



IRF22/3079

Gateway determination report – PP-2022-2959

Tourist and visitor accommodation – RU1 Primary
Production and RU2 Rural Landscape Zones

October 22



Published by NSW Department of Planning and Environment

dpie.nsw.gov.au

Title: Gateway determination report – PP-2022-2959

Subtitle: Tourist and visitor accommodation – RU1 Primary Production and RU2 Rural Landscape Zones

© State of New South Wales through Department of Planning and Environment 2022. You may copy, distribute, display, download and otherwise freely deal with this publication for any purpose, provided that you attribute the Department of Planning and Environment as the owner. However, you must obtain permission if you wish to charge others for access to the publication (other than at cost); include the publication in advertising or a product for sale; modify the publication; or republish the publication on a website. You may freely link to the publication on a departmental website.

Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing (September 22) and may not be accurate, current or complete. The State of New South Wales (including the NSW Department of Planning and Environment), the author and the publisher take no responsibility, and will accept no liability, for the accuracy, currency, reliability or correctness of any information included in the document (including material provided by third parties). Readers should make their own inquiries and rely on their own advice when making decisions related to material contained in this publication.

Acknowledgment of Country

The Department of Planning and Environment acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

Contents

1	Planning proposal.....	2
1.1	Overview.....	2
1.2	Objectives of planning proposal	2
1.3	Explanation of provisions	3
1.4	Site description and surrounding area.....	4
1.5	Mapping.....	4
1.6	Background	4
2	Need for the planning proposal	4
3	Strategic assessment	5
3.1	North Coast Regional Plan 2036.....	5
3.2	Draft North Coast Regional Plan 2041	6
3.3	Local strategic framework	6
3.4	Section 9.1 Ministerial Directions	7
3.5	State environmental planning policies (SEPPs)	9
3.6	Agritourism Reforms	9
4	Site-specific assessment	11
4.1	Environmental.....	11
4.2	Social and economic.....	12
4.3	Infrastructure	12
5	Consultation.....	13
5.1	Community	13
5.2	Agencies.....	13
6	Timeframe	13
7	Local plan-making authority	13
8	Assessment summary	14
9	Recommendation.....	14

Table 1 Reports and plans supporting the proposal

Relevant reports and plans

Planning Proposal PP-2022-2959 – Council Reference 26.2022.5.1

Review of Planning Controls for Rural Tourist Accommodation – October 2020

Draft Development Control Plan - Chapter D3 Tourist Accommodation

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	Byron Shire
PPA	Byron Shire Council
NAME	Tourist and Visitor Accommodation – RU1 Primary Production and RU2 Rural Landscape Zones (0 Homes, 0 Jobs)
NUMBER	PP-2022-2959
LEP TO BE AMENDED	Byron LEP 2014
ADDRESS	RU1 Primary Production and RU2 Rural Landscape Zones
DESCRIPTION	Various Lots
RECEIVED	17/08/2022
FILE NO.	IRF22/3079
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

1.2 Objectives of planning proposal

The objectives of the planning proposal are to amend Byron LEP 2014 to introduce a 20ha minimum lot size for rural tourist accommodation in the RU1 and RU2 zones and to reduce the number of farm-stay accommodation bedrooms currently permitted under clause 5.4 of the LEP from 12 to 8.

‘Rural tourist accommodation’ is not a defined term within the Standard Instrument LEP. Council has used this as a general term for tourist and visitor accommodation in rural areas.

Tourist and visitor accommodation is defined as a building or place that provides temporary or short-term accommodation on a commercial basis, and includes any of the following -

- (a) backpackers’ accommodation,
- (b) bed and breakfast accommodation,

- (c) farm stay accommodation,
- (d) hotel or motel accommodation,
- (e) serviced apartments,
- but does not include –
- (f) camping grounds, or
- (g) caravan parks, or
- (h) eco-tourist facilities.

It is recommended that Council amend the planning proposal prior to consultation to refer to tourist and visitor accommodation in rural areas to avoid ambiguity.

Council has identified the current planning pathway for tourist and visitor accommodation in rural areas through the development application process is resulting in development on rural land that is not entirely consistent with the RU1 and RU2 zone objectives. Council believes there has been a prevalence of smaller sites being over-developed along with inconsistent outcomes in relation to environmental enhancement and conservation (despite Council having the ability to assess and manage these outcomes through the development application process).

The objectives of this planning proposal are clear. No objection is raised to the objective of reducing the number of farm stay accommodation bedrooms. The objective of prohibiting tourist and visitor accommodation across the proposed zones on lots less than 20 hectares is not supported. The proposal is not supported by any assessment into the economic impact on the tourism industry in Byron LGA that would result nor its consistency with the recently released agri-tourism reforms. It is also considered that such proposals can be appropriately and adequately managed through the development application process and a prohibition on lots less than 20 hectares is not needed or necessary.

1.3 Explanation of provisions

The planning proposal seeks to amend the Byron LEP 2014 to:

- introduce a 20ha minimum lot size for tourist and visitor accommodation in the RU1 and RU2 zones; and
- reduce the number of farm-stay accommodation bedrooms permitted from 12 to 8.

The introduction of the 20ha minimum lot size provision is not supported for the reasons discussed above (and noting that tourism is one of the key drivers of Byron's economy).

Table 3 Current and proposed controls

Control	Current	Proposed
Minimum lot size	No minimum lot size	20ha minimum lot size
Number of bedrooms for farm stay accommodation	12	8

The planning proposal contains an explanation of provisions that details how the objectives of the proposal will be achieved. It notes the drafting of the amendments to the Byron LEP 2014 will be subject to Parliamentary Counsel review.

The amendment to the number of bedrooms for farm stay accommodation is considered to have a minimal impact on the community and provides scope for Council to ensure development is at an appropriate scale.

It is noted that Byron LEP 1988 contains clause 34 Tourist Accommodation in rural zones includes a requirement that a rural tourist facility incorporating holiday cabins must not be carried out on a lot less than 20 hectares in size. This clause however has a limited application as it applies to only rural land still deferred due to the E Zone review and not all types of tourist and visitor accommodation.

The Byron LEP 2014 includes Clause 6.8 Rural and nature-based tourism development that seeks to ensure that tourism development in rural and natural areas is small scale and does not adversely impact on the agricultural production, scenic or environmental values of the land. This clause includes a local definition of 'tourism development' that includes different and additional land uses than the definition of tourist and visitor accommodation.

1.4 Site description and surrounding area

The planning proposal applies to all land zoned RU1 Primary Production and RU2 Rural Landscape.

1.5 Mapping

The planning proposal does not require amendment to any LEP maps.

1.6 Background

The planning proposal is the result of a Council review that investigated the current planning framework and looked at options for limiting the scale and density of development for 'rural cabins' and farm stay accommodation. The Council review suggested the current planning framework for 'rural tourist accommodation' is resulting in development on rural land that is not consistent with the RU1 and RU2 zone objectives. It was recommended this could be rectified by bringing the Byron LEP 2014 into closer alignment with that of Byron LEP 1988 that currently applies a 20ha minimum lot size for this type of development.

2 Need for the planning proposal

Council believes this planning proposal is necessary because the current planning framework under Byron LEP 2014 allows tourist and visitor accommodation to occur in circumstances that could be inconsistent with the RU1 and RU2 zone objectives.

Council has identified there has been an increase of smaller sites (under 20ha) being over-developed along with inconsistent and inappropriate outcomes in relation to environmental enhancement and conservation set out in the Byron Development Control Plan 2014. Council's investigation into this identified approximately 40% of development applications received since 2014 were on lots less than 20ha. They consider this proliferation of tourist accommodation on smaller sites without agricultural potential or significant capability for environmental enhancement is inconsistent with their broader planning objectives for rural tourism.

The Council review has recommended a minimum lot size provision be introduced into the Byron LEP 2014 to ensure the environmental enhancements, conservation goals and the zone objectives are achieved. The proposed minimum lot size will be consistent with the provisions of the Byron LEP 1988 that are still in force over some parts of the Shire.

The introduction of the minimum lot size for tourist and visitor accommodation across the rural zones will significantly reduce the number of lots able to be developed. Council was requested to

provide additional information on the total number of lots within their RU1 and RU2 zones below 20ha in size. Council advised that only 28.7% of rural zoned land is above the proposed 20ha minimum lot size for tourist and visitor accommodation. The remaining 71.3% of lots are below 20ha and would not be able to be considered for development if this proposal progresses. These figures are approximate as they include road reserves, service and utility lots, and other sites not suitable for a dwelling or tourist accommodation.

The introduction of the proposed minimum lot size will therefore have a significant impact on the number of rural lots that have potential for tourist and visitor accommodation. This is not considered appropriate without further economic investigation into the impacts this will have on the tourist industry of Byron.

It is also noted that both rural zones include a specific objective added by Council to enable the provision of tourist accommodation, facilities and other small-scale rural tourism uses associated with primary production and environmental conservation consistent with the rural character of the locality. Byron LEP 2014 also contains clause 6.8 Rural and nature-based tourism to help manage and control rural tourism. Any incidents of overdevelopment of small sites and the inconsistent application of environmental enhancement and conservation measures are likely to have occurred because of the inconsistent application of the Byron LEP 2014 and Byron DCP 2014 overtime rather than issues with the planning framework.

The proposed 20ha minimum lot size for rural tourist accommodation is also considered to be inconsistent with the intent of the Department's Agritourism reforms made on 6 October 2022. The reforms introduce clear planning definitions for agritourism, including farm stay accommodation, and allow activities to be done as either exempt development, complying development or under a development application. This planning proposal effectively prohibits farm stay accommodation on lots less than 20 hectares when development consent would be required. This is considered inconsistent with the intent of the reforms as discussed with the Department's Planning and Legislation policy team.

The proposed 20-hectare minimum lot size restriction is therefore not supported at the present time as insufficient evidence has been provided regarding the economic impacts, consistency with the Government's agri-tourism reforms or why these uses are unable to be managed through the development application process.

A preferable alternate approach to ensure tourist and visitor accommodation is located on appropriate sites is to include a new heads of consideration clause in the LEP, or amend existing clause 6.8, to clearly identify the matters proponents will need to address when seeking development consent until further economic evidence on the impact of the proposal is provided. This gives greater flexibility to Council to consider applications where sites may be small but still provide a good planning outcome that meets the objectives of the zones.

No objection is raised to the proposal to reduce the number of farm stay accommodation bedrooms from 12 to 8.

3 Strategic assessment

3.1 North Coast Regional Plan 2036

The proposal is considered to be consistent with the relevant aspects of the North Coast Regional Plan. 2036 except as discussed in the table below.

Table 4 Regional Plan assessment

Regional Plan Objectives	Justification
Direction 8: Promote the growth of Tourism	This Direction notes the important role tourism has on the Region's economy and aims to facilitate tourism and visitor accommodation and supporting land uses in coastal and rural hinterland locations through local growth management strategies and local environmental plans. This planning proposal reduces Council's ability to facilitate tourism and visitor accommodation and is therefore inconsistent with this Direction unless amended as recommended by this report.

3.2 Draft North Coast Regional Plan 2041

The proposal is considered to be consistent with the relevant aspects of the draft North Coast Regional Plan 2041 except as discussed in the table below (it is noted that the planning proposal does not address the draft Regional Plan and this should be amended prior to consultation).

Table 5 Draft Regional Plan assessment

Regional Plan Objectives	Justification
OBJECTIVE 12: Create a diverse visitor economy	As lodged, tourist and visitor accommodation in the rural areas will remain as a permissible use but will be dramatically reduced in where it can be located within the rural zones and is inconsistent with this objective. The alternate suggested approach of a heads of consideration clause would ensure growth in this sector, providing flexibility within the planning framework and consistency with the draft plan.

3.3 Local strategic framework

The proposal states that it is consistent with the following local plans and endorsed strategies. It is also consistent with the strategic direction and objectives, as stated in the table below:

Table 6 Local strategic planning assessment

Local Strategies	Justification
Byron Shire Local Strategic Planning Statement	<p>A key priority of the LSPS is to develop and implement strategies to support agriculture, agri-business and farmers. Council has prepared an Agricultural Action Plan with goals to ensure agriculture remains a major economic contributor to Byron's Gross Regional Product. The amendments within this planning proposal seek to ensure tourist accommodation is small scale and located on appropriately sized lots so that adequate area is available for agriculture uses on our rural land.</p> <p>Another priority is to protect and enhance biodiversity, ecosystems and ecology. The requirement for vegetation management plans and compensatory plantings through the DCP help achieve this.</p>

Byron Rural Land
Use Strategy 2017

The Byron RLUS was prepared to preserve the distinctive character, values and economic capacity of the Shire's rural areas for future generations and improve planning for all rural land uses in the Shire. Action 10 of the Strategy is to identify opportunities in the local planning framework to improve the capacity for future rural lifestyle living and rural tourism development opportunities to deliver environmental enhancement outcomes.

Action 13 of the Strategy is to identify opportunities in the local planning framework to support and strengthen existing agricultural activities and low scale rural tourism opportunities, particularly those directly associated with primary production and / or improved conservation outcomes.

Council outlines in the planning proposal that proponents have interpreted the limits on bedrooms for farm stay accommodation in clause 5.4 to enable 12 separate accommodation buildings resulting in tourist development which is not considered low scale. They consider the reduction in the maximum number of bedrooms from 12 to 8 will help to ensure accommodation is low scale and allowing sufficient area to support agriculture activities on the site. Ensuring tourism accommodation remains low scale will also minimise conflicts with adjoining land uses.

3.4 Section 9.1 Ministerial Directions

The planning proposal's consistency with relevant section 9.1 Directions is discussed below:

Table 7 9.1 Ministerial Direction assessment

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
1.1 Implementation of Regional Plans	Inconsistent	<p>The proposal is inconsistent with the regional plan as it reduces Council's ability to facilitate tourism and visitor accommodation in accordance with Direction 8: Promote the growth of Tourism.</p> <p>Despite tourist and visitor accommodation in the rural areas remaining a permissible use in the rural zones, the areas where they can occur will be reduced by approximately 70%. The proposed alternate approach of a heads of consideration clause would ensure the planning proposal is consistent with the regional plan and this Direction.</p>
1.4 Site Specific Provision	Inconsistent	<p>The planning proposal is inconsistent with this direction as it proposes to introduce a minimum lot size for tourist and visitor accommodation via the inclusion of a local provision. This is considered an unnecessarily restrictive site-specific planning control.</p> <p>The proposed alternate approach of a heads of consideration clause would ensure the planning proposal is consistent with this Direction</p>

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
4.1 Flooding	Justifiably inconsistent	<p>This direction applies to a planning proposal that alters a provision that affects flood prone land.</p> <p>Some rural zoned land in the Byron Shire will be subject to inundation by flooding. The planning proposal does not include provisions that give effect to and are consistent with the NSW Flood Prone Land Policy, the principles of the Floodplain Development Manual 2005, the Considering Flooding in Land Use Planning Guideline 2021 or any adopted flood study and/or floodplain risk management plan.</p> <p>It is considered that the inconsistency is of minor significance as the proposal seeks to ensure tourist and visitor accommodation is located appropriately rather than increasing the density of this land use. Furthermore, the Byron LEP 2014 already contains provisions that will ensure appropriate consideration of flood planning at the development application stage.</p>
4.2 Coastal Management	Justifiably inconsistent	<p>Rural zoned land within Byron Shire may be in proximity to, or contain, coastal wetlands or littoral rainforests. As such, this direction is relevant to the proposal.</p> <p>The proposal does not include provisions that give effect to and are consistent with the objects of the Coastal Management Act 2016 and the objectives of the relevant coastal management areas, the NSW Coastal Management Manual and associated Toolkit, the NSW Coastal Design Guidelines 2003 or any relevant Coastal Management Program.</p> <p>The inconsistency is considered to be of minor significance as the proposal seeks to ensure tourist and visitor accommodation is located appropriately rather than increasing the density of this land use. Furthermore, any future development application will be required to demonstrate consistency with State Environmental Planning Policy (Resilience and Hazards) 2021.</p>
4.3 Planning for Bushfire Protection	Unresolved	<p>This direction is relevant to the proposal as the application affects or is in proximity to land mapped as bushfire prone.</p> <p>The direction provides that Council must consult with the Commissioner of the NSW Rural Fire Service (RFS) after a Gateway determination is issued and before community consultation is undertaken. Until consultation has been undertaken, the direction remains unresolved.</p>
4.4 Remediation of Contaminated Land	Justifiably inconsistent	<p>The planning proposal applies to rural zones that have the potential to be contaminated.</p> <p>The inconsistency is considered to be of minor significance in this instance as the planning proposal does not rezone any land or intensify any land uses.</p>

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
4.5 Acid Sulfate Soils	Justifiably inconsistent	<p>The planning proposal applies to rural zones that have the potential to be affected by acid sulfate soils.</p> <p>The planning proposal is inconsistent with this direction as it enables intensification of land use on acid sulfate soils and the proposal is not supported by an acid sulfate soils study.</p> <p>The inconsistency is considered to be of minor significance as Byron LEP 2014 already contains suitable provisions (clause 6.1) to ensure that this matter can be appropriately considered and addressed as part of any future development application.</p>
9.2 Rural Lands	Justifiably inconsistent	<p>This direction applies as the planning proposal will affect land within existing rural zones and mapped as containing state and regionally significant agricultural land.</p> <p>The inconsistency is considered to be of minor significance as the planning proposal seeks to align the existing provisions for tourist and visitor accommodation and farm stay accommodation with the objectives of the rural zones and to ensure tourist and visitor accommodation is located appropriately rather than increasing the density of this land use.</p> <p>The proposed alternate approach of a heads of consideration clause will minimise land use conflicts and maintain viability of important farmland.</p>

3.5 State environmental planning policies (SEPPs)

The planning proposal is broadly consistent with all relevant SEPPs.

3.6 Agritourism Reforms

New planning controls will be coming into force on 1 December 2022 making it easier for farmers to use their land for agritourism to complement their existing businesses. This includes running activities such as farm experiences, cellar doors, cafes, retreats, roadside stalls, fruit picking and hosting small weddings. The new planning controls were legislated on 6 October and come into force on 1 December 2022.

The planning controls introduces a new definition of farm stay accommodation and a new optional clause into the Standard Instrument. It is recommended Council amend the planning proposal to reference the new planning controls and indicate whether the optional clause, discussed below, will be adopted.

The new definition of farm stay accommodation is a building or place -

- (a) on a commercial farm, and
- (b) ancillary to the farm, and
- (c) used to provide temporary accommodation to paying guests of the farm, including in buildings or moveable dwellings.

The optional clause is below. It is recommended Council amend the planning proposal to indicate whether this optional clause will be adopted.

5.24 Farm stay accommodation [optional]

- (1) The objectives of this clause are as follows -
 - (a) to diversify the uses of agricultural land without adversely impacting the principal use of the land for primary production,
 - (b) to balance the impact of tourism and related commercial uses with the use of land for primary production, the environment, scenic values, infrastructure and adjoining land uses.

Direction— Additional objectives may be included.

- (2) Development consent must not be granted to development for the purposes of farm stay accommodation on a landholding unless the consent authority is satisfied all buildings or manufactured homes used to accommodate guests on the landholding will be -
 - (a) on the same lot as an existing lawful dwelling house, or
 - (b) on a lot of a size not less than the minimum lot size for a dwelling house to be permitted on the lot under an environmental planning instrument applying to the land.
- (3) Subclause (2) does not apply if the development is a change of use of an existing dwelling to farm stay accommodation.
- (4) Development consent must not be granted to development for the purposes of farm stay accommodation on land unless the consent authority has considered -
 - (a) whether the development will result in noise or pollution that will have a significant adverse impact on the following on or near the land—
 - (i) residential accommodation,
 - (ii) primary production operations,
 - (iii) other land uses, and
 - (b) whether the development will have a significant adverse impact on the following on or near the land -
 - (i) the visual amenity or heritage or scenic values,
 - (ii) native or significant flora or fauna,
 - (iii) water quality,
 - (iv) traffic,
 - (v) the safety of persons, and
 - (c) whether the development is on bush fire prone land or flood prone land, and
 - (d) the suitability of the land for the development, and
 - (e) the compatibility of the development with nearby land uses.

Direction— Additional development standards for farm stay accommodation may be included.

The reforms also amend clause 5.4(5) of the Standard Instrument to insert “in buildings” after “bedrooms”. This will remove ambiguity as the new definition of farm stay accommodation allows moveable dwellings (tents and caravans of the like). Council’s proposal to reduce the number of

bedrooms from 12 to 8 will not be inconsistent with the new optional clause or the reforms to agritourism.

4 Site-specific assessment

4.1 Environmental

The following table provides an assessment of the potential environmental impacts associated with the proposal.

Table 8 Environmental impact assessment

Environmental Impact	Assessment
Biodiversity and Regionally Significant Farmland	<p>The planning proposal relates to land zoned RU1 Primary Production and RU2 Rural Landscape, with portions containing:</p> <ul style="list-style-type: none"> • high environmental value land • biodiversity values • land mapped as state significant farmland and regionally significant farmland. <p>The planning proposal seeks to align the existing provisions for tourist and visitor accommodation and farm stay accommodation with the objectives of the rural zones. The proposed alternate approach of a heads of consideration clause, or amendment of existing clause 6.8, will ensure there is sufficient land available for environmental enhancement as required by Byron DCP 2014.</p> <p>The Byron DCP 2014 requires a vegetation management plan and compensatory plantings as part of a development approval for tourist accommodation in the rural zones.</p> <p>The proposed alternate approach of a heads of consideration clause and appropriate consideration at the development application stage can ensure there is space available within the lot to fulfil the environmental enhancement requirements and avoid areas with high environmental value and areas mapped as state significant farmland and regionally significant farmland. Consultation with DPI – Agriculture is also recommended.</p>
Bushfire	<p>Much of the rural zones of the Byron Shire are mapped as being subject to bushfire risk. Section 9.1 direction 4.3 Planning for Bushfire Protection requires council to consult with the Commissioner of the NSW Rural Fire Service (RFS) after a Gateway determination is issued to ensure that this matter is capable of being addressed.</p>
Flooding	<p>Parts of the rural zoned land in the Byron Shire are prone to flooding. The Byron LEP 2014 contains provisions that will ensure appropriate consideration of flood planning at the development application stage.</p> <p>The planning proposal does not rezone flood prone land or permit additional development within flood prone land.</p>

4.2 Social and economic

The planning proposal does not include a comprehensive assessment of the social and economic impacts of its objectives. The following table provides an assessment of the potential social and economic impacts associated with the proposal.

Table 9 Social and economic impact assessment

Social and Economic Impact	Assessment
Social	<p>It is expected that limiting the area where tourist and visitor accommodation is permissible to rural zoned lots above 20ha will have a neutral social impact. It is likely that the potential for land use conflict will be reduced, and the rural character and agricultural capability of land will be maintained but opportunities for certain lots that may be able to cater for tourist accommodation given their location and physical attributes will be excluded from doing so arbitrarily.</p> <p>The proposed alternate approach of a heads of consideration clause and appropriate consideration at the development application stage will provide greater flexibility within the planning framework.</p>
Economic	<p>The planning proposal will significantly reduce the area where tourist and visitor accommodation can occur with the Byron LGA. Approximately 70% of the rural zoned areas of the Shire will be excluded from permitting this land use.</p> <p>Council has not provided an appropriate assessment of the economic impact the proposed 20ha minimum lot size will have on the tourism industry. Given tourism is one of Byron's key economic drivers it is considered appropriate that flexibility be provided in the planning framework to ensure tourist and visitor accommodation is located sensibly, at the correct scale for existing infrastructure and at appropriate densities for each location, until further economic evidence on the impact of the proposal can be provided. The proposed alternate approach of a heads of consideration clause, or amendment of clause 6.8 can help achieve this while not eliminating land based on a lot size not supported by appropriate economic evidence.</p>
Tourism	<p>This proposal will limit the potential for tourist and visitor accommodation, and subsequently tourism, into the future.</p> <p>It is considered appropriate that consultation is undertaken with Destination NSW as the lead government agency for tourism in NSW.</p>

4.3 Infrastructure

The planning proposal will have minimal impact on the existing or future infrastructure needs.

Table 10 Infrastructure assessment

Infrastructure	Assessment
Local	Local infrastructure upgrades will be required specific to site requirements identified at the development application stage for each tourist and visitor accommodation proposal. It is noted that council requires an acceptable standard of road infrastructure to be provided at no cost to the wider community.
State	There will be no impact on State or regional infrastructure or the requirement for additional funding

5 Consultation

5.1 Community

Council proposes a community consultation period of 28 days.

The Local Environmental Plan Making Guidelines released by the Department of Planning, Industry and Environment in 2021 recommend a maximum public exhibition period of 20 working days for a standard planning proposal which is generally consistent with Council's proposed 28 calendar days.

An exhibition period of 20 days has been included as a condition of the Gateway determination.

5.2 Agencies

Council has nominated the public agencies to be consulted about the planning proposal.

It is recommended the following agencies be consulted on the planning proposal and given 21 days to comment:

- Department of Primary Industries – Agriculture;
- Destination NSW; and
- NSW Rural Fire Service

6 Timeframe

Council proposes a five month time frame to complete the LEP.

The Department recommends a time frame of nine months to ensure the proposed amendments can be made and noting that there is no impediment to Council finalising the proposal more quickly.

7 Local plan-making authority

Council has advised that it wishes to exercise its functions as a Local Plan-Making authority.

As the planning proposal is of local significance it is recommended that Council be authorised to be the local plan-making authority for this proposal.

Council staff have been contacted regarding the proposed approach to having a heads of consideration clause or amending existing clause 6.8. They did not object to the approach and indicated they will review this report and the Gateway determination and then discuss the matter further with the Department's Regional Office.

8 Assessment summary

The planning proposal, subject to it being amended to the alternate approach of a heads of consideration clause or amendment of existing clause 6.8, is supported to proceed with conditions for the following reasons:

- it will ensure tourist and visitor accommodation and farm stay accommodation is built in appropriate locations, on suitably sized lots at an appropriate scale to meet the objectives of the RU1 Primary Production and RU2 Rural Landscape zones.
- it is not inconsistent with the North Coast Regional Plan 2036 and will assist in delivering key Directions.

As discussed in the previous sections 4 and 5, the proposal should be updated to:

- include an alternative approach to managing tourist and visitor accommodation developments by incorporating a 'heads of consideration' clause or amending existing clause 6.8 of Byron LEP 2014 that addresses key matters before the consent authority can grant consent.

Based on the assessment outlined in this report, the proposal is also to be updated before consultation to:

- remove the proposal of a 20ha minimum lot size for tourist and visitor accommodation in the RU1 Primary Production and RU2 Rural Landscape zones.
- include discussion on the proposal's consistency with the draft North Coast Regional Plan 2041 and the recently released Agri-tourism reforms.

If this approach is not considered appropriate and the 20ha minimum lot size is supported, it is recommended an assessment by undertaken by Council into the economic impact this proposal will have on tourism in the Byron Shire.

9 Recommendation

It is recommended the delegate of the Secretary:

- Agree that any inconsistencies with section 9.1 Directions 4.1 Flooding, 4.2 Coastal Management, 4.4 Remediation of Contaminated Land, 4.5 Acid Sulfate Soils and 9.2 Rural Lands are minor or justified: and
- Note that the consistency with section 9.1 Direction 4.3 Planning for Bushfire Protection is unresolved and will require justification.

It is recommended the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. The planning proposal is to be updated to:
 - include an alternative approach to managing tourist and visitor accommodation developments by incorporating a 'heads of consideration' clause or amending existing clause 6.8 of the Byron LEP 2014 that addresses key matters to be addressed before the consent authority can grant consent. including, but not limited to:
 - remove the proposal of a 20ha minimum lot size for tourist and visitor accommodation in the RU1 Primary Production and RU2 Rural Landscape zones.
 - Include discussion on the new planning controls for Agri-tourism.
 - Include discussion on the draft North Coast Regional Plan 2041.
2. Consultation is required with the following public authorities:
 - NSW Department of Primary Industries - Agriculture;

- NSW Rural Fire Service;
 - Destination NSW
3. The planning proposal should be made available for community consultation for a minimum of 20 days.
 4. The timeframe for completing the LEP is to be nine months from the date of the Gateway determination.
 5. Given the nature of the proposal, Council should be authorised to be the local plan-making authority.



20 October 2022

(Signature)

(Date)

Craig Diss

Manager, Northern Region



21 October 2022

(Signature)

(Date)

Jeremy Gray

Director, Northern Region



25 October 2022

(Signature)

Malcolm McDonald

Executive Director, Local and Regional Planning

Assessment officer

Jon Stone

Senior Planning Officer, Local and Regional Planning

Northern Region

5778 1488