



Submission on Short-Term Holiday Letting Options Paper

October 2017

To: Director, Housing Policy
Department of Planning and Environment
GPO Box 39, Sydney NSW 2001
Email: sth1@planning.nsw.gov.au

Estate Agents Co-operative or EAC was established by a group of seven real estate agents in 1960 to help agencies meet the challenges of the time. While our purpose hasn't changed, today we are a network of more than 300 member agencies representing over 6,000 real estate professionals from independent and franchise agencies, based in Australia, bringing like-minded agents together, providing the support you need.

We enable and inspire real estate agents to work together to build strong, prosperous and sustainable businesses that are well-equipped to cope with the modern era. We provide end to end support to independent and franchise organisations via a comprehensive suite of real estate support services, including:

- Agency Practice Support and Advice
- Business Consulting and Coaching
- Professional Development and Training
- Insurance Services in conjunction with Aon
- Real Estate Forms & Merchandise
- Real Estate Publications
- Property Data and Mapping
- Listing Services and a property portal
- Digital Marketing including video, 360 virtual tours, website design and hosting.

EAC as an industry body represents its members by working with government and other bodies to ensure the views of our members and the greater industry are heard, as well as ensuring that consumers' interests are protected. We are part of the NSW Fair Trading Real Estate Reference Group and sit on NCAT and other industry forums.

Our submission includes feedback from our members, Jemmeson & Fisher Solicitors and Accountants who provide legal support to EAC and its members, Rosy Sullivan from the Australian College of Professionals who are the preferred training provider for EAC and David Colman from CCE Consulting and Training who provides Business Consulting and Coaching support to EAC Members.

EAC would like to note its appreciation for the opportunity to provide feedback on the options paper and are happy to meet with those government agencies involved to clarify any points within our submission.

Yours sincerely



David Crombie
Chief Executive Officer

Introduction

1. Do you use or have you ever used short-term holiday accommodation?

Those involved in providing the feedback for the basis of our submission have used short-term holiday accommodation in both Australia and overseas.

2. Are you or have you ever been a short-term holiday accommodation host?

Those involved in providing the feedback for the basis of our submission have performed the role of an accommodation host in properties that they own.

3. Do you provide another form of short-term holiday accommodation?

Those involved in providing the feedback for the basis of our submission also provide traditional holiday management services as part of their real estate agency business. As part of this specialised service they manage properties on behalf of owners used primarily for short-term holiday letting.

4. Do you live near a property that provides short-term holiday accommodation?

Those involved in providing the feedback for the basis of our submission live in areas of both traditional short-term holiday accommodation and metropolitan areas where there are properties (including strata) on services such as Airbnb.

5. Are you from a STHL industry group, owners corporation or community group?

EAC as an industry body represents real estate agencies that provide traditional holiday management, property management and strata management services and has a thorough understanding of the complexities that exist around the issue of short-holiday letting.

Impacts

6. Please indicate below which STHL impact(s) are of most concern to you?

The impacts in order of importance based on the feedback received are:

1. Noise
2. Party Houses
3. Parking
4. Sub Letting
5. Waste
6. Hazards and Evacuation
7. Licensing of Accommodation Providers

How do you believe these can be managed?

Occupants behaviour to the above issues generates concerns to all stakeholders. It is important that guests that stay in STHL accommodation are respectful of the quiet enjoyment of neighbours in respect to all the impacts noted.

Many of our members that provide traditional STHL services manage these issues with a general code of conduct, house rules and terms and conditions that are pre-signed by guests upon booking confirmation and another reminder is provided in the information at the property once they arrive. Many also have developed good relationships with neighbours and are accessible to residents where in some cases they feel they can call and report issues that arise.

Some of the impacts can be an issue where the number of guests staying in the STHL accommodation exceeds the normal number of occupants under a traditional residential rental or owner occupier situation.

When it comes to the operation of STHL in Strata consideration needs to be given to:

- Access to facilities within the strata building, i.e security parking, swimming pools, gyms, etc
- Security related issues in relation to both access and personal security of existing occupants
- Knowledge of and breach of By-Laws
- Damage to common property and recovery of monies

In relation to sub letting there needs to be clear guidelines as to what tenants can do in regards to sub letting vs what is a licence?

To assist in the management of these impacts there needs to be a party actively involved with the management and enforcement of booking conditions, guidelines and by-laws of the STHL property, Ultimate responsibility of occupants behaviour must rest with the STHL property owner. The issue faced though is that given the short length of stay in STHL that by the time the impact can be addressed the guest(s) have left the property.

There needs to be guidelines, they need to be enforceable and that cost should be the responsibility of the STHL property owner.

Currently, there are “management rights” complexes in NSW and other States, that in many areas are the major provider of holiday accommodation. They are regulated under the Property, Stock and Business Agents Act 2002, in terms of the owner of the management rights must hold an “On-Site Residential Property Managers Licence” and adhere to the requirements under the Act and its Regulations. Of greatest importance for is that an On-Site Manager is required to hold monies paid to them in trust until the holiday-maker has utilised the accommodation. The payment to the owner of the lot (holiday apartment) is made after the service has been provided and the On-Site Manager then takes their commission from the trust account. This provides a high level of protection for the owner of the holiday accommodation and also to the holiday-maker who is receiving the accommodation service. These consumer protections do not exist under some of the newer models.

Self-Regulation

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

- The Code of Conduct
- Complaint Management Mechanism
- Monitoring & Reporting

In summary 'self regulation' must be underpinned by an owner being held accountable for all negative impacts.

The most practical method is by an annual STHL property specific licence.

The Holiday and Short Term Rental Code of Conduct in its current form is too confronting and sets an industry body with limited membership up as the administering authority. Those seeking self-regulation in some instances are international companies which brings into question what can be done when there is consumer detriment from both a host and guest perspective.

However, there are positive guidelines within this document that could be adopted as a guide. To achieve the necessary outcomes we do not believe that the Code of Conduct can be managed by those seeking a self-regulatory approach. These issues go beyond the conduct of the host and guests.

A Complaint Management Mechanism would be strongly recommended and licensing individual properties would have far reaching benefits in assessing STHL property numbers, assisting with the collection data such as the number complaints, provide local council and other authorities with better data to base their decisions on, ongoing commercial benefits, planning progression, etc.

As noted above, the protection for the accommodation owner and the holiday-maker through a regulated system where the accommodation provider is licensed and required to hold money in trust would provide government protection in terms of the Property Services Compensation Fund. If this were self-regulated, the continued access of accommodation providers to third-party monies, will continue to be a risk for government in terms of managing complaints in relation to accommodation providers.

8. Are there barriers that may reduce the effectiveness of self-regulation?

The major barrier to self-regulation is the issue surrounding the management of third-party monies, that is, money paid by the holiday-maker to the accommodation provider. At this stage, STHL providers take the money and it is not held in trust. With the ever-increasing size of this industry, this poses a significant risk to consumers and also owners of the actual premises being utilised for short-term holiday accommodation.

As noted above the issue with self-regulation is the authority that exists to penalise those that do not comply with a Code of Conduct. In addition to excluding properties from the STHL operator websites there needs to be consideration given to financial penalties in some cases.

Collaboration, consultation, communication and community engagement are the keys to making any mechanism proposed to work at a local level.

So long as local Council, State and Federal Government policies don't clash and leave those at the coalface of the holiday letting industry confused as to what is acceptable and allowable.

Less friction, no ambiguity and easy to adopt guidelines will help immensely.

STHL in Strata Properties

9. Should owners' corporations be given the legal ability to prohibit or restrict STHL? If so, how and under what circumstances?

At present, local zoning and planning regulations can prohibit a strata complex from providing short-term accommodation. In these instances, a strata should not be permitted to over-rule these regulations and allow STHL.

For those strata/community complexes that are not affected by zoning or planning regulations that restrict STHL, the owners' corporation should be permitted to restrict or approve STHL as they determine within each complex. This would need to be addressed within the Strata Schemes Management Act. The issue should also consider the ability for an owner who has an investment property, to give approval for their tenant to use a licence to offer part of their leased premises for STHL within a strata complex that given approval for STHL to occur. This would need to be addressed within the Residential Tenancies Act.

10. Should the Strata Schemes Management Act be amended to increase the ability of owners' corporations to manage the impact of STHL and obtain compensation for adverse impacts? If so, under what circumstances?

The impact of STHL on a strata/community complex would need to be part of the consideration for an owners' corporation in making a determination in relation to the approval for STHL within a specific complex - where local zoning and planning regulations permit.

Where STHL is allowed, a fee structure should be considered relative to the number of occupations per year and guidelines provided to assist owner's corporations in the management and recovery of costs for items impacted by the activities of STHL.

STHL holiday letting in a strata complex has the ability to affect the quiet enjoyment by owners of their property and may well affect the value of strata properties given the negative aspects of STHL in this environment.

11. Is there scope for industry self-regulation in the short-term holiday letting industry?
Would this effectively address issues that occur in short-term letting in strata schemes?

There needs to be clear guidelines and self-regulation will most likely not address strata/community title issues, as the accommodation provider will not be able to regulate what an owners' corporation can and cannot make decisions about. This can only be regulated under the Strata Schemes Management Act and the Strata Schemes Management Regulation.

Regulation through the Planning System

12. How should STHL be subject to a planning regulatory framework? What would be the impacts of applying a planning framework to STHL?

Exempt

Complying

Development Consent

No planning regulation

Development Consent - as this affects the provision of parking spaces, open space, size of lots, and general facilities contained within a strata/community title complex. For example, if a STHL is exempt, a strata/community complex may be forced to provide holiday accommodation within a building that does not have the facilities to cope with the additional people and increased use of facilities.

Questions around the ability for councils to effectively manage STHL through Development Consent needs to be given consideration.

No planning regulation will actually deem many STHL properties illegal as many LEP's do not identify this activity as a permissible usage. This is not an acceptable position.

13. If STHL is to be regulated via the planning framework, how should it apply?

- Number of total days per year
- Number of consecutive days
- Number of bedrooms
- Length of stay
- Presence of a host
- Location (metro vs. regional)
- Compliance with a Code of Conduct

We believe that any regulation needs to consider location first. There are differences in the type of accommodation, density and population between regional, coastal and metropolitan areas.

STHL accommodation has been taking place in many regional and coastal areas for many years without significant impact. Changes in the promotion, management, type and use of STHL accommodation in recent years has led to the situation that occurs today.

Depending upon the type of property (strata) and location consideration should also be given as to whether a host is present or not. We believe that there could be regulations for situations covered where a host is present vs a situation where a host is not present.

Greater consideration needs to be given to situations where the host is not present in regards to the total number of days per year and the number of consecutive days.

The number of available bedrooms once again raises the issues of sub-letting by tenants when it is all of the available rooms. The number of guests should also be limited by the number of bedrooms and available bedding.

Compliance with a Code of Conduct is recommended and as noted above this Code of Conduct should be developed and administered by NSW Fair Trading so as to provide consistency and enforceability.

14. Should there be different planning frameworks in regional and metropolitan areas? If so, how and why?

The argument here is more about tourist vs non-tourist destinations. The impact of STHL on a local community varies depending on the infrastructure of that community and the access to transport and other services.

The impacts of STHL can be somewhat different in regional and metropolitan areas.

Registration or Licensing

15. Could a licensing system for STHL work in NSW? If so, how might it operate?

A licensing system maintained by a NSW Government division would be the best approach and would overcome issues with non-compliance, strata, burden of requiring development consent, fraud and consumer complaints.

The STHL property owner then becomes 'the property licensee'. Payment of an annual licence fee would then require a property owner to be responsible for all issues that can cause concern. In effect they are seen no different to anyone operating a business.

The system that is currently in place for management rights complexes works extremely well in terms of protection of third-party monies for the accommodation owner and the holiday-maker. A similar system of licensing and regulation surrounding the management of third-party (trust) money would be an additional advantage to a growing industry.

Summary of Options

16. The options outlined in the paper are summarised in the below table. For the future regulatory framework, which top 3 options (if any) would you like to see in this framework? Why?

Themes		INDUSTRY SELF REGULATION	STRATA REGULATION	PLANNING REGULATION	REGISTRATION
		<i>Refer Section 4</i>	<i>Refer Section 5</i>	<i>Refer Section 6</i>	<i>Refer Section 7</i>
Multiple Options	Code of conduct		By-laws to manage visitor behaviour	Development approval - exempt/complying	Registration to manage safety and amenity issues
	Complaints management			Development approval - development consent	
	Education		By-laws to receive compensation for adverse effects	Limit the length of stay	Registration to monitor that other regulatory approaches (e.g. number of days, number of properties) are being met
	Monitoring and reporting		By-laws to prohibit STHL	Limit the number of days per year	
				Limit the number of bedrooms	
				Regulate by whether the host is present when STHL takes place	

Those involved in providing the feedback for the basis of our submission believe that first and foremost should be Registration, followed by Strata Regulation and Planning Regulation.

These options are somewhat easier to implement and will go some way towards addressing many of the issues created by STHL. Registration should include the necessary guidelines and a code of conduct to remove any risks posed to both accommodation owners (hosts) and guests and by the ever-expanding effects of the STHL industry.

For the reasons provided above we do not believe Industry Self Regulation can provide the necessary level of consumer protection.