

**Submission  
No 158**

## **ADEQUACY OF THE REGULATION OF SHORT-TERM HOLIDAY LETTING IN NEW SOUTH WALES**

**Organisation:** City of Sydney  
**Name:** Mr Andrew Thomas  
**Position:** Executive Manager Strategic Planning and Urban Design  
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# Inquiry into adequacy of the regulation of short-term holiday letting in NSW

City of Sydney  
Town Hall House  
456 Kent Street  
Sydney NSW 2000

City of Sydney submission to NSW Parliament

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## Executive Summary

The digital age is supporting the rapid expansion of the sharing economy as well as providing benefits to existing business activities with new ways to access customers and expand commercial opportunities. Web enabled mobile technology provides an efficient way of offering homes and spare rooms for short-term holiday letting. This technology also provides existing and new market participants, a low cost method for bookings and payments, as well as access to an expanding global customer market. When appropriately defined and regulated, short-term holiday letting can support local communities and economies, while protecting amenity and the residential character of our communities. Short-term letting that occurs too often, or without the presence of the primary resident, changes the character of the occupation of the residential property and is primarily a commercial activity. This is regardless of how it's marketed; online through new digital platforms or through more traditional methods.

Our regulatory framework has not kept pace with the new opportunities and services these technology advances create. Some of these opportunities and services are relatively low risk and in many instances are operating without incident. Established visitor accommodation providers are regulated to protect public safety and amenity and provide accessible services to a wide customer base. These concerns and objectives are important in all forms of short-term holiday letting, including those of lower risk.

Through its ongoing engagement activities, the City has found that that community members, platform owners as well as traditional tourist and visitor accommodation operators and investors, all support a state-wide approach that is clear and consistent.

In addition, there has been strong growth in the supply of short-term holiday letting by online providers and if this growth were to continue it may undermine confidence and investment in traditional visitor accommodation investment. Investor confidence and certainty are key factors in the Sydney market where land prices are high and competing uses regularly price out visitor accommodation uses constraining new supply.

## Recommendations:

That the Committee:

- A. consider recommending a carve out definition of short-term holiday letting on a commercial basis separate to the existing *Tourist and visitor accommodation* definition development standards for lower impact premises that meet the following:
  - a. permitting this activity in buildings approved for residential use only;
  - b. appropriate limits to the number of days in a calendar year an owner/occupier may let their whole dwelling;
  - c. not limiting the number of days that a room or bed may be let where the primary resident of a dwelling is also present;
  - d. limiting the number of adults to 2 per bedroom, with no limit on the number of person under the age of 16, and a limit on the total number of guests to 5;
  - e. the premises meeting fire safety standards that are appropriate for risk;
  - f. no alterations or additions being permitted;
  - g. rooms approved as bedrooms only to be included.
- B. consider recommending that this new short-term holiday letting definition is incorporated as exempt development in *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.
- C. note it would be the responsibility of short-term holiday providers to meet their obligations of the Commonwealth's Disability Discrimination Act 1992.

### **a) The current situation in NSW and comparison with other jurisdictions**

The *Environmental Planning and Assessment Act 1979* establishes the land use planning regulatory framework in NSW. Councils use the Act to prepare local environmental plans which amongst other things zones land to permit or prohibit certain uses. The NSW Standard Instrument which councils must follow contains a common structure, terms and land use definitions. Councils may vary elements of the Standard Instrument where it does not give rise to an inconsistency or where it does not address local planning objectives. For example, about a third of *Sydney Local Environmental Plan 2012* is made up of local provisions that are not contained with the Standard Instrument which address matters such car parking, unique floor space ratio provisions such as heritage floor, design excellence and provisions to protect solar access to important public spaces.

Lower impact short-term holiday letting is not a separately defined land use and currently meets the definition of *Tourist and visitor accommodation*. *Sydney LEP 2012* prohibits *Tourist and visitor accommodation* in the following zones where *Residential accommodation* is permitted:

- R1 General Residential;
- R2 Low Density Residential; and
- B1 Neighbourhood Centre.

This is because the uses under this definition conflict with zone objective *to maintain the existing land use pattern of predominantly residential uses*. The City requires separation of uses where they occur in mixed use developments to address amenity impacts, such as separate entrances and lift access for serviced apartments and residential apartments where they occur in the same building.

The above zones apply to the majority of the City's existing residential areas. The B4 Mixed Use, B8 Metropolitan Centre and B2 Local Centre zones, are the only zones which permit both *Residential accommodation* and *Tourist and visitor accommodation*. *Hotels*, a separately defined use within the *Tourist and visitor accommodation* definition are permitted in all commercial zones.

A change of use occurs when a dwelling is let to visitors on a commercial basis, changing the nature of the occupation of the property. This change of use requires development consent. However, where the use is not permitted in the zone, the use cannot obtain consent. As stated above, the majority of the City's residential zones do not permit *Tourist and visitor accommodation*.

Short-term holiday letting in a *dwelling house* provided by a permanent resident could meet the definition of, and complying development standards for, *Bed and breakfast* accommodation. While this current arrangement does provide a framework within which some properties can operate, its application in the City is limited because it not available to apartments as it is confined to a *dwelling house* that is a single dwelling.

Short-term holiday letting activities outside of commercially recognised premises are not specifically addressed by the NSW Standard LEP definitions or the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*, and therefore cannot be assessed as separate uses. The key difference between short-term holiday letting activities and those currently defined is the occasional or infrequent nature of rental period. There is an opportunity to define these activities as exempt development so that it clearly applies to dwelling houses and apartments as well as addressing acceptable fire safety measures and building classification interpretation for exempt development purposes. For example, the fire safety measures may include smoke detectors and signs and information to guide occupants out of the building in case of emergencies. Proponents of short-term holiday letting are currently responsible for meeting the requirements of the Commonwealth's *Disability Discrimination Act 1992*.

A key issue is an appropriate time period that these activities could occur before triggering a change in the nature of the use making it unauthorised or requiring development consent. For example, a period consistent with standard holidays (4 weeks) or a higher number of weeks consistent with schools holidays (up to 12 weeks). A time period means that the primary occupant will remain a part of the residential community because for a significant majority of the year they will be home to contribute to that community. Short-term holiday letting where the primary resident remains presents a lower risk of amenity and residential character impacts because of the self-regulating nature of the primary occupant living there and therefore a time limit is not necessary.

Another key issue is amenity impacts which can be addressed by limiting the number of people up to 2 adults per bedroom, with the number of children under 16 not restricted, and a limit on the total number of guests to 5. In recent correspondence to the Hon. Victor Dominello MP, Minister for Innovation and Better Regulation, the Lord Mayor Clover Moore stressed the need to introduce a new State license framework that addresses all forms of visitor share and visitor accommodation. The exempt development approach recommended in this submission is designed to sit alongside the suggested license framework. It is also appropriate to clarify how proponents should address the Building Code of Australia fire safety requirements.

It is acknowledged that councils can introduce local provisions to identify short-term holiday letting. However, it is recommended that the State Government investigate and prepare a clear and consistent threshold to define short term holiday letting that is separate to the *Tourist and visitor accommodation* definition and permit this as exempt development in State Environmental Planning Policy (Exempt and Complying Development Codes) 2008. If made exempt development, an owner's corporation are not prevented from establishing by laws that could further manage this activity.

An appropriate short-term holiday letting definition allows home owners and occupiers to participate and enjoy the benefits of the sharing economy and manage the impacts on the predominant residential character of NSW communities. As exempt development, unnecessary regulation and cost are avoided for proponents. Through its ongoing engagement activities, the City has found that that community members, platform owners as well as traditional tourist and visitor accommodation operators and investors all support a state wide approach that is clear and consistent.

### Serviced Apartments

Short-term holiday letting for more frequent periods is most consistent with the *Serviced Apartment* definition, which is *a building (or part of a building) providing self-contained accommodation to tourists or visitors on a commercial basis and that is regularly serviced*, is therefore *Tourist and visitor accommodation* and requires consent where permitted.

There are numerous NSW holiday destinations where *short term rental accommodation*, that is short-term holiday letting, is defined and made exempt development without a time limit. For example, the Gosford LEP exempt provisions prescribe a maximum of four bedrooms, appropriate garbage servicing and no more than two complaints to be received by council in the previous 12 months. This approach is not suitable and not recommended for the City as there are number of conflicts with long standing City of Sydney development controls for *serviced apartments* that address design, amenity and the predominant residential character of buildings.

### ***b) The differences between traditional accommodation providers and online platforms***

Traditional providers of short-term holiday letting are located in buildings designed, and modified or built for purpose with an established planning pathway. Providers of short-term holiday accommodation through online platforms are commonly carried out in buildings designed for residential purposes and in neighbourhoods that are predominantly residential in character. For local government authorities the primary key difference is the planning framework and regulation.

Another key difference is the frequency of the letting activity which determines the frequency of visitors. The key difference between short-term holiday letting activities and those currently defined is the occasional or infrequent nature of rental period. There is an opportunity to define these activities as exempt development for dwelling houses and apartments and require acceptable fire safety standards.

### **c) The growth of short-term and online letting, and the changing character of the market**

Short-term letting of dwellings is a long established practice in world cities and other popular holiday destinations. It provides income for owners as well as secondary economic benefits to local services and businesses used by visitors.

It is clear that internet based platforms have facilitated significant growth in renting whole or part private residences for short-term holiday letting in many cities around the world. Sydney is experiencing strong growth in online providers. According to the *Inside Airbnb* website *Airbnb* total listings in metropolitan Sydney have grown from 5,692 in September 2014 to 10,473 in October 2015, 60% of these are entire homes or apartments. In the City of Sydney local government area as at October 2015 there are 2,993 *Airbnb* listings, 60% of which are entire homes.

### **d) The economic impacts of short-term letting on local and the state economies**

The City adopted its Visitor Accommodation Action Plan in 2015 to support investment in new and existing visitor accommodation and help deliver the benefits to the visitor and city economies. Sydney is Australia's premier tourist destination city and the gateway to NSW and Australia. 10.5 million visitors came to Sydney in 2012 and 4.3 million stayed in the City of Sydney Council area. Visitors are important to the city's economy, contributing over \$5 billion to our economy in 2012. This supported over 10,000 businesses in transport, accommodation, education, retail, cultural and recreation sector and almost 27,000 jobs or 7% of the city's workforce. Sydney is Australia's largest accommodation market with approximately 31,868 rooms and/or beds.

The importance of the visitor economy's contribution to Australia's and NSW's economy is recognised by the National and State governments.

At the Federal level, *Tourism 2020* is Australia's national strategy for the tourism industry. It identifies the potential for the industry to grow nominal overnight visitor expenditure from \$70 billion in 2009 to between \$115 and \$140 billion by 2020. To meet visitor demand, *Tourism 2020* targets between 6,000 and 20,000 new accommodation rooms in capital cities, with about 18 per cent of the target achieved to 2013. The plan is to achieve these targets by encouraging investment, implementing regulatory reform, such as reducing compliance costs and removing barriers, and facilitating new tourism infrastructure projects.

The NSW Government's State Plan, *NSW 2021*, sets a target to double overnight visitor expenditure by 2020, consistent with the national *Tourism 2020* Strategy.

City of Sydney data shows that at present the local government area visitor accommodation supply is around 31,868 rooms and hostel beds made up of the following:

- 20,000 hotels rooms.
- 4,700 serviced apartment rooms.
- 968 pubs or hotel rooms.
- That is a total of approximately 25,668 visitor accommodation rooms.
- As well as 6,200 backpacker hostel beds.

These figures are approximate as they are taken from the 2012 City of Sydney Floor Space and Employment data plus a review of approved development applications from 2012 to 2014, assuming those approved to 2014 would be complete and available to the visitor accommodation market.

Within the local government area there are 2,993 *Airbnb* listings and approximately 220 *Stayz* listings which is equivalent to 10% additional supply. While this may not seem significant in terms of total supply, if growth were to continue at the current rate, this may undermine confidence and investment in traditional visitor accommodation supply. Investor confidence and certainty are key factors in the Sydney market where land prices are high and competing uses regularly price out visitor accommodation uses, which restricts growth in supply.

***e) Regulatory issues posed by short-term letting including customer safety, land use planning and neighbourhood amenity, and licensing and taxation***

The regulatory approach recommended in this submission must be supported by appropriate regulatory tools to protect neighbourhood amenity as well as providing confidence for traditional visitor accommodation providers to continue to invest in the Sydney market.

The expanded investigation powers made available in recent amendments to the *Environmental Planning and Assessment Amendment Act 2014* are welcome and appear to provide an appropriate regulatory tool. Section 119J enables council investigation officers to require people to produce records in their possession where the records are required for an investigation purpose. This section is now being used by the City to effectively obtain information about residential premises owners and leasing agents to support investigations into unauthorised backpacker and boarding house accommodation. These investigations have not generally been to address short-term holiday letting. However, it is the City's view that s 119J provides council investigation officers the powers needed to obtain the evidence required to investigate the unauthorised short-term holiday letting of residential premises. For example, investigation officers could use this power to obtain records as to how many days a premises has been let for in a particular period. As this section is new the nature of the power and the evidence obtained has not yet been tested in court proceedings.