

## **APPENDIX 1: RESPONSE TO SUPPLEMENTARY QUESTIONS**

### **Response to Question 1**

The 2011 census identifies a total of 16,037 or 25.1% of the total households in Gosford are renting permanently.

The census does not count properties that are rented on a part – time basis. Around 3,000 properties have been estimated to be used for the short term holiday use. This could be a reasonable figure as the 2011 census taken on a weekday night in August has identified that 9,808 dwellings (13% of total dwellings) were vacant on the Census night in Gosford. It is unlikely that many short term lets were occupied on a midweek winter's night outside school holidays.

### **Response to Question 2**

Justice Pepper in *Dobrohotoff v Benic* (2013) relating to the taking of a S123 of the EPA Act action in the Land and Environment Court relating to the use of a dwelling for short term holiday rental concluded in relation to the permissibility of the use;

*The current rental of the property as holiday accommodation for periods of a week or less to persons using or occupying it other than in the ordinary family or household way, does not constitute a 'domicile', does not constitute a 'dwelling' and therefore, does not constitute a 'dwelling house' for the purpose of item 2 in the 2(a) Residential zone. The use of the property not being otherwise permissible, it is prohibited within the zone and it constitutes development in breach of s76B of the EPAA.*

The Judge stated she could not consider the draft Gosford LEP 2009 which included provision to allow 'short term holiday letting' as a permissible use (i.e.: exempt development or development requiring consent) in Gosford as at the time of the court case there was no agreed date as to when this plan would be made.

### **Response to Question 3**

Extract from letter (Appendix 2) dated 25 September 2009 to Gosford Council from the then Department of Planning relating the issuing of a S65 certificate for the public exhibition of the draft Gosford LEP 2009,

*'The Department is continuing to work on a State-wide approach to short term holiday letting of dwellings. For the purposes of public exhibition, some provisions have been included in the dLEP based on those proposed by Council. It is likely however that Council's proposed provisions will need to be altered before the plan is finalised, to align with the Department's State-wide approach.'*

Council assumed from the above that given Council had proposed development standards for the short term use, development standards would also be used in the 'state – wide approach'. A state planning policy would be the only document that could contain development standards and have state wide application.

## Response to Question 4

Below is a summary of Council's short term holiday letting provisions that were recently placed on public exhibition.

Summary of Proposed Short Term Holiday Letting of Dwellings Provisions.

### Definition of Use:

The definition of Short Term Holiday Letting of Dwellings as was advertised is;

*"A dwelling that provides temporary or short term accommodation on a commercial basis but excludes hotel or motel accommodation, serviced apartments, bed and breakfast accommodation, tourist and visitor accommodation and backpacker's accommodation".*

Since the issuing of the Gateway Determination and exhibition of this plan, Council has been advised by the Department of Planning and Infrastructure of an amended use and definition as part of the draft Gosford LEP 2013. The amended use and definition is;

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

There are no significant changes arising from this alteration. For the purposes of the following discussion reference will be made to the use and definition that were advertised as it formed the basis of the Gateway Determination.

A dwelling can be a dwelling house or a unit in a residential flat building or similar.

Short Term is up to three (3) consecutive months in duration.

Short term holiday letting is considered to be a non – residential use similar to bed and breakfast, home occupation and home industry which may be carried out in a low density residential area under certain conditions.

### Zones where use is permitted

The use will be permitted in all zones where a dwelling is permitted, e.g. Residential zones, Rural, Scenic Protection zones and Conservation zones.

### Classes of Permissibility/Prohibition

- The use will be classed as *exempt development* if it consists of up to and including 4 bedrooms.
- The use will be *permitted with development consent from Council* for dwellings with a maximum of 6 bedrooms.
- The use will be *prohibited* for dwellings with greater than 6 bedrooms.

Existing short term holiday lets of *4 bedrooms or less will require no planning approvals* and may continue operation.

Existing short term holiday lets of *5 or 6 bedrooms will be required to submit a development application* to continue operation.

Existing short term holiday lets of *greater than 6 bedrooms will not be permitted* to continue operation.

#### Exempt Development Provisions

Exempt Development cannot adversely impact on the amenity/environment of a local area (see for example Clause 45CD (2) (a) of the Gosford Planning Scheme Ordinance and Clause 3.1 (1) of the exhibited draft Gosford LEP 2013, attached as Appendices 3 and 4). To quantify amenity/environment it is proposed that an amenity/environment limit will be reached when Council receives a minimum of 3 written complaints from the occupiers of 3 separate dwellings located within 40 metres of the subject property over a 12 month period concerning the activities taking place on the property. (A development application will be required to be submitted once this amenity limit is reached.)

A fire evacuation plan will need to be prepared for all exempt development including existing short term holiday lets of 4 bedrooms or less if located in a bushfire prone area.

The use must have a 240 litre garbage bin.

#### Development Application Provisions

A development application will be assessed against the provisions of Section 79C of the Environmental Planning and Assessment Act 1979.

A development application will also be assessed against a Development Control Plan (DCP) for Short Term Rental Accommodation of Dwellings (advertised as short term holiday letting of dwellings).

The DCP provides in summary;

- The use must not contain more than 6 off street carparking spaces.
- On-street parking impacts in a neighbourhood can be considered as an amenity/environment issue for the purposes of this plan. It should be noted that stack parking is acceptable.
- Council may impose relevant restrictions for development proposals for short term rental accommodation of a dwelling where the means of sewerage disposal is on –site treatment.
- To support the Code of Conduct prepared by the Department of Planning and Infrastructure and peak bodies relating to short term rental accommodation of dwellings.
- Development Applications for conversion of an existing dwelling or the construction of a new dwelling for use as a short term rental accommodation on land which is bushfire prone will be subject to the requirements of section 100B of the Rural Fires Act 1997. Upgrading of dwelling to meet fire standards would expect to be required.

- Council can review a previous development application to determine how many approved bedrooms are contained in the dwelling.

Council can impose conditions of consent on a development application. The DCP provides examples of the type of conditions Council can use.

#### Types of Conditions

- Under Clause 80(1) (d) of the Environmental Planning and Assessment Act Council may impose time limited development consent (i.e. 1 year on a development for short term holiday letting). A further development application would need to be submitted after that period has elapsed and Council could consider the operation of the use over the previous consent period.
- Outdoor areas such as swimming pools/spas, outdoor decking/balconies or other spaces which are not classed as a room on a development application for construction/alterations to the dwelling can be limited in their hours of operation in their use.
- Amplified sound devices as heard at the boundary of the property may be time restricted in their use.

The aim of these conditions is that they are able to be monitored for compliance without Council inspectors having to enter the subject property.

#### **Response to Question 5**

Being part of the Sydney Region, Gosford Council experiences similar housing costs issues as do other local government areas in the region.

#### **Response to Question 6**

Gosford local government area experiences low vacancy rates similar to most local government areas in the Sydney Region.

#### **Response to Question 7**

Gosford City Council has two Special rates. The Terrigal Tourism/Business Special Development Rate was introduced in 2004/2005 for a fifteen year period to allow special development works to be completed. The Minister approved a special increase of \$927,701. There are 510 properties with a total land value of \$237,676,868 contributing to this special rate. In 2013/2014 a rate of 0.00224323 in the dollar will raise \$533,164. The balance of the special increase will be funded from ordinary rate levies.

This Special Rate is payable by all business properties in Terrigal, North Avoca and Wamberal areas, including short term rental properties that are rented for less than three months in the financial year. However, Bed & Breakfast businesses only pay 50% of this Special Rate, thus reflecting the business/residential split, as recognised by the ATO.

The Business/Tourism Development Special Rate is an ongoing Special Rate levied on all properties categorised as Business. Funds from this levy are directed to Central Coast Tourism Inc. On the basis that the benefit derived from the expenditure of these funds is

relative to the size of the businesses, the most appropriate method is a wholly ad valorem rate. There are 3114 properties contributing to this special rate with a total land value of \$1,455,725,137. In 2013/2014 a rate of 0.00055852 in the dollar will raise \$813,052.

**Response to Question 8**

In terms of off-road recreational vehicles such as 4WDs there are no Council managed locations that are provided for off-road recreational vehicles.

The NSW Forest website indicates that off-road vehicle opportunities may be available in some NSW Forests estate on the Central Coast.