



24 October 2017

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

Dear Sir/Madam

**Submission to Options Paper on Short-term Holiday Letting**

Please find attached submission from Blue Mountains City Council regarding the NSW Government's Options Paper on short-term holiday letting.

Should you have any questions regarding the content of the submission please contact myself or Michelle Maher, Executive Principal Land Use Planning on (02) 4780 5000.

Yours faithfully

A handwritten signature in black ink, appearing to read "Alex Williams".

ALEX WILLIAMS  
Executive Principal – Planning

## Blue Mountains City Council Submission to the Short-term Holiday Letting in NSW - Options Paper

There has been a long history of short-term holiday letting of dwellings in the Blue Mountains. The activity provides a source of income for owners as well as providing economic support through tourism for many towns and villages. However, the recent growth in STHL highlights the need for a well-regulated sector so that environmental and social impacts are minimised. The NSW Government is commended for working to establish an appropriate policy response.

Blue Mountains LEP 2015 allows for short-term rental accommodation to be undertaken without the need for formal planning approval subject to certain pre-conditions being met. Clause 6.29 reads as follows:

- (1) The objective of this clause is to require development consent for short-term rental accommodation, unless certain conditions are met, in which case development consent is not required.
- (2) Despite any other provision of this Plan, development consent is required for short-term rental accommodation.
- (3) Despite subclause (2), development consent is not required for short-term rental accommodation if:
  - (a) the dwelling house contains no more than 3 bedrooms, and
  - (b) the dwelling house is connected to a reticulated sewerage system, and
  - (c) the dwelling house is not located on land identified as “Bush fire prone land” on the Bush Fire Prone Land Map, and
  - (d) the use does not interfere with the amenity of the neighbourhood by reason of the emission of noise or traffic generation.
- (4) In this clause:  
***short-term rental accommodation*** means a dwelling house, or part of a dwelling house, used for the purpose of tourist and visitor accommodation (other than bed and breakfast accommodation or farm stay accommodation) that is available for rent for a period of less than 60 consecutive days.

If the provisions in clause 6.29 cannot be met, development consent via a development application process is required.

This approach is generally working well and should be supported by the NSW Government in any new State policy:

- It allows low-impact STHL to be undertaken in many high-demand areas without overly burdening STHL operators or soaking up Council resources and
- It requires proposed short-term holiday lets with potentially higher impacts to be assessed through the development application process.

The Options Paper details a number of potential policy approaches to deal with localised impacts while allowing the industry to grow including:

- greater industry self-regulation, including registration or licensing of STHL operators
- changes to strata laws
- regulation through the planning system and
- registration or licensing.

The potential for these options to complement or improve the existing approach to STHL in the Blue Mountains is considered below:

### **Self-regulation**

It is acknowledged that greater industry self-regulation would minimise the need for an overly interventionist approach to regulation and would lower the regulatory and enforcement burden placed on Council. However, an effective, transparent, accountable and lasting self-regulation regime cannot be guaranteed and there will always be cases where the planning system has a legitimate role in protecting the public interest. For these reasons, greater industry self-regulation should be encouraged but should not be relied upon as the sole response to the broad range of emerging issues associated with STHL.

### **Amending strata laws**

Strata properties represent a small but growing segment of the STHL industry in the Blue Mountains. The complexity and difficulty associated with managing STHL impacts through strata law is acknowledged. However, moves to ensure owner's corporations can take reasonable steps to limit the impacts of STHL, and recover costs if necessary, are supported.

### **Regulation through the planning system**

Council's existing approach to regulating STHL via clause 6.29 of LEP 2015 ensures the vast majority of short-term holiday lets occur without the need for development consent. The triggers for requiring development consent contained within LEP2015 are generally working well and are based on similar triggers as those flagged within the Option Paper.

However, there is currently no use of complying development as an approval pathway. Below are some observations and suggestions regarding the options contained within the Options Paper, the existing approach established under LEP 2015 and possible opportunities for the use of complying development as a third 'middle-ground' approval pathway.

#### Provide a standardised definition

The Options Paper notes the desirability of having a consistent definition of STHL. A standardised definition of STHL is essential for consistent and effective regulation across the State. The existing definition of 'short-term rental accommodation' within LEP 2015 is working well. By including the use as a type of tourist and visitor accommodation and stipulating a maximum length of stay there has been little confusion when applying the definition. Further, by defining STHL as a 'dwelling house, or part of a dwelling house' the use of secondary dwellings, apartments or multi-dwelling housing as STHL is discouraged. This reduces concern that STHL will 'soak up' new dwellings therefore reducing housing affordability or availability of rental accommodation. It also makes it more difficult for STHL to occur in potentially higher impact settings such as residential flat buildings.

Some argue that as a form of tourist and visitor accommodation, short-term holiday lets should be required to comply with BCA standards for Class 3 buildings. These standards are typically more stringent than those which apply to standard dwellings. Should short-term holiday lets be considered as Class 3 buildings, the compliance burden on STHL operators would likely discourage the use of dwellings for STHL. The Options Paper proposes to exclude STHL from the broader tourist and visitor accommodation definition. This may remove doubt regarding the BCA classification of dwellings used for STHL.

The suggested definition within the Options Paper does not include the term 'dwelling house' and instead refers to '... a dwelling, or part of a dwelling ...'. Such a change to the definition would mean a broader range of dwellings could potentially be made available for use as STHL, such as secondary dwellings, dual occupancies, apartments and multi-dwelling housing. From a local impact management perspective, this might be appropriate if other impact management requirements, as explored in the Options Paper, are met. However, as a significant proportion of new dwellings in the mountains over the coming years are likely to be secondary dwellings, dual occupancies, apartments, multi-dwelling housing and the like, the use of these dwelling types for STHL risks reducing the supply of housing for first-home buyers and long-term renters and may impact affordability. The stated policy intention of these forms of alternative housing is to meet the changing housing needs of the Blue Mountains community, not to provide STHL.

Further, by not stipulating what constitutes 'short-term' the suggested definition within the Options Paper has the potential to cause confusion when applying the definition. For this reason, it is suggested that a maximum length of stay be included within the definition of STHL.

#### Regulate the length of stay

The definition of short-term rental accommodation under LEP 2015 effectively places a limit on the length of stay for short-term holiday lets by defining the use as being a dwelling that 'is available for rent for a period of less than 60 consecutive days'. As noted above, this helps avoid confusion when defining the proposed land use.

There may be some merit in applying a maximum stay of 90 days. After 90 days there is an argument that the use is no longer for short-term holiday letting and that the use should be subject to the provisions of the *Residential Tenancies Act 2010*.

#### Regulate the number of bedrooms

The Options Paper flags using the number of bedrooms in a holiday let as a trigger for requiring development approval. The presumption here is that the number of bedrooms influences the number of guests and the number of guests is a major determinant of whether the holiday let will create amenity issues or other impacts.

As noted above, LEP 2015 uses the number of bedrooms in a holiday let (more than three bedrooms) as a trigger for requiring development consent. However, problems have arisen with 'party houses' and adverse impacts are associated with short-term holiday lets over 8 guests. It is not uncommon for some short-term holiday lets to have multiple rooms of 4 bunks or more, resulting in capacities exceeding twelve people in a three bedroom house.

The number of people staying in a holiday let is the principal factor determining whether other issues become problematic including:

- Residential amenity such as noise and parking issues
- Evacuation risks in times of emergency and
- Impact on on-site sewerage systems.

Limiting the number of overnight guests, rather than the number of bedrooms, would allow better management of these risks and impacts. It would also give Council an avenue for compliance action if necessary, especially in instances where amenity is being negatively impacted. Setting the guest limit could form part of the letting agreement.

Such person based limits are already used within the Standard Instrument format for other land uses.

- Child care centre does not include services “provided for fewer than 5 children”
- Home-based child care is not to “exceed 7 children.....including no more than 5 who do not ordinarily attend school”
- Health consulting rooms are not to be used by “more than 3 health care professionals”
- Home business cannot include “more than 2” employees who are not residents of the property
- Home occupation (sex services) restricts the provision of sex services to “no more than 2 permanent residents of the dwelling”.

#### Presence of hosts

The regulation of STHL via LEP 2015 currently does not utilise the presence (or absence) of hosts as a trigger for requiring development approval. However, it is recognised that the presence of a host on-site has a big influence on the impact of a holiday let on residential amenity, particularly noise. The presence of a host also has the potential to reduce the evacuation risk in times of emergency by allowing the local knowledge of the host to inform the behavior of guests.

The Options Paper notes that the Parliamentary Committee recommended that short-term letting of rooms in any property where the host is present be permitted as exempt development. However it is considered that there are some circumstances, such as STHL on bushfire prone land, where this may not be appropriate.

Subject to satisfactory arrangements being negotiated with the Rural Fire Service (RFS), this may be one area where STHL could be pursued as complying development. For example, if it could be demonstrated that the host will be present and other requirements are met, including those determined by the RFS, it may be appropriate to allow a certifier to issue a complying development certificate rather than require the use to be subject to a full development application process.

#### **Registration or licensing**

As with greater self-regulation, a registration or licensing system is supported as it will enable many issues to be managed without the need for regulatory intervention via the planning system. A registration and licensing system should complement the planning system by dealing with issues common to most, if not all, STHL properties particularly those relating to the on-going management of the property. However, some issues are best left to the planning system, particularly those requiring a more considered impact assessment at the point where the use is proposed to commence.

#### **Broader industry considerations**

The potential impact that STHL has on the level of affordable rental housing stock and the viability of traditional accommodation providers in areas of high-demand such as the upper Blue Mountains is a significant concern.

Consistent with the recommendations of the Parliamentary Committee, it is recommended that the NSW Government proactively consult with relevant stakeholders and collect data on the holiday industry generally, and short-term letting in particular, to assess its impact on housing affordability and traditional forms of holiday accommodation.