

PAYING THE PRICE: AIRBNB IN STRATA

Abstract

The NSW Short Term Rental Policy de-regulates housing and residential zoning to accommodate the growth of Airbnb. It makes no distinction between a free-standing home and a high-density apartment community. The commercialisation of strata assets brings with it unpredictable and significant risks and costs for all Owners and increases the burden on Strata Committees and residents. The strata legislation must now address these unresolved policy issues before the rebound in tourism post Covid-19.

Table of Contents

Executive Summary.....	1
Summary of Recommendations.....	2
1. Background NSW “Home-Sharing” Policy and Strata	7
1.1. Short-Term Letting - A fundamental change in principle	7
1.2. Exposure to demand led tourist industry	7
1.2 Short-Term Let Penetration Likely to Expand Further, Increasing Risks.....	8
2 Establish and Clarify Short-Term Hosts Responsibility to Pay Short-Term Letting related cost... 10	
2.1 Direct costs and Overheads	11
2.2 Strata Management Fees – Schedule B	12
2.3 Damage to Property.....	13
2.4 Second Tier of Strata Levies	13
2.5 Rising Strata Insurance Costs – Disclosure, Claims and Premiums.....	14
3 Support Strata By-Laws that Prohibit Short-Term Letting	17
3.1 “Opt. Out” Favours Investors.....	17
3.2 Principal Place of Residence	18
3.3 Consent Conditions, By-law and Terms of a Lease	18
4 Establish a Sound Legislative and Policy Framework.....	20
4.1 Functions of the OC and obligations of Owners and Occupiers	20
4.2 What is the legal status of the “Airbnb Guest”?.....	21
4.3 The Strata Roll, section 258 and Short-Term Rentals	22
4.4 Reasonable restriction on non-residents’ use of common property.....	22
4.5 Remove Short-term Guest and Tenant Representation Anomaly.....	23
5 Support Better Management of Short-Term Letting	24
5.1 Management by-Law framework.....	24
5.2 Short-Term Rental Contract - Terms and Conditions.....	27
5.3 Holidaymakers, dogs, parrots and the rest.....	28
5.4 Groups in Short-Term Let Apartments and Limits Occupation.....	28
6. Ensure Effective Enforcement of “No Short-Term Letting” By-law	31
6.1 Protracted processes and low penalties.....	31
6.2 Strata Committee – Direct Enforcement Power and Notice to De-Register	32
6.3 Commissioner for Fair Trading - Orders and Offences	32
6.4 NCAT orders and low penalties.....	33
6.5 Remedies for Neighbours and Owner Corporations.....	33

7. License Short-Term Letting Property Managers	35
8. Conclusion.....	36
Appendix 1: Background Facts: Airbnb Market/Market Dynamics	37
Appendix 2: Responsibility of Short-Term Let Hosts to pay for the costs	39
Appendix 3: Strata by-laws to manage Short-Term Letting.....	42
Appendix 4: Security and Common Types of Nuisances.....	43
Appendix 5: Terms and Conditions of Short-Term Let Contract.....	44
Appendix 6: What strata committees and communities need from the NSW Government - Survey Results August 2021.....	45
Appendix 6.1: Millers Point Community Resident Action Group Report.....	48

Executive Summary¹

This Report discusses the risks and impacts of commercial short-term letting to tourists in residential apartment buildings and strata schemes across NSW. It identifies hidden costs and canvasses options and recommendations to better support strata schemes and address unresolved strata policy issues.

In 2018, the NSW Government announced the “home-sharing” policy and gazetted the planning instrument on 9 April 2021. The new short-term rental accommodation policy is scheduled to commence on 1 November 2021.ⁱ The policy de-regulates residential zoning and all dwellings, including residential flat buildings in NSW. The impetus for the de-regulation was the exponential growth and illegal penetration of Airbnb into Sydney’s urban apartment market.ⁱⁱ

The majority of visits to Sydney by Airbnb users are for “vacation/leisure”. Tourism Research Australia also reports that holidaymakers have driven the growth in nights spent in rented Airbnb apartments, with domestic travellers making up just over half and the remainder being international travellers.ⁱⁱⁱ

Evidence of serious impacts on apartment communities led to an amendment to the *Strata Schemes Management Act 2015* (NSW) (the Act) (s137A). The amendment clarified that a strata scheme has the authority to adopt a by-law to prohibit the use of a lot for short-term letting. However, this by-law only applies to a lot that is not the principal place of residence of the “Host” and is an “opt out” model that embeds a presumption in favour of Investor Hosts.

The new planning policy de-regulates housing and retrospectively lifts residential zoning restrictions leaving significant challenges for Strata Committees. Residents and Owners in strata buildings, large and small, are being forced to carry risks and costs they cannot control. The expanding exposure to short-term letting is of continuing concern and remains highly controversial because fundamentally the Airbnb model does not fit into the strata model.

In particular, the commercialisation of private strata assets brings with it unpredictable and extra costs for all Owners. The strata model was never designed to accommodate commercial level short-term activity or “serviced apartments”. Platforms and Hosts are able to take the profits leaving all Owners to bear the costs arising from short-term letting. The Owner Corporations and Strata Committees also have to deal with more responsibilities and additional work as well as increased complaints from residents. Note that events such as outbreaks of infectious diseases such as Covid-19 demonstrate another issue that could have catastrophic implications.

The legislation of disaggregated short-term letting among residents represents a fundamental change to the strata model, with significant and foreseeable social and economic consequences. The NSW Government must act promptly to protect apartment communities and Strata Committees from the worst impacts of short-term letting including legislating for:

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- a second tier of strata levies to ensure an upfront contribution is paid to ensure overheads and costs arising from short-term letting to tourists and visitors do not accrue to all Owners;
- systems to manage common property and the security and safety of residents, including the authority to collect personal identifying information of the short-term Guest; and
- faster, more effective and less expensive enforcement of the “No Short-Term Letting” by law.;
- a review of the short-term letting policy as it impacts on housing and neighbourhoods.

More detail on specific recommendations and justification is provided in the following Chapters:

- 2 Establish and Clarify Short-Term Hosts Responsibility to Pay for related costs
- 3 Support Strata By-Laws that Prohibit Short-Term Letting
- 4 Establish a Sound Legislative and Policy Framework
- 5 Support Better Management of Short-Term Letting
- 6 Ensure Effective Enforcement of “No Short-Term Letting” By-Law

Appendices 1 to 6 provide supporting detail on key topics and include Background Facts re Airbnb Market/Dynamics, cost models that show the impact of short-term letting, models of by-laws, and terms and conditions and feedback from two different surveys.

Going Forward

While this Report canvasses measures to reduce the very significant negative impacts of short-term letting it remains abundantly clear that short-term letting to tourists and visitors dispersed among residents is incompatible with residential living. There are accumulative impacts but no planning controls to cap the number of “Airbnb apartments” in a single building. There are no controls over the volume, turnover, or spatial distribution among residents. The burden of the impacts of this disaggregated industry is being shifted away from State and Local Government onto Strata Committees, residents and all Owners. It remains extremely contentious and concerning for a large number of strata Owners and committees.

Strata Plans should not be confused with individual stand-alone homeowners, whose interests and rights are not inextricably linked to rights or decisions of other stand-alone properties. Strata living is communal and is based on a model of shared cost, community standards and normal residential living. There are now over 80,000 schemes in NSW housing over a million people. It is the fastest growing form of residential living in NSW, with 1 in 10 residents living in strata. In high demand areas that are also attractive to tourists, the growth of short-term letting has degraded the quality of life for strata residents. The presence of short-term letting affects the value of apartments and pushes strata fees upward. It is a significant disincentive and runs counter to the NSW housing strategy to increase strata living to 50% of all residents in NSW within ten years.

We urge the NSW Government to consider the implications brought out in this paper, particularly in the context of a future where people will need to live with open borders and the ongoing risk and threat of infectious disease.

Summary of Recommendations

The NSW Government has allowed short-term letting to tourists and visitors to grow in residential strata schemes. There are no controls on the volume, intensity, or turnover in a single apartment building. This is a summary of the minimum actions needed to address unresolved strata law and policy issues relating to short-term letting in residential schemes.

Establish Short-Term Hosts Responsibility to Pay Related Costs

1. There must be a commitment to the proposition that all lot Owners should not bear the costs of short-term letting. Short-term let related overheads and costs must be able to be allocated to Owners of lots used for short-terms. This includes the ongoing management, as well as the additional wear and tear and costs of repair and maintenance, consumption of utilities, specific damage, insurance premiums and excesses and so forth.
2. The additional costs of strata management dealing with short-term letting should be Schedule B fees, identified and charged separately to lot Owners who use their lot for short-terms. The same principle applies to building managers, concierge, security and strata lawyers which should be on chargeable to those lot Owners and not absorbed.
3. Legislate to create a second tier of strata levies (with no additional voting rights) to ensure upfront contributions are paid and non-payment must result in the loss of voting rights.
4. Tender for a qualified management accountant(s) specialising in the tourist and visitor market and strata to conduct a costing exercise, if there is doubt about the veracity of the claim that short-term letting increases costs. The Owners Corporation Network should be consulted on the terms of reference and included in project design and steering committee.

Rising Strata Insurance Costs – Disclosure, Claims and Premiums

- 1) Legislate a statutory obligation to notify the OC that a lot(s) will be used for short-term purposes before the lot is used for that purpose as outlined above.
- 2) Legislate a statutory obligation to provide information about the volume and turnover of occupation on request of the OC for disclosure to the Insurer. This is also essential from time to time for the proper allocation of fees, charges and costs (see below).
- 3) The attribution of insurance costs must not rely on consent. The existing s.82 should be amended to remove the requirement for consent when the activity is short-term letting. One option is for those lots to be separately identified and charged separately.
- 4) The lot Owner must indemnify the OC against any claims, costs and increased premium and excess. The lot Owner must provide evidence of public liability insurance, as required by the Code of Conduct, which includes common property of a strata scheme.
- 5) Legislate that the lot Owner has an obligation to vet Guests and is responsible for the use of the lot for short-term purposes, including vicarious liability for the behaviour of the Guest and any damage caused by the Guest or the Guest's Visitors.

Support Strata By-Laws that Prohibit Short-Term Letting

- 1) Legislate a presumption in favour of residential living rather than short-term letting and require a 75 % vote of the Owners Corporations to allow short-term letting, that is, if short-term letting is not otherwise unlawful under development conditions. This would reverse the current position that favours commercial level short-term letting and Investor Hosts.
- 2) The “principal place of residence” is undefined and should be clarified to prevent it being used as a loophole for commercial level short-term letting
- 3) Plain English guidance should reflect the legal position – that short-term letting is only permitted if it is not otherwise unlawful. The use of a lot for short-term letting may be unlawful due to an existing development consent condition, an original or later by-law or a term of lease that prohibits or restricts the use of a lot for short-term purposes. The Plain English guidance should prompt Owner Corporations of residential and mixed-use developments to obtain expert planning law advice, because conditions that explicitly exclude “serviced apartments” and/or leases for less than 3 months are common for residential buildings located in commercial and business zones.

Establish a Sound Legislative and Policy Framework

- 1) Legislate the statutory functions of the OC to include the obligation to *protect the reputation, standards and values of the strata scheme*.
- 2) Legislate the statutory obligations of owner/occupiers to include *not using or permitting to be used a lot or common property in a manner that is injurious to the reputation of the scheme*.
- 3) There must be clear policy support for the proposition that all lot Owners should not be liable or expected to absorb the cost of short and the strata legislation reformed to achieve that outcome.

Resolve the Status of the “Airbnb Guest”

- 1) Legislate that the lot Owner is legally responsible for the conduct of the short-term letting activity, including the behaviour of Guests (and their Visitors) when on strata common property.
- 2) Legislate all short-term arrangements to be a statutory license that does not create an ‘interest in land’. It is a contract for tourist or visitor accommodation, and may be terminated at any time by the lot Owner/Host for breach of terms and conditions.

The Strata Roll, section 258 and Short-Term Rentals

- 1) Legislate to provide clear legal authority for the OC to collect verifiable personal identifying information and contact details of the short-term Guest(s) in a form that is satisfactory to the OC or Strata Committee. This needs to be a statutory power with an obligation on the lot Owner, Occupier and “Guest” to comply. It cannot be left to by-laws that may not be adopted due to commercial conflicts of interest and power imbalance within the scheme.

- 2) The legislative provisions must include the full name, residential address, contact details, including telephone and email, of the Guest(s) in occupation not just the person who makes the booking. Information is to be provided prior to arrival, at “check-in’ or at any other time as required by the OC.
- 3) If necessary, define the purposes for which the information is to be collected including for the purpose of managing the security of the scheme, code of conduct and by law enforcement; to implement scheme processes for complaints, the recovery of costs for any damage. Similarly, if necessary, legislate disclosure for the purposes of reporting the person to the police, Local Council, the Commissioner for Fair Trading or similar entity, such as public health authorities, para medics or other medical practitioner, or any other emergency services personnel or authorities.

Reasonable restriction on non-residents’ use of common property

- 1) Legislate to enable an OC to exclude a short-term Guest(s) from some parts of the common property facilities to protect the privacy and amenity of residents. These include, event room, meeting room, library, marina, BBQ area, or private garden all intended for the exclusive use of Residents (together with their own guests).

Remove Short-Term Guest and Tenant Representation Anomaly

- 1) It is an anomaly that a lot used for short-term tourists and visitors is counted toward the 50% threshold that triggers tenant representation. The legislation should be amended to remove the anomaly and the absurd situation where visiting overseas tourists has a right to attend a strata committee meeting.

Support Better Management of Short-Term Letting

- 1) There must be clear legal authority to establish processes and systems to manage short-term letting in a residential strata scheme. Fair Trading should state clearly that it regards such systems as within the scope of legislation or amend it to ensure there is sufficient flexibility to do so.
- 2) Legislate to include a duty to provide notice to the OC of:
 - a) the intention to use a lot for short-term lets before the lot is used, listed or advertised;
 - b) evidence that the lot is the principal place of residence or not;
 - c) proof of Premises Registration and the ID number;
 - d) certified written proof of the lot Owner’s consent if the Host is not the lot Owner;
 - e) evidence of public liability insurance policy, which includes common property.
- 3) Legislate that the lot Owner is responsible for their short-term letting activity and is liable for losses or costs associated with damage or theft attributable to the Guest(s) or the Guest(’s) Visitors. The lot Owner is part of the Owners Corporation and it is neither appropriate or effective in the strata context to adopt a defense of “reasonable steps” as has been adopted in relation to breaches and offences of the Code of Conduct. If the Host is a tenant, the responsibility to recover costs must lie with the landlord/lot Owner.

Short-Term Rental Contract - Terms and Conditions

- 1) Legislate to enable the OC to set stricter terms and conditions for the short-term lets either via a by-law or terms and conditions adopted at the scheme level.

Holidaymakers, Dogs, Parrots and the Rest

- 2) Legislate to permit a blanket “no pets” ban on lots used for short-term letting to tourists and visitors to distinguish it from ordinary by-laws intended for the management of day-to-day living of residents with ongoing relationships and mutual obligations. This is now necessary because of the Supreme Court decision in the Cooper Case.

Groups in Short-Term Let Apartments and Limit Occupation

- 1) The Minister for Better Regulation and Innovation should make representations to the Minister for Planning that:
 - a) The planning instrument should limit occupation to 2 persons per bedroom, or per carpark space, whichever is the lesser. This limit must include children, except for babies or children under 5 years of age.
 - b) The planning instrument must make it illegal to divide the lot into more rooms or use rooms that are not approved bedrooms as sleeping quarters, including for children. It is essential to adopt these planning development controls so that Local Council Building Inspectors can monitor and enforce via penalties under planning law.
- 2) Legislate to prohibit the advertising/listing of a lot for more than 2 persons per bedroom, including children, or 2 persons per car space, whichever is the less, when the lot is offered for short-term lets to tourists and visitors. The Act must also prohibit the division of a lot into more rooms or use of rooms that are not approved bedrooms as sleeping quarters.

Strata Committee – Direct Enforcement “No Short-Term Letting” By-Law

Legislate to give the Strata Committee authority to directly fine a Host as follow:

- a) issue a fine of \$1000 for each breach of a “No Short-Term Letting” by-law unless the Owner can provide evidence that the property is their principal place of residence; and
- b) notice to the Secretary of the Department of Planning, Industry and Environment to remove the premises from the Premises Register;
- c) notice to the facilitator, agent and Platform to delist the premises.

Commissioner for Fair Trading Powers - Orders and Offences

- 1) Amend the Code of Conduct to grant the Commissioner for Fair Trading the power to order a lot Owner to cease use of a lot for short-term letting purposes; order the de-registration of the

premises from the Premises Register; order the facilitators, agents and Platform(s) to de-list a lot that is the subject to a “No Short-Term Lets” by-law.

- 2) Amend the Code of Conduct to make it an offence for a facilitator, agent or Platform to continue to list premises that is subject of a “No Short-Term Lets” by-law, development consent condition or term of a lease. These amendments to the Code of Conduct can be adopted and declared immediately in time for 1 November 2021.

NCAT orders and low penalties

Legislate to enable the NCAT on application to grant an order to cease and desist and impose the following fines and make the following orders:

- a) penalty for breach of “No Short-Term Let” by-law significantly higher than the current tariff;
- b) penalties accumulated on a daily basis for the duration of the period;
- c) order the Secretary of the Department of Planning to de-register the premises;
- d) order the lot Owner to delist from all Platforms and any other advertising immediately;
- e) order Platforms and Agents to not advertise or list the premises;

License Airbnb Property Management Companies

- 1) Legislate to create a licensing system that applies to any person (corporate entity, related bodies corporate, sole trader, natural person) who facilitates the booking and management of a dwelling for short-term let purposes.
- 2) Legislate that the licence obligations include a statutory duty of care to vet “Guests”; meet Guests on-site and not take a booking or permit a short-term let to Guest(s) where there is a foreseeable risk the Guest(s) will cause a nuisance to residents or damage to the common property.

1. Background NSW “Home-Sharing” Policy and Strata

1.1. Short-Term Letting - A fundamental change in principle

Since its inception in NSW in 1961, strata property has been the primary mechanism through which apartment Owners can share responsibility and costs for maintenance and support of their building.

A key feature of well run and effective strata schemes is an ability to build a community of like-minded residents who understand and support ‘the rules of the building’. It is in permanent residents' interests to live in a building that is well run and highly liveable. Resident Owners have an interest in maintaining this liveability as well as the long-term condition and value of their building, without unnecessary ongoing running and repair costs or disputation.

Residential strata buildings in NSW were never intended to operate like hotels or serviced apartments with their attendant service and other costs and risks associated with higher turnover. This point was re-iterated in 2018 when the NSW Cabinet and the Parliament said that no strata scheme should be turned into a “quasi-hotel”.

Yet the NSW Government’s recently introduced “short-term letting policy” encourages commercial volume of letting to tourists and visitors in all dwellings, including residential flat buildings. Specifically, this policy permits, without the requirement for consent of the Local Council, the following “Host not Present” commercial activity among residents who live in close proximity to one another:

- 180 days of short-term letting to tourists and visitors in a single year; and
- an additional unlimited volume of lets for 21 days or longer not counted allowing tourists, visitors and informal rental occupation year-round; and
- an unlimited number of guests can occupy the premises at any one time; and
- different guests who do not know each other in separate rooms in the premises, with no Host present.

In Local Government Areas outside of the Greater Sydney Region there is no cap at all.²

The impetus for the “home-sharing” reform was exponential growth of illegal short-term letting to tourists and visitors in the urban apartment market across Greater Sydney.^{iv} The largest percentage growth is whole apartments and the trend is a shift away from regular tenancies toward tourist and visitor letting with “hosting” delegated to an expanding industry of “Airbnb property management companies”. **The scale of short-term letting and future growth are summarised in *Appendix 1: Background Facts: Airbnb Market/Market Dynamics*.**

1.2. Exposure to demand led tourist industry

The de-regulation of residential buildings means:

- an unlimited number of apartments in a single building that may be converted to short-term letting;

² Local Councils may bring themselves within the 180 day “cap”.

- the imposition of the cumulative effects of a commercial volume and intensity of short-term letting on residents and all lot Owners; and
- downward pressure of value of apartments and the impost of costs and rising strata fees.

The policy exposes schemes in high demand areas that are also attractive to tourists to a:

- high volume and turnover of tourists and visitors coming and going from residential buildings;
- transient persons in private areas, lobbies, lifts, car parks, gardens and facilities;
- groups of “guests” booked into small apartments;
- groups of “guests” and “visitors” entering private facilities often in excess of those booked;
- the growth of the informal rental market operating outside the *Residential Tenancies Act 2010* (NSW) operating under the short-term letting arrangement model; and
- a legal route out of hostel and boarding house regulation and an increase in insecure housing, overcrowding and the undermining of Local Council Building Inspectors.

In this entirely free market:

- individual investors in one building can conduct short-term letting for domestic holiday makers and international travellers in multiple apartments dispersed across different floors;
- there is an incentive for corporate multi-unit “serviced apartment” operators, such as Oaks Hotel and Accor, to operate multiple units in a single building or across multiple buildings with costs absorbed by all Owners. This highly rapacious type of commercial operation in residential buildings is well documented and is being legalised;
- there is an incentive for corporate investors, including syndicates, to purchase units and operate them as short-term holiday apartments among residents;
- a resident can vacate indefinitely and conduct commercial level short-term letting to tourists and visitors while continuing to claim the lot is their principal place of residence.

The NSW Short-Term Rental Accommodation Framework does not address the strata model of ownership and governance. Nor does it address the wider implications for insecure housing and “slum-landlords”. The policy ignores historical experience of commercial licensed business infiltrating residential strata, which has previously been dealt with by the Land and Environment Court.

The expectation of the NSW Government is that strata law will protect this form of housing and communal living and that resident Owners must simply “manage”. The continued controversy means this issue will not go away. It will continue to degrade the quality of life of too many strata residents, be a source of conflict, plague the management of schemes and remain a political issue.

1.2 Short-Term Let Penetration Likely to Expand Further, Increasing Risks

The industry has moved quickly to scale. Investment in property for short-term letting purposes and in new property management companies is attracting corporate investment in what is now a proven model and an asset class that is delivering a financial return.

The largest growth has been in whole property listings. In Sydney, over 70 % of listings are for one or two-bedroom apartments and Airbnb has 85 % of the market. Despite the pandemic, over

20,000 apartments listed in metropolitan Sydney alone. In response to Covid-19 the independent research shows that investors have gone to the informal market and are confident of a rebound in tourism. There has also been a significant impact on regional housing.

The closure of international borders has temporarily reduced demand, but domestic visitation has remained strong. The pattern of domestic visitation is short-term, weekend or long weekend stays, and public holidays. This creates issues for residents in terms of threats to safety, increased crime, noise, drug taking, prostitution, and accumulated rubbish. In Pyrmont, for example, weekend letting has resulted in more resident complaints and two stabbings within six months.

From being a safe home for many including office workers, older residents, essential workers and young children, strata living has become unpredictable and less safe. The use of Airbnb apartments for prostitution is well reported and brings clientele into resident's lifts and residential floors exposing children to risk.

The presence of short-term letting also affects the values of peoples' homes. The value of a "serviced apartment" is 30 % less than a residential apartment and banks regard residential buildings with short-term letting as a higher risk and require higher deposits as a result. In the case of Maestri Towers, property values increased and costs and levies went down when an illegal "serviced apartment" operator was removed along with thousands of guests.

In NSW, especially Greater Sydney, apartment living is the primary housing choice for first time buyers, young couples, families, and older downsizers. Post Covid-19 more people will work from home and need well-located housing close to work, schools, services and amenities. The social and financial impacts of transient populations have not yet been assessed or even considered in a future where outbreaks of infectious diseases are increasingly likely, which has been demonstrated by the Delta variant.

Despite not having sufficient input into these changes; all OCs *prima facie* owe a duty of care to transient occupants and residents and have obligations to administer the scheme in the interests of all lot Owners.

We believe the NSW Government has a responsibility to ensure there is greater certainty for people who purchase apartments to live in. The policy is controversial and housing organisations and Local Councils are calling for:

- **Short-term letting to be limited to the primary home and capped at no more than 90 days and preferably 60 days, in Greater Sydney. The additional 21 day + lets to be removed. Local councils to have autonomy to set cap lower than 180 days.**

The remainder of this paper sets out key areas of strata law where greater support is required

2 Establish and Clarify Short-Term Hosts Responsibility to Pay Short-Term Letting related cost

This chapter discusses the inequity of all lot Owners being forced to absorb the costs arising from short-term letting on the tourism market. The commercialisation of strata assets brings increased overheads and additional risks and costs to all lot Owners. It is fundamentally inequitable to expect all lot Owners to absorb the costs of short-term letting impacts on residential schemes. This is just one of the many reasons why investment in an “Airbnb apartment” is affordable and lucrative, because all lot Owners are bearing the costs – it is the original “shared economy” but in this case is an impost on others.^v There is also no easy existing strata mechanism for the measurement, collection, attribution and charging of costs to a Host. This needs to be addressed, as soon as possible, and before the rebound in tourism brings Airbnb guests back into residential buildings.

The model of Airbnb may work for a freestanding home with one occupier but it does not fit inside the strata model with common property vested in the Owners’ Corporation. The disaggregated nature of the short-term let industry should not cloud our understanding of the impact. The profile of the operating costs model of hotel or serviced apartment business would provide more transparency on the costs of this commercial activity and contribute toward that analysis.

How much is too much?

Different Investor Hosts operating short-term lets from 10 apartments in a block of 300 for 180 nights in a single year = 1800 nights of visitors in a single high-rise building there for events held at local stadium. Typically, the stay is a weekend or public holiday doubling the foot traffic and movements in and out of the buildings throughout the year. The location is popular, 30 more apartments STR, 5 apartments are used for prostitution.

In a 170-lot new scheme in a high demand area, one third of lots went straight to the Airbnb market. That is a staggering 10,800 nights of transient occupation in a single year. The average stay is 4 nights = 2,700 turnovers of couples, families and groups of international tourists and local youngsters in the city for the weekend. Lots of local deliveries by Uber Eats, drug taking and noise. Neighbouring schemes have 50 and 70 % of apartments on the short-term let market.

In a small scheme of 8 units in a beachside suburb with 4 units owned by two Investors and 3 units used for short-term lets to tourists and visitors. Residents have a constant of stream of new people over spring summer and autumn using their shared laundry, washing lines, communal garden, and parking.

One lot in a two-lot scheme in a divided historic house in the Blue Mountains bought as an investment property for the short-term visitor market. The only resident has no privacy, with frequent tourists entering the private garden and using a digital key pad to enter the building and the upstairs apartment. This resident Owner has no ability to adopt a by-law. The Local Council has no power to stop it.

Two costing models are at Appendix 2, both models are prepared by people with professional costing expertise. The first requires attribution based on the specific number of nights. The

second is based on a real assessment of a high rise in the CBD, but does not include repair and maintenance. Both models demonstrate the complexity of the task and the role for a second tier of strata levies (without additional voting rights). This would provide a simpler approach and ensure that at least some costs are provided for on an up-front basis.

2.1 Direct costs and Overheads

Direct costs and overheads associated with the conduct of short-term letting are currently being absorbed by all lot Owners. These costs can be significant and ongoing but are also often unpredictable. The issue of these additional costs has already been raised by Owners in many buildings because at present they must 'wear' these costs.

At present the costs of administration and management of a scheme are charged to and shared by all lot Owners (including running costs, repairs and a share of current and future capital costs). The extra costs associated with and arising from the use of individual lots for short-term purposes are shared by all lot Owners based on their unit entitlements. Clearly, this means that those with high unit entitlements will absorb more of the extra costs. Strata levies are a significant and mandatory housing cost not modelled by Treasury. The non-payment of levies results in the loss of voting rights.

The existing strata levy and unit entitlement model is based on the normal residential use of a residential building and budgets are developed on that basis. The potential loss of voting rights is to ensure schemes can function in a just, equitable and sustainable way for all lot Owners.^{vi}

The introduction of short-term letting on the tourist and visitor market into residential strata communities brings extra costs. This might include, for example, concierge services, security and building management service time spent dealing with matters arising from short-term lets. In the majority of schemes there is no building manager or on-site security and, in some cases, these services are required to improve security.

The turnover of Guests also intensifies the wear and tear on common property furniture, lifts, corridors, parking space, garages, garbage rooms, gym equipment and changing rooms, swimming pools and so forth. It also increases the risk of damage to lot property and common property, by accident, negligence or intentional vandalism. The presence of short-term letting in a residential complex gives rise to more complaints that must be dealt with by Strata Committees and strata managers and results in additional management, legal costs and claims on insurance.

The higher foot traffic of the short-term Guests and their Visitors also creates more activity and services from the cleaners, linen change trolleys and agents. Residential buildings are not designed for these services and do not have goods or service lifts. In large schemes the volume of short-term let apartments can be 30, 50 or 70 % of the scheme and, in a small scheme, just one or two investors can mean 50% of the building is converted to short-term letting on the tourist market.

In a hotel business costs are borne by the company and offset against the profit extracted from the business. Pricing of accommodation takes this into account. That is, these costs are charged to those who cause them via the daily tariff. The profile of a serviced apartment business is more complex because in these businesses there are individual Owners that incur a range of costs and then there is the management company. The costs include, base management fees, administration, information systems, utilities, property operations and maintenance, the costs of operating facilities such as spas, sauna, pools and gymnasium and tennis courts.

In a residential-strata scheme all these costs are borne by all lot Owners while the 'profit' is transferred to the Platform and the Host. The property managers and service workers employed by the Host also obtain the benefit of conducting their commercial services on private property.

This is the standard “Airbnb” model where the lot Owners and tenants who conduct short-term letting benefit while all lot Owners absorb the costs. It is manifestly unfair, unjust, and inequitable – the business model is flawed.

It is vital that overheads and costs arising from short-term letting are allocated to Owners whose lot(s) are used for transient occupation, not absorbed by all lot Owners.

In the case of “serviced apartments”, onsite management is required and the cost is built into the running costs of the business. This is not the case in residential Class 2 buildings, until now. In some schemes it may be necessary or reasonable to employ additional security services or an onsite concierge.

In smaller buildings in high-risk areas like Darlinghurst weekend security is necessary, especially with the prevalence of drugs and theft. In others schemes, extending the hours of an existing service or bringing the service on-site (rather than on call) is the best option.

In 2006, the Maestri Tower scheme won its case in the Land and Environment Court against a multi-national operator who had increasingly taken over the building. The OC saved \$1.3M of OC funds once the court ordered the 142 short-term lets to cease. The OC commissioned Quantitative Research which generated numerical data. This included a Financial Forensic Report and Quantities Surveyor Report (gas, electricity, lift maintenance, air conditioning, hydraulics, due specifically to higher operating costs associated with short-term letting). Reports were also generated for utilities assessment for electricity, gas for air-conditioning and swimming pool; and, maintenance costs for air conditioning, lifts, hydraulics, electrical.

Dr Heaney provided fully substantiated evidence to the Parliamentary Inquiry. He submits that in the case of Maestri Towers,

“... The levies went up 70% in 4 years subsidising the short-term lets operation. Short-term letting in Maestri Towers was a form of commercial use or a quasi-hotel – it was a for profit activity. Owners buying into a residential complex believed that they should enjoy some protection from such a fundamental change. Investors and Owner occupiers alike were stunned at the increased cost and the support for the short-term lets started to dissipate from the short-term lets company”.^{vii}

2.2 Strata Management Fees – Schedule B

Importantly, the administration and management of the scheme includes the time and services of a strata manager who must now work with the OC to establish new systems. These service providers are providing additional services to implement the Short-Term Rental Accommodation Framework created by the NSW Government. This includes the costs of administration, development and implementation of by-laws, responding to complaints, and dealing with matters of compliance.

This work is not part of the normal strata management agreement. These additional costs are and should be Schedule B fees, identified and charged separately. The same applies to

services by building managers, concierge, security and strata lawyers whose time and fees will be borne by all lot Owners unless they are attributed to lot(s) used for short-term let purposes.

2.3 Damage to Property

In the world of short-term rentals there are numerous examples of damage and, in some cases, vandalism. Intentional damage to fire hydrants is reported to have caused \$3M damage to a residential building in Olympic Park resulting in extra service costs and increased insurance premium.

It is simply a fact that short-term “Guests” cause damage such as broken glass in entrance doorways, damage to lift panels, copied security swipes cause damage to lift systems; flooding events as Guests block a drain, flush things into the sewer, false fire alarms call outs penalties are charged to the OC, damaged laundry doors and so forth. While accidents happen this is not the norm on a day-to-day basis among residents who are familiar with their environment and have an interest in preserving their living environment.

In addition, damage to a front door, lot window lock or a balcony door, for example, is damage to common property. The statutory responsibility for repair and maintenance lies with all lot Owners. These incidents also result in strata insurance claims that result in increased premiums.

In some cases, the strata manager can raise a secondary invoice and levy a charge against the lot Owner. However, it is common for these to remain unpaid until the property is sold, leaving all other lot Owners with the upfront cost and increased premiums.

2.4 Second Tier of Strata Levies

This wide variety of overheads and costs suggests that an additional strata levy is a practical approach to ensure there is an upfront and continuing contribution. It addresses the systemic nature of the change to the strata model imposed by Government policy.

The legislation already envisages special purpose funds. An OC may enter into an agreement to provide amenities or services to particular lots, for example, where only some lot Owners use a remaining common laundry. It is not directly suitable for short-term letting because it relies on the agreement of the operators but it does show there is flexibility in the strata model.

The wider range of overheads and costs needs a response that does not rely on the agreement of those who benefit from all lot Owners absorbing the costs of short-term letting. It could be charged as a percentage for each lot, for example, an additional 25 % (or more) or calculated as a “booking fee” for each Host against all STR-nights as a contribution to costs.

At the moment, to recover direct costs some schemes allocate the excess on an insurance claim or recover the costs for repair of damage via a secondary invoice. This leaves ongoing overheads, such as the cost of strata manager’s time, costs to deal with resident complaints, the increased insurance premiums and additional wear and tear untouched and unaccounted for. It also leaves the scheme’s strata insurance open for exploitation.^{viii} Two possible approaches to modelling the costs as attached as **Appendix 2: Responsibility of Short-Term Let Hosts to**

pay for the cost of Short-Term Letting: Two models. These models are for illustration purposes only and also highlight the complexity of the task.

- **There must be a mechanism so that the costs of short-term letting are not absorbed by all lot Owners. The legislation needs to be amended to enable additional short-term let costs to be allocated and paid for by Owners whose lot(s) is being used for short-term lets.^{ix}**
- **This should be done by a second tier of strata levies (with no additional voting rights) to ensure upfront contributions. This will account for some but not all of the costs. The non-payment of the short-term let levy or debt should result in the loss of voting rights.**
- **If there is any doubt about the validity of this proposition the NSW Government should tender for a qualified management accountant with expertise in tourism and strata to conduct a costing exercise.**

2.5 Rising Strata Insurance Costs – Disclosure, Claims and Premiums

To date, the issue of strata insurance premiums and coverage of an OC remains unaddressed. The question is: how are all lot Owners to be protected from the increased risk of claims arising from short-term letting to tourists and visitors?

The cost of strata insurance is rising and the performance of a scheme (that is the “claims experience”) affects the premium charged as well as the excesses. Insurance brokers and underwriters are clear that short-term letting increases both the number and cost of claims. This raises the cost of premiums charged over time.

In the era of Covid-19, the increased demands on local insurers and pressure on the global re-insurance industry is putting pressure on premiums locally. Increasingly some market sectors are subject to massive annual increases in premiums and some are no longer insurable. Insurers must remain profitable but also provide affordable products. The advice to strata schemes is to reduce the risk of claims and increased premiums by ensuring that properties are well maintained and have good security.^x

Under the *Insurance Contracts Act 1984* (Cth) all policy holders have a duty of disclosure. That duty requires the insured to disclose all facts that affect the risk profile and insurance coverage. The presence of short-term letting increases the likelihood of increased premiums and the failure to disclose relevant facts leaves the OC exposed to unmet claims. This can leave all lot Owners exposed to millions of dollars in uninsured costs because an OC is a statutory corporation not a company and it has unlimited liability.

The current s.82 requires disclosure of an activity that may increase the insurance premium but it has been routinely ignored by short-term let Hosts and it is impossible for an OC to ‘enforce’. The industry is known for widespread avoidance of regulation and the legislation is not designed for short-term let business activity. To charge the difference in the premium also requires the lot Owner’s consent (s.82). This is manifestly unfair to all other lot Owners.

The section is especially repugnant when Un-Hosted Short-Term Letting is being conducted by Investor Hosts who are only indirectly or distantly related to the administration of the scheme. The s.82 provision is manifestly inadequate.

The Code of Conduct requires the Host to:

- (i) notify the OC that the Lot is being used for short-term letting; and
- (ii) hold third party liability insurance for death and injury.

It will be necessary for schemes to enforce these obligations at the scheme level as part of the day-to-day administration of the scheme. If the OC or Community Association (CA) cannot disclose the presence of short-term letting or the volume of it, the coverage will be at risk in the event of a claim. The premium is also likely to rise if short-term letting is poorly managed due to lax security, damage or by-law disputes. Increases in premiums are a direct result of disputes or incidents and is borne by all lot Owners.

Lot Owners need to be protected from higher risk of claims and increased insurance premiums and excesses. One option is for annual strata insurance to exclude lots used for short-term letting, or for those lots to be separately identified and charged separately.

- **The legislation should impose a clear statutory obligation on lot Owners to notify the OC that a lot(s) will be used for short-term letting purposes before the lot is used for that purpose, listed or advertised. It is insufficient to leave something so essential to the proper management of a scheme to a model by-law or the Code of Conduct.**
- **The statutory obligation should require the lot Owner or Resident to provide proof of registration of the premises on the Premises Register and the ID number.**
- **There must be a statutory obligation to provide information about the volume and turnover of occupation on request of OC for disclosure to the Insurer. This is also essential for the audit and proper allocation of fees, charges and costs (see below).**
- **The attribution of insurance costs must not rely on consent. The s.82 needs to be amended to remove the requirement for consent when the activity is STR. One option is for those lots to be separately identified and charged separately.**
- **The lot Owner must indemnify the OC against any claims, costs and increased premium or excesses. The lot Owner must provide evidence of public liability insurance, as required by the Code of Conduct, which includes common property of the strata scheme.**
- **There must be an explicit obligation to vet Guests and accept a booking or permit the short-term let to go ahead where there is a foreseeable risk the Guest(s) will cause a nuisance or damage.**
- **The lot Owner must be legally responsible under the strata legislation for the conduct of the short-term let activity and that includes vicarious liability for the behaviour of the Guest and any damage caused by the Guest or the Guest's Visitors. The lot Owner is part of the Owners Corporation and has obligations toward other lot Owners and residents. It is neither appropriate nor effective to shift the burden to seek redress onto the Owner Corporation. Nor is it appropriate to adopt a defence of "reasonable steps" in the strata context as has been adopted in the Code of Conduct. Similarly, if the Host is a tenant whether the short-term let activity is permitted or not, the responsibility for the use of the lot for short-term purpose and the impacts of that use must lie with the lot Owner. This is necessary to ensure that Investors exercise due**

diligence and take their obligations to other lot Owners and residents seriously. Losses that flow from Guest behaviour are to be recovered and any dispute settled between the parties to the short-term let arrangement, a contract to which the Owners Corporation is not a party.

3 Support Strata By-Laws that Prohibit Short-Term Letting

This chapter discusses the pro and cons of the new by-law power. It calls for a reversal of the presumption that favours short-term letting and clearer public statements that conditions of consent, by-laws and terms of leases that prohibit or restrict short-term letting prevail.

In 2018, the NSW Government amended the legislation to clarify that an OC could adopt a “No Short-Term Letting” by-law. This was done to prevent residential strata schemes from becoming “quasi hotels”. Hundreds of schemes have passed s.137A by-laws but there are major challenges:

- i. resolutions to adopt the “No Short-Term Letting” by law are voted down by a minority of investors;
- ii. residents can vacate and continue to claim their lot is their principal place of residence;
- iii. monitoring and compliance is time-consuming, cumbersome and expensive.

The need for new and more efficient enforcement and penalties is discussed in: *6. Enforcement of “No Short-Term Letting” By-law and Remedies.*

3.1 “Opt. Out” Favours Investors

The by-law power under s 137A was welcome and necessary but there was no consultation on the scope or approach. There should have been a presumption against STR.

The current ‘opt out’ approach is a presumption that favours investors and non-resident Owners conducting short-term letting. It requires a supermajority of 75% of the vote based on unit entitlements and Owners present to vote for the By-law and against short-term lets. This enables a minority (26%) to force an uncontrolled volume of short-term letting on the tourist and visitors market on residents and impose the costs on all lot Owners.

The decision to put forward and vote on a “No Short-Term Lets” by-law is not undertaken in a neutral environment. There is considerable investment in strata property for wealth creation, with almost half of all apartments in NSW rented and in some buildings 80% or more are tenanted.^{xi}

Investors are overseas and have no connection to the scheme while many local investor/Hosts sit on strata committees and/or attend general meetings. In a small scheme, just one or two investors can determine the future of the scheme. Investor/Hosts that Chair a Strata Committee can and do influence the outcome.

Investor Owners have a greater focus on ROI than the wellbeing of residents, stability of the community or quality of the building. The new policy enables investors to convert a residential apartment building into an unlicensed Airbnb hotel and that has already happened. It is also common for overseas investors to take no interest in whether or not tenants are “doing Airbnb”.

In April 2021, a senior official of the Department of Planning argued that investors are entitled to “certainty”. The position the Owners Corporation Network, housing organisations, Local Councils and many State MPs is that residents are entitled to certainty. Residents have invested in their apartment and the building as their home. They live there. In the majority of cases, it is the resident Owners who sit on voluntary strata committees and look after the administration and management of the building.

In a recent survey of approximately 200 OCN members over 40 made unsolicited comments about short-term letting although there were no questions on short-term letting in the survey. It is clear evidence of concern among this constituency. Those comments are included as Appendix 2. In a recent precinct research survey for the Dawes and Millers Point Precinct, short-term letting was also identified as one of the three issues of major concern in the area. See Appendix 2 Report of the Dawes and Millers Point Precinct, which includes both high rise strata buildings and low-rise heritage housing.

In that survey, 84% of respondents thought Airbnb should be banned entirely or severely restricted. These responses were consistent with the overwhelming majority of resident and strata scheme submissions to the Parliamentary Inquiry and to the ongoing and continued feedback and concerns expressed to the Owners Corporation Network.

- **In residential strata schemes the presumption should be against short-term letting and require consent of 75 % of the OC before it is permitted, and only then if it otherwise permitted by planning policy.**^{xii}

3.2 Principal Place of Residence

Section 137A limits the power of the OC to prohibit short-term letting only in lots that are not the principal place of residence of the Owner or occupier. It enables a resident to vacate indefinitely to conduct short-term letting on the tourist market while continuing to claim the lot is their PPR with no time limit. The settings of 180 day plus additional unlimited short-term lets of 21 days or more is commercial level short-term letting for tourists and visitors. This volume of short-term letting is clearly inconsistent with residential occupation of a primary home. The concept of principal place of residence is drawn from taxation law without considering how that operates in practice. It also fails to consider the objective of the “No Short-Term Let” by-law, which is to stabilise an apartment community and stop it turning into a “quasi-hotel”.

In contrast, for example, in San Francisco, the municipal “home-sharing” policy limits the use of dwelling for short-term lets to the primary home; permits residents to conduct short-term un-hosted lets for up to 90 days in a single year and requires a permit. The law requires that the resident be in occupation for 275 days. This removes the opportunity to exploit what it means to be a “resident” or “primary home” and it is clear and straightforward for all parties. The ability to conduct short-term letting in common interest properties, however, remains subject to whether the condominium or homeowner association permits it under their own declaration and by-laws.

- **The concept of “principal place of residence” is undefined. It remains one of the unresolved legal policy issues leaving strata committees to engage in detailed inquiries. It permits an excessively high level of Host not Present short-term letting on the tourist and visitors market, which is inconsistent with the stability of an apartment community. It should be reviewed.**

3.3 Consent Conditions, By-law and Terms of a Lease

It is important to provide clear information to the public and strata schemes about how the new short-term letting policy interacts with development consent conditions, by-laws and the terms of a residential lease. The State Environment Planning Policy now confirms in clear and unambiguous language that short-term letting is only a permissible use of a dwelling where it is

otherwise lawful. **The DA consent condition, by-law or terms of a lease that prohibits or restricts short-term letting prevails.**^{xiii}

All premises used for short-term letting must be registered and Platforms must not list an un-registered premises. However, registration does not make the use of a lot for short-term purposes lawful or an entitlement. Registration on the Premises Register is a criterion of “exempt development” under the planning instrument but it does not prevail over a DA condition, a by-law or a term of lease that prohibits or restricts short-term letting in respect of a specific residential development.

Over the past four years the lack of clear information to apartment communities has increased their vulnerability to more powerful and organised commercial interests. It is concerning that the registration system has no triggers or declarations to promote compliance and that the Department of Planning takes no responsibility for the integrity of the Premises Register.

- **Published guidance should reflect the full legal position – that short-term letting is only permitted if it is not otherwise unlawful. The use of a lot for short-term letting may be unlawful due to development consent conditions, an original or later by-law or a term of lease that prohibits or restricts the use of a lot for short-term letting purposes. The requirement for registration is a development criterion only. Registration is not a permit. It does not prevail.**
- **The Owners Corporation should obtain expert planning law advice on the scope of conditions of consent as some consent conditions explicitly prohibit “serviced apartment” and short-term leases of less than 3 months. The s 141 original by laws based on these conditions remain undisturbed but depend on specificity.**

4 Establish a Sound Legislative and Policy Framework

This chapter discusses the broader strata legal policy framework and the status of the “Airbnb Guest”. The right to know the identity of the Guest is a fundamental to the proper administration and management of the scheme. This chapter also argues that a holiday-maker should not, as a matter of public policy, have exactly the same standing as a lot Owner or Residents.

4.1 Functions of the OC and obligations of Owners and Occupiers

The Act currently provides that the OC has responsibility for: (a) the management and control of the use of the common property, and (b) the administration of the strata scheme (s.9). By-laws may be introduced or updated to support the effective management, administration, and control in relation to the use or enjoyment of the lots or the common property and lots of the strata scheme (s.136(1)).

The by-laws may:

- (a) confer specific functions on the OC with respect to the use and enjoyment of lots and the common property; and
- (b) make provision directly in relation to the use and enjoyment of the lots and common property.

The OC must not adopt a by-law(s) that is harsh, unconscionable or oppressive (s.136). In addition, the OC must not adopt a by-law that restricts or prohibits a resident from conducting short-term letting (s.137A (2)). However, the OC may adopt a by-law that prohibits an Owner for who is a non-resident from using their lot for short-term letting purposes (s.137A (1)).

The responsibility of the OC is to exercise those functions **to the benefit of the lot Owners**. It is unclear the extent to which by-laws can confer functions on an OC **to benefit lot Owners who are only indirectly or distantly related to the administration of the scheme**.³

The obligations of Owners and occupiers also includes the obligation not to use the lot or the common property or permit the lot or the common property to be used or enjoyed in a manner or for a purpose that causes a nuisance or hazard to other occupants or unreasonably interferes with their right to use their lot or common property (s.153).

- **The statutory functions of the OC should include the obligation *to protect the reputation, standards and values of the scheme*.**
- **The obligations of owner/occupiers should include *not using or permitting to be used a lot or common property in a manner that is injurious to the reputation of the scheme*.**
- **There must be clear policy support for the proposition that all lot Owners should not be liable or expected to absorb the cost of short-term letting to tourists and visitors and that the strata legislation should be reformed to achieve that outcome.**

These matters are expanded in more detail in subsequent sections.

³ *Cooper v The Owners SP 58068* [2020] NSWSCA 250 [61]

4.2 What is the legal status of the “Airbnb Guest”?

There is an outstanding legal policy issue concerning the “Airbnb Guest”. What is the legal status of the “Airbnb Guest”? (i) visitor or occupier;^{xiv} (ii) tenant or a licensee?

It is essential that the lot Owner takes responsibility for their conduct of the short-term let including the behaviour of the Guest(s) (and their Visitors). In the strata context, the Code of Conduct “reasonable steps” test leaves all lot Owners exposed to unmanageable risks with no consequences for the Host except in the most extreme circumstances. It needs to be clear in the strata legislation that the lot Owner is responsible for the conduct of their short-term letting activity, including the behaviour of the short-term “Guest”.

Host responsibility for Guest

In some cases, the short-term Guest is in occupation with the Host. The “home-hosting” arrangement is a commercial activity for consideration. It is not a flat share or house swap arrangement. By-laws require residents to accompany their visitor(s) on common property. This is for the security and privacy of others especially when using facilities, such as pools and gyms. It is also stop visitors roaming across private grounds and common shared spaces such as car parks. The majority of short-term letting is un-hosted and some strata lawyers regard un-hosted Guests still as visitors.

Licensee or Tenant

The industry describes the short-term let arrangement as a temporary licence. But in the case of a dispute the courts will look at the terms of the contract, the facts and the circumstances. In some cases, a document described as a licence will be found to be a lease. There are several important legal policy issues that flow from this unregulated status.

In essence, where the grant of the right to occupy is for the whole property without the Host present, the nature of the “arrangement” is a common law tenancy. The general common law principles were applied by the Supreme Court of Victoria in *Swan V Uecker* (2016) VSC 313 (10 June 2016). That case confirmed that an “un-hosted” Airbnb sub-let created a common law tenancy. The short-term tourist and visitor industry has asked Government to legislate the matter to avoid creating a tenancy. The common law tenancy entitles the Guest to remain until evicted by an order of the Supreme Court. Police will not intervene to evict a person where the legal relationship is unclear.

In strata schemes problems with a Guest need to be resolved quickly to reduce the risk to other residents, especially where a person(s) is a nuisance, drug affected or violent. The Owner must be responsible for taking immediate steps if there is a breach of terms of contract or by-law or the Code of Conduct. The Host should have the ability to quickly terminate the occupation of the lot.

- **Legislate to clarify that a lot Owner is legally responsible for the conduct of their short-term letting activity, including the behaviour of Guests (and their Visitors).**
- **Legislate the short-term let arrangement to be license that does not create an ‘interest in land’. It must be clarified these arrangements are a contract for short-term accommodation not a residential tenancy to remove any doubt and avoid creating a tenancy.**

4.3 The Strata Roll, section 258 and Short-Term Rentals

Section 258 applies to STR. It requires the lot Owner to notify the OC every time a new tenant occupies a lot. It requires notice within 14 days of occupation in the clear expectation the tenant is a resident not a short-term Guest.^{xv} The notification includes the name and contact details, including email details, of that person who is entered on the Strata Roll.

The Secretary has a legal duty under the Act to maintain an up-to-date Strata Roll, which serves various functions. There is a penalty for failing to maintain an up-to-date Strata Roll.

In the case of a short-term Guest in occupation for a weekend or public holiday s.258 is unlikely to be complied with. The maintenance of the Strata Roll is important for a number of functions, including communication and service of notice. It is also proving essential in the Covid-19 pandemic crisis response. On 26 August, Dr Kerry Chant PSM, Chief Health Officer issued a request to Strata Managers to fulfil the obligation to maintain the Strata Roll to assist contact tracers in Sydney's Delta Covid-19 outbreak. There needs to be scope for faster systems for registration of short-term Guests with all contact details. In some cases, it may be the use of check in system or a registration system as determined by the OC.

- **There must be clear legal authority for the OC to collect verifiable personal identifying information and contact details of the short-term Guest(s) in a form that is satisfactory to the OC or Strata Committee. The legislation should be amended to include a statutory obligation on the lot Owner, Occupier and "Guest(s)" to disclose that information.**
- **This must include the full name and contact details, residential address, telephone and email, of the Guest(s) in occupation not just the person who makes the booking. The information is to be provided prior to arrival, at "check-in" or at any other time as required by the Strata Committee.**

4.4 Reasonable restriction on non-residents' use of common property

The pattern of domestic visitation into urban destinations is concentrated on weekends and public holidays. In contrast, a 'resident' is a person who lives on an indefinite basis in a place of "permanent place of abode". The "Airbnb Guest" has no intention of "residing" in the lot, which is not the person's home because *they live elsewhere*. This is the established meaning across multiple areas of Australian law. One might "reside" in the dwelling for a short duration but that does not make a weekend visitor or guest a "resident" in the strata community sense.

The OC must be able to make some reasonable distinctions and, for example, exclude un-hosted short-term let Guests from the OC's own meeting, function room or library. It is not envisaged that this would apply to facilities such as a gym or a swimming pool. However, a transient Guest should not have access to all common property as a matter of right on the same footing as a permanent tenant or resident Owner. The "Guest" in occupation under a short-term let arrangement is closer in equivalence to a hotel guest or an occupant of a "serviced apartment", not a resident.

The law should clarify that an OC can make some rational distinctions to achieve the legitimate aim of managing the common property for the purpose of protecting the health, safety, compliance with fire safety regulations, welfare and quiet enjoyment of all Owners or Occupiers.

The short-term let Guest is not a “minority” with a legitimate expectation of strata property rights. The short-term let Guest” is a consumer of a short-term accommodation service under a commercial contract relationship with the Host. It is not harsh, oppressive or unjust in respect of the “Guest” who is not a minority with property rights or an ongoing relationship with the scheme. Nor is it an interference with the right of an Owner or Occupier to use their private lot for short-term let purposes.

For example, a scheme found a “Guest” booked the function room and conducted her wedding reception within the residential building. It would be unconscionable to force an OC to allow a short-term let Guest who is a tourist or visitor to utilise the private scheme meeting room. Similar views have been expressed concerning a scheme library located in an Estate Office, which is contributed to, for and by residents and require unlimited and afterhours access. It is maintained on a voluntary basis by residents for genuine neighbours not holiday-makers or weekend visitors. It is not sufficient to require “no events, no parties”, this goes to the access and use of parts of the common property and the security and privacy of residents.

Similarly, the OC must have the right to prevent a “Guest” from entering highly sensitive areas such as a marina where genuine residents would otherwise have free access via security devices. This common but private property is gated. It excludes the general public for privacy, safety, and security reasons. Transient “Guests” are members of the public, they are not members of the OC or residential tenants of the scheme. In some schemes a rooftop garden or open roof area may be used for the private use of residents. The OC may not want the short-term lets Guests and their Visitors who are members of the public to take over this type of space intended for the exclusive use of Residents, especially at the same time. For example, private communal herb and vegetable gardens established by residents are not accessible to the public. The same should apply to transient short-term let Guests, if the OC wishes to do so.

- **Legislate to enable an OC to exclude a short-term let Guest from some parts of the common property facilities to protect the privacy and amenity of residents. These include event and meeting rooms, libraries, marinas or private gardens or other sensitive areas intended for the exclusive use of genuine Residents.**

4.5 Remove Short-term Guest and Tenant Representation Anomaly

The Act provides for the representation of tenants on the Strata Committee of the scheme. The short-term let Guest with exclusive possession is a common law tenant and would count toward the 50 % threshold. This internal inconsistency undermines the policy of government to encourage tenant representation and the tenant representation provision. It also leads to the absurd result that a short-term let Guest, including an international traveller, could attend a strata committee meeting.

- **Legislate that a lot used for short-term let purposes is not counted toward the 50 % threshold that triggers residential tenant representation and a short-term let Guest has no right to attend or observe a Strata Committee Meeting.**

5 Support Better Management of Short-Term Letting

This chapter discusses the need for management by-laws, including registration systems and more transparency for prospective purchasers. There needs to be clarity and confidence that such systems can be established without being challenged as an unlawful restriction. **See Appendix 3 Strata by-laws to manage short-term letting**

5.1 Management by-Law framework

In the majority of cases, sophisticated systems to reduce the negative impacts of short-term letting will simply be impossible to implement. It is inherently difficult to manage disaggregated short-term letting dispersed among residents run by different investors, Hosts and agents. In smaller schemes there will be no capacity to manage short-term letting and resident Owners and tenants will be left to respond. That is also one of the reasons for a second tier of strata fees (without additional voting rights) to be adopted, to simplify the contributions made.

That said, strata schemes still need certainty that OCs can exercise powers under the Act to:

- protect the reputation of the scheme and the safety, welfare and security of the community;
- require personal identifying information of a short-term let “Guest”;
- protect other lot Owners from the absorption of costs and charge short-term let Hosts.

There are some schemes who want to employ concierge and/or security and establish registration, with check in and conditions applying to the short-term lets. If larger OCs wish to adopt a registration system, they must be free to do so.

It is also evident that schemes of all sizes do need management by-laws. They must be able to manage their common property and administer the scheme without the threat of legal action or unjustified complaints about alleged infringement of rights.

Transparency and accountability

There has been a history of non-disclosure and regulatory avoidance. This has made management and enforcement of by-laws very difficult. To overcome this issue in the strata context there should be a statutory obligation on a lot Owner or other permanent residents to disclose the intention to use a lot for short-term let purposes before the lot is used for that purpose, listed or advertised. The notice must include proof of registration on the Premises Register and the ID number. If the Host is not the lot Owner the Host should include written proof of the lot Owners consent to the Strata Committee. This will provide a solid basis on which to basis a by-law that does not depend on knowledge of fragmented elements of the Short-Term Rental Accommodation Framework and Registration system. Nor does it depend on the ability to pass a by-law, which is vulnerable to undue influence of commercial interests in the scheme.

This approach would also support landlords, many of whom are deeply frustrated that prohibiting short-term letting is left to individual leases and is difficult for them to “police”. Many landlords would prefer to have the added support of a by-law. The statutory commitment to transparency would also strengthen protections for prospective purchasers who are entitled to know the extent of short-term letting in a specific building they intend to live in (or invest in). It should be in the

available to all lot Owners as part of the strata scheme records and available to a prospective purchaser as part of the strata report.

Finally, clear and stronger obligations in strata legislation itself will support the monitoring and compliance efforts of Local Council. It will also enable the OC to audit the Register and scheme records.

It is possible to prescribe a notice containing these elements and schedule it to the Act. This would enable facilitators to integrate it into their software and office systems. It would streamline their work and assist them to be compliant with the Short-Term Rental Accommodation Framework. The record of lots notified as used for short-term letting should be a record that is required to be kept by Owners Corporation and available for inspection by a prospective purchaser.

Personal Identifying Information

In particular, personal identifying information of the Guest(s) is essential - this is not an invasion of privacy or a restriction on the use of the lot for short-term letting. It is part of the management of a strata scheme in which Owners and tenants are on the Strata Roll, as discussed above. If a scheme is unable to establish registration, control security keys or set conditions for check-in it will impose on residents and Owners' standards that are lower than a hotel, motel, hostel or serviced apartment business. These businesses also have the benefit of on-site management, while residential strata schemes typically are "unmanaged sites".

In this example, which pre-dates the new "home-sharing" policy, and was adopted in a development with ambiguous development conditions, the by law includes:^{xvi}

- (i) Fixed line telephone number to the lot provided to the Concierge;
- (ii) Owner must notify the Concierge upon the arrival of any Occupier staying in a lot used as a serviced apartment including details as to the Occupier's identification, booking confirmation and contact information (including a contact telephone number);
- (iii) A new Occupier of a lot must register and check in with the Concierge prior to entering and occupying the lot;
- (iv) The Owner and Occupier of a lot indemnifies the Owners Corporation for any cost or charge incurred as a result of a false fire alarm recorded by the system as having been triggered in their lot;
- (v) The by-laws also include that the Owner or occupier must provide the Owners Corporation with the following information:
 - a. Details of all Contractors engaged by the Owner or Occupier to clean or service a lot in the building;
 - b. The certificate of currency of the insurance policy or policies of the Contractor with a reputable insurance company reasonably satisfactory to the Owners Corporation for:

- c. The contractor's all risk insurance incorporating public liability insurance in the amount of \$5,000,000; and
 - d. Workers' compensation in accordance with applicable legislation;
 - e. Safe work method statement of a Contractor;
- (vi) An Owner or Occupier must ensure that all Contractors:
- a. Have an initial induction into the building, which is to be conducted by the Building Management; and
 - b. sign in with the concierge upon arrival.
- (vii) An Owner or Occupier must not, without prior approval of the Owners Corporation, erect any wall or structure within the lot for the purpose of, or having the effect of, creating additional rooms within their lot.
- (viii) The by-law is a fundamental term in any lease or licence granting rights of occupation to the lot, whether or not the lease or licence contains a clause having the same effect as this by-law;
- (ix) If the lessee, licensee or other Occupier of a lot commits a breach of this by-law, the Owner must take immediate steps to terminate the lease or license and the occupation of the lot thereunder.
- (x) The Concierge must be notified of a guest with a disability or who is less mobile and vulnerable to arrange a Personal Emergency Evacuation Plan in accordance with AS 3745-201 Planning for Emergencies in Facilities.

In future, management by-laws that will be adapted to the Short-Term Rental Accommodation Framework include:

- notice that the lot is to be used for short-term let purposes;
- indemnify the OC from any claim for injury or death or disease when on common property;
- evidence of registration on the Premises Register and the unique ID number;
- evidence of compliance with the fire safety standards;
- evidence of public liability insurance valid for the period(s);
- management of security keys for lots used for short-term let purposes;
- recovery of costs arising from short-term let activity, including direct costs of damage, legal costs;
- payment of short-term letting levy as an upfront contribution to costs arising from short-term letting;
- payment of additional strata insurance premiums;

The increase or introduction of transient occupation into small or larger schemes brings numerous issues. It is not uncommon for people to have accidents in a swimming pool or suffer a heart attack and to die in a swimming pool or gym. In an evacuation it may be necessary to render extra assistance to people with disabilities or who are less mobile and vulnerable. An OCN member who on the basis of experience has raised the issue of planned suicide. This is phenomenon in hotels that strata schemes residents and staff are un-trained to deal with but occurred.

It is necessary that schemes can act with confidence to develop management by-laws. There has also been the suggestion that a common property memorandum may be a future option.

See Appendix 3 *Strata by-laws to manage STR*.

- **There must be clear legal authority to establish processes and systems to manage short-term letting to tourists and visitors in a residential strata scheme. Fair Trading should state clearly that it regards such systems as within the scope of the existing law or amend the law to ensure there is sufficient flexibility to do so.**

- **The strata legislation should include a duty to provide notice to the OC of:**
 - a) **The intention to use a lot for short-term letting before the lot is used, listed or advertised;**
 - b) **Evidence that the lot is the principal place of residence or not;**
 - c) **Proof of Premises Registration and the ID number;**
 - d) **Certified written proof of the lot Owners consent if the Host is not the lot Owner;**
 - e) **Evidence of public liability insurance policy, which includes the common property.**

5.2 Short-Term Rental Contract - Terms and Conditions

In the “serviced apartment” sector the contracts set ‘stricter’ conditions to reduce risk and prevent problems arising. These terms are stricter than can be achieved through the normal by-laws that apply to genuine residents. This recognises the different patterns of use, and the risks associated with transient occupation for holiday and other short-term reasons. For example, terms and conditions of hotel and serviced apartment contracts prohibit parties, smoking, and pets and may prohibit children. **See Appendix 4 Security and Common Types of Nuisances and Appendix 5 Terms and Conditions of Short-term Let Contract.**

In the residential strata context, it is not sufficient to rely only on normal by-laws that are not adapted to the ‘serviced apartment’ or ‘motel’ or ‘hostel’ environment. The strata scheme by-laws cannot impose such restrictions on residents but this gives an unnecessary greater latitude to holiday makers and increased nuisance to residents.

In the strata context, stability and harmony is maintained through peer pressure and mutual social and financial relationships not by-law enforcement. The behaviour of holiday makers and other short-term visitors is not mediated through the social norm of peer pressure or ongoing relationships that are an incentive to respect each other and the property. It should be possible for a strata scheme to adopt a set of minimum terms and conditions that are required as essential terms of a short-term let contract operating within the scheme.

During the Code of Conduct advisory process some industry stakeholders suggested a model set of terms and conditions. This was rejected by Government on the grounds that the Code of Conduct was intended to be ‘light touch’.

5.3 Holidaymakers, dogs, parrots and the rest

The Supreme Court judgement in *Cooper v The Owners SP 58068* [2020] NSWSCA 250 [61] invalidated a blanket ban on pets as an impermissible restriction on the rights of lot Owners and Occupiers. The court equated the freehold property rights of lot Owners with those of all other forms of freehold. The ban was an absolute ban. The type one finds at a hotel, or hostel.

Holiday-makers increasingly bring pets into accommodation services. There are reports of “Airbnb Guests” bringing multiple dogs, parrots, cats and no doubt there are others. It is not possible for an OC to police every short-term let. Nor is it fair or reasonable to expect a Strata Committee to consider requests from a short-term let Guest to bring their pets onto the property or for residents to be left with an uncontrolled volume of dogs on their common property and increasing the risk of nuisance and interference with their own right to quiet enjoyment of their homes.

In the tourist and visitor sector the hotel, motel, bed and breakfast and serviced apartment business Owner is at liberty to prohibit pets in their premises. It is unconscionable to prevent a residential strata scheme from implementing a blanket ban on pets being brought into the premises by a short-term let Guest just as it is an unjust burden to expect an OC to enforce smoking and pet bans directly against a Guest (s). The OC must be able to adopt stricter by-laws for short-term let Guest and tighter terms and conditions and the lot Owner must be held responsible.

- **The lot Owner must be legally responsible for their short-term letting, including the behaviour of the Guest and their Visitors.**
- **The OC must be able to set stricter terms and conditions for lots used for short-term letting either via a by-law or terms and conditions adopted at the scheme level.**
- **Legislate to permit a blanket “no pets” ban on lots used for short-term letting to distinguish it from ordinary by-laws. This is necessary because of the Supreme Court decision in the Cooper case, which did not contemplate the situation of transient occupation by tourists and visitors and the risks and manage of this activity.**

5.4 Groups in Short-Term Let Apartments and Limits Occupation

Special attention is needed to address the common problem of large groups of tourists in small apartments for short weekend stays. Short-term lets to groups increases the profit for the short-term let Host but it also results in increased nuisance and costs for residents and Owners.

There is no limit on the number of occupants in a Lot. The planning policy also permits different rooms to be used for different guests who do not know each other, without the Host present. The Department of Planning did recommend minimum standards but lobbying from Airbnb resulted in these being removed. The policy is a state-wide template that does not differentiate free-standing

home from small apartments or high-density high rise. It increases risks to residents and is associated with increased crime, including threats to life.

The lack of minimum development controls legalises overcrowding and otherwise illegal “hostels” in an apartment building and poses a threat to other residents and the Guests/informal renters in occupation. Unless this flaw is rectified in the planning policy, it will be impossible for Local Council Building Inspectors to enforce regulations to deal with illegal hostels, overcrowding, and illegal division of properties. The fire safety standards also do not take the lack of occupation limits and overcrowding into account.

The OC can adopt a by-law to limit occupation to two adults per bedroom, unless the occupants are all members of the same family. This was introduced to stop overcrowding but also to avoid discrimination against larger multi-cultural families. **The provision is not relevant to the short-term let context and functions as a loophole that permits groups booking for short-term weekends and slum landlords operating informal rental accommodation.**

It is common for two-bedroom apartments to be listed for six and eight people, and, even with a by-law in place, the Host can continue to list an apartment for groups. In these cases, Hosts install more beds in bedrooms and living rooms and multiple sofa beds. Increased occupants and beds also block egress for Guests, including children. It is done to increase the nightly tariff, and increase profit and in high demand areas can maintain a high level of booking.

This practice which presents in many guises is one of the reasons why unregulated “Airbnb apartments” are so lucrative. It exists in high demand areas such as the city, Chinatown, Olympic Park and beachside suburbs close to night time venues such as entertainment, venues, tourist areas and sporting clubs. This type of overcrowded occupation also increases the costs to the OC and is not part of the operating costs of a licensed service apartment business or a hotel.

There is no practical way for a Strata Committee to enforce occupation limits, when apartments are used for groups on a weekend visit. The fact that by-laws cannot prohibit families, leaves Hosts with the right to advertise for any number of occupants they wish. The division of apartments into additional rooms and use of rooms not designated for sleeping, is also common. This type of slum landlord practice is a continual challenge for Building Inspectors, and the NSW short-term letting policy legalises un-limited occupation and requires no consent or any complying certificate.

- **The Minister for Better Regulation and Innovation should make representation to the Minister for Planning and the NSW Cabinet that:**



GROUPS WELCOME ★
SANITISED Modern
Apartment C02

★ 4.64 (197 reviews)
Pyrmont, New South Wales, Australia

This is a rare find. Kimi's place on Airbnb is usually fully booked.



Entire apartment
hosted by Henry



8 guests · 2 bedrooms · 5 beds · 2 baths

Entire home

\$400 / night
28 May – 29 May

Reserve

- **The planning instrument should limit occupation to 2 persons per bedroom, or per carpark space whichever is the lesser. This must include children, except for babies.**
- **The planning instrument must make it illegal to divide the lot into more rooms or use rooms that are not approved bedrooms as sleeping quarters, including for children. This is essential to ensure that Local Council Building Inspectors can monitor and enforce penalties under planning law and enforce other regulatory frameworks that govern hostels.**
- **The strata legislation should be amended to enable the OC to prohibit the listing or advertising of a lot for more than 2 persons per bedroom, including children, or per car space whichever is the lesser. It must prohibit the division of a lot into more rooms or use of rooms that are not approved bedrooms as sleeping quarters.**

6. Ensure Effective Enforcement of “No Short-Term Letting” By-law

This chapter discusses problems and possible solutions for faster and cheaper enforcement of the “No Short-Term Letting” by-law. There are significant commercial and financial interests at stake that are a powerful incentive to ignore by-laws and development conditions. The widespread illegal penetration of the apartment market gave rise to the policy reform. The current procedures remain cumbersome and the penalties are insufficient. The burden on volunteer strata committees and increased insurance premiums resulting from disputes is also unacceptable.

There are a number of options that can work together or in some combination:

- i. OC to have the power to directly fine a lot Owner;
- ii. Fast track process for order to “cease and desist” order from NCAT;
- iii. Commissioner for Fair Trading power to order a Platform to de-list a premises registered (or not) listed in breach of a “No Short-Term Letting” by-law.
- iv. Commissioner for Fair Trading to order the de-registration of short-term let premises;

There also needs to be a review of NCAT procedure, powers and penalties.

The short-term tourist and visitor industry expanded in urban apartments because of widespread determination to skirt planning laws and flout valid by-laws. The Hosts are incentivised by lucrative returns and low risk of prosecution. The majority of short-term letting on the tourist market is also conducted through agents and there is no ‘peer pressure’ to respect the scheme. Under the new Short-Term Rental Accommodation Framework Local Councils have no role and illegal operators within strata schemes can dominate residents. The Code of Conduct provides no protection. It requires Hosts not to breach planning law or by-laws. In these cases, the Commissioner for Fair Trading will require the complaint to be dealt with by another relevant authority.

In addition, Hosts sit on strata committees and prevent matters being dealt with. It requires a decision of Owners in general meeting to undertake legal proceedings. This necessarily involves the offending lot Owner(s). While this is true for most by-law breaches, there is a substantial difference when dealing with short-term letting (and multiple short-term let events or lots).

6.1 Protracted processes and low penalties

The existing strata dispute procedures and remedies are also not designed to combat the fast turnover and lucrative income generated by STR. Enforcement of a “No Short-Term Letting” by-law is difficult, time consuming and expensive – and may be needed against multiple hosts repeatedly over time having a cumulative impact on the morale, culture and strata fees of the entire scheme.

It has been reported that Notices to Comply are not followed. NSW Fair Trading mediation results in no compliance. Hosts engage lawyers requiring a scheme to also engage legal services. It is possible some Hosts’ lawyers have been funded by tourist platforms. These disputes increase insurance claims and may result in a claim for lost rental income.

To illustrate the point, in just one scheme with just one Airbnb unit a member of OCN said:

Nothing would surprise me re these AirBnB/Stayz lets! We tried to go down the breach process – 17 breaches in 18 months. Every breach notice was responded to by the Owner’s (or was it AirBnB/Stayz’s?) lawyer, necessitating us also requiring legal advice. After 3 Notices to Comply and still no compliance we finally had a mediation hearing, at which the Owner refused to comply with any by law provisions, citing Government fence-sitting on the issue. Strata’s costs of all this were nearly \$10,000. ... the Owner then submitted a substantial claim on our Insurance policy under the “Owners fittings and improvements” provisions, with loss of rent calculated at Short-Term letting rates – initially rejected by the insurer, but won on appeal to Australian Financial Complaints Authority (AFCA). The hit on our insurance premiums was substantial. (August 2021)

Multiply this by repeated breaches or several lots over many months or years in a single scheme.

In short, the position of the majority of lot Owners and volunteer strata committees under the Short-Term Rental Accommodation Framework, is significantly worse. The Local Council has a very limited role, except for in the buildings with DA consent conditions that prohibit STR. Even in those cases, Local Councils will expect a scheme to rely on its own by-laws. There is no recourse to the Commissioner for Fair Trading, and the NCAT procedure is slow, expensive and undermined by conflict of interest.

6.2 Strata Committee – Direct Enforcement Power and Notice to De-Register

To ensure the “No Short-Term Letting” by-law is effective the Strata Committee needs to be able to act quickly and effectively. This is essential to redress the power imbalance and protect residents and all lot Owners from costly, drawn out and destructive NCAT processes, including irrelevant mediation. One option is to enable an Owners Corporation to fine a lot Owner directly. The fine would be a disincentive but to be effective the premises has to be de-registered and delisted. It also risks taking the place of NCAT orders, which is counter-productive.

- a) authority to issue a fine of \$1000 for each breach of the “No Short-Term Letting” by-law;
- b) notify the Secretary, Department of Planning to de-register the premises;
- c) notify the Platform, property management company to de-list the premises;
- d) notify the Commissioner for Fair Trading for enforcement action against the Platform.

A variation on this option is to strengthen the legislation in relation to notifications for de-registration and de-listing so that notification of the By-Law is sufficient for the Secretary of the Department of Planning to act

6.3 Commissioner for Fair Trading - Orders and Offences

The Commissioner for Fair Trading is responsible for administering the Code of Conduct. It is an offence for a Platform to list an unregistered premises.^{xvii} The Commissioner for Fair Trading should have an explicit power to direct or order a Platform to de-list a premises that has been registered and listed in violation of a “No Short-Term Let” by-law or that becomes the subject of a by-law, revised condition of consent or a term of a lease. It should be an offence under the Code for a Platform to list or continue to list a premises offered for short-term letting in breach of a “No Short-Term Let” by-law, condition of consent or term of a lease.

This will make the system less costly for ordinary residents and lot Owners. It will ensure all lot Owners are spared the complexity and cost of NCAT. It should be sufficient for a scheme, a

Local Council or a landlord to work with the Commissioner for Fair Trading to audit the Premises Register and have lots removed from the Register promptly.

- **The Commissioner for Fair Trading should have an explicit function to order a lot Owner to cease use of a lot for short-term letting purposes; order the de-registration of the premises from the Premises Register, and, order the Platform(s) to de-list a lot that is the subject of a “No Short-Term Let” by-law, a development consent condition or term of a lease.**
- **It should be an offence for the Platform to continue to list a premises that is subject to a “No Short-Term Letting” by-law, a development consent condition or a term of lease that restricts or prohibits short-term letting. That offence provision should be triggered once the Platform has notice. The amendment to the Code of Conduct can be adopted and declared immediately.**

6.4 NCAT orders and low penalties

In addition, the NCAT must have a suite of effective powers and appropriate penalties that match the nature of short-term letting activity and breaching of “No Short-Term Letting” by-laws. In summary, the NCAT must be able to promptly and without excessive cost:

- a) impose a penalty for breach of “No Short-Term Letting” by-law to be significantly higher than the current tariff;
- b) order penalties accumulated on a daily basis for the duration of the period;
- c) order the Secretary of the Department of Planning to de-register the premises;
- d) order the lot Owner to delist the premises from all platforms and any other forms of advertising immediately; and
- e) directly order Platforms and Agents to not advertise or list the premises;
- f) ensure orders to be published by Fair Trading so that other Platforms are notified.

It is widely known that Hosts share techniques to avoid regulatory measures, such as listing under different names, renaming a property, de-listing and re-listing under a different Host. The registration details of a property may also be falsified. The terms of NCAT Orders must therefore be broad enough to be effective and capture all these avoidance techniques.

6.5 Remedies for Neighbours and Owner Corporations

The Departmental advice is that complaints about guest breaches of clause 2.5.1(b) of the Code of Conduct, which specifically requires guests to comply with by-laws, would usually first need to be dealt with as a by-law breach and go **through the NCAT process**.

However, clause 2.5.2 of the Code of Conduct sets out short-term let guests’ obligations to neighbours. The Department has advised that breaches of these obligations do not necessarily need to be dealt with as a by-law breach and through the NCAT before being lodged as a complaint with NSW Fair Trading under the Code of Conduct.

This is because clause 2.5.2 sets out specific obligations that guests must meet that are not linked to the requirement that there be a breach of a by-law. For example, if a guest has made noise that unreasonably disrupts the peace and comfort of the neighbours, then an OC or

neighbour will be able to complain **directly** to NSW Fair Trading about a breach of paragraph 2.5.2(a).

Nevertheless, there is an overlap between 2.5.2 obligations and routine by-laws, and it is possible the Commissioner for Fair Trading may require the scheme to deal with the matter via mediation than the NCAT procedure. It is difficult to see how this would work in practice.

Clause 3.2 of the Code also sets out explicitly that if a complaint involves a contravention of other laws (e.g., planning laws, criminal laws, or by-laws), the Commissioner for Fair Trading can decline to accept the complaint and ask the complainant to take the matter to another appropriate regulatory authority first.

There is little confidence across the strata sector in the relevance or effectiveness of NSW by-law enforcement procedures against a short-term Guest, especially if that person is an international or inter-state Guest, and little confidence that the lot Owner can be held accountable. The existing process is simply not designed or adapted to provide redress or promote community standards when the offender is a holidaymaker. Importantly, NCAT has no jurisdiction over inter-state parties or international travellers at all. So, while the NSW Government may be confident it can reach inter-state and international offenders if pursuing a Code of Conduct offence that is not the case for Owners Corporations or strata residents that must resort to the by-law and NCAT procedures and jurisdiction.

It is vital that complaints under 2.5.2 of the Code are dealt with directly by the Commissioner. This is necessary to secure potential strike against the Guest and Host, which may lead to exclusion from the industry. But there is no compensation under the Code of Conduct for neighbours or schemes nor is there scope for an award of damages. The lot Owner/Host can avoid responsibility relying on a defence of “reasonable steps” and this enables lot Owner to avoid responsibility toward all lot Owners and strata residents. The Code of Conduct makes no distinction between a free-standing home and a high-density apartment building, and the strata legislation itself must make lot Owners responsible for their short-term letting activity, including the behaviour of a Guest and their Visitors. It is the lot Owner’s responsibility to then recover costs or compensation from the Guest under their short-term let contract.

- **The lot Owner must be responsible for the conduct of Guest(s) and their Visitors in a strata lot and while on common property.**
- **The issue of remedies such as compensation for neighbours and Owners Corporations needs to be reviewed to overcome the current lack of effective domestic remedies.**

7. License Short-Term Letting Property Managers

Unlicensed “Airbnb property management companies” have grown into an important part of the industry. These companies provide end to end services and vary in size and quality. They facilitate bookings and subcontract to “local hosts” for services such as key exchanges, complaints handling. The agents and their sub-contractors are conducting a commercial enterprise on private strata property. It includes hotel like services such as room cleaning and linen exchanges.

Many persist in facilitating bookings in clear violation of planning conditions and by-laws. The agents are not required to have a trust account or undergo any training. These entities are attracting significant corporate and institutional investment. It is long overdue for these entities to be licensed.

The licensing regime must include the following minimum obligations and conditions:

- notify the OC before a lot is used for STR;
- provide information about the identity of every Guest/s;
- ensure premises are registered and/or de-registered as appropriate;
- comply with requirements for key management, key security and key audit of the OC;
- ensure that employees or subcontractors have had a police check and have insurance;
- provide evidence of insurance and registration to the OC;
- be available 24/7 to respond to emergencies;
- ensure details contained on the Premises Register are accurate and up to date;
- not list a property in violation of a DA consent condition, by-law or terms of a lease;
- not provide any service in respect of a lot that is subject to a by-law under s.141 or s.137A of the Act or in breach of a term of lease;
- not facilitate, book or service a premises booked in excess of the applicable night cap;
- provide accurate occupation and turnover data in respect of a lot in the scheme on request from the OC, Building Manager or Strata Manager;
- vet Guests and not accept ‘instant booking’, and not use ‘self-check in’ key locks or other ‘self-check in’ methods in relation to premises that are part of a residential strata scheme.

- **Any person (corporate entities, related bodies corporate, sole traders, natural persons) who facilitate the booking and/or management of a dwelling for short-term letting purposes should be licensed. The licence obligations must include a statutory duty of care to vet “Guests”; meet Guests in person and not permit short-term letting where there is a foreseeable risk the Guest(s) will cause a nuisance to residents or damage to the common property.**

- **Employees and contractors of these entities must be licensed, qualified and insured and registered with the OC providing proof of insurance.**

8. Conclusion

Tourist platforms businesses have led a movement for the deregulation of housing across the world. In NSW, the exponential growth of “Airbnb” has introduced more costs and risks to residential schemes of all sizes. There are thousands of apartment communities located in high demand areas that are also attractive to tourists and visitors.

The *Strata Schemes Management Act 2015* (NSW) clarifies that an Owners Corporation can adopt a by-law to prohibit short-term letting to tourists and visitors but it embeds a presumption in favour of short-term letting and Investor/Hosts. This means that Owners and tenants in high demand areas have no certainty in the value or stability of their strata home. That presumption should be reversed.

The business model of “Airbnb” relies on the mutual obligations of all lot Owners to bear the overheads and costs associated with short-term letting. It is a flawed model that calls for a clear commitment from government to address the inequity, including a second tier of fees (without additional voting rights).

The short-term tourist and visitor industry has also cast doubt on the right of an OC to identify the “Guest” or implement a system to manage short-term letting and protect the security, safety, and welfare of residents. This is a right and a responsibility of OC and should be clarified in the strata legislation and as outlined in this Report. The lot Owner must also clearly be legally responsible for their short-term letting activity.

It is also necessary to close regulatory gaps left untouched by the Short-Term Rental Accommodation Framework. The inexpensive and efficient enforcement of “No Short-Term Letting” by-laws is a priority to support Strata Committees. It also requires statutory disclosure obligations; a simple process to audit strata records against the Premises Register and the authority to fine a lot Owner directly for the nuisance and damage caused by their Guest.

The Covid-19 pandemic has delivered a compliance result that Local Council have not been able to achieve. But thousands of apartments remain listed ready for the rebound in tourism off the back of pent-up demand. This is raising concerns among residents who must live with open borders and increased foot traffic during the Covid-19 pandemic.

The underlying planning policy is deeply flawed. It contains no mechanism to limit the number of apartments in a single building that can be converted. There is no limit on the number of occupants and “Guests”, who do not know each other can be in occupation at the same time, without the Host present. This increases the burden on Strata Committees and undermines the ability of Local Council Building Inspectors to deal with prostitution, illegal hostels and boarding houses. In 2021, these critical public policy issues remain under-investigated and independent urban planners, housing organisations and Local Councils have called for tighter regulation of the short-term letting tourist and visitor market. The systemic impacts on residential strata schemes cannot be dealt with via a Code of Conduct, which is geared toward the most extreme instances. It is cumbersome and unsuited to a strata environment with multiple lots used for short-term letting, every weekend and public holiday throughout the year.

The planning policy must be reviewed. In the meantime, the amendments and clarifications outlined in this Report are the minimum required to start addressing the structural inequality and additional burdens placed on residents, Strata Committees and all lot Owners.

Appendix 1: Background Facts: Airbnb Market/Market Dynamics

As has happened elsewhere in the world, Airbnb is concentrated in high demand areas. Despite the Covid-19 pandemic there is an estimated 33,630 listed properties across Sydney on the Airbnb platform alone. This is Sydney Metropolitan (not Greater Sydney Region). This includes, for example, approximately 8,000 listings for Sydney LGA; 4,500 for Waverly LGA; 4,500 and about 3,500 for Randwick LGA as examples of some of the most affected LGAs. These are by no means all of the worst affected LGAs (reference InsideAirbnb.com). The Australian Housing Urban Research Institute (AHURI) has found that short-term letting to tourists and visitors accounted for between 8.6 and 15.6 % of rental stock in sought-after suburbs and was pushing up rents.

Over 62 % of listings are for an entire home/apartment - that is a staggering 20,358 (60.5 %) of Sydney properties – in high demand areas it is 70% to 80%.^{xviii} High availability is an indicator that a property has been removed from the residential market.^{xix} The impact of Airbnb on apartment dwellers is particularly severe with 70 % of all of Sydney's dwellings listed being apartments and 36 % of whole apartments listed in Sydney CBD are available more than 90 days in a year ^{xx}.

... Many properties on our street have now become Airbnb properties. It also means it's harder to find somewhere new to rent as there's less out there and lots of competition from fellow long-term renters. We have to leave here in a month as this very property is being renovated so it can be turned into an Airbnb^{xxi}

The pattern of domestic visitation is weekends and public holidays year-round 52 weeks of the year. This is a significant burden for urban apartment communities who carry the bulk of overnight and weekend stays in their building. It is especially burdensome to strata communities of small residential schemes. In larger schemes in urban precincts as much as 30 %, 50 % and 70 % of new apartments have gone straight to the Airbnb market. Apartment communities close to entertainment or sporting venues, wedding venues, in urban precincts and beachside suburbs are particularly impacted.

The UNSW City Futures Research Centre research has found that rental prices have fallen proportionately with Airbnb activity, and saw the typical weekly rental fall an average of 7.1% from June 2019 to April 2021 in 19 of the most active Airbnb neighbourhoods. These include Manly, Freshwater, Darlinghurst, Surry Hills, Redfern, Zetland/Waterloo, Coogee, and Randwick.^{xxii} It suggests there has been considerable turnover as a result of Covid-19 however it is not a sign of more stability to come. While the typical weekly rental has fallen the majority of apartment properties remain listed on platforms, like Airbnb.

The recent AHURI investigation has also shown that properties have moved into the **informal housing market**. Typically, these rentals were offered on a weekly or monthly basis outside the *Residential Tenancies Act 2010* (NSW) to enable investors to switch back when tourism rebounds.^{xxiii} These are listed on tourist platforms and advertised, for example, via Gumtree and local Facebook pages.^{xxiv} These arrangements sit in the informal market and have little incentive to move formally back to the regular rental market with increased protection for tenants.

The NSW Government's "home-sharing" policy encourages a high volume of STR. The grant of "exempt development" for 180 days in a single year is excessive. It is commercial level letting and will not drive apartments back to the regular rental market. Nor is it a minor impact as required by "exempt development" status under the *Environment Planning and Assessment Act 1979* (NSW). It means that a residential strata scheme in a high demand area is open to the public every weekend, public holiday and school holiday with multiple lots becoming the destination for unrestricted numbers of groups all year round.

The additional volume of 21+ consecutive day lets will not be counted (or reported). It cements the use of residential apartments for short-term letting as a 365-day year-round business equivalent in most respects to a licensed tourist and visitor accommodation provider.

The fact that entire home listings have been growing at a faster rate than shared accommodation suggests short-term rentals have been professionalised over time. Increasingly, management companies rather than individuals are leasing properties full-time.^{xxv} There is increasing investment in the short-term letting sector now that it is a proven financial model. The market analysts predict significant growth as this asset class is still providing returns.

The de-regulation of tourist and visitor use of residential apartments has flow on consequences for other related housing types. It directly undermines compliance and enforcement of regulation of hostels, boarding houses, brothels, and the regular rental market.

Appendix 2: Responsibility of Short-Term Let Hosts to pay for the costs

Model A. Cost Calculations for Short -Term letting in Strata

SP 99999	02 1234 5678	Proforma Spreadsheet for Illustration Purposes Only			
STRA COSTS AND CHARGES					
Host may be present or absent		1 Bed	2 Bed	3 Bed	
Type of Hosts		Apartment	Apartment	Apartment	
No of Hosts		2	20	3	25
No of Stays per annum per apartment		5	90	10	
Total # of Stays Per Annum		10	1800	30	1840
Avg Duration of Stay, days		7	2	4	
Total stay days per annum		70	3600	120	3790
Avg # days stay per apartment per yr		35	180	40	
Days Proportion of Total		2%	95%	3%	100%
UP-FRONT COSTS to OC.3Yrs					
Bylaws	10,200	By-Law, lawyers, strata & bldg mgrs, EGM, comms, mtgs excl Volunteers			
Fire Safety, CP	10,000	Inspections, compliance, SM, BM, OC & Security, comms, mtgs excl Volunteers			
Systems & Procedures incl I.T.	37,500	SC, BM, admin, systems, procedures, excludes OC and volunteers			
SubTotal	57,700	To be progressively recovered from STRA's over 3 years and then recalibrated Excludes volunteer costs = ~\$50,000			
UP-FRONT COSTS to HOST					
Fire Safety, Host apt		Host pays for inspection and possible upgrade			
Govt Reg'n of Host		Host pays for inspection and possible upgrade			
EXTRA ANNUAL COSTS to OC					
Insurance Premium	\$ 10,000	Actual	Actual Extra Premium / # of Stay Nights p.a.		
Rubbish collections	\$ 20,000	Collections	Actual Extra Yr costs / # of Stay Nights p.a.		
BnB Monitoring	\$ 2,500	Invoices	Fixed Fee		
Common Property Maint & Damage	\$ 7,500	Special Jobs	Actual Extra Yr costs / # of Stay Nights p.a.		
Security & Concierge	\$ 5,000	Timesheets	Actual Extra Yr costs / # of Stay Nights p.a.		
Lifts - Extra Usage Costs & Dep'n	\$ 4,000	Activities	Actual Extra Yr costs / # of Stay Nights p.a.		
Utilities e.g. gas if not metered	\$ 3,750	Review Usage	Actual Extra Yr costs / # of Stay Nights p.a.		
Cleaning	\$ 2,000	Jobs	# of Stays		
NCAAT costs	\$ 11,500	Fees, lawyers, SM, BM Invoices	Direct to Lot Owner		
SubTotal	\$ 66,250				
ANNUAL COSTS to Host					
Govt reg'n of Host	\$ 360				
ALLOCATION TO HOSTS					
For OC Up-front costs	Fixed Fee per Apartment	\$ 769 \$ 769 \$ 769 Charged Fixed Amount Per STL Apartment			
EXTRA ANNUAL COSTS to OC					
<u>Basis of Allocation</u>					
Insurance Premium	Per Apartment	\$ 400	\$ 400	\$ 400	\$ 10,000
Rubbish collections	Per Stay Per Apartment	\$ 54	\$ 978	\$ 109	Annual Cost/# of Stays
BnB Monitoring	Per Apartment per Apartment	\$ 100	\$ 100	\$ 100	2,500
Common Property Maint & Damage	Per Day	TBA	TBA	TBA	
Security & Concierge	Per Day	TBA	TBA	TBA	
Lifts - Extra Usage Costs & Dep'n	Per Day	TBA	TBA	TBA	
Utilities e.g. gas if not metered	Per Day	TBA	TBA	TBA	
Cleaning	Per Stay	TBA	TBA	TBA	
NCAAT costs	One Off	TBA	TBA	TBA	
SubTotal					
For OC Annual costs	Variable	\$ 82	\$ 233	\$ 70	
Total OC costs per stay		\$ 851	\$ 1,002	\$ 839	
For Host Up-front costs					As required at the time
For Host Annual costs					Annual levy as B32
PER STAY ADMIN		\$ 500	\$ 500	\$ 500	Conciege & BM costs as per paper, page 17
TOTAL UPFRONT PLUS ADMIN		\$ 1,351	\$ 1,502	\$ 1,339	Per Guest
<i>Created by John Snelson - v1.01 :: Based on an original design developed by Margaret Wright</i>					

Model B. Cost Calculations for Different levels of STRA per annum

The above is based on detailed examination of key activities and cost impacts.

Cost Category	Cost Item	Estimate	Commentary
Upfront	Bylaws- develop and register	\$10,000	Includes legal review and meeting costs for GM
Upfront	Fire Safety, CP	\$10,000	
Upfront	Process Establishment	\$ 5,000	
Total Upfront Costs (\$5k per annum)		\$25,000	Spread over 5 yrs/updated 5 yearly (1)
Annual	Increased Insurance Premium	\$10,000	Estimate (2).
Annual	Incremental Rubbish Collection Fee	\$42,000	Based on modest increase in rubbish take in collection fees to next level. (3)
Annual	BnB Monitoring	\$1,250	BNBGuard
Total Annual Costs		\$53,250	
Annualised Costs		\$58,250	Annual costs plus 20% of upfront costs
Costs per stay (4)	Check-in/out, onsite management	\$250	Includes cost impacts such as fob changes, fire alarm fines, clearing garbage chutes, extra cleaning, extra security staff etc.(4)
Cost per incident	NCAT, Lawyers etc. Claims	\$10,000	Additional costs per proceeding should this arise- relatively likely

Modelling of cost impacts of different levels of STRA

No. of Apartments	Average Number of stays p.a.	Annual cost of managing stays at \$250 per stay	Add Annualised Cost per year	Total cost per annum	Average Cost per apartment per annum (5) In strata levy
10	10	\$25,000	\$58,250	\$83,250	\$416.25
25	20	\$125,000	\$58,250	\$183,250	\$916.25
50	20	\$250,000	\$58,250	\$308,250	\$1541.25
100	20	\$ 500,000	\$58,250	\$558,250	\$2,791.25

Note 1. Spread over 5 years to allow for update with experience.

Note 2. Note that pressure on premiums in strata is high given the market pressures on accommodation, Australian experience re fires floods and many other factors. STRA is one of the factors considered in premium pricing. Brokers have confirmed premium impact and also an impact on excess. PI claims can double premiums in subsequent years.

Note 3. Cost per annum depends on the number of short stays per year. Estimates are provided below for different volumes. The assumption is that most if not all STRA conducted comprises 2 or 3 day stays, normally at weekends, given evidence from the area. Visual evidence from stays in the area is that management of rubbish could potentially be a far greater issue and cost than

allowed for with short stays generating much greater quantities of rubbish and lower compliance with rubbish separation etc.

Note 4: Includes additional effort including managing fobs and cancelling and registering guests (note security requirements do NOT allow fobs in the street in key locks); provision of standard pack and tour of facilities, dealing with food and other package deliveries; checking for damage post visit; responding to queries etc).

Experience also indicates the shorter the stays, even 3-month tenants, the greater the risk of clogging up garbage chutes, fire service callout fines etc. further impacting costs.

Note 5. Estimates of additional impact on strata fees per apartment per annum given 200 apartments in the building. Note this does NOT include the increased wear and tear involved

Appendix 3: Strata by-laws to manage Short-Term Letting

The list below is a preliminary non-exhaustive list of management related by-laws.

Administration of STR

- notify the Owners Corporation the lot is to be used for short-term letting purposes;
- evidence that the lot is the principal place of residence of the "Host";
- evidence that an Owner has granted a resident tenant permission to short-term let the lot;
- evidence the Owner has registered the premises and the ID number;
- name and contact details of the "Host" and emergency contact number;
- evidence of the third-party liability insurance certificate;
- evidence the lot complies with the short-term letting fire safety standards;
- prohibit the construction of internal rooms inside the lot;
- limit occupation to two persons per bedroom (including children) (see below);
- duty of care to verify the Guest(s) and terminate the contract if that person(s) poses a threat to the security and safety of residents or the strata scheme property.

Management of the Lot and the Common Property

- registration of a Guest (and their car) administered within certain times;
- access to security keys and secure car parking subject to registration on site;
- prohibit the use of lock boxes on common property, a fire door, or place off site;
- prohibit the holding of security keys by a friend, café Owner, or other nominated person;
- requirement that the Host use a licensed agent/ or that the person holding keys to be registered with the scheme and ensure keys are given directly to the guest;
- requirement that cleaners or others are police checked and registered with the scheme;
- details of all cleaners, other contracts and evidence they are insured;
- requirement that the building manager give the Guest a safety induction;
- require the Host to check in the Guest in person or limit the hours of check in;
- exclusion from specific parts of the common property (meeting room, residents' library).

Restrictions on the Use of the Lot by the Airbnb Guest

- no smoking in the short-term letting Lots, balcony and the common property;
- no pets in the short-term let lot;
- no pets brought onto the Common Property by the short-term Guest or their Visitors;
- no events or parties and limit on the number of Visitors;
- no use of the visitor carpark by the "Guest";
- limit the occupation of the lot to two persons per bedroom (including children) (see below);
- limit the number of visitors the Guest can bring onto common property;

Host Obligations to Pay Costs

- require a bond to be held during the occupation or period the lot is used for short-term purposes;
- indemnify the OC from liability for death, injury or disease;
- payment of excess on claims and additional insurance premium;
- payment of levies, charges or fees arising from short-term letting, including the Schedule B costs from Strata Manager and costs of Building Manager, Concierge or other; and/or
- specific charges to be made for a false fire alarm;
- cost recovery in the event of damage to the common property.^{xxvi}

Appendix 4: Security and Common Types of Nuisances

The issue of security is paramount and causes higher levels of stress where residents do not know who is coming in and out of their building. There are a lot of casual arrangements, sometimes keys are simply left with a café Owner or at a convenience store. It is unlawful for a person to fix something to common property without the permission of the OC. Key lock boxes are left padlocked to trees, grills, drain pipes, railway fences, and bicycles and in unlocked mail boxes. These practices violate the security of strata buildings. Security and police crime prevention officers strongly advise schemes against permitting such lax arrangements.

Hosts also go to considerable lengths to put lock boxes or keys in places to avoid detection. It is also common for Guests to become complicit with illegal short-term letting when they agree to '*...just tell anyone who asks that you are friends visiting for the weekend*'. In addition to violating security there are a range of behaviours that are a frequent source of complaint and often additional risks and costs:

- entering and occupying a lot in violation of by-laws;
- inviting numerous people to visit or occupying beyond those officially booked;
- using fake accounts and false identities to access strata schemes;
- increased theft and opportunistic crime and vandalism;
- smoking on balconies and on common property;
- guests raping visitors;
- selling of illegal substances;
- dropping cigarette butts or other items from balconies;
- throwing furniture over balconies onto the street or common property;
- unauthorised dogs and dogs off leash and not cleaning up dog faeces'
- bringing other pets into the scheme without the OC consent (not guide dogs);
- parking one or more cars for several days in visitors' car parks;
- multiple visitors accessing facilities such as pools, gyms and car parks;
- additional Visitors, especially those that bring their children and dogs;
- children left to play unsupervised on common property;
- bikes, skateboards and toys left on pathways and in corridors;
- inappropriate attire at swimming pools and language that offends residents;
- large inflatable toys that dominate, displacing resident families or less mobile residents;
- alcohol or drugs being sold and/or consumed on the lot and common property;
- garbage not properly being bagged or disposed of in the correct manner;
- excessive use of takeaway food and food deliveries with resulting waste and disruption;
- additional volumes of garbage;
- people being disturbed to give access to the building to a Guest or their Visitor(s) who is lost, drunk, or drug affected at all hours of the day or night;
- use of lock boxes or informal key arrangements and unlocked mail boxes;
- taking photographs and posting reviews about the facilities or experience of the scheme;
- careless slamming of apartment, entry and car park doors;
- use of washing machines and dishwashers at a late hour or overnight;
- putting washing over balconies;
- flooding units by leaving towels in sinks and over drains;
- blocking toilets because of nappies and other inappropriate material;
- damage to lifts and doors from moving in and out with bags, bikes, surfboards etc.;
- using flammable fuels in BBQs on balconies;
- booking and use of resident BBQ facilities displacing residents from their own facilities;
- booking and use meeting room or function rooms for social events;
- taking over gyms or pools as Guests make full use of facilities and invite their friends and family.

Appendix 5: Terms and Conditions of Short-Term Let Contract

In the strata context the Host must be responsible for the conduct of their Guest. The terms and conditions of a short-term rental arrangement need to include clear terms that:

- Prohibit the passing of keys to anyone who is not the designated key holder;
- Not permit parties or events to be held in the lot or on the common property;
- Limit the number of Visitors;
- Require the Guest to accompany their Visitor(s) at all times on common property;
- Not permit Visitors to stay overnight;
- Not permit dogs or other animals to be brought into the lot or onto common property (except an assistance dog);
- Not permit smoking on balconies or on the common property;
- Require Guests to park in an allotted car space only;
- Require the Guests to strictly comply with all rules that apply to the use of facilities such as pools and gymnasiums;
- Prohibit parking of cars of Guests in Visitor car parking;
- Require that washing not be hung on balconies in a visible manner;
- Require that rules for the disposal of garbage be strictly complied with;
- Limit occupation to two adults per bedroom or to the number of parking spots available (whichever is lower);
- State clearly whether the property is suitable for children, or whether children are permitted.

Appendix 6: What strata committees and communities need from the NSW Government - Survey Results August 2021

SHORT-TERM LETTING. INFO FROM STRATA SCHEME MANAGEMENT ACT SURVEY

NOTE THAT THERE WAS NO SEPCIFIC QUESTION ABOUT STR- THIS CAME OUT IN THE 'ANTHING ELSE' CATEGORY AND THE NUMBER OF PARTICIPANTS WHO COMPLAINED IS SALUTORY

Experienced Strata Committees already understood the disruption to lives, safety and amenity caused by STRA based on dealing with the occasional problem Owner or tenant and for some seeing the effects down their street.

Several had extensively investigated the costs incurred in dealing with the additional traffic (people and vehicles), damage, rubbish accumulation and other issues. Garbage collection costs and insurance costs alone add significantly to the annual fees charged to Owners and the ability to recoup these is limited under current law.

We all know of instances where the police have had to be called to an apartment and know of examples where women have been attacked in apartments and police have had extreme difficulty pinning down exact locations.

The extra time and emotional energy required to manage yet further disruption is frightening, especially given most Committees' experiences with disruption from existing Owners and Residents, building issues and service challenges, as well as the need to ensure regulatory compliance.

Their unsatisfactory experience with regulatory support across multiple dimensions, has simply exacerbated these concerns.

The planned STRA legislation was surprising for all of us, being one of the loosest if not the loosest regime we could find. The same applies to pets. There is very useful information on what is and is not accepted in the US and Europe. Given these jurisdictions have had pets in apartments for many years, their experience is invaluable. It would benefit the Government to conduct this research or speak to others who have.,

The strata committee and building manager have spent significant time on identifying and removing short-term letting. The result has been 28 lease terminations since 2014 (and there are only 33 rental apartments in the building!) These significant concerns were not addressed by the State or Local Governments. We were left on our own, spending significant \$ to upgrade security systems, engaging the strata lawyer, paying the building manager, and many unpaid hours of the strata committee's time. If we hadn't done this, the building would now be a rough unlicensed backpacker hotel.

1	The strata committee and building manager have spent significant time on identifying and removing short-term letting. The result has been 28 lease terminations since 2014 (and there are only 33 rental apartments in the building!) These significant concerns were not addressed by the state or Local governments. We were left on our own, spending significant \$ to upgrade security systems, engaging the strata lawyer, paying the building manager, and many unpaid hours of the strata committee's time. If we hadn't done this, the building would now be a rough unlicensed backpacker hotel.
2	Short-term tenants do not always know the by-laws and, if they do, they often do not respect them. Party noise, bringing in pets who foul the garden, occupying the gym en masse, bringing

	non-tenants into the pool area. If the Owner has gone overseas, the managing agent, who is meant to handle any issues, is not always even able to be contacted.
3	airbnb >Owner was unaware tenant was doing this - terminated their lease, changed leasing managers
4	Short-term letting is hard to detect until an issue arises, usually noise, garbage disposal, or parking
5	Planning legislation existent when apartments were bought - i.e., a ban on short term & holiday lets needs to stand & be able to be policed. We want long term tenants & homes, not hotels! Policing short-term lets after the parties is not proving effective.
6	AirBnB has been a huge problem in our building. COVID has stopped this practice thankfully.
7	We have had a 'no short-term letting' by-law in place for many years. One investor-owned unit broke this by-law at some inconvenience to occupants but since that occurrence the Owner has complied.
8	Airbnb not compatible with strata living
9	Owner undertaking airbnb in breach of our bylaw which did not allow short-term leasing.
10	Short-Term Letting problems - so far, the building manager has been able to sort out any Short-Term Letting problems
11	No-short-term letting problems to date
12	Our building is very concerned that Government legislation will overturn our ban on short-term letting. This will impact our peaceful community and turn it into a hotel with noise, security and wear and tear issues.
13	Changes to the Strata Management Act (2015) are not being made in accordance with the objectives of the Act. Dictates by Government to allow short-term letting in apartments that are the primary residence of the occupier has removed the right of strata to determine their living conditions democratically, as per the objectives of the Act. Apartment Owners are unable to restrict or ban short-term letting even when a 75% majority of Owners wishes to do so, as they can in any other circumstance in the passing of legitimate by-laws.
14	We have had a by-law in place for some time preventing short-term letting. A number of Owners breached the by-law but we have successfully pursued these breaches through NCAT. However, the new regulations will undermine our by-law and, once COVID-19 conditions come to an end, we foresee Owners returning to short-term letting. The first principle of the 2015 Strata Reforms was to "empower communities to make their own decisions in a democratic way". This new legislation flies in the face of this principle. The regulation will be extremely hard to enforce via a register and allows a massive 180 days of short-term letting. This changes the nature of the residential building and adds considerably to building costs and wear and tear. Buildings should have the ability to choose to deny short-term lets if the vast majority of Owners vote accordingly.
15	Airbnb is a problem, particularly with Corona Virus. Hard to monitor in a large building.
16	Short-term letting - a small building, without security now has complete strangers walking through common areas & we have no idea if they have permission to be there. Constant issues with excess garbage, mess & noise. A very large burden on Strata Committee. Owners are not present so don't care.
17	Short-term letting is the main problem in our building because the majority of Owners are opposed to it with the exception of one Owner who claims it is his right under a section of the Strata laws and that our by law prohibiting it is invalid.
18	Short-term letting of garage resulting in damage to downpipe, storage of asbestos. In flat short-term tenants let washing machine overflow causing flooding and subsequent damage to their own and underneath flat. Didn't put correct objects in recycle bin. Costly compliance in small block of 6 -- over-regulation for some things
19	By-laws were tightened several years ago to restrict short-term letting.
20	Short-term letting is an ongoing issue, mainly due to poor visitor behaviour & a lack of consideration for affected residents. The regulations are ineffective & really a waste of effort. Punitive enforcement is the only effective way to put an end to bad behaviour
21	Local council consent (no short-term rentals under 3 months) very hard to catch as Owners head lease to others who then Airb&b.

22	We only have one short-term letting unit out of 36 (have discouraged others) but would be a major problem if more came as we have no idea who is coming or going, they don't know the rules of the building, leave pool gates propped open, umbrellas ass up, covers off pool, and continually asking others where things are. Both tenants and Owners stay in this well-run building for years rather than days, and short-term letting destroys the atmosphere.
23	We are in a prime location for STL. We have updated our by-laws and are very pro-active in dealing with STL...which has meant that it is not currently a major issue. We have no issues running our strata except for Government interference.
24	As our building is more than 20 years' old the construction issues have been dealt with. Regulatory compliance is always an issue as the rules change often and there is always a catch-up.
25	an obligation to have pets and disallow STRA is not democratic
26	I strongly believe in the right of Owners to manage their buildings without government interference. It is outrageous when the vast majority of Owners do not want short-term leasing that we can be forced to accept it, effectively turning our quiet residence into a hotel.
27	Short-Term Letting – e.g., air bnb - Owners should be able to prevent this via a by-law and not be overridden by the state
28	No Airbnb
29	ST-Letting - issues regarding parties, noise, parking, rubbish, overcrowding. It should not be allowed in buildings zoned as residential - only those that have approval to be tourist accommodation. It is not compatible with an Owner's right to quiet enjoyment of their home.
30	Provide Owners with control over short-term letting.
31	Better control of Short-Term lettings
32	The Government should not overrule by-laws. In particular pets and STRA by-laws should be determined by Owners Corporations.
33	Allow Owner communities to determine their own by-laws as to how they wish to live without imposing blanket rules on short-term letting and pet ownership.
34	Tighten up the regulations surrounding short-term tenancy to permit a building to forbid this activity by any Owner.
35	Short-term lets
36	Ban short-term letting
37	Stop dithering over short-term Air B & B rentals
38	Stop short-term letting of any kind!
39	Short-term letting being a result of Owners' deliberations not the state
40	Keep no pets and no short-term letting bylaws
41	I am extremely concerned with some of the proposals regarding short-term letting which changes residential units into commercial use.
42	Allow Owners Corporations to implement legally bylaws to prohibit short-term letting.
43	Allowing strata schemes to make their own decisions on key issues such as short-term letting and pets
44	Make illegal the subleasing of apartments for short periods by Owners or tenants, a practise that attracts undesirables!
45	Ban Air b n b
46	No Airbnb
47	Better control of Short-term lettings
48	The Government should not overrule by-laws. In particular pets and STRA by-laws should be determined by Owners Corporations.
49	Allow Owner communities to determine their own by-laws as to how they wish to live without imposing blanket rules on short-term letting and pet ownership.
50	Tighten up the regulations surrounding short-term tenancy to permit a building to forbid this activity by any Owner.
52	Defects and STRA
53	Short-term lets
54	Ban short-term letting
55	Consider how Airbnb impacts Owner residents;
56	Allow Owners Corporations to control short-term letting

Appendix 6.1: Millers Point Community Resident Action Group Report

This is an extract of a recent Millers Point Community Resident Act Group Report on the Millers and Dawes Point Village Precinct. The neighbourhood includes high-rise apartment buildings and low-rise heritage housing. One of the three major issues identified in the report was short-term letting.

Appendix 2: Report on the survey of residents on the built infrastructure and general amenity of the Precinct

INTRODUCTION

Millers Point Community Resident Action Group Inc. (“MPCRAG”) has undertaken a survey of residents of the Millers and Dawes Point Village Precinct (“the Precinct”), including Owners and tenants of both heritage homes and apartments (incorporating the five high rise apartment buildings at the southern end of Kent Street), on their views regarding the build infrastructure of the Precinct.

Respondents were asked for their views on the following three topics:

- Regulation of building development activities impacting the Precinct.
- Vision for the Precinct with suggested improvements balancing both heritage and amenity.
- Regulation of non-hosted short-term letting (Airbnb) in the Precinct.

OVERVIEW OF FINDINGS AND RECOMMENDATIONS

Vision for the Precinct

Millers and Dawes Point Village Precinct is of state significance for its ability to demonstrate the principal characteristics of 19th and 20th century Australian maritime harbourside precincts, such as a close proximity between workplace and residence. The social and public nature of neighbourhood hotels, corner shops and small businesses are demonstrative of the earlier ‘everyday’ environment of Millers Point.

There is a strong desire from all respondents to protect, conserve and enhance the character of this extremely important heritage area. This requires pro-active management of issues that are detrimentally impacting the character of the area including traffic, noise and anti-social behaviour. The community wants to create a neighbourhood that welcomes visitors and highlights the story of its history in its architecture, streetscapes, diversity of buildings and its community.

The community would like to work collaboratively with the relevant parties/authorities to enhance and capitalise on the history and heritage of the area and share this with all Australians and visitors.

Short-Term Letting

The sale of the State Heritage Listed social housing properties in the Precinct over the last decade, resulted in rapid and unconstrained growth in short-term letting, concentrated in a number of streets within the area, in particular High Street, Kent Street and Dalgety Street.

There was a 'very strong negative' response to short-term letting from all respondents. Residents saw the impacts clearly in the streets, including the increased rubbish, dumping of large household goods, noise and disturbance and patterns of mainly weekend visitation on the life in this community. Short-term rental accommodation is inconsistent with the preservation of the heritage significance of the area. Many of these significant Heritage properties have been poorly renovated, destroying many of the historical features of the buildings and conducting illegal alterations removing significant original features and material, often against the individual Conservation Management Plans (CMPs) implemented to protect and preserve these homes.

The survey reported a clear appeal to ensure that control and regulation of the short-term letting regulations should remain under the control of the City of Sydney, who are the best placed to understand the neighbourhoods. The Precinct is zoned residential, not visitor and tourist accommodation and, as such, short-term lettings should be excluded.

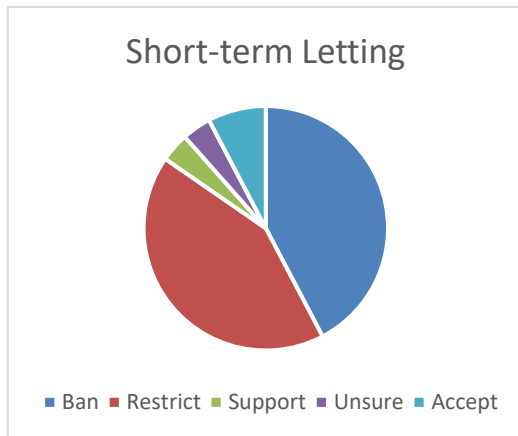
Short-Term Letting (Short-Term Rental Accommodation)

Question: How should non-host attended short-term rental (STR) arrangements (e.g., Airbnb) be specifically regulated in the Millers Point heritage precinct?

MPCRAG members noted the high volume of short-term letting in the area which, prior to COVID, encompassed most of High Street and a significant number of Kent Street and Dalgety Street properties. During COVID a number of properties were converted to longer lets, although it is not clear whether these revert to the short-term let market post COVID, leaving current renters to look for alternatives.

Most of the short-term occupation occurred over weekends and on holiday periods. The result was high volumes of rubbish on council collection day on a Tuesday, with rubbish bins full and overflowing and being left on the street all week. Much of this rubbish appeared to be takeaway food cartons often placed in the wrong designated bin. There was also a significant increase in night-time noise and poor behaviour.

In the main, this pattern of visitation provided limited benefit to local businesses such as the many excellent restaurants and a number of the hotels in the area. Indeed, it is likely the majority of profit from this 'tourism' was gained from the 30% margin paid to firms such as Airbnb and Uber Eats and Deliveroo. Note that locals tend to pick up their food from their local restaurant during COVID as they want to keep local restaurants running. This was echoed by at one respondent who insisted. *[Short-term lets] Should not be allowed. Pre-COVID it was worse but even now the Tuesday bins are overfull and rubbish is often put in the wrong bins. Many seem to buy all their food online so question how much contribution they make to the local businesses*



Responses included a spread of residents from those living in former social housing near the junction of Kent Street and Gas Lane.

A significant majority (84%) of respondent's comments were strongly in favour of banning short-term letting or severely restricting it. In the latter case many of those in strata buildings felt short-term letting should be allowed only if a 75% majority of Owners agreed and were prepared to allow short-term letting in the building at all.

Only four respondents out of 50(8%) felt short-term letting could be accepted. Two were 'unsure' or 'didn't care' and two felt that it should be fully permitted. These two felt that this would require specific additional conditions/restrictions and/or payments for example *'Hosts to fund daily rubbish collection and nightly security, levy to be applied (circa \$250 per person per night) to supplement Council funding of local area improvements.*

One of these was out of synch with almost all of most other comments saying *'It's a tourist area, so let tourists stay in short-term accommodation. We need less regulations, not more.*

A number of respondents were concerned with the impact of short-term letting on the character and heritage of the area. An excellent example which was echoed by others was the following: *Airbnb and other short-term rentals have changed the character of the area. The outcome is an influx of people for 2 to 3 days at a time using the houses as a place to party or sleep, and then leaving huge piles of garbage at the end of their stays. The transition from social housing in Millers Point has been completely botched by the NSW Government - we now have no residents, no pride in the environment and no community.*

The mix of those living in heritage houses and high-rise strata also showed in different recommendations. The following recommendations cover both standalone premises and strata buildings. *They [STL] should be Strictly controlled. In standalone premises only where Owner accepts full responsibility for guests' behaviour, in Strata building only if 75% of Owners approve such operation, and the applicant pays a special levy for the additional usage for commercial gain by an Owner.*

Note the **clear majority of strata occupants** seemed to be of the view that short-term letting should be totally banned or only allowed if this was supported by 75% or more of Owners. Certainly, the view of residents was a long way from current State Government stand, which allows non-hosted short-term letting in strata and elsewhere for 180 days a year. In strata, only if 75% of Owners vote to prevent short-term letting can it be restricted and even then, can be conducted by Owner occupiers and tenants for 180 days per year.

One respondent suggested a different approach, *Specific property approval by City of Sydney to control number, concentration and nature of properties offered for STRAs. CoS should consult Strata Committees for input on strata applications.*

In separate observations outside the survey from longer standing residents, the neighbourhood has far fewer young children than in the past before the social housing tenants were moved out. A significant percentage of the children also live in the high-rise apartments. The small numbers are disappointing given the presence of an excellent primary school in the immediate area which

is being expanded. This provides yet another reason to move short-term letting out to make room for essential more workers and young families.

Table A provides a full list of survey responses in respect of short-term letting in the area by type. As can be seen from the detailed comments, a significant number of residents are concerned at the significant impact of short-term letting on the 'feel' of the neighbourhood. Clearly the issue is a very real and emotional one and of concern to many in the area.

Table A: Short-Term Letting

BAN or Restrict
<i>They should be disallowed. Noise, debris, and bins on the sidewalks are disruptive. So nice to see my neighbours when I walk around, not some lost folks.</i>
<i>Owners and Strata by laws should manage and have control over short-term rentals. Our building has a 3-month minimum for rental and we do not wish our building mandated for hotel/short-term accommodation - this is undemocratic!</i>
<i>I don't think it should be allowed in houses that were sold off by State Government - it takes away from the community aspect of Millers Point.</i>
<i>Strata premises should not allow short-term rentals less than 6 months as there are significant safety issues for residents as there are no investigations into background</i>
<i>Short-term letting should be limited to at least 3month duration. The communal nature of the area is very important. Residents look after properties better and care for our environment and neighbours.</i>
<i>Do not agree with Airbnb for in our building.</i>
<i>Prohibited (note this was the response- means should be banned)</i>
<i>Strata committees should have the ability to limit, control or prohibit short-term letting within their building. Short-term lettings often attract tenants who are less considerate to their neighbours and can be very disruptive to other residents in predominantly residential buildings and neighbourhoods</i>
<i>For high rise building, the Owners at a vote of an AGM or EGM should have absolute discretion whether such infringement of the right to control one's private property is approved. A man's home is his castle and should not be opened for general access for the likes of Airbnb customers against the majority wishes of the Owners in strata buildings.</i>
<i>Not allowed in apartment buildings. The greater good of residents and neighbours should be considered and individual strata's allowed a fair vote on the matter</i>
<i>There should be a total ban on Airbnb-type arrangements, especially given the presence of The Langham Hotel and the fact that Millers Point has Crown Sydney to the west and a number of other short-term accommodation within a walking distance to the east, e.g., Shangri-La, Four Seasons, Jamison Hotel etc. Moreover, short-term rental arrangements in a place like Millers Point's heritage precinct that features terraces, often attract visitors who hold parties that go into the night.</i>
<i>Yes, especially in residential apartment blocks which can impact everyday life of residents.</i>
<i>They should be prevented at all cost in Apartment buildings where Owners have their living amenities trampled by the greed of absent Owners and the lack of care or interest from short-term blow ins.</i>
<i>Should restrict it all together</i>
<i>They should be Strictly controlled. In standalone premises only where Owner accepts full responsibility for guests' behaviour, in Strata building only if 75% of Owners approve such operation, and the applicant pays a special levy for the additional usage for commercial gain by an owner.</i>
<i>Airbnb has no community value whatsoever and consequently; it should be restricted in this neighbourhood type area.</i>
<i>By the Strata body</i>
<i>Hotels are meant for tourists and business travellers. Residential properties are meant for residents. Short-term rentals in residential properties are an attempt to effectively make them hotels and should be stopped. Owners of the private properties must have full rights to decide on how their properties can be used. In case of strata ownership majority of Owners make the rules. Any Government regulation voiding the private ownership rights is against the principles of our liberal system. Airbnb</i>

BAN or Restrict
<i>and the like are just internet-based booking applications who attempt to bypass the regulated licensed hotels. They want to make money from "hotel" business without licence, insurance, qualifications and without any responsibility for the safety of their clients. They should be stopped like in many major cities around the world.</i>
<i>Same as residents, noise rules, garbage etc.</i>
<i>No short-term rentals (air BNB) allowed. Body corporates should be allowed to decide whether they allow short-term rentals in their community</i>
<i>Not permitted in apartment complexes when 75% of Owners do not want it. Reduce the number of days to 60/year/property. This allows the area to be liveable.</i>
<i>Apartment buildings which do not want short-term letting should be able to regulate via their own By-Laws.</i>
<i>Airbnb should only be permitted in high rise apartment buildings where the Body Corporates agree by majority vote to approve short-term lettings. Residential apartment buildings are shared spaces and work on effective cooperation amongst Owners and residents. People buy into these spaces based on the rules and bylaws adopted by each building. The power to refuse short-term lettings should be retained by Body Corporates providing voting is permitted at Annual General Meetings to ensure that remains the majority view.</i>
<i>they should not be (allowed- meaning should not be permitted)</i>
<i>Yes, and by each apartment building's management and their Owner's surveys</i>
<i>Isn't it a no-brainer that each apartment building can decide for itself via AGM? Imposition of Short-Term Rentals can only have adverse effects on security (and increased costs thereof) and on neighbourliness. And such imposition offends the sense of "one's home being one's castle". It is contrary to the vibe of it, surely, not least by way of moving the goalposts on those who bought, often at great cost, into existing arrangements and amenities. To deprive us of a say in how our building is run is both unfair and unreasonable.</i>
<i>This decision should be up to building strata corporations for apartments. Individual residences should require a licence of sorts to ensure that the local area is respected by Airbnb renters and monitored by lessors.</i>
<i>Depends on the type of development. Up to Strata schemes to legislate in large towers.</i>
<i>Should discourage it --as it will change the dynamics of the area----as it will lead into people who do not care about the area so antisocial behaviour is possible----we want Millers Point to be a place people want to live, work and enjoy the recreation</i>
<i>I am strongly opposed to non-host attended short-term rentals. These arrangements have no regard for the peace of this residential area. Litter increases and the general respect for public property is not observed, for the most part</i>
<i>Airbnb and other short-term rentals have changed the character of the area. The outcome is an influx of people for 2 to 3 days at a time using the houses as a place to party or sleep, and then leaving huge piles of garbage at the end of their stays. The transition from social housing in Millers Point has been completely botched by the NSW Government - we now have no residents, no pride in the environment and no community.</i>
<i>Specific property approval by City of Sydney to control number, concentration and nature of properties offered for STRAs. CoS should consult Strata Committees for input on strata applications.</i>
<i>Body Corporate of individual buildings should determine whether short-terms letting is permitted</i>
<i>It should be regulated quite heavily.</i>
<i>Only long-term rentals should be encouraged as is currently the situation in some of the residential towers. This better enhances the sense of community within the area.</i>
<i>Not allowed</i>
<i>It should not be permitted</i>
<i>Either ban or limit.</i>
<i>If allowed overall, should be up to individual body corporate whether to allow for apartment blocks.</i>

BAN or Restrict
<i>Different for apartment blocks as opposed to stand alone homes. Either way non hosted is always difficult as more than likely it will disrupt neighbours</i>
<i>Either ban or limit. If allowed overall, should be up to individual body corporate whether to allow for apartment</i>
<i>It should not be permitted. These homes are not suitable for the high wear and tear of short-term rental tenancies and the negative impact on the community in terms of noise, mess, increased rents etc is too high</i>
<i>Strict quota on rental headcount per property (not bus loads as at present), hold Owners liable if garbage/recycling disposal not correctly done by tenants (e.g., put out much too soon, left in the wrong location, bins not taken in expeditiously after collection, garbage spilled on footpath), mandatory larger bins to cope with the quantum of garbage/recycling observed. Kent Street sometimes resembles an informal settlement.</i>
<i>STR is inconsistent with both the heritage values of Millers Point and that we are a residential suburb (for the last 150 years). We are not The Rocks which is a "tourist" destination (as promoted by Place Management NSW - that's another conversation). We also need to recognise that this is medium density living, shared party walls, security issues with random strangers living next door in party mode every weekend. It should be severely limited. Many other "Old Towns" around the world have stopped STR in these places for these reasons.</i>
<i>Should not be allowed. Pre-COVID it was worse but even now the Tuesday bins are overfull and rubbish is often put in the wrong bins. Many seem to buy all their food online so question how much contribution they make to the local businesses</i>
<i>Minimal. Plenty of hotels in the area. Neighbourhood feel needs to be upheld</i>
Unsure or Disagree (accept in area)
<i>Don't really care much. Haven't had any issues with the status quo</i>
<i>Apart from reporting noise and public nuisance issues to the local police, unsure how to address short-term rentals.</i>
<i>No. Same rules should apply across the whole state. Can't have us all heading happily to a coastal Airbnb but refuse them in our backyard. That's just being super privileged.</i>
<i>It's a tourist area, so let tourists stay in short-term accommodation. We need less regulations, not more.</i>
Accept with Conditions
<i>should be allowed as much as possible. however, Airbnb enabled properties should pay higher strata and maintenance fees.</i>
<i>A register of such properties must be maintained. There should be limits placed on number of occupants and visitors. If there are complaints from residents due to noise, piling up of rubbish etc., then council must take action.</i>
<i>Restrict with rules. Same as residents, noise rules, garbage etc.</i>
<i>Hosts to fund daily rubbish collection and nightly security, levy to be applied (circa \$250 per person per night) to supplement Council funding of local area improvements.</i>

ⁱ State Environmental Planning Policy (Affordable Rental Housing) Amendment (Short-term Rental Accommodation) 2021 <https://legislation.nsw.gov.au/view/pdf/asmade/epi-2021-75>

ⁱⁱ NSW planning law prohibits "serviced apartments" in residential zones and where permitted this business is subject to conditions that segregate it from residents. In the licensed serviced apartment business model, the costs internalised.

ⁱⁱⁱ Horwath HTL, *Special Market Reports Issue 90 Australia*, May 2017, p.1.

^{iv} If permitted in a mixed-use residential development in a commercial or business zones, "serviced apartments" are permitted with consent subject to condition that segregate the "serviced apartments" from residential floors.

^v There are other costs such as non-payment of commercial rates, licencing fees, health and safety standards, the availability of tax deductions and negative gearing and no GST. The lack of occupation standards is also a significant contributor. These factors all contribute to making Airbnb apartment cheaper for tourists and more profitable for Hosts/operators.

^{vi} This is also why the 10 % penalty applies to non-payment of strata fees as a necessary discipline to ensure schemes do not suffer cash flow problem or are unable to fund essential repairs and maintenance.

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- vii Dr Heaney, Submission, Inquiry into the Adequacy of the Regulation of Short-Term Letting (2016).
- viii In a recent media article, it was reported that a lot Owner's insurer declined a claim to repair a flood damaged floor because it was also covered by strata insurance.
- ix In Victoria, fees and charges for extraordinary items of expenditure relating to repairs, maintenance or other works that are carried out wholly or substantially for the benefit of some or one, but not all, of the lots affected by the OC must be levied on the basis that the Owner of the lot that benefits more pays more. The OC may determine the times for payment of the special fees and charges; s 24 *Owners Corporation Act 2006* (VIC).
- x In general, public liability insurance for strata schemes will cover claims against an Owners Corporation or community association for transmission of an infectious disease via common property, provided the public health orders are followed and there is no intentional omission (e.g., to closure at the gym). In 2021, the public health orders have failed to address strata schemes specifically but plenty of resources and clear messages have been provided. This includes excluding members of the public. The individual office bearers are likely to exclude claims resulting from illness/disease but as volunteers they should be covered under the public liability cover. That said, if an Office Bearer contracts Covid-19 and makes a claim for medical expenses or capital benefits, there is not likely to be coverage because, for example, this cover tends to be limited to violent, accidental, external and visible means. NB a failure to comply with a Government health order may be considered a deliberate omission and therefore, insurers recommend full compliance at all times
- xi Rented 48% Owned outright 13% Owned with a mortgage 16% Unoccupied 11% Other 12%, Australasian Strata Insights 2021 City Futures Research Centre, UNSW, Sydney (March 2021).
- xii In other jurisdictions like San Francisco, the home sharing policy remains subject to consent at the homeowner association or condominium board level.
- xiii The DA conditions of an apartment building that excludes or prohibits short-term letting cannot be retrospectively altered except by an entire OC returning to the Local Council for an amendment. If those DA conditions exclude or prohibit 'serviced apartments' and short-term letting (however expressed) the original by-laws remain valid.
- xiv If the Guest is an occupant s/he also has standing in the NCAT against the OC. For example, the person would be able to challenge the OC by-law imposing a restriction on the use of the Lot. The person could seek an order to settle a dispute. S/he has standing to seek orders to allow the occupier to keep an animal (with the consent of the Owner).
- xv In addition to Owners, real estate agents should have a distinct obligation to provide the notification to the OC.
- xvi Goldsbrough Apartments, 243-271 Pyrmont Street, Pyrmont SP 50946. [Goldsbrough-By-laws-Dealing-AN755885.pdf](#) The Darling Harbour Authority was the consent authority. DA conditions have left residents with a high volume of short-term letting operating from the scheme. There has been Covid-19 exposure site due to a traveller and Covid-19 positive cases.
- xvii Clause 2.2.5 A booking platform must ensure that short-term rental accommodation premises are not advertised on the booking platform's online booking service unless: (a) the host and premises are registered on the premises register, and (b) the registration number for the premises is displayed alongside the details of the premises on the booking platform's online booking service. This section is an offence provision under s.54C and a civil penalty provision under s. 54D of the Act.
- xviii InsideAirbnb.com
- xix Jane Hearn, *Airbnb is eating the neighbourhood*, City Hub, 16 June 2021.
- xx Jim Minife, *Peer-to-peer pressure: Policy for the sharing economy*, Grattan Institute, 2016. According to the Reserve Bank, the national figure is 40 %; see, Evans, Rosewall and Wong, *The Rental Market and Covid-19*, Reserve Bank of Australia, September, 2020.
- xxi Baker, E. and Daniel, L. (Eds.) (2020). *Rental Insights: A COVID-19 Collection*, The Australian Housing and Urban Research Institute Limited, Melbourne, <https://www.ahuri.edu.au/research/research-papers/rental-insights-a-covid-19-collection>, doi: 10.18408/ahuri3125402.
- xxii *Airbnb during COVID-19 and what this tells us about Airbnb's Impact on Rental Prices* | Published in Findings (findingspress.org); Jimmy Thompson, Australian Financial Review, Airbnb activity hit linked to falling rents in pandemic, 12-13 June 2021, p.36
- xxiii Buckle, C., Gurrán, N., Phibbs, P., Harris, P., Lea, T. and Shrivastava, R. (2020) *Marginal housing during COVID-19, AHURI Final Report No. 348, Australian Housing and Urban Research Institute Limited, Melbourne, https://www.ahuri.edu.au/research/final-reports/348, doi:10.18408/ahuri7325501.*
- xxiv Facebook groups: Sydney Rooms / Apartment / Unit / Flat / House for Rent Lease / Houseshare since 22 February 2018
- xxv [Opening the door on the rise of Airbnb in Australia \(indaily.com.au\)](#)
- xxvi A fund established for a specific purpose must be with an authorised deposit taking institution, and the Owners Corporation must adhere to financial reporting requirements under the Act.