

31 October 2017

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

Dear Deborah Brill

Re: Short- term holiday lettings Options Paper

I am writing in response to your call for submissions on the Options Paper for Short-term holiday lettings. The issues I raised in Council's submission of 30 October 2015 to the Inquiry into the adequacy of the regulation of short-term holiday letting (Submission No. 57) are still relevant. The main points in that submissions related to:

- The need for a standard, consistent definition
- Potential impacts of short-term holiday lettings linked to length of stay
- Standardization of exempt development
- The impacts resulting from short-term holiday lettings in houses vs flats
- The difficulties of enforcement.

I have attached our previous submission for further consideration.

The Council considered a report on your Options Paper at its meeting on 3 October 2017 and resolved to support the preparation of a submission. I have attached the resolution of the Council for your information.

As you are aware, the impact of short-term holiday letting on communities varies depending on location, intensity, frequency and type. Mosman has over 380¹ Airbnb listings, up from 200 in 2015, demonstrating that our numbers are growing and are significant enough to have an impact on existing development and residents. Like most Councils in Sydney, Mosman is constrained by the manner in which short-term holiday letting is managed under the planning system.

I would urge the State government to consider carefully the experiences of cities overseas and the way in which authorities have addressed issues, and in some cases resolved matters, with a high level of success. Based on experiences overseas, and our local experience, I consider that a combination of registration and regulation is the model the State should be moving towards.

I note the range of options outlined in the Options Paper, however, this submission will focus on the following:

¹ Source: Inside Airbnb, 15 September 2017

1. Permissibility
2. Regulation and Exempt development
3. Registration
4. Compliance and enforcement

1. Permissibility

It is quite clear that short-term holiday lettings are generally prohibited in residential zones under Standard Instrument LEPs by virtue of the definition of *tourist and visitor accommodation*. I would support the idea in the Options Paper that a new definition is needed, however, the definition proposed in the Options Paper would not resolve the matter. This needs more consideration.

I note that LEPs currently include definitions for *serviced apartments* and *bed and breakfast accommodation*, and yet the Options Paper and the Legislative Assembly Inquiry report are silent on these uses and the applicability and relevance of these terms.

2. Regulation and Exempt development

Once a clear, unambiguous definition has been established, then it is appropriate for certain developments to be considered as exempt development.

An approach that should be canvassed is to distinguish between metropolitan areas and coastal or regional areas. Holiday lettings in regional towns and villages have been operating for years and are an established part of the tourism sector. The proliferation of short-term holiday lettings in metropolitan Sydney has been a more recent experience and due to the nature of the city needs a different approach.

Under the exempt provisions I would consider that limiting the number of days per year that a property is available for short-term holiday lettings is an appropriate response. In cities overseas such as Amsterdam, Berlin and London there are tight restrictions on the availability of lettings. Amsterdam has secured the co-operation of Airbnb to limit rentals to 60 days per year. These cities provide a model for Sydney and should be investigated further by the Government. The State should seek the co-operation of the online platforms to ensure effective self-regulation. Without this co-operation the impacts on residents in residential flat buildings will continue to be a nuisance.

Seeking and obtaining the co-operation of the platform providers is an opportunity the State should be pursuing. As this is more of an issue for metropolitan Sydney, it may be that the Greater Sydney Commission could take the lead on this issue.

3. Registration

A system of registration could serve to address the issues of enforcement and resourcing.

- **Enforcement:** If all short-term holiday lettings were required to be registered by the online platforms before they could be listed, then local and State authorities would have a database of properties operating in the area as short-term holiday lettings. This would reduce the burden of proof for the purposes of complaint follow-up and enforcement of regulations.
- **Resourcing:** registration should be associated with a fee that should be collected by the online platform on behalf of local councils. Councils could use this revenue for providing additional services and resources associated with the use, for example, additional waste collection; and funding the employment of inspectors to ensure compliance.

These measures are in place elsewhere, for example Amsterdam, and are working successfully.

4. Compliance and enforcement

In any scenario where the State is considering imposing a new regulatory regime it is very important for it to consider how such regulations would be monitored and enforced. The burden of proof required for successful prosecution of illegal short-term holiday lettings is currently too high for councils to proceed in a cost effective way.

As resolved by the Council, it is considered that there is a need for more practical and enforceable regulations with greater penalties for short-term holiday lettings in residential flat buildings where it has been prohibited by the Owners Corporation of that building.

Conclusion

The opportunity to act before short-term holiday lettings become a major issue in Sydney is available now. Tourist cities like Venice and Berlin waited until the issue was out of control. The majority of residential accommodation in Venice is now used for short-term holiday lettings, resulting in a shift in what is considered the local community and a 'real' city. Berlin experienced protests and rallies objecting to the spread of short-term holiday lettings.

It is clear from the Options Paper that the State would like to tread softly on this issue, however, our experience is that regulation is needed to protect the amenity for permanent residents and to provide for additional services. In addition, the Government should be investigating this largely unregulated sector which provides no protection for people working in it. Further research is needed, in particular the effectiveness of planning controls already in place in local government areas that have local provisions in their LEPs.

Thank you for the opportunity to again provide comment. I can be contacted on 9978 4041 should you require further information.

Yours sincerely



Linda Kelly
MANAGER URBAN PLANNING

Attachment:

Mosman Municipal Council
Civic Centre
Mosman Square
PO Box 211
Spit Junction 2088
Telephone 02 9978 4000
Facsimile 02 9978 4132
ABN 94 414 022 939

council@mosman.nsw.gov.au
www.mosman.nsw.gov.au

30 October 2015

Mr Glenn Brookes MP
Committee Chair, Committee on Environment and Planning
Parliament of New South Wales
Macquarie Street
SYDNEY NSW 2000

Dear Mr Brookes

Re: Inquiry into the adequacy of the regulation of short-term holiday letting in NSW

I refer to your call for submissions to inform Committee members about how Mosman Council feels about the issue of short-term holiday lettings. Mosman is located on the foreshores of Sydney and Middle Harbours, with beaches, Sydney Harbour National Park, access to boating recreation and extensive views of the Heads, Harbour and the city making it a highly desirable holiday destination. There are over 200 online listings of properties in Mosman available for short-term holiday lettings. A number of recent complaints regarding the conduct of holiday lettings and their effects on neighbourhood amenity have highlighted shortcomings with the current planning and regulatory framework.

Council welcomes the Inquiry by the Committee of Environment and Planning and the Government's commitment to addressing this issue.

This use goes largely unnoticed and only in the event of an occasional complaint is Council made aware of a short-term holiday letting. Council is seeking clarity on this issue in terms of land use planning terms, permissible land uses, including exempt development, and realistic enforcement and prosecution standards. Council is also of the view that the use should be distinguished between whether it is conducted in dwelling houses or in dwellings within residential flat buildings, and whether the business is conducted by the owner/occupier or absent landlord.

I note the six points of the terms of reference, however, this submission will focus on:

e) Regulatory issues posed by short-term letting including customer safety, land use planning and neighbourhood amenity, and licensing and taxation.

1. Definitions of land use terms

In the absence of a definition of "short term holiday letting" most NSW local environmental plans (LEP) fall back on the established terms in the LEP Dictionary, like "tourist and visitor accommodation" which is a prohibited use in most low density residential zones.

Some local government areas have amended their LEPs to allow short term holiday lettings as exempt development and included a definition of the term. The difficulty with this approach is there is no consistency. The Standard Instrument LEPs are supposed to include a consistent

Proud to be Mosman
Protecting our Heritage
Planning our Future

Mosman Council Submission

Page 2
30 October 2015

Dictionary of terms in all LEPs however there are now different terms and different definitions relating to this issue. For example:

- Gosford LEP: *short-term rental accommodation*
- Pittwater LEP: *short term holiday rental accommodation*
- Lake Macquarie Planning Proposal: *short-term rental accommodation* (same terminology but different definition to Gosford)
- Great Lakes Planning Proposal: *short-term tourist and visitor accommodation*
- Wingecarribee LEP: *holiday accommodation*

2. Period of rental

The effect of short-term letting on neighbourhoods may be linked to the length of tenure. Some of the definitions referred to above specify periods of no more than 60 or 45 days, or less than 3 months. Generally the very short stays are more likely to disturb permanent residents.

3. Exempt development

One way of providing certainty and consistency across the State would be to standardise exempt development on this issue. The councils listed in Point 1. above, have incorporated exempt provisions in their respective LEPs for short-term holiday lettings.

4. Dwelling houses vs dwellings in residential flat buildings

Council is of the view that planning, regulation and enforcement of short-term holiday lettings is better suited to houses rather than flats. Amenity issues are not as problematic and less permanent residents are potentially adversely affected. Issues relating to car parking, waste, internal access to the building and security are concerns when there is a high turnover of visitors in a residential flat building.

5. Standard of evidence required

Council has attempted to initiate enforcement proceedings regarding the alleged use of premises for short-term holiday lettings, however, it was found that the burden of proof was too high for Council to proceed in a cost effective way. It is considered that this is an area that needs to be addressed by the Committee and it should consider whether the evidentiary standard should be lowered.

I note that the issue of short-term holiday lettings has had traction in the media this year and it is timely that this Inquiry is being held. While some councils have tried to address the issue through amending planning regulation for their areas it is an opportunity for the State to show leadership and give sound and considered direction for local government to provide market opportunities for owners but not to the detriment of neighbourhood amenity or safety.

Thank you for the opportunity of providing comment. I can be contacted on 9978 4041 should you require any further information.

Yours sincerely

Linda Kelly
MANAGER URBAN PLANNING

Attachment:

**Mosman Council Resolution Item
3 October 2017**

EP/55: Short-term Holiday Lettings Options Paper (EP)**RESPONSIBLE OFFICER: Manager Urban Planning**

EXECUTIVE SUMMARY

In response to the NSW Government Legislative Assembly Inquiry into the Adequacy of the Regulation of Short-term Holiday Letting in NSW in 2015/2016 and its subsequent report, the NSW Departments of Planning and Environment, and Fair Trading have prepared an Options Paper with ideas to deliver an effective approach to short-term holiday letting. The Paper is currently on public exhibition.

This report reflects on the issues Council raised in October 2015 in its submission to the Inquiry and whether the ideas presented in the Options Paper would effectively address the impacts on the Mosman community. There are over 380 Airbnb listings in Mosman which represents a substantial increase from 200 listings in 2015. The impacts of short-term holiday lettings are experienced more especially in flats rather than houses, however, the number of complaints are relatively low.

Planning is struggling to regulate short-term holiday lettings within existing structures. In order to address this, the Options Paper included some ideas for comment including:

- Self-regulation
- Regulation for strata schemes
- Regulation through the planning system
- Registration and licensing

It is recommended that a submission be prepared to ensure Mosman's position is reinforced by any changes by the State.

OFFICER'S RECOMMENDATION

That Council supports the preparation of a submission responding to the ideas presented in the Short-term Holiday Lettings Options Paper July 2017, addressing the following issues and advocating the position taken in this report:

1. Planning legislation:
 - The need for a definition that is standard, enforceable and provides certainty. The one proposed is not considered to be suitable or useful
 - Standardised exempt development provisions as proposed by the Legislative Assembly committee report into the Adequacy of the Regulation of Short-term Holiday Letting in NSW, October 2016
 2. Length of stay - urge the State to seek the co-operation of online platforms to ensure effective self-regulation. Without this co-operation the impacts on residents in residential flat buildings will continue to be a nuisance
-

3. Further research into the impacts of planning regulations. Recommendations are being considered by the State Government without sound, independent evidence in the form of research into the NSW short-term holiday letting sector, in particular the effectiveness of planning controls already in place in local government areas that have local provisions in their LEPs
-

Background

Short-term holiday lettings are a fast growing part of the NSW economy, largely as a result of on-line booking platforms like Airbnb. Its rapid growth has been ahead of the State legislators, local regulators and researchers. There is evidence of concern in the community about the impacts of short-term holiday lettings in established residential areas. In order to address the issue the State Government held a Parliamentary Inquiry into the adequacy of the regulation of short-term holiday letting in NSW in 2015/16. The Inquiry attracted 212 submissions from local councils, members of the public, online platform providers (eg Stayz), industry groups (eg Real Estate Institute of NSW) and academics. The Committee released its findings and recommendations in a report dated October 2016. The Government's response to the Inquiry was released in April 2017 followed by an Options Paper in July 2017 which is currently on public exhibition.

Mosman submitted a submission to the Inquiry in October 2015 (copy attached) following a Councillor workshop on 22 September 2015 in which Councillors considered the issues relating to Mosman. In particular, Councillors formed the view that short-term holiday lettings were better suited to houses rather than flats as amenity issues were more profound in flat buildings.

Current Position

Short-term holiday lettings are currently regulated by the planning system in an adhoc way. Local environmental plans (LEPs) include a standard definition of "tourist and visitor accommodation" which is taken to include short-term holiday lettings. Some NSW councils have included additional definitions and controls in their LEPs in an attempt to provide more certainty and an ability to regulate the use more effectively, for example Pittwater, Great Lakes, Port Macquarie and Gosford.

The concentration of short-term holiday lettings in Sydney tends to be in areas close to the City, beaches and other tourist attractions mainly on the eastern part of the metropolitan area (refer to Figure 1). Mosman has over 380 listings, compared with around 200 at the time of Council's submission in October 2015, (Source: Inside Airbnb 15SEP2017). This demonstrates significant growth in that period. The Options Paper found that demand for short-term holiday lettings appears year-round and is mostly apartment based.

The Options Paper included consideration of the current regulatory framework in NSW and some approaches taken overseas; the impacts associated with short-term holiday lettings; as well as some options for future regulation including:

- Self-regulation
- Regulation for strata schemes
- Regulation through the planning system
- Registration and licensing

The Options Paper is available for public comment until 31 October 2017.



Figure 1: Airbnb listings Source: Inside Airbnb 15 Sept 2017

<http://insideairbnb.com/sydney/?neighbourhood=Mosman&filterEntireHomes=false&filterHighlyAvailable=false&filterRecentReviews=false&filterMultiListings=false>

Relationship with MOSPLAN

Responding to Government policy is part of the recurrent tasks in Program 3: Built Environment in MOSPLAN.

Comment

The impacts of short-term holiday lettings include:

- Effects on residential amenity (noise, security, waste collection etc)
- Availability of longer term rental housing
- Housing affordability
- Growing sector of tourism sector of economy
- Additional income for property owners

Not all these matters are local factors which affect Mosman. The purpose of this report is to focus on matters of local concern regarding this larger issue.

The main points of Mosman's 2015 submission were:

- The need for a standard, consistent definition in all LEPs.
- Potential impacts of short-term holiday lettings linked to length of stay.
- Standardisation of exempt development

- The impacts resulting from short-term holiday lettings in houses vs. flats
- The difficulties of enforcement

These issues are addressed in the Options Paper to varying degrees. In light of the new information presented in the Options Paper our submission subheadings are revisited below.

1. Definitions of land use terms

The current definition for tourist and visitor accommodation in Mosman LEP2012 (from the Standard Instrument) is:

"*tourist and visitor accommodation*" means a building or place that provides temporary or short-term accommodation on a commercial basis, and includes any of the following:....."

OPTIONS PAPER

The position in the Options Paper is that the Government considers that short-term holiday letting is acceptable in a residence up to a point that it becomes a more intensive commercial type of use. The suggested definition is:

short-term holiday letting means a dwelling, or part of a dwelling, that provides short-term accommodation, but does not include tourist and visitor accommodation.

PLANNING COMMENT

It is considered that the introduction of such a definition would not assist in managing and regulating short-term holiday lettings because the distinction would be difficult to distinguish. The current LEP definition, if taken literally, prohibits short-term holiday lettings in zones where tourist and visitor accommodation are prohibited, for example R2 Low Density Residential in Mosman, because the letting is a commercial transaction. The Options Paper makes reference to 'a more intensive commercial type of use'. This is vague and difficult to determine, and would continue the uncertainty around permissibility. No guidelines about how this might be determined are given.

2. Period of rental

This relates to both the length of tenure and the frequency of letting. It is generally considered that the very short stays are more likely to disturb permanent residents. Regulating the use through limiting the total days per year that a dwelling can be used as a short-term holiday letting would control the degree to which a dwelling is used as short-term holiday letting and retain its primary use as long-term residential. This is the approach taken in other cities overseas and works effectively provided the online platform co-operates. The University of Sydney has undertaken research into the impacts of Airbnb and notes that cities such as New York, Paris, London, Berlin and San Francisco have been more responsive to implementing regulations that are impacting the supply of rental properties in these cities.

OPTIONS PAPER

The Options Paper acknowledges that limiting the maximum length of each stay as well as setting a limit on the total days per year that a dwelling can be used as a short-term holiday letting may address some issues such as noise or social impacts, it cautions that limitations like these may stifle demand and impact on the industry.

PLANNING COMMENT

It is considered that the State government should use the strategies that are working overseas and work with the online platforms to get their co-operation in limiting the extent to which dwellings are used as short-term holiday lettings.

3. Exempt development

Council's position has been that there should be a standardisation of exempt provisions across the State. The success of this approach is dependent upon the definition of the use being clear. Among the Legislative Assembly Committee's recommendations was that certain types of short-term holiday lettings should be exempt development. This position by default acknowledges that without these provisions short-term holiday lettings would require development consent or alternatively it may be prohibited.

4. Dwelling houses vs dwellings in residential flat buildings

The experience in Mosman where impacts from short-term holiday lettings such as noise, waste, car parking, fire safety and emergency access are more problematic in residential flat buildings, is consistent with the findings from the Inquiry. The Committee was persuaded that strata schemes present a special case and that the impact on residents was real, serious and disturbing.

OPTIONS PAPER

The Options Paper addressed this issue, however, its proposals were non-committal, reflecting the NSW Government's stated position that it is committed to providing a balanced regulatory approach to the issue of short-term holiday lettings in strata schemes. Options included amending strata law provisions to address the impact of short-term holiday letting, and allowing strata schemes to prohibit or restrict short-term holiday letting in their schemes.

PLANNING COMMENT

The experience of residents and local councils is that dwellings in strata schemes which are used for short-term holiday letting magnify impacts on other residents in the building such as noise, parking, waste and security. The Options Paper fell short of suggesting a prohibition of short-term holiday lettings in residential flat buildings.

The idea to amend the strata law provisions to address the impact of short-term holiday letting relies on the owners' corporation being able to take action and gather evidence for breaches of by-laws. Council's experience has been that gathering evidence can be difficult. Negative impacts on residents' amenity may continue despite these provisions. The other idea to allow strata schemes to prohibit or restrict short-term holiday letting in their schemes has little support. It would effectively transfer the responsibility of regulating land use from government to owners corporations. The vexed planning issue of definition and permissibility needs to be addressed to provide certainty.

5. Standard of evidence required

The burden of proof required for successful prosecution is too high for councils to proceed in a cost effective way. The Committee recommended that a compliance system for short-term holiday lettings be developed under the *Environmental Planning and Assessment Act 1979*. This issue was only lightly touched on in the Options Paper. The Inquiry found that the numbers of complaints regarding short-term holiday lettings were not high but given the rapid growth in the industry and its location in established residential areas it is likely that the volume of complaints would increase.

Council's resolution of 4 August 2015 regarding its enforcement and compliance response to short-term holiday lettings was:

COUNCIL RESOLUTION

Motion Moline/Sherlock

1. *Council continue to investigate complaints about short term rentals on a case by case basis however only take enforcement action if there is shown to be a risk to life*
2. *On receipt of a complaint regarding short term rentals the Council advise the Owner's Corporation (if applicable) to commence its own action against the relevant owners through the NSW Civil and Administrative Tribunal (NCAT) for breach of any by-laws which exclude overnight holiday letting*
3. *All concerned parties in any current investigations be advised in writing of Council's recommendations*
4. *That Council write to the NSW Government requesting that clearer rules re short term rentals be put in place. These rules should be effective and efficient to enforce at Local Government level under the LEP*

CARRIED UNANIMOUSLY

It is considered that item 4 of the resolution has not been adequately addressed in the Options Paper.

Conclusion

There is general agreement that the NSW land use planning framework is not structured to regulate short-term holiday lettings (for example, City of Sydney, Leichhardt, Waverley, Blue Mountains). There has been limited independent research into the impacts of short-term holiday letting, the effectiveness of planning controls in regulating the use and managing the impacts, its effect on rental housing supply, its effect on housing affordability and impacts on neighbourhoods in the less tangible area of understanding any loss of a sense of community as a result of the growth of short-term holiday letting on some areas of Sydney.

The conclusion drawn from University of Sydney research is that local planners will need to revise zoning and residential development controls to distinguish between different forms of short-term holiday lettings enabled by Airbnb (and other online platforms) and to manage their differential impacts on neighbourhoods and permanent rental housing. The ideas presented in the Options Paper appear to be focussed on a non-interventionalist approach that supports the status quo in recognition of the value of the sector to the State's economy.

Recommended Action

Short-term holiday lettings are a significant use in Mosman due to the attractive nature of the area and its proximity to the city centre. The potential for impacts from short-term holiday lettings to increase is likely due to the recent growth in online listings. The issues raised by Council in October 2015 are still relevant. The Options Paper currently on exhibition does not provide certainty in the ideas presented that the issues previously raised would be satisfactorily addressed.

It is therefore recommended that a submission be prepared in response the Options Paper reiterating Council's concerns and advocating for a definition that provides certainty in its interpretation.

Recommendation endorsed by Director Environment and Planning.

ATTACHMENTS

Circulations

- Submission to Inquiry into the adequacy of the regulation of short-term holiday letting in NSW
-

COUNCIL RESOLUTION

Motion Bendall/Willoughby

That the Officer's Recommendation be adopted.

Amendment Moline/Sherlock

That Council supports the preparation of a submission responding to the ideas presented in the Short-term Holiday Lettings Options Paper July 2017, addressing the following issues and advocating the position taken in this report:

1. Planning legislation:
 - The need for a definition that is standard, enforceable and provides certainty. The one proposed is not considered to be suitable or useful
 - Standardised exempt development provisions as proposed by the Legislative Assembly committee report into the Adequacy of the Regulation of Short-term Holiday Letting in NSW, October 2016
 - The need for more practical and enforceable regulations with greater penalties for short term holiday lettings in residential flat buildings where it has been prohibited by the Body Corporate of that building
2. Length of stay - urge the State to seek the co-operation of online platforms to ensure effective self-regulation. Without this co-operation the impacts on residents in residential flat buildings will continue to be a nuisance.
3. Further research into the impacts of planning regulations. Recommendations are being considered by the State Government without sound, independent evidence in the form of research into the NSW short-term holiday letting sector, in particular the effectiveness of planning controls already in place in local government areas that have local provisions in their LEPs.

CARRIED UNANIMOUSLY and upon being put as the Motion CARRIED UNANIMOUSLY
