

Council Ref: SC1082
Your Ref:

31 October 2017

Director, Housing Policy
NSW Department of Planning and Environment
GPO Box 39
Sydney NSW 2001

Dear Sir/Madam

Submission to the *Short Term Holiday Letting In NSW Options Paper*

Council supports the NSW Government's review of the short term holiday letting sector, and Council staff provide the following submission on the *Short Term Holiday Letting in NSW Options Paper* for consideration.

Impacts associated with STHL

Q6. Please indicate below which impacts are you most concerned about and how do you believe these could be managed.

- **Noise**

The *Protection of the Environment Operations Act 1997* (POEO Act) is not effective for regulating noise from Airbnb type accommodations, whether in strata units or single dwellings.

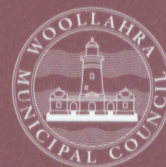
Noisy and disruptive parties carried out on a weekly basis by different offenders (occupiers) cannot be adequately controlled by the POEO Act. Councils do not have the resources to action such matters under the POEO Act, and having the NSW Police attend these premises after midnight each weekend is not a sufficient solution.

Noise within strata buildings can cause significant disturbance. This could be also be managed through enhanced owners' corporation by-laws and as well as the NSW Government endorsed Code of Conduct.

We advocate for a licensing system (see responses to Q7 and Q15). Under such a system the licence could be revoked or amended, like a liquor license, to address unacceptable noise and anti-social behaviour.

- **Waste**

Waste can become an issue because short stay guests tend to generate more waste than regular residents and sometimes the capacity of the waste bins provided are insufficient to accommodate the additional volumes of waste.



This could be addressed by requiring number and capacity of bins for general waste and recycling to be related to the number of bedrooms. The Code of Conduct could then identify responsibilities for the guests as well as the owners/managing agents such as taking the bins in and out for weekly collection.

- Party houses

We support the establishment of a separate definition for “party houses” or the like. The definition could apply to dwellings where the nature of STHL is taking on a commercial /function centre type operation. For example the definition should apply to dwellings used for product launches, weddings, buck’s / hen’s parties and other similar events or functions.

The definition for “party house” could also apply if the number of visitors exceeded the total number of guests and visitors permitted/specified for that property.

- Health and safety regulations

Consistent with the complying development provisions for bed and breakfast in the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* dwellings provided as STHL could require a fire extinguisher and fire blanket in the kitchen. We also recommend smoke detectors in bedrooms and hallways to provide additional protection as guests will be unfamiliar with the layout of the dwelling.

The Code of Conduct could also include provisions for general amenity and cleanliness similar to the Standards for places of shared accommodation in the *Local Government (General) Regulation 2005*.

Self-regulation

Q7. Considering the mechanisms below, how could self-regulation in NSW address any negative impacts of STHL?

Industry self-regulation through a Code of Conduct would need to be supported by:

- a complaints management process
- a licencing system to operate STHL
- monitoring and reporting mechanisms
- new enforcement provisions and penalties through the NSW Civil and Administrative Tribunal (NCAT).
- Code of Conduct
We support the development of a Code of Conduct produced by the NSW Government rather than the adoption/amendment of the existing National Holiday Rental Code of Conduct.
- Complaint management mechanism
We support the establishment of a complaint management mechanism operated centrally by the NSW Government and not devolved to councils. The complaint mechanism should be part of the monitoring and reporting framework and provide enforcement provisions and penalties through the NSW Civil and Administrative Tribunal (NCAT).

- Monitoring, reporting and licensing
We support greater monitoring and reporting of the STHL industry and suggest that a licensing system or register could be developed (i.e. similar to the Department of Fair Trading boarding house register). The benefit of a licensing system means that penalties could be applied to bad operators and licences could be revoked. It would also potentially give some teeth to the Code of Conduct.

Q8. Are there barriers that may reduce the effectiveness of self-regulation?

The main barriers to self-regulation relate to compliance and enforcement matters. For self-regulation to be effective it is important to provide neighbours, owners' corporations and others with an effective and responsive complaints and enforcement mechanism. We see that central to this, is the establishment of a licensing system and Code of Conduct that is backed up by an independent government watch-dog.

STHL in strata properties

Q9. Should owners' corporations be given the legal ability to prohibit or restrict STHL? If so, how and under what circumstances?

- Prohibit
No, owners' corporations should not be able to prohibit STHL. However, there should be an effective and efficient complaint mechanism for the owners' corporation to report and remedy problems, and in the event of consistent and/or serious breaches the STHL licence for that operator should be revoked.
- Restrict
Yes, owners' corporations should be able to establish by-laws to minimise potential negative impacts of STHL. This could include by-laws to manage visitor behaviour, limit the number of guests per bedroom (excluding children under 5 years old), limit the number of visitors the guests may have at any time at the STHL, apply additional strata fees (within reason) to owners who make their dwellings available for STHL, and owners' corporations should be able to seek compensation or issue fines for property damage or breaches of by-laws.

Q10. Should the Strata Schemes Management Act be amended to increase the ability of owners' corporations to manage the impact of STHL and obtain compensation for adverse impacts? If so, under what circumstances?

- Yes, see response above at Q9 Restrict.

Q11. Is there scope for industry self-regulation in the short-term holiday letting industry? Would this effectively address issues that occur in short-term letting in strata schemes?

- There may be scope for self-regulation but only if combined with a NSW Government framework for licencing, monitoring, handling complaints and issuing penalties.

Regulation through the planning system

Q12. How should STHL be subject to a planning regulatory framework? What would be the impacts of applying a planning framework to STHL?

1. Introduce a definition to specifically cover "short term holiday letting/accommodation". The definition should:

- remove the word “holiday” from the definition as this type of letting is also used as short stay business accommodation;
- sit within the group term of “tourist and visitor accommodation”;
- be distinguished from “bed and breakfast” and “serviced apartments” and other forms of “tourist and visitor accommodation” to remove any ambiguity; and
- be distinguished from existing “temporary use” provisions in LEPs.

2. Introduce a definition specifically for “party house”:

We support the establishment of a separate definition for “party house” or the like.

The definition could apply to dwellings where the STHL is taking on a commercial/function centre type operation. For example the definition should apply to dwellings used for large parties (including weddings, engagement, buck’s or hen’s parties), media launches, product launches, charity events or other similar events and functions.

These types of activities tend to have greater and more intense impacts on surrounding neighbours e.g. traffic, parking and loading, guest numbers and noise. Furthermore the regularity or frequency of these high intensity activities (e.g. each weekend) is not consistent with typical residential activities.

The definition for “party house” could also apply if the number of visitors exceeded the total number of guests and visitors permitted/specified for that property.

We also suggest that “party houses” should be complying development or require a DA.

3. Level of permissibility – exempt development, complying development, development consent:

Any regulation of STHL under the LEP must have particular regard to the ability for councils to deal with complaints and unreasonable activities in an efficient and effective manner, as it is most likely that residents will direct their complaints to councils regardless of any other mechanisms that may also be available.

Councils will be in a strong position for enforcement purposes if there are measurable standards relating to the use and conditions of consent. Exempt development utilises development standards but does not require consent and therefore conditions are not applicable. Conditions of consent are, however, used in either a consent through a DA or a CDC:

- Under a DA, the consent can include conditions which are tailored to the specific proposal.
- Under a CDC, there are development standards for the use and standard conditions of consent. To be effective these need to be clear, unambiguous and enforceable. In particular, the development standards and conditions must not involve merit assessment which is open to subjective interpretation.

Our experience is that enforcement roles are more effective and practical in the case of a breach of a development consent issued through the development application or complying development application processes rather than a breach of an exempt development standard. For this reason we do not support STHL as exempt development.

In weighing up the preference of a DA or CDC as the primary consent mechanism, we are mindful of the substantial number of existing STHL accommodations within NSW and the need to ensure a fair and equitable regulatory system for those uses and future operations. Accordingly, we consider a practical, equitable and efficient approach is to require CDCs for existing and future STHL uses. Where the use cannot meet the development standards for complying development, a DA is required.

Q13. If STHL is to be regulated via the planning framework, how should it apply?

- Number of total days per year:
The total number of nights a dwelling is used as STHL could be used as a key factor in determining whether the activity is exempt, complying development or requires a DA.

However, compliance and enforcement will be problematic. Trying to prove the number of days a dwelling has been used as STHL would be extremely difficult for Council. It is important that we do not create a system that is difficult or resource intensive to enforce.

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| • Number of consecutive days: | No minimum or maximums to apply |
| • Number of bedrooms: | No restrictions |
| • Number of people/bedroom: | Yes- 2 people per bedroom not including children under 5 years; standard could be established in the Code of Conduct and the strata by-laws |
| • Length of stay: | No minimum or maximums to apply |
| • Presence of a host: | Discretionary |
| • Location (metro vs. regional): | Unsure (see response to Q.14 below) |
| • Compliance with a Code of Conduct: | Yes mandatory for all STHL |
| • Penalties: | Yes there needs to be a system of penalties. We support a licencing system and penalties through NCAT. |

Q14. Should there be different planning frameworks in regional and metropolitan areas? If so, how and why?

We identify there is some anecdotal evidence indicating that property owners in the Eastern Suburbs of Sydney can make more revenue from STHL than through traditional longer term rental leases, and therefore STHL may have a negative impact on rental housing affordability. However, we do not have any statistics to support implementing different planning requirements for regional and metropolitan areas

based on impacts of the STHL industry on rental housing affordability, and we also suspect there may be significant variations between the regional areas.

Registration or licensing

Q15. Could a licensing system for STHL work in NSW? If so, how might it operate?

Yes, we support a licensing system operated by the NSW Government (probably under the Department of Fair Trading). The benefit of a licensing system means that penalties could be applied to bad operators and licences could be revoked. It would also give some teeth to the Code of Conduct.

Summary of options

Q16. The top 3 options we would like to see in the future regulatory framework:

We have identified 5 options (not in priority order) that we consider necessary:

1. Development approval
LEP to provide certainty about the definition and permissibility of STHL as a land use. Consent is to be obtained as complying development or through a DA if development standards for the complying development type cannot be satisfied.
2. Licensing system
Introduce a mandatory licence to operate a STHL. The licensing system to be operated by the NSW Government under the Department of Fair Trading.
3. Code of Conduct
State Government prepare a Code of Conduct for NSW under the Department of Fair Trading. Within the context of a low regulatory approach having a Code of Conduct owned by the NSW Government will promote greater compliance and authority compared to the existing National Holiday Rental Code of Conduct.
4. By-laws to manage visitor behaviour
Increase the rights of owners' corporations to establish by-laws to minimise potential negative impacts of STHL and seek compensation or issue fines for property damage or breaches of by-laws.
5. Complaints management
Establish a complaints management mechanism operated centrally by the NSW Government, and provide enforcement provisions and penalties through the NCAT.

If you have any queries please contact Jacquelyne Della Bosca, Executive Planner on (02) 9391 7046.

Yours faithfully



Allan Coker
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