



31 October 2017

Director, Housing Policy
Department of Planning and Environment
GPO Box 39 Sydney NSW 2001

Via email: STHL@planning.nsw.gov.au

Dear Sir/Madam

**Central Coast Council Submission
Short-Term Holiday Letting Options Paper**

Thank you for providing the opportunity to make a submission to the Short-Term Holiday Letting Options Paper.

Please find attached for your consideration, a submission on behalf of the Central Coast Council. The attached submission has been structured to provide:

- A background summary of approaches to this matter adopted by the former Wyong and Gosford Councils (now the Central Coast Council);
- Identification of issues relating to existing short-term holiday letting premises; and
- Opportunities and solutions to support and regulate the industry.

Should you require further information, or supporting commentary, please contact me on 02 4350 5547 or email Scott.Duncan@centralcoast.nsw.gov.au.

Yours faithfully

A handwritten signature in black ink, appearing to read "S. Duncan", on a light-colored background.

Scott Duncan
Section Manager, Land Use and Policy
Central Coast Council



Background

The following outlines the past approaches of the former Gosford and Wyong Councils.

In 2014, the former Gosford and Wyong Councils each introduced provisions to enable dwellings of up to 4 bedrooms to be used for Short-Term Rental Accommodation (STRA) as Exempt Development, and dwellings of up to 6 bedrooms to be used for STRA only with Development Consent, under the respective Local Environmental Plans (LEPs). A limit was applied on the number of bedrooms, as the number of bedrooms was seen to dictate the number of occupants. Dwellings larger than 6 bedrooms were considered to be likely to impact the residential amenity of the neighbourhood, and are therefore not supported.

The Exempt Development Provisions include:

Short-term rental accommodation

- (1) The subject dwelling must be located in a zone where dwellings are permitted with development consent.
- (2) The dwelling must not contain more than 4 bedrooms.
- (3) The dwelling must be serviced by a general waste garbage bin of at least 240L capacity.
- (4) If the dwelling is located in a bush fire prone area, a bush fire evacuation plan must be attached to the dwelling in a prominent location.
- (5) If the dwelling is part of a community or strata scheme, the development must have the prior written approval of the owners corporation for that scheme.
- (6) 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.
- (7) There must not have been more than 2 written complaints to the Council concerning the activities taking place on the property from the occupiers of separate dwellings located within 40m of the subject dwelling within the preceding 12 months.

[Notes: the Gosford LEP does not contain above sub-clauses 5 and 6, and the Wyong provisions do not define what period constitutes "short-term", meaning the site could be let to various tenants for 52 weeks per year. Gosford City Council also adopted a DCP Chapter, to provide development assessment guidelines for circumstances where Council requires the submission of a development application. This is when the development limits for the use exceed the exempt development provisions (5-6 bedrooms), or as a result of complaints concerning the operation of the use. This Chapter defines 'temporary or short term as 'any period up to 3 months'.]

The introduction of planning provisions were in response to a Land and Environment Court action brought by a neighbour in relation to the use of a property at Copacabana (within the former Gosford City Council area). The Court held that the STRA use was separate to use as a "dwelling-house", and was therefore not permissible within the R2 Low Density Residential Zone. In recognition that the unregulated use of dwellings for holiday lettings (STRA) had been commonplace for many years in coastal areas, the Councils sought to enable the use. They recognised that STRA provides an affordable form of tourist and visitor accommodation, which in turn provides an important economic stimulus to businesses and services in the region.

Statistics

- Council currently has 3 sites under surveillance due to complaints.
- Since 2014 there have been 26 properties investigated as a result of complaints about short term holiday rentals.

Issues relating to Existing Premises

From a compliance point of view, the main issues with STRA relate to noise, anti-social behaviour, parking and waste disposal.

- Complaints commonly result when large groups use the accommodation for parties, particularly when the parties are in outside areas, and/or extend into late hours. Houses consistently used for parties cause significant ongoing impacts on neighbourhood amenity.
- Currently under the LEPs, the exempt limit for STRA (or short term holiday letting) is not more than 4 bedrooms. However, a 4 bedroom dwelling may accommodate any number of persons. A further limitation of 2 persons per bedroom should be introduced to reinforce the limitation on numbers (as per the provision within the HLO Code of Practice).
- Lack of car parking in the locality is a common complaint. Council's ability to respond is limited to action where car parking blocks driveways or if median strips are used.
- Insufficient garbage facilities cause amenity nuisance.
- Currently under the LEPs, STRA (or short term holiday letting) is exempt unless there are 2 complaints received from neighbouring dwellings within 40m, within the last 12 months.
 - o This exemption enables conduct of short term holiday letting with minimal control of antisocial activities.
 - o The requirement is subjective and not enforceable and should be replaced by measurable restrictions.
- Council's ability to respond to impacts such as noise is limited. Often complaints are received by police late at night or after the guests have left. The responsibility for the behaviour of the tenants needs to be placed on the owner of the property, e.g., to provide access to security services when required and to require tenant screening processes and other procedures (strengthening the HLO Code of Practice) including:
 - o key handover for tenants;
 - o house rules, such as prohibiting use of outdoor areas after 10pm;
 - o a disturbance provision in the bond, which is to be released either fully or partially, dependent upon impacts produced (e.g., 21 days after the tenancy); and
 - o providing neighbouring residents 24/7 contact numbers should they be adversely affected by nuisance impacts.

Proposed Solutions

- As part of the exempt development conditions, the owner should be required to develop a Plan of Management for the use of the premises. This plan should be provided to all neighbouring premises within 40m of the property. The Department of Planning could develop a model or template for the plan of management that could be used by owners. The plan of management should include requirements for keeping a register of tenants, a complaints register, process for screening tenants, key handover procedure, parking requirements, waste management requirements, fire and bushfire safety, emergency evacuation plans, floor plans or sleeping arrangements (maximum number of adults/children), house rules and a contact number for adjacent properties if they are affected by nuisance impacts (link to HLO Code of Practice).
- The current exempt provisions are based on the number of bedrooms only. This should be linked to the number of guests, with exempt development being for a maximum of 4 bedrooms catering for 8 guests or less.
- If it is a requirement that short-term holiday letting is registered with Council, this provision should be included as part of the exempt development criteria. There should also be a fee attached with the registration which is specified in the Regulations.
- Short term letting of rooms (not entire homes) in any property where the landlord or host is present should be considered exempt development.
- The exempt development provisions should be strengthened to ensure the Owner/Managing Agent strictly apply and enforce tenant limits to properties with Onsite Sewage Management Systems (OSSMs). Most domestic OSSMs are not designed to cope with either intermittent loads or excessive hydraulic loads, which are likely to occur from STRA. Both scenarios can result in the failure of the OSSMs, with a resultant risk to both public health and the environment. In addition, OSSMs have specific operational requirements which STRA guests need to be made aware of by the property Owner/Managing Agent. Incorrect use of the system can result in system failure, which again can result in a risk to public health and the environment, and result in costly repairs for property owners.
- There should be the ability for Council to issue a Penalty Infringement Notice upon Owner/Managing Agent of short term holiday letting when impacts occur. The penalty should be, say \$500 and payable to Council for recovery due to resource consumption responding to complaints etc. Service of the penalty notice would require evidence such as police reports, statutory declarations from residents, surveillance etc.

Suggested Actions:

- STRA approvals for larger dwellings should initially only be granted for 12 months (and then Councils could consider S.96 applications, for each additional 12 month period).
- A requirement that operators register premises with Council, with a licence (like OSSM or Swimming Pools) for Council to conduct random inspections for fire safety, etc. Often the premises are existing homes that may not have been built to current BCA requirements (disability access, fire, bush fire prone, flooding, etc.);

- Continue the limitation on the number of bedrooms, and link it to maximum occupancy of 2 persons per bedroom.
- An industry Association, the Holiday Letting Organisation (HLO), has developed a Holiday Rental Code of Practice, which has been adopted by some of the leading STRA organisations, such as STAYZ, TakeABreak, Rentahome, REI NSW, HLO Central Coast and HLO Byron. The Code addresses Owner/Managing Agent and Tenant responsibilities and behaviour. Broader compliance with this Code should be mandatory. The NSW Department of Planning and Environment (DP&E) should adopt and reinforce The Holiday Rental Code of Conduct in Exempt provisions, and which can form part of the conditions of consent.
- If a self-regulator is created, what powers would they have to ensure compliance is met? Will they be able to issue orders/fines? A checklist should be devised for compliance matters.
- Often the amenity issues occur on the weekend, when Council officers are not available. Often the Police (who are the correct regulatory authority) are called; however, most often don't attend due to competing priorities, thus pushing the matter back to Council. The Owner/Managing Agent should be required to provide security services, which neighbours can contact when behaviours are impacting residential amenity. Tenants should be clearly advised that each call-out will forfeit a percentage of the bond, or may result in eviction.
- A register of tenants should be maintained by the Owner/Managing Agent as well as a Complaints Register, dictating what action has been taken to mitigate any issue.
- Known problem premises could be placed on a Council Ranger's list for random patrols.