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30 October 2017

Ms Deborah Brill
Director, Housing Policy
Department of Planning and Environment
30 October 2017

Sent via email: sth1@planning.nsw.gov.au

Dear Ms Brill, *Deborah*

Randwick City Council submission on Short term Holiday Letting in NSW – Options Paper

Thank you for the opportunity to respond to the Department's Options Paper "*Short Term Holiday letting in NSW*" which considers regulatory and non-regulatory approaches to managing the impacts of short-term holiday lettings (STHL) in NSW. This Paper follows the 2016 inquiry by the NSW Legislative Assembly Committee on Environment and Planning, which examined the adequacy of existing regulation of STHL. The Paper considers options ranging from minimal intervention (greater self-regulation), government regulation and registration or a combination of both to address issues of neighbourhood amenity such as noise, traffic and parking as well as broader impacts on housing availability for long term, permanent renters.

This submission responds to the options presented in the Paper based on Council's recent regulatory experiences, noting the significant growth in tourist listings facilitated through on-line booking platforms, particularly in coastal locations in the LGA. As an overarching comment, Council acknowledges the contribution of STHL to the economy and local housing opportunities/diversity as a way of addressing the tight housing market. Council also considers that a balanced and consistent approach to STHL is necessary by amending definitions in local planning instruments, improving industry self-regulation and the preparation of state guidelines for the community, councils and property owners.

Current approach

Council responds to many complaints relating to alleged unauthorised use of premises for tourist accommodation (and associated amenity concerns) and whether development consent is required for a change of use. Most complaints received by Council relate to noise disturbances (particularly at night) and a smaller number of complaints relate to the legality of such use and other amenity concerns such as parking and traffic. Whilst Council does not have a specific policy for short-term accommodation of residential premises, Council approaches each enquiry on a case-by-case basis in accordance with it's the current provisions of the EPA Act and Council's adopted *Enforcement Policy*. Council also takes into consideration the extent, scope and impact of alleged unauthorised uses on the community and resolution of matters in the most appropriate and effective manner. The current approach is time consuming and relies on information provided by owners, tenants and neighbours to determine whether a premises is in breach of planning controls.

<p>English</p> <p>If you need help to understand this letter, please come to Council's Customer Service Centre and ask for assistance in your language or you can contact the Telephone Interpreter Service (TIS) on 131 450 and ask them to contact Council on 9399 0999.</p>	<p>Greek</p> <p>Αν χρειάζεστε βοήθεια για να καταλάβετε αυτή την επιστολή, παρακαλείστε να έρθετε στο Κέντρο Εξυπηρέτησης Πελατών της Δημορχίας (Council Customer Service Centre) και να ζητήσετε βοήθεια στη γλώσσα σας ή τηλεφωνήστε στην Τηλεφωνική Υπηρεσία Διερμηνέων (Telephone Interpreter Service – TIS) τηλ. 131 450 και να ζητήσετε να επικοινωνήσουν με τη Δημορχία τηλ. 9399 0999.</p>	<p>Italian</p> <p>Se avete bisogno di aiuto per capire il contenuto di questa lettera, recatevi presso il Customer Service Centre del Municipio dove potrete chiedere di essere assistiti nella vostra lingua; oppure mettetevi in contatto con il Servizio Telefonico Interpreti (TIS) al 131 450 e chiedete loro di mettersi in contatto col Municipio al 9399 0999.</p>
<p>Croatian</p> <p>Ako vam je potrebna pomoć da biste razumjeli ovo pismo, molimo dođite u Općinski uslužni centar za klijente (Council's Customer Service Centre) i zatražite pomoć na svom jeziku, ili možete nazvati Telefonsku službu tumača (TIS) na 131 450 i zamoliti njih da nazovu Općinu na 9399 0999.</p>	<p>Spanish</p> <p>A la persona que necesite ayuda para entender esta carta se le ruega venir al Centro de Servicios para Clientes [Customer Service Centre] de la Municipalidad y pedir asistencia en su propio idioma, o bien ponerse en contacto con el Servicio Telefónico de Interpretes ["TIS"], número 131 450, para pedir que le comuniquen con la Municipalidad, cuyo teléfono es 9399 0999.</p>	<p>Vietnamese</p> <p>Nếu quý vị không hiểu lá thư này và cần sự giúp đỡ, mời quý vị đến Trung Tâm Dịch Vụ Hướng Dẫn Khách Hàng của Hội Đồng Thành Phố (Council's Customer Service Centre) để có người nói ngôn ngữ của quý vị giúp hay quý vị có thể liên lạc Dịch Vụ Thông Dịch qua Điện Thoại (TIS) ở số 131 450 và yêu cầu họ liên lạc với Hội Đồng Thành Phố (Council) ở số 9399 0999.</p>
<p>Polish</p> <p>Jeśli potrzebujesz pomocy w zrozumieniu treści tego pisma, przyjdź do punktu obsługi klientów (Customer Service Centre) przy Radzie Miejskiej i poproś o pomoc w języku polskim, albo zadzwoń do Telefonicznego Biura Tłumaczy (Telephone Interpreter Service – TIS) pod numer 131 450 i poproś o skontaktowanie się z Radą Miejską (Council) pod numerem 9399 0999.</p>	<p>Indonesian</p> <p>Jika Anda memerlukan bantuan untuk memahami surat ini, silakan datang ke Pusat Pelayanan Pelanggan (Customer Service Centre) Pemerintah Kotamadya (Council) dan mintalah untuk bantuan dalam bahasa Anda, atau Anda dapat menghubungi Jasa Juru Bahasa Telepon (Telephone Interpreter Service – TIS) pada nomor 131 450 dan meminta supaya mereka menghubungi Pemerintah Kotamadya pada nomor 9399 0999.</p>	<p>Turkish</p> <p>Bu mektubu anlamak için yardıma ihtiyacınız varsa, lütfen Belediye'nin Müşteri Hizmetleri Merkezi'ne gelip kendi dilinizde yardım isteyiniz veya 131 450'den Telefonla Tercüme Servisi'ni (TIS) arayarak onlardan 9399 0999 numaradan Belediye ile ilişkiye geçmelerini isteyiniz.</p>
<p>Hungarian</p> <p>Amennyiben a levél tartalmát nem érti és segítségre van szüksége, kérjük látogassa meg a Tanácsház Ügyfél Szolgálatát (Customer Service Centre), ahol magyar nyelven kaphat felvilágosítást, vagy hívja a Telefon Tolmacs Szolgálatot (TIS) a 131 450 telefonszámon és kérje, hogy kapcsolják a Tanácsházat a 9399 0999 telefonszámon.</p>	<p>Czech</p> <p>Jestliže potřebujete pomoc při porozumění tohoto dopisu, navštivte prosím naše Středisko služeb pro veřejnost (Council's Customer Service Centre) a požádejte o poskytnutí pomoci ve vaší řeči anebo zavolejte Telefonní tlumočnickou službu (TIS) na tel. číslo 131 450 a požádejte je, aby oni zavolali Městský úřad Randwick na tel. číslo 9399 0999.</p>	<p>Arabic</p> <p>إذا أردت مساعدة لفهم هذه الرسالة، نرجوكم الحضور إلى مركز خدمة عملاء المجلس واطلب المساعدة في لغتك، أو يمكنك الاتصال بخدمة الترجمة الهاتفية (TIS) على هاتف رقم ١٣١ ٤٥٠ واطلب منهم الاتصال بالمجلس على رقم ٩٣٩٩ ٠٩٩٩.</p>
<p>Chinese</p> <p>如果你需要人幫助你了解這封信的內容，請來市政會顧客服務中心要求翻譯服務，或者與電話傳譯服務 (TIS) 聯係，號碼是 131 450。請他們幫助你打電話給市政會，號碼是 9399 0999。</p>	<p>Russian</p> <p>Если Вам требуется помощь, чтобы разобраться в этом письме, то, пожалуйста, обратитесь в Муниципальный Центр Обслуживания Клиентов и попросите оказать Вам помощь на Вашем языке или же Вы можете позвонить в Телефонную Службу Переводчиков (TIS) по номеру 131 450 и попросить их связаться с Муниципалитетом по номеру 9399 0999.</p>	<p>Serbian</p> <p>Ako vam treba pomoć da razumete ovo pismo, molimo vas da dođete do Centra za usluge mušterijama pri Opštini (Customer Service Centre) i zamolite ih da vam pomognu na vašem jeziku, ili možete nazvati Telefonsku prevodilačku službu (TIS) na 131 450 i zamolite ih da vas povežu sa Opštinom na 9399 0999.</p>

Should Council obtain sufficient evidence that the primary use of a premises is for the purposes of providing tourist or visitor accommodation, without the required consent of Council, the Council would commence appropriate regulatory action to resolve the matter.

STHL ancillary to residential uses

In considering the need for regulatory intervention, it is important to draw a distinction between STHL on an ongoing commercial basis and holiday/temporary accommodation on a casual basis. In the latter case, it is considered that there should be no regulatory requirements where owners wish to lease bedrooms (where an owner is present) or entire dwellings on a short-term basis (such as house swapping/sitting, temporary house stays, business related trips etc.). These arrangements do not change the principle use of a building as a dwelling and are considered ancillary activities to the primary use. Any amenity issues arising from such cases would be dealt with through existing channels under strata by-laws or council/police. Where dwellings are used as tourist or visitor accommodation on a more regular basis this activity is a change of use and would either be prohibited in a residential zone or require development consent.

Owners or occupiers of these types of STHL that is ancillary to residential use of premises should still, however, be included with a relevant 'Self-Regulatory' Scheme and Code of Conduct.

Planning guidelines and policy

There is merit in the preparation of state based planning guidelines which specify the circumstances under which bedrooms or entire dwellings can be let out occasionally without the need for development consent and where this is exempt development (under the Codes SEPP). This would provide clarity and consistency to both property owners and the community ensuring the primary use of a property remains as a dwelling house (consistent with the zoning). It is agreed that a code of conduct (which outlines responsibilities of hosts and guests) as mentioned in the Paper could be included as a requirement for exempt development. It is also reasonable that this should include dwellings that are heritage listed or located in environmentally sensitive areas.

The introduction of a new provision within the standard instrument (which can be adopted by councils for inclusion in their LEPs) for '*Short term holiday rentals*' would assist in providing clarity to the use and permissibility in residential zones. The Shoalhaven LEP 2014 local provision is a possible approach that can be modified to define short-term rental accommodation which does not require development consent and where a building is used predominantly as a place of residence.

Short-term rental accommodation

(1) *The objective of this clause is to ensure that residential accommodation may be used as tourist and visitor accommodation for a short term or **temporary** basis without requiring development consent.*

(2) *Despite any other provision of this Plan, development consent is not required for the use of residential accommodation for the purposes of **temporary** tourist and visitor accommodation (except backpackers accommodation or bed and breakfast accommodation) if the use is only short-term, and does not interfere generally with the amenity of the neighbourhood in any way, including by noise or traffic generation.*

Note.

If a building or place is used for the holding of events, functions, conferences and the like it could be classified as a function centre and function centres are prohibited in all residential zones.

(3) *In this clause, short-term rental means a premises used for a maximum period of 90 consecutive days in any 12 month period where use of a premises is predominantly a place of residence and not used for long term tourist and visitor accommodation.*

This provision would only be workable if there is an effective self-regulation system in place or a state-wide registration process, to assist in determining the total period in which dwellings are let for holiday rentals. Without such a process, it would be difficult if

not impossible to determine if a use falls outside the definition and be akin to a commercial operation such as a 'serviced apartment' or 'hotel and motel accommodation'. The new use, short term holiday rentals, should also be made permissible without the need to obtain development consent.

Consideration should also be given to amending the definition of '*bed and breakfast accommodation*' in the standard instrument to make the provision of meals optional. The current definition mandates the serving of meals and this creates uncertainty about the permissibility of short-term accommodation in residential zones:

bed and breakfast accommodation means an existing dwelling in which temporary or short-term accommodation is provided on a commercial basis by the permanent residents of the dwelling and where:

- (a) meals are provided for guests only, and
- (b) cooking facilities for the preparation of meals are not provided within guests' rooms, and
- (c) dormitory-style accommodation is not provided

Consideration should also be given to amending the definition of '*Tourist and visitor accommodation*' in the standard instrument to exclude a dwelling used for short-term holiday rentals.

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:

- (a) backpackers' accommodation,
- (b) bed and breakfast accommodation,
- (c) farm stay accommodation,
- (d) hotel or motel accommodation,
- (e) serviced apartments,
- but does not include:
- (f) camping grounds, or
- (g) caravan parks, or
- (h) eco-tourist facilities.

Similarly, the definition of residential accommodation may need to be modified to include short-term holiday lettings:

residential accommodation means a building or place used predominantly as a place of residence, and includes any of the following:

- (a) attached dwellings,
- (b) boarding houses,
- (c) dual occupancies,
- (d) dwelling houses,
- (e) group homes,
- (f) hostels,
- (g) multi dwelling housing,
- (h) residential flat buildings,
- (i) rural workers' dwellings,
- (j) secondary dwellings,
- (k) semi-detached dwellings,
- (l) seniors housing,
- (m) shop top housing,

(n) short-term holiday lettings

but does not include tourist and visitor accommodation or caravan parks.

Strata Properties

Whilst powers under current strata laws enable the management of STHL, enforcement action on holiday occupants has limited effectiveness due to the time required for processing matters through the Civil and Administrative Tribunal. It is agreed that strengthening strata laws is an effective and appropriate approach to managing impacts of STHL such as making owners liable for the conduct of occupants (unless reasonable steps to prevent adverse conduct have been taken by owners), notification of owners corporation, increased contributions to strata funds and improved Tribunal processes and powers. However, enabling strata laws to completely prohibit STHL is considered an unreasonable and unnecessary response to managing issues associated with STHL, not only because it would interfere with the rights of property owners but it would also restrict potential local economic and social benefits including much needed housing supply. The strata laws should be explicit on this.

In addition, if provisions are introduced to allow STHL as exempt development, they should not be subject to strata approval. However if this is greater than 90 days and for an on-going commercial use then it is reasonable for strata approval to be required.

Industry Self-Regulation

Industry self-regulation is considered the most effective mechanism to manage potential impacts associated with holiday lettings. Making a distinction between short term, occasional or temporary lettings and regular holiday lettings raises challenges for councils, as it is very difficult to obtain evidence and enforce time limits. Self-regulation could address this by placing limits on the number of days that properties can be let. So if the limit under planning controls is 90 days, then on-bookings could be restricted to this.

The appropriate 'self-regulatory' body should also be able to act on resident complaints and enquiries under a suitable code of conduct. And, in addition, to share information about the premises (including letting details and actions) to Council upon request.

Registration or licensing

The suggestion outlined in the Options Paper for registration and/or licensing of premises used for STHL is considered unnecessary as this will result in additional red-tape and is unlikely to translate to better management of potential safety and amenity issues or address concerns about housing affordability. It is agreed that improved industry self-regulation would be a better approach as this would provide contact details for the host or managing agents for the purposes of initial complaints handling by councils.

Housing supply and housing affordability

The increasing supply of residential accommodation created by the emergence of on-line platforms is generally seen as a positive outcome. By encouraging room sharing, whether it be for short or long term tenancies, this provides additional options for renters particularly in areas such as the Randwick Education and Health precinct which relies on good access to a local labour market. As a consequence, this would have potential long term benefits to the growth of the precinct and to the wider economy.

The Paper briefly addresses the impacts on rental and affordable housing stock by stating that there is currently limited evidence to suggest that STHL is reducing the availability of traditional long term tenancy.

Inner city areas such as Randwick with low vacancy rates and high cost of rental accommodation may be impacted to a greater extent than other areas if properties used for long term accommodation convert to STHL. A recent study by Sydney University's Urban Housing Lab has concluded that short-term rentals may be impacting the affordable rental market in the inner city and coastal locations. Similar studies have been undertaken overseas including the USA and Europe linking the rising cost of rental accommodation and STHL. It is considered that further investigations are needed to monitor changes over time to ensure that rental prices are not pushed up. Therefore, it is considered that a balanced approach is necessary to ensure supply of permanent residential accommodation is not adversely affected.

To address potential affordable housing impacts, it would be a possible option is to introduce a local levy on on-line rental platforms such as AirBnB which would go into a Council fund to pay for the creation of new affordable housing. Councils are best placed to administer funds and plan for affordable housing needs of their communities. This should be considered as a priority given the rapid rise in STHL in recent years.

Community Information

In order to assist the community to understand and obtain further information on future policy and regulatory approaches to STHL it would be appropriate that a dedicated web site be created by the NSW government as a one-stop shop. This site could include fact sheets and be interactive to enable users to search for information on the intended use of a property and to obtain advice as to planning regulations and any licensing requirements.

I trust Council's submission will assist the Department and NSW Fair Trading to establish a whole of government approach to regulating and managing the impacts of STHL on the local community. Please contact myself or Stella Agagiotis on 9093 6954 or stella.agagiotis@randwick.nsw.gov.au for clarification or discussion of any of the matters contained in this submission.

Yours sincerely,



Alan Bright
Manager, Strategic Planning