

NSW SHORT TERM RENTAL ACCOMMODATION (STRA) - FURTHER UPDATE

The NSW Department of Planning and Environment has recently clarified its views in relation to the application of the State - Wide Short term Rental Accommodation (STRA) planning laws.

You may recall that from the 1st November 2021, new rules commenced in NSW in relation to STRA, including:

- a state-wide **planning instrument** permitting the use of dwellings for STRA under certain conditions, including limits on the days the activity can take place; and
- a mandatory **Code of Conduct** that applies to online booking platforms, letting agents, hosts and guests; and
- allowing strata schemes to adopt a **by-law that prohibits STRA** where a lot is not a host's principal place of residence. (Any such by-law has to be adopted by special resolution, with 75% of votes supporting the proposal at a general meeting), and
- STRA properties upgraded where necessary to meet certain **minimum safety requirements**.

After some delays and staggered starts, all these policies have now been put into effect.

Day Limits on STRA

The planning laws now include new 'exempt' and 'complying' approval pathways that enable STRA within certain day limits:

- where the host is present, STRA is 'exempt development' for 365 days per calendar year. This allows hosts to use an existing approved dwelling for the purposes of STRA, without requiring any further approval from the local council;
- where the host is not present, and the site is not on bushfire prone land or a flood control lot, STRA is 'exempt development' for:
 - 180 days in Greater Sydney;
 - 365 days in regional areas; except where a council varies this to no lower than 180 days (although Byron Bay is possibly looking to varying this to 90 days in some parts of the shire and 365 days in other parts);

(Note that where the host is not present, and the booking is for 21 or more consecutive days, the booking will not count towards the above day thresholds).

What does this mean for management rights operators?

Prior to the commencement of the STRA laws, only a limited number of Councils in NSW had local environmental plans that specifically regulated the use of properties for short term rental accommodation. Many operators conducted short term letting from complexes that were zoned (or had a DA) for “residential accommodation”.

Following the introduction of the STRA laws, management rights operators now need to make enquiries with their local Council to ascertain if the development approval (DA) for their building specifically allows short term letting in the complex. If a valid DA for STRA exists, the day caps set under the STRA planning policy do not apply to that building.

However, if the DA for the building was only for residential use (notwithstanding that it may have been used for STRA in preceding years without any Council intervention), the day caps **will apply**, which this obviously could have a detrimental effect on management rights operations.

It should be noted however that the Departments interpretation of these new STRA laws have not been tested yet in a Court of Law – so watch this space!

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