

PJK/Peter Kavanagh  
RZ/5/2013

15 May, 2014

David Rowland  
General Manager  
Hunter and Central Coast  
Department of Planning and Infrastructure  
PO Box 1148  
GOSFORD NSW 2250

Attention: Mr Garry Hopkins

Dear Mr Hopkins

**Planning Proposal in Relation to the Use of Dwellings for Short-term Rental Accommodation –  
RZ/5/2013**

During its meeting of 23 April, 2014, Council resolved to prepare a Planning Proposal to amend Wyong Local Environmental Plan (WLEP) 2013 to enable the use of existing lawful dwellings for Short-term Rental Accommodation.

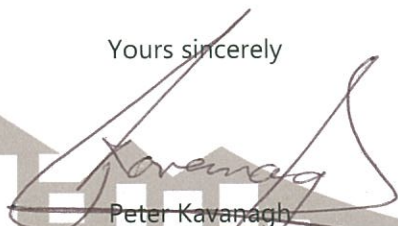
The objectives of the Proposal are to allow the continuation of the letting of dwellings on a short term basis for the purposes of providing holiday accommodation in those zones where dwellings are permitted with consent, and to ensure the use operates at a scale that is compatible with maintaining the residential amenity of the surrounding neighbourhood. The Proposal contains provisions for the land-use to be considered as Exempt Development in lawful dwellings of up to 4 bedrooms and to be considered as permissible with development consent for lawful dwellings of up to 6 bedrooms, similar to provisions recently notified within the Gosford LEP, 2014, in order to ensure a regionally consistent approach to this issue.

The attached Planning Proposal has been prepared in accordance with the requirements of s55 of the Environmental Planning and Assessment Act, 1979 (the Act) and the Department of Planning's *Guide to Preparing Planning Proposals*. In accordance with s56 of the Act, the Planning Proposal is enclosed for consideration by the Regional Office of the Department of Planning and Environment, the LEP Review Panel and the Gateway.

In addition to considering this proposal, it is requested that Council's delegate be able to determine/make the plan under Section 59 of the Act.

Should you require further information regarding the Planning Proposal, please contact me on 02 4350 5537 or email [peter.kavanagh@wyong.nsw.gov.au](mailto:peter.kavanagh@wyong.nsw.gov.au)

Yours sincerely

  
Peter Kavanagh  
**Senior Strategic Planner  
REZONINGS**





**Wyong  
Shire  
Council**  
CENTRAL COAST

## ***Planning Proposal***

Proposed Amendment to Schedule 2, the insertion of a new definition, and the insertion of a new draft Clause 7.15 within the Wyong Local Environmental Plan, 2013, to enable the use of dwellings for Short-term Rental Accommodation

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## **Part 1 Objectives or Intended Outcomes**

- To enable the use of dwellings for Short-term Rental Accommodation;
- To allow the continuation of the letting of dwellings on a short term basis for the purposes of providing holiday accommodation in those zones where dwellings are permitted with consent; and
- To ensure the use operates at a scale that is compatible with maintaining the residential amenity of the surrounding neighbourhood.

## **Part 2 Explanation of Provisions**

The Planning Proposal includes the following amendments to the Wyong Local Environmental Plan, 2013:

- Insert in appropriate order in the Dictionary, the following definition:

**short-term rental accommodation** means a lawful dwelling that is commercially available for rent as short-term accommodation on a temporary basis, but does not include bed and breakfast accommodation.

- Insert within Schedule 2 Exempt Development:

### **Short-term rental accommodation**

1. Must be located in a zone where dwellings are permitted with consent
2. Must not contain more than 4 bedrooms
3. Must have a bushfire evacuation plan displayed in a prominent location within the dwelling, if located in a bushfire prone area
4. Must not exceed the number of persons/capacity of any on-site sewage management system
5. Must have a regularly serviced garbage bin of sufficient capacity
6. Must not involve interference with the amenity of the neighbourhood by reason of the emission of noise or traffic generation
7. Nothing in cl. (1) to (6) inclusive permits:
  - (a) the erection of any new dwelling; or
  - (b) the alteration or extension of any existing dwelling.

- Insert within **Part 7 Additional Local Provisions:**

### **7.15 Short-term rental accommodation**

- (1) The objective of this clause is to require development consent for the temporary use of dwellings containing up to 6 bedrooms as short-term rental accommodation.
- (2) Despite any other provision of this Plan, development consent may be granted for the use of a lawful dwelling containing up to 6 bedrooms as short-term rental accommodation.

## **Part 3 Justification**

### **Section A – Need for the Planning Proposal**

**1. *Is the Planning Proposal a result of any Strategic Study or report?***

No, the Planning Proposal is not as a result of any Strategic Study or report. The need for the provisions is not unique to Wyong Shire, with ramifications extending throughout NSW.

The Planning Proposal is as a result of a decision in the NSW Land and Environment Court on 2 May 2013, which determined that the Short-Term Holiday Letting of residential dwellings is a prohibited land use in the (then) low density Residential 2(a) zone in the Gosford City LGA, and that it is not a “dwelling”, but a separately defined land use. Decisions of the Court are binding throughout NSW.

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 land-use controls to maintain residential amenity.

It is noted that the Gosford Local Environmental Plan, 2014, was notified on 21 March 2014, including similar provisions to those proposed herein, designed to address the land-use, which is now defined as “short-term rental accommodation”. The draft provisions within this Planning Proposal have regard to those considerations.

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

The Wyong Local Environmental Plan, 2013 (SI LEP), became effective on 23 December, 2013, and does not address this land-use.

Failing the introduction of State-wide planning provisions (e.g., an amendment to the Standard Instrument (Local Environmental Plans) Order 2006, inserting a definition of the land-use and prescribing appropriate controls), the Planning Proposal is considered to be the simplest method of permitting the use of lawful dwellings for Short-term Rental Accommodation.

Similar provisions have been recently approved by NSW Parliamentary Counsel for the Gosford Local Environmental Plan, 2014, as amended on 21 March, 2014.

**Section 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)?*

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' and identifies the 'growth of home-based businesses' as a key opportunity.

Support for tourism and the economic benefits both direct and indirect are key objectives of the applicable strategies to Wyong. The maintenance of Short-term Rental Accommodation provisions for dwellings as one of the primary sources of tourist accommodation is important to the economy of the Region.

4. *Is the planning proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?*

The Community Strategic Plan identifies 8 priority objectives, each supported by a range of actions. The Planning Proposal is assessed as follows.

1. Communities will be vibrant, caring and connected.

The proposed amendment affects all lands where dwellings are permissible with development consent. Opportunities exist for tourists and new residents to participate in existing programs in the district, including community, business, sports, recreation, education and creative groups.

The Planning Proposal is consistent with the Wyong Shire-wide Settlement Strategy and the Central Coast Regional Strategy.

2. There will be ease of travel.

Bus services operate within most areas of the Shire. Car access to services and rail transport are also available, with services likely to improve as population expands over the life of the Strategy.

3. Communities will have a range of facilities and services.

The provisions will enable developments which will attract tourists, and potentially new residents, who will contribute to cultural and community facilities, open space, sports and recreation facilities. Council is currently seeking to increase utilisation of many of its existing facilities.

4. Areas of natural value will be enhanced and maintained.

The proposal enables the use of dwellings of up to 4 bedrooms for STRA as Exempt Development. The assessment of the DAs for STRA within larger, or non-complaint dwellings, would determine the most appropriate sites with minimal environmental impact, thereby supporting this objective.

5. There will be a sense of community ownership of the natural environment.

Not relevant to this Proposal.

6. There will be a strong sustainable business sector.

The Proposal will assist in job creation opportunities, particularly within the service sector.

7. Information and communication technology will be world's best.

Not relevant to this Proposal.

8. The community will be educated, innovative and creative.

Not relevant to this Proposal.

5. *Is the planning proposal consistent with applicable state environmental planning policies?*

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

6. *Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?*

As the Planning Proposal involves the addition of a new land-use to the Wyong Local Environmental Plan 2013, and the zones contained within, a significant number of S117 Directions are triggered. The Planning Proposal though is not in conflict with the relevant directions. The primary directions considered relevant were those relating to the use of dwellings. A detailed review of the Directions is included as Attachment 1.

A summary of the consideration against the relevant Ministerial Section 117 Directions is provided below.

| Number                            | Direction                                              | Applicable | Consistent |
|-----------------------------------|--------------------------------------------------------|------------|------------|
| <b>Employment &amp; Resources</b> |                                                        |            |            |
| 1.1                               | Business & Industrial Zones                            | N          | N/A        |
| 1.2                               | Rural Zones                                            | Y          | Y          |
| 1.3                               | Mining, Petroleum Production and Extractive Industries | N          | N/A        |
| 1.4                               | Oyster Aquaculture                                     | N          | N/A        |
| 1.5                               | Rural Lands                                            | N          | N/A        |
| <b>Environment &amp; Heritage</b> |                                                        |            |            |
| 2.1                               | Environmental Protection Zones                         | Y          | Y          |
| 2.2                               | Coastal Protection                                     | Y          | Y          |
| 2.3                               | Heritage Conservation                                  | Y          | Y          |
| 2.4                               | Recreation Vehicle Areas                               | Y          | Y          |



| Number                                                 | Direction                                                                | Applicable | Consistent |
|--------------------------------------------------------|--------------------------------------------------------------------------|------------|------------|
| <b>Housing, Infrastructure &amp; Urban Development</b> |                                                                          |            |            |
| 3.1                                                    | Residential Zones                                                        | Y          | Y          |
| 3.2                                                    | Caravan Parks and Manufactured Home Estates                              | Y          | N/A        |
| 3.3                                                    | Home Occupations                                                         | Y          | Y          |
| 3.4                                                    | Integrating Land Use & Transport                                         | Y          | Y          |
| 3.5                                                    | Development Near Licensed Aerodromes                                     | N          | N/A        |
| 3.6                                                    | Shooting Ranges                                                          | N          | N/A        |
| <b>Hazard &amp; Risk</b>                               |                                                                          |            |            |
| 4.1                                                    | Acid Sulfate Soils                                                       | Y          | N/A        |
| 4.2                                                    | Mine Subsidence and Unstable Land                                        | Y          | Y          |
| 4.3                                                    | Flood Prone Land                                                         | Y          | Y          |
| 4.4                                                    | Planning for Bushfire Protection                                         | Y          | Y          |
| <b>Regional Planning</b>                               |                                                                          |            |            |
| 5.1                                                    | Implementation of Regional Strategies                                    | Y          | Y          |
| 5.2                                                    | Sydney Drinking Water Catchments                                         | N          | N/A        |
| 5.3                                                    | Farmland of State and Regional Significance on the NSW Far North Coast   | N          | N/A        |
| 5.4                                                    | Commercial and Retail Development along the Pacific Highway, North Coast | N          | N/A        |
| 5.5, 5.6 & 5.7                                         | REVOKED                                                                  |            |            |
| 5.8                                                    | Second Sydney Airport: Badgerys Creek                                    | N          | N/A        |
| <b>Local Plan Making</b>                               |                                                                          |            |            |
| 6.1                                                    | Approval and Referral Requirements                                       | Y          | Y          |
| 6.2                                                    | Reserving Land for Public Purposes                                       | Y          | Y          |
| 6.3                                                    | Site Specific Provisions                                                 | N          | N/A        |
| <b>Metropolitan Planning</b>                           |                                                                          |            |            |
| 7.1                                                    | Implementation of the Metropolitan Plan for Sydney 2036                  | N          | N/A        |

**Section 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?*

No. The proposed amendment will enable the use of existing dwellings for STRA. The land use compatibility or potential for impact on critical habitat or threatened species, populations or ecological communities, or their habitats, are matters for consideration at the Development Assessment stage for subdivisions and for dwelling houses. There will be no additional impacts directly created through this Planning Proposal.

8. *Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?*

The potential for any likely environmental effects in relation to STRA proposals are to be controlled utilising Exempt Development prescriptions and will also be examined in accordance with s.79C of the EP&A Act when determining development applications. There will be no additional impacts directly created through this amendment.

9. *How has the planning proposal adequately addressed any social and economic effects?*

**Social**

The social impact of STRA 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 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 lets that are also available for use by local residents.

The negative social impacts are not the result of the land-use itself but the behaviour of a small minority of the people renting short term accommodation. 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 Exempt Development provisions will provide a commencement point in the administration of STRA of dwellings. For most short term holiday operations this is sufficient to provide a legal town planning basis for the activity with little need for further Council involvement. For those operations where behaviour of occupants and poor oversight by owners is occurring, firstly communication, education and ultimately compliance enforcement mechanisms can be applied as a response. Appropriate conditions of Development Consent will assist in regard to providing guidelines that can be applied to ensure amenity concerns are addressed.

Codes of Conduct, liaison between neighbours, police involvement (as necessary) and Council compliance, along with town planning provisions, should combine to ensure behaviour and oversight achieve the aim of respect for the living environment of neighbours.

**Economic**

Short-term Rental Accommodation dwellings are one of the primary sources of holiday accommodation for tourists in Wyong LGA and across the country. Tourism has been a major industry in the Shire for many years. It provides important economic activity and job opportunities in the marketing and service sectors for the area. The continued support for STRA of dwellings by Council and the NSW Government through this Planning Proposal is considered to be important in maintaining the economic benefits and job opportunities provided by the tourism industry.

**Section D – State and Commonwealth Interests****10. *Is there adequate public infrastructure for the planning proposal?***

The amendment will address various disparate sites. Affected lots are within residential, rural, and environmental management zoned lands where dwellings are permitted. Compatibility with the land and the availability of public infrastructure are matters for due consideration during the Development Assessment process for the dwelling house.

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

[to be completed after Gateway Determination]

**Part 4 Community Consultation**

It is recommended that the proposal be publicly exhibited for a period of 28 days.

Notification of the public exhibition is recommended to be placed in the Central Coast Express Advocate and on Council's website, and a link attached to Council's new ePanel initiative.

The Planning Proposal, Gateway Determination, and any supporting materials will be made available on Council's website, at Council's Administration Building in Hely Street Wyong.

A public hearing is considered unlikely to be necessary.

**Attachments and Supporting Documentation**

| <b>Document</b>                                             | <b>Attached</b> |
|-------------------------------------------------------------|-----------------|
| 1. Section 117 Ministerial Directions Assessment (Detailed) | <b>Yes</b>      |
| 2. Council Report and Minutes                               | <b>Yes</b>      |



## Section 117 Ministerial Direction Assessment

| Direction                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Comment                                                                                                                      |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------|
| Employment and Resources                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                              |
| <i>1.1 Business and Industrial Zones</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                              |
| <ul style="list-style-type: none"> <li>Aims to encourage employment growth in suitable locations, protect employment land in business and industrial zones and to support the viability of identified strategic corridors.</li> <li>Applies when a dLEP affects land within an existing or proposed business or industrial zone.</li> </ul>                                                                                                                                                                                                                                                                                                                                           | <ul style="list-style-type: none"> <li>Not Applicable.</li> </ul>                                                            |
| <i>1.2 Rural Zones</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                              |
| <ul style="list-style-type: none"> <li>Aims to protect the agricultural production value of rural land.</li> <li>Applies when a dLEP affects land within an existing or proposed rural zone.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | <ul style="list-style-type: none"> <li>Applicable.</li> <li>The Proposal is not inconsistent with this Direction.</li> </ul> |
| <i>1.3 Mining, Petroleum Production and Extractive Industries</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                              |
| <ul style="list-style-type: none"> <li>Aims to ensure that the future extraction of State or regionally significant reserves of coal, other minerals, petroleum and extractive materials are not compromised by inappropriate development.</li> <li>Applies when a dLEP would have the effect of prohibiting the mining of coal or other minerals, production of petroleum, or winning or obtaining of extractive materials, or restricting the potential of development resources of coal, other mineral, petroleum or extractive materials which are of State or regional significance by permitting a land use that is likely to be incompatible with such development.</li> </ul> | <ul style="list-style-type: none"> <li>Not applicable.</li> </ul>                                                            |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                          |
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| <i>1.4 Oyster Aquaculture</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                          |
| <ul style="list-style-type: none"> <li>▪ Aims to ensure that Priority Oyster Aquaculture Areas and oyster aquaculture outside such an area are adequately considered, and to protect Priority Oyster Aquaculture Areas and oyster aquaculture outside such an area from land uses that may result in adverse impacts on water quality and the health of oysters and consumers.</li> <li>▪ Applies when a dLEP could result in adverse impacts on a Priority Oyster Aquaculture Areas or current oyster aquaculture lease in the national parks estate or results in incompatible use of land between oyster aquaculture in a Priority Oyster Aquaculture Area or current oyster aquaculture lease in the national parks estate and other land uses.</li> </ul> | <ul style="list-style-type: none"> <li>▪ Not applicable.</li> </ul>                                                                                                                                      |
| <i>1.5 Rural Lands</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                          |
| <ul style="list-style-type: none"> <li>▪ Aims to protect the agricultural production value of rural land; and facilitate the orderly and economic development of rural lands for rural and related purposes.</li> <li>▪ Applies to Councils to which State Environmental Planning Policy (Rural Lands) 2008 applies and prepares a dLEP that affects land within an existing or proposed rural or environment protection zone.</li> </ul>                                                                                                                                                                                                                                                                                                                      | <ul style="list-style-type: none"> <li>▪ Not applicable.</li> </ul>                                                                                                                                      |
| <b>Environment and Heritage</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                          |
| <i>2.1 Environmental Protection Zones</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                          |
| <ul style="list-style-type: none"> <li>▪ Aims to protect and conserve environmentally sensitive areas.</li> <li>▪ Applies when Council prepares a dLEP.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | <ul style="list-style-type: none"> <li>▪ Applicable</li> <li>▪ The Proposal will facilitate the use within existing lawful dwellings, and is therefore not inconsistent with this Direction.</li> </ul>  |
| <i>2.2 Coastal Protection</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                          |
| <ul style="list-style-type: none"> <li>▪ Aims to implement the principles in the NSW Coastal Policy.</li> <li>▪ Applies when a dLEP applies to land in the coastal zone as defined in the Coastal Protection Act 1979.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | <ul style="list-style-type: none"> <li>▪ Applicable.</li> <li>▪ The Proposal will facilitate the use within existing lawful dwellings, and is therefore not inconsistent with this Direction.</li> </ul> |
| <i>2.3 Heritage Conservation</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                          |
| <ul style="list-style-type: none"> <li>▪ Aims to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.</li> <li>▪ Applies when Council prepares a dLEP.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | <ul style="list-style-type: none"> <li>▪ Applicable.</li> <li>▪ The Proposal is not inconsistent with this Direction.</li> </ul>                                                                         |

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| <i>2.4 Recreational Vehicle Areas</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <ul style="list-style-type: none"> <li>▪ Aims to protect sensitive land or land with significant conservation values from adverse impacts from recreational vehicles.</li> <li>▪ Applies when Council prepares a dLEP.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                    | <ul style="list-style-type: none"> <li>▪ Applicable.</li> <li>▪ The Proposal is not inconsistent with this Direction.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Housing, Infrastructure and Urban Development</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <i>3.1 Residential Zones</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <ul style="list-style-type: none"> <li>▪ Aims to encourage a variety and choice of housing types to provide for existing and future housing needs, to make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, and to minimise the impact of residential development on the environmental and resource lands.</li> <li>▪ Applies when a dLEP affects land within an existing or proposed residential zone, and any other zone in which significant residential development is permitted or proposed to be permitted.</li> </ul> | <ul style="list-style-type: none"> <li>▪ Applicable.</li> <li>▪ The Proposal will facilitate the use of existing lawful dwellings for Short-term Rental Accommodation. The provisions will enable developments which will attract tourists, and potentially new residents, who will contribute to cultural and community facilities, open space, sports and recreation facilities. Support for tourism and the economic benefits both direct and indirect are key objectives of the applicable strategies to Wyong and Council is currently seeking to increase utilisation of many of its existing facilities. The proposal is consistent with this Direction.</li> </ul> |
| <i>3.2 Caravan Parks and Manufactured Home Estates</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <ul style="list-style-type: none"> <li>▪ Aims to provide for a variety of housing types and provide opportunities for caravan parks and manufactured home estates.</li> <li>▪ Applies when Council prepares a dLEP.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                       | <ul style="list-style-type: none"> <li>▪ Applicable.</li> <li>▪ The Proposal is not inconsistent with this Direction.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <i>3.3 Home Occupations</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <ul style="list-style-type: none"> <li>▪ Aims to encourage the carrying out of low impact small business in dwelling houses.</li> <li>▪ Applies when Council prepares a dLEP.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                             | <ul style="list-style-type: none"> <li>▪ Applicable.</li> <li>▪ Whilst Home Occupations and Short-term Rental Accommodation will be separately defined land-uses, the Proposal reinforces the principle of enabling the carrying out of low-impact small businesses within existing lawful dwellings, which will provide important economic activity and job opportunities in the tourism, marketing and service sectors of the local economy. The proposal is consistent with this Direction.</li> </ul>                                                                                                                                                                  |
| <i>3.4 Integrating Land Use and Transport</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <ul style="list-style-type: none"> <li>▪ Aims to ensure that urban structures, building forms, land use locations, development designs, subdivision and street layouts achieve: improving access to housing, jobs and services by walking, cycling and public transport; increasing choice of available transport and</li> </ul>                                                                                                                                                                                                                                                                                     | <ul style="list-style-type: none"> <li>▪ Applicable.</li> <li>▪ The proposal will permit an additional economic activity in existing lawful dwellings, contributing to the sustainable utilisation of existing transport infrastructure. The Proposal is consistent with this Direction.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                        |

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| <p>reducing transport on cars; reducing travel demand; supporting efficient and viable public transport services; and provide for efficient movement of freight.</p> <ul style="list-style-type: none"> <li>▪ Applies when a dLEP creates, alters or moves a zone or provision relating to urban land, including land zoned for residential, business, industrial, village or tourist purposes.</li> </ul>                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                          |
| <b>3.5 Development Near Licensed Aerodromes</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                          |
| <ul style="list-style-type: none"> <li>▪ Aims to ensure the effective and safe operation of aerodromes and that the operation is not compromised by development which constitutes an obstruction, hazard or potential hazard to aircraft flying in the vicinity. Development for residential purposes or human occupation (within the Annual Noise Exceedence Frequency (ANEF) contours between 20 and 25) must incorporate appropriate mitigation measures so that the development is not adversely affected by aircraft noise.</li> <li>▪ Applies when a dLEP creates, alters or removes a zone or provision relating to land in the vicinity of a licensed aerodrome.</li> </ul> | <ul style="list-style-type: none"> <li>▪ Not Applicable.</li> </ul>                                                                                                                                      |
| <b>3.6 Shooting Ranges</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                          |
| <ul style="list-style-type: none"> <li>▪ Aims to maintain appropriate levels of public safety and amenity when rezoning land adjacent to an existing shooting range; reduce land use conflict arising between existing shooting ranges and rezoning of adjacent land; and identify issues that must be addressed when giving consideration to rezoning land adjacent to an existing shooting range.</li> <li>▪ Applies when a dLEP affects, creates or removes a zone or a provision relating to land adjacent to and/or adjoining an existing shooting range.</li> </ul>                                                                                                           | <ul style="list-style-type: none"> <li>▪ Not Applicable.</li> </ul>                                                                                                                                      |
| <b>Hazard and Risk</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                          |
| <b>4.1 Acid Sulphate Soils</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                          |
| <ul style="list-style-type: none"> <li>▪ Aims to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulfate soils.</li> <li>▪ Applies when a dLEP applies to land having a probability of containing acid sulfate soils on the Acid Sulphate Soils Planning Maps.</li> </ul>                                                                                                                                                                                                                                                                                                                                            | <ul style="list-style-type: none"> <li>▪ Applicable.</li> <li>▪ The Proposal will facilitate the use within existing lawful dwellings, and is therefore not inconsistent with this Direction.</li> </ul> |

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| <b>4.2 Mine Subsidence and Unstable Land</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <ul style="list-style-type: none"> <li>▪ Aims to prevent damage to life, property and the environment on land identified as unstable or potentially subject to mine subsidence.</li> <li>▪ Applies when a dLEP permits development on land which is within a mine subsidence district, or identified as unstable in a study or assessment undertaken by or on behalf of Council or other public authority and provided to Council.</li> </ul>                                                                                       | <ul style="list-style-type: none"> <li>▪ Applicable.</li> <li>▪ The Proposal will facilitate the use within existing lawful dwellings, and is therefore not inconsistent with this Direction.</li> </ul>                                                                                                                                                                                                                                                                                                          |
| <b>4.3 Flood Prone Land</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <ul style="list-style-type: none"> <li>▪ Aims to ensure development on flood prone land is consistent with NSW Government's Flood Prone Land Policy and principles of the <i>Floodplain Development Manual 2005</i>; and provisions of an LEP on flood prone land is commensurate with flood hazard and includes consideration of the potential flood impacts both on and off the subject land.</li> <li>▪ Applies when a dLEP creates, removes or alters a zone or provision that affects flood prone land.</li> </ul>             | <ul style="list-style-type: none"> <li>▪ Applicable.</li> <li>▪ The Proposal will facilitate the use within existing lawful dwellings, and is therefore not inconsistent with this Direction.</li> </ul>                                                                                                                                                                                                                                                                                                          |
| <b>4.4 Planning for Bushfire Protection</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <ul style="list-style-type: none"> <li>▪ Aims to protect life, property and the environment from bushfire hazards, and encourage sound management of bushfire prone areas.</li> <li>▪ Applies when a dLEP affects or is in proximity to land mapped as bushfire prone land.</li> </ul>                                                                                                                                                                                                                                              | <ul style="list-style-type: none"> <li>▪ Applicable.</li> <li>▪ The Proposal will facilitate the use within existing lawful dwellings. It is noted that where the existing dwelling is located within a bushfire prone area, the RFS will likely require that a bushfire evacuation plan be displayed in a prominent location within the dwelling, and provisions are to be included to address this requirement. The Proposal is consistent with this Direction.</li> </ul>                                      |
| <b>Regional Planning</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>5.1 Implementation of Regional Strategies</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <ul style="list-style-type: none"> <li>▪ Aims to give legal effect to the vision, land use strategy, policies, outcomes and actions contained within Regional Strategies.</li> <li>▪ Applies to land to which the following regional strategies apply: <ul style="list-style-type: none"> <li>▪ Far North Coast Regional Strategy,</li> <li>▪ Lower Hunter Regional Strategy,</li> <li>▪ Illawarra Regional Strategy,</li> <li>▪ South Coast Regional Strategy,</li> <li>▪ Sydney-Canberra Corridor Regional</li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>▪ Applicable.</li> <li>▪ The Central Coast Regional Strategy (CCRS p29) provides under the <i>Key Economic Opportunities for the Region</i>, that "the regions tourism advantages are also likely to increase" and identifies the "growth of home-based businesses" as a key opportunity. Support for tourism and the economic benefits both direct and indirect are key objectives of the applicable strategies to Wyong. The maintenance of Short-term Rental</li> </ul> |

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| <p>Strategy,</p> <ul style="list-style-type: none"> <li>▪ Central Coast Regional Strategy, and</li> <li>▪ Mid North Coast Regional Strategy.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                  | <p>Accommodation provisions for dwellings as one of the primary sources of tourist accommodation is important to the economy of the Region. The Proposal is consistent with this Direction.</p>                                      |
| <i>5.2 Sydney Drinking Water Catchments</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                      |
| <ul style="list-style-type: none"> <li>▪ Aims to protect water quality in the hydrological catchment.</li> <li>▪ Applies when Council prepares a dLEP that applies to Sydney's hydrological catchment.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                        | <ul style="list-style-type: none"> <li>▪ Not applicable.</li> </ul>                                                                                                                                                                  |
| <i>5.3 Farmland of State and Regional Significance on the NSW Far North Coast</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                      |
| <ul style="list-style-type: none"> <li>▪ Aims to ensure that the best agricultural land will be available for current and future generations to grow food and fibre; provide more certainty on the status of the best agricultural land, assisting councils with strategic settlement planning; and reduce land use conflict arising between agricultural use and non-agricultural use of farmland caused by urban encroachment into farming areas.</li> <li>▪ Applies to Ballina, Byron, Kyogle, and Tweed Shire Councils, Lismore City Council and Richmond Valley Council.</li> </ul> | <ul style="list-style-type: none"> <li>▪ Not applicable.</li> </ul>                                                                                                                                                                  |
| <i>5.4 Commercial and Retail Development along the Pacific Highway, North Coast</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                      |
| <ul style="list-style-type: none"> <li>▪ Aims to manage commercial and retail development along the Pacific Highway, North Coast.</li> <li>▪ Applies to all Councils between and inclusive of Port Stephens and Tweed Shire Councils.</li> </ul>                                                                                                                                                                                                                                                                                                                                         | <ul style="list-style-type: none"> <li>▪ Not applicable.</li> </ul>                                                                                                                                                                  |
| <i>5.5, 5.6 and 5.7 - Revoked</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                      |
| <i>5.8 Second Sydney Airport: Badgerys Creek</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                      |
| <ul style="list-style-type: none"> <li>▪ Aims to avoid incompatible development in the vicinity of any future second Sydney Airport at Badgerys Creek.</li> <li>▪ Applies to land located within the Fairfield, Liverpool and Penrith City Council and Wollondilly Shire Council Local Government Areas.</li> </ul>                                                                                                                                                                                                                                                                      | <ul style="list-style-type: none"> <li>▪ Not applicable.</li> </ul>                                                                                                                                                                  |
| <b>Local Plan Making</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                      |
| <i>6.1 Approval and Referral Requirements</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                      |
| <ul style="list-style-type: none"> <li>▪ Aims to ensure that LEP provisions encourage the efficient and appropriate assessment of development.</li> <li>▪ Applies when Council prepares a dLEP.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                               | <ul style="list-style-type: none"> <li>▪ Applicable.</li> <li>▪ The proposal minimises the need for referrals, concurrences and consultation by requiring the use apply to existing lawful dwellings (i.e., environmental</li> </ul> |

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|                                                                                                                                                                                                                                                                                                                                         | merits already assessed and determined), and by recognising that the RFS will likely require that a bushfire evacuation plan be displayed in a prominent location within the dwelling, should the dwelling be located in a bushfire prone area. The proposal is consistent with this Direction. |
| <i>6.2 Reserving Land for Public Purposes</i>                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                 |
| <ul style="list-style-type: none"> <li>▪ Aims to facilitate the provision of public services and facilities by reserving land for public purposes, and facilitate the removal of reservations of land for public purposes where land is no longer required for acquisition.</li> <li>▪ Applies when Council prepares a dLEP.</li> </ul> | <ul style="list-style-type: none"> <li>▪ Applicable.</li> <li>▪ The Proposal will facilitate the use within existing lawful dwellings, and is therefore not inconsistent with this Direction.</li> </ul>                                                                                        |
| <i>6.3 Site Specific Provisions</i>                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                 |
| <ul style="list-style-type: none"> <li>▪ Aims to discourage unnecessarily restrictive site specific planning controls.</li> <li>▪ Applies when Council prepares a dLEP to allow particular development to be carried out.</li> </ul>                                                                                                    | <ul style="list-style-type: none"> <li>▪ Not applicable.</li> <li>▪ In any event, the Proposal will facilitate the use within existing lawful dwellings in all zones where dwellings are permissible, and is therefore not inconsistent with this Direction.</li> </ul>                         |
| Metropolitan Planning                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                 |
| <i>7.1 Implementation of the Metropolitan Strategy</i>                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                 |
| <ul style="list-style-type: none"> <li>▪ Aims to give legal effect to the vision, land use strategy, policies, outcomes and actions contained in the Metropolitan Plan for Sydney 2036.</li> <li>▪ Applies to Sydney Metropolitan Councils</li> </ul>                                                                                   | <ul style="list-style-type: none"> <li>▪ Not Applicable.</li> <li>▪ The dLEP does not affect land within the Sydney Metropolitan Region of Councils</li> </ul>                                                                                                                                  |



23 April 2014

To the Ordinary Council Meeting

Director's Report

Development and Building Department

## **2.1 Planning Proposal for Short term Rental Accommodation**

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TRIM REFERENCE: RZ/5/2013 - D06255214

MANAGER: Brian Glendenning, Acting Director Development and Building

AUTHOR: Scott Cox; Manager

### **SUMMARY**

The use of dwellings for Short-term Rental Accommodation (STRA) has long provided an alternative form of tourist accommodation within the Wyong Local Government Area (LGA). As a result of legal proceedings involving Gosford City Council there is a possibility that the use of dwellings for the purpose of short term rental accommodation maybe prohibited. This report details an initiative to draft a Planning Proposal to enable the permissibility of this use to be either Exempt Development or Development permissible with consent, while maintaining appropriate amenity for adjacent residents. This report seeks the approval of Council to initiate a "Gateway" process to enable STRA as an exempt or permissible land use under WLEP 2013.

### **RECOMMENDATION**

- 1 *That Council initiate the Local Environmental Plan "Gateway" process, pursuant to Section 55 of the Environmental Planning and Assessment Act 1979 by preparation of a Planning Proposal to enable the use of dwellings for Short Term Rental Accommodation.*
- 2 *That Council forward the Planning Proposal to the Department of Planning and Infrastructure requesting a "Gateway" determination, pursuant to Section 56 (1) of the Environmental Planning and Assessment Act, 1979.*
- 3 *That Council undertake community consultation regarding the Planning Proposal subject to the determination of the Gateway Process.*

### **ORDINARY MEETING HELD 23 APRIL 2014**

**RESOLVED** unanimously on the motion of Councillor WEBSTER and seconded by Councillor NAYNA:

- 398/14** *That Council initiate the Local Environmental Plan "Gateway" process, pursuant to Section 55 of the Environmental Planning and Assessment Act 1979 by preparation of a Planning Proposal to enable the use of dwellings for Short Term Rental Accommodation.*
- 399/14** *That Council forward the Planning Proposal to the Department of Planning and Infrastructure requesting a "Gateway" determination, pursuant to Section 56 (1) of the Environmental Planning and Assessment Act, 1979.*
- 400/14** *That Council undertake community consultation regarding the Planning Proposal subject to the determination of the Gateway Process.*
- 401/14** *That Council delegate authority to the General Manager to make minor*

***amendments.***

FOR: COUNCILLORS BEST, EATON, GRAHAM, GREENWALD, NAYNA, TROY AND  
WEBSTER

AGAINST: NIL

**BACKGROUND**

The draft Planning Proposal is the result of a decision in the NSW Land and Environment Court on 2 May 2013, which determined that the Short-Term Holiday Letting of residential dwellings was a prohibited land use in the (then) Residential 2(a) zone in the Gosford City area. The Court determined, in the circumstances of that case, that the use was a separately defined land use to that of a 'dwelling', as it did not involve the usual permanency of occupation that a dwelling does. As decisions of the Court are binding throughout NSW, it is prudent that Council amend WLEP 2013 to address the potential implications of this decision involving Gosford Council.

The use of dwellings for holiday lettings has been commonplace for many years in coastal areas, and has provided an affordable form of tourist and visitor accommodation. Tourists using this accommodation spend valuable dollars in local businesses, therefore benefitting the local economy. The possibility of such letting may also stimulate the local real estate market.

The Wyong Local Environmental Plan, 2013 (WLEP 2013) became effective on 23 December, 2013, and does not have a provision for STRA as a separately defined or specifically controlled land use. Some *holiday lettings* could be approved as “tourist accommodation”, however, this use is only permissible within the R3 Medium Density Residential Zone, certain Business zones and the SP3 Tourist zone.

The intention of the draft Planning Proposal is to enable a STRA use in the R2 General Residential Zone and other zones where dwellings are permitted and also to provide land-use controls to maintain residential amenity for neighbours of STRA developments.

The planning proposal will amend WLEP 2013 to enable dwellings of up to 4 bedrooms to be used for “short-term rental accommodation” as Exempt Development, and up to 6 bedrooms with development consent.

Similar provisions have recently been sought and approved for a number of NSW Council’s and will be addressed later in the report.

## THE PROPOSAL

The draft Planning Proposal will amend the WLEP 2013 in the following manner:

- 1 Provide a definition for “*Short Term Rental Accommodation*”.
- 2 Permit Short Term Rental Accommodation as Exempt Development where a dwelling contains less than 4 bedrooms and meets exempt provisions where certain criteria to protect local amenity are met.
- 3 Allow Short Term Rental Accommodation as a permissible land use with development consent for dwellings containing up to 6 bedrooms. This will apply to all zones where a dwelling is currently permissible.

## OPTIONS

A number of NSW Council’s have recently amended their Local Environment Plans (LEP’s) to accommodate STRA as a permissible land use. These Council’s include:

- Gosford City Council
- Wingecarribee Council
- Bega Shire Council
- Eurobodalla Shire Council
- Port Stephens Shire Council
- Kiama Shire Council

Each Council has adopted specific provisions for their LGA and those were considered suitable by the Minister. Council staff will review these LEP’s in order to have provisions that are best suited for the Wyong LGA.

## **STRATEGIC LINKS**

### **Wyong Shire Council Strategic/ Annual Plan**

The planning proposal is consistent with the WSC Strategic Plan to promote the Central Coast as a choice tourism and event destination

### **Link to Community Strategic Plan (2030)**

The use of dwellings for Short-term Rental Accommodation provides an alternative form of affordable tourist accommodation within the Wyong Local Government area. Such use offers a unique form of accommodation by allowing a home-style holiday experience.

Operators of Short-term Rental Accommodation could be encouraged to register with the Central Coast Tourism Board. Benefits include regular newsletters, information packages, promotional opportunities and contact with other Short-term Rental Accommodation Operators in the industry and other tourism services on the Central Coast. Also, contact will be encouraged with peak industry bodies such as the Central Coast Holiday Letting Organisation (HLOCC) and the NSW Real Estate Institute regarding the Holiday Rental Code of Conduct, prepared by the NSW Department of Planning and Infrastructure in conjunction with these peak bodies.

### **Budget Impact**

The Planning proposal will be progressed utilising existing staff resources.

## **CONSULTATION**

Public consultation requirements for the Planning Proposal will be carried out as the "Gateway" determination in accordance with the determination requirements.

## **MATERIAL RISKS AND ISSUES**

There are no significant material risk issues.

## **CONCLUSION**

The use of dwellings for Short-term Rental Accommodation has long provided an affordable alternative form of tourist accommodation within the Wyong Shire Council area. They offer a unique form of accommodation giving visitors the opportunity to enjoy a home-style holiday experience, and for property owners to secure a potential source of income from their property.

## **ATTACHMENTS**

Nil