

11 September 2019

The Hon. Rob Stokes MP
Minister for Planning and Public Spaces
GPO Box 5341
Sydney NSW 2001

Dear Minister

Short-Term-Rental Accommodation Reforms

Short term letting has an important place in the economy but without the appropriate regulatory framework, residents across New South Wales risk being priced out of neighbourhoods and replaced by transient holiday makers, with the remaining community suffering from amenity impacts, loss of strategic planning and increased owners' corporation costs.

As drafted, the proposed instruments and regulations are grossly inadequate: they provide little regulation, oversight or enforcement. Strategic planning will essentially become impossible at a time when Sydney must plan for significant population growth. The proposal is a weak self-regulatory approach that will require significant effort to fix in the future as the industry grows and impacts become more widespread.

Caps

The proposed 180-day limit that would enable short term letting in residentially zoned premises in Sydney for 180 days a year without any planning approval or independent oversight ignores the international experience – and the government's own acknowledgement of serious impacts in Byron Bay – that large caps facilitate mass conversion of homes into short term stays in areas of high tourist demand.

In popular tourist destinations like the inner city, letting a home for half the year on a short term basis can be more profitable than signing a lease with a long term tenant. Six-month leases could become the norm with tenants evicted during peak tourist periods.

The new proposal to enable stays of 21 days or more not to count towards the cap is of serious concern, essentially providing a loophole to permit year round short term letting in premises that are zoned residential.

Last year the government promised that the 180-day cap in Sydney would not just ensure neighbours could get relief from ongoing changing visitors, but would also ensure that homes would not be wholly converted into commercial holiday accommodation. The 21-day rule is a gross betrayal of this promise that will result in commercial ventures replacing



residential communities in tourist areas. It suggests the government is only paying lip service when it claims its reforms are aimed at supporting the “sharing economy”.

Alarming, constituents informed me that they were told at an AirBnB course for hosts earlier this year that year-round commercial short term letting would be permitted in the inner city and that they could “get around” the 180-day rule by listing their homes on another platform. The 21-day rule was not public at that time, suggesting that the short term letting industry had prior knowledge to this new government policy likely to deliver it windfall profits.

Other cities like London, San Francisco, New Orleans and Reykjavik – and soon Byron Bay – use 90 day caps, and are all still grappling with unlawful short term lets changing neighbourhoods. With the 21-day rule, the cap will be impossible to monitor. I support the Tenants Union whose research suggests that 60 days is appropriate as a cap.

- ***The 180-day limit for short term rentals must be significantly reduced.***
- ***The 21-day loophole must be removed.***

Planning Regime

Exempt development is meant to be reserved for very minor developments that clearly do not impact on adjacent communities. Examples include awnings around windows and pergolas, where there is unlikely to be any concern and council oversight and expert assessment are not necessary. This process – or lack of – is completely inappropriate for short term letting which can result in different service and infrastructure needs and community impacts. Planning authorities must retain control of this activity.

With the proposed 21-day loophole, properties in Sydney will essentially be able to convert completely from residential to holiday accommodation without any planning authority oversight or merit assessment process.

Under this model, there will be no way for councils to plan for housing or the services and infrastructure needed for residents and visitors. They will be limited to reacting to emerging and constantly changing trends in the tourism market. In approving development proposals, it will be impossible for councils to impose consent conditions appropriate to the specific site or neighbourhood because consent authorities will not know how buildings will be used.

Similarly councils will be hamstrung from ensuring affordable housing in key precincts, with serious impacts on affordability. This will undermine key government policies to encourage the market to provide more affordable housing.

- ***Zoning for short term letting should be determined through an open planning process by experts, with assessment and approval by a consent authority.***
- ***Where the host is not present, short term letting must never be classed as exempt development.***

The lack of oversight proposed for fire safety compliance with the standards set out in the Short-term Rental Accommodation Fire Safety Standard creates significant risk.

It is well known that short term letting increases fire risks, which is why additional standards have been set. Fire safety is too important to be left to self-regulation. Oversight of fire safety compliance is essential.

The planning regime does not recognise any proportion of short term lets in a residential apartment building that would trigger a change in zoning. If every lot in an inner city residential tower was let out on a short term basis all year round (using the 21 day loophole), it would be completely inappropriate to retain its residential zoning. There must be some point where planning laws recognise that an apartment building is no longer considered residential, both in terms of strategic planning and transparency for potential owners and tenants considering buying or living in the building.

- ***The planning framework must set a trigger for the proportion of short term letting in residential apartment buildings that would require a change of use.***

It is unclear how express conditions of consent that ban short term letting in apartment buildings in mixed use zones will operate under the new planning regime. This must be clarified with existing conditions honoured in recognition that some owners purposely purchased homes in buildings with specific short term letting conditions.

- ***Existing conditions of consent that ban short term letting in a building in mixed use zones must not be overridden.***

Register

Short term letting is currently unlawful in most residential homes in Sydney yet it is widespread, including in my electorate. The government must acknowledge that new enforcement tools are needed.

The registration system should form part of a new enforcement framework aimed at ensuring compliance with planning laws, the code of conduct and relevant apartment by-laws.

A mandatory short term letting registration system is the only way to ensure compliance with any planned regime because it is the only way to identify and oversee activities. It provides an opportunity to build compliance into systems and ensure enforcement bodies have access to the information they need to investigate complaints.

All hosts, premises and platforms must be registered, with all dates that premises are offered for, and actually occupied as short term letting listed. Information about the relevant planning laws and strata by-laws must be linked to each property listed, along with hosts' principal place of residence.

Councils, government departments including the Department of Planning, Industry and Environment, NSW Fire and Rescue and the Australian Tax Office (ATO) must have access to the register to ensure compliance and to facilitate strategic planning.

Owners' corporations should be able to have access to relevant information on the register to enable them to ensure compliance with by-laws.

- ***Platforms must not permit a host to list their property unless their relevant details are on the register.***
- ***A mandatory registration system must facilitate access to information by enforcement bodies to ensure compliance.***
- ***The registration system must be in place before the new planning instruments commence operations.***

Details around the registration system under consideration have not been developed, however it is stated to be industry run. There is a conflict of interest in allowing industry, which can profit from non-compliance and lax rules to manage the register. It would be preferable if it were managed by government or an independent body, with the system funded through a registration fee.

Experience with self-regulation in the building industry has shown it is vital to ensure independent oversight and prevent conflict of interest in order to protect consumers.

Code of Conduct

The proposed Code of Conduct is weak and will provide little benefit other than to create an additional and toothless process for hosts and guests to resolve complaints about each other. There is nothing to protect neighbourhood amenity or to ensure compliance with the planning regime.

The draft code doesn't even require booking platforms to ensure premises listed on their sites comply with planning laws or by-laws. The registration system will provide all platforms the ability to identify whether premises offered for rent on their sites have complied with the 180-day and 21-day rules, or are in buildings with by-laws that have banned commercial letting.

- ***The Code of Conduct must include an obligation on platforms not to list premises that have reached the annual cap or breach by-laws.***

The code must also include an obligation on platforms to share information with enforcement authorities including councils, departments, NSW Fire and Rescue and the ATO as well as assist owners' corporations attempting to enforce by-laws.

- ***The Code of Conduct must include new obligations on letting platforms to appropriately share information with law enforcement bodies.***

The Code of Conduct was touted as a tool that would enable government to "crack down" on "party houses" yet the code fails to include any mechanism that would allow a strike against a premise for repeatedly hosting parties. The proposed code does not appear to provide for a premise be able to be placed on the exclusion list due to frequent parties or amenity problems.

Obligations in the code to prevent noise and antisocial behaviour are limited exclusively to guests; hosts bear no responsibility towards their neighbours outside of informing them of the change in use. If premises regularly allow loud disruptive parties, the only action

neighbours can take under the code is against guests – most of whom will have left the city by the time any investigation or complaint outcome is possible.

Even if action is successful, the only outcome is for a guest to receive a strike, potentially leading to their exclusion from renting through short term platforms again, but the problem premise could continue to be used for parties by other future guests. Most neighbours will see this process as futile.

The only way for the Code of Conduct to protect neighbours from constant parties would be to allow a strike against a premise through the host, and measures to allow this should be included.

- ***The Code of Conduct must include obligations on the host to ensure their premises are not used for parties with strikes against their relevant premise for repeated breaches.***

I am concerned that obligations on guests associated with protecting amenity and preventing antisocial behaviour are limited to residents of the “immediately adjoining” premises. In the densely populated inner city, which has rows of closely adjoining terraces on narrow streets, neighbours beyond the direct boundary of a property can be significantly impacted by, for example, loud parties or poor rubbish disposal. There is no reason to introduce this constraint when the commission could use a reasonable test in terms of neighbours who would be reasonably expected to be impacted by an activity.

Furthermore, it is unclear how references to “immediately adjoining premises” will apply in apartment buildings. Obligations to protect amenity and prevent antisocial behaviour should cover all residents in a building, in recognition of the common property, shared services like waste disposal and facilities like swimming pools and gyms, and potential impacts through balconies. Strata and tenancy law and court decisions both recognise this wider obligation.

- ***Obligations on guests in the Code of Conduct must be towards neighbours beyond those immediately adjoining the premise including all lots within the same apartment building.***

In apartment buildings, short term letting can increase operational costs such as leading to a fire order, increased work for the building manager, greater maintenance costs for example with lifts and higher insurance costs. Of note, the draft code only requires hosts to take out public liability insurance for the death or injury of a guest or visitor or damage to their property “on or at the premises”.

In apartments, this does not include common property, potentially resulting in additional public liability insurance costs for owners’ corporations. It is unfair to require other owners to subsidise the commercial activities of some owners.

- ***The Code of Conduct must include an obligation on hosts in apartment buildings to cover increased costs on the owners’ corporation caused by use of their lot for short term letting, including insurance for common property.***

There is evidence of people applying to rent homes for the sole purpose of hosting short term letting at a profit, and some businesses already provide advice and information to

people wishing to operate short term letting in multiple homes they lease. This should not be done without the property owner's permission.

- ***The Code of Conduct must place an obligation on hosts to inform the owner of the premise that the property is being offered for lease on a short term basis.***

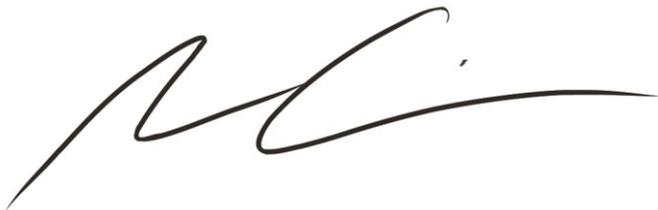
While short term letting may not have impacts in some areas and help benefit regional economies and communities, in the densely populated inner city with high levels of apartment living and tourism putting pressure on costs and amenity, there is potential for serious impacts. A one size fits all model is not appropriate for such a diverse state.

The proposed regulatory framework is completely inadequate and ignores vast international evidence in areas of high tourist demand like Venice, Florence, Paris and Barcelona that show significant community impacts without appropriate regulation. The proposed regime lacks useful regulation, oversight or enforcement.

The proposal is also unfair, particularly on strata communities who will be forced to subsidise the commercial activities of some owners.

I ask that you undertake further work, including a review of international experience and effective models to create a robust world-class scheme that allows short term letting to prosper while protecting housing affordability, community and amenity in areas popular with tourists.

Yours sincerely

A handwritten signature in black ink, appearing to be 'AG', written in a cursive style.

Alex Greenwich

Member for Sydney

Copy: Minister for Better Regulation and Innovation
Department of Planning, Industry and Environment