

Our ref: MC21/1407 MA-00052



15 October 2021

Department of
**State Development, Infrastructure,
Local Government and Planning**

Neil McGaffin
Director Development Services
Whitsunday Regional Council
PO Box 104
PROSERPINE QLD 4800

Dear Mr McGaffin

Second Notice of advice to appropriately address state interests during the state interest review under the Minister's Guidelines and Rules (MGR)

Thank you for your response on 6 September 2021 to our letter which identified the outstanding state interests for the major amendment (proposed amendment) to the Whitsunday Planning Scheme 2017 (the planning scheme) and the proposed Administrative Local Government Infrastructure Plan (LGIP) Amendment.

I have determined that the proposed amendment has not appropriately addressed the relevant state interests and further justification / rationale from Whitsunday Regional Council (the council) is required.

In accordance with chapter 2, part 4, section 17.3 of the Ministers Guiding Rules (MGR), I am taking this opportunity to advise you on how the proposed amendment may be changed during the state interest review to appropriately address state interests. This advice is detailed in items 1 – 6 below.

1. Short – Term Accommodation (dwelling)

Consider changing the proposed amendment to ensure consistency with the Regulated Requirements (section 16(2) of the *Planning Act 2016*) and the State Planning Policy (SPP) Guiding Principles.

Issue i) Proposed amendment: Code Provisions of Short-term Accommodation (Dwelling) - Extracted from Table 1 Item No 3, No 4, No 11 and No 13

SPP Guiding Principle/s: Efficiency and Accountability

State Agency: Department of State Development, Infrastructure, Local Government and Planning

Action: Remove or revise the code provisions relating to the Short-term Accommodation (dwelling) components. If revising the code provisions, limit the requirements to land use rather than operational matters. These operational matters should be addressed in other forms of regulation, such as local laws.

Reasoning: When drafting the Assessment Benchmarks, the Performance Outcomes (POs) should clearly and objectively establish what the local government seeks to achieve but they should not mandate how to achieve that desired outcome. An Accepted Outcome (AO) may specify a solution that

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achieves the desired outcome. This is the local governments' preferred way, but need not be the only way, of achieving the PO.

Planning schemes should only seek to regulate land use and planning outcomes. It is considered that a number of the provisions within the Short-term Accommodation and Multi-unit Use Code are not directly related to land use planning but are day-to-day operational matters. Such matters are better suited to be regulated through alternate options such as local laws, a code of conduct, by-laws or similar.

It is recommended that the council consider these alternative options to deal with the following matters:

- Limiting noise associated with the use
- Limiting the number of occupants per bedroom
- Limiting congregation around entrance of premises
- Regulating adult entertainment on the premises
- Establishing a code of conduct for each individual premises (a standard code of conduct could be developed by the council which would apply to all such uses to assist Short-term accommodation providers).

Attachment 1 of this letter provides examples of how short-term accommodation has been regulated by other local governments.

Issue ii) Proposed amendment: Level of Assessment defaulting to Impact rather than Code – Specifically Domestic Outbuildings (Dwelling House Code and Dual Occupancy Code) - Extracted from Table 1 Item No 16

SPP Guiding Principle/s: Efficiency and Accountability

State Agency: Department of State Development, Infrastructure, Local Government and Planning

Action:

- a) Reconsider the levels of assessment for a domestic outbuilding with a Dwelling House or Dual Occupancy.
- b) Consider how the categories of development and assessment work, specifically:
 - For Code assessable development there is no requirement for notification. However, where local government is the assessment manager for a code assessable development, it may also have regard to the common material for a development application. This may include a submission about the application that the assessment manager has accepted or any other advice or comment about the application that a person gives to the assessment manager
 - Under section 60 of the *Planning Act, 2016* the assessment manager must decide to approve the application to the extent the development complies with all the assessment benchmarks for the development.
 - The assessment manager may decide to approve the application even if the development does not comply with some of the assessment benchmarks, for example, where the decision resolves a conflict between assessment benchmarks.
 - The assessment manager may decide to refuse an application that does not comply with some, or all, of the assessment benchmarks only if compliance cannot be achieved by imposing development conditions.

Reasoning: The department does not support the proposed levels of assessment for a domestic outbuilding associated with a Dwelling House or Dual Occupancy. A

Domestic Outbuilding in a Residential (Low Density, Low-Medium Density or Tourist Accommodation) or Mixed use Zone, where not complying with AO1.2 of the Dwelling House Code, is Impact Assessable. Similarly, a Domestic Outbuilding associated with a Dual Occupancy in a Residential (Low Density, Low-Medium Density or Tourist Accommodation) or Mixed use Zone, where not complying with AO3.1 of the Dual Occupancy Code, is also Impact Assessable. This is deemed to be overly restrictive for a non-habitable structure, noting that sufficient evidence to justify the proposed level of assessment has not been provided.

The proposed levels of assessment are to align with the SPP Guiding Principles in *the Drafting a Planning Scheme: Guidance for Local Governments*, prepared by Queensland Treasury (Planning Group), June 2020, specifically:

a) Efficiency

Regulate development to the extent necessary, to create a land use planning and development assessment system that is responsive and not overly restrictive.

Limit content to that suited to a statutory instrument that seeks to regulate land use and planning outcomes. For example:

- ensure outcomes are those that are best delivered as result of a development assessment and are legal, reasonable, relevant and enforceable, and
- use planning scheme policies and supporting materials, if necessary, to provide further context for the planning scheme content.

b) Accountability

Establish a sound evidence base to underpin the land use planning vision and direction. This can establish credibility for future decision making and provide a reference when determining appropriate strategic outcomes, spatial allocations and assessment benchmarks.

Consider what matters are of community interest and would benefit from community input at development application stage to inform the setting of category of development and assessment.

2. Bushfire Hazard Overlay Code, Flood Overlay Code, Landslide Hazard Overlay Code and their regulation of building assessment provisions

Consider changing the proposed amendment to alignment with Section 8(5) of the *Planning Act, 2016*.

Issue i) Proposed amendment: Bushfire Hazard Overlay Code Table 8.2.6.3.1, Table 8.2.5.6.2 - Extracted from Table 2 Item No 4, No 5, No 7

State Agency: Department of State Development, Infrastructure, Local Government and Planning and Department of Energy and Public Works

Action: Align the Bushfire Hazard Overlay Code with the model code outlined in “Natural hazards, risk and resilience state interest – Bushfire, example planning scheme assessment benchmarks”.

Reasoning: The model code ensures that the planning scheme is not regulating building assessment provisions under the *Building Act 1975*

The model code has been drafted to meet the SPP and ensure that planning provisions provide for adequate separation between bushfire hazard sources and new or intensified development. Adoption of the model code will appropriately

ensure that planning for bushfire risk can also help to improve community safety and resilience and minimise the burden on emergency management systems and processes.

Issue ii) Proposed amendment: Flood Hazard Overlay Code, Table 8.2.9.3.1, Table 8.2.9.3.2- Extracted from Table 2 Item No 8

State Agency- Department of State Development, Infrastructure, Local Government and Planning

Action: Review the Flood Hazard Overlay Code and how it regulates Building Work, specifically:

- a) Ensure that there is a clear link between the relevant PO and AO(s).
- b) Remove or amend PO1 and AO1.1, PO5 and AO5.1 and 5.2 in Table 8.2.9.3.1 as they address or conflict with the building assessment provisions regarding the location and design of buildings in flood hazard areas.
- c) Amend or remove PO1, AO1.2 and AO4.1 in Table 8.2.9.3.2 to specify which class of building the finished floor level provisions relate to.
- d) Where council considers AOs relate to matters a planning scheme can include (such as maintaining conveyance capacity across the flood plain) ensure that there is a clear relationship with the POs.
- e) Ensure the terminology of the planning scheme aligns with QDC MP3.5 (for example using term *defined flood level*).

Reasoning: To ensure that the Flood hazard overlay code does not address any building assessment provisions under the *Building Act 1975* and uses appropriate terminology.

Issue iii) Proposed amendment: Landslide Hazard Overlay Code –Table 8.2.12.3.1- Extracted from Table 2 Item No 9

State Agency- Department of Energy and Public Works and Department of State Development, Infrastructure, Local Government and Planning

Action: Review the Landslide Hazard Overlay Code to ensure it does not address any building assessment provisions under the *Building Act 1975*. In addition, ensure that the AOs are appropriate as accepted development requirements. Specifically:

- a) Remove the building assessment provisions from AO1.1 and AO1.3 unless it can be clarified that the provisions are only relevant to operational work, reconfiguring a lot and/or only to coastal hazards.

Reasoning: The structural integrity of a building is subject to an assessment by a building certifier as per the building assessment provisions (particularly the NCC). Planning instruments should not deal with siting of buildings within the lot, the structural design of buildings, or site works associated with a building or structure.

3. State interests identified in the SPP

Consider changing the proposed amendment by taking the actions listed for each State interest summarised below:

Issue i) Proposed Amendment: Zoning change of property located at 2 – 6 Banksia Court Cannonvale (Lot 51 on RP864671) from Low-medium density residential zone to Low impact industry zone

State Interest: Housing Supply and Diversity – Policy 2 and 3(a)

State Agency: Department of Housing and Public Works

Action: Lot 51 on RP864671 is to remain within the Low-medium density residential zone.

Reasoning: The zoning of Lot 51 on RP864671 to Low impact industry has the potential to impact on the current residential use of the adjoining property at 8 -12 Banksia Court and its ability for future residential renewal.

This proposed change is not consistent with Policy 2 and 3(a) for Housing Supply and Diversity of the SPP. Rezoning Lot 51 on RP864671 to Low impact industry will not facilitate the development of residential land for low to moderate incomes nor is the zoning in this residential location considered appropriate.

Issue ii) Proposed Amendment: Coastal Hazard Overlay Code – PO1, AO1.2 and PO9 - Extracted from Table 3 Item No 20, No 21

State Interest: Coastal Environment – Policy 1

State agency: Department of Environment and Science

Action: Amend AO1.2 in the Coastal Hazard Overlay Code to include coastal erosion in addition to the already mentioned storm tide inundation.

Reasoning: Structures are not acceptable within an erosion prone area.

Action:

- a) Ensure terminology is consistent in relation to 'inundation area', specifically in PO9, 'Inundation area' should refer to 'storm tide inundation area'.
- b) Provide clarification that 'except in limited circumstance' is acceptable when 'limited circumstance' is not defined.
- c) Amend Table 8.2.7.3.2 PO1 as follows –
 - Development within a coastal management district:*
 - a) *avoids adverse impacts on coastal processes; and*
 - b) *maintains coastal dune height; or*
 - c) *for (b) where a reduction in coastal dune height cannot be avoided, mitigates risk to development from wave overtopping and storm-tide inundation.*

Reasoning: Table 8.2.7.3.2 only refers to coastal hazard areas. The coastal management districts can extend beyond erosion prone areas and storm tide areas. The assessment benchmarks need to protect the state interest where that can occur.

Issue iii) Proposed Amendment: Coastal Hazard Overlay Code – Table 8.2.7.3.2 PO1(b) - Extracted from Table 3 Item No 24

State Interest: Coastal Environment – Policy 3

State Agency: Department of Environment and Science

Action: Amend PO1(b) as follows –

b) strategic ports, priority ports, boat harbors or strategic airports and aviation facilities in accordance with a statutory land use plan, or statutory master plan, where there is a demonstrated net benefit for the state or region and no feasible alternative exists; or

Reasoning: Reclamation is not mentioned in the new codes and the SPP requires that reclamation of land under tidal water is avoided, other than for specified purposes.

Issue iv) Proposed Amendment: Heritage Register - Extracted from Table 3 Item No 25

State Interest: Cultural Heritage – Policy 4

State Agency: Department of Environment and Science

Action: Council is to demonstrate the proposed sites to be removed from the local heritage register no longer have cultural heritage significance, having regard to the

Department of Environment and Science (DES) guideline- *Identifying and assessing places of local significance in Queensland*.

Reasoning: DES do not support the request for removal of the Hook Island Observatory; Proserpine Memorial; Palace Hotel; Proserpine Plumbing building (former theatre); Bowen Church and the St James Uniting Church from the Heritage Overlay as insufficient evidence has been provided that these places no longer have cultural heritage significance.

There is no statutory authority under the *Queensland Heritage Act, 1992* (QHA) for a local government to make guidelines or a policy. The chief executive of DES may make guidelines under section 173 to provide guidance to local governments about identifying or managing local heritage places, after consultation with the Queensland Heritage Council and local governments, and they must be published on DES's website. There is one such guideline of relevance: *Identifying and assessing places of local significance in Queensland*:

https://www.qld.gov.au/data/assets/pdf_file/0024/129804/gl_places-local-cultural-heritage-significance-qld.pdf

The DES guideline does not support applying a criterion that a building can be removed if "irreparably damaged" for removal from a local heritage register, as an alternative to an assessment of cultural heritage significance. No guideline can be inconsistent with the provisions of an Act, and under section 119(2) of the QHA, the local government must be satisfied the place no longer has cultural heritage significance. Notwithstanding this, it is also noted that council has not established that the removed places are irreparably damaged. Comments from council on this matter which state that significant fabric could not be re-used within future structures suggests a pre-judgement that council has decided the buildings must be demolished.

Replacement of damaged fabric is a recognised *Burra Charter* process which can maintain the cultural heritage significance of a place.

The proper process if an owner does wish to demolish a heritage place, is to lodge an application for demolition, and for that application to be assessed against the relevant assessment benchmarks.

Issue v) Proposed Amendment: Heritage Overlay Code - Table 8.2.10.3.1 AO2.1 - Extracted from Table 3 Item No 28

State Interest: Cultural Heritage – Policy 5 and 6

State Agency: Department of Environment and Science

Action:

a) Amend AO2.1 as follows:

"Where a ground-breaking activity is required within the boundary of a Heritage place that has been identified as an archaeological place:

(a) an archaeological investigation is undertaken by a suitably qualified and experienced archaeologist; and

(b) if there is potential for archaeological artefacts and if required by Council, an archaeological management plan is prepared and implemented by the archaeologist, overseen by Council, so that impacts on the archaeological significance and potential of the place are appropriately managed.

Note - the archaeological investigation and any necessary archaeological management plan must be carried out in accordance with PSP SC6.3

(Heritage)."

- b) The note is redundant and can be removed.
- c) The citation in the Planning Scheme Policy (PSP) of the 2013 DEHP archaeological investigations guideline should be replaced with the current (2019) guideline.
- d) The citation in the PSP of the 1999 Burra Charter should be replaced with the current 2013 Burra Charter.

Reasoning: A02.1 should be redrafted so the methodology and defined assessment benchmark will be consistent with the current *Guideline: Archaeological investigations* (DES, 2019), available on the department website: https://www.qld.gov.au/_data/assets/pdf_file/0030/68628/archaeological-investigations-guideline.pdf

Issue vi) Proposed Amendment: Heritage Overlay Code - Table 8.2.10.3.1 P03 / AO3.1 - Extracted from Table 3 Item No 29

State Interest: Cultural Heritage – Policy 5 and 6

State Agency: Department of Environment and Science

Action: Remove the reference to council's Local Heritage Register Policy.

Reasoning: There is no statutory authority under the *Queensland Heritage Act, 1992* (QHA) for a local government to make guidelines or a policy.

Issue vii) Proposed Amendment: Heritage Planning Scheme Policy - Archaeological management plan SC6.3.5 - Extracted from Table 4 Item No 17

State Interest: Cultural Heritage – Policy 5 and 6

State Agency: Department of Environment and Science

Action: SC 6.3.5.2 should describe the obligation to notify the State where there is a discovery of an archaeological artefact that is an important source of information about an aspect of Queensland's history.

Reasoning: There is a risk there will be a breach of the *Queensland Heritage Act, 1992* (Heritage Act) if the archaeological management plan is implemented without making this obligation clear.

SC 6.3.2.1 states that consultation may be necessary with other entities, including council and the State government. SC 6.3.5.2(1)(d) states that where there are new/unexpected finds council may need to be notified however there is no mention of the State government.

Under section 90 of the Heritage Act if there is a discovery of an archaeological artefact that is an important source of information about an aspect of Queensland's history, the chief executive of DES must be notified. It is an offence under section 90 of the Heritage Act to interfere with the artefact without the chief executive's consent.

Issue viii) Fit-for-purpose natural hazards risk assessment - Extracted from Table 3, Item No 33, No 48 and No 49

State Interest: Natural Hazards, Risk and Resilience – Policy 2

State agency: Department of State Development, Infrastructure, Local Government and Planning

Action:

(a) Section 1.2 Flood Hazard Areas

- Confirm if the Natural Hazard Risk Assessment (Dated 15/07/2021) provided to the Department on 15 July 2021 is consistent with the Australian Disaster Resilience Handbook 'Managing the floodplain' best practice approach to assessing flood and follows the flood risk assessment principles in Section 13.1.3.3 of the Integrating State Interests in a Planning Scheme (Guidance for Local Governments)
- Confirm whether the degree of refinement for the mapping and studies for the Town of Whitsunday aligns with Level 2 in 13.1.3.1 of the Integrating State Interests in a Planning Scheme (Guidance for Local Governments) – specifically, is the model calibrated?
- Clarify whether there any new properties impacted as a result of the introduction of the Medium and High Risk Flood Hazard Areas?

(b) Section 1.3 Landslide Hazard Areas

- Confirm that the Moderate and High Risk areas on the mapping are 15% or greater.
- Provide clarification for AO1.1(b)(i) in regards to determining if 'Low' or 'Very low' risk in accordance AGS 2007 as these are not terms used on the maps

(c) Section 1.4 Storm-tide Inundation Areas

Overview of hazard risk mapping amendments

- It is unclear how the term 'risk' is being used in this document. The discussion is about the hazard area, not about risk in the hazard area. Risk is the probability x consequence - the hazard area (1 in 100-year event) x the value of assets in the hazard area. When considering risk, the CHAS typically considers present day assets at a locality. This is appropriate for considering a case for downzoning or other restrictions on development in a high-risk area.
- However, risk rating in the CHAS may not be appropriate for considering future risk. That is where intensification of development is proposed at a low-risk site. In this case the value of the future development needs to be inputted into the risk calculation and a new risk rating derived. For example, in the case of up zoning of rural land (currently low risk because no development is under threat) to residential (high value assets which will change the risk rating to high). Council will need to consider if planning scheme provisions are needed to address all risk levels.
- The mapping was not approved. DES only reviewed the technical study.

Planning Scheme integration

- Land use zones have not been modified in response to the updated risk mapping, this approach is inconsistent with the SPP.
- Medium and high hazards are related to depth of water over land. Inundation and wave run-up are the type of inundation and can be any depth. This needs to be reconsidered.

- Confirm what has been determined to be wave runup. Commonly wave setup is applied up to 200m inland. Council's consultant may have used combination wave run-up and setup level (wave effects).
- The report for this matter states that the 200m of HAT being the wave run-up areas and extents beyond this (where applicable) is identified as inundation areas and that this methodology was also applied to the State Government's storm tide mapping. This is incorrect, the State mapping is based on depth of water over land.
- The report also recommended that the freeboard associated with each of these categories is 'increased' to 1m above. Possibly use 'set at' rather than 'increased'.
- The overview summary does not comprehensively reflect the SPP, please identify this in the wording to avoid confusion.

(d) Section 1.5 Erosion and Permanent Inundation Areas

Mapping Source

- Note the mapping source for the Permanent inundation Region – Whitsunday Coastal Hazard Mapping Refinement 2018. Reference is made to a superseded version and contains incorrect information. Please check all Coastal Hazard documents are the final version.
- Note that the mapping source for the Erosion Mainland QSpatial – Erosion prone areas (refined by DES during State Interest Review) is in progress and requires agreement on the mapping between council and DES and then declaration of the erosion prone area under the *Coastal Protection and Management Act 1995*.
- Note that the mapping source for the Erosion Islands QSpatial – Erosion prone areas is in progress and requires agreement on the mapping between council and DES and then declaration of the erosion prone area under the *Coastal Protection and Management Act 1995*.

Overview of hazard risk mapping amendments

- Note that the refinement of the QSpatial mapping provided to council by DES is progressing.

Planning Scheme integration

- Note that the Coastal Hazard Study was reviewed by DES and accepted.
- Note that the mapping is in progress and requires agreement on the mapping between council and DES.
- The overview summary does not comprehensively reflect the SPP, please identify this in the wording to avoid confusion.

Reasoning: Confirmation and/or clarification is required on various matters as detailed above.

Issue ix) Proposed Amendment: Coastal erosion prone area mapping and Definition of Coastal hazard area - Extracted from Table 3, Item No 34 and Table 1 Item 7

State Interest: Natural Hazards, Risk and Resilience – Policy 1

State Agency: Department of Environment and Science

Note: The department acknowledges receipt of the Coastal erosion area mapping and will review and provide any comments if matters are outstanding.

Action: The proposed definition of Coastal hazard area in Schedule 1 - Definitions – SC1.2 Administrative terms requires amendment as follows:

Coastal hazard area

An area that is:

- (a) identified as wave run-up or inundation area on Coastal hazard overlay map - Storm tide inundation;*
 - (i) wave run-up area is considered to affect premises 200m landward from the highest astronomical tide. It represents the peak elevation of the intermittent process of advancement and retreat of the shoreline associated with wave processes during the coastal inundation event; and*
 - (ii) inundation area is located landward of the wave run-up area and is assumed to persist for a sufficient duration to cause inundation of land below this design water level;*
- (b) identified as the declared erosion prone area which shows coastal erosion or permanent inundation due to sea level rise at 2100 sub category on Coastal hazard overlay map - Erosion prone areas and Permanent inundation; or*
- (c) if not identified on the Coastal hazard overlay maps, an area of land affected by the Defined Storm Tide Event (DSTE).*

Reasoning: As part of the DES and council's erosion prone area mapping resolution, DES requires reference to 'declared erosion prone areas' within the administrative definition for coastal hazard area.

Issue x) Proposed Amendment: Part 3, Strategic Framework 3.2.4.1 Strategic Outcomes (1a) - Extracted from Table 3, Item No 36

State Interest: Natural Hazards, Risk and Resilience – Policy 4

State Agency: Department of Environment and Science

Action: Amend 3.2.4.2(1a) as follows:

*Risks to people, property, essential service uses and vulnerable uses are minimised in areas within or adjacent to natural hazard areas by avoiding the risk, **where the risk cannot be avoided or where it is not possible to be avoided, then mitigating the risk or removing the hazard.***

Issue xi) Proposed Amendment: 8.2.7 Coastal Hazard Overlay Code – Table 8.2.7.3 Assessment Benchmarks AO3.1 - Extracted from Table 3, Item No 40

State Interest: Natural Hazards, Risk and Resilience – Policy 9

State Agency: Department of Environment and Science

Action: Amend AO3.2 as follows to remove undefined term:

Unless for Recreation activities or building extensions, development is situated wholly outside of Erosion prone and Permanent inundation areas, except where it is demonstrated that buildings or structures are:

- a) part of redevelopment that intensifies the use of a site in an urban area, if the development mitigates any increase in risk to people and property from ~~adverse~~ coastal erosion impacts to an acceptable or tolerable level;*
- b) Dwelling houses in an urban area where:*
 - i. landward **of** or equal to the seaward alignment of any buildings on neighbouring properties; or*
 - ii. if there are no neighbouring properties, the dwelling house is at least 12m from the seaward property boundary of the site.*

Note – Coastal building lines identified by State DA mapping may also apply to some development in Queens Beach and Brisk Bay triggering referral for State Assessment.

<p><i>Note: See National emergency risk assessment guidelines (NERAG), and ISO 31000:2009 Risk management – principles and guidelines for acceptable or tolerable levels of Risk Management.</i></p>
<p>Issue xii) Proposed Amendment: 7.2.2 Bowen Local Plan Code; Table 5.9.2.5 Bowen local plan - Extracted from Table 3 Item No 52 State Interest: Transport Infrastructure – Policy 1 State agency: Department of Transport and Main Roads</p>
<p>Action: Remove references to accommodation activities within the Local Plan Code and make all accommodation activities impact assessable throughout all precincts in the Tables of Assessment for the Bowen Local Plan.</p> <p>Reasoning: Department of Transport and Main Roads (DTMR) is the leaseholder over the harbour land, DTMR does not support accommodation activities within the harbour. The planning scheme should not set the expectation that they will be supported.</p>
<p>Issue xiii) Proposed Amendment: 7.2.1 Airlie Beach Local Plan Code; 7.2.1.2 Purpose and overall outcomes (2) (f) and (g); and Table 7.2.1.3.1: Benchmarks for assessable development PO2, PO7 and PO9 - Extracted from Table 4 Item No 18 State Interest: Transport Infrastructure – Policy 6 State Agency: Department of Transport and Main Roads</p>
<p>Action: Remove references in the Purpose and overall outcomes, Section 7.2.1.2 (2) (f) and (g) and Table 7.2.1.3.1 – PO2, PO7 and PO9, specifying that active street frontages are to be located on Waterson Way.</p> <p>Reasoning: Waterson Way has been declared a state -controlled road to act as a Main Street bypass. Active street frontages and any additional accesses to Waterson Way compromise this function. This issue should be addressed as a priority.</p>

4. The Community Engagement Plan submitted as part of the State interest review should be amended to:
 - (a) Reflect the changing timeframes; and
 - (b) Acknowledge the requirements for consultation should the proposed amendment be significantly different to the version released for public consultation and additional consultation be required.
5. The proposed Administrative LGIP Amendment requires no action from the State, however, it is noted that council are changing the desired standards of service for the stormwater network. In order for the change to be considered an Administrative LGIP Amendment, council need to be satisfied that the change meets one of the items identified in chapter 5, part 1.1 (a) to (g) of the MGR.
6. Compliance with Ministerial Advice Matters

Provide an assessment on how the advice matters provided in the Minister letter dated 19 June 2017 have been considered by council. Specifically:

 - a) The Advice requested that council reconsider the levels of assessment in the Community Facilities zone to facilitate development surrounding a strategic airport (Whitsunday Coast Airport).

The department has continued concerns that Air Services at the strategic airport are impact assessable unless undertaken by the council where it is accepted development.

To facilitate development in close proximity to the strategic airport, the department seeks to understand council's intention and progress on the Industry Investigation Area Zone to the east of the Airport.

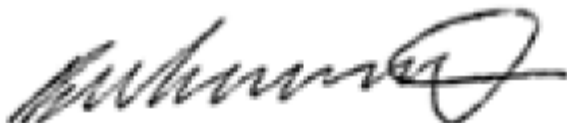
- b) The Advice requested that council reconsider the self-assessable development assessment criteria to be clearer and offer more certainty. The department has continued concerns that the self-assessable provisions in the adopted planning scheme were ambiguous and lacked certainty. Given that the scheme has been in operation for four years, it is requested that council provide justification that the assessment development criteria for self- assessable uses do not need to be amended to be clearer and offer more certainty.

The State interest review timeframe is currently paused until 7 December 2021 to provide time for you to respond to this notice.

During this period, I encourage you to continue to engage with officers from the Planning Group to resolve any outstanding matters. I would also like to remind you that if no response is received during this period, the process will resume at chapter 2, part 4, section 17.5 of the MGR on the 8 December 2021.

I have asked for Ms Erin Lee, Principal Planning Officer, Planning Group, in the Department of State Development, Infrastructure, Local Government and Planning to assist you with any further queries. You may wish to contact Ms Erin Lee on telephone number (07) 4898 6815 or by email at erin.lee@dsdilgp.qld.gov.au.

Yours sincerely



BRETT NANCARROW
DIRECTOR – PLANNING

ENC **Attachment 1: Examples of how other local governments are regulating short-term accommodation**

Attachment 1: Examples of how other local governments are regulating short-term accommodation

Gold Coast City Council

- The Council has implemented a Local Law for the Control of Party House Noise and for Rental Accommodation
- The purpose of the Local law for Rental Accommodation is that properties used for short-term accommodation, do not detrimentally affect the residential amenity of premises in the vicinity of the rental accommodation. Licenses are not required for the operation of rental accommodation which is the provision of home-stay accommodation at premises used as a residential dwelling (other than a bed and breakfast) which—
 - (i) is occupied and continues to be occupied as the principal place of residence of at least one person; and
 - (ii) provides accommodation for up to four guests;
- When applying for a licence council requires the application material must include the proposed use of each room and the maximum number of persons to be accommodated in each bedroom.

Noosa Shire Council

- The Council has a proposed local law for Short Stay and Home Hosted Accommodation. The proposed local law –
 - (i) Aims to manage the potential impacts of short stay letting and home hosted accommodation on the residential amenity of permanent residents by requiring a local management framework and code of conduct for guest behaviour as well as minimum safety standards for guests.
 - (ii) A one off application and annual renewal is required for a premises used for short stay letting or home hosted accommodation
 - (iii) Exemptions are proposed for certain sites identified in Noosa Plan 2020 as visitor only. This includes the Hastings St Mixed Use Precinct, hotels, motels, backpacker accommodation and holiday houses not used for short stay letting
 - (iv) A local contact person must manage a short stay let premises, be available 24/7, be located within 20 minutes travel and respond to complaints within 30 minutes
 - (v) A code of conduct will be introduced for guest behaviour. Use of the premises must not detrimentally affect residential amenity including noise, overlooking and light spill; guests must not display unacceptable behaviour; vehicles must be stored to not cause a nuisance; pets and waste are managed; grounds kept tidy; and sleeping or camping in a tent or caravan on site is not permitted

Toowoomba Regional Council

- The Planning scheme states that when renting-out all or part of a home or other accommodation premises for short-term accommodation Council considers this type of land use as either *Home based business* or *Short-term accommodation*.
- A *Home based business* is where the permanent resident resides at the premises while renting part of it out for short-term accommodation. Bed and breakfasts and farm stays are examples of a *Home based business*.
- Additional to this land use type, the function and scale of operations must be in keeping with the primary use of the dwelling as a private permanent residence. Eg:
 - (i) The permanent resident must reside in the dwelling
 - (ii) The maximum number of rooms for bed and breakfast, or accommodation units in a farm stay is 6 in the *Rural zone* and 3 in other zones
 - (iii) The maximum number of overnight guests is 6 (other than in the *Rural zone* where there is no limit)
 - (iv) Meals must not be served for gain, other than to paying overnight guests

- (v) 1 additional car parking space must be provided for each room occupied by paying guests.
- Home-based businesses may require development approval and Short-term accommodation will require a development approval. Other approvals, such as placing an advertising device on the premises or a food licence may also be required.
- A Home based business as described above is considered an Accepted development subject to requirements if in one of the following zones and does not require a development approval if meeting the requirements:
 - (i) Low density residential zone
 - (ii) Low-medium density residential zone
 - (iii) Township zone
 - (iv) Rural residential zone
 - (v) Rural zone.
 Outside of these zones a Home based business is a Code assessable development and will require a development approval.
- *Short-term accommodation*
 If the owner or lessee does not reside at the premises and rents all or part of it out for short-term accommodation, the use may be defined as *Short-term accommodation*. This type of use provides accommodation to guests for less than 3 consecutive months to tourists or travellers and may contain a manager's residence, office or recreation facilities for the exclusive use of guests.

 Short-term accommodation will require a development approval. Changing to this type of use is generally Impact assessable development in a residential zones except in Low-medium density residential zone or Township zone where it is Code assessable.

New South Wales

- The NSW government has implemented a new state-wide (some local governments are exempt) regulatory framework for short-term rental accommodation (STRA), which includes a new planning framework, fire safety standards for STRA dwellings and a new Government-run STRA Register. The new framework compliments the mandatory Code of Conduct and changes to strata legislation made by the Department of Customer Service.
- The new STRA planning policy framework comprises new standard provisions and introduces:
 - (i) a new definition for STRA, hosted STRA and non-hosted STRA;
 - (ii) an exempt development pathway for:
 - hosted STRA in a dwelling, 365 days per year;
 - non-hosted STRA in a dwelling, 180 days per year in Greater Sydney and nominated regional NSW LGAs and 365 days per year in all other locations;
 - and
 - (iii) an exemption of bookings of 21 consecutive days or more from day limits for non-hosted STRA.