

## **Summary**

The owners corporations of residential strata schemes are entitled to have clear legal authority to determine the nature and extent of Short Term Holiday Letting (STHL) within their schemes using by-laws. The experience of Strata Plan 74760 (Moreton by the Park) is used to demonstrate how a policy that enshrines this right operates in practice to deliver the safe, efficient and fair adoption of STHL over time.

### **1. Introduction**

This submission has been prepared by the Owners Corporation of Strata Plan 74760 (going by the name of Moreton by the Park). It is in response to the NSW Government consultation on the paper entitled "Short-term Holiday Letting in NSW Options Paper - July 2017" (the Options Paper).

We stress at the outset that this is not a submission opposed to STHL in strata per se. The potential net benefits of STHL to the NSW economy and community are recognised and can be maximised if managed properly, including within strata schemes. Indeed, our scheme has established a by-law that provides scope for limited STHL (to the extent permitted within current planning requirements).

Moreton by the Park Stratum consists of a medium rise building of 84 apartments and 20 terraces with 6 separate entrance ways to the site. This includes the 4 entrances from Chalmers St to the apartments which are not connected internally. There is also an enclosed central outdoor courtyard and under cover car parking areas with car spaces for almost all residents. Occupants have the benefit of shared services and systems such as hot and cold water, power and gas, fire safety systems, building access security systems, internal lifts, and a 20m swimming pool and associated BBQ area. Located opposite Redfern Park and close to the Sydney CBD some owners have sought to use lots for STHL.

Almost half the residents in Moreton by the Park are owner occupiers, including retirees and full time working people making their homes close to the city. The complex is popular with renters too, many of whom have been residents for many years. There is a high degree of harmony within the pet friendly complex. General Meetings are well attended and there has been no need to activate NCAT processes in the past decade.

As the Options Paper correctly acknowledges, there are particular issues unique to the operation of STHL within residential strata schemes. The Paper canvasses policy options to address these issues.

Unfortunately, based on the Moreton by the Park experience, the Options Paper does not appear to fully recognise the essential role of by-laws in managing the collective property rights and legal accountabilities of strata owners, particularly the rights and responsibilities impacted by STHL.

Once the management of these challenges is properly considered it becomes clear that ensuring owners corporations have the authority to set by-laws to manage the nature and extent of STHL in their schemes is the best policy option. Specifically, adopting this option:

- Best matches STHL outcomes with the unique requirements of each strata scheme
- Properly balances the owners corporations' authority with their current legal accountabilities
- Protects the inherent property rights of strata owners
- Maximises the acceptance and efficient adoption of STHL within strata schemes over time

The remainder of this submission explains each of these points in turn with reference to the situation facing Moreton by the Park.

**2. Owners Corporations are the best placed to match STHL with their own Scheme's needs**

We note with concern that most of the policy options proposed in the Options Paper partly or completely sideline owners corporations in decisions to permit STHL in a strata scheme. As such these policy options are unable to effectively address the different situations faced collectively by owners from one strata scheme to the next. In contrast, owners corporations have been established with the express purpose of matching the collective interests of scheme owners to the unique characteristics of each scheme.

The Options Paper also reports different views on the extent to which STHL impacts on residential strata schemes. In reality the impacts, costs and benefits will vary widely from one scheme to another. Therefore, debate over average impacts is of little relevance to the owners of Moreton by the Park or other schemes. What really matters are impacts on the people within each scheme and what solution is most appropriate to their particular situation.

The nature and extent to which STHL occurs at Moreton by the Park and elsewhere is also crucial to the impacts it has. At one end of the spectrum the occasional STHL of a single room by a permanent resident would be expected to have minimal impact. The permanent resident is on site and is well placed and motivated to manage their individual responsibilities in relation common property and the amenity of other residents. At the other end of the spectrum many, if not most of the apartments are used for STHL. If such a situation was to eventuate at Moreton by the Park it would effectively convert what is now a harmonious home for residents into a quasi-hotel.

It is beyond the scope of this submission to set out every detail of the issues facing the owners of Moreton by the Park if extensive STHL was to be imposed. Indeed, the owners are still coming to terms with this themselves. Suffice it to say the impacts are potentially extensive and material if many or most of the apartments are used for STHL.

A recurring theme to emerge from examining the potential issues is the probable need to move from part time building management resourcing to full time, possibly including 24 concierge and security style resourcing to maintain current levels of safety, security and amenity. Should this be required current building management costs would triple leading to an increase of around 40% or more in strata levies. Clearly this is an unreasonable impost on owners without there being a mechanism for the affected owners being able to say 'no'.

The following limited sub-set of potential issues help illustrate this point:

- a) Enhanced fire safety management practices and expenditure are required
- b) Resident safety and security management becomes more complex and costly
- c) Amenity is reduced and associated by-law enforcement becomes much more problematic

**a) Material fire safety enhancements are required**

Moreton by the Park has a fire safety system designed, implemented and maintained to meet the Building Code of Australia standards for a residential class 2 medium rise building with an underground car park. As yet a full assessment of the changes that may be required to bring the building into line with holiday accommodation standards has not been undertaken. This assessment alone would be a cost imposition on the owners requiring, as a minimum, the engagement of expert fire consultants. Indeed, it is unclear why owners should be forced into a position of having to fund this exercise, let alone any emerging fire upgrade requirements, if they have no interest in accommodating significant levels of STHL.

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Even without the results of an expert assessment it is apparent that fire alarm evacuation procedures alone would warrant more effort and costs to accommodate adoption of STHL. Currently, these procedures are made available to new residents and are tested from time to time with dummy evacuations that help ensure residents – new and old – remain familiar with this vital exercise. The relatively low rates of occupant turnover also make it possible to keep reasonable track of disabled and elderly residents who may need special assistance with evacuation without excessive administrative overhead.

These measures may be appropriate for a building with owner occupiers and tenants on six month leases. However, they are unlikely to be sufficient to ensure that holiday makers renting from off-site landlords are familiar with the alarms and the evacuation processes. Importantly, there are no permanent on site staff, or even an intercom system to assist and guide holiday makers in the event of an emergency. The risks to disabled holiday makers are greater still as a result. This is not a trivial issue to address properly and would most likely require upgraded communications and signage, and additional on site and on-call building management resources. The owners would either have to bear the associated recurring costs collectively or manage an expensive and complicated cost allocation process to impose these costs on owners that undertake STHL.

These issues may be fundamentally different in a high rise strata complex with more sophisticated fire protection systems, full time building management services, and a 24/7 concierge. The additional cost imposed of upgrading to accommodate STHL may be lower, particularly on a per owner basis. Moreton by the Park does not presently have or need to have these arrangements.

*b) Resident safety and security becomes more complex and costly*

As with fire safety building access and security systems at Moreton by the Park are designed around permanent residential arrangements. A part-time building manager is able to issue and keep reasonable track of electronic access devices and keys. Annual access device audits are sufficient to provide a high degree of confidence that unaccounted for access devices have been turned off.

Simple CCTV arrangements at key entry ways are also considered sufficient by current owners. The significant presence of owner occupiers and the six month plus rental agreements ensure familiarity among residents and aid effective low cost security practices.

Access to individual foyers within Moreton by the Park is an important aspect of building security. Typically there are a small number of apartments off each foyer, most commonly four but sometimes two and sometimes up to eight. Keys and access devices are coded to ensure that, in general, only the residents in any foyer can access that foyer. Combined with a familiarity with the usual neighbours in each foyer this provides relatively high security at a low cost.

The introduction of STHL, particularly with off-site landlords, immediately increases the challenges of managing and tracking keys and access devices. There are no on-site handover arrangements for key and access devices as there are no permanent on-site staff at Moreton by the Park. Nor are there any CCTV facilities monitoring every level. The existing security arrangements at Moreton by the Park fall well short of accepted good practice in many hostels and hotels that do not even have the rights of permanent residents to consider. Unlike hotels there are multiple independent access points into Moreton by the Park adding to the inherent security and access key management issues arising from many paying guests coming and going.

Letterbox security has been an issue at Moreton by the Park largely due to their location outside building entrances. Low cost strategies for managing this have been possible, in part, because

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awareness and vigilance is easily implemented with permanent residents. Unfortunately, the introduction of STHL complicates this process as well as inviting insecure usage of letterboxes and other questionable arrangements for the transfer of access keys to and from short term guests.

The by-law that provides for limited STHL into Moreton by the Park has managed this issue by requiring an on-site permanent resident to be nominated by the owner to manage access and other issues.

The safety and security issues in smaller walk up style apartment buildings may rely even more on basic 'know your neighbour' strategies than at Moreton by the Park. However, in high rise buildings with sophisticated CCTV systems, a full time concierge to manage access devices and a single entry point STHL may not be as problematic. Regardless, the owners corporations in each situation are best placed to know and address their specific requirements.

*c) Amenity of residents is reduced while property damage and by-law enforcement issues increase*

Like all strata schemes Moreton by the Park needs to manage the unreasonable impact of some individual resident activities upon other residents and the integrity of common property. As a residential complex Moreton by the Park is home to the people living there.

With the current make-up of permanent residents in Moreton by the Park, some retired and many working during the week, there is a strong collective interest in ensuring the quiet enjoyment of homes and reasonable ongoing access to shared facilities. There is also a greater tendency to respect common property. Noise issues do arise and groups of residents and their guests have tended to 'take over' the courtyard pool with parties from time to time. There are also common property impacts to manage.

However, these are relatively rare and have been managed by direct engagement with the relevant residents. This is effective because they are residents who are relatively easy to identify. Furthermore, because they live in the complex residents are usually keen to avoid ongoing conflict with their immediate neighbours. This enables amenity to be generally preserved without need for full time on-site staff including security staff. As already noted Moreton by the Park has not had need to access NCAT processes in the last decade.

A significant presence of STHL in the building changes this. Not only are the visitors in holiday mode but they have no stake in maintaining ongoing relations with other building residents or are likely to share the same respect for the ongoing care of common property. They don't even have a stake in maintaining good relations with their temporary landlord, unlike residential tenants. By the time an issue with behaviour or property damage is identified the holiday makers responsible are long gone.

The impact of STHL on Moreton by the Park is made worse because of its close and persistent proximity to long term residents in relatively intimate shared foyers. There is minimal physical separation between people in the homes and holiday makers.

Enforcement proceedings for by-law violations by holiday makers is inherently problematic too. Taking action against the off-site owners involved is one 'after the event' avenue. However, owners in this situation have little capacity to prevent reoccurrence with future different holiday makers. Indeed, it is difficult to envisage what effective sanctions NCAT could actually impose.

Again, the situation in other strata schemes may be different to Moreton by the Park. Physical separation of holiday lettings from residential lettings may be more feasible. There may already be full time staff on site to help manage issues as they arise because of the scale and nature of the building.

**3. *The inherent property rights of strata owners are respected and protected***

There is little questioning of the right of an owner of a free standing torrens title property to decide for themselves whether or not their property should be used for STHL, provided that they meet the relevant council planning and other legal requirements. There is clear recognition of the inherent property rights of owners in these situations and the fundamental nature of the change in use that is occurring.

In principle, the shared property rights of strata owners are no less legitimate than owners of any property. Importantly, in strata schemes, the vast majority of scheme property and assets by value in a scheme, such as Moreton by the Park, are common property assets owned collectively. These include land and structural assets as well as all the site services infrastructure and site amenities. Indeed, responsibility for the insurance of this asset value rests with the relevant owners corporation.

Collectively the strata owners through their owners corporation are entitled to determine whether or not this property, their property, changes in function from residential to a pseudo hotel, either partially or fully. This principle already comes into play when there is a proposal to sell a strata complex for physical redevelopment. Specifically, any such sale requires the express approval of at least 75% of all owners. Indeed, the exclusion of this higher threshold as an option in the Options Paper as a pre-condition for permitting material levels of STHL letting within any strata scheme is of concern.

Put simply, Moreton by the Park is the property of its owners. Therefore, its intended shared use ought to be a matter for the owners. The owners corporation is the legal vehicle through which owners make choices about the use and nature of their property. These choices are via democratic processes established for spending decisions, creating by-laws, making capital improvements or collectively re-developing the building.

However, confusion arises because of the way in which the individual property rights of strata owners are intertwined with the collective property rights of all owners within a scheme.

Individual owners have certain additional rights in relation to the exclusive use of the air space within their lots. This includes the right to lease the space for residential purposes if the strata scheme is a residential scheme like Moreton by the Park. Residents also have rights to bring friends and family onto the site and use shared facilities provided they are invited and comply with the expectations of the scheme as embodied in the scheme's by-laws.

However, off-site letting of individual allotments for STHL, particularly on any scale, cannot occur without material consequences for common property, its management, and the amenity of other residents. Unfortunately, in a residential strata scheme such as Moreton by the Park, it is not feasible for an individual lot owner to unilaterally change the use of their lot from residential to STHL without also incrementally imposing such consequences. These impacts have already been discussed.

The key point here though is that to protect the collective property rights of owners the owners corporation is fundamentally entitled to have a meaningful degree of control over individual lot owners' abilities to unilaterally change the use of their lots to a non-residential purpose.

**4. The authority available to Owners Corporations match their accountabilities**

Owners corporations must have sufficient authority to enable them to properly manage their extensive legal accountabilities. Importantly these include legal accountability for security and safety, notably fire safety measures as already outlined above.

We note with some concern that the Options Paper does not expressly recognise the legal accountability of owners corporations for their many responsibilities. Fortunately, there is some express acknowledgement that the introduction of STHL into a building designed and operating as a residential complex does impact on the ability to effectively manage building security, safety and other matters. This carries through to insurance risk and associated insurance premiums as well as the need to upgrade some facilities to meet the higher standards associated with non-residential uses.

Earlier sections of this submission have already noted Moreton by the Park's accountabilities for fire safety, and building security. These are legal accountabilities that rest on the owners corporations via various statutes. Strata Law also makes owners corporations accountable for the maintenance and repair of common property and includes requirements to raise sufficient funds through levies on owners to do this.

These obligations at Moreton by the Park are reflected in building management arrangements that require cleaning, maintenance, certification, repair, renewal and replacement as may be necessary from time to time of the *common property* including:

- any plant, machinery and equipment such as lifts, swimming pool equipment, fire safety devices, ventilation systems, hot water system equipment, plumbing and drainage, floodgate and associated auxiliaries, lights, pumps and fans, security and access equipment, telecommunications equipment, and power supply equipment); and
- the carpets, lifts, walls, ceilings, toilets, windows, floors, roofing, tiling, skirtings, the swimming pool, gardens and outdoor paving, internal and external timberwork, the car park, the garbage room, signage, and any fittings and fixtures on the *common property*.

Accordingly, any additional wear and tear on common property arising from a change in common property usage flows through to funding requirements and, thus, levies. Unless, this accountability can be contained via the owners corporation ability to make by-laws limiting STHL then owners corporations effectively become accountable for a more demanding set of requirements and increased costs without any assurance of offsetting benefits.

We contrast this position with that of the STHL facilitators who are not accountable for managing these crucial responsibilities in buildings. Nor are they required to fund any additional management costs that may arise. As such it is entirely inappropriate for them, or Government policies set in response to their demands, to insist that owners corporations be denied the right to use by-laws to manage responsibilities for which they are accountable.

**5. The most efficient adoption of STHL by Strata Schemes occurs over time**

As noted in the introduction, this submission does not oppose the introduction of STHL into residential strata schemes per se. Indeed, we believe that if owners corporations have the authority to set by-laws that control the nature and extent of STHL then this will occur over time where it is in the interests of owners. Similarly, it will not occur where it is not, on balance, in the collective interests of owners.

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At Moreton by the Park a by-law seeking a complete ban of STHL within the complex was considered. However, feedback from owners, including at a General Meeting, saw this reconsidered to open the way for STHL, but within important limits. These limits were set to maintain resident amenity, to avoid materially compromising owners corporation accountabilities, and to continue the management of the complex at a cost commensurate with a purely residential complex. The by-law also operates in such a way as to ensure that individual lot owners are responsible for meeting planning and other legal requirements.

Importantly, like all by-laws, its adoption required approval of 75% of owners present at a General Meeting. This is a democratic approval mechanism that is also applied to decisions to proceed with common property capital improvement projects. As with capital improvement projects the owners of the building in question are best placed to decide what form of changes to the nature of the building and its operation are in the best interests of owners collectively.

No doubt with time, experience and a changing ownership profile there will be further adjustments to the current by-law within Moreton by the Park. Importantly, they will reflect the collective net benefits of owners specific to Moreton by the Park and provide a mechanism for local issues to be resolved without recourse to wider political agitation. They may even provide for differential levies to be applied to owners that carry out short term holiday letting to help fund managing the consequential impacts on amenity and common property.

None of the other mechanisms offered in the options paper do this. They either highly constrain the owners corporations in their ability to limit STHL or, worse, move the authority for these decisions to a centralised remote authority such as NCAT or Government mandate. Indeed, we do not see these other options as ever being acceptable to owners of Moreton by the Park. Nor do they provide a suitably flexible mechanism to managing changing owner profiles and preferences over time.

***Conclusion***

Any Government policy solution that fails to provide residential strata owners corporations with the ability to make by-laws to expressly control the nature and extent of Short Term Holiday Letting in their buildings is sub-optimal and almost certainly doomed to failure in the long run. The potential for unresolved and costly conflict within the rapidly growing number of strata scheme residents in NSW will remain and the Government of the day should expect unnecessary and ongoing negative community reaction.

Conversely, enabling owners corporations to form such by-laws utilises an existing established democratic process for strata scheme owners to determine the direction their schemes will take on Short Term Holiday Letting. This approach is consistent with the inherent collective property rights of strata owners and their existing significant legal accountabilities. Most importantly, as demonstrated by Moreton by the Park, it provides for efficient and fair solutions to evolve that match to the individual and varying needs of each strata scheme within the State.

Patrick Smith  
Chairman SP74760

Philip Gall  
Treasurer SP74760

Rosemary Noonan  
Secretary SP 74760

