

**Report to General Manager**

Attachments:

1. NSW Planning & Environment, “*Explanation of Intended Effect – Short-term Rental Accommodation Planning Framework*” – Oct/Nov 2018 Report
2. Australasian Legal Information Institute (Austlii), *Greater Sydney Commission Act 2015 – Schedule 1*

SUBJECT: Short-term Rental Accommodation (STRA)**AUTHOR:** Adele Bechara, Senior Compliance Officer**ENDORSED BY:** Joseph Hill, Director City Strategy**EXECUTIVE SUMMARY:**

The NSW Legislative Assembly Committee on Environment and Planning conducted an inquiry into the Adequacy of the Regulations of Short-Term Holiday Letting across NSW in 2015.

In 2016, the Committee published its report and recommendations which were supported by the NSW Government which subsequently allowed for the release for an Options Paper in 2017. This Options Paper allowed for feedback from the Public which attracted almost 8,000 submissions. The submissions received sought feedback on regulatory approaches to Short-Term Rental Accommodation (STRA) and assisted in the formation of a framework for STRA in NSW.

On 5 June 2018, the NSW Government announced the framework that aims to support the economic value of the industry and manages the impacts on the community. This framework includes state-wide planning controls and a mandatory Code of Conduct for all online accommodation platforms, letting agents, hosts and guests. The framework will address the issues with STRA such as noise levels, disruptive guests and the effects on shared neighbourhood amenities. Such framework is aimed to be executed through amendments to current planning instruments, and strata and Fair Trading legislation.

The Department of Planning and Environment is proposing a number of amendments to introduce the state-wide planning framework for STRA. These proposed amendments are outlined in the Department of Planning & Environment’s report titled “*Explanation of Intended Effect – Short-term Rental Accommodation Planning Framework*” Oct/Nov 2018. This Council report is in response to the abovementioned and submissions will be made in accordance with the above. The proposed amendments affect North Sydney Council in terms of monitoring and regulatory obligations which will be outlined in the submissions.

Tourist and visitor accommodation is formally defined in North Sydney Council’s Local Environmental Plan (LEP) 2013 as “*a building or place that provides temporary or short-term accommodation on a commercial basis*”. North Sydney Council defines an Airbnb-type stay as short-term rental accommodation (STRA) and is formally defined in the North Sydney LEP.

North Sydney Council's current planning controls do not allow for tourist and visitor accommodation in residential zones as STRA is considered to be a commercial activity. Therefore, currently, short term accommodation can only be provided in hotels, hostels, serviced apartments and the like in the North Sydney Local Government Area and is prohibited within residential properties.

The purpose of this report is to outline the proposed framework to the current planning instruments and the effects it may have on North Sydney Council with regard to the enforcement of these proposed changes.

FINANCIAL IMPLICATIONS:

There are minimal financial implications.

RECOMMENDATION:

1. THAT Council prepares and forwards a submission to the Department of Planning and Environment in response to the *Explanation of Intended Effect – Short term Rental Accommodation Planning Framework*. The following issues and principles are to be included:

- challenges arising in the regulatory process; and
- clarity regarding the permitted 180 days, in particular, whether it be consecutive days or intermittent days. Should it be intermittent, the need for a State register to assist with investigation triggered by complaints.

2. THAT Council seeks an undertaking from Department of Planning and Environment that this initiative will not be enacted until further information is provided, to the satisfaction of Council, in relation to the application of enforcement powers.

LINK TO COMMUNITY STRATEGIC PLAN

The relationship with the Community Strategic Plan is as follows:

Direction: 3. Our Future Planning

Outcome: 3.5 North Sydney is regulatory compliant

BACKGROUND

The NSW Legislative Assembly Committee on Environment and Planning conducted an inquiry into the Adequacy of the Regulations of Short-Term Holiday Letting across NSW in 2015.

In 2016, the Committee published its report and recommendations which were supported by the NSW Government which subsequently allowed for the release for an Options Paper in 2017. This Options Paper allowed for feedback from the Public which attracted almost 8,000 submissions. The submissions received sought feedback on regulatory approaches to STRA and assisted in the formation of a framework for STRA in NSW.

On 5 June 2018, the NSW Government announced the framework that aims to support the economic value of the industry and manages the impacts on the community. This framework includes state-wide planning controls and a mandatory Code of Conduct for all online accommodation platforms, letting agents, hosts and guests. The framework will address the issues with STRA such as noise levels, disruptive guests and the effects on shared neighbourhood amenities. Such framework is aimed to be executed through amendments to current planning instruments, and strata and Fair Trading legislation.

The Department of Planning and Environment is proposing the following amendments to include:

- The introduction of a land use definition and permissibility for ‘short-term rental accommodation’
- The introduction of Exempt and Complying Development criteria for STRA which will include a maximum number of days that STRA can operate in a calendar year
- Allowing councils outside Greater Sydney to set the number of days that a dwelling can be used for STRA without development consent or with a complying development certificate, to no lower than 180 days per year, to meet the needs of their communities, and
- The introduction of minimum fire safety and evacuation requirements for premises used for STRA.

Currently, there is no state-wide planning definition for STRA. North Sydney Council’s current planning controls do not allow for tourist and visitor accommodation in residential zones as STRA is considered to be a commercial activity. Currently, short term accommodation may only be provided in hotels, hostels, serviced apartments and the like and is prohibited within residential properties.

The proposed changes will effectively allow short term accommodation within residential zones.

CONSULTATION REQUIREMENTS

Community engagement is not required.

SUSTAINABILITY STATEMENT

The sustainability implications are of a minor nature and did not warrant a detailed assessment.

DETAIL

Under the North Sydney LEP there is no definition for Short-term Rental Accommodation. Furthermore, under the EP&A Act, the powers of Council Officers can be difficult to enforce when acquiring entry to a premises or gathering evidence that may be used to prosecute illegal use of the premises.

The following are details of the proposed amendments:

1. Land Use Definition of STRA to the Standard Instrument Order 2006

The proposed amendments to the Standard Instrument Order 2006 intends 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.”

The proposed amendment aims to “make it clear that ‘short-term rental accommodation’ is not a form of ‘tourist and visitor accommodation’ and making it clear that STRA will be permissible in all zones in which dwellings are permissible.” It appears that the definition aims to differentiate short term accommodations for dwellings as appose to Council’s LEP defining tourist and visitor’s accommodation. Regardless of the distinction, the proposed amendments basically allows short term accommodation throughout the whole of the NSC Local Government Area.

2. Land Use Permissibility to the Standard Instrument Order 2006

The newly defined STRA land use will be permitted in all zones where dwellings are permissible.

3. Development Approval Pathway Amendment to the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (SEPP)

The proposed Exempt and Complying Development approval pathways for STRA are based on different circumstances and will differ based on whether a host is present at the property, whether the property is in bushfire prone land and the days of operation in a calendar year.

These proposed amendments are evident in the following table:

Table 1: Development Pathways available to STRA in State Planning Framework Development Pathway

Development Pathway	Criteria	Period
Exempt Development	<ul style="list-style-type: none"> Host present on site overnight 	Year round
	<ul style="list-style-type: none"> Host not present, and Property is not in Greater Sydney¹ Property is not on bushfire prone land 	365 days per year Councils will be able to set the number of days from 180 days to 365 days.
	<ul style="list-style-type: none"> Host not present, and Property is in Greater Sydney Property is not on bushfire prone land 	180 days per year
Complying Development	<ul style="list-style-type: none"> Property is on bushfire prone land Host not present, and Property is not in Greater Sydney 	365 days per year Councils will be able to set the number of days, from 180 to 365 days.
	<ul style="list-style-type: none"> Property is on bushfire prone land Host not present, and Property is in Greater Sydney 	180 days per year

In summary, the proposed position is that:

- When the host is present on site overnight: STRA can proceed as exempt development for 365 days per year, noting the hosts' ability to manage behaviour and impacts.
- When the host is not present and the property is not on 'bushfire prone land': The state-wide provisions will stipulate the number of days per calendar year that a property can host STRA as exempt development, as follows:
 - If the property is in Greater Sydney, a property may be used for STRA for no more than 180 days per year.
 - If the property is not in Greater Sydney, a property may be used for STRA up to 365 days per year. However, councils in these areas will be able to reduce the number of days STRA is permissible to no less than 180 days. The Department of Planning & Environment has not yet indicated how Councils will be able to monitor and enforce this or whether each Council would need to create their own register/process of enforcement.
- When the host is not present and the property is on 'bushfire prone land', complying development approval will be required for STRA. This is in recognition that additional safety measures are required to provide for the safety of guests who are unfamiliar with the location. A landowner will obtain a Complying Development Certificate and to do so would be required to address issues specific to bushfire prone areas.

¹ Greater Sydney is defined within the *Greater Sydney Commission Act 2015*, Schedule 1. North Sydney Council is located within the Greater Sydney Region - see attachment 2.

4. Ability of Regional Councils to Determine the Permissibility of STRA under the SEPP

Under the proposed policy, STRA will be permissible in areas outside Greater Sydney for 365 days per year. However, councils outside of Greater Sydney will have the option to reduce the number of days STRA from 365 days, when the host is not present to no lower than 180 days, based on local needs.

5. Exempt and Complying Development Standards in the SEPP

The SEPP contains core criteria that must be met for all the uses identified as Exempt or Complying Development in the SEPP and criteria specific to different land uses and development types. This approach will be applied to STRA.

The following additional criteria are proposed to apply to STRA as both exempt and complying development approval pathways:

- The current use must be a lawful use, permissible under an environmental planning instrument (EPI) applying to the land and in a building approved for residential accommodation.
- The building in which STRA is proposed must comply at all times with all relevant planning, building, strata, fire safety and health regulations.
- No alterations or additions will be permitted to the building unless otherwise exempt. Other than safety standards below, the STRA activity does not authorise any building works. Any building works would be required to follow existing approval pathways.
- STRA must not cause contravention of any existing condition of the most recent development consent that applies to the building.
- STRA must comply with relevant requirements under the strata scheme.
- The dwelling must comply with the safety standards mentioned below.

6. Safety Provisions in SEPP

One of the main considerations made in developing this policy framework has been for the safety of guests using STRA. Given safety in existing dwellings remains important, there is a need to consider how existing buildings used for STRA can meet acceptable safety standards.

The following minimum fire safety and evacuation requirements for individual premises used for STRA are proposed:

Dwelling Type	Recommended Standard
All dwellings	<ul style="list-style-type: none">• No more than 2 persons/bedroom or 12 persons, whichever is the lesser• Installation of smoke alarms in each bedroom, and the smoke alarms are interconnected where there is more than one alarm.• Installation of a lighting system in hallways that is activated by the smoke alarm system
Dwellings in multi-unit buildings only (Dwellings in Class 2 and 4 buildings)	<ul style="list-style-type: none">• Entry doors should be openable from inside the dwelling without a key• Installation of a self-closing device and smoke seals to all edges of the door, if the door opens onto a shared corridor and entrance doorway.• Installation of a fire extinguisher and fire blanket in the kitchen.• Making an Evacuation Plan, displaying 'evacuation signage' and familiarising guests with exit system.
Standalone dwellings only (Class 1a buildings)	<ul style="list-style-type: none">• Installation of heat alarms in single dwellings which are located above a garage. This would be required only where the garage is not accessible to the guest/s.

It is also proposed that STRA dwellings will not be able to be let out to unrelated parties simultaneously. Related parties would include families, partners, friends and/or colleagues.

7. Noise and Amenity Impacts

Local councils and NSW Police have powers, under the POEO Act and other legislation, to respond to complaints about disturbances from activities in a dwelling. The Department of Planning and Environment will provide information to councils, industry and the local community on the application of these powers. Division 9.2 of the EP&A Act provides investigative powers which councils may apply to exercise their functions under this Act.

These powers cover investigation and authorisation, entry and search, obtaining information and recording evidence. No changes are proposed to these powers under these Acts.

8. Mandatory Code of Conduct

A new mandatory Code of Conduct for online platforms, managing agents, hosts and guests will be developed in consultation with industry and relevant stakeholders. This Code will include provisions to resolve complaints about STRA, including anti-social behaviour, that is readily accessible to hosts, guests and impacted third parties, such as neighbours as well as enforcement powers in relation to implementation by industry and platforms, will provide direct levers to ensure that the proposed measures are implemented effectively.

9. STRA in Strata Settings

The Strata Schemes Management Act 2015 will be amended to allow owners' corporations (by a 75% majority vote) to make a by-law that prohibits the use of a lot for STRA where the lot is not the principle place of residence of the owner or tenant. However, if the lot is the principle place of residence for the owner or tenant, a by-law cannot prevent the lot being used for STRA. If the host does not own the property, they will be required to obtain owner permission to undertake STRA. A Bill enabling this change to be made was passed by NSW Parliament on 14 August 2018.

Options Available to Council

The following options are available to Council:

1. Provide written submissions to the Department of Planning & Environment outlining the implications that will impact Council in enforcing these proposed amendments, or
2. Note this report and take no further action.

Other Matters for Consideration

The Department of Planning & Environment have not indicated whether the 180 days are consecutive days or intermittent throughout the year. If the proposed amendments were to be implemented, Council may need to consider whether a register would be the most effective way to monitor STRA premises. It would be logical for the Department to provide and maintain a state register of STRA properties, similar to the swimming pools and boarding house registers. The intent from the Department is unclear in this regard. Should Council initiate its own register, experience indicates that Council would need one full time position to achieve this.

In the event that the Department doesn't adopt a state register approach, it is highly likely that Council will need to maintain its own register. This is considered to be the most effective way for regulatory staff to monitor each premises in terms of use, the number of days rented for short term, the number of persons occupying the premises and contact details.

In order to provide and maintain a localised STRA register, there may be implications for Council in terms of staff resourcing.

CONCLUSION

Based on the information provided in the Department of Planning and Environment's report, these changes may pose impacts for Council.

The proposed framework aims to amend LEP's to include the definition of STRA. This new definition conflicts with the current NSC LEP definition of *Tourist and Visitor Accommodation*.

It is anticipated that the changes mentioned throughout this report will likely lead to an increase in the number of complaints Council receive regarding noise and amenity impacts. This may affect staffing resources.



Planning &
Environment

Explanation of Intended Effect

*Short-term Rental
Accommodation
Planning Framework*

*October / November
2018*

© Crown Copyright, State of New South Wales through its Department of Planning and Environment [2018]

Disclaimer

While every reasonable effort has been made to ensure that this document is correct at the time of printing, the State of NSW, its agents and employees, disclaim all liability to any person in respect of anything or the consequences of anything done or omitted to be done in reliance or upon the whole or any part of this document.

Copyright notice

In keeping with the NSW Government's commitment to encourage the availability of information, you are welcome to reproduce the material that appears in 'STRA Planning Framework Explanation of Intended Effect' for personal, in-house or non-commercial use without formal permission or charge. All other rights are reserved.

This material is licensed under the Creative Commons Attribution 4.0 International (CC BY 4.0). You are required to comply with the terms of CC BY 4.0 and the requirements of the Department of Planning and Environment. More information can be found at: <http://www.planning.nsw.gov.au/Copyright-and-Disclaimer>.

Contents

Explanation of Intended Effect	4
Part 1 – Executive summary	5
1.1. Background	5
1.2. This document	5
1.3. What is proposed?	5
Part 2 – Context	6
2.1. Short-term Rental Accommodation in NSW	6
2.2. Policy history	6
2.3. Whole of Government Framework	7
Part 3 – Planning Context	8
3.1. Current planning system	8
Part 4 – Proposed changes to the planning system	9
4.1. Proposed amendments to the Standard Instrument Order 2006	9
4.2. Proposed amendments to the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008	10
4.3. Noise and amenity impacts	13
4.4. Additional elements of the Government policy	13
4.5. Transitional arrangements	13
Part 5 – Have your say	14
5.1. How to make a submission	14
5.2. Privacy policy	14
Part 6 – Appendices	15
6.1. Summary of proposed amendments	15
6.2. Relevant planning legislation	17
6.3. Abbreviations	18
6.4. Local Government Areas comprising Greater Sydney Region	19

Explanation of Intended Effect

This Explanation of Intended Effect (EIE) has been prepared according to Section 3.30 of the *Environmental Planning and Assessment Act 1979* (EP&A Act 1979).

It is presented in six parts:

- Part 1 – Executive Summary
- Part 2 – Context
- Part 3 – Planning Context
- Part 4 – Proposed Changes to The Planning System
- Part 5 – Have Your Say
- Part 6 – Appendices

Part 1 – Executive summary

1.1. Background

Short-term rental accommodation (STRA) has been carried out in New South Wales (NSW) for many years and has grown rapidly with the development of online platforms and the sharing economy. The activity increases tourist accommodation options, contributes to household income and brings wider tourism benefits. However, some communities report impacts on amenity, parking and housing availability.

In 2015, the NSW Legislative Assembly Committee on Environment and Planning conducted an inquiry into the Adequacy of the Regulation of Short-Term Holiday Letting in NSW. The Committee published its report and recommendations in 2016. The recommendations were mostly supported by the NSW Government and an Options Paper was released in 2017. The Options Paper, publicly exhibited between 21 July and 31 October 2017, sought feedback on regulatory approaches to STRA and attracted almost 8,000 submissions.

The submissions, received in response to the Options Paper, have helped inform a whole of Government policy for the regulation of STRA in NSW. On 5 June 2018, the NSW Government announced a framework that strikes a balance between supporting the economic value of the industry and managing impacts on the community. The framework includes state-wide planning controls and a mandatory Code of Conduct for online accommodation platforms, letting agents, hosts and guests, which will address impacts like noise levels, disruptive guests and effects on shared neighbourhood amenities. The framework will be implemented through amendments to planning instruments, and strata and Fair Trading legislation.

1.2. This document

This Explanation of Intended Effect (EIE) relates to proposed amendments to the NSW planning system, as part of the 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. Other elements of the whole of Government framework will be progressed by the Department of Finance, Services and Innovation (DFSI).

1.3. What is proposed?

The Department of Planning and Environment is proposing amendments to introduce the state-wide planning framework for STRA. Proposed amendments include:

- the introduction of a land use definition and permissibility for 'short-term rental accommodation'
- the introduction of exempt and complying development criteria for STRA which will include a maximum number of days that STRA can operate in a calendar year
- allowing councils outside Greater Sydney to set the number of days that a dwelling can be used for STRA without development consent or with a complying development certificate, to no lower than 180 days per year, to meet the needs of their communities, and
- the introduction of minimum fire safety and evacuation requirements for premises used for STRA.

Have your say.

The Department of Planning and Environment is seeking feedback on the details of the planning framework for regulation of STRA in NSW. To make a submission, visit www.planning.nsw.gov.au/STHL

Part 2 – Context

2.1. Short-term Rental Accommodation in NSW

The STRA industry has undergone rapid growth since 2012, supported by the emergence of online booking services and the sharing economy. Internet platforms have generated new marketplaces for STRA, benefitting consumers and providers by increasing accommodation options; providing opportunities to earn income from property assets; and broadening the economic benefits of tourism.

Existing regulation of STRA

The existing regulatory system for STRA in NSW comprises a voluntary Code of Conduct for industry, some scope for owners' corporations to use strata laws to manage STRA impacts and locally derived planning controls.

This has caused uncertainty for industry navigating the permissibility of the use. In addition, some communities and businesses have raised concerns regarding impacts on amenity, noise, parking, safety, 'quasi hotels' and housing availability.

2.2 Policy history

- 2012 & 2015** The Holiday Rental Code of Conduct was originally adopted in NSW in 2012. Revised as a national code in 2015, with the key objective of encouraging acceptable standards of behaviour for STRA guests. This is a voluntary Code of Conduct.
- 2015-2016** The NSW Legislative Assembly Committee on Environment and Planning conducted an inquiry into the adequacy of the regulation of short-term holiday letting in New South Wales. In its investigation, the Committee recognised that STRA is a complex and multi-faceted issue requiring a whole of Government response. The Committee recommended that the NSW Government amend planning laws to regulate STRA; allow home sharing and short-term letting of a principal place of residence as exempt development; empty houses be let as exempt and complying development; and the existing Code of Conduct be strengthened.
- The NSW Government released a response to the Committee's recommendations in 2016, providing in-principle support for the key recommendations.
- 2017** During 2017, further consultation was undertaken with the community through a NSW Government Options Paper, which presented regulatory options for responding to STRA. The Options Paper was exhibited for 14 weeks.
- During the public consultation there was broad support for a comprehensive, whole of Government solution considering planning, strata regulations, the industry code of conduct and a registration system.
- From a planning perspective, feedback included support for a state-wide definition and a standard approach to planning controls, but with provision to respond effectively to the specific local context.
 - From an industry management perspective, the vast majority of stakeholders supported

strengthening the existing Code of Conduct through updating standards, mandating compliance and introducing a robust complaints management scheme.

- From a strata perspective, owners' corporations supported additional powers, through by-laws, to be able to prohibit or restrict STRA on strata schemes.

2.3. Whole of Government Framework

On 5 June 2018, the NSW Government announced a policy framework for STRA in NSW, to be implemented by amending planning instruments and strata and Fair Trading legislation. This approach supports STRA occurring in NSW and manages potential impacts by providing appropriate controls for the land use and a new Code of Conduct that will apply to STRA booking services, letting agents that facilitate STRA, hosts and guests. It enhances the use of existing mechanisms and introduces new mechanisms to deliver a cohesive and effective framework that, once implemented, will provide a more consistent and accessible approach to managing STRA in NSW to the benefit of communities and industry.

The proposed whole of Government framework

- A State-wide planning framework developed by the Department of Planning and Environment to achieve consistency and certainty across local planning controls.
- A new co-regulatory Code of Conduct developed by DFSI with industry and other relevant stakeholders. The Code will apply to online accommodation platforms, letting agents, hosts and guests and address impacts like noise levels, disruptive guests and effects on shared neighbourhood amenities. The Code will also include a new dispute resolution process to resolve complaints, and NSW Fair Trading will have powers to police online platforms and letting agents.
- Changes to strata legislation, which will allow owners' corporations to adopt a by-law, with a 75 per cent majority vote, preventing STRA in their block for lots that are not the principal place of residence of the host.

The Department of Planning and Environment is proposing planning amendments to give effect to the Government's position on STRA in NSW. This EIE outlines the proposed amendments.

Part 3 – Planning Context

3.1. Current planning system

3.1.1. Defining STRA

At present, there is no state-wide planning definition for STRA and the SI Order does not expressly provide for the permissibility of this use. Currently, individual councils can determine where and when planning consent is required for STRA. Most councils do not specifically legislate for STRA and the use is commonly treated as an ancillary activity to the residential use of a dwelling.

STRA is regulated in a small number of some local government areas through the planning system. Eleven councils have defined the activity and circumstances when consent is required in their Local Environmental Plans (LEPs). Definitions, permissibility and controls vary between these councils. For instance, some councils allow the use without the need for any approval, while others consider STRA as 'tourist and visitor accommodation' or 'residential accommodation' and require approval. Some councils limit the activity by setting a maximum number of consecutive days or a maximum number of bedrooms.

3.1.2. Compliance and STRA

The existing planning system has strong compliance measures to address land use permissibility and compliance with planning legislation. Division 9.2 of the EP&A Act provides investigative powers which councils may apply where property owners are in breach of their consent. These powers cover investigation and authorisation, entry and search, obtaining information, and recording evidence.

There are also other regulatory powers available to the NSW Environment Protection Authority or Police to address amenity issues under the *Protection of the Environment Operations Act 1997* (POEO Act). Residents can make complaints to these authorities which can issue a warning or a noise abatement direction under the POEO Act, issue an on the spot fine, or direct a person who is the occupier of a premise to stop making the offensive noise.

Feedback on the Options Paper suggested 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; a lack of information regarding STRA activities; and the resourcing burden associated with proving non-compliances.

Part 4 – Proposed changes to the planning system

The proposed changes will simplify and clarify the planning regulation of STRA in NSW, by providing a single definition for the use and circumstances where approval is required for this activity. These changes seek to:

- clarify the permissibility of STRA
- provide consistency and certainty for the industry and community
- enable STRA to occur in appropriate locations
- provide for the safety of those using STRA
- strike a balance between the availability of properties for long-term and the short-term rental market in metropolitan areas
- enable councils in regional areas to respond to local needs and
- mitigate impacts of STRA on communities.

The planning framework for STRA will be given effect through amendments to the SI Order and the Codes SEPP.

4.1. Proposed amendments to the Standard Instrument Order 2006

Key changes

- Providing a definition for this activity – to be known as ‘short-term rental accommodation’.
- Making it clear that ‘short-term rental accommodation’ is not a form of ‘tourist and visitor accommodation’.
- Making it clear that STRA will be permissible in all zones in which dwellings are permissible.

4.1.1. Land use definition

Definitions for land uses in the planning system are generally located in the SI Order and it is proposed to include a land use definition for STRA in the SI Order Dictionary. This will allow the definition to be incorporated into all Standard Instrument LEPs.

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.”

This indicative definition is intended to enable the use of a dwelling for STRA as a part of its residential use where:

- the dwelling is permissible with consent in the zone
- no physical alterations or additions would be made to accommodate the STRA use, and
- the dwelling has a current development consent or existing use rights for its use as a dwelling.

STRA is intended to be permissible in secondary dwellings. It is proposed that some forms of residential accommodation, such as boarding houses, seniors housing and group homes, will be excluded from STRA use to ensure they continue to meet their intended purpose. STRA will also be excluded from 'affordable rental housing' approved under *State Environmental Planning Policy (Affordable Rental Housing) 2009* (ARHSEPP) and *State Environmental Planning Policy No. 70 Affordable Housing (SEPP 70)*, as these policies are aimed at increasing affordable rental housing for long term residential use.

4.1.2. Land use permissibility

The newly defined STRA land use will be permitted in all zones where dwellings are permissible.

4.2. Proposed amendments to the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

Key changes

- Include specific provisions and required development standards so that STRA is permitted as exempt and complying development.
- Include minimum fire safety and evacuation requirements for individual premises used for STRA.

4.2.1. Development approval pathways

The proposed exempt and complying development approval pathways for STRA are based on different levels of risk associated with whether a host is present, whether the property is on bushfire prone land and days of operation in a calendar year. The pathways recognise that in certain circumstances, STRA has minimal impact and therefore, a lower level of regulation is appropriate.

The table below identifies approval pathways available to STRA activity, under the Government position.

Table 1: Development pathways available to STRA in state planning framework

Development Pathway	Criteria	Period
Exempt development	<ul style="list-style-type: none"> • Host present on site overnight 	Year round
	<ul style="list-style-type: none"> • Host <i>not</i> present, and • Property is not in Greater Sydney¹ • Property is not on bushfire prone land 	365 days per year Councils will be able to set the number of days from 180 days to 365 days.
	<ul style="list-style-type: none"> • Host <i>not</i> present, and • Property is in Greater Sydney • Property is not on bushfire prone land 	180 days per year
Complying development	<ul style="list-style-type: none"> • Property is on bushfire prone land • Host <i>not</i> present, and • Property is not in Greater Sydney 	365 days per year Councils will be able to set the number of days, from 180 to 365 days.
	<ul style="list-style-type: none"> • Property is on bushfire prone land • Host <i>not</i> present, and • Property is in Greater Sydney 	180 days per year

¹ Please see Appendix 6.4.

In summary, the Government position is that:

- When the host is present on site overnight: STRA can proceed as exempt development for 365 days per year, noting the hosts' ability to manage behaviour and impacts.
- When the host is not present and the property is not on 'bushfire prone land': The state-wide provisions will stipulate the number of days per calendar year that a property can host STRA as exempt development, as follows:
 - If the property is in Greater Sydney, a property may be used for STRA for no more than 180 days per year.
 - If the property is not in Greater Sydney, a property may be used for STRA up to 365 days per year. However, Councils in these areas will be able to reduce the number of days STRA is permissible to no less than 180 days.
- When the host is not present and the property is on 'bushfire prone land', complying development approval will be required for STRA. This is in recognition that additional safety measures are required to provide for the safety of guests who are unfamiliar with the location. A landowner will obtain a Complying Development Certificate and to do so would be required to address issues specific to bushfire prone areas, outlined at 4.2.3 below.

As this is an endorsed state-wide policy, it is proposed that no variations or development application pathways will be available to undertake STRA above these number of day limits.

4.2.2. Ability of regional councils to determine the permissibility of STRA

Under the policy, STRA will be permissible in areas outside Greater Sydney for 365 days per year. However, councils outside of Greater Sydney will have the option to reduce the number of days STRA can occur from 365 days, when the host is not present to no lower than 180 days, based on local needs.

Councils seeking to reduce the number of days are invited to provide an expression of interest to the Department of Planning and Environment within 8 weeks of the exhibition commencing.

If a council LEP does not amend the day threshold, the per annum state-wide policy will apply.

4.2.3. Exempt and complying development standards

The Codes SEPP contains core criteria that must be met for all the uses identified as exempt or complying development in the SEPP and criteria specific to different land uses and development types. This approach will be applied to STRA.

The general requirements set out in the Codes SEPP for exempt and complying development will apply to STRA progressing through these respective pathways. The following additional criteria are proposed to apply to STRA as both exempt and complying development approval pathways:

- The current use must be a lawful use, permissible under an environmental planning instrument (EPI) applying to the land and in a building approved for residential accommodation.
- The building in which STRA is proposed must comply at all times with all relevant planning, building, strata, fire safety and health regulations.
- No alterations or additions will be permitted to the building unless otherwise exempt. Other than safety standards below, the STRA activity does not authorise any building works. Any building works would be required to follow existing approval pathways.

- STRA must not cause contravention of any existing condition of the most recent development consent that applies to the building.
- STRA must comply with relevant requirements under the strata scheme.
- The dwelling must comply with the safety standards outlined at 4.2.4. below.

STRA on Bushfire Prone Land when the host is not present

Development on mapped bushfire prone land must meet relevant bushfire safety requirements to minimise risk. In addition to the criteria above, the following specific criteria will apply to STRA as complying development on bushfire prone land:

- The land on which STRA can occur must be certified as being no more than Bush Fire Attack Level (BAL) 29 risk rating.
- Where a property exceeds BAL29 bushfire risk, it is proposed that a development application would be required to undertake STRA.

4.2.4. Safety

One of the considerations in developing the policy framework has been the safety of guests using STRA, who may be less familiar with the location where the host is not present. The Building Code of Australia does not provide any specific requirements for STRA. However, given safety in existing dwellings remains important, there is a need to consider how existing buildings used for STRA can meet acceptable safety standards. The intent is to manage risks for users of STRA, while still enabling the activity to occur.

In this regard, the following minimum fire safety and evacuation requirements for individual premises used for STRA are proposed:

Table 2: Proposed safety requirements applying to dwellings used for STRA

Dwelling type	Recommended standard
All dwellings	<ul style="list-style-type: none"> • No more than 2 persons/bedroom or 12 persons, whichever is the lesser • Installation of smoke alarms in each bedroom, and the smoke alarms are interconnected where there is more than one alarm. • Installation of a lighting system in hallways that is activated by the smoke alarm system.
Dwellings in multi-unit buildings only (Dwellings in Class 2 and 4 buildings)	<ul style="list-style-type: none"> • Entry doors should be openable from inside the dwelling without a key • Installation of a self-closing device and smoke seals to all edges of the door, if the door opens onto a shared corridor and entrance doorway. • Installation of a fire extinguisher and fire blanket in the kitchen. • Making an Evacuation Plan, displaying 'evacuation signage' and familiarising guests with exit system.
Standalone dwellings only (Class 1a buildings)	<ul style="list-style-type: none"> • Installation of heat alarms in single dwellings which are located above a garage. This would be required only where the garage is not accessible to the guest/s.

It is also proposed that dwellings will not be able to be let for STRA to unrelated parties at one time. Related parties would include families, partners, friends and/or colleagues.

4.3. Noise and amenity impacts

Local councils and NSW Police have powers, under the POEO Act and other legislation, to respond to complaints about disturbances from activities in a dwelling. The Department of Planning and Environment will provide information to councils, industry and the local community on the application of these powers. As noted earlier, Division 9.2 of the EP&A Act provides investigative powers which councils may apply to exercise their functions under this Act. These powers cover investigation and authorisation, entry and search, obtaining information and recording evidence. No changes are proposed to these powers under these Acts.

4.4. Additional elements of the Government policy

In addition to the state-wide planning framework exhibited in this EIE, the Government policy also includes a new mandatory Code of Conduct and changes to strata legislation. All elements of the policy will work together to enable STRA, while managing potential impacts.

For more information about the mandatory Code of Conduct or STRA in strata settings, please contact the NSW Department of Finance, Services and Innovation or visit fairtrading.nsw.gov.au/news-and-updates/news/new-short-term-holiday-letting-regulations.

4.4.1 Mandatory Code of Conduct

A new mandatory Code of Conduct for online platforms, managing agents, hosts and guests will be developed by DFSI in consultation with industry and relevant stakeholders. This Code will include provisions to resolve complaints about STRA, including anti-social behaviour, that is readily accessible to hosts, guests and impacted third parties, such as neighbours. DFSI oversight of the Code, as well as enforcement powers in relation to implementation by industry and platforms, will provide direct levers to ensure that the proposed measures are implemented effectively.

4.4.2 STRA in strata settings

As part of whole of Government framework, the *Strata Schemes Management Act 2015* will be amended to allow owners' corporations (by a 75% majority vote) to make a by-law that prohibits the use of a lot for STRA where the lot is not the principal place of residence of the owner or tenant. However, if the lot is the principal place of residence for the owner or tenant, a by-law cannot prevent the lot being used for STRA. If the host does not own the property, they will be required to obtain owner permission to undertake STRA. A Bill enabling this change to be made was passed by NSW Parliament on 14 August 2018.

4.5. Transitional arrangements

Once made, the proposed amendments to the SI Order and Codes SEPP will mean the state-wide planning framework for STRA will automatically apply to all councils in NSW, including those with existing provisions. The Department of Planning and Environment will work with councils with existing provisions to amend their LEPs to be consistent with the state-wide framework, including appropriate transitional periods.

Part 5 – Have your say

This EIE outlines proposed changes to the NSW planning system to enact the planning framework announced in the NSW Government policy on STRA. The Department of Planning and Environment welcomes feedback, but notes that the state-wide permissibility of STRA and number of days in which it can take place are a policy position which has been endorsed by Government.

5.1. How to make a submission

This EIE is available on the Department of Planning and Environment's website at www.planning.nsw.gov.au/STHL.

You can make a submission online at the website or you can write to:

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

5.2. Privacy policy

Your personal information is protected under the Privacy and Personal Information Protection Act 1998 (PIIP Act). The Department collects personal information in submissions for the purposes set out in the Department's Privacy Statement.

We respect your right to privacy. Before lodging your submission, you will be asked to confirm that you have read the terms of the Privacy Statement, which sets out:

- how personal information is defined under the PIIP Act - it includes but is not limited to your name, address and email address,
- the purposes for which the Department collects personal information, and
- how personal information collected by the department will be used.

When you make a submission, we will publish:

- the content of your submission – including any personal information about you which you have chosen to include in those documents, and
- a list of submitters', which may include your name and your suburb or town.

We will not publish offensive, threatening, defamatory or other inappropriate material. If you do not want your personal information published, please do not include any personal information in your submission. If you do not want your submission published at all, please note this in your submission.

Part 6 – Appendices

6.1. Summary of proposed amendments

Amendments to the planning system intend to:

- provide a single definition to be applied across NSW; and
- set criteria for exempt and complying development approval pathways where the use either meets the minimal environmental impact criteria for exempt development, or has been found to be generally of low environmental impact and can meet complying development criteria.

Changes are summarised in Table 2, and discussed further below.

Table 2: Summary of proposed changes

Topic	EPI	Proposed change	Intention
Definition	SI Order	Add a definition for 'short-term rental accommodation'. Add a note under the tourist and visitor accommodation definition that it does not include 'short-term rental accommodation'.	To provide greater certainty and clarity for councils, industry and community and to distinguish between STRA and traditional accommodation uses.
Permissibility	SI Order	Make it clear that STRA will be permissible in zones in which dwellings are permissible.	To provide land use permissibility for STRA.
Exempt Development	Codes SEPP	Add 'short-term rental accommodation' including development standards required.	To enable the temporary use of dwellings as STRA for visitors based on certain criteria.
		Include a provision that STRA is permitted as exempt development year round (365 days) where the host is present on-site overnight.	To enable STRA in this circumstance, recognising the lower impact of activity.
		Include a provision that, if the host is not present, STRA is permitted in a dwelling on land that is not bushfire prone as exempt development: <ul style="list-style-type: none"> - year round (365 days), if the property is outside Greater Sydney - for no more than 180 days per 	To define the maximum period for dwellings to be used for STRA in a calendar year, when the host is not present.

Topic	EPI	Proposed change	Intention
		year, if the property is in Greater Sydney	
		Include a provision that allows councils outside Greater Sydney to decrease the number of days STRA is permissible as exempt development per year from 365 days to no lower than 180 days, if they wish.	To recognise local differences and communities' needs in regional NSW.
		Include minimum fire safety and evacuation requirements for individual premises used for STRA.	To ensure the safety of visitors using STRA.
Complying Development	Codes SEPP	<p>Include a provision that, if the host is not present and the property is on bushfire prone land (<BAL29), STRA is permitted in a dwelling as complying development:</p> <ul style="list-style-type: none"> - year round (365 days), if the property is outside Greater Sydney - for no more than 180 days per year, if the property is in Greater Sydney. 	<p>To recognise local differences and communities' needs in regional and metropolitan NSW.</p> <p>To ensure safety on bushfire prone land.</p>
		Include a provision that allows councils outside Greater Sydney to decrease the number of days STRA is permissible as exempt development per year from 365 days down to no less than 180 days, if they wish.	To recognise local differences and communities' needs in regional NSW.
		Include minimum fire safety and evacuation requirements for individual premises used for STRA.	To ensure the safety of visitors using STRA.

6.2. Relevant planning legislation

6.2.1. Environmental Planning and Assessment Act 1979

The EP&A Act is the principal legislative instrument for land use planning in NSW. It provides for amending planning instruments such as LEPs and state planning policies; enables the inclusion of a land use definition in the SI Order and provides for additions to exempt and complying development types.

The Act also provides for the determination of development applications and ensures that the assessment of proposed development considers appropriate matters. This includes consideration of environmental, economic and social impacts including noise, parking and amenity.

As noted above, the EP&A Act also contains compliance and enforcement powers for use when development does not comply with the approval process.

No amendments are proposed to the EP&A Act as part of the whole of Government policy or this EIE.

6.2.2. State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

The State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP) simplifies the approval process for standard types of development.

The proposed amendments to the Codes SEPP will specify standard pathways for planning approval of STRA as exempt development and complying development.

6.2.3. Standard Instrument Order 2006

The SI Order prescribes the form and content of a principal LEP for a local government area for the purposes of section 3.20 of the EP&A Act in accordance with relevant state policies. It is a standard format LEP that applies to all local government areas in NSW. The SI Order establishes the land use planning framework and includes a range of definitions and appropriate land use zones for inclusion in each council's LEP.

The inclusion of a definition for STRA in the SI Order and the identification of where it will be permissible will mean there is a consistent approach to the regulation of the activity across NSW.

6.2.4. Local Environmental Plans

LEPs are a local planning instrument applying to local government areas that specify where land uses are permissible and can set standards for types of development.

The state-wide policy will amend existing LEPs according to the SI Order.

6.3. Abbreviations

Table 3: Abbreviations

Topic	Intention
Codes SEPP	State Environmental Planning Policy (Exempt and Complying Development) Codes 2008
DFSI	Department of Finance, Services and Innovation
EIE	Explanation of Intended Effect
EP&A Act	The Environmental Planning and Assessment Act 1979
LGA	Local Government Area
LEP	Local Environmental Plan
NSW	New South Wales
SEPP	State Environmental Planning Policy
SI Order	Standard Instrument (Local Environmental Plans) Order 2006
STRA	Short-Term Rental Accommodation

6.4. Local Government Areas comprising Greater Sydney Region

Bayside	Cumberland	Northern Beaches
Blacktown	Fairfield	North Sydney
Blue Mountains	Georges River	Penrith
Burwood	Hawkesbury	Randwick
Camden	Inner West	Strathfield
Campbelltown	Hornsby	Sutherland
Canterbury-Bankstown	Hunter's Hill	The Hills
City of Sydney	Ku-ring-gai	Waverley
City of Parramatta	Lane Cove	Willoughby
City of Ryde	Liverpool	Woollahra
City of Canada Bay	Mosman	Wollondilly



New South Wales Consolidated Acts

GREATER SYDNEY COMMISSION ACT 2015 - SCHEDULE 1

GREATER SYDNEY COMMISSION ACT 2015 - SCHEDULE 1

SCHEDULE 1 – GREATER SYDNEY REGION

(Sections 3 and 4)

