Submission on the Draft Short Stay Accommodation Bill 2018

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The analysis in this submission has been prepared by the Institute for the Study of Social Change and draws on the University of Tasmania’s expertise in housing policy and planning, including those of the Housing and Community Research Unit. The views expressed in this submission are those of the authors and not the University of Tasmania.
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Executive Summary
This submission provides feedback both on the specific details of PD6 and the Draft Bill as well as outlining additional policy and legislative measures the government should consider as part of its ongoing commitment to address the housing challenges facing our community.

Our key findings and recommendations are:

- Compliance with permit requirements under the current Exemption and Standards for Visitor Accommodation in Planning Schemes (PD6) are poor.
- We commend the government for introducing legislation that will improve compliance with and support enforcement of permit requirements in PD6. The Bill will also facilitate a deeper understanding of the impact of the sector on the broader housing market.

Minor amendments and issues for consideration:

- Require all SSA providers (including genuine sharing and ancillary dwellings) to acquire a simple, low/no-cast permit. This reflects international trends and allows governments to capture data on the entire sector (see part 3 below)
- That the Draft Bill be implemented with the specific inclusions that:
  - data be shared and available for independent analysis; and
  - reporting of information by booking platforms including not only days made available, but number of days actually booked on any given listing (to reflect listings’ availability and occupancy rates) (see part 4 below).

Additional measures to be addressed to improve housing outcomes

The Draft Bill, if implemented, will promote compliance with DP6 and will yield greater data, which will contribute to our understanding of the impact of the SSA sector on local housing markets.

However, we encourage the government to introduce additional provisions that facilitate effective, nimble, and evidence-based regulation of SSA specifically to mitigate poor housing outcomes. Based on our discussion, we recommend the following:

- That the government address the issue of whether the current legislative framework (through the planning system) can adequately respond to poor housing outcomes resulting from SSA, including any rapidly changing market conditions that may accompany them.

- That the current PD6 legislation contain provisions for properly addressing the impacts of the sector on housing markets. These include:
  - limiting the use of SSA in local communities where its impact is adversely affecting access to affordable housing. Regulation must be nimble enough to adapt to fast-changing market conditions. Based on international trends, policy tools that should be considered include imposing caps on listings per calendar year in specific council areas or the introduction of annual license fees.

- That the government actively work with LGAT to ensure that local governments are adequately resourced for responsive and effective administration of SSA legislation.
1. Introduction
The short stay accommodation (SSA) sector continues to deliver social and economic benefits to Tasmania. However, the growth of the short stay accommodation sector in Tasmania during the last three years has also impacted on the availability and cost of rental accommodation in Hobart in particular, contributing to Tasmania’s ongoing housing crisis. The drivers and impacts of these housing market pressures are now well documented (Eccleston et. al 2018), as are policy recommendations for the more effective regulation of short stay accommodation in Tasmania.

The draft Short Stay Accommodation Bill (hereafter named the ‘Draft Bill’) proposes the introduction of measures to strengthen short stay accommodation planning permit requirements as outlined in the current Exemption and Standards for Visitor Accommodation in Planning Schemes (PD6). We commend the government for introducing legislation that will improve compliance with short stay accommodation planning permit requirements, as well as supporting improved enforcement by planning authorities and facilitating a deeper understanding of the impact of the sector on the broader housing market. We agree these provisions should deliver improvements in the integrity and effectiveness of the current (PD6) permit regime.

The proposed bill provides a foundation for more targeted, evidence-based regulation of the SSA sector, which could achieve a better balance between the growth of the sector and the community’s housing needs. However, in their current form neither PD6 or the draft Bill are likely to improve housing market conditions in communities most impacted by recent growth in SSA. This submission provides feedback both on the specific provisions of the PD6 and the Draft Bill as well as outlining additional policy and legislative measures the government should consider as part of its ongoing commitment to address the housing challenges facing our community.

2. The impact of the short stay accommodation sector on housing in Tasmania
The Institute for the Study of Social Change’s recent ‘Tasmanian Housing Update’ (Eccleston et al. 2018) outlines the key drivers contributing to ongoing housing market pressures in Tasmania. The report documents the rapid growth of the SSA sector at the LGA level in Tasmania and its contribution (in combination with other factors) to the housing challenges being experienced in the state. Some of the key findings include:

- SSA listings are particularly concentrated near popular holiday destinations and in inner Hobart;
- There is an intensification of commercial activity in the SSA sector with investment property listings growing relative to other listings types in the Tasmanian market. ‘Sharing’ a principle place of residence is a declining segment in the SSA sector in Tasmania;
- There is no evidence (unlike mainland cities) that ‘Peak Airbnb’ has been reached in Tasmania;
- There is a strong relationship between SSA growth and declining rental supply and vacancies in Hobart in particular highlighting the need for a community-specific approach to regulation which is nimble enough to respond to changing market conditions.
3. The current Short Stay Accommodation legislation (PD6)

First, we argue that the current PD6 legislation is currently limited in its ability to effectively balance the interests of the short stay accommodation sector with that of the housing market needs of local communities. This is primarily because the legislation was drafted with the intention to clarify, rather than regulate the impact of, the short stay accommodation sector through the current Land Use Planning and Approvals Act (the Act). Second, current legislation draws on planning provisions and schedules available in the Act (limited to residential character and amenity, safety impacts and road network efficiencies) which do not respond to the impact of short stay accommodation on housing market conditions and on the supply of affordable rental accommodation in particular (see section 5 for further discussion).

The purpose of the PD6, which came into effect in July 2017 (with an update in August 2018), was to clarify provisions for short stay accommodation use and to make it simpler to apply for a standard permit for visitor accommodation use. In July 2017 the PD6 introduced an exemption for genuine home-sharing where primary residences are used for short term visitor accommodation. The updated 2018 directive clarified that (with a few exceptions such as the Battery Point Heritage Precinct) visitor accommodation applications for secondary or investment properties up to 4-bedrooms, and up to 200m2 floor area are ‘permitted’ use, meaning the applicant is entitled to a permit on application.

We argue that to properly balance short stay accommodation interests with the housing needs of the wider Tasmanian community, PD6 (or an alternative legislative instrument) must not only clarify visitor accommodation use, but also outline provisions for limiting its use when there is evidence that the SSA sector is impacting on housing market outcomes. Some of these checks and balances, such as improved compliance and data capture, are partially captured in the Draft Bill. However, the Draft Bill has been designed to support the intended direction of the current PD6 and therefore clarifies the scope of the SSA sector rather than imposes limits on the sector’s further growth.

First, to more effectively balance the impacts of the short stay accommodation sector, the directive should provide for limitations on the use of short term visitor accommodation where required; for example, in local government areas where it has been reasonably established that the sector has adverse impacts on affordability and access to private rental dwellings (such as in Hobart LGA). Research across Australia has effectively demonstrated that short stay accommodation regulation must be community-specific and respond to the micro-climates and regional dynamics of housing markets (Beer et. al 2018; Eccleston et al. 2018; Gurran et. al 2018). Within a state-wide regulatory framework, local councils should have the ability to take discretionary action to limit short stay accommodation impacts - if required - to respond to the needs of their local communities through a range of flexible approaches. These may include:

- Local planning responses via a suite of opt in / opt out provisions (Gurran et al. 2018);
- Limiting short term accommodation use and/or availability via various caps on the number of days a property can be listed per calendar year. Caps have a number of functions, including to clarify the definition and use of different types of listings, and to deter investors from converting private rental properties to SSA by capping maximum possible listings per year (e.g. to 180 nights, as in the case of greater Sydney NSW);
- The establishment of discretionary local government area permits or annual licencing application fees, which may act as a deterrent and/or raise revenue to assist in compliance management;
• Implementing a ‘pause’ or a moratorium on issuing new visitor permits or renewal of permits in communities where the short stay accommodation sector is deemed (by an agreed measure) to be having a detrimental impact on rental market outcomes until conditions ease.

Second, the short stay accommodation directive (PD6) should include mechanisms to provide for checks and balances to properly address the impacts of the sector on housing markets. While the Draft Bill will improve data capture in relation to the SSA sector, key gaps remain.

One such gap is that ancillary dwellings remain exempt from permits in the current directive. In many cases, ancillary dwellings or granny flats constitute ‘entire dwellings’ and it is more than likely that the previous use of ancillary dwellings may have been affordable longer-term private rental. Additionally, this kind of dwelling is ideally suited to affordable housing tenants such as international or local university students, or an elderly but still mobile parent living alongside family. As such, the conversion of these dwellings to SSA would likely have an impact on any local affordable housing rental supply. While the intention to require permits for ancillary dwellings is not directed at limiting their SSA use, we argue that without the requirement for a permit, this significant source of information cannot be captured, or its impacts adequately understood.

A further gap in the current directive is that permits are required only for secondary or investment dwellings listed for SSA use. Internationally, jurisdictions experiencing increased housing pressures are fine-tuning their permit systems as a means to improve data capture and thereby more efficiently manage and regulate their SSA system. Increasingly this includes creating permit categories according to host-types to provide a comprehensive picture of the SSA sector. Among many others, New Orleans provides a good example, with three permit types including ‘accessory’ (properties are shared with host on-site); ‘temporary’ (properties are shared with the host off-site); and ‘commercial’ (host is permanently offsite). Each permit type is governed by differing sets of limitations from few to strict. Primary benefits of this system include access to basic host information for all host types (and therefore capacity to build a comprehensive database of host information); ability to communicate any limitations of the use of properties for short stay accommodation; mechanism to communicate host responsibilities pertaining to safety, neighbourhood impact or any tax or income obligations.

4. The proposed Short Stay Accommodation Bill 2018

As noted, the purpose of the Draft Bill is designed to support and strengthen the intended purpose of the current legislation (PD6). While we have noted the gaps in the current direction of the PD6, we nevertheless commend the government on key aspects of the proposed Short Stay Accommodation Bill 2018. Specifically, our research has highlighted that compliance with the requirement for a permit under PD6 is currently likely quite low, and additionally ensuring compliance is challenging when property-specific data capture of the sector is poor to non-existent. The Draft Bill specifically sets out to address both compliance and data capture with the assistance of the online listings platforms and provides for the introduction of penalties to both accommodation providers and online platforms that do not comply. These developments are positive and have the capacity to improve the integrity and accuracy of the short stay accommodation permit regime.

To improve the effectiveness of the Draft Bill, there are some further details that require consideration or clarification, particularly with respect to data sharing and publication:
• First, does the proposed legislation include any provision for selective sharing of de-identified and/or aggregated community level data based on permit records? There should be a clear provision within legislation for this kind of data disclosure, provided that recipients (e.g. researchers) are subject to appropriate non-disclosure agreements. For example, one of the possible uses for this data for researchers is to create a master file of (de-identified) property addresses from which accurate modelling of how many properties have been converted from the longer term private rental market to SSA in a particular period could be made. This level of data capture would significantly contribute to understanding the specific housing impacts of SSA on local private rental markets including calculating housing supply dynamics and forecasts.

• Second, point (7) in the Attachment (A) Summary of the proposed Bill outlines the types of information that online booking platforms must share with the government, stating that, ‘this information is also required to include the number of days that a short stay accommodation place was available to the public during the reporting period’. We argue that in addition to number of days ‘made available’ (or listed), this should also include number of days ‘booked’ to reflect listings’ availability and occupancy rates.

5. The impact of the proposed Draft Short Stay Accommodation Bill 2018

Given the housing challenges facing Tasmania and Hobart in particular we believe it is important to assess whether the proposed legislation can facilitate effective, evidence-based regulation of SSA to mitigate poor housing outcomes.

As we noted above (point 3), current legislation draws on planning provisions and schedules available in the Act (limited to residential character and amenity, safety impacts and road network efficiencies), which do not consider the impact of short stay accommodation in terms of its marginal contribution to housing market outcomes including the supply of affordable rental housing. This issue raises the broader question of whether planning provisions can offer the right tools to address SSA impact on housing markets. Some considerations include:

- First, planning and housing market considerations are conceptually quite different. Planning is concerned with whether a property development or a property’s use is suitable in a given location and community. In contrast, housing market outcomes are shaped by aggregate supply and demand of housing with regulation designed to influence the marginal supply of and demand for property;
- Second; housing markets are dynamic and can be subject to rapid change. This is especially the case in relation to the rapidly growing SSA sector. Any regulatory framework must be nimble, evidence based and respond to changing market conditions. While there is scope to include community specific ‘local provisions’ in the State-wide planning scheme (Battery Point is an example), such provisions have to be approved by the Tasmanian Planning Commission via a process that is time consuming and unlikely to be ‘nimble’ enough to respond to changing market conditions.

One simple but effective approach to limit the conversion of permanent homes into short-stay accommodation is to introduce an annual permit fee system for such dwellings. Currently, the City of Hobart charges a fee of up to $250 for a SSA permit. This cost sits within the broader planning application fee structure and is therefore a one-off payment. The aim of creating an annual fee
system would be to limit the supply of entire homes offered on SSA platforms in communities where there is an established shortage of residential accommodation, with the permit fee revenue being used to fund the regulation of the sector. Examples of other jurisdictions that impose an annual permit or registration fee for SSA include New Jersey ($300.00), New Orleans ($200.00 for accessory licences or $500.00 for commercial licences), or Minneapolis where different ‘tiers’ of listings types invoke a different fee structure range (e.g. Tier 1 is $70 - $175; Tier 2 is $112 - $350). The Sunshine Coast council has set an annual levy for SSA providers starting at $387 to be paid alongside local rates. The Mornington Peninsula Shire has established the requirement to register any listing displayed on an SSA platform, along with a $100 annual fee utilised to fund enforcement such as security patrols.

However, even a fee system of this kind may be unlikely to work within the existing planning system, particularly if the capacity to flexibly impose such a fee structure is constrained by protracted Tasmanian Planning Commission processes. While the broader legislative framework for SSA may have the potential to provide avenues for improved regulation of the sector, the effectiveness of policy also depends on adequate implementation and resourcing of the administrative bodies implementing them. We question whether Tasmanian councils have the means to implement effective regulation. A good example of this is that currently councils do not have the capacity (resources or jurisdiction) to tackle issues of housing affordability or housing market impacts on behalf of their own communities. In this matter, the role of the Local Government Association of Tasmania (LGAT) could be to strategically advocate for the adequate resourcing of local councils toward responsive and effective administration of SSA legislation.

References:

