

PUBLIC CONSULTATION ABOUT NSW SHORT-TERM RENTAL ACCOMMODATION REGULATORY FRAMEWORK

Draft State Environmental Planning Policy (Short-term Rental Accommodation) 2019

under the Environmental Planning and Assessment Act 1979

The planned alteration to the SEPP represents a circumvention of National Building Codes legislation and zoning regulations, and as noted in a precedent ruling by Justice Pepper, NSW Land and Environment Court:

“(It) undermines the planning regime of the (LGA) and ultimately of the State.”

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

(Planning NSW ‘Options Paper’ July 2017)

Neighbours Not Strangers, September 2019

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Neighbours Not Strangers

10 September 2019

The Hon Robert Stokes MP (MSc BA LL M PhD)
Minister for Planning and Public Spaces
PARLIAMENT OF NEW SOUTH WALES

Director, Housing and Infrastructure Policy
NSW Department of Planning, Industry and Environment
GPO Box 39, SYDNEY NSW 2000

Dear Ministers Stokes

REF: Public consultation about the NSW short-term rental accommodation regulatory framework

A NSW Government 'Options Paper'¹ states:

In 2014 NSW/ACT had lost 216,000 homes to short-term holiday letting (STHL).

The Hon Matthew Kean MP 18/97 16.3.18: "There is currently no centralised register of STHL properties in NSW. Therefore, we are unable to provide you with an accurate number of properties in NSW that are currently used for STHL purposes."

Neighbours Not Strangers represents in excess of 1,130 NSW Residents and their families. We also work in close association with other Residents Groups and accredited Bed & Breakfast operators across NSW, as well as those interstate and internationally. We have, since 2015, been responding to Government's request for Submissions and information. Noted is the NSW State Government's invitation to once again 'have our say'.

On 30 May 2016, in a corridor of NSW Parliament House, the Strategic Planning Manager of one NSW South Coast Local Government Authority recommended to Senior Representative of Expedia/Stayz and HRIA/ASTRA (Australian Short Term Rental Association) that State Government should be lobbied to amend planning instruments so as to facilitate the tourist/visitor rental of residential housing state wide.

As of 25/08/19, that South Coast Local Government Area (LGA) had 47 fewer STHLs compared to the Byron Shire.

Everyone within society is subject to the same law; this stems from the doctrine known as "The Rule of Law". When three NSW State MPs had their Sydney dwellings listed on NSW Land and Environment Court Orders for the "Illegal Use of Premises"/STHLs and had failed to declare their properties and/or income to Parliament, Legal Counsel for the Department of Premier and Cabinet wrote (Reference: A223460) that they should be referred to the Independent Commission Against Corruption (ICAC).

Those whose professional expertise is in area of Planning advise, as a preliminary observation only:

1. *STHLs cannot sensibly be complying/exempt development as there is little chance of such development meeting the important National Construction Codes (NCC) and Fire and Rescue requirements.*
2. *STHLs could be complying development were dwellings to meet Class 1(b)/Class 3 NCC standards. The landlord would have to obtain a complying development certificate that certifies compliance with all the SEPP requirements. A complying development certificate would be required for a mandatory Industry Register.*
3. *The SEPP should include more development standards (Class 1(b) and Class 3) eg, no cameras within the dwelling.*
4. *STHL must include car spaces plus provisions for off-street drop-off and pick-up for visiting clients.*

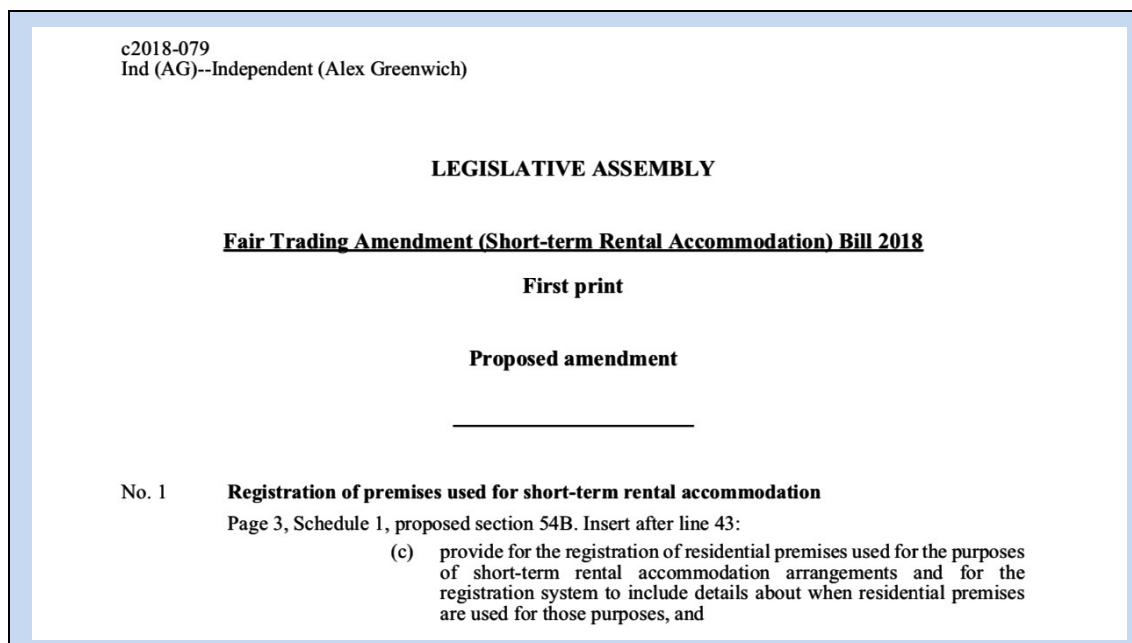
"Privacy" is always put forward by Airbnb to cloak the identity of those using its platform to engage in an illegal use. Such is the reluctance of landlords to disclose their STHL properties; we can provide the names of five State MPs who have withheld details from Parliament. This demonstrates that, due to a lack of clarity, it is not possible to properly evaluate the certain, negative impacts the proposed changes will impose on our planning framework.

Without a transparent registration and licensing system, it will not be possible to enforce any limitation on the permissible number of days and other requirements for STHLs, as proposed in the Department of Planning, Industry and Environment's (DPIE) pathway. Senior Members of Parliament plus thousands of other landlords know and use calendar synchronisation: the Leader of the Opposition's property is on some 75+ platforms in countries such as Armenia, Bolivia, Guatemala, Honduras, El Salvador, Nicaragua, Egypt, Russia, etc.

¹ <https://www.planning.nsw.gov.au/~media/Files/DPE/Other/short-term-holiday-letting-options-paper-20-July-2017.ashx>

It is also considered that the proposed definition of STHLs as a land use does not align with the definition in the *Fair Trading Act 1987* as amended by the *Fair Trading Amendment (Short-term Rental Accommodation) Act 2018*.

Missing also is Alex Greenwich MP's amendment² that was accepted by both Houses of the NSW Parliament in devising the STRA legislation; this was the only amendment accepted:



That which is being proposed by the DPIE will almost certainly lead to an unintended land use characterisation, which will certainly be exploited by some operators who seek to circumvent the requirement for development consent where a 'use' will be argued to also satisfy a definition of "tourist and visitor accommodation". The Deputy Premier's STHL is but one example of a residential property used as a wedding reception/functions venue.

In the Standard Instrument Order, "serviced apartment" and "bed and breakfast accommodation" are included as types of "tourist and visitor accommodation":

Serviced apartment means a building (or part of a building) providing self-contained accommodation to tourists or visitors on a commercial basis and that is regularly serviced or cleaned by the owner or manager of the building or part of the building or the owner's or manager's agents.

Bed and Breakfast accommodation means an existing dwelling in which temporary or short-term accommodation is provided on a commercial basis by the permanent residents of the dwelling and where:

- a. Meals are provided for guests only, and
- b. Cooking facilities for the preparation of meals are not provided within guests' rooms, and
- c. Dormitory-style accommodation is not provided.

The proposed Draft Instruments will see STHLs permitted in all zones and strata buildings as either exempt or complying development. Most STHL operations are identical in practical terms to serviced apartments, which require development consent in some commercial zones but are prohibited in residential zones. That which is now proposed will lead to a 'prohibited land use' circumventing the requirement for development consent plus adherence to building, fire and disability access standards.

It must be said that there are serious concerns over how any of the proposed minor attempts at limitations and compliance will be enforced:

- How will it be established that the dwelling is the principal place of residence of the STHL landlord?
- Who will monitor the number of days per year a dwelling is offered as a STHL?
- Who will certify that the dwelling meets Fire Safety Standards and that all equipment is functioning?

As with the current system covering accredited accommodation providers, we strongly recommend that the only satisfactory oversight on properties used for STHLs would be via a State register, with premises routinely inspected by Councils. As is currently the case, commercial rates and charges levied on accredited accommodation providers would see STHL landlords providing a revenue source for councils to fund certification oversight and the enforcement of residential zoning.

² <https://www.parliament.nsw.gov.au/bill/files/3525/LA%20Amendments%20agreed%20to.pdf>

Council registers would also facilitate the collection of data on dwellings operating as STHLs and their impacts on the availability of housing. As widely known and reported in the international Media, whole city centres and popular tourist areas are being emptied of Residents, as thousands of homes are converted to STHLs.

With no revenue derived from STHLs, Councils across NSW are refusing to investigate widespread illegal operations by commercial operators. Or might one suspect that LGA administrators are involved in STHLs?

As the NSW Government currently does not have a figure on the number of homes lost to STHLs, the proposed changes will continue to have a major impact on communities where a higher percentage of properties are used for STHL. The impact on neighbours and residential communities cannot be underestimated.

Reference Submission to NSW Parliamentary Inquiry - Maestri Towers/Dr Michael Heaney – marked 'Confidential' by Parliamentary Committee Members. Also:

"The financial cost of the increased wear and tear is borne by all owners. One Sydney building commissioned reports on the impacts, and tracked the annual savings after removing all short-term lets (205 of 384 apartments at the peak). The building saved \$1.3m over 3 years, while reducing levies 5% per year in each of those 3 years. Few strata owners realise that all owners are jointly and severally liable for costs incurred. What if your building insurance does not cover a claim if a short stay guest is injured or worse?"

Reference Submission to NSW Parliamentary Inquiry – Submission No. 22 – described by the Manager of the Inquiry as "the most graphic" of the 212 Submissions received and marked 'Confidential' by Parliamentary Committee Members. The writer was denied permission to address the Inquiry:

"The Land and Environment Court judges mixing permanent residents with short-term rentals as 'fundamentally incompatible'. Be assured, it's a living Hell."

There is also an unquantifiable value to exclusive use for residential purposes. The fact that residents know all occupants in surrounding homes and apartments not only provides a sense of community that is missing in properties where occupants are transients, at the same time there is a significant element of reassurance and security which cannot be underestimated.

The DPIE draft documents set out plans to circumvent National Construction Codes (NCC) plus a long line of authority in the jurisdiction that has been established in the NSW Land and Environment Court (LEC). As is his prerogative, a former Minister for Innovation and Better Regulation failed to acknowledge advice from a leading Senior Counsel who specialises in the areas of Planning, Environmental and Local Government Law, Building and Construction, and Negligence of Statutory Authorities.

Given the involvement of State Government Departments – Destination NSW and National Parks NSW – as facilitators of unlawful STHLs, we repeat our request to Premier Gladys Berejiklian and Ministers in seeking voluntary Orders from the NSW Land and Environment Court³, restraining these Government Departments offering Class 1(a) and Class 2 dwellings as STHLs. In line with legal precedent, such Orders do contain the following Penal Notice:

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.

As per the draft documents provided, alterations to the State Environmental Planning Policy (Exempt and Complying Development Codes) must be of minimal environmental impact, and...

The current proposal to alter the SEPP deeming STHL as 'exempt' and 'complying development' represents an incalculable impost plus it provides zero relief to NSW residents and accredited accommodation providers. Also, under the proposed changes, a Court may well hold that Section 149(2) Certificates (EP&A 2000) previously issued to be false and misleading.

A critical issue for Parliament: in placing the financial goals of short-term rental platforms, such as Destination NSW and Airbnb, over the rights of residential Title Deed holders, any exercise of discretion must **avoid actual or apprehended bias**. (NSW Ombudsman.) Do the rights of residential Title Deed Holders and accredited accommodation providers count for nothing in the eyes of the DPIE?

At no time during the Parliamentary review process have Ministers provided legal advice on this matter. The Manager of the Parliamentary Inquiry confirmed in writing that legal advice was not sought by Inquiry Members.

³ NSW LEC Case number 14/40923 27 March, 2015/30 April 2013

The DPIE's proposals do not reflect the lawful use to which the land may be put under valid zoning restrictions and development consents. These restrictions and consents were clear to all at the time of purchase.

It must also be borne in mind that for many years now the City of Sydney has been issuing development consent conditions limiting the use of residential flat dwellings for residential purposes only. (See most recent example⁴, 18 July 2019, typically):

"The development must be used for permanent residential accommodation only and not for the purposes of a hotel, motel, serviced apartment, tourist accommodation or the like, other than in accordance with Sydney Local Environmental Plan 2012.

If a unit contains tenants, it must be subject to a residential tenancy agreement for a term of at least three months.

No person can advertise or organise the use of residential apartments approved under this consent for short term accommodation or share accommodation."

There is provision for the owners of Class 1(a) residential dwellings to seek the approval of neighbours and Local Council to 'share' their home and operate an accredited, staffed Bed and Breakfast. The property may then be advertised on the hundreds of booking platforms offering STHLs.

Making STHLs exempt and complying development under the SEPP sets out to invalidate residential development consent conditions, which expressly prohibit short-term lettings. An immediate tension between the exempt development provisions and existing development consents that clearly prohibit STHLs will be present.

The NSW Government must acknowledge 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 amended⁵. The DPIE cannot assume that the planned amendment of the SEPP would invalidate the conditions of development consent that are in force and prohibit STHLs.

The NSW Government must respect the proprietary rights of owners of existing residential dwellings plus protect the rights of our State's accredited accommodation providers.

When Airbnb landlords sign up with the service to let people stay in residential dwellings, the company takes the step "to protect their privacy and safety": The property address isn't publicly listed, and is only provided after clients book and pay. In very many instances 'rocket science' isn't required to find the location of the property, yet during the last four years when details of literally hundreds and hundreds of non-compliant properties have been provided to NSW Local Government Authorities, all LGAs have refused to take enforcement action.

National Construction Codes for Class 1(b) and Class 3 buildings must be met.

- The Agent who 'managed' a holiday home in which a 4-year-old boy was burnt to death near Adaminaby (redacted official documents included in this submission) has, since this deadly incident, simply changed the name under which it now operates.
- We queried compliance issues with the Cooma Visitors Centre, which is operated by the Snowy Monaro Regional Council. In response, local STHL operator and ASTRA/HRIA Board Member Joan Bird was assured by the Cooma Visitors Centre: *"Don't worry we have deleted the trolls – that's all they are! We have no need for their comments, especially when they are not even from our region."*
- Cooma Visitors Centre social media page is managed by "1 Team Member". The Team Member is Mayor John Rooney,
- Correspondence from Snowy Monaro Regional Council (06 May 2019) states: *"...Council approved these types of buildings for the same purpose as "Serviced Apartments". Under the changes proposed by the state government there may no longer be a requirement for approval however we are still requiring approvals at present."*
- There appears to be no enforcement of Local Government Zoning or Federal Building Codes. And Council's Mayor considers queries 'trolling'.

A family has lost their four-year-old brother/son in horrific circumstances⁶. The child's mother was airlifted from to Melbourne after she was critically injured while attempting to save her son⁷. We have previously provided to State Government links to Coroners' Reports and will include in our submission the relevant reports for this incident.

At the last count 105,237 people were homeless in Australia (census night in 2011). In NSW, that number is 28,190 people⁸. According to Parliament, in 2014 there were 216,000 NSW/ACT homes lost to STHLs⁹.

⁴ <https://cdn.online.cityofsydney.nsw.gov.au/dasearch/determined/1436455-11470280.PDF>

⁵ Harris v Hawkesbury City Council (1989) 68 LGRA 183 and Lederer v South Sydney Council (2001) 119 LGRA 350 at 373

⁶ <https://www.abc.net.au/news/2015-07-24/young-child-dies-in-house-fire-while-on-holidays/6645090>

⁷ <https://www.abc.net.au/news/2015-07-25/woman-transferred-to-melbourne-in-critical-condition-after-fire/6647734>

⁸ <https://www.homelessnessnsw.org.au/resources/facts-about-homelessness>

⁹ <https://www.planning.nsw.gov.au/~media/Files/DPE/Other/short-term-holiday-letting-options-paper-20-July-2017.ashx>

“The loss of housing for rent posed by unregulated sub markets like Airbnb are (sic) a big issue. We don’t need to further inflame housing affordability.” Philip Thalys (City of Sydney Councillor, Hill Thalys Architects)

STHL and Airbnb operators are a mutation of our traditional accommodation industry. It is well past time for landlords/investors in residential housing to rent that housing to long-term tenants. An alternate is for them to consider investing their money in a commodity such as stocks and shares, Airbnb claims we are their “most penetrated market in the world”. We want our homes and our communities back.

In 2015 there were 5,247,199 motor vehicle registrations in NSW¹⁰. As of 2019, there are 6,221,283 Drivers Licenses on issue in our State¹¹. The State Government handles the licensing of both vehicles and drivers and heavy penalties and jail terms apply when regulations are infringed.

The State Government must take responsibility for the registration and licensing of STHL and their operators, and penalties and jail terms, which already appear in legislation, must apply when licensing regulations are infringed.

China appears to be the one jurisdiction in which Airbnb is meeting regulatory requirements. Airbnb claims it wants to ‘work with government’. And when it comes to compliance with NCC and Fire Regulations, why wouldn’t Airbnb and other Online Travel Agents (OTA) want their clients protected? As a sign of cooperation, Airbnb should share with the Planning Minister details of its operational compliance regime in China.

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 business¹².”

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

“...I have stated publicly I will review any...proposal which has checks and balances and which properly balances people’s rights...with the need of the council to enforce safety standards¹³.”

On 23 May 2019, Troy Reid stated that NSW Fair Trading needs to see that which an Agent is doing is illegal and needs to receive advice from Council that the short-term rental of residential dwellings is against zoning regulations.

No one is suggesting that homes shouldn’t be leased to tenants or that co-tenancing arrangements should be stopped; quite the reverse. Residential housing is for housing Residents. Meanwhile, opponents of illegal STHLs are severely harassed and threatened on an ongoing basis.

An accredited NSW accommodation provider asks:

“My property is DA approved for short term letting (less than 3 months). I can’t see any point paying commercial rates, GST and tax anymore when it is my principal place of residence. I may as well just operate as a 6-bedroom Airbnb and save myself the hassle. Am I missing something?”

If the DPIE’s draft plans are implemented, will accredited accommodation providers be compensated for the infrastructure upgrades they have put in place to meet DA requirements, and will they receive reimbursement and compensation for the years of commercial rates and taxes they have paid to date? Will compensation be paid for a loss of business and income, when they have literally hundreds of unlawful STHLs in their immediate area?

And will the Minister deregulate the Accommodation Industry to downgrade all building and compliance requirements for Class 3-10 buildings to bring them in line with Class 1(a) and Class 2 residential dwellings?

In November 2015, submissions were lodged to a NSW Parliamentary Inquiry into the Adequacy of regulation of short-term holiday letting in NSW. Concurrently, Airbnb spent US\$8 million to defeat San Francisco legislation¹⁴. There is no transparency surrounding that which has been spent here in our State by the likes of Airbnb and Expedia/Stayz, HRIA/ASTRA etc in lobbying for these proposed changes. May we please have clarity and disclosure on this important issue? Cautionary note: In jurisdictions where STHLs are currently mandated to register, it is reported that up to half of Airbnb applications are denied due to the inclusion of false information¹⁵. Consultation with Officials in other jurisdictions is strongly recommended.

NSW is experiencing growth in tourist and visitor numbers and we support the Industry and our accredited accommodation providers. Housing and our residential proprietary rights must not be confused with Tourism.

¹⁰ <https://www.abs.gov.au/ausstats/abs@.nsf/lookup/9309.0Media%20Release131%20Jan%202015>

¹¹ https://www.rms.nsw.gov.au/about/corporate-publications/statistics/registrationandlicensing/tables/table212_2019q2.html

¹² Answer received on 8 April 2008 and printed in Questions & Answers Paper No. 57.

¹³ Answer received on 14 October 2008 and printed in Questions & Answers Paper No. 89.

¹⁴ <https://www.reuters.com/article/us-airbnb-election-sanfrancisco-idUSKCN0SQ2CJ20151101>

¹⁵ <https://www.nbcbayarea.com/news/local/San-Francisco-Unregistered-Vacation-Homes-Surge-Fraudulent-Short-Term-Rental-Applications-538513141.html>

Parliament continues to ignore independent fiscal reports, such as the City of San Francisco's Financial Comptrollers who found that removing a single dwelling from the residential market would have a total economic impact on the city's economy of approximately -\$250,000 to -\$300,00 per year. This exceeds the annual total economic benefit from visitor spending, landlord income and accommodation taxes, given prevailing STHL rates¹⁶.

The Parliamentary Inquiry into the adequacy of the regulation of short-term holiday letting in New South Wales¹⁷ did not identify any inadequacies with current legislation.

At the reported behest of Minister Matthew Kean, we were asked to provide details of "Agents colluding with Online Travel Agents". We have since provided details. Top of our list:

- **Destination NSW (State Government) and National Parks NSW (State Government)**
- **Multiple Travel and Real Estate Agents plus what appear to be unlicensed large-scale operators**
- **Several NSW Unions**
- **There are multiple Members of Federal/State Parliament also profiting directly from STHLs**

The Drafts provided by the DPIE do not mentioned – nor is there any attempt to prohibit - residential dwellings being used as Corporate Venues or casual Workspaces. These practices are widespread.

No authority in NSW has control over OTAs in China, Russia, Singapore, Japan, New Zealand etc. Registration of NSW property/landlords is mandatory in order to meet certification requirements.

It is imagined that all OTAs would seek to protect both their clients. We recommend extending 9.47 of the NSW Environmental Planning and Assessment Act¹⁸ to cover illegal Short-Term Holiday Lettings:

Division 9.5 Civil enforcement proceedings

9.47 Evidence of use of premises as backpackers' hostel

(cf previous s 124AA)

- (1) This section applies to proceedings before the Court under this Act to remedy or restrain a breach of this Act in relation to the use of premises as a backpackers' hostel.
- (2) In any proceedings to which this section applies, the Court may rely on circumstantial evidence to find that particular premises are used as a backpackers' hostel.

Note.

Examples of circumstantial evidence include (but are not limited to) the following:

- (a) evidence relating to persons entering and leaving the premises (including the depositing of luggage) that is consistent with the use of the premises for a backpackers' hostel,
- (b) evidence of the premises being advertised expressly or implicitly for the purposes of a backpackers' hostel (including advertisements on or in the premises, newspapers, directories or the Internet),
- (c) evidence relating to internal and external signs and notices at the premises (including price lists, notices to occupants and offers of services) that is consistent with the use of the premises for a backpackers' hostel,
- (d) evidence of the layout of rooms, and the number and arrangement of beds, at the premises that is consistent with the use of the premises for a backpackers' hostel.

One understands that it is at the Minister's discretion, not the DPIE, to amend the State Environmental Planning Policy [SEPP]. Given Minister Stokes background and professional qualifications, one must have faith that the Hon Member comprehends the enormity of that which has been proposed. Serious concerns remain though: *"This structure, Mr Stokes said, was relatively liberal by world standards and would allow the [Airbnb] industry to develop by itself¹⁹."*

As per Justice J Pepper's judgment – legal precedent in the NSW Land and Environment Court - the Draft SEPP "undermines the planning regime of the Local Government Authority and ultimately of the State."

Alterations to the State Environmental Planning Policy (Exempt and Complying Development Codes) **"must be of minimal environmental impact"**. What the DPIE is proposing is a radical change to Planning; it is akin to the acquisition of our valuable proprietary rights without compensation. We have undertaken all due diligence and placed our life's work and savings into residential housing in zones and buildings where STHLs are clearly stated to be a 'prohibited use'.

Statistically, an extremely small proportion of Airbnb's business is "home sharing". Other OTAs – Expedia/Stayz included - divert entire homes/apartments for use as tourist/visitor accommodation. To support short-term tourist/visitor rental accommodation as a safe, certified and accredited "home sharing" activity and contributor to local economies, while managing the social and environmental impacts from this use²⁰...

¹⁶ https://sfcontroller.org/sites/default/files/FileCenter/Documents/6458-150295_economic_impact_final.pdf?documentid=6457

¹⁷ <https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=1956#tab-termsreference>

¹⁸ <https://legislation.nsw.gov.au/#/view/act/1979/203/part9/div9.5/sec9.47>

¹⁹ <https://www.smh.com.au/national/nsw/nsw-to-clear-the-decks-on-development-proposals-20190827-p52lc5.html>

²⁰ https://shared-drupal-s3fs.s3-ap-southeast-2.amazonaws.com/master-test/fapub_pdf/AA+Exhibitions+STRA/Draft+STRA+SEPP.pdf

Neighbours Not Strangers calls for:

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 proceedings²¹ – 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".
13. **(As per the NSW Land and Environment Court Act²², 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 constituents²³."**
And
Section S124 of the NSW Local Government Act²⁴ should be amended to strengthened orders in relation to illegal STHL premises.)
Local Government Authorities: To prevent the unlawful short-term commercial letting of residential housing, Local Government Authorities in NSW must be mandated to enforce Development Consents, Residential Planning and Zoning, National Construction Codes and Federal Disability Access legislation, plus Fire and Rescue NSW criteria.

The proliferation of illegal STHL operators is a serious problem for NSW residents, visitors and accredited accommodation providers. What is currently being proposed by the DPIE removes from all NSW Residents the ability to live within a residential community or residential Strata building. The livelihoods of our remaining small accredited accommodation providers are also in peril.

We await the Minister's response

Trish Burt

Convener

Neighbours Not Strangers

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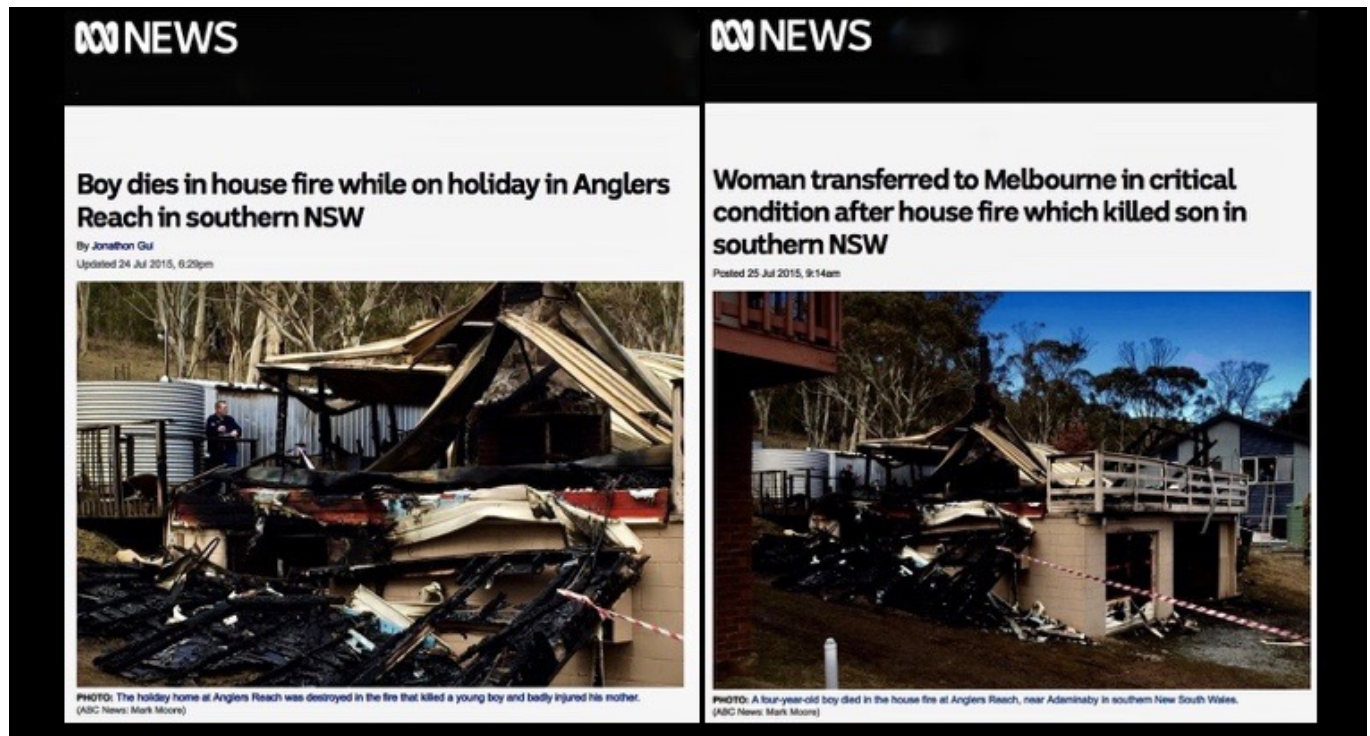
²¹ <https://www.legislation.nsw.gov.au/#/view/act/1979/203/part9/div9.6>

²² http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol_act/laeca1979274/s20.html#class_4

²³ <https://www.caselaw.nsw.gov.au/decision/54a6399b3004de94513da983>

²⁴ http://www5.austlii.edu.au/au/legis/nsw/consol_act/lga1993182/s124.html

SHORT-TERM RENTAL ACCOMMODATION FIRE SAFETY STANDARDS



The issue of fire safety is paramount; coronial inquiries and reports have been sent to the NSW Parliament in our earlier submissions.

- The death of a four-year-old Victorian child in a fire at a holiday rental property near Adaminaby in July 2015²⁵
- Woman transferred to Melbourne in critical condition after house fire which killed son in southern NSW²⁶
- The 20 lives lost at Sandgate and Childers²⁷
- The deaths of Sunil Patel, Jignesh Sadhu and Deepak Prajapati at Footscray²⁸
- The deaths of Leigh Sinclair and Christopher Giorgi in Brunswick²⁹
- The death of Connie Zhang (and Ginger Jiang left permanently incapacitated) at Bankstown³⁰

Our Federal and NSW legislation is the result of ongoing 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 **Palace Backpackers Hostel fire in Childers**. Coroner Michael Barnes wrote:

"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."

We include in our Submission the redacted **Officer In Charge (OIC) Statement, NSW Police**, Death (of four-year-old boy) – House Fire at 65 Illawong Road, Anglers Reach, 01 October 2015, and the **Coroner's Report on Dispensing with an Inquest (See Annexure A, pages 35 onwards)**. The Travel Agent³¹ who 'managed' the property at the time of the deadly fire now advertises under another name and currently operates 70 STHL properties.

²⁵ <http://www.abc.net.au/news/2015-07-24/young-child-dies-in-house-fire-while-on-holidays/6645090>

²⁶ <https://www.abc.net.au/news/2015-07-25/woman-transferred-to-melbourne-in-critical-condition-after-fire/6647734>

²⁷ http://www.courts.qld.gov.au/data/assets/pdf_file/0004/86647/cif-childers-palace-hostel-fire-20060707.pdf

²⁸ https://www.justiceconnect.org.au/sites/default/files/Coroner%27s%20findings%20-%20Patel_0.pdf

²⁹ http://www.coronerscourt.vic.gov.au/resources/2c43be8d-f8f6-41a0-b66a-bcd8d4375f2a/leighsarahsinclair_372706.pdf

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

³¹ <http://www.selwyncentre.com.au>

Accredited Accommodation Providers (in the Council of the City of Sydney) display at the front of their premises under a Development Control Plan, or in a Fire Control Room, the number of rooms and persons per room. These premises must have fire stairs isolated, and – Bed & Breakfast Operators in the City of Sydney - have their premises inspected monthly by an independent certifier. Fire alarm and equipment are inspected on each monthly visit plus all other certification requirements (lights, smoke alarms, fire extinguishers etc) are checked quarterly. A log book is kept for Council 'spot inspections'.

It is a current requirement that owners of dwellings used for commercial purposes must hold and submit a fire safety certificate that certifies that specified, essential fire safety measures have been installed and perform in accordance with the relevant BCA/NCC requirements and Australian Standards. An Annual Fire Safety Statement is then prepared, certifying that the essential fire safety measures have been tested, are operational and have been maintained in accordance with the relevant requirements and standards. This Statement certifies that a qualified person has assessed the fire safety measures and found them to be performing to the appropriate standard. Details for NSW Council requirements are available on the Internet³²

Of the 216,000+ homes (2014 NSW Government figure) operating as STHLs, it is estimated that only those who have sought a Development Approval through their LGA to operate as certified tourist/visitor facility meet all legislative requirements. A major concern is that every NSW Council we have contacted over the last two years has confirmed that they will not undertake enforcement action required against illegal STHL operators; Councils are 'waiting instead for the NSW Government to conclude their review of this issue'.

Context

The protection of residents and visitors to NSW, and property and the environment, must be protected. National Parks NSW has 82 properties currently rented as STHLs. Most if not all would be in or adjacent to bushfire zones. It was necessary to forward to National Parks NSW a copy of a link to the Australian Building Codes Board for them to respond to questions around the certification of their properties. In response a Member of Staff wrote:

"Broadly speaking all of our accommodation offerings meet the Building Code of Australia standards. The majority of our accommodation buildings are classified as Class 1. (No specific classification was provided.)

There are a few instances where we have received exemptions from the Building Code, for example in some of the heritage buildings where strict adherence to the code would impact on the significant heritage fabric of the building. In all instances we make every effort to ensure that the accommodation is safe and suitable for our visitors."

In the deaths of Leigh Sinclair and Christopher Giorgi, and in the death of Connie Zhang and permanent injury to Ginger Jiang, the Local Government Authorities had been notified and were aware of non-compliance issues in regards to Fire and Rescue. No enforcement action had been undertaken.

In the deaths of Leigh Sinclair and Christopher Giorgi, the Victorian Coroner³³ recommended that Municipal Councils, in conjunction with the State Government/Consumer Affairs, and Victoria Municipal Councils, implement a licensing system for all rooming house/accommodation operators and, in order to ensure the effectiveness of this legislation, to order the closure of premises and/or the bringing of criminal prosecutions in appropriate cases.

Following the death of Connie Zhang at Bankstown, the NSW Coroner³⁴ made direct recommendations to the Minister for Planning (NSW) and the Minister of Health (NSW):

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

³² <https://www.firesafe-au.com/your-local-council/>

³³ https://www.google.com.au/url?sa=t&rct=j&q=&esrc=s&source=web&cd=16&ved=2ahUKEwiukbGuxbHkAhWRT30KHexiDnwQFjAPegQIARAC&url=https%3A%2F%2Fwww.consumer.vic.gov.au%2Flibrary%2Fpublications%2Fhousing-and-accommodation%2Frenting%2Fgovernment-response-to-coroners-report-into-the-deaths-of-leigh-sinclair-and-christopher-giorgi.doc&usg=AOvVaw0kVXgGCD_Q9dK6JtpRFwL

³⁴ <http://www.coroners.justice.nsw.gov.au/Documents/Zhang%20findings%2018%2009%2015%20FINAL.pdf>

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.

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.

That current changes proposed to clause 144 and clause 152 of the Environmental Planning and Assessment Regulation (2000) affecting the role of FRNSW in the assessment of alternative solutions be expedited so that FRNSW are better able to apply their resources on a risk basis when addressing building fire safety.

Fire Safety is a fundamental issue for the built environment. The vulnerability of building occupants to fire risk is influenced by the type and characteristics of occupants, building design and construction and location. There is a marked difference between clients of short stay accommodation properties (class 1(b) and class 3 buildings (BCA/NCC) compared to residents in residential dwellings (class 1(a) and class 2).

Coroners' reports lay bare the at times catastrophic consequences of inadequate or absent fire safety infrastructure.

Our federal building control regime and national construction code system is well established. A certified building control approach does not 'leave to chance' the safety of occupants and neighbours and does not function when a market is left to self-regulate and meet strict fire safety benchmarks. Our federal systems ensure a level of fire safety is met and is appropriate to the use of a building or site.

No matter the manner in which legislators wish to 'classify' STHLs, they are without doubt the same use/class as conventional short-stay tourist/visitor accommodation and have an identical safety risk profile. Short-stay accommodation providers must be subject to the same regulatory requirements and fire safety measures as those met by accredited accommodation providers. Currently STHL operators are, in the main, failing to provide residents and visitors with a reliable and effective safety outcome.

Clients staying within bushfire-prone zones would be considered to be particularly vulnerable, given their unfamiliarity with the area in which they are visiting. Most would be unfamiliar with the area and how to access information of a pending emergency. There is of course the added level of alarm when clients are from non-English speaking backgrounds and may not be able to react to the dissemination of public warnings or to understand instructions given in emergency situations. There is also the question for non-English speakers as to whether to 'stay put' and use the property as a 'safe house', or whether early evacuation is the best course of action.

Non-English speaking clients may also be totally unprepared in the event of an emergency; their decisions under pressure may place themselves, fire fighters and others a great personal risk.

All States of Australia have and should be following 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 would see class 1(a) and class 2 residential flat dwellings used as STHLs, will place 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, which requires greater fire safety infrastructure for buildings that are used for commercial STHLs, 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."*³⁵ **Repeating:**

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

Comparisons of fire safety measures regulated via the NCC for class 1(a), 1(b) and class 3 buildings

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 DPIE and which must be adhered to by STHL 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)

³⁵ <https://ncc.abcb.gov.au/ncc-online/NCC>

<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 (NSW)</i> 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 advised³⁶: "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 to short-term rentals.

The Senior Solicitor for the City of Sydney does not respond to written enquiries on this issue.

Australia's National Strategy for Disaster Resilience (NSDR)³⁷ 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.

³⁶ Request REQ2019-030317 lodged

³⁷ <https://knowledge.aidr.org.au/resources/national-strategy-for-disaster-resilience/>

The NSW Government's 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 - currently there is a 'wait-and-see' approach by Government to a major event or incident in a Class 2 residential flat building.

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

- 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.
- 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.

Recommendations

- 1 Class 1(a) dwellings which are used for commercial STHLs must have fire safety infrastructure in line with National Construction Codes – upgrade to class 1(b) or class 3, depending on occupancy levels,
- 2 In line with the Accommodation Association of Australia's response to the NSW Parliament's 'Option Paper' on short-term letting, any other building in which STHLs are conducted must meet requirements under class 3 of the BCA/NCC. Tents, campervans, yachts, tree-houses etc as offered by Airbnb, do not comply.

Conclusion

Currently there are known, severe policy and enforcement gaps for fire safety and accountability in terms of STHLs in NSW. Community fire safety and wellbeing are a priority in any regulatory environment.

Foreign-owned online booking platforms such as Airbnb, Expedia, HomeAway, Booking.com etc must play their roll in meeting legislative requirements and seeing to the safety of clients and neighbouring residents. So too the State Government's Destination NSW and National Parks NSW. Their operations must not simply meet but exceed community expectations. Where platforms refuse to account for or comply with legislative requirements, any reasonable layperson would deem this to be **aiding and abetting the illegal use of residential dwellings**.

HRIA/ASTRA Board Member Joan Bird providing compliance advice via Social Media to Airbnb landlords:

"Quick update to the question about the NSW fire safety requirements and someone already being ripped off by her electrician. We already have this in place for our newer rentals. Clipsal and others do a wireless interconnecting smoke alarm that we also use a 10 year lithium ion battery in. We have them hardwired into the existing lights – its (sic) where they should be installed as lighting switches are never supposed to be turned off in any property. Cost is about \$200 each plus installation. So as an approximate for a three-bedroom with single hallway approximate cost is \$1600 NOT \$6000. You DO NOT have to have the wiring in your property redone!"

DRAFT STATE ENVIRONMENTAL PLANNING POLICY (Short-term Rental Accommodation) 2019

Alterations to the State Environmental Planning Policy (Exempt and Complying Development Codes) **"must be of minimal environmental impact"**.

In line with judicial precedence set down by the NSW Land and Environment Court Judgments, the DPEI's Draft State Environmental Planning Policy [SEPP] 2019 -

"...is not trivial in nature."

"...the harm caused to the environment is not limited to the undermining of the planning regime. The adverse impact on the amenity and wellbeing of the (neighbouring residents) has been, as the evidence overwhelmingly demonstrates, severe."

"...the granting of development consent will bring no relief because it is prohibited within the 2(a) Residential Zone (and in Residential Strata)."

"...the granting of development consent will bring no relief to small, accredited accommodation providers."

The NSW Government must respect the proprietary rights of owners of existing residential dwellings and our law-abiding accredited accommodation providers.

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 Destination NSW'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)³⁸ 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 bachelors 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.

³⁸ <http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWLEC/2013/61.html?stem=0&synonyms=0&query=dobrohotoff>

...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;

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)³⁹ 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.

³⁹ https://docs.wixstatic.com/ugd/5a8126_d5be4877a647493fb66b7ceb6aafa86c.pdf

⁴⁰ <https://www.parliament.nsw.gov.au/ladocs/other/10065/Answer%20to%20question%20on%20notice%20Sutherland%20Shire%20Council.pdf>

⁴¹ <https://www.parliament.nsw.gov.au/ladocs/other/10065/Answer%20to%20question%20on%20notice%20Sutherland%20Shire%20Council.pdf>

⁴² https://docs.wixstatic.com/ugd/5a8126_3d8a03bfe9e742a2a1986b7e676f90a2.pdf

⁴³ <https://www.caselaw.nsw.gov.au/decision/549f8bb83004262463ada6bc>

⁴⁴ <https://www.caselaw.nsw.gov.au/decision/549f8eb83004262463ae626e>

⁴⁵ <https://www.caselaw.nsw.gov.au/decision/549f8eb83004262463ae626e>

⁴⁶ <https://www.caselaw.nsw.gov.au/decision/549f8daf3004262463ae1f42>

⁴⁷ <https://www.caselaw.nsw.gov.au/decision/54a6364e3004de94513d91cc>

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;
- 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)⁴⁰ 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)⁴¹ 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 2006⁴² (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..."

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 2006⁴³ (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 2007⁴⁴ (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 2007⁴⁵ (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"

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 2009⁴⁶ (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 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 2009⁴⁷ (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.

LOOPHOLE in Draft Proposals – no legal definition of a ‘permanent place of residence’ is provided. Nor is it shown how such a criteria can be verified and controlled.

Division 1 Short-term rental accommodation—exempt development

And

Division 2 Short-term rental accommodation—complying development

In calculating the number of days a dwelling is used for non-hosted short-term rental accommodation for the purposes of subclause (1)(b), any period of 21 consecutive days or more for which non-hosted short-term rental accommodation is provided to the same person or persons is not to be counted.

A Very Small Sample of NSW Airbnb (and other) Landlords with Multiple Listings:

Bedroom Villas has 75,146 NSW listings⁴⁸

Aura has 4,423 NSW listings⁴⁹

Tim C claims to have over 500 NSW listings⁵⁰

HRA has 332 Airbnb listings⁵¹

Sabrina has 254 Airbnb listings⁵²

Keris has 159 Airbnb listings⁵³

A Perfect Stay has 141 listings⁵⁴

Aaron has 126 Airbnb listings⁵⁵

Rowen has 123 Airbnb listings⁵⁶

Danny has 121 Airbnb listings⁵⁷

Joel has 116 Airbnb listings⁵⁸

Hotelsque has 108 Airbnb listings⁵⁹

Pacific Coast has 106 Airbnb listings⁶⁰

Jared has 97 Airbnb listings⁶¹

Aymeric has 60 Airbnb listings⁶²

Terry has 55 Airbnb listings⁶³

Cedric has 43 Airbnb listings⁶⁴

Johannes has 43 Airbnb listings⁶⁵

Gabriel has 41 Airbnb listings⁶⁶

Rachel has 41 Airbnb listings⁶⁷

Tracey has 38 Airbnb listings⁶⁸

Inna has 38 Airbnb listings⁶⁹

Natasha has 36 Airbnb listings⁷⁰

Leon has 35 Airbnb listings⁷¹

Awaba has 33 Airbnb listings⁷²

Kimi has 33 Airbnb listings⁷³, plus many, many, many more...

⁴⁸ <https://www.bedroomvillas.com/listing?q=New%20South%20Wales,%20Australia&ref=home>

⁴⁹ <https://aura.travel/accommodation/nsw?view=map>

⁵⁰ <https://www.astra.asn.au/astra-board/>

⁵¹ <https://www.airbnb.com.au/users/9855607/listings>

⁵² https://www.airbnb.com.au/users/show/36410227?_set_bev_on_new_domain=1423853016_Tzi0vmEzT4gsJ5PF

⁵³ https://www.airbnb.com.au/users/show/15739069?_set_bev_on_new_domain=1423853016_Tzi0vmEzT4gsJ5PF

⁵⁴ <https://www.airbnb.com.au/users/show/1649158>

⁵⁵ https://www.airbnb.com.au/users/show/181698992?_set_bev_on_new_domain=1423853016_Tzi0vmEzT4gsJ5PF

⁵⁶ https://www.airbnb.com.au/users/show/15469257?_set_bev_on_new_domain=1423853016_Tzi0vmEzT4gsJ5PF

⁵⁷ https://www.airbnb.com.au/users/show/15193662?_set_bev_on_new_domain=1423853016_Tzi0vmEzT4gsJ5PF

⁵⁸ https://www.airbnb.com.au/users/show/21058208?_set_bev_on_new_domain=1423853016_Tzi0vmEzT4gsJ5PF

⁵⁹ <https://www.airbnb.com.au/users/2450066/listings>

⁶⁰ <https://www.airbnb.com.au/users/show/89047254>

⁶¹ https://www.airbnb.com.au/users/show/8530753?_set_bev_on_new_domain=1423853016_Tzi0vmEzT4gsJ5PF

⁶² https://www.airbnb.com.au/users/show/103385102?_set_bev_on_new_domain=1423853016_Tzi0vmEzT4gsJ5PF

⁶³ https://www.airbnb.com.au/users/show/3046924?_set_bev_on_new_domain=1423853016_Tzi0vmEzT4gsJ5PF

⁶⁴ https://www.airbnb.com.au/users/show/21385139?_set_bev_on_new_domain=1423853016_Tzi0vmEzT4gsJ5PF

⁶⁵ https://www.airbnb.com.au/users/show/117548275?_set_bev_on_new_domain=1423853016_Tzi0vmEzT4gsJ5PF

⁶⁶ https://www.airbnb.com.au/users/show/101139031?_set_bev_on_new_domain=1423853016_Tzi0vmEzT4gsJ5PF

⁶⁷ https://www.airbnb.com.au/users/show/148607219?_set_bev_on_new_domain=1423853016_Tzi0vmEzT4gsJ5PF

⁶⁸ <https://www.airbnb.com.au/users/show/16026854>

⁶⁹ https://www.airbnb.com.au/users/show/70570922?_set_bev_on_new_domain=1423853016_Tzi0vmEzT4gsJ5PF

⁷⁰ https://www.airbnb.com.au/users/show/225489194?_set_bev_on_new_domain=1423853016_Tzi0vmEzT4gsJ5PF

⁷¹ https://www.airbnb.com.au/users/show/91587706?_set_bev_on_new_domain=1423853016_Tzi0vmEzT4gsJ5PF

⁷² https://www.airbnb.com.au/users/show/4298915?_set_bev_on_new_domain=1423853016_Tzi0vmEzT4gsJ5PF

⁷³ https://www.airbnb.com.au/users/show/91961414?_set_bev_on_new_domain=1423853016_Tzi0vmEzT4gsJ5PF

Amendments to Current Environmental Planning Instruments Now Required

The following NSW Local Government Authorities have previously, despite clear specifications as set out in the National Construction Codes⁷⁴ and without financial compensation to residents, amended environmental planning instruments so as to circumvent legislation. Thus the following amendments to environmental planning instruments are now required:

- 1.1 Bega Valley Local Environmental Plan 2013 Clause 6.11 Short-term rental accommodation
Omit the clause.
- 1.2 Blue Mountains Local Environmental Plan 2015 Clause 6.29 Short-term rental accommodation
Omit the clause.
- 1.3 Eurobodalla Local Environmental Plan 2012 Clause 6.15 Short-term rental accommodation
Omit the clause.
- 1.4 Gosford Local Environmental Plan 2014
 - [1] Clause 7.6 Short-term rental accommodation
Omit the clause.
 - [2] Schedule 2 Exempt development
Omit the matter relating to short-term rental accommodation.
 - [3] Dictionary
Omit the definition of *short-term rental accommodation*.
- 1.5 Kiama Local Environmental Plan 2011
Clause 6.10 Short-term rental accommodation
Omit the clause.
- 1.6 Palerang Local Environmental Plan 2014 Clause 6.12 Short-term rental accommodation
Omit the clause.
- 1.7 Pittwater Local Environmental Plan 2014 Schedule 2 Exempt development
Omit the matter relating to short-term holiday rental accommodation.
- 1.8 Port Stephens Local Environmental Plan 2013 Clause 7.18 Short-term rental accommodation
Omit the clause.
- 1.9 Queanbeyan Local Environmental Plan 1998 Schedule 1 Dictionary
Insert “, but does not include an establishment providing short-term rental accommodation within the meaning of *State Environmental Planning Policy (Short-term Rental Accommodation) 2019*” after “souvenir shops” in the definition of *tourist facilities*.
- 1.10 Shoalhaven Local Environmental Plan 1985 Clause 20BB Short-term accommodation
Omit the clause.
- 1.11 Shoalhaven Local Environmental Plan 2014 Clause 7.13 Short-term rental accommodation
Omit the clause.
- 1.12 Shoalhaven Local Environmental Plan (Jerberra Estate) 2014 Clause 6.4 Short-term rental accommodation
Omit the clause.
- 1.13 State Environmental Planning Policy (Gosford City Centre) 2018
 - [1] Clause 7.4 Short-term rental accommodation
Omit the clause.
 - [2] Schedule 2 Exempt development
Omit the matter relating to short-term rental accommodation.
 - [3] Dictionary
Omit the definition of *short-term rental accommodation*.
- 1.14 Wingecarribee Local Environmental Plan 2010
Clause 7.11 Short-term rental accommodation
Omit the clause.
- 1.15 Wyong Local Environmental Plan 2013
 - [1] Clause 7.18 Short-term rental accommodation
Omit the clause.
 - [2] Schedule 2 Exempt development
Omit the matter relating to short-term rental accommodation.
 - [3] Dictionary
Omit the definition of *short-term rental accommodation*.

⁷⁴ <https://www.planning.nsw.gov.au/Policy-and-Legislation/Buildings/National-Construction-Code>

DRAFT CODE OF CONDUCT FOR THE SHORT-TERM RENTAL ACCOMMODATION

Nuisance occurs when someone substantially and unreasonably interferes with, or disturbs someone else's ordinary and reasonable use of the land they own or occupy⁷⁵. The interference occurs without direct entry onto the affected person's land⁷⁶. In NSW, private nuisance laws are generally derived from case law (the common law), rather than statutes and legislation. In terms of case law, the following examples are provided:

"The adverse impact on the amenity and wellbeing of the (neighbouring family) has been, as the evidence overwhelmingly demonstrates, severe."

Justice J Pepper [2013] NSWLEC61

THE LAND AND ENVIRONMENT COURT OF NEW SOUTH WALES

Can any measures be taken to address amenity impacts?⁷⁷

33 *Renaldo Plus 3 Pty Limited v Hurstville City Council* [2005] NSWLEC 315 identified a number of questions relevant to the appropriateness of use of a management plan as part of the measures to mitigate the impacts of a development. Those questions involved considering the consistency of the management plan with consent conditions, whether the management plan required people to act in an unlikely or unreasonable manner, the clarity of the requirements of the management plan to enable ready enforcement in the event of breach, whether the management plan was sufficiently effective to enable adequate operation even absent absolute compliance, effective communication of the management plan to employees and others engaged on site, effective complaint management procedures and procedures for the management plan to be updated and amended as required (including making those changes public).

34 The questions of whether the management plan was sufficiently effective to enable adequate operation even absent absolute compliance and whether communication of the management plan to employees and others engaged on the site are particularly relevant in this case. On the first question, I am not satisfied that a management plan can deal with spontaneous events of noise that may disturb the existing residents. Again, the noise events may not necessarily relate to unacceptable behaviour but to the normal comings and goings of short-term tenants. The existence of full-time staff is a positive aspect of the proposed development and would be effective in managing most situations around the foyer area however it could not be reasonably expected that staff would be in a position to address spontaneous events of noise elsewhere in the building.

35 On the second question, I am unsure how short-term occupants can be bound by the contents of the management plan. Even if the contents of the management plan are explained to each short-term occupant (and this has problems in itself) there is no obligation to comply with the requirements in the same way as if the management plan applied to employees or other persons associated with the holder of the consent. Enforcement of the contents of the management plan would be virtually impossible for short-term occupants and as such it has minimal effectiveness to address any amenity impacts.

36 For the reasons in the preceding paragraphs I do not accept that a management plan will provide an effective means of addressing potential amenity impacts that may occur on the site.

The zone objectives

37 Clause 33 states that before consenting to development, a consent authority must have regard to the objectives of the zone. In accepting that the proposed development is consistent with objectives (a), (b), (c) and part (d), I am not satisfied that the proposed development adequately addresses part objective (d) in that appropriate amenity cannot be provided with a mix of residential and serviced apartments that share the same floor and access points. Consequently, I find the proposed development is unacceptable and the appeal should be dismissed.

Precedent

38 Precedent is a valid planning consideration (*Goldin & Anor v Minister for Transport Administering the Ports Corporatisation and Waterways Management Act 1995* [2002] NSWLEC 75) although I am not satisfied that the particular characteristics of this proposal, including the layout of the apartments and the separate strata plans, would likely be that similar to other applications that any reasonable comparisons could be drawn. The issue is essentially redundant following the findings in the preceding paragraphs however taken in isolation; precedent is not an issue that would support the refusal of the application.

G T Brown

Commissioner of the Court

⁷⁵ *Grand Central Car Park Pty Ltd v Tivoli Freeholders* [1969] VR 62 at 72 per McInerney J (public nuisance); *Sedleigh-Denfield v O'Callaghan* [1940] AC 880 at 896-7 per Lord Atkin.

⁷⁶ The appropriate remedy for direct interference with the use and enjoyment of land owned or occupied by someone (ie when entry onto the land is involved) is trespass.

⁷⁷ <https://www.caselaw.nsw.gov.au/decision/549f99013004262463b0cb15>

The Draft Code of Conduct for the Short-term Rental Accommodation Industry is unenforceable and provides no relief to neighbouring residents in R2 residential zones or those in residential flat dwellings. It also provides no relief to accredited accommodation providers who are subject to strict operating regulations and who presently are competing with thousands of illegal STHL operators.

For neighbouring residents who are attempting to present a case of nuisance, the use of video or still cameras to record evidence would not be acceptable, as the recording of any anti-social activity would usually mean offenders would be recorded when they are within a private area, over which they have been granted a *license to occupy*.

The case of *Dobrohotoff v Bennic*⁷⁸, by virtue of a civil injunction, lead to the enforcement of regulations only, and not proof of anti-social behaviour.

It would appear that, again, no legal advice has been sought during the drafting of this Code of Conduct.

Schedule 1 Amendment of Fair Trading Regulations 2012:-

“5.2 Booking platforms

A booking platform must inform an industry participant using the booking platform’s online booking service for short-term rental accommodation of the following matters before the participant enters into a short-term rental accommodation arrangement:

- 2.2.1 (a) this code
- (b) the booking platform’s obligation to comply with this code”

“5.2.7 A booking platform must keep a record of the full particulars of each transaction involving a short-term rental accommodation arrangement that is entered into using its online booking service. The record must be:

- (a) kept for 5 years after the end of the occupancy period
- (b) in a readily producible form.

“6.1.8 The Commissioner may dismiss a complaint if satisfied:

- (a) the complaint is frivolous, vexatious, trivial, misconceived or without substance,
- (b) the complaint has been previously determined under this code.”

Dispute resolution

Any collection of evidence – recorded or otherwise – may be challenged in accordance with case law precedent. Where case law precedent was taken into account, all such action will fail. (*Raciti v Hughes*⁷⁹)

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*’.

Obligations to neighbours

The NSW Government’s endorsed Code of Conduct has been in place since 2012⁸⁰. This Code, with Minister Brad Hazzard’s backing (12/04604), has failed, as evidenced by a complete lack of successful action over the past seven years.

Destination NSW has a Code of Conduct and Ethics⁸¹. Despite this: Destination NSW does not carry out regulatory functions, therefore any questions in regards to compliance with legislation, regulations and other activities provided by its contractors fall outside the State Government’s remit, according to Sandra Chipchase, Destination NSW CEO (DV19/9, D19/390).

The State Opposition Leader, Jodi McKay, has her short-term rental property listed on 75+ different platforms, with her booking agents located in countries including, but not limited to, Armenia, Bolivia, Guatemala, Honduras, El Salvador, Egypt, Russia, Spain, France, Hong Kong, Bahrain, Kuwait, Saudi Arabia, Turkey etc... Former State LNP MPs had their short-term rental properties listed on more than 155 platforms.

⁷⁸ <https://www.caselaw.nsw.gov.au/decision/54a6399b3004de94513da983>

⁷⁹ <http://www.austlii.edu.au/au/journals/PrivLawPRpr/1996/8.html>

⁸⁰ <https://www.ignsw.org.au/files/imce-uploads/48/2%20Justin%20Butterworth.pdf>

⁸¹ <https://www.destinationnsw.com.au/code-of-conduct-and-ethics-for-contractors-and-consultants>

Airbnb alone has portals in all countries, except North Korea, Syria and Iran. The proposition that booking platforms must ensure that a copy of this draft code is readily available on its website and provided to and read 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 the Hon Jodi McKay MP or our Deputy Premier John Barilaro to find themselves banned, they could simply relist their properties under another identity, or relist their premises under a different name/description and use new photographs to market the dwellings.

Identification of platform users

Airbnb's Terms of Service⁸² clearly state:

"Airbnb does not endorse any Member, Listing or Host Services. Any references to a Member being "verified" (or similar language) only indicate that the Member has completed a relevant verification or identification process and nothing else. Any such description is not an endorsement, certification or guarantee by Airbnb about any Member, including of the Member's identity or background or whether the Member is trustworthy, safe or suitable."

"User verification on the Internet is difficult and we do not assume any responsibility for the confirmation of any Member's identity. Notwithstanding the above, for transparency and fraud prevention purposes, and as permitted by applicable laws, we may, but have no obligation to (i) ask Members to provide a form of government identification or other information or undertake additional checks designed to help verify the identities or backgrounds of Members, (ii) screen Members against third party databases or other sources and request reports from service providers, and (iii) where we have sufficient information to identify a Member, obtain reports from public records of criminal convictions or sex offender registrations or an equivalent version of background or registered sex offender checks in your local jurisdiction (if available)."

Multiple newspaper reports indicate that convicted child sex offenders and other known criminals use Airbnb platforms on a regular basis. In the last week, New Zealand Police advise that "criminals are using Airbnb...to establish massive drug trafficking rackets⁸³". NZ Lawyers are also warning about the dangers of places listed on accommodation websites after Airbnb was named in a report on a meth haul worth \$235 million last Friday.⁸⁴

The DPIE's Draft Code of Conduct will be unworkable and unenforceable.

⁸² <https://www.airbnb.com.au/terms>

⁸³ https://www.stuff.co.nz/national/crime/115602091/240m-drug-bust-airbnb-storage-units-used-by-international-crims?fbclid=IwAR34iU2w0oN_ycNhRsfQg4D0NVk8breQe-czHB4luFW67uuRb7pw-Rq4_9E

⁸⁴ https://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=12266011&fbclid=IwAR1hj2scybiyM0Af5dXM4p8EG3Z8Z5m0HiA1YbUiAAPqmDpOo_zKePf8ZWU

INSIDE AIRBNB – www.insideairbnb.com

As at 25 August 2019, statistics for Airbnb alone are now available, thanks to Murray Cox from Inside Airbnb:

The Hon Rob Stokes and the DPIE must acknowledge from the outset that the only Organisation that makes the pretext of 'home sharing' is Airbnb. Expedia/Stayz, Booking.com, Wotif, LastMinute, Agoda, HomeAway, VRBO etc see whole homes removed from the residential housing market.

Airbnb landlords will list an 'Entire Home/Apartment' and at the same time list one or multiple 'Private Room/s' within the same property. This effectively makes the 'Entire Home/Apartment' numbers appear less of an issue and promotes the false mantra of 'home sharing'. Without a State Government Administered registration scheme there is no effective way of calculating the total amount of homes lost. There are now 68,477 Airbnb listings, up from 29,657 listings in December 2016:

- Entire Home/Apart - 48,347
- Private Rooms - 19,264
- Shared Rooms - 866

Following are the 30 top LGAs showing homes lost to Airbnb landlords – single/multiple listings

<i>SUM of Listings</i>	Entire home/apt Multi listing	Entire home/apt Single listing	Entire home/apt Total	Private room Multi listing	Private room Single listing	Private room Total	Shared room Single listing	Shared room Total	Grand Total
<i>LGA</i>									
Sydney	3,367	3,100	6,467	2,203	1,151	3,354	318	318	10,139
Waverley	2,657	892	3,549	1,501	384	1,885	139	139	5,573
Randwick	1,457	493	1,950	1,020	420	1,440	72	72	3,462
Byron	1,241	1,331	2,572	361	364	725	9	9	3,306
Shoalhaven	1,185	1,808	2,993	135	129	264	2	2	3,259
Manly	1,056	351	1,407	354	133	487	9	9	1,903
Warringah	1,192	210	1,402	400	79	479	5	5	1,886
Gosford	805	833	1,638	113	70	183	1	1	1,822
Woollahra	786	319	1,105	419	108	527	13	13	1,645
North Sydney	656	346	1,002	315	112	427	13	13	1,442
Port Stephens	260	1,028	1,288	40	48	88			1,376
Marrickville	510	170	680	481	159	640	15	15	1,335
Blue Mountains	508	496	1,004	107	126	233	3	3	1,240
Tweed	522	481	1,003	141	78	219			1,222
Pittwater	729	369	1,098	80	38	118	1	1	1,217
Leichhardt	499	189	688	222	102	324	4	4	1,016
Newcastle	428	335	763	140	95	235	4	4	1,002
Coffs Harbour	399	396	795	106	85	191	1	1	987
Great Lakes	329	562	891	45	31	76	1	1	968
Snowy River	250	612	862	29	71	100	4	4	966
Rockdale	197	138	335	319	129	448	24	24	807
Bega Valley	263	407	670	40	41	81	4	4	755
Eurobodalla	396	262	658	39	33	72	1	1	731
Cessnock	213	395	608	39	83	122			730
Wollongong	396	118	514	97	100	197	7	7	718
Wyong	287	262	549	49	56	105	4	4	658
Botany Bay	158	105	263	217	147	364	13	13	640
Ryde	171	125	296	200	127	327	16	16	639
Pt Macquarie-Hastings	266	258	524	61	39	100	1	1	625
Wingecarribee	288	242	530	54	39	93	1	1	624
Ballina	293	234	527	56	32	88			615
Parramatta	122	118	240	199	140	339	17	17	596

Inside Airbnb – Percentage Increases for Airbnb by NSW LGA 2016 to 2019

<i>SUM of Listings</i>	<i>Date</i>	<i>Date</i>	<i>%</i>
<i>NSW LGA</i>	<i>10/12/16</i>	<i>25/08/19</i>	<i>Increase</i>
Albury	52	198	372%
Armidale Dumaresq	31	136	339%
Ashfield	141	312	121%
Auburn	114	576	405%
Ballina	193	615	219%
Balranald	2	2	0%
Bankstown	68	282	315%
Bathurst Regional	56	334	496%
Bega Valley	225	755	236%
Bellingen	78	231	196%
Berrigan	5	31	520%
Blacktown	107	305	185%
Bland	3	7	133%
Blayney	13	53	308%
Blue Mountains	358	1,240	246%
Bogan	0	4	400%
Bombala	6	9	50%
Boorowa	2	11	450%
Botany Bay	228	640	181%
Bourke	1	5	400%
Broken Hill	32	43	34%
Burwood	90	266	196%
Byron	1,172	3,306	182%
Cabonne	13	87	569%
Camden	11	51	364%
Campbelltown	29	117	303%
Canada Bay	276	516	87%
Canterbury	128	360	181%
Carrathool	6	10	67%
Central Darling	2	6	200%
Cessnock	119	730	513%
Clarence Valley	108	580	437%
Cobar	0	1	100%
Coffs Harbour	179	987	451%
Conargo	1	4	300%
Coolamon	0	7	200%
Cooma-Monaro	14	51	264%
Coonamble	0	8	400%
Cootamundra	3	9	200%
Corowa Shire	16	126	688%
Cowra	1	15	1400%
Deniliquin	2	7	250%
Dubbo	19	123	547%
Dungog	20	92	360%
Eurobodalla	184	731	297%
Fairfield	19	90	374%
Forbes	6	43	617%
Gilgandra	0	2	400%

<i>SUM of Listings</i>	<i>Date</i>	<i>Date</i>	<i>%</i>
<i>NSW LGA</i>	<i>10/12/16</i>	<i>25/08/19</i>	<i>Increase</i>
Glen Innes Severn	10	36	260%
Gloucester	16	31	94%
Gosford	319	1,822	471%
Goulburn Mulwaree	14	110	686%
Great Lakes	122	968	693%
Greater Hume Shire	9	21	133%
Greater Taree	55	243	342%
Griffith	2	22	1000%
Gundagai	9	27	200%
Gunnedah	8	21	163%
Guyra	2	15	650%
Gwydir	2	2	0%
Harden	3	16	433%
Hawkesbury	62	228	268%
Hay	1	10	900%
Holroyd	62	128	106%
Hornsby	225	421	87%
Hunters Hill	51	69	35%
Hurstville	85	233	174%
Inverell	4	18	350%
Jerilderie	0	3	200%
Junee	1	3	200%
Kempsey	54	411	661%
Kiama	72	556	672%
Kogarah	110	192	75%
Ku-ring-gai	205	332	62%
Kyogle	14	47	236%
Lachlan	0	8	500%
Lake Macquarie	100	500	400%
Lane Cove	211	322	53%
Leeton	0	3	200%
Leichhardt	695	1,016	46%
Lismore	77	218	183%
Lithgow	44	138	214%
Liverpool	50	163	226%
Liverpool Plains	4	15	275%
Lockhart	2	1	-50%
Maitland	13	99	662%
Manly	1,347	903	-33%
Marrickville	875	1,335	53%
Mid-Western Regional	92	316	243%
Moree Plains	0	7	700%
Mosman	381	538	41%
Murray	11	52	373%
Murrumbidgee	1	6	500%
Muswellbrook	5	13	160%
Nambucca	50	200	300%
Narrabri	10	13	30%

Inside Airbnb – Percentage Increases by NSW LGA 2016-2019 continued

<i>SUM of Listings</i>	<i>Date</i>	<i>Date</i>	<i>%</i>
<i>NSW LGA</i>	<i>10/12/16</i>	<i>205/08/19</i>	<i>Increase</i>
Narrandera	0	14	700%
Narromine	0	6	200%
Newcastle	150	1002	568%
North Sydney	1,036	1,442	39%
Oberon	12	59	392%
Orange	62	268	332%
Palerang	14	65	364%
Parkes	6	55	817%
Parramatta	191	596	212%
Penrith	58	154	166%
Pittwater	815	1,217	49%
Port Macquarie-Hastings	148	625	322%
Port Stephens	115	1,376	1097%
Queanbeyan	17	59	247%
Randwick	2,345	3,462	48%
Richmond Valley	5	28	460%
Rockdale	356	807	127%
Ryde	269	639	138%
Shellharbour	13	131	908%
Shoalhaven	483	3,259	575%
Singleton	47	208	343%
Snowy River	115	966	740%
Strathfield	74	187	153%
Sutherland Shire	298	538	181%
Sydney	5,497	10,139	84%
Tamworth Regional	68	262	285%
Temora	3	21	600%
Tenterfield	10	49	390%

<i>SUM of Listings</i>	<i>Date</i>	<i>Date</i>	<i>%</i>
<i>NSW LGA</i>	<i>10/12/16</i>	<i>25/08/19</i>	<i>Increase</i>
The Hills Shire	141	322	128%
Tumbarumba	1	23	2200%
Tumut Shire	9	64	611%
Tweed	289	1222	323%
Unincorporated NSW	1	5	400%
Upper Hunter Shire	12	49	308%
Upper Lachlan Shire	15	31	107%
Uralla	11	22	100%
Wagga Wagga	26	223	758%
Wakool	3	14	367%
Walcha	3	6	100%
Walgett	2	12	500%
Warren	0	1	200%
Warringah	1,157	1,886	63%
Warrumbungle Shire	11	25	127%
Waverley	4,043	5,573	38%
Weddin	2	8	300%
Wellington	4	5	25%
Wentworth	15	18	20%
Willoughby	311	582	87%
Wingecarribee	134	624	366%
Wollondilly	15	53	253%
Wollongong	159	718	352%
Woollahra	1,319	1,645	25%
Wyong	123	658	435%
Yass Valley	23	63	174%
Young	4	21	425%
Grand Total	29,657	68,477	

INFLUENTIAL 'FRIENDS' of STHL OPERATORS

We put to the Minister for Planning and Public Spaces and the DPIE that 'friends', particularly those of Airbnb's Brent Thomas and lobbyists for Expedia/Stayz, are a 'significant political asset'⁸⁵ and that the 'cultivation' of these assets is one way in which Airbnb, Expedia/Stayz and others seek to secure their financial objectives, no matter the costs to residents and accredited accommodation providers.

Residents who have to date been excluded from the State Government's consultation process, who have seen their submissions to Parliament marked "confidential", have been denied meetings with Ministers and excluded from the Government's 'working party', have repeatedly asked how one might believe that this issue will be dealt with in a fair and proper manner and in line with Land and Environment Court case law precedent.

The 'doctrine of precedent' is the rule that a legal principle has been established by a superior court and should be followed in other similar cases by that court and other courts.

A precedent is 'binding' if the precedent was made by a superior court that is higher in the hierarchy of courts. A binding precedent must be followed if the precedent is relevant and the circumstances of the cases are sufficiently similar.

Following are examples of those who are known to profit directly or have previously profited from STHLs, plus those lobbying for major amendments to NSW Planning instruments:

John Alexander OAM, MP – Iona Park

The Hon (John) Giovanni Barilaro MP – Dungowan Estate

Ms Jodi McKay MPA(Syd), MP – Kia Ora Lookout Retreat

The Hon Bob Carr, former NSW Premier and NSW Senator – Airbnb spokesperson

John Williams OAM*, former Member for Murray Darling, Land and Environment Court Orders

Thomas George, former Member for Lismore, Land and Environment Court Orders**

Kevin Humphries, former Member for Barwon, Land and Environment Court Orders**

* Referred by Legal Counsel Premier and Cabinet to the ICAC

** Referred by Legal Counsel, Premier and Cabinet to the ICAC and went on to vote on legislation without declaring any possible conflict of interest

BARTON DEAKIN - Lobbyists for Expedia/Stayz (former Ministers and Members of Parliament):

The Hon Peter Collins AM, former Leader of NSW Liberal Party, Founder of Barton Deakin

Andrew Humpherson, former CoS to Minister in O'Farrell/Baird Government, CEO/MD Barton Deakin

Grahame Morris MP, former Liberal Party Deputy Federal Director, Chairman and Federal Director Barton Deakin

Matthew Hingerty, Ministerial Chief of Staff and adviser to Barry O'Farrell, Joe Hockey, Peter Collins, John Fahey and several ministers throughout the Greiner-Fahey Governments Director, Barton Deakin

Anthony Benscher, for John Howard communications adviser, Ministerial Chief of Staff in the O'Farrell Government, Managing Director (NSW) Barton Deakin

David Alexander, senior adviser to Peter Costello during his time as Treasurer, Managing Director (Federal) Barton Deakin

The Hon Katrina Hodgkinson, former Minister NSW National Party, Director Barton Deakin

RICHARDSON COUTTS PTY Limited and STATECRAFT PTY LTD - Lobbyists for Airbnb

AIRBNB STAFF:-

JULIAN CROWLEY – Policy & Corporate Communications – News Lead, APAC (formerly)

Senior Adviser to NSW Minister for Ageing, Disability Services and Multiculturalism, John Ajaka MLC, 01/16-12/16

Adviser to NSW Attorney General, Gabrielle Upton - Liberal (now Minister for Local Government), 04/15 – 01/16

Adviser to Minister for Family and Community Services, 04/14 – 04/15

Adviser to Minister for Sport and Recreation NSW Government, 02/13 – 04/14

HUW PHILLIPS - Public Policy Strategist (formerly)

Councillor Support Officer (Linda Scott - Labor, President Local Government NSW), City of Sydney, 10/12 – 04/16

Assistant Secretary, NSW Young Labor, Australian Labor Party (NSW Branch), 2012-2014

⁸⁵ 03-09-2019 Operation Aero transcript pp. 00509-00562 from 10.00am to 1.02pm.pdf

BRENT THOMAS – Director of Public Policy, Asia Pacific, B Laws and Grad. Cert. Legal Practice, (formerly) Ministerial Chief of Staff (Carl Scully - Labor), NSW Government, Feb 2001 – Jun 2006

Councillor, Hurstville Council

The Hon Jennifer Aitchison MP, Shadow Minister for Tourism, formerly Shadow Minister for Small Business made special mention of **Brent Thomas**, **Kaila Murnain**⁸⁶, **Ernest Wong** and **Jamie Clements**⁸⁷ in her inaugural speech to the NSW Parliament⁸⁸. Despite several requests to discuss the impacts of STHLs on NSW accredited accommodation providers, Jennifer Aitchison has not been available.

Other ‘Friends’⁸⁹ of Brent Thomas include, but are not limited to:

- **Matthew Kean MP and Minister**
- **Alison McLaren, A/Executive Director Office of the Group Deputy Secretary, Housing and Property (formerly Director Local Planning Policy), NSW Dept Planning, Industry and Environment,**
- **Kenrick Cheah (ICAC witness⁹⁰),**
- **Ernst Wong MP (ICAC witness⁹¹)**
- **Sam Dastyari (ICAC witness⁹²)**
- **Julie Sibraa (ICAC witness⁹³)**
- **Jamie Clements (noted in ICAC transcripts⁹⁴)**
- **Pat Garcia (acting General Secretary NSW Labor⁹⁵)**
- **Michael Daley MP**
- **Penny Sharpe MP**
- **Edmond Atalla MP**
- **Walt Secord MP**
- **Daniel Mookhey MP⁹⁶**
- **Paul Scully MP**
- **Ryan Park MP**
- **Peter Primrose MP**
- **Adam Searle MLC**
- **David Campbell, former State MP and Minister, former Mayor of Wollongong**
- **Joel Fitzgibbon MP**
- **Matt Thistlethwaite MP**
- **Jim Chalmers MP**
- **Ed Husic MP**
- **Susan Templeman MP**
- **Stephen Jones MP**
- **Senator Tim Ayres**
- **Senator Jenny McAllister**
- **Daniel Walton, National Secretary The Australian Workers Union**
- **Paul Howes, former National Secretary of Australian Workers’ Union, Partner KPMG**
- **The Hon Dr Craig Emerson MP, former Federal MP and Minister**
- **Rob Oakeshott, former Federal MP**
- **Simon Crean, former Federal MP and Trade Unionist**
- **Geoff Derrick, National Campaign Coordinator, ACTU**
- **Glenda Gartrell, former ministerial advisor for State Government Ministers & Premier**
- **Geoff Gallop AC, former WA Premier**
- **Ben Keneally, husband of Senator Kristina Keneally**
- **Mark Lennon, former President ALP (NSW Branch), former Secretary Unions NSW**
- **Patrick Garcia, Assistant General Secretary ALP (NSW Branch)**
- **Verity Firth, former MP for Balmain**
- **Michael Gleeson, Former Director Hawker Britton (Labor branch of Barton Deakin, lobbyists for Expedia/Stayz) Senior Consultant Australian Public Affairs**
- **Chris Gambian, Labor candidate for Federal seat of Banks, CE Nature Conservation Council NSW**

⁸⁶ <https://www.icac.nsw.gov.au/investigations/current-investigations/2019/political-donations-operation-aero/political-donations-allegations-concerning-alp-nsw-branch-officials-chinese-friends-of-labor-and-others-operation-aero>

⁸⁷ <https://www.smh.com.au/national/nsw/cash-deliveries-and-suicide-notes-icac-hearing-opens-with-sensational-claims-20190826-p52krs.html>

⁸⁸ <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1323879322-59342/link/120>

⁸⁹ https://www.facebook.com/brent.thomas.1865/friends?lst=100012545103318%3A100003144743030%3A1567477066&source_ref=pb_friendtl

⁹⁰ 30-08-2019 Operation Aero transcript pp. 00341-00391 from 10.00am to 11.57am.pdf

⁹¹ 30-08-2019 Operation Aero transcript pp. 00341-00391 from 10.00am to 11.57am.pdf

⁹² 29-08-2019 Operation Aero transcript pp. 00250-00299 from 10.00am to 12.43pm.pdf

⁹³ <https://www.icac.nsw.gov.au/investigations/current-investigations/2019/political-donations-operation-aero>

⁹⁴ <https://www.icac.nsw.gov.au/investigations/current-investigations/2019/political-donations-operation-aero/political-donations-allegations-concerning-alp-nsw-branch-officials-chinese-friends-of-labor-and-others-operation-aero>

⁹⁵ <https://www.smh.com.au/politics/nsw/acting-nsw-labor-boss-pat-garcia-quits-after-five-weeks-in-the-role-20191004-p52xm2.html>

⁹⁶ https://www.google.com.au/search?q=daniel+mookhey+mp+airbnb&source=lnms&sa=X&ved=0ahUKEwilttuv3LPkAhXaAnlKHb27BE4Q_AUI DCgA&biw=803&bih=554&dpr=1

- Alex Cramb, Government Relations Australia
- Marianne Saliba, Shellharbour Mayor
- Joe Awada, Deputy Mayor Bayside Council
- Mark Lyons, Cessnock City Councillor
- Adrian Wong, Deputy Mayor Fairfield Council
- Tim Harcourt, Economist and advisor to the South Australian Government
- Brendan Lyon, Partner, KPMG
- Matt Cross, Corporate Affairs Advisory at KPMG
- Sam Crosby, Executive Director, The McKell Institute, Labor candidate for Reid
- Peter Munford, Organiser, Campaigns & Research, NSW Nurses and Midwives' Association
- Michael Gleeson, Managing Director Beltway Government Relations
- Phillip Kessey, former Health Services Union, Branch Official CEPU The Communications Union
- James Fox, Industrial Organiser Health Services Union NSW/ACT

A young family member of Brent Thomas' performed at a Federal Labor launch (7/10/18), attended by Bill Shorten, Tanya Plibersek, Penny Wong, Ed Husic, Tony Burke and Kristina Keneally⁹⁷.

AIRBNB: "Home Sharing Clubs"⁹⁸

Airbnb is supporting the creation of Home Sharing Clubs to help hosts come together to advocate for fair home sharing laws in their communities. We now have more than 100 Clubs operating in communities around the world. This growing network of hosts, guests, small business owners, and local community leaders is leading the way in demonstrating how home sharing benefits neighborhoods around the world."



NSW MINISTER FOR TOURISM STUART AYRES

**No disclosure of *DestinationNSW's* links with online booking platforms *Airbnb/Expedia/etc* during Parliamentary Review.
Small sample of *DestinationNSW* and *VisitNSW* listings:**

- "Blue Gums Cottage" - portal to *HomeAway* (2014 Revenue USD446.8 million)
- "Tannin Apartment" - portal to *HomeAway* STHLs
- "Victory Court" - portal for 557 STHLs
- "Koorringal" - portal for 557 STHLs
- "The Lotus Retreat at Horizons" - portal to 443 STHLs
- "Villa Mer" - portal to 332 STHLs
- "Luxico Harbourside Retreat" portal for 202 STHLs
- "Apartment One surfside" - portal to 151 STHLs
- "James Cook 11" - portal to 151 STHLs
- "Villa Pinot" - portal to 113 STHLs

⁹⁷ <https://www.smh.com.au/politics/federal/bill-shorten-launches-fair-go-action-plan-for-labor-20181007-p5089q.html>

⁹⁸ <https://www.airbnbncitizen.com/clubs/>

AIRBNB and HRIA/ASTRA LANDLORDS' ASTROTURFING CAMPAIGN

Firstly, we highlight another message that appeared on social media concurrently with an Airbnb template. This first message highlights another example of the issues brought to residential communities and buildings when residents are replaced by transient clients. Problems are not limited to: violence, overcrowding, prostitution, alcohol and drug activity and trafficking, human trafficking, money laundering.

(As of 02/09/19, this Airbnb operator has 72 properties listed⁹⁹)

"Just a watch out for Melbourne hosts. We've just had our 6th apartment for the year trashed by...gangs. Threatened our cleaner with a knife this time and wanted to take on the police when they arrived (the police wouldn't come until terrified neighbours called). Police told us this is happening every weekend and it's sport. No fear of authority and they stole the keys and now won't leave the foyer. Building manager terrified. Police now coming back. The response of Airbnb? You should turn off instant book (and therefore send us to page 50 in the search ranking...) oh and by the way if we cancel an instant guest booking. They will take our Superhost away and we suffer other penalties. This is the real attitude of this company to hosts, yet look what we are subject to make their billions. By the way, as Airbnb have now banned profile photos until AFTER booking has been accepted due to their "diversity and inclusion" policy, we now suffer all the risk."

"Airbnb doesn't care about the host, they've proven it time and time again with their ridiculous policies..."

Airbnb and HRIA/ASTRA are astroturfing the NSW Government via their landlords/platform users and are asking that all send the following message to Parliament.

AIRBNB 'TEMPLATE' FOR PLATFORM USERS, circulated across Social Media by:

JOAN BIRD – HRIA/ASTRA Board Member, Principal, Ray White Jindabyne/Snow Escape Holidays¹⁰⁰:-

"By now most NSW based hosts would have received the "template email" they (Airbnb) would like you to send to NSW Dept of Planning, with their objections to the proposed changes. Just wondering how you feel about if you understand their objection to the "onerous cost of obtaining complying development"? Any residential development either under the old DA system or the newer complying development application already has this – you need it to build. Are they saying that anything that can have a bed put in it can be used on Airbnb? So a tepee in the backyard, a garage or an enclosed garden shed should be allowed?"

Email to Department of Planning:-

"As a local Airbnb host I wanted to provide my feedback on the Government's proposed regulations.

I host on Airbnb because...(insert)

The Airbnb host community depends on hosting as an economic lifeline to help us pay the mortgage and the bills. I also recommend my favourite cafes, restaurants and shops so small businesses get a boost from local tourism.

I am deeply concerned that the NSW Government's proposed short-term rental accommodation (STRA) rules will make it harder and more expensive for me to share my home.

I understand that the Government has made commitments to support "fair short term rental accommodation (STRA) regulations that supports the sharing economy".

Generally I support the Government's approach, however parts of the current proposals are unfair and fall short of the Government's commitments.

Specifically, I want to comment on the following:

STRA State Environmental Planning Policy

I oppose the requirement for costly complying development permits. This expensive permit will make hosting out of reach for most people who will be forced to pay hundreds or thousands of dollars for a permit to simply share their home. For hosts who share their homes for a few weeks a year, this is a significant barrier to home sharing and will make hosting uneconomical. For holiday homes up and down the coast, and in the regions, these have existed for decades without these expensive permits which will end up making holidays across NSW more expensive.

Environmental Planning and Assessment (STRA) Regulation 2019

I oppose the unprecedented requirements to introduce red tape to make costly alterations to my home before hosting, such as expensive lighting systems. Both South Australia and Tasmania state clearly that hosting is an ancillary use of an approved residential dwelling – for the vast majority of hosts, this means there are no

⁹⁹ <https://www.airbnb.com.au/users/1739996/listings> www.completehost.com.au

¹⁰⁰ <https://www.snowescapeholidays.com.au>

requirements to alter home to be compliant with regulations. Put simply, if my house is approved to be safe for me and my family to live in, it's safe for my guests. I support the NSW Government streamlining safety regulations which:

- Respect the ancillary use of my home for home sharing
- Mandate smoke alarms – either battery operated or hard-wired
- Require evacuation or emergency plans and guest education

STRA Property Register

I oppose the potentially costly, complex, and onerous STRA property register. At every stage of the consultation, registration has been considered, debated, and ultimately rejected. In South Australia there are no fees and no registration or licensing system, allowing the home sharing economy to thrive. In Tasmania, there is a simple, quick and cost effective self-assessment form, which is only required in limited circumstances – usually for holiday homes or weekenders only – and a data sharing framework.

Code of Conduct

I support the Code of Conduct which overall is reasonable and representative of the home sharing community, and provides strong protections for hosts and guests from vexatious or frivolous complaints. I ask that the Government amend the Code to allow hosts such as myself to be covered by insurance directly provided by a booking platform.

As the NSW Government considers how best to regulate home sharing, the message of hosts across NSW remains the same – we want to work with you and have a say on developing fair, innovative rules that reflect how people travel and use their homes today, not last century. We don't want severe home sharing rules, overly complicated planning requirements, or expensive or complex registration systems.

Thank you for reading my submission.”

ANNEXURE A - Officer in Charge (OIC) Statement, NSW Police & Coroner's Report

NSW POLICE

STATEMENT OF POLICE

OFFICER IN CHARGE STATEMENT
(Redacted Statement)

And

CORONER'S REPORT ON DISPENSING WITH AN INQUEST



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
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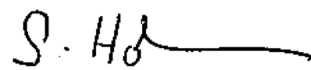
STATES:

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 . 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:

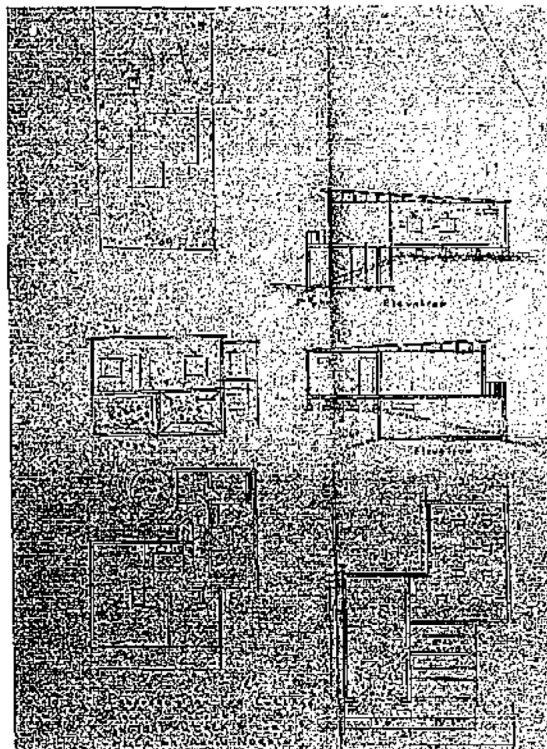

Stephen Hopkin

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 [REDACTED] 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]

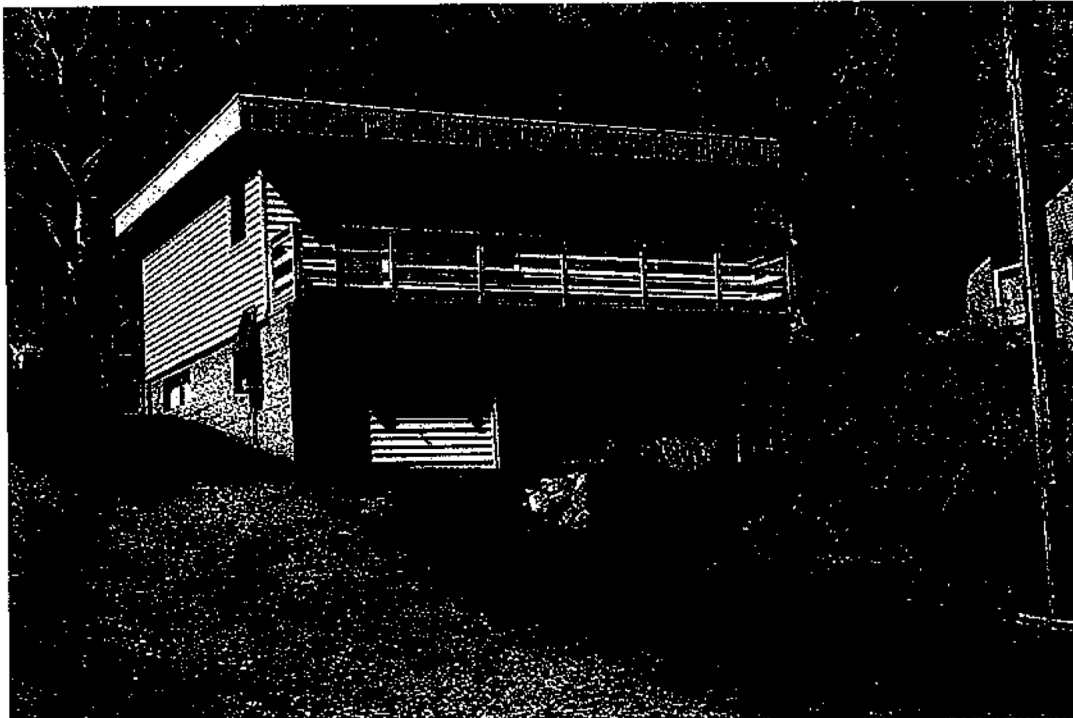
Signature:

S. Hop

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.

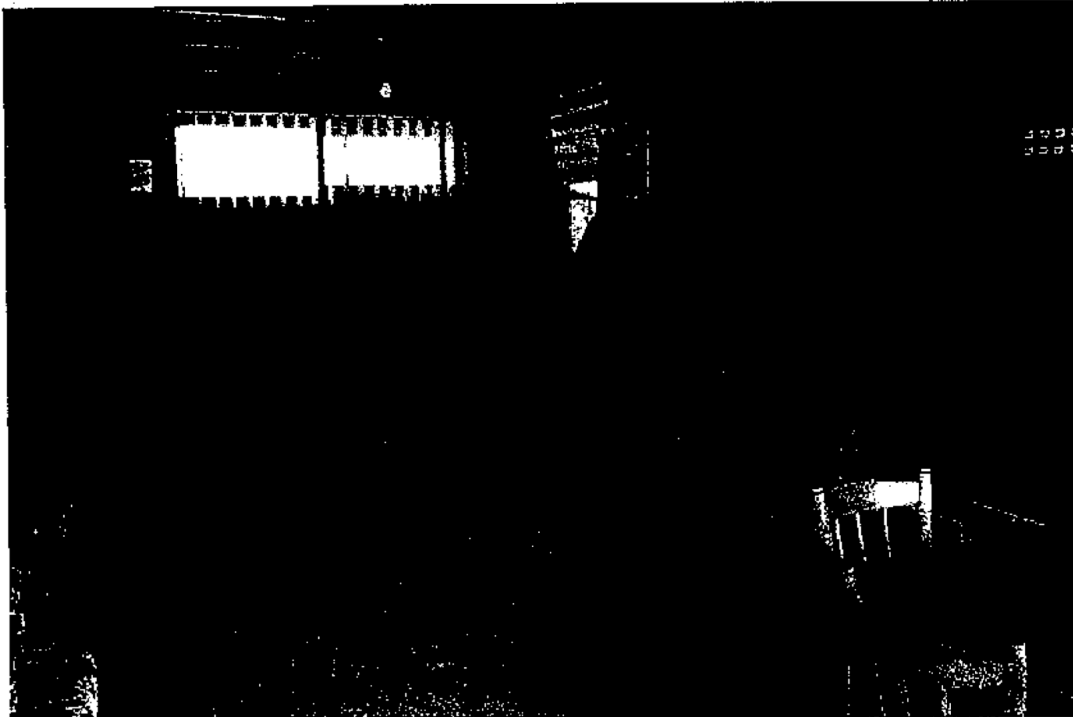
Witness:

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.

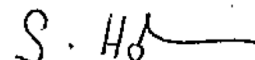


16. As it was very cold in the house, [REDACTED] attempted to light the fire. He took wood from a stack on the hearth near the fireplace, and placed some wood pieces in the heater. He then lit fire lighters in an attempt to catch the wood alight.
17. None of the group had ever had experience with the 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:



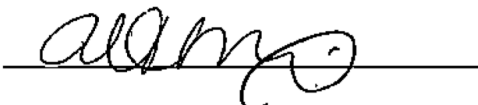
Signature:


Stephen Hopkin

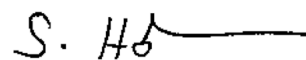
Statement of Detective Senior Constable Stephen Hopkin
In the matter of the Death of [REDACTED] – House Fire at 65 Illawong Road, Anglers Reach

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.

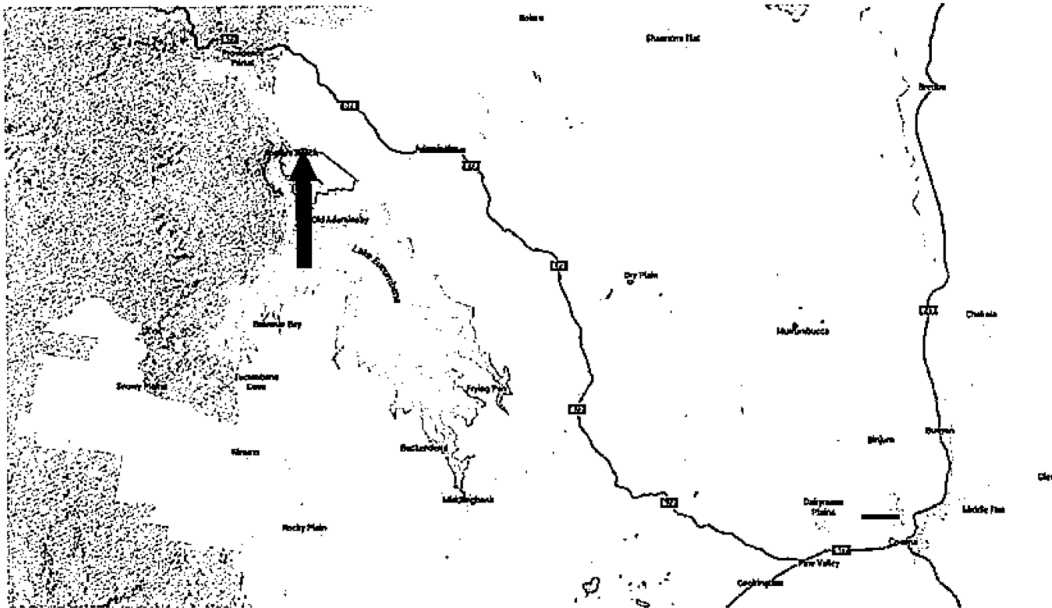


EXHIBIT – PHOTOGRAPH OF THE HOUSE BURNING TAKEN BY A RESIDENT ACROSS THE ROAD.



Witness:

[Signature]

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

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.

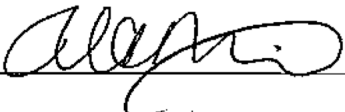
EXHIBIT – I NOW PRODUCE PHOTOGRAPHS OF THE SCENE TAKEN BY SGT VUCKO

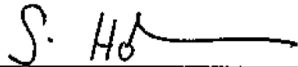
37. The local Government Contractor, Alan Dodd collected the deceased and I followed him to Cooma Hospital where Doctor Truter issued a Life Extinct Certificate. The body was subsequently collected from Cooma and taken to the Department of Forensic Medicine at Glebe.
38. On the 24 July, 2015, Crime Scene 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.

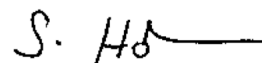
WITNESSES:

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

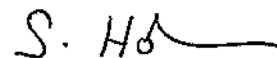
Statement of Detective Senior Constable Stephen Hopkin
In the matter of the Death of [REDACTED] – House Fire at 65 Illawong Road, Anglers Reach

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 [REDACTED] and the other Dad [REDACTED] were trying to make heat (trying to light the wood heater) and [REDACTED] 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. [REDACTED] 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, [REDACTED] suggested he remain outside bringing bags from the car, so the house did not get muddy.
48. [REDACTED] unloaded [REDACTED]'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 [REDACTED] (in Melbourne) what it was for, a [REDACTED] 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 [REDACTED] being worried the jerry can could be stolen if it was left outside, so he thought took it inside. [REDACTED] 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 [REDACTED] pants were on fire, tried to pat it out, and then told him to go and roll on the ground outside. [REDACTED] 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 [REDACTED], were at this stage. He then heard screaming that [REDACTED] was missing. He then tried with others to get into the house from the back, but this was unsuccessful.
51. [REDACTED] (taped interview) is the father of the deceased [REDACTED]. 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, [REDACTED] went into their other friend's rental house at [REDACTED] 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
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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

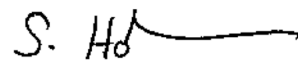
Statement of Detective Senior Constable Stephen Hopkin
In the matter of the Death of [REDACTED] – House Fire at 65 Illawong Road, Anglers Reach

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]

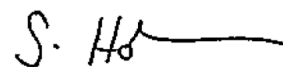
ENQUIRIES MADE REGARDING ANY RELATED SAFETY REGULATIONS:

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.

Explanation/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-Generals 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:


 Stephen Hopkin

Statement of Detective Senior Constable Stephen Hopkin
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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. 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.

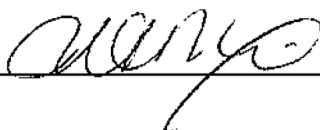
85. stated that there had been talk in the Industry that standard regulations should be put in place in regards to 'Non Compliant Short Term Accommodation', so safety standards can be monitored and regulated. One such standard example that could be introduced is known as the 'Japanese Model'. This regulation 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:


 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

- **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

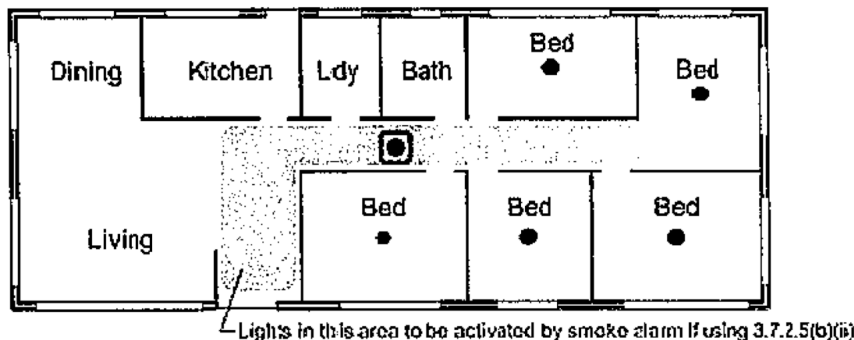


EXHIBIT – I NOW PRODUCE RELEVANT SECTIONS FROM THE NATIONAL CONSTRUCTION CODE

Witness:

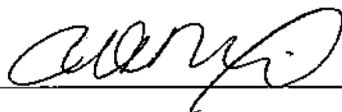
Signature:

Stephen Hopkin

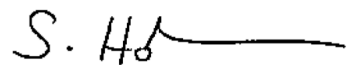
Statement of Detective Senior Constable Stephen Hopkin
In the matter of the Death of [REDACTED] – House Fire at 65 Illawong Road, Anglers Reach

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:



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

- 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.

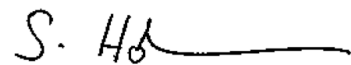
THE LIGHTING SLOW COMBUSTION WOOD HEATERS:

94. Prior to this accidental ignition of the fatal fire, [REDACTED] and [REDACTED] 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:



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

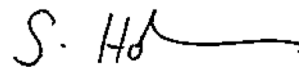
SUMMARY & OPINION:

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:

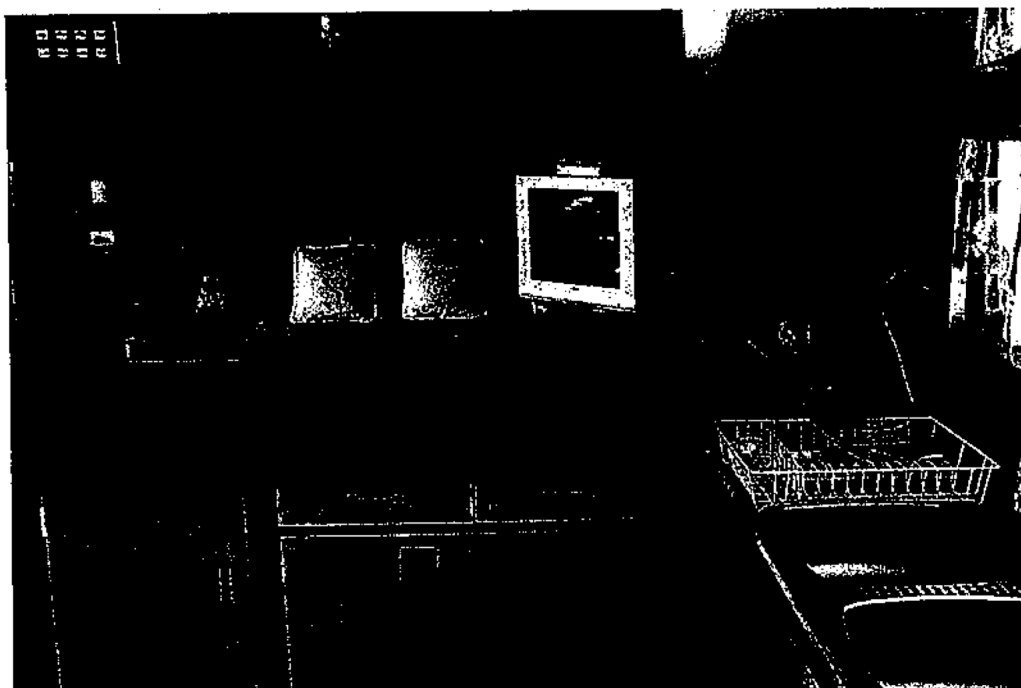


Signature:



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



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 KRYN
 Constable
 7/10/15

Signature:

S. Hop
 Stephen Hopkin
 07/10/2015

Witness:

Signature:

Stephen Hopkin

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