

**Submission
No 208**

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

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Environment and Planning Committee
Legislative Assembly,
Parliament House,
Macquarie St
Sydney NSW 2000

via email: environmentplanning@parliament.nsw.gov.au

To whom it may concern,

**Submission to the inquiry into the adequacy of the regulation of short-term holiday letting
in New South Wales**

Thank you for the opportunity to make a submission to this inquiry.

As the Greens NSW spokesperson on Tourism, Housing and Homelessness and Community Resilience I raise concerns that cross these portfolio areas.

This inquiry is timely as the state grapples with a lack of housing supply and a high level of unaffordability. I encourage the committee to consider the impact that the use of planned and approved residential premises for tourism/visitor purposes is having on housing unaffordability and unavailability.

For this submission I am providing comments and insights on the short term use of approved residential premises or short term visitor use known as holiday let and the experience of this in my local area, Byron Shire on the far north coast. In recent times the rise of the sharing economy, most prominently in the accommodation sector through the brand of Airbnb, has drawn attention to the practice, but it's important to recognise that it has existed for some time in different forms. However, the rise of the internet and businesses associated with these uses have accelerated and highlighted both benefits and concerns.

The use of dwellings as 'holiday houses' is an activity that has a long tradition in many coastal tourism areas. In some locations there have been properties that are only occupied in tourism periods and are referred to as holiday houses, and this is the case in many locations on the south coast. On the north coast, there has been historical use of properties for peak holiday visitor purposes, often with residents taking a holiday or relocating to friends, caravan parks or renting more cheaply. These properties were often placed with real estate agents for these short term letting opportunities, traditionally during summer and Easter or undertaken through family and friendship circles. These more traditional means offered some degree of oversight and contact.

The Rise of the Web and web based business – Lack of regulation

In the early 2000s with the advancement of the internet there was a new tourism phenomenon, the website booking a holiday property on line. This spurred the new tourism accommodation model of 'holiday letting' that was being undertaken, initially on an individual property per website model, and then later presented by the consolidated forms of Stayz and other operators such as Homeaway and Rentalhomes.

These consolidated sites then provided a market place for choice and opportunity for both customer and owner as well as becoming substantial businesses for the operators with a percentage of payment model, not dissimilar to the current situation with Airbnb.

What these models lack within a tourism market is regulation. There is no quality assurance for these operations and no real connection or personal contact with the occupants. There are risks associated with this type of tourism. There is the potential for properties not to meet the visitor expectation by way of not meeting the stated 'attractions' or the standard of the accommodation or the images presented in the advertising. The other aspect is the potential for the 'tenants' not to comply with the recommended or stated number of occupants. There have been experiences where a booking for 4 people ends up with up to 20 people staying in a premise, especially during peak periods, e.g. "Schoolies".

The most relevant issues in this regard are the safety standards for visitors that aren't defined or enforced due to lack of regulation and insurance.

General State-based issues

NSW housing unaffordability and unavailability

I note that the significant problems of housing shortages and unaffordability in NSW, particularly in Sydney and coastal areas such as the north coast, are affected by this use. For further detail, see below in the section addressing Term of Reference (e).

I also draw the Committee's attention to a previous Legislative Council Inquiry that considered tourism in local communities. It was clear from that inquiry that in some areas, the impact of 'holiday letting of residential properties' can be devastating for some communities and individuals but also it has a financial impact with the use essentially operating as a 'black market', contributing no development contributions or rates and being subject to no regulation, other than owner-funded security in some areas which should be noted only operates after a disturbance.

Two recent research papers by the parliamentary Research Service highlight the problem of housing affordability and provide data that suggests short term letting plays a role in constraining supply of residential housing:

*NSW Parliamentary Research Service – Housing affordability ebrief 13/2015:
"The affordable rental housing problem is not just limited to the Sydney region, with a number of other regional metropolitan areas including the Hunter, Central Coast and the Illawarra feeling the burden of declining rental affordability, with the proportion of rental properties affordable for very low and low income households declining over the last decade".*

*NSW Parliamentary Research Service –Uber and Airbnb ebrief 6/2015:
"Roughly 60% of the listings on Airbnb are entire homes and 40% are private rooms"*

The fact that a majority of the listings on Airbnb are entire homes is evidence that this use already does, and will continue to, affect the availability and affordability of residential housing supply.

Issues of constrained supply, and in particular the limited supply of affordable housing in key areas of Sydney and regional centres, are a key contributor to the current housing affordability crisis. In the Legislative Council Select Committee inquiry into Social, public and affordable housing, it was a consistent issue that there is concern regarding the lack of supply and access to affordable housing for essential workers.

With the increase in the use of properties for tourism purposes, there will continue to be diminished availability for affordable housing. This is an issue for entire house availability, but also for the availability of rooms for rent. It should not be overlooked that the opportunities for the renting of rooms on a permanent basis in homes can fulfil the necessary housing, particularly for single persons who may not be in a position to afford to rent a whole premise or who are seeking a shared accommodation option close to their place of work or training.

NSW tourism

Tourism is an important industry for NSW and a major economic driver for many regions. I draw the committee's attention to the responsibility of approved tourism providers and note that there is an unfair economic situation with the use of web-based promotion and marketing by unregulated providers. This may also have some impact on the integrity and credibility of the NSW tourism sector due to the lack of regulation. Without regulation and the assessment of safety and amenity standards there is a potential for the experience of the visitor to be unsatisfactory, which can lead to a negative sense of the location. Another consequence of Internet models for accommodation booking is that negative impressions can be broadcast widely and have a negative and economic impact on a destination.

Reports about negative Airbnb experiences have received some media attention and range from the destruction of property and belongings to cases of abuse and violence, e.g.

<http://news.domain.com.au/domain/real-estate-news/flat-chat-why-apartment-residents-hate-airbnb-20150529-ghcevc.html>

I have previously tabled motions relating to both holiday and the rise of Airbnb (see attached).

The Legislative Council Inquiry into Tourism in Local Communities

(<https://www.parliament.nsw.gov.au/prod/parlment/committee.nsf/0/91B529C2E7AA3824CA257C920083817B?open&refnavid=x>) considered the issue of unregulated tourism. Below is an extract from the Executive Summary:

Unregulated holiday letting and recreational vehicles (Chapter 5)

A significant issue raised throughout the Inquiry was the practice of short term holiday letting. While the practice of holiday letting was seen as an accepted practice by some stakeholders as a necessary supplement to other types of tourism accommodation, others were opposed to the practice primarily due to the impact on the amenity of permanent residents arising from the anti-social behaviour of some temporary occupiers. The Committee also heard about tensions felt by regulated accommodation providers toward unregulated providers and concerns about the impact of reduced numbers of permanent residents in communities. The chapter considers options for addressing issues with short term letting including holiday letting precincts, development approval, self-regulation or a statewide policy or regulation.

...

Recommendation 15

That the NSW Government publish the results of the trial of the Holiday Rental Code of Conduct.

While the inquiry did not resolve specifically on how to address the issue of unregulated holiday letting of residential properties, the report does identify some of the concerns and the lack of clarity for protecting the amenity of residentially zoned areas.

I urge members to read Chapter 5 of the inquiry's report, which outlines the issues and also the submissions that relate to the concerns raised by affected neighbours.

The difficulty for the committee was the situation that existed at the time where the NSW Government had accepted the process put forward by the Holiday Letting industry of undertaking a trial into its Rental Code of Conduct. Unfortunately the report on the trial has not been made public yet, despite one of the recommendations seeking disclosure of the report of the trial.

Varying regional circumstances

In considering the terms of reference for this inquiry I urge committee members to consider the different circumstances that apply for rural and regional areas, particularly those areas in which tourism is a significant economic sector.

Over the last decade the increase in the use of residential properties for tourism purposes has been considerable on the north coast and has resulted in the recognition that in the two local government areas of Byron and Tweed there are approximately 900 residential-zoned dwellings being used for tourism purposes in each shire.

In the Snowy River region there have been concerns with the practice, resulting in a regulation of the use and a visitor education program. There are still concerns with the use and its impact on the economic viability of council and the supply of infrastructure.

Submission 72 to the inquiry into tourism in local communities – Snowy River Shire, dated 10 July 2013:

“An issue of concern stemming from the tourism industry is the fact that ‘holiday lettings’ ie. Residential apartments used for letting during tourism season are classified as residential rather than businesses. These ‘holiday letting’ apartments compete with hotels and motels which are classified as business and as such should be similarly classified”

NSW planning

Despite concerns being raised by local government and residents regarding the impact and legal issues surrounding the use of residential premises for tourism purposes, there has been a lack of clarity and support from the state regarding this matter.

In 2009 a motion was presented and adopted unanimously at the Local Government Association conference by Kiama Council:

That the Local Government Association once again call on the New South Wales Government and the Department of Planning to expedite as a matter of urgency either:

- A statewide policy position on short-term holiday rentals that permit these businesses to operate in residential areas subject to enforceable provisions designed to protect the amenity of neighbouring residents.

OR

- the enabling of local Councils to include 'local Clauses' in the LEP so that Councils may choose to include short term holiday rentals in their LEP, subject to restrictions designed to protect the amenity of neighbouring residents and contingent on such premises being registered with Council.

It is my understanding that advice received by the Department of Planning to LGA in relation to this motion indicated that it was a matter for local government to determine. At the time, councils and the Department were in the process of formulating the new Standard Instrument LEP and there was confusion and delays regarding the inclusion or exclusion of the use in the new LEP.

At that time, Byron Shire Council (BSC) had been experiencing a high level of community opposition to the use and sought to amend the current LEP to exclude the use in residential zones. BSC had been through a process to seek to define precincts where the use would be permitted by a clear position had not been formulated and with court cases having determined the unlawful nature of the use the council sought to define in the LEP. The council at the time was addressing the use as a compliance matter and had begun taking legal action. The Department wrote to council and requested it desist from the LEP amendment as they were working with the industry on the trial of the Code of Conduct model.

Comments on specific terms of reference

a) The current situation in NSW and comparison with other jurisdictions

Byron Shire Council became a member of the Seachange Taskforce and discovered that many other coastal locations also experienced the impact of short term letting of residential properties. I refer the committee to the Sea Change Taskforce – which has recently undergone a change with the amalgamation with the coastal councils organisation and is now part of a wider group operating under the name Australian Coastal Councils Association: <http://coastalcouncils.org.au/>

I was made aware of the experience in Victoria on Philip Island and in Western Australia in the town of Brusselton regarding holiday let and the similar impacts to those in my community. In Western Australia, the State Government developed a planning process that required the regulation of the use by development application.

For communities that are located within 2 hours of a major population centre, the destinations experience similar impacts. The exodus of city dwellers to more regional communities for short term breaks has seen the rise in the use of approved residential dwellings for accommodation. It should also be recognised that locations that have developed as recognised tourism destinations undergo dramatic character and social changes.

I note some examples of short term holiday rental regulation in other jurisdictions:

- NSW – Snowy Mountains – see submission 72 to the Tourism in local communities inquiry
- WA – Planning – regulation standards apply
- QLD – Gold Coast council charges a commercial rate for properties unless the owner identifies that the property is permanently occupied.
- NZ – Queenstown – regulation standards apply
- California restrains Airbnb use: <http://www.buzzfeed.com/mariahsummers/southern-california-tells-airbnb-you-cant-stay-here#.xlw3P6Gp6W>

b) The differences between traditional accommodation providers and online platforms

Planning, zoning and assessment and tourism management plans

Traditional tourism was determined by a principle that tourism is an industry and one that relies on expectation and experience and the provision of service. The regulation of the industry has historically occurred to ensure that the safety and experience of the visitor is of a high standard and that it provides for the needs and management of the visitor.

As a councillor on Byron Shire Council I had over a decade of involvement with the consideration of planning for tourism. These processes involved the assessment and consultation of zoning plans, where the location of tourism zones was determined on the basis that it was important to separate the areas where this use was deemed suitable based on proximity to facilities and attractions, and away from residential areas where the impacts and conflicts for residents could be avoided.

The assessment criteria for tourism development applications focused on ensuring the safety of visitors and the provision of a level of service to ensure the high standard of experience. The overall principle in determining suitable locations for tourism also respected the rights of residents to have their amenity protected as well as ensuring that the supply of housing for permanent residents could be accommodated.

The State Government has always placed a responsibility on local government to meet targets for the provision of housing to meet future population projections. The release of the Far North Coast Regional Strategy in 2006 determined the population projections for the region and required councils to meet their share of population growth by the provision of available land for residential living and the ultimate delivery of housing, defined by the density standards determined in Local Environmental Plans.

I also was involved in the development of tourism management plans for over a decade and was a member of the Northern Rivers Regional Tourism Board. Throughout this time there were growing concerns from the community and the tourism industry about the increasing use of residential properties for unregulated tourism.

The Byron Shire Tourism Management Plan that was adopted in 2010 was undertaken with detailed community consultation, including the use of a citizens jury, to consider the needs and the future planning for tourism in the area. The final plan identified the community concerns with the impact of holiday letting and the need to ensure compliance so that the negative impacts on amenity were managed. The view of the community and council planning staff was that the use was prohibited in residential areas and should be subject to increased compliance by the council.

Approved accommodation provider standards

There is a history of media reports relating to negative experiences for visitors to a destination when the reality of a web based promotion does not meet the described attributes, which demonstrates how the mismatch of experience and expectation can be damaging to a destination.

In contrast, the regulated tourism accommodation operator is bound by an approval given by local government or the state and is required to meet the standards and conditions that are determined with the approval. If the standards of an approved accommodation provider are not met, then there is recourse for the visitor and the council to take action.

There have been significant concerns raised by the Tourism Accommodation Association, NSW division and providers such Youth Hostels Australia and other tourism operators about the unfair

commercial advantage that can result from activities that are not subject to tourism provider standards and the impacts on the regulated industry.

Building Code of Australia (BCA) – Fire and Safety

One of the key issues for regulation is the standards under the Building Code of Australia that provide specific requirements for the safety and protection of visitors to tourism accommodation. Importantly, these standards address the fire safety regulations that differ between tourism and residential premises due to the lack of familiarity tourists will have with a premise. There is a need for specific signage and smoke alarms as well as information and physical definition of the options for exits in case of fire.

There is a need to ensure public safety and tragedies such as the Childers fire in Queensland serve a shocking reminder that it is government's role to ensure proper use of premises and the appropriate regulations.

In Byron Bay in recent years there have been two fires in premises occupied by visitors. Thankfully there were no injuries, but as the local fire brigades noted there is a risk in the use of residential premises for short term visitors when they are not approved.

A report presented to Byron Shire Council on 14 April 2011 after a fire in a residential property used for holiday letting that resulted in the demolition of the house due to the extent of damage but thankfully no fatalities, noted:

“The majority of dwelling homes used for holiday letting are likely to be approved as class 1a buildings under the BCA. (Building Code of Australia)

In regards to fire safety compliance staff are of the view that premises used for holiday letting should be assessed as 1b buildings under the BCA. This is due to the fact that at most times a holiday let is visited by new guests who may not be familiar with internal layout of and exit points of the premises and those guest may comprise unrelated persons, such as a group of schoolies sharing a house”.

Note that the BCA classification issue relates to the requirement for the provision of defined fire safety standards.

Payments to local government

There is a significant loss of income to council from the lack of approval e.g., developer contributions, rates and water and sewerage charges. See below in relation to term of reference (d).

Insurance – visitor safety

A key issue with the unregulated use of premises for short term letting is the lack of insurance coverage. Despite repeated claims to the contrary by the representatives of providers of short term letting, it is an important point that without approval insurance providers may not fulfil a claim for an unapproved premise. This raises major concerns about liability and coverage if an injury or fatality was to occur.

There is a lack of clarity regarding insurance, but there is a view that without an approval an insurance company is not required to meet a claim involving a paying visitor in a residential property if accidents, damage or theft result during the stay. The 'commercial' use of the property as an unregulated use removes the obligation on the insurer to meet a claim.

I have been informed that insurance companies do offer insurance for holiday rental use of a residential property but also define in policies, that a valid claim must be for an approved use.

I am not aware of whether any legal action has been taken for a non-payment of a claim by an insurance company regarding temporary use, but I believe it is an important point to clarify in relation to ensuring the safety of the visitors/s and the protection of the property owners.

Insurance Example: <http://www.rentcover.com.au/products/>

RentCoverShortTerm

Insurance for short term rental properties such as holiday letting and corporate leasing. Cover includes features often not included in standard household policies.

PART A – PRODUCT DISCLOSURE STATEMENT (PDS) FOR HOME AND CONTENTS INSURED EVENTS POLICY

The Policy provides:

...

(b) Legal liability cover for \$20,000,000 which includes liability for you or any member of your family in respect of ownership or occupancy of your home where your home is insured under this Policy, or where your home is a strata title residence and your contents are insured under this Policy.

...

Section 4: Cover for your Legal Liability

We do not insure you or your family against liabilities arising from:

...

(g) the conduct of any activity carried on by you or your family for reward except for letting the home for holiday or temporary residential accommodation

Note: I previously had advice from a real estate agent that a policy such as this is invalid in relation to the use of a residential premise for short term accommodation. I was informed that when a claim for injury had been made, it was dealt with by a payout that was collected from the organisation's membership to avoid a legal action arising and drawing attention to the situation.

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

Regulation

The unregulated and unapproved use of properties for short term letting has a significant effect for local government. The use of dwellings for a commercial use, specifically when there is the use of a whole house equates to a loss of income for councils. There are costs that are not borne by these operators compared to a regulated tourism operator including:

- The purchase of land that is commercially zoned, which is of higher value than residential.
- A Development Application and the necessary studies that allow for the assessment of impact.
- Developer Contribution payments to councils for the use to offset the impacts and contribute to the overall amenity and services of an area. DC payments contribute to upkeep of roads, open spaces, public facilities, etc.
- The lack of payment for additional sewerage contribution fees, which means that rural and regional councils who fund water and sewerage are not receiving the funds that provide for the upgrade and management of infrastructure. The average occupancy for a residential premise is 2.4 persons and that is the calculation used for the design and payment of sewerage contributions for residential zoned areas. The use of premises for tourism purposes quite often means that dwellings accommodate from 4 – 12 persons and that

equates to a substantial increase of water use and impact on Sewerage Treatment Plants. These also impacts on the annual rate charges as a loss.

- Approved tourism premises pay an additional rate charge for commercial use, which is an annual rate charge and the lack of regulation means that an annual loss of income results for councils. This rate varies between councils but could amount to significant income. In some councils there is a process to allow for the use of residential properties as Bed and Breakfast establishments. This use requires a development application process and also defines a commercial rating and it is at odds with the unapproved use.

The loss of payment to council for a commercial use means that the community is subsidising the commercialisation of residential areas, without any payment to council. This issue also affects the approved tourism providers who have undertaken the steps to gain approval for accommodation facilities and do contribute to the general management of the local government area.

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

Strategic planning and legal issues

It needs to be considered that when councils have undertaken strategic planning they have identified areas where residential areas should exist and have understood what is expected.

Residential zones are the areas where community and neighbourhoods are established. The change of use of approved dwellings in those residential zones to tourism purposes has brought with it some dramatic changes to the lifestyle and sense of connectedness, amenity and safety for many residents.

Holiday letting has been the use of approved dwellings for the purpose of short term letting for visitor accommodation. This type of visitor accommodation is often advertised via local real estate agents, individual website and also under the business models of Stayz and other branding.

In 2006 it was estimated that 22% of the dwelling properties in Byron Bay were used for holiday letting. This has had a significant impact on the community in relation to impacts and loss of amenity, along with the loss of community and neighbours. The impact on housing supply and affordability has also had flow on effects in relation to the resilience and capacity of the community to maintain the viability of schools, volunteer organisations and an overall sense of belonging to a community.

Airbnb, while being a relatively new concept, originally promoted itself as an option for the renting out of a spare room and an opportunity for visitors to stay with locals and share an experience that it is enhanced by that local knowledge and connection. This situation promoted an opportunity for owners and residents to not only gain additional income but to also be part of the tourism market in a personal way, inviting people into their homes and allowing visitors to get to know 'real' locals and gain understanding of the location from a locals perspective.

As noted above, it has now been determined that approximately 60% of Airbnb properties are entire homes. I note that the Parliamentary Library e-brief references Airbnb information stating that most of the properties are located outside the main hotel areas. There is no recognition of the distribution of Airbnb in rural and regional areas. I believe there are substantial numbers of premises being used by this process, particularly in coastal areas such as the Central Coast, Mid North Coast, Far North Coast and South Coast. It would be valuable to obtain the numbers of premises and to consider in terms of the percentage of overall properties.

Amenity

The impacts of short term accommodation in residential areas has been varied in communities across the state. There has been a variety of negative experiences that have resulted in legal cases, which have predominantly been in relation to the amenity impacts.

In my local area, where the impact of holiday letting has existed for over decade, there has been a range of impacts identified that result from the use but can generally be categorised as amenity impacts that include:

- Anti social behaviour – noise, late night parties, abuse, excessive rubbish, late night car activities from returning home from nightclubs, drug and alcohol behaviour.
- Loss of safety – neighbours not having the experience of knowing who is in their community and the experience of threats or actual violence when people approach visitors to seek restraint of noise, etc., late at night or in the early hours of the morning.
- Lack of privacy – the activities of holiday makers can impact on the privacy of adjoining neighbours.
- Damage to adjoining properties.
- Disturbance and loss of sleep – this has affected school children, teachers, doctors, dentists, etc., all of whom have had their lives impacted by the behaviour of people who are not connected or responsible to the people who live in the vicinity.
- Rubbish – due to the use of houses for parties, there is often excessive rubbish resulting from the use of premises for short term letting, which can be unsafe, unhealthy and unsightly for neighbourhoods.
- Traffic and parking – often due to the large numbers of people staying in a dwelling or the partying, there can be problems with residential streets being crowded by cars associated with the use and the late night traffic movements.

As a result of the amenity impacts of holiday letting in Byron Shire a community group formed that gave itself the name, Victims of Holiday Let.

It is important to note that the 'industry' (Holiday Let Organisation, HLO) developed a Code of Conduct in an attempt to address the negative impacts and provided a hotline and security measures to respond to the impacts. It cannot be dismissed that once people are affected, the damage has been done and the experience of many is that despite making phone calls to register disruption to their amenity there are sometimes other consequences. There are circumstances where the response from the security has been slow or non-existent, or that if action is taken there can be repercussions and intimidation by the offending persons due to their enjoyment being stifled. This has in some circumstances led to a fear by residents and a lack of reporting.

Legal issues

In relation to the legal position, there are a number of court cases that have defined the legality of dwelling purposes and they are cited in the motion I presented to the Legislative Council (see attached).

The recent case (2012) on the Central Coast is highlighted in the report and relates to a dwelling in a residential coastal area. The earlier case in Sutherland (2002) relates to an apartment block.

The key issue in relation to the legal position is whether the premise is being used 'wholly' or partly for the use of visitor accommodation. If a property has been approved as a dwelling in a residential zone then it has been deemed by the courts to be a prohibited use.

Licensing and taxation

The lack of licensing and approval poses risks in association with injury or damage to property.

The proliferation of investment purchases of residential dwellings for the commercial use of short term holiday letting has been facilitated by the taxation incentives of negative gearing and Capital Gains Tax concessions. Investors use these mechanisms to facilitate the purchase and use of properties for short term holiday letting. I have been made aware of people in my community who own multiple properties using these publicly funded concessions. Given that these tax concessions were originally intended to stimulate the provision of additional rental housing supply, I suggest that it is a misuse of publicly funded tax concessions for them to be used in short term holiday letting which actually restricts the availability of residential housing.

The recent ATO determination regarding Uber made it clear that there is a requirement for declaration of taxable income in relation to sectors in the sharing economy. However, there are concerns that owners of properties who are using residential premises for short term letting may not be paying tax on the income derived from the use.

It is worth noting that in Byron Bay and other coastal location there are large returns for some properties for short term letting. It has been quoted in the media previously that some of the high end properties in Byron Shire charge up to \$30,000 per week in peak period. In non-peak periods the rents are still high with rents of \$1,000 per week.

Case study: Byron Bay/Shire

The issue of holiday letting has been a controversial issue for my community of Byron Shire for over 12 years, as its impact has had significant effects on the amenity of the residential life of a community that hosts one of Australia's most visited tourism destinations. Over that time there have been various attempts to resolve the issue locally that have included seeking state government support for regulation proposals including:

- a) amendment to *Local Government Act* section 68 to allow the use of residential properties to be licensed for short term use,
- b) a proposal to provide permissible precincts under a Development Control Plan model, and
- c) a prohibition clause inserted into the residential zone .

None of these options were successful in gaining the support of the state government and currently there is a proposal before the council to amend the Local Environmental Plan to allow the use of short term rental accommodation in any residential property across the shire, with provisions for a development application to be required in some areas. After many years, there is still fierce opposition to the use being allowed in residential areas and groups are still active in opposing the current move by council to regulate the use.

For residents who have been affected by the use and experience the loss of amenity there has been an ongoing dissatisfaction with the lack of regulation action. The formation of a number of groups opposing the use have been established over the period with names such as "BRACE – Byron Residents Against Community Erosion" and "Victims of Holiday Letting", and the establishment of an organization that represents the property owners who undertake the letting, Holiday Letting Organisation (HLO) who have provided a Code of Conduct and a security regime, which has resulted in some circumstances with the eviction of tenants after complaints being made.

The impact of holiday letting has delivered substantial changes to the availability and affordability of housing in the area. In the 2006 Census conducted in August, a non-peak tourism period, there

were 22% of households/residential properties in Byron Bay unoccupied and the town was the only coastal town in NSW to have a reduction in permanent population since 2001 Census.

In relation to the lack of supply and affordability of residential properties in Byron Bay, the 2015 Anglicare Australia Rental Affordability Snapshot identified that:

Byron Bay for the third year running had no properties whatsoever considered affordable and appropriate for any of the household groupings.

The Far North Coast Regional Strategy (FNCRS) adopted in 2006 set dwelling targets for 25 years to meet the regions projected population growth. In Byron Shire, the number of holiday lets identified as ranging between 900 -1500 represents between 35% and 55% of future growth when in effect it is taking away existing properties and the number of properties being used is increasing.

Changing Character – bulk and scale of built environment

The use of residential premises for short term accommodation equates to the establishment of a mini-motel model, except that there are no on-site services. The renovation and construction of new properties designed to facilitate this use has seen an increase in the size and density of buildings, including additional bathrooms/ensuites, and it is also notable that these premises then also have increased occupant numbers. At the time of the FNCRS the average household occupancy rate was 2.4 persons. At the same time, dwellings that were being used for short term accommodation were advertised as permitting up to 12 persons, and in some cases, greater numbers resulted, especially during schoolies, summer and Easter.

The renovation and building of new dwellings specifically for short term letting has seen a rise in the construction of large structures. Despite floor space ratios in council planning documents, there are many other features that add to the bulk and scale of a property (e.g., decks, verandahs, and gazebos) and also reduce the amount of soft, vegetated areas (e.g., swimming pools and pathways).

The size of houses in the shire in the last decade has increased and associated issues relating to the loss of urban habitat, loss of neighbour amenity and increased bulk and scale have resulted.

Changing community – loss of social capital, neighbours and volunteers

With a loss of permanent residents come changes to the social capital of community. The strategic design of localities with dedicated residential zones determines the establishment of neighbourhoods. The social value of residential areas is often not recognised until it is lost, but the loss of dwellings available for permanent living and the use of approved dwellings for tourism purposes brings about a change in the way that people live.

A permanent population delivers many attributes that are taken for granted. Residents are also volunteers, engaging in community activities and events to enhance the social capital of an area. When there is a loss of permanent residents it follows that there is a diminished number of people available to undertake volunteer roles, particularly in rural and regional areas, such as SES, community care, meals on wheels, Landcare group, and coaching and supervising activities such as sport or theatre for young people.

In Byron Bay some years ago there was also an unforeseen impact of holiday letting with the then high school principal making a submission to council's review of holiday letting option. The point was made that the school had lost students and therefore the number of teachers was also reduced and, consequently, that the diversity and number of subjects and available curriculum

options was also reduced. The principal identified that this change was due to the lack of available and affordable housing due to the impact of holiday letting.

Another aspect of the change to a residential community is the lack of connectedness and sense of 'community'. Without permanent neighbours and community there is also a lack of safety. With constantly changing tenants and impacts there is an erosion of belonging. In Byron Shire there has been an ongoing disruption caused to the lives of people who live next door or near homes that are used for short term letting. There has been the disruption caused by partying, anti-social behaviour, theft, late night car movements and rubbish and destruction of vegetation and incidences of abuse.

These aspects have had an impact on those who reside in areas where holiday let has taken on a dominant role and has impacted on some people to a degree where they have taken the drastic step of leaving to relocate to other areas that are not being used for the tourism purposes.

Infrastructure Impacts – Water, sewerage and traffic/parking

The increase in the occupation of dwellings and the new standard for larger dwellings to meet the use has an impact on infrastructure demands.

At the time of designing the new Sewerage Treatment Plant (STP), the design calculations for residential properties was 2.4 persons per dwelling and a person daily water usage of 960 litres, which allows for a daily capacity for 5 persons at approximately 200 litres per person. With an increased occupancy and holiday style activities, which tends to include additional and longer showering and a lack of reduction/minimisation focus, there is increased water usage and this adds pressure on the infrastructure, in terms of water supply and STP management. Increased water usage also skews previous projections for infrastructure planning and or the reduction in the life of the plant/supply. These are major issues for planning purposes and also come at a cost to council. Unapproved use does not allow for commercial rates to be applied to support the increased scale of infrastructure required to meet the use.

The increase in the use of properties for tourism purposes and the higher rates of occupation also result in associated parking and traffic issues. The assessment of residential areas for permanent living has traditionally considered the traffic/parking issues based on the rate of occupation but this is changed by the temporary use and occupation. The increased tourism use brings additional traffic into areas that would otherwise be subject only to residential use. The use also adds to traffic generation when it is located outside the tourism zoned areas which are predominantly located in areas where pedestrian access to retail, restaurants and natural assets exist. Locations such as coastal communities are often affected by traffic congestion at peak periods and this is increased with an increase of the numbers of properties available for short term letting.

The overall increase in tourism numbers in a location places unforeseen pressures on a range of infrastructure and this can impact on the experience of the visitor and the challenge for local government to manage the impacts.

Economic Benefits

It is often portrayed that the benefit of additional tourism properties brings with it increased economic benefit to an area, providing jobs, retail sales and service/activity use. What is often not presented is the economic and social benefit of permanent residents and the goods and services consumed and how this is not factored in to the financial equation.

There are arguments presented that the maintenance and upkeep of these properties provides jobs for cleaners, gardeners and tradespersons. It is true in my local area that businesses that have developed to fulfil these roles to directly service the short term letting of properties. What fails

to be assessed is whether these businesses do provide jobs to locals and whether or not they take away opportunities for other forms of employment. The loss of housing for people who provide essential work in a community is also a consideration that can impact on a locality. I am advised that some of the operators in the Byron Shire who service the short term letting of homes employ travellers and transient workers to undertake the cleaning and maintenance of properties, and the lack of regulation may also lead to the lack of appropriate wages due to the lack of a registered/regulated business model.

Byron Shire holiday letting – historical information

2009

- 13 February 2009 - public exhibition of information brochure and a FAQ

2008

- 31 October - Resolution - 08-676 Parts 1-5
1. That Council adopt for public exhibition an urban holiday letting precinct model for Byron Bay and Brunswick Heads

2007

- 22 November – Motion by Cr Peter Westheimer:
I move that Council introduce a development application and / or licencing system or differential rate for holiday lettings in the Shire wide LEP

2006

- 20 March 2006 - Holiday Letting Forum

2005

- 8 November - Council resolves to
- 31 October - facilitated forum
- 17-18 September - MEDIA Weekend Financial Review - Squabbles disturb the karma in Byron Bay -
HLO Byron, the new group that represents 250 owners of Byron Bay holiday lettings, had gained advice from national law firm Blake Dawson Waldron and from senior counsel that Byron Shire Council's policy to close down short-stay holiday lettings in residential areas is "wrong and unlawful". Bryon Shire has written to owners and agents to ensure "that dwellings/ units are not let or sold for the purpose of holiday let or sold for the purpose of holiday accommodation" and has placed stop orders on individual properties.
- September - Questionnaire re holiday let prior to forum
HLO (Holiday Let Organisation) form
- 22 June - Letter to BSC from Neville Newell MP for Min for LG, Tony Kelly re BSC letter to amend LGA S68 –
"If Council is concerned with the adequacy of the existing regulatory arrangements under the EP&A Act, it should raise the matter with Minister Beamer direct. Consequently, the Minister does not consider that an amendment to the LGA is the appropriate means to address the issue."
- 21 June - BRACE (Bay Residents Against Community Erosion) - presentation to Council raises concerns with holiday letting and calling for regulation
05-517 - Resolved that Council develop a policy / DCP on 'Casual Holiday letting' and approval and regulation as complying/ exempt development
- 5 May 2005 - LGA NSW - Letter re survey - Exec resolved that individual council approach
- 10 February – MEDIA – Byron Shire News - BRACE defends stand on tourism -
"BRACE is a group of Byron Bay residents who are extremely concerned about hte ever increasing incidence of holiday letting in parts of the Byron Shire currently zoned Residential 2a. The group believes that the practice is illegal and that council is not enforcing compliance with its own zoning regulations. Mr Wilkosz said BRACE was concerned about holiday letting in residential areas because the practice was subjecting the residents to unacceptable levels of noise, abuse, antisocial behaviour, garbage, litter, increased traffic and sleep deprivation. He said the decline in

numbers of permanent residents in traditional residential areas was leading to a loss of culture.”

2004

- 25 November- MEDIA - Byron Shire News - Lets negotiate, Holiday letting under scrutiny
*“ A licensing and regulation regime for people who holiday let their homes in the Byron Shire may soon be introduced.....
“The letting of properties during peak periods meets the high tourism demand and in some cases this is preferable to the development of more commercial tourism operations that would then try and attract high levels of tourism all year round to sustain a viable business.
“The holiday letting of homes has seen the dramatic loss of permanent rentals which is having a social impact as housing is becoming both less available and affordable, Cr Barham said.*
- 9 November - Resolution 04-890
 1. *That Council receive legal advice on the definition of holiday letting*
 2. *That Council write to the Minister for Local Government and the Local Government Association to recommend that an amendment to the Local Government Act 1993 Section 68 be created to define the activity of temporary letting of 90 days or less in an approved dwelling be required to obtain an approval of Council*
- 18 Aug - Council receives letter from Tourism Byron acknowledging concerns and proposes
 1. Agree to industry adopting a code of practice on Holiday Letting as a means of managing problems in this area
 2. To develop a council operated licencing system for all holiday letting properties
 3. To develop an effective complaint system as a priority
 4. Have council consider an incremental, priority driven strategy for the management of holiday letting
- April - MEDIA real estate agents introduce ‘Community Security System for Holiday Rental Properties’ – *“This trial has been introduced following growing concerns within the community about holiday rentals”*
- 23 March – Resolution 04-265
That Council investigate development control provisions applicable to short term holiday accommodation, including
 - a. *definitions*
 - b. *identification of suitable and / or unsuitable precincts*
 - c. *parking requirements, building construction, site planning or any other matters that may affect privacy or amenity*
- 24 Feb - Resolution 04-109
 1. *That an immediate report be received on necessary changes such as a development application or license or any other process that can be utilised to achieve regulation of holiday letting*
 2. *That Council acknowledges and congratulates the real estate agents and tourism industry for responding to community concern and look forward to engagement with the industry regarding tourism management*

2003

- 8 Aug - L&E Justice Lloyd - Parkes v Byron Shire Council -
Definition of ‘tourist facility’ was any ‘establishment providing holiday accommodation’
- 4 Feb
Barham 03-43 - That Council direct that both draft LEP amendments 106 and 110 address the issue of allowing the ‘holiday letting of houses’ with consent in residential zones in appropriately identified area’
- 29 January MEDIA - Northern Star - Letter to the editor - ‘Packing them in’ - refers to Council action against illegal backpackers - James Robinson-Gale (Tourism operator)

- January - Public meeting - Byron Bay High School re community concerns about Summer holiday lets

2002

- 2 November MEDIA - SMH - 'Great place for a holiday but you'll just have to live there' - L&E Court decision re use of an apartment in South Cronulla used for short term rental ruled to prevent casual letting for less than 3 months.

"The council (Sutherland) took action after hearing complaints from other residents in their building that visitors to the flat held parties and double parked cars on the property. It's victory means other councils and strata organisations across the NSW could take similar action"

"The Tourism Task Force welcomed the "commonsense decision", saying it would provide a local solution to a widespread problem. Residential apartment building leased as tourist accommodation stripped the industry - currently at an all-time low - of vital revenue, the task force's deputy chief executive, Stephen Albin said."


"Alex Ilkin, a specialist strata law solicitor for Tradewinds, said the decision would have a major financial impact on owners who wished to profit from inflated, short-term rents. "Unit occupiers who want a peaceful home lifestyle will welcome this decision as a victory," he said.

Conclusion

I strongly urge the committee to consider the need for regulation of the use and to take into account the impacts on amenity and the loss of vital housing supply and affordability.

Thank you again for undertaking this inquiry. I am willing to provide further evidence in a hearing and any additional information that may assist in assessing the potential and unintended consequences of this practice.

Yours sincerely,



Jan Barham MLC

Attachments – further information can be provided if required:

Motions to Legislative Council, 11 & 14 November 2014
Building Code of Australia – Fire Safety provisions
WA Planning Commission guidelines – cover page
NZ – Queenstown Lakes District definition – cover page
Gold Coast City Council rental accommodation register
Minister for Planning, Brad Hazzard letter 2012
Holiday Rental Code of Conduct – cover page

Legislative Council Notice of Motion given by Ms Jan Barham MLC, 11 November 2014

1. That this House calls on the Government to resolve the legal issues of properties that are used by tourists or visitors secured via internet sites such as Airbnb and Stayz, which constitute a non-compliant use with state planning and/or local council regulations, as considered by the Legislative Council Inquiry into Tourism in Local Communities, especially under Term of Reference 3.

2. That this House notes that:
 - (a) the use of internet sites such as Airbnb to locate properties for short term stays by tourists or visitors has been increasing since 2008 when such sites first began,

 - (b) the use of this form of booking via internet sites results in the true number of tourists or visitors to an area being under-estimated which can mean that government is unable to plan properly for service provision,

 - (c) most properties listed on such websites are not approved by local government for tourism purposes and are non-compliant with the standards set in the Building Code of Australia for tourist accommodation,

 - (d) due to the lack of approval these properties may not be covered by insurance while being used by tourists,

 - (e) fire, safety and other standards of these properties may be inadequate for temporary holiday accommodation,

 - (f) this type of tourist or visitor accommodation may have negative impacts on neighbours due to issues such as noise, rubbish, parking and anti-social behaviour, and

 - (g) properties secured via the internet and used by tourists or visitors for short term stays may be competing unfairly with legitimate, approved tourist or visitor accommodation due to lack of:
 - i. application approvals and fees,

 - ii. compliance with regulation,

 - iii. higher cost of commercial property purchase, and

 - iv. payment of local government commercial rates,

- (h) Strata managers and Strata Committees are seeking clarification about the legal issues surrounding the use of residential properties for short term letting.
- 3. That this House notes that when residential zoned approved dwellings are used for commercial or tourism purposes it diminishes the supply and affordability of housing and therefore contributes to housing affordability pressures.

Legislative Council – Private Members’ Business Item no. 2185 outside the order of precedence, notice given by Ms Jan Barham MLC, 19 November 2014

1. That this House notes that:
 - (a) legislation and court decisions define the distinction between the use of residential dwellings for the purpose of permanent occupation and short term tourism uses such as holiday let and serviced apartments, and
 - (b) court decisions have determined that the use of approved dwellings or dwelling houses for the purpose of tourism use is an unlawful purpose and contrary to the zone objectives and therefore prohibited.
2. That this House notes that many court cases have addressed the use of residential-zoned buildings and land for uses other than residential dwellings, including the following:
 - (a) in the judgement of Reynolds JA in *South Sydney Council v James (1979) 35 LGRA 432* the critical element of reasoning is that some level of permanence is required in that a dwelling requires “at the very least, a significant degree of permanence or habitation or occupation”,
 - (b) in the Land and Environment Court case of the Sydney Council and the Waldorf Apartments in March 2008, Paine J’s judgment focussed on the question of whether the use of the rooms “is for the purpose of ‘residential accommodation’ or for other purpose, namely short term accommodation” and ruled that consent to use the building for serviced apartments had not been given consent,
 - (c) in the Waldorf Apartments case, Paine J noted the similarities with the case in North Sydney regarding the use of Blues Point Towers where, in the Court of Appeal, Mahoney JA (with the agreement of Handley JA and Priestly JA) held that the use of flats as serviced apartments was unauthorised on the grounds that they did not have “the necessary degree of permanence”,
 - (d) in the 2005 case relating to the York Apartments in York St Sydney, it was noted that the term ‘serviced apartments’ “was first introduced into the City of Sydney Local Environment Plan in 1996 and described inter alia as ‘used to provide short term accommodation’”, and that Lord J, ruling in the appeal to change usage of the York building to incorporate serviced apartments, found against the appeal on the grounds that “the description of a flat as a ‘dwelling’ or ‘domicile’ carried with it the notion of a degree of permanency of habitation or occupancy” and the owner must comply with the original consent for use as a ‘residential flat building’,

- (e) in the more recent case in the Land and Environment Court, Paine J ruled that a unit in Sutherland Shire whose 1960 development consent was for use only as a ‘residential flat building’, also quoted the above Mahoney J Court of Appeal decision, citing the that a dwelling or residence carries with it the notion of permanency and ruled that the unit in question was, on the balance of probabilities, being used for holiday letting, as indicated by its advertisement for such in the NRMA Open Road magazine,
 - (f) in a Byron Shire case in the Land and Environment Court involving the appeal against Council’s refusal to permit a proposed development to be re-categorised as ‘holiday cabins’, Lloyd J considered that by definition, a holiday cabin is a tourist facility and therefore is prohibited in that particular zone of the Council’s LEP, and
 - (g) in the Land and Environment Court in April/May 3013, hearing a matter involving Gosford City Council brought by the neighbours of a six bedroom holiday let with a history of late night parties, loud music and other disturbances, Pepper J found that holiday letting of this property was prohibited on the grounds that the use was not sufficiently “permanent to comprise a ‘dwelling house’ for the purposes of the relevant zoning” and further Pepper J noted that, unlike other Councils like Byron Shire, this Council had not amended its LEP to resolve any ambiguity regarding holiday letting.
3. That this House notes that there is considerable confusion in the community regarding the rights of property owners to use buildings and land for short-term letting or tourism purposes when the original consent has been for residential use, and in particular that in the Gosford judgment Pepper J stated that, “Whether a building is a dwelling house is a question of fact and degree,” and further that Councils expecting the courts to rule on these matters “amounts to an effective abrogation by the council of its fundamental duties and responsibilities.”
 4. That this House notes that while the then Minister for Planning and Infrastructure the Hon. Brad Hazzard MP in April 2012 announced a Code of Conduct for Holiday Letting, this amounted to the industry essentially regulating the industry and little recourse for either the Councils or the residents who may be suffering the negative effects of holiday letting in their towns or suburbs.
 5. That this House notes that:
 - (a) due to the legal interpretations of the permissible use of a dwelling house and the determinations that short term letting is a prohibited use, there are concerns regarding liability and insurance protection, and

- (b) the use of dwellings for an unapproved use such as short term letting and tourism purposes results in a lack of safeguards for the occupants.
- 6. That this House notes that the current Standard Instrument LEP definition of a residential accommodation:
 - (a) means a building or place used predominantly as a place of residence, and includes any of the following:
 - i. attached dwellings,
 - ii. boarding houses,
 - iii. dual occupancies,
 - iv. dwelling houses,
 - v. group homes,
 - vi. hostels,
 - vii. multi dwelling housing,
 - viii. residential flat buildings,
 - ix. rural workers' dwellings,
 - x. secondary dwellings,
 - xi. semi-detached dwellings,
 - xii. seniors housing,
 - xiii. shop top housing, but
 - (b) does not include tourist and visitor accommodation or caravan parks, and therefore identifies that tourism use of a dwelling is a prohibited use.
- 7. That this House notes that the use of approved dwellings for short term letting and tourism purposes reduces the available permanent housing stock in a locality and can result in a housing supply shortage, and therefore places availability and affordability stresses on a locality and is contrary to strategic planning objectives to define the potential housing stock and meet permanent population targets.
- 8. That this House calls on the Government to clarify the legal and planning requirements relating to the use of dwellings for short term letting and tourism purposes and note the impacts and consequences.

PART 1.3 CLASSIFICATION

1.3.1 Principles of classification

The classification of a building or part of a building is determined by the purpose for which it is designed, constructed or adapted to be used.

Explanatory information:

1. Class 1 and 10 buildings are classified in accordance with this Part; and
2. Class 2 to 9 buildings are classified in accordance with Section A of BCA, Volume One.

1.3.2 Classification

Class 1 and 10 buildings are classified as follows:

Class 1 — one or more buildings, which in association constitute—

- (a) **Class 1a** — a single dwelling being—
 - (i) a detached house; or
 - (ii) one of a group of two or more attached dwellings, each being a building, separated by a *fire-resisting* wall, including a row house, terrace house, town house or villa unit; or
- (b) **Class 1b** — a boarding house, guest house, hostel or the like—
 - (i) with a total area of all floors not exceeding 300 m² measured over the enclosing walls of the Class 1b building; and
 - (ii) in which not more than 12 persons would ordinarily be resident,

which is not located above or below another dwelling or another Class of building other than a *private garage* (see Figure 1.3.1, 1.3.2 and 1.3.3).

Class 10 — a non-habitable building or structure being—

- (a) **Class 10a** — a non-habitable building being a *private garage*, carport, shed, or the like; or
- (b) **Class 10b** — a structure being a fence, mast, antenna, retaining or free-standing wall, *swimming pool*, or the like.

(see Figure 1.3.3).

CONVEYANCING ACT 1919

66Q Meaning of "residential property"

(1) For the purposes of this Division,
"residential property" is:

- (a) land on which are situated (or in the course of construction) not more than two places of residence, and no other improvements, or
- (b) vacant land on which the construction of a single place of residence alone is not prohibited by law, or
- (c) a lot or lots (including a proposed lot or lots) under the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*, comprising not more than one place of residence alone, whether constructed or in the course of construction, and including any place used or designed for use for a purpose ancillary to the place of residence.

(2) Residential property **does not** however include:

- (a) land or a lot that is used wholly for non-residential purposes, or
- (b) land that is more than 2.5 hectares in area (or such other area as may be prescribed).

(3) For the purposes of this section,

"place of residence" means a building or part thereof used, or currently designed for use, as a single dwelling only, and includes outbuildings or other appurtenances incidental to any such use.



New South Wales Consolidated Acts

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RURAL FIRES ACT 1997 - SECT 100B

Bush fire safety authorities

100B Bush fire safety authorities

- (1) The Commissioner may issue a bush fire safety authority for:
- (a) a subdivision of bush fire prone land that could lawfully be used for residential or rural residential purposes, or
 - (b) development of bush fire prone land for a special fire protection purpose.
- (2) A bush fire safety authority authorises development for a purpose referred to in subsection (1) to the extent that it complies with standards regarding setbacks, provision of water supply and other matters considered by the Commissioner to be necessary to protect persons, property or the environment from danger that may arise from a bush fire.
- (3) A person must obtain such a bush fire safety authority before developing bush fire prone land for a purpose referred to in subsection (1).
- (4) Application for a bush fire safety authority is to be made to the Commissioner in accordance with the regulations.
- (5) Development to which subsection (1) applies:
- (a) does not include the carrying out of internal alterations to any building, and
 - (a1) does not include the carrying out of any development excluded from the operation of this section by the regulations, and
 - (b) is not complying development for the purposes of the *Environmental Planning and Assessment Act 1979*, despite any environmental planning instrument.
- (6) In this section:
"special fire protection purpose" means the purpose of the following:
- (a) a school,
 - (b) a child care centre,
 - (c) a hospital (including a hospital for the mentally ill or mentally

disordered),

(d) a hotel, motel or other tourist accommodation,

(e) a building wholly or principally used as a home or other establishment for mentally incapacitated persons,

(f) seniors housing within the meaning of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* ,

(g) a group home within the meaning of *State Environmental Planning Policy No 9-Group Homes* ,

(h) a retirement village,

(i) any other purpose prescribed by the regulations.

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Guidelines

Holiday Homes - short stay use of residential dwellings

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John Day
Minister for Planning; Culture and the Arts

Thu 10 September, 2009

New guidelines provide certainty for growing holiday homes sector

Portfolio: Planning

Local governments will be encouraged to establish approved holiday home registers and promote voluntary accreditation under new guidelines released by the State Government today.

Planning Minister John Day said the new planning bulletin and guidelines would provide greater certainty for the local government and the growing holiday home sector.

Mr Day said the guidelines had been developed in response to the growing number of holiday homes - particularly in popular tourism destinations - over the past decade.

"Holiday homes are a significant component of the short stay accommodation sector in some parts of Western Australia and an important aspect of the tourism accommodation mix," he said.

"But the informal development of this accommodation market has meant that holiday homes have so far operated with minimal guidance."

The guidelines propose possible changes to local planning schemes and the preparation of policies tailored to address specific issues encountered by local governments in their region.

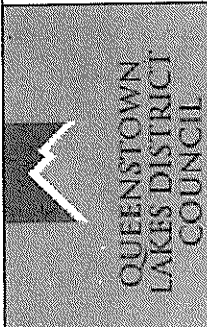
Other key proposals include:

- holiday homes being formalised as a land-use class in local planning schemes
- local governments developing local planning policies on holiday homes
- the identification of preferred areas for holiday homes.

The Minister said the new guidelines would promote the use of residential homes for short stay accommodation in appropriate locations and in accordance with relevant legislation with voluntary accreditation managed by the Tourism Council of Western Australia.

"The new planning bulletin will assist local governments to guide this growing industry in a consistent, equitable and efficient way," he said.

The Department of Planning, in collaboration with Tourism WA, would advise local government and other stakeholders of the bulletin and its guidelines.



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definition of visitor accommodation - q and a

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definition of visitor accommodation - q and a

Q and A with senior policy analyst-housing *Scott Figneshow*.

What does the new Definition of Visitor Accommodation as proposed by Plan Change 22 mean for me?

The proposed definition considers accommodation to be Visitor Accommodation when the length of any stay is fewer than 28 consecutive days. Anything else is considered to be Residential but take care to read the definition in full when considering this. If the zone of the property is residential, and the activity the property is used for is residential, then there would not be any other resource consent requirement regarding the rental of the property. Home stays for 4 or fewer guests continue to be excluded from the definition.

The proposed definition also provides an exemption that allows residents to rent their home on a nightly basis (for up to 28 consecutive days) once per year, while away on holiday, and not be required to obtain resource consent. This once per year exemption means that the property is expected to be used as a residence for the rest of the year.

How is this different from the current definition?

Currently the District Plan considers accommodation to be Visitor Accommodation for any stay 3 months or less. For example, this means that people who want to rent an otherwise residential property to a local worker for two months have been required to apply for resource consent. Under the new definition, a property could be rented for up to 12 times a year if each rental is over 28 consecutive days.

Another example might be a rental for 6 weeks to a movie crew- a type of rental that would no longer require resource consent under the proposed definition. This was a particular type of rental that the community wanted to allow, and since it was demonstrated that people who usually come to stay for a month or more shop at the local grocery and engage in living patterns that look and feel residential, it was felt their use was not in conflict with the community's residential desires.

Why was 28 days selected as the cutoff point?

Council had to establish a point when the rental of residential property stops being truly 'residential' in character, and starts becoming 'commercial' in nature. At the one month mark, or 28 days, this line starts to blur. Further, 28 days is the period of time of statutory annual leave for most Kiwi's, and the time honoured tradition of going away on holiday, and renting ones house while away for that time was expressed by the community as a priority that the District Plan should allow.



Gold Coast City Council

ABN: 82 668 526 460

NOTICE

REGISTRATION OF RENTAL ACCOMMODATION

NOTICE ENQUIRIES

24 1300 368 859
Cost of a Local Call



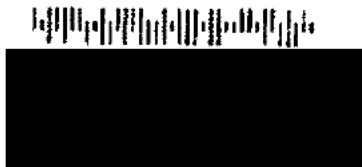
Billers Code: [REDACTED]
Ref: 63651625

Notice Number: [REDACTED] Licence Account Number: [REDACTED] RA Number: [REDACTED]

Issue Date:
07/05/04

Due Date:
07/06/04

Amount Payable:
\$22.00



Property Location:
[REDACTED]
Property Description:
[REDACTED]
PN 13892

CURRENT CHARGES plus any prior charges not previously levied		
ACCOMMODATION/FLAT REGISTRATION LICENCE		
Permanent Rental		
06/03/04 - 31/08/04	1 EA @ \$44.00	\$22.00



CERTIFICATE OF REGISTRATION OF RENTAL ACCOMMODATION

(Local Law No.8-Rental Accommodation)

Licence Account Number: [REDACTED]
Period of Registration: 01/09/03 to 31/08/04

Property Location: 44 HARLEY STREET LABRADOR
Property Description: L1 BUP6944; PAR:BARROW

- Subject to the payment of registration fees and on renewal of registration this CERTIFICATE OF REGISTRATION will be deemed valid.
- Unless sooner revoked, once a Registration is deemed valid it will remain in force until 31 August 2004.
- (Any Residential Flat, Boarding House, Hotel, Motel, Home Unit, Dwelling, Serviced Room/Apartment or the like, which provides rental accommodation must be registered if let for any period of the year)

PLEASE RETAIN THIS PORTION FOR YOUR RECORD OF REGISTRATION.

Westpac Banking Corporation

1/100 Bundall Road
Bundall QLD



POST 1875 11 60 000000063651625 28

CREDIT

Date: / /

Teller's Stamp & Initials	Name: [REDACTED] Notice Number: 63651625 Licence Account Number: [REDACTED]
No. of Cheques	Due Date: 07/06/04 Amount Payable: \$22.00
Where this deposit is lodged at a Westpac office other than that shown above it will be transferred under the bank's internal procedures. The bank will not be responsible for delays in transmission. Details of Cheques. (Proceeds of cheques, etc. will not be available until cleared)	
Drawer	Bank
For CREDIT of	GOLD COAST CITY COUNCIL COLLECTION AGENT

Amount of Cash	[REDACTED]
Amount of Cheques	[REDACTED]
Free from transfer fee at any branch of the Westpac Banking Corporation.	



\$

⑈00000063651625

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**GOLD COAST CITY COUNCIL
DATA COLLECTION FORM
STATEMENT OF PROPERTY OCCUPANCY**

Section 1.

I, We 
please PRINT full name/s
of 
please PRINT address

Contact telephone no.

Home
Work

TICK WHICHEVER APPLIES


am/are the owner/s a person authorised by the registered owner/s
of the property described as: 
and located at: 

Section 2.

Please enter in the box against the applicable criteria, the number of Flats, Units or Dwellings owned by you at the above described property:

- (i) the premises is/are for the owner/s sole use (including immediate family) and is/are never rented or offered for rent to any person/s for any part of the year.....
- (ii) the premises is/are rented or offered for rent to permanent residents of the City of Gold Coast and is/are never rented or offered for rent to tourists or visitors alike for any part of the year.....
- (iii) the premises is/are rented or offered for rent to tourists/visitors for any part of the year.....
- (iv) the premises is/are used for other purposes e.g surgery or office. If so, please specify.....


Section 3. Please advise Council in writing within thirty (30) days of any changes to the type of occupancy stated above

Owners/Declarant's Signature.....  Date 7/4/04

OFFICE USE ONLY

Improvement: R1LU 0001

Account No: 

Account Owner/s: 

Issue Date: 02/04/04

Comments:



The Hon Brad Hazzard MP
Minister for Planning and Infrastructure
Minister Assisting the Premier on Infrastructure NSW

12/04604

[REDACTED]
Byron Shire Council
PO Box 219
MULLUMBIMBY NSW 2482

BYRON SHIRE COUNCIL
DOC NO:
REC'D: - 2 APR 2012
FILE NO:
ASSIGNEE:

Dear [REDACTED]

Holiday Letting and the Holiday Rental Code of Conduct

You would be aware the short term rental of houses and apartments to holiday makers results in significant tourism and economic benefits to local areas and the State as a whole. The short term use of a dwelling as a holiday rental is a long established practice that generally occurs without incident across the State.

However on occasions, amenity issues associated with the intensive use of short term holiday rental accommodation arise from the behaviour of guests and visitors, in particular noise and car parking issues.

In response to this issue, with Government support, an industry stakeholder group that includes representatives from industry and government has developed a Holiday Rental Code of Conduct (the Code). The stakeholders intention is that the Code be used by owners, managers and occupants of properties being let on a short term basis as holiday rentals. The Code sets out among other things:

- a) property management arrangements for individual holiday rental premises
- b) appropriate standards of behaviour for holiday rental guests and their visitors
- c) industry responsibilities for the implementation, monitoring and updating of the Code itself.

The Code is based on:

- implementation primarily by industry through a Code Administration Committee (CAC)
- a two year trial period with a comprehensive review after an initial 12 month period
- other industry approaches proven to be effective in reducing performance issues
- responsible self-regulation
- retaining flexibility to enable refinement in response to monitoring outcomes and stakeholder feedback.



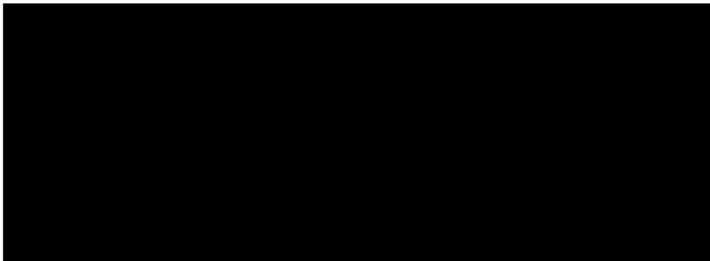
The Hon Brad Hazzard MP
Minister for Planning and Infrastructure
Minister Assisting the Premier on Infrastructure NSW

The Minister for Local Government and the Minister for Tourism, Major Events, Hospitality and Racing and I all welcome this industry initiative.

A copy of the Code is attached to this letter.

Should your officers have any enquiries about this matter, I have arranged for [REDACTED] [REDACTED] Director, Policy, Planning Systems and Reform of the Department of Planning and Infrastructure, to assist. She can be contacted on telephone number [REDACTED]

Yours sincerely



HON BRAD HAZZARD MP
Minister

HOLIDAY RENTAL CODE OF CONDUCT

Participating Organisations

