4 October 2017

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

Dear Sir/Madam

Submission - Cessnock City Council - Short-Term Holiday Letting Options Paper

Thank you for the opportunity to provide comment on the Options Paper for Short-Term Holiday Letting (STHL) in NSW. Cessnock City Council welcomes the release of the Options Paper to assist in developing a uniform regulatory approach to STHL in NSW.

Council acknowledges that STHL contributes significantly to the national economy and that excessive regulation could put the industry at risk. However, a level of government intervention is considered necessary to manage the impacts of STHL and bring about a consistent and equitable regulatory framework.

Local Issues

There are approximately 300 known tourist accommodation land uses occurring in the Cessnock Local Government Area (LGA). Well over half of these land uses occur in the Cessnock wine region. Tourism associated with the wine region is a significant component of the regional and local economy and a delicate balance exists between these tourist land uses and viticulture. Further tourism development in the wine region needs to be carefully managed to preserve the qualities of the region that underpin tourism demand. Cessnock City Council is currently reviewing the permissibility of land uses in the wine region, including tourist accommodation land uses, through a Joint Planning Proposal with Singleton Council.

Council presently requires the submission of a development application for STHL and has taken the view that the use constitutes a change in building classification under the Building Code of Australia (BCA). In most cases, the change in building classification is class 1a to 1b. The change in classification triggers specific requirements relating to fire safety, public health, amenity and disabled access.

Current resourcing arrangements do not permit Council to actively search for unapproved STHL operating within the LGA. Council responds to unapproved STHL when complaints are received in relation to them. If it is determined that the use is in breach of legislation, appropriate enforcement action is taken.
Although there has been very little research or evidence gathered about the overall impact of STHL on the community at Cessnock, STHL is a recognised issue in the LGA and complaints heard from the community about the impacts of STHL are real and serious.

**Comments on the Options Paper**

**Land Use and Definition**

Council supports the inclusion of a consistent definition for short-term letting in the Standard Instrument LEP. The new definition should consider what constitutes 'short-term' accommodation and differentiate between short-term 'holiday letting' and short-term 'rental accommodation'.

Amenity impacts are likely to be greater in instances where dwellings are occupied by different groups for short periods of time (holiday letting/party houses), as opposed to being occupied by a single group for less than 90 days (short-term rental accommodation). Occupying a dwelling over 90 days could be leased as a tenancy under the *Residential Tenancies Act 2010*.

**Mandatory Registration**

Council supports mandatory registration of STHL. Knowing where STHL is located would assist Council in carrying out necessary compliance action when problems arise. Registration would also assist in collecting information to assess the impacts of STHL on the wider community.

Registration to a NSW government body, such as NSW Fair Trading, would ensure management of STHL are funded through a 'user pays' system. This could also include a requirement to abide by a mandatory code of conduct or guideline for other issues such as noise, parking, waste management, fire safety, insurance and public health.

**Code of Conduct**

The Holiday Rental Industry Association (HRIA) has developed a 'Holiday and Short Term Rental Code of Conduct'. The Code sets out a self-regulatory approach for STHL. A State structured code of conduct or guideline is supported by Council to the extent that it sets out minimum operating standards and requirements for all STHLs.

**Regulation of STHL through the planning system**

The Options Paper explores a variety of regulatory options to manage the impacts of STHL. The options range from self-regulation and exempt development to development consent.

Council understands that the challenge for State Government is identifying an appropriate level of regulatory intervention to manage the impacts of STHL without excessive regulation that could put the industry at risk. To achieve this, Council supports a scaled approach to managing the impacts of STHL.

The Options Paper identifies that most STHL operate without incident and do not require Government regulatory intervention. Council shares this view and recommends that 'low impact' forms of STHL be managed through the exempt development framework. It is recommended that the threshold for 'low impact' STHL would be determined in consideration of:
- a maximum number of operating days per year
- a maximum number of beds or bedrooms
- compliance with a State structured code of conduct or guideline
- mandatory registration
- business identification sign with owner's contact details
- bushfire and flood evacuation plans, if the dwelling is located on land so designated

While self-regulation through a code of conduct and mandatory registration is considered suitable for 'low impact' forms of STHL, self-regulation will not be appropriate for all forms of STHL. Given the potential for significant social impacts of STHL, any proposed regulatory framework should consider a 'worst-case scenario'.

Where a STHL was to operate beyond the exempt development standards, or if it occurred in a more sensitive location, such as strata units or nominated strategic land, then it would be reasonable for the use to require development consent. Likewise, development consent would also be reasonable in instances where Council can demonstrate that there has been systematic and ongoing breaches of the code of conduct, development standards, or noise complaints.

**Compliance with the Building Code of Australia**

The Options Paper identifies that STHL can constitute a change in building classification under the Building Code of Australia (BCA). A change in building classification has a range of implications for fire safety, health, amenity and disabled access. A change of classification also triggers a requirement for development consent.

The Parliamentary Inquiry on Short Term Holiday Letting found that, 'subject to appropriate definitions and conditions, short-term letting should be regarded as a residential use and as such, should not trigger any Building Code of Australia requirements.'

While the finding of the Parliamentary Inquiry is generally supported by Council, it is considered that there is merit in requiring STHL to comply with the requirements of a class 1b building (as a minimum) through another means, such as a mandatory registration process. Requiring compliance recognises the higher risk to occupants of STHL and assists in ensuring a 'level playing field' with other forms of tourist accommodation, such as bed and breakfast accommodation.

**Enforcement**

Additional enforcement options, including financial penalties, should be considered to manage STHL in instances where Council can demonstrate that there has been systematic and ongoing breaches of the code of conduct or development standards.

If you require any further information, please do not hesitate to contact me on telephone 02 4993 4229.

Yours faithfully,

[Signature]

Martin Johnson
Acting Director Planning and Environment