

**Submission  
No 38**

## **ADEQUACY OF THE REGULATION OF SHORT-TERM HOLIDAY LETTING IN NEW SOUTH WALES**

**Organisation:** Sutherland Shire Council  
**Name:** Ms Beth Morris  
**Position:** Senior Policy Advisor  
**Date Received:** 27/10/2015

The use of part or the whole of a dwelling as short term rental accommodation has increased with the rise of web based businesses promoting such accommodation, including Airbnb and Stayz Holiday Accommodation etc. It is evident that there are a number of residential properties throughout the Sutherland Shire being advertised on short term rental accommodation websites.

Such uses are permitted in parts of the Shire - the SP3 Tourist zone applies to a beach front street in Cronulla. The SP3 and Business zones (B1, B2, B3, B4) permit Tourist and visitor accommodation. Hotel and Motel accommodation is permitted in the RE2 Private Recreation zone.

Under Sutherland Shire Local Environmental Plan 2015 short term rental of an entire dwelling is considered as not permissible in the residential zones as it is a commercial use. The use of part of a dwelling for short term accommodation is best defined as 'Bed and breakfast accommodation' and requires development consent or a complying development certificate (permissible pursuant to SEPP Exempt & Complying Development Codes 2008). Hence bed and breakfast accommodation is subject to some form of consent and associated safety regulation. Given the limitations of the standard instrument LEP definitions Council has no choice but to define the use of part of a dwelling for short term rental accommodation as 'bed and breakfast accommodation' and continue to regulate accordingly.

Council has taken limited action against residential property owners for unauthorised use. Most accommodation appears to be used sporadically and occupation as short term rental accommodation can be difficult to establish. Adverse amenity impacts arise where a premise is being used every weekend for large parties.

Should Council be of a mind to facilitate greater permissibility for such uses, amendments to SSLEP2015 are required. Other Councils in high tourist demand areas, such as Byron Bay and Shoalhaven, are aiming to amend their planning controls to allow minor occupation as short term rental accommodation as exempt development (bed and breakfast type - 1 bedroom use only) and more extensive use with development consent (entire 3 bedroom dwellings for up to 90 days/year). Registration and management plans would be required to limit adverse impacts. Current legislation, including State mandated standardised uses/terms, could be improved with a definition of short term rental accommodation. At this stage Council has not resolved to make changes to SSLEP2015 to accommodate such uses in the residential zones.

On the 19th of October 2015 Council considered a report on the adequacy of the Regulation of Short Term Rental Accommodation. Council resolved:

"That the difficulties in regulating short term rental accommodation are noted and that this report form the basis for a submission to the Committee on Environment and Planning of the NSW Legislative Assembly."

Please find attached a copy of the relevant Council report:

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# Development Assessment and Planning Committee



<b>06/10/2015</b>	<b>DAP041-16</b>
<b>Report Title:</b>	<b>Adequacy of the Regulation of Short Term Rental Accommodation</b>
<b>File Number:</b>	<b>2015/87233</b>
<b>Author:</b>	<b>Manager Environmental Planning (BL/BM)</b>

## REPORT SUMMARY

### **EXECUTIVE SUMMARY:**

The Committee on Environment and Planning of the NSW Legislative Assembly has initiated an inquiry into the adequacy of the regulation of short-term holiday letting in NSW and requested comments from Council. An email from Insurance Australia Group also raised concern regarding the legality of Airbnb (and other similar home-sharing websites) operating in the local government area (LGA) of Sutherland Shire.

The use of part or the whole of a dwelling as short term rental accommodation has increased with the rise of web based businesses promotion of such accommodation, including Airbnb and Stayz Holiday Accommodation etc. It is evident that there are a number of properties throughout the Shire being advertised on short term rental accommodation websites. Council has taken action against property owners for unauthorised use. The use of the site for a bed and breakfast accommodation may be granted as complying development.

Most accommodation appears to be used sporadically and occupation as short term rental accommodation can be difficult to establish. Adverse amenity impacts arise where a premises is being used every weekend for large parties. Legislation could be improved with a definition of *short term rental accommodation*.

It is noted that other Councils in high tourist demand areas, such as Byron Bay and Shoalhaven, are aiming to amend their planning controls to allow minor occupation as short term rental accommodation as exempt development (bed and breakfast type - 1 bedroom use only) and more extensive use with development consent (entire 3 bedroom dwellings for up to 90 days/year). Registration and management plans would be required to limit adverse amenity impacts.

Under SSLEP2015 short term rental of an entire dwelling is considered as not permissible in the residential zones as it is a commercial use. The use of part of a dwelling for short term accommodation is best defined as 'Bed and breakfast accommodation' and requires development consent or a complying development certificate (permissible pursuant to SEPP Exempt & Complying Development Codes 2008). Hence bed and breakfast accommodation is subject to some form of consent and associated safety regulation.

### **SUMMARY OF RECOMMENDATION:**

Given the limitations of the standard instrument LEP definitions Council has no choice but to

define the use of part of a dwelling for short term rental accommodation as 'bed and breakfast accommodation' and continue to regulate accordingly. Should Council be of a mind to facilitate greater permissibility for such uses amendments to SSLEP2015 are required.

It is recommended that the difficulties in regulating short term rental accommodation be noted and that this report form the basis for a submission to the Committee on Environment and Planning of the NSW Legislative Assembly.

**FINANCIAL / RESOURCE IMPLICATIONS:**

NIL.

**RELATIONSHIP TO STRATEGIC DIRECTIONS:**

The following Our Shire Our Future strategies are relevant considerations:

*Balanced development - The negative impacts of development on the environment, people and economy are minimised.*

*Local economic opportunities - A strong local economy that responds to local and visitor needs and interests.*

By requiring approval of bed and breakfast accommodation, the amenity impacts of the development can be assessed to ensure a balance is maintained, however this may impact the local economic opportunities and the ability to provide for visitor needs.

**POLICY / LEGAL IMPLICATIONS:**

NIL.

**LIST OF APPENDICES:**

Appendix 1 - Environment and Planning of the NSW Legislative Assembly Terms of reference for an inquiry into the adequacy of the regulation of short-term holiday letting in NSW

Appendix 2 - Byron Shire Council Short Term Rental Accommodation Action Plan

**PREVIOUS CONSIDERATION / HISTORY OF MATTER:**

PLN035-06 - Opportunities to Increase Tourism Accommodation in the Sutherland Shire  
SDC013-12 - Findings of the Working Party to Review the Proposed SP3 Tourist Zone in Planning for Tourism in the Draft Standard Instrument LEP (Report SDC10A-11), Recommendation 1.

**REPORT IN FULL**

**Purpose**

The Committee on Environment and Planning of the NSW Legislative Assembly (Appendix 1) has initiated an inquiry into the adequacy of the regulation of short-term holiday letting in NSW and requested comments from Council by the 9 November 2015. An email from Insurance Australia Group also raised concern regarding the legality of Airbnb (and other similar home-sharing websites) operating in the local government area (LGA) of Sutherland Shire. Not unlike the legality of private ride share schemes such as Uber, the legality of short-term holiday letting, or home sharing, has been a matter of concern in recent years.

**Background**

The use of part or the whole of a dwelling as short term rental accommodation has increased with the rise of web based businesses promoting such accommodation, including Airbnb and

Stayz Holiday Accommodation etc. Airbnb, allows its users to register as 'host' and put their property(s) up for short-term and long-term letting. The 'host' may decide to let out part or whole of the property, decide the different charges that the 'guest(s)' should pay, and the duration of the stay ranging from 1 night to over a year.

Generally this type of accommodation is short term and located in residential zones. However, Councils across NSW are increasingly receiving complaints about such uses particularly adverse impacts on the amenity of the local area, including increased traffic, noise and the like.

The market of short-term holiday letting and home sharing has changed since the growth of online letting platforms. There are two major issues presented. First, short-term letting and home sharing via online platforms are not being approved as a type of tourist or visitor accommodation, hence are not regulated by relevant NSW legislation and governing bodies. Second, online platforms arrange the letting and home sharing activity in a manner that blurs the line between commercial letting and home sharing with friends and family. Online platforms operate to allow a 'host' to rent out whole or part of their property in a nature that the 'guest' is staying as a friend or a family member, but pay a commercial price that is agreed to prior by both parties.

#### Economic and Social Impacts

Economically, these informal short-term letting and home sharing arrangements provide an alternative form of tourist and visitor accommodation, usually at a lower standard. They are often located in favourable locations can be attractive to overseas and inter-state visitors. These informal arrangements are often absorbing the unearned income present in a sub-market within the tourism industry that was not captured by the more traditional form of tourist and visitor accommodations.

While these informal short-term letting and home sharing arrangements can help boost Sydney's (and the Shire's) tourism, they are not registered and regulated by relevant legislation. This makes it difficult for relevant governing bodies to regulate this form of tourism and visitor accommodation and hence may affect the reputation of Sydney's tourism. As these informal arrangements are not registered, their profits are not taxed. The government is losing valuable tax income that can be used in a number of areas, including but not limited to tourism.

Socially, these informal arrangements may bring tourist and visitor accommodation to areas where this form of accommodation is not desirable. The arrangement will negatively affect neighbourhood amenity, the neighbour's conception of security, and the safety of the affected neighbourhoods.

It is noted that 2T - Tourism Asset Services has been engaged by council to provide an update on the original Visitor Accommodation Development Opportunities Report produced in 2013 (BDS012-13). The 2T - Tourism Asset Services research looks at the potential for development sites for formalised (hotel/motel etc) tourist and visitor accommodation.

#### Permissibility & Regulation of Short Term Rental Accommodation

Short-term holiday letting and home sharing is a complex issue in the sense that the activity itself can be defined as one of several uses under the prescribed definitions under SSLEP2015. The ill-defined nature of the activity means that there are potential difficulties in regulating the activity to be carried out. In order to determine the activity in question, the following must be considered:

1. Definition of the Use, and
2. Zoning of the Land, and
3. Permissibility of the Use under Relevant Legal Frameworks

### Definition of Use

Short-term holiday letting or home sharing is an activity that can be defined as one of several uses under the SSLEP 2015, depending on the nature, arrangement and duration of the activity. The definitions under the SSLEP2015 are prescribed by the Standard Instrument (Local Environmental Plans) Order 2006, and hence Council has limited flexibility to change them.

Under SSLEP2015 the activity can be categorised into two groups, 'residential accommodation' or 'tourist and visitor accommodation'. 'Residential accommodation' refers to a building or place used predominantly as a place of residence, whereas, 'tourist and visitor accommodation' refers to a building or place that provides temporary or short-term accommodation on a commercial basis. Short-term holiday letting and home sharing activities can be captured under either category depending on the duration of stay.

A group of people sharing a dwelling – jointly entering into a long term lease or each taking a room in a dwelling on a long term arrangement, it is essentially use of the premises as a dwelling - a type of residential accommodation:

***residential accommodation*** means a building or place used predominantly as a place of residence, and includes any of the following:

- (a) attached dwellings,
- (b) boarding houses,
- (c) dual occupancies,
- (d) dwelling houses,
- (e) group homes,
- (f) hostels,
- (g) multi dwelling housing,
- (h) residential flat buildings,
- (i) rural workers' dwellings,
- (j) secondary dwellings,
- (k) semi-detached dwellings,
- (l) seniors housing,
- (m) shop top housing,

*but does not include tourist and visitor accommodation or caravan parks.*

Within the definition of residential accommodation, the activity could be defined as 'boarding house' under SSLEP2015, when the activity takes place over a period of 3 months or longer, and is in a nature that it is providing the lodger a principal place of residence:

***boarding house*** means a building that:

- (a) is wholly or partly let in lodgings, and
  - (b) provides lodgers with a principal place of residence for 3 months or more, and
  - (c) may have shared facilities, such as a communal living room, bathroom, kitchen or laundry, and
  - (d) has rooms, some or all of which may have private kitchen and bathroom facilities, that accommodate one or more lodgers,
- but does not include backpackers' accommodation, a group home, hotel or motel accommodation, seniors housing or a serviced apartment.*

**Note.** *Boarding houses are a type of residential accommodation—see the definition of that term in this Dictionary.*

The type of accommodation being provided would generally not fall into the definition of a boarding house, as the accommodation is generally for a shorter term. It is noted that the definition of **residential accommodation** specifically excludes tourist and visitor accommodation, defined in SSLEP2015 as follows:

**tourist and visitor accommodation** means a building or place that provides temporary or short-term accommodation on a commercial basis, and includes any of the following:

- (a) backpackers' accommodation,
- (b) bed and breakfast accommodation,
- (c) farm stay accommodation,
- (d) hotel or motel accommodation,
- (e) serviced apartments,

but does not include:

- (f) camping grounds, or
- (g) caravan parks, or
- (h) eco-tourist facilities.

Accordingly, such accommodation can be defined under SSLEP2015 as one of four defined uses – 'backpackers' accommodation', 'bed and breakfast accommodation', 'hotel or motel accommodation', and 'serviced apartment' – depending on the nature and arrangement of the activity. The following SSLEP2015 standard instrument definitions apply:

**backpackers' accommodation** means a building or place that:

- (a) provides temporary or short-term accommodation on a commercial basis, and
- (b) has shared facilities, such as a communal bathroom, kitchen or laundry, and
- (c) provides accommodation on a bed or dormitory-style basis (rather than by room).

**Note.** *Backpackers' accommodation is a type of **tourist and visitor accommodation**—see the definition of that term in this Dictionary.*

**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.

**Note.** *See clause 5.4 for controls relating to the number of bedrooms for bed and breakfast accommodation. Bed and breakfast accommodation is a type of **tourist and visitor accommodation**—see the definition of that term in this Dictionary.*

Clause 5.4 of SSLEP2015 limits the use to no more than 5 bedrooms.

**hotel or motel accommodation** means a building or place (whether or not licensed premises under the Liquor Act 2007) that provides temporary or short-term accommodation on a commercial basis and that:

- (a) comprises rooms or self-contained suites, and
- (b) may provide meals to guests or the general public and facilities for the parking of guests' vehicles,

but does not include backpackers' accommodation, a boarding house, bed and breakfast

accommodation or farm stay accommodation.

**Note.** Hotel or motel accommodation is a type of **tourist and visitor accommodation**—see the definition of that term in this Dictionary.

**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.

**Note.** Serviced apartments are a type of **tourist and visitor accommodation**—see the definition of that term in this Dictionary.

It is clear that the use of part of a dwelling for short term rental accommodation most closely fits the 'bed and breakfast accommodation' definition. However, the use must be carried out within an existing dwelling, where meals are provided for guests, and cooking facilities are not provided. This definition is problematic as it prohibits the use of outbuilding (rumpus rooms etc) and/or the use of the whole dwelling as a short term rental. Similarly, often meals are not provided.

### Permissibility - Zoning of the Land

The permissibility of relevant uses is dictated by the zoning of the land under the SSLEP2015. The relevant uses are either 'permitted with consent' or 'prohibited'. An applicant can put in a development application to seek council's consent for the use to be carried out when the home sharing activity is defined as a use that is 'permissible with consent'.

The permissibility of each defined use in each zone is shown in the table below.

Zone	Tourist and Visitor Accommodation				Residential Accommodation
	Backpacker's accommodation	Bed & Breakfast accommodation	Hotel / Motel accommodation	Serviced Apartment	Boarding House
R2	x	a	x	x	a
R3	x	a	x	x	a
R4	a	a	x	x	a
B1, B2, B3, B4	a	a	a	a	a
B5, B6, B7	x	x	x	x	x
IN1, IN2, IN3, IN4	x	x	x	x	x
SP1, SP2	x	x	x	x	x
SP3	a	a	a	a	a
RE1	x	x	x	x	x



RE2	×	×	a	×	×
E1, E2	×	×	×	×	×
E3, E4	×	a	×	×	×
W1, W2	×	×	×	×	×

**a** = Permitted with consent; **×** = Prohibited

'Bed and breakfast accommodation', can also be carried out as complying development under the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 with a complying development certificate. Under the SEPP, bed and breakfast accommodation must be a permissible use and such a use must not be constructed or installed on bush fire prone land. The use must also:

- (a) *be in an existing dwelling house, and*
- (b) *consist of not more than 4 guest bedrooms or, if there is a local environmental plan applying to the land that was made under section 33A of the Act, the maximum number of bedrooms specified in clause 5.4(1) of that plan, and*
- (c) *have at least 1 guest bathroom, and*
- (d) *have a fire extinguisher and fire blanket in the kitchen, and*
- (e) *have at least 1 off-road car parking space per guest bedroom, and*
- (f) *not display any advertisement on the premises (other than a notice or sign indicating the name and occupation of the resident), and*
- (g) *if the dwelling house is subject to the [Strata Schemes Management Act 1996](#) or the [Community Land Management Act 1989](#) —have the prior approval of the owners corporation, or the community, precinct or neighbourhood association.*

Tourist and visitor accommodation is more widely permissible in the business zones. The use of part or the whole of a dwelling for short term rental accommodation is generally occurring in the residential zones. In the residential zones, permissibility is limited to a boarding house or bed and breakfast accommodation.

#### Use of Part of a Dwelling as Tourist and Visitor Accommodation

The use of a room in a dwelling as accommodation is best defined as 'Bed and breakfast accommodation'.

'Bed and breakfast accommodation' (whether undertaken as complying development or as a use subject to development consent) ultimately will result in a change of building class for the dwelling under the Building Code of Australia. This requires a development to achieve new fire safety and access requirements – for example the use may require upgrades to the construction of the dwelling for fire rating to prevent the spread of fire. Such upgrades are required to achieve public safety standards.

Many in the community no longer expect such high safety standards. However some people are willing to accept some risk in return for a lower cost base. The issue is really whether the use should be regulated just like any other business.

#### Use of the whole of a Dwelling as Tourist and Visitor Accommodation

Council has approved some serviced apartments in the Shire including the Quest Apartments at 'Northies' (145 Elouera Rd). This is within the commercial core of the Cronulla centre (zoned

B3). Approval for additional floorspace was granted in 1998 on the basis that part of the development would be used for tourist and visitor accommodation. Occupation of the apartments is limited to 3 months. Council has received submissions requesting that this limitation be removed, arguing that there is no market for such accommodation.

It is noted that rental of an entire dwelling does not meet the definition of 'bed and breakfast accommodation'. Council has held a view that the use of an entire dwelling for short term rental accommodation does not constitute the use of the premises as a dwelling, hence the use is a commercial use which is not permissible in a residential zone (unless otherwise defined and permitted eg 'bed and breakfast accommodation'). The residential zones are 'closed zones' meaning that new uses – whatever they may be defined as – are prohibited.

The court case *Sutherland Shire Council v Foster & Anor [2003] NSWLEC 2* found that there was evidence that the subject dwelling (a unit at Cronulla) was being used for holiday and short term accommodation. One of the respondents stated that the subject unit was used by a large number of people who "were family, friends, relatives, acquaintances and that some of them did pay". The Court accepted Council's evidence that the dwelling was being advertised and used as short term holiday and rental accommodation and not as approved – that is as a permanent domicile or home. Hence the building could be used only as a residential flat building and continued to be able to be used only on that basis. The Court also found that, given their contact address was at another location, it was unlikely that this was their principal permanent residence. It is noted that in a previous case *Foster v Sutherland Shire Council (2001) 115 LGERA 130*, whilst the Environmental Planning and Assessment Act 121B Order (to cease use of the premises for short term accommodation) was declared invalid, Justice Cowdroy did note at par 14:

*'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.'*

Similarly in a more recent case brought by one home owner against a neighbour in the popular tourist destination Terrigal (*Dobrohotoff v Bennic [2013] NSWLEC 61*), the Court found that renting out a home in the 2(a) Residential Zone for short term holiday letting is prohibited, and in breach of the *Environmental Planning and Assessment Act*. The decision hinged on the interpretation of what uses are permissible in the residential 2(a) zone of the Gosford Planning Scheme Ordinance (PSO). In short, the Court found that short term 'holiday letting' of a house is not a "residential dwelling" use. Instead it is a separate, different type of use, contrary to the zone objectives and, in this case, prohibited in the zone.

#### Definition of Short term rental accommodation

As shown in the court cases above, part of the difficulty in prosecuting such premises is the evidence required to prove that the premises are being let as short term accommodation. Advertising for a house mate or flat mate that stays for 3 months is somewhat similar to what is being offered on Airbnb. However, where the turnover of residents is quicker, such as weekly, there are greater impacts on resident amenity.

It is considered that special provisions in the Act in relation to what is required to prove short term evidence would assist. Provisions could be similar to s124AA in relation to backpackers accommodation:

*124AA Evidence of use of premises as backpackers' hostel*

- (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.*

However, this would require changes to legislation by the State government.

#### Other Tourist Areas

Coastal Councils are increasingly also addressing this problem of short term rental accommodation. Shoalhaven Council has a provision in the SLEP2014 that permits the use of residential accommodation for the purposes of short term tourist and visitor accommodation:

#### **7.13 Short-term rental accommodation**

- (1) *The objective of this clause is to ensure that residential accommodation may be used as tourist and visitor accommodation for a short term without requiring development consent.*
- (2) *Despite any other provision of this Plan, development consent is not required for the use of residential accommodation for the purposes of tourist and visitor accommodation (except backpacker accommodation or bed and breakfast accommodation) if the use is only short-term and does not interfere generally with the amenity of the neighbourhood in any way, including by noise or traffic generation.*
- (3) *In this clause, **short-term** means for a maximum period of 45 consecutive days in any 12 month period.*

The key here is that the use is limited and it must *not interfere generally with the amenity of the neighbourhood* in any way, including by noise or traffic generation. Development in breach of this, such as use of a dwelling for large noisy parties every weekend, would not be permissible.

In Byron Shire Council the Council recently exhibited a *Byron Shire Short Term Rental Accommodation Action Plan* (Appendix 2). This plan proposes to amend their LEP planning controls to enable minor occupation as short term rental accommodation as exempt development (bed and breakfast type - 1 bedroom use only) and more extensive use with development consent in all zones where dwellings are permissible (entire 3 bedroom dwellings for up to 90 days/year). This would facilitate Airbnb type developments as well as whole

dwelling accommodation. The plan proposes amendments to their Development Control Plan to ensure the amenity of the locality is retained including parking. Registration and management plans would be required to limit adverse impacts.

### Overseas Examples

Isle of Man has established a compulsory registration scheme under their Tourist Act 1975 for all visitor accommodation establishments to be registered with the Department of Economic Development.

Hong Kong has established a Visitor Accommodation Scheme under their Quality Tourism Services (QTS) to accredit visitor accommodation establishments that meet the requirements of the scheme and those establishments are registered with the QTS.

### **Conclusion**

The Committee on Environment and Planning of the NSW Legislative Assembly has initiated an inquiry into the adequacy of the regulation of short-term holiday letting in NSW and requested comments from Council by the 9 November 2015. An email from Insurance Australia Group also raised concern regarding the legality of Airbnb (and other similar home-sharing websites) operating in the local government area (LGA) of Sutherland Shire.

The use of part or the whole of a dwelling as short term rental accommodation has increased with the rise of web based businesses promoting such accommodation, including Airbnb and Stayz Holiday Accommodation etc. It is evident that there are a number of properties throughout the Shire being advertised on short term rental accommodation websites. Council has taken action limited against property owners for unauthorised use - use of the site for a bed and breakfast accommodation may be granted as complying development. Most accommodation appears to be used sporadically and occupation as short term rental accommodation can be difficult to establish. Adverse amenity impacts arise where a premise is being used every weekend for large parties. Legislation could be improved with a definition of *short term rental accommodation*.

Other Councils in high tourist demand areas, such as Byron Bay and Shoalhaven, are aiming to amend their planning controls to allow minor occupation as short term rental accommodation as exempt development (bed and breakfast type - 1 bedroom use only) and more extensive use with development consent (entire 3 bedroom dwellings for up to 90 days/year). Registration and management plans would be required to limit adverse impacts.

Under SSLEP2015 short term rental of an entire dwelling is considered as not permissible in the residential zones as it is a commercial use. The use of part of a dwelling for short term accommodation is best defined as 'Bed and breakfast accommodation' and requires development consent or a complying development certificate (permissible pursuant to SEPP Exempt & Complying Development Codes 2008). Hence bed and breakfast accommodation is subject to some form of consent and associated safety regulation. Given the limitations of the standard instrument LEP definitions Council has no choice but to define the use of part of a dwelling for short term rental accommodation as 'bed and breakfast accommodation' and continue to regulate accordingly. Should Council be of a mind to facilitate greater permissibility for such uses amendments to SSLEP2015 are required.

It is recommended that this report be the basis for a submission to the Committee on Environment and Planning of the Legislative Assembly.

## REPORT RECOMMENDATION

That the difficulties in regulating short term rental accommodation are noted and that this report form the basis for a submission to the Committee on Environment and Planning of the NSW Legislative Assembly.

## COMMITTEE RECOMMENDATION

That the report Adequacy of the Regulation of Short Term Rental Accommodation be referred to the Council meeting of the 19 October 2015 for consideration.

(Councillor Johns / Councillor Schreiber)

## COUNCIL RESOLUTION

That the difficulties in regulating short term rental accommodation are noted and that this report form the basis for a submission to the Committee on Environment and Planning of the NSW Legislative Assembly.

(Councillor Johns / Councillor Riad)

## APPENDIX

### Adequacy of the regulation of short term rental accommodation

Appendix 1 - Terms of reference for an inquiry into the adequacy of the regulation of short-term holiday letting in NSW



Information Package - Inquiry into the adequacy of the regulation of short-term holiday letting in NSW.pdf

Appendix 2 - Byron Shire Council Short Term Rental Accommodation Action Plan

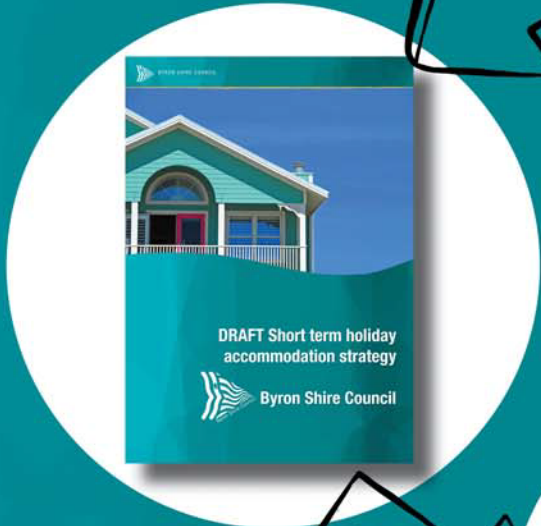


Byron Shire Council Short Term Rental Accommodation Action Plan.pdf

*(To view the document, double click on icon and select 'Open'. Select 'File' 'Close' to return to report.)*



# Short Term Rental Accommodation Action Plan



***Document History***

<b>Doc No.</b>	<b>Date Amended</b>	<b>Details Comments eg Resolution No.</b>
E2015/14847		Adopted at Ordinary meeting 30/4/15 with amendments as per resolution 15-186
E2015/28038	May 2015	Revised Action Plan in accordance with Council resolution 15-186

## Introduction

The Byron Shire Short Term Rental Accommodation Action Plan is the culmination of a process to develop structure and planning controls around the long practiced use of holiday letting dwellings in Byron Shire. The process commenced in 2013 with key stakeholder workshops that continued into 2014. From these workshops a Discussion Paper was prepared for key stakeholder's consideration. Comments on the Discussion Paper then led to the development of a Draft Short Term Holiday Accommodation Strategy that was publicly exhibited from 11 November to 22 December 2014. Over 150 submissions were received including two from state government agencies. Council considered a report on the submissions at the 30 April 2015 meeting. As a result of the issues raised in submissions and Council's resolution (15-186), the draft planning controls and actions have been revised. The Byron Shire Short Term Rental Accommodation Action Plan details the revised actions and planning controls.

Overall the planning controls have been simplified; duplication with the Holiday Rental Code of Conduct has been removed but only so far as to ensure those elements that are important to maintaining neighbourhood amenity are clearly addressed.

Key changes include:

- Renaming to 'Short Term Rental Accommodation' (STRA) consistent with other councils
- Broadening definition of STRA from 'dwelling house' to 'dwelling'
- Including a new exempt development clause to ensure development, if part of a community or strata scheme, has prior written approval of the owners' corporation of that scheme. This is already a requirement for any development application. This clause is modelled on the Wyong Council's exempt provision.
- Removing occupant type ie. adult to avoid discrimination and numbers simplified to '2 occupants per bedroom', excluding children under 5 years of age
- Consolidating complying and development assessment planning controls as all development assessment and retaining exempt controls:
  1. Exempt: will allow property owners of dwellings with 3 bedrooms or less, who want to rent their property out for less than 90 days in any one year and live there for the remainder of the year; caps number of occupants to 2 per bedroom, excluding children under 5 years of age.
  2. Development Application: provides for dwellings of any size where the dominant use of the dwelling is short term rental accommodation; caps number of occupants as 2 occupants per bedroom, excluding children under 5 years of age; it is also for dwellings up to 3 bedrooms that cannot comply with the exempt provisions.





## Byron Shire Short Term Rental Accommodation (STRA) Action Plan

Action	What	Who / When / Cost
1. Amend Byron LEP 2014	1a. Insert exempt provisions in Schedule 2 for Short Term Rental Accommodation (STRA), as detailed in Table 1 below.	<p><b>Council</b> prepares a Planning Proposal to amend the Byron LEP 2014, refer to the Department of Planning and Environment for gateway determination, and publicly exhibit and report to Council as required under the EPA Act 1979 and Regulation 2000.</p> <p><b>Time frame:</b> May to December 2015.</p> <p><b>Cost:</b> existing budget</p>
	1b. Insert new clause 6.10 Short Term Rental Accommodation, as detailed in Table 2 below to enable development applications.	
	1c. Insert Serviced Apartments in Zone B4 Mixed Use as permissible with development consent. <p>Serviced apartments are already permitted in the B3 Medium Density, B2 Local Business and the SP3 Tourist zones. The B4 Mixed Use zone permits a range of commercial and residential uses including shop top housing, residential flat buildings and hotel and motel accommodation. Given the range of uses that are already permitted in the B4 zone it is appropriate to permit serviced apartments.</p>	
	1d. Insert Tourist and Visitor Accommodation in the RU2 and RU1 Zones as permissible with consent, and list motel and hotel accommodation, Backpackers and Serviced Apartments as prohibited. <p>This will enable rural cabin type proposals which don't fall into the category of 'farmstay accommodation', which means <i>a building or use that provides temporary or short term accommodation to paying guests on a working farm as a secondary business to primary production.</i></p>	
	1e. Amend clause 5.4 (1) <i>Bed and Breakfast Accommodation</i> to increase the number of bedrooms from no more than 3 to no more than 5 bedrooms.	
	1f. Insert exempt provisions in Schedule 2 for 1 bedroom bed and breakfast establishments, as detailed below, to enable development such as Air B&Bs.	



Action	What	Who / When / Cost
	1g. Prepare draft conditions of development consent, as detailed below.	
2. Amend Byron DCP 2014	2a. In Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access, Table B4.1, include car parking rates for STRA and include reference to stacked parking for bed and breakfast, as detailed in Table 3 below.	<p><b>Council</b> prepares the relevant DCP amendments, publicly exhibit and report to Council as required under the EPA Act 1979 and Regulation 2000</p> <p><b>Time frame:</b> May to December 2015.</p> <p><b>Cost:</b> existing budget</p>
	2b. Chapter D3 Tourist Accommodation: <ul style="list-style-type: none"> <li>i. include new clause D3.3.8 Short Term Rental Accommodation, as detailed below,</li> <li>ii. amend clause D3.3.7 Serviced Apartments to include prescriptive measures, as detailed below,</li> <li>iii. amend clause D3.3.2 Bed and Breakfast Accommodation to enable 5 bedrooms and 10 guests.</li> </ul>	
	2c. Amend Part A, Appendix A.1, to include new definition for STRA.	
	2d. Amend the <i>Byron Shire Development Control Plan 2014 – Part A – Preliminary, Table A3 – Level 1 Notification</i> to include STRA requiring notification to adjoining property owners and 14 days exhibition period.	
3. Develop a register	3a. Investigate whether a nominal fee can be charged for registration and to cover the cost of establishing and maintaining the register in accordance with appropriate legislation. <p>A requirement for all exempt development and development approvals is that the dwelling be registered on Council's register prior to the initial period used.</p>	<p><b>Council's</b> Development Assessment and Compliance Section with IT.</p> <p><b>Timeframe:</b> May to September 2015.</p> <p><b>Cost:</b> development of the register may require additional funding. If required this will be reported to Council post the scoping analysis.</p>
	3b. Undertake a scoping analysis to determine register design and what's feasible within Council's IT systems.	
	3c. Develop web based register for STRA.	
4. Investigate rating of properties	4a. Councils Finance Section to be kept up to date on changes to Councils planning controls and advised of any applications approved for STRA including properties registered.	<b>Council's</b> Environment and Economic Planning Section and Development Assessment and Compliance Section



Action	What	Who / When / Cost
		<p>within the Sustainable Environment and Economic Directorate</p> <p><b>Timeframe:</b> Ongoing</p> <p><b>Cost:</b> existing budgets</p>
5. Compliance	<p>5a. With adoption and implementation of Controls, Council will need to ensure compliance with planning provisions. Additional Council resources may be required during peak holiday periods to respond to after hour complaints and to collect evidence.</p>	<p><b>Council's</b> Development Assessment and Compliance Section within the Sustainable Environment and Economic Directorate</p> <p><b>Timeframe:</b> Ongoing</p> <p><b>Cost:</b> funds may be required to provide additional resources</p>
	<p>5b. Land owner or appointed property manager must be contactable 24 hours 7 days a week and to be able to respond within 30minutes to complaints regarding the action of tenants and in particular issues pertaining to noise and residential amenity</p>	<p><b>Land Owner or appointed property manager</b></p> <p><b>Timeframe:</b> Ongoing</p>
	<p>5c. Neighbours of separate dwellings to the subject dwelling can contact the land owner or appointed property manager in the first instance to report any complaints.</p> <p>In the event that the land owner or appointed property manager does not respond to the complaint, neighbours should call the police or Council.</p>	<p><b>STRA neighbours</b></p> <p><b>Timeframe:</b> Ongoing</p>
6. Holiday Rental Code of Conduct	<p>6a. Council acknowledges that the Holiday Rental Code of Conduct was developed by a consortium of stakeholders.</p>	<p><b>Council</b></p> <p><b>Timeframe:</b> April 2015</p> <p><b>Cost:</b> existing budget</p>
	<p>6b. Council accept the invitation from Holiday Rental Industry Association (HRIA) to become a supporting organisation and to enter a MOU with HIRA in accordance with Section 1.5 of the Holiday and Short Term Rental Code of Conduct</p>	
	<p>6c. Council reference the Holiday Rental Code of Conduct endorsed by NSW Department of Planning and Environment (DoPE) in the planning</p>	

Action	What	Who / When / Cost
	<p>controls.</p> <p>Council write to the DoPE requesting to be consulted on any future reviews of their endorsed Holiday Rental Code of Conduct and that further wording be included in section 3.4 Security Deposits or Bonds as follows: <i>'Make effective and fair use of security deposits and bonds to produce compliance. Bonds should not be less than \$250 per adult per letting'</i></p>	
7. Moratorium	<p>7a. Council allow a one year moratorium upon the LEP amendment being made for land owners/managers of existing STRA to comply with exempt or development consent provisions.</p> <p>The moratorium is for applying to use the dwelling for STRA. Complaints relating to noise or amenity issues are not covered by this moratorium.</p> <p>A Council resolution will be required to direct Council's Compliance Staff to take no action at the point of council resolving to make the LEP amendment for the first 12mths.</p>	<p><b>Council</b></p> <p><b>Timeframe:</b> one year post gazettal of the LEP amendment</p> <p><b>Cost:</b> existing budgets</p>
8. Develop information sheets and website content	8a. Develop information sheets to assist land owners, property managers and neighbours understanding of the planning controls	<p><b>Council</b></p> <p><b>Timeframe:</b> prior to LEP amendments being gazetted</p> <p><b>Cost:</b> existing budgets</p>
	8b. Update information on Council's website in relation to STRA	
	8c. Provide information to various holiday rental organisations eg. HLO, STAYZ, WOTIF, real estate agents etc on Councils STRA Action Plan and Planning Controls.	
9. Develop sign template	9a. Develop an A3 signage template for use by landowners/managers in accordance with the planning controls	<p><b>Council</b></p> <p><b>Timeframe:</b> prior to LEP amendments being gazetted</p> <p><b>Cost:</b> existing budget</p>
10. Review Action Plan and effectiveness of planning	10a. Twelve months from adoption of the Action Plan prepare a status report to Council on the progress of implementing the actions.	<p><b>Council</b></p> <p><b>Timeframe:</b> April 2016</p> <p><b>Cost:</b> existing budgets</p>
	10b. Review the effectiveness of planning controls within 18months of their	<b>Council</b>

Action	What	Who / When / Cost
controls	gazettal.	<b>Timeframe:</b> 18mths post gazettal of planning controls <b>Cost:</b> existing budgets
	10c. Develop an Authority Data Report on key indicators such as number of registered properties; number of exempt and DAs; number of complaints and action taken etc for reporting to Council in line with the 18mth review of the Action plan	<b>Council</b> <b>Timeframe:</b> prior to LEP amendments being gazetted <b>Cost:</b> existing budgets



## Amend Byron LEP 2014

### Action Plan 1a: Insert exempt provisions in Schedule 2 for Short Term Rental Accommodation (STRA), as detailed in Table 1

Table 1: Exempt Planning Controls

Exhibited Exempt Controls	Revised Exempt Controls post exhibition
(1) <i>In this clause short term holiday accommodation is tourist and visitor accommodation in a dwelling that provides short term accommodation on a commercial basis, but excludes backpackers accommodation, bed and breakfast accommodation, farm stay accommodation, hotel or motel accommodation, and serviced apartments.</i>	Definition simplified and broadened (1) <i>In this clause short term rental accommodation is an existing dwelling that provides short term accommodation to tourists and visitors on a commercial basis, for less than 90 days in any one calendar year</i>
(2) <i>The subject dwelling house must be located in a zone where dwelling houses are permitted under Byron LEP 2014,</i>	Minor change (2) <i>The subject dwelling must be located in a zone where dwellings are permitted under Byron LEP 2014,</i>
(3) <i>Only during Australian public school holiday periods and for less than 90 days in any one calendar year,</i>	Deleted
	New (4) <i>The dwelling must not contain more than 3 bedrooms,</i>  Note: where dwellings are designed with studies/ offices and other areas capable of being utilised as separate sleeping quarters these may be counted as bedrooms
(4) <i>To facilitate family holidays: I. The maximum number of occupants is 10 II. The number of occupants 16 years or over is restricted to 2 per bedroom up to a maximum of 8 occupants for 4 or more bedrooms</i>	Changed (5) <i>The maximum number of occupants is 2 per bedroom, excluding children under 5 years of age,</i>
(5) <i>Garbage and recycling bins to be provided, serviced and managed on a regular basis,</i>	No change (6) <i>Garbage and recycling bins to be provided, serviced and managed on a regular basis,</i>
	New (as per Wyong's LEP 2013) (7) <i>If the development is part of a community or strata scheme, the</i>



Exhibited Exempt Controls	Revised Exempt Controls post exhibition								
	<i>development must have the prior written approval of the owners' corporation for that scheme,</i>								
(6) <i>If the dwelling is located in a bush fire prone area, a bush fire evacuation plan must be attached to the dwelling in a prominent location,</i>	(8) <i>Prior to commencement a Bushfire Safety Authority under S.100B of the RFS Act 1997 is required on land identified as bush fire prone,</i>  Comment: Any approval from the RFS under this section of the act would require investigation of the need for an evacuation plan								
(7) <i>The dwelling house must have hard wired smoke alarms, evacuation lighting, fire blanket and extinguisher in kitchen.</i>	No change  (9) <i>The dwelling must have hard wired smoke alarms, evacuation lighting, fire blanket and extinguisher in kitchen,</i>								
No change  (8) <i>Carparking to comply with Part B4 Byron Shire DCP 2014</i>  Provisions would need to be included in DCP Chapter B4 Table B.41 as follows: <table border="1" data-bbox="204 1061 587 1256"> <thead> <tr> <th>No. of bedrooms</th> <th>Parking</th> </tr> </thead> <tbody> <tr> <td>1-2</td> <td>1 space</td> </tr> <tr> <td>3-4</td> <td>2 spaces</td> </tr> <tr> <td>&gt;5</td> <td>3 spaces</td> </tr> </tbody> </table> Stacked parking, one vehicle behind the other, can be used to achieve the parking requirements.	No. of bedrooms	Parking	1-2	1 space	3-4	2 spaces	>5	3 spaces	No change  (10) <i>Carparking to comply with Part B4 Byron Shire DCP 2014,</i>
No. of bedrooms	Parking								
1-2	1 space								
3-4	2 spaces								
>5	3 spaces								
No change  (9) <i>There must be no more than 2 substantiated complaints to the Council concerning the holiday letting activities taking place on the property from the occupiers of separate dwellings located within the proximity of the subject dwelling within the preceding 12 months</i>	Minor change  (11) <i>There must be no more than 2 substantiated complaints to the Council concerning the short term rental activities taking place on the property from the occupiers of separate dwellings located within the proximity of the subject dwelling within the preceding 12 months,</i>								
No change  (10) <i>Only where use does not interfere with the amenity of the neighbourhood to the extent that Council could issue a Notice, Order or Direction.</i>	Change  (12) <i>The use of the dwelling for short term rental accommodation is to not impact on the residential amenity expected to be enjoyed by surrounding residents. Use to comply with the Protection of the Environment Operations Act 1997 and associated Noise Regulations,</i>  Comment: consistent with controls that may be applied to STRA that requires a								



Exhibited Exempt Controls	Revised Exempt Controls post exhibition
	development application.
(11) <i>The owner/manager must register the use of the dwelling house for short term holiday accommodation on Council's register prior to the initial period used and then updated for each subsequent period used.</i>	Minor change (13) <i>The owner/manager must register the use of the dwelling for short term rental accommodation on Council's register prior to the initial period used,</i>
(12) <i>The use of the dwelling house for short term holiday accommodation must abide by the REINSW Holiday Rental Code of Conduct</i>	Minor change (14) <i>The use of the dwelling for short term rental accommodation must comply with the Holiday Rental Code of Conduct endorsed by the Department of Planning,</i>
(13) <i>The land owner or appointed property manager (eg Real Estate Agent) must be contactable 24 hours 7 days a week and to be able to respond within 30minutes in person to complaints regarding the action of tenants and in particular issues pertaining to noise and residential amenity.</i>	Minor change (15) <i>The land owner or appointed property manager (eg Real Estate Agent) must be contactable 24 hours 7 days a week and to be able to respond within 30 minutes to complaints regarding the action of tenants and in particular issues pertaining to noise and residential amenity,</i>
(14) <i>A sign with an area of 0.5 m<sup>2</sup> to be placed on the front gate, letterbox or some other location which can clearly be seen from the public domain (eg footpath) advising the public of the land owners or property managers details including telephone number to enable complaints to be readily made and wording to advise that the property is 'Registered with Byron Shire Council'.</i>	Minor changes (16) <i>An A3 size sign, in accordance with Council's template, is to be placed where it can clearly be seen from the public domain (eg footpath) advising the public of the land owner's or property manager's details including telephone number in 40mm font to enable complaints to be readily made and wording to advise that the property is 'Registered with Byron Shire Council',</i>
(15) <i>The land owner or appointed property manager must maintain a logbook to record the number of quests and their dates of stay.</i>	Delete Comment: Required by Holiday Rental Code of Conduct
Additional clauses from 26 March 2015 Councillor workshop to ensure consistency with controls that may be applied to STRA that requires a development application.	(17) <i>Additional accommodation is not to be provided on site by way of tents, (including tee pees) caravans, campervans or the like,</i>  (18) <i>Outdoor areas including swimming pools, spas, outdoor decking and balconies are not to be used between</i>





Exhibited Exempt Controls	Revised Exempt Controls post exhibition
	<p><i>the hours of 10pm and 8am,</i></p> <p><i>(19) Visitors permitted at a property are not to exceed 6 persons between 8am and 10pm and no visitors are permitted after 10pm.</i></p>



**Action Plan 1b: Insert new clause 6.10 Short Term Rental Accommodation, as detailed in Table 2 to enable development applications**

**Table 2: Byron LEP 2014 Clause 6.10 Short Term Rental Accommodation**

Exhibited Development Consent Controls	Revised controls post exhibition
<i>(1) The objective of this clause is to require development consent for the temporary use of a dwelling house as short term holiday accommodation.</i>	Minor change <i>(1)The objective of this clause is to require development consent for the temporary use of a dwelling as short term rental accommodation,</i>
<i>(2) The subject dwelling must be located in a zone where dwelling houses are permitted under Byron LEP 2014.</i>	Minor change <i>(2) The subject dwelling must be located in a zone where dwellings are permitted under Byron LEP 2014,</i>
<i>(3) In this clause short term holiday accommodation is tourist and visitor accommodation in a dwelling house that provides short term accommodation on a commercial basis, but excludes backpackers accommodation, bed and breakfast accommodation, farm stay accommodation, hotel or motel accommodation, and serviced apartments</i>	Definition simplified and broadened <i>(3) In this clause short term rental accommodation is an existing dwelling that provides short term accommodation to tourists and visitors on a commercial basis,</i>
	<i>(4) Only where the use of the dwelling for short term rental accommodation is dominant to its use as residential accommodation or it cannot meet the exempt provisions</i>
<i>(4) Despite any other provision of this Plan, development consent may be granted for the use of a dwelling house as short term holiday accommodation.</i>	Minor change <i>(5) Despite any other provision of this Plan, development consent may be granted for the use of a dwelling as short term rental accommodation,</i>
<i>(5) The maximum number of occupants is 2 per bedroom with no more than 8 occupants 16 years or older for 4 or more bedrooms and with no more than 10 occupants in total.</i>	Change <i>(6) The maximum number of occupants is 2 per bedroom, excluding children under 5 years of age..</i>

**Action Plan 1f: Insert exempt provisions in Schedule 2 for 1 bedroom bed and breakfast establishments, as detailed below**

**Bed and Breakfast Accommodation**

1. No more than one guest bedroom;
2. A maximum of two guests;
3. Offer at least breakfast to guests;
4. Owner or operator to be a permanent resident of the dwelling;
5. Register the use of the dwelling on Council's register prior to commencement and maintain registration;
6. The accommodation to be provided within the dwelling; no guest accommodation to be provided within secondary dwellings, sheds, tents, caravans or other structures or vehicles on the site;
7. Guest parking to be provided on site (stacked parking within the driveway permitted);  
and
8. Prior to commencement a Bushfire Safety Authority under S.100B of the RFS Act 1997 is required on land identified as bush fire prone



## **Action Plan 1g: Prepare draft conditions of consent, as detailed below**

### **Conditions of consent which may be imposed include:**

- a) Under Clause 80(1) (d) of the EP&A Act 1979 Council may impose time limited development consent. Approval may be initially granted for a period of 1 year to ensure the property is managed effectively and there are minimal impacts on neighbours. At the end of the period, consent may be sought for a longer timeframe. Where two substantiated complaints of a serious nature that impacted on neighbouring properties have been received, an extension of the consent may not be granted.
- b) The use of the dwelling for short term rental accommodation must abide by the Holiday Rental Code of Conduct endorsed by the Department of Planning. Details are to be provided to the tenant of their rights and responsibilities.
- c) Outdoor areas including swimming pools, spas, outdoor decking and balconies are not to be used between the hours of 10pm and 8am.
- d) The use of the dwelling for short term rental is to not impact on the residential amenity expected to be enjoyed by surrounding residents. Use to comply with the Protection of the Environment Operations Act 1997 and associated Noise Regulations.
- e) The maximum number of occupants is 2 per bedroom excluding children under 5 years of age.
- f) Visitors permitted at a property not to exceed 6 persons between 8am and 10pm. No visitors permitted after 10pm.
- g) The maximum number of vehicles that can be parked on the premises at any time.
- h) Measures to ensure effective communication to occupants of the conditions of registration and emergency management procedures
- i) The land owner or appointed property manager (eg Real Estate Agent) must be contactable 24 hours 7 days a week and to be able to respond within 30minutes to complaints regarding the action of tenants and in particular issues pertaining to noise and residential amenity.
- j) An A3 size sign in accordance with Council's template is placed where it can clearly be seen from the public domain (eg footpath) advising the public of the land owner's or property manager's details including telephone number in 40mm font to enable complaints to be readily made and wording to advise that the property is 'Registered with Byron Shire Council'.
- k) Appropriate tenancy agreement between occupants and the land owner specifying the obligations of both parties in relation to the conditions of operation for the property as a holiday home.
- l) Additional accommodation not to be provided on site by way of tents, (including tee pees) caravans, campervans or the like.
- m) The dwelling must not be used as a 'party house'.
- n) Any gatherings or celebrations at the dwelling must comply with the Holiday Rental Code of Conduct as endorsed by Department of Planning and any other relevant planning approvals.

## Amend Byron DCP 2014

**Action Plan 2a. Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access, Table B4.1 – include car parking rates for STRA and include reference to stacked parking for bed and breakfast, as detailed below**

**Table 3: Car Parking Rates**

Land Use	Car parking		Bicycle Spaces
Short Term Rental Accommodation	<b>No. of bedrooms</b>	<b>Parking</b>	No specific rates
	1-2	1 space	
	3-4	2 spaces	
	>5	3 spaces	
	Stacked parking permitted for 1 vehicle.		

- Action Plan 2b. Chapter D3 Tourist Accommodation**  
i. **include DCP provisions for STRA, as detailed below**

### **D3.3.8 Short Term Rental Accommodation**

#### **Objectives**

1. *To ensure that the design and operation of **Short term rental accommodation** is compatible with the amenity and character of the locality and considers potential impacts of the use on the adjoining and nearby residents' enjoyment of their residences.*

#### **Performance Criteria**

1. The design and operation of **short term rental accommodation** must not adversely affect the amenity of the precinct in which it is located.

#### **Prescriptive Measures**

**Short term rental accommodation** must:

- a) not be for any tenancy greater than 90 consecutive days;
- b) provide car parking in accordance with Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access;
- c) have no more than 2 substantiated complaints to the Council concerning the short term rental activities taking place on the property from the occupiers of separate dwellings located within the proximity of the subject dwelling within the preceding 12 months;
- d) provide garbage and recycling bins that are serviced and managed on a regular basis;
- e) ensure that on-site effluent treatment systems are adequate for short term rental accommodation of dwellings;
- f) provide a bush fire evacuation plan, if the dwelling is located in a bush fire prone area and the plan must be attached to the dwelling in a prominent location; (NB. An approval may also be required under Section 100B of the Rural Fires Act 1997. This can be sought concurrently with the development application.)
- g) register the use of the dwelling for STRA on Council's register prior to commencement and maintain registration;
- h) the maximum number of occupants is 2 per bedroom excluding children under 5 years of age.
- i) provide details on an A3 size sign in accordance with Council's template, to be placed where it can clearly be seen from the public domain (eg footpath) advising the public of the land owner's or property manager's details including telephone number in 40mm font to enable complaints to be readily made and wording to advise that the property is 'Registered with Byron Shire Council'.
- j) ensure use of the dwelling for short term rental accommodation complies with the Holiday Rental Code of Conduct endorsed by Department of Planning.
- k) submit a copy of the Complaints Handling Policy, House Rules and contact details of the land owner or appointed property manager (eg Real Estate Agent) who must be contactable 24 hours 7 days a week and to be able to respond within 30



minutes to complaints regarding the action of tenants and in particular issues pertaining to noise and residential amenity with the development application

- l) provide management measures for dogs and other pets in pet friendly accommodation;
- m) ensure additional accommodation is not provided on site by way of tents, (including tee pees) caravans, campervans or the like;
- n) ensure outdoor areas including swimming pools, spas, outdoor decking and balconies are not used between the hours of 10pm and 8am;
- o) where dwellings include existing outdoor entertainment areas, swimming pools and spas bath areas and other features that have the potential to impact on neighbourhood amenity from excessive use, they may need to be retrofitted with sound fencing, privacy screening and the like.
- p) ensure visitors permitted at a property don't exceed 6 persons between 8am and 10pm and that no visitors are permitted after 10pm.



**Action Plan 2b      Chapter D3 Tourist Accommodation**  
**ii.                    amend clause D3.3.7 Serviced Apartments to include**  
**prescriptive measures, as detailed below**

**Prescriptive Measures**

- a) not be for any tenancy greater than 90 consecutive days;
- b) provide car parking in accordance with Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access;
- c) provide garbage and recycling bins that are serviced and managed on a regular basis;
- d) register the use of the dwelling for STRA on Council's register prior to commencement and maintain registration;
- e) provide details on an A3 size sign in accordance with Council's template to be placed where it can clearly be seen from the public domain (eg footpath) advising the public of the land owner's or property manager's details including telephone number in 40mm font to enable complaints to be readily made and wording to advise that the property is 'Registered with Byron Shire Council'.
- f) The use of the dwelling for short term rental accommodation to comply with the Holiday Rental Code of Conduct as endorsed by Department of Planning.
- g) Submit a copy of the Complaints Handling Policy, House Rules and contact details of the land owner or appointed property manager (eg Real Estate Agent) who must be contactable 24 hours 7 days a week and to be able to respond within 30minutes to complaints regarding the action of tenants and in particular issues pertaining to noise and residential amenity with the development application



**Action Plan 2c: Amend Part A, Appendix A.1, to include new definition of STRA**

*Short Term Rental Accommodation is an existing dwelling that provides short term accommodation on a commercial basis.*



**Action Plan 8.1: Develop information sheets to assist land owners, property managers and neighbours understanding of the planning controls**

**Short term Rental Accommodation - Clarifications**

Short term rental accommodation (STRA) is the letting of a dwelling for any tenancy less than 90 consecutive days.

Only those dwellings that charge rent need to comply with Council's planning controls.

Dwellings let long term under the Residential Tenancies Act 2010, are not short term rental accommodation.

If you want to operate a STRA, for any tenancy up to 90 consecutive days you will need to be registered with Council and registration is to be kept up to date.

If you operate a STRA for less than 90 days in any one year that is three bedrooms or less, it will generally be exempt from requiring development approval, however you will still need to comply with the exempt provisions including registering the property with Council.

Existing STRA have one year from the start of the new planning controls to comply.

It will be an offence to operate a STRA without registration and or approval. Fines may apply.

There are two forms of development holiday homes can operate under:

1. Exempt: will allow property owners of dwellings with 3 bedrooms or less, who want to rent their property out for less than 90 days in any one year and live there for the remainder of the year; caps number of occupants to 2 per bedroom, excluding children under 5 years of age.
2. Development Application: provides for dwellings of any size; caps number of occupants as 2 occupants per bedroom excluding children under 5 years of age; it is also for dwellings up to 3 bedrooms that cannot comply with the exempt provisions;

Owners of holiday homes will be required to nominate a manager who will be responsible for the dwellings day to day management. Owners can nominate themselves as the manager or a real estate agent or other person, but any manager must be locally available when the holiday home is operating.

An A3 size sign, in accordance with Council's template, is to be placed on the front gate, letterbox or some other location which can clearly be seen from the public domain (eg footpath) advising the public of the land owner's or property manager's details including telephone number in 40mm font to enable complaints to be readily made and wording to advise that the property is 'Registered with Byron Shire Council'.

More than two substantiated complaints could result in registration and or development consent not being approved.



## Frequently asked questions (FAQs)

### Council fees and charges

#### ***What will a development application (DA) cost me?***

The use of a home for STRA would be a 'change of use' and charged in accordance with Council's fees and charges. Current fees are \$285 for the DA plus \$95 advertising fee to notify neighbours. In addition, an occupation certificate would be required which can be issued either by Council or a private certifier. Council currently charges \$160/hr, minimum 1 hour. The certificate must be registered with Council; the fee to register is \$36.

#### ***How long will Council take to process the development application?***

Council will generally process the development application within 6 weeks however the time taken to process the application will depend on the information provided by the applicant and the requirement to consult with State Government Agencies.

#### ***Will my Council rates change?***

Where the home is available for short term rental accommodation as the dominant use then business rates may be charged.

Where the use of the home for short term rental accommodation is for less than 90days in any one year then it should retain a residential rate.

If the short term rental accommodation changes back to primarily residential accommodation then the rates would change back to a residential rate upon the owner/manager notifying Council.

#### ***What do business and residential rates cost?***

Council rates include an ordinary rate and annual charges for sewer supply, water supply, stormwater and waste services.

The ordinary rate is calculated using the unimproved capital value of the property, issued by the NSW Valuer General's Office for rating purposes, multiplied by either the business or residential rate in the dollar as follows:

Type of rate	Rate in the dollar
Business	0.004245
Residential	0.002830

To calculate the ordinary rate for your property go to Council's on line rate calculator:

<http://www.byron.nsw.gov.au/forms/rates-calculator-for-2014-15>

These rates in the dollar refer to Rates levied for 2014/2015. These rates are made by Council each financial year.

### Noisy Neighbors

#### ***What times are residential noise restrictions in place?***



There are time restrictions on when noise from a residential premise should not be heard inside a neighbour's residence. The state government's Department of Environment and Heritage website outlines these times:

<http://www.environment.nsw.gov.au/askenvironmentlineapp/question.aspx?qald=ael-197>

For example:

Noise source	Time restrictions
Swimming pool and spa pumps	8 pm to 8 am on Sundays and public holidays 8 pm to 7 am on weekdays and Saturdays
Music	Midnight to 8 am on Friday, Saturday or any day preceding a public holiday 10 pm to 8 am on any other day
Air conditioner or water heater	10 pm to 8 am on weekends and public holidays 10 pm to 7 am on weekdays
Motor vehicles (except when entering or leaving residential premises)	8 pm to 8 am on weekends and public holidays 8 pm to 7 am on weekdays

***If someone is making noise during restricted times, what can I do?***

Call the owner/manager of the holiday home. All holiday homes will be required to have a sign clearly visible to the public with the contact number of the owner/manager who is to respond to all complaints within 30minutes.

One of the main objectives is for owners/managers to responsibly manage the use of their holiday home and to put measures in place to ensure that their guests respect the amenity of the neighbourhood environment and understand it's a residential area they are residing in not a tourist resort.

***What happens if the manager/owner does not respond to my complaint?***

In the event that the manager/owner does not respond to the complaint, neighbours can call the police or Council. Where more than two substantiated complaints have been made to Council the owner of the property may lose the right to use the house for short term rental accommodation

**General questions**

***Can't I already holiday let my home?***

A recent court case found that where the use of a home is not sufficiently permanent to comprise a family home, that is it is primarily available to tourist and visitors, the dwelling becomes tourist and visitor accommodation. Tourist and visitor accommodation, other than bed and breakfast establishments, is currently prohibited in the R2 Low Density Residential zone. There is a risk that should Council not address this matter in its planning controls, then operators of holiday homes could be taken to court by either Council or third parties (eg community group, neighbour) for operating contrary to Council's planning controls.

**Need help?**

If you have any enquires please talk to a Council planner on 02 6626 7126

