

**Submission
No 203**

ADEQUACY OF THE REGULATION OF SHORT-TERM HOLIDAY LETTING IN NEW SOUTH WALES

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SUBMISSION TO INQUIRY INTO THE ADEQUACY OF REGULATION OF SHORT-TERM HOLIDAY LETTING IN NSW

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1. Submission Overview

This submission provides a broad overview of the issues that Great Lakes Council has encountered in trying to respond to the planning and regulatory aspects of short term holiday rental of dwellings. It does not go into a lot of detail on the issues as many of these will be elaborated upon by other specialist agencies and industry groups who will make submissions to the Inquiry.

The submission has been prepared based on Council's current position with input from Council's Environmental, Strategic Planning, Building and Tourism Sections.

2. Strategic Context

Tourism is an important part of the Great Lakes economy. In 2014, tourism contributed \$359 million directly and \$330 million indirectly to the Great Lakes economy. (Great Lakes LGA Profile, Tourism Research Australia, Sept 2014). It is estimated that Tourism directly and indirectly employs just over 1300 people in the Great Lakes region, 12% of the total workforce. (National Institute of Economic and Industry Research, 2013)

Short Term Holiday Letting (STHL) is a significant contributor to the Great Lakes visitor accommodation sector with 26% of visitors choosing to stay in this type of accommodation. Equating to 608,000 visitor nights per annum. This is considerably higher than the NSW average for this sector. It is estimated that short term holiday rentals directly contributes over \$80 million per annum to the Great Lakes economy.

Whilst it is difficult at this stage to conclusively demonstrate the economic impact that the emerging disruption channels such as Airbnb have had on the STHL sector it has without doubt had a tangible effect on both the number of short term holiday rentals and the growth of individual owner managers in the Great Lakes.

Given the value of STHL to the Great Lakes tourism accommodation offer and local economy it is imperative that potential regulation be managed sensitively to ensure that the sector continues to thrive and is flexible enough to embrace all the opportunities that will undoubtedly continue to emerge in the future.

3. Land Use Planning and Regulation

Background

Like many coastal Local Government Areas, short term holiday letting (STHL) is a significant contributor to the tourist accommodation market in the Great Lakes area. The use has

undergone substantial expansion over the years to the point where it, on occasions, is having an adverse impact on the amenity of residential neighbourhoods.

From a land use planning perspective, the greatest issue is with the use of STHLs in traditional low density residential and village areas, bush fire prone areas and areas not connected to a town sewerage system.

Legal Situation

The matter came to the fore with the release of the Land and Environment judgement in the matter of *Dobrohotoff vs Bennic* (May 2013). The case concerned the use of a dwelling-house located within a 2(a) low density residential zone in Terrigal to provide short term holiday accommodation.

The court heard that the dwelling had, for a number of years, been used by tenants who engaged in anti-social behaviour, using the dwelling for hens' and bucks' nights and frequent parties. These parties consistently impacted upon the surrounding the amenity of the surrounding area with loud music and flashing lights continuing into the early hours of the morning.

In her finding, Justice Pepper ruled that the use of a 'dwelling' for the purpose of short term holiday accommodation was prohibited in residential zones for the following reasons:

- The only relevant development permissible with consent within the 2(a) Residential zone of the Gosford Planning Scheme Ordinance (GPSO) was a 'dwelling house';
- The term 'dwelling house' refers to a building designed for the use as a dwelling for a single family;
- The term dwelling contained the notion of a domicile, which has the notion of a permanent home;
- The temporary nature of the short term holiday accommodation land use did not constitute a 'dwelling house' or a 'domicile'; and
- As the use did not constitute a 'dwelling house' under the GPSO, the use of the property for short term holiday accommodation was not otherwise permissible and as such, was prohibited within the zone and in breach of the Environmental Planning and Assessment Act 1979.

In Justice Pepper's concluding remarks, she stated that the decision made in relation to this case served as a warning to councils to review the wording of their planning instruments and that in not addressing this matter the Gosford City Council was failing to fulfil its core functions.

The legal situation in Great Lakes is similar to Gosford where the use of dwellings in the R2 Low Density Residential Zone, under Great Lakes Local Environmental 2014, for holiday letting would be technically be defined as *tourist and visitor accommodation* and is prohibited.

Great Lakes Councils Response Dobrohotoff vs Bennic

Residents of Great Lakes who felt they were adversely affected by holiday rental of dwellings drew Council's attention to the judgement and sought a formal position from Council. In response, Council decided that it did not want to overly regulate holiday rental of dwellings and has tried to reach a balance between managing environmental and amenity issues while not imposing unreasonable regularity controls on rental operators. To strike this balance, Council decided that development consent would be required only where five bedrooms or more are to be used for holiday rental. Any holiday rental of dwellings of less than five bedrooms would not require consent.

Council was of the view that the impacts of holiday rental such as noise, waste management, traffic, parking, effluent disposal and keeping of pets would only require regulating when more than five bedrooms were involved.

Great Lakes Council has prepared and exhibited a Planning Proposal to amend its Local Environmental Plan to clarify when holiday letting of dwellings does and does not require development consent. The planning proposal indicates Council's intention to require consent for STHL when five or more bedrooms are to be used. Consent will not be required when less than five bedrooms are involved.

Council has exhibited its planning proposal and draft Development Control Plan provisions and is in the process of addressing issues that have been raised in public submissions and from Government Agencies.

Other Councils in NSW are responding in different ways to the issues associated with STHL. I am aware that other Council's responses vary from making it clear that development consent is not required regardless of the location and scale of the use to being prescriptive when consent is required.

Resourcing is also an issue for Great Lakes Council as it does not want to impose a requirement for development consent that would result in a large number of applications that would have to be processed.

4. Issues

Great Lakes Council, in dealing with the matter, as encountered the following issues

1. Residential Amenity

At what point does the scale of a STHL impact on the amenity of the neighbourhood by generating unreasonable noise, waste, traffic and parking? In unsewered areas the capacity of onsite effluent disposal systems to manage the additional effluent generated is also an issue. Council is attempting to deal with these issues by the inclusion of controls in its Development Control Plan (DCP). The exhibited draft DCP provisions are contained in Annexure A.

2. Bush Fire

A major issue that Council has encountered is how to deal with STHL in bush fire prone areas. This arose because Council's proposal to require development consent for STHLs with five or more bedrooms raised the question of how such development should be dealt with under the *Rural Fires Act 1997* (RFA).

Many STHLs located in rural landscapes and on the periphery of urban area that adjoin vegetation are situated on bush fire prone land and subject to the requirements of the RFA.

Other Councils have prepared planning proposals for STHLs and this has resulted in considerable consultation between the Councils, the Department of Planning and Environment and the NSW Rural Fire Service (RFS). The RFS has now issued a Discussion Paper on Holiday Lets. One of the most significant findings of the RFS is that regardless of the number of bedrooms, a STHL is a *special bush fire protection purpose* under the *Rural Fires Act* and a Bush Fire Safety Authority is required (BFSA). The RFS recognises that the requirement for a BFSA is an industry barrier to STHL and an onerous requirement.

The underlying concern, according to the RFS, is that the occupants of holiday lets (unlike permanent residents) are not necessarily aware of their surroundings or the level of bush fire risk. They are therefore more vulnerable than residents.

The RFS Discussion Paper identifies three options, all of which require amendments to legislation.

Council considers it reasonable that new dwellings that are proposed to be used for to be built for holiday rental comply with the requirements of the RFS but the question of what to do with older dwellings is much more problematic.

3. Building Regulations

There are questions whether the change of use of a dwelling to STHL constitutes a change in classification under Building Code of Australia and whether the conversion of older dwellings should involve an upgrade to contemporary standards relating to window openings, stairs, fire protection and balustrades etc.

4. Effluent Management

STHLs are often occupied by large numbers of people over a short period. This can be an environmental health concern in rural locations or small villages where reticulated sewerage is not available. STHL occupants are often not aware of the limitations on the capacity of the onsite sewerage treatment and disposal system and how it is meant to operate. They are not necessarily aware of what to do when there is a system failure, such as a pump breakdown, blockage or holding tank overflow.

Great Lakes Council is aware of situations where systems have been overloaded and effluent has escaped or been discharged to the environment leading to potential health and environmental, mainly water quality, impacts.

5. Conclusion

STHL are a very significant component of the visitor economy and this Council supports the continuation of the use without undue regulation. The difficulties, from a land use planning and regulation perspective, are how to deal with the operators and occupants who do not do the right thing and who are not aware of the bush fire, servicing or building issues associated with such premises.

Ideally, a standard approach should be developed for STHLs across NSW. Questions of equity also arise because those operators who do not need consent may not be subject to the same level of controls as those operators who do need consent.

Council's preference is for short term holiday letting (STHL) of dwellings to be self-regulating. STHL could be made permissible without consent, or as *Exempt Development* under the *Environmental Planning and Assessment Act*, if the industry was self-regulating to the extent that impacts referred to above were effectively managed.

Great Lakes Council, and Local Government in general, does not have the resources or capacity to undertake monitoring, regulatory and enforcement functions associated with STHL.

Proper and responsible management of STHLs must go back to the source; those who derive the financial benefit (owners and their management representatives) must be held accountable.

Suggested Approach

An option would be for STHL to have to be licensed by the Department of Fair Trading before they could operate. This department is recommended because they currently have the responsibility for licencing Real Estate agents and for handling compliance issues. Licensing would have to be based on clear parameters, such as those contained in a Code endorsed by regulatory authorities, management agents and the industry. A starting point would be the *Holiday and Short Term Rental Code of Conduct - Overview and Administrative Framework*, produced by the Holiday Rental Industry Association http://www.hria.com.au/resource/resmgr/Docs/Holiday_and_Short_Term_Renta.pdf .

The license would have to be reviewed regularly (one, three or five years) and would have to cover all relevant land use planning considerations, including those mentioned in this submission. A complaint handling process would have to be established by Fair Trading to deal with complaints about licensed and unlicensed premises. Licenses should be immediately revoked if there is a breach of the conditions and the relevant Council notified of the revocation.

The use of premises that are licensed for short term holiday rental could then be Exempt development under the *Environmental Planning and Assessment Act* (EP&A Act) provided the owner holds a licence from the Department of fair Trading.

In summary, the following are the land use planning and regulation issues for consideration with STHL:

- STHL is a long standing practice that makes a significant contribution to the visitor economy, particularly in sought after coastal holiday areas, such as Great Lakes. Significant barriers should therefore not be applied that could significantly curtail, or be a disincentive to, operators.
- There should be a consistent approach as to how STHL are dealt with under the *Environmental Planning and Assessment Act*
- Regulation by way of licencing and/or as Exempt Development under the EP& A Act is an option. This would need to define the parameters as to when development consent is and is not required.
- There are environmental health issues associated with STHL in unsewered areas.
- There must be an appropriate response to bush fire issues to ensure that bush fire controls are not unreasonably onerous or a barrier to STHL while at the same time protecting occupants who are not familiar with bush fire susceptibility and emergency evacuation procedures.
- There must be equity for those operators i.e. between those who do and don't need Councils approval. What happens if some operators require consent while others do not?
- These must be consideration to building standards and classification under the Building Code of Australia.

ANNEXURE A:

Draft Development Control Plan Provisions for Short Term Holiday Rental of Dwellings

Objectives

- a) To ensure that the short-term holiday rental of a dwelling is compatible with the scale, amenity and environment of the surrounding neighbourhood.
- b) To ensure that consideration of short term holiday rental of a dwelling has regard to the impact on the neighbouring resident's enjoyment of their residences.
- c) To identify requirements for the consideration of development applications for the use of a dwelling for the purpose of short term holiday rental accommodation.

Controls

1. Amenity

Objective

- a) To ensure that the amenity of the residential locality is not negatively impacted by the use of short-term holiday rental of a dwelling.

Control

- I. Guests and visitors must not create noise which is offensive to occupiers of neighbouring properties especially between the hours of 10pm - 8am and during arrival and departure at any time throughout the occupancy;
- II. Privacy screening and landscaping should be provided on the site to reduce overlooking and visual intrusion from outdoor private areas.
- III. Outdoor lighting shall be designed and located to limit impacts on surrounding residences. Note: a light spill diagram may be required for outdoor recreation areas where swimming pools, spas, tennis courts or similar structures are located.

2. Car Parking

Objective

- a) To ensure that adequate car parking is provided in association with the short-term holiday rental of a dwelling.
- b) To ensure there is adequate safe provision for access, manoeuvring and parking within the development.

Control

- I. The number of car parking spaces for the development should be consistent with Table 1.
- II. On-street parking spaces available for the premises must be identified in the development application.

Table 1

No. of bedrooms	Parking (to be provided on-site)
1-2	1 space
3-4	2 spaces
5	Minimum of 3 spaces.
>5	1 space is to be provided for every 2 additional bedrooms.
Stacked parking permitted for 1 vehicle.	

3. On-site Sewage & Waste Management

Objective

- a) To ensure that in areas where short term holiday rental is permissible and where the proposed premises is not connected to a reticulated sewerage system, the on-site sewage management system (OSMS) is adequate for the maximum number of occupants permitted within the dwelling, when used for the purpose of short term holiday rental.
- b) To ensure that there are no negative environmental impacts associated with the use of short-term holiday accommodation.

Control

- I. Council will only approve the use of short term holiday rental if the operation of the OSMS is 'fit for purpose'.
- II. Any premises that utilises a pump out system will only be approved where the following can be complied with:
 - The collection well must have a high water alarm installed on the collection well and must incorporate both audible (buzzer) and visual (strobe) alarm components. The alarm panel must be installed in a visible location approved by Council. The high water alarm shall be set on activation with two (2) days storage capacity in the collection well. At

Council's discretion, an alarm utilising telemetry technology may be conditional.

- A shut off valve must be installed in circumstances where the height of the standpipe outlet is physically lower than the lid of the collection well.
- The septic tank and collection well will comply with the following table of tank volumes:

No. of Bedrooms	Septic Tank Capacity (L)	Collection Well Capacity (L)
2	3,000	4,500
3	3,000	6,000
4	3,500	7,500
5	4,500	10,000
6	6,000	12,500

- III. The location and design capacity of the OSMS (including related land application areas) must be detailed within the application to enable assessment of the capacity of the system and the potential hydraulic loading on the system. The OSMS and related land application areas must be able to accommodate the hydraulic loading based upon the following table:

		Design Wastewater Flow (L/d)	
No. of bedrooms	No of occupants	Water Supply (other than rainwater tank)	Rainwater Tank Water Supply
1	2	300	240
2	4	600	480
3	6	900	720
4	8	1,200	960
5	10	1,500	1,200
6	12	1,700	1,440

- IV. Premises that utilise an OSMS with surface or subsurface irrigation disposal areas shall have an indexing valve installed on the irrigation line, with the irrigation disposal area divided into two or more equal areas, to allow for resting of irrigation disposal areas.
- V. All premises must be fitted with water saving devices. Details of water saving devices to all fixtures and fittings should be included in the application.
- VI. A detailed rental/tenant/occupier user manual shall be developed for the premises and kept on the premises at all times. The user manual shall be kept in a prominent location and include emergency response provisions.
- VII. A management plan must be submitted with any application providing details on, but not limited to, the following information:
- Proposed measures to reduce any likely impacts on the performance of the OSMS.
 - Emergency management provisions ie. power failure, system and land application area failure, Council notifications.
 - If a pump out system is utilised, provisions for emergency pump outs, system overflows, Council notifications.

- VIII. The location and design of waste storage facilities must be detailed within the application to enable assessment of the capacity of these facilities to accommodate additional waste produced by the short-term holiday rental of the dwelling.

4. Number of Visitors & Duration of Use

Objective

- a) To ensure that the short-term holiday rental of a dwelling provides for a reasonable number of guests in keeping with the surrounding neighbourhood.
- b) To ensure that the duration of the use does not impact on the amenity of the surrounding neighbourhood.

Control

- I. The maximum number of guests must not exceed 2 adults per bedroom.
- II. The use of a dwelling for the purpose of short-term holiday rental accommodation is permissible for no more than 60 consecutive days in any 12 month period.

5. Dogs

Objective

- a) To ensure that any dogs kept on the premises do not impact on the residential amenity of the neighbourhood.

Control

- I. In accordance with Clause 12A of the Companion Animals Act 1998, the owner of any dog must take all reasonable precautions to prevent the dog from escaping from the property.
- II. There must be no more than 3 dogs at any one time.
- III. Adequate fencing or an enclosure must be provided capable of confining the dog regardless of breed, age, size or physical condition.
- IV. Fence gates must be:
 - a. kept closed at all times when the dog is on the premises;
 - b. fitted with a proper latch or other means of fastening it; and
 - c. capable of preventing the dog at all times from passing over, under or through it.
- V. Fences and gates must be maintained in good order and condition at all times.