



Planning &  
Environment



Fair  
Trading

# ***Short-term Holiday Letting in NSW***

## ***Options Paper***

July 2017



# Foreword

We are very pleased to present this Options Paper on short-term holiday letting in New South Wales.

The emergence of innovative online booking services and the development of the sharing economy has seen short-term holiday letting expand significantly in NSW. This industry has been carried out in NSW for many years and can provide significant economic benefits to local economies and the wider state tourism economy. This has led to the need to reconsider the role of regulation in enabling the activity to continue to take place, without unduly impacting on local communities and the safety of visitors.

In October 2016, the NSW Parliament Legislative Assembly Committee on Environment and Planning made several recommendations to the government relating to planning matters and strata laws following its public inquiry on the *Adequacy of Regulation of Short Term Holiday Letting*. We thank the Parliamentary Committee for its effort and welcomed the recommendations through a whole government response on 20 April 2017.



**The Hon. Anthony Roberts MP**  
Minister for Planning  
Minister for Housing  
Special Minister of State

The NSW Government, like the committee, is committed to providing the best regulatory framework for short-term holiday letting. It is important to get the settings right, which is why we are releasing this Options Paper to have an in-depth discussion. We want to work through the detail of various options before any formal process is commenced.

The short-term accommodation industry and the community will be part of a broad consultation to address short-term holiday letting. The community and industry feedback on options are needed to identify the most appropriate way for the NSW Government to respond to the development of the sharing economy.

The NSW Government's Options Paper will explore approaches to implement a whole of Government framework, addressing land use and planning concerns, strata managed buildings and the amenity of existing residents.

To provide this framework, we are starting a three-month consultation process to find the best options for the people of NSW.

We look forward to your comments on this important issue.



**The Hon. Matt Kean MP**  
Minister for Innovation and Better Regulation

---

© Crown Copyright 2017 NSW Government

## Disclaimer

While every reasonable effort has been made to ensure that this document is correct at the time of printing, the State of NSW, its agents and employees, disclaim any and all liability to any person in respect of anything or the consequences of anything done or omitted to be done in reliance or upon the whole or any part of this document.

## Copyright notice

In keeping with the NSW Government's commitment to encourage the availability of information, you are welcome to reproduce the material that appears in 'Short-term Holiday letting in NSW: Options Paper' for personal, in-house or non-commercial use without formal permission or charge. All other rights are reserved. If you wish to reproduce, alter, store or transmit material appearing in the 'Short-term Holiday letting in NSW: Options Paper' for any other purpose, a request for formal permission should be directed to: Director Housing Policy | Planning Policy, Strategy and Governance, Department of Planning and Environment, GPO Box 39, Sydney NSW 2001.

# Contents

<b>Executive Summary</b>	<b>4</b>
<b>Section 1 - Background</b>	<b>7</b>
Short-term Holiday Letting and its Contribution to NSW	7
2016 Parliamentary Inquiry	7
<b>Section 2 - Regulation of STHL</b>	<b>8</b>
Current Regulation of STHL in NSW	9
Regulatory Approaches Both Here in Australia and Overseas	9
<b>Section 3 - Impacts Associated with STHL</b>	<b>10</b>
General Environmental and Amenity Impacts	10
Impacts within Strata Properties	11
Broader Industry and Housing Policy Considerations	11
<b>Section 4 - Self-regulation</b>	<b>13</b>
Code of Conduct	13
Airbnb Friendly Buildings Program	14
Education	14
Complaint Management	14
Monitoring and Reporting	14
<b>Section 5 - STHL in Strata Properties</b>	<b>15</b>
STHL and Current Strata Laws	15
Options	16
<b>Section 6 - Regulation through the Planning System</b>	<b>18</b>
How STHL is Defined	18
The NSW Planning System and STHL	18
Options for Triggering Types of Development Approval	19
<b>Section 7 - Registration or Licensing</b>	<b>21</b>
Examples of Registration and Licensing in Other Jurisdictions	21
Nature of Problem and Focus of Potential Registration	22
<b>Section 8 - Next Steps</b>	<b>23</b>
Have Your Say	23
Abbreviations	23
References	24
<b>Appendices</b>	<b>25</b>
Appendix 1 – STHL Options Paper Submission Form	25
Appendix 2 – Recommendations and Findings of the Legislative Assembly Committee	28
Appendix 3 – The Holiday and Short-term Rental Code of Conduct	29
Appendix 4 – Regulatory Approaches to STHL in other Jurisdictions	30

## Executive Summary

### Short-Term Holiday Letting in NSW

There has been a rapid growth in short-term holiday letting (STHL) both nationally and in NSW over recent years particularly since the emergence of online booking services and the development of the sharing economy.

The NSW Government's response to the Parliamentary Inquiry into the regulation of short-term holiday letting supported putting in place a regulatory framework for STHL. This Options Paper seeks feedback on the approaches to enable economic benefits while managing the social and environmental impact of STHL.

STHL is estimated to be worth \$31.3 billion<sup>1</sup> nationally, providing income for property owners and creating jobs through the establishment of new businesses to manage transactions between property owners and customers. In NSW, STHL constitutes approximately 50% of the national total, accounts for 25% of total visitor nights and occurs in both regional and metropolitan areas. It is expected that STHL in NSW will continue to increase its share of visitor night demand over the next ten years.

STHL has the potential to generate impacts on the community if not adequately managed. These impacts could include noise, waste, traffic and parking, safety and security, and the potential impact on housing and broader industry in general. These impacts vary between regional and metropolitan areas, and between detached dwellings and apartments. Impacts can be managed in different ways and feedback is sought on the type and degree of impacts and the appropriate response by government to these impacts.

### 2016 Parliamentary Inquiry

In 2016, the NSW Legislative Assembly Committee on Environment and Planning conducted an inquiry into the adequacy of regulation for short-term holiday letting in New South Wales.

This Options Paper should be read as a companion document to the Committee's paper – which can be found at <https://www.parliament.nsw.gov.au/committees/DBAssets/InquiryReport/ReportAcrobat/6080/>.

### NSW Government's Response

The Government response<sup>2</sup> to the Parliamentary Committee was released on 20 April 2017.

The NSW Government generally supports the findings and recommendations of the Parliamentary Inquiry.

The Government considers that STHL is acceptable in a residence however, there is a point where STHL becomes a more intensive commercial type of use.

This Options Paper is the next step in determining a policy framework – by engaging with stakeholders, industry and the general public to discuss what level of regulation is required to best meet the needs of the NSW community.

<sup>1</sup> Parliamentary Inquiry Report, October 2016, p42.

<sup>2</sup> <https://www.parliament.nsw.gov.au/>





## Options

An approach to STHL in NSW could range from minimal intervention to substantial Government regulation.

Non-regulatory approaches could include improved self-regulation, or working with stakeholders through co-regulation arrangements. Direct regulatory intervention may be warranted if it is demonstrated as a viable option to address a specific problem, and is likely to result in a positive net benefit to the community as a whole.

There are a number of regulatory options that could be considered either individually or in combination as having the potential to manage STHL impacts. These include: greater industry self-regulation through a stronger Code of Conduct; registration or licensing of STHL operators with acceptable standards of operation; changes to strata laws to protect the amenity of residents within apartment buildings; and regulation through the planning system.

While Government intervention in the form of regulation may address some issues associated with STHL, it should not be seen as the default option where other solutions, such as industry self-regulation, exist.

In determining what the policy framework might look like there are a range of stakeholders that we would like to hear from including local councils, homeowners, tenants and holidaymakers, affected neighbours, strata corporations, STHL businesses, traditional accommodation operators and other downstream businesses.

## Purpose of this Options Paper

This Options Paper, building on the work of the Parliamentary Inquiry and existing practice, considers different options to deliver an effective approach to short-term holiday letting. It is the next step in determining a whole of government framework. The options outlined in this paper are summarised in **Figure 1**.

You are invited to respond to the ideas raised in the Options Paper by writing to the NSW Department of Planning and Environment by **31 October 2017**. You may wish to use the form provided in **Appendix 1** when submitting your ideas. Details for how to make a submission or provide feedback on this Options Paper are available at:

**[www.planning.nsw.gov.au/STHL](http://www.planning.nsw.gov.au/STHL)**

You can provide your feedback by:

- filling out the submission form
- completing the online survey
- email to [STHL@planning.nsw.gov.au](mailto:STHL@planning.nsw.gov.au)
- writing to:

**Director, Housing Policy**

*Department of Planning and Environment  
GPO Box 39, Sydney NSW 2001*

Your submission will inform any changes the NSW Government makes to the regulation of STHL.

## Have your say.

**Figure 1: Potential Options**

Themes	INDUSTRY SELF REGULATION	STRATA REGULATION	PLANNING REGULATION	REGISTRATION
	Refer Section 4	Refer Section 5	Refer Section 6	Refer Section 7
Multiple Options	Code of conduct	By-laws to manage visitor behaviour	Development approval - exempt/complying	Registration to manage safety and amenity issues
	Complaints management	By-laws to receive compensation for adverse effects	Development approval - development consent	
	Education		Limit the length of stay	Registration to monitor that other regulatory approaches (e.g. number of days, number of properties) are being met
	Monitoring and reporting	By-laws to prohibit STHL	Limit the number of bedrooms	
			Regulate by whether the host is present when STHL takes place	

**Note:** The policy options for STHL could include regulatory or non-regulatory approaches, or a combination of both. A combination of options from any rows or columns (or/and other options not covered in the paper) can be chosen to suggest a policy framework for the STHL in the submission form.

## Section 1 - Background

### **Short-term Holiday Letting and its Contribution to NSW**

STHL has occurred for many years in coastal and other holiday locations in NSW to accommodate tourists<sup>3</sup>. STHL is no longer confined to holiday making, but is now commonly used throughout NSW for corporate and business trips, annual community events, family reunions, temporary accommodation while looking for long-term rental, and emergency accommodation.

In 2014, there were an estimated 216,000 STHL premises in NSW/ACT<sup>4</sup>.

These premises have traditionally been managed through local real estate agents or tourism agencies. In the last decade, however, online advertising platforms and booking services have taken a growing share of STHL listings. The number of listings via online platforms is more than doubling each year between 2011-2015<sup>5</sup>, and most online listings are managed directly by the owner of the dwelling rather than an estate agent.

In 2015, non-traditional accommodation accounted for 25% of visitor nights to NSW<sup>6</sup>.

STHL occurs in both regional and metropolitan areas of NSW. About one-third of accommodation supply in non-metropolitan coastal NSW is STHL and it is a significant contributor to regional economies<sup>7</sup>. While STHL demand in regional areas tends to be seasonal (around holiday periods) and mostly full (unhosted) houses, STHL demand in metropolitan NSW appears year-round and is mostly apartment-based.

STHL takes four forms in NSW:

- Rental of one or more rooms (including room sharing) with the host present
- Rental of a whole dwelling (principal residence) with the host away
- Rental of a holiday dwelling (non-principal residence) with the host away
- Rental of a dwelling solely reserved for STHL

### **2016 Parliamentary Inquiry**

In 2016, the NSW Legislative Assembly Committee on Environment and Planning conducted an inquiry into the adequacy of short-term holiday letting in New South Wales. 212 public submissions were received, and three public hearings were held between March and May 2016. The Committee's final report was published on 19 October 2016 and made 12 recommendations (Appendix 2).

The full report can be found on the Parliament of NSW website<sup>8</sup>, and it should be read as a companion document to this paper. The key recommendations were that the NSW Government:

- amend planning laws to regulate short-term rental accommodation,
- allow home sharing, and letting a principal place of residence, as exempt development,
- allow empty houses to be let as exempt and complying development,
- strengthen owners' corporations' powers to manage and respond to STHL issues in strata properties, and
- commit to further investigating impacts from STHL on traditional accommodation operators, and opportunities to reform their regulation.

The NSW Government responded to the report on 19 April 2017 indicating general support for the key recommendations.

---

<sup>3</sup> *Parliamentary Inquiry Report, October 2016, p14.*

<sup>4</sup> *Parliamentary Inquiry Report, October 2016, p23.*

<sup>5</sup> *Gurran and Phibbs, 2017: 80.*

<sup>6</sup> *Parliamentary Inquiry Report, October 2016, p23*

<sup>7</sup> *Holiday Rental Industry Association, 2016: 20-21.*

<sup>8</sup> <https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=1956>

## Section 2 - Regulation of STHL

A final policy approach will need to consider both the benefits of STHL as well as the nature and extent of the negative impacts and red tape for business and citizens.

To determine which policy option is appropriate, it is important to establish a clear, evidence-based understanding of the nature and significance of the impacts of STHL on the community. Even in the absence of sufficient data, policy options should still be guided by the relative significance and likelihood of the problem, and the outcomes sought.

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

Government regulatory intervention may address some issues associated with STHL but should not be seen as the default option where other solutions may exist. The regulation of STHL in NSW could range from minimal intervention to substantial Government regulation. Direct regulatory intervention would be warranted in cases where it is demonstrated as the best available option to address a problem, and is likely to result in a positive net benefit to the community at large. Alternatively, non-regulatory approaches could include incentives for better self-regulation, or working with stakeholders through co-regulation arrangements.

There are a range of distinct regulatory options available to manage the impacts associated with STHL including greater self-regulation by industry, registration of STHL operators along with acceptable standards of operation, changes to strata laws, stronger regulation through the planning system, or a combination of these approaches.

### Key Considerations for Government

There are a number of general considerations that inform whether there should be a regulatory regime for STHL in NSW. These include:

- Regulatory and non-regulatory options properly considered by evaluating their potential effectiveness, costs and benefits
- That selected options are effective and proportional
- Consultation with business and the community should inform regulatory development
- The simplification, repeal, reform or consolidation of existing regulation

In addition, there are a number of specific matters relating to STHL which should be considered in any regulatory response. These include:

- NSW (including ACT) represents approximately 35% of holiday rental premises nationally<sup>9</sup>
- STHL contributes an estimated \$31.3 billion to the national economy including upwards of 238,000 jobs<sup>10</sup>
- The amenity and safety impacts associated with this growing industry can be real and warrant consideration, and
- The potential and the level of concern in relation to impacts are greater in strata buildings.

<sup>9</sup> Parliamentary Inquiry Report, October 2016, p23.

<sup>10</sup> Parliamentary Inquiry Report, October 2016, p42



## **Current Regulation of STHL in NSW**

STHL is currently regulated in a piece meal manner through the planning system.

While local councils can generally determine the land use planning controls for STHL in their jurisdictions through their Local Environmental Plans (LEPs), few LEPs in NSW refer specifically to STHL (see Parliamentary Committee Report <sup>11</sup>).

Those LEPs that do refer to STHL use different definitions of STHL, and have different thresholds for when STHL requires development consent. Some define STHL as tourist and visitor accommodation within residential accommodation. Some set a maximum number of consecutive days that STHL can occur, or a maximum number of bedrooms allowed as STHL. Some set thresholds for days and bedrooms beyond which a more detailed level of approval from council is required.

There is value in standardising this approach. There is also value in giving councils some flexibility to reflect their area's specific circumstance.

## **Regulatory Approaches Both Here in Australia and Overseas**

Jurisdictional responses to STHL vary, reflecting the issues and circumstances experienced in their specific locations (see Appendix 4).

In Australia, South Australia does not require approval for STHL. Victoria is considering changes to strata laws to address issues in apartment buildings, while Queensland has introduced legislation to allow councils to deal with party houses. In Western Australia, some cities have a registration process in conjunction with the requirement for development consent.

Cities internationally have also established different regulatory responses to STHL. In New York, advertising an entire unoccupied apartment for less than 30 days is illegal. In Berlin it is illegal to let more than 50% of an apartment on a short-term basis without a permit from the city. In Paris an authorisation is required for STHL longer than 120 days whilst in London STHL is allowed for up to a total of 90 nights in any calendar year.

In San Francisco the registration of STHL properties has been introduced to address housing affordability. STHL is defined as a rental of all or some of the primary residential unit for less than 30 consecutive nights. Similarly, Vancouver is tightening its laws on STHL in response to low rental vacancy rates and limited access to affordable, quality rental housing. The city will require a business license for anyone doing short-term rentals.

<sup>11</sup><https://www.parliament.nsw.gov.au/committees/DBAssets/InquiryReport/ReportAcrobat/6080/>

## Section 3 - Impacts Associated with STHL

As STHL takes place in existing dwellings it is hard to quantify the potential impacts of STHL above and beyond what would normally be expected in residential areas.

However, STHL occupants may differ from most long-term occupants in that they may:

- prioritise leisure or festive activities
- be unfamiliar with local rules to manage amenity
- be less concerned to maintain good neighborly relations.

This section focuses on the impacts associated with STHL in NSW including general environmental and amenity impacts, impacts within strata properties and broader industry and housing policy considerations. By taking into account the impacts, consideration can be given to whether a regulatory response is required over and above the existing responses.

### General Environmental and Amenity Impacts

#### Noise

Noise and associated anti-social behavior was one of the most frequent amenity issues raised in submissions to the Parliamentary Committee inquiry. Leisure and festive activities may be predominate in short-term holiday letting, and occur more frequently than long-term residential activities. In addition, people on holidays may occupy the dwelling for more hours each day than would be expected of long-term residents.

There are a number of existing avenues to raise concern and seek a response in relation to noise issues associated with the use of dwellings in NSW, such as complaints to the local council or reporting to the NSW Environment Protection Authority or NSW Police.

These authorities can issue a warning or a noise abatement direction under the Protection of the Environment Operations Act (POEO Act) directing a person to stop making the offensive noise, with the potential for non-compliance with the direction resulting in an on-the-spot fine. The POEO Act also sets out that local councils can serve various notices on occupants that require them to control offensive noise and advise them what noise levels are acceptable.

However, given the nature of STHL, these measures are likely to be more effective in responding to systemic noise problems associated with the use of a dwelling as opposed to short-term one off noise incidents.

#### Party Houses

Party houses were raised as an issue with the Parliamentary Committee, however there is limited data on the impact of party houses in NSW. Problems may stem from a combination of frequent short stays by inconsiderate occupants and by the size of the dwelling.

In QLD, the Sustainable Planning Act enables a local planning scheme to declare that a 'party house' may be 'assessable development' requiring approval and restricting party houses to particular precincts and/or ban them from others. To date, however, only the Gold Coast Council has utilised these provisions.

#### Waste

Waste generation may be higher for STHL guests than long-term residents because their perishable items or other items acquired during their stay may be disposed of at the end of their stay. They may also be unfamiliar with rules about when and how waste is collected.

## **Traffic and Parking**

There may be a higher proportion of independent adults occupying STHL than would be expected under long-term occupancy, which may generate more demand for parking. STHL guests may also be unfamiliar with local parking arrangements or rules.

## **Hazards and Evacuation**

All dwellings are at risk from hazards that may require the evacuation of the building, such as a house fire or gas leak. Apartment complexes rely on efficient evacuations. STHL occupants may not be familiar with the procedures for evacuating the building, especially if there is no host present.

Many properties in NSW, especially in regional areas, are also exposed to natural hazards such as bushfire and flood.

The NSW Government's current approach to actual impending hazards is to provide warnings in real time through a telephone warning system called Emergency Alert. This system sends warnings to landline and mobile phones in the area subject to threat, which provides real-time information and directs people to the radio, television or website for up-to-date information. Where possible, officers door knock to reinforce evacuation warnings.

## **BCA Classification**

Some jurisdictions and courts in Australia have asserted that STHL can constitute a change in building classification under the Building Code of Australia (BCA). This can affect in NSW, among other things, the fire safety, health and amenity and disabled access (for people with a disability) requirements that apply, as well as whether development approval is required from the local council.

## ***Impacts within Strata Properties***

Strata complexes are generally more susceptible to the potential impacts of STHL due to:

- the proximity of neighbours,
- the reliance on shared facilities, and
- the high proportion of whole-premise STHL in these listings (i.e. with no host present).

One small survey in Victoria indicated that STHL guests caused complaints about three times as often as long-term occupants, but the total complaint rate averaged less than one complaint per apartment per year<sup>12</sup>.

Nevertheless, strata complexes have unique needs which require separate consideration as outlined in Section 5 of the Options Paper.

## ***Broader Industry and Housing Policy Considerations***

### **Crossover with Other Short-term Accommodation Providers**

Traditional short-term accommodation providers are of the view that there is inequality between the regulated accommodation sector and less regulated STHL. This inequality is said to stem from a lower level of regulation, giving STHL an advantage by having lower establishment and compliance costs.

For example, the Committee heard evidence that 'this advantage is most stark at the boundary between [STHL] and bed and breakfast operators, who are arguably competing for the same customers'.

Consideration could be given to better aligning the regulatory requirements for low impact tourist and visitor accommodation, such as bed and breakfasts, and those for STHL.

<sup>12</sup> Minifie, 2016: 27.



### **Concentration of STHL Ownership**

In its submission to the Parliamentary Committee, Inside Airbnb reported that 25% of entire home listings are rented out by hosts with more than one listing<sup>13</sup>.

Concentration of ownership of dwellings, solely for the purpose of using them for STHL could create 'virtual hotels' where the 'rooms' are dispersed across NSW. There is currently little or no evidence of concentration of ownership, or of any adverse impacts from 'virtual hotels' in NSW.

Some jurisdictions are regulating the number of properties a host can advertise. In NSW, any attempt to regulate STHL ownership may be anti-competitive and would need to be carefully considered.

### **Rental and Affordable Housing Stock**

The continued growth of STHL is occurring at the same time as the housing market is generally becoming less affordable, particularly in metropolitan Sydney and highly patronised holiday destinations such as Byron Bay. In these areas, some consider that STHL has the potential to compete against traditional forms of residential tenancy.

However, the limited evidence currently available suggests that the impact of STHL on rental availability is negligible.

Sector-wide, transparent data collection and reporting from industry may help to ensure the issues can be monitored to facilitate an informed response from Government.

<sup>13</sup> Parliamentary Inquiry Report, Submission 199, Inside Airbnb, p2.



## Section 4 - Self-regulation

One of the NSW Government's considerations in the regulation of STHL is that industry could take greater responsibility in self-regulating its operation and that the effectiveness of this self-regulation would, to some degree, influence the ongoing level of Government regulation that is required (if any).

Effective self-regulation generally requires a strong and unified industry body with broad membership and the ability to ensure compliance with self-regulatory measures. It may also involve incentives for owners, hosts and guests of STHL to further enhance better self-regulation.

The evidence relating to the impacts associated with STHL where most hosts operate without incident supports the view that the vast majority of STHL does not require Government regulatory intervention. However, for this approach to be supported there would need to be more effective, accountable and transparent self-regulation by industry.

## Code of Conduct

The Holiday Rental Code of Conduct was originally adopted by NSW in 2012 and revised as a national code in 2015 with the key objective of encouraging acceptable standards of behaviour for holiday rental guests.

The NSW Legislative Assembly Committee<sup>14</sup> generally found that the Code's current management structure and participants are too narrow and that there is disagreement and confusion regarding its ownership and legal status. The Committee were of the view that the Code might be a valuable tool in the management of the STHL industry. Therefore, it was recommended that the Code should be strengthened and be part of a compliance system for STHL.

The Committee suggested that there may be value in reviewing the Code of Conduct or producing a NSW-specific Code of Conduct that is supported by all providers and the government in NSW (recommendation 6). The Committee also recommended that the NSW Government should participate formally in the management of the Code.

Conversely, the creation of a State-level code could add costs and complexity to STHL which may outweigh its value. In any event, the effective implementation of a Code may allow the NSW Government to tailor its regulatory response accordingly.

<sup>14</sup> NSW Legislative Assembly Committee page 5.

## Airbnb Friendly Buildings Program

According to Airbnb's Australian website the Friendly Buildings program is "a pilot program offered to help landlords, building residents who are Airbnb hosts, and their neighbours<sup>15</sup>. The program is currently only available in certain buildings within the United States.

The program facilitates an agreement between hosts and the strata building's owners' corporation so that the corporation has the information on the number of dwellings let and the nature of the STHL stays in the building, can cap the number of nights a unit can be let for STHL and allows them to take a share of the STHL earnings. Once the program is signed up to, when rules are broken Airbnb can penalise the host by removing the relevant listing from their platform.

## Education

A self-regulation approach would see the industry committing to better educating users and hosts of the benefits of managing impacts to address some community concerns around STHL.

## Complaint Management

Most STHL operators provide complaint mechanisms for their listings, such as a website or a telephone number. Self-regulation could see a transparent and responsive complaint management system.

If this was implemented it could form part of the Code of Conduct, be mandated through Government regulation either as a requirement of, for example, a registration scheme (refer to Section 7) or a requirement to being exempt development or a planning approval (refer to Section 6).

## Monitoring and Reporting

There is value in greater ongoing monitoring and reporting on STHL by industry. This is particularly the case given the paucity of information relating to the impacts associated with STHL.

If information about the growth of STHL in NSW and its impacts on the community was made publicly available it would provide data on the extent of any issues and inform the future regulatory management of the industry.



<sup>15</sup> <https://www.airbnb.com.au/help/article/1195/airbnb-friendly-buildings-program>

## Section 5 - STHL in Strata Properties

The NSW Government is committed to providing a balanced regulatory approach to the issue of STHL in strata schemes. This approach is centred on maintaining a resident's entitlement to the use and enjoyment of their property, providing the appropriate compliance and enforcement tools to address bad behavior, while supporting the positive economic benefits that derive from STHL.

Section 5 addresses current strata laws in strata properties where STHL occurs. Strata properties have different requirements to detached housing, because of the proximity of their residents and shared responsibility for common property. For this reason, Recommendations 10 and 11 of the Committee's report relate specifically to the management of STHL in strata properties.

The Committee recommended that the NSW Government consider amendments to strata laws to give owners' corporations more powers to manage and respond to adverse behaviour (*Recommendation 10*). The Committee also recommended that the NSW Government review the impact of short-term letting in the strata environment after no later than three years (*Recommendation 11*).

There are differing views on the best regulatory approach to manage STHL. Options that could be introduced under strata scheme management laws include imposing vicarious liability on lot owners for the actions of short-term lessees, allowing for increased levies for lot owners who engage in STHL, introducing a civil penalty for creating a nuisance, and expanding the powers of the NSW Civil and Administrative Tribunal (the Tribunal) to deal with problems arising from STHL. There is also the option to enable owners' corporations to prohibit or restrict STHL in their strata schemes.

Representatives of the short-term letting industry argue that the impact of STHL on strata schemes:

- is overstated and unsupported by corresponding data;
- is similar to impacts arising from long term rental or ownership; and
- can be adequately addressed through self-regulatory measures such as adherence to the industry's Code of Conduct, or changes to strata laws to enable owners' corporations to better manage the impact of STHL.

On the other hand, some strata advocates argue that STHL can result in:

- degradation of communal facilities;
- reduced amenity and enjoyment of an apartment complex; and
- owners' corporations should be able to restrict or ban STHL in the schemes.

### STHL and Current Strata Laws

#### Managing the Impacts of STHL

Under current strata laws, owners' corporations can adopt model by-laws which enable them:

- to manage some of the impacts that may arise from short-term rental accommodation, including management of common property; and
- require that an owner/occupier must notify the owners corporation of a change of use of that lot including if it is to be used for short-term rental accommodation.

Owners' corporations can also formulate their own by-laws to:

- help manage the behavior of owners/ occupiers and invitees, noise, vehicle parking, the appearance of a lot and waste disposal;
- vary the insurance payable by owner/ occupiers who short-term let; and
- restrict the occupancy of bedrooms in a lot to no more than two adults<sup>16</sup>.

<sup>16</sup>Strata Management Schemes Regulation 2016, Schedule 3.

While an owner/occupier is obliged to comply with by-laws, a short-term holiday occupant may not have the same interest in by-laws as long-term residents. They are also likely to have left the property by the time any enforcement action could commence.

Owners and occupiers of lots in a strata scheme are also required to avoid creating a nuisance or hazard or unreasonably interfering with the use or enjoyment of the common property or other lots by others.

If an owner/ occupier breaches this section, the owners corporation can initiate proceedings in the NSW Civil and Administrative Tribunal (Tribunal) to require an owner/occupier to comply<sup>17</sup>.

### Prohibition of STHL

The Strata Schemes Management Act 2015 (SSMA) prohibits by-laws that restrict the rights of owners to deal with their lots<sup>18</sup>. Furthermore, by-laws that purport to restrict the use of a lot when that use is permitted under an applicable planning instrument have no effect<sup>19</sup>.

The Committee received submissions indicating that some owners' corporations have passed by-laws which purport to prohibit STHL in their buildings<sup>20</sup> in accordance with legal advice that such by-laws were valid and effective.

## Options

### Strata Law Provisions to Address the Impact of STHL

The rapid growth in STHL in recent years has arguably outpaced regulation. It is therefore important to consider whether owners' corporations should be given greater ability to manage the impacts associated with STHL.

The Grattan Institute<sup>21</sup> advocated giving owners' corporations more power to limit the impacts of STHL. Similarly, the Committee<sup>22</sup> did not accept that STHL was incompatible with strata living, but recommended that the NSW Government consider amendments to strata laws to give owners' corporations additional powers.

The Committee highlighted the Victorian Government's proposed amendments to strata laws in the *Owners' corporations Amendment (Short-Stay Accommodation) Bill 2016*. These amendments, if enacted, will enable the Victorian Civil and Administrative Tribunal to make an order for compensation due to loss of amenity due to STHL, impose a civil penalty for breaches of conduct provisions, and make orders prohibiting the use of a lot for STHL for a specified period following repeated breaches of conduct provisions. The Bill also will enable providers and short stay occupants jointly and severally to be liable for compensation orders.

In New South Wales, possible amendments to strata laws could:

- 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;
- streamline and simplify enforcement processes for breaching by-laws or causing a nuisance or hazard;
- allow owners' corporations to apply to the Tribunal for an order to require owners to pay increased contributions to the administrative or capital works funds; and/ or
- enable the Tribunal to make orders, in appropriate circumstances:
  - to cease conduct breaching by-laws or causing a nuisance or hazard;
  - for payment of compensation;
  - imposing a civil penalty; and/ or
  - to cease using the relevant lot for STHL, usually for a specified period.

<sup>17</sup>Strata Schemes Management Act 2015, s 153.

<sup>18</sup>Strata Schemes Management Act 2015, s 136.

<sup>19</sup>Strata Schemes Management Act 2015, s 136(2).

<sup>20</sup>Parliamentary Inquiry Report, October 2016, p10.

<sup>21</sup>Minifie, 2016.

<sup>22</sup>Parliamentary Inquiry Report, October 2016, p9,10.





### **Allow Strata Schemes to Prohibit or Restrict STHL in their Schemes**

The Committee held that STHL in strata schemes should be managed through amendments to strata laws to enable owners' corporations to address any adverse impacts of STHL, rather than prohibiting STHL. Similarly, the Grattan Institute's 2016 paper, 'Peer to peer pressure, Policy for the sharing economy' argued that STHL should only be prohibited 'as a last resort'.

The NSW Government has received a number of representations on this issue of STHL in strata schemes.

On the one hand, some stakeholders have argued that enabling owners' corporations to prohibit or restrict STHL in their strata schemes would involve an impingement on the property rights of owners who wish to short-term let, may be viewed as unfair to those owners who take steps to minimize the impact of STHL, and could impact on tourism and employment opportunities.

On the other hand, there remains a strong desire by some owners' corporations to have the ability to prohibit STHL in their schemes. Advocates for this position argue that short-term letting has a significant impact on apartment buildings and on apartment residents, on areas such as amenity, strata costs and individual safety.

## Section 6 - Regulation through the Planning System

The Parliamentary Committee recommended using planning instruments to regulate STHL, and to do this in a light touch way, primarily through exempt and complying development.

### How STHL is Defined

There is no consistent definition of STHL across NSW. A consistent definition would make it easier to operate STHL in NSW, as well as providing clarity for local councils, operators and owners.

The Government considers that STHL is acceptable in a residence up to a point that it becomes a more intensive commercial type of use (i.e. tourist and visitor accommodation).

Based on the principle of allowing STHL to occur where residential use of dwellings is allowed, it is suggested that the most appropriate definition of STHL is as a dwelling, or part of a dwelling, that provides short-term accommodation, but does not include tourist and visitor accommodation.

### The NSW Planning System and STHL

In NSW, there are three levels of development control:

- **Exempt** means the development does not need approval.
- **Complying** means the development needs a simplified approval from a private certifier or council, subject to meeting a set provisions.
- **Requiring consent** means a full development application must be lodged with the consent authority (local council, regional panel or Minister for Planning) and a full merit assessment undertaken against a range of state and local planning provisions.

Exempt and complying development can only occur in certain locations in NSW. For example, there are some restrictions on exempt development within heritage items. There are also restrictions on complying development in locations that are considered environmentally sensitive or at risk from natural hazards such as bushfire<sup>23</sup>.

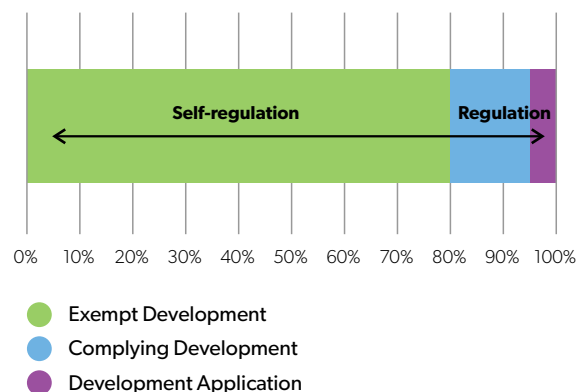
Planning controls, either through exempt or complying development, or development requiring consent, could be used to manage the operation of STHL properties, taking into account factors such as:

- Length of stay
- Number of bedrooms
- Presence of a host
- Compliance with a Code of Conduct
- Waste management arrangements

One regulatory option could be to set minimum requirements, such as adoption of a mandated Code of Conduct, and then allow most STHL to be exempt development. This is illustrated indicatively in **Figure 3**.

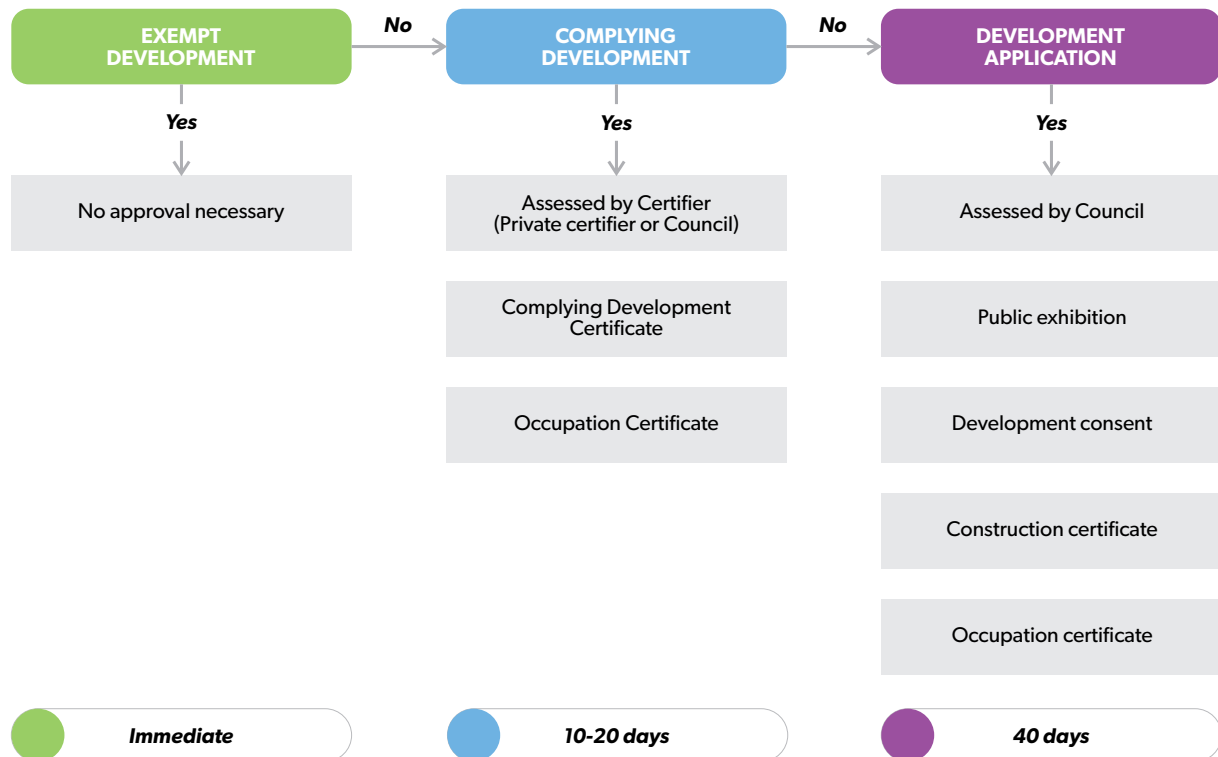
However, the planning regulatory framework could become more interventionist when the potential impacts of STHL intensify and/or reflect commercial uses. In this case, STHL could become either complying development or require consent (**Figure 2**). If a planning approach is adopted, one challenge will be determining the criteria that would trigger complying development, or requiring consent. This could result in additional costs for government, hosts of STHL properties and users. It could also increase complexity to STHL industry, which may outweigh its value.

**Figure 2: Indicative Planning Regulatory Scope**



<sup>23</sup>See, for example, clauses 1.18 and 1.19 of State Environmental Planning Policy (Exempt and Complying Development) 2008.

**Figure 3: Planning Approval Pathways**



The use of the planning system to manage STHL would be supported by provisions in the *Environmental Planning & Assessment Act* (EP&A Act) which allow investigation into on-going issues of non-compliance.

The Act allows an investigation authority (i.e. council officers) to enter and search, obtain information and record evidence on, amongst other things, the use of a property.

These provisions are reliant on some level of development control being applied to the use of the property i.e. either complying or development consent. These regulatory approvals would allow authorities to investigate and monitor uses for on-going compliance with impact management performance standards and conditions.

### **Options for Triggering Types of Development Approval**

#### **Regulate the Length of Stay**

Setting the length of stay could be a risk-based approach to determining the appropriate level of regulation on STHL. This approach could reduce potential amenity impacts and match regulatory requirements for other accommodation providers.

The 12 councils which have STHL provisions in their LEPs, generally allow owners to occasionally let their dwellings for a short-term without the need for consent. Three councils provide short-term letting as exempt development.

Councils variously define 'short-term' as 45, 60 or 90 consecutive days. Others do not include a length of stay in their definition of STHL.

Given that STHL is of particular value to the economies of regional communities, consideration also needs to be given to whether the final approach should take this into account, meaning that urban and regional areas would have different planning controls.

If length of stay became part of a regulatory approach the following parameters or a combination could be used:

- Days per stay
- Days per year

### **Days Per Stay**

The maximum length of each stay could be limited. The rationale for this would be that if a property is leased for longer than 90 consecutive days, the agreement may be a tenancy and be dealt with under the *Residential Tenancies Act 2010*.

Limiting the minimum length of each stay may address the issues sometimes associated with very short stays, such as noise or social impacts. However, very short stays are also a very important part of the STHL sector. For example, Airbnb guests stay 2.1 times longer than typical visitors<sup>24</sup> in Sydney and the average length of stay in Stayz listings is 6.2 days<sup>25</sup>.

### **Days Per Year**

Setting a limit on the total days per year that a dwelling can be used as STHL would control the degree to which a dwelling is used as STHL and retain its primary use as long-term residential.

However, if the limit is set too high, the income generated through STHL may obviate the need for long-term residential use the rest of the year. Conversely, too restrictive a limit could stifle the demand for STHL.

Some important statistics to consider are that there are approximately 90 days of school holidays each year in NSW (which is when most regional STHL tend to be rented). However, it is noted that these times are also peak usage times for traditional accommodation operators, and consideration needs to be given to the impact on that industry.

In Sydney, the majority of Airbnb hosts rent their primary residences occasionally 37 nights per year<sup>26</sup>.

### **Number of Bedrooms**

Some NSW Councils place a limit on the number of bedrooms in a STHL. This may be intended to reduce the likelihood of large gatherings and the potential for noise, traffic, parking, 'party houses' and other impacts.

However, there is no change to the potential number of occupants in each dwelling just because the use changes from long-term occupancy to short-term occupancy.

Limiting the number of bedrooms in a STHL may be unfairly restrictive on larger homes, which are common STHLs in regional NSW. An important statistic to consider is that the average guest group for a Stayz listing is 3.7 adults and 1 child<sup>27</sup>, which equates to 3-4 bedrooms.

### **Presence of Hosts**

The Parliamentary Committee recommended that short-term letting of rooms in any property where the landlord or host is present be permitted as exempt development (*recommendation 2*).

Further, anecdotal evidence suggests there are lower potential impacts associated with STHL where the principal resident (owner or tenant) is present during STHL, because it's in the best interests of the host to monitor and respond to guest behavior or neighbor complaints.

<sup>24</sup>Parliamentary Inquiry Report, Submission 207, Airbnb, p3.

<sup>25</sup>Parliamentary Inquiry Report, Submission 141, Stayz Pty Ltd, p6.

<sup>26</sup>Parliamentary Inquiry Report, Submission 207, Airbnb, p25.

<sup>27</sup>Parliamentary Inquiry Report, Submission 141, Stayz Pty Ltd, p6.



## Section 7 - Registration or Licensing

Registration or licensing is another option for managing impacts associated with STHL.

The Parliamentary Inquiry heard that STHL operators in NSW should be required to acquire a license or be registered to let their properties along with a mandatory code of conduct or other guidelines which would regulate STHL. It was considered that any such register would need to be established and maintained by a Government agency rather than an industry body with the most likely agency being NSW Fair Trading which could work with other agencies to ensure compliance.

The Committee found that the concept of a registration system hosted by a Government agency rather than an industry body, was supported by most of stakeholders including residents in strata buildings (*finding 3*). However, the Committee did not make a recommendation about this.

### *Examples of Registration and Licensing in Other Jurisdictions*

A number of jurisdictions have adopted registration processes to manage STHL. Generally, however the registration of STHL in these jurisdictions are undertaken in conjunction with planning requirements.

In Western Australia, the City of Fremantle requires registration for STHL to ensure an appropriate standard of management of short-term accommodation in Fremantle, to minimise the risk of such accommodation causing nuisance to neighbours. Where these provisions are adopted, the use of any such property for STHL must be registered with Council.

To be registered an applicant must submit:

- a floor plan of the short-term accommodation stating the number and location of sleeping rooms,
- details of proposed on-site parking bay,
- the name of the manager of the short stay dwelling and his or her contact details, at any time of the day or night, and
- an undertaking that he or she will respond, within 12 hours, to any contact relating to the short stay dwelling.

The registration process is subject to breach provisions. Noncompliance is an offence liable to a \$4,000 fine. The fine and process of City of Fremantle are implemented as a local law under the Local Government Act (WA) 1985.

In San Francisco, the registration of properties being used for STHL has been introduced predominantly to address the issue of housing affordability. It aims to eliminate illegal short-term letting, prevent housing stock being illegally turned into de facto hotels, and to manage housing supply. STHL is defined as a rental of all or some of the primary residential unit for less than 30 consecutive nights with a valid Short-term Residential Rental Registration. Only one registration is permitted per person.

The San Francisco registration:

- enables renting a portion or the entire unit while the registered person is present for an unlimited number of nights per year,
- provides that renting a portion or the entire unit while the registered host is not present is limited to a maximum of 90 nights per year,
- enables the unit to be advertised providing the registration number is listed at the top of the description, and
- requires that hosts submit quarterly reports of all the stays within their units for the last three months (or back to the date of their initial registration, whichever is applicable).

A host must be a permanent resident (owner or tenant) of the residential unit rented for short-term periods i.e. the person must live in that specific residential unit for at least 275 nights of any given calendar year.

Similarly, the City of Vancouver is tightening its laws on STHL in response to low rental vacancy rates and limited access to affordable, quality rental housing. The city will require a business license for anyone doing short-term rentals. Once granted a license, owners and renters would be allowed to rent part or all their principal residence on a nightly basis. To get a short-term rental business license owners and renters would need to prove that it was their principal residence by submitting a relevant property title or a tenancy agreement along with photo ID and recent Government or utility mail. The City intends auditing license applications to prevent fraud. Licensed operators would need to post their licence number in all online advertising. People operating rentals without a business licence will face fines and legal action.

## ***Nature of Problem and Focus of Potential Registration***

As indicated above, the registration and licensing of STHL has been adopted in different jurisdictions to address different problems associated with the operation of STHL.

A registration process could provide greater information for potential users, and conversely, help monitor the management of the industry.

Licensing could be used to address issues that would not be addressed through the planning framework. Licensing for STHL could work within the existing planning system as other licensing schemes work (such as child care and liquor licensing).

Incentives for improved industry self-regulation could also be explored via licensing exemptions. Under these circumstances, hosts may be required to register their STHL, but would be exempt from any registration or licensing fees if compliance with the measures within an industry wide code of conduct relating to the management and minimisation of impacts could be demonstrated.

However, consistent with the themes established earlier in this paper, the adoption of any registration or licensing scheme would need to carefully consider the need to mitigate negative impacts against the broader regulatory costs.

## Section 8 - Next Steps

### *Have Your Say*

The NSW Government wants your ideas on the issues raised in this Options Paper. You may wish to use the submission form in **Appendix 1** to answer the questions raised in this paper and provide any other comments. Submissions can be made until **31 October 2017**.

Following this, the NSW Government will consider submissions and decide the regulatory approach (if any) it will pursue for STHL. At this stage, it is difficult to say what that approach will include, but there may be legislative changes made, such as new provisions in State Environmental Planning Policies or other changes to certain laws. If these changes occur there is likely to be further opportunity for input on the detail of these changes.

### *Abbreviations*

ACT	Australian Capital Territory
BCA	Building Code of Australia
Code of Conduct	Holiday and Short-term Rental Code of Conduct
NSW	New South Wales
LEP	Local Environmental Plan
Parliamentary Inquiry Report	Legislative Assembly Committee on Environment and Planning Report 1/56 – October 2016: Adequacy of the Regulation of Short-term Holiday Letting in New South Wales
SEPP	State Environmental Planning Policy
STHL	Short-term Holiday Letting
The Committee	NSW Legislative Assembly Committee on Environment and Planning

## References

**Australian Regional Tourism Network (2016)**

*ARTN Response Inquiry into the adequacy of the regulation of short-term holiday letting in NSW*, NSW Government: Sydney.

**Business Insider Australia (2017)** *Here's how huge*

*Airbnb has become in Sydney*, available at <https://www.businessinsider.com.au/heres-how-huge-airbnb-has-become-in-sydney-2017-4>.

**Gurran, N. and Phibbs, P. (2017)** 'When Tourists

Move IN: How should urban planners respond to Airbnb?', *Journal of the American Planning Association*, 83:1, 80-92.

**Inside Airbnb (2016), Submission 199**, *Response to the Adequacy of the regulation of short-term holiday letting in NSW (Parliamentary Inquiry Report)*

**Minifie, J. and Wiltshire, T. (2016)** *Peer-to-peer*

*Pressure: Policy for the sharing economy*, Grattan Institute: Melbourne.

**NSW Department of Planning & Environment**

**(2016)** *Impact of Airbnb on the Sydney Rental Market*, NSW Government: Sydney.

**NSW Government Response** to the final report of the Parliamentary Inquiry into the Adequacy of the regulation of short-term holiday letting in NSW <https://www.parliament.nsw.gov.au/>

**NSW Government (2016) Submission 190**,

*Response to the Adequacy of the regulation of short-term holiday letting in NSW (Parliamentary Inquiry Report)*

**Airbnb (2016), Submission 207**, *Response to the*

*Adequacy of the regulation of short-term holiday letting in NSW (Parliamentary Inquiry Report)*

**Parliament of NSW (2016)** *Legislative Assembly*

*Committee on Environment and Planning Report 1/56 – October 2016: Adequacy of the Regulation of Short-term Holiday Letting in New South Wales*, NSW Government: Sydney.

**State Environmental Planning Policy (Exempt**

**and Complying Development) 2008**, <http://www.legislation.nsw.gov.au/#/view/EPI/2008/572/full>

**Stayz Pty Ltd (2016), Submission 141**, *Response to*

*the Adequacy of the regulation of short-term holiday letting in NSW (Parliamentary Inquiry Report)*

**Strata Management Schemes Regulation**

**2016**, <http://legislation.nsw.gov.au/~view/regulation/2016/501/id37>

**Strata Schemes Management Act 2015**, <http://www.legislation.nsw.gov.au/#/view/act/2015/50>

**The Holiday Rental Industry Association (2016)**

**Submission 202**, *Response to the Adequacy of the regulation of short-term holiday letting in NSW (Parliamentary Inquiry Report)*



## Appendices

### Appendix 1 – STHL Options Paper Submission Form

SHORT-TERM HOLIDAY LETTING OPTIONS PAPER SUBMISSION FORM	
<p>The NSW Government has released an Options Paper, building on the work of the Parliamentary Inquiry and existing practice, to start a public discussion on potential options to develop a suitable approach for short-term holiday letting (STHL) in NSW.</p> <p>The Options Paper for STHL outlines potential options around the development of an appropriate approach to managing STHL. These options could be considered either individually or in combination.</p> <p>Prior to making a whole of government policy framework, we are seeking feedback from the community and our stakeholders on the options discussed in the paper.</p> <p>You are invited to respond to the Options Paper by submitting <b>this form</b> to the NSW Department of Planning and Environment.</p> <p>You can also provide your feedback by:</p> <ul style="list-style-type: none"> <li>• filling out the online survey</li> <li>• email to <a href="mailto:STHL@planning.nsw.gov.au">STHL@planning.nsw.gov.au</a></li> <li>• writing to: <b>Director, Housing Policy</b> Department of Planning and Environment GPO Box 39, Sydney NSW 2001</li> </ul> <p>If you have further inquiries, please email us at <a href="mailto:STHL@planning.nsw.gov.au">STHL@planning.nsw.gov.au</a></p> <p>The consultation process is open until <b>31 October 2017</b>.</p> <p>By hitting submit you agree to the <u>Department's Privacy Policy</u>.</p>	<p><b>How will your personal information be used when you make a submission?</b></p> <p>Your personal information is protected under the Privacy and Personal Information Protection Act 1998 (PPIP Act). The Department collects personal information in submissions for the purposes set out in the Department's <u>Privacy Statement</u>.</p> <p>We respect your right to privacy. Before lodging your submission, you will be asked to confirm that you have read the terms of the <u>Privacy Statement</u>, which sets out:</p> <ul style="list-style-type: none"> <li>• how personal information is defined under the PPIP Act - it includes but is not limited to your name, address, and email address;</li> <li>• the purposes for which the department collects personal information; and</li> <li>• how personal information collected by the department will be used.</li> </ul> <p>When you make a submission, we will publish:</p> <ul style="list-style-type: none"> <li>• the content of your submission - including any personal information about you which you have chosen to include in those documents</li> <li>• a list of submitters, which will include: <ul style="list-style-type: none"> <li>– your name</li> <li>– your suburb or town</li> </ul> </li> </ul> <p>We will not publish offensive, threatening, defamatory or other inappropriate material.</p> <p>If you do not want your personal information published, do not include any personal information in your submission.</p> <p>All other information gathered in this submission form will be collated and used towards making a recommendation on the future approach of STHL in NSW.</p>
Name, Surname	
Organisation	
Suburb	Postcode
E-mail Address	
Date of Submission	

Introduction	
1	Do you use or have you ever used short-term holiday accommodation?
2	Are you or have you ever been a short-term holiday accommodation host?
3	Do you provide another form of short-term holiday accommodation?
4	Do you live near a property that provides short-term holiday accommodation?
5	Are you from an STHL industry group, owners' corporations or community group?
Impacts Associated with STHL	
6	<p>Please indicate below which impact(s) are you most concerned about and how do you believe these could be managed.</p> <ul style="list-style-type: none"> <li>Noise</li> <li>Waste</li> <li>Party Houses</li> <li>Parking</li> <li>Hazards and Evacuation</li> </ul>
Self-Regulation	
7	<p>Considering the mechanisms below, how could self-regulation in NSW address any negative impacts of STHL?</p> <ul style="list-style-type: none"> <li>The Code of Conduct</li> <li>Complaint Management Mechanism</li> <li>Monitoring &amp; Reporting</li> </ul>
8	Are there barriers that may reduce the effectiveness of self-regulation?
STHL in Strata Properties	
9	Should owners' corporations be given the legal ability to prohibit or restrict STHL? If so, how and under what circumstances?
10	Should the Strata Schemes Management Act be amended to increase the ability of owners' corporations to manage the impact of STHL and obtain compensation for adverse impacts? If so, under what circumstances?
11	Is there scope for industry self-regulation in the short-term holiday letting industry? Would this effectively address issues that occur in short-term letting in strata schemes?
Regulation through the Planning System	
12	<p>How should STHL be subject to a planning regulatory framework? What would be the impacts of applying a planning framework to STHL?</p> <ul style="list-style-type: none"> <li>Exempt</li> <li>Complying</li> <li>Development Consent</li> <li>No planning regulation</li> </ul> <p>Please indicate your reasons below:</p>

13	<p>If STHL is to be regulated via the planning framework, how should it apply?</p> <ul style="list-style-type: none"> <li>• Number of total days per year</li> <li>• Number of consecutive days</li> <li>• Number of bedrooms</li> <li>• Length of stay</li> <li>• Presence of a host</li> <li>• Location (<i>metro vs. regional</i>)</li> <li>• Compliance with a Code of Conduct</li> </ul>			
14	<p>Should there be different planning frameworks in regional and metropolitan areas? If so, how and why?</p>			
Registration or Licensing				
15	<p>Could a licensing system for STHL work in NSW? If so, how might it operate?</p>			
Summary of Options				
16	<p>The options outlined in this paper are summarised in the below table. For the future regulatory framework, which top 3 options (if any) would you like to see in this framework? Why?</p> <p><i>(Please tell us the reasons for your choices).</i></p>			
Potential Options				
<div>Themes</div> <div>Multiple Options</div>	<div>INDUSTRY SELF REGULATION</div> <div>Refer Section 4</div>	<div>STRATA REGULATION</div> <div>Refer Section 5</div>	<div>PLANNING REGULATION</div> <div>Refer Section 6</div>	<div>REGISTRATION</div> <div>Refer Section 7</div>
	Code of conduct	By-laws to manage visitor behaviour	Development approval - exempt/complying	Registration to manage safety and amenity issues
	Complaints management		Development approval - development consent	
	Education	By-laws to receive compensation for adverse effects	Limit the length of stay	Registration to monitor that other regulatory approaches (e.g. number of days, number of properties) are being met
	Monitoring and reporting	By-laws to prohibit STHL	Limit the number of days per year	
		Limit the number of bedrooms	Regulate by whether the host is present when STHL takes place	
<p><b>Note:</b> The policy options for STHL could include regulatory or non-regulatory approaches, or a combination of both. A combination of options from any rows or columns (or/and other options not covered in the paper) can be chosen to suggest a policy framework for the STHL in the submission form.</p>				

## Appendix 2 – Recommendations and Findings of the Legislative Assembly Committee

### NSW Legislative Assembly Committee on Planning and Environment Report 1/56 – October 2016

#### Adequacy of the Regulation of Short-Term Holiday Letting in New South Wales

##### **Recommendations:**

1. The Committee recommends that the NSW Government amends:
  - the Standard Instrument - Principal Local Environmental Plan to include a definition of short-term rental accommodation in the category of tourist and visitor accommodation
  - the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 to allow short-term rental accommodation.
2. The Committee recommends that short-term letting of rooms in any property where the landlord or host is present be permitted as exempt development.
3. The Committee recommends that short-term letting of a principal place of residence be permitted as exempt development.
4. The Committee recommends that short-term letting of empty properties be permitted under State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, as:
  - exempt development where the development does not exceed applicable impact thresholds; and
  - complying development where the development exceeds applicable impact thresholds.
5. The Committee recommends that the NSW Government investigates, in consultation with advocates for traditional accommodation operators, the impact of the growth of short-term rental accommodation on their industry, and identifies opportunities to reform current regulations.
6. The Committee recommends that the NSW Government participates in the management of the Holiday and Short-Term Rental Code of Conduct to ensure that it has a broadly-based management structure, including community representation, and increases its industry coverage.
7. The Committee recommends that the NSW Government develops a compliance system for short-term rental accommodation under the Environmental Planning and Assessment Act 1979 which considers:
  - the use of the investigative powers in Division 1C of the Act
  - streamlined development assessment (Complying Development Certificates)
  - the Holiday and Short-Term Rental Code of Conduct
  - 'party house' provisions.
8. The Committee recommends that the NSW Government prepares advice to councils and the community outlining the changes which will apply to short-term rental accommodation, and implements a communication and monitoring program.
9. The Committee recommends that local councils be responsible for communicating with all landowners about their rights and obligations.
10. The Committee recommends that the NSW Government considers amendments to strata regulations to give owners' corporations more powers to manage and respond to adverse behaviour resulting from short-term letting in their buildings.
11. The Committee recommends that the NSW Government reviews the impact of short-term letting in the strata environment after no later than three years.
12. The Committee recommends that the NSW Government implements a program to collect data on the holiday industry generally, and short-term letting in particular, to assess the economic contribution of short-term letting and its impact on housing affordability and community viability.



## Appendix 3 – The Holiday and Short-term Rental Code of Conduct

The Holiday Rental Code of Conduct (updated on 24 March 2015) includes:

### ***Part 1: Obligations of Participating Organisations***

- Implement and promote the Code of Conduct and make it available on their website.
- Members must undertake to comply with the Code of Conduct.
- Incorporate Code of Conduct provisions into rental terms and conditions.
- Display House Rules at all times on premises.
- Provide Code of Conduct, Terms and Conditions, House Rules and any By-Laws in a folder on the premises.
- Impose sanctions for non-compliance with Code of Conduct (includes appeal provisions).
- Participate in the Code Administration Committee.

### ***Part 2: Obligations on Property Managers***

- Comply with Code of Conduct.
- Inform guests of provisions of Code of Conduct.
- Provide information to neighbouring properties on relevant contacts.
- Act with integrity and cooperate with others.
- Offer the property in clean, safe state and in compliance with regulations.
- Have a local representative and general contacts.
- Display House Rules and Terms and Conditions.
- Limit occupancy to 2 adults per bedroom.
- No commercial catering or functions without local Council permission.
- No party houses.
- Provide information on parking prior to arrival.
- Inform guests of waste practices, and remove any excess waste left by guests.
- Hold appropriate insurance.
- Handle complaints and resolution.

### ***Part 3: Terms and Conditions for Owners and Guests: Performance Standards***

- Security deposits
- Comply with house rules
- Respect residential amenity
- Control and be responsible for any visitors
- Comply with any instructions from Managers
- No offensive noise
- No party houses
- Comply with parking regulations and maximum number of permitted vehicles.
- Dispose of garbage appropriately.
- Report any problems or incidents promptly.

### ***Part 4: House Rules for Visitors and Guests: Performance Standards***

- No offensive noise or anti-social behavior
- Comply with limits on visitor numbers
- No party houses
- Comply with parking regulations and arrangements
- Dispose of garbage appropriately
- Close windows and doors when absent
- No use of swimming pools between 22:00 and 07:00
- No glassware in pool
- Rules about smoking and pets indoors
- Report damages and breakages
- Departure arrangements
- Emergency contacts

## Appendix 4 – Regulatory Approaches to STHL in other Jurisdictions

### Queensland

Queensland enables councils to define certain STHL as a ‘party house’ and enforce acceptable behavior through the Sustainable Planning Act . To date only the City of the Gold Coast has done so. The definition does not limit the number of people or bedrooms but defines the accommodation as being for “a period of less than 10 days” .

To address noise issues, the Gold Coast City Council passed a local law (No. 19) Control of Party House Noise 2013. For an action to occur, excessive noise has to be experienced “more than 2 times during a 12-month period” or another specified frequency not less than 3 times during a 12-month period” (p2). The compliance section of Gold Coast City Council does not have a direct role as a noise abatement direction under this law is served by the police.

### Victoria

In Victoria, the Owners’ corporations Amendment (Short-Stay Accommodation) Bill 2016 is proposed to give the Victorian Civil and Administrative Tribunal (VCAT) various powers over STHL, including prohibiting it based on inappropriate conduct and compensating other residents for loss of amenity. Both the STHL provider and occupant can be liable for the damage or compensation.

### South Australia

The South Australian Government has clarified that STHL does not constitute a change of use and does not require development approval.

### Western Australia

The Planning and Development (Local Planning Schemes) Regulations 2015 defines STHL as temporary accommodation provided either continuously or from time to time with no guest accommodated for periods totaling more than 3 months in any 12-month period.

The City of Fremantle’s Short Stay Accommodation Local Law 2008 requires that dwellings which provide accommodation for a maximum of six occupants for a minimum of 2 nights but no more than three consecutive months must be registered.

The City of Perth requires planning approval for STHL as a change of use. These applications need to address fire safety and disability standards.

### Tasmania

The City of Hobart requires a once off planning permit when a residence is used for ongoing or multiple occurrences of STHL. Approval is required for all changes of use of a residence to STHL. Visitor accommodation is permitted in 5 residential zones provided it satisfies acceptable solutions. Visitor accommodation must be in an existing building, meet the parking and access code for on-site parking and have a floor area of no more than 160 square meters.

However, from July 2017 the use of a residence is exempt development if the principal residence is used only when the owner is on vacation; or no more than 4 bedrooms are used for short-term visitor accommodation. The use requires a permit in certain residential zones if in a building with an existing floor area of no more than 300 square meters (corresponding to letting up to 4 bedrooms) and the certain business zones if above ground floor level or at the rear of the Building.

Elsewhere it has been stated that no permit will be required for up to 4 rooms let as short-term visitor accommodation for up to six weeks (42 days) a year.

### New York City

Legislation made on 21 October 2016 is to take effect on 1 May 2017. It makes advertising an entire unoccupied apartment for less than 30 days illegal.

### Berlin

It is illegal to let more than 50% of an apartment on a short-term basis without a permit from the city.

## San Francisco

STHL is defined as a rental of all or some of the primary residential unit for less than 30 consecutive nights with a valid Short-term Residential Rental Registration. Only one registration is permitted per person.

Registration:

- enables renting a portion or the entire unit while the registered person is present for an unlimited number of nights per year
- provides that renting a portion or the entire unit while the registered host is not present is limited to a maximum of 90 nights per year
- enables the unit to be advertised providing the registration number is listed at the top of the description
- requires that hosts submit quarterly reports of all of the stays within their units for the last three months (or back to the date of their initial registration, whichever is applicable).

A host must be a permanent resident (owner or tenant) of the residential unit rented for short-term periods i.e. the person must live in that specific residential unit for at least 275 nights of any given calendar year.

Although there has been a defined registration by the city, more than half of the hosts were running their businesses illegally since there was no any implemented enforcement by platform providers as Airbnb.

It was recently announced that Airbnb has settled its lawsuit with the city of San Francisco on 1 May 2017. As part of the settlement, Airbnb will offer a streamlined registration process to hosts that makes it easy to register their short-term rental with the city and obtain a business license through Airbnb's platform.

The purpose of the new registration is to eliminate the illegal short-term letting and prevent housing stock from being illegally turned into de facto hotels.

In this context, technology will be provided by Airbnb to automatically register new hosts with the city when they sign up, as well as to deactivate existing hosts who do not comply. During the sign-up process, potential hosts will be notified that their information will be shared with the city. The existing hosts have 8 months

## Paris

An authorisation is required for STHL longer than 120 days.

## London

The Greater London Council allows STHL for up to a total of 90 nights in any calendar year. Amenity provisions also apply. The use is not considered to be a change of use and no planning permission is required. Where STHL exceeds 90 nights in the same calendar year, planning permission is required, providing 'permanent short-term use' (similar to a hotel) is permissible on that site.

