



BYRON SHIRE COUNCIL

Planning proposal for short term letting in Byron Shire

RESPONSE by HLO Byron Incorporated

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1 EXECUTIVE SUMMARY

HLO Byron is an organisation made up of property owners and their managing agents. A central tenet of HLO Byron is that owners have a right to let their properties whenever they want to, short term or long term, providing that their properties are managed responsibly.

Short term rental provides a significant overnight visitor bed capacity. It is very important to the success and growth of the dispersal and increase in visitor spend targeted by both our local tourism organisation, Destination Byron, and also the NSW State Government's 2020 on doubling the revenue generated by overnight visitors.

HLO Byron has reviewed the Byron Shire Council (BSC) revised short term holiday letting strategy. In summary, HLO Byron:

- requests that the BSC suspends all activity on the process pending the outcomes of the NSW Government Parliamentary Inquiry into the adequacy of regulation of short-term holiday letting in NSW.
- advises that the planning proposal demonstrates a lack of understanding of the operating environment of STRA where whole dwellings are involved.
- challenges the justification for the planning proposal and maintains that the strategy is overly complicated, overreaches its scope and lacks the necessary impartiality.
- requests that the BSC urgently reviews the planning proposal due to the fact that it is fundamentally flawed as a regulatory tool as it does not apply to dwellings currently engaged in short term rental accommodation (holiday letting).
- reiterates its recommendation that the focus on a discriminatory development consent structure be replaced with a prime objective that includes planning certainty and focuses on registration and behavioural management
- continues to support the creation of a short term rental policy by the BSC to end the current doubt and confusion, however it strongly disagrees with the planning proposal.
- supports the recognition and adoption of the Code of Conduct as the practical management tool.
- recommends that the BSC changes its focus to the implementation and integration of the Code of Conduct to achieve the prime objectives of its STRA strategy.

2 HLO BYRON INCORPORATED

HLO (Holiday Letting Organisation) Byron Incorporated was established in 2005 at a meeting of property owners to represent them at local and state government level.

The membership of HLO Byron Inc. is made up of property owners and their managing agents.

HLO Byron's position is that owners have a right to let their properties whenever they want to, short term or long term. On the other hand, they should ensure that their properties are managed responsibly.

HLO Byron wrote the first Code of Practice for holiday rental in NSW. It was part of the team convened by the Department of Planning and Infrastructure in 2011 that formulated the current Code of Conduct for holiday rental and currently sits on the Code Administration Committee. It manages and funds the Noisy Neighbour Hotline as a community service and policing tool for non-compliant incidents.

HLO Byron's views in its submission to the lead up Byron Shire Council Draft Short Term Letting Strategy (attached) are pertinent and apply to this response to the planning proposal.

HLO Byron has reviewed the planning proposal for short term rental accommodation in Byron Shire (hereafter referred to as the 'planning proposal') and provides the following response.

3 JUSTIFICATION OF THE PLANNING PROPOSAL

HLO Byron remains concerned about the development and final decision making process to arrive at the planning proposal.

Section A - Need for the Planning Proposal

1. Is the planning proposal a result of any strategic study or report?

- We have ongoing concerns about the procedural integrity of the stakeholder workshops. While the workshops technically 'tick the box' of stakeholder consultation and engagement, they appeared to have been structured around a preconceived outcome rather than as a consultative process.

- Industry workshop participants were assured that there would be working groups to help create a platform for the strategy to develop the planning proposal which never occurred.

- There has been limited consultation with those who own property available for short term rental and the people who manage them on their behalf. The failure to effectively engage with this group has resulted in the planning proposal that contains errors of fact and reveals a limited working knowledge of how the short term rental of whole dwellings actually operates.

- There has been limited consultation with HLO Byron, the peak local organisation for short term rental. In disregarding this source of subject matter expertise a wealth of knowledge, experience and statistical data available on this topic has been overlooked. HLO Byron has actively sought to work with the BSC to address issues such as this over the past years.

- There has been limited consultation with the Department of Planning & Environment in developing the detail of the planning proposal.

- There has been limited consultation with BSC's own internal tourism and economic development department, as well as Destination Byron, to gauge the effect that their proposed strategy will have on the visitor economy if implemented.

The announcement of the NSW State Government Parliamentary Inquiry into the adequacy of regulation for short term holiday letting in NSW will provide a long awaited overview to guide the government's policy development. It is inappropriate for BSC to proceed with its planning proposal until the outcomes of the inquiry are available,

2. Is the planning proposal the best means of achieving the objectives or is there a better way?

HLO Byron believes that no other means was ever seriously explored or considered.

The BSC ignored the initial requests of the NSW State Government to support the Code of Practice for self-regulation of STRA. The general response was that self-regulation 'does not work' and no effort was made to consider the possibilities for this option.

The BSC has been single minded in the belief that they must address issues with STRA through the planning route. There are many historical reasons for this view to dominate; however, there is no practical reason for such limited strategic thinking to compromise the process.

The BSC strategy now involves the use of the Code of Conduct as the practical operating guide. The objectives of the BSC's planning proposal can be achieved through the legally binding terms and conditions defining the occupancy agreement between the renter and the owner of the dwelling.

The combination of this and the existing planning powers the BSC possesses in the development approvals for residential use of private dwellings is more than enough to address problems.

4 PLANNING PROPOSAL - REGULATION THROUGH DEVELOPMENT CONSENT

4.1 DEVELOPMENT APPROVAL

The focus on the development approval structure reveals an objective to restrict or remove an owner's fundamental right to let on a short term basis a dwelling that has already been approved for residential use. HLO Byron's legal advice is that this planning proposal is fundamentally flawed if the objective is to regulate STRA in private dwellings through the process of development approval.

It is assumed that this objective is to gain regulatory control over the existing pool of dwellings that are available for STRA.

However any amendments to the LEP can only be prospective. This means that no dwelling that is currently engaged in STRA is subject to any of the provisions that are sought.

The EPA Act states;

109B Saving of effect of existing consents

(1) Nothing in an environmental planning instrument prohibits, or requires further development consent to authorise, the carrying out of development in accordance with a consent that has been granted and is in force.

(2) This section:

(a) applies to consents lawfully granted before or after the commencement of this Act, and
(b) does not prevent the lapsing, revocation or modification, in accordance with this Act, of a consent, and

(c) has effect despite anything to the contrary in section 107 or 109.

(3) This section is taken to have commenced on the commencement of this Act

The questions that must be asked of the creators of this planning proposal and the Councillors who approved it are;

Are you aware that the conditions you seek to impose can only apply to dwellings without any current development approval or existing STRA use?

If not, why not?

If so, what practical use does the strategy have in addressing any of the issues with the dwellings currently renting on a short term basis?

At one stage BSC pursued the concept of restricting STRA to specific zones. This was obvious patently inequitable and unfair amongst other considerations. Now a strategy is proposed which seeks to potentially favour all those currently owning dwellings engaged in STRA over those who may wish to do so in the future.

5 CONCLUSION

The planning proposal is fundamentally flawed as a regulatory strategy and needs to be thoroughly reviewed with impartiality.

It is inappropriate to continue the current process whilst the NSW Parliamentary Inquiry is in process. This time could be gainfully used to develop a working relationship between the STRA sector and the Byron Shire Council.

It also could be used to review the path that the BSC has taken to arrive at its planning proposal and redress the serious gaps in knowledge and knee jerk decision making which was clearly evident on the day that the proposal, again revised on the day, was given the go ahead.

What the community wants is a continuing improvement in the reduction of behaviourally generated non-compliant incidents.

What the STRA sector wants is certainty with a fair and equitable policy and cooperation from the BSC.

The BSC has been handed an effective instrument in the Code of Conduct which can address all stakeholder's issues.

The BSC can be actively involved in delivering this now alongside those who own STRA dwellings with the tools it currently has at its disposal.