

Submission to

NSW Government

*Options Paper for short
term holiday letting in
NSW* (published July 2017)

Wingecarribee Shire Council



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Introduction

Wingecarribee Shire Council appreciates the opportunity make a submission to the State Government's Options Paper for short term holiday letting (STHL) in NSW.

It is estimated that there are some 300 STHL properties across Wingecarribee Shire. They generate tourism accommodation jobs and business. Council recognises the positive economic and social contribution such properties can make. However, Council is also aware that such properties can cause concern to neighbours and communities, largely due to over population of the accommodation and/or the poor behaviour of guests. These concerns can be exacerbated in strata developments where noise and poor behaviour can be more directly felt by neighbours through adjoining walls and can result in damage to common property.

Therefore, Council agrees with the State Government's priority to achieve a balance between preserving the benefits of STHL properties within the tourism industry and the need to ensure that any adverse impacts on neighbours and communities are minimised and preferably avoided. Therefore any regulatory option needs to be sufficient to address potential social costs, but not unnecessarily restrictive.

Council agrees that a final regulatory policy for STHL should be framed around an evidence-based understanding of the nature and significance of STHL on the community and that, even in the absence of direct evidence, policy options should still be guided by the relative significance and likelihood of the problem and the outcomes sought.

With regard to the four types of regulation presented for consideration, Council offers the following comments.

Industry Self-Regulation

Industry self-regulation is largely how STHL is currently managed and Council believes, ideally, that would be the best option for managing STHL into the future. However, for this to occur successfully Council agrees that the industry would need to take greater responsibility for the operation of STHL.

STHL within the Shire currently operates under a local clause within Wingecarribee Local Environmental Plan (WLEP) 2010 which permits the use of any approved property for STHL without Council consent. Council endorsed a Holiday Rental Code of Conduct in November 2014 based on the Real Estate Institute's Code which is utilised by many property managers across the State. However, this Code remains voluntary and does not appear to provide a satisfactory mechanism for the reporting, investigating and resolving of any complaints or issues reported by neighbours.

Council supports the adoption of a strengthened Code of Conduct managed by the NSW Government, with improved education for industry participants. Council also supports the suggestion that such self-regulation be strengthened by a transparent and responsive complaint management system mandated through Government regulation.

Strata Regulation

Council is aware that residents in strata properties are generally living in closer proximity to their neighbours than residents in detached dwellings and the impacts of poor behaviour and noise in particular can be greater. Council also recognises that a strata development includes common property to which guests would have access and for which all residents, through strata insurance, would be responsible for the repair of any damage. Damage caused by guests can be difficult to prove and therefore difficult to obtain compensation from the individual property owner, thus putting the burden of repair back on the owners' corporation.

The short term rental of a room or rooms in a strata development where the owner is in residence may not be such an issue, but Council believes that, rather than determine that this be the only form of strata letting, it may be preferable to leave the final decision to the owners' corporation.

Council would encourage further investigation of options as outlined in the discussion paper including reviewing by-laws to provide stronger control through the owners' corporation of the subletting of individual properties as STHL with the option of being able to prohibit such use where adverse impacts persist.

Planning Regulation

Council notes that the Parliamentary Committee recommended using planning instruments to regulate STHL, specifically suggesting that thresholds be determined below which STHL could operate as exempt or complying development and above which a development approval would be required.

It is also noted that the Options Paper identifies several potential standards for determining development thresholds, including:

- length of stay (based on days per stay, or days per year, or a combination of both)
- number of bedrooms
- presence, or not, of a host
- compliance with a code of conduct
- waste management arrangements.

It is noted that the Parliamentary Committee also recommended that short-term letting of rooms in any property where the landlord or host is present be permitted as exempt development. Council's own experience with community concerns regarding STHL accords with the anecdotal evidence presented in the Options Paper which suggests there are lower potential impacts associated with STHL where the principal resident (owner or tenant) is present, because it's in the best interests of the host to monitor and respond promptly to guest behaviour or neighbour complaints. So Council would be supportive of this recommendation.

However, this option would mean that the other threshold standards, such as length of stay and number of bedrooms, would need to be applied under some approval process, placing additional burden on local government for uncertain benefit.

Council agrees with concerns expressed in the Options Paper that such thresholds may not be relevant and could be overly restrictive. Council agrees that a STHL property, even one with many bedrooms, could be let all year without any adverse impacts on neighbours or the community generally if guests are well behaved and issues can be addressed promptly, or preferably avoided altogether.

Council also agrees that the nature of modern suburban life is that even permanent residents can create adverse neighbour impacts through poor behaviour and this should inform any consideration of regulatory options for the STHL industry. Requiring a development approval for any form of STHL could be unnecessarily overly restrictive in these circumstances.

Therefore, for these reasons, if STHL were to be included as exempt development under the *State Environmental Planning Policy (Exempt and Complying Development) 2008* Council believes that all STHL should be included.

An equally acceptable alternative to Council would be a standard clause in the Standard Instrument. The permissibility of STHL in Wingecarribee Shire currently rests in clause 7.11 of Wingecarribee Local Environmental Plan (WLEP) 2010 titled *Short-term rental accommodation*

(1) The objective of this clause is to enable dwellings to be used as holiday accommodation, in certain circumstances, without requiring development consent for such use.

(2) Despite any other provision of this Plan, development consent is not required for the use of a dwelling for the purpose of holiday accommodation if the use of the dwelling for that purpose does not involve the extension or alteration of any part of an existing dwelling or the erection of a new dwelling.

(3) In this clause, holiday accommodation means an existing dwelling in which accommodation is provided on a commercial basis where the maximum period that any person is accommodated is 45 consecutive days (but does not include bed and breakfast accommodation).

The Options Paper notes that there is no consistent definition of STHL across NSW and Council agrees that a standard definition contained within the Standard Instrument would be appropriate and reflect the Standard Instrument's intent of ensuring that all local planning instruments across the state are consistent. The Paper proposes the following definition for STHL: *a dwelling, or part of a dwelling, that provides short-term accommodation, but does not include tourist and visitor accommodation*, and Council has no issue with that definition.

Council would also agree with traditional short-term accommodation providers who are of the view that there is inequality between the regulated accommodation sector and less regulated STHL, giving STHL an advantage by having lower establishment and compliance costs. Council agrees with evidence provided to the Committee that *'this advantage is most stark at the boundary between [STHL] and bed and breakfast operators, who are arguably competing for the same customers'*. Council would support consideration being given to better aligning the regulatory requirements for low impact tourist and visitor accommodation, such as bed and breakfasts, and those for STHL.

Registration

The Options Paper notes that, although the Parliamentary Committee found that the concept of a registration system hosted by a Government agency (rather than an industry body), was supported by most stakeholders including residents in strata buildings, the Committee did not make any recommendation to this effect.

Council would be very supportive of a Registration or Licensing authority, especially as it seems to have general stakeholder support. There may be many benefits to properties being registered and this need not imply any particular regulatory implications, especially if STHL is exempt either under the SEPP or Standard Instrument.

Council's particular reason for supporting a state registration or licencing authority is that it would provide an opportunity for an effective mechanism by which complaints could be registered and investigated, and if necessary, action taken to limit or prohibit the ongoing operation of a STHL.

Council's experience with issues arising from STHL suggests that they fall into two main categories. First are problems related to the number of guests being accommodated. These include the inability of the property to provide adequately for increased traffic generation due to limitations on road infrastructure, or for additional car parking.

Second are problems related to the behaviour of guests. Loud noise late into the night is a prime cause for any complaint, along with littering in and around the property. A consistent concern of residents who do object to STHL is that there is no-one they can contact who is available or willing to address an issue in a timely manner, especially at 3.00AM.

Both types of issues could be addressed by better property management and some mechanism to ensure that genuine complaints are addressed and resolved. As distressing as these impacts are to those directly affected, Council concurs the Parliamentary Committee findings that level of complaint is limited to some 1% of all STHL properties.

Council would not seek a regulatory response which penalised the other 99% of properties, but would rather work from a base which enabled STHL to occur without regulation, but have in place a stronger mechanism which can review complaints and, if substantiated and persistent, can take action to prevent the operation of that property as a STHL.

IMPACTS OF STHL ON HOUSING SUPPLY

The Options Paper reports that there is currently little or no evidence of concentration of ownership, or of any adverse impacts from this practice. The Options Paper also notes that continued growth of STHL is occurring at the same time as the housing market is generally becoming less affordable. However, again the Paper concludes that limited evidence currently available suggests that the impact of STHL on rental availability is negligible.

Council notes these comments, but remains concerned that such adverse impacts on housing supply are occurring as a result of STHL. Being a popular holiday and retirement destination, some dwellings are used for weekends and holidays only in conjunction with also operating for STHL. The popularity of the Shire as a wedding destination also attracts the use of larger dwellings for STHL for wedding parties and guests. The 2016 census indicates that some 13% of private dwellings are unoccupied across the Shire. The following table indicates their location.

Location	Number	%
Berrima / New Berrima	80	13.3%
Bowral	577	11.8%
Bundanoon / Exeter	315	17.1%
Burradoo	181	15.7%
Hill Top / Balmoral / Colo Vale	154	8.8%
Mittagong District	339	8.9%
Moss Vale	365	9.7%
North West District	169	29.3%
Robertson District	350	21%
Wingello SW District	235	23.7%
Yerrinbool	49	8.7%

Of particular concern is the use of the 'Affordable Housing' State Environmental Planning Policy (SEPP) to provide secondary dwellings to use for STHL rather than providing a more affordable permanent housing option as originally intended. The growth in STHL is considered to have had a direct impact on the supply of housing stock within the Shire.

Council notes the Options Paper comments that further factual evidence is required in this regard, but such evidence is only likely to be sought if a potential problem is believed to exist.

Council would appreciate the state government giving attention to this concern, either as a result of this Options Paper, or in a subsequent inquiry.

Council appreciates the opportunity to make this submission.