
PLANNING PROPOSAL GOSFORD CITY COUNCIL TO PERMIT SHORT – TERM HOLIDAY LETTING OF RESIDENTIAL DWELLINGS

This Planning Proposal has been drafted in accordance with Section 55 of the Environmental Planning and Assessment Act, 1979 and the Department of Planning and Infrastructure's A Guide to Preparing Planning Proposals and Guide to preparing Local Environmental Plans.

A Gateway determination under Section 56 of the Environmental Planning and Assessment Act is requested from the Department of Planning and Infrastructure.

Part 1 Objectives or Intended Outcomes

s.55(2)(a) A statement of the objectives or intended outcomes of the proposed instrument.

The objective /intended outcomes of the Planning Proposal is to allow the continuation of the letting of dwellings on a short term basis (less than 3 months) for the purposes of providing holiday accommodation in those zones where dwellings are permitted with consent. This use has been in operation for many years in coastal areas and the intention is to provide legal support for the use but also provide landuse controls to assist in ensuring the use operates at a scale that is compatible with a residential living environment.

Part 2 Explanation of Provisions

s.55(2)(b) An explanation of the provisions that are to be included in the proposed instrument.

The recent decision by the Land Environment and Court on 2 May 2013 in relation to of 24 Charles Kay Drive Terrigal found that the use of the dwelling for short term holiday letting for a period of less than three months is prohibited under the E.P.& A. Act. This decision has necessitated the bringing forward of the short term holiday letting provisions contained within the draft Gosford LEP 2009.

These provisions had been considered by the community and Council as part of the public exhibition of the LEP and provide an appropriate middle ground for providing landuse support for the use.

The proposal for short term holiday letting under the draft Gosford LEP 2009 was for the use to be permitted in zones where dwellings are permitted. This Planning Proposal would aim to replicate the provisions of the draft Gosford LEP 2009.

These provisions are different to those proposed by Parliamentary Counsel in their amendments to Council's Standard Instrument LEP, as these provisions have not been presented to the community and are in any event considered to be unworkable due to their inability to be enforced.

The provisions of this Planning Proposal define Short Term Holiday Letting of Dwellings as being;

“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 “.

- The use will be classed as exempt development if it consists of up to and including 4 bedrooms.

- The use will be permitted with development consent for dwellings with a maximum of 6 bedrooms.
- The use will be prohibited for dwellings with greater than 6 bedrooms.
- The use would only be available in zones where dwellings are permitted.

Guidelines will be provided for the use through a development control plan (DCP) and a code of conduct developed by the Department of Planning and Infrastructure.

s.55(2)(d) If maps are to be adopted by the proposed instrument, such as maps for proposed land use zones, heritage areas, flood prone land – a version of the maps containing sufficient detail to indicate the substantive effect of the proposed instrument.

No maps are required, as only the written planning instrument (i.e. citation) needs amendment.

Part 3 Justification

s.55(2)(c) The justification for those objectives, outcomes and provisions and the process for their implementation (including whether the proposed instrument will comply with relevant directions under section 117).

Section A Need for the Planning Proposal

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

The Planning Proposal is not based on any specific strategic study or report.

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

The Planning Proposal is the only means of ensuring certainty for existing owners of dwellings used for short term holiday accommodation as to the continuation of the use in Gosford.

3 Is there a net community benefit?

There will be an overall net community benefit for the residents of Gosford from the continuation of the use due to its importance to the local economy through the multiplier effects to the real estate and other service industries it assists in supporting. To widen the community benefits the use though needs to be operated in a manner that respects the rights of neighbours, and in most cases historically this has always been the case. This will be achieved through the application of the Department of Planning's Code of Conduct and the Holiday Letting Code of Conduct for the use. It has been only very few dwellings where the behaviour of the temporary residents has been detrimental to neighbours.

Will the LEP be compatible with agreed State and Regional strategic directions for development in the area?

The Central Coast Regional Strategy (CCRS p29) provides under the key economic opportunities for the region that 'the regions tourism advantages are also likely to increase'. The maintenance of short term holiday letting of dwellings as one of the primary sources of tourist accommodation and it is important that access to this accommodation is maintained.

Is the LEP located in a global/regional city, strategic centre or corridor nominated within the Metropolitan Strategy or other regional/sub-regional strategy?

No, the Planning Proposal is not located in any of the above.

Is the LEP likely to create a precedent or create or change the expectations of the landowner or other landowners?

No, the LEP will only formalise the existing arrangements with regard to short term holiday letting through the LEP in lieu of a state-wide approach which the State Government's promised in September 2009. In correspondence associated with authorisation of the DLEP 2009 for public exhibition, DoP&I stated that it is likely that Council's proposed LEP provisions will need to be altered before the plan is made, to align with the Department's state-wide approach.

Have the cumulative effects of other spot rezoning proposals in the locality been considered? What was the outcome of these considerations?

This is not a spot rezoning.

Will the LEP generate permanent employment generating activity or result in a loss of employment lands?

The LEP will ensure that existing employment both direct and indirect associated with short term holiday letting are maintained into the future.

Will the LEP impact on the supply of residential land and therefore housing supply and affordability?

The LEP will have no effect on housing supply or residential land supply or affordability.

Is the existing public infrastructure (roads, rail, and utilities) capable of servicing the proposed site? Is there good pedestrian and cycling access? Is public transport currently available or is there infrastructure capacity to support future public transport?

Not applicable to this Planning Proposal.

Will the proposal result in changes to the car distances travelled by customers, employees and suppliers? If so, what are the likely impacts in terms of green house gas emissions, operating costs and road safety?

Not applicable to this Planning Proposal.

Are there significant Government investments in infrastructure, or services in the area whose patronage will be affected by the proposal? If so what is the expected impact?

No.

Will the proposal impact on land that the Government has identified as needed to protect (eg land with high biodiversity values) or have other environmental impacts? Is the land constrained by environmental factors such as flooding?

No. The planning proposal will not alter the situation with regard to the LEP's zoning, permissible uses or density of development, hence affectation on these matters.

Will the LEP be compatible/complementary with surrounding land uses? What is the impact on amenity in the location and wider community? Will the public domain improve?

The use has operated for many years in coastal locations such as Gosford without impacting on the residential amenity of localities. Changes in the nature of the operation of the use in some cases where bucks & hens parties are targeted have resulted in the loss of amenity for some residents. The issues raised relate to the behaviour of a small proportion of occupiers of short term holiday lets. The use itself has not caused a loss of amenity. Codes of conduct will assist in addressing the behavioural issues that have occurred.

Will the proposal increase choice and competition by increasing the number of retail and commercial premises operating in the area?

Not applicable to this Planning Proposal.

If a stand alone proposal and not a centre, does the proposal have the potential to develop into a centre in the future?

Not applicable to this Planning Proposal.

What are the public interest reasons for preparing the draft plan? What are the implications of not proceeding at that time?

Council was proposing that provisions relating to short term holiday letting of dwellings were to be included in its Standard Instrument LEP which was submitted in September 2011 to DoP&I with the request that the plan be made with Council's resolved changes. Due to a Land and Environment Court case finalised on 2 May 2013 that has identified that the use is not a permitted within the 2(a) zone in the City, there is an urgent need for Council to bring forward its proposed provisions, as the state-wide approach to the matter promised by the NSW Government in 2009 has not come to fruition. It is then proposed to use the provisions from the draft Gosford LEP 2009 in the subject Planning Proposal to ensure that the use is able to be considered as permissible in the near term for all zones where dwellings are permitted and certainty is provided to landowners.

Section B Relationship to Strategic Planning Framework

Is the Planning Proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

Support for tourism and the economic benefits both direct and indirect are key objectives of the applicable strategies to Gosford.

Is the Planning Proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?

The Planning Proposal is consistent with the relevant strategy, in particular;

Strategy C1.4 of the Gosford Community Strategic Plan states the need to 'Promote tourism to the region'.

Strategy C2.4 of the Gosford Community Strategic Plan states the need to 'Facilitate greater expenditure by tourists'.

Is the Planning Proposal consistent with applicable State Environmental Planning Policies?

The Planning Proposal is consistent with all State Environmental Planning Policies.

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

As the Planning Proposal involves the addition of a use to Gosford's planning instruments and the zones contained within them a significant number of S117 Directions are triggered. The Planning Proposal though is not in conflict with the relevant directions. The directions considered were;

- 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 Sulphate Soils
- 4.3 Flood Prone Land
- 4.4 Planning For Bushfire Protection
- 5.1 Implementation of Regional Strategies

Section C Environmental, social and economic impact**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?**

No. There will be no change to these matters as a result of the Planning Proposal.

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

No. There will be no change to these matters as a result of the Planning Proposal.

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

The social impact of short term holiday letting depends on the perspective of the individual concerned. For those that have been affected by the adverse behaviour of some occupiers there are significant negative social effects from short term holiday letting. For the majority of the local population the activity has no negative social impact. Social benefits exist through increased services that are generated by tourists using short term holiday lets that are also available for use by local residents.

The negative social impacts are not the result of the landuse itself but the behaviour of a small minority of the people renting short term holiday dwellings. Anti-social behaviour can manifest in any location, most commonly in hotels, sporting grounds, on the streets, or in the case of bucks and hens parties, sometimes in dwellings. The use itself has operated for many years without any negative social impacts. The short term holiday dwellings use can continue to operate in the same manner in the future as it has done in the past, if the behavioural issues are dealt with through stricter controls by property owners. Primarily it is first and foremost the responsibility of the individuals in the dwellings and secondly the letting agents to behaviour in a manner acceptable to a residential neighbourhood. Council and the Police also have roles of responsibility with regard to anti-social behaviour in these cases. Codes of Conduct as prepared by the Department of Planning and Infrastructure and the Holiday Letting Organisation can assist in this regard. The landuse provisions are only a supporting component in addressing matters associated with short term holiday letting.

Short term holiday lets are one of the primary sources of holiday accommodation for tourists in Gosford and across the country. Tourism has been a major industry in Gosford for many years. It provides important economic activity for the area. The continued support for Short term holiday letting of dwellings by Council through this Planning Proposal is considered to be important in maintaining the economic benefits of tourism.

Section D State and Commonwealth interests**Is there adequate public infrastructure for the Planning Proposal?**

Not applicable to this Planning Proposal.

What are the views of State and Commonwealth Public Authorities consulted in accordance with the gateway determination, and have they resulted in any variations to the Planning Proposal?

Not relevant. Consultations have not yet been undertaken with State and Commonwealth agencies as the Gateway determination has not yet been issued.

Part 4 Community Consultation that is to be undertaken***S55(2)(e) Details of the community consultation that is to be undertaken before consideration is given to the making of the proposed instrument.***

Subject to Gateway support community consultation will involve an exhibition period of between 14 to 28 days because the provisions have been exhibited extensively within DLEP 2009, it is suggested that the minimum exhibition period of 14 days is used in this case.

The community will be notified of the commencement of the exhibition period via a notice in the local newspaper and on the web-site of Gosford City Council. The written notice will:

- give a brief description of the objectives or intended outcomes of the planning proposal;
- indicate the land affected by the planning proposal;
- state where and when the planning proposal can be inspected;
- give the name and address of Gosford City Council for receipt of submissions; and
- indicate the last date for submissions.

During the exhibition period, the following material will be made available for inspection:

- the planning proposal, in the form approved for community consultation by the Director-General of Planning;
- the gateway determination; and
- any studies relied upon by the planning proposal.

Part 5 Project Timeline

These will be derived once the Gateway is provided to Council.