

**Report No. 13.5 PLANNING - Planning Proposal - 26.2021.6.1
- 103 Yagers Lane, Skinners Shoot**

Directorate: Sustainable Environment and Economy

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5 **File No:** I2022/1198

Summary:

10 Council received a planning proposal in August 2021 requesting an amendment to Byron LEP 2014 to obtain a dwelling entitlement for Lot 8 DP 8385 which has an area of approximately 9 hectares. The street address is 103 Yagers Lane, Skinners Shoot.

The subject land contains an existing unauthorised dual occupancy (detached). Aerial photography indicates that one of the dwellings was constructed in approximately 2014 while the second dwelling was constructed over a period between 2015-2018.

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

The planning proposal is the best means to obtain development consent for the existing dual occupancy (detached).

20 The subject land is affected by flooding and is mapped as bush fire prone land. These issues are addressed to the satisfaction of Council. The proposal generates minimal additional traffic movements and does not require any upgrading of Yagers Lane.

25 The planning proposal is justifiably inconsistent with the North Coast Regional Plan 2036 because it is located outside of the Urban Growth Area boundary. It is located in the coastal strip being located east of the Pacific Highway. The planning proposal is consistent with the Urban Growth Area Variation Principles of NCRP.

The planning proposal is consistent with the Council adopted Local Strategic Planning Statement and 10 year + Community Strategic Plan 2022 (CSP).

30 An assessment of the planning proposal indicates that it is also consistent with relevant SEPPs and the majority of relevant section 9.1 Directions; and where inconsistencies occur, they can be justified or addressed with further information.

It is recommended that the planning proposal be forwarded to the NSW DPIE for a Gateway determination so that it can proceed to public exhibition (subject to compliance with any Gateway conditions).

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.5

The planning proposal, as attached to this report, includes supporting information and studies that are required to be placed on public exhibition and available for agency consultation.

NOTE TO COUNCILLORS:

- 5 In accordance with the provisions of S375A of the Local Government Act 1993, a Division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes of Council Meetings of Council's adopted Code of Meeting Practice (as amended) a Division will be deemed to have been called by the mover and seconder of all motions relating to this report.

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RECOMMENDATION:

That Council:

- 15 1. **proceeds with the planning proposal as attached to this report (Attachment 1) to amend LEP 2014 to permit a dual occupancy (detached) with consent on the subject land;**
2. **forwards the planning proposal to the NSW Department of Planning and Environment for a Gateway determination;**
- 20 3. **pending a positive Gateway determination and completion of further studies by the applicant (if required), undertakes public exhibition of the planning proposal in accordance with the determination requirements;**
4. **considers a submissions report post-exhibition that includes any recommended changes to the planning proposal for final adoption.**

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Attachments:

- 1 26.2021.6.1 - Draft Planning Proposal for Council - 103 Yagers Lane Skinners Shoot, E2022/91546 
- 30 2 26.2021.6.1 - Preliminary Contaminated Land Assessment - 103 Yagers Lane Skinners Shoot, E2022/91565 
- 3 26.2021.6.1 - On-site Wastewater Management Assessment - 103 Yagers Lane Skinners Shoot, E2022/91566 
- 35 4 26.2021.6.1 - Letter of offer for Voluntary Planning Agreement - 103 Yagers Lane Skinners Shoot, E2022/92776 

Background

Council resolution **20-283** dated 18 June 2020 included a request that staff *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*. This resolution also included *that in the meantime any planning proposal or development application lodged with Council for existing (as of 18 June 2020) unauthorised residential accommodation comply with the requirements of the Unauthorised Residential Accommodation Policy or for those applications lodged prior to the Policy being adopted the principles as presented in this report*.

Council resolution **20-417** dated 27 August 2020 resolved that the Draft Byron Shire Unauthorised Dwellings Policy be placed on public exhibition with a submissions report to be sent back to Council following the exhibition.

As a result of issues raised in public submissions, the Draft Unauthorised Dwellings Policy was converted to a [guideline](#) document for internal use by staff to outline the process for reactive investigations initiated by complaints and owner-initiated actions.

One of the planning pathways identified in the guideline is “pathway 2” which provides that, where land does not have a dwelling entitlement and contains an existing unapproved dual occupancy, a planning proposal may be submitted to seek to amend LEP 2014 to permit the dual occupancy on the land with development consent.

Subject Land

Historically, Lot 8, together with Lots 4, 6 & 7 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 8 does not hold a dwelling entitlement.

Council received a planning proposal in August 2021 requesting an amendment to Byron LEP 2014 to obtain a dwelling entitlement for Lot 8 DP 8385 which has an area of approximately 9 hectares (see Figures 1 & 2 below). The street address is 103 Yagers Lane, Skinners Shoot. The subject land contains an existing unauthorised dual occupancy (detached).

The land formerly contained a piggery which has been decommissioned for several years. The former piggery sheds remain on the site with some of the sheds being approved for

use as a plant nursery with another building on the site being approved as a place of assembly.

5 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).

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.

10 The land has been largely cleared of vegetation historically though there has been some regrowth of camphor laurel and landscape plantings in recent years. There are two clumps of Camphor Laurel located along the southern boundary which are located approximately 60m from the nearest existing dwelling. There are also two small clumps of vegetation mapped as subtropical rainforest that are located on the western and northern boundaries at a minimum distance of approximately 180m to the nearest dwelling. There is also a
15 hoop pine located between the two existing dwellings.

The majority of the site is mapped as bushfire prone land however the existing dwellings may reasonably comply with Planning for Bushfire Protection 2019. Consultation with the Rural Fire Service will be undertaken as part of this Planning Proposal.



Figure 1: Subject land



Figure 2: Existing dual occupancy (detached)

Planning Proposal

5 The planning proposal lodged by the proponent requests an amendment to Byron LEP 2014 to obtain a dwelling entitlement for Lot 8 DP 8385 on land zoned RU2.

The land contains an existing dual occupancy (detached) and the aim of the planning proposal is to establish a legislative mechanism to permit the lawful use of the dual occupancy with development consent.

10 Specifically, the planning proposal seeks to add the land to Part 6 – Additional local provisions to permit a dual occupancy (detached) with consent on Lot 8 DP 8385.

Planning Framework

North Coast Regional Plan

15 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. Being outside of the Urban Growth Area boundary makes it inconsistent with the NCRP. However, an inconsistent planning proposal can be justified with an application consistent with the Urban Growth Area Variation Principles. This has been demonstrated in the attached Planning Proposal.

The most relevant NCRP direction is *Direction 24: Deliver well-planned rural residential housing areas*. The most relevant action is *24.2 Enable sustainable use of the region's sensitive coastal strip by ensuring new rural residential areas are located outside the coastal strip, unless already identified in a local growth management strategy or rural residential land release strategy endorsed by the Department of Planning and Environment*.

The proposal is consistent with the Urban Growth Area Variation Principles of the NCRP and is consistent with Action No. 22 of the *Byron Shire Rural Land Use Strategy 2017* (BSRLS) which recommends investigation into a strategic framework for resolving dwelling entitlement issues. This strategy was endorsed by the NSW DPE in July 2018.

Local Strategic Planning Statement

Council adopted a Local Strategic Planning Statement in September 2020 and it was subsequently agreed to by DPIE.

The relevant planning priority in the LSPS (page 37) is:

"3. Support housing diversity and affordability with housing growth in the right locations."

This planning proposal will be adding to the supply of housing stock in the shire by providing a mechanism to legalise an existing dual occupancy (detached) and is consistent with the adopted LSPS.

Site Specific Issues

Flooding

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).

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.

Traffic and roads

Skinners Shoot Road has approximately 781 vehicles/day (2021-22 traffic counts). The road formation ranges from approximately 5m to 6m and is sealed. Council's adopted engineering standards (The Northern Rivers Local Government Development Design and Construction Manuals) require a road formation for such daily traffic flows of a 7m seal with 1m shoulders. The current road formation does not comply with Council's standards, irrespective of a dual occupancy on the subject site.

Yagers Lane is not expected to carry more than 150 veh/day. The road formation is approximately 4m and is sealed with grassed verges. Council's adopted engineering

- standards (The Northern Rivers Local Government Development Design and Construction Manuals) require a road formation of a 6m seal with 0.5m gravel shoulders. Whilst Yagers Lane is below the recommended formation standard, irrespective of the dwellings on the current site, it is reasonable for the current formation to serve the additional 15 trips for a dual occupancy development. The demand for passing of vehicles is low, however the grassed verges are suitable for passing if needed.

Bush fire

- The land is mapped as bush fire prone land and contains vegetation mapped as Category 1 (high risk), Category 2 (low risk), Category 3 (medium risk) and a vegetation buffer area.
- 10 The existing dwellings are located within Vegetation Category 3 (medium risk) with the hazard being identified as grassland. The existing dwellings are located a minimum of 60m from vegetation identified as Category 1 (high risk).
- The existing dwellings each include an existing Asset Protection Zone (APZ). The existing APZs may need to increase in size to comply with Planning for Bushfire Protection 2019 but this can reasonably be achieved without having a significant ecological impact.
- 15 Council staff will consult with the Commissioner of the NSW Rural Fire Service following receipt of a gateway determination.

Land contamination

- 20 The applicant has supplied a preliminary contaminated land assessment carried out in accordance with the contaminated land planning guidelines. While the land has previously been used as a commercial piggery and plant nursery, soil tests were undertaken and no contamination of concern was identified. The existing dwelling envelopes are considered suitable for use as a dual occupancy (detached).

Aboriginal cultural heritage

- 25 The Jali and Tweed Byron LALCs and the Arakwal Corporation will be consulted as part of the public exhibition of the planning proposal following a gateway determination. An AHIMS search undertaken by the applicant did not identify any aboriginal sites or places within proximity of the subject site.

Ecology

- 30 The land has been largely cleared of vegetation historically though there has been some regrowth of camphor laurel and landscape plantings in recent years. There are two clumps of Camphor Laurel located along the southern boundary which are located approximately 60m from the nearest existing dwelling. There are also two small clumps of vegetation mapped as subtropical rainforest that are located on the western and northern boundaries at a minimum distance of approximately 180m to the nearest dwelling. There is also a hoop pine located between the two existing dwellings. Compliance with the requirements of Planning for Bush Fire Protection 2019 can reasonably be achieved without having a significant ecological impact.
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Developer Contributions / Planning Agreement

The planning proposal seeks to amend LEP 2014 so that a dual occupancy (detached) is permitted with consent on the subject site.

5 If a dual occupancy (detached) is permitted on the site, this will create additional demands on rural roads, community facilities, open spaces etc. Such demands are captured by the Byron Shire Developer Contributions Plan 2012 which requires a monetary contribution in accordance with the Plan and Section 7.11 of the *Environmental Planning and Assessment Act 1979*.

10 Ordinarily contributions would be paid at the time of subdivision for creating a lot with a dwelling entitlement equivalent to one Standard Dwelling Unit (SDU) (3 bedroom dwelling or greater). However, for the purposes of this planning proposal, there is no clear mechanism within the Contributions Plan for applying developer contributions.

15 The submitted planning proposal included a letter of offer to enter into a planning agreement with Council. The offer proposes payment of a monetary contribution which is equivalent to two SDUs.

Council staff have no justification to require additional contributions over and above the demand normally generated for a rural dual occupancy under the terms of the Contributions Plan 2012.

20 However, Council may resolve to apply different terms in the agreement if deemed reasonable and appropriate in the circumstances.

A formal agreement will need to be drafted to be exhibited concurrently with the planning proposal.

Next steps

There are three options for Council to consider:

1. Proceed with the planning proposal contained in Attachment 1 to this report, which will facilitate the lawful use of the existing dual occupancy (detached) with Council consent. This option is subject to any requirements imposed by DPE in its Gateway determination; or
 2. Proceed with the planning proposal in a modified form other than the version attached to this report; or
 3. Not proceed with the planning proposal and advise the applicant accordingly.
- 10 There is sufficient information to support the planning proposal at Attachment 1 to this report and proceed to a Gateway submission. It is considered that no additional studies are required prior to public exhibition and agency consultation.

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
4: Ethical Growth We manage growth and change responsibly	4.2: Enable housing diversity and support people experiencing housing insecurity	4.2.3: Establish planning mechanisms and advocate for changes to legislation to support housing that meets the needs of our community	4.1.4.2	

Recent Resolutions

- **20-283:** that staff 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.

- **20-417:** that the Draft Byron Shire Unauthorised Dwellings Policy be placed on public exhibition with a submissions report to be sent back to Council following the exhibition.

- 5
- **21-448:** that Council agrees to the Draft Unauthorised Dwellings Policy being converted to a guideline document for internal use by staff to outline the process for reactive investigations initiated by complaints and owner-initiated actions

Legal/Statutory/Policy Considerations

The relevant legal/statutory/policy considerations have been noted above.

10 Financial Considerations

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- If Council chooses to proceed with the planning proposal, it will be at the proponent's expense as a landowner-initiated planning proposal. Full cost recovery of the remaining stages will be required by Council. If the applicant chooses not to pay then the planning proposal will not proceed. If Council chooses not to proceed then the matter does not incur any additional costs.

Consultation and Engagement

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- If Council chooses to proceed with the planning proposal, it will be forwarded to the NSW Department of Planning & Environment for a Gateway determination. A positive determination will identify public exhibition requirements and government agency consultation requirements.