
Public Hearing Notes on Inquiry into the adequacy of the regulation of short-term holiday letting in NSW

Date: 14 March 2016
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Information for planning

1. Planning to meet the future requirements of the community requires reliable information.
2. An essential element of development consents is for the Council to know the numbers of residential properties, commercial properties, and hotels there are in the jurisdiction. Then the Council and the government can plan for the future and approve more residential properties if there is a shortage.
3. Services like Airbnb mean that Councils and other levels of government don't know what types of accommodation are available in the community. The problem is exacerbated because Airbnb is not the only player. The collaborative economy is a dynamically changing landscape and the government cannot obtain information from all of the providers.
4. The providers are normally not based in Australia so they are outside the jurisdiction of the State. They have no obligation to comply with State laws. They don't have to comply with subpoenas or orders. They don't have to provide all the information that the government requires to make good planning decisions. The government is then forced to come to a mutual agreement with such companies such as like with Facebook and law enforcement. That might work with one large player but with so many online short term letting providers and a continuously changing landscape that's not workable.
5. As the providers are constantly changing a proposed approach is to target the one thing that doesn't change which is the host (proposals below).

Shortage of rental properties and impact on housing affordability

6. The debate is often framed in terms that are polar opposites e.g. If you don't support services like Airbnb then you are not embracing the future and being a luddite.
7. There is a romantic view of the collaborative economy. Take Uber for example, a person with a car can make some extra money. Take the quote in the New York Daily News:

"The vast majority of Airbnb hosts in New York City are regular people - teachers, nurses, retirees - who rent their homes a few times a month to help make ends meet," he wrote. "Middle class people should have the right to occasionally share their homes ... and they should not face fines for doing so as some in New York have suggested."

8. However, that romantic view is not the reality. The risk from services like Airbnb is not posed by the host. The risk is posed by the logical next steps in a competitive market. Services like Airbnb are take a 'hands off' approach. In their terms and conditions they make the host agree that the host comply with local planning consents. They also make it clear in their terms and conditions that the contract is between the host and the guest.
9. I quote from an article in Domain that said, "Airbnb are quite categorical that they don't police their members, and while making people responsible for their own behaviour, their attitude has a whiff of what a 19th century British politician, criticising journalists, called the "prerogative of the harlot" – power without responsibility. You can't make someone who sells cars responsible for bad driving ... unless, perhaps, the brakes don't work. And that is the problem with this wonderful way of bringing people together. There are no brakes."
10. What I suggest that means is that in a competitive market there are investors who see services like Airbnb as being able to generate a higher return than they would get then from traditional long term rental. In some cases twice the revenue that with year round tenants (Source: domain.com.au ,Airbnb hosts getting rich while traditional landlords lose out, Nov 22 2015).
11. Those investors in high demand areas like the CBD don't normally have trouble renting out in the long term rental market. However, they are driven by getting a higher return and will embrace services like Airbnb. Money talks. This will reduce the available rental pool for long term rentals and will cause a chronic shortage. It will also increase rents. There is already a housing affordability crisis and reducing the rental pool will just make it even worse. That's bad for the community.
12. There is also the phenomena of head tenants who are renting out spare rooms. I had a client who called me about trouble 'with her flatmate'. It turns out that she was running an Airbnb and the landlord said it was a breach of the lease. Such head tenants reduce the availability of apartments to share. That will decimate the market for students and low income people who will then be forced to move far from the city to find anything that they can afford.
13. The head tenancy problem requires anti circumvention measures as it's a common practice to have a long term head tenancy (even with a company as the head tenant) and then sublet out on a short term basis. Any legislative change needs to emphasise that it's the length of stay of the actual occupant and not who is the occupant on the paperwork. The Residential Tenancies Act 2010 (NSW) already defines landlord to be the head tenant where there is a sub tenancy but it's a point that is often ignored and requires clarification.

Agency

14. The threat to the community is not caused by the hosts. The threat to the community are the agency services that spring up.
15. In a competitive environment the hosts will seek to differentiate themselves by providing more services such as cleaning and concierge services.
16. Investors don't have the time or willingness to actually do the hosting so they find an agent to manage the property for them. Such agents then form a letting pool and then provide hotel like services.

17. With agents the operations of the hosts increasingly look more and more like a hotel or serviced apartment. Everything in form but just not in name and without complying with the regulatory requirements.
18. In the end quasi hotels are created. It's not a far fetched idea and it's already happening. Take Guesty as an example. (See attached Guesty print outs).
19. Airbnb takes a hands off approach but there are competitors who are very hands on. Take the Chinese market where Tujia is taking the market by storm. Tujia is the Chinese Airbnb competitor and it's already valued at over \$1billion. It's already expanding to Taiwan, Korean, and Thailand. Australia would be a lucrative market for Tujia. See the attached article from the Cheung Kong Graduate School of Business.
20. Tujia differentiates itself by combining Airbnb and Guesty to provide a comprehensive solution to investors. They don't need to do the hosting. There are teams on the ground to take care of all of that for the investor. Those agents get a commission. Tujia uses the approach that allowed Alibaba to beat Ebay in China, they market in using the micro networking that is very effective in Chinese markets.
21. Getting information out of Tujia will be much harder than from companies like Airbnb.
22. If the government is going to provide a carve out of existing planning restrictions then a compromise is to stop agency. That will put a natural limit on services such as Airbnb.
23. It will keep the romance of Airbnb and its essence. Let hosts be hosts.
24. However, if someone wants to run a quasi hotel then they should comply with the rules. Cannot have effectively a Class 3 building operation without the regulatory requirements i.e. fire safety, disabled access, service lifts.

Stata Impact

25. Same holiday makers and business people who would use a hotel but are looking for a cheaper alternative. All the same problems but now many moving targets.
26. An Owners Corporation cannot recover its legal fees in NCAT proceedings and will just give up in most cases.
27. The Owners Corporation cannot easily get the profits made by the guest as the Owners Corporation didn't lose that money. The Owners Corporation is limited to damage to common property and increased expenses such as cleaning, damage to common property, wear on lifts, and that's expensive and difficult to quantify.
28. Noise, parties, drunken behaviour, cigarette butts, loss of community, security costs.
29. Extra cleaning of garbage on common property can cost upwards of \$60,000 per year.
30. Distortion on property prices and valuations.
31. People trapped in their own buildings. Unlike choosing between Uber and Lyft a person in a strata building cannot just pick up and go, they have financial commitments, work commitments, community ties etc..
32. If the government is going to open the floodgates to services like Airbnb then it needs to balance that with an emergency brake. The emergency brake is an exemption to Section 49(1) of the Strata Schemes Management Act 1996 (NSW) to allow the owners by special resolution to disallow Airbnb like services in their building. In other words, strata communities know what's best for them so let the people who live in that community decide if it's out of hand.

Licensing and Transparency

- 33. A proposed solution is to bring in an easy to access licensing system. The cost can be offset by fees. The benefits to the community outweigh the costs.
- 34. The objective of legislation can be that a host must do the hosting. They cannot use agency services. If hosts have to do the work and do the actual hosting that it keeps the essence of what an Airbnb service is about. The hosting by the host means that quasi hotel services cannot take root. It's a natural limit. If investors want to be hoteliers then they should meet the high standards required of a hotel.
- 35. The host can log onto NSW Fair Trading and register for a licence. It will take 10 minutes and use the same registration process that the host is used to with services like Airbnb. The host uploads a form of ID, puts the address, if it's a strata plan they put the strata plan number and lot number. They pay an annual fee of \$100.
- 36. The licensing system can have online searches for a small fee of \$15. The fee sustains the system. The searches mean that community also has transparency and can find out how many Airbnb like services are in their buildings.
- 37. The licensing allows the government the information that it needs to plan for the future.
- 38. A licence number is provided and must be posted onto the photos uploaded to services like Airbnb. That's because services like Airbnb don't provide addresses.

Fines and Enforcement

- 39. NSW Fair Trading could have jurisdiction.
- 40. The fines cannot be fixed fines otherwise a running battle like with Uber in QLD could eventuate where Uber just pays the fines for drives. The fines become 'the cost of doing business'. It's just a tax.
- 41. Enforcement can start with a warning and then escalate to a maximum penalty of \$1,000 or 3 times the profit made. Whichever is the greater.
- 42. The fines must be big enough to be felt, and they will provide a specific deterrence and general deterrence to breaches.

Yours faithfully,

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