

**Submission  
No 105**

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

**Organisation:** Shoalhaven City Council  
**Name:** Mr Gordon Clark  
**Position:** Strategic Planning Manager  
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Council Reference: 27521E (D15/302579)  
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Committee on Environment & Planning  
By email only: [environmentplanning@parliament.nsw.gov.au](mailto:environmentplanning@parliament.nsw.gov.au)

Attention: The Chair

Dear Sir/Madam

### **Submission - Inquiry into regulation of short-term holiday letting**

Council welcomes the opportunity to provide a submission to this inquiry, given the importance of this type of holiday accommodation in Shoalhaven.

#### **General Comments**

Shoalhaven is located on the south coast of NSW and is a popular holiday destination located within a 3 hour drive of Sydney and Canberra. Shoalhaven is the most visited area outside Sydney and our area has an estimated 4000+ holiday homes. The tourism industry is a large and important driver in the Shoalhaven economy with an estimated spend of between \$623 million and \$750 million.

Council generally supports the continuation of the existing practice of short-term rental of residential dwellings in Shoalhaven. This type of accommodation has a long history in Shoalhaven and is an important element of the tourist accommodation market, particularly in the coastal settlements, Kangaroo Valley, Berry and other popular tourist destinations.

#### **Sea Change Taskforce Research Project**

Council contributed to and took part in a Sea Change Taskforce (now Australian Coastal Councils Association) research project in 2012 by the University of Adelaide called '*Time and tide: moving towards an understanding of temporal population changes in coastal Australia*' - Graeme J Hugo and Kevin R Harris (April 2013). This research project examined key data from:

- Australian Bureau of Statistics (ABS) Census 2011;
- Survey of Tourist Accommodation (STA) by ABS regularly;
- A generic survey of holiday home property owners within the participating LGA's including Shoalhaven (April 2012).

Of specific relevance to short-term holiday letting in Shoalhaven:

- It was found that every 1,000 holiday homes generate a temporary population of more than 2,000 persons in Shoalhaven.
- When asked the main reason/s for purchasing their sea change property, 'investment/future' was the second highest reason listed, for all LGA's;
- Specifically for Shoalhaven – the most common reason/s given for purchasing their property were primarily 'Holidays' (22%) which was followed by 'Location' (13.2%) which was closely followed by 'Investment' (11.8%);
- Respondents were asked about the usage of their property by Renters and Tenants, specifically details of the number of days their property was rented in each of the preceding 12 months. Levels of rental were found to be lower during the winter months with pronounced peaks in the summer holiday period up to the end of March;
- The survey asked non-resident property owners whether their property was available for rental in 2011 and how many days each month. Of the responses received, 62 properties were rented out during 2011, for a total number 10,284 days. The key rental season was found to be over the period October through to April. In Shoalhaven the number of days rented peaks from November through to January.

Given that this research is specifically related to holiday homes it may be of interest to the inquiry and can be accessed on the Internet at <http://coastalcouncils.org.au/portfolio/landmark-study-on-missing-coastal-populations-now-available/>

Council's more detailed comments are provided below under the terms of reference for the inquiry.

#### **(a) *The current situation in NSW***

Currently Councils across NSW appear to vary greatly in their approach to short-term holiday letting. This inconsistency creates uncertainty for all stakeholders.

Examples of the various types of regulation that have been adopted by various Councils in include:

- Prohibiting the use of homes for short-term holiday letting in residential zones;
- Permitting the use of homes for short-term holiday letting with or without development consent in residential zones;
- Requiring homes used for short-term holiday letting to be registered with the relevant council or authority;
- Self-regulation by the industry e.g. Council/organisations providing policies and codes such as the 'Holiday Rental Code of Conduct' for the guidance of owners, managers and occupants of holiday rental properties.

#### **Outcomes of Court Cases**

Further adding to this uncertainty are decisions by the Land and Environment Court. The Court has ruled that the use of dwellings for holiday or short-term accommodation was unlawful in a number of cases.

The outcome of these cases has affectively classified short term holiday lettings as a commercial activity and thus effectively banning the practice in residential or other land use zones where commercial uses are prohibited. The cases that have created this legal precedent include, among others:

- The Council of the Municipality of North Sydney v Sydney Serviced Apartments Pty Ltd (1992) – NSW LEC 43;
- Sutherland Shire Council v Foster & Anor (2002) – NSW LEC 2;
- Gosford in 2013 - Dobrohotoff v Bennic – NSW LEC 61.

In media responses to the earlier cases, it was indicated that the State Government may consider this issue as part of the Planning Reforms. Council was aware that this was likely to take some time to come to fruition, and given the importance of this issue to Shoalhaven, Council took the prudent step of amending its LEP to enable the practice of the short-term rental of existing residential dwellings to continue without any legal uncertainty. This was done via an LEP amendment in 2006 that made the short-term rental of dwellings permissible without consent. At the time, Shoalhaven was understood to be the only Council to take this step.

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

The continued popularity of online platforms, has made accessibility to a diverse range of holiday homes available to the everyday person, combined with the ability to rate and review properties so the average consumer is able to make more educated, informed and quicker choices than ever before.

However, holiday home owners often have issues with customers (failure to pay, misalignment of expectations etc.) and feel like there are few resources available for them when help or advice is needed which may be exacerbated for owners operating through online platforms.

While traditional accommodation providers typically operate through a local management agent such as a real estate agent, online platforms allow owners to operate individually and from a distance. This has created an 'absentee' issue when a problem arises, or creates practical issues such as ensuring rubbish bins can be put out and collected, which in turn leads to dumping of rubbish in bins in public parks when rental periods end, which is often a problem in Shoalhaven.

The 'absentee' management issue could be addressed in a number of ways, including:

- Online providers being required to provide a 24-hour local contact for management and complaints to the lessee but also to adjoining neighbours and/or authorities who may need to contact the owner should a problem arise;
- There could also still be a role for a traditional local management agent who could respond to complaints or management issues that may arise from a property listed for lease on an online platform.



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

One of the largest issues facing the tourism industry sector in Shoalhaven is the availability of accommodation, with a growing consumer trend appearing towards boutique accommodation.

The availability of holiday homes, combined with the growing popularity of online sites, have provided an opportunity for the region to host many more people than would otherwise be possible. Given Shoalhaven's proximity to both Sydney and Canberra it is likely that holiday homes will continue to be a larger and significant component of the local tourism accommodation market.

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

Whilst there are some ongoing concerns in regards to holiday homes that need to be addressed, overall the positive impact on Shoalhaven's economy is significant and needs to be acknowledged. Any outcome that could potentially lead to a reduction in the availability of holiday homes would have a significant impact on our tourism economy.

Emphasis also needs to be placed on the local shopping spend from holiday accommodation users. Traditionally these visitors are more likely to spend a higher amount, dine out often and shop at local centres in a different way to those who stay in hotels. Therefore, overall holiday homes are a major contributor to the Shoalhaven economy.

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

**Customer Safety & Compliance**

The safety and maintenance of homes is an ongoing concern for all stakeholders, with some operators failing to meet the expectations of the customers.

There are potential issues with houses and swimming pools from a safety and insurance perspective. Any confusion as to the requirements for pools or non-compliance with pool safety creates a risk to customer safety. From 29 April 2013, all pool owners in New South Wales have been required to register their swimming pools on a state-wide register and penalties will apply for failing to register. How the requirements relate to short-term holiday rentals has the potential to be confusing as the requirements for pool owners are only stipulated for persons either selling or leasing their property and for owners of tourist and visitor accommodation. Short term holiday rentals, however, may not clearly fit within these categories. For example, pool owners are required to obtain a *Swimming Pool Compliance Certificate* from their local authority before they can sell or lease their property; does short-term holiday letting trigger this requirement?

Given that the use of homes for short-term holiday letting does not generally require development consent, this creates the potential for a dwelling to be used contrary to the existing consent for the dwelling.

For example, the lower levels of a dwelling may have been approved as a non-habitable area, due to the risk of flooding and this has not been adhered to by the owner (eg. additional bedrooms have been created).

Any proposal to introduce planning controls or restrictions on the number of beds that can be produced creates compliance problems. It raises the question of how Council can inspect, monitor and ensure compliance with controls when the subsequent use of the dwelling does not require development consent.

### **Land Use planning and neighbourhood amenity**

Given that short-term holiday rentals have been a feature of the accommodation market in Shoalhaven for a long time, Council amended its LEP in 2006 to enable the practice to continue. The clause in the current Shoalhaven Local Environmental Plan (LEP) 2014 (below) has evolved and states that no consent is required for short term rental of holiday homes unless there is an impact on neighbourhood amenity.

#### *Clause 7.13 Short-term rental accommodation*

- (1) The objective of this clause is to ensure that residential accommodation may be used as tourist and visitor accommodation for a short term without requiring development consent.*
- (2) Despite any other provision of this Plan, development consent is not required for the use of residential accommodation for the purposes of tourist and visitor accommodation (except backpacker accommodation or bed and breakfast accommodation) if the use is only short-term and does not interfere generally with the amenity of the neighbourhood in any way, including by noise or traffic generation.*
- (3) In this clause, short-term means for a maximum period of 45 consecutive days in any 12 month period.*

Development standards associated with this clause are provided in Chapter G16 'Short Term Rental Accommodation' of the Shoalhaven Development Control Plan (DCP) 2014 and addresses issues particularly relating to the impacts on neighbourhood amenity (<http://dcp2014.shoalhaven.nsw.gov.au/sites/dcp2014.shoalhaven.nsw.gov.au/files/Chapter%20G16.pdf>). However, this chapter generally only applies once a development application is required to be lodged, such as in instances where there has been an unacceptable impact on the amenity of the neighbourhood.

At the time Council introduced the original clause permitting the use of short-term accommodation without consent into the LEP, it also provided '*Advisory Guidelines for Short Term Holiday Rental in Residential Areas*' to be used by owners of rental properties and others; however, these guidelines are no longer produced. In 2012, Council considered the *Holiday Rental Code of Conduct* developed by the industry stakeholder group for use by owners, managers and occupants of holiday rentals and provided copies of this voluntary code to known holiday home rental owners and managers in Shoalhaven.

In 2011/2012 Council also distributed the attached flyer re "Managing Rental Holiday Accommodation" to all landowners/ratepayers with its Annual Rates Notice. The flyer draws on the voluntary code and encourages owners to consider using it.

Council may consider an amendment to Shoalhaven LEP 2014 and Shoalhaven DCP 2014 controls in relation to short-term holiday letting regard once the inquiry has been completed and if the State Government determine there is the need for a consistent policy position throughout NSW. The need for a consistent planning approach to short term holiday letting would be welcomed.

Council strongly supports the motion passed at the recent 2015 NSW Local Government Conference that:

*“LG NSW lobbies the NSW government, and in particular the Minister for Planning, to prepare state wide definitions, policy and planning guidelines to introduce consistency and manage risk issues raised by the RFS, for managing short term rental accommodation in NSW.”*

In this regard it is essential that clarity is provided regarding whether or not the practice is deemed to be a ‘special fire protection purpose’ under the NSW Fires Act 1997 and if so, what is the impact of this, particularly where development consent is not required for the practice.

### **Responding to Complaints**

When the use of a dwelling as a holiday rental is consistently impacting upon the amenity of the neighbourhood in any way, Council can take action including requiring a development application to be lodged. This application would be assessed against the development standards contained in *Chapter G16 ‘Short Term Rental Accommodation’* of Shoalhaven DCP 2014. This may result in an application being required to comply with particular conditions of consent or being refused.

Council receives consistent complaints regarding a small proportion of holiday homes in relation to impacts on amenity (noise, car parking, dumping of rubbish, overcrowding etc.). These complaints are often in relation to the use of a holiday home by larger groups or the hosting of functions or parties that disrupt the neighbourhood amenity for the permanent residents located nearby. Issues such as noise complaints can be managed under the provisions of the *Protection of the Environment & Operations Act 1997* and other issues of inappropriate behaviour or criminal activity may be addressed by police action.

The tenants of holiday homes do at times hold parties during their stay, and in so doing, often disregard the fact that their activities may impact on neighbours. These issues are more problematic to address given that the tenants are not permanent residents and may be less likely to share a sense of community responsibility and ownership. These issues can in some instances be addressed under Strata legislation or as part of the Development Application process. However, in most cases, Council has a small role in the resolution process, if any, as the use generally does not require development consent. Generally it is a small number of properties that consistently generate complaints and issues when compared to the overall number of holiday homes that are managed appropriately.

Council is currently considering amending Clause 7.13 in Shoalhaven LEP 2014 to specifically prohibit weddings/functions being carried out in short term rental accommodation. This acknowledges that while short term rental of dwellings is an important form of tourist accommodation in Shoalhaven, there is a need to balance the rights of residents to the quiet enjoyment of their properties.

The amendment will consider making it clear that hosting a wedding or other functions as part of a short-term holiday rental has the potential to have an unacceptable impact on neighbourhood amenity and cannot be carried out in short term rental properties.

## **Taxation**

Traditional tourist accommodation providers (hotels, motels, caravan parks etc.) have expressed concerns that holiday home owners benefit from promotional tourism marketing and other initiatives, without contributing financially. From a financial perspective, short term holiday letting providers continue to benefit from funds spent on tourism marketing and resultant growth without making a contribution. Consideration should be given to how this can be made fair or rationalised across all accommodation providers.

### ***(f) Any other related matters***

#### **Dumping of Rubbish**

An ongoing concern for Council is the apparent dumping of rubbish by the users of some holiday rentals. Last year around Shoalhaven, Council needed to respond to rubbish from holiday letting homes adjacent to parks, being dumped next to litter bins and needing to be removed. This has been an ongoing issue for many years. Contributing to this issue is that in some cases the owners of holiday homes appear to have no mechanism to arrange for the bins to be placed and recovered from the kerbside during regular waste collection and so they are not emptied regularly.

The increase in holiday accommodation usage also impacts on local services. For example; rubbish placed in public facilities required the commitment of resources that are already stretched during busy holiday times.

#### **Use of Parks and Reserves Adjoining Holiday Homes**

The use of adjoining reserves by holiday homes for weddings and other functions has become a growing problem. Complaints have been received by Council in relation to impacts on amenity (parking, waste, noise) associated with the functions. To address this issue, Council's *Private Functions on Public Reserves Policy* (<http://doc.shoalhaven.nsw.gov.au/displaydoc.aspx?record=POL15/34>) was updated.

This requires a separation distance for functions on reserves so there is at least 25 metres minimum separation from a private boundary and 25 metres from reserve infrastructure such as playgrounds, amenities, car parks, and private functions of more than 50 people can only be hosted in defined areas.

#### **Conclusion**

In Council's experience, only a relatively small proportion of the homes used for short-term holiday letting are an issue. Therefore, Council does not see the need to require development consent for the use of homes for short-term holiday letting, unless the use interferes generally with the amenity of the neighbourhood. Council favours a self-regulatory approach to the continued use of short-term holiday letting of residential homes.

Council has taken a proactive approach to enable the existing practice to continue in Shoalhaven by including *Clause 7.13 Short-term rental accommodation* in Shoalhaven LEP 2014 which is supported by development standards contained in chapter *G16: Short Term Rental Accommodation* in Shoalhaven DCP 2014.

Given the relevance of this issue to Shoalhaven, Council would be interested in attending a public hearing should one be held as part of this inquiry.

If you need further information about this matter, please contact Danielle Ratcliffe, Planning & Development Services Group on [REDACTED] Please quote Council's reference 27521E (D15/302579).

Yours faithfully

[REDACTED]

**Gordon Clark**  
**Strategic Planning Manager**  
6 November 2015

Encl: Advisory Guidelines for Short-Term Holiday Rental in Residential Areas  
Rates pamphlet from 2011/2012

## Background

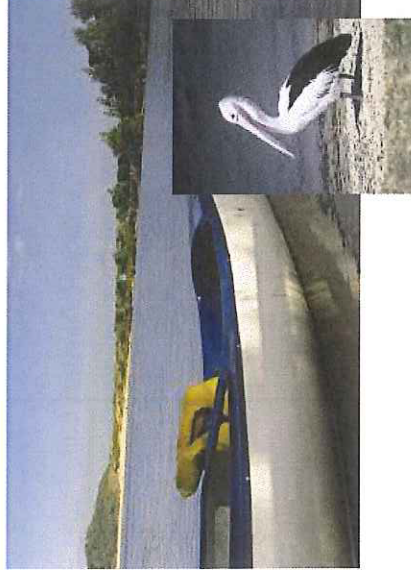
Our City is acknowledged as a major tourist destination in NSW. A large number of visitors to Shoalhaven stay in rented holiday accommodation (dwellings, units, etc) which is an important contributor to our tourism base.

The legal precedent set by two court cases questioned the legality of short term rental of houses as they appear to be classified as a commercial activity, thus effectively banning the practice in residential areas and other zones where commercial uses are prohibited. This could have adversely impacted on the future use of holiday homes and other forms of short term accommodation in Shoalhaven.

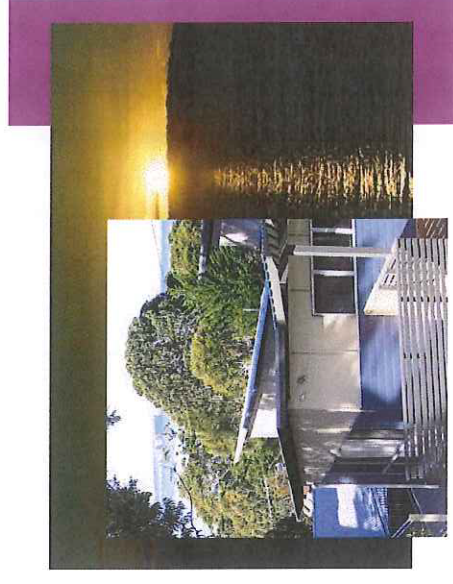
As a result of the issues mentioned above, Council has taken a pro-active approach by;

- allowing the short term rental of a dwelling without the need for development consent (except B&B accommodation) through an amendment to Shoalhaven Local Environmental Plan 1985 to resolve the issue.
- providing Advisory Guidelines for the Short Term Rental of Residential Dwellings to be used by owners of rental premises and others.

There is existing legislation relating to noise abatement, neighbourhood amenity, and offensive behaviour. The relevant authorities (Police, and Authorised Council staff) can take action if necessary. A complaints register may be established to monitor repeated problems.



## Short Term – Holiday Rental in Residential Areas



### How do you find out more

For more information on managing a rental property visit the NSW Office of Fair Trading  
Website at: [www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au)



## ADVISORY GUIDELINES

### Shoalhaven City Council

PO Box 42,  
Nowra, NSW 2541  
Ph: 02 4429 3111

[www.shoalhaven.nsw.gov.au](http://www.shoalhaven.nsw.gov.au)





## Advisory Guidelines - "How to be a Good Neighbour"

The following advisory guidelines are suggested to help you develop a "good neighbour" relationship with adjoining owners, and manage the rental of your holiday house.

### Do's

- Rent your house through an agent unless you have experience in this field. An agent can give you advice on regulations, requirements, insurance and guidelines. If you choose to rent privately and manage the property yourself you should consider the following questions.
  - Will you save money by managing it yourself?
  - Are you prepared to organise all the repairs and deal with tenants?



- Are you ready for the responsibility that this involves?
- Do you know what your legal rights and legal responsibilities are?

- Do you know the tenant's legal rights and responsibilities?

- Open dialogue with neighbours, ask for feedback on behaviour of occupants, offer to address any issues which may arise. Having an interactive relationship with your neighbours can benefit all concerned. For example, neighbours tend to keep an eye on the place and provide feedback.

- Use your agent as a local point of contact should problems arise.



- Exchange numbers with adjoining neighbours if not using an agent.
- Make it clear that it is the tenant's responsibility to maintain reasonable peace, comfort and privacy to neighbours.

- Provide advisory notices for the occupants of the premises eg, number of persons allowed, noise considerations, use of rubbish bins, car parking and general consideration of the neighbours.

- Notice of penalties to tenants for not complying with regulations.
- Ensure there is enough parking available on the property for the occupants.

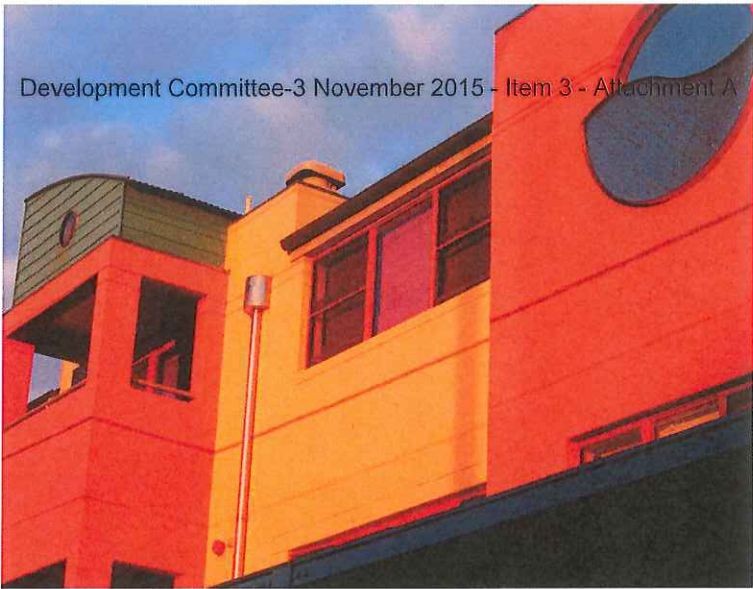


### Don't's

- Don't encourage occupants to have parties or functions on the premises.
- Don't ignore or alienate your neighbours as they are a valuable ally to have.
- Don't allow overcrowding of premises as too many people could be a safety risk. As a rule, the correct number of beds per number of people staying on premises is advisable.







## **Managing Rented Holiday Accommodation**

The Shoalhaven is regional NSW's major tourist destination, making tourism and holiday visits a vital part of our local economy.

Because a large number of our visitors stay in rented holiday accommodation such as houses, units and apartments, it is important for the owners of holiday rental properties to be aware of their obligations, especially with respect to noise, behaviour of guests and overcrowding of homes.

The NSW Government supports the Holiday Rental Code of Conduct, put together jointly by the Real Estate Institute of NSW, 'Stayz', 'Take a Break' and 'Rent a Home'. This Code can be downloaded from <http://www.reinsw.com.au/default.aspx?ArticleID=10373>.

If you are an owner of holiday rental property/s you can minimise problems for yourself and your neighbours by:

- being aware of your legal responsibilities as property owner and abiding by the Holiday Rental Code of Conduct
- providing friendly advisory notices to your guests, including penalties that may apply if your guests do not comply
- using a specialist local agency or professional property manager to handle your holiday letting. Your agent can then monitor and respond to any issues which may arise such as complaints from neighbours, property presentation and maintenance, safety issues, use of rubbish bins, car parking and general consideration of the neighbourhood.



