



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: EP&D:DH1b1608963

13 November 2018

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

Dear Sir/Madam,

Short-term rental accommodation in NSW – Explanation of Intended Effect

The Law Society of NSW appreciates the opportunity to comment on the Explanation of Intended Effect (“EIE”) outlining proposed amendments to planning rules to provide for short-term rental accommodation (“STRA”). The Law Society’s Environmental Planning and Development Committee contributed to this submission.

The EIE relates to proposed amendments to the NSW planning system, as part of a whole of government framework for STRA. It outlines proposed amendments to the *Standard Instrument (Local Environmental Plans) Order 2006* (“SI Order”) and *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (“Codes SEPP”), and their intended effects. The framework also includes changes to strata legislation and a new mandatory code of conduct to be developed by the Department of Finance, Services and Innovation (“DFSI”) for on-line accommodation platforms, letting agents, hosts and guests, which aims to address impacts like noise levels, disruptive guests and effects on shared neighbourhood amenities.

Overview

The Law Society supports the Government’s aim of introducing a state-wide planning framework for STRA that strikes a balance between supporting the economic value of the industry and managing impacts on the community.

We consider, however, that it is not possible to properly evaluate the possible effectiveness of these changes to the planning framework in isolation from the code of conduct to be developed by the DFSI.

We are also concerned that without additional measures being put in place it will not be possible to effectively enforce the limitations on the permissible number of days and other requirements for STRA, as set out in the proposed approval pathways.

We consider, too, that the proposed definition of STRA as a land use requires further clarification. It does not align with the definition in the *Fair Trading Act 1987* as amended by the *Fair Trading Amendment (Short-term Rental Accommodation) Act 2018*.

It may also lead to an unintended land use characterisation, with the potential for exploitation by some operators, seeking to circumvent the requirement for development consent, in circumstances where the use also satisfies the definition of a type of “tourist and visitor accommodation.”

Proposed changes to the planning system

We note that the planning framework for STRA will be given effect through amendments to the SI Order and the Codes SEPP. One key change is the introduction of a land use definition for STRA in the SI Order Dictionary.

It is proposed to define STRA as:

the commercial use of an existing dwelling, either wholly or partially, for the purposes of short-term accommodation, but does not include tourist and visitor accommodation.

In the SI Order, both “bed and breakfast accommodation” and “serviced apartment” are included in the Dictionary as types of “tourist and visitor accommodation” and defined respectively as follows:

bed and breakfast accommodation means an existing dwelling in which temporary or short-term accommodation is provided on a commercial basis by the permanent residents of the dwelling and where:

- (a) meals are provided for guests only, and
- (b) cooking facilities for the preparation of meals are not provided within guests’ rooms, and
- (c) dormitory-style accommodation is not provided.

serviced apartment means a building (or part of a building) providing self-contained accommodation to tourists or visitors on a commercial basis and that is regularly serviced or cleaned by the owner or manager of the building or part of the building or the owner’s or manager’s agents.

We consider that there is a degree of cross-over between these definitions and the proposed new definition of STRA. This is particularly the case with the definition of “serviced apartment”.

The newly defined STRA land use will be permitted in all zones where dwellings are permissible, as exempt or complying development. Despite the STRA definition expressly excluding ‘tourist and visitor accommodation’, many STRA operations are similar in practical terms to serviced apartments, which require development consent in some commercial zones but are prohibited in residential zones. We are concerned that the cross-over effect of these definitions may lead to an unintended land use characterisation, with the potential for exploitation by some operators, seeking to circumvent the requirement for development consent, in circumstances where the use satisfies both definitions. We suggest that further consideration be given to clarifying that where the use satisfies both descriptions, it must be treated as “tourist and visitor accommodation”.

The proposed definition also differs from the definition of ‘short-term rental accommodation arrangement’ in the *Fair Trading Amendment (Short-term Rental Accommodation) Act 2018*:

a commercial arrangement for giving a person the right to occupy residential premises for a period of not more than 3 months at any one time, and includes

any arrangement prescribed by the regulations to be a short-term rental accommodation arrangement, but does not include any arrangement prescribed by the regulations not to be a short-term rental accommodation arrangement.

The limitation of the right to occupy for 'a period of not more than 3 months at any one time' is not included elsewhere under the proposed changes to the Codes SEPP. This inconsistency in the respective definitions should be addressed.

Codes SEPP

The key proposed changes to the Codes SEPP include specific provisions and required development standards so that STRA is permitted as exempt and complying development.

It is noted on page 8 of the EIE that:

Feedback on the Options Paper suggested that it can be difficult for councils to effectively use the existing enforcement and compliance powers when there are complaints about STRA due to the transient nature of the use; the lack of information regarding STRA activities; and the resourcing burden associated with proving non-compliance.

The Law Society remains concerned that it is not clear how the following limitations and requirements will be enforced:

- whether premises are in fact the principal place of residence of the STRA operator;
- the limits on the number of days per year, depending on location, that STRA can take place in properties where the host is not present;
- the minimum fire safety and evacuation requirements for individual premises used for STRA.

It is possible that some guidance to enforcement may be provided in the code of conduct. We suggest, however, that effective control of these limitations and requirements would require the council to record and manage compliance. This would only be possible if a council register was established to ensure, for example, that the introduced minimum fire safety and evacuation requirements for premises used for STRA are present.

A council register would also:

- allow real time data to be collected on the growth and supply of this market and any effects on local housing availability and affordability; and
- provide an additional revenue source for councils to fund the enforcement of the code of conduct.

Without a revenue source, councils are unlikely to be able to "police" the requirements governing STRA effectively, if at all, to meet community expectations and protect long-term residents from the impacts of STRA.

Consultation and education

These proposed changes will have a major impact on some communities where a high percentage of properties are used for STRA, such as for example, the Sydney CBD, Sydney harbourside and beachside suburbs and in 'holiday areas' such as the

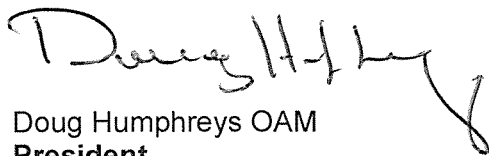
Byron Shire. Given the extent of the changes and their potential impact, we consider that there has not been sufficient consultation or education to assist with community awareness. We consider that public information sessions, particularly for strata owners, should be conducted by the Department prior to the commencement of the new legislation.

It would be helpful if the new mandatory code of conduct could be exhibited at the same time as the EIE to enable consideration to be given to the whole framework. Ideally, we suggest that the exhibition period for the EIE should be extended to enable this to occur. At the very least, the draft code of conduct should be available for consultation prior to the commencement of the new legislation.

When the actual amendments have been drafted, they should also be exhibited to enable proper public consultation and to ensure that the legislation, as drafted, has no unintended consequences.

If you have any questions in relation to this submission, please contact Liza Booth, Principal Policy Lawyer at liza.booth@lawsociety.com.au or on (02) 9926 0202.

Yours faithfully,



Doug Humphreys OAM
President