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Deborah Brill
Director, Housing Policy
Department of Planning and Environment
Email to: STHL@planning.nsw.gov.au

Dear Deborah

Bega Valley Shire Council submission to the Short-term Holiday Letting in NSW Options Paper

Bega Valley Shire Council appreciates the opportunity to review and provide comment upon the Short-Term Holiday Letting (STHL) Options Paper published by the NSW Department of Planning & Environment and NSW Fair Trading.

STHL offers excellent potential to provide supplementary tourist accommodation choice within the Bega Valley Shire, while simultaneously providing additional income opportunities for landowners. The benefits for supporting accessible STHL of residential dwellings are clear. However, it is acknowledged that STHL can have social impacts upon communities and the NSW Government's intention to provide a regulatory framework to assist in mitigating these impacts is acknowledged as a necessity.

It is recognised generally that STHL can impact upon the provision of affordable housing and Council supports the NSW Government's ongoing affordable housing initiatives.

Council's concerns regarding impacts from STHL include:

- use of non-residential structures (such as sheds or dairy bails) for STHL;
- use of bushfire prone land and fire safety, as rapid evacuation from a hazard is known to be more difficult for tourist users than residential users as there is little familiarity with paths of egress from the building or property;
- noise and amenity in residential areas;
- car parking impacts upon neighbours in residential areas;
- higher vacancy rates for established tourist and visitor accommodation providers such as motels/hotels and bed and breakfast accommodation due to supply and demand impacts;
- impact on availability of long-term rental properties as residential accommodation is converted to permanent or semi-permanent tourist accommodation;
- impact on the availability of affordable housing stock as residential units/houses are purchased and converted to permanent "temporary" tourist accommodation;
- the compliance burden upon Councils, as monitoring of uses is resource intensive and it is expensive to prosecute; and
- use of non-quality assured tank water for drinking water supply in rural areas.

Discussion of Matters Raised in the Options Paper

The option to pursue a multi-pronged regulatory framework that provides avenues for low-risk STHL through an exempt development pathway, and higher-impact STHL through a development consent pathway, in combination with a State-level licensing/registration program is recommended. The combined approach is seen as a feasible option to mitigate any increased compliance burden upon Councils, while providing transparency and safety for tourist visitors to the Bega Valley Shire.

Self-regulation

Self-regulation could be useful in combination with a STHL licensing program, whereby STHL accommodation providers are required to provide a NSW Government-issued license in order to list their property on a website.

Possible issues with self-regulation could stem from a lack of will to self-regulate (given the earnings potential for the STHL websites and STHL operators), and therefore any self-regulatory approach should be combined with regular auditing.

Changes to Strata Laws

The option for body corporates to be able to regulate STHL within a strata complex is supported.

Regulation through the Planning System

It is considered that temporary use of residential dwellings does not change the land use definition of the building, whether it is a dwelling house, dual occupancy, secondary dwelling, multi-dwelling housing or shop-top housing. Therefore the proposal to create a standard definition as follows is supported:

a dwelling, or part of a dwelling, that provides short-term accommodation, but does not include tourist and visitor accommodation.

With regard to Clause 6.11 Short term rental accommodation as adopted within the Bega Valley LEP 2013, it is noted that despite being a model clause put forward by the NSW Department of Planning and Environment, the clause has been interpreted differently in various Council areas, and it is recommended further clarification of the meaning of this clause should be provided by the Department. Depending upon the outcome of this policy review, use of the clause may need to be reconsidered.

Categorisation of STHL into exempt development, complying development and development requiring consent would provide consistency with the existing planning framework and is supported. The process of categorisation should take into consideration the regulatory framework currently experienced by Tourist and Visitor Accommodation providers, to provide consistency to

tourism accommodation operators. It is recommended that if adopted, most dwellings could undertake STHL as a temporary, low-risk activity without requiring further development approval from Council.

For clarity, high-risk activities could include: party houses; use of non-habitable structures; inadequate car parking provision; noise and amenity impacts; and contaminated water supply. These matters could be addressed within the exempt framework and development that cannot meet these provisions could be subject to a development application. Dwellings with four bedrooms or less are likely to be lower-risk as most STHL use would be by small groups or families. Car parking is generally not likely to be an issue in this instance. Dwellings larger than four bedrooms are more likely to be targeted for use as multiple family gatherings or party houses and so this has been used as a point of consideration in the proposed exempt framework.

High-risk could also include STHL on bushfire prone land, however if the dwelling can meet the provisions of the exempt development code for STHL it is considered that referral to the NSW RFS could be dealt with as a separate matter under the licensing program.

If the STHL definition is not to include a maximum number of days per year restriction, it is recommended the provisions for exempt and complying development take this into account. The inclusion of days per year restriction would provide the following benefits to stakeholders:

- Clarify the use as *residential accommodation* rather than *tourist and visitor accommodation*, negating the legal requirement to comply with the raft of additional requirements under the Planning System, Building Code of Australia, *Food Act 2003*, *Rural Fires Act 1993*, and *Disability Discrimination Act 1992* that are triggered by permanent tourist accommodation.
- Depending upon the maximum days per year elected (for instance, 60 days), a days per year figure could provide a disincentive to landlords considering evicting their long-term tenants for lucrative STHL income.

Some ideas for how regulation through the planning system could look are provided below:

Exempt Development

STHL less than or equal to 60 days per year is development specified for this code, subject to the following requirements:

- Single dwelling house or secondary dwelling, or if dual occupancy, multi-dwelling housing, shop top housing or residential flat building, STHL is permitted by the Strata Corporation.
- The dwelling contains no more than four bedrooms

- The dwelling is connected to reticulated water, or if not connected to a Council operated reticulated water supply, provision of free bottled water and a sign in the kitchen and bathrooms
- Subject to STHL License obtained from NSW Fair Trading
- Subject to annual fire safety certificate

Development Requiring Consent

All other development that cannot meet the provisions of exempt development and subject to STHL License obtained from NSW Fair Trading.

It is recommended that any regulation through the planning system is combined with a registration/licensing approach.

Registration or Licensing

The option to pursue registration or licensing by an industry body such as NSW Fair Trading (as opposed to self-regulation by industry) is strongly supported.

The major benefit of this approach includes removing the compliance burden from under-resourced Councils, and providing a framework that can be monitored by a separate regulatory body.

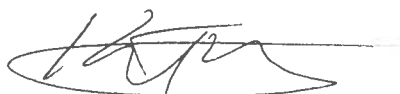
Some ideas for how a licensing program could work are provided below:

- Any person wanting to list a NSW property on a STHL site is required to obtain a license. The license would be provided by the landowner to the advertising body (i.e. AirBNB) in order to be listed on the site.
- The license could be issued by an Industry Body subject to an application and fee (similar to child care and liquor licensing), and subject to a referral to Council to determine whether the subject building has development consent and has been lawfully constructed.
- Councils could provide this referral service for a fee.
- Similar to liquor licensing, STHL licensing could offer different categories of licenses, depending upon the type and extent of STHL.
- The license may need to be reissued annually or every two years (i.e. fire safety inspections for tourist accommodation are required annually).
- The license could be issued subject to: STHL being permitted in the location or zone; the building being lawful (residential building with an Occupation Certificate in place); a BCA compliance check (to address unlawful modifications and fire safety).
- Consideration should be given to bushfire prone areas and whether a referral to the NSW RFS is required (eg. for STHL applications for over 60 days per year).

- Dwellings offering STHL could be required to provide a sign at the front of the property with the host's name and phone number, and the Industry Body's name and contact details to prevent complaints being directed at Council.

Thank you again for the opportunity to comment on the Options Paper. Should you wish to discuss any part of this submission in further detail, please contact Anna Bowman on 02 6499 2384.

Yours faithfully

A handwritten signature in black ink, appearing to read 'K. Tull', with a long horizontal flourish extending to the right.

Keith Tull

Acting Director Planning and Environment