

**Submission
No 184**

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

Organisation: Port Stephens Council
Name: Mr Matthew Brown
Position: Development Assessment and Compliance Manager
Date Received: 10/11/2015



PORT STEPHENS
COUNCIL

Mr G Brookes
C/O Mr D Hale
Parliament of New South Wales
Macquarie Street
SYDNEY NSW 2000

Dear Glenn,

Re: Inquiry into the Adequacy of the Regulation of Short-term Holiday Letting in NSW

I refer to the above mentioned enquiry in relation to the adequacy of current regulation of short-term holiday letting in NSW.

Port Stephens Council thanks the Committee on Environment and Planning for the opportunity to provide a formal submission.

The terms of reference for the enquiry are as follows;

That the Committee inquire into and report on the adequacy of the regulation of short-term holiday letting in NSW, with particular reference to:

- a) *The current situation in NSW and comparison with other jurisdictions*
- b) *The differences between traditional accommodation providers and online platforms*
- c) *The growth of short-term and online letting, and the changing character of the market*
- d) *The economic impacts of short-term letting on local and the state economies*
- e) *Regulatory issues posed by short-term letting including customer safety, land use planning and neighbourhood amenity, and licensing and taxation*
- f) *Any other related matters.*

This submission provides advice in three broad areas being, economic and market issues, land use planning and finally land rating issues. These points relates to points c), d), e) and f) of the terms of reference mentioned above.

Economic and Market considerations

Analysis of Population Data from the Census sheds some light on the short term holiday letting market when comparing the **Place of Usual Residence**, the total number of people usually resident in Port Stephens (A) locality of **Nelson Bay for example, which**

| Page 1

PORT STEPHENS COUNCIL

116 Adelaide Street
Raymond Terrace NSW 2324

PO Box 42
Raymond Terrace NSW 2324

Phone: 02 4980 0255
Email: council@portstephens.nsw.gov.au

www.portstephens.nsw.gov.au



PORT STEPHENS

on Census Night 2011 which was 5,397 (i.e. based on the area in which they usually live), compared with the **Place of Enumeration**, the total number of people enumerated in Port Stephens (A) locality of **Nelson Bay** on Census Night 2011 which was 5,566. (I.e. based on where they were located on that night this may or may not be the place where they usually live.) Typically, holiday areas show a large enumeration count compared with the usual residence count, and in the case of Nelson Bay this difference of 169 people could potentially equate to occupancy of dwellings that are not for permanent residency, rather short term holiday letting.

When considering the Tourism Impact of 169 additional people, assuming 50% occupancy rate throughout the year, the direct effect on output is \$4.472M, an industrial flow-on effect of \$1.408M and consumption flow on effect of \$0.990M, giving a total impact of \$6.869M and a total value-added effect of \$3.276M. Nelson Bay is typically characterised as the primary tourist and service center of the Tomaree Peninsula and the Post Stephens LGA, experiencing high seasonal variations resulting in low level of activity on winter weekdays as compared with the large numbers of tourists visiting during summer, Easter holidays and special event weekends. These fluctuations place pressure on local businesses to accommodate varying demand and consumption patterns throughout the year.

The nature of short term holiday letting also presents a couple of key issues:

- A transient population is not generally accounted for in terms of planning (e.g. there is increased demand on infrastructure that may not have been accounted for).
- In tourism surveys accommodation houses are classified with 15 rooms or over and as such data for short term holiday letting is not captured within these surveys.
- In terms of the rate base (current classification of short term holiday letting as a residence as opposed to a business), means the owner is receiving an economic return for this type of dwelling, however the LGA does not capture direct benefit from a business rate levy. Balancing the cost imposed on owner vs economic benefit from additional people in the area is a factor to consider.

Land Use Planning

As discussed with David Hale on 18 September 2015, there are a number of considerations from a land use perspective for short-term holiday letting. These include;

- 1) Short term holiday letting is classed as development without consent pursuant to Port Stephens Local Environmental Plan 2013 (*PSLEP 2013*), *Cl 7.18 – Short Term Holiday Rental*. In preparation of PSLEP 2013, Council considered this issue and determined that such a use was not substantially different from a long term residential use in terms of impact on the locality. A requirement to lodge a DA in the majority of cases was overly onerous;



PORT STEPHENS
COUNCIL

- 2) No DAs for short term holiday letting were lodged in the year preceding the commencement of PSLEP2013;
- 3) No compliance matters, complaints or CRMs regarding short term holiday letting were received by Council in the last year;
- 4) When infrequent complaints about short term holiday letting have been received by Council historically, Council has addressed the specific issue source e.g. noise – not the land use specifically. The last time a noise order was issued for a short term holiday letting premises was over 3 years ago.

In summary from a land use perspective, both the market and neighbours self-regulate short-term holiday letting and following the commencement of PSLEP 2013, no adverse impacts have been identified to Council. CI7.18 of PSLEP 2013 has been worded however that should adverse noise or traffic impact occur a Development Application is required to be lodged.

Land Rating

The key issue as it relates to land rates/taxes is that as far as we are aware, no Council in NSW has found a way to effectively achieve consistency in rating short term accommodation under the business category. Over the years every Council on the east coast of NSW has been contacted as well as Blue Mountains and Snowy River in the ski fields to discuss their experience.

Land can only be categorised as “Farmland”, “Residential”, “Mining” or “Business”. Council cannot invent/develop its own land categories. Residential land can only be sub categorised by centre of population. Business land can only be subcategorised by centre of activity. Council cannot put short term holiday accommodation into a separate category; it must be either residential or business. (ss 514, 531 LGA)

The issues as it relates to land rating purposes is best outlined via the chronology below.

- 1) Clause 122 of *The Local Government (General) Regulation 2005* requires serviced apartments and time-share schemes to be categorised as residential for rating purposes. Therefore, serviced apartments cannot be categorised as business. Serviced apartments are more characteristic of a ‘business’ than a holiday home or unit.
- 2) The Department of Local Government wrote to Council in 1999 expressing its concern that Council was proposing to categorise houses and units used for short term holiday accommodation as business.
- 3) Council’s legal advice from Harris Wheeler lawyers in 1999 stated:
 - residential is not defined in the *Local Government Act 1993*.



PORT STEPHENS COUNCIL

- duration of occupation is not a sole determinant.
 - Council must determine dominant use (i.e. residential or business) on a case by case basis.
 - Council cannot adopt a blanket approach.
- 4) The Department of Local Government wrote to Council in 2004 stating “It is also the Department’s view that “holiday units” should ideally be categorised as residential.”
 - 5) In 1999, 1,100 holiday homes/units were categorised as ‘business’ for rating purposes however the business rate was lower than the residential rate at low land values as there was no base amount in the business category and so there was little ratepayer objection to paying the cheaper business rates.
 - 6) From 2002/2003 onward the business rate became substantially dearer than the residential rate.
 - 7) 350 holiday homes/units were subsequently re-categorised from business to residential following receipt of statutory declarations from ratepayers that the property is not rented out for financial gain.
 - 8) When Council refused to grant re-categorisation applications in 2004/2005, two appeals were lodged in the Land and Environment Court by ratepayers dissatisfied with Council’s interpretation of “residential”. These matters were withdrawn by the appellants when Council advised them it was reconsidering its position but not until after \$11,000 in legal costs were incurred by Council.
 - 9) In 2005 following substantial rate write offs as a result of re-categorising holiday homes/units to the lower residential rate, the last 750 holiday homes/units were transferred to the residential category.
 - 10) In 2004/2005 ratepayers were using approaches such as altering their mailing address and drivers licence address to show the rateable property as their place of living in order to provide proof to Council that they live at the rateable property.

The internal use of a property and associated financial renting and leasing arrangements are not available to Council to scrutinise on a case by case basis to determine whether paid short term rental is occurring. There are properties that can be identified from internet listings or real estate agents listings. These listings confirm that at some time in the past they were available for short term rent. It does not however legally and categorically, confirm if the property was successfully rented, or for what period, or whether the property is still available for short term rent.

A rating system needs to comply with legislation, be simple, fair, cost effective to administer and also immobile. If ratepayers can manipulate their affairs to achieve a



PORT STEPHENS
COUNCIL

lower rate bill then the tax base is not immobile and honest ratepayers will pay higher rates than dishonest ratepayers.

In the absence of legislation that enables Council to consistently rate all holiday homes/units and serviced apartments as "business" it is preferable to place them all in the residential category.

I trust the above information goes some way to outline the issues faced by Port Stephens Council both from an economic, land use and rating perspective. If further explanation on matters raised above is required please don't hesitate to call me on the number below.

Yours sincerely,



Matthew Brown
Development Assessment and Compliance Manager

3 November 2015

Telephone enquiries



Please quote file no: PSC2009-00878