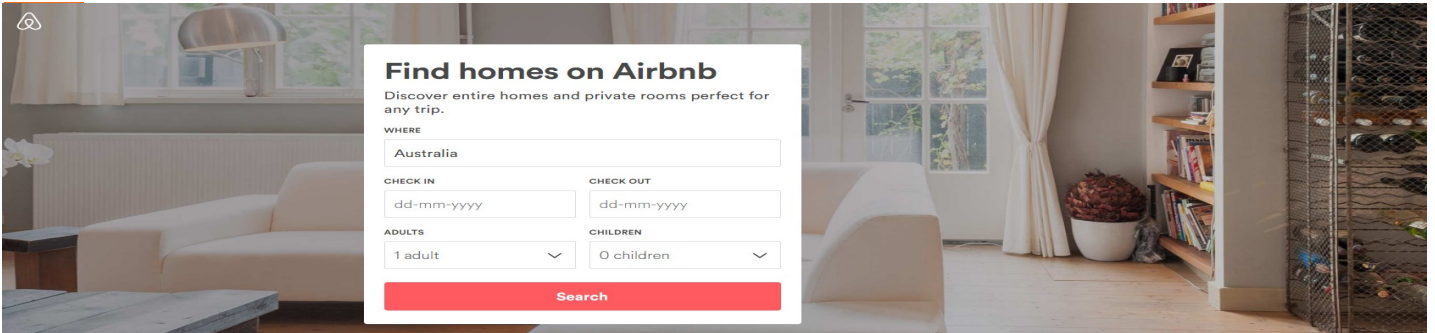


# PLANNING & ENVIRONMENT UPDATE

April 2018



## AIRBNB

The debate is ongoing in relation to holiday and permanent use of accommodation.

In New South Wales the state government and councils have vacillated from trying to regulate Airbnb accommodation to not regulating it.

*State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 allow premises to be used as bed and breakfast without Council consent and this applies across NSW."*

*In Waverley – another popular Sydney Airbnb hang out – short term renting is not allowed without prior approval from the council.*

....

*"If council receives a complaint about a property being used for short term accommodation without approval, we inspect the property, and the owner is requested to stop using the building illegally. Legal action will then be taken, which can include the issuing of fines, if the illegal use continues," he said.*

*Airbnb's Head of Communications for Australia and New Zealand Dylan Smith said the company was working with local councils and government across the country to allow for home sharing and the response had been positive.*

*"Airbnb advises hosts to familiarise themselves with locally set regulations, and these can differ from council to council and even street to street, all over the world," Mr Smith said. "One of the things that we consistently hear though, from both councils and our community, is that many of the laws are outdated and difficult to interpret, because they were written long before anyone could imagine something as incredible as Airbnb. That's why we've been talking with policy makers about the need for clear, progressive and fair laws that allow for home sharing."*

Noosa Shire Council is currently considering housing needs and conflicts as part of the preparation of its planning scheme and will be discussing Airbnb accommodation in a public forum.

In those discussions there is a benefit in understanding the applicable legal framework.

The state government may legislate laws.

The local government may include provisions in its planning scheme dealing with development.

The local government may include provisions in its local laws dealing with regulating activities almost exclusively other than development.

This information provides advice of a general nature only and should not be relied upon as legal advice.

## AIR BNB CON'T

There is no limitation upon letting a house to a tenant for a rent. It is common for a group of students to let a house where those students have exclusive use of a bedroom and typically share the majority of the remainder of the house. It is common for people to arrange house swaps as a means of enjoying a holiday in a different location without the cost of accommodation. It is common for people to let their house out for short-term whilst they are away on holiday or otherwise. A more recent trend has been for people to advertise rooms within their house for holiday let including Airbnb.

It is the impact of the different uses of residential accommodation that the Noosa Council is considering.

Those impacts potentially include a loss of permanent rental accommodation, an increase in the cost of permanent rental accommodation, a reduced use of tourist accommodation, inequity between formal tourist accommodation, whose operators pay a tourism levy and informal operators who do not, public health and safety, amenity impacts including noise and car parking and increased use of other infrastructure such as water and sewerage.

The law does not make Airbnb accommodation a separate residential use. This may be contrasted with provisions relating to "party houses".

The state government has amended the *Local Government Act 2009* by insertion of a section titled "Owners liability for party houses" through which it gives a local government the power to make a local law "because of excessive noise regularly omitted from the property."

The state government has also included in the *Planning Act 2016* a specific provision dealing with party house allowing a Council to regulate party houses through its planning scheme.

A party house is defined in the *Planning Act 2016* for the relevant section as:

In this section—

**party house** means premises containing a dwelling that is used to provide, for a fee, accommodation or facilities for guests if—

- (a) guests regularly use all or part of the premises for parties (bucks parties, hens parties, raves, or wedding receptions, for example); and
- (b) the accommodation or facilities are provided for a period of less than 10 days; and
- (c) the owner of the premises does not occupy the premises during that period.

The relevant section also provides, the use of a residential development as a "party house" is not a natural and ordinary consequence of a residential development.

This provision enables local governments to provide in their planning schemes for party houses.

Gold Coast City Council has prepared temporary local planning instrument No. 4 (Party houses) 2018 which provides assistance in considering the nature of provisions that can be included in a planning scheme.

The position of party houses is one of those rare occurrences where a local government may deal with a party house in either its local law or planning scheme. The specific provision permitting a local law to deal with party houses will override the general provision of the *Local Government Act 2009* preventing a local law from dealing with "development".



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## AIR BNB CON'T

p&e Law

planning, environment & native title law

The provisions relating to party houses provide a mechanism to protect amenity irrespective of the nature of the use of the residential accommodation.

Without specific provisions making Airbnb a separate use it is difficult to envisage that a planning scheme would have the capacity to regulate its use.

Local laws commonly deal with public health and safety issues for rooming accommodation caravan parks and the like. Never let the bed bugs bite, make sure that the kitchen is suitable for the number of people and that ablutions are available.

Appropriate infrastructure ought to have been provided to allow any residential accommodation to be used to its full extent. For instance, if a house has four bedrooms then it always had the potential to have that number of people stay on the premises and be serviced accordingly. Given the general trend of reducing occupation rates per dwelling, using certain premises to their full potential ought not be a significant problem but a matter to be kept under consideration.

There has been significant complaint from tourist operators that people using their private residences for tourist accommodation do not fairly contribute to tourism levies. There may be some merit in this position. Suggestions that Airbnb tourism levies should be linked to the value of the premises lacks an appropriate connection between the impact/service and the charge.

The planning scheme needs to balance the potential loss of permanent rental accommodation, a reduced use of tourist accommodation and an increase in the cost of rental accommodation. To assist with its deliberations the Noosa Council has commissioned a housing needs assessment report prepared by Briggs & Mortar Pty Ltd which was endorsed by the Council for the purpose of informing the drafting of the planning scheme. The report is comprehensive and looks at the inter-relationship between tourists visitors permanent residents the needs of each the accommodation markets and the impact of that and specifically Airbnb accommodation. It is informative reading.

We also found informative the report of The Legislative Assembly Committee on Environment and Planning from New South Wales report 1/56-October 2016 dealing with the adequacy of the regulation of short-term holiday letting in New South Wales.

We look forward to reading the feedback from the forum and being able to consider it as part of the wider consideration throughout the State.

If you would like more information on the above topic or advice generally,

**Freecall 1300 303 866**

please do not hesitate to contact

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