

Planning Proposal to permit short-term holiday letting of residential dwellings

Proposal Title : **Planning Proposal to permit short-term holiday letting of residential dwellings**

Proposal Summary : **The planning proposal will amend the Gosford planning instruments to permit short term holiday letting of residential dwellings in zones where dwellings are permitted with consent.**

PP Number : **PP_2013_GOSFO_003_00** Dop File No : **13/08461**

Proposal Details

Date Planning Proposal Received : **13-May-2013** LGA covered : **Gosford**

Region : **Hunter** RPA : **Gosford City Council**

State Electorate : **GOSFORD
TERRIGAL
THE ENTRANCE** Section of the Act : **55 - Planning Proposal**

LEP Type : **Policy**

Location Details

Street :
Suburb : City : Postcode :
Land Parcel : **The Gosford Local Government Area**

DoP Planning Officer Contact Details

Contact Name : **Glenn Hornal**
Contact Number : **0243485009**
Contact Email : **glenn.hornal@planning.nsw.gov.au**

RPA Contact Details

Contact Name : **Brian McCourt**
Contact Number : **0243258260**
Contact Email : **brian.mccourt@gosford.nsw.gov.au**

DoP Project Manager Contact Details

Contact Name :
Contact Number :
Contact Email :

Land Release Data

Growth Centre : **N/A** Release Area Name : **N/A**
Regional / Sub Regional Strategy : **Central Coast Regional Strategy** Consistent with Strategy : **Yes**

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MDP Number :	N/A	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 :

If No, comment :

Have there been meetings or communications with registered lobbyists? :

If Yes, comment :

Supporting notes

Internal Supporting Notes :

External Supporting Notes : **The planning proposal seeks to bring forward provisions in the draft Gosford LEP 2009 as a result of a recent Land & Environment Court Case that identified the use for short term holiday letting of residential dwellings was illegal in the 2(a) Residential zone in the Gosford Planning Scheme Ordinance.**

The proposal will permit the use where dwellings are permissible with consent either as exempt development where a dwelling has 4 bedrooms or less or with development consent for up to 6 bedroom dwellings. The use will be prohibited for dwellings with greater than 6 bedrooms. Council has not provided supporting evidence as to why it has set the threshold for development consent as 5 bedroom dwellings, rather than 4 or 3 bedroom dwellings for example. It is recommended that Council include some supporting evidence in the planning proposal justifying its approach, before community consultation.

The following Gosford local planning instruments permit dwellings and could be affected by the planning proposal:

**Gosford Planning Scheme Ordinance
Interim Development Order No 122
Gosford City Centre Local Environmental Plan 2007
Gosford Local Environmental Plan No 22.**

Council should confirm which instruments are to be amended and update the planning proposal before community consultation.

Delegations to make the plan

Council has accepted the general delegations to make plans however has advised they will not be seeking delegation to make the plan for this specific proposal. The explanation provided was that Council did not resolve to use delegations to make the plan however there was no recommendation that raised this matter in the Council Report.

Adequacy Assessment

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

Is a statement of the objectives provided? Yes

Comment : Council advise the proposal seeks to allow the continuation of the letting of dwellings on a short term basis (less than 3 months) in zones where dwellings are permitted with consent. The intention of the planning proposal is to provide legal support for the use for short term holiday letting of residential dwellings within Council's planning instruments and landuse controls to ensure the use operates at a scale that is compatible with a residential living environment.

Generally the statement of objectives is consistent with the Department's "A guide to preparing planning proposals"

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

Is an explanation of provisions provided? Yes

Comment : Council identified the provisions in the planning proposal will:
-define the use of 'Short Term Holiday Letting of Dwellings' as:
'A dwelling that provides temporary or short term accommodation on a commercial basis but excludes hotel or motel accommodation, serviced apartments, bed and breakfast accommodation, tourist and visitor accommodation and backpacker's accommodation'.
-class the use as exempt development if it consists of up to and including 4 bedrooms.
-require development consent for the use up to a maximum of 6 bedrooms.
-the use will be prohibited for dwellings with more than 6 bedrooms.
-the use would only be available in zones where dwellings are permitted.

The use will have Gosford LGA wide application where dwellings are permitted and will require amendments to various Council planning instruments if it is finalised before the gazettal of the draft Gosford LEP 2009.

Council has not identified in the planning proposal which of Council's specific planning instruments will require amending and it is recommended these be included in the planning proposal prior to exhibition in order to provide clarity to the community.

This section also contains discussion of a recent Land & Environment Court case regarding short term letting and discussion of Parliamentary Counsel's version of the definition in Council's draft LEP 2009. Although these are relevant matters they would be better placed in the justification section of the planning proposal to ensure clarity of the provisions.

Council makes reference to the exhibited Gosford draft LEP 2009 which contained short term holiday letting of dwellings provisions. The provisions included a listing of the use in Schedule 2 - Exempt development which stated the use "must not consist of more than 4 bedrooms". An additional local provision was also included which defined the use of 'Short Term Holiday Letting of Dwellings' and limited the maximum number of bedrooms to 6 for this purpose. The provision did not actually state development consent was required but this appears to have been Council's intention.

The revised version of the Gosford draft LEP 2009 provided to Council following legal drafting removed the entry in Schedule 2 and included a local provision to not require development consent for the use in dwellings containing no more than 4 bedrooms and requiring consent for 5 or 6 bedroom dwellings. The revised provisions limited the use to a maximum period of 182 consecutive days in any 12 month period.

Council identifies in the planning proposal the version provided to it was not presented to the community (i.e was not publicly exhibited) and it considers the provisions to be unworkable due to their inability to be enforced.

A consequence of Council's approach in the planning proposal is that for the development to be exempt it must meet the generic provisions of exempt development identified in Council's local planning instruments eg. Gosford Planning Scheme Ordinance requires that the development not cause interference with the amenity of the neighbourhood.

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Council would also need to create an exempt development provisions in the Gosford Local Environmental Plan No 22 which currently does not have an exempt development clause.

Recent Standard Instrument LEP's of Kiama LEP 2011 and Eurobodalla LEP 2012 contained provisions which permitted the use without consent via an additional local provision rather than using the exempt development schedule. This could be considered as an alternative means of achieving the intention of the planning proposal.

Generally the explanation of provisions is consistent with the Department's "A guide to preparing planning proposals".

Justification - s55 (2)(c)

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

b) S.117 directions identified by RPA :

* May need the Director General's agreement

1.1 Business and Industrial Zones

1.2 Rural Zones

2.1 Environment Protection Zones

2.2 Coastal Protection

2.3 Heritage Conservation

3.1 Residential Zones

3.4 Integrating Land Use and Transport

4.1 Acid Sulfate Soils

4.3 Flood Prone Land

4.4 Planning for Bushfire Protection

5.1 Implementation of Regional Strategies

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

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

d) Which SEPPs have the RPA identified?

e) List any other matters that need to be considered :

Council considers the planning proposal is consistent with all State Environmental Planning Policies.

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

If No, explain :

4.4 Planning for Bushfire Protection

Council will need to consult with the NSW Rural Fire Service following a Gateway Determination. Consistency with the direction would need to be determined following Agency consultation.

Mapping Provided - s55(2)(d)

Is mapping provided? **No**

Comment :

The planning proposal has LGA wide application and will amend Council's written instruments only, therefore no mapping is required.

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment :

Council has suggested a 14 day exhibition period. The draft Gosford LEP 2009 contained provisions to formalise short term letting of dwellings in Gosford LGA and these provisions were exhibited as part of community consultation requirements.

Although similar provisions have already been exhibited, there is likely to be significant community interest in this matter from those who own and operate short term holiday letting and those residents whose amenity is potentially impacted by the use. Given the likely community interest a minimum exhibition period of 21 days is recommended.

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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 proposal could be clearer, particularly in regard to the explanation of provisions and what planning instruments will be affected by the proposal. This matter could be addressed though a condition in the Gateway Determination should the proposal progress.**

Proposal Assessment

Principal LEP:

Due Date : **December 2013**

Comments in relation to Principal LEP : **Council provided comments to the Department on the latest draft version of the dLEP on 15 May 2013. The Department is currently reviewing Council's comments.**

Assessment Criteria

Need for planning proposal : **The proposal is not based on any specific strategic study or report however Council has stated it is the only means of ensuring certainty for the continuation of the use for existing owners of dwellings used for short term holiday letting. Council identified an overall net community benefit due to the importance to the local economy and associated service industries it assists in supporting.**

Council advised that due to a Land & Environment Court case that identified the use is not permitted in the 2(a) Residential zone there is urgent need for Council to bring forward the proposed provisions in the draft Gosford LEP 2009. This will ensure the use is able to be considered as permissible in the near term for all zones where dwellings are permitted and provide certainty to landowners who operate this type of accommodation. In addition, the formalisation of the use allows Council to condition development application consents and require compliance.

Given the decision of the Court and the potential impacts on landowners who operate this type of accommodation Council's approach to bring forward provisions in advance of the draft LEP is supported.

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Consistency with strategic planning framework :

Central Coast Regional Strategy

Tourism is identified in the CCRS as a key economic sector and is expected to experience strong growth over the 25 year span of the Strategy. Council identified support for tourism and economic benefits are key objectives in the strategy. The provision of short term holiday letting is not specifically identified in the CCRS however the continuation of the use and associated service provision, jobs and economic activity associated would not be inconsistent with the strategy.

Local Strategies: Gosford 2025 Community Strategic Plan

The Plan outlines a set of guiding principles, aspirations and values for the community and includes social, economic, environmental and governance aspects for the present and into the future over the lifespan of the plan. The Plan also includes objectives and strategies for achieving these aspirations.

Council has identified the following as applicable to the proposal:

Strategy C1.4 Promote Tourism to the region; and

Strategy C2.4 Facilitate greater expenditure by tourists.

Council state the planning proposal is consistent with the Community Strategic Plan.

SEPPs

Council has stated the proposal is consistent with all State Environmental Planning Policies.

S117 directions

Council has identified the following S117 directions are triggered however the planning proposal is not in conflict with the relevant directions.

- 1.1 Business and Industrial Zones
- 1.2 Rural Zones
- 2.1 Environmental Protection Zones
- 2.2 Coastal Protection
- 2.3 Heritage Conservation
- 3.1 Residential zones
- 3.4 Integrating Land Use and Transport
- 4.1 Acid Sulfate Soils
- 4.3 Flood Prone Land
- 4.4 Planning For Bushfire Protection
- 5.1 Implementation of Regional Strategies

An assessment against the following S117 directions identified some issues that require further discussion.

4.3 Flood Prone Land

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.

There are areas of Gosford LGA that are identified as flood prone land. Given that the use would be applicable to dwellings, there may be some situations where there are existing dwellings located on flood prone land. The direction requires that planning proposals must not contain provisions that apply to the flood planning areas which permit development in floodway areas.

Development defined under the EP&P Act, 1979 also means the use of land, and as such the proposal would be inconsistent with the direction. However the use would be located within existing dwellings and would not necessitate building augmentation to be carried out. Although there is the potential for the use to permit development in floodway areas and be inconsistent with the direction it is considered the inconsistency with the direction

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is of minor significance.

4.4 Planning for Bushfire Protection

This direction applies when a relevant planning authority prepares a planning proposal that will affect, or is in proximity to land mapped as bushfire prone land.

Large areas of Gosford LGA are identified as Bushfire Prone Land and as the provision will affect all dwellings in the LGA, Council would be required to consult with the NSW Rural Fire Service following a Gateway Determination. Consistency with the direction would need to be determined following Agency consultation.

Environmental social economic impacts :

Council discussed the social impact of short term holiday letting and recognised that the behaviour of some occupiers can have significant negative social effects. These negative impacts, argue Council, are not the result of the land use itself, but behavioural issues from a small minority of people renting the short term accommodation. Council refers to stricter controls by property owners and letting agents as a means to help curb anti-social behaviour and also recognises there is role for Council and the Police in dealing with anti-social behaviour.

Council has identified short term holiday lets are one of the primary sources of holiday accommodation and an important source of economic activity and they are considered important in maintaining the economic benefits of tourism.

Assessment Process

Proposal type :	Routine	Community Consultation Period :	14 Days
Timeframe to make LEP :	6 Month	Delegation :	DDG
Public Authority Consultation - 56(2)(d) :	NSW Rural Fire Service		

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 :

Identify any additional studies, if required. :

If Other, provide reasons :

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

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Document File Name	DocumentType Name	Is Public
Council Covering Letter.pdf	Proposal Covering Letter	Yes
Council Report.pdf	Proposal	Yes
Council Resolution.pdf	Proposal	Yes
Planning Proposal.pdf	Proposal	Yes
Timeline and Delegation Rejection.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
 - 2.1 Environment Protection Zones
 - 2.2 Coastal Protection
 - 2.3 Heritage Conservation
 - 3.1 Residential Zones
 - 3.4 Integrating Land Use and Transport
 - 4.1 Acid Sulfate Soils
 - 4.3 Flood Prone Land
 - 4.4 Planning for Bushfire Protection
 - 5.1 Implementation of Regional Strategies

Additional Information :

- Council is to identify in the planning proposal the planning instruments which require amending prior to exhibition.
- Council is to include supporting evidence in the planning proposal justifying its approach for dwellings based on the number of bedrooms that are exempt; require development consent and are prohibited prior to exhibition of the planning proposal.
- 4.3 Flood Prone Land - The DG agrees that the provisions that are inconsistent with the direction are of minor significance.
- Consultation with the NSW Rural Fire Service is required to determine consistency with s117 direction 4.4 Planning for Bushfire Protection.
- Exhibition for 21 days.
- 3 month timeframe

Supporting Reasons :

To provide clarity to the community should the planning proposal be finalised in advance of the draft Principal LEP and give the community adequate time to comment on the proposal.

Council has suggested the planning proposal would be resubmitted to the department for finalisation in October 2013 however a shorter timeframe is achievable.

Signature:



Printed Name:

GARRY HOPKINS Date: 20.5.2013