



2 July 2020

Communication prepared for the NSTAA by Mr Lestar Manning
To Mayor, Councillors, CEO
Noosa Shire Council

Prior to the election we commissioned advice in relation to the draft planning scheme and local laws touching on permanent and temporary accommodation in detached houses. The advice we received was provided to Council by way of a submission to the local laws and planning scheme.

The importance of permanent and temporary accommodation in residential accommodation on individual rights and the Noosa economy should not be underestimated.

Consequently, we are writing to Council to seek some further discourse in relation to the draft planning scheme.

Whilst we recognise that the content of the draft planning scheme in final form is a matter that the Council needs to keep confidential it would not prevent helpful discourse around matters that could improve the draft planning scheme prior to its adoption.

One of the fundamental complaints in relation to the process of making and seeking public comment on the draft planning scheme was the lack of economic study to show the impact of the short-term letting provisions on Noosa's economy.

The Ministers conditions on the adoption of the planning scheme confirm our submission to the planning scheme.

"8. The Council must:

B) monitor the provisions relating to short-term accommodation, tourism and housing supply considering the outcomes sought across the residential zones.

The process shall, at a minimum:

- include a detailed analysis of the existing situation within the Noosa Shire, including numbers and types of short-term accommodation uses. This analysis should include annual comparison data that demonstrates the performance of the relevant scheme provisions;*
- consider the economic and social benefits of the current situation, and forecast the potential long-term impacts of short-term accommodation across the residential zones;*
- consider the zone intent, levels of assessment and regulation short-term accommodation across the residential zones;*
- consider the state interests of Housing supply and diversity and Tourism;*
- the evidence-driven, comprehensive, and prepared in a detailed manner."*
(Underlining added)

It is alarming to consider that such an important matter has been and is being allowed to progress without fundamental analysis of the existing situation, forecasting of the economic

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and social benefits (we assume this also means dis-benefit) based upon evidence driven, comprehensive, and detailed preparation.

How can Council seek to make such significant change without having that information to hand?

There is no impediment to the Council obtaining that analysis now. Council can adopt the balance of the planning scheme seeking to introduce changes, other than to short-term accommodation uses, now.

Council and the community would then be given the opportunity to properly consider the purport and effect of the proposed changes to short-term holiday letting on the economy.

Covid 19 has in some respects given an indication of the effect of removing options for travellers and tourists. The economic impacts of Covid 19 are significant. The timing of a further impact on the Noosa economy caused by the restrictions proposed for short-term letting could not be worse.

The Minister's condition supports the submission made that the advertising of the planning scheme did not fairly identify the purport and effect of the proposed planning scheme.

The Minister's condition to, following the adoption of the planning scheme, produce an analysis and evidence of the nature identified confirms the purport and effect was never known and therefore could not be conveyed in the public advertising of the draft planning scheme.

A further requirement by ministerial condition is:

"8. The Council must:

A) prepare and publish a comprehensive guide explaining the regulatory requirements for operating short-term accommodation in the Noosa Shire Council local government area."

The draft advisory note in relation to short-term accommodation prepared as a consequence of Covid 19 is significantly different to the misinformation that was provided during the public consultation period of the draft planning scheme.

The draft provides:

"Under the current Noosa Plan 2006, which is still in place, a detached house can interchangeably be used for either permanent residential living or short-term holiday letting."

That position was not explained during the advertising of the draft planning scheme.

Numerous people were advised to the contrary.

However, the misinformation continues in that draft which requires a “consistent” use for short-term accommodation.

This position is still contrary to the provisions of the *Planning Act* 2017 which makes it an offence to “commence” a new use.

If the “commencement” of a use is an offence it does not require it to be a “consistent” use, simply it needs to have commenced.

The right that exists under the current planning scheme is for an interchangeable ability to use accommodation for permanent and short-term residential living.

We adopt the words of Morzone QC DCJ in *Savage & Savage Resorts Pty Ltd as trustee v Cairns Regional Council* [2015] QPEC 37:

[55] It is trite law that two uses may be carried out upon the same premises,²³ and the owners may exercise those rights at the same time, separately or not at all.²⁴
[56] I do not see the uses as being mutually exclusive. It is conceivable that they could be carried on separately and at the same time. A self contained dwelling unit may be used by a tourist or traveller for residential purposes for a long or short stay. It is also conceivable that a so-called a ‘fly-in fly-out’ worker may own a unit for permanent residential purposes but seek to let it for holiday accommodation whilst periodically away for work. More importantly, there is no discernible increased impact in the way the two uses may be enjoyed.

We ask that Council be more open and transparent in relation to a matter of such importance to the overall economy and individuals rights going forward.

We ask that Council meet with a delegation to further discuss options. Those options would include deferring the introduction of parts of the planning scheme affecting short-term holiday letting, working conjointly on producing the evidence-based material the ministers conditions require and ensuring the public are properly informed of the effect and purport of any changes.

NSTAA