

Submission to the *Options Paper for Short-term Holiday letting in NSW*

1. Submission overview

This submission provides a broad overview of the issues that MidCoast Council (formerly Gloucester, Great Lakes and Greater Taree Councils) has encountered with regard to the short-term holiday letting of dwellings. It also provides feedback on the *Options Paper for Short-term Holiday letting in NSW* (hereafter referred to as the 'Options Paper').

It does not go into detail on all of the issues associated with short-term holiday letting (STHL) as many of these will be elaborated upon by other specialist agencies and industry groups who will make submissions to the Options Paper.

The submission has been prepared based on the (former) Great Lakes Council's submission to the Parliamentary Inquiry on this matter, with input from Council's Environmental, Strategic Planning, Building and Tourism Sections.

Please note that three planning instruments apply to the different regions of the MidCoast Council area, being:

- *Great Lakes Local Environmental 2014* which applies to the Great Lakes region
- *Gloucester Local Environmental Plan 2010* which applies to the Gloucester region
- *Greater Taree Local Environmental Plan 2010* which applies to the Manning region.

In this submission, the three different regions of MidCoast Council are referred to separately as the issues associated with STHL in each area are unique to that locality.

2. Background

Great Lakes region

Tourism is an important part of the economy in the Great Lakes region. In 2014, tourism in the Great Lakes contributed \$359 million directly and \$330 million indirectly to the Great Lakes economy. (Great Lakes LGA Profile, Tourism Research Australia, Sept 2014). It is estimated that tourism directly and indirectly employs just over 1,300 people in the Great Lakes region being 12% of the total workforce. (National Institute of Economic and Industry Research, 2013)

STHL is a significant contributor to the Great Lakes region's visitor accommodation sector with 26% of visitors choosing to stay in this type of accommodation. This equates to 608,000 visitor nights per annum. This is considerably higher than the NSW average for this sector. It is estimated that STHL directly contributes over \$80 million per annum to the Great Lakes economy.

Gloucester region

The Gloucester region encapsulates sections of the World Heritage listed Barrington Tops National park, part of the Gondwana Rainforests of Australia, and the Barrington Forest State Conservation area. These natural areas provide opportunities for camping, bushwalking, hiking and a range of other recreational activities that attract over 150,000 visitors per year. These numbers equate to

approximately 7% of the industry sector being dedicated to tourism in the Gloucester region. Statistics show tourism contributes about \$51 million annually to the Gloucester economy.

Manning region

At present the average annual spend on overnight and domestic daytrip tourism is \$159 million and the number of visitors is over 699 000 per year. Future planning for tourist facilities and services is required to continue to grow this important sector from a place to visit family and friends to a stand-alone destination.



Figure 1 - Manning Valley Visitor Statistics

3. Legal situation

The matter came to the fore with the release of the Land and Environment judgement in the matter of *Dobrohotoff vs Bennic* (May 2013). The case concerned the use of a dwelling-house located in a 2(a) low density residential zone in Terrigal to provide short term holiday accommodation.

The court heard that the dwelling had, for a number of years, been used by tenants who engaged in anti-social behaviour, using the dwelling for hens' and bucks' nights and frequent parties. These parties consistently impacted upon the surrounding the amenity of the surrounding area with loud music and flashing lights continuing into the early hours of the morning.

In her finding, Justice Pepper ruled that the use of a 'dwelling' for the purpose of short term holiday accommodation was prohibited in residential zones for the following reasons:

- the only relevant development permissible with consent within the 2(a) Residential zone of the Gosford Planning Scheme Ordinance (GPSO) was a 'dwelling house';
- the term 'dwelling house' refers to a building designed for the use as a dwelling for a single family;
- the term dwelling contained the notion of a domicile, which has the notion of a permanent home;
- the temporary nature of the short term holiday accommodation land use did not constitute a 'dwelling house' or a 'domicile'; and
- as the use did not constitute a 'dwelling house' under the GPSO, the use of the property for short term holiday accommodation was not otherwise permissible and as such, was prohibited within the zone and in breach of the *Environmental Planning and Assessment Act 1979*.

In Justice Pepper's concluding remarks, she stated that the decision made in relation to this case served as a warning to councils to review the wording of their planning instruments and that in not addressing this matter the Gosford City Council was failing to fulfil its core functions.

Former Great Lakes Councils response to Dobrohotoff vs Bennic

Residents from the Great Lakes region who felt they were adversely affected by STHLs, drew Council's attention to the judgement and sought a formal position from the former Great Lakes Council. In response, Council decided that it did not want to overly regulate STHLs and tried to reach a balance between managing environmental and amenity issues while not imposing unreasonable regularity controls on rental operators.

To strike this balance, the former Great Lakes Council decided that it would require development consent only where the STHL had five (5) bedrooms or more. Under the proposal STHLs with less than five (5) bedrooms would not require consent. The former Great Lakes Council was of the view that the impacts of holiday rental such as noise, waste management, traffic, parking, effluent disposal and keeping of pets would only require regulating when more than five (5) bedrooms were involved.

The former Great Lakes Council prepared and exhibited a planning proposal to amend *Great Lakes Local Environmental Plan 2014* to clarify when holiday letting of dwellings would and would not require development consent. A Development Control Plan (DCP) to provide controls for such things as amenity and onsite sewage management was also prepared and exhibited concurrently the planning proposal. The DCP is contained in Annexure A to this submission.

The planning proposal and associated DCP were adopted by MidCoast Council at its Ordinary meetings of 28 September 2016 and 14 December 2016 respectively. The planning proposal was forwarded to the Department of Planning and Environment (DPE) on with a request that the plan be drafted and made. At this stage the DCP has not been notified and therefore is currently not in force.

Former Gloucester Shire Councils response to Dobrohotoff vs Bennic

The former Gloucester Council responded to the judgement by preparing a planning proposal for STHL to amend *Gloucester Local Environmental Plan 2010*.

The aim of the planning proposal was to enable the use of dwellings for STHLs without requiring development consent. To address the bushfire issue the former Gloucester Shire Council included a provision that STHLs within areas subject to bushfire hazard would need obtain a bushfire safety authority under the provisions of 100B of the *Rural Fires Act 1997*.

The planning proposal for the *Gloucester Local Environmental Plan 2010* was adopted by MidCoast Council on 24 August 2016 and forwarded to DPE with a request that the plan be drafted and made.

Former Greater Taree Councils response to Dobrohotoff vs Bennic

The former Greater Taree City Council did not take action in regard to the outcomes of the court proceedings. However, it was the intention to make the use of STHL permissible within *Greater Taree City Council Local Environment Plan 2010* in due course.

The approach taken by the three former Councils reflects the differences in the issues associated with STHLs. There continues to be issues associated with STHLs in the Great Lakes region. In the Gloucester and Manning regions STHLs have not created any significant issues. Whether or not this continues to be the case remains to be seen given the growing popularity of the use. Even so, Council seeks a resolution to the legal situation for STHLs, given the use of a dwelling for STHL is not currently defined in any of our LEPs and is therefore considered a prohibited use.

It is the desire of Council to include the definition of STHL in the three applicable planning instruments. At the same time, with resourcing being a major issue, Council does not want to impose a requirement for development consent that would result in the need to process a large number of development applications. A delicate balance will need to be found between allowing this important economic activity to continue, while managing the impacts of the use in those areas where the problems exist.

4. Impacts associated with STHL – MidCoast area

Section 3 of the Options Paper outlines a number of issues associated with STHL. The specific issues associated with STHL in the Council area are mainly relevant to the Great Lakes region as outlined below.

1. Residential Amenity

At what point does the scale of a STHL impact on the amenity of the neighbourhood by generating unreasonable noise, waste, traffic and parking? In unsewered areas the capacity of onsite effluent disposal systems to manage the additional effluent generated is a key issue along with household waste disposal. The former Great Lakes Council attempted to deal with some of these issues by the inclusion of controls in its DCP (draft DCP provisions are contained in Annexure A).

2. Bush Fire

A major issue that Council has encountered is how to deal with STHL in bush fire prone areas. In the Great Lakes region this issue came about when the LEP required development consent for STHLs with five or more bedrooms. This raised the question of how such development should be dealt with under the *Rural Fires Act 1997* (RFA). In the Gloucester region, many STHLs are located in rural landscapes situated on bush fire prone land, and subject to the requirements of the RFA.

Other Councils have prepared planning proposals for STHLs which has resulted in considerable consultation between the Councils, the DPE and the NSW Rural Fire Service (RFS). The RFS did issue a Discussion Paper on Holiday Lets. One of the most significant findings of the RFS is that regardless of the number of bedrooms, STHL is a *special bush fire protection purpose* under the *Rural Fires Act* and a Bush Fire Safety Authority is required (BFSA). The RFS recognises that the requirement for a BFSA is an industry barrier to STHL and an onerous requirement. This issue remains unresolved.

The RFS underlying concern is that the occupants of holiday lets (unlike permanent residents) are not necessarily aware of their surroundings or the level of bush fire risk, making them more vulnerable than residents.

The RFS Discussion Paper identifies three options, all of which require amendments to legislation.

Council considers it reasonable that new dwellings that are proposed to be used or built for holiday rental comply with the requirements of the RFS. But the question of what to do with older dwellings is much more problematic.

3. Building Regulations

There are questions whether the change of use of a dwelling to STHL constitutes a change in classification under Building Code of Australia and whether the conversion of older dwellings should involve an upgrade to contemporary standards relating to window openings, stairs, fire protection and balustrades etc.

4. Effluent Management

STHLs are often occupied by large numbers of people over a short period. This can be an environmental health concern in rural locations or small villages where reticulated sewerage is not available. STHL occupants are often not aware of the limitations on the capacity of the onsite sewerage treatment and disposal system and how it is meant to operate. They are not necessarily aware of what to do when there is a system failure, such as a pump breakdown, blockage or holding tank overflow.

We are aware of situations where systems have been overloaded and effluent has escaped or been discharged into the environment, leading to potential health and water quality impacts.

It should be noted that unlike many urban localities, we do not currently have issues with STHL with regard to Strata Properties.

5. Recommendation

In accordance with Section 4 of the Options Paper MidCoast Council supports the self-regulation of the STHL industry.

An option would be for STHL to have to be licensed by the Department of Fair Trading before they could operate. This Department currently have the responsibility for licencing Real Estate agents and for handling compliance issues. Licensing would have to be based on clear parameters, such as those contained in a Code endorsed by regulatory authorities, management agents and the industry. A starting point would be the *Holiday and Short Term Rental Code of Conduct - Overview and Administrative Framework*, produced by the Holiday Rental Industry Association [http://www.hria.com.au/resource/resmgr/Docs/Holiday and Short Term Renta.pdf](http://www.hria.com.au/resource/resmgr/Docs/Holiday_and_Short_Term_Renta.pdf)

The license would have to be reviewed regularly and would have to cover all relevant land use planning considerations, including those mentioned in this submission. A complaint handing process would have to be established by Fair Trading to deal with complaints about licensed and unlicensed premises. Licenses should be immediately revoked if there is a breach of the conditions and the relevant Council notified of the revocation.

The use of premises that are licensed for STHLs could then be made permissible without consent or as *Exempt development* under the *Environmental Planning and Assessment Act* (EP&A Act) if the industry was self-regulating to the extent that impacts referred to above were effectively managed and that the operator holds a licence from the Department of fair Trading.

It is Councils' view that a trial period be established for the suggested self-regulation of the industry. If this approach fails to address the issues associated with STHL then Regulation through the planning system would need to occur.

5. Conclusion

STHL are a very significant component of the visitor economy and MidCoast Council supports the continuation of the use without undue regulation. Any potential regulation should be managed sensitively to ensure that the sector continues to thrive and is flexible enough to embrace all the opportunities that will undoubtedly continue to emerge in the future.

The land use planning and regulation difficulties relate to dealing with the operators and occupants who do not do the right thing, and who are not aware of the bush fire, servicing or building issues associated with such premises.

Whatever the approach taken, councils in general, do not have the resources or capacity to undertake monitoring, regulatory and enforcement functions associated with STHL.

Proper and responsible management of STHLs must go back to the source; those who derive the financial benefit (owners and their management representatives) must be held accountable.

In summary, the following are the land use planning and regulation issues for consideration with STHL:

- STHL is a long standing practice that makes a significant contribution to the visitor economy, particularly in sought after coastal holiday areas. Significant barriers should therefore not be applied that could significantly curtail, or be a disincentive to, operators.
- there should be a consistent approach as to how STHL are dealt with under the *Environmental Planning and Assessment Act*.
- regulation by way of licencing and/or as Exempt Development under the EP& A Act is an option. This would need to define the parameters as to when development consent is and is not required.
- there are environmental health issues associated with STHL in unsewered areas.
- there must be an appropriate response to bush fire issues to ensure that bush fire controls are not unreasonably onerous or a barrier to STHL, while at the same time protecting occupants who are not familiar with bush fire susceptibility and emergency evacuation procedures.
- there must be equity for operators between those who do and don't need Councils approval. What happens if some operators require consent while others do not?
- consideration must be given to building standards and classification under the Building Code of Australia.

ANNEXURE A - Draft Development Control Plan Provisions for Short Term Holiday Rental of Dwellings (Great Lakes Region ONLY – adopted by former Great Lakes Council)

Objectives

- a) To ensure that the short-term holiday rental of a dwelling is compatible with the scale, amenity and environment of the surrounding neighbourhood.
- b) To ensure that consideration of short term holiday rental of a dwelling has regard to the impact on the neighbouring resident’s enjoyment of their residences.
- c) To identify requirements for the consideration of development applications for the use of a dwelling for the purpose of short term holiday rental accommodation.

Controls

1. Amenity

Objective

- a) To ensure that the amenity of the residential locality is not negatively impacted by the use of short-term holiday rental of a dwelling.

Control

- I. Guests and visitors must not create noise which is offensive to occupiers of neighbouring properties especially between the hours of 10pm - 8am and during arrival and departure at any time throughout the occupancy;
- II. Privacy screening and landscaping should be provided on the site to reduce overlooking and visual intrusion from outdoor private areas.
- III. Outdoor lighting shall be designed and located to limit impacts on surrounding residences. Note: a light spill diagram may be required for outdoor recreation areas where swimming pools, spas, tennis courts or similar structures are located.

2. Car Parking

Objective

- a) To ensure that adequate car parking is provided in association with the short-term holiday rental of a dwelling.
- b) To ensure there is adequate safe provision for access, manoeuvring and parking within the development.

Control

- I. The number of car parking spaces for the development should be consistent with Table 1.
- II. On-street parking spaces available for the premises must be identified in the development application.

Table 1

No. of bedrooms	Parking (to be provided on-site)
1-2	1 space
3-4	2 spaces
5	Minimum of 3 spaces
>5	1 space is to be provided for every 2 additional bedrooms
Stacked parking permitted for 1 vehicle	

3. On-site Sewage & Waste Management

Objective

- a) To ensure that in areas where short term holiday rental is permissible and where the proposed premises is not connected to a reticulated sewerage system, the on-site sewage management system (OSMS) is adequate for the maximum number of occupants permitted within the dwelling, when used for the purpose of short term holiday rental.
- b) To ensure that there are no negative environmental impacts associated with the use of short-term holiday accommodation.

Control

- I. Council will only approve the use of short term holiday rental if the operation of the OSMS is 'fit for purpose'.
- II. Any premises that utilises a pump out system will only be approved where the following can be complied with:
 - The collection well must have a high water alarm installed on the collection well and must incorporate both audible (buzzer) and visual (strobe) alarm components. The alarm panel must be installed in a visible location approved by Council. The high water alarm shall be set on activation with two (2) days storage capacity in the collection well. At Council's discretion, an alarm utilising telemetry technology may be conditional.
 - A shut off valve must be installed in circumstances where the height of the standpipe outlet is physically lower than the lid of the collection well.
 - The septic tank and collection well will comply with the following table of tank volumes:

No. of Bedrooms	Septic Tank Capacity (L)	Collection Well Capacity (L)
2	3,000	4,500
3	3,000	6,000
4	3,500	7,500
5	4,500	10,000
6	6,000	12,500

- III. The location and design capacity of the OSMS (including related land application areas) must be detailed within the application to enable assessment of the capacity of the system and the potential hydraulic loading on the system. The OSMS and related land application areas must be able to accommodate the hydraulic loading based upon the following table:

		Design Wastewater Flow (L/d)	
No. of bedrooms	No of occupants	Water Supply (other than rainwater tank)	Rainwater Tank Water Supply
1	2	300	240
2	4	600	480
3	6	900	720
4	8	1,200	960
5	10	1,500	1,200
6	12	1,700	1,440

- IV. Premises that utilise an OSMS with surface or subsurface irrigation disposal areas shall have an indexing valve installed on the irrigation line, with the irrigation disposal area divided into two or more equal areas, to allow for resting of irrigation disposal areas.
- V. All premises must be fitted with water saving devices. Details of water saving devices to all fixtures and fittings should be included in the application.
- VI. A detailed rental/tenant/occupier user manual shall be developed for the premises and kept on the premises at all times. The user manual shall be kept in a prominent location and include emergency response provisions.
- VII. A management plan must be submitted with any application providing details on, but not limited to, the following information:
 - Proposed measures to reduce any likely impacts on the performance of the OSMS.
 - Emergency management provisions ie. power failure, system and land application area failure, Council notifications.
 - If a pump out system is utilised, provisions for emergency pump outs, system overflows, Council notifications.
- VIII. The location and design of waste storage facilities must be detailed within the application to enable assessment of the capacity of these facilities to accommodate additional waste produced by the short-term holiday rental of the dwelling.

4. Number of Visitors & Duration of Use

Objective

- a) To ensure that the short-term holiday rental of a dwelling provides for a reasonable number of guests in keeping with the surrounding neighbourhood.
- b) To ensure that the duration of the use does not impact on the amenity of the surrounding neighbourhood.

Control

- I. The maximum number of guests must not exceed 2 adults per bedroom.
- II. The use of a dwelling for the purpose of short-term holiday rental accommodation is permissible for no more than 60 consecutive days in any 12 month period.

5. Dogs

Objective

- a) To ensure that any dogs kept on the premises do not impact on the residential amenity of the neighbourhood.

Control

- I. In accordance with Clause 12A of the Companion Animals Act 1998, the owner of any dog must take all reasonable precautions to prevent the dog from escaping from the property.
- II. There must be no more than 3 dogs at any one time.
- III. Adequate fencing or an enclosure must be provided capable of confining the dog regardless of breed, age, size or physical condition.
- IV. Fence gates must be:
 - a. kept closed at all times when the dog is on the premises;
 - b. fitted with a proper latch or other means of fastening it; and
 - c. capable of preventing the dog at all times from passing over, under or through it.
- V. Fences and gates must be maintained in good order and condition at all times.