

15 November 2018

Director, Housing Policy
Department of Planning and Environment
GPO Box 39 Sydney NSW 2001

Dear Sir/Madam

Subject: Submission - Short Term Rental Accommodation EIE - Lake Macquarie City Council

Thank you for the opportunity to provide comment on the Short term rental accommodation Explanation of Intended Effect. This submission is provided by Council staff.

Lake Macquarie City Council welcomes the release of the Explanation of Intended Effect. This document assists to provide clarity on how the proposed planning legislation for short term rental accommodation (STRA) may be enacted and affect Council and STRA hosts. STRA is a concern that faces not only Lake Macquarie Council and its constituents, but also many other Council areas across NSW.

As per our submission to the Options Paper released in 2017, Council staff sees that STRA is currently regulated in a piece meal manner through the planning system and there is value in having a more standard approach. Council staff generally supports the findings and recommendations of the Parliamentary Inquiry released in October 2016. Similarly, we agree with the NSW Government, that STRA provides significant economic benefit to the NSW and Lake Macquarie economy. It also has the potential to generate substantial detrimental impacts on the community if not adequately managed.

Background

Council has been working with the Department of Planning and Environment for some time regarding the regulation and certainty around the permissibility of STRA. This included the drafting of an amendment to the Lake Macquarie Local Environmental Plan 2014 (LMLEP 2014) to regulate this land use.

Some of the approaches included in the amendment, were:

- To require development consent required for dwellings with five or more bedrooms intended for short-term holiday letting use;
- That written documentation be provided to guests outlining terms and conditions of letting the property, including maximum number of guests, correct waste disposal and identification of vehicle parking areas; and
- Signage clearly displaying the contact details of the owner or property manager, should disturbances to the amenity of the neighbourhood occur.

Our Ref: F2014/01451/03 Your Ref:

The LEP amendment has been placed on hold pending further progress of the options paper, community feedback, and the Government's regulatory response.

Council made a submission to the Parliamentary Inquiry into the adequacy of short-term holiday letting in NSW by the NSW legislative Assembly Committee on Environment and Planning in 2016. Our submission advocated for a state-wide definition as well as policy and planning guidance for managing short-term accommodation in NSW.

Council also made a submission to the short term holiday letting Options Paper in October 2017. Our submission advocated for the use of the term 'short-term rental accommodation' instead of the term 'short-term holiday letting', the requirement for a registration or licensing system, creation of a fact sheet, maximum exempt use at 90 days and the requirement of signage for dispute management at property entries.

Comments on Explanation of Intended Effect

Use of the term 'Short Term Rental Accommodation'

The use of the term 'Short-term Rental Accommodation (STRA)' is much more reflective of the use of these dwellings. The definition also now includes clarification that it is not the same as tourist and visitor accommodation. Council is supportive of this change from short-term holiday letting.

Restriction of STRA

STRA is proposed to be permissible as either exempt development or complying development, depending on whether a host is present on the site and the bushfire rating of the dwelling. This use is proposed to be permissible for all approved dwellings, excluding boarding houses, seniors housing and group homes. This does not include manufactured housing which is often developed as over 55s living estates, nor does it consider heritage buildings or precincts.

If a Council chooses to reduce the number of days to less than 365, it does not appear that there are any options for dwelling owners to apply to have their property approved to provide STRA for more than the specified days.

The proposed controls for STRA accommodation, limits the number of bedrooms to 6 and a maximum number of guests to 12.

The proposed controls also state that it is proposed that dwellings will not be able to be let for STRA to unrelated parties at one time, This does not take into account properties where a host may choose to let out individual rooms.

Recommendation

STRA proposed for dwellings produced under the SEPP No 36 – Manufactured housing, and dwellings that are heritage listed or within a heritage conservation area, require development consent to permit this use.

Ensure owners wishing to lease their property as STRA can lodge a development application to Councils who restrict operations to less than 365 days, or who wish to lease more than 6 bedrooms or to more than 12 guests.

Permit the letting of rooms to unrelated guests, if a host is present onsite overnight. To ensure the safety of guests, this should allow related guests to share a room, but not permit unrelated guests to share a room.

Bushfire Restrictions

A large proportion of the Lake Macquarie local government area is bushfire prone. This can be seen in the bushfire prone map of Lake Macquarie (below).

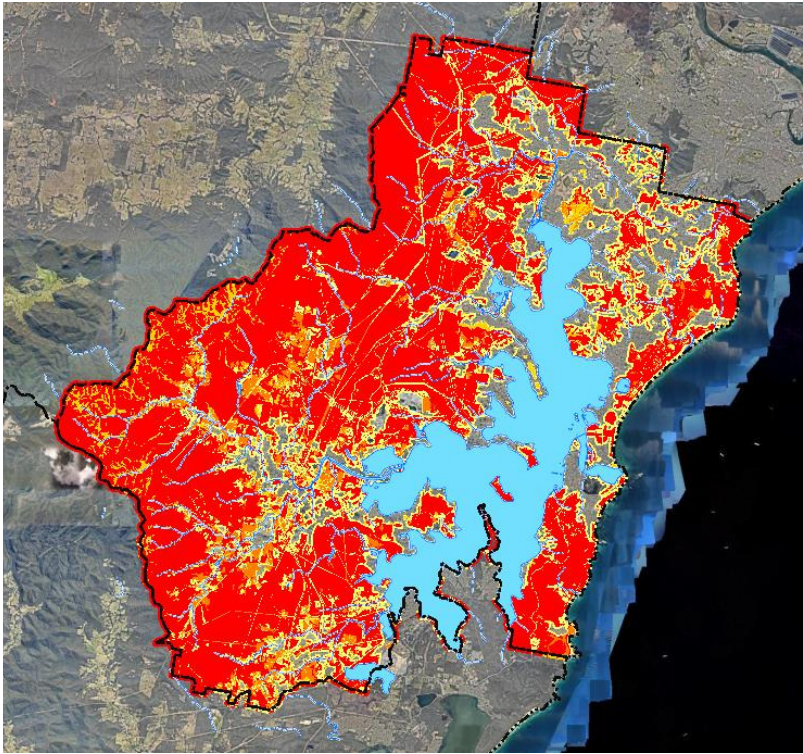


Figure 1 Bushfire prone areas in Lake Macquarie

This bushfire prone area covers a large proportion of Lake Macquarie's STRA offerings. The spread of available STRA in Lake Macquarie is included below.

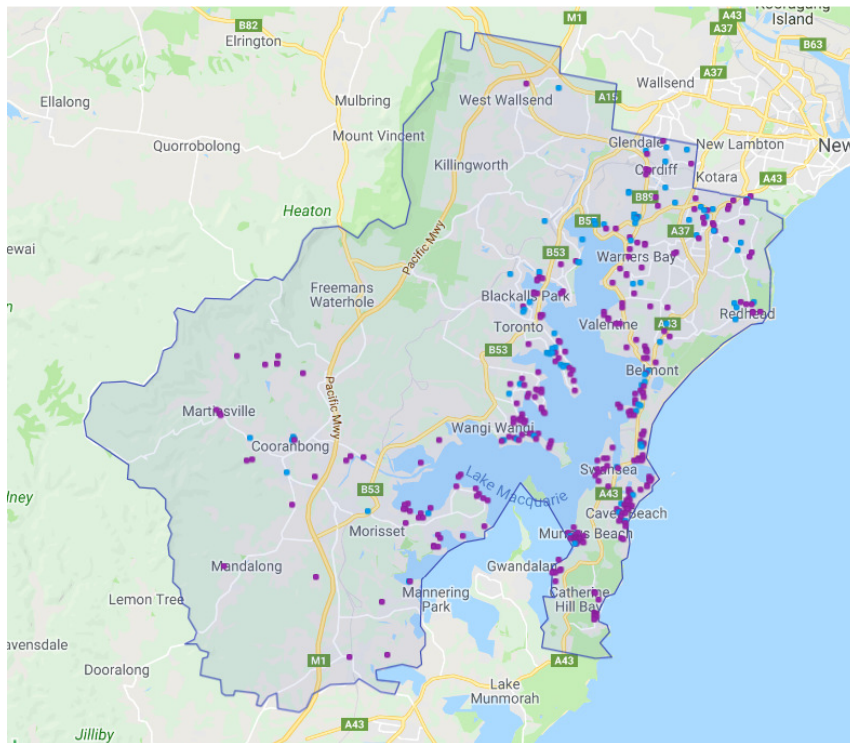


Figure 2 Available STRA in Lake Macquarie

The proposed solution, stated in the Explanation of Intended Effect, requires properties in bushfire prone areas, where a host will not be on-site, to be assessed under complying development. This has implications for Council for resourcing to facilitate the anticipated influx of applications from property owners. This requirement may also have negative economic effect to these owners and the community whilst they are awaiting approval.

Recommendation

If the proposed solutions are adopted, that a 12 month grace period be applied to allow existing properties to apply as complying development if required. This will give time to owners to organise the required documentation for an application, as well as give them time to ensure their properties meet any additional requirements. For Councils, it gives the departments and officers who will be responsible for assessing complying development applications, time to resource their teams and staff, whilst also not forcing a sudden influx of work in a very limited period.

Requiring STRA on a property that is on bushfire prone land to apply as complying development should be reconsidered. This is due to some properties having small areas of bushfire prone land within the property, but that do not reach the dwelling. Council recommends that this should be amended to STRA dwellings on bushfire prone land required to apply as complying development. STRA dwellings not on bushfire prone land, be permissible as exempt, even if part of the property does have bushfire prone land within the lot.

Clarification on the permissibility of STRA as exempt development is recommended. This is proposed in stating that “STRA is exempt development if host is onsite overnight, whether or not the property is on bushfire prone land”.

Timeframe restrictions

The Explanation of Intended Effect states that STRA will be permissible 365 days a year, where the host is present, and for Councils outside of the Greater Sydney Region, between 180 and 365 days per year where a host is not present. This is proposed to cover an entire local government area, across the entire calendar year.

This proposal does not take into account local issues, particularly the issue of party houses, and does not recognise the distinct variations within local government areas. A local example of this is the variation of offerings in Martinsville and Caves Beach, two suburbs within Lake Macquarie. Properties in Martinsville are predominately large dwellings on large bush lots. These properties can cater for large groups and can be popular as party houses as they are perceived to be less likely to receive complaints from neighbours about noise. Caves beach properties are much smaller dwellings or units, situated close together in an urban area. These properties often have issues with parking availability and potential for noise complaints due to the higher density of development around the dwelling. Caves beach is particularly popular over summer due to its proximity to the beach. Having a blanket time restriction does not address the different issues that these two suburbs face.

Recommendation

Provide councils the ability to decide to restrict the number of days where STRA is exempt development where a host is not present to less than 180 days per year. This would reduce the impact on neighbours of certain STRA being used as a ‘party house’.

Allow councils to set restrictions for individual suburbs where required. This should also consider allowing time of year restrictions, such as November to February to ensure that not all dwellings are STRA, and suitable accommodation is available to support the local population.

Change of building classification:

Premises that will be used as short-term rental accommodation may change the classification of the building from Class 1a to Class 1b, under the requirements of Part 1.3 of Volume Two of the Building Code of Australia of the National Construction Code 2016. It is our understanding that it is a requirement to obtain a Complying Development Certificate, instead being exempt development, this could expose the NSW Government and Local Council's to the risk of buildings not complying with fire safety requirements. In this regard it is noted that use of a premises as Bed and Breakfast accommodation requires Complying Development Certificate under Part 4A Division 1 Subdivision 1 of the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008. The change in building classification will mean that the building is then subject to the Annual Fire Safety Statement process as per clause 175 of the Environmental Planning and Assessment Regulation 2000.

Recommendation

As this use is perceived to be a change in the building classification, it is recommended that this use be regulated and certified through a complying development certificate. Alternatively, this should be addressed in SEPP (Exempt and Complying Codes) 2008, to clarify the requirements for STRA compared to Bed and Breakfast premises.

Under the Building Code buildings that are Class 1b are required to have an Annual Fire Safety Statement. Council recommends that owners or hosts of STRA are to register each dwelling used for STRA with Council, to ensure that inspections are undertaken.

Fire Safety measures:

The proposed fire safety measures include additional smoke alarms in each bedroom, as well as emergency lighting connected to these systems. As STRA is proposed to be exempt in some cases, the implementation of this is difficult to confirm.

Having these systems is also only one measure to help protect occupants from the danger of fire. There are also relatively cheap inclusions that should be considered as part of a solution. These could include fire blankets or extinguishers.

Recommendation

The installation of the fire safety measures of evacuation lighting and additional smoke alarms in accordance with Parts 3.7.2.4 and 3.7.2.5 of Volume Two of the Building Code of Australia of the National Construction Code 2016, should be certified by an A1 or A2 Accredited Certifier and a Fire Safety Schedule submitted to the local Council.

Council also recommends the provisions of a fire extinguisher and fire blanket to be provided adjacent to kitchen facilities in all premises used for short-term rental accommodation.

Disability access:

Permitting STRA changes the classification of the building under the Building Code of Australia, from a Class 1a to a Class 1b. Class 1b buildings may require additional considerations for disability access, if they contain four or more bedrooms.

Recommendation

The proposal may cause an increase in claims under the Disability Discrimination Act 1992, as there is no mention of upgrading to provide access for people with accessibility issues. This should be reviewed to ensure consistency with the Building Code of Australia.

Mandatory Code of Conduct

The Code of Conduct is to be produced by the Department of Industry, with input being provided from hosts, tourism bodies and other relevant stakeholders. This code of conduct is proposed to include a two strike policy for operators, to reduce the impact of noise and antisocial behaviour that is sometimes affiliated with STRA. This code is to be easily accessible to owners and users of STRA, neighbouring residents and other parties. Council is supportive of this code to ensure clarity to STRA hosts, guests and the general public.

If a host receives two strikes they will be excluded from listing STRA for a period of five years. This does not take into account local issues with certain properties that may occur despite efforts from a host. It also does not take into account multiple owners changing who the host is for a troublesome property.

Currently, there is no requirement for STRA to be advertised through signage or other means to neighbours. Without neighbours knowing that a dwelling is operating as STRA this may see complaints regarding noise or antisocial behaviour being directed to police or Councils and may not see a property receiving a strike under the code of conduct.

There is concern among staff as to the compliance regulation with regards to STRA. As the Code of Conduct is being developed by NSW Fair Trading and is listed under the Fair Trading Act, it is of Council's opinion that compliance and regulation should be carried out by NSW Fair Trading and not local councils.

Recommendation

Exclusions should be placed against a property and not a host. This will assist to close the loophole of related parties changing who is the host for problematic properties.

If a property receives a five year exclusion from STRA, that this is required to be disclosed if a property is sold within the exclusion period.

That all STRA dwellings either require a sign at the entry to the premise stating that it is STRA with a contact number for any complaints or emergencies, or that a central database with all registered STRA is created. A database would be best to be developed with host websites such as AirBnB, through an automated system that creates a registration when an owner lists the dwelling on a website. At the registration of a dwelling, the neighbouring properties are automatically notified with a letter that states the point of contact for complaints or in an emergency.

Further information regarding the proposed Code of Conduct be released for consideration, before any proposed changes to planning legislation are made final.

Summary of Recommendations

In response to the potential regulations and controls, Council recommends the following for consideration:

- STRA requires development consent for dwellings created under SEPP No 36 – Manufactured Housing, or for dwellings that are heritage listed or within a heritage conservation area.
- Permit the letting of dwellings to unrelated parties where a host is present
- Ensure development applications can be lodged to Council to provide an option for owners of STRA who wish to lease larger dwellings or longer than the listed time limits.
- A 12 month grace period to lodge applications for STRA be applied following the introduction of these regulations
- STRA be permitted as exempt development where a dwelling is not on bushfire prone land, even if part of the property is.

- Review the choice of 180 as a minimum amount of days a Council can restrict STRA to.
- Review consistency with the Building Code of Australia and require an Annual Fire Safety Statement for STRA
- Require installation of smoke detector and lighting systems be certified by an accredited certifier
- If a Council chooses to reduce the number of days from 365, that this can be done at a suburb level, rather than it be the same for an entire local government area.
- STRA time restrictions can be timeframe specific, to ensure adequate accommodation is available for local residents during seasonal travel periods.
- STRA is required to have a sign at the entry to the property listing it as STRA with contact details for complaints or in an emergency, OR
- A STRA database is created of all STRA, which is automatically updated when a property is registered with a host website, which automatically notifies neighbours.
- The Code of Conduct should apply strikes and exclusions to properties not hosts
- Further information about the Code of Conduct be released for comment prior to any changes to the planning legislation be finalised.

Should you require further information, please contact Council's Strategic Landuse Planner, Samantha Hardie on 4921 0492.

Yours faithfully



Wes Hain

Manager Integrated Planning