

**Submission  
No 48**

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

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Legislative Assembly  
Committee on Environment and Planning  
BY EMAIL  
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Dear Sir/Madam

**Subject: Submission to legislative assembly inquiry on short-term holiday letting in NSW**

Thank you for the opportunity to lodge a submission for the inquiry on the adequacy of the regulation of short-term holiday letting in NSW. Council staff have prepared this submission on behalf of Council.

There is a long history of holiday rentals operating across the State. The industry contributes to tourism revenue and job creation with flow on effects for food services, transport and retail industries. The majority of properties are managed in such a way that causes little disruption to neighbouring property owners. A few, however, have caused noise and amenity issues, mainly due to them functioning as "Party Houses" for large numbers of people at a single premise.

In general, short-term holiday letting (STHL) is a prohibited use in local government areas where a Template based Local Environmental Plan (LEP) is in force. Exceptions occur where the LEP includes a specific clause that defines and permits this land use.

Land and Environment Court rulings over the past ten years have determined that STHL is a commercial, rather than a residential activity and therefore, by default, is prohibited in residential zones (e.g. NSW Land and Environment Court case of Dobrohotoff vs Bennic (2013)).

An agreed approach on the regulation of STHL is really a state issue, however, to date there has been no policy direction set by the Department of Planning and Environment (DoPE), and there is no standard definition included in the Template LEP. Each council is expected to identify how they intend to manage the use. This provides for an inconsistent and ad hoc approach to managing this type of development.

### **History of Short-term Holiday Letting regulation in Lake Macquarie LGA**

For a number of years, Lake Macquarie City Council (Council) has requested direction from the Department of Planning and Environment to provide a consistent state-wide approach to the regulation of STHL.

STHL is currently a prohibited use in residential zones under the *Lake Macquarie Local Environmental Plan 2014* (LMLEP 2014). When preparing LMLEP 2014, Council sought to include a clause that permitted a dwelling to be used as STHL, subject to no loss of residential amenity. The clause was exhibited for public comment.

The DoPE and Parliamentary Counsel sought changes to the clause that would have had the effect of placing no limits or restrictions on how a STHL premises was to operate, making it very difficult for Council to manage any negative impacts on the amenity of adjoining residents. To allow draft LMLEP 2014 to progress, the clause was removed and Council flagged that it would continue to discuss possible clauses with the DoPE.

Council resolved on 1 December 2014 to amend LMLEP 2014 to regulate short-term holiday letting in those zones where a dwelling was permitted. The amendment proposed that STHL in dwellings

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containing 4 or less bedrooms be permitted as exempt development, and dwellings with 5 or more bedrooms require development consent, as long as it met certain criteria including a bushfire evacuation plan in bushfire prone areas and abided by a Code of Conduct to preserve the amenity of the neighbourhood.

The public exhibition period for the amendment was between 2 March 2015 and 28 April 2015.

#### **Status**

During the exhibition period, the Rural Fire Service NSW (RFS) advised that the amendment to LMLEP 2014 in its current form, was not consistent with Section 117 Direction 4.4 "Planning for Bushfire Protection".

The RFS advised that as STHL is considered to be tourist accommodation, it is a '*special fire protection purpose*' (SFPP) for the purposes of *Planning for Bushfire Protection 2006* (PBP). Under Section 100B of the *Rural Fires Act 1997*, a Bush Fire Safety Authority (BFSA) is to be obtained for a SFPP on land mapped as bushfire prone.

As a result, the RFS advised that STHL located on bush fire prone land should be required to gain development consent from Council to trigger the integrated approval process under Section 91 of the EP&A Act 1979, to obtain the BFSA.

Since this correspondence has been received, Council has worked with DoPE and RFS staff to determine a solution for STHL in bushfire prone areas.

#### **Recommendation**

It is strongly recommended that the NSW Department of Planning and Environment prepare state-wide definitions, policy, and planning guidance, to introduce consistency and manage risk issues being raised by the RFS, for managing short-term holiday letting in NSW.

Should you require further information, please contact me on [REDACTED]

Yours faithfully

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