

INQUIRY INTO TOURISM IN LOCAL COMMUNITIES

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Date received: 8/09/2013

Partially Confidential

8 September 2013

NSW Legislative Council GENERAL PURPOSE STANDING COMMITTEE NO. 3

Inquiry into tourism in local communities

Dear Committee

Thank you for the opportunity to make a submission to this inquiry. We consider that we have unusual expertise and experience in the effects that a particular form of unregulated tourism has in a regional coastal community. We wish to advise you with regard to Terms of Reference 3b, 3c, 5 and 6. We have engaged Mr Luke Marquet, an Urban and Regional Planner, with experience working in Gosford Council, to assist with these issues and other terms of reference where we lack expertise.

We request that Mr Marquet and Dr Dobrohotoff be given leave to address this committee personally at the next opportunity.

We have been in the unfortunate position of needing to take action in the Land and Environment Court (*Dobrohotoff v Bennic* [2013] NSWLEC 61) in order to alleviate the impact of Short Term Holiday Letting (STHL) on our family over the past 12 years. This case has highlighted the severe social and environmental impacts that unregulated tourism in the form of STHL has had in our local community. These are unacceptable.

The Central Coast has its attractions. Ms Robyn Abernethy, CEO of Central Coast Tourism, informed this committee that these have traditionally been our beaches, bushland and a few theme parks. She did not mention that people come the short distance up the M1 motorway from Sydney because it offers cheaper accommodation than Kings Cross for bucks parties; or that people come because there are unregulated party venues with access to visiting prostitutes and a Council that sees profit from this activity.

We live in a quiet residential neighbourhood several kilometres away from the beach at Terrigal. Over the years, however, we have experienced on a regular basis loud noise, sleep deprivation, the consequences of alcohol and drug intoxication, malicious damage to our property in retaliation of our calling the police, sexual activity between groups of men and prostitutes in full daytime view of our children, other offensive behaviour including screaming obscenities, and even assaults amongst the people who rent such properties for weekend parties or 'schoolies week'. We have had fireworks fired into our house and we have taken to staying with friends in Sydney every New Years Eve for many years to avoid problems on that night. In fact, from September 2012, we tried to make arrangements to stay away on most weekends and holidays to avoid our family to witnessing the ongoing anti-social behaviour.

In the verdict of *Dobrohotoff v Bennic*, Justice Pepper clearly agreed that such impacts were plainly unacceptable. For example: *"The evidence of Mrs Rosemary Dobrohotoff was similar in content. She gave several illustrations of the antisocial activities she witnessed occurring on the property. One example, in particular, demonstrates starkly, in my view, the detrimental effect the behaviour of the tenants at the property has had on her family. She deposed that in mid 2012 her son came inside from playing basketball in the*

backyard because, 'the people [next door at the property] are saying stuff and swearing and it's making me feel uncomfortable'. This is plainly unacceptable. Children should be able to feel secure in their own backyard."

Justice Pepper also noted that: *"Mrs Dobrohotoff stated in her written evidence that she finds herself becoming increasingly anxious as the weekends and school holidays approach. She makes arrangements for herself and her family to go away during these periods in case any disruptive tenants are staying at the property. She does not regularly invite friends to socialise at her home or allow her children to have their friends to sleep over as she is concerned that the tenants of the property may behave inappropriately. As a consequence of the stress caused by the use of the property, she has been attending a psychologist intermittently over the past three years and has been taking antidepressants since September 2012".*

Following one particular call to the police to deal with an all night party on a long weekend, we were confronted with shards of glass being placed around our children's backyard play equipment. On other occasions retaliation has included having the house numbers ripped from our front wall and knives and food thrown into our property. On this backdrop, we have had successive owners request that we do not seek the assistance of police for any trouble that we are having, but that we phone the owners instead. This strategy was tried for a number of years. However, it was clear that the owners were unable to modify the behaviour of a large group of aggressive and intoxicated people at 3 am and were always unwilling to evict the perpetrators. Their attitude was "what's wrong with people wanting to come for a party?" For the last 3-4 years we increasingly involved the Police Service, and ended up making 30-40 calls to them in the last 2 years alone. Unfortunately police can do nothing to prevent these problems and can only be reactive. Noise Abatement Orders are not possible as the offenders only stay short term. GCC inform us that Council rangers are not available after hours.

For the final 12 months of the operation of the STHL the owners attempted to prevent the problems we were experiencing through the use of the Code of Conduct developed by STHL industry groups. This attempt at self regulation clearly failed as shown in Justice Pepper's findings in *Dobrohotoff v Bennic*:

"before taking a booking for the property she emails prospective tenants a copy of the House Rules and the Stayz Holiday House Code of Conduct. It is only once the prospective tenant emails back confirming they have read, understood and agreed to abide by these Rules and the Code of Conduct, that she confirms their booking. Moreover, prior to the booking commencing she meets with the tenants and ensures that they sign the House Rules. She also verbally advises them of the House Rules to ensure that they completely understand what is required of them with respect to their behaviour while they are occupying the property. In addition, she takes their licence details, confirms their identity, and takes a cash bond;

...she readily agreed that she could not guarantee compliance with the House Rules or the Code of Conduct. As Ms Bennic stated, "I have no control over any other person do I really, in realism [sic], I can only control my own conduct I can't control other - other people's conduct." (T57.41-57.43)

Council could only advise us that we should involve the Police or take legal action. In the end we had no other option and sought legal intervention to end the problems. This has been at considerable expense to us in time, money and our mental health.

The LEC case has also highlighted the failings of Gosford City Council (GCC) in addressing these impacts:

"The Dobrohotoffs have complained to the Gosford City Council ("the council") about the use of the property in this way, but to no avail. This is so notwithstanding that, somewhat astonishingly, the council appears to have acknowledged that short term holiday rental of residential premises may be a prohibited use under the relevant planning instrument, the Gosford Planning Scheme Ordinance"

"...it appears that the council has been content for the Court to resolve the matter. On any view, this is unsatisfactory and amounts to an effective abrogation by the council of its fundamental duties and responsibilities. These duties include, amongst other things, to manage development and coordinate the orderly and economic use of land within the area under its control. By leaving it to the Court to determine this important issue, the council, by its inaction, has, in my opinion, failed to fulfil its core functions and has failed its constituents."

Unfortunately, GCC continues to ignore these impacts on the local residential community and is actively pursuing changes to the Local Environment Plan to protect the interests of the local real estate industry and their own financial interests. You have already heard during this inquiry that GCC receives about \$750 000 pa from the special rate variations in this area. GCC have not disclosed how much of this is from STHL and what proportion is from other business. They stated to this inquiry that they currently collect this levy from 3114 properties which include businesses and STHLs.

Given the current rate that GCC currently charge for the STHL part of this, it is estimated that Council could potentially receive between \$1.5M and \$3M pa solely from STHLs.

Council appear very reluctant to forgo any of this income or potential income. We know of at least one case of a property in Terrigal purchased 2013 which has incurred the additional 'Business Tourism' levy although it is being rented out on a long term basis. When the owners incidentally discovered (from speaking with us about the LEC matter) that they were being inappropriately charged this levy, they approached the Council to correct the rates notice. In August 2013 they were informed that they would need to provide a Statutory Declaration that it was not being used for STHL! It is likely that there are other owners who are not even aware that they are being incorrectly charged these additional rates. It is suggested that further investigation of the use of the 'special rate variation' be undertaken to ensure that GCC are not inappropriately charging other residential properties.

It is unclear why some STHL are charged the tourism levy and others are not. Perhaps those STHL that have attracted complaints to GCC have had the levy imposed as a condition of continued operation? We speculate that this may be connected in some way with the vested interests and idiosyncratic decisions about STHL which we will elaborate on below. In our opinion this may warrant further investigation.

Other reasons that GCC have failed to act to stop the inappropriate STHL problems include the personal interests and inappropriate interventions of local Councillors.

GCC is currently attempting to allow unregulated STHL in residential zones.

Their planning proposal and the Development Control Plan remain woefully inadequate to prevent ongoing problems. For further detailed analysis please see our submission to their recent 'exhibition' attached (Appendix B). This submission also discusses a number of other impacts on local community that we have not included here for the sake of brevity. These include the effects on local infrastructure, services, litter and garbage, lack of long term rental accommodation, the effect on legitimate businesses such as hotels and motels, and that commercial enterprises are often inappropriate in residential zones, especially when they are not domestic in scale. It also addresses the lack of public consultation.

In the case of the STHL in question, Justice Pepper found that: *While the property may be "a low density housing form" that is "essentially domestic in scale" (objective (a)), there is, in my opinion, nothing compatible with the current use of the property as short term holiday rental accommodation and that of "a low density residential environment" that "affords services to residents at a local level" (objective (b)(i)). The services the property affords are, on the contrary, to residents outside Terrigal. Moreover, the evidence discloses that the use to which the property is being put in fact "adversely affect[s] residential amenity" and "places demands on services", on the police and the council in particular, by having to deal with complaints relating to its use, in a manner well "beyond the level reasonably required for low scale housing" (objective (b)(ii))."*

We believe that residents have a reasonable expectation to be aware of what sort of commercial businesses are operating in a neighbourhood before they purchase or rent a property. This requires Councils to hold a public register of STHLs. Currently, we can decide whether or not to live next door to a hotel, motel, B+B or brothel. We do not have that ability with regard to STHL yet the impact on our amenity can be worse than neighbouring these.

We have asked a number of Councillors and Council staff what they would do if they found themselves living next door to a STHL with the problems that we have been experiencing. None were able to offer an answer. Most did not bother to reply at all. Perhaps if regulation of STHLs were to be trialled, then they should be trialled next door to one or more of the GCC Councillor's residences.

We, and other residents from our community, have written to the NSW Department of Planning and Infrastructure with our concerns. So far they have failed to impose or advise any guidelines or directives to ensure that STHL do not have unacceptable impacts on communities.

Finally, our lawyers tell us that the problems we have experienced are not uncommon in this community. They have been contacted by others in the same situation. We have also been contacted by many people who have been similarly affected by STHL and/or support the declaration by the LEC.

It is clear that the operation of unregulated STHL is unacceptable in residential zones.

John and Rosemary Dobrohotoff