Friday 27 October 2017

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

By email: STHL@planning.nsw.gov.au

Dear Sir / Madam

Re: Short-Term Holiday Letting Options Paper

The following submission to the Short-Term Holiday Letting Options Paper is made on behalf of SP79684 and SP79683 which comprise the residential apartments of the building at 1. The building has over 500 residential apartments and has extensive common property and facilities including a 50m swimming pool, spa, sauna, steam room, gym, weights room, resident lounge and meeting areas.

This building is part of the larger Regent Place development which also comprises commercial, retail and serviced apartments administered by a Building Management Committee that the above strata plans are members of.

This submission focusses on the impact of Short Term Holiday Letting (STHL) to strata developments and the most common STHL of exclusive access.

Strata buildings are different to freehold property, in that whilst an owner has exclusive access to the airspace of their lot, other building facilities which the lot owner has access to are the common property of all owners of the strata plan.

In a freehold property, if a STHL tenant causes damage, this is completely at the freehold property owners expense. The freeholder owner bears all the rewards and risks associated with their property from undertaking STHL, as it should be.

In a strata building this is not the case. Whilst the STHL owner bears all the rewards from the STHL, they only bear a small part of the risks directly relating to their lot. Any activities associated with common property and facilities, which in the case of our building are quite extensive, are passed onto the other lot owners. The other strata lot owners are unwillingly co-joined in the risks, and yet receive none of the financial rewards from the STHL.
Whilst the vast majority of STHL tenants would be, like regular residents, respectful and "law abiding", a proportion will always cause problems. The short-term nature of STHL tenants sees significant turnover in the number of residents in the building, thus the total number of problematic tenants will increase, even if they are each individually present for only a small number of days.

The short-term nature also means that these short-term tenants are less aware of the by-laws, rules and regulations, and are likely to be less caring given they are seeing their stay as a commercial transaction akin to hotel accommodation, rather than staying in another person’s home.

As a practical example, the 50m swimming pool in our building is over 800,000 litres. A problematic STHL tenant who ignores the various by-law, rules and regulations could take a glass beer bottle into the pool area where any breakage of which would require the pool to be emptied, cleaned and refilled at significant cost as well as significant inconvenience (probably closed for a minimum of 7 days) to all other residents in the building, but minimal cost and impact to the STHL owner.

Trying to recover these costs from the relevant STHL tenant and/or STHL owner is also hampered. The STHL tenant is short term so identification of the perpetrator is an issue and having sufficient evidence of the damage being caused by the STHL tenant in order to be legally liable is also problematic. Whilst this could be improved with better CCTV and access control systems to cover more common property areas, as well as increased security and concierge staff, this represents a significant overhead to all of the owners in the strata plan, who receive no benefit from the STHL transactions. With such intensive activities required, the more likely outcome is that it is not cost effective to pursue the relevant person and as a consequence all strata lot owners will wear the loss.

The problem is further amplified by the interaction of other federal and state laws regarding privacy. The strata plans are not privy to the STHL transactions via the STHL facilitation platform (eg Airbnb) and do not have the identity of the STHL tenants. Furthermore, many of the STHL owners utilise a third party STHL management firm (eg MadeComfy) to undertake the logistics of the STHL operations (keys, cleaning, etc) and the owners of the specific lots are not identifiable on the STHL platform as they are shielded by the STHL management firm. When (not if) an issue arises, Airbnb will not provide details of the STHL tenants and MadeComfy won’t confirm details of the STHL owners, nor of the STHL tenants. Due to privacy requirements, this information could only be provided via slow, expensive formal legal processes.

Perusing one of the many STHL websites such as Airbnb identifies numerous listings where the owner mitigates their risk of damage by requiring a security bond from the STHL tenant. Yet, the strata plan as owner of the common property and facilities cannot mitigate their risk of damage from STHL tenants via a similar means.

Whilst some STHL facilitation platforms provide some level of insurance coverage to the STHL owners, does this extend to the common property owned by the strata plans? Do the strata plans existing insurances provide coverage for potential liability being unwillingly
accrued via the STHL owners through STHL (e.g. an accident on gym equipment)? Or do the strata owners in NSW who pay numerous federal, state and local council taxes and rates, including the stamp duty on the purchase, need to take on enormous, well resourced international corporations such as Airbnb (valuation over US$30billion) (who pay minimal domestic taxes) in order to identify and recoup damages inflicted upon common property and facilities that we are not a party to, nor receive any benefit from?

This is a significant and unwanted financial burden and resource overhead for the strata plans, other owners, executive committee members (who are voluntary), strata managers and the like, given that none of the financial benefits of the STHL are accrued to them.

There are other significant potential impacts by STHL tenants to the residential tenants including:

- **Noise / Parties** – STHL tenants are most likely on holidays and do not need to maintain neighbourly relations
- **Waste** – inappropriately disposed of in common property rubbish rooms or not respecting recycling
- **Parking** – whilst the parking garage area looks like a large common car park, each car space belongs to a specific lot. STHL are more likely to park at the first best spot they find, denying another resident their parking spot, which then causes flow on effects throughout the parking. The inability of identifying the owners of these transient vehicles is also an issue.
- **Personal safety** – our building maintains high level of security with a minimum access security policy. Residents only have access to their level and other common facilities. This provides a level of reassurance and personal safety for our permanent residents, particularly families with young children, unaccompanied women and the elderly. This is diminished where frequent turnover of potentially unaccountable residents occurs as in the case of STHL tenants.
- **Security** – increased security risks as large number of short term tenants now have access to restricted and secured facilities including garages and storage areas.
- **Community** – our building has fostered the development of a sense of community within the building and this would be impacted by transient STHL tenants.

Whilst some of the above issues can also occur with permanent residents, the various strata regulations and by-laws and associated dispute resolution processes provide a mechanism for managing the behaviour of residents, and whilst these mechanisms aren’t perfect, a degree of harmony is maintained.

However, these current processes are inappropriate and ineffective where tenants are short term in nature due to the timeframes and processes required for enforcement activities.

Consider a STHL tenant who has a loud party thus impacting on the peaceful enjoyment of other lot owners. And the next day, a different STHL tenant in the same apartment causes a similar nuisance and further impacts on the peaceful enjoyment of other lot owners. How would this be managed? Will the NSW Police be adequately resourced to actively enforce such activities? The current strata processes are designed for permanent residents and won’t provide any relief where the tenant changes every other day.
There is also significant disparity in the example between the regulation of STHL versus commercial accommodation providers. In commercial accommodation such as hotels and service apartments, unruly persons could be immediately evicted for continued noise complaints. No such mechanisms exist in a residential setting, again with the impacts and risks transferred to the other strata owners and residents.

The Lumiere apartment building was approved and developed with a Section 88B restriction on title to be “... used and occupied for the sole purpose of permanent residential accommodation ...” which equates to a minimum of 3 months. All owners and residents are subject to this restriction, and many actively chose such a residential only complex rather than some of the mixed residential / service apartment complexes that are in existence.

STHL should not override existing restrictions on title such as the above.

The options paper identifies potential economic benefits from allowing STHL. But it is equally important to factor in the negative impacts from allowing STHL.

Whilst STHL might create “jobs through the establishment of new businesses to manage transactions between property owners and customers”, in addition to some casual cleaning and associated unskilled activities, it does not create high value or skilled activities.

Our building, like many in the Sydney CBD, has a large number of professionals and executives as residents. The negative economic impact of disturbance of peaceful enjoyment via STHL of existing resident’s in high density strata plans through noise and other issues also needs to be taken into account.

It is important to note that minimal jobs are created directly in NSW by the STHL platforms such as Airbnb, and that these international STHL platforms can represent a significant revenue leakage overseas with minimal benefits accruing domestically.

The STHL also impacts established accommodation providers such as hotels, serviced apartments and the like and may just shift revenue from regulated accommodation providers to unregulated STHL owners. Unregulated STHL owners may also fall outside of the tax net.

**Key Position Summary**

1. By default, STHL should not be permitted in residential strata schemes. This avoids the various legal uncertainties, ambiguities and impacts that could arise between the STHL owner and the strata body that own shared property and facilities where STHL occurs before explicit consideration by the owners in the strata body.

2. Strata schemes should be free to override the above restriction via an appropriate by-law and determine whether short term holiday letting is permitted, in what form and limitations over periods for stays (e.g. 7 night minimum, 60 nights per year, presence of
hosts, etc) as well as other applicable measures and procedures such as, for instance, requirement for notification of the strata committee that this activity is being undertaken. This would continue to provide a democratic process for owners to have their say about the management of their residential strata scheme.

3. STHL should not override existing Section 88B restrictions. All existing owners acquired their property with full knowledge of the restrictions on usage, as will all future owners. If future potential owners do not agree with the restrictions on title, then they can choose to purchase elsewhere.

4. Appropriate measures need to be in place to ensure that the owners corporation executive committee and strata managers can easily identify STHL owners and STHL tenants from both STHL management companies and STHL facilitation platforms.

5. As some strata schemes will choose NOT to allow for STHL, appropriate measures need to be in place to ensure that STHL management companies and STHL facilitation platforms can be notified by the strata schemes that STHL is not permitted in a given strata scheme (building). As opposed to placing the onus upon volunteer executive committees to continually search and “police” compliance and notify the STHL operators on a case by case basis, the STHL facilitation platforms and STHL management companies who undertake these activities for profit should be required to prevent future acceptance of illegal STHL from these buildings once notified.

6. In conjunction with the above, the possible amendments to strata laws identified in the options paper are logical changes:
   - make lot owner/occupants jointly and severally liable for the conduct of occupants, unless owners had taken reasonable steps to prevent conduct breaching by-laws or causing a nuisance or hazard;
   - streamline and simplify enforcement processes for breaching by-laws or causing a nuisance or hazard;
   - allow owners’ corporations to apply to the Tribunal for an order to require owners to pay increased contributions to the administrative or capital works funds; and/or
   - enable the Tribunal to make orders, in appropriate circumstances:
     - to cease conduct breaching by-laws or causing a nuisance or hazard;
     - for payment of compensation;
     - imposing a civil penalty; and/or
     - to cease using the relevant lot for STHL, usually for a specified period.

7. Any measures regarding STHL in strata schemes need to be conscious that STHL is undertaken by an owner for profit, unlike the activities of the strata scheme where the executive committee is acting on a voluntary basis. As such, any measures should reduce the workload and costs for the strata and place additional burden on the STHL owner.
8. Whilst the vast majority of the population comply with laws, rules, regulations, by-laws and the like, a minority will not. The government needs to at the outset develop streamlined, appropriate and timely enforcement activities and provide adequate resources to ensure that issues can be dealt with in a timely manner, rather than adopting a wait and see approach.

Should you wish to discuss any elements of this submission in further detail, then please contact the author on .

Regards

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Chairman, SP79684