Sally Johannsen

From: Troy Green <TGreen@tweed.nsw.gov.au>
Sent: 13 June, 2018 1:53 PM
To: 'Sally Johannsen'; chris.johannsen@bacchuscapital.co.uk; chrisjohannsen@kingscliffcapital.com
Cc: icac@icac.nsw.gov.au; olg@olg.nsw.gov.au; tweed@parliament.nsw.gov.au; lanecove@parliament.nsw.gov.au; 'Elliot, Justine (MP)'; 'Di Hendy'
Subject: RE: URGENT - Resolution of 6 Beason Crt Development Order (ICAC Ref E18/0706)

Dear Ms Johanssen

In response to your email dated 12 June I advise as follows:

1. The 28 day appeal period is the statutory period set down by the NSW Environmental Planning and Assessment Act (see section 8.18 of the Act for reference). Accordingly Council has no power to grant an extension of time for the period of appeal to the development control order.
2. The development control order enforces compliance with the current relevant planning law by stopping a land use that is prohibited. The nature of the proposed legislation changes, when they will commence and how they will affect your site are unknown accordingly it is not considered appropriate to modify the terms of the development control order in the terms you have proposed.

Regards

Troy

Troy Green | General Manager
Executive

TWEED SHIRE COUNCIL

p (02) 6670 2412 | **f** (02) 6670 2483 | **e** tgreen@tweed.nsw.gov.au | **w** www.tweed.nsw.gov.au
Civic and Cultural Centre Tumbulgum Road Murwillumbah NSW 2484 | PO Box 816 Murwillumbah NSW 2484

Customer Service: (02) 6670 2400 or 1300 292 872 ABN: 90 178 732 496
Our values: transparency | customer focus | fairness | reliability | progressiveness | value for money | collaboration

From: Sally Johannsen [mailto:sj@lamaisonpacifique.com]
Sent: Tuesday, 12 June 2018 8:07 PM
To: Troy Green; chris.johannsen@bacchuscapital.co.uk; chrisjohannsen@kingscliffcapital.com
Cc: icac@icac.nsw.gov.au; olg@olg.nsw.gov.au; tweed@parliament.nsw.gov.au; lanecove@parliament.nsw.gov.au; 'Elliot, Justine (MP)'; 'Di Hendy'
Subject: RE: URGENT - Resolution of 6 Beason Crt Development Order (ICAC Ref E18/0706)

Dear Mr Green et al

I am in receipt of your email.

I will be travelling to Australia this week to personally speak with lawyers in relation to this matter.

I therefore respectfully request the following extensions:

1. That the appeal date (for the Land and Environment Court) be extended to 31 July 2018; and

2. That the Development Control Order against us be suspended until the NSW Government has handed down its new legislation in respect of Short Term Holiday Lets (as is expected in the imminent future).

Thankyou

Sally Johannsen

41a Ethelbert Road
London SW20 8QE
+44 (0) 7538 408 063

From: Troy Green [mailto:TGreen@tweed.nsw.gov.au]
Sent: 12 June, 2018 5:43 AM
To: sj@lamaisonpacifique.com; chris.johannsen@bacchuscapital.co.uk; chrisjohannsen@kingscliffcapital.com
Cc: icac@icac.nsw.gov.au; olg@olg.nsw.gov.au; tweed@parliament.nsw.gov.au; lanecove@parliament.nsw.gov.au; 'Elliot, Justine (MP)'
Subject: RE: URGENT - Resolution of 6 Beason Crt Development Order (ICAC Ref E18/0706)

Dear Ms Johannson,

I would like to respond to the various emails that you have either sent directly to, or copied in, Council's corporate email address, Tweed Councillors, Tweed Council officers and various external parties, since the day of email correspondence that I sent to you at 11.23am AEST, Tuesday, 5 June 2018.

In a review of Council's recent records, you have sent emails at the following times (AEST) and dates: 7.47am, 4.47pm, 6.18pm, and 6.42pm Tuesday 5 June 2018, 6.23pm Thursday 7 June 2018 and 3.45pm Friday 8 June 2018.

In terms of Council's current obligations to respond to your correspondence, Council's adopted policy "Customer Service Charter", requires a response or acknowledgement to written correspondence received within 14 days. My response today to each of your above mentioned emails satisfies Council's Policy.

In preparation for my response today, I have fully considered the details of each of your emails and have sought the advice of Council's solicitors who have been closely monitoring this matter for a number of weeks.

In response to a variety of matters raised in your emails, I would firstly like to reiterate that Council is of the view that you have presented no additional information to alter Council's previous advice and assessment that you have been conducting an unauthorised and prohibited serviced apartment use on your premises at 6 Beason Court Casuarina, and hence validating the Order issued to you to cease this use, which took final effect on 5 June 2018. In this regard, it would be appreciated if you could confirm that the use has ceased.

The action recently been taken by Council remains valid despite the announcement by the NSW State Government on Wednesday 6 June 2018 of proposed new policy and legislation to address Short Term Holiday Let issues, given that, at this point of time, there is no legislation that currently takes effect on Council decision making.

In respect to your question as to why a multitude of previous emails sent by you directly to, or copied into Council, were not reported to Council's Planning Committee Meetings of 3 May and 7 June 2018, you would be aware that unlike other STHL matters reported to Council at these meeting, the complaints against the unauthorised and prohibited use on your premises were much more advanced and had already been investigated and reported to Council in specific detail on various occasions and Council had already commenced enforcement action against you. In addition, as I have identified above, Council's solicitors have confirmed that these emails contained no further evidence to cause Council to reconsider its consistent view that you have been conducting an unauthorised and prohibited use on your premises, which has impacted on the amenity of surrounding residents. Finally, the extent of detail of a multitude of emails that you have sent have invariably been directly sent or copied in to the Tweed Councillors and Council staff, making them fully aware of your concerns as part of their decision making.

I am further advised by Council's solicitors that Council has acted appropriately in terms of the extent of information presented to the 3 May and 7 June 2018 Planning Committee Meetings as they relate to current Compliance matters affecting your premises, stating the following:

"Based on my review of the above, I do not think that Ms Johannsens' email of 27 April 2018 was required by the Local Government (General) Regulation 2005 to be included in the Council's agenda for the May or June meetings.

Clause 240(1) of the LG Regulation provides:
(1) The general manager must ensure that the agenda for a meeting of the council states:
(a) all matters to be dealt with arising out of the proceedings of former meetings of the council, and
(b) if the mayor is the chairperson-any matter or topic that the chairperson proposes, at the time when the agenda is prepared, to put to the meeting, and
(c) subject to subclause (2), any business of which due notice has been given.

I can't see how Ms Johannsens' email of 27 April 2018 falls within any of the categories listed in clause 240(1)."

For the reasons outlined above, it is the advice of Council's solicitors that your most recent claims that I and other Council staff and the Tweed Councillors have breached Council's Code of Conduct, are unsubstantiated and are vexatious. Further your threat against me in your email below, which could also be interpreted as a bribe not to lodge a Code of Conduct against me if I accede to your demands, is using the Code of Conduct for an improper purpose. I would welcome you raising this matter with other authorities.

For your information, it is the statutory role of the General Manager to implement the Resolutions of Council without undue delay. As there have been no legislative changes introduced by the NSW State Parliament regarding short term holiday letting, Council recommended at the Planning Committee and subsequently resolved at the Council Meeting held on 7 June 2018, that until there is definitive direction from State Government in the form of legislation or policy directive, Tweed Shire Council's Compliance Unit will continue to enforce action against unauthorised short term holiday lettings where there is an identified risk to surrounding residence, neighbourhood amenities and the public.

In terms of appraising the conduct of Tweed Councillors and Council staff, I note from your multitude of recent emails that you have sent directly, or copied in a wide range of State and Federal Government Members of Parliament, and State Government agencies, ICAC, the NSW Ombudsman's Office and the Office of Local Government. You remain free to raise any concerns of improper conduct or maladministration to either ICAC or the NSW Ombudsman's Office.

In terms of Council's Order issued, the Order itself explains the process for you to appeal. That is through the NSW Land and Environment Court within a period of 28 days after the date of the service of the Order. In other words you had 28 days from 4 May 2018 to appeal to the Land and Environment Court. If, as you continue to claim in your correspondence, you have legal advice or believe that you have a lawful existing use right or believe Council has issued the Order wrongfully, the Land and Environment Court is the appropriate jurisdiction to give you redress.

Regards

Troy Green

Troy Green PSM
General Manager

TWEED SHIRE COUNCIL

p (02) 6670 2412

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Your actions matter: print less to save more

-----Original Message-----
From: Sally Johannsen [mail to:sj@lamaisonpacifique.com]
Sent: 5 June 2018 6:18 PM
To: Troy Green [mail to:TGreen@tweed.nsw.gov.au],chris.johannsen@bacchuscapital.co.uk [mail to:chris.johannsen@bacchuscapital.co.uk],chrisjohannsen@kingscliffcapital.com [mail to:chrisjohannsen@kingscliffcapital.com]
CC: icac@icac.nsw.gov.au [mail to:icac@icac.nsw.gov.au],olg@olg.nsw.gov.au [mail to:olg@olg.nsw.gov.au],tweed@parliament.nsw.gov.au [mail to:tweed@parliament.nsw.gov.au],lanecove@parliament.nsw.gov.au [mail to:lanecove@parliament.nsw.gov.au],Elliot, Justine (MP) [mail to:justine.elliot.mp@aph.gov.au],katie milne [mail to:KMilne@tweed.nsw.gov.au],admin@hria.com.au [mail to:admin@hria.com.au],psmith66@gmail.com [mail to:psmith66@gmail.com],nikki.todd@tweeddailynews.com.au [mail to:Nikki.Todd@tweeddailynews.com.au],jalgudgeon@gmail.com [mail to:jalgudgeon@gmail.com],Pryce Allsop [mail to:PAllsop@tweed.nsw.gov.au],Reece Byrnes [mail to:RByrnes@tweed.nsw.gov.au],Chris Cherry [mail to:CCherry@tweed.nsw.gov.au],Ron Cooper [mail to:rcooper@tweed.nsw.gov.au],katie milne [mail to:KMilne@tweed.nsw.gov.au],James Owen [mail to:JOwen@tweed.nsw.gov.au],Warren Polglase [mail to:wpolglase@tweed.nsw.gov.au],Vince Connell [mail to:VConnell@tweed.nsw.gov.au],Nick Tzannes [mail to:NTzannes@tweed.nsw.gov.au],Di Hendy [mail to:dihendy4@gmail.com]
Subject: RE: URGENT - Resolution of 6 Beason Crt Development Order (ICAC Ref E18/0706)

Dear Mr Green

I respectfully suggest that you review the decision outlined in your letter dated 5 June, 2018 directly and personally ensure the revocation of the Development Control Order ("DCO") issued by Tweed Shire Council ("TSC") to us on 10 May 2018 immediately as requested in our letter of 3 June 2018. This would necessarily include addressing our acceptable terms for resolution outlined in that letter (and updated below in this email). Otherwise I will have no choice but to submit yet another Code of Conduct complaint – this time against you personally - on the basis that:

You must not conduct yourself in carrying out your functions in a manner that is likely to bring the council or holders of civic office into disrepute.
Specifically, you must not act in a way that:
a) contravenes the Act, associated regulations, council's relevant administrative requirements and policies…
c) is improper or unethical
d) is an abuse of power or otherwise amounts to misconduct
e) causes, comprises or involves intimidation, harassment or verbal abuse
Source: Tweed Shire Council Code of Conduct

I will have no hesitation in formally submitting my complaint to the NSW Ombudsman, ICAC, the NSW Minister for Planning and the NSW Local Government Minister – in addition to the other complaints already lodged and which are currently under review.

It is my view that the letter dated 5 June 2018 as submitted by you to us does not take into account the facts (as outlined in my emails and reports to you) in relation to this matter and therefore breaches the Code of Conduct guidelines outlined above. Once a clear-cut case is bought to you that TSC and its officers have acted in direct contravention to a law (in this case the NSW Environmental and Planning Act 1979, its amendment and regulations ("EPA Act 1979")) **we believe it is your honourable duty as General Manager, Tweed Shire Council to**:

1. Immediately revoke any erroneously-issued DCO; and
2. resolve this matter via acceptable terms (as offered by the defendant party or negotiated and agreed).

In the interest of clarity, let me summarise **just some of the facts** for you.

October 2011	Purchase of 6 Beason Court, Casuarina by Christopher Alan Johannsen and Sally Margaret Johannsen (Title in the name of Christopher Alan Johannsen only). The purchase of the property is personal in nature – in a personal name - with a view that it would be offered to visitors as a Short Term Holiday Let ("STHL") when not being used by us personally or our family and friends
December 2011	First let as a STHL. Use as an STHL was not prohibited in the Tweed LGA: **Proof:** Legislative Assembly Committee on Environment in Planning Adequacy of the Regulation of Short Term Holiday Letting in NSW Report 1/56 – October 2016 Report 3.56 "STRA is currently prohibited in all rural and the majority of residential zones in the Tweed LGA. Council noted that, **prior to the introduction of the standard instrument LEP, the use was not prohibited**" (Mr Iain Lonsdale, Unit Coordinator, Strategic Planning and Urban Design, Tweed Shire Council, Transcript of Evidence, 7 March, 2016 p5.)"
2014	TSC LEP 2014 Introduced Does not apply to 6 Beason Court, Casuarina as existing use rules apply in EPA Act 1979. **Proof:** *The EP&A Amendment (Existing Uses) Regulation 2006 amends the EP&A Regulation so that: f* *an existing use can no longer be changed to another prohibited use (unless the zoning is also changed to permit that use) f* ***an existing use can be changed to a use that is permissible**.* *AND* *Where feasible, councils will be encouraged to **identify development that would have existing use rights and include 'permitted additional uses' on that land in their LEP, so that the land use is no longer prohibited.*** **We refer you to the following:** **ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 - SECT 4.65** **Definition of "existing use"** **4.65 Definition of "existing use"** (cf previous s 106) In this Division, **"existing use"** means: (a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for this Division, have the effect of prohibiting that use, and (b) the use of a building, work or land: (i) for which development consent was granted before the commencement of a provision

	of an environmental planning instrument having the effect of prohibiting the use, and (ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse. **4.66 Continuance of and limitations on existing use** (cf previous s 107) (1) Except where expressly provided in this Act, nothing in this Act or an environmental planning instrument prevents the continuance of an existing use. (2) Nothing in subsection (1) authorises: (a) any alteration or extension to or rebuilding of a building or work, or (b) any increase in the area of the use made of a building, work or land from the area actually physically and lawfully used immediately before the coming into operation of the instrument therein mentioned, or (c) without affecting paragraph (a) or (b), any enlargement or expansion or intensification of an existing use, or (d) the continuance of the use therein mentioned in breach of any consent in force under this Act in relation to that use or any condition imposed or applicable to that consent or in breach of any condition referred to in section 4.17 (1) (b), or (e) the continuance of the use therein mentioned where that use is abandoned. (3) Without limiting the generality of subsection (2) (e), a use is to be presumed, unless the contrary is established, to be abandoned if it ceases to be actually so used for a continuous period of 12 months. The above is upheld in case law by *Haddad v Council of the City of Ryde* [2016] NSWLEC 1386
February 2017	Per Chris Johannsen's discussion with Mr Steve Bishop, Tweed Shire Council that as we "opened in 2011 - prior to DA being required or any possible prohibited use being activated through the TSC LEP 2014" we were not required to lodge a DA.
15 March 2018	A proposed DCO issued to Mr Christopher Alan Johannsen re use of 6 Beason Court as "prohibited use" as tourist and visitor accommodation as defined by the TSC LEP 2014.
15 April 2018	Our response to the proposed DCO which included substantial evidence that we were not operating under prohibited use due to a range of facts including (but not limited to) the erroneous assertion that our property is a "serviced apartment" and that as we had been operating since 2011, it was our view that we should be allowed to continue as laws/regulations can not be applied retrospectively.
10 May 2018	DCO Issued
3 June 2018	Our letter to you which stipulated that legal advice received does not apply to us as TSC LEP 2014 (on the basis of which the DCO was issued) is irrelevant as the existing use provisions of the EPA Act 1979 specifcally apply in our case and unequivocally state Except where expressly provided in this Act, nothing in this Act or an environmental planning instrument prevents the continuance of an existing use.

We have made it very clear that it is and remains our firm view that the DCO has been issued erroneously and does not follow the EPA Act 1979 (The EPA Act 1979 is unequivocal in determining existing use which absolutely applies in our case and is upheld case law by *Haddad v Council of the City of Ryde* [2016] NSWLEC 1386). Our property was clearly used as an STHL prior to the TSC LEP 2014 (and we provided statistical and other evidence of this in our previous reports to TSC representatives) therefore existing use applies without question.

That the DCO against us has not been revoked is a clear-cut Code of Conduct breach by those:

1. who issued it in the first place (as frankly, it should never had been issued as it contravenes the EPA Act 1979) as outlined; and
2. who continue to support it by not instituting is immediate revocation once this distinct and unequivocal breach was bought to their attention.

Please note that I retain the right to submit to the relevant authorities (included those cc'd on this email and the NSW Ombudsman) further Code of Conduct breaches to be applicable all Tweed Shire Councillors and Tweed Shire Council representatives who are cc'd in this email as this is their opportunity (in addition to yours) to personally act to ensure the immediate revocation of the DCO against us. To not act would be seen (by me) as a clear Code of Conduct breach as the matter has now been bought to their personal attention and therefore would substantiate the fact that they have an opportunity to act to rectify the situation and ensure no further Code of Conduct breaches through improper, unethical actions, abuses of power and which involves intimidation and harassment of us personally.

Code of Conduct Breach by Mr Troy Green

Mr Green, your letter shows a deliberate acceptance of the actions of the TSC against us (who you represent) in the acceptance of a clear contravention of the EPA Act 1979 and associated regulations. It is our view you have now personally continued to try to "justify" the erroneous TSC's DCO despite substantial evidence (provided by us) of its improper application and that you (personally) have clearly not supported its immediate revocation. As such, this action is viewed by us as improper, unethical, an abuse of power and involves intimidation and harassment of us personally, resulting in this proposed Code of Conduct breach.

In an effort to stop:

1. this proposed Code of Conduct breach and allowable complaint to the authorities outlined above; and
2. the unnecessary continued harassment of us and to reduce the risk of incurring expensive legal fees which are (based on the above) unlikely to be successful for you

we respectfully suggest to you the following terms for resolution:

Acceptable terms for resolution of this matter

- full revocation of the improperly and selectively issued DCO issued against us (to be effective immediately) and which revokes in full and clears our name and property in relation to its issue (by admitting in writing that it is fully revoked as it was issued erroneously and in contravention to the NSW EPA Act 1979, its regulations and as upheld by case law - *Haddad v Council of the City of Ryde* [2016] NSWLEC 1386);
- full revocation of **all** improperly and selectively issued "proposed orders" for the "prohibited use" of STHLs in R2 and R3 zones issued between 14 February 2018 and 5 April 2018 where the above existing use definition applies;
- full clearing of any improper (unsubstantiated by an independent third party – ie. police/security company) record of "complaint" against all parties in TSC records affected by the TSC "proposed orders" issued between 14 February 2018 and 5 April 2018, where complaints made are unable to be verified by either the police or a third party independent security company;
- changes to the current TSC LEP 2014 which will ensure that TSC properly follow due process – in this case upholding NSW Planning Law (EPA Act 1979) by updating the TSC LEP 2014 to ensure that STHLs remain permissible as outlined in the NSW Government Planning Circular noted above;
- changes to systemic deficiencies in public administration at TSC which have allowed this situation to occur. This would necessarily include changes to procedures which would ensure that the rights of owners is protected (including but not limited to existing rights) and that any "complaints" made against an owner MUST (without exception) require third party substantiation (ie. police report or security company report) before TSC acts;
- clear, vocal, written and media (social media, newspapers) public apologies to all affected STHLs as a result of the improper, selective "proposed orders" or "DCOs" outlined above were issued and where existing use applies in their case. Each person to be clearly and separately listed as part of this apology; and

- monetary compensation to all affected parties in receipt of improper, selective "proposed orders" in this matter. This should necessarily start at the amount of the fines threatened to each party – in our case (in the order received) of $1,000,000 plus $10,000 per day.

Time is obviously critical in this instance and as such we look forward to immediate action for the full revocation of the DCO IMMEDIATELY and (as advised in our letter of 3 June 2018) If the above resolutions are not met in full by midnight, Sunday 17 June 2018, we reserve our right to instigate legal proceedings.

Regards

Sally & Chris Johannsen

41a Ethelbert Road
London SW20 8QE
+44 (0) 7538 408 063

From: Troy Green [mailto:TGreen@tweed.nsw.gov.au]
Sent: 5 June, 2018 2:40 AM
To: sj@lamaisonpacifique.com; chris.johannsen@bacchuscapital.co.uk; chrisjohannsen@kingscliffcapital.com
Cc: icac@icac.nsw.gov.au; olg@olg.nsw.gov.au; nswombo@ombo.nsw.gov.au; tweed@parliament.nsw.gov.au; lanecove@parliament.nsw.gov.au; 'Elliot, Justine (MP)'; Katie Milne; admin@hria.com.au; psmith66@gmail.com; nikki.todd@tweeddailynews.com.au; jalgudgeon@gmail.com
Subject: RE: URGENT - Resolution of 6 Beason Crt Development Order (ICAC Ref E18/0706)

Dear Mr and Ms Johannsen

Please find attached letter for your attention in response to your email below.

Regards

Troy

Troy Green PSM
General Manager

TWEED SHIRE COUNCIL

p (02) 6670 2412

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tweed | **our values**

Your actions matter: print less to save more

From: Sally Johannsen [mailto:sj@lamaisonpacifique.com]
Sent: Sunday, 3 June 2018 9:38 PM
To: Corporate Email; chris.johannsen@bacchuscapital.co.uk; chrisjohannsen@kingscliffcapital.com

Cc: icac@icac.nsw.gov.au; olg@olg.nsw.gov.au; nswombo@ombo.nsw.gov.au; tweed@parliament.nsw.gov.au; lanecove@parliament.nsw.gov.au; 'Elliot, Justine (MP)'; Katie Milne; 'Rob Jeffress'; admin@hria.com.au; psmith66@gmail.com; nikki.todd@tweeddailynews.com.au; jalgudgeon@gmail.com
Subject: URGENT - Resolution of 6 Beason Crt Development Order (ICAC Ref E18/0706)

Dear Mr Green

Legal advice we have received in the last few days stipulates that **TSC LEP 2014 can not be applied in relation to our STHL** (at 6 Beason Crt, Casuarina NSW 2487) by Tweed Shire Council ("TSC") due to the legal fact that existing use rights apply. STHLs were not prohibited use in TSC when we opened our STHL in 2011 (admitted and confirmed in TSC's Mr Troy Green's letter of 1 June, 2018). I refer you to the following NSW Government Department of Planning Circular which states:

> *The EP&A Amendment (Existing Uses) Regulation 2006 amends the EP&A Regulation so that: f*
> *an existing use can no longer be changed to another prohibited use (unless the zoning is also changed to permit that use) f*
> ***an existing use can be changed to a use that is permissible**.*
> *AND*
> *Where feasible, councils will be encouraged to **identify development that would have existing use rights and include 'permitted additional uses' on that land in their LEP, so that the land use is no longer prohibited.***
>
> **We refer you to the following:**

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 - SECT 4.65

Definition of "existing use"

4.65 Definition of "existing use"

(cf previous s 106)
In this Division,
"existing use" means:

(a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for this Division, have the effect of prohibiting that use, and
(b) the use of a building, work or land:
(i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and
(ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse.

4.66 Continuance of and limitations on existing use

(cf previous s 107)

(1) Except where expressly provided in this Act, nothing in this Act or an environmental planning instrument prevents the continuance of an existing use.
(2) Nothing in subsection (1) authorises:
(a) any alteration or extension to or rebuilding of a building or work, or
(b) any increase in the area of the use made of a building, work or land from the area actually physically and lawfully used immediately before the coming into operation of the instrument therein mentioned, or
(c) without affecting paragraph (a) or (b), any enlargement or expansion or intensification of an existing use, or
(d) the continuance of the use therein mentioned in breach of any consent in force under this Act in relation to that use or any condition imposed or applicable to that consent or in breach of any condition referred to in section 4.17 (1) (b), or

(e) the continuance of the use therein mentioned where that use is abandoned.
(3) Without limiting the generality of subsection (2) (e), a use is to be presumed, unless the contrary is established, to be abandoned if it ceases to be actually so used for a continuous period of 12 months.

The above is upheld in case law by *Haddad v Council of the City of Ryde* [2016] NSWLEC 1386

It is clear from the above that existing use applies to us and the **only** way this can change is if TSC follow NSW Planning guidelines which would include STHLs as "permitted additional uses" in R2 zones in the TSC LEP 2014. This makes total sense in that STHLs are not specifically defined (nor can be) in the TSC LEP 2014 as Tourist and Visitor Accommodation as STHLs arrangements are of a private nature between owners and guests and were permitted prior to the introduction of the TSC LEP 2014.

Therefore the DCO has been issued in direct conflict with the above and is viewed by us as an inappropriate action (and therefore requires immediate revocation) by TSC representatives who have issued the DCO erroneously. **We believe that the DCO must be revoked prior to the DCO becoming "live" on 5 June 2018.**

In an effort to stop this unnecessary harassment of us and to reduce the risk of incurring expensive legal fees which are (based on the above) unlikely to be successful for you, we respectfully suggest to you the following terms for resolution:

Acceptable terms for resolution of this matter

- full revocation of the improperly and selectively issued DCO issued against us (to be effective immediately – and before the date of 5 June 2018);
- full revocation of **all** improperly and selectively issued "proposed orders" for the "prohibited use" of STHLs in R2 and R3 zones issued between 14 February 2018 and 5 April 2018 where the above existing use definition applies;
- full clearing of any improper (unsubstantiated by an independent third party – ie. police/security company) record of "complaint" against all parties in TSC records affected by the TSC "proposed orders" issued between 14 February 2018 and 5 April 2018, where complaints made are unable to be verified by either the police or a third party independent security company;
- changes to the current TSC LEP 2014 which will ensure that TSC properly follow due process – in this case upholding NSW Planning Law (EPA Act 1979) by updating the TSC LEP 2014 to ensure that STHLs remain permissible as outlined in the NSW Government Planning Circular noted above;
- changes to systemic deficiencies in public administration at TSC which have allowed this situation to occur. This would necessarily included changes to procedures which would ensure that the rights of owners is protected and that any "complaints" made against an owner will require third party substantiation (ie. police report or security company report) before TSC acts;
- clear, vocal, written and media (social media, newspapers) public apologies to all affected STHLs as a result of the improper, selective "proposed orders" outlined above and where existing use applies in their case. Each person to be separately listed as part of this apology; and
- monetary compensation to all affected parties in receipt of improper, selective "proposed orders" in this matter. This should necessarily start at the amount of the fines threatened to each party – in our case (in the order received) of $1,000,000 plus $10,000 per day.

Time is obviously critical in this instance and as such we look forward to immediate action for the full revocation of the DCO by 5.00pm on Monday 4 June, 2018 (AEST) and within the following 14 days (10 working days) the acceptable terms for resolution being met by TSC without exception.

If the above resolutions are not met in full by midnight, Sunday 17 June 2018, we reserve our right to instigate legal proceedings.

Regards

Sally & Chris Johannsen

41a Ethelbert Road
London SW20 8QE
+44 (0) 7538 408 063

All official correspondence requiring a formal written response should be addressed to the General Manager, PO Box 816, Murwillumbah, 2484; or emailed to tsc@tweed.nsw.gov.au; or faxed to 02 6670 2429.

We work flexibly. If you have received an email from me outside of normal business hours, I'm sending it at a time that suits me. Unless it's flagged as urgent, I'm not expecting you to read or reply until normal business hours.

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