

**Submission  
No 102**

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

**Organisation:** Holiday Letting Organisation Central Coast Inc (HLOCC)  
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**Date Received:** 5/11/2015

HLO Central Coast Inc  
November 2015

Attention: NSW Legislative Assembly  
Committee on Environment & Planning

RE: The inquiry into the adequacy of the regulation of  
Short-Term Holiday Letting in NSW

**Attention:** The NSW Legislative Assembly Committee on Environment and Planning

**RE:** The inquiry into the adequacy of the regulation of Short-Term Holiday Letting

**06 November 2015**

To whom it may concern,

Short-Term Holiday Letting (STHL) is an exciting and integral sector of the NSW tourism economy and is one of the largest sectors of the sharing and collaborative economy. As with other digital technology driven industries, STHL has grown rapidly and significantly; facilitated by the proliferation of online advertising portals such as Stayz and AirBnB.

The rapid growth of STHL has brought a wide range of recognised economic benefits to the states economy, however, growth driven by digital technology has resulted in regulation challenges that should be addressed to ensure sustainable industry management practices and future growth.

Holiday Letting Organisation Central Coast (HLOCC) is pleased to provide the Legislative Assembly Committee on Environment and Planning with the following submission which has been prepared and approved by the HLOCC Committee.

**The HLOCC submission reports on the adequacy of NSW STHL regulation. The submission:**

- **reviews the recently completed 2 year NSW STHL self-regulation trial**
- **outlines a number of regulation challenges**
- **makes a number of recommendations**

The HLOCC Committee believes adoption of the recommendations contained within this submission will contribute to effective and sustainable regulation and management of the STHL industry, and positive outcomes for a broad range of stakeholders; further enabling STHL to positively contribute to the NSW economy.

Yours sincerely

Donat Kobeleff  
President  
HLO Central Coast Inc  
06 November 2015

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# Challenges / Recommendations

## Regulation Challenges

1. Legal recognition of STHL
2. Custodianship and credible, effective administration of the NSW Holiday Rental Code of Conduct (version 1, march 2012, please see appendix 6)
3. STHL insurance policies may not complement Government legislation, regulation and the NSW Holiday Rental Code of Conduct
4. STHL dwelling managers and owners require a recognised method to implement and prove compliance with:
  - a) the NSW Holiday Rental Code of Conduct (version 1, march 2012)
  - b) Planning Controls and Development Applications
5. Guaranteed Guest safety
6. STHL remaining sustainable

## Recommendations

1. A co-regulation structure continue to be adopted and developed. Co-regulation to include:
  - a) Local Government STHL Planning Controls
  - b) NSW Holiday Rental Code of Conduct (version 1, march 2012)
  - c) NSW Holiday Rental Code of Conduct (version 1, march 2012) policy support
  - d) Participating Organisations
  - e) Industry based quality improvement and accreditation support mechanisms
2.
  - a) A new NSW industry based Code Administration Committee (CAC) be formed to administer and maintain custodianship of the NSW Holiday Rental Code of Conduct (version 1, march 2012)or
  - b) A NSW government body maintain custodianship of of the NSW Holiday Rental Code of Conduct (version 1, march 2012) and an industry based Administration Committee be formed

**Credible and transparent Code administration is vital to ensure a robust and effectively institutionalised Code of Conduct which in turn facilitates sustainable industry management, quality improvement and control, effective risk mitigation and applicable insurance policy development.**
3. STHL insurance policies be amended to reflect applicable legal and industry accepted definitions
4. Organisations that facilitate regulation and standards implementation, institutionalisation and accreditation should complement, support and work in collaboration with regulators, industry associations (participating organisations) and insurance companies
5. Regulatory requirements be implemented and maintained by all stakeholders. Compliance should be easily identified by stakeholders
6. The taxation of STHL be no different to the taxation of dwellings rented for long-term rental accommodation

# Introduction

STHL in the Gosford City Local Government Area (LGA) conservatively contributes in excess of:

- 3,000 visitor accommodation dwellings
- 9,000 visitor rooms
- 18,000 visitor beds
- 25% of all visitor accommodation
- 50% of all commercial visitor accommodation
- \$350-\$500 million annually (direct & indirect)

HLOCC is a peak industry association that represents and supports hundreds of Central Coast and Hunter Valley STHL managers and owners. The HLOCC Committee is comprised of STHL industry experts with many years of experience both within the STHL industry and in other complementary industries and professions.

HLOCC co-developed version 1 (March 2012) of the NSW Holiday Rental Code of Conduct and participated on the Code Administration Committee (CAC) for a period of time; relinquishing this position when it became clear that the committee was not a functional body.

HLOCC continues to support and promote the Code (version 1) as the best method of prescribing minimum standard STHL management standards and practices.

HLOCC:

- was invited by The NSW Department of Planning and Infrastructure to participate in the development of the NSW Holiday Rental Code of Conduct (please see appendix 1)
- co-developed version 1 of the NSW Holiday Rental Code of Conduct
- participated on the Code Administration Committee (CAC)
- was a [Code Participating Organisation](#) (part 1, page 7) endorsed by the CAC on 6 December 2012. (Please see appendix 2)
- complies with all Participating Organisation obligations as prescribed in the Code
- requires all members to meet the Code standards and Council planning requirements
- **believes ineffective Code administration is a significant impediment to the future sustainability of Central Coast and Hunter Valley STHL**
- **believes legal recognition and ineffective Code administration is a significant impediment to the future sustainability of NSW STHLs in general**

## **What is STHL?**

STHL is a form of un-hosted accommodation that generally operates out of domestic dwellings, often located in areas zoned for domestic, low impact, non-commercial &/or non tourist activities.

STHL differs from traditional rental/tenancy of a dwelling in a legal sense because:

- occupation is generally for periods of **less than 90 consecutive days**
- tenancies/rental's for **90 days or more** require a tenancy agreement under current NSW legislation
- STHL is typically conducted via a **licence agreement** rather than a tenancy agreement

STHL:

- provides flexible and high demand accommodation
- maintains the wealth of local communities through the provision of employment, business and property investment
- can ease fiscal pressure on local Council and State Government budgets if the industry is sustainably supported
- provides sustainable, dual purpose use of existing and future accommodation development (permanent and visitor accommodation)



- provides low environmental impact accommodation (existing and dual purpose dwelling use)

STHLs are generally managed by the properties owner or by a Managing Real Estate Agent.

Many Local Government Planning Controls and Policies refer to STHL as Short Term Rental Accommodation.

For the purposes of this submission, HLOCC regards the term 'Short Term Holiday Letting' as encompassing Short Term Rental, Short Term Rental Accommodation, Holiday and Short Term Rental, Holiday Rental, Holiday Rental Accommodation etc.

# 1. Self Regulation Trial Review

STHL historically operated in a mostly unregulated environment in NSW, with minimal impact on community amenity.

The proliferation of online advertising portals (amongst other factors) has led to the rapid expansion of STHL in the last decade; resulting in substantial economic benefits to regional economies. Unfortunately, in some circumstances this expansion has also resulted in community amenity challenges that include:

- nuisance noise
- overcrowding
- garbage and parking management
- complaint and eviction management
- fire safety concerns
- vexatious complaints (neighbours and guests)
- other

To address the challenges and enable a sustainable future, HLOCC joined with other industry organisations to lobby for:

- legal recognition of STHL
- STHL industry self-regulation involving a Code of Conduct, administered by an industry group, supported by industry associations that addressed the community amenity challenges as described above

HLOCC was invited by the NSW Department of Planning and Infrastructure (now the Department of Planning and Environment) to assist with the development of the NSW Holiday Rental Code of Conduct.

HLOCC viewed the development of the Code as:

- the first step towards meeting the challenges of an unregulated and rapidly expanding accommodation sector
- a possible alternative to government regulation that may undermine the sustainability of the sector
- the development of a minimum standard policy document that would prescribe acceptable STHL management standards and practices that satisfied community and guest expectations

Developing the Code was a pain staking process that took years to complete and approximately 18 – 20 draft versions. The major points of contention that held up publishing and government endorsement included:

- occupancy numbers (domestic scale occupancy max 2 adults/bedroom or 2 adults/bedroom + 2adults. Code version 1 includes maximum occupancy limits of 2 adults/bedroom)
- permissible number of bedrooms
- CAC voting rights (who would sit on the CAC and what voting rights each entity would have)
- possible inclusion of a not yet formed national body

The Code development committee included the following organisations:

- the NSW Department of Planning and Infrastructure (now Department of Planning and Environment)
- Destination NSW
- Local Government and Shires Associations
- HLOCC
- HLO Byron
- REINSW
- the Stayz Group

On 31 May 2012, the NSW STHL industry commenced a Government endorsed self-regulation trial involving the Code. The two year trial was voluntarily established and endorsed by all of the industry stakeholders that participated on the Code Development Committee. A CAC was established under the request and guidance of the State Government to administer the state code.

The voluntary nature of self regulation requires the collective action of all stakeholders to succeed. All stakeholders must commit to participating, supporting, implementing and enforcing regulation standards and practices.

### **Effective and credible governance is imperative in any system of regulation.**

In the case of the STHL self regulation trial, transparent and accountable CAC and Participating Organisation governance and administration would determine the credibility and effectiveness of the industries self regulation trial.

HLOCC became a Code Participating Organisation to:

- support the objectives of the self regulation trial and Code
- assist STHL managers to address community amenity challenges
- assist STHL quality improvement and control

HLOCC partnered with an external Code accreditation organisation and a STHL specific security company to ensure our members have the ability to implement and prove compliance with the Code and enable effective quality improvement, control and complaints management. HLOCC member Code implementation and compliance has been very successful.

Halfway through the self regulation trial the NSW Land & Environment Court defined STHL as a prohibited land use in the Gosford City LGA 2A residential zone (02 May 2013, Dobrohotoff v Bennis).

The case was brought before the court by a STHL neighbour as a result of recognised community amenity challenges (specifically addressed by the Code) including overcrowding, nuisance noise and parties in the neighbouring STHL (amongst other things).

### **HLOCC notes that the dwelling in question was:**

- **never a member of HLOCC**
- **advertised on Stayz in a manner not consistent with the Code's requirements (Stayz was a Participating Organisation and member of the CAC)**
- **not managed in accordance with the Codes standards and practices**

When HLOCC learned about the challenges the STHL dwelling owner and neighbour were facing, HLOCC advised the dwelling owner:

- to cease operation until the Gosford City Council DLEP2009 was approved
- to undertake a 12 month educational program
- against court action as the operation clearly did not comply with the Code or the Gosford City Council DLEP2009

The STHL dwelling owner did not take HLOCC's advice and the LEC case proceeded.

The LEC ruled that STHL was illegal in the Gosford City LGA, principally as the occupation of a property for the purpose of STHL was not sufficiently permanent to comprise a 'dwelling house' with regard to the original zoning development consent. Further, the Court found that adoption of the Gosford City Council draft LEP2009 Short Term Rental Accommodation (STHL) Planning Provision was not imminent or certain.

HLOCC understands that the ruling applies to other NSW LGAs with similar residential zoning definitions and development consents that do not define STHL or make STHL Planning Provisions, and potentially any land zoned primarily for residential purposes.

The following extract explains further (20th August 2013 Australian Conveyancing and Property Law Tracker):

*Landlords and prospective landlords need to be aware that planning controls such as those that apply to the residential zone 2(a) within the Gosford Council Local Environmental Plan (GLEP) have recently been found to prohibit the short-term holiday letting of a house as it was not a “residential dwelling” use: Dobrohotoff v Bennic[2013] NSWLEC 61, a decision of Pepper J in the New South Wales Land and Environment Court (LEC). It is unknown at this stage whether this decision will be appealed.*

*The consequences of this finding poses a serious threat for property investors across NSW who similarly engage in short-term holiday letting of houses within residential zones such as the 2(a) zone in the GLEP. For now, landlords and prospective landlords within the Gosford Local Council area are prohibited from entering into short-term holiday letting arrangements, and risk civil enforcement or criminal proceedings if they are found to be in breach.*

### **Application of this decision to other Local Government Areas (LGAs)**

*LGAs with similarly drafted definitions of permissible uses in residential 2(a) zones will also be affected by this decision, namely short-term holiday rentals in residential areas where:*

- *the LEP does not define “holiday rentals” or similar terms, and*
- *undefined or unidentified uses are prohibited within the zone*

**HLOCC concludes that continued use of a dwelling for STHL in an LGA without STHL Planning Controls or not in accordance with Council Approvals/Controls leaves stakeholders open to prosecution for illegal operation and may void applicable insurance contracts leaving one open to liability without the protection or (possibly) even the option of insurance.**

Unapproved STHL may incur significant joint &/or several forms of liability concerns for the following stakeholders:

1. Local Governments
2. Insurance Companies
3. STHL Property Owners/Managers/Guests
4. Online STHL advertising facilitators & marketplaces (portals)

Other stakeholders potentially affected:

1. Security Guards
2. Lawyers
3. Accountants
4. Police
5. Banks
6. Australian Taxation Office
7. Neighbours/Community

**The management practices of the STHL in question were not consistent or compliant with the Code's standards and practices, resulting in a LEC Case that found STHL to be illegal. Code non compliance was facilitated by a Code Participating Organisation (the Stayz Group) and ineffective and non transparent Code governance by the CAC; resulting in unsustainable industry, community and economic challenges in the Gosford City LGA and wider NSW.**

The CAC did not:

- act in the best interests of the industry and community
- act responsibly
- effectively, transparently and accountably administer and govern the Code

As a result of the CACs ineffective governance, NSW STHL dwelling owners and managers and many regional community's face greater uncertainty. STHL dwelling owners and managers, consumers, communities and local/state Government are subject to significant liability concerns.

The Code adequately prescribes CAC and Participating Organisation obligations in sections:

- a) 1.3.2
- b) 1.4.2 &
- c) 1.5

### **a. Code Section 1.3.2**

*Requires the CAC to deal with instances where Participating Organisations fail to comply with the Code of Conduct.*

The CAC failed to deal with instances where Participating Organisations do not comply or enforce the code of conduct.

In may 2013, the NSW LEC deemed STRA to be illegal within the Gosford City 2A residential zone. The case involved a dwelling advertised on Stayz Group websites.

The dwelling's advertising clearly breached the Code. Non compliance resulted in significant:

- community amenity concerns deemed unacceptable by the NSW LEC
- the LEC ruling STRA illegal in Gosford City's 2A residential zone
- unacceptable Central Coast economic impact
- market and industry uncertainty
- significant statewide stakeholder liability concerns

HLOCC wrote to the CAC on the 10th May 2013 requesting the status of the imposition of appropriate sanctions on the Stayz Group for failing to enforce the Code. HLOCC received no response (please see appendix 3).

- To the best of HLOCC's knowledge, the Stayz Group was not sanctioned
- To the best of HLOCC's knowledge, the Stayz group continues to facilitate non compliance by advertising dwellings that clearly do not comply with the Code including advertising dwellings that cater to overcrowding (greater than 2 adults/bedroom), unapproved parties and commercial functions etc)

Non compliant STHL advertising and management distorts the market and undermines the industries self regulation objectives.

The CAC failed to administer and govern the Code as prescribed in section 1.3.2.

### **b. Code Section 1.4.2**

*Outlines the role of the CAC as follows:*

#### ***(a) Publicise and promote the Code***

- The CAC failed to effectively publicise and promote the Code.
- The CAC did not maintain a website or publicise contact details.
- The CAC did not communicate effectively with Participating Organisations, property owners, managers or the public.

The CAC failed to administer and govern the Code as prescribed in section 1.4.2 (a).

**(b) Maintain a register of Participating Organisations, receive and process signed copies of the Code and any notice or decision that any signatory ceases to be a Participating Organisation**

HLOCC was not made aware of who or how many organisations were official Code signatories.

**(c) Monitor and review the operation of the Code**

- The CAC did not request any information or updates from HLOCC.
- On a number of occasions HLOCC requested information from the CAC and attempted to consult with the CAC with no response.
- The CAC's Code review did not take into account HLOCC's findings as an official Participating Organisation; required under section 1.4.2.(f). As a result the CAC could not effectively monitor or transparently review the operation of the Code (please see appendix 4).

The CAC failed to administer and govern the Code as prescribed in section 1.4.2 (c).

**(d) Give instructions to Participating Organisations and hear and determine appeals from Managers concerning sanctions under Clause 1.3.1 of the Code**

- HLOCC did **not** receive **any** instructions from the CAC

The CAC failed to administer and govern the Code as prescribed in section 1.4.2 (d).

**(e) Impose sanctions upon Participating organisations under Clause 1.3.2 of the Code**

- HLOCC received no response from the CAC regarding the imposition of sanctions on the Stayz Group under clause 1.3.2 of the Code.
- HLOCC was not made aware of the CAC's sanction policy.

The CAC failed to administer and govern the Code as prescribed in section 1.4.2 (e).

**(f) Consult with Participating Organisations and key stakeholders from the Holiday Rental Industry (where appropriate) on proposed amendments to the Code**

- HLOCC was not given the opportunity to contribute to Code amendments and only endorses version 1 of the Code (as endorsed by the NSW State Government).

The CAC failed to administer and govern the Code as prescribed in section 1.4.2 (f). Failure to consult with HLOCC regarding Code amendments is unacceptable.

**(g) Determine necessary amendments to the Code**

- The CAC could not determine necessary Code amendments because they failed in their obligation to consult with Participating Organisations.

The CAC failed to administer and govern the Code as prescribed in section 1.4.2 (g).

**(h) Provide for the adequate financing of Code of Conduct administration expenses**

- HLOCC was not made aware of the CAC's effectiveness in this role due to inadequate CAC communication.

**(i) Produce an annual report on the Code and its administration**

- HLOCC was not made aware of any report being developed nor did the CAC consult with HLOCC regarding an annual report.
- [Note: The GPSC3 NSW Parliamentary Committee and the NSW Department of Planning and Environment recommended that the CAC publish the self regulation trial review. Page 9.recommendation15](#)

The CAC failed to administer and govern the Code as prescribed in section 1.4.2 (i). They also failed to act on the recommendations of the GPSC3 Parliamentary Committee and the NSW Department of Planning and Environment.

***(j) Report on the operation and effectiveness of the Code as required to such state and territory government, tourism, fair trading and planning and infrastructure authorities as have endorsed the Code***

- HLOCC was not made aware of any such report being developed and was not consulted at any stage regarding such a report.

***(k) Report to the Participating Organisations and key stakeholders from the Holiday Rental Industry on the operation and effectiveness of the Code***

- HLOCC did not receive a written report from the CAC on the operation and effectiveness of the Code.

The CAC failed to administer and govern the Code as prescribed in section 1.4.2 (k).

***(l) Organise an independent review of the Code once every three years***

HLOCC was not made aware of an independent Code review.

### **c. Code Section 1.5**

*Requires the CAC to monitor the implementation of the Code*

The CAC did **not** consult with HLOCC regarding the implementation of the Code. HLOCC:

- offered proven, effective implementation suggestions to the CAC
- co-developed proven and effective Code implementation, education, sanction and support policies and procedures

The CAC did not effectively monitor the implementation of the Code.

The CAC failed to administer and govern the Code as prescribed in section 1.5.

**The CACs failure to comply with the responsibilities and obligations prescribed in the Code resulted in serious and unsustainable industry, community and economic challenges including:**

- **a loss of confidence in the industries ability to self regulate and institutionalise the Codes standards and practices**
- **the objectives of the Code and self regulation trial not being realised**
- **marketplace and industry uncertainty**
- **the undermining of HLOCC and other Participating Organisations ability to govern and administer the Code**
- **market distortion between complying and non complying dwelling managers**
- **a LEC Case that deemed STHL illegal in Gosford City's 2A residential zone**
- **significant liability concerns**
- **unacceptable economic loss in the Gosford City LGA**

## 2. The Current Regulation Situation In NSW

### a. Local Government Planning Controls

Following the NSW LEC STHL ruling and completion of the STHL self regulation trial, NSW Council's are adopting STHL Planning Control's to address liability concerns and community amenity challenges.

The LGNSW Association describes Local Government obligations following the NSW LEC STHL ruling as follows:

*'This decision serves as a reminder to all councils to review the wording of their planning instruments. If there is ambiguity surrounding the definition of 'dwelling house' and whether the use of a property for short term holiday rental accommodation is permissible in a particular zone, councils have a duty to amend ambiguous terms and remedy any deficiencies in their planning instruments.'*(Land & Environment Court Reporter issue 4, 2013 Dobrohotoff v bennic (2013) NSWSC 61)

- **Gosford City Council (GCC) adopted an amended version of the draft LEP2009 Short Term Holiday Letting Planning Provisions on 15<sup>th</sup> October 2013 via the NSW Department of Planning and Environments Gateway Process. The planning provisions legally recognise STHL, provide effective, sufficient and sustainable controls and recognise and support the NSW Holiday Rental Code of Conduct. (s 3.14.7 of the GCC DCP2013)**
- **HLOCC strongly endorses GCC's support for the NSW Holiday Rental Code of Conduct**
- **Wyong Shire Council (WSC) STHL Planning Controls were gazetted on 10 Oct 2014 via the Gateway Planning Process**
- **HLOCC members and the Central Coast community strongly support the GCC and WSC STHL Planning Control's as effective and sustainable STHL co-regulation measures that effectively guide and define acceptable STHL standards and practices and ensure STHL is consistent with domestic scale and the amenity/environment of a neighbourhood.**
- **The GCC and WSC STHL Planning Controls combined with Code of Conduct compliance have been effective in addressing community amenity challenges and addressing liability challenges**

### **Challenge**

1. Legal recognition of STHL in Local Government Areas that do not include STHL in their Planning Controls

### **Recommendation**

1. A co-regulation structure continue to be adopted and developed further by Councils. Co-regulation to include:
  - a) Local Government STHL Planning Controls
  - b) NSW Holiday Rental Code of Conduct (version 1, march 2012)
  - c) NSW Holiday Rental Code of Conduct (version 1, march 2012) policy support
  - d) Participating Organisations
  - e) Industry based quality improvement and accreditation support mechanisms

HLOCC strongly supports the GCC and WSC STHL Planning Controls.



## **b. The NSW Holiday Rental Code of Conduct**

Following the completion of the NSW STHL self regulation trial, the Stayz Group (now owned by HomeAway) claimed ownership of any copyright that exists in the NSW Code (Please see appendix 5). The Stayz Group formed an organisation called the Holiday Rental Industry Association (HRIA); proclaiming the organisation:

- the industries national governing body
- would be taking custodianship of the Code and administering it

The HRIA website states that it 'relaunched' the Code on 24 March 2015, in conjunction with leading advertising portals Stayz, HomeAway and Flipkey, with AirBnB as a Supporting Organisation of the Code (effective 31 May 2015). HRIA states its national code replaces the aforementioned NSW code.

**Despite this, the organisations that endorse the HRIA Code do not promote or support the Code on their websites:**

- **HLOCC has not been able to find any mention of the HRIA or NSW Holiday Rental Code of Conduct on the Flipkey or AirBnB websites**

The NSW Legislative Assembly Committee on Environment and Planning is advised that the HRIA national Code does not have the support of all peak industry bodies that developed the original NSW state Code.

HRIA's Code is also not endorsed or formally recognised by the NSW Department of Planning and Environment, nor is it supported by NSW industry, including peak bodies such as the Real Estate Institute of NSW (to the best of HLOCC's knowledge) and HLOCC, both original members of the code development committee and CAC. In addition, the HRIA code was developed and promoted without consultation with the NSW industry.

The promotion of a Code which is not formally recognised by the State, or supported by the NSW industry, creates confusion for consumers and industry stakeholders, as well as conflicts with the current and proposed planning legislation of various NSW councils.

GCC on the NSW Central Coast has a large short term rental sector which plays an important role in the local and regional economy. GCC's Development Control Plan 2013 refers to the Department of Planning and Environment's Code of Conduct (s 3.14.7 of the GCC DCP2013). GCC's DCP requires all development consents for short term rentals in the Gosford LGA to reference the state code.

In addition, some NSW councils are in the process of developing, or have developed and adopted, their own Codes of Conduct for short term rental accommodation. On 26 November 2014, Wingecarribee Council adopted its own Holiday Rental Code of Conduct. Council's intent is for all property owners and managers within the Wingecarribee LGA, who rent their properties for short term tourist and visitor accommodation, to follow the Council's Code of Conduct.

The NSW Holiday Rental Code of Conduct (version 1, march 2012) is endorsed by the former Minister for Planning & Infrastructure the Honourable Brad Hazzard as a policy document that prescribes industry standards, practices and definitions. This Code should be used by:

- **All STHL property owners and managers:** as a policy document that describes minimum standards and practices
- **Communities:** to define STHL expectations
- **Insurance companies:** to help understand the industry being insured and to identify and manage risk
- **Legal situations:** to define acceptable practices and standards with regards to negligence
- **The basis of accreditation and quality assurance schemes:** it is vital that organisations utilising a Code of Conduct have a method of implementing, verifying compliance and facilitating quality improvement. Insurance companies, Council's, Guests and Communities may require identification of managers that are operating and meeting required standards

HLOCC notes:

- the Code was developed in NSW by NSW stakeholders with the assistance of the NSW Department of Planning & Infrastructure. Indeed the Department assisted in the drafting of the final version(s) of the Code
- The Code is a public document that is not owned by any organisation
- version 1 (march 2012) of the Code was formally endorsed by all organisations that contributed to it's development
- version 1 (march 2012) of the Code continues to be endorsed by the NSW STHL Industry and (to the best of our knowledge) the Government
- no mid trial review was published by the CAC
- no end of trial report was published by the CAC
- HLOCC and the major NSW stakeholders disagree with the concept of ownership of the Code by any one entity
- HLOCC and the major NSW Stakeholders disagree with the Codes standards being reduced below those endorsed by the NSW State Government
- HLOCC does not recognise the HRIA organisation as the STHL industries national governing body
- The HLOCC Committee unanimously voted to continue to support only version 1 of the Code and reject any other Code because:
  1. **The Code was endorsed by the NSW State Government**
  2. **The Code is robust and sets minimum standards with clearly defined responsibilities**
  3. **The Code has been widely promoted to all Councils in NSW**
  4. **Councils are endorsing the Code through there planning processes**
  5. **Gosford City Council referenced and supported the Code in GCC LEP2013 STHL Planning Controls**

## Challenge

2. Custodianship and credible, effective administration of the NSW Holiday Rental Code of Conduct (version 1, march 2012)

## Recommendation

2. a) A new NSW industry based CAC be re-formed to administer and maintain custodianship of the NSW Holiday Rental Code of Conduct (version 1, march 2012)

or

b) A NSW government body maintain custodianship of the NSW Holiday Rental Code of Conduct (version 1, march 2012) and an industry based administration committee be formed

**Credible and transparent Code administration is vital to ensure a robust and effectively institutionalised Code of Conduct which in turn facilitates sustainable industry management, quality improvement and control, effective risk mitigation and applicable insurance policy development.**

### **c. Insurance**

The management of risk is fundamental to entrepreneurial activity. The provision of applicable STHL structured risk management tools such as insurance and accreditation/quality assurance systems enables sustainable investment and growth in an industry or economy. The absence of appropriate risk management tools limits STHL's potential contribution to the economy.

The development of robust insurance policy generally requires clear property rights, enforceability of contracts, and safeguards against corruption, consistent collection and sharing of data, common supervisory principles, consumer education, adequate regulatory and supervisory frameworks, disciplined transparency and corporate governance

Insurance companies have an obligation to ensure STHL insurance contracts complement Government legislation, regulation and the the NSW Holiday Rental Code of Conduct.

### **Challenge**

3. STHL Insurance policies may not complement Government legislation, regulation and the NSW Holiday Rental Code of Conduct

### **Recommendation**

3. STHL insurance policies be amended to reflect applicable legal and industry accepted definitions

## **d. Quality Improvement and Control**

A poorly regulated industry can undermine consumer trust, and may lead to adverse reputation effects for all STHL accommodation providers that may take years to overcome.

All NSW STHL accommodation providers should implement and comply with the NSW Holiday Rental Code of Conduct.

### **Challenge**

4. STHL dwelling managers and owners require a recognised method to implement and prove compliance with:
  - a) the NSW Holiday Rental Code of Conduct (version 1, march 2012)
  - b) Planning Controls and Development Applications

### **Recommendation**

4. Organisations that facilitate regulation and standards implementation, institutionalisation and accreditation should complement, support and work in collaboration with regulators, industry associations (participating organisations) and insurance companies

## 3. Regulatory issues posed by STHL

Regulatory issues posed by STHL including customer safety, land use planning, neighbourhood amenity, and licensing and taxation

### a. Customer Safety

With regard to the safety of STHL guests (customers) it is important that:

- the dwelling is maintained adequately and meets its residential dwelling approval requirements
- domestic scale operations are conducted
- STHL management meets Council planning and Code of Conduct minimum standard requirements
- enquiring guests, governing bodies and the community can identify a STHL dwelling that meets the standards required
- Dwelling owners maintain appropriate STHL insurances. Please see section 2.c. for more information

#### Challenge

5. Guaranteed Guest safety

#### Recommendation

5. Regulatory requirements be implemented and maintained by all stakeholders and compliance easily identified by stakeholders

### b. Land Use Planning

Please see section 2.a. Local Government Planning Controls

### c. Neighbourhood Amenity

Please see section:

- 2.a. Local Government Planning Controls
- 2.b. The NSW Holiday Rental Code of Conduct

### d. Licensing

STHL differs from traditional rental/tenancy of a dwelling in a legal sense because:

- occupation is generally for periods of **less than 90 consecutive days**
- tenancies/rental's for **90 days or more** require a tenancy agreement under current NSW legislation
- STHL is typically conducted via a **licence agreement** rather than a tenancy agreement

### e. Taxation

Taxation of STHL out of domestic dwellings should be no different to the taxation of dwellings rented for long-term rental accommodation; both should occur on a domestic scale in an approved dwelling that can be flexibly used for both purposes.

Any alteration to the taxation of STHL dwellings would create further complexity and undermine the sustainability of STHL.

#### Challenge

6. STHL remaining sustainable

#### Recommendation

6. The taxation of STHL be no different to the taxation of dwellings rented for long-term rental accommodation

## 4. Conclusion

A large amount of ground work has been done to achieve the development of a sustainable STHL accommodation sector in NSW. This includes the original NSW Holiday Rental Code of Conduct (version 1) which was endorsed by the NSW State Government. It is an effective policy document that was developed through a comprehensive consultation process with a number of important industry and government stakeholders.

Many NSW Councils are developing and adopting planning instruments to support and encourage sustainable STHL in their LGAs. Many of these Councils are using the Code as a foundation for their planning instruments.

Unfortunately, the NSW Code cannot be referenced or accessed from any independent industry or government body. The code needs to be supported and protected for the benefit of all stakeholders.

The NSW Code does not have a current CAC. The Initial CACs term has ended and needs to be replaced.

The Code also requires an implementation strategy that assists with Code compliance and assists with the develop of quality management practices in conjunction with the Code. Through a recognised implementation system the industry can promote recognition of compliance. Recognition of quality management practices will assist in avoiding market failure. Identification of compliant, quality managers is imperative for the industry to remain sustainable.

**HLOCC's position is that excessive over regulation will not create a sustainable industry, it will simply undermine it. It is also HLOCC's position that to do nothing and continue with the status quo will lead to market failure and the eventual need for heavier regulation which in turn will undermine the sustainability of the industry.**

HLOCC believes the STHL co-regulation measures adopted and implemented in the Gosford City and Wyong Shire LGAs are adequate, sensible, effective and sustainable. The measures include:

- Local Government Planning Controls that legally recognise STHL and provide adequate and clear requirements
- The NSW Holiday Rental Code of Conduct
- A Supporting/Participating Industry Organisation (HLOCC)
- A robust, simple and effective implementation and accreditation system
- A STHL industry specific Security Company

HLOCC believes that those LGAs that do not recognise STHL in their Planning Control's may incur significant liability and industry sustainability concerns.

**HLOCC advocates and recommends the co-regulation structure adopted in the Gosford City and Wyong Shires as the most appropriate and effective method of addressing STHL related concerns.**

**HLOCC believes the two most pressing STHL regulation challenges that must be addressed include:**

- **Custodianship and governance of the NSW Holiday Rental Code of Conduct (version 1)**
- **Legal recognition of STHL in Local Government Planning Controls**