

31 October 2017

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

sth1@planning.nsw.gov.au

RE: Owners Corporation Network submission to the NSW Government's Short-term Holiday Letting Options Paper

Please find attached the Owners Corporation Network's submission to the NSW Government's Short-term Holiday Letting Options Paper.

OCN represents strata communities throughout NSW and is pleased to provide the Department with this submission.

As you can see from the attached submission, OCN is of the strong view that apartment owners should have the democratic right to decide whether short-term letting occurs in their individual buildings.

OCN believes that this is the correct regulatory response to the issue of short-term holiday letting as it will ensure the integrity of strata living into the future.

We thank the NSW Government for its consultative approach to this vitally important issue and we look forward to the Government's positive response.

If any further information or explanation is required by the Department, please do not hesitate to contact OCN Executive Officer, Karen Stiles, on 02 8197 9919 or 0418 232 476 or at karen.stiles@ocn.org.au.

Yours sincerely,

Michael Mangan
Director

Thanks to our sponsors

OUR STRATA COMMUNITY OUR CHOICE



Owners Corporation Network – Submission to the NSW Government’s Short-term Holiday Letting Options Paper

Contents

Introduction	3
Issue – Loss of amenity	5
Case study – Maestri Towers, Sydney	5
Issue – Safety and security concerns	6
Case study – Overcrowding in Sydney short-term rentals	7
Issue – Affordability	9
Case study – Rental affordability issues caused by short-term letting in Sydney	9
Recommended regulatory response – strata regulation and a register	10
Conclusion	12

Introduction

The Owners Corporation Network (OCN) represents strata communities throughout NSW. OCN is a network of owners helping owners – people who have experience in strata living, who have confronted many of its inherent problems and who have evolved strategies for dealing with the problems that the rapid growth in apartment, villa and townhouse living inevitably brings.

In line with the nature and mission of our organisation, OCN's submission to the *Short-term Holiday Letting Options Paper* only relates to the treatment of short-term letting in strata communities.

This submission has been informed by expert opinion, the views of the OCN members from across the state, and more broadly from strata residents throughout NSW.

The overwhelming view of OCN is that the unregulated rise of short-term letting in NSW presents a significant challenge to the integrity of strata living in the state, which, if not addressed, will cause significant planning, population and regulatory issues now and into the future.

Population projections show that NSW will grow to 9.9 million people by 2036, and Sydney is having to grow both up and out to accommodate this.

More singles, couples and families are choosing strata living as the lifestyle of choice, resulting in the construction of more 'vertical villages', which are the most essential element in delivery of the housing stock that NSW needs.

The Sydney Housing Supply Forecast 2016 shows 184,300 new dwellings will be built in the period 2016-17 to 2020-22, which is an 84 per cent increase on the previous five years. It is estimated that up to 70 per cent of newly approved dwellings are apartments.

People deciding on where they want to live, and people entering financial arrangements, need the certainty, confidence and assurance that comes from knowing that if they have bought into a residential strata property - that is how it will remain.

If that certainty is taken away, and residential complexes become a mixed use of residents and short-term holiday-makers, against their original intention and the will of the owners, it places a disincentive on the housing type that will allow NSW to meet its housing targets.

If this confidence in strata living is undermined there are significant risks for Sydney's and NSW's continued growth.

Therefore, the regulatory response to short-term letting in NSW needs to align with the NSW Government's overall approach to housing in NSW, which sees strata living as the future of residential housing for many people in NSW.

If strata living is undermined, Sydney will need to grow further out rather than up, to cater for its projected growth – a significantly more costly and inefficient outcome.

To ensure the integrity of strata living into the future, OCN recommends that strata regulation, through the creation of model by-laws which give owners the democratic right to decide if short-term letting occurs in their buildings, is the optimum approach.

Many people throughout the state, probably assume that this can be managed by passing by-laws to prohibit short-term letting today.

But a recent NSW Civil and Administrative Tribunal (NCAT) decision, ruled that by-laws prohibiting short-term letting, such as Airbnb, are invalid.

Landmark decision: NSW tribunal overturns bylaw that banned woman from renting apartment on Airbnb

JIMMY THOMSON AND SUE WILLIAMS | SEP 30, 2017

OCN understands there are even examples of strata bodies at risk of being sued for lost revenue by short-term letting hosts where such by-laws have been put in place.

This brings into sharp focus the urgent need for the NSW Parliament to act on a key option in its Short-term Holiday Letting Options Paper, and give apartment owners the right to decide on short-term letting – just like we set the rules collectively on all manner of things in strata.

This decision by NCAT exposes the unintended consequences that flow from applying 1961 strata provisions to 21st Century living. There is now great uncertainty in the law around strata communities and the rise in short-term letting and this Options Paper process presents a way to address this.

This submission exclusively addresses short-term letting in strata communities and explores three key issues caused by the boom in this practice, namely:

- Loss of amenity;
- Security and safety concerns; and
- Affordability issues.

Finally, this submission explains further OCN's recommended regulatory response to the rise of short-term letting in strata communities in NSW.

Issue – Loss of amenity

One of the central issues confronting strata communities is the impact that the rise of short-term letting platforms are having on the amenity of these communities.

This loss of amenity can take the form of party houses, increased wear and tear and damage done to common property, and can lead to increased strata costs for all apartment owners.

The experiences of OCN members who have had short-term occupants in their buildings have included:

- Breaches of building security – with short-term guests less concerned about compliance with locking doors, not blocking fire exits, smoking etc.
- Excessive wear and tear on common property with increased usage of lifts, swimming pools and community green spaces, which leads to increased repair and maintenance costs.
- Excessive noise, late night parties and loud music, drunken behaviour, overcrowding.
- Blocked garbage disposals, excessive water use, violation of visitor parking restrictions, and peak hour demands on lifts and foyers at checkout time.
- Strata insurance risk, as it is designed for class 2 buildings with long term residents, and short-term letting could jeopardise that in the event of a major claim.

This loss of amenity has been recognised by the Grattan Institute in its [report](#), *Peer-to-peer pressure*, which noted the importance of ensuring there is confidence in strata living, and concluded that:

“In peer-to-peer accommodation, states need to do more to get the balance right between short-term use of property and the amenity of neighbours. They should give owners’ corporations more power to limit disruptions caused by short-stay letting and streamline dispute resolution.”

Case study – Maestri Towers, Sydney

Maestri Towers, two strata buildings in Sydney’s CBD, saved \$1.3 million in administration costs in the three years after it ceased short-term letting, while reducing the levies by 5 per cent each year in those three years.

Maestri Towers chairman, Michael Heaney, said overcrowding was also reduced by approximately 1,000 residents.

Issue – Safety and security concerns

Security of residents

Most apartment buildings in NSW do not have the administrative and security functions of traditional holiday accommodation, which means that, unlike in tourist accommodation, monitoring and management of who enters the building and their behaviour in the building is impossible.

It is the experience of OCN that security concerns are most often felt more by older residents. They include in relation to matters such as:

- unlocked security doors;
- blocking of fire exits;
- smoking in areas where you shouldn't; and
- strangers in common areas such as hallways, laundries and pools.

If government is to encourage “empty nesters” to downsize in order to free up large houses for families, and foster “ageing in place” to reduce the need for more expensive facility care, then it must preserve public confidence in strata living as a viable option.

Safety concerns

As well as security issues, short-term letting in strata communities presents a range of public safety concerns.

Class 2 residential buildings are built to Building Code of Australia (BCA) requirements not designed for short-term occupancy (Class 3 or hotels). For example:

- Class 3 buildings require evacuation maps and illuminated green EXIT signs to indicate the location of a fire escape for people unfamiliar with the building (BCA E4.7);
- Residential apartment buildings are exempt from NSW Work Health and Safety Act 2011, whereas Class 3 buildings would be required to adhere to WH&S regulations; and
- Short term letting providers can promote overcrowding – see below case-studies.

These regulatory issues present grave risks for apartment residents, as well as the added risks for short-term tourists who may not be familiar with safety and evacuation protocols, in the event of an emergency such as a building fire.

Case study – Overcrowding in Sydney Airbnb rental

Below is an Airbnb listing for 8 occupants in a 2 bedroom apartment in Sydney's CBD, where Class 2 building emergency escape routes are designed for a specified number of occupants.

Why not stay in CBD - 2BR next to Darling Harbour

Entire apartment · Sydney

👤 8 guests 🛏 2 bedrooms 🛏 4 beds 🚿 2 baths

About this listing

- New apartment with nice kitchen and bathroom
- Centrally located in CBD

Source:

<https://www.airbnb.com.au/rooms/20624794?checkin=&checkout=&guests=6&adults=6&location=New%20South%20Wales%2C%20Sydney&s=E76or00J>

Case study – Overcrowding in Sydney Airbnb rental

Below is an Airbnb listing for 13 occupants in a 2 bedroom terrace house in Redfern.

Sydney Centre, Victorian Terrace House

Entire house · Redfern

👤 13 guests 🛏 2 bedrooms 🛏 9 beds 🚿 1 bath

Wifi, sheets, covers, towels included with free on street parking
1 km to City centre, Walk to everywhere, Transport to everywhere
Restaurants, bars, parks, Chinatown, universities and downtown nearby
Beds for 13 people, 4 doubles, 5 singles.

Source:

https://www.airbnb.com.au/rooms/9683087?checkin=&checkout=&guests=8&adults=8&location=New%20South%20Wales%2C%20Sydney&s=d_rS0iRS

Case study – Overcrowding in Sydney Airbnb rental

Below is an Airbnb listing for 6 occupants in a 2 bedroom townhouse in Surry Hills.

CBD house 2 mins walk from Central train station

Entire house · Surry Hills

👤 6 guests 🛏 2 bedrooms 🛏 6 beds 🚿 1 bath

Beautifully furnished cosy two-storey CBD townhouse located in the BEST possible location to explore Sydney. Only two minutes walk from Sydney's main train station- Central Station- with convenient train connections everywhere. Trusted and well reviewed host with 200 reviews (see my profile).

Source:

https://www.airbnb.com.au/rooms/20640624?checkin=&checkout=&guests=8&adults=8&location=New%20South%20Wales%2C%20Sydney&s=d_rS0iRS

Case study – Overcrowding in Sydney Airbnb rental

Below is an Airbnb listing for 8 occupants in a 2 bedroom apartment in Sydney's CBD.

Darling Harbor Seaview & Stunning CBD Apt

Entire apartment · Sydney

👤 8 guests 🛏 2 bedrooms 🛏 5 beds 🚿 2 baths

Contemporary newly renovated apartment with brand new every piece of furniture. This place symbolic fresh and zesty, bring you light and breezy new look. Neutral hues and timber furniture with Darling Harbor Seaview to give you relax and comfortable, is perfect for your staying.

Source:

https://www.airbnb.com.au/rooms/19833229?checkin=&checkout=&guests=8&adults=8&location=New%20South%20Wales%2C%20Sydney&s=d_rS0iRS

Issue – Affordability

One of the central issues surrounding the rise in short-term letting has been the impact this has had on rental and housing affordability throughout NSW, but particularly in Sydney.

The University of Sydney's Urban Housing Lab recently found that short-term letting platforms have removed 6,000 entire properties from the long-term rental market throughout NSW.

To put this into perspective, Meriton's World Tower in the middle of Sydney remains the tallest and largest residential building in Sydney, with around 700 apartments.

In the past three or four years, short-term letting platforms have directly removed the equivalent of just under nine World Towers from the rental market.

These properties are no longer available to tenants. They are not available for sale. They are not available to live in – they are available for discount tourists.

This latest research came off the back of earlier University of Sydney research which shows that short-term letting makes housing less affordable.

This research analysed the impact of short-term letting on five municipalities in Sydney, including City of Sydney, Waverley, Marrickville, Leichhardt and Parramatta, and found that:

“Planners and policymakers in cities with increasing numbers of Airbnb rentals need to review how well local planning controls manage the neighbourhood nuisances, traffic, and parking problems that may be associated with them while acting to protect the permanent rental housing supply.”

The researchers concluded that: *“providers like Airbnb are not helping the affordability problem facing many Australians on low incomes.”*

Case study – Rental affordability issues caused by short-term letting in Sydney

A young couple who were asked to leave their rental unit in Kirribilli after a two-year stay to make way for the family who owned it, were shocked, after they had moved out, to spot it being advertised on Airbnb.

What's more, their small two-bedroom, \$540-a-week apartment was being advertised for a weekly rate of \$929.

**Housing at 'crisis point':
tenants discover former
Kirribilli rental unit on Airbnb**

SUE WILLIAMS DOMAIN REPORTER | NOV 23, 2016

Source:

<https://www.domain.com.au/news/housing-at-crisis-point-evicted-tenants-discover-former-kirribilli-rental-unit-on-airbnb-20161123-gsvtfn/>

Recommended regulatory response – strata regulation and a register

As provided for by the NSW Government's *Short-term Holiday Letting in NSW Options Paper*, the ideal policy response to the financial, security and safety issues caused by short-term letting would be **strata regulation**.

Empowering apartment owners to make decisions on short-term letting in their building will allow them to better manage these concerns as a collective.

Some buildings will elect to allow short term stays because of the increased short-term rental potential, and some will not due to the increased inconvenience and costs – but the point is that it should be the choice of each individual strata community.

By recognising the established collective decision-making nature of strata communities when it comes to short-term letting, strata communities will be best placed to ensure the necessary financial, safety and security arrangements are in place for their building.

Strata regulation is ultimately a self-regulatory measure that recognises the unique and communal nature of strata living.

If there is damage done to a building, you can collectively decide on setting a special levy to repair it and you collectively work together on issues including; pets, cleaning, levies, gardening and the like.

And you should be able to collectively decide on whether your building can be used for commercial or tourist purposes, like short-term letting.

This approach would also address the recent issue created by NCAT's decision to rule current by-laws prohibiting short-term letting in NSW are invalid.

In practice, this policy option could be achieved by amending s.139(2) of the *Strata Schemes Management Act* to enable the creation of by-laws regulating the short-term leasing of a lot for periods specified by the relevant owners corporation.

Where planning law, as at 31 October 2017, prevents short-term letting within a strata scheme, that protection needs to be maintained.

If planning law in the future is changed to allow for short-term letting in these areas, it should only be permitted in buildings that have adopted a by-law permitting and regulating short-term letting.

That by-law could only be passed by 75 per cent of owners on the relevant owners corporation.

A register would then keep record of which building has approved short-term letting, the apartments that are carrying out the practice, the number of nights each is let, and any complaints lodged. This would allow authorities to track short-term letting buildings.

Register

With multiple online platforms, as well as individuals, managing short-term letting it is essential that a Government maintained register be implemented that keeps record of:

- Agency (platforms) who list properties for rent;

- Apartment buildings that have passed by-laws approving their use for short-term letting;
- Individuals or entities that rent their apartments (hosts);
- Individual apartments that are available for short-term renting, including capacity e.g. 2 adults per bedroom;
- The number of nights rented, with functionality to refuse bookings past the maximum nights permitted; and
- Complaints made about individual apartments.

Access to the details in the register must be available to the Strata Committee of the building.

Anonymised data should be available for research into the sector and its impact across the state, to inform any future regulatory responses.

Code of Conduct

A code of conduct needs to be established which sets the standards by which short-term letting occurs which minimises the impact of short-term letting on strata communities.

Complaints Mechanism

A simple complaints mechanism is required to deal with breaches of the Code of Conduct supported by fines against both the Agencies and Hosts for breaching the code. A well implemented Register will self-regulate a lot of the abuses but impact from noise, security and other localised breaches will require a complaints mechanism.

Conclusion

OCN does not want a blanket ban on short-term letting – but we do have the view that the people who live with it, and pay for it, should have the right to decide on whether it is allowed, on a building-by-building basis.

Commercialisation of short-term letting has resulted in removal of residential homes for tourist accommodation worldwide. And there is international evidence that poorly regulated short term letting has led to increasing community calls for an outright ban.

On a micro level this is at its core about fairness and recognising that strata living is different to living in stand-alone housing.

Beyond that, it's about good public policy, and not allowing houses to be locked away for tourists during a housing affordability crisis, or creating a disincentive to apartment living during a population boom.

This Options Paper process presents an opportunity to protect the integrity of strata living and OCN urges the NSW Parliament to introduce the sensible approach recommended in this submission.

We thank the NSW Government for the opportunity to make our case, and we look forward to a speedy resolution by the Government that protects the rights of apartment owners.