

# Short-term Holiday Letting in NSW

Submission to NSW Department of Planning and Environment  
October 2017



**CITY OF SYDNEY**   
*city of villages*



**City of Sydney**  
ABN 22 636 550 790  
GPO Box 1591 Sydney NSW 2001 Australia

Town Hall House 456 Kent Street Sydney NSW 2000 Australia  
Phone +61 2 9265 9333 Fax +61 2 9265 9222 TTY +61 2 9265 9276

council@cityofsydney.nsw.gov.au  
[www.cityofsydney.nsw.gov.au](http://www.cityofsydney.nsw.gov.au)  
TRIM 2017/509506

**31 October 2017**

## Contents

<b>1.0</b>	<b>Executive Summary .....</b>	<b>1</b>
<b>2.0</b>	<b>Short-Term Holiday Letting .....</b>	<b>2</b>
<b>3.0</b>	<b>Survey of strata communities .....</b>	<b>3</b>
<b>4.0</b>	<b>Regulating short-term holiday letting .....</b>	<b>4</b>
<b>5.0</b>	<b>Registration .....</b>	<b>5</b>
<b>6.0</b>	<b>Regulation through the planning system .....</b>	<b>6</b>
6.1	State-wide definition of 'Short-Term Holiday Letting' .....	7
6.2	Exempt Development .....	7
6.3	Development Consent for short-term letting .....	9
6.4	Short-term letting in mixed business and residential zones .....	9
6.5	Restricting short-term letting outside the primary residence .....	10
6.6	Building code compliance .....	11
<b>7.0</b>	<b>Strata Regulation .....</b>	<b>11</b>
7.1	Managing Impacts .....	11
7.2	Providing strata with the choice to restrict short-term letting .....	12
7.3	Cost Recovery .....	13
<b>8.0</b>	<b>Compliance.....</b>	<b>13</b>

## Attachments

- A. Opinions of Short Term Letting within Residential Apartments, Woolcott Research, April 2017
- B. Engagement Report: Short-Term Letting in Sydney, City of Sydney, October 2017

## 1.0 Executive Summary

This submission responds to the Department of Planning and Environment's *Short-term Holiday Letting in NSW Options Paper* (Options Paper).

Short-term holiday letting relates to the letting of the whole or part of a private dwelling by its owner to a visitor on a commercial basis. This activity has been carried out in popular tourist destinations in NSW for many years. Recently, there has been rapid growth in letting through online platforms which have made it easier for owners and occupants to let their properties and for visitors to check guest reviews.

Short-term letting can have a range of social and economic benefits such as supporting tourism, providing supplementary income for individuals, enabling hosts to meet people from all over the world and injecting money into the local economy. But if it occurs too often, and in the absence of a longer term host resident, it can become a commercial business that may negatively impact neighbours and reduce housing supply, ultimately impacting on affordability.

Community concerns have been raised with the City about the impacts of short-term letting in strata buildings where residents have shared facilities and neighbours are close. The City engaged Woolcott Research in March 2017 to survey strata owners, occupiers and investors across the City's neighbourhoods to help us better understand the issue. 1001 strata residents and investors were interviewed: 56 per cent were tenants, 38 per cent were owner occupiers and 8 per cent investors.

The survey responses indicate that 15 per cent of residents have let out a room and 50 per cent of residents have used short-term letting as a visitor elsewhere. One third of residents believe short-term letting is happening in their building.

Most respondents support short-term letting in a residents' own home while they are on holidays. However, the majority oppose it when used as a full-time investment in properties which do not have a long-term resident.

64 per cent of respondents support strata committees having more power to manage impacts such as anti-social behaviour. Respondents are evenly split as to whether strata committees should be able to ban short-term letting in their buildings (42 per cent agree, 40 per cent disagree).

The City also sought community feedback on this research. The research and community comments are attached to this report.

The City suggests the NSW Government strike a balanced approach that enables the sharing of a primary dwelling for occasional short-term letting, distinct from the regular commercially focused letting of vacant investment properties, through a simple, user focused planning and registration framework.

It is recommended the Government:

1. Establish a simple self-service automated registration process for hosts via booking platforms and Service NSW for Fair Trading NSW. Require short-term letting advertisements to display a registration number.

2. Provide a state-wide definition of short-term letting in planning and strata legislation that distinguishes the use from other commercial tourist and visitor accommodation uses on the basis it is carried out occasionally in the primary residence.
3. Permit short-term letting as exempt development in metropolitan areas, subject to the following criteria:
  - only permitted in a building approved and currently used for residential accommodation;
  - where the primary resident is present (host), there be no limit on number of days;
  - where the primary resident is absent, activity limited to a specified maximum number of days (either 28, 45, or 90 days) in a calendar year (whether or not the days are consecutive);
  - limit of 2 adults per bedroom, no limit on children below 16 years old;
  - limit total number of adult guests to 5;
  - building required to meet fire regulations;
  - no alterations or additions permitted to the dwelling unless otherwise exempt;
  - operation needs to comply with a mandatory code of conduct;
  - registration with Fair Trading NSW.
4. Consider separate processes and criteria for regional areas.
5. Insert provisions into the standard instrument LEP that require the consent authority to be satisfied there is separation of uses, compliance with the building code and management of neighbour impacts where short-term letting proposals do not meet the exempt development criteria or a change of use from residential accommodation to tourist and visitor accommodation is proposed
6. Amend the *Strata Schemes Management Act 2015* and develop model by-laws to increase the ability of owners' corporations to manage the impact of short-term letting and obtain compensation to mitigate adverse impacts.
7. Give strata communities the power to restrict short-term letting in their building, through amendments to the *Strata Schemes Management Act 2015* only where there is strong support, such as a 75 per cent majority.
8. Establish a comprehensive compliance framework including a code of conduct for hosts.

## 2.0 Short-Term Holiday Letting

Short-term letting can have a range of social and economic benefits such as supporting tourism, providing supplementary income for individuals, enabling hosts to meet people from all over the world and injecting money into the local economy. But if it occurs too



often, and in the absence of a resident, it can become a commercial business that may impact neighbours and reduce housing supply impacting on affordability.

According to the *Inside Airbnb* website<sup>1</sup> total *Airbnb* listings in metropolitan Sydney grew from 10,473 in October 2015, to 24,038 in October 2017, 61 per cent of these are entire homes or apartments. In the City of Sydney local government area as at October 2017 there was 5,675 *Airbnb* listings, 61 per cent of which are entire homes.

Short-term letting has the potential to detrimentally impact on amenity and housing affordability if not regulated appropriately. The University of Sydney's Urban Housing Lab recently found that short-term letting platforms have removed 6,000 properties from the long-term rental market throughout NSW<sup>2</sup>. Short-term letting is currently being promoted on the basis that by switching the use of their property from long-term tenancy to a short-term tourist and visitor accommodation, property owners can increase the rate of return, from 4 per cent to 10 per cent. This reduces the supply of residential dwellings and has been shown to drive up residential rents and impacting on housing affordability in high demand areas of Sydney.

### 3.0 Survey of strata communities

There are community concerns about the impacts of short term letting in strata buildings where residents share facilities and neighbours are close. We engaged Woolcott Research in March 2017 to survey strata owners, occupiers and investors across our neighbourhoods to help us better understand the issue. 1001 strata residents and investors were interviewed: 56 per cent were tenants, 38 per cent were owner occupiers and 8 per cent investors. The survey, *Opinions of Short Term Letting within Residential Apartments* is at Attachment A.

The key findings of the research are:

- **Use and support for short-term letting** - 37 per cent of respondents think short-term letting is occurring within their building. Of those, 52 per cent feel personally impacted by short-term letting (19 per cent of total respondents). 15 per cent of respondents have used short-term letting as a host and 48 per cent as a guest. The majority of respondents support short-term letting in a resident's home whilst they are present and on holidays but not when it is a full time investment.
- **Short-term letting is an issue for some, not most** – short term letting is a significant issue for 1 in 6 respondents (16 per cent) and a moderate issue for 1 in 5 respondents (21 per cent). Other issues of strata living such as building defects, maintenance and parking were areas of concern for more respondents than short-term letting.
- **Age is a determinant** - Under 35's are the most likely age group to support short-term letting. 60 per cent of this group supported short-term letting as a full time investment. Over 55's are least supportive, with over

---

<sup>1</sup> <http://insideairbnb.com/>

<sup>2</sup> <http://www.smh.com.au/business/the-economy/housing-affordability-6000-homes-removed-from-rental-market-as-landlords-turn-to-airbnb-20170816-gxxh7l.html>

50 per cent of this group not supporting short-term letting in any situation, including while residents are at home. 77 per cent of under 35's have used short-term letting, compared to 30 per cent of over 55's.

- **Support for strata committee powers** - 64 per cent support strata committees having more power to manage impacts such as anti-social behaviour. There is an even split as to whether strata committees should be able to ban short-term letting in their buildings (42 per cent agreed, 40 per cent disagreed). Again, age is a key determinant of the position of respondents. Around 30 per cent of under 35's agree strata committees should be able to ban short-term letting in their buildings compared to around two-thirds of over 55s.

## 4.0 Regulating short-term holiday letting

The City suggests the NSW Government strike a balanced approach that enables the sharing of a primary dwelling for occasional short-term letting, distinct from the regular commercially focused letting of vacant investment properties, through a simple, user focused planning and registration framework. It is recommended the Government:

- Require the registration of short-term letting properties and hosts, and the advertisement of a registration number, through a simple, automated online process to support the regulatory approach and assist compliance with a code of conduct for hosts
- Define short-term letting as a distinct form of tourist and visitor accommodation that is carried out on a temporary basis in a person's primary residence
- Allow short-term letting without approval (exempt development) when the primary resident is present and for a limited 'holiday' period when the primary resident is absent
- Insert provisions into the standard instrument LEP that require the consent authority to be satisfied there is separation of uses, compliance with the building code and management of neighbour impacts where short-term letting proposals do not meet the exempt development criteria (and therefore require development consent) or a change of use from residential accommodation to tourist and visitor accommodation is proposed
- Provide model by-laws and an effective complaints resolution mechanism for strata communities to manage impacts and recover reasonable costs and
- Amend the *Strata Schemes Management Act 2015* to provide strata communities the choice to live without short-term letting where there is significant and strong support of owners.

The recommended framework balances clarity, transparency and simplicity with reasonable oversight to protect interests of hosts, neighbours and visitors. The parts of the regulatory framework are described in the following sections.

## 5.0 Registration

The growth of short-term letting has been driven by significant technological advances and changes to the way people communicate and do business online. Government should harness technological opportunities to assist the appropriate operation, management and compliance of short-term letting.

The City recommends the NSW Government implement registration process, centrally managed for Fair Trading NSW via a Service NSW online platform with data accessible by relevant compliance authorities. The registration system may be updated annually and would be the gateway to short-term letting, whereby a host could come in, register and obtain all regulatory information related to their proposed short-term letting operation. The host would then be required to provide their registration number in all advertising.

The registration process, combined with the requirement for properties to include their registration number in all advertisements, could enable duration and frequency of visits to be recorded, ensuring that amenity impacts are managed appropriately. This would assist monitoring supply, support compliance from relevant authorities, identify when development consent is needed and flag where a strata community has decided to restrict short-term letting in their building.

If, for example, a host is registering their home (the primary residence) for short-term letting, the following information could be provided to Service NSW:

- Proof of residence;
- Address including strata plan number where relevant;
- Maximum number rooms and guests;
- Host (operator) name;
- Insurance number;
- Business Registration Number (ABN);
- Fire Safety Certificate (where required by the EP&A Regulation 2000);  
and
- Agreement to abide by the Code of Conduct.

Once complete Service NSW would issue a registration number, which provides a unique identifier for the operation. All the platforms would be required to include the registration number on in all advertisements.

It is understood San Francisco have implemented a similar system where only one registration is permitted per person and short-term letting is defined as a rental of all or



some of the primary residential unit for less than 30 consecutive nights<sup>3</sup>. The City acknowledges and can see merit in the registration mechanisms introduced in San Francisco in response to low rental vacancy rates and limited access to affordable, quality rental housing. The registration process in San Francisco has been introduced predominantly to address the issue of housing affordability, aiming to eliminate illegal short-term letting, to prevent housing stock being turned into commercial operations hotels and to manage housing supply.

Registration would assist in implementing planning and strata rules, described in the following sections, including whether the short-term letting was taking place in the primary residence, the number of unhosted days and whether it was allowed in the strata building. Property owners would be permitted to register a maximum of one place of residence and have to show proof the property is their primary residence.

The online registration system could be used to manage short-term letting in residential strata buildings where that strata community has decided to restrict the activity. If an owners' corporation passes a resolution and by-law to restrict short-term letting, the resolution would be referred to Service NSW and the strata plan number would be included in the registration system. A host would be required to enter the strata plan number in the registration but would not be able to complete the registration if it matched a restricted strata plan number in the system.

Registration would also assist in compliance. Short-term letting platforms have systems available for affected residents, hosts and visitors to post issues and complaints as part of an industry-based self-regulation system. However these systems do not seem to extend to issues raised by third parties such as neighbours. Most hosts operate without incident however a simple automated registration system will ensure any incidents can be followed up and will provide transparent and independent oversight.

**Recommendation 1: That the NSW Government establish a simple, automated registration process, centrally managed for Fair Trading NSW via a Service NSW online platform, and require short-term letting advertisements to display a registration number.**

## 6.0 Regulation through the planning system

As well as having a registration system, short-term letting requires a simple planning framework that aligns activities and their risks to the need for assessment and approval.

The *Environmental Planning and Assessment Act 1979* (the EP&A Act) sets the framework for regulation and land use in NSW. Under the EP&A Act, each local council prepares a local environmental plan (LEP) which zones the land to permit or prohibit certain activities. The Standard Instrument LEP contains a common structure, terminology and land use definitions for land use planning in NSW.

---

<sup>3</sup> <https://shorttermrentals.sfgov.org/about>

Key changes recommended to the NSW planning framework include a short-term letting definition to distinguish it from other land uses, allowing minimal impact short-term letting to occur without an approval and controls to ensure reasonable separation of tourist and visitor accommodation and residential uses.

### 6.1 State-wide definition of 'Short-Term Holiday Letting'

The City recommends that the NSW Government should establish a state-wide definition of short-term letting to distinguish the use from other commercial tourist and visitor accommodation activities and enable the development to be allocated to the appropriate approval pathway such as exempt, permitted with consent or prohibited in appropriate situations. This definition will also ensure that short-term letting is carried out in the primary residence, with short-term letting outside the primary residence being classified as 'tourist and visitor accommodation'.

The definition of short-term letting needs to:

- clearly distinguish the use from other commercial tourist and visitor accommodation uses including backpackers' accommodation, bed & breakfast accommodation, farm stay accommodation, hotel or motel accommodation and serviced apartments;
- identify the relationship to residential development by requiring the use to only be permitted in buildings approved for residential use and being used as a primary residence;
- clearly characterise the activity as short-term, temporary and carried out on a commercial basis; and
- Make short-term letting a subordinate term of Tourist and Visitor Accommodation.

It is recommended that the definition does not include qualifiers related to intensity or duration of use as these could change depending on location, context and planning pathway. This would enable different approaches to be adopted, for instance, regional areas that might rely on seasonal holiday accommodation. Short-term letting activity outside the primary residence and in an empty investor property would be classified as a different form of tourist and visitor accommodation use, such as a serviced apartment.

**Recommendation 2: That the NSW Government provide a state-wide definition of short-term letting in planning and strata legislation that distinguishes the use from other commercial tourist and visitor accommodation uses on the basis it is carried out occasionally in the primary residence.**

### 6.2 Exempt Development

The NSW Government should permit short-term letting as exempt development across NSW, subject to criteria to ensure the activity is minimal environmental impact. The exempt development category would clarify that hosting visitors in the primary residence or sharing one's home is a normal part of residential activity and effectively

an ancillary use. This enables short-term letting to deliver positive social and economic benefits with minimal regulatory costs.

The following development standards are appropriate to achieve this aim for the metropolitan area:

- only permitted in a building approved and currently used for residential accommodation;
- where the primary resident is present, there be no limit on number of days;
- where the primary resident is absent, activity limited to a specified maximum number of days (either 28, 45, or 90 days) in a calendar year (whether or not the days are consecutive);
- limit of 2 adults per bedroom, no limit on children below 16 years old;
- limit total number of adult guests to 5;
- building required to meet fire regulations;
- no alterations or additions permitted to the dwelling unless otherwise exempt;
- operation needs to comply with a code of conduct;
- registration with Fair Trading NSW.

There should be a different system in place for metropolitan and regional areas. Metropolitan areas have a greater amount of density, including strata title and short-term letting is likely to operate all year round, for a range of reasons, including corporate visits, whereas in regional areas, short-term letting is likely to occur on a seasonal basis, more likely to occur in school holidays and operate in areas with a lesser density.

**Recommendation 3: That the NSW Government permit short-term letting as exempt development in metropolitan areas, subject to the above criteria.**

**Recommendation 4: Government consider separate processes and criteria for regional areas.**

#### **6.2.1 Presence of the primary resident**

The presence of the primary resident assists managing impacts and will ensure the activity is minimal environmental impact. Requiring short-term letting to be in the primary residence ensures housing supply is maintained and housing affordability is not made worse. In London and Paris, 90 day and 120 day limits respectively have been placed on short-term letting for this reason.

The exempt development provisions should limit the total number of days short-term letting can occur when the primary resident is not present and allow the activity without limit when the primary resident is present.

The Options Paper notes that short-term is generally defined as 45, 60 or 90 consecutive days where it is addressed in planning controls. The paper also notes that, according to Airbnb, in Sydney the majority of hosts rent their residences for 37 nights per year. The impacts surrounding short-term letting are largely managed by the presence of the primary resident. Where the primary resident is present, guests tend to behave respectfully and a person is present to help manage issues. However, problems are more likely to arise and are more difficult to manage when the primary resident is absent.

The City suggests no limit on letting days if the primary resident is present. Where the primary resident is absent, the City recommends that letting days should be limited to a community agreed definition of 'holidays'. Depending on community feedback, the limit could be 28 days (typical annual leave), 45 days (approximate length of the summer school holidays), or 90 days (approximate total school holidays or about 85 per cent of weekends a year). The number of days could differ for metropolitan and regional areas.

### **6.2.2 Occupancy**

Limiting the number of visitors permissible when the development is exempt reduces the likelihood of noise, traffic, parking, party houses and other impacts. The City recommends the number of people should be limited to 2 adults per bedroom and the total number of adult guests should be limited to 5.

## **6.3 Development Consent for short-term letting**

As short-term letting is recommended to be a defined land use and a type of tourist and visitor accommodation, as described in Section 6.1, Councils would be able to decide when the use is permitted with consent or prohibited in each zone depending on local context and community views.

Currently tourist and visitor accommodation is generally permitted in mixed business and residential zones such as B4 mixed use and B2 local centre, so short-term letting would also be permitted.

Most forms of tourist and visitor accommodation are prohibited in residential only zones. Short-term letting would also be prohibited, unless a council decides to make it permitted with consent, separate to other forms of tourist and visitor accommodation. This is the approach taken for bed & breakfast accommodation which is permitted in residential zones. It is noted that short-term letting consistent with the exempt criteria could be carried out regardless of any zoning prohibition.

Development standards for short-term letting that require consent, such as occupancy and days, could be incorporated in the miscellaneous provisions under Part 5 of the LEP or through DCPs.

## **6.4 Short-term letting in mixed business and residential zones**

The City recommends short-term letting should be restricted in multi-dwelling housing, residential flat buildings or other forms of strata development in mixed zones which enable both residential and commercial uses. In Sydney LEP 2012, these zones include B2 Local Centre, B4 Mixed Use and B8 Metropolitan Centre.

As tourist and visitor accommodation is generally permitted in mixed business and residential zones, a person could apply to carry out more intensive forms of short-term letting in a serviced apartment within a residential flat building. A single apartment

within an approved residential building should not be allowed to be used as commercial tourist and visitor accommodation.

Additional planning controls are needed to ensure the separation of commercial tourist and visitor accommodation from residential uses.

Currently, for serviced apartments or tourist and visitor accommodation occurring in residential or buildings with a mix of uses, the City requires separation of uses, including separate entrances and lift access to address amenity impacts and enable building code compliance.

This should be achieved by inserting provisions into the standard instrument LEP that require the consent authority to be satisfied there is separation of uses, compliance with the building code and management of neighbour impacts where short-term letting proposals do not meet the exempt development criteria or a change of use from residential accommodation to tourist and visitor accommodation is proposed. Inserting the provision into the standard LEP is appropriate for consistency and because it relates to uses.

Application of the provision could be limited to relevant zones and residential building types. This provision would, for example, provide guidance for buildings which accommodate hotel rooms or serviced apartment on the lower levels and residential above which are common in high density CBD environments. It would also ensure a single unit within a residential flat building does not become a commercial serviced apartment. Councils could provide guidance in DCPs as to how separation of uses and management of neighbour impacts are achieved. Short-term letting that meets the exempt development criteria would not be affected by this provision.

**Recommendation 5: Insert provisions into the standard instrument LEP that require the consent authority to be satisfied there is separation of uses, compliance with the building code and management of neighbour impacts where short-term letting proposals do not meet the exempt development criteria or a change of use from residential accommodation to tourist and visitor accommodation is proposed**

## **6.5 Restricting short-term letting outside the primary residence**

Evidence collated from research by Woolcott Research and Engagement and via the *Sydney Have Your Say* webpage, has highlighted considerable community concern for this type of short-term letting in the City. Forty-two per cent of Sydney inner-city residents oppose the operation of residential properties for the purposes of short-term letting as a full-time investment.

Short-term letting occurring outside the primary residence is a commercial use which is inconsistent with residential character delivering unacceptable impacts on amenity and housing affordability.

The City recommends short-term letting of a dwelling that is not used as a primary residence (that is, an empty investor property) is characterised as tourist and visitor accommodation. In these circumstances, the use should be regulated through existing LEP zoning provisions.



## **6.6 Construction Code compliance**

Under current building code regulations, technically, such a change of use from residential to tourist and visitor accommodation would require a physical upgrade of fabric and essential services within the building due to the change of building classification under the National Construction Code (NCC).

However, the City is of the view that short-term letting carried out in the primary residence should not require a change of building use, as the activity will be temporary, residential, usually have the primary resident present and unlikely to be building-wide at any one time.

Should a proponent seek development consent for short-term letting, the consent authority is required to assess the fire protection and structural capacity of the building and determine whether the fire safety systems are appropriate for the building's proposed new use (cl. 93 EP&A Reg). Similar provisions apply when a complying development certificate is issued (cl 131). It is noted that the Australian Building Codes Board (ABCB) has undertaken to look at short-term letting in more detail next year.

Recommendation 5 under section 6.4 above requires the consent authority to be satisfied the building code is met where there is a more intensive form of short term letting or the change of use from residential accommodation to tourist and visitor accommodation.

The Government should also work with the appropriate stakeholders to seek reform of the NCC to remove this unnecessary restriction.

## **7.0 Strata Regulation**

The changes to the planning system need to be complemented with new forms of strata regulation to assist strata communities mitigate the potential adverse impacts on neighbours within a strata building.

The City of Sydney is one of the most densely populated local government areas in Australia, with around 75 per cent of residents living in strata titled residential buildings. Strata communities have greater sensitivity to impacts due to proximity of neighbours and common ownership and use of shared spaces. The need for a distinct response to issues faced by strata was recognised by the NSW Parliamentary Enquiry.

The City's research and consultation with strata communities has found that issues relating to amenity impacts, compensation for damage to common areas, recovery of insurance and other costs need to be managed. The City also recommends that strata communities have the choice to restrict short-term letting in their homes where there is strong support.

### **7.1 Managing Impacts**

The City supports improved powers for owners' corporations to manage and respond to the impacts of short-term letting, so as to preserve the amenity of neighbours. Short-term letting operating in strata buildings has the potential to create adverse impacts such as increased noise created by visitors, antisocial behaviour, waste increase and parking issues. These issues generally happen within the common property. The City's short-term letting survey concluded that 64 per cent support strata committees having more power to manage impacts.

Amenity impacts in strata buildings are of greater magnitude and intensity than other residential uses, such as single dwellings and attached and detached dual-occupancies. This is due to the density of strata buildings, the proximity of living areas in residential flats to those of neighbours, the nature of common property and dynamics of co-ownership, which increase sensitivity to impacts and extend the impacts to more people. Therefore, short-term letting occurring in strata buildings requires additional regulatory measures. Particularly as, unlike other forms of tourist and visitor accommodation such as serviced apartments and hotels, most residential strata buildings do not have on-site staff who can respond promptly to issues arising from short-term letting as they arise.

Strata corporations need the legislative power to impose by-laws which limit or control hours of access to common areas such as foyers, gymnasiums and pools, to limit check in and check out times for guests of short-term letting, and the ability to define standard pick up/drop off locations for keys and swipe cards. Strata should be able to set and implement by-laws related to access, common facilities and amenities.

**Recommendation 6: That the NSW Government amend the *Strata Schemes Management Act 2015* and develop model by-laws to increase the ability of owners' corporations to manage the impact of short-term letting and obtain compensation to mitigate adverse impacts.**

## 7.2 Providing strata with the choice to restrict short-term letting

Strata communities should also have the choice as to whether or not short-term letting can occur in the building they own. Any decision to restrict short-term letting should have strong support of a significant majority of owners within the building.

Representatives of the strata community have expressed to the City that short-term letting leads to increased wear and tear of common property, increased electrical and maintenance costs and increased generation of waste due to more intensive use of the building and the common areas. This leads to additional expenses for the owners' corporation, which is then borne by apartment owners and long term renters, many of whom may not be receiving the financial benefits of short-term letting.

Section 139 of the *Strata Schemes Management Act 2015* says that by-laws may not be harsh, unconscionable or oppressive and they may not prohibit or restrict, transfer, lease, mortgage or other dealing related to a lot. In 2017, an apartment owner within a strata complex provided her apartment for short-term holiday letting while she was away. The strata tried to prohibit the activity occurring, saying she was in breach of strata by-laws. The NSW Civil and Administrative Tribunal determined that strata are unable to restrict short-term letting. This recent case demonstrates that under the current strata legislation, owners' corporations are powerless to impose by-laws to restrict the use of individual lots for short-term letting.

Given the potential impacts on strata communities, the *Strata Schemes Management Act 2015* should be amended to provide owners corporations with the choice over whether short-term letting can occur in their building. If there is overwhelming support within a strata community to restrict or prohibit short-term letting in their building, this desire to do so should be respected. This choice currently exists for Torrens title dwellings but not strata dwellings. It is considered that subject to further consultation by NSW Government, a 75 per cent majority could be an appropriate threshold for

passing a by-law to restrict short-term letting. Consideration should be given to whether such a power might exclude primary residences when the host is present (i.e., use of second bedroom).

Such a by-law would be available to any potential purchasers of units in the strata scheme so that they are aware of the restriction at the time of purchase. A requirement could be imposed for a similar notification to potential tenants of buildings affected by such a by-law.

A strata's decision to pass a by-law restricting short-term letting would be passed onto NSW Fair Trading and entered into the short-term letting registration system. If the property owner wanted to register a short-term letting operation in a strata building, which had passed a by-law to ban the use in their building, upon visiting Service NSW and providing the strata plan number, the database would flag that the use had been restricted in the building, which would not allow the registration to proceed.

**Recommendation 7: That strata communities be given the power to restrict short-term letting in their building, through amendments to the Strata Schemes Management Act 2015 only where there is strong support, such as a 75 per cent majority. Consideration should be given to whether such a power excludes primary residence apartments when the host is present (i.e., use of second bedroom).**

### 7.3 Cost Recovery

The *Strata Schemes Management Act 2015* should also be amended to enable an owners' corporation to recover costs from the management and impacts of short-term letting. This could be enacted by enabling provisions to enable owners' corporations the discretion to impose greater levies to cover increased insurances, imposing provisions which enable vicarious liability on lot owners for the actions of short-term visitors, introducing civil penalties for creating a nuisance, or by expanding the powers of the NSW Civil and Administrative Tribunal to efficiently deal with problems arising from short-term letting. Adverse impacts from additional wear and tear from short-term letting may also be able to be mitigated at the strata level, through the NSW Civil and Administrative Tribunal.

## 8.0 Compliance

Compliance is a key part of reducing adverse impacts on surrounding residential dwellings, particularly in strata buildings.

The registration system proposed in Section five will assist all parties monitor short-term letting. It can be used to monitor duration and land use permissibility. It can provide contact details of hosts, distribute a code of conduct and register breaches of laws and by-laws. Registering breaches against a host or property would enable warnings to be issued, registrations to be suspended and restrictions on registration for repeat offences to be enforced. Suspensions and restrictions would lock a person or property out of the registration system, meaning the exempt development pathway would not be available (as registration is proposed to be a requirement for exempt development).

Complaints would need to be investigated by the relevant authority depending on the type of issue. For example, matters relating to land use, noise and amenity under the EP&A Act would be dealt with by councils, matters relating to offensive behaviour and property damage would be dealt with by the Police and matters relating to revoking registrations would be dealt with by Fair Trading NSW. Where short-term letting is being undertaken in strata buildings and it is restricted, causing a nuisance or causing damage to common property, the owners' corporation should be able to take action via the NSW Civil and Administrative Tribunal.

If the volume, intensity, frequency or duration of the use exceeds the defined exempt criteria, affected parties require a process for registering and resolving issues. For example, if a property owner were to have registered a short-term letting operation in a strata building, however, neighbours are of the view it has exceeded the maximum number of days per year, they should be able to make a complaint by contacting Fair Trading NSW through the Service NSW portal, quote the registration number, explain the reasons it is operating outside the exempt criteria. If these complaints are validated, action could be taken, for example, the first two substantiated complaints of a serious nature could incur a fine and any 3<sup>rd</sup> substantiated complaint could result in cancellation of the registration. The cancellation of a licence could be an effective compliance mechanism where an operator may be identified as acting unscrupulously.

**Recommendation 8: That the NSW Government establish a comprehensive compliance framework.**

## **8.1 Code of Conduct**

A mandatory code of conduct, such as the *Holiday Rental Code of Conduct*, originally introduced in 2012, is likely to be useful as part of the registration system. The City also sees merit in the *Friendly Buildings* program, better education of users and hosts of short-term letting and the enforcement of a transparent and responsive complaint management system forming part of the code of conduct.