

Attachment 2

Detailed Options for Regulating Short Stay Accommodation

Council report – 4 October 2023



Summary of Options

Each option is detailed separately in the following pages



	How it could work (summary)	Estimated additional \$ costs/revenue
OPTION 1 Utilise existing legislation and the local law clause 59 Utilising existing controls, legislation and advocacy.	<ul style="list-style-type: none"> Continue to use existing State legislation to address SSA amenity concerns, where appropriate. Utilise Clause 59 in the Local Law 2023, where appropriate, and add clear guidelines to the Procedures and Protocols Manual. No change to Local Laws Officer service levels. After hours behaviour and noise complaints to be made to VicPol. Continue advocacy to State Government for introduction of a consistent, state-wide approach to regulation of SSA. 	Estimated 0.2 FTE dedicated resource may be required. Aim to absorb within existing budgets /staff resources initially, with close monitoring of complaint numbers and time on investigations/enforcement to inform any future additional resource allocation.
OPTION 2 New local law; retain existing enforcement service levels New Local Law requiring Registration and Annual Fee.	<ul style="list-style-type: none"> A new local law requiring compulsory annual registration with fee. Council to issue permit with conditions (e.g. requirement that property owners are not more than 2 hours away from property, and immediately address amenity complaints) Owners to implement Code of Conduct / Management Standards Penalties for breaches of local law. Applicable to all dwellings (ie. both detached and those with owners' corporations). No change to enforcement service levels (i.e. business hours) After hours complaints to be made to VicPol. 	Costs (5-year): \$2.2m Income (5-year): \$1.9m Total cost of service: \$304k
OPTION 3 New local law; with expanded 24/7 complaint contact service	<ul style="list-style-type: none"> As for Option 2 above PLUS 24/7 hotline for complaints. On-call Officer available to take complaints, contact owners and require them to attend and remedy amenity concerns immediately. No out of hours attendance of properties by Council Officers due to OHS concerns and limited enforcement powers. 	Costs (5-year): \$2.6m Income (5-year): \$2.2m Total cost of service: \$360k
OPTION 4 Option 3 plus differential rate	<ul style="list-style-type: none"> Option 3 above PLUS Introduce differential rates applicable to short stay properties. 	Costs (5-year): \$2.63m Income (5-year): \$2.2m Total cost of service: \$390k

Option 1



OPTION 1 - Utilise existing legislation and the local law clause 59

- Continue to use existing State legislation to address SSA amenity concerns, where appropriate.
- Utilise Clause 59 in the Local Law 2023, where appropriate, and add clear guidelines to the Procedures and Protocols Manual.
- Continue advocacy to State Government for introduction of a consistent, state-wide approach to regulation of SSA.

How it would work:

- Utilise existing legislation and Local Law provisions, where appropriate, including imposing Amenity Management Plans upon property owners where breaches are established, without imposing regulation on all SSA properties. (Team: Local Laws)
- No change to Local Laws Officer service levels, aim to absorb within existing budgets /staff resources initially, with close monitoring of complaint numbers and time on investigations/enforcement to inform any future additional resource allocation.
- After hours behaviour and noise complaints to be made to VicPol.
- Amenity Management Plans successfully used previously, with owner taking voluntary steps, but none challenged at the Magistrates Court.

Amenity Management Plans

Step 1 - Complaint Received

- Local Laws investigate and gather evidence, including seek written statements and/or videos or audio recording, evidencing amenity impacts, interviews with the owner of the SSA.
- Investigate in line with the new Guidelines to the assessment.

Step 2 - Outcome of investigation

- Officer may decide to issue a warning for a one-off breach of the Local Law, if substantiated; or seek an Amenity Management Plan within a specified timeframe.

Step 3 – Implement Amenity Management Plan

- Akin to Management Plans required under rooming house accommodation and Planning Permits.
- Issued to the owner, can mitigate music noise, people noise, waste or parking issues.
- Can restrict number of persons, hours, access and impose other controls.
- For noise or behaviour issues the owner becomes the contact and is responsible for addressing concerns at the time of an incident.
- Breaching the Amenity Management Plan may result in infringements or legal proceedings.

Option 1 cont.



OPTION 1 - Utilise existing legislation and the local law clause 59

Pro	Con	Limitations
<ul style="list-style-type: none">Local Law Amenity Management Plans have proven effective in managing amenity impacts as they are targeted to individual property use and customisable.Existing Local Law provisions are practical and safe to enforce. (EPA2017 requires different skills, out of hours visits and would require additional resources and safety measures).Advocacy work can be absorbed within existing resources	<ul style="list-style-type: none">For residents, does not resolve out of hours impacts in real time, as there is no guarantee that VicPol will respond to out of hours noise/amenity complaints.If Council wished to apply legislative framework to action matters for property owners' corporations, additional resources may be required.Current local law clause 59 is untested in Court (low risk).	<ul style="list-style-type: none">Aim to absorb within existing budgets /staff resources initially, with close monitoring of complaint numbers and time on investigations/enforcement to inform any future additional resource allocation.

Option 2



OPTION 2 - New Local Law and retain existing enforcement service levels

- A local law requiring compulsory annual registration with annual fee.
- Penalties for breaches of the new local law. For example:
 - not registering a SSA property
 - not complying with the permit conditions (designed to regulate amenity, behaviour and safety issues)

How it would work:

Registration:

- Establish a new permit type and administer through City Permits team.
- Additional Officers required to create data base of SSA; establish systems to track and maintain the database;
- Annual or pro rata fee.
- Annual renewal process tied to Financial Year.
- Configure OneCouncil to allow for new permit type; fees and permit issuance
- Configure OneCouncil reporting and monitoring mechanisms for the registration data base and record keeping.

Enforcement:

- Investigate non-registration by property owners to establish if a property is operating as a short stay property without a permit, in breach of the LL (i.e site inspections and other out of hours work; collect Statements, photographs, interviews; booking sites etc).
- For breaches - Issue Notice to Comply; Infringements; Penalty Reminder Notices etc.
- Management of Infringement Appeals (via Internal Infringement Review Panel)
- Prosecution at the Magistrate's Court
- Direct prosecutions – for example 3 substantiated complaints within 12 months.
- VicPol to address after hours complaints.

Option 2 cont.



Example Permit Conditions – for illustrative purposes only

1. The owner or appointed agent must not use or allow to be used a Short Stay Rental Accommodation property in breach of this Local Law.
2. The owner or appointed agent must provide contact details of the designated contact person to Council, and to adjoining and immediate neighbouring properties.
3. The designated contact person must respond to complaints within two hours (any time of day or night).
4. The owner or appointed agent must display <Local Law Part X> and make it available to all occupants and visitors to the dwelling including availability on their website or any social media used by the owner to promote the Short Stay Rental Accommodation.
5. The owner or appointed agent must ensure the use of Short Stay Rental Accommodation property does not interfere with the reasonable use and enjoyment by the residents of their land, or otherwise cause a nuisance.
6. The owner or appointed agent must be responsible for behaviour of occupants at the dwelling. Unacceptable behaviour includes aggressive behaviour; yelling, screaming and arguing.
7. The maximum number of occupants per booking as prescribed in the registration must not be exceeded. No additional accommodation is allowed on site by way of tents, caravans, swags, campervans, motor vehicles or similar facilities.
8. The owner or appointed agent must provide information to occupants on the available legal parking in proximity to the address, prior to arrival.
9. The owner or appointed agent must inform occupants of waste disposal arrangements and remove any excess waste left by occupants.
10. Council may cancel a registration if:
 - A material change occurs to the details which formed the basis on which the registration was issued.
 - Council receives 3 substantiated complaints over a 12 month period.
 - Council receives a single substantiated complaint that it determines is of such severity that immediate cancellation is warranted.

Option 2 cont.



OPTION 2 continued - New Local Law and retain existing enforcement service levels.

Pro	Con	Limitations
<ul style="list-style-type: none"> <i>Gives Council visibility and controls over SSA in the City. (transparency)</i> <i>Makes owners accountable.</i> <i>Establishes powers for Council to enforce</i> <i>Estimated income: \$330k per annum</i> <p><u>Assumptions:</u> <i>600x permits at \$500 permit fee = \$300,000</i></p> <p><i>Estimated permits based on volume of short-stay properties advertised.</i></p> <p><i>30x Local Law infringement notices for failure to obtain permit, at \$1,000 = \$30,000</i></p> <p><i>Estimated 5% non-conformance reported and investigated.</i></p>	<ul style="list-style-type: none"> May be perceived as a disproportionate response relative to the low number of complaints received. Creates community expectation that Council can solve problems, and that Council is responsible, regardless of other legislation. May be perceived as simply a revenue generating exercise (reputational risk). Additional resourcing for OneCouncil configuration, manage registrations, fee collection and register maintenance. Estimated \$735k first year being implementation and configuration, 3xFTE Band 5 and 1xFTE Band 6 (first year only), then \$320k per annum plus additional legal and communications costs to implement change to Local Law) Administratively intensive to maintain registrations register as current. (Once a data base is established, it will require investigations of properties who refuse/fail to register. These investigations will be difficult without a submitted complaint, as the onus is on Council to establish breach, without the aid of a complainant's information). Potential for any new Local Law to become redundant, should State Government introduce a state-wide approach to regulation. 	<ul style="list-style-type: none"> Current local law clause 59 is untested in Court (low risk) No guarantee that enforcement actions against a property owner will necessarily lead to reduced amenity impacts upon neighbouring residents. Creation and maintenance of the register will be resource intensive, particularly identifying and verifying those properties whose owners do not proactively register.

Option 3



OPTION 3 - New Local Law with out of hours contact for complaints

- As for Option 2, with the addition of an on-call Local Laws Officer to take complaints and contact owner/managers out of hours.

How it would work:

As for Option 2 plus

- Have out of hours complaints referred to Local Laws on call number. Council Officer would contact the property owner/manager and require them to attend or arrange to remediate the amenity impacts at the property. *Note: Local Laws would not attend property due to OHS concerns*
- Complaints / alleged breaches would be investigated in business hours, as per current arrangements.

Pro	Con	Limitations
<ul style="list-style-type: none"> • As for option 2 PLUS: • Holding owners accountable for the real impacts of the property's use. • Council could facilitate a response for a resident, without exposing LL Officers to risks. • Estimated income: \$60k through improved compliance and enforcement, assuming: 100 additional permit applications and fee income, and 10 additional infringements through increased hours of enforcement 	<p>As for Option 2 PLUS</p> <ul style="list-style-type: none"> • Community may expect that Officers will do more than simply contact Owners in the after-hours response. • Additional resourcing requirements estimated over five-year term at \$360k, being: on-call costs for after-hours services and overtime provisions and Change Management communications plan (first year only). 	<ul style="list-style-type: none"> • As for Option 2 PLUS: • If the property is not registered, there is very little Council can do at the time that an out of hours call is received (reputational risk to Council).

Option 4



OPTION 4 - New Local Law with out of hours contact for complaints PLUS a Differential Rate

- As for Option 3, with application of a differential rate.

How it would work:

As for Option 3 plus

- Introduce a different rate in the dollar for these properties (differential rating). Currently we have differential rating at the higher property classification: residential, commercial and industrial properties. These properties are at a lower classification.
- Council can set the differential rate up to 400% of the lowest differential (currently residential properties). i.e. if it is paying \$1,000 in general rates as a residential property, we can increase to a cap of \$4,000 in rates.
- The earliest this can be done is as part of Budget 2024/25 and update to our rating strategy for council endorsement.

Pro	Con	Limitations
<ul style="list-style-type: none"> • May reduce the number of properties offering short-stay due to higher rates (depends on the level of differential). • Higher rates justifiable on the grounds of amenity loss or impact to the community, therefore maybe considered a more fair and equitable distribution of rates. 	<ul style="list-style-type: none"> • Does not generate additional rates income. It redistributes more rates to these properties; therefore, other properties types will pay lesser rates (albeit negligible). • Cannot compel VGO to apply certain ratings categories – (Legal advice) • Administratively intense with changing nature of property use, requiring ongoing applications to VGO for supplementary valuations. • The ratepayer may seek a supplementary valuation to revert to original classification (ie. Residential flat). The cost to Council approximately \$45 per supplementary valuation at no cost to the ratepayer. Assuming 25% of the 569 short-stay properties change status, a budget increase of \$6,400). 	<ul style="list-style-type: none"> • Maximum differential rating is 400% of the lowest differential (currently residential is the lowest) <ul style="list-style-type: none"> ➢ Residential 0.1694% ➢ Commercial 0.2021% ➢ Industrial 0.2000% ➢ Short stay differential cap is 0.6776% (4 times residential) • May not capture all short-stay properties as they are generally classified at the time of development or revalued as at 1 January.