

Attachment F – Request for additional information (Biodiversity), BCD

Mr Paul Hickey
Ballina Shire Council
PO Box 450
Ballina NSW 2478

Attention: Ms Jessica Hutley

Dear Mr Hickey

RE: Seniors Housing Development, 550-578 River Street WEST BALLINA, (2022/721/1)

Thank you for your referral dated 16/03/2023 about the proposed seniors housing development at West Ballina seeking comments from the Biodiversity and Conservation Division (BCD) of the Biodiversity, Conservation and Science Directorate in the Environment and Heritage Group of the Department of Planning and Environment. I appreciate the opportunity to provide input.

We have reviewed the Biodiversity Development Assessment Report (BDAR) prepared by Cumberland Ecology dated 3 March 2023 and advise there are issues with the application of the Biodiversity Assessment Method (BAM) by the accredited assessor.

The issues apparent with the BDAR include missing information, inaccurate delineation of the development footprint, data errors, lack of justification for excluding species, and insufficient consideration and/or justification of measures to avoid and minimise impacts on biodiversity values.

We have also reviewed the documents supplied in relation to acid sulfate soils impacts.

The issues relating to the BDAR and comments relating to acid sulfate soils are detailed in **Attachment 1** to this letter.

We note there is a planning proposal currently under exhibition, which seeks to rezone most of the subject site to C2 Environmental Conservation. The BCD supports the rezoning of the land to C2 and considers the site is not suitable for urban development. However, we acknowledge there is presently a planning pathway for a development application to be lodged, and we provide the following comments on this basis.

We also note that much of the proposed development footprint has been regularly slashed and had been recently slashed at the time of the BCD site inspection. This slashing has likely impacted on the species composition and condition of the plant communities on parts of the site. Indeed, the largest vegetation zone described in the BDAR has been defined based on it being slashed (*'PCT 1808 Slashed'*).

The Ballina Shire Council should satisfy itself that the slashing has been undertaken lawfully, which is likely to have impacted biodiversity values on site and affected data underpinning the BDAR.

Please note, this response does not contain comments on flooding and coastal processes, which will be provided under separate cover.

If you have any questions about this advice, please do not hesitate to contact Mr Gene Mason, Senior Conservation Planning Officer, at gene.mason@environment.nsw.gov.au or 8289 6315.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Gene Mason', written in a cursive style.

06/04/2023

DON OWNER
A/-Senior Team Leader Planning, North East Branch
Biodiversity and Conservation

Attachment 1: Detailed BCD Comments – Seniors Housing Development, 550-578 River Street WEST BALLINA

The Biodiversity and Conservation Division (BCD) has reviewed the documents submitted in support of the development application for the proposed seniors housing development at West Ballina. Our comments and recommendations are provided below.

Acid Sulfate Soils

The BCD has reviewed the document *Acid Sulfate Soils Assessment - 550-570 River Street and 6 Burns Point Ferry Road, West Ballina, New South Wales - prepared for GTH Project NO. 4 Pty Ltd*, dated December 2022.

The results of the investigation indicated most of the samples tested exhibited Net Acidity either at or above the action threshold of 0.03 % S, which will require treatment if disturbed. However, we note the footprint of the development will be filled to an average of approximately 2.44m above ground level as a flood protection measure. The maximum elevation on the site is 2.162 m. Therefore, the minimum depth of fill will be 0.278 m thick. As a result, the document notes that any impacts from the disturbance of acid sulfate soils (ASS) caused by the development is considered unlikely, and any materials disturbed by potential excavation works will be managed in accordance with the Acid Sulfate Soils Management Plan (ASSMP).

The ASSMP is generally satisfactory, although it mentions that all soils excavated below 5.0m AHD will be sampled for ASS. We consider this to be unnecessary, as ASS will not occur >1 m AHD. On the other hand, where materials are excavated, the ASSMP anticipates that ASS testing will be conducted at a frequency of 1 test/500 m³ of excavated in situ materials. This is insufficient given that excavated materials are presumably more likely to be encountered in lineal excavations for services.

BCD recommendation:

1. Change the frequency of ASS testing of excavated in situ materials from 1 test/500 m³ to 1 test/25 lineal metres.

Biodiversity

The BCD has reviewed the Biodiversity Development Assessment Report (BDAR) prepared by Cumberland Ecology dated 3 March 2023 and we provide the following comments and recommendations.

Issue	BAM reference	BCD comments	BCD recommendations
1. GIS shapefiles	Table 24	The assessor has not submitted GIS shapefiles with the BDAR, as required in Table 24 of the Biodiversity Assessment Method 2020 (BAM).	The assessor should provide all digital shapefiles specified in Table 24 of the BAM to the consent authority at the time of lodgement of the development application (DA).
2. Development footprint	2(3)	The proposed 25 m mosquito buffer zone has been excluded or partially excluded from all figures depicting the development footprint except for Figure 3. Section 4.4 of the Landscape Concept Plan states this area will be regularly slashed or mown to minimise mosquito habitat. As such, the mosquito buffer zone is part of the development footprint and would be subject to direct impacts. This area does not appear to have been fully included in the assessment of impacts or clearing calculations.	The assessor should revise the development footprint to include the 25 m wide mosquito buffer. This will result in additional impacts that will need to be described and assessed in the BDAR. Some additional survey plots may be required.

Issue	BAM reference	BCD comments	BCD recommendations
3. Vegetation integrity survey plots	4.3.4(3)	<p>Figure 4 shows the locations of vegetation integrity survey plots as points. The map does not show the actual area covered by the 20 m x 20 m composition and structure plots or the orientation of the 20 m x 50 m function plots.</p> <p>Also, interpretation of Figure 4 is confounded by the amount of information included on a single map. It is difficult to understand the location of vegetation integrity survey plots in relation to mapped vegetation zones because they are obscured by the amount of information relating to flora and fauna surveys.</p>	The assessor should amend the BDAR to clearly show the location and orientation of vegetation integrity survey plots to all function attributes relevant to the PCT have been captured. For clarity, the plot locations should be shown on their own map(s) along with vegetation zones. Flora and fauna survey locations should be shown on a separate map.
4. Threatened species records	5.2.5	Tables 18 and 20 list the ecosystem credit species and species credit species detected within the study area, but there is no map indicating the locations where these species were detected.	The assessor should include a map showing the locations of threatened species recorded within the study area.
5. Threatened species polygons	5.2.5	<p><u>Pale-headed snake (<i>Hoplocephalus bitorquatus</i>)</u> The species polygon for <i>H. bitorquatus</i> has only included areas mapped as 1235_Moderate and 1235_Poor due to these areas being adjacent to watercourses where dead <i>Casuarina glauca</i> with loose bark are present.</p> <p>The TBDC states that the species favours habitats close to riparian areas in drier environments. The subject site cannot be considered a drier environment, with almost the entire study area containing freshwater, forested, and saline wetlands. Habitat for the species also includes rainforest and moist eucalypt forest, and it is noted that the area mapped as 1235_Weeds contains <i>Eucalyptus tereticornis</i> trees. The species may also range into areas without a tree layer to feed, particularly if slashing was not occurring.</p> <p>This species has also been misnamed in Figure 12 as the broad-headed snake.</p> <p><u>Mangrove honeyeater (<i>Lichenostomus fasciocularis</i>)</u> The species polygon for <i>L. fasciocularis</i> has excluded areas mapped as 1235_Weeds. However, this vegetation zone contains <i>E. tereticornis</i> trees, and the TBDC states that the species ranges into adjacent forests, woodlands and shrublands including areas containing eucalypts.</p>	<p><u>Pale-headed snake (<i>Hoplocephalus bitorquatus</i>)</u> The species polygon should be redrawn to cover all PCTs present on the site. The species name should be corrected on Figure 12.</p> <p><u>Mangrove honeyeater (<i>Lichenostomus fasciocularis</i>)</u> The species polygon should be redrawn to include 1235_Weeds.</p>
6. Threatened species surveys	5.3	Section 8.3.2 states that there are threatened species that are yet to be targeted in surveys, and it is possible that the project would generate additional offset credits for threatened species. We have assumed this has been accidentally left in from a previous version of the BDAR.	The assessor should clarify whether additional threatened species surveys are required.
7. Future VI scores	8.1.1	<p>Section 7.2 assumes that for the road frontage of River Street where the proposed fill depth is less than 0.25 m, <i>Phragmites australis</i> and other native grasses and forbs would re-establish, and no trees would be impacted. The assessor then proposes a future Vegetation Integrity (VI) score reflecting only a partial loss for these areas.</p> <p>Due to the proximity of these areas to the proposed development footprint and the road reserve, it is considered highly likely that once the development is operational, vegetation in these areas would continue to degrade due to management (slashing,</p>	<p>The assessor should amend the BDAR so that all areas grouped in the "Earthworks Management Zone" have a future VI score of 0.</p> <p>The assessor should ensure the changes in VI scores are consistent between Table 25 and the BAM-C.</p>

Issue	BAM reference	BCD comments	BCD recommendations
		<p>mowing, etc), hydrological changes from filling and ongoing human disturbance.</p> <p>Some of the changes in VI scores are inconsistent between Table 25 and the BAM-C Credit Summary Report. For example, Table 25 lists vegetation zone 1 <i>782_Freshwater_Wetland</i> as having a current VI score of 26.6 and a future VI score of 0, but the BAM-C Credit Summary Report shows a change in VI of only 26.5. There are additional inconsistencies for vegetation zones <i>1808_Weedy</i> and <i>1808_Slashed</i>.</p>	
8. Stormwater	8.3.4	<p>Section 7.5.2.i. states that the proposal will have no material impact on the surface water hydrological conditions of the wetland to the east of the proposal and the existing BSA and proposed additional conservation area. This section also states that the drainage scheme for the proposed development will discharge most stormwater directly to Emigrant Creek, with the remainder being discharged to the buffer (presumably the mosquito buffer) between the development and the eastern wetland.</p> <p>It is unclear how the proposal will have no material impact on the surface water hydrological conditions of the BSA and other wetland areas if it is also proposing to modify the existing drainage scheme to those areas.</p> <p>The BDAR also does not consider the potential impact of concentrated stormwater discharge points, increased volume and duration of peak discharge rates or increases in nutrient and pollution loads in stormwater discharged into the BSA and other wetland areas.</p> <p>It is unclear whether changes to stormwater discharge characteristics into the adjoining BioBanking Site would be consistent with clause 3.1 of the BioBanking Agreement, which states <i>“Except as otherwise permitted by this agreement, the landowner must not carry out any act or omit to carry out any act, or cause or permit any act to be carried out or any act not to be carried out which act or omission may harm biodiversity values on the biobank site, including but not limited to any native animals, native plants, threatened species, populations and ecological communities, and their habitats”</i>. Consequently, changing or permitting the change of stormwater characteristics on the BioBanking Site that result in harm to biodiversity values may be considered a breach of this clause.</p>	<p>The council should ensure there would be no post-development change in stormwater discharge rates/durations or nutrient and pollution loads. The council should also be satisfied the proposed management and discharge of stormwater would be consistent with clause 3.1 of BioBanking Agreement 444.</p>
9. Impact assessment for threatened species at risk of a serious and irreversible impact	9.1.2	<p>Section 8.2.1 excludes the black-necked stork (<i>Ephippiorhynchus asiaticus</i>) from the serious and irreversible impact (SAIL) assessments on the basis that a previous photograph of the species on the subject site appeared to be in an inundated area adjacent to mangroves and that all such habitat will be avoided, no nesting has been observed in the study area, and the species has a very large home range.</p> <p>Given that a confirmed recording exists within the study area, the proposed development footprint area contains areas representative of the species' key habitat (floodplain wetlands), and the NSW breeding population has been estimated at just 75 pairs, we consider that the species should be</p>	<p>The assessor should include an SAIL assessment for the black-necked stork (<i>Ephippiorhynchus asiaticus</i>).</p>

Issue	BAM reference	BCD comments	BCD recommendations
		assessed as being at risk of an SAI. The SAI assessment should include detailing the action and measures taken to avoid direct and indirect impacts on the species.	
10. Vegetation Management Plan and Biodiversity Stewardship Agreement	N/A	<p>Section 7.7.5 describes the area covered by the proposed Vegetation Management Plan (VMP) as including the existing BSA (described as Zone 1), the mosquito buffer, the 'green link' area and the remainder of the site outside the development footprint.</p> <p>The VMP states that a new Stewardship Site Agreement and Management Action Plan (MAP) will be prepared at a later date, and the VMP will guide the management of the subject areas during the interim. It also states that some works are required in the existing BSA area (described as Zone 1) that are not specified in the existing BSA and its MAP. The VMP cannot override the requirements of the existing BSA and MAP, and it may be more suitable to separate the VMP from Stewardship Site Agreement.</p> <p>Consideration should also be given to how the BSA will be accessed and the type of fencing to be used to deter unauthorised access while maintaining the biodiversity values of the site.</p>	<p>The council should ensure that the VMP is consistent with the existing BioBanking Agreement and its associated MAP.</p> <p>The council should consider the functionality of the adjoining BSA site and the most appropriate way to incorporate it into the proposed development so that ongoing management and access can be achieved.</p>