



NSW proposed
short term letting
framework 2019

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*'... a guest who comes for the weekend is not a resident.
A short-stay visitor is not a resident.'*ⁱ

INTRODUCTION

1. This is the submission to the Department of Planning and Environment and the Department of Better Regulation and Innovation on the Short-Term Rental Accommodation Framework by the the Owners Corporation Network of Australia Pty Ltd (OCN). This submission supplements the preliminary submission lodged on 10 September 2019. The OCN is an independent association of apartment owners and represents the interests of residential and community title strata schemes in NSW.
2. The OCN welcomes the release of the Draft Short-term Rental Accommodation Framework.ⁱⁱ We also appreciate the opportunity to make a fuller submission on a topic that is of the utmost importance to our members and to all strata owners and residents.
3. The OCN has made previous submissions and gave evidence to the 2016 Parliamentary Inquiry.ⁱⁱⁱ We provided a submission to the Short-Term Holiday Letting Options Paper; a submission to the Department of Planning and Environment (DPE) on the Explanation of Intended Effect in 2018 (EIE) and OCN was the community representative on the Code of Conduct Advisory Committee. Entire Owners Corporations and individual apartment owners representing thousands of people have made comments and submissions.^{iv} In the meantime, there has also been a growing resource of independent academic research on the impacts of the online rental platforms internationally and in Australia.
4. The STRA Framework de-segregates the housing and tourist accommodation markets and has serious implications for residential strata communities across NSW. It removes planning controls and does not differentiate between different markets, locations, types of residential dwellings or demographics. The state-wide “solution” contains no meaningful controls over the scale or intensity of short term letting for the protection of housing or to mitigate impacts on close residential environments. Local Councils will have no basis on which to deny approval to a large short-term letting development or limit short term letting where a neighbourhood has reached capacity. The policy proposed for NSW stands in stark contrast to WA that will deliver a state-wide register with conditions set Local Council level.
5. In addition, the EIE clearly stated that dwellings approved under the Affordable Rental Housing SEPP 2009 (SEPP No 70 Affordable Housing (Revised Schemes)) would not be permitted to be

used for STRA. This has not been carried through to the Draft STRA SEPP and undermines the core objectives of this State policy for affordable housing.

6. The majority of residential strata owners are still unaware that such a significant change to the planning system and residential strata model has been proposed and is being prepared for implementation. In November 2018 and April 2019, OCN recommended that DPE conduct information sessions or workshops to explain the proposed new regulatory STRA Framework.

Planning Issues

7. NSW is implementing Visitor Economy Taskforce's recommendation to double overnight visitor expenditure in NSW by 2020.^v The forecast is for visitors to spend more than 146 million nights in Sydney by 2024-25 (alone).
8. On September 2019, the Government said that: "...one of the factors that we are considering is just the size of the economy. It is about \$31 billion, I think, in terms of value in 2016. The other side, which you would obviously be across, is just the impact it is having in terms of creating jobs, actually supporting tourism, amongst others. You have got to think about the wide spectrum rather than just noise with the next-door neighbour. (Mr King, Hansard Budget Estimates 9 September 2019).
9. According to Austrade the "sharing economy" helps to: "... address gaps in supply during periods of high demand and the competitive pricing and diversity of options opens up travel to more Australians and overseas visitors".^{vi}
10. The intention of the STRA SEPP is to declare the use of residential dwellings for short term letting by tourists and visitors to be "exempt development", even in the close confines of a residential strata community in residential flat buildings designed, approved and occupied by resident owners and long-term tenants. It is our submission that STRA is not a "minor impact" and an exercise of executive power declaring it to be so may well be *ultra vires* the principal Act. It is self-evident that in the residential strata environment, STRA is not a "minor impact". Tourism is not an objective of the *Strata Schemes Management Act 2015* (NSW).
11. The only protection that any residential strata scheme will have is a by-law to prohibit a non-resident owner from converting a residential apartment to the tourist market and visitor market.^{vii} As 25% of the organised vote of absent landlords can defeat the adoption of such a by law, many of the most vulnerable residents will be forced to live with transient occupants accessing their building and using their common property assets. In a small scheme this means that just one or two investors can control the direction of the entire apartment building.

12. The residential strata model is based on residential living, shared property and democratic governance. In its present form the STRA SEPP will generate more conflict and extra costs borne by the entire Owners Corporation.^{viii}
13. In April 2019, the OCN wrote to the Minister for Planning to raise concerns that:
- i. there will be no limit to the number of apartments in a single building or scheme that can be converted to STRA by a single or multiple “Hosts”;
 - ii. STRA businesses will be permitted to operate dispersed among resident owners and tenants;
 - iii. there will be no threshold that would trigger a “change of use”;
 - iv. there will be nothing to stop an entire scheme being taken over by stealth; and
 - v. the clear legal authority to adopt a by law passed by the Parliament in August 2018 is necessary and important. It will be necessary to protect residents from investors for whom the dwelling is not their principal place of residence. But it will not be available to some of the most vulnerable residents because an organised minority of 25% can prevent such a by-law being adopted.

Removing residential protections

14. Our concern has been elevated further with the release of the Draft SEPP.
15. The proposal to declare STRA to be “exempt development” removes all planning controls that protect residential neighbourhoods. Thousands of apartment dwellers living in mixed use and commercial zones, like the CBD and Pyrmont, rely on their development consent condition that explicitly prohibits short term letting to stop their homes turning into quasi-hotels.
16. In residential zones the STRA SEPP means there will be no control over the scale, intensity, or spatial distribution of short term letting among residents. The conversion of housing to tourist accommodation hollows out residential neighbourhoods and in the strata environment the impacts are acute. The Local Council will have no mechanism to moderate the scale, intensity, or spatial distribution of STRA.
- **Un-hosted STRA should not be classified as “exempt development”.**

Development application for full time STRA

17. In 2018 the Explanation of Intended Effect (EIE) expressed the clear commitment that 180 days would be the maximum permitted Un-Hosted STRA in the Greater Sydney Metropolitan Area (GSMA). This is clearly not now the case. The 180 days applies only to the “exempt (or complying) development” pathway. A person will be able to apply for consent to conduct Un-Hosted STRA for 365 days a year. The DPE also confirmed to a Local Council workshop held on 5 November 2018 that there was no intention of making provision for a DA. However, the effect of the Draft SEPP is to make STRA a defined use, permissible and therefore a DA can be lodged and Local Council will be obliged to consider it. This change of position is not explained or justified in the Discussion Paper.

18. It enables a commercial operator to overcome the STRA Framework. In the strata context a DA requires the consent of the Owners Corporation.^{ix} In reality, the competing interests of investors, commercial operators and residents within a single scheme is intense, unrelenting, distressing and expensive. The possibility of a DA for full time STRA for one or more apartments in a residential building is totally unacceptable.^x

- **There must be an absolute cap on STRA and no possibility of DA for full time Un-Hosted STRA in a residential flat building.**

Twenty - one day loophole

19. The Discussion Paper now also reveals that, in addition to the 180 days, Un-hosted lets for 21 consecutive days or more will not be subject to the cap at all. This is an entirely new category of STRA. It effectively removes the cap, which is the clear goal of the “industry”. The 21 day + loophole has been put forward on the dubious grounds that longer STRA causes less noise and nuisance to neighbours but there are far wider and more sinister implications. The 21 day + loophole:

- i. encourages landlords to abandon residential tenancies in favour of STRA;
- ii. makes monitoring impossible and strata management more difficult;
- iii. undermines data analysis or any meaningful profile of the industry;
- iv. gives the “corporate letting” industry free access to all residential apartment buildings in all zones (including residential zones). This will enable them to evade the existing NSW, “serviced apartments” rules. Illegal short term letting in residential schemes is already being advertised as “corporate” but is, in fact, occurring on a short-term letting basis for 2 – 4 days.

- v. increases the overall volume of STRA occurring among residents because it adds unlimited 21 day + lets to the “maximum” of 180 days in effect removing the cap;
- vi. complicates the implementation of the by law, which turns on the concept of “principal place of residence”.

20. This new 21 day + loophole has not been credibly justified or explained.

21. The definition of short-term rental accommodation in the draft STRA SEPP means an existing dwelling— (a) that is lawfully used by the owner, tenant or permanent resident of the dwelling (the host) to provide accommodation on a commercial basis for a **temporary or short-term period**, with or without the host residing on the premises during that period. This new language introduces a new concept into the STRA Framework. The definition of short-term rental accommodation arrangement in the Fair-Trading Act means a commercial arrangement for giving a person the right to occupy residential premises for **a period of not more than 3 months at any one time**.

22. This retro-fitting of a new unreportable and uncapped 21 day + period illustrates demonstrates gaps in the policy development process that resulted in a decision that the state-wide policy is appropriate. If there are grounds for creating a new category, there is a public policy imperative to consider all the implications and what, if any, the appropriate response should be. This new category undermines the entire Framework. It should be withdrawn.

- **The OCN position is that the 21-day loophole must be removed.**

180 days excessive

23. The Government is already well aware that the 180-day cap is excessive by world standards. Day caps are intended to be an economic lever to drive apartments back to the residential market. Throughout the entire policy process, the OCN, the Tenants Union, the City of Sydney, and other metropolitan Local Councils like Inner West, and regional Local Councils like Tweed Heads, have all said the cap must be lowered to 90 or 60 days.

- **To function as a “home sharing” instrument there should be a lower cap, at least 90 day, and preferably 60 and restricted to the principal home in Sydney.**
- **In areas out of Sydney, Local Councils should have flexibility to set lower caps and apply precinct-based development controls to manage competing housing and tourist requirements.**

24. The pressure from industry to remove caps is unrelenting and will continue because the policy is state-wide – it cannot differentiate between different markets, types of dwellings, location, demographics or local conditions and residential as opposed to tourism objectives. It makes no distinction between a rural property in a regional area, a coastal town house complex, or apartments in a single high-rise apartment building in Kings Cross.
25. Declaring of STRA to an “exempt” development under the current settings would be a serious mistake and a mistake that will be almost impossible to rectify. The State Government needs to give very serious consideration to all the consequences of the policy before it ‘legislates’ to convert residential homes into holiday flats and houses and apartments into a quasi-boarding houses and hostels. There are numerous unintended consequences but these are foreseeable.

Un-related Parties

26. The EIE stated that the intention of the STRA SEPP was that a residential dwelling could not be used for STRA for un-related parties. This has not been followed through into the draft SEPP. So, if this is correct, it is entirely possible for a person in either a free-standing home or strata townhouse to conduct commercial STRA with 2 persons per bedroom in multiple bedrooms – hosted or un-hosted. Indeed, this could be conducted even from an apartment or multiple apartments. As there is no DA required there is no opportunity for any neighbour or local residents or affected businesses to express a view or objection to this commercial activity.
27. If it proceeds it will undermine the existing controls on boarding houses and hostels and is being permitted regardless of the local conditions or the attributes of the house or apartment itself. It is extraordinary that this would be permitted without development consent in any zone. It is completely unacceptable that this would be permitted in a residential strata community, with nothing more than notice to the Owners Corporation. The Owners Corporation is bound together in shared ownership of common property and collective legal and mutual social obligations.

Summary of Recommendations

- Where the host is not present, short term letting must never be classed as exempt development.
- The OCN position is that the 21-day loophole must be removed.
- To function as a “home sharing” instrument there should be a lower cap to no more than 90 days, and preferably 60 and restricted to the principal home in Sydney.
- In areas out of Sydney, Local Councils should have flexibility to set lower caps and apply precinct-based development controls to manage competing housing and tourist requirements.

- Residential strata schemes in mixed use and commercial zones with express prohibitions on short term letting must have their development consent conditions preserved.

SCALE OF SHORT TERM LETTING

28. The number of apartments available for short term letting has been growing dramatically but remains underestimated in most public debate. The fragmentation of the “market” and the growth of the self-styled entrepreneur “Host” plus the illegal sub-letting of apartments is not well understood and difficult to track. In this hyper-competitive environment, Sydney is an important market globally. This is just one the many reasons why a comprehensive, cost effective, Register is needed. That is why companies, like Airbnb, invest so much money on promotion, internet saturation and lobbying for less or no regulation and oppose sensible standards in the public interest.^{xi}

29. In 2018, the Australian Housing Urban Research Institute published the chart below showing that there were just over 20,000 Airbnb listings in Sydney and just under 20,000 listings in Melbourne.

Figure 1: Airbnb listings for Sydney and Melbourne (Aug 2015–Feb 2018)



Source: authors, based on analysis of AirDNA.co data

30. The Statista analysis below estimates that in fact short-term letting is more than four times as large in Sydney and more than three times as large in Melbourne.



31. This simple graph illustrates the extent to which the focus on Airbnb distorts the understanding of the public, bureaucrats and politicians about the impacts of online rental brokers. There are dozens of platforms operating in Australia and overseas and innumerable licensed and unlicensed “agents” turning apartments into short term rentals. This fragmenting market includes a cadre of get rich quick ‘professional tenants’ who illegally sublet multiple apartments or now co-host with landlords’ using multiple residential tenancies for multiple apartments across multiple buildings. The figures belie the impacts for the people who live in the localities and in the residential schemes in which this conversion is taking place. “The biggest losers are the people who live in apartments and younger and vulnerable residents who are unable to afford a home and are stuck in an increasingly insecure housing market.”

32. In 2017, Professor Nicole Gurrán, University of Sydney, published an initial and conservative estimate of potential loss of 6000 apartments to Airbnb (alone).^{xii} This is equivalent to removing about 9 apartment buildings the size of Sydney’s World Tower from the residential market. In some locations the number of listings for STRA is five times that of residential rental vacancies.^{xiii}

33. In 2018, the Australian Housing Urban Research Institute (AHRUI) found that over 10% of housing in some suburbs is listed on the Airbnb platform and more than 40 per cent of listings are for Hosts who have more than one listing. Some ‘hosts’ identified across both Sydney and Melbourne had over 120 properties suggesting the high presence of property management companies and commercialised activity. The report also debunked Airbnb’s long held claim that the majority of its

hosts use the platform as an economic lifeline to cover basic costs such as rent and groceries, rather than purely for profit.^{xiv} That claim is a fallacy.

34. The economic analysis from the University of Sydney and the University of NSW shows that the short term rental market is already distorting the rental market.^{xv} In March 2019, new modelling from the Reserve Bank of Australia (RBA) also showed that Airbnb is having a definite effect on rental prices despite the company's assertions its business model doesn't affect Australia's housing market. The University of Sydney Professor Peter Phibbs said "... the "sharp link" between rents and vacancies rates – highlighted by Monday's RBA report – demonstrated that home-share services like Airbnb are influencing the housing market". The RBA report found that vacancy rates are the "strongest predictor" of rents. Professor Phibbs said, that "...while that in itself seems "pretty obvious", it also shows the conversion of long-term rental stock into Airbnb-style tourist accommodation is reducing rental stock, and subsequently reducing vacancy rates".^{xvi}
35. In the Sydney Greater Metropolitan Area (SGMA) over 62% of residential properties are listed for entire houses and apartments. That figure is considerably higher in key locations attractive to tourists and visitors. For brevity we mention just two:
- (i) In the Eastern Suburbs local government areas of Woollahra, Randwick and Waverley, at the end of 2018, there were a total of more than 10,300^{xvii} homes or 9 per cent^{xviii} of all dwellings listed on Airbnb alone. Of these, 65 per cent^{xix} are for un-hosted properties – that is, where entire homes or apartments are rented. The average un-hosted Airbnb property in the Eastern Suburbs is rented for a staggering number of days each year, 118 in Randwick, 146 in Woollahra and 241 in Waverley.^{xx}
 - (ii) In the Northern Beaches there are now 4786^{xxi} homes or 5 per cent^{xxii} of all dwellings listed on Airbnb, of which approximately 80 per cent^{xxiii} are un-hosted properties – that is, where entire homes or apartments are rented. The average un-hosted Airbnb property on the Northern Beaches is rented for a staggering 245 days each year.^{xxiv}
36. In September 2018, Professor Nicole Gurr et al said that: "Without a basis for regulating short term holiday rental accommodation within residential properties, there is a strong risk that well designed and located apartments and townhouses will become holiday rental rather than permanent residences. This will exacerbate rental affordability pressures and also increase the risk of conflict in relation to residential and tourism uses in certain housing markets".^{xxv}
37. As noted above, there are thousands of apartment dwellers living in mixed use and commercial zones like the CBD, Darling Harbour, North Sydney, St Leonards, Pyrmont and locations like Sydney Olympic Park (to name a few). These apartment communities often rely on a development

consent condition that explicitly prohibits short term letting to stop their homes being turned into quasi-hotels. Such conditions are not uniformly applied across LGAs, however, because “serviced apartment” rules make it clear that short term letting is an impermissible use and these illegal uses can be shut down. In popular locations like Manly, Coogee and Bondi, Local Councils have managed these incompatible land uses through the Local Environment Plan and approving a mix of accommodation providers to service those locations while protecting residential objectives. The STRA SEPP removes strategic planning capacity from all Local Councils in every part of the NSW.

38. The New York City Council recently uncovered a \$20M(US) business that had been operating 133 apartments via the Airbnb platform who had profited from 76,000 illegal lets. If the proposed STRA SEPP is implemented in NSW such rapacious operations will be entirely legal unless the Owners Corporation can pass a by-law preventing it.
39. In another example, in Portland, where Airbnb has a ‘one host one property’ policy, the short-term rental ordinance does not apply to landlords in commercial-zoned areas, if they file for a relatively routine change in occupancy to allow hotel-style uses in their buildings. This is how one Airbnb Host, can list over 500 apartments in different US cities.
40. In NSW there will be no limits and it will be the most vulnerable residents in the most affected areas and buildings who will be least able to get a by law adopted because an organised vote of 25% of owners can prevent such a by-law being passed. In many buildings a single landlord will control the vote.
41. The stated aim of the STRA SEPP is to support “home sharing” activity (cl.3). It is the OCN’s submission that, in its current form, the STRA SEPP is not about “home sharing”. It will facilitate more commercial STRA and enable it to spread because under the proposal STRA:
 - (i) is not restricted to the principal home that would have created natural limits;
 - (ii) will encourage investors to divest from permanent tenancies for more lucrative STRA;
 - (iii) provides no protection for residents if 25 % or more of absent investors vote against adopting a by law to prevent short term letting by absent landlords; and
 - (iv) lacks control over the intensity, turnover or spatial distribution of the land use in any zones, including residential zones and residential strata schemes for very dubious results.
42. The economic benefits of Airbnb and other platforms businesses are overstated and do not take into account the externalised cost to the community. Much of the favourable research is commissioned by Airbnb: “In regard to zoning regulations, there is no empirical evidence that the net benefits of Airbnb introduction and expansion are so large that policymakers should reverse long-standing regulatory decisions simply to accommodate the rise of a single company” Josh Bevans, Economic Policy Institute, January 30, 2019.^{xxvi}

IMPACT ON RESIDENTIAL STRATA COMMUNITIES

Development Consent Conditions and Existing Apartment Buildings

43. The proposed STRA SEPP does not contain any express override of existing conditions of development consent that prohibit short term letting.^{xxvii} However, the rules of interpretation mean that the specified exempt activity (STRA) will render such conditions null and void.^{xxviii} The Discussion Paper makes no mention of this. The Draft SEPP does contain a note that states that specifying the development as “exempt development” does not authorise the contravention or any condition of development consent (cl 9 note 2). However, the content of that note is not given effect by any provision in the Draft SEPP. To protect residential buildings in high density locations with such conditions there must be an express clause to the effect of Note 2, not just a note. Unless the STRA SEPP is amended it will take the lid off all these residential apartment buildings and allow un-Hosted STRA to expand.

- **Amend the SEPP to preserve the existing development consent conditions.**

New Apartment Buildings in Key Locations

44. Local and foreign developers (who may have approval to sell up to 100% overseas) are unlikely to include a “no short term letting by law” in the original by laws, so it should not be surprising that new apartments in key areas, are going straight to the “Airbnb market”.^{xxix} Foreign investors, in particular, are concentrated in high density dwellings located in inner city areas of Sydney and Melbourne.^{xxx} The off the plan purchaser has no way of knowing the ownership profile of the building or the business intention of investor owners. At the micro level this imposes a distressing burden on innocent purchasers who find they have bought into a quasi-hotel. It will be hard for them to ever establish a residential culture or community environment. The fact is that ordinary people rarely want to move into an apartment building with “Airbnb” in it, especially un-hosted STRA.

45. This lack of transparency violates the right of consumers to know and to exercise consumer power in the market. In the future, it will be those buildings with a “no short term letting” by law that will retain their value. This is the experience in the USA. There is already a silent displacement of both tenants and apartment owners moving to escape this nuisance and this will increase.

Mixed Use Schemes

46. In developments that are approved for mixed use (e.g. retail, residential and serviced apartments) the conversion to STRA has the potential to disrupt the entire economic model. For example, the development consent conditions for the Opera Residences in Sydney building, includes approval

for residential apartments on specific floors segregated from the serviced apartment segment of the scheme. The residential floors are for permanent residents and the conditions include a prohibition on short term letting.^{xxxii} The protection will be removed by the STRA SEPP. Similarly, a development on the Central Coast consists of residential dwellings, a golf course, and a hotel. It has extensive sporting facilities managed by the community association. The scheme of 260 lots estimates it has 60 international investors with potential for short term letting. The interdependency between the hotel business, the golf course and property values within the estate are important. There has been no consideration as to how to make adjustments to compensate commercial operators or other resident owners within the same development.

Residential Schemes

47. The introduction of STRA into residential strata communities brings extra costs of concierge services, security, wear and tear on lifts, gyms, other utility areas, and administration. Extra management costs will be borne by owner/occupiers and investors with residential tenants who will be subsidising the business models of those running STRA businesses significantly.
48. The vast majority of residents do not have any concierge, building manager or security services. The design of residential complexes is such that there may be multiple entrances, private homes face onto lobby areas and there can be multiple car park entrances. It is common for lift access from a secure residents' car park to take people directly to residents' floors. There is no separate lobby and no way of controlling access as people pass keys and security fobs. The Code of Conduct cannot effectively address what is one of the major issues – security.
49. It is the residents who are left to manage the building with fewer people willing and able to volunteer for the Executive Committee, cope with people they don't know in their car parks, their corridors and their pools and pick up the mess. It is these people who are living with the parties on balconies, family holidays in their pool, weekend visitors dominating the gymnasium, and increasing the wear and tear and damage on the common property. The majority of schemes are less than 20 lots. There is no strata agent or services are limited and periodic. In mid-size schemes of 50 lots building manager are usually part-time. These apartment buildings are not hotels.

Community Tiered Developments

50. In community tiered developments, where a single estate community contains several strata schemes, residents are now faced with the prospect that one scheme may adopt a by-law but not all them. Each of the schemes pays levies based on unit entitlement to the community association, which is responsible for managing the common property facilities. It would be unconscionable for

property owners to be forced to subsidise another scheme and wear the social and economic imposts, especially when they have clearly voted against STRA. This has already happened on one such estate adjacent to the harbour and with high value facilities in North Sydney.

Not a minor impact in residential strata communities

51. OCN maintains that STRA is not a “minor impact” and un-hosted STRA should never be an “exempt development”. The cumulative impact of multiple STRA operating 180 days (more with the proposed 21 day + loophole) is not a “minor impact” on that community. If STRA is on average a 4-night stay, there will be 45 changeovers in a single apartment (based on 180 days). In a residential scheme of 300 apartments where 10% convert to STRA, that is 1350 (30 x 45) changeovers. In a small block of 4 units, 2 lots produce on average 90 (2 x 45) change overs. As a “changeover” means one party leaves and another arrives, this results in 180 (2 x 90) movements of families, and luggage. That is a significant increase in internal traffic, wear and tear and costs to the entire Owners Corporation. It is added traffic moving in and out of car parks and it is a considerable increase in complete strangers in facilities, like the resident’s pool.
52. These “Guests” also bring their own Visitors to the property and frequently arrive with more people than the property was booked for. This is not uncommon in traditional tourist accommodation properties, but they have onsite management and Guest check in. They can also manage Guest behaviour. The use of apartments for “Airbnb style letting” frequently relies on “self-check in” and there is no control over who or how many people actually arrive. In one instance, a scheme reported 10 people entering their “secure” building in Coogee. In one CBD scheme several apartments were booked and the “Guest” conducted her wedding reception in the residents’ function room.
53. The lack of limits on the number of apartments that can be used for STRA in a single residential building is a significant flaw in the policy. There are buildings in central Melbourne where 80% of the apartments are on the “Airbnb market”. In smaller buildings in Sydney, there is 50% conversion and more. This is no different from the experience of cities like London.
54. The relaxation of housing laws in London has led to a STRA boom causing housing distress. In a residential apartment block near Marble Arch, one in five of its 530 apartments is now being used for short-term rentals.^{xxxii} The 90-day limit has failed because there was no registration system and the Council has been forced to rely on Airbnb, which is becoming increasingly irrelevant as the market fragments. This is not “residential use” of the apartment building. It is disaggregated commercial use of a residential flat building by multiple absent investors and agents with no regard for the residents.

55. In contrast, for example, in the North Sydney LGA, residents are currently protected from STRA by the LEP. The North Sydney Council has actively defended residents' interests in dealing with short term letting in residential apartment buildings. If STRA is declared "exempt" there will be no Local Council oversight. It is the very existence of the LEP that has enabled residential strata schemes to keep the lid on STRA because they are able to rely on the fact that STRA is illegal. It is often sufficient to promote the LEP and this avoids personal conflict. This protection is being removed and, in some cases, the entire building will soon be converted to STRA.
56. In NSW, "serviced apartments" are prohibited in most residential zones in which apartment buildings are permissible. In mixed use zones "serviced apartments" may be permitted subject to conditions that require segregation onto a different floor, an on-site manager and medium-to-high rise building must have two lifts. Even the Complying Development Standards for a 'Bed and Breakfast' in zones where B & B is permitted require 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, or the community, precinct or neighbourhood association.^{xxxiii}
57. None of these considerations apply to STRA. The townhouse entrepreneur can open a B&B with no planning permission with 2 "Guests" per bedroom at a time. A single "Host" with multiple lots or multiple Hosts can operate STRA businesses among residents. The Code of Conduct requires nothing more than that the "Host" inform the Owners Corporation. No conditions apply.

Status of the "STRA Guest"

58. The status of the "Guest" has been raised by the industry and by OCN. This matter remains unresolved. In a hotel, motel or licensed B&B there is onsite management and it is clear the person is a licensee and their contract can be cancelled and they can be asked to leave. In the residential environment, if the Guest has "exclusive possession", they are a common law tenant. It would require an order from the Supreme Court to evict them. The police will not evict without a court order. This leaves Hosts and owners corporations in an untenable situation.

- **The status of the "STRA Guest" should be legislated as a licensee.**
- **The Owners Corporation must have the authority to fine the Host/Guest directly.**

Strata Fees and Charges

59. If the STRA SEPP proceeds there must also be a clear legal authority granted to Owners Corporations to levy fees and charges to ensure that costs incurred are paid for by the Host and not the Owners Corporation. This has been accepted by the courts in the USA, and should apply here.

- **Owners Corporations must have clear legal authority to levy fees and charges to ensure that the costs of STRA are paid for by the Host and not the Owners Corporation.**

Local Council Rates

60. Finally, competitive neutrality requires businesses competing with each other to be treated in a similar way. If residential rates are applied to residential land that is competing with licensed approved private accommodation providers who are incurring higher costs, they may withdraw from the market. If private providers reduce or withdraw their services that would be detrimental to the LGAs and it would also undermine the tourism objectives of Government. It is counter-productive to the Government objectives to ignore this issue. If a residential apartment (s) (or other dwelling) is used exclusively for tourist and visitor accommodation, it would seem reasonable to rate those properties as a business.

- **Local Councils should be able to rate a dwelling used exclusively for STRA as a type of business.**

Summary of Recommendations

- The legal status of the STRA Guest must be legislated to be a licensee, and put on the same basis as hotel Guest.
- The Owners Corporation should have the legal authority to fine the Host and the Guest directly.
- The Owners Corporations should have clear legal authority to levy additional fees and charges and ensure costs are allocated back to the owners and permanent tenants conducting STRA.
- OCN recommends that Local Councils should be able to rate a dwelling used exclusively for short term letting as a business sub-category.

FIRE SAFETY

61. To be an exempt development clause 9 (2)(c) of the Policy relevantly provides that if the dwelling is classified under the Building Code of Australia as class 1b or class 2 – 9:

- (i) the dwelling must have a current fire safety certificate or fire safety statement, or
- (ii) no fire safety measures are currently implemented, required or proposed for the dwelling.

62. In addition to these thresholds, there are proposed Fire Safety Standards specific to short term rental accommodation. The object of the FSS Regulation is to prohibit a dwelling from being used for the purpose of short-term rental accommodation unless the dwelling complies with certain fire safety and evacuation controls.

63. The controls apply in addition to any other requirements that apply to the dwelling under Part 9 (Fire safety and matters concerning the Building Code of Australia) of the Environmental Planning and Assessment Regulation 2000. The prohibition is prescribed both as an offence against the Regulation (attracting a maximum penalty of \$110,000) and a penalty notice offence (with a penalty amount of \$1,500 for an individual and \$3,000 for a corporation).

64. If a dwelling is within a residential scheme located on bush fire prone land it will require a complying certificate. This will mean that residential strata schemes in bush fire prone areas will have the benefit of a compliance inspection.

Complying Development STRA Class 2 Buildings

65. The OCN supports the additional mandatory Fire Safety Standards (FSS). No un-hosted STRA should be “exempt development”. If the STRA Framework is to be implemented without development consent, then for a dwelling within a residential strata scheme to be used for STRA purposes should be a “complying” not an “exempt development”. This will be the only way that the Local Council is able to check that a specific dwelling complies with the mandatory FSS. The fire safety standards are mandatory and important to the entire resident population in a Class 2 building.

- **If the use of a dwelling within a Class 2 building for STRA is to proceed it must at the very least be a “complying development” with inspection by Local Council or a private certifier.**

66. The Owners Corporation has limited powers to inspect. It may-be unable to establish whether:

- (i) the mandatory FSS are met;
- (ii) upgrade work has damaged the common property;

- (iii) any work interferes with the building's fire safety system;
- (iv) the work has been carried out by a qualified person; or
- (v) any assessment of the work has been performed by a qualified certifier.^{xxxiv}

67. The mandatory FSS help serve an important public safety objective. It is not voluntary and it should not be left to self-regulation by a fragmented "industry" of amateur "Hosts", unlicensed agents, property or a tick box on an online platform.

68. The mandatory FSS also have serious implications for the Owners Corporations. If Government policy engages the rights and legal obligations of all the proprietors, it must be clear that:

- (i) The cost of any work falls on the Owner or "Host" and not the Owners Corporation.
- (ii) The work must be carried out by a qualified person.
- (iii) If work involves the common property, the Owner must have the permission of the Owners Corporation to perform that work;
- (iv) If the Owners Corporation does not give permission for that work to be carried out, then an individual who conducts STRA will be committing an offence.

69. It should be made clear that:

- **The "Host" must not carry out or cause to be carried out any work on the common property without the consent of the Owners' Corporation; and**
- **The Host must not carry out or cause to be carried out any work that interferes with part of the fire safety system of the building.**
- **The work must be carried out by a qualified person.**

70. It will need to be spelt out who bears the cost and how the FSS obligation inter-act with the Owners Corporation's obligations under the EPA Regulations and SSM Act. For example, smoke and heat alarms are a statutory fire safety measure and may be part of the common property fire safety schedule of the building or be required as a result of a fires safety order. In this case, it is the responsibility of the Owners Corporation to maintain them. Fire doors are also common property and the responsibility of the Owners' Corporation.

71. There are instances where the (annual) fire safety schedule may include EPA requirements for smoke detectors in apartments, which are the owner's responsibility and not common property. In this case STRA upgrades will be the host/ owner's responsibility.

72. It is also the responsibility of the Owners Corporation to arrange for the buildings annual fire safety inspection. Section 123 requires the owners corporation to ensure access is provided, within a period or at a time specified, to the common property and, if so specified, in the notice to some or all of the lots in the strata scheme. Maximum penalty: 20 penalty units. It is a defence if the owners corporation can prove the owner of the lot refused to grant access. In schemes without the benefit of professional services, this is a significant burden on ordinary residents and, where, short term letting is occurring it is necessary for the annual fire inspection to include those dwellings.

- **There must be an obligation on the owner of the lot or, if the Host is a tenant, that access is granted.**

73. Further, elsewhere EPA Regulations specify that the responsibility falls on the 'owner of a dwelling within a class 2 building' or 'owner of a building' in relation to particular fire safety requirements. The proposed new 186W provides that (1) A dwelling must not be used for the purpose of short-term rental accommodation unless it complies with the requirements of Short-term Rental Accommodation Fire Safety Standard approved by the Secretary and published on the Department's website, as in force from time to time.

74. The penalties for use of a Lot in breach of the STRA FSS apply to an individual or a 'corporation'. There should be no possibility that an Owners Corporation could be held liable for the use of a Lot that does not meet the FSS. This should be clarified because without this clarification Owners Corporations (i.e. other owners) will be exposed to liability. The Owners Corporation should be expressly excluded from the definition of "corporation" for the purpose of the STRA FSS. It also necessary to prevent vulnerable resident owners from being taken advantage of and misled into funding fire safety upgrades under a spurious risk of prosecution.

- **The Owners Corporation should be expressly excluded from the definition of "corporation" for the purpose of the STRA FSS regulation.**
- **There must be clear legal authority that, if the Owners Corporation incurs costs, those costs are to be recovered from the Lot Owner or Permanent Tenant.**
- **The inspection of dwellings used for STRA should be mandated as part of the annual fire inspection.**

75. The Owners Corporation must be notified of the intention to conduct short term letting and it would assist if a note to that effect were inserted into the regulation. It should also be made clear by use of a note that the "Host" must not:

- (i) carry out or cause to be carried out any work on the common property without the consent of the Owners' Corporation;

- (ii) carry out or cause to be carried out any work that interferes with part of the fire safety system of the building.

76. The only way to prevent thousands of non-compliant and illegal apartments in Class 2 Buildings being used for STRA is to make it mandatory that there is compliance with fire safety standards.

- **It must be an offence for a corporation or individual to list, book or facilitate the use of the dwelling for STRA that does not comply with the fire safety regulations and standards**

Fire Orders and Fires Safety System Upgrades

77. As STRA increases the risk to all residents, it is also more likely that a Local Council will issue a fire order that the building be upgraded in terms of fire safety and that will be a cost to the entire owners' corporation. This is not a "minor impact" on the building or the other owners, especially those on fixed or lower incomes. The cost of fires safety upgrades can be considerable. For example, in an 8 storey, 4 per floor, 32 lot apartment building in Neutral Bay overlooking the harbour the Owners Corporation had to spend almost \$1m upgrading the fire safety system to meet Class 2 standards. The upgrade took several years.

78. This will be the fate of many Owners Corporations if they are forced to upgrade the entire building because of the increased risks created by the presence of STRA. The widespread problem of defects in fire safety systems in new buildings and the many older buildings mean that thousands of apartment buildings in NSW are likely to be unsuitable for use for STRA purposes.

Summary of Recommendations

- The use of a dwelling within a Class 2 building should, at the very least, be a "complying development" with inspection by Local Council or a private certifier before a dwelling is registered on the NSW STRA Register.
- It should be made clear that the "Host" must not carry out or cause to be carried out any work on the common property without the consent of the Owners' Corporation; and that the Host must not carry out or cause to be carried out any work that interferes with part of the fire safety system of the building.
- The work must be carried out by a qualified person.

- The Owners Corporation should be expressly excluded from the definition of “corporation” for the purpose of the STRA FSS regulation.
- There must be clear legal authority that, if the Owners Corporation incurs costs, those costs are to be recovered from the lot owner or permanent tenant Host.
- The inspection of dwellings used for STRA should be mandated as part of the annual fire inspection. To be effective the obligation to grant access must be imposed directly on the owner of the lot or the tenant who is the Host.
- It must be an offence for a corporation or individual to be involved with the listing, booking or facilitating the use of the dwelling for STRA that does not comply with the fire safety regulations and standards

THE NSW STRA REGISTER

Data, Planning and Demographics

79. The Government’s commitment to a STRA Register is welcomed. However, for several reasons, OCN will not support an ‘industry led’ register. Firstly, the State has significant data integrity requirements and the value and importance of this data set(s) must not be underestimated. Secondly, across the world, agreements and systems that rely on one or two major global platform companies have failed because of the fragmented nature of the market and behaviour of industry participants. This is a serious consideration. The STRA SEPP is intended to legalise a disaggregated informal sector but it will also enable the new market to expand and to fragment and diversify even more. The state-wide registration system must have credibility and should not institutionalise the disproportionate power of global online business into the regulatory framework.

80. The DPE and ABS hold detailed housing, demographic, community and economic data relied on for private sector investment decisions by public authorities for strategic planning. In order to tax and regularise this market, government, demographers, planners and regulatory authorities will need to know: the location, spatial distribution, volume and intensity of STRA. The regulatory authorities all need to capture and store the identity of the “Host” and address of the dwelling. More granular information is needed if the industry is to be properly controlled and profiled.

81. If the STRA Register is incomplete or unreliable it weakens the reliability of other data sets. For example, unlicensed “professional tenants” are currently invisible but take thousands of dwellings off the market in the guise of residential tenancies. This “get rich quick strategy” is being taught on a significant scale and does not appear in Rental Bond Board data. The issue is not one of “privacy”

or “private property rights” - identification and registration is routine in virtually all aspects of life: property title, taxation, liquor licensing, driving licences, development consents and so forth.

82. This issue is a global one. There is serious international concern that internet platform businesses are facilitating a black-market in goods and services.^{xxxv} The Register will support efforts by Australian Federal and State agencies to assess income tax, and apply land tax and capital gains tax more accurately. This includes identifying dwellings owned by foreign non-residents who become liable for an annual vacancy fee if their investment property is let for less periods of less than 30 days.

Failed Systems

83. Poor systems and lack of enforcement in places like New York and London have led to thousands of illegal apartments remaining listed on online platform giants like Booking.com, Expedia, and Airbnb. In Paris, licensing and fining the platforms, like Airbnb, for listing unlicensed properties has been more successful. In London, like Venice and Barcelona, the failure to track the growth of STRA has resulted in significant pressure on the housing market.^{xxxvi} The cooperation of Airbnb to block bookings above 90 days in London, has failed. In fact, that cooperation has been a dysfunctional response as Hosts change platforms to avoid limits or delist and re-list under a different name. In the UK the announcement of 23 September 2019 that Airbnb will now start sharing identity information with council authorities to help with enforcement is simply irrelevant to the overall task.^{xxxvii} It is unlikely to be accepted by London or elsewhere because it has been shown to fail in other jurisdictions. It keeps the platform companies in control of the data.

84. International experience is that once one platform cooperates, others are slow to follow because they benefit commercially from the illegal activity. With more and more platforms coming into the market and the rise of aggregators, cooperation with platforms is becoming less useful and less likely. The Report of the WA Inquiry *Levelling the Playing Field; Managing the impact of the rapid increase of Short-Term Rentals in Western Australia* published on 26 September 2019. It recommended that Government examine how best to design a registration system to meet all data, compliance and enforcement requirements, this includes cross portfolio consideration and Local Councils. The Report of the Inquiry contains useful discussion.^{xxxviii}

Focus on Hosts not Platforms

85. The focus on companies like Airbnb and Expedia and the fragmentation of the market means that dozens of platforms and agents go unnoticed. For example, the platform Misterb&b has over 300,000 hosts globally and, apparently, in some parts of Sydney rivals Airbnb.^{xxxix} The focus must be on the Hosts, and this is why Berlin has been more successful in managing STRA.

86. The effectiveness of the NSW STRA Register will depend on whether:

- (i) the Register is friendly public facing and easy to use;
- (ii) it is supported by clear mandatory obligation on Hosts to register;
- (iii) there are penalties for listing or using an unregistered dwelling for STRA purposes;
- (iv) the administrator has the technical skill and capacity to identify unregistered premises; and
- (v) an obligation on industry participants to (i) clearly display the unique ID; and: not to list, book or facilitate an unregistered dwelling.

Public Agency or Digital Economy Solution

87. If the NSW STRA Register is outsourced it must not be administered by an industry stakeholder with a commercial interest in the short-term letting industry. In the USA, the company Host Compliance based in San Francisco provides online registration, monitoring, compliance and complaints hotline services for US councils and governments. This market solution is the digital economy evolving and responding to the regulatory challenges of the digital environment. This appears to be a better “fit for purpose”: <https://hostcompliance.com/features/#platform-overview>.

88. In Australia, a similar business <https://www.bnbguard.com.au/> has been operating in this space. It is data rich and uses sophisticated technology to monitor dozens of platforms. It already provides monitoring and compliance services and a register to clients in NSW, Victoria and Queensland.^{xi}

Host Obligation to Register as a Planning Requirement

89. It should be mandatory for Hosts to be registered before a dwelling is used for STRA purposes. To make this compliance tool effective the obligation to register should be part of the general planning requirement (Part 2 SEPP STRA) or a specific development control (Part 3). This would make it absolutely clear to everyone that conducting STRA in unregistered premises is illegal and penalties apply.

90. This would remove the waste of public money spent chasing unregistered properties to prove whether or not it in fact being used for short term letting. The requirement to register the premises AND not to list an unregistered-premises means that the listing of an unregistered dwelling would itself is evidence *per se* of non-compliance. This is a far cheaper and easier approach for everyone - including the Hosts. The Register should be self-sufficient and this approach would also make this easier to achieve and be at a low cost for everyone if it is “all in” – that is - every Host and premises must be on the Register. The NSW Government has advanced spatial data information and e-planning systems and the approach proposed in this instance appears to be significantly out of step with registers and data collection standards in NSW.

Types of Information

91. Information the Host should identify includes: Tax file number, Address of premises, Name and Address of Host; Type of dwelling, Strata Scheme Number, type of hosting; number of rooms; swimming pool; public liability insurance; platforms on which the property is listed; days of availability; nights of occupation under STRA (at the time of annual renewal). It is common to upload documents such as proof of identity and ownership or consent, and, if the property is used for Un-Hosted STRA, to identify whether it self-managed, the agent or facilitator and the 24-hour emergency number.
92. It is essential that Local Councils and the NSW Fire and Rescue can log-in to the system and that the Australian Tax office and NSW State Revenue can data match. This data is an important addition to the housing, tourism and demographic data utilised by various NSW agencies. The ability to generate disaggregated data report is invaluable to government, owners' corporations, local council and the industry.

Platform obligation not to list unregistered dwelling

93. Platforms and agents (licensed or unlicensed) must not list an unregistered residential dwelling for STRA and significant penalty that accumulates based on days listed. The international experience shows that without such an obligation Platforms will continue to list thousands of illegal apartments. Apart from the violation of planning and strata law, the travelling public is entitled to rely on a listing as a representation that the dwelling is safe and the STRA is lawful. In a country like Australia, international travellers expect a base line level of regulatory compliance and safety. Residential strata schemes are also entitled to expect that no apartment will be listed in violation of a by law. The register must prompt the Host to ensure they have notified the Owners Corporation and their neighbour. This will avoid unnecessary conflict between residents and tourists or other visitors.
94. The STRA customer is entitled to know and to rely on the fact that for premises and hosts to be compliant with the law they must comply with fire safety standards and be on the STRA Register.

Summary of Recommendations

- It should be mandatory for Hosts to be registered before a dwelling is used for STRA purposes. To make this compliance tool effective the obligation to register should be part of the general planning requirement (Part 2 SEPP STRA) or a specific development control (Part 3).

- There must be an clear obligation not to use an unregistered residential dwelling for STRA and this should be backed up with a penalty that accumulates based on days listed.
- Platforms and agents (licensed or unlicensed) must not list an unregistered residential dwelling for STRA and this should be backed up with a significant penalty that accumulates based on days listed.

CODE OF CONDUCT

95. OCN has participated in all Code of Conduct advisory committee meetings and it has provided the Government with extensive substantive comments, proposals and advice. The Code of Conduct does not regulate the rights and obligations between the parties. It is limited primarily to “party houses”. The platform companies have no obligations and the Hosts are not responsible for the conduct of their Guests. The Commissioner for Fair Trading has no powers to investigate a matter and no additional powers of inspection in relation to matters under complaint. The Code of Conduct should have been developed in closer consultation with Local Council to ensure that these regulatory framework mesh properly.

96. The requirement to have an NCAT order if the basis of a complaint is breach of a by-law will create confusion for strata managers, strata lawyers, and residential strata communities. There will need to be considerable resources put into education. In any event, the Code of Conduct is not designed to address the systemic pattern of violations of privacy and security or provide a means to ameliorate the social and economic impacts on a residential environment. The following comments are necessarily brief.

Promoting compliance with the “no short term letting” by law

97. The commercial motive to ignore or dispute by laws is high and without a stronger legal framework to reinforce the protection for residential strata schemes, the entire burden of policing compliance with fall heavily on owners corporations. There needs to be a mechanism that reduces the risk of violations of the “no short term letting” by law. It should not be possible to register a strata property that is part of the scheme that has a “no short term letting” by law.

98. The Code includes a general exhortation to comply with planning, criminal and by laws but this is not sufficient to address the issue. There needs to be obligation that applies to industry participants not to register, offer, list, advertise or use a residential dwelling within a residential strata scheme for the purposes of STRA in breach of a ‘no short term letting’ by law.

- **Industry participants must have an obligation not to register, offer, list, advertise residential dwelling for the purposes of STRA in breach of a ‘no short term letting’ by law.**

Responsibility of the Host for their STRA business

99. Hosts must have responsibility for the impact of their STRA business on owners and residents within the scheme on a day to day basis and not only in the most extreme cases. In particular, Host must be capable of being held responsible for the theft, loss, or damage to the common property; and theft, loss or damage to the property of residents, caused by the Host's Guest.

100. It is common for Guests, who are unfamiliar with the strata environment, to cause damage to common property often resulting in damage to another residents' property. This can range from negligent events (towels left in basins that flood floors) to deliberate acts of wilful damage (breaking locks or doors) or reckless damage to lift panels with bikes, and blocking sewer systems with disposable wipe and so forth. The Owners Corporation that has the strict legal duty to repair and maintain the common property, and this becomes increasingly urgent when it impacts on others.

- **The Host must bare the cost of repair of damage to common property and to compensate a resident or Owners Corporation who has suffered theft, loss or damage to their personal property as a result of the actions of their Guest.**

Public liability insurance

101. Section 5.4.3 requires the Host to have public liability insurance (PLI). The failure to have PLI could attract a strike. To record a strike the breach must not be “minor”. Theoretically, the lack of PLI could ultimately result in a person being excluded from the industry but this highly unlikely. If there are sound public policy reasons for requiring a host to hold PLI, the system needs to be designed to promote and ensure compliance up front. The obligation needs to be backed up with a penalty. The proof of PLI should be part of the Register.

- **There should be a penalty for failing to have public liability insurance.**

Power to order production of information in specific cases

102. The Commissioner has the power to “request” an industry participant to produce information “relating to the STRA industry” or “this code” and OCN has been informed that it is not the intention of the Commissioner to investigate individual cases as such. The Commissioner should have a clear power to order production of information in relation to a specific dwelling or specific Guest and

a specific transaction. This is necessary to support the complaint function of the Commissioner and is a common feature of analogous bodies, such as the Ombudsman. In many instances, a complainant will not have and will not be able to discover the precise details of, for example, the identity of the Guest. The ability of an aggrieved person or strata scheme to lodge a comprehensible complaint that satisfies the threshold set by the Commissioner, must not be frustrated by lack of information.

- **There should be a clear power to order production of information in relation to a specific dwelling or specific Guest and a specific transaction.**

Directions

103. The OCN has consistently said that the by-laws of a strata scheme prevail over the Code of Conduct. The Code expressly states that the directions of the Commissioner are not to be inconsistent with by laws. However, the Commissioner needs to be able to impose conditions that are more restrictive than by laws that apply to all residents.

- **The Commissioner must be able to impose conditions that are more restrictive than by laws that apply to all residents.**

Extraterritorial reach of the code – “guest’

104. The application of the Code to an international Guest is fraught with evidential, procedural and enforcement problems. To date, OCN has seen no evidence that Australia is a party to any international or bilateral treaty on mutual assistance in civil matters; the enforcement of money judgements; or consumer affairs agreement(s) that would enable this code to be effectively applied to an international guest who has left the Australian territory and resident in a foreign jurisdiction. This aspect of the code needs further public explanation for people to have confidence in the Code.

Public Safety

105. There is a serious question as to whether any person who is on the Sex Offender Register or has criminal record for domestic violence, drug use, or assault should be able to participate in the industry at all. It requires more than mere reliance on Platforms to ‘verify’ the Host’s identity or ad hoc reviews by consumers to address this issue. There should be some threshold entry requirements or an administrative process for checking police records. There is also a case for data matching listings with police records and consumer reviews and obtaining the ‘red flag’ data from platforms like Airbnb.^{xii}

Racial and Other Forms of Discrimination

106. The anti-discrimination laws need to be assessed and plain English information made available on how these laws apply to this industry. Section 20 of the *Anti-Discrimination Act 1977* (NSW) makes it unlawful to deny a person accommodation on the grounds race. This prohibition does not apply when the accommodation is in a private home if the principal or a near relative intends to continue residing in the premises. It should be clarified whether the prohibition applies when the Host is not Present.

Conclusion

107. In its current form, the proposed STRA Framework for NSW will remove residential protections and override significant housing policy objectives. It is not sufficiently flexible to take account of the social and economic impacts in specific localities and this is especially acute in the residential strata environment. The NSW STRA Framework takes no account of the cumulative impacts of multiple dwellings within a single apartment building being used for STRA dispersed among residents. There is no mechanism to stop an apartment building being taken over by stealth and no threshold that would trigger a “change of use”. The only protection that residential strata communities have is the possibility of a by law to protect them from absentee landlords turning their home into a tourist accommodation facility. As an organised 25 % of the vote can defeat the by law, thousands of the most vulnerable residents will be forced to live with transient holidaymakers and visitors who provide a lucrative income stream for the people who do not live there.

108. There should be no un-hosted STRA classified as an “exempt development”. There must be a clear legal authority for an Owners Corporation to allocate costs to the Host and Hosts must be responsible for the conduct of their Guest(s). The STRA Framework must not commence until there is a STRA Register. That Register must not be led or controlled by the STRA industry as suggested. It is crucial that the Register is administered by an independent entity and is part of the compliance and enforcement system of NSW.

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APPENDIX 1 INTERNATIONAL EXPERIENCE

The Australian research is consistent with international research on this topic. In 2017 researchers at the University of California, Los Angeles, looked at rents and home prices in the 100 largest metro areas in the U.S. between 2012 and 2016. They found that a 10% increase in Airbnb listings leads to a 0.39% increase in rents and a 0.64% increase in house prices. “That may sound minuscule, but between 2012 and 2016, rents rose by about 2.2% annually [on average in the 100 areas], so a 0.39% increase in that context isn’t very small at all,” The same is true for home prices, which rose by an average of about 4.8% annually in the 100 areas in the study. The authors found a correlation of higher house prices and rental rates in neighbourhoods with fewer owner-occupiers.^{xliii}

More recently, in April 2019, the Harvard Business Review reported that independent economic analysis shows that a 1% increase in Airbnb listings is causally associated with a 0.018% increase in rental rates and a 0.026% increase in house prices. “While these effects may seem very small, consider that Airbnb’s year-over-year average growth is about 44%”. The researchers concluded that in aggregate, the growth in “home-sharing” through Airbnb contributes to about one-fifth of the average annual increase in U.S. rents and about one-seventh of the average annual increase in U.S. housing prices.^{xliiii} These studies tend to focus on Airbnb and, as mentioned above, is not a comprehensive survey of the short term rental market operating from residential dwellings. It tends to distort the public debate.

Leading planner and academic Professor Gurran has said that: “Voluntary and market regulation ... misses many of the traditional concerns that land use planners have about tourism accommodations, such as the opportunities to spatially cluster tourist facilities and services; the management of traffic, parking, and waste; building and urban design requirements to attenuate noise and privacy impacts; appropriate fire, safety, emergency, and disability access requirements; and likely levels of occupancy and potential overcrowding (Palombo, 2015).”^{xliiv}

The international experience is that jurisdictions that try to accommodate companies like Airbnb, soon tighten regulations because liberalising their planning laws simply allows rampant STRA. In the vast majority of countries, the STRA regulations are designed and implemented at a more local level.

In Canada, Vancouver, has a similar housing culture, demography and housing issues as Sydney, has a more pro-housing approach to STRA. In Vancouver all STRAs require a license; the license number must be displayed on any listing; investor STRAs are banned; Owners corporations can ban or restrict STRAs, and can fine wrongdoers up to \$1000 a day; the city can fine up to \$1000 per offence per platform per day for not having a license or breaking the rules, with fines up to \$10,000 for repeat

offences; requires hosts to submit evidence that their property complies with local rules, including fire safety regulations.

In Los Angeles, which is one of the few cities in the world that permits 180 days, STRA is restricted to the primary home. In December 2018, LA City reduced that cap to 120 days. In Paris, the day cap is 120 days but Paris also restricts short term letting to primary home only and fines Airbnb for every illegal listing on its site.^{xlv} The day caps in comparable European cities, in the US and Canada are all significantly lower than the 180 days proposed in NSW.

In Toronto, STL is restricted to the primary home and the Municipal Council will not grant an exemption to investors even where the Condominium Council has permitted STL.^{xlvi} The objective of the Toronto regulation is to stabilise vertical communities and protect housing supply. Similar arrangements apply in Vancouver and Montreal.

In Chicago, the “declaratory” documents of an apartment community explicitly exclude STL and, if not, the Condominium Association can amend it themselves.^{xlvii} In 2017, Chicago City Council established a Prohibited Buildings Register. It started with 900 buildings and 12 months later has just under 2000 apartment buildings and townhouse complexes on it.^{xlviii} There are over 91,000 units protected as a result of the Prohibited Building Register. The Chicago regulation also puts a limit on the number of apartments in a single building that can be used for STL (where it is not prohibited).

In Boston, the Council has banned investors and tenants from using residential dwellings for STL and is instituting a registration system to protect housing supply.^{xlix} In West Hollywood, the Council has banned STL in apartments altogether.^l In San Francisco, the municipal ordinance permits STL in primary homes subject to other state or federal laws. It also expressly states that it does not confer a right to lease or sublease an apartment for short term rent where short-term use is not otherwise allowed by the homeowner association agreement or requirement, covenant, condition or restriction(s 41A.5(5)).^{li} Typically, these bodies prohibit transient occupancy and use of residential apartment buildings. For example, “*Rule s 7.1 No Condominium shall be occupied and used except for non-transient residential purpose by the Owner, their tenants, and social guest...*” (*Portside Homeowners Association*).^{lii}

In most comparable cities STL is restricted to primary homes in order to prevent the loss of housing to the tourist market. In North America, for example, as mentioned above, Vancouver, and Toronto, Denver, Los Angeles, New York, Washington DC, Philadelphia, Portland and San Francisco all restrict STL to the primary home.^{liii}

Many of these cities also include a day cap as well as a primary home restriction. For example, New Orleans, Washington DC, Portland and LA also have a cap on the number of nights Un-Hosted STL can be offered. In 2015, Santa Monica banned Un-Hosted Airbnb entirely, a Host must live in the

premises during their stay, apply for a business licence and collect 14% occupancy tax that is payable to the city. The city's regulation was challenged by Airbnb, which has lost its appeal. Like Coogee and Bondi, Santa Monica is a popular beachside community.^{liv}

In jurisdictions such as Austin^{lv} Chicago, New Orleans, and Toronto STL there are areas/zones where short-term rentals can take place and hosts are required to obtain a licence to operate.

Most of the jurisdictions mentioned include requirements for registration and permits. Austin Texas charges all accommodation providers a \$500 licence fee and \$300 per annual renewal. New Orleans has announced a moratorium on new permits.^{lvi}

In Europe mature cities are trying to get Airbnb back under control. Amsterdam reduced the cap from 90, to 60 and reduced its day cap to 30 from January 2019.^{lvii} Regional cities such as Liverpool in the UK have called for 90-day caps like London as a first step in addressing a growing problem. In London Airbnb agreed to block bookings in excess of 90 days, but it is not the only platform so the measure is somewhat irrelevant. The Mayor Sadiq Kahn has declared that the failure to track the growth of STL has put significant pressure on housing market and registration and further restrictions will follow.^{lviii} The City of Westminster identified a single building with over 100 apartments listed and has advocated a 30-day limit and a registration system.^{lix}

In Spain, Mallorca banned Airbnb from apartments in April 2018.^{lx} Madrid has banned the use of apartments for short term letting unless there is a separate entrance, which has taken thousands of apartments off the market. In Budapest, the uncontrolled investment in new apartments and impact on communities is now leading to restrictions.^{lxi}

APPENDIX 2 FIRE SAFETY RESEARCH AND EXPERIENCE

On 20 August 2019, Mr Wayne Smith, CEO National Fire Industry Association testified to the Parliamentary Inquiry on Building Regulation that in modern buildings:

... egress time for a person in a modern apartment fire with modern furniture today is about six times less than what it was in the nineties. So instead of having 17 minutes to get out of the building, you have like three minutes to get out of the building—to get out of the apartment, not the building.^{lxii}

The latest independent research conducted by Nicole Johnston (Deakin) and Sacha Reid (Monash) also shows that in NSW over 90% of residential buildings have defects in at least one construction system affecting multiple floors, apartment and parts of the building. This research identifies water and fire safety systems as comprising the bulk of the defects, which pose potentially serious health impacts (toxic mould) and threat to life and are costly repair.^{lxiii}

In August 2019, the NSW Parliamentary Inquiry took evidence about “alternate fire safety solutions” being certified for multi-storey residential buildings in relation to egress, fire separation and fire services. The City of Wollongong submitted that: “... these alternate solutions provided economic benefits to the Developer/Builder the maintenance costs are transferred to the end user being the strata /owners.” It is common for councils to “...issue Fire Orders on a building 12 months after the Occupation Certificate has been issued, as a result of an essential fire safety measure either not being installed or not installed correctly. This particular issue is of concern as the safety of the occupants maybe compromised as the intended Fire Safety Measures may not provide detection in the event of a fire.”

This scenario was realised in the recent fire at the "Neo 200" apartment building in Melbourne. That building is comprised of 371 apartments. The forensic review of the buildings fire safety systems after the combustible cladding fire: “... revealed that over 40% of apartments had alarms that could not be activated from either being removed or were inoperable. Over 1000 smoke/detection alarms had to be replaced. ... This example is by no means isolated to a Victorian issue; NSW has the same type of buildings with external combustible cladding.”^{lxiv}

There has been more than one fire at the Neo2000 Spencer Street building in Melbourne. In the last cladding fire occupants were reported to have taken plastic and wrapped it around the smoke alarm to stop it activating in the case of cooking or other products of combustion in an apartment. The previous fire was caused by a towel left on an air conditioning unit.^{lxv} OCN is informed of situations in Sydney where “Guests” have cut the wires of a smoke alarm or taken out the battery to stop it from making a noise..

The risk of fire and threat to life to all residents (not just the guest) in a Class 2 Building is significantly increased with the presence of short stay tourists and visitors. In the case of the 2014 Lacrosse cladding fire, the Melbourne Fire Brigade investigation highlighted the problem of increasing the occupancy and presence of short-term stayers: “Some individuals or companies rent apartments on long leases, furnishing them, then renting them out either short term or on a bed by bed basis. This is facilitated via the use of sites as Airbnb, Wotif and other internet sites on which owners or small operators can advertise and facilitate bookings.” Giuseppe Genco, Municipal Building Surveyor, City of Melbourne, April 2015.^{lxvi}

The latest apartment block fire reported in a modern high rise building in the centre of Canberra City is attributed to a ‘smouldering cigarette setting fire to ‘combustible’ balcony furniture’. The fire spread to the 100 per cent polyethylene-core panels on the building and burned on both sides of a balcony partition separating two apartments.^{lxvii} In that case, the fire broke out on the second floor, and residents were able to reach it with hoses from the ground.

ⁱ Lord Denning MR, *Fox v Stirk & Bristol Electoral Registration Officer* [1970] 2 QB 463, 475.

ⁱⁱ Draft State Environmental Planning Policy (Short-term Rental Accommodation) 2019 (STRA SEPP); the draft mandatory fire safety standards that will require all dwellings used for STRA to meet additional fire safety standards; the draft Code of Conduct for the Short-Term Rental Accommodation Industry, and the Discussion Paper, which raises the possibility of an 'industry-led' Register.

ⁱⁱⁱ <https://www.parliament.nsw.gov.au/ladocs/transcripts/1919/Hearing%20-%20Public%20Hearing%20No%202.pdf>

^{iv} http://planspolicies.planning.nsw.gov.au/index.pl?action=view_job&job_id=8525;

http://planspolicies.planning.nsw.gov.au/?action=list_submissions&search=&job_id=9645&title=Website%20Submissions&type=2&page=3

^v The tourism industry is now about 5 per cent of the Australian economy and the long-term forecasts are for strong growth, especially in international visitor numbers. <https://www.destinationnsw.com.au/tourism/facts-and-figures/tourism-forecasts>; 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>

^{vi} <https://www.destinationnsw.com.au/wp-content/uploads/2019/09/tourism-research-australia-tourism-forecast-report-2019.pdf>

^{vii} New section 137A of the *Strata Schemes Management Act 2015* (NSW) was passed by the Parliament in August 2018. It has not commenced. The definition of short-term rental accommodation (STRA) is an agreement to occupy a residential dwelling for any period up to 3 months at a time. The by law is not part of this consultation.

^{viii} <https://www.parliament.nsw.gov.au/ladocs/transcripts/1919/Hearing%20-%20Public%20Hearing%20No%202.pdf> ; New section 137A of the *Strata Schemes Management Act 2015* (NSW), clarifies that the Owners Corporation can adopt a by law to prohibit non-resident owners from using their Lots for short term rental accommodation purposes. This amendment has been passed by Parliament but has not yet commenced. It is not part of the current consultation.

^{ix} http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol_reg/epaar2000480/s49.html?context=1;query=owner;mask_path=au/legis/nsw/consol_reg/epaar2000480

^x In one scheme, which includes both commercial and residential lots, the original by laws purport to bind the Owners Corporation to sign a development application. This matter is currently before NCAT.

^{xi} https://www.businessinsider.com.au/airbnb-most-popular-cities-home-rental-2018-8?utm_source=feedly&utm_medium=referral&r=US&IR=T

^{xii} <https://www.tandfonline.com/doi/full/10.1080/01944363.2016.1249011?scroll=top&needAccess=true>

^{xiii} <https://www.smh.com.au/business/the-economy/housing-affordability-6000-homes-removed-from-rental-market-as-landlords-turn-to-airbnb-20170816-gxxh7l.html>

^{xiv} <https://thenewdaily.com.au/money/property/2018/11/08/tenants-turfed-out-for-tourists/>

^{xv} <https://www.macrobusiness.com.au/2019/03/professor-airbnb-distorting-australias-rental-market/>

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- ^{xvi} <https://www.realestateview.com.au/blog/2019/03/airbnb-pressure-rent-prices/>
- ^{xvii} Inside Airbnb www.insideairbnb.com/sydney/
- ^{xviii} Community Profiles <https://profile.id.com.au/waverley>; <https://profile.id.com.au/randwick>; <https://profile.id.com.au/woollahra>
- ^{xix} Inside Airbnb www.insideairbnb.com/sydney/
- ^{xx} Inside Airbnb www.insideairbnb.com/sydney/
- ^{xxi} Inside Airbnb www.insideairbnb.com/sydney/
- ^{xxii} Northern Beaches Community Profile <https://profile.id.com.au/northern-beaches>
- ^{xxiii} Inside Airbnb www.insideairbnb.com/sydney/
- ^{xxiv} Inside Airbnb www.insideairbnb.com/sydney/
- ^{xxv} Nicole Gurrán, Yuting Zhang, Pranita Shrestha, Catherine Gilbert, Planning responses to online short-term holiday rental platforms, Research Project for Australian Coastal Councils Association Inc. September 2018, p. 4.
- ^{xxvi} <https://www.epi.org/publication/the-economic-costs-and-benefits-of-airbnb-no-reason-for-local-policymakers-to-let-airbnb-bypass-tax-or-regulatory-obligations/>
- ^{xxvii} Section 3.16 of the *Environment and Planning Assessment Act 1979* (NSW) (EPA Act) enables an environmental planning instrument to override other Acts, regulations, by laws, and covenants.
- ^{xxviii} Section 3.16 of the *Environment and Planning Assessment Act 1979* (NSW) (EPA Act) enables an environmental planning instrument to override other Acts, regulations, by laws, and covenants.
- ^{xxix} The question has been raised as to whether it is possible to do so. The issue is whether an original owner could adopt such a by law because the amendment to the Strata Schemes Management Act 2015 (NSW) was to insert new s.137A, and not to amend s 139: <https://www.holdingredlich.com/power-to-owners-corporations-to-ban-airbnb-letting>
- ^{xxx} Gauder, Houssard, Orsmond, Reserve Bank of Australia, Economic Analysis Department, *Foreign Investment in Residential Real Estate, Bulletin*, June Quarter 2014, pp.11-18.
- ^{xxxi} The approval includes restrictions on the use of the permanent residential development, on level 10 to 19. This includes that the residential lots must be used as permanent residential accommodation only and not for the purpose of a hotel, motel, serviced apartments, private hotel, boarding house, tourist accommodation or the like, other than in accordance with Sydney Local Environmental Plan 2012. If a unit contains tenants, it must be subject to a residential tenancy agreement for a term of at least three months. And, that no person can advertise or organise the use of residential apartments approved under this consent for short term accommodation or share accommodation.
- ^{xxxii} <https://news.sky.com/story/airbnb-short-term-letting-boom-puts-pressure-on-housing-and-communities-11731774>
- ^{xxxiii} Clause 4.2 State Environment Planning Policy (Exempt and Complying Codes) 2008. http://www5.australia.gov.au/au/legis/nsw/consol_reg/seppacdc2008721/s4a.2.html
- ^{xxxiv} Section 186D of the EPA Regulations 2000 provide that no consent of the owners' corporation is required to install smoke alarms.
- ^{xxxv} The Australian Taxation Office (ATO) estimates that in 2016 there were 2 million individual taxpayers who reported rental income of \$42 billion and/or claimed rental expenses totalling \$45 billion.
- ^{xxxvi} <https://news.sky.com/story/airbnb-short-term-letting-boom-puts-pressure-on-housing-and-communities-11731774>
- ^{xxxvii} <https://www.theguardian.com/technology/2019/sep/23/airbnb-could-share-identities-of-hosts-to-prevent-illegal>
- ^{xxxviii} [http://www.parliament.wa.gov.au/parliament/commit.nsf/\(InqByName\)/Inquiry+into+Short-Stay+Accommodation#Report](http://www.parliament.wa.gov.au/parliament/commit.nsf/(InqByName)/Inquiry+into+Short-Stay+Accommodation#Report)
- ^{xxxix} https://www.washingtonpost.com/business/niche-home-sharing-sites-roll-out-welcome-mat-for-minorities/2019/09/03/7f580f34-ce5d-11e9-a620-0a91656d7db6_story.html?noredirect=on
- ^{xl} The company is familiar with trends in the online STRA market and understands the techniques used to avoid regulatory compliance. It is familiar with overseas development and can contribute to the policy process. It also understands, for example, how the asset renting market is diversifying (car spaces, swimming pools etc) so has potential to future proof the system and, if necessary, adapt as these types of regulatory challenges continue to evolve.
- ^{xli} In the case of Airbnb, the online review system creates data about the premises and both the host and the guest, which can work as a disincentive to honest appraisals. Online reviews are untested and there is little academic literature on the efficacy of these models to promote regulatory compliance and good practice.
- ^{xlii} <https://www.wsj.com/articles/how-airbnb-affects-home-prices-and-rents-1508724361>
- ^{xliiii} Research: When Airbnb Listings in a City Increase, So do Rent Prices, https://hbr.org/2019/04/research-when-airbnb-listings-in-a-city-increase-so-do-rent-prices?utm_source=twitter&utm_campaign=hbr&utm_medium=social
- ^{xliiii} <https://www.tandfonline.com/doi/pdf/10.1080/01944363.2016.1249011>
- ^{xliv} <https://www.travelandleisure.com/hotels-resorts/vacation-rentals/paris-suing-airbnb>
- ^{xlvi} <http://www.lashcondolaw.com/city-of-toronto-releases-reports-recommending-short-term-rental-regulations/>; <https://www.toronto.ca/legdocs/mmis/2017/pg/bgrd/backgroundfile-108276.pdf>
- ^{xlvii} <https://www.condolawwatch.com/2018/08/another-victory-for-condominium-associations/>
- ^{xlviii} <https://data.cityofchicago.org/Buildings/House-Share-Prohibited-Buildings-List/7bzs-jsvj/data>; <https://www.chicagobusiness.com/commercial-real-estate/airbnb-scofflaws-stay-one-step-ahead-city>; <https://www.dnainfo.com/chicago/2017/01/13/loop/airbnb-home-share-banned-michele-smith-shared-housing-ordinance>
- ^{xlix} <https://boston.curbed.com/2018/6/13/17460760/boston-airbnb-regulations-what-are-rules>;
- ^l <https://boston.curbed.com/2018/6/13/17460760/boston-airbnb-regulations-what-are-rules>;

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- ^{li} [http://library.amlegal.com/nxt/gateway.dll/California/administrative/chapter41aresidentialunitconversionandde?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sanfrancisco_ca\\$anc=JD_Chapter41A](http://library.amlegal.com/nxt/gateway.dll/California/administrative/chapter41aresidentialunitconversionandde?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca$anc=JD_Chapter41A)
- ^{lii} <https://portsidehoa.com/association-documents>
- ^{liii} <https://www.nolo.com/legal-encyclopedia/overview-airbnb-law-san-francisco.html>
- ^{liv} <https://www.californialandusedevelopmentlaw.com/wp-content/uploads/sites/7/2019/03/Homeaway.com-v.-City-of-Santa-Monica.pdf>
- ^{lv} <https://www.austintexas.gov/str>
- ^{lvi} https://www.nola.com/politics/2018/05/short-term_rentals_council.html
- ^{lvii} <https://www.trtworld.com/europe/amsterdam-to-curb-airbnb-rentals-to-30-days-a-year-14099>
- ^{lviii} <https://news.sky.com/story/airbnb-short-term-letting-boom-puts-pressure-on-housing-and-communities-11731774>
- ^{lix} <https://www.bbc.com/news/uk-politics-42633271>
- ^{lx} <https://www.cntraveler.com/galleries/2016-06-22/places-with-strict-airbnb-laws>
- ^{lxi} <https://dailynewshungary.com/the-airbnb-fever-in-pest-is-over/>
- ^{lxii} <https://www.parliament.nsw.gov.au/lcdocs/transcripts/2194/Public%20Accountability%20Committee%20Tuesday%2027%20August%202019%20-%20UNCORRECTED.pdf>
- ^{lxiii} Examination of Building Defects in Residential Multi-Owned Properties Johnston Sacha Reid Deakin and Griffith Universities 2019
- ^{lxiv} Submission 153 Wollongong City Council
- ^{lxv} <https://www.theage.com.au/national/victoria/same-as-grenfell-tower-cladding-fears-as-fire-rips-through-melbourne-cbd-apartment-building-20190204-p50vgl.html>
- ^{lxvi} <https://www.melbourne.vic.gov.au/sitecollectiondocuments/mbs-report-lacrosse-fire.pdf>
- ^{lxvii} <https://www.afr.com/property/residential/combustible-cladding-ignited-in-canberra-apartments-fire-20190820-p52j15>