



Short-term Holiday Letting (STHL) in NSW Options Paper Submission

To - Director, Housing Policy
Department of Housing and Environment
STHL@planning.nsw.gov.au

Cc: Jamie Parker MP, Member for Balmain
jamie.parker@parliament.nsw.gov.au

Background

1. Dalgety Square is large strata plan comprising 337 lots that are mostly residential (311 lots). We have some retail/commercial units (27 lots) with separate entrances. We are in inner city Sydney within easy walking distance of Central Railway Station and Darling Harbour.
2. The final occupancy certificate for our building lists our residential lots as Class 2.
3. The approved development consent for our building states:

"71. Residential Use – 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."
4. We have an existing by-law which restricts short-term letting (STL B-L) as per the terms of our development consent. This by-law was prepared by a specialist solicitor dealing solely with strata by-laws. The by-law passed, with an overwhelming majority of owners in favour of restricting short-term letting.
5. A copy of our Short Term Accommodation by-law (18.2), and a relevant extract (motion 16.3) from the minutes of the annual general meeting at which it was passed, are included at attachments 1 and 2.
6. We have owners who have bought into the building on the strength of the STL B-L restrictions. These owners felt confident they were buying into a building which would become their home, not a hotel or serviced apartments.
7. We have a pool, two spas and a steam room. Our pool and spa water quality is checked and maintained by a pool expert three times a week. The NSW Public Health Act indicates that our pool is not public, as it is part of a residential strata plan.
8. Much more onerous public health requirements apply to: "(c) a pool provided at a hotel, motel or guest house or at holiday units, or similar facility, for the use of guests".

See: <http://www.health.nsw.gov.au/environment/publicpools/Documents/public-health-act-2010-pt3.pdf>



Short-term Holiday Letting (STHL) in NSW Options Paper Submission

Issues with short-term letting (STL)

9. We believe that short term letting is in clear breach of the development consent for our building.
10. We have had instances of our STL B-L being breached. In two cases the STL B-L breach was accompanied by covert and illegal internal building works which compromised the fire safety measures within the lot and common property. In one case fire safety panels between lots were removed. In the other, internal structures had been erected to form two extra bedrooms which were not covered by the fire sprinkler system.
11. STL is an extra and ongoing burden for our building management, our strata manager, and our volunteer strata committee, in terms of time and effort.
12. STL reduces confidence in the long-term viability of apartment living. No one wants to live long term in a hotel or next door to an apartment where frequent parties or other anti-social activities interfere with our chosen quiet and private lifestyle.
13. Neither do we want to bear the uncertain financial costs of STL.
14. "No host present" STL introduces security and other problems as there is no supervision of un-vetted guests in the building.
15. "No host present" STL makes it difficult to ensure that guests are aware of emergency procedures or of the building by-laws, in the way that we welcome and orient our owners and conventional tenants.
16. It is unclear, and thus concerning, what impact STL has on our strata plan's insurance policy as the regulatory framework around STL is so uncertain. Is it illegal given our development consent conditions? Does that mean our insurance policy is void if a fire started in a lot which is operating as a STL? Our premiums remain very much at our insurer's discretion, and they have not, as yet, committed to the way they will treat STL into the future.
17. It is unclear whether our pool and spa facilities will, or may, be deemed 'public' if we are forced to permit STLs. We have been provided with an estimate of an extra \$250K/year (above the cost of our current pool maintenance regime) to keep our pool and spa facilities up to the mandatory public pool health standards. This would be unacceptable. Particularly, as we would have no way to recover these increased costs from the parties incurring them. All owners would be forced to pay.
18. Legitimate providers of hotels, motels, tourist accommodation and the like have more onerous regulatory requirements including fire safety, food safety, pool, and public health measures. STL hosts have an unfair advantage as they do not have to provide food safety, first aid certificates or ensure the fire and public health safety of their



Short-term Holiday Letting (STHL) in NSW Options Paper Submission

guests. Being a large strata plan of 328 lots makes us more vulnerable to being classed as a hotel, or similar, and thus subject to 'increased compliance' costs and concerns.

19. STL operators commonly hide behind a veil of secrecy not afforded to those who have to suffer their "disruption". There is no clear complaints path which neighbours, owners corporations and/or strata managers can follow with STL operators to deal with problematic STLs and/or hosts. It is difficult to find a number to call. Emails garner an automatic generic response and little else.
20. Detection and management of overcrowding in strata plans continues to be an unresolved problem for many owners corporations and local councils.
21. Building security is often compromised by STL operators issuing multiple cloned access fobs to clients. This can also cause problems with the technology used in lifts and other parts of buildings, particularly when identical cloned fobs or entry devices are used simultaneously at more than one point.

Preferred options for STL

22. Provide certainty and do not alter the terms of our development consent retrospectively.
23. Allow us to uphold our existing, democratically passed, by-law which restricts STL as per the precise terms of our development consent. This by-law already has been demonstrated to have the overwhelming support of owners at two general meetings.
24. Have the STL operators provide innovative mechanisms on their platform which prevent hosts listing addresses from buildings which restrict STL as per their development consent and/or by laws. This LPI information should be available from NSW government data for use on STL platforms. At the very least Owners Corporations and others should have the ability to easily contact STL operators to have them flag their non-permissible addresses as per their development consent and/or STL B-L.
25. STL operators should be subject to the same regulatory regime as other providers of tourist & hotel accommodation, particularly where public safety is concerned. STL operators should be registered to enable compliance checking & tax recovery.
26. STL operators must provide active local contact details, including a monitored phone number, to assist the general public with issues relating to STLs listed on their platforms.
27. Owners corporations should retain the right to democratically decide how STL will be managed in each building – including a total ban.



Short-term Holiday Letting (STHL) in NSW Options Paper Submission

28. Non-resident tenants that simply rent to sublet to AirBnb or similar as a business should be banned in all cases, as this is not a real tenancy in terms of the tenancy legislation.
29. There should be a clear right of 'unannounced' access by Councils and owners corporations where STL, overcrowding, fire safety and other issues are suspected. Common experience has shown that 24-hours' notice is a loophole that gives ample time for breaches to be concealed, thus ensuring there is no hard evidence with which to prosecute any breaches.
30. Owners corporations should not be forced to bear the increased costs of dealing with the additional security, wear and tear, and other maintenance issues caused by STL operators using the building to generate private income.
31. We would like a clear legislative differentiation between hotels and other short term letting establishments, as distinct from residential apartment buildings primarily used by owners and traditional tenancy arrangements. This would protect us from arbitrary compliance costs of hotel use – as in pools, insurance classifications, public risk etc.

Conclusion

32. STL is an ongoing matter of serious concern for the nearly 1,000 owners and residents of Dalgety Square. With respect, we want to retain our calm community lifestyle.
33. The chair, secretary, and members of our strata committee are happy to be contacted should further information be sought.

A handwritten signature in black ink, appearing to read 'David Farrell', is positioned above the typed name. The signature is fluid and cursive, with a long horizontal stroke extending to the left.

David Farrell

Secretary – Strata Committee - SP57895

On behalf of the Owners Corporation – Dalgety Square

30 October 2017

Email - _____

Phone –



Short-term Holiday Letting (STHL) in NSW Options Paper Submission

Attachment 1 - Extract from by laws passed at the Annual General Meeting on 26 April 2017

18.2 Short Term Accommodation

- (1) An Owner or Occupier of a lot must ensure that the lot is not used for any purpose that is prohibited by law.
- (2) An Owner or Occupier of a lot shall only use and carry out activities on the lot for which consent has been granted by the Local Council, or State authority, and is compliant with all relevant Acts and / or regulations.
- (3) Unless permitted with the consent of the Local Council, a Residential Lot must only be used for Residential Accommodation as approved by the local authority and an Owner or Occupier must—
 - (a) not use that lot, for the purpose of Tourist or Visitor Accommodation (including AirBnB and similar activities);
 - (b) ensure that any tenant of that lot is subject to a residential tenancy agreement with an initial term for that tenant of at least three (3) months;
 - (c) not advertise or solicit, or permit or authorise any agent, servant or contractor to advertise or solicit for Tourist or Visitor Accommodation of less than three (3) months; and
 - (d) not end a residential tenancy agreement less than three (3) months into its term without lawful justification for doing so.
- (4) An Owner or Occupier must notify the Owners Corporation of any change in use of lot approved by the Local Council for any type of Tourist or Visitor Accommodation or holiday letting and provide a written copy of the Development Consent which provides consent to the lot being used as Tourist or Visitor Accommodation.
- (5) An Owner or Occupier of a lot must ensure that the lot is not occupied by more persons than are allowed by law to occupy the lot.
- (6) If a lot is let, then the Owner (“lessor”) must take all reasonable action under the lease or tenancy agreement and relevant laws to restrain any breach of the by-laws or other laws by the Occupier of the lot.
- (7) If an Owner or Occupier of a lot, fails to comply with the terms of this by-law and as a consequence, the Local Council issues an Order or commences proceedings under the *Environmental Planning and Assessment Act 1979 (NSW)* in relation to that lot then the Owner or Occupier must indemnify the Owners Corporation for its costs of defending such an action and any penalty imposed.
- (8) Further, if an Owner or Occupier of a lot fails to comply with this by-law or any Development Consent or planning law, then the Owners Corporation, at its sole discretion, may do all things necessary to enforce the terms of this by-law, or any relevant Development Consent or planning law requirement, including but not limited to:
 - (a) commencing and prosecuting any action before any Court or Tribunal of competent jurisdiction; and/or
 - (b) assisting the Local Council in any legal proceedings.
- (9) The Owner or Occupier must indemnify the Owners Corporation with respect to any expenses reasonably incurred by the Owners Corporation in relation to any proceedings referred to in clause (10) and (11) above.
- (10) In this by-law,
 - “**Development Consent**” means development consent granted by the Local Council pursuant to the *Environmental Planning and Assessment Act 1979 (NSW)*
 - “**Local Council**” means City of Sydney Council
 - “**Owner**” means any owner or owners of a lot from time to time on the strata plan.
 - “**Occupier**” means an occupier, lessee, licensee, sub-lessee or sub-licensee of a lot from time to time on the strata plan.
 - “**Residential Lot**” means a lot in the strata scheme that has development approval from the local authority and approval from the Owners Corporation to be used for Residential Accommodation.
 - “**Residential Accommodation**” means permanent residential occupation of a lot as approved by the local authority.
 - “**Tourist and Visitor Accommodation**” means a building or place that provides temporary or short-term accommodation on a commercial basis, and includes any of the following:
 - (a) backpackers’ accommodation
 - (b) bed and breakfast accommodation
 - (c) farm stay accommodation
 - (d) hotel or motel accommodation
 - (e) serviced apartments



Short-term Holiday Letting (STHL) in NSW Options Paper Submission

Attachment 2 - Extract from the Minutes of the Annual General Meeting held on 26 April 2017.

The prescribed quorum was present.

By-Law 18.2 - Short Term Accommodation (shown at Attachment 1) – was passed without amendment as part of Motion 16.3 below.

Motion 16.3

The Owners Corporation by SPECIAL RESOLUTION pursuant to section 141 (1) of the *Strata Schemes Management Act 2015* ("the Act"), add the new Consolidated by-laws 1 to 28 for Strata Plan 57895 as set out in the "*Annexure to Change of By-laws*" appended to the agenda of general meeting considering this motion.

CARRIED
