

**Submission  
No 177**

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

**Organisation:** Hornsby Shire Council  
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**Position:** Manager Strategic Planning Branch  
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9 November 2015

The Chair  
Committee on Environment and Planning  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

Attention: Glenn Brookes MP

Dear Mr Brookes

### **Inquiry into the Adequacy of the Regulation of Short Term Holiday Letting in NSW**

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Thank you for the opportunity to provide comment in response to the Committee on Environment and Planning's inquiry into the adequacy of the regulation of short-term holiday letting in New South Wales.

The issue of how to regulate the use of dwellings for short-term accommodation through the planning system to address customer safety and neighbourhood amenity has been a planning issue for councils for a number of years. To assist the Committee in its inquiry, a submission is attached that addresses the terms of reference. A summary of the issues raised in the submission are provided below.

- a) *The current situation in NSW and comparison with other jurisdictions:* Despite the NSW Government introducing the *Standard Instrument* LEP, there are varied policy positions and approaches to the regulation of short-term accommodation throughout local government areas in NSW. To provide a more uniform approach between councils, the NSW Department of Planning and Environment should consider introducing a mandated definition of, and model local provisions for, "short-term accommodation" for insertion in the *Standard Instrument*.
- b) *The differences between traditional accommodation providers and online platforms:* In Hornsby Shire, short-term accommodation guests are required to sign and adhere to a Code of Conduct issued by the owner or agent before guests can enter the property. However, an on-line environment may not provide this opportunity for un-hosted short term accommodation. It could be argued that dealing directly with a person raises a holiday maker's sense of responsibility to adhering with a Code of Conduct.
- c) *The growth of short-term and online letting, and the changing character of the market:* In recent times, the growth in on-line tourism platforms (such as Airbnb and Stayz) has given rise to the use of dwelling-houses and residential units for both un-hosted holiday-letting and resident hosted short-term accommodation. Hosted short-term accommodation or shared accommodation is less likely to suffer the problems associated with un-hosted accommodation and may not need to be regulated by councils. To recognise the difference between hosted and un-hosted short-term accommodation and to provide flexibility in determining their land use strategy, the Department of Planning and

Environment should consider introducing a definition for both accommodation forms in the *Standard Instrument*.

- d) *The economic impacts of short-term letting on local and state economies:* Tourist accommodation provides income to specific business as well as the local economy. Many local government areas depend on the contribution tourism makes to the local economy. Notwithstanding, any land use development strategy established in a local government area should provide reasonable means of addressing residential amenity. Accordingly, the Department of Planning and Environment should consider releasing model short term accommodation policy provisions for local government areas to consider when drafting Development Control Plan requirements.
- e) *Regulatory issues posed by short term letting including customer safety, land use planning and amenity, and licensing and taxation:* The regulation of residential properties used for all forms of short-term accommodation would be difficult as it is resource-demanding and difficult for councils to regulate. Given that hosted short-term accommodation is less likely to suffer the problems associated with un-hosted accommodation, there may be a need for an alternate policy approach for hosted short-term accommodation. To help facilitate this, the Department of Planning and Environment should introduce definitions for both accommodation forms in the *Standard Instrument*.
- f) *Any other related matters:* The regulation and enforcement of short-term accommodation has significant resource and financial implications for councils. A potential solution could involve a requirement for land owners to obtain a license, similar to the existing process for other types of government issued licenses. This would enable responsibility for compliance and enforcement of short term accommodation to be overseen by State Government who is better placed to license and regulate this activity.

Should you require clarification in relation to any matter discussed, you can contact [REDACTED], Principal Strategic Planner on [REDACTED] during business hours.

I trust these comments assist the Committee in its inquiry.

Yours faithfully

[REDACTED]

Fletcher Rayner  
Manager  
Strategic Planning Branch

Attachment: Council Submission

TRIM Reference: F2004/07515

**Hornsby Shire Council Submission**  
**Inquiry into the Adequacy of the Regulation of Short-Term Holiday Letting in NSW**

**a) *The current situation in NSW and comparison with other jurisdictions***

By way of background, the use of dwelling houses for short-term accommodation in residential areas was first brought to Council's attention in 2004 by the then Local Government and Shires Associations when it sought feedback from all NSW councils on their policy positions on the regulation of short-term accommodation as a result of a Land and Environment Court decision (*Sutherland Shire Council v Foster and Anor [2003] NSWLEC2*) and its potential implications. Of particular relevance, the Court noted that the use of a dwelling carries with it a notion of permanency. Short-term tenancies are commercial activities which are prohibited in the residential zoning. The Court found that the owners could not let the unit for less than three (3) months at a time, except to immediate family.

Council advised the Associations that the then governing environmental planning instrument (i.e. *Hornsby Shire Local Environmental Plan 1994*) did not contain specific provisions to regulate the use of dwelling-houses for the purposes of short-term accommodation or holiday letting. The Associations subsequently advised that all councils in NSW were divided over whether it is appropriate to regulate the use of dwellings for short-term accommodation through the planning system. Some were concerned about the impacts short term accommodation was having on residential areas and others recognised the contribution tourism makes to the local economy.

In response to community angst in relation to the use of several properties on Dangar Island for short term accommodation, Council undertook the *Rivers Settlements and Foreshores Review 2007* to (in part) review the issue of the permissibility of short-term and bed and breakfast accommodation in the river settlement areas of the Shire. The *Review* noted that generally, the use of the dwelling-houses or residential units for short-term accommodation does not, or should not generate environmental impacts additional to that generated by a legally constructed dwelling but that short-term letting can have a number of impacts on residential neighbourhoods that would not be encountered with longer term letting. Council considered the findings of the *Review* and resolved to permit, with development consent, short term accommodation across all river settlements.

The NSW Government's *Standard Instrument Local Environmental Plan* does not specifically define short-term accommodation and at the time the current governing environmental planning instrument (i.e. the *Hornsby Local Environmental Plan (HLEP) 2013*) was prepared, the Department did not have a preferred approach for regulating short-term accommodation. Council was therefore reliant on using the group term "*tourist and visitor accommodation (other than hotel or motel accommodation, serviced apartments, bed and breakfast accommodation, backpacker's accommodation and farm stay accommodation)*" to permit short term accommodation in the Shire.

Short-term accommodation is permitted with consent via this approach in various rural, residential, business, industrial special purpose and environmental protection zones under the *HLEP 2013*. Specifically, short term accommodation is permitted with consent in the RU1, RU2, RU4, RU5, R2, B2, B4, B6, IN4, SP3, E3 and E4 zones under the *HLEP 2013*. Guidelines for Tourist and Visitor Accommodation development are also included in the *Hornsby Development Control Plan 2013* to

limit their size to a maximum of 6 guests and require a Code of Conduct to be signed and adhered to by the guests.

Subsequent to the preparation of the *HLEP 2013*, there have been nine other council Local Environmental Plans that have been made by the State Government with a different approach for the regulation of short-term accommodation. In summary, there are two approaches. The first approach involves insertion of a local provision which defines short-term accommodation and permits the land use without consent in all zones. This approach has been adopted by the Bega Valley, Eurobodalla, Kiama, Palerang, Port Stephens, Shoalhaven and Wingecarribee local government areas. The second approach involves the insertion of a definition of short term accommodation, and exempt development provisions for the use of dwellings up to 4 bedrooms, and local provisions for the use of dwellings containing 5 or 6 bedrooms, as short term accommodation. This approach has been adopted by Gosford and Wyong local government areas.

In summary, despite the NSW Government introducing the *Standard Instrument* LEP, there are varied policy positions and approaches to the regulation of short-term accommodation throughout local government areas in NSW. To provide more uniform approach between councils, the NSW Department of Planning and Environment should consider introducing a mandated definition of, and model local provisions for, “short-term accommodation” for insertion in the *Standard Instrument*.

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

In the past, holiday makers would traditionally stay in purpose built accommodation forms such as motels, hotels, caravan parks and bed and breakfast accommodation. These accommodation forms have long been regulated by councils, and their location restricted to areas where there is limited opportunity for impact on the amenity of residential areas. A number of councils have also recently sought to regulate the use of dwelling-houses or residential units for short-term accommodation. Traditionally, these forms of accommodation have been rented directly by the owner or an agent for weekends or longer periods. In most instances, the dwelling-house or unit would be occupied only by the visitors (i.e. un-hosted holiday letting).

Un-hosted holiday letting can have a number of impacts on residential neighbourhoods that would not be encountered with longer term letting. For example, the behaviour of short-term tenants can, in some instances, lead to greater neighbourhood disruptions including noise and inappropriate behaviour. Such land uses can also attract more cars and other holiday activities such as the storage of boats, equipment and rubbish. Accordingly, Council requires development consent and a Code of Conduct to be signed and adhered to by the guests to ensure the use of the dwelling-houses for short-term accommodation does not generate environmental impacts additional to that generated by a legally constructed dwelling.

The requirement for holiday makers to meet the owner or agent and be briefed on the Code of Conduct before entering the property provides an appropriate control to ensure there is no unruly behaviour. However, an on-line environment may not provide this opportunity for un-hosted short term accommodation. It could be argued that dealing directly with a person raises a holiday maker’s sense of responsibility to adhering with a Code of Conduct.

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

In recent times, the growth in on-line tourism platforms (such as Airbnb and Stayz) has given rise to the use of dwelling-houses and residential units for both un-hosted holiday-letting and resident hosted short-term accommodation. A cursory review of Air BnB has identified that there are 300+ rentals in Hornsby and surrounds and include a significant number of “private room rentals” where accommodation is hosted or the accommodation is shared (i.e. residents are in residence).

Hosted short-term accommodation or shared accommodation is less likely to suffer the problems associated with un-hosted accommodation and may not need to be regulated. To recognise the difference between hosted and un-hosted short-term accommodation and to provide flexibility in determining their land use strategy, the Department of Planning and Environment should consider introducing a definition for both accommodation forms in the *Standard Instrument*.

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

Tourist accommodation provides income to specific business as well as the local economy. The *Local Tourism Plan* commissioned by Council in 1993 notes that overnight tourists have a greater contribution to the local economy through expenditure for meals and accommodation than day visitors. Tourism also has a multiplier effect on the local economy. Visitors may choose to eat at a local restaurant or hire a boat, thereby providing income to those additional businesses.

Many local government areas depend on the contribution tourism makes to the local economy. Also, the economic viability of many homeowners, particularly in coastal areas, depends on some tourist letting due to high land values. Notwithstanding, any land use development strategy established in a local government area should provide a reasonable means of addressing residential amenity. Accordingly, the Department of Planning and Environment should consider releasing model short term accommodation policy provisions for local government to consider when drafting Development Control Plan requirements.

**e) *Regulatory issues posed by short term letting including customer safety, land use planning and amenity, and licensing and taxation***

There are various arguments over whether it is appropriate to regulate the use of dwellings for short-term accommodation through the planning system. However, it is generally accepted that the enforcement of controls for all forms of short-term accommodation would be difficult as it is resource-demanding and difficult for councils to regulate.

Council has received two recent complaints regarding short-term rental accommodation non-compliances in the Shire, including one in Mount Colah and one in Singletons Mill. However, a cursory review of AirBnB has identified that there are a significant number of rental properties. Accordingly, the number of complaints recently received is just the tip of the iceberg.

Given the inability for councils to regulate and enforce all forms of short-term accommodation and that hosted short-term accommodation is less likely to suffer the problems associated with un-hosted accommodation, there may be a need for an alternate policy approach for hosted short-term

accommodation. To help facilitate this, the Department of Planning and Environment should consider introducing definitions for both accommodation forms in the *Standard Instrument*.

**f) *Any other related matters***

As highlighted above, due to the potential number of short term accommodation non-compliances the regulation and enforcement of short-term accommodation would have significant resource and financial implications for councils. A potential solution could involve a requirement for land owners to obtain a license, similar to the existing process for other types of government issued licenses. This would enable responsibility for compliance and enforcement of short term accommodation to be overseen by State Government who is better placed to license and regulate this activity.