

25 October 2017

Director, Housing Policy
Department of Planning and Environment
GPO Box 39
Sydney NSW 2001
sth1@planning.nsw.gov.au

Dear Sir/Madam,

We write on behalf of the Owners Corporation of SP 89828 being NSW. Our strata complex consists of 4 separate buildings containing 298 residential lots and our Owners Corporation is responsible to the owners for keeping the buildings maintained to a high standard and to provide a peaceful and quiet amenity and living environment.

We have had, and continue to have, residents of our strata buildings advertising and providing services of short term holiday accommodation, even though we have By-laws prohibiting this activity. In our experience, it is mostly through the Airbnb platform that the properties are listed and we contacted Airbnb with a list of current lettings to let them know that these hosts were in breach of our By-laws, but Airbnb replied that they do not take any responsibility and it is up to the hosts to check that they are not in breach of any laws, regulations or By-laws and confirm this compliance with Airbnb.

There is difficulty in identifying the apartments and hosts on the Airbnb website as the address is not disclosed until a confirmed booking is made. We have had several hosts using names other than their own (presumably names are verified through Airbnb, and may be friends of the host) and many hosts do not reside in the listed property. It is through the complaints of residents that we are aware of the STHL activities, and difficult to obtain physical evidence positively identifying the property such as photographs, CCTV footage or downloads from the website because property addresses are not identified. Statements from residents complaining of the activities and noise issues, even though backed up by reports from our private security guards, are not deemed sufficient evidence to present to NCAT. We had considered obtaining evidence of the host's identity by employing an investigator to make a booking but, apart from considerable cost, this is only one step in gathering enough evidence to take to NCAT. We would like to see a governing body or authority set up specifically dedicated to STHL complaints where Statutory Declarations from at least 2 affected residents are considered sufficient evidence of an offence which can then be dealt with through adjudication and the imposition of a fine which would escalate for any further offence. We also consider that the STHL advertising platform should be notified of each and every offender and held to account if repeat offenders continue to operate through their site.

Setting the number of bedrooms, the number of days or length of stay, as an option, is currently hard to police in a strata building. When guests depart, there is little recourse. It has been suggested in the Options Paper that Self Regulation could be an option. Self-regulation may work for some honest and reliable hosts, but for most, we don't believe it will be sufficient oversight. One of the reasons for our lack of confidence in such a system is that the owner occupier/tenant split in our strata scheme is about 25%/75%. Several of the apartments which are advertised for STHL for whole apartment rental are being sub-let by the tenants. Many of these apartments are owned by absent landlords

who reside overseas. Strata management companies require an Australian address for service of notices and often do not have the landlord's contact details as all contact is through the letting agent. We have had experience of agents who are either not notifying the landlord of their tenant's activities in sub-letting or, if they do, perhaps the owner is not concerned so long as the rent is paid on time. In this case, it is possible that an agent colludes with a tenant to run the STHL business.

We have had an instance of a 3-bedroom unit being advertised for Hen's and Buck's parties – housing 16+ occupants. The parties held here were very noisy, with loud music and many guests. We knew exactly which unit it was but had no physical proof. The property was leased and the tenant used another name as host and denied he was hosting STHL. His letting agent did not advise the landlord of the activity. We did eventually resolve this matter but it took a great deal of time and in the meantime caused anxiety and disturbance to neighbours on a regular basis.

Fire evacuation is an important issue, especially in STHL apartments where often more than the allowable number of occupants are housed and who do not know the procedures to follow. Any damage to common property would be claimed through the Owners' Building insurance, incurring an excess and adding to the record of claims, thereby raising premiums, which is unfair distribution of cost to other owners. In the case of an accident, a claim may be necessary under public liability insurance – the owners/hosts should be covered for such liability. It is grossly unfair that the owners in strata buildings should be subsidising the running costs of STHL hosts when those hosts are reaping personal gain from their business.

Our building is a secure building and we also have concerns that the security of the building is being compromised, firstly by the number of keys issued to 'guests' and secondly by the way in which keys are left in lock boxes attached by chains to signposts on the kerbside for access by 'guests'. These lock boxes could be tampered with and keys obtained by outsiders and we would never know who had these keys in their possession.

We have instances of;

- party houses (proven to be through Airbnb);
- Calls made to local Council with regard to excessive noise, are met with advice to call Police, who are too busy to attend such a call out, particularly on weekends;
- intrusion into neighbours' quiet enjoyment by some STHL guests ringing the doorbell at any hour requesting that the main door be opened;
- excess waste due to holiday letting and rubbish not being deposited in the correct bins or areas, adding to duties of cleaning staff, a cost borne by all owners;
- parking in private spaces reserved for specific units without any identifying information to enable the owner or building manager to follow up the vehicle's owner and request the vehicle be removed.

Airbnb has realised that there is a huge problem with strata communities and STHL. However, under Airbnb's 'Friendly Buildings' compensation, costings for OCs is woeful. According to a recent media article:

“5-15 per cent of Airbnb **booking fees** would be returned to a strata body as recompense for Airbnb listings.

The average Airbnb stay is \$211 a night, and the average service fee is 6-12 per cent (up to \$25.32) meaning the maximum average strata compensation (15 per cent of the fee) would be \$3.80 per unit per night" !!

Apart from the additional cost to all owners for extra cleaning and possible insurance claims, if the OC has to take action against an owner/tenant of an apartment being let for STHL it is a long and expensive exercise through NCAT.

We believe that STHL is a business which should be registered or licensed with a government authority, imposing a Code of Conduct with acceptable standards of operation, and linked to the Australian Tax Office who advise: "If you rent out all or part of your house or unit, the payments you receive are assessable income."

We are aware that other countries have introduced laws to curb STHL:

In NY advertising an entire unoccupied apartment for less than 3 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 short term letting of less than 120 days

In London short term is allowed for up to a total of 90 nights in any consecutive year

In San Francisco registration of STHL (less than 30 consecutive nights) properties has been introduced to address housing affordability.

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 licence for anyone doing short term rentals.

In summary

A strata building is comprised of any number of units under a collective ownership. One of the options proposed is to legislate, through re-zoning, against the democratic right of that collective ownership of a building to decide what protections are put in place to preserve the quiet enjoyment and amenity of its residents. Strata owners share common facilities and carry the cost of those facilities, so it is therefore appropriate that they, as a collective, decide what activities are permissible in their apartment building. The idea that regulations could be introduced to take away their legal right to restrict activities which have an impact on the amenity of the whole strata community and increase costs to the whole strata community – for the personal benefit of a few - is Orwellian. It is against the belief in the welfare of a free and open society and suggests an attitude of draconian control and we are strongly opposed.

In our case, the building was sold off-the-plan with registered Developer By-laws based on Local Government regulations and the Contracts on which original and subsequent purchasers have relied contain these By-laws:

"By-law 1.1 Residential Lots can only be used by owners or occupiers as follows:

(a) residential use or by leasing subject to the Residential Tenancies Act, 2010. Other short term uses such as temporary rental of rooms, serviced apartments, backpacker use are not permitted;

- (b) no more than two adult people may occupy any bedroom;*
- (c) no bedroom or other living areas may contain more than two beds. This excludes children's beds, cots and bassinets;*
- (d) use of rooms for sleeping accommodation, other than rooms designated in the Development Approval as bedrooms, is prohibited;*
- (e) bedrooms must not be further divided, screened or partitioned in any way;*
- (f) the total number of adults residing in one Residential Lot must not exceed twice the number of approved bedrooms; and*
- (g) owners, tenants or the Owners Corporation must not advertise or permit an agent or building manager to advertise a Residential Lot for short term accommodation or share accommodation.*

1.2 By-law 1.1 is a Council prohibition and any variation or repeal of this by-law will be a contravention of the terms of the Council's Development Approval.

2. Leasing of Residential Lots

2.1 Owners must ensure that:

- (a) the letting of any lot is recorded under the terms of a residential lease under the Residential Tenancies Act, 2010 and must be for a period of at least 3 months."*

We believe that the STHL industry is difficult to manage by Strata regulation alone, but the Owners of a strata building must have the right to decide what protections are put in place to preserve the quiet enjoyment and amenity of its residents. Regulation of the STHL industry should be:

- firstly at the **Strata level** in allowing an Owners Corporation to choose to register By-laws which are enforceable, with low costs, through **an authority dedicated to the STHL industry** (rather than NCAT):
 - prohibiting STHL; or
 - allowing STHL with the owner on-site, i.e. partial, not entire home; or
 - allowing STHL and receiving reasonable compensation for adverse effects, from the STHL advertising platform through their hosts, and
- secondly at the **government level** so that there is another level of enforcement and complaints management, to which strata owners who choose to allow STHL, or strata buildings where this activity is carried out illegally, can take action, based on Statutory Declarations from at least 2 residents, detailing the offence and identifying the subject apartment.

Kind Regards

Strata Committee SP 89828 on behalf of The Owners Corporation