

Planning and Assessment

IRF20/5819

Plan finalisation report

Local government area: Lake Macquarie

1. NAME OF DRAFT LEP

Lake Macquarie Local Environmental Plan 2014 (Amendment No 15)

2. SITE DESCRIPTION

The planning proposal (**Attachment A**) applies across the local government area in zones where dwellings are permitted.

3. PURPOSE OF PLAN

The draft local environmental plan seeks to provide a planning pathway for short term rental accommodation by:

- defining short term rental accommodation;
- providing exempt development provisions; and
- requiring development consent for the use of a house with 5 bedrooms or more for short term rental accommodation.

An amendment to the Lake Macquarie Development Control Plan 2014 has also been prepared to complement the local environmental plan amendment. Council adopted the amendment in April 2016 and will come into effect with the draft local environmental plan is made.

On 18 December 2020, a mandatory Code of Conduct for the Short-term Rental Accommodation Industry commenced. The Code creates new minimum standards of behaviour and requirements for all participants. The Code also creates new disciplinary actions that NSW Fair Trading can take, including listing non-compliant participants on an exclusion register.

4. STATE ELECTORATE AND LOCAL MEMBER

The site falls within the following state electorates:

- Charlestown where Ms Jodie Harrison MP is the State Member;
- Lake Macquarie where Mr Greg Piper is the State Member;
- Swansea where Ms Yasmin Catley MP is the State Member;
- Wallsend where Ms Sonia Hornery MP is the State Member; and
- Wyong where Mr David Harris MP is the State Member.

The site falls within the following federal electorates:

- Hunter where Mr Joel Fitzgibbon MP is the Federal Member;
- Newcastle where Ms Sharon Claydon MP is the Federal Member; and
- Shortland where Mr Pat Conroy MP is the Federal Member.

To the Central Coast and Hunter team's knowledge, none of the MPs has made any written representations regarding the proposal.

NSW Government Lobbyist Code of Conduct: There have been no meetings or communications with registered lobbyists with respect to this proposal.

NSW Government reportable political donation: There are no donations or gifts to disclose and a political donation disclosure is not required.

5. GATEWAY DETERMINATION AND ALTERATIONS

On 17 December 2014, the Gateway determination was issued subject to conditions **(Attachment B)**.

On 17 May 2017, the Gateway determination was altered to extend the timeframe for completion of the planning proposal. At that time, the Department also removed Council's delegation to exercise local plan making functions of the Minister.

The planning proposal was due for finalisation on 24 May 2018, but was halted because of the preparation of a State-wide planning framework for short term rental accommodation.

On 30 November 2020, Lake Macquarie City Council requested the Department of Planning, Industry and Environment make the planning proposal.

6. PUBLIC EXHIBITION

In accordance with the Gateway determination, publicly exhibition was undertaken by Council from 3 to 30 March 2015. This was extended to 28 April 2015 in response to a request from the Lake Macquarie Tourism Association.

Thirteen submissions were received from community members and industry groups.

The key issues raised in community submissions were:

ISSUE	RESPONSE
Impacts on community amenity through party noise and car parking in local streets.	<p>The proposed amendments will require holiday rentals to abide by a code of conduct.</p> <p>Each property is to provide guests with terms and conditions for leasing covering noise, parking, garbage disposal.</p> <p>Council will be able to prohibit leasing of properties that do not abide by the code of conduct under s121B of the EP&A Act.</p> <p>Dwellings of 5 or more bedrooms will require development consent, enabling the imposition of conditions.</p>
The holiday code of conduct is self-regulating and has been mismanaged.	<p>The code of conduct is binding and will include a process for complaints handling.</p> <p>A log of complaints and how they are handled is required to be kept.</p> <p>The participating organisation can take action to impose sanctions or de-list properties.</p> <p>As above, Council can also take action.</p>

ISSUE	RESPONSE
Uncertainty about the complaints procedure.	Local environmental plan and development control plan amendments will provide a more transparent process to regulation of the industry. The requirement for a publicly visible sign on the premises will provide appropriate avenues to lodge complaints.

7. ADVICE FROM PUBLIC AUTHORITIES

Council was not required to consult with any public authorities in the Gateway determination.

However, the NSW Rural Fire Service was consulted under s9.1 Direction Planning for Bush Fire Protection. The agency wanted short term rental accommodation in bushfire prone areas to require development consent and therefore to obtain a Bush Fire Safety Authority under s100B of the *Rural Fires Act 1997*.

Council advised that 50 per cent of residential zoned land within the local government area was mapped as bush fire prone. This would have a significant impact on the exempt development pathway.

An agreed position was reached whereby short term rental accommodation in a bush fire prone area would require a Bush Fire Safety Authority to be considered as exempt development.

8. POST-EXHIBITION CHANGES

There have been several post-exhibition changes to improve the planning outcomes. Changes have been made to the planning proposal to reflect State policy that has now come into force or matters administered under other legislation e.g. code of conduct and requirements for a Bushfire Management Authority to be obtained in bush fire prone areas.

Council changes	Parliamentary Counsel's Changes
Short term rental accommodation is permitted on bush fire prone land as exempt development provided a Bush Fire Safety Authority, under s100B of the <i>Rural Fires Act 1997</i> , is obtained from the RFS.	Advised this is required in any case under s100B of the <i>Rural Fires Act 1997</i> and there is no need to repeat the requirement in the local environmental plan. A note has been added to the local environmental plan.
Wording was added to enable properties to abide by alternative codes of conduct to the <i>Holiday and Short-Term Rental Code of Conduct</i> that are: '... a similar code with equivalent or higher standards'	Advised that as the NSW Fair Trading Code of Conduct comes into force on 18 December the local environmental plan should rely on this Code of Conduct. A note has been added and the provision removed.
A requirement has been added for a business sign containing the contact phone number of the owner or property manager and the code of conduct applicable to be displayed in a location visible to the public.	This has remained unchanged by Parliamentary Counsel during drafting.

Council changes	Parliamentary Counsel's Changes
Minor changes have been made to the definitions.	Combined and simplified the definition and identified short term rental accommodation as part of the group term 'tourist and visitor accommodation'.

These amendments, as drafted by Parliamentary Counsel, should be endorsed without requiring further exhibition as it does not change the objectives and aims of the planning proposal, but merely adds clarity and reflects current legislation.

9. ASSESSMENT

Since the Gateway determination was issued, short term rental accommodation has been the subject of a Parliamentary Inquiry and development of a State planning framework. Lake Macquarie City Council has advised it is aware that the State planning framework is scheduled to come into force in 2021. Despite this, it seeks to have the local environmental plan amendment had and in operation until the State planning framework is in force.

9.1 Section 9.1 Directions

The planning proposal is consistent with all applicable section 9.1 Ministerial directions or any inconsistencies are of minor significance.

As explained above, the NSW Rural Fire Service and Lake Macquarie City Council have reached agreement that any short term rental accommodation in bush fire prone areas requires a Bush Fire Safety Authority under s100B of the *Rural Fires Act 1997*.

In Parliamentary Counsel's drafting of the local environmental plan amendment it has clarified, through its definition, that short term rental accommodation is tourism development which requires a Bushfire Safety Authority under the terms of the *Rural Fires Act 1997* if it is in a bush fire prone area. This satisfies section 9.1 Ministerial direction 4.4 Planning for Bush Fire Protection.

9.2 State environmental planning policies

The draft LEP is consistent with relevant SEPPs or deemed SEPPs.

9.3 State, regional and local plans

The draft local environmental plan is consistent with relevant sections of the *Hunter Regional Plan 2036* and *Greater Newcastle Metropolitan Plan 2036* and Lake Macquarie City Council's *Lifestyle 2030 Strategy*.

10. MAPPING

There are no maps relevant to this draft local environmental plan.

11. CONSULTATION WITH COUNCIL

Lake Macquarie City Council Strategy Committee meeting papers and minute of the decision to adopt the planning proposal are attached (**Attachments C and D**).

Council was consulted on the terms of the draft instrument under clause 3.36(1) of the *Environmental Planning and Assessment Act 1979*.

On 14 December 2020, Council confirmed the draft local environmental plan achieved the outcome it sought and that the plan should be made (**Attachment E**).

12. PARLIAMENTARY COUNSEL OPINION

On 15 December 2020, Parliamentary Counsel provided the final Opinion that the draft local environmental plan could legally be made. This Opinion is provided at **Attachment PC**.

13. RECOMMENDATION

It is recommended that the Minister's delegate as the local plan-making authority determine to make the draft local environmental plan under clause 3.36(2)(a) of the *Environmental Planning and Assessment Act 1979* because:

- it is estimated the short term rental accommodation industry contributes around \$38 million per year to the local government area;
- it will put in place a planning framework for short term rental accommodation, which is currently lacking in planning controls;
- it is consistent with local, regional and State planning strategies, policies and directions.



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