



#E2022/28968  
BSC File No: 26.2020.1.1  
Contact: Ben Grant

30 March 2022

Department of Planning, Industry & Environment  
Locked Bag 9022  
GRAFTON NSW 2460

Dear Sir/Madam

### **Updated Planning Proposal for Short-term Rental Accommodation in Byron Shire**

Council at its Ordinary Meeting of 24 February 2022 considered Report No. 13.13 Economic Impact Assessment of Planning Proposal for Short-Term Rental Accommodation and resolved as follows:

#### ***22-060 Resolved that Council:***

- 1. Notes the findings and recommendations of the Economic Impact Assessment and that of the Peer Review of the Economic Impact Assessment by Dr Peter Phibbs in Attachments 1 and 2.*
- 2. Notes the Planning Proposal Timeline including delays to it due to the changing State Government requirements placed on Council in Attachment 3.*
- 3. Supports wholeheartedly the existing 90-day/365-day cap option and instructs staff to amend the current Planning Proposal to meet the requirements of the Gateway Determination in Attachment 4, except for Condition 1(b), point 3, which requires the Planning Proposal to reflect the recommendations of the DPIE endorsed Economic Impact Assessment.*
- 4. Authorises staff to submit the Peer Review with the amended Planning Proposal to the Department of Planning and Environment for a revised Gateway Determination to enable public exhibition of the Planning Proposal.*
- 5. Requests the Department of Planning and Environment to extend the Gateway Determination date to 31 December 2022 or to when the Planning Proposal is determined and/or notified.*

The planning proposal has been updated in accordance with the Council resolution and the Gateway determination where necessary. Council submits the enclosed planning proposal to the Department of Planning, Industry and Environment further consideration.



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It is also noted that in actioning resolution 20-060, Council:

- (a) submits an amended planning proposal to DPIE meeting the requirements of the Gateway determination, except for Condition 1(b), point 3, which requires the Planning Proposal to reflect the recommendations of the DPIE endorsed Economic Impact Assessment, and
- (b) requests DPIE to extend the Gateway determination date to 31 December 2022 or to when the planning proposal is determined and/or notified.

In making these requests Council is cognitive of Environmental Planning and Assessment Act 1979 (the Act): Division 3 Environmental Planning instruments: 3.34 Gateway determination (8) that states:

*A failure to comply with a requirement of a determination under this section in relation to a proposed instrument does not prevent the instrument from being made or invalidate the instrument once it is made. However, if community consultation is required under Schedule 1, the instrument is not to be made unless the community has been given an opportunity to make submissions and the submissions have been considered under that Schedule.*

Hence, Council is of the understanding it is within the Department's capacity to reassess the conditions of the gateway where necessary. The following sets out the grounds under which the requests are made:

#### **Request (a) – variation to condition 1(b) point 3 of the Gateway**

The proposed variation to condition 1(b)(3) of the Gateway is justified in that an economic impact assessment (EIA) should not advance any recommendation as to a preferred policy option that would circumvent the right afforded to Council under the Ministerial Direction.

The Department's attention is also brought to:

- A peer review of the EIA by Dr. Peter Phibbs, previously a Professor in the Faculty of Architecture, Design and Planning at the University of Sydney, which raised serious concerns over reliability to the methods used to produce the EIA's final recommendations. Dr. Phibbs commented that using the findings of the EIA as a decision-making tool, as one would a cost benefit analysis, is a fundamental error. It is generally recognised that economic impact analysis can be a useful tool in decision making but is not by itself intended for use as an evaluative tool.
- Further, the EIA indicates the Council's planning proposal has net benefits for the local community and is unlikely to have a significantly adverse impact on the local economy. Hence, in principle, it not justified to preclude the proposal given:
  - the highest benefits are notably associated with residents in particular renters and local workers, namely potentially increased long term rental availability and lower rents.
  - STRA property operators could experience an increase in annual revenue of ~ 48 – 92% by 2027.
  - commercial accommodation operators such as motels and service apartments would also see marginal revenue benefit and increased room occupancy rates.
  - whilst ~1,535 properties are estimated to convert to long term rentals (including 9-month leases) and ~275 properties estimated to convert to owner-occupation a provision ~ 3,440 non-hosted STRA properties for visitors would be available (based on 2019 figures).

- whilst EIA indicates STRA visitors are expected to experience a high disbenefit risk associated with potentially higher prices for accommodation and reduced night availability; visitors are not singled out as a specific sector for consideration under the Ministerial Direction 7.2 (previously 3.7) Reduction in non-hosted short term rental accommodation nor the Gateway determination.

The recent catastrophic flooding across the north coast region has disrupted the community. Now and into the foreseeable future Council maintains that the emphasis needs to be on measures to retain housing for community. The return of properties to long term rental homes will help provide much sought stability and aid community wellbeing as it recovers.

### **Request (b) – extension of timeframe**

The request for an extension is considered justified as delays incurred in the planning proposal progression are not alone attributable to Council. The Gateway and planning proposal's complexity, electoral processes and the recent Covid outbreaks and flood event combine in a situation where the allotted gateway time is insufficient. Complexity is apparent with EIA taking over 12 months to be documented. The Department took nearly 5 months to scope the EIA, it was a further 3 months to engage a consultant and then 4 months to complete in late November 2021. Only to find that planning proposal could not be reported to by Council until February this year due to local government elections.

Adding to this extensive flooding has placed onerous burdens on the Council and the community with a significant recovery task ahead. It is hoped that Council and the community may be able to move forward with a public exhibition by mid-May.

Importantly an amended gateway will respect the right given to the Byron Shire community under Ministerial Direction 3.7.

Should you have any enquiries please contact me by phone (02) 6626 7066 or email [ben.grant@byron.nsw.gov.au](mailto:ben.grant@byron.nsw.gov.au).

Yours sincerely



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Planner

Enc. Planning Proposal 26.2020.1.1 - # E2022/18935  
Council Minutes 24/02/2022