

Good afternoon

Thank you for your phone call / email.

As per my correspondence from last Friday, I understand that a large number of our property owners have received the letters from council in relation to a complaint regarding holiday letting in their R2 zoned property.

Of course we understand and share your concerns in relation to this matter.

As per our meeting with council they have determined that holiday accommodation under their LEP is defined as a serviced apartment. However if you review the details below, the NSW Planning website says that Short Term Holiday Letting is defined as tourist and visitor accommodation. The only zonings that allow this within the Clarence Valley Council LEP are R1 General Residential and SP3 Tourist. There is no allowance for visitor or tourist accommodation by the NSW planning's definition under R2 and R3 zonings.

After over 30 years in real estate, I am confused in relation to this, so believe me I can appreciate that our owners are confused and anxious about this issue. In the Clarence Valley, Short Term Holiday Letting in residential zonings has never been tested in a court of law.

We will continue to query Clarence Valley Council on this, because their information is unclear and their actions need to be challenged. I spoke to one of our local councillors last Friday who said they didn't know that these letters had been sent out.

We will also honour all advance bookings, as we are only weeks out of our holiday peak season, and it would be impossible to relocate all guests located in the residential zones. Until such a time as an injunction is placed by council, I will not be cancelling any holiday bookings.

However, if you are still uncomfortable in relation to this, I am more than happy for owners to seek their own legal advice. I am not a solicitor / lawyer and cannot provide you with legal advice.

I have attached below details procured from the NSW planning website, and the Clarence Valley LEP to provide you with some background information in relation to this matter.

I would encourage you to respond to Council's correspondence in relation to this matter.

At the bottom of this document is a draft copy of the letter which I sent to David Morrison at Clarence Valley Council in response to his letter regarding my personal property. Please feel free to use any part of this correspondence in your own reply.

#### **From the NSW planning website**

Short-term holiday letting (STHL) has been carried out in coastal and other tourist destinations in NSW for many years, often without planning approval or incident. Internet platforms have generated new marketplaces for STHL, benefitting consumers and providers by lowering transaction and accommodation costs; providing opportunities to earn income from unused assets; and broadening the economic benefits of tourism.

STHL can be considered as the renting of the whole or part of a private dwelling by an owner to a visitor on a commercial basis, whether the owner is present or not. **There is currently no consistent definition of STHL under the NSW planning system.**

STHL is currently regulated in some local government areas through the planning system. Councils can generally determine the land use planning controls for STHL

through their Local Environmental Plans (LEP), few LEPs in NSW refer specifically to STHL.

The LEPs that do address STHL use different definitions and thresholds for when STHL requires development consent. These LEPs either:

- allow the use without the need for any approval;
- define STHL as **tourist and visitor accommodation** within residential accommodation and set a maximum number of consecutive days that STHL can occur;
- define a maximum number of bedrooms allowed as STHL; and
- define thresholds for days and bedrooms beyond which a more detailed level of approval from a council is required.

## Clarence Valley LEP 2011

### Zone R1 General Residential

#### 1 Objectives of zone

- To provide for the housing needs of the community.
- To provide for a variety of housing types and densities.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

#### 2 Permitted without consent

Home-based child care; Home occupations; Home occupations (sex services)

#### 3 Permitted with consent

Attached dwellings; Boarding houses; Caravan parks; Centre-based child care facilities; Community facilities; Dwelling houses; Educational establishments; Environmental protection works; Exhibition homes; Exhibition villages; Flood mitigation works; Food and drink premises; Group homes; Home businesses; Home industries; Hostels; Information and education facilities; Multi dwelling housing; Neighbourhood shops; Places of public worship; Recreation areas; Residential accommodation; Residential flat buildings; Respite day care centres; Roads; Semi-detached dwellings; Seniors housing; Shop top housing; **Tourist and visitor accommodation**

#### 4 Prohibited

Rural workers' dwellings; Any other development not specified in item 2 or 3

### Zone R2 Low Density Residential

#### 1 Objectives of zone

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

#### 2 Permitted without consent

Home-based child care; Home occupations; Home occupations (sex services)

#### 3 Permitted with consent

Bed and breakfast accommodation; Boarding houses; Boat sheds; Centre-based child care facilities; Community facilities; Dwelling houses; Educational establishments; Environmental protection works; Exhibition homes; Exhibition villages; Flood mitigation works; Group homes; Health consulting rooms; Home businesses; Home industries; Information and education facilities; Neighbourhood shops; Places of public worship;

Recreation areas; Residential accommodation; Respite day care centres;  
Roads; Water recreation structures

**4 Prohibited**

Attached dwellings; Multi dwelling housing; Residential flat buildings; Rural workers' dwellings; Any other development not specified in item 2 or 3

**Zone R3 Medium Density Residential**

**1 Objectives of zone**

- To provide for the housing needs of the community within a medium density residential environment.
- To provide a variety of housing types within a medium density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To enable serviced apartments while maintaining the medium density residential character and amenity of a locality.

**2 Permitted without consent**

Home-based child care; Home occupations; Home occupations (sex services)

**3 Permitted with consent**

Attached dwellings; Bed and breakfast accommodation; Boarding houses; Centre-based child care facilities; Community facilities; Educational establishments; Environmental protection works; Exhibition homes; Exhibition villages; Flood mitigation works; Group homes; Home businesses; Home industries; Information and education facilities; Multi dwelling housing; Neighbourhood shops; Places of public worship; Recreation areas; Residential accommodation; Respite day care centres; Roads; Seniors housing; Serviced apartments; Water recreation structures

**4 Prohibited**

Rural workers' dwellings; Shop top housing; Any other development not specified in item 2 or 3

**Zone SP3 Tourist**

**1 Objectives of zone**

- To provide for a variety of tourist-oriented development and related uses.
- To enable a range of residential accommodation that is compatible with the provision of tourism uses to assist with the off season viability of tourist-based development.
- To provide for tourist accommodation that does not compromise the environmental, scenic or landscape qualities of the land.
- To enable retail and business premises that complement tourism-based development without eroding the retail hierarchy of the area.

**2 Permitted without consent**

Home-based child care; Home occupations; Home occupations (sex services)

**3 Permitted with consent**

Advertising structures; Amusement centres; Boat sheds; Camping grounds; Car parks; Caravan parks; Centre-based child care facilities; Charter and tourism boating facilities; Community facilities; Entertainment facilities; Environmental facilities; Environmental protection works; Flood mitigation works; Food and drink premises; Function centres; Helipads; Home

businesses; Home industries; Information and education facilities; Kiosks; Marinas; Markets; Mooring pens; Passenger transport facilities; Places of public worship; Recreation areas; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Registered clubs; Residential accommodation; Respite day care centres; Roads; Roadside stalls; Shops; **Tourist and visitor accommodation**; Water recreation structures; Wharf or boating facilities

**4 Prohibited**

Hostels; Rural workers' dwellings; Seniors housing; Any development not specified in item 2 or 3



# YAMBA ILUKA REAL ESTATE

3<sup>rd</sup> October 2017

David Morrison  
Clarence Valley Council  
Locked Bag 19  
GRAFTON NSW 2460

Dear David

I refer to your letter dated 21<sup>st</sup> September 2017, in relation to the use of properties in the R2 Residential Low Density zoning as holiday lettings, and complaints that Clarence Valley Council have received in relation to this.

I would like to formally declare that my property at 1/8 Nabilla Court, Yamba is currently let on a short term holiday letting basis, as well as 3 – 6 month tenancies.

1 / 8 Nabilla Court, Yamba has been let on a holiday basis well before the 2011 Clarence Valley LEP was put into place, as the previous owner, also had this property under holiday letting. Yamba has been a holiday destination for decades, where property in the hill and urban area, have been holiday let to holidaymakers.

This is the very first time that I have been made aware of any complaints in relation to my property. I have not received any written complaints from Council nor any other person in relation to any problems with holiday guests or my property. On one occasion I received a phone call from the occupants of 10 Nabilla Court, about a noisy permanent tenant, and this complaint was acted upon immediately. I request that you please respond with particulars of the complaint you are referring to in your letter, and provide me a copy of same.

Due to the very confusing nature of the Clarence Valley LEP as it relates to Short Term Holiday Letting in its present state, and the lack of definition for Short Term Holiday Letting, I have engaged a legal representative to guide me through this issue.

Due to the extreme short notice of the upcoming holiday season, it is too late for me to be cancelling advance bookings. This would be extremely unfair, as these guests cannot be relocated at this late stage.

I am surprised to be in receipt of this correspondence, as on the 8<sup>th</sup> September, I was invited in the capacity of the Licensee of my real estate agency, to sit and discuss short term stays with three representatives from the council office, Ashley Lindsay, Des Schroder and yourself. After lengthy discussions, with not only myself but other agency principals from real estate offices, we were informed at this meeting, that you were seeking information to present to council, and that no further action would be taken until after the October council meeting. Therefore to be in receipt of this letter which places me under the threat of a fine of \$3,000 to \$6,000 is a serious concern. Several of my clients are also in receipt of this correspondence, which has caused considerable confusion and a great deal of anxiety.



## **YAMBA ILUKA REAL ESTATE**

I am also aware that State Government is currently seeking submissions from stakeholders in relation to Short Term Holiday Letting. It is stated on the Planning NSW website "There is currently no consistent definition of STHL under the NSW planning system."

I am seeking a delay re the threat of a fine until such a time as further resolution in relation to this matter is found, as per your meeting with myself and others on 8<sup>th</sup> September.

I await your urgent reply.

Yours faithfully  
**YAMBA ILUKA REAL ESTATE**

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**Denise Gillies**  
**DIRECTOR / PRINCIPAL**