



### Tweed LEP 2014 - Short-Term Rental Accommodation

Proposal Title : **Tweed LEP 2014 - Short-Term Rental Accommodation**

Proposal Summary : **The proposal seeks to introduce provisions into the Tweed Local Environmental Plan 2014 to manage short-term rental accommodation within dwellings throughout the Tweed Shire.**

**The proposal requires amendments to the written instrument by including new provisions that define short-term rental accommodation, require development consent for short-term rental accommodation and schedule certain forms of short-term rental accommodation as exempt development.**

PP Number : **PP\_2015\_TWEED\_006\_00**      Dop File No : **15/13957**

#### Proposal Details

Date Planning Proposal Received :	<b>17-Sep-2015</b>	LGA covered :	<b>Tweed</b>
Region :	<b>Northern</b>	RPA :	<b>Tweed Shire Council</b>
State Electorate :	<b>TWEED</b>	Section of the Act :	<b>55 - Planning Proposal</b>
LEP Type :	<b>Policy</b>		

#### Location Details

Street :  
 Suburb :                                      City :                                      Postcode :  
 Land Parcel : **All land zoned RU1, RU2, RU5, R1, R2, R3, R5, B1, B2, B3, B4 and B7 under Tweed LEP 2014**

#### DoP Planning Officer Contact Details

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### Land Release Data

Growth Centre :	N/A	Release Area Name :	N/A
Regional / Sub Regional Strategy :	Far North Coast Regional Strategy	Consistent with Strategy :	Yes
MDP Number :		Date of Release :	
Area of Release (Ha) :	0.00	Type of Release (eg Residential / Employment land) :	N/A
No. of Lots :	0	No. of Dwellings (where relevant) :	0
Gross Floor Area :	0	No of Jobs Created :	0

The NSW Government Lobbyists Code of Conduct has been complied with : **Yes**

If No, comment : **The Department of Planning and Environment's Code of Practice in relation to communications and meetings with lobbyists has been complied with to the best of the Region's knowledge.**

Have there been meetings or communications with registered lobbyists? : **No**

If Yes, comment : **The Northern Region office has not met any lobbyists in relation to this proposal, nor has the Region been advised of any meeting between other officers within the agency and lobbyists concerning this proposal.**

### Supporting notes

Internal Supporting Notes :

External Supporting Notes : **The following provisions are proposed under the planning proposal:**

#### **Clause 7.15 Short-term rental accommodation [local]**

- (1) The objective of this clause is to enable the temporary use of dwellings as short-term rental accommodation.**
- (2) Despite any other provisions of this Plan, development consent may be granted for the use of a dwelling as short-term rental accommodation.**
- (3) Such dwelling must be located in a zone where dwellings are permitted with development consent.**
- (4) In this clause short-term rental accommodation is an existing dwelling, or part of a dwelling, that provides short-term accommodation on a commercial basis.**

**Note: These provisions will apply to all short-term holiday rental accommodation proposals that do not comply with the exempt development provisions (listed below).**

#### **Schedule 2 Exempt development: Short-term rental accommodation**

- (1) In this clause short-term rental accommodation is an existing dwelling, or part of a dwelling, that provides short-term accommodation on a commercial basis.**
- (2) The subject dwelling must be used as short-term rental accommodation for a maximum of 62 days per calendar year.**
- (3) Such dwelling must be located in a zone where dwellings are permitted**

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- with development consent.
- (4) If the dwelling is located in a bush fire prone area, a bush fire evacuation plan must be attached to the dwelling in a prominent location.
  - (5) The property owner or appointed property manager must abide by:
    - (a) Council adopted Holiday and Short-Term Rental Accommodation Policy, or its successor, or
    - (b) a similar policy with equivalent or higher standards for:
      - (i) the terms and conditions upon which a property is offered, booked and occupied,
      - (ii) the record keeping, complaints handling and dispute resolution procedures,
      - (iii) the maximum number of guests and visitors,
      - (iv) garbage, recycling and waste disposal,
      - (v) car parking, and
      - (vi) function, noise and residential amenity.
  - (6) If the dwelling is part of a community or strata scheme, the development must have the prior written approval of the owners corporation for that scheme.
  - (7) A business identification sign containing the contact phone number of the owner or appointed property manager must be displayed in a location visible from the public domain to enable the public to lodge complaints at any time of the day. The sign must be a maximum of 0.2m<sup>2</sup> and limited to one sign per street frontage.
  - (8) If the dwelling is serviced by an on-site sewage management system, the number of persons occupying the dwelling must not exceed the number of persons stated as the capacity for that system.

**Note:** Proposals for short-term holiday rental accommodation that do not comply with these provisions will need to be considered and approved through the development application process, in accordance with Proposed Clause 7.15 (see above).

The proposal indicates that a Short-Term Rental Accommodation Policy with controls specific to short-term rental accommodation will be exhibited for public comment concurrently with this planning proposal.

## Adequacy Assessment

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

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

**Comment :** The Statement of objectives adequately describes the intention of the planning proposal, which is to provide a mechanism for managing short-term rental accommodation under the Tweed LEP 2014.

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

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

**Comment :** The explanation of provisions explains that the intent of the proposal will be implemented through a new local planning clause and exempt development provisions. The proposal also indicates that Council will prepare a guiding policy on short-term rental accommodation, and that the draft policy will be exhibited concurrently with the planning proposal.

#### - Comments Regarding Proposed 'Permitted With Consent Provisions':

The proposal seeks to include a new local provision under Part 7 of the Tweed LEP 2014 which defines short-term residential accommodation and allows the temporary use of dwellings for this purpose with development consent.

The proposed provisions limit this use to zones that permit dwellings. This ensures that the use occurs in appropriate locations.

Including provisions under the LEP that permit short-term residential accommodation with development consent allows Council to consider the merits for proposed uses, place conditions of approval and regulate these uses.

- **Comments Regarding Proposed 'Exempt Development Provisions':**

The proposal seeks to include provisions under Schedule 2 Exempt Development of the Tweed LEP 2014 that establishes some forms of short-term rental accommodation to be undertaken as exempt development.

The proposed exempt development criteria are intended to ensure low impact holiday rentals can occur without requiring development consent. The criteria include, amongst other matters, a requirement to comply with a Council adopted policy on short-term holiday accommodation. Uses which do not comply with the criteria would need to obtain Council's approval through the development application process.

Whilst the proposed provisions under the planning proposal indicate Council's intent to regulate short-term accommodation, some of the provisions or their wording may be considered superfluous or unenforceable. This includes the proposed definition for short-term rental accommodation under Proposed Clause 7.15(4), which does not define what 'short-term accommodation' entails (i.e. time frames, etc.).

The proposal also raises the matter for introducing a land use that is neither defined under the standard instrument or included as either a permitted or prohibited use under the land use tables.

Legal Services Branch have provided advise for other planning proposals that have sought to introduce provisions for regulating an undefined land use (Refer to: PP\_2015\_TWEED\_005\_00). Legal Branch have advised that an undefined land use that may be considered a subset use of a defined land use, could be introduced into the LEP by listing and defining this use under Schedule 1. This would allow the innominate use (i.e. short-term rental accommodation) to be permitted with consent in those zones where the defined use (i.e. dwelling) is permitted.

It is not considered that a legal review and/or amendment to these written provisions is necessary prior to exhibiting the proposal, as it is consistent with other short-term rental accommodation provisions that have been applied in other LEPs throughout NSW. It is considered appropriate however that Council provide a plain English description and reasoning behind each proposed criteria.

Exhibiting the proposal with the current proposed provisions and the supporting plain English justification will provide opportunity for the community to understand Council's intent for each proposed criterion as well as Parliamentary Counsel when drafting the Plan. Any change or omission to the criteria, as an outcome of submissions or legal drafting, would not likely require an altered Gateway determination and/or re-exhibition. Such a change would not significantly alter the intended outcomes of the proposal for permitting short-term rental of existing dwellings as either exempt development or with development consent.

**Justification - s55 (2)(c)**

a) Has Council's strategy been agreed to by the Director General? No

b) S.117 directions identified by RPA :

**1.1 Business and Industrial Zones**

**1.2 Rural Zones**

\* May need the Director General's agreement

**1.5 Rural Lands**

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- 2.2 Coastal Protection
- 2.3 Heritage Conservation
- 3.1 Residential Zones
- 3.3 Home Occupations
- 3.4 Integrating Land Use and Transport
- 3.5 Development Near Licensed Aerodromes
- 4.3 Flood Prone Land
- 4.4 Planning for Bushfire Protection
- 5.1 Implementation of Regional Strategies
- 6.1 Approval and Referral Requirements
- 6.3 Site Specific Provisions

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

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

d) Which SEPPs have the RPA identified? **SEPP (Exempt and Complying Development Codes) 2008**

e) List any other matters that need to be considered : **An assessment of the applicable directions and SEPPs is provided within the 'Assessment' section of this planning team report.**

**The Environment and Planning Committee of the NSW Legislative Assembly has recently commenced an inquiry into the adequacy of short-term holiday letting in NSW. Consultation has occurred with the Housing Policy and Strategy Team on the matter.**

**Further discussion regarding this is provided under the 'Assessment' section of this planning team report.**

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

If No, explain : **See the 'Assessment' section of this planning team report.**

### Mapping Provided - s55(2)(d)

Is mapping provided? **No**

Comment : **No mapping necessary.**

### Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : **The planning proposal has not indicated a set time frame for community consultation. A 28 day public exhibition/community consultation period is considered appropriate given the proposal relates to all zones throughout the shire that permit a dwelling. That is, the proposal is not considered to be a 'low impact proposal' as defined under the Department's guidelines.**

**Consultation with the NSW Rural Fire Service will be required in accordance with the relevant Section 117 Directions (discussed further below).**

**Consultation with the following agencies and public authorities is also considered appropriate, given that the proposal relates to managing tourism activities across the Tweed:**

- (a) Destination NSW
- (b) Holiday Rental Industry Association
- (c) Destination Tweed
- (d) North Coast Destination Network
- (e) Tweed Heads Chamber of Commerce and Industry

### Additional Director General's requirements

Are there any additional Director General's requirements? **No**

If Yes, reasons :

**Overall adequacy of the proposal**

Does the proposal meet the adequacy criteria? **Yes**

If No, comment :

**The planning proposal generally satisfies the adequacy criteria by:**

- 1. Providing appropriate objectives and intended outcomes;**
- 2. Providing a suitable explanation of the provisions proposed by the planning proposal to achieve the outcomes (noting the recommended updates);**
- 3. Providing an adequate justification for the proposal;**
- 4. Indicating that public exhibition of the proposal will be undertaken; and**
- 5. Providing a project time frame which suggests completion within 9 months (noting the recommended updates).**

**Timeline**

- **The planning proposal includes a project timeline which estimates the completion of the Planning proposal by February 2016 (6 months). The proposal has also nominated numerically that the proposal should be completed within 9 months. Due to potential delays around the Christmas period, it is considered that a 9 month time frame would be appropriate. This does not restrict Council from finalising the LEP amendment sooner.**
- **The proposal contains references to an 'updated hydraulic study', which does not relate to this proposal.**
- **The proposal should be updated prior to community consultation, to remove these incorrect references.**

**Delegation**

- **Council has not accepted plan making functions nor has it requested delegation to finalise the subject proposal. It is recommended that an Authorisation for the execution of delegation not be issued to Council in this instance.**

**Proposal Assessment**

**Principal LEP:**

Due Date :

Comments in relation to Principal LEP :

**The Tweed LEP 2014 commenced on the 4th April 2014. This planning proposal seeks to make amendments to the Tweed LEP 2014.**

**Assessment Criteria**

Need for planning proposal :

**Holiday rental properties are an important provider of tourist and visitor accommodation, economic support to the local area, and income for home owners, particularly in coastal areas.**

**The Holiday Rental Code of Conduct was prepared by representatives of the short-term rental industry and came into effect in May 2012. It addresses issues such as noise and residential amenity, guest numbers, car parking, managing waste, controlling functions and parties and handling complaints and dispute resolution. Adherence to the Code is industry regulated and participation in the Code is voluntary.**

**Despite the existence of this Code, the current provisions under the Tweed LEP 2014, and many other standard instrument LEPs throughout NSW, have been argued by some to actually prohibit the use of dwellings for short term holiday rental purposes.**

**The use may be considered a 'tenancy issue' rather than a 'land use matter', given that it relates to the renting or leasing of a dwelling, just over a shorter period. The leasing of a dwelling is not defined or regulated by land use planning provisions.**

**The land use term 'serviced apartments' also provides scope for permitting holiday rentals of dwellings with development consent, provided that they are serviced. This is limited to**

the R1, R3, B7, SP3, RE2 and RU5 zones under the Tweed LEP 2014 and also raises ambiguity if holiday letting of a dwelling was only periodic. That is a degree of permanency of habitation or occupancy of the dwelling is retained, which is inconsistent with the definition for 'serviced apartments'.

Recent Court cases have highlighted the need for appropriate planning provisions to regulate where and under what conditions holiday letting operations may occur. Since this determination, many councils throughout NSW have undertaken an amendment to their LEPs to provide a local planning framework for managing holiday rentals. This includes the Tweed's neighbouring LGA, being Byron Shire.

The Environment and Planning Committee of the NSW Legislative Assembly has recently established an inquiry into the adequacy of short-term holiday letting in NSW. Submissions are currently being sought up until the 9 November 2015.

It is considered appropriate that this planning proposal progresses, prior to this inquiry being finalised. It is consistent with other LEPs throughout the North Coast and NSW.

Matters regarding the proposed provisions have been discussed in detail under the 'Explanation of Provisions' part of this Planning Team Report. Once the proposal is on exhibition, the community and tourism industry will be able to review and comment on the adequacy and suitability of the proposed provisions for managing these activities in the Tweed. Parliamentary Counsel will also be able to draft the final provisions to ensure they are legally enforceable.

Once adopted, the provisions under the Tweed LEP 2014 may be further reviewed should the outcomes of the inquiry lead to a State-wide policy direction for managing short term rentals

Consistency with strategic planning framework :

**FAR NORTH COAST REGIONAL STRATEGY (FNCRS)**

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

The proposal is consistent with the aims, objectives and intent of the Strategy.

The proposed Regional Plan also addresses the issue as follows:

"There are areas on the North Coast that experience significant seasonal fluctuations in population due to their attractiveness as holiday locations. Holiday dwellings are an important factor influencing the demand for housing on the North Coast. This has been included into the housing supply numbers to allow tourism related growth to be managed appropriately by having regard to infrastructure, environmental and social issues."

The proposal is not inconsistent with the intent of the proposed Regional Plan.

**LOCAL STRATEGIES**

- **Tweed Shire Economic Development Strategy 2013**

The Strategy includes actions for the enhancement of the Tweed Shire economy including the management of appropriate tourism development. The proposal, which seeks to manage short term holiday rentals, is considered consistent with this Strategy.

- **Tweed Community Strategic Plan 2013-2023**

The Strategy is the long term strategic plan for the future of the Tweed Shire, identifying the community's priorities and expectations for the Shire. The Strategy includes objectives to strengthen the economy of the Tweed, through expanded employment, tourism and education opportunities. The proposal is considered to be consistent with this Strategy.

**STATE ENVIRONMENTAL PLANNING POLICIES**

No SEPPs specifically apply to short-term holiday accommodation.

The proposal seeks to include a requirement that short-term holiday accommodation operating as exempt development, must display business identification sign on the premises that is a maximum of 0.2m<sup>2</sup> in area.

The Codes SEPP provides exempt provisions for displaying signage, and allows the display of business identification signs for home businesses, home industries and home occupations greater than 0.2m<sup>2</sup>. These provisions establish that signage greater than 0.2m<sup>2</sup> is suitable for a business operating in a dwelling outside of commercial zone. It is considered that the proposed provision under the planning proposal is overly restrictive and unnecessary in the case.

It is noted that a similar provision to that proposed under this planning proposal was contained in the Gateway approved planning proposal for introducing short-term holiday accommodation provisions into the Byron LEP 2014 (Reference No. PP\_2015\_BYRON\_003\_00). In this regard, it is considered suitable that this provision remain in the planning proposal. Retaining this provision will allow the community and tourism industry agencies to understand Council's intended provisions for managing short-term holiday rentals and provide comment.

Any change or omission to this provision, as an outcome of submissions or legal drafting, would not trigger the requirement for an altered Gateway determination and/or re-exhibition.

**SECTION 117 DIRECTIONS**



**3.1 Residential Accommodation.**

Permitting short term rental accommodation in existing dwellings could be argued to be inconsistent with this Direction, as it could be considered to be a reducing in housing density / availability within existing residential areas. The proposal does not include provisions to offset these loses. The Inconsistency is considered to be of minor significance given that increased densities can still be provided in the affected zones through new development proposals.

**4.4 Planning for Bushfire Protection.**

The proposal is inconsistent with the direction pending consultation with the Rural Fire Service. Consultation will be required post-Gateway in accordance with the direction.

Environmental social economic impacts :

**ENVIRONMENTAL**

The proposal is considered to have limited impacts on the natural environment. Restricting short-term accommodation to areas where dwellings are permitted will ensure that the use occurs in appropriate locations.

**ECONOMIC**

Tourism is a major contributor to the Tweed economy. The proposal will introduce provisions that intend to permit short term holiday rentals within dwellings under the current legislative framework.

**SOCIAL**

The proposed provisions provide scope for some forms of holiday rentals to occur without development consent and all other proposals to be considered on their merits through the development application process.

The community and tourism industry will be able to review and comment on the adequacy and suitability of the proposed provisions for managing these activities in the Tweed.

Once the proposed provisions are included in the LEP, Council can regulate the use via Section 121B of the Act.

**Assessment Process**

Proposal type :	<b>Routine</b>	Community Consultation Period :	<b>28 Days</b>
Timeframe to make LEP :	<b>9 months</b>	Delegation :	<b>DDG</b>
Public Authority Consultation - 56(2) (d) :	<b>NSW Rural Fire Service Other</b>		

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

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

If no, provide reasons :

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

If Yes, reasons :

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Identify any additional studies, if required. :

If Other, provide reasons :

**No additional studies are required due to the nature of the proposal.**

Identify any internal consultations, if required :

**No internal consultation required**

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

If Yes, reasons :

### Documents

Document File Name	DocumentType Name	Is Public
Tweed Shire Council_17-09-2015_LEP 2014 Amendment Short Term Rental Accommodation - s56_.pdf	Proposal Covering Letter	Yes
2015-08-27 Planning Proposal.pdf	Proposal	Yes

### Planning Team Recommendation

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

S.117 directions:

- 1.1 Business and Industrial Zones
- 1.2 Rural Zones
- 1.5 Rural Lands
- 2.2 Coastal Protection
- 2.3 Heritage Conservation
- 3.1 Residential Zones
- 3.3 Home Occupations
- 3.4 Integrating Land Use and Transport
- 3.5 Development Near Licensed Aerodromes
- 4.3 Flood Prone Land
- 4.4 Planning for Bushfire Protection
- 5.1 Implementation of Regional Strategies
- 6.1 Approval and Referral Requirements
- 6.3 Site Specific Provisions

Additional Information : **It is RECOMMENDED that the General Manager, as delegate of the Minister for Planning, determine under section 56(2) of the EP&A Act that an amendment to the Tweed Local Environmental Plan 2014 to define short-term rental accommodation, require development consent for short-term rental accommodation and schedule certain forms of short-term rental accommodation as exempt development should proceed subject to the following conditions:**

**1. The planning proposal is required to be updated prior to community consultation. This is to include:**

- updating Part 2 – Explanation of Provisions, to include a plain English description of the proposed LEP provisions and reasoning behind each proposed criterion.
- updating Part 5 – Timeline, to remove references to an 'updated hydraulic study' and update the proposed monthly timeframes to corresponded with the nominated '9 months to finish the plan'.

**2. Community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") as follows:**

- (a) the planning proposal must be made publicly available for 28 days; and
- (b) the relevant planning 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 5.5.2 of 'A guide

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to preparing local environmental plans (Planning and Infrastructure, 2013)'. -

3. Consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act and/or to comply with the requirements of relevant S117 Directions:

- (a) NSW Rural Fire Service
- (b) Destination NSW

4. Consultation is required with the following agencies:

- (a) Holiday Rental Industry Association
- (b) Destination Tweed
- (c) North Coast Destination Network
- (d) Tweed Heads Chamber of Commerce and Industry

4. The timeframe for completing the LEP is to be 9 months from the week following the date of the Gateway determination.

5. Section 117 Directions - It is recommended that:

- (a) inconsistency with Direction 3.1 Residential Accommodation is justified as of minor significance.
- (b) Consultation is required in relation to s117 Direction 4.4 Planning for Bushfire Protection with the NSW Rural Fire Service

6. Plan making functions should not be delegated to Council, given that Council has not requested nor accepted plan making functions.

Supporting Reasons :

The reasons for the above recommendations for the planning proposal are as follows:

- 1. The proposal is consistent with other LEPs throughout NSW.
- 2. The proposal will facilitate new tourist development opportunities on suitable land.
- 3. The proposed conditions will provide adequate consultation, accountability and progression.

Signature:



Printed Name:

JIM CLARK

Date:

30 September 2015

*Team Leader Local Planning*

