

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

Name: Name Suppressed

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Partially Confidential

Terms of reference for an inquiry into the adequacy of the regulation of short-term holiday letting in NSW

That the Committee inquire into and report on the adequacy of the regulation of short-term holiday letting in NSW, with particular reference to:

- a) The current situation in NSW and comparison with other jurisdictions*
- b) The differences between traditional accommodation providers and online platforms*
- c) The growth of short-term and online letting, and the changing character of the market*
- d) The economic impacts of short-term letting on local and the state economies*
- e) Regulatory issues posed by short-term letting including customer safety, land use planning and neighbourhood amenity, and licensing and taxation*
- f) Any other related matters.*

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

Currently the regulation of short-term holiday letting across NSW varies from council area to council area. Many LEPs regulate what is defined as “temporary or short-term tourist and visitor accommodation on a commercial basis” (or words to similar effect).

Only six of thirty-four Councils in metropolitan areas of NSW surveyed in a report published by Fairfax this year indicated that they allow short-term holiday rentals (including AirBnB) – with some limitations regarding consent and areas. By contrast, the vast majority of Councils in metropolitan areas believe that short-term tourist and visitor accommodation in residential areas is prohibited.

However, the current regulatory framework does not accurately deal with online platforms such as AirBnB, or indeed Domain, Stayz, HomeAway, Rent-A-Home and other similar services. AirBnB has received a lot of press because it has been very successful, thanks to good infrastructure and popularity. My analysis of the Woollahra LEP 2014, as an example, suggests that while the Council may assert that letting one’s home on a short term basis to someone coming to Australia for a holiday or on business is prohibited, the conduct may in fact not be prohibited.

The existing definitions for prohibited forms of accommodation do not appropriately fit or reflect changes in actual use. My house is an ordinary dwelling house and I use AirBnB to find people to share my house from time to time (including when I am temporarily away from my house). I recently received a Notice of an Intention to Give an Order from Woollahra Council on the basis that I was using my home for a prohibited purpose (namely “tourist and visitor accommodation”) and that this unlawful use was causing a disturbance to amenity.

The Council officer to whom I spoke was very helpful. She clarified that indeed Council will only act if there are complaints regarding amenity. Unfortunately for me there were complaints. However, Council did not provide any detail of those complaints, so I pressed for details of those complaints (it is difficult if not impossible to respond to complaints without any detail) so that I can respond. According to long accepted rules of administrative law, I have a right to respond and to be heard in relation to any adverse decision made against me by a government body. I have pressed for particulars of complaints, which Council has agreed to provide so that I can respond.

Why do I list my home on AirBnB?

Advertising of my home on AirBnB allows me to find people to share my home with - but only if I approve them and if I make my home available. This is so much better than allowing my house to be listed with a real estate agent, because once a property is leased to a long-term tenant, that tenant has a right to exclusive use of the property. I am not looking for a long-term tenant. For various reasons (including sharing in the care and support of my frail and elderly mother following the death of my father), I have cause to be regularly away from my home on a temporary basis. However, my home is my home and continues to be my home. AirBnB allows me to share my home from time to time, when I choose and with whom I choose. I also have a right to access, use, maintain and repair the property without the need to give notice, arrange access and so on.

The fact that Councils (and I am aware that Woollahra Council is not the only Council doing this) is alleging “unlawful” and “prohibited” conduct on my part without specifying which type of “tourist and visitor accommodation” that my house is being used for is unacceptable. It causes incredible distress and allows vexacious neighbours (and yes, these do exist) to make unsubstantiated allegations to Council, and on which Council appears to be willing to act.

This is akin to charging someone with a crime but without specifying what specific conduct (based on evidence, not speculation) fell foul of which particular provision of the Crimes Act. To breach a provision of any legislation or regulation, you must meet each and every condition specified – based on fact.

It seems Councils are also in the difficult position of having to constrain slightly inappropriate legislation to regulate conduct that currently may not fall within the precise prohibitions specified. It seems Council policy and practice is to act if and only if there is a complaint from a neighbour. The outcome for home owners, however, is to have an order made against them – often without the benefit of the full complaint alleged and therefore without a real opportunity to respond and be heard.

b) The differences between traditional accommodation providers and online platforms

Who wouldn't want to stay in a fabulous home in New York city if they had the opportunity? When travelling, I have stayed in a range of different types of accommodation. When travelling for work, I look for wifi access (so I can work) and proximity / ease of access to clients/conference venues or wherever it is that I need to be. When travelling with family, I need space in case the children need “down time” or a day of rest. In all cases, access to transport and facilities (cafes, restaurants, supermarkets), safety, and a vibrant location close to cultural attractions.

When travelling to a large and vibrant city (e.g. Tokyo, New York, Shanghai), it is hard to beat staying in an area where locals live as it provides an opportunity to explore a vast city in a more meaningful and efficient way (you have to navigate the city differently than from the usual tourist viewpoint). It is a wonderful way to travel and offers a very rich travel experience. It is also great way to meet locals, who will often point out or recommend a place or activity that you might otherwise not consider.

For many years now, I have selected accommodation providers (whether “traditional” or “online platforms”) online. I always use online providers because I can check reviews and look closely at the accommodation features (location, facilities, etc) before booking.

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

From personal experience, I have become increasingly willing to use a service such as AirBnB – even for business travel. This is because if I am travelling for business, I will often be alone and therefore more likely to want to eat in the comfort of a home.

Years ago there were “war stories” about paying for accommodation that did not exist and so on. However, the larger online providers have security measures in place to address these kinds of risks and allow communication with prospective hosts (or guests), which can be a very effective way to vet each other. The infrastructure provided by AirBnB is fantastic as they handle all of the financial aspects – taking money from guests and paying it across to hosts, as well as dealing with enquiries about fees and charges. They hold the money in escrow so that the guest is also protected in the event that booked accommodation is not as advertised. It is only through the success of AirBnB that the spotlight has been shone on the concept of “holiday homes” or “short-term” leasing of homes to visitors. However, the concept is not new. Serviced apartments, executive rentals, house-swapping and time-share accommodation for holidays have been around at least since the 1980s. The whole economy of many towns in coastal areas of NSW rely heavily on holiday rentals and tourist spending to survive. The “online” nature of letting has not changed the way these homes are used, but it has opened to market to a broader audience as it allows people to look and select a property (albeit through photographs) before booking.

In the past, you would have to rely on a local real estate agent to find a listing for a holiday home. This would mean having some familiarity with the local area (so you knew the name of an agent) or, with the advent of the internet, being able to search the website of the agent for available listings. Stayz popularised the concept of listing your holiday home (or your home for a holiday rental) almost 15 years ago. However, AirBnB has streamlined the process to make it easier to assess a property and the trustworthiness of a guest or host through their two-way review process. Their success has also made their reach into the market very wide-ranging, with many people who have not previously used a service such as AirBnB willing to try it to make a booking or list their home.

From personal experience and dealing with guests, more and more people are willing to consider a short-term letting through AirBnB. I believe that AirBnB is introducing a new type of accommodation offering into the market. It is not competing directly with traditional kinds of tourist and visitor accommodation such as backpackers’, bed&breakfasts, hotels / motels and serviced apartments. It is a wholly different kind of experience.

Why do I say this? The *REINSW Real Estate Journal September 2014* states the following statistics for AirBnB:

- *80% of Airbnb listings in Sydney are outside of main tourist areas.*
- *48% of Airbnb guests were first-time visitors to Sydney last year*
- *98% of hosts suggest local attractions, restaurants and shops, increasing local tourism.*

One of my guests described her experience of staying at our home as:

“...like visiting a cool relative who is in-the-know about the neighborhood and city in general. Staying here was so much better than staying in a fancy hotel (which I have done in Sydney before) because you get to live like a local in a wonderful neighborhood with great places to eat and shop within walking distance. [REDACTED] house is full of books and interesting art and was really comfortable for our family.”

My personal experience means that I would now preferentially look at staying in a home as my first choice for visiting many destinations before choosing a hotel or serviced apartment. The main difference is that a hotel or serviced apartment is mostly filled with tourists. I like to do what the locals are doing – go to the local coffee shop, buy bread at the local bakery or produce at the local growers' market. I have stayed in homes (houses or apartments) in Osaka, Paris, New York and Beijing. There is something about local culture that you get to experience – from simple things like how the house is furnished or decorated, to the way the kitchen is organised that you simply do not get to experience in a hotel.

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

Every one of the people I have shared my house with has spent money in the local area – from the local cheese shop, the bakery, the growers' market, the coffee shop down the road, and the local Indian take-away shop a few doors further away. Most of these businesses would have been unlikely to be a chosen destination for a tourist visiting Sydney, but they are what makes staying in the area great because they are part of “un-tourist” Sydney. I am proud of my local neighbourhood and Sydney in general and want to share what I love about Sydney with my guests. Engaging with my guests re-invigorates me about Sydney.

Houses “die” when left empty. It is the people who live in and use a house that brings a house to life and makes a house a home. Getting a “taste” of someone else's life by staying in their home is a rich cultural experience. Similarly, I and my home have been enriched by the exchanges with people from all around the world (and indeed, even people who live in Sydney and wanting a single house where they can enjoy the company of their relatives from out of town and live like an extended family). Some of these Sydney-siders have told me that they had previously had no real appreciation of what a great neighbourhood my local area was. Yes, they knew Paddington by reputation and had obviously visited previously – but their feeling for and appreciation of the neighbourhood was completely changed after staying in my home. They had no idea it was such a great place to live in or how fabulous the location was with great proximity to the city. This is definitely a local benefit to the community.

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

Providers such as AirBnB have extensive security measures that assist in addressing safety and security issues. There may well be unscrupulous people who manage to bypass security measures, but this can happen to anyone, anywhere. When travelling alone, personal security is paramount to me. It is also a paramount consideration in selecting guests to share my home with.

In relation to aspects of land use and planning, the benefit of online models like AirBnB is a massive increase in available infrastructure without a single building having to be built. This means the infrastructure also retains flexibility so can be absorbed for additional and/or alternative uses as needs apply. In an article published in the Australian Financial Review in September 2015 – “One Building Many Stories” – the author noted that “smart cities can adopt to more efficient use of property assets”. The report focused on a new trend in cities to design spaces that can have shared uses – moving away from the “outdated idea of single-use buildings. A typical office tower, for example, is unoccupied 76 per cent of the time.” It went on to quote Matthew Lynch, head of global research for architectural firm Woods Bagot that “...a hotel room...house[s] early 20th-century behaviours that are now antiquated, and suit[s] an investment model that has since been

superseded....Instead, we're working from cafes, we're studying in airports, we're sleeping in strangers' apartments."

I strongly agree with this flexibility of land use. I can appreciate that there needs to be regulation in terms of safety. However, the safety risks posed by having people share my home is no greater than the risks I and my family face living in the home. Of greater concern might be:

- Health and fire risks from overcrowding, so perhaps this could be addressed by regulating (for example) the maximum number of residents to any given floor space or number of bedrooms (to address the fact that houses in inner-city Sydney have much lower floor space than houses in outlying suburban areas);
- fire risks if a dwelling house were to be used for an industrial purpose (e.g. a laboratory) or as a commercial kitchen. This could be addressed by regulating the need for numbers and placement of smoke alarms;
- neighbourhood amenity – this needs to take into account existing neighbourhood amenity and actual use. This is not necessarily reflected by land use zoning because, for example, my entire street is zoned "low density residential" but in actual fact it is a very busy street (both with cars and pedestrians). This is because our street sits at the back of St Vincent's Hospital, there is a cinema opposite the end of our street on Oxford St, there are late-night commercial / retail premises at the end of our street (with the premises on Oxford St literally extending a significant distance down along our street). This does not take into account the people attending or visiting UNSW Art & Design, Notre Dame University School of Medicine, The Beauchamp and "Rose Shamrock and Thistle" pubs – all within 150 m (or less). Across the road is also late-night trading Berkelouw bookstore and the 1812 wine bar / café. There is also a long history of people running commercial enterprises in terrace houses on our street. For example, [REDACTED] (next door), number [REDACTED] at the top of the street and number [REDACTED] at the bottom of the street all have a history of commercial use. I would argue that if houses were to be used to accommodate short-term visitors but that the numbers of visitors are limited to a number reflective of the size of the house (so a house with 4 double bedrooms takes no more than 8 visitors and so on), then there is no increased burden on local amenity. The only thing the visitors do is bring money INTO the local neighbourhood, but the numbers of people using transport, requiring garbage services and so on is essentially unaffected. This would be different if a traditional house were to be converted into multiple apartments or studios, as the number of people who could be accommodated would in that situation increase.
- Licensing and taxation – there could be a model of licensing. However, it would need to look at specific circumstances. I can understand that establishing a whole building as a hostel or boarding house may have very different needs than someone who advertises their home for people to share on a short-term basis. I would argue in this scenario, it is no different than the regulation of flat-mates or house-mates. The issue of taxation or commercial revenue should be no different than for any other income stream. Council seems to draw an arbitrary distinction between long term visitor and tourist accommodation (not prohibited) and short-term. However, long term accommodation involves financial transactions as much as short term. As long as income is lawfully made and appropriate taxes are paid, I see no reason why different licensing and tax issues are introduced when I have short-term tenants in an ordinary dwelling house than when I had long term tenants in the same house (the same maximum number of tenants at any given time).