

Draft LEP Amendment No. **17**

**Planning Proposal to enable short-term  
rental accommodation**

Version 3 – Final  
March 2016

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## **Part 1 Objectives and intended outcomes**

The objective of this Planning Proposal is to explain the intent of and provide justification for an amendment to Tweed Local Environmental Plan 2014 (LEP 2014) introducing provisions that recognise and regulate use of existing dwellings for short-term rental accommodation on a commercial (income generating) basis.

The Standard Instrument, on which Tweed LEP 2014 is based, makes the distinction between *residential accommodation* and *tourist and visitor accommodation*. Short-term rental accommodation is not defined as a standalone land use and is deemed to come under the definition of *serviced apartments*, which is a land use within the *tourist and visitor accommodation* group. With change in definition arising from the making of Tweed LEP 2014, commercial rental of dwellings for short term accommodation became prohibited in all zones except R1 General Residential and R3 Medium Density Residential, where *serviced apartments* are permitted with consent. Prior to the making of the Tweed LEP 2014 this use was not prohibited.

Council, at its meeting of 6 August 2015, resolved to prepare a planning proposal in respect of this matter and submit it to the Department of Planning and Environment for a Gateway Determination. The Gateway determination has been granted on 1 October 2015 and was placed on public exhibition with this Planning Proposal.

The intended outcome of this Planning Proposal is to recognise short-term rental accommodation as a land use category in order to:

- (i) Enable the use of existing dwellings for short-term rental accommodation;
- (ii) Prescribe the circumstances where development consent is required for the use of existing dwellings for holiday rental accommodation;
- (iii) Improve certainty for short-term rental accommodation owners, guests, neighbours and the community;
- (iv) Provide a regulatory framework that can mitigate the impacts of holiday rentals on the neighbourhood; and
- (v) Provide a regulatory framework that ensures Council can effectively respond to holiday rental complaints.

A detailed explanation, justification and draft versions of the intended amendments are provided in Part 2 and Part 3 of this document.

## **Part 2 Explanation of provisions**

This Planning Proposal aims to establish two types of assessment regulating short-term rental accommodation:

- Dwellings used as short-term rental accommodation for a maximum of 62 non-consecutive days (that is two months) per calendar year may be considered as exempt development if consistent with Council *Short-term Rental Accommodation Policy*. This will provide a simplified avenue for low-impact short term rental, such as use of owner-occupied dwellings during the absence of the owners.

- Dwellings used as short-term rental accommodation for more than 62 days in a calendar year will require development consent. This will enable assessment, including public notification, of dwellings intended to be used as short-term rental accommodation for longer timeframes.

Detailed wording of the proposed amendments to the LEP 2014 is provided in **Tables 1** and **2** below.

**Clause 7.15** Short-term rental accommodation [local]

- (1) The objective of this clause is to enable the temporary use of dwellings as short-term rental accommodation.
- (2) Despite any other provisions of this Plan, development consent may be granted for the use of a dwelling as short-term rental accommodation.
- (3) Such dwelling must be located in a zone where dwellings are permitted with development consent.
- (4) In this clause short-term rental accommodation is an existing dwelling, or part of a dwelling, that provides short-term accommodation on a commercial basis.

**Table 1** Proposed new clause to Part 7 Additional Local Provisions

**Schedule 2 Exempt development:** Short-term rental accommodation

- (1) In this clause short-term rental accommodation is an existing dwelling, or part of a dwelling, that provides short-term accommodation on a commercial basis.
- (2) Dwelling must be used as short-term rental accommodation for a maximum of 62 days per calendar year.
- (3) Such dwelling must be located in a zone where dwellings are permitted with development consent.
- (4) Dwelling used for short-term rental accommodation must not be located on land mapped as bush fire prone area.
- (5) The property owner or appointed property manager must abide by:
  - (a) Council adopted Short-Term Rental Accommodation Policy, or its successor, or
  - (b) a similar policy with equivalent or higher standards for:
    - (i) the terms and conditions upon which a property is offered, booked and occupied,
    - (ii) the record keeping, complaints handling and dispute resolution procedures,
    - (iii) the maximum number of guests and visitors,
    - (iv) garbage, recycling and waste disposal,
    - (v) car parking, and
    - (vi) function, noise and residential amenity.
- (6) A business identification sign containing the contact phone number of the owner or appointed property manager must be displayed in a location visible from the public domain to enable the public to lodge complaints at any time of the day. The sign must be a maximum of 0.2m<sup>2</sup> and limited to one sign per street frontage.
- (7) If the dwelling is serviced by an on-site sewage management system, the number of persons occupying the dwelling must not exceed the number of persons stated as the capacity for that system.

**Table 2** Proposed entry to Schedule 2 Exempt development

Explanatory notes:

- In the above clauses *dwelling* has a meaning as in the Tweed LEP 2014: “*dwelling means a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile*”. Under the Tweed LEP 2014, all residential accommodation types are comprised of dwellings.
- A (draft) Short-Term Rental Accommodation Policy was exhibited for public comment concurrently with this Planning Proposal. This draft Policy has been based on the Holiday Rental Code of Conduct, prepared by the Holiday Rental Industry Association (HRIA), and

supported by the NSW Department of Planning and Environment. The primary purpose of this Policy is to provide a regulatory framework for the use of dwellings for short-term rental accommodation.

- A period of 62 days is proposed as a distinction between temporary and long-term use of a dwelling for short-term rental and corresponds with two months in calendar year.
- Dwellings are permissible with consent in all residential, rural and business zones (except B5 Business Development zone), and a prohibited land use in industrial and recreation zones.
- A requirement to provide a bush fire evacuation plan, if a dwelling is located in a bush fire prone area, has been included to ensure safety of tourists and visitors.
- A requirement to obtain a written approval from the owners corporation where short-term rental is intended in a community or strata scheme development has been included to clarify that exempt development Schedule of the Tweed LEP 2014 does not conflict with internal regulations within that owners corporation.
- The size of a business identification sign has been limited to 0.2 m<sup>2</sup> to minimise any potential negative impact on visual amenity.
- As many dwellings located in rural parts of the Shire rely on on-site sewage management systems, a requirement has been included to avoid overloading of such systems by limiting the maximum number of guests.
- The policy seeks a self-regulatory approach by the owners/managers to ensure that the short term rental use is a good neighbour.
- The policy sets out the role and responsibilities of the property owner/manager and the tenants and clarifies the matters for the consideration/action of the owner/manager, the Council or the police.

## **Part 3      Justification**

### **Section A   Need for the planning proposal**

#### **1 Is the planning proposal a result of any strategic study or report?**

This Planning Proposal has been prepared with a reference to the ruling of the NSW Land and Environment Court Case of *Dobrohotoff vs Bennic* (2013), where the court found that councils have a duty to resolve ambiguity and remedy deficiencies in their planning instruments relating to short-term rental accommodation. It is not considered to be linked directly to any study or report. The proposal results from ongoing monitoring and review of the Tweed LEP since its implementation in 2014. Council considers the proposed amendment to be policy and housekeeping matters of high significance to the local economy.

Unique scenic features of Tweed Shire, such as its complex landform dominated by the remnant caldera of the Wollumbin/Mt Warning shield volcano and approximately 37 kilometres of coastline make Tweed a popular tourist destination. Data for 2013/2014 shows continued growth for the Tweed, with 1.4 million international and domestic tourists checking recorded. Tourism and hospitality are important contributors to the local economy with the total tourism and hospitality sales in Tweed Shire in 2013/2014 reaching \$555.5m and the total value added was \$278.1m (source: Tweed community profile).

Short-term rental accommodation is often described as an affordable alternative to hotel or motel accommodation, particularly with larger family groups. This mode of accommodation has shown an increasing trend of popularity, both with family groups, but also with larger tourist groups of tourists on a shared accommodation basis.

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

The need to amend local environmental plans in order to define and regulate short-term rental accommodation has been identified and acted upon by a number of councils in New South Wales, therefore it has a State-wide context. As such, it would appear to be more practical for this matter to be addressed and resolved by the State Government through a State-wide amendment to the Standard Instrument LEP template, aiming to recognise and regulate this form of land use.

It is understood that the State Government's current view is that this matter should be resolved by individual councils through the LEP amendment process, an approach that has led to several councils instigating the necessary amendments within their LEPs, in recent months.

Whilst there are indications the Government may be considering a uniform approach to address the issue, as evidenced by the NSW Planning Minister referring the matter to a parliamentary inquiry in August this year, Tweed Shire Council's approach is to continue with this Shire-wide amendment, until advised otherwise by the Minister's Office or Delegate.

## **Section B Relationship to strategic planning framework**

### **1 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)?**

Tweed Shire is subject to the *Far North Coast Regional Strategy (FNCRS) 2006-2031*. Although short-term rental accommodation is not directly referred to in the FNCRS, the overall vision for the future defined under this Strategy recognises the entire North Coast Region as an important domestic and international tourist destination. This Planning Proposal is consistent with the vision statement provided under the FNCRS (*A healthy, prosperous and sustainable future for the diverse communities of the Far North Coast Region*) and with the following provisions:

#### *Part 8 Settlement Character and Design*

- New buildings should be designed to maximise adaptability to meet changing demographic needs and alternative future uses.
- Village centres are to be multifunctional, mixed-use (including residential) areas catering for diverse community needs.

#### *Part 9 Economic Development and Employment Growth*

- Local environmental plans will ensure that appropriate land is available to provide for a range of tourism experiences and forms of tourist accommodation, including ecotourism and the support of 'bed and breakfast' enterprises within residential and rural areas.
- Local environmental plans will permit no more than small scale tourism development in rural or environment protection zones.

No inconsistencies between this Planning Proposal and the FNCRS have been identified.



## 2 Is the planning proposal consistent with the local Council's Community Strategic Plan, or other local strategic plan?

The *Tweed Community Strategic Plan 2013/2023* (CSP) is the long term strategic plan for the future of Tweed Shire area. It identifies the community's main priorities and expectations for the future and ways to achieve these goals. The CSP is established on four thematic sections: Civic Leadership, Supporting Community Life, Strengthening the Economy, and Caring for the Environment. The Planning Proposal does not directly respond to any of the key actions identified within the CSP, but is consistent with the overarching objective of strengthening the local economy. This will be achieved by providing planning controls around the long established practice of short-term rental accommodation and responding to the community's needs and expectations to have this form of land use permissible and properly regulated. Particularly, this Planning Proposal is consistent with the following objective of the CSP:

### **Objective 3.1 Expand employment, tourism and education opportunities.**

The planning proposal seeks to implement regulatory controls into the Tweed LEP 2014, which, in the long term, are expected to provide a high level of certainty for owners, visitors and the wider community regarding the use of existing dwellings for short-term rental accommodation.

## 3 Is the planning proposal consistent with the applicable State Environmental Planning Policies (SEPPs)?

While assessing consistency of this Planning Proposal with State Environmental Planning Policies, consideration was given to the scope of proposed changes to the LEP, which aim to facilitate commercial use of dwellings for short term rental accommodation. This change of use will not lead to an increase in development (such as subdivision, increased density or erection of additional dwellings) or negative impact on natural environment. To further minimise the impact of the proposed land use on environment, compliance with the Short-Term Rental Accommodation Policy will be required.

From approximately 66 SEPPs made by the NSW Government, many of them apply to land within Tweed Shire and regulate matters of State or regional environmental planning significance. Key SEPPs, usually considered as applicable to planning proposals in the Tweed, include SEPP 14 Coastal Wetlands, SEPP 26 Littoral Rainforests, SEPP 71 Coastal Protection, Rural Lands, SEPP 44 Koala Habitat Protection, Exempt and Complying Development Codes, BASIX and Caravan Parks. None of these SEPPs however apply specifically to short-term rental accommodation.

This Planning Proposal responds to aims of the Codes SEPP by facilitating development of minimal environmental impact to be carried out without the need for development consent.

#### 4 Is the planning proposal consistent with applicable Ministerial Directions (s117 Directions)?

The Planning proposal is consistent with the Ministerial s117 Directions, as outlined in the following table.

*The consistency with applicable s117 Directions is assessed in the following table 4.*

*Table 4- Consistency with s117(2) Directions*

S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
<b>1. Employment and Resources</b>			
1.1 Business and Industrial Zones	The objectives of this direction are to encourage employment growth in suitable locations, protect employment land in business and industrial zones, and support the viability of identified strategic centres.	Relevant to this Planning Proposal as short-term rental accommodation may occur in business zones, where shop top housing is permitted.	Consistent. Short-term rental accommodation is a low key commercial activity that will not negatively impact on the availability of business and industrial land in the Shire. It is likely to continue to positively contribute to employment growth and viability of strategic centres by offering affordable and varied accommodation to increasing the number of tourists and visitors.
1.2 Rural Zones	<u>Objectives:</u> The objective of this direction is to protect the agricultural production value of rural land. <u>Application:</u> Clause 4(a) of this direction is applicable to this planning proposal.	Relevant to this Planning Proposal as short-term rental accommodation may occur in dwellings permissible in rural zones.	Consistent. The proposal does not aim to rezone the land. As it applies to the <i>existing</i> dwellings only, it is not likely to lead to increased density or development pressure on the rural land.
1.5 Rural Lands	<u>Objectives:</u> To protect the agricultural production value of rural land and to facilitate the orderly and economic	Relevant to this Planning Proposal as short-term rental accommodation may occur in	Consistent. The proposal complies with the Rural Planning Principles: <ul style="list-style-type: none"> <li>• The proposal promotes</li> </ul>

Table 4- Consistency with s117(2) Directions

S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
	<p>development of rural lands for rural and related purposes.</p> <p><u>Application:</u> This direction applies to all planning proposals to which State Environmental Planning Policy (Rural Lands) 2008 applies, including Tweed Shire.</p>	<p>dwelling permissible in rural zones.</p>	<p>opportunities for low impact tourism activities in the rural areas.</p> <ul style="list-style-type: none"> <li>• Short-term rental accommodation does not impact on rural lands and agriculture, including land of importance to the State,</li> <li>• The proposal is unlikely to impact on any natural resources.</li> <li>• Short-term rental accommodation in Tweed is a long practiced form of commercial activity, consistent with rural lifestyle and housing uses,</li> <li>• By limiting the scope of application to <i>existing</i> dwellings only, this proposal minimises impacts on infrastructure,</li> <li>• The proposal is consistent with the Far North Coast Regional Strategy.</li> </ul>
<b>2. Environment and Heritage</b>			
<p>2.1 Environment Protection Zones</p>	<p><u>Objective:</u> The objective of this direction is to protect and conserve environmentally sensitive areas.</p> <p><u>Application:</u> This direction applies to all relevant planning authorities.</p>	<p>This Direction is of limited relevance to this Planning Proposal as the State Government deferred E2 and E3 zones from Tweed LEP 2014. The only one environmental zone that remained in the LEP (E1 zone) prohibits dwellings.</p>	<p>N/A</p>

Table 4- Consistency with s117(2) Directions

S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
2.2 Coastal Protection	<p><u>Objective:</u> The objective of this direction is to implement the principles in the NSW Coastal Policy.</p> <p><u>Application:</u> This direction applies to the coastal zone, as defined in the Coastal Protection Act 1979.</p>	<p>Most of the existing dwellings within Tweed Shire LGA are located within the coastal zone therefore this direction is relevant.</p>	<p>Consistent. This amendment will not affect public access to the Tweed River foreshore or generate the need to provide new access; the proposal will not affect the scenic amenity of the Tweed River foreshore or cause overshadowing or major view impacts; the proposal will not affect threatened species or wildlife corridors; the proposal is not likely to cause conflicts with water or land based activities; the proposal will not cause impacts on waterbodies such as the Tweed River as long as appropriate on site wastewater disposal is implemented and storm water controls are implemented; and will not impact on cultural heritage of significance as it applies to <i>existing</i> dwellings only.</p>
2.3 Heritage Conservation	<p><u>Objective:</u> The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.</p> <p><u>Application:</u> This direction applies to all relevant planning authorities.</p>	<p>Relevant as this Planning Proposal has a Shire-wide application.</p>	<p>Consistent. The State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 provides that exempt development must not be carried out in relation to an item listed on the State Heritage Register under the <i>Heritage Act 1977</i>, or subject to an interim heritage order under that Act.</p>

**3. Housing, Infrastructure and Urban Development**

Table 4- Consistency with s117(2) Directions

S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
3.1 Residential Zones	<p><u>Objective:</u> To encourage a variety and choice of housing types, to make efficient use of existing infrastructure and services and to minimise the impact of residential development on the environment and resource lands. This direction applies to all relevant planning authorities.</p>	<p>This Direction is relevant to this Planning Proposal as dwellings are permissible in all residential zones.</p>	<p>Consistent. The planning proposal 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.</p>
3.3 Home Occupations	<p><u>Objective:</u> To encourage the carrying out of low-impact small businesses in dwelling houses. This direction applies to all relevant planning authorities.</p>	<p>This Direction is relevant to this Planning Proposal as dwellings are permissible in all residential zones.</p>	<p>Consistent – short-term rental accommodation is considered to be a commercial use of dwellings therefore meets the objectives of this direction.</p>
3.4 Integrating Land Use and Transport	<p><u>Objective:</u> To ensure that urban structures achieve the following planning objectives: (a) improving access to housing, jobs and services by walking, cycling and public transport, and (b) increasing the choice of available transport and reducing dependence on cars, and (c) reducing travel demand including the number of trips generated by development and the distances travelled, especially by car, and (d) supporting the efficient and viable operation of public transport services, and (e) providing for the efficient movement of freight.</p>	<p>Relevant as the Proposal applies to all zones which permit development of dwellings.</p>	<p>Justifiably inconsistent. This Planning Proposal aims to regulate long practiced rental of dwellings, or parts of dwellings. Matters raised in this Direction have not been specifically evaluated due to the regulatory nature of this Proposal. In general terms however, this Proposal leads to increased mixed use of existing build forms within the Shire.</p>
3.5 Development Near Licensed Aerodrome	<p>Applies when a relevant planning authority prepares a planning proposal that will create, alter or remove a zone or a provision relating to land in the vicinity of a licensed aerodrome.</p>	<p>Whilst this direction does apply, the planning proposal will not result in development inconsistent with AS 2021:2015</p>	<p>The planning proposal will not result in any intensification of residential use in the vicinity of a licensed aerodrome as this applies to existing</p>

Table 4- Consistency with s117(2) Directions

S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
		and it does not set controls for the development of land in the vicinity of a licensed aerodrome.	dwellings. The proposal is considered to be consistent.
<b>4. Hazard and Risk</b>			
4.3 Flood Prone Land	<p>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.</p>	Relevant as the Proposal applies to all zones which permit development of dwellings.	Significant areas within Tweed LGA are identified as flood prone and some of that land contains existing dwellings which could potentially be used as short-term rental accommodation. However, the planning proposal does not lead to an increase in density or new development in floodway areas, and it will not create situations where development may create flood impacts to other properties. As such, any inconsistencies of this planning proposal with this direction are considered to be of <b>minor significance.</b>
4.4 Planning for Bushfire Protection	<p><u>Objectives:</u>                      (a) to protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas, and                      (b) to encourage sound management of bush fire prone areas.                      It applies to all local government areas in which the responsible Council is required to prepare a bush fire</p>	Relevant as some of the existing dwellings are located on land identified as bush fire prone land. The proposal however will not result in any increase of residential development. The exempt development criteria state that if a dwelling is located in a bush fire prone area, a bush fire evacuation plan must be	Advice from NSW RFS received during the public exhibition stage highlighted a need to amend the proposed provisions by prohibiting short-term rental accommodation on land mapped as bush fire prone, unless approved through a DA process.

Table 4- Consistency with s117(2) Directions

S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
	prone land map under section 146 of the EP&A Act, or, until such a map has been certified by the Commissioner of the NSW Rural Fire Service, a map referred to in Schedule 6 of that Act.	attached to the dwelling in a prominent location.	
<b>5. Regional Planning</b>			
5.1 Implementation of Regional Strategies	This direction gives legal effect to the vision, land use strategy, policies, outcomes and actions contained in regional strategies.	All planning proposals must be consistent with the Far North Coast Regional Strategy (FNCRS), released by the Minister for Planning.	Short-term rental accommodation is not directly referred to under the FNCRS. The desired outcome of this proposal, documented in Section B is consistent with the overall vision and relevant directions of the FNCRS.
<b>6. Local Plan Making</b>			
6.1 Approval and Referral Requirements	<u>Objective:</u> To ensure that LEP provisions encourage the efficient and appropriate assessment of development. This direction applies to all relevant planning authorities.	The planning proposal does not include provisions requiring the concurrence, consultation or referral of development applications to a Minister or public authority.	Consistent
6.3 Site Specific Provisions	<u>Objective:</u> To discourage unnecessarily restrictive site specific planning controls. This direction applies to all relevant planning authorities.	The planning proposal seeks to zone the land appropriate to the land uses proposed. The planning proposal does not contain schematic drawings.	Consistent as this planning proposal applies to all zones where dwelling houses are permissible with consent.



## **Section C Environmental, Social and Economic Impact**

### **1 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?**

The proposal is not expected to result in any adverse impacts on the natural environment, including critical habitat or threatened species, populations or ecological communities or their habitats. The main purpose of this proposal is to both permit and regulate short-term rental accommodation, which is already occurring in existing dwellings across the Shire, particularly in the coastal suburbs. The proposed amendments to the LEP have been tailored and limited to existing dwellings to ensure that this proposal will not be used to facilitate new, additional development or increase density of development within the residential areas.

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

Short-term rental is often described as an affordable alternative to hotel or motel accommodation and is increasingly popular among larger groups of tourists on a shared accommodation basis. As such, short-term rental accommodation may cause increased noise and traffic impact affecting the immediate neighbourhood. These forms of environmental impact do not result from this Planning Proposal; on the contrary, this Proposal aims to provide a regulatory framework that will assist in mitigating and managing adverse impacts of short-term rental accommodation on the neighbourhood, and will establish clear regulatory response framework for Council to better address neighbour complaints. As discussed under the previous sections of the Planning Proposal, this regulatory response framework will be based on provisions of the Tweed LEP 2014 and the Short-Term Rental Accommodation Policy, prepared on the basis of the Holiday Rental Code of Conduct. The Code of Conduct has been supported by the NSW Department of Planning & Environment and may be summarised in the following way:

#### ***Summary of the Holiday Rental Code of Conduct***

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 is comprised of 4 Parts. Part 1 contains the Obligations of Participating Organisations including sanctions that may be imposed on owners and agents breaching the Code, including:

- 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.

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:

- 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,
- 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,
- 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,
- 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,
- 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,
- 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,
- 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,

- 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,
- 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'.

### ***Environmental impacts resulting from car parking and traffic***

Demand for short-term rental accommodation appears to be growing not only in Tweed Shire, but also Australia-wide and internationally, as this form of accommodation is increasingly considered as an affordable alternative to hotels and motels. Whilst this planning proposal aims to introduce planning controls that regulate an existing form of land use, it is expected that increasing demand for short-term rental accommodation may, in the longer term, result in increased traffic and demand for parking spaces. Impact of increased number of cars on residential amenity will be mitigated by provisions of the draft Short-Term Rental Accommodation Policy (placed on exhibition along with this Planning Proposal), limiting parking spaces in the following way:

- two car parking spaces for short-term rental accommodation in dwelling house, attached dwelling, dual occupancy, or semi-detached dwelling up to 4 bedrooms,
- one additional parking space for every two additional bedrooms, over the first 4 bedrooms.

Access and parking matters will be addressed in the Short-Term Rental Accommodation Policy consistently with the above requirements. If car parking associated with the short-term rental accommodation was impacting on the amenity of residents or neighbours, this would be inconsistent with the Policy and action could be taken against the property.

### ***Environmental impacts: noise and residential amenity***

Exempt development criteria, as well as the draft Short-Term Rental Accommodation Policy require adherence to the provisions regulating noise and residential amenity issues. According to these provisions, the Terms and Conditions of any short-term rental accommodation must specify that offensive noise and antisocial behaviour is prohibited, and would enable the Manager to exercise all legal rights and remedies to promptly deal with any violation of the Code.

The proposed amendments include a requirement to display a business identification sign in a location visible from a public domain. The size of such sign has been limited to 0.2m<sup>2</sup> in order to prevent negative impact on the amenity of the area.

### ***Environmental impacts: heritage***

The Codes SEPP and Part 3 of Tweed LEP 2014 provide 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 listed items.

### **3 How has the planning proposal adequately addressed any social and economic effects?**

Perception of the social impact of *short-term rental accommodation* depends on the perspective of the individual concerned. While for the majority of the local community this form of land use does not have a negative impact, there may be instances where adverse behaviour of some occupiers will negatively impact on the neighbourhood. In this context however, the negative social impacts should not be associated with the land use itself, but with the behaviour of a small minority of people renting accommodation on short-term basis.

Provisions of both the Part 7 clause and Exempt development entry aim to provide controls mitigating negative social effects of short-term rental accommodation. For those sites where behaviour of occupants and poor oversight of owners is occurring, firstly communication education and ultimately compliance enforce mechanisms will be applied in response. Also, appropriate conditions of Development Consent will assist in ensuring that environmental amenity concerns are adequately addressed.

Tweed Shire area is a popular tourist destination, with data for 2013/2014 showing 1.4 million international and domestic tourists checking. Income from tourism and hospitality sector is an important contributor to the local economy with the total tourism and hospitality sales in Tweed Shire in 2013/2014 reaching \$555.5m and the total value added was \$278.1m (source: Tweed community profile). Short-term rental is often described as an affordable alternative to hotel or motel accommodation and is increasingly popular, particularly among larger groups of tourists on a shared accommodation basis. Support for short-term rental accommodation by Council and 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**

### **1 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.

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

The Gateway determination, granted on 1 October 2015, includes a requirement to consult this Planning Proposal with Destination NSW and NSW Rural Fire Services.

The NSW Rural Fire Service (RFS) advised in their submission that short term rental accommodation cannot be considered as exempt development if located on land mapped as bush fire prone land unless this approach is substantiated through a legal opinion.

The submission from RFS is consistent with provisions regulating exempt development in New South Wales. In response, it is proposed to amend the planning proposal and the draft Policy to permit short-term rental accommodation on land mapped as bush fire prone areas only with development consent.

#### **Part 4 Community consultation**

The draft Policy and the planning proposal were on public exhibition from 2 December 2015 through to 5 February 2016. As part of community consultation, four drop-in information sessions were held in January 2016 at: Murwillumbah, Tweed Heads, Kingscliff and Pottsville.

In total, 20 submissions were received. Whilst the feedback was mixed it was apparent that many attendees and submitters were either intending, had, are or renting properties for this purpose, and opposed any requirement for development approval. Many also felt that the proposed 62 days as exempt development was too onerous. On the opposite view spectrum issues concerning the regulation of adverse behaviour and compliance of holiday rentals were raised. All public submissions have been summarised and presented to Council.

#### **Part 5 Timeframe and information checklist**

<b>Task</b>	<b>Timeframe</b>	<b>Completed</b>
Referral of the Planning Proposal for Gateway determination	September 2015	
Gateway Determination	October 2015	
Undertake requirements of the Gateway Determination and prepare V2 Planning Proposal	October/November 2015	
Public exhibition	December 2015 / January 2016	
Agency consultation	December 2015 / January 2016	
Review submissions, respond and prepare V3 Planning Proposal for Council's consideration	January / February 2016	
Council report to finalise and refer the plan to the DPE to be made	March 2016	April 2016
Referral of the Plan to the DPE for making	March 2016	April 2016
Plan to be made within 9 months of Gateway	April / May 2016	-





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