



The Palm Beach & Whale Beach Association Inc.

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NSW State Government's Short Term Rental Accommodation Proposals

Submission

INTRODUCTION

This submission is prepared by the Palm Beach & Whale Beach Association, whose principal role over the past 100 years has been to advocate on behalf of the residents and businesses of Palm Beach and Whale Beach. The Association appreciates the opportunity to put forward its views to assist the Department of Planning, Industry and Environment and the Department of Customer Service in the formulation of proposals for regulation of Short Term Rental Accommodation.

The Association is most interested in the impact regulation as put forward in the proposals would have on Palm Beach and Whale Beach but believes the points it wishes to make will have a significant effect on other areas such as much of the rest of the Northern Beaches and other areas of New South Wales, the economies of which significantly rely on tourist visits and summer accommodation.

Our comments below are set out under the following four main headings: -

- The proposed new State Environmental Planning Policy ("SEPP") dealing with additional planning requirements for STRA premises.
- The proposed new fire regulations for STRA premises, enforceable because of an amendment to the Environmental Planning Regulations.
- A proposed new Code of Conduct which will be administered primarily by the Commissioner of Fair Trading
- The proposed new register of STRA premises, to be set up and funded by an "industry body" – at present unidentified.

THE NEW SEPP

The principal issues with the new SEPP are: -

- The principal problems which emerged in the previous consultations were to do with problems in multi-unit buildings caused by over-use of facilities, noise,

nuisance, rubbish and such issues. There was also the issue of competition with hotels caused by such lets. There were no major issues identified as arising from short term lets of houses, (other than party houses and these are mostly dealt with in the SEPP and the Code of Conduct). There were no particular fire risk issues identified in the earlier consultations. There is no discussion in the current Discussion Paper about fire risks, other than the statement on page 10 “*The STRA SEPP will not provide a development application pathway for STRA on bushfire prone land > BAL40 risk rating*”. However the approach of the SEPP, taken as a whole, is punitive of short term lets of houses and in a way which is totally inconsistent with the treatment of longer term lets. Why are short term lets (1-20 days) a greater fire risk than longer term lets (21 days +)?

- It appears to be the intention that the use of premises for STRA is a development of the property, either exempt or complying, which will not need development approval if it complies with the limit on days specified below, and the other conditions set out in the SEPP. This is not clearly spelled out, nor is its application to premises already used as STRA premises because, in this case, there is no change of usage requiring planning permission.
- The total exclusion of STRA premises from exempt development in any fire-prone area and from complying development in bushfire attack level 40 (BAL-40) areas and bushfire flame zone areas is not based on any evidence cited in the discussion paper. It will affect substantial parts of Palm Beach and Whale Beach, including all or parts of 15 out of the 31 roads in these two suburbs, as well as significant parts of Avalon and Avalon Beach, Bilgola, Clareville, Newport, Mona Vale, Bayview, Church Point, Great Mackerel Beach, Currawong Beach, and Coasters Retreat, all of which areas include many properties let on holiday lets. Holiday and short term lets in these areas are not easily replaced with longer term lets. This will have a significant economic and financial impact on these local economies.
- We support the proposed limit of 2 persons to each bedroom or a maximum of 12 persons sleeping in each STRA premises, whichever is the lower. If the only mechanism for policing this requirement is an inspection of premises during ordinary hours, it will be extremely difficult to detect any contraventions.
- For a complying development, there must be a fire hydrant within 60 m of the dwelling – this is not something the owner of the property can do anything about.
- There is no rationalisation put forward for the day-limit of 180 days. It should not apply to single unit dwellings – they are not the competition that the hotels are agitated about.

The language of the SEPP is confusing. It says that “*Development of a property as STRA premises is*”. Does this mean that an existing property already used for STRA is not covered because it does not require “development”?

PROPOSED NEW FIRE REGULATIONS

- The requirements for smoke and heat alarms in single houses are far in excess of what is required for long-term lets;
- We support the requirements for each STRA property in a multi-unit development that it be fitted with a self-closing exit fire door able to be opened from the inside without a key.
- The requirement that there be a fire extinguisher and fire blanket in the kitchen of STRA premises in multi-unit buildings should be extended to all STRA lets, whether single houses or in multi-unit buildings. In fact this requirement should be extended to all lets whether short-term or longer term.

There is no specific requirement that existing STRA premises, particularly single-unit dwellings, have to bring themselves somehow within the new SEPP provisions.

THE CODE OF CONDUCT

During the earlier consultation on STRA premises, we advocated for a mandatory code of conduct (including provision for strikes) and we fully support the new proposed Code. Although there are no specific provisions relating to party houses, we believe that the limits on the number of guests in the SEPP plus this Code of Conduct will go a long way towards alleviating the problem of party houses. Administration of the code by the Commissioner of Fair Trading appears appropriate.

The current version of the Code depends for its interpretation on a number of critical definitions. Unfortunately they are contained in a variety of separate pieces of legislation which will make use of the Code difficult by STRA participants, particularly guests. These definitions need to be included in the Code in full so that any person reading it can fully understand his or her obligations.

REGISTRATION

The proposal is that a mandatory register of all (i.e. both “hosted” and “unhosted”) STRA premises be set up, funded and managed by the STRA industry because “the industry participants already hold much of the information needed”. “This approach would enable the industry to choose the appropriate governance structure”.

We support the introduction of a mandatory register completely – in fact, it was in our previous submission. But our advocacy of it was primarily based on safety and safety as an issue is not recognised in the current provisions relating to registration.

We do not support the proposed implementation of registration as set out in these documents for the following reasons: -

- There is no industry body currently in existence capable of taking on the responsibility and whatever existing information about STRA exists is fragmented, uncoordinated and in various forms and in many locations;
- It is not appropriate that the industry self-regulate, even to the limited extent of running the register;

- Councils currently have registers of every property in their LGA and the identity of the owners. It would be a minimal cost exercise for Councils to be given the responsibility of setting up and running the proposed STRA registers and there could be no conflicts of interest. All the registers need to do is to exist – they have no other role than as an information source for industry participants and, we believe, the public; a Council is in a much more practicable position to collect fees for the maintenance of the register;
- It would be very difficult for most industry participants other than the hosts, to find out whether there had been a breach of the byelaws of a particular multi-unit building and what would that person or the registry manager be expected to do with that information?
- The register needs to be a public register so that anybody affected by an STRA transaction, e.g. neighbours, can find out the industry participants in relation to a particular property.
- There appear to be no sanctions for failure to register STRA premises. It will not be “mandatory” without sanctions.

It is clearly envisaged that this register will be the place to monitor days let against the day-limits. Who will be responsible for reporting breaches to, presumably, the Commissioner for Fair Trading? How would the registry manager know whether any strata byelaws have been breached and what would the manager do with the information anyway? The register will apparently not contain any information about guests.

REVIEW

We support the need for a review of these measures after a period of operation but believe the period of 12 months after they commence is too short – they will take many months to come into effective operation.

RECOMMENDATIONS

Most of the recommendations – e.g. registration, strikes, exclusions, were amongst measures we recommended during the earlier consultation period in October 2017.

Specific recommendations: -

1. The safety measures for single-unit STRA premises should be the same as for long-term lets.
2. The safety measures for hosted STRA premises should be the same as for ordinary houses.
3. Safety measures for multi-story buildings should be dealt with separately.
4. The register of STRA premises should be run by local councils and should be available for public inspection.
5. The regulatory regime requires inspection mechanisms to ensure compliance and sanctions for non-compliance.
6. The exclusion of properties in bushfire prone areas is not appropriate and is not evidence-based. There has been no prior consultation on this and it will affect the interests of many

property owners (including many of our members) in areas like the Northern Beaches where holiday lets are an important feature of the local economy. It will therefore also have a significant impact on local economies.

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President

8 September 2019

MAP OF BUSHFIRE PRONE AREAS IN PITTWATER

