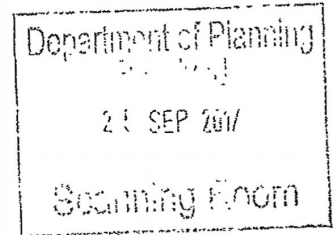




PCU072419

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



**Response to Short-term Holiday Letting (STHL) Options Paper**

Dear Director,

I am writing to you as Chairman of the Strata Committee to provide feedback on the recently published STHL Options Paper by the NSW Government. Rockwall Gardens is a residential apartment building of 115 residences providing a home to approximately 220 residents in Tusculum Street, Potts Point since October 1999. We are conveniently located in close proximity to the train station, multiple bus stops and within walking distance of the Sydney CBD. A vibrant neighbourhood of restaurants, supermarkets, shops and the very popular weekend markets around the El-Alamein fountain park area surrounds us.

This is **Strata Land**. In excess of 95% of the residents in Potts Point and our adjacent suburbs of Elizabeth Bay, Rushcutters Bay and Woolloomooloo live in Strata plans and Potts Point is now considered the most densely populated suburb in Australia. We believe that from recent government statistics that there are now over 100 suburbs in Sydney, which have over 50% of the residents living in Strata plans.

These Strata plans are at great risk of having control of their amenity swamped by STHL. At we recognised this risk some time ago and have policed the use within our building and more recently introduced a specific Special By-Law to clarify the compliance and occupancy issue (this is currently being reviewed and will be updated prior to 29 November 2017). We police all our By-Laws evenly and consistently.

We do not have an opinion on the use of STHL in free-standing, individually owned homes, and have no wish to interfere with their owner's possible rights or actions. We are specifically concerned about the impact of STHL on Strata Living.

The original 'Adequacy of Short Term Holiday Lets in NSW (STRA)' Report tabled in Parliament in October 2016 acknowledged that '**Strata is different**' but then did little to address the situation. The current Options Paper also notes that 'Strata properties have different requirements to detached

properties' and accordingly makes two recommendations (10&11) specific to Strata.

We believe these recommendations are weak for Strata and self-serving to the STHL industry;

**Recommendation 10** – this suggests that Strata Committees be given some extra retrospective powers to address problems after the fact and..

**Recommendation 11** – this suggests that the situation regarding STHL in Strata plans be re-visited three years after any legislation relaxing STHL in NSW is enacted.

We believe that Recommendation 10 will fail as it assumes that Strata plans are commercial enterprises with full-time, possibly even 24/7 staff that can be deployed to respond to these issues as they arise. This is not the case. This Recommendation completely ignores the fact that Strata plans are run by unpaid volunteers who are in many instances already stretched by the necessary duties required under NSW law to properly and effectively run a Strata scheme. Recommendation 10 would exacerbate these workloads.

We suggest that Recommendation 11 would be significantly improved by amending it so that Strata is exempt from any changes to the laws regarding relaxation of STHL in NSW for three years. This approach would enable a review of the impacts on the simpler ownership and more easily controllable environments of free-standing dwellings to achieve a proper and thorough assessment of any law changes before addressing the vastly more complex Strata issues.

### **Strata Plans are very different to free-standing properties.**

A free-standing home is generally owned by an individual or a family. Within reason they should be able to deal with that property as they wish, subject to the law, council regulations and respect for their neighbours. They do not have an unfettered right to do whatever they like with their property and this has never been the case.

Within a Strata plan an apartment owner effectively owns a hole in the air. Within their apartment they own the carpets, paint on the walls and their goods and chattels. The surrounding walls, floors, ceilings, balconies and windows are collectively owned and maintained by the Owners Corporation of the Strata plan. These, the land and the building are common property as are the jointly used and community funded foyers, entrances, hallways, lifts, stairwells, gardens, gyms and pools etc.

A free-standing building may be owned by an individual owner or family and they are solely responsible for making decisions about that building.

A Strata plan building is jointly owned by the Strata plan community (the Owners Corporation) – a community that is responsible for making decisions about that building.

**1. Strata invented the Sharing Economy.**

Long before Airbnb, Stayz or Uber were conceived the owners of Strata plans have been planning for and operating shared buildings and facilities. Owner Corporations and Strata Committees have decades of experience successfully managing the resources of the Sharing Economy of their Strata plan and should be allowed to continue to do so.

**2. Strata plans are governed by Strata Committees. By order of the NSW government.**

In 1961 Strata plans were invented in NSW. The NSW government mandated that each Strata plan be collectively owned by an Owners Corporation and it be 'governed' by an Executive Committee (now Strata Committee). There are strict rules relating to how Owners Corporation and Strata Committees operate. Strata plans are run under legally mandated, democratic principles and are effectively the fourth level of government in Australia.

**3. Rules made by the people; for the people.**

Strata plans are owned and run by communities not individuals. Strata Committees are tasked with creating, managing and policing their own rules....these rules are designed for that unique Strata plan and decided by the owners of that unique Strata plan.

**4. Shutting the stable door after the horse has bolted.**

Every remedy that is promulgated in the Options Paper to the myriad potential issues of the STHL in Strata is retrospective. It assumes that each Strata plan has ready access to professional help over and above their Strata manager with all the concomitant legal and financial implications Airbnb's dispute resolution plan also requires action after the event. The Options Paper alludes to resolving issues, often involving now departed guests, by recourse to NCAT.

The reality is that NCAT is not effective in Strata matters; it has no relevant expertise (no specialist Strata mediators); a work-load that defies quick or easy access and crucially no ability to enforce decisions once made. This creates a farcical 'catch-22' where to enforce an NCAT decision we have to go to the District or Supreme Court but neither the District nor Supreme Court will hear a Strata case until it has been heard at NCAT.

**5. Unmanageable, Unfair and Utterly Unreasonable.**

Strata Committees are unpaid volunteers. The workload for properly conducted Strata Committees is ever increasing and in large schemes it requires a level of professional expertise. The core tasks of Chair, Secretary and Treasurer are serious part-time jobs for the office holders. Management of STHL will only further increase this work load.

The vast majority of Strata plans do not have concierges or full time building managers; so who will manage the unknown guests? Who will manage party noise, damage and resident amenity issues, inevitably at 3 o'clock in the morning? It is utterly unfair and unreasonable to expect the volunteer owner who has given their time to be chair, secretary or treasurer of the Strata Committee, to be responsible for breaking up the party.

#### **6. Strata communities do not want to Subsidise Individual's Commercial activities.**

If STHL is allowed in Strata plans some of those buildings which are close to public transport, pubs, clubs and restaurants and the CBD or beaches etc., will become hotels overnight. Rockwall Gardens and most Strata plans are simply not set up to be hotels....and nor do they want to be.

We do not have, and do not want to have, CCTV in every corridor, security trained concierges, increased insurance to cover the potential damages and liabilities, the extra fire safety issues of unknown guests, the invasion of utterly unknown strangers into our homes with all the attendant security issues or to be maintaining booking management or expanded concierge services.

#### **7. There is a Solution for STHL in Strata.**

STHL is a clear and present threat in Strata plans to resident amenity, property damage, insurance and fire risk, realistic management protocols by Strata Committees and to owner values.

Every Strata plan however has to have, by law, a General Meeting every 12 months. Any owner can put a motion to that General Meeting. Some owners may wish to have the right to have STHL in their Strata plan and some may not; but it is a decision for the whole Strata community within that plan.

#### **The solution for STHL in Strata is for any NSW law**

- a) to prohibit STHL in Strata plans across NSW and then;
- b) to allow each Strata plan to make up their own mind on allowing STHL within their Strata plan by a vote of the Owners at a General Meeting which would be required within 12 months of the passage of the law.

#### **8. Fairness and transparency in decision-making.**

Various members of the NSW parliament (and or their families) have investment properties, some in Strata plans. It should be an essential part of any associated legislative process for all members of the NSW government to declare any such interest before participating in any vote or debate.

I would welcome the opportunity to directly address any formal government enquiry or forum in to this matter. Please do not hesitate to contact me should you require any further information or clarification contained in this response.

Yours sincerely,



George J. Proos  
Chairman - Strata Committee

.cc NSW Premier  
Minister for Planning  
Minister for Innovation and Better Regulation  
Lord Mayor, City of Sydney.