

**Submission  
No 154**

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

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**Snowy River Shire submission to NSW Legislative  
Assembly**

**Inquiry into the adequacy of the regulation of short-  
term holiday letting in NSW**

**November 2015**

## **SUBMISSION**

Snowy River Shire Council welcomes the opportunity to make a submission to the inquiry into the adequacy of the regulation of short-term holiday letting in NSW.

### **General Comments:**

Snowy River Shire has had a long history, since 2003, of regulating and requiring development consent for short term holiday dwellings in the Shire. This includes over 600 properties approved; constantly growing substantially as new approvals are issued on a regular basis. This use is very popular in our context which is heavily driven by investment properties which are developed into holiday accommodation to service the tourist industry.

Council is of the view that properties being let for short term holiday rental are a fundamentally different land use than residential dwellings. As such holiday dwellings should be defined, permitted and prohibited, managed, rated and regulated differently than a standard residential dwelling.

### **Restricted definition and limitations of Standard Instrument LEP**

One of the primary issues with regard to the regulation of existing or new dwellings for short term accommodation for tourists and visitors is the definitions and limitations of the Standard Instrument LEP. Council continues to be concerned that the provisions in the former 1997 and 2007 Snowy River LEPs relating to holiday dwellings cannot be reflected in the Standard Instrument and in the current Snowy River LEP 2013. Currently our former definition of 'holiday dwelling' does not easily fit into the standard instrument definitions being:

***tourist and visitor accommodation*** means a building or place that provides temporary or short-term accommodation on a commercial basis, and includes any of the following:

- (a) backpackers' accommodation,
  - (b) bed and breakfast accommodation,
  - (c) farm stay accommodation,
  - (d) hotel or motel accommodation,
  - (e) serviced apartments,
- but does not include:
- (f) camping grounds, or
  - (g) caravan parks, or
  - (h) eco-tourist facilities.

Currently council requires consent for 'serviced apartments' to cater for dwellings being let for short term holiday lettings, a less than ideal fit for such a use. Since the introduction in 2013 of the standard instrument LEP for Snowy River the former 'holiday dwellings' are now not permitted in the rural context as the Standard Instrument LEP offers no appropriate definition. This is not a desirable situation from Snowy River Shires point of view and severely limits the mix and range of accommodation options in our Shire.

### **Holiday letting different to permanent residential use**

Council fundamentally believes that short term use of dwellings for holiday accommodation is a use on its own and should require consent. Central to this is the differences in relation to residential amenity for both the occupant and neighbourhood. It is an intensification of use and hence has impacts in terms of amenity, overcrowding, fire safety, and parking provision.

During the planning process the above issues can be considered and managed. For example holiday letting may require more parking spaces, functional living areas, size of bed room relative to occupancy and the like. Through the planning process and regulation and compliance of this type of use amenity, health and safety issues can be managed.

**Regulation and compliance issues**

In small rural councils, such as is the example with Snowy River Shire, ensuring an adequate regulation and compliance program is a large resource burden. Changes to the powers of entry provisions under the *Protection of the Environment and Operations Act 1997* would facilitate better compliance measures.

In addition monitoring and ensuring compliance with fire safety statements is a major issue with holiday let properties. Overcrowding is also a major issue when operators of holiday dwellings exceed the approved bed numbers. This in turn creates greater fire safety risks and issues.

**The case for rating holiday letting differently**

Also it is the view of Snowy River Shire that the use for a holiday dwelling constitutes a business/commercial use in a residential zone. This has both land use implications as well as rating and regulation factors. Snowy River Shire is of the view that holiday dwellings should be rated differently than regular residential properties. This case has been put to the rating review and full examination of the issue is attached. Attachment 1 is the relevant extract from the Snowy River Rating Submission.

Thank you for the opportunity to comment. Snowy River Shire Council would welcome the opportunity to expand on this submission should it be required.

Yours faithfully



Dennis Trezise  
Director Community and Environmental Services

## Part 3

Issue;

### Introduction of a Holiday Lettings rating sub-category

#### 1. Introduction

The various provisions and requirements of the Local Government Act concerning the four (4) categories of rateable lands, and the determination of sub-categories within those categories are summarised in Attachment 3.1. Reference should and will be made to those provisions throughout the body of this report.

The critical factor is that before making an ordinary rate, the council must have declared each parcel of rateable land in its area to be within one or other of the following categories:

- farmland
- residential
- mining
- business.

The matters which enable a property to be so categorised and eligible for a particular rating category are detailed in Attachment 3.1. All properties within the Shire have been categorised, though constant checking is necessary to ensure that the correct category is assigned to a property and that changes in use are reflected in appropriate changes in category, or sub-category.

The current issue for the Council is whether properties which enjoy holiday letting approval under the DCP can, or should, be differently categorised other than as ordinary residential properties, and accordingly rated on a different basis to that applying to the ordinary residential property.

#### 2. Council's position

The Council's position was detailed in a report to the Council's Governance, Business and Finance Committee meeting of 2 May 2007, as a result of which the Council on 2 May 2007, resolved as follows;

1. *That Council introduce a new residential rate sub-category for holiday lettings.*
2. *That the holiday lettings residential sub-category apply to all residential category properties within the Snowy River Shire which have development consent for tourist accommodation.*
3. *That the ad valorem rate for this sub-category be set similar to the Business Electricity Undertaking sub-category.*
4. *That an application be made to the Minister for Local Government for the minimum rate for this sub-category to be 50% higher than the ordinary residential minimum rate.*

5. *That the Council's intention to introduce this new sub-category be advertised and submissions sought from the public to be considered in conjunction with the Draft Management Plan for 2007/08.*

The Council's position is generally summarised as follows;

Residential properties approved to be used as holiday lettings remain categorised as residential. Those property owners derive an economic benefit from holiday letting that is not available to ratepayers whose property is used solely for their residential purposes.

Within the Shire 644 properties have been identified as having holiday letting approval status but they remain categorised under the residential rating category. It is possible that there are others which are being used for holiday lettings without the necessary consent and that the introduction of a rating sub-category which requires approved holiday letting properties to pay a higher rate than normal residential, may result in an increase in the number of properties being used without the required consent, but "neighbourhood surveillance" and inspection will usually identify and disclose these.

For a long time increasing demands have been placed on infrastructure as a result of increased tourism and the spikes in population during peak holiday periods such as Easter, Christmas and the winter snow season. The Council essentially must be able to service and provide essential facilities and services for towns which have a population for about 4 months that can be up to eight times its normal permanent residential population. This includes such things as road maintenance, provision of parking facilities, public place and street rubbish collection and disposal, ranger services, responding to noise and animals complaints, waste collection and disposal, repair of vandalism damage and graffiti etc.

The shire ratepayers bear the burden of some of these costs and little is, or can be, re-couped from tourists or related activities.

If dwellings approved for holiday letting throughout the entire council area could be categorised from a rating perspective, as a separate sub-category of residential, farmland, or as "business" then there would be an opportunity for Council to recover some of the additional costs associated with the increases in population during those peak times, from those ratepayers who financially benefit through the holiday letting capability of their dwellings.

### **3. Legal Position**

The Council included a proposal to introduce a sub-category of rating for holiday lettings category in its draft 2007/08 Management Plan. The Council also sought legal advice on the proposal. The advice resulted in the Council abandoning the proposal for 2007/08, when the Management Plan was submitted for adoption to the meeting on 28 June 2007, and the rates for 2007/08 adopted by the Council on 4 July 2007.

In summary the Council concluded that the position was;

3.1 The Council is not able to create a sub-category of residential land according to whether the land is used for a particular purpose, such as for holiday lettings. The Council may determine a sub-category within the category of "residential" land only according to whether the land is rural residential land or within a centre of population.

3.2 "Rural residential" land used for holiday lettings should be treated in the same way. Land in this sub-category must comply with the eligibility requirements and must be used for the purposes of dwelling and excludes land that has "a significant and substantial commercial purpose or character" (see Attachment 3.1, item 1.2.1).

3.3 The Council can not determine a sub-category based on particular uses within the category "business", such as use for holiday letting purposes. Sub-categories if created must be based on centres of activity i.e. land within a business centre, industrial estate or other concentration of like activities. However as any holiday letting rate would be less than the ordinary business rate, there is no logic in having a sub-category in "business" which would effectively reduce the normal business rates on those properties.

The legal position though is not entirely clear nor unequivocal. The concept of "residential" and "dwelling" implies permanency and provision of a place to live rather than the provision of short term accommodation for tourists. There is a reasonable argument however that, if holiday lettings are the predominant use of land, it would be appropriate to categorise the land as being within the "business" category for rating purposes. This is based on specific provisions of the Act and Regulations (See Attachment 3.1, items 1.2);

the specific exclusion from the residential category of rateable land, of caravan parks, hotels, motels, guest-houses and backpacker hostels (all of which offer short term accommodation), and

the specific inclusion in the residential category of retirement villages, serviced apartments, time-shares, boarding houses and lodging houses ( all of which generally involve more permanent residential accommodation).

#### **4. Financial Considerations**

##### *4.1 Effect on total rate income*

The Council's objective through the introduction of a sub-category of residential rating for holiday letting properties as indicated in the report mentioned above and the Draft Management Plan 2007-2010, was that it did not anticipate to raise income beyond the rate pegging limit for Council's total income. The income to be raised from this sub-category would be proportionately reduced from the other residential sub-categories.

This contention suggests that;

The Council is satisfied that the current level of rating income (limited each year to increases in accordance with rate-pegging) is adequate to meet its current annual costs for the maintenance and provision of infrastructure, services and facilities, and

The Council wishes only to change the incidence of rating to reduce the rate income from the normal residential properties, and recover that reduction by an increase in the rate income levied on properties which have DA approval for holiday lettings.

This seems factually unlikely to be the case.

The May 2007 report went on to state that the income from this holiday letting sub-category would be used to fund Council's on-going works resulting from the increased level of infrastructure required to be maintained to meet the spikes in the Shire's population.

It is logical that if the Council seeks to create a new sub-category for holiday letting properties, then it should be seeking increased rate income from that and the increased income should be applied towards the identified increased maintenance and service provision costs resulting from the tourist activities. To do otherwise is simply to move the rating incidence between residential properties, without any increased revenue to the Council, but an expectation that more funds would be allocated to these tourist created maintenance and service costs at the expense of other normal maintenances and services.

4.2 *Increased costs of maintenance and service provision due to tourist activity.*

The level of current or increased expenditure required which is attributable to the tourist activity has not been quantified in any detail, however additional expenditure is required from general revenue for such identified purposes as road maintenance, provision of parking facilities, public place and street rubbish collection and disposal, ranger services, responding to complaints about noise and animals, waste collection and disposal, repair of vandalism damage etc.

4.3 *Projected rate income from "Holiday Lettings" sub-category*

A recent report indicated that there are 520 properties issued with a DA for holiday lettings; 342 have been issued with Final Occupation Certificates, and 178 with DA awaiting certification. The number of rateable occupations could be significantly more than this is properties are/will be strata subdivided.

The 2 May 2007 decision of the Council (see item 2 above) proposed that the holiday letting sub-category ad-valorem-rate be set similar to the Business Electricity Undertaking . The Draft Management Plan advertised by the Council however proposed four (4) different holiday letting rates shown below. A comparison to the final adopted category ad-valorem-rates is also shown;

Rate Category	Exhibited Management Plan proposed standard and holiday letting ad-valorem- rates in Dollar			Final adopted ad-valorem-rates in dollar
	Standard Rates	Holiday letting	% increase over standard rates	
Residential	.00514640	.00621358	20.70%	.00534054
Rural Residential	.00474834	.00626600	31.96%	.00635602
Farmland	.00511621	.00597690	16.80%	.00608944
Business General	.01206500	.01206500	0%	.00963569
Electricity	.00777680	N/A	N/A	.00815201

The current (2007/08) residential rate income on the 520 properties is approximately \$299,600.

A broad assessment of the increased rate income from the holiday lettings is;

- if the rate in \$ was as per exhibited Management Plan \$30,580
- if the rate in \$ was as per Electricity Generation adopted rate \$100,570.



If the Council was/is able to introduce a holiday lettings rating sub-category then depending on the final approach taken by the Council, either additional income over and above rate pegging could be generated , or the existing residential rates reduced by the above.

## **5. Options Open to the Council**

The options open to the Council would appear;

- 5.1 Abandon any proposal to seek “fairness” in the rating system as it applies to holiday lettings and continue with the current “residential” categorisation of these properties.

This is not a recommended course of action in view of the identified imposts that these tourist catering facilities place on the council, and the financial benefit to property owners who enjoy holiday letting approval compared to the other residential dwellings which don't.

- 5.2 Continue with its 2007/08 draft Management Plan proposal of categorising approved short term holiday lettings as “business” category as a “test case” and seek a commitment from the Local Government and Shires Associations to fund any legal challenge to the proposal which might be taken against the Snowy River Shire Council, through contributions obtained from amongst other NSW Councils.

This option is not recommended, in view of the legal position, and the unlikely financial support from the LGSA.

- 5.3 A number of other NSW Councils, which have facilities, characteristics or geographical features which attract substantial increases in population for short term or intermittent periods, experience the same position as does Snowy River Shire Council, particularly coastal councils with a holiday destination and attraction.

### **Conclusion and recommendation.**

It is accordingly **recommended** that the Council should seek the support of other Councils known to experience the same position, and together petition the Department of Local Government for an amendment to the Local Government Act to legally enable properties which can be used for short term accommodation lettings to be categorised other than “residential general” i.e. either a separate sub-category of “residential” or “farmland”, or as the “ business” category.

This may require the council to identify the increased costs to the council created by holiday lettings, and to demonstrate the inequities created by the ability of property owners to obtain holiday letting approval, whilst their property remains with a “residential general” categorisation.

### Attachments:

- Attachment 3.1 – Provisions and requirements of Local Government Act regarding categorisation and sub-categorisation of rateable lands.