

Natural Environment Referral Response - Biodiversity

Application Number:	DA2021/2097
Date:	07/04/2022
Responsible Officer	Nick England
Land to be developed (Address):	Lot 16 DP 650061 , 918 Barrenjoey Road PALM BEACH NSW 2108

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

Further Revised Comments

The revised development designs have been reviewed by the arborist, who has confirmed that Tree 4 can be retained. The development will now require the removal of two trees, thereby avoiding and minimising impacts that would have previously resulted. Mitigation measures include the planting of 6 replacement trees (4 to survive to maturity), additional landscaping across the site using suitable small tree, shrub and ground cover native species, as well as weed removal and bush regeneration works. Offsetting under the NSW Biodiversity Offset Scheme is also required to offset the residual impacts of the amended design.

Based on the above the development satisfies the relevant biodiversity planning controls that are applicable to the site.

Updated Comments

Without the non-destructive root mapping investigation prior to development application determination, Council are unable to assess accurately if tree T4 is realistically able to be retained, or whether further design modifications are required to preserve this tree. This tree is recommended for retention to clearly demonstrate that the proposed development will avoid and minimise impacts to biodiversity values of the site, and not result in a significant onsite loss of canopy cover.

Revised Comments

Council notes the revised and finalised BDAR (Kingfisher October, updated November 2021), including additional information related to the BAM plot and survey methods. While the previous comments have not been addressed in full, especially whether or not the 1000m² plot area requirement has been

addressed, the degraded nature of the site due to past disturbance is acknowledged and the application in this instance has been assessed based on the information provided.

A key aspect of biodiversity conservation legislation, including both the Biodiversity Conservation Act 2016 and the applicable local planning controls, is that a development must first demonstrate appropriate and sufficient steps have been taken to avoid or minimise impact to areas of biodiversity value (see Chapter 7 of the BAM, cl 7.6 of Pittwater LEP and SEPP (Coastal Management) 2018). Only then, if the consent authority is satisfied that this is achieved, relevant biodiversity conservation measures should be considered to offset or compensate any impacts. Sufficient efforts to avoid and minimise impacts on biodiversity values, including retention of trees # 1, 2 & 4) associated with the proposed development have not been demonstrated. Currently, the proposed development will result in the majority of trees within the site, and one tree from the adjoining property.

Further analysis of alternatives such as construction methods, alternative locations and designs that would avoid or minimise impacts on biodiversity values and native trees is required. Specifically, increasing the setback of the proposed patio and swimming pool from the western boundary, and relocation of the stairs in this area is recommended in order to retain the two trees proposed for removal. The redesign of the garage, stairs and driveway to facilitate the retention of the eucalyptus tree within the front yard is also recommended.

Original Comments 14/12/21

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

- Biodiversity Conservation Act 2016 (BC Act)
- Biodiversity Conservation Regulation 2017
- Pittwater LEP cl. 7.6 Biodiversity Protection
- Pittwater 21 DCP cl. B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community
- Coastal Management SEPP 2018 cl. 11 Development on land in proximity to coastal wetlands or littoral rainforest
- Coastal Management SEPP 2018 cl. 13 Development on land within the coastal environment area

The Development Application seeks consent for alterations and additions to the existing dwelling house including the installation of a swimming pool and garage. The application also seeks to establish an Asset Protection Zone (APZ) over the entirety of the site in perpetuity.

The property is located within the Biodiversity Values (BV) Map designated by the NSW State Government (Department of Planning, Industry and Environment), making it subject to the provisions of the NSW Biodiversity Conservation Act 2016. Development occurring within the BV Map will require assessment under the Biodiversity Assessment Methodology (BAM) 2020 if it involves:

- Impacts to Native Vegetation (as defined under 60B of the Local Land Services Act 2013), including clearing and/or establishment of Asset Protection Zones; or
- Prescribed actions (as defined under 6.1 of the Biodiversity Conservation Regulation 2017).

Impacts including those outlined above that occur within the Biodiversity Values Map will trigger the Biodiversity Offsets Scheme (BOS) and require a Biodiversity Development Assessment Report (BDAR) to be prepared by an accredited assessor and submitted with the application.

Four (4) native trees are proposed for removal as part of the development application (Vertical Tree

Management & Consultancy, August 2021), two (2) of which are located within the BV map (Trees 4 and 5). Additionally, the APZ will overlap with the BV Map.

Submission of a **(1)** Landscape Plan (Matt Goodman, October 2021) and **(2)** Biodiversity Development Assessment Report (BDAR) (Kingfisher Urban Ecology and Wetlands, October 2021) are noted.

(1) The Landscape Plan seeks to remove weeds, and restore locally-native vegetation. It is noted that whilst the Landscape Plan has proposed a range of native species for planting, none of the species selected are representative of Pittwater Spotted Gum Forest. As such, the Landscape Plan is to be amended. Four (4) replacement canopy trees are required to be planted within the site as part of landscaping to comply with P21 DCP cl. B4.7 to ensure that the development does not result in no significant onsite loss of canopy cover or a net loss in native canopy trees. Canopy species are required to be selected from Pittwater Spotted Gum Forest species, including at least one (1) *Corymbia maculata*.

(2) Broadly, no objection is raised to the impact assessment, or recommendations presented in the submitted BDAR, however concern is raised over the method in which the Vegetation Integrity (VI) score was calculated for the Plant Community Type within the site.

Section 3.1.1 of the BDAR (Kingfisher 2021) states:

"Due to the small size of vegetation the plot was split into 2 sections to make up the survey area. Plots were as per the BAM Method with 20x20 plots (400m²) for assessing structure and composition with a center line extending 50m to create a 20 x 50 plot (1000m²) to assess function."

Mapping files submitted to Council, indicate that the BAM Plot was limited to two (2) separate areas of 189m² and 312m² for assessing structure and composition. This is a total of only 501m². The Accredited Assessor must demonstrate how the 1000m² of data that the BAM-C required for 'function' analysis has been derived (i.e. duplicating data to model 1000m²), or should in future use a surrogate plot (i.e. in a nearby Council reserve within the same PCT, such as McKay Reserve at the rear of the site). In this case, a surrogate plot would be recommended due to the recent understory clearing within the site. Due to the methodology in which the BAM Plot was undertaken, a number of important canopy species, located within or overhanging the site, were missed, and only one (1) tree species was recorded within the Plot - *Glochidion ferdinandi*. An additional three (3) canopy species (*Eucalyptus piperita*, *Corymbia gummifera* and *Eucalyptus acmenoides* (identified by Council's Biodiversity Officers as *Eucalyptus umbra*), as outlined in the Arborist Report (Vertical Tree Management & Consultancy, August 2021) should also be represented in the BAM Plot.

Further, the Accredited Assessor has calculated an area of impact of approximately 0.02ha. This calculation does not take into account the proposed APZ which is recommended by the Bushfire Consultant to cover the entire site in perpetuity. The impact area is to be updated to include all vegetated areas, including those recently cleared areas, within the site.

Due to these limitations and other factors, a VI Score of <15 (i.e. '10') was determined by the Accredited Assessor based on a single BAM Plot, which if correct would not require Ecosystem Credits per 9.2.1 of BAM 2020.

It is also noted that the BDAR submitted to Council did not appear to be a finalised version. A finalised version should be resubmitted to Council with the required amendments as discussed above.

Upon receiving the amended and finalised BDAR and BAM-C data as requested within these comments, Council's Biodiversity Referrals team will reassess the application.

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.

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

Reason: To protect native vegetation.

Installation of Nest Boxes

A minimum of two nest boxes suitable for microbat fauna species are to be installed in retained trees / throughout the trees within areas of retained native vegetation / on the site.

Nest boxes must be attached in accordance with industry best practice (e.g. expandable tree sensitive methods).

Written certification of compliance is to be prepared by the Project Ecologist and submitted to the Certifying Authority prior to issue of the Construction Certificate.

Reason: To maintain wildlife habitat.

Fencing for Wildlife Passage

Any new permanent fencing (with the exception of swimming pool fencing) is to be made passable to native fauna through the provision of access gaps or raised fencing to provide appropriate ground clearance. Any access gaps are to be a minimum of 150mm wide x 100mm high at ground level and spaced at a minimum of 6m intervals.

Plans are to be certified as complying with this condition and provided to the Certifying Authority prior to issue of the Construction Certificate.

Reason: To preserve wildlife corridors.

Notification of determination to which the Biodiversity Offset Scheme applies

The applicant or Project Ecologist, on behalf of the applicant, must download and complete the "Biodiversity Offsets Scheme – Notification of Determination" form.

The completed form and attachments, including a copy of the determination and any conditions of approval, must be emailed to the LMBC Service Centre bam.support@environment.nsw.gov.au. The LMBC Service Centre arranges for determination outcomes to be recorded in the Biodiversity Offset and Agreement Management System (BOAMS).

Council's Manager Bushland and Biodiversity and the Certifying Authority must be copied into the

notification email to confirm compliance.

Reason: To ensure the NSW Department of Planning, Industry and Environment are notified of determinations where the Biodiversity Offsets Scheme applies and Council are notified for compliance.

Like for like credit retirement conditions - Species credit retirement conditions

Prior to issue of the relevant Construction Certificate the class and number of species credits in Table A must be retired to offset the impacts of development.

The requirement to retire credits outlined in Table A may be satisfied by payment to the Biodiversity Conservation Fund of an amount equivalent to the class and number of species credits, as calculated by the Biodiversity Offsets Payment Calculator.

Evidence of the retirement of credits or payment to the Biodiversity Conservation Fund in satisfaction of Table A requirements must be provided to the Manager Bushland and Biodiversity of Northern Beaches Council and the Certifying Authority prior to release of construction certification.

Table A Species credits required to be retired – like for like

Impacted species credit species	Number of species credits	IBRA sub-region
<i>Chalinolobus dwyeri</i>	One (1)	Pittwater

Reason: To offset the residual biodiversity impacts of the development in accordance with the NSW Biodiversity Offset Scheme.

Compliance with approved BDAR impact mitigation to minimise impacts – Prior to Construction

The approved BDAR includes mitigation measures (s10 Recommendations) , which must to be implemented before, during and after construction to avoid and minimise the impacts of the proposal, including action, outcome, timing and responsibility.

All biodiversity-related measures are to be implemented prior to construction, as specified in the approved BDAR and these conditions of consent.

The Project Ecologist is required to provide details of compliance, including written and photographic evidence, and provide to the Certifying Authority and Council prior to issue of Construction Certificate.

Reason: To - compliance with the approved BDAR.

Engagement of Project Ecologist

A Project Ecologist is to be employed for the duration of the approved works to ensure all biodiversity protection measures are carried out in accordance with the Biodiversity Development Assessment Report and Landscape Plan (Kingfisher Updated February 2022).

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

- Practising member of the NSW Ecological Consultants Association (<https://www.ecansw.org.au/find-a-consultant/>) OR
- Biodiversity Assessment Method Accredited Assessor under the relevant legislation (<https://customer.lmbc.nsw.gov.au/assessment/AccreditedAssessor>)

Evidence of engagement of the Project Ecologist is to be provided to the Certifying Authority Prior to issue of Construction Certificate.

Reason: To protect native vegetation and wildlife.

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.

Compliance with approved BDAR impact mitigation table to minimise impacts – During Construction

The approved BDAR includes mitigation measures (section 10 Recommendations), which must to be implemented before, during and after construction to avoid and minimise the impacts of the proposal, including action, outcome, timing and responsibility.

All biodiversity-related measures are to be implemented during construction, as specified in the approved BDAR and these conditions of consent.

The Project Ecologist is required to keep details of compliance, including written and photographic evidence.

Reason: To ensure compliance with the approved BDAR.

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 designs, Proposed Actions and Recommendations of the approved Landscape Plans (Kingfisher VA2 Updated Feb 2022) 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.

Compliance with approved BDAR impact mitigation table to minimise impacts – Occupation Construction

The approved BDAR includes mitigation measures (see BDAR section 10 Recommendations), which must to be implemented before, during and after construction to avoid and minimise the impacts of the proposal, including action, outcome, timing and responsibility.

All biodiversity-related measures are to be implemented immediately after construction, as specified in the approved BDAR and these conditions of consent.

The Project Ecologist is required to provide details of compliance, including written and photographic

evidence, and provide to the Principal Certifying Authority and Councils Bushland Manager prior to issue of Occupation Certificate.

Reason: To ensure measures required to avoid and minimise residual biodiversity impacts are undertaken in accordance with the approved BDAR.

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.