

Director - Housing Policy
NSW Department of Planning & Environment
GPO Box 39
SYDNEY GPO PRIVATE BOXES NSW 2001

By email only: STHL@planning.nsw.gov.au

Dear Sir/Madam

SUBMISSION
Short Term Holiday Letting in NSW – Options Paper

The opportunity to comment on this Options Paper is welcomed by Council. The Options Paper was reported to Council's Development Committee on 10th October 2017 and it was resolved (under delegation) that Council:

Make a submission to the NSW Government on the Options Paper: Short Term Holiday Letting in NSW consistent with the content of the report and continue to be involved as required in any outcomes that eventuates.

As such this submission is consistent with the content of the Council report and a copy of Council's submission to the NSW Parliamentary Inquiry is also attached given that it contains information that is relevant to this matter (**Attachment 1**).

Opening Comments

Shoalhaven is located on the south coast of NSW and is a popular holiday destination within a 3 hour drive of Sydney and Canberra. Shoalhaven is the most visited tourist destination in NSW outside Sydney (3.2 million visitors). As a result the overall tourism industry is a large and important driver in the Shoalhaven economy with an estimated spend of approximately \$868 million, contributing to an estimated 7,400 jobs.

Short term holiday rentals/letting or holiday homes have been a feature of the tourism in Shoalhaven for a long period. This important form of accommodation makes up a large part of the overall tourism accommodation supply in Shoalhaven. It was previously estimated that there could be in excess of 4,000 holiday homes in the City.

Data from the Tourism Research Australia's National Visitor Survey (March 2017) for the three (3) years ending September 2016 relating to accommodation types used by domestic overnight visitors indicates that approximately 60% of domestic overnight visitors to Shoalhaven stayed in what could be termed 'holiday homes'.

The following table provides an overview of this research data for Shoalhaven compared to Regional NSW and Coastal NSW:

	Shoalhaven	Regional NSW	Coastal NSW
Rented House/ apartment/Unit	17%	9%	11%
Own Property (e.g. holiday house)	11%	4%	5%
Friend or relatives property	32%	40%	40%
Total	60%	53%	56%

This data gives an insight into the key role that this type of accommodation plays in the Shoalhaven tourism economy. As such, Council has continued to take an active role in research, advocacy and any regulatory changes related to this form of accommodation.

Current Planning Controls

Court decisions related to cases in Sydney involving the short term rental of residential apartments deemed that the practice was a commercial activity and was thus prohibited. Specifically a decision in 2003 involving Sutherland Shire Council (a unit in a complex at Cronulla) lead Council to amend its Local Environmental Plan (LEP).

Given the importance of this form of accommodation to Shoalhaven, Council took the step of amending its then Shoalhaven LEP 1985 to enable the practice of the short-term rental of existing residential dwellings to continue without any legal uncertainty. This was done via an LEP amendment in 2006 that included a provision that made the short-term rental of dwellings permissible without consent. At the time, Shoalhaven was understood to be the only Council to take this step.

As part of the move to the new Standard LEP Instrument format the intent of the provision was retained and the current Shoalhaven Local Environmental Plan (LEP) 2014 states that consent is not required for the short term rental of a dwelling unless there is an impact on neighbourhood amenity.

The current LEP2014 clause reads as follows:

Clause 7.13 Short-term rental accommodation

- (1) The objective of this clause is to ensure that residential accommodation may be used as tourist and visitor accommodation for a short term without requiring development consent.*
- (2) Despite any other provision of this Plan, development consent is not required for the use of residential accommodation for the purposes of tourist and visitor accommodation (except backpacker accommodation or bed and breakfast accommodation) if the use is only short term and does not interfere generally with the amenity of the neighbourhood in any way, including by noise or traffic generation.*
- (3) In this clause, short-term means for a maximum period of 45 consecutive days in any 12 month period.*

The development standards associated with this clause are provided in Chapter G16 'Short Term Rental Accommodation' of the Shoalhaven Development Control Plan (DCP) 2014 and addresses issues particularly relating to the impact on neighbourhood amenity.

This chapter generally only applies once a development application is required to be lodged, such as instances where there is an unacceptable impact on the amenity of the neighbourhood. The DCP Chapter can be viewed on the internet at:

<http://dcp2014.shoalhaven.nsw.gov.au/sites/dcp2014.shoalhaven.nsw.gov.au/files/Chapter%20G16.pdf>

The key difference between the original and current LEP provisions is that Council can step in and take action if warranted against problematic holiday homes or short term rentals.

We have not formally used this provision yet to its fullest extent to require development consent in individual circumstances. However, its general intent has been utilised. For example, earlier this year Councils Compliance Section wrote to the owners of some properties in the Vincentia area following concerns being raised about amenity impacts (noise etc.) and drew their attention to requirements of Clause 7.3 of the LEP.

Emerging Rental Platforms

Since Council first amended its LEP in 2006 to enable the practice to continue without the need for consent, it is acknowledged that the landscape has changed considerably with the emergence and growth of on-line booking platforms and the 'sharing' economy.

This has seen platforms such as Airbnb, Stayz etc. play an increasing role in the letting of holiday homes in Shoalhaven. The use of these platforms has grown in recent years and is predicted to grow into the future.

As an indication of the scale and growth of these platforms, the following is an indication of the number of listings in Shoalhaven on two of these platforms:

Stayz		Airbnb	
2015 Listings	2077	2016 Listings	483
2016 Listings	2127	2017 Listings	1062

Note: the data in this table was obtained from *Stayz* and *Inside Airbnb*.

Prior to the emergence and growth of online platforms most holiday homes in Shoalhaven were let or rented out through local real estate agents or directly by landowners. This ensured that there was a local presence or someone who could be directly approached or contacted if neighbours or others had issues, for example noise from the night before. The challenge now is that many of the properties are rented via the internet and there is no local management presence should immediate issues need addressing.

Shoalhaven will be part of a new research project being undertaken for the Australian Coastal Councils Association into appropriate planning responses to the impacts of online short term holiday rental platforms on coastal communities. The research team will be headed by Professor Nicole Gurrin from the University of Sydney.

The key outputs for this project include:

- A report for participating councils which identifies appropriate planning responses, tools and strategies that can be adopted by coastal councils to address concerns in relation to the impacts of online short term holiday rental platforms;
- A guideline checklist, in a form developed in consultation with participating councils, which provides a practical framework to assist council's decision-making in relation to these issues; and

- *Case studies which illustrate both the range of issues affecting particular stakeholders in different coastal contexts, as well as the application of appropriate planning responses to the impacts of on-line short term holiday rental platforms on these local communities.*

It is envisaged that the research will be completed in the first half of 2018 and as such could help inform the Governments options in this regard and Councils response to them.

Shoalhaven Destination Management Operational Plan

This plan was adopted by the Shoalhaven Tourism Advisory Group on 28 August 2017. The plan guides tourism in Shoalhaven and contains a range of detail that is relevant in this regard.

The plan recognises that a weakness is the high number of holiday properties, which are difficult to engage, and absent holiday home owners impacting on neighbourhoods. One of the threats is the potential that State legislation and cross government responsibilities can prevent some strategic desirable outcomes e.g. review of short term holiday accommodation regulation. It is also acknowledged that holiday homes generally not requiring consent is also a strength.

Holiday Homes - Issues

Council's submission to the NSW Parliamentary Inquiry (**Attachment 1**) highlighted a number of issues and matters that are relevant in this regard including:

- Compliance issues – pools, fire safety etc.
- Amenity issues and resolving complaints – noise, car parking, rubbish etc.
- Local infrastructure impacts – rubbish being dumped in public litter bins etc.
- Taxation - benefit from funds spent on tourism marketing and resultant growth without making a contribution.
- Use of holiday homes and/or adjacent parks and reserves for large functions such as weddings.
- Competition with other forms of tourist accommodation – not a level playing field.
- Impact of 'party houses'.

It has also been suggested that the prevalence of short term holiday rentals also impacts on housing availability and affordability, however whilst housing affordability is an issue in Shoalhaven, the correlation has not been directly confirmed or quantified at present.

Options Paper – Comments on Options

The following comments are offered on the four options presented in the Options Paper:

Option 1 - Industry Self-Regulation:

A Holiday Rental Code of Conduct was previously launched in 2012 by a number of industry groups and Council previously distributed a flyer with rates notices promoting the use of the code. Council's submission to the NSW Parliamentary Inquiry (**Attachment 1**) refers to these and contains copies of them.

Whilst industry self-regulation is always helpful, the take up of the current Code of Conduct appears to have been limited and the ability to enforce things through this approach is limited given its optional non-binding nature. As such this option is likely have a limited impact.

Option 2 - Strata Regulation:

It is acknowledged that strata situations are somewhat different to standalone dwellings, given the number of residents/occupants, their closeness and the shared property element. As such it may be appropriate for owner's corporations or bodies to be able to have a say in limiting or prohibiting STHL in their complex dependent on its nature, circumstances etc.

Option 3 - Planning Regulation:

This option is perhaps the closest to the current provision that Council has in its LEP related to STHL. Councils current LEP Clause is effectively an "exempt" development type provision, given that the use generally does not need consent. It does however provide Council with the opportunity to step in and require development approval where the use impacts on neighbourhood amenity in any way including noise and traffic generation.

The current LEP clause also defines "short term" as a maximum period of 45 consecutive days in any 12 month period. Actually measuring the length of stay is however difficult to quantify on the ground and as such this type of provision may not actually add much value.

Restricting use to the number of bedrooms has some merit and would help control overcrowding or excessive use and stop additional unauthorised sleeping space being constructed or used within existing dwellings e.g. if a dwelling is approved at 4 bedrooms (2 double and 2 single) then no more than 6 people should stay.

Option 4 – Registration:

This option has some potential as it could require a certain minimum standard or compliance requirements to be met. It would also potentially enable the properties being used for this practice to be accurately identified and as such levied to also contribute to tourism marketing and the like. However, as noted in the Options Paper licencing/registration is closely linked to planning requirements and as such, whilst NSW Fair Trading may be identified as a potential implementation agency (which is supported), it is likely that Council could still wear a considerable burden in this regard and this is a concern.

Conclusions

The bulk of the properties in the city that are used for STHL largely create no direct issues and given the important tourism role this form of accommodation plays, Council has not felt the need or had the appetite to fully regulate holiday homes or STHL in Shoalhaven.

This position does not appear to have changed, although the need and ability to resolve problematic properties is acknowledged. The current LEP provision allow Council to step in where there are properties that are impacting on the amenity of a neighbourhood.

Council's current approach is still favoured as it means that we do not have the administrative burden of regulating every STHL in the City, but can regulate problematic properties via a development approval if necessary.

Our current approach appears to fall broadly under the planning regulation option in the Options Paper, specifically the exempt or complying development approach. It is suggested that a set of rules could be established that development needs to abide by or be consistent with so as not to require development approval. This could relate to consistency with the current approval for the dwelling (limit number of occupants to be consistent with the number of bedrooms, car parking limited to the number of spaces provided etc.) or specific requirements such as on site signage to nominate a point of contact if issues arise. This could ensure that practice continues in a manageable manner, without Council having to consider approvals for every single STHL. It is also acknowledged that it may be appropriate for strata situations to be able to use their own rules to restrict/manage STHL.

To ensure consistency, but also not necessarily require one set approach across the State, the NSW Government should provide a suite of options that Councils can choose from and utilise. Such as standard LEP provisions for the different approaches. This will at least ensure that there is consistency depending on what approach a Council wishes to take based on the nature of their local area, recognising the distinct differences between the issue in city and regional areas.


Given the significance of STHL to tourism in Shoalhaven, Council has had an ongoing and active involvement in this issue and still supports our current approach or one that is similar (essentially "light-touch") where the vast majority do not need consent or approval, but problematic ones can be regulated.

We look forward to the NSW Government considering our comments and are happy to provide further feedback as the options in this regard are worked up. Council requests the opportunity to comment on the detail that might arise from this Options Paper to ensure that it is workable at a local level.

Thank you again for the opportunity to provide feedback in this regard.

If you need further information about this matter, please contact me on (02) 4429 3355. Please quote Council's reference 27521E (D17/355753).

Yours faithfully



Gordon Clark
Strategic Planning Manager
27/10/2017

Encl: Attachment 1 – Council Report and Council's Submission to the NSW Parliamentary Inquiry

c.c.	The Hon. Gareth Ward, MP	kiama@parliament.nsw.gov.au
	The Hon. Shelley Hancock, MP	southcoast@parliament.nsw.gov.au
	The Hon. Richard Colless, MLC	rick.colless@parliament.nsw.gov.au
	Mr Justin Field, MLC	Justin.field@parliament.nsw.gov.au
	The Hon. Paul Green, MLC	paul.green@parliament.nsw.gov.au
	The Hon. Donald Harwin, MLC	office@harwin.minister.nsw.gov.au

REPORT OF GENERAL MANAGER

DEVELOPMENT COMMITTEE

TUESDAY, 3 NOVEMBER 2015

PLANNING AND DEVELOPMENT

ITEMS TO BE DEALT WITH UNDER DELEGATED AUTHORITY

1. **Inquiry into the adequacy of the Regulation of Short-Term Holiday Letting in NSW – Proposed Submission** **File 27521e**

SECTION MANAGER: Gordon Clark.

PURPOSE:

Consider Council's proposed submission to the State Government Inquiry into the adequacy of the regulation of short-term holiday letting in NSW.

RECOMMENDED, in accordance with the Committee's delegated authority from Council, that the Committee send the submission attached to this report to the NSW Parliament Legislative Assembly Committee on Environment and Planning for consideration in their Inquiry into the adequacy of the regulation of short-term holiday letting in NSW.

OPTIONS

1. Adopt the recommendation. This is the preferred option to ensure Council will make a submission to the inquiry by 9 November 2015, so that Council is able to contribute matters for consideration by the inquiry regarding short term rental of holiday homes, which form a significant component of the holiday accommodation in Shoalhaven.
2. Revise and amend the draft submission to the inquiry. If any items are removed or changed these issues will not be provided to the Inquiry to be addressed. It is important that the issues identified in Council's submission can be considered and addressed by State Government.

DETAILS

Overview

Shoalhaven is the most visited LGA outside of Sydney and encompasses an estimated 4000+ holiday homes. The tourism industry is a large and important driver in the Shoalhaven economy with an estimated spend of between \$623 million and \$750 million.

The NSW Parliament's Legislative Assembly Committee on Environment and Planning is currently conducting an inquiry into the adequacy of the regulation of short-term holiday

letting in NSW. Council has been invited to make a submission to the inquiry. The closing date for submissions is 9 November 2015.

- # The proposed Council submission (summarised below and detailed in **Attachment “A”**) addresses the terms of reference for the inquiry, which are:

That the Committee inquire into and report on the adequacy of the regulation of short-term holiday letting in NSW, with particular reference to:

- a) The current situation in NSW and comparison with other jurisdictions*
- b) The differences between traditional accommodation providers and online platforms*
- c) The growth of short-term and online letting, and the changing character of the market*
- d) The economic impacts of short-term letting on local and the state economies*
- e) Regulatory issues posed by short-term letting including customer safety, land use planning and neighbourhood amenity, and licensing and taxation*
- f) Any other related matters.*

Relevant Sections and Groups within Council have provided feedback in this regard for inclusion in Council's proposed submission.

Proposed Submission to the Inquiry

- # The proposed Council submission addresses the terms of reference for the inquiry (**Attachment “A”**)

The following key issues will be raised in the submission:

- Support the continuation of the existing practice of short-term holiday letting of residential dwellings in Shoalhaven given that it is an important established element of our tourist accommodation market;
- Key outcomes of the Sea Change Taskforce Research Project (2013) relevant to Shoalhaven are presented as background.
- Small proportion of the homes used for short-term holiday letting create an issue. Therefore, do not see the need to require development consent for the use of homes for short-term holiday letting, unless the use interferes generally with the amenity of the neighbourhood. A self-regulatory approach to the continued use of short-term holiday letting of residential homes is favoured.
- Council has taken a proactive approach to retaining the existing practice to enable the use of homes for short-term holiday letting in Shoalhaven by the inclusion of *Clause 7.13 Short-term rental accommodation* in Shoalhaven Local Environmental Plan (LEP) 2014 which is supported by development standards contained in chapter *G16: Short Term Rental Accommodation* in Shoalhaven Development Control Plan (DCP) 2014;

-
- The current inconsistent approach to the regulation of the use of homes for short-term holiday letting across NSW Councils is creating uncertainty for all stakeholders;
 - Rulings by the Land and Environment Court have added to uncertainty as the Court has found that the use of a residential dwelling for short-term holiday letting was unlawful in a number of cases as it was considered to be a commercial activity within a residential zone where commercial uses are prohibited. Council initially resolved this issue in Shoalhaven during 2006 by inserting a provision allowing the use to continue without development consent in Shoalhaven LEP 1985;
 - The operation of short-term holiday letting through online platforms such as Stayz and Airbnb instead of a local management agent, such as a real estate agent, has the potential to create an 'absentee' issue when problems or complaints arise the require immediate or urgent resolution and also for practical issues.
 - The availability of holiday homes, combined with the growing popularity of online sites, have provided an opportunity for this region to host many more people than would otherwise be possible;
 - Whilst there are ongoing issues that need to be addressed, the impact of short-term holiday letting on Shoalhaven's economy is significant and needs to be taken into consideration as any outcome that may potentially lead to a reduction in holiday homes would significantly impact our tourism economy;
 - Regulatory and other issues caused by short-term holiday letting generally include:
 - Customer safety – ensuring compliant use of the building, adequate maintenance of the building and swimming pool compliance;
 - Land use planning and neighbourhood amenity issues including ensuring compliance with relevant development standards given that *Clause 7.13 Short-term rental accommodation* in Shoalhaven LEP 2014 states that no consent is required for short term rental of holiday homes unless there is an impact on neighbourhood amenity. Also dealing with and resolving complaints related to noise, car parking, dumping of rubbish etc.
 - Taxation – holiday homes generally do not contribute to tourism marketing budgets in the way traditional accommodation providers do, but they benefit from spending and this creates an equity issue;
 - Other related matters including:
 - Dumping of rubbish by holiday rentals in public litter bins; and
 - Use of holiday homes and/or adjacent parks and reserves for large functions such as weddings.

At the recent Local Government NSW Conference Lake Macquarie City Council drew delegate's attention to a bushfire compliance issue in regard to the short term tourist rental of a dwelling. As part of their Planning Proposal to regulate holiday rentals they received advice from the NSW Rural Fire Service (RFS) that holiday rentals are considered to be a 'special fire protection purpose' and as such would require appropriate approvals if located on 'bushfire prone land'. This interpretation has the potential to have significant impact if it is applied across the state. Given that the practice

does not require development consent in the Shoalhaven how this interpretation impacts would need to be considered.

As a result, at the Local Government Conference the following motion was carried:

- *That LGNSW lobby's the NSW government, and in particular the Minister for Planning, to prepare state wide definitions, policy and planning guidance to introduce consistency and manage risk issues raised by RFS, for managing short term rental accommodation in NSW.*

The need for a consistent approach to short term holiday rentals in NSW is strongly supported, as is the need to clarify, and if needed, address issues such as those raised by the RFS.

It is important that Council make a submission to the inquiry as the short-term rental of holiday homes is a significant form of holiday accommodation in Shoalhaven and the issues identified need to be considered and potentially consistently addressed by the State Government.

CONCLUSION

Should the recommendation be adopted, the submission will be made to the inquiry. Further reports will be provided when the outcomes of the inquiry are ultimately known.

COMMUNITY ENGAGEMENT:

Interested members of the public can make personal submissions to the Inquiry before Monday 9 November 2015.



Bridge Rd, Nowra NSW 2541 02 4429 3111
Deering St, Ulladulla NSW 2539 02 4429 8999

Address all correspondence to
The General Manager, PO Box 42, Nowra NSW 2541 Australia
DX5323 Nowra Fax 02 4422 1816

Council Reference: 27521E (D15/302579)

Committee on Environment & Planning
By email only: environmentplanning@parliament.nsw.gov.au

Attention: The Chair

Dear Sir/Madam

Submission - Inquiry into regulation of short-term holiday letting

Council welcomes the opportunity to provide a submission to this inquiry, given the importance of this type of holiday accommodation in Shoalhaven.

General Comments

Shoalhaven is located on the south coast of NSW and is a popular holiday destination located within a 3 hour drive of Sydney and Canberra. Shoalhaven is the most visited area outside Sydney and our area has an estimated 4000+ holiday homes. The tourism industry is a large and important driver in the Shoalhaven economy with an estimated spend of between \$623 million and \$750 million.

Council generally supports the continuation of the existing practice of short-term rental of residential dwellings in Shoalhaven. This type of accommodation has a long history in Shoalhaven and is an important element of the tourist accommodation market, particularly in the coastal settlements, Kangaroo Valley, Berry and other popular tourist destinations.

Sea Change Taskforce Research Project

Council contributed to and took part in a Sea Change Taskforce (now Australian Coastal Councils Association) research project in 2012 by the University of Adelaide called '*Time and tide: moving towards an understanding of temporal population changes in coastal Australia*' - Graeme J Hugo and Kevin R Harris (April 2013). This research project examined key data from:

- Australian Bureau of Statistics (ABS) Census 2011;
- Survey of Tourist Accommodation (STA) by ABS regularly;
- A generic survey of holiday home property owners within the participating LGA's including Shoalhaven (April 2012).

Of specific relevance to short-term holiday letting in Shoalhaven:

- It was found that every 1,000 holiday homes generate a temporary population of more than 2,000 persons in Shoalhaven.
- When asked the main reason/s for purchasing their sea change property, 'investment/future' was the second highest reason listed, for all LGA's;
- Specifically for Shoalhaven – the most common reason/s given for purchasing their property were primarily 'Holidays' (22%) which was followed by 'Location' (13.2%) which was closely followed by 'Investment' (11.8%);
- Respondents were asked about the usage of their property by Renters and Tenants, specifically details of the number of days their property was rented in each of the preceding 12 months. Levels of rental were found to be lower during the winter months with pronounced peaks in the summer holiday period up to the end of March;
- The survey asked non-resident property owners whether their property was available for rental in 2011 and how many days each month. Of the responses received, 62 properties were rented out during 2011, for a total number 10,284 days. The key rental season was found to be over the period October through to April. In Shoalhaven the number of days rented peaks from November through to January.

Given that this research is specifically related to holiday homes it may be of interest to the inquiry and can be accessed on the Internet at <http://coastalcouncils.org.au/portfolio/landmark-study-on-missing-coastal-populations-now-available/>

Council's more detailed comments are provided below under the terms of reference for the inquiry.

(a) *The current situation in NSW*

Currently Councils across NSW appear to vary greatly in their approach to short-term holiday letting. This inconsistency creates uncertainty for all stakeholders.

Examples of the various types of regulation that have been adopted by various Councils include:

- Prohibiting the use of homes for short-term holiday letting in residential zones;
- Permitting the use of homes for short-term holiday letting with or without development consent in residential zones;
- Requiring homes used for short-term holiday letting to be registered with the relevant council or authority;
- Self-regulation by the industry e.g. Council/organisations providing policies and codes such as the 'Holiday Rental Code of Conduct' for the guidance of owners, managers and occupants of holiday rental properties.

Outcomes of Court Cases

Further adding to this uncertainty are decisions by the Land and Environment Court. The Court has ruled that the use of dwellings for holiday or short-term accommodation was unlawful in a number of cases. The outcome of these cases has affectively classified short term holiday lettings as a commercial activity and thus effectively banning the practice in residential or other

land use zones where commercial uses are prohibited. The cases that have created this legal precedent include, among others:

- The Council of the Municipality of North Sydney v Sydney Serviced Apartments Pty Ltd (1992) – NSW LEC 43;
- Sutherland Shire Council v Foster & Anor (2002) – NSW LEC 2;
- Gosford in 2013 - Dobrohotoff v Bennic – NSW LEC 61.

In media responses to the earlier cases, it was indicated that the State Government may consider this issue as part of the Planning Reforms. Council was aware that this was likely to take some time to come to fruition, and given the importance of this issue to Shoalhaven, Council took the prudent step of amending its LEP to enable the practice of the short-term rental of existing residential dwellings to continue without any legal uncertainty. This was done via an LEP amendment in 2006 that made the short-term rental of dwellings permissible without consent. At the time, Shoalhaven was understood to be the only Council to take this step.

(b) The differences between traditional accommodation providers and online platforms

The continued popularity of online platforms, has made accessibility to a diverse range of holiday homes available to the everyday person, combined with the ability to rate and review properties so the average consumer is able to make more educated, informed and quicker choices than ever before.

However, holiday home owners often have issues with customers (failure to pay, misalignment of expectations etc.) and feel like there are few resources available for them when help or advice is needed which may be exacerbated for owners operating through online platforms.

While traditional accommodation providers typically operate through a local management agent such as a real estate agent, online platforms allow owners to operate individually and from a distance. This has created an 'absentee' issue when a problem arises, or creates practical issues such as ensuring rubbish bins can be put out and collected, which in turn leads to dumping of rubbish in bins in public parks when rental periods end, which is often a problem in Shoalhaven.

The 'absentee' management issue could be addressed in a number of ways, including:

- Online providers being required to provide a 24-hour local contact for management and complaints to the lessee but also to adjoining neighbours and/or authorities who may need to contact the owner should a problem arise;
- There could also still be a role for a traditional local management agent who could respond to complaints or management issues that may arise from a property listed for lease on an online platform.

(c) The growth of short-term and online letting, and the changing character of the market

One of the largest issues facing the tourism industry sector in Shoalhaven is the availability of accommodation, with a growing consumer trend appearing towards boutique accommodation. The availability of holiday homes, combined with the growing popularity of online sites, have provided an opportunity for the region to host many more people than would otherwise be possible. Given Shoalhaven's proximity to both Sydney and Canberra it is likely that holiday homes will continue to be a larger and significant component of the local tourism accommodation market.

(d) The economic impacts of short-term letting on local and the state economies

Whilst there are some ongoing concerns in regards to holiday homes that need to be addressed, overall the positive impact on Shoalhaven's economy is significant and needs to be acknowledged. Any outcome that could potentially lead to a reduction in the availability of holiday homes would have a significant impact on our tourism economy.

Emphasis also needs to be placed on the local shopping spend from holiday accommodation users. Traditionally these visitors are more likely to spend a higher amount, dine out often and shop at local centres in a different way to those who stay in hotels. Therefore, overall holiday homes are a major contributor to the Shoalhaven economy.

(e) Regulatory issues posed by short-term letting including customer safety, land use planning and neighbourhood amenity, and licencing and taxation

Customer Safety & Compliance

The safety and maintenance of homes is an ongoing concern for all stakeholders, with some operators failing to meet the expectations of the customers.

There are potential issues with houses and swimming pools from a safety and insurance perspective. Any confusion as to the requirements for pools or non-compliance with pool safety creates a risk to customer safety. From 29 April 2013, all pool owners in New South Wales have been required to register their swimming pools on a state-wide register and penalties will apply for failing to register. How the requirements relate to short-term holiday rentals has the potential to be confusing as the requirements for pool owners are only stipulated for persons either selling or leasing their property and for owners of tourist and visitor accommodation. Short term holiday rentals, however, may not clearly fit within these categories. For example, pool owners are required to obtain a *Swimming Pool Compliance Certificate* from their local authority before they can sell or lease their property; does short-term holiday letting trigger this requirement?

Given that the use of homes for short-term holiday letting does not generally require development consent, this creates the potential for a dwelling to be used contrary to the existing consent for the dwelling. For example, the lower levels of a dwelling may have been approved as a non-habitable area, due to the risk of flooding and this has not been adhered to by the owner (eg. additional bedrooms have been created).

Any proposal to introduce planning controls or restrictions on the number of beds that can be produced creates compliance problems. It raises the question of how Council can inspect, monitor and ensure compliance with controls when the subsequent use of the dwelling does not require development consent.

Land Use planning and neighbourhood amenity

Given that short-term holiday rentals have been a feature of the accommodation market in Shoalhaven for a long time, Council amended its LEP in 2006 to enable the practice to continue. The clause in the current Shoalhaven Local Environmental Plan (LEP) 2014 (below) has evolved and states that no consent is required for short term rental of holiday homes unless there is an impact on neighbourhood amenity.

Clause 7.13 Short-term rental accommodation

- (1) *The objective of this clause is to ensure that residential accommodation may be used as tourist and visitor accommodation for a short term without requiring development consent.*
- (2) *Despite any other provision of this Plan, development consent is not required for the use of residential accommodation for the purposes of tourist and visitor accommodation (except backpacker accommodation or bed and breakfast accommodation) if the use is only short-term and does not interfere generally with the amenity of the neighbourhood in any way, including by noise or traffic generation.*
- (3) *In this clause, short-term means for a maximum period of 45 consecutive days in any 12 month period.*

Development standards associated with this clause are provided in Chapter G16 'Short Term Rental Accommodation' of the Shoalhaven Development Control Plan (DCP) 2014 and addresses issues particularly relating to the impacts on neighbourhood amenity (<http://dcp2014.shoalhaven.nsw.gov.au/sites/dcp2014.shoalhaven.nsw.gov.au/files/Chapter%20G16.pdf>). However, this chapter generally only applies once a development application is required to be lodged, such as in instances where there has been an unacceptable impact on the amenity of the neighbourhood.

At the time Council introduced the original clause permitting the use of short-term accommodation without consent into the LEP, it also provided 'Advisory Guidelines for Short Term Holiday Rental in Residential Areas' to be used by owners of rental properties and others; however, these guidelines are no longer produced. In 2012, Council considered the *Holiday Rental Code of Conduct* developed by the industry stakeholder group for use by owners, managers and occupants of holiday rentals and provided copies of this voluntary code to known holiday home rental owners and managers in Shoalhaven.

In 2011/2012 Council also distributed the attached flyer re "Managing Rental Holiday Accommodation" to all landowners/ratepayers with its Annual Rates Notice. The flyer draws on the voluntary code and encourages owners to consider using it.

Council may consider an amendment to Shoalhaven LEP 2014 and Shoalhaven DCP 2014 controls in relation to short-term holiday letting regard once the inquiry has been completed and if the State Government determine there is the need for a consistent policy position throughout NSW. The need for a consistent planning approach to short term holiday letting would be welcomed.

Council strongly supports the motion passed at the recent 2015 NSW Local Government Conference that:

"LG NSW lobbies the NSW government, and in particular the Minister for Planning, to prepare state wide definitions, policy and planning guidelines to introduce consistency and manage risk issues raised by the RFS, for managing short term rental accommodation in NSW."

In this regard it is essential that clarity is provided regarding whether or not the practice is deemed to be a 'special fire protection purpose' under the NSW Fires Act 1997 and if so, what is the impact of this, particularly where development consent is not required for the practice.

Responding to Complaints

When the use of a dwelling as a holiday rental is consistently impacting upon the amenity of the neighbourhood in any way, Council can take action including requiring a development application to be lodged. This application would be assessed against the development standards contained in *Chapter G16 'Short Term Rental Accommodation'* of Shoalhaven DCP 2014. This may result in an application being required to comply with particular conditions of consent or being refused.

Council receives consistent complaints regarding a small proportion of holiday homes in relation to impacts on amenity (noise, car parking, dumping of rubbish, overcrowding etc.). These complaints are often in relation to the use of a holiday home by larger groups or the hosting of functions or parties that disrupt the neighbourhood amenity for the permanent residents located nearby. Issues such as noise complaints can be managed under the provisions of the *Protection of the Environment & Operations Act 1997* and other issues of inappropriate behaviour or criminal activity may be addressed by police action.

The tenants of holiday homes do at times hold parties during their stay, and in so doing, often disregard the fact that their activities may impact on neighbours. These issues are more problematic to address given that the tenants are not permanent residents and may be less likely to share a sense of community responsibility and ownership. These issues can in some instances be addressed under Strata legislation or as part of the Development Application process. However, in most cases, Council has a small role in the resolution process, if any, as the use generally does not require development consent. Generally it is a small number of properties that consistently generate complaints and issues when compared to the overall number of holiday homes that are managed appropriately.

Council is currently considering amending Clause 7.13 in Shoalhaven LEP 2014 to specifically prohibit weddings/functions being carried out in short term rental accommodation. This acknowledges that while short term rental of dwellings is an important form of tourist accommodation in Shoalhaven, there is a need to balance the rights of residents to the quiet enjoyment of their properties. The amendment will consider making it clear that hosting a wedding or other functions as part of a short-term holiday rental has the potential to have an unacceptable impact on neighbourhood amenity and cannot be carried out in short term rental properties.

Taxation

Traditional tourist accommodation providers (hotels, motels, caravan parks etc.) have expressed concerns that holiday home owners benefit from promotional tourism marketing and other initiatives, without contributing financially. From a financial perspective, short term holiday letting providers continue to benefit from funds spent on tourism marketing and resultant growth without making a contribution. Consideration should be given to how this can be made fair or rationalised across all accommodation providers.

(f) Any other related matters

Dumping of Rubbish

An ongoing concern for Council is the apparent dumping of rubbish by the users of some holiday rentals. Last year around Shoalhaven, Council needed to respond to rubbish from holiday letting homes adjacent to parks, being dumped next to litter bins and needing to be removed. This has been an ongoing issue for many years. Contributing to this issue is that in some cases the owners of holiday homes appear to have no mechanism to arrange for the bins

to be placed and recovered from the kerbside during regular waste collection and so they are not emptied regularly.

The increase in holiday accommodation usage also impacts on local services. For example; rubbish placed in public facilities required the commitment of resources that are already stretched during busy holiday times.

Use of Parks and Reserves Adjoining Holiday Homes

The use of adjoining reserves by holiday homes for weddings and other functions has become a growing problem. Complaints have been received by Council in relation to impacts on amenity (parking, waste, noise) associated with the functions. To address this issue, Council's *Private Functions on Public Reserves Policy*

(<http://doc.shoalhaven.nsw.gov.au/displaydoc.aspx?record=POL15/34>) was updated.

This requires a separation distance for functions on reserves so there is at least 25 metres minimum separation from a private boundary and 25 metres from reserve infrastructure such as playgrounds, amenities, car parks, and private functions of more than 50 people can only be hosted in defined areas.

Conclusion

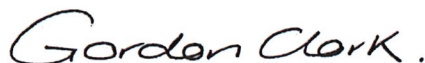
In Council's experience, only a relatively small proportion of the homes used for short-term holiday letting are an issue. Therefore, Council does not see the need to require development consent for the use of homes for short-term holiday letting, unless the use interferes generally with the amenity of the neighbourhood. Council favours a self-regulatory approach to the continued use of short-term holiday letting of residential homes.

Council has taken a proactive approach to enable the existing practice to continue in Shoalhaven by including *Clause 7.13 Short-term rental accommodation* in Shoalhaven LEP 2014 which is supported by development standards contained in chapter *G16: Short Term Rental Accommodation* in Shoalhaven DCP 2014.

Given the relevance of this issue to Shoalhaven, Council would be interested in attending a public hearing should one be held as part of this inquiry.

If you need further information about this matter, please contact Danielle Ratcliffe, Planning & Development Services Group on (02) 4429 3553. Please quote Council's reference 27521E (D15/302579).

Yours faithfully



Gordon Clark
Strategic Planning Manager
Date

Background

Our City is acknowledged as a major tourist destination in NSW. A large number of visitors to Shoalhaven stay in rented holiday accommodation (dwellings, units, etc) which is an important contributor to our tourism base.

The legal precedent set by two court cases questioned the legality of short term rental of houses as they appear to be classified as a commercial activity, thus effectively banning the practice in residential areas and other zones where commercial uses are prohibited. This could have adversely impacted on the future use of holiday homes and other forms of short term accommodation in Shoalhaven.

As a result of the issues mentioned above, Council has taken a pro-active approach by;

- allowing the short term rental of a dwelling without the need for development consent (except B&B accommodation) through an amendment to Shoalhaven Local Environmental Plan 1985 to resolve the issue.
- providing Advisory Guidelines for the Short Term Rental of Residential Dwellings to be used by owners of rental premises and others.

There is existing legislation relating to noise abatement, neighbourhood amenity, and offensive behaviour. The relevant authorities (Police, and Authorised Council staff) can take action if necessary. A complaints register may be established to monitor repeated problems.



How do you find out more

For more information on managing a rental property visit the NSW Office of Fair Trading
Website at: www.fairtrading.nsw.gov.au



Shoalhaven City Council

PO Box 42,
Nowra, NSW 2541
Ph: 02 4429 3111
www.shoalhaven.nsw.gov.au



402/06/06

Short Term – Holiday Rental in Residential Areas



ADVISORY GUIDELINES

Advisory Guidelines – “How to be a Good Neighbour”

The following advisory guidelines are suggested to help you develop a “good neighbour” relationship with adjoining owners, and manage the rental of your holiday house.

Do's

- Rent your house through an agent unless you have experience in this field. An agent can give you advice on regulations, requirements, insurance and guidelines. If you choose to rent privately and manage the property yourself you should consider the following questions.
 - Will you save money by managing it yourself?
 - Are you prepared to organise all the repairs and deal with tenants?



- Are you ready for the responsibility that this involves?
- Do you know what your legal rights and legal responsibilities are?

- Do you know the tenant's legal rights and responsibilities?

- Open dialogue with neighbours, ask for feedback on behaviour of occupants, offer to address any issues which may arise. Having an interactive relationship with your neighbours can benefit all concerned. For example, neighbours tend to keep an eye on the place and provide feedback.

- Use your agent as a local point of contact should problems arise.



- Exchange numbers with adjoining neighbours if not using an agent.
- Make it clear that it is the tenant's responsibility to maintain reasonable peace, comfort and privacy to neighbours.

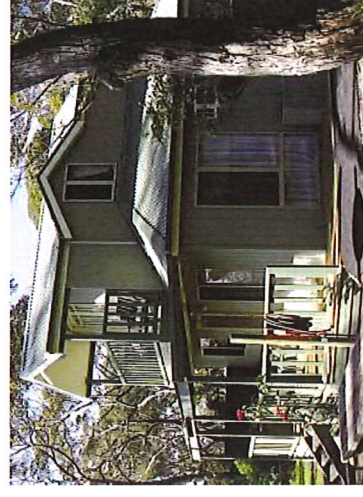
- Provide advisory notices for the occupants of the premises eg, number of persons allowed, noise considerations, use of rubbish bins, car parking and general consideration of the neighbours.

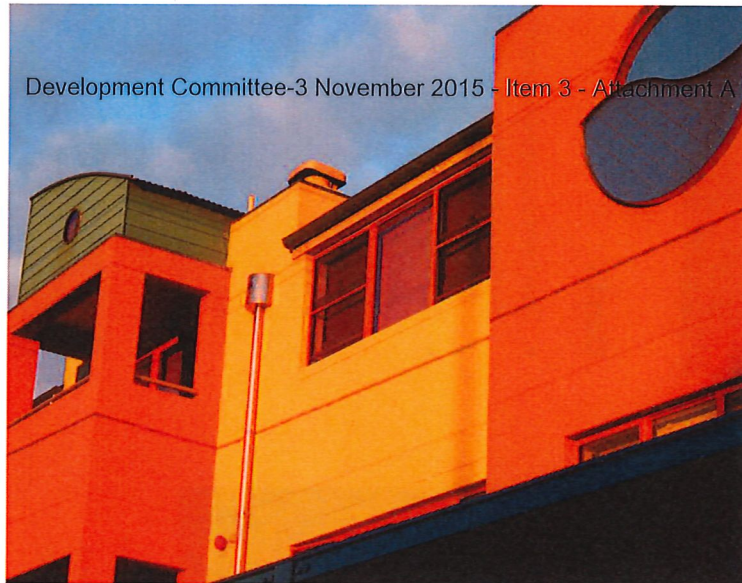
- Notice of penalties to tenants for not complying with regulations.
- Ensure there is enough parking available on the property for the occupants.



Don't's

- Don't encourage occupants to have parties or functions on the premises.
- Don't ignore or alienate your neighbours as they are a valuable ally to have.
- Don't allow overcrowding of premises as too many people could be a safety risk. As a rule, the correct number of beds per number of people staying on premises is advisable.





Managing Rented Holiday Accommodation

The Shoalhaven is regional NSW's major tourist destination, making tourism and holiday visits a vital part of our local economy.

Because a large number of our visitors stay in rented holiday accommodation such as houses, units and apartments, it is important for the owners of holiday rental properties to be aware of their obligations, especially with respect to noise, behaviour of guests and overcrowding of homes.

The NSW Government supports the Holiday Rental Code of Conduct, put together jointly by the Real Estate Institute of NSW, 'Stayz', 'Take a Break' and 'Rent a Home'. This Code can be downloaded from <http://www.reinsw.com.au/default.aspx?ArticleID=10373>.

If you are an owner of holiday rental property/s you can minimise problems for yourself and your neighbours by:

- being aware of your legal responsibilities as property owner and abiding by the Holiday Rental Code of Conduct
- providing friendly advisory notices to your guests, including penalties that may apply if your guests do not comply
- using a specialist local agency or professional property manager to handle your holiday letting. Your agent can then monitor and respond to any issues which may arise such as complaints from neighbours, property presentation and maintenance, safety issues, use of rubbish bins, car parking and general consideration of the neighbourhood.

