

10 September 2019

NSW Department of Planning, Industry and Environment  
GPO Box 39  
SYDNEY NSW 2000

Dear Sir/Madam

Attention: Director, Housing and Infrastructure Policy

## **PRELIMINARY SUBMISSION – NSW SHORT TERM LETTING FRAMEWORK**

### **A. INTRODUCTION**

1. This is the preliminary submission of the Owners Corporation Network of Australia Ltd (OCN) in response to the NSW Government Short Term Rental Accommodation Framework Package released on 14 August 2019 for comment by 11 September 2019. The full submission will be provided by 25 September 2019.
2. OCN is the peak consumer body that represents the interests of residential apartment owners and residents in NSW. It is an association of apartment owners and owners corporations with membership across NSW. The issue of short term letting in residential strata schemes is controversial. OCN has made submissions to the parliamentary inquiry; the short-term holiday and letting options papers; participated in the code of conduct advisory committee; and made an extensive submission to the 2018 Explanation of Intended Effect (EIE) on changes to the planning system. During this period numerous issues and concerns have been raised.
3. OCN remains concerned that the STRA package is not, in fact, designed to manage “home sharing”. It does not restrict “Airbnb style letting” to the principal home and the state-wide approach removes strategic planning powers from Local Councils. The model being proposed for NSW is unable to respond to different business models and different locations and demographics. It will have significant unwanted consequences.
4. The first part of this submission addresses the *a priori* issue of public participation in the current consultation. The summary of major short-term letting issues is set out in paragraphs 13 - 26.

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## **B. PARTICIPATION IN PUBLIC AFFAIRS**

5. First, OCN welcomes the release of the entire short-term letting framework, including the draft State Environment Planning Policy. It has been our consistent position that all the relevant instruments should be published together to enable the public to see how the entire package will work together. This is to try and overcome the fragmented way in which this STHL policy has been developed. However, the Departmental standard one-month exhibition period applied to State Environmental Planning Policies generally is not sufficient in this case and this short time period is disappointing.
6. The consultation package consists of:
  - i. Draft State Environmental Planning Policy (Short-term Rental Accommodation) 2019;
  - ii. Draft mandatory fire safety standards and regulation;
  - iii. Draft Code of Conduct for the Short-Term Rental Accommodation Industry; and
  - iv. Discussion Paper, which raises the possibility of an 'industry-led' Register.
7. The Discussion Paper does not fully explain the effect of the planning instruments. There are no information sessions that would enable the public to clarify questions or issues. It means that the highly important aspects of the planning policy are not transparent to the public. It will be a shock to many strata owners that their conditions of development consent and their Local Environmental Plan protections are being removed.

## **C. PUBLICATION STANDARDS**

8. Secondly, previous submissions to the DPE (on the EIE) were only published on 26 August – almost a year late and half way through this consultation period. The EIE submissions were, in fact, originally published on 17 November 2018 and promptly removed. The over 40 submissions published on that day were from organisations, including Local Councils. The OCN was told that the submissions were removed for reasons of 'confidentiality'. There is no confidentiality issue in relation to a public submission to public consultation made by elected public bodies such as Local Councils or organisations like the Owners Corporation Network (OCN).
9. Thirdly, submissions have been:
  - (i) stripped of organisational identity the original letterhead with address and contact number of the organisation;
  - (ii) formatting has been removed collapsing the text into unreadable blocks with headings and syntax lost; and
  - (iii) in almost all cases published under the private name of the signatory instead of the organisational name (e.g. the name of OCN's Chairman, not OCN).
10. Local Council submissions, which raise important planning law, policy and practice have suffered the same fate and have been published under the private name of the signatory. It is these submissions that highlight critical planning, land use, housing and strategic planning issues.



11. Fourthly, the submissions are:

- (i) difficult to find, being listed under a 'view previous submission' link which has no prominence;
- (ii) difficult to navigate and do not allow the reader to return to the list requiring them to re-enter the page on every occasion.

12. The effect of these unfortunate circumstances is to deprive stakeholders and the public of any meaningful access to the EIE submissions which contain crucial substantive analysis and comment. This combined with the short one-month timeframe undermines the public consultation process. It deprives the current Ministers, who were not responsible for the initial policy, of being fully informed<sup>1</sup>.

#### D. SUMMARY OF MAJOR ISSUES

13. This is a short summary of major issues.

14. **Complying Development:** All STRA in all residential strata schemes must be made a complying development not exempt development to ensure mandatory fire safety standards are met, with inspection by local council or a private certifier.

15. OCN commends the Minister on bringing forward a mandatory fire safety standard for STRA. We are disappointed to see non-professional "hosts" oppose such standards on the grounds that it will be an unnecessary 'burden' on their STRA business activities.

16. In the residential strata environment, the risk to life of fire is significantly increased by the presence of short stay tourists and visitors and increased further in high rise apartment buildings. The characteristics of residential apartment buildings is such that only a complying development approach will ensure that the mandatory fire standards are in fact implemented. This is essential for the protection of all residents, and not just the STRA Guest. This issue is addressed in more detail on our forthcoming submission.

17. **Maximum Caps:** In residential apartment buildings Un-Hosted STRA should be capped at a maximum 90 and preferably 60 days for the Greater Sydney Region to contain STRA to "Home Sharing". All Un-Hosted STRA must count toward the maximum cap. The City of Sydney survey clearly demonstrated that there is not public support for the use of entire apartments for STRA purposes. Local Council submissions in LGAs with high "Airbnb style letting" growth in regional areas, and, metropolitan councils with housing affordability issues have consistently told the NSW Government that 180 days is excessive. The NSW framework is not aimed at managing "home-sharing". A genuine 'home sharing' policy would restrict this type of short term letting to the principal home and set a much lower cap.

18. **There is No real Cap:** In 2018 the EIE expressed the clear commitment that 180 days would be the maximum permitted Un-Hosted STRA in the Greater Sydney Metropolitan Area. This is clearly not the case. The 180 days only applies to the "exempt (or complying) development" pathway. A "Host" can apply for consent to conduct Un-Hosted STRA for 365 days a year. This is a change of position that has not been explained. Combined with the newly announced 21-day loophole – the flaws of the state-wide approach become more evident. **Local Councils** must have flexibility to set a lower cap and apply zoning

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erspo<sup>1</sup> <https://www.planningportal.nsw.gov.au/exhibition/have-your-say-short-term-rental-accommodation-reforms> - to see submissions from local councils and other groups scroll down to 'view previous submissions'.



restrictions to meet their strategic planning objectives. The state-wide approach is simply unable to respond to different situations in different areas.

19. **Development Consent Conditions:** Residential strata schemes in mixed use and commercial zones with express prohibitions on short term letting must have their development consent conditions preserved. There are thousands of apartment owners in the locations like the CBD and Pyrmont living in residential apartment buildings with a specific development consent condition that prohibit short term letting (< 3 months). These conditions are precisely to ensure that these buildings are not converted into quasi hotels. The OCN has written to the Minister explaining that a by law to prohibit short term letting can be defeated by a mere 25% of votes based on unit entitlement limiting this mechanism's ability to deal with the issues.
20. **Register:** The planning law changes should not start without the Register, which must be a government run register or a neutral platform not part of the short-term letting industry. The Register must include reporting of day of occupation (caps), the Host must disclose all the platforms on which the premises is listed. Local Councils must be involved in designing the system and have unimpeded access to data. The Register must generate a unique Host ID. The OCN submission will set out in more detail the model, data fields and operation of a cost-effective registration system. It is vital that NSW does not repeat the mistakes of other jurisdictions or enable digital platforms to abuse their market power.
21. **Host obligation:** There must be an enforceable obligation for Hosts to register their premises, before it is listed and used for STRA purposes. This should be part of the planning law criteria, so it is clear the use of unregistered premises for STRA is in breach of the planning laws and penalties apply. The Host must display the unique Host ID on all listings. It is jurisdictions that set clear obligations to Hosts that have been more effective in overseeing arrangements, in part because this also allows Hosts to know specifically what is and what is not lawful.
22. **Platform Obligation:** There must also be a legal obligation for Platforms and agents not to list an unregistered residential dwelling for STRA. The international experience shows that without such an obligation Platforms will continue to list thousands of illegal apartments. Platforms must also have an obligation to share data with state and local government. All listings and other advertising must display clearly the Host's unique ID. Penalties for non-compliance must be significant.
23. Residential strata **schemes** must have authority to levy charges and fees to Hosts conducting STRA. There is a wide variety in residential strata schemes, which include mixed use schemes and multi-tiered community association with 'resort style' facilities. The economic model of a strata scheme is based on the use for which it was designed, approved and built.
24. One of the many impacts will be a disproportionate cost to owners and the owners' corporations of these STRA operations (concierge workload, wear and tear on lifts, gyms and other utility areas, administration and management costs). Unless these are addressed, owner/occupiers and investors with residential tenants will be significantly subsidising the business models of those running STRA businesses. This also applies to mixed use schemes that include, for example, golf courses and hotels that are part of the strata scheme or community association. The disruption of that economic model requires the clear legislative ability to redress the externalised costs of the STRA business(es) operating from the residential component of the scheme/community association.

25. In the US, the courts have recognised that an owners' corporation of a residential scheme in which some owners are using their lot for short term renters has a legitimate basis for levying additional fees and charges. The same should apply here.
26. If you have any questions concerning this submission, please contact Jane Hearn, OCN Vice Chair on 0432 618 937. The OCN will endeavour to ensure that the further detailed submission will be submitted by the extended date of 25 September 2019.

Yours sincerely,



Philip Gall  
Chairman  
Owners Corporation Network of Australia Limited