

Report No. 13.21 Update - Impacts of and management options for short term rental accommodation (STRA) in Byron Shire

Directorate: Sustainable Environment and Economy

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Summary:

Council has had many reports on the impacts of and management options for short term rental accommodation (STRA) in Byron Shire. The most recent:

Report No. 13.27 PLANNING - Draft Planning Controls for Short Term Rental Accommodation in response to Ministerial Direction 3.7 Reduction in non-hosted rental accommodation period to the December 2019 Ordinary Meeting of Council.

https://byron.infocouncil.biz/Open/2019/12/OC_12122019_AGN_1002.PDF

Followed by: **Report No 13.12 - PLANNING - 26.2020.1.1 - Planning Proposal for Short Term Rental Accommodation to the 20 February 2020 Planning Meeting.**

https://byron.infocouncil.biz/Open/2020/02/PLAN_20022020_AGN_1151.PDF

At the February planning meeting, Council resolved to prepare and submit a planning proposal to Department of Planning, Industry and Environment (DPIE) for gateway determination. This occurred in March 2020.

The purpose of this report is to update: Council on the status of the planning proposal, the recent announcements by State Government on the STRA code of conduct and the state planning controls for STRA, and to seek support for amendments to the planning proposal to enable a gateway determination to be issued by the DPIE.

RECOMMENDATION:

That Council:

1. **Notes the update provided on the status of the planning proposal and state management options for short term rental accommodation in Byron Shire.**
2. **Agrees to amend the planning proposal to include precinct areas that permit non hosted STRA for 365 days in those areas that have already been taken up almost exclusively for STRA, and 90 days for those areas that have not. These precinct areas are shown in the maps in Attachment 1(#E2020/89860).**
3. **Authorises staff to submit an amended planning proposal to the Department of Industry and Environment for Gateway determination that satisfies item 2.**
4. **Pending gateway determination, undertakes public exhibition of the planning proposal and consult with government agencies in accordance with the gateway determination; and**
5. **Receives a report outlining the public exhibition outcomes.**

Attachments:

- 1 STRA maps - 365 day areas, E2020/89860

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REPORT

Current status of the planning proposal

5 At the February planning meeting, Council resolved to prepare and submit a planning proposal to DPIE for gateway determination. This occurred 10 March 2020.

10 However, in March the real time impacts of the COVID 19 pandemic hit Byron Shire. Various states of community lockdown and state border closures meant that almost all domestic travel demand went into hibernation, along with large components of the economy. More than 60% of businesses in Byron Shire relied on Job Keeper to stay afloat. This is the highest in any local government area in Australia and double the number in capital cities.

15 Housing security and affordability continued to be a major concern for community and key workers trying to maintain an existence without employment; which was not helped by STRA in Byron Shire being promoted for self isolation for return travellers prior to hotel quarantine.

20 In June 2020, Council received a letter from the DPIE, advising that a preliminary assessment of the planning proposal had indicated inconsistencies with either the Ministerial Direction 3.7 – Reduction in non-hosted short-term rental accommodation period or the draft short-term rental accommodation SEPP.

25 Council was asked for further clarification on the following aspects of the Planning Proposal prior to the DPIE finalising its assessment:

- further direction from Council on whether it is seeking to incorporate a savings provision for properties currently being used for non-hosted STRA purposes and, if not, the implications for any existing landowners and whether they would be able continue their existing practices despite the introduction of the new requirements;
- an economic analysis that evaluates and considers the impacts on the tourism industry and long-term rental housing market if landowners are required to limit the use of their non-hosted STRA to 90 days or less;
- further clarification on the intention for any new STRA provisions in Byron LEP 2014 to override any STRA SEPP as it applies to Byron Council.

40 An economic impact analysis can be a costly consultancy to engage at the best of times, but more so when the project parameters of it are so broad, and the environment in which it is sought so volatile. As such further clarification from the DPIE was requested on a scope of analysis that would satisfy their request for information. Council had already provided a sizeable amount of data and commentary when it submitted the planning proposal to them and was certain that this was sufficient to meet the Ministerial direction.

45 Several emails and phone conversations with the DPIE have since followed. Asking in particular:

- Does the Department require detailed analysis of each town/village in the Shire, or is a general analysis of impacts across the whole Shire sufficient?
- Considering 'impacts on the tourism industry', should the study focus only on direct impacts on the STRA sector, or should it have a broader scope covering impacts on all local industries/businesses that are directly or indirectly related to tourism.
- Having regard to 'impacts on the long term rental housing market', should the study focus only on economic impacts for property owners (i.e. changes in rental returns between short

and long term rental markets)? Or, is a more detailed analysis required looking into the usage of properties and the potential for increased long term rental supply under a 90 day cap scenario.

- 5 • The draft STRA SEPP includes a 180 day cap on non-hosted STRA for LGA's in the Greater Sydney Region and certain other regional LGA's. Would it be useful to include a comparison of different scenarios for day caps (i.e. 0 days, 90 days, 180 days, etc.) to demonstrate the difference in economic impact between Council's PP and the draft SEPP?

10 The most recent response from the DPIE when pressed is, that they are considering commissioning advice from an external consultancy about the potential economic impact of the state wide STRA framework. That part of the brief to the consultant will be to provide Council with information about the detail and scope required for our Byron specific study.

15 The DPIE would be in contact with Council in the near future with details.

Other recent advice from the DPIE is that it is not going to introduce a savings provision into the SEPP. DPIEs view is that STRA is captured by an existing consent for a dwelling and is not a change of use.

20 Council's view is that the use of a dwelling for STRA would in most cases be characterised as tourist and visitor accommodation. Tourist and visitor accommodation is prohibited in residential zones under Byron Local Environmental Plan 2014, which raises implications for the legality of many dwellings predominantly used for STRA in Byron Shire at the current time.

25 At the time of writing this report no further advice had been received from DPIE on the details of their consultancy.

Code of Conduct and the State planning controls for STRA

30 An (unexpected) recent announcement by the state government was that laws via a mandatory code of conduct will impose new obligations on STRA booking platforms, hosts, letting agents and guests from 18 December 2020.

35 <https://www.fairtrading.nsw.gov.au/about-fair-trading/legislation-and-publications/changes-to-legislation/changes-to-short-term-rental-accommodation>

40 The code however does not change the existing complaint handling processes for NSW Police or local councils about issues or complaints relating to fire safety (including overcrowding), planning approvals, parking or ongoing noise.

There will also be changes to planning laws in mid-2021, including a new planning policy that applies consistent regulation of the use of premises for short-term rental accommodation across the whole state of NSW.

45 Advice issued also was that a STRA premises register is currently under development for commencement in mid-2021. Hosts will be required to register their premises **once that obligation is mandated** by the Department of Planning, Industry and Environment **and the register itself becomes available online.**

50 In the meantime the public health orders remain, and affect holiday rentals and holiday homes by imposing limitations on the number of persons who can be on the premises. STRA providers are required to ensure the maximum number does not exceed 20 persons.

In short the code without the planning law changing and the registers in place provides little comfort to our community on the operation of STRA accommodation in Byron Shire.

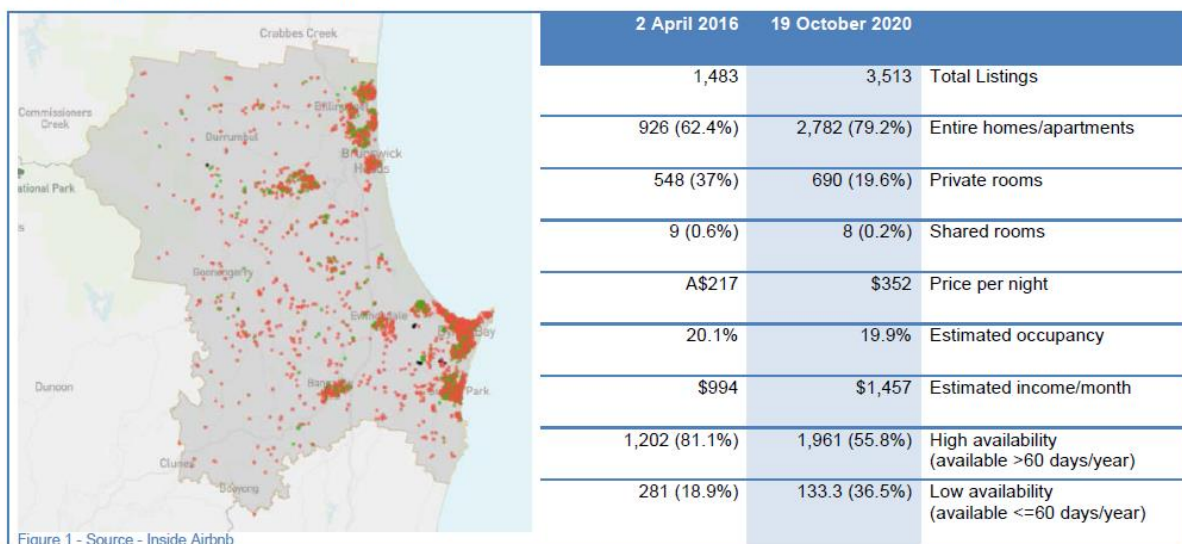
Suggested amendments to the our planning proposal to move it forward

5 With the above in mind, it is critical that Council progress its STRA planning proposal prior to any STRA SEPP coming into effect, as unless the DPIE agree to exclude Byron Shire from the STRA SEPP until our local planning controls are notified it will be for nought.

10 This has been a previous request of them.

From a community impact perspective, the numbers of STRA properties online have now returned to higher than pre COVID times, and most are booked for the 20/21 holiday season and beyond. There are many stories circulating about displaced local families, individuals and key workers
15 being evicted from local housing the result.

Extent of Airbnb listings within the Byron Shire



20 As reported to Council in February, after considering community feedback and the results of further research, Council opted for a more simplified approach for STRA that seeks **to introduce a 90 day limit for non-hosted STRA in all areas as an initial planning control response**. The reason for this is that a proposed precinct model apart from being difficult to define in Byron Shire with hard boundaries, if done, has the potential to create an unequal distribution of benefits and burdens across the community.

25 We also seek **to introduce a 'zero (0) day cap' on Council managed land and new release areas identified in a strategy**. The reason for this was to address our housing deficit (the result of STRA occupations) necessary to achieve strategic planning objectives for residential dwelling targets and to meet the needs for permanent housing stock for our resident community and key
30 workers. This also has not been accepted by the DPIE.

To be clear the Ministerial Planning Direction was issued to address the **high concentration and unique impacts of STRA in the Byron Shire**.

35 The Direction allows Council to reduce non-hosted short-term rental accommodation to a minimum of 90 days per calendar year, as long as there is a sound base of evidence to support the proposed changes.

The Ministerial Direction gives Council the opportunity to implement local planning rules for STRA, rather than being subject to the planning rules in the SEPP.

The following principles needed to be addressed:

- non-hosted short term rental accommodation periods must not be reduced to be less than 90 days
- the reasons for changing the non-hosted short-term rental accommodation period should be clearly articulated
- there should be a sound evidence base for the proposed change, including evidence of the availability of short-term rental accommodation in the area (or parts of the area) in the 12 months preceding the proposal, relative to the amount of housing in the area, and trend-data on the availability of short-term rental accommodation over the past 5 years.
- the impact of reducing the non-hosted short-term rental accommodation period should be analysed and explained, including social and economic impacts for the community in general, and impacted property owners specifically.

What is clear from the our research and current observations is that Byron Shire is a hotspot of activity for STRA in NSW and the sector continues to stay strong. Regulation through the planning system is needed to manage the impacts on residential amenity and to prevent further erosion of an already limited and expensive housing supply.

The DPIE has made it clear that it is not supportive of the proposed zero day areas applying to council owned and managed land or release areas, and is unlikely to support a blanket 90 day cap for non-hosted STRA in all areas of the Shire without further economic impact analysis.

So, where does this leave us?

It is recommended that **Council agree to amend the planning proposal submitted to permit non hosted STRA for 365 days in those areas that have already been taken up almost exclusively for STRA, and 90 days for those areas that have not. These are shown as precinct areas in the attached maps.**

Further discussion with the DPIE is still needed on the merits of a zero day cap for STRA on Council owned and managed land and new release areas identified in a strategy. This can be progressed separate to this planning proposal.

Recommendation

- It is recommended that a revised draft planning proposal be prepared by staff, based on the precinct model described in the report and maps.
- The planning proposal is submitted to the Department of Industry and Environment for gateway determination.

STRATEGIC CONSIDERATIONS

Community Strategic Plan and Operational Plan

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 4: We manage growth and change responsibly	4.1	Support the visions and aspirations of local communities through place-based planning and management	4.1.3	Manage development through a transparent and efficient assessment process	4.1.3.10	Prepare a Planning Proposal to enable precinct based Short Term Rental Accommodation.

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Financial Considerations

Given the high number of STRA properties operating in the Shire, it is likely that additional compliance resources may be required to implement the new framework. Council will need to consider resource implication of the new controls and the compliance team work priorities.

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Consultation and Engagement

Subject to gateway determination issued by the DPIE.