

Submission on Short-term Holiday Letting in NSW: Options Paper



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1. Introduction

Tourism Accommodation Australia (NSW) welcomes the opportunity to make a submission to the Department of Planning and Environment responding to the New South Wales Government's *Short Term Letting in New South Wales: Options Paper*. This submission will provide comment and recommendations on how TAA believes an appropriate mix of regulatory responses can ensure the sustainability of NSW's accommodation sector, as well as ensuring that the regulatory environment for commercial operators of short-term accommodation is fair and equitable.

TAA (NSW) is the peak industry association representing hotels, motels and serviced apartments in New South Wales' \$2.5 billion accommodation sector. TAA (NSW) is focused on, and committed to, the future development and growth of the accommodation sector within NSW's vibrant tourism and hospitality industries. TAA (NSW) is a division of the Australian Hotels Association (NSW).

1.1. Contribution of Accommodation Sector to the NSW Economy

NSW's accommodation sector supported 56,012 full-time equivalent jobs in 2015-16 (25,983 through direct employment and a further 30,029 through flow-on impacts). This accounts for 21% of jobs supported by NSW's tourism industry and 1.8% of employment throughout NSW. Employment in the accommodation sector contributed \$3.5 billion to household incomes throughout NSW, and the sector contributed \$416.8 million in taxation revenue during 2015-16.¹

2. The Definitions of Short-term Letting

As outlined in previous TAA submissions, there are a number of interchangeable terms that are frequently used to describe the new economies that have mushroomed around digital platforms (collaborative consumption; peer to peer economy etc.) Many of the leading companies in this space identify as being part of the "sharing economy". In the accommodation space there has been the general emergence of internet-based companies that permit ordinary people to offer tourist accommodation. While Airbnb is the most dominant and city-centric, it has several competitors offering essentially identical services, including Stayz, HomeAway (and its subsidiary VRBO), FlipKey (a subsidiary of TripAdvisor), HouseTrip, Wimdu, 9flats, and Roomorama. The number of these platforms continues to grow.

As outlined in our submission below, channels such as Airbnb have morphed well beyond "sharing" into supporting commercial short term accommodation that is available throughout the year.

To clarify the industry's position on the provision short-term accommodation in residential property, the different categories of accommodation in the "sharing" economy need to be clearly defined.

¹ AEC Group, 2017, *Economic Contribution of the Tourism Accommodation Sector in New South Wales*

Hosted Accommodation:	All hosted stays in primary residences, typically involving the private or shared short-term letting of a spare room.
Shared Accommodation:	Primary residences let un-hosted for a maximum total of ninety nights per year, typically while the residents are temporarily absent.
Commercial-residential accommodation:	Short-term accommodation that falls outside the above definitions of hosted and sharing accommodation, and the property is not a regulated commercial accommodation provider. This includes properties offering un-hosted short-term accommodation for a cumulative total of more than 90 nights per year, and entire properties let by operators with multiple listings.

Recommendation 1

TAA recommends that the NSW Government adopt the above definitions of hosted accommodation, shared accommodation and commercial-residential accommodation.

By comparison, short-term commercial accommodation is defined as “regulated commercial accommodation, including traditional short-term accommodation providers such as hotels, motels and serviced apartments.”

The significant transition away from “sharing” is demonstrated by figures scraped from the Airbnb website by *Inside Airbnb* that show that of the 23,516 listings on Airbnb in April 2017, hosted accommodation consisting of private and shared rooms accounted for 9145 listings, or 38.8%. Sharing accommodation accounted for 6201 listings (26.3%), while commercial-residential accommodation accounted for the remaining 8170 listings (34.7%).

3. TAA Policy Position

3.1. Hosted and Shared Accommodation

TAA supports sharing and hosted accommodation. The monetisation of an under-utilised asset, such as a spare room or a family home while it is temporarily vacated, should be allowed to continue as long as that asset predominately and demonstrably continues to function as an occupier’s primary residence.

The hosted and shared accommodation categories diversify the accommodation sector’s product offering, increase competition in an already-competitive commercial environment, encourage innovation and lead to growth throughout the entire accommodation sector.

With regard to the hosted accommodation category, any perceived risks or possible detrimental consequences for neighbourhood amenity are considerably mitigated by the physical presence of the host. As such, hosted accommodation in a private or shared room should not have limits imposed on either permissible lengths of stay or cumulative nights per year. In line with TAA’s position, the Parliament of Victoria’s *Inquiry into the Owners Corporations Amendment (Short-stay Accommodation) Bill 2016* (the Victorian Report) found that hosted accommodation ‘has little

impact on the amenity and safety of other residents and should be embraced by government.² The NSW Legislative Assembly on Environment and Planning's *Inquiry into the Adequacy of Short-term Holiday Letting in New South Wales* (the NSW Report) recommended that the 'short-term letting of rooms in any property where the landlord or host is present be permitted as exempt development.'³

3.2. Commercial-Residential Accommodation

While TAA welcomes hosted and shared accommodation, it is gravely concerned that entrepreneurial commercial operators are exploiting regulatory grey-areas to run commercial short-term accommodation businesses in residential properties, particularly in residential strata-buildings. TAA has labelled this category as "commercial-residential accommodation", and will use this term throughout this submission. Commercial-residential accommodation accounts for 34.7% of all Airbnb listings.⁴

Inherent in distinguishing between hosted and shared accommodation and commercial-residential accommodation is determining the threshold at which short-term letting becomes a commercial activity rather than an occasional activity providing supplemental income. TAA believes that hosted and sharing accommodation – as inferred by the widely used umbrella term "home-sharing" – can by definition only occur in a home (primary residence). Where short-term letting is occurring in a property that is not functioning as a primary residence, that property is offering commercial-residential accommodation.

Therefore, the key consideration is defining when a property is not functioning as a primary residence. Clearly, an investment property is not a landlord's primary residence. Similarly, a vacant property of an absentee owner is not functioning as a primary residence. Landlords and investors do not "share" empty investment properties – regardless of the length of the agreement, a transaction occurs whereby permission for another individual to temporarily occupy the dwelling is granted in exchange for payment. To label such an arrangement as "home-sharing" is duplicitous and ignores the commercial basis of a landlord or absentee owner offering this accommodation.

TAA's definition of commercial-residential accommodation consists of two separate measures. Firstly, a single host with multiple listings across different addresses indicates a commercial operation, as only one of those properties could satisfactorily be the host's primary residence. Secondly, and as stated in Airbnb's *Policy Tool Chest*, 'at a certain point ... [short-term letting] becomes a more commercial activity requiring additional regulation.'⁵ Short-term letting an entire house or apartment beyond an annual threshold of nights indicates a commercial activity. The *Short-term Holiday Letting in NSW Options Paper* (the Options Paper) agrees that short-term letting 'is acceptable in a residence up to a point that it becomes a more intensive commercial type of use.'⁶ Although TAA would support a lower threshold, the New South Wales *Residential Tenancies Act*

² Legislative Council Environment and Planning Committee, 2017, *Inquiry into the Owners Corporations Amendment (Short-stay Accommodation) Bill 2016*, p xi

³ Legislative Assembly Committee on Environment and Planning, 2016, *Adequacy of the Regulation of Short-term Letting in New South Wales*, p 3

⁴ Inside Airbnb, April 2017.

⁵ Airbnb, 2016, *Airbnb Policy Tool Chest*, p 7

⁶ NSW Government, 2017, *Short-term Holiday Letting in NSW: Options Paper*, p 18

2010 provides an existing distinction of 3 months. TAA has therefore incorporated a threshold of 90 nights per year into our definition of commercial-residential accommodation.

4. Extent and Growth of Commercial Operators

Table 1: Top Ten Individual Property Earnings on Airbnb in Greater Sydney: 12 Months to September 2017⁷

"Host" Name	Host ID	"Host" Location	Property ID	Annual Property Earnings	Occupancy	Days Per Year
Lynne	66970711	Avalon - Palm Beach	12860969	\$317,842	61%	221
Suzy	76292332	Coogee - Clovelly	13402776	\$278,666	87%	317
Peter	80788379	Coogee - Clovelly	13769746	\$211,313	81%	295
Brooke	2790530	Lilyfield - Rozelle	8924082	\$192,935	89%	326
Idy	39094555	Hunters Hill - Woolwich	7463505	\$187,435	58%	213
Jet	10137646	Bondi Beach - North Bondi	11106673	\$181,134	51%	186
Luxico	11914644	Rose Bay - Vaucluse - Watsons Bay	9371114	\$177,689	65%	237
Emma	8294697	Freshwater - Brookvale	12012487	\$175,552	87%	319
Matthew	21377631	Manly - Fairlight	6045148	\$170,582	63%	228
Morgan	54175852	Avalon - Palm Beach	10507482	\$162,099	44%	162

In the twelve months to September 2017, the top ten individual properties on Airbnb earned a total of \$2,055,247 and an average occupancy of 68.6% (translating to an average of 250 booked nights).

Table 2: Top Ten "Hosts" on Airbnb in Greater Sydney by Number of Active Listings: 12 Months to September 2017⁸

	Host	Host Name	Active Listings	Total Earnings
1	7409213	L'Abode Accommodation	252	\$3,809,396
2	36410227	Sabrina	182	\$2,134,785
3	15739069	Keris	142	\$1,129,624
4	4335104	Vincent	108	\$781,878
5	16357713	Property Providers	90	\$2,345,163
6	2450066	Your Home Away From Home	86	\$1,797,350
7	48627526	Bondi Beach Rentals	74	\$693,130
8	113874	Bondi Beach Holiday Homes	61	\$1,150,851
9	16026854	Kirstie	53	\$373,973
10	4298915	Awaba Properties	52	\$509,483
Total			1100	\$14,725,633

⁷ AirDNA, September 2017.

⁸ AirDNA, September 2017.

The top ten hosts in Sydney by the number of active listings had a cumulative portfolio of 1100 properties which earned over \$14,000,000 in the year ending September 2017.

Based on the scale, occupancy and turnover, the listings in Tables 1 and 2 above are clearly commercial operators using residential property to offer short-term accommodation and should have the same regulatory obligations pertaining to development and operation as any metropolitan hotel.

The concentration of ownership or control of dwellings solely for the purpose of short-term letting creates ‘virtual hotels’ where rooms, rather than being located in one building, are dispersed across Sydney. While the Options Paper stated that there was no evidence of concentration of ownership or control, Table 2 indicates otherwise.

Table 3: Growth in Commercial-Residential Listings in Sydney and New South Wales⁹

Sydney Listings	Apr-16	Apr-17	Annual Growth (%)
a) Entire Home/Apartment AND host has 1 listing AND annual availability of >90 days	2931	3677	25.45
b) Entire Home/Apartment AND host has >1 listing	3032	4493	48.19
Total Commercial-Residential	5963	8170	37.01
Total Listings	17,098	23,508	37.49
Commercial-Residential Percentage	34.88%	34.75%	n/a
Total NSW Listings	Apr-16	Apr-17	Annual Growth (%)
a) Entire Home/Apartment AND host has 1 listing AND annual availability of >90 days	5378	7390	37.41
b) Entire Home/Apartment AND host has >1 listing	5099	8207	60.95
Total Commercial-Residential	10,477	15,597	48.87
Total Listings	24,596	35,213	43.17
Commercial-Residential Percentage	42.60%	44.29%	n/a

In the year to April 2017, the number of commercial-residential listings in Sydney and New South Wales grew by 37.01% and 48.87% to 8170 and 15,597, respectively. In both instances, the largest growth was in listings by “hosts” with more than one listing on the website (i.e. commercial operators).

5. The Regulatory Impact of Commercial-Residential Accommodation

The regulatory and legislative requirements imposed by Commonwealth, State and local governments upon short-term commercial accommodation but not imposed upon commercial-residential accommodation (outlined in Appendix 1) demonstrate the unevenness of the short-term accommodation playing field. This jeopardises ongoing investment in new accommodation supply in metropolitan areas necessary to capitalise on New South Wales’ strategic tourism advantages.

Regulations add costs for operators. A 2015 report commissioned by the ACCC determined that ‘regulatory neutrality’ is a significant issue affecting competition between traditional operators and commercial operators in the “sharing” economy, who have “fewer regulations applied to and/or

⁹ Inside Airbnb, April 2017.

enforced against them” which “affects traditional businesses’ ability to compete.”¹⁰ Because of this, the conversion of residential property into commercial-residential tourist accommodation is a much more attractive investment proposition than investment in regulated accommodation product. It is evidenced in the growth of commercial operators who are moving away from traditional hotel investment, instead aggregating and converting residential apartments into quasi-hotels.

5.1. Areas of Regulatory Unevenness

Food Safety

Under the *Food Act 2003* and the Australian New Zealand Food Standards Code, food businesses in New South Wales including restaurants and cafes in hotels are required to register with the local council, appoint a trained food safety supervisor, comply with the Food Standards Code and are subject to regular council inspections.

Commercial-residential accommodation, which may provide food for guests as part of the product offering, is not subject to the same regulations in the *Food Act*.

Fire Safety

Traditional accommodation (hotels, motels, and serviced apartments) classified as Class 3 buildings under the Building Code of Australia is subject, as part of that Code, to extensive fire safety requirements. Additionally, hotels are subject to regular council fire safety inspections including monitoring of the required emergency lighting, exit signs, fire doors, fire hydrant systems, and sprinklers. Class 3 buildings have stringent requirements for smoke alarms. There is also an indoor smoking ban, and an outdoor smoking ban within 4 metres of pedestrian access points.

Commercial residential accommodation in Class 2 buildings is subject to much lower requirements relating to fire safety and smoking, despite the fire risks actually being greater. Unlike a hotel room, each commercial-residential apartment in a Class 2 building is equipped with a kitchen, and unlike a hotel room, smoking on balconies and inside apartments is either permitted or bans are impossible to enforce.

Disability Access

In hotels, common areas must be accessible for guests with a disability. Additionally, the *Disability (Access to Premises – Buildings) Standards 2010* dictate the proportion of rooms that must be built for guests with an ambulant requirement. The cost of constructing or renovating an accessible room has a 30% premium over a standard room, and delivers a weaker return on investment than a standard room.

Commercial-residential accommodation is not required to offer accessible rooms because the accessible room ratio does not apply to Class 1a and Class 2 buildings.

Liquor Licensing

Under the *Liquor Act 2007* and *Liquor Act Regulation*, hotels serving alcohol are required to maintain a valid liquor licence and are subject to oversight from NSW Police and Liquor & Gaming NSW. Urbis

¹⁰ Deloitte Access Economics, 2015, *The Sharing Economy and the Competition and Consumer Act*

notes that the process of gaining a liquor license is generally “relatively small but overly complex”, and that “modest bars situated within hotels represent a very low risk development which is not reflected in approval requirements”¹¹. The annual risk-based licence fee plus trading hour loading can cost accommodation hotels up to \$5550.

Commercial-residential accommodation, which may supply alcohol for guests as part of the product offering, is not subject to the same burdensome regulatory control or enforcement to which accommodation hotels are subjected.

Development Applications

Commercial-residential accommodation occurs in contravention of local planning instruments and the zoning restrictions established by local councils, without any barriers to entry.

By contrast, hotels undertake exhaustive, protracted and expensive development applications. In Sydney, a 300 room four star CBD hotel development takes 51 weeks to gain stage one approval and 87 weeks to gain stage 2 approval. A stage two approval has direct regulatory costs of \$450,000, total regulatory costs of \$2 million and site holding costs of \$2.5 million. These costs are in addition to developer contributions towards local infrastructure.

As noted in the Urbis report, various representations to Austrade by the tourism industry have suggested that the planning environment in Australia is discouraging and even hostile to efficient hotel investments, and that there is a risk that efficient commercial investment will be delayed or even deterred by inappropriate and lengthy regulatory processes.

By contrast, commercial residential accommodation can enter and exit the market without any comparable development-related regulatory costs, approval processes or site holding costs.

Employment

The traditional, regulated accommodation sector employs over fifty thousand full-time-equivalent workers in New South Wales, either directly or indirectly, through extensive value chains. State-wide, hotels, motels and serviced apartments employ 25,983 workers directly including over 16,500 in metropolitan Sydney.¹²

At a minimum, workers are employed under the *Hospitality Industry (General) Award 2010* which guarantees a fair rate of remuneration, working conditions and ensures compliance with FairWork principles. In addition to this, employers make significant investment in workforce training and development, and maintain appropriate workers compensation insurances.

Commercial-residential accommodation does not make a comparable contribution to direct employment. They do not have the same staffing requirement as traditional hotels (which employ an average of 0.42 employees per available room), and workers they do require are often employed as contractors instead of employees – transferring business risk and associated responsibilities on to

¹¹ Urbis, 2015, *Hotel Development Regulations in Australia*

¹² AEC Group, 2017, *Economic Contribution of the Tourism Accommodation Sector in New South Wales*

the individual worker and undermining minimum payment and conditions. The Laane Report (2015) found that, at best, Airbnb listings create 80% less employment than comparable hotel rooms.¹³

Taxation

At present, there is no way for governments to monitor commercial-residential accommodation income or booking frequency, meaning that the Commonwealth Government is unable to monitor the Capital Gains Tax liabilities that arise from short-term letting.

Current guidance from the Australian Taxation Office is that income generated by short-term letting a residential house or apartment, even on a permanent commercial basis, is exempt from charging and remitting GST. Conversely, hotels pay GST on all transactions.

Hotels and similar accommodation pay council rates and charges set at business levels, whereas commercial-residential accommodation – despite operating as a business – attracts a much lower residential council rate.

Individually, these regulatory impositions are unlikely to be threshold factors to discourage hotel investment. However, their cumulative impact, combined with the lack of a regulatory framework for commercial-residential accommodation, substantially impacts investment decisions. With dramatically reduced overheads and without a registration system to provide transparency of supply, these commercial-residential operators can multiply unhindered and undercut the room rate of heavily regulated, traditional accommodation providers.

For the long-term sustainability of the hotel sector, NSW must be able to attract foreign and domestic capital for investment to support asset prices of existing hotel stock, fund ongoing maintenance and refurbishment and innovatively meet changing consumer demands. This will become more difficult as lower-cost commercial-residential accommodation increasingly competes against regulated hotels for investment. It will be exacerbated by prospective hotel investors redirecting their capital to international markets (such as New York, London, Paris, Berlin, Amsterdam and San Francisco) where commercial-residential accommodation is appropriately regulated and high-risk investment in hotels is afforded greater certainty.

Table 4: Hotel-Comparable Listings in City of Sydney

Hotel-Comparable Listings Only - Studio & 1 BR Apartments	
Hotel-comparable Listings	6513
Active hotel-comparable listings	3846
Occupied > 90 nights	1137
Average Occupied Nights (>90)	180
Total Room Nights (>90)	204,728
Average Daily Rate	\$128.75
Average Annual Earnings (>90)	\$23,008
Total Annual Earnings (>90)	\$26,159,789

¹³ Laane, 2015, *Airbnb, Rising Rent and the Housing Crisis in Los Angeles*, p17. Available at <http://www.laane.org/wp-content/uploads/2015/03/AirBnB-Final.pdf>.

In the year to September 2017, entire listings of commercial-residential studio and one bedroom apartments in the City of Sydney accounted for 204,728 room nights. These listings directly compete with heavily regulated hotel room stock, and because they are free from any of the associated regulatory costs, they can dramatically undercut hotel rates.

Commercial-residential accommodation is a fundamental threat to the integrity of the current planning system. Presently, apartment complexes built for residential purposes under the Building Code of Australia have much lower standards relating to construction, fire safety and disability access. TAA contends that these lower standards render the building unfit to safely and equitably provide permanent tourist accommodation. For many years TAA has foreshadowed that unless the distinction between shared, hosted and commercial-residential accommodation was crystallised through tiered regulatory requirements, entire residential buildings would be developed with residential approval and constructed to residential standards, only for whole or part of the building to be converted post-construction to function as a commercial-residential quasi-hotel (as occurred at the time of the Sydney Olympics in 2000). This undermines New South Wales' current planning controls and regulated hotel investment, and additionally threatens that Sydney's current residential supply (already inadequate to control housing affordability pressures) will be further diminished over time.

Concerningly, Airbnb is already pivoting into residential development to provide purpose-built short-term accommodation. In Miami, Airbnb has partnered with the Newgard Development Group to build "Niido Powered by Airbnb", a 324-unit apartment complex to be used for commercial-residential accommodation. Just like a hotel, the apartment complex will have common areas for guests and keyless doors, and a "MasterHost" at the property to function as both a receptionist and concierge to check-in guests and provide other guest-services. The partnerships intends to roll-out 2000 similar apartments in the next few years throughout south-eastern USA.¹⁴¹⁵

6. Further Impacts of Commercial-Residential Accommodation

6.1. Rental and Housing Affordability

While not TAA's primary advocacy, it is important to note the impact that commercial-residential accommodation has on the availability and affordability of residential stock available for housing and long-term rent. The conversion of existing residential stock into commercial-residential accommodation decreases the number of properties available for long-term residential purposes. This decrease in supply increases the price of buying and renting residential property. While hosted and shared accommodation may provide opportunities to generate supplementary income that has the effect of improving housing affordability, commercial-residential accommodation that directly competes with existing hotel stock simultaneously cannibalises residential housing stock.

Using information on short-term letting from *Inside Airbnb*, the impact of commercial-residential accommodation in Sydney was analysed by Nicole Gurran and Peter Phibbs in *When Tourists Move In: How Should Urban Planners Respond to Airbnb?* This analysis found that there is 'considerable potential' for short-term letting platforms offering un-hosted entire residences on a permanent or semi-permanent basis 'to remove whole homes from the permanent rental supply and therefore

¹⁴ <https://www.lonelyplanet.com/news/2017/10/18/airbnb-apartments-niido-orlando-florida/>

¹⁵ <http://fortune.com/2017/10/13/airbnb-florida-niido-apartments/>

considerably increase pressures on rents, a pressure even more marked in certain parts of Sydney.’ The certain parts of Sydney most impacted are popular tourist areas, such as Waverly and the City of Sydney local government areas, where the number of dwellings removed from the permanent rental market for the purposes of short-term letting equalled 353% and 145% respectively of the rental vacancy rates.

Table 5 below shows the number of listings occupied for short-term letting for more than 90 nights per year in different neighbourhoods throughout the City of Sydney, totalling 1785 properties. In order to be available to be occupied this frequently, these entire properties must necessarily be completely withdrawn from the residential housing market. This conflicts with the statement from the Options Paper that ‘the impact of STHL on rental availability is negligible’, although more transparent data collection of the properties used for short-term letting and the frequency of STL activity would allow more detailed analysis.

Table 5: Commercial-Residential Properties in the City of Sydney/Residential Properties Removed from Long-Term Housing Market

Neighbourhood	Active Entire Listings	Number of Entire Listings Occupied >90 nights	Average Nights Occupied (>90)	Most Nights Occupied	Top Property Earnings
Surry Hills	747	219	177	344	\$ 108,808
Potts Point-Woolloomooloo	996	292	177	352	\$ 96,360
Redfern-Chippendale	502	142	195	358	\$ 94,224
Newtown-Camperdown-Darlington	416	117	165	337	\$ 79,339
Sydney-Haymarket-The Rocks	906	342	192	364	\$ 147,598
Darlinghurst	745	232	185	360	\$ 109,014
Glebe-Forest Lodge	348	76	171	332	\$ 92,596
Pyrmont-Ultimo	422	126	171	345	\$ 122,873
Paddington-Moore Park	517	104	154	334	\$ 84,088
Erskineville-Alexandria	268	61	165	325	\$ 55,741
Waterloo-Beaconsfield	395	74	151	347	\$ 64,188

The impact of commercial-residential accommodation on housing affordability in metropolitan areas has also been keenly felt in jurisdictions overseas. San Francisco, New York, Dublin, Vancouver, Toronto, Montreal London, Amsterdam, Berlin, and Paris are some of the global cities that have begun implementing regulations to stop the impact that the commercialisation of short-term letting is having on housing and rental affordability. More information on how overseas jurisdictions have responded to commercial-residential accommodation is provided in Appendix 2.

While housing and rental stresses existed in parts of Sydney before the advent of online platforms facilitating short-term letting, it is inescapable that commercial operators removing entire residential properties permanently from the residential housing market has a detrimental impact on supply and, consequentially, is exacerbating rental price increases and housing unaffordability within certain locations. That residential property for permanent short-term letting is allowed to continue

as a more attractive investment proposition than regulated accommodation (due to the regulatory imbalance pertaining to operation and development) is also exacerbating housing affordability stresses in popular tourist areas (such as the City of Sydney).

6.2. Amenity

Historically, the separation of tourist accommodation (enforced through the zoning of land for Tourist and Visitor Accommodation, and conditions placed on development application approvals by local governments) recognised the often fundamental incompatibility, particularly in metropolitan environments, of mixing a transient tourist population with long-term residents. This distinction between residential areas and commercial areas has been undermined by the conversion of residential property – once reserved to provide for the housing needs of the community – by commercial operators into commercial-residential accommodation providing permanent tourist accommodation.

The penetration of commercial-residential accommodation into previously residential-only localities has created conflict between tourists and residents, particularly relating to excessive noise, the prevalence of party-houses, waste disposal, diminished availability of parking and increased road congestion. TAA is concerned that this conflict, if unaddressed, could jeopardise the tourism industry's social licence and lead to perceptions of "over-tourism". Commercial-residential accommodation has precipitated "over-tourism" in overseas markets, most notably Barcelona and Reykjavik.

Without mandatory registration of properties used for short-term letting to provide transparency and stricter controls on commercial-residential accommodation, disturbances to residential amenity and complaints relating to waste disposal, party houses, noise and parking have proved difficult for local authorities to police. A state-wide registration, coupled with a mandatory Code of Conduct and greater cooperation between short-term letting platforms and local enforcement authorities, would assist in effectively addressing the amenity impact of commercial-residential accommodation.

However, in densely populated metropolitan areas attracting significant numbers of tourists, these measures alone are not sufficient. TAA submits that the amenity concerns in metropolitan areas are a consequence of commercial-residential accommodation being a more attractive investment proposition than investment in traditional forms of accommodation. Amenity concerns in metropolitan areas cannot be fully resolved unless the regulatory imbalance that incentivises commercial-residential accommodation is removed.

7. Differentiation between Regional and Metropolitan Commercial-Residential Accommodation

In May 2017, Tourism Accommodation Australia released a joint statement with Expedia (parent company of Stayz and HomeAway) regarding the regulation of short-term accommodation. This agreement was the first of its kind globally between an accommodation association and a short-term letting platform. In acknowledging the need for restrictions on short-term letting in residential buildings in metropolitan areas and supporting increased data-sharing and transparency across the entire accommodation sector, TAA and Expedia also agreed that the regulatory impact on short-term letting in regional areas should be limited. The rationale behind this agreement was that in the absence of sufficient hotel stock in regional areas to support seasonal tourist demand, commercial-

residential accommodation plays an important role in supporting local economies and facilitating the growth of regional tourism.

As the Options Paper acknowledges, short-term letting has occurred in regional NSW for many years, particularly in coastal leisure-orientated destinations, and provides significant economic benefits to local economies and the tourism industry.

Hotel stock in regional communities is often insufficient to meet peak seasonal tourist demand. As such, there is a reliance on commercial-residential accommodation in regional areas to provide the overnight capacity necessary to sustain these visitor economies. In the year ending June 2017, commercial-residential accommodation in regional NSW accounted for approximately 4.6 million international visitor nights and 7 million domestic visitor nights. By comparison, hotel and similar accommodation accounted for 960,000 international room nights and 14.8 million domestic visitor nights.

Existing regional hotel stock is insufficient to meet seasonal demand for many reasons, primarily because regional hotel investment is high risk and high cost. To justify this risk, hotel investors typically seek annual yields of at least 9% (11x earnings) in regional investments. In comparison, hotel investors are currently entering the metropolitan market for initial yields of 6% (16x earnings). The yields required to attract regional investment will not occur without increased regional dispersal and growth in regional visitor nights. Until regional hotel development becomes more feasible, growth in regional dispersal and regional visitor nights can only be facilitated by commercial-residential accommodation.

Because of the scale of individual residential properties, commercial-residential accommodation is not subject to comparable local government planning constraints that hotel developments must comply with.

Residential development provides a higher initial return for developers, is easier to finance through pre-sales, and has a much faster development timeframe. Because the upfront costs of residential development are significantly less than for a hotel development and the period before a positive return-on-investment can be generated is shorter (in addition to stimulatory tax concessions on residential property such as negative gearing), commercial-residential accommodation is an attractive investment in spite of highly seasonal demand and the associated revenue variability. Fixed and ongoing costs are lower than a hotel development, and because the direct ongoing contribution to employment is negligible, commercial residential accommodation is not plagued by the exacerbated regional skills shortages that afflict hotels once they become operational.

As in metropolitan areas, the amenity impact of commercial-residential in regional communities is real and if left unchecked can lead to perceptions of “over-tourism”, jeopardising the industry’s social licence to operate. Byron Bay is a good example of a regional area where, despite being the main driver of the local economy, the amenity impact of short-term letting has created a backlash against the visitor economy. This underscores the need for an industry-supported Code of Conduct, state-wide transparency of short-term letting supply and greater cooperation between short-term letting platforms with local enforcement authorities such as local councils to manage concerns such as noise, waste, party houses, traffic and parking.

However, unlike metropolitan areas, commercial-residential accommodation in regional communities is filling a void in the accommodation sector caused by the unfeasibility of new hotel development. Regional New South Wales is also unlikely to experience comparable pressure that commercial-residential accommodation is having on housing and rental affordability in metropolitan communities. As the Options Paper acknowledges, the impacts of short-term letting vary between regional and metropolitan areas and as such, the solution required to manage these impacts in regional New South Wales is different to the solution required for Greater Sydney and other metropolitan centres such as Wollongong and Newcastle.

8. Response to Themes in the Options Paper

8.1. Theme 1 - Industry Self-Regulation

TAA supports the short-term letting industry being required to take more responsibility in managing the impacts of its operations. A key tool in this is the creation of a mandatory, enforced Code of Conduct that clearly identifies the expectations and responsibilities of short-term letting platforms, online and offline listing agents, property managers and property owners relating to guest safety and amenity.

A new Code of Conduct should be designed and approved for adoption by the NSW Government. Any subsequent changes to the Code of Conduct should require the approval of the relevant Minister. Short-term letting platforms and offline property agents should largely be responsible for enforcement of the Code, and punitive measures should be applied in instances of non-compliance.

The mandatory Code of Conduct should place requirements on hosts and property owners as well as short-term letting platforms and offline property agents.

Regarding hosts and property owners, a mandatory Code of Conduct needs to include the following:

- Requirement for short-term letting insurance to cover the property and guests
- Requirement that the property meets fire-safety standards
- Registration of the property with the NSW Government via Service NSW

These requirements are comparable to the requirements that the NSW Government has applied to ride-share drivers.

Regarding short-term letting platforms and offline property agents, a mandatory Code of Conduct needs to include the following:

- Agreement to only list properties that comply with the Code of Conduct
- Agreement to only list properties that have registered with the NSW Government, and include the registration number in any listing
- Agreement to remove listings that have not complied with the Code of Conduct
- Via a registration system, agreement to provide to the NSW Government property information, owner information and booking information for the purposes of data-transparency and monitoring.

Short-term letting platforms and offline property agents that do not comply with the Code of Conduct should no longer be allowed to list properties in NSW for short-term let.

Combined, these elements of a new, mandatory Code of Conduct will stop irresponsible property owners from short-term letting and provide a strategic competitive advantage to those short-term letting platforms and offline property agents that are prepared to protect the social licence of NSW's tourism industry.

These measures take much of the administrative burden away from Government, and ensure that those companies and individuals profiting from short-term letting are committed to the industry's sustainability.

Recommendation 2

TAA recommends that a mandatory, enforced Code of Conduct requires short-term letting hosts and property owners to have appropriate insurance, meet fire safety standards and register the property with NSW Government via Service NSW.

Recommendation 3

TAA recommends that a mandatory, enforced Code of Conduct requires short-term letting platforms and offline property agents to only list properties that comply with the Code of Conduct; only list properties registered with the NSW Government and include the registration number in the listing; remove properties that have not complied with the Code of Conduct; and provide property, owner and booking information to the NSW Government.

8.2. Theme 3 - Planning Regulation

As outlined at the beginning of this submission, TAA welcomes genuine shared and hosted accommodation. TAA believes that aside from registering a property to provide short-term letting and complying with a Code of Conduct, there should be no additional regulation placed on shared and hosted accommodation in any location in New South Wales.

TAA also believes that aside from registering a property to provide short-term letting and complying with a Code of Conduct, there should be no additional regulation for commercial-residential accommodation in regional New South Wales.

Given the impact (identified in Sections 5 and 6 above) that commercial-residential accommodation has in metropolitan areas of New South Wales such as Greater Sydney, Wollongong and Newcastle, un-hosted short-term letting in selected metropolitan areas should be capped at 90 nights per year. This is equivalent to the thresholds in London, New Orleans, Toronto, Vancouver, Montreal, and San Francisco. It is higher than the 60 day threshold in Amsterdam and proposed for Dublin. As in San Francisco, New York, Vancouver and Toronto, un-hosted short-term letting in metropolitan areas should also be limited to primary residences rather than investment properties.

The challenge for regulators is how best to incorporate these distinctions and approaches into the current Planning System, and subsequently how to ensure enforcement.

The Options Paper highlights the planning approval pathways available, being Exempt Development, Complying Development and Requiring Consent. The Options Paper also highlights that the options for triggering the different types of development approval are regulating the length of stay, days per stay, days per year, number of bedrooms or presence of hosts.

Hosted accommodation, which involves the presence of hosts, should be classified as Exempt Development throughout NSW. This is in line with the NSW Report's second recommendation that 'the short-term letting of rooms in any property where the host is present be permitted as exempt development'.

Shared accommodation, where a property used for short-term letting retains its function as a primary residence, should also be permitted as Exempt Development. The most objective way of ensuring a property retains its function as a primary residence is through a threshold on the number of nights per year it can be short-term let, rather than a limit on the number of cumulative days per stay or the number of bedrooms within a property.

Recommendation 4

TAA recommends that aside from registering a property to provide short-term letting and complying with a Code of Conduct, hosted accommodation and shared accommodation throughout New South Wales be permitted as Exempt Development.

TAA maintains that a mandatory Code of Conduct is a tool that underpins enforcement of distinctions within the planning system. That a host is present during the duration of a short-term let, or that property is not short-term let in excess of 90 nights per year, can be ensured through short-term letting platforms and offline property agents providing the booking information of individual properties to the NSW Government. For effective enforcement, the Code of Conduct needs to mandate the provision of this information to the New South Wales Government. Airbnb, for example, has agreed to this in overseas jurisdictions such as San Francisco and New Orleans.

Commercial-residential accommodation has significant metropolitan impacts on hotel investment, amenity and housing affordability. It involves a change in use of a property from long-term residential to a commercial accommodation operation. This change in use negates the previous development consent, and therefore requires a new development application requesting consent for the commercial use of the property for short-term accommodation. Without consent, short-term letting platforms and offline property agents would not be allowed facilitate a booking for that property.

Recommendation 5

TAA recommends that short-term letting platforms and offline property agents not be permitted to facilitate a booking for commercial-residential accommodation in metropolitan areas.

Recommendation 6

TAA recommends that short-term letting platforms and offline property agents be required to provide booking information of individual properties to the NSW Government to ensure compliance.

8.3. Theme 4 - Registration

The Options Paper acknowledges the value in ongoing monitoring and reporting on how short-term letting is occurring throughout NSW. A registration system would provide information on the growth and operation of short-term letting in NSW, and as such would ensure regulators and policy makers are equipped with independent data to inform the future regulatory management of the industry.

Mandatory registration of properties used for short-term letting is an enforcement tool that ensures compliance with the distinctions in the planning system between hosted accommodation, shared accommodation and commercial-residential accommodation. Registration would entail providing the property location, the contact details of the owner of the property, the relevant insurance policy number, and whether short-term letting of the property will be hosted or un-hosted. Registration of a property for short-term letting would require agreement from the property owner to comply with the Code of Conduct.

Because of the multitude of online platforms and the need for integrity, it is important that a registration system be maintained by the NSW Government, similar to ride-sharing registrations. Service NSW is the most obvious repository of a registration system. It would not be appropriate for commercial interests to play a role in the administration of a registration for short-term letting. Information from registration system could be shared with local governments and enforcement authorities to enable better localised responses to amenity concerns such as waste, noise, parking and party houses.

Numerous jurisdictions around the world now require the registration of properties used for short-term letting. Foremost among these jurisdictions are San Francisco, New Orleans, Paris, Berlin, Dublin, Miami, Montreal and Toronto. The key learning from these cities is that the registration process should be simple, straightforward and online. The best overseas example of a registration system has come from New Orleans, where Airbnb worked cooperatively with the local authorities. The outcome of this has been that, through automated data-sharing, the process of listing a New Orleans property for short-term let on Airbnb automatically triggers and satisfies the city's own registration procedure. Airbnb calls this "Pass-Through Registration". This has provided Airbnb in New Orleans with a competitive advantage over other platforms.

Compliance with registration can be ensured through a requirement that any online or offline advertisement of a property for short-term let must include that property's registration number.

The registration system would work in concert with the Code of Conduct to store the booking activity of properties used for short-term let. This will ensure that properties are not short-term in excess of 90 nights a year unless they have received a development application consent recognising their change in use from residential to commercial.

Recommendation 7

TAA recommends that all properties used for short-term letting are required to register with the NSW Government through Service NSW.

Conclusion

As outlined in this submission, TAA continues to support hosted and shared accommodation.

While commercial-residential accommodation assists in meeting peak seasonal tourism demand in regional New South Wales, it has considerable impacts on hotel investment, amenity and housing affordability in metropolitan New South Wales. As such, in metropolitan areas short-term letting needs to be capped at 90 nights per year (in line with the *Residential Tenancies Act*) and limited only to primary residences.

A mandatory, enforced short-term letting Code of Conduct coupled with a mandatory short-term letting registration system are essential tools in monitoring the amenity impact of tourism and ensuring compliance with the planning system. It is important that short-term letting platforms and offline property agents commit to the sustainability of New South Wales' visitor economy by sharing with Government the property information, owner information and booking information of properties they advertise for short-term let.

Appendix 1: Regulations on Hotels not applied to Commercial-Residential Accommodation

Development Applications	These are undertaken at considerable expense. In Sydney, it takes 51 weeks to obtain a one-stage approval and 87 weeks to get a two-stage approval. A stage two approval has direct regulatory costs of \$450,000, total regulatory costs of \$2 million and site holding costs of \$2.5 million.																
Building Code of Australia (fire safety)	Hotels are subject to extensive fire safety requirements prescribed by the Code.																
<i>Environment Planning and Assessment Act 1979 and Regulation (NSW) (fire safety)</i>	<p>Class 3 buildings (hotels) are subject to regular council fire safety inspections.</p> <p>Submit fire safety certificates, annual statements and comply with a safety schedule. Requirements can include emergency lighting, exit signs, fire doors, fire hydrant systems, sprinklers, and display orders showing exits and fire safety equipment.</p> <p>Hotels have stringent requirements for smoke alarms.</p>																
<i>Disability (Access to Premises - Buildings) Standards 2010 (Cth) (room ratio requirements)</i>	<p>In addition to making common areas accessible, the Premises Standards impose a number of access requirements on hotels, including the requirement that a proportion of rooms and facilities cater to disabled guests. The requirements are as follows:</p> <table data-bbox="724 1182 1331 1794"> <tr> <td>1 to 10 rooms</td> <td>1 accessible room</td> </tr> <tr> <td>11 to 40 rooms</td> <td>2 accessible rooms</td> </tr> <tr> <td>41 to 60 rooms</td> <td>3 accessible rooms</td> </tr> <tr> <td>61 to 80 rooms</td> <td>4 accessible rooms</td> </tr> <tr> <td>81 to 100 rooms</td> <td>5 accessible rooms</td> </tr> <tr> <td>101 to 200 rooms</td> <td>5 accessible rooms plus 1 for every 25 rooms or part thereof in excess of 100</td> </tr> <tr> <td>201 to 500 rooms</td> <td>9 accessible rooms plus 1 for every 30 rooms or part thereof in excess of 200</td> </tr> <tr> <td>More than 500 rooms</td> <td>19 accessible rooms plus 1 for every 50 rooms or part thereof in excess of 500</td> </tr> </table>	1 to 10 rooms	1 accessible room	11 to 40 rooms	2 accessible rooms	41 to 60 rooms	3 accessible rooms	61 to 80 rooms	4 accessible rooms	81 to 100 rooms	5 accessible rooms	101 to 200 rooms	5 accessible rooms plus 1 for every 25 rooms or part thereof in excess of 100	201 to 500 rooms	9 accessible rooms plus 1 for every 30 rooms or part thereof in excess of 200	More than 500 rooms	19 accessible rooms plus 1 for every 50 rooms or part thereof in excess of 500
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More than 500 rooms	19 accessible rooms plus 1 for every 50 rooms or part thereof in excess of 500																
<i>Liquor Act 2007 & Liquor Act Regulation (NSW)</i>	<p>In order to serve alcohol, hotels are required to obtain a hotel or on-premises licence. Requirements include:</p> <ul data-bbox="724 1868 1353 2036" style="list-style-type: none"> - Rigorous 'community impact statement' process undertaken - Signage and record keeping requirements - Trading hour restrictions - Staff must be trained in RSA 																

	<ul style="list-style-type: none"> - Compliance with licence conditions - Payment of an annual risk-based licence fee + trading hour loading (up to \$5550)
<i>Smoke Free Environment Act 2000 and Regulation (NSW)</i>	<p>Restrictions include:</p> <ul style="list-style-type: none"> - Indoor smoking ban (guests cannot smoke in rooms) - Smoking not permitted in 'commercial outdoor dining areas' - Smoking not permitted within 4 metres of 'pedestrian access points'
<i>Food Act 2003 (NSW); Australian New Zealand Food Standards Code</i>	<p>Hotels operating restaurants and cafes need to:</p> <ul style="list-style-type: none"> - Register with council - Appoint a trained food safety supervisor - Comply with the Food Standards Code - Are subject to regular council inspections.
<i>Inkeepers Act 1968 (NSW)</i>	Sets out signage requirements and the liabilities of 'innkeepers'.
<i>Privacy Act 1988 (Cth)</i>	Requirement to adopt a privacy policy and abide by the Australian Privacy Principles. As employers, hotels are also subject to the <i>Workplace Surveillance Act 2005 (NSW)</i> which provides privacy protections.
Employment Laws	Mandatory.
<i>Work Health and Safety Act and Regulation (NSW)</i>	Mandatory.
Compulsory Contributions to Employee's Superannuation	Mandatory.
Workers Compensation Insurance	Under NSW workers compensation legislation, every employer is required to have workers compensation insurance.
Public Liability Insurance	Contractual arrangements often specify a required minimum amount. Most hotels take out insurance to the value of \$20 million.
Payroll tax	Mandatory
Company tax	Mandatory.
GST	GST is payable on all bookings and services.
Council (business) rates	Hotels in Sydney's CBD have reported council fees of \$140,000 per year.
Other commercial fees and charges	For example, these include trade waste charges.

Appendix 2: Overseas Responses

Jurisdiction	Response to Short-term Letting
New York	<p>Short-term letting for stays less than thirty day is illegal. Advertising properties for stays of less than thirty days is also illegal. Landlords in violation of these restrictions are liable for a USD7500 fine.</p> <p>Short-term letting is estimated to have reduced the affordable housing stock by 10%, accelerated gentrification to the detriment of working-class communities and increased rents.</p>
San Francisco	<p>Hosts are required to register with the City before letting their property.</p> <p>Airbnb has crafted a mandatory registration system to provide the city with hosts' names, addresses and guests' length of stays. This system can block booking beyond the 90 day threshold, and quantify the conversion of long-term rentals into short-term rentals.</p> <p>Short-term letting platforms must inform hosts of their legal responsibilities to collect & remit hotel taxes, only list primary residences, have insurance coverage of a minimum USD500,000, and a maximum un-hosted letting of 90 days per year.</p> <p>Airbnb states to have been applying a "One Host, One Home" policy in San Francisco since April 2016 to limit un-hosted short-term letting to primary residences only.</p>
New Orleans	<p>There is an outright ban short-term letting in the French Quarter. Listing a property in New Orleans automatically triggers the city's registration process. Airbnb calls this "Pass-Through-Registration."</p> <p>Un-hosted short-term letting is limited to 90 days per year.</p> <p>Short-term letting platforms collect taxes on behalf of the city, which fund an enforcement bureau.</p> <p>Short-term letting platforms provide the city with data on short-term rental hosts, the locations of the listings and host contact information.</p>
Miami	<p>Short-term letting has been banned in a substantial portion of Miami. Miami has also tried to ban short-term letting for stays of less than 30 days. In neighbourhoods where short-term letting is legal, strict conditions have been introduced.</p> <p>In legal areas, hosts are required to apply for a certificate of compliance at a cost of \$250. The application form for short-term letting requires copies of the property's deed, proof of a business tax receipt from the city and Miami-Dade County, a Florida Department of Revenue Certificate of Registration for taxation purposes and a Transient Lodging License with the Florida Department of Business.</p> <p>Violators of the above requirements incurs a \$250 fine for a first offence and a \$500 fine for subsequent offences.</p>
London	<p>London has an annual threshold of 90 days for which a property can provide un-hosted short-term letting. Beyond this threshold, planning permission is required.</p> <p>Airbnb enforces a day-counter in London, which blocks booking functionality on listings that have reached the 90 day limit. There is concern that Airbnb is not enforcing the day-counter.</p>

Berlin/Hamburg/Munich	<p>The short-term letting of more than 50% of an apartment on a short-term basis without a permit risks a fine of €100,000. A change in use permit and approval is required to let more than 50% of a dwelling for short-term accommodation.</p> <p>For entire apartments that have been given approval for short-term letting, the rate charged can be no more than the average long-term rent per square metre for the local area.</p>
Paris	<p>Properties can be short-term let for 120 days per year. Above this threshold a special licence is required. Fines of €25,000 apply to landlords who short-term let properties above this threshold without a licence.</p> <p>Registration is required of properties used for short-term letting. Airbnb has agreed to implement an automated day-counter to block booking functionality once the 120 day annual threshold has been reached.</p>
Amsterdam	<p>Airbnb agreed to a short-term letting annual limit of 60 days. It also agreed to enforce this limit through its own automated day-counter. From October 2017, Amsterdam has begun requiring hosts to report booked dates of their guests ahead of time. This is in response to concerns that Airbnb was not enforcing the automated day-counter, and that hosts were moving across multiple short-term letting platforms to circumvent the day-limit. Fines for non-compliance are up to €20,500.</p>
Dublin	<p>A change from residential use to short-term letting use requires planning permission. It is expected that the threshold for planning permission will be 60 days per year. Landlords are not allowed to short-term let investment properties unless they register and received planning approval as a bed & breakfast or a hotel.</p>
Vancouver	<p>Short-term letting is banned apart from primary residences. All hosts are required to register with the City, and have business licences displayed on their accommodation listing. The primary residence qualification means that properties cannot be short-term let for more than 90 days per year.</p>
Montreal	<p>Quebec law requires owners who frequently short-term let their properties (more than 90 days annually) to obtain the same certifications as hotels and bed & breakfast operators. Fines are up to CAD100,000.</p>
Toronto	<p>Toronto is finalising its response to short-term letting. All short-term letting hosts must register with the City and post their registration number in all advertisements. Short-term letting platforms are required to be licenced and only list registered properties. Short-term letting is only allowed in primary residences (based around a 90 day annual threshold). Short-term letting platforms must share booking, owner and property data with the city to enable enforcement.</p>