



**Planning proposal
for short term rental accommodation in Byron Shire
(Byron Shire Council)**

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Part 1 Introduction

Purpose

The purpose of this planning proposal is to introduce a special provision to define and then require development consent for short term rental accommodation. It also establishes the circumstances in which short term rental accommodation would be exempt development.

At the Byron Shire Council meeting of 30 April 2015 Council considered the need to amend its new LEP to permit short term rental accommodation and resolved as follows:

15-186 Resolved that Council:

- 1. Adopt the Byron Shire Short Term Holiday Accommodation Action Plan, Attachment 1 (E2015/14847) subject to the following amendments:*
 - a) amend the planning controls to remove all references to '40m' limitation applying to occupiers of separate dwellings in relation to making complaints about the short term rental activities taking place on a property (eg. at Action 5c in the Plan);*
 - b) further amend the planning controls at Action 6c in the Plan to change "\$250/adult" to "\$250 per adult";*
 - c) amend the planning controls relating to signage to read: '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';*
 - d) include a new action 'Develop Signage Template for use by landowners/managers in accordance with the planning controls. Timeframe: prior to LEP amendments being gazetted. Cost: existing budget';*
 - e) change the Actions to ensure that for dwellings (of any size) where the dominant use of the dwelling is short term rental accommodation, development consent is required and other references in the documents be adjusted accordingly;*
 - f) clarify wherever needed, that the standard is the total number of occupants being no more than the equivalent of 2 people per bedroom; and*
 - g) exclude from the calculation of total number of occupants children under 5 years of age.*
- 2. Prepare a planning proposal to amend Byron LEP 2014 in accordance with the proposed planning controls in Attachment 1 (E2015/14847) amended as in part 1 above and submit the planning proposal to the Department of Planning and Environment for a Gateway Determination.*
- 3. Request the Department of Planning and Environment to delegate to Council the preparation and making of the LEP amendment.*

4. *Publicly exhibit the proposed amendments to DCP 2014 in Attachment 1 (E2015/14847)*

The first two recommendations of the Byron Shire Short Term Rental Accommodation Action Plan are that:

- Council insert exempt provisions in Schedule 2 (LEP 2014) for Short Term Rental Accommodation
- Council insert new clause 6.10 Short Term Rental Accommodation (LEP 2014) to enable development applications.

Property details and existing zones

This planning proposal directly affects all land within zones where dwelling houses are permitted under Byron LEP 2014. This currently includes RU1 Primary Production, RU2 Rural Landscape, RU5 Village, R2 Low Density Residential, R3 Medium Density Residential, R5 large Lot Residential, and B4 Mixed Use.

Background

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 (DPE and RFS). Council considered a report on the submissions at the 30 April 2015 meeting. The decision to amend LEP 2014 was made at that meeting.

The Byron Shire Short Term Rental Accommodation Action Plan is at Appendix 1. Other recommendations from this Action Plan will be implemented over time.

Part 2 Explanation of provisions

The intended outcomes are to be achieved by an amendment to Byron Shire Council LEP 2014 as follows:

- Insert a new clause 6.10 into Byron Shire LEP 2014, Part 6, Additional Local Provisions to require consent for Short Term Rental Accommodation as follows:

6.10 Short Term Rental Accommodation

- (1) *The objective of this clause is to require development consent for the temporary use of a dwelling as short term rental accommodation,*
- (2) *The subject dwelling must be located in a zone where dwellings are permitted under Byron LEP 2014,*
- (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,*
- (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*
- (5) *Despite any other provision of this Plan, development consent may be granted for the use of a dwelling as short term rental accommodation,*
- (6) *The maximum number of occupants is 2 per bedroom, excluding children under 5 years of age.*

And

- Insert exempt provisions in Schedule 2 (LEP 2014) for certain Short Term Rental Accommodation in order that in some circumstances it can be undertaken as exempt development as follows:

Short Term Rental Accommodation

- (1) *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*
- (2) *The subject dwelling must be located in a zone where dwellings are permitted under Byron LEP 2014,*
- (3) *The dwelling must not contain more than 3 bedrooms,*
- (4) *The maximum number of occupants is 2 per bedroom, excluding children under 5 years of age,*
- (5) *Garbage and recycling bins to be provided, serviced and managed on a regular basis,*
- (6) *If the development is part of a community or strata scheme, the development must have the prior written approval of the owners' corporation for that scheme,*
- (7) *Prior to commencement a Bushfire Safety Authority under S.100B of the RFS Act 1997 is required on land identified as bush fire prone,*

- (8) *The dwelling must have hard wired smoke alarms, evacuation lighting, fire blanket and extinguisher in kitchen,*
- (9) *Carparking to comply with Part B4 Byron Shire DCP 2014,*
- (10) *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,*
- (11) *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,*
- (12) *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,*
- (13) *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,*
- (14) *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,*
- (15) *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',*
- (16) *Additional accommodation is not to be provided on site by way of tents, (including tee pees) caravans, campervans or the like,*
- (17) *Outdoor areas including swimming pools, spas, outdoor decking and balconies are not to be used between the hours of 10pm and 8am,*
- (18) *Visitors permitted at a property are not to exceed 6 persons between 8am and 10pm and no visitors are permitted after 10pm.*

Part 3 Justification

Section A Need for the planning proposal

1 Is the planning proposal a result of any strategic study or report?

Yes. In May 2014 Council released a Holiday Letting Strategy Discussion Paper for public comments and consideration. This was followed by a draft Short Term Holiday Accommodation Strategy and more recently the Short Term Rental Accommodation Action Plan. The planning proposal is a recommendation of the most recent document and part of a strategic approach to solving a long standing issue in Byron Shire. See Attachment 1.

2 Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

A planning proposal is considered to be the only way to add a new clause and amend Schedule 2 to LEP 2014. It is part of a suite of actions that include information, compliance, registers, signage, and a code of conduct for operators.

3 Is there a net community benefit?

The Net Community Benefit (NCB) Criteria is identified in the NSW Government's publication *Draft Centres Policy, 2009* which states that the Net Community Benefit Test should be used to assess the merits of rezoning in the following circumstances:

- proposals to develop within an existing centre where the current zoning does not permit the use
- proposals to develop outside an existing centre where the current zoning does not permit the use
- proposals to create a new centre.

The main focus of the NCB test is to ensure that centres remain compact and viable and linked to existing and proposed transport networks (particularly public transport).

Assessment against the Net Community Benefit Assessment Criteria is not appropriate for a planning proposal that deals with small scale tourism accommodation issues in a range of zones and circumstances (urban and rural).

Section B Relationship to strategic planning framework

1 Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (in this case the Far North Coast Regional Strategy)?

The planning proposal is largely consistent with the outcomes and actions contained within the Far North Coast Regional Strategy (FNCRS). In particular, the actions related to Economic Development and Employment Growth. The proposal specifically responds to the following tourism related actions:

- *Local environmental plans will ensure that appropriate land is available to provide for a range of tourism experiences and forms of tourism accommodation.*
- *Local environmental plans will permit no more than small scale tourism development in rural or environment protection zones.*

2 Is the planning proposal consistent with the local Council's Community Strategic Plan, or other local strategic plan?

In 2012 Council adopted a 10 year + *Community Strategic Plan 2022 (CSP)*. The plan is based on five key themes being Corporate Management, Economy, Environment, Community Infrastructure, Society and Culture. The planning proposal is generally consistent with the following relevant goals:

CM4.1 Promote community compliance with Acts, Regulations, Instruments and Council policies and standards	Short term letting of dwellings has been widespread throughout Byron Shire urban and rural areas. It has not been subject to the development assessment process and has resulted in compliance issues. Permitting it with consent or as exempt development (if on a small scale with low impacts) will reduce the level of noncompliance and reduce Council resources put into this issue.
EC2.1 Build a tourism industry that delivers local and regional benefits in harmony with the community's values. EC2.2 Develop Byron Shire as a leader in responsible and sustainable tourism and encourage sustainable business practices within the tourism industry. EC2.3 Support and promote a collaborative shire-wide approach to managing tourism.	In the right setting and with good management short term letting will provide rental income for a property owner with minimal impacts on the neighbourhood and infrastructure. As a low key form of accommodation it attracts people looking for something other than a "resort" experience. More of the "holiday spend" from visitors is spread across local businesses, including farmer markets and the like. Short term holiday letting management is being viewed on a shire wide basis and not just confined to Byron Bay.

On this basis the planning proposal is generally consistent with Council's *CSP*.

3 Is the planning proposal consistent with the applicable State Environmental Planning Policies (SEPPs)?

Most State Environmental Planning Policies (SEPP) are not applicable to this planning proposal. The State Environmental Planning Policies relevant to the planning proposal are as follows:

State Environmental Planning Policy (SEPP)	Compliance of Planning Proposal
SEPP 71 – Coastal Protection	Permitting short term rental accommodation in zones where dwellings are already permitted could result in applications in the coastal zone of Byron Shire. The aim of the SEPP and the matters for consideration in clause 8 of the SEPP are matters that Council will consider on a site specific basis in future development applications. In most cases the change of use (if approved) will not result in impacts on the coast beyond that already generated by the existing dwelling. The planning proposal is compliant with the aims of the SEPP.

State Environmental Planning Policy (SEPP)	Compliance of Planning Proposal
SEPP 55 – Remediation of land	In this case no land is actually being rezoned and short term rental accommodation will only be permissible where a dwelling is already permitted on the land. This will not significantly increase the range of sensitive land uses on the site and past land use will still be addressed in any development application (if required). It is consistent with the SEPP.

4 Is the planning proposal consistent with applicable Ministerial Directions (s117 Directions)?

Consistency with the s117 Directions is assessed in the following table:

Consistency with S117(2) Directions

S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
1. Employment and Resources			
1.1 Business and Industrial Zones	Applies when a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed business or industrial zone (including the alteration of any existing business or industrial zone boundary).	This planning proposal will not affect the boundaries or extent of business or industrial zones. However it will allow shop top housing to be used for short term rental accommodation. This will not reduce the area available for employment land uses and not alter any locations for business or industry.	Consistent
1.2 Rural Zones	Applies when a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed rural zone (including the alteration of any existing rural zone boundary). Under this direction a planning proposal must: (a) not rezone land from a rural zone to a residential, business, industrial, village or tourist zone. (b) not contain provisions that will increase the permissible density of land within a rural zone (other than land within an existing town or village).	This planning proposal will apply to rural zoned land where a dwelling is permitted. It will not alter the zone of any rural land. It will not alter the density of land use within any rural zone.	Consistent
1.3 Mining, Petroleum Production and Extractive Industries	Applies when a relevant planning authority prepares a planning proposal that would have the effect of: (a) prohibiting the mining of coal or other minerals, production of petroleum, or winning or obtaining of extractive materials, or (b) restricting the potential development of resources of coal, other minerals, petroleum or extractive materials which are of State or regional significance by permitting a land use that is likely to be incompatible with such development.	Nothing in this planning proposal will prohibit or restrict exploration or mining.	N/A

S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
1.4 Oyster Aquaculture	Applies when a relevant planning authority prepares any planning proposal that proposes a change in land use which could result in: (a) adverse impacts on a Priority Oyster Aquaculture Area or a “current oyster aquaculture lease in the national parks estate”, or (b) incompatible use of land between oyster aquaculture in a Priority Oyster Aquaculture Area or a “current oyster aquaculture lease in the national parks estate” and other land uses.	Priority Oyster Aquaculture Areas (POAA) exist in the Brunswick River however there is minimal likelihood the planning proposal will have adverse impacts on POAA as the proposed use of the land will be either minor (and therefore exempt development) or subject to an environmental assessment on a case by case basis through the development application process. Also most land in the vicinity of the POAA is already zoned for environmental protection or within the national parks estate.	Consistent.
1.5 Rural Lands	Applies when: (a) a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed rural or environment protection zone (including the alteration of any existing rural or environment protection zone boundary), or (b) a relevant planning authority prepares a planning proposal that changes the existing minimum lot size on land within a rural or environment protection zone. A planning proposal to which clauses (a) and (b) apply must be consistent with the Rural Planning Principles listed in <i>State Environmental Planning Policy (Rural Lands) 2008</i>. A planning proposal to which clause (b) applies must be consistent with the Rural Subdivision Principles listed in <i>State Environmental Planning Policy (Rural Lands) 2008</i>.	This planning proposal will affect land zoned RU1 or RU2 where a dwelling is permitted. It will not alter the minimum lot size on any land. It is consistent with the Rural Planning Principles listed in <i>State Environmental Planning Policy (Rural Lands) 2008</i> as follows: (a) <i>the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas</i> – the proposed amendment is not intended to undermine or create conflict with agriculture or other rural land uses. If a development application is required then the SEE will need to address this issue. (b) <i>recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State</i> – the use of dwellings for short term rental accommodation is in response to the changing nature of agriculture in Byron Shire including the need for additional income to keep the farm	Consistent.

S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
		viable. (c) <i>recognition of the significance of rural land uses to the State and rural communities, including the social and economic benefits of rural land use and development</i> – Byron Shire has a sustainable agriculture strategy and understands the benefits of maintaining rural land uses. The proper use of existing dwellings for short term rental will not undermine this. (d) <i>in planning for rural lands, to balance the social, economic and environmental interests of the community</i> – the nature of rural land use is changing and the socio-economic interests of the Byron Shire community will be best served by permitting this land use lawfully. The Byron experience suggests it is widespread and occurs without proper controls. This change to the LEP will permit it to happen openly and to be better controlled. (e) <i>the identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land</i> – the LEP amendment will require consideration of the physical environment in which the development will be located (if a development application is required). (f) <i>the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities</i> – short term rental accommodation is a tourism experience that (if	

S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
		properly managed) can contribute to the economic welfare of rural communities. (g) <i>the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing</i> – Council will expect services and infrastructure to be addressed in applications for short term rental accommodation. (h) <i>ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General</i> – the Far North Coast Regional Strategy applies to Byron Shire and this planning proposal is consistent with it, particularly in relation to providing “for a range of tourism experiences and forms of tourist accommodation...”(page 38). The LEP changes will limit tourism in rural areas to a small scale.	
2 Environment and Heritage			
2.1 Environment Protection Zones	A planning proposal must include provisions that facilitate the protection and conservation of environmentally sensitive areas. A planning proposal that applies to land within an environment protection zone or land otherwise identified for environment protection purposes in a LEP must not reduce the environmental protection standards that apply to the land (including by modifying development standards that apply to the land). This requirement does not apply to a change to a development standard for minimum lot size for a dwelling in accordance with clause (5) of Direction 1.5 “Rural Lands”.	The planning proposal does not alter or remove any environment protection zone. No environmental standards will be reduced by the proposed LEP changes.	Consistent

S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
2.2 Coastal Protection	Direction applies when a relevant planning authority prepares a planning proposal that applies to land in the coastal zone. A planning proposal must include provisions that give effect to and are consistent with: (a) the NSW Coastal Policy: A Sustainable Future for the New South Wales Coast 1997, (b) the Coastal Design Guidelines 2003, (c) the manual relating to the management of the coastline for the purposes of section 733 of the <i>Local Government Act 1993</i> (the NSW Coastline Management Manual 1990).	Certain land affected by this proposal is located within the coastal zone, which affects the eastern half of Byron Shire. It is consistent with the NSW Coastal Policy as there is minimal likelihood of physical impact on the environment and where a development is not minor it will require an assessment through a development application. If any land in Byron Shire affected by coastal erosion is proposed for short term rental accommodation then Council will consider the management of the coastline and response to emergencies as part of any application it receives.	Consistent.
2.3 Heritage Conservation	A planning proposal must contain provisions that facilitate the conservation of: (a) Items, places, buildings, works, relics, moveable objects or precincts of environmental heritage significance to an area, in relation to the historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value of the item, area, object or place, identified in a study of the environmental heritage of the area, (b) Aboriginal objects or Aboriginal places that are protected under the <i>National Parks and Wildlife Act 1974</i>, and (c) Aboriginal areas, Aboriginal objects, Aboriginal places or landscapes identified by an Aboriginal heritage survey prepared by or on behalf of an Aboriginal Land Council, Aboriginal body or public authority and provided to the relevant planning authority, which identifies the area, object, place or landscape as being of heritage significance to Aboriginal culture and people.	Byron LEP 2014 currently contains provisions that are consistent with this Direction.	N/A

S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
2.4 Recreation Vehicle Areas	A planning proposal must not enable land to be developed for the purpose of a recreation vehicle area (within the meaning of the <i>Recreation Vehicles Act 1983</i>): (a) where the land is within an environment protection zone, (b) where the land comprises a beach or a dune adjacent to or adjoining a beach, (c) where the land is not within an area or zone referred to in paragraphs (4)(a) or (4)(b) unless the relevant planning authority has taken into consideration: (i) the provisions of the guidelines entitled <i>Guidelines for Selection, Establishment and Maintenance of Recreation Vehicle Areas, Soil Conservation Service of New South Wales, September 1985</i>, and (ii) the provisions of the guidelines entitled <i>Recreation Vehicles Act, 1983, Guidelines for Selection, Design, and Operation of Recreation Vehicle Areas, State Pollution Control Commission, September 1985</i>.	The proposal does not enable land to be developed for the purpose of a recreation vehicle area.	N/A
3. Housing, Infrastructure and Urban Development			
3.1 Residential Zones	This direction applies when a relevant planning authority prepares a planning proposal that will affect land within: (a) an existing or proposed residential zone (including the alteration of any existing residential zone boundary), (b) any other zone in which significant residential development is permitted or proposed to be permitted. A planning proposal must include provisions that encourage the provision of housing that will: (a) broaden the choice of building types and locations available in the housing market, and (b) make more efficient use of existing infrastructure and services, and (c) reduce the consumption of land for housing and	The planning proposal will affect residential zoned land. The purpose of the LEP amendment is to broaden the potential use of some residential buildings in Byron Shire by permitting short term rental accommodation. This may lead to a reduction in the availability of housing for permanent occupation in some locations. It will not affect the density of residential development. It will give the choice of using a dwelling for permanent or short term rental accommodation if it	Consistent

S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
	associated urban development on the urban fringe, and (d) be of good design. A planning proposal must, in relation to land to which this direction applies: (a) contain a requirement that residential development is not permitted until land is adequately serviced (or arrangements satisfactory to the council, or other appropriate authority, have been made to service it), and (b) not contain provisions which will reduce the permissible residential density of land.	meets the criteria in the LEP. Existing clause 6.6 of Byron LEP 2014 already requires adequate essential services to be available to the land at the time at which consent is granted.	
3.2 Caravan Parks and Manufactured Home Estates	Applies when a relevant planning authority prepares a planning proposal. In identifying suitable zones, locations and provisions for caravan parks in a planning proposal, the relevant planning authority must: (a) retain provisions that permit development for the purposes of a caravan park to be carried out on land, and (b) retain the zonings of existing caravan parks, or in the case of a new principal LEP, zone the land in accordance with an appropriate zone under the Standard Instrument (Local Environmental Plans) Order 2006 that would facilitate the retention of the existing caravan park. In identifying suitable zones, locations and provisions for manufactured home estates (MHEs) in a planning proposal, the relevant planning authority must: (a) take into account the categories of land set out in Schedule 2 of SEPP 36 as to where MHEs should not be located, (b) take into account the principles listed in clause 9 of SEPP 36 (which relevant planning authorities are	This proposal does not seek development for the purposes of a caravan park or manufactured homes estate, nor does it impact upon any land that does permit development for the purposes of a caravan park or manufactured homes estate.	N/A

S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
	required to consider when assessing and determining the development and subdivision proposals), and (c) include provisions that the subdivision of MHEs by long term lease of up to 20 years or under the <i>Community Land Development Act 1989</i> be permissible with consent.		
3.3 Home Occupations	Planning proposals must permit home occupations to be carried out in dwelling-houses without the need for development consent.	This proposal does not alter home occupation provisions in Byron LEP 2014.	N/A
3.4 Integrating Land Use and Transport	Applies when a relevant planning authority prepares a planning proposal that will create, alter or remove a zone or a provision relating to urban land, including land zoned for residential, business, industrial, village or tourist purposes. A planning proposal must locate zones for urban purposes and include provisions that give effect to and are consistent with the aims, objectives and principles of: (a) <i>Improving Transport Choice – Guidelines for planning and development</i> (DUAP 2001), and (b) <i>The Right Place for Business and Services – Planning Policy</i> (DUAP 2001).	The planning proposal will alter the permitted uses on land zoned for residential (and other purposes) where dwellings are permitted. However, it will not alter zone boundary or create a new zoned area. There is unlikely to be any impact on public transport as a result of this planning proposal.	Consistent.
3.5 Development Near Licensed Aerodrome	Applies when a relevant planning authority prepares a planning proposal that will create, alter or remove a zone or a provision relating to land in the vicinity of a licensed aerodrome. The main requirements of the Direction are that Council considers the Obstacle Limitation Surface (OLS) as defined by that Department of the Commonwealth for residential purposes, and does not increase residential densities in areas where the ANEF, as from time to time advised by that Department of the Commonwealth, exceeds 25.	The planning proposal will alter provisions that may affect rural zoned land located in the vicinity of the Tyagarah aerodrome. However, it is about increasing the uses for existing dwellings and will not increase densities or create obstacles in proximity to the aerodrome. Any application in the vicinity of the aerodrome would need to address the issues that relate to this location.	Consistent

S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
4. Hazard and Risk			
4.1 Acid Sulfate Soils	Applies when a relevant planning authority prepares a planning proposal that will apply to land having a probability of containing acid sulfate soils as shown on the Acid Sulfate Soils Planning Maps. A council shall not prepare a draft LEP that proposes an intensification of land uses on land identified as having a probability of containing acid sulfate soils on the Acid Sulfate Soils Planning Maps unless the council has considered an acid sulfate soils study assessing the appropriateness of the change of land use given the presence of acid sulfate soils.	Some land to which this planning proposal will apply may be affected by acid sulfate soils. The planning proposal will not necessarily lead to intensification of land uses proposed on land identified on the Acid Sulfate Soils Planning Maps. Council will consider acid sulfate soils if it receives an application in this location in accordance with cl. 6.1 of Byron LEP 2014.	Consistent.
4.2 Mine Subsidence and Unstable Land	Applies when a relevant planning authority prepares a planning proposal that permits development on land that: (a) is within a mine subsidence district, or (b) has been identified as unstable in a study, strategy or other assessment undertaken: (i) by or on behalf of the relevant planning authority, or (ii) by or on behalf of a public authority and provided to the relevant planning authority.	This proposal does not impact on any mine subsidence area.	N/A
4.3 Flood Prone Land	Applies when a relevant planning authority prepares a planning proposal that creates, removes or alters a zone or a provision that affects flood prone land. A planning proposal must include provisions that give effect to and are consistent with the NSW Flood Prone Land Policy and the principles of the <i>Floodplain Development Manual 2005</i> (including the <i>Guideline on Development Controls on Low Flood Risk Areas</i>). A planning proposal must not rezone land within the flood planning areas from Special Use, Special Purpose,	The planning proposal will not rezone any land. Byron LEP 2014 already contains a flood planning clause that would apply to short term rental accommodation if it were proposed on land that is flood prone. Given that attached dwellings are already permitted in the affected zones, the planning proposal will not permit significant development on flood prone land (beyond that already permitted). The use of dwellings for short term rental	Consistent.

S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
	Recreation, Rural or Environment Protection Zones to a Residential, Business, Industrial, Special Use or Special Purpose Zone. A planning proposal must not contain provisions that apply to the flood planning areas which: (a) permit development in floodway areas, (b) permit development that will result in significant flood impacts to other properties, (c) permit a significant increase in the development of that land, (d) are likely to result in a substantially increased requirement for government spending on flood mitigation measures, infrastructure or services, or (e) permit development to be carried out without development consent except for the purposes of agriculture (not including dams, drainage canals, levees, buildings or structures in floodways or high hazard areas), roads or exempt development. A planning proposal must not impose flood related development controls above the residential flood planning level for residential development on land, unless a relevant planning authority provides adequate justification for those controls to the satisfaction of the Director-General (or an officer of the Department nominated by the Director-General). For the purposes of a planning proposal, a relevant planning authority must not determine a flood planning level that is inconsistent with the Floodplain Development Manual 2005 (including the <i>Guideline on Development Controls on Low Flood Risk Areas</i>) unless a relevant planning authority provides adequate justification for the proposed departure from that Manual to the satisfaction of the Director-General	accommodation is consistent with the Floodplain Development Manual 2005, and there is unlikely to be a net increase in demand for flood rescue services for sites where it is approved.	

S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
	(or an officer of the Department nominated by the Director-General).		
4.4 Planning for Bushfire Protection	Applies when a relevant planning authority prepares a planning proposal that will affect, or is in proximity to land mapped as bushfire prone land. In the preparation of a planning proposal the relevant planning authority must consult with the Commissioner of the NSW Rural Fire Service following receipt of a gateway determination under section 56 of the Act, and prior to undertaking community consultation in satisfaction of section 57 of the Act, and take into account any comments so made. A planning proposal must: (a) have regard to <i>Planning for Bushfire Protection 2006</i>, (b) introduce controls that avoid placing inappropriate developments in hazardous areas, and (c) ensure that bushfire hazard reduction is not prohibited within the APZ. A planning proposal must, where development is proposed, comply with the following provisions, as appropriate: (a) provide an Asset Protection Zone (APZ) incorporating at a minimum: (i) an Inner Protection Area bounded by a perimeter road or reserve which circumscribes the hazard side of the land intended for development and has a building line consistent with the incorporation of an APZ, within the property, and (ii) an Outer Protection Area managed for hazard reduction and located on the bushland side of the perimeter road, (b) for infill development (that is development within an	Some parts of the land to which this planning proposal applies in Byron Shire may be identified as bushfire prone land. This will be a consideration in any application for short term rental accommodation. Early consultation with the Commissioner of the NSW Rural Fire Service resulted in changes to the exempt development provisions as they relate to short term rental accommodation. The provisions now state that "<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>". Where a development application is lodged for short term rental accommodation on land identified as bushfire prone land, the RFS consider it will be Integrated Development under Section 91 of the EPA Act, 1979. Consultation with the Commissioner of the NSW Rural Fire Service following receipt of a gateway determination under section 56 of the Act will take place when the gateway determination has been received. It is assumed that any concerns that RFS may still have can be addressed as the planning proposal proceeds.	Consistent.

S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
	already subdivided area), where an appropriate APZ cannot be achieved, provide for an appropriate performance standard, in consultation with the NSW Rural Fire Service. If the provisions of the planning proposal permit Special Fire Protection Purposes (as defined under section 100B of the <i>Rural Fires Act 1997</i>), the APZ provisions must be complied with, (c) contain provisions for two-way access roads which link to perimeter roads and/or to fire trail networks, (d) contain provisions for adequate water supply for fire fighting purposes, (e) minimise the perimeter of the area of land interfacing the hazard which may be developed, (f) introduce controls on the placement of combustible materials in the Inner Protection Area.		
5. Regional Planning			
5.1 Implementation of Regional Strategies	Planning proposals must be consistent with a regional strategy released by the Minister for Planning.	The planning proposal is largely consistent with the outcomes and actions contained within the Far North Coast Regional Strategy (FNCRS). In particular, the actions related to Economic Development and Employment Growth. The proposal specifically responds to the following tourism related actions: <i>Local environmental plans will ensure that appropriate land is available to provide for a range of tourism experiences and forms of tourism accommodation.</i> <i>Local environmental plans will permit no more than small scale tourism development in rural or environment protection zones.</i>	Consistent.

S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
5.2 Sydney Drinking Water Catchments	Applies when a relevant planning authority prepares a planning proposal that applies to the hydrological catchment.	The proposal is not within this catchment.	N/A
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	The planning proposal must not rezone land mapped as State or regionally significant farmland under the Northern Rivers Farmland Protection Project for an urban use.	No land is proposed to be rezoned by this planning proposal.	N/A
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	A planning proposal that applies to land located on “within town” segments of the Pacific Highway must provide that: (a) new commercial or retail development must be concentrated within distinct centres rather than spread along the highway, (b) development with frontage to the Pacific Highway must consider the impact the development has on the safety and efficiency of the highway. (c) For the purposes of this paragraph, “within town” means areas which, prior to the draft local environmental plan, have an urban zone (eg “village”, “residential”, “tourist”, “commercial”, “industrial”, etc) and where the Pacific Highway speed limit is less than 80 km/hour. A planning proposal that applies to land located on “out-of-town” segments of the Pacific Highway must provide that: (a) new commercial or retail development must not be established near the Pacific Highway if this proximity would be inconsistent with the objectives of this Direction, (b) development with frontage to the Pacific Highway must consider the impact the development has on the safety and efficiency of the highway. (c) For the purposes of this paragraph, “out-of-town” means areas which, prior to the draft local environmental plan,	This planning proposal does not affect commercial or retail uses in proximity to the Pacific Highway.	N/A

S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
	do not have an urban zone (eg “village”, “residential”, “tourist”, “commercial”, “industrial”, etc) or are in areas where the Pacific Highway speed limit is 80 km/hour or greater.		
6. Local Plan Making			
6.1 Approval and Referral Requirements	A planning proposal must: (a) minimise the inclusion of provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority, and (b) not contain provisions requiring concurrence, consultation or referral of a Minister or public authority unless the relevant planning authority has obtained the approval of: (i) the appropriate Minister or public authority, and (ii) the Director-General of the Department of Planning and Environment (or an officer of the Department nominated by the Director-General), prior to undertaking community consultation in satisfaction of section 57 of the Act, and (c) not identify development as designated development unless the relevant planning authority: (i) can satisfy the Director-General of the Department of Planning and Environment (or an officer of the Department nominated by the Director-General) that the class of development is likely to have a significant impact on the environment, and (ii) has obtained the approval of the Director-General of the Department of Planning and Environment (or an officer of the Department nominated by the Director-General) prior to undertaking community	The planning proposal will not include provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority. It does not identify development as designated development.	N/A

S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
	consultation in satisfaction of section 57 of the Act.		
6.2 Reserving Land for Public Purposes	A planning proposal must not create, alter or reduce existing zonings or reservations of land for public purposes without the approval of the relevant public authority and the Director-General of the Department of Planning and Environment (or an officer of the Department nominated by the Director-General).	The planning proposal does not create, alter or reduce land reserved for a public purpose.	N/A
6.3 Site Specific Provisions	Applies when a relevant planning authority prepares a planning proposal that will allow a particular development to be carried out. A planning proposal that will amend another environmental planning instrument in order to allow a particular development proposal to be carried out must either: (a) allow that land use to be carried out in the zone the land is situated on, or (b) rezone the site to an existing zone already applying in the environmental planning instrument that allows that land use without imposing any development standards or requirements in addition to those already contained in that zone, or (c) allow that land use on the relevant land without imposing any development standards or requirements in addition to those already contained in the principal environmental planning instrument being amended. A planning proposal must not contain or refer to drawings that show details of the development proposal.	The planning proposal does not seek to allow a particular development to be carried out. The planning proposal does not contain schematic drawings.	N/A

Section C Environmental, social and economic impact

- 1 Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats will be adversely affected as a result of the proposal?**

No. Although Byron Shire is a biodiversity hot spot with large numbers of threatened species and endangered ecological communities, this planning proposal should not directly affect these if it is implemented properly. A dwelling would normally exist on the subject land. If the proposed activity is minor it will be exempt development. If a Development application is required then Council can (if appropriate) require a thorough ecological assessment to accompany any application consistent with its "Guidelines for Ecological Assessment in Byron Shire".

- 2 Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?**

Environmental impacts, such as managing on-site effluent disposal in a rural setting, can be addressed at the development assessment stage.

- 3 How has the planning proposal adequately addressed any social and economic effects?**

The planning proposal may result in an impact on neighbourhood character over time. This will depend on the extent of take up of short term rental accommodation and the style and location of structures. Council will need to consider this in any DA. The planning proposal will allow dwellings to be used for tourist accommodation as well as normal residential use. This has the potential to provide increased financial support for residents of Byron Shire particularly at peak tourism times.

Section D State and Commonwealth interests

- 1 Is there adequate public infrastructure for the planning proposal?**

The additional use is based on existing dwellings which typically would be adequately served by water and sewerage or on-site sewage management. Power and telephone will usually be linked to the existing dwelling (if not also self-sufficient, eg solar or mobile phone). Section 94 contributions may be applicable to development applications for short term rental accommodation but this will need to be considered against the contributions previously paid for any site and will be a future decision for Council.

- 2 What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?**

Commonwealth public authorities have not been formally involved in this particular planning proposal as it is yet to receive Gateway Approval. At this early stage it appears unlikely that there will be any issues of interest to Commonwealth authorities.

A Discussion Paper was circulated locally and then a Draft Short Term Holiday Accommodation Strategy was circulated more widely in late 2014. The Rural Fire Service made a submission as did the Department of Planning and Environment. The proposed exempt provisions have been amended to align with the RFS views on bushfire prone land. The Department's views have been considered and also influence the proposed LEP clauses.

The following table provides a summary of the relevant public authorities, which in the opinion of Council, should be consulted in accordance with the Gateway Determination:

Public authority/stakeholder	Issue requiring comment
NSW Rural Fire Service	Section 117 of the <i>Environmental Planning and Assessment Act 1979</i> , Ministerial Direction 4.4 to consult with the Commissioner of the NSW Rural Fire Service.

Part 4 Mapping

The planning proposal does not involve any map amendments.

Part 5 Community consultation

Council will commence community consultation in accordance with the Gateway Determination. For the purposes of public notification, the planning proposal is not considered to be low impact as outlined in the Department of Planning and Infrastructure's, *A guide to preparing local environmental plans*, and a **28 day public exhibition period** is recommended.

Notification of the exhibited planning proposal will include:

- a newspaper advertisement that circulates in the Byron LGA, which is the area affected by the planning proposal
- the website of Byron Shire Council and the Department of Planning and Environment.

Part 6 Project timeline

The proposed timeline for the completion of the planning proposal is as follows:

Estimated completion	Plan making step
July 2015	Gateway determination issued by Department of Planning and Environment.
August 2015	Public exhibition of planning proposal. Government agency consultation.
September 2015	Analysis of public submissions. Preparation of Council report.
October 2015	Public submissions report to Council.
November 2015	Endorsed planning proposal submitted to Department of Planning and Environment for finalisation or dealt with by Council under delegation.

Summary and conclusions

Byron Shire Council has initiated a planning proposal to modify its 2014 LEP to permit short term rental accommodation either with consent or as exempt development.

The preferred method to achieve this will be to add a new local provision (clause 6.10) and to amend the exempt provisions in Schedule 2.

The planning proposal is consistent with the Far North Coast Regional Strategy and SEPPs. It is also consistent with section 117 Directions.

It is not considered that this planning proposal raises any issues that require further studies or detailed assessment.

Appendix 1
Short Term Rental Accommodation Action Plan
(BSC#E2015/28038)



Short Term Rental Accommodation Action Plan



Document History

Doc No.	Date Amended	Details Comments eg Resolution No.
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.	Council 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. Time frame: May to December 2015. Cost: existing budget
	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. 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.	
	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. 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>	
	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.	Council prepares the relevant DCP amendments, publicly exhibit and report to Council as required under the EPA Act 1979 and Regulation 2000 Time frame: May to December 2015. Cost: existing budget
	2b. Chapter D3 Tourist Accommodation: i. include new clause D3.3.8 Short Term Rental Accommodation, as detailed below, ii. amend clause D3.3.7 Serviced Apartments to include prescriptive measures, as detailed below, iii. amend clause D3.3.2 Bed and Breakfast Accommodation to enable 5 bedrooms and 10 guests.	
	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. 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.	Council's Development Assessment and Compliance Section with IT. Timeframe: May to September 2015. Cost: development of the register may require additional funding. If required this will be reported to Council post the scoping analysis.
	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.	Council's Environment and Economic Planning Section and Development Assessment and Compliance Section



Action	What	Who / When / Cost
		within the Sustainable Environment and Economic Directorate Timeframe: Ongoing Cost: existing budgets
5. Compliance	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.	Council's Development Assessment and Compliance Section within the Sustainable Environment and Economic Directorate Timeframe: Ongoing Cost: funds may be required to provide additional resources
	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	Land Owner or appointed property manager Timeframe: Ongoing
	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. In the event that the land owner or appointed property manager does not respond to the complaint, neighbours should call the police or Council.	STRA neighbours Timeframe: Ongoing
6. Holiday Rental Code of Conduct	6a. Council acknowledges that the Holiday Rental Code of Conduct was developed by a consortium of stakeholders.	Council Timeframe: April 2015 Cost: existing budget
	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	
	6c. Council reference the Holiday Rental Code of Conduct endorsed by NSW Department of Planning and Environment (DoPE) in the planning	



Action	What	Who / When / Cost
	controls. 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>	
7. Moratorium	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. The moratorium is for applying to use the dwelling for STRA. Complaints relating to noise or amenity issues are not covered by this moratorium. 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.	Council Timeframe: one year post gazettal of the LEP amendment Cost: existing budgets
8. Develop information sheets and website content	8a. Develop information sheets to assist land owners, property managers and neighbours understanding of the planning controls 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.	Council Timeframe: prior to LEP amendments being gazetted Cost: existing budgets
9. Develop sign template	9a. Develop an A3 signage template for use by landowners/managers in accordance with the planning controls	Council Timeframe: prior to LEP amendments being gazetted Cost: existing budget
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. 10b. Review the effectiveness of planning controls within 18months of their	Council Timeframe: April 2016 Cost: existing budgets Council

Action	What	Who / When / Cost
controls	gazettal.	Timeframe: 18mths post gazettal of planning controls Cost: 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	Council Timeframe: prior to LEP amendments being gazetted Cost: 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> <i>I. The maximum number of occupants is 10</i> <i>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"> <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>>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 m² 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
	<i>the hours of 10pm and 8am,</i> <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>



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
(1) <i>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 (1) <i>The objective of this clause is to require development consent for the temporary use of a dwelling as short term rental accommodation,</i>
(2) <i>The subject dwelling 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>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 (3) <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,</i>
	(4) <i>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>
(4) <i>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 (5) <i>Despite any other provision of this Plan, development consent may be granted for the use of a dwelling as short term rental accommodation,</i>
(5) <i>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 (6) <i>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 teepees) 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

Table 8: Car Parking Rates										
Land Use	Car parking	Bicycle Spaces								
Short Term Rental Accommodation	<table><tr><th>No. of bedrooms</th><th>Parking</th></tr><tr><td>1-2</td><td>1 space</td></tr><tr><td>3-4</td><td>2 spaces</td></tr><tr><td>>5</td><td>3 spaces</td></tr></table>	No. of bedrooms	Parking	1-2	1 space	3-4	2 spaces	>5	3 spaces	No specific rates
	No. of bedrooms	Parking								
	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 90 days 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 30 minutes.

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

