

Submission to the discussion paper on short and long-term rental accommodation



Contents

Introduction	2
1. Context	4
2. STRA to be exempt only	7
3. Planning policy settings for STRA	8
4. Day caps on non-hosted STRA	10
5. Short-term Rental Accommodation Register	12
6. Code of Conduct	13
7. Revenue measures	14

Introduction

The City of Sydney (the City) welcomes the opportunity to provide a submission on the Department of Planning, Housing and Infrastructure and NSW Treasury's Discussion Paper on the short- and long-term rental accommodation (Discussion Paper).

It is understood that the NSW Government is investigating policy levers to unlock housing supply and ease the ongoing pressure on housing affordability across NSW. Specifically, the Discussion Paper seeks feedback about:

- the adequacy of the short-term rental planning and regulatory framework and how well it balances the benefits to the tourism economy with the potential costs for housing availability and affordability, and
- potential policy options, including revenue measures, to encourage property investors to make homes available to the long-term rental market.

On 1 November 2021, the NSW Government introduced a statewide planning and regulatory framework for short-term rental accommodation. It aimed to provide a consistent approach to balancing the effects of short-term rental accommodation on local tourism, housing supply and affordability, and neighbourhood amenity. However, the main function of the existing framework is to set out the rights and obligations of participants and to facilitate oversight of the STRA industry.

It is the City's experience that this is not delivering on the outcomes anticipated. The focus needs to shift to compliance with planning laws, as this has the potential to influence strategic outcomes such as availability and affordability of housing supply and visitor accommodation.

The City has closely reviewed the Discussion Paper and makes the following recommendations.

- Recommendation 1:** Work directly with the City to implement local policy responses, considering the local housing market, needs of the tourism sector and the evidence in the City commissioned research.
- Recommendation 2:** Exceedance of a mandated day cap should not be permitted as it will create uncertainty for applicants, cause conflict in the development application process, ultimately delaying approvals and increasing costs and administration.
- Recommendation 3:** Changes to any definition(s) must consider the implications on planning pathways and the outcomes intended by a day cap and should differentiate between hosted and non-hosted STRA.
- Recommendation 4:** Amend the definitions used in the registration process to improve clarification and reduce instances of incorrect registration.
- Recommendation 5:** Amend the registration process to introduce an additional entry field for a unit number.
- Recommendation 6:** Review and improve the online sources of information on the regulatory and policy framework for STRA that is available to industry participants.
- Recommendation 7:** Undertake targeted consultation with the City following the conclusion of our STRA review, to determine whether a localised day cap would be a suitable and effective approach, and if so, what this day cap would be.
- Recommendation 8:** Introduce a deeming provision to Section 102F of the EP&A Regulation (Development Certification and Fire Safety) that the booking summary

provided on the STRA Register is direct evidence of the number of days a dwelling has been used as STRA.

- Recommendation 9:** The Department should actively monitor the day cap, suspend the registration number of any property that has exceeded the 180-day cap and refer the case to the Fair Trading to place the property on the Exclusion Register.
- Recommendation 10:** Fair Trading should investigate all complaints received from local councils outlining breaches of the Code and pursue the relevant offence and placement on the Exclusion Register.
- Recommendation 11:** Fair Trading should establish a built for purpose process for councils to directly refer breaches of the Code to Fair Trading.
- Recommendation 12:** Undertake targeted consultation with the City to determine suitable revenue measures informed by robust economic analysis on the impacts of such measures, following the conclusion of the City's STRA review.
- Recommendation 13:** Divert any funds generated through revenue measures from properties within the City of Sydney LGA to established programs that support the supply of affordable and diverse housing within the LGA and to support compliance operations.
- Recommendations 14-21:** are included at confidential Attachment A.

1. Context

1.1 Background

The City's Housing Strategy - Housing for All (the Strategy), recognises that in the last decade, Sydney's liveability has been challenged by the decreasing affordability of its housing for many. This problem has become particularly acute in the inner city.

The Strategy found a substantial decline in the amount of rental stock that is affordable for people on very low incomes. The Strategy also found 27.6 per cent of all rental households in the local government area (LGA) were experiencing rental stress (households paying more than 30% of their income on rent). More recently, the rental housing shortage has escalated and the cost of renting in the City has significantly increased. Long-term rental stock has shrunk over 2020-2023 due to shrinking household size, fewer lodgements for new housing and owner occupiers acquiring rental stock in the market over the period. This has resulted in historically low vacancy levels.

Short-term rental accommodation (STRA) can have a range of social and economic benefits such as supporting tourism, providing supplementary income for individuals, enabling hosts to meet people from all over the world and injecting money into the local economy. However, if it occurs too often, and in the absence of a longer-term host resident, it can operate as a commercial business that may negatively impact long-term rental housing supply. It may also have significant amenity impacts on neighbours.

With the rise of online booking platforms, STRA has rapidly grown over the last two decades. This has given rise to a range of concerns including, but not limited to:

- the potential withdrawal of long-term rental properties from the rental market,
- impacts on purpose built forms of visitor and tourism accommodation,
- safety and amenity impacts on existing residents and buildings,
- compliance issues and other problems with the existing STRA regulatory framework.

1.2 STRA activity in the City of Sydney

Analysis of AirDNA and Census data reveals that approximately 4.4% of all housing stock within the City of Sydney LGA is listed as STRA, with non-hosted STRA accounting for about 3.5% of the total dwelling stock. There are clear 'hotspots' of STRA listings across the LGA, particularly in Central Sydney, Waterloo and Potts Point.

The increasing commercialisation of STRA in the City is evident, with 36% of STRA stock being rented out as non-hosted for more than 180 days in a year, which is the highest proportion on record for the LGA. Additionally, approximately a third of STRA properties listed across the City are being run by hosts that have multiple listings within the City of Sydney LGA. It is expected that this segment would be even larger if listings by hosts who also have listings outside the City of Sydney LGA were counted.

The commercialisation of STRA has been identified as a factor contributing to reduced availability of long-term rental properties, due to certain STRA operations yielding higher returns for investors compared to traditional long-term rentals.

STRA supply in the City peaked in 2019 at over 15,000 active listings (booked at least one night annually), before falling during the Covid-19 period. Listings are still recovering following the

pandemic, with supply for 2023 sitting at just over 5,000 active listings. If STRA supply was to return to pre-pandemic levels, there is a risk that this will further reduce the availability of rental stock.

It is noted that the data the City has procured from AirDNA, which is scraped from Airbnb and Vrbo, lacks validation of property locations due to the methods employed by these booking providers in collecting property information, particularly regarding location and address details.

It is a common practice for properties to be listed at nearby points of interest rather than their actual addresses on these platforms. Consequently, the location accuracy of AirDNA data is inconsistent, potentially misrepresenting real-world property locations.

1.3 The City's independent STRA Review

In May 2023, Council resolved to commission a report on the impacts that STRA is having on rental affordability and availability, and tourist accommodation in the LGA. The review commenced in October 2023 - an independent consultant has been engaged and we surveyed property owners, renters and neighbours.

The key objectives of the City's review are to:

- evaluate the efficacy of the existing STRA regulatory framework for the City
- establish an STRA sector profile for the LGA
- identify impacts to tourist accommodation
- analyse the local housing market to investigate the availability and pricing of rental accommodation in various markets in the LGA
- conduct an investment analysis to compare the investment returns of long-term vs. short-term rental accommodation and identify the number of days needed for investment returns from long term rental accommodation and STRA to be at parity across different locations in the LGA
- undertake a policy and case study review of NSW's regulatory framework to enable policy scenarios for evaluation in the economic analysis as well as uncover any alternative models or interventions worth considering
- conduct financial analysis to evaluate the effectiveness of policy options including examining potential revenue and tax implications for the property owners
- observe the number or proportion of STRA that could realistically be withdrawn and allocated for longer-term housing should various interventions be implemented.

The review will make recommendations for enhancing STRA regulation, compliance and enforcement. The review will also recommend interventions that seek to reduce to commercialisation of the STRA sector, evaluate the efficacy of the STRA day cap, investigate the impacts of an STRA tax and consider ways to incentivise long-term rentals.

Whilst some preliminary findings of the City's review have been incorporated into this submission, the associated policy recommendations will only be available once the research has concluded, and the outcomes have been reported to Council.

This is anticipated to occur in the second quarter of 2024. Following this, the City looks forward to engaging with the NSW Government on suitable policy responses and interventions for STRA in the City, taking into account the local housing market, needs of the tourism sector and the evidence in the City commissioned research.

Recommendation 1: Work directly with the City to implement local policy responses, considering the local housing market, needs of the tourism sector and the evidence in the City commissioned research.

2. STRA to be exempt only

2.1 STRA as exempt development only

The current exempt development pathway to use residential dwellings as STRA under the Housing State Environmental Planning Policy (Housing SEPP) caps non-hosted stays at 180 days in Greater Sydney and nominated regional local government areas. The exception being a new 60-day cap that will apply across most of the Byron Shire LGA from 23 September 2024.

The Discussion Paper notes the recommendations of the NSW Independent Planning Commission (IPC) to the Minister for Planning and Public Spaces in early 2023. The recommendations were made at the request of the Minister to inform their decision about the introduction of the more restrictive day cap on non-hosted STRA in Byron Shire council.

The IPC made a recommendation, specific to Byron Shire council, that a development application be required for non-hosted STRA seeking to go beyond the day cap. The Discussion Paper seeks feedback about the utility of this approach in other council areas, noting that if applied across NSW, specific day caps for each local area would need to be established and then each application would be assessed by council.

This approach is not supported by the City. Exceedance of a mandated day cap should not be permitted. The City agrees with the Discussion Paper that the introduction of a development application pathway will create uncertainty for applicants, cause conflict in the development application process, ultimately delaying approvals, and increase costs and administration.

As stated above, the City is conducting a review of STRA which will evaluate the efficacy of the STRA day cap and inform the City's position on whether a localised day cap would be a suitable approach for the City.

Due to the amenity impacts and the different management requirements in high rise buildings, the Sydney Development Control Plan 2012 (DCP) contains specific requirements for residential and visitor and tourist accommodation uses, such as serviced apartments. These controls are outlined in Section 4.4.8 of the Sydney DCP and development applications (DAs) for STRA in single apartments would directly conflict with the City's controls and would not be supported. An STRA use above the cap is considered tourist and visitor accommodation which is not permitted in the City's low density residential zones (R1, R2). Accepting DAs for STRA above the cap would lead to further proliferation of STRA in the City's apartment buildings and low density residential neighbourhoods and lead to further reduction in the City's long term residential rental supply.

Recommendation 2: Exceedance of a mandated day cap should not be permitted as it will create uncertainty for applicants, cause conflict in the development application process, ultimately delaying approvals and increasing costs and administration.

3. Planning policy settings for STRA

3.1 Land use type and definitions

The Discussion Paper highlights that general feedback on the STRA policy has been that the activity is now overly commercialised and closer in nature to a tourist and visitor accommodation activity, rather than a residential activity. In their advice report, the IPC commented that identifying non-hosted STRA as a type of tourist and visitor accommodation land use was the simplest method of formalising the characterisation of STRA in the Byron Shire.

The City notes that tourist and visitor accommodation is a prohibited land use in the R1 General Residential zone which applies to a large proportion of the LGA's residential land. Therefore, under the IPC's recommended arrangement, STRA would be prohibited in the majority of the LGA. As such, any proposal to change this characterisation in line with the IPC recommendation should consider the scaled impact this would have on the City.

The definition(s) must also consider hosted STRA and cases where the occupant (as an owner occupier or long-term tenant) provides the dwelling as non-hosted STRA for a small number of days, such as during an overseas trip, but the dwelling remains the primary place of residence.

The Discussion Paper considers ways to improve the process for those registering their STRA dwellings on the NSW Government's Short-term Rental Accommodation Register (the Register).

The Paper acknowledges that people often register their short-term rental accommodation dwellings as a 'dwelling house' when in fact they should be registering their apartment as a 'residential flat building'. This creates inaccurate data and compliance difficulties for councils.

To overcome this, the paper proposes making these definitions clearer. The City supports this approach to ensure STRA dwellings within residential flat buildings are correctly accounted for.

In relation to enforcement, the City has encountered ongoing issues with unit numbers not being included in the street address when dwellings within residential flat buildings are registered. The City also has had difficulty in obtaining information of a dwelling being let on a 'commercial basis', such as financial transaction records, as required by the definition of STRA in cl. 110 of the Housing SEPP.

Recommendation 3: Changes to any definition(s) must consider the implications on planning pathways and the outcomes intended by a day cap and should accommodate the different forms of hosted and non-hosted STRA.

Recommendation 4: Amend the definitions used in the registration process to improve clarification and reduce instances of incorrect registration.

Recommendation 5: Amend the registration process to introduce an additional entry field for a unit number.

Further recommendations to improve the Register are included in Section 5 and Attachment 1 of this submission.

3.2 Requirements for STRA

The general requirements for STRA are outlined in Section 113 of the Housing SEPP. This section specifies that the use of the dwelling for the purposes of STRA must be otherwise lawful. For example, where conditions of development consent prohibit the use of a dwelling for STRA. This means that conditions of consent take precedence over the STRA provisions and that councils may continue to impose conditions of consent that prevent the use of a dwelling or building for STRA.

In the past, the City has applied restrictions on most residential development through a condition of consent to prohibit a person from advertising or organising the use of residential apartments for short term accommodation or share accommodation.

This practice ceased following the introduction of state-wide STRA framework and since then this condition has only been applied in limited circumstances to ensure the use of a site for permanent residential purposes. The City will continue to exercise its right to implement conditions of consent where appropriate, in accordance with Section 4.17 of the Environmental Planning & Assessment Act (EP&A Act).

Following the conclusion of the City's STRA review, the City may investigate whether this condition of consent should be applied to certain development types moving forward, such as newly constructed residential accommodation, as was recommended by the NSW IPC in the advice report to the Minister for Planning and Public Spaces in early 2023.

3.3 Communication

It is the City's experience that better communication of the regulatory and policy framework for STRA would increase compliance. At present, the information on the Department of Planning, Housing and Industry (the Department) and Fair Trading websites conflicts with the exempt provisions in the State Environmental Planning Policy (Housing) 2021 (Housing SEPP).

The interaction between the change to the Strata Schemes Management Act to only allow owners corporations to pass by-laws to ban STRA in lots that are not a host's principal place of residence and Section 113(i) of the Housing SEPP is not clear, in relation to conditions of development consent that prohibit STRA. This results in instances of STRA operation that is not compliant with Section 113(i) of the Housing SEPP.

Recommendation 6: Review and improve the online sources of information on the regulatory and policy framework for STRA that is available to industry participants and better communicate this information to them.

4. Day caps on non-hosted STRA

4.1 Localised day caps

As above, it is noted that a cap of 180 days currently applies to non-hosted short-term rental accommodation in Greater Sydney and nominated regional local government areas, and that from 23 September 2024, a new 60-day cap will apply across most of the Byron Shire LGA.

The Discussion Paper indicates the NSW Government is considering the following approaches:

- restrictive day caps for non-hosted STRA
- revenue measures on STRA instead of day caps
- a combination of both revenue measures and targeted day caps in areas with disproportionately high levels of non-hosted STRA.

In submissions to the proposed NSW framework in 2018 and 2019, the City raised concerns that a 180-day cap would do little to mitigate the impacts of property owners withdrawing existing long-term rental dwellings in favour of STRA. The City continues to advocate this position.

Preliminary financial analysis conducted as part of the City's STRA review indicates that the current 180-day cap does not effectively discourage the exclusive use of properties for STRA. Furthermore, the exemption of stays exceeding 21 days from this cap allows for a property to be leased on a short-term basis for significantly more than 180 days annually, enhancing its attractiveness for STRA operations.

The City's preliminary findings reveal a substantial variation in the minimum number of days a STRA property needs to be rented to remain economically viable across different parts of the LGA.

Following the completion of its review, the City looks forward to working with the NSW Government to determine if a localised day cap would be a suitable approach for the City, considering the local housing market and tourism economy. The day cap mechanism will only be effective when informed by robust investment and economic analysis, such as that being conducted in the City's STRA review. Analysis to inform a localised day cap should also consider any revenue measures that are introduced, which are understood to be decided upon prior to any changes to the planning and regulatory framework.

Any introduction of a localised day cap or reliance on day caps as a policy intervention is ineffective unless it can be enforced. Further, the ability for government to collect revenue from STRA will also require a more effective registration and compliance framework.

When the STRA Register was introduced as part of the NSW regulation framework in 2021, the NSW Government affirmed that hosts would be unable to book more than 180 days in a year through the Register. However, the existing day cap is currently unable to be enforced. Based on analysis completed by the City in 2022, over 300 registered non-hosted dwellings in the City of Sydney LGA had exceeded the 180-day cap.

The booking summary currently provided through the Register is not sufficient evidence to prove the number of days a listing has used in a 12-month period. The financial records associated with bookings are required to prove use of a dwelling on a commercial basis as required by the definition in cl. 110 of the Housing SEPP. As the Department administers the Register, they should be responsible for proactively monitoring the day cap. Presently, a property's registration

number remains active (and therefore can legally be advertised on a booking platform), despite exceeding the 180-day cap. To date, the City has never received a notice from the Department regarding a property where the day cap has been exceeded.

In addition, as some of this data is self-reported and can be edited by hosts, as well as considering that there are dwellings operating as STRA that are not registered, it is anticipated that the actual number of cases where the day cap has been exceeded is far higher.

- Recommendation 7:** Undertake targeted consultation with the City following the conclusion of our STRA review, to determine whether a localised day cap would be a suitable and effective approach, and if so, what this day cap would be.
- Recommendation 8:** Introduce a deeming provision to Section 102F of the EP&A Regulation (Development Certification and Fire Safety) that the booking summary provided on the STRA Register is direct evidence of the number of days a dwelling has been used as STRA.
- Recommendation 9:** The Department should actively monitor the day cap, suspend the registration number of any property that has exceeded the 180-day cap and refer the case to the Fair Trading to place the property on the Exclusion Register.

5. Short-term Rental Accommodation Register

Under both the Housing SEPP and EP&A Regulation (Development Certification and Fire Safety) (the Regulation), all STRA dwellings must be registered on the NSW Government's Short-term Rental Accommodation Register (the Register). Registrations must remain valid to maintain compliance with the requirements of the policy settings for exempt development. Registrations must also be renewed annually.

The City has serious concerns with the current administration of the Register, including the highly variable and poor quality information that is being collected, the lack of monitoring of the Register, and the lack of enforcement measures where there is non-compliance.

It is noted the City's analysis of the Register, and its efficacy exposes numerous weaknesses that might be exploited by operators should they be made public.

Therefore, the City's analysis, comments and recommendations about the Register are provided as a separate confidential appendix to this submission.

6. Code of Conduct

It is the City's experience that non-compliance with the Code of Conduct is commonplace. Often, the City's investigations into alleged breaches of planning law reveal multiple breaches of the Code. As council officers are not authorised to administer the offence provisions specified in the Code, these breaches are referred to Fair Trading – however no action has been taken. To the City's knowledge, not a single entity has been placed on the Department of Customer Service's Exclusion Register since its creation.

The City has encountered instances where an individual who has been subject to council enforcement action for contravening a planning law, can continue to operate the dwelling in question as STRA as they are not placed on the Exclusion Register, allowing the registration number to remain valid.

Recommendation 10: Fair Trading should investigate all complaints received from local councils outlining breaches of the Code and pursue the relevant offence and placement on the Exclusion Register.

Recommendation 11: Fair Trading should establish a built for purpose process for councils to directly refer breach of the Code to Fair Trading and similarly to report information back to councils.

7. Revenue measures

The Discussion Paper suggests that revenue measures may play a role in NSW's approach to managing STRA. Currently the approach relies solely on a planning and regulatory framework. The paper outlines the guiding principles for revenue measures and the scope for a levy on STRA to encourage some owners to shift their dwellings to use as a long-term rental.

Any levy, with the purpose of encouraging dwellings to return to or remain in the long-term rental market, should be targeted at those dwellings, and not long-term rental accommodation and primary places of residences, that are also used as STRA properties (either hosted or when households go on holidays). Discouraging hosted STRA, or those who choose to rent out their primary residence while away on holiday, by applying a levy would not result in an increased supply of long-term rental stock and would instead lower overall use of existing housing stock.

Exemptions for revenue measures should be made for STRA properties that are already used as long-term rental accommodation or as a principal place of residence. To implement this, a levy could be linked to the existing land tax structure, i.e., if a property operating as STRA is subject to state land tax – it is therefore not a primary residence and would be subject to the levy.

The City's STRA review is investigating whether targeted strategies to reduce the commercialisation of the STRA sector would be effective. One such strategy could be to introduce financial levies on owners who list multiple properties as STRA properties. This measure could be particularly pertinent during housing shortages, to ensure that investment properties not used as primary residences are encouraged to re-enter the long-term rental market in an attempt to alleviate pressure on vacancy rates.

Notwithstanding this, revenue measures will only be effective when informed by robust economic analysis, such as that being conducted in our STRA review.

It is crucial that all funds generated through levies applying to properties within the City of Sydney LGA are used to bolster affordable and diverse housing needed to prevent homelessness within the LGA through the City's established programs. Revenue streams could also support compliance operations for STRA at the City.

Recommendation 12: Undertake targeted consultation with the City to determine suitable revenue measures informed by robust economic analysis on the impacts of such measures, following the conclusion of the City's STRA review.

Recommendation 13: Divert any funds generated through revenue measures from properties within the City of Sydney LGA to established programs that support the supply of affordable and diverse housing within the LGA and to support compliance operations.

