

# Referral Response

## Development – Flora/Fauna



**Application Number:** MISC/259/2018/B

**Date:** 24-May-2019

**Location:** LOT 54 DP 9632 LOTS 5/6 8 & 10 DP 262159 ML 1443 & 1543 SURFACE 43.386HA SUBSURFACE 3820.5HA 12 KERRY ANDERSON DRIVE, MANDALONG NSW 2264

**Referral Officer:**

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**Note: The information provided with the below referral response is intended for Council's internal communication purposes only.** After undertaking a thorough assessment, the assessing officer for the application may send out a further request for information (RFI), based on consideration of other matters including other referral responses. Only the items outlined within the RFI are required to be addressed.

I have reviewed the application (Modification 8), including the Statement of Environmental Effects (SEE) (EMM Consulting, April 2019), Biodiversity Development Assessment Report (BDAR) (RPS, March 2019), and the Biodiversity Impact Report (BIR) (RPS March 2019).

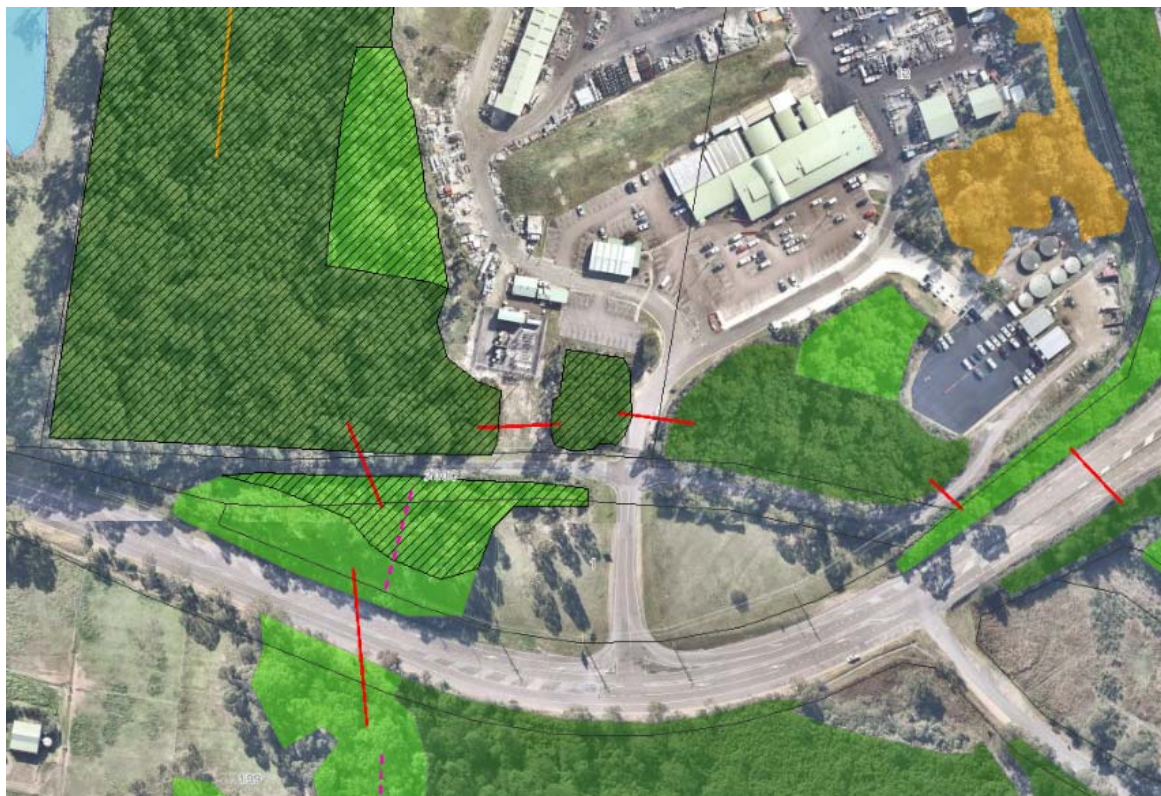
Where required the application has been assessed for compliance with ecological requirements / recommendations detailed in the EPA Act 1979, BC Act 2016, LLS Act 2013, FM Act 1994, EPBC Act 1999, SEPP 2018 (Coastal Management), SEPP 19 Bushland in urban areas, SEPP 26 Littoral Rainforest, SEPP 44 Koala Protection, LMCC LEP (2014), LMCC DCP (2014) and LMCC Guidelines for Flora and Fauna survey (2012), *Tetratheca juncea* (2014), *Grevillea parviflora* subsp. *parviflora* (2013), Squirrel Glider (2015), Large Forest Owls (2014) and Coastal Management.

### **Flora and Fauna Site Attributes / Proposal**

#### **Vegetation**

The application is for a substation upgrade and the construction of additional car parking facilities.

The vegetation within the project area was identified as being within E2 Environmental Conservation Lands under the LMCC LEP 2014. The vegetation was also identified as being part of a remnant native vegetation corridor that contributes significantly to movement and viability of flora and fauna in Lake Macquarie (see Figure 1).



**Figure 1:** Extract of Council's Native Vegetation and Corridor Map v1 (2011). The dark green areas indicate the corridor of remnant native vegetation; light green indicates the corridor of partially cleared remnant native vegetation. The red line represents a crossing point containing a cleared barrier of 1-0 – 70 metres and pink dashed line represents native vegetation corridor in need of rehabilitation.

The BDAR (RPS, March 2019) identified the vegetation within the project area as being a 'best-fit' with PCT 1649 – Smooth-barked Apple – Red Mahogany – Swamp Mahogany – Melaleuca sieberi heathy swamp woodland of coastal lowlands.

Investigation by Council regarding the flora species recorded on site (see Appendix C of the BIR provided by RPS, March 2019) identified a greater number of native flora species reflective of PCT 1720 Cabbage Gum - Forest Red Gum - Flax-leaved Paperbark Floodplain Forest of the Central Coast than PCT 1649.

### Threatened Species

The site provides habitat to a number of threatened species (see Table 1).

**Table 1 – Summary of threatened species that occur and are likely to occur on site**

Level of Occurrence	Species
Threatened species considered to potentially occur within the study area	<ul style="list-style-type: none"> <li>• <i>Tetratheca juncea</i>, <i>Grevillea parviflora</i> subsp <i>parviflora</i>, <i>Melaleuca biconvexa</i>;</li> <li>• Wallum froglet (<i>Crinia tinnula</i>), Red-crowned Toadlet (<i>Pseudophryne australis</i>);</li> <li>• Dusky Woodswallow (<i>Artamus cyanopterus cyanopterus</i>), Glossy Black Cockatoo (<i>Calyptorhynchus lathami</i>), Masked Owl (<i>Tyto novaehollandiae</i>), Powerful Owl (<i>Ninox strenua</i>), Square-tailed Kite (<i>Lophoictinia isura</i>), Regent Honeyeater (<i>Xanthomyza phrygia</i>), Swift Parrot (<i>Lathamus discolor</i>), <i>poliocephalus</i>); Little Lorikeet (<i>Glossopsitta pusilla</i> Little Lorikeet (<i>Glossopsitta pusilla</i>),</li> </ul>

Level of Occurrence	Species
	<p>Black-chinned Honeyeater (eastern subspecies) (<i>Melithreptus gularis gularis</i>);</p> <ul style="list-style-type: none"> <li>• Grey Headed Flying Fox (<i>Pteropus poliocephalus</i>);</li> <li>• East Coast Freetail bat (<i>Mormopterus norfolkensis</i>), Little Bentwing-bat (<i>Miniopterus australis</i>) and Eastern Bentwing-bat (<i>Miniopterus schreibersii oceanensis</i>).</li> </ul>

It was considered that the provided BDAR and BIR have adequately addressed threatened species and their habitats.

### Significant Habitat Features

Although the condition of vegetation on contained a number of environmental weeds, the site still contains significant habitat features (see Table 2).

**Table 2 – Summary of significant habitat features on site**

Habitat Feature	Site Attribute
Foraging habitat	Approximately 0.29 hectares of foraging habitat would be impacted that is likely to be important to a number of species, including Dusky Woodswallow ( <i>Artamus cyanopterus cyanopterus</i> ) and Grey Headed Flying Fox ( <i>Pteropus poliocephalus</i> ).
Habitat Hollows	The BIR identified no hollow-bearing trees occurring within the project area.
Corridors	The project area was identified as being part of a corridor of remnant native vegetation that contains a widely interfaced crossing point. The island of vegetation provides a connection between vegetation patches in the local area.

### Referral Comments

The application is generally acceptable however; it is inconsistent with a number of requirements under LMCC controls. Table 3 below details the requirements that are inconsistent with the application.

**Table 3 – Summary of flora and fauna requirements that are inconsistent with the application**

Requirement	Issue with application
<p><b>The LMCC LEP 2014</b></p> <p>Zone objectives for E2 Environmental Conservation land:</p> <ul style="list-style-type: none"> <li>• To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values;</li> <li>• To prevent development that could destroy, damage or otherwise have an adverse effect on those values.</li> <li>• To conserve, enhance and manage corridors to facilitate species</li> </ul>	<p>The proposal is considered inconsistent with the objectives identified for E2 Environmental Conservation lands.</p> <p>Although, it is acknowledged that the location of the proposal has attempted to minimise impacts to native vegetation, no management and restoration of E2 lands or corridors has been identified.</p> <p>A detailed Landscape Plan is to be provided for the area identified as 'new screening vegetation' and is to reflect plantings of fully structured locally native vegetation that will</p>

Requirement	Issue with application
<p><i>movement, dispersal and interchange of genetic material.</i></p> <ul style="list-style-type: none"> <li><i>To encourage activities that meet conservation objectives.</i></li> <li><i>To enhance and manage areas affected by coastal processes.</i></li> </ul>	<p>continue to provide movement function and viability of the corridor.</p>
<p><b>The LMCC Development Control Plan 2014</b></p> <p>Part 7 – Development in Environmental Protection Zones:</p> <p>Section 2.12 Flora and Fauna objectives</p> <p><i>a. To avoid or minimise impacts on native flora and fauna</i></p> <p><i>b. To protect and enhance significant flora and fauna, vegetation communities and significant habitat on the site and on surrounding development sites.</i></p> <p><i>c. To protect and enhance ecological corridors and increase the connections between habitats.</i></p> <p><i>d. To ensure rehabilitation of degraded areas.</i></p> <p><u>Controls</u></p> <p><i>1. Where the proposed development is likely to have an impact on native vegetation or fauna habitat, or where five or more trees are proposed to be removed, a flora and fauna assessment must be submitted with the development application. The flora and fauna assessment must be prepared in accordance with Council's Flora and Fauna Survey Guidelines;</i></p> <p><i>2. The flora and fauna assessment must be sufficient to adequately identify and assess all the impacts of the proposed development. This includes cumulative, direct and indirect impacts, as well as the impacts of Asset Protection Zones, provision of services (water and sewer, etc.) and stormwater management.</i></p> <p><i>3. Where a proposed development site is within a vegetation corridor identified on Council's Native Vegetation and Corridors Map, or identified as part of a site-specific flora and fauna assessment, the corridor must be surveyed. Within the survey, the appropriate corridor width must be determined with reference to core habitat areas and potential edge effects and fragmentation. The proposed development should be located and designed to avoid impacts on the identified vegetation corridor. Where this is not possible, the</i></p>	<p>Although, it is acknowledged that the location of the proposal has attempted to minimise impacts to native vegetation, no management and restoration of E2 lands or corridors has been identified.</p> <p>A detailed Landscape Plan is to be provided for the area identified as 'new screening vegetation' and is to reflect plantings of fully structured locally native vegetation that will continue to provide movement function and viability of the corridor.</p>

Requirement	Issue with application
<p><i>development should be designed to minimise impacts.</i></p> <p><i>4. Development should be designed to avoid impacts on native flora and fauna, and minimise any unavoidable impacts. Significant flora and fauna species, vegetation communities and habitat should be protected and enhanced through appropriate site planning, design and construction.</i></p> <p><i>5. A Site Vegetation Plan must be submitted clearly indicating the location of the proposed development in relation to vegetation communities, significant flora and fauna species and vegetation, and significant habitat and corridors on the site.</i></p> <p><i>6. Native vegetation buffers must be provided between development and areas containing threatened flora and fauna species or their habitat, threatened vegetation communities and native vegetation corridors. The width of the buffer should be determined with reference to the function of the habitat, the threat of sea level rise and the type of development proposed. The buffer should be designed to keep the area of significance in natural condition.</i></p> <p><i>7. A suitable barrier such as a perimeter road should be provided between development, (including landscaped areas) and native vegetation or significant habitat features, to minimise edge effects.</i></p> <p><i>8. Where a proposed development is likely to impact on an area of native vegetation, it must be demonstrated that no reasonable alternative is available. Suitable ameliorative measures must also be proposed (e.g.: weed management, rehabilitation, nest boxes).</i></p> <p><i>9. Rehabilitation of degraded areas of the development site should include local native species to establish a self-maintaining ecosystem as close as possible to the natural state.</i></p> <p><i>10. Buildings and structures, roads, driveways, fences, dams, infrastructure, drainage and asset protection zones should be located outside of areas with significant flora and fauna, native vegetation corridors and buffers</i></p> <p><i>11. An application for removal of native vegetation will only be considered where it is ancillary to, and necessary for conducting an approved use of the land (i.e.: an application for clearing alone will not be supported).</i></p> <p><i>12. Where retention or rehabilitation of native</i></p>	

Requirement	Issue with application
<p><i>vegetation and/or habitat is required, a vegetation management plan must be prepared in accordance with Council's Vegetation Management Plan Guidelines. This must detail how vegetation will be protected, rehabilitated and managed before, during and after construction.</i></p> <p><i>13. Long-term protection and management of areas set aside for ecological reasons is encouraged through secure tenure with appropriate conservation management. This may be achieved through a Planning Agreement.</i></p> <p><i>14. Development should be consistent with the effective conservation of land within any adjacent Environmental or Waterway zone and its protection from adverse impacts. It should include, but not be limited to weed invasion, erosion and sedimentation, pollution, chemicals, nutrients, stormwater run-off, feral and domestic animals.</i></p>	

In order to be able to support this proposal, it is requested that a letter comparing the native species and landscape elements (including topography, soil landscape, rainfall and elevation) is provided to Council regarding the justification of the chosen PCT (PCT 1649 – Smooth-barked Apple – Red Mahogany – Swamp Mahogany – Melaleuca sieberi heathy swamp woodland of coastal lowlands). Vegetation within the project area is considered by Council as being PCT 1720 Cabbage Gum - Forest Red Gum - Flax-leaved Paperbark Floodplain Forest of the Central Coast, equivalent to River-Flat Eucalypt Forest (RFEF), an Endangered Ecological Community (EEC) under the BC Act 2016.

A detailed Landscape Plan must also be provided for the area identified as 'new screening vegetation' and is to be reflective of fully structured locally native vegetation (in accordance with the final PCT selection) and to continue to perform as a fauna movement corridor for fauna species known to occur in the local area. The Landscape Plan is to identify species to be planted and their abundances.

### **Summary of Recommendation**

The application is considered to reasonably address flora and fauna requirements. No objection is raised with regard to the proposed application, provided the above comments are addressed and conditions of consent provided in Attachment 1 are adhered to.

Should you require any information please contact me on extension ext. 1334

Ashleigh McTackett  
**Development Assessment and Compliance**