

Planning Proposal – Short-term rental accommodation

Draft Amendment No. F2014/01451 to Lake Macquarie Local Environmental Plan (LM LEP) 2014

Local Government Area:	Lake Macquarie City Council (LMCC)
Name of Draft LEP:	Lake Macquarie Local Environmental Plan 2014 (LMLEP 2014) Draft Amendment No. F2014/01451 – Short term rental accommodation
Subject Land:	All land on which a 'dwelling' is permitted in Lake Macquarie Local Government Area
Tables:	Table 1: Proposed changes to the LMLEP 2014 map and instrument Table 2: Justification for exempt development criteria Table 3: Comparison of the Planning Proposal against the Draft Centres Policy Table 4: Consistency with applicable Section 117 Ministerial Directions
Attachments:	Attachment 1 – Holiday Rental Code of Conduct

Part 1 – Objectives or Intended Outcome

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

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

Part 2 – Explanation of Provisions

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

Two levels of assessment are proposed to regulate short-term rental accommodation, with dwellings of 4 bedrooms or less able to proceed as exempt development if they meet certain criteria and dwellings with 5 bedrooms or more requiring development consent.

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

Table 1: Proposed changes to the LMLEP 2014 map and instrument

Amendment Applies to:	Explanation of Provision
Clause 7.23	Insert new clause, as follows: Clause 7.23 (1) <i>The objective of this clause is to require development consent for the temporary use of a dwelling as short-term residential accommodation where:</i> (a) <i>the dwelling contains 5 or more bedrooms,</i> (b) <i>the dwelling does not meet the exempt development criteria for short-term rental accommodation.</i> (2) <i>Despite any other provisions of this Plan, development consent may be granted for the use of a dwelling containing 5 or more bedrooms as short-term rental accommodation.</i> Note: Exempt development provisions are provided in Part 3 and Schedule 2 of the Lake Macquarie Local Environmental Plan 2014.
Schedule 2 Exempt Development	Insert new exempt development provisions as follows: Short-term rental accommodation (1) <i>The subject dwelling must be located in a zone where a dwelling is permitted.</i> (2) <i>The dwelling must not contain more than 4 bedrooms.</i> (3) <i>If the dwelling is located in a bush fire prone area, a bush fire evacuation plan must be attached to the dwelling in a prominent location.</i> (4) <i>Owners and agents of short-term holiday rental properties shall join and remain a member of a participating organisation or become and remain a participating organisation that endorses and agrees to implement the Holiday Rental Code of Conduct.</i>
Dictionary	Insert the following definition: Short-term rental accommodation <i>means a dwelling, or part of a dwelling, that is commercially available for rent as short-term accommodation on a temporary basis, but does not include bed and breakfast accommodation.</i>

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

The proposed wording of Clause 7.23 states that a dwelling with 4 bedrooms or less that does not meet the exempt development criteria may submit a Development Application instead. Part 3 of the LMLEP 2014 states that exempt development 'must not be carried out on land that is, or on which there is, an item that is listed on the State Heritage Register under the *Heritage Act 1977*, or that is subject to an interim heritage order under that Act'. There are currently six State Heritage Register items in Lake Macquarie, including the Catherine Hill Bay Cultural Precinct that contains many dwellings. Under Clause 7.23, an item listed on the State Heritage Register can only be used as short-term accommodation subject to development consent and so would be required to submit a Development Application.

There may be other instances where a dwelling does not meet the exempt development criteria provided in Schedule 2 of LMLEP 2014. However, it is unlikely that Council would issue development consent for a dwelling located in a zone where dwellings are prohibited (industrial, special use and recreational zones) or where a bushfire evacuation plan is not displayed in a prominent location. Alternatives to adhering to the Holiday Rental Code of Conduct may be considered if it can be demonstrated that an alternative solution will reduce the impact of the proposed holiday rental on the local neighbourhood and ensure that Council can effectively respond to complaints.

A draft Development Control Plan (DCP) amendment with controls specific to short-term rental accommodation Development Applications will be exhibited for public comment at the same time as this Planning Proposal. The draft DCP will include provisions relating to adherence with the Holiday Rental Code of Conduct and safety for dwellings in bushfire prone areas.

Part 3 – Justification

A. NEED FOR THE PLANNING PROPOSAL

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

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

Land and Environment Court findings over the past ten years have determined that holiday rentals are a commercial rather than a residential activity and therefore by default are prohibited in residential zones.

The use of a dwelling for short-term rental accommodation is consistent with other low key commercial activities permitted in residential zones, such as bed and breakfast accommodation, child care centres, professional consulting rooms and home businesses. Holiday rental properties can be an important provider of tourist and visitor accommodation, of economic support to the local area, and of income for owners. Holiday rentals are common practice in many NSW council areas, particularly in coastal areas and near the ski fields.

Tourism contributes \$371,123,000 per annum to the Lake Macquarie economy and creates 2,263 direct and indirect jobs¹. Short-term holiday rentals help to contribute to

¹ 2012 – 2013 Tourism Research Australia (TRA), Regional Tourism Profile, Hunter Region

these statistics by providing accommodation for tourists and visitors. Further information on the economic impact of short-term holiday rentals is provided in Section 10 below.

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

Background

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

5.4A Short term use of residential accommodation

- (1) The objective of this clause is to ensure that residential accommodation may be used commercially for short-term residential accommodation without requiring development consent.*
- (2) Despite any other provision of this Plan, development consent is not required for the use of residential accommodation for short-term residential purposes on a commercial basis, if the use does not interfere with the amenity of the neighbourhood in any way, including by noise or traffic generation.*
- (3) In this clause, short-term means any period less than 90 consecutive days in any 12 month period.*

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

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

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

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

As the clause was removed from LMLEP 2014 before publication, it means that short-term rental accommodation remains a prohibited development in the City. This Planning Proposal seeks to rectify the situation.

Exempt Development –permitting short-term rental accommodation without consent

It is unclear how many holiday rental premises exist in Lake Macquarie Local Government Area (LGA), as holiday rentals do not require approval and are listed on a number of different booking websites. A review of some accommodation booking websites indicates that there are a number of short-term rental properties currently operating in Lake Macquarie, with 109 properties listed on Stayz and 167 properties listed on Airbnb as of 1 October 2014. Note that some of these properties would be listed on both sites.

While unregulated holiday letting has the potential to impact on residential amenity, Council has received complaints about 3 of short-term rental accommodation premises over the past 5 years, which indicates that the majority are managed well and do not cause issues for their neighbours. It is therefore proposed that short-term rental accommodation be exempt from requiring consent under Schedule 2 Exempt Development of LMLEP 2014.

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

Table 2: Justification for exempt development criteria

Proposed criteria	Justification
(1) The subject dwelling must be located in a zone where dwellings are permitted.	This criteria permits a dwelling to be used as a short-term holiday rental, but only where dwellings are permitted, which ensures that the use occurs in appropriate locations. The wording of this clause covers dwellings permitted under any legislation, including the LMLEP 2014, under the <i>State Environmental Planning Policy (Exempt and Complying Development Codes) 2008</i>, and under the LMLEP 2004 and LMLEP 1984 (which still apply to some areas of Lake Macquarie).
(2) The dwelling must not contain more than 4 bedrooms.	Limiting exempt development provisions to dwellings with 4 bedrooms or less helps to reduce the impacts on the neighbourhood. Larger houses that can sleep more people are more likely to be used as 'party houses' that impact on the amenity of the surrounding neighbourhood by way of excessive noise, antisocial behaviour, car parking and waste disposal. This exempt development criteria does not restrict the number of people that can stay at any one time because this is difficult for Council to enforce. The <i>Holiday Rental Code of Conduct</i> referred to in (4) below states that 'the maximum number of Guests permitted at a Property must not exceed a maximum of 2 adults per bedroom' (Section 2.4, page 16 of 25). The criteria requires endorsement and implementation of the <i>Code of Conduct</i> by all exempt development short-term holiday rentals in Lake Macquarie. Adherence to the <i>Code</i> is industry-regulated.

(3) If the dwelling is located in a bush fire prone area, a bush fire evacuation plan must be attached to the dwelling in a prominent location.	This helps to address the bush fire risk that occurs in bush fire prone areas of Lake Macquarie. Gosford City Council uses the same criteria in their recently published Gosford LEP 2014. Tourist accommodation is considered to be a special fire protection purpose for the purposes of <i>Planning for Bushfire Protection 2006</i> (PBP 2006). Evacuation plans or refuges are appropriate options for special fire protection purposes that contain able-bodied persons, such as tourist accommodation (PBP 2006, p 12). Therefore, requiring a bush fire evacuation plan to be attached to the dwelling in a prominent location is consistent with PBP 2006. The NSW Rural Fire Service will be consulted following Gateway Determination and prior to exhibition of this Planning Proposal.
(4) Managers (including owners and agents) of short-term holiday rental properties shall join a participating organisation or become a participating organisation that endorses and agrees to implement the <i>Holiday Rental Code of Conduct</i>.	The <i>Holiday Rental Code of Conduct</i> –Version 1.1 (March 2013) was prepared by representatives of the short-term rental industry. The NSW Department of Planning and Infrastructure, Destination NSW and the Local Government Shires Association NSW were also consulted during preparation of the Code. The <i>Holiday Rental Code of Conduct</i> addresses issues such as noise and residential amenity, car parking, garbage and recycling disposal, the maximum number of guests and visitors (2 per bedroom), functions and parties, and complaints and dispute resolution. A summary of the Code is provided below. The Code is subject to periodic review, with the first edition released in March 2012, which is why the date and version number have not been included in the exempt development criteria. The Code provides a self-regulatory approach to managing holiday rentals. The Code applies to Participating Organisations, which agree to endorse and implement the Code. Participating Organisations can impose sanctions on the owner and / or manager of a holiday rental, while an overarching Code Administration Committee can intervene to require a Participating Organisation to implement sanctions on a property or to mediate where an owner / manager feels that a sanction is unjustified. The Code recommends imposing sanctions that reflect the nature, seriousness and frequency of the breach. As breaches increase in seriousness or frequency, the severity of the sanction should also increase. Sanctions include warnings, rectification or compensation for damage and actions to prevent a reoccurrence such as limiting guest and visitor numbers. At worst, the property owner can be expelled from membership of the Participating Organisation or have their property de-listed, whatever may be the case. If this occurs, the property

	would no longer comply with the exempt development criteria listed under LMLEP 2014 and the use is therefore prohibited. Council is able to order a premises to cease being used for a prohibited purpose under Section 121B of the <i>Environmental Planning and Assessment Act 1979</i> (EP&A Act).
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Summary of the Holiday Rental Code of Conduct

A stakeholder group including representatives of industry and government prepared and published the *Holiday Rental Code of Conduct* in 2012. A copy should be available on the website of any Participating Organisation. The objectives of the Code are:

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

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

- Part 1 of the Code contains the Obligations of Participating Organisations:
 - o The Code applies to short-term rentals owned or managed by members of Participating Organisations.
 - o Owners and managers of short-term rentals can become a member of an existing Participating Organisation, such as Stayz or the NSW Real Estate Institute (REINSW), or they can form a new Participating Organisation. Compliance with the Code is required as a condition of membership or listing the property with the Participating Organisation.
 - o Participating Organisations agree to the Code by lodging a written notice with the Code Administration Committee (CAC). The CAC consists of representatives of Participating Organisations or key stakeholders in the holiday rental industry, such as consumer groups or tourism bodies and government or statutory planning bodies. The CAC is responsible for dealing with instances where Participating Organisations are not complying with the Code of Conduct.
 - o The Terms and Conditions upon which the property is offered, booked and occupied must be consistent with Part 3 of the Code (see below) and must be incorporated into the contract between the owner and guests.
 - o The Code requires the display of the Code of Conduct, any House Rules, the Terms and Conditions and any By-Laws relating to Community or Strata title developments within the property in a prominent location.
 - o Each Participating Organisation is responsible for dealing with instances where the owners or agents of a short-term rental are not complying with the Code of Conduct. Participating Organisations may impose sanctions on

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

- Issuing a censure or warning,
 - Requesting rectification of harm done or compensation for damage caused by the breach,
 - Requesting remedial action to ensure that the breach does not reoccur, which may include more restrictive practices such as reducing the number of guests permitted in the premises or restricting visitor numbers and / or hours, and
 - Expulsion from membership of the Participating Organisation or de-listing of the property, as applicable.
- o The CAC reviews any disputed sanctions and deals with instances where a Participating Organisation is not complying with the Code.
- Part 2 of the Code contains an 'Implementation Guide for Managers'. It outlines the role and responsibilities of managers and matters that must be taken into account when handling complaints, including keeping a log of related communications and actions taken. Section 2.5 outlines the consequences of not meeting the Code of Conduct, which can include enforcement action from the owner and its agents and security services, the local council and / or the Police. Enforcement action could result in termination of permission to occupy the property, eviction, loss of rent paid, deductions from the security deposit or bond, or extra charges.
 - Part 3 of the Code contains performance standards that are to be considered by the owner / agent when preparing the 'Terms and Conditions between owners and guests'. Part 3 aims to provide performance standards that will ensure that the amenity of the neighbourhood is not impacted, while acknowledging that short-term rental properties, managers, guests, visitors, neighbourhoods and circumstances are diverse and a prescriptive one size fits all approach is unlikely to meet the objectives of the Code. Managers are able to adapt the Terms and Conditions to meet their circumstances, but they must be able to demonstrate consistency with the following performance standards:
 - o 3.3 – Licence not a tenancy – Guests are granted a limited permission to occupy the property for holiday purposes under a licence not a residential tenancy agreement (as per a long-term rental property). Failure to comply with the Terms and Conditions may result in termination of permission to occupy the property and eviction.
 - o 3.4 – Security deposits or bonds – Owners and agents should make effective and fair use of security deposits or bonds to procure compliance from guests, as per Section 2.5 of the Code discussed above.
 - o 3.5 – Maximum number of guests and visitors –The number of guests permitted at a Property must not exceed a maximum of 2 adults per bedroom. The number of guests at a property must not conflict with residential amenity, or with the House Rules (see Part 4 below for more about House Rules) and the Holiday Rental Code of Conduct.
 - o 3.6 – Noise and residential amenity – Offensive noise and antisocial behaviour is prohibited and the Manager must be able to exercise all legal rights and remedies to promptly deal with any breach.

- o 3.7 – Functions and parties – The property is not a ‘party house’ and any such activities are prohibited. Any gathering, celebration or entertainment permitted at the property must not conflict with residential amenity and must comply with all House Rules. Properties in a residential area must not host commercial catering or functions unless they have local council permission to do so.
- o 3.8 – Access and parking – Managers must provide information to guests prior to arrival regarding access or parking restrictions to ensure ease of access with minimum disturbance to other residents or neighbouring properties.
- o 3.9 - Recycling and garbage – Guests must dispose of garbage and recycling in accordance with the usual practice at the Property and in the allocated bins. Guests must not leave rubbish in public or common areas and should be cooperative in complying with relevant local council collection days. The Manager is responsible for removing excess garbage left by guests and visitors.
- o 3.10 – Complaints and dispute resolution procedure – The Terms and Conditions under which a property is offered, booked and occupied must include a complaints and dispute resolution procedure.
- o 3.11 – Clearly set out the consequences of not meeting the terms and conditions.
- Part 4 contains ‘House Rules for guests and visitors’ that are to be displayed in a conspicuous place in the property. The rules in Part 4 are to be adopted and augmented to suit the individual property. The house rules reiterate the requirements for noise, residential amenity, visitors, gatherings and functions, parking and garbage and recycling outlined in Part 3 of the Code. It also requires appropriate rules to be specified around the hours of use and safety measures for any pool and the appropriate use of any deck or balcony areas. The House Rules also need to be clear about the consequences for non-compliance.

Appropriateness of referring to the *Holiday Rental Code of Conduct*

Communications with the Department of Planning and Environment have indicated that Council is welcome to adopt the Code of Conduct for use by short-term holiday rentals in the Local Government Area as a means of addressing ‘amenity’. The Code itself also states that Government authorities ‘are encouraged to endorse this Code of Conduct’.

The Code of Conduct covers matters associated with car parking, garbage disposal, nuisance behaviour, noise, functions and parties, numbers of guests and a complaints procedure, which avoids the need to address these matters individually in the exempt development criteria.

The short-term rental accommodation industry administers and regulates the Code, which means that Council does not need to be involved in administration. Property owners and industry are generally better placed to respond to neighbourhood complaints than Council, as many disturbances occur on weekends and at nights when Council staff are not available. Owners and Managers are also able to implement sanctions on a sliding scale, as described in the Code. Owners and managers are required to record the history of sanctions and complaints.

While participation in the Code is voluntary, the draft exempt development criteria makes it mandatory for short-term holiday rentals in Lake Macquarie to participate.

While not all holiday rental organisations are Participating Organisations in the Code, a number of organisations are existing members. It is also possible for organisations and groups to become a Participating Organisation if they are not already.

Each Participating Organisation has membership fees, which need to be paid by the owner or agent to join the Organisation. However, most short-term rental accommodation properties already pay these fees to have their properties listed on booking websites. So participating in the Code of Conduct will generally not create additional costs for property owners.

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

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

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

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

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

A draft Development Control Plan (DCP) amendment with controls specific to short-term rental accommodation Development Applications will be exhibited for public comment at the same time as this Planning Proposal. The draft DCP will include provisions relating to adherence with the Holiday Rental Code of Conduct and safety for dwellings in bushfire prone areas.

3. Is there a net community benefit?

The Proposal will deliver a net community benefit, as shown in Table 3 below, by addressing the permissibility of short-term rental accommodation in the LEP and ensuring there is a regulatory framework in place that reduces the impacts of holiday rentals on the neighbourhood. Net community benefit is determined in accordance with the Draft Centres Policy.

Table 3: Comparison of the Planning Proposal against the Draft Centres Policy

Draft Centres Policy Criteria	Comparison against the Planning Proposal
Will the LEP be compatible with agreed State and regional strategic direction for development in the area (e.g. land release, strategic corridors, development within 800 metres of a transit node)?	Yes. The proposal is not inconsistent with the Lower Hunter Regional Strategy (LHRS) or Lifestyle 2030. The Proposal will permit another land use in the LGA and will not affect land release, strategic corridors or transit nodes.

Is the LEP located in a global/regional city, strategic centre or corridor nominated within the Metropolitan Strategy or other regional/subregional strategy?	No. The LEP Amendment applies to the whole Lake Macquarie local government area.
Is the LEP likely to create a precedent, or create or change the expectations of the landowner or other landholders?	Yes. The LEP will change the expectations of landowners by improving certainty for short-term rental accommodation owners, guests, neighbours and the community. The LEP will not create a precedent.
Have the cumulative effects of other spot rezoning proposals in the locality been considered? What was the outcome of these considerations?	Yes. The Planning Proposal is not a spot rezoning. Short-term rentals are already operating in the LGA, despite being technically prohibited under the LEP. This Planning Proposal makes the use permissible under the LEP. Due to the existing use, the cumulative impact of the Proposal is unlikely to be significant.
Will the LEP facilitate a permanent employment generating activity or result in a loss of employment lands?	Yes. Short-term holiday rentals are an income source for owners. While direct employment is unlikely to result from the operation of a short-term holiday rental, the guests and visitors may provide indirect employment opportunities for the tourism, hospitality and transport industry and for others. The Regional Tourism Profile for the Hunter Region indicates that visitor expenditure in Lake Macquarie flows beyond accommodation and food services with 21% of expenditure going towards retail and 14% for transport services ² .
Will the LEP impact upon the supply of residential land and therefore housing supply and affordability?	No. The LEP Amendment does not create or alter a residential zone. The Planning Proposal permits the use of a dwelling as short-term rental accommodation. Permanent residents may occupy some short-term rental accommodation properties for part of the year, only renting the property out to guests for temporary periods. Other properties may remain vacant during the times when guests are not renting the property. A large number of properties used purely as holiday rentals rather than permanent residences may affect the local housing supply and affordability in popular tourist areas. However, Lake Macquarie does not currently experience tourist numbers or concentrations to the extent that this is likely to be a problem. Short-term rental accommodation properties are currently dispersed around the LGA.
Is the existing public infrastructure (roads, rail, utilities) capable of servicing the proposed site? Is there good pedestrian and cycling access? Is public transport currently available or is there infrastructure capacity to support future public transport?	N/A. As this Planning Proposal does not relate to a specific site, there will be varying levels of public infrastructure for different short-term rental accommodation sites across the LGA. A short-term rental is permitted anywhere that a dwelling is permitted.
Will the Proposal result in changes to the car distances travelled by customers, employees, and suppliers? If so, what are the likely impacts in terms of greenhouse gas emissions, operating costs, and road safety?	No. The Proposal will not impact on car distances travelled by customers and owners.
Are there significant Government investments in infrastructure or	No – none identified.

² 2012 – 2013 Tourism Research Australia (TRA), Regional Tourism Profile, Hunter Region

services in the area whose patronage will be affected by the Proposal? If so, what is the expected impact?	
Will the Proposal impact on land that the Government has identified a need to protect (e.g. land with high biodiversity values) or have other environmental impacts? Is the land constrained by environmental factors such as flooding?	No – parts of Lake Macquarie LGA contain land with high biodiversity values and areas constrained by environmental factors such as flooding and bushfire. A short-term rental is only permitted in an existing dwelling, which means that it is unlikely to significantly impact on biodiversity values. Section 76 of the EP&A Act states that exempt development must be of 'minimal environmental impact', that it 'cannot be carried out in critical habitat of an endangered species, population or ecological community (identified under the <i>Threatened Species Conservation Act 1995</i> or the <i>Fisheries Management Act 1994</i>)' and that it 'cannot be carried out in a wilderness area (identified under the <i>Wilderness Act 1987</i>). A provision has been added to the exempt development criteria and draft DCP stating that if a dwelling is located in a bush fire prone area, a bush fire evacuation plan must be attached to the dwelling in a prominent location. This helps to address the bush fire risk to some existing dwellings within the LGA.
Will the LEP be compatible/ complementary with surrounding land uses? What is the impact on amenity in the location and wider community? Will the public domain improve?	Yes. The Planning Proposal has been worded to require compliance with the <i>Holiday Rental Code of Conduct</i>, produced and published by industry stakeholders including the Real Estate Institute of NSW, Stayz, members of relevant government organisations. The Code seeks to reduce the impact of short-term rental accommodation on the surrounding neighbourhood by way of noise, antisocial behaviour, car parking, garbage disposal and other matters. The Code is regulated by the industry. Owners and managers who breach the Code are issued with sanctions that correspond to the frequency and magnitude of the breach. At worst, the organisation administering the code can strip a short-term rental owner or manager of their membership or remove the listing from their portfolio. If this occurs, the property would no longer comply with Council's exempt development criteria and would therefore be prohibited development under LMLEP 2014.
Will the Proposal increase choice and competition by increasing the number of retail and commercial premises operating in the area?	Yes. Short-term holiday rentals are an important provider of tourist accommodation. They increase choice and competition for guests and visitors to Lake Macquarie.
If a stand-alone proposal and not a centre, does the Proposal have the potential to develop into a centre in the future?	N/A. Proposal covers the whole LGA.
What are the public interest reasons for preparing the draft plan? What are the implications of not proceeding at that time?	Short-term rental accommodation is not currently defined under LMLEP 2014 and by default is a prohibited use. This Planning Proposal seeks to define short-term rental accommodation and ensure that it is permitted where a dwelling is permitted, as long as the use does not unreasonably affect the amenity of the neighbourhood. If this Planning does not proceed, short-term rental accommodation will remain a prohibited use in Lake Macquarie.

B. RELATIONSHIP TO STRATEGIC PLANNING FRAMEWORK

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

Lower Hunter Regional Strategy (LHRS) 2006

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

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

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

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

Lifestyle 2030 Strategy (LS2030)

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

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

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

Outcome 5.14 seeks to encourage and develop tourism opportunities within Lake Macquarie City in consultation with Destination NSW. Consultation with Destination NSW will be undertaken once Gateway determination is received for this Planning Proposal and prior to public exhibition.

The Lifestyle 2030 Strategy also discusses the importance of non-centre based employment activity to the prosperity of the LGA, which includes industry, mining, power generation, home-based businesses and home-based industries, tourism, and intensive agriculture. To address the need for non-centres based employment in Lake Macquarie 'tourism businesses are encouraged throughout the City, and they are particularly encouraged to cluster in areas with high tourism potential or where there is access to a range of tourism services' (p27). In the instance of short-term rental accommodation, it is considered best to encourage the use throughout Lake Macquarie City to avoid clusters of holiday rentals, which may have a higher impact on the amenity of permanent residents in the locality. This Planning Proposal is consistent with the aim of Lifestyle 2030 to encourage tourism businesses throughout the City.

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

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

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

An assessment of the Planning Proposal against the applicable Ministerial Directions is provided in Table 4. The table addresses whether the Proposal is consistent with 'what a relevant planning authority must do' if a direction applies.

Table 4: Consistency with applicable Section 117 Ministerial Directions

Ministerial Direction & Relevance	What a relevant planning authority must do if this direction applies	Consistency / Comment
1.1 - Business and Industrial Zones This direction applies when a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed business or industrial zone.	When this direction applies, a planning proposal must: (a) give effect to the objectives of this direction, (b) retain the areas and locations of existing business and industrial zones, (c) not reduce the total potential floor space area for employment uses and related public services in business zones, (d) not reduce the total potential floor space area for industrial uses in industrial zones, and (e) ensure that proposed new employment areas are in accordance with a strategy that is approved by the Director-General of the Department of Planning.	The proposal is consistent with this direction. Dwellings are permitted in business zones under the LMLEP 2014, for example in residential flat buildings. Therefore, this direction applies. The proposal will not create or remove any zone boundaries. It also does not impact on floor space areas. Short-term rental accommodation is a low key commercial activity that will not impact on the viability of centres, business or industrial zones. The promotion of tourism across the LGA is consistent with the non-centres based employment activity encouraged by Lifestyle 2030.
1.2 Rural Zones This direction applies when a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed rural zone (including the alteration of any existing rural zone boundary).	When this direction applies, a relevant planning authority must: (a) not rezone land from a rural zone to a residential, business, industrial, village or tourist zone. (b) not contain provisions that will increase the permissible density of land within a rural zone (other than land within an existing town or village).	Dwellings are permitted in rural zones under LMLEP 2014, and therefore short-term rental accommodation would also be permitted in these zones under the Planning Proposal. The proposal is consistent with this direction because it will not rezone land and does not contain provisions that will increase the permissible density of land within a rural zone, as it makes use of existing and permitted dwellings.
1.5 Rural Lands This direction applies to all planning proposals to which State Environmental Planning Policy (Rural	When this direction applies, a planning proposal must be consistent with the Rural Planning Principles listed under <i>State Environmental Planning Policy (Rural Lands)</i>	Dwellings are permitted in rural and environmental protection zones under LMLEP 2014, and therefore short-term rental accommodation would also be permitted in these zones under the Planning Proposal. The planning proposal is consistent with the

Lands) 2008 applies, including Lake Macquarie local government area. This direction applies if a planning proposal affects land within an existing or proposed rural or environment protection zone.	2008.	Rural Planning Principles because: (a) The proposal promotes opportunities for productive and sustainable economic activities in rural areas, in this case tourism activities. (b) The proposal will not impact on rural lands and agriculture. (c) The proposal will not impact on rural land uses or their importance to the State. (d) The proposal balances the social, economic and environmental interests of the community. (e) The proposal is unlikely to impact on natural resources. (f) The proposal is consistent with rural lifestyle and housing uses and contributes to the social and economic welfare of rural communities, (g) The use of an existing dwelling minimises impacts on infrastructure and services. (h) The proposal is consistent with the LHRS.
2.1 Environment Protection Zones The objective of this direction is to protect and conserve environmentally sensitive areas.	(4) A planning proposal must include provisions that facilitate the protection and conservation of environmentally sensitive areas. (5) A planning proposal that applies to land within an environment protection zone or land otherwise identified for environment protection purposes in a LEP must not reduce the environmental protection standards that apply to the land (including by modifying development standards that apply to the land). This requirement does not apply to a change to a development standard for minimum lot size for a dwelling in accordance with clause (5) of Direction 1.5 "Rural Lands".	Dwellings are permitted in environmental protection zones under LMLEP 2014, and therefore short-term rental accommodation would also be permitted in these zones. The planning proposal is consistent with this direction because existing provisions of the LEP and other relevant legislation already provide for the protection and conservation of environmentally sensitive areas when seeking to construct a dwelling. The use of the dwelling as short-term rental accommodation is not expected to have additional impact. The planning proposal also does not alter or reduce the environmental protection standards applying to any land. Furthermore, Section 76 of the EP&A Act states that exempt development must be of 'minimal environmental impact', that it 'cannot be carried out in critical habitat of an endangered species, population or ecological community (identified under the <i>Threatened Species Conservation Act 1995</i> or the <i>Fisheries Management Act 1994</i>)' and that it 'cannot be carried out in a wilderness area (identified under the <i>Wilderness Act 1987</i>).
2.2 – Coastal Protection This direction applies to the coastal zone.	A Planning Proposal must include provisions that give effect to and are consistent with relevant NSW Government coastal policy.	Some of the dwellings within Lake Macquarie LGA are located within the coastal zone. However, short-term use of dwellings as holiday rentals will be of minor significance to the coastal zone.

2.3 – Heritage Conservation This direction aims to conserve items and places of heritage significance.	The Direction provides that a Planning Proposal must contain provisions that facilitate the conservation of Aboriginal areas, objects or places with heritage significance to Aboriginal culture and people.	The State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 provides that exempt development must not be carried out on land that is, or on which there is, an item that is listed on the State Heritage Register under the <i>Heritage Act 1977</i>, or that is subject to an interim heritage order under that Act. Therefore, the proposal is consistent with this direction.
3.1 – Residential Zones This direction applies when a planning proposal will affect land within an existing or proposed residential zone or any other zone in which significant residential development is permitted or proposed to be permitted.	(4) A planning proposal must include provisions that encourage the provision of housing that will: (a) broaden the choice of building types and locations available in the housing market, and (b) make more efficient use of existing infrastructure and services, and (c) reduce the consumption of land for housing and associated urban development on the urban fringe, and (d) be of good design. (5) A planning proposal must, in relation to land to which this direction applies: (a) contain a requirement that residential development is not permitted until land is adequately serviced (or arrangements satisfactory to the council, or other appropriate authority, have been made to service it), and (b) not contain provisions which will reduce the permissible residential density of land.	Dwellings are permitted in residential zones under LMLEP 2014, and therefore short-term rental accommodation would also be permitted in these zones under the Planning Proposal. The planning proposal is consistent with this direction because it does not affect the provision of housing. As a result, the proposal does not need to contain a requirement that dwellings are only permitted on adequately serviced land. The proposal does not impact on the residential density of land.
3.4 – Integrating Land Use and Transport The direction requires consistency with State policy in terms of positioning of urban land use zones.	A planning proposal must locate zones for urban purposes and include provisions that give effect to and are consistent with the aims, objectives and principles of: (a) Improving Transport Choice – Guidelines for planning and development (DUAP 2001), and (b) The Right Place for Business and Services – Planning Policy (DUAP 2001).	This direction applies when preparing a planning proposal that will create, alter or remove a zone or a provision relating to urban land, including land zoned for residential, business, industrial, village or tourist purposes. The draft provisions related to urban land in Lake Macquarie and therefore, this direction applies. The proposal makes use of existing dwellings and does not consider the location of public transport services, walking and cycling. Therefore, it is inconsistent with this direction, but the inconsistency is considered to be of minor significance because it relates to existing dwellings.

4.1 – Acid Sulfate Soils The direction applies to land that has been identified as containing potential Acid Sulfate Soils (ASS)	A relevant planning authority must not prepare a planning proposal that proposes an intensification of land uses on land identified as having a probability of containing ASS unless the relevant planning authority has considered an ASS study.	The use of a dwelling as a short-term rental does not involve the excavation of land and therefore, this direction is not applicable.
4.2 – Mine Subsidence and Unstable Land This seeks to prevent damage associated with mine subsidence	The direction requires consultation with the Mine Subsidence Board (MSB) where a draft LEP is proposed for land within a mine subsidence district.	A significant portion of Lake Macquarie LGA is located within a mine subsidence district. However, the use of a dwelling as a short-term rental does not involve any intensification of land use or change to the scale, density or type of development on the land. Therefore, this direction is not applicable.
4.3 – Flood Prone Land Development of flood prone land should be consistent with the NSW Government's Flood Prone Land Policy	This direction applies when a relevant planning authority prepares a planning proposal that creates, removes, or alters a zone or a provision that affects flood prone land.	Some land within Lake Macquarie LGA is identified as flood prone land and some of that land contains existing dwellings and could therefore potentially be used as short-term holiday rental. However, the planning proposal will not permit an increase in the development of the land or new development in floodway areas, and it will not create situations where development may create flood impacts to other properties (any development would be existing). The planning proposal is not likely to result in a substantially increased requirement for government spending on flood mitigation measures, infrastructure or services. Therefore, any provisions of this planning proposal inconsistent with this direction are considered to be of minor significance.
4.4 – Planning for Bushfire Protection This direction applies to bushfire prone land	Under this direction, a planning proposal must: (a) have regard to <i>Planning for Bushfire Protection 2006</i>, (b) introduce controls that avoid placing inappropriate developments in hazardous areas, and (c) ensure that bushfire hazard reduction is not prohibited within the APZ. (6) A planning proposal must, where development is proposed, comply with the following provisions, as appropriate: (a) provide an Asset Protection Zone (APZ) incorporating at a minimum: (i) an Inner Protection Area bounded by a perimeter road or reserve which circumscribes the hazard side of the land intended for development and has a building line consistent with the incorporation of an APZ, within the property, and	Some land within Lake Macquarie LGA is identified as bush fire prone land and some of that land contains existing dwellings that could therefore potentially be used as short-term holiday rental. Therefore, this direction applies. Consultation is required with the Commissioner of the NSW Rural Fire Service (RFS) following receipt of a gateway determination under section 56 of the Act, and prior to undertaking community consultation in satisfaction of section 57 of the Act. This section of the planning proposal will be updated once consultation has been undertaken with the RFS. The exempt development criteria and draft DCP state that if a dwelling is located in a bush fire prone area, a bush fire evacuation plan must be attached to the dwelling in a prominent location.

	(ii) an Outer Protection Area managed for hazard reduction and located on the bushland side of the perimeter road, (b) for infill development (that is development within an already subdivided area), where an appropriate APZ cannot be achieved, provide for an appropriate performance standard, in consultation with the NSW Rural Fire Service. If the provisions of the planning proposal permit Special Fire Protection Purposes (as defined under section 100B of the Rural Fires Act 1997), the APZ provisions must be complied with, (c) contain provisions for two-way access roads which links to perimeter roads and/or to fire trail networks, (d) contain provisions for adequate water supply for firefighting purposes, (e) minimise the perimeter of the area of land interfacing the hazard which may be developed, (f) introduce controls on the placement of combustible materials in the Inner Protection Area.	
5.1 – Implementation of Regional Strategies	Planning proposals must be consistent with a regional strategy released by the Minister for Planning.	Although short-term rental accommodation is not addressed in the LHRS, this Proposal is generally consistent with the vision and objectives of the Strategy.
6.1 – Approval & Referral Requirements The objective of this direction is to ensure that LEP provisions encourage the efficient and appropriate assessment of development.	This direction seeks to minimise the inclusion of provisions in planning instruments that require the concurrence, consultation, or referral of development applications to a Minister or public authority (a). It also sets out consultation and approval requirements, if such provisions are to be included in a planning instrument (b), or if a planning instrument identifies development as designated development (c).	The Proposal is consistent with the direction as follows: (a) consultation is being undertaken with government agencies at the LEP Amendment stage of the development to reduce the need for concurrence, consultation, and referrals at the development approval stage. None of the provisions outlined in Table 1 at the start of this document will create excessive concurrence, consultation, or referral requirements. (b) any consultation with public authorities shall be undertaken prior to undertaking community consultation in satisfaction of s57 of the EP&A Act. (c) N/A – The Planning Proposal does not identify any development as designated development.

C. ENVIRONMENTAL, SOCIAL, AND ECONOMIC IMPACT

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

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

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

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

Car parking

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

It is proposed to amend the LMDCP 2014 to require 2 car parking spaces for a dwelling house, attached dwelling, dual occupancy, or semi-detached dwelling with 5 or more bedrooms that is used as a short-term rental accommodation premises, plus 1 space for every 2 additional bedrooms, or part thereof, over the first 4 bedrooms. This includes at least one undercover space and the remainder can be single file parking if necessary. The DCP applies to a Development Application only.

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

If a complaint were made to Council in the future about vehicles at short-term holiday rentals impacting on the local car parking, the complainant would need to substantiate their claim and to demonstrate to Council that car parking issues are attributable to the use.

Car parking is covered under the Holiday Rental Code of Conduct and states that managers must provide information to guests prior to arrival regarding access or parking restrictions to ensure ease of access with minimum disturbance to other residents or neighbouring properties. If car parking associated with the short-term rental was impacting on the amenity of residents or neighbours, this would be inconsistent with the Code and action could be taken against the property. This could

involve a warning or changes to the way the premises is operated (such as reduced numbers of guests). Breaches under the Code are dealt with by industry, not by Council.

Bushfire

Some land within Lake Macquarie LGA is bush fire prone land and some of that land contains existing dwellings that could potentially be used as a short-term holiday rental. To address this risk, the exempt development criteria and draft DCP require dwellings in bush fire prone areas must have a bush fire evacuation plan attached to the dwelling in a prominent location.

Consultation is required with the Commissioner of the NSW Rural Fire Service (RFS) prior to undertaking community consultation in satisfaction of section 57 of the Act. This section of the planning proposal will be updated once consultation has been undertaken with the RFS.

Noise and residential amenity

Section 3.6 of the Holiday Rental Code of Conduct addresses noise and residential amenity. The Terms and Conditions of any holiday rental must specify that offensive noise and antisocial behaviour is prohibited and enable the Manager to exercise all legal rights and remedies to promptly deal with any breach.

Adherence to the Holiday Rental Code of Conduct is required by the draft exempt development criteria and by the draft DCP for short-term rental accommodation. It is considered that the Holiday Rental Code of Conduct adequately addresses noise and residential amenity issues associated with short-term rental accommodation and no further provisions relating to noise and residential amenity are required.

Heritage

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

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

The Codes SEPP and Part 3 of LMLEP 2014 provides that exempt development must not be carried out on land that is, or on which there is, an item that is listed on the State Heritage Register under the *Heritage Act 1977*, or that is subject to an interim heritage order under that Act. Therefore, exempt development is not permitted within State Heritage items. However, this planning proposal seeks to enable a Development Application to be lodged for such items, particularly as the Catherine Hill Bay Heritage Cultural Precinct is included on the State Heritage Register and this area contains many dwellings that would otherwise not be able to be used as short-term rental accommodation.

Signage

Part 9.17.3 (5.) of the LMDCP 2014 referring to signage shall be amended to state that 'identification signs – including nameplates on professional offices, community

facilities, recreational facilities, rural pursuits or residences for home businesses, industry or short-term rental accommodation – are limited to 1m², and one sign per street frontage'. This will help to ensure that any signage is consistent with the residential character of the area.

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

Economic

In Lake Macquarie, tourism contributes \$371,123,000 per annum to the economy and creates 2,263 direct and indirect jobs. The average length of stay in nights is 3 for domestic overnight visitors, and 16 for international visitors³. The average expenditure is \$98 per domestic day, \$366 per domestic overnight, and \$1,181 per international visit⁴. Visitor expenditure flows beyond accommodation and food services with 21% of expenditure going towards retail and 14% for transport services⁵. The short-term rental accommodation industry contributes to the tourism revenue and job creation in Lake Macquarie with flow on effects for food services, transport and retail industries.

Airbnb is a website that allows people to list their properties, or rooms in their houses, as tourist and visitor accommodation. The site has listings in more than 34,000 cities and 190 countries⁶. Airbnb have been measuring the positive economic impact of their business in cities around the world. The study shows that Airbnb diversifies the accommodation options available to tourists. The results for Sydney show that Airbnb guests stay longer and spend more than traditional tourists spend⁷. Some statistics from the study include⁸:

- Airbnb hosts help their guests discover less-visited locales with 98% of hosts suggesting local restaurants, cafes, bars and shops in their neighbourhoods to their guests.
- Airbnb guests in Sydney spend AUD \$1822 over the course of the trip compared to average tourist spends of AUD \$1071.
- 80% of Airbnb listings in Sydney are outside the main tourist areas and the average Airbnb guest spends \$1042 in the neighbourhood where they stay.

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

The studies also indicate that short-term rental accommodation for tourists and visitors can complement the existing tourism industry by providing accommodation

³ 2012 – 2013 Tourism Research Australia (TRA), Regional Tourism Profile, Hunter Region, <http://www.tra.gov.au/statistics/Regional-overview.html>

⁴ 2012 – 2013 Tourism Research Australia (TRA), Regional Tourism Profile, Hunter Region

⁵ 2012 – 2013 Tourism Research Australia (TRA), Regional Tourism Profile, Hunter Region

⁶ Airbnb, About Us, accessed 10 October 2014, <https://www.airbnb.com.au/about/about-us>

⁷ Airbnb, Airbnb Economic Impact, accessed 10 October 2014, <http://blog.airbnb.com/airbnb-economic-impact/#sydney>

⁸ Airbnb, Airbnb Economic Impact, accessed 10 October 2014, <http://blog.airbnb.com/airbnb-economic-impact/#sydney>

outside of traditional tourist areas, as well as supporting the local community because guests are more likely to spend money in the neighbourhood.

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

Social

Unregulated holiday letting has the potential to impact on residential amenity by way of noise, antisocial behaviour, car parking, and incorrect rubbish disposal, among other matters. The social impact can be particularly high when the impacts occur regularly over a long period of time in so called 'party houses'. However, Council has received complaints about 3 short-term rental accommodation premises in Lake Macquarie over the past 5 years, which indicates that the majority are managed well and do not cause issues for their neighbours.

To qualify for exempt development as short-term rental accommodation, a dwelling must meet a number of proposed criteria. The criteria are designed to reduce the impacts of holiday rentals on the neighbourhood, and provide a regulatory framework under which Council can effectively respond to holiday rental complaints. The criteria limits exempt development to a maximum 4 bedroom dwelling. A development application is required for dwellings with 5 bedrooms or more. The criteria also refer to the Holiday Rental Code of Conduct, which includes performance criteria relating to noise, antisocial behaviour, car parking, rubbish disposal, and the use of pools and decks among other matters. The Code of Conduct also requires that a complaints procedure be implemented at each property.

The Code recommends imposing sanctions that reflect the nature, seriousness and frequency of the breach. As breaches increase in seriousness or frequency, the severity of the sanction should also increase. Sanctions include warnings, rectification or compensation for damage and actions to prevent a reoccurrence such as limiting guest and visitor numbers. At worst, the property owner can be expelled from membership of the Participating Organisation or have their property de-listed. If this occurs, the property no longer complies with the exempt development criteria under LMLEP 2014 and the use is therefore prohibited. Council is able to order a premises to cease being used for a prohibited purpose under Section 121B of the Environmental Planning and Assessment Act 1979 (EP&A Act).

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

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

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

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

It is considered that consultation is required with the following authorities prior to public exhibition of the Planning Proposal:

- Rural Fire Service (RFS)
- Destination NSW

This planning proposal will be updated once the consultation has been undertaken.

Part 4 – Details of Community Consultation

The public will have the opportunity to view and comment on the Planning Proposal once the Gateway determination is issued requiring public exhibition in accordance with section 57 of the EP&A Act.

The Director-General must approve the form of the Planning Proposal following any gateway revisions before community consultation is undertaken.

The Proposal does not fit the definition of a 'low impact Planning Proposal' and it should therefore be exhibited for a minimum of 28 days.

Attachment 1 – Holiday Rental Code of Conduct