



SMARTER COMMUNITIES

ABN 25 065 006 859

Level 7, 447 Kent Street, Sydney NSW 2000
PO Box 72, Strawberry Hills 2012

t. +61 2 9266 2600

f. +61 2 9266 2699

e. info@smartercommunities.com.au

www.smartercommunities.com.au

Timothy Lee
Head of Marketing – Smarter Communities,
Level 7, 447 Kent Street,
Sydney NSW 200
+61 2 9266 2600
tlee@smartercommunities.com.au

25 October 2017

Director, Housing Policy
Department of Planning and Environment
GPO BOX 39, Sydney NSW 2001

By Email To: STHL@planning.nsw.gov.au

Subject: Response to Short-term Holiday Letting in NSW Options Paper

Executive Summary

On Thursday, 14 September 2017, Strata Title Management (a fully owned subsidiary of Smarter Communities) invited key Owners Corporation committee members (the Group) from diverse properties to attend a round table discussion in response to the Short-term Holiday Letting (STHL) in NSW Options Paper released by NSW Planning & Environment and NSW Fair Trading in July 2017.

Based on this robust discussion it was determined that the Group are well-aware that STHL is active and is very real in the world of strata today.

The Group were not opposed to STHL but believed each Owners Corporation (OC) should have the ability to decide whether STHL is permitted in their building.

In the event where the OC agrees to STHL, there needs to be suitable regulations to guide appropriate behaviour, additional resources to counter the impact of STHL, and authority to act against non-conforming owners/occupants who engage in STHL.

Ultimately, the group consensus was that the user should pay.

DISCLAIMER:

The views and opinions expressed in this submission does not represent the views and opinions of all Owners Corporations managed on behalf of Strata Title Management (STM) and Smarter Communities. Nor does this necessarily reflect the views of Strata Title Management or Smarter Communities. The stated views and opinions reflect the personal views of key committee members from Owners Corporations under STM management who participated in the STHL round table discussion.



About the Round Table & Group

STM invited key committee members from diverse properties to attend a round table discussion on Thursday, 14 September 2017 for 1.5 hours at its Sydney CBD office.

There were nine committee members (6 males/3 females) in attendance representing:

Suburb	Building size	Occupier/Investor
East Redfern	145 lots	Occupier
Sydney	351 lots	Investor
Chatswood	240 lots	Occupier
Sydney	257 lots	Occupier
Ultimo	104 lots	Occupier
Haymarket	112 lots	Investor
Rozelle	67 lots	Occupier
Alexandria	124 lots	Occupier
Potts Point	69 lots	Investor
TOTAL:	1,469 lots	

Round Table Overview

Smarter Communities Head of Marketing, Timothy Lee, chaired the event. Committee members were given an overview of STHL in NSW including statistics of the estimated size and net worth of STHL nationally and how it has been estimated that NSW accounts for approximately 50% of the national total of STHL. The agenda included:

- Brief introductions of attendees
- Impacts associated with STHL
- Strata regulation
- Registration/licencing

Once attendees introduced themselves and spoke about the size of their buildings, they provided a brief oversight of their own views and experiences with STHL and how this has impacted on their building.

We understand that the opinions provided were purely of those in attendance and do not necessarily represent the views of every individual lot owner within their own building. This is feedback from the key influential committee members in attendance only.

Impacts of STHL

After discussions surrounding the impacts of STHL, the key issues experienced by the Group in their buildings included:

- Excessive and inconsiderate noise;
- Mess;
- Access to the building and facilities;
- Rubbish left lying around the premises;
- Use of lift(s) – often held up and left in a messy state;



- Amenities are often abused;
- Overcrowding – instances where more people are staying over than permitted under the LGA requirements (e.g. 2 people per bedroom);
- Overuse of common property, such as pipes, and amenities such as gyms and pools. It puts stress on the infrastructure as these buildings were not designed for the volume of guests;
- Security – from the Owners Corporation’s perspective they don’t know who is staying in their building. They often need to go to the owner to track down who is staying;
- Fire and safety evacuations – plans were not designed to exit excessive guests. Currently there is no requirement to have a fire exit plan on the back of the main door like in hotels. Perhaps there should be a requirement to do so;
- The sense of community is lost in smaller apartment buildings with STHL.

The Group confirmed there is a definite impact on their buildings due to STHL and inconsiderate guests. Unfortunately, very few guests treat the premises as if it were their own investment and most behave in an unruly manner because they don’t know the neighbours and know that the neighbours don’t know who they are... and there are no repercussions.

Strata Regulation

Option 1: Make lot owner/occupants jointly and severally liable for the conduct of occupants, unless owners had taken reasonable steps to prevent conduct breaching by-laws or causing a nuisance or hazard.

Issue:

The consensus from the Group was they felt the OC did not have the power to effectively address issues. This is largely because by the time they were informed of issues and/or damages the guests had already left the premises.

Solutions:

To address the above issues, the Group agree the following would be suitable:

- Introduce a special levy for lot owners who engage in STHL. This levy should be charged appropriately to suit the building and/or facilities and have the appropriate by-laws;
- The OC to receive a portion of the bond, currently charged by the owner, to cover damages to common property caused by STHL occupants.

Should the OC decide not to allow STHL in their building, then:

- Include this as an item in all contracts of sale;
- Ban the properties on STHL sites such as Airbnb and Stayz.

Desired Outcome:

The Group collectively agree that lot owners who engage in STHL need to be held accountable for what goes on within the building.

Likewise, the OCs want to promote clear consequences to deter guests from behaving undesirably and causing havoc or damage to common property and/or other residents.

The OCs want the mechanisms in place to go straight to the owner to get them to address any issues where their STHL guests are in breach of building by-laws.



Option 2: Streamline and simplify enforcement processes for breaching by-laws or causing a nuisance or hazard, and expanding the powers of NCAT to deal with problems arising from STHL.

Issues:

The Group collectively agree that NCAT would be overwhelmed with this option and lack confidence NCAT could effectively manage this process in a timely manner. This conclusion was based on previous dealings with NCAT regarding unrelated STHL matters.

The Group also raised concerns regarding the breach of **by-law 17** and how this affects insurance premiums as outlined in the Schedule 3 Model by-laws for residential strata schemes:

17 Change in use or occupation of lot to be notified

1. An occupier of a lot must notify the owners corporation if the occupier changes the existing use of the lot.
2. Without limiting clause (1), the following changes of use must be notified:
 - (a) a change that may affect the insurance premiums for the strata scheme (for example, if the change of use results in a hazardous activity being carried out on the lot, or results in the lot being used for commercial or industrial purposes rather than residential purposes),
 - (b) a change to the use of a lot for short-term or holiday letting.
3. The notice must be given in writing at least 21 days before the change occurs or a lease or sublease commences.

Solutions:

The process going forward definitely needs to be streamlined. Suggestions include:

- Empower building managers to advise the OC of any owners who engage in STHL without informing the OC;
- Cancel building access such as key fobs for these owners. They will then be required to deal with the OC to gain access again;
- Display signage around the building indicating Council does not allow STHL;
- Only refer cases to NCAT for further action if required.

Desired Outcome:

The Group strongly believes the OCs should be empowered to act immediately to stop STHL unruly behaviour. Not unlike the process within hotels. If a guest behaves inappropriately, the OC should have the mechanisms in place to act immediately and have the person/s removed.

Option 3: Allow OCs to apply to the Tribunal for an order to require owners to pay increased contributions to the admin and capital works fund for lot owners engaged in STHL.

The Group were in favour of Option 3 and strongly believe the user should pay.

Solutions:

- The owner must register with the OC that they conduct STHL, and their levy contribution should be adjusted, either double or triple their unit entitlement;
- Suggest making the above condition a by-law. If the OCs want to allow STHL but won't allow the above by-law to be adopted, then it should become legislation so it can be enforced.



If owners don't register, yet still conduct STHL, there must be a substantial penalty. Residents have a right to feel safe and secure in their own homes. There is no doubt that STHL contributes to the overuse of the building and its facilities.

The Group were more relaxed with STHL if the owner lives in the apartment and only rents out a room. They feel they are in a far better position to supervise guests. This would then be considered boarding, not STHL.

Option 4: Enable OCs to prohibit or restrict STHL in their strata schemes.

This option generated a definite **yes** from the Group.

The Group agreed it was more acceptable if the owners were present as well as the guests to ensure there is no overcrowding, by-laws are enforced and behaviour is controlled.

The Group also agreed that when STHL impacts on the cost of the building, then that becomes a major issue. There needs to be a balance between the rights of the owner and the rights of permanent residents.

Solution:

Create a special resolution: if the building wants to go ahead with STHL then the OC needs support from strata laws.

Registration or Licensing for STHL?

Q: Do you register the property or the owner?

A: The Group agreed it should be just like renting a car or staying in a hotel. Renters need to be identified and provide a security bond/credit card for any incidentals. The owner must take greater responsibility for the property.

Solutions:

- The owner participating in STHL must be registered, as well as the property. By registering, this will help to be more ATO compliant;
- Should the OC of the building allow STHL then they should pay for a building manager to help manage the process, for example to produce a register before the renter will be provided access to the building. Identification will be required;
- If you advertise a STHL property, the registration number should be featured on the advertisement;
- The OC should be notified if a property within the strata is advertised for STHL;
- The OC should have free access to run a search to see if their building has any lots listed;
- Additional security for the building should be paid for by the owners who run STHL.

The Group agreed that the OC should not be responsible to do the registration of the property. This should be a government function. Then all the government agencies can inspect the property including the ATO. It needs to be state legislation. It is all about enforcement.



Strata regulation vs planning regulation vs registration

The Group collectively believes, based on previous experience, the option for **industry self-regulation** via a *code of conduct* and *complaints management* would not be viable.

The Group believes a *combination* of **strata regulation**, **planning regulation** and **registration** would provide effective management of STHL.

Strata regulation

The Group saw this taking immediate effect in terms of enforcing by-laws to:

- manage visitor behaviour such as excessive noise, mess, overuse or abuse of facilities;
- receive compensation for adverse effects including a portion of the bond to go directly to the OC; or
- prohibit STHL altogether.

Planning regulation

The Group saw this option as the way of the future. If the new OC within a development agrees to allow STHL, it should be noted in the by-laws and specific by-laws should be adopted to help manage STHL within the building.

By adopting these by-laws, the OC should be able to enforce any restrictions on the owner rather than going to NCAT for assistance.

Limitations should apply e.g. the length of stay, number of days per year and number of bedrooms.

Registration

The Group saw this taking immediate effect. Registration through a government body would be an attractive option for owners to stay honest. And the onus is on the individual owner, not the OC, which is also attractive for the OC.

CONCLUSION – The user should pay

The Group are well-aware STHL is active and is real in the world of strata. They are not opposed to STHL, and if the OC voted for STHL in their buildings, then:

- STHL owners are registered and follow the rules as set by a governing body;
- STHL owners pay an increased levy premium based on their unit entitlements to cover expenses;
- the OC have a level of authority to deal with any issues as a result of STHL within their building, according to by-laws, and take immediate action;
- any issues that the OC can't deal with are referred to NCAT for fast processing with a speedy result;
- the OC can take the owner to NCAT if the owner is aware of undesirable STHL guests but does nothing to stop the behaviour – and ultimately shut down STHL for non-conforming owners.

OCs are seeking the power to adjust the contributions of STHL owners to cover expenses based on a multiple of the lot's unit entitlement that is engaged in STHL.

Ultimately, the group declared the same conclusion... the user should pay.



We hope this submission will help guide policy framework, and as a key industry stakeholder, Smarter Communities will be happy to facilitate further workshops in the future to provide valuable feedback to policy makers.

Kind regards,

Timothy Lee
Head of Marketing – Smarter Communities



Smarter Communities is one of the largest Owners Corporation management companies in Australia with over \$30b of properties covering 90,000 lots under management.

Operating under a “local expert, national support” framework, Smarter Communities owns and operates five brands including:

- Adelaide Strata & Community Management (ASCM)
- Challenge Strata Management
- Ernst Body Corporate Management
- Strata Title Management (STM)
- Victoria Body Corporate Services (VBCS)



Strata Title Management (STM) is our local NSW brand. More than 60 staff operate from five strategically located offices; Sydney CBD, Crows Nest, Taren Point, Ballina and Tweed Heads.

STM manages over 1,500 buildings and over 26,000 lots ranging in size from 2-lot duplex properties right up to large 650+ mixed-use residential/commercial lots.

The STM portfolio is as diverse as its Owners Corporations: high-rise developments, commercial developments, mixed-use residential/commercial complexes, building management committees, small blocks, townhouse and villa developments and strata titled hotels.