



ALTAIR

Strata Plan 64622

3 Kings Cross Rd

Rushcutters Bay,

NSW 2011

18 September 2017

Matt Kean
Minister for Innovation and Better Regulation
NSW Government
cc. NSW Premier; Minister for Planning.

Response to Short-term Holiday Letting (STHL) Options Paper

Dear Director,

I write as Chair of the Altair Strata Committee to provide feedback to the STHL Options Paper recently published by the NSW government. Altair is a residential apartment building of approximately 140 homes for around 250 residents in Kings Cross Rd, Rushcutters Bay. We are close to a train station and multiple bus stops, surrounded by restaurants, pubs, clubs and bars and are within comfortable walking distance of the CBD.

This is Strata land. Well over 95% of all residents in Rushcutters Bay and neighbouring Darlinghurst and Potts Point live in Strata plans. We understand that recent government statistics show that there are now over 100 suburbs in Sydney which have over 50% of residents living in Strata plans.

These Strata plans are at great risk of having control of their amenity swamped by STHL.

At Altair, we have long recognised this risk and have had by-laws in place for over 15 years regarding STHL (updated in October 2016). We police these by-laws stringently.

We do not have an opinion on the use of STHL in free-standing, individually owned homes, and have no wish to interfere with their owner's possible rights or actions. We are uniquely concerned about the potential impact of STHL on Strata living.

The original 'Adequacy of Short Term Holiday Lets in NSW (STRA)' report tabled in parliament in October 2016 acknowledged that 'Strata is different' but then did little to address this situation. The current Options Paper also notes that 'Strata properties have different requirements to detached properties' and accordingly makes two recommendations (10 & 11) specific to Strata.

We believe these recommendations are weak for Strata and self-serving to the STHL industry.

Recommendation 10; Suggests that Strata Committees be given some extra retrospective powers to address problems after the fact and...

Recommendation 11; Suggests that the situation regarding STHL in Strata plans be re-visited three years after any legislation relaxing STHL in NSW is enacted.

We believe that Recommendation 10 will fail as it assumes that Strata plans are commercial enterprises with full-time, possibly even 24/7, staff that can be deployed to respond to these issues as they arise. This is not the case.

The Recommendation completely ignores the reality that Strata plans are run by unpaid volunteers who are in many instances already stretched by the necessary duties required under NSW law to properly run a Strata scheme. Recommendation 10 would exacerbate workloads.

We suggest that Recommendation 11 would be significantly improved by amending it so that Strata is exempt from any changes to the laws regarding relaxation of STHL in NSW for three years. This approach would enable a review of the impacts on the simpler ownership and more easily controllable environments of free-standing dwellings to achieve a proper and thorough assessment of any law changes before addressing the vastly more complex Strata issues.

Our Previous Submissions

We wrote a submission to the parliamentary committee investigating STHL in NSW (22 October 2015, acknowledged in the subsequent report) asking that Strata plans continue to be able to make their own decisions regarding the application of STHL in each individual Strata plan.

After the October 2016 report, we again wrote (27 October 2016) and requested that Strata plans should be able to make their own decisions regarding STHL. This approach is briefly alluded to, but not addressed, in the Options Paper. The failure to explore this logical and democratic solution for STHL in Strata is a fundamental weakness of the Options Paper.

Strata Plans are very different to free-standing properties.

- A free-standing home is generally owned by an individual or a family. Within reason they should be able to deal with that property as they wish subject to the law, council regulations and respect for their neighbours. NB. They do not have the unfettered right to do whatever they like with that property...and this has never been the case.
- Within a Strata plan an apartment owner effectively owns a hole in the air. Within their apartment they own the carpets, the paint on the walls and their chattels. The surrounding walls, floors, ceilings, balconies and windows are collectively owned by the Owners Corporation of the Strata plan. These, the land and the building are common property as are the jointly used and community funded foyers, entrances, lifts, stairwells, gardens, gyms, pools etc.
- A free-standing building may be owned by an individual owner or family... an individual who is responsible for making decisions about that building.
- A Strata plan building is jointly owned by the Strata plan community (the Owners Corporation) ... a community that is responsible for making decisions about that building.

1. Strata invented the Sharing Economy.

Long before Airbnb or Stayz or Uber were conceived the owners of Strata plans have been planning for and operating shared buildings and facilities. Owner Corporations and Strata Committees have decades of experience successfully managing the resources of the Sharing Economy of their Strata plan and should be allowed to continue to do so.

2. Strata plans are governed by Strata Committees. By order of the NSW government.

In 1961 Strata plans were invented in NSW. The NSW government mandated that each Strata plan be collectively owned by an Owners Corporation and that it be 'governed' by an Executive Committee (now Strata Committee). There are strict rules relating to how Owners Corporations and Strata Committees operate. Strata plans are run under legally mandated, democratic principles and are effectively the fourth level of government in Australia.

3. Rules made by the people; for the people.

Strata plans are owned and run by communities not individuals. Strata Committees are tasked with creating, managing and policing their own rules...rules designed for that unique Strata plan and decided by the owners of that unique Strata plan.

4. Shutting the stable door after the horse has bolted

Every remedy that is promulgated in the Options Paper to the myriad potential issues of STHL in Strata is retrospective. It assumes that each Strata plan has ready access to professional help over and above their Strata manager with all the concomitant legal and financial implications. Airbnb's dispute resolution plan also requires action after the event. The Options Paper alludes to resolving issues, often involving now departed guests, by recourse to NCAT.

The reality is that NCAT is not effective in Strata matters; it has no relevant expertise (no specialist Strata mediators); a work-load that defies quick or easy access and crucially no ability to enforce decisions once made. This creates a farcical 'catch-22' where to enforce an NCAT decision we have to go to the District or Supreme Court but neither the District nor Supreme Court

will hear a Strata case until it has first been heard at NCAT...and we can advise from direct experience that this combined process is tortuous and expensive (currently we have a Strata action still running at 5+ years and counting...and over \$150,000 in fees).

5. Unmanageable, Unfair and Utterly Unreasonable.

Strata Committees are unpaid volunteers. The workload for properly conducted Strata Committees is ever increasing; in large schemes, it requires a level of professional expertise. The core tasks of Chair and Secretary are serious part-time jobs such that they are often and necessarily performed by retired owners. I conservatively calculate my workload as Chair at 15 hours per week. Management of STHL will only add to that load.

The vast majority of Strata plans do not have concierges and or full time building managers; so who will manage the unknown guests. Who will manage party noise, damage and resident amenity issues, inevitably at 3 o'clock in the morning? It is utterly unfair and unreasonable to expect the retired school teacher, nurse or bank manager, who has given up their time to be chair or secretary of the Strata Committee, to be responsible for breaking up the party.

6. Strata communities do not want to Subsidise Individual's Commercial activities.

If STHL is allowed in Strata plans some of those buildings which are close to public transport, pubs, clubs and restaurants and the CBD or beaches etc. will become hotels overnight. Altair and most Strata plans are simply not set up to be hotels...and nor do they want to be.

We do not have, and do not want to have, CCTV in every corridor (our residents would be appalled), security-trained concierges (at 100%+ pay loadings), increased insurance to cover the potential damages and liabilities, the extra fire safety issues of unknown guests, the invasion of utterly unknown strangers into our homes with all the attendant security issues or to be maintaining booking management or expanded concierge services.

7. There is a Solution for STHL in Strata.

STHL is a clear and present threat in Strata plans to resident amenity, property damage, insurance and fire risk, realistic management protocols by Strata Committees and to owner values.

Every Strata plan however has to have, by law, a General Meeting every 12 months. Any owner can put a motion to that General Meeting. Some owners may wish to have the right to have STHL in their Strata plan and some may not; but it is a decision for the whole Strata community.

The solution for STHL in Strata is for any NSW law

- a) to prohibit STHL in Strata plans across NSW and then
- b) To allow each Strata plan make up their own mind on allowing STHL within their Strata plan by a vote of the Owners at a General Meeting which would be required within 12 months of the passage of the law.

8. Fairness and transparency in decision-making

Various members of the NSW parliament (and or their families) have investment properties, some in Strata plans. It should be an essential part of any associated legislative process for all members of the NSW government to declare any such interest before participating in any vote or debate.

I would welcome the opportunity to directly address any formal government enquiry or forum into this matter.

Yours

Ralf Harding
Chair, Altair Strata Committee.