

## Planning Proposal – Short-term rental accommodation Amendment to Lake Macquarie Local Environmental Plan 2014

<b>Local Government Area:</b>	Lake Macquarie City Council (LMCC)
<b>Name of Draft LEP:</b>	Amendment to Lake Macquarie Local Environmental Plan 2014 (LMLEP 2014) – Short term rental accommodation
<b>Subject Land:</b>	All land on which a ‘dwelling’ is permitted in Lake Macquarie Local Government Area
<b>Tables:</b>	Table 1: Proposed changes to the LMLEP 2014 instrument Table 2: Justification for exempt development criteria Table 3: Consistency with applicable Section 117 Ministerial Directions Table 4 – Main issues raised during public exhibition period
<b>Attachments:</b>	<b>Attachment 1</b> – Holiday and Short Term Rental Code of Conduct <b>Attachment 2</b> – Gateway Determination <b>Attachment 3</b> – Public Submissions and Responses

### Part 1 – Objectives or Intended Outcome

This Planning Proposal seeks to create provisions in LMLEP 2014 that permit a dwelling to be used as a short-term accommodation for tourists and visitors. The objectives of this Planning Proposal are:

1. To improve certainty for short-term rental accommodation owners, guests, neighbours and the community.
2. To provide a regulatory framework that:
  - a. reduces the impacts of holiday rentals on the neighbourhood, and
  - b. ensures Council can effectively respond to holiday rental complaints.

### Part 2 – Explanation of Provisions

Short-term rental accommodation is not currently defined under LMLEP 2014 and by default is a prohibited use. This Planning Proposal seeks to define short-term rental accommodation and ensure that it is permitted in zones that permit dwellings subject to meeting certain controls.

Two levels of assessment are proposed to regulate short-term rental accommodation, exempt development and development requiring consent.

Dwellings with 4 bedrooms or less are able to proceed as exempt development if they meet certain criteria. Dwellings with 5 bedrooms or more, or developments that do not meet the criteria for exempt development, require development consent.

Table 1 outlines the changes proposed to LMLEP 2014 under this Planning Proposal.

**Table 1: Proposed changes to the LMLEP 2014 Instrument**

Amendment:	Explanation of Provision
Clause 7.24	<p>Insert new clause, as follows:</p> <p><b>Clause 7.24 Short-term rental accommodation</b></p> <p>(1) <i>The objective of this clause is to require development consent for the temporary use of a dwelling as short-term residential accommodation where:</i></p> <p>(a) <i>the dwelling contains 5 or more bedrooms, or</i></p> <p>(b) <i>the dwelling does not meet the exempt development criteria for short-term rental accommodation.</i></p> <p>(2) <i>Despite any other provisions of this Plan, development consent may be granted for the use of a dwelling containing 5 or more bedrooms as short-term rental accommodation.</i></p> <p><b>Note:</b> Exempt development provisions are provided in Part 3 and Schedule 2 of the Lake Macquarie Local Environmental Plan 2014.</p>
Schedule 2 Exempt Development	<p>Insert new exempt development provisions as follows:</p> <p><b>Short-term rental accommodation</b></p> <p>(1) <i>The subject dwelling must be located in a zone where a dwelling is permitted.</i></p> <p>(2) <i>The dwelling must not contain more than 4 bedrooms.</i></p> <p>(3) <i>Where the lot on which the dwelling is situated is wholly or partially identified as bush fire prone land, a Bush Fire Safety Authority (BFSA) is to be obtained from the Rural Fire Service under s.100B of the Rural Fires Act 1997 prior to operation.</i></p> <p>(4) <i>The requirements of a BFSA are to be complied with at all times.</i></p> <p>(5) <i>The property owner or appointed property manager must abide by:</i></p> <p>a. <i>The Holiday and Short-Term Rental Code of Conduct, or its successor, or</i></p> <p>b. <i>A similar code with equivalent or higher standards for:</i></p> <p>i. <i>The terms and conditions upon which a property is offered, booked and occupied,</i></p> <p>ii. <i>The record keeping, complaints handling and dispute resolution procedures,</i></p>

	<ul style="list-style-type: none"> <li>iii. <i>The maximum number of guests and visitors,</i></li> <li>iv. <i>Garbage recycling and waste disposal,</i></li> <li>v. <i>Car parking, and</i></li> <li>vi. <i>Functions, noise and residential amenity.</i></li> </ul> <p>(6) <i>A business identification sign containing the contact phone number of the owner or appointed property manager, and a reference to the Code applicable to the Property (as described in (4) above), should 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 1m<sup>2</sup> and limited to one sign per street frontage.</i></p>
Dictionary	<p>Insert the following definitions:</p> <p><b>Short-term rental accommodation</b> <i>means a dwelling, or part of a dwelling, that provides short-term accommodation on a temporary, commercial basis, but does not include bed and breakfast accommodation.</i></p> <p><b>Short-term</b> <i>means the right of occupancy of the accommodation granted to any one guest does not exceed three months.</i></p>

Part 3 of the LMLEP 2014 contains general requirements for exempt development, including provisions that require compliance with the Building Code of Australia (BCA), including fire safety. Therefore, there is no need to require compliance with the BCA as exempt development criteria.

Part 3 of the LMLEP 2014 states that exempt development ‘must not be carried out on land that is, or on which there is, an item that is listed on the State Heritage Register under the *Heritage Act 1977*, or that is subject to an interim heritage order under that Act’.

Under Clause 7.24, an item listed on the State Heritage Register can only be used as short-term accommodation subject to development consent. The State Heritage items in Lake Macquarie include Catherine Hill Bay Cultural Precinct that contains many dwellings, Glenrock early coalmining sites within the Glenrock State Recreation Area, Morisset Hospital Precinct, Rathmines Park former RAAF Seaplane Base, Wangi Power Station Complex, and WWII RAAF Radar Station 208 in Catherine Hill Bay.

Similarly, exempt development must not be carried out on land identified as an “Environmentally Sensitive Area”. However, majority of these lands are within bush fire prone areas and would require a BFSA.

Part 3 of the LMLEP 2014 is a compulsory clause under the Standard Instrument.

In addition, Section 76 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) contains additional provisions about land on which exempt development may or may not be undertaken, stating that exempt development:

- (a) must be of minimal environmental impact, and

- (b) cannot be carried out in critical habitat of an endangered species, population or ecological community (identified under the *Threatened Species Conservation Act 1995* or the *Fisheries Management Act 1994*), and
- (c) cannot be carried out in a wilderness area (identified under the *Wilderness Act 1987*).

A draft Development Control Plan (DCP) with controls specific to Development Applications for short-term rental accommodation was also exhibited for public comment at the same time as this Planning Proposal. The draft DCP included similar provisions as the exempt criteria, relating to adherence with the *Holiday and Short Term Rental Code of Conduct*, or a similar code, and safety for dwellings in bush fire prone areas.

### **Part 3 – Justification**

#### **A. NEED FOR THE PLANNING PROPOSAL**

##### **1. Is the Planning Proposal a result of any strategic study or report?**

The Planning Proposal is not the result of a strategy, study or report. However, in the NSW Land and Environment Court Case of *Dobrohotoff vs Bennic* (2013), the court found that councils have a duty to resolve ambiguity and remedy deficiencies in their planning instruments relating to short-term rental accommodation.

Land and Environment Court findings over the past ten years have determined that holiday rentals are a commercial rather than a residential activity and therefore by default are prohibited in residential zones. However, the use of a dwelling for short-term rental accommodation is consistent with other low-key commercial activities permitted in residential zones, such as bed and breakfast accommodation.

Holiday rental properties can be an important provider of tourist and visitor accommodation, economic support to the local area, and income for owners. Holiday rentals are common practice in many NSW council areas, particularly in coastal areas and near the ski fields.

Council's economic analysis indicates that tourism in Lake Macquarie contributed \$381 million in the 12 months to August 2015, and created 2,213 direct and indirect jobs. Short-term holiday rentals help to contribute to these statistics by providing accommodation for tourists and visitors. Further information on the economic impact of short-term holiday rentals is provided in Section 10 below.

##### **2. Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?**

#### **Background**

Council sought to include a clause prior to publishing LMLEP 2014 that permitted a dwelling to be used as short-term rental accommodation without requiring development consent. The version of the clause exhibited to the public for comment and forwarded to the Department of Planning and Environment (DoPE) for publication was worded as follows:

##### ***5.4A Short term use of residential accommodation***

- (1) The objective of this clause is to ensure that residential accommodation may be used commercially for short-term residential accommodation without requiring development consent.***

(2) *Despite any other provision of this Plan, development consent is not required for the use of residential accommodation for short-term residential purposes on a commercial basis, if the use does not interfere with the amenity of the neighbourhood in any way, including by noise or traffic generation.*

(3) *In this clause, short-term means any period less than 90 consecutive days in any 12 month period.*

The clause was later updated to state that ‘the objective of this clause is to enable the temporary use of **dwelling**s as short-term rental accommodation without requiring development consent’.

Under the LMLEP 2014, a ‘**dwelling** means a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile’. The changed wording of the draft clause meant that any single ‘separate domicile’ could be used as a short-term holiday rental rather than the clause applying to ‘residential accommodation’ which covers a whole ‘building or a place’.

Parliamentary Counsel (PC) removed reference to ‘amenity’ from the draft LEP clause based on their review of the Land and Environmental Court case of *Dobrohotoff v Bennic* (2013) regarding a holiday house in Gosford. In the opinion of PC, the case indicates that ‘amenity’ is not a relevant matter for inclusion in an LEP regarding short-term rental accommodation because it is ambiguous.

Council requested the deletion of the short-term rental accommodation clause from LMLEP 2014 because the draft clause prepared by PC permitted short-term rental accommodation without development consent, but there were no other provisions regulating the land use once the reference to amenity was removed.

As the clause was removed from LMLEP 2014 before publication, short-term rental accommodation remains a prohibited development in the City.

### **Exempt Development –permitting short-term rental accommodation without consent**

It is unclear how many holiday rental premises exist in Lake Macquarie Local Government Area (LGA), as holiday rentals are listed on a number of different booking websites. There are approximately 106 properties listed on Stayz and 300 properties listed on Airbnb when searching ‘Lake Macquarie’ (as of 6 January 2016). However, some of these properties would be listed on both sites, and there may be other properties not listed on either of these sites.

While unregulated holiday letting has the potential to impact on residential amenity, Council has received only a small number of complaints, which indicates that the majority are managed well. It is therefore proposed that short-term rental accommodation be exempt from requiring consent under Schedule 2 Exempt Development of LMLEP 2014.

To qualify for exempt development as short-term rental accommodation, a dwelling must meet a number of proposed criteria. The criteria is designed to reduce the impacts of holiday rentals on the neighbourhood, and provide a regulatory framework under which Council can effectively respond to holiday rental complaints. The reasoning behind the criteria is in Table 2 below.

During the consultation period, the NSW Rural Fire Service (RFS) made a submission requesting all dwellings on land partially or wholly identified as bush fire prone be required to obtain a *Bush fire Safety Authority* from the RFS for short-term

rental accommodation. As a result, this requirement has been added to the exempt criteria.

**Table 2: Justification for exempt development criteria**

<b>Exempt development</b>	
<b>Proposed criteria</b>	<b>Justification</b>
<p>(1) The subject dwelling must be located in a zone where dwellings are permitted.</p>	<p>This criteria permits a dwelling to be used as a short-term holiday rental, but only where dwellings are permitted, to ensure the use occurs in appropriate locations.</p> <p>The wording of this clause covers dwellings permitted under any legislation, including the LMLEP 2014, under the <i>State Environmental Planning Policy (Exempt and Complying Development Codes) 2008</i>, and under the LMLEP 2004 and LMLEP 1984 (which still apply to some areas of Lake Macquarie).</p> <p>It also covers any type of 'dwelling'. This means that it applies to a dwelling within an attached dwelling, dual occupancy, multi dwelling housing, residential flat building, semi-detached dwelling, shop top housing or secondary dwelling, as well as a 'dwelling house'.</p>
<p>(2) The dwelling must not contain more than 4 bedrooms.</p>	<p>The 2011 Census Community Profile for Lake Macquarie Local Government Area indicates that over 93% of dwellings in Lake Macquarie consist of 4 bedrooms or less. Therefore, the vast majority of dwellings in Lake Macquarie would meet this particular exempt development requirement.</p> <p>Limiting exempt development provisions to dwellings with 4 bedrooms or less helps to reduce impacts on the neighbourhood. Larger houses that can sleep more people may be more likely to be used as 'party houses' that impact on the amenity of the surrounding neighbourhood by way of car parking, waste disposal, excessive noise, and antisocial behaviour.</p> <p>The <i>Holiday and Short Term Rental Code of Conduct</i> referred to in (4) below states that 'the maximum number of adult Guests permitted at a Property must not exceed 2 per bedroom, plus 2' (Part 3 of the Code).</p>
<p>(3) Where the lot on which the dwelling is situated is wholly or partially identified as bush fire prone land a Bush Fire Safety Authority (BFSA) is to be obtained from the Rural Fire Service under S100B of the Rural Fires Act 1997 prior to operation</p> <p>(4) The requirements of the BFSA are to be complied with at all times.</p>	<p>This helps to address the bush fire risk that occurs in bush fire prone areas of Lake Macquarie.</p> <p>Tourist accommodation is considered to be a special fire protection purpose for the purposes of <i>Planning for Bush fire Protection 2006</i> (PBP 2006).</p> <p>The RFS advised that the planning proposal was not consistent with Section 117 Direction 4.4 "Planning for Bush fire Protection".</p> <p>The RFS recommended changes to the Planning Proposal to require a Bush Fire Safety Authority (BFSA) be obtained for land identified as bush fire prone, under Section 100B of the <i>Rural Fires Act 1997</i>, to comply with the PBP 2006.</p> <p>The RFS has reviewed this clause and advised it is a good way forward to satisfy their requirements. However, Council and RFS would need to work together regarding compliance with</p>

	<p>the BFSA.</p> <p>Further advice from RFS sent to DoPE and Council stated that amendments to the Exempt and Complying Codes SEPP should be made to address the issues relating to bush fire prone areas across the State.</p>
<p>(5) The property owner or appointed property manager must abide by:</p> <p>(a) the Holiday and Short Term Rental Code of Conduct, or its successor, or</p> <p>(b) a similar code with equivalent or higher standards for:</p> <p>(i) the terms and conditions upon which a property is offered, booked and occupied,</p> <p>(ii) the record keeping, complaints handling and dispute resolution procedures,</p> <p>(iii) the maximum number of guests and visitors,</p> <p>(iv) garbage, recycling and waste disposal,</p> <p>(v) car parking, and</p> <p>(vi) functions, noise and residential amenity.</p>	<p>A new version of the <i>Holiday and Short Term Rental Code of Conduct</i> prepared by representatives of the short-term holiday rental industry was released in March 2015. The national Holiday Rental Industry Association (HRIA) administers the Code and a copy is available on their website <a href="http://www.hria.com.au">www.hria.com.au</a> under 'Code of Conduct'.</p> <p>The NSW Department of Planning and Infrastructure (now DoPE), Destination NSW and the Local Government Shires Association NSW were consulted during preparation of previous versions of the Code.</p> <p>The <i>Holiday and Short Term Rental Code of Conduct</i> addresses issues such as noise and residential amenity, car parking, garbage and recycling disposal, the maximum number of guests and visitors (2 per bedroom, plus 2), functions and parties, and complaints and dispute resolution.</p> <p>The Code is subject to periodic review, which is why the date and version number have not been included in the exempt development criteria. The criteria has been worded so that if the title of the Code is changed in the future, the LEP criteria will continue to apply to the Codes successor.</p> <p>The criteria also covers codes similar to the <i>Holiday and Short Term Rental Code of Conduct</i> with equivalent or higher standards. This means that any organisation or property manager can apply their own Code of Conduct, as long as it contains equivalent or higher standards than the Holiday and Short Term Rental Code of Conduct.</p> <p>Participation in the <i>Holiday and Short Term Rental Code of Conduct</i> is voluntary. However, the exempt development criteria requires a property owner or property manager to abide by the Code, its successor, or a similar code with equivalent or higher standards thereby making adherence to industry best practice standards mandatory.</p> <p>If a property owner or manager is not abiding by these requirements, the use is prohibited under the LEP. Council is able to take action against such a use, including ordering a premise to cease the use for a prohibited purpose under Section 121B of the <i>Environmental Planning and Assessment Act 1979</i> (EP&amp;A Act).</p> <p>The <i>Holiday and Short Term Rental Code of Conduct</i> contains four parts. Some of these parts relate to governance of the Code and other parts provide performance standards and operating requirements for holiday rentals. If a holiday rental owner is relying on an alternative Code to meet the exempt development criteria, the Code would need to contain equivalent or higher performance standards and operating requirements, but would not need to emulate the governance structure of the <i>Holiday and Short Term Rental Code of Conduct</i>.</p>

<p>(6) A business identification sign containing the contact phone number of the owner or appointed property manager, and a reference to the Code applicable to the Property (as described in (4) above), should 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 1m<sup>2</sup> and limited to one sign per street frontage.</p>	<p>This criteria has been added so neighbouring residents have access to a contact number for making complaints.</p> <p>Following a public submission received, a reference to the Code applicable to the Property has been added to this criteria so neighbouring properties and Council are aware of the regulations applicable to the property.</p> <p>The sign should be visible from the public domain to ensure that neighbours can read the sign from the street.</p> <p>The sign should be a maximum of 1m<sup>2</sup> and limited to one sign per street frontage, which is consistent with the requirements for home business signage under the LM DCP 2014.</p>
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## **Summary of the Holiday and Short Term Rental Code of Conduct**

A stakeholder group, including representatives of industry and government, prepared the *Code of Conduct* and previous versions. A copy is available on the website of any Participating Organisation and on the Holiday Rental Industry Association website [www.hria.com.au](http://www.hria.com.au). The objectives of the Code are:

- a) To establish acceptable standards of behaviour for Holiday Rental Guests and Visitors to minimise any adverse social or environmental impacts;
- b) To assist Owners and Managers of Holiday Rental accommodation to meet the needs of all stakeholders including guests, neighbours, local communities, local councils and government authorities; and
- c) To inform the community of the standards of conduct expected from Holiday Rental Owners, Managers, Guests and Visitors so as to effectively minimise amenity impacts.

The Code provides a self-regulatory approach to the management of holiday rentals. The key elements of the Code are outlined below:

- Part 1 of the Code contains the obligations of Participating Organisations and relates mainly to administration and governance of the Code. The Code applies to short-term rentals owned or managed by members of Participating Organisations. Owners and managers of short-term rentals can become a member of an existing Participating Organisation, or they can form a new Participating Organisation. Compliance with the Code is required as a condition of membership or listing the property with the Participating Organisation.

Participating Organisations agree to the Code by lodging a written notice with the National Code Administration Committee (NCAC). The NCAC consists of representatives from each State and Territory approved by the HRIA. The NCAC is responsible for dealing with instances where Participating Organisations are not complying with the Code of Conduct and with complaints from the public. NCAC will also conduct an annual review of the Code.

Participating Organisations may impose sanctions on owners and agents who breach the code. The sanctions should increase in severity to reflect the nature, seriousness and frequency of the breach and may include:

- Issuing a censure or warning,
- Requesting rectification of harm done or compensation for damage caused by the breach,
- Requesting remedial action to ensure that the breach does not reoccur, which may include more restrictive practices such as reducing the number of guests permitted in the premises or restricting visitor numbers and / or hours, and
- Expulsion from membership of the Participating Organisation or de-listing of the property.

The NCAC reviews any disputed sanctions and deals with instances where a Participating Organisation is not complying with the Code.

- Part 2 of the Code contains the obligations of property managers. It outlines the roles and responsibilities of property managers and the matters that must be taken into account when handling complaints, including keeping a log of related

communications and actions taken. Section 2.5 outlines the consequences of not meeting the Code of Conduct. Enforcement action can result in termination of permission to occupy the property, eviction, loss of rent paid, deductions from the security deposit or bond, or extra charges.

- Part 3 of the Code provides performance standards that aim to ensure that the amenity of the neighbourhood is not impacted. Part 3 is supplemented by Schedule A of the Code, which provides ‘deemed to satisfy’ solutions to the performance standards. Property managers are able to adapt the performance standards in Part 3 to meet their circumstances, but they must be able to demonstrate consistency with the following at a minimum:
  - 3.3 – Licence not a tenancy – Guests are granted a limited permission to occupy the property for holiday purposes under a licence not a residential tenancy agreement (as per a long-term rental property). Failure to comply with the Terms and Conditions may result in termination of permission to occupy the property and eviction.
  - 3.4 – Security deposits or bonds – Owners and agents should make effective and fair use of security deposits or bonds to procure compliance from guests.
  - 3.5 – By Laws and Common Property – where the property is part of a strata or community title scheme, require guests and visitors to comply with owners’ corporation by-laws.
  - 3.6 - Maximum number of guests and visitors –The number of guests permitted at a Property must not exceed a maximum of 2 adults per bedroom plus 2 additional adult guests.
  - 3.7 – General obligations of guests and visitors – set out general obligations of guest and visitors designed to procure safety and security and preserve residential amenity.
  - 3.8 – Noise and residential amenity – Offensive noise and antisocial behaviour is prohibited and the Manager must be able to exercise all legal rights and remedies to promptly deal with any breach.
  - 3.9 – Functions and parties – The property is not a ‘party house’ and any such activities are prohibited.
  - 3.10 – Access and parking – Regulate guest and visitor parking to show consideration for neighbours.
  - 3.11 - Recycling and garbage – Regulate garbage storage and disposal to avoid adverse impacts on amenity and neighbours.
  - 3.12 – Complaints and dispute resolution procedure – Provide adequate information on complaints handling and dispute resolution.
  - 3.13 – The Terms and Conditions under which the property is booked must clearly set out the consequences of not meeting the Terms and Conditions.

Schedule A expands upon the above requirements, including that: the number of visitors should not conflict with residential amenity; guests must control and be responsible for visitors; guests must not create offensive noise especially between 10pm and 8am; guests and visitors must comply with parking regulations; and guests must dispose of garbage and recycling in accordance with the usual practice at the property and in the allocated bins.

- Part 4 contains performance standards for ‘House Rules for guests and visitors’ that are to be displayed in holiday rentals. The rules in Part 4 are to be adopted and augmented to suit the individual property. Schedule B of the Code provides ‘deemed to satisfy’ House Rules that can be adapted and augmented to suit the specific circumstances at the property.

The house rules reiterate the requirements for noise, residential amenity, visitors, gatherings and functions, parking and garbage and recycling outlined in Part 3 of the Code. It also requires appropriate rules to be specified around the hours of use and safety measures for any pool and the appropriate use of any deck or balcony areas. The House Rules need to be clear about the consequences for non-compliance with the Rules, including termination and eviction.

### **Appropriateness of referring to the *Holiday and Short Term Rental Code of Conduct***

The Code of Conduct covers matters associated with car parking, garbage disposal, nuisance behaviour, noise, functions and parties, numbers of guests and a complaints procedure. Communications with DoPE indicated that Council is welcome to adopt the Code of Conduct for use by short-term holiday rentals as a means of addressing ‘amenity’. The Code itself also states that Government authorities ‘are encouraged to endorse this Code of Conduct’.

Property owners and managers are generally better placed to respond to neighbourhood complaints than Council, as many disturbances occur on weekends and at nights when Council staff are not available. Owners and managers are also required by the Code to record the history of complaints from the public.

While participation in the Code is voluntary, the draft exempt development criteria makes it mandatory for short-term holiday rentals in Lake Macquarie to participate in the Code, its successor, or a similar code with equivalent or higher standards.

Not all holiday rental organisations are Participating Organisations in the *Holiday and Short Term Rental Code of Conduct*, but a number of organisations are existing members and short-term rental property owners are able to join these organisations. It is also possible for organisations and groups to form their own Participating Organisation.

Each Participating Organisation has membership fees, which need to be paid by the owner or agent to join the Organisation. However, many short-term rental accommodation properties already pay these fees to have their properties listed on booking websites.

### *Gateway Determination*

The DoPE requested clarification in their Gateway Determination dated 17 December 2014 (see Attachment 2) about how adherence to the *Holiday and Short Term Rental Code of Conduct* (the Code) will be enforced and implemented in the draft LMLEP 2014. As a result, the following changes have been made to this Planning Proposal since the matter was reported to Council on 1 December 2014 and prior to public exhibition:

- The draft exempt development criteria now refers to the *Holiday and Short Term Rental Code of Conduct* or ‘its successor’. This change means that any change to the title of the Code will not impact on the permissibility of short-term rental accommodation under the LMLEP 2014.
- DoPE raised concerns that organisations may stop implementing or endorsing the Code without Council’s awareness. However, this is true of any

exempt development criteria for any type of exempt development, for example, exemption criteria for fuel tanks for home businesses include a requirement to be installed in accordance with AS1940-2004. Council is generally unaware of a non-compliance unless a complaint is made and investigations undertaken. Keeping a register of short term rental accommodation in Lake Macquarie would not resolve the issue, as the register would rely on owners and managers signing up and updating the information.

If a property owner or manager is not abiding by the Code, or a similar code with equivalent or higher standards, the property does not comply with the exempt development criteria listed under LMLEP 2014 and the use is therefore prohibited. If Council becomes aware of this breach, they are able to take action, including ordering a premises to cease being used for a prohibited purpose under Section 121B of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

- Participating Organisations to the Code are responsible for issuing sanctions on properties that do not comply with the Code and DoPE was concerned that organisations may apply different levels of enforcement for non-compliance.

To remedy this, the draft exempt development criteria no longer requires an owner or manager to become a member of a Participating Organisation to Code. The emphasis is on abiding by the Code of Conduct or a similar code with equivalent or higher standards.

Council is in a position to determine whether an owner or manager is abiding by the relevant standards and can therefore take action accordingly.

- The DoPE also raised concerns in the Gateway Determination that organisations who endorse the Code may be favoured, even though other organisations or individuals may abide by higher or equivalent standards. The draft exempt development criteria now refers to the Holiday and Short Term Rental Code of Conduct or a similar code with equivalent or higher standards.

This means that any organisation or property manager can apply their own Code of Conduct, as long as it contains equivalent or higher standards than the Code.

### **Development Application – Permitting short-term rental accommodation with development consent**

Under this Planning Proposal, development consent is required for the temporary use of dwellings containing 5 or more bedrooms as short-term rental accommodation.

Larger houses that can sleep more people may be more likely to be used as 'party houses' that impact on the amenity of the surrounding neighbourhood by way of excessive noise and antisocial behaviour and the generation of excess car parking and garbage. Assessment of dwellings with 5 bedrooms or more will help to determine the appropriateness of the premises to be used as a short-term accommodation.

Council is able to place conditions on a development consent that can be used for compliance purposes if complaints are received about a development. Council is able to issue a fine and take action for a breach of Conditions of Consent under Section 121B of the EP&A Act.

The creation of a clause within the LEP is preferable to making short-term rental accommodation permitted with consent in certain zones because it allows flexibility to require development consent only when the dwelling contains 5 or more bedrooms. The clause can also specify that only a permissible dwelling may be used as short-term rental accommodation.

A draft Development Control Plan (DCP) with controls specific to short-term rental accommodation Development Applications was exhibited for public comment at the same time as this Planning Proposal. The draft DCP included provisions relating to adherence with the *Holiday and Short Term Rental Code of Conduct*, its successor, or a similar code with equivalent or higher standards and safety for dwellings in bush fire prone areas.

## **B. RELATIONSHIP TO STRATEGIC PLANNING FRAMEWORK**

### **3. Is the Planning Proposal consistent with the objectives and actions of the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?**

#### Lower Hunter Regional Strategy (LHRS) 2006

The Planning Proposal is consistent with the objectives of the LHRS. The Proposal seeks to create provisions for short-term rental accommodation that protect and strengthen the quality lifestyle for residents and visitors in accordance with the Vision on page 9 of the LHRS.

The LHRS states that the Lower Hunter has enjoyed strong job growth. This growth in jobs relates to a number of sectors, including tourism (p 7). It is therefore evident that the tourism sector in the Lower Hunter is growing.

The LHRS also identifies opportunities for rural tourism in the Lower Hunter. Although the Lower Hunter is now the sixth largest urban settlement in Australia, rural land still comprises approximately 80 per cent of all land within the Region. There are opportunities for rural tourism in some locations within Lake Macquarie, particularly in the western half of the LGA, which would be consistent with the LHRS.

### **4. Is the Planning Proposal consistent with the local council's Community Strategic plan, or other local strategic plan?**

#### Lifestyle 2030 Strategy (LS2030)

Lifestyle 2030 (LS2030) is Council's citywide strategic planning document that informed preparation of LMLEP 2014. The Planning Proposal is consistent with the objectives of LS2030.

LS2030 contains seven Strategic Directions, one of which is to create a 'city of progress and prosperity'. The intention of this direction is to sustain 'a prosperous economy with a supportive attitude to balanced growth managed in a way to enhance quality of life'. The Planning Proposal is consistent with this intention as it aims to permit short-term rental accommodation under the LEP, while providing a regulatory framework to minimise the impact on the quality of life of the surrounding neighbourhood.

Council is seeking to achieve a list of outcomes under each Strategic Direction. Outcome 5.13 of the Strategy seeks to further develop rural and non-urban based forms of tourism, such as bed and breakfast and farm stays. Short-term rental accommodation could form part of this mix and the Planning Proposal is therefore consistent with Outcome 5.13.

Outcome 5.14 seeks to encourage and develop tourism opportunities within Lake Macquarie City in consultation with Destination NSW. Consultation with Destination NSW was undertaken as part of the exhibition process. No response was received.

The Lifestyle 2030 Strategy also discusses the importance of non-centre based employment activity to the prosperity of the LGA, which includes tourism. To address the need for non-centres based employment in Lake Macquarie, 'tourism businesses are encouraged throughout the City, and they are particularly encouraged to cluster in areas with high tourism potential or where there is access to a range of tourism services' (p27).

In the instance of short-term rental accommodation, it is considered best to encourage the use throughout Lake Macquarie City to avoid clusters of holiday rentals, which may have a higher impact on the amenity of permanent residents in the locality.

This Planning Proposal is consistent with the aim of Lifestyle 2030 to encourage tourism businesses throughout the City.

#### 5. Is the Planning Proposal consistent with applicable state environmental planning policies (SEPPs)?

Some SEPPs apply to particular parcels of land within Lake Macquarie and certain types of development in NSW, but no SEPPs apply specifically to short-term rental accommodation.

#### 6. Is the Planning Proposal consistent with applicable Ministerial Directions (s.117 directions)?

An assessment of the Planning Proposal against the applicable Ministerial Directions is provided in Table 3. The table addresses whether the Proposal is consistent with 'what a relevant planning authority must do' if a direction applies.

**Table 3: Consistency with applicable Section 117 Ministerial Directions**

Ministerial Direction & Relevance	What a relevant planning authority must do if this direction applies	Consistency / Comment
<p><b>1.1 - Business and Industrial Zones</b></p> <p>This direction applies when a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed business or industrial zone.</p>	<p>When this direction applies, a planning proposal must:</p> <p>(a) give effect to the objectives of this direction,</p> <p>(b) retain the areas and locations of existing business and industrial zones,</p> <p>(c) not reduce the total potential floor space area for employment uses and related public services in business zones,</p> <p>(d) not reduce the total potential floor space area for industrial uses in industrial zones, and</p> <p>(e) ensure that proposed new employment areas are in accordance with a strategy that is approved by the Director-General of the</p>	<p>The proposal is <b>consistent</b> with this direction. Dwellings are permitted in business zones under the LMLEP 2014, for example in residential flat buildings. Therefore, this direction applies. The proposal will not create or remove any zone boundaries. It also does not impact on floor space areas.</p> <p>Short-term rental accommodation is a low key commercial activity that will not impact on the viability of centres, business or industrial zones. The promotion of tourism across the LGA is consistent with the non-centres based employment activity encouraged by Lifestyle 2030.</p>

	Department of Planning.	
<p><b>1.2 Rural Zones</b></p> <p>This direction applies when a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed rural zone (including the alteration of any existing rural zone boundary).</p>	<p>When this direction applies, a relevant planning authority must:</p> <p>(a) not rezone land from a rural zone to a residential, business, industrial, village or tourist zone.</p> <p>(b) not contain provisions that will increase the permissible density of land within a rural zone (other than land within an existing town or village).</p>	<p>Dwellings are permitted in rural zones under LMLEP 2014, and therefore short-term rental accommodation would also be permitted in these zones under the Planning Proposal.</p> <p>The proposal is <b>consistent</b> with this direction because it will not rezone land and does not contain provisions that will increase the permissible density of land within a rural zone, as it makes use of existing and permitted dwellings.</p>
<p><b>1.5 Rural Lands</b></p> <p>This direction applies to all planning proposals to which State Environmental Planning Policy (Rural Lands) 2008 applies, including Lake Macquarie local government area. This direction applies if a planning proposal affects land within an existing or proposed rural or environment protection zone.</p>	<p>When this direction applies, a planning proposal must be consistent with the Rural Planning Principles listed under <i>State Environmental Planning Policy (Rural Lands) 2008</i>.</p>	<p>Dwellings are permitted in rural and environmental protection zones under LMLEP 2014, and therefore short-term rental accommodation would also be permitted in these zones under the Planning Proposal.</p> <p>The planning proposal is <b>consistent</b> with the Rural Planning Principles because:</p> <p>(a) The proposal promotes opportunities for productive and sustainable economic activities in rural areas, in this case tourism activities.</p> <p>(b) The proposal will not impact on rural lands and agriculture.</p> <p>(c) The proposal will not impact on rural land uses or their importance to the State.</p> <p>(d) The proposal balances the social, economic and environmental interests of the community.</p> <p>(e) The proposal is unlikely to impact on natural resources.</p> <p>(f) The proposal is consistent with rural lifestyle and housing uses and contributes to the social and economic welfare of rural communities,</p> <p>(g) The use of an existing dwelling minimises impacts on infrastructure and services.</p> <p>(h) The proposal is consistent with the LHRS.</p>
<p><b>2.1 Environment Protection Zones</b></p> <p>The objective of this direction is to protect and conserve environmentally sensitive areas.</p>	<p>A planning proposal must include provisions that facilitate the protection and conservation of environmentally sensitive areas.</p> <p>A planning proposal that applies to land within an environment protection zone or land otherwise identified for environment protection purposes in a LEP must not reduce the environmental protection standards that apply to the land (including by modifying development standards that apply to the land). This requirement does</p>	<p>Dwellings are permitted in environmental protection zones under LMLEP 2014, and therefore short-term rental accommodation would also be permitted in these zones.</p> <p>The planning proposal is <b>consistent</b> with this direction because existing provisions of the LEP and other relevant legislation already provide for the protection and conservation of environmentally sensitive areas when seeking to construct a dwelling. The use of the dwelling as short-term rental accommodation is not expected to have additional impact.</p> <p>The planning proposal also does not alter or reduce the environmental protection standards applying to any land. Section 76 of the EP&amp;A Act states that exempt development must be of 'minimal</p>

	not apply to a change to a development standard for minimum lot size for a dwelling in accordance with clause (5) of Direction 1.5 “Rural Lands”.	environmental impact’, it ‘cannot be carried out in critical habitat of an endangered species, population or ecological community (identified under the <i>Threatened Species Conservation Act 1995</i> or the <i>Fisheries Management Act 1994</i> )’ and it ‘cannot be carried out in a wilderness area (identified under the <i>Wilderness Act 1987</i> ).
<b>2.2 – Coastal Protection</b> This direction applies to the coastal zone.	A Planning Proposal must include provisions that give effect to and are consistent with relevant NSW Government coastal policy.	Some of the dwellings within Lake Macquarie LGA are located within the coastal zone. However, short-term use of dwellings as holiday rentals will be of <b>minor significance</b> to the coastal zone.
<b>2.3 – Heritage Conservation</b> This direction aims to conserve items and places of heritage significance.	The Direction provides that a Planning Proposal must contain provisions that facilitate the conservation of Aboriginal areas, objects or places with heritage significance to Aboriginal culture and people.	The State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 provides that exempt development must not be carried out on land that is, or on which there is, an item that is listed on the State Heritage Register under the <i>Heritage Act 1977</i> , or that is subject to an interim heritage order under that Act. Therefore, the proposal is <b>consistent</b> with this direction.
<b>3.1 – Residential Zones</b> This direction applies when a planning proposal will affect land within an existing or proposed residential zone or any other zone in which significant residential development is permitted or proposed to be permitted.	(4) A planning proposal must include provisions that encourage the provision of housing that will: (a) broaden the choice of building types and locations available in the housing market, and (b) make more efficient use of existing infrastructure and services, and (c) reduce the consumption of land for housing and associated urban development on the urban fringe, and (d) be of good design. (5) A planning proposal must, in relation to land to which this direction applies: (a) contain a requirement that residential development is not permitted until land is adequately serviced (or arrangements satisfactory to the council, or other appropriate authority, have been made to service it), and (b) not contain provisions which will reduce the permissible residential density of land.	Dwellings are permitted in residential zones under LMLEP 2014, and therefore short-term rental accommodation would also be permitted in these zones under the Planning Proposal.  The planning proposal is <b>consistent</b> with this direction because it does not affect the provision of housing. As a result, the proposal does not need to contain a requirement that dwellings are only permitted on adequately serviced land. The proposal does not affect the residential density of land.
<b>3.4 – Integrating Land Use and Transport</b> The direction requires consistency with State policy in terms of positioning of urban	A planning proposal must locate zones for urban purposes and include provisions that give effect to and are consistent with the aims, objectives and principles of:	This direction applies when preparing a planning proposal that will create, alter or remove a zone or a provision relating to urban land, including land zoned for residential, business, industrial, village or tourist purposes. The draft provisions relate to urban land in Lake Macquarie and

land use zones.	(a) Improving Transport Choice – Guidelines for planning and development (DUAP 2001), and (b) The Right Place for Business and Services – Planning Policy (DUAP 2001).	therefore, this direction applies. The proposal makes use of existing dwellings and does not consider the location of public transport services, walking and cycling. Therefore, it is inconsistent with this direction, but the inconsistency is considered to be of <b>minor significance</b> because it relates to existing dwellings.
<b>4.1 – Acid Sulfate Soils</b> The direction applies to land that has been identified as containing potential Acid Sulfate Soils (ASS)	A relevant planning authority must not prepare a planning proposal that proposes an intensification of land uses on land identified as having a probability of containing ASS unless the relevant planning authority has considered an ASS study.	The use of a dwelling as a short-term rental does not involve the excavation of land and therefore, this direction is <b>not applicable</b> .
<b>4.2 – Mine Subsidence and Unstable Land</b> This seeks to prevent damage associated with mine subsidence	The direction requires consultation with the Mine Subsidence Board (MSB) where a draft LEP is proposed for land within a mine subsidence district.	A significant portion of Lake Macquarie LGA is located within a mine subsidence district. However, the use of a dwelling as a short-term rental does not involve any intensification of land use or change to the scale, density or type of development on the land. Therefore, this direction is <b>not applicable</b> .
<b>4.3 – Flood Prone Land</b> Development of flood prone land should be consistent with the NSW Government's Flood Prone Land Policy	This direction applies when a relevant planning authority prepares a planning proposal that creates, removes, or alters a zone or a provision that affects flood prone land.	Some land within Lake Macquarie LGA is identified as flood prone land and some of that land contains existing dwellings and could therefore potentially be used as short-term holiday rental. However, the planning proposal will not permit an increase in the development of the land or new development in floodway areas, and it will not create situations where development may create flood impacts to other properties (any development would be existing). The planning proposal is not likely to result in a substantially increased requirement for government spending on flood mitigation measures, infrastructure or services. Therefore, any provisions of this planning proposal inconsistent with this direction are considered to be of <b>minor significance</b> .
<b>4.4 – Planning for Bush fire Protection</b> This direction applies to bush fire prone land	Under this direction, a planning proposal must: (a) have regard to <i>Planning for Bush fire Protection 2006</i> , (b) introduce controls that avoid placing inappropriate developments in hazardous areas, and (c) ensure that bush fire hazard reduction is not prohibited within the APZ. (6) A planning proposal must, where development is proposed, comply with the following provisions, as appropriate: (a) provide an Asset Protection Zone (APZ) incorporating at a minimum:	Approximately 50% of residential zoned land within Lake Macquarie LGA is mapped as bush fire prone land. Therefore, this direction applies. As part of the exhibition process, the NSW Rural Fire Service (RFS) was consulted. The RFS advised that the Planning Proposal was <b>not consistent</b> with Section 117 Direction 4.4 "Planning for Bush fire Protection". Under this Direction, Short-term rental accommodation is considered tourist accommodation, which is defined as a ' <i>special fire protection purpose</i> '. Under Section 100B of the <i>Rural Fires Act 1997</i> , a Bush Fire Safety Authority (BFSA) is required for tourist accommodation on land mapped as bush fire prone. As a result, the RFS advised that short-term rental accommodation located on bush fire prone land should be required to gain

	<p>(i) an Inner Protection Area bounded by a perimeter road or reserve which circumscribes the hazard side of the land intended for development and has a building line consistent with the incorporation of an APZ, within the property, and</p> <p>(ii) an Outer Protection Area managed for hazard reduction and located on the bushland side of the perimeter road,</p> <p>(b) for infill development (that is development within an already subdivided area), where an appropriate APZ cannot be achieved, provide for an appropriate performance standard, in consultation with the NSW Rural Fire Service. If the provisions of the planning proposal permit Special Fire Protection Purposes (as defined under section 100B of the Rural Fires Act 1997), the APZ provisions must be complied with,</p> <p>(c) contain provisions for two-way access roads which links to perimeter roads and/or to fire trail networks,</p> <p>(d) contain provisions for adequate water supply for firefighting purposes,</p> <p>(e) minimise the perimeter of the area of land interfacing the hazard which may be developed,</p> <p>(f) introduce controls on the placement of combustible materials in the Inner Protection Area.</p>	<p>development consent from Council to trigger the integrated approval process under Section 91 of the <i>EP&amp;A Act 1979</i>, to obtain the BFSA.</p> <p>The potential number of properties required to lodge a development application because they are mapped as bush fire prone land could be significant.</p> <p>Further advice from the RFS stated that increased bush fire protection measures such as increased Asset Protection Zones and access requirements may be imposed during the assessment of proposed holiday rentals.</p> <p>These additional regulation requirements to use existing dwellings for holiday rentals may deter dwelling owners from obtaining approvals and renting their homes out. In turn, this would affect the amount of accommodation available for visitors, or may encourage the continuance of the current widespread practice of renting homes out without approval.</p> <p>Given these implications, further discussions have been held with RFS representatives and DoPE to determine an appropriate solution. The RFS have suggested a number of changes to amend the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP) for DoPE's consideration. These solutions would assist a state-wide approach, which is preferable.</p> <p>In addition to these discussions, Council has made representations at the Local Government Conference in October 2015, and the Hunter and Central Coast Regional Environmental Management Strategy (HCCREMS) in June 2015 to advocate for the NSW Government to prepare a state-wide approach to consistently manage risks raised by the RFS, for managing short-term rental accommodation in NSW.</p> <p>Council also prepared a submission to the Inquiry into the adequacy of the regulation of short-term holiday letting in NSW led by the Legislative Assembly Committee on Environment and Planning in October 2015, recommending a state-wide approach.</p> <p>Despite these representations, no further developments have occurred.</p> <p>In the meantime, following discussions with the Regional DoPE office, it is considered appropriate for Council to include a requirement for land within a bush fire prone area to obtain a Bush Fire Safety Authority from the RFS.</p> <p>The RFS has reviewed the amended planning proposal and advised it is a good way forward to satisfy their requirements. However, Council and RFS would need to work together regarding compliance with the BFSA.</p>
<b>5.1 – Implementation</b>	Planning proposals must be	Although short-term rental accommodation is

<b>of Regional Strategies</b>	consistent with a regional strategy released by the Minister for Planning.	not addressed in the LHRS, this Proposal is generally <b>consistent</b> with the vision and objectives of the Strategy.
<b>6.1 – Approval &amp; Referral Requirements</b> The objective of this direction is to ensure that LEP provisions encourage the efficient and appropriate assessment of development.	This direction seeks to minimise the inclusion of provisions in planning instruments that require the concurrence, consultation, or referral of development applications to a Minister or public authority (a). It also sets out consultation and approval requirements, if such provisions are to be included in a planning instrument (b), or if a planning instrument identifies development as designated development (c).	The Proposal is <b>consistent</b> with the direction as follows: (a) consultation was undertaken with government agencies at the LEP amendment stage, to reduce the need for concurrence, consultation, and referrals at the development approval stage. None of the provisions outlined in Table 1 at the start of this document will create excessive concurrence, consultation, or referral requirements. (b) consultation with public authorities was undertaken in satisfaction of s57 of the EP&A Act. (c) N/A – The Planning Proposal does not identify any development as designated development.
<b>6.3 – Site Specific Provisions</b>	The objective of this direction is to discourage unnecessarily restrictive site specific planning controls.	The proposal is <b>consistent</b> with this direction as it proposes short-term rental accommodation in all areas where a dwelling is currently permitted, subject to compliance with the proposed exempt provisions.

## C. ENVIRONMENTAL, SOCIAL, AND ECONOMIC IMPACT

### 7. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the Proposal?

Short-term rental accommodation must be located in an existing dwelling. It is therefore unlikely that the use will impact on critical habitat or threatened species, populations or ecological communities, or their habitats.

Section 76 of the EP&A Act states that exempt development must be: of ‘minimal environmental impact’; that it ‘cannot be carried out in critical habitat of an endangered species, population or ecological community (identified under the *Threatened Species Conservation Act 1995* or the *Fisheries Management Act 1994*)’; and that it ‘cannot be carried out in a wilderness area (identified under the *Wilderness Act 1987*)’.

### 8. Are there any other likely environmental effects as a result of the Planning Proposal and how are they proposed to be managed?

#### Car parking

Although many guests and visitors of short-term holiday rentals arrive in the same car, some large groups may have many cars. A large number of cars can impact on residential amenity by creating car parking congestion and hindering access to driveways. While it is desirable for some onsite car parking to be provided, it is also undesirable to have too many car parks provided within a dwelling lot, as it is unsightly and inconsistent with residential character. Short-term holiday rentals should be operating at a domestic scale and providing too many car parks is inconsistent with this scale. Providing lots of onsite car parking also discourages shared vehicle use.

Existing dwellings of four bedrooms or less generally fall under the exempt development provisions for short-term rental accommodation. Existing dwellings with four bedrooms or less generally provide car parking rates that are consistent with the car parking requirements of the LMDCP 2014, so car parking is not addressed in the exempt development criteria. It is also considered unnecessary to have car parking provisions for residential flat buildings, multi dwelling housing and shop top housing used as short-term rental accommodation, because most of these types of developments will not exceed 4 bedrooms in size and the car parking rates applicable to this type of development are adequate to provide for a short-term rental.

Development Applications are required for a dwelling with 5 or more bedrooms and some dwellings of 4 bedrooms or less that cannot meet the exempt development criteria. It is therefore proposed to amend the LMDCP 2014 to require 2 car parking spaces for a dwelling house, attached dwelling, dual occupancy, or semi-detached dwelling with 4 or more bedrooms that is used as a short-term rental accommodation premises, plus an additional car space for every 2 additional bedrooms, or part thereof, over the first 4 bedrooms. This includes at least one undercover space and the remainder can be single file parking if necessary.

Car parking is discussed in Part 3 of the *Holiday and Short Term Rental Code of Conduct* and states that the Terms and Conditions of leasing a holiday rental should ensure that access and car parking are regulated to ensure consideration for neighbours. Schedule A of the Code contains a 'deemed to satisfy' performance standard for access and parking that may be used by a holiday rental to demonstrate compliance with Part 3 of the Code. Schedule A states that guests and visitors must comply with parking regulations, show consideration to neighbours, and provide any information on access constraints or parking restrictions. If relevant, the Terms and Conditions should also specify the maximum number of vehicles permitted on site, parking spaces allocated, and require guests to supply vehicle and trailer registration numbers.

#### Bush fire

Approximately 50% of residential zoned land in the Lake Macquarie LGA is mapped as bush fire prone and some of that land contains existing dwellings that could potentially be used for short-term rental accommodation. To address this risk, the exempt development criteria and draft DCP require dwellings in bush fire prone areas to obtain a 'Bush Fire Safety Authority' from the RFS.

A summary of the issues raised by the RFS are outlined in Table 3 above, under S117 Direction 4.4.

#### Noise and residential amenity

Section 3.8 of the *Holiday and Short Term Rental Code of Conduct* addresses noise and residential amenity. The Terms and Conditions of any holiday rental must specify that offensive noise and antisocial behaviour is prohibited and enable the property manager to exercise all legal rights and remedies to promptly deal with any breach.

Under Section 3.9 of the Code, so called "party houses" are prohibited because they conflict with residential amenity.

Adherence to the *Holiday and Short Term Rental Code of Conduct* is required by the exempt development criteria and by the draft DCP for short-term rental accommodation.

#### Heritage

Part 2 Exempt Development Codes of the Codes SEPP describes the types of development that are exempt from requiring development consent under the SEPP. Many of the standards for exempt development have special provisions relating to existing and provisional heritage items and heritage conservation areas (listed under a LEP). However, these provisions largely relate to structural works and their location and visibility.

Subdivision 22 of the Exempt Development Codes relates to the use of a dwelling as a home business, home industry or home occupation and does not contain any provisions relating to heritage listings. Similarly, Subdivision 23 relates to home-based child care and does not contain any provisions relating to heritage listings. As these exempt developments are similar in nature to short-term rental accommodation, it is considered unnecessary to have provisions relating to heritage listed short-term rentals under LMLEP 2014.

The Codes SEPP and Part 3 of LMLEP 2014 provides that exempt development must not be carried out on land that is, or on which there is, an item that is listed on the State Heritage Register under the *Heritage Act 1977*, or that is subject to an interim heritage order under that Act.

This planning proposal requires a Development Application to be lodged for areas listed on the State Heritage Register to enable the use of these areas for short-term rental accommodation. This includes the Catherine Hill Bay Heritage Cultural Precinct.

In addition, clause 5.10(10) of LMLEP 2014 provides conservation incentives for a heritage item by granting consent to a development which would otherwise not be allowed in the LEP, if the proposed development facilitates the ongoing conservation of the item.

### Signage

Part 9.17.3 (5.) of the LMDCP 2014 referring to signage shall be amended to state that 'identification signs – including nameplates on professional offices, community facilities, recreational facilities, rural pursuits or residences for home businesses, industry *or short-term rental accommodation* – are limited to 1m<sup>2</sup>, and one sign per street frontage'. This will help to ensure that any signage is consistent with the residential character of the area.

The exempt development criteria and draft DCP shall also contain provisions requiring any identification signs for short-term rental accommodation premises to include a contact phone number to enable the public to lodge complaints at any time of the day.

## 9. How has the Planning Proposal adequately addressed any social and economic effects?

### Economic

Council's economic analysis indicates that tourism in Lake Macquarie contributed \$381 million in the 12 months to August 2015, and created 2,213 direct and indirect jobs. In 2013, the average length of stay in nights was 3 for domestic overnight visitors, and 22 for international visitors<sup>1</sup>. The average expenditure was \$75 per domestic day, \$232 per domestic overnight, and \$978 per international visit<sup>2</sup>. Visitor

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<sup>1</sup> 2012 – 2013 Tourism Research Australia (TRA), Regional Tourism Profile, Hunter Region, [http://tra.gov.au/Tourism\\_in\\_Local\\_Government\\_Areas/pdfs/Tourism\\_LGA\\_Lake%20Macquarie%20\(C\).pdf](http://tra.gov.au/Tourism_in_Local_Government_Areas/pdfs/Tourism_LGA_Lake%20Macquarie%20(C).pdf)

<sup>2</sup> 2012 – 2013 Tourism Research Australia (TRA), Regional Tourism Profile, Hunter Region

expenditure flows beyond accommodation and food services with 21% of expenditure going towards retail and 14% for transport services<sup>3</sup>. The short-term rental accommodation industry contributes to the tourism revenue and job creation in Lake Macquarie with flow on effects for food services, transport and retail industries.

Internet services, such as Airbnb, allow people to list their properties, or rooms in their houses, as tourist and visitor accommodation. Airbnb have been measuring the economic impact of their business in cities around the world. The study shows that Airbnb diversifies the accommodation options available to tourists. The results for Sydney show that Airbnb guests stay longer and spend more than traditional tourists spend<sup>4</sup>.

The results from other cities around the world also show that Airbnb travellers stay longer and spend more than typical visitors spend, so it is probable that the same would apply to short-term rental accommodation guests in Lake Macquarie.

The studies also indicate that short-term rental accommodation for tourists and visitors can complement the existing tourism industry by providing accommodation outside of traditional tourist areas, as well as supporting the local community as guests are more likely to spend money in the neighbourhood.

Therefore, there is an economic benefit resulting from short-term rental accommodation.

### Social

Unregulated holiday letting has the potential to impact on residential amenity by way of noise, antisocial behaviour, car parking, and incorrect rubbish disposal, among other matters. The social impact can be particularly high when the impacts occur regularly over a long period of time in so called 'party houses'. However, Council has only received a small number of complaints about short-term rental accommodation premises in Lake Macquarie over the past 5 years, which indicates that the majority are managed well.

During the exhibition period, a number of submissions were received that stated the community were unaware that complaints regarding short-term rental accommodation should be directed to Council. As a result, there may be more issues regarding impacts to neighbourhood amenity from short-term rental accommodation than Council is unaware of.

To qualify for exempt development as short-term rental accommodation, a dwelling must meet a number of proposed criteria. The criteria are designed to reduce the impacts of holiday rentals on the neighbourhood, and provide a regulatory framework under which Council can effectively respond to holiday rental complaints. The criteria limits exempt development to a maximum 4 bedroom dwelling. A development application is required for dwellings with 5 bedrooms or more.

The criteria also refer to the *Holiday and Short Term Rental Code of Conduct*, which includes performance criteria relating to noise, antisocial behaviour, car parking, rubbish disposal, and the use of pools and decks among other matters. The Code of Conduct also requires that a complaints procedure be implemented at each property.

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<sup>3</sup> 2012 – 2013 Tourism Research Australia (TRA), Regional Tourism Profile, Hunter Region

<sup>4</sup> Airbnb, Airbnb Economic Impact, accessed 10 October 2014, <http://blog.airbnb.com/airbnb-economic-impact/#sydney>

Section 1.2.2 of the Code requires participating organisations to be responsible for dealing with instances where managers do not comply with the Code of Conduct. This includes imposing sanctions that reflect the nature, seriousness and frequency of any breach. As breaches increase in seriousness or frequency, the severity of the sanction should also increase. Sanctions include warnings, rectification or compensation for damage and actions to prevent a reoccurrence such as limiting guest and visitor numbers. At worst, the property owner can be expelled from membership of the Participating Organisation or have their property de-listed. If this occurs, the property no longer complies with the exempt development criteria under LMLEP 2014 and the use is therefore prohibited. Council is able to order a premises to cease being used for a prohibited purpose under Section 121B of the Environmental Planning and Assessment Act 1979 (EP&A Act).

The criteria also covers codes similar to the *Holiday and Short Term Rental Code of Conduct*. This means that any organisation or property manager can apply their own Code of Conduct, as long as it contains standards equivalent or higher than the *Holiday and Short Term Rental Code of Conduct*.

If a property owner or manager is not abiding by the *Holiday and Short Term Rental Code of Conduct*, its successor, or a similar code with equivalent or higher standards, the property does not comply with the exempt development criteria listed under LMLEP 2014 and the use is therefore prohibited. Council is able to order a premises to cease being used for a prohibited purpose under Section 121B of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

A concentration of short-term holiday rentals in one location can erode the social fabric of the local area, by reducing the proportion of permanent residents to tourists. There does not appear to be any particular destinations in Lake Macquarie that are more likely to attract high tourist numbers and concentrations of holiday rentals. Therefore, existing holiday rentals are spread throughout the LGA, as evidenced by a review of holiday rental websites.

#### 10. Is there adequate public infrastructure for the Planning Proposal?

As this Planning Proposal does not relate to a specific site, there will be varying levels of public infrastructure for different short-term rental accommodation sites across the LGA. A short-term rental is permitted anywhere that a dwelling is permitted, utilising existing dwellings. Most dwellings in the LGA are serviced by adequate infrastructure.

#### 11. What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

The Gateway Determination (Attachment 2) does not contain requirements to consult with any public authorities. However, Council did consult with the RFS and Destination NSW at the same time as the public exhibition.

### Part 4 – Details of Community Consultation

The Gateway Determination issued on 17 December 2014 found that the Planning Proposal fits the definition of a 'low impact Planning Proposal' and should therefore be exhibited for a minimum of 14 days. However, Council decided to exhibit the Planning Proposal for an extended timeframe of 28 days to enable the public adequate opportunity to comment.

The Planning Proposal was originally placed on public exhibition from 3 March to 30 March 2015 and was extended following a request from the Lake Macquarie Tourism Association for further time. The exhibition period was extended until 28 April 2015.

There were 14 submissions received during the exhibition period.

A summary of the main issues raised is provided in Table 4 below, along with a planning comment in response. The comments received by the RFS is provided in Table 3 under S117 Direction 4.4.

Further detail on each submission and a planning response is provided at **Attachment 3**.

**Table 4 – Main issues raised during public exhibition period**

<b>Issue</b>	<b>Excessive ‘party’ noise and too many cars parked around short-term rental accommodation.</b>
<i>Planning Comment</i>	<p>The proposed amendments will require Managers of holiday rental accommodation to abide by a ‘Code of Conduct’, which prohibits offensive noise and anti-social behaviour. Each property is to provide guests and visitors with the terms and conditions for leasing the property, including a list of ‘house rules’. This includes requirements for noise, parking, garbage disposal etc.</p> <p>The introduction of enforceable controls to mitigate the impact of this type of accommodation provides Council the opportunity to prohibit properties not abiding by the Code under Section 121B of the EP&amp;A Act 1979.</p> <p>Dwellings having 5 or more bedrooms will require development consent for use of short-term rental accommodation.</p>
<b>Issue</b>	<b>Holiday code is self-regulating and complaints so far have been mismanaged</b>
<i>Planning Comment</i>	<p>Section 2.4 of the Code of Conduct outlines the complaints handling process. Property managers must have a policy setting out how to deal with disputes, retain a log of all communication and actions taken, take effective action to stop any problems and cooperate and participate in any complaint handling process implemented by a participating organisation or a local council.</p> <p>In the first instance, the Participating Organisation can impose sanctions on owners and managers for breaches to the Code. This can include the ‘delisting’ of properties on the relevant websites.</p> <p>As noted above, Council is also able to order premises to cease being used for a prohibited purpose under Section 121B of the EP&amp;A Act 1979 for continual breaches to the Code.</p>
<b>Issue</b>	<b>There is uncertainty with the complaints procedure, which may account for the lack of complaints received by council on Short-term Rental Accommodation</b>
<i>Planning Comment</i>	<p>Noted.</p> <p>The amendments to the LEP and DCP will provide a more transparent approach to the regulation of the industry. The proposed Code of Conduct (or similar) and the business identification sign will provide an appropriate avenue to lodge complaints regarding impacts on the local neighbourhood.</p>

## **Attachment 1 – Holiday and Short Term Rental Code of Conduct**

## **Attachment 2 – Gateway Determination**

## **Attachment 3 – Public Submissions and responses**