

Short Term Holiday Letting

Property Council Submission

31 October 2017

Executive Summary

The swift rise of the shared economy has been subject to much examination and debate across sectors and the property industry is no different.

The increase over time of Short Term Holiday Letting (STHL) practices has generated two competing narratives. On one hand is the suggestion that STHL is being used to bypass established and necessary safety and accessibility regulations of the National Construction Code. On the other is the economic benefits and customer needs that can be provided for by good practises of STHL.

The Property Council views the current regulatory approach as fragmented and incomplete. STHL must be defined at a state-level to avoid the chequered approach currently being led by local governments to fill a perceived regulatory void. This will provide much needed clarity to owners, customers, and other relevant stakeholders such as insurers.

The Property Council believes there needs to be greater regulatory oversight and supports the introduction of registration and a licensing system to allow planning regulators and the government to accurately quantify the supply of short-term leases and make informed policy decisions. It will also allow compliance activities to be carried out against poor operators.

STHL is often used by home owners as a means to supplement income by letting a whole property on a sporadic basis. However, when STHL is run commercially in a dedicated property throughout the year, it could be seen to circumvent established regulations imposed on short term accommodation operators. This is not acceptable. As such, the Property Council recommends that the NSW government limit the use of residential housing for commercial purposes. A non-primary dwelling should only be eligible to be rented out on a short-term basis while the registered host is not present for a maximum of 90 days per year.

The use of STHL in strata-titled properties presents particular issues due to the proximity of residences to each other. Noise disturbances and damage to shared amenities are common complaints put forward by strata residents and owners. The Property Council recommends that the NSW Government amend strata regulations to give owners corporations more powers to manage and respond to adverse behaviour resulting from short-term letting in their buildings.

Key Recommendations

Recommendation 1: Define – Establish a state-wide definition for Short Term Holiday Letting to avoid inconsistency generated by local governments taking their own approaches. It should also be renamed Short Term Letting as it is no longer uniquely focused on leisure accommodation.

Recommendation 2: Register – Create a state-wide registration system to be administered by government to allow for better tracking of the supply of STHL and its ongoing impact on the NSW economy.

Recommendation 3: Limit/License – A non-primary dwelling should only be eligible to be rented out on a short-term basis while the registered host is not present for a maximum of 90 days per year.

Recommendation 4: The NSW Government should amend strata regulations to give owners' corporations more power to manage and respond to adverse behaviour resulting from short-term letting in their buildings.

Recommendation 5: STHL that is limited to 90 days a year should not be considered to be undertaken on a commercial basis and should therefore maintain the Class 1a dwelling classification under the National Construction Code.

About the Property Council

Property is the nation's biggest industry – representing one-ninth of Australia's GDP and employing more than 1.1 million Australians.

Our members are the nation's major investors, owners, managers, and developers of properties of all asset classes. They create landmark projects, environments, and communities where people can live, work, shop and play.

The property industry shapes the future of our cities and has a deep long-term interest in seeing them prosper as productive and sustainable places.

A pillar of NSW

The property and construction industry also underpins the health and prosperity of the NSW economy. The industry:

- generates over 311,000 jobs – one in ten workers
- provides \$20.3 billion in wages to workers and their families
- pays \$17 billion in state taxes, Local Government rates, fees and charges - the state's single largest tax payer
- contributes \$54.5 billion directly to Gross State Product - 11.1 per cent of total GSP
- is invested in by 4.5 million NSW residents who have a stake in the industry through their superannuation funds.

Further information is available at www.propertycouncil.com.au or by contacting Tim Wheeler, NSW Senior Policy Advisor on (02) 9033 1909 or twheeler@propertycouncil.com.au.

Definitions

Short Term Holiday Letting (STHL) has grown rapidly over the past decade, expanding from being carried out almost exclusively in coastal/tourist destination to the heart of our large cities. In the Sydney region there are currently 18,481 active rentals¹ on the Airbnb platform alone.

Despite the prevalence of this practise, there is no consistent definition of STHL under current state law. Coupled by the absence of a regulatory framework, this could lead to uncontrolled outcomes.

The options paper advances the following definition:

"[...] STHL is a dwelling, or part of a dwelling, that provides short-term accommodation, but does not include tourist and visitor accommodation."

This definition is vague as it does not venture into assigning a length of stay that would be considered "short-term". This is problematic as it doesn't allow for clear boundaries to be put on STHL across NSW. We therefore recommend that short term holiday letting be defined as:

"STHL is a dwelling, or part of a dwelling, that provides accommodation for no longer than 90 days per annum for travellers and tourists who generally have their principal place of residence elsewhere that is not tourist or visitor accommodation."²

The need for a state-wide definition is compounded by the fact that STHL is a traditional land use in many parts of NSW. In some of these areas local councils have incorporated provisions allowing STHL into their Land Environmental Plans (LEP) but this is not ubiquitous across councils. There is also variation in the terminology used to capture the concept of STHL from one council to the next leading to further confusion (Table 1).

While online platforms have their origin in sharing available real estate for holiday rentals, this practice has evolved. Increasingly online platforms are moving to commercialise the sector. Online platforms have formed partnerships with airline operators and corporate travel booking systems to grow their share of the Australian travel market, with stays no longer limited to ad hoc leisure travel. There is a case for redefining short-term holiday letting as simply Short Term Letting as it no longer applied exclusively to holiday accommodation.

Table 1 - STHL terminology used by Councils across NSW

Council	Terminology
Pittwater Council	short-term holiday rental accommodation
Bega Valley Shire Council, Eurobodalla Shire Council, Great Lakes Council and Port Stephens Council	short-term tourist and visitor accommodation
Kiama Municipal Council, Palerang Council and Shoalhaven City Council	short-term
Wingecarribee Shire Council	holiday accommodation
Gosford City Council, Wyong Shire Council	short-term rental accommodation

¹ Airdna – Airbnb online market minder (as consulted in October 2017).

² "Tourist and visitor accommodation" as defined in the City of Sydney Visitor and Tourist Accommodation DCP 2006

Managing a growing sector

The industry has grown in recent years and has begun expanding from regional NSW to cities thanks to streamlined, online platforms such as Airbnb and Homeaway (Stayz). A report by BIS Shrapnel estimated the holiday home segment to support \$31.3 billion in economic activity in 2014 Australia-wide³ - this was based on a number of assumptions that date back several years. In the absence of a more recent study we can nonetheless estimate the STHL industry to support tens of billions in economic activity per annum. Given the strength of NSW's economy, it would not be unreasonable to assume that a significant portion of this occurs in NSW.

Rapid growth in recent years in short-term letting has provided a means for commercial residential operators to operate year-round, un-hosted accommodation in cities without adhering to the development or operational regulations that apply to other forms of short term accommodation providers.

The following section is underpinned by data sourced from Airdna, a market watcher that monitors the listings available on Airbnb. While Airbnb is not the only platform offering STHL it is certainly the market leader and trends can be extrapolated from this data.



Figure 1 - total available listings in Sydney from 2014 to present⁴

According to Airdna, there are 18,481 active STHL rentals in Sydney available on the Airbnb platform as at October 2017 (**Figure 1**; “active rentals” are defined as properties that have been leased out in the last 30 days). With an average property size of 1.48 bedrooms, this equates to more than 27,350 room equivalents – noting however that occupancy rates are affected by lone travellers booking listings with multiple bedrooms.

- Airbnb rentals have grown from a largely zero base in 2010 to now be approximately 74 per cent of the size of the hotel, motel and serviced apartment market⁵ in Sydney.

³ The Economic Impact of the Holiday Rental Industry (2014) BIS Shrapnel

⁴ Airdna, Market Watcher data, October 2017

⁵ Source: ABS 8635.0, Tourism Accommodation, Australia, 2015-16

- Of these active rentals, 59 per cent (10,976 properties) are entire apartments or homes which could compete with hotel and serviced apartment properties. The majority of rentals have one or two bedrooms, accounting for two thirds of STHL supply.
- The proportion of 'shared' accommodation is considerably lower and represents an even lower proportion of total STHL rooms (just 358 rooms in Sydney).
- Commercialisation of the sector is increasing. Of the 27,800 hosts that have been active in the last twelve months in the Sydney region, 4,200 (15.1 per cent) operate more than one dwelling (**Figure 2**). There are only 239 hosts operating six or more listings but together they hold over 3,400 dwellings. One host alone holds 250 listings. This has resulted in growth in intermediaries to service multi-site hosts. It is plausible that a single host listed on Airbnb may be managing properties that belong to several different owners.

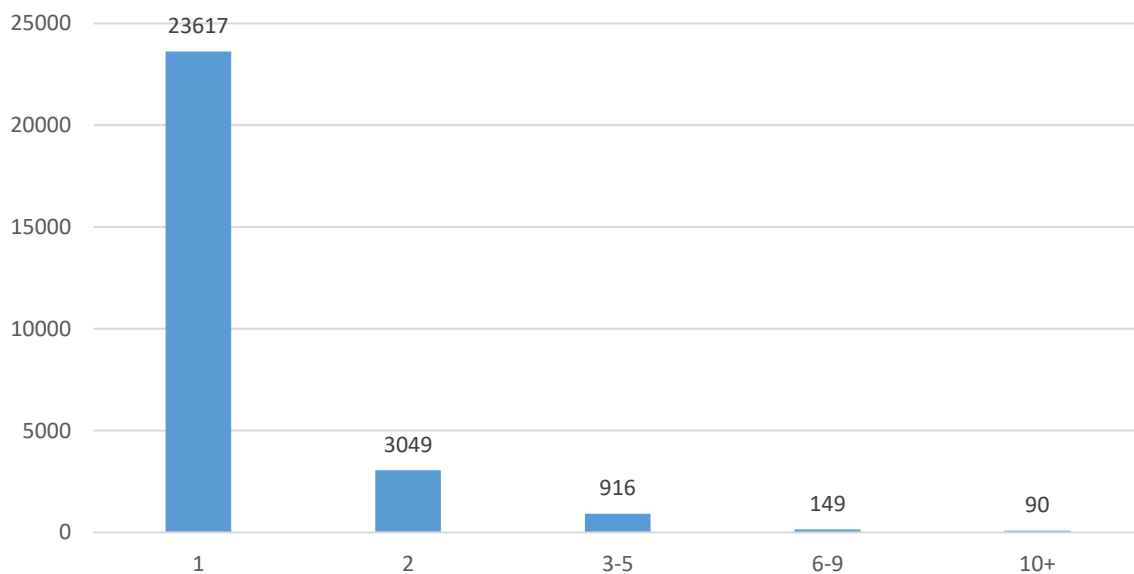


Figure 2 - Number of listings per owner in Sydney LTM

Hotels provide government with certainty of accommodation supply to support the growing visitor economy. Whilst we have seen strong growth in short term letting in recent years, market dynamics may ultimately shift again in response to economic cycles and government regulation. However, the quantum of short term letting supply cannot be quantified or guaranteed in a lax regulatory environment. Registration is essential for effective forward planning.

Table 2 - Listing information NSW and Sydney⁶

	NSW	Sydney
Annual earning for a typical host	\$7,158	\$6,610
Active listings	35,023	18,481
Listing nights (entire dwelling)	497,038	183,489
Booked nights (entire dwelling)	236,369	108,045
Average length of stay per guest	4	4
Average host age	42	38

⁶ Airdna, Market Watcher data, October 2017

The relatively small amounts generated from STHL indicate that short term leasing is typically a secondary or supplementary use of a dwelling rather than the primary purpose (Table 2). It allows home owners to generate additional income when they are not using their dwelling or when there is a room available. It is worth noting however that some owners across NSW earn more than \$200k revenue yearly through STHL activities⁷.

Insurance

NSW Fair Trading states that landlords must conduct due diligence on the offerings of online platforms prior to listing their properties. This includes checking for any restrictions with a local council, reviewing the building's by-laws if the property is in a strata complex and ensuring that an insurance policy covers STHL.⁸

Insurance companies have started offering policies to cover short term rentals, but this has been slowed by the inconsistent regulation. Because insurers must tailor their products specifically to STHL at a council level, the cost of their policies are higher.

The Insurance Council of Australia's position is that local government level regulation for the use of residential property causes issues across NSW⁹. The variety of approaches taken by councils have resulted in different legal solutions, some of which can be ambiguous due to their drafting. They further submit that it can be challenging to assess whether LEPs have been updated to accommodate STHL as it is a relatively recent property use in some local government areas.

The Property Council agrees with this view and suggests that this further reinforces the requirement for a State-wide policy rather than a chequered approach at a local government level.

A case for registration and licensing

Given the size and value of the STHL sector, there is a need for provisions to improve transparency and accountability.

Some issues that may arise if no action is taken include the following:

Taxation – Under the current regime, owners must declare the income received from letting out their property on a short-term basis. It counts as assessable income and should be included in individuals tax returns to the ATO. While revenue authorities generally prefer a strategy of self-regulation and voluntary compliance with the tax regime, they require means of exercising compliance activities when necessary.

The method of online transactions, often to overseas entities, makes auditing revenue from STHL very challenging. Transparency would assist achieve this aim.

Insurance – A submission by the Insurance Council of Australia highlights the confusion surrounding providing insurance to the STHL industry¹⁰. Generally, home and contents insurance does not cover commercial activities being carried out in the dwelling. Further, the

⁷ Ibid.

⁸ Holiday and short stay rentals (NSW Fair Trading website) http://www.fairtrading.nsw.gov.au/ftw/Consumers/Buying_services/Travel/Holiday_home_rentals.page consulted in October 2017.

⁹ Submission 150, Insurance Council of Australia, p1.

¹⁰ Submission 150, Insurance Council of Australia, p2.

fact that some LGAs may not permit or be ambiguous on the practise of STHL causes issues for both insurers and home owners. If the activity is deemed unlawful, it could hinder the prospect of a successful claim.

Transparency – is essential for government to make informed policy decisions. The ability to freely move residential property between long-term and the short-term letting markets has created some uncertainty in the accommodation market, thereby impeding the development of evidence-based policy.

Given the issues outlined above, it is essential that a supporting framework be developed and maintained. The Property Council suggests establishing a Register, in the form of a database, for properties being made available for STHL. Given the sensitive nature of the information to be collected, this would most suitably be hosted by the NSW Government.

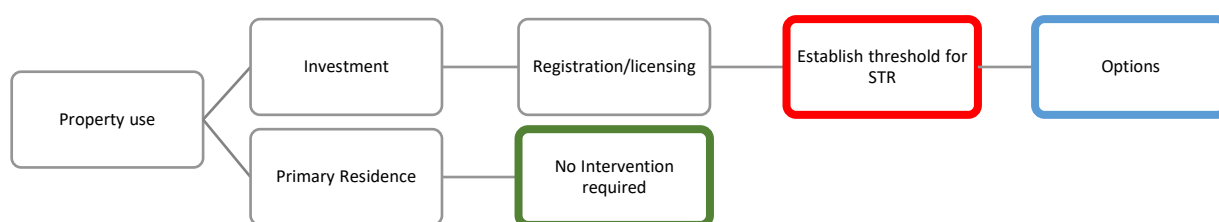
A central, government-held Register could also be used to track the number of nights a property has been leased out on short term rental across multiple online. It could also serve as a way of tracking complaints made against particular listings and would allow for targeted compliance activities against poor operators.

Information for registration on the government database should be kept to a minimum to avoid making the process onerous and creating unnecessary red-tape.

A fairer system for NSW

The Property Council represents members from across the property industry including the hotel industry, the residential development sector and commercial real estate companies. We have consulted across sectors to finalise a position. Through this process we have developed a framework that balances the requirement for innovation in holiday letting while not permitting an intentional circumvention of established regulation by commercial operators masquerading as 'participants in the share economy'.

Figure 2 - Decision Tree for STHL



Primary residence vs investment property

Regulating the presence of guests in the spare room of a dwelling is problematic. There is no straightforward way of conducting compliance and differentiating between family, guests and tenants could be challenging.

Further, when a spare room is temporarily made available for short term rental the benefits derived from lower fire and safety regulation is minimal. The risks associated with the lower regulation are also mitigated by the presence of a host who is familiar with the premises.

The Property Council therefore supports the exemption of primary residences from any form of regulation that may be applied to the sector.

Establishing a threshold for STHL

The Property Council acknowledges that STHL operators benefit from lower levels of regulation than traditional short-term accommodation providers but that there are few areas where the regulation can be lifted on the traditional industry.

Establishing a threshold on the use of STHL for investment properties across NSW will prevent large operators from subverting regulation while simultaneously allowing home owners to generate additional income from their assets.

Putting a cap on the number of nights that a property can be leased for the STHL is a tried and effective way of controlling its use. In San Francisco, a dwelling can be rented out on a short-term basis while the registered host is not present for a maximum of 90 days per year. A similar system was put in place successfully in London starting in January 2017. This system was implemented following a report warning that homesharing sites were causing landlords to remove properties from the already stretched private rented sector and placing them into short-term lets in a trend that poses “potential future risks to housing supply in London”.

By enrolling the assistance of the online platforms to register and report on STHL activities, the registration system can be delivered with a relatively low level of red tape.

The Property Council supports a 90 day per annum threshold across NSW as it is balanced and allows for a sustainable growth of STHL without permitting commercial operators to circumvent established regulation.

Strata Properties

Strata properties present different and additional challenges in relation to STHL. Due to the proximity of residences to each other there can be nuisances caused by noise, odours, or even excessive use of shared amenities.

While these issues can become more apparent with STHL guests present, strata can still be compatible with the practice. Owners’ corporations can create or amend by-laws to manage the behaviour of occupants on a building-by-building case and this should apply equally to STHL.

The Property Council recommends that the NSW Government amend strata regulations to give owners’ corporations more powers to manage and respond to adverse behaviour resulting from short-term letting in their buildings. These powers should include banning STHL in cases where the owners’ corporation is in favour of doing so.

Classification

Class 1 buildings under the National Construction Code are defined as typically standalone single dwellings of a domestic or residential nature. It includes two sub classifications Class 1a and 1b defined as follows:

*A **Class 1a** building is a single dwelling being a detached house; or one of a group of attached dwellings being a town house, row house or the like.*

*A **Class 1b** building is a boarding house, guest house or hostel that has a floor area less than 300 m², and ordinarily has less than 12 people living in it. It can also be four or more single dwellings located on one allotment which are used for short-term holiday accommodation.*

The proposed threshold of 90 days per year on STHL is to limit commercial operation being conducted in the absence of fair tax contributions and the subverting of established safety regulation. This threshold maintains STHL as a secondary stream of income rather than a year-round commercial activity.

Class 1b is directed at commercial operators who are full-time providers of accommodation. This does not apply to STHL under the threshold and it should therefore be maintained as a Class 1a building.

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