

Tourist & Visitor Accommodation Development

How to Remove Loopholes in SLEP

The NSW Standard Instrument Local Environment Plan (SILEP) contains anomalies and inconsistencies in permitted land uses and controls for tourist & visitor accommodation in rural zones. As a result, significant loopholes are open to exploitation, particularly in the Shoalhaven.

In terms of scale and built form, there are no limits on the number and size of tourist cabins that can be constructed, and residents are shocked to discover that Council cannot prevent a large tourist facility resembling a housing development being constructed on the property next door. Controls on visual impact are very weak, other than for eco-tourist cabins.

When constructing SLEP 2014, Shoalhaven Council (SCC) aimed to provide flexibility with regard to permissible uses for tourist accommodation development. However, this flexibility has had unintended consequences, which have adversely impacted the community.

By using the descriptive group term 'tourist & visitor accommodation' a developer is able to circumvent permitted land use controls in rural & environmental zones. SCC is the **only** council in NSW that includes the group term as a permitted use in all RU1, RU2 & E3 zones (see Attachment).

A hotel and function centre is prohibited in a RU1 zone, but the DA for Rockfield Park in 2015 was characterised as an 'eco-tourist facility'. For three years residents fought to get the intent of the LEP applied, and the Land & Environment Court (LEC) Commissioner was only able to refuse the application by using road safety as a public interest argument.

The Rockfield Park case demonstrated that unless the inconsistencies are removed and SLEP aligned with almost all other NSW councils, it will not be possible to prevent a similar, or larger, development from being approved in another 'prohibited' area of the Shoalhaven.

Over the last three years, the Berry Forum Committee has been lobbying the Department of Planning (DPE) to amend the SILEP to remove the loopholes and there have been several meetings with two NSW Planning Ministers and several senior DPE officials.

In a meeting on 24 October, Minister Stokes welcomed the Forum's initiative and advised that the DPE believed the impacts of the loopholes were largely confined to the Shoalhaven. This aligned with our analysis of every council LEP in NSW, which shows that 80% do not include the group term 'tourist & visitor accommodation' in rural and environmental zones (see Attachment).

The Minister recommended that SCC should prepare a planning proposal to amend SLEP for DPE approval, and offered his support with facilitating and prioritising the proposal.

The objective of the Forum process is not to restrict TVA development that complies with the intent of planning legislation, but to retain Council's flexibility whilst removing anomalies and inconsistencies in SLEP so that the intent of the legislation is reflected in its operation.

Recommendations

- The group term should be retained only in Residential/Business zones, and removed from RU1/2/E3 zones (as recommended in the DPE Practice Note 09-006).
- The loopholes in form and scale, and visual impact would be addressed by expanding SLEP Part 7 Additional Local Provisions
- Council would retain flexibility to approve tourist accommodation development opportunities by using SLEP Schedule 1.

Anomalies in SLEP 2014

1 - The 'Group Term Tourist and Visitor Accommodation' (TVA)

Until 2011, the 'group term TVA' was used only in Residential & Business zones and included the following categories -

- *Backpackers' accommodation*
- *Bed and breakfast accommodation*
- *Hotel or motel accommodation*
- *Serviced apartments*

However, in 2011, the SILEP was amended and the Farm Stay category was inexplicably added to the 'group term' list, causing SILEP and PN 09-006 to become misaligned.

PN09 continues to recommend only Farm Stay and Bed & Breakfast for RU1/2 and E3 zones, but after 2011 a few councils chose instead to include the 'group term TVA', which shows hotels, motels and serviced apartments as permissible. This meant they also had to list hotels, motels and serviced apartments as Prohibited Uses.

The DPE considers the 'group term TVA' to be not 'exhaustive', which means councils using it must consider applications for land use categories other than the five listed. This exposes Council to a plethora of potential 'innominate' uses (eg tourist cabins) which it has no ability to regulate as they are not subject to Dictionary definitions or Clause 5.4 scaling controls.

The DPE survey finding of an absence of impacts in the vast majority of NSW council zones is explained by the Forum's analysis of all 112 council LEPs (excl. Greater Sydney). See attached analysis findings, which identifies that for the 'group term TVA' -

- Only 12 councils include TVA in RU1 zones
- Only 3 councils include TVA in E3 zones
- Only 8 councils include TV in RU1 & RU2 zones
- Only SCC includes TVA in RU1, RU2 & E3 zones

2 - Omission of Tourist Cabins from SILEP

Tourist cabins/units were omitted from the original SILEP and are classified as an innominate use, but there is no Dictionary definition and no restriction on maximum size.

- A landowner described a proposed development as "high end farm stay accommodation" in his covering letter to SCC, but in the DA it was characterized as a tourist cabin under the 'group term TVA'. This was because it would not have met the Farm stay definition of being a secondary business to primary production.
- Council's refusal of 195m² proposed for a cabin internal floor area (62% more than the SDCP max 120m²) was overturned by the LEC, with the Commissioner referring to the absence of any restrictions on scale in the SLEP.

3 – Absence of Clause 5.4 Controls for Cabins/Units

Clause 5.4 limits the maximum number of bedrooms for Farm stay and Bed & Breakfast accommodation, but there are no limits on tourist cabins/units or eco-tourist cabins.

- A 42 bedroom hotel and function centre proposed for Rockfield Park in 2015 (prohibited in a RU1 zone) was characterised as an ‘eco-tourist facility’.
- In the LEC case *Raphael Shin Enterprises v Minister for Planning* (RU2 zone) the applicant proposes to construct a -“five star eco-hotel incorporating 350 rooms, restaurant and café, retail space, multipurpose theatre and undercover parking”

4 – Absence of Scenic Protection Controls

Clause 5.13(3g) does not permit eco-tourist cabins to be sited *above ridgelines and against escarpments*, but there are no restrictions on the siting of tourist cabins or farm stay cabins.

SDCP states that tourist accommodation “buildings are not located on prominent ridgelines or knolls”, but DCP controls are viewed only as discretionary guidelines by the L&E Court.

5 – Subdivision Granted for Tourist Accommodation

The current SILEP minimum lot size following subdivision in rural zones is 40ha and Clause 4.2 allows for a reduction in the minimum lot size for primary production. However, SLEP also includes Clause 4.2A that allows for subdivision of land in zones RU1/2 & E3 that will create lots of less than 40ha for the purpose of tourist accommodation.

SDCP 5.6 states that the proposed subdivision must include a minimum of 5 tourist cabins.

Unfortunately, SLEP Clause 4.2A and SDCP 5.6 have created an unintended incentive to obtain a subdivision by stealth. Many DAs propose 5 cabins, but after granting consent for cabin development, Council only checks to confirm that construction has commenced.

NSW Councils Aligned with Amended SILEP or DPE's PN09-006

| RU1/ RU2/ E3 - Permissible Uses | | | | |
|--|--|-------------------|-----------------|-----------------|
| SILEP | | PN09 -006 | | |
| TVA | | | | |
| Farm stay | | Farm stay | | |
| B&B | | B&B | | |
| Backpackers | | | | |
| * Hotels/motels | | | | |
| *Serviced apartments | | | | |
| *Prohibited - | | | | |
| Hotels/motels | | | | |
| Serviced apartments | | | | |
| | | | | |
| RU1/RU2/E3 | | RU1/RU2/E3 | | |
| Shoalhaven | | Bega Valley | Bathurst | Tweed |
| RU1/RU2 | | Bombala | Lithgow | Tenterfield |
| Port Stephens | | Cooma Monaro | Gosford | Kyogle |
| Kempsey | | Snowy River | Wyong | Greater Hume |
| Nambucca | | Tumut | Cessnock | Wagga Wagga |
| Ballina | | Tumbarumba | Singleton | Lockhart |
| Byron | | Queanbeyan | Lake Macquarie | Bland |
| Uralla | | Yass Valley | Mid Western | Lachlan |
| Albury | | Gundagai | Newcastle | Temora |
| Dubbo | | Harden | Maitland | Bogan |
| RU1 | | Cootamundra | Great Lakes | Brewarrina |
| Eurobodalla | | Young | Gloucester | Corowa |
| Hawkesbury | | Wingecarribee | Tamworth | Urana |
| Dungog | | Kiama | Gilgandra | Narrandera |
| Upper Hunter | | Shellharbour | Warren | Leeton |
| Liverpool Plains | | Wollongong | Coonamble | Murrumbidgee |
| Muswellbrook | | Wollondilly | Warrumbungle | Jerilderie |
| Walcha | | Blue Mtns | Gunnedah | Griffith |
| Armidale | | Upper Lachlan | Junee | Carrathool |
| Guyra | | Boorowa | Narrabri | Cobar |
| Moree Plains | | Weddin | Walgett | Bourke |
| Coolamon | | Cowra | Gwydir | Denilquin |
| Conargo | | Blaney | Greater Taree | Murray |
| E3 | | Orange | Port Macquarie | Hay |
| Palerang | | Cabonne | Coffs Harbour | Wakool |
| Goulburn | | Forbes | Clarence Valley | Balranald |
| Bellingen | | Parkes | Glen Innes | Wentworth |
| | | Narromine | Inverell | Central Darling |
| | | Wellington | Richmond Vally | |
| | | Oberon | Lismore | |
| 24 | | 88 | | |