



Planning Proposal

Amendment of Byron Local Environmental Plan 2014 Additional Local Provision – Tiny House Development

Byron Shire Council

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Part 1 Introduction

Objective and intended outcomes

The objective of this Planning Proposal is to amend Byron Local Environmental Plan 2014 (LEP 2014) to facilitate tiny house development on Council owned and or managed land for the provision of supported housing for people experiencing (or at risk of) homelessness.

Site identification

The planning proposal will apply to Council owned and managed land.

Background

Homelessness is a growing concern for our Shire. From 2011 to 2016, the homelessness rate increased by 245.83%^[1]. In addition, Council coordinates periodic street counts of people sleeping rough in Byron Shire. From August 2018 to August 2019, we found an increase of 18% in three identified hotspots.

People experiencing homelessness are part of our community. And our community has a rate of homelessness twice the national average and within that the percentage of homeless people sleeping rough is 6 times the national average.

Homelessness covers a broad spectrum of situations. The ABS definition recognises three levels of homelessness:

Primary homelessness (rough sleeping): includes people without conventional accommodation. They may be living on the streets, sleeping in cars, in deserted buildings, in improvised or substandard dwellings, under bridges, or in parks.

Secondary homelessness: includes people moving frequently between various forms of temporary shelter including staying with friends and relatives, couch surfing, in emergency accommodation, youth refuges, hostels and boarding houses on a short term basis (12 weeks or less).

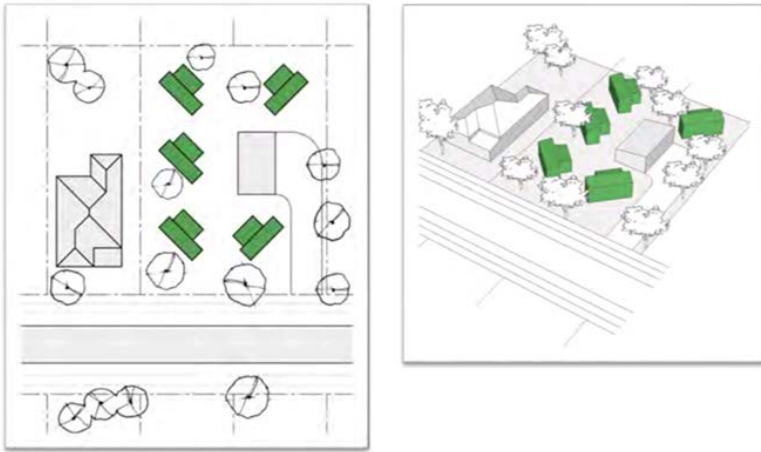
Tertiary homelessness: includes people living in boarding houses (or similar) on a medium to long term basis (13 weeks or longer). Residents may not have separate bedrooms and living rooms, they do not have a kitchen and bathroom facilities of their own, their accommodation is not self-contained, and they do not have security of tenure provided by a lease.

People who sleep rough are among the most vulnerable and disadvantaged. Their resilience and strength are put to the test daily and the experience has lasting impacts on their health and wellbeing. People experiencing long-term rough sleeping have an average life expectancy of 47 years. This is far below the national average life expectancy of 77 years or more.

This is not the trend we want to see and Council is working on a number of responses to address this, including a supported housing solution in the form of tiny house development. The legislation presently impedes this due to the lack of a legal term and category for a tiny house in the planning legislation.

The concept in its simplest form is to provide a temporary and relocatable housing solution under the terms of a lease for a moveable dwelling/s (MD) on Council owned and or managed land. Rent would be paid by the tiny house occupier to Council. Council could also choose to waive any rent payable depending on the circumstances. The MD is able to be removed and or relocated to another site when required. The land is able to be the subject of a new application and or returned to its original state once the MD/s is no longer required. A diagram below illustrates what this could look like.

[1] Census 2011 indicated 28.8 homeless persons per 10 000. By Census 2016 the number went up to 99.6 according to data provided by ABS. Homelessness



Source: A Place for Tiny Homes <http://www.tinyhousecompany.com.au/tiny-house-planning-resource>

It is understood that this matter is not unique to Byron Shire and any successful pilot may assist other councils in addressing their own local housing challenges by informing changes to the standard LEP instrument to enable this type of development to occur more broadly.

At its meeting 20 February 2020, Council considered a report on Tiny House Development in Byron Shire and resolved as follows:

20-016 Resolved that Council support:

1. *The preparation of an amendment to the Byron Local Environmental Plan 2014 to facilitate Tiny House Development on Council owned and or managed land for the provision of supported housing for people experiencing (or at risk of) homelessness.*
2. *The Planning proposal being drafted on the basis of the definitions and draft local provision outlined in the report.*
3. *The Planning proposal once prepared by staff is submitted to the Department of Planning for a gateway determination to enable public exhibition.*
4. *Staff writing to the Planning and Local Government departments to request formation of a working group with Byron Council and others (including industry) to further examine the tiny house spectrum and recommend changes to the planning and local government legislation to enable this type of development more flexibly and permanently.*

In accordance with the report to Council and the above resolution, the planning proposal is submitted to the Department for Gateway determination.

Part 2 Explanations of Provisions

The planning proposal seeks to amend Byron LEP 2014 by adding the following clause to Part 6 Additional Local Provisions in Byron LEP 2014:

Tiny House Development

- (1) The objectives of this clause are as follows—

- a) To enable development for the purposes of tiny house development for the provision of supported housing for people experiencing (or at risk of) homelessness.
 - b) To ensure that tiny house development is appropriately located.
 - c) To minimise the impact of tiny house development on the locality in which it is situated.
- (2) Despite any other provision of this Plan, development consent may be granted for development of a tiny house and or tiny house development on Council owned and or managed land for the provision of supported housing for people experiencing (or at risk of) homelessness.
- (3) In determining an application under subclause (2) Council must have regard to:
- a) locating the tiny house and or tiny house development as close as possible to existing residential facilities and social support services;
 - b) the availability and capacity of infrastructure to the site;
 - c) the purpose and provisions of the applicable zone and any applicable controls; and
 - d) the potential for land use conflict with other use or development on adjoining properties and any measures available to manage or mitigate such conflict.
- (4) In this clause:

“Tiny house” is a moveable dwelling up to 50m² GFA that is suitable for residential use, and may be on wheels or on skids.

“Tiny house development” is 2 or more tiny houses on one parcel of land.

“Supportive housing” is temporary accommodation to bridge the gap from homelessness to permanent housing and is located as close as possible to existing residential facilities and social support services.

“Temporary accommodation” is a residential use or development for a period of not more than 48 months from the date on which an occupation certificate is issued under the Act.

It is considered easiest to amend the Local Environmental Plan to include a local provision that would introduce new terms ‘tiny house’ and ‘tiny house development’ and a local provision for this type of development to occur including eligible land, persons, and a time frame for use. This would remove the current Local Environmental Plan definition impediment to this type of development. Other approvals under the Environmental Planning and Assessment Act and Local Government Act would otherwise remain where appropriate.

Part 3 Justification

Section A – Need for the Planning Proposal

Q1. Is the planning proposal a result of any strategic study or report?

The planning proposal provides an appropriate response to and is consistent with the vision and outcome sought for the Byron Shire given in various strategic studies including but not limited to the Byron Residential Strategy.

Q2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Adding a clause to the Byron LEP 2014 provides the legislative mechanism necessary to achieve the intended outcomes of the planning proposal.

Section B – Relationship to strategic planning framework

Q3. Will the planning proposal give effect to the objectives and actions of the applicable regional or district plan or strategy (including any exhibited draft plans or strategies)?

The planning proposal is consistent with the following *Regional Priority*, identified for Byron Shire within the Regional Plan:

Direction 25 Deliver more opportunities for affordable housing

5.1 Deliver more opportunities for affordable housing by incorporating policies and tools into local growth management strategies and local planning controls that will enable a greater variety of housing types and incentivise private investment in affordable housing.

Q4. Will the planning proposal give effect to a council's endorsed local strategic planning statement or another endorsed local strategy or strategic plan?

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. The themes or objectives are relevant to this Planning Proposal:

Community Strategic Plan and Operational Plan

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 4: We manage growth and change responsibly	4.2	Support housing diversity in appropriate locations across the Shire	4.2.1	Establish planning mechanisms to support housing that meets the needs of our community	4.2.1.4	Investigate and implement planning controls to encourage an increase in the supply of affordable and inclusive housing stock (Action in Residential Strategy)
	4.2	Support housing diversity in appropriate locations across the Shire	4.2.1	Establish planning mechanisms to support housing that meets the needs of our community	4.2.1.5	Prepare a report on deliberative development models to facilitate the delivery of accessible housing

Byron Shire Draft Local Strategic Planning Statement

A Liveable Shire

Local Priority 3: Support housing diversity and affordability with housing growth in the right locations.

Byron Shire Draft Residential Strategy

Policy 2: Improved housing choice, diversity and equity

DIRECTION 2.1: Enable opportunities for innovative new residential forms and models that give a sense of place, promote environmental stewardship and encourage social, economic and cultural diversity and equity.

DIRECTION 2.2: Facilitate and promote growth in the proportion of rental and tobuy housing aimed at the lower end of the market, including those with very low incomes.

On this basis the Planning Proposal is consistent with Council's CSP, draft LSPS and draft Residential Strategy.

Q5. Is the planning proposal consistent with applicable State Environmental Planning Policies?

Yes. The State Environmental Planning Policies (SEPP) relevant to this planning proposal are addressed below.

SEPP	Compliance of Planning Proposal
SEPP (Exempt and Complying Development Codes) 2008	The Planning Proposal does not affect the ongoing operation of the SEPP.
SEPP (Affordable Rental Housing) 2009	The Planning Proposal does not affect the ongoing operation of the SEPP.
SEPP (Infrastructure) 2007	The Planning Proposal does not affect the ongoing operation of the SEPP.

Q6. Is the planning proposal consistent with applicable Ministerial Directions (s9.1 directions)?

Unless otherwise noted the Planning Proposal is consistent with applicable Ministerial Directions as follows:

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).	Not applicable.	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	The Planning Proposal does not affect any Rural land.	N/A

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with direction
	land within an existing town or village).		
1.3 Mining, Petroleum Production and Extractive Industries	<p>Applies when a relevant planning authority prepares a planning proposal that would have the effect of:</p> <ul style="list-style-type: none"> (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. 	Nothing in this Planning Proposal will prohibit or restrict exploration or mining or the extraction of other material.	N/A
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. 	The Planning Proposal does not impact on any Priority Oyster Aquaculture Areas (POAA).	N/A
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 be consistent with the Rural Planning Principles listed in <i>State Environmental Planning Policy (Rural Lands) 2008</i>.</p>	The Planning Proposal does not affect Rural Land.	N/A

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with direction
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 Planning Proposal does not alter or remove any environment protection zone.	N/A
2.2 Coastal Protection	Direction applies when a relevant planning authority prepares a planning proposal that applies to land in the coastal zone.	The Planning Proposal does not affect Rural Land	N/A
2.3 Heritage Conservation	<p>A planning proposal must contain provisions that facilitate the conservation of:</p> <p>(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,</p> <p>(b) Aboriginal objects or Aboriginal places that are protected under the <i>National Parks and Wildlife Act 1974</i>, and</p> <p>(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 relevant planning authority, which identifies the area, object, place or landscape as being of heritage significance to Aboriginal culture and people.</p>	The Planning Proposal does not impact on heritage conservation.	N/A

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with direction
2.4 Recreation Vehicle Areas	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>).	The Planning Proposal does not enable land to be developed for the purpose of a recreation vehicle area.	N/A
3. Housing, Infrastructure and Urban Development			
3.1 Residential Zones	This direction applies when a relevant planning authority prepares a planning proposal that will affect land within: (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.	The Planning Proposal does not affect the possible density or mix of dwelling types on the land. This Planning Proposal will address the need for a supported housing solution in the form of a tiny house development in Byron Shire. The legislation presently impedes this due to the lack of a legal term and category for a tiny house in the planning legislation.	Consistent
3.2 Caravan Parks and Manufactured Home Estates	Applies when a relevant planning authority prepares a planning proposal that identifies suitable zones, locations and provisions for caravan parks.	Not applicable to this Planning Proposal.	N/A
3.3 Home Occupations	Planning proposals must permit home occupations to be carried out in dwelling-houses without the need for development consent.	This proposal does not alter home occupation provisions in Byron LEP 2014.	N/A
3.4 Integrating Land Use and Transport	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.	This Planning Proposal will address the need for a supported housing solution in the form of tiny house development in Byron Shire. The legislation presently impedes this due to the lack of a legal term and category for a tiny house in the planning legislation.	Consistent
3.5 Development Near Licensed Aerodrome	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.	The Planning Proposal will not alter provisions on land in the vicinity of the Tyagarah aerodrome.	N/A
4. Hazard and Risk			
4.1 Acid Sulfate Soils	Applies when a relevant planning authority prepares a planning proposal that will apply to land having a probability of containing acid sulfate	Byron LEP 2014 contains clause 6.1 to address ASS in any future Development Application.	Inconsistent

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with direction
	soils as shown on the Acid Sulfate Soils Planning Maps.		
4.2 Mine Subsidence and Unstable Land	Applies when a relevant planning authority prepares a planning proposal that permits development on land that is within a mine subsidence district.	This Proposal does not impact on any mine subsidence area.	N/A
4.3 Flood Prone Land	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.	The planning proposal will not impose flood controls on development above the flood planning level. Development in flood prone areas is subject to the provisions of existing clause 6.3 of the Byron LEP 2014, which will apply at Development Application stage.	Justifiably Inconsistent
4.4 Planning for Bushfire Protection	Applies when a relevant planning authority prepares a planning proposal that will affect, or is in proximity to land mapped as bushfire prone land.	Council will conduct consultation during notification of the Planning Proposal, and any recommendations from the Rural Fire Service will be incorporated in the Planning Proposal. The bushfire hazard will also be addressed at Development Application stage.	Justifiably Inconsistent
5. Regional Planning			
5.1 Implementation of Regional Strategies	Planning proposals must be consistent with a regional strategy released by the Minister for Planning.	See above.	Consistent.
5.2 Sydney Drinking Water Catchments	Applies when a relevant planning authority prepares a planning proposal that applies to the hydrological catchment.	Not relevant to this Planning Proposal.	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 an urban use.	Not relevant to this Planning Proposal.	N/A
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	Applies to land located on “within town” segments of the Pacific Highway.	Not relevant to this Planning Proposal.	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 section 57 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 section 57 of the Act. 	<p>The Planning Proposal will not include provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority.</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 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>The Planning Proposal will facilitate nominated development to be carried out on Council owned and or managed land only.</p> <p>This Planning Proposal will address the need for a supported housing solution in the form of tiny house development in Byron Shire.</p> <p>The legislation presently impedes this due to the lack of a legal term and category for a tiny house in the planning legislation.</p>	Justifiably inconsistent.

Section C – Environmental, social and economic impact

Q7. 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?

The amendments proposed will not adversely affect critical habitat or threatened species, populations or ecological communities, or their habitats.

Q8. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

There are negligible environmental effects likely as a result amendments outlined in this Planning Proposal.

Q9. Has the planning proposal adequately addressed any social and economic impacts?

Homelessness is a growing concern for our Shire. From 2011 to 2016, the homelessness rate increased by 245.83%. In addition, Council coordinates periodic street counts of people sleeping rough in Byron Shire. From August 2018 to August 2019, we found an increase of 18% in three identified hotspots.

People experiencing homelessness are part of our community. And our community has a rate of homelessness twice the national average and within that the percentage of homeless people sleeping rough is 6 times the national average.

This is not the trend we want to see and Council is working on a number of responses to address this including a supported housing solution in the form of a tiny house development. The legislation presently impedes this due to the lack of a legal term and category for a tiny house in the planning legislation.

From a social and economic perspective, the planning proposal provides a positive outcome to the community within Byron Shire.

Section D – State and Commonwealth interests

Q10. Is there adequate public infrastructure for the planning proposal?

There is adequate public infrastructure to support the additional use contained in the proposal.

Q11. What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway determination?

State and Commonwealth public authorities have not been formally involved in this particular Planning Proposal as it is yet to receive Gateway Approval. 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.

Part 4 Mapping

No changes are proposed to the Byron LEP 2014 Map Sheet. The Planning Proposal will apply to Council owned and or managed land.

Part 5 Community Consultation

The Planning Proposal will be advertised in local papers and on display at Council's administration building. The planning proposal will also be made available on Council's web site.

Part 6 Project Timelines

An indicative project timeline is provided in the table below:

Plan making step	Estimated Completion
Gateway Determination	April 2020
Government Agency consultation	May 2020
Public Exhibition Period	May 2020
Submissions Assessment	June 2020
Council assessment of planning proposal & exhibition outcomes	June/August 2020
Submission of endorsed LEP amendment to Parliamentary Counsel for drafting	September 2020

(delegated authority)	
Council to make the LEP amendment (delegated authority)	October 2020
Forwarding of LEP amendment to Department of Planning & Environment for notification (if delegated)	November 2020

Conclusion

This Planning Proposal seeks to introduce a new local clause into Byron LEP 2014 to facilitate tiny house development on Council owned and or managed land for the provision of supported housing for people experiencing (or at risk of) homelessness.

This Planning Proposal will not impact on environmental areas nor create unreasonable demand on urban infrastructure.

This Planning Proposal will have positive social and economic effects by addressing the need for a supported housing solution in the form of a tiny house development in Byron Shire. The legislation presently impedes this due to the lack of a legal term and category for a tiny house in the planning legislation.

The proposed LEP amendments are generally consistent with the North Coast Regional Plan. An assessment of the planning proposal indicates that it is consistent with relevant SEPPs and most of the relevant s9.1 Directions.

Appendix A Proposed LEP Amendments

The following clause is proposed to be added to Part 6 Additional Local Provisions in Byron LEP 2014:

Tiny House Development

- (1) The objectives of this clause are as follows—
 - a) To enable development for the purposes of tiny house development for the provision of supported housing for people experiencing (or at risk of) homelessness.
 - b) To ensure that tiny house development is appropriately located.
 - c) To minimise the impact of tiny house development on the locality in which it is situated.
- (2) Despite any other provision of this Plan, development consent may be granted for development of a tiny house and or tiny house development on Council owned and or managed land for the provision of supported housing for people experiencing (or at risk of) homelessness.
- (3) In determining an application under subclause (2) Council must have regard to:
 - a) locating the tiny house and or tiny house development as close as possible to existing residential facilities and social support services;
 - b) the availability and capacity of infrastructure to the site;
 - c) the purpose and provisions of the applicable zone and any applicable controls; and
 - d) the potential for land use conflict with other use or development on adjoining properties and any measures available to manage or mitigate such conflict.
- (4) In this clause:

“Tiny house” is a moveable dwelling up to 50m² GFA that is suitable for residential use, and may be on wheels or on skids.

“Tiny house development” is 2 or more tiny houses on one parcel of land.

“Supportive housing” is temporary accommodation to bridge the gap from homelessness to permanent housing and is located as close as possible to existing residential facilities and social support services.

“Temporary accommodation” is a residential use or development for a period of not more than 48 months from the date on which an occupation certificate is issued under the Act.