

Natural Environment Referral Response - Biodiversity

Application Number:	DA2021/2097
Date:	14/03/2022
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

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 great 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 unsupported.

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

Recommended Natural Environment Conditions:

Nil.