

To amend Byron LEP 2014 to provide for short term rental accommodation

Proposal Title : To amend Byron LEP 2014 to provide for short term rental accommodation

Proposal Summary : This planning proposal introduces special provisions to

- define short term holiday accommodation and require development consent for this use in an existing dwelling; and
- allow small-scale operations (rental of dwellings of 3 bedrooms or less for fewer than 90 days in a year) as exempt development (Schedule 2 of Byron LEP 2014).

PP Number : PP_2015_BYRON_003_00 Dop File No : 15/11543

Proposal Details

Date Planning Proposal Received : 24-Jul-2015 LGA covered : Byron

Region : Northern RPA : Byron Shire Council

State Electorate : BALLINA Section of the Act : 55 - Planning Proposal

LEP Type : Policy

Location Details

Street :

Suburb : City : Postcode :

Land Parcel : Lands within RU1 and RU2 Rural Zones, RU5 Village, R2, R3 and R5 Residential Zones and B4 Mixed Use Zone.

DoP Planning Officer Contact Details

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DoP Project Manager Contact Details

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To amend Byron LEP 2014 to provide for short term rental accommodation

Land Release Data

Growth Centre :		Release Area Name :	
Regional / Sub Regional Strategy :		Consistent with Strategy :	
MDP Number :		Date of Release :	
Area of Release (Ha) :		Type of Release (eg Residential / Employment land) :	
No. of Lots :	0	No. of Dwellings (where relevant) :	0
Gross Floor Area :	0	No of Jobs Created :	0
The NSW Government Lobbyists Code of Conduct has been complied with : Yes			
If No, comment :	The Department's Code of Practice in relation to communication and meetings with Lobbyists has been complied with to the best of the Region's knowledge		
Have there been meetings or communications with registered lobbyists? :	No		
If Yes, comment :	Northern Region has not met any lobbyists in relation to this proposal, nor has Northern Region been advised of any meetings between other department officers and lobbyists concerning this proposal.		

Supporting notes

Internal Supporting Notes :	
External Supporting Notes :	The Council has adopted a Short Term Holiday Accommodation Action Plan, which includes amendments to its Development Control Plan.

Adequacy Assessment

Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? **Yes**

Comment : **The objectives are clearly stated - to add provisions to Byron LEP 2014 to provide for short
term rental accommodation.**

Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? **Yes**

Comment : **Part 2 of the Proposal (and Parts 1a and 1b of the Action Plan attachment) provide:**

DEVELOPMENT CONSENT to be required for
**-short term rental of existing dwellings where residential development is permitted in the
zone; with**
-maximum 2 occupants per bedroom (excluding children under 5).

**The Action Plan (section 1g) includes a set of draft standard conditions to be included in
any consent and section 2b of the Action Plan is a proposed DCP amendment.
However these are not part of the Planning Proposal.**

To amend Byron LEP 2014 to provide for short term rental accommodation

Comment: Council is to be advised that Action Plan requirements or DCP provisions can not be more restrictive than the Planning Proposal / LEP amendment permits.

EXEMPT DEVELOPMENT (Schedule 2 of Byron LEP 2014).

Short term rental accommodation in an existing dwelling can occur where:

- less than 90 days in any one calendar year;
- 3 bedroom maximum;
- 2 occupants per bedroom (excluding children under 5);
- garbage and recycling bins provided; *
- if a community or strata scheme, written approval of owners' corporation; *
- bushfire safety authority (s. 100B Rural Fire Services Act 1997);
- hard wired smoke alarms, evacuation lighting, fire blankets and extinguisher;
- no more than 2 substantiated complaints from neighbours in last 12 months; *
- use of the dwelling to not impact on local residential amenity; *
- registration with Council; *
- comply with DP&E Holiday Rental Code of Conduct; *
- land owner / manager must be available within 30 minutes 24/7 to address complaints; *
- an A3 sign with owner/ contact / registration details;
- no additional accommodation (caravans, tents etc) on site;
- outdoor areas (including pools, spas) not to be used between 10pm and 8am; and
- visitors not to exceed 6 persons between 8am and 10pm and none after 10pm. *

Comment : Those conditions marked * above and others may not be applicable / enforceable under exempt development. Council will be required to obtain advice on which provisions can be included and how they should be expressed before community consultation takes place.

A copy of the revised Planning Proposal should be referred to the Regional Team prior to community consultation.

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **Yes**

b) S.117 directions identified by RPA :

* May need the Director General's agreement

1.1 Business and Industrial Zones

1.2 Rural Zones

1.5 Rural Lands

2.1 Environment Protection Zones

2.2 Coastal Protection

3.1 Residential Zones

3.4 Integrating Land Use and Transport

3.5 Development Near Licensed Aerodromes

4.1 Acid Sulfate Soils

4.3 Flood Prone Land

4.4 Planning for Bushfire Protection

5.1 Implementation of Regional Strategies

Is the Director General's agreement required? **Yes**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **Yes**

d) Which SEPPs have the RPA identified?

SEPP No 55—Remediation of Land

SEPP No 71—Coastal Protection

e) List any other matters that need to be considered :

Consultation has occurred with the Housing Policy and Strategy Team and advice provided to the Legislative Assembly Committee for Planning & Environment was considered - see under "Assessment".

Have inconsistencies with items a), b) and d) being adequately justified? **Yes**

If No, explain :

See "Assessment section"

To amend Byron LEP 2014 to provide for short term rental accommodation

Mapping Provided - s55(2)(d)

Is mapping provided? No

Comment : No mapping necessary .

Community consultation - s55(2)(e)

Has community consultation been proposed? Yes

Comment : Council considers this proposal not to be low impact and suggests 28 days community consultation period. This is acceptable.

Additional Director General's requirements

Are there any additional Director General's requirements? Yes

If Yes, reasons : As certain sections of the proposal are unclear, a revised proposal should be submitted, which

- clarifies proposed clause 6.10 "short term rental accommodation" and,
- having regard to legal advice concerning the effectiveness and drafting of the provisions concerning exempt development, includes revision of the proposed addition to Schedule 2 of the LEP.

These actions need to be completed and advised to the Department before community consultation takes place.

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? Yes

If No, comment : Time Line

The planning proposal timeline estimates the completion of the planning proposal within 6 months. Given the local significance of this proposal, its history and to ensure the RPA has adequate time to complete further investigations; the need to revise the proposal before exhibition and finalise reporting and legal drafting it is recommended that a time frame of 12 months is appropriate.

Delegation.

Council considers that delegation to finalise the amendment should be given and has provided a written evaluation.

However in view of the recommended requirement to consider the proposal again prior to community consultation, it is considered that no decision on delegations should be made at this stage.

The planning proposal satisfies the adequacy criteria by;

1. Providing appropriate objectives and intended outcomes;
2. Subject to requested clarifications, a suitable explanation of the provisions proposed for the LEP to achieve the outcomes will be achievable.
3. Providing an adequate justification for the proposal.
4. Outlining a proposed community consultation program; and
5. Providing a project completion timeframe.

Proposal Assessment

Principal LEP:

Due Date :

Comments in relation to Principal LEP :

Byron LEP 2014 came into effect in July 2014. This proposal amends BLEP 2014.

Assessment Criteria

Need for planning
proposal :

Previous consideration of the "holiday letting" issue is that the planning legislation has not been considered to be the only method of dealing with the issue; the issue being related to tenancy rather than to land capability. However recent Court cases have highlighted the need for appropriate planning provisions to regulate where and under what conditions holiday letting operations may occur. This proposal is appropriate in this context.

Council has prepared a separate Planning Proposal to make alterations to the land use tables for the RU1, RU2 and B4 zones in relation to tourist and visitor accommodation; and to make minor clause amendments relating to bed and breakfast accommodation including classifying one-bedroom operations as exempt development.

To amend Byron LEP 2014 to provide for short term rental accommodation

Consistency with strategic planning framework :

The Minister in June 2015 wrote to the Legislative Assembly Committee on Environment and Planning asking advice on the adequacy of regulation of short-term holiday letting, including new internet opportunities for bookings such as AirBnB and Stayz. The letter draws attention to potential impacts of such developments on local residents while highlighting the economic benefits of such operations. The letter describes the current position where it is a Council decision how to regulate short term holiday letting from a planning viewpoint, and mentions the existence of the voluntary Code of Conduct for owners and agents. At the time of writing this report the committee is yet to consider a response.

This planning proposal is based on a number of strategic planning exercises by the Council, most recently the Short Term Rental Accommodation Action Plan. Regulation of holiday rental accommodation is consistent with Council's Community Strategic Plan 2022 (2012).

The Far North Coast Regional Strategy in actions related to Economic Development and Employment Growth requires that "local environmental plans will ensure that appropriate land is available to provide for a range of tourism experiences and forms of tourist accommodation". The proposal is not inconsistent with this requirement.

The proposed Regional Plan also addresses the issue as follows:

" There are areas on the North Coast that experience significant seasonal fluctuations in population due to their attractiveness as holiday locations. Holiday dwellings are an important factor influencing the demand for housing on the North Coast. This has been included into the housing supply numbers to allow tourism related growth to be managed appropriately by having regard to infrastructure, environmental and social issues." Again the proposal is not inconsistent with this statement.

Council has nominated a number of section 117 directions and SEPPs. There are inconsistencies with directions 3.1 and 4.4.

3.1 Residential Zones. The effect of short term rental accommodation is to take full-time housing opportunities away from existing housing stock. This is arguably inconsistent with the direction. Council accepts this, but indicates that the density of development will not be affected (increasing densities can still be provided with new development) and that the proposal provides an additional choice for landowners consistent with tourism aspirations. Housing targets can be increased to accommodate the need for further full-time housing. The inconsistency is justified as of minor significance.

4.4 Planning for Bushfire Protection. The proposal is inconsistent with the direction pending consultation with the Rural Fire Service. Council advises the RFS has already been consulted and has made suggestions, including the addition of a requirement for a Bushfire Safety Authority on bushfire prone land. However further consultation will be required post-Gateway in accordance with the direction.

Council indicates there will be a 12 month moratorium to enable existing (unauthorised) operations to become compliant with the new requirements. The planning proposal is silent on the legality or otherwise of current operations. As there are no current provisions and the Council has consistently maintained the view that holiday letting in residential zones is a commercial operation which is prohibited, the issue of existing or continuing rights does not arise. The new provisions will take the form of an enabling clause to allow existing or new operations to gain consent.

Environmental social economic impacts :

The proposal applies only to existing developed areas and dwellings, so any increase in effect on critical habitat, threatened species or other environmental issues of concern is likely to be minimal.

Depending on the extent of use of the short-term rental provisions the proposal will impact on neighbourhood character. Increased social impact is likely due to the nature of holiday accommodation. Council has attempted to address some of these factors with this

To amend Byron LEP 2014 to provide for short term rental accommodation

planning proposal.

The requirement to submit an application where there have been existing operations (allegedly illegal) and if those that remain without approval are closed by Council, there may be a reduction in availability of short term rental accommodation.

There will be an additional need for policing of regulations for noise, traffic and adherence to development conditions. Council should allow for additional resources to address this - however this is not a planning issue - it has not been mentioned in the planning proposal.

The potential impacts may be outweighed by the increased availability of low-cost tourism opportunities and related benefit to the local economy.

Assessment Process

Proposal type : **Routine** Community Consultation Period : **28 Days**

Timeframe to make LEP : **12 months** Delegation : **DDG**

Public Authority Consultation - 56(2) (d) : **NSW Rural Fire Service**

Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **Yes**

If no, provide reasons :

Resubmission - s56(2)(b) : **No**

If Yes, reasons :

Identify any additional studies, if required. :

If Other, provide reasons :

No additional studies

Identify any internal consultations, if required :

No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons :

Documents

Document File Name	DocumentType Name	Is Public
2015-07-24 Planning Proposal.pdf	Proposal	Yes
2015-07-24 Council report.pdf	Proposal	Yes
2015-07-24 Covering letter.pdf	Proposal Covering Letter	Yes

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

To amend Byron LEP 2014 to provide for short term rental accommodation

S.117 directions:

- 1.1 Business and Industrial Zones
- 1.2 Rural Zones
- 1.5 Rural Lands
- 2.1 Environment Protection Zones
- 2.2 Coastal Protection
- 3.1 Residential Zones
- 3.4 Integrating Land Use and Transport
- 3.5 Development Near Licensed Aerodromes
- 4.1 Acid Sulfate Soils
- 4.3 Flood Prone Land
- 4.4 Planning for Bushfire Protection
- 5.1 Implementation of Regional Strategies

Additional Information :

It is recommended that;

1. The planning proposal should proceed as a 'routine' planning proposal.
2. Prior to community consultation Council is to:
 - clarify Part 2 (Explanation of Provisions) of the planning proposal so that it can be clearly understood by the community.
 - obtain advice concerning the proposed exempt provisions (additions to Schedule 2 of Byron LEP 2014), some of which may be superfluous (with regard to other legislation), unworkable or unenforceable. Council is required to submit a revised proposal to the Department addressing these matters prior to community consultation;
 - Council is also to be reminded that the requirements of any development control plan or Action Plan can not be more restrictive than the Planning Proposal or subsequent LEP Amendment permits.
3. A community consultation period of 28 days is necessary.
4. Council consult with the Commissioner of the NSW Rural Fire Services in accordance with S117 Direction 4.4 Planning for Bushfire Protection
5. A delegate of the Secretary agree that inconsistency of the proposal with S117 Direction 3.1 is justified in accordance with the terms of the direction.
6. The planning proposal is to be completed within 12 months.
7. Authorisation for Council to exercise delegation be considered following submission to the Department of a revised proposal as indicated in recommendation 2 above.

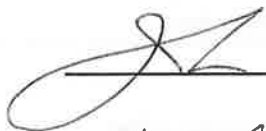
Supporting Reasons :

This planning proposal is the culmination of strategic work and consultation by the Council to try to resolve issues resulting from the issue of ad hoc holiday accommodation in dwellings.

In practice it does no more than require consent for short term residential accommodation, or in many cases, consider such development as exempt development.

The proposal has no direct impact on State policy and subject to the conditions above, is appropriate to proceed.

Signature:



Printed Name:

JIM CLARK

Date:

5 August 2015

Team Leader Local Planning