

OBSERVATORY TOWER

168 KENT STREET, MILLERS POINT

Director, Housing Policy

Department of Planning and Environment

GPO Box 39, Sydney NSW 2001

By email: STHL@planning.nsw.gov.au

20 September 2017

STHL Options Submission on behalf of SP53158 Observatory Tower, Millers Point NSW

Dear Director,

I am providing this submission on behalf of the Owners Corporation SP53158 – Observatory Tower. The content of this submission has been approved by the Strata Committee at its meeting on 20 September 2017.

Introduction

Observatory Tower is a multi-level building comprising 198 residential apartments and in addition 6 retail premises on the ground floor street frontage. Common property amenities include a gymnasium, swimming pool, spa, sauna and library. The building has been in this configuration for approximately 22 years following development consent from the City of Sydney on 10 August 1994 to convert the former IBM building office tower to residential apartments.

City of Sydney's consent specifically forbade short term letting: "*That the residential component of the development must be for permanent residential accommodation only and not for the purpose of hotel, motel, serviced apartments, tourist accommodation or the like*". Council additionally placed a similarly worded covenant on the title of the building.

Further to and in support of the approval, the Strata Plan has a by-law that prohibits letting, leasing or licensing a lot for a period less than 3 months. At no time has an owner sought to have that by-law removed or modified. By virtue of this by-law, a majority of owners do not wish to have STHL in Observatory Tower and this submission is being provided in support of that majority view.

Notwithstanding the City of Sydney consent and the by-law, we have had some instances of owners engaging in STHL and, whilst in general their guests have not caused issues, there were instances of rude

and anti-social behaviour in the pool, elevators etc. When owners were made aware of the restrictions in place, they withdrew their advertising without argument.

We particularly refute the stated position from the Options paper “*Representatives of the short-term letting industry argue that the impact of STHL on strata schemes is overstated and unsupported by corresponding data*”. In our discussions with similar strata buildings we are aware that many prohibit or discourage STHL. This could very likely account for the reports of negative impacts being few – simply because the instances of STHL in strata buildings (not designed for that purpose) are few.

Our submission

Recognising the potential economic and social benefits from STHL and that the Government has the power to enact legislation that could enable STHL, the Strata Committee has carefully considered the Options put forward in your July 2017 paper. Our views are presented in the following table and are framed on the potential impacts on Strata dwellings only as opposed to free-standing properties.

Regulation	Our submission
Industry Self-Regulation	Not preferred. We feel the potential effectiveness is in doubt. The varied and increasing STHL operators in Australia and globally makes it difficult for the industry to be defined, let alone agree and implement a regulatory framework. Further, owners and tenants might make STHL arrangement outside of the regulated industry via social media or other means.
Strata Regulation	Preferred. We feel that a majority of owners should be able to regulate STHL in a strata building, subject to a review at each Annual General Meeting. It could also be appropriate to set a higher voting majority threshold on this issue such as 75% of owners present (or represented by proxy) at the meeting. Owners are in the best position to understand the opportunities and practical limitations associated with a particular strata, and the behaviour and other rules that should apply and be enforced in the event that STHL is permitted.
Planning Regulation	Partially Preferred. Planning authorities should be able to determine usage controls for new buildings. The ability however of Planning authorities (at State or Local Government levels) to enforce behavioural regulations promptly is dubious. Of particular concern is that where an STHL guest is in breach of rules, there is (as yet) no facility for action to be taken against the guest, and the owner might well say that the problem has gone. In effect, the damage or disturbance has occurred and an Owners Corporation may be required to pursue the owner for damages through NCAT which can be an expensive and lengthy process.
Registration for STHL	Preferred in the event that a complete residence is to be made available for STHL. Not preferred for room letting where an owner will be present. In this situation, the need for registration may be onerous and not provide flexibility for impromptu arrangements.

Regulation	Our submission
Limitations on permitted STHL – maximum days etc.	Not preferred. Limitation of maximum STHL day stays, length of stays and so on are not supported as we feel these are difficult to enforce. An owner might use several agencies with no single view of the property utilisation, or can privately extend a booked stay directly with the guest. Ultimately the responsibility to enforce these limitations would fall on the Owners Corporation which even then might not have visibility of the arrangements. We feel that this would be an unreasonable imposition on an Owners Corporation.

Our position

1. We strongly advocate that an Owners Corporation have the right to determine STHL based on a vote by a compelling majority (eg %75) of owners present or represented by proxy at a General Meeting. We believe that this is appropriate to protect the rights of owners who purchased a lot on the basis of existing restrictions, covenants on title and by-laws. We believe that retrospective disablement of those restrictions (other than with the consent of owners) is inequitable.
2. We recognise the economic, tourism and other benefits of STHL and, without wishing to yield to enforced overriding of the restrictions in place (as per 1 above), we would accept a limited variation on restrictions such that STHL may be permitted in a lot while the owner is in residence for the duration of the letting. We see this arrangement as not being substantially different from an owner having a friend or relative using a spare bedroom for a short duration.
3. We suggest that the position of existing strata buildings with long-standing restrictions on STHL is different to new strata buildings. In the case of new builds or conversions to residential use, it may be reasonable to deny restrictions on STHL. Owners would purchase with full knowledge that STHL is permitted, however the Owners Corporation should nevertheless be permitted to apply behaviour and compliance rules to effectively manage STHL within their building.
4. We support the suggestion that formal Registration be required for a complete Lot to participate in STHL, but not required for casual letting of a bedroom or bedrooms while the owner is in residence.
5. We do not support industry self-regulation in any context as the industry has multiple and growing participants, often based outside Australia and has porous boundaries.
6. We do not feel that the Strata Schemes Management Act requires amendment “to enable Owners Corporations to manage the impact of STHL and obtain compensation for adverse impacts”. We believe that the existing powers of an Owners Corporation to hold an owner accountable for costs and damages caused by visitors is sufficient, notwithstanding that NCAT processes can be difficult.

Thank you for the opportunity to submit a response on this significant issue. I would appreciate an acknowledgment of receipt by you.

I and other members of our Strata Committee would welcome the opportunity to discuss this further with you.

Yours sincerely

Ian Baseby

Chairman, Strata Committee

Strata Plan 53158

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