensure the retention of the tree.
- d) Signage is to be erected advising all contractors and visitors to the site that no works or storage is to take place within the calculated Tree Protection Zone (TPZ) of existing trees.

Any changes or alterations made to the tree management recommendations as outlined by the arborist report due to the discovery of new structural roots or underground services during development works must be reported to the Principal Certifying Authority prior to works recommencing.

Reason: To ensure the retention of the Urban Forest/Natural Environment and remain consistent with approved reports.

Tree Protection Zone Fencing to be Certified

Prior to the commencement of construction works, all tree protection recommendations in particular the establishment of tree protection zone fencing as specified in the approved *Arboricultural Impact Assessment* prepared by Footprint Green Pty Ltd November 2017 are to be certified by the consulting arborist as being adequate and in accordance with the specifications of AS 4970 ~ 2009 Protection of Trees on Construction Sites.

Certification is to be provided to the certifying body prior to the issue of the Occupation Certificate.

Reason: To protect and retain trees proposed for retention.

Native Vegetation Protection

Guards or fences are to be provided around native vegetation as identified/ nominated on the approved plans. The guards or fences are to be installed prior to the commencement of any work on the site. No works, including utility installations (eg water, sewer, telephone, drainage), are to be undertaken within 4 metres of the trunk of any such trees. The tree guards shall be a minimum 1200mm high at least four (4) metres from the base of the nominated tree/s and constructed from timber posts and rails or posts and suitable plywood panels.

Reason: To protect and retain trees/the natural environment proposed for retention.

Work Within the calculated Tree Protection Zone (TPZ) - Hand Digging

When working within the drip line of the trees, hand digging is to occur in sensitive areas. Liaison on a daily basis is to be maintained during the excavation works between the Builder and Arborist. No filling or compaction shall occur over tree roots within 5m of the tree stem or the calculated TPZ. Root protection/ compaction mitigation in the form of planks or metal decking supported clear of the ground fixed to scaffolding is to be installed as required.

Reason: To protect and retain trees proposed for retention.

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

Weed Removal and Management

No weeds are to be imported on to the site.

All invasive and priority weeds on the site are to be removed and managed continuously, in accordance with the Biosecurity Act 2015.

Details demonstrating the removal and management of weeds are to be prepared by the project ecologist in writing and submitted to the Principal Certifying Authority prior to occupation certificate.

Reason: Weed management and biosecurity

Certification of ongoing work

A Bush Regeneration contract is to be entered into to ensure that works required by the **Vegetation Management Plan prepared by Ann Clements in December 2017** to occur post Occupation Certificate are adequately completed. The bush regeneration company is to certify that such a contract has been entered into.

Reason: Bushland Management

Documentation of Arborist Site Supervision Required

Documented evidence of a qualified arborist supervising the works in proximity to trees being retained and ensuring that all tree protection measures as specified in the supplied arborist report is required. This documentation is to be provided prior to the issue of the Occupation Certificate.

Reason: To ensure the retention of the Urban Forest/Natural Environment.

Tree Protection to be Certified by Arborist

Prior to the commencement of construction works, all tree protection recommendations in particular the establishment of tree protection zone fencing as specified in the approved Arboricultural Impact Assessment prepared by Footprint Green Pty Ltd November 2017 are to be certified by the consulting arborist as being adequate and in accordance with the specifications of AS 4970 ~ 2009 Protection of Trees on Construction Sites. Certification is to be provided to the certifying body prior to the issue of the Occupation Certificate. Documented evidence of a qualified arborist having supervised the works in proximity to trees being retained and ensuring that all tree protection measures are adopted as specified in the approved arborist report is required. This documentation is to be provided prior to the issue of the Occupation Certificate.

Reason: To ensure the retention of the Urban Forest/Natural Environment.

Certification of Planting, Biodiversity Management and ongoing work

The Project Ecologist or Ecological Consultant is to certify that:

- a) Native plant selection and planting as per Vegetation Management Plan prepared by Ann Clements December 2017 has been completed;
- b) All actions prescribed in the approved **Vegetation Management Plan** prepared by Ann Clements December 2017 have been undertaken fully and where relevant completed and that an appropriate program of regeneration and maintenance has been entered into to comply with requirements of the Plan;
- c) That areas/features requiring protection have been adequately protected and are in an acceptable condition.

Reason: Bushland management

Practical Completion of Landscape Works

A landscape practical completion report is to be prepared by the consultant landscape architect/designer and submitted to the Principal Certifying Authority with the Occupation Certificate application. This report is to certify that all landscape works have been completed in accordance with the landscape working drawings and specifications.

Reason: To ensure landscaping is adequate and consistent with approved plans.

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

Control of Weeds

Prior to the completion of works, all priority weeds (as listed under the Biosecurity Act 2015) are to be removed/controlled within the subject site using an appropriately registered control method. Information on weeds of the Northern Beaches can be found at the NSW WeedWise website (<http://weeds.dpi.nsw.gov.au/>). All environmental weeds are to be removed and controlled. Refer to Council website http://www.pittwater.nsw.gov.au/environment/noxious_weeds

Reason: Weed management.

No Planting Environmental Weeds

No environmental weeds are to be planted on the site. Information on weeds of the Northern Beaches can be found at the NSW WeedWise website (<http://weeds.dpi.nsw.gov.au/>).

Reason: Weed management.

Works to cease if item found

If any Aboriginal Engravings or Relics are unearthed all work is to cease immediately and the Aboriginal Heritage Office (AHO) and Office of Environment and Heritage (OEH) are to be notified.

Reason: To protect Aboriginal Heritage.

Control of Domestic Animals

Domestic pet animals are to be kept from entering wildlife habitat areas at all times. Dogs and cats are to be kept in an enclosed area or on a leash such that they cannot enter areas of bushland or foreshore, unrestrained, on the site or on surrounding properties or reserves. Ferrets and rabbits are to be kept in a locked hutch/run at all times.

Reason: Wildlife protection

CONDITIONS THAT MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF ANY STRATA SUBDIVISION OR SUBDIVISION CERTIFICATE**Certification of Planting, Biodiversity Management and ongoing work**

The Project Ecologist or Ecological Consultant is to certify that:

- a) Native plant selection and planting as per Vegetation Management Plan prepared by Ann Clement December 2017 has been completed;
- b) All actions prescribed in the approved **Vegetation** Management Plan have been undertaken fully and where relevant completed and that an appropriate program of regeneration and maintenance has been entered into to comply with requirements of the Plan;
- c) That areas/features requiring protection have been adequately protected and are in an acceptable condition.

Reason: Bushland Management.