

Planning and Assessment

IRF20/3371

Gateway determination report

LGA	Byron Shire
PPA	Byron Shire Council
NAME	Amendment to Schedule 1 of the Byron LEP 2014 to permit a dwelling house on Lot 6 DP 8385, 31 Yagers Lane, Skinners Shoot (1 home, 0 jobs)
NUMBER	PP_2020_BYRON_004_00
LEP TO BE AMENDED	Byron Local Environmental Plan 2014
ADDRESS	31 Yagers Lane, Skinners Shoot
DESCRIPTION	Lot 6 DP 8385
RECEIVED	13 July 2020
FILE NO.	IRF20/3371
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

1. INTRODUCTION

1.1 Description of planning proposal

This planning proposal seeks to amend Schedule 1 'Additional permitted uses' of the Byron Local Environmental Plan 2014 (LEP) to provide a dwelling entitlement to Lot 6 DP 8385, 31 Yagers Lane, Skinners Shoot.

1.2 Site description

Lot 6 DP 8385, 31 Yagers Lane, Skinners Shoot has an area of approximately 4.1 hectares (Figure 1) and is located approximately four kilometres south-west of Byron Bay. The subject land contains an existing unapproved dwelling house in the south-western corner. Pending inclusion of the subject land in Schedule 1 of the LEP, the landowner will be required to obtain a Development Application seeking consent for use of the existing structure as a dwelling prior to an Occupation Certificate being issued.

The site is classified as bushfire prone land (Figure 2). A portion of the allotment is mapped as having High Environmental Value (Figure 3) and Biodiversity Values (Figure 4) as well as a small portion of koala habitat (Figure 5). The site of the existing, unapproved dwelling is free of constraints. The land does not contain any state significant farmland or Biophysical Strategic Agricultural Land and is not within the mapped area of *State Environmental Planning Policy (Coastal Management) 2018*. The allotment is located east of the Pacific Highway and is therefore considered to be within the coastal strip as defined by the North Coast Regional Plan 2036 (NCRP).



Figure 1 - The Subject Land, Lot 6 DP 8385, 31 Yagers Lane, Skinners Shoot

Source: Planning Proposal

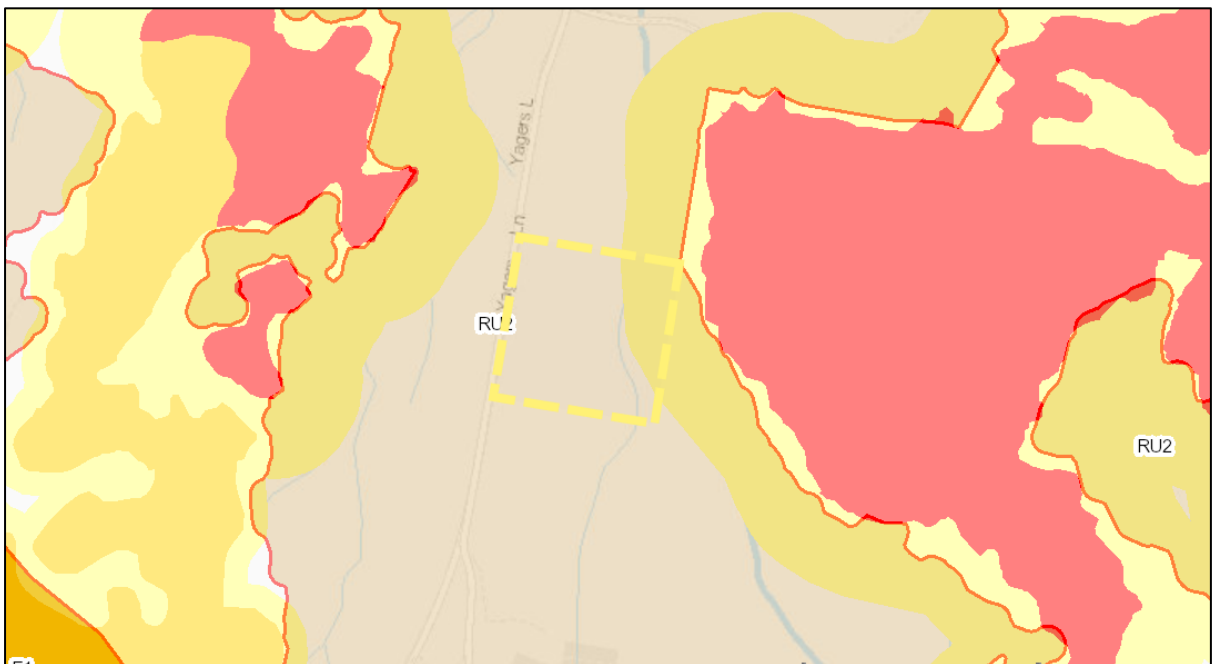


Figure 2 - Bushfire Prone Land, Lot 6 DP 8385, 31 Yagers Lane, Skinners Shoot

Source: NSW Planning Portal, ePlanning Spatial Viewer

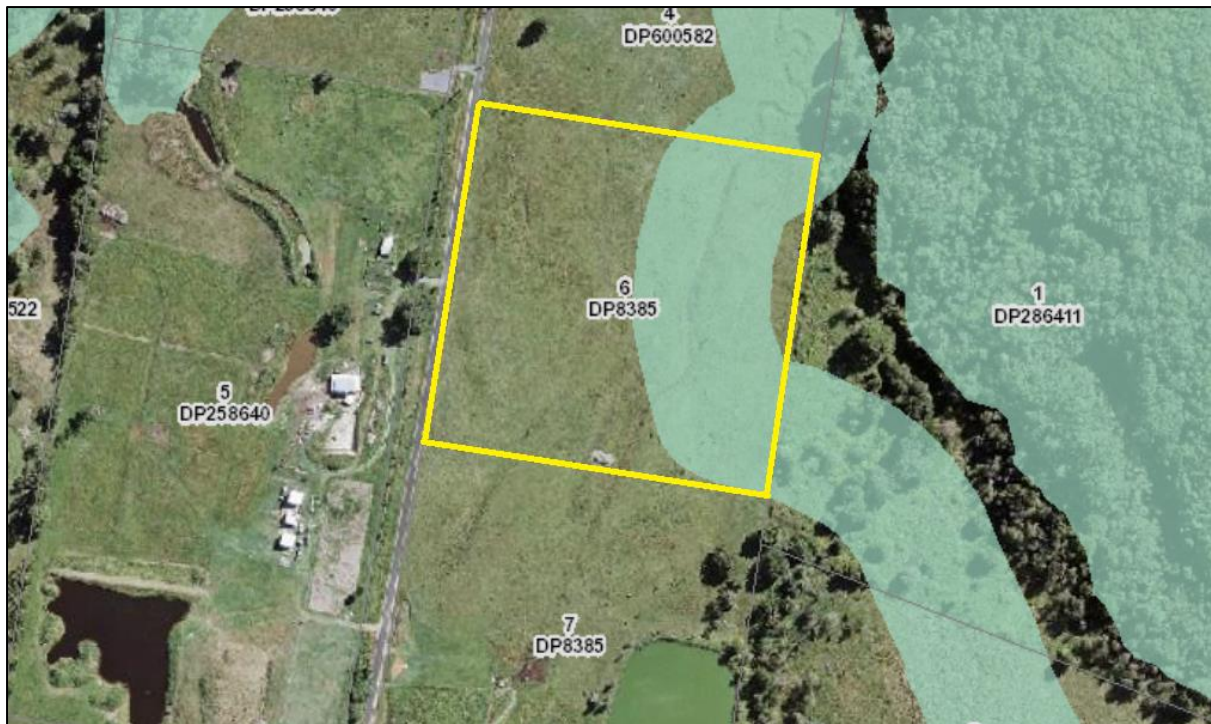


Figure 3 - High Environmental Values, Lot 6 DP 8385, 31 Yagers Lane, Skinners Shoot

Source: Northern Region Geocortex

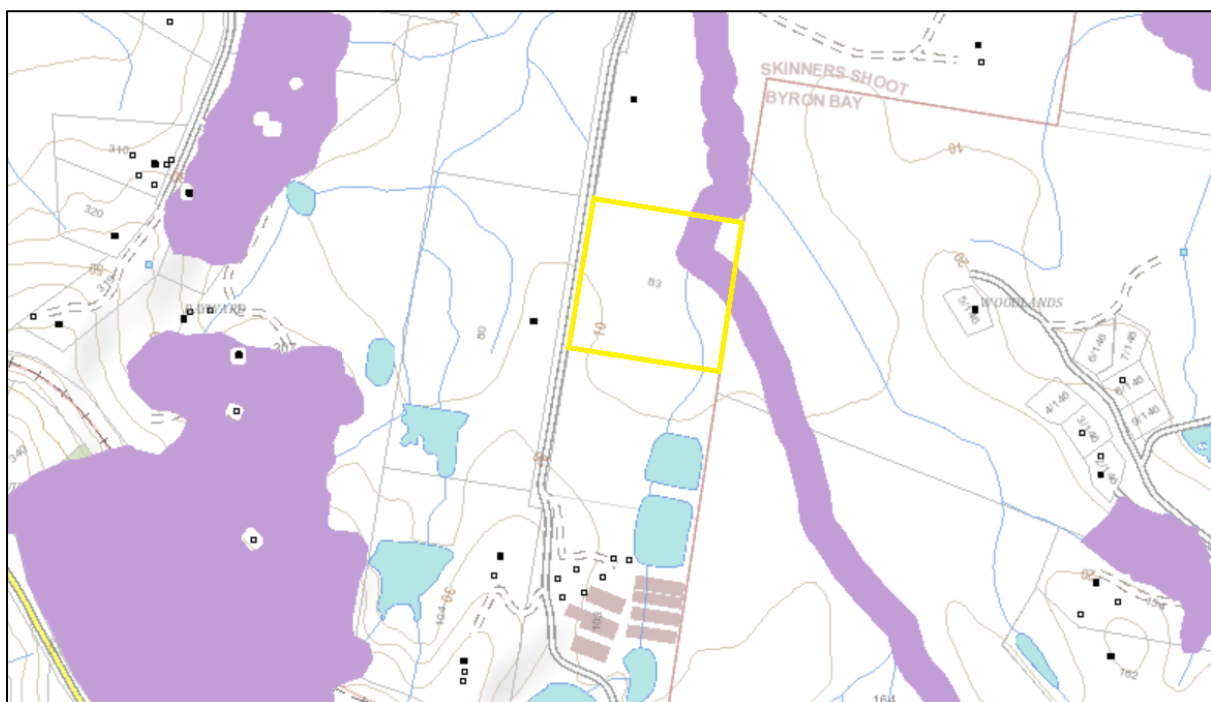


Figure 4 - Biodiversity Values Map, Lot 6 DP 8385, 31 Yagers Lane, Skinners Shoot

Source: Biodiversity Values Map and Threshold Tool, NSW Environment, Energy and Science



Figure 5 - Koala Habitat, Lot 6 DP 8385, 31 Yagers Lane, Skinners Shoot

Source: State Environmental Planning Policy (Koala Habitat Protection) 2019—Koala Development Application Map

1.3 Existing planning controls

Pursuant to the LEP, the subject land is zoned RU2 Rural Landscape (Figure 6) with a minimum lot size of 40 hectares (Figure 7). A 9 metre height of building restriction applies.

Historically, Lots 4, 6, 7, & 8 in DP 8385 formed an ‘existing holding’ on the ‘relevant day’ as defined within Clause 15 of Byron Local Environmental Plan 1988. Pursuant to this clause, an existing holding is entitled to one dwelling entitlement over the aggregation of allotments in the holding. The dwelling entitlement has been utilised elsewhere in the holding (potentially on Lot 4 DP 8385) and as such, the subject land does not hold a dwelling entitlement. It appears that Lot 7 DP 8385 remains vacant, while Lot 8 DP 8385 is improved by a former piggery (ceased prior to the year 2000), used more recently as a plant nursery.

The subject land contains an unauthorised dwelling house that has been the subject of compliance action by Council. Initially, the structure was constructed as a ‘farm building’ in 2016 but appears to have been used for habitable purposes since 2018. A Notice of Proposed Order No. 1 – Stop Use of the existing dwelling was issued on 27 August 2019 and the subject planning proposal has been submitted in response. Pending inclusion of the subject land in Schedule 1 of the LEP, the landowner will be required to obtain a Development Application seeking consent for use of the existing structure as a dwelling prior to an Occupation Certificate being issued.

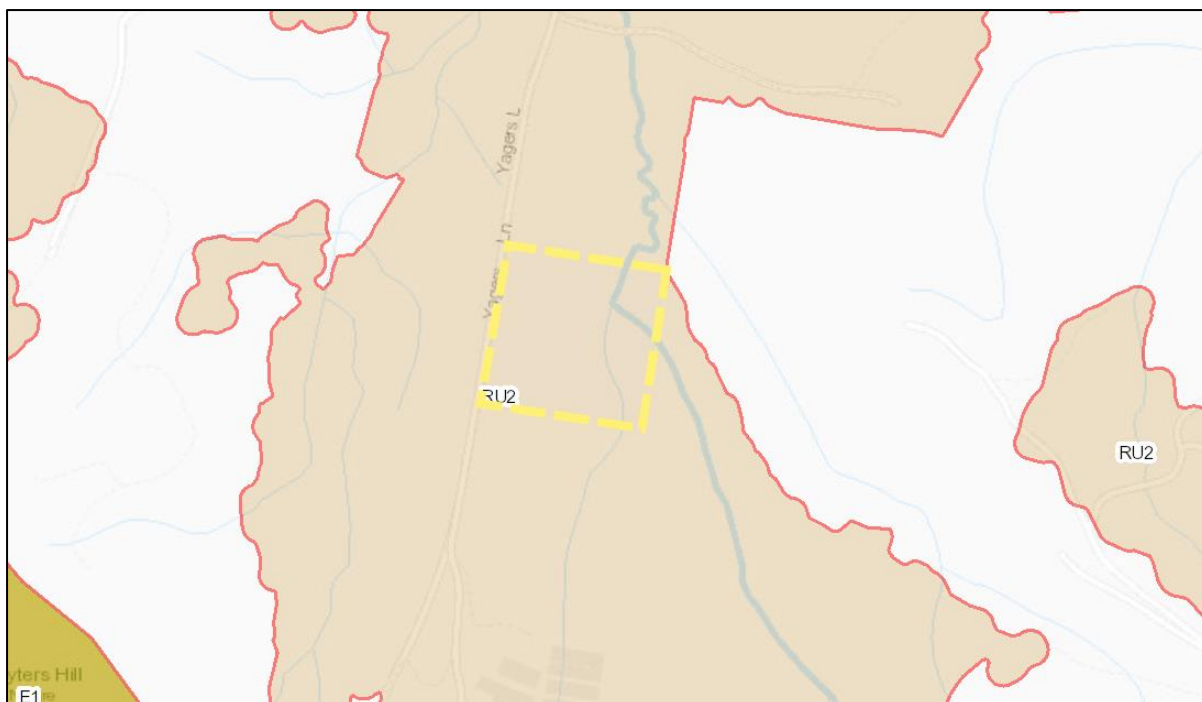


Figure 6 - Land zoning, RU2 Rural Landscape – Byron LEP 2014 - Lot 6 DP 8385, 31 Yagers Lane, Skinners Shoot

Source: NSW Planning Portal, ePlanning Spatial Viewer

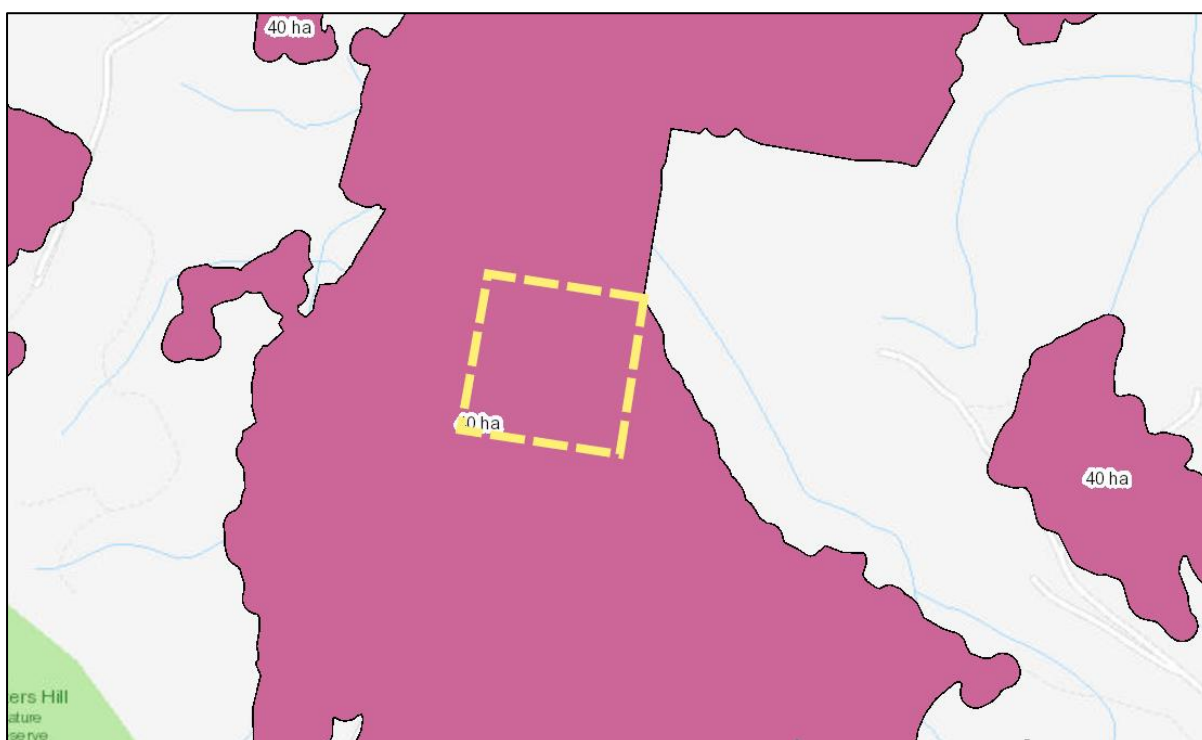


Figure 7 - Minimum lot size, 40 hectares – Byron LEP 2014 - Lot 6 DP 8385, 31 Yagers Lane, Skinners Shoot

Source: NSW Planning Portal, ePlanning Spatial Viewer

1.4 Surrounding area

The subject land is bounded by Yagers Lane to the west, with rural residential allotments and grazing land surrounding the site to the south, west and north. The nearest dwellings appear to be situated approximately 70 metres to the west, 300 metres to the north and 315 metres to the south-west. Environmental land exists to the east. The allotment is located approximately 200 metres north of a former piggery (ceased prior to the year 2000) and plant nursery on Lot 8 DP 8385 and 500 metres from an electricity power station to the southeast (Figure 8).

It is noted that piggeries are defined as 'agriculture' in the LEP (with sub-definitions of 'intensive livestock agriculture' and 'pig farm') and are permitted with consent in the RU2 zone. Therefore, there is potential for the piggery to recommence in the future, which may cause land use conflict. However, as the use of the piggery was ceased more than 12 months ago, a new Development Application would be required to be lodged prior to re-commencement of the land use which would allow for the completion of an updated Land Use Conflict Risk Assessment (LUCRA). Residents in rural areas must also be aware that such land uses are permissible, and that Right to Farm legislation allows farmers to undertake lawful agricultural practices without conflict or interference arising from complaints from neighbours and other land users.



Figure 8 - Area surrounding Lot 6 DP 8385, 31 Yagers Lane, Skinners Shoot

Source: Six Maps

1.5 Summary of recommendation

It is considered that the proposal has merit to proceed to Gateway. It is recommended that the planning proposal proceed subject to conditions for the following reasons:

- provision of a dwelling entitlement on the subject land via Schedule 1 of the LEP is unlikely to lead to any land use conflicts, considering surrounding rural residential development;
- continued use of the subject site for residential purposes is not expected to compromise the environmental attributes of the land;
- the proposal is not inconsistent with the North Coast Regional Plan 2036 (NCRP) as discussed within this report;
- the proposal aligns with the Planning Priorities and Actions of the Byron Local Strategic Planning Statement (LSPS) as discussed within this report;
- the proposal is consistent with the strategic direction of the land adopted by Council and endorsed by the Department, as detailed in the Byron Shire Rural Land Use Strategy 2017 (BSRLS).

2. PROPOSAL

2.1 Objectives or intended outcomes

The statement of objectives adequately describes the intention of the planning proposal. The proposal seeks to amend Schedule 1 'Additional permitted uses' of the LEP to permit a dwelling house on Lot 6 DP 8385, 31 Yagers Lane, Skinners Shoot.

2.2 Explanation of provisions

The explanation of the provisions adequately addresses the intended changes to the LEP.

2.3 Mapping

This planning proposal does not include any amendments to LEP maps.

3. NEED FOR THE PLANNING PROPOSAL

The subject land contains an unauthorised dwelling house that has been the subject of compliance action by Council. A Notice of Proposed Order No. 1 – Stop Use of the existing dwelling was issued on 27 August 2019 and the subject planning proposal has been submitted in response, as the allotment is not afforded with a dwelling entitlement under existing planning provisions.

It is considered that the proposal is the best means for achieving the intended outcomes. The proposal facilitates compliance with the intention of the BSRLS while also permitting a site-specific assessment of the suitability of the subject land to support a dwelling in perpetuity.

4. STRATEGIC ASSESSMENT

4.1 State

The planning proposal does not contain any matters of state or regional significance. It is not inconsistent with the Premier's Priorities currently being actioned by the State government.

4.2 Regional / District

The planning proposal has been assessed against the provisions of the NCRP and has been found to be consistent with the following Directions:

- 1 – Deliver environmentally sustainable growth;
- 3 – Manage natural hazards and climate change;
- 14 – Provide great places to live and work;
- 22 – Deliver greater housing supply;
- 23 – Increase housing diversity and choice; and
- 24 – Deliver well-planned rural residential housing areas.

The subject site is located in the coastal strip, being east of the Pacific Highway. Direction 24 of the NCRP does not permit new rural residential housing in the coastal strip unless the land is already zoned for this purpose or identified in a Department-endorsed local growth management strategy. However, it is considered that this section predominantly relates to the delivery of new release rural residential housing areas rather than single dwelling entitlements in areas which are already subdivided and used for this purpose.

The subject land is also located outside the urban growth area boundary. A minor variation to the boundary is considered to be consistent with the NCRP Urban Growth Area Variation principles detailed at Appendix A as follows:

- Policy – the proposal is consistent with the overarching objectives and outcomes of the NCRP. The subject allotment is approximately 4.1 hectares in size and is improved by an existing (unapproved) dwelling house. Surrounding land uses comprise rural residential allotments and grazing land to the south, west and north. The nearest dwellings appear to be situated approximately 70 metres to the west, 300 metres to the north and 315 metres to the south-west. Environmental land exists to the east.. The allotment is not identified as important farmland or Biophysical Strategic Agricultural Land, and the dwelling site does not accommodate any significant biodiversity. The proposal is inconsistent with section 9.1 Direction 4.4 Planning for Bushfire Protection (as detailed later within this report); however, this inconsistency is able to be resolved via consultation with the NSW Rural Fire Service. The subject site has historically been utilised for rural and residential purposes and a Preliminary Contaminated Land Assessment report prepared in support of the planning proposal in accordance with *State Environmental Planning Policy No. 55 – Remediation of Land* indicates that the site is suitable for residential use. The proposal is consistent with the direction of the BSRLS, which has initiated investigation into a strategic framework for resolving dwelling entitlement issues.
- Infrastructure – the existing dwelling has access to a reticulated water supply provided by Rous Water and on-site wastewater disposal. Vehicular access is available via Yagers Lane. Reticulated power and telecommunications are connected to the site and to the existing dwelling. Existing infrastructure is therefore capable of accommodating the proposal.

- Environmental and farmland protection – the location of the dwelling site is not mapped as being of high environmental value or biodiversity value and does not contain koala habitat. The land is not identified as important farmland or Biophysical Strategic Agricultural Land.
- Land use conflict – the subject site is currently utilised for rural residential purposes and is located in proximity to similarly sized rural residential allotments and grazing land. It is noted that a former piggery is located approximately 200 metres to the south of the subject land on Lot 8 DP 8385. Piggeries are defined as ‘agriculture’ in the LEP (with sub-definitions of ‘intensive livestock agriculture’ and ‘pig farm’) and are permitted with consent in the RU2 zone. Therefore, there is potential for the piggery to recommence in the future, which may cause land use conflict. However, as the use of the piggery was ceased more than 12 months ago, a new Development Application would be required to be lodged prior to re-commencement of the land use which would allow for the completion of an updated Land Use Conflict Risk Assessment (LUCRA). Residents in rural areas must also be aware that such land uses are permissible, and that Right to Farm legislation allows farmers to undertake lawful agricultural practices without conflict or interference arising from complaints from neighbours and other land users.
- Avoiding risk – flood modelling information available to Council indicates that the majority of the site (including the site of the existing dwelling) is not inundated during the Probable Maximum Flood (PMF). While the land is classified as bushfire prone (Figure 2), it is considered that this matter is capable of being addressed at the Development Application stage and that the land is suitable for ongoing residential use.
- Heritage – the allotment is not known to accommodate any European heritage items and an AHIMS search has not identified any Aboriginal sites or places in proximity.
- Coastal area – the subject land is located east of the Pacific Highway and is therefore considered to be within the coastal strip as defined by NCRP, although it is outside the mapped area of *State Environmental Planning Policy (Coastal Management) 2018*. Considering the historic use of this allotment as well as the strategic directions detailed in Council’s BSRLS and LSPS, ongoing use of the land for rural residential purposes is considered appropriate.

It is considered that the planning proposal is consistent with the NCRP as it satisfies the variation principles required for development outside the Urban Growth Area. However, it is noted that the submitted planning proposal has not addressed the provisions of Appendix A of the NCRP. A condition has been included as part of the Gateway determination to require amendment to the planning proposal prior to public exhibition in order to address this matter.

4.3 Local

Byron Local Strategic Planning Statement (LSPS)

The LSPS was adopted by Council at the Ordinary (Planning) Meeting on 18 June 2020. The proposal is consistent with the following planning priority detailed in the LSPS:

Land Use Priorities for a Liveable Shire:

Planning Priority 2: Support housing diversity and affordability with housing growth in the right locations.

The LSPS advocates for the maintenance of Byron's diverse community and social cohesion to support the Shire's social and economic vitality. The LSPS identifies a reliable future supply of housing for a range of incomes, lifestyle choices, household types and life stages as a critical pathway in achieving this outcome. Approval of the subject planning proposal will contribute to increased housing choice in the Shire and as such, it is considered that the proposal will contribute to the achievement of this planning priority.

It is noted that the submitted planning proposal has not addressed the provisions of the LSPS. A condition has been included as part of the Gateway determination to require amendment to the planning proposal prior to public exhibition in order to address this matter.

Byron Shire Rural Land Use Strategy 2017 (BSRLS)

Section 3.3.1 of the BSRLS relates to unauthorised dwelling houses. Council's Enforcement Policy as referenced in the Strategy provides that *Council will have regard to the impact the unapproved activity is causing on amenity or harm to the environment. If action is required, Council will consider what is reasonable in the circumstances and ensure the action is not disproportionate to the level of harm or damage arising from the unapproved activity.* The Strategy states that unauthorised dwellings present a combination of safety, health, infrastructure, environmental and equity issues. To address this matter, Action No. 22 of the Strategy recommends investigation into a strategic framework for resolving dwelling entitlement issues.

In accordance with Action 22, Council has recently resolved to prepare an Unauthorised Residential Accommodation Policy as a matter of priority to confirm the planning pathways and consequences for unauthorised residential accommodation seeking regularisation in Byron Shire. The proposed pathways include three different scenarios involving unauthorised residential accommodation:

1. Land has a dwelling entitlement and contains unauthorised residential accommodation – development consent may be sought;
2. Land does not have a dwelling entitlement and contains unauthorised residential accommodation – meets the strategic merit test for LEP amendment – Planning Proposal may be submitted before development consent may be sought;
3. Land may or may not have a dwelling entitlement and contains unauthorised residential accommodation – does not meet the strategic merit test for LEP amendment and does not comply with LEP and DCP provisions – Enforcement action as per Enforcement Policy 2016 (i.e. Orders to demolish/restore to previously approved use as appropriate).

Skidders Shoot is not identified in the BSRLS as a priority locality for rural lifestyle living opportunities and the subject land is not identified as a concessional allotment (i.e. afforded a dwelling entitlement). Nevertheless, it is considered that the planning proposal is consistent with the direction of the Strategy which aims to integrate the social, economic and environmental implications of development, including the larger picture of housing affordability across the Shire. Furthermore, the proposal has been assessed by Council in accordance with a Council Policy which has been prepared as a direct outcome of Action 22 of the BSRLS.

4.4 Section 9.1 Ministerial Directions

The proposal is considered to be consistent with all relevant section 9.1 Directions except for the following:

4.4 Planning for Bushfire Protection

The proposal is inconsistent with this Direction as the land is classified as bushfire prone. This Direction requires Council as the Relevant Planning Authority to consult with the Commissioner of the NSW Rural Fire Service after a Gateway Determination has been issued. Until this consultation has occurred, consistency of the proposal with this Direction will remain unresolved.

4.5 State environmental planning policies (SEPPs)

The proposal is consistent with all applicable SEPPs.

A Preliminary Contaminated Land Assessment was submitted in support of the planning proposal, prepared in accordance with the provisions of *State Environmental Planning Policy No. 55 Remediation of Land*. Considering the rural zoning of the land and the potential for past agricultural use including cattle dips and chemical storage, soil samples of the dwelling site were collected. The contaminant concentration of the site is below the required threshold limit and the consultant concluded that no future investigation is required based on the site's known history, inspection of the land and sampling regiment. The subject allotment is therefore considered fit for use.

As detailed by Figure 5 of this report, a small portion of the north-eastern corner of the subject land is affected by koala habitat according to the mapping accompanying *State Environmental Planning Policy (Koala Habitat Protection) 2019*. Any future development application is required to be assessed in accordance with the provisions of this SEPP, and a condition has been included as part of the Gateway determination to require amendment to the planning proposal prior to public exhibition in order to address this matter.

5. SITE-SPECIFIC ASSESSMENT

5.1 Social

The planning proposal is not expected to result in any negative social impacts. The proposed inclusion in Schedule 1 of the LEP to provide a dwelling entitlement on the subject allotment is consistent with land uses in proximity. The site is not classified as regional or state significant farmland and there are no land use conflicts anticipated.

An AHIMS search has been completed over the property, and found that:

- no Aboriginal sites are recorded in or near the subject land; and
- no Aboriginal places have been declared in or near the subject land.

Council proposes to undertake consultation with the Tweed Byron Local Aboriginal Land Council (LALC), Jali LALC and Arakwal Corporation during the public exhibition period.

Schedule 5 of the LEP does not identify any items of environmental heritage on the subject land.

Considering the above, it is not anticipated that any detrimental social impacts will arise from the planning proposal.

5.2 Environmental

The subject site has been historically cleared and retention of the existing dwelling will not result in any significant physical change to the land.

Figure 3 demonstrates the location of High Environmental Value land on the subject site, while Figure 4 details biodiversity values. The existing dwelling site is located outside the mapped areas and as such is expected to have minimal impact on environmental values.

5.3 Economic

While the planning proposal will facilitate an additional dwelling in the Byron local government area, the proposal is minor. There are no adverse economic impacts anticipated.

5.4 Infrastructure

The provision and funding of State infrastructure is not necessary for this proposal.

In terms of local infrastructure, the site has legal and practical access from Yagers Lane. Stormwater drainage and the disposal of sewage can be accommodated on the subject land and existing power and telecommunication connections are able to service the site into the future. Access to a reticulated water supply provided by Rous Water is available.

6. CONSULTATION

6.1 Community

Council have identified a 28-day community consultation period.

As the planning proposal is low impact as described in *A guide to preparing local environmental plans* (Department of Planning, Industry and Environment 2018) a 14-day consultation period is considered adequate. However, no objection is raised to Council's intention to exhibit for 28 days.

In addition to the newspaper advertisement and inclusion of details on Byron Shire Council's website, affected and adjoining landowners are to be notified in writing of the exhibition of the planning proposal.

6.2 Agencies

Council has indicated that consultation will be undertaken with the following agencies:

- NSW Rural Fire Service;
- Jali LALC;
- Tweed Byron LALC; and
- Arakwal Corporation.

There are no additional agencies that are required to be consulted.

7. TIME FRAME

Council has nominated a project timeframe of 6 months in the planning proposal which aligns with *A guide to preparing local environmental plans* (Department of Planning, Industry and Environment 2018). However, the accompanying Council report indicates that the proponent intends to enter into a voluntary planning agreement to pay developer contributions for one standard dwelling unit. A 9-month time frame has therefore been specified in the Gateway determination to allow sufficient time for all aspects of the proposal to be completed.

8. LOCAL PLAN-MAKING AUTHORITY

The planning proposal is consistent or justifiably inconsistent with the State, regional and local planning framework and deals only with matters of local significance. It is considered appropriate that Council be provided authorisation to act as the local plan-making authority.

9. CONCLUSION

It is considered that the planning proposal has merit to proceed to Gateway for the following reasons:

- it meets the adequacy criteria by providing appropriate objectives and intended outcomes; a suitable explanation of the provisions and justification for the proposal; appropriate community consultation; and a suitable project timeline;
- it is consistent with all relevant 9.1 directions and SEPPs apart from 4.4 Planning for Bushfire Protection which will require justification;
- it is not inconsistent with the North Coast Regional Plan 2036;
- it aligns with the Planning Priorities and Actions of the Byron Local Strategic Planning Statement;
- it is consistent with the strategic direction of the land adopted by Council and endorsed by the Department, as detailed in the Byron Shire Rural Land Use Strategy 2017;
- provision of a dwelling entitlement on the subject land via Schedule 1 of the LEP is unlikely to lead to any land use conflicts, considering surrounding rural residential development;
- it is unlikely to have any detrimental impact on the socio-economic welfare of the local government area;
- continued use of the subject site for residential purposes is not expected to compromise the environmental attributes of the land; and
- it can be serviced by existing infrastructure.

10. RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. note that the consistency with section 9.1 Direction 4.4 Planning for Bushfire Protection is unresolved and will require justification.

It is recommended that the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. The planning proposal should be made available for community consultation for a minimum of 14 days.
2. Consultation is required with the following public authorities:
 - NSW Rural Fire Service;
 - Jali LALC;
 - Tweed Byron LALC; and
 - Arakwal Corporation.
3. The time frame for completing the LEP is to be 9 months from the date of the Gateway determination.
4. Given the nature of the planning proposal, Council should be the local plan-making authority.
5. Prior to agency and community consultation, the planning proposal shall be amended to:
 - (a) include justification for the variation to the urban growth area boundary as specified by Appendix A of the *North Coast Regional Plan 2036*;
 - (b) address consistency of the proposal with the Byron Local Strategic Planning Statement; and
 - (c) address the provisions of *State Environmental Planning Policy (Koala Habitat Protection) 2019*.



24/7/2020

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7-8-2020

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