
ITEM 14.131/18 SHORT-TERM RENTAL ACCOMMODATION PLANNING FRAMEWORK

Meeting	Environment, Planning & Community Committee	13 November 2018
Directorate	Environment, Planning & Community	
Reviewed by	General Manager - Ashley Lindsay	
Attachment	Yes	

SUMMARY

The Department of Planning and Environment (DoPE) has released a draft planning framework to regulate short-term rental accommodation (STRA) and invites feedback from councils and the broader community by 16 November. The planning framework is to be complemented by an industry mandatory Code of Conduct that will apply to anyone involved in providing or using short-term holiday letting including guests, hosts, online platforms and letting agents. The planning framework essentially involves a combination of exempt and complying development provisions to allow the use anywhere where dwelling houses are permitted. Councils have the opportunity to seek to limit the number of days that accommodation can be let, where the host is not present, to no less than 180 days per year.

OFFICER RECOMMENDATION

That Council make a submission on the proposed short-term rental accommodation planning framework:

1. Submitting an expression of interest to reduce the number of days that a STRA can be used as exempt or complying development, where the host is not present, to 180 days in any year, in the low density residential zones in coastal villages of Yamba, Iluka, Angourie, Wooloweyah, Brooms Head, Sandon, Wooli, Diggers Camp, and Minnie Water. Should the Department of Planning and Environment advise that any restriction must apply across the whole local government area, Council withdraw its expression of interest meaning that STRA would be permissible, with or without host, for 365 days.
2. Allowing an approval pathway on merit via a Development Consent for STRA in excess of 180 days where the host is not present.
3. Seeking assurances that the Department of Fair Trading will be adequately resourced to meet the compliance and registration requirements of the Code of Conduct to avoid additional impact upon councils to manage community expectations of the mandatory Code, including providing access to Council of registration data under the Code.
4. Request that the draft amendments to the Code's SEPP and the Standard Instrument Order be the subject of further consultation and comment prior to adoption.
5. Seeking clarification of the following:
 - a. Implications on building classification and consequent standards and inspection obligations.
 - b. Implication for inspection and compliance of STRAs with swimming pools and other ancillary structures.
 - c. Department of Fair Trading's commitment to its precise role and scope in compliance activities with the draft planning framework and to providing councils with details of the STRA registration regime.
 - d. Transitional provisions that relate to existing (authorised or unauthorised) STRAs and time for compliance with the exempt development criteria which require building modification.
 - e. Implications for disabled access.

COMMITTEE RECOMMENDATION

Baker/Williamson

That the Officer Recommendation be adopted.

Voting recorded as follows:

For: Baker, Simmons, Williamson, Clancy

Against: Novak

LINKAGE TO OUR COMMUNITY PLAN

Theme 1 Society

Objective 1.1 We will have proud and inviting communities

Strategy 1.1.1 Encourage vibrant and welcoming towns and villages

BACKGROUND

The Government released a draft planning framework to manage Short-term Rental Accommodation (STRA) on 5 October 2018. The framework is open to feedback by 16 November.

In short, STRA will be permitted as exempt development for 365 days per year where the host is present.

Where the host is not present, STRA will be permitted for 365 days per year subject to:

- In the Greater Sydney area, a maximum of 180 days per year will be permitted.
- Councils outside Greater Sydney will be able to request a reduction of the number of days to somewhere between 180 to 365 days.
- Where land is of a defined bushfire prone risk, STRA will become complying development when the host is not present.

Advice from the DoPE indicates that the exempt development criteria in the Code's SEPP will include additional safety measures such as fire alarms, hallway lights, and the like, and limit the number of guests in a STRA to a maximum of two people per bedroom and a maximum of 12 guests per dwelling in total.

Councils in non-metropolitan areas wishing to restrict the number of days where a premises can be let, when the host is not resident, to no less than 180 days (mirroring the Greater Sydney standard) must submit an expression of interest to the Department by 30 November.

The framework proposes a mix of inter-related statutory provisions through amendments to the "Code's SEPP", amendments to Local Environmental Plans via the Standard Instrument Order and an amendment to the Fair Trading Act 1987 (to implement a mandatory industry Code of Conduct).

The precise framework is not clear as the draft Code's SEPP and LEP amendments are yet to be issued, hence, it is difficult to understand the full implications and options. This is exacerbated by the Department workshops, in this region at least, whereby some of these details may be explored further, are not being held until the last week or so of the exhibition period and too late for inclusion in this report (although a State-wide webinar on 5 November clarified some but not all of the intended provisions).

The attachments to this report include the following:

- Explanation of Intended Effect issued by the Department of Planning and Environment
- New Short-term Holiday Letting Regulations fact sheet issued by the Department of Fair Trading
- Fair Trading Amendment (Short-term Rental Accommodation) Bill 2018, assented to 21/8/2018

KEY ISSUES

As alluded to in the Background, the precise planning framework is not totally clear. Nevertheless, the proposals generally are intended to work in the following way:

- Definition – a new planning definition “Short-term Rental Accommodation” is proposed. It should be noted that unlike previous terminologies which at various times has referred to short-term *holiday* accommodation, the new definition does not differentiate between the nature of the use. STRA refers to lettings for less than 3 months irrespective of use. This means that it will apply to worker accommodation, transient/locum employees, as well as the more problematic holiday lettings. Hence, restrictions to manage issues of say holiday lettings (“party houses”) will also apply to all other short term lettings. The new definition of STRA is distinct from the existing definition of “*tourist and visitor accommodation*”.
- Location/zoning – STRA will be permissible wherever “dwelling houses” are permitted. The DoPE has advised that any limitation of the number of days for a non-host present STRA cannot be varied through a development application process (although the legal drafting required to achieve this is still not clear).
- Approval pathways – the Code’s SEPP is to be amended to make STRA exempt development (i.e. no approval required), except for bushfire prone areas where it will become complying development. For non-Greater Sydney areas, this will apply whether the host is present or not, for 365 days per year.
- Limiting host absent days per year – For the Greater Sydney area, where the host is not present there is a maximum of 180 days per year that the premises can be let. Regional areas are invited to submit an expression of interest to the Department to request a similar provision (or differing number of days but not less than 180) to the Greater Sydney areas. It is not clear exactly how this will be implemented but it is alluded to involve amendments to both the Code’s SEPP and Council’s local environmental plan. The DoPE has indicated that there will not be an ability for a STRA to seek an increase outside of whatever threshold is adopted, through a normal merits based development consent process. In any case, for the Clarence Valley, R1 zones which apply across Grafton for instance, such proposals could be considered in any case as the separately defined and permissible “*tourist and visitor accommodation*” use.
- Limiting use by area – further to the above, it is not clear whether a reduced threshold of days for host absent STRA can apply to discreet parts of the Council area or whether it must apply across the whole area. This will be influenced by the as yet unknown legal drafting approach proposed to implement such a threshold. Given that the “party house” scenario in the low density zones of the area are where, in Clarence’s experience, the conflicts almost exclusively occur, having a reduced threshold of days in those areas seems reasonable. Limiting that threshold to coastal towns will minimise unintended impacts on key worker accommodation in other areas. The DoPE has been unable to confirm whether such an approach will be possible under the proposed planning framework but has indicated that Council should request this in its submission.

Should the response be that it is not legally possible/preferred to allow a reduced threshold in certain areas only, Council will need to make a decision whether or not to reduce the number of days for STRA across the whole LGA. The possible adverse impacts on other non-holiday forms of accommodation or a lesser ability to manage behavioural impacts are matters for Council to consider.

- Mandatory Industry Code of Conduct – A mandatory Code of Conduct will apply to all “participants” in the STRA industry. Participants include letting owners, guests, online platforms and letting agents. This would presumably include real estate agents. The Code will establish “two strikes and your out” policy,

which will include bans for hosts or guests who commit two serious breaches within two years. The ban will apply for five years. Registration and compliance with the Code will be undertaken by the Department of Fair Trading. While this is supported, Council should seek assurances from the State Government that it will fully resource the Department so that they can effectively enforce the Code. Otherwise, there is concern that Council will inevitably be expected by the local community to step in and enforce compliance. It is noted too that the Code prevails over any existing development consent conditions.

- **Compliance** – the draft Framework provides very little detail on compliance issues. The Government has committed to enforcing the mandatory Code of Conduct through the Department of Fair Trading. However, there is genuine concern that this commitment only will apply to the “behavioural” aspects of the Code, such as noise and nuisance. Also, there has not been a commitment to increase the staff resources in the Department to take on this new role, which is more problematic in regional areas.

Other aspects of the criteria that define STRA relate more to land use permissibility and building standards, such as a 180 day limit on non-host present STRAs. It seems likely that the Department of Fair Trading will not undertake compliance on these issues, which means that Council will be the compliance agency. This would mean that should Council choose to limit the number of days of a non-host present STRA, Council will be expected to enforce compliance with that defined number of days of the premises being let. That will potentially require significant staff resources and be legally difficult, especially if Fair Trading do not follow up and provide Council access to the occupancy register required under the mandatory industry Code of Conduct. The fact that a number of building requirements i.e. smoke alarms in all bedrooms, hallway lights, door lock mechanisms, fire blankets/extinguishers and emergency plans are all hard-wired into the exempt development criteria, Council will need to determine if it will routinely inspect and enforce compliance from a public safety viewpoint. Other issues regarding the requirements to inspect swimming pools for STRA need also consideration.

OPTIONS

There are innumerable nuances and options for Council to consider in a limited timeframe which has not allowed the full benefit of information workshops to be considered, nor engagement with the local community. Nonetheless, it is clear that the general principles of permitting STRA with or without a host being present will be adopted by the Government.

Hence, the key decision for Council to make at this stage is whether it will lodge an expression of interest (required by 30 November) to limit the number of days permissible in a non-resident present STRA to something less than 365 days per year (but not less than 180), in all or part of the LGA.

Alternatively, Council could choose not to seek a limit. It will still be open at some future stage to pursue a limit through a stand-alone amendment to the Local Environmental Plan (Planning Proposal).

Given that the main source of complaint to Council in the past few years has been the “party house” issue in coastal villages, it is recommended that Council seek to limit the usage in these areas only. This would avoid adverse impact on other forms of short-term accommodation in other towns which provide an important part of their economic base (i.e. short-term worker accommodation, key workers, locums, etc). Should the DoPE advise that any restriction must apply across the whole local government area, it is recommended that Council withdraw its expression of interest meaning that STRA would be permissible, with or without host, for 365 days. Council could always review that in the future through a planning proposal.

COUNCIL IMPLICATIONS

Budget/Financial

Council will most likely be expected by the local community to become involved in the compliance obligations of the planning framework from a land use perspective. This will be significantly exacerbated should Council pursue the option of restricting the number of days for a non-host present STRA in part or all of the local government area. This could impose significant staffing demands.

Asset Management

N/A

Policy or Regulation

Environment Planning and Assessment Act 1979
 Clarence Valley LEP 2011
 Fair Trading Act 1987

Consultation

N/A

Legal and Risk Management

N/A

Prepared by	Des Schroder, Director Environment Planning and Community
Attachment	<ol style="list-style-type: none"> 1. Explanation of Intended Effect, Short-term Rental Accommodation Planning Framework, Department of Planning and Environment, Oct/Nov 2018 2. New Short-term Holiday Letting Regulations, Factsheet, FairtradingNSW 15/8/2018 3. Fair Trading Amendment (Short-term Rental Accommodation) Bill 2018

