

REGULATING THE SHORT TERM RENTAL ACCOMODATION INDUSTRY IN BYRON SHIRE – A SOLUTION TO A SOCIAL SCURGE OR A FUTILE EXERCISE?

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The scope of this submission This submission is concentrating on regulation of this industry and some options that are available from a few studies on European and USA cities. Other studies show how counties and cities have found creative ways to put limits on this industry with varying degrees of success. By comparison our Government's attempts are pathetic. Caps by themselves in Byron Shire are no answer when it's so easy for property owners to slip through the petty regulations and operate as often as they want, as they do.

A difficult industry to regulate

As Professor Peter Phibbs said on the ABC news in May of last year,

'Making the regulation is probably the easy part. Enforcing the regulation can be quite difficult. It's certainly resource-intensive. It sometimes involves quite long legal processes. It's important to have some kind of taxing regime where short-term rentals pay for the cost of that regulation through some sort of bed tax.'

<https://www.abc.net.au/news/2022-05-15/short-stay-rentals-airbnb-impact-on-australian-property-market/101019726>

While bed tax is one option this paper will explore the need for different forms of government regulation and a range of options to fund the processes effectively.

One 2017 study which looked at how 11 in European and USA cities dealt with the 'perceived negative externalities' of short term rentals, concluded that most cities try to regulate the STRA industry, *'but enforcement remains difficult as, for example, Airbnb is a peer to peer platform and is not caught up by traditional regulations. The owners and the hosts rather than Airbnb become the target for regulation. This is problematic as hosts and owners do not operate in a business model. Some cities do target the platform with a fine and then an accumulating fine can be as high as 100,000 euros.'*

https://www.researchgate.net/figure/Regulatory-approaches-in-11-European-and-American-cities_fig1_326814900

[The main reasons for regulation](#)

Reasons for better regulation

Better regulation includes the dot points below. Many of these will actually reduce the number of available STRA homes in the shire, if we exclude the out of shire owners and the multiple dwelling owners. If the regulations are monitored for compliance and there are provisions for penalties, then more will be gone. If owners have to show registration

numbers for themselves and for their properties, then monitoring will be so much easier to monitor and monitoring itself is fairly useless if there aren't funds to enforce compliance. It's a multifactorial system, with many possible variables. **Caps and maps alone won't do it.**

Hopefully we can stem the tide of loss of social capital, have businesses that can attract workers, and workers who can afford to live where they happen to work. Areas with 1 tourist home for every 4 residents may be great for the ASTRA's but not for the residents and not for many local businesses.

Attempted ways of regulating

Despite the difficulties in monitoring and imposing penalties, many places overseas attempt a range of regulations including the following:

- Limiting the number of STRA homes,
- Limiting the number of visitors per home,
- Limiting the number of days per year for rental,
- Limiting the number of STRA homes owned by one entity.
- Confining STRA to specific areas,
- Requirements for safety precautions like fire alarms
- Mandating permits and licences.
- Displaying their licence number on the premises and on advertising for rental
- Requiring the renter to live in the STRA premises as their primary place of residence, or for a given percentage of the year.
- Tourist and other taxes
- Development approval for the premises.

In some cities, Airbnb has cornered so much of the market, regulations are specifically for Airbnb rentals.

Two rare examples of successful regulation.

Case 1 – Anaheim

<https://www.anaheim.net/DocumentCenter/View/26468/Short-term-rentals-fact-sheet?bidId=>

Anaheim is a city in California, with a population of approx. 350,000, and is famous for its Disneyland and the accompanying hotel resort. STRA listings must have business licences with a limit of 30 nights per year. In the spring of 2022 there were only a few hundred premises licenced for STRA. Two part time enforcement officers were employed to deal with complaints. Owners or managers can be fined, lose their permits or be shut down. Published data indicate that these penalties are being enforced.

Case 2 New Orleans

https://eres.architecture.net/system/files/P_20190128144521_0143.pdf

This southern city is exceptional in that it has banned STRA in the French quarter of the city which is the main tourist area leaving the old hotels almost a monopoly on tourist accommodation. Newly built hotels in this area are also banned.

Major problems and recommendations re regulation

Below is a list of the most obvious problems and recommended roles for NSW and local governments to address these problems. Included are examples where such restrictions have been imposed.

Problem 1:

Lack of adequate funding for all three levels of government to tax, regulate, carry out compliance and impose penalties.

Some places in Europe and USA have imposed hefty taxes and fines. Eg in California the Transient Occupancy tax is between 10 and 15%. Some city governments in Europe collect tax. eg Barcelona. In New York, failure to register can attract a fine between \$1000 and \$7500 and in Paris and Dublin can be as high as 5000 Euros

http://clkrep.lacity.org/online/docs/2014/14-1635-S2_ORD_185931_07-01-19.pdf

<https://awning.com/post/new-york-state-short-term-rental-laws#:~:text=New%20York%20City%20Short%20Term%20Rental%20Laws&text=In%20NYC%20it%20is%20prohibited,paying%20guests%20at%20a%20time.>

In NSW it costs \$65 to register on the Department of Planning and Environment register with an annual fee of \$25. Anecdotal evidence suggests that the register contains less than a third of the total of residences on the various platforms. With no-one on the bad Code of Conduct register, a hefty fine is an option for non-compliance.

<https://www.fairtrading.nsw.gov.au/housing-and-property/short-term-rental-accommodation>
<https://www.planningportal.nsw.gov.au/sites/default/files/documents/2022/Registering%20a%20STRA%20Property.pdf>

Recommendation 1: NSW government looks at adopting overseas examples of raising money from the STRA industry to finance registration and compliance.

<https://www.fairtrading.nsw.gov.au/resource-library/publications/code-of-conduct-for-the-short-term-rental-accommodation-industry>

Problem 2:

Many STRA properties fees are so high that the owners can afford to leave the properties empty in non-peak times.

This problem has been addressed in a variety of places by reducing the number of nights per year that a residence can be let for STRA.

Amsterdam has a limit of 30 days per year, with a limit of 4 people.

Barcelona restriction is for 31 days per year

New York has prohibited letting for less than 30 days unless the host is present, and then it is restricted to 2 paying guests at a time.

<https://blog.keycafe.com/understanding-barcelonas-short-term-rental-regulations/>

<https://awning.com/post/new-york-state-short-term-rental-laws#:~:text=New%20York%20City%20Short%20Term%20Rental%20Laws&text=In%20NYC%20it%20is%20prohibited,paying%20guests%20at%20a%20time.>

<https://blog.keycafe.com/understanding-short-term-rental-regulations-in-amsterdam/>

In NSW the limits is 180 days with a loop hole of 21 days which is open to abuse as groups can do a 21 day booking and then use the residence for different times.

Recommendation 2

In this under-regulated environment the 90 day cap is open to cheating by property owners. More regulation and compliance checks are essential.

Some cities insist that the primary residence of the renter (Paris, Dublin, Los Angeles, Berlin, San Francisco) with varying conditions) Fines for non-compliance can be as high as 5000 euros.

<https://www.lodgify.com/guides/short-term-rental-rules-california/>

<https://mdcoastdispatch.com/2022/03/29/berlin-officials-approve-short-term-rental-ordinance/>

<https://blog.keycafe.com/understanding-dublins-short-term-rental-regulations/>

<https://medium.com/keycafe/understanding-short-term-rental-regulations-in-paris-f510aebc34081>

Other cities have restricted the number of STRA properties that can be owned that can be owned by one person or entity. The ideal number is 1.

Adopting these constraints would free up a huge number of properties in Byron Shire.

Recommendation 3

That the government bring in regulations that restrict the ownership of residences for STRA to one per person or entity.

Many of the STRA properties in Byron are collectively owned by a single entity, giving a few individuals significant lobbying power in addition to the well acknowledged lobbying power of platforms such as Airbnb.

Problem 3

Local government has minimal role in this area; the properties are not registered or approved at the local council level.

STRA needs planning permission in Edenborough if it is not the primary home in addition to licensing the owner. Registration of the property applies in Paris and San Francisco as well.

<https://www.scottishhousingnews.com/articles/edinburgh-agrees-new-powers-to-regulate-short-term-lets>

NSW has the capacity to introduce this at a local level, but it requires adequate funding for councils to introduce regulation and compliance and the ability to raise funds through fees and fines. It is important that Council has a record of all STRAs in the shire and can plot their densities and areas that are problematic for residents. With some level of control, Council can add conditions, such as parking, time limits for loud music, etc.

Recommendation 5

That the NSW government funds local governments to take on local responsibilities for the STRA industry.

Problem 4

No option for residences to choose to live in STRA free areas

Los Angeles 2019 Ordinance prohibits STRA in the City's most restrictive residential zones with the intent of stopping the loss of residential buildings to the tourist industry.

http://clkrep.lacity.org/onlinedocs/2014/14-1635-S2_ORD_185931_07-01-19.pdf

In Montreal there are STRA-free zones, with a total ban also in the French zone mainly due to lobbying from the hotel industry.

How wonderful it would be if Byron Shire residents could rent or purchase homes with confidence that they will not have a STRA next door, or if they do, then Council has the legislative and financial ability to shut them down, with an appropriate fine.

<https://airbtics.com/airbnb-regulations-inmontreal/#:~:text=To%20rent%20accommodations%20to%20tourists,space%2C%20whether%20online%20or%20offline>

Recommendation 6

The NSW Governments permits no-go zones for tourism in the LEPs.

PROBLEM 5

The NSW Government and Council, in their so called community consultation has shown little interest in placing the needs of the Byron Shire community over and above the interests of the industry.

I refer to Locale Consultants Nov 2022 Engagement Report on Byron Shire's STRA Planning Proposal. It makes interesting reading.

Chrome

[extension://efaidnbmnnnibpcajpcglclefindmkaj/https://byron.infocouncil.biz/Open/2022/12/OC_15122022_AGN_1481_ExternalAttachments/OC_15122022_AGN_1481_Attachment_10454_2.PDF](https://efaidnbmnnnibpcajpcglclefindmkaj/https://byron.infocouncil.biz/Open/2022/12/OC_15122022_AGN_1481_ExternalAttachments/OC_15122022_AGN_1481_Attachment_10454_2.PDF)

5.2 of the above report explains that

'the Minister for Planning requested that Council undertake consultation with the Australian Short Term Rental Accommodation Association (ASTRA) before the exhibition of the planning proposal. ASTRA was contacted on 10 August 2022 to attend an interview, with a follow-up request sent on 24 August 2022. Ultimately, an interview was held with ASTRA representatives on 29 September 2022. The interview was attended by four representatives of Byron ASTRA, a local committee set up to represent around 800 local STRA property owners in the Byron Shire.'

In the Locale Consultants report, commissioned by Council, there was one major interest group – the property owners of STRA. Council sent emails to 1994 of these on the state register. Council emailed 458 property owners in the mapped areas tagged for 365 days STRA. No emails were sent to the other property owners as is they had no interest in their neighbourhood becoming open slather STRA.

In this 22 page document there is a 150 word paragraph that addresses the deep community concerns about the impact that the massive growth of STRA is having on their community and wellbeing.

The members of ASTRA were selectively consulted by both the planning minister and the council and they responded big time with submissions that outweighed those of the community. Yes by 2 to 1. Conclusion – the majority of submissions indicated no support for the 90 day cap. How surprising. How can the IPC take this result seriously.

STRA has become the default holiday accommodation in Byron Shire. Gone and going are the genuine B & Bs, the guest houses, the simple resorts. STRA tourism is expensive. It's elitist. It cuts out vast numbers of people doing it tough. These are the unsung victims of this industry.

It is no wonder that an associate of mine in the housing industry calls Byron STRA a cancer in our community.

