

10.3.4 Shellharbour Local Environmental Plan 2013 Planning Proposal No. 15 and Shellharbour Development Control Plan Amendment No 2 - Short-Term Rental Accommodation (11563102)

To the Chief Executive Officer

Directorate: Community & Customers
Group: City Planning

Manager: Geoff Hoynes – Group Manager City Planning
Author: Ian Rankine – Senior Strategic Planner

Summary

The purpose of this report is to provide Council with an update on the NSW government's position on short-term rental accommodation (holiday accommodation) and to seek Council's resolution to not proceed with both the Planning Proposal to amend Local Environmental Plan 2013 (LEP 2013), and Amendment No 2 to the Shellharbour Development Control Plan (DCP).

Background

This Planning Proposal was initiated by Council staff in an attempt to provide a town planning framework for holiday accommodation that is otherwise prohibited in LEP 2013's residential zones and if being undertaken, is an unauthorised use.

Planning Proposal 15 and DCP amendment timeline

- Report to Council 18 March 2014 to seek a resolution to prepare a Planning Proposal. The item was deferred for further investigation.
- Report to Council 4 August 2015. This item was also deferred to allow staff to give consideration to the public address to the meeting.
- Report to Council 27 October 2015. Council resolved to prepare a Planning Proposal and send to the then Department of Planning & Environment (DPE) for a Gateway determination to exhibit. Note: DPE is now the Department of Planning, Industry & Environment (DPIE).
- DPE Gateway determination received 15 December 2015.
- Community Consultation 10 February – 9 March 2016.
- Report to Council 11 October 2016 outcomes of community consultation. Council resolved to send to the Parliamentary Counsel to draft the legal instrument.

- Report to Council 11 April 2017 to accept the Parliamentary Counsel drafting of the LEP amendment and advise Parliamentary Counsel that Council accepts the wording; exhibit amendments to Shellharbour Development Control Plan (DCP) to facilitate the provision of the short-term rental accommodation LEP amendments.
- DCP amendments exhibited 3 – 30 May 2017.
- Parliamentary Counsel advised Council that the LEP can be made 20 April 2017.
- DPE withdrew Council's delegation to make LEP 30 May 2017 and the DPE will make no decision on the LEP amendment until the State's position has been determined.
- Information report to Council 5 September 2017 outlining withdrawal of delegation and can't proceed until the State decide their position and a submission will be made to Department of Planning's options paper on holiday accommodation.
- Report to Council 10 October 2017 submission on DPE options paper.
- Submission to DPE 26 October 2017 options paper.
- Report to Council 13 November 2018 State's proposed planning controls.
- 15 November 2018 submission to DPE on proposed planning controls.
- 6 September 2019 Council staff submission to Department of Planning, Industry & Environment (DPIE) on proposed planning controls (not reported to Council due to timeframe).

State government position – Short-term rental accommodation (STRA)

To-date there have been no changes to the *Environmental Planning & Assessment Act* or associated legislation that relates to short-term rental accommodation in the Shellharbour LGA. The NSW Fair Trading website states that "there will be changes to planning laws in mid 2021, including a new planning policy that applies consistent regulation of the use of premises for short-term rental accommodation across the whole state of NSW. A short-term rental accommodation premises register is currently under development for commencement in mid-2021. Hosts will be required to register their premises once that obligation is mandated by the Department of Planning, Industry and Environment."

Amendments have been made to the *Fair Trading Act*, *Strata Schemes Management Act* and *Residential Tenancies Act* to allow owners corporations to be able to pass by-laws that prohibit short-term rental accommodation within strata schemes, but only in lots that are not a host's principle place of residence.

Short-term rental accommodation arrangements of three (3) months or less will not be regulated under the residential tenancies' laws.

The Fair Trading Regulation has been amended to include provision to make a Code of Conduct for the short-term rental accommodation industry. The Code of Conduct will commence on 18 December 2020 and is available on the NSW Fair Trading website.

State government planning reform action plan

The State government has recently announced a broad Planning Reform Action Plan (Action Plan) to create a more timely, certain and transparent planning system. The Action Plan includes measures to:

- reduce assessment times for planning proposals, regionally significant development applications and major projects,
- implement the next stage of ePlanning,
- provide new resources for the NSW Land and Environment Court,
- reduce concurrence and referral cases between agencies, and
- review application fees with a link to speed of assessment.

The Action Plan includes the Faster Assessments Program which will combine new resources with system improvements to reduce assessment times. This involves a commitment by the NSW Government to reduce timeframes for:

- Rezoning decisions by 33 per cent
- Decisions on development applications for larger, regionally significant projects by 25 per cent
- Decisions on major projects of significance to the State by 17 per cent.

As part of the Action Plan program, the Group Deputy Secretary Planning & Assessment of the Department of Planning, Industry & Environment (DPIE) has written to Council and outlined that the DPIE will work with Council to finalise SLEP 2013 Planning Proposal 15 (short-term rental accommodation) by 31 December 2020.

Financial / Resources Implications

The cost of processing this Planning Proposal and DCP amendment has been borne from staff budgets as it is a Council staff initiated Planning Proposal and DCP amendment.

Legal and Policy implications

SLEP 2013 Planning Proposal 15 Amendment

The then DPE withdrew Council's delegation to make this LEP Amendment. This means that the LEP Amendment can only be finalised by the NSW DPIE.

The finalisation of the LEP amendment is unlikely to be made until the State have decided how they will deal with short-term rental accommodation (holiday accommodation).

Based on the length of time since this Planning Proposal and DCP amendment was on public exhibition and Council last considered the project, combined with the unknown detail and timeframe for the implementation of the State-wide planning controls, it is not considered reasonable to keep this Planning Proposal and DCP amendment active. Further, Council has received advice from the DPIE that as this Planning Proposal is over four years old, it should be finalised.

Under Section 3.35 of the *Environmental Planning & Assessment Act*, Council may, at any time, request the Minister to determine that the matter not proceed. Under the circumstances, it is considered appropriate that Council request the Minister that this Planning Proposal not proceed.

DCP Amendment 2 public exhibition comments

The amendment to the DCP was publically exhibited between 3 and 30 May 2017. As the then DPE withdrew Council's delegation to make the LEP, the proposed amendments to the DCP would have no legal weight and be of no relevance as the land use would still be prohibited in Shellharbour LEP 2013. As such, the outcome of the consultation process was not reported to Council at that time.

Two submissions were received as part of the 2017 exhibition. The comments received are summarised as follows:

1. Agree that provisions should be included but they should be similar to surrounding councils so that Shellharbour is not disadvantaged.
2. Review the requirement that only two people be permitted per room to two adults per room. This would allow families to have more than two children in each room.

City Planning Comments

As the State has not finalised its position on short-term rental accommodation, the issues raised during public exhibition can't be considered by Council at this time, as the legal mechanism to permit short-term rental accommodation is not known.

The report recommends that the DCP amendment not proceed. Once the State's planning controls are finalised, the issue of any associated and relevant DCP provisions can be re-considered and presented to Council.

Public / Social Impact

The public and social impacts can be reconsidered when the State planning controls are known.

Link to Community Strategic Plan

This report supports the following objectives and strategies of the Community Strategic Plan:

Objective: 2.3 A City that is connected through places and spaces

Strategy: 2.3.2 Undertake land use planning in a socially, economically and environmentally responsive manner

Consultations

Internal

Nil.

External

Nil.

Political Donations Disclosure

Not Applicable.

Recommendation

That Council:

- 1. In accordance with Section 3.35 of the *Environmental Planning & Assessment Act*:**
 - a. Not proceed with Planning Proposal No. 15 to make amendments to Shellharbour Local Environmental Plan 2013 to introduce provisions for short-term rental accommodation.**
 - b. Request the Minister for Planning & Public Spaces not proceed with this Planning Proposal.**
- 2. In accordance with clause 21 of the *Environmental Planning & Assessment Regulation* not proceed with Shellharbour Development Control Plan Amendment No. 2 to introduce provisions for short-term rental accommodation as the amendment to Shellharbour Local Environmental Plan has not been made and there are no legal means to approve or refuse short-term rental accommodation in our Local Government Area.**

Approved for Council's consideration: Geoff Hoynes
Group Manager City Planning

Date of Meeting: 24 November 2020

Attachments

Nil

**Minutes of the Ordinary Meeting
of Shellharbour City Council
held at the Council Chambers, Council Administration Centre
Shellharbour City Centre
on Tuesday 24 November 2020 commencing at 6:30 pm**

Present

Mayor, Councillor	M Saliba
Deputy Mayor, Councillor	J Murray
Councillor	M Hamilton
Councillor	K Marsh
Councillor	P Moran
Councillor	R Petreski

In attendance

Chief Executive Officer	C McIntyre
Director Council Sustainability	S Bridgement
Director Community and Customers	M Boxall
Director Amenity and Assets	B Stewart
Executive Manager / Public Officer	F Lepouras
Group Manager Organisational Performance	S Colefax
Group Manager Community Connections	K Baget-Juleff
Group Manager City Planning	G Hoynes
Acting Manager Financial Services	J Harris
Manager Business and Investment	T James
Team Leader Children and Youth Services	M Brown
Property Management Coordinator	M Harben
Media Officer	K Wells
Senior Executive Assistant (Minute Taker)	L Davey
Executive Assistant - Councillor Support	J Frasca
Deloitte	S Raje

2. If any significant changes are made by the Department, a report will be submitted to Council for consideration and with further recommendations regarding exhibition.
3. If any opposing submissions are received as a result of the public exhibition process, or substantial changes are recommended for any reason, a further report be provided to Council for consideration.
4. Council adopt the Draft Crown Plan of Management – first Council Chambers – Shellharbour (Attachment 1), if at the conclusion of the exhibition period no opposing submissions are received and there are no substantial post public exhibition changes proposed for any reason. Councillors will be informed of submissions, any post public exhibition changes and the Plan's final adoption by memo.

CARRIED UNANIMOUSLY

10.3.4 Shellharbour Local Environmental Plan 2013 Planning Proposal No. 15 and Shellharbour Development Control Plan Amendment No 2 - Short-Term Rental Accommodation (11563102)

219 RESOLVED: Saliba/Murray

That Council:

1. In accordance with Section 3.35 of the *Environmental Planning & Assessment Act*:
 - a. Not proceed with Planning Proposal No. 15 to make amendments to Shellharbour Local Environmental Plan 2013 to introduce provisions for short-term rental accommodation.
 - b. Request the Minister for Planning & Public Spaces not proceed with this Planning Proposal.
2. In accordance with clause 21 of the *Environmental Planning & Assessment Regulation* not proceed with Shellharbour Development Control Plan Amendment No. 2 to introduce provisions for short-term rental accommodation as the amendment to Shellharbour Local Environmental Plan has not been made and there are no legal means to approve or refuse short-term rental accommodation in our Local Government Area.

CARRIED UNANIMOUSLY