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**Submission re Shoalhaven 2040 - Managing the Impacts of Tourist Development**

**Inappropriate tourist development**, facilitated by ineffectual planning controls, will cause Berry to lose the very qualities that make it a very popular tourist and residential area.

Feedback from Berry residents at Forum meetings, and via emails, strongly supports the need to address the lack of **balance** between development and its **impacts** on Berry’s lifestyle and culture.

The draft Local Strategic Planning Statement (LSPS) states that Council (SCC) will consult with CCBs on planning and development controls. However, SCC has ignored repeated requests from the Forum to address dangerous planning issues and precedents, which need serious review and change.

We have now researched all DAs lodged in the Shoalhaven in the 15-month period from April 2019 to June 2020 and found that there were 22 DAs for tourist accommodation in rural/environmental zones. Of this total, **90% were in the Berry/ Kangaroo Valley area.**

However, in April as part of its review of tourist accommodation planning provisions, SCC published the following results of its online questionnaire -

*Of the 190 responses,* ***72% were received from the Berry area****. Whilst the views of the Berry community are important, it is noted that the Berry area forms a relatively small part of the overall Shoalhaven and as such it does not necessarily reflect the views of the broader community. This is important as any changes to the LEP would apply across the Shoalhaven.*

The LSPS Planning Priority 8 states that SCC will “***balance*** *the support of tourism activity and manage impacts on communities”,* yet it is ignoring the views of the communities impacted and the requests from the CCB representing those communities.

**Council Does Not Apply LEP Controls to Tourist Development**

SCC is the only council in NSW to deploy the group term ‘tourist & visitor accommodation’ (TVA) in both rural and environmental zones. It provides automatic permissibility for tourist cabins and other ‘innominate’ uses and its continued use has created the following critical unintended LEP loophole -

* SCC has no statutory capability to control the adverse impacts of any tourist cabin or other innominate use development and no legal defence in the L&E Court.

Other councils restrict LEP permissibility to Bed & Breakfast and Farm stay cabins (which must comply with LEP Definitions and Clause 5.8 controls on max number of bedrooms) and control tourist cabins and innominate uses through DCP provisions, which are not subject to legal challenge.

**Council’s Weak DCP ‘Controls’ are Not Implemented** (see example on Page 4)

The most detrimental tourist development impacts on communities and sensitive locations are associated with visual impact and density, and SCC’s DCP Acceptable Solutions for these areas are very weak when compared to those applied by other councils -

Visual Impact - Maximum gross floor area

Lismore 45m2, Dungog 60m2, Byron 60m2, **SCC** **120m2**

Density - Max. no. of bedrooms on land > 20ha

Lismore 8, Tumut 10, Byron 12, **SCC has no maximum**

However, even these very weak controls are not implemented. Planning firms know that SCC will accept concocted ‘variation statements’ to explain major failures to align with DCP Acceptable Solutions and that their cumulative adverse impacts are ignored. Mere token alignment with DCP Objectives and Performance Criteria has been deemed to be adequate for approval.

**Density Controls**

SCC’s current use of ‘cabins’ as the base unit for density controls is outdated and does not align with the SLEP and the DCPs of other councils, which all use maximum number of bedrooms for approvals. A cabin may contain two or more accommodation units and each unit could contain two bedrooms, so a request for 2 cabins could in reality be for 8 bedrooms and 16 people.

This confusion was dealt with effectively in Andrew Lissenden’s comprehensive assessment of the Rockfield Park (RP) application for SCC in 2017. His rationale was accepted by the NSW Land & Environment Court, thereby establishing the following precedent -

* The size of each building is the relevant factor when assessing the performance criteria for visual impact, regardless of how many accommodation units or bedrooms they contain.
* Each bedroom, not cabin, should be counted as the base unit for assessing density compliance. The 42 RP bedrooms contained in sixteen buildings required a land area of 84ha.

**Conversion of Existing Dwellings to Tourist Accommodation** (see examples on Page 5)

The same concerns with new tourist development are evident with the approach adopted in the recent assessment of DAs proposing the construction of a new rural dwelling together with the conversion of an existing dwelling into tourist accommodation.

Compliance with DCP Objectives and Performance Criteria should apply to existing dwellings in the same way as for new structures. However, planning firms are ‘justifying’ significant cumulative variations statements by implying that DCP controls are less important for existing structures.

**Community Impacts are Ignored in the Assessment Process for Tourist Development DAs**

* Pre-lodgement meetings - Council staff advise applicant how to obtain approval and facilitate the use of the group term to obtain LEP permissibility
* Applicant obtains professional planning advice and lodges DA after several months preparation
* Council only advises owners of immediate neighbouring properties
* Residents have only two weeks to prepare and make submissions. Planning firms are not interested in objections to lucrative development and are generally ‘too busy’ to assist.
* Residents submissions based on an expectation that Council will fairly apply LEP and DCP planning provisions are largely ignored.
* Impacted residents, confused by the process, contact the Forum for help with advice

**Council Must Address the Adverse Impacts of Tourist Development**

* Without adequate controls tourist development will cumulatively affect the amenity of rural areas
* Given the transient nature of guests, there is not the same sense of social obligation and consequences that would be expected for permanent residents
* Tourist developments on neighbouring properties can greatly affect the value of a property originally purchased on the basis of an unspoilt rural lifestyle that suddenly disappears.

To restore its capability to manage the adverse impacts of tourist development, and to implement the Planning Minister’s request for consistency across all forms of tourist accommodation, SCC should:

1. Align with the DPIE’s Practice Note 09-006 and more than 90% of NSW councils by removing the group term TVA from rural & environmental zones.
2. Adhere to the Rockfield Park assessment precedent by aligning SDCP density controls with the SLEP and the DCPs of other councils by using bedrooms, not cabins, as the density base unit.
3. Provide consistency with SLEP Clause 5.4 maximum number of bedrooms for B&Bs and Farm stay cabins by applying the same maximum numbers for bedrooms in tourist cabins and innominate uses (via SLEP Part 7 ‘Additional Local Provisions’).

If SCC is unwilling to close the group term LEP loophole, Points 2 & 3 can and should be addressed urgently to protect the community against the most serious adverse impacts.

**Berry Forum Involvement**

At the April 2019 Forum meeting, as part of the continuing process of seeking direction from the Berry community, there was overwhelmingly support for the following motion from 122 attendees (no votes against) and a further 51 residents who couldn’t attend also communicated their support –

*Does the Forum want the Committee to continue discussions with Council and DoP to promote effective regulation to stop the proliferation of inappropriate development in rural areas?*

**Temporary Use of Land**

Any consideration of a possible new LEP definition for a ‘rural function centre’ land use, which would cater for destination weddings and business conferencing, must not weaken the existing Clause 2.8 community safeguards protecting the amenity of neighbouring properties over a broad area.

**The Berry Forum Committee**

Geoff Armstrong, Mary Beare, David Brawn, Garry Broadbridge, David Carter, Stuart Coughlan, John Cullity, Heather Macdonald, Gail Paton, James Robinson, John Underwood, Laurie Watson.

29 July 2020

**Examples of SSC Failure to Manage Tourist Development Impacts**

New Developments

**Mananga, 8 Homestead Lane, Berry** (approved 2 June)

Many residents were astonished by the approval of this DA after Council had received close to 200 submissions objecting to the proposal. Key concerns raised were:

* The original application comprised 7 rooms/suites, reception office, lounge room for guests and parking for 14 vehicles. Staff initially considered the appropriate LEP characterisation of a (prohibited) boutique motel, but did not follow through and allowed the group term TVA to be used to obtain LEP permissibility.
* The proponent’s SEE stated the floor area of the double-unit cabins was only **70m2 -** **80**m2, compared to the DCP maximum of **120**m2 and stated –

"*Two larger cabins as stipulated in the DCP in this instance* ***could reduce the heritage significance of the main residence*** *as the bulk and scale of the cabins would be larger."*

However, the proponent later increased the floor area of each of the double-unit cabins to **160m2**

* The actual size of the lot is only 1.94ha and the minimum land area requirement for the 5 units eventually approved is 8 to 10ha, **a variation of more than 300%.**
* The key DCP Objective, ‘**Address issues of cumulative impact’** was given no consideration. Despite unprecedented major variations to DCP provisions, the development is described in the Assessment as “generally compliant with the relevant provisions of SDCP 2014”.
* The Assessment states, “The variations to Chapter G15 will not set an **undesirable precedent** for future development applications”, but provides no evidence to support this extraordinary claim.
* The adjoining site is zoned SP3 Tourist and the proponent’s many references to the Banagalee motel demonstrate that the correct approach should have been a rezoning proposal.

**275 Bong Bong Road, Broughton Vale** (about to be lodged)

* A draft concept plan has been discussed with neighbouring property owners which shows a very large tourist accommodation facility. There appears to be eight villas, with each villa comprising two separate buildings, one for a living area and one for bedrooms. In total there are 16 large buildings (each with two carparking spaces) and around 24 bedrooms, some with additional bunk beds.
* The villa complex is sited close to the neighbouring property.
* There are also three very large buildings set around a courtyard area that will provide additional accommodation and facilities, with a ‘machinery shed’ potentially available for functions.
* The whole site would appear to have capacity for up to 70 guests and would have to be characterised as a **(prohibited)** boutique hotel/motel.

**Examples of SSC Failure to Manage Tourist Development Impacts**

Conversion of Existing Dwellings to Tourist Accommodation

**599 Coolangatta Road** (approved 3 February)

The DA used the group term TVA and characterised the four-bedroom existing dwelling as a ‘guesthouse’. However -

* A ‘guesthouse’ is not a defined use in the LEP.
* The SDCP definition of a guest house requires that -

"*the building incorporate a common facility for the provision of meals either to people temporarily resident or to the general public"*

But there is no reference to this requirement in the DA or the assessment.

**151 Wattamolla Rd**. (Council staff are recommending approval)

The DA is using the group term TVA and characterising the existing four-bedroom dwelling as a ‘tourist cabin’. The nearby garage is also to be converted into a two-bedroom ‘tourist cabin’.

There are serious non-compliance issues with DCP provisions -

* Approval of a two-storey structure for a ‘tourist cabin’ would set a **precedent**.

The proponent claims the upper floor will only be used for storage, but the property has been advertised previously for sale and for rent with a fourth bedroom or living area on the upper level and the DA requests an additional dormer window for the upper level.

* The floor area of the existing dwelling is 180m2 compared to the DCP maximum of 120m2. The significant scale and perceived high density of three large buildings close to a popular tourist route will create excessive adverse visual impact that will diminish the rural character of the area
* Based on the density controls accepted by the LEC, the land area of only 1.94ha would only qualify for 1-2 bedrooms. The 6 bedrooms proposed would require a land area of 10ha.
* Tourist accommodation consisting of six bedrooms will attract ‘party house’ holidaymakers, oblivious to and unconcerned with adverse impact on neighbours.

Individual DCP variation statements do not address the serious cumulative adverse impacts associated with all of the above issues.