

15 September 2023

Planners North  
PO Box 538  
LENNOX HEAD NSW 2478

Email: [kate@plannersnorth.com.au](mailto:kate@plannersnorth.com.au)

Dear Ms Singleton

<b>RESPONSE TO REQUEST FOR DEVELOPMENT RELATED ADVICE</b>	
<b>Request No.</b>	<b>29.2023.131.1</b>
<b>Parcel No.</b>	<b>268846</b>
<b>Property Address</b>	<b>LOT: 0 SP: 96105 1 Kendall Street BYRON BAY</b>

I refer to your recent request for Development Related Advice received on 15 September 2023 in relation to the above property. Further to our recent on-site meeting regarding the proposed extensions to the subject residential development on the site, Council provides the following comment in terms of Coastal Wetlands and mapped Biodiversity Values land.

It is considered the proposal will need to be prepared as designated development triggering the provisions under Clause 2.7 of SEPP Resilience and Hazards 2021.

Council also notes the property is partly mapped as containing Biodiversity values under the Biodiversity Conservation Act 2016.

- The developed portion of the site adjacent to the existing structures features scattered swamp oak within a mown grassland – this comprises an approved APZ which must be mown/maintained in perpetuity as per the original consent DA10.2015.398.1 This area is mapped as BV land (on the basis of being SEPP Coastal Wetlands)
- It is understood the proposed additions do not require any additional bushfire measures with regard to any expanded APZ, so the existing measures may continue and do not require any additional vegetation removal or modification – on this basis BV land is unlikely to be impacted upon due to the previous approval.
- The proposed building additions occur on existing carpark areas (concrete slab/gravel) where vegetation is absent. A small portion of mown lawn within the existing APZ may be affected (this is not mapped as BV land)
- No trees or shrubs would require removal.



On the basis of the existing approvals and that any new additions would not require the removal of native vegetation for construction and bushfire management purposes, it appears unlikely that the Biodiversity Offset Scheme would be triggered.

Council trust this will assist with your discussions with relevant Stage Government Agencies with the preparation of the Environmental Impact Statement.

If you have any questions about the application please contact Council's Development Support Team on 02 6626 7025 or email [dso@byron.nsw.gov.au](mailto:dso@byron.nsw.gov.au).

Yours sincerely



Christopher Larkin

Manager Sustainable Development



## NSW RURAL FIRE SERVICE

Department of Planning and Environment (Parramatta)  
Locked Bag 5022,  
PARRAMATTA NSW 2124  
Australia

Your reference: SEAR 1839  
Our reference: DA20231210005598-Original-1

**ATTENTION:** Fadi Shakir

Date: Monday 5 February 2024

Dear Sir/Madam,

**Development Application**  
**Other - Other Assessment - Residential Accommodation**  
**SEAR 1839 - 1 KENDALL ST BYRON BAY NSW 2481 Australia, //SP96105**

I refer to your correspondence regarding the above proposal which was received by the NSW Rural Fire Service on 07/12/2023.

The development proposal is for the alteration and addition to the existing residential development, the construction of new residential buildings and strata subdivision.

The subject site contains coastal wetlands in accordance with the provisions of State Environmental Planning Policy (Resilience and Hazards) 2021. The proposal is classified as Designated Development. The referral is for Request for Advice - SEARs.

The subject land is mapped bush fire prone land and contains a significant vegetation formation within and adjoining the site.

NSW RFS requires the EIS to identify bushfire risk to the development and recommend mitigation measures that address Planning for Bushfire Protection guidelines. The EIS shall include draft strata plan, asset protection zone (APZ) plan, BAL construction plan and a statement that addresses APZ management on common and individual lots.

For any queries regarding this correspondence, please contact Alan Bawden on 1300 NSW RFS.

Yours sincerely,

Timothy Carroll  
**Manager Planning & Environment Services**  
**Built & Natural Environment**

### Postal address

NSW Rural Fire Service  
Locked Bag 17  
GRANVILLE NSW 2142

### Street address

NSW Rural Fire Service  
4 Murray Rose Ave  
SYDNEY OLYMPIC PARK NSW 2127

T (02) 8741 5555  
F (02) 8741 5550  
[www.rfs.nsw.gov.au](http://www.rfs.nsw.gov.au)

----- Forwarded message -----

From: **Alan Bawden** <[Alan.Bawden@rfs.nsw.gov.au](mailto:Alan.Bawden@rfs.nsw.gov.au)>

Date: Thu, 14 Mar 2024 at 07:50

Subject: EIS Residential Development1 Kendall Street Byron Bay.

To: Executive Assistant <[ea@plannersnorth.com.au](mailto:ea@plannersnorth.com.au)>

Cc: Meg Kitchner <[Margaret.Kitchner@rfs.nsw.gov.au](mailto:Margaret.Kitchner@rfs.nsw.gov.au)>

Attention Kate Singleton

Hello Kate

As per the NSW RFS letter dated 5 February 2024, the proposed residential development shall address Planning for Bushfire Protection guidelines.

Residential development – chapter 7

Subdivision chapter 5

Tourist uses – SFPP chapter 6

Acceptable solutions are designed to provide a suitable outcome to minimise bushfire threat to the future development.

It is noted that the land and adjoining land contains mapped wetlands. Without approval to manage the vegetation within the wetlands, the proposed development shall be set back from the un-managed vegetation to achieve a <29k/W RHE for residential or 10k/WRHE for SFPP.

Regards

**Alan Bawden**

Supervisor – Development Assessment and Planning – Planning and Environment Services North

OUR REF: C24/198

13 March 2024

Kate Singleton  
Planners North  
PO Box 538  
Lennox Head NSW 2478  
Via email: [kate@plannersnorth.com.au](mailto:kate@plannersnorth.com.au)

Dear Ms Singleton,

Re: DPI Fisheries comments on the preparation of Environmental Impact Statement (EIS) for proposed alterations and additions to an existing multi-dwelling housing development at Lot 1-13 SP 961051, Kendall Street, Byron Bay, Byron Shire Council LGA.

I refer to your letter dated 7 March 2024 seeking further comments from DPI Fisheries to assist with the development of an Environmental Impact Statement (EIS) for the subject proposal.

DPI Fisheries is responsible for ensuring that fish stocks are conserved and that there is “no net loss” of key fish habitats upon which they depend. To achieve this, the Coastal Systems Unit assesses activities under Parts 4 and 5 of the *Environmental Planning and Assessment Act 1979* in accordance with the objectives of the *Fisheries Management Act 1994* (FM Act), the aquatic habitat protection and threatened species conservation provisions in Parts 7 and 7A of the FM Act, and the *Policy and Guidelines for Fish Habitat Conservation and Management (2013 Update)* (DPI Fisheries P&G). In addition, DPI Fisheries is responsible for ensuring the sustainable management of commercial fishing and aquaculture, quality recreational fishing and the continuation of Aboriginal cultural fishing within NSW.

It is understood that the proposal is seeking to add an additional eight dwellings, and car parking for 13 vehicles, to an existing multi dwelling housing development within or proximate to mapped Coastal Wetlands under the *State Environmental Planning Policy (Resilience and Hazards) 2021*.

Coastal Wetlands are considered Type 1 highly sensitive key fish habitat in accordance with the DPI Fisheries P&G. Despite the footprint of the proposal indicating that there will not likely be direct impacts to habitats that would be considered part of Coastal Wetlands, impacts to adjacent Coastal Wetland habitats may occur as a result of construction activities and/or operation of the

development, such as via an increase in urban water discharges. Accordingly, DPI Fisheries recommends that developments adjacent to key fish habitat include a vegetated buffer zone to ensure impacts during construction and operation are avoided. In consideration of the above, DPI Fisheries suggests that the EIS contain the following information:

- A statement outlining how construction impacts to the adjacent Coastal Wetlands will be avoided;
- Details of the size and management regime for any buffer zone located between the proposed development (and associated open space) and the Coastal Wetland;
- Details of what water sensitive urban design measures will be incorporated into the development to ensure impacts to the adjacent Coastal Wetland are avoided;
- A vegetation survey map of the area which shows the location and/or coverage of any saltmarsh, mangrove, seagrass, macroalgae, macrophytes, riparian vegetation and snags in and adjacent to the works area;
- Details of the general regional context, any protected areas, other developments in the area, and/or cumulative impacts; and,
- Details of any mitigation measures to limit environmental impacts.

#### Part 7 Fisheries Management Act 1994 Approvals

The table below outlines actions that trigger sections of the FM Act.

Sections	Description of action	Legislative trigger
198-202	Dredge (digging) and/or reclamation (filling) of land permanently or periodically inundated by water (including wetlands).	Digging and/or filling below the Highest Astronomical Tide (~1m AHD) in estuaries. Digging and/or filling within the high bed of 3 <sup>rd</sup> order and higher watercourses (based on 1:25,000 scale maps) and/or draining water from land for its reclamation. Digging and/or filling within Coastal Wetlands. Activities described in cl 226 <i>Fisheries Management (General) Regulation 2019</i>
205	Harming marine vegetation (seagrass, mangroves, and kelp)	Gather, cut, pull up, destroy, poison, dig up, remove, injure, or otherwise harm marine vegetation or any part of it. Activities described in cls 228-229 <i>Fisheries Management (General) Regulation 2019</i>
218-220	Obstructing free passage of fish, in waterways	Construction or alteration of a dam, floodgate, causeways, or weir or otherwise creation of an obstruction

It is understood that the proposal intends to conduct works adjacent to, not within, Key Fish Habitat, therefore it is unlikely that the proposal would trigger requirements under the FM Act.

Note, the proponent should undertake pre-lodgement consultation with DPI Fisheries to discuss any permit requirements once final designs and works locations have been identified.

**Other information requirements**

DPI Fisheries' standard minimum information requirements for environmental assessment are clearly detailed in section 3.3 of the DPI Fisheries P&G. Please ensure that these requirements are addressed in the environmental studies. This will facilitate an effective assessment of the proposal and reduce delays.

If you have any queries, please contact me on 0499 689 583 or [fletcher.mingramm@dpi.nsw.gov.au](mailto:fletcher.mingramm@dpi.nsw.gov.au).

Yours sincerely

A handwritten signature in black ink, appearing to read "F. Mingramm".

Fletcher Mingramm  
Fisheries Manager, Coastal Systems (North Coast)  
Marine Estate Management, Primary Industries NSW

## USEFUL DEFINITIONS

The definitions given below are relevant to these requirements:

**Dredging work** means:

- (a) any work that involves excavating water land, or
- (b) any work that involves the removal of material from water land that is prescribed by the regulations as being dredging work to which this Division applies.

**Farm Dam** means the backed up waters of any dam, or impoundment, located on land that is not public water land.

**Fish** means any part of marine, estuarine, or freshwater fish or other aquatic animal life at any stage of their life history (whether alive or dead). Fish include oysters and other aquatic molluscs, crustaceans, echinoderms and beach worms and other aquatic polychaetes.

**Marine vegetation** means any species of plant that at any time in its life must inhabit water (other than fresh water).

**Reclamation Work** means any work that involves:

- (a) using any material (such as sand, soil, silt, gravel, concrete, oyster shells, tyres, timber, or rocks) to fill in or reclaim water land, or
- (b) depositing any such material on water land for the purpose of constructing anything over water land (such as a bridge), or
- (c) draining water from water land for the purpose of its reclamation.

**Stream Order (Strahler)** When two first order streams come together, they form a second-order stream. When two second order streams come together, they form a third order stream. Streams of lower order joining a higher order stream do not change the order of the higher stream. Thus, if a first order stream joins a third order stream it remains a third order stream. It is not until a third order stream combines with another third order stream that it becomes a fourth order stream. DPI Fisheries, using maps at a scale of 1:25,000, consider 3<sup>rd</sup> order and above (i.e. 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> etc) waterways as Key Fish Habitats and works in these waterways in almost all instances trigger permit requirements under the *Fisheries Management Act 1994*.

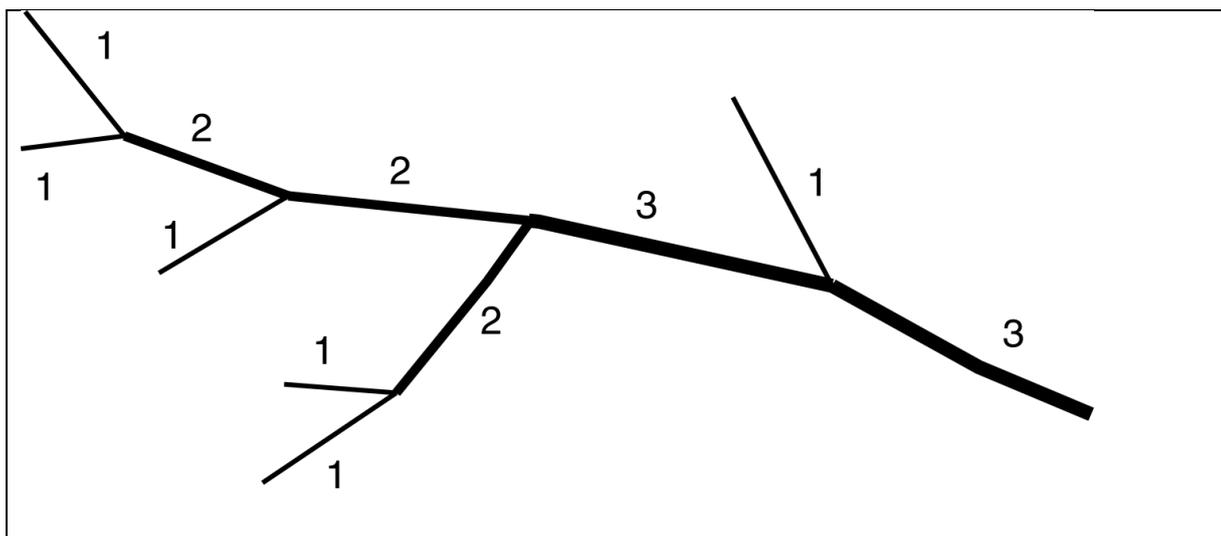
**Water Land** means land submerged by water:

- a) whether permanently or intermittently, or

b) whether forming an artificial or natural body of water,  
and includes wetlands and any other land prescribed by the regulations as water land to which this Division applies.

**Waters** refers to all waters including tidal waters to the Astronomical High Tide Level (AHTL) as well as flowing streams, irregularly flowing streams, gullies, rivers, lakes, coastal lagoons, wetlands, and other forms of natural or man-made water bodies on both private and public land.

**Wetlands** include marshes, mangroves, swamps, or other areas that form a shallow body of water when inundated intermittently or permanently with fresh, brackish, or salt water, and where the inundation determines the type and productivity of the soils and the plant and animal communities



Diagrammatic representation of Strahler Stream Order

## Further Information

DPI Fisheries' Policy and Guidelines series contains more detailed information on techniques and practices that satisfy DPI Fisheries' requirements to minimise impacts of developments on fish and fish habitat. The Guidelines are available at:

<http://www.dpi.nsw.gov.au/fisheries/habitat/protecting-habitats/toolkit>

Considering the information in these documents prior to developing and submitting your proposal is strongly recommended.

Another document "*Guidelines for the Assessment of Aquatic Ecology in EIA*" (Draft 1998) produced by the Department for Urban Affairs and Planning (now the Department of Planning and Environment) may prove useful in outlining appropriate procedures and methodologies for conducting aquatic surveys required for the preparation of an environmental assessment.



Key Sites & Regional Assessments  
Department of Planning and Environment  
Locked Bag 5022  
PARRAMATTA NSW 2150

Attention: Mr Andrew Watson

Dear Mr Watson

**Re: Request for Biodiversity and Conservation Division's Environmental Impact Statement  
Environmental Assessment Requirements – Dwelling Additions and Alterations – 1 Kendall Street,  
Byron Bay – SEAR 1839**

Thank you for your e-mail dated 7 December 2023 about the proposed additions and alterations to an existing multi-dwelling housing development, seeking Environmental Assessment Requirements (EARs) from the Biodiversity and Conservation Division (BCD) of the Department of Planning and Environment. I appreciate the opportunity to provide input.

We note the project will be assessed in accordance with Part 4 of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The Environmental Impact Statement (EIS) EARs provided by the BCD are limited to biodiversity, NPWS estate, acid sulfate soils, flooding, and coastal processes and associated hazards.

The BCD understands the subject site includes land mapped as a coastal wetland under the *State Environmental Planning Policy (Resilience and Hazards) 2021* (R&H SEPP), and that parts of the proposed development footprint overlap with the mapped area. Consequently, the proposal is a designated development under Clause 2.7(1) and (2) of the R&H SEPP.

The documentation provided states the proposal would not require removal of native vegetation on land identified on the Biodiversity Values Map, and therefore the EIS does not need to be accompanied by a Biodiversity Development Assessment Report (BDAR) under the *Biodiversity Conservation Act 2016*.

The consent authority should carefully consider this aspect of the proposal, as the proposed development footprint is directly adjacent to an area identified on the Biodiversity Values Map comprising the Threatened Ecological Community (TEC) Swamp Oak Floodplain Forest of the NSW North Coast, Sydney Basin and South East Corner Bioregions, and appears to extend into the Structural Root Zones of some trees. There is a strong possibility native vegetation in these areas would be impacted by the development over time.

If the proposal would result in the removal of native vegetation identified on the Biodiversity Values Map, either during the construction phase or once the development is operational, the EIS must be accompanied by a BDAR.

We anticipate the EIS will be sufficiently comprehensive to enable unambiguous assessment of all direct and indirect impacts of the proposed development.

In particular, we expect the EIS will consider the direct and indirect impacts of the proposal on:

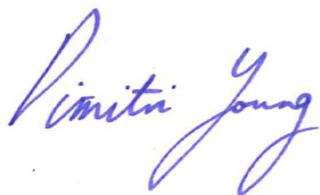
1. The mapped coastal wetland on and adjoining the subject site in accordance with the R&H SEPP.
2. Threatened species that have been recorded on or near the subject site including, but not limited to, scented acronychia (*Acronychia littoralis*), black-necked stork (*Ephippiorynchus asiaticus*), pale-vented bush-hen (*Amaurornis moluccana*), spotted-tailed quoll (*Dasyurus maculatus*), and koala (*Phascolarctos cinereus*).
3. TECs that may occur on or near the subject site including, but not limited to, Swamp Oak Floodplain Forest of the NSW North Coast, Sydney Basin and South East Corner Bioregions, Swamp Sclerophyll Forest on Coastal Floodplains of the New South Wales North Coast, Sydney Basin and South East Corner Bioregions, and Freshwater wetlands on coastal floodplains of the NSW North Coast, Sydney Basin and South East Corner bioregions.
4. The biodiversity values on and adjoining the subject site in accordance with the Byron Shire Development Control Plan 2014 – Chapter B1 Biodiversity.

We consider this information is necessary for a comprehensive EIS for the proposed development.

The full list of our requirements that may need to be addressed in the EIS is provided in **Attachment 1**. In preparing the EIS, the proponent can refer to the relevant guidance material listed in **Attachment 2**.

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](mailto:gene.mason@environment.nsw.gov.au) or 8289 6315.

Yours sincerely



**DIMITRI YOUNG**  
**Senior Team Leader Planning, North East Branch**  
**Biodiversity and Conservation**

20/12/2023

Enclosures:

Attachment 1 - BCD Recommended EARs – EIS – Dwelling Additions and Alterations – 1 Kendall Street, Byron Bay (SEAR 1839)  
Attachment 2 - EIS Guidance Material

# **Attachment 1**

## **Biodiversity and Conservation Division's Recommended Secretary's Environmental Assessment Requirements (SEARs) for Preparation of an Environmental Impact Statement**

**for the**

**Dwelling Additions and Alterations – 1 Kendall  
Street, Byron Bay**

**SEAR 1839**

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## **A. The Proposed Development**

The Environmental Impact Statement (EIS) should fully and clearly describe the proposed development, including any environmental impact mitigation measures, and identify all the processes and activities intended for the site during the life of the proposed development.

The description of the proposed development in the EIS should, where relevant, include:

1. the location of the proposal and details of the surrounding environment;
2. the land use zoning;
3. the size and type of the proposal and its operation;
4. the proposed layout of the site;
5. the staging and timing of the proposal;
6. the proposal's relationship to any other proposal.
7. all equipment proposed for use at the site;
8. chemicals, including fuel, used on the site and proposed methods for the transportation, storage, use and emergency management;
9. waste generation, storage and disposal;
10. the anticipated environment impacts of the proposal, both direct and indirect,
11. a plan showing the distribution of any threatened flora or fauna species and the vegetation communities on or adjacent to the subject site, and the extent of vegetation proposed to be cleared; and
12. ownership details of any residence and/or land likely to be affected by the proposal;
13. maps/diagrams showing the location of residences and properties likely to be affected and other industrial developments, conservation areas, wetlands, etc. in the locality that may be affected by the proposal;
14. methods to mitigate any expected environmental impacts of the proposal; and
15. the anticipated level of performance in meeting required environmental standards.

## **B. Environmental Impacts of the Proposed Development**

Impacts related to Biodiversity, NPWS Estate, Acid Sulfate Soils, Flooding, Coastal Processes and Associated Hazards, and Cumulative Impacts, should be assessed, quantified, and reported on in the EIS, as required.

The EIS should address the specific requirements outlined under each heading below, where necessary, and assess impacts in accordance with the relevant guidelines mentioned. A full list of guidelines is at **Attachment 2**.

## C. Biodiversity

1. The EIS must assess the impacts of the proposed development on biodiversity values to determine if the proposed development is “likely to significantly affect threatened species” for the purposes of Section 7.2 of the *Biodiversity Conservation Act 2016* (BC Act) as follows:
  - A. The EIS must demonstrate whether the proposed development is to be carried out in a declared area of outstanding biodiversity value.
  - B. If the proposed development is not carried out in a declared area of outstanding biodiversity value, then the EIS must demonstrate and document whether the proposed development exceeds the biodiversity offset scheme threshold, as set out in section 7.4 of the BC Act and clause 7.1 of the *Biodiversity Conservation Regulation 2017* (BC Regulation), by determining whether the proposed development involves:
    - I. The clearing of native vegetation of an area declared by clause 7.23 of the BC Regulation as exceeding the threshold, or
    - II. The clearing of native vegetation, or other action prescribed by clause 6.1 of the BC Regulation, on land included on the Biodiversity Values Map published under clause 7.3 of the BC Regulation.
  - C. If the biodiversity offset scheme threshold is not exceeded, then the EIS must document *the test for determining whether proposed development is likely to significantly affect threatened species or ecological communities* as outlined in Section 7.3 of the BC Act, by preparing an ecological assessment that should include:
    - I. A field survey of the site conducted and documented in accordance with relevant guidelines, including:
      - a. *Field survey methods for environmental consultants and surveyors when assessing proposed developments or other activities on sites containing threatened species* (OEH undated)  
<https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Animals-and-plants/Threatened-species/field-survey-method-guidelines.pdf>
      - b. *NSW Survey Guide for Threatened Frogs* (DPIE 2020)  
<https://www.environment.nsw.gov.au/research-and-publications/publications-search/nsw-survey-guide-for-threatened-frogs>
      - c. *Surveying threatened plants and their habitats: NSW survey guide for the Biodiversity Assessment Method* (DPIE 2020)  
<https://www.environment.nsw.gov.au/research-and-publications/publications-search/surveying-threatened-plants-and-their-habitats-survey-guide-for-the-biodiversity-assessment-method>
      - d. *Species credit' threatened bats and their habitats* (OEH 2018)  
<https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Animals-and-plants/Threatened-species/species-credit-threatened-bats-survey-guide-180466.pdf>

- e. *Threatened Biodiversity Survey and Assessment: Guidelines for Developments and Activities - Working Draft* (DEC 2004), <https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Animals-and-plants/Threatened-species/draft-threatened-biodiversity-survey-guide.pdf>.

If a proposed field survey methodology is likely to vary significantly from the methods in the guidelines above, then the proponent should discuss the proposed methodology with the Biodiversity and Conservation Division prior to undertaking surveys for the EIS, to determine whether the Biodiversity and Conservation Division considers the proposed methodology appropriate.

The results of recent (less than five years old) field surveys may be used. However, the results of previous field surveys should not be used if they have:

- been undertaken in seasons, weather conditions or following extensive disturbance events when the subject species are unlikely to be detected or present, or
- utilised methodologies, survey sampling intensities, timeframes or baits that are not the most appropriate for detecting the target subject species,

unless these differences can be clearly demonstrated to have had an insignificant impact upon the outcomes of the field surveys.

If the results of previous field surveys are used, then field surveys for any additional threatened entities listed under the BC Act since the previous field surveys took place, must be undertaken and documented.

The list of potential threatened species, populations, ecological communities, or their habitats for the site should be determined in accordance with:

- the *Threatened Biodiversity Survey and Assessment: Guidelines for Developments and Activities - Working Draft* (DEC 2004) <https://www.environment.nsw.gov.au/research-and-publications/publications-search/threatened-biodiversity-survey-and-assessment>, and
- the Department's Threatened Species website <http://www.environment.nsw.gov.au/topics/animals-and-plants/threatened-species>, and
- the *Bionet Atlas of NSW* <http://www.environment.nsw.gov.au/wildlifeatlas/about.htm>, and
- the Vegetation Information System (BioNet Vegetation Classification) <http://www.environment.nsw.gov.au/research/Visclassification.htm>, and
- other data sources (e.g. PlantNET, Online Zoological Collections of Australian Museums (<http://www.ozcam.org/>), previous or nearby surveys etc.) may also be used to compile the list.

II. The following information as a minimum:

- a. A description, spatial data files, and geo-referenced mapping of the study area, (overlays on topographic maps, satellite images and /or aerial photos, including details of map datum, projection and zone), showing all field survey locations, vegetation communities classified in accordance with the BioNet Vegetation Classification (<http://www.environment.nsw.gov.au/research/Visclassification.htm>), key

- habitat features and reported locations of threatened species and ecological communities present in the subject site and study area.
- b. A description of survey methodologies used, including timing, location and weather conditions.
  - c. Details, including qualifications and experience, of all staff undertaking the surveys, mapping and assessment of impacts as part of the EIS.
  - d. Identification of national and state listed threatened biota known or likely to occur in the study area and their conservation status.
  - e. A description of the likely impacts of the proposed development on biodiversity values, including direct and indirect impacts and construction and operation impacts, with impacts quantified, wherever possible, such as the amount of each vegetation community or species habitat to be cleared or impacted, and/or the degree of fragmentation of a habitat connectivity.
  - f. Identification of the avoidance, mitigation and management measures that will be put in place as part of the proposed development to avoid or minimise biodiversity impacts, including details about alternative options considered and how long-term management arrangements will be guaranteed.
  - g. A description of the residual impacts of the proposed development.
- III. The *'test for determining whether proposed development or activity is likely to significantly affect threatened species or ecological communities, or their habitats'* as outlined in Section 7.3 of the BC Act undertaken in accordance with the gazetted *Threatened Species Test of Significance Guidelines* (OEH 2018) available at: <https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Animals-and-plants/Threatened-species/threatened-species-test-significance-guidelines-170634.pdf>.
2. If the EIS determines under 1 above that the proposed development is likely to significantly affect threatened species, then in accordance with Section 7.7 of the BC Act the EIS must be accompanied by a Biodiversity Development Assessment Report prepared in accordance with Part 6, Division 3 of the BC Act.
  3. If the EIS determines under 1 above that the proposed development is unlikely to significantly affect threatened species, then the proposed development should:
    - a. be designed to avoid and minimise impacts on biodiversity values to the fullest extent possible, and
    - b. include a biodiversity offset package to offset remaining direct and indirect impacts on biodiversity values, prepared in accordance with the Department's 13 offsetting principles available at <http://www.environment.nsw.gov.au/biodivoffsets/oehoffsetprincip.htm>:

Note:

For the *Commonwealth Environment Protection and Biodiversity Conservation Act 1999*, the EIS should identify any relevant Matters of National Environmental Significance and whether the proposal has been referred to the Commonwealth or already determined to be a controlled action.

## D. NPWS Estate

The EIS should address the following with respect to land reserved under the *National Parks and Wildlife Act 1974*.

1. Where appropriate, likely impacts (both direct and indirect) of the proposed development on any adjoining and/or nearby NPWS estate reserved under the National Parks and Wildlife Act 1974 should be considered, with reference to the *Developments adjacent to National Parks and Wildlife Service lands Guidelines for consent and planning authorities (DPIE 2020)* available at:

<https://www.environment.nsw.gov.au/research-and-publications/publications-search/developments-adjacent-to-national-parks-and-wildlife-service-lands>

Note: Proposed development which may impact marine protected areas should be referred to the Regions, Industry, Agriculture and Resources Group in the Department of Planning, Industry and Environment to determine the assessment and approval requirements.

## E. Acid Sulfate Soils

The EIS should address the following:

1. The potential impacts of the proposed development on acid sulfate soils must be assessed in accordance with the relevant guidelines including the following:
  - Assessment Guidelines in the Acid Sulfate Soils Manual (Stone et al. 1998),
  - National Acid Sulfate Soils Identification and Laboratory Methods Manual (Sullivan et al. 2018a),
  - National Acid Sulfate Soils Sampling and Identification Methods Manual (Sullivan et al. 2018b), and where relevant,
  - Overview and Management of Monosulfidic Black Ooze (MBO) Accumulations in Waterways and Wetlands (Sullivan et al. 2018c),
  - Guidelines for the Dredging of Acid Sulfate Soil Sediments and Associated Dredge Spoil Management (Simpson et al. 2018), and
  - Guidance for the Dewatering of Acid Sulfate Soils in Shallow Groundwater Environments (Shand et al. 2018).

Samples must be tested according to procedures in National Acid Sulfate Soils Identification and Laboratory Methods Manual (Sullivan et al. 2018a).

2. A sound conceptual model must be developed for the site, including an understanding of local hydrogeological conditions, of the stratigraphic and lateral distribution of sulfide minerals, and of the presence of sensitive environmental receptors. This must include:
  - a. Identifying whether sufficient pyrite is present in sediments to cause significant acidification on oxidation,
  - b. Determining whether mining activities are likely to cause oxidation of pyrite and leach acidity and soluble metals into groundwater or surface waterways,

- c. Determining the likely extent and severity of groundwater or surface water contamination that may be caused by acidic leachate from oxidising sediments, and
  - d. Identifying whether there are ecosystems or groundwater users in the vicinity of the mine site that are likely to be exposed to contamination from acidic leachate.
3. Describe mitigation and management measures that will be used to prevent, control, abate or minimise potential impacts from the disturbance of acid sulfate soils associated with the proposal and to reduce risks to human health and prevent the degradation of the environment. This must include an assessment of the effectiveness and reliability of the measures and any residual impacts after these measures are implemented.
4. Describe the contingency plan, incorporating a commitment to appropriate monitoring.

## **F. Flooding, Coastal Processes and Associated Hazards**

The EIS should include an assessment of the following referring to the relevant guidelines in Attachment 2:

1. The potential effect of coastal processes and coastal hazards including potential impacts of sea level rise:
  - a. on the proposed development; and
  - b. arising from the proposed development.
2. Whether the proposed development is consistent with any coastal zone management plans.
3. Whether the proposed development is consistent with any floodplain risk management plans.
4. Whether the proposed development is compatible with the flood hazard of the land.
5. Whether the proposed development will significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties.
6. Whether the proposed development will significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.
7. Whether the proposed development incorporates appropriate measures to manage risk to life from flood.
8. Whether the proposed development is likely to result in unsustainable social and economic costs to the community as a consequence of flooding.
9. The implications of flooding over the full range of potential flooding, including the probable maximum flood, should be considered as set out in the NSW Government Floodplain Development Manual. This should include the provision of:

- a. Full details of the flood assessment and modelling undertaken in determining any design flood levels (if applicable), including the 1 in 100 year flood levels.
  - b. A sensitivity assessment of the potential impacts of an increase in rainfall intensity and runoff (10%, 20% and 30%) and sea level rise on the flood behaviour for the 1 in 100 year design flood if applicable.
10. All site drainage, stormwater quality devices and erosion / sedimentation control measures should be identified and the onsite treatment of stormwater and effluent runoff and predicted stormwater discharge quality from the proposed development should be detailed.

## **G. Cumulative Impacts**

The EIS should include an assessment of the following:

1. The cumulative impacts, including both construction and operational impacts, from all clearing activities and operations, associated edge effects and other indirect impacts on cultural heritage, biodiversity and NPWS Estate in accordance with the *Environmental Planning and Assessment Act 1979*.
2. The cumulative impacts, including both construction and operational impacts, of the proponent's existing proposals and other proposals and associated infrastructure (such as access tracks etc.) as well as the cumulative impact of the proposed development in the context of other proposals located in the vicinity.

## Attachment 2 – EIS Guidance Material

Title	Web address
<b><u>Relevant Legislation</u></b>	
<i>Biodiversity Conservation Act 2016</i>	<a href="https://www.legislation.nsw.gov.au/#/view/act/2016/63/full">https://www.legislation.nsw.gov.au/#/view/act/2016/63/full</a>
<i>Coastal Management Act 2016</i>	<a href="https://www.legislation.nsw.gov.au/#/view/act/2016/20/full">https://www.legislation.nsw.gov.au/#/view/act/2016/20/full</a>
<i>Commonwealth Environment Protection and Biodiversity Conservation Act 1999</i>	<a href="http://www.austlii.edu.au/au/legis/cth/consol_act/epabca1999588/">http://www.austlii.edu.au/au/legis/cth/consol_act/epabca1999588/</a>
<i>Environmental Planning and Assessment Act 1979</i>	<a href="http://www.legislation.nsw.gov.au/maintop/view/inforce/act+203+1979+cd+0+N">http://www.legislation.nsw.gov.au/maintop/view/inforce/act+203+1979+cd+0+N</a>
<i>Fisheries Management Act 1994</i>	<a href="http://www.legislation.nsw.gov.au/maintop/view/inforce/act+38+1994+cd+0+N">http://www.legislation.nsw.gov.au/maintop/view/inforce/act+38+1994+cd+0+N</a>
<i>Marine Parks Act 1997</i>	<a href="http://www.legislation.nsw.gov.au/maintop/view/inforce/act+64+1997+cd+0+N">http://www.legislation.nsw.gov.au/maintop/view/inforce/act+64+1997+cd+0+N</a>
<i>National Parks and Wildlife Act 1974</i>	<a href="http://www.legislation.nsw.gov.au/maintop/view/inforce/act+80+1974+cd+0+N">http://www.legislation.nsw.gov.au/maintop/view/inforce/act+80+1974+cd+0+N</a>
<i>Protection of the Environment Operations Act 1997</i>	<a href="http://www.legislation.nsw.gov.au/maintop/view/inforce/act+156+1997+cd+0+N">http://www.legislation.nsw.gov.au/maintop/view/inforce/act+156+1997+cd+0+N</a>
<i>Water Management Act 2000</i>	<a href="http://www.legislation.nsw.gov.au/maintop/view/inforce/act+92+2000+cd+0+N">http://www.legislation.nsw.gov.au/maintop/view/inforce/act+92+2000+cd+0+N</a>
<i>Wilderness Act 1987</i>	<a href="http://www.legislation.nsw.gov.au/viewtop/inforce/act+196+1987+FIRST+0+N">http://www.legislation.nsw.gov.au/viewtop/inforce/act+196+1987+FIRST+0+N</a>
<b><u>Biodiversity</u></b>	
Biodiversity Assessment Method (DPIE, 2020)	<a href="https://www.environment.nsw.gov.au/research-and-publications/publications-search/biodiversity-assessment-method-2020">https://www.environment.nsw.gov.au/research-and-publications/publications-search/biodiversity-assessment-method-2020</a>
Biodiversity Development Assessment Report	<a href="https://www.legislation.nsw.gov.au/#/view/act/2016/63/part6/div3/sec6.12">https://www.legislation.nsw.gov.au/#/view/act/2016/63/part6/div3/sec6.12</a>
Guidance and Criteria to assist a decision maker to determine a serious and irreversible impact (OEH, 2017)	<a href="http://www.environment.nsw.gov.au/resources/bcact/guidance-decision-makers-determine-serious-irreversible-impact-170204.pdf">http://www.environment.nsw.gov.au/resources/bcact/guidance-decision-makers-determine-serious-irreversible-impact-170204.pdf</a>
Accreditation Scheme for Application of the Biodiversity Assessment Method Order 2017	<a href="https://www.legislation.nsw.gov.au/regulations/2017-471.pdf">https://www.legislation.nsw.gov.au/regulations/2017-471.pdf</a>

Title	Web address
Biodiversity conservation actions	<a href="http://www.environment.nsw.gov.au/resources/bcact/ancillary-rules-biodiversity-actions-170496.pdf">www.environment.nsw.gov.au/resources/bcact/ancillary-rules-biodiversity-actions-170496.pdf</a>
Reasonable steps to seek like-for-like biodiversity credits for the purpose of applying the variation rules	<a href="http://www.environment.nsw.gov.au/resources/bcact/ancillary-rules-reasonable-steps-170498.pdf">www.environment.nsw.gov.au/resources/bcact/ancillary-rules-reasonable-steps-170498.pdf</a>
Threatened Species Website	<a href="http://www.environment.nsw.gov.au/threatenedspecies/">www.environment.nsw.gov.au/threatenedspecies/</a>
NSW BioNet (Atlas of NSW Wildlife)	<a href="http://www.bionet.nsw.gov.au/">www.bionet.nsw.gov.au/</a>
Surveying threatened plants and their habitats NSW survey guide for the Biodiversity Assessment Method (DPIE 2020)	<a href="https://www.environment.nsw.gov.au/research-and-publications/publications-search/surveying-threatened-plants-and-their-habitats-survey-guide-for-the-biodiversity-assessment-method">https://www.environment.nsw.gov.au/research-and-publications/publications-search/surveying-threatened-plants-and-their-habitats-survey-guide-for-the-biodiversity-assessment-method</a>
Threatened biodiversity survey and assessment - Guidelines for developments and activities (2004 working draft)	<a href="https://www.environment.nsw.gov.au/research-and-publications/publications-search/threatened-biodiversity-survey-and-assessment">https://www.environment.nsw.gov.au/research-and-publications/publications-search/threatened-biodiversity-survey-and-assessment</a>
Field survey methods for environmental consultants and surveyors when assessing proposed developments or other activities on sites containing threatened species (OEH undated)	<a href="https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Animals-and-plants/Threatened-species/field-survey-method-guidelines.pdf">https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Animals-and-plants/Threatened-species/field-survey-method-guidelines.pdf</a>
NSW Survey Guide for Threatened Frogs (DPIE 2020)	<a href="https://www.environment.nsw.gov.au/research-and-publications/publications-search/nsw-survey-guide-for-threatened-frogs">https://www.environment.nsw.gov.au/research-and-publications/publications-search/nsw-survey-guide-for-threatened-frogs</a>
Koala ( <i>Phascolarctos cinereus</i> ) Biodiversity Assessment Method Survey Guide (DPE 2022)	<a href="https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Animals-and-plants/Threatened-species/koala-phascolarctos-cinereus-biodiversity-assessment-method-survey-guide-220249.pdf">https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Animals-and-plants/Threatened-species/koala-phascolarctos-cinereus-biodiversity-assessment-method-survey-guide-220249.pdf</a>
'Species credit' threatened bats and their habitats (OEH 2018)	<a href="https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Animals-and-plants/Threatened-species/species-credit-threatened-bats-survey-guide-180466.pdf">https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Animals-and-plants/Threatened-species/species-credit-threatened-bats-survey-guide-180466.pdf</a>
BioNet Vegetation Classification - NSW Plant Community Type (PCT) database	<a href="http://www.environment.nsw.gov.au/research/Vegetationinformationsystem.htm">www.environment.nsw.gov.au/research/Vegetationinformationsystem.htm</a>
SEED Data Portal (access to online spatial data)	<a href="http://data.environment.nsw.gov.au/">http://data.environment.nsw.gov.au/</a>

Title	Web address
Department of Primary Industry Policy and guidelines for fish habitat conservation and management (update 2013)	<a href="https://www.dpi.nsw.gov.au/fishing/habitat/publications/pubs/fish-habitat-conservation">https://www.dpi.nsw.gov.au/fishing/habitat/publications/pubs/fish-habitat-conservation</a>
<b><u>NPWS Estate</u></b>	
List of national parks	<a href="http://www.environment.nsw.gov.au/NationalParks/parksearchatoz.aspx">http://www.environment.nsw.gov.au/NationalParks/parksearchatoz.aspx</a>
Revocation, recategorisation and road adjustment policy (OEH, 2012)	<a href="https://www.environment.nsw.gov.au/topics/parks-reserves-and-protected-areas/park-policies/revocation-recategorisation-and-road-adjustment">https://www.environment.nsw.gov.au/topics/parks-reserves-and-protected-areas/park-policies/revocation-recategorisation-and-road-adjustment</a>
Developments adjacent to National Parks and Wildlife Service lands Guidelines for consent and planning authorities (DPIE 2020)	<a href="https://www.environment.nsw.gov.au/research-and-publications/publications-search/developments-adjacent-to-national-parks-and-wildlife-service-lands">https://www.environment.nsw.gov.au/research-and-publications/publications-search/developments-adjacent-to-national-parks-and-wildlife-service-lands</a>
<b><u>Acid Sulfate Soils</u></b>	
Acid Sulfate Soils Planning Maps via Data.NSW	<a href="http://data.nsw.gov.au/data/">http://data.nsw.gov.au/data/</a>
Acid Sulfate Soils Manual (Stone et al. 1998)	<a href="http://www.environment.nsw.gov.au/resources/epa/Acid-Sulfate-Manual-1998.pdf">http://www.environment.nsw.gov.au/resources/epa/Acid-Sulfate-Manual-1998.pdf</a>
National Acid Sulfate Soils Guidance: National acid sulfate soils identification and laboratory methods manual, Department of Agriculture and Water Resources, Canberra, ACT. (Sullivan, L, Ward, N, Toppler, N and Lancaster, G. 2018a)	<a href="https://www.waterquality.gov.au/sites/default/files/documents/dewatering-acid-sulfate-soils.pdf">https://www.waterquality.gov.au/sites/default/files/documents/dewatering-acid-sulfate-soils.pdf</a>
National Acid Sulfate Soils guidance: National acid sulfate soils sampling and identification methods manual, Department of Agriculture and Water Resources, Canberra ACT. (Sullivan, L, Ward, N, Toppler, N and Lancaster, G. 2018b)	<a href="https://www.waterquality.gov.au/issues/acid-sulfate-soils/sampling-and-identification-methods-manual.pdf">https://www.waterquality.gov.au/issues/acid-sulfate-soils/sampling-and-identification-methods-manual.pdf</a>

Title	Web address
National Acid Sulfate soils Guidance: Overview and management of monosulfidic black ooze (MBO) accumulations in waterways and wetlands, Department of Agriculture and Water Resources, Canberra ACT. (Sullivan, LA, Ward, NJ, Bush, RT, Toppler, NR, Choppala, G. 2018c)	<a href="https://www.waterquality.gov.au/issues/acid-sulfate-soils/monosulfidic-black-ooze-accumulation.pdf">https://www.waterquality.gov.au/issues/acid-sulfate-soils/monosulfidic-black-ooze-accumulation.pdf</a>
National Acid sulfate soils guidance: Guidelines for the dredging of acid sulfate soil sediments and associated dredge spoil management, Department of Agriculture and Water Resources, Canberra, ACT (Simpson, SL, Mosley, L, Batley, GE and Shand P. 2018)	<a href="https://www.waterquality.gov.au/sites/default/files/documents/dredging-sediments-spoil.pdf">https://www.waterquality.gov.au/sites/default/files/documents/dredging-sediments-spoil.pdf</a>
National Acid Sulfate Soils Guidance: Guidance for the dewatering of acid sulfate soils in shallow groundwater environments, Department of Agriculture and Water Resources, Canberra, ACT. (Shand, P, Appleyard, S, Simpson, SL, Degens, B, Mosley, LM 2018)	<a href="https://www.waterquality.gov.au/issues/acid-sulfate-soils/dewatering-groundwater-environments.pdf">https://www.waterquality.gov.au/issues/acid-sulfate-soils/dewatering-groundwater-environments.pdf</a>
<b><u>Flooding, Coastal Processes and Associated Hazards</u></b>	
Reforms to coastal erosion management	<a href="http://www.environment.nsw.gov.au/coasts/coastalerosionmgmt.htm">http://www.environment.nsw.gov.au/coasts/coastalerosionmgmt.htm</a>
Floodplain development manual	<a href="http://www.environment.nsw.gov.au/floodplains/manual.htm">http://www.environment.nsw.gov.au/floodplains/manual.htm</a>
Guidelines for Preparing Coastal Zone Management Plans	<a href="http://www.environment.nsw.gov.au/resources/coasts/130224CZMPGuide.pdf">http://www.environment.nsw.gov.au/resources/coasts/130224CZMPGuide.pdf</a>
NSW Climate Impact Profile	<a href="http://climatechange.environment.nsw.gov.au/">http://climatechange.environment.nsw.gov.au/</a>
Climate Change Impacts and Risk Management	<a href="#">Climate Change Impacts and Risk Management: A Guide for Business and Government, AGIC Guidelines for Climate Change Adaptation</a>



Executive Assistant &lt;ea@plannersnorth.com.au&gt;

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**Re: SEARs advice for EIS**

1 message

**Sites** <sites@tblalc.com>

11 March 2024 at 17:21

To: Executive Assistant &lt;EA@plannersnorth.com.au&gt;

Cc: Cultural Heritage &lt;culturalheritage@tblalc.com&gt;

Hello Rebecca

I have reviewed the plans for the DA for [1 Kendall Street, Byron Bay](#). I understand that the DA is being amended to include extra units. I do not know whether any Aboriginal cultural heritage assessment was prepared for the original DA but, in any case, I recommend that one be undertaken at this juncture. The property is contiguous with the Cumbebin Swamp Nature Reserve which has Aboriginal cultural significance as evidenced by the presence of a marked tree, which is registered on the NSW Aboriginal Heritage Information Management System (AHIMS).

To enable us to schedule our site visit and report please complete the attached request form and scan it back to me at this email address.

I also recommend that you contact Bunjalung of Byron Bay Aboriginal Corporation (BOBBAC) ~ Arakwal for their input and advice regarding this DA.

Kind regards

Maurice Gannon  
Conservation Planning Officer  
Cultural Heritage Unit  
Tweed Byron Local Aboriginal Land Council  
m: 0407 643 349

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**From:** Executive Assistant <EA@plannersnorth.com.au>**Sent:** Thursday, 7 March 2024 2:44 PM**To:** Sites <sites@tblalc.com>**Subject:** SEARs advice for EIS

You don't often get email from [ea@plannersnorth.com.au](mailto:ea@plannersnorth.com.au). [Learn why this is important](#)

Good afternoon

please find attached our request for advice in relation to the preparation of an EIS for [1 Kendall Street Byron Bay](#).

with thanks,

Rebecca

*for Kate Singleton*

Rebecca Hickey

Executive Assistant to the Partners

I work flexibly: Tuesday - Friday



ABN 56 291 496 553

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12/03/2024, 09:29

Planners North Mail - Re: SEARs advice for EIS

e: [ea@plannersnorth.com.au](mailto:ea@plannersnorth.com.au)

p: 1300 66 00 87

m: 0402 497 058

Bundjalung Country

6 Porter Street, Habitat, Byron Bay NSW 2481 | PO Box 538 Lennox Head NSW 2478

*This email (including any attachments) is confidential and may be subject to professional privilege.*



**TBLALC CHU CONSULTATION REQUEST FORM.pdf**

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