

Short-Term Letting in Strata

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This fact sheet outlines proposed changes to the NSW regulatory framework announced in June 2018 and the further changes released in August 2019. The new strata by-law power commenced on 10 April 2020. It is for information only. It does not constitute legal advice.

Changes to the Planning System

In June 2018, proposed changes to the state-wide planning system were announced that will allow all private residential dwellings in NSW to be used “wholly or partially” for short-term letting for holiday and other visitor purposes. This type of use will be recognised as a commercial activity and classified as “short term rental accommodation” (STRA). However, it will be treated as a *residential use* and permitted in all dwellings and in all residential zones.

The intention is to declare STRA an “exempt development”, which means that the consent of the Local Council will not be required provided certain fire safety standards are met. If the dwelling is located on bush fire or flood prone land there must be a complying development certificate from Local Council (or a private certifier).

The “short term rental accommodation arrangement” will be a contract that gives a person the right to occupy “residential premises” for any period up to 3 months (consecutively). The STRA could be a night, a few days or a few weeks at a time. The proposed changes were originally set out in the Explanation of Intended Effect: Short Term Rental Accommodation Framework published in August 2018.

Host Present and Host Not Present

Two types of STRA are proposed: “Host Present” and “Host Not Present”:

- Host Present STRA, namely, where the owner or tenant remains in the premises, can be conducted for 365 days a year in all parts of NSW.
- Host Not Present STRA, namely, an entire apartment or house rented out, “capped” at 180 days a year in the Greater Sydney Region;
- areas outside of Sydney, Host Not Present STRA will be permitted 365 days of the year unless the Local Council applies for the lower 180-day limit.
- Byron Shire Council will be permitted to apply to the Minister for a 90-day cap.

In August 2019, the Department of Planning exhibited for public comment a package including the Draft State Environmental Planning Policy (SEPP) for Short-Term Rental Accommodation (STRA). The major features of the package are:

- Existing development consent conditions prohibiting un-hosted short term letting will be unenforceable;
- Un-hosted short term lets for 21 days (or successive periods of 21 days) will not be included in the 180 day ‘cap’;

- Individual rooms will be able to be let to different un-related people; and
- An operator will be able to apply to the Local Council for development consent to conduct un-hosted STRA in any type of dwelling with no “cap”;
- Homes for people on lower incomes protected under the Affordable Rental Housing SEPP will not be protected.

“Host” could be an overseas or interstate investor or a ‘tenant’ with multiple leases sub-letting properties exclusively for STRA. The policy allows an unlimited number of apartments in a scheme to be converted to tourism dispersed among residents.

Local Government will lose strategic planning control over both housing and the tourist economy in their local area.

STRA Register

The Discussion Paper released in August 2019 suggested that there might be an ‘industry led’ register. Stakeholders have rejected the ‘industry led’ option but there must be a register because without a register there will be major enforcement issues for the new regime.

Code of Conduct

The Draft Code of Conduct for the Short-Term Rental Accommodation Industry is part of the package. “Hosts” must notify the owners corporation that an apartment or townhouse will be used for STRA and have public liability insurance. The “Guest” must not cause noise, nuisance or damage to common property. The Code will use warnings and directions.

If there are two proven “serious breaches” this could lead to a person being excluded from the “Industry” for 5 years. The Commissioner for Fair Trading will administer the Code.

Impact on Owners and Tenants

Over recent years, illegal STRA that breaches development consent conditions, by-laws and residential zoning has been facilitated by global platforms, like Airbnb. The social impact on residents has already been enormous. Short-term letting hollows out communities and enables commercial “Hosts” to dominate strata committees, displacing resident owners and tenants and preventing residents from dealing with loss of security, amenity and extra costs.

The volume and intensity of transient occupation in strata schemes is degrading the quality of life for residents, the value of their homes and impacting on costs. The loss of housing and pressure on vacancy rates has been well documented.

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“No Short-Term Letting By-law”

In 2018, the Parliament passed an amendment to the Strata Schemes Management Act 2015 (NSW) to insert new section 137A. The amendment clarifies that an owners corporation can adopt a by-law to prohibit STRA in lots that are NOT the “principal place of residence” of the Host. New section 137A commenced on 10 April 2020. Like all by-laws, it must be adopted by special resolution.

In 2019, OCN commissioned a strata lawyer with experience in short stay issues to draft a pro-forma by-law, which is available exclusively to our members at a low cost. OCN will continue to pursue the short-term letting issues for schemes unable to adopt the by-law.

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