

## ITEM 3 SHORT TERM HOLIDAY LETTING

The NSW Department of Planning and Environment is seeking input on an Options Paper for “Short-term Holiday Letting in NSW”. On 31 July 2017, Council resolved for a report to be prepared on Short-term stay premises in Wollongong.

This report reviews the issues associated with Short-term holiday letting and recommends that Council endorse the attached submission to the NSW Department of Planning and Environment which outlines Council’s position.

### RECOMMENDATION

The General Manager be authorised to finalise the submission to the NSW Department of Planning and Environment on Short-Term Holiday Letting in NSW (Attachment 1).

### REPORT AUTHORISATIONS

Report of: Jason Brown, Manager Environmental Strategy and Planning (Acting)  
Authorised by: Mark Riordan, Director Planning and Environment – Future City and Neighbourhoods (Acting)

### ATTACHMENTS

1 Wollongong City Council submission to NSW Department of Planning and Environment

### BACKGROUND

Short-term holiday rental accommodation has been around for many years in a variety of forms, such as:

- Beach house or rural house rental via a real estate agent;
- Serviced apartment accommodation;
- Cabins and caravans in caravan parks;
- Bed and breakfast accommodation;
- Hotels and motel accommodation;
- Informal house renting arrangements;
- Backpacker accommodation; and
- Holiday house swapping.

In recent years there has been rapid growth in short-term holiday rentals, with the advent of on-line booking systems, such as Stayz or AirBnB, which enable individual property owners to rent out a room or a house/via an online platform.

Short-term holiday rental accommodation can take a number of forms:

- Rental of one or more rooms (including room sharing) within a dwelling (detached home or apartment building) with the host present;
- Rental of a whole dwelling (principal residence) (detached home or apartment building) with the host away;
- Rental of a holiday dwelling (non-principal residence) with the host away; or
- Rental of a dwelling solely reserved for short-term holiday letting.

On the face of it, short-term holiday rental accommodation seems a relatively benign use, but it is complex to define as it can take a variety of forms, as noted above, and can also vary in intensity and function:

- The built form – it can occur within a dwelling house, or a dwelling within a town house, villa or residential apartment building. Within a residential apartment building or a strata title townhouse or villa complex, the strata by-laws become a relevant consideration;
- It can occur in various intensities. The number of bedrooms available to rent and the size of the dwelling results in varying degrees of intensity;
- The length of stay – the number of days per visit. The length of stay is not defined for ‘short term’. In terms of the length of stay, more than 90 consecutive days may be a tenancy and be dealt with under the Residential Tenancies Act 2010;
- The frequency of the use or the number of days per year is not prescribed. A dwelling can be rented out once or twice a year, or every weekend, or just used in the school holidays/summer holidays;
- Short term holiday rentals are not defined by whether the owner is present. There is generally less complaint when an owner is on-site and can respond to issues or concerns;
- Whether it is defined as a residential, tourism or commercial use. A commercial definition may impact on insurance policies, building classification and building maintenance charges; and
- Whether the building classification is different under the Building Code of Australia from a dwelling, and therefore whether different accessibility and fire safety rules apply.

The use has had both positive benefits and negative impacts. On the positive side:

- More rental accommodation is available for tourism;
- Rental accommodation is available at cheaper rates;
- Rental accommodation is available outside tourist precincts and in a variety of locations;
- Economic and tourism benefits, an estimated \$31.3 billion to the National economy; and
- Assists landowners paying off mortgages.

On the negative side:

- Guests come and go, and don’t connect with the local community. Can create noise and parking issues and leave rubbish;
- Dwellings rented out as “Party houses” impact on the amenity of surrounding residents;
- If the owner is not located nearby, there is no local contact to advise / complain to, if there is a problem and get a quick response;
- Guests not understanding / knowing local requirements – such as garbage and recycling services, understanding local bushfire or flooding evacuation procedures;
- May result in a reduction in affordable rental housing being available;
- May result in increased rents and house prices;
- Competition with the traditional forms of tourism accommodation such as bed and breakfasts, hotels, motels, serviced apartments. These traditional forms also need development approval, so there is not a level playing field in terms of regulation;
- Increase building maintenance in common areas of apartment buildings;
- Increase insurance premiums; and
- Contrary to strata by-laws.

There are over 300 premises available for short-term holiday rental accommodation in the Wollongong LGA. As the use is not currently regulated, it is difficult to get an exact number.

Historically, Council has received few complaints about holiday rental accommodation. With the recent changes and publicity surrounding the issue there has been increased complaints from residents against the impact of “party houses”, and enquiries from strata bodies about the permissibility of units being used for short-term holiday accommodation.

On 24 June 2015, following a request from the then Minister for Planning, the NSW Legislative Assembly Committee on Environment and Planning resolved to conduct an inquiry into the adequacy of the regulation of short-term holiday letting in NSW. The Committee received 212 submissions and held public hearings between March and May 2016. In October 2016, the Committee published its report “Adequacy of the regulation of Short-term Holiday Letting in NSW”.

<https://www.parliament.nsw.gov.au/committees/DBAssets/InquiryReport/ReportAcrobat/6080/Final%20Report%20-%20Adequacy%20of%20the%20Regulation%20of%20Short-Term%20Holiday%20Letting%20in%20New%20South%20Wales.pdf>

The Committee made twelve recommendations (in summary), that the NSW Government:

- *amends planning laws to regulate short-term rental accommodation*
- *allows home sharing, and letting a principal place of residence, as exempt development*
- *allows empty houses to be let as exempt and complying development*
- *investigates impacts on traditional accommodation operators*
- *strengthens the Holiday and Short-Term Rental Code of Conduct*
- *develops a compliance system*
- *issues guidance and provides education for councils and the community*
- *communicate with owners about their rights and obligations*
- *amends strata laws and later reviews the effectiveness of changes*
- *collects information on the industry.*

On 19 April 2017, the NSW Government released its response to the recommendations, and indicated support or qualified support. The Government also indicated that it will be releasing a consultation paper on potential regulatory approaches to short-term holiday letting.

<https://www.parliament.nsw.gov.au/committees/DBAssets/InquiryReport/GovernmentResponse/6080/Government%20Response%20-%20Inquiry%20into%20the%20adequacy%20of%20short-term%20holiday%20letting%20in%20NSW.pdf>

In July 2017, the NSW Department of Planning and Environment published the Options Paper for “Short-term Holiday Letting in NSW” and is seeking community input.

[http://www.planning.nsw.gov.au/~/\\_media/Files/DPE/Other/short-term-holiday-letting-options-paper-20-July-2017.ashx](http://www.planning.nsw.gov.au/~/_media/Files/DPE/Other/short-term-holiday-letting-options-paper-20-July-2017.ashx)

Submissions closed on 31 October 2017. As a consequence of the Council election and meeting cycle, Council officers requested a short extension to enable Council to consider a report, and to finalise a submission to the Department.

On 31 July 2017, a resident from Otford spoke at the Public Access Forum on the adverse impacts of an adjoining short-term holiday rental premise. Council also considered a Notice of Motion on Informal Short Stays and resolved that:

- 1 Council receive a report and briefing on short-term stay premises in Wollongong.
- 2 The report include –

- a Information on their impact on local residential neighbourhoods and neighbouring residents;
- b The State legislative and regulatory environment;
- c Comparisons with requirements for formal short-term stay premises such as bed and breakfast businesses, motels and hotels, and serviced apartments;
- d A survey of the policies of other coastal Councils pertaining to these types of rentals;
- e A process for developing Council policy to ensure a level of regulation aimed at protecting neighbourhood amenity.

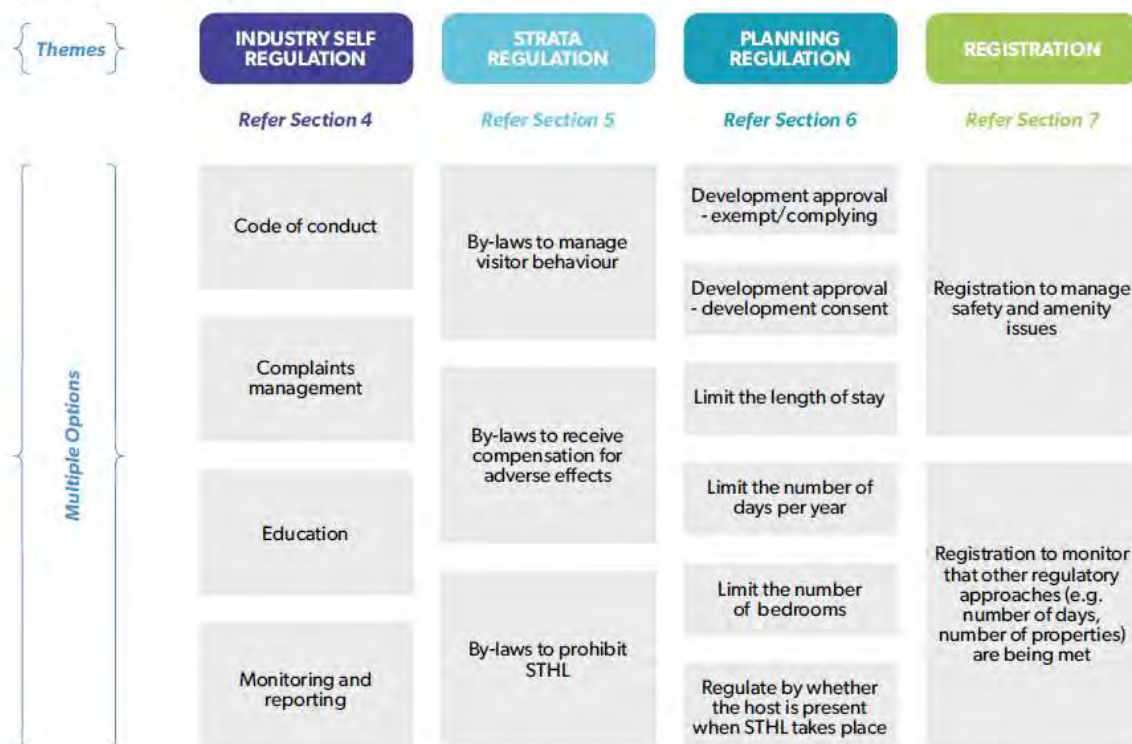
Following Council’s resolution a “Have your say” webpage on Short-term Holiday Letting was created to allow residents to provide input into Council’s submission. Letters were also sent to all Neighbourhood Forums seeking input. The feedback is discussed later in this report.

**PROPOSAL**

**Options Paper**

The Department of Planning and Environment’s Options Paper indicates the following options are available to regulate Short-term Holiday Letting:

**Figure 1: Potential Options**



**Note:** The policy options for STHL could include regulatory or non-regulatory approaches, or a combination of both. A combination of options from any rows or columns (or/and other options not covered in the paper) can be chosen to suggest a policy framework for the STHL in the submission form.

**Industry self-regulation**

Like a number of new web-based services, Short-term Holiday letting has grown without regulation and is disrupting the traditional tourism accommodation market.

Online holiday letting has grown from renting out the spare room, to renting out a house every weekend for parties. While the use of the spare room is regulated by the owner being present, the other extreme of the party house is unregulated, and causes impacts on the surrounding residents.

It is difficult to see self-regulation working, as premises don't have to be registered, and there is no industry peak body to oversee, monitor or regulate poor performance. Properties can be de-listed from the host website.

### **Strata regulation**

Clarification of the Strata laws is required in terms of Short-term Holiday letting. While strata by-laws vary from premise to premise, most include requirements around:

- The use of a dwelling must be permissible under the planning legislation. This is difficult to resolve, as the use is not currently defined and is generally not permitted under the current definition;
- Owners / tenant shouldn't create a nuisance or hazard for the other owners / occupiers. If a nuisance or hazard is created, complaints can be made to the strata body to address;
- Sub-letting is / is not permitted;
- Responsibility for damage caused; and
- Higher insurance premiums for commercial uses.

### **Planning regulation**

Short-term Holiday letting is a form of development, under the NSW Environmental Planning and Assessment Act 1979 as the use of land, includes the use of a building or structure on that land.

However, the use does not neatly fit into one of the existing land use definitions.

#### Residential accommodation:

There is an argument that in some respects the use of a house / unit by guests is no different from the use of the dwelling by its owner and family or by a renter in accordance with the Residential Tenancies Act 2010. However, case law has established that the use of the entire premises for short-term holiday rental (eg. for periods of a week or less), where there are no hosts present, is not consistent with the use of the property as a dwelling house.

**A dwelling house** is defined as a building containing only one dwelling. **A dwelling** is defined as a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile.

The definition of "dwelling" has two parts. The first part concerns the actual occupation or use of a room or rooms as a separate domicile; and the second part deals with the hypothetical test of whether a room or rooms are "so constructed or adapted as to be capable of being occupied or used" as a separate domicile.

There is clear and long standing case law authority that inherent within the term "domicile" is the notion of a permanent home or, at the very least, a significant degree of permanence of habitation or occupancy.

One example, is the case of *Dobrohotoff v Bennic* [2013] in the Gosford LGA, where at issue was whether the use of a property as a self-contained short term holiday rental fell within the permissible use of a "dwelling house"....., the court found that:

*the property was not a "dwelling-house" because it could not be fairly said, looking at its use as a whole as short term holiday accommodation, that ... the property was being occupied in the same way that a family or other household group in the ordinary way of life would occupy it. A tenancy granted to persons who are residing in a group situation for periods of a week or less for the purpose of bucks and hens nights, parties or for the use of escorts or strippers, is, in my opinion, not consistent with a use or occupation by a family or household group in the ordinary way of life, and therefore, not consistent with the use of the property as that of a "dwelling-house" (Blacktown City Council v Haddad [2012] NSWLEC 224 at [35]).*

**Tourism accommodation**

The Standard LEP Instrument and the Wollongong Local Environmental Plan 2009 contain the following definition of tourist and visitor accommodation, with individual definitions of the listed uses:

*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.*

Short-term Holiday rental accommodation does not neatly fit into one of the current standard tourist accommodation definitions, although the use contains similarities with both bed and breakfast accommodation and serviced apartments.

The best fit definition is serviced apartments which is defined as *a building (or part of a building) providing self-contained accommodation to tourists or visitors on a commercial basis and that is regularly serviced or cleaned by the owner or manager of the building or part of the building or the owner's or manager's agents.*

Whereas, in terms of scale and intensity, Short-term holiday rental accommodation is closest to Bed and Breakfast Accommodation, which is defined as *the use of an existing dwelling in which temporary or short-term accommodation is provided on a commercial basis by the permanent residents of the dwelling and where:*

- (a) *meals are provided for guests only, and*
- (b) *cooking facilities for the preparation of meals are not provided within guests' rooms, and*
- (c) *dormitory-style accommodation is not provided.*

Bed and Breakfast Accommodation is permitted with development consent throughout the City, generally wherever a dwelling house is permitted, as it is defined as the use of an existing dwelling house (not the construction of new building). The permissibility of the overarching Tourist and Visitor Accommodation definition and serviced apartments is more limited, as summarised in the following table.

Land use	Permitted with development consent in the following zones
Tourist and Visitor Accommodation (overarching definition)	B2 Local Centre, B3 commercial core; B4 Mixed Use; and SP3 Tourist
Serviced apartments	R1 General Residential, R3 Medium Density Residential, R4 High Density Residential, B2 Local Centre, B3 commercial core; B4 Mixed Use; B6 Enterprise Corridor, and SP3 Tourist
Bed and Breakfast Accommodation	RU2 Rural Landscape, RU4 Primary Production Small lots, R1 General Residential, R2 Low Density Residential, R3 Medium Density Residential, R4 High Density Residential, R5 Large Lot Residential, B1 Neighbourhood Centre, B2 Local Centre, B3 Commercial Core; B4 Mixed Use; and SP3 Tourist, E3 Environmental Management, E4 Environmental Living

Eleven councils in NSW have included specific provisions in their LEP to address short-term holiday rental accommodation. In the absence of guidance from the State, a number of different approaches have been used. The differences highlight the need to standardise a common approach.

Council	Provision	Definition of use	Max. No of bedrooms	Max. Length of stay (days / year)
Kiama	Clause 6.10 indicates development consent not required	Use of Residential accommodation for tourist and visitor accommodation	NA	60 consecutive days
Shoalhaven	Clause 7.13 indicates development consent not required	Use of Residential accommodation for tourist and visitor accommodation	NA	45 consecutive days
Snowy River	Clause 7.8 indicates development consent is required	Serviced apartments	NA	NA
Bega	Clause 6.11 indicates development consent not required	Temporary use of a dwelling	NA	NA
Pittwater	Schedule 2 Exempt development	NA	NA	3 months
Wyong	Clause 7.18 indicates development consent is required	Temporary use of a dwelling	up to 6	NA
Gosford	Clause 7.6 indicates development consent is required for 5 or 6 bedrooms	Temporary use of a dwelling	5 or 6	NA
Port Stephens	Clause 7.18 indicates development consent is not required	Temporary use of dwellings	NA	60 consecutive days in 12 months
Eurobodalla	Clause 6.15 indicates development consent is not required	Temporary use of dwellings	NA	45 consecutive days in 12 months
Palerang	Clause 6.12 indicates development consent is not required	Use of Residential accommodation for tourist and visitor accommodation	NA	45 consecutive days in 12 months
Wingecarribee	Clause 7.11 indicates development consent is not required if there is no extension or alteration of any part of the existing dwelling.	Dwellings used as holiday accommodation	NA	45 consecutive days

Eight of the councils do not require development consent (either as not required, or exempt development) and three Councils do require development approval for the use. These councils apply a limitation on the number of days/years. The number of days varies between 45, 60, 90 (3 months) to unlimited (if not specified). Only the Gosford and Wyong provisions currently limit the number of bedrooms.

A number of other Council's, including Shellharbour City Council, have resolved to prepare and exhibited draft Planning Proposal to introduce provision, however they have not been finalised while the State Government is determining its position. Some Council's may be using the Temporary Use of Land provisions in the LEP, wherein a use could be approved for a maximum time limit each year (eg 52 days in the Wollongong LEP 2009).

**Recommended controls for short term stays**

Having consideration to the Option Paper issues identified above, and community consultation, a scaled approach is recommended, along with an appropriate definition as outlined below.

**Definition**

*Short-term rental accommodation means a dwelling, or part of a dwelling, used for the purpose of tourist and visitor accommodation (other than bed and breakfast accommodation, farm stay accommodation or serviced apartments) that is available for rent for periods of less than 90 consecutive days.*

There should also be restrictions on the size and intensity of the use, the following table provides a suggested scaled approach:

<i>Form of use</i>	<i>Proposed approval</i>
<i>Rental of one or more rooms (including room sharing) within in dwelling with the host present;</i>	<i>Exempt development</i>
<i>Rental of a whole dwelling (principal residence) with the host away (eg on holidays);</i>	<i>Exempt development up to 30 days to 1 guest family Complying development 1-6 months managed by a real estate agent Local Development - Development Consent required – more than 6 months</i>
<i>Rental of a holiday dwelling (non-principal residence) with the host away; or</i>	<i>Local Development - Development Consent required</i>
<i>Rental of a dwelling solely reserved for short-term holiday letting.</i>	<i>Local Development - Development Consent required</i>

**CONSULTATION AND COMMUNICATION**

To assist Council in preparing this submission, community input was sought though a “Have your say” webpage on Short-term Holiday Letting. Letters were also sent to all Neighbourhood Forums seeking input.

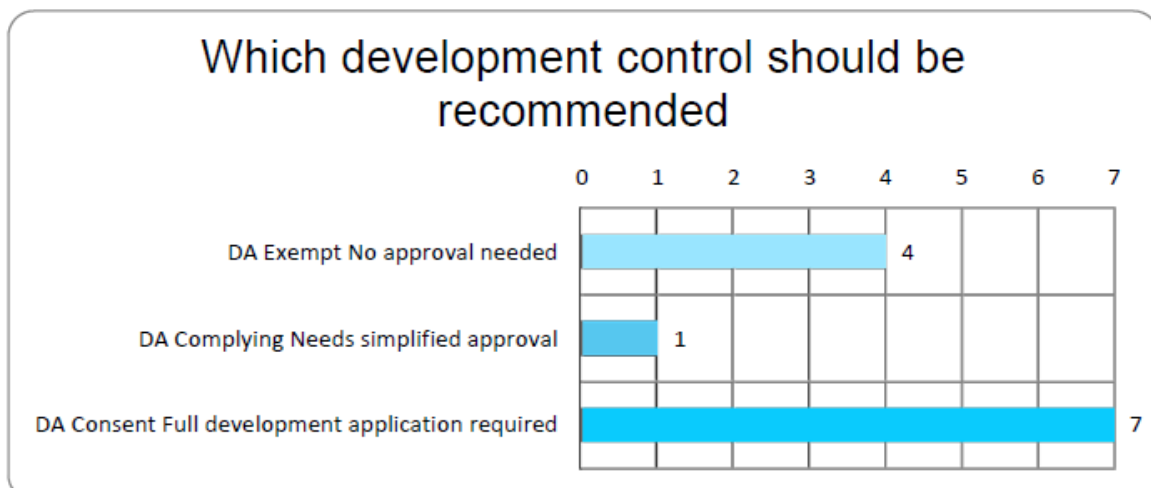
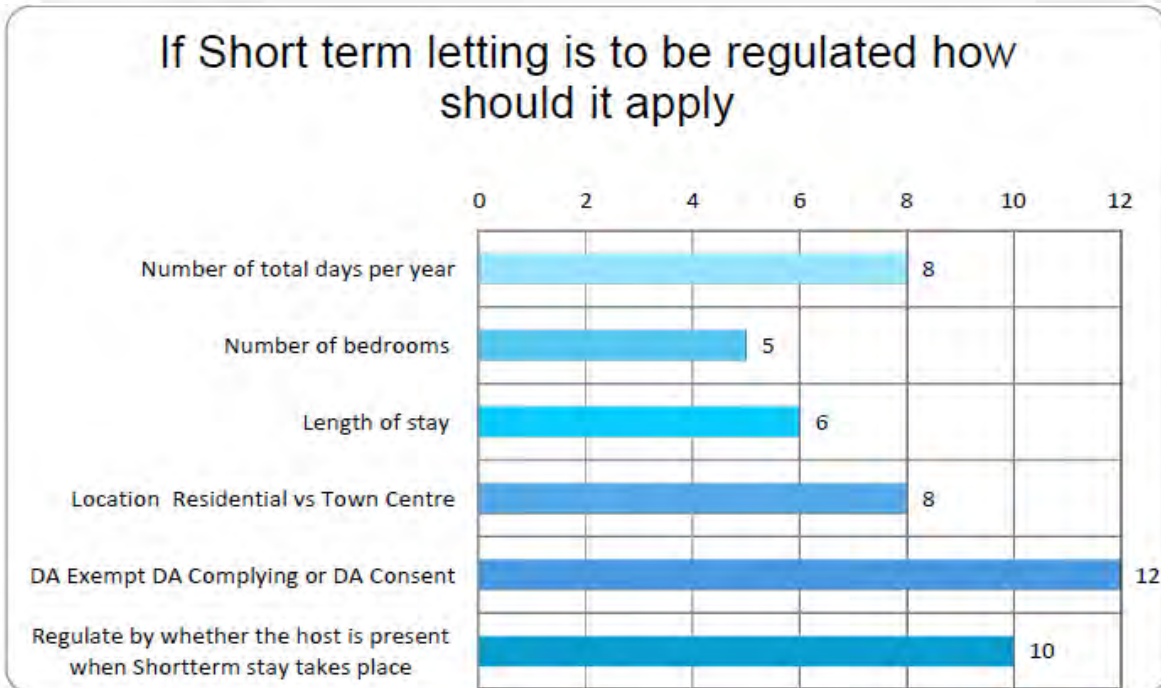
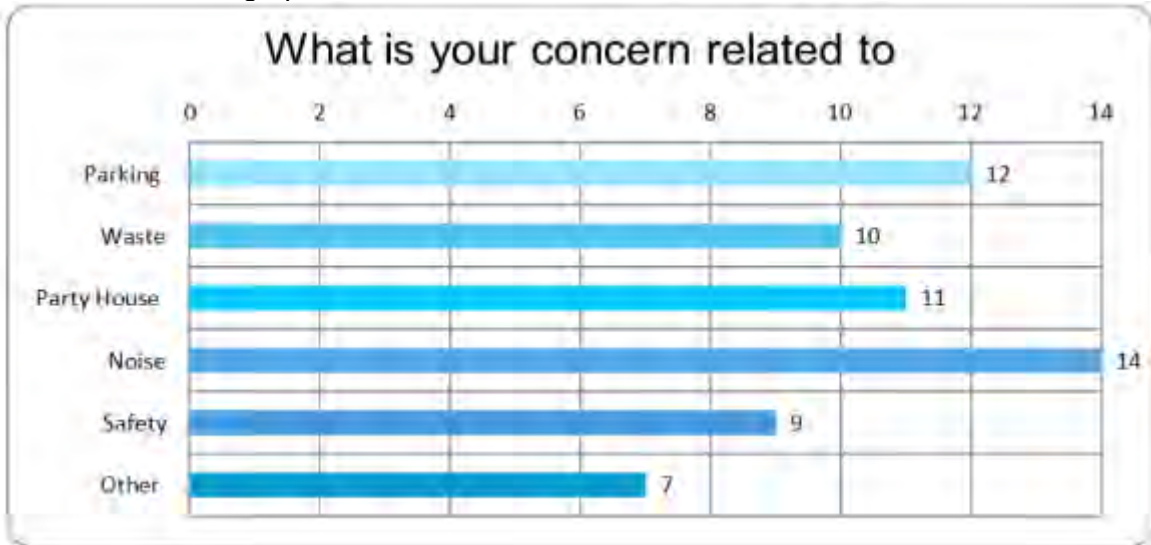
The webpage was viewed 255 times, nine documents were downloaded and 20 comments were left. A letter from Neighbourhood Forum 5 was also received.

Some of the feedback from the webpage was:

- 17 of the 20 responders had used short-term holiday rental premises;
- Three of the responders provided short-term holiday rental premises, in houses at Otford and Stanwell Park;
- 11 responders lived near short-term holiday rental premises;
- 17 responders had concerns, as summarised in the graph below;



- The responders thought short-term holiday rental premises should be regulated in a variety of ways, as summarised in the graphs below.



Although it is a small sample, the responses show that there is concern about the adverse impacts of short-term holiday rental on the local amenity. There is also a range of views as to how the use can be regulated. It is noted that a range of issues raised are typical neighbour complaints.

At their meeting on 6 September 2017, Neighbourhood Forum 5 resolved to *advise Council of the components of their submission made in relation to the recommendations of the Parliamentary Inquiry into Short-term Holiday Letting. These are:*

- 1 *A new definition "Short Term Lettings" as dwellings which are not used as solely a principal place of residence;*
- 2 *Allowing part of a principal place of residence to be let as exempt development;*
- 3 *Empty houses to be let, as exempt, but not complying, development provided:*
  - i *exemptions only apply to lettings under 30 days for each stay, provided further they are not for the purposes of a short term event (eg a week-end party);*
  - ii *a maximum 90 days in a calendar year;*
- 4 *Strengthening owners' corporations' powers;*
- 5 *Short term lettings which are not exempt require registration and regulation.*

#### PLANNING AND POLICY IMPACT

This report contributes to the delivery of Wollongong 2022 goal "*We have an innovative and sustainable economy*".

It specifically delivers on core business activities as detailed in the Land Use Planning Annual Service Plan 2017-18.

#### CONCLUSION

In response to the NSW Department of Planning and Environment Options Paper on Short-term Holiday Letting in NSW, it is recommended that Council endorse the attached submission.



## WOLLONGONG CITY COUNCIL

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### DRAFT

016



Director, Housing Policy  
NSW Department of Planning & Environment  
GPO Box 39  
SYDNEY NSW 2001

Our Ref: Z17/476856  
File: ESP-100.07.016  
Date: 20 November 2017

Dear Sir / Madam

#### SHORT-TERM HOLIDAY LETTING IN NSW – OPTIONS PAPER

Reference is made to the exhibition of the Short-term Holiday Letting in NSW – Options Paper. On 20 November 2017, Council considered a report on the Options Paper and the benefits and impacts of Short-term Holiday Letting (copy attached), and resolved to forward this submission.

There are over 300 premises available for short-term holiday letting in the Wollongong Local Government Area (LGA) which provides accommodation in areas not serviced by traditional forms of tourism accommodation.

Short-term holiday letting is not currently a major problem in the Wollongong LGA, although the number of complaints is increasing, especially associated with “party houses” and the use of dwellings in apartment buildings.

Council considers that there is a need for planning regulation to be introduced and a consistent approach applied across NSW is preferable.

The use of short-term holiday letting should be defined to clarify whether it is a residential, commercial or tourism use. The following definition could be considered:

*Short-term rental accommodation means a dwelling, or part of a dwelling, used for the purpose of tourist and visitor accommodation (other than bed and breakfast accommodation, farm stay accommodation or serviced apartments) that is available for rent for periods of less than 90 consecutive days.*

There should also be restrictions on the size and intensity of the use, the following table provides a suggested scaled approach:

<b>Form of use</b>	<b>Proposed approval</b>
Rental of one or more rooms (including room sharing) within in dwelling with the host present	Exempt development
Rental of a whole dwelling (principal residence) with the host away (eg on holidays)	Exempt development up to 30 days to 1 guest family. Complying development 1-6 months to multiple renters for periods of less than 90 days & managed by a real estate agent Local Development - Development Consent required – more than 6 months to multiple renters for periods of less than 90 days & managed by a real estate agent
Rental of a holiday dwelling (non-principal residence) with the host away	Local Development - Development Consent required - to multiple renters for periods of less than 90 days & managed by a real estate agent
Rental of a dwelling solely reserved for short-term holiday letting	Local Development - Development Consent required - to multiple renters for periods of less than 90 days & managed

*by a real estate agent*

Council would welcome the opportunity to provide additional comments when the draft legislation is exhibited.

If you require additional information please contact Council's Land Use Planning Manager, Mr David Green on 4227-7111.

Yours faithfully

David Farmer  
**General Manager**  
Wollongong City Council  
Telephone: (02) 4227 7111

*Attach*