

**SHORT TERM HOLIDAY LETTING OPTIONS PAPER –
DARLING ISLAND APARTMENTS SUBMISSION**

Background

This submission is made by the Strata Committee of Darling Island Apartments, 3 Darling Island Road, Pyrmont on behalf of the 107 owners of lots in the complex. All owners have been made aware of the STHL Options Paper and have had the opportunity to contribute to the content of this submission.

Darling Island Apartments comprises a complex of three medium rise buildings on the northern end of Darling Island at Pyrmont. Because of the location close to the city's entertainment precinct and The Star casino, the Owners Corporation has invested, and continues to invest heavily in security following a range of security incidents some years ago. Because the apartments are at the prestige end of the market, they continue to act as a magnet for individuals seeking to make easy money. A key element in the security strategy is tight management of the electronic keys which provide access to the Occupier's lift lobby, lift, the basement areas, common property facilities and all entry points to the three buildings.

In the last 12 months there have been at least two instances that are known in which an apartment has been leased from the owner with the specific intent of the lessee then using it as short term holiday accommodation for visitors where the lessee is not in occupation. The profits to be made from doing so can be very substantial, more than \$2000 per week per apartment, so a predictable scenario is an increase in this type of behaviour if left unchecked. It is not known whether the owners were aware that their apartments were being used in this manner, but it is assumed they did not know because there was no owner or lessee interaction with building management as required by the By-Laws. Building management has had no visibility of how electronic keys were being managed by lessees for their holiday letting so there is some certainty that keys have been transferred ignoring By-Law requirements for notification, thereby potentially impacting overall security of the complex.

Executive Summary

The Owners Corporation of Darling Island Apartments is strongly opposed to allowing Owners or Occupants to use their apartments for STHL. There is a strong prevailing view that the existing conditions in the original Development Consent and the related lease with Planning NSW should prevail, namely that the building cannot be used for short term holiday letting. Permitting STHL in our and similar developments will result in:

- a significantly increased security risk for both property and people; and
- negative impacts on amenity and quiet enjoyment by owners and long-term occupiers; and
- increased costs to manage and maintain the development to a high standard; and

- material devaluation of property values.

There is no doubt that regulation is required to provide owners and the industry with clear guidance on what is or is not permitted and what recourse is available should the regulations be breached. Ideally the regulations will take a multi-tiered approach which:

- Permits Owners Corporations to determine the degree to which STHL may be permitted in their strata development, taking account of the Development Consent and other Authority conditions which apply to the development;
- Where STHL is permitted in a strata development, endows the Owners Corporation, acting reasonably, with powers enabling them to direct remedial action in the event of a breach, recover costs for damage directly and seek compensation in the event of repeated incidents.
- Makes the Owner or Sub-lessee using an apartment for STHL purposes fully liable for all costs related to any breaches, thereby conferring responsibility for any cost recovery actions from short term occupiers back onto the person managing the STHL activity and limiting the burden on the Owners Corporation in respect of cost recovery.
- Provides channels which enable the Owners Corporation to refer repeated breaches to a Tribunal in situations where direct action by the Owners Corporation has been unsuccessful
- Ensures that the Tribunal is responsive in a timely manner and there are no costs to the Owners Corporation when a ruling is in favour of the Owners Corporation.
- For matters referred to a Tribunal, empowers the Tribunal to:
 - order that conduct breaching by-laws or causing a nuisance or hazard cease;
 - order payment of compensation to the Owners' Corporation and to owners and residents of other units;
 - impose a significant civil penalty on owners and/or tenants where either have arranged STHL; and/or
 - prohibit the future use of the relevant lot for STHL indefinitely with significant penalties imposed on those who breach such a prohibition order.

Development Consent

Darling Island Apartments are subject to a Development Consent which is specific in respect of the use of the property, namely:

“The building must remain as a building for permanent residential accommodation and must not be used for serviced apartments, hotel use or similar non-wholly permanent residential use. The Owners Corporation must not do anything or, so far as legally possible, permit anything to be done which may result in the Building being used otherwise than as for permanent residential accommodation.”

and

“All Apartments must either be occupied by Owners or by Occupiers with a residential

lease under the Residential Tenancies Act 1987 with a minimum term of 3 months.”

The conditions of the Development Consent are reflected in the lease that the Owners Corporation has with the Authority, NSW Planning, and in the sub-leases that each lot Owner has with the Authority. These conditions are seen to be a significant benefit to both current and prospective owners. Any changes to these conditions would be seen as highly detrimental and, in the current poorly regulated STHL environment, likely to devalue every Lot in the complex. The Owners Corporation is required to report annually in respect of its compliance with the various conditions of Development Consent.

Self-Regulation

To promote the concept of industry self-regulation would be to demonstrate a high degree of naivety. In strata communities there is an ever-increasing lack of awareness of not only the By-laws but also the general societal expectations of what constitutes normal or acceptable behavior. In part this is attributable to an increasing percentage of owners and occupiers coming from non-English speaking backgrounds. But, even when an individual is from an English-speaking background and is well educated, there is increasing evidence on a day to day basis that some individuals are unwilling to observe what constitutes a Code of Conduct for the Strata, namely the By-Laws.

Further, as demonstrated by the two known examples experienced at Darling Island Apartments, there is no demonstrable incentive for a lessee, who is renting an apartment purely for the purpose of short term letting, to promote the by-laws or a code of conduct because theirs can be a relatively short-term venture which can effectively stay ahead of the regulatory options available. Even if the owner or lessee provides short term letting occupants with a code of conduct or By-Laws, it is highly unlikely that the occupants will either understand or observe the conditions.

Therefore, the result of proposed STHL relaxations in properties such as ours will be that, no matter what procedures and rules one puts in place, they will largely be ineffective against those who stay for short periods, because the process of enforcement will never keep up with breaches. An occupier, staying for three weeks, may respect the rules of STHL in the first two weeks but break them in the last week leaving behind a trail of destruction and rendering the Owners' Corporation powerless to stop such behaviour without causing conflict, which could be a significant safety issue for those seeking to enforce reasonable codes of conduct. There is a high probability that people staying short term in any complex for the purpose of having extreme fun will occupy a property without much regard for the consequences of their actions.

Joint Responsibility

As identified in the Options Paper, one option for managing compliance could be to make the Owner and the short-term occupant jointly and severally responsible. Once again this perspective demonstrates a degree of naivety. Short term occupants are unlikely to be

contactable, or even in-country, after a short stay. Owners or, in the case of Darling Island Apartments experience, the lessees, could be strongly resistant to any claim placed on them by an Owners Corporation to recover costs for damage or compensation for allowing By-Laws to be breached.

The proposed form of resolving matters through the Tribunal has three negative elements, namely:

- the time it would potentially take to get a hearing;
- the costs to the Owners Corporation in preparing and participating in a Tribunal hearing; and
- the time required of volunteer members of Strata Committees to prepare for and participate in a hearing.

While the concept of joint responsibility and use of the Tribunal may appear sound in theory, it ignores the practical application elements. Owners Corporations through Strata Committees need to be able to manage the security, safety and amenity of a strata site in near real time.

Classification of Properties and Regulation

The Options Paper discusses the concept of property classification and the degree of regulation associated with each classification. At no stage does the proposed process consider the inputs from individual properties based on their unique circumstances. Not all strata properties are the same and nor are all owners of like mind. However, a strata complex is a community and that community must be entitled to have some influence over how their property is classified and what level of regulation is required.

Realistically, an Owners Corporation in a large complex such as Darling Island Apartments should have the powers to:

- regulate the use of the property for the benefit of all owners;
- regulate use of the property to ensure compliance with Development Approvals;
- minimise the potential impacts of STHL by establishing appropriate By-Laws;
- seek financial compensation from owners or occupiers who repeatedly breach the By-Laws, without recourse to a Tribunal;
- recover costs directly from an owner without recourse to a Tribunal where damage is caused to common property by a STHL occupant;
- recover compensation from an owner without recourse to a Tribunal where a STHL occupant significantly impacts the peaceful enjoyment of residents of Darling Island Apartments.

Conclusion

To allow unfettered STHL in any strata development has the potential to:

- increase operational and capital works costs for the Owners Corporation;
- have a significant negative impact on property values due to the increased uncertainty for prospective owners in respect of the behaviour and compliance expected from neighbours;
- significantly undermine the amenity and quiet enjoyment of permanent occupiers; and
- increase the costs to owners due to the requirement to effectively manage the potential disruption, physical and mental, short term occupants may have on residents.

Given that the desire to operate a STHL facility is limited to a very small proportion of strata owners, there must be some recognition of the needs and desires of the majority of owners in whatever new approach is agreed upon. Regulation and administration of STHL should remain a responsibility of the Owners Corporation without an excessive overlay of local or state bureaucracy and intervention. A caveat on local management and authority should be that “the Owners Corporation acts reasonably”.

Where a Development Consent exists which requires the Owners Corporation to monitor and manage the use of properties within the strata plan, those conditions should be allowed to prevail. To force significant change to DA compliance conditions based on the wishes of a very vocal industry and a minute percentage of property owners is totally unreasonable and unacceptable.

Accepting that the political environment is unlikely to accede to the wishes of the majority of owners of strata properties, we therefore recommend that, in drafting new regulations and guidelines, consideration be given to:

- allowing Owners Corporations to establish By-Laws which can limit the number of days per annum that a property can be used for STHL;
- providing Owners Corporations in large developments (>100 lots) with the powers to directly recover financial compensation from owners using their apartment for STHL for significant breaches of By-Laws and to recover directly from the owner costs for repairing damage to common property and financial compensation for loss of peaceful enjoyment by any occupier caused by STHL;
- requiring any owner or occupier intending to use their strata property for STHL to obtain approval from Council and from the Owners Corporation, noting that Owners Corporation approval can apply conditions with respect to security and amenity;
- requiring the STHL industry to monitor and be responsive to limitations on numbers of letting days placed on a property by the Owners Corporation, acting reasonably; and
- providing an opportunity for the Owners Corporation of every large strata development to make representations in the classification process for a given property.