October 17, 2017

Director, Housing Policy  
Department of Planning & Environment  
GPO Box 39  
SYDNEY NSW 2001

Dear Sir

Reference:  
NSW PLANNING & ENVIRONMENT — NSW FAIR TRADING  
SHORT-TERM HOLIDAY LETTING IN NSW  
OPTIONS PAPER

At the Strata Meeting of the Peninsula Residential Owners Corporation, Strata Plan # 63767, held on August 31, 2017, it was resolved that a Sub-Committee be formed to supply comment on the Options Paper — Short-Term Holiday Letting in NSW.

As a result, attached is our submission which we believe provides evidence of the dangers and problems of short-term holiday letting in residential strata plan apartments such as the Peninsula, which comprises 162 residential apartments.

It is probably only here in Manly, that a proper investigation into short-term holiday letting has ever taken place. What was put in place by Manly Council Working Party has been successful, and solved what had become a highly volatile situation.

It would be a most retrograde step to move back to the situation that existed between 2000-2007 here in Manly, as outlined in this submission.

Yours faithfully  
Peninsula Residential Owners Corporation  
Strata Plan # 63767

Brian Fitzgerald  
Secretary/Treasurer

Enc.
October 17, 2017

Director, Housing Policy
Department of Planning & Environment
GPO Box 39,
SYDNEY NSW 2001

Dear Sir

Reference: NSW PLANNING & ENVIRONMENT - NSW FAIR TRADING
SHORT-TERM HOLIDAY LETTING IN NSW
OPTIONS PAPER

And

LEGISLATIVE ASSEMBLY COMMITTEE ON ENVIRONMENT & PLANNING
- ADEQUACY OF THE REGULATION OF SHORT-TERM HOLIDAY LETTING IN NEW SOUTH WALES - 1/56 - OCTOBER 2016

It would appear that sometime in 2015, a decision was made by the NSW Government to conduct an inquiry into “Adequacy of the Regulation of Short-Term Holiday Letting in New South Wales.

As a matter of process, our first question is why our Strata Plan # 63767 was not advised of such inquiry? It is noted that there are 76,685 such Strata Plans in New South Wales with 836,982 strata lot folios, most of which relate to residential apartment blocks.

It was not until the Report to Parliament in October 2016, and its Recommendations, were brought to our attention that we knew of any such inquiry having taken place.

A Peninsula owner becoming concerned with the ramifications of the Recommendations, emailed former Premier Mike Baird, our local State member, advising him of the fact that Manly Council had conducted a Working Party on Short Term Accommodation in 2004 when it became clear that Manly Council was the planning authority, and that a Development Consent was required to conduct such activity. Mr Baird replied to this email a few days before his resignation, and it became obvious he was not aware of the situation in Manly regarding short term holiday accommodation.
From a reading of the Options Paper, this may well be the end for “residential” Strata Title apartments if short term letting is permitted in the way in which residential Strata Title apartments are owned and operated.

For over fifty years, thousands of owners have volunteered their time and resources to run the Owners Corporation Executive Committees – now Strata Committees. There has been no financial reward for these many hours of labour, but the legal responsibility today is greater than for a company director if something goes wrong. These committees throughout New South Wales are charged with the responsibility of raising levies to cover all costs, which must be kept to a minimum. This requires the most astute financial knowledge and experience.

What are the implications when the Ministers in their Options Paper Foreword advise us that our Owners Corporation Strata Plan # 63767 is now part of the “sharing economy”? The question immediately arises as to who will pay all the additional costs?

PENINSULA HISTORY AND EXPERIENCE OF SHORT TERM HOLIDAY LETTING


It was Christmas 2000 when residents noted an influx of tourists into the building, which immediately caused great concern. As time progressed, we realized that some forty to fifty apartments were in the hands of five local holiday letting agents, who were providing short term holiday accommodation less than 90 days and even overnight. These agents and their staff had freedom of access to every part of our security building having been provided security keys/swipes by owners.

When people go on holidays, whether they are locals, interstate or overseas, their objective is to have a good time, and we very quickly learnt the problems associated with short term letting.

The outcry in Manly against short term holiday letting in residential apartment blocks became so great that in 2004, Manly Council set up a Working Party with:
What the Manly Council Working Party members discovered within the first thirty minutes of the first meeting was that in effect, Manly Council had the authority on the matter via its LEP, not the Strata Plan. One must appreciate that Manly Council had kept a low profile on this subject because of the lack of staff to follow through complaints, but once armed with this information, it was possible for us to organize our own By-Law which confirmed this authority vested in the Manly Council.


“It is acknowledged that short-term accommodation within residential premises in Manly has been a feature of the rental market within Manly for some time. The apparent conflict between short-term leasing and longer-term owner occupiers and tenants has apparently become more evident since the establishment of luxury units within down-town Manly, and there is an expectation that people who have paid up to $1 million (or more) for their premises are entitled to quiet enjoyment of their homes, and in some situations there are apparent frustrations with the apparent disregard for their rights as individuals and apparent disregard and lack of respect for the property

Further on page 37, Mr Hunter advised:

As presented to the Working Party previously, I believe that there already exists under the Strata Titles Act and under Council’s Development Controls an ultimate power to regulate by reason of the need for Council’s DA consent. It is noted that some members of the Working Party have a concern with this because they want some immunity for some premises (and Council cannot be discriminatory), but it does have some discretion, and this is where the pro-active/re-active (acting only on compliance) strategy becomes relevant. It should be noted that whilst asserting that there is “ultimately some power to regulate” it is acknowledged that in practical terms this is potentially difficult and costly”
Note that when Mr Hunter refers to the Strata Titles Act and Council's Development Controls – firstly the Strata Act was amended in 2016 causing some by-laws to be in doubt, and secondly Council's Development Controls were recommended to be deleted in the Legislative Assembly Committee Report.

On page 38, under Action Plan No. 7, Mr Hunter states:

"In allowing the tourist zone to continue, it may well re-focus market forces to either acquire and operate buildings totally as short-term accommodation, or it may lead to the market forces building new facilities which have proper facilities and separation between short-term accommodation and longer term residential living (as per the Grande Esplanade).

Unfortunately to the best of our knowledge no such holiday apartments have been approved since that time.

At the Manly Council Meeting held on 8 November 2004, when the above Report was presented, the vote was unanimous for its implementation with two amendments:
1. Council needs to make a clear statement that it has power to control and regulate.
2. Indicate that apartments advertised on the internet or elsewhere must have the necessary Development Consent, otherwise it is unlawful.

Following the Manly Council Meeting held on 8 November, 2004, the report was placed on public exhibition. No submissions were received, and the report was then passed to the General Manager pursuant to the resolution of Council for implementation

The Short-Term and Tourist Accommodation Working Party met for the final time on 24th May, 2005, when under Item 3: Next Meeting – “That the Committee will sunset unless or until the Mayor re-convenes the Committee for the purpose of a review of the strategies.”

Please note that no subsequent meeting of the Working Party was held because the whole subject of Short Term & Holiday Accommodation under 90 days was now under control.

On January 17, 2006, Manly Council wrote to all Proprietors of Strata Plan 63767 explaining the Zoning of the Property.
In December 2006, at our AGM, a special by-law was passed and registered supporting council’s local zoning authority. The Peninsula Short-Term Holiday Letting problem was rectified following the passing of the By-Law.

The Peninsula Owners Corporation Chairman, Mr Gerry McMahon was recorded as saying in the Manly Daily on December 8, 2006:

"The Peninsula was built to accommodate residents, not tourists, and would have to undergo significant changes to meet the Building Code of Australia.

If you want to have holiday lettings, you have to have a service desk, a concierge 24/7 and a luggage room. It would be costly and the strata fees would go up.

We believe that holiday letting was inconsistent with the Peninsula being a first-class residential building.

...Mr McMahon said other less responsible holidaymakers had punched holes in walls, pulled off fire extinguishers and urinated in the lift. There were also problems with baggage blocking up the lift, different people constantly coming in and out of the building and garbage collection issues."

2012 LETTER FROM THE HON BRAD HAZZARD MP
MINISTER FOR PLANNING AND INFRASTRUCTURE
HOLIDAY LETTING AND THE HOLIDAY RENTAL CODE OF CONDUCT.

When we noted the letter from Minister Hazzard tabled at Manly Council Meeting on May 7, 2012, alarm bells rang that the Minister was in fact being lobbied by parties with vested interests in holiday letting. Our Mrs Lisle Fortescue addressed Council on May 14, 2012 rejecting such Codes because they are impossible to police, particularly as we discovered in 2004, that holiday accommodation bookings were made using the Internet, not only with local agents right here in Manly, but also sub-agents operating throughout the world. Self-governing codes do not work.

Under GIPA we have now obtained copy of this letter promoting a CODE OF CONDUCT for holiday letting.

We note that the participating organisations involved in the “Holiday Rental Code of Conduct” in this instance were:

Stayz – TakeABreak – rentahome – HLO Holiday Letting Byron – REINSW
LEGISLATIVE ASSEMBLY COMMITTEE ON ENVIRONMENT AND PLANNING
REPORT 1/56 - OCTOBER 2016
ADEQUACY OF THE REGULATION OF SHORT TERM HOLIDAY LETTING IN NEW SOUTH WALES.
THE COMMITTEE’S RECOMMENDATIONS.

In view of the fact that NSW Strata Plans, 76,685 of us, were not advised of this inquiry, obviously the process is flawed.

Let us examine 1.53 “We do not accept however, that STRA is incompatible with strata living. As we have said, STRA is a low impact activity. This is borne out by the evidence of councils that they receive few complaints.”

Of course, there have been “few complaints”, because local councils like Manly Council “believe that there already exists under the Strata Titles Act and under Council’s Development Controls an ultimate power to regulate by reason of the need for Council’s Development Application Consent.” This is how the problem in residential apartment blocks in Manly was solved.

What does the Report mean by “low impact activity”? Let us explain what it is really like:

(i) “We’re at the beach” so let’s walk into the building, dripping with water and sand and proceed into the lift, creating puddles and continue dripping to the relevant apartment.

(ii) Let’s throw the rubbish anywhere despite recycling notices, and dump in whatever space is easily available.

(iii) Bring all your friends to share your happy times in the Peninsula pool with the requirement of getting well and truly smashed, make lots of noise and wreak as much havoc as possible. Never mind this is a family pool where there are signs “No alcohol Permitted”. Let’s have more fun and throw the glass bottles into the pool.

(iv) Ignore all parking signs and just park anywhere. What’s more let your friends into the security car park.

(v) At all times show total disrespect to the building, its owners and its environs.

(vi) We’re on holidays and have paid big money so will do exactly as we like.
We read every day where the NSW Government is planning for more and more apartments to be built throughout the state to cope with an ever increasing population, but who will want to live in them if they are full of holiday makers? Those who live in the Peninsula form a special community looking after each other. There are many families with young children, students, professional business people or retirees to whom security is a priority.

2017 NSW PLANNING & ENVIRONMENT & FAIR TRADING SHORT-TERM HOLIDAY LETTING IN NSW – OPTIONS PAPER

Whilst the Peninsula is in Manly, recognized as a popular holiday resort, Manly Council in the early 1990s set about encouraging and approving “RESIDENTIAL” Apartment blocks in the Manly CBD for the purpose of preventing anti social behaviour, and creating a normal residential environment for 12 months of the year.

Our experience between 2000 and 2007 convinced owners that we must maintain and protect our “RESIDENTIAL” status at all costs, thus providing owners and tenants with a safe and secure environment in which to live.

We believe that our “RESIDENTIAL” status should be protected by local government, whereby any alteration such as short-term holiday letting requires Development Consent.

We also believe that we should be able to have By-Laws which confirm this local council zoning as the authority in the matter, which By-Laws appear to be under a cloud following the introduction of the 2016 Strata Act.

Our objection to the Options Paper relates to Apartments, and in particular Residential Apartments in Manly.

CONCLUSION

This whole exercise appears to have been for the benefit of Short-Term accommodation providers. With their vast financial resources available for regular news print and television advertising, it has been easy to convey their quaint message of helping ordinary people raise some money to pay their levies or mortgage by short term holiday letting.

Unfortunately our Members of Parliament appear to have little knowledge and understanding of what is really involved, and so have accepted without investigation the true impacts of short term holiday letting. It is our understanding that these
providers have organized a massive drive from their supporters to mail and lobby their local members.

It is probably only here in Manly, that a proper investigation into short term holiday letting has ever taken place. What was put in place by Manly Council Working Party, chaired by Mayor Dr Peter Macdonald OAM and former NSW state member for the seat of Manly, and Jim Hunter, Director Corporate Planning & Strategy, an experienced official and often acting General Manager of Manly Council, has been successful and most effective in creating a vibrant community for twelve months of the year, and not just a few months over summer.

It should be mentioned that very soon after residents received the letter from Manly Council (Appendix 4), and after the Special By-Law 8 was passed at the Annual General Meeting in December 2006 (Appendix 5), the letting of Peninsula residential apartments for short-term letting (less than 90 days) ceased.

It was impressive to see that apartments previously occupied by short-term holiday makers were quickly converted to long term tenants, or alternatively, were occupied by owners. The lifestyle of all residents in Peninsula apartments was greatly enhanced by the action of Manly Council and the Peninsula Special By-Law 8 supporting Councils local zoning authority.

It would be a most retrograde step to move back to the situation that existed between 2000-2007, as outlined in this submission, and prior to the Manly Council Working Party on Short-Term & Tourist Accommodation, which confirmed the Council’s planning authority, and that a Development Consent was required to conduct such activity.

Finally, the words “national security” seem to have by-passed the NSW Departments of Planning & Environment and Fair Trading. The Peninsula Residential Owners Corporation has always taken seriously the security of our building. Now it is being recommended that all council regulations be removed against short-term holiday letting. At a time when we are witnessing terrorist and other attacks on our society, this is completely unacceptable.

Yours faithfully
Peninsula Residential Owners Corporation
Strata Plan # 63767
Brian Fitzgerald
Secretary/Treasurer
APPENDICES

SUBMISSION IN RESPONSE TO
NSW PLANNING & ENVIRONMENT – NSW FAIR TRADING
SHORT-TERM HOLIDAY LETTING IN NSW
OPTIONS PAPER

Appendix 1 MANLY COUNCIL AGENDA PLANNING & STRATEGY COMMITTEE
SHORT-TERM & TOURIST ACCOMMODATION WORKING PARTY
PROGRESS REPORT – 8 NOVEMBER, 2004

Appendix 2 MANLY COUNCIL MINUTES NOVEMBER 8, 2004
CORPORATE PLANNING & SGSTRATEGY DIVISION REPORT NO. 61
SHORT-TERM & TOURIST ACCOMMODATION WORKING PARTY –
PROGRESS REPORT.

Appendix 3 MINUTES OF THE SHORT-TERM & TOURIST ACCOMMODATION
WORKING PARTY MEETING HELD TUESDAY, 24TH MAY, 2005

Appendix 4 MANLY COUNCIL LETTER TO PROPRIETORS OF STRATA PLAN 63767
DATED JANUARY 17, 2006.

Appendix 5 PENINSULA RESIDENTIAL OWNERS CORPORATION
SPECIAL BY-LAW – DECEMBER 2006

Appendix 6 LETTER FROM THE HON BRAD HAZZARD MP – 12/04604
MINISTER FOR PLANNING & INFRASTRUCTURE
HOLIDAY LETTING & THE HOLIDAY RENTAL CODE OF CONDUCT.
PENINSULA RESIDENT LISLE FORTESCUE PUBLIC ADDRESS TO MANLY
COUNCIL ON MAY 14, 2012 IN RESPONSE

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October 16, 2017
Agenda

Planning and Strategy Committee

Notice is hereby given that a Planning and Strategy Committee of Council will be held at Council Chambers, 1 Belgrave Street, Manly, on:

Monday 8 November 2004

Commencing at 7:30 pm for the purpose of considering items included on the Agenda.

Persons in the gallery are advised that the proceedings of the meeting are being taped for the purpose of ensuring the accuracy of the Minutes. However, under the Local Government Act 1993, no other tape recording is permitted without the authority of the Council or Committee. Tape recording includes a video camera and any electronic device capable of recording speech.

Copies of business papers are available at the Customer Services Counter at Manly Council, Manly Library and Seaforth Library and are available on Council's website:

www.manly.nsw.gov.au
SUMMARY

This report has been endorsed by the Working Party and referred to Council as a Progress Report on the deliberations of the Working Party to date.

REPORT

Introduction

It is acknowledged that short-term accommodation within residential premises in Manly has been a feature of the rental market within Manly for some time. The apparent conflict between short-term leasing and longer-term owner occupiers and tenants has apparently become more evident since the establishment of luxury units within down-town Manly and there is an expectation that people who have paid up to $1 Million (or more) for their premises are entitled to quiet enjoyment of their homes and in situations where there are apparent frustrations with the apparent disregard for their rights as individuals and apparent disregard and lack of respect for the property.

Definitions

- **"Tourist Facilities"**

  Means an establishment providing for holiday accommodation or recreation and may include a boatshed, boat landing facilities, camping ground, caravan park, holiday cabins, hotel, houseboat, marina, motel, playground, refreshment room, water sports facility or a club used in conjunction with any such activity.

- **"Residential Zone - Prohibited Uses"**

  Advertising structures, amusement centres, bulk stores, car repair stations, backpacker accommodation, clubs, hotels, motels, refreshment rooms, service stations and tourist facilities (other than backpacker accommodation, clubs, hotels, motels, refreshment rooms, service stations and tourist facilities in the Tourist Area), commercial premises, gas holders, generating works, heliports, etc., etc.

- **"Tourist Area"**

  Means any land shown by heavy black dots on the Manly Local Environmental Plan, As Amended (Amendment Number 33).

- **"Short-Term Accommodation"**

  Is not a definition contained in the Manly Local Environmental Plan. However, in some recent Court proceedings has been referred to as a period being less than 90 consecutive days.
Previous Council Resolutions

The two decisions that Council has made in relation to this matter are restated hereunder:

- **Council Resolution of 17th May, 2004**
  
  "1. That Council in consultation with appropriate stakeholders, develop a clear policy on the issue of short term lettings.

  2. Council deal immediately with properties causing concern in particular 66 North Steyne.

  3. Council set up a Working Party with:-
     - Resident representatives;
     - Councillors representatives;
     - Chamber of Commerce representatives, and the General Manager or relevant staff;

    to focus on clear policies, review issues and complaints and develop a system of implementation."

- **Council Resolution of 21st June, 2004**

  "1. That Council refer to the proposed Working Group on Short Term letting, opportunities to:
     
     a) Advise all travel agents and Internet cafes, in the municipality, that advertising for accommodation must be for legitimate authorised premises.

     b) Educate and inform all local real estate agents that leases should prescribe the maximum number of persons who may, at any one time, be resident in the leased property.

     c) Inspect all premises, so advertised, that come to the Council's attention, to assess compliance with Council's development application approval for building involved.

  2. That the Working Party be constituted to involve equal representation of residents, councillors and Chamber of Commerce representatives and the General Manager or relevant staff, in conjunction with advise from the Mayor and the Chair of the two affected Precincts.

  3. That consistent with Council's resolution of 17 May 2004, Council act immediately to restrain short term letting where consent has not been granted, with priority given to those premises where there are clearly problems for residents."

The essence of the resolution of 17th May, 2004 was to:

1. Develop a clear policy on short-term lettings.

2. Review issues and complaints.

3. Develop a system of implementation (presumably to address complaints arising from short-term lettings).
The essence of the resolution of 21st June, 2004 was more instructive and required that the Working Party look to opportunities to:

(a) Advise all travel agents and Internet cafes, in the municipality, that advertising for accommodation must be for legitimate authorised premises.

(b) Educate and inform all local real estate agents that leases should prescribe the maximum number of persons who may, at any one time, be resident in the leased property.

(c) Inspect all premises, so advertised, that come to the Council's attention, to assess compliance with Council's development application approval for building involved.

AND ALSO:-

(d) That consistent with Council's resolution of 17 May 2004, Council act immediately to restrain short term letting where consent has not been granted, with priority given to those premises where there are clearly problems for residents.

Having reviewed these resolutions, and also considered the text of Notice of Motions and Mayoral Minutes which preceded these resolutions, it is clear that Council had come to the conclusion that there are problems with some establishments where short-term letting occurs.

Membership of the Working Party

Dr. Peter Macdonald, Mayor
Councillor Mark Norek
Philip Horder, Community Representative
Miriam Cannon, Proprietor Manly Seaside Holiday Apartments
Lisle Fortescue, Owner/Occupier, Peninsula
David Glading, Owner/Occupier/Investor, Pacific Waves
Tony Satler, Community Representative
Karen Wares, Manly Chamber of Commerce
John Malcolm, Proprietor Manly Waterside Holidays
Tim Fiddes, The Corso Precinct Community Forum
Rebecca Crawford, Ocean Beach Precinct

Debate Within the Working Party Regarding the Extent of the Problem

A lot of the verbal exchanges in the Working Party meetings (and in the submissions that have been made by all sides) disclose very polarised views depending on whether the person is the owner of premises where short-term letting occurs and where the person may have had an experience of a negative impact from short-term letting, or on the other hand, a feeling that "a few bad apples" should not be the basis of stamping out all short-term letting.

My Understanding of the Thrust of Council's Resolutions

My reading of the resolutions is that Council is desirous of having a framework in place within which problem premises can be managed or controlled.
Proactive or Reactive Policy Framework

In both the resolutions, there appear to be references where Council is indicating a reactive stance, i.e.:-

- Deal immediately with properties causing concern.
- Inspect all premises so advertised that come to Council's attention, to assess compliance with Council's development application approval for building involved.
- Council act immediately to restrain short-term letting where consent has not been granted, with priority given to those premises where there are clearly problems for residents."

Summary of the Points Raised so Far

- Council wants a clear policy on short-term lettings.
- It wants to act in relation to those premises that are giving rise to complaints.
- It wants to give notice to travel agents, internet cafes and others advertising short-term accommodation, including real estate agents, that Council can and is prepared to act where short-term letting has not been approved by Council under its Planning Codes and where it is giving rise to complaint from other residents.

Mechanisms Available for Management, Regulation and Control

Given that there are clearly problems associated with some premises on some occasions, it is appropriate to look at how these problems can be addressed.

At one level, issues such as noise complaints, etc., can be dealt with in accordance with the noise control provisions of the Protection of the Environment Operations Act 1997, and other issues of inappropriate behaviour or criminal activity can also be dealt with under other laws (which may involve Police action).

What cannot be so readily dealt with are the impacts which are attributed to short-term tenants in terms of frequent coming and going from premises, the lack of regard for other occupants of the premises, disregard for house rules such as recycling, etc., and issues associated with parking of motor vehicles, etc. These issues to some extent can be dealt with under the Strata Titles legislation or in other circumstances can be dealt with in the development application process which looks at the compatibility of uses within a particular zone or within particular premises.

Clearly this was what was in mind when Council's Codes were established and, for example, there is a special provision for back packers. There are other provisions relating to tourist accommodation and there are other provisions relating to residential and commercial (there is an issue of whether some of the short-term accommodation is in fact commercial in nature, but this has not been specifically raised in Council's resolution, and therefore, is not proposed to be further addressed in this report).

Before proceeding to recommend what might be necessary as new regulatory or control measures, we need to consider whether the present regulatory and control measures are adequate.
As presented to the Working Party previously, I believe that there already exists under the Strata Titles Act and under Council's Development Controls an ultimate power to regulate by reason of the need for Council's DA consent. It is noted that some members of the Working Party have a concern with this because they want some immunity for some premises (and Council cannot be discriminatory), but it does have some discretion and this is where the pro-active/re-active (acting only on compliance) strategy becomes relevant. It should be noted that whilst asserting that there is "ultimately some power to regulate" it is acknowledged that in practical terms this is potentially difficult and costly.

**Council's Role is to Formulate Sound Public Policy**

In this case, Sound Public Policy is basically to regulate and control incompatible uses (for harmony, equity and amenity).

The argument within the Working Party as to whether short-term accommodation is incompatible with normal residential living is, in my view, not resolvable as it depends on the circumstance of each situation. We need to move on from this debate and focus on general policy.

**Council's Role is:-**

1. To set the Policy framework.
2. To communicate the rights and obligations of all parties.
3. To investigate complaints or to address complaints with a measured response.
4. To mitigate against the likelihood of complaints by putting in place codes and guidelines which will promote harmony.
5. To uphold the law.

It is this final point that is both the answer and the problem facing the Working Party. On the one hand, the law gives some power to control and regulate, and on the other hand, there is a view from some members of the Working Party that existing short-term accommodation, whether approved or not, should be tolerated provided it does not give rise to complaint.

Whilst members of the committee might want to find an accommodation to satisfy all parties, the reality is that without the authority to control and regulate, there is in fact no power or authority to address the issues that give rise to complaint. So this returns us to the issue of discretion and process. I will return to this point later.

**66 North Steyne, Manly is a Model of Effective Public Policy**

Even though it took some time for Council and others to come to terms with all of the implications of roles, responsibilities and the application of law, in the end that Case proves that there is an adequate legal framework within which to address the issue. The biggest problem block is now no longer a problem.

It would seem that the frustration within the community has been the lack of transparency within the process and a lack of understanding of the rights and obligations of the various parties involved.

I return to the Action Plan put forward in the last meeting as follows:-
Corporate Planning and Strategy Division Report No. 61 (Cont’d)

Action Plan

1. Council needs to make a clear statement that provided all other steps have been exhausted, that Council has power to control and regulate.

2. Council (as part of the Communication Strategy) should make a statement of the rights and obligations of all parties and that this Communication Strategy should:-

   (i) Outline Council’s Codes in relation to the Residential Zone and draw out the distinctions between permitted uses within the Residential Zone, the Tourist Zone and the Business Zone, particularly as it relates to the Land Use, generally referred to as Short-Term Accommodation.

   (ii) Explain the Tourist Sub-Zone.

   (iii) Explain permitted use and the approval process of "tourist facilities" within the Tourist Sub-Zone.

   (iv) Provide guidance on the issue of "Short-Term Accommodation" and what this means in practical terms.

   (v) Make reference to other regulatory and control measures, such as the Strata Titles provisions and the noise pollution control provisions of the Environment Operations Act 1997, which may assist in addressing amenities issues.

3. Council should prepare a targeted Communication Strategy to agents and operators incorporating the above information.

4. Problem premises should be dealt with in the first instance in accordance with the "warning letter" utilised by Council’s solicitors in relation to the premises at 66 North Steyne. Such letter to indicate the possible consequences of any unauthorised short-term letting.

5. The strategy should concentrate on premises giving rise to complaints, as this will be most effective in directing limited resources to premises of greatest concern, whereas, an untargeted approach might lead to an enormous administrative burden targeting some 400 or more subject properties, when in fact only a relatively small percentage of that number might give rise to community concern.

6. The Council should demonstrate a will to act to enforce its tourist zone controls so as to regulate commercial activity which may be incompatible with the underlying residential zoning.

7. In allowing the tourist zone to continue, it may well re-focus market forces to either acquire and operate buildings totally as short-term accommodation or it may lead to the market forces building new facilities which have proper facilities and separation between short-term accommodation and longer term residential living (as per the Grande Esplanade).

Implementation Strategy

The Action Plan referred to above requires an Implementation Strategy.

1. Issue a general Press Release on the thrust of any public policy initiative.

2. Issue an information brochure regarding Regulation and Control and Rights and Obligations in relation to short-term letting (see Complaints Handling Procedure Attachment 1).
3. Provide a targeted communication to agents and operators who manage short-term lettings (see Attachment 2).

4. Prepare a list of matters to be incorporated in Council's Codes to set criteria to be considered when considering a development application for tourist accommodation and also a list of conditions which might be imposed on an approval and which might be embodied in a Management Plan as part of the DA approval (see Attachment 3).

Notes:-

1. Pursuant to the Committees request, the report has been examined by council's (in-house) Solicitor and he advises that he sees no problems with it from the legal perspective.

2. This report has been circulated to members of the Working Party and responses invited. A submission has been received (see Attachment 4) from Lisle Fortescue with a request that it be circulated with the agenda.

RECOMMENDATION

That Council endorse the strategy as outlined in the report and refer the matter to the General Manager for implementation.

ATTACHMENTS

AT-1 Complaints Handling Procedures - Attachment 1 2 page(s)
AT-2 Communication to Agents and Operators of Tourist Facilities - Attachment 2 1 page(s)
AT-3 Criteria for Assessment of Applications for Short-Term Accommodation (Less than 90 days) - Attachment 3 1 page(s)
AT-4 Submission by Lisle Fortescue 4 page(s)

PS081104CPSD_5.DOC

***** End of Corporate Planning and Strategy Division Report No. 61 *****
COMPLAINTS HANDLING PROCEDURES FOR SHORT-TERM LEASING (LESS THAN 90 DAYS)

1. On receipt of any written or verbal complaint regarding short-term leasing issues, a copy of Council's complaints handling procedure will be forwarded to the complainant.

2. Copies of Attachments 1, 2 and 3 will be forwarded for the purpose of outlining Council's powers in relation to the matter and also the procedure which will be followed by Council in following up any complaint.

3. The complainant will be asked to complete a complaints registration form, (preferably in the form of a Statutory Declaration), which will provide as much of the following information as is possible:-
   (a) The name and address of the owner of the premises complained of.
   (b) The nature of the complaint.
   (c) The date and time of the occurrence.
   (d) Provide supportive documentation from any other persons who may have witnessed or experienced the matter complained of.
   (e) The corroborating statement to be signed and witnessed if available.
   (f) The statement as to whether the matter has been referred to the Owners Corporation for consideration at a dually convened meeting.
   (g) The results or outcomes of any deliberations of the Owners Corporation.
   (h) A copy of the Owners Corporation Minutes dealing with the matter if available.

4. Following receipt and assessment of the complaint, the Council may forward to all owners of property within the subject premises a letter to the effect of the legal advice from Council's Solicitors regarding rights and obligations of owners of units within residential premises.
5. On receipt of any further formal complaint in relation to the premises, Council will notify all owners and commence evidence gathering procedures.

6. One month after commencement of the evidence gathering procedures, the matter will be reviewed and assessed in relation to the likely success of legal proceedings and will be reviewed monthly thereafter, until such time as adequate evidence is obtained upon request.

7. Owners of premises will be informed regarding the processes and procedures necessary to make application for the development application consent in order to carry out short-term leasing of premises in residential flat buildings.

8. Potential applicants for development application consent will be informed of the criteria which will be used to assess the application (in addition to the requirements of the Environmental Planning and Assessment Act 1979).

* * *
DRAFT

COMMUNICATION TO AGENTS AND OPERATORS OF TOURIST FACILITIES

Some agents may be operating premises by way of short-term lease and it may be that such short-term leasing is contrary to Council's Codes and/or the Environmental Planning and Assessment Act.

Please refer to Council's general Press Release on this subject.

If Council is made aware of specific premises which allegedly do not comply with our Codes, a letter of advice in accordance with draft attached will be forwarded to all owners along with a copy of the Complaints Handling Procedure.

In the event that Council receives further complaints and evidence of a non-complying or non-approved use, Council will consider initiating legal action and the penalties referred to in the draft letter attached may be applied (at the discretion of the Court).

Agents and owners should not rely on the advice contained herein, but should make their own (legal) enquiries regarding the circumstances of their particular case.

Further enquiries may be directed to Mr/Ms XXXXXX at Manly Council.

***
DRAFT

CRITERIA FOR ASSESSMENT OF APPLICATIONS FOR SHORT-TERM ACCOMMODATION (LESS THAN 90 DAYS)

The following matters will be taken into account in assessing a development application for short-term accommodation:-

- Does the establishment have supervision and a contact number.
- Does the establishment meet all Building Code of Australia requirements relative to short-term accommodation premises.
- Is there evidence of a Plan of Management for the premises which will serve to promote the objective of Council's Local Environmental Plan in relation to tourist facilities whereby short-term accommodation and longer term residents can co-exist to their mutual advantage.
- Is the physical form and layout of the building such that short-term letting and long-term residential use are compatible.

(These Criteria are yet to be formulated into a form that is suitable for incorporation into our control codes.)
MANLY COUNCIL
SHORT TERM & TOURIST ACCOMMODATION WORKING PARTY
PROGRESS REPORT TO COUNCIL
FOR THE PLANNING & STRATEGY COMMITTEE MEETING
MONDAY, 8TH NOVEMBER, 2004

SUBMISSION BY LISLE FORTESCUE
MEMBER OF THE WORKING PARTY & OWNER/RESIDENT PENINSULA
UNDER THE HEADING
IMPLEMENTATION STRATEGY

3. Provide a targeted communication to agents and operators who
manage short term lettings (see attachment 2.)

I wish to comment as follows:

Whilst short term holiday letting has taken place in Manly for a long time, it is
only in the last say four years that the activity has exploded to proportions
which are fast becoming uncontrollable.

The major reason for this, I believe, is

THE INTERNET

Using the World Wide Web
GOOGLE SEARCH ENGINE
It is possible for someone sitting at their desk in London, New York, Hong
Kong, Australia or anywhere in the world to simply key in
MANLY NSW – HOLIDAY APARTMENTS
AND THERE IMMEDIATELY BEFORE THEIR EYES WILL APPEAR UNDER
THIS HEADING
10,400 ENTRIES. (Saturday, October 23, 2004)

I will not bore you with comments regarding every entry, but suffice it to say
on the first page of entries on Saturday, October 23, 2004, it was easy to see
why holiday letting, i.e. under 90 days, has become an issue of such concern
to residents of Manly.
 Whilst two of the major operators in Manly are early entries, you will see entries for TRAVELMATE.COM.AU AUSEMADE SYDNEY CITY LIFE SYDNEY INTERACTIVE VISITOR GUIDE – USA SITE SYDNEY APARTMENTS & MANLY SYDNEY AUSTRALIA BUSINESS DIRECTORY.

I found this last entry mentioned very interesting because it includes RAY WHITE, and guess what, Ray White is even advertising an apartment in the recently televised programme, THE BLOCK, with the statement “Stay in apartment 3 that Matt & Jane completed for their television series “THE BLOCK”.

I would be surprised if this apartment has Manly Council’s Development Application Consent for Holiday Letting.

Reverting to the internet, there appear to be MASTER OPERATORS with a network of AGENTS because the same apartment blocks appear on many sites.

For instance, the Go Sydney City Site takes you to the “Go Manly.com” site where you can see testimonials from two Manly operators praising this site for the amount of bookings they receive from it. Go Sydney City claims a membership of 24,446.

What must be of concern to us all is that these residential apartments without the necessary DA Consent are being offered to holiday makers throughout the world, who would have the right to believe that they are lawful and comply with all regulations. Also the inference is made that the whole apartment block consists of holiday makers, because no specific mention is made of the individual apartment available. The Peninsula for instance is called “The Peninsula Resort”. Resort it certainly is not. This could be regarded as misleading advertising.

It was clear from the first meeting of the Working Party that Manly Council does have the necessary regulations to control holiday letting through its Development Application process. Anyone holiday letting without this consent is acting unlawfully.

Manly Council cannot give consent for Residential Apartments without this having real meaning, because we are finding our apartments overrun by strangers who are continually changing, week by week and sometimes day by day. Who are they – where do they come from - we do not know.
It is of course, a business opportunity for Manly Council to promote the development of serviced apartments such as The Grande Esplanade. (Note: Grande Esplanade Serviced Apartments is a separate entity to Grande Esplanade Apartments and has a separate entrance.)

But in the meantime I believe that if Manly Council takes a strong stand on agents of all description advertising this activity unlawfully it will be greatly curtailed.

It is the advertising which is causing holiday letting to mushroom out of control, and to become such a problem for permanent residents trying to carry out their normal daily lives which a residential apartment promised them.

Agents have taken advantage of the situation of new apartments in Manly, often selling them on the basis that they will holiday let for owners fully in the knowledge that this was against Manly Council regulations without the necessary consent, but that Manly Council does not police their own regulations. (Any business operator has an obligation to understand the regulations governing their activities.)

Until there is a clear statement by Council to all owners of residential apartments in Manly that holiday letting, i.e. a short term lease of less than 90 days, is illegal without the necessary development application consent under Manly Council’s Planning Regulations, and that by passing their apartment over to a holiday operator without that consent, they are committing an offence, this problem will continue to escalate.

Manly Council has proved its authority with 66 South Steyne, and the public must be made aware that there are regulations which must be adhered to. If not adhered to, ultimately there will be financial penalties.

We must not be diverted by side issues concerning holiday letting, but rather bear in mind it is an unlawful act without the necessary Development Application Consent.

Manly has become a very desirable place to live, and this desirability must not be jeopardized by owners and operators refusing to accept that holiday letting, i.e. less than 90 days, without the necessary DA consent is unlawful.

Once an individual apartment owner lodges a Development Application to Manly Council for this consent, attachment 3 Draft Criteria for Assessment of Application For Short-Term Accommodation (less than 90 days) Assessment can take place.

October 25, 2004

* * *
This email relates to the above Council Meeting next Monday evening.

I am a member of the Working Party, but also joint owner/occupier of an apartment in The Peninsula.

Having been in business for over 40 years, before commencing any new project, we knew it was our responsibility to investigate if there were any Commonwealth, State or Local Government Regulations which could affect the outcome.

Likewise when we purchased our apartment in The Peninsula we confirmed with Council that it was in fact a “Residential Apartment Block”, thereby implying it was only for people wanting full time permanent residency, whether as owners or long term tenants. Others obviously did not do this resulting in the present situation.

It became quite clear at the first meeting of the Working Party that Manly Council has the authority under its planning regulations to prevent apartments without the necessary Development Application Consent for holiday letting (i.e. under 90 days.)

It is my understanding that councillors in the early 90’s decided to encourage the development of residential apartment blocks to encourage permanent residents. It was apparently believed that this action would help control anti-social behaviour in the Manly CBD and increase population.

The unlawful use of residential apartments for holiday letting has been under discussion by Council for sometime – at least four years to my knowledge. Following your motions on May 17 and June 21, 2004, it is now time for Manly Council to make a clear statement that:

1. Holiday letting (i.e. under 90 days) in residential apartment blocks without the necessary Development Application Consent is unlawful. Ultimately, if this regulation is not taken seriously by owners of apartments and real estate agents, etc., substantial fines will apply under the EPA Act.

2. Real Estate Agents, Travel Agents and other operators should be informed that the advertising of such apartments (and in particular on the Internet) without this consent is illegal. (See separate submission being distributed with meeting papers.)

3. Encourage the development of serviced apartment blocks such as the Grande Esplanade Serviced Apartments with the necessary DA consent.

Manly Council’s action in relation to 66 North Steyne has proved that Manly Council can control this issue.

If we take it that the letting of apartments for less than 90 days without approved DA consent is unlawful as defined by Manly Planning Regulations, then if such apartments are advertised for short term holiday letting without appropriate action by Council, presumably Council is condoning an unlawful activity.

Those councillors who do not live in residential apartment blocks where holiday letting is taking place can have no concept of the problems associated with the incompatibility of holiday makers and residents going about their daily lives. Reports of incompatibility are too numerous to table here. It is for this reason that I prefer to concentrate on the fact that Manly Council has the power under its planning regulations to regulate.

Previous regulations by Manly Council relating to backpackers have been successful so much so that the subject is rarely mentioned.

Let the same apply to residential apartment blocks.

4/11/2004
Minutes

Planning and Strategy Committee

Held at Council Chambers, 1 Belgrave Street Manly on:

Monday 8 November 2004

Copies of business papers are available at the Customer Services Counter at Manly Council, Manly Library and Seaforth Library and are available on Council's website: www.manly.nsw.gov.au
TO THE MAYOR AND COUNCILLORS OF THE COUNCIL:

The Planning and Strategy Committee, having met at 7:30 pm on Monday 8 November 2004, in the Council Chambers, Town Hall, Manly, to consider the various matters referred to it, now reports the decisions reached and the recommendations made which are stated hereunder.

The decisions taken and indicated by the prefix "Resolved" as distinct from "Recommendations" made to the Council, were taken pursuant to authority delegated to this Committee vide Minutes Number 139 of 6th September, 2004.

PRESENT

His Worship, The Mayor, Councillor Dr P Macdonald
Deputy Mayor Councillor R Morrison
Councillor B Aird, Chairperson who presided
Councillor P Daley
Councillor J Evans
Councillor J Hay, AM
Councillor A Heasman, Deputy Chairperson
Councillor J Lambert
Councillor M Norek
Councillor B Pedersen

ALSO PRESENT

Henry T Wong, General Manager
Jim Hunter, Director Corporate Planning and Strategy
Julia Paul, Minute Secretariat

APOLOGIES

(File A8/2)

Apologies were tendered on behalf of Councillor S Cant and Councillor D Murphy, for non-attendance.

RESOLVED: (Macdonald/Hay)

That the apologies received from Councillor Cant and Councillor Murphy, be accepted and leave be granted.

For the Resolution: Councillors Hay, Heasman, Lambert, Morrison, Pedersen, Aird, Evans, Norek and Macdonald.

Against the Resolution: Nil.

Councillor Daley was not present in the Chamber and did not take part in the voting on this matter.

LEAVE OF ABSENCE

Nil.
b. That the Landscape Management and Urban Design Committee Minutes of Meeting held on 18th August 2004 be adopted including Item Number 4.4 - Neighbourhood Centres - Fairlight Urban Design Plan as follows:

1. Ideas and issues would be sought from local shopkeepers and precinct representatives in the next 2 weeks and an "Issues Paper" be compiled.

2. An on-site meeting will be called in approximately 3-4 weeks time following the above and all committee members invited to attend, to discuss the issues raised.

3. A Working Party will be set up to develop a brief.

4. That the concept design work can be undertaken in-house using staff resources for the Fairlight Urban Design Plan with the option of engaging suitable external consultants as required. Issues such as shopfront signage consistency and appropriate colour schemes are to be included."

For the Resolution: Councillors Hay, Heasman, Lambert, Daley, Morrison, Pedersen, Aird, Evans, Norek and Macdonald.

Against the Resolution: Nil.

*******

PUBLIC ADDRESSES
(File C17/43)

<table>
<thead>
<tr>
<th>NAME</th>
<th>SUBJECT/PUBLIC SPEAKERS</th>
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<tbody>
<tr>
<td>Mrs Lisle Fortescue</td>
<td>CPS Report 61. Short-Term and Tourist Accommodation Working Party</td>
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<tr>
<td>Mr John Malcolm</td>
<td>CPS Report 61. Short-Term and Tourist Accommodation Working Party</td>
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GENERAL MANAGER'S OFFICE REPORTS

General Manager's Office Report No. 41

Financial Statements for the year ended 30 June 2004 (A2/3 A2/4)

SUMMARY

A formal presentation of the auditor's report and Council's financial statements for the year ended 30th June, 2004 was made in accordance with the requirements of the Local Government Act. Council's Auditor, Mr N. Mah Chut was in attendance to answer any questions.

MOTION: (Macdonald/Heasman)


RESOLVED: (Macdonald/Heasman)


For the Resolution: Councillors Hay, Heasman, Lambert, Daley, Morrison, Pedersen, Aird, Evans, Norek and Macdonald.

Against the Resolution: Nil.
SUSPENSION OF STANDING ORDERS  (Aird/Macdonald)

That Standing Orders be suspended to allow for consideration of an item of public interest i.e. Corporate Planning and Strategy Division Report No. 61 and the following item be adopted as a Block Vote as per the Code of Meeting Practice: Corporate Planning and Strategy Division Report No. 59, Radisson Kestrel Hotel, South Steyne, Draft LEP Amendment to Clarify Existing Provision in the Manly LEP, 1988.

RESOLVED: (Aird/Macdonald)

That Standing Orders be suspended to allow for consideration of an item of public interest i.e. Corporate Planning and Strategy Division Report No. 61 and the following item be adopted as a Block Vote as per the Code of Meeting Practice: Corporate Planning and Strategy Division Report No. 59, Radisson Kestrel Hotel, South Steyne, Draft LEP Amendment to Clarify Existing Provision in the Manly LEP, 1988.

For the Resolution: Councillors Hay, Heasman, Lambert, Daley, Morrison, Pedersen, Aird, Evans, Norek and Macdonald.

Against the Resolution: Nil.

*******

Corporate Planning and Strategy Division Report No. 61
Short-Term and Tourist Accommodation Working Party - Progress Report

SUMMARY

This report has been endorsed by the Working Party to be referred to Council as a Progress Report on the deliberations of the Working Party to date.

MOTION: (Macdonald/Pedersen)

A. That Council endorse the strategy as outlined in the report referring the matter for further consideration to the Short-Term Working Party and then to the General Manager for implementation.

B. That the amendments to the Action Plan as follows be included in the further consideration of the Short-Term Working Party:

These amendments to read:

1. Council needs to make a clear statement that it has power to control and regulate.

A new point;

2. (vi) Indicate that apartments advertised on the internet or elsewhere must have the necessary Development Consent otherwise it is unlawful.

RESOLVED: (Macdonald/Pedersen)

A. That Council endorse the strategy as outlined in the report referring the matter for further consideration to the Short-Term Working Party and then to the General Manager for implementation.

B. That the amendments to the Action Plan as follows be included in the further consideration of the Short-Term Working Party:
These amendments to read:

1. Council needs to make a clear statement that it has power to control and regulate.

A new point;

2. (vi) Indicate that apartments advertised on the internet or elsewhere must have the necessary Development Consent otherwise it is unlawful.

For the Resolution: Councillors Hay, Heasman, Lambert, Daley, Morrison, Pedersen, Aird, Evans, Norek and Macdonald.

Against the Resolution: Nil.

*****

Corporate Planning and Strategy Division Report No. 59
Radisson Kestral Hotel, South Steyne - Draft LEP Amendment to Clarify Existing Provision in the Manly LEP, 1988

SUMMARY

This report recommends commencing action to make a Draft LEP to clarify existing provisions in the Manly LEP, 1988.

MOTION: (Aird/Macdonald)

That Council:

A. Resolve, pursuant to Section 54 of the Environmental Planning & Assessment Act 1979, to prepare a local environmental plan to amend Clause 36 of the Manly LEP, 1988 to explicitly refer, in Part (1) (a) of that Clause, to the two properties, 9 - 13 South Steyne and 45 - 49 Ashburner Street Manly that comprise the Radisson Kestral Hotel, and advise the Department of Infrastructure, Planning & Natural Resources accordingly;

B. Consult, as required by Sec. 62 of the Environmental Planning & Assessment Act 1979, with relevant Government and other authorities;

C. Advise the Department of Infrastructure, Planning & Natural Resources that, in Council’s opinion that an environmental study is not necessary given the minor nature of the matter; and

D. Following the issue of a Certificate under Section 65 of the Environmental Planning & Assessment Act 1979, exhibit the draft local environmental plan pursuant to Section 66 of the Environmental Planning & Assessment Act 1979.

RESOLVED: (Aird/Macdonald)

That Council:

A. Resolve, pursuant to Section 54 of the Environmental Planning & Assessment Act 1979, to prepare a local environmental plan to amend Clause 36 of the Manly LEP, 1988 to explicitly refer, in Part (1) (a) of that Clause, to the two properties, 9 - 13 South Steyne and 45 - 49 Ashburner Street Manly that comprise the Radisson Kestral Hotel, and advise the Department of Infrastructure, Planning & Natural Resources accordingly;
MINUTES OF THE
SHORT-TERM AND TOURIST ACCOMMODATION WORKING PARTY
MEETING HELD TUESDAY, 24TH MAY, 2005

The Meeting commenced at 6.07 p.m.

PRESENT:

Dr. Peter Macdonald, Mayor (who presided)
Councillor Mark Norek
Miriam Cannon, Proprietor Manly Seaside Holiday Apartments
Lisle Fortescue, Owner/Occupier, Peninsula
David Glading, Owner/Occupier/Investor, Pacific Waves
Tony Sattler, Ocean Beach Precinct
John Malcolm, Proprietor Manly Waterside Holidays

OBSERVER:
Nick Vescio on behalf of Karen Wares, Manly Chamber of Commerce

MANLY COUNCIL OFFICERS:
Jim Hunter, Director Corporate Planning and Strategy
Mark Pearson, Manager Regulatory Services

APOLOGIES:
Philip Horder, Community Representative
Karen Wares, Manly Chamber of Commerce
Rebecca Crawford, Ocean Beach Precinct Community Forum
Tim Fiddes, The Corso Precinct Community Forum

* * *

ITEM 1: CONFIRMATION OF MINUTES OF 11TH NOVEMBER, 2004

RECOMMENDATION:

That the Minutes of the Short-Term and Tourist Accommodation Working Party Meeting of 11th November, 2004 (as circulated) be endorsed as a true and accurate record.

* * *
ITEM 2: MATTERS ARISING FROM COMMITTEE DECISION OF 11TH NOVEMBER, 2004

Discussion

The Mayor opened the meeting with a brief summary of what had happened since 11th November, 2004 in relation to the Short-Term and Tourist Accommodation Working Party report being presented to Council and the fact that Council had endorsed the report and then placed it on public exhibition.

Following exhibition there were no submissions received and the report was then passed to the General Manager pursuant to the resolution of Council for implementation. It was noted that Mark Pearson from the Regulatory Services area of Council was also present at the meeting.

It was acknowledged that the attachments in the form of Communication to Agents and Operators of Tourist Facilities and the Complaints Handling Procedure for Short Term Leasing had not been circulated widely as originally envisaged, and up to this point in time had only been sent in relation to properties where complaints had been received.

It was reiterated that as envisaged in the strategy, a focus would be made on properties causing problems and this is how the strategy has been implemented to date, including where appropriate the sending of the legal letter which is referred to under part four of the Complaints Handling Procedure.

There was debate within the Committee on the issue of whether or not the actions arising out of part four of the Complaints Handling Procedure were fair and reasonable and achieving their desired objective. Following a broad ranging debate, the Committee did not resolve to amend the procedure that had previously been endorsed by resolution of Council and hence this will continue to be Council's standard operating procedure, it being noted that part four of the procedure does allow some discretion on the part of staff and staff acknowledge that they would take on board the various points of view expressed in debate.

After a broad ranging discussion canvassing many issues that had been previously discussed and embodied in the Working Party Report, the Committee resolved to reaffirm its previously agreed position as outlined in the report and to seek implementation of the strategy in accordance with the report.
RECOMMENDATION:

1. That the Mayor use the Mayoral Column and issue a Press Release to communicate to relevant property owners and the community generally, the adoption and implementation of a strategy which addresses key objectives of the Manly Local Environment Plan as follows:

   (a) In relation residential and community life, maintain, protect and increase the Manly Council area's permanent residential population.

   (b) In relation to tourism, to encourage and concentrate tourist development in the tourist area and to encourage tourism to co-exist with local residents to their mutual advantage.

2. That in support of the above initiatives, the previously adopted Communication to Agents and Operators of Holiday Accommodation Facilities and the Complaints Handling Procedure for Short-Term Leasing be distributed widely to premises where holiday (short term) letting is occurring or likely to occur.

3. In relation to apartments being advertised on the internet, property owners and agents should be advised that short term leasing of residential apartments without the necessary Council approval as a Tourist Facility would contravene Council's Development Control Codes and, therefore, any such use would be illegal and potentially render the owner liable to legal action.

4. That the Committee be reconvened in approximately twelve months to review the effectiveness of the strategy, or be reconvened at the instigation of the Mayor, if considered warranted.

Note: Committee members should note that the publicising of information relative to this issue in the Mayoral Column and the in the Press Release will be the principal form of general notification to the community at large and that this information will be available on Council's Web Site together with information about the Council's strategy and Complaints Handling Procedure, etc., as notification to every residential (potentially short term holiday accommodation) property in Manly is impractical and unwarranted.
Council will continue to provide general information through such channels as Precinct Forum Newsletters, however, it will be a largely complaints driven strategy, particularly as Council's Compliance Staff resources are limited and already stretched and evidence gathering is often an involved and protracted process.

* * *

ITEM 3: NEXT MEETING

That the Committee will sunset unless or until the Mayor re-convenes the Committee for the purpose of a review of the strategies.

* * *
Dear Sir/Madam,

Re: Short Term Accommodation
Strata Plan: 63766/7
Property: 11-25 Wentworth Street

I refer to a number of complaints received by Council that the property owners of individual units in the above strata scheme located at 11-25 Wentworth Street, Manly, have been letting their units for overnight or short-stay accommodation or as serviced apartments.

At the outset, Council emphasises that the fact it has written to you as one of the owners in the strata scheme does not amount to an allegation by the Council or anybody else that you have been responsible for letting your unit for any of the purposes referred to.

A letter in the same terms as this letter has been forwarded to the Strata Plan to alert them to the legal situation and to the avenues available to Council in the event that it can be established that a particular unit or units is being let for one or more of the purposes stated.

Zoning of the Property.

11-25 Wentworth Street, Manly is located within the Business Zone under the Manly Local Environmental Plan 1988 (the LEP) and in that zone use for the purposes of commercial premises is permissible with Development Consent.

The Environmental Planning and Assessment Act 1979 ("EP&A Act")

The LEP was made pursuant to the EP&A Act which is the principal legislation in New South Wales dealing with land use, development control, town planning and related issues.

Section 76B of the EP&A Act provides:

"76B If an environmental planning instrument provides that:

(a) specified development is prohibited on land to which the provisions applies, or

(b) development cannot be carried out on land with or without Development Consent
A person must not carry out the development on the land."
The LEP is an "environmental planning instrument" under the EP&A Act.

Section 125(1) of the EP&A Act provides:

"(1) A person guilty of an offence against this Act shall, for every such offence, be liable to the penalty expressly imposed and if no penalty is so imposed to a penalty not exceeding 10,000 penalty units and to a further daily penalty not exceeding 1,000 penalty units."

One penalty unit presently equals $110.00. Accordingly, the maximum penalty for a breach of the Act as set out above is $1.1 million. In addition the Court can impose an additional daily penalty not exceeding $110,000.00 for each day the offence continues.

It is reiterated that Council does not, by forwarding this letter to you allege that you are permitting the use of your unit for any of the purposes stated.

The intention of this letter is to advise you and all other unit owners that Council is aware that, in some circumstances, some of the owners of units in the building are permitting their units to be let for the purposes stated. Council intends to monitor the situation very closely and if any further such occurrences come to Council's attention it intends to prosecute the owner or owners involved in the Land and Environment Court for breach of the legislation, as set out above.

If it becomes necessary for Council to commence such prosecutions proceedings against a particular owner the relevant copy of this letter, which has been forwarded as noted above to the owner of each unit, will be tendered in Court in these proceedings.

Apart from commencing proceedings referred to above, it is also open to Council to seek an injunction restraining the use of units in the development for the purpose as stated above.

In the event of either a prosecution under the EP&A Act or an application for an injunction being successful, the Council will also seek to recover its costs of such proceedings from the Respondent to the proceedings.

If you have any enquiries regarding the above matters please do not hesitate to telephone the writer on 9976 1577 during business hours.

Yours Faithfully,

[Signature]

Rod Moore
Manager, Standards & Compliance
Environmental Services Division
SPECIAL BY-LAW 8: COMPLIANCE WITH ZONING REQUIREMENTS (INCLUDING FOR SHORT STAY ACCOMMODATION)

8. Without in any way limiting the generality of by-laws 6.1(e), 8 and 19:

8.1 Owners acknowledge that:

(a) The Peninsula Apartments is located within the Business Zone under the Manly Local Environment Plan 1988 (the “LEP”) and in that zone, use for the purposes of commercial premises is permissible only with Development Consent;

(b) Manly Council (the “Council”) has the responsibility for enforcing the LEP;

(c) The leasing or licensing by owners of their lots (including car parking spaces) for overnight or short stay accommodation (being less than 90 days), or as serviced apartments, is a commercial purpose for which Development Consent is necessary.

(d) In the absence of the relevant Development Consent:

(i) owners can be prosecuted by the Council and may thereafter receive substantial fines; and

(ii) Owners may be restrained by Court order from using their lot for such purposes.

8.2 Owners who desire to lease their lots (including car parking spaces) for overnight or short stay accommodation (being less than 90 days), or as serviced apartments shall obtain a Development Consent for such purpose from the Council and comply with all other requirements of the Council.

8.3 The owner or occupier of a lot must ensure that the lot is not used for any purpose that is prohibited by law.

8.4 The 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.

8.5 The owner or occupier of a lot must not advertise, or permit or authorise any agent, servant or contractor to advertise, that the lot is available for a purpose or use contrary to this special by-law 8.
Mr Henry Wong
Manly Council
PO Box 82
MANLY NSW 1655

Dear Mr Wong,

Holiday Letting and the Holiday Rental Code of Conduct

You would be aware the short term rental of houses and apartments to holiday makers results in significant tourism and economic benefits to local areas and the State as a whole. The short term use of a dwelling as a holiday rental is a long established practice that generally occurs without incident across the State.

However on occasions, amenity issues associated with the intensive use of short term holiday rental accommodation arise from the behaviour of guests and visitors, in particular noise and car parking issues.

In response to this issue, with Government support, an industry stakeholder group that includes representatives from industry and government has developed a Holiday Rental Code of Conduct (the Code). The stakeholders intention is that the Code be used by owners, managers and occupants of properties being let on a short term basis as holiday rentals. The Code sets out among other things:

a) property management arrangements for individual holiday rental premises
b) appropriate standards of behaviour for holiday rental guests and their visitors
c) industry responsibilities for the implementation, monitoring and updating of the Code itself.

The Code is based on:

- implementation primarily by industry through a Code Administration Committee (CAC)
- a two year trial period with a comprehensive review after an initial 12 month period
- other industry approaches proven to be effective in reducing performance issues
- responsible self-regulation
- retaining flexibility to enable refinement in response to monitoring outcomes and stakeholder feedback.
The Hon Brad Hazzard MP  
Minister for Planning and Infrastructure  
Minister Assisting the Premier on Infrastructure NSW

The Minister for Local Government and the Minister for Tourism, Major Events, Hospitality and Racing and I all welcome this industry initiative.

A copy of the Code is attached to this letter.

Should your officers have any enquiries about this matter, I have arranged for Ms Yolande Stone, Director, Policy, Planning Systems and Reform of the Department of Planning and Infrastructure, to assist. She can be contacted on telephone number (02) 9228 6301.

Yours sincerely

[Signature]

HON BRAD HAZZARD MP  
Minister
HOLIDAY RENTAL
CODE OF CONDUCT

Participating Organisations

stayz  
TakeABreak®  
rentahome

HLO  
REAL ESTATE INSTITUTE OF NEW SOUTH WALES

Page 1 of 25
INTRODUCTION

Holiday rental is a long established practice in Australia and serves a range of purposes. The short term rental of houses and apartments to holiday makers, workers and students makes an important contribution to the local as well as the broader State and national economy. Holiday rental is the term used to describe the rental of a dwelling for short periods, most commonly for weekends or a few weeks for holidays. Short term rental is also used by workers, students and the like who require residential accommodation for a limited period of time.

The use of a dwelling for the provision of holiday accommodation can be considered to be ancillary to the main use of the residential property. A dwelling includes a room or suite of rooms occupied or used as a separate domicile (including a house, villa, town house, apartment or granny flat) whether for permanent or holiday accommodation.

Holiday rental of a residential property is typically through a licence agreement rather than a tenancy agreement under the relevant state and territory residential tenancy legislation.

Holiday rental of dwellings can make a positive sustainable contribution to local tourism and communities, and should be managed so as to minimise any adverse social or environmental impacts. However in some areas, the increased use of dwellings for holiday rental accommodation has led to some impacts on amenity such as in relation to noise and car parking issues.

This Code of Conduct has been developed to provide a self-regulatory approach in the management of holiday rental. This approach has been used in some areas and has been found to be successful in managing amenity impacts associated with holiday rental. This Code of Conduct applies to dwelling properties that are rented for the purposes of holiday accommodation. This Code may be applied to short term rental for other purposes in due course.
This self regulatory approach to Holiday Rental incorporates four components:

Part 1 This part outlines obligations on Participating Organisations to cooperate and combine efforts to achieve the Objectives of the Code through appropriate administration and enforcement of the Code.

Part 2 This part outlines obligations on Managers of Holiday Rental Properties.

Part 3 This part outlines obligations on Owners and Guests required to implement The Code through the Terms and Conditions of the contract between the Owner and Guests.

Part 4 This part provides a framework for House Rules for Visitors and Guests at a Property to ensure that the amenity of neighbouring properties is not adversely affected.
Holiday Rental Code of Conduct

OBJECTIVES OF THIS CODE

The objectives of this Code of Conduct are:

a) To establish acceptable standards of behaviour for Holiday Rental Guests and Visitors to minimise any adverse social or environmental impacts;

b) To assist Owners and Managers of Holiday Rental accommodation to meet the needs of all stakeholders including Guests, neighbours, local communities, local councils and government authorities; and

c) To inform the community of the standards of conduct expected from Holiday Rental Owners, Managers, Guests and Visitors so as to effectively minimise amenity impacts.

Government authorities and private sector bodies are encouraged to endorse this Code of Conduct and to work cooperatively with Participating Organisations to achieve its Objectives.
DEFINITIONS USED IN THIS CODE

- **Holiday Rental** means rental of Property for holiday purposes within the maximum term permitted for rental without a residential tenancy agreement under state and territory residential tenancy legislation.

- **Dwelling** means a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile.

- **Guest** means a person who stays overnight in the Property during the term of the occupancy.

- **Manager** means the Owner or another person appointed by the Owner (such as a real estate agent), who is responsible for renting the Property.

- **Noise** means any sound which is offensive to occupiers of neighbouring properties.

- **Owner** means the person or entity who owns the Property. It includes the lessee of a Property who sublets or licences it to others for Holiday Rental.

- **Participating Organisations** comprise those organisations that endorse and agree to implement this Code of Conduct and include initially:
  - Stayz;
  - TakeABreak;
  - Rentahome;
  - Holiday Letting Organisation Byron (HLO Byron); and
  - NSW Real Estate Institute (REINSW.)

- **Property** means Dwellings and residential premises including houses, dual occupancies, villas, townhouses, apartments, units, secondary dwellings, cabins and the like generally with a maximum of 6 bedrooms unless the relevant local council permits holiday rental in properties with more than 6 bedrooms.

- **Visitor** means a person a Guest invites or permits to visit the Property during the term of the occupancy who does not stay overnight.
Part 1. Holiday Rental – Obligations of Participating Organisations

This Part outlines the arrangements and the role and responsibilities of Participating Organisations for the promotion, implementation, administration, monitoring and enforcement of this Code of Conduct.

1.1 Guiding Principles

This Code of Conduct is for use by Participating Organisations to outline to Holiday Rental Managers, Owners Guests and Visitors what their responsibilities are in order to ensure that the amenity of the Property and neighbours is maintained.

a) This Code of Conduct applies to the Holiday Rental of Property owned or managed by members of Participating Organisations;

b) Managers (including owners and agents) are encouraged to join Participating Organisations and may become Participating Organisations;

c) Participating Organisations consider that compliance with this Code of Conduct is required to achieve the Objectives and undertake to enforce this Code;

d) Participating Organisations signify their endorsement and agreement to this Code of Conduct by signing and lodging a copy of it with the Code Administration Committee;

e) Participating Organisations may withdraw their endorsement and agreement to this Code of Conduct at any time by lodging a written notice with the Code Administration Committee; and

f) Participating Organisations will implement and promote this Code of Conduct and make a copy of it available to the public from their website.
1.2 Implementation of the Code

This Code of Conduct will be implemented through the following mechanisms:

1.2.1 Through Participating Organisations:
 a) Participating Organisations must require an undertaking from Managers to comply with the Code of Conduct as a condition of membership of their organisation or of listing their Property as the case may be; and
 b) Where a Participating Organisation is a Manager they must require an undertaking from Owners as a condition of managing their Property to endorse and comply with relevant provisions in the Code and agree to this Code so far as the Manager’s own Property is concerned.

1.2.2 Through Owners and Managers:
 a) The Terms and Conditions upon which the Property is offered, booked and occupied for Holiday Rental must comply with Part 3 of this Code and be incorporated into the contract between the Owner of the Property and Guests;
 b) House Rules including the fundamental obligations of Guests and Visitors on Noise and Residential Amenity under the Terms and Conditions must comply with Part 4 and be displayed at all times in a prominent position in the Property to remind Guests of their key contractual obligations and to inform all Guests and Visitors of the conditions upon which they are permitted to enter and remain on the Property; and
 c) A full printed copy of this Code of Conduct, the Terms and Conditions, the House Rules and any By Laws relating to the strata or community title must be provided in a Guest & Visitor Information Folder within the Property in a location which is prominent and easily accessible to Guests, Visitors and persons authorised by the Manager or law to inspect and enforce compliance.
1.3 Sanctions

1.3.1 Through Participating Organisations

Each Participating Organisation is responsible for dealing with instances where Managers are not complying with this Code of Conduct.

a) Participating Organisations may impose sanctions upon Managers for non compliance with this Code of Conduct;
b) Such sanctions will be imposed under the terms of their membership or listing arrangements with Managers;
c) If so directed by the Code Administration Committee, a Participating Organisation must impose the sanctions;
d) A Manager who disputes a sanction imposed upon it by a Participating Organisation under this Code may appeal to the Code Administration Committee and in that case the Code Administration Committee will review the sanction and direct the Participating Organisation on what it considers to be the appropriate sanction in all the circumstances; and
e) The sanctions should reflect the nature, seriousness and frequency of the breach and include in increasing severity:
   i. Issuing a censure or warning to the Manager;
   ii. Requesting the Manager to rectify the harm done or compensate for the damage caused by the breach;
   iii. Requesting the Manager to take remedial action to ensure the breach does not reoccur. Remedial action may include more restrictive practices, for example limiting the number of Guests permitted to stay at a Property to a lesser number or restricting the number of Visitors and the hours when Visitors can be on the Property; and
   iv. Expulsion from membership or delisting of the Property as the case may be.

1.3.2 Through the Code Administration Committee

The Code Administration Committee is responsible for dealing with instances where Participating Organisations are not complying with this Code of Conduct.
a) The Code Administration Committee may impose sanctions upon Participating Organisations for non compliance with the obligations of a Participating Organisation under this Code of Conduct.

b) If a Participating Organisation disputes a sanction imposed upon it by the Code Administration Committee under this Code the dispute shall be submitted to arbitration in accordance with, and subject to, The Institute of Arbitrators & Mediators Australia Rules for the Conduct of Commercial Arbitrations. Unless the Code Administration Committee and the Participating Organisation agree upon an arbitrator, either of them may request a nomination from either the President OR the Chapter Chairman of the Chapter where the dispute arises.

c) The sanctions should reflect the nature, seriousness and frequency of the breach and include in increasing severity:
   i. Issuing a censure or warning to the Participating Organisation;
   ii. Requesting the Participating Organisation to rectify the harm done or compensate for the damage caused by the breach;
   iii. Requesting the Participating Organisation to take remedial action to ensure the breach does not reoccur; and
   iv. Cancelling the registration of the Participating Organisation under this Code of Conduct.

1.4 Code Administration

1.4.1 Code Administration Committee

This Code of Conduct will be administered by the Code Administration Committee ("CAC").

a) The CAC will consist of representatives of Participating Organisations or key stakeholders in the Holiday Rental industry.

b) The initial CAC will comprise a representative from each of the following:
   i. Stayz or its nominee;
   ii. HLO Byron;
   iii. REINSW;
   iv. A consumer group or tourism body; and
   v. A government or statutory planning body.
Members of the CAC may be appointed and dismissed by decision of the CAC.

The CAC may invite other relevant authorities to act as observers or advisors when appropriate, for example the Australian Competition and Consumer Commission and State and Territory Government agencies such as Tourism, Planning and Infrastructure and Fair Trading Departments, law enforcement and the Local Government and Shires Associations.

The chairman and secretary of the CAC will be appointed by decision of the CAC.

The CAC will be industry-funded.

Unless otherwise agreed meetings of the CAC will be held in Sydney, NSW and members from other cities or states may participate by telephone or video conferencing.

Decisions of the CAC will be made according to the following:

i. CAC decisions to amend this Code of Conduct or changes to the membership of the CAC require a majority of at least 66%;

ii. All other CAC decisions require a simple majority; and

iii. In the event of a deadlock the Chairman shall have an additional casting vote.

1.4.2 The role of the CAC

The role of the CAC will be to:

a) Publicise and promote this Code of Conduct;

b) Maintain a register of Participating Organisations, receive and process signed copies of this Code of Conduct and any notice or decision that any signatory ceases to be a Participating Organisation;

c) Monitor and review the operation of this Code of Conduct;

d) Give instructions to Participating Organisations and hear and determine appeals from Managers concerning sanctions under Clause 1.3.1 of this Code of Conduct;

e) Impose sanctions upon Participating Organisations under clause 1.3.2 of this Code of Conduct;

f) Consult with Participating Organisations and key stakeholders from the Holiday Rental industry (where appropriate) on proposed amendments to this Code of Conduct;

g) Determine necessary amendments to this Code of Conduct;

h) Provide for the adequate financing of Code of Conduct administration expenses;

i) Produce an annual report on this Code of Conduct and its administration;
j) Report on the operation and effectiveness of this Code of Conduct as required to such state and territory government Tourism, Fair Trading and Planning and Infrastructure authorities as have endorsed this Code of Conduct;

k) Report to the Participating Organisations and key stakeholders from the Holiday Rental industry on the operation and effectiveness of this Code of Conduct; and

l) Organise an independent review of this Code of Conduct once every three years.

1.5 Monitoring Outcomes of the Use of this Code

The CAC will monitor the implementation of this Code.

1.5.1 Monitoring criteria

The criteria which will be used to monitor and measure the effectiveness of this Code of Conduct include:

a) Number of Participating Organisations;

b) Number of Owners and Managers of a Property represented by Participating Organisations;

c) Number of endorsing government authorities and private sector bodies;

d) Number of relevant complaints (bearing in mind that implementation of this Code of Conduct will provide and promote mechanisms for lodging complaints) received by:
   i. Participating Organisations;
   ii. Fair Trading authorities that have endorsed this Code of Conduct (so far as data is readily available);
   iii. Local councils (so far as data is readily available); and
   iv. State government planning authorities (so far as data is readily available.)

e) Success rate in resolving disputes and complaints without recourse to litigation (so far as data is readily available); and

f) Instances of acceptance of this Code of Conduct as a practical self regulatory alternative to government regulation.

1.5.2 Outcomes from the monitoring

a) This Code of Conduct is designed to be a living document that will evolve based on monitoring outcomes and stakeholder feedback.
b) The CAC will be responsible for making necessary changes to better achieve the objectives of this Code of Conduct.

1.6 Compliance with Australian Competition & Consumer Act

This Code of Conduct is intended to comply with the Australian Competition and Consumer Act 2010 (the 'Act') and any term or requirement of the Code including Parts 1, 2, 3 and 4 which conflicts with the Act shall be read and be enforceable as if it complies with the Act.
Part 2. Holiday Rental - Obligations of Managers

This Part outlines the role and responsibilities of Managers, including standards, practices and procedures for implementation of this Code of Conduct.

2.1 Role and Responsibilities of Managers

a) Managers are required to comply with this Code of Conduct as a condition of membership of a Participating Organisation or of listing their Property with a Participating Organisation as the case may be.

b) Managers must also comply with any request made by a Participating Organisation under the Sanction provisions of this Code of Conduct.

c) Managers must use their best endeavours to ensure that Property under their management used for Holiday Rental complies with this Code of Conduct generally including in particular the standards, practices and procedures under this Part.

d) Managers must outline to Guests (and Visitors) the consequences of not complying with any Terms and Conditions.

e) Managers are to provide information to neighbouring properties on the relevant authority to contact in the event of a contravention of the Terms and Conditions. This can include the provision of a telephone number to contact in this event.

2.2 Property Management generally

2.2.1 Managers should:

a) Act with integrity, professionalism, courtesy and consideration when dealing with Guests, neighbours, Owners corporations and other community stakeholders; and

b) Cooperate with other stakeholders including industry associations, tourism bodies, local councils and other government authorities to enhance the image, standards and contribution of Holiday Rental to the economy.
2.2.2 The Property must not be offered, described, or advertised:
   a) In a false or misleading manner;
   b) For a purpose inconsistent with this Code of Conduct; or
   c) For more than the maximum number of Guests or Visitors determined in accordance with
      this Code of Conduct or in any relevant environmental planning instrument.

2.2.3 The Property offered must:
   a) Be offered in a clean, safe and habitable state of repair; and
   b) Comply with relevant planning, building and fire safety and health regulations.

2.2.4 Managers should:
   a) Provide general, after hours and emergency telephone numbers to Guests and neighbours;
      and
   b) Have a local representative to manage Guests and Property issues.

2.3 Terms, Conditions and House Rules

2.3.1 Managers must ensure that:
   a) The Terms and Conditions upon which the Property is offered, booked and occupied for
      Holiday Rental must adequately cover and be consistent with this Code of Conduct and the
      Terms and Conditions specified in Part 3.
   b) These Terms and Conditions must be incorporated into the contract between the Owner
      and the Guest.

2.3.2 Managers must:
   a) Provide and have displayed prominently in the Property, the House Rules;
   b) Provide a Guest & Visitor Information Folder containing other information including a copy of
      this Code of Conduct and information promoting good neighbourly behaviour;
   c) The House Rules upon which Guests and Visitors are permitted to enter and remain upon
      the Property must be consistent with this Code of Conduct and must be consistent with and
      adequately cover the issues in the House Rules specified in Part 4 and must cover any
      other any key issue relating to the particular Property; and
   d) The Terms and Conditions and House Rules must not offend the unfair contract terms and
      other provisions of the Australian Consumer Law.
2.4 Number of Guests and Visitors

a) The maximum number of Guests permitted at a Property must not exceed a maximum of 2 adults per bedroom; and

b) The number of Visitors permitted at a Property must not be such as may conflict with residential amenity and must comply with all the other requirements of this Code of Conduct including the Terms and Conditions and House Rules.

2.5 Functions and parties

a) Properties located in residential areas must not host commercial catering or functions unless they have local council permission to do so.

b) So-called "party houses" conflict with residential amenity, are damaging to the Holiday Rental industry and are not permitted.

c) Any gathering, celebration or entertainment permitted at a Property must not conflict with residential amenity and must comply with all the other requirements of this Code of Conduct including the Terms and Conditions (Part 3) and House Rules (Part 4) and any other relevant planning approvals.

2.6 Access and Parking

Managers must provide information to Guests prior to arrival regarding access or parking restrictions to ensure ease of access with minimum disturbance to other residents or neighbouring properties.

2.7 Recycling and Garbage

Managers must:

a) Inform Guests of the garbage disposal or recycling usual practices at the Property including:
   i. the allocated bins and how excess rubbish should be managed and not left in public or common areas;
   ii. details of local council garbage and recycling collection days; and
   iii. any special requirements relating to the disposal of garbage or waste minimisation.

b) Make arrangements for the removal of any excess garbage left by Guests and Visitors.
2.8 Insurance

Owners and Managers should hold appropriate insurance, including comprehensive landlords' and public liability insurance (as appropriate.)

2.9 Complaints handling

2.9.1 Managers must:
   a) Have a policy, setting out how to deal with disputes or complaints;
   b) Retain a log of related communication and actions taken;
   c) Respond to complaints professionally and take effective action to stop any problems; and
   d) Cooperate and participate in any complaint handling, response or resolution system implemented by their relevant Participating Organisation or local council.

2.9.2 Managers must also make and maintain a record of the following particulars of each complaint:
   a) Date and time received;
   b) Name and designation (e.g. Guest, neighbour, council, police etc) of complainant;
   c) Contact details of complainant;
   d) Nature of complaint;
   e) Action taken (by whom and when); and

2.9.3 Participating Organisations and Managers should encourage and facilitate complaint handling and dispute resolution through the following stages:
   a) Initially by the Manager;
   b) If not resolved in (a) then through the relevant Participating Organisation; and
   c) If not resolved in (b) then through the relevant state or territory Fair Trading or other authority.
2.10 Consequences of not meeting this Code of Conduct

Where required to ensure compliance, Managers must make Owners, Guests and Visitors aware that:

a) Depending on the Terms and Conditions of the contract between the Guest and Owner, the consequences of not meeting the requirements of this Code of Conduct can include enforcement action from:
   i. the Owner and its agents including Manager and security services;
   ii. local councils or; and
   iii. in some instances, the Police.

b) Enforcement action is subject to the Australian Consumer Law and other relevant legislation.

c) Such enforcement action could result in termination of permission to occupy the Property, eviction, loss of rental paid, deductions from security deposits and extra charges.

d) It is therefore important for all Guests to be aware of their obligations and of their responsibilities to make any Visitors to the Property aware of these requirements to maintain the amenity of the Property and its neighbourhood.
Part 3. Holiday rental – Terms and Conditions between Owners and Guests

The Terms and Conditions upon which a Property is offered, booked and occupied for Holiday Rental under the contract between the Owner and Guest must adequately cover and be consistent with this Code of Conduct and provisions set out in this Part.

3.1 Formalities:

The Terms and Conditions:

a) Must be in writing;

b) May be in electronic, printed or other legally compliant form;

c) Must include the information and cover the matters in Part 3 of this Code of Conduct;

d) May incorporate information by reference including Booking Conditions, Occupancy Agreement, House Rules, By Laws and information made available to the Guest from web sites; and

e) May cover such other matters generally required in relation to Holiday Rental of the Property and any special conditions provided they are not inconsistent with this Code of Conduct including in particular this Part 3.

3.2 General Content

a) The Terms and Conditions must include:

i. the address and description sufficient to identify the particular Property;

ii. Guest’s name, usual residential address, email and phone number(s);

iii. dates of occupancy and check-in/check-out times;

iv. total rental payable and any other charges;

v. amount and timing for payment of deposit and balance of moneys due;

vi. provisions on variation, cancellation and forfeiture or refund of moneys paid; and

vii. contact details for the Manager or their nominated representative.

b) The Terms and Conditions must not offend the unfair contract terms and other provisions of the Australian Consumer Law.
3.3 Licence not a tenancy

The Terms and Conditions must include:

a) Guests are granted a limited permission to occupy the Property for holiday purposes;

b) This is not a residential tenancy agreement under the residential tenancy legislation; and

c) Failure to comply with the Guest's obligations in the Terms and Conditions may result in termination of permission to occupy the Property and eviction.

3.4 Security Deposits or Bonds

A security deposit (or equivalent) should be obtained from the Guest (e.g. as cash or a credit card transaction or authorisation) prior to commencement of the occupancy;

a) Guests should be advised that failure to comply with the Terms and Conditions may result in charges against the security deposit; and

b) Security deposits should be administered, processed and accounted for and any balance released or returned to the Guest as soon as possible following their departure in accordance with the applicable law.

3.5 Maximum number of Guests and Visitors

In compliance with the Code of Conduct the Terms and Conditions must specify:

a) Maximum permitted number of Guests; and

b) Maximum permitted number of Visitors.

3.6 General obligations of Guests and Visitors

Guests and Visitors must:

a) Comply with all House Rules and By-Laws;

b) Respect the residential amenity and security of the Property and neighbours;

c) Refrain from anti-social behaviour;

d) Guests must control and be responsible for Visitors and ensure that Visitors comply with the House Rules;

e) Comply with any instructions from the Manager and security services during their stay; and

f) Notify the Manager of any disputes or complaints as soon as is practicable.
3.7 Noise and Residential Amenity

a) Guests must not create noise which is offensive to neighbours especially between 10pm-8am and during arrival and departure at any time throughout the occupancy.

b) Offensive noise is prohibited and may result in:
   i. termination of permission to occupy the Property;
   ii. eviction;
   iii. loss of rental paid; and
   iv. extra charges for security and other expenses which may be deducted from Security Deposits or Bonds.

c) Guests must abide by any noise abatement conditions, standards and orders issued by police or any regulatory authority to minimise impacts upon the residential amenity of neighbours and local community.

3.8 Functions and parties

a) The Property is not a “party house” and any such activities are strictly prohibited; and

b) Any gathering, celebration or entertainment permitted at the Property must not conflict with residential amenity and must comply with all House Rules.

3.9 Access and Parking

a) Guests and Visitors must comply with parking regulations and show consideration to neighbours;

b) Information on any constraints on access or any parking restrictions to ensure ease of access with minimum disturbance to other residents or neighbouring properties;

c) If relevant, specify maximum number of vehicles permitted onsite and parking space(s) allocated; and

d) If relevant, Guests may be required to supply vehicle/trailer registration numbers.

3.10 Recycling and Garbage

a) Guests must dispose of garbage and recycling in accordance with the usual practice at the Property and in the allocated bins;

b) Guests must not leave excess rubbish in public or common areas; and
c) Guests should be co-operative in complying with requirements in relation to the relevant local council garbage and recycling collection days, and any special requirements relating to the disposal of garbage or waste minimisation.

3.11 Complaints and dispute resolution procedure

Information on complaints handling including:
a) Guest's obligations to report any problems or incidents promptly; and
b) Complaints and dispute resolution procedure.

3.12 Consequences of not meeting the Terms and Conditions

a) The consequences of not complying with the Terms and Conditions requirements can include enforcement action from the owner, Manager, security services, local councils or, in some instances, the Police.
b) Enforcement action is subject to the Australian Consumer Law and other relevant legislation.
c) Such enforcement action could result in termination of permission to occupy the Property, eviction, loss of rental paid, deductions from security deposits and extra charges.
d) It is therefore important for all Guests to be aware of their obligations and of their responsibilities to make any Visitors to the Property aware of these requirements to maintain the amenity of the Property and its neighbourhood.
House Rules are provided at the Property to ensure that Guests and Visitors know and comply with the specific Rules governing their permission to enter and occupy the Property. House Rules are to be displayed in a conspicuous place in the Property so they can be easily viewed by Guests and Visitors, such as in the Property’s kitchen. Matters contained in House Rules should include those set out in this Part and should be adapted and augmented to suit the particulars of the Property, such as specific instructions for car parking arrangements and the like and rules appropriate for any special equipment, facilities or local risks.

4.1 General requirements

a) Guest and Visitors must comply with all House Rules, By-Laws and instructions from the Manager and security services during their stay; and
b) Guests must notify the Manager of any disputes or complaints from neighbours as soon as is practicable.

4.2 Noise and Residential amenity

a) Guests and Visitors must not create noise which is offensive to occupiers of neighbouring properties especially between 10pm - 8am and during arrival and departure at any time throughout the occupancy;
b) Offensive noise is prohibited and may result in termination of permission to occupy the Property, eviction, loss of rental paid and extra charges for security and other expenses which may be deducted from Security Deposit or Bond under the Terms and Conditions; and

c) Guests and Visitors must not engage in anti-social behaviour and must minimise their impact upon the residential amenity of neighbours and local community.
4.3 Visitors

a) Guests are responsible for ensuring the limits set on Visitor numbers is complied with at all times; and
b) Guests are responsible for ensuring that Visitors comply with these House Rules.

4.4 Gatherings or functions

a) The Property is not a "party house" and any such activities are strictly prohibited; and
b) Any gathering, celebration or entertainment permitted at a Property must not conflict with residential amenity and must comply with all the other requirements.

4.5 Parking

a) Guests and Visitors are to comply with parking regulations and other requirements set out below and show consideration to neighbours and other vehicles; and
b) Parking arrangements at the Property are as follows: [Manager insert here]

4.6 Garbage and recycling

a) Guests and Visitors are to dispose of garbage and recycling in accordance with the usual practice at the Property (as set out below) in the allocated bins, and excess rubbish must not be left in public or common areas; and
b) Garbage and recycling arrangements at the Property are as follows: [Manager insert here]

4.7 Security

Whenever you are absent from the Property, close all windows and doors to maintain security and prevent rain and water damage.

4.8 Swimming pool/spa (if applicable)

a) The swimming pool/spa must not be used between the hours of 10.00pm and 7.00am.
b) No glassware is permitted in the pool.
4.9 Deck and balcony areas

[Manager insert here – if applicable]

4.10 Smoking

Smoking is not permitted indoors (if applicable).

4.11 Pets

Pets are not permitted indoors (if applicable).

4.12 BBQ

[Manager insert here – if applicable]

4.13 Damages and breakages

Damages and breakages must be reported to the Manager.

4.14 On departure arrangements

Arrangements for keys, security, dishwashing, rubbish, etc are: [Manager insert here]

4.15 Emergency Contact

In the event of an emergency relating to the Property, please telephone [Manager insert name here] on [Manager insert phone number here]

4.16 Compliance

a) Breach of these House Rules is a breach of the Terms and Conditions of occupancy.

b) The Owner and Manager reserve the right to terminate permission to occupy and to evict from the Property, Guests or Visitors who refuse to follow these House Rules or who cause a nuisance.
“HOLIDAY RENTAL, CODE OF CONDUCT

When I noted the letter from NSW Liberal Minister Hazzard tabled at last Monday’s Council Meeting with the caption “Incoming letter regarding Holiday Letting and the development of a Holiday Rental Code of Conduct, alarm bells rang that Minister Hazzard was in fact being lobbied by parties with a vested interest.

The Minutes from last Monday read:

“That Council bring a report back on the Holiday Rental, Code of Conduct to ensure Council’s interests are not put at risk.”

Following Councillor Macdonald being elected Mayor of Manly, because of the outcry that residential apartment blocks were being overrun by holiday makers, a Working Party was formed to investigate “Short-Term and Tourist Accommodation less than 90 days, which is the correct title for holiday letting as defined by the Land & Environment Court. I was a member of that Working Party.

Within minutes of the first meeting commencing, it was clear that holiday letting, a commercial enterprise, in residential apartments was illegal without a DA.

The Working Party reported to Council on November 8, 2004, when the Report was unanimously supported by all Councillors.

It is on this point that I now speak, because at that meeting, the current Mayor using the mantra that holiday letting had always taken place in Manly, asked the General Manager regarding the legality of it. The General Manager responded that it was illegal without DA approval.

In light of Liberal Minister Hazzard’s letter, the Manly community, and particularly those living in residential apartment blocks, now require a clear statement from the Mayor that she still supports the decision of November 8, 2004.

Without such an indication of support, this becomes a council election issue in September.
I have not seen Minister Hazzard’s letter, but the mere mention of a Code of Conduct raises alarm bells. Such codes, and I have now read this one, are impossible to police particularly as I discovered in 2004, that holiday accommodation bookings were made using the internet, not only with local agents right here in Manly, but also sub-agents operating throughout the world.

This is a global internet business where motherhood statements seek to give respectability, but in fact provide no guarantees, particularly as it now relates to a global jurisdiction.

This code must be rejected.

I can tell you from experience that the lifestyle of residents and holiday makers are just not compatible in residential apartment blocks, and it is only right that Manly Council now reaffirms its support for the 2004 Working Party Report, and confirm that there is nothing in the new Draft LEP & DCP which could alter this regulation.

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Lisle Fortescue

May 14, 2012