

Attachment 8

Ecological Assessment for the Hutley Drive Northern Extension

The Ecological Assessment Report (EAR) which supported the project was reviewed by Council's Environmental Scientists within its Planning and Environmental Health Division.

Generally the key items were:

- Presence of Threatened species – Rough shelled bush nut (*Macadamia tetraphylla*) within the development footprint (“*Subject site*”)
- Presence of a Littoral rainforest plant community type and consideration of a Threatened Ecological Communities – *Littoral Rainforest in the NSW North Coast, Sydney Basin and South East Corner Bioregions*
- Development footprint and offset areas

The ecological reports confirm the project will remove 0.33 hectares of vegetation. The vegetation to be removed is a mixture of native vegetation, landscape plantings and exotic species. Figure 1 of Appendix A provides Council with a graphic illustration on the ecological decision making as the project has proceeded.

An inspection conducted by Council's Environmental Scientists confirmed that EAR had not detected the occurrence of two mature Rough shelled bush nut trees, a species listed as vulnerable pursuant to both the Biodiversity Conservation (BC) Act (2016) and the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act).

The site inspection also identified the occurrence of a small area of littoral rainforest, a vegetation listed as an endangered ecological community pursuant to the BC Act. Consequently, the applicant was required to provide an amended EAR addressing these matters.

Under the BC Act (2016) impacts to listed species are assessed via a five-part test. Section 7.3 of the BC Act states the Minister may:

“by order published in the Gazette with the concurrence of the Minister for Planning, issue guidelines relating to the determination of whether a proposed development or activity is likely to significantly affect threatened species or ecological communities, or their habitats”

In this regard, the Minister gazetted the “*test of significance guidelines*” on 27 July 2018.

The purpose of the Guidelines is to:

“provide standardised and transparent consideration of threatened species and ecological communities, and their habitats, through the development assessment process.

These guidelines help applicants or proponents of a development or activity to interpret and apply the factors in the test in section 7.3 of the BC Act. They also provide guidance for consent authorities to encourage a consistent method of assessment for applications that may have an impact on threatened species and ecological communities or their habitats.

The guidelines are made under section 7.3(2) of the BC Act and relate to the determination of whether a proposed development or activity is likely to significantly affect threatened species or ecological communities, or their habitats, within the meaning of that phrase in section 7.3”.

To enable a standardized assessment the “test of significance guidelines” contain a range of definitions relevant to the current application.

Under those Guidelines a “local population” of a threatened plant is:

*“The **local population** of a threatened plant species comprises those individuals occurring in the study area or the cluster of individuals that extend into habitat adjoining and contiguous with the study area that could reasonably be expected to be cross-pollinating with those in the study area”.*

The other relevant definitions to this application include:

***Subject site** means the area directly affected by the proposal. The subject site includes the footprint of the development and any ancillary works, facilities, accesses or hazard reduction that support the construction or operation of the development or activity”*

*“**Study area** means the subject site and any additional areas which are likely to be affected by the proposal, either directly or indirectly. The study area should extend as far as is necessary to take all potential impacts into account”.*

and

*“**Local occurrence**: the ecological community that occurs within the study area. However, the local occurrence may include adjacent areas if the ecological community on the study area forms part of a larger contiguous area of that ecological community and the movement of individuals and exchange of genetic material across the boundary of the study area can be clearly demonstrated”.*

To facilitate construction of the road the project will remove one mature Rough shelled bush nut tree and a juvenile plant from within the “Subject site”. The project will also indirectly impact on a third individual growing just outside the development footprint. Based on the above test of significance definitions the project will remove 75% of the local Rough shelled bush nut population. It is understood, due to road design parameters the identified impacts cannot be avoided.

In relation to littoral rainforest, it was concluded “local occurrence” extends off the development site. Hence, the development will remove around 20% of the communities’ “local occurrence”.

The project will also indirectly impact on a number of retained rainforest trees growing just outside the development footprint, by impacts to their tree protection zones. It is recommended these impacts should be monitored during road construction.

While the amended EAR concluded the development would not have a significant impact on the local Rough shelled bush nut population this conclusion was not supported as the plants growing within the “*subject site*” are isolated from other known Rough shelled bush nuts.

It was ultimately concluded the proposed development could have a significant impact on the “*local population*” of the Rough-shelled nut trees if not assessed and appropriately managed in accordance with the BC Act (2016). In these circumstances, the BC Act allows an applicant to prepare either a Species Impact Statement (SIS) or a Biodiversity Development Assessment Report (BDAR).

In accordance, with the above legislation a BDAR submitted to Council for assessment, which upon review was deemed compliant with the requirements of the BC Act. To offset the ecological impact of the development the BDAR identified the applicant would be required to provide biodiversity credits (monetary contribution) to the Biodiversity Conservation Trust (BCT) totaling \$24,644.24.

It is important to understand when a monetary contribution is paid to the BCT, Council has no control where those funds are expended. While Council may make a payment into the BCT it is highly likely that money will not be used to support biodiversity actions within the Ballina Shire Local Government Area. From Council’s perspective, undertaking biodiversity conservation actions for rainforests within or near Lennox Head is a superior environmental outcome. Such actions also have a broader community benefit as the community’s money is expended within the Shire.

It is for these reasons where a public authority is undertaking work and biodiversity credits generated a Consent Authority may reduce the credit requirements.

In this regard, Section Clause 7.15 of the BC Act 2016 states:

“If the number of biodiversity credits required to be retired is less than that specified in the biodiversity development assessment report, the determining authority is to give reasons for the decision to reduce the number of biodiversity credits”

In mitigating against impacts of the development, the BDAR confirms the applicant will:

5.1 Avoiding and Minimising Impacts

A management plan for Rough-shelled Bush Nut in relation to the project has been prepared by Blackwood (2019) to provide measures to mitigate impacts to this species. The plan prescribes the following:

- A propagation program: including production of at least 30 Rough-shelled Bush Nut seedlings from cuttings and seeds taken from trees on the site. Once ready for planting, the tubestock will be planted out in suitable areas of protected habitat in the Lennox Head area. Areas in which propagated specimens of Rough-shelled Bush Nut are to be planted will be maintained as part of existing maintenance programs for these areas of habitat and subject to regular monitoring for three years as part of a monitoring program.
- Retention of the south-eastern most tree on the site: prior to the commencement of vegetation clearing works on the site this tree is to be located and protective fencing (orange barrier mesh or similar) is to be established at a distance of 3.5 m around the perimeter of the trunk. This is outside the TPZ and canopy extent of the tree. No activities are permissible within the protected area including storage of materials and/or fill. Protective fencing is not to be removed until road construction is finalised.

In dealing with this issue, the applicant has undertaken a proactive approach by implementing the propagation program for the local Rough shelled bush nut population. Such actions if successful will ultimately aid in the species long term persistence by ensuring the existing genetic diversity of the species is maintained and/or enhanced.

However, it is also considered appropriate mitigation measures should be extended to account for loss of the other native vegetation and, as such, these impacts need to be offset.

In this instance, the above mitigation measures will benefit the wider community and as direct biodiversity conservation actions are proposed, it is concluded that a reduced credit obligation is appropriate. When the additional mitigation measures are included (rainforest planting) it is recommended rather than the biodiversity credits (monetary contribution) being transferred to the BCT the monies should be used to fund the above mitigation projects.

However, if Council deems this approach suitable relevant accounting safeguards will need to be in place to ensure the monies is correctly expended. Council's Civil Services Division will be required to maintain records for the duration of the Compensatory Plan project and provide the Planning and Environmental Health Division with an annual update on monies expended on the project for that year.

If Council elects to meet the requirements of the determination through payment of the contribution, the payment of the specified amount in full would justify negating the payment of the Biodiversity Credits to the BCT.

In supporting this approach, the Mitigation Management Plan to be amended to include a financial contribution of \$24,644.24 to undertake:

- Rough-shelled bush nut propagation and rehabilitation program; and
- Incorporation of a littoral rainforest restoration program which includes.
- Procurement for works and implementation a dedicated planting program.
- Weed control, fencing, signage, engagement of a bush regeneration, maintenance.

- Implementation of monitoring and reporting requirements to Planning and Environmental Health Division.

Conclusion

The proposed road construction project provides a benefit to the wider community and incorporates direct local biodiversity conservation actions.

Attachment A

<p>REF Part V - Hutley Drive North Extension</p>	<ul style="list-style-type: none"> • Council is the determining authority • Application was referred internally to the Planning and Environmental Health Division - Environmental Scientists • Request for additional information
<p>Applicant response to Request for additional information</p>	<ul style="list-style-type: none"> • Test of Significance was provided. • Environmental Scientist considered that the removal of two Threatened Rough-Shelled Bush Nuts (<i>Macadamia tetraphylla</i>) would mean the loss of 75% of the population. • Council determined that this was a significant impact
<p>Significant impacts to threatened species</p>	<ul style="list-style-type: none"> • Under <i>Section 7.8</i> of the <i>BC Act 2016</i>, a biodiversity development assessment report (BDAR) or a species impact statement (SIS) must accompany a Part 5 activity where the development is likely to significantly affect a threatened species. • The proponent elected to provide a BDAR report
<p>BDAR</p>	<ul style="list-style-type: none"> • The applicant provided a BDAR to accompany the Hutley Drive North Part 5 activity • Generally, the BDAR was carried out in accordance with the Biodiversity Assessment Methodology • Determining authority (Council) assessed the BDAR and
<p>Reduction of Credit requirements</p>	<ul style="list-style-type: none"> • Under <i>Section 7.15(4)</i> of the <i>BC Act 2016</i> (link here) a reduction of the Biodiversity Credits associated with the Biodiversity Offset Scheme can be sought. • The Part V activity is to the benefit of the wider community and direct biodiversity conservation actions are proposed • Council understands that a reduced credit obligation is appropriate.

Figure 1 – Snapshot of decision making in regards to Environmental matters