

SUBMISSION

Regarding Short-Term Holiday Letting in NSW
Options Paper July 2017

**1. General****a) Comments**

- i. In recent years, Short-Term Holiday Letting (STHL) has increasingly become apparent in Willoughby as it has in other parts of Sydney and NSW.
- ii. It is considered that there are both potential benefits and adverse impacts associated with the provision of STHL.
- iii. The growth of STHL has outpaced regulation, resulting in a lack of a policy framework at the local and state levels around how to manage STHL.

b) Recommendations

- i. The NSW Government move towards establishing a standardized approach to STHL is supported.
- ii. The position of the NSW Government that STHL be acceptable in a dwelling is recognized, however:
 - STHL should not represent a more intensive commercial type of use (For example 'Tourist and Visitor Accommodation' as defined in the Standard Instrument - Principal Local Environmental Plan).
 - STHL should not adversely impact on neighbouring properties or the community in general.

2. What is STHL and the situation in Willoughby

a) General

- i. The most appropriate definition of STHL is a dwelling, or part of a dwelling, that provides short term accommodation, but no other associated commercial use.
- ii. It is noted that STHL takes four forms in NSW:
 - Rental of one or more rooms (including room sharing) with the host present.
 - Rental of a whole dwelling (principal residence) with the host away.
 - Rental of a holiday dwelling (non-principal residence) with the host away.
 - Rental of a dwelling solely reserved for STHL.

b) Comments

- i. The above forms of STHL currently occur in Willoughby to varying degrees.
- ii. Currently the issue of STHL is not adequately addressed in either Willoughby Local Environmental Plan 2012 or NSW Government legislation.
- iii. There has been difficulty in considering STHL within Willoughby Local Environmental Plan 2012 or NSW Government legislation, for the purposes of determining what is permissible, what is prohibited and managing impacts. At present Council considers that STHL would fall under the definition of 'Tourist and Visitor Accommodation', which is prohibited within residential zones.

c) Recommendation

- i. A planning framework is required for STHL in order to permit appropriate activity while at the same time managing impacts.

3. The 2016 Parliamentary Inquiry and STHL Options Paper July 2017

a) General

- i. The 2016 Parliamentary Inquiry 'Adequacy of Regulation of Short term Holiday Letting' and the STHL Options Paper July 2017 is part of a NSW Government review of STHL.
- ii. It is noted that the key recommendations of the 2016 Parliamentary Inquiry were:
 - Amend planning laws to regulate short-term rental accommodation;
 - Allow home sharing, and letting a principal place of residence, as exempt development;
 - Allow empty houses to be let as exempt and complying development;
 - Strengthen Owners Corporation's powers to manage and respond to issues in strata properties; and
 - Commit to further investigating impacts from STHL on traditional accommodation operators.
- iii. The NSW Government gave general support for these key recommendations on 19 April 2017.
- iv. The STHL Options Paper July 2017 represents the next step in the process, and seeks to explore approaches to implement a government policy framework, addressing land use and planning concerns, strata managed buildings and the amenity of residents.
- v. The Options Paper states that STHL demand in metropolitan NSW appears year round and is mostly apartment based.

b) Comments

- i. Public consultation on policy framework is considered crucial in achieving the appropriate level of regulation and is supported.

c) Recommendation

- i. Further public consultation is required following consideration of the submissions in response to this Options Paper, and the subsequent preparation of a draft policy framework.

4. Impacts associated with STHL

a) General

- i. The types of amenity impacts that may arise from STHL involve noise, anti-social behaviour, waste, traffic and parking.
- ii. There are potential hazard and evacuation issues and how the use should be considered under the BCA Classification (involving for example fire safety).
- iii. Concern has been raised in regards the impact of STHL on traditional accommodation operators.

b) Comments

- i. The operation of STHL should address the abovementioned impacts, with particular regard to potential 'Party Houses' and safety issues for potential occupiers.
- ii. A clear understanding should be obtained regarding the impact of STHL on traditional accommodation operators.

c) Recommendations

- i. Any proposed framework needs to discourage and manage adverse amenity impacts on neighbouring properties.
- ii. Meaningful mechanisms must be built into any proposed framework to ensure adversely affected neighbouring properties have a clear process to address unsatisfactory outcomes.
- iii. Further investigation should occur into the impacts from STHL on traditional accommodation operators.

5. STHL in strata properties

a) General

- i. It is noted that the 2016 Parliamentary Inquiry did not conclude that STHL was incompatible with strata living, but rather recommended that the NSW Government consider amendments to strata laws to give Owners Corporation's additional powers.

b) Comments

- i. Strata complexes are generally more susceptible to the potential impacts of STHL due to the proximity of neighbours, the reliance on shared facilities, and the potential for a significant

- proportion of a building being subject to STHL.
- ii. It is understood that there are unresolved or conflicting legal opinions regarding whether Owners Corporation's are able to prohibit STHL in their buildings.

c) Recommendations

- i. In accordance with the Options paper, further investigation is warranted into the following possible amendments to strata laws:
- Require owner / occupiers to manage the conduct of occupants, unless owners have taken reasonable steps to prevent conduct breaching by-laws or causing nuisance or hazard.
 - Streamline and simplify enforcement processes for breaching by-laws or causing a nuisance or hazard.
 - In accordance with the Options Paper, expand the powers of the NSW Civil and Administrative Tribunal (the Tribunal) to deal with problems arising from STHL.
 - Allow Owners Corporation's to apply to the Tribunal for an order to require owners to pay increased contributions to the administrative or capital works funds.
- ii. Legal clarification should be made regarding whether Owners Corporation's are able to prohibit STHL in their buildings.

6. Regulation or self-regulation

a) General

- i. The policy options for STHL can be regulatory, non-regulatory or a combination of both.

b) Comments:

- i. An appropriate balance is required to be found between permitting STHL and subsequent impacts.
- ii. Self-regulation is considered to have a role, through complaint management, monitoring and reporting by STHL providers.
- iii. It is considered that regulation at the state level should involve establishing under what circumstances STHL may be permissible, via a State Environmental Planning Policy.
- iv. Council is concerned to ensure that any further regulatory responsibilities must not be placed on local government.
- v. Council seeks to minimise regulation and bureaucracy as well as the costs to all parties involved.
- vi. As noted above in Section 5, any further regulation should occur at Owners Corporation level where a strata scheme is involved.
- vii. The primary purpose of a residential property should be full time residential use. There is a potential for STHL to displace normal occupation, which is contrary to the objectives of the Willoughby Housing Strategy and good planning practice.

c) Recommendations

- i. It is considered appropriate for the NSW Government to prepare a State Environmental Planning Policy to address STHL, which would:
- Define Short-Term Holiday Letting, distinguishing it from other forms of 'Tourist and Visitor Accommodation.'

- Amend planning laws to regulate short-term rental accommodation.
- Allow home sharing, and letting a principal place of residence, as exempt development.
- Allow empty houses to be let as exempt and complying development.

ii. The following specific issues are suggested for inclusion in any State Environmental Planning Policy:

- The current use must be a lawful use.
- The use occupy either the whole dwelling or part of a dwelling (including residential units).
- Beds are only permitted in a lawfully created bedroom.
- The primary purpose of a residential property should be full time residential use.
- The use have consent of the Owners Corporation if the premises is located in a strata scheme.
- The use not be a sublease of a premises. It should only be undertaken by a registered owner of the premises.
- There should be no related signage exhibited anywhere on the premises.
- The use not interfere with the amenity of the neighbourhood by reason of the emission of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, traffic generation or otherwise.

iii. Self-regulation is considered to have a major role, through complaint management, monitoring and reporting by STHL providers.