SHORT TERM LETTING IN NSW
OPTIONS PAPER RESPONSE

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Response by
Yamba Residents’ & Community Action Group

October, 2017.
<table>
<thead>
<tr>
<th>Table of Contents</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Executive Summary</td>
<td>4</td>
</tr>
<tr>
<td>Clarence Valley Local Government Area</td>
<td>9</td>
</tr>
<tr>
<td>Clarence Valley Profile (Land)</td>
<td>9</td>
</tr>
<tr>
<td>Population</td>
<td>10</td>
</tr>
<tr>
<td>Property</td>
<td>11</td>
</tr>
<tr>
<td>Dwelling structure</td>
<td>11</td>
</tr>
<tr>
<td>Number of bedrooms</td>
<td>12</td>
</tr>
<tr>
<td>Demographic</td>
<td>12</td>
</tr>
<tr>
<td>Planing controls</td>
<td>15</td>
</tr>
<tr>
<td>Clarence Valley Council</td>
<td></td>
</tr>
<tr>
<td>residential zone definition</td>
<td>17</td>
</tr>
<tr>
<td>Other councils</td>
<td>17</td>
</tr>
<tr>
<td>Other jurisdictions</td>
<td>18</td>
</tr>
<tr>
<td>Airbnb &amp; others</td>
<td>20</td>
</tr>
<tr>
<td>Legal position</td>
<td>20</td>
</tr>
<tr>
<td>Accountability framework</td>
<td>22</td>
</tr>
<tr>
<td>DPE Options paper</td>
<td>23</td>
</tr>
<tr>
<td>Our Response</td>
<td>23</td>
</tr>
<tr>
<td>Further condsiderations</td>
<td>25</td>
</tr>
<tr>
<td>Conclusion</td>
<td>25/26</td>
</tr>
</tbody>
</table>
Executive Summary

The Yamba Residents’ and Community Action Group was formed in 2014 as a result of the proliferation of short term rental accommodation in R2 low density residential zones, contrary to Clarence Valley Council planning regulations.

The group represents resident’s living in low density residential homes and commercial accommodation operators impacted by the growth of short term rental accommodation.

This response aims to point out the vast differences our coastal townships have compared to major metropolitan areas, like Sydney, Newcastle and Wollongong. Although the problems associated with short term accommodation rentals are the same.

The leasing of residential homes for short term holiday accommodation in NSW is a planning and zoning issue.

Home owners who purchased their homes in low density residential zones did so for the express purpose of living in a neighbourhood that is exempt of short term holiday accommodation. They did this for the express purpose of wanting to live in a community of neighbours, amongst those who share the same values and amenity provided by low density residential zones.

It is an issue that has equal impact in major cities in NSW, but has a particular impact in regional areas. By the very location of regional centres on the east coast of NSW, these areas are popular tourists destinations. In recent decades, these areas have experienced substantial growth from expanding families who have lived in the area for several generations. There has also been a growth in the number of retirees and young families moving from larger metropolitan areas to more affordable housing and the community lifestyle that this regional area provides.

Those in our local community chose to invest substantial sums of money, either their life savings or mortgages to live in low density residential zones. They did so knowing that low density residential zones are designed for a specific purpose and provides the lifestyle they chose to enjoy. People also believed that low density zoning regulations would be respected and enforced, when necessary.

Residents who purchased in these zones did so after carrying out their due diligence with local council and real estate agents. Local council regulations state that R2 low density residential zones are free of commercial short term holiday house accommodation.
In many cases, the reality is vastly different. Instead many residents found they were living along side short term holiday houses. In other cases, residents found when their next door neighbour sold their house, an investor purchased it and turned that house into short term holiday accommodation, contrary to zoning regulations and without any due notice or application to council.

After council became aware of the situation, it failed over many years to enforce regulations, leading to the growth in unlawful commercial accommodation operations. There has been recent growth in this industry under the guise of ‘The Sharing Economy’ and ‘Home Sharing’.

In this region, there is no ‘sharing economy’ or ‘home sharing’, all the houses presently let as short term holiday accommodation in R2 low density residential zones function as commercial operations. There are no hosts living in the premises and the houses are not shared in any meaningful way. The houses are a commercial use of a residential home.

There are those in our community that chose to upgrade their home and comply with all relevant legislation and regulations and operate as Bed & Breakfast Accommodation, which is permitted on low density residential zones. These businesses proved to be a valuable asset to the community and do not cause any problems to neighbours or the amenity of the residential zones. The owners live in the house and provide excellent tourist accommodation.

However, they have suffered significant financial loss with the growth of the unlawful short term holiday house lettings. The owners of these properties do not conform in any way to the vast amount of regulation and compliance placed on Bed & Breakfast operators, who provide a safe and healthy form of accommodation through proper compliance.

Short term holiday houses in low density residential zones are not shared in any way, shape or form. Nor is it sharing with those in need of a home. Instead it is blocking many local people from finding and renting long term accommodation. In fact, many people have been pushed out of the community due to the lack of affordable housing.

At the same time many houses in this area are allowed to operate as unlawful commercial operations for the sole purpose of collecting very high rents without having to spend any funds on compliance in the same way that legitimate commercial operators do.

A property rented as short term holiday rental accommodation to persons using or occupying it other than in the ordinary household way has been judged by the NSW Land & Environment Court as not satisfying the meaning of the term ‘domicile’ and lacks the requisite degree of permanency or occupancy for the property to be considered “a dwelling house”. In reality a ‘change of use’ has occurred without consent.

Agents and owners are aware that houses used as short term holiday accommodation in low density residential zones is not permitted. However, in this region there has been a steady growth in this type of accommodation. And as the Clarence Valley Council has not enforced the regulations, despite knowing their obligation, there is nothing to stop the growth continuing. Given this situation there is a need for clearly defined and enforceable regulations that properly govern short term rentals.
Low density residential zones have become tourists corridors, without any meaningful regulation that ensures safety or compatibility with residential zones. Local infrastructure is not designed for this over-use and simply cannot cope with this type of activity. The very reason low density residential zones exists is becoming obsolete with an incredible negative impact on the social harmony and fabric of the community.

By comparison with our geographic neighbour, Byron Bay has a greater number of holiday houses. Yamba, Angourie, Iluka, Brooms Head, Minnie Water and Wooli townships have a relatively low number of houses being unlawfully used as holiday accommodation. Yamba has the greatest concentration of short term rentals low density zones. Less than 100 houses are presently let contrary to zoning regulations. Even this number has a severe impact. This community cannot cope with the unregulated growth in this type of commercial activity in low density residential zones.

However, there is in excess of 300 holiday houses & apartments established in Yamba and nearby townships. Most are within authorised zones and will benefit from improved regulations.

Infrastructure has been designed in accordance with low density living. The residential areas are zoned for low density living for very good reasons. That is, to provide the local community with a balance of holiday accommodation and residential dwelling accommodation, without one impinging on the other.

Allowing this unregulated rental activity, places a high demand on local infrastructure. That infrastructure has to be maintained at additional cost to council. The R2 low density residential zones are simply not designed to carry the additional tourists traffic that short term holiday houses bring with them.

A traditional 4 bedroom house is usually designed for a family, which in this country, is an average of two adults and two - three children. Most families have two cars. Then there is often space for a small boat or caravan.

Typical holiday use of a 4 bedroom house in our region, will have the bedroom accommodation expanded using multiple bunk beds, converting certain living areas into additional bedrooms. A house that would normally accommodate four to five people can now accommodate up to 14 people. So this opens the way for two or three families or a large group to rent the house. Added to this, these groups often have 3 to four vehicles, plus boats & jet skis parked on the front yard, nature strip or adjoining properties.

So a house designed for traditional family living has become a full blown commercial operation, allowing up to 14 people with vehicles, boats etc. This occurs without any safety considerations and beyond the local infrastructure capability.

Low density residential neighbourhoods are planned, designed and built for traditional residential living. However, these neighbourhoods become tourist transit zones. The difference is vast. People have invested large sums of money by choice and the desire to enjoy the benefits that low density living provides.

Those people, like many of our members, did not have a choice when commercial holiday houses began operating next door. Despite complaints to council, these houses have been allowed to become established to the detriment of those who exercised a choice, and to the detriment of others in the nearby community.
This community was planned in a particular way to accommodate the needs of permanent residents and tourists alike. Without enforcement of zoning regulations a ‘free for all’ situation has been created. There is nothing short of contempt for council regulations. This contempt has caused community disharmony. It’s classic of the ‘broken windows’ syndrome, if the regulations aren’t enforced, the attitude of contempt for regulations grows and local council authorities lose control, leading to unsafe and unlawful practices that erodes the fabric of a community.

The impact is not only felt by residents. Legitimate commercial accommodation providers are required to meet strict regulations in order to provide safe buildings and grounds, along with strict health & safety regulations. This level of compliance comes at a substantial cost to those business owners. In addition to the cost of their initial investment, they pay high commercial rates, insurance premiums and licensing fees. Not so with unlawful short term holiday house owners.

Having committed to their investment, these business owners are now in competition with land lords who have exploited weaknesses in residential zoning regulations and local council’s failure to enforce those regulations. Legitimate operators lose business and have their investment and lifestyle placed at great risk as they are forced to operate in an environment that is not a level playing field.

On-line booking platforms, such as Airbnb, Stayz, bookings.com are also beginning to have an impact on local business. Real Estate Agents have experienced a loss in business, as some owners choose to have holiday house bookings managed by the on-line platforms, particularly Airbnb. Anecdotal evidence from one agent, who does not wish to be identified, states he has lost 16 clients to Airbnb. As the common management fee for holiday accommodation is 17% of the letting fee, this is a substantial loss in business.

The towns of Yamba, Iluka, Angourie, Brooms Head, Wooli and Minnie Water are the principle tourists areas within the Clarence Valley. The expansion, either residential or otherwise is extremely limited as each township is bordered by national parks, rivers and beaches. Given their location, each town is highly dependent on tourism. Equally, each town is highly attractive to permanent residents. Local businesses are highly dependent on those residents for their survival. Tourism does not sustain these towns outside traditional holiday seasons. There is no significant business tourism or business travel to sustain those townships and tourist centric businesses.

For over two years, the Yamba Residents’ and Community Action Group has lobbied the Clarence Valley Council to enforce current R2 low density residential zoning regulations in an attempt to restore the amenity that has been lost to the growth of unlawful short term rental accommodation.

NSW has some of the best planning regulations in the world and with improvement to particular definitions, along with Land and Environment Court rulings, these regulations maybe sufficient to address the problem, provided local councils enforce those regulations.
However, in the absence of adequate definition of some of the regulations, we support the establishment of strong, sustainable and enforceable regulations that are required to maintain a fair balance of low density residential housing and commercial tourist accommodation.

Any change to regulations must provide the mechanism that will maintain the fabric of the community and future proof the residential, commercial and industrial needs of the people residing in the Clarence Valley and across the State.

Further, any planning changes must be able to ensure compliance and provide local councils with the means to properly enforce those changes. The resource impact on local councils must be taken into account, without the requisite resources any compliance or enforcement regulations are doomed to fail at the expense of local residents.

We have provided an area profile that demonstrates the unique differences in our regional area from major metropolitan centres. These differences are important and need to be taken into account when considering any major planning change. We submit that a ‘one size fits all’ approach may not be appropriate and may require regional specific planning controls.

Our response endeavours to offer solutions that will support the residents and legitimate tourism operators within our community, and other like communities, and provides a considered response to the Options Paper.
THE CLARENCE VALLEY LOCAL GOVERNMENT AREA

Land area 1,044,121 hectares (10,441 sq km)
CLARENCE VALLEY PROFILE

Population 51,367

Year Population
2006 49,114
2007 49,624
2008 49,818
2009 50,433
2010 50,696
2011 51,139
2012 51,387
2013 51,361
2014 51,369
2015 51,363
2016 51,367

Source: Australian Bureau of Statistics, Regional Population Growth, Australia
Age-sex pyramid, 2016

Compiled and presented in profile.id by .id, the population experts.

Property

<table>
<thead>
<tr>
<th>Dwelling type</th>
<th>number</th>
<th>%</th>
<th>Regional NSW %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Separate house</td>
<td>20,235</td>
<td>81.5</td>
<td>80.2</td>
</tr>
<tr>
<td>Medium density</td>
<td>2,766</td>
<td>11.1</td>
<td>14.3</td>
</tr>
<tr>
<td>High density</td>
<td>231</td>
<td>0.9</td>
<td>2.5</td>
</tr>
<tr>
<td>Caravans, cabin, houseboat</td>
<td>1,320</td>
<td>5.3</td>
<td>1.9</td>
</tr>
<tr>
<td>Other</td>
<td>92</td>
<td>0.4</td>
<td>0.4</td>
</tr>
<tr>
<td>Not stated</td>
<td>185</td>
<td>0.7</td>
<td>0.7</td>
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<tr>
<td>Total private dwellings</td>
<td>24,829</td>
<td>100.0</td>
<td>100.0</td>
</tr>
</tbody>
</table>

(Source ABS-Census population & housing 2016)
In 2016, there were 20,235 separate houses in the area, 2,766 medium density dwellings, and 231 high density dwellings. In addition, there were 1,320 caravans/cabins/houseboats in the area.

Analysis of the types of dwellings in Clarence Valley Council area in 2016 shows that 81.5% of all dwellings were separate houses; 11.1% were medium density dwellings, and 0.9% were high density dwellings, compared with 80.2%, 14.3%, and 2.5% in the Regional NSW respectively.

In 2016, a total of 87.3% of the dwellings in Clarence Valley Council area were occupied on Census night, compared to 87.3% in Regional NSW. The proportion of unoccupied dwellings was 12.3%, which is similar compared to that found in Regional NSW (12.3%).

**Emerging groups**

The total number of dwellings in Clarence Valley Council area increased by 973 between 2011 and 2016.

The largest changes in the type of dwellings found in Clarence Valley Council area between 2011 and 2016 were:

- Caravans, cabin, houseboat (+401 dwellings)
- Separate house (+328 dwellings)
- Medium density (+184 dwellings)
- Other (-92 dwellings)
Number of bedrooms per dwelling
Clarence Valley Council area - Households (Enumerated) 2016

<table>
<thead>
<tr>
<th>Number of bedrooms</th>
<th>Number</th>
<th>%</th>
<th>Regional NSW %</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 or 1 bedrooms</td>
<td>1,467</td>
<td>6.7</td>
<td>4.5</td>
</tr>
<tr>
<td>2 bedrooms</td>
<td>3,701</td>
<td>17.0</td>
<td>16.9</td>
</tr>
<tr>
<td>3 bedrooms</td>
<td>9,155</td>
<td>42.0</td>
<td>40.4</td>
</tr>
<tr>
<td>4 bedrooms</td>
<td>4,565</td>
<td>20.9</td>
<td>24.5</td>
</tr>
<tr>
<td>5 bedrooms or more</td>
<td>1,004</td>
<td>4.6</td>
<td>5.6</td>
</tr>
<tr>
<td>Not stated</td>
<td>1,901</td>
<td>8.7</td>
<td>8.1</td>
</tr>
<tr>
<td>Total households</td>
<td>21,793</td>
<td>100.0</td>
<td>100.0</td>
</tr>
</tbody>
</table>

(Source: Australian Bureau of Statistics, Census of Population and Housing 2011 and 2016.)

Demographic
Clarence Valley Council area 2016

<table>
<thead>
<tr>
<th>Median Age (yrs)</th>
<th>Regional NSW</th>
<th>NSW</th>
<th>Australia</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>49</td>
<td>43</td>
<td>38</td>
</tr>
</tbody>
</table>

Indigenous Population
6.3% 5.5% 2.9% 2.8%

Couples with children
20% 25% 32% 30%

Older couples without children
15% 13% 10% 10%

Lone person households
26% 26% 22% 23%

Medium/High density housing
12% 17% 33% 27%
<table>
<thead>
<tr>
<th>Category</th>
<th>Regional NSW</th>
<th>NSW</th>
<th>Australia</th>
</tr>
</thead>
<tbody>
<tr>
<td>Median weekly household income</td>
<td>$915</td>
<td>$1,166</td>
<td>$1,481</td>
</tr>
<tr>
<td>Median weekly mortgage repayment</td>
<td>$300</td>
<td>$366</td>
<td>$456</td>
</tr>
<tr>
<td>Median weekly rent</td>
<td>$265</td>
<td>$278</td>
<td>$384</td>
</tr>
<tr>
<td>Households renting</td>
<td>24%</td>
<td>26%</td>
<td>30%</td>
</tr>
<tr>
<td>Households with a mortgage</td>
<td>24%</td>
<td>26%</td>
<td>30%</td>
</tr>
<tr>
<td>Overseas born</td>
<td>8%</td>
<td>11%</td>
<td>28%</td>
</tr>
<tr>
<td>Language at home other than English</td>
<td>2%</td>
<td>6%</td>
<td>25%</td>
</tr>
<tr>
<td>University attendance</td>
<td>1%</td>
<td>3%</td>
<td>5%</td>
</tr>
<tr>
<td>Vacancy Rates</td>
<td>1.1%</td>
<td>2.9%</td>
<td>2.1%</td>
</tr>
</tbody>
</table>

(Source: Australian Bureau of Statistics, Census of Population and Housing 2016)
Current journey to work-where people live and work in Clarence Valley

Live and work in the area 14,695 94.5%
Live and work in same SLA 12,679 81.6%
Live in area/work in different SLA 2016 13.0%
Work in area/live outside 848 5.5%
Total workers in area 15,543 100%

(Source: Australian Bureau of Statistics, Census of Population and Housing 2016)

Residential location of local workers, 2011

Clarence Valley Council area
- Live and work in the same SLA
- Live in the area and work in different SLA
- Work in the area, but live outside

Source: Australian Bureau of Statistics, Census of Population and Housing, 2011 (Usual residence data)
Current planning controls -
Clarence Valley Council generally relies on the State Environment Planning Policy (Exempt and Complying Development Codes) 2008:

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008
Current version for 22 September 2017 to date (accessed 22 October 2017 at 10:59)
Part 1 Division 2 Clause 1.15

1.15 What development is exempt development?
(1) Development that is specified in an exempt development code that meets the standards specified for that development and that complies with the requirements of this Division for exempt development is exempt development for the purposes of this Policy.
(2) For the purposes of subclause (1), development that is specified includes any specified limitations as to the land on which that development may be carried out.

Note. Under section 76 of the Act, exempt development may be carried out without the need for development consent under Part 4 of the Act or for assessment under Part 5 of the Act. The section states that exempt development:
(a) must be of minimal environmental impact, and
(b) cannot be carried out in critical habitat of an endangered species, population or ecological community (identified under the Threatened Species Conservation Act 1995 or the Fisheries Management Act 1994), and
(c) cannot be carried out in a wilderness area (identified under the Wilderness Act 1987).

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008
Current version for 22 September 2017 to date (accessed 22 October 2017 at 11:12)
Part 1 Division 2 Clause 1.18

1.18 General requirements for complying development under this Policy
(1) To be complying development for the purposes of this Policy, the development must:
(a) not be exempt development under this Policy, and
(b) be permissible, with consent, under an environmental planning instrument applying to the land on which the development is carried out, and
(c) meet the relevant provisions of the Building Code of Australia, and
(c1) must not require an environment protection licence within the meaning of the Protection of the Environment Operations Act 1997, and
(c2) must not be designated development, and
Note. Designated development is defined in section 77A of the Act as development that is declared to be designated development by an environmental planning instrument or the regulations.
(c3) not be carried out on land that comprises, or on which there is, a draft heritage item, and
(d) before the complying development certificate is issued, have an approval, if required by the Local Government Act 1993, for:
(i) an on-site effluent disposal system if the development is undertaken on unsewered land, and
(ii) an on-site stormwater drainage system, and
(e) before the complying development certificate is issued, have written consent from the relevant roads authority (if required under section 138 of the Roads Act 1993) for the building of any kerb, crossover or driveway, and

**Note.** Other consents may be required under section 138 of the Roads Act 1993 before carrying out other works in relation to roads.

(f) if it is the alteration or erection of improvements on land in a mine subsidence district within the meaning of the Mine Subsidence Compensation Act 1961, have the prior approval of the Mine Subsidence Board, and

**Note.** Information about mine subsidence is information that is a prescribed matter for the purpose of a planning certificate under section 149 (2) of the Act, but the information is not included in a certificate issued under clause 279 (2) of Environmental Planning and Assessment Regulation 2000.

(g) not be the construction or installation of a skylight or roof window on land in the local government area of Coonamble, Gilgandra, Warrumbungle Shire or that part of the local government area of Dubbo Regional that was formerly in the City of Dubbo, and

(h) if it involves the removal or pruning of a tree or other vegetation that requires a permit or development consent to which clause 3.33, 3A.7 or 5A.3 does not apply—before the complying development certificate is issued, have a permit or development consent for that removal or pruning.

**Note.** A permit for the removal or pruning of a tree or other vegetation may be granted under a local environmental plan. A development consent for the removal of native vegetation may be granted under the Native Vegetation Act 2003. Paragraph (h) may not apply to certain trees or vegetation near complying development under this Policy (see clauses 3.33, 3A.7 and 5A.3).

(2) The erection of a new dwelling house or an addition to a dwelling house on land in the 20-25 ANEF contours is complying development for this Policy, if the development is constructed in accordance with AS 2021—2000, Acoustics—Aircraft noise intrusion—Building siting and construction.

(3) A complying development certificate for complying development under this Policy is subject to the conditions specified in this Policy in respect of that development.

**Note.** Clause 136A of the Environmental Planning and Assessment Regulation 2000 requires a complying development certificate to be issued subject to the conditions specified in that clause.
Clarence Valley Council defines residential zones in the following manner:

**Residential Zones DCP 2011 (5.7Mb)**
In force from 23 December 2011
The aim of Clarence Valley Council DCP - Development in Residential Zones is to encourage well designed, high quality development within residential zones in the Clarence Valley.

Clarence Valley Council DCP - Development in Residential Zones applies to land within the following residential zones:
- R1 General Residential
- R2 Low Density Residential
- R3 Medium Density Residential
- R5 Large Lot Residential

Clarence Valley Council regulations do not permit the following in R2 zones:
- Backpacker accommodation;
- Farm stay accommodation;
- Hotel or motel accommodation;
- Serviced accommodation.

**Action by other Councils:**
Byron Shire Council made the following proposal to their LEP 2014

**Exempt Development:** will allow property owners of dwellings with 3 bedrooms or less, who want to rent their property out for less than 90 days in any one year and live there for the remainder of the year; caps occupants to 2 per bedroom, excluding children under 5 years of age.

**Development Application:** provides for dwellings of any size where the dominant use of the dwelling is short term rental accommodation; caps number of occupants as 2 per bedroom, excluding children under 5 years of age; it is also for dwellings up to 3 bedrooms that cannot comply with exempt provisions.

**Gosford LEP 2014**
**Exempt Development:** subject to zoning, must not contain more than 4 bedrooms, waste provisions, bushfire evacuation plan, not more than 2 written complaints from separate dwellings located with 40 meters of subject dwelling within the preceding 12 months.

**Development Application:** Required for temporary use of dwellings containing 5 or 6 bedrooms.

**Wyong LEP 2013**
**Exempt Development:** subject to zoning, must not contain more than 4 bedrooms, waste provisions, bushfire evacuation plan, if Strata - written approval from the owners corporation, compliance with on-site sewage, management approval, not more than 2 written complaints within the preceding 12 months.
**Development Application:** Required for temporary use of dwellings containing up to 6 bedrooms.

**Examples from other States:**

**Western Australia**
Defined as ‘temporary accommodation’ provided either continuously or from time to time with no guest accommodation for periods totalling more than 3 months in any 12 month period;
- Breach conditions apply, non-compliance is an offence liable to a $4000 fine;
- Require registration to minimise the amenity and safety impacts on local communities.
Such registration requires:
- Floor plan stating number and locations of sleeping rooms;
- Details of on-site parking;
- Property management contact details, at any time of day or night;
- Undertake that he/she will respond within 12 hours, to any contact relating to the property.

**Other Countries**

**Barcelona** - In 2014, Airbnb was fined 30,000 Euros ($33,913) by the Catalonian government for a “serious” breach of laws, which stipulate that any residence rented to tourists must also be registered with the Tourism Registry in Catalonia. The company was also fined $65,000 in 2015, for the same offence. The city continues to increase its investigations to find offenders. Barcelona has doubled the number of investigators seeking out illegal rentals, and will increase to 100 next year.

**New York**
In October, 2016, New York Governor Andrew Cuomo signed into law a ban on short term Rentals on home sharing sites. Renting out an entire apartment for a stay less than 30 days is illegal. Even advertising such a rental is illegal, with fines up to $A7,500. In February, 2017, two individuals were fined $A17000 between them for renting out a residence fewer than 30 days.

**Santa Monica**
Santa Monica has introduced some of the toughest laws against Airbnb in the country when it mandated that hosts will have to live on the property during renters’ stays, register for a business licence and collect the city’s 14% occupancy tax. Nine months after the regulations took effect, the city had issued 650 violations, with the vast majority going to Airbnb and VRBO.

**Reykjavik**
The tourist boom in Iceland has seen a boom in Airbnb business. However, the practice has been regulated in Reykjavik, with a new law stating that as of January 1, 2017, people can rent out their apartments for up to 90 days per year before needing a hospitality licence. They can also earn a maximum on one million Kroner ($8,785) per year. However, prospective Airbnb hosts will still need to get their property registered, which requires health and safety regulations. Icelandic police are taking violators seriously and have raided several Airbnb believed to be illegally operating.
Paris
Paris is one of Airbnb’s most popular destinations, with app. 55,000 listings. In order to catch hosts who break the law, that prohibits owners from renting out their properties for more than 120 days per year, authorities carry out random raids. According to a study, many landlords rent their homes exceeding the 120 days. Mayor Hidalgo’s housing advisor stated, “We can’t have entire neighbourhoods or buildings turned into tourists houses, that’s why we’re fighting to keep Parisians inside Paris and we won’t let tourist rental eat up their space.”

Berlin
Laws enacted in May, 2016, stipulate that landlords are forbidden from renting out apartments to short-term visitors, with hefty fines up to $113,000, should they choose to do so. There are a few exceptions, owners can rent no more than 50% of the entire floor space, and landlords can still apply for short term rental permits.

The impact of Airbnb & similar platforms
The ‘Options Paper’, signed off by Ministers Anthony Roberts and Matt Kean, appears to be weighted in favour of the short term holiday rental industry. With insufficient consideration to the many problems identified by resident’s action groups and local councils. The considerable differences between major metropolitan cities and regional coastal towns is not sufficiently recognised within the Legislative Assembly’s Committee Report or the Options Paper.

Notwithstanding those considerable differences, there is an overarching problem associated with on-line platforms, such as Airbnb, that isn’t properly recognised in the Committee’s Report or the Options Paper.

Given the passage of time since the Report was prepared and issuing the Options Paper, significant issues have been identified that highlight the negative impact of Airbnb and similar platforms regarding the short term rental of dwelling houses and strata apartments. In short, there is an unregulated on-line industry fostering the growth of an unregulated and unlawful short term rental industry.

Many of the problems referred to in this submission were identified several years before the Legislative Assembly’s Committee was formed. However, the unregulated short term rental industry has taken advantage of the time since, and with the promotion of the ‘sharing economy’ label, the chance to profit from an unregulated and unlawful situation has accelerated.

Both State and Local Governments are being left in the wake of a section of the tourism industry exploiting loopholes and inadequacies within various planning instruments. Further, this industry takes advantage of Local Councils’ unwillingness or unpreparedness to enforce current regulations.
The legal position

NSW LAND AND ENVIRONMENT COURT RULINGS
Dobrohotoff v Bennic [2013] NSWLEC 61.
Extracts from Justice Pepper's ruling:

LAND AND ENVIRONMENT COURT NSW
Hearing dates: 23 April and 2nd May, 2013
Decision date: 2 May, 2013
Jurisdiction: LAND AND ENVIRONMENT COURT NSW Class 4
Before: J Pepper
Decision: See Orders at 100
Catchwords:
Legislation Cited: Civil Procedures Act 2005
Land & Environment Court Act 1979

DEVELOPMENT CONSENT: whether short term holiday rental accommodation was prohibited development within the relevant zone - whether the development was "for the purpose of" use as a "dwelling-house" - whether the property was a "dwelling" - whether the property was being used or occupied or capable of being used or occupied as "a separate domicile" - development prohibited.

Orders
In conformity with the reasons given above, the orders of the Court are as follows:
(1) leave to amend the summons is refused;
(2) the Court declares that, in breach of s 76B of the Environmental Planning and Assessment Act 1979, the respondent has carried out development that is prohibited, namely, the use of land for short term holiday rental accommodation at 24 Charles Kay Drive, Terrigal ("the property");
(3) that the respondent, by herself and her servants and agents, be restrained from using the property for short term holiday rental accommodation, including, without limitation, advertising, soliciting or permitting the property to be used for that purpose. "Short term holiday rental accommodation" means accommodation for a period of less than three months;
(4) the Court stays the operation of Order (3) until 29 June 2013; and
(5) that the respondent to pay the applicants' costs of the proceedings, unless, within 14 days either party seeks, by way of notice of motion and supporting affidavit, some other form of costs order.

The Court held that a dwelling house in the 2(a) zone in Gosford could not be used for holiday rentals. The primary reason, in Pepper J's judgement, was that the use would not be 'for the purpose' of a dwelling house because it was not being occupied in the way a family or other household group would do.
Implications

Council’s refusal to act on the neighbours complaints was found to be an ‘abrogation of their duty’. Councils’ have a duty to amend ambiguous terms and remedy any deficiencies in their planning instruments.

Considerable work has been done in many jurisdictions around the world by legislators and the community. In this region, it has fallen on unfunded community interest groups to fight to protect the amenity of their community and their fundamental right and desire to live in low density residential zones.

Regrettably, the same has happened elsewhere in NSW, with the formation of many community groups, who have spent enormous amounts of time, effort and money in carrying out research and making submissions in an effort to support local councils in dealing with problems associated with holiday rentals in residential zones and apartment buildings, including the impact of on-line booking platforms.

As pointed out by the ‘Neighbours Not Strangers’ Campaign:
“Ultimate responsibility and liability for short-term tourist/visitor rentals is with the owner of each individual property. When the actions of commercial landlords are challenged by legislators, it is the multi-billion dollar platform, Airbnb, that has stepped in and commenced legal action against cities and states. To date, it appears that all legal actions mounted by Airbnb have ultimately seen them forced to withdraw.”

Further, “Work done recently by the City of Vancouver, whose housing situation mirrors that of Sydney’s plus other smaller regional NSW centres, was at first applauded. Housing advocates have subsequently highlighted the flaws in Vancouver’s initial response, most notably that of letting Airbnb and others ‘off the hook’ in terms of responsibility for premises rented unlawfully via their platform.”

It is an established fact that platforms like, Airbnb have redirected residential housing away from residents. The experience in many overseas countries is testament to this fact. It is difficult to understand, and an enormous source of frustration, as to why State and Local Governments have failed its resident’s and legitimate commercial operators for so long.

In regard to on-line booking platforms and risks associated with that industry, our group concurs with ‘Neighbours Not Strangers’:
“No promise or measure of goodwill could or would curb the insatiable financial targets of the short-term rental operators with more and more players – such as Google – entering the market. It is our contention that NSW should learn from other jurisdictions and avoid watering down regulations, only to be forced to return to the issue years later.”

Platform accountability is considered a key element to ensuring successful enforcement of any short-term rental regulations.
Platform Accountability:

All on-line booking platforms must be accountable in the same manner as any other tourist accommodation operator. As pointed out in our submission, Airbnb has displayed a lack of any accountability and exploitation of planning legislation, both in Australia and overseas.

What platform accountability simply means is that real estate agents and booking platforms police their landlords or ‘hosts’ by ensuring the rental properties are licensed, in a similar way to existing bed & breakfast, hotel, motel licensing requirements.

Local Councils remain responsible for ensuring compliance with Building Codes, Disability, Fire & Rescue requirements, along with approval by way of registration and licence number, which is managed by State Government Licence Register.

Without such level of accountability, corruption of any proposed planning laws will almost be inevitable.

Accountability Framework

- Local Government to develop rules and regulations around short term rentals;
- A permit system must be set up, ensuring properties operating as short term rentals meet all relevant building, access, safety, health and taxation standards;
- All short term rental agents and platforms to be licensed in NSW, with conditions that legally bind them to advertising only properties that have been inspected by the Local Government Authority ensuring all compliance is met and license to operate sited.
- Any agent that advertises any property that does not meet the criteria should be fined and have their licence to operate short term accommodation withdrawn (Appeal mechanism to apply)

This is a suggested framework that will require further review and development, however, the principles are based on successful overseas legislation/regulations.

Memorandum of Understanding - (a cautionary note):
Airbnb recognises problems associated with on-line booking platforms and has attempted to address this by entering into an MoU with relevant authorities. However, research from overseas, including Amsterdam, indicates that Memorandum of Understanding (MoU) has failed. Although this form of corporate citizenship is the favoured method of Airbnb to deal with the issue, as was the case in the Netherlands. However, on close scrutiny of the rentals following the commencement of the MoU, over 50% of Amsterdam’s listing were found to be in violation of the MoU.

Any reasonable analysis of the Legislative Assembly’s Committee Report and the Options Paper demonstrates a lack of research. There are significant knowledge gaps that need to be addressed before any proposed changes can be made.

Much more consultation needs to be had with all affected local councils to properly understand the unique differences in each region. Much more consultation is required with owners living in both low density residential dwellings and Strata complexes.
The DPE Options Paper

- **Self regulation** - Industry takes greater responsibility of compliance with regulatory measures;
- Need to be more effective, accountable and transparent;
- Effective self regulation requires strong and unified body with broad membership to ensure compliance.
  (Note overseas experience re. self regulation has experienced many failures - any self regulation must be robust to ensure success)
- **Strata laws** - Different requirements and options because of proximity of residents and shared responsibility for common property;
- Recommended NSW Govt. considers changes to strata laws to give owners corporations more power to manage adverse behaviour;
- Owners corporations could prohibit, restrict or impose strict liability on lot owners who engage in STHL.
- **Planning regulations** -Recommended using planning instruments to regulate STHL, primarily through Exempt and Complying development;
- Currently no definition of STHL;
- Considered STHL acceptable to a point where it becomes a more intensive commercial type of use (i.e tourists and visitor accommodation);
- Options for triggering development approval:
  - Regulate the length of stay (i.e days per stay and/or days per year)
  - Number of bedrooms
  - Presence of hosts

- **Registration** - Could provide greater information and help monitor the management of the industry;
  - Registration/licensing adopted in other jurisdictions to manage STHL, generally in conjunction with planning requirements

**Our response** -

Given the similarities that the Clarence Valley has with the Byron Shire our response is similar and supports the Byron response:

- Opt in/out option for councils in certain zones or defined precincts (overlay in LEP) to protect local character and amenity;
- New definitions of ‘home stay’ and ‘short term holiday let’ in standard LEP instrument;
- New development controls to address:
  - Number of rooms/people;
  - Number of nights;
  - Presence of hosts;
  - Compliance with fire safety & health requirements;
  - Disability access;
  - State & Federal Building code compliance;
  - Noise management;
  - Waste management;
  - Adequate on site car, boat, caravan and trailer parking.
Residential zones:
- Bed & Breakfast;
- Home stay;
- Owner present as host at all times during any rental period.

Rural zones:
- Farm stay/home stay in conjunction with approved or lawful use;
- Owner present as host during any rental period.

Other zones:
- Define STHL subset of tourist and visitor accommodation controls through local provision.

Registration:
- Mandatory registration scheme administered by Council via e portal for operators;
- Initial registration and annual renewal fee collected by council to regulate operators;
- Council to have the ability to refuse to register non compliant operators.

Self Regulation:
- Code of conduct to be mandatory;
- 'Scores on Rooms' program - rating to be included on registration list and council and operator web pages;
- Education - Respect the locals and the local community - linked to Scores on room program;
- Good will to community - percentage of local host fees where collected by booking service to be returned to the local council and invested back into the local community infrastructure projects necessary due to tourists demands;
- Levies - Council to develop a tourist levy plan.

Other issues to be considered:
- Current legislation does not currently enable Councils to impose a tourism accommodation levy;
- Current average occupancy levels of short term holiday accommodation in the low density residential zones is 70%, comparable to commercial operators;
- There is strong support and a critical need to support a tourism accommodation levy as local council does not have the funds to maintain infrastructure impact of tourism;
- Clarence Valley Council is in the process of applying for a Special Rate Variation due to budget shortfalls;
- Presently residents rates have to contribute to infrastructure maintenance resulting from impact of tourism;
- No obligation on tourists to contribute to tourism infrastructure;
- Any legislative framework must be robust and should take into account the differences between major CBD, metropolitan and regional areas;
- It may not be possible to develop a 'one size fits all' framework;
- Separate planning legislation maybe required for metropolitan and regional areas;
- Any draft legislative framework should be offered for further consultation before any final decisions are made.
**Further considerations:**

Our group has raised a number of concerns regarding knowledge gaps in both the Legislative Assembly's Committee Report and the 'Options Paper'.

There appears to have been a lack of consultation with a number of relevant bodies, including:
- NSW Police Force;
- Fire & Rescue NSW

We believe some consultation with NSW Police is necessary to assess the impact of short term rental accommodation in residential zones, such as anti-social behaviour, alcohol related crime etc.

In addition, NSW Police could advise on the use of on-line platforms by persons committing serious crime or planning any terror related incident. Current booking methods used by Airbnb lends itself to the anonymous use by persons wishing to use short term rentals to plan or carry out crime. False identification can be used as there is no 'face to face' contact.

Fire and Rescue NSW needs to be consulted regarding the various safety codes to ensure any short term rental is safe and meets regulations. The impact on this organisation needs to be taken into account.

There are a number of other bodies that should be considered and may require further consultation to assess the impact of any planned changes, these include:
- National Disability Discrimination Commissioner;
- Tenants Union of NSW and Unions NSW;
- Local Aboriginal Land Councils.

A unique situation has developed in the region with several thousand road workers employed on the Woolgoolga to Ballina highway upgrade. This includes construction of several major bridges at Harwood and Grafton.

A large percentage of these workers currently rent, or have purchased houses in Yamba. Once the road upgrades are completed it is expected many of those people will move out of the area, leaving a glut of housing. This will increase the opportunity for unlawful short term rentals, if stronger regulations are not introduced.

Serious concerns have been raised by residents concerning the negative impact on NSW residents regarding any proposed changes will have on home values and overall loss of amenity and lifestyle. A question has been raised, will compensation be available by residents in low density residential zones impacted by planning changes?
Conclusion

Members of our group, whether residing in R2 low density residential zones or not, along with various commercial accommodation operators, want stronger controls to prevent short term holiday accommodation in low density residential zones.

We submit that with the provision of clear and concise definitions in relevant planning instruments, coupled with current planning legislation and alignment with NSW Land and Environment Court rulings, would be sufficient for local councils to enforce zoning regulations.

Our members also recognise there is little future in absoluteness and we are flexible to the needs of our community and other like communities along the NSW Coast. Our members strongly value and support tourism. We also value the investment and commitment of legitimate commercial accommodation operators who need protection from an unlawful growth industry.

This submission mentioned the unique nature of the Clarence Valley. The Clarence River is a centre piece of tourism. The river stretches some 394 kilometres and the opportunity to expand tourism along the river is enormous.

Small towns, such as Ulmarra, Lawrence, Maclean, to name only a few would benefit from the expansion of well regulated tourism and residential expansion. With the support and encouragement of local government and regional tourism organisations, such as Destination NSW, tourism accommodation, waterway facilities, shops, restaurants and other tourists and community facilities could be established. The well regulated and planned expansion of the tourism industry would provide many benefits to the region in terms of business growth and jobs.

This region has a deep connection to our indigenous history. It is home to the Bundjalung, Gumbaynggirr and Yaegl Nations. There is an excellent opportunity for cultural tourism to expand in consultation with local Aboriginal Land Councils.

To accommodate the needs of our local residents and tourists alike, we support any planned changes that provides clear definition, is robust and takes into account the rights of residents as a priority.

Planned changes should foster and encourage tourism in regional areas within a framework that protects residents and ensures a compatible and safe environment for both residents and visitors. Any planned changes must enable effective enforcement by local government and provide a non-confrontational pathway for residents to take action, when necessary.

G.W. Beresford. APM.
Secretary
Yamba Residents’ & Community Action Group.