



Frequently Asked Questions

Holiday letting in Byron Shire

Answers to some frequently asked questions

What is holiday letting?

Holiday letting is the term used to describe the short term rental of houses or units as holiday accommodation as distinct from a permanent place to live.

Why can it be a problem?

For a number of years there have been complaints regarding holiday letting in residential areas. Residents have complained about noise, anti social behaviour, parking, excess waste and loss of neighbourhood amenity and sense of community.

Holiday letting can also compete with approved tourist facilities that have appropriate approvals in place and make a contribution to community facilities and infrastructure that are used by visitors to the Shire.

Holiday letting in residential areas can also reduce the amount of housing stock available which can put pressure on housing affordability in an area.

Is this just a Byron Shire thing?

No. Holiday letting of residential accommodation is widespread issue throughout tourist areas of NSW and Australia. There have been court cases on this issue in other Shires e.g. Sydney City and Sutherland but it is also an issue for other Councils e.g. Randwick, Hornsby, Gosford and Snowy Mountains. It was also debated at the Local Government and Shires Association of NSW Tourism Conference in 2005. Many other Councils are trying to deal with this issue. Western Australian Tourism is also examining controls for holiday letting.

Why not just do nothing?

This is a difficult issue, but it is still important that it be discussed and resolved. Doing nothing will result in continuing complaints, the erosion of community values and avoidance of financial contribution to public infrastructure and services used by the tourist population. If holiday letting is part of the tourist accommodation industry of Byron Shire then it should accept a level of regulation and responsibility in line with other parts of the tourist accommodation industry.

Isn't it my right to do whatever I want with my property?

No. Planning controls have dictated land use under the Environmental Planning and Assessment Act since 1979. Prior to 1979 land use was controlled under the Local Government Act. Holiday letting is not the same as permanent residential use and public authorities have the right to regulate this land use.

As a land owner am I responsible for protecting the safety of Visitors’?

Yes. Another reason why it is important that holiday letting of houses and units is regulated is to ensure that visitors using that accommodation are not put at risk, particular from fire but also other hazards. It is commonly understood that visitors are not able to find their way out of a building, or an area, as easily as a resident because they are not familiar with the house or their surroundings.

The *Planning for Bush Fire Protection* requirements detail greater bush fire mitigation measures for holiday accommodation. There may also be additional relevant building controls under the *Building Code of Australia*. Some examples include, greater asset protection buffers from bushfire prone vegetation, display of emergency evacuation information on doors (as you would normally find in any motel), fire blankets in kitchens, fire extinguishers, illuminated exit signs etc. Most of the safety measures will not be hard to comply with but they may be critical to a visitor’s survival in an emergency.

Will approvals be required for holiday letting and if so, what type of approval? **

Yes. Approval will be required under the Council's proposed Local Environmental Plan (LEP). However, whether a formal development application is needed will depend on whether specific criteria can be met, such as guest numbers and car parking. Complying development criteria are proposed to be included in the Council's new planning controls. In most cases complying development certification will be required for holiday letting.

How will complying development certification work if used?

Complying development certification is a form of development control that requires the applicant to demonstrate that they have met specific criteria. Examples of issues that the specific criteria will address include guest numbers, car parking, fire safety and noise. They will be included in Council's proposed LEP. There will be no merit assessment. Complying development certificates must be determined within 7 days. Complying development certificates may be issued by Council or by private certifiers.

Development contributions, that assist Council in establishing and supporting facilities and services, will be levied on complying development for holiday letting.

How did Council decide the areas nominated on the maps for the proposed controls?

The areas marked in **red** on the maps in the brochure were identified as those most suited to holiday letting. The areas were chosen based on proximity to the beach and areas that are within walking distance to the town centre, tourist facilities and services and cultural experiences. The idea of mapping the most suitable areas, rather than allowing it to occur everywhere, was the first preference of a 2006 workshop held with Councillors, business representatives, Byron Bay residents, members of the Holiday Letting Organisation (HLO), representatives from real estate agents and members of the local conservation movement.

What will happen to me if I don't get approval if the proposed controls are implemented? **

As with any land use, if approval is required and not obtained then the use is unauthorised. Council has the right to investigate unauthorised uses and pursue compliance with its Local Environmental Plan. This may result in legal action.

Why not just issue a licence or permit?

Council is limited in the way it can control land use by State legislation. Section 68 of the Local Government Act (LGA) allows Council to issue an approval for prescribed forms of land use without the need for a development application or complying development certification. Unfortunately holiday letting is not one of the uses nominated in the LGA. Byron Shire Council and the NSW Local Government and Shires Association have requested that the LGA be amended but the State Government has not made the changes to the legislation. A more recent request has been again made to the Department of Local Government to allow for the licencing of holiday letting, with no response received to date. Until the LGA is amended Council has cannot use this option.

Why not just have self regulation by the holiday letting owners?

Disjointed self regulation (or lack of it) has lead to the problems that Byron Shire is now experiencing. More recently some accommodation providers in Byron Bay have developed a code of conduct to mitigate the main impacts of holiday lettings such as late night noise and anti-social behaviour. However, membership of any industry association and/or compliance with any industry code of conduct is voluntary. There is no mechanism by which Council could compel membership or compliance.

Council supports reliable and extensive use of a code of conduct for holiday letting and agrees it has excellent potential to improve management practices and control potential adverse impacts. However, self regulation cannot be controlled or relied on by Council for legal or regulatory purposes. It also does not provide the community with a say in where the land use should occur and does not provide an opportunity for financial contribution to Council services and facilities that support the tourist industry.

What will happen to me if I operate my holiday house or apartment outside of the mapped areas if the proposed controls are implemented?**

If you operate outside of the mapped areas then you may be conducting an unauthorised use of the property. Council has the right to investigate unauthorised uses and pursue compliance with its Local Environmental Plan. This may result in legal action.

Can I just use my house or unit as a family weekender?

If you don't make your house or unit available for use for payment then it may not be holiday letting and may not require approval.

I actually live in Byron Shire, can I just rent my house or unit over Christmas or Easter if I go away? **

There is no single answer to this question as it will depend on the circumstances in each case including the type of approval for the building, the length of time it is holiday let, the area in which it is in and any impacts etc. The proposed controls are aimed primarily at the situation where a house or unit is rented out for tourist accommodation for the majority of the time and the owner lives elsewhere. If you genuinely live at the house or unit (if asked you may need to prove this) then Council may not require you to seek permission for an occasional holiday rental while you are away. [However, this may not always be the case depending on any statutory or case law changes on this issue].

Landowners should also satisfy themselves that such an activity would not place persons using the premises at risk and may also need to check whether they have any other legal obligations not to carry out such an activity, for example to mortgagees or insurers. Landowners should get their own legal advice.

How is holiday letting different to bed & breakfast establishments?

Both holiday letting and bed and breakfast accommodation take place in or near a dwelling house. The main difference is that bed and breakfast accommodation is within a dwelling where the owners or managers are present on site. Also currently where bed and breakfast establishments are not complying development, they require a formal development application and approval. They also require the payment of Section 94 contributions. It is proposed to include both of these uses in the proposed Local Environmental Plan and they will be required to pay Section 94 contributions equivalent to the number of guests.

Why is Council calling for submissions on this issue now?

Council resolved to publicly exhibit a model for holiday letting in the urban areas of the Shire to gather information about the proposed approval process and locations where holiday letting will be permissible if this model is adopted by Council.

This exhibition is outside of the proposed draft Shire-wide Local Environmental Plan (LEP) process and an opportunity for input into that process will be provided for when the draft LEP is placed on public exhibition.

It should be noted that there is no guarantee that there will be any change to the draft LEP based on this exhibition in the future.

*** Some existing buildings may already have approval for holiday accommodation use or may have an existing right to continue without getting further approval. However, it will be a matter for each landowner to establish that they have any such rights and that they have not been abandoned etc. But in any case, an owner of property in the proposed designated areas may want to gain a new approval to put the matter beyond doubt and to ensure that they are complying with any applicable modern safety standards.*