

Our ref: DOC24/377384-13

Your ref: SSD-47105958

Ms Amber Nehal
Planning Officer
Department of Planning, Housing and Infrastructure
4 Parramatta Square, 12 Darcy Street
PARRAMATTA NSW 2150

Dear Ms Nehal

Subject: Environmental Impact Statement - Proposed Seniors Housing - 24A Kingscliff Street and 27, 29, 31 & 33 Lorien Way, Kingscliff (SSD-47105958)

Thank you for your email dated 14 May 2024, seeking advice from the Biodiversity, Conservation and Science Group (BCS) of the NSW Department of Climate Change, Energy, the Environment and Water on the Environmental Impact Statement (EIS) for the Proposed Seniors Housing -at24A Kingscliff Street and 27, 29, 31 & 33 Lorien Way, Kingscliff project.

We have reviewed the exhibited EIS against the Secretary's Environmental Assessment Requirements (SEARs) provided by the Department of Planning, Housing and Infrastructure to the proponent on 15 August 2022.

BCS considers the EIS **does not** meet the Secretary's requirements for biodiversity and flooding unless the applicant addresses issues 1 to 6 identified in **Attachment A**.

In summary, our key issues are as follows:

- The allocation of Plant Community Types, the identification of threatened ecological communities, and the assessment of vegetation integrity (condition) scores require revision in the Biodiversity Development Assessment Report (BDAR)
- The BDAR does not demonstrate any avoidance of impact on biodiversity values, and this requires rectification.
- The proposed evacuation and shelter in place strategies require review and support from the State Emergency Services, and if retained, shelter in place will require changes to the design and to construction specifications.
- The BDAR requires updating and recertification and then to be lodged to the consent authority within 14 days of that recertification, to be valid.

A summary of our assessment, advice and, where appropriate, recommended conditions of approval is provided in **Attachment A**. Detailed comments are provided in **Attachment B**.

If you have any questions about this advice, please do not hesitate to contact Mr Dimitri Young, Senior Team Leader Planning North East, via dimitri.young@environment.nsw.gov.au or 6659 8272.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'G. Pietrini'.

GABRIELLE PIETRINI
Director North East Branch
Biodiversity, Conservation and Science

18 June 2024

Attachment A - BCS Assessment Summary for Proposed Seniors Housing - 24A Kingscliff
Street and 27, 29, 31 & 33 Lorien Way, Kingscliff Environmental Impact
Statement (SSD 7105958)

Attachment B – Detailed DCCEEW BCS comments for Seniors Housing, Uniting Kingscliff
Environmental Impact Statement (SSD 47105958)

ATTACHMENT A

BCS Assessment Summary for Proposed Seniors Housing - 24A Kingscliff Street and 27, 29, 31 & 33 Lorien Way, Kingscliff Environmental Impact Statement (SSD 7105958)

In preparing this advice BCS has reviewed the following documents:

- Environmental Impact Statement – Seniors Housing – Uniting Kingscliff, Planit Consulting, March 2024 (EIS)
- Biodiversity Development Assessment Report – Streamlined Assessment – Small Area – 24A Kingscliff St Kingscliff, Biodiversity Assessments and Solutions March 2024 (BDAR)
- Flood Impact Assessment Report – Uniting Kingscliff - 24A Kingscliff St Kingscliff, Venant Solutions, March 2024 (FIA)
- Flood Emergency Response Plan – Uniting Kingscliff Seniors Housing, Water Technology, February 2024 (FERP)

Key Assessment Issues

1.	<i>Slashing of native vegetation has impacted the accuracy of the vegetation integrity (condition) scores</i>	To determine whether the subject vegetation communities are Threatened Ecological Communities (TECs) and to allow a more representative vegetation integrity score to be calculated for this vegetation zone, the areas of the site being slashed require regeneration to at least the condition they were in when the site was originally surveyed for flora and fauna in July 2022. Once, this has occurred, native vegetation surveys can be undertaken in accordance with Sections 4.2 and 4.3.3 of the BAM. Recommended action: • <i>The vegetation communities growing within the development footprint be allowed to regenerate to the condition they were in as of July 2022, and once this has occurred, repeat BAM plots be undertaken and sections 4-10 of the BDAR amended accordingly.</i>
	<i>Extent and Timing</i>	Pre-determination

2.	<i>Plant Community Types (PCTs) have not been accurately allocated</i>	BCS examination of the BAM plot data contained in Appendix D of the BDAR for PCT 3989 confirms that several species identified in Section 4.2.2.3 as occurring within PCT 3989 are absent from the datasheets. While BAM plot number 5 has been assigned to PCT 3989, a review of the species list contained in Appendix D for plot number 5 confirms that several key diagnostic species associated with that PCT are absent from the datasheet. This indicates the allocation of PCTs was based on inaccurate data. Recommended action: • <i>The PCTs contained in the BDAR be revised to ensure only the species recorded within each of the BAM plots are used to</i>
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		<i>determine PCT allocation and sections 4-10 of the BDAR amended accordingly.</i>
	<i>Extent and Timing</i>	Pre-determination

3.	<i>The proposal does not avoid any impacts on biodiversity values</i>	Currently, the development proposes to remove all the vegetation growing within the development footprint. This includes, at least one vegetation community listed as a Threatened Ecological Community (TEC) under the <i>Biodiversity Conservation Act 2016</i> while retaining low conservation valued landscaped garden beds. The development will also remove all the wallum froglet (<i>Crinia tinnula</i>) habitat located on the subject site. The proposed development will cover the entire development footprint and will not avoid or minimise any impacts to biodiversity. Recommended action: • <i>Section 6 of the BDAR be revised to adequately demonstrate and justify measures taken by the proponent to avoid and minimise impacts on biodiversity values of the site in accordance with Section 6.12 of the Biodiversity Conservation Act 2016, and then sections 7, 9 and 10 of the BDAR amended accordingly.</i>
	<i>Extent and Timing</i>	Pre-determination

4.	<i>Proposed evacuation and shelter in place strategies have not been reviewed or supported by the NSW State Emergency Service (SES)</i>	The FIA proposes evacuation and shelter in place strategies for flood events affecting the proposal. The success of these strategies is critical in protecting human life, but they have not been reviewed or supported by SES. Recommended action: • <i>Prior to the proposal being determined, review and support from the NSW State Emergency Services be provided for the combination of evacuation and shelter in place proposals for the proposed development and its inhabitants.</i>
	<i>Extent and Timing</i>	Pre-determination

5.	<i>The proposed shelter in place strategy will require changes to building design and construction specifications</i>	If shelter in place is retained as a risk management strategy and to minimise risk to life, it is critical that building design and construction specifications enable implementation of that strategy. Recommended action: • Should shelter in place be retained as a risk management strategy and to minimise risk to life, it is critical that:
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		○ adequate provisions are made in the building design and construction specifications, to ensure the proposed building can withstand the anticipated forces of a PMF event having a hazard rating of H6. ○ the building incorporates sufficient design elements to ensure a robust power supply, and provisions of medical supplies and equipment, food, and amenity supplies for the building's inhabitants. ○ adequate provisions are made in the building design and construction specifications, to ensure the proposed building can withstand the anticipated forces of a PMF event having a hazard rating of H6
	<i>Extent and Timing</i>	Pre-determination

6.	<i>The BDAR was not lodged within 14 days of being certified by the assessor and so it is not valid</i>	The current BDAR does not accord with s6.15(1) of the BC Act and this must be addressed before the consent authority can complete its assessment of the development application. Recommended action: • <i>An updated and recertified BDAR be prepared and lodged in support of the development application within 14 days of the credit calculations being finalised.</i>
	<i>Extent and Timing</i>	Pre-determination

**ATTACHMENT B Detailed DCCEEW BCS comments for Seniors Housing, Uniting
Kingscliff Environmental Impact Statement (SSD 47105958)**

Flooding

BCS has reviewed the flooding component in Sections 6.2, 6.12, 6.13, and 6.14 of the EIS and Appendices G and U.

The EIS does address the Secretary's requirements for flooding.

The Executive Summary of the Flood Emergency Response Plan (FERP) confirms the proposed development is constrained by the following flood-related considerations:

- the ground floor would be inundated by riverine flooding in events at least as frequent as the 0.2% AEP flood.
- in the riverine Probable Maximum Flood (PMF) the entire site would be subject to a hydraulic hazard of H6 and the basement, ground floor and level 1 of all buildings would be flooded.
- a riverine PMF could isolate the site for up to 50 hours and flood debris on local roads could result in the site being isolated for a longer period.
- a Moderate Flood Warning (MFW) may have a lead warning time of 11.5 hours before the site becomes isolated in a riverine PMF. However, if overland flooding occurs at the same time as riverine flooding this could cut the evacuation route for several hours and significantly reduce the time available for evacuation.
- the time required for a full vehicular evacuation of the site may exceed 9 hours, while the time required to evacuate everyone except residents with mobility impairments (noting that these residents could shelter in place) would be 5 hours and 50 minutes.

We note, when describing the proposed emergency response strategy, Chapter 6 of the FERP concludes:

- if a Minor Flood Warning is issued, visitors and Independent Living Unit (ILU) residents and visitors are to be informed that flooding is possible and they should consider evacuating to a location outside the floodplain, to be pre-determined by each resident. Figure 5-1 shows the maximum extent of riverine flooding in the area.
- visitors, ILU residents and mobile RAC residents must evacuate if a Moderate or Major Flood Warning or a quantified Flood Warning for a flood level > 1.7 m AHD is issued for the Tweed River at Chinderah.
- immobile RAC residents and sufficient staff to attend to the needs of these residents for 3 days should shelter in place on level 2 or above of the RAC building if the northern driveway is cut by floodwaters, any remaining site occupants should shelter on level 2 or above of the RAC building.
- in the event of overland flooding when riverine flooding is not anticipated, site occupants should shelter within the buildings. In this case flooding should not enter the buildings and will in most cases have a relatively short duration (e.g. a few hours). In addition, to the above, the report assesses and compares flood risk to life in pre and post development conditions, to ascertain whether the proposed development would make risk to life worse or better at the site.
- This differential risk assessment is included in Appendix F and demonstrates the flood risk to life would significantly decrease in post development conditions. A merit-based

approach, as outlined in the NSW Flood Risk Management Manual issued by the NSW Department of Planning and Environment 2023, should therefore consider that the proposed development reduces the existing flood risk to life.

H6 Hazard is defined in the DCCEE 2023 Flood Risk Manual as, “*unsafe for vehicles and people. All building types considered vulnerable to failure*”.

Recommended actions:

- Prior to the proposal being determined, review and support from the NSW State Emergency Services be provided for the combination of evacuation and shelter in place proposals for the proposed development and its inhabitants.
- Should shelter in place be retained as a risk management strategy and to minimise risk to life, it is critical that:
 - adequate provisions are made in the building design and construction specifications, to ensure the proposed building can withstand the anticipated forces of a PMF event having a hazard rating of H6.
 - the building incorporates sufficient design elements to ensure a robust power supply, and provisions of medical supplies and equipment, food, and amenity supplies for the building's inhabitants.
 - adequate provisions are made in the building design and construction specifications, to ensure the proposed building can withstand the anticipated forces of a PMF event having a hazard rating of H6.

Hazards and Risks

BCS has reviewed the flooding and hazards and risks components in Sections 6.14 and 6.15 of the EIS.

The EIS does address the Secretary's requirements for hazards and risks with respect to coastal processes.

We have reviewed the EIS in the context of our previous comments provided to the proponent on 18 August 2023 that the Kingscliff - Dreamtime Beach Coastal Zone Management Plan (CZMP) 2017 is currently being revised and is expected to be finalised at the end of 2024.

Our review of the EIS indicates the proponent has recognised the development is within the coastal use area of the State Environmental Planning Policy (SEPP) (Resilience and Hazards) 2021.

Since that correspondence we note, the *Kingscliff - Dreamtime Beach Coastal Zone Management Plan* has now expired and, based on contemporary information, there is no indication the site is exposed to coastal hazards in a way that would require further planning to mitigate the projected risk of coastal hazards over the 100 year planning horizon or under a 1.5m SLR scenario.

BCS has no further comments or recommendation for hazards and risks.

Biodiversity

The Biodiversity Development Assessment Report (BDAR) at Appendix H of the EIS does not meet the Secretary's requirements for biodiversity.

Specific comments on the BDAR and related sections in the EIS are as follows:

Biodiversity Development Assessment Report (BDAR)

Currency of the BDAR (page Xii)

We note the BDAR prepared by Biodiversity Assessments and Solutions is dated 15 March 2024. Appendix F of the BDAR shows the credit report for the proposal, which indicates the Biodiversity Assessment Method (BAM) Calculator was finalised on 14 March 2024. The NSW Planning Portal confirms the development application was lodged with the Department on 26 April 2024.

Section 6.15(1) of the *Biodiversity Conservation Act 2016* (BC Act) states that:

'A biodiversity assessment report cannot be submitted in connection with a relevant application unless the accredited person certifies in the report that the report has been prepared on the basis of the requirements of (and information provided under) the biodiversity assessment method as at a specified date and that the date is within 14 days of the date that the report is so submitted.'

The currency of the BDAR is important to ensure the most relevant biodiversity updates have been included for the proposal. As it stands, the current BDAR does not accord with s6.15(1) of the BC Act and this must be addressed before the consent authority can complete its assessment of the development application.

Recommended actions:

- An updated and recertified BDAR be prepared and lodged in support of the development application within 14 days of the credit calculations being finalised.

Threatened Species Surveys/Effort (pages 18-20)

Table 5 of the BDAR confirms amphibian surveys were conducted over four nights over an 11-night period. Section 5.3 of the Biodiversity Assessment Method (BAM) 2020 requires field surveys to be undertaken in accordance with the Department's published survey guidelines.

Our review of the BDAR confirmed the survey effort expended at the site for amphibians does not comply with the published guidelines. For instance, when surveying for the wallum froglet, the NSW Survey Guideline for Threatened Frogs (2020) requires the following:

3.4 Wallum froglet <i>Crinia tinnula</i>			
Site	500 m transect of suitable breeding habitat		
Survey method	Survey period	Total effort for a 500 m transect	Number of repeat surveys
Aural-visual surveys	All year after flooding rains	480 mins	4
Acoustic recorder	All year after flooding rains	154 recorder days	1 x 14 days

Given the amphibian surveys did not include the placement of an acoustic recorder, the survey effort expended at the site does not conform with the guidelines. The guidelines also require aural-visual surveys to be undertaken over a minimum period of 14 days and after flooding rains. We note, the initial survey undertaken on 30 October 2023 was conducted prior to any significant rainfall event.

Nevertheless, despite not using appropriate survey methods and failing to record the species during these surveys, the BDAR has assumed presence for Wallum Froglet and species credits have been calculated.

Recommended actions:

- The assessor be advised that all threatened species surveys for a BDAR need to comply with the relevant published survey guidelines, including undertaking frog surveys after flooding rains.

PCT Allocation (pages 27-30)

Section 4.2 of the BDAR identifies the vegetation within the subject land aligns with PCT3989 (Far North Paperbark Fern Swamp Forest). Section 4.2.2.3 of the BDAR confirms Plant Community Type (PCT) allocation was in part, based on the range of plants that occur on the subject land (See Plate 1).

4.2.2.3 Justification of PCT selection

PCT 3989 was selected as the best representative PCT available for the vegetation to which it has been assigned on the subject land based on factors including: landscape position, underlying soils and geology, and species present in the higher condition vegetation fragments recorded during plot-based floristic vegetation surveys. This PCT is mapped in proximity to the subject land for other areas of vegetation with similar characteristics within the assessment area, and is considered the most suitable representation of the vegetation present.

Species recorded on the subject land within the higher condition fragments of vegetation (which are also listed in the BioNet Vegetation Classification - Community Profile Report), with representation of all growth forms, include: Broad-leaved Paperbark (*Melaleuca quinquenervia*), Tuckeroo (*Cupaniopsis anacardioides*), Swamp Oak (*Casuarina glauca*), Lilly Pilly (*Acmena smithii*), Sally Wattle (*Acacia melanoxylon*), Willow Bottlebrush (*Callistemon salignus*), Blueberry Ash (*Elaeocarpus reticulatus*), Spiny-headed Mat-rush (*Lomandra longifolia*), Swamp Ricegrass (*Leersia hexandra*), Broadleaf Cumbungi (*Typha orientalis*), Indian Cupscale Grass (*Sacciolepis indica*), Frogsmouth (*Philydrum lanuginosum*), Slender Knotweed (*Persicaria decipiens*), Common Silkpod (*Parsonsia straminea*) and Bangalow Palm (*Archontophoenix cunninghamiana*).

A flora species list developed during this assessment is contained in Appendix E.

Plate 2: Extract from the BDAR justifying PCT allocation.

An examination of the BAM plot data contained in Appendix D of the BDAR for PCT 3989 confirms that several species identified in Section 4.2.2.3 as occurring within PCT 3989 are absent from the datasheets. Species absent include, broad-leaved paperbark (*Melaleuca quinquenervia*), willow bottlebrush (*Callistemon salignus*), blueberry ash (*Elaeocarpus reticulatus*), bangalow palm (*Archontophoenix cunninghamiana*) and cupscale grass (*Sacciolepis indica*).

While BAM plot number 5 has been assigned to PCT 3989, a review of the species list contained in Appendix D for plot number 5 confirms that several key diagnostic species associated with that PCT are absent from the datasheet. Notably, the key indicator species *M. quinquenervia* is missing from Appendix D. In our view, the vegetation associated with plot number 5 is more closely aligned to being classified as a rainforest PCT. Alternatively, due to the range of common garden species contained in the plot datasheet this vegetation community could form part of the broader landscaping that is found throughout the existing development.

Despite Plates 8 and 10 and the BAM plot datasheets of the BDAR confirming that swamp oak (*Casuarina glauca*) was the only species of tree recorded in the development footprint, the BDAR has assigned PCT 3989 to this area. Based on the plot data, it is our view the vegetation in the development footprint is more closely related to a swamp oak dominated PCT than PCT 3989.

Recommended actions:

- The PCTs contained in the BDAR be revised to ensure only the species recorded within each of the BAM plots are used to determine PCT allocation and sections 4-10 of the BDAR amended accordingly.

Vegetation Condition (pages 30-34)

On 18 August 2023, BCS (then BCD) provided comments to Planit Consulting on a draft BDAR that was prepared by Green Tape Solutions. In reference to the condition of the vegetation communities growing within the development footprint that correspondence stated:

During our site inspection we observed both vegetation communities had been recently slashed as shown in Plate 3 below. The slashing works are likely to have an adverse impact on the structure and composition of both vegetation communities.

To determine whether the subject vegetation communities are Threatened Ecological Communities (TECs) and to allow a more representative vegetation integrity score to be calculated for this vegetation zone, the subject areas require regeneration to at least the condition they were in when the site was surveyed in July 2022 as shown in Plate 4 below. Once, this has occurred, native vegetation surveys can be undertaken in accordance with Sections 4.2 and 4.3.3 of the BAM.



Plate 3: Condition of the “Grassland/Sedgeland” during BCD’s site inspection.



Plate 4: Condition of the “Grassland/Sedgeland” July 2022. Source submitted BDAR.

It is evident from Plates 8 and 11 in the BDAR, that slashing is still occurring, and the subject vegetation communities have not been allowed to regenerate to at least the condition they were in when the site was first surveyed in July 2022.

Recommended actions:

- The vegetation communities growing within the development footprint be allowed to regenerate to the condition they were in as of July 2022, and once this has occurred, repeat BAM plots be undertaken and sections 4-10 of the BDAR amended accordingly.

Avoid and minimise (pages 54-56)

Stage 1 of the BAM 2020 requires accredited assessors to assess the biodiversity values of the subject site to inform the location and design of the proposal such that it avoids and minimises impacts on those values, before assessing the direct and indirect impacts of the proposed development in Stage 2 of the BAM 2020.

Currently, the development proposes to remove all the vegetation growing within the development footprint. This includes, at least one vegetation community listed as a Threatened Ecological Community (TEC) under the *Biodiversity Conservation Act 2016* while retaining low conservation valued landscaped garden beds. The development will also remove all the wallum froglet (*Crinia tinnula*) habitat located on the subject site. The proposed development will cover the entire development footprint and will not avoid or minimise any impacts to biodiversity.

The issue of avoidance as required by the legislation has been the subject of recent cases heard in the NSW Land and Environment Court. Recent case law decisions relevant to this situation include:

- *Planners North v Ballina Shire Council* [2021] NSWLEC 120

- Statewide Planning Pty Ltd v Blacktown City Council [2022] NSWLEC 1024

Based on the information provided to date, it is unclear where the hierarchy of avoid and minimise has been applied in the BDAR.

Recommended actions:

- Section 6 of the BDAR be revised to adequately demonstrate and justify measures taken by the proponent to avoid and minimise impacts on biodiversity values of the site in accordance with Section 6.12 of the *Biodiversity Conservation Act 2016*, and then sections 7, 9 and 10 of the BDAR amended accordingly.

Environmental Impact Statement

Mitigation Measures (page 162)

Section 6.10.3 of the EIS sets out mitigation measures for the proposal. BCS supports implementation of these measures.