

Mr Ken Gainger
General Manager
Byron Shire Council
PO Box 219
Mullumbimby NSW 2482

Our ref: PP_2015_BYRON_003_00 (15/11643)
Your ref: 28.2015.5.1 - #E2015/48128

Attention: Julie Francombe

Dear Mr Gainger

Planning proposal to amend Byron Local Environmental Plan 2014

I am writing in response to your Council's letter dated 24 July 2015 requesting a Gateway determination under section 56 of the *Environmental Planning and Assessment Act 1979* (the Act) in respect of the planning proposal to define short term rental accommodation, require development consent for short term rental accommodation and schedule certain forms of short term rental accommodation as exempt development.

As delegate of the Minister for Planning, I have now determined the planning proposal should proceed subject to the conditions in the attached Gateway determination.

It is noted that Council has included a number of short term rental accommodation provisions for exempt development as part of the planning proposal. While this objective is generally supported, Council has included a number of conditions that may not be enforceable under its Local Environmental Plan (LEP). Therefore, prior to proceeding to public exhibition, Council is required to demonstrate how they will be enforced and amend the planning proposal if necessary. The Department's regional office is available to work with Council to progress this matter.

I have also agreed the planning proposal's inconsistency with S117 Direction 3.1 Residential Zones is justified and of minor significance. No further approval is required in relation to this Direction.

Council may still need to obtain the agreement of the Secretary to comply with the requirements of S117 Direction 4.4 Planning for Bushfire Protection. Council should ensure this occurs prior to the plan being made.

Plan making powers were delegated to councils by the Minister in October 2012. It is noted that Council has requested to be issued with delegation for this planning proposal. I have considered the nature of Council's planning proposal and have decided not to issue an authorisation for Council to exercise delegation to make this plan at this stage.

The amending LEP is to be finalised within 12 months of the week following the date of the Gateway determination. Council's request for Department of Planning and Environment to draft and finalise the LEP should be made 6 weeks prior to the projected publication date.

The State Government is committed to reducing the time taken to complete LEPs by tailoring the steps in the process to the complexity of the proposal, and by providing clear and publicly available justification for each plan at an early stage. In order to meet these commitments, the Minister may take action under section 54(2)(d) of the Act if the time frames outlined in this determination are not met.

Should you have any queries in regard to this matter, I have arranged for Mr Jim Clark, Team Leader, of the Northern Regions office to assist you. Mr Clark can be contacted on (02) 6601 6604.

Yours sincerely

 31 August 2015
Stephen Murray
Acting Executive Director, Regions
Planning Services

Encl:
Gateway Determination



Gateway Determination

Planning proposal (Department Ref: PP_2015_BYRON_003_00): to define short term rental accommodation, require development consent for short term rental accommodation and schedule certain forms of short term rental accommodation as exempt development.

I, the Acting Executive Director, Regions, at the Department of Planning and Environment as delegate of the Minister for Planning, have determined under section 56(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the *Byron Local Environmental Plan (LEP) 2014* to define short term rental accommodation, require development consent for short term rental accommodation and schedule certain forms of short term rental accommodation as exempt development should proceed subject to the following conditions:

1. Prior to the commencement of public exhibition, Council is to:
 - (a) amend Part 2 (Explanation of Provisions) of the planning proposal to ensure that it is written in a way that can be clearly understood by the community; and
 - (b) demonstrate how the additional exempt development provisions proposed to be inserted into Schedule 2 of Byron LEP 2014 could be enforced. In doing so, Council is to amend the planning proposal and provide the Department with a revised proposal.
2. Community consultation is required under sections 56(2)(c) and 57 of the Act as follows:
 - (a) the planning proposal must be made publicly available for a minimum of **28 days**; and
 - (b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of *A Guide to Preparing LEPs (Department of Planning and Environment 2013)*.
3. Consultation is required with the Holiday Rental Industry Association and the following public authority under section 56(2)(d) of the Act and/or to comply with the requirements of relevant S117 Directions:
 - Tourism NSW

Council is to consult with the Commissioner of the NSW Rural Fire Service prior to undertaking community consultation, and take into account any comments made as per the requirements of S117 Direction 4.4 Planning for Bushfire Protection.



Planning & Environment

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material, and given at least 21 days to comment on the proposal.

4. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
5. The timeframe for completing the LEP is to be **12 months** from the week following the date of the Gateway determination.

Dated 31st day of August 2015

Stephen Murray
Acting Executive Director, Regions
Planning Services

Delegate of the Minister for Planning