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

Dear Director,

re: SHORT-TERM HOLIDAY LETTING OPTIONS PAPER SUBMISSION

Thank you for the opportunity to comment on the NSW Government’s “Short-term Holiday Letting in NSW” Options Paper dated July 2017 (hereinafter referred to as “Options Paper”).

This letter is submitted as a supplement and annexure to the Appendix 1 - STHL OPTIONS PAPER SUBMISSION FORM BY AVENTINE STRATA SCHEME OWNERS’ CORPORATION.

The comments in this letter are submitted by the Strata Committee on behalf of the Owners’ Corporation of Strata Plan 69224, being the Aventine strata scheme located at 23 Church Street, The Hill in Newcastle NSW.

Summary
Aventine Owners’ Corporation believes individual strata communities should have the right to decide in the usual manner, through either ordinary or special resolutions, how its community will cohabit. This system operates successfully for all aspects of living in a strata community and should similarly apply to STHL.

Accordingly, Aventine Owners’ Corporation believes the NSW Government should not include in its raft of strategies for dealing with STHL any change in legislation that would result in a strata scheme being prevented from deciding by way of ordinary or special resolution whether or not it will permit short-term holiday letting within its own strata scheme.

Background
The strata scheme is located on a 8044 square metre site that comprises a whole residential block bounded by Church, Wolfe, Tyrrell and Perkins Streets, The Hill.

Aventine is a gated security development, consisting of 52 strata units (ie 30 townhouses and 22 apartments with the majority being three bedroom properties). The strata scheme was developed in 2002. There are 32 owner occupied units and 20 rented units.

Aventine does not have an on-site resident caretaker, and day to day matters are managed by the Strata Committee.
Aventine is a desirable residential strata scheme, proven by a low ownership and tenant turnover, with the majority of rented units being long-term tenancies.

To date, Aventine Owners' Corporation has opposed proposals by non-resident owners to use their strata unit as a serviced apartment or as a short-term holiday letting (STHL).

We note that Section 5 of the Options Paper deals with STHL in strata properties, and that the NSW Legislative Assembly Committee on Planning and Environment Report 1/56 – October 2016 (the Committee) makes recommendations (numbered 10 and 11) which relate specifically to the management of STHL in strata properties.

We also note in the final part of Section 5 under the heading “Allow Strata Schemes to Prohibit or Restrict STHL in their Schemes" the NSW Government has received a number of representations on this issue of STHL in strata schemes. In summary, there appear to be two opposing positions:-

1. That prohibiting or restricting STHL in a strata scheme is an impingement on rights of owners wanting to short term let; and
2. That there is a desire for Owners' Corporations to have the ability to prohibit STHL.

In considering the matters raised, it appears the Options Paper is inclined to favour position one above by permitting STHL in strata schemes (albeit by way of managing impact through amendments to strata laws). The Options Paper appears not to support, in any way, any option for owners in a strata scheme to have a right not to allow STHL in their strata community.

Aventine Owners' Corporation believes that STHL will have significant negative impacts on people living in residential apartments (refer list below) and that for this reason the majority of residents' requirements for a quiet enjoyment of their property should prevail over a minority who are only interested in financial gain.

These significant impacts include but are not limited to:

1. Significant increase in risk of damage to common areas as the majority of properties in Aventine have multiple bedrooms and as such are most likely to attract larger groups
2. Significant increase of risk of unacceptable late night noise
3. Abuse of swimming pool By Laws
4. Increased risk of parking offences relating to visitor parking and incorrect parking in other lot holders car spaces
5. Security issues relating to multiple issues of security keys to short term residents
6. Increased risk of multiple By Law breaches due to lack of knowledge of short-term residents including such matters as rubbish disposal, smoking, and children's behaviour.
7. Increased risk of units being used as serviced apartments for general purpose letting, not just holiday letting.

8. It appears that changes in strata laws are intended to deal with management of the above risks, concomitantly it also imposes an increased burden and financial cost on a strata community to manage all consequential risks resulting from absentee unit owners who allow STHL of their strata unit without being on-site to exercise control over their guest(s).

9. It must be acknowledged there is an element of inequity in forcing a strata scheme to accept STHL in its community, particularly if the majority of unit owners oppose STHL within their strata scheme.

The question asked by Aventine Owners’ Corporation is - “Why should a strata community that the majority of residents have joined (either renting or buying) for reasons of security and joyful cohabitation with known and similar minded residents, all of a sudden be forced into the possibility of having their strata scheme turned into a holiday resort?”

Aventine Owners’ Corporation strongly believes the NSW Government should introduce legislation that would enable a strata scheme to decide by way of ordinary or special resolution whether or not it will permit short-term holiday letting within its own strata scheme.

Yours sincerely

[Signature]

Ian Thomas
Secretary
Strata Committee
on behalf of Aventine Owners’ Corporation
Introduction

1. Do you use or have you ever used short-term holiday accommodation?  
   Not applicable

2. Are you or have you ever been a short-term holiday accommodation host?  
   Not applicable

3. Do you provide another form of short-term holiday accommodation?  
   Not applicable

4. Do you live near a property that provides short-term holiday accommodation?  
   Not applicable

5. Are you from an STHL industry group, owners' corporations or community group?  
   Yes Owners' Corporation Strata Plan 69224

Impacts Associated with STHL

6. Please indicate below which impact(s) are you most concerned about and how do you believe these could be managed.
   - Waste
   - Party Houses
   - Parking
   - Hazards and Evacuation

We are concerned about all of the impacts listed as well as other potential issues. In a small living community it is impossible to have control over the behaviour of short-term holiday residents without incurring significant costs, for example, engaging a security company, employing a facility manager for additional hours, etc. More importantly it impedes the ability of the owner-occupiers and long-term lessees to quietly enjoy their homes.

Self-regulation

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

This options paper describes the Code of Conduct in its current form as being inefficient and ineffective. The Code has made little attempt to develop controls for occupancy within a strata development. The suggestions are for the formulation of By-laws prohibiting actions and types of behaviours within a lot, thus transferring the responsibility of the management of STHL properties within a Strata Scheme to the Owners' Corporation. Effective external management of tenancies of a STHL within a Strata community would necessitate the formation of a separate body (a governmentally empowered authority) to regulate STHL activity as Strata living by very definition is a significantly different environment to stand alone housing.
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Alternatively, amendments to the Strata Schemes Management Act 2015 could be made allowing, for example, imposition of significant financial penalties for breach of By-Laws, By-laws allowing an Owners' Corporation to impose additional levies on properties used for STHL and expanding powers of NSW Civil and Administrative Tribunal.

- Complaint Management Mechanism
Generally, difficult occupants within a Strata community require immediate attention because of the close proximity of neighbours and over-use of share facilities and common property paid for by all residents of the property. An owner of a property who does not reside in the strata is, for example, unlikely to respond to a 1am callout to attend to the disruptive behaviour of a STHL tenant. A letting agent or governing body is even less likely to attend to such matters in a timely manner. It is obvious therefore that the only circumstances where STHL complaints could be effectively dealt with are if the owner of the property is on-site or if the strata has an on-site resident caretaker.

- Monitoring & Reporting
In view of the acknowledged paucity of information relating to impacts, the existing regulatory bodies in their current format are not functioning effectively. Therefore, to monitor and report on STHL regulations the existing (or alternative) body would require further development and effective management to enable collection and consideration of data and preparation of meaningful reports. Such organisations would require sufficient funding to allow such monitoring and reporting to be timely and corrections to the regulations where there is a shortfall or gap in the policies previously emplaced.

8 Are there barriers that may reduce the effectiveness of self-regulation?
No Comment

STHL in Strata Properties
9 Should owners' corporations be given the legal ability to prohibit or restrict STHL? If so, how and under what circumstances?
Individual Owners' Corporations should have the right to decide in the usual manner, through either ordinary or special resolutions, how its community will cohabit. This system operates successfully for all aspects of living in a strata community and should similarly apply to STHL. A strata community where the residents have joined (either renting or buying) for reasons of security and joyful cohabitation with known and similar minded residents should be permitted to continue to make these decisions in agreement with one another.

10 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, amendments should be made to allow for the Owners' Corporations to make decisions to impose penalties, particularly financial penalties for any adverse impacts on the residents preventing the quiet enjoyment of their property. These circumstances may include, without being limited to:
- damage caused to common areas by STHL
- unacceptable noise
- abuse of swimming pool By Laws
- parking offences relating to visitor parking and incorrect parking in other lot holders car spaces
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- security issues relating to multiple issues of security keys to short term residents
- By Law breaches due to lack of knowledge of short-term residents including such matters as rubbish disposal, smoking, and children’s behaviour.
- Any financial cost associated with the increased burden on a strata community to manage all consequential risks resulting from unit owners who allow STHL of their strata unit without being on-site to exercise control over their guest(s).
- Generally under any circumstances where the STHL has tenants not cohabitating in accordance with the normal expectations of the long term residents.

11 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? It is our view that the only way self-regulation would be effective is if a Government Agency was established and given authority to strictly supervise the tenants to comply with the By-laws of a Strata scheme and were available at short notice at any time of the day to attend to problems that arise.

Regulation through the Planning System
12 How should STHL be subject to a planning regulatory framework? What would be the impacts of applying a planning framework to STHL?
- Exempt
- Complying
- Development Consent
- No planning regulation
Please indicate your reasons below:
No Comment

13 If STHL is to be regulated via the planning framework, how should it apply? • Number of total days per year • Number of consecutive days • Number of bedrooms • Length of stay • Presence of a host • Location (metro vs. regional) • Compliance with a Code of Conduct.
No Comment

14 Should there be different planning frameworks in regional and metropolitan areas? If so, how and why?
No Comment

Registration or Licensing
15 Could a licensing system for STHL work in NSW? If so, how might it operate?
No Comment

Summary of Options
16 The options outlined in this paper are summarised in the below table. For the future regulatory framework, which top 3 options (if any) would you like to see in this framework? Why?
(Please tell us the reasons for your choices).
Our submission is in relation to the development of an effective regulatory framework in relation to STHL within a Strata Scheme. Our Owners’ Corporation believes the most appropriate regulation would be to allow strata schemes to vote in the usual manner whether or not to allow the use of a property within that scheme as a STHL, for example - if an Aventine owner in residency wanted to let a bedroom and the resident owner remains in occupation, then our Owners’ Corporation would not oppose the STHL.
Our belief is that the best way to ensure a problem free STHL operates is for a Lot owner or caretaker to be on-site and in residency to deal quickly and directly with any adverse impacts arising from the STHL, rather than the Strata Committee having to deal directly with issues.

If the Owners Corporation is not permitted this right and considering that our Owners Corporation has in place By-laws to manage all usual matters as well as behaviour, then a much broader regulation (within the Strata Management Scheme) would be essential to allow the imposition of significant financial consequences/fines for failure to comply with the By-law breaches. The Owners’ Corporation should also be given the right to add a loading to the Administrative and Sinking Fund levies for any particular STHL Lot if deemed more practical.

In support of the above response, please also see attached letter from Aventine Owners’ Corporation Strata Committee.