



**Planning Proposal
for Amendment of Byron Local Environmental Plan 2014
– Lot 6 DP 8385
Yagers Lane, Skinners Shoot**

Byron Shire Council

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V2 Gateway Version (#E2020/50221)

Date: July 2020

Document History

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E2020/37915	May 2020	V1 Draft Planning Proposal – reported to 18 June 2020 Council meeting for gateway
E2020/50221	July 2020	V2 Gateway Version – amendment to correct minor typographical errors

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Part 1 Introduction

Objective and intended outcomes

The objective of this planning proposal is to seek a dwelling entitlement for the land.

Property details and existing zones

This planning proposal relates to land described as Lot 6 DP 8385 with an area of approximately 4.1 hectares and has a regular shape. The street address is informally known as 31 Yagers Lane, Skinners Shoot. The land contains an existing unapproved dwelling.



Figure 1: Subject land

The land is zoned RU2 Rural Landscape in accordance with LEP 2014 (Figure 2).

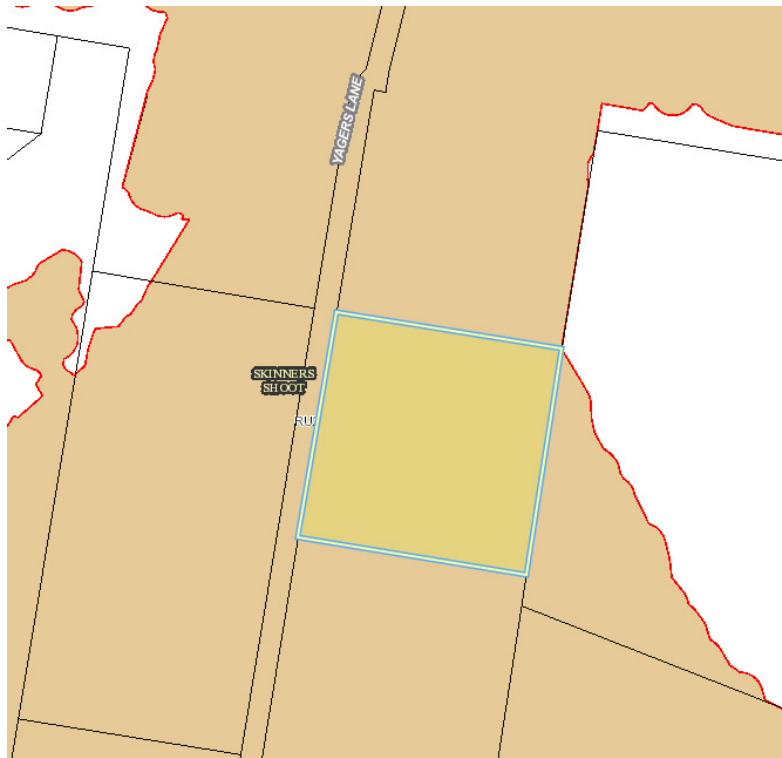


Figure 2: Existing land use zone under Byron LEP 2014 – RU2 Rural Landscape

The land subject to BLEP14 has a building height limit of 9 metres (Figure 3) and a Minimum Lot Size of 40 hectares (Figure 4).

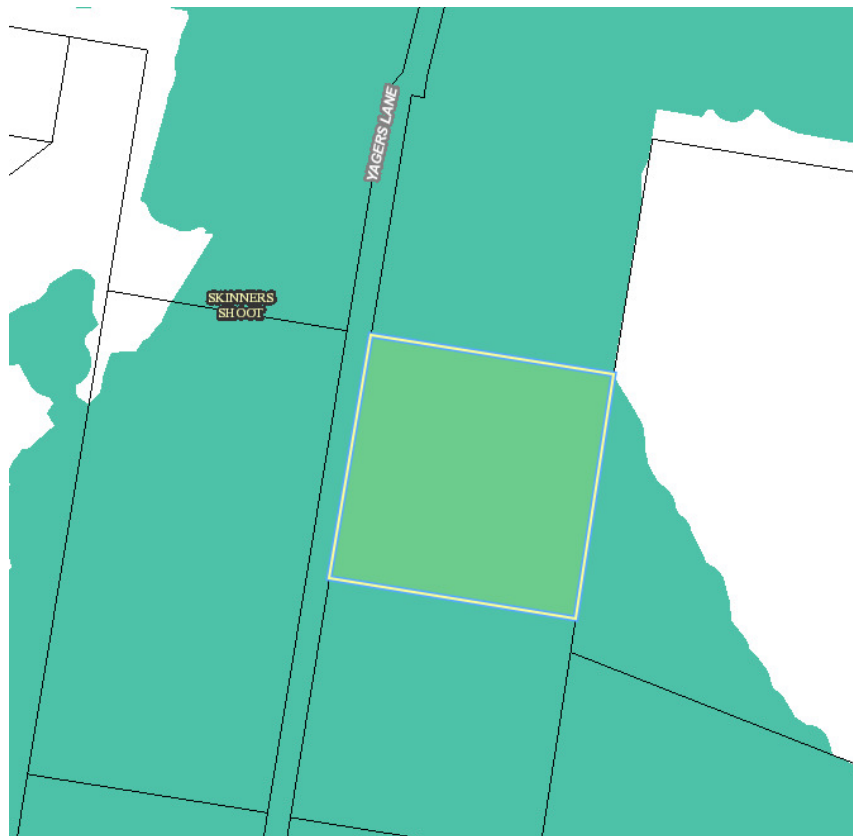


Figure 3: Height of Buildings Map under Byron LEP 2014 – site is 9 metres



Figure 4: Minimum Lot Size Map under Byron LEP 2014 – site is 40 hectares

Background

Historically, Lot 6, together with Lots 4, 7 & 8 of DP 8385 formed an “*existing holding*” on the *relevant day* as defined within Clause 15 of LEP 1988. Pursuant to clause 15 of Byron LEP 1988 an existing holding is entitled to one ‘dwelling entitlement’ over the entire aggregation of lots in the holding.

The ownership of the four lots comprising the existing holding changed on 11 October 2013. Clause 4B of the *Environmental Planning & Assessment Act 1979* defines ‘subdivision of land’ which includes reference to a division of land affected by ‘conveyance, transfer or partition’. Consequently as of 11 October 2013 the land no longer satisfies the requirements for an “*existing holding*” under the terms of Clause 15(2)(b) of LEP 1988. Accordingly Lot 6 does not hold a dwelling entitlement.

The 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 to address this Notice.

Part 2 Explanation of provisions

The planning proposal seeks to amend Schedule 1 of Byron LEP 2014 to permit a dwelling house to be located on Lot 6 DP 8385 with development consent.

Part 3 Justification

Section A Need for the planning proposal

1 Is the planning proposal a result of any strategic study or report?

Yes. Action No. 22 of the *Byron Shire Rural Land Use Strategy 2017* (BSRLS) recommends investigation into a strategic framework for resolving dwelling entitlement issues. This strategy was endorsed by the NSW DPE in July 2018. This action provides the strategic basis for the subject planning proposal.

Section B Relationship to strategic planning framework

1 Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (in this case the North Coast Regional Plan)?

The subject site is located outside of the Urban Growth Area boundary under the *North Coast Regional Plan 2036* (NCRP). It is located in the coastal strip being located east of the Pacific Highway.

The NCRP states (page 57) “New rural residential housing will not be permitted in the coastal strip, unless the land is already zoned for this purpose, or is identified in a Department endorsed current or future local growth management strategy (or rural residential land release strategy).”

The land is zoned RU2 and a dwelling house is permitted with consent in this zone. However the subject lot does not have a dwelling entitlement.

The *Byron Shire Rural Land Use Strategy 2017* identifies Action 22 to “investigate a strategic framework for resolving dwelling entitlement issues”. The strategy was endorsed by the NSW DPE in July 2018.

On this basis, the planning proposal is consistent with the NCRP.

2 Is the planning proposal consistent with the local Council’s Community Strategic Plan, or other local strategic plan?

The *Byron Shire Rural Land Use Strategy 2017* identifies Action 22 to investigate a strategic framework for resolving dwelling entitlement issues.

22.	Investigate a strategic framework for resolving dwelling entitlement issues.	Co	Leader Regulator	Landholders	Investigation outcomes reported to Council	ST
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Figure 5: Extract from the *Byron Shire Rural Land Use Strategy 2017*

In 2012, Council adopted a 10 year + *Community Strategic Plan 2022* (CSP). The plan is based on five key themes being Corporate Management, Economy, Environment, Community Infrastructure, Society and Culture. Four of those themes or objectives are relevant to this planning proposal:

Environment: Our natural and built environment is improved for each	The planning proposal ensures the environment and its resources will be maintained and
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<i>generation</i>	protected for future generations by restricting development to land with no major environmental significance.
Community Infrastructure: <i>Services and infrastructure that sustains, connects and integrates our communities and environment</i>	The site has road access with direct frontage to Yagers Lane. Power is connected to the site. Water and sewerage are able to be dealt with on-site.
Society and Culture: <i>Resilient, creative and active communities with a strong sense of local identity and place</i>	The subject site is approximately 4km from Byron Bay. Although this is somewhat remote from services such as schools, shops, and health facilities this is often the case in rural residential lifestyle based communities. It has an established group of owners that are part of the local community.

On this basis, the planning proposal is consistent with Council's CSP.

3 Is the planning proposal consistent with the applicable State Environmental Planning Policies (SEPPs)?

The State Environmental Planning Policies relevant to this planning proposal are as follows:

State Environmental Planning Policy (SEPP)	Compliance of Planning Proposal
SEPP 55 – Remediation of Land	<p>A Preliminary Contaminated Land Assessment prepared by Greg Alderson & Associates dated November 2019 and submitted with this planning proposal provides that soil sampling results were below the Health Investigation Levels (HIL) in accordance with the National Environment Protection (Assessment of Site Contamination) Measure. Reporting was conducted in accordance NSW EPA (2000) Guidelines for Consultants Reporting on Contaminated Sites.</p> <p>The site is considered to be suitable for residential land use. However, based on limitations identified in the submitted contaminated land assessment, any future development application for residential land use should include the provision of an Unexpected Findings Protocol (Contaminated Land).</p>
SEPP (Primary Production and Rural Development) 2019	<p><i>The aims of this Policy are as follows:</i></p> <ul style="list-style-type: none"> <i>(a) to facilitate the orderly economic use and development of lands for primary production,</i> <i>(b) to reduce land use conflict and sterilisation of rural land by balancing primary production, residential development and the protection of native vegetation, biodiversity and water resources,</i> <i>(c) to identify State significant agricultural land for the purpose of ensuring the ongoing viability of</i>

State Environmental Planning Policy (SEPP)	Compliance of Planning Proposal
	<p><i>agriculture on that land, having regard to social, economic and environmental considerations,</i></p> <p><i>(d) to simplify the regulatory process for smaller-scale low risk artificial waterbodies, and routine maintenance of artificial water supply or drainage, in irrigation areas and districts, and for routine and emergency work in irrigation areas and districts,</i></p> <p><i>(e) to encourage sustainable agriculture, including sustainable aquaculture,</i></p> <p><i>(f) to require consideration of the effects of all proposed development in the State on oyster aquaculture,</i></p> <p><i>(g) to identify aquaculture that is to be treated as designated development using a well-defined and concise development assessment regime based on environment risks associated with site and operational factors orderly and economic use and development of rural lands,</i></p> <p>The subject land is zoned RU2 Rural Landscape under Byron LEP 2014. The land does not contain any regionally or state significant farmland. The planning proposal seeks to permit a dwelling on the land subject to development consent. The land has an area of approximately 4 hectares and, given this small size, the granting of a dwelling entitlement to the land will not have any significant impact on its agricultural viability.</p> <p>This planning proposal is consistent with the SEPP.</p>

4 Is the planning proposal consistent with applicable Ministerial Directions (s9.1 Directions)?

Consistency with the s9.1 Directions is assessed in the following table:

Consistency with s9.1 Directions

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
1	Employment and Resources		
1.1 Business and Industrial Zones	Applies when a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed business or industrial zone (including the alteration of any existing business or industrial zone boundary).	This planning proposal will not affect the boundaries or extent of business or industrial zones.	N/A
1.2 Rural Zones	Applies when a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed rural zone (including the alteration of any existing rural zone boundary). Under this Direction a planning proposal must: (a) not rezone land from a rural zone to a residential, business, industrial, village or tourist zone. (b) not contain provisions that will increase the permissible density of land within a rural zone (other than land within an existing town or village).	This planning proposal seeks to obtain a dwelling entitlement for a 4.1 hectare lot zoned RU2 that contains an existing unauthorised dwelling. This will effectively increase the permissible density of the land from no dwellings to one. This is inconsistent with the Direction. However, the <i>Byron Shire Rural Land Use Strategy 2017</i> (Action 22) recommends investigation into a strategic framework for resolving dwelling entitlement issues. The strategy was endorsed by the NSW DPE in July 2018. The inconsistency is considered to be of minor significance.	Justifiably inconsistent
1.3 Mining, Petroleum Production and Extractive Industries	Applies when a relevant planning authority prepares a planning proposal that would have the effect of: (a) prohibiting the mining of coal or other minerals, production of petroleum, or winning or obtaining of extractive materials, or (b) restricting the potential development of resources of coal, other minerals, petroleum or extractive materials which are of State or regional significance by permitting a land use that is likely to be incompatible with such development.	This planning proposal seeks the granting of a dwelling entitlement for the land. A dwelling will be incompatible with the use of the site for development of resources or extractive industry. However, there are no known existing natural resources present on the site. The inconsistency is considered to be of minor significance.	Justifiably inconsistent

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
1.4 Oyster Aquaculture	<p>Applies when a relevant planning authority prepares any planning proposal that proposes a change in land use which could result in:</p> <ul style="list-style-type: none"> (a) adverse impacts on a Priority Oyster Aquaculture Area or a “current oyster aquaculture lease in the national parks estate”, or (b) incompatible use of land between oyster aquaculture in a Priority Oyster Aquaculture Area or a “current oyster aquaculture lease in the national parks estate” and other land uses. 	<p>Priority Oyster Aquaculture Areas (POAA) exist in the lower parts of the Brunswick River. However, there is minimal likelihood that the planning proposal will have adverse impacts on them as this site is not located within the Brunswick River catchment.</p>	Consistent
1.5 Rural Lands	<p>Applies when:</p> <ul style="list-style-type: none"> (a) a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed rural or environment protection zone (including the alteration of any existing rural or environment protection zone boundary), or (b) a relevant planning authority prepares a planning proposal that changes the existing minimum lot size on land within a rural or environment protection zone. <p>A planning proposal to which clauses (a) and (b) apply must:</p> <ul style="list-style-type: none"> (a) be consistent with any applicable strategic plan, including regional and district plans endorsed by the Secretary of the Department of Planning and Environment, and any applicable local strategic planning statement (b) consider the significance of agriculture and primary production to the State and rural communities (c) identify and protect environmental values, including but not limited to, maintaining biodiversity, the protection of native vegetation, cultural heritage, and the importance 	<p>This planning proposal seeks the granting of a dwelling entitlement for the land.</p> <p>In relation to Direction 1.5, the development that is being sought from this planning proposal will not undermine the rural economy; it will not impact negatively on agriculture on the subject land or adjacent to it; it will not impact on the surrounding rural land use generally; it balances the social and environmental interests of the site; it will not impact on the biodiversity or water resources of the site; it will provide for a dwelling in a rural setting; it will not impact on services and infrastructure that are largely provided by the site residents; and it is consistent with the NCRP because it is included in an endorsed local strategy.</p> <p>Conflict with surrounding rural land uses is unlikely given the surrounding land uses of low scale grazing and an abandoned piggery. The dominant land use in this locality is “lifestyle lots” that produce very little.</p> <p>The natural and physical constraints of the site have been assessed in relation to this planning proposal and the land is considered to be suitable for the</p>	Consistent

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
	<p>of water resources</p> <p>(d) consider the natural and physical constraints of the land, including but not limited to, topography, size, location, water availability and ground and soil conditions</p> <p>(e) promote opportunities for investment in productive, diversified, innovative and sustainable rural economic activities</p> <p>(f) support farmers in exercising their right to farm</p> <p>(g) prioritise efforts and consider measures to minimise the fragmentation of rural land and reduce the risk of land use conflict, particularly between residential land uses and other rural land uses</p> <p>(h) consider State significant agricultural land identified in <i>State Environmental Planning Policy (Primary Production and Rural Development) 2019</i> for the purpose of ensuring the ongoing viability of this land</p> <p>(i) consider the social, economic and environmental interests of the community.</p> <p>A planning proposal to which clause 3(b) applies must demonstrate that it:</p> <p>(a) is consistent with the priority of minimising rural land fragmentation and land use conflict, particularly between residential and other rural land uses</p> <p>(b) will not adversely affect the operation and viability of existing and future rural land uses and related enterprises, including supporting infrastructure and facilities that are essential to rural industries or supply chains</p> <p>(c) where it is for rural residential purposes:</p> <p>i. is appropriately located taking account of the availability of human services, utility infrastructure, transport and proximity to existing centres</p>	<p>proposed use.</p> <p>The land is not identified as State or Regionally significant farmland.</p>	

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
	<p>ii. is necessary taking account of existing and future demand and supply of rural residential land.</p> <p>Note: where a planning authority seeks to vary an existing minimum lot size within a rural or environment protection zone, it must also do so in accordance with the Rural Subdivision Principles in clause 5.16 of the relevant Local Environmental Plan.</p>		
2 Environment and Heritage			
2.1 Environment Protection Zones	<p>A planning proposal must include provisions that facilitate the protection and conservation of environmentally sensitive areas.</p> <p>A planning proposal that applies to land within an environment protection zone or land otherwise identified for environment protection purposes in a LEP must not reduce the environmental protection standards that apply to the land (including by modifying development standards that apply to the land). This requirement does not apply to a change to a development standard for minimum lot size for a dwelling in accordance with clause (5) of Direction 1.5 <i>"Rural Lands"</i>.</p>	The subject land does not contain any existing or proposed Environmental Protection Zones	Consistent

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
2.2 Coastal Protection	<p>This Direction applies when a relevant planning authority prepares a planning proposal that applies to land identified on SEPP (Coastal Management) 2018 maps as coastal wetlands, littoral rainforests, coastal environment or coastal use area.</p> <p>A planning proposal must include provisions that give effect to and are consistent with:</p> <ul style="list-style-type: none"> (a) the objects of the <i>Coastal Management Act 2016</i>, and (b) the <i>NSW Coastal Management Manual</i> and associated Toolkit, and (c) the <i>NSW Coastal Design Guidelines 2003</i>, and (d) any relevant Coastal Management Program certified by the Minister. <p>A planning proposal must not rezone land which would enable increased development or more intensive land use on land identified as being affected by current or future coastal hazard.</p>	<p>The subject land is not affected by coastal environment area, coastal use area, coastal wetlands and littoral rainforest mapping.</p>	N/A
2.3 Heritage Conservation	<p>A planning proposal must contain provisions that facilitate the conservation of:</p> <ul style="list-style-type: none"> (a) Items, places, buildings, works, relics, moveable objects or precincts of environmental heritage significance to an area, in relation to the historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value of the item, area, object or place, identified in a study of the environmental heritage of the area, (b) Aboriginal objects or Aboriginal places that are protected under the <i>National Parks and Wildlife Act 1974</i>, and (c) Aboriginal areas, Aboriginal objects, Aboriginal places or landscapes identified by an Aboriginal heritage survey prepared by or on behalf of an Aboriginal Land Council, Aboriginal body or public authority and provided to the 	<p>The site has no European heritage items located on it.</p> <p>An AHIMS search undertaken by the applicant did not identify any aboriginal sites or places within proximity of the subject site.</p> <p>BLEP14 already contains clauses that facilitate the conservation of Aboriginal and European heritage in Byron Shire.</p>	Consistent

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
	relevant planning authority, which identifies the area, object, place or landscape as being of heritage significance to Aboriginal culture and people.		
2.4 Recreation Vehicle Areas	<p>A planning proposal must not enable land to be developed for the purpose of a recreation vehicle area (within the meaning of the <i>Recreation Vehicles Act 1983</i>):</p> <ul style="list-style-type: none"> (a) where the land is within an environment protection zone, (b) where the land comprises a beach or a dune adjacent to or adjoining a beach, (c) where the land is not within an area or zone referred to in paragraphs (4)(a) or (4)(b) unless the relevant planning authority has taken into consideration: <ul style="list-style-type: none"> (i) the provisions of the guidelines entitled <i>Guidelines for Selection, Establishment and Maintenance of Recreation Vehicle Areas, Soil Conservation Service of New South Wales, September 1985</i>, and (ii) the provisions of the guidelines entitled <i>Recreation Vehicles Act 1983, Guidelines for Selection, Design, and Operation of Recreation Vehicle Areas, State Pollution Control Commission, September 1985</i>. 	This planning proposal does not enable land to be developed for the purpose of a recreation vehicle area.	N/A
2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs	<p>This Direction applies when a relevant planning authority prepares a planning proposal:</p> <ul style="list-style-type: none"> (a) that introduces or alters an E2 Environmental Conservation or E3 Environmental Management zone; (b) that introduces or alters an overlay and associated clause. <p>A planning proposal must apply the proposed E2 Environmental Conservation or E3 Environmental Management zones, or the overlay and associated clause, consistent with the Northern Councils E Zone Review Final Recommendations.</p>	This planning proposal does not introduce an environmental zone or overlay.	N/A

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
2.6 Remediation of Contaminated Land	<p>This direction applies when a planning proposal authority prepares a planning proposal applying to:</p> <ul style="list-style-type: none"> (a) land that is within an investigation area within the meaning of the <i>Contaminated Land Management Act 1997</i>, (b) land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out, (c) the extent to which it is proposed to carry out development on it for residential, educational, recreational or childcare purposes, or for the purposes of a hospital – land: (i) in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and (ii) on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge). 	<p>The land is not within an investigation area within the meaning of the <i>Contaminated Land Management Act 1997</i>.</p> <p>The land has not been, and is not known to have been, used for a purpose referred to in Table 1 of the contaminated land planning guidelines.</p> <p>A Preliminary Contaminated Land Assessment prepared by Greg Alderson & Associates dated November 2019 and submitted with this planning proposal provides that soil sampling results were below the Health Investigation Levels (HIL) in accordance with the National Environment Protection (Assessment of Site Contamination) Measure. Reporting was conducted in accordance NSW EPA (2000) Guidelines for Consultants Reporting on Contaminated Sites.</p> <p>The site is considered to be suitable for residential land use. However, based on limitations identified in the submitted contaminated land assessment, any future development application for residential land use should include the provision of an Unexpected Findings Protocol (Contaminated Land).</p>	Consistent
3 Housing, Infrastructure and Urban Development			
3.1 Residential Zones	<p>This Direction applies when a relevant planning authority prepares a planning proposal that will affect land within:</p> <ul style="list-style-type: none"> (a) an existing or proposed residential zone (including the alteration of any existing residential zone boundary), (b) any other zone in which significant residential development is permitted or proposed to be permitted. <p>A planning proposal must include provisions that encourage</p>	This planning proposal does not relate to residential zones.	N/A

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
	<p>the provision of housing that will:</p> <ul style="list-style-type: none"> (a) broaden the choice of building types and locations available in the housing market, and (b) make more efficient use of existing infrastructure and services, and (c) reduce the consumption of land for housing and associated urban development on the urban fringe, and (d) be of good design. <p>A planning proposal must, in relation to land to which this Direction applies:</p> <ul style="list-style-type: none"> (a) contain a requirement that residential development is not permitted until land is adequately serviced (or arrangements satisfactory to the council, or other appropriate authority, have been made to service it), and (b) not contain provisions which will reduce the permissible residential density of land. 		
3.2 Caravan Parks and Manufactured Home Estates	<p>Applies when a relevant planning authority prepares a planning proposal.</p> <p>In identifying suitable zones, locations and provisions for caravan parks in a planning proposal, the relevant planning authority must:</p> <ul style="list-style-type: none"> (a) retain provisions that permit development for the purposes of a caravan park to be carried out on land, and (b) retain the zonings of existing caravan parks, or in the case of a new principal LEP, zone the land in accordance with an appropriate zone under the <i>Standard Instrument (Local Environmental Plans) Order 2006</i> that would facilitate the retention of the existing caravan park. <p>In identifying suitable zones, locations and provisions for</p>	This planning proposal will not alter the permissibility of caravan parks or manufactured home estates on the subject land.	N/A

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
	<p>manufactured home estates (MHEs) in a planning proposal, the relevant planning authority must:</p> <ul style="list-style-type: none"> (a) take into account the categories of land set out in Schedule 2 of SEPP 36 as to where MHEs should not be located, (b) take into account the principles listed in clause 9 of SEPP 36 (which relevant planning authorities are required to consider when assessing and determining the development and subdivision proposals), and (c) include provisions that the subdivision of MHEs by long term lease of up to 20 years or under the <i>Community Land Development Act 1989</i> be permissible with consent. 		
3.3 Home Occupations	Planning proposals must permit home occupations to be carried out in dwelling-houses without the need for development consent.	This planning proposal will not alter the permissibility of home occupations on the subject land.	N/A
3.4 Integrating Land Use and Transport	<p>Applies when a relevant planning authority prepares a planning proposal that will create, alter or remove a zone or a provision relating to urban land, including land zoned for residential, business, industrial, village or tourist purposes. A planning proposal must locate zones for urban purposes and include provisions that give effect to and are consistent with the aims, objectives and principles of:</p> <ul style="list-style-type: none"> (a) <i>Improving Transport Choice – Guidelines for planning and development</i> (DUAP 2001), and (b) <i>The Right Place for Business and Services – Planning Policy</i> (DUAP 2001). <p>The objective of this Direction is to ensure that urban structures, building forms, land use locations, development designs, subdivision and street layouts achieve the</p>	This planning proposal does not relate to urban land.	N/A

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
	<p>following planning objectives:</p> <ul style="list-style-type: none"> (a) improving access to housing, jobs and services by walking, cycling and public transport, and (b) increasing the choice of available transport and reducing dependence on cars, and (c) reducing travel demand including the number of trips generated by development and the distances travelled, especially by car, and (d) supporting the efficient and viable operation of public transport services, and (e) providing for the efficient movement of freight. 		
3.5 Development Near Licensed Aerodrome	<p>Applies when a relevant planning authority prepares a planning proposal that will create, alter or remove a zone or a provision relating to land in the vicinity of a licensed aerodrome.</p> <p>The main requirements of the Direction are that Council considers the Obstacle Limitation Surface (OLS) as defined by that Department of the Commonwealth for residential purposes, and does not increase residential densities in areas where the ANEF, as from time to time advised by that Department of the Commonwealth, exceeds 25.</p>	This planning proposal will not alter provisions that affect land located in the vicinity of any aerodrome.	N/A
3.6 Shooting Ranges	<p>Applies when a relevant planning authority prepares a planning proposal that will affect, create, alter or remove a zone or a provision relating to land adjacent to and/or adjoining an existing shooting range.</p> <p>A planning proposal must not seek to rezone land adjacent to and/or adjoining an existing shooting range that has the effect of permitting more intensive land uses in the area.</p>	There are no shooting ranges in the vicinity of this planning proposal.	N/A

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
3.7 Reduction in non-hosted short term rental accommodation period	This direction applies when the council prepares a planning proposal to identify or reduce the number of days that non-hosted short-term rental accommodation may be carried out in parts of its local government area.	This planning proposal does not seek to reduce the number of days that non-hosted short-term rental accommodation may be carried out in parts of its local government area.	N/A
4 Hazard and Risk			
4.1 Acid Sulfate Soils	<p>Applies when a relevant planning authority prepares a planning proposal that will apply to land having a probability of containing acid sulfate soils as shown on the Acid Sulfate Soils Planning Maps.</p> <p>A council shall not prepare a draft LEP that proposes an intensification of land uses on land identified as having a probability of containing acid sulfate soils on the Acid Sulfate Soils Planning Maps unless the council has considered an acid sulfate soils study assessing the appropriateness of the change of land use given the presence of acid sulfate soils.</p>	The land to which this planning proposal applies is not mapped as containing acid sulfate soils.	N/A
4.2 Mine Subsidence and Unstable Land	<p>Applies when a relevant planning authority prepares a planning proposal that permits development on land that:</p> <p>(a) is within a mine subsidence district, or</p> <p>(b) has been identified as unstable in a study, strategy or other assessment undertaken:</p> <p>(i) by or on behalf of the relevant planning authority, or</p> <p>(ii) by or on behalf of a public authority and provided to the relevant planning authority.</p>	This planning proposal does not impact on any mine subsidence area and the site is gently sloping.	N/A
4.3 Flood Prone Land	<p>Applies when a relevant planning authority prepares a planning proposal that creates, removes or alters a zone or a provision that affects flood prone land.</p> <p>A planning proposal must include provisions that give effect</p>	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).	Complies

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
	<p>to and are consistent with the NSW Flood Prone Land Policy and the principles of the <i>Floodplain Development Manual 2005</i> (including the <i>Guideline on Development Controls on Low Flood Risk Areas</i>).</p> <p>A planning proposal must not rezone land within the flood planning areas from Special Use, Special Purpose, Recreation, Rural or Environment Protection Zones to a Residential, Business, Industrial, Special Use or Special Purpose Zone.</p> <p>A planning proposal must not contain provisions that apply to the flood planning areas which:</p> <ul style="list-style-type: none"> (a) permit development in floodway areas, (b) permit development that will result in significant flood impacts to other properties, (c) permit a significant increase in the development of that land, (d) are likely to result in a substantially increased requirement for government spending on flood mitigation measures, infrastructure or services, or (e) permit development to be carried out without development consent except for the purposes of agriculture (not including dams, drainage canals, levees, buildings or structures in floodways or high hazard areas), roads or exempt development. <p>A planning proposal must not impose flood related development controls above the residential flood planning level for residential development on land, unless a relevant planning authority provides adequate justification for those controls to the satisfaction of the Director-General (or an officer of the Department nominated by the Director-General).</p> <p>For the purposes of a planning proposal, a relevant</p>	<p>Access to the site during a flood is compromised as Yagers Lane and Skinners Shoot Road are inundated during flood events, however there is no need to evacuate during a flood given the site has land above the PMF.</p>	

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
	<p>planning authority must not determine a flood planning level that is inconsistent with the <i>Floodplain Development Manual 2005</i> (including the <i>Guideline on Development Controls on Low Flood Risk Areas</i>) unless a relevant planning authority provides adequate justification for the proposed departure from that Manual to the satisfaction of the Director-General (or an officer of the Department nominated by the Director-General).</p>		
4.4 Planning for Bushfire Protection	<p>Applies when a relevant planning authority prepares a planning proposal that will affect, or is in proximity to land mapped as bushfire prone land.</p> <p>In the preparation of a planning proposal the relevant planning authority must consult with the Commissioner of the NSW Rural Fire Service following receipt of a Gateway determination under Division 3.4 of the Act, and prior to undertaking community consultation in satisfaction of Division 3.4 of the Act, and take into account any comments so made.</p> <p>A planning proposal must:</p> <ul style="list-style-type: none"> (a) have regard to <i>Planning for Bushfire Protection 2006</i>, (b) introduce controls that avoid placing inappropriate developments in hazardous areas, and (c) ensure that bushfire hazard reduction is not prohibited within the APZ. <p>A planning proposal must, where development is proposed, comply with the following provisions, as appropriate:</p> <ul style="list-style-type: none"> (a) provide an Asset Protection Zone (APZ) incorporating at a minimum: <ul style="list-style-type: none"> (i) an Inner Protection Area bounded by a perimeter road or reserve which circumscribes the hazard side of the land intended for development and has a building line consistent with the incorporation of an 	<p>The subject land is partly classified as affected by a bushfire buffer in the north-east corner.</p> <p>The existing dwelling is not located on bushfire prone land therefore any future development application for use of the existing dwelling is not required to comply with Planning for Bushfire Protection requirements.</p> <p>Notwithstanding the above, any planning proposal on land mapped as bushfire prone land must be referred to RFS which has not yet occurred.</p>	Justifiably Inconsistent (referral to RFS is required)

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
	<p>APZ, within the property, and</p> <p>(ii) an Outer Protection Area managed for hazard reduction and located on the bushland side of the perimeter road,</p> <p>(b) for infill development (that is development within an already subdivided area), where an appropriate APZ cannot be achieved, provide for an appropriate performance standard, in consultation with the NSW Rural Fire Service. If the provisions of the planning proposal permit Special Fire Protection Purposes (as defined under section 100B of the <i>Rural Fires Act 1997</i>), the APZ provisions must be complied with,</p> <p>(c) contain provisions for two-way access roads which link to perimeter roads and/or to fire trail networks,</p> <p>(d) contain provisions for adequate water supply for firefighting purposes,</p> <p>(e) minimise the perimeter of the area of land interfacing the hazard which may be developed,</p> <p>(f) introduce controls on the placement of combustible materials in the Inner Protection Area.</p>		
5 Regional Planning			
5.2 Sydney Drinking Water Catchments	Applies when a relevant planning authority prepares a planning proposal that applies to the hydrological catchment.	The planning proposal is not within this catchment.	N/A
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	The planning proposal must not rezone land mapped as State or regionally significant farmland under the Northern Rivers Farmland Protection Project for urban or rural residential purposes.	The land is not mapped as State or regionally significant farmland under the Northern Rivers Farmland Protection Project for urban or rural residential purposes.	N/A
5.4 Commercial	A planning proposal that applies to land located on “within	This planning proposal does not affect commercial or	N/A

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
and Retail Development along the Pacific Highway, North Coast	<p>town” segments of the Pacific Highway must provide that:</p> <ul style="list-style-type: none"> (a) new commercial or retail development must be concentrated within distinct centres rather than spread along the highway; (b) development with frontage to the Pacific Highway must consider the impact the development has on the safety and efficiency of the highway; and (c) for the purposes of this paragraph, “within town” means areas which, prior to the draft local environmental plan, have an urban zone (eg “village”, “residential”, “tourist”, “commercial”, “industrial”, etc) and where the Pacific Highway speed limit is less than 80 km/hour. <p>A planning proposal that applies to land located on “out-of-town” segments of the Pacific Highway must provide that:</p> <ul style="list-style-type: none"> (a) new commercial or retail development must not be established near the Pacific Highway if this proximity would be inconsistent with the objectives of this Direction; (b) development with frontage to the Pacific Highway must consider the impact the development has on the safety and efficiency of the highway; and (c) for the purposes of this paragraph, “out-of-town” means areas which, prior to the draft local environmental plan, do not have an urban zone (eg “village”, “residential”, “tourist”, “commercial”, “industrial”, etc) or are in areas where the Pacific Highway speed limit is 80 km/hour or greater. 	retail uses in proximity to the Pacific Highway.	
5.10 Implementation of Regional Plans	All planning proposals must be consistent with the applicable Regional Plan released by the Minister for Planning.	This planning proposal affects land subject to the NCRP. The site is subject to the <i>Byron Shire Rural Land Use Strategy 2017</i> , which was endorsed by the NSW DPIE in July 2018. The planning proposal is therefore consistent with the NCRP.	Consistent

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
5.11 Development of Aboriginal Land Council land	This direction applies when a planning proposal authority prepares a planning proposal for land shown on the Land Application Map of <i>State Environmental Planning Policy (Aboriginal Land) 2019</i> .	The subject planning proposal does not relate to land identified on the Land Application Map of <i>State Environmental Planning Policy (Aboriginal Land) 2019</i> .	N/A

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
6.	Local Plan Making		
6.1 Approval and Referral Requirements	<p>A planning proposal must:</p> <ul style="list-style-type: none"> (a) minimise the inclusion of provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority, and (b) not contain provisions requiring concurrence, consultation or referral of a Minister or public authority unless the relevant planning authority has obtained the approval of: <ul style="list-style-type: none"> (i) the appropriate Minister or public authority, and (ii) the Director-General of the Department of Planning and Environment (or an officer of the Department nominated by the Director-General), prior to undertaking community consultation in satisfaction of Division 3.4 of the Act, and (c) not identify development as designated development unless the relevant planning authority: <ul style="list-style-type: none"> (i) can satisfy the Director-General of the Department of Planning and Environment (or an officer of the Department nominated by the Director-General) that the class of development is likely to have a significant impact on the environment, and (ii) has obtained the approval of the Director-General of the Department of Planning and Environment (or an officer of the Department nominated by the Director-General) prior to undertaking community consultation in satisfaction of Division 3.4 of the Act. 	<p>This planning proposal will not include provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority. It does not identify development as designated development.</p>	N/A

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
6.2 Reserving Land for Public Purposes	A planning proposal must not create, alter or reduce existing zonings or reservations of land for public purposes without the approval of the relevant public authority and the Director-General of the Department of Planning and Environment (or an officer of the Department nominated by the Director-General).	The planning proposal does not create, alter or reduce existing zonings or reservations of land for public purposes.	N/A
6.3 Site Specific Provisions	<p>Applies when a relevant planning authority prepares a planning proposal that will allow a particular development to be carried out.</p> <p>A planning proposal that will amend another environmental planning instrument in order to allow a particular development proposal to be carried out must either:</p> <ul style="list-style-type: none"> (a) allow that land use to be carried out in the zone the land is situated on, or (b) rezone the site to an existing zone already applying in the environmental planning instrument that allows that land use without imposing any development standards or requirements in addition to those already contained in that zone, or (c) allow that land use on the relevant land without imposing any development standards or requirements in addition to those already contained in the principal environmental planning instrument being amended. <p>A planning proposal must not contain or refer to drawings that show details of the development proposal.</p> 	<p>This planning proposal does seek to allow a particular development to be carried out, being a dwelling house.</p> <p>In this case, the planning proposal is seeking to amend Schedule 1 of LEP 2014 to permit a dwelling house with consent within the existing RU2 Rural Landscape zone, which is consistent with this Direction.</p> <p>The planning proposal does not contain schematic drawings.</p>	Justifiably inconsistent

Section C Environmental, social and economic impact

1 Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats will be adversely affected as a result of the proposal?

No. The planning proposal seeks to permit a dwelling house with development consent on land zoned RU2 and on land that has been used for cattle grazing for many years. The land does not contain any vegetation.

It is highly unlikely that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the planning proposal.

2 Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

No. The subject site currently contains an unauthorised dwelling and is used as a rural “lifestyle” lot. The planning proposal ultimately seeks development consent for the use of an existing dwelling which will not result in any significant physical change to the land.

3 How has the planning proposal adequately addressed any social and economic effects?

The planning proposal will have minimal social and economic effects as the site already contains an existing dwelling. The RU2 zoned land has an area of approximately 4 hectares and may be suitable for small scale agriculture of some sort.

Section D State and Commonwealth interests

1 Is there adequate public infrastructure for the planning proposal?

The existing unauthorised dwelling has access to a reticulated water supply provided by Rous Water and on-site wastewater disposal. The existing dwelling has vehicular access via frontage to Yagers Lane.

Reticulated power and telecommunications are connected to the site and to the existing dwelling.

State infrastructure such as schools and hospitals are located at Byron Bay.

There is adequate public infrastructure to deal with the proposal as it will result in the opportunity to seek development consent for an existing dwelling only.

2 What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

The Gateway determination has yet to be issued. It is anticipated that the Rural Fire Service, Tweed Byron LALC, Jali LALC and Arakwal Corporation will be contacted for comment during the public exhibition.

At this early stage, it appears unlikely that there will be any issues of interest to Commonwealth authorities. State government authorities will be consulted during the public exhibition period in accordance with the Gateway requirements.

The following table provides a summary of the relevant public authorities, which in the opinion of Council, should be consulted in accordance with the Gateway determination:

Public authority/stakeholder	Issue requiring comment
Rural Fire Service	Bushfire issues
Jali LALC, Tweed Byron LALC and Arakwal Corporation	Aboriginal cultural heritage and archaeological matters

Part 4 Community consultation

Council will commence community consultation in accordance with the Gateway determination. For the purposes of public notification, the planning proposal is not considered to be low impact as outlined in the NSW DPE's *A guide to preparing local environmental plans* because it is inconsistent with some Section 9.1 Directions. Although it has been widely exhibited and considered by the public as part of the *Byron Shire Rural Land Use Strategy 2017*, a 28-day public exhibition period is recommended.

Notification of the exhibited planning proposal will include:

- a newspaper advertisement that circulates in the Byron LGA, which is the area affected by the planning proposal; and
- the web sites of Byron Shire Council and the NSW DPE.

The supporting studies and information supplied with the planning proposal submission will also be included in the exhibition material.

Part 5 Project timeline

The proposed timeline for the completion of the planning proposal is as follows:

Estimated completion	Plan making step
June 2020	Decision by Council to support the planning proposal and send for Gateway determination by the NSW DPE.
July 2020	Gateway determination issued by the NSW DPE.
August/September 2020	Public exhibition of planning proposal. Further government agency consultation.
November 2020	Analysis of public submissions. Preparation of Council report.
December 2020	Decision by Council to endorse the planning proposal and submit to the NSW DPE under delegation for finalisation.

Summary and conclusions

This planning proposal seeks to amend Schedule 1 of BLEP14 to permit a dwelling on Lot 6 DP 8385 with development consent.

The land contains an existing dwelling without a dwelling entitlement and has been constructed and used without consent.

The land is supplied with reticulated water provided by Rous Water and contains an existing on-site sewage management system. Reticulated power and communication infrastructure is available. The site has access via direct road frontage to Yagers Lane, which is in reasonable condition. The land does not contain ASS and has no serious geotechnical issues that would prevent its development. The planning proposal is not likely to have an adverse impact on adjoining agricultural lands and the land is not identified as being state or regionally significant agricultural land.

A preliminary assessment of land contamination pursuant to SEPP 55 has been carried out indicating that the land is expected to be suitable for the proposed land use.

The site does not contain coastal wetlands, littoral rainforest or other significant habitat areas. The site does not contain any native vegetation.

The proposal is consistent with the NCRP. The *Byron Shire Rural Land Use Strategy 2017* is applicable to the land and the proposal seeks to utilise Action 22 of the strategy. An assessment of the planning proposal indicates that it is consistent with relevant SEPPs. It is consistent with most of the relevant Section 9.1 Directions, and where inconsistencies occur they can be justified.

It is appropriate that it be sent to the NSW DPE for a Gateway determination in order that the planning proposal can proceed to public exhibition (subject to compliance with any Gateway condition).