

# **Compilation of Gateway determinations and letters**

## Contents

Dated 24 June 2021

Dated 3 June 2022

Dated 13 December 2022



Mr Mark Arnold  
General Manager  
Byron Shire Council  
PO Box 219  
MULLUMBIMBY NSW 2482

via email: [council@byron.nsw.gov.au](mailto:council@byron.nsw.gov.au)  
[ben.grant@byron.nsw.gov.au](mailto:ben.grant@byron.nsw.gov.au)

Dear Mr Arnold

### **Planning proposal PP-2021-3355**

I am writing in response to Council's request for a Gateway determination under section 3.34(1) of the *Environmental Planning and Assessment Act 1979* (the Act) in respect of the planning proposal to reduce the number of days of non-hosted short-term rental accommodation in parts of the Byron Shire Local Government Area.

As delegate of the Minister for Planning and Public Spaces, I have now determined that the planning proposal should proceed subject to the conditions in the enclosed Gateway determination.

I have also agreed, as delegate of the Secretary, the planning proposal's inconsistencies with section 9.1 Directions 2.1 Environment Protection Zones, 2.2 Coastal Management, 4.1 Acid Sulfate Soils and 4.3 Flood Prone Land are justified in accordance with the terms of the Direction. No further approval is required in relation to these Directions.

Council may still need to obtain the agreement of the Secretary to comply with the requirements of relevant section 9.1 Directions 3.7 Reduction in non-hosted short-term rental accommodation period, 4.4 Planning for Bushfire Protection and 5.10 Implementation of Regional Plans. Council should ensure this occurs prior to public exhibition.

I have determined not to condition the Gateway for Council to be the local plan-making authority as the planning proposal has the potential to be contentious across various sectors of the community, and it involves changes to a State Environmental Planning Policy.

The amendment is to be finalised within 12 months of the date of the Gateway determination. Council should aim to commence the exhibition of the planning proposal as soon as possible. Council's request for the Department of Planning,

Industry and Environment to draft and finalise the State Environmental Planning Policy should be made eight weeks prior to the projected publication date.

The state government is committed to reducing the time taken to complete amendments to environmental planning instruments 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 3.32(2)(d) of the Act if the time frames outlined in this determination are not met.

Should you have any enquiries about this matter, I have arranged for Ms Gina Davis to assist you. Ms Davis can be contacted on 5778 1487.

Yours sincerely



24/06/2021

**Marcus Ray**  
**Group Deputy Secretary**  
**Planning and Assessment**

Encl: Gateway determination



## Gateway Determination

***Planning proposal (Department Ref: PP-2021-3355): to reduce the number of days of non-hosted short-term rental accommodation in parts of the Byron Shire Local Government Area.***

I, the Group Deputy Secretary, Planning and Assessment at the Department of Planning, Industry and Environment, as delegate of the Minister for Planning and Public Spaces, have determined under section 3.34(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to State Environmental Planning Policy (Affordable Rental Housing) 2009 to reduce the number of days of non-hosted short-term rental accommodation in parts of the Byron Shire Local Government Area should proceed subject to the following conditions:

1. Prior to agency and community consultation, Council is to:
  - (a) prepare an Economic Impact Assessment;
  - (b) update the planning proposal to:
    - remove the proposed amendments discussed in sections 2.1 to 2.7 (inclusive);
    - identify that the proposal comprises a single amendment which is to State Environmental Planning Policy (Affordable Rental Housing) 2009;
    - reflect the recommendations of the Economic Impact Assessment;
    - include a matrix framework which summarises the key potential risks of maintaining the base case versus cap determined by the economic impact assessment for the following market segments:
      - Byron Region tourism industry (including hospitality; hotels, motels and serviced accommodation);
      - local property industry (private, residential and commercial);
      - local renters;
      - local homeowners;
      - local workers;
      - local business owners; and
      - NSW State economy.
    - include a Risk Mitigation and Monitoring Strategy aimed at minimising the potential risks associated with reducing the short term rental accommodation day limit cap on the following key following key groups:
      - Byron Region tourism industry (including hospitality; hotels, motels and serviced accommodation);
      - local property industry (private, residential and commercial);

- local renters;
  - local homeowners;
  - local workers; and
  - local business owners
- (c) submit the updated planning proposal for the Department's review and approval.
2. The Economic Impact Assessment must be exhibited with the planning proposal.
3. Public exhibition is required under section 3.34(2)(c) and schedule 1 clause 4 of the Act as follows:
- (a) the planning proposal must be made publicly available for a minimum of **28 days**; and
  - (b) the planning proposal 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 6.5.2 of *A guide to preparing local environmental plans* (Department of Planning and Environment, 2018).
4. Consultation is required with the following public authorities/organisations under section 3.34(2)(d) of the Act and/or to comply with the requirements of relevant sections 9.1 Directions:
- NSW Rural Fire Service
  - NSW Fair Trading
- Each public authority/organisation 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.
5. A public hearing is not required to be held into the matter by any person or body under section 3.34(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).
6. The time frame for completing the LEP is to be **12 months** following the date of the Gateway determination

Dated 24<sup>th</sup> of June, 2021.



**Marcus Ray**  
**Group Deputy Secretary**  
**Planning and Assessment**  
**Department of Planning, Industry**  
**and Environment**

**Delegate of the Minister for Planning**  
**and Public Spaces**



**The Hon. Anthony Roberts MP**  
Minister for Planning  
Minister for Homes

Our ref: IRF 22/11482

Mr Mark Arnold  
General Manager  
Byron Shire Council  
PO Box 219  
MULLUMBIMBY NSW 2481

Via email: [council@byron.nsw.gov.au](mailto:council@byron.nsw.gov.au)  
[shannon.burt@byron.nsw.gov.au](mailto:shannon.burt@byron.nsw.gov.au)

Dear Mr Arnold

I refer to Byron Shire Council's (Council) correspondence seeking a revision to the conditions of the Gateway determination for Planning Proposal PP-2021-3351, to reduce the number of days of non-hosted short-term rental accommodation (STRA) in parts of the Byron Shire Local Government Area (LGA).

I also acknowledge receipt of correspondence from Mr Michael Lyon, Council's Mayor, in support of Council's planning proposal to reduce non-hosted STRA to 90 days in the majority of the LGA, and 365 days in small, mapped precincts.

I note that the Gateway determination issued by the Department of Planning and Environment (the Department) on 24 June 2021 required the planning proposal be updated in accordance with the findings of an Economic Impact Assessment (EIA).

I am advised that an EIA has now been prepared by Urbis, and jointly funded by Council and the Department. As you are aware, the EIA recommended a cap of 180 days be placed on non-hosted STRA across the Byron LGA. It was found to be the preferred of 6 tested options, as it would generate the highest net benefit to the community and local industry. The EIA also identified that if a 90 day cap was implemented, significant benefit for the community and local industry could be achieved by expanding the proposed 365 day unrestricted areas.

Given the unique and exceptional circumstances facing Byron Shire regarding the impact of recent flooding on the availability and affordability of housing, combined with the existing high proportion of short term rental accommodation compared to permanent accommodation in the Shire, I have, however, determined it is in the public interest for this proposal to proceed to exhibition without incorporating the findings of the EIA to allow community consultation.

The proposal and the EIA must be on exhibition for a minimum of 56 days to allow the community an opportunity to fully consider the proposal. I have also amended the Gateway determination to require that a 12-month transition period of any changes is implemented to provide greater certainty for the industry and customers.

Please be advised that I remain concerned regarding the potential impact of this proposal on the local economy due to the findings of the EIA. For this reason, I have conditioned the Gateway so that Council delegation to make the plan can only be used provided the proposal is not at any time amended to reduce non-hosted short-term rental accommodation periods on any land to less than 90 days.



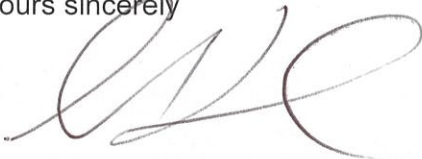
I would also encourage Council to consider amending the proposal to expand the areas where non-hosted short-term rental accommodation can occur unrestricted 365 days per year, as discussed in the EIA, to limit any adverse economic impacts.

To allow this to occur, I have given Council an extension until 24 June 2023 to finalise the proposal. I expect Council to thoroughly consider all submissions and impacts of its proposal raised in those submissions and respond accordingly, and to publish justification of its final decision, whether or not to make the changes to the Local Environment Plan, before proceeding to make the plan.

I have also provided Council with delegation to act as the Local Plan Making Authority subject to the proposal not being amended at any time to reduce non-hosted short-term rental accommodation periods on any land to less than 90 days. Prior to proceeding to exhibition, I expect Council to consult with the Australian Short Term Rental Association (ASTRA) about the planning proposal.

If you have any questions in relation to this matter, I have arranged for Mr Malcolm McDonald, Executive Director of Local and Regional Planning, at the Department to assist you. Mr McDonald can be contacted on 02 9274 6267.

Yours sincerely



**The Hon. Anthony Roberts MP**  
Minister for Planning  
Minister for Homes

Encl: Alteration of Gateway Determination

## Alteration of Gateway Determination

### *Planning proposal (Department Ref:PP-2021-3351)*

I, the Minister for Planning, have determined under section 3.34(7) of the *Environmental Planning and Assessment Act 1979* to alter the Gateway determination dated 24 June 2021 as follows:

1. Change the description of the planning proposal

From "...an amendment to State Environmental Planning Policy (Affordable Rental Housing) 2009 to reduce the number of days of non-hosted short-term rental accommodation in parts of the Byron Shire Local Government Area..."

To "...an amendment to State Environmental Planning Policy (Housing) 2021 to reduce the number of days of non-hosted short-term rental accommodation in parts of the Byron Shire Local Government Area..."

2. Delete Condition 1:

"1. Prior to agency and community consultation, Council is to:

- (a) prepare an Economic Impact Assessment;
- (b) update the planning proposal to:
  - remove the proposed amendments discussed in sections 2.1 to 2.7 (inclusive);
  - identify that the proposal comprises a single amendment which is to State Environmental Planning Policy (Affordable Rental Housing) 2009;
  - reflect the recommendations of the Economic Impact Assessment;
  - include a matrix framework which summarises the key potential risks of maintaining the base case versus cap determined by the economic impact assessment for the following market segments:
    - Byron Region tourism industry (including hospitality; hotels, motels and serviced accommodation);
    - local property industry (private, residential and commercial);
    - local renters;
    - local homeowners;
    - local workers;
    - local business owners; and
    - NSW State economy.
  - include a Risk Mitigation and Monitoring Strategy aimed at minimising the potential risks associated with reducing the short term rental



accommodation day limit cap on the following key following key groups:

- Byron Region tourism industry (including hospitality; hotels, motels and serviced accommodation);
- local property industry (private, residential and commercial);
- local renters;
- local homeowners;
- local workers; and
- local business owners

(c) submit the updated planning proposal for the Department's review and approval."

and replace with a new Condition 1:

"1. Prior to agency and community consultation, Council is to:

(a) prepare an Economic Impact Assessment;

(b) update the planning proposal to:

- remove the proposed amendments discussed in sections 2.1 to 2.7 (inclusive);
- identify that the proposal comprises a single amendment which is to State Environmental Planning Policy (Housing) 2021;
- incorporate a 12-month deferred commencement for any changes to provide an appropriate level of certainty and transition for industry and the community;
- include a matrix framework which summarises the key potential risks of maintaining the base case versus cap determined by the economic impact assessment for the following market segments:
  - Byron Region tourism industry (including hospitality; hotels, motels and serviced accommodation);
  - local property industry (private, residential and commercial);
  - local renters;
  - local homeowners;
  - local workers;
  - local business owners; and
  - NSW State economy.
- include a Risk Mitigation and Monitoring Strategy aimed at minimising the potential risks associated with reducing the short term rental accommodation day limit cap on the following key following key groups:
  - Byron Region tourism industry (including hospitality; hotels, motels and serviced accommodation);
  - local property industry (private, residential and commercial);

- local renters;
- local homeowners;
- local workers; and
- local business owners”

3. Delete Condition 3:

“3. Public exhibition is required under section 3.34(2)(c) and clause 4 of Schedule 1 to the Act as follows:

- (a) the planning proposal must be made publicly available for a minimum of **28 days**; and
- (b) the planning proposal 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 6.5.2 of A guide to preparing local environmental plans (Department of Planning and Environment, 2018).”

and replace with a new Condition 3:

“3. Public exhibition is required under section 3.34(2)(c) and clause 4 of Schedule 1 to the Act as follows:

- (a) the planning proposal must be made publicly available for a minimum of **56 days**; and
- (b) the planning proposal 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 6.5.2 of A guide to preparing local environmental plans (Department of Planning and Environment, 2018).”

4. Delete condition 6:

“6. The time frame for completing the LEP is to be 12 months following the date of the Gateway determination.”

and replace with a new Condition 6:

“6. The LEP should be completed on or before 24 June 2023.”

5. Insert new condition 7:

“7. The Council as the planning proposal authority is authorised to exercise the functions of the local plan-making authority under section 3.36(2) of the EP&A Act subject to the following:

- (a) the planning proposal authority has satisfied all the conditions of the gateway determination;
- (b) the planning proposal is consistent with applicable directions of the Minister under section 9.1 of the EP&A Act or the Secretary has agreed that any inconsistencies are justified;
- (c) there are no outstanding written objections from public authorities; and

- (d) that the proposal is not at any time amended to reduce non-hosted short-term rental accommodation periods on any land to less than 90 days.

Dated 3<sup>rd</sup> day of June 2022.



**The Hon. Anthony Roberts MP  
Minister for Planning  
Minister for Homes**



**The Hon. Anthony Roberts MP**  
Minister for Planning  
Minister for Homes

Our Ref: IRF22/4173

Mr Mark Arnold  
General Manager  
Byron Shire Council  
PO Box 219  
MULLUMBIMBY NSW 2481

Via email: [council@byron.nsw.gov.au](mailto:council@byron.nsw.gov.au)  
[shannon.burt@byron.nsw.gov.au](mailto:shannon.burt@byron.nsw.gov.au)

Dear Mr Arnold

I am writing to you about planning proposal, PP-2021-3351, to reduce the number of days of non-hosted short-term rental accommodation (STRA) in parts of the Byron Shire local government area (LGA).

Given the large number of submissions related to the proposal and the potentially significant economic impacts it could have on local businesses, I have made the decision to seek advice from the Independent Planning Commission (IPC) before the planning proposal is finalised. I have also removed Council's delegation to be responsible for finalising the planning proposal, so that the IPC's advice can be carefully considered before the proposal progresses further.

I have not made this decision lightly. While I recognise Council has a larger proportion of non-hosted short-term rental in its LGA compared to the rest of the State, the importance of tourism to the area and the significant impact the proposal may have on businesses cannot be understated.

I intend to seek advice from the IPC on:

- the status of housing and rental affordability and rental availability in the Byron Shire, including the impact of non-hosted STRA and well as recent flood events
- recommendations to improve housing affordability and rental availability in the Byron Shire
- the economic contribution of the STRA industry in Byron Shire, and any potential economic implications for Byron Shire with the introduction of Council's proposed 90 and 365-day dwelling caps
- whether it recommends I should finalise the planning proposal, with or without amendments, or whether any further information may be required.

I have requested the IPC to consider holding a public hearing given the public interest in the planning proposal. The public hearing would allow the community and industry to present their views on the proposal as part of the IPC's review. I have also strongly encouraged the IPC to meet with Council.

To assist the IPC with its consideration and advice, I request that Council provides all studies, submissions, engagement reports and any other information in its possession relating to the proposal to both the Department and IPC as soon as possible.

I acknowledge this late change of approach will disappoint Council. However, given the complex and contentious nature of STRA in the Byron Shire, it is important that I obtain independent advice



**The Hon. Anthony Roberts MP**  
Minister for Planning  
Minister for Homes

from the IPC on the broader issues associated with housing and rental affordability and availability in Byron Shire and potential economic impacts of Council's proposal before the matter progresses.

If you have any questions in relation to this matter, you can contact Mr Malcolm McDonald, Executive Director, Local and Regional Planning, at the Department to assist you. Mr McDonald can be contacted on 02 9274 6267.

Yours sincerely

A handwritten signature in black ink, appearing to be 'A. Roberts', written over a light grey signature line.

**The Hon. Anthony Roberts MP**  
Minister for Planning  
Minister for Homes

Encl: Alteration of Gateway Determination



## Alteration of Gateway Determination

*Planning proposal (Department Ref: PP-2021-3351)*

I, the Minister for Planning have determined under section 3.34(7) of the *Environmental Planning and Assessment Act 1979* to alter the Gateway determination dated 24 June 2021 (since altered) for the proposed amendment to the Byron Shire Local Environmental Plan 2014 as follows:

1. Delete condition 7 as follows:

- "7. The Council as the planning proposal authority is authorised to exercise the functions of the local plan-making authority under section 3.36(2) of the EP&A Act subject to the following:
- (a) the planning proposal authority has satisfied all the conditions of the gateway determination;
  - (b) the planning proposal is consistent with applicable directions of the Minister under section 9.1 of the EP&A Act or the Secretary has agreed that any inconsistencies are justified;
  - (c) there are no outstanding written objections from public authorities;  
and
  - (d) that the proposal is not at any time amended to reduce non-hosted short-term rental accommodation periods on any land to less than 90 days."

Dated

13<sup>th</sup>

day of

December

2022.



**The Hon. Anthony Roberts MP**  
**Minister for Planning**  
**Minister for Homes**