

REPORT OF PROCEEDINGS BEFORE

COMMITTEE ON ENVIRONMENT AND PLANNING

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

At Tweed Heads on Monday 7 March 2016

The Committee met at 10.47 a.m.

PRESENT

Mr G. E. Brookes (Chair)

Mr M. J. Coure
Mr A. Chanthivong
Mr J. T. Parker
Mr G. K. Provest

VINCENT MATTHEW CONNELL, Director Planning and Regulation, Tweed Shire Council, and

IAIN WILLIAM LONSDALE, Unit Coordinator, Strategic Planning and Urban Design, Tweed Shire Council, sworn and examined:

CHAIR: Today we are hearing evidence for our inquiry into short-term holiday letting in New South Wales. The Committee has received 210 submissions from people across the State. Nearly one-fifth of these submissions were from the Far North Coast and that is why we decided it was important to meet in Tweed. I declare the meeting open and ask everyone to switch off their phones. I thank witnesses from Tweed Shire Council for appearing before the Committee today. Do you have any questions about the information you have been sent and our process today?

Mr CONNELL: No.

CHAIR: Would either of you like to make a brief opening statement?

Mr LONSDALE: Thank you. Tweed Shire Council wrote a submission for the Committee. This issue has been facing the Tweed for well over a decade, an issue that we have not really dealt with previously with any degree of veracity. It was not seen to be a major problem and up until a couple of years ago we did not really receive that many complaints from neighbours or consider the issue to be too great to warrant any amendments to our planning instruments or the like. In more recent times, with the advent of online technologies and the take-up of the use of those online technologies, we seem to have had quite a proliferation in short-term rental accommodation on the Tweed. A lot of it is driven by individual land owners themselves, without any experience in any kind of business market, without any awareness of the risks and pitfalls that may present to themselves as land owners but also to those individuals who come and stay at these properties. Many of those individuals are unaware of the Tweed and may not have been here before.

The issues that presented were largely around flooding and evacuations, bushfires and the like. That raised quite a lot of concern for the council, because that is potentially where people would be at risk in the event of a natural event or disaster occurring. As a consequence Tweed Shire Council resolved to look into this issue and where appropriate the staff were asked to come back with recommendations about whether or not there should be a land use for this permitted with consent exempt or simply prohibited. We have recently commenced a policy framework and had a public consultation on that framework. We had approximately 20 submissions that were made by members of the public and we are now in the process of reviewing the policy framework that we put out as a discussion paper. From that a number of issues arose that we thought were worthwhile raising with this Committee, hence our submission.

CHAIR: The Committee has heard that there should be a standardised approach to regular short-term letting that should be applied across all councils if not across Australia. Do you agree?

Mr LONSDALE: We do agree. Would you like me to elaborate?

CHAIR: If you would.

Mr LONSDALE: We agree because in the communities there is a broad spectrum of views: those who are vehemently opposed to this form of development and those who carry it out on a routine basis. What we found over a period of time is that we have not had significant complaints and where properties are well managed they seem to work quite well within the communities. I think many community members are unaware that these things are happening within their own neighbourhood. Our view is that providing there is a form of regulation and strict guidelines that the council can use, from a compliance perspective, the land use can be properly regulated and therefore should be permissible at some level.

Mr MARK COURE: I direct a question to either of you. It is probably more to do with how you deal with short-term letting. Do you require development consent in any of the situations? Are you satisfied in the operation of short-term letting in the local government area? There have been hints of moving towards a standardised template of local environmental plan or State environmental planning policy that councils could take off the shelf and adapt and adopt. What are your views on that?

Mr LONSDALE: Currently it is prohibited within the Tweed. It was certainly permissible as a land use with development consent for 14 years under our prior local environmental plan. It became prohibited when the standard instrument local environmental plan was implemented because of the change in definitions and the way that they operated. We do believe that it should be regulated. Standardised template control is not ideal. The question is for how long should they operate and in what way. The approach that we have looked at lately accommodates the variety of uses: knowing that sometimes the use happens when people go away on school holidays, that may be two months within the year, and there are those that run it like a business and do it regularly day in day out throughout the year.

We took the approach in our discussion paper that regulating it for a set period would probably be appropriate and that way we can manage it. We can have a code of conduct. We can use the code of conduct and we can respond to that where there are breaches so we feel that standardisation is appropriate. The question we had was how long that should be allowed for. We said around 60 to 62 days, which is about two months, which covers the holiday periods. Many of the operators thought that very unreasonable and it should be a lot longer, 150 days plus. Our view is that beyond the 60 days, which is a reasonable level, development consent should be required.

Mr ANOULACK CHANTHIVONG: You mentioned that you would like to see regulation of the industry. What, in your view, would you be regulating for and what sort of model of regulation? Are we looking at a public agency standard or a self-regulated industry code of conduct? Those are the two questions.

Mr LONSDALE: A self-regulated industry would be the preferred model. In our view an operator of the sort offering short-term accommodation should be required to subscribe to a particular code. It may be a real estate agent. I can give an example in the Tweed: there is a real estate agent that operates somewhere between 100 and 200 properties, they have been nonspecific but we know it is a large number. We generally do not have any problems with that operator. We do not have any problems with their property because they are well managed and they operate under their own code of conduct. When they have tenants coming in they can make them aware of the issues that I canvassed a moment ago. Self-regulation in that realm would work. It needs to be a regulation where the council has some leverage if the complaints are persistent and the managing agent is not doing the right thing. There needs to be recourse through the council.

Mr MARK COURE: Following on from that, what recourse would you be interested in taking?

Mr LONSDALE: Fines, cessation of use, whether that be through the Local Court or through the Land and Environment Court.

Mr JAMIE PARKER: At the moment you are seeking to make a variation to the definition in the standard instrument when it comes to residential zoning questions to include a definition of short-term stay accommodation. Let us say that the standard instrument was proposed, or some wording about what short-term stay accommodation is. Let us say it is 65 days, and for any more than that development consent is required. One of the questions is: Who enforces compliance? Local councils, as you know, are under a lot of pressure with their compliance staff already. If it was 65 days and council gets complaints from a neighbour and it is 72 days, do you see any potential challenges when you have hundreds of short-term stay accommodation properties? How do you know which one is rented and on which nights? Who would police this? Does the neighbour have to tick off every day that they have had someone in there? How do you think that would be managed from a compliance perspective?

Mr LONSDALE: With some difficulty. I think it is a shared responsibility and I think it is important to have a licensed manager. We can certainly have properties registered, that is something else we have canvassed. It may be a requirement for them to keep a log so if there are complaints we can check the log to see how many days within the 12 months it was used.

Mr JAMIE PARKER: I wish to ask a follow up question.

Mr CONNELL: I was just going to elaborate on the actual compliance. There are some models there about having that stronger management role. As you would be aware, council's compliance officers and rangers do not operate in the night-time and only a limited amount in the daytime and weekends. So they are not around for the party house situation or an abuse of that sort of arrangement and that is often left to the police. From the feedback I have had and what has occurred in other situations in other areas, there is a requirement that there be

a contact person for the management group. That is where I would be supportive of what Ian is saying—there has to be shared responsibility. It cannot all be a council responsibility.

Where a neighbour's sleep is being disturbed, there is always an immediate contact person who is responsive. If they are not responsive then they are accountable to whatever industry standards have been set. You are right in terms of the compliance aspect for an actual matter to be prosecuted in court. Generally speaking we will seek an authorised officer to witness circumstances to be able to properly prosecute. But I would expect as well that if there is a continual receipt of log books or complaints that are clearly documented and a person is a witness to a neighbour, if it were to actually appear in a court it would give that legal case greater weight.

Mr JAMIE PARKER: It would. To briefly follow that up, you touched on the fact that it is currently prohibited in the LEP. So how do you deal with complaints and issues at the moment? A lot of residents say, "This is prohibited, so you should not allow it to happen. Why are there hundreds of these happening in the area?" There is that contradiction that people see. How does the Tweed shire manage that?

Mr CONNELL: Up to the last one or two years, council would respond on a complaint basis. Certainly the council would follow that through with a property owner if they believed that there was an illegal use. In more recent times our council have tried to be a bit pragmatic. Given that we have an obviously large number of unauthorised house or home let arrangements in a whole different range of settings—not just your traditional house let but also in residential flat buildings—the council has said, "Look, we really need a stronger policy framework to be able to administer the compliance as well as the regulated land use." So our council have said that unless there is a specific issue that is causing great distress to a community member that is an ongoing, obvious illegal activity, we will defer our action at this point in time. We will certainly follow up where we can on complaints, but the idea is to get a better policy framework in place that will be used in future and make a more solid basis for us to take action.

I also clarify that there is a lot of focus on the traditional house let—it may be a holiday house or a larger conventional single residence being let out—but we also have an increasing incidence of residential flat buildings being let out for such uses as well. That can cause significant grief for the other unit owners within a complex. No doubt it causes some issues with managing that within their own body corporate or strata management situations. So the council are trying to recognise that there is a variety of circumstances and that that house let or home let type of arrangement is evolving. We want to come up with an appropriate policy framework to support that.

Mr GEOFF PROVEST: In your submission you tend to favour the recent changes in Queensland to its planning provisions which you say "provide a high level of clarity for short-term rental owners and operators". Do you see that as a possible solution in New South Wales as a separate provision? That is the first question. The other issue that concerns me is that you are going to charge a registration fee. I assume that local government would be in charge of collecting that fee but will also be the policeman. I am concerned that you can overregulate it. All local governments have struggled for many years with illegal brothels, to no avail. So I am a bit concerned that, if you overregulate, you will just force it underground. Ultimately it is the local residents that need some sort of voice in this.

Mr CONNELL: I think we are trying to achieve a balance. Through our recommendations certainly a big issue for our elected council was that they recognise that house lets and tourist accommodation play a big and important part in our local economy. So we do not want to be projecting a message to people wanting to come to this area that we are trying to shut down that industry. We want to strike a balance that is feasible for both retaining the amenity of local residents but also providing that ability for council to regulate. I appreciate what you are saying in terms of: "How far do you want to go, council?" We do not have the extent of resources to go too far, but with a lot of these new regimes of compliance, sometimes it takes a while to get a workable practice in place.

We are trying to take experiences with some initial development applications that we have had, which have been quite successful, that came in before our local environment plan in which we set up development consents in single houses and management plans to clearly give a shared responsibility with the individual owners and their agents. To this point in time, from our point of view the circumstances of those development applications have had very few complaints. If you weigh up regulation versus no regulation, what we are finding is that our community is demanding more regulation and we are attempting to respond to that. But I take your point that council is limited in its ability to administer the licensing fees and those types of things. That may be

an opportunity—it might be a suitable government agency such as Fair Trading or some other regulatory body that takes that licensing of the broader industry body whereas council takes more of the role of the land use regulator.

Mr GEOFF PROVEST: But you would have to get the licensing fee. You could not ask council just to wear those costs, really, could you? There would have to be cost recovery in some form.

Mr CONNELL: That would be preferable, but I think it is fair to say that in a lot of aspects of council administration we are not necessarily cost recovering. But you are right: As a good model of financial management we should be seeking that whatever service we provide should be at no greater cost to our ratepayers.

Mr JAMIE PARKER: And the Queensland part of the question: What is your view on the Queensland regulatory environment?

Mr LONSDALE: Certainly having a standardised process through a separate instrument would be our preferred option. That is what the SEPP is for. This is a statewide issue. It is not a local issue to Tweed and the local council. So we are absolutely for a SEPP with very clear guidelines. There is an opportunity here to do this form of land use as complying development. It does not necessarily have to have a DA; it does not necessarily have to be exempt. The middle ground is complying. We just need to weigh up what the issues are and how they are affecting the different communities and tailor it appropriately. You have three options there, really, for permissibility. We would prefer to see compliance. We have not pursued that. We did not have it in the discussion paper. It is not something that we can control anymore. Those provisions were taken away from LEPs.

Mr ANOULACK CHANTHIVONG: So you are after some sort of standardisation through the SEPP. What are we regulating for? Is it public safety? Is it fair competition or any other things you may think of? How big an issue are those regulatory purposes that we are seeking to define?

Mr LONSDALE: Certainly from a local council's perspective we are looking to regulate the environment and increase the amenity of the neighbourhoods people live in—neighbourhoods that people have bought into with an expectation that has subsequently changed because of the use and the proliferation in some areas of this particular development. That really is the key thing for us. So is the safety of the occupants when they come here, absolutely. It is a high flood-prone area. There are other risks such as bushfire. We need to ensure that a mechanism is in place so that people coming here to stay are aware of those risks. When they come and stay in a hotel, that information is usually available. They are much better structured. What we find with short-term rental accommodation is that it is hit and miss. Those managed by an agency usually get the information and those that are not simply do not.

Mr MARK COURE: Do you want to add to that?

Mr CONNELL: Yes. I was going to identify the Queensland experience. The issue for the Gold Coast council that we know most about is that it had gone through issues of party houses and people coming to stay. It had to make a decision. No matter how difficult it was for council on the regulatory side of things, it had to make a stand. It had to introduce more stringent and clearer provisions that required development approval in the planning system. In respect of your question about what role should State policy play, it is about clarity of definitions, whether that should be permissible land use. That is its clear role. Councils are better placed to look at the amenity issues, such as the impacts on local areas.

As you can imagine, we are very closely related to our neighbours in the northern rivers, Byron and Ballina councils, and we do not want people dodging from one council area to the other just because each council has a different attitude or a different way of thinking about these cluster situations. It would be a stronger position for the State Government, as well as local communities, if people had clarity about what do we mean by short-term accommodation, what is the definition, where is it best located. Then issues of how it is to be administered is really up to the local councils to apply their compliance role.

Mr MARK COURE: Has there been any guidance from the Department of Planning and Environment, the Office of Local Government or Fair Trading to help find a solution to short-term living?

Mr CONNELL: The Department of Planning and Environment is probably the most relevant department that has been discussing this with us. We have had various representations. I do not believe we have had much contact with other government agencies. I also point out that we are grappling with an issue, which I mentioned to a few of the members today before we started. We are very interested in an article published in the *New York Times* on the weekend about how this same issue is being fought in America on both major coasts. More recently New Orleans experienced exactly the same issue in a similar way to what is happening here. It has had an inquiry about it. What has come out is that the general desire for regulation was there, but at the same time they do not want to shut down or affect the character of that home stay industry, and that is the challenge we face.

Mr MARK COURE: Do you know how many short-term holiday lettings are in the local government area?

Mr LONSDALE: From discussions we have had with the community and others in the industry is that it is upwards of 2,000.

Mr MARK COURE: That is quite significant. In the last financial year have you received any complaints about short-term living?

Mr CONNELL: Yes, we have. In my area and my clients' areas as well, there probably have been, I would estimate, no more than 10 to 20 complaints in that time.

Mr JAMIE PARKER: You said that this issue was mentioned in the *New York Times*. We know it is an issue that many jurisdictions in Australia and around the world are grappling with. There are different definitions to determine what short-term stay accommodation is. We are getting down to the detail, but that is one of the biggest challenges for this Committee. What is it and how do you define it? Some people say it is 45 days, some regulations stipulate 45 days in other jurisdictions, some say 65. There are different definitions. Why did you settle on 65 days? What makes that a meritorious number that you think is important or a threshold?

Mr LONSDALE: That is a good question. It was a very tricky one. We looked at roughly how many days a year the schools are closed and in what period families are likely to go away and rent their properties out. That was one of the main categories that became clear to us. It was families taking their children away and using the income from those properties to pay for that holiday. That is a common story around the Tweed. So, two months is around 60 days or 62 days, so we settled on that period for that reason.

Mr JAMIE PARKER: If a short-term accommodation property was being leased out for more than that period, it would require development consent. What would you expect that development would require?

Mr LONSDALE: That is a good question. That is the concern of the community, what does the development application [DA] require. We certainly have not discussed or canvassed putting together any guidelines on what it may require. It would be on a case-by-case basis. For example, in some of the village areas there are bushfire issues, so we would expect that a bushfire control plan may be needed in that area, notwithstanding that a bushfire control plan would most likely have had to have been signed off for the DA in the first place. From a risk management point of view, they are the minimum we would expect. If you are in a flood risk area, we would expect a flood risk evacuation plan to be prominently displayed on the property for the occupiers of that site. Beyond that, I think an analysis of the neighbourhood itself, such as how many others are operating in that area. I am not suggesting that it would be a requisite condition for whether one gets approved or refused, but I think it is important that the council has an idea of what is going on in that locality. We would put the onus on the applicant to show us how they might manage the site and what the impact might be within the neighbourhood.

Mr JAMIE PARKER: There might be clustering provisions or something like that?

Mr LONSDALE: That is possible. It is not something we have contemplated, but possible.

Mr ANOULACK CHANTHIVONG: I want to follow up on what Mr Parker asked regarding your threshold. What incentives would you foresee that would encourage people to come forward to say, "Yes, I have done it for more than 65 days." There is obviously a cost involved if you go over the threshold. What incentives would make people disclose that information? Others might say, "I only did it for 64 days, therefore, I do not incur costs." How do we get around that issue?

Mr LONSDALE: I do not see it as an incentive so much but whether you comply with the law or you do not. If you exceed the threshold, you are no longer exempt development. Now you are prohibited; you are in breach of the Act. That may have consequences for your insurance. It is really in the best interests of the operator to make sure that they are complying with the law.

Mr CONNELL: We are grappling with the issue of threshold in a local environment court matter at the moment. It is bit of a different scenario. One of the issues of the case is that it is a formerly approved tourist accommodation and the units are to be converted to residential. As part of the progression of negotiation on conditions of consent, the parties are debating those thresholds and there have been suggestions are we talking about a potential two- to three-month split where it can be used as short-term accommodation and permanent accommodation. Some issues have been raised about how that relates to the Residential Tenancies Act. For example, you might have someone in for the holiday period. Someone might have signed up on the residential lease. Who tells that person that they have to be removed? There are some issues that we have to carefully consider such as how it relates to the general legislation in terms of the use, rent and leasing of residential properties.

Mr GEOFF PROVEST: When I enter into a normal residential tenancy agreement there is a requirement to pay a bond and the Government keeps the bond. The issue of a bond is always mentioned on short-term residential websites. Do you envisage a potential problem down the track because that bond is being held by a private person or a company?

Mr CONNELL: That is a good point. No, we had not contemplated that. We do need to have a close think about that.

Mr GEOFF PROVEST: I have seen some of them where, if you have an animal, they charge an extra \$600 or \$800. I could see a potential legal battle down the track with that.

Mr LONSDALE: I guess my perspective is that if it was regulated through an industry body then there would be appropriate mechanisms within that for them to hold that bond. I know that one of the major residential agents in the Tweed takes a \$1,000 bond for every property that they let. If you misbehave you forfeit \$1,000. That \$1,000 is an incentive to do the right thing.

One of the things that come to mind is that we have other uses within residential precincts of a commercial nature. You can have a home business, and there are controls in the local environmental plan (LEP) that allow you to do that. There are no time limits—62 days or 150 days. They are all year long as long as you comply. We voted in the 62 days; for us it was a safety net. Whether or not that is appropriate and whether it is required will depend on the kinds of controls you have. A home business is one example. The controls are quite limited: do not employ anyone at the premises; do not pollute and do not block the parking of your neighbours. That might suffice for short-term rental accommodation.

What we have done through our discussion paper may be an over-regulation. Certainly the registration component may be an over-regulation. We felt it was appropriate to go out with a whole range of different issues to try to flesh out how the community feel about that. At the end of the day if it is through a State environmental planning policy [SEPP] there is no reason why it cannot be quite straight forward, similar to a home industry.

CHAIR: As far as the bonds go, everywhere in industry you may get good tenants and you may get bad tenants. How would you end up regulating, say through an ombudsman, where there was a dispute about what you were paying for or if you were trying to get a bond back? The short-term letting that I see is mostly through Airbnb. Is there any recourse, especially as it is off-shore? What do people do, if they have a complaint, or if a complaint has been made about them? Where would they go with respect to the repercussions? How are they going to deal with it? If, as a Government, we are going to regulate it, these sorts of things have to be put in place so that the owner of the building has someone to go to and whoever was renting the premises has someone to go to if there are issues later on.

Mr LONSDALE: Given that it is the use of a residential building, and we are not reclassifying the building to a business, commerce or industry, then the Residential Tenancy Tribunal (NSW Civil and Administrative Tribunal) would probably be the appropriate way to go. Beyond that, it is not something that the council has sought to regulate. We have not really set our minds to it.

CHAIR: As a whole, it is more stuff that we have to look at. At the moment, they will take a credit card number, and—I am just thinking aloud—if there has been damage you do not talk to the person, you would take the money. Then the argument starts. The owner or the company will just draw upon the credit card. Everybody has to produce one of them these days. Dealing with cash has pretty well gone. If there has been damage the owner takes the money out of someone's bank account, whether or not they caused the damage. There is no tribunal to go to in order to have the money returned or where you can argue the facts.

Mr LONSDALE: We will take that question on notice but we cannot provide a response at this point.

CHAIR: It is a difficult one, I know.

Mr JAMIE PARKER: I suspect they would probably just go to NCAT—it used to be the tenancy tribunal—and fight it out there. It is not optimal, is it, to have to go to NCAT and resolve it? This will be my last question because I know we are a bit pushed for time. In regard to complaints you said that over time they have been increasing. Ten years ago you never heard about this kind of thing but over time it is increasing. You said there were maybe 10 or 20 complaints. What is the nature of those complaints? Is it amenity issues? Is it garbage, parking or noise? What are the complaints that you are getting?

Mr CONNELL: There is a combination. As you suggest, it is all about the amenity. There are those that you mention. There is, for example, complaints about parking—the additional parking in the area. I think they are, generally, the worst-case examples—a party being had, noise disruption and anti-social behaviour. Those are really the worst-case examples. We do not have, amongst the majority of the current unauthorised uses, that feedback. They seem to be well managed.

Mr ANOULACK CHANTHIVONG: Have any issues of public safety been raised, or any incidents that you are aware of relating to these short stays?

Mr CONNELL: Not that I am aware of; no.

Mr LONSDALE: I would like to raise two issues before we leave.

CHAIR: Yes.

Mr LONSDALE: The first issue that I would like to raise, which has come to our attention, is the impact that this industry is having on the value of residential properties. Through the discussions we have had with the community we have discovered that investors are purchasing on the basis of that use, without which they would not purchase. So there is a question about whether that is having a flow-on effect in elevating the value of these properties.

The second issue, which is a corollary of that, is that, because a lot of these properties are taken out of the residential market, it reduces the number of properties that are available for occupation and for renting on a more permanent basis. We have seen no evidence—we have no information—on how that is impacting on our ability to supply housing at an affordable rate to the community now and in the long run.

CHAIR: We may wish to send you some additional questions in writing. Your reply will be part of your evidence, and will be published. Would you be happy to answer any additional questions?

Mr CONNELL: Yes, we would.

CHAIR: Thank you for appearing today.

(The witnesses withdrew)

GRANT IAN HAWKINS, Partner, Byron Bay Accom, and

JOHN ANDREW GUDGEON, President, Holiday Letting Organisation Inc., sworn and examined:

CHAIR: Thank you for appearing before the Committee today. Do you have any questions about the information you have been sent, and our process today?

Mr GUDGEON: No.

CHAIR: Would you like to make a brief opening statement?

Mr GUDGEON: Yes. Holiday Letting Organisation [HLO] was formed back in 2005 by a meeting of owners of properties and agents operating in Byron Bay. It was done at a time when the Byron Shire Council had a very aggressive campaign against holiday letting. They were sending out letters threatening \$1.1 million fines—to cease and desist. The planning director at the time even sent a letter to all agents in town asking them not to take bookings in the future for short-term rental because of this council policy.

That was challenged by HLO. On good legal advice the council basically put a moratorium on it. The issue has been going on for 11 years now without being resolved satisfactorily. The council is in a much more amenable state; they see the importance of holiday rental in Byron Bay. The Byron visitor economy is virtually dependant on short-term letting. We do not have any high rise. We do not have high density buildings. We rely on residential buildings to provide most of the bricks and mortar accommodation. Back at that time there was a local environmental plan [LEP] for Byron shire being put through. We went through a process of communication with the council and the community and what we discovered was that the council actually wanted to shut it down.

Again, legal advice and planning advice—we got expert planning advice—clearly identified that this was a behavioural management issue and not a planning issue. Our advice has not changed in 11 years. At that time the Holiday Letting Organisation Byron [HLO] formed a basic platform that it was the right of any property owner to let their house on a short- or long-term basis but they had to do so responsibly. So we represented them fighting the council to stop their campaigns but at the same time we brought in measures, including a code of practice back in 2005, to help owners manage responsibly. We also run a security service, which provides a service to owners and managers to respond quickly to incidents that do happen in the town.

What I think we have asked for all this time is—the code of practice that we wrote back then was transformed by the New South Wales Department of Planning inviting industry members to write the code of conduct, which is now run by Holiday Rental Industry Association [HRIA] on a national basis but definitely totally applicable and with the approval from the Department of planning. What we had asked for as a corollary to this—which is what the Tweed Shire Council are basically asking for—is that the State clarified the position of short-term rental. Short-term rental has been there since the 1800s, what has only happened is that it has been excised out in people's minds from long-term rental only in recent years. What happened in Byron, when they decided back in 2005 they wanted it to be illegal they looked at the LEP to try to find a clause in there to hang their hat on. They used tourism and visitor accommodation, which applied to other forms of accommodation. That was not appropriate. We have asked consistently over the past 11 years for the department to clarify this and have a uniform set of definitions within the instrument to aid all councils. All councils I have spoken to would love that, including Byron council.

The answer we got from Minister Hazzard, when he launched the code of conduct and asked every council in New South Wales to become a participant and a supporter of it, was that the problem had been solved. But what he did not do was to give a clear definition, so that people who had the perception it was illegal did not follow that path. That has caused huge neighbourhood angst with neighbour against neighbour—one believing that the other person is doing something illegal so therefore why should they talk to them. What we desperately need is—this Committee is very welcome, sitting in front of that, to ask very clearly that we have a uniform code for holiday rental, which exists anyway but it needs to be clarified and ratified.

CHAIR: You have answered the first question. Mr Hawkins, do you wish to say something as well?

Mr HAWKINS: Mainly I can respond to practical questions about what it is like managing holiday rentals. I have been doing that for 15 years but I was also the chair of Tourism Byron in 2005 when we

established the hotline. I have been involved in this for a long time. In practical terms it has been very interesting—

MARK COURE: Sorry to interrupt, but are you talking about the holiday letting hotline?

Mr HAWKINS: Correct. Yes, if there is a problem in the area. In our experience the main issue is noise amenity. But it is not an issue that is confined to holiday letting; it also applies to permanent letting and applies to owners as well. That needs to be carefully looked at. In practical terms the hotline was called out for less than one per cent of the rentals we had in the last year.

Mr GEOFF PROVEST: How many rentals would you roughly have in Byron?

Mr HAWKINS: One hundred.

Mr GUDGEON: You are talking about overall?

Mr GEOFF PROVEST: Yes.

Mr GUDGEON: It is hard to tell. We have a database for the hotline that has probably got about 750 addresses on it but what is happening now, especially with the advent of the Airbnb model, many people are going on for Easter or whatever. I agree—I think it was brought up by the people from Tweed—that these people can access the market very easily but they have not got any experience in basically managing a property. Going back to the statistic that Mr Hawkins mentioned, we have figures going back for complaints for 11 years and that figure of one per cent is very consistent.

Mr MARK COURE: Have you finished?

Mr HAWKINS: That is fine.

Mr MARK COURE: Mr Gudgeon, in your submission you talked about the need for some regulation, a template LEP or some guidelines from Planning or from the Office of Local Government or Fair Trading—probably from Planning. Mr Hawkins, in your submission you said that some approach is needed but I gather from your submission something a little different to a template LEP. On page 1 of your submission you talked about overregulation. What did you mean by that?

Mr HAWKINS: I suppose there has been a lot of concern with the proposal that Byron council has put up, that it looks over regulated and there will be a need for a development application [DA] process on virtually 80 per cent of the properties. That seems to us to be very much over regulation. That is where the concern is. So what would it look like? Certainly to keep going with the code of conduct, which has been endorsed by the State Government—if the council was really alongside us and promoted the code of conduct more strongly to the community it gets more traction. I think if you have a look at the HRIA's submission—which I think is an excellent submission in terms of a lot of background to this whole situation and a lot of legal issues—it makes the point that it is getting more and more gravitas over time and the power of the code increases over time. With regard to all the international websites—we use all those sites for marketing so we are very familiar with how they work—the management issue does not happen there. The management issue happens with us and happens with our owners. I do not think there should be a large concern about where the marketing comes from; it is more about where is the responsibility?

CHAIR: You said you are managing 100 houses?

Mr HAWKINS: Houses and apartments.

CHAIR: About 750 of them?

Mr GUDGEON: On our database, yes, about 750 across the shire.

Mr MARK COURE: Currently if there is a complaint for whatever reason—noise, amenities, garbage or whatever—who do I call? Do I call you or do I call the council?

Mr GUDGEON: You can call the council but the hotline is basically a service where there is a call number—a lot of houses have that number up there—and there is a call centre. The call centre takes a detailed report of what the complainant is reporting and then the call centre looks at the database and knows that it is a member of HLO—

Mr MARK COURE: Who funds the call centre?

Mr GUDGEON: We do. Our organisation funds it.

Mr MARK COURE: So you have to be part of the association to be party to that call centre?

Mr GUDGEON: Yes, but if you are not part of the organisation the call centre will then call the police—as a community service they will call the police and give the same report to the police. But if they are on the database the information is given to a private security firm and they respond. The response takes anything from five to 10 minutes, but sometimes it can be longer depending on traffic. That is followed up the next day by our administrator contacting the complainant to see whether they had satisfaction and they also contact the manager to make sure that they follow through and take the appropriate action with their occupant.

Mr GEOFF PROVEST: My question is directed to either of you. Tweed council brought up the Queensland model which has included a number, 65 days. What is your view on that?

Mr JAMIE PARKER: Byron is saying 90.

Mr GUDGEON: Maybe both of us would like to say something. It does not make any sense from the actual practical management side of things. The biggest problem we have is behavioural management, and that can happen randomly, as we have seen. Most places are not a problem, or some places might have a problem now and again. As Mr Hawkins said, that happens in the permanent community as well as the visiting community. That is where we should be focussing our attention. I believe that even though Byron Shire is a hotspot, from the compliance section's problems, holiday letting is actually a very small one overall. But emotively it has a loud and strident opposition, so we hear about it. The thing about 65 days is you have to look at the usage of the house.

Mr GEOFF PROVEST: You do not need a development application [DA] if you are under 65 days; if you run over it, then you do.

Mr GUDGEON: Yes, but the problem is mixing up long-term rental with short-term rental. We hear about school holidays, but that is not the case in Australia any more. People take holidays all the way through the year. It is a different society to what it used to be back in 60s or even the 80s.

Mr HAWKINS: I think it is an important point because when people rent for less than 65 days, frankly there can be more problems not less, certainly proportionally in time. The reason for that is people are not experienced in the management issues and if they try to do it themselves, it takes a little time to get up to speed with it. We are reluctant to take on properties that they only want to rent for six weeks; we tend to get more problems. If you are going to have some form of registration in your end result, I would suggest everyone needs to be part of it—I think that is very important. But the process needs to be taken with care.

CHAIR: That is the idea behind this inquiry, so everyone can be part of the process and we can get as much information as possible so we can make good regulations, if necessary.

Mr JAMIE PARKER: There are two issues, first, the compliance with environmental management question about residential amenity, and that is more my area, as an inner-city member. One of the things raised in submissions—and Byron shire talks about it—is the impact on the market of turning residential communities into accommodation providers. This may or may not have an effect on the value of properties—obviously a lot more money can be made by short-term letting than just as a 12-month rental. There is also the issue of the supply of rental properties and how that has an impact on regional areas. Do you think supply is being affected? Byron said there were 2,000 short-term letting properties in the shire, and that is a lot of properties. What impact is this having?

Mr GUDGEON: Byron shire says there are 2,000 rental properties?

Mr JAMIE PARKER: Byron shire in its submission said that if you look at Stayz, which is just one online provider, there are in excess of 1,000 properties for holiday letting and the council estimated there were an additional 500 to 600 in 2005.

Mr GUDGEON: I would question those statistics. Property can be listed multiple times on Stayz from different agencies, so you have to be very careful about the number. That does not make sense in terms of what we are seeing out there overall. One of the things we do on the hotline is to manage by exception. If there is a problem with the house, we will find out if it is a holiday house and bring them into the fold. Going back to your question, that has often been brought up as an influence on the market. I have talked extensively to real estate agents in Byron Bay. They say it does not make any difference in terms of market price. Market price in a lot of cases is built on availability. Byron has had a shutdown development mentality since the 90s, and that has caused a chronic undersupply of housing compared to the actual demand. There is an argument that holiday rentals drive down the price.

The other misconception is in terms of rentals. Short-term rentals certainly are much higher than a permanent rental, but so are the costs. I have a holiday rental and I manage it myself, so I run it pretty tightly. It costs me probably 45 per cent of the income to do that. I have seen some where the figure is up to 60 per cent. When you look at the bottom line, it is not actually a great bonanza. People do it for totally different reasons. Some people do it for money, but a lot of them do it for the flexibility of being able to access the place themselves. A lot of these places are the traditional family holiday home and because of ease of rental, mortgages, land tax that has now gone through the roof, rates that have gone through the roof and building prices that are going up, so I do not think there is an economic argument. If people are going to have affordable housing it ain't going to be in Byron Bay. Land values there are ridiculous because there is not enough land.

Mr ANOULACK CHANTHIVONG: Mr Gudgeon, in your submission you say the number of complaints is very small overall and it can be addressed by exception. What do you mean by "exception"?

Mr GUDGEON: That gets back to the whole thing of a light touch in terms of regulation. If you look at the figures, and they consistently come out everywhere that I have seen saying the amount of complaints is less than a per cent overall in terms of occupancies within a year. Even if you double or triple it, it is still a relatively low proportion. I totally agree with everybody in the community that one complaint is far too many, but it is the same thing with every other aspect of human behaviour. We are not going to get it perfect but we need to work on ways to make it better. Every incremental thing we can do to reduce that is what the whole community and government should be looking at and working together to reduce those things and make management much better. If you have good management and a good quality of tenants in a particular property you will reduce those problems down to nothing.

Mr MARK COURE: Mr Gudgeon, in regard to your organisation, what checks do you make to ensure that the units or houses meet the building and fire-safety codes?

Mr GUDGEON: We do not do anything physical. We run under the Holiday Rental Industry Association [HRIA] code of conduct and there is a stipulation in that code that you must be compliant with all local government association by-laws. We talked about the problem in the work of a council. We totally support the council in terms of any inspections or whatever they do provided it is on the basis of looking at safety issues, and we will continue to do that. If we were aware of a property having a complaint from somebody, which is not likely because we do not go into the detail, we would report that to council. We have flagged issues in the past.

Mr MARK COURE: Mr Hawkins, do you want to answer that question?

Mr HAWKINS: I will look at a slightly different aspect. I am sure the Committee is aware of already existing regulation on the statutes, particularly regarding the building council of Australia, safety regulations, fire, insurance. I want to flag that those things are already covered by existing regulation. The HRIA submission gives a very good explanation of how those things can be applied. I know the Committee has expressed concern that there is not overregulation in how we move forward from here. I endorse what Mr Gudgeon has said that there needs to be certainty in the definition of holiday letting, particularly.

CHAIR: How do you check on that? For example, do you add fire insurance to everyone's rates? A lot of houses are not insured for fire and if those houses are affected by a fire, people expect somewhere to live. What are your procedures to make sure properties are covered?

Mr HAWKINS: We insist that there is insurance and we sight it. We have a calendar and we follow up as part of our management process.

Mr MARK COURE: That is a good idea.

Mr JAMIE PARKER: Maybe I have missed this, so I hope you can explain it to me—and I do not want to pre-empt anything the Committee does so this is a hypothetical—let us say that short-term accommodation would not be complying unless it was available for a certain amount of time. What do you mean by having a "light touch"? Would you like to make it compulsory to have development consent or do you not want development consent? Your submission does not make that clear.

Mr GUDGEON: We looked at every connotation of this—I am talking about holiday letting as an organisation—and we did support at one stage the Gosford model but then we received legal advice that said that any change to a local environmental plan can be only prospective, not retrospective. When we are looking for an instrument that is going to be effective in helping diminish any problems with holiday rental it would make sense that it would apply to the whole market and not properties that are not yet operating. I think, going back to the consistent advice we have had all the way through, that it is a behavioural management problem, not a planning problem. It cannot be solved by planning. That is when the Government should look at the light touch.

As Mr Hawkins mentioned, there are a lot of powers that the council has under the Noise Abatement Act that could be accessed to work with in the industry if there is a problem. I think one of the things that has not been mentioned yet is that it seems the gentleman from Tweed did not refer to the code of conduct. In the code of conduct perhaps the most important thing for me when I was on the committee that put that together, was the difference between long-term rental and short-term rental. Long-term rental is anything over 30 days, which requires a residential tenancy agreement. Anything below that does not come under the Residential Tenancy Act. The whole legal document in short-term rental is the terms and conditions and house rules and they are legal documents. That means that they can be rescinded, taken away and any recalcitrant behaviour can be rewarded with eviction without any recourse. That is much more powerful. The Residential Tenancy Act, as we well know, comes back to people having argy-bargy, going to court, all that kind of stuff. There is no such problem with short-term rental.

Mr JAMIE PARKER: If I can conclude, the short version is you do not think there should be any change? You are relying on previous consents and you do not believe there should be any change. When you say what is the definition of short-term stay accommodation you do not really want a new definition; you are saying it should stay as it is because your argument is that any change to the local environmental plan can only be prospective not retrospective?

Mr GUDGEON: We desperately need clarification of definitions. What is lacking are clear definitions as to the—

Mr MARK COURE: Guidance.

Mr GUDGEON: Guidance. Basically we are looking at the fundamental use of a dwelling as being residential use. There is no difference in that residential use in regard to time—whether a person is there for a day, a week, a year or whatever. That is something we need to have as a central tenet of this whole argument.

Mr JAMIE PARKER: You are basically saying you want the definition of "residential use" to be a short-term and long-term stay accommodation? That is a clarity you are seeking. Those residential properties can be used for any type of leasing purpose, short-term or long-term, and that should be able to comply with the zoning of residential?

Mr GUDGEON: Which is the case now.

Mr JAMIE PARKER: That is being argued.

Mr GUDGEON: That is basically what the principal use is. I cannot run something else in a residential dwelling, it must be residential use.

Mr JAMIE PARKER: That is the contested problem, is it not? People contest the claim you are making now?

Mr GUDGEON: They do. The reason they contest that claim is that there is no clarity, or there are arguable terms, as there are with any terms in any instrument, as we well know. If you have two good lawyers you can have black and white looking like whatever you want. That is the thing we have been asking the Government to do for ages but they did not see the need because they were not directed with the arguments going backwards and forwards. Minister Hazzard said to our barrister over dinner, "I have solved it. Why are you asking me to give clarity? It is solved. We do not have to do any more." That was a bit frustrating.

Mr GEOFF PROVEST: You indicated you were the president of the local tourism industry board. You have the traditional forms of holiday accommodation, motels, resorts and so forth. Do you think that the short-term one that we are talking about now is detrimental or fair to those other operators? They have fixed costs, they have to get pretty expensive development applications approved, supply car parking—a whole myriad of things. Do you think the way we are going with this will be detrimental or fair to other tourism operators?

Mr HAWKINS: The main thing is that the guests who we are dealing with want a choice. By coming to a holiday house or a holiday apartment, in most cases that is not directly competing with a lot of those operators. It is competing at times. It is important that they behave well and the behaviour is monitored in that way. That is the most important thing from a community point of view. From a financial point of view the other tourism operators—

Mr GEOFF PROVEST: Have they bucked?

Mr HAWKINS: Yes, I think they do.

Mr GEOFF PROVEST: I was the chairman of the local tourism industry here so I know they are pretty vocal most of the time. In Byron have they bucked about the proliferation of the others?

Mr GUDGEON: Yes, they did, but one of the problems we had in Byron about the model for bed and breakfasts was the exorbitant cost of getting into it. I have people who say, "It is not fair, it is not fair". I say it is not fair because you should not have been put under the conditions you have been put under. I will help fight that battle for you but I believe recently Byron shire had a look at it again and realised that they had over stepped the mark as far as the regulations and they are doing something about it. It is a totally different animal. A bed and breakfast or a hotel deals with usually very short-term stays, it does not accommodate families and as Mr Hawkins says there is a huge need to have this choice.

Mr JAMIE PARKER: It was a good submission. You answered most of the questions in the submission.

CHAIR: In conclusion, we may wish to send you some additional questions in writing, your reply will be part of the evidence and be published, would you be happy to answer any additional questions?

Mr GUDGEON: Yes.

Mr HAWKINS: Yes.

(The witnesses withdrew)

CHRISTOPHER AARON LARKIN, Major Projects Planner, Byron Shire Council, sworn and examined:

ANDREW BRUCE HILL, Community Enforcement Officer, Byron Shire Council, affirmed and examined:

CHAIR: Thank you for appearing before the Committee today. Do you have any questions about the information you have been sent or our process today?

Mr LARKIN: No.

CHAIR: Would you like to make a brief opening statement?

Mr LARKIN: On 9 November the council made a submission to the Committee on holiday letting in Byron shire. It has been a vexed issue in Byron shire for a number of years. Council has attempted previously to introduce planning controls to set in force some sort of regulations to control the activity. We believe there is somewhere up to maybe 1,000 properties being holiday let on a regular basis throughout the year. That is the thrust of our submission—the need for some sort of planning control or direction from the department of planning to establish regulations for the activity.

CHAIR: Would you like to add anything, Mr Hill?

Mr HILL: No, I am fine, thanks.

Mr MARK COURE: I have a couple of questions. You have answered the first one—you said roughly 1,000 properties are part of short-term holiday letting in Byron shire. How does Byron Shire Council deal with short-term holiday letting? You have probably answered part of the question I was about to ask, which was: Do you require any development consent in any situation or any particular guideline from the department of planning?

Mr LARKIN: At this point in time there is a view that it is a use that is not permissible in the residential areas. Council has passed a resolution, I believe, for staff not to take any action against those people undertaking that activity. Mr Hill might be able to provide some further evidence on that. There was a previous attempt back in, I think, 2007-08 to introduce planning controls. There was a local environmental plan [LEP] amendment put to the department of planning and it never got any further than that on the grounds that the activity was considered to be somehow ancillary to normal residential use. The matter at Terrigal back in 2011 where the neighbours took the other neighbour to court over the use of that house for that purpose in terms of holiday letting probably led to a bit of a briefing from the department of planning as to whether it was a use that needed consent or not.

To date we have now seen Gosford and Wyong councils introduce planning controls to control the activity. Other local council areas such as Eurobodalla and Kiama also have provisions in their planning schemes to permit the activity without consent. Byron Shire Council has now taken that lead, I suppose, with some comfort that there is an acceptance from the department of planning to permit planning rules into their local planning schemes. We are currently preparing an LEP amendment which has been on exhibition. We are due to report that back to council in the near future.

Mr JAMIE PARKER: Thank you for taking the time to come along. It was a very well-argued and well-presented submission on behalf of the council—thank you for that. My interest is twofold. First, can you tell us a little about the compliance issues? How many complaints do you have? What are the issues that they are raising? And, secondly, with the amendment to the LEP I see you have identified a range of different thresholds for exempt development including the number of bedrooms and so on. Can you tell us a little about what made you arrive at that specific threshold?

Mr HILL: Just to provide additional information with regard to the issue as to how Byron Shire Council is dealing with compliance matters, this is a quote from Byron Shire Council's legal services:

On 28 February 2013 Council resolved through resolution 2013-114 that Council would defer authorisation of proceedings related to holiday letting pending the development of a strategy regarding options for regulation. In February 2013 Council noted that action remained open against holiday let properties should the behaviour of tenants of such properties cause significant impact on neighbourhood amenity. That approach has been reinforced in numerous contexts. Thereafter, such that it has been made abundantly clear that whilst Council would not take action relating to holiday letting of properties it would take action in respect of fire safety and amenity issues on a case-by-case basis as and when they arise.

Mr JAMIE PARKER: So how many complaints would you have in a year on those issues? I am not talking about the legality or illegality of short-term accommodation but people complaining about amenity impacts from short-term accommodation properties.

Mr HILL: We probably only get of the order of 100 or 200. I do not have the statistics with me. We do have those statistics.

Mr JAMIE PARKER: That is a ballpark figure. That is all right.

Mr HILL: The environmental and compliance area of council receives about 3,500 complaints a year. Only a very small percentage of those complaints relate to holiday letting. Personally I deal with most of the holiday letting complaints and there would only be about four or five problem holiday lets a year. By "problem holiday lets" I mean holiday lets about which we get second, third or fourth complaints or holiday lets on which we are unable to obtain a change in behaviour. The overall number of problem holiday lets is quite low.

Mr MARK COURE: What was the nature of those complaints? What type of complaints were they?

Mr HILL: The majority of complaints are about noise and disturbance. A small minority of complaints also include car parking and waste management.

Mr JAMIE PARKER: Back to the question about the thresholds, why did Byron come up with the thresholds you are using to determine whether a development application [DA] is required or is exempt?

Mr LARKIN: Following the Terrigal case, as I said before we took some comfort after watching what Gosford and Wyong had done to move forward with introducing planning controls. We originally set about preparing a short-term accommodation strategy which set about drafting some ideas around controls in terms of whether or not it would be exempt, a DA or what they call complying development. That strategy went on exhibition. I do not have the exact number of submissions we received but I am guessing somewhere in the vicinity of 150. That strategy went back to council and out of that we prepared an action plan which set in train the planning proposal to amend the LEP. The council resolved to set up two levels of development, being exempt for up to three bedrooms and for a limited time frame per year of 90 days. If you did not fit within that scheme then you had the option to seek consent for development approval. It is similar to what Gosford and Wyong have set up. I think they may have set their threshold at four bedrooms. Byron was a bit more conservative and picked three as the number. From that we have now gone on exhibition with that LEP amendment.

Mr JAMIE PARKER: I imagine a lot will be exempt—under 90 days. For those which require a development application, what will be the requirements for the development application? We have heard about bushfires. Is it notifying neighbours? What are the things that will be required as part of the development application? Have you looked at that issue?

Mr LARKIN: We have prepared some development control plan provisions to set out what sort of guidelines and requirements we will be looking at in terms of a DA. In effect, if the LEP amendment was to get up then what the landowner would be seeking would be a change of use from a residence or a dwelling to use that house for short-term rental accommodation purposes. Generally the application needs to be submitted with plans showing which bedrooms are going to be used in the house. It allows council to double check that there have been no further additions and whatnot done to the house without any approvals and for those matters to be retrospectively looked at. One of the important things we want to look at is the management of the house—who is going to manage the property; is there going to be someone available 24 hours of the day to respond to complaints?—based around some of the responsibilities that the landowner should abide by in terms of the holiday rental code of conduct.

Mr ANOULACK CHANTHIVONG: You had your exhibition on until 4 December. Could you summarise some of the thoughts you received? You have made a number of suggestions in your LEP that is on exhibition. How does the administrative and compliance regime actually work?

Mr LARKIN: In respect of the submissions received, broadly speaking, there are two general camps. I suppose in both of those camps there are views that the planning scheme is not the way forward and it should be left as a prohibited use and not a use that council should be endorsing. The other camp is that it is a use that

should be allowed to occur but not without council oversight in respect of planning controls. I do not have the submissions with me so I cannot give you a word-by-word blow.

Mr ANOULACK CHANTHIVONG: I wanted to get a feel for whether it is 50:50 or 60:40.

Mr LARKIN: In respect of those for and against the controls, I suppose those two opposing camps are against the controls. In the middle, probably 40 or 50 per cent were saying, "Good on you Byron shire for trying to have a go and bringing in some planning controls."

Mr ANOULACK CHANTHIVONG: How does the administrative and compliance regime work? I know you have a number of conditions about guest rooms. How does that work administratively for the organisation and your compliance team?

Mr LARKIN: It requires a degree of cooperation from the landowners and the property managers; that they are going to do the right thing by their conditions of approval or those exempt requirements if they fall under the exempt regime. As Andrew said before, although we might have 1,000 properties being holiday let, we are not getting 1,000 complaints from those properties. There are probably a handful that are causing us some concern. In saying that, probably most properties are operating fine without any real problems with the neighbourhood. The ones that are causing concerns come to the attention of the council and then it leads to compliance officers such as Andrew to investigate. If they are found to be breaching the conditions of approval or the exempt conditions, then council would take further action.

Mr ANOULACK CHANTHIVONG: In respect of the specific properties that are generating most of your problems, I would have thought it would be easier for the organisation to target those properties rather than applying a uniform administrative process across the board.

Mr LARKIN: One of the issues that came out of the Terrigal case—the judge at the time was quite scathing of council for not dealing with this matter under its planning scheme. With more than 1,000 properties in Byron shire, the council needs to be seen to be doing something and actually doing something to bring in controls. Otherwise, we may end up with the same situation where a neighbour takes their own legal action against another neighbour and it brings the whole thing into further question.

Mr GEOFF PROVEST: I note in your submission you have an A3 sign at the front of these properties. I think Victoria has this requirement, which is a good idea. What is the effect on the rest of the neighbourhood with the large amount of holiday rents? Do you see the number of those holiday rents growing? Finally, Chris, what has it done to the affordable housing market within the Byron local government area?

Mr LARKIN: Sorry, can you repeat your first question?

Mr GEOFF PROVEST: Signage. Do you see a registration number on that and a fee that has been paid and compliance to some of these rules you have put down here, such as three bedrooms and so on?

Mr LARKIN: The idea is that the details of the holiday manager of the property would be on the signage, so if there is a complaint at 2.00 a.m. or 3.00 a.m. that there is a loud party going on the manager is contacted.

Mr GEOFF PROVEST: If I owned one place and registered it, I would become an owner manager?

Mr LARKIN: Maybe, if you wanted to self-manage, otherwise you might use a real estate agent to manage the property. In that case, you would have LJ Hooker on the sign instead, "Holiday let. Contact John", such-and-such a number. That enables the neighbours, if there is an issue with the way the place is being let, for them to follow it up with the manager, and the manager becomes the first person responding to the call, not police, not council. Council would probably not get to it until the next morning, and the police are probably busy doing other things, not responding to a noise complaint about a holiday let dispute. We think it is only reasonable that the landowner or the property managers take that call. They are the ones who are generating an income out of the property. If they can resolve the issue by dealing with the tenants accordingly, or the guests, that is a better way forward than bringing in the police

Mr GEOFF PROVEST: Would you take my word for it if I ticked the box that I have only got three bedrooms? Are you envisaging physical inspections?

Mr LARKIN: All houses are supposed to be approved by council in some manner or form unless they have been there prior to any planning scheme being introduced in Byron. If someone has gone down the exempt path and there is a complaint to council about the house having five bedrooms not three, we would pull out the historical approvals, check the plans and if there is a need for follow-up inspections, we would commence that action. What was the second part of your question?

Mr GEOFF PROVEST: Affordable housing.

Mr LARKIN: In the submission I gave some figures on the median house prices in Byron. In June 2015, the median house rental was \$650 per week, which is \$220 higher than the State average. The median house valuation was \$675,000, which was \$106,000 higher than the State average. Byron Bay is always going to be an expensive place to buy a house. Probably more of a concern is if people own properties, do they take out six-month leases or nine-month leases and, come Christmastime, the tenants will be out looking for somewhere else to live? What happens in that three-month period over the Christmas period when they have to find somewhere else to live? In fact, it happened to a friend of mine who was renting a house from his mother-in-law and ended up at my place for three or four weeks over Christmas because she could generate \$3,000 a week instead of \$500. It does happen.

Mr MARK COURE: Smart.

Mr JAMIE PARKER: I hope you charged good rent. The suggestions from Byron Shire Council are really interesting. You say that you are not inundated with complaints, maybe 100 or 200 complaints. What is your sense of how the situation has evolved over time? Do you think that the organisations that have come together and the codes of conduct are making a difference, or do you think that the issues that have been raised have remained static over the years?

Mr HILL: There is no doubt that since the introduction of the Holiday Letting Organisation [HLO] in Byron Bay we have had a significant improvement in holiday letting complaints. There has been a significant reduction. The issue, though, is because of the council resolution, compliance officers are a little bit hemmed in on how they can deal with a lot of these issues. We have tried various methods of dealing with noise and disturbance. The HLO and some of the agents have got together and they have got some good strategies. One of the biggest issues in Byron Bay is the density. A lot of the dwellings in the popular holiday areas are very close to each other. If you look at places such as Suffolk Park in Byron Bay, a lot of the blocks are well under 600 square metres in size. Because of property values, the houses have become quite large. You have got swimming pools and outdoor areas that are extremely close to each other, so this is causing a bit of a problem in regards to noise and disturbance.

One of the issues that I have come across, and we have tried to deal with, is permitting the industry to try to resolve issues with some of those problem holiday lets. It gets very difficult because although the industry is definitely making an effort to improve things when there is a problem holiday let, there is not a lot of regulation that can be used to enforce something. We can deal with the issue of noise under the Protection of the Environment Operations Act. However, I know from a recent case of mine that it is a very expensive thing to do. If I was to issue a prevention notice to a holiday let property requiring that property to carry out a noise and acoustic assessment report and then implement any mitigation measures from that report, it could be in the order of \$14,000. So, if you are the owner of a holiday let and you have to deal with noise through a compliance program it can be very expensive. There is obviously going to be reluctance by holiday let owners to go down that path. It is a tricky situation but I must say that we only have a handful of really problematic holiday lets in the shire.

Mr JAMIE PARKER: I feel for you. In my electorate, in the seat of Balmain, the minimum lot size is 200 square metres. So 600 square metres is heaven—palatial! I will just ask one more brief question. I am really interested that Byron Shire Council went through a very traumatic process, really, looking at how to introduce regulation. You have relied on the Gosford City Council issue in particular to move forward. You said that you have had some involvement with the Department of Planning and Environment. How have you found, from a State Government perspective—and the Department of Planning and Environment—their involvement with the council? Do you feel there has been enough engagement with the council to help provide direction? Does this Committee need to be recommending changes or do you feel that the Department of Planning and Environment has been adequately supporting local government to make these decisions?

Mr LARKIN: I cannot get out of this because I put it in my submission. I put in words that there was a lack of clear direction from the Department of Planning and Environment on how councils could regulate and control short-term holiday letting, so I cannot back away from that statement. In saying that, in 2006, 2007 or 2008—I am not sure of the exact year—council had a crack at trying to introduce planning controls. They were not supported by the Department of Planning and Environment, primarily on the grounds that it was considered a residential type of use and it was ancillary to the normal use of the house.

There has also been discussion over the years that they would look at introducing some sort of statewide controls. That is yet to eventuate in terms of, I assume, a State environmental planning policy. That has not happened. We had some correspondence from the department—I think it was in about 2011—saying that it was now a local government matter and that councils could deal with it in terms of their own planning schemes. Following that, there was the Terrigal case, which brought home the issue. In terms of Byron shire, tourism is a major driver and council needs to be supporting that component. I made the point that if there are 1,000 properties with three bedrooms each, potentially there are one million bed nights being provided a year in Byron shire. I do not know if that is the exact number. Some of those properties might come and go through the year but that is the potential number of beds being provided. Tourism is a major component of the local economy. Byron Shire Council cannot turn its back on it easily.

CHAIR: Do you think that the holiday letters should come into line under a memorandum of understanding with local government?

Mr LARKIN: Holidaymakers or the owners?

CHAIR: The owners. There is a code of conduct that they are working within but I am suggesting that they also sit across from council—local government—and that is policed and understood and those are the guidelines that they work under.

Mr LARKIN: I think the code of conduct is a good step forward. One of the concerns we have about it is: who is in control of it? Is it a State Government code or is it an industry code? Who gets to have the final say on recommendations on that code and is it endorsed, eventually, by the State Government? I think there were a couple of earlier versions back in 2012-13, which had some sort of State Government endorsement. The latest version, though, seems to be a code that is derived from those earlier versions but it looks as though Stayz and the Holiday Rental Industry Association of Australia now have control of that code. I am not sure what sort of role the State Government Department of Planning has in influencing that code and what goes into the code.

The code is a good idea if it had some teeth in terms of the compliance—the actions that the holiday let organisations, including Stayz or whoever it might be have to take—of operators who are not operating in accordance in the rules. Or it could revert back to the local government with their compliance regime to enforce the code. There is a slight disconnect with the code and compliance. If it is just an industry code, and councils are reliant on the industry to ensure that the code is enforced, what sort of mechanisms require that to happen? That is the issue I see.

Mr GEOFF PROVEST: Just following that line, do you think that, while a code is necessary, there should be more teeth that local government can use if necessary, if operators step out of line?

Mr LARKIN: I think that would be an important element of it. If holiday letting is totally governed by the code and there is no planning, approval or registration requirement under the Local Government Act for holiday letting, what role does council have in terms of enforcing the code of conduct? We seem to have these two overarching pieces of legislation which set about approval processes. If the code on holiday letting was outside that legislation I struggle to see where councils might fit into the enforcement regime.

Mr GEOFF PROVEST: Are you aware of the Queensland model? I do not know how long you have been here, but we spoke earlier about definitions and that they are really crucial. The Queensland model appears to be quite definitive.

Mr LARKIN: I did have a brief look at what the Queensland State Government introduced last year or the year before. I think the Gold Coast City Council have now introduced a precinct type of model for party house zones on the canals, and things like that. If you want to have a house that can be used for weddings, functions, bucks parties and the like, they are only to go in certain areas. That is my understanding of it. I am not

too sure how it works in terms of the rest of the holiday let provisions. But they have introduced this definition, which I think is a good way forward.

Mr GEOFF PROVEST: The last thing I would like to see is the overburdening of the industry with a whole heap of regulations, knowing full well that local government only has a limited workforce, so enforcement may become subjective, and other things. We want to see the industry grow but we also want to see that the local residents are protected. We want to offer some clear guidance to local councils. Otherwise we will get 100 different versions of it.

Mr JAMIE PARKER: My experience of being in local government as a councillor and a mayor is that noise abatement orders and those types of amenity controls are very difficult to apply. They are often very onerous in terms of levels of proof. You have just said that the cost to the host or the homeowner can be really significant. Would I be right in saying that part of the reason you are proposing to introduce the exempt status and the development application status is because it is far easier—it is more straightforward and very simple—to pursue a breach of their approval? So if they have a development application [DA] and they are clearly breaching that DA it is a lot simpler, more straightforward and very easy for council. Is that one of the benefits you see in your proposed model?

Mr HILL: Yes. For instance, a development application for a holiday let premises would have clear conditions. It would definitely make my job easier. We could issue on-the-spot fines rather than having to go down the path of issuing notices and orders, which can be a very lengthy and time-consuming process for staff. From my perspective, on-the-spot fines also tend to change people's behaviour a lot more quickly than having to go down the process of issuing notices and order.

Mr JAMIE PARKER: That is a real benefit of that proposal.

CHAIR: In conclusion, we may wish to send you some additional questions in writing. Your reply will form part of the evidence and be published. Would you be happy to answer any additional questions?

Mr LARKIN: Yes.

CHAIR: Thank you for coming along today.

(The witnesses withdrew)

JOHN FRANCIS MURRAY, Regional Manager, Northern Rivers NSW Business Chamber, and

WILLIAM JOHN SPENCER TATCHELL, Chief Executive Officer, Destination Tweed, sworn and examined:

PAUL JOSEPH MCMAHON, Principal, LJ Hooker Kingscliff, affirmed and examined:

CHAIR: Thank you for taking the time to appear before the Committee today. Do you have any questions about the information you have been sent or the procedure that will be followed today?

Mr MURRAY: No.

Mr TATCHELL: No.

Mr McMAHON: No.

CHAIR: Would any of you like to make a brief opening statement?

Mr MURRAY: Thank you. My name is John Murray and I am the regional manager of the NSW Business Chamber up here in the Northern Rivers. I also have some 20 years past experience—I have a senior industry background and was director of international group development with a large travel group as well. So I have some interest, as does the NSW Business Chamber, in this fairly important issue. I would also like to link my submission ahead today with submission No. 179, which was submitted back in November to the inquiry. It was drafted by a chap called Dean Gorddard, who is the executive manager of our tourism division. I would like to touch on some points in that submission as well as give a little bit of clarification, particularly in one area, and then perhaps just a quick summary if I can.

The submission that was given by the NSW Business Chamber was based on what is called the sharing economy, in particular a report that covered the issues, impacts and regulatory responses to deal with the sharing economy. In that submission five key principles were put forward. I will just summarise those in my own words, if I can. One was to allow growth without restriction, another was to reduce red tape, the third was to allow self-regulation, another was to allow where regulation was to occur to allow efficiencies to be incorporated, and the final one, once again with regulation and where it was required to be implemented, that the regulation was based on strong empirical evidence. The sharing economy in the sharing economy in New South Wales report basically summarised that we are now in a new world. This new world basically is how the State Government engages and manages the tourism sector from the point of view of being critical and it will provide a blueprint of how to integrate this powerful business sector with the overall economy.

The short-term holiday market is complex and dynamic. The leisure model is emerging in different forms, seemingly on a daily basis. Disruptive technologies are now a part of everyday life whether we like it or not. So the biggest taxi company in the world does not own taxis, the biggest retailers in the world do not own inventory, and the biggest accommodation providers do not own hotels. The world has changed since March of 1993 with the introduction of the internet and it continues to change at breakneck speeds. These emerging disruptive technologies create two distinct positions, particularly with accommodation—those private operators wishing to capitalise on their own excess capacities; and those corporations wanting to perhaps bypass the regulatory framework. We do not support the latter.

With regard to private operators using their excess capacities, many private owners are caught up in the vagaries of the short-term holiday definition used by many councils in their various LEPs. Short-term holiday properties are basically defined by one key word—that is, the word "principally". A property that is defined "short-term holiday" through the DA processes has this overruling definition that says the property should be principally used for short-term holiday accommodation. So principally it is 50 per cent plus one, the vagary is with the 49 per cent. Basically that is a trap for anyone who is caught up in that 49 per cent and I would like to speak on this a bit more. The 49 per cent effectively leaves people swinging in the breeze. Just here in this region we have got quite a few properties with owners where their valuations are running between 30 and 50 per cent of what they originally bought their properties for. These are people caught up in the vagaries of the definition and I think that needs to be sorted out. I think a better outcome would be to have an overall dual-use outcome with regards to properties that do sit in the right zoning, have properties that are clearly defined for permanent use and yet have this descriptive vagary, if you like, placed over them.

Airbnb is worth \$13 billion and is only now just starting to find its feet. You also have companies like Stayz and Wotif that are providing most acceptable tourism short-time holiday accommodation outcomes. The consumers like this form of business dealing. It is very popular. It is even recognised on the NSW Department of Fair Trading's website. That gives credit to operators who use their excess capacity—the second and the third bedrooms and the granny flats and the likes—within these online booking systems. Just a final comment, the existing short-term holiday framework operating within legislation is not sophisticated at all—perhaps Mr Tatchell might like to say something about that a bit later. There are a lot of 2½ and three star properties out there existing within the legislative framework that do not use traditional forms of letting, let alone new forms of technologies like I mentioned a moment ago. This is a real frustration for the industry.

With regards private operators using the likes of Airbnb and Stayz, many of those are actually offering a better, more accessible product than some of the 2½ and three star properties just existing out there relying on passing road traffic, for example, for their business. If you look at the North Coast Regional Plan we need—and it is quoted by Chris Gulaptis, MP—a diversified economy and one that can sustain the needs of some 11 million tourists who come to this region every year. I believe that reducing the red tape and making it easier for operators and owners to use their excess capacity in a positive way is certainly the way to go. Thank you.

Mr TATCHELL: My background is tourism, marketing, development. I cannot speak with a great deal of knowledge on the planning framework and the regulatory framework, but what I would like to do today is talk about the output of actually sorting that one out—how we can actually drive things forward to help us achieve our 2020 goals and objectives. It is no secret that we have an issue in the tourism industry with our inventory in order to be able to achieve that target. Most of the investment that we see in tourism infrastructure is centred on Sydney in the context of New South Wales, but it is the regional areas that need that investment. They need those areas and opportunities to grow the tourism offer. They need those areas and opportunities to grow their tourism offer, so when it comes to accommodation we do not find that same level of investment. We need to look to alternatives—Airbnb, the sharing economy or, if you are more of the Harvard school of economics, the access economy. It is about connecting those to these opportunities, these accommodations.

We know about the horror stories on the Gold Coast. We are well aware of the issues surrounding people living within strata titles and renting them out as party places. These issues are a concern, but in the context of the Tweed we have some traditional infrastructure—our Mantra and Peppers resorts. We also have an enormous amount of holiday homes. We have about 300 homes just in Tweed Heads on Airbnb, 180 or so on the coast—and that is just at a quick glance. From our side it is about making informed decisions. Destination Tweed do not feel that we have those decisions. We have the knowledge to make them but the data is not there. The National Visitor Survey and International Visitor Survey capture a snapshot but do not drill down to make informed decisions.

There are not the requirements that exist for traditional accommodation providers in terms of the regulatory framework they operate within, from adherence to fire restrictions and other forms of important legislation that govern safety and the visitor experience. On Airbnb you can log on and put your couch or room online without having to follow regulations. I am no expert on regulatory frameworks but it seems to me that perhaps we should look at deregulating those currently constrained by enormous red-tape regulation and lowering the bar, not in a negative way, so we can create a more competitive field. But it comes down to defining what is short-term holiday rental, who consumes it, how we track it, how it fits in and, more importantly, from a development point of view how to strengthen that market segment to help us achieve our Tourism 2020 goals.

Mr McMAHON: As I said, I am principal of LJ Hooker Kingscliff. I have been there almost 30 years. Prior to that we had motels and holiday accommodation on the beach at Cabarita, so I have been involved in the holiday industry here for more than 30 years and I know it inside and out. To give you some idea, the economy in Tweed would not exist without it. Half our restaurants would close, our cleaners, our gardeners. It is a huge part of our economy—I think something like \$700 million, the figure I got from Tweed Shire Council. I think the next one is agriculture which is about \$300 million. I could go through statistics, but I hear all these horror stories. I have not experienced them although I have been involved for 30 years. Over Christmas we had over 130 properties occupied for six weeks pretty solid. We had one noise complaint. Our complaints are like 0.01 per cent, and complaints are pretty much always about noise. An average family might get a bit excited with the kids playing a bit loud in the pool, but if you have a chat it is pretty well done and dusted and that is the end of it. We do not run party houses, and that is clear. We have a strong code that originally came from Fair Trading and the Real Estate Institute. We take a \$1,000 deposit. In the days before we did that we had a few

more problems and issues, but since then it has made it an enjoyable industry to be involved in. You still need to prepare properties right and run them right, but I do not subscribe to there are huge problems.

Using our office as an example, the economic benefits to the local economy are huge. Over the last 12 months, LJ Hooker Kingscliff alone has accommodated over 12,000 holiday guests in an average of 126 properties. Those properties stretch from Banora Point through to Pottsville. The average holiday guest stay is 7.96 days and they generate about \$13 million of spending at local businesses. That is based on a local average daily spend of \$134 in the Tweed and \$172 in New South Wales. The economic on-flow generates employment income engaging services including cleaning, laundering, gardening, electricians, plumbers et cetera, tourist services, food, dining, even our local farmers produce for the restaurants. Our retail outlets would not exist without tourism.

My general opinion is if we have to go down the regulatory path for the Tweed shire, that is fair and reasonable but it would be too heavy handed. I believe an owner should have the right to let his property short or long term as long as he does so responsibly. Under the Residential Tenancies Act the rules and regulations are pretty clear. I do not see holiday tenants as any more of a problem than a regular tenant and regulation should probably go down that same path. The Byron solution is a code of conduct for short-term rental accommodation through some sort of statutory means. Let us not complicate it but keep it where basically everyone signs up for the same deal. We take a deposit and if they are in breach then they do not get it back. People do not risk their \$1,000. It could be run by Fair Trading. The Tweed Shire Council, as good and simple as it is, I tremble about the things that could happen—

Mr JAMIE PARKER: Tremble?

Mr McMAHON: I do. I have been a part of our local economy for a long time and I feel I know it. I feel the hurt and the damage that can happen if we introduce something of this nature. Let us keep it simple—that is my general opinion.

Mr GEOFF PROVEST: Mr McMahon, one of the technical issues is prohibited use. As you know, Tweed council has a moratorium on it. This Committee will make recommendations on the way forward. My view is to keep it simple. A number of local government bodies tend to mirror that but saw the necessity of having some type of mechanism so residents have somewhere to go if there is a problem. In Byron there is a hotline but I want to keep it simple. Technically, right at this moment, in the Tweed shire it is a prohibited use in some areas and the council has a moratorium waiting to see what happens. All members of this Committee support the economic benefits of short-term letting.

Mr JAMIE PARKER: I come from an inner-city electorate and a Land and Environment Court case has determined that the use of a strata building in the central business district for short-term accommodation is prohibited even though other strata buildings are used for short-term accommodation. Most councils are grappling with this and trying to find ways to work through this issue. Some councils have 45-day or 90-day thresholds until it becomes short-stay accommodation. One of the challenges for this Committee is whether that is the path we want to take or to look at a code of conduct. In terms of the code of conduct that has been implemented, why do you think there are complaints to councils by residents? Is it because short-stay accommodation operators are inexperienced? Is it because a minority of people act like fools? Is it because some websites do not require a bond to be paid? We have codes of conduct, so why are there still problems?

Mr McMAHON: I started in the days when people came and now their children come. They used to come and turn up, "Good day, Bill." And you throw them the keys and tell them there is a broom there, they can sweep the cockroaches out and everyone was happy. That was where it came from. In those days you used to have to come out at night and go and say, "Listen, you have to quiet it down a bit." And they generally would and sometimes they would not but those days disappeared for us once we came up with this code of conduct. I have all the info here. We tried the bond. It virtually vanished and disappeared overnight. It is a rare thing now. I wandered around the office this morning to check my thinking and I said to everyone involved in holiday letting, "What do you think the biggest problem is?" They had a hard think and they said the same thing. All those girls are the ones that take the calls and do the stuff every day. The cleaners virtually walk in and do a general tidy up, it has changed the industry.

Mr MURRAY: I want to comment about the online side of it and the suggestion was if you make a booking online then the opportunity is to create havoc and have all sorts of wild parties. I disagree with that line of thinking. Can I say to you that people seem to respect and value their reputation far greater with an online

rating. For example, eBay, people are horrified of getting a bad rating on the likes of eBay. It is exactly the same with Airbnb. You have a transparent online rating system both ways; the customer gets rated and the property gets rated. This is really working big time not just in Australia, not just in this region but around the world. If you do the wrong thing your reputation is going to follow you around the world.

The online system is a good system and not necessarily one that is a precursor towards bad conduct. I still think that some of the points that Paul was making with regards to council as far as policing, it is a tough one for the council. I would like to think that perhaps there was the opportunity to register with council. There may be a small bond that may be in keeping with that registration process where if you want to rent out the granny flat or second or third bedroom you have to register it with council and therefore a noise complaint may trigger a quicker, more reactive approach than if it was a resident. If you link that with a code of conduct as well that may bring down the opportunities for bad play. I hope I have been clear on that.

Mr JAMIE PARKER: That is fair enough.

CHAIR: I point out that you were worried about what is going on up here, and we all are. This is about all councils because at the moment every council is running their own show out there and every council is different; there are no two the same at the moment. What we are doing is trying to come up with a set of guidelines, if any, that everyone can work under together. If we have achieved that we have achieved a lot, not just for you but anywhere up the North Coast whether rural or coastlines, it does not matter. It is about us all coming under the same regulation so we all know where we sit. It will make it easier for the State and the whole of Australia to look at it. At the moment we are only looking at the State so we can all work under one set of guidelines. Mr Tatchell, you were saying we are going to be over-regulated. It is not about over-regulation, it is actually about getting a set of guidelines that we can all work with and know where we stand.

Mr TATCHELL: It is important, I do not disagree at all. One thing I would like to point out in here is the online platforms and the varying types available. If someone is physically coming in you put down a deposit and that is held in trust.

Mr McMAHON: They do that online too.

Mr TATCHELL: We are looking at two different things: the traditional online situation with the wholesaler in the middle, such as Stayz, Wotif and Expedia, versus the peer to peer or consumer to consumer dumping out their inventory. That is a lot harder to police. I do not necessarily see it is the role of council. I think they are overburdened as is. When it comes to a noise complaint, it is a noise complaint regardless of whether it is a resident or short-term holiday letting. I do not see or feel that the onus should fall back on to the homeowner to put up a bond or a deposit. In terms of looking at the online environment, it is a struggle finding something that works perhaps through Fair Trading in a traditional manner versus online. How do you police a global company?

CHAIR: Even with that, some of the things that we have been discussing include evacuation plans and the way that everything is done within the different areas and councils. If you have a high level of bush around do those people there for the weekend understand their evacuation plan? Where is it displayed? Is it displayed at all? Being the next-door neighbour, do I know them? I do not know them. Do I tell them where to go or where not to go? It is the same within many areas. We have a lot of areas in the bush where we have two or three days of rain and rivers burst their banks. You may have people staying besides the river in short-term holiday letting not knowing where to go. It is about not over-regulating but about helping to let those people who are using those short-term holiday lets know what do. As a Government we have to make sure they are protected as well as the house owner. How do we go about that?

Mr TATCHELL: The Tourism and Transport Forum submission, 209, was interesting in terms of that and regulation. It suggested using the existing mechanism of Fair Trading without putting too much onus onto councils. I see where you are coming from and from a tourism point of view the last thing we want to do is have a risk and a harm associated with our destination experience. It comes back to, from a regulatory point of view, it would be illogical for council because they have that footprint over that area.

CHAIR: How do you get that message to the short-term holiday letter that is only there for a couple of days? For argument's sake, Mr McMahon, when someone comes in and rents a property off you for two days a week, is there a procedure you go through on an evacuation if need be? How does that operate?

Mr McMAHON: The only thing that would be relevant there would be notices in the property. We are looking towards going to an app. The minute they make a booking they have an app for whatever goes on from there. That would be the next phase and our next step. Quite honestly, what we deal with is people that come, the wives, the kids and they have a holiday. In 30 years we have had one fire and that was over Christmas and it was the Peppers Resort. We have never had one other than that. We have never had any great emergency of any nature. It is different to your hotels. It is people and we can all relate.

If you are in a bushfire area in the country that is a different story and it would be the same as there would be for any person that lives there; you would have a simple notice on the door or wall or whatever. Ultimately, it would be dealt with by us with an app. I am not against Airbnb. I am happy to work with it and online. We do as much as we can online. If you have the right procedures, policies, everything in place to begin with it is okay. This \$1,000 deposit, if we get grandma and grandpa and they come along and they are not a party freak you might bend that a little bit for them. You see things on *A Current Affair*, well, I've been in this game for 30 years and we do not have those sort of issues.

Mr MARK COURE: Mr Murray, did you want to add something?

Mr MURRAY: Just quickly on this one, I think this could be covered under the code of conduct very well. In fact, a simple two- or three- minute explanation to an incoming guest on that particular house in the particular area, whether it is a flood issue or a fire issue, would be far more valuable than the bureaucratic approach which is to put signs up on the inside of doors or in compendiums and things like that. The simple fact is this: In a four- or five-star resort or whatever, 99.9-something per cent of people that stay there would not have a clue what the fire evacuation processes are, but the boxes have been ticked. That is not necessarily a reflection of safety or that that property is safer than, for example, a house down the road that is being rented. People are just not aware of these things until it is too late. If a fire alarm goes off, the last thing you want people to do is stand at the inside of the door trying to understand what they are supposed to do. I think this could be covered under a code of conduct better than the bureaucratic approach.

Mr MARK COURE: Mr Murray, in a previous answer you talked about registering your short-term letting property with the council—whether by a form or otherwise—as a way of at least having council identify it as a short-term letting and, through that, ensuring that it has smoke detectors, a safety evacuation plan et cetera. Did you want to expand on that? Certainly one of the points a few people have raised this morning is that of having a property registered with a council as opposed to some sort of blanket LEP or DCP change.

Mr MURRAY: My overriding quest is to have less regulation not more. However, the point that I raised earlier could be summarised this way: The last thing you would want to do is to have a non-approved dwelling being listed on Airbnb. That non-approved dwelling does not meet council regulations—it does not meet the most basic of living standard requirements that a normal council would look for when it is approving and assessing a property. I guess that is one thing—to make sure that a property being rented is within an approved dwelling or property or whatever. The other thing is this: If there were complaints to come from that property and a council received that complaint they could quickly look to their database and see that that has been registered with us for short-term holidays, whether it is through Airbnb, Stayz or whatever. That should then give the council greater powers to deal more quickly with the problem rather than go through the convoluted process with a resident.

Mr MARK COURE: It is sort of like registering a swimming pool, for example—similar things.

Mr McMAHON: Less complicated.

Mr MURRAY: Correct. I think with swimming pools they come every three years to check. It may even figure something like that, where every so many years they come out just to make sure the property is okay, that the doors work, that the business is being conducted within approved premises and so on.

Mr JAMIE PARKER: No-one on this Committee wants to make it difficult for the industry, but we have to deal with a range of different issues. There are two main issues we are trying to deal with. One is: Can we better deal with amenity issues? The second issue is that short-term stay accommodation is basically a prohibited use under the template LEP at the moment. So everyone has said, universally, "Can you just make it clear what is permitted and what is not permitted? We can argue over the thresholds and how and when, but let's just be really clear so we are not having arguments where the neighbours are saying, "You are illegal," and I am saying, "No, I am not." It is a bit of a mess and it needs to be clarified." There are a few ways we can do that.

We can have exempt or complying development up to a threshold. Some councils base the threshold on the number of bedrooms; some councils base it on the number of days. Byron is talking about 90 days, for example, and three bedrooms.

This is obviously a bit of an anecdotal approach. A council might say or there might be a State environmental planning policy [SEPP] that says, "After the 90-day threshold you have to lodge a DA." When the DA gets lodged you have to comply with a range of different things—tick-box type stuff—allowing councils to more easily manage noncompliance, because as soon as you do not meet a DA condition it is very easy to take action—on-the-spot fines and stuff like that. How many are rented for fewer than 90 days? Is it 5 per cent, 90 per cent, 10 per cent? How many properties would you say are only rented for that period of time from your perspective here in the Tweed? We will ask the online people that next week.

Mr McMAHON: With us, there would be very few—little to none. The bottom line is to set up a property, to get it there, to get it in order, we go through a process to make sure it is to a certain standard. Basically we do not do anything less than a three-star. By the time you do all the work, in three months you are not going to get a return on it.

Mr JAMIE PARKER: So the 90 days could pretty much be every single property—it does not really knock anyone out that much.

Mr McMAHON: No. I am saying for us 90 days would knock out all ends.

Mr JAMIE PARKER: Yes—the other way around.

Mr TATCHELL: The average length of stay according to the National Visitor Survey in the Tweed is 3.6 nights. It is not going to have an impact.

Mr JAMIE PARKER: So if you had a property that could only be rented out for 90 days until it needed a DA, what you are saying is basically every short-stay accommodation property would have to lodge a DA.

Mr McMAHON: Yes.

Mr JAMIE PARKER: Pretty much everyone.

Mr McMAHON: I have spoken to Vince Connell at Tweed Shire Council. They are not excited by the paperwork. I have also spoken to local planners. They are not either. But if that is the way it has to go, there are a couple of things to say about the Tweed Shire particularly. The caravan park at Kingscliff is going to close down, which is a big thing. Then we get this at the same time. You could put together a few of the ingredients of a bit of a perfect storm to really whack the economy pretty hard. We worked hard and nursed that economy for 30 years. To see something that comes as an unintended consequence is at the moment a little bit frightening.

Mr GEOFF PROVEST: It is illegal at the moment. There is a moratorium on a lot of councils across the State. Queensland has brought in a separate definition which made it really clear and everyone was happy with that. The Tweed council and the Byron council want to be able to minimise their paperwork. As Jamie Parker said, Byron has 90 days and Tweed was thinking of 60 days. It looks like most of them, from what you are telling us, are going to be well over 90 days anyway. Now it would be up to this Committee to see how they could simplify that DA process or development application type thing. I think it is safe to say all members of the Committee are very much attuned to how good it is for the local economy and how a lot of our local people are making good money out of it, it is stimulating jobs et cetera. It is just trying to make it as soft a touch as possible—that is all.

Mr McMAHON: Yes.

Mr MURRAY: If I can just make a reference to the existing legislation around short-term holiday accommodation, the existing framework—and there is a 90-day component to this as well—prohibits stays in excess of 90 days in a defined short-term holiday stay property. That does not work—that does not work at all. So we have to be very careful about imposing these 45- or 90-day nominal periods, because they do not work. There are ways around them. For example, with the 90 days with short-term holiday properties you are required to have your property available for rent for six months and one day per year. It must be available. It does not say

that you must be successful at it. It says that the property must be available. So I could put my property at Cabarita Beach on Airbnb for \$25,000 a week and it is going to be there, available, for a long, long time without being taken up. But I will meet the provisions of the Act. And I could live in that unit in the meantime. So it is sort of the reverse of what we are talking about here, but the point is that imposing days or limits or whatever—minimums—does not work. There is always a way around it.

Once again, I would love to see the definitions of short-term holiday accommodation as adopted by many councils through their LEPs enhanced and brought up to speed. I really applaud Tweed Shire Council in particular for imposing a moratorium to really look at this, because there are people going broke. There are people living in, say, 3B zones going broke at the moment because their valuations are going through the floor because they have got this imposition of short-term holiday stays on their property. Their property may meet permanent guidelines—it may be in the right zoning for permanency. Everything is ideal for it except for the vagary of that short-term holiday accommodation legislation which is full of holes. It needs to be refined and any short-term holiday property that meets permanent guidelines that is in the right zoning should not be restricted just to short-term holidays. It should have a dual-use outcome over it. That is my opinion.

Mr JAMIE PARKER: Okay. That was good.

Mr GEOFF PROVEST: In Victoria and other places, it is a requirement to put an A3 sign out the front, indicating a reference number for council as well as a complaints line. How do you feel about that idea? This is more for houses, not so much units.

Mr McMAHON: From my point of view, it is good advertising. Apart from that, we make sure the neighbours know; we make sure we are in touch with them. We have not had any problems with anyone needing to contact us in the past.

CHAIR: In conclusion, we may wish to send some additional questions in writing. Your reply will be published as part of the evidence. Would you be happy to answer any of the additional questions?

Mr McMAHON: Yes.

Mr TATCHELL: Yes.

Mr MURRAY: Yes.

CHAIR: Thank you very much.

(The witnesses withdrew)

(Short adjournment)

DOUGLAS LUKE, Coordinator, Victims of Holiday Letting,

THOMAS ALFRED TABART, Resident and former councillor, and

DON MAUGHAN, Resident, affirmed and examined:

CHAIR: Thank you for appearing before the Committee today. Do you have any questions about the information you have been sent or about our process today?

Mr TABART: I have a submission.

Mr MARK COURE: Do you have a copy for everyone?

Mr TABART: Yes.

CHAIR: Would any of you like to make a brief opening statement?

Mr LUKE: Yes. We are from Byron shire. Some residents have opposed holiday letting for more than 12 years. It was a problem then and it is a greater one now. It is still illegal under Byron shire's current local environmental plan. You cannot claim on insurance where an illegal act is taking place. This applies to nearly all insurance companies. They will take your premium and some will not even touch you. Our community has been damaged. If you live in Byron Bay, you are now more likely to have a holiday let next door than a friendly resident neighbour. The introduction of no party house legislation in Queensland and the Gold Coast has resulted in partygoers from Brisbane and the Gold Coast now heading to Byron Bay. We have a "party house" problem in "party town".

We believe the problems here are much greater than elsewhere in New South Wales. Our council tried to develop a policy on holiday letting in 2005 but met with vociferous opposition from the holiday let lobby, accompanied by threats of legal action. I would say that the council bowed to intimidation. This lobby tries to paint us as a vocal minority but has itself talked over Victims of Holiday Letting [VOHL] and community members in a series of council workshops, while members and other residents have been threatened by holiday let guests and owners. The holiday let lobby attributes any problems to rogue operators. We have received an increasing number of emails and phone calls from desperate residents who are frightened to complain for fear of retribution. These people feel powerless. They do not use the holiday hotline as they do not find it to be effective in solving their problems.

The problem now has been exacerbated by the internet—the internet rules. Holiday letting in Byron Bay is entrenched. We have airbnbs soaking up rooms in Byron shire, many of which previously offered permanent rental accommodation. The holiday let lobby contend that the economy, local and state, benefit from their businesses. VOHL believes that they are overstating the case. Houses permanently occupied would still have tradies and cleaners, and the occupants would all shop in our local area. Byron shire is famous for attracting diverse people with original ideas who can stimulate new businesses. They cannot afford to live here now. Instead, holiday let guests bring noise, neighbourhood disruption, infrastructure degradation, high house prices and rents—that is if you can find somewhere to rent.

It is common for real estate agents to sell properties to prospective retirees by saying, "Well, if you buy now we will enable you to finance your mortgage through holiday letting and just move in when you retire." Many residents wanted holiday letting to be banned completely, and some still do. There is no need then for regulation. VOHL has lost some of these people who say we have sold out but VOHL has worked with council and shared workshops with the holiday let lobby. VOHL has been open to conciliation, even compromise. We have listened to the arguments for self-regulation, but the very fact that this Committee is here in Tweed Heads today indicates serious ongoing problems. In the news we hear almost daily how self-regulation has failed in yet another industry. We are dealing with the impacts on people's lives—our residents.

Property owners can make a lot more money from holiday letting compared with permanent rentals. This affects our demographic make-up adversely. We have one street in our shire with almost 70 holiday lets. One real estate agent has said that 25 per cent of the houses in Byron shire are holiday lets. This inquiry has received over 200 submissions, and a huge majority support regulation. Some, mainly Airbnb operators, say that if you are going to regulate you should do it with a light hand. The residents want strong regulation.

It is quite unbelievable that we have been kicking this around for 12 or more years. People keep asking, "Why haven't you sorted this out yet?" Where do we go? The question for us is about how to eliminate noise affecting neighbours, and other antisocial behaviour; and how to protect our community from disintegration and preserve our unique cultural environment. What we have seen is an industry code of conduct, State planning laws, local council action plans and changes to environment plans, and the poor resident with a disrupting holiday let next door.

A solution we see would be a strong code of conduct endorsed by State Government, which would inform the behaviour of owners and guests. It is the owners who are ultimately responsible for the behaviour of their holiday let guests. Version 1 of the code of conduct, in March 2012, was endorsed by planning Minister Hazzard, and it should be used by the holiday let industry. Version 1 still does not give quite enough protection for residential amenity. Later versions have been seriously weakened and have not been endorsed by Minister Hazzard or his successor. A promised review after a two-year trial has not been forthcoming. The weakened code of conduct frequently gives general advice, where version 1 contained details and instructions. Parts 3 and 4 have been considerably weakened in later versions.

Furthermore, managers are now able to change their terms and conditions as long as they are "deemed to satisfy solutions". That that is like saying "vaguely resembling parts 3 and 4". The standards specified in part 3 are inadequate. The State Government should change or introduce legislation to enable local councils to instigate appropriate fees and charges connected with registration and regulation and also allow for the charging of fines or penalties. State Government should enable local councils to levy a business rate on the clear commercial use of property. Across the State, occupant numbers would be restricted to two adults per bedroom, a cap of six adults for three-bedroom properties, and a cap of eight adults for all properties with more than three bedrooms. This would provide a level playing field, which local councils could work within across the State, and develop their own plans to suit their particular differences. The State Government should carry out an extensive review after two years. Local councils would work with all stakeholders to facilitate holiday letting, but also give strong protection for residents.

Byron Shire Council explored the concept of precincts and zones, which was a preferred option by VOHL at one time. It proved to be too complicated. The current action plan is dependent on the good will of councillors. Registration and regulation must be enforceable so local councils must be allowed to receive enough in fees and charges to provide 24/7 compliance officers. With the application of version 1 of the code of conduct, which was devised by the industry with the help of the Department of Planning and Environment, self-regulation should enable holiday let owners to operate successfully and avoid any action covered by council regulation. Responsible owners would not fall foul of compliance. Both owners and residents would be protected.

May I suggest a look at Western Australia, where Parliament has legislated guidelines but allowed individual shires to develop their own policies. We ask the committee to recommend the following to the Minister for Planning, through some form of legislation or regulation. First, require the holiday let industry, its participating organisation and members, to implement the code of conduct version 1 as endorsed by Minister Hazzard, and not copyrighted by any individual, as is the case now. This would include a requirement for a code administration committee—comprising all stakeholders, including a community representative—that met at regular intervals. The code administrative committee is currently dysfunctional, not representative and has no community input. As far as we know it has not dealt with complaints or problems with holiday lets.

Second, enable local councils that so desire, to charge appropriate fees, charges and penalties in connection with running a registration and regulation plan or policy, with changes to council instruments where necessary. Third, enable those councils that so desire to charge a business rate on holiday-letting businesses, with changes to council instruments where necessary. Fourth, enable those councils that so desire to require all holiday lets and Airbnb lets to submit to the development application process. If not, can we have reinstated, in the exempt category, those conditions that were deleted in the Department of Planning and Environment Gateway response? Fifth, enable councils that so desire to put in place a moratorium on the number of holiday lets—no more than a percentage of residential properties in the shire.

Mr TABART: I will be very quick. When I first came to council, this was a marginal, nagging problem of poorly-controlled letting and weak council compliance, complicated by the local council. It has now become the major industry in the shire. Holiday lets have burgeoned to take up all the available rentals and generate more. They have been driven beyond the reach of ordinary renters. This is now being escalated by the

new multinational internet renting companies. Firms and individuals own multiple rentals, and councils have been left far behind. Byron Bay deals with waves of holiday lets: two major festivals—and growing, schoolies, New South Wales and Queensland school holidays. Often you are not just dealing with a family in a house; you are dealing with a three-bedroom house with 30 schoolies in it.

The coastal tourist towns have been overwhelmed. The entire nature of the towns has been changed. Local residents have been marginalised. The schools have had their numbers and subject choices reduced. There is no affordable housing and workers have been forced into long commutes. Councils must have clearly defined powers and the resources to control the situation.

Mr MAUGHAN: I thank the Legislative Assembly Committee for allowing us to present. As stated, I am Donald Maughan and I have lived in this area for 66 years. I was born and raised in Byron Bay. For the past 15 years I have lived at Suffolk Park, which is a small community of about 4,000 people, five kilometres outside of the town centre of Byron Bay.

There was an analogy by one of the earlier speakers. He said that his 30 years of experience in the real estate game made him feel as if he knew it like a child. With 66 years living in the community I feel as if I know it like a child and a grandchild. I am involved with—I am on the committees of—many community organisations, including the Byron Residents' Group, the Byron regional heritage committee, the Community Alliance for Byron shire, the Byron Bay Historical Society and the Suffolk Park Progress Association, of which I am president. I am here today to present a plea on behalf of our community.

I will not go through all the arguments relating to breaches of current law or the history of the many and varied methods used by states and councils in an attempt to control short-term holiday letting. This detail is covered in a formal submission, No. 42, which was put up by a member of the Suffolk Park community. In it he presents a very cogent case for the need for effective control and monitoring of short-term holiday letting. I would rather spend the limited time talking about our community and its struggle with the impact of short-term holiday letting.

As stated, Suffolk Park is a little village on the outskirts of central Byron Bay. By and large, the community is made up of low- to middle-income families, who moved to the village to escape the excitement of central Byron Bay and to live in a supportive and interactive community—a safe place to raise our families. What is now happening in our community is that the very fabric of what we are attempting to develop is being torn asunder by absentee landlords, who buy up residences and illegally turn them into short-term holiday lets. This not only invariably affect the amenity of the residents who live nearby—due to uncontrolled, intrusive noise and activities—but also has a dramatic effect on the relationships of families, due to stress associated with living among holiday lets.

The trauma of confronting an alcohol- and often drug-fuelled young adult at 1.00 a.m., begging them for respite from their raucous activities is very intimidating and dangerous. Members of our community have come to our committee meetings in tears, pleading for support to control short-term holiday lets. These people are not the so-called recalcitrant neighbour who is just whingeing and trying to stop someone else from earning a fair quid. They are long-term contributors and members of our community who add to our social structure and support the growth of our community, as opposed to absentee landlords who do not contribute to anything to our community. They do not react when there is a complaint and by and large are not contactable. They do not support our neighbourhood. They do not know our kids in the streets and they do not help to clean-up the neighbourhood or add to the beauty of the streetscape—in fact, they do the opposite. Activities that would be unacceptable in a legal resort or a hotel complex that would result in eviction go unchecked in our family neighbourhoods.

Suffolk Park is classified as residential zone, please help us protect it. The ears of the legislators appear to be tuned to the jingle of the developer and landlord's pocket, and deaf to the cries of the community pleading for protection of their amenity. We, the community of Suffolk Park, ask this legislative committee to use its power to draft effective legislation to protect the community to stop short-term holiday letting in residential zones and to make absentee landlords accountable and pay for breaches. We have a problem. The symptom is the disintegration of the community of our residential village, the infection is short-term holiday let and the parasite is the absentee landlord in a residential zone. Now if you were to do a root cause analysis it would tell you this: remove the parasite, treat the infection and the symptom will disappear. Thanks for listening.

Mr MARK COURE: Thank you all for your contributions. In your opinion are there any positive impacts of short-term holiday letting?

Mr LUKE: I would have to say no.

Mr MARK COURE: Not at all.

Mr LUKE: I cannot think of any. You may meet the odd interesting person. I think if it was families it would be one thing but generally it is a lot more than that—single groups.

Mr TABART: It is a legitimate commercial activity if properly controlled—the economy of the shire actually relies on it—but when it is out of control then it becomes a social problem. That is the situation now. So basically we are looking to you to put the controls in place to make it live with us.

Mr MAUGHAN: Can I just make the comment that short-term holiday let is probably too broad a concept to discuss. I think the problem is in residential zones. In residential zones absentee landlords are the problem. Personally in our little community we have got no problem with people who live on premises renting a room because they live in the community, they respect the community and they control the space. But what is happening in Byron Bay and Suffolk Park, which is a suburb of the bay, as much as we do not like that, we now have, as Tom alluded to: Christmas, New Year, Blues Festival, Splendour in the Grass, schoolies New South Wales, schoolies Queensland, Boomerang Festival, bucks parties 52 weeks of the year, hens parties 52 weeks of the year, and weddings 52 weeks of the year. The Blues Festival site has just been approved and they have been given double the window of activities—that is, 10 days of festivals and I think, if I am correct, 100 extra single day events.

Mr TABART: Yes.

Mr MAUGHAN: We are under attack.

Mr MARK COURE: You should be happy that people want to come to Byron Bay.

Mr MAUGHAN: I should be happy having someone sit in—

Mr MARK COURE: It sounds like a great place to go.

Mr MAUGHAN: It is a great place to go but do not come to my community and go to a house next door for the landlord not to be there—there are the odd ones who come up. They talk about \$100 or a \$1,000 bond. If you get 10 young bucks turn up, \$100 bucks to tell you to go and get stuffed is nothing to them. They are juiced up and out of control.

Mr MARK COURE: I get the general gist that you do not like short-term holiday letting. But are you after some regulation or some controls being put in place?

Mr LUKE: Yes. And we have heard reference to the code of conduct, which to my mind is a very valuable document, but in its original form it was more effective. Why has it been necessary to weaken its controls over holiday lets? If we could work with that code of conduct—maybe your Government could legislate so that anyone holiday letting had to comply with a code of conduct partly developed by the State department of Planning. That would be something we would welcome. A strengthened code of conduct is going to make it easier for the owners and managers. They are not going to get the same level of complaints or whatever. They say they are not getting very many now—most people do not complain. They are not going to get the same problem. The council policies they want to bring in complement the code of conduct. If you follow the code of conduct you are not going to fall foul of council compliance. You are not going to get fined if you are running your property in a sensible way with the code.

Mr MARK COURE: Mr Tabart, what are your thoughts?

Mr TABART: The answer is that we do need the power to control the industry. Obviously the only organisation on the spot that can do it would be the local council. Therefore the local council needs to have very clear definition, it needs to be backed by State legislation and it needs to have the resources to be able to effectively control it. I mean if you have got an industry that is so diverse with absentee landlords, local

landlords, companies with multiple dwellings; it is now at a stage where you need a strong organisation to be able to properly control it. You also need to be able to put areas like the Gold Coast in zones—although we tried in Byron and it did not work—where it is going to reduce the impact on the ordinary residents who have a right to a good residential occupancy of their dwelling. I mean, that is basic. So it is a big problem and it has grown rather out of hand because—strictly speaking the State Government has decided to look the other way for many years and I am very pleased to see you here finally having a look at it. You have got to empower the local council and you have got to pay them to be able to look after them and you have got to give them the rules to go by.

Mr JAMIE PARKER: Firstly, I thank all of you for taking the time to speak to us. Obviously this issue has been going on for a decade or more, and despite that the council is still getting 100 to 200 complaints a year. I think most people have probably got complaint fatigue and do not bother complaining any more. It is clear that the State Government through this Committee wants to take some action and look at this very seriously. I understand that it is frustrating. A lot of people see what are essentially commercial operations paying residential rates and businesses saying, "We run a commercial operation and have to pay business rates, why should they pay residential rates?" The Committee has a lot of issues to weigh up, but hearing the perspective from you and Byron in particular is very important because you have had this issue for quite some period of time. You have spoken about the issues with absentee landlords. About 30,000-odd people live in Byron shire so let us say that equates to 10,000 or 15,000 houses—it is about 2.5 per property as a State but I do not know exactly how many it is—and we have been told that there is only 1,000 properties. So that is about 10 per cent of the dwellings, but some people say the numbers are a lot higher. Is there any evidence as to exactly how many there are? We have been told by the industry and the council that it is about 1,000. Do you think that number is correct?

Mr LUKE: We have heard that there are 750 on the Holiday Letting Organisation [HLO] database and we think there would have to be a lot more than that. We think there could easily be 1,000 and probably more. When we are talking about population, although the shire population is 30,000 most of the holiday letting is centred in Byron Bay and Suffolk Park, where there are probably only 4,000 or 5,000 houses.

Mr JAMIE PARKER: So probably a higher proportion of the housing stock in those communities rather than in some of the outlying areas in Byron shire?

Mr LUKE: Yes, one real estate agent did say, and it was quoted in a newspaper, that 25 per cent of the houses are holiday lets. He would have been referring to Byron Bay.

Mr JAMIE PARKER: That is market-shifting stuff.

Mr MAUGHAN: We have 15,000 ratepayers in Byron shire. We have a visitor base of about 1.6 million a year into Byron shire and I would guess 90 per cent of those come to Byron Bay and Suffolk Park, not Byron shire.

Mr JAMIE PARKER: Playing devil's advocate for a minute, we accept there are problems with the amenity—social issues like not having fulltime residents to fill the schools et cetera—but is this not about the council not following up noise complaints or dealing with issues correctly? What about people who ask the council to follow up complaints and so resolve the issue?

Mr TABART: The Byron council is totally under resourced to follow up complaints at the time complaints are made, which is usually after hours. Byron council has difficulty affording two dog wallopers—sorry, rangers—let alone pursuing feral landlords in the wee hours of the morning. We need a lot more money to employ people to control this situation. There is so much money in this industry, I see no reason why the rules should not be arranged so that they pay their fair share for compliance.

CHAIR: I return to the number of people who live in Byron compared with the number of people who visit Byron. I believe there are no high-rise buildings or medium-density housing in Byron.

Mr TABART: There is medium-density housing but there is certainly no high-rise. We have tried very hard to maintain that and it is one of the proud achievements of the council. We hope there will not be any high-rise, despite the pressures.

CHAIR: Byron is a beautiful place to visit and many people want to visit Byron. If there is inadequate accommodation people will be turned away. How could that shortage be curbed if it were not for short-term holiday letting?

Mr TABART: I am not talking about curbing it; I am talking about controlling it.

CHAIR: I understand that, but I think you said approximately—

Mr MAUGHAN: Approximately 1.6 million.

CHAIR: Yes, 1.6 million people a year visit Byron.

Mr JAMIE PARKER: Is that visitor nights or individuals?

Mr MAUGHAN: I think it is individuals.

CHAIR: With the existing accommodation, how can you accommodate all those people?

Mr MAUGHAN: I said I am not opposed to holiday let or to short-term holiday let. I am opposed to residential zones with absentee landlords. It is a totally different thing. We just want respect and protection, and we get neither.

Mr TABART: The planning side of it needs to be looked into. We tried to divide the shire into precincts but nobody was satisfied with the precincts.

CHAIR: We are here to try to help with that by hearing from everyone, not just people letting houses but also the people affected by letting. We can be given glossy stories about the economic benefits and how well tenants behave but we need to hear the other side of the story as well. Those who are dissatisfied may need to talk to their councils and look at the local environmental plan [LEP] to see if they can build places for short-term letting. That could be medium-density housing or other solutions, I do not know.

Mr TABART: You do not, and speaking as somebody who does, there are very few places in Byron which are available for development as tourist precincts. We have to look at what we have. Before the holiday let issue became a major problem, we still had over a million people coming into Byron shire. They were utilising the holiday accommodation—that is, the legitimate accommodation, which is paying the proper rates and has proper inspections et cetera. I feel that it is a case for reorganisation. I am not saying we are going to or want to stop them, I am saying that we need to look at ways—and I must say the council has failed—to fit them in without impinging too much on the residential occupancy of the shire in a way that organises them so we have a handle on what is happening and they pay for what they are getting. At the moment they are getting a free ride.

Mr GEOFF PROVEST: We have heard from previous witnesses that the hotline is working and the complaints mechanism is working, which you have disputed. Can you give actual examples? One group says it works with a 24-hour manager but you say it does not. I assume you have some real-life examples of where it is not working.

CHAIR: Please give examples without naming individuals.

Mr LUKE: It seems to be generally accepted by people we talk to that nothing happens with the holiday hotline—you ring it and nothing is resolved. The security man might turn up, look out of his car window and drive off—that is the common thing that we have heard. We do not know how often they do turn up. We have heard there are 750 houses, but I do not know how many callouts there are.

Mr GEOFF PROVEST: Have you sat down with that group and discussed those concerns? Often I deal with council issues in the Tweed and I find that sometimes permanent residents say they get on. I am trying to get my head around it.

Mr MAUGHAN: Can I make a comment in relation to Suffolk Park? Mr Murray and I know each other quite well. He mentioned, when talking about the hotline, if the person is not registered with the hotline then they ring the police. I have been to the police twice on behalf of residents who have come to me—they are

supposed to have contacted the police but no cop has turned up. I asked the police what was going on and I will paraphrase what I was told, "Mate, this is central Byron Bay, Saturday night, what do you expect? We're dealing with a warzone." What is happening in the back streets of Suffolk Park is important and it does affect us but the police are dealing with a warzone. No, we do not expect the police to turn up for a residential complaint, and I understand that.

Mr TABART: As a councillor I have many residents come to me about the hotline and they laugh. They say either nobody answers the phone, nobody turns up or if somebody turns up, nothing happens. Self-regulation has not worked anywhere properly right across the board. It is always an easy cop-out to say they are self-regulating and we do not have to think about it until next time it blows up, but that does not work.

Mr MARK COURE: Do you think it is worth trying?

Mr TABART: They tried it and it failed.

Mr GEOFF PROVEST: Like many things with the internet, councils find it hard to enforce regulations for businesses operating over the internet. A classic example is for the last 15 or 20 years local government have tried to enforce regulations on illegal brothels, but they have not even got close to stamping them out. My concern is if we make rigid rules on short-term letting—and I really do respect residents' rights—we will get the industry offside. We need to bring the industry on board and all work together. If we try to legislate short-term letting, like brothels it will still exist. Tweed council has tried to deal with brothels for the last 25 years but they are still here no matter how hard the council tries. How do you see this problem being stamped out? Mr Maughan, you being the next councillor or whatever—

Mr TABART: Mr Provest, you are too close to Queensland. Brothels are legal in New South Wales.

Mr GEOFF PROVEST: The illegal ones, the shopfront ones.

Mr TABART: I see.

Mr GEOFF PROVEST: You do not see there is a future to work with the industry? I had the same issue with the New South Wales taxi council. Uber came on to the market, the taxi council hated them and it was like civil war but due to the internet and freedom of the internet Uber is here to stay and it was a matter of working to get a best result.

Mr TABART: Absolutely. Of course we want to work with the industry but it has to be on a playing field that we both understand and the money has to be paid by the people who have got the money and getting the services, that is all. Self-regulation is something which is pie in the sky. We need proper regulation and somebody has to pay for it. That does not mean we are not going to bend over backwards to keep the tourists coming to Byron Shire.

Mr MAUGHAN: Can I use an example: as a residential zone I am not allowed to have a business in my suburb. I decide to set up a panel beating shop, a legitimate business, I work nine to five—I would have my proverbials cut off if I tried to do that. Yet, someone did come in and set up a business, an absentee landlord, and works and interferes with our residents' lifestyle from six o'clock in the morning until six o'clock the next morning. We have no way of stopping them. We cannot evict them. If you put them in a pub or resort they would get kicked out the door within hours, but not in the residency. Who protects us? It is against the law. Stop it. Make legislation. We are not saying do not have short-term accommodation we are saying do not have absentee landlords. That is the difference. You can have it but be there, supervise it, live with it and stay in our community and we will love you for it. We love our community. Just help us.

Mr LUKE: You asked about why we all do not work together. We have been on several workshops organised by council and the mayor got up at the first one and said, "Look, guys, you have to come out of your trenches. The only way we are going to come out of this is if we give a little". We would love to talk about the Holiday Letting Organisation [HLO] but somehow there is a barrier there. We have moved from saying, "Stop holiday letting we do not want it", to saying, "You have probably got too big for us to stop you anyway so we will go along with it". I think the code of conduct is what they have produced with State Government and since then Stayz and others have come into it. Let us work with that. I have already said the first version of the code of conduct was pretty good. Brad Hazzard endorsed it. Why can't they all use that? We are happy to go along

with that. We do not see that it is going to cost them anything other than what it might cost them to register. We see registration as no different to registering your car and nobody has a problem with that.

Mr GEOFF PROVEST: Most of them do not seem to have a problem with registration; at least you get a standard within the industry.

Mr TABART: Not registered with council though.

Mr GEOFF PROVEST: Council is probably in the ideal position to do that, to have some form of registration, but whether you involve Fair Trading is another matter. The purpose of this Committee is to understand the concerns of the local residents and the industry. You cannot overregulate it but we must work out some middle ground that respects the rights of both.

Mr LUKE: To be fair to Byron council, they have made propositions to State Government, particularly the planning department, and it has come back, no, you cannot do this or that. There needs to be more flexibility in planning.

Mr GEOFF PROVEST: I think the planning rules across the State are archaic and out of date compared to what the current environment is out there.

Mr LUKE: The digital age is hitting us with something new every day.

Mr TABART: You have the development control plan [DCP] coming up at Byron council now. Not everybody agrees with it, a lot of us think it could be strengthened, but it is a good initiative. I do not know how familiar you are with it but I would suggest that perhaps you look at that DCP as some sort of template to go on with.

Mr JAMIE PARKER: Thank you for that. I know that several councils, including Eurobodalla, Gosford and Byron, are developing their own DCPs to deal with it. I wanted to ask two questions. First of all, thank you for raising absentee landlords. That is one of the questions we are dealing with. Is there a threshold for what is or is not short-term stay accommodation? Several people have said to us you should have an on-site manager, which means you live there and you rent out a room. I hear that clearly. Are you happy or to what extent are you happy with the Byron Shire Council proposal of how to deal with it? Secondly, when it comes to revenue for council some people suggested that if the primary purpose of that house is a commercial activity then it should pay business rates and not get a free ride on residential rates? What is your view on the DCP of the council and, secondly, about the rates base, which is charged on an activity that is predominantly commercial?

Mr TABART: I think the DCP is a good initiative but it will need the compliance backup to go with it. It is all well having a DCP and saying, "you are breaking the rules," but if you cannot be there to make sure that you are picking up the people who are breaking the rules it becomes another piece of paper.

Mr JAMIE PARKER: What rate base should apply?

Mr TABART: We have been on about this forever. We are saying they are getting a free ride running a business in a residential area and it goes with all the other things they are doing with reducing the amenity and raising the risk. I think you will see in my submission that we have had two holiday lets burn down. Fortunately, nobody got hurt. I am waiting for the one where somebody gets hurt. Some years ago we had a legitimate holiday block burn down with people killed and we know what happened in Queensland a few years ago. Mostly they do not carry the appropriate insurance. That is something that council considered from the point of view of its own liability. If they were not controlling the industry to the extent that people got killed how liable was council? That was another thing.

Mr JAMIE PARKER: We are meeting with the insurance council at our next meeting, they are coming as witnesses.

Mr TABART: Okay.

Mr LUKE: We heard earlier that running a holiday let the expenses are something like 45 per cent of what you are taking. I live next door to somebody who was renting out a single garage and she was pulling in

\$51,000 a year. She had her property up for sale and she even printed out a sheet, "how I made this money from holiday letting." The only expense she put down was cleaning, which was \$4,000 out of \$50,000 that she was taking.

Mr GEOFF PROVEST: The Australian Taxation Office might want to talk to her.

Mr TABART: That is something that is happening. The Australian Taxation Office is beginning to take a look at Airbnb.

Mr LUKE: It is more profitable than perhaps you have heard. I think it is really quite lucrative and you would not be doing it unless you were making money. People are now acquiring more than one house to do holiday letting. I had another neighbour who had four houses. No doubt they were all negatively geared as well. That is taking houses out of the housing stock. It is okay to make money but we have residents living in our towns and not everybody is willing to stick their head up and say, "I do not like this, I want you to go away". Maybe we are vocal but we are representing the people who are really quite oppressed by holiday letting.

CHAIR: I ask the simple question: apart from the ones holiday let from short-term leasing, how big is the normal housing stock for one, two, three, years at a time? Do you have that there?

Mr LUKE: We do not really know but when it comes to permanent rentals we found that the more holiday letting has increased the greater the number of people that are going into share houses. When we hear the argument that permanent residents make as much disruption as holiday lets it is because they have been forced to share to cover the rents. The median rent is \$650 a week in Byron Bay. We used to have couples that could afford to rent next door to us. Now it is five or six blokes and they have a car each and they are coming in at two o'clock in the morning because they are working in hospitality. So there is a knock-on from holiday letting. It is cutting down the housing stock and pushing people into fewer and fewer buildings.

Mr MAUGHAN: I make a comment about the fact that people are supposedly not complaining. A lot of the people that I work with and live with in my community—and I mean this in a very nice way—are not hugely articulate. They are older. They are lovely people—the salt of the earth. However, they are not used to dealing with and going into verbal gymnastics with a businessman. They go to present their argument and their concerns and they are not met with a sympathetic ear to hear the story. They are met with a confrontational approach. They start to tell their story and the other person does not listen; they just come back with, "Well, there is a complaint mechanism. Use that." They totally intimidate the people. And these people then retreat. That is when they come to us as community representatives, because we are a little bit more articulate. And that is not saying they are not intelligent; they are just not up to the speed. So do not give us the argument that they are not hurting, they are not feeling, they are not complaining—they are. They are just not confident and articulate enough to do it in this forum.

Mr GEOFF PROVEST: We have had two council representatives who both said their level of complaints has dropped dramatically—that is Byron and Tweed. That will be in *Hansard* tomorrow.

Mr TABART: For every complaint you get you can add five more who have given up or are too intimidated.

Mr GEOFF PROVEST: I probably tend to lean that way a bit too, but I am just saying that two official local government people have told us they have 20 or 30 complaints a year.

Mr JAMIE PARKER: Byron said 100 to 200 a year, but there are only a couple that are really bad.

CHAIR: Gentlemen, thank you very much for coming in and standing up for your community. I think what you are doing is very important, and you have given us the other side of the story, because we have only been hearing from one part. Now you have put the other side together for us. In conclusion, we may wish to send you some additional questions in writing. Your reply will form part of the evidence and be published. Would you be happy to answer the additional questions?

Mr MAUGHAN: Yes.

Mr TABART: Yes.

Mr LUKE: Yes.

CHAIR: Again, thanks very much for coming in.

Mr TABART: Thanks for coming too. It was good to see you at last.

Mr LUKE: Will we get a copy of your report as we have turned up today?

CHAIR: Yes.

(The witnesses withdrew)

(The Committee adjourned at 3.14 p.m.)
