

The Hon Anthony Roberts MP
Minister for Planning Minister for Housing

The Hon. Matt Kean MP
Minister for Innovation and Better Regulation

Dear Ministers,

Submission – Short Term Holiday Letting in New South Wales

1. I am an Australian lawyer with 20 years of experience in legal policy and regulation for the Commonwealth and the Federal Parliament and the Legal Services Council. I live in North Sydney on a high value Estate next to Sydney Harbour.
2. This submission concerns the proposal to legalise Short Term Holiday Letting (STHL) in private homes in all residential areas across the entire State of NSW.¹ This is a highly contentious area of policy that has many immediate and long term consequences for strata owners. The views of strata owner occupiers about the effects of STHL on their residential amenity and their jointly owned common property must be taken more seriously. Investors are also at risk as STHL increases costs and makes estates less desirable for normal residential tenancies and future sale. The burden of these effects is borne disproportionately by strata owners in the most desirable locations.
3. The NSW Government's proposal to legalise STHL in our home environment:
 - (a) removes our rights and the existing protection of the North Sydney Local Environment Plan;
 - (b) gives STHL holiday makers the same rights as owners to the use of common facilities;
 - (c) imposes the costs of increased occupation and use on all strata owners;
 - (d) places no limit on the number of STHL hosts that may operate within our scheme;
 - (e) ignores the cumulative impact of multiple STHL operators/hosts; and
 - (f) places the reputation, values and standards of our Estate in the hands of tourists and a minority of "hosts".
4. The Options Paper claims but does not offer a 'balanced' approach. It disproportionately favours STHL even against the wishes of a majority of strata owners. Legalising STHL will encourage the sale on a short term basis of "residential accommodation" to holidaymakers who are placed on an equal footing with genuine residents living in their own home. This is an unacceptable proposition that has been rejected by hundreds of strata schemes in Sydney, and in many major overseas cities.
5. This submission has the endorsement of Strata Committee of SP60590 (mtg. 10/10/2017) (Stage 3). It was endorsed by Strata Committee of SP58848 (Stage 2) on 16/10/2017 and the Strata Committee of SP58146 (Stage 1) on 29/10/2017. The Community Association DP270176 also endorses the submission.²

A. Background

6. Historically, there has been no problem with sharing - someone renting a room in their home to a tenant provided it's a genuine residential arrangement. Airbnb have relabelled this pre-existing rental part of the "shared economy" to sell an entirely different and highly profitable concept.

¹ This submission is not concerned with the interests of the hotel industry or other traditional tourism operators. It does not attempt to offer any analysis of impacts on housing supply, residential tenancies or housing affordability.

² The content of the document and any errors therein remain entirely the responsibility of the author.

7. Airbnb, Flipkey, Expedia, Stayz, Homeaway and VRB are accommodation brokers who facilitate a commercial transaction between private parties taking a commission from hosts and fees from consumers (approx. 12% in the case of Airbnb). It holds those funds until the service has been provided. This is commerce generated through dispersed *en mass* listings of residential homes (product) in the best suburbs – their ‘assets’ are described as ‘virtual’.³ The externalised cost of this business is born by the whole community. The negative impacts of STHL in residential neighbourhoods and buildings far outweigh any claimed benefit for individual property owners. These costs and impacts are more acute in strata schemes because of the immediate proximity of residents, and the involvement of all co-owned property as part of the STHL transaction.
8. The global experience is that STHL in city locations:
 - is concentrated in locations most attractive to tourists and expands into residential neighbourhoods with higher socio-economic characteristics;⁴
 - is concentrated in apartments in higher value and middle class suburbs;
 - occurs year round but has seasonal patterns that intensify on weekends, during major sporting and cultural events, school holidays, Xmas and New Year;⁵
 - spreads to neighbouring areas⁶ and especially when pressure is applied to key ‘hot spots’;
 - has grown when legalised and produced many adverse unintended consequences;⁷
 - is promoted by private hosts/ operators who maximise their exposure and visibility in the online market place by listing with multiple online platforms in Australia and overseas;⁸
 - takes place with systemic non-compliance with regulatory limits in cities that have tried to accommodate it;⁹ and
 - is facilitated by middlemen online platforms who are un-licensed in this jurisdiction, take no responsibility for the activity of hosts/operators; operate in flagrant disregard for zoning laws and the views of neighbours. In the case of Airbnb, it does not cooperate with researchers and markets its business as ‘building community’ to attract *en mass* listings as it diversifies on the way to an IPO.¹⁰
9. The adverse impacts of the rapid growth of Airbnb have been reported increasingly in cities including Barcelona, Berlin, Brussels, London, Los Angeles, New York, Paris, San Francisco, Santa Monica, Vancouver, Toronto and now Sydney.¹¹ These major cities and smaller regional ones have adopted

³ Gutenag, 2015, Zervas, Proserpio, & Byers, 2014.

⁴ Gurran, July 2017, *When Tourists Move In: How Should Urban Planners Respond to Airbnb?*, Journal of the American Planning Association, 80-92;

Coyle D, et al, *Understanding Airbnb in Fourteen European Cities*, Toulouse School of Economics, Institute of Advanced Studies Toulouse, 2017, p.4.

⁵ *Short Term Cities, Airbnb's impact on Canadian housing markets*, Wachsmuth, School of Urban Planning, McGill University, August 2017.

⁶ Quattrone, *Who Benefits from the Sharing Economy of Airbnb?*, Proceedings of the 25th International Conference on the WWW, pp.1385, 2016.

⁷ Helen Hsi, *Airbnb Regulation: How is New Legislation Impacting the Growth of Short-Term Rentals?* Airdna, April 10, 2017.

⁸ Google is now developing a service to integrate private STL with other hotel advertisements massively extending global advertising.

⁹ In December 2016 Airbnb admitted that 23% of its listings for entire homes were advertised in excess of the 90 day limit imposed by London.

<https://www.theguardian.com/technology/2016/dec/01/airbnb-introduces-90-day-a-year-limit-for-london-hosts>; The ban on letting entire apartments in Berlin has been ignored by many <https://www.thelocal.de/20160503/100s-of-flats-still-available-after-berlins-airbnb-ban>

¹⁰ The problems of enforcement have been widely reported and the evidence from Berlin shows that direct regulation of hosts with significant fines for non-compliance has been the most effective way to remove illegal listings from online platforms.

¹¹ In San Francisco the Office of Economic Analysis concluded that removing a single housing unit from the residential market would have a total negative economic impact on the city's economy of - \$250,000 -- \$300,000 per annum; Wachsmuth et al, *Short Term Cities, Airbnb impact on Canadian housing markets*, Urban Politics and Research Group, School of Urban Planning, McGill University, August 2017; Gurran & Phibbs, *When Tourists Move In: How Should Urban Planners Respond to Airbnb?*, Journal of American Planning Association, 83:1, 80-92; *While sharing economy*

their own regulatory frameworks but to my knowledge there has been no attempt to adopt a national, state or province wide definition in the EU or the USA.

10. There is an increasing body of research analysing the loss of housing stock and impacts on rental prices and systemic non-compliance with regulatory limits in cities that have tried to accommodate platforms like Airbnb.¹² Major North American and EU cities have adopted increasingly restrictive regulation and enforcement to combat the downsides of STHL.¹³ In several instances Airbnb has litigated against smaller cities to defeat regulatory controls applied to the company itself.¹⁴ This is despite the illegality of the activity in the first place and after amendments to regularise STHL that has enabled Airbnb to operate. It has also removed or hidden listings to avoid detection and under-report listings data to local authorities.¹⁵ This is not the conduct of a responsible corporate citizen.
11. In NSW, the views of strata owners have been the least heard, overwhelmed by the sophisticated and multi-million dollar corporate political lobbying and marketing campaigns of companies like Airbnb, Expedia and Stayz.¹⁶ However, it is this group of owners who bear the most immediate **social and financial costs** of all forms of STHL in their buildings and common property.
12. Submissions to the Parliamentary Inquiry gave evidence about (a) increased resentment toward tourists in higher density locations; (b) increases in complaints and (c) a general disquiet about the presence of more visitors. Residents in strata communities also expressed additional and more specific complaints about the increasing prevalence of STHL occupants including noise and nuisance, garbage, parking, security, fire and safety issues. These concerns have been acknowledged in the Options Paper but remain subordinate.
13. The analysis of the economic ‘benefits’ of STHL assumes that all growth in tourism is a good thing and has failed to integrate the externalised costs of this business such as (a) the loss of housing stock; (b) downgrading of liveability and amenity; and (c) the social and financial imposts on strata owners. The Options Paper did not rectify these shortcomings and relies heavily on the report of a Parliamentary Inquiry. There is a need for more rigour in the analysis by Government and a perspective that goes beyond economics and the emphasis on tourist figures.
14. **Down-playing the views of strata owners risks ignoring the largest group of people with the greatest personal investment in this issue. These residents are long term voters in key electorates.**

companies like Uber and Airbnb disrupt traditional industries, local economies suffer the economic consequences while the profit flees;

<http://business.financialpost.com/investing/downside-of-uber-airbnb-is-disrupted-canadian-economy#comments-area>

¹² Helen Hsi, *Airbnb Regulation: How is New Legislation Impacting the Growth of Short-Term Rentals?* Airdna, April 10, 2017; Zohara Jamasi, *Regulating Airbnb and the Short Term Rental Market, An Overview of North American Regulatory Frameworks*, Canadian Centre for Policy, June 2017; In London, the 90 day limit on entire apartments is widely ignored, and avoided by de-listing and re-listing with different descriptors, and listings on multiple platforms and there is now talk of introducing a Berlin style ban on entire apartments:

<https://www.theguardian.com/technology/2016/dec/01/airbnb-introduces-90-day-a-year-limit-for-london-hosts>

¹³ Fines imposed against owners renting their Paris apartments out on Airbnb surged more than tenfold in the first half of 2017 thanks to more rigorous monitoring 11 August 2017. <https://www.thelocal.fr/20170811/airbnb-fines-surge-in-crackdown-on-owners-in-paris>. Vancouver has just announced a ban on the use of ‘secondary suites’ for STHL; this month the City of Victoria (BC) has banned the STHL of entire apartments in the CBD; Zohara Jamasi, *Regulating Airbnb and the Short-Term Rental Market, An overview of North American regulatory frameworks*,

¹⁴ For example, <http://www.latimes.com/business/la-fi-airbnb-lawsuit-santa-monica-20160903-snap-story.html>

¹⁵ Inside Airbnb is an independent NGO data monitoring site, see <http://insideairbnb.com/how-airbnb-hid-the-facts-in-nyc/>

¹⁶ Airbnb in particular has enlisted other organisations to do its lobbying for it, including organising hosts to prevent any kind of regulation. The creation of NGOs and hiring PR companies to do their lobbying, and promote the urban myth that Airbnb is essential for people to make ends meet: <https://la.curbed.com/2013/11/25/10170060/airnbaffiliated-lobbying-group-defeats-venices-attempt-to-regulate>;

<http://valleywag.gawker.com/airbnbs-industry-mouthpiece-astroturfs-for-donations-1481305550>; <http://valleywag.gawker.com/new-york-senator-accuses-airbnb-lobbyist-of-misinformation-1484355324>. In the case of Airbnb it even seeks to embed its corporate interests in the culture by representing the widespread violation of Australian law and residential norms as a ‘social movement’. It attaches its corporate interests to genuine social movements like marriage equality, makes corporate donations to large iconic public institutions like the Opera House.

15. **This estate alone has about 500 voters in an electorate with a 25% swing against the Government in the recent By Election.**¹⁷

B. Impacts and Implications for This Estate

16. As indicated above, I am writing from a 'luxury' **residential** strata community on the Lower North Shore, in the State seat of North Sydney. The Estate is located in a High Density Residential Zone 4 area and approved for **residential use** only. It is a premium tiered community development with high residential values in a desirable location with high quality recreation facilities.¹⁸ It consists of several buildings set in 13 hectares of gardens and open space on a remediated industrial site next to the Harbour, only 3 train stops to the CBD. Owners are paying substantial body corporate fees from approximately \$2,500 and up to \$11,000 a quarter to maintain the reputation, value and standards of their Estate.
17. The Estate is ripe for exploitation as a STHL holiday destination. There have already been advertisements across multiple platforms on Australian and overseas websites. This involves numerous violations of the Development Approval (DA), the Local Environment Plan (LEP) and the By-Laws of 3 schemes.
18. The Estate is **home** to professional people – public servants, business executives, diplomatic staff, downsizers, young and middle aged families and senior citizens. It is predominantly owner occupied but has a significant proportion of residential tenants. Residents are known to Security Staff and Estate Management and are known personally to each other or at least recognisable and familiar to each other over time. This is a community of residents – owners and long term renters.
19. **During a meeting of owner occupiers earlier this year and in a subsequent written survey – a strong majority said they don't want STHL tourists anywhere on this Estate. The Estate is not a hotel or a tourist holiday park. This is a residential community.**
20. **Legalising STHL would open the door to this activity. It would encourage others to regard our Estate as a business opportunity and exploit the benefits of our home environment for their own financial gain. The Owners' Corporations of each Scheme will be powerless to stop it or even to control the number of STHL operators/hosts on the Estate. The Community Association will have no power to restrict access to recreation facilities used extensively by genuine residents.**
21. As strata owners we are bound by statutory contract in the shared ownership and responsibility for our Estate. This involves accepting limits on aspects of our own activity for the benefit of the entire community as a whole now and into the future. Ironically, it is this shared aspect of strata ownership and the mutual obligations it creates that some choose to ignore, do not fully appreciate or disregard because of private financial motives.

Short Term Holiday Letting Makes Strata Living Unattractive

22. STHL in residential strata schemes:

- brings a changing population of strangers who are tourists and unaccompanied visitors into our home environment;¹⁹

¹⁷ <http://www.smh.com.au/nsw/irritation-index-will-sydney-pull-up-the-welcome-mat-to-tourists-20170720-gxexsl.html?deviceType=text>

¹⁸ The recreation facilities include two outdoor swimming pools immediately adjacent to private homes; a gymnasium, indoor pool, spa and sauna – also immediately adjacent to private homes. The car parking is behind secured automatic doors with all access controlled by electronic tags. Swipe keys that provide access to cars parks also provide access to the building and marina.

¹⁹ <http://www.wired.co.uk/article/living-next-to-airbnb-sharing-economy-problems>

- causes frequent changes to occupancy, people moving in and out with suitcases, trollies, children bikes etc. increasing wear and tear on lifts and buildings; and incidents of damage that increase the costs of maintenance, cleaning, repairs and insurance and drives body corporate fees up;²⁰
 - is an invasion of our privacy especially in the spa, sauna, gymnasium, tennis courts and swimming pools which are shared but are not public places;
 - increases the costs of maintaining common property because STHL occupants want to get the full value for money and tend to maximise the use of recreation facilities;
 - increases security risks to private property - cars, boats, kayaks and bikes. STHL tourists have access to a marina via the same keys they use to enter buildings, access floors, car parks and common amenities;²¹
 - creates a risk to personal safety of residents who have good reason to be concerned for their physical safety and the safety of their children;
 - increases the risk of fire as STHL smokers pay little attention to local customs and By-Laws;²²
 - exposes tourists to risks in an unfamiliar environment;²³
 - exposes us to public gaze and intrusions into our privacy as photographing of our buildings and environment turns us into a tourist attraction for curious visitors who naturally wish to explore their 'destination';
 - reduces the value of property (especially surrounding apartments) and undermines the reputation of buildings and makes these schemes less desirable;
 - creates stress and uncertainty for owners who do not have the assurance of their residential amenity because anyone (including their neighbour) could decide to STHL their home.
23. Strata owners have invested millions of dollars in their homes and have a legitimate expectation that their buildings and common property will remain private. The legalisation of STHL across all residential areas will be the biggest reorganisation of zoning law and property rights in NSW history. It abandons core residential objectives and existing development controls for dubious results.
24. The Government's proposal to make STHL in residential apartments an "exempt development" ignores the widely accepted fact that STHL is not compatible with *residential living* in strata schemes designed, approved and built for permanent residential living.²⁴ The impacts of STHL in this environment are immediate and disproportionate – it involves everyone, not a single owner/tenant.

²⁰ In Maestri Towers the body corporate fees went up by 70% in 4 years; Dr Heaney, Chairman, Maestri Towers Owners' Corporation, *Submission into the Inquiry into the Regulation of Short Term Letting in NSW*, p.2.

²¹ Michael Townsley et al, *Crime in High-Rise Buildings: Planning for Vertical Community Safety*, Criminology Research Advisory Council, June 2013.

²² The Lacrosse fire in Melbourne was started by a French man on a working holiday visa. He and his head tenant are being prosecuted while owners are left carrying financial costs of their unintentional but irresponsible behaviour.

²³ In a recent fire emergency many residents failed to leave their apartments, several used the lift, and dispersed to unsafe locations close to the building instead of the official assembly point. The swimming pools were closed by the Department of Health because of the potential presence of cryptosporidium infection caused by the faeces of children who are not toilet trained.

²⁴ The Parliamentary Committee asserted that STHL is not a change of 'use', and not incompatible with residential living ignoring a body of jurisprudence of the Land and Environment Court, preferring the policy of the South Australian Government, *Parliamentary Report*, p.17, 36.

It cannot be characterised as ‘non-intrusive’ or ‘minimal’. The cumulative impact of multiple STHLs operating in residential strata communities is totally unacceptable.²⁵

25. **On the Lower North Shore the most adverse consequences will be borne disproportionately by the owner occupiers in attractive Estates on the Harbour because we have invested in high quality facilities and have easy access to the city.**

Tourism Demand

26. Sydney is Australia’s largest city and a prime focus for domestic and international tourists. In the twelve months ending June 2017, Sydney broke records with 3.7 million international visitors to Sydney spending \$9.03 billion.²⁶ This is just a portion of the total of 13 million overnight visitors who stayed a total of 101 million nights. Visitors are forecast to spend more than 146 million nights in Sydney by 2024-25.²⁷
27. The quality of our recreation facilities and our proximity to the Harbour Bridge, Luna Park, the Opera House and local attractions like the Coal Loader and the forthcoming High Line Project, make our Estate an ideal destination. These features are attractive all year round but especially on weekends, summer school holidays, over Xmas, Australia Day, and major events like the Vivid Festival and the New Year Fireworks.²⁸
28. STHL is a demand-driven activity and by legalising it across residential areas we would be placing the value of strata property and the privacy and residential amenity of thousands of owner occupiers in the hands of tourists and a minority of hosts/operators.²⁹
29. The demand for tourist accommodation means that legalising STHL is a guarantee that STHL of all types will expand and intensify on this Estate. It is for this reason that I am opposed to amendments to the *State Environment Planning Policy (Exempt and Complying Development Code) 2008* to include a new category of STHL as an exempt or complying development.³⁰

C. North Sydney – Local Environment Plan Prohibits STHL in Residential Areas

30. The North Sydney LEP prohibits STHL in Residential Zone 4, which applies to this Estate.³¹ There is no gap in the law and no lack of clarity.³² In North Sydney STHL is considered a type of “tourist and visitor accommodation” and this “means that short term letting, such as Airbnb in residential properties, is considered a prohibited use”.³³ The Council does take action when notified and it has

²⁵ <http://www.wired.co.uk/article/living-next-to-airbnb-sharing-economy-problems>

²⁶ The total was 4 million overseas visitors to NSW and \$10.1 billion:

<https://www.destinationnsw.com.au/news-and-media/media-releases/nsw-makes-history-for-australian-tourism>

²⁷ <http://www.smh.com.au/nsw/irritation-index-will-sydney-pull-up-the-welcome-mat-to-tourists-20170720-gxexsl.html?deviceType=text>

²⁸ STHL has already expanded and is intensifying in locations like Mosman, Balmoral Beach, Kirribilli, Milsons Point, and Waverton. Apartments on the North Shore particularly those with harbour views are listed on Airbnb for up to \$2000 per night. North Shore Living, www.activenetworks.com.au

²⁹ Final Report of the Visitor Economy Taskforce a plan to Double overnight visitor expenditure to NSW by 2020:

http://www.industry.nsw.gov.au/__data/assets/pdf_file/0008/53684/VET_finalreport_20120810.pdf.

³⁰ See, for example, the suggestion officers (not councillors) of Randwick City Council that an amendment to the *SEPP (Exempt and Complying Development Code) 2008* should be adopted to achieve state-wide clarity as to the permissibility of this form of ‘residential accommodation’ to permit ‘small-scale, non-intrusive use of dwellings’ to be used for the purposes of providing short-term holiday accommodation, *Submission 114*. The submission makes no distinction between free standing dwelling houses and strata apartments and townhouses.

³¹ STHL is a type of *tourist and visitor accommodation*, which is a prohibited activity in residential areas. The definition of tourist and visitor accommodation means a building or place that provides temporary or short-term accommodation on a commercial basis and includes any of the following: backpackers’ accommodation, bed and breakfast accommodation, farm stay accommodation, hotel or motel accommodation, serviced apartments. STHL is clearly analogous to these activities, and was described as such by the Parliamentary Committee.

³² The same prohibition also exists in Mosman and Willoughby Council. There is widespread opposition to proposals to legalise STHL on Lower North Shore; see *North Shore Living*, January 2017, pp.15-17.

³³ https://www.northsydney.nsw.gov.au/Building_Development/Compliance/General_Compliance_Information/Tourist_and_Visitor_Accommodation

stated that notification is generally sufficient to bring illegal activity to an end. This Council played an important role in developing the jurisprudence that protects residential living and is aware of the impacts of STHL in strata communities.³⁴ **The protection of the North Sydney LEP should not be diluted or invalidated by any amendment to the SEPP that might make STHL (in any form) an exempt activity.**

31. The LEP provides us with the confidence that we can preserve the standards and reputation of our Estate and our concerns about public intrusion, costs, nuisance and security are understood. It enables us to have illegal STHL dealt with in a way that avoids personal conflict. Thus the existence of the LEP prohibition is playing an important role in containing the growth of STHL and preserving the reputation, values and standards of our residential Estate. This will not appear in any official statistics or show in complaints data because publicising the prohibition on our Estate is generally sufficient. Notification to Council also brings with it the risk of enforcement action.
32. Where STHL has been legalised it has required new enforcement units with limited success and new businesses selling STHL compliance monitoring services to city governments.³⁵ In North Sydney, it would be cheaper to identify a property than count nights across online platforms in Australia and overseas. This can be achieved more easily with the cooperation of Owners Corporations who may also use By Laws to contain STHL activity.

Legalising STHL - State-wide Definition

33. If STHL is legalised via a SEPP that overrides the LEPs there will literally be no-where that any of us could live free from STHL activity. It is extraordinary that any State Government would retrospectively remove from all property owners their existing rights to residential amenity protected by their LEP and By-Laws. This includes hundreds of thousands of strata owners in densely populated parts of Sydney who purchased their home on the basis that it was reserved for private residential living.
34. The proposal to adopt a State-wide definition of STHL originates from the City of Sydney Council perhaps because it has lacked the political will to enforce its own zoning laws. This approach is supported by several Local Councils and Local Government NSW has called for clearer rules.³⁶ To date their recommendations have made no distinction between single dwelling houses and residential strata schemes (apartments and townhouses) despite their central role in planning high density neighbourhoods.³⁷ The problems of the City of Sydney should not be exported to LGAs where STHL can be addressed by Local Council working with Owners' Corporations. Legalising STHL on the Lower North Shore will encourage its growth and spread across desirable residential neighbourhoods.
35. If STHL in private homes is declared an 'exempt development' Local Councils must retain power to:
(a) apply zoning restrictions to take account of local conditions (apply the principle of subsidiarity to avoid inconsistency with the SEPP); and (b) exclude STHL in the DA of a specific strata scheme where it might otherwise be allowed; (c) amend a DA to exclude STHL on application from the Owners

³⁴ For example, the Court of Appeal in the Blues Point Tower Case decided that the meaning of 'residential dwelling' encompasses a degree of permanent habitation absent from the use of apartments on a short term basis. The application for special leave to appeal to the High Court was unsuccessful and the law is settled on this point. *The Council of the Municipality of North Sydney v Sydney Serviced Apartments Pty Ltd* [1992] NSWLEC 43; *Graincorp Operations Limited v Liverpool Plains Shire Council* [2012] NSWLEC143

³⁵ For example, in San Francisco, the original home of Airbnb the persistent illegality and refusal to cooperate with the regulator who had tried to accommodate Airbnb has stimulated new compliance businesses <https://hostcompliance.com/> ; <https://hostcompliance.com/five-things-every-local-government-leader-needs-to-know-about-short-term-rentals>

³⁶ Local Government NSW, *Submission 197*, p.5, p.5.

³⁷ Existing planning laws already require Owners Corporation permission to operate a Bed and Breakfast in a 'dwelling house' that is subject to the *Strata Schemes Management Act 2015* (NSW), and the *Community Land Management Act 1989* (NSW); see Part 4A Division 1 Sub Division 1 - 4A.1 4A.2 of the State Environment Planning Policy (Exempt and Complying Development Codes) 2008.

Corporation; and (d) charge an occupancy levy on top of general rates.³⁸ This would retain some development control by Local Council to take account of local conditions and other development goals.³⁹ The NSW Government must also give explicit powers to Owners' Corporations to prohibit and restrict STHL in their own residential community.

36. **To be very clear - I do not support any changes that might be made that would effectively negate or amend the North Sydney LEP, which prohibits STHL in High Density Residential Zone 4.**

STHL and Planning Sydney's Development

37. The North Sydney Council cannot achieve population or housing targets or implement its residential development strategies unless it has control of the number, type and location of STHL activity.⁴⁰ North Sydney LGA already has the second highest dwelling density in NSW, with a high proportion of medium (25%) and high density (55%) dwellings within the LGA. It has a high level of private rentals compared to the Sydney Statistical Division. The dwelling occupancy rate is consistently over 90% - 94.23 in 2016 rising to 95.36 in 2036 – and it is an area of high population growth.⁴¹ We are also part of Sydney's 'global economic corridor'⁴² with pressure to develop more housing to meet the State Government's *Metropolitan Strategy*⁴³ to cater for a diverse population and support the generation of real employment in the commercial areas of North Sydney.⁴⁴
38. Despite this there is no analysis of how the growth of STHL will impact on the competing goals of population growth, housing supply and the generation of real jobs. The Parliamentary Report and the Options Paper promote a *laissez faire* approach and Destination NSW aims to double overnight tourist expenditure by 2020.⁴⁵ Meanwhile, it is the residents in high density residential areas and residential strata communities that will carry the increased impacts of STHL.

D. Definition of Short Term Holiday Letting and Residential Use

39. In October 2016, the Parliamentary Committee recommended that STHL should not trigger a change of use of a property because it is the same character as long term or traditional letting. If this were true the entire rationale for defining and zoning "tourist and visitor accommodation" would be rendered void. The Options Paper asserted that STHL is a "residential use" because the building in which it is taking place is a "residential dwelling", provided it does not reach a level where it might be regarded as a commercial activity.
40. All STHL sold via online platforms is the sale of holiday accommodation offered on the open market to the public for a commercial price. It is a transaction between unrelated persons through a broker. It is carried out on a commercial basis and is a type of "tourist and visitor accommodation" service.
41. From the real world perspective of residential strata living it is nonsense to focus on the type of building, whether the premises are a principal home (predominant use) or the number of nights that

³⁸ <http://www.abc.net.au/news/2017-08-18/airbnb-levy-considered-by-queensland-local-councils/8820252>

³⁹ North Sydney Council has delisted serviced apartments as a permitted activity in Zone B3 to ensure the commercial zone is not skewed toward tourist and short term accommodation to the disadvantage of developing commercial activities and employment. It should have similar controls in residential areas to prevent them from becoming commercialised by STHL.

⁴⁰ North Sydney Residential Development Control Plan 2013, supports the North Sydney Council's Residential Development Strategy to increase housing to cater for a diverse population and protect residential amenity.

⁴¹ For population figures see <http://forecast.id.com.au/north-sydney/population-households-dwellings>

⁴² <http://www.planning.nsw.gov.au/Plans-for-your-area/Sydney/A-Plan-for-Growing-Sydney/Highlights>

⁴³ NSW population is projected to be 9.9million by 2036 and 70 per cent of all newly approved dwellings will be apartments.

⁴⁴ See analysis of population drivers and the need to balance commercial and employment growth with an increase in housing to accommodate population growth. <http://forecast.id.com.au/north-sydney/drivers-of-population-change>

⁴⁵ See *Final Report of the Visitor Economy Taskforce a plan to Double overnight visitor expenditure to NSW by 2020*: http://www.industry.nsw.gov.au/__data/assets/pdf_file/0008/53684/VET_finalreport_20120810.pdf

STHL is capped. Characterising STHL as a “residential use”, or “ancillary to a residential use” promotes the fallacy that in residential strata communities the repeat temporary occupation for 60 or 90 nights a year of a rotating number of strangers is “low impact” and “non-intrusive”.

42. Randwick Council, for example, has proposed that STHL be aligned with other exempt commercial activities permitted under the SEPP (home businesses, home industries, and home occupations).⁴⁶ While this acknowledges that STHL is a commercial activity - STHL is not entirely analogous to other home businesses for the simple reason that STHL is not contained within the home. In residential strata communities the exploitation of “resort style” facilities is integral to the STHL in locations like ours. It intrudes on all owners without their consent and externalises the costs to Owners’ Corporations and Community Association.
43. Just because an apartment block is residential does not mean that STHL occupants who lease an entire apartment or one or two bedrooms for a few days or weeks are ‘residents’. This is of fundamental importance to owner occupiers in the strata context.
44. **STHL in any form in residential homes is not a residential use for the simple reason that the short term lessee has no intention of using the premises as his/her usual place of abode – they live elsewhere.**
45. There is a long line of jurisprudence on the meaning of ‘resident’ in the planning law context.⁴⁷ The meaning of resident has also been subject to detailed consideration by the Federal Court in the context of taxation: *Marana Holdings Pty Ltd v Commissioner of Taxation*.⁴⁸ In June 2017, the full bench of the WA Court of Appeal in *Byrne v The Owners of Ceresa River Apartments Strata Plan 55597* [2017] WASCA 104 applied this well established jurisprudence in the context of strata law and upheld the validity of a by-law that prohibits STHL. As Lord Denning MR observed in *Fox v Stirk & Bristol Electoral Registration Officer*: ‘a guest who comes for the weekend is not a resident. A short-stay visitor is not a resident’.⁴⁹
46. These distinctions are also well understood by the insurance industry that regards STHL as a commercial activity and does not provide coverage for STHL in Landlord Insurance Policies. The Insurance Council of Australia has also clarified that strata insurance policies do not cover activities of a commercial nature.⁵⁰
47. The financial implications for insuring a scheme with an uncontrolled number of STHL operators and STHL ‘guests’ in a tiered community development such as ours is being investigated. Each of the three schemes has common property including lifts and car parks and garden areas. The Estate as a whole owns and operates three swimming pools, a gymnasium, a sauna, spa, several tennis courts – none of these have been approved by North Sydney Council for commercial use. The Owners’ Corporations are not incorporated bodies and have unlimited liability – a fact not widely understood by many strata owners in NSW.⁵¹

⁴⁶ The Codes SEPP permits certain home businesses, home industries, and home occupations to be carried out as exempt development (see Subdivision 22 of Division 1 of Part 2 of the Codes SEPP, cited *Randwick Council, Submission 114*, p.3)

⁴⁷ See for example, *Graincorp Operations Ltd v Liverpool Plains Shire Council* [2013] NSWCA 171.

⁴⁸ See for example, *Marana Holding Pty Ltd v Commission of Taxation* [2004] FCAFC 307; (2004) 141 FCR 299 [18]-[33]; *Graincorp Operations Ltd v Liverpool Plains Shire Council* [2013] NSWCA 171.

⁴⁹ *Fox v Stirk & Bristol Electoral Registration Officer* [1970] 2 QB 463, 475.

⁵⁰ Insurance Council of Australia, *Submission 150*, p.2.

⁵¹ Hosts listed with Airbnb have recourse to limited ‘protection’ for damage to their home but it excludes cover for shared or common facilities.

Implication of Treating STHL as Residential Use

48. Redefining STHL in residential areas as an exempt “residential use” and treating STHL occupants as “residents” in residential strata communities has several implications:

- It misses (a) the inherently commercial nature of STHL (b) the significance of multiple STHL in a single community and (c) the unique local conditions specific to buildings and common property.
- It puts STHL holidaymakers, tourists and visitors on an equal legal footing with genuine residents. This would entitle STHL holidaymakers to hire Function Rooms and the use of other facilities on the same basis as genuine residents and enable them to bring their own friends onto the Estate.
- It avoids all regulatory standards applicable to other tourist and visitor accommodation operations - public health and safety, insurance, fire regulations, taxation and anti-discrimination laws.⁵²
- It ignores the fact that residential strata developments are not designed with STHL in mind. The placement of outdoor swimming pools immediately adjacent to residents’ private homes, for example, assumes normal residential use. It is reasonable to expect residents to moderate their activity and be aware of their acoustic environment. It is not a public pool or hotel pool.⁵³
- It ignores the reality that STHL is a different activity from the normal activity of day-to-day residential living. The normal pattern of daily life include periods of serious ill health, death and grief, new babies and work day stresses, the demands of family life, enjoyment with one’s own friends, the need for uninterrupted sleep, shift work, and the need for respite in gardens, the spa or pool away from public gaze. Inserting STHL consumers into this mix is an unwelcome intrusion into other peoples’ privacy and sense of home.
- It ignores the fact that STHL occupants have no long term interest in the maintenance of the amenity within the buildings or the surrounding area. They do however have an immediate interest in extracting value for money and making maximum use of all facilities especially recreation facilities during summer months and holiday periods. This is a natural consequence of STHL – when we travel we want to enjoy our environment. When we are at home we need to be able to go about our normal day to day activities.
- It ignores the significant research on crime in high-density strata-title vertical communities which provides irrefutable evidence that the highest rates of ‘residential crime’ occurs in strata communities where there is a mix of tourists with permanent residents.⁵⁴

49. In responding to STHL via companies like Airbnb and Stayz, the NSW Government must do more than use zoning laws to legitimise the activities of ‘hosts’ (landlords). It must attend to these deeper social and legal issues, and respect the interests of the majority of residential strata owners.

50. The legalisation of STHL goes to the heart of strata ownership. It takes the control and management of buildings, car parks, grounds and recreation facilities out of the hands of Owners’ Corporations:

⁵² In a recent fire emergency many residents failed to leave their apartments, several used the lift, and dispersed to unsafe locations close to the building instead of the official assembly point. There is also poor access for the fire brigade and no legal duty for fire wardens or drills.

⁵³ In a hotel environment this is less important because all visitors are there for the same purpose. In fact, most hotels are able to provide quieter rooms – an option that is not available to a permanent resident in a private lot.

⁵⁴ Michael Townsley et al, *Crime in High-Rise Buildings: Planning for Vertical Community Safety*, Criminology Research Advisory Council, June 2013.

- neither this Scheme nor the Local Council will be able to control how many premises are used for STHL or prevent the character of facilities changing over time;
- we would not be able to monitor or control who is given keys and provided with access to roam across our Estate, or put any limits on STHL activity even to mitigate rising costs;
- we would have no control at all over how many tourists and unaccompanied visitors invade our recreation facilities, secure car parks, swimming pools or tennis courts and gymnasium on the weekends and over holiday periods. **Yet these people will have the same rights as genuine residents and owner occupiers to the use of these facilities. This is a ridiculous and an outrageous proposition.**

E. Regulatory Options – Reliance on Self-Regulation and Capped Night or Consecutive Days

51. The Options Paper's approach to regulation of industry standards prioritises self-regulation via a Voluntary Code. There is no in depth consideration of competitive neutrality or consumer protection. The existing Holiday Rental Code of Conduct is unknown to most people in NSW.⁵⁵ It has been in existence for 5 years, never been evaluated and provides us with no confidence that it has had or has the potential to provide effective controls.⁵⁶ It is also likely to be inconsistent with the wishes of NSW Owners Corporations who must be free to prohibit or restrict STHL and impose terms that may conflict with such a Code.
52. It is unclear how or why such a Code would apply to companies like Airbnb or why Airbnb or other online platforms would be a participating organisation. STHL is dispersed 'peer to peer' commercial activity spread across Sydney suburbs - hosts have no entry requirement and are not required to be members of a professional association.⁵⁷ If Airbnb is to be believed they are simple Mums and Dads, struggling to make ends meet and just sharing their home. Platforms like Airbnb take no responsibility for licensing hosts, ensuring legality of the STHL, security or safety, or the quality of consumer experience. It lacks self-enforced consumer standards and the reputational mechanism is untested. In any event, such tools are known to be vulnerable to bias, misleading statements, and adverse reviews may be removed or hidden.⁵⁸
53. Applying this type of feedback mechanism to a home environment is completely different to an eBay transaction which is a straight forward sale of goods. In the residential environment there is a cultural predisposition not to leave adverse remarks about the home of a stranger/host and in most instances no review is left at all.⁵⁹ In residential strata communities there are multiple parties – other co-owners or common property. My property is implicated in the transaction but I cannot publicly comment on an STHL occupant (or the host) and find it offensive to be told by X that our 5 Star Facilities lived up to their expectations and that they will return.
54. In any case, as Gurran and Phibbs point out, voluntary and market regulation misses many of the concerns of clustering tourist services, traffic, parking, waste, **building design** to attenuate noise and privacy, fire, safety and emergency, levels of occupancy and overcrowding.⁶⁰ These are critical issues in residential strata communities where buildings and grounds are designed for permanent

⁵⁵ The Code belongs to the Holiday Rental Industry Association, which after 5 years is still 'establishing itself', it has poor transparency, no complaints mechanism and appears to be a very weak 'institution': <https://sites.google.com/hria.com.au/stra/home?page=Code>

⁵⁶ <https://www.echo.net.au/2017/08/holiday-letting-woes-will-get-bigger/>

⁵⁷ Companies like Airbnb are not members of Tourism Accommodation Australia and the Accommodation Association of Australia.

⁵⁸ Australian Competition and Consumer Commission, Deloitte Sharing Economy Report, 2015; accessible at: <https://www.accc.gov.au/system/files/Sharing%20Economy%20-%20Deloitte%20Report%20-%202015.pdf>

⁵⁹ See also Quartz Magazine, accessible at: <https://qz.com/410264/you-should-never-trust-an-airbnb-review/>

⁶⁰ Gurran, July 2017, *When Tourists Move In: How Should Urban Planners Response to Airbnb?* Journal of the American Planning Association, p. 80-92.

residential living. This is not the Gold Coast where apartment buildings have been built for holiday letting and investment is encouraged for that purpose.

Regulatory Limits – Effectiveness of Capped Night or Consecutive Days

55. The Options Paper also canvasses possible limits on STHL via ‘capped nights’ or ‘consecutive days’. These regulatory tools are based on economic modelling aimed at returning apartments to the residential market while getting the claimed economic benefits to the city.⁶¹ These measures do not address the concerns of residential strata communities, including:

- (a) legal status of the STHL occupant and unrestricted access to common facilities;
- (b) immediate impact of STHL because of the proximity of apartments;
- (c) cumulative impacts of disaggregated activity by multiple operators in a single scheme;
- (d) financial impacts because of increased people traffic and use; or
- (e) security and safety as keys give tourists access to car parks, a marina and facilities next to private homes.

56. It also ignores the global experience of systemic non-compliance with even modest regulation:

- It is common for STHL to be listed on multiple platforms to maximise visibility and take reservations from multiple sources. This also makes it easier to evade booking limits.
- It is known that some ‘hosts’ advertise ‘home hosted STHL’ but actually vacate or get ‘guests’ to tell neighbours they are personal friends of the regular occupant.
- Repeat STHL visitors enter private transactions for cash without going through online platforms;
- Hosts can delist and relist under a different name to evade booking limits. Booking platforms like Airbnb have strongly resisted their obligations to enforce booking limits.
- Airbnb has a record of non-cooperation and resists disclosure to authorities.⁶² It will not disclose identifying information to an Owners Corporation.

57. These are **known patterns of behaviour** and this reality makes monitoring and enforcement more complex than a simple prohibition that can be enforced without lengthy monitoring.

58. From a strata management point of view there is no way of knowing how to deal with the situation of multiple STHL operators/hosts engaged in different types of STHL and each using different bookings platforms to take reservations from anyone anywhere in the world. Who is going to keep count? The stress of managing this activity will be carried by voluntary strata committees and neighbours, left to ‘police’ STHL creating a source of conflict; locking STHL trespassers out and increasing body corporate fees.

F. By-Laws Prohibiting Short Term Holiday Letting

59. It is not surprising that **hundreds of strata schemes have passed By-Laws that prohibit STHL** on their Estates.⁶³ These By-Laws are an unequivocal statement of the majority.

⁶¹ *Amending the Regulation of Short-Term Residential Rentals: Economic Impact Report*, Office of Economic Analysis, County of San Francisco, 2015.

⁶² In San Francisco, the Attorney General has had to take formal legal proceedings against Airbnb to force them to comply with local regulation.

⁶³ It is possible that this figure is in the thousands. I am informed that Jacksons Landing Community Association, which incorporates 27 strata schemes have unanimously voted to prohibit STHL.

60. Many residential strata communities have been dissuaded from passing such By-Laws because unqualified and dubious advice has been provided by strata managers. The assertion by the Government that such By-Laws are invalid exceeds the proper limit of Executive Power. There is no Supreme Court judgment on point in NSW. Tribunal decisions have no precedent value. *Esten v Owners Corporation SP 11825* [2017] NSWCATCD 52, which was not decided until 6 July 2017, is of such poor quality as to be embarrassing to NSW.
61. **The NSW Government knows that if given a choice the vast majority of owner occupiers and strata investors will choose to prohibit STHL.** This is not due to some aversion to sharing – these people have a right to preserve their residential environment. They also understand the real impacts of STHL on residential amenity and the costs of strata management and capital works.
62. The Government should now reconsider its public assertions about the invalidity of By-Laws in light of the WA Court of Appeal Judgment in *Byrne v The Owners of Ceresia River Apartments Strata Plan 55597* [2017] WASA 104. In that case, the Court of Appeal upheld a By-Law prohibiting STHL on a luxury Estate. The Court applied the well-established jurisprudence on what it means to be a *resident* and *residential use*, namely, that use turns on the intention of the person in occupation to use the apartment as a permanent or semi-permanent place of abode and not on the type of building.
63. Importantly, the Court held that the By-Law did no more than limit the length of leases to ensure that leasing on the Estate was for a residential purpose. The By-Law was held to be within the power to make By-Laws for the management, administration, control, use or enjoyment of the Lots and common property and was intended to preserve the reputation and values of the Estate.⁶⁴
64. Significantly, the appellants failed in their efforts to rely on the assertions of NSW Fair Trading and the purported ‘findings’ of the NSW Parliamentary Report that identical provisions in NSW *Strata Schemes Management Act 2015* (NSW) prevent such By-Laws because they are an unlawful interference with the Lots owner’s right to deal in the property.⁶⁵ **During the Parliamentary Inquiry, the Department of Premier and Cabinet submission cited no authority for that proposition because there is none.** In any case, that provision was intended to give banks confidence when granting mortgages. It was not intended to enable owners to subvert the applicable LEP or DA for a residential building and such an interpretation would be absurd.

Future Role of Owners’ Corporations

65. In broad terms, Owners Corporations have obligations to make By Laws that:
- promote the safety and security of the owners and residents;
 - prevent unreasonable interference with the enjoyment of common property and private Lots;
 - preserve the reputation, values and standards of the Estate for the community as a whole.
66. The entire rationale of the *Strata Scheme Management Act 2015* (NSW) and the *Community Land Management Act 1989* (NSW) is to enable owners to achieve these purposes. The management of a tiered community development is more complex than a single small strata scheme. It requires cooperation across multiple owners’ corporations - all of them are voluntary organisations.
67. If NSW legalises STHL indiscriminately across all residential areas Owners’ Corporations will have to be able to make By-Laws on a building by building basis and in relation to use of facilities on their

⁶⁴ Equivalent NSW provision is section 136 (1) of the *Strata Schemes Management Act 2015* (NSW).

⁶⁵ Equivalent NSW provision is section 139 (2) of the *Strata Schemes Management Act 2015* (NSW)

own Estates. It will be the only way a residential strata community can act to protect the interests of its owners and to preserve the reputation, value and standards of their own Estate.

68. This issue is not unique to NSW or Australia. In Canada, condominium councils have been passing STHL By-Laws without interference from government.⁶⁶ In places as diverse as Las Vegas and Brussels local authorities cannot license a STHL without proof of permission of the condominium council/building owner/commune.

Legalisation of STHL and Amendments to Strata Laws

69. If STHL (in any form) is legalised in residential strata communities there should be cognate amendments to the *Strata Schemes Management Act 2015* (NSW) and *Community Land Management Act 1989* (NSW) to provide an express power to pass By-Laws prohibiting or restricting STHL. This must include the power to exclude STHL occupants from common facilities such as gymnasiums, tennis courts, swimming pools or a marina and from hiring our jointly own Residents' Apartment, a Function Room, BBQ or any facility managed on behalf of all Owners. The legal status of a STHL occupant must be defined to distinguish that person from a genuine resident owner or tenant.
70. Reforms that establish registration and/or licensing must apply equally to all types of STHL. The express permission of the Owners' Corporation via a Special Resolution should be a precondition to registration/licensing. In a tiered community development that permission should be agreed to by all the Owners Corporations and the Community Association.
71. In my opinion, residential strata communities that have already passed By-Laws prohibiting STHL should be grandfathered. The *Strata Schemes Management Act 2015* (NSW) should provide that STHL may only be permitted by an Owners Corporation if there is 100% vote of all unit entitlements in favour. In the absence of this type of protection there is a danger that a motivated 25% voting entitlement could defeat the majority view. This vote can be cast by investors who do not live in the community and has been used to defeat By-Laws in some highly affected schemes.⁶⁷ In small schemes even a single owner occupier may carry more than 25% of the vote.
72. It should be noted that development standards for a Bed and Breakfast (defined as a house with less than 4 guests bedrooms) already requires that if the "dwelling house" is subject to the *Strata Schemes Management Act 2015* (NSW) or the *Community Land Management Act 1989* (NSW), it must have the prior approval of the owners corporation.⁶⁸ In other words, NSW planning law already recognises that STHL in a strata scheme engages the rights and interests of all Owners. The case for subjecting STHL in an apartment to the same regime is self-evident. It would be inconsistent to require a townhouse to obtain permission but not require the same of an apartment.

G. Three Forms of STHL – Entire Apartments, Owner Vacation and Home Hosted

73. This section comments on three types of STHL canvassed in the Options Paper.

i. Entire Apartments – Deregulation of the Serviced Apartment Sector

74. Permitting entire apartments to be used for STHL in strata communities would legalise STHL commercial activities in our homes and is a deregulation of the serviced apartment industry. In this location the ability to command high prices makes any cap on nights or consecutive days irrelevant.

⁶⁶ <https://gowlingwlg.com/en/canada/insights-resources/what-to-do-when-airbnb-moves-into-your-condominium-complex>. In Vancouver a condominium is taking legal action against Airbnb: *Vancouver condo council development anti-airbnb strategy*, The Globe and Mail, 22 October 2017.

⁶⁷ The new restriction on proxies being limited to 5% of the unit entitlements will not be sufficient to prevent this from happening.

⁶⁸ See Part 4A Division 1 Sub Division 1 - 4A.1 4A.2 of the *State Environment Planning Policy (Exempt and Complying Development Codes) 2008*.

The market for luxury STHL and corporate STL is growing and is an incentive to STHL for investors or second home owners on a luxury Estate.⁶⁹

75. NSW planning law defines a “serviced apartment” as “tourist and visitors accommodation”. This is a prohibited use under the North Sydney LEP Residential Zone 4 area. There is a serviced apartment sector that is appropriately zoned and managed.⁷⁰ The underlying rationale for the existing regulatory framework remains sound. There is well-respected judicial authority that STHL is incompatible with residential living.⁷¹
76. The use of entire apartments for STHL in areas zoned residential is totally unacceptable. It turns residential buildings into hotels/guest houses and is a violation of the rights of all property owners to residential amenity, and security. In most instances STHL owners do not meet the consumer– keys are left in key locks; there is no control on the turnover; the number of occupants or the identity of the person (s) entering our property. New unlicensed agents offer to create a ‘hotel’ like standard – providing styling, cleaning, airport transits and tourist information.⁷² They have unfettered access to buildings and hand keys to innumerable strangers and their friends.⁷³ There is no notification - residents are confronted with complete strangers, Security Staff are exposed to increased risks; and Estate Management and Owners’ Corporations have no knowledge of who is in occupation.
77. The failure to enforce zoning laws has allowed the growth of a black-market of illegal serviced apartments in Sydney. In the meantime, North American cities either have an outright ban on letting an entire apartment for less than 28/30 days or have restricted STHL to primary homes.⁷⁴

ii. Owner on Vacation STHL – Financial Incentive to Vacate for a Tourist

78. Legalising STHL by owners on vacation creates a financial incentive to vacate your own property for a tourist while being paid to go on holiday and to maximise that period. It is common to see listings that offer a spare room OR an entire apartment to maximise letting opportunities. The high market price commanded by STHL in desirable locations is an incentive, especially for families, to vacate their apartment so as to go away on their own holiday. This is not housesitting or home sharing.
79. **During Christmas and New Year our Harbour-side location and outdoor facilities make us an ideal place for a Sydney family holiday. There is no “sharing” involved– the owner vacates, leaving other residents, the Estate Manager and Security Staff to deal with people in a holiday mood enjoying our outdoor pool, while we try to go about our normal day-to-day living. This is NOT a holiday resort.**
80. The proposal that Owners’ Corporations would be given ‘additional powers’ to manage the ‘behaviour’ of holiday makers is an insult. In any case, By-Laws already apply to all ‘occupants’ and the proposed changes in the Options Paper are weak and disingenuous. The expectations, acoustic awareness and activities of STHL visitors are generally different to the usual pattern of day to day living. In any event, as residents in a strata community we are expected to be ‘reasonable’, especially if children are involved. I don’t want a holiday apartment next door and nor do the majority of my

⁶⁹ The STHL of empty apartments has even been promoted to overseas investors as a way of avoiding Federal Vacancy Tax <https://www.domain.com.au/news/experts-raise-concerns-about-efficacy-of-scott-morrison-empty-property-tax-as-overseas-investors-offered-loop-hole-20170516-gw6c0o/>

⁷⁰ In Berlin leases for less than 30 days are prohibited with hosts fined \$100,000.

⁷¹ *Council of the Municipality of North Sydney v Sydney Serviced Apartments Pty Ltd* [1992] NSWLEC 43;

⁷² Example: <https://www.kozyguru.com/>

⁷³ <https://madecomfy.com.au/sydney-short-term-rentals/?gclid=CPf13v6BwtYCFY4DKgodVpEMeg>

⁷⁴ In New York there is an outright ban on advertising any apartment for rent for less than 30 days. In San Francisco an owner cannot register a unit for STHL unless s/he has lives in the unit for 275 days (90 days). In Vancouver it is illegal to list any residence that is not a primary residence. Seattle and Denver have a primary residence rule. Toronto has moved to the primary residence rule.

neighbours. I will not tolerate a free for all in an outdoor swimming pool - this is a residential community not a hotel, or caravan park with motor homes in our visitors' carparks.

81. In one Airbnb advertisement a two bedroom apartment on this Estate was promoted for family holidays for five people at \$800 per night, with a photograph of our residential swimming pool which is immediately adjacent to my private home. This family were overseas before final settlement. They were moving on and had no interest in the impact on other people. In fact, their advertisement was titled ***My Place, You'll Love My Place!! My place has 'resort style facilities'***. The North Sydney Council was notified. If NSW legalises this exploitation of my home I will be unable to do anything about it.
82. Powers to deal with 'unruly holidaymakers' are meaningless when: (a) dealing with multiple STHL consumers over a holiday period (b) the difficulty of identifying people/STHL property; and (c) only available AFTER my privacy has been invaded and my property right to use and enjoy my own home (incl. the balcony) and common property has been violated and the visitors have left forever.
83. In housesitting the relationship is reversed – the home owner 'buys' the house-sitters services of taking care of the home and pets in return for free accommodation. Genuine house sitting provides no financial incentive to re-organise life to include extended periods of absence. House-sitters generally have references and depend upon their reputation.

iii. Hosted Home STHL in Strata Schemes – Multiple Guest House/Bed Breakfast

84. The proposal that 'home-hosted STHL' be permitted for 30, 60 or 90 nights fails to recognise the effects of operating a guest house/ B&B within a strata building. It involves strangers coming and going, day or night, any day of the week, appearing in our buildings, shared car parks, gardens, tennis courts and swimming pools. **Even a 60 night cap means tourists for 30 out of 52 weekends.**
85. The **cumulative effects** of multiple 'home-hosted STHL hosts' has been given no thought:
 - There is no proposal in the Options Paper to place any limits on the number of apartments that may be used for STHL across an entire Estate, or even to limit the number in a single building.
 - If even 10 out of 300 apartments on my Estate in North Sydney conducted 'home hosted' STHL for 90 nights in a single year we would have 900 nights of STHL holiday makers/visitors on our property. That is an unreasonable burden to place on any residential strata community.
 - There is nothing to stop a home-hosted STHL operator also taking advantage of "vacation" STHL. I could easily home host for 60-90 nights and let the whole apartment for 60-90 days of year.
86. Legalising STHL provides a financial incentive to maximise STHL opportunities. Proposed caps of 90 nights is effectively full time STHL turning our Estate into a luxury B&B holiday destination.
87. Home hosted STHL is not equivalent to having one's own friends or family visit or stay for short periods. The STHL is sold on the basis of our 'resort style' facilities and location. It is a frequent repeat transaction with multiple different strangers. The STHL visitor enjoys our private recreation facilities on an equal footing to owners and other residents. This is a patently absurd situation.
88. This is a private residential Estate. The By-Laws require that a visitor must be accompanied by a resident when on common property. I will not accept that STHL holidaymakers have the same rights as I do to use our facilities or access other parts of the common property such as open green spaces,

the car parks or the marina. Nor will I accept that I must accompany my friends and family, while a fee paying tourist has the right to freely roam across common property AND use facilities at will.

iv. Subletting for STHL by Residential Tenants

89. In some countries tenants are permitted to STHL their apartments with the permission of their landlord. Under no circumstances should residential tenants be permitted to STHL their apartment in part or whole at any time. This would turn most residential Estates into a living nightmare.

90. I will not be forced to put up with the intrusion of strangers while residential tenants, who have no financial or legal responsibilities for Estate management, exploit strata property they do not own.

H. Conclusion and Recommendation

91. I disagree with and reject the definition in the Options Paper that STHL is a residential use of a dwelling. All STHL is short term accommodation for tourists and visitors offered to the public on the open market for a commercial price. It is a repeat commercial transaction facilitated by a third party.

92. I disagree with and reject the assumption in the Options Paper that STHL is acceptable in residential strata communities unless it reaches a particular level of intensity:

- STHL occupants are not residents and their use of the property is not for a residential purpose;
- the interests and activity of STHL occupants is different to the daily living of real residents;
- the cumulative social and financial impacts of multiple STHL operators/ hosts in a residential strata community has not been accounted for nor considered in the Options Paper;
- the presence of STHL occupants is an invasion of privacy and an intrusion into our home environment. It increases security risks for residents and their property; increases wear and tear; and exploits jointly owned property for the private profit of an individual and agents like AirBnB.

93. I reject the proposition that STHL occupants in residential strata communities should have the same legal status as genuine residents. It is totally unreasonable as a matter of public policy to expect any owner or tenant to accept that STHL tourists are entitled to use our gymnasium, tennis courts, swimming pools or spa or to roam at will across our common property. The current proposals would enable a STHL occupant to bring their own friends to our property and even to hire a Function Room.

94. It is for these reasons that I do not support any changes that might be made that would effectively negate or amend the North Sydney LEP, which prohibits STHL in High Density Residential Zone 4.

95. If STHL is legalised in residential areas then NSW Local Councils must retain the power to (a) exclude any STHL from any residential zone; (b) exclude STHL in a specific DA; and (c) control the number of STHL operators/hosts in a specific location. All STHL should be registered and licensed. The registration and licensing of all types of STHL in a residential strata community should be subject to the permission of the Owners' Corporations via a Special Resolution.

96. There should be a significant civil fine imposed directly on "hosts" for breaching the regulatory limits. Online platforms like Airbnb and Stayz must be required by law to disclose identifying information on demand by the relevant Local Council or State run Register, with significant fines for non-compliance.

97. In the case of residential strata communities - there should be no amendments to the SEPP that enables an entire apartment to be used for STHL. Nor should the SEPP permit a principal strata home to be turned over to STHL for monetary consideration during the vacation of the owner. Home hosted STHL should be limited to 'minimum 30 consecutive days' *per annum*.

98. The *Strata Scheme Management Act 2015* (NSW) should be amended to ensure that:

- NSW Owners Corporations have the power to prohibit entirely and restrict STHL. This includes exclusion from Function Rooms and recreation facilities approved for the exclusive use of residents and their private guests; and the power to impose additional levies agreed to by by-law to cover additional costs and a bond to cover infringements.
- There is a statutory obligation to disclose to the Owners' Corporation where there is an intention to advertise their property for STHL and a requirement to obtain permission.
- The number of STHL hosts/operations in a single scheme can be limited by the Owners Corporation. That means they will have to develop systems, databases and management reporting procedures. The cost of this administration must be borne by the STHL owners.

99. No individual owner can have confidence about their own privacy, amenity or the value of their apartment and no sensible purchaser would buy an apartment with STHL activity occurring in the building or elsewhere in the scheme. Therefore, the presence of STHL in any residential strata community must be discoverable in a Strata Report by any prospective buyer.

100. In summary, the NSW Government should NOT adopt a policy that would:

- force strata owners to accept STHL on their Estates and grant STHL occupants the same legal status as genuine residents;
- generate additional costs imposed on all strata owners driving up body corporate fees affecting affordability and value;
- threaten the amenity, peaceful enjoyment, personal safety, and security of our home;
- undermine the reputation, value and standards of Estates by denying Owners' Corporations the powers to properly manage the use of the Lots and the of common facilities;
- undermine the attractiveness of strata living and investment in strata property;
- increase suspicion, stress and resentment on private Estates, damaging social cohesion and causing more tension and conflict between residents;
- expose any tourist to the risk of hostility as they unwittingly intrude into the home environment or use shared facilities at times when genuine residents are going about their day to day life.⁷⁵

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Wondakiah Estate Wollstonecraft NSW 2065
31 October 2017

⁷⁵ <http://www.smh.com.au/nsw/irritation-index-will-sydney-pull-up-the-welcome-mat-to-tourists-20170720-gxexsl.html?deviceType=text>

Strata Committees

Community Association



Chairperson Stage 1

P. D. DAWSON



Chairperson Stage 2

G. D. HAINES



Chairperson Stage 3

H. MILLER



CA Rep Stage 1

BRIAN MARTIN



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