

Council Reference: PP15/0005
Your Reference: STRA



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Dear Sir/Madam

Tweed Shire Council submission to the State Government Short term Rental Accommodation Planning Framework (Policy, Regulation, Code of Conduct)

Tweed Shire Council (TSC) has played an active role in the State Government's development and consultation on a short term rental accommodation (STRA) policy framework for NSW, having made submissions previously and been engaged through the STRA council and industry workshop sessions.

TSC welcomes the opportunity to make a submission on the draft policy framework. Our submission is focussed on the exhibited material as well as providing some local Tweed Shire STRA context.

It is noted that our submission will be lodged by the closing date of 11 September, however, in accordance with the extension granted by email of 28 August 2019, a formal submission endorsed by Council will follow after their meeting of 19 September 2019. It is noted the submission may vary following Council's review.

Exhibited material includes:

1. Short-term Rental Accommodation: A new regulatory framework Discussion paper
2. Draft Code of Conduct for the Short-term Rental Accommodation Industry
3. Draft Fair Trading Amendment (Code of Conduct for Short-term Rental Accommodation Industry) Regulation 2019
4. Draft State Environmental Planning Policy (Short-term Rental Accommodation) 2019
5. Draft Environmental Planning and Assessment (Short-term Rental Accommodation) Regulation 2019 and accompanying 'Short-term Rental Fire Safety Standard'.

Tweed Shire Council STRA context

Council has been providing a degree of flexibility and considering applications, which appear to be STRA, as a *serviced apartment* under the Tweed Local Environmental Plans (LEPs).

Notwithstanding a limited number of applications, the number of STRA listings has increased significantly. Whilst the following figures relate specifically to the short term rental platform AirBnB, it is noted that this is only one provider of many on the STRA market. AirBnB is referred to as there is a tracking website which provides basic numerical data. As such the figures are not provided to be a complete picture, rather to provide an indication of trends.

	October 2017	October 2018 (at the time of our previous submission)	02/09/19
Total listings Tweed Shire	369	1,091	1,202
5 being for entire home/apartment	70%	80.1%	82.2%
% being multiple listings	N/A	44.4%	48.1%
Total listings Northern Rivers	2,350	5,114	5,388

Source: <http://insideairbnb.com/>

Multiple listings are growing, indicating a trend of STRA as a business, rather than home sharing activity as it is described.

Over two years these figures represent an increase of 225% in listings within Tweed Shire. Currently 22% of the Air BnB listings are within Tweed Shire (15% in 2017), second only to Byron Shire.

As a percentage of the Northern Rivers, Tweed Shire listings are growing, a trend which is likely to continue as neighbouring Byron Shire moves to restrict short term rental accommodation.

Compliance with legislative requirements, basic amenity requirements and unauthorised STRA is having a significantly increasing impact on TSC resources. Compliance is one of our key concerns and a key focus of the TSC submission.

Draft State Environmental Planning Policy (Short-term Rental Accommodation) 2019

Rural Workers Dwellings and Clause 9 General requirements for exempt development

Under the policy framework, STRA will be exempt development within a range of residential dwelling types, including a lawful rural workers dwelling, under the definition of *short term rental accommodation*.

Dwellings approved for rural worker's purposes are approved for a specific use and the occupants of such a dwelling are also a specific category, being a rural worker.

It is not considered appropriate that the provisions of the SEPP (STRA) 2019 override this specific dwelling type and its use as originally intended, ie. to allow accommodation provision for rural workers. How is it proposed to maintain the use as a workers dwelling if the owner can use it for short term rental accommodation?

Clause 9(2) (b) of the draft SEPP excludes certain categories of land uses from the exempt provisions it would seem logical that *rural workers dwellings* would be included in this excluded list.

Recommendation

Rural Workers dwelling be added to the list in Clause 9(2)(b) along with the other specific use dwelling types.

Clause 14 Requirements for complying development on flood control lots

The intent of the clause appears to be to consider risk from events exceeding design flood level through consideration of evacuation, isolation and refuge, which is to be commended and is supported. However, the wording of the clause is confusing and is considered to require clarification, as follows:

Clause 14(2)(a) the lot must have pedestrian and vehicular access to a readily accessible refuge at a level equal to or higher than the lowest habitable floor level of the dwelling house,

1. What defines a “refuge” and what flood immunity must it have?
2. What has to have a “level equal to or higher than the lowest habitable floor level of the dwelling house”? Does this apply to the access route or the refuge?
3. Why is “lowest habitable floor level” used? What if the house has an old, “deemed approved”, habitable level (or basement) with very low flood immunity? This would set the bar very low and is of concern.

Clause 14 (2)(b) vehicular access to the dwelling house will not be inundated by water to a level of more than 0.3m during a 1:100 ARI (average recurrent interval) flood event.

1. How far does the “vehicular access to the dwelling house” go? To the end of the driveway, to the “refuge” area, or other?
2. The selection of “a level of more than 0.3m during a 1:100 ARI flood event” is unusual and would make assessment ambiguous due to the finely detailed investigation required.
3. “a level of more than 0.3m during a 1:100 ARI flood event” could also be considered by some as contrary to the NSW SES position of “if its flooded, forget it (don’t drive through flooded roads) as it seems to suggest driving through 300mm of flood water is acceptable.
4. “a level of more than 0.3m during a 1:100 ARI flood event” is an over simplistic threshold. For example what if that 300mm of flood water is high flow hazard, such as flowing a 1 metre per second? This is then not considered safe.

Whilst Council supports the inclusion of a clause that considers evacuation, isolation and risk from events greater than 1% AEP, we suggest that the wording of the current clause 14(2) be revisited in consultation with DPIE flooding specialists.

Recommendation

The wording of Clause 14 (2) be clarified to address the above concern in consultation with DPIE flooding specialists.

BCA accessibility requirements

The SEPP is silent on accessibility requirements. The BCA requires accessibility to be provided to certain Class 1b, 2 and 3 buildings and to be considered at the time of construction. It is recommended the draft SEPP address the accessibility requirements.

Recommendation

It is recommended the draft SEPP also address the BCA accessibility requirements.

Draft Environmental Planning and Assessment (Short-term Rental Accommodation) Regulation 2019 Division 7D and accompanying ‘Short-term Rental Fire Safety Standard’

Bush Fire

The intent of the fire safety provisions is to be commended and is supported. However, the wording of the provisions is confusing and is considered to require clarification, as follows:

A building is to comply with *Planning for Bushfire Protection (PFBP)* and is restricted from applying to BAL 40 and the flame zone (FZ), as follows:

Under Division 3 Clause 13 (d) a dwelling cannot be complying development and non-hosted STRA where:

- (d) *the dwelling is situated on bushfire prone land, and*
- (e) *no part of the lot on which the dwelling is situated is bushfire attack level -40 (BAL-40) or in the flame zone (BAL_FZ), and*
- (f) *the dwelling complies with the requirement of Planning for Bush Fire Protection (ISBN 0 9751033 2 6) published by the NSW Rural Fire Service in December 20061, and...*

	Hosted	Non Hosted
New dwellings constructed after PFBP	NA	To comply
Existing dwelling constructed prior to PFBP		Unsure if building is to be retro fitted to comply with determined BAL / amber protection upgraded / Exempt from requirement if constructed prior to PFBP

1. How is it determined if a part of a lot the dwelling is located on is BAL – 40 or BAL - FZ, when a BAL is assessed in relation to the location of a dwelling on the lot? Currently under the SEPP Exempt and Complying Development Code this would relate to the dwelling rather than lot.
2. Who determines the BAL where not already applied at Development Approval stage of the Dwelling and at what stage, as a prerequisite or as part of the CDC application? Currently a Pre Requisite BAL Certificate is required before lodging a CDC to support the dwelling design.
3. Where a house is constructed prior to Planning for Bushfire Protection 2006, it is unclear if it is required to be retrospectively upgraded to comply with today's requirements / ember protection or exempt?

Recommendation

The wording of Clause 13 be clarified to address the above concern in consultation with bush fire specialists.

Fire Safety provisions

The Standard sets out different requirements for different classes of buildings consistent with the BCA. These are realistic, however, the fire standards should be included in the SEPP STRA as development standards.

Swimming pool safety

Where STRA is proposed (either exempt or complying) at a property that has a pool, it should be made clear that the owner would be required to re-register the pool on the NSW Government's swimming pool Register as Short Stay Tourist Accommodation.

It is recommended that this be included as a development standard, and require a copy of the Swimming Pool Certificate of Registration and a copy of current Swimming Pool Safety Certificate or Occupation Certificate for the pool (where obtained within 3 years) be provided with the STRA registration.

Recommendation

The Draft State Environmental Planning Policy (Short-term Rental Accommodation) 2019 include development standards requiring the registration and certification of any pool in association with STRA.

Where STRA is neither exempt or complying development

The SEPP makes provision for most STRA as exempt development. STRA can also be complying development where the conditions for bushfire or flooding can be met. However when these conditions cannot be met there is no clarity regarding whether a development application can be lodged. If a DA can be lodged, currently this only be under the definition of *serviced apartment*, and in zones where this use is permitted as the definition resides in the SEPP and not the local environmental plan (LEP).

Clarity is sought as to whether this is the intent of the STRA legislative framework.

Recommendation

Clarity be provided regrading development which does not meet either the exempt or complying conditions.

Draft Fair Trading Amendment (Code of Conduct for Short-term Rental Accommodation Industry) Regulation 2019

Clarification of compliance responsibilities

Councils should be briefed on what resources the Department of Fair Trading will be allocated to carry out the regulation and administration of the *Code of Conduct* and the process for the community and councils for referring those complaint.

Given that the draft Code deals with noise and other amenity complaints, which generate a high level of complaints requiring a swift response, how does the Department intend to deal with such complaints? For example will there be an “on ground” response and a local presence for complaints handling and investigation?

Draft Code of Conduct for the Short-term Rental Accommodation Industry

Draft Code of Conduct

Minor drafting error to Clause 6.1.9 which refers to Clause 6.3.8, which does not exist. Suggest this reference should be to Clause 6.1.8.

Inconsistencies within the Draft Code of Conduct regarding compliance matters

The *Draft Code of Conduct* defines *planning laws* yet in section 6.2.4 it refers to two other *Acts* that are not part of the *planning laws* definition.

Our understanding of this structure is that a complaint has to be based on planning law which is confined to the Act and Regulations and LEP, ie that a dwelling is lawful, permissible and compliant with these policies.

The *Protection of the Environment Operations Act* and the *Protection of the Environment Operations (Noise Control) Regulation* are the primary pieces of legislation in NSW to manage noise pollution. This legislation and the Draft SEPP do not currently identify the appropriate regulatory authority (ARA) for STRA. Specific regulatory tools under the legislation do not currently exist.

A registration system through State Government is proposed to help manage noise and anti-social behaviour associated with STRA, with a ‘two strikes and you’re out’ arrangement for guests. Such a regulatory framework is supported by Council.

However, given that “planning laws” do not deal with noise, parking or other amenity complaints, it is unclear how these will be dealt with. The Code at Section 5.5.2 deals with noise, however, the following should be clarified:

It is not clear at Clause 5.4.8 and Clause 5.5.2 *Obligation to Neighbours* what is meant by *neighbour, other occupants of the premises and any immediately adjoining premises*. Is neighbour confined to the adjoining unit in a building?

The Code should explain who the Code is recognising in terms of the *Obligation to Neighbours*. For example, does the Obligation extend to someone two or three doors away, who may also be affected? This is critical to understanding compliance because the Code only recognises *contravention of the Code*.

Why reference immediately adjoining premises when neighbour is also used? It seems to read there are two groups that are covered by the Code: 1. neighbours and other occupants of the premises; and 2. any adjoining premises.

Notwithstanding, this does not address a neighbour across the road, someone two doors up, or where there is a park or reserve in between. These neighbours may also be subject to noise and amenity impacts.

Similarly, anti-social behaviour in the community is generally investigated and responded to by the local police. The Code should clearly identify responsibilities regarding anti-social behaviour associated with STRA, and clarify this for all stakeholders.

Recommendations

The draft Code of Conduct be amended to clarify the terms neighbour, other occupants of the premises and any immediately adjoining premises and how compliance is to be managed for these people.

The Code should articulate the appropriate regulatory authority roles and responsibilities for noise impacts.

The Code should articulate the appropriate regulatory authority roles and responsibilities with respect of anti-social behaviour.

Additional comments

1. The Code should provide discussion about how breaches of the planning framework (councils) lead to disciplinary action under the Code of Conduct.
2. The Code should clarify what disciplinary action, if any, can be taken against an internationally registered booking platform or letting agent.
3. There does not appear to be any discussion about how will the industry-managed register validates compliance with day limits (where they apply) and how the register information will be available for councils. Without this information managing compliance by councils is virtually impossible.
4. While an Exclusion Register will provide details of a premise or host, and discusses disciplinary action, there does not appear to be any discussion about how use of the property outside the STRA market (registered 'booking platforms')

and 'letting agents') will be enforced? For example a property owner entering into privately arranged letting.

5. There are a diverse range of booking platforms and letting agents; how will the listing of a property be made available to all platforms and agencies and kept-up-to date and to ensure compliance with day limits (where they apply)?
6. A procedure needs to be established in Council which could ensure that all complaints received by Council regarding STRA are automatically forwarded to NSW Fair Trading.
7. There is no advice about how complaints referred to Fair Trading will be responded to and what if any feedback will be provided to councils.
8. Making information relating to the Exclusion Register publicly searchable online may breach privacy rights of landowners; however, if all booking platforms and agents have access, then a property should not come up as being available for rental purposes if listed on the Exclusion Register, thereby avoiding the need for publicly searchable information.
9. A mandatory STRA registration system will provide the necessary transparency, but does not appear to provide the framework under which the 'industry' will fund, develop and administer it. Is it proposes to establish a whole-of-industry representative organisation?

Discussion Paper

1. There appears to be no firm commitment from the government at this time to whether a register will be developed (p 18 of Discussion Paper).
2. While the Discussion Paper asks if a separate penalty should be applied for not registering, it would have been assumed that all properties listed on platforms and through agents would automatically be registered so the need for penalties for not registering would only apply to those platforms and agents, and those individuals who choose to let property privately.
3. It should be an obligation of the host to ensure that the property is on the register.
4. Any property which reaches its day limit (where they apply) should automatically be listed as not available until commencement of the next 12 month cycle.
5. There is no discussion about how the 12 month cycle will be established, but it is assumed to apply from the first day of listing, or should this be from first rental? This needs to be confirmed in legislation.

Monitoring and associated impacts

Government policy, the Low Rise Medium Density Housing Code (LRMDHC) is seeking to increase residential density and diversity across all residential zones, which will have a significant long-term impact on the very structure and function of residential land.

The STRA framework provides an attractive incentive to the commercialisation of dwellings, especially in strong tourism areas such as the Tweed Shire. Concern is raised that the increase of low rise medium density housing is attractive to the STRA market by its nature of smaller, lower maintenance properties. Council is concerned that a significant percentage of the dwellings arising from the LRMDHC, intended to provide greater housing diversity and affordability will likely be used for STRA thereby reducing the intended diversity of housing from the permanent rental market and potentially increasing rental prices.

While the SEPP provides for a review as soon as possible after the first anniversary of commencement of the Policy, and the Discussion Paper identifies points for consideration in any review, it will be essential for the impact of the Policy to be assessed against impacts on long-stay rental availability and affordability.

Recommendations

The SEPP review of the STRA should consider the take up rates and impacts of STRA on the permanent rental market availability and affordability over the longer term.

That councils be consulted during the review of the STRA to provide local knowledge and feedback on its effectiveness, compliance matters, and impacts on our local communities.

That the review findings be available to councils and publicly.