

NEW SOUTH WALES GOVERNMENT
Department of Planning, Housing and Infrastructure

Discussion paper on short- and long-term rental accommodation

***“In 2014, there were an estimated 216,000
STHL premises in NSW/ACT...”***

(Planning NSW ‘Options Paper’ July 2017)

https://web.archive.org/web/20230307232640/https://www.planning.nsw.gov.au/~/_media/Files/DPE/Other/short-term-holiday-letting-options-paper-20-July-2017.ashx
https://www.neighboursnotstrangers.com/_files/ugd/5a8126_f12de998afd14471b08dc8b45ca5aa49.pdf

Former NSW Planning Minister Rob Stokes’ use of ministerial discretion in 2021 to alter the State Environmental Planning Policy [SEPP] represented circumvention of National Building Codes and Federal Disability Access legislation, plus recommendations from numerous State Coroners. These alterations to the SEPP also circumvented zoning regulations, and as noted in a precedent ruling by Justice Pepper of the NSW Land and Environment Court, the short-term commercial rental of residential dwellings:

***“...undermines the planning regime of
(Local Government Areas) and
ultimately of the State.”***

Neighbours Not Strangers

March 2024

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Neighbours Not Strangers

08 March 2024

The Hon. Paul Scully, MP
Minister for Planning and Public Spaces
c/- NSW Department of Planning, Housing and Infrastructure
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PARRAMATTA NSW 2150

Minister

REF: DISCUSSION PAPER ON SHORT- & LONG-TERM RENTAL ACCOMMODATION
DPT REF: SF24/8579 – February 2024

1 INTRODUCTION

In 2013/2014 I assisted the City of Sydney Council with their application to the NSW Land and Environment Court (LEC). Council obtained LEC Orders with PENAL NOTICE*¹, which resulted in the cessation of large-scale short-term rentals in our residential building. At that time, members of our strata committee included former NSW State MPs John Williams², Thomas George and Kevin Humphries, along with ClaytonUtz Partner Gary Best. All operated short-term rentals: an activity judged to be an ***“Illegal Use of Premises”***. The respondent received this:

**** THIS PENAL NOTICE is given in accordance with the Uniform Civil Procedure Rules 2005 (UCPR) part 40 division 2 rule 40.7. TAKE NOTICE that the Order made by the Land and Environment Court...(which bears this Penal Notice) will, if you disobey the Order, render you liable to imprisonment or to sequestration of property in addition to liability for a fine.***

Whilst assisting Council I received 37 threats of legal action from members of the strata community – including a claim of defamation made by the brother of Julie Bishop MP, Roy Bishop, on behalf of Gary Best. Indeed, Mr Best and State MPs notified me on 26 February 2014 that I would be *“named and shamed, it would be put to every member of our strata community that I act recklessly, and I would be hunted down and sued”*. I also received three anonymous telephone calls asking if I had ‘funeral insurance’.

It must be noted that your former parliamentary colleagues at no time listed their residential dwellings on the Airbnb platform. Instead, they had their short-term rentals listed on more than 155 other online booking platforms.

Along with other issues in our strata scheme associated with the aforesaid and their cohort’s ***“Illegal Use of Premises”***, I made two submissions to the NCAT. These State Government MPs and ClaytonUtz Partner had their Legal representative label me as a ‘vexatious complainant’. Despite support from other numerous owners within the strata scheme, my NCAT submissions were dismissed.

In 2015 I lodged a submission to the State Government’s Inquiry into the Adequacy of Regulation of Short-Term Holiday Letting in NSW. This submission - Submission No. 22 – was described to me personally by the Manager of the Inquiry, Mr David Hale, as *“the most graphic”* of the 212 Submissions received. Mr Hale recommended that I report the activity to which I had been subjected to the NSW Police.

My submission to Parliament was marked ‘Confidential’ by the Parliamentary Committee Members. I was advised that were one to provide a copy of a ‘confidential’ submission to a third party one would be officially *“In Contempt of Parliament”*.

I was also denied permission to address the Parliamentary Committee Members during the course of their Inquiry into short-term rentals. Of specific note:

- The Manager of the Parliamentary Inquiry went on to confirm that at no time did the MPs on the Inquiry Panel seek legal advice on this critical matter

¹ https://www.neighboursnotstrangers.com/_files/ugd/5a8126_1e32ab553a7f4d1fb34c7f14b3fc9f40.pdf

² <https://www.smh.com.au/national/nsw/baird-condemns-national-mps-sexist-slur-against-female-mp-robyn-parker-20140725-zx0qr.html>

- Federal Disability Access Legislation³, the Disability Discrimination Act (DDA)⁴, and obligations under Australian Human Rights Commission⁵ were not considered and were subsequently circumvented under Rob Stokes MP's 2021 changes to the SEPP
 - A long line of NSW LEC case law judgments on this matter were not considered
 - No representatives from Housing and Homeless services were consulted during this Inquiry
 - No mention was made of multiple State MPs' profiteering personally from STRs – Deputy Premier John Barilaro and Opposition Leader Jodi McKay being among them
 - There was no disclosure of DestinationNSW's official 'partnership' at that time with Expedia/Stayz
 - There was no mention of DestinationNSW's platforming of hundreds of short-term holiday rentals, some of which acted as portals to thousands of STR listings (National Parks NSW also platforms STRs)
 - Multiple State Coroners' reports and recommendations were ignored
- And
- The NSW Government was well aware of a 2014 report which said that NSW/ACT, by the time of their Inquiry, had already lost 216,000 homes to STRs and, "*the number of listings via online platforms (was) more than doubling each year between 2011-2015*". This too was not disclosed during the Parliamentary Inquiry.

It must also be noted that the 2016 Parliamentary Inquiry into the adequacy of the regulation of short-term holiday letting in New South Wales⁷ did not identify any inadequacies with the legislation then in place.

On 30 May 2016, in the corridors of State Parliament House, I was privy to a conversation between Legal representatives from Expedia/Stayz, Trevor Atherton, then Director/Chair Regulations and Government Relations Committee, Holiday Rental Industry Association of Australia (HRIA – now known as the Australian Short-Term Rental Association/ASTRA) and Gordon Clark, Strategic Planning Manager, Shoalhaven City Council. Mr Clark recommended to the STR representatives that they lobby State Government/our then Planning Minister to alter the SEPP. His advice: if commercial short-term rentals were to be classified as 'exempt' and/or 'complying development' in residential dwellings, the STR Industry would then have access to every home across our State. Business cards were exchanged. Mr Clark volunteered to meet representatives of the STR industry at any time.

In sworn testimony before the Victorian Parliament, on 24 March 2017, Trevor Atherton acknowledged that short-term rentals were indeed 'illegal' in NSW.

Given the NSW Government's failed response⁸ to their 2016 Parliamentary Inquiry, and with the assistance of others, I launched a community group known as **Neighbours Not Strangers**. Approximately 1,200 residents signed an online petition⁹ against the penetration of their residential buildings and communities by STRs; full details of this petition were provided to NSW Ministers and MPs. No response was forthcoming.

In May 2017, *Neighbours Not Strangers* lodged a paper: – 'Give Us Your Homes: The Rise and Rise of Short-Term Letting in New South Wales'. NSW Ministers and MPs never acknowledged this work nor addressed the contents.

In October 2017, *Neighbours Not Strangers* lodged a submission¹⁰ in response to the State Government's so-called 'Options Paper' on short-term rentals. No acknowledgement of this submission was received and none of the issues raised were acknowledged or addressed.

In June 2018, *Neighbours Not Strangers* wrote to then NSW Premier Gladys Berejiklian, outlining the specific 'conflict of interest' of numerous MPs¹¹ who were to debate Minister Matt Kean's *Fair Trading Amendment (Short-Term Rental Accommodation) Bill* in the NSW Parliament. NSW Hansard records show where these same MPs voted on legislation – again, without declaring their 'conflict of interest' and/or Court Orders over their STRs "**Illegal Use of Premises**".

In January 2019, *Neighbours Not Strangers* lodged another submission¹² with the NSW Parliament. The submission and its contents were not acknowledged nor addressed.

In September 2019, *Neighbours Not Strangers* lodged another submission¹³ with the NSW Parliament. The submission and its contents were not acknowledged nor addressed.

³ <https://www.legislation.gov.au/F2010L00668/latest/text>

⁴ <https://www.legislation.gov.au/C2004A04426/2018-04-12/text>

⁵ <https://humanrights.gov.au/our-work/disability-rights/about-disability-rights>

⁶ https://www.neighboursnotstrangers.com/_files/ugd/5a8126_f12de998afd14471b08dc8b45ca5aa49.pdf

⁷ <https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=1956#tab-termsreference>

⁸ <https://www.parliament.nsw.gov.au/ladocs/inquiries/1956/Government%20Response%20-%20Inquiry%20into%20the%20adequacy%20of%20short-term%20holiday%20letting%20in%20NSW.pdf>

⁹ <https://me.getup.org.au/petitions/stop-short-term-lets-neighbours-not-strangers-2>

¹⁰ https://www.neighboursnotstrangers.com/_files/ugd/5a8126_d2d87d24845d44c68203544f0d171570.pdf

¹¹ https://www.neighboursnotstrangers.com/_files/ugd/5a8126_1df03c98ac554b59ba5afaaff67ef0fb.pdf

¹² https://www.neighboursnotstrangers.com/_files/ugd/5a8126_3f1c05e9f39c41b3a5d0d95966937ce7.pdf

¹³ https://www.neighboursnotstrangers.com/_files/ugd/5a8126_a1c67f9d92c7419ab7f6759d28cd825b.pdf

In February 2023, *Neighbours Not Strangers* lodged another submission¹⁴ with the NSW Parliament. The submission and its contents were not acknowledged nor addressed.

Since 2013, at no time has access to any Minister of the NSW State Parliament been granted.

Since the inception of the community organisation *Neighbours Not Strangers*, at no time have we been offered the opportunity to sit on any State Government consultation committee.

It is well noted that representatives from ASTRA appear to always be included when State Government Ministers form consultation groups. Fact: former Minister Victor Dominello appointed former ASTRA Board Member/STR operator Joan Bird¹⁵ to his NSW Property Services Expert Panel¹⁶.

1.1 Ministerial Discretion

When former Planning Minister Rob Stokes used ministerial discretion in 2021 to alter the SEPP, many other critical issues were ignored by said Minister in placing the financial goals of STR platforms and operators, and multiple Ministers, MPs and other Legislators, over the rights of residential Title Deed holders and the rights of those seeking safe, secure affordable rentals. Importantly, in using ministerial discretion, it is our firm opinion that Minister Rob Stokes ignored this legislated clause:

“Any exercise of discretion must avoid actual or apprehended bias” (NSW Ombudsman).

The Minister's actions are indeed judged by many as clear contempt for the proprietary rights on Title Deeds on NSW residential dwellings. 'Apprehended bias', certainly, given that one of your current Ministerial colleagues has her STR currently listed under her husband's name at a 'discounted rate' of \$5,042.86 for a seven-night stay. And many other Ministers/MPs/Legislators in the NSW Parliament continue their profiteering to this day.

1.2 State Environmental Planning Policy [SEPP]

In 2017, Minister Dominello received advice from Senior Counsel at Martin Place Chambers on the Government's contentious plans to alter the SEPP in favour of short-term rental operators. This advice was ignored.

Former Planning Minister Rob Stokes used his discretionary power and altered the NSW SEPP¹⁷ in April of that year. The following October (2021), the STR SEPP was amended¹⁸, again by way of use of ministerial discretion.

Under Rob Stokes' changes to the SEPP, the use of residential dwellings across our State for commercial short-term tourist visit accommodation was deemed to be 'exempt' and/or 'complying development'. This, despite clear advice in the NSW State Environmental Planning Policy (Exempt and Complying Development Codes) 2008¹⁹, that states:

“1.3 Aims of Policy – This Policy aims to provide streamlined assessment processes for development that complies with specific development standards by – (b) identifying, in the exempt development codes, types of development that are of minimal environmental impact...”

Clearly, the use of residential housing for the purposes of commercial short-term tourist/visitor accommodation sees extreme impacts, including, but not limited to:

‘The adverse impact on the amenity and wellbeing (of neighbours is), as the evidence overwhelmingly demonstrates, severe. (Commercial short-term rentals) offend and undermine the planning regime of the Local Government Area and ultimately of the State’²⁰.

1.3 Short-Term Rental Accommodation Fire Safety Standards

In April 2021 the NSW Government introduced Short-Term Rental Accommodation Fire Safety Standards²¹. Despite multiple requests, no details have been provided as to whether any individual or corporation has been penalised for non-compliance under this legislation. Sandy Chappel, Director, Housing Policy, NSW DPHI, advised via a telephone conversation that it was being left to the 'good will' of STR operators to ensure compliance.

The two most recent examples of fires in STRs that we have been able to identify include:

12 DEC 23: The death of NSW firefighter Michael Kidd, when fire engulfed a house at 591 Gross Vale Road, Gross Vale²²

¹⁴ https://www.neighboursnotstrangers.com/_files/ugd/5a8126_7a310a6a3f704320b5976bc38604abfe.pdf

¹⁵ <https://alpinecountryproperties.com.au/joan-bird/>

¹⁶ <https://www.nsw.gov.au/nsw-government/projects-and-initiatives/property-services-expert-panel?fbclid=IwAR0utjgEYww3I6YhBFsCwEB4Z2wv4eKFXNgam15R8ru4ASws0RCcf7KGNh4#toc-meet-the-panel>

¹⁷ <https://legislation.nsw.gov.au/view/pdf/asmade/epi-2021-175>

¹⁸ http://classic.austlii.edu.au/au/legis/nsw/num_reg/epaaaraar220212021629129o20211075/

¹⁹ <https://legislation.nsw.gov.au/view/whole/html/inforce/current/epi-2008-0572>

²⁰ https://www.neighboursnotstrangers.com/_files/ugd/5a8126_014f2042ec284adbac9785ce01b9213.pdf

²¹ <https://www.planning.nsw.gov.au/sites/default/files/2023-03/stra-fire-safety-standard.pdf>

²² <https://www.fire.nsw.gov.au/incident.php?record=reclBbaTvPDh6O0DW>

08 JUL 23: Mother and two children rescued from an Airbnb rental at Yester Road, Wentworth Falls²³

Note also:

- The death of a four-year-old Victorian child in a fire at a holiday rental property near Adaminaby in July 2015²⁴ (Coroner's Report on Dispensing with an Inquest, and NSW Police – Statement of Police – both attached. (See page 56 onwards)
- Woman transferred to Melbourne in critical condition after house fire which killed son in southern NSW²⁵
- The 20 lives lost at Sandgate and Childers²⁶
- The deaths of Sunil Patel, Jignesh Sadhu and Deepak Prajapati at Footscray²⁷
- The deaths of Leigh Sinclair and Christopher Giorgi in Brunswick²⁸
- The death of Connie Zhang (and Ginger Jiang left permanently incapacitated) at Bankstown²⁹

Federal and NSW legislation is the result of constant modification and upgrading, with the aim being that of protecting residents and those who come to study, work and holiday in NSW. We provide this closing summary from the **Queensland State Coroner** in respect of the Childers **Palace Backpackers Hostel** fire. **Coroner Michael Barnes:**

"It is apparent that since the fire there has been a very high level of commitment and activity across numerous State Government departments and local authorities that has seen a metamorphosis in building fire safety. However, there is always a risk that as the horror of the Palace Backpackers Hostel fire fades from the public consciousness, and new priorities demand the commitment of extra financial and human resources, these reforms will be allowed to degrade. I know the professional and volunteer fire fighters of this State who risk their lives when fires occur would prefer sufficient resources continue to be devoted to prevention. It is incumbent on their superiors and the State Government to continue to provide the leadership and the resources to enable that to happen."

Following the death of Connie Zhang at Bankstown, the NSW Coroner³⁰ made direct recommendations to the Minister for Planning (NSW) and the Minister of Health (NSW). As a result of ministerial discretion, these recommendations, as well as those of multiple other State Coroners, are **circumvented by current legislation**.

That the Department of Planning and the Department of Health develop (jointly or individually), in consultation with Fire and Rescue NSW, Australasian Fire and Emergency Service Authorities Council and the Australian Building Codes Board, the capacity to collect and publish data regarding fire-related injuries for use in the development of fire safety policies and reforms (and see below regarding the collection of non-injury related economic cost data)

That the Department of Planning and the Department of Health (jointly or individually) engage interstate counterparts with the objective of establishing the uniform collection and publishing of data on fire-related injuries for use in the development of fire safety policies and reforms.

To the Minister for Planning (NSW), the Minister for Emergency Services (NSW) and the Minister for Fair Trading (NSW):

That a statutory regime be implemented for the accreditation and auditing of persons or entities that undertake annual fire safety checks and issue annual fire safety statements issued pursuant to the Environmental Planning and Assessment Regulation 2000. Consideration should be given to including Australian Standard AS1851 as part of the statutory regime as an option for meeting maintenance requirements for essential fire safety systems.

That the ministers consider legislative reform to allow lawful powers of entry for appropriately authorised inspectors from the Department of Planning, Office of Fair Trading, Council or FRNSW to inspect property in circumstances where a reasonable suspicion of unlawful occupancy is held.

To the Minister of Planning and the Minister for Emergency Services:

That consideration be given to implementing, in consultation with Fire & Rescue NSW, a statutory requirement that installations of new, or alterations of existing fire hydrant systems be approved by Fire & Rescue NSW prior to the issue of an occupation certificate.

That the Department of Planning, in consultation with Fire & Rescue NSW, develop the capacity to collect and publish data regarding the economic cost of fire including business interruption, property loss, displacement of residents, lost work time due to injuries including smoke inhalation injuries and associated business costs related to insurance payouts and premiums.

²³ <https://www.fire.nsw.gov.au/incident.php?record=recWZ2F8ubJos8vMM>

²⁴ <http://www.abc.net.au/news/2015-07-24/young-child-dies-in-house-fire-while-on-holidays/6645090>

²⁵ <https://www.abc.net.au/news/2015-07-25/woman-transferred-to-melbourne-in-critical-condition-after-fire/6647734>

²⁶ http://www.courts.qld.gov.au/_data/assets/pdf_file/0004/86647/cif-childers-palace-hostel-fire-20060707.pdf

²⁷ https://www.justiceconnect.org.au/sites/default/files/Coroner%27s%20findings%20-%20Patel_0.pdf

²⁸ http://www.coronerscourt.vic.gov.au/resources/2c43be8d-f8f6-41a0-b66a-bcd8d4375f2a/leighsarahsinclair_372706.pdf

²⁹ <http://www.coroners.justice.nsw.gov.au/Documents/Zhang%20findings%2018%2009%2015%20FINAL.pdf>

³⁰ <http://www.coroners.justice.nsw.gov.au/Documents/Zhang%20findings%2018%2009%2015%20FINAL.pdf>

That the Department of Planning, in consultation with the Fire & Rescue NSW, examine the development of a star rating system for new residential building fire safety systems (in addition to mandatory compliance with the NCC regime) with the objective of readily informing the consumer about the overall efficacy of the building's overall fire safety systems and consider strategies to deter non-compliance with the fire safety requirements in residential buildings as provided by the

National Construction Code and Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000.

That the Minister for Planning (NSW), in consultation with the Minister for Emergency Services (NSW) conduct a review of the efficacy of the enforcement powers of FRNSW in relation to fire safety with a particular focus on the effective and proportionate escalation of powers to ensure timely compliance with orders and the consideration of extending or clarifying those powers as they relate to structural matters.

1.4 Short-Term Rental Night Caps

Under Stokes' STR SEPP, a STR 'night cap'³¹ of 180 nights per calendar year was applied to multiple Local Government Areas, including:

- a) The Greater Sydney Region,
- b) Ballina local government area,
- c) Bega Valley local government area,
- d) Byron local government area,
- e) Dubbo Regional local government area,
- f) City of Newcastle local government area,
- g) Land in the Clarence Valley local government area shown edged heavy black on the Clarence Valley Short-term Rental Accommodation Area map,
- h) Land in the Muswellbrook local government area shown edged heavy black on the Muswellbrook Short-term Rental Accommodation Area Map.

Despite multiple requests to Ministers and Parliament, no details have been provided on whether any individual or corporation has been penalised for non-compliance under this legislation.

1.5 Short-Term Rental 'Code of Conduct'

A so-called 'Code of Conduct' - supposedly an attempt to mitigate the severe impacts of mixing commercial STR activity with permanent residents - was passed by Parliament. This, despite Ministers being made very much aware of NSW Supreme Court case law³² which renders this 'Code' completely ineffective.

Despite multiple requests, no details have been provided on whether any individual or corporation has been penalised for non-compliance under this legislation.

1.6 Unlawful Use of Premises

Your attention is again drawn to advice from Andrew Pickles SC to Minister Victor Dominello dated 09 January 2017 (see Annexure A pages 49-54.)

It is considered that the NSW Department of Planning's handling of this issue does not reflect the lawful use to which land may be put under valid zoning restrictions and development consents. These restrictions and consents were clear to all at the time of entering into legal contracts for the purchase of Title Deeds on residential property, where development approvals and restrictions were clear on the use of said property for commercial operations – commercial operations deemed a '**prohibited use**'. Paradoxically, the Rob Stokes STR SEPP is clear:

"...the use of the dwelling for the purposes of short-term rental accommodation must otherwise be lawful."

Said 'commercial use' – short-term holiday rentals - has been judged repeatedly in the NSW Courts as '**unlawful**'.

On 08 April 2008, the Minister for Fair Trading gave the following assurance in the NSW Parliament:

"The Office of Fair Trading would examine any improper or questionable actions undertaken by a(n)...agent, including actions that would be in breach of the consumer protection provisions of that Act...Penalties for breaching the legislation include a range of disciplinary actions from a reprimand to cancellation of a licence and disqualification from involvement in a real estate business³³."

On 14 October 2008, the Minister for Planning gave the following assurance in the NSW Parliament:

³¹ <https://legislation.nsw.gov.au/view/pdf/asmade/epi-2021-175>

³² <http://www7.austlii.edu.au/cgi-bin/viewdoc/au/journals/PrivLawPRpr/1996/8.html>

³³ Answer received on 8 April 2008 and printed in Questions & Answers Paper No. 57.

Latest Airbnb Figures - InsideAirbnb

As at 12/12/23, across Greater Sydney, of the 25,480 Airbnb listings only 48.8% list a license number³⁹... and large numbers see license details replicated across multiple properties

(Figures below are listed alphabetically by Local Government Area, as at December 2023)

InsideAirbnb NSW Data Trends as at December 2023				InsideAirbnb NSW Data Trends as at December 2023			
	Apr-16	Dec-23	% Increase		Apr-16	Dec-23	% Increase
Albury				Blaney			
Entire home/apt	33	210	636%	Entire home/apt	11	60	545%
Hotel		1		Private room		11	
Private room		25		Blue Mountains			
Armidale Dumaresq				Entire home/apt	299	1,053	352%
Entire home/apt	19	97	511%	Private room		118	
Private room		23		Bogan			
Ashfield				Entire home/apt	2	5	250%
Entire home/apt	36	138	383%	Bombala			
Private room		7		Entire home/apt	3	8	267%
Auburn				Private room		1	
Entire home/apt	41	323	788%	Boorowa			
Private room		117		Entire home/apt	2	12	600%
Shared room		7		Private room		3	
Ballina				Botany Bay			
Entire home/apt	175	772	441%	Entire home/apt	57	243	426%
Private room		75		Private room		230	
Balranald				Shared room		4	
Entire home/apt	1	2	200%	Bourke			
Bankstown				Entire home/apt	1	4	400%
Entire home/apt	14	72	514%	Private room		3	
Private room		99		Brewarrina			
Shared room		2		Entire home/apt	1	1	0%
Bathurst Regional Council				Broken Hill			
Entire home/apt	33	318	964%	Entire home/apt	20	105	525%
Private room		31		Private room		7	
Bega Valley				Burwood			
Entire home/apt	209	724	346%	Entire home/apt	8	116	1450%
Private room		38		Private room		87	
Bellingen				Shared room		8	
Entire home/apt	63	255	405%	Byron Bay			
Private room		38		Entire home/apt	930	2711	292%
Berrigan				Private room		378	
Entire home/apt	2	26	1300%	Shared room		5	
Private room		5		Cabonne			
Shared room		6		Entire home/apt	7	93	1329%
Blacktown				Camden			
Entire home/apt	8	145	1813%	Entire home/apt	2	51	2550%
Private room		144		Private room		29	
Shared room		6		Shared room		1	
Bland Shire				Campbelltown			
Entire home/apt	2	9	450%	Entire home/apt	7	56	800%
Private room		11		Private room		42	
				Shared room		1	

³⁹ <http://insideairbnb.com/sydney>

	Apr-16	Dec-23	% Increase		Apr-16	Dec-23	% Increase
Canada Bay				Deniliquin			
Entire home/apt	72	219	304%	Entire home/apt	2	11	550%
Private room		142		Dubbo			
Shared room		5		Entire home/apt	7	154	2200%
Canterbury				Private room		28	
Entire home/apt	34	126	371%	Shared room		1	
Private room		123		Dungog			
Carrathool				Entire home/apt	11	131	1191%
Entire home/apt	4	4	0%	Private room		11	
Private room		4		Eurobodalla			
Central Darling				Entire home/apt	142	1,104	777%
Entire home/apt	0	9		Private room		54	
Cessnock				Fairfield			
Entire home/apt	114	888	779%	Entire home/apt	1	84	8400%
Private room		57		Private room		64	
Clarence Valley				Forbes			
Entire home/apt	91	916	1007%	Entire home/apt	5	18	360%
Private room		47		Private room		3	
Cobar				Gilgandra			
Entire home/apt	1	3	300%	Entire home/apt	0	3	
Private room		1		Shared room		1	
Coffs Harbour				Glen Innis Severn Council			
Entire home/apt	127	870	685%	Entire home/apt	10	34	340%
Private room		96		Private room		5	
Shared room		1		Gloucester			
Conargo				Entire home/apt	9	61	678%
Entire home/apt	1	1	0%	Private room		9	
Private room		4		Gosford			
Coolamon				Entire home/apt	278	1839	662%
Entire home/apt	1	2	200%	Private room		77	
Cooma-Monaro				Shared room		1	
Entire home/apt	13	45	346%	Goulburn Mulwaree			
Private room		8		Entire home/apt	13	94	723%
Coonamble				Private room		27	
Entire home/apt	1	5	500%	Greater Hume Shire			
Private room		2		Entire home/apt	1	17	1700%
Cootamundra				Private room		7	
Entire home/apt	4	12	300%	Greater Taree			
Corowa Shire				Entire home/apt	36	324	900%
Entire home/apt	14	81	579%	Private room		39	
Cowra				Shared room		1	
Entire home/apt	1	27	2700%	Great Lakes			
Private room		2		Entire home/apt	112	1371	1224%
				Private room		35	

	Apr-16	Dec-23	% Increase		Apr-16	Dec-23	% Increase
Griffith				Kempsey			
Entire home/apt	1	26	2600%	Entire home/apt	40	659	1648%
Private room		8		Private room		21	
Gundagai				Shared room		1	
Entire home/apt	5	27	540%	Kiama			
Private room		5		Entire home/apt	60	672	1120%
Gunnedah				Private room		32	
Entire home/apt	5	10	200%	Shared room		1	
Private room		5		Kogarah			
Guyra				Entire home/apt	19	72	379%
Entire home/apt	1	8	800%	Private room		82	
Gwydir				Shared room		2	
Entire home/apt	2	3	150%	Ku-ring-gai			
Harden				Entire home/apt	68	169	249%
Entire home/apt	3	20	667%	Private room		156	
Private room		1		Shared room		1	
Hawkesbury				Kyogle			
Entire home/apt	56	259	463%	Entire home/apt	12	45	375%
Private room		27		Private room		8	
Hay				Lachlan			
Entire home/apt	1	15	1500%	Entire home/apt	1	9	900%
Private room		3		Private room		3	
Holroyd				Lake Macquarie			
Entire home/apt	5	48	960%	Entire home/apt	80	589	736%
Private room		36		Private room		45	
Shared room		1		Lane Cove			
Hornsby				Entire home/apt	85	129	152%
Entire home/apt	56	292	521%	Private room		67	
Private room		111		Shared room		3	
Shared room		2		Leeton			
Hunters Hill				Entire home/apt	1	11	1100%
Entire home/apt	20	30	150%	Private room		1	
Private room		30		Leichhardt			
Shared room		6		Entire home/apt	319	452	142%
Hurstville				Private room		145	
Entire home/apt	41	71	173%	Shared room		1	
Private room		76		Lismore			
Shared room		9		Entire home/apt	63	183	290%
Inverell				Private room		48	
Entire home/apt	1	25	2500%	Shared room		1	
Private room		9		Lithgow			
Jerilderie				Entire home/apt	35	198	566%
Entire home/apt	2	2	100%	Private room		17	
Junee				Liverpool			
Entire home/apt	1	4	400%	Entire home/apt	7	108	1543%
				Private room		65	
				Shared room		1	

	Apr-16	Dec-23	% Increase		Apr-16	Dec-23	% Increase
Liverpool Plains				Newcastle			
Entire home/apt	1	13	1300%	Entire home/apt	70	662	946%
Private room		11		Private room		100	
Lochart				North Sydney			
Entire home/apt	2	3	150%	Entire home/apt	430	738	172%
Private room		5		Private room		178	
Maitland				Shared room		6	
Entire home/apt	4	100	2500%	Oberon			
Private room		28		Entire home/apt	8	82	1025%
Manly				Private room		4	
Entire home/apt	624	1070	171%	Orange			
Private room		160		Entire home/apt	54	370	685%
Shared room		2		Private room		41	
Marrickville				Palerang			
Entire home/apt	317	510	161%	Entire home/apt	8	83	1038%
Private room		242		Private room		10	
Shared room		5		Shared room		1	
Mid-Western Regional Council				Parkes			
Entire home/apt	76	498	655%	Entire home/apt	5	44	880%
Private room		37		Private room		12	
Moree Plains				Parramatta			
Entire home/apt	1	2	200%	Entire home/apt	43	242	563%
Private room		6		Private room		202	
Mosman				Shared room		7	
Entire home/apt	191	330	173%	Penrith			
Private room		32		Entire home/apt	15	111	740%
Murray				Private room		53	
Entire home/apt	9	70	778%	Pittwater			
Private room		6		Entire home/apt	93	1086	1168%
Murrumbidgee				Private room		55	
Entire home/apt	1	7	700%	Shared room		2	
Muswellbrook				Port Macquarie-Hastings			
Entire home/apt	2	21	1050%	Entire home/apt	115	796	692%
Private room		4		Private room		75	
Nambucca				Shared room		1	
Entire home/apt	40	276	690%	Port Stephens			
Private room		28		Entire home/apt	92	1582	1720%
Shared room		1		Private room		47	
Narrabri				Shared room		1	
Entire home/apt	1	13	1300%	Queanbeyan			
Private room		9		Entire home/apt	10	43	430%
Narrandera				Private room		21	
Entire home/apt	1	12	1200%	Randwick			
Private room		6		Entire home/apt	971	1239	128%
Narromine				Private room		643	
Entire home/apt	1	8	800%	Shared room		20	
Shared room		4					

	Apr-16	Dec-23	% Increase		Apr-16	Dec-23	% Increase
Richmond Valley				Tumbarumba			
Entire home/apt	2	109	5450%	Entire home/apt	2	31	1550%
Private room		8		Private room		2	
Rockdale				Tumut Shire			
Entire home/apt	68	234	344%	Entire home/apt	6	72	1200%
Private room		248		Private room		13	
Shared room		6		Tweed Shire			
Ryde				Entire home/apt	255	1530	600%
Entire home/apt	58	294	507%	Private room		153	
Private room		189		Upper Hunter			
Shared room		14		Entire home/apt	14	42	300%
Shellharbour				Private room		5	
Entire home/apt	6	208	3467%	Shared room		1	
Private room		12		Upper Lachlan Shire			
Shoalhaven				Entire home/apt	11	60	545%
Entire home/apt	412	4,011	974%	Private room		3	
Private room		130		Uralla			
Singleton				Entire home/apt	5	27	540%
Entire home/apt	42	227	540%	Private room		1	
Private room		42		Wagga Wagga			
Snowy River				Entire home/apt	7	259	3700%
Entire home/apt	113	1294	1145%	Private room		49	
Private room		70		Wakool			
Strathfield				Entire home/apt	3	9	300%
Entire home/apt	24	93	388%	Walcha			
Private room		76		Entire home/apt	3	9	300%
Shared room		5		Walgett			
Sutherland Shire				Entire home/apt	2	15	750%
Entire home/apt	125	435	348%	Private room		4	
Private room		65		Warren			
Sydney				Entire home/apt	0	2	
Entire home/apt	2532	3993	158%	Warrangah			
Private room		1459		Entire home/apt	635	1159	183%
Shared room		91		Private room		189	
Tamworth Region				Shared room		2	
Entire home/apt	45	195	433%	Warrumbungle Shire			
Private room		46		Entire home/apt	5	41	820%
Temora				Private room		12	
Entire home/apt	2	22	1100%	Waverley			
Private room		16		Entire home/apt	1995	2302	115%
Tentrfield				Private room		717	
Entire home/apt	7	57	814%	Shared room		28	
Private room		16		Weddin			
The Hills Shire				Entire home/apt	3	4	133%
Entire home/apt	26	197	758%	Private room		2	
Private room		110					
Shared room		3					

1.9 Residential Vacancy Rates by Region

(Feb 2024) - "Sydney's vacancy rate fell to a new record low of 0.8% due to a record low level of supply..."⁴⁰

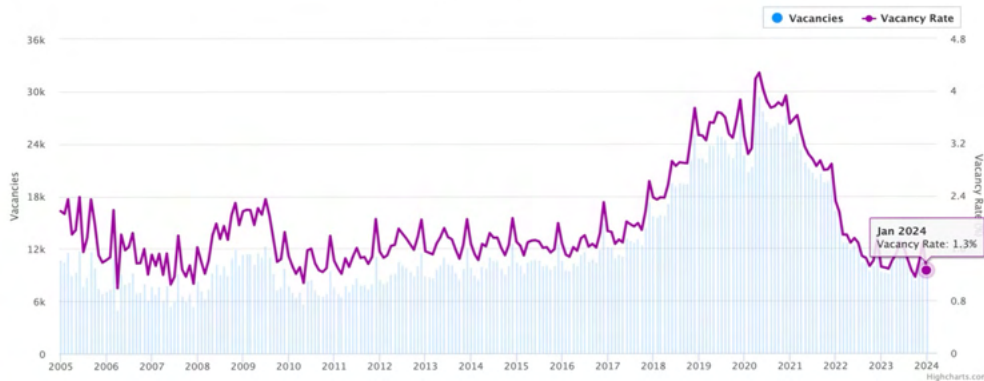
To put this figure into perspective, a vacancy rate of around 3% is generally considered balanced. As of January 2024, even a rate of 1.3% reflects a significant tightening in the market, which leads to rising rental prices.



RESIDENTIAL VACANCY RATES

CITY: SYDNEY

Residential Vacancy Rates
Source: SQM Research



The following chart lists the number of homes available for residential tenancies by region, as of January 2024⁴¹.

REGION	Jan-24	% of total homes
Blue Mountains	61	1.1%
Broken Hill/Dubbo	125	1.1%
Canterbury Bankstown	301	0.7%
Central Coast	339	0.8%
Central Tablelands	347	1.6%
Eastern Suburbs	1422	1.4%
Hunter Region	954	1.1%
Inner West	1196	1.2%
Liverpool	324	0.7%
Lower North Shore	240	1.5%
Murray Region	159	0.9%
North Coast	744	1.2%
Northern Beaches	274	1.0%
Parramatta	908	1.1%
Riverina	228	0.9%
South Coast	819	2.5%
South Western Sydney	274	0.9%
St George	491	1.2%
Sutherland Shire	143	0.7%
Sydney CBD	482	4.2%
Tamworth	343	1.6%
The Hills District	737	2.1%
Upper North Shore	1422	1.9%
Western Sydney	2865	1.1%
Wollongong	680	1.0%

⁴⁰ <https://www.domain.com.au/research/vacancy-rates-february-2024-1266500/>

⁴¹ <http://sqmresearch.com.au>

1.10 National Construction Codes – circumvented by current SEPP, fault of ministerial discretion

National Construction Codes of Australia Class 1(a) single dwellings only:-

1. Complying Development: Maximum 12 occupants - all National Construction Code Standards for Class 1(b) buildings must be met plus Development Approval obtained. No 'Exempt Development'.
2. Development Consent: Over 12 occupants – Development Approval required, and all National Construction Code Standards for Class 1(b) Class 3 buildings must be met. No 'Exempt Development'.
3. Night Caps: Staffed by a licensed Owner/Occupier ("home sharing" activity), 365 nights per year permitted in Class 1(b) or Class 3 buildings.
4. Development Consent Conditions: National Construction Codes of Australia Class 2 residential flat dwellings/strata schemes that have development consent conditions, however expressed, that prohibit STHLs, the prohibition must be allowed to continue in force indefinitely.
5. Services NSW: To create and manage registers.
6. Services NSW: To issue owner/occupier with a registration number/license - similar to a drivers licence number. Maximum one licence per individual. All entries to include: a) Landlord's name, b) Landlord's address (permanent place of residence), c) Contact information, d) URL,
7. Services NSW: To issue property registration number - similar to a car registration number. Maximum one registration per individual. In addition, and as per vehicle registrations, Services NSW's file to contain information on the property in question in that it complies with the required construction codes Class 1(b) or Class 3, fire and bush fire regulations, and that it has the mandatory insurances to operate as a STHL.
8. Services NSW: A Public Register displaying license numbers and address of all certified STHL properties to be open to public access.
9. NSW State Government: To reinforce current and all relevant legislation, with penalties and jail terms to apply when licensing and other areas of compliance are infringed.
10. Platform Accountability: Platforms must remove all listings that do not provide a verified, Services NSW license number. Failure to comply: Penalties and jail time, in line with current Environmental Planning and Assessment Act, Division 9.6 Criminal offences and proceedings¹ – mandated. Platforms mandated to share data, including, booking information/records, with ATO, State and Local Government plus NSWFR. All listings and other advertisements must clearly display the license holder's number and registration number of the property.
11. License Fees: Annual fire safety inspection charges, commercial rating and land tax is payable on all rooms used for STHL. This is to cover administrative expense plus enforcement action against platforms that fail to delist illegal STHLs.
12. Local Government Authority Commercial Rates: To finance compliance inspections and enforcement action against those found to be engaged in the "Illegal Use of Residential Premises".

(As per the NSW Land and Environment Court Act¹, Section 20(2) (a) to enforce any right, obligation or duty conferred or imposed by a planning or environmental law of a development contract, the LEC has judged that a failure by a Local Government Authority to enforce residential zoning: "On any view, this is unsatisfactory and amounts to an effective abrogation by the council of its fundamental duties and responsibilities. These duties include, amongst other things, to manage development and coordinate the orderly and economic use of land within the area under its control. By leaving it to the Court to determine this important issue, the council, by its inaction, has, in my opinion, failed to fulfil its core functions and has failed its constituents¹."

And

Section S124 of the NSW Local Government Act¹ should be amended to strengthened orders in relation to illegal STHL premises.)

1.11 Extracts from NSW Land & Environment Court case law judgments – circumvented by current SEPP, fault of ministerial discretion

THE LAND AND ENVIRONMENT COURT OF NEW SOUTH WALES

Under the Environmental Planning and Assessment Act 1979 No 203, a person who a) aids, abets, counsels or procures another person to commit, or b) conspires to commit, an offence against this Act or the regulations arising under any other provision is guilty of an offence against this Act or the regulations arising under that provision and is liable, on conviction, to the same penalty applicable to an offence arising under that provision.

Since DestinationNSW's August 2015 partnership with Expedia/Stayz, one can find no record of penalties applied for the offence of the "Illegal Use of Residential Premises" for STHLs.

Following is a small sample of extracts from NSW case law judgments:

"For these reasons I find that there is a fundamental incompatibility between a mix of residential and serviced apartments that share the same floor and access points."

[2013] NSWLEC 61 (2 May 2013)⁴² Jurisdiction Class 4

ZONE NO. 2(a) RESIDENTIAL

Objectives of the zone

The objectives of Zone No. 2(a) are:

- (a) to make provision for the orderly and economic development of suitable land for a variety of low density housing forms which are essentially domestic in scale and which have private gardens; and
- (b) to provide for other uses, but only where they:
 - (i) are compatible with a low density residential environment and afford services to residents at a local level; and
 - (ii) are unlikely to adversely affect residential amenity or place demands on services beyond the level reasonably required for low scale housing.

The Use of the Property (Short-Term Holiday Rental Accommodation) is Prohibited Within the Zone Because it is Not for the Purpose of a "Dwelling-house".

(An occupancy) granted to persons who are residing in a group situation for periods of a week or less for the purposes of bucks and hens nights, parties, or for the use of escorts or strippers, is, in my opinion, not consistent with a use or occupation by a family or household group in the ordinary way of life, and therefore, not consistent with the use of the property as that of a "dwelling house".

...regard must be had to the notion of "domicile" contained within it...and the critical element of permanence. Inherent within the term "domicile" is, as a long line of authority in this jurisdiction has established, the notion of a permanent home or, at the very least, a significant degree of permanence of habitation or occupancy.

(In Law) the place where one has his home or permanent residence, to which if absent, he has the intention of returning.

...the facts disclose an absence of any permanent habitation or occupation. (Occupancies) of no more than a week are antithetical to this concept.

The evidence discloses that the use to which the property is being put – STHL – in fact "adversely affect[s] residential amenity" and "places demands on services, on the police and the council in particular, by having to deal with complaints relating to its use, in a manner well "beyond the level reasonably required for low scale housing".

(The rental of the property) as holiday accommodation for periods of a week or less to persons using or occupying it other than in the ordinary family or household way, does not constitute a "domicile", does not constitute a "dwelling", and therefore, does not constitute a "dwelling-house" for the purpose of item 2 in the 2(a) Residential Zone. The use of the property not being otherwise permissible, it is prohibited within the Zone and it constitutes development in breach of s76B of the EPAA.

...the property continued to be let to large groups of people who engaged in antisocial behaviour. This behaviour included shouting, screaming obscenities, strippers, escorts, who appeared topless in full view on the deck of the property, and the discovery of shards of a broken glass on his property...the antisocial behaviour often continued into the early hours of the morning, intruding upon the sleep of the family...the family have vacated their house in order to avoid the disruptive behaviour during weekends and school holiday periods...complaints to the police and the council...have not resulted in the diminution or cessation of either.

Before taking a booking for the property she emails prospective tenants a copy of the House Rules and the Stayz Holiday House Code of Conduct. It is only once the prospective tenant emails back confirming that they have read, understood and agreed to abide by these Rules and the Code of Conduct, that she confirms their booking. Moreover, prior to the booking commencing she meets with the tenants and ensures that they sign the House Rules. She also verbally advises them of the House Rules to ensure that they completely understand what is required of them with respect to their behaviour while they are occupying the property. In addition, she takes their licence details, confirms their identity, and takes a cash bond;

⁴² <http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWLEC/2013/61.html?stem=0&synonyms=0&query=dobrohotoff>

The local police have confirmed that no fines or convictions have been recorded with respect to the property.

She readily agreed that she could not guarantee compliance with the House Rules or the Code of Conduct. (She) stated, "I have no control over any other person do I really, in realist [sic], I can only control my own conduct I can't control other – other people's conduct."

It appears that the council has been content for the Court to resolve the matter. On any view, this is unsatisfactory and amounts to an effective abrogation by the council of its fundamental duties and responsibilities. These duties include, amongst other things, to manage development and coordinate the orderly and economic use of land within the area under its control.

By leaving it to the Court to determine this important issue, the council, by its inaction, has, in my opinion, failed to fulfil its core functions and has failed its constituents.

[1992] NSWLEC 43 (3 July 1992)⁴³ Jurisdiction Class 4

The decision of the Court of Appeal (as was the case of this Court's original decision) in terms, concerned, and only concerned, the question of the proper construction of the development consent granted by the Council on 19 January 1960 for the erection of a residential flat building and whether the Respondent's use fell within or beyond the ambit of that consent, property construed.

At first blush the Respondent's application appears to come into full head-on collision with long established principles which promote finality in litigation.

However upon more mature reflection I do not think in the present circumstances that the Respondent's attempt to re-open its case offends these long established and salutary principles. In my judgment the Respondent did not act unreasonably in submitting to the statement of agreed facts and more particularly to the agreed fact that the relevant development consent was that granted by the Council in January 1960 to the erection of a residential flat building. It is a notorious fact that the existence of development consents granted many years ago is often a most difficult matter to establish.

The definition of "residential building" requires nothing more than use of human habitation. However, it includes within its terms descriptions of buildings or usages involving different kinds of human habitation. The kind of human habitation required to satisfy each of these will vary according to the nature of each of them and will, inter alia, require different degrees of permanency. Thus, a residential hotel may have a smaller degree of permanence than a residential club or a hostel. It is, I think, not inconsistent with the thrust of the definition that there should be within it a kind of category of residential building which envisages a significant degree of permanency of habitation or occupancy."

It only remains to note more particularly the effect on the Respondent's use of the new governing planning instrument. When it originally came into force on 3 November 1989 (see the Government Gazette of that date) the North Sydney Local Environmental Plan expressly permitted, subject to the obtaining of development consent, the carrying out of development on land within Zone No 2(c) (which includes the land upon which the "Blues Point Tower" building is erected) for the purposes of "serviced apartments" which was (and remains) defined as follows:

"serviced apartment" means a building containing two or more dwellings which are cleaned and serviced by the owner or manager of the building or the owner's manager's agent, and which provides short-term accommodation for travellers or tourists but does not include:

a hostel or a building or place elsewhere specifically defined in this clause;..."

However only six weeks later North Sydney Local Environmental Plan 1989 (Amendment No 1) was made (see Government Gazette No 124 of 22 December 1989). One of its express aims was:

"(c) to prohibit serviced apartments on land in Zone No 2(c)..."

This aim was effected by suitable amendment to cl 9 by deleting reference in item 2 ("only with development consent") to "serviced apartments" with the result that that purpose became an absolutely "prohibited" purpose).

For all the foregoing reasons I conclude that the Respondent's use:

- (i) is relevantly use for the purpose of "serviced apartments";
- (ii) is prohibited by the terms of cl 9 of the North Sydney Local Environmental Plan 1989; and
- (iii) constitutes a breach of the Environmental Planning and Assessment Act 1979.

Essentially the Court is being asked to pass over, this express prohibition and the Respondent's breach thereof, in the exercise of its statutory discretion, broad and salutary though that discretion be: cf *Warringah Shire Council v. Sedevcic* (1987) 10 NSWLR 335.

1. Findings supporting the grant of a remedy

- i. the statutory prohibition on "serviced apartments" development within Zone No 2(c) can be supported by planning principles concerning urban consolidation, and promoting residential amenity;
- ii. the breach of the Environmental Planning and Assessment Act 1979 by the Respondent's use is contrary to the planning principles referred to in (i) though the actual harm caused by that contrariety is not great;

⁴³ https://docs.wixstatic.com/ugd/5a8126_d5be4877a647493fb66b7ceb6aafa86c.pdf

- iii. the Respondent's use, if unchecked, has the further potential planning detriment of creating a precedent for other serviced apartment uses of residential flat buildings within the Municipality of North Sydney; and...

I cannot regard, as the Respondent is inviting me to, the relevant breach of the Environmental Planning and Assessment Act 1979, as merely technical. The Respondent's use involves a clear breach of an absolute prohibition on a particular type of development effected as recently as December 1989.

In all the circumstances, I intend to grant the permanent injunction claimed by the Applicant to restrain the Respondent's unlawful use.

[2001] NSWLEC 89 10086 of 2001 (06 July 2001)⁴⁴ Jurisdiction Class 4

The use of the premises for short-term accommodation is a non-residential use, and is prohibited within the Residential 2(c) zone; and The unlawful use of the premises is causing loss of amenity to the immediate adjoining neighbours.

His Honour determined that the term 'residential building' envisages 'a significant degree of permanency of habitation or occupancy'.

"I have discussed your question regarding the requisite degree of permanency required for you to lawfully use your unit in the 2(c) Residential zone with a senior planner. The minimum length of time for a person(s) to occupy the unit should be six (6) months"

This time period should satisfy the degree of permanency for the use to be classified as residential."

Accordingly, adopting council's contention, any use of residential accommodation for a period of less than six months duration would constitute a prohibited use in the residential zone. Interpreted literally the order would prohibit the applicant from using the home unit for... 'short-term accommodation' by tourists.

Council's determination that use of residential premises for periods of less than six months does not constitute a residential use (and) has no statutory basis.

...the use of the premises was prohibited because the home units were occupied by third parties as serviced apartments analogous to a hotel use, or a commercial use. Such use is quite different to 'short-term accommodation' by an owner of his or her home unit.

[2003] NSWLEC 2, 40002 of 2002 (24 September 2002)⁴⁵ Jurisdiction Class 4

The Council has argued that, following the grant of Development Consent 19/60 in February 1960 pursuant to the County of Cumberland Planning Scheme Ordinance (the Ordinance), the building could be used as a residential flat building and continues to be able to be used only on that basis. By that submission, the Council means that the use of the flats in the building should be as a permanent domicile or home.

The Council argued the Respondents had been using (their unit) for holiday and short-term accommodation and that activity is not a permitted use of the flat in the building given the existing development consent.

Under the relevant local environmental planning instruments...the building is in a Zone 2(c), Residential zone. The planning tables in the LEPs for that zone shows that holiday and short-term accommodation is prohibited development.

It seems to me the 2000 LEP is clear on what is permitted and not permitted in this zone...

In the end, my conclusion is that the meaning of the consent, though not determined by, is to be read consistently with the use of language in the relevant definitions...The definition of "residential building" requires nothing more than use for human habitation. However, it includes within its terms descriptions of buildings or usages involving different kinds of human habitation. The kind of human habitation required to satisfy each of these will vary according to the nature of each of them and will, inter alia, require different degrees of permanency... It is, I think, not inconsistent with the thrust of the definition that there should be within it a kind of category of residential building which envisages a significant degree of permanency of habitation or occupancy.

The description of a flat as a "dwelling" or a "domicile" carries with it the notion of that degree of permanency.

The precise extent of the short-term use of (the Unit) is impossible to quantify in terms of the evidence presented to the Court, but it would appear that it has been considerable in terms of a large number of people using (the unit) for short-term accommodation.

If the evidence established that such use was being conducted as a commercial activity...[that is, the short-term accommodation use], it would prima facie constitute a prohibited use in a residential 2(c) zone.

[2008] NSWLEC 88, 10576 of 2006⁴⁶ (02 March 2007) Jurisdiction Class 4

Condition 6 of the consent stated that the accommodation within the building on levels 1 to 8 must not be used for the purposes of a "hotel, motel, serviced apartments, private hotel, boarding house, tourist accommodation or the like..."

⁴⁴ <https://www.parliament.nsw.gov.au/ladocs/other/10065/Answer%20to%20question%20on%20notice%20Sutherland%20Shire%20Council.pdf>

⁴⁵ <https://www.parliament.nsw.gov.au/ladocs/other/10065/Answer%20to%20question%20on%20notice%20Sutherland%20Shire%20Council.pdf>

⁴⁶ https://docs.wixstatic.com/ugd/5a8126_3d8a03bfe9e742a2a1986b7e676f90a2.pdf

The applicant lodged Development Application...for the dual use of all apartments on levels 1 to 8 for residential and serviced apartments. The council refused the application.

Mixed-use development means a building or buildings in which two or more uses are carried out.

Residential accommodation in Central Sydney means a building or part of a building that provides permanent or long-term accommodation, and includes residential flat buildings, dwellings, boarding houses, hostels, student accommodation and the like.

Serviced apartment in Central Sydney is a form of tourist and visitor accommodation and means a building or part of a building that provides self-contained accommodation which is serviced or cleaned by the owner or manager of the apartments or the owners or managers agents.

Chapter 2 of the LEP 2005 provides requirements for Central Sydney. Clause 33 states that before consenting to development, a consent authority must have regard to the objectives of the zone Clause 36 provides objectives for the City Centre zone. The relevant objectives are:

- a. to encourage Central Sydney's role and growth as one of the Asia-Pacific regions principal centres for finance, commerce, retailing, tourism, cultural activities, entertainment and government, and
- b. to permit a diversity of uses which reinforce the multi-use character of Central Sydney, and
- c. to facilitate the development of buildings and works that are scale and character consistent with achieving the other objectives of this zone, and
- d. to provide for increased residential development with appropriate amenity and to ensure the maintenance of a range of housing choices, and

Central Sydney Development Control Plan 1996 (DCP 1996) also applies. Clause 2.13.1 states:

The consent authority should not consent to a mixed-use development which includes two or more dwellings unless it is satisfied that separate lift access and a separate entrance will be provided for use exclusively for the dwellings.

Clause 6.1 provides amenity requirements for residential buildings and serviced apartments. The objective is:

To enhance the amenity of residential buildings and serviced apartments in terms of daylight, solar access, ventilation, privacy, outlook, noise, safety, recreation facilities and storage.

The council filed a Statement of Issues containing 3 issues. The issues relate to:

- (1) the impact on the amenity of future residents, including shared lift access (Issues 1 and 2),
- (2) the precedent for similar applications (Issue 3).

...raised a further issue... He submitted under the terms of an existing s 88E Instrument, the site cannot be used "for any purposes other than as a "residential building" as that term is defined in the Central Sydney Local Environmental Plan 1996". As the proposed development is inconsistent with this requirement and as LEP 2005 does not contain any overriding provisions, the proposed development is prohibited.

Are the uses compatible?

The council officers report makes the following comments:

There is a difference in the living activity patterns and the behaviour of short and long-term residents, and the responsibility to resolve and control any conflict between the uses and occupants falls entirely upon the serviced apartment managing agency. Short-term residents have no long-term interest in the maintenance of the amenity within the building or the surrounding area....

I accept the council's position on (in)compatibility between residential accommodation and serviced apartments. While both are residential in nature, the fact that they are separately defined in the LEP 2005 would suggest that they have different characteristics. I agree that there is likely to be a difference in behaviour, living and activity patterns between short-term and long-term occupants. A conclusion that short-term occupants are likely to have less concern about maintaining of the amenity of the building than long-term occupants is a finding that can be reasonably made, in my opinion. That is not to say that all short-term occupants are likely to have less concern about maintaining the amenity of the building than long-term occupants but only that there is likely to be a greater proportion who use the building differently through their behaviour and activities in and around the building.

The greater frequency of short-term occupants in and out of the building is potentially disruptive for long-term occupants, particularly at times such as early in the morning or late at night. These movements may not create excessive noise but may occur at a time when long-term occupants reasonably expect not to be disturbed. These disturbances could relate to matters such as doors closing, noise from adjoining apartments and general conversation in common areas. While there may be measures, such as door closers to minimise potential noise impact, it would be unlikely that all sources of noise could be removed.

In general terms, long-term occupants would generally have a greater expectation and promote a more quiet and peaceful amenity than short-term occupants, and they would regard their apartment as a home compared to a temporary place to reside for short-term occupants. Long-term occupants are also likely to be less tolerant of disturbances and likely to be more concerned with activities that may potentially cause damage to the building, as they would have a greater feeling of ownership and ultimately be responsible through the Owners Corporation for repairs. While Mr Crane states that there is no evidence to support such a finding, I am satisfied that by simply adopting a common sense approach, the council's conclusion of incompatibility between the two uses can be supported.

For these reasons I find that there is a fundamental incompatibility between a mix of residential and serviced apartments that share the same floor and access points.

[2007] NSWLEC 382, 10576 of 2006⁴⁷ (18 June 2007) Jurisdiction Class 4

The Council filed and served a statement of issue...as required by the Court's direction. The statement identified the first issue, in part, as follows:

Issue 1 – Impact on Amenity of Residents

1. The proposed use would have unacceptable impacts on the amenity of permanent residents, especially in relation to security, potential noise and servicing of the serviced apartments.

The appeal commenced on the site, at which various residents gave evidence. The Council tendered notes of the residents' evidence. That evidence included submissions from: ...Mr Staveley, the national manager of the Tourism Transport Forum who was concerned about the outcomes in terms of an "uncontrolled ...pattern of usage".

All available evidence suggests that serviced apartments result in a loss of amenity for permanent residents....

In fact allowing "dual use" would combine the worst features of Strata Plan 61897's operations as residential apartments and as serviced apartments. Both Strata Plan 61643 and Strata Plan 61897 residents would get an intensity of use comparable to a continuously occupied hotel, but without the high degree of management supervision and maintenance association with its former status as a hotel.

The applicant has not identified any error of law in the Commissioner's decision. Accordingly, the appeal is dismissed.

[2008] NSWLEC97, 40389 of 2007⁴⁸ (04 December 2007) Jurisdiction Class 4

...The Council also seeks declarations that a development consent for use of the premises as "flats" does not permit or authorise the use of the premises for "serviced apartments", "hotel" or the like...

4 The Council relied on the affidavit of Mr Moore, Planning Manager of the Council, sworn on 10 August 2007, which identifies the relevant planning instruments applying to the premises now, being the City of Sydney Local Environmental Plan 2005 (CSLEP 2005). Serviced apartments are a permissible use in the City Centre zone subject to obtaining development consent. He refers to the planning issues related to mixed use buildings which have both residential accommodation and serviced apartment uses. There are different impacts due to the short term use of serviced apartments because of the different living and activity patterns and behaviour of guests, greater maintenance required due to guests in serviced apartments and potential impacts on residential amenity.

21 The 1980 development consent should be construed on the basis that "residential flat building" excludes use for serviced apartments. *North Sydney Municipal Council v Sydney Serviced Apartments Pty Ltd & Anor* (1990) 21 NSWLR 532 (the Blues Point Tower case) and *KJD York Management Services Pty Ltd v City of Sydney Council* (2006) 148 LGERA 117 support this approach. This case has similar parameters to the decision of the Court of Appeal in *Blues Point Tower*. The case also falls within the use of a "residential flat building" as "serviced apartments" considered by Lloyd J in *KJD*.

28 The question before the Court now is whether the use of the rooms is for the purposes of "residential" accommodation or for some other purpose, namely short-term accommodation.

I do not therefore consider that the 1980 development consent authorised the use of the premises for serviced apartments. Further support for this approach is found in *Derring Lane Pty Ltd v Port Phillip City Council* (1999) 104 LGERA 92 relied on by the Council, in which Balmford J in the Victorian Supreme Court upheld a determination of the Victorian Planning Tribunal that a motel did not come with the meaning of a residential building. Referring to *Wilcox J in Hafza v Director-General of Social Security* (1985) ASSC 92-052 at 90,607 and *Latham CJ in Commissioner of Taxation v Miller* (1946) 73 CLR 93 at 99, his Honour held at 98:

On that basis, the phrase "residential building" must be taken to refer to a building constructed for the purpose of people dwelling there permanently or for a considerable period of time, or having in that building their settled or usual abode.

[2008] NSWLEC 97, 40389 of 2007⁴⁹ (05 March 2008) Jurisdiction Class 4

The Council also seeks declarations that a development consent for use of the premises as "flats" does not permit or authorise the use of the premises for "serviced apartments", "hotel" or the like, and that the First Respondent, its servants or agents cease carrying out the use of the premises for "serviced apartments", "hotel" or the like until such time as it has obtained development consent.

Where the word "domicile" is employed in the definition of an occupancy use, however termed, the popular and legal meaning of domicile "embod[ies] the idea which is expressed in English by the word 'home' ie permanent home"

⁴⁷ <https://www.caselaw.nsw.gov.au/decision/549f8bb83004262463ada6bc>

⁴⁸ <https://www.caselaw.nsw.gov.au/decision/549f8eb83004262463ae626e>

⁴⁹ <https://www.caselaw.nsw.gov.au/decision/549f8eb83004262463ae626e>

The situation before me in this case is not distinguishable in any material way from the principles in *Blues Point Tower* as applied in *KJD* and I consider I should adopt that reasoning to the effect that “capable of use as a separate domicile” when used as a definition for a “flat” in a “residential flat building” requires that the flat also be used for habitation for a duration suggesting permanency rather than short term use suggested by serviced apartment use. I do not therefore consider that the 1980 development consent authorised the use of the premises for serviced apartments. Further support for this approach is found in *Derring Lane Pty Ltd v Port Phillip City Council* (1999) 104 LGERA 92 relied on by the Council, in which Balmford J in the Victorian Supreme Court upheld a determination of the Victorian Planning Tribunal that a motel did not come with the meaning of a residential building. Referring to Wilcox J in *Hafza v Director-General of Social Security* (1985) ASSC 92-052 at 90,607 and Latham CJ in *Commissioner of Taxation v Miller* (1946) 73 CLR 93 at 99, his Honour held at 98:

On that basis, the phrase “residential building” must be taken to refer to a building constructed for the purpose of people dwelling there permanently or for a considerable period of time, or having in that building their settled or usual abode.

[2010] NSWLEC 181, 40515 of 2009⁵⁰ (30 September 2010) Jurisdiction Class 4

1. A declaration that the Respondent is carrying out development at the premises situated at and known as ‘Oaks Maestri Towers’, 298-304 Sussex Street, Sydney, NSW (‘the Premises’) for the purposes of a ‘serviced apartments’ (‘the said Purpose’) in contravention of the conditions of Development Consents D/97/00499F and D/98/00318H and in breach of s.76A(1) of the Environmental Planning and Assessment Act 1979 (‘the EPA Act’).

The following orders are sought:

2. An Order restraining the Respondent (by itself or through a related entity or agent) from using or permitting the use of the Premises for the said Purpose until development consent for such use is granted pursuant to the EPA Act and such consent is in force.
3. An order restraining the Respondent (by itself or through a related entity or agent):
 - (a) from advertising or holding out the Premises or any part of them as available for the said Purpose; and
 - (b) from leasing or licensing the Premises or any part of them for the said Purpose without first obtaining a development consent specifically authorising the said Purpose.
4. An order that the Respondent pay the Applicant’s costs of these proceedings; and
5. Such further or other orders as this Honourable court deems fit.”

30 LEP 2005 (Exhibit C3, tab 1, at pp47-48) includes the following definitions:

“ Residential accommodation in Central Sydney means a building or part of a building that provides permanent or long term accommodation, and includes residential flat buildings, dwellings, boarding houses, hostels, student accommodation and the like.

Serviced apartment in Central Sydney is a form of tourist and visitor accommodation and means a building or part of a building that provides self-contained accommodation which is serviced or cleaned by the owner or manager of the apartments or the owner’s or manager’s agents.”

31 LEP 1996 includes the following definitions (Exhibit C3, tab 2, at p107-108):

“ Residential building means a building which contains one or more dwellings, and in which the residential component is owner-occupied or occupied by a tenant with a residential tenancy agreement within the meaning of the Residential Tenancies Act 1987.

Serviced apartments means a building containing two or more self-contained dwellings:

- (a) which are used to provide short-term accommodation, but not subject to residential tenancy agreements within the meaning of the Residential Tenancies Act 1987, and
- (b) which are serviced or cleaned by the owner or manager of the apartments or the owner’s or manager’s agents.”

36 The 24 designated serviced apartments were not affected by the October 2001 approval. The most relevant condition of that amended approval is condition 47 (fol 177), in the following terms:

47 The following restrictions apply to that part of the building approved for residential use:

- (a) The residential apartments on levels 1-27 must be used as a permanent residential building only and not for the purpose of a hotel, motel, serviced apartments, private hotel, boarding house, tourist accommodation or the like, other than in accordance with the Central Sydney Local Environmental Plan 1996. (Amended 5 September 2000)
- (b) A restrictive covenant is to be created pursuant to Section 88E of the Conveyancing Act, 1919, restricting any change of use of the land from a ‘residential building’ as defined in the Central Sydney Local Environmental Plan 1996. The covenant is to be

⁵⁰ <https://www.caselaw.nsw.gov.au/decision/549f8daf3004262463ae1f42>

executed prior to building approval under section 68 of the Local Government Act 1993 for the construction of the development, to the satisfaction of Council. All costs of the preparation and registration of all associated documentation is to be borne by the applicant.

- (c) All units approved in the residential building must be either owner occupied or occupied by a tenant with a residential lease under the Residential Tenancy (sic) Act 1987. A certificate signed by the owner or the body corporate (if the development is strata subdivided) or a solicitor (holding a current certificate to practice), must be forwarded to Council within 12 months of the completion of the development, and every 12 months thereafter, certifying that all units approved in the residential buildings are either owner occupied or are subject to residential leases under the Residential Tenancy (sic) Act 1987.”

39 The Council has never granted any development consent for serviced apartments in the Kent Street tower, and relies on the conditions of the consent D/98/00318 H (Exhibit C3, tab 8, and Annexure ‘C’ to McNamara – approved on 11 April 2002, with the plans stamped on the same date).

As the applicant for consent in the DA the subject of the class 1 appeal (see Exhibit R1), announced itself as manager of the serviced apartments...(in its Statement of Environmental Effects at cl 4.2). The way it deals with the units in its care (offering apartments for short term lettings, setting tariffs, taking bookings, maximising income, informing short-term occupants in detail, organising servicing, etc) is clearly to “use” them as serviced apartments, in many cases beyond the conditions of consent.

[2011] NSWLEC 235, 40515 of 2009⁵¹ (07 December 2011) Jurisdiction Class 4

...Council challenged the respondent company in separate but similar proceedings over the alleged unauthorised use by the company of residential units it does not own as serviced apartments. The company essentially argues that the use is carried out by the owners and merely facilitated by (the company).

I concluded in both cases that the company was, in fact, using various units in the respective residential unit blocks as serviced apartments without relevant consent...

The Respondent (by itself or its agent) is restrained...from using the premises situated at and known as... ('the Premises') for the purposes of 'serviced apartments' ('the said Purpose') unless and until development consent for such use is granted pursuant to the EPA Act and such consent is in force.

2. The Respondent (by itself or its agent) is restrained forthwith from:

- a. advertising or holding out the Premises or any part of them as available for the said Purpose; and
- b. leasing or licensing the Premises or any part of them for the said Purpose

unless and until development consent for such use is granted pursuant to the EPA Act and such consent is in force.

1.12 Summary

Multiple Members of the NSW State Parliament have been asked if they would nominate one residential stratum, residential building and/or neighbourhood where residents of our State may be guaranteed to live in a residential setting, unaffected by commercial short-term rentals. None have replied. It seems none can reply.

In our attempt to compile an accurate and relevant submission to this 'Discussion paper', we have repeatedly sought information from NSW Planning and NSW Fair Trading. No replies to multiple, specific questions have ever been forthcoming.

Australia is a signatory on the United Nations' charter on Human Rights, which includes the right to safe, secure, affordable housing. Our homes were zoned, conceived, designed, constructed, certified, advertised and sold, as residential housing - not commercial hotels, motels, tourist accommodation or the like. Respect for the fundamental right to housing and respect for our proprietary rights on residential Title Deeds must be upheld by Government. This is not happening. To put into words how many within our State feel on this issue would most probably cause offence to those reviewing this submission. The distress of residents is palpable.

From a personal perspective – and as an example of one single instance only - in early 2015, the NSW Land and Environment Court issued Orders⁵² banning the “*Illegal Use of Premises*” in my former City of Sydney residential strata building. A 'PENAL NOTICE' was attached to the Orders. In late 2021, I was still receiving almost daily verbal abuse and was the subject of severe provocation within my strata building, due entirely to the City of Sydney's action in the NSW LEC and my engagement with Council at its behest. In December of that year, I sold my home and moved to a nearby building. Records show that the financial costs to me associated with that move were well in excess of \$80,000; this figure included payment to the NSW Government in the form of Stamp Duty on my current residential dwelling. What cannot be specifically calculated is the impact on an individual of these years of constant threats and harassment.

⁵¹ <https://www.caselaw.nsw.gov.au/decision/54a6364e3004de94513d91cc>

⁵² https://www.neighboursnotstrangers.com/_files/ugd/5a8126_1e32ab553a7f4d1fb34c7f14b3fc9f40.pdf

Residents in our state of New South Wales and elsewhere have suffered years of abuse and are incredibly damaged by this process....

The owners of single-family, free-standing residential dwellings have always had the right to seek neighbours' and Local Council approval, to upgrade their premises for commercial operations in order to operate an accredited Bed & Breakfast, while remaining 'in-house' when clients are present; commercial rates and charges apply.

Former Managing Director of the Tourism and Transport Forum Chris Brown was clear on how this issue must be handled, stating:

“...we will continue to investigate how councils could be mandated to enforce residential planning, zoning or approval to prevent...short-term commercial letting of (residential dwellings). The proliferation of illegal serviced apartments is a huge problem for legitimate tourism accommodation providers, and there remains insufficient scrutiny of this damaging practice.”

And we repeat the judgment of Justice Rachel Pepper of the NSW Land and Environment Court:

“The adverse impact on the amenity and wellbeing of the (neighbouring residents) has been, as the evidence overwhelmingly demonstrates, severe... (The short-term rental of housing) undermines the planning regime of the LGA and ultimately the State.”

The DPHI's own 'discussion paper'⁵³ says:

“The existing regulatory framework for short-term rental accommodation in NSW is purposely 'light touch'.

The existing regulatory framework for short-term rental accommodation in NSW is a clear indication of ongoing and systemic government collusion with the commercial short-term rental industry and outright disregard - nay, contempt - for the fundamental right to housing and contempt in respect of the proprietary rights of Title Deed holders on residential property wanting to live – as is their right – in a residential setting.

Residential housing is for the housing of residents.

State Government must mandate that all Local Government Authorities MUST enforce residential zoning.

Trish Burt
Convener
Neighbours Not Strangers
Email: neighboursnotstrangers@gmail.com

⁵³ [https://shared-drupal-s3fs.s3.ap-southeast-2.amazonaws.com/master-test/fapub_pdf/Discussion+paper+on+short+and+long-term+rental+accommodation+-+NSW+DPHI+\(1\).pdf](https://shared-drupal-s3fs.s3.ap-southeast-2.amazonaws.com/master-test/fapub_pdf/Discussion+paper+on+short+and+long-term+rental+accommodation+-+NSW+DPHI+(1).pdf)

2 Context of this review

2.1 Housing pressures in NSW

The NSW State Government's statements are self-explanatory:

An archived⁵⁴ 2016 State Planning & Environment and Fair Trading document, endorsed by Ministers Anthony Roberts MP and Matt Kean MP, states:

"In 2014 there were an estimated 216,000 STHL (short-term holiday letting) premises in NSW/ACT... The number of listings via online platforms is more than doubling each year between 2011-2015."

And, The NSW State Government's statements in this 'Discussion paper' are also self-explanatory:

- *"Since the end of 2019, advertised prices for long-term rentals in NSW have increased more than 38%."*
- *"The vacancy rate in Greater Sydney was 1.7% in December 2023, below the decade average of 23%. In regional NSW the vacancy rate has fallen even lower."*
- *"...Sydney dwelling prices by the end of 2023 were 28% higher compared to the end of 2019, and prices in the regions are now up 48% over the same period."*
- *"Poor housing affordability in NSW...is likely to worsen in the near term as new dwelling approvals and completions remain subdued."*
- *"The deterioration in housing affordability has coincided with increased demand for social housing and an increase in the number of people sleeping rough."*
- *"The number of priority applicants for social housing...has grown nearly 70% from 4,484 applicants in June 2019 to 7,573 in June 2023. There are now over 55,000 applicants on the NSW Housing Register."*
- *The NSW Statewide Street Count has found the number of people sleeping rough in the state has increased 34% from 2022 to 2023."*
- *"Over the past decade, the short-term rental accommodation market has expanded rapidly in NSW."*
- *"The existing regulatory framework for short-term rental accommodation in NSW is purposely 'light touch'."*
- *"This approach...was informed by a 2016 Parliamentary Inquiry. It found that short-term rental accommodation was generally seen as a low-impact activity... The inquiry did not touch on housing affordability, but found that short-term rental accommodation's contribution to housing pressures at the time was mostly anecdotal."*
- *"The focus of the government has...shifted from addressing guest behaviour and neighbourhood amenity to the effects of short-term rental accommodation on the housing market and housing affordability."*

Indeed, a March 2017 Report by the **Tenants' Union of NSW**⁵⁵ - 'Belonging anywhere' - stated:

"Australia has been described by Airbnb as "the most penetrated market in the world... An alternative use of the phrase at the same time described Sydney and Melbourne as 5th and 6th respectively in the world for 'users' of the site... We acknowledge the impact the growth in short term letting has had on communities in other parts of the world, but from our investigation the same does not appear to be true here."

2.2 Policy considerations for review

The State Government's 'Discussion paper' relies on NSW Fair Trading's register. The 'Discussion paper' states:

"As of January 2024 there are approximately 52,300 dwellings registered for short-term rental accommodation across the state."

A momentary glimpse at **InsideAirbnb** figures for December 2023⁵⁶ shows in Greater Sydney alone:

- 25,480 homes listed on the Airbnb platform
- 12,423 (48.8% only) homes listed a license number (frequent use of one license number across multiple dwellings not highlighted)
- 10,457 (41.0%) homes listed were unlicensed
- 2,600 (10.2%) listings claim to be 'exempt' from licensing requirements

Many STR properties have not been registered with Fair Trading. The STR (g)host can simply mark on a booking platform entry a 'fake' registration number, or state that the property is 'Exempt' from registration.

The 'Discussion paper's' **"Table 1. Areas with the highest concentration of non-hosted short-term rental accommodation registrations"** is misleading, as it relies on figures that in themselves are far from an accurate account of the present situation. The figures quoted are for 'registered' properties only.

⁵⁴ [https://shared-drupal-s3fs.s3.ap-southeast-2.amazonaws.com/master-test/fapub_pdf/Discussion+paper+on+short+and+long-term+rental+accommodation+-+NSW+DPHI+\(1\).pdf](https://shared-drupal-s3fs.s3.ap-southeast-2.amazonaws.com/master-test/fapub_pdf/Discussion+paper+on+short+and+long-term+rental+accommodation+-+NSW+DPHI+(1).pdf)

⁵⁵ <https://files.tenants.org.au/policy/2017-Airbnb-in-Sydney.pdf>

⁵⁶ <http://insideairbnb.com/sydney>

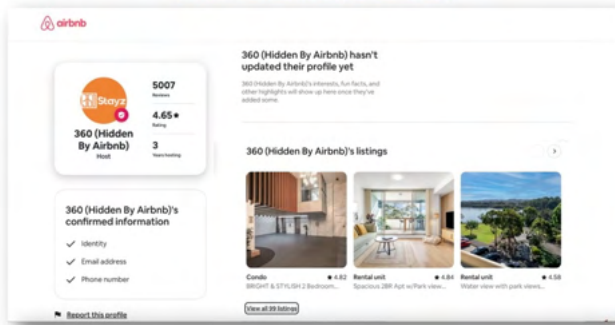
It is disappointing for residents that our State Government’s ‘Discussion paper’ repeatedly quotes figures, based on Fair Trading’s STR register. By way of comparison and correction, the figures added in the chart below in **RED** are courtesy of **InsideAirbnb** and would be available to Government, had a request simply been made:

Local government area	Total private dwellings	Non-hosted short-term rental accommodation dwellings	Percentage of total private dwellings
Byron Shire	15,220	1,259 (2,740 - InsideAirbnb)	8 % (18 %)
Snowy Monaro Regional	10,589	771 (1,294 – InsideAirbnb)	7 % (12 %)
Shoalhaven	55,463	3,418 (4,011 – InsideAirbnb)	6 % (7.25 %)
Kiama	10,371	612 (672 – InsideAirbnb)	6 % (6.5 %)
Eurobodalla	22,827	1,074 (1,104 – InsideAirbnb)	5 % (5 %)
Kempsey	13,104	570 (659 - InsideAirbnb)	4 % (4.75 %)
Port Stephens	34,100	1,472 (1,582 – InsideAirbnb)	4 % (4.65 %)
Waverley	31,190	1,217 (2,302 - InsideAirbnb)	4 % (7.4 %)
Bega Valley	17,546	654 (724 – InsideAirbnb)	4 % (4.15 %)
Mid-North Coast	47,366	1,608 (1,867 - InsideAirbnb)	3 % (4 %)

As well, the number of ‘registered’ properties does not take into account those who list multiple properties under the one registration number. Examples include but are certainly not limited to the following:

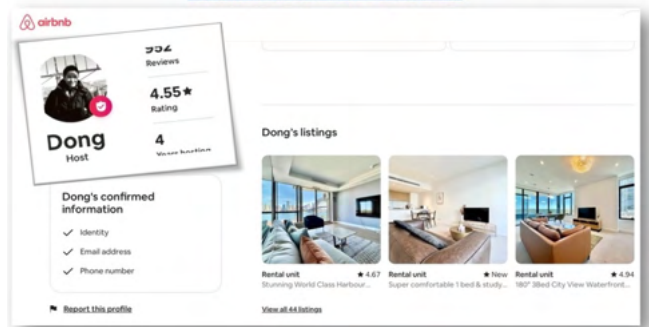
Airbnb (g)host, ‘360’ – identity ”(Hidden By Airbnb)”
Has 99 Airbnb rentals
“Registration number: Exempt”

<https://www.airbnb.com/users/show/382384057>



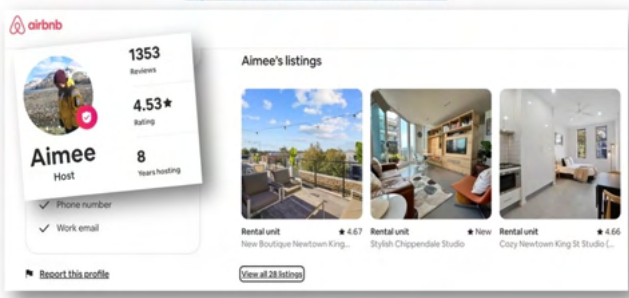
Airbnb (g)host Dong
Has 44 Airbnb rentals
Six have registration numbers.
All others are listed as ‘Exempt’

<https://www.airbnb.com/users/show/324511820>



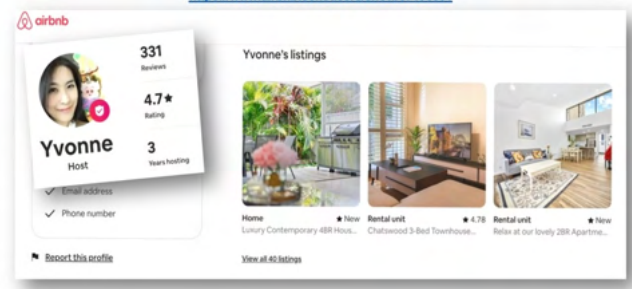
Airbnb (g)host Aimee
Has 28 Airbnb rentals
Four have registration numbers/all others are listed as ‘Exempt’

<https://www.airbnb.com/users/show/70438829>



Airbnb (g)host Yvonne
Has 40 Airbnb rentals
Three homes have registration numbers
The other 37 homes are listed as ‘Exempt’

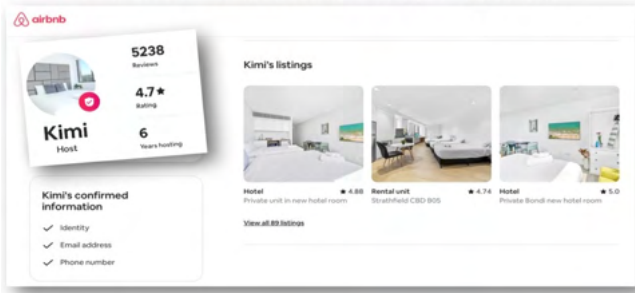
<https://www.airbnb.com/users/show/87196501>



**Airbnb (g)host Kimi
Has 89 Airbnb rentals**

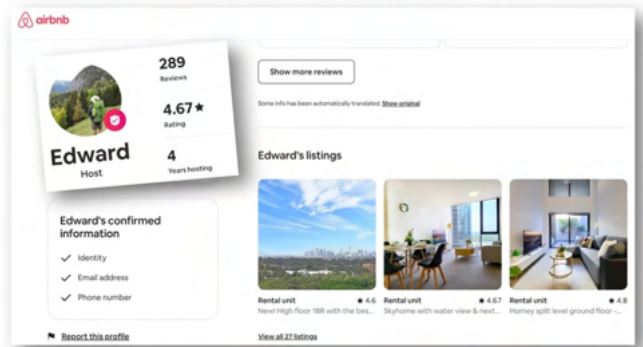
Ashfield properties (bar 2) are registered PID-STRA-49937
Marrickville properties are registered PID-STRA-49442
Burwood properties are registered PID-STRA-27027
Waverley properties are registered as "Exempt"
<https://www.airbnb.com/users/show/91961414>

Airbnb and its hosts circumnavigate legislation



**Airbnb (g)host Edward
Has 27 Airbnb rentals**

All but five dwellings are registered as "Exempt"
Those other five share three license numbers
<https://www.airbnb.com/users/show/92779512>

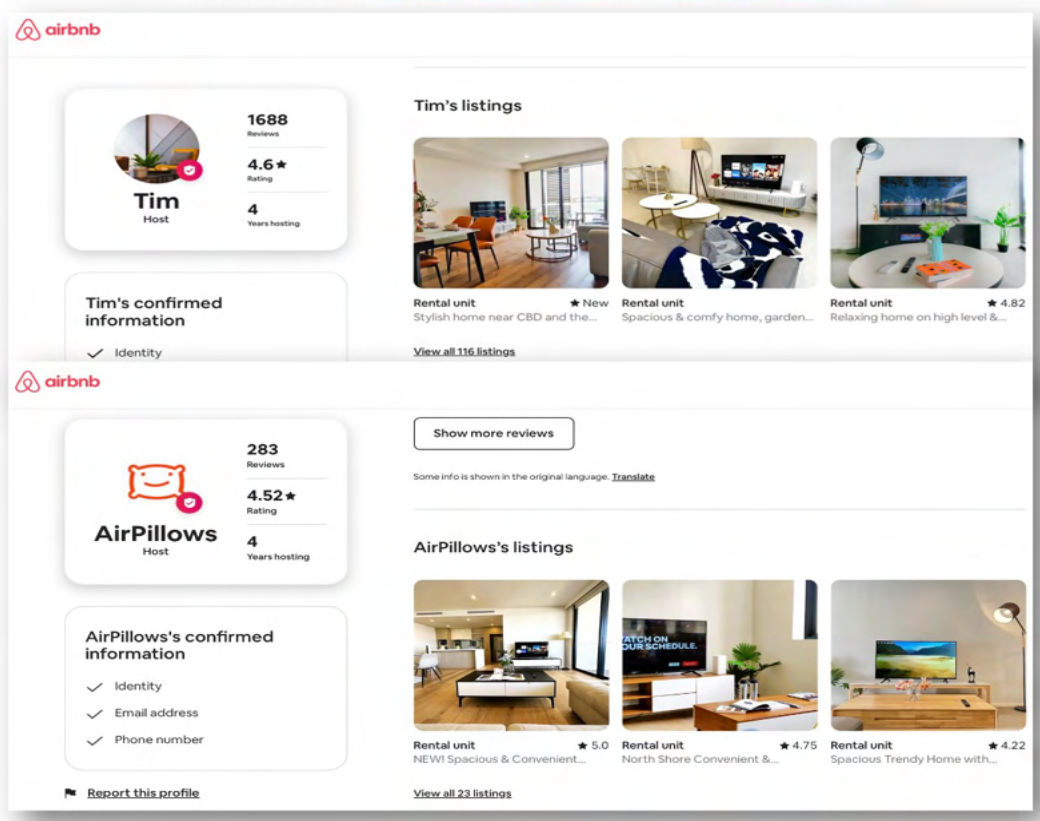


**Airbnb (g)host 'Tim' from Airpillows
Has 116 Airbnb rentals***

**We can see another 23 homes listed under
Airpillows(**)
All appear to be listed as 'Exempt'**

* 'Tim's' listings - <https://www.airbnb.com.au/users/show/301753450>

** Airpillows listings - <https://www.airbnb.com.au/users/show/337363892>



It might have been more helpful if those from the DPIHI had consulted with *InsideAirbnb's* Murray Cox⁵⁷, keeping in mind that the data provided by his organisation reflects those properties listed on Airbnb – and no other platforms. **A count of all NSW Airbnb listings – hotels excluded - as of December 2023, is 105,790.**

The following figures should be noted. The figures quoted are Entire Home/Apartment listings on Airbnb. Another distortion: 'Shared Room' often sees every room in the dwelling operating as a STR = an Entire Home/Apartment.

⁵⁷ <http://insideairbnb.com>

Local government area	Non-hosted short-term rental dwellings As at April 2016	Non-hosted short-term rental dwellings As at December 2023	% increase in entire homes lost
Shoalhaven	412	4,011	974%
City of Sydney	2,532	3,993	158%
Byron Bay	930	2,711	292%
Waverley	1,995	2,302	115%
Gosford	278	1,839	662%
Port Stephens	92	1,582	1,720%
Tweed Shire	255	1,530	600%
Great Lakes	112	1,371	1,224%
Snowy River	113	1,294	1,145%
Randwick	971	1,239	128%
Warringah	635	1,159	183%
Eurobodalla	142	1,104	777%
Pittwater	93	1,086	1,168%
Manly	624	1,070	171%
Blue Mountains	299	1,053	352%

The figures below are Entire Home/Apartment listed on Airbnb; homes listed on other platforms are not captured. (LGAs with less than 100 homes lost are not shown in this summary.) This shows the percentage increase in LGAs between April 2016 and December 2023. (Data courtesy of *InsideAirbnb*):

Local government area	Non-hosted STRs Apr '16 – Dec '23	% increase	Local government area	Non-hosted STRs Apr '16 – Dec '23	% increase
Richmond Valley	2 - 109	5,450%	Greater Taree	36 – 324	900%
Wagga Wagga	7 – 259	3,700%	Auburn	41 – 323	788%
Shellharbour	6 - 208	3,467%	Wyong	116 – 911	785%
Maitland	4 – 100	2,500%	Cessnock	114 – 888	779%
Dubbo	7 - 154	2,200%	Eurobodalla	142 – 1,104	777%
Blacktown	8 – 145	1,813%	Hills Shire	26 – 197	758%
Port Stephens	91 – 1,582	1,720%	Penrith	15 – 111	740%
Kempsey	40 – 659	1,648%	Lake Macquarie	80 – 589	736%
Liverpool	7 - 108	1,543%	Port Mac Hastings	115 – 7896	692%
Burwood	8 – 116	1,450%	Nambucca	40 – 276	690%
Great Lakes	112 - 1,371	1,224%	Coffs Harbour	127 – 870	685%
Dungog	11- 131	1,191%	Orange	54 – 370	685%
Pittwater	93 – 1,086	1,224%	Wingecarribee	110 – 741	674%
Snowy River	113 – 1,294	1,145%	Gosford	278 – 1,839	662%
Kiama	60 – 672	1,120%	Mid-West. Regional	76 498	655%
Clarence Valley	91 – 916	1,007%	Albury	33 – 210	636%
Shoalhaven	412 – 4,011	974%	Tweed Shire	255 – 1,530	600%
Bathurst	33 – 318	964%	Lithgow	35 – 198	566%
Newcastle	70 - 662	946%	Parramatta	43 – 242	563%

On 27 November 2023, the **ABC** released a video: ‘Alan Kohler brings you the latest financial news’⁵⁸. Here is a transcript of that presentation:

“...and finally, you might be interested in this graph of Airbnb listings versus long-term rental listings.

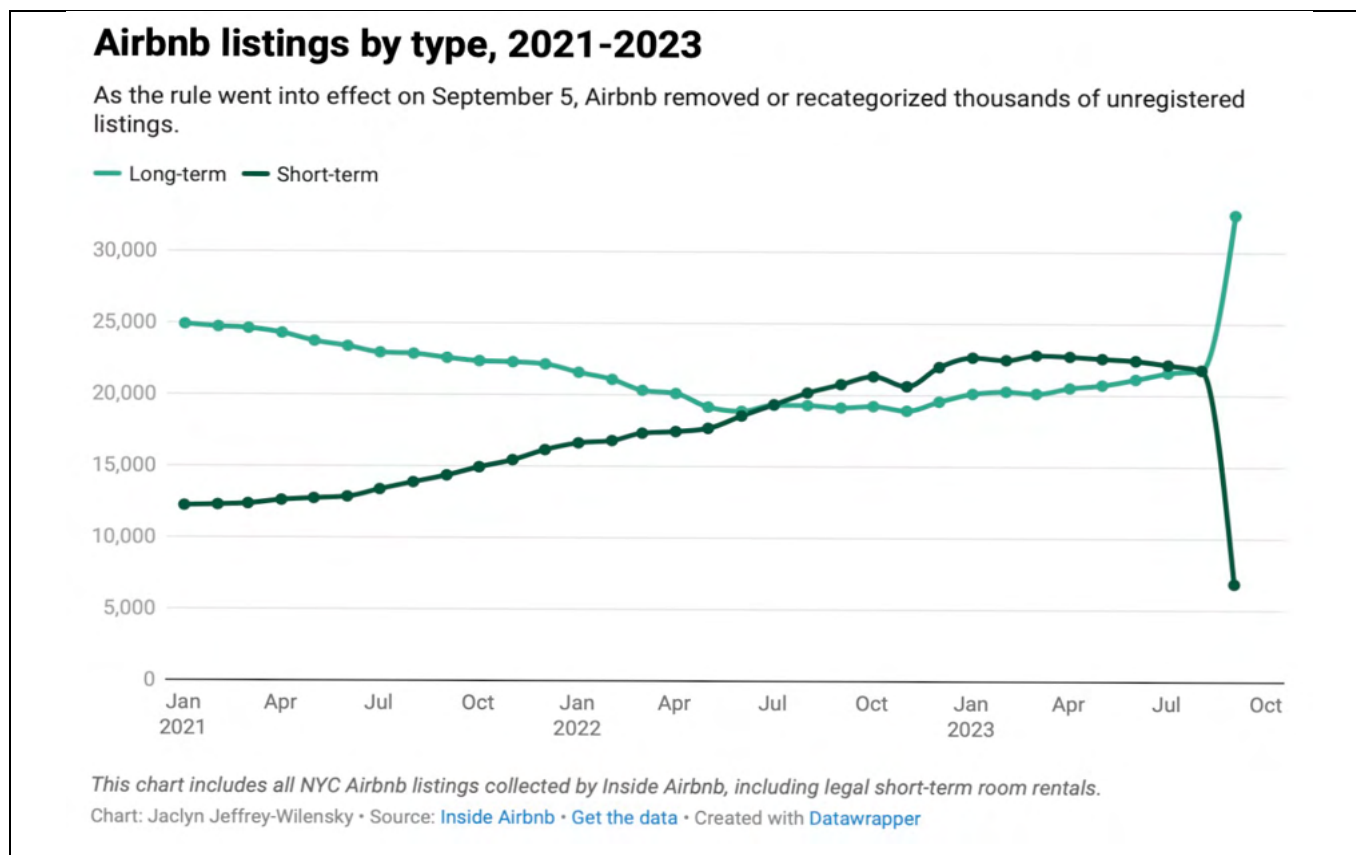
In the past five years, Airbnb listings are up about 70,000, while long-term rentals are down about the same.

It might explain the difficulty in finding a place to live.”



In January 2022 **New York City (NYC)** passed **Local Law 18**. This legislation requires short-term rental ‘hosts’ to register their property with the Mayor’s Office of Special Enforcement if they want to rent the property for less than 30 days. Only those who live in the residential dwelling – and are present when someone is staying – can qualify. And residents can only have two guests. Operators who violate the rules can face fines of up to \$5,000 for repeat offenders, and platforms can be fined up to \$1,500 for transactions involving illegal rentals. As a result, thousands of homes were returned to NYC’s housing supply. By September 2023, the number of registered Airbnb options in the city had dwindled by 15,000 listings, with just 3,400 New York City apartments still available for short-term bookings⁵⁹. It is well noted that as of 05 January 2024, data from *InsideAirbnb*⁶⁰ shows 35,027 unlicensed Airbnb listings in New York – the equivalent of 88.2% of the City’s operators. STR landlords continue to flout legislation, no matter...

The following chart⁶¹, courtesy of @jeffwilen of @Gothamist, and Murray Cox from *InsideAirbnb*, demonstrates the massive drop in Airbnb short-term rents in NYC, while at the same time residential dwellings were returned to the long-term rental market.



⁵⁸ https://www.abc.net.au/news/2023-11-27/alan-kohler-brings-you-the-latest-financial-news/103157142?utm_source=abc_news_app&utm_medium=content_shared&utm_campaign=abc_news_app&utm_content=other&fbclid=IwAR1MZVgucMO5_L1mRtZ-tn160tzWrfWuG7nACTOHwPt1ZQFkAdnAQcgmV8

⁵⁹ <https://gothamist.com/news/nyc-loses-15k-unlicensed-short-term-rentals-as-airbnb-rule-kicks-in>

⁶⁰ <http://insideairbnb.com/new-york-city>

⁶¹ <https://gothamist.com/news/nyc-loses-15k-unlicensed-short-term-rentals-as-airbnb-rule-kicks-in>

By way of a worthless pardon for the dramatic distortion to housing supply and affordability, and in order to appease the short-term rental lobbyists and our parliamentary short-term rental landlords – all facilitated by the NSW Government/Rob Stokes' 2021 STR SEPP - this section of the Discussion Paper concludes by stating:

“In the context of rising housing costs and a growing number of people sleeping rough, the NSW Government is committed to achieving the right balance between improving housing affordability, reducing episodes of homelessness and supporting the tourism economy and other benefits of short-term rental accommodation.”

Our NSW Government takes us all for fools.

As one US observer recently wrote: ***“STR lobbying groups paying for ‘studies’ that claim STRs do not hurt long-term housing are no different to ‘back then’ when Big Tobacco used to hire ‘experts’ to publish studies claiming that cigarette smoking does not cause cancer.”***

The ‘Discussion paper’ repeats the line that *“holiday homes and short-term rental accommodation play a key role in supporting local economies...Local businesses benefit from the increased demand for goods and services, which also supports the employment and wages of workers...”* No mention is made of businesses being unable to find staff, since there is no housing available at affordable rates in which to house staff. The DPIHI provides no data to substantiate its claims of ‘benefits’. Here, instead, we – *Neighbours Not Strangers* - **again** refer to the following:

A 2015 economic analysis compiled by the Office of Economic Analysis (OEA) for the City of San Francisco⁶² researched the impacts of commercial short-term rentals. Their research found:

“The citywide economic harms associated with higher housing costs are fairly severe. According to the REMI model, removing a single housing unit from the market would have a total economic impact on the city’s economy of approximately -\$250,000 to -\$300,000 per year. This exceeds the annual total economic benefit from visitor spending, host income, and hotel tax...”

Irrespective of the number of times this economic report - compiled by the OEA and the City of San Francisco’s Ted Egan, Ph.D., Chief Economist, and Asim Khan, Ph.D., Principal Economist - is quoted to the NSW Government, we are still repeatedly presented with unsubstantiated government claims such as:

“Dwellings used as holiday homes and short-term rental accommodation play a key role in supporting local economies, particularly in holiday destinations...”

Current regulatory and policy environment

The ‘Discussion paper’ proposes the following. Our responses are in italics, immediately under each proposal:

- Higher registration fees for short-term rental accommodation
The fees will simply be passed on to clients. Fees do nothing to deter the loss of housing to STRs.
- More onerous approval requirements for short-term rental accommodation
As per accredited B&B operators? For decades there has been a regulatory system in place for the owners of single-family, free-standing dwellings. The 2021 Rob Stokes STR SEPP circumvented this system.
- Lower day caps on the maximum number of nights a dwelling can be let for non-hosted short-term rental accommodation
Former NSW Members of Parliament – Thomas George, John Williams, and Kevin Humphries - had their STR properties listed on 155+ online booking platforms. At no time did they list on the Airbnb platform. STR operators have, for years, abused planning and zoning regulations and will no doubt continue to do so. Example: Comments posted online by members of ‘Airbnb Hosts Australia’, 01 October 2023:

Lo...

“So what happens when (sic) get booked up to the required number of days and we block out the rest of the year can (sic) we still claim 12 months of interest on our loans”

Pi...

“I doubt it because it’s not on the market during the whole year. BTW I’m in Sydney and everyone was expecting listings to dry up when the 6 months rolled around since the legislation and it did not happen because the laws are not being policed. I only realised recently that people who got into ‘hosting’ as a business use multiple platforms and not just Airbnb so even if the platform blocks your calendar after x days you can take other bookings on the other platforms. It has made zero difference to how many nights hosts sell. The government did not think the legislation through. Who is supposed to check and ensure compliance?”

- Limits to the number of homes in an area that can be used for short-term rental accommodation
Commercial use should be strictly limited to single-family, free-standing dwellings with hosts present at all times – aka, upgraded, commercial, accredited, B&B operations. Approval from neighbouring residents and Council should determine whether an application is acceptable.

⁶² https://sfcontroller.org/sites/default/files/FileCenter/Documents/6458-150295_economic_impact_final.pdf?documentid=6457

- Limits on the number of guests that can use a short-term rental property
In line with accredited B&B operations – maximum two (2) guests per bedroom only.
- A levy on the revenues from bookings of short-term rental accommodation
Will simply be passed onto clients; does nothing to deter loss of housing to STRs. Accredited B&B operators already pay commercial rates and charges on their operations.
- Day fees per guest staying in short-term rental accommodation
Will simply be passed onto clients; does nothing to deter loss of housing to STRs. Who will ‘police’ the numbers and how this fee will be collected/paid?
- An annual levy based on the use of the property (for example, non-hosted short-term rental accommodation, holiday homes and vacant properties)
*STRs: annual levy will simply be passed onto clients; does nothing to deter loss of housing to STRs.
Vacant Properties: secondary – empty property – dwellings should incur a ‘vacant property’ tax.*

Lower Day Caps

Again, by way of a pardon for the dramatic distortion to housing supply and affordability, and in order to appease the short-term rental lobbyists and our parliamentary short-term rental landlords – all facilitated by the NSW Government/Rob Stokes’ 2021 STR SEPP - this section of the Discussion Paper states:

“The NSW Government aims to find the right mix of regulatory settings and revenue measures. The aim is to balance the ongoing housing affordability pressures throughout NSW with supporting tourism and economic activity throughout the state.”

The 2021 STR SEPP states that in certain Local Government Areas:

“...the dwelling is not (to be) used for non-hosted short-term rental accommodation for more than 180 days in any 365 day period.”

Again, LGAs covered by this clause include:

- Clarence Valley Short-term Rental Accommodation Area
- Greater Sydney region
- Muswellbrook Short-term Rental Accommodation Area
- Ballina local government area
- Bega Valley local government area
- Byron local government area
- Dubbo Regional local government area
- City of Newcastle local government area
- Land in the Clarence Valley local government area
- Land in the Muswellbrook local government area.

Despite multiple requests, no details have been provided on whether any individual or corporation has been penalised for non-compliance under this legislation. Ministers and State Government were forewarned that so-called ‘night caps’ would be impossible to enforce, given that STR operators list properties across multiple platforms. Examples of this practice include, but are certainly not limited to, those following here:

**Former NSW State Labor Leader Jodi McKay’s
‘Kia Ora Lookout Retreat’
is listed on 83 Online Booking Platforms**

**We didn’t bother to search McKay’s second STR:
‘Luxuriously Converted Church near Barrington Tops’***

* https://www.airbnb.com.au/rooms/43572072?source_impression_id=p3_1708335280_SsGHvOD8ySE%2F1srx

Airbnb	Brownsigns.net.au	Readytotrip.com	TrueLocal
Booking.com	Qldtourism.com	Google	Accommodationqld
Stayz	TrueLocal	Qldtourism.com	Accommodationsyd
NSW Government’s VisitNSW	YouTube	Tourismbrisbane	Australianexplorer
Gloucester Tourism	MakeMyTrip	VacationRenter.com	Wego
Rent By Owner	LetsBookHotel	Cybevasion	Attractions.net.au
Facebook	AustralianHotelsInfo	Tripadvisor	DirectHotels
Barrington Coast	Accommodationbrisbane.net.au	Australian Good Food Guide	Cozycozy
Trivago	Nextdayhotels	Bookabach	Goldcoastqld
Instagram	Goibibo	HKTrip.com	Hotala
NSWHotels.net	Visitaus.com.au	Vrbo	LodgingWorld
OnlineReservations.com	Planet of Hotels	Booked.net	LetsBookHotel.com
Agoda	Localista	Hotelscombined	Newsouthwalestourism.com
HomeToGo	Vacation Cottages	Vacationrenter.com	Caravanparkaccommodation.com
Cabinn.com	Australian Good Food Guide	OnlineReservations	A-Hotel.com
Booked.net	Trip.com	HotelsInIndia	OnlineReservations
HiChee	BedroomVillas	SouthCoastHolidayHomes	CheapHolidayHomes
Hotel.com.au	Australia’s Guide	BarringtonCoast	Ferienmahaus.de
Australia’s Guide	VacationRenter.com	VacationHomeRent	Lugaresquever.com
VacationRenter.com	Booked.net	HomeToGo	Hotel-board.com
ZenHotels.com	Rentberry.com	NSWTourism	
	Trip101		

3 Current regulatory and policy environment

3.1 Regulatory and policy environment in NSW

3.1.1 Regulatory framework for short-term rental accommodation

“On 1 November 2021, the NSW Government introduced a statewide planning and regulatory framework for short-term rental accommodation. This was in response to the industry’s growth.” In fact, this was due entirely in response to the STR industry’s demands and in order to see the *“Illegal Use of Residential Dwellings”* – which so very many State Ministers, MPs, Legislators etc were engaged in – deemed as ‘complying development’.

“(The State Government’s response) aimed to provide a consistent approach to balancing the effects of short-term rental accommodation on local tourism, housing supply and affordability and neighbourhood amenity.” In truth, ‘the response’ aimed at permitting access to almost every NSW residential dwelling to online booking platforms and STR operators, at the expense of accredited local tourism operators, while ensuring further dramatic negative impacts on housing supply and affordability, and at the same time treating with contempt the proprietary rights of those forced to live adjacent to and/or surrounded by commercial STRs.

The planning and regulatory framework in NSW for short-term rental accommodation involves the Department of Planning, Housing and Infrastructure; the Department of Customer Service; and local councils. The framework comprises:

- an exempt development planning pathway for hosted and non-hosted short-term rental accommodation within the *State Environmental Planning Policy (Housing) 2021 [SEPP]*...
- a 180-day cap in any 365-day period on non-hosted short-term rental accommodation in Greater Sydney and certain local government areas...
- an exemption for bookings of 21 consecutive days or more from the day limits for non-hosted short-term rental accommodation
- fire and safety requirements for short-term rental accommodation dwellings within the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021...
- an online, government-run Short-term Rental Accommodation Register...

What has also been effectively sidestepped is legislative issues such as the following. All Australian States have and should adhere to a clear national planning and building regulations framework; these are critical in managing risks to buildings and their occupants:

Bushfire requirements become clear through the building approvals process for land development and for changes of land use.

New building work which is designated for use as STHLs such as a guest house, hostel, hotel, motel, or serviced apartment (a class 1(b) or class 3 buildings) is clearly defined. As such, emergency planning is a trigger in response to the vulnerabilities of both the clients and the buildings they occupy. Such buildings fall under much more stringent benchmarks in terms of hazard management areas when compared to what is required for a residential Class 1(a) or Class 2 dwelling.

Existing dwellings in bushfire-prone locations are often not designed or constructed to current standards for bushfire resistance. These dwellings are unlikely to have adequate separation from the hazard for their limited fire resistance. Such factors exacerbate the level of risk to any clients who decide to ‘stay put’ within the building during a bushfire situation.

The DPIE’s proposals, which sees class 1(a) and class 2 residential flat dwellings used as STHLs, places all users – residents and clients alike – at considerable increased risk.

Occupants of buildings class 1(b) and classes 3 upwards are considered to be at considerable risk, for reasons such as unfamiliarity with the building, the means of egress, the potential fire sources etc. Hence our clear regulatory system as set down in the National Construction Codes (NCC), which requires greater fire safety infrastructure for buildings that are used for commercial STRs, when compared to buildings used for residential purposes:

“The classification of a building or part of a building is determined by the purpose for which it is designed, constructed or adapted to be used.”⁶³ Repeating:

- **Residential dwellings: are classified as class 1(a) or class 2**
- **STHL accommodation is classified as either class 1(b) or class 3 buildings, depending on scale.**

Following are comparisons of fire safety measures regulated via the NCC for class 1(a), 1(b) and class 3 buildings:

⁶³ <https://ncc.abcb.gov.au/ncc-online/NCC>

Class 1(a) building (single family dwelling)	Class 1(b) building (visitor accommodation)	Class 3 building (visitor accommodation)
<ul style="list-style-type: none"> • Fire separation • Smoke alarms within hallways 	<ul style="list-style-type: none"> • Fire separation • Smoke alarms within each bedroom as well as in hallways • Access and egress • Evacuation route lighting 	<ul style="list-style-type: none"> • Fire resistance • Fire separation • Protection of openings • Fire fighting equipment • Access and egress • Evacuation route lighting • Smoke hazard management

Other legislative requirements and measures that have not been raised by the ‘Discussion paper’ and which must be adhered to by STR operators, in line with current legislation, include:

<i>Development Applications</i>	These are mandatory for commercial operations.
<i>Disability (Access to Premises – Buildings) Standards 2010 (Cth) (room ratio requirements)</i>	In addition to making common areas accessible, the Premises Standards impose a number of access requirements on accredited accommodation buildings, including the requirement that a proportion of rooms and facilities cater to disabled clients. The requirements are as follows: 1 to 10 rooms 1 accessible room 11 to 40 rooms 2 accessible rooms etc
<i>Liquor Act 2007 & Liquor Act Regulation (NSW)</i>	In order to serve or provide alcohol, accredited accommodation providers are required to obtain a hotel or on-premises licence. Requirements include: <ul style="list-style-type: none"> • Rigorous ‘community impact statement’ process undertaken • Signage and record keeping requirements • Trading hour restrictions • Staff must be trained in RSA • Compliance with licence conditions • Payment of an annual risk-based licence fee + trading hour loading (up to \$5,550)
<i>Smoke Free Environment Act 2000 and Regulations (NSW)</i>	Restrictions include: <ul style="list-style-type: none"> • Indoor smoking ban (clients cannot smoke in rooms) • Smoking not permitted in ‘commercial outdoor dining areas’ • Smoking not permitted within 4 metres of ‘pedestrian access points’
<i>Food Act 2003 (NSW); Australian New Zealand Food Standards Code</i>	Accredited accommodation providers providing food need to: <ul style="list-style-type: none"> • Register with council • Appoint a trained food safety supervisor • Comply with the Food Standards Code • Are subject to regular council inspections
<i>Innkeepers Act 1968 (NSW)</i>	Sets out signage requirements and the liabilities of ‘innkeepers’.
<i>Privacy Act 1988 (Cth)</i>	Requirements to adopt a privacy policy and abide by the Australian Privacy Principles. As employers, accredited accommodation providers are also subject to the <i>Workplace Surveillance Act 2005</i> (NSW) that provides privacy protections.
<i>Employment Laws</i>	Mandatory

<i>Work Health and Safety Act and Regulations (NSW)</i>	Mandatory
<i>Compulsory Contributions to Employee's Superannuation</i>	Mandatory
<i>Workers Compensation Insurance</i>	Under NSW workers compensation legislation, every employer is required to have workers compensation insurance.
<i>Public Liability Insurance</i>	Contractual arrangements often specify a required minimum amount. Most accredited accommodation providers take out insurance to the value of \$20 million.
<i>Payroll tax</i>	Mandatory
<i>Company tax</i>	Mandatory
<i>GST</i>	GST is payable on all bookings and services
<i>Council (business) rates</i>	Accredited accommodation providers are charged commercial council fees
<i>Other commercial fees and charges</i>	For example, trade waste charges
<i>Parking</i>	Provisions for off-street drop-off and pick-up and parking for visiting clients' vehicles

Emergency planning is mandatory for class 1(b) and class 3 buildings.

Without strict enforcement of regulations, current proposals allow for a change of use of residential dwellings to accommodate more vulnerable clients. Such a proposal effectively circumvents our nationally accepted standards for fire safety, as established and clearly set down in the National Construction Codes.

In a telephone conversation – 09 May 2019 – Mr Alan Nassau from Sydney's Inner-West Council advised⁶⁴: **“Council receives hundreds and hundreds of complaints every week about Airbnb.”** Mr Nassau was asked to repeat his claim, which he did. When residents complain, the Inner-West Council will not take action against unregulated short-term rentals.

Australia's National Strategy for Disaster Resilience (NSDR)⁶⁵ acknowledges the increasing severity and regularity of disasters in Australia and the need for a co-ordinated, co-operative national effort. It identifies the need to reduce risks in the built environment and places clear priority on improving the strategic planning framework by including natural hazards in land use planning schemes, building code standards and state and territory regulations.

The NSW Government must focus on community fire safety and responses to the impact of fire and other emergencies. Nothing short of this is acceptable.

It is also imperative that one raises the issue of insurance, particularly for those in residential Strata. Strata Lot owners have unlimited liability and – as per testimony given during the 2016 Parliamentary Inquiry - there is a 'wait-and-see' approach by State Government to a major event or incident in a Class 2 residential flat building.

As the use of uncertified dwellings for STHLs has increased, so too has the level of unmitigated risk. This is an unacceptable risk to public safety. Key Requirements:

- At all times, a building intended to be used for STHLs must provide appropriate fire safety for all clients and neighbouring residents. The number of nights that a building is occupied does not reduce the vulnerability of the occupants and neighbours. Adequate infrastructure must be in place from 'night one' of operation and thereafter,
- Class 1(b) requirements for fire safety deliberately call for working smoke alarms in every bedroom, in every corridor or hallway, and on each level of the building; visitors are highly likely to have closed bedroom doors, reducing the effectiveness of smoke alarms located in hallways. The effectiveness of smoke alarms is dependent upon the alarm being heard at the bed-head. Smoke alarms must be provided in all STHLs in compliance with either class 1(b) or class 3 buildings to ensure effective fire detection and timely warning for clients.

⁶⁴ Request REQ2019-030317 lodged

⁶⁵ <https://knowledge.aidr.org.au/resources/national-strategy-for-disaster-resilience/>

- Class 1(b) NCC requirements ensure that a pathway is illuminated from every bedroom to an external exit, and is activated when an alarm is activated. This is to increase the ability for rapid evacuation of occupants from a burning building. Visitors are unlikely to be familiar with the route to external exits, and in an emergency situation smoke may seriously reduce visibility and normal electric lighting may fail. Providing an illuminated pathway increases the likelihood of safe evacuation from a burning building.
- Class 1(b) building requirements include having an evacuation plan. This type of plan is well known to travellers using traditional tourist/visitor accommodation. A layout plan depicting the room location, the route(s) to safety and the assembly area is usually found on the door of rooms in hotels, motels etc. These plans are credited with ensuring the safety of visitors.
- Buildings in bushfire-prone areas occupied by vulnerable users are already required to have an approved emergency plan for bushfire. Similar to an evacuation plan for internal building fire, the bushfire emergency plan significantly increases the likelihood of survival for occupants and visitors during a bushfire. All STHLs within bushfire-prone areas should have an approved emergency plan for bushfire. STHLs which are staffed when visitors are 'in-house' see clients assisted in emergency situations. 'Unhosted' STHLs do not.

Now, well in excess of two plus years after the introduction of this *Regulatory framework*, it is clear how completely ineffective is this legislation, and how it has been used to, as judged by the NSW Land and Environment Court⁶⁶, guarantee **severe “adverse impacts on the amenity and wellbeing”** of neighbouring residents, and **“offend and undermine the planning regime of (Local Government Areas) and ultimately the State.”**

Registrations

(G)hosts of short-term, rental accommodation must register their dwellings on the NSW Government's Short-term Rental Accommodation Register. If the State Government cared to research the data, it would immediately be clear how this system is being abused.

Booking platforms must ensure that a short-term rental accommodation dwelling is registered and that the registration number for the dwelling is displayed before being listed on a platform's online booking service. Again, this system is a total smoke-screen, abused on a constant basis by Australian and overseas-based online booking platforms.

The State Government makes the Short-term Rental Accommodation Register accessible to local governments; yet this flawed information is of little-to-no use to Local Government Authorities.

3.1.2 Independent Planning Commission review of Byron Shire Council's planning proposal for short-term rental accommodation

After considering the Independent Planning Commission's advice, the Minister for Planning and Public Spaces determined that the Byron Shire Council's planning proposal and new provisions in the Housing SEPP will apply from 23 September 2024. The changes to the SEPP include:

- a 60-day cap for non-hosted short-term rental accommodation across the entire Byron Shire local government area, except for 2 precincts in and around Byron Bay Town Centre and at Brunswick Heads.

This of course places responsibility on neighbouring residents to somehow record the number of nights an adjacent property is used for commercial short-term rentals, given that STR operators can list across hundreds of platforms. As for those who undertook all due diligence when entering into legal contracts for the purchase of Title Deeds on 'residential' dwellings in residential buildings/zones, the State Government's approval for unlimited STR activity in and around Byron Bay Town Centre and at Brunswick Heads is nothing but a retrospective alteration of, and indeed contempt for, these residents' proprietary rights.

3.1.3 Revenue policy settings

The 'Discussion paper' states that the NSW Government and local councils do not currently apply specific revenue measures to short-term rental accommodation, holiday homes not used for short-term rental accommodation, and vacant property.

The NSW land tax does not differentiate investment properties by use. The land tax system treats investment properties used for long-term rental accommodation the same way as those that are rarely or never occupied.

Local Government Authorities have a long and sustained record of administering applications for the use of residential dwellings as commercial, hosted, B&Bs. Approval for such activity requires consultation and agreement with neighbouring residents, the operators to be 'in house' while clients are present, building infrastructure must be upgraded to meet Federal Construction Codes and Disability Access legislation for commercial use, Fire & Safety upgrades are mandatory – as is compliance with Food and Beverage, and other well-established legislation

⁶⁶ https://www.neighboursnotstrangers.com/_files/ugd/5a8126_014f2042cc284adbac9785ce01b9213.pdf

covering the likes of Hotels, Motels, etc. The payment of commercial rates and taxes to Local Government Authorities ensures revenue sufficient to undertake yearly compliance checks by council staff.

The current NSW Government system sees \$65 for the initial registration, followed by a yearly fee of \$25...which triggers a registration number, often used across multiple, multiple dwellings. Compliance with legislated Health & Safety requirements goes unchecked and, one can assume, in many instances, compliance is non-existent.

We would welcome the introduction of a tax on vacant property that is not the primary residence of the owner, and a tax on secondary properties that are used as personal holiday residences.

3.1.4 Other policy settings

The planning and regulatory framework for short-term rental accommodation has a so-called 'Code of Conduct' for the Short-Term Rental Industry.

Any collection of evidence – recorded or otherwise – may be challenged in accordance with NSW case law precedent. Where case law precedent is taken into account, all such action will fail. (*Raciti v Hughes*⁶⁷)

Anecdotal evidence shows that the NSW Consumer and Administrative Tribunal regularly dismisses complaints relating to STHLs and other issues; respondents simply need put to the Tribunal a claim of 'vexatious applicant'.

The NSW Government has endorsed a so-called 'Code of Conduct' since 2012⁶⁸. This Code, with former Minister Brad Hazzard's backing (12/04604), has failed, as evidenced by a complete lack of successful action over the past 13 or so years.

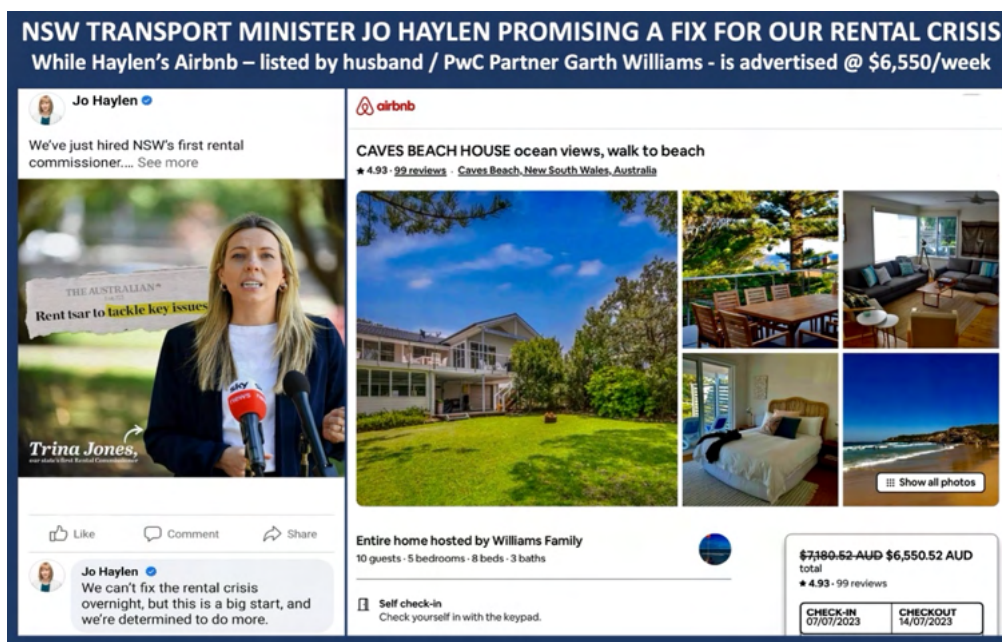
DestinationNSW has a 'Code of Conduct and Ethics'⁶⁹. Despite this: "DestinationNSW does not carry out regulatory functions, therefore any questions in regard to compliance with legislation, regulations and other activities provided by its contractors fall outside the State Government's remit", according to Sandra Chipchase, former DestinationNSW CEO (DV19/9, D19/390).

Former State Opposition Leader, Jodi McKay, still has her short-term rental property listed on 80+ different platforms, with many of her booking agents located in overseas countries.

Airbnb alone has portals in all countries, except North Korea, Syria and Iran. It has very recently recommenced activity in the Occupied West Bank. The proposition that booking platforms must ensure that a copy of this 'Code' is readily available on its website and provided to, read and agreed to by clients is unrealistic and unenforceable.

It is not possible to verify which platform has facilitated the booking of a residential property, nor can one guarantee the identity of the landlord or client. Were hypothetically Jodi McKay, Minister Jo Haylen, or our former Deputy Premier John Barilaro, to find themselves banned, they could simply relist their properties under another identity – say that of a child, instead of their spouse - or relist their premises under a different name/description and use new photographs to market their dwellings.

Despite multiple requests to Ministers and Legislators, no details have been provided on whether any individual or corporation has ever been penalised for non-compliance under this legislation.



⁶⁷ <http://www.austlii.edu.au/au/journals/PrivLawPRpr/1996/8.html>

⁶⁸ <https://www.lgnsw.org.au/files/imce-uploads/48/2%20Justin%20Butterworth.pdf>

⁶⁹ <https://www.destinationnsw.com.au/code-of-conduct-and-ethics-for-contractors-and-consultants>

3.2 Policies in other jurisdictions

“...Common policy objectives typically include a combination of addressing:

- *housing supply and affordability*
- *preserving neighbourhood amenity*
- *concerns about guest safety*
- *ensuring that the short-term rental accommodation market operates on a level playing field with the hotel industry.”*

Since the 2016 parliamentary inquiry into the ‘Adequacy of the regulation of short-term holiday letting in New South Wales’⁷⁰, Ministers, Members of Parliament, Legislators and Public Servants have displayed nothing but complete misunderstanding – or perhaps deliberate, intentional ignorance – of the issues at hand.

It is our understanding that Shelter NSW will be responding to this current invitation to ‘Have One’s Say’, with specific data on the levels of homelessness across our State and how Airbnb* is impacting our residents.

(* Again, it is thanks to *InsideAirbnb’s* Murray Cox that we can rely on numbers for the Airbnb platform. Data is not available when it comes to the hundreds of other platforms accessing our housing.)

3.2.1 Policy approaches within other Australian jurisdictions

While Victorian, Queensland, Western Australian and Tasmanian State Governments fiddle with their policy approaches on commercial Short-Term Holiday Rentals, all jurisdictions are battling with the results of their planning regimes being undermined by operators such as Airbnb, Expedia/Stayz, Booking.com etc, etc, etc.

Some State Governments are introducing a tax/levy; this will simply be passed on to clients and will result in an increased in nightly rates. Nothing more.

No State Government is taking seriously the destructive impacts of STRs on housing availability and affordability, or the proprietary rights of neighbouring residents and the devastating impacts that this activity is having on our residents’ home lives and those of their family members.

3.2.2 International policy approaches

In short: we simply cannot understand how there can be any doubt whatsoever about the need to regulate short-term rentals in New South Wales.

On 9 January 2022 New York City adopted Local Law 18⁷¹, also known as the Short-Term Rental Registration Law. The law requires short-term rental (g)hosts to register with the Mayor’s Office of Special Enforcement (OSE) and prohibits booking service platforms from processing transactions for unregistered short-term rentals.

From 5 September 2023, OSE’s initial phase of Local Law 18 enforcement focussed on collaborating with the booking platforms to ensure they are using the city’s verification system, that all verifications are occurring correctly, and that the platforms stop processing unverified transactions.

The Short-Term Rental Registration Law also requires OSE to maintain a Prohibited Buildings list. This list is comprised of buildings where short-term rentals are prohibited, either by the law (such as NYCHA or entire rent-regulated buildings) or by the leases and occupancy agreements for the building. Owners can notify OSE that short-term rentals are prohibited in their building.

NYC’s Administrative Code on Registration Requirements for Short-Term rentals is available via link⁷² on the OSE’s website.

NYC’s Administrative Code on requirements for Booking Services with respect to Short-Term Rentals is available via a link⁷³ on the OSE’s website.

New York City’s law is just one striking way cities are fighting back against short-term rentals. Supporters of the rule argued it would free up apartments and homes for New Yorkers, who pay high rent prices and are facing similar housing shortages and insecurity.

Local Law 18 includes several rules:

- No more than two paying guests can stay in a short-term rental at a time, no matter the size of the dwelling or the number of bedrooms
- (G)hosts must be physically present while their properties are being rented
- (G)hosts and visitors must leave the doors inside the dwelling unlocked, so occupants can access the entire dwelling.

⁷⁰ <https://www.parliament.nsw.gov.au/committees/Pages/inquiryprofile/adequacy-of-the-regulation-of-shortterm-holiday-letting-in-new-south-wales.aspx#tab-termsofreference>

⁷¹ <https://www.nyc.gov/site/specialeenforcement/registration-law/registration.page>

⁷² <https://codelibrary.amlegal.com/codes/newyorkcity/latest/NYAdmin/0-0-0-133488>

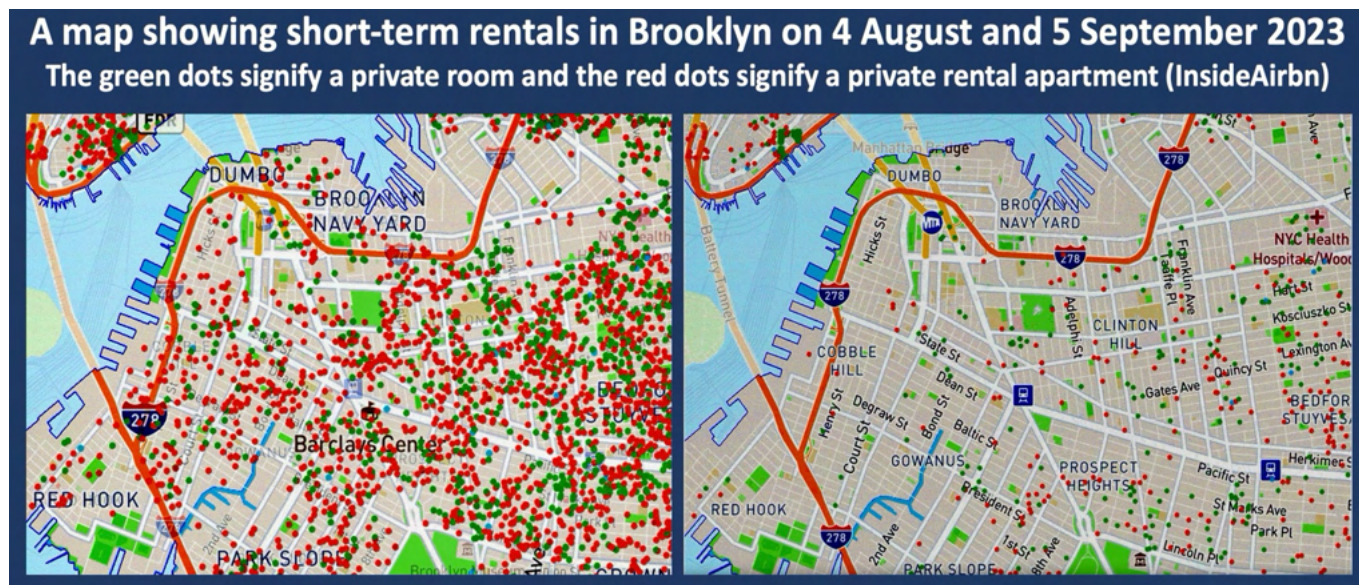
⁷³ <https://codelibrary.amlegal.com/codes/newyorkcity/latest/NYAdmin/0-0-0-137273>

NYC's Law 18 applies only to properties rented for less than 30 days. According to NYC legislators, the law is intended to stamp out illegal short-term rentals, ensure the safety of guests bunking in private dwellings and ease the tight housing market.

New York's OSE states:

"Illegal short-term rentals can be dangerous for neighbours, guests, and first responders. They can lack proper fire safety systems such as alarms and sprinklers and may not have enough exits in the event of an emergency."

New York City's enforcement against illegal short-term rentals took the major step of holding online booking sites responsible if listings were not registered. It is possible to see a major correction in housing supply and affordability, while respecting the rights of NSW residents.



Pardon our cynicism; given our observations of government's manipulation and actions over the past 8-9 years, we have no faith in our NSW State Legislators when it comes to pro-active action on this critical issue.

4 Issues for consultation

4.1 Policy objectives

Considering the text in this section of the 'Discussion paper', we request the following:

- Residential housing is for housing residents – housing policy must mandate the use of housing stock for this purpose: housing.
- State government has failed to prove any 'economic benefits' related to short-term rental accommodation; concurrently, the impacts on housing affordability are blindingly obvious, as too is the increasing demand for social housing (at taxpayers' expense) and the growing number of homeless.

NSW residents have had enough of the State Government's collusion with online booking platforms. DestinationNSW's ties with STR operators are clear to see.

By circumventing/altering legislation governing residential dwellings in order to accommodate the STR industry, Government's 'commitment' to achieving the right balance to improve housing affordability and reduce episodes of homelessness, particularly in regional areas, is an empty statement and an insult.

It is interesting to note that this 'Discussion paper' does acknowledge that providers of traditional tourism accommodation 'compete against short-term rental accommodation, though each are subject to different planning regulations, fire safety standards and taxation arrangements including liability for the GST'.

Indeed, STR operators are, still, gaming the system; as they have for decades.

- ***"NSW needs to boost the supply of housing. Planning and rezoning is a key part of the mix...measures that restrict short-term rental accommodation should encourage property owners to move their property to long-term uses, rather than encouraging them to underuse their property."***

Just mandate that all Local Government Authorities MUST enforce residential zoning. This would see somewhere in the vicinity of 216,000 homes (State Government figure) returned to our housing supply!

4.2 Review of the planning and regulatory framework for short-term rental accommodation

Those who sat through the State Parliament's 2016 Inquiry, who were blocked from addressing the Inquiry Members, and who had their submissions marked by the Parliament as 'confidential', would concur that *"the current planning and regulatory framework for short-term rental accommodation in NSW was purposely designed to be a 'light touch'"*. The planning and regulatory framework is designed specifically with the financial interests of STR lobbyists and operators in mind; nothing more, nothing less.

4.2.1 Scope of review of planning and regulatory framework

The scope of the present review into the regulatory framework for short-term rental accommodation covers the following aspects of policy. (Our responses **in bold**):

- Planning pathway – consider if the existing exempt development pathway is still appropriate
No, it is not!
- Day caps – consider if day caps are appropriate for non-hosted short-term rental accommodation and if they are the most effective way to balance the benefits and effects of this accommodation
No, they are not!
- Reporting requirements – consider the operation of the Short-term Rental Accommodation Register and reporting requirements for hosts, letting agents and industry
You have the New York City model. You have the legal advice from Andrew Pickles SC. State Government's 'Register' is in no way effective; it is merely a 'free pass' to the STR Industry.
- Compliance and enforcement – consider the compliance regulatory framework, including complaints-handling and enforcement processes under the planning framework (including the 'relationship' with the code of conduct and other legislation)
The State Government's Fair Trading 'Detailed Complaints Register'⁷⁴ no longer publishes reports made against Airbnb, Expedia/Stayz etc. No details whatsoever have been supplied as to whether any disciplinary action whatsoever has been taken by the NSW Government for breaches of various areas of its proxy STR Legislation.
- Compliance and enforcement – consider the compliance regulatory framework....
The current regulatory framework has been designed to ensure failure/non-compliance. We now have the New York City model; apply this!

4.2.2 Suitability of the exempt development planning pathway

"...Exempt development is described as very low-impact development that can be done without planning approval, if it complies with any relevant standards and requirements. This means that local council does not need to give planning approval. The current exempt development pathway is still considered to give the most balance response to short-term rental accommodation. It keeps a streamlined and consistent statewide framework. It also acknowledges short-term rental accommodation as a low-impact activity that does not alter the otherwise residential characterisation of a dwelling."

It would be useful if the authors of this 'Discussion paper' would disclose whose 'considerations' and opinions were used to formulate this document and these statements. Unlike the State Government's 2017 'Options Paper' on Short-term Holiday Letting in NSW⁷⁵, endorsed by then Ministers Anthony Roberts and Matt Kean, there is no official signature on this 'Discussion paper'.

To imply that short-term rental accommodation is a 'low impact activity' is a gross, false statement.

Again, we refer to NSW Land and Environment Court case law judgments. It was Rob Stokes, the former Planning Minister, who used ministerial discretion to single-handedly alter the SEPP in complete disregard for a long and established line of case law judgments on this activity.

Under no circumstances whatsoever can commercial short-term rentals be considered 'low-impact development'. The establishment of specific day caps across New South Wales is, again, merely a gateway – a means by which - to 'green light' the use of all housing as commercial short-term holiday rentals. This is unacceptable, except of course to the STR lobbyists and commercial operators.

⁷⁴ [//www.cas.fairtrading.nsw.gov.au/pubreg/tabNew.html](http://www.cas.fairtrading.nsw.gov.au/pubreg/tabNew.html)

⁷⁵ https://www.neighboursnotstrangers.com/_files/ugd/5a8126_f12de998afd14471b08dc8b45ca5aa49.pdf

4.2.3 Planning policy settings for short-term rental accommodation

Land use type and definitions

The 'Discussion paper' states: ***"The NSW planning system includes land uses to describe development that could be permitted or prohibited in certain zones. General feedback on the short-term rental accommodation policy has been that the activity is now overly commercialised and closer to a tourist and visitor accommodation activity..."***

Again, it would seem that the author/s of this 'Discussion paper' has/have no background whatsoever in the area of Planning, LEC case law, etc. That which is being discussed – the use of residential dwellings for commercial short-term rentals – has always been classified/judged as 'tourist and visitor accommodation'. It is most definitely not, nor has it ever been, classified as 'permanent residential occupation' by our courts or by our judges.

The 'Discussion paper' goes on to state: ***"The current planning and regulatory framework considers short-term rental accommodation as an activity that does not alter the 'residential accommodation' land use characterisation of a dwelling."***

Since the 2021 changes to the SEPP, this is correct. That said, this classification is contrary to multiple levels of Federal, State and Local Government legislation and policy and case law precedent/s.

The 'Discussion paper' goes on to say: ***"While there is no current proposal to change this characterisation, the NSW Government could consider introducing thresholds to ensure the activity remains low-impact and residential in nature. The thresholds could establish a tipping point for activities that blur the lines between residential accommodation and tourist and visitor accommodation land uses..."***

Ask anyone whether they would like their neighbour/s to sell up/move out and turn the property next door into a short-term holiday rental; the response would be emphatic: ***"NO!"*** The tipping point is reached, when those in control of a residential dwelling hand the keys to said property to a group of strangers, who have paid for the privilege to use the dwelling as they see fit, having been granted a 'right to occupy'.

The NSW Land and Environment Court's Justice Jayne Jagot, having fully considered the case before her, judged mixing commercial short-term rentals with permanent residents ***"FUNDAMENTALLY INCOMPATIBLE"***⁷⁶.

This current 'Discussion paper' pardons STR (g)hosts: ***"People have been confused about the definitions of hosted and non-hosted short-term rental accommodation."*** Is this the same type of 'confusion' when (g)hosts confuse a 'residential dwelling' with 'commercial short-term tourist/visitor accommodation'.

Again, those who have undertaken all due diligence when entering into legal contracts for the purchase of Title Deeds of residential dwellings know and understand what they are purchasing, and the use to which such type of dwelling may be put.

Zoning, Construction Codes, Development Approvals etc, etc are all clear; yet, ***"...the NSW Government could consider making these definitions – 'dwelling house' and 'residential flat building' – clearer."***

What the NSW Government needs to make clear is that the use of a 'dwelling house' and/or a 'residential flat building' for the purposes of commercial short-term tourist/visitor accommodation is an ***"ILLEGAL USE OF PREMISES"***. Perhaps the following may be of assistance to the author/s of this 'Discussion paper':

NEW SOUTH WALES PROPERTY LAW – Section 10.7(149) Certificate

Also known as zoning certificates, these certificates are legal documents issued by the NSW Local Government Authority (Council) under the provisions of the *Environmental Planning and Assessment Act*. The certificates contain information about how a property may be used and restrictions on development that may apply. The Section 10.7(149) Certificate is one of the most important items to be read prior to purchasing a property and remains an essential document in any contract of sale.

Section 10.7(149) certificates, often together with Section 88B instruments and certificates of development approval, contain information about complying development such as zoning, permissible and prohibited land uses, details of exempt and complying development etc.

NSW residents undertake all due diligence when purchasing Residential Dwellings and Residential Title Deeds under the *Conveyancing (Sale of Land) Regulations 2017 (NSW) (CSLR)*. Changes in 2021 to the *State Environmental Planning Policy [SEPP] ARHSTR2021* render permissible residential dwellings operating as non-compliant hotels. This has resulted in incompatible changes to neighbouring residents' living conditions and equates to the acquisition of valuable proprietary rights without financial compensation. In other words, contempt for neighbouring residents' proprietary rights.

These 2021 changes to the SEPP must be rescinded and all Councils must be mandated to enforce residential zoning.



#HomesNotHotels #PeopleBeforeProfits #Right2Housing #NeighboursNotStrangers

⁷⁶ <https://www.caselaw.nsw.gov.au/decision/549f8bb83004262463ada6bc>

General requirements for short-term rental accommodation

The NSW State Government, under the Rob Stokes SEPP, has given the green light to (g)hosts carrying out short-term rental accommodation activity as 'exempt development' in all NSW dwellings, under the conditions that they are using residential housing only for this commercial activity. The benchmarks for this use of housing for commercial activity are that the home must:

- have been lawfully constructed
- meet the relevant fire safety standards for this type of short-term rental accommodation – which are not the same standards set for accredited hotel/motel/serviced apartments/other tourist accommodation
- be registered on the State Government's Short-term Rental Accommodation Register

And none of these substandard – to say the least - requirements are being enforced.

Requirements introduced overseas

We refer you to page 29 and the details provided on New York City's Local Law 18. This is the legislation that needs to be enforced. Or, put simply, rescind the Rob Stokes 2021 STR SEPP and revert to what was accepted and applied legislation, in terms of Development Applications/Approvals, the legal contracts that residents entered into, and the use of residential housing for the housing of residents.

4.2.4 Day caps on non-hosted short-term rental accommodation

The determination of a 'day cap' simply accepts that housing can and will be used for commercial short-term tourist/visitor accommodation. This equates to contempt for the fundamental right to housing and contempt for the proprietary rights of neighbouring residents. As has been displayed, since the introduction of this 'day cap', the legislation is unenforceable.

4.2.5 Short-term Rental Accommodation register

Again, the State Government's 'Short-term Rental Accommodation Register' simply accepts that housing can and will be used for commercial short-term tourist/visitor accommodation. This equates to contempt for the fundamental right to housing and contempt for the proprietary rights of neighbouring residents. As has been displayed, since the introduction of this 'day cap', the legislation is unenforceable.

Registration fees and renewals

Again, the State Government's 'Registration fees and renewals' simply accepts that housing can and will be used for commercial short-term tourist/visitor accommodation, with fees being passed onto clients. This equates to contempt for the fundamental right to housing and contempt for the proprietary rights of neighbouring residents.

Responsibilities of hosts and online booking platforms

Again, the State Government's 'Responsibilities of hosts and online booking platforms' simply accepts that housing can and will be used for commercial short-term tourist/visitor accommodation. 'Compliance' is an illusion. This equates to contempt for the fundamental right to housing and contempt for the proprietary rights of neighbouring residents.

We are yet to see one example of an individual or platform being penalised for failing to meet their 'responsibilities', with penalties applied under the *Fair Trading Act 1987*, administered by NSW Fair Trading.

The 'Discussion paper' goes on to state the obvious: ***"...we do not know how much accommodation information they (STR operators/ platforms) are or are not sharing."***

4.2.6 Compliance and enforcement

Department of Planning, Housing and Infrastructure

"The department does not have a role in statutory compliance or the enforcement of the planning framework for short-term rental accommodation...the Department of Planning, Housing and Infrastructure does not have a statutory role in monitoring and enforcing the registration of dwellings for short-term rental accommodation."

Local Councils

"Consistent with other planning policies at the local level, enforcing the planning framework for short-term rental accommodation is a general responsibility of local government. The NSW Government recognises that local governments should have the right legislative and regulatory powers to effectively enforce and regulate short-term rental accommodation activities in their local government areas."

How are councils supposed to function and regulate this commercial use of residential housing, when the NSW Government's 'Short-term Rental Accommodation Register' is a completely flawed structure? How are councils able to confirm whether:

- the details of registration are correct
- details of the dwelling are correct
- (g)hosts details are correct
- fire safety declarations are correct
- any record of booking days for short-term rental are accurate

The Government's 'Discussion paper' states:

"As illustrated in Figure 3, a council may use existing planning enforcement powers. These are for unauthorised activities where short-term rental accommodation premises do not comply with the exempt development provisions or general requirements under the planning framework for short-term accommodation. Such compliance action may relate to short-term rental accommodation happening in a premises that:

...Has a development consent condition that bans short-term rental accommodation at the premises."

The 'Discussion paper' goes on to refer to other legislation:

"...a council may use existing planning enforcement powers. These are for unauthorised activities where short-term rental accommodation premises do not comply with the exempt development provisions or general requirements under the planning framework for short-term rental accommodation...Part 9 of the Environment Planning and Assessment Act 1979 has provisions that councils may use to enforce the planning provisions for short-term accommodation, including the right to:

- enter and search the property
- require information from a person or organisation
- take enforcement action...This includes issuing an order requiring a host to stop using the premises for short-term rental accommodation

The NSW Government obviously expects all rate payers to fund this 'council action', given that the only income derived from short-term rentals is the initial registration fee of \$65, plus an annual ongoing fee of \$25 per rental, payable to the NSW State Government.

One example only of a breach of this legislation that has been an ongoing issue since 2016 and clearly displays that no effective assistance is rendered to neighbouring residents:

Airbnb (g)host Jennifer*

https://www.airbnb.com.au/rooms/15948732?source_impression_id=p3_1701319898_WWqg01CqkOvbB6cG

**Determination of Development Application – Z96-00542
STRs are a 'prohibited use'**

**NSW Land & Environment Court Orders with Penal Notice
Case number 14/40923 Class 4 – 'prohibited use'**

**Senior Solicitor, City of Sydney Council, AS S101841
STRs = "Illegal Use of Premises"**

STR License Number Issued by DPIHI: PID-STRA-33846

April 2023 – City of Sydney Council Representative:

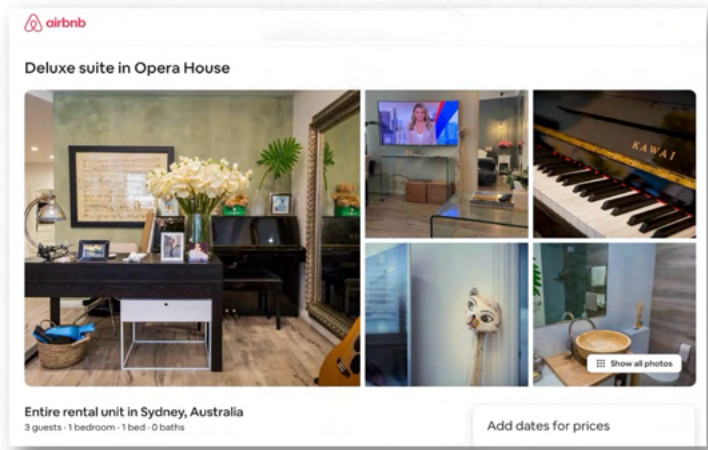
"A notice to issue a cease use order was issued on the owner..."

**Clients advise neighbours they are encouraged, on return visits,
to 'book direct' rather than use Airbnb platform**

**When approached by fellow residents,
Airbnb (g)hosts tells neighbours to "fuck off"**

**Jennifer* - 286 Airbnb reviews dating from 2016-present day
(* Not the actual name of landlord)**

AIRBNB HAS REFUSED REQUEST TO DELIST PROPERTY



Compliance under the *Protection of the Environment Operations Act 1997*

As clearly stated, responsibilities for pollution prevention and control falls “to various authorities, including local councils. The right regulatory authority for most matters concerning non-scheduled activities is the relevant local council. This can include offensive noise emissions from short-term rental accommodation dwellings. Council (as well as NSW Police) may issue a direction to the occupier of a dwelling (for example, a short-term rental accommodation guest) to stop making the offensive noise”.

And yet, the ‘Discussion paper’ says: “...people can carry out short-term rental accommodation in types of residual accommodation that are lawfully approved...as exempt development. Exempt development is described as very low-impact development...”

The NSW Land and Environment Court does NOT judge mixing STRs with permanent as ‘low-impact’. In fact, and repeating, the Court judges mixing STRs with permanent residents as “**FUNDAMENTALLY INCOMPATIBLE**” and the impacts on neighbouring residents as “**SEVERE**”.

More offences relating to short-term rental accommodation

Under the EP&A Regulation (Fire Safety), a (g)host must not use the dwelling for short-term rental accommodation “unless it complies with the fire safety standard. Maximum penalties for non-compliance can reach up to \$16,500 for an individual. Local councils have power under the EP&A Regulation (Fire Safety) to issue a penalty notice under this provision”.

As stated previously, local councils do not receive funding to undertake annual Fire Safety inspections on, in many cases, thousands upon thousands of properties operating as short-term tourist/visitor rentals in their area of responsibility. And as noted by Sandy Chappel, Director, Housing Policy, NSW DPHI, it was being left to the ‘good will’ of STR operators to ensure compliance.

Despite multiple requests, no details have been provided on whether any individual or corporation has been penalised for non-compliance under this legislation.

4.3 Potential revenue measures

The NSW Government seeks our views and comments on the merits, benefits and costs of potential revenue measures to achieve its policy objectives. Government wants residents to ensure that our replies are:

- Broad based
- Leverage an efficient revenue base
- Are simple, fair and equitable
- Strike an effective balance between competing uses
- Be complementary

Well, we sincerely hope our response is ‘complementary’. Our response is: Those already operating accredited accommodation B&Bs are paying commercial rates and taxes on their operations. When it comes to scam STR operators, **State Government must mandate that all LGAs MUST enforce residential zoning!**

4.3.1 Revenue policy issues

“There is a range of revenue measures...the NSW Government will...take into account feedback from the community and interested stakeholders during consultation.”

One understands this to mean that the NSW Government will do all to placate and accommodate those in the Short-Term Rental industry. A ‘levy’ of, say, 5% will underpin the gateway to commercial use of all housing.

Revenue base

Any ‘levy’ applied by the State Government will simply be passed on to the client, by way of an increase in the nightly rate.

Having booking platforms collect the levy will not help with compliance, when there are an untold number of overseas based booking platforms that in no way fall under Australian government jurisdiction.

And, yes, one knows from first-hand experience that STR (g)hosts strongly encourage repeat clients to ‘book direct’, to avoid going through an online booking platform.

Compliance

As stated on so many occasions, those who have engaged in the short-term rental of residential dwellings have, so often, done so by circumventing legislation; that is ‘the name of the game’; the established modus operandi.

To expect that the Industry will assist in what is ‘fair’ and ‘respectful’ of others simply goes against the whole concept of turning housing into a ‘side hustle’.

Many other jurisdictions do have a system whereby a secondary dwelling – a private holiday home – is subject to a ‘vacant property levy’. Such a levy should be considered and introduced.

Exemptions and concessions

In terms of (g)hosted short-term rentals, the ‘Discussion paper’ states that it is unlikely that individual rooms would enter the long-term rental (accommodation) market. Would it therefore be accurate to say that the author/s of this ‘Discussion paper’ has/have never rented under a ‘home-share’ arrangement?

Those renting rooms in a single-family, free-standing dwelling can and do have the option of:

- operating as an accredited B&B
- living under a genuine ‘home sharing’ arrangement

The State Government appears entirely focussed on the use of housing as commercial short-term rentals. At the same time, and to deal with our statewide **housing crisis**, the NSW DPHI has prepared a highly contentious **‘New planning rules to fast track low and mid rise housing’**⁷⁷. The hypocrisy of these two papers when compared...!

Having our say...yet again, while State Government prioritises industry over housing and community

“This discussion paper starts a public consultation process. The NSW Government invites all interested people and organisations to comment and give feedback on all or some of the issues under consultation.”

Incorrect. This is not ‘the start’ of a public consultation process. Many residents have been actively engaged in this issue for well over a decade. During this time the NSW Government has not merely silenced us; many feel they have been deliberately blocked from the whole process, while representatives from the STR Industry are routinely welcomed by Government with open arms and literally ‘pats on the back’.

Using data from **InsideAirbnb**, ‘percapita’⁷⁸ published the following in August 2023:

“We find that the explosion in popularity of Airbnb has led to a significant share of dwellings being listed for short-term letting. For example, in many coast towns over 20% of dwellings are listed on just Airbnb...”

- *In the six regions studied for this report, there are over 86,693 properties listed on Airbnb alone. Airbnb represents an estimated 75% of the STR market. This means that the total STR market in the six regions included in this paper is likely around 115,591. Previous research has estimated that around 251,000 dwellings are listed on STR platforms. 251,000 STR dwellings is equal to 2.3% of the nation’s 10,852,208 dwellings,[5] and equivalent to 7.6% of all rental dwellings.*
- *Average Airbnb yields are extremely high compared to income from long-term rentals. In all areas studied, short-stay rental properties had the potential to exceed local median annual rental yields in fewer than 100 nights. However, in some areas, it only takes 25 nights of Airbnb yield to equal the median long-term rent for the year. Gaps between median rents and Airbnb incomes were more severe in regional areas than in capital cities.*
- *A significant proportion of properties are not adhering to restrictions on short-term rental operations in New South Wales. 22.2% of listings in Sydney and 21.0% of listings in the Byron Shire Council exceeded 180 nights booked in the year preceding the data analysis, which was conducted in March 2023. This is despite legislation restricting bookings to 180 nights in these regions.*
- *Despite most active listings being available year-round, many listings are booked for a total of fewer than two months annually. 58% of listings in the Mornington Peninsula and 57% of listings in the Northern Rivers were booked for fewer than sixty nights a year. This may represent housing stock that is effectively vacant for most of the year.*
- *Several ‘mega-hosts’ managing dozens of properties were identified in each region. Extreme examples included an individual host with a portfolio of 182 listings across Sydney. Properties managed by mega-hosts included a number of informal hotels comprising of clusters of listings by a single host in one location.*
- *The impact of Airbnb varies dramatically across different towns and suburbs. For example, in Blairgowrie, Victoria, more than 32% of dwellings are listed on Airbnb, but the rate of Airbnb is far lower in neighbouring towns. This suggests that regulation must be highly responsive to local effects and the specific needs of residents.”*

The impact of short-term rental platforms such as Airbnb has become increasingly problematic in Australia’s residential rental market, as long-term rental dwelling availability has shrunk, and prices increased.

This problem has been blindingly evident for many years. Airbnb has been expanding rapidly since it arrived in Australia in 2012. Since then, online STR platforms have fundamentally changed the geography of tourism, shifting a large swathe of holidaymakers from traditional short-term accredited accommodation such as hotels, motels and caravan parks, into residential dwellings scattered throughout our neighbourhoods and residential buildings.

⁷⁷ <https://www.planning.nsw.gov.au/news/new-planning-rules-fast-track-low-and-mid-rise-housing>

⁷⁸ <https://percapita.org.au/wp-content/uploads/2023/08/Airbnb-paper-temp-web.pdf>

This has led some communities to feel invaded by short term holidaymakers, with the proportion of homes dedicated to short term rentals tearing at the social fabric of neighbourhoods⁷⁹.

It was an Airbnb spokesperson who boasted that we are **“Airbnb’s most penetrated market in the world”**, a quote that was happily repeated in the NSW Government’s report: ‘The Future of Airbnb Made in Sydney’.

In terms of Local Government responsibility when it comes to residential zoning, short-term tourist/visitor rental enforcement and the behaviour of STR clients, it was Tim McKibbin, CEO Real Estate Institute NSW who, back in 2017, told a Parliamentary inquiry⁸⁰:

“I think there is certainly a partnership with local government, but I was dismayed to read – and I have it in our submission – that the Independent Pricing and Regulatory Tribunal of New South Wales found 71 per cent of metropolitan councils and 56 per cent of regional councils were not fit to continue operating in their existing capacity...

What I cannot reconcile is that if that is commercial then in the residential market – when somebody buys an investment property, rents it out and gets a return – that too must be commercial. In one instance it is classified as residential and in the other one it is classified as commercial. I think we have to say that they are both commercial or that they are both residential...I cannot see the difference between the two activities.”

Mr McKibbin’s ‘confusion’ is understandable, given that it is a well-known fact that when a residential dwelling is leased on a commercial short-term rental basis, the nightly/weekly return will be considerably higher than were the property leased to a tenant under a residential tenancy agreement. It is also a given that Real Estate Agents take a much higher rate of commission on properties operating as commercial short-term rentals, hence the attraction for Agents to encourage landlords to turn their properties into STRs.

The contents of this ‘Discussion paper’ leave one in no doubt that the NSW Government’s position is to underpin and strengthen the profits of online booking platforms and short-term rental operators, at the expense of housing supply and affordability and community cohesion and safety.

We have ‘had our say’. We expect the work it has taken to compile this submission will be treated in exactly the same way as that of each and every earlier submission to the NSW Government; that is, with complete disdain.

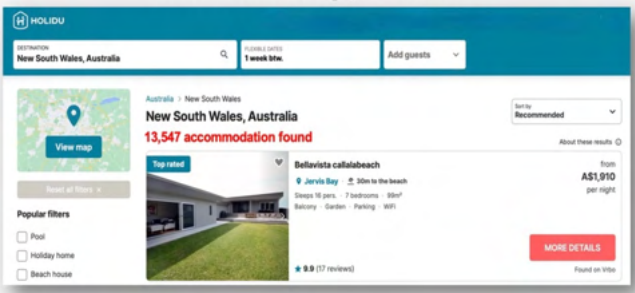
In closing, we repeat: State Government must rescind Rob Stokes’ 2021 STR SEPP and mandate that all Local Government Authorities MUST enforce residential zoning.

Residential housing is for the housing of residents.

Short-term commercial tourist/visitor rentals are contempt for the fundamental right to housing and contempt for the proprietary rights and safety of neighbouring residents.

Neighbours Not Strangers March 2024

HOLIDU
is just one of Swedish investment manager
EQT Ventures’ multiple companies.
Holidu currently lists 13,547 NSW homes as
commercial short-term rentals across multiple
online booking platforms.

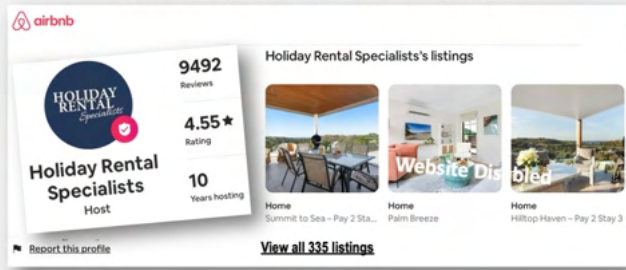


HOLIDAY RENTAL SPECIALISTS
(CRIBBIN BLENCOWE PTY LTD)
<https://abr.business.gov.au/ABN/View?abn=41082563251>

346 NSW SOUTH COAST HOMES LISTED AS STRs
https://www.holidayrentalspecialists.com.au/search/?listingcat&pageNum=15&action=homhero_ajax_search

335 OF THOSE HOMES LISTED ON AIRBNB
https://www.airbnb.com.au/users/show/9855607?set_bev_on_new_domain=1697691686_2G1rYt1LYWMyZTJk

CAN'T FIND REINSW REGISTRATION



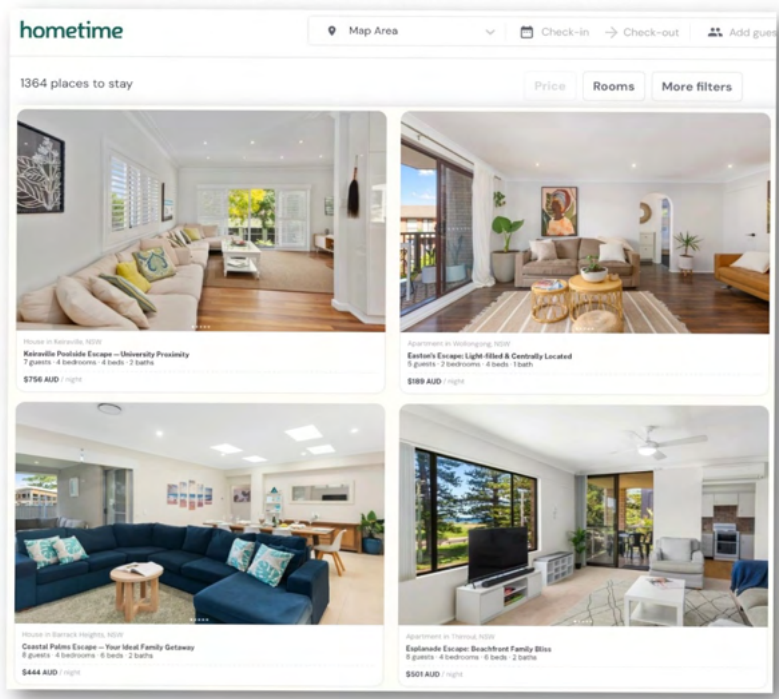
⁷⁹ https://percapita.org.au/blog/our_work/light-as-air-regulating-short-term-rentals-in-australia/?fbclid=IwAR0wKMqsr5r9xcopCQa-eywDGGerKji-3N4iJnB003MhsAvMO1U857Wxtg

⁸⁰ <https://www.parliament.nsw.gov.au/ladocs/transcripts/1919/Hearing%20-%20Public%20Hearing%20No%202.pdf>

Hometime Has 1,364 Airbnb rentals

<https://stays.hometime.io/search>

**NSW Ministers & NSW Department of Planning
are helping STR operators and platforms
rob us of housing and community**



AIRBNB (g)HOST DANIEL (White) "Real Estate"

<https://canbnb.com.au/our-team-2/>

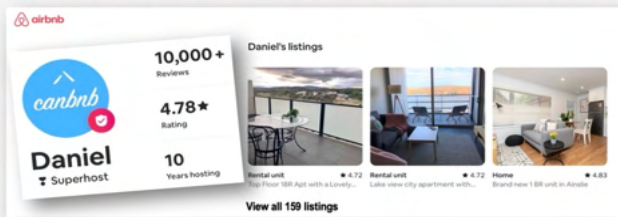
Licensed Real Estate Agents - CANBNB - "No results found!"

<https://services.access.canberra.act.gov.au/public-register/occupational-register?registerid=licensed-real-estate-agents>

7th highest number of AIRBNBS on NSW Central Coast
(InsideAirbnb)

159 homes listed on Airbnb

https://www.airbnb.com.au/users/show/19223282?set_bev_on_new_domain=1697691686_ZGIzYTQ1YWMyZTJk



THE HOLIDAYS COLLECTION

<https://holidayscollection.com.au/search?check-in=&check-out=&sleeps=any&suburb=any&bedrooms=any&bathrooms=any>

Real Estate Sales Business in Gerringong, Hyams Beach & Bowral

zero homes available for residential tenancies

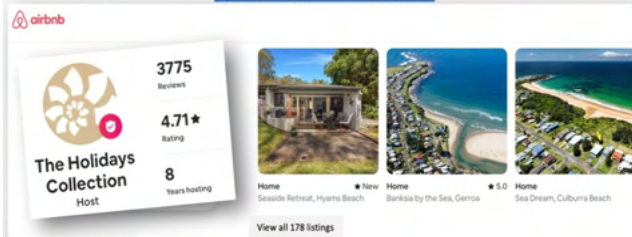
300 homes listed as holiday rentals

(178 homes on Airbnb)

<https://www.airbnb.com.au/users/show/47431484>

(A further 63 homes on Airbnb under a different (g)host)

<https://www.airbnb.com.au/users/show/7148142>



RAINE & HORNE SOUTH WEST ROCKS "Website Disabled" - Zero Homes for Lease

<http://www.rhsouthwestrocks.com.au/>

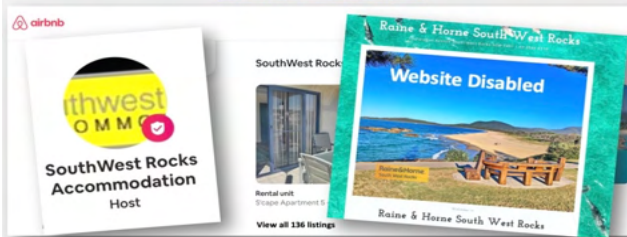
RAINE & HORNE
SOUTH WEST ROCKS ACCOMMODATION

"has a proven record of success..."

180 homes listed as STRs

136 of those homes listed on Airbnb

<https://www.airbnb.ca/users/show/489223622>



PROFESSIONAL HOLIDAY HOMES (Craig Reid Holdings Pty Ltd)

<https://www.abr.business.gov.au/ABN/View/13994661751>

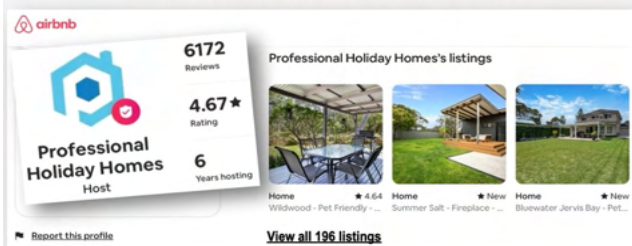
200 NSW SOUTH COAST HOMES LISTED AS STRs

<https://professionalholidayhomes.com.au/search/>

196 OF THOSE HOMES LISTED ON AIRBNB

https://www.airbnb.com.au/users/show/128177525?set_bev_on_new_domain=1697691686_ZGIzYTQ1YWMyZTJk

CAN'T FIND REINSW REGISTRATION



BNB MADE EASY

Timmy - holds a "Class 1 Real Estate Agent License"

<https://bnbmadeeasy.questybookings.com/properties>

Bathurst / Dubbo / Orange / Wagga Wagga

Zero homes listed as residential tenancies

182 homes listed as short-term holiday rentals
(179 homes on Airbnb)

<https://www.airbnb.com.au/users/show/53244166>

BNB Made Easy: Timmy
Superhost

8043 Reviews
4.79 ★ Rating
6 Years hosting

View all 179 listings

HUNTER VALLEY BASED 'WEEKENDA'

LISTS 232 HOMES AS SHORT-TERM RENTALS

<https://www.weekenda.com.au/booking/results.cfm>

188 OF THOSE HOMES ARE LISTED ON AIRBNB

<https://www.airbnb.com.au/users/show/31180676>

AUSTRALIAN GOVERNMENT RECORDS - WEEKENDA

"Not currently registered for GST"

<https://abr.business.gov.au/ABN/View?abn=67110752586>

28 November 2023: "Alloggio adds Weekenda to growing list of acquisitions... Weekenda founder and CEO, Pete Smith, said: "Will [Creedon – founder and CEO of Alloggio Group] is the right partner and custodian of the Weekenda brand... he has built a business that is 10+ x bigger than us and growing quickly."

<https://shorttermrentals.com/news/alloggio-weekenda-acquisition/>

Weekenda
Host

4650 Reviews
4.56 ★ Rating
9 Years hosting

View all 188 listings

MOLLYMOOK MILTON HOLIDAYS

117 HOMES LISTED AS HOLIDAY RENTALS
ACROSS MULTIPLE (g)HOSTS

<https://www.mollymookmiltonholidays.com.au/search-results>

AUSTRALIAN GOVERNMENT RECORDS:

"Fixed Unit Trust

The Trustee for Trova Unit Trust"

PART OF ALLOGGIO GROUP LIMITED

2022 ANNUAL ASX FINANCIAL REPORT

**"Revenue from ordinary activities –
\$27,834,802"**

<https://announcements.asx.com.au/asxpdf/20220825/pdf/45d8cdr1qdddmm.pdf>

alloggio

Turning valuable housing into accommodation
Turning property into valuable accommodation

Level 32
52 Martin Place
SYDNEY NSW 2000

DX: 130 SYDNEY
T: 02 8227 9600
F: 02 9210 0524
E: pickles@mpchambers.net.au

9 January 2017

The Hon. Victor Dominello MP
Minister for Innovation and Better Regulation

By Email

Dear Minister

Re: Short-Term Letting of strata apartments

I refer to the Legislative Assembly Report on the Adequacy of Regulation of Short-Term Letting in NSW (the Report). I understand that the NSW Government is proposing to formulate its position in response to that report by April this year. I wish to comment on aspects of the report as far as they concern short-term letting of apartments in strata buildings, particularly whole apartment letting.

1. First, this is a matter of interest to me as an owner of an apartment in a strata building in Pyrmont, which has since its inception, been subject to both a development consent condition imposed by the Council and an original by-law that prohibits short-term letting.
2. Second, as a lawyer, having read the submission made by the Department of Premier and Cabinet Government, on which much of the Report is founded, I am puzzled and troubled by the bald assertion that such by-laws are not legally valid or enforceable.

Strata apartments are a special case

3. The Report recognises that "strata is a special case"¹, yet is dismissive of the concerns raised by many strata owners essentially on the basis that the issues of concern "are not exclusive to STRA and may also be caused by longer-term residents."²
4. It is absurd to suggest that the solution to these concerns is to give owners corporations more powers to manage and respond to adverse impacts arising from adverse behaviour. While it may readily be accepted that many of the concerns relating to breaches of by-laws, unruly behaviour and damage to common property can also be caused by longer term residents, it is self-evident that longer term residents can be more readily identified by other occupiers and, thus, by owners corporations for the purposes of enforcement. When short-term lets may be as short as a few days, such powers are less likely to be readily enforceable against short-term occupants or their owners.

¹ Report at 1.51 and at 3.97

² Report at 3.99

5. Without a full time eye on every floor of every building, the identification of individuals responsible for every item of damage to common property is virtually impossible to prove, especially where the short-term occupants, who have long since left the building, are unknown or even unseen by others while on common property.
6. Enforcement action against absent owners letting their apartments is also problematic. They may rightly say they have limited control over the behaviour of their short-term tenants and have done everything in their power to try to inform short-term tenants of their responsibilities.
7. In any event, it is already difficult and expensive for owners corporations to issue breach notices and bring proceedings to enforce by-laws in respect of longer-term tenants and owners. The burden of proof and the costs are laid at the feet of the other owners while the landlords run away with the profits. These problems will simply be magnified if short-term letting is allowed to proliferate in residential apartments.
8. In any event, it is not just unruly behaviour and damage to common property that is in issue. There is an unquantifiable value to exclusive use for residential purposes to the exclusion of short-term letting. The fact that I know all of the occupants of the floor of my building at any one time provides not only a sense of community that is missing from hotels and serviced apartments, but is a significant element of reassurance and security, which cannot be underestimated.
9. In recognising that strata is a special case, the only practical response is to allow strata schemes to make by-laws prohibiting or restricting the use of their buildings for short-term letting.

By-laws restricting short-term letting

10. The foundation of much of the Committee's findings and recommendations was a submission from NSW Premier and Cabinet that by-laws, which manage or prohibit short term letting in their buildings, have no legal authority.³ While the NSW Premier and Cabinet Submission refers to s 49 of the *Strata Schemes Management Act 1996* (1996 SSM Act) in support of the proposition, there is no judicial decision referred to that would support the broader interpretation of s 49 advanced. In fact, the leading judicial decisions suggest a narrow interpretation of s 49 has been consistently applied.
11. Section 49 of the 1996 SSM Act, now replicated in s 139(2) of the *Strata Schemes Management Act 2015* (2015 SSM Act) prevents a by-law from "*operating to prohibit or restrict the devolution of a lot or a transfer, lease, mortgage or other dealing relating to a lot*".
12. However, section 47 of the 1996 SSM Act, now effectively replicated by s 136 of the 2015 SSM Act, allows the regulation of uses and provides that:

(1) By-laws may be made in relation to the management, administration, control, use or enjoyment of the lots or the common property and lots of a strata scheme.

³ Report at 1.56 and 3.101-3.103

13. Not only does the NSW Premier and Cabinet submission fail to record any legal authority relating to the interpretation of s 49, but the relationship between s 49 and s 47 is also ignored. Critically, s 49 has been read down in the context of s 47.
14. In *Sydney Diagnostic Services Pty Ltd v Hamlena Pty Ltd* (1991) 5 BPR 11,432, the NSW Court of Appeal upheld the validity of a by-law which prohibited a proprietor of a lot from engaging in any enterprise other than the practice of medicine, but excluding the practice of pathology. Although the decision preceded the 1996 SSM Act, and related to the limits of the powers of owners corporations under s 58(2) of the *Strata Titles Act 1973*, this was the predecessor to Division 3 of Part 5 of the 1996 SSM Act.
15. In *Pro-Tek Pty Ltd, trading as Panozzo Property Unit Trust v The Owners SP54408* [1999] NSWSSB 38 the appellant sought an order that they be “permitted to lease or rent their strata apartment for any legal and legitimate purpose”. Consent to lease the premises to a church group had been rejected by the owners corporation. In dismissing the appeal the Strata Schemes Board noted that while s 49(1) operated to prohibit by-laws having the general effect of restricting dealings with a lot, the freedom to deal with a lot is qualified by the restrictions on the permissible use of lots.
16. In *White v Betalli & anor* [2006] NSWSC 537; 66 NSWLR 690, White J cited the decision in *Sydney Diagnostic Services* at [44] and noted, at [54], that s 49(1) has been construed narrowly and further said:

“In one sense, a by-law which restricts the user of the lot, restricts the right of the lot owner to deal with the lot. Most by-laws, including the by-laws in schedule 1 of the Strata Schemes Management Act, include restrictions on the use of a lot...The cases show that a mere restriction on use of a lot which might limit the number of potential transferees or lessees of a lot does not amount to a restriction on dealing so as to contravene s 49(1)...” (Emphasis added)

17. While the by-law in question in *White v Betalli* was not one restricting the use of the land for short-term letting, it was nevertheless analogous in that it created a right in favour of the owners of one lot to use a portion of the land owned by the plaintiffs for storage of watercraft. It was argued by the plaintiffs that such a restriction interfered with their power to grant an easement or otherwise dispose of the affected land. This argument was expressly rejected.
18. The decision in *White v Betalli* was the subject of an appeal to the Court of Appeal which, by majority, dismissed the appeal and upheld the original decision.⁴ On appeal, Santow JA specifically referred to the second reading speech of the NSW Minister for Fair Trading on the introduction of the 1996 SSM Act where the Minister said:

“one of the major initiatives in this Bill is to allow more flexibility in the use of by-laws, and to encourage the adoption of by-laws more appropriate to the nature of individual strata

⁴ *White v Betalli* (2007) 71 NSWLR 381

schemes. Too often in the past, bodies corporate simply accepted the by-laws included in the legislation without giving any thought to how well they fitted their scheme..."

And so it ought to continue. Just as some apartments may be more suited by reason of their layout, size, location and amenity for short-term letting, others may not be so suited and the residents of such schemes should be entitled to protect their residential amenity by preventing whole apartment letting for short-term lets.

19. The decision in *White v Betalli* was followed in the NSW CTTT in *The Owners SP57237 v Fowley, Burgess* [2012] NSWCTTT 425, which concerned the validity of a by-law that required owners to obtain the consent of the Council if they intended to use their apartments for short-term letting. The validity of the by-law was upheld with Senior Member Bordon saying at [33]: "I agree with the submission that section 49(1) is to be construed narrowly".
20. The NSW Premier and Cabinet submission also referred, though incorrectly cited⁵, a decision of the Victorian Civil and Administrative Tribunal finding that an owners corporation rule prohibiting short-term letting was not validly made. I assume the decision intended to be cited was *Owners Corporation PS 501391P v Balcombe & Anor* [2015] VCAT 956. That decision has since been on appeal to the Supreme Court of Victoria. While the appeal was dismissed, the judge (Riordan J) did make some important observations concerning differences between the NSW and Victorian statutory schemes, which are relevant to the question of the powers of owners corporations to make by-laws:
 - (a) First, Riordan J observed⁶ that in contrast to Victoria, in NSW, proposed by-laws must accompany the registration of a strata plan. This is important because of the special position which original by-laws have in NSW.⁷
 - (b) Secondly, it was observed that, subject to two restraints, the power to make by-laws in relation to matters under s 43 and for the purposes specified in s 47 was otherwise wider in NSW than in Victoria.⁸

It follows from these two important differences that the decision in *Balcombe* is distinguishable from the position in NSW quite apart from the fact that the decision is not binding in NSW.

21. It is evident from the leading cases on the question in NSW that it is incorrect to baldly assert, as the NSW Premier and Cabinet submission asserts, that by-laws that prohibit short-term letting are invalid or unenforceable. What is certain from the decided cases is that, where a by-law reflects the lawful uses to which the land may be put under zoning restrictions and development consents, they are valid.

⁵ Incorrectly cited at p9 as *Dobrohotoff v Bennic* [2013] NSWLEC 61

⁶ [2016] VSC 384 at [79]

⁷ Section 157 of the 1996 SSM Act and s 148 of the 2015 SSM Act allow the Tribunal to revoke or amend an amending or new by-law, but not an original by-law

⁸ At [83]

22. Once it is understood that the legal basis for the proposition advanced by the submission of the Department of Premier and Cabinet is legally mistaken, the ready acceptance of this advice by the Committee is also flawed. The recommendations have been made in the context of this mistaken advice and should not be accepted.

Original by-laws

23. Even if the Government is not minded to give full power to strata schemes to make by-laws restricting short-term letting, greater consideration should be given to the position of apartment buildings where there are original by-laws that have prevented such activity. As Riordan J noted in *Balcombe*, the position in NSW is different to that in Victoria. The SSM Act has always recognised a distinction between original and amending by-laws. The Report fails to recognise this important distinction.
24. Section 157 of the 1996 SSM Act and s 148 of the 2015 SSM Act are in similar terms. The provision permits the Tribunal to revoke an amendment to a by-law, repeal a new by-law or reinstate an earlier by-law. The fact that the Tribunal has no such power in respect of an original by-law demonstrates the special significance of original by-laws.
25. In *Casuarina Rec Club Pty Limited v The Owners SP 77971* [2011] NSWCA 159 Young JA, (Macfarlan JA and Handley AJA agreeing) said at [50]:

“Some very different considerations arise when one is considering whether an original by-law is valid as opposed to an amended by-law. In the case of an original by-law, people have vested rights which are not lightly to be diminished by an amendment at the behest of the majority.” (Emphasis added)

26. For the same reason as recognised by the Court of Appeal, the Government should recognise the important distinction between original by-laws, which restrict short-term letting, and those, which were introduced by later amendment.

Local Government and the role of existing development consents

27. The Report also unjustifiably downplays the views expressed by a number of inner city Councils where there is a preponderance of residential strata accommodation. The Report cites Woollahra and Leichhardt Councils as supporting the power of owners corporations to choose whether to allow or restrict short-term letting⁹.
28. A reader of the Report would perhaps glean from this and from other references to submissions by the City of Sydney, that the City did not support the same position as Woollahra and Leichhardt Councils. However, a reading of the City of Sydney submission makes it clear that if the Committee were inclined to recommend that short term letting should be exempt development under the SEPP (Exempt and Complying Development) Codes 2008 (the SEPP), the City recommended that owners corporations should not be prevented from establishing by-laws to

⁹ Report at 3.106

further manage the activity.¹⁰ Yet, the Committee have glossed over this aspect of the recommendation from one of the major stakeholders.

29. It also must be borne in mind that for many years now the City of Sydney has been imposing development consent conditions limiting the use of residential apartment buildings for residential purposes only. The development consent condition for my own building, Sugar Dock, is typical:

"(a) The development shall be used for residential purposes only as defined in Sydney Regional Environmental Plan 26 – City West, for permanent residential accommodation and shall not be used for the purposes of a hotel, apartment hotel, motel, serviced apartments, tourist accommodation or the like.

(b) All units shall be either owner occupied or occupied with a tenant with a residential lease under the Residential Tenancies Act 1987..."

This condition is matched by an original by-law in the same terms.

30. Critically, for me and my fellow owners, as well as countless owners of apartments in the residential areas of the City of Sydney, who acquired their properties fully aware of the development consent conditions intended to prevent short-term letting, if enacted, the Committee's recommendations would be akin to an acquisition of valuable proprietary rights without compensation.
31. If I had wished to live in a quasi-serviced apartment building I would have bought into such a scheme. In fact, when looking to acquire my apartment I rejected a penthouse in the City near to Hyde Park notorious for short term letting and overcrowding for the very reason that I did not wish to live in a building with the costs, amenity consequences and atmosphere of a building with a transitory population. So why should I be faced with that prospect now when I have taken care to acquire property in a building protected by consent conditions and by-laws that prevent short-term letting and all its attendant consequences? This would be grossly unfair.
32. It is also apparent that the Committee fails to understand the significance of earlier decisions of the Land and Environment Court concerning short term letting, such as "Bridgeport" and "Maestri Towers". The Report states:

"in relying on development consents to rule STRA should cease in these two buildings, it is unclear whether the Court decision would be applicable to consideration of STRA in other strata buildings where a similarly worded development consent has not been issued".¹¹

It ought to be obvious that the enforcement of development consent conditions in the Land and Environment Court is a very different exercise of statutory enforcement power to the enforcement of by-laws in NCAT. The two actions are sourced in different legislative schemes. Even assuming, as the Premier and Cabinet submission does, that by-laws are ineffective to prevent short term letting, development consent conditions remain in force and enforceable.

¹⁰ Submission 158 at p5

¹¹ At paragraph [3.110]

33. The recommendations in the Report do not resolve how to deal with apartment buildings where there are such conditions in place. Making short-term letting exempt development under the SEPP will not invalidate development consent conditions, which expressly prohibit short-term letting. An immediate tension will arise between the exempt development provisions of the SEPP and the existing development consents, which prohibit short-term letting.
34. It needs to be borne in mind that a development consent may be regarded as a right or privilege acquired under a statute or statutory rule that would be preserved under s 30(1)(c) of the *Interpretation Act 1987 (NSW)* even if the Act under which the right was accrued is amended.¹² Accordingly, the Government cannot lightly assume that the amendment of the exempt development provisions in the SEPP would invalidate conditions of development consent that are in force and restrict or prohibit short-term letting.
35. If the Government does accept Recommendation 4 in the Report, then one of the prescribed circumstances for short-term letting to be exempt must be that it does not breach any development consent conditions in force for the building.

Conclusion

36. The Report makes an incorrect assumption that by-laws, which seek to restrict or prohibit short-term letting, are invalid or unenforceable. Such by-laws are almost certainly valid where they are supported by development consent conditions or planning restrictions.
37. If the Government is inclined to make short-term letting of apartments exempt development under the SEPP, the Government should not remove the legal rights of owners corporations to manage or restrict such activities by making by-laws.
38. If the Government is inclined to do so, it should not do so in residential zones where tourist accommodation is not currently permitted and/or where development consents already prohibit such activity.
39. The Government must respect the proprietary rights of owners of existing residential apartments that have original by-laws that prohibit short-term letting.

I would ask that the Minister take advice on the matters raised by this letter and consider these issues carefully before formulating the Government response to the Report.

Yours faithfully



Andrew Pickles SC

¹² *Harris v Hawkesbury City Council* (1989) 68 LGRA 183 and *Lederer v South Sydney City Council* (2001) 119 LGERA 350 at 373

CORONER'S REPORT ON DISPENSING WITH AN INQUEST

COURT DETAILS

Court: Queanbeyan

Registry: 2 Farrer Place, Queanbeyan, NSW 2620

Case Number: 2015/217291

PROCEEDINGS

Investigation into the death of:

REASONS FOR DISPENSING

The deceased died in a house fire at 65 Illawong Road, Anglers Reach in the State of New South Wales. The house was rented by the parents of the deceased for the purpose of a ski holiday in the area.

On arrival at the house on 23 July 2015 the group decided to light the slow combustion wood fire. None of the group there had any experience with such heating systems. After several unsuccessful attempts to light the fire, Mr [redacted] the father of the deceased, decided to use petrol from a jerry can as an accelerant.

Some of the fuel spilt onto the hearth and ignited, igniting also fuel around and on the fuel jerry can. Members of the group became alarmed. Mr [redacted] ran with the flaming can but did not try to exit the front door as others were using it as an exit. He went to the back door which was locked. As he was running, more fuel escaped the can and was igniting behind him. He placed the can on the floor somewhere near the back door. A fire within the house took hold quickly given the internal wood panelling on the walls.

Once outside, and after extinguishing a fire on the person of his wife, Mrs [redacted] Mr [redacted] learned that their four year old son (the deceased) was not with them. Mrs [redacted] and other persons tried to regain entry into the home but were unable to do so as a result of the intensity of the fire. The house was engulfed and was destroyed by the fire.

The deceased perished during the fire, probably in the kitchen area where he was last seen playing.

DSC Hopkin, the OIC in this matter, has conducted extensive enquiries, and has compiled a comprehensive brief. His investigation has included consultations with relevant local government entities, real estate bodies, and the Australian Federation of Travel Agents. DSC Hopkin's efforts were directed, in the main, to determining what standards, policies or guidelines exist with respect to short term rental of properties and fire safety.

His investigations have led to the conclusion that the industry and Local Government do not regulate to any significant degree, if at all, aspects of fire safety within the holiday rental market and certainly not to the degree that is evident within the commercial hotel industry.

DSC Hopkin is concerned that the lack of oversight and regulation may be contributing to the risk which had such tragic results in this matter. I have given careful consideration to that concern.

A Coroner may dispense with an Inquest unless an inquest is required to be held pursuant to s25 of the *Coroner's Act 2009*.

There is clearly a need for review of fire safety standards in the short term holiday rental market, particularly in areas such as the Snowy Mountains region where short-term rentals, and open and wood fires are commonplace.

In my view this is a matter better suited for review by the appropriate State and Local Government authorities. I recommend that the NSWPF provide a copy of these reasons, excluding reference to any named person, to the NSW Office of Local Government, and NSW Fair Trading for further consideration. The OIC Brief contains additional useful material with respect to this issue.

I am satisfied that the cause, place, date, identity and manner of the death of the deceased are sufficiently disclosed within the Brief on the balance of probabilities.

I am, therefore, satisfied that an Inquest will not take this matter any further and pursuant to s.25 of the Coroners Act 2009, I dispense with holding an Inquest.

PARTICULARS OF DEATH

Cause: Inhalation of carbon monoxide and products of combustion

Manner: House fire

Date: 23 July 2015

Place: 65 Illawong Road, Anglers Reach, NSW 2629



Signed:

Coroner M D Antrum

Date: 19 October 2016



NSW POLICE

STATEMENT OF POLICE

In the matter of: Death of _____ -- House Fire at 65 Illawong Road, Anglers Reach
Place: Cooma Police Station
Date: 1 October, 2015

Name: Detective Senior Constable Stephen Hopkin

STATES:

1. This statement made by me accurately sets out the evidence which I would be prepared, if necessary, to give in court as a witness. The statement is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false, or do not believe to be true.
2. I am 50 years of age
3. The Deceased, _____, commonly known as _____, was born on the 20 July, 2011, in _____. His parents are _____ and _____, and _____ After previously moving from _____ to _____ Australia in 2008, the family again moved to _____ (where _____ was then born) and they remained there 2012, before returning to Australia, and settling in Melbourne.
4. There are two other children in the family, their daughter _____ (9 years old) and their son _____ (1 year old).
5. In 2013 the family moved into a new home at _____
6. On the 20 July, 2015, the _____ family were visited by a family of four friends at their home. This family consisted of _____, his wife _____ and their sons, _____ and _____
7. On the 23 July, 2015, both families, and an additional friend, _____, left Melbourne to head to Anglers Reach, NSW, where they were going to meet with other friends for a ski holiday.
8. The vehicle owned by the _____ family was petrol driven Mitsubishi Pajero four wheel drive. Prior to leaving on the holiday _____ made enquiries with friends and associates in relation to the area they were travelling to and discussed topics such as snow or ice covered roads and the

Witness: _____

Signature: _____

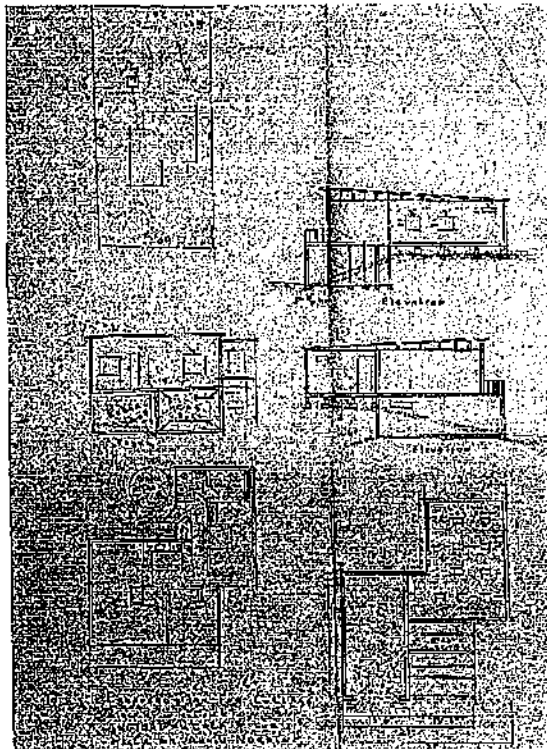
Stephen Hopkin

Statement of Detective Senior Constable Stephen Hopkin
In the matter of the Death of [REDACTED] – House Fire at 65 Illawong Road, Anglers Reach

availability of fuel for vehicles in the area. As a result, [REDACTED] purchased a set of snow chains for his vehicle and also brought with him a small 4 or 5 litre plastic fuel can for use if he ran short of fuel and could not locate a petrol station.

9. On the way from Melbourne to Anglers Reach the group stopped for a coffee, then for lunch at McDonalds Albury & then they stopped at Tumut. Whilst in Tumut the group fuelled their vehicles at the Tumut Coles Express Service Station where [REDACTED] also topped up the plastic jerry can.
10. They then continued onto Anglers Reach, arriving between 6.00pm and 6.30pm.
11. The group first went to Illawong Road where their other friends were staying. One of their friends, [REDACTED], had arranged accommodation at both No. [REDACTED] and No. 65 Illawong Road, Anglers Reach, through the Snowy Mountains Holiday Centre of 9 Denison Street, Adaminaby.
12. [REDACTED] gave [REDACTED] the code for the 'key box' at No. 65, and they discussed dinner arrangements. The two newly arrived families and [REDACTED] then drove back along Illawong Road to No. 65. It was dark, and it took a while to locate the main entrance and the 'key box'. They then used the code to obtain the key from the box, and they opened the house. None of them had been in this house before.

EXHIBIT – I NOW PRODUCE THE FLOOR PLAN OF THE HOUSE.



Witness:

[Handwritten Signature]

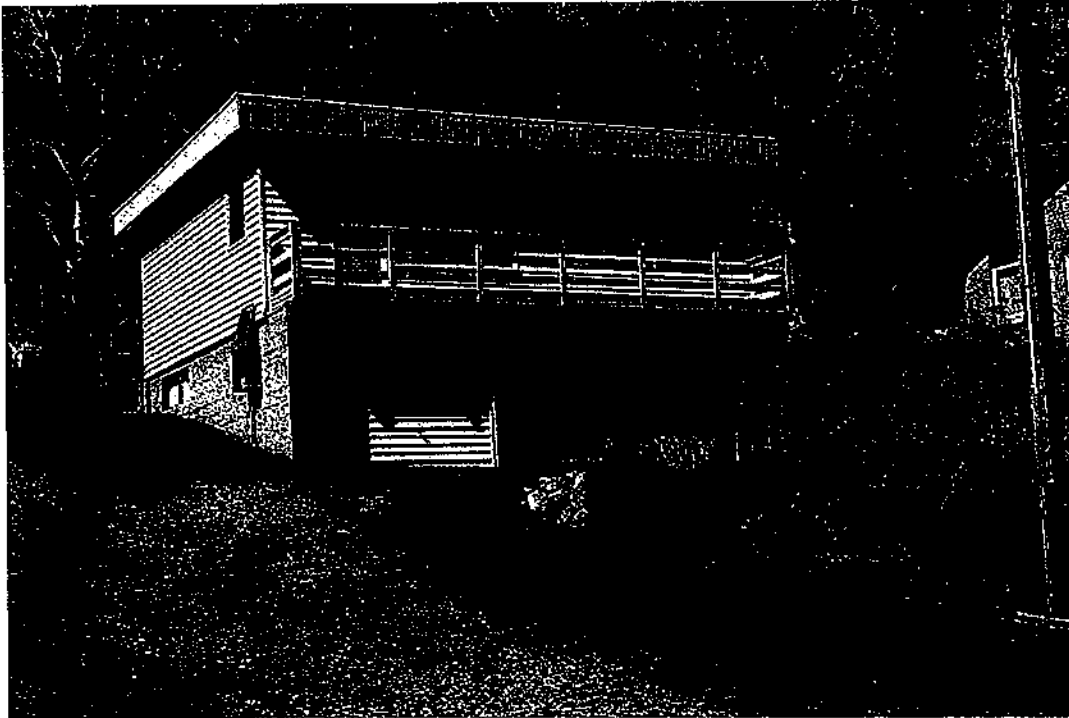
Signature:

S. Ho

Stephen Hopkin

Statement of Detective Senior Constable Stephen Hopkin
In the matter of the Death of [REDACTED] – House Fire at 65 Illawong Road, Anglers Reach

EXHIBIT – I NOW PRODUCE PHOTOGRAPHS OF THE HOUSE PRIOR TO THE FIRE.

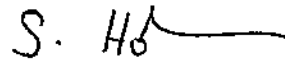


13. The house was a three bedroom two storey house with all living areas on the top floor. The building application for this house was submitted in 1970 to the Snowy River Shire Council, and it was constructed soon after.
14. Once in the house they turned on all the lights and looked through the house. They found it was really cold. They looked for the heating for the house, turned on electric blankets and checked things such as the hot water and kitchen equipment was working. They then started unpacking the car, but as it was wet outside, it was decided that [REDACTED] would bring the things from the cars to the front door and the others would take their luggage from the front door into the house.
15. The house contained a slow combustion wood heater, which was located in the lounge area. The heater was located on a raised hearth and under a chimney. The flue travelled up this chimney.

Witness:



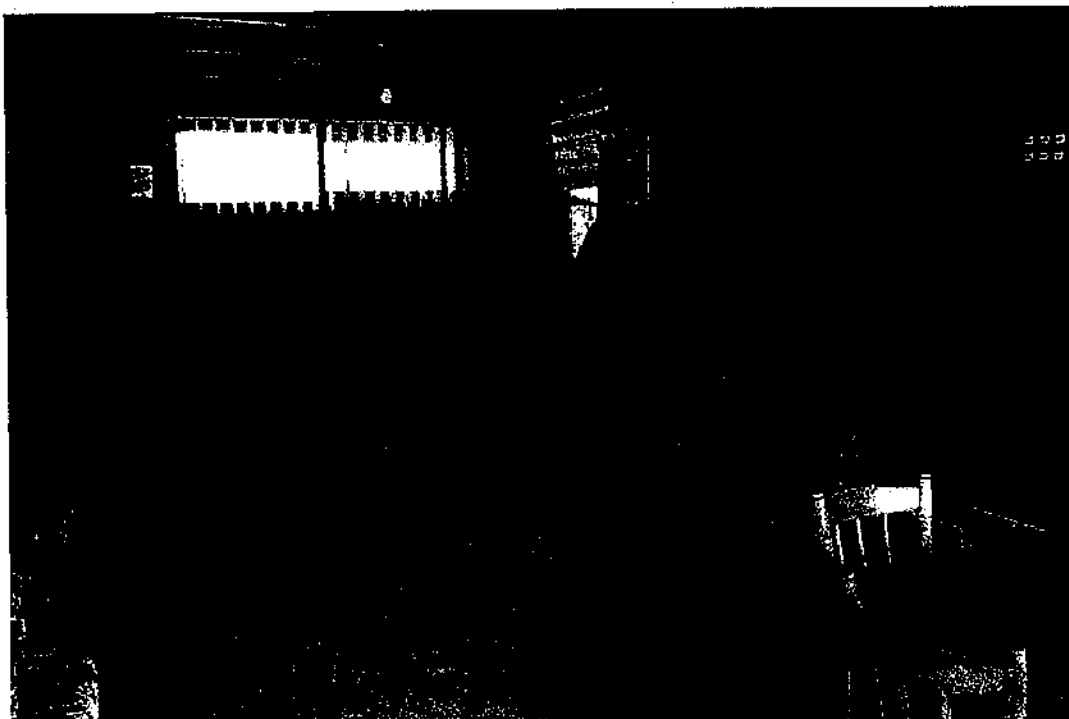
Signature:



Stephen Hopkin

Statement of Detective Senior Constable Stephen Hopkin
In the matter of the Death of [REDACTED] – House Fire at 65 Illawong Road, Anglers Reach

EXHIBIT – I NOW PRODUCE A PHOTOGRAPH OF THE LOUNGE AND FIREPLACE.



16. As it was very cold in the house, [REDACTED] attempted to light the fire. He took wood from a stack on the hearth near the fireplace, and placed some wood pieces in the heater. He then lit fire lighters in an attempt to catch the wood alight.
17. None of the group had ever had experience with the use of a slow combustion wood heater.
18. The group then continued to bring their luggage in, and as they did this, [REDACTED] also brought the small fuel can into the house with all their other luggage.
19. About 5 to 10 minutes after [REDACTED] had attempted to light the fire, it was still not burning very well, and was giving off very little heat. [REDACTED] then had a thought to use some petrol from the jerry can, to get the fire burning well. It appears he opened the can whilst standing near the fire, approximately a metre away. As he took the lid off the fuel can and started to pull the spout out of the neck, [REDACTED] and [REDACTED] said something to [REDACTED] indicating not to open/use the fuel.

Witness:

[Handwritten Signature]

Signature:

S. Hopkin
Stephen Hopkin

Statement of Detective Senior Constable Stephen Hopkin
In the matter of the Death of [REDACTED] – House Fire at 65 Illawong Road, Anglers Reach

20. But simultaneously some fuel from the can spilt, most likely onto the tiled hearth, and/or the floor (covered in carpet). [REDACTED] indicates at this time he "felt that something going wrong" (sic). The fuel that had spilt on the hearth/floor ignited, and fuel on the can also caught alight.

21. Everyone in the group at this stage became panicked, they began shouting, and they started to make their way out of the house, via the front door.

22. [REDACTED] began to run with the jerry can, trying to take it out of the house, but his family and friends were also going out that way, so he could not get out the front door with it without the risk of hurting someone. So instead he took the fuel can to the back of the house, where he tried to open the back door. He did not succeed. He then decided to leave jerry can on the floor somewhere at the rear of the house.


23. During the time [REDACTED] was running with the jerry can, it had been dripping petrol and igniting behind him. As the house consisted of internal wood panelling on the walls, and fuel was dripping on the carpet, the floor and walls began burning and the fire took hold very quickly.

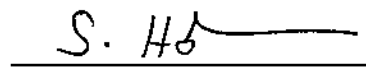
24. As [REDACTED] went to leave the house, he found [REDACTED] clothing was alight and as a result he pulled her jumper off and rolled her on the floor, managing to put the fire out on [REDACTED]. They both then left the house.

25. [REDACTED] then found out from his wife that their four year old son [REDACTED] was unaccounted for. [REDACTED] and [REDACTED] were calling for [REDACTED] and they started looking for him. But they heard no answer from their son, and due to the smoke and fire they could not locate him. The last place [REDACTED] had been seen was in the kitchen, shortly before the fire taking hold.

26. [REDACTED] and some of their other friends then tried to get into the house by other means/locations, including trying to break open the back door and trying to get up onto the front veranda (from on top of a vehicle). But inside the fire was too intense, and the smoke too thick, and they could not gain entry.

27. Anglers Reach is a somewhat isolated community with one road into the town. The location is in a Rural Fire District, which is served by local volunteers. There is a small Rural Fire Brigade at Anglers Reach and the next closest Rural Fire Brigade is at Adaminaby (15km). The closest NSW Fire Brigade Station located at Cooma (66km). The first Triple Zero call was received at 6.34pm and the first volunteer was informed at 6.36pm. The Anglers Reach Brigade arrived at the premises about 6.45pm. By the time the Anglers Reach Rural Fire Brigade arrived, the house was engulfed.

Witness: 

Signature: 
Stephen Hopkin

Statement of Detective Senior Constable Stephen Hopkin
In the matter of the Death of [REDACTED] – House Fire at 65 Illawong Road, Anglers Reach

EXHIBIT – MAP OF LOCATION OF ANGLERS REACH.

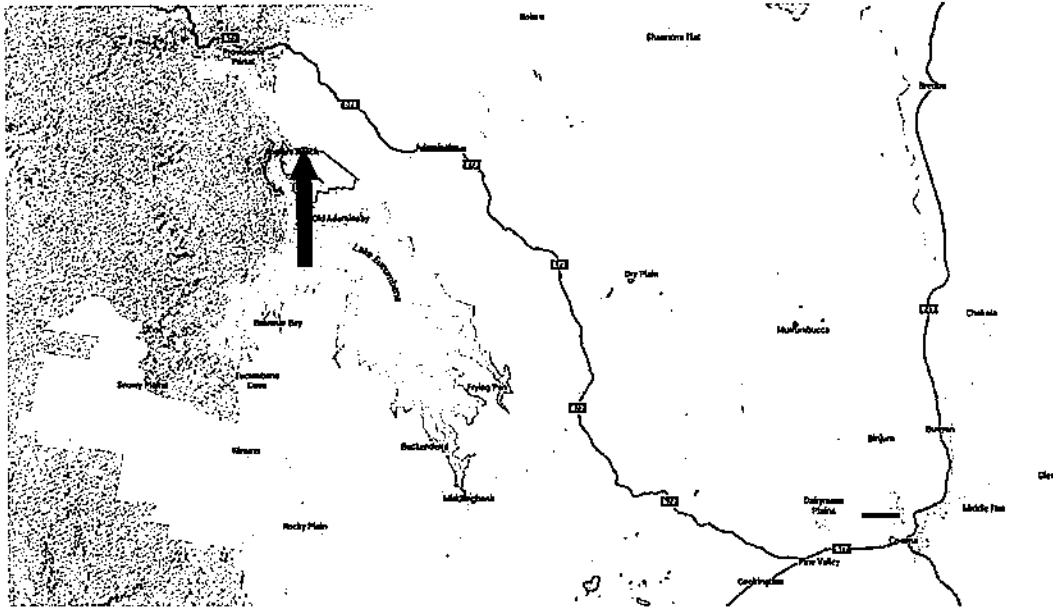
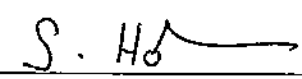


EXHIBIT – PHOTOGRAPH OF THE HOUSE BURNING TAKEN BY A RESIDENT ACROSS THE ROAD.



Witness: 

Signature: 
Stephen Hopkin

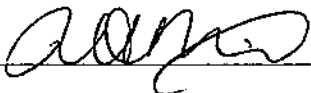
Statement of Detective Senior Constable Stephen Hopkin
In the matter of the Death of [REDACTED] – House Fire at 65 Illawong Road, Anglers Reach

EXHIBIT – I NOW PRODUCE A PHOTOGRAPH OF THE HOUSE AFTER THE FIRE.

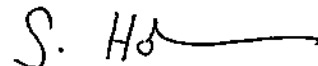


28. The Ambulance Service of New South Wales attended the scene and treated [REDACTED] for minor burns on his face and hands, [REDACTED] for minor burns on his lower right leg and [REDACTED] had serious burns on her hands, throat and chest. All three were conveyed by road to Cooma Police Station, and then [REDACTED] was airlifted to Canberra Hospital and later The Alfred Hospital, Melbourne.
29. Police attended the location and secured it as a crime scene.
30. Plain Clothes Senior Constable Hardman and I were recalled to duty about 7.30pm on 23 July, 2015. We made our way to Cooma Police Station and then travelled to Adaminaby Police Station, where we had a discussion with Chief Inspector Tranby. We then made our way to 65 Illawong Road, Anglers Reach.
31. On arrival at that address I saw the premises were located on the left side of the street, on the high side. It had premises on both sides of it. It appeared to be the remains of a two story dwelling.
32. The bottom level consisted of an enclosed garage, all its contents destroyed (including a small boat) and an open garage which had little damage and appeared to have been empty other than garbage bins.
33. The top floor had been completely destroyed with the roof collapsed at the front and left side and some partially held up in the back right area. I walked around the perimeter of the house to familiarise myself with the layout.

Witness:



Signature:



Stephen Hopkin

**Statement of Detective Senior Constable Stephen Hopkin
In the matter of the Death of [REDACTED] – House Fire at 65 Illawong Road, Anglers Reach**

34. Plain Clothes Senior Constable Hardman and I then walked down to 70 Illawong Road, where we spoke to [REDACTED] and [REDACTED]. They supplied details of the persons involved in the incident, their injuries. We were aware from this conversation and information supplied earlier by Police that four year old [REDACTED] was missing, presumably somewhere inside the destroyed premises.
35. We then returned to 65 Illawong Road and waited for the Crime Scene Officer to arrive. Whilst waiting, the Rural Fire Brigade were extinguishing a flare up in what was the kitchen area of the house, when they saw what they believed may be the remains of the missing boy.
36. On the arrival of the Crime Scene Officer, Sergeant Vucko, he was directed to this area and on close examination he confirmed it was the body of a young male person. He then photographed the deceased and area and we retrieved the body. Body Tag 0108434 was attached to the body.

EXHIBIT – I NOW PRODUCE PHOTOGRAPHS OF THE SCENE TAKEN BY SGT VUCKO

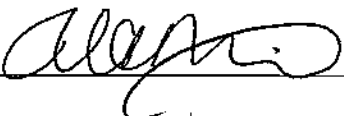
37. The local Government Contractor, Alan Dodd collected the deceased and I followed him to Cooma Hospital where Doctor Truter issued a Life Extinct Certificate. The body was subsequently collected from Cooma and taken to the Department of Forensic Medicine at Glebe.
38. On the 24 July, 2015, Crime Scene Officer, Senior Constable Andrew Gibson and Rural Fire Service Investigator Angus Barnes attended 65 Illawong Road and examined the premises.

EXHIBIT – I NOW PRODUCE PHOTOGRAPHS OF THE HOUSE TAKEN BY S/C GIBSON

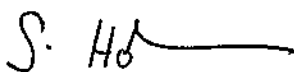
39. A Post Mortem Examination was conducted on the Deceased at the Department of Forensic Medicine at Glebe, on the 27 July, 2017, by Doctor Rebecca Irvine. Senior Constable King of Queanbeyan Police indicated that Dr Irvine's verbal interim cause of death would be carbon monoxide inhalation and other combustion (if the carbon monoxide levels in the blood are high), or, otherwise the cause may be affects of fire (if the carbon monoxide levels in the blood are low).
40. Of note, the examination identified the remains of the clothing items left on the deceased, these remains corresponded with the description of the clothing types/colours that the deceased was last seen wearing before the fire. A number of photographs were taken by Crime Scene Officer, Senior Constable Ardish Basty

EXHIBIT – I NOW PRODUCE PHOTOGRAPHS TAKEN BY S/C BASTY

Witness:



Signature:



Stephen Hopkin

Statement of Detective Senior Constable Stephen Hopkin
In the matter of the Death of [REDACTED] – House Fire at 65 Illawong Road, Anglers Reach

41. In the course of the investigation a number of interviews were conducted or statements obtained, from witnesses in the matter. Importantly their accounts specifically included their memories of the period immediately before, at the time and immediately after the ignition of the fire.

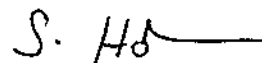
WITNESSES:

42. [REDACTED] states (via a taped interview) that he arrived at 65 Illawong Drive on the day of the fire between 6pm and 7pm and it was very cold inside the house. He attempted to light the fire by placing logs inside and lighting 'little white blocks' (firelighters). He placed the blocks in the fire using a metal 'dustpan'. 'The fire was not enough' and then [REDACTED] said 'Let's put some petrol'. [REDACTED] did not know if the petrol had been there or if he [REDACTED] came with it. [REDACTED] and everyone said 'No, No' in relation to using petrol. As they said this he [REDACTED] opened the petrol container and some petrol either poured or fell onto the 'dustpan' (which was on the hearth in front of the fire). 'In a split second' the fire started.
43. [REDACTED] saw flames on his trousers and removed his trousers. He found he was burnt. His sons left the house and he recalls 'the lady' [REDACTED] was shouting her baby was inside. He tried to locate a blanket so he could go back in and look for the child, but he could not find one and he was unable to go back inside (due to the fire). He believes the fire started within 15 to 20 minutes of them arriving at the house.
44. [REDACTED] states she had travelled to 65 Illawong Drive on the day of the fire with her family and the [REDACTED] family. She was in the house whilst her husband [REDACTED] tried to light the fire with wood and 'little white cubes'. After 20 minutes the fire was not working and they were discussing how to get it to work. She recalls seeing the fuel container on the floor in the corridor about a metre away from the fire. She did not know where the container had come from, but recalls it was not there when they arrived.
45. The next thing she recalls is her son [REDACTED] yelling 'Fire Fire' and she saw fire outside the heater. She saw [REDACTED] carrying the burning container and he ran with it towards the front door; with it was dripping on the floor and catching alight. Everyone was yelling to get out. She passed [REDACTED] in the hallway and went outside with [REDACTED] and [REDACTED]. Some of their clothing/hair caught alight on the way out but was extinguished. They then realised [REDACTED] was not there, [REDACTED] was screaming for [REDACTED] along with others. She asked the lady next door for help, and the lady called the fire brigade. She then found her husband's pants had caught alight and he had a burnt leg. She then took him to the Ambulance.

Witness:



Signature:


Stephen Hopkin

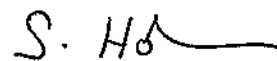
Statement of Detective Senior Constable Stephen Hopkin
In the matter of the Death of [REDACTED] – House Fire at 65 Illawong Road, Anglers Reach

46. (taped interview) indicated that they arrived at the house about 6.00pm (unsure exactly). Both mothers and the other children were in the house too. His Dad () and the other Dad () were trying to make heat (trying to light the wood heater) and () was standing near the doorway to the room. The Dads were lighting little white things (firelighters) and putting them inside the thing with the logs (the wood heater). The next thing he remembers was seeing flames and fire in the corridor and he ran outside and went to the house next door.
47. () states when they arrived at 65 Illawong Road, it was drizzling and cold. They stumbled around finding light switches and turning everything on. They then decided to get everyone into the house and start bringing the bags in before it started raining. As it was muddy outside, () suggested he remain outside bringing bags from the car, so the house did not get muddy.
48. () unloaded ()'s car first and he recalls seeing the jerry can which he describes as plastic, red with something yellow around the lid. He had earlier asked () in Melbourne) what it was for, a () told him the gasoline was in case of emergency, if the car ran out of fuel. They filled the jerry can up in Tumut.
49. He recalls () being worried the jerry can could be stolen if it was left outside, so he thought took it inside. () then started to unpack the second car, and whilst doing this heard someone yelling 'Fire' (In the 'Sinhala' language).
50. He ran up to the house, opened the front door and saw people running towards him. He saw fire to his left down a passage towards the main sitting area. He saw () pants were on fire, tried to pat it out, and then told him to go and roll on the ground outside. () then took three of the other children out of the house to the front yard. He then came back up to the house. He looked inside the house through the front door but could not see anything due to smoke and fire. He did not know where all the four other adult, or (), were at this stage. He then heard screaming that () was missing. He then tried with others to get into the house from the back, but this was unsuccessful.
51. () (taped interview) is the father of the deceased (). He travelled with his family and friends from his home in Melbourne on the day of the fire. He brought a small jerry can of fuel with him in the car, in case they ran out of fuel. He filled it up in Tumut. When they got to Anglers Reach, () went into their other friend's rental house at () Illawong Road, Anglers Reach, where he spoke to the friends and collected the code/information to allow him to get the key to the house at 65 Illawong Road, Anglers Reach. They then drove there. The men went into the house first to turn the lights on and to look around. Then the other members of the group came in.

Witness:



Signature:



Stephen Hopkin

**Statement of Detective Senior Constable Stephen Hopkin
In the matter of the Death of [REDACTED] – House Fire at 65 Illawong Road, Anglers Reach**

52. They found it was real cold, and then they found there was a fireplace (In the lounge room). Everyone wanted to start it so it would get warmer. [REDACTED] started to place pieces of wood into it. The set up was confusing [REDACTED]. He found he had to open a door to place the wood in. The wood was already in the house. [REDACTED] then used firelighters (provided by owner) to put in the fireplace with the wood. But the fire did not start to burn quickly.

[REDACTED] then brought some luggage, along with the jerry can, into the house. He wanted to keep the can with everything else.

54. After 5 to 10 minutes the fire was still burning but only the pieces they had lit, it was not catching everything alight, and therefore it was not providing heat. Then [REDACTED] thought he could use some fuel from the jerry can to help get the fire going. He opened the jerry can and started to pull the spout out. As [REDACTED] was doing this he states he thinks [REDACTED] all said not to. But as the jerry can was full, fuel spilled on the floor or the tiled hearth surface, in front of the fire. Before [REDACTED] had a chance to stop and put the lid back on he states he felt something was going wrong (the spilt fuel ignited) and he then thought it was going to burn and he took the can and ran. But the can had also caught alight and it was dripping burning fuel on the floor and catching the floor alight.

55. He could not get the jerry can outside as people were in the way, and he could not open the back door (He thought it was locked), so in the end he put it on the floor. He shortly after became aware that [REDACTED] was missing as [REDACTED] was in the house screaming for him. [REDACTED] and he were looking for him, but [REDACTED] caught alight and he helped to get her jacket off and roll her over to put out the flames.

56. By this stage the walls and floor was burning, and he could not stay in the house.

57. He then tried to get in via the back door, with others, and others tried to get on the veranda from the top of the car, but both ways were impassable.

58. [REDACTED] is the mother of the deceased [REDACTED]. She travelled from her home in Melbourne on the day of the fire. She recalls a small fuel can being in the car and filled on the way (in Tumut), it was brought in case they needed fuel for the vehicles. When they got to 65 Illawong Road, Anglers Reach, her husband and the other men first went into the house, and about 5 minutes later [REDACTED] followed. She found it was very cold inside. She looked around the house.

59. The adults decided they needed to light a fire in the fireplace. She saw it was square with a door on the front. She had not seen this type of fireplace before. She did not see anyone place wood in the fireplace, but she saw [REDACTED] lighting fire starters and placing them inside the fireplace.

Witness:



Signature:




Stephen Hopkin

Statement of Detective Senior Constable Stephen Hopkin
In the matter of the Death of [REDACTED] – House Fire at 65 Illawong Road, Anglers Reach

60. [REDACTED] was standing near the lounge room windows when she saw the fire 'come out of the fire place'. She thinks the carpet caught alight. Everyone started screaming and she jumped over the fire to get out of the house. In doing this her jumper caught alight. Her husband pulled her jumper off her and rolled her on the floor, to put out the fire on her.
61. At this stage she realised her son [REDACTED] was missing and she and her husband [REDACTED] were calling out for him and trying to search the house. But the fire was too hot and the floors and walls were burning and there was too much fire and smoke. A final attempt to enter the house was made at the rear this did not work. [REDACTED] again tried to go in the front door, but there was lots of smoke. She was then taken to a neighbouring house where she waited until the Ambulance arrived. She was then conveyed to Hospital where she was treated for serious burns.
62. [REDACTED] was one of the group of friends staying at [REDACTED] Illawong Road, Anglers Reach, and after the arrival of their friends staying at 65 Illawong Road, he and his wife and daughter went to the other house to take them some food (approx 6.35pm to 6.45pm). As he approached the house he saw the fire had engulfed the top right hand side of the house and he heard screams. He saw [REDACTED] run down to him and she had burns on her face. He then assisted others trying to force entry through the rear of the house, but although able to break the door open, he could not enter as there was too much smoke.
63. [REDACTED] was one of the group of friends staying at [REDACTED] Illawong Road, Anglers Reach. He first became aware of the fire when [REDACTED] came back to the house and started beeping the horn. [REDACTED] then drove to the house. He saw the fire was outside of the house and smoke and flames coming out of the side. He confirmed with other onlookers that someone had called the Fire Brigade. At the request of someone he then shone his car lights on the front of the house. He then saw some people were standing on a Pajero, trying to get onto the front balcony. He waited around while the Fire Brigade and police arrived. He spoke to the police.
64. [REDACTED] is the owner of the destroyed house. [REDACTED] lives in South Windsor (Sydney). He purchased the house around 2002 / 2003 for \$80'000. The slow combustion heater had been installed prior to the purchase.
65. After purchase, the house was fitted out with furniture, bedding and kitchen items. When the premises were rented, tenants were also supplied wood, fire starters and matches to light the slow combustion fire. On a bench under the phone a 'welcome pack' was kept with instructions of how to use things and where things were located. When tenants used the house, they had to bring their own linen, clothing, toiletries and food.
66. The rental of the property was organised through Snowy Mountains Holiday Centre in Adaminaby. It was on their website. Cleaning was arranged by [REDACTED] when required, after rentals.

Witness:



Signature:




Stephen Hopkin


Statement of Detective Senior Constable Stephen Hopkin
In the matter of the Death of [REDACTED] – House Fire at 65 Illawong Road, Anglers Reach

67. Various maintenance and upgrade/replacement of household equipment took place during the time [REDACTED] owned the house, including the upgrade of the electrical board in 2011 / 2012. An Insurance Policy was held with NRMA Insurance for the value of \$279,000 and \$52,000 for the contents.
68. [REDACTED] received notification of the related booking by [REDACTED] (for the period of 23 July to 26 July), from Snowy Mountains Holiday Centre, on the 6 May, 2015. He was informed of the fire on the evening of 23 July, 2015 by a neighbour, and later by [REDACTED] / from the Snowy Mountains Holiday Centre.
69. Statements were also obtained from Police and other Investigators.
70. **Detective Sergeant Vucko** – (Queanbeyan Crime Scene) attended 65 Illawong Road, Anglers Reach in the early hours of the 24 July, 2015. He was apprized of the situation and then moved to the north eastern corner of the premises, which was under lighting provided by the Rural Fire Service.
71. He observed human remains in the debris in the remains of the kitchen area. Scaffolding planks were put in place so he could examine the area. He found the flooring under the body had been preserved, the remains were of a young child, the deceased was prone (face down) on the floor, the head was against a collapsed cupboard, the body was aligned generally north/south, and the posterior of the body was charred and fire affected.
72. He then assisted with the body recovery before returning to Queanbeyan.
73. **Detective Senior Constable Gibson** – (Queanbeyan Crime Scene) after examining and photographing the fire scene, developed the opinion that 65 Illawong Road, Anglers Reach was extensively damaged by fire. He found that the floor and supporting timbers in the lounge room area, near the fireplace, had been completely consumed, and no internal supporting walls remained in this area. He found the damage lessened as it moved away from the fireplace area towards the extremities of the building. Having later read the interview conducted with [REDACTED], he believes the version is consistent with his findings.
74. **Inspector Angus Barnes** – (Rural Fire Service Investigator) found that most amount of damage had been occasioned to the northern part of the house, along with the floor being burnt right through in the area adjacent to the wood burning fire place. He also observed 'clean burn' in the area around the fire place, indicating high intensity. He found areas away from the northern end had far less damage. As a result he also agreed that the point of origin was in the vicinity of the wood burning fire and the cause being accidental in attempts to light the wood fire.

Witness:



Signature:



Stephen Hopkin

**Statement of Detective Senior Constable Stephen Hopkin
In the matter of the Death of [REDACTED] – House Fire at 65 Illawong Road, Anglers Reach**

75. **Enquiries at Coles Express Tumut** – Detective Parker of Tumut Detectives made enquiries at the Tumut Coles Express Service Station and confirmed via the viewing of video and copies of receipt dockets that the [REDACTED] and [REDACTED] family had attended the Tumut Coles Express Service Station about 2.30pm on 23 July, 2015.

EXHIBIT – I NOW PRODUCE A RECEIPT FROM THE COLES EXPRESS

76. **Enquiries with [REDACTED] and the Snowy Mountains Holiday Centre** – [REDACTED] indicates that the premises were installed with both smoke alarms and fire extinguishers. Her recollection being that there was a smoke alarm in the hall near the kitchen entrance and one in the hall near the back bedrooms. In relation to fire extinguishers, her best recollection places one extinguisher in the lounge / kitchen area. The cleaner, [REDACTED] believes there was also a fire extinguisher in the rear of the house near the entrance to the sauna.
77. [REDACTED] indicated the lock on the back door was an old style one that could be opened from the inside without the use of a key, by turning the knob (not a dead lock style). This was confirmed by cleaner [REDACTED]

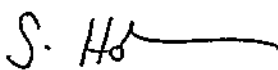
ENQUIRIES MADE REGARDING ANY RELATED SAFETY REGULATIONS:

78. **Enquiries with the Department of Fair Trading and other Organisations** – Initial enquiries were made with the Department of Fair Trading in relation to what safety standards, regulations etc were applicable to this type of rental property. Subsequently [REDACTED], the Coordinator of the Real Estate Area indicated that such a short term rental property was not covered by the Residential Tenancy Act and she was not aware of any related safety regulations. She indicated that the Snowy Mountains Holiday Centre, who advertise and rent the premises on behalf of the owner, are not Real Estate Agents but come under the title of Travel Agents. She indicated that such organisations are self regulated. [REDACTED] suggested enquiries be made with 'AFTA' (Australian Federation of Travel Agents).
79. [REDACTED] of 'AFTA' was spoken to and he indicated that the members of his organisation do not have any set safety standards to which are they have to abide. He indicated that from the 30 June 2014, industry licensing had in fact been de-regulated. He suggested enquiries regarding any existing safety standards for this type of premises, be made, with organisations such as the Australian Hotels Association and Accommodation Association of Australia, or with the Inn Keepers Act (NSW).

Witness:



Signature:



Stephen Hopkin

Statement of Detective Senior Constable Stephen Hopkin
In the matter of the Death of [REDACTED] – House Fire at 65 Illawong Road, Anglers Reach

80. It was ascertained that the Australian Hotels Association and the Inn Keepers Act (NSW) did not relate to such a premise.

81. Subsequently, [REDACTED] the 'General Manager of Operations' at the Accommodation Association of Australia, was spoken to. [REDACTED] was able to provide some valuable information in regards to standards for this type of premise.

82. [REDACTED] indicated that such a premise which offers holiday accommodation is known in the industry as a 'Non Compliant Short Term Accommodation'.

83. He informed that there are some standards that this type of premises/building must adhere to, but only if the Local Council has categorised the building as a 'Class 1B' building, under the National Construction Code. A 'Class 1B' building is defined as:

1.3.1 Principles of classification

The classification of a building or part of a building is determined by the purpose for which it is designed, constructed or adapted to be used.

Explanatory information:

1. Class 1 and 10 buildings are classified in accordance with this Part; and
2. Class 2 to 9 buildings are classified in accordance with Section A of BCA, Volume One;
3. Access requirements for people with a disability for certain Class 1b and Class 10a buildings, and certain Class 10b swimming pools, are contained in Volume One of the BCA. These requirements are based on the Disability (Access to Premises – Buildings) Standards which are available from the Australian Government Attorney-General's Department Website at www.ag.gov.au.

1.3.2 Classification

Class 1 and 10 buildings are classified as follows:

Class 1 — one or more buildings, which in association constitute—

(a) Class 1a — a single dwelling being—

- (i) a detached house; or
- (ii) one of a group of two or more attached dwellings, each being a building, separated by a fire-resisting wall, including a row house, terrace house, town house or villa unit; or

(b) Class 1b —

- (i) a boarding house, guest house, hostel or the like—

2

(A) with a total area of all floors not exceeding 300 m measured over the enclosing walls of the Class 1b building; and

(B) in which not more than 12 persons would ordinarily be resident; or

- (ii) 4 or more single dwellings located on one allotment and used for short-term holiday accommodation, which are not located above or below another dwelling or another Class of building other than a private garage (see Figure 1.3.1, 1.3.2 and 1.3.3).

Witness: [Signature]

Signature: [Signature]
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Explanation/Information:

Class 1B buildings used for short term holiday accommodation include cabins in caravan parks, tourist parks, farm stay, holiday resorts and similar tourist accommodation. This accommodation itself is typically rented out on a commercial basis for short periods and generally does not require the signing of a lease agreement. Short term accommodation can also be provided in a boarding house, guest house, hostel, bed and breakfast accommodation, or the like.

84. [REDACTED] indicated that a Local Council is not obligated to deem a premise as a Class 1B, but if they do so, they should then enforce the code in some way. He advised that due to the three layers of Government involved in this area (Local, State, Federal), it all becomes quite complicated.

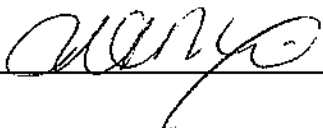
85. [REDACTED] stated that there had been talk in the Industry that standard regulations should be put in place in regards to 'Non Compliant Short Term Accommodation', so safety standards can be monitored and regulated. One such standard example that could be introduced is known as the 'Japanese Model'. This regulation model would enforce such areas, but not be restricted to:

- *The inspection of premises on a regular basis (between every 1 and 3 years)*
- *Stipulate what type of Smoke Detectors must be installed*
- *Stipulate location, number and type of Fire Extinguishers*
- *Ensure there are two safe points of egress*
- *Stipulate a well articulated evacuation plan is displayed*

86. Perusal of Volume Two of the National Construction Code Series 2015 (Building Code of Australia - Class 1 and 10 Buildings) shows it to be a comprehensive document covering many various areas of building standards. In relation to relevant fire safety issues to this premise, the Code indicates that if it is categorised as a Class 1B building the following should apply:

- **The Hearth:** Should extend 400mm from the heating appliance.
- **Smoke Alarm Requirements:** Smoke alarms must be located in Class 1B buildings in accordance with Sections 3.7.2.4 and 3.7.2.5; and comply with AS 3786; and be connected to consumer mains power where consumer power is supplied to the building; and be interconnected where there is more than one alarm.

Witness:



Signature:



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- **3.7.2.4 Smoke Alarm Location:** In Class 1B buildings, smoke alarms must be installed on or near the ceiling in every bedroom; and in every corridor or hallway associated with a bedroom, or if there is no corridor or hallway, in an area between the bedrooms and the remainder of the building; and on each storey.
- **3.7.2.5 Lighting to assist evacuation — Class 1B buildings:** In a Class 1B building, a system of lighting must be installed to assist evacuation of occupants in the event of a fire; and be activated by the smoke alarm (required by 3.7.2.4(b)), and consist of — (i) a light incorporated within the smoke alarm; or (ii) the lighting located in the corridor, hallway or area served by the smoke alarm.

Explanatory information:

The lighting required by 3.7.2.5 may consist of the artificial lighting which may already be installed in a corridor, hallway or area, provided that lighting is activated by the smoke alarm.

Interconnection of smoke alarms: Alarms need to be interconnected to provide a common alarm so that if one alarm in the dwelling activates then other alarms automatically activate, which will increase the likelihood of sleeping occupants becoming aware of the detection of smoke.

LOCATION OF SMOKE ALARM

- Legend: ● Smoke alarm ● Smoke alarm with evacuation lighting (as required by 3.7.2.5(b)(i))

Diagram b. Class 1b buildings

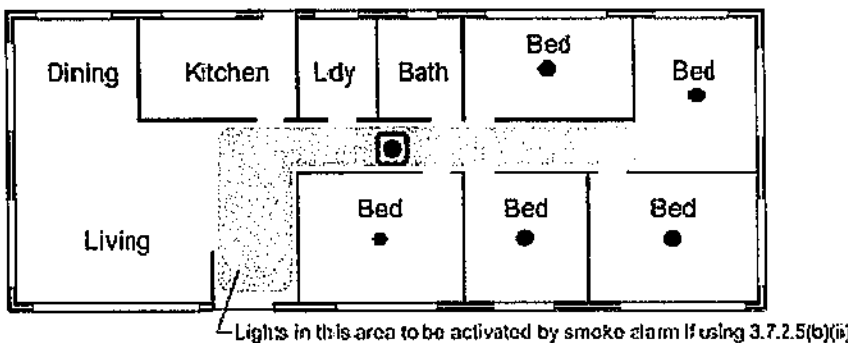


EXHIBIT – I NOW PRODUCE RELEVANT SECTIONS FROM THE NATIONAL CONSTRUCTION CODE

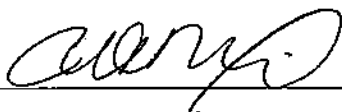
Witness: [Signature]

Signature: [Signature]
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87. Other important safety areas such as emergency exit doors, types of locks and fire extinguishers are not raised in the National Construction Code.
88. If required an adequate fire extinguisher to be located close to the fire place. The fire may have been extinguished by the guests immediately after its ignition.
89. The Accommodation Association of Australia have indicated that they would be happy to contribute their knowledge and ideas to the Coroners Court, (by way of a submission or other), in relation to the lack of standards/regulations with respect to 'Non Compliant Short Term Accommodation' premises , as they consider some regulation is required to enforce safety standards.
90. **Enquiries with [REDACTED] of the Snowy River Shire Council:** (The geographical Local Council for this location) Mr [REDACTED] indicated that the premises at 65 Illawong Road, Anglers Reach, had been categorised by Council as a 'Class 1A' building. It had been inspected by Council (once) after an 'Application to Change Use' had been submitted, requesting the use of the building be changed from residential to short term accommodation. As a 'Class 1A' it did not require any follow up inspections by Council. The Snowy River Shire Council does not appear to have considered that the premises could be classed 1B, where the premises would have been required to fulfil more stringent fire regulations and be inspected on a regular basis.
91. **Section 1.3.2 – Classification**, of the National Construction Code Series 2015 Volume Two was drawn to the attention of Mr. [REDACTED] especially Section (b) and the associated Explanatory Information. Mr. [REDACTED] indicated he was not convinced the use of the premises should come under Class 1B.
92. As a result of this investigation, I have found that these type of premises known as '**Non Compliant Short Term Accommodation**' seem to have 'slipped through the cracks' in relation to some standard fire safety regulations.
93. Subsequently I would like the Coroners Court to consider making a number of my recommendations which would improve safety, but not necessarily restricted the recommendations to those highlighted below:
- That legislation be enacted enforcing specific installation regulations for smoke alarms and emergency lighting, in all 'Non Compliant Short Term Accommodation'. (Such as required for Class 1B buildings)
 - That legislation be enacted requiring a fire extinguisher be located adjacent to all wood fire heaters and in all kitchen areas, in all 'Non Compliant Short Term Accommodation'.

Witness:



Signature:



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- That legislation be enacted requiring the provision of comprehensive instructions on how to light any installed wood fire heaters. (Including what not to do – e.g. 'do not use an inflammable liquid').
- Consideration by given that a regulation be created stipulating that only gas or electric heating is to be installed in all 'Non Compliant Short Term Accommodation'.
- That legislation be enacted requiring the display of a well articulated 'Evacuation Plan' in a prominent area of any 'Non Compliant Short Term Accommodation'.
- That legislation be enacted requiring illuminated 'Exit Signs' be fitted to all external doors in any 'Non Compliant Short Term Accommodation'.
- That legislation be enacted requiring all external exit doors on 'Non Compliant Short Term Accommodation', be of a regulated type that can be opened easily without the use of a key.

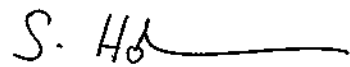
THE LIGHTING SLOW COMBUSTION WOOD HEATERS:

94. Prior to this accidental ignition of the fatal fire, _____ and _____ were attempting with great difficulty to light a heating fire in the installed slow combustion heater. They had no experience with lighting such a fire. Such a combustion wood fire heater has settings for air flow on the heater, called a damper. The damper controls airflow into the firebox after you close the doors. By opening and closing the damper, you can exert some level of control regarding to how fast and hot a fire burns. If this is not adjusted properly when first lighting the fire, it can make it difficult to start the fire and getting it to continue burning. Some heaters also need the door to be cracked (open) a little or the ash pan door opened a little, whilst starting the fire.
95. Also when lighting a fire it needs to be 'built', not just have a few logs and fire starters thrown in and a match put to them. Kindling should split into small pieces 10 – 20mm thick (but no need to be accurate) and should be laid on top of newspaper or fire lighters and spread out touching each other, but allowing gaps for air or flames. When this all starts burning, then larger logs should be laid on top carefully trying not to disturb the initial fire too much. Once the larger logs catch, then the damper can be adjusted as required.
96. The above complexities appear to have prevented the group from establishing a fire, leading them to the use (or consideration of use) of the fuel which ignited the house fire.

Witness:



Signature:



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SUMMARY & OPINION:

97. From my investigation into the fire at 65 Illawong Road, Anglers Reach, I have formed the opinion that the fire originated in the lounge room area, near the wood fire heater, after [REDACTED] opened, and spilled, unleaded petrol from a small jerry can, onto the floor (or hearth). The fumes from this spillage ignited, due to the small fire already burning/smouldering in the wood fire heater a short distance away. The floor and walls quickly ignited and spread.
98. As the men (and their wives) had no experience with igniting wood fires, [REDACTED] wanting to provide a warm environment in the house for the families, developed the idea to use some of the unleaded fuel he had brought with him. Although in the end he did not pour any petrol on the fire, just by the act of removing the lid and spilling some fuel on the floor was enough to trigger the subsequent ignition of the fumes.
99. As the families had only just arrived at the house, in the dark, at a location never visited before, their unfamiliarity with the house became a contributing factor to the resulting tragedy. The panic that ensued after the house fire started, and the group's unfamiliarity of the house layout, all worked against them in the need for the quick location and rescue of young [REDACTED].
100. Due to the resulting urgent actions that needed to be performed, such as extinguishing the fires on the clothes of [REDACTED] and [REDACTED] the adults in the group were delayed in the realising that [REDACTED] was unaccounted for and most likely still inside the house.
101. As the walls of the house were covered in timber panelling, the fire took hold and spread very quickly, assisted by the spilt fuel. Smoke and fire filled the building quickly. With the fire spreading from the vicinity of the fireplace and into the small hallway, this meant the only designed exit from the lounge and kitchen area was blocked. This was the only exit out towards the front door and back doors.
102. The last two locations where witnesses recall [REDACTED] was seen, was in the lounge area (at the rocking chair) and in the kitchen (seen opening and closing cupboard doors). The kitchen was where subsequently the location where the body of [REDACTED] was later found, next to the cupboards and bench on the northern side of the kitchen.

Witness:

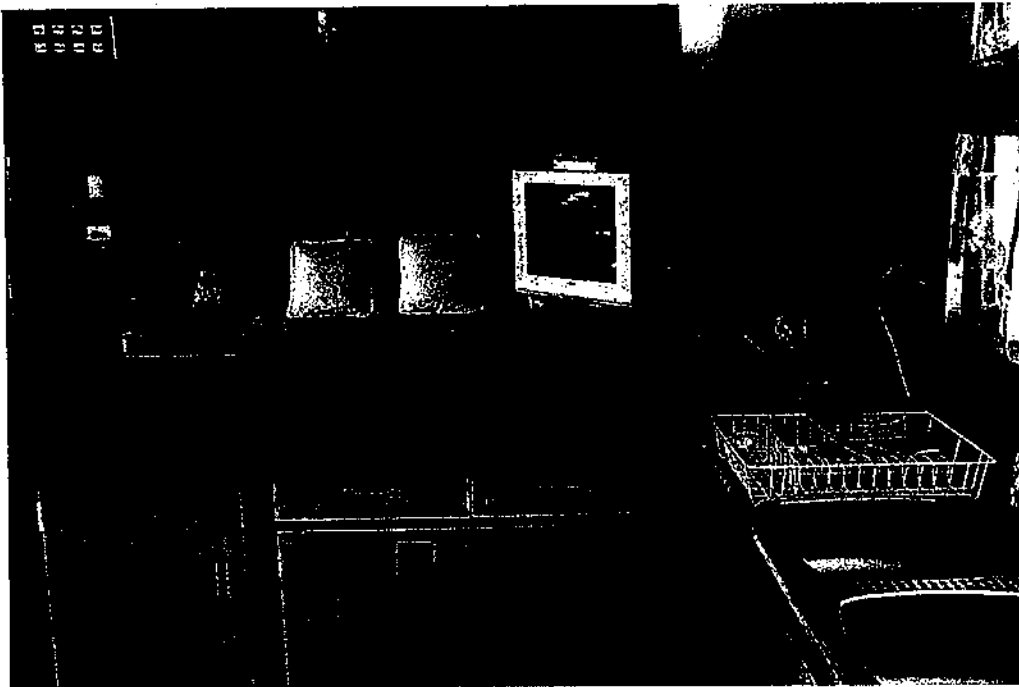


Signature:



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103. Another contributing factor to the death may have been the failed attempt by [REDACTED] to take the already burning fuel can out of the house via the back door. [REDACTED] stated he could not open the door. Enquiries with persons familiar with the house have determined that the door lock was operable without a key, it was not dead locked. Subsequently it appears [REDACTED] unfamiliarity with the style of lock prevented him from opening it in his obvious panic.

104. If [REDACTED] had managed to use the second available exit/entry, to promptly dispose of the fuel can (which was accelerating the fire throughout the house), it would have meant the container of fuel was out of the house reducing the accelerant effect on the fire and possibly creating an additional entry/egress point from the house, that may have helped potential rescuers searching for

105. I believe that due to a combination of contributing circumstances, after the fire having been caused by the accidental ignition of the house by his father, [REDACTED] became isolated from the other family members, in the kitchen, by the fire and smoke, and as a result he died due to the effects of that fire on him.

Witness: [Signature]
Ursula KRYJ
Constable
7/10/15

Signature: S. Ho
Stephen Hopkin
07/10/2015

Witness: _____

Signature: _____
Stephen Hopkin