



**Planning Proposal to
Insert a local clause into
Wingecarribee Local Environmental Plan 2010
to permit the short term rental of dwellings.**

Planning Proposal

LOCAL GOVERNMENT AREA: WINGECARRIBEE SHIRE COUNCIL

ADDRESS OF LAND: This clause will apply to all zones within the Shire in which dwellings are permissible. No maps are affected by this Planning Proposal.

PART 1 - OBJECTIVES OR INTENDED OUTCOMES OF PLANNING PROPOSAL

The purpose of the Planning Proposal is to provide a legal means under WLEP 2010 for permitting the short term rental of dwellings without requiring development consent.

PART 2 – EXPLANATION OF PROVISIONS

The provisions of the Planning Proposal will amend Wingecarribee Local Environmental Plan 2010 to insert the following local clause:

Short-term rental accommodation [local]

- (1) The objective of this clause is to enable the temporary use of dwellings as short-term rental accommodation for tourists and visitors without requiring development consent.*
- (2) Despite any other provision of this plan, development consent is not required for the use of a dwelling as short-term rental accommodation for visitors (except bed and breakfast accommodation).*
- (3) In this clause 'short-term tourist and visitor accommodation' is tourist and visitor accommodation that is used for a maximum period of 45 consecutive days in any 12 month period per individual or group.*

No maps will be affected by this Planning Proposal.

PART 3 - JUSTIFICATION

Planning Considerations

WLEP 2010 makes the distinction between 'Residential Accommodation' and 'Tourist and Visitor Accommodation'. Residential Accommodation is defined under WLEP 2010 to mean: " a building or place used predominantly as a place of residence, and includes

any of the following: (a) attached dwellings, (b) boarding houses, (c) dual occupancies, (d) dwelling houses, (e) group homes, (f) hostels, (g) multi dwelling housing, (h) residential flat buildings, (i) rural workers' dwellings, (j) secondary dwellings, (k) semi-detached dwellings, (l) seniors housing, (m) shop top housing, but does not include tourist and visitor accommodation or caravan parks."

Tourist and Visitor Accommodation is defined under WLEP 2010 to mean: "a building or place that provides temporary or short-term accommodation on a commercial basis, and includes any of the following: (a) backpackers' accommodation, (b) bed and breakfast accommodation, (c) farm stay accommodation, (d) hotel or motel accommodation, or (e) serviced apartments."

For example, dwelling houses are a form of residential accommodation. Dwelling houses are defined under WLEP 2010 to mean: "a building containing only one dwelling", and 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".

Serviced apartments are defined to mean: "a building (or part of a building) providing self-contained accommodation to tourists or visitors on a commercial basis and that is regularly serviced or cleaned by the owner or manager of the building or part of the building or the owner's or manager's agents."

Therefore, as inappropriate as the term may seem to residential dwellings in Wingecarribee Shire, if a dwelling house is let out for short term tourist and visitor accommodation, rather than for long term owner occupation or residential lease, it ceases to be a 'dwelling house' and becomes a 'serviced apartment'.

Serviced apartments are permitted with consent in only two residential zones - R2 Low Density Residential and R3 Medium Density Residential. Such development is prohibited in the R5 Large Lot Residential zone as well as the E3 Environmental Management zone.

Therefore, residential dwellings being used for short term tourist and visitor accommodation, where that use commenced after 16 June 2010 and no consent has been obtained from Council for the use of the dwelling as a 'serviced apartment', are in breach of WLEP 2010.

In the R2 Low Density Residential and R3 Medium Density Residential zones, where 'serviced apartments' are permitted with consent, a valid approval could be sought. However, in the R5 Large Lot Residential and E3 Environmental Management zones, where 'serviced apartments' are prohibited under WLEP 2010, those owners who let out their dwellings for short term tourist and visitor accommodation would need to apply for

permission under clause 2.8 of WLEP which makes provision for the temporary use of land.

Council recognises the valuable contribution that this form of tourist and visitor accommodation makes to the tourist base of the Shire and is aware that some 200 properties currently offer this form of accommodation. The proposed clause seeks to remove the need for a development application. The clause also legitimises those dwellings being used for short term rental accommodation and whose owners would not realise they were in breach of WLEP 2010. It also ensures that dwellings can be used for short term rental accommodation in those zones where serviced apartments are prohibited.

Potential Impacts

- **Environment**

Environmental considerations are addressed at the time of considering a Land Use Application (LUA) for the original dwelling house. It is not considered that short term rental of that house for tourist and visitor accommodation would adversely impact on the environmental requirements of the original consent.

It is noted that the SCA's comments include the recommendation that the original dwelling approval include provision for the additional demands that short term rental arrangements might place on on-site wastewater management systems. However, the initial dwelling approval is based on the number of bedrooms and an average occupancy rate. This demand is not expected to automatically increase under a rental arrangement.

- **Social**

The short term rental of housing for tourist and visitor accommodation may impact on the surrounding residential or rural amenity if tenants behave badly and cause neighbourhood disruption. It is the responsibility of the property owner to manage this and becomes a Police matter if they do not.

- **Broader Economic Implications**

The short term rental of housing provides a form of for tourist and visitor accommodation which meets a market need and generates additional economic benefit to the Shire.

- **Culture**

There are no significant cultural implications.

Section A – Need for the Planning Proposal

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

The Planning Proposal is not the result of any strategic study or report. Council considered it important to address the issue following the decision in a case before the Land and Environment Court regarding short term rental accommodation in Terrigal in Gosford Shire on the NSW Central Coast.

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

The following alternative options were considered.

Enforce the current controls - In order to enforce the current controls Council needs to firstly identify those dwellings which are being let out for short term tourist and visitor accommodation where that operation commenced after 16 June 2010. It is unlikely that Council could ever be confident that all, or even most, properties had been identified.

Identified properties would be required to lodge a Land Use Application (LUA) where they are operating in zones that permit 'serviced apartments' with consent. Those properties identified in those zones which do not permit serviced apartments would need to be issued with notices to cease that activity. Again compliance would be difficult to enforce. This approach would probably result in considerable Council effort for very little effect.

Amend the Standard Instrument - Council has sought direction from the NSW Department of Planning and Infrastructure (DP&I) as to whether there is any intention to amend the Standard Instrument to address this issue, but it appears that there is none at this stage.

Amend WLEP 2010 to permit serviced apartments in those zones where dwellings are permitted with consent – This option would not overcome the need to lodge a land use application for the use of a dwelling for a serviced apartment. The dwelling, by definition, would have been approved for residential purposes and would therefore need to be approved for use as a serviced apartment, either at the time it was constructed or subsequently. Permitting serviced apartments without consent could lead to breaches in building standards.

Section B – Relationship to strategic planning framework

2. Is the Planning Proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including draft strategies)?

The Sydney-Canberra Corridor Regional Strategy (SCCRS) identifies tourism as a major economic contributor for the region, generating \$600 million in 2001 (page 22). Over 40% of overnight within the Region visit the northern subregion for its rural and heritage character and its proximity to Sydney.

Council recognises the valuable contribution that the short term rental of dwellings for tourist and visitor accommodation makes to the tourist base of the Shire and is aware that some 200 properties currently offer this form of accommodation.

Council is therefore keen to offer the owners of such properties an effective means by which to legitimise this accommodation.

3. Is the Planning Proposal consistent with a council's local strategy or other local strategic plan?

Goal 5.2 of the 2031+ Wingecarribee Community Strategic Plan is to develop The Southern Highlands as a recognised tourist destination throughout Australia. The provision of a range of accommodation options is an integral part of the achievement of that goal.

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

<i>State Environmental Planning Policy No. 44 – Koala Habitat Protection (SEPP 44)</i>	SEPP 44 requires Council to consider, for any application where the SEPP applies, whether or not the land is a potential koala habitat. Because the Planning Proposal is not site-specific, Council would rely on relevant studies being undertaken at the LUA stage of any development application.
<i>State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011</i>	In accordance with the Section 117 Directions the Planning Proposal was referred to the Sydney Catchment Authority (SCA) for comment. It is noted that the Planning Proposal is not site-specific therefore Council would rely on relevant studies being undertaken at the LUA stage of any development application to ensure that NORBE standards are maintained. The SCA's response included the recommendation that the original dwelling approval include provision for the additional demands that short term rental arrangements might place on on-site wastewater management systems. However, the initial dwelling approval is based on the number of bedrooms and an average occupancy rate. This demand is not expected to

	automatically increase under a rental arrangement. Therefore it is considered that the Planning Proposal is consistent with this SEPP.
<i>State Environmental Planning Policy (Rural Lands) 2008</i>	The Rural Lands SEPP identifies a number of Rural Principles to ensure that rural lands are protected and that rural activity make a positive contribution to the economy. The ability for a rural property owner to use a rural dwelling for short term rental can make a genuine contribution to the financial viability of the property and lessen subdivision pressures. Existing undersized rural allotments can also be utilised to financial advantage when few other options exist.

5. Is the Planning Proposal consistent with applicable section 117 Directions?

The following Local Planning Directions apply to the Planning Proposal.

1.2 Rural Zones

The objective of this Direction is to protect the agricultural production value of rural land. Clause 4(a) of this Direction applies to all relevant planning authorities and requires that the Planning Proposal not rezone land from a rural zone to a residential, business, industrial, village or tourist zone.

The Planning Proposal is *consistent* with this Direction because no land is being zoned as a result of this Proposal.

1.5 Rural Lands

The objectives of this Direction are to:

- a) Protect the agricultural production value of rural land
- b) Facilitate the orderly and economic development of rural lands for rural and related purposes.

The Planning Proposal is *consistent* with this Direction because the use of any rural land for short term rental of dwellings would be assessed on a site-specific basis at the LUA stage to ensure no adverse environmental impacts resulted from the location or subsequent use of the dwelling.

2.1 Environmental protection Zones

The objective of this Direction is to protect and conserve environmentally sensitive areas.

The Planning Proposal is *consistent* with this Direction because the use of any environmentally sensitive land for short term rental of dwellings would be assessed on a site-specific basis at the LUA stage to ensure no adverse environmental impacts resulted from the location or subsequent use of the dwelling.

2.3 Heritage Conservation

The objective of this Direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.

The Planning Proposal is *consistent* with this Direction because the use of any land of heritage significance for short term rental of dwellings would be assessed on a site-specific basis at the LUA stage to ensure no adverse heritage impacts resulted from the location or subsequent use of the dwelling. It is possible that items of heritage may be protected as a result of their use for short term rental if appropriately managed as the income generated provides funding for ongoing maintenance.

3.1 Residential Zones

The objectives of this Direction are to:

- a) Encourage a variety and choice of housing types to provide for existing and future housing needs
- b) Make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, and
- c) Minimise the impact of residential development on the environment and resource lands.

The Planning Proposal is *consistent* with this Direction because although the intent of the clause is to permit the use of residential accommodation for tourist and visitor use, it is not considered that this would occur to such an extent as to limit the supply of residential accommodation across the Shire.

5.1 Implication of Regional Strategies

The objective of this Direction is to give legal effect to the vision, land use strategy, policies, outcomes and actions contained in regional strategies.

The Planning Proposal is *consistent* with this Direction because the provision of tourist and visitor accommodation supports the objective of encouraging tourism within the Sydney-Canberra Corridor Region.

5.2 Sydney Drinking Water Catchment

The objective of this Direction is to protect water quality in the Sydney drinking water catchment.

The Planning Proposal is *consistent* with this Direction because the Planning Proposal is not site-specific therefore Council would rely on relevant studies being undertaken at the LUA stage of any development application to ensure that NORBE standards are maintained.

In accordance with the Section 117 Directions the planning proposal is being referred to the Sydney Catchment Authority (SCA) for comment which will be incorporated into the Planning Proposal prior to public exhibition.

Section C – Environmental, social and economic impact

6. 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 Planning Proposal?

Because the Planning Proposal is not site-specific Council would rely on relevant studies being undertaken at the LUA stage of any development application to ensure that there are no adverse environmental, social or economic impacts.

It is noted that the short term rental of housing for tourist and visitor accommodation may impact on the surrounding residential or rural amenity if tenants behave badly and cause neighbourhood disruption. It is the responsibility of the property owner to manage this and becomes a Police matter if they do not.

It is also noted that the short term rental of housing provides a form of for tourist and visitor accommodation which meets a market need and generates additional economic benefit to the Shire.

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

Environmental considerations would be addressed at the time of considering a Land Use Application (LUA) for the original dwelling house. It is not considered that short term rental of that house for tourist and visitor accommodation would adversely impact on the environmental requirements of the original consent.

8. Has the Planning Proposal adequately addressed any social and economic effects?

It is not considered that there are additional social or economic effects additional to those already addressed.

Section D – State and Commonwealth interests

9. Is there adequate public infrastructure for the Planning Proposal?

The impact of residential development on public infrastructure is assessed at the LUA stage for the original subdivision plan or LUA. The use of any of that accommodation for short term rental is not considered to be sufficient to impact on public infrastructure.

10. What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway Determination?

Apart from referral to the SCA, no further consultation has yet occurred.

PART 4 – MAPPING

This Planning Proposal does not require any mapping amendments.

PART 5 – COMMUNITY CONSULTATION

It is recommended that the Planning Proposal be publicly exhibited for a period of 28 days. Council intends to place the Planning Proposal on public exhibition by advertising in the local newspaper, making it available on Council's website, and at Council libraries and prominent community information points such as local post offices, general stores or community centres.

PART 6 – PROJECT TIMELINE

It is anticipated that the Planning Proposal will progress as indicated below:

ACTION	INDICATIVE DATE
Gateway Determination	15 October 2013
Revised/updated Planning Proposal (if required)	30 October 2013
Public Exhibition/Consultation with government agencies	15 November 2013
Public Exhibition	15 Nov - 15 Dec 2013
Report to Council on exhibition of Planning Proposal.	January 2014
Documents to DP&I & PCO.	February 2014
Approximate completion date	April 2014

DELEGATIONS

Council is applying to use its delegation to complete this proposal and an Evaluation Form has been attached for consideration.