



18 October 2017

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



Dear Ms Brill

**Subject: Submission - Short-term Holiday Letting Options Paper – Lake Macquarie City Council**

On 9 October 2017, Council endorsed this submission on the Short-term Holiday Letting in NSW Options Paper. Thank you for the opportunity to provide comment.

Lake Macquarie City Council welcomes the release of the Options Paper. It has the potential to assist in solving a complex problem we, along with many other local government areas across Australia, have been grappling with for some time.

Council agrees that Short-term Holiday Letting is currently regulated in a piece meal manner through the planning system and there is value in having a more standard approach. Council generally supports the findings and recommendations of the Parliamentary Inquiry released in October 2016. Similarly, we agree with the NSW Government, that short-term letting provides significant economic benefit to the NSW and Lake Macquarie economy. It also has the potential to generate substantial detrimental impacts on the community if not adequately managed.

## Background

Council has been working with the Department of Planning and Environment for some time to reduce the legislative ambiguity of using dwellings for short term accommodation purposes. This has included the drafting of an amendment to Lake Macquarie Local Environmental Plan 2014 (LMLEP 2014) to regulate this land use.

Some of the approaches included in the amendment, were:

- To require development consent required for dwellings with five or more bedrooms intended for short-term holiday letting use;
- That written documentation be provided to guests outlining terms and conditions of letting the property, including maximum number of guests, correct waste disposal and identification of vehicle parking areas; and
- Signage clearly displaying the contact details of the owner or property manager, should disturbances to the amenity of the neighbourhood occur.

Our Ref: f2014/01451/02  
008525886\_Submission to NSW Government on short-term holiday letting in NSW Options Paper(5).DOCX

The LEP amendment has been placed on hold pending further progress of the options paper, community feedback, and the Government's regulatory response.

Council made a submission to the Parliamentary Inquiry into the adequacy of short-term holiday letting in NSW by the NSW legislative Assembly Committee on Environment and Planning in 2016. Our submission advocated for a state-wide definition as well as policy and planning guidance for managing short-term accommodation in NSW. This Options Paper is an excellent approach to further developing a state-wide regulatory framework.

### **Issues in Lake Macquarie**

Fourteen submissions were received during the exhibition period of the draft amendment to LMLEP 2014 between 3 March and 28 April 2015. Key points raised included:

- Short term rental accommodation could not be considered as exempt development for properties listed in the State Heritage Register. Under Section 3.1 (3)(d) of LMLEP 2014 and Section 1.16 (1)(c) of the Exempt and Complying SEPP, exempt development must not be carried out on land listed on the State Heritage Register. This includes the Catherine Hill Bay Cultural Precinct, requiring that dwellings in the area lodge a development application for short-term letting. This was considered an onerous requirement.
- A request to increase exempt criteria for dwellings from "up to four bedrooms" to "up to 6 bedrooms".
- Excessive 'party' noise and too many cars parked around short-term accommodation.
- Concerns over a self-regulatory process and the mismanagement of complaints.
- Uncertainty with the existing complaints procedure, many did not realise issues relating to short-term accommodation should be raised with Council.

### **Comments on the Options Paper**

#### **Use of the term 'Short Term Holiday Letting'**

The use of the word 'holiday' in Short Term Holiday Letting suggests that properties rented on a short-term basis (under a period of 90 days) are being used for 'holiday' accommodation. This is not necessarily the case. Short-term accommodation can be used for a number of reasons, including:

- visits to major regional hospitals for treatment;
- students from overseas studying at major universities; and
- seasonal or contractual work such as major infrastructure projects.

Given this, it is more appropriate to use the term Short-term letting or Short-term rental accommodation to provide a more accurate description of this land use.

#### **Balancing economic benefits with managing social and environmental impacts**

The options paper provides a comprehensive discussion on the different ways a regulatory framework could be established to help manage issues associated with short-term holiday letting (STHL).

## **Government intervention versus industry self-regulation**

Council initially proposed a regulatory framework that primarily relied on industry self-regulation to manage STHL. However, it is unclear whether the complaints handling process would be effective for serious impacts on the amenity of residential neighbours. The NSW Legislative Assembly Committee generally found that the Code might be a valuable tool, however its current management structure is too narrow and there is confusion regarding its ownership and legal status.

There is also very little research or information on the overall impact of STHL on the community, including accurate data on the number of STHL dwellings, noise or other issues on the surrounding neighbourhood. The effect on long-term rental accommodation and housing affordability is also not completely understood.

### *Recommendation*

*A registration or licensing requirement to a NSW government body, such as NSW Fair Trading, should be considered to ensure management of STHL is funded through a 'user pays' system. This could also include a requirement to abide by mandatory guidelines for other issues such as noise, parking and waste management.*

*This would also provide an opportunity to monitor the impacts of STHL, which was recommended by the Committee.*

## **Party Houses**

In relation to 'party houses', Council shares similar findings to the parliamentary inquiry in that, *there is generally a low level of complaints concerning short-term letting. Given the continuing growth in short-term letting, however, there is potential for more complaints without appropriate land use planning controls.*

*Council also agrees that the complaints heard from stakeholders about the impacts of short-term letting on the quiet enjoyment of their properties are real and serious.*

In fact, a number of residents have raised concerns with Council that their wellbeing has suffered as anxiety is experienced from wondering when the next disturbance will occur.

### *Recommendation*

*Given the potential for the significant social impacts of STHL, any proposed regulatory framework should consider a 'worst-case scenario'. The Queensland Sustainable Planning Act 2009 has defined party houses and prepared an accompanying fact sheet to assist local councils in the 'opt-in' provisions.*

*A similar framework should be considered to appropriately manage breaches to any proposed regulation.*

## **Crossover with other short-term accommodation providers**

The Options Paper highlights the current inconsistency in regulation between different forms of STHL. Accommodation providers within Lake Macquarie have raised similar issues with the difference in the existing regulatory framework for bed and breakfast establishments, versus the less regulated short-term letting of private residences.

Council agrees that better alignment with the regulatory requirements for low impact tourist and visitor accommodation, such as bed and breakfasts, and STHL should occur.

### **Complaints Management**

Council has been advised by neighbours of STHL that the current complaints handling system was extremely inadequate.

On weekends and late in the evening, when noise impacts are greatest, lodging complaints on websites were ineffective and their calls to contact numbers went to message bank services. If complaints were followed up at all, it was usually after occupants responsible for the noise have vacated. Historically, local real estate agencies have managed the complaints handling process, providing a more objective approach in managing these issues. The rise of online platforms such as airbnb has negated the need for an agent, leaving neighbouring residents powerless, and STHL operators with no effective penalty for amenity breaches.

To address this, Council proposed the erection of a business identification sign containing the contact phone number of the owner, or appointed property manager, to enable the public to lodge complaints at any time of the day. Byron Shire Council also included this provision in their planning proposal, *PP\_2015\_BYRON\_003\_00 to amend Byron LEP 2014 to provide for short term rental accommodation*, approved by the Gateway in August 2015.

#### *Recommendation*

*It is recommended a sign (or similar control) is required to be provided to ensure neighbouring properties are able to lodge complaints when a breach to the regulatory framework occurs to at the time, to the owner or property manager.*

### **Impacts within Strata Properties**

Council agrees that strata properties used for STHL have the potential to impact neighbours significantly due to the proximity of dwellings and the sharing of common areas.

Council supports the consideration of amending strata laws to assist in the enforcement of significant breaches to the amenity and use of complexes, where adequately substantiated. Enforcement options should include liability for both occupants and owners.

It should be noted that detached single dwellings can be very close to each other and can also share common property such as driveways and jetties.

### **Definition of STHL**

Council supports a consistent definition of STHL to be used across NSW and to be incorporated into the LEP Standard Instrument. The following definition was drafted for the amendment to LMLEP 2014:

***Short-term rental accommodation*** means a dwelling, or part of a dwelling, that provides short-term accommodation on a temporary, commercial basis, but does not include bed and breakfast accommodation.

***Short-term*** means the right of occupancy of the accommodation granted to any one guest does not exceed three months.



The options paper suggested the following definition for STHL, *as a dwelling, or part of a dwelling, that provides short-term accommodation, but does not include tourist and visitor accommodation.*

Council's draft definition of 'short-term' identified occupants stay a maximum of 90 consecutive days. Anything above this could be leased as a tenancy under the *Residential Tenancies Act 2010*.

#### *Recommendation*

*If the proposed regulatory framework is primarily exempt provisions, it is important that any definition is clear on the differences in accommodation types. This could be achieved through a NSW government guideline.*

### **NSW Planning System and STHL**

Council supports a scaled approach to the regulatory framework to manage impacts of STHL. At this stage, Council receives a minimal number of complaints relative to the number of dwellings used for STHL, however with the growth of online platforms this may increase.

#### **Limiting days per year**

The number of days per year a premise is used for STHL is a good option to consider, particularly in managing breaches of the regulatory framework. For example, SHTL could be classified as exempt if it is used for less than 90 days in a calendar year, provided it does not impact on the amenity of the neighbourhood.

Where it is proposed to be longer than this, then it is reasonable to obtain development consent, as the primary use of the dwelling relates more to tourist and visitor accommodation than as a residence.

The assessment of a development application would consider any ongoing amenity impacts on surrounding properties and the impact of this accommodation type on housing affordability and rental availability.

This approach could also assist with the potential social impacts identified earlier. Limiting the number of days per year may assist in alleviating some of the anxiety neighbouring residents feel if they know STHL is only for a short period of the year.

The difficulty with this approach is enforcement. Without a significant amount of resourcing, it is very difficult to build enough evidence to prove a breach to this provision.

A register would need to be introduced to record the number of days each year the premises is let, but it may still be difficult to enforce and could be skewed when occupants are non-paying guests.

Registration is discussed further below.

#### **Number of bedrooms**

Although it is acknowledged that noise, parking and waste issues can occur in any dwelling, larger houses can sleep more people and are often targeted by larger groups to hold parties, gatherings or events.

Dwellings of five bedrooms or more are also a small component of our housing stock, meaning the requirement will only impact on a small number of dwellings that have the potential to create a major impact on the neighbourhood amenity.

### Registration or licensing

Council supports the requirement for all STHL to register their properties not only to manage breaches to the regulatory framework, but also to ensure data is collected to assist in assessing the impact of STHL on the wider community now and in the future.

Upon registration, providers would also agree to follow mandatory guidelines to regulate STHL. These mandatory guidelines should be prepared by the NSW government, similar to the noise guide for local government produced by the NSW EPA. Noise monitoring is considered important. This can be measured objectively making it easier to enforce breaches.

Council also recommends that the register and records be maintained over a number of years by a government agency such as NSW Fair Trading, rather than Council.

### Summary - recommended regulatory framework

In response to the potential options identified for planning regulation in Figure 1 of the Options Paper (over page), Council recommends the following framework/criteria for consideration.

Exempt development provisions	Development consent
<ul style="list-style-type: none"> <li>o Mandatory registration to manage safety and amenity issues and monitoring and reporting (e.g. number of days, maximum number of guests, parking)</li> </ul>	<ul style="list-style-type: none"> <li>o Dwellings with 5 bedrooms or more</li> </ul>
<ul style="list-style-type: none"> <li>o Adherence to NSW Government STHL guideline (guideline addresses code of conduct, complaints management, noise, education)</li> </ul>	<ul style="list-style-type: none"> <li>o Dwellings operating for more than 90 days per year</li> </ul>
<ul style="list-style-type: none"> <li>o Operating less than 90 days per calendar year</li> </ul>	<ul style="list-style-type: none"> <li>o Dwellings who have breached exempt provisions over three times during the preceding 12 months</li> </ul>
<ul style="list-style-type: none"> <li>o Dwellings less than 5 bedrooms</li> </ul>	
<ul style="list-style-type: none"> <li>o business identification sign with contact details</li> </ul>	
<ul style="list-style-type: none"> <li>o bushfire evacuation plan, if the dwelling is located in a bushfire prone area</li> </ul>	
<ul style="list-style-type: none"> <li>o short-term letting must be located in a zone where a dwelling is permitted</li> </ul>	

Themes	<b>INDUSTRY SELF REGULATION</b>	<b>PLANNING REGULATION</b>	<b>PLANNING REGULATION</b>
	<i>Refer Section 4</i>	<i>Refer Section 4</i>	<i>Refer Section 6</i>
Multiple Options	Code of conduct	By-laws to manage visitor behaviour	Development approval - exempt/complying
	Complaints management	By-laws to receive compensation for adverse effects	Development approval - development consent
	Education		Limit the length of stay
	Monitoring and reporting	By-laws to prohibit STHL	Limit the number of days per year
			Limit the number of bedrooms
		Regulate by whether the host is present when STHL takes place	Registration to manage safety and amenity issues
			Registration to monitor that other regulatory approaches (e.g. number of days, number of properties) are being met

Note: The policy options for STHL could include regulatory or non-regulatory approaches, or a combination of both. A combination of options from any rows or columns (or/and other options not covered in the paper) can be chosen to suggest a policy framework for the STHL in the submission form

Ref: Short-term Holiday Letting in NSW Options Paper, Figure 1 Potential Options, page 6

Should you require further information, please contact Council's Senior Strategic Landuse Planner, Karen Partington on 4921 0371.

Yours faithfully



Morven Cameron  
**Chief Executive Officer**