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Independent Planning Commission

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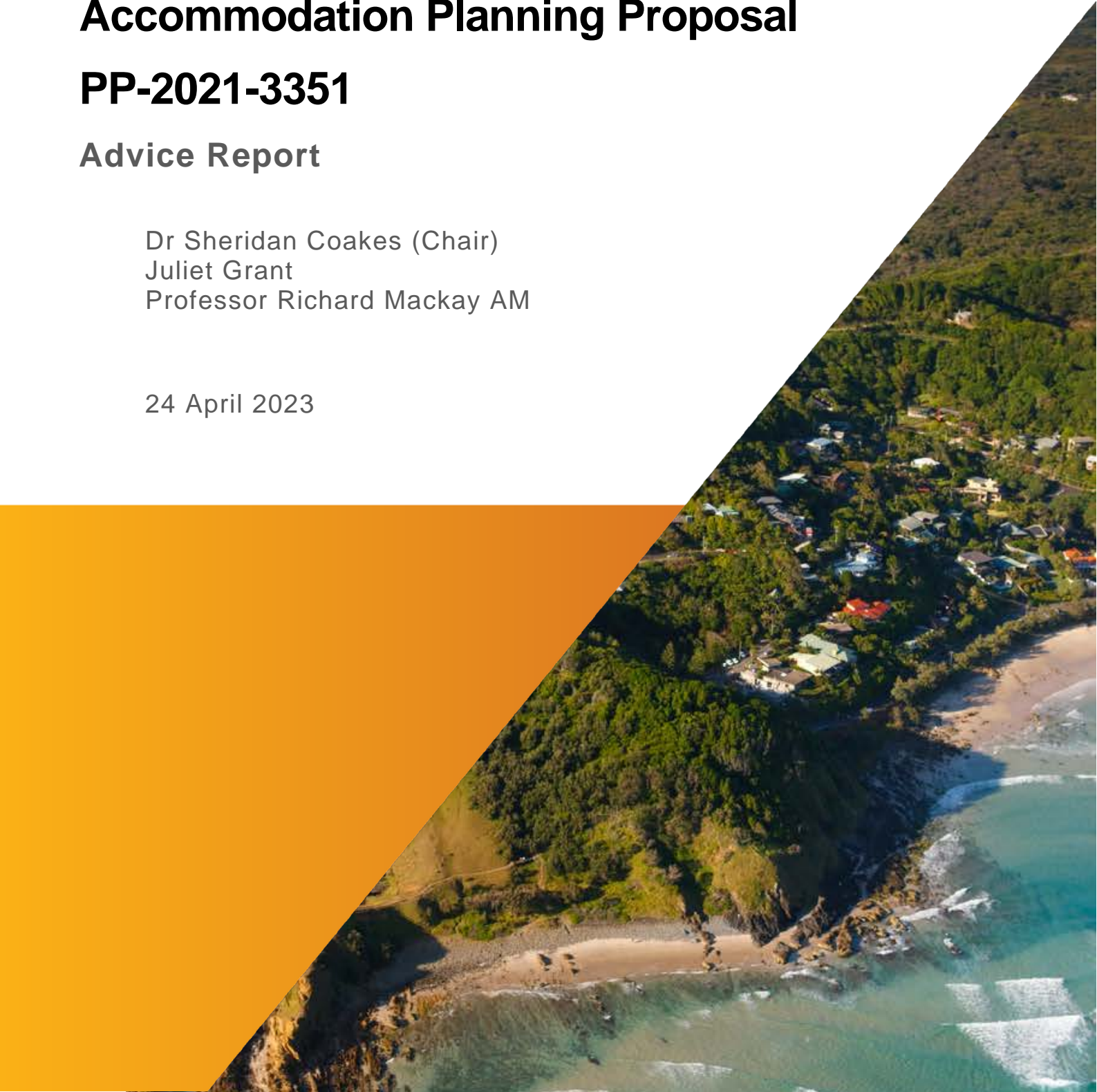
# Byron Shire Short-Term Rental Accommodation Planning Proposal

## PP-2021-3351

### Advice Report

Dr Sheridan Coakes (Chair)  
Juliet Grant  
Professor Richard Mackay AM

24 April 2023



# Executive Summary

On 14 December 2022, the NSW Independent Planning Commission received a request from the then Planning Minister to provide advice on Short Term Rental Accommodation (STRA) and related housing and rental affordability and availability issues in the Byron Shire local government area (Byron Shire). A key question was whether a Planning Proposal (PP-2021-3351) prepared by Byron Shire Council (Council), which proposed new caps on the number of nights that a residential premises can operate as a non-hosted STRA, should proceed in its current form.

The Commission Panel appointed to this matter comprised Dr Sheridan Coakes (Chair), Professor Richard Mackay, AM and Juliet Grant. The Commission consulted widely in the preparation of its advice, hearing from 75 speakers at a two-day Public Hearing, receiving and considering more than 500 written submissions, and holding multiple meetings and briefings with stakeholder organisations, experts and other jurisdictions. The Commission conducted a locality tour of key precincts relevant to the Planning Proposal within the Byron Shire and reviewed prior community submissions and data provided by Council as well as analysis previously prepared for Council's Planning Proposal. The Commission was further informed by seeking additional datasets and commissioning supplementary expert analysis of the data and relevant housing issues.

The Commission's advice responds to the specific questions in the Minister's request. As required, the report focuses on planning considerations that are relevant to the tension between using residential properties for non-hosted STRA and ensuring the availability and affordability of long-term rental housing in the Byron Shire.

## Housing availability and affordability

The housing market and housing pressures are different in Byron Shire than in other Australian locations, and the social impact of non-hosted STRA is more significant. Much of this difference is due to Byron Shire, particularly the Byron Bay township, being a highly attractive year-round destination for tourism and permanent residency. Some of the housing affordability and availability issues experienced in Byron Shire are consistent with overarching national trends and the particular pressures faced by desirable coastal regional locations. Others are exacerbated by Byron Shire's specific characteristics as a sought-after location with high-value natural and community capital but shortfalls in developable hinterland, vulnerability to flood impacts, specific statutory building height and density controls, and a high proportion of non-hosted short-term rental accommodation (STRA).

Against a national backdrop of increased property and rental prices, Byron Shire is experiencing a substantial tightening of housing availability and affordability on most metrics when compared to other locations. The cost of purchased and rental housing has increased significantly, outpacing growth in regional NSW and Sydney and dwarfing average gains in household income. Rental vacancy rates have fallen and homelessness has risen. Rental properties are not affordable for lower income households, with half the Byron Shire renters experiencing rental stress. The profile of renters has also changed, with a marked increase in the proportion of renters who are high-income and a decrease in the proportion that are low income – a trend that has otherwise remained relatively stable in other locations. On the supply side, new housing stock and land releases planned under a suite of existing local and state-level housing policies have not proceeded at a rate that matches demand and community need.

According to the NSW Department of Planning and Environment, 8.5% of Byron Shire housing stock (approximately 1,300 properties) is currently registered for use as non-hosted STRA. This exceeds that of other urban and coastal NSW locations, even acknowledging the pre-existing use of housing in the area for holiday homes. Some properties now used for STRA will have previously been long-term rental stock, that is no longer available as housing for residents, although it is difficult to determine the exact proportion. For many in the local community, the intensive use of properties as non-hosted STRA in a tight residential market that has already undergone significant increase in property and rental values is a highly visible contributor to the persistent housing affordability and availability issues in the area.

With the Byron Shire's already high visitor numbers anticipated to increase further, the STRA industry is seen to play a significant role in the Byron Shire visitor economy. It supports local tourism and hospitality businesses, provides direct rental income and creates demand for ancillary services that support the operation and upkeep of STRA properties. However, quantifying this economic and social contribution is a complex exercise that must also balance its impacts, and requires more reliable data and research to provide the necessary evidence base.

### Planning context

A stated principle of the *State Environmental Planning Policy (Housing) 2021* (Housing SEPP) is to support STRA "as a home-sharing activity and contributor to local economies, while managing the social and environmental impacts from this use". It designates STRA that meets specific requirements to be 'exempt development' (a type of development that is "of minimal environmental impact that may be carried out without the need for development consent") and imposes a non-hosted STRA cap of 180 days each year on residences in prescribed areas, including the Byron Shire.

It is within this context that Council has developed its Planning Proposal to amend the Housing SEPP exempt development requirements for non-hosted STRA and apply a non-hosted STRA cap of 90 days across the Byron Shire, with the inclusion of some designated precincts with no STRA cap. The objective of Council's Planning Proposal is to "mitigate the significant impacts of short-term rental accommodation on permanent rental housing supply, amenity, local character, and community, while still allowing for a diverse and sustainable base of tourist accommodation options to support the local economy".

### Commission findings and advice

#### *The Planning Proposal*

The Commission finds that, in its current form, the Planning Proposal is unlikely to achieve its stated objective. It is also at risk of delivering adverse unintended economic and social outcomes, whereby the 90-day cap is significant enough to reduce visitor numbers materially and thereby impact the positive economic activity associated with STRA tourism, but not set at a level which is sufficiently low to trigger the return of sufficient property to the long-term rental market by non-hosted STRA owners. Further, the Commission is concerned about the equity of proposed precinct boundaries and whether the benefits of 365-day precincts would outweigh the social amenity impacts from the intensification of STRA in these areas.

#### **Recommendation 1**

The Planning Proposal should not proceed in its current form (no cap on non-hosted STRA in identified precincts, otherwise, a 90-day cap on non-hosted STRA) as it would not adequately achieve its stated objectives and may have unintended adverse economic consequences.

#### *Recommended alternatives*

The Commission finds that a more equitable sharing of both impacts and benefits can be achieved for Byron Shire using the available regulatory regime. Tightening the local exempt development cap to 60 days would provide the financial settings needed to incentivise the use of properties for long term rental whilst also continuing to support the incidental use of homes as non-hosted STRA. The Byron Shire STRA industry would instead be supported by a streamlined development consent process that requires Council approval for non-hosted STRA use in exceedance of the proposed cap. Clarifying the characterisation of STRA within the broader planning system and requiring development consent for intensive non-hosted STRA beyond the 60 day cap would provide flexibility for Council (as the local consent authority) to assess, plan for and manage the social and economic impacts and benefits in line with community needs.

In summary, the Commission finds that within Byron Shire:

- STRA should be defined as a type of ‘tourist and visitor accommodation’ and thereby as a permissible use;
- hosted STRA should continue to be exempt development;
- non-hosted STRA should be subject to a 60 day exempt development cap;
- non-hosted STRA beyond the 60 day cap should be permissible with consent;
- transitional arrangements should be provided to support current non-hosted STRA operators; and
- these proposed changes should be subject to continuous review and improvement.

### Recommendation 2

Utilise the available regulatory regime to support Byron Shire Council to plan for and manage local impacts from the conversion of existing and future housing stock to non-hosted STRA by:

- a) Defining STRA as a permissible use by specifically listing STRA as a type of ‘tourist and visitor accommodation’ with the objective of facilitating STRA in well located and serviced areas already zoned for tourism.
- b) Tightening the exempt development non-hosted STRA day cap to a level that puts the financial returns from non-hosted STRA on a more level playing field with long-term rental housing. Amending the *State Environmental Planning Policy (Housing) 2021* to provide a 60-day cap in Byron Shire would be appropriate for this purpose and would continue to provide reasonable flexibility for the incidental use of a residence as STRA. The proposed precinct model should not be used and the recommended 60-day cap should apply across Byron Shire, consistent with the current application of the 180-day cap in the *State Environmental Planning Policy (Housing) 2021*.
- c) Permitting development consent to be obtained for the use of a property as non-hosted STRA in excess of the 60-day cap. When determining such development applications, Byron Shire Council should be supported in reviewing the available STRA data and considering:
  - i. specific matters related to the social and economic impacts on the locality, such as the current availability of long-term rental properties in the surrounding area and the alignment of the application with relevant housing strategies and policies;
  - ii. conditions of consent to retain flexibility to manage non-hosted STRA across Byron Shire, such as time limits on approvals, and to require registration and compliance with the STRA Code of Conduct; and
  - iii. the creation of clear public guidelines and a streamlined pathway and fee structure (or even waiver) for applying for non-hosted STRA development consent.
- d) Preventing the subsequent conversion of new housing supply to non-hosted STRA by requiring relevant conditions on development consent for new housing developments.
- e) Giving consideration to any transitional arrangements, such as an amnesty period, as may be appropriate in the implementation of Recommendation 2.
- f) Supporting Council in undertaking a strategic-level impact assessment of development applications for non-hosted STRA land uses to provide ongoing evaluation of Byron Shire’s needs.



### *Housing market structure*

Factors related to the structure of the housing market are a central driver of the national housing affordability and availability issues that also affect the Byron Shire. These factors were frequently cited in submissions to the Commission – and are well-canvassed by experts and policy-makers – and include national tax policies and regulatory settings that encourage the prevailing investor view of housing as an asset class rather than a social good, leading to a shortfall in the provision of social housing, higher rates of multi-property ownership, lower rates of occupant home ownership, high rental insecurity and increasing rates of homelessness. These are complex issues that require urgent coordinated action across all jurisdictions.

#### **Recommendation 3**

The NSW Government should continue to work with all levels of government to use available levers to address misalignment between the functioning of the housing market and broader social objectives. This could put the economic returns from affordable long-term rental housing on a more level playing field with non-hosted STRA and other development types.

### *Housing supply*

Byron Shire Council and the NSW Government have a range of strategies for housing and affordable housing, which provide a robust foundation for increasing supply of new housing. Noting the broader housing market factors above, Byron Shire currently has a low level of affordable rental housing, insufficient social housing, a uniform housing stock of low-density dwelling houses and underutilised land. The Commission was persuaded by submissions on the need to intensify efforts from local and state levels of government to increase supply through rezonings and other planning mechanisms, targeted programs with associated financial support and alternative models of housing that overcome affordability barriers.

Secondary dwelling and dual occupancy developments that have been locally approved under the policy objective of increasing housing supply are reported to have been increasingly used for STRA.

A limiting factor to the operation and growth of the local tourism industry is a reported lack of local housing for key workers and workers supporting the tourism industry. There is also scope for local government and industry collaboration to increase the availability of visitor accommodation (for example motels and serviced apartments) as a viable alternative to the use of housing stock for STRA.

#### **Recommendation 4**

The NSW Government should continue to work with Council to identify and utilise every available mechanism to support:

- a) the urgent release of more land for housing development within Byron Shire (including the potential for infill development in Byron Bay);
- b) the timely delivery of new housing supply;
- c) the delivery of increased affordable, diverse, social and crisis accommodation; and
- d) protection of lessees.

#### **Recommendation 5**

The NSW Government should give consideration to the legal and policy options and implications of encouraging a return of dual occupancy and secondary dwelling properties to long-term rental, either by direct requirement or via an incentive program, and support Council in considering these matters.

### Recommendation 6

The NSW Government should support Council in collaborating with relevant stakeholders, particularly in the tourism and relevant community service industries, to address:

- a) worker accommodation requirements; and
- b) the supply of alternative (non-STRA) visitor accommodation consistent with the Byron Shire Sustainable Visitation Strategy 2020-2030 and the needs of the consumer, including consideration of increased density for visitor accommodation in the town centre.

### *Floods and crisis accommodation*

The Byron Shire was particularly affected by the 2022 catastrophic flood events, with more than 2,000 properties directly impacted. STRA owners responded positively to the call to provide temporary emergency housing as part of the response during and after the floods. The Commission finds that use of STRA for temporary emergency housing should be encouraged as a standard response for any future emergency events.

### Recommendation 7

The NSW Government should support Council in continuing to work with Northern Rivers Reconstruction Corporation to address the ongoing housing-related impacts of the 2022 floods and formalise arrangements for emergency use of STRA for crisis accommodation.

### *Local community benefits*

The Commission received submissions on the negative impacts of non-hosted STRA experienced by residents, including strain on infrastructure, amenity and environmental impacts and impacts on community resilience. Community members also expressed concern that the STRA Code of Conduct was not being enforced, and that residual costs from impacts would remain with residential ratepayers while the economic benefits of non-hosted STRA would not flow on to the local community.

The option of imposing a levy on STRA stays in the Byron Shire to fund community benefits was raised in submissions and considered favourably by the Commission. There are multiple viable options for the implementation of this initiative that aim to limit the administrative burden of collecting the levy and passing it through to the community. The Commission considers that this initiative, together with effective enforcement of STRA industry compliance with regulatory requirements, would be key to building community trust and appropriately managing amenity and other impacts.

### Recommendation 8

The NSW Government should introduce a levy on all STRA properties in Byron Shire as a mechanism to provide an income stream to Council that will be used to address amenity, infrastructure, and service impacts from STRA on the local community and deliver community benefits. Levy mechanisms proposed for consideration in Byron Shire include:

- a) additional STRA property registration fees
- b) a per-booking levy on STRA stays
- c) an additional Council rate category for registered STRA properties

Implementation of this proposal needs to be balanced against the costs of regulation and the complexities of collecting a levy through third parties.

### Recommendation 9

The NSW Government should strengthen STRA industry compliance and enforcement arrangements and make them more visible to the community and other stakeholders, consistent with the principles of open government. This includes measures to continue to improve the effectiveness and monitoring of compliance with the STRA Code of Conduct.

#### *Data, research and evaluation*

Through a range of submissions, the Commission was presented with diverse and inconsistent datasets on housing and STRA trends and likely social and economic impacts. Analysis to inform this advice was limited by the accessibility and provision of accurate, reliable and specific data, particularly spatial data, despite requests from the Commission. This is an ongoing problem that will hamper policy-makers, researchers and regulators monitoring the extent and impacts of STRA. Data access constraints (especially in relation to spatial data) are an impediment to effective planning, STRA regulation and community confidence.

An integrated evaluation and continuous improvement framework should be adopted to monitor and evaluate implementation of the Commission's recommendations.

### Recommendation 10

The NSW Government should address data access constraints in order to support effective planning, regulation and community confidence by:

- a) ensuring that STRA platforms and managers share more comprehensive data with all three tiers of government (at no cost to government) and requiring this data be made more available to the community and other stakeholders under open government principles, while maintaining privacy; and
- b) making Council STRA-approval data (per Recommendation 2) readily available in an accessible format to the community and other stakeholders.

### Recommendation 11

The NSW Government should lead research efforts to provide all three tiers of government and other stakeholders with the knowledge base to inform well targeted policy delivery by establishing and maintaining an appropriate ongoing STRA research and monitoring program (in partnership with the Commonwealth). This should extend to a longitudinal study quantifying the trends and economic and social effects of STRA.

### Recommendation 12

The NSW Government should ensure continuous improvement to relevant environmental planning instruments, including any future changes to relevant environmental planning instruments, by establishing an evaluation program of the effectiveness of these recommendations as implemented, linked to the proposed review by the Department of the current 180-day cap in the *State Environmental Planning Policy (Housing) 2021*.

In preparing this advice, the Commission has collected and considered a significant amount of material and insights from the community and experts on this issue, including commissioning additional analysis from the Australian Housing and Urban Research Institute (AHURI). The Commission thanks all individuals, groups and agencies who submitted material and invested time and effort to provide their views. The Commission invites other jurisdictions, organisations and policy-makers considering this report to also access this primary material, which it has made available on its website (<https://www.ipcn.nsw.gov.au/cases/2022/12/byron-shire-short-term-rental-pp>) to inform the development of future policies and interventions.

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# Defined Terms

| <b>ABBREVIATION</b>            | <b>DEFINITION</b>   |
|--------------------------------|---|
| <b>ABS</b>                     | Australian Bureau of Statistics   |
| <b>AHCS</b>                    | Byron Shire Affordable Housing Contribution Scheme 01   |
| <b>AHURI</b>                   | Australia Housing and Urban Research Institute  |
| <b>Airbnb</b>                  | Airbnb Pty Ltd  |
| <b>BLEP 2014</b>               | <i>Byron Local Environmental Plan 2014</i>  |
| <b>Byron ASTRA</b>             | Byron Chapter, Australian Short-term Rental Association   |
| <b>Byron Bay</b>               | The township of Byron Bay   |
| <b>Byron LSPS</b>              | Byron Shire Local Strategic Planning Statement  |
| <b>Byron Shire / Byron LGA</b> | Byron Shire Local Government Area   |
| <b>Code of Conduct</b>         | Code of Conduct for the Short-term Rental Accommodation Industry  |
| <b>Commission</b>              | NSW Independent Planning Commission   |
| <b>Council</b>                 | Byron Shire Council   |
| <b>DA</b>                      | Development Application   |
| <b>DCJ</b>                     | NSW Department of Communities and Justice   |
| <b>Department</b>              | NSW Department of Planning and Environment  |
| <b>EIA</b>                     | Economic Impact Assessment  |
| <b>EP&amp;A Act</b>            | <i>Environmental Planning and Assessment Act 1979</i>   |
| <b>EPI</b>                     | Environmental Planning Instrument   |
| <b>Expedia</b>                 | Expedia Group Inc.  |
| <b>Fair Trading</b>            | NSW Department of Fair Trading  |
| <b>Hosted STRA</b>             | Short-term rental accommodation provided where the host resides on the premises during the provision of the accommodation         |
| <b>Housing SEPP</b>            | <i>State Environmental Planning Policy (Housing) 2021</i>   |
| <b>Housing Strategy</b>        | NSW Housing Strategy 2041   |
| <b>LGA</b>                     | Local Government Area   |
| <b>LTR</b>                     | Long-term rental  |
| <b>Material</b>                | The material set out in section 4.1 of this Advice Report   |
| <b>NGOs</b>                    | Non-government organisations  |
| <b>Non-hosted STRA</b>         | Short-term rental accommodation provided where the host does not reside on the premises during the provision of the accommodation |
| <b>NRRC</b>                    | Northern Rivers Reconstruction Corporation  |
| <b>Planning Proposal</b>       | Byron Shire Short-Term Rental Accommodation Planning Proposal (PP-2021-3351)  |
| <b>Regulations</b>             | <i>Environmental Planning and Assessment Regulation 2000</i>  |
| <b>STRA</b>                    | Short-term rental accommodation   |
| <b>Taskforce</b>               | Regional Housing Taskforce  |

# 1. Introduction

## 1.1 Advice request

1. On 15 December 2022, the NSW Independent Planning Commission (**Commission**) received a referral from the then Minister for Planning, Minister for Homes, the Hon. Anthony Roberts MP (Minister) requesting advice pursuant to section 2.9(1)(c) of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* in relation to a Planning Proposal, PP-2021-3351 (**Planning Proposal**), to make amendments to the *State Environmental Planning Policy (Housing) 2021* to amend the number of days of non-hosted short-term rental accommodation (**non-hosted STRA**) in parts of the Byron Shire Local Government Area (**Byron Shire**).
2. Professor Mary O’Kane AC, Chair of the Commission, appointed Dr Sheridan Coakes (Chair), Juliet Grant and Professor Richard Mackay AM to constitute the Commission Panel for the purpose of exercising its functions with respect to this request.
3. The Commission was requested by the Minister<sup>1</sup> to review the Planning Proposal prepared by Byron Shire Council (**Council**), hold a Public Hearing and prepare advice. The key parts of this advice that respond to each part of the Minister’s request are shown in Table 1.

*Table 1 – Advice requested by the Minister*

| <b>Advice requested</b>  | <b>Relevant report sections</b>   |
|--|---|
| 1. Status of housing and rental affordability and rental availability in the Byron Shire, including the impact of non-hosted STRA as well as recent flood events.  | Section 5.2 – Housing trends in Byron Shire<br>Section 5.3 – STRA in Byron Shire<br>Section 6.3 – Housing market structure<br>Section 6.4 – Housing supply<br>Section 6.5 – Floods and crisis accommodation |
| 2. Recommendations to the NSW Department of Planning and Environment ( <b>Department</b> ) to improve housing affordability and rental availability in the Byron Shire. Recommendations may be used by the Minister, Council and Northern Rivers Reconstruction Corporation. | Section 6 – Key findings<br>Section 7 – Recommendations   |
| 3. Economic contribution of the STRA industry in Byron Shire, and any potential implications arising out of Council’s proposed 90 and 365-day caps for non-hosted STRA. Consider commissioning specific technical analysis to inform its advice on this matter.              | Section 5.3 – STRA in Byron Shire<br>Section 6.1 – The Planning Proposal<br>Section 6.2 – Recommended alternatives  |
| 4. Hold a Public Hearing to provide the opportunity to hear public views from the community and industry.  | Section 4 – The Commission’s consideration<br>Section 4.5 – Public Hearing<br>Section 4.6 – Public submissions  |
| 5. Advise whether Council’s Planning Proposal to reduce the number of days of non-hosted STRA in parts of the Byron Shire should be finalised, with or without amendments or further information.  | Section 6.1 – The Planning Proposal<br>Section 6.2 – Recommended alternatives   |

## 1.2 Role of the Commission

4. In its provision of independent expert advice for this matter, the Commission is providing advice and recommendations *only*, and is not itself empowered to determine the Planning Proposal or make any amendments to the applicable State and local environmental planning instruments (**EPIs**). The current Minister, and not the Commission, remains the decision maker in respect of the Planning Proposal, pursuant to the EP&A Act.

## 2. Planning Proposal

### 2.1 Council's Planning Proposal

5. Council's Planning Proposal applies to all land in the Byron Shire local government area and is intended to amend *State Environmental Planning Policy (Housing) 2021 (Housing SEPP)* by including new provisions in Part 6 that would:
  - introduce a mapping overlay for the Byron LGA known as the Byron Shire Short-term Rental Accommodation Area Map to identify precincts where non-hosted STRA is permitted 365-days per year;
  - include a new clause that limits non-hosted STRA in the Byron LGA to 90-days in any 365-day period where a dwelling is located on land outside a mapped precinct. The Byron LGA would need to be removed from the list of 'prescribed areas' under Clause 112(3) of the Housing SEPP for this provision to have effect; and
  - Provide a 12-month transition period deferring commencement in the Byron LGA.<sup>2</sup>
6. The objective and intended outcomes of the Planning Proposal are identified by Council as the following:

*The objective of this planning proposal is to mitigate the significant impacts of short-term rental accommodation on permanent rental housing supply, amenity, local character, and community, while still allowing for a diverse and sustainable base of tourist accommodation options to support the local economy.*

*The objective will be achieved by reducing the 'day cap' for non-hosted short-term rental accommodation to 90-days per year across most of the Byron LGA, except in certain precincts where it will be permitted 365-days per year. The aim is to preserve permanent housing in most of [Byron] Shire's residential and rural areas, while also recognising that some areas with high tourism appeal near beaches and services may be more suitable for year round holiday letting.<sup>3</sup>*
7. Council's proposed 365-day precincts are illustrated in Figure 1 and Figure 2.

Figure 1 – Byron Bay proposed 365-day precinct (cropped)<sup>4</sup>

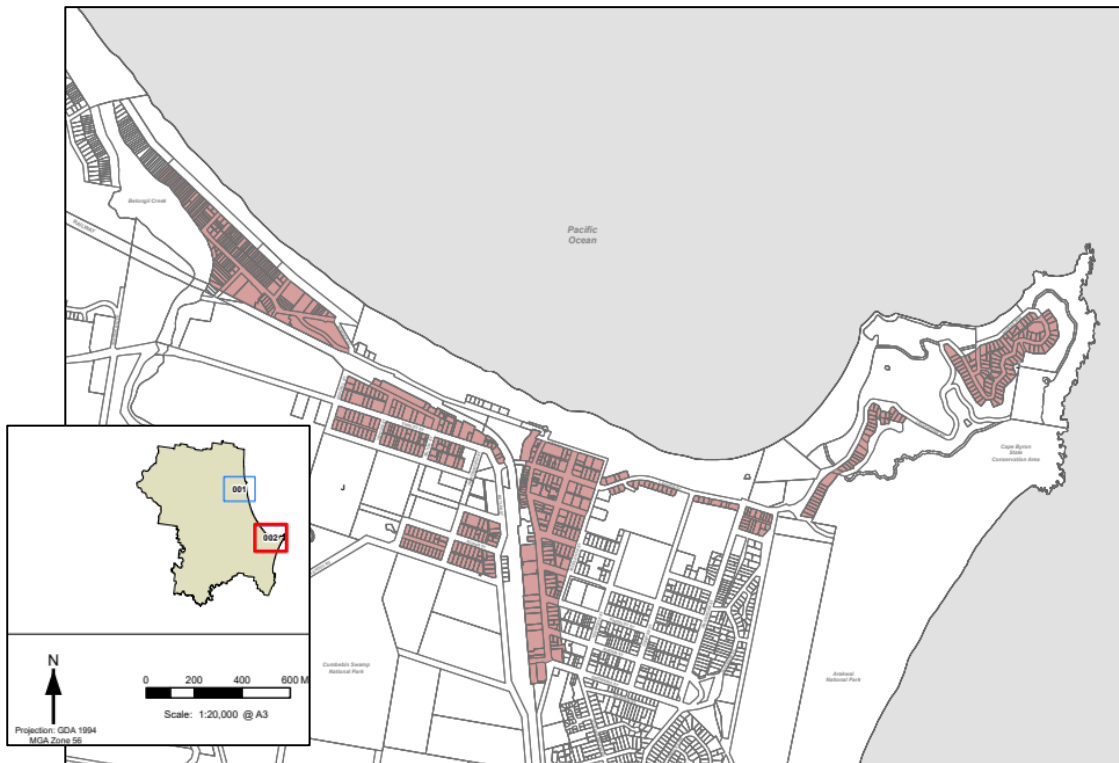
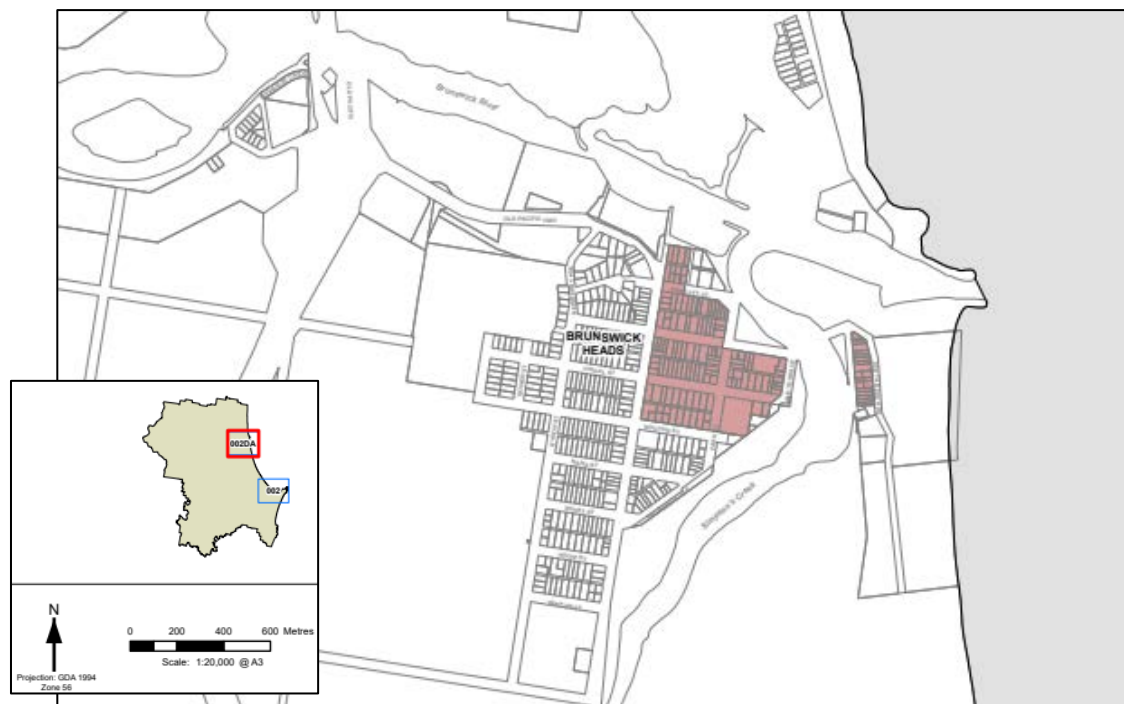


Figure 2 – Brunswick Heads proposed 365-day precinct (cropped)<sup>5</sup>



## 2.2 Background to the Planning Proposal

8. The background to Council's Planning Proposal and its referral to the Commission for advice is set out in Table 2.

*Table 2 – Planning Proposal timeline*

| <b>Date</b>                           | <b>Action</b>   |
|---------------------------------------|---|
| <b>11 February 2019</b>               | <p>The Minister issued a Ministerial Direction that allowed Council to prepare a Planning Proposal that could reduce the number of days that non-hosted STRA may be carried out in parts of the local government area (LGA).</p> <p>The Direction outlined principles for the Planning Proposal, including that the day cap cannot be less than 90 days and that the impacts of the Planning Proposal should be analysed and explained, including the social and economic impacts for the community in general and impacted property owners specifically.<sup>6</sup></p> |
| <b>24 June 2021</b>                   | <p>A conditional Gateway determination (<b>Gateway</b>) for the Planning Proposal was issued by the Department. The Gateway required Council to prepare an economic impact assessment (<b>EIA</b>) to investigate the likely economic effects of the proposed new planning rules.<sup>7</sup></p>   |
| <b>November 2021</b>                  | <p>Urbis (jointly commissioned by Council and the Department's Planning Delivery Unit) prepared the EIA. The EIA recommended a cap of 180 days be placed on non-hosted STRA across the Byron Shire on the basis that it would generate the highest net benefit to the community and local industry.<sup>8</sup></p>   |
| <b>December 2021</b>                  | <p>Council commissioned a peer review of the EIA by Dr Peter Phibbs, which was prepared in December 2021.<sup>9</sup></p>   |
| <b>24 February 2022</b>               | <p>A report was tabled at Council's Ordinary Council Meeting. This report presented the findings of the EIA and the Peer Review. Council resolved at the meeting (Resolution 22-060) to support the existing 90-day/365-day non-hosted STRA model as proposed in Version #2 of its Planning Proposal.<sup>10</sup></p>  |
| <b>3 June 2022</b>                    | <p>The Gateway for the Planning Proposal was subsequently amended with the issuing of an Alteration of Gateway Determination on 3 June 2022. This alteration enabled Council to progress the Planning Proposal to community consultation.</p>   |
| <b>1 September to 31 October 2022</b> | <p>Council exhibited the Planning Proposal.</p> <p>An online survey on the Planning Proposal attracted a total of 766 responses. Council also received 784 written submissions. The letter of referral from the Minister to the Commission notes that in total, over 1,500 forms of feedback were received while the Planning Proposal was on exhibition.<sup>11</sup></p>  |
| <b>13 December 2022</b>               | <p>A further Alteration of Gateway Determination was issued by the Minister. This alteration removed Council's delegation to be responsible for finalising the Planning Proposal so that the Commission's advice can be considered by the Minister before the Planning Proposal progresses further.<sup>12</sup></p>  |



| Date             | Action  |
|------------------|---|
| 15 December 2022 | The exhibited version (Version #4) of the Planning Proposal was reported to Council at its Council Meeting.<br><br>At this meeting, Council resolved (Resolution 22-729) to adopt the Planning Proposal with minor amendments, including changes to the 365-day precincts in Byron Bay and Brunswick Heads as well as removal of the Suffolk Park 365-day precinct. <sup>13</sup> |
| February 2023    | The above amendments were finalised and the current version of the Planning Proposal (Version #5) was prepared by Council and provided to the Commission.   |

### 2.2.1 Economic Impact Assessment

9. As described in Table 2, Urbis was jointly commissioned by Council and the Department’s Planning Delivery Unit to prepare an EIA analysing the potential impacts of implementing varying caps on the number of days per year properties can be made available as non-hosted STRA. The caps analysed by Urbis were caps of 180 days, 90 days and an uncapped option. No caps of less than 90 days were analysed by Urbis. The purpose of the EIA was to:

- provide an independent view of how potential non-hosted STRA 365-day precincts should be defined;
- identify, analyse and assess the potential varying economic and social impacts of different policy options; and
- identify which potential policy option would best balance potential benefits to the housing market and local community against potential disbenefits to the tourism sector.<sup>14</sup>

10. The six policy options identified by Urbis in the EIA are shown in Figure 3.

Figure 3 – EIA policy options<sup>15</sup>

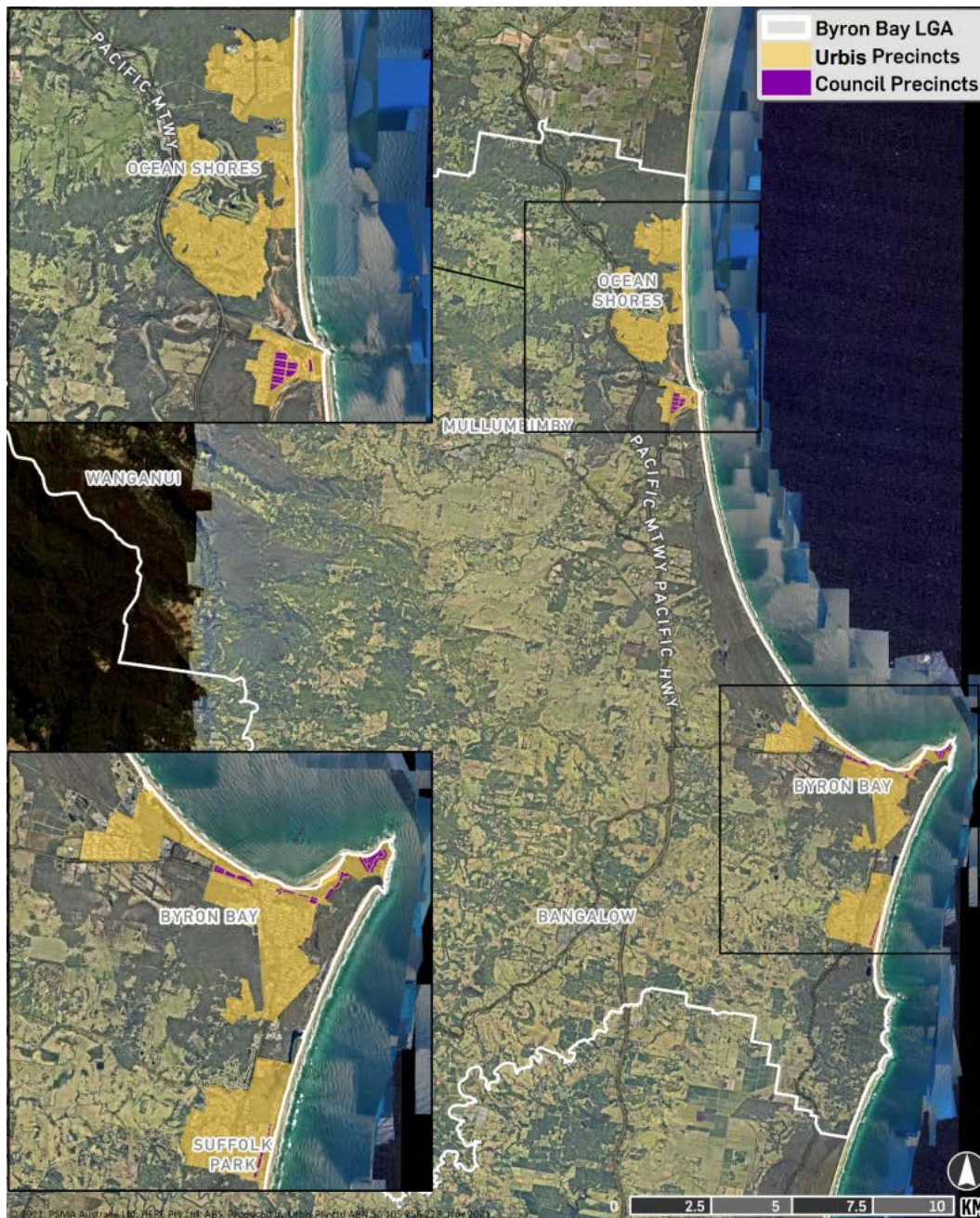
| Policy Basis                                | Policy Options  |   |   |
|---|---|---|---|
| Default Policy Under the SEPP               | <b>Base Case: SEPP Default</b><br>Default Policy Under the SEPP (180-day cap on non-hosted STRA across the entire LGA)  |   | <b>Base Case Alternative</b><br>Variation to the Default Policy Under the SEPP (180-day cap on non-hosted STRA <u>outside of Urbis-defined STRA Precincts</u> ) |
| Council's Current Gateway Planning Proposal | <b>Option 1: Council's Current Gateway Planning Proposal</b><br>Council's Current Gateway Planning Proposal (90-day cap on non-hosted STRA outside of Council-defined STRA Precincts) | <b>Option 1A</b><br>Variation to Council's Current Gateway Planning Proposal ( <u>180-day cap</u> on non-hosted STRA outside of Council-defined STRA Precincts) | <b>Option 1B</b><br>Variation to Council's Current Gateway Planning Proposal (90-day cap on non-hosted STRA outside of <u>Urbis-defined STRA Precincts</u> )    |
| No Regulation                               | <b>Option 2: No Caps</b><br>No caps on non-hosted STRA across the entire LGA.   |   |   |

11. As part of the EIA, Urbis proposed its own 365-day precincts (refer to Figure 4), with these more extensive precincts aiming to:

*“...capture both a large share of STRA listings and a small share of residential dwellings... [in order to] minimise potential detrimental impacts on the tourism industry while maximising the number of dwellings able to be delivered to the housing market.*

*Therefore, the Urbis-defined STRA Precincts account for 3,509 of the 5,249 non-hosted STRA properties (~67%) in the Byron LGA in 2019 (base year).”<sup>16</sup>*

Figure 4 – Council and Urbis-defined STRA precinct boundaries in Byron Shire<sup>17</sup>



12. In analysing the policy options, the EIA utilised a multi-criteria assessment to identify each option's direct, indirect and social impacts, with impacts scaled from low to moderate to high and categorised by their direction.<sup>18</sup>
13. The EIA also included engagement with the property management industry and property owners in the Byron Shire through an online survey of 249 STRA owners (refer to Figure 5).<sup>i</sup> The EIA states:

*The purpose of the survey was to provide data to inform the assumptions of potential impacts considering how STRA owners would respond to the alternate policy options, i.e. the 180-day cap policy across the LGA or the 90-day cap on properties outside the Council-defined [non-hosted] STRA Precincts. The options provided were:*

- Continue to rent as short stay for the maximum period allowed
- Rent out on a long-term basis, i.e. 3 months plus
- Rent out on a 9-month lease and holiday let for 3 months in Summer
- Sell the property
- Buy additional property to rent as short stay.<sup>19</sup>

Figure 5 – STRA owner responses to policy options<sup>20</sup>

| Policy Options                            | STRA Owner Responses to the Policy Options   |  |
|---|--|--|
|   | STRA Properties in STRA Precincts  | STRA Properties in Rest of LGA   |
| <b>180-Day Cap Across the Entire LGA</b>  | <ul style="list-style-type: none"> <li>▪ Keep as STRA: ~82%</li> <li>▪ Shift to Long Term Rental: ~17%</li> <li>▪ Sell to Owner-Occupier: ~2%</li> </ul> | <ul style="list-style-type: none"> <li>▪ Keep as STRA: ~80%</li> <li>▪ Shift to Long Term Rental: ~17%</li> <li>▪ Sell to Owner-Occupier: ~3%</li> </ul> |
| <b>90-Day Cap Outside STRA Precincts</b>  | <ul style="list-style-type: none"> <li>▪ Keep as STRA: ~92%</li> <li>▪ Shift to Long Term Rental: ~8%</li> </ul>   | <ul style="list-style-type: none"> <li>▪ Keep as STRA: ~61%</li> <li>▪ Shift to Long Term Rental: ~32%</li> <li>▪ Sell to Owner-Occupier: ~7%</li> </ul> |
| <b>180-Day Cap Outside STRA Precincts</b> | <ul style="list-style-type: none"> <li>▪ Keep as STRA: ~92%</li> <li>▪ Shift to Long Term Rental: ~8%</li> </ul>   | <ul style="list-style-type: none"> <li>▪ Keep as STRA: ~80%</li> <li>▪ Shift to Long Term Rental: ~17%</li> <li>▪ Sell to Owner-Occupier: ~3%</li> </ul> |
| <b>No Caps Across the Entire LGA</b>      | <ul style="list-style-type: none"> <li>▪ Keep as STRA: ~92%</li> <li>▪ Shift to Long Term Rental: ~8%</li> </ul>   | <ul style="list-style-type: none"> <li>▪ Keep as STRA: ~92%</li> <li>▪ Shift to Long Term Rental: ~8%</li> </ul>   |

14. The EIA determined that the 'Base Case: SEPP Default' has the potential to deliver the highest overall net benefit to the Byron Shire, as it is "estimated to provide the most substantial benefits across almost all relevant groups while minimising detrimental impacts on Visitor Market Visitors."<sup>21</sup>
15. Nonetheless, the EIA recommended that "a post-impact policy evaluation be undertaken no later than 2027 to determine the actual impacts of whatever policy is ultimately implemented."<sup>22</sup> The overall outcomes of the EIA's analysis are shown in Figure 6.

<sup>i</sup> As the EIA notes at page 20, "[a] total of 941 owners opened the survey with complete data from 249 STRA owners."



Figure 6 – Summary of overall EIA outcomes<sup>23</sup>

| Policy Option   | Overall Rating                  |
|---|---------------------------------|
| Base Case: SEPP Default   | High Net Benefit<br>(+13.5)     |
| Base Case Alternative<br>(180-day cap outside of Urbis-defined STRA Precincts)  | High Net Benefit<br>(+12)       |
| Option 1: Council's Current Gateway Planning Proposal<br>(90-day cap outside of Council-defined STRA Precincts)                 | Moderate Net Benefit<br>(+7)    |
| Option 1A – Variation to Council's Current Gateway Planning Proposal<br>(180-day cap outside of Council-defined STRA Precincts) | High Net Benefit<br>(+12)       |
| Option 1B – Variation to Council's Current Gateway Planning Proposal<br>(90-day cap outside of Urbis-defined STRA Precincts)    | Moderate Net Benefit<br>(+8.33) |
| Option 2: No Caps   | Moderate Net Benefit<br>(+7.5)  |

16. The Commission notes the following other key findings presented in the EIA:

- approximately 44% of dwellings in Byron Bay are being used as non-hosted STRA from January to December 2019;<sup>24</sup>
- the Byron Shire is impacted by issues of rental affordability, which “has been exacerbated in recent years by the sharp increases in median rents and dwelling prices across the Byron LGA”, as well as availability, with “extremely low” vacancy rates “between 2016 and 2019 [...] result[ing] in limited choice for residents and significant rent and price growth.”<sup>25</sup> The EIA finds “this represents a market failure where a lack of clear regulation and attractive revenue prospects have led many residential property owners to convert their properties into [non-hosted] STRA properties... [causing] further tightening of an already low vacancy residential market”;<sup>26</sup>
- Byron Bay has the greater share of employment in the Byron Shire, with approximately 42% of jobs located in the Byron Bay town centre.<sup>27</sup> The EIA cautions that the “diminishing availability of housing near major employment areas such as Byron Bay town centre may result in increased use of the Pacific Motorway for commuter traffic... and limit the LGA’s ability to attract workers to the region”;<sup>28</sup>
- in relation to the availability and occupancy of non-hosted STRA properties from January to December 2019, 62% “were available for more than 180 days in the year, however most properties (61%) were occupied for less than 90 days in the year” and 23% “were occupied for 91-180 days” with 16% “occupied for more than 180 days”;<sup>29</sup> and
- survey respondents were “very concerned” about the potential impacts of the Planning Proposal, as “[n]on-hosted accommodation particularly detached houses has been an important product of the visitor economy and supports larger groups and a higher yielding visitor compared to most hosted options such as apartments, caravan park etc.”<sup>30</sup> The survey results suggested, however, that “owners of properties in Council-defined STRA Precincts might consider long-term rental if the number of days occupied annually is less than 180 days and less than 104 days for properties outside the precincts.”<sup>31</sup>

### *Peer Review of Economic Impact Assessment*

17. As referenced in Table 2, Council commissioned Peter Phibbs (Emeritus Professor, the University of Sydney) to undertake a peer review of the EIA. The key findings of Phibbs' peer review are:
- the EIA combines economic impact analysis with other evaluative methods such as cost benefit analysis;
  - the comparison of policy options does not weight the importance of impacts on different stakeholder groups;
  - the study does not take account of the positive economic impacts from long term tenants in some options; and
  - the study does not adequately take account of the difference between the experience in Byron Bay compared to Sydney and has "underestimated the extent of the market failure".<sup>32</sup>

## **3. Statutory and policy context**

### **3.1 Commonwealth Government**

18. The Commonwealth Government's key roles on housing policy in Australia include its:
- impact on the housing market through taxation regimes (i.e. negative gearing and capital gains tax reductions);<sup>33</sup>
  - investment in social and affordable housing programs aimed at boosting housing supply (e.g. the National Housing and Homelessness Agreement);<sup>34</sup>
  - provision of welfare support (e.g. Commonwealth Rent Assistance);<sup>35</sup> and
  - investment in major infrastructure projects in partnership with the states and territories that support housing-enabling infrastructure (e.g. the National Housing Infrastructure Facility).<sup>36</sup>

### **3.2 NSW Government**

19. State and territory governments are primarily responsible for the delivery and regulation of housing and homelessness services in their jurisdictions, including public and community housing, major infrastructure funding that enables housing delivery release of new land for housing, zoning laws and amendments, stamp duty and land tax.<sup>37</sup>

#### **3.2.1 Environmental Planning and Assessment Act, 1979**

20. The EP&A Act is the primary land use EPI in NSW and governs environmental and planning assessment for the state. The Objects of the EP&A Act are set out at section 1.3 of the Act and include the following relevant to housing and residential development:
- (c) *to promote the orderly and economic use and development of land,*
  - (d) *to promote the delivery and maintenance of affordable housing, [...]*
  - (g) *to promote good design and amenity of the built environment,*<sup>38</sup>



### 3.2.2 State Environmental Planning Policy (Housing) 2021

21. Housing regulation in NSW is predominantly set at a state level by the Housing SEPP, which commenced on 26 November 2021.
22. The Housing SEPP aims to incentivise the supply of “affordable and diverse housing in the right places and for every stage of life”<sup>39</sup> and consolidates five former housing-related EPIs, these being:
- State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARH SEPP);
  - State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004 (Seniors SEPP);
  - State Environmental Planning Policy No 70 – Affordable Housing (Revised Schemes) (SEPP 70);
  - State Environmental Planning Policy No 21 – Caravan Parks; and
  - State Environmental Planning Policy No 36 – Manufactured Home Estates.
23. The Housing SEPP introduced definitions and provisions for STRA in NSW. The stated aims of Part 6 (Short-term rental accommodation) of the Housing SEPP are as follows:
- a) *to support short-term rental accommodation as a home-sharing activity and contributor to local economies, while managing the social and environmental impacts from this use,*
  - b) *to provide for the safety of users of short-term rental accommodation who may be less familiar with the dwelling,*
  - c) *to clarify the types of housing that may be used for the purposes of short-term rental accommodation.*<sup>40</sup>
24. Part 6 defines key STRA-related terms as follows:
- **host** means the owner, tenant or permanent resident of a dwelling who uses the dwelling to provide short-term rental accommodation.
  - **hosted short-term rental accommodation** means short-term rental accommodation provided where the host resides on the premises during the provision of the accommodation.
  - **non-hosted short-term rental accommodation** means short-term rental accommodation provided where the host does not reside on the premises during the provision of the accommodation.
  - **short-term rental accommodation** means a dwelling used by the host to provide accommodation in the dwelling on a commercial basis for a temporary or short-term period.<sup>41</sup>
25. Part 6 sets out that hosted STRA “is exempt development if the dwelling meets the general requirements”.<sup>42</sup> Non-hosted STRA is exempt development if:
- *the dwelling meets the general requirements, and*
  - *for a dwelling located in a prescribed area—the dwelling is not used for non-hosted short-term rental accommodation for more than 180 days in a 365-day period.*<sup>43</sup>
26. Part 6 additionally sets out however, that:
- In calculating the number of days a dwelling is used for non-hosted short-term rental accommodation, a period of 21 consecutive days or more during which non-hosted short-term rental accommodation is provided to the same person or persons must not be counted.*<sup>44</sup>

27. The prescribed areas where a 180-day cap currently applies to non-hosted STRA are the Greater Sydney region (excluding the Central Coast LGA), Ballina LGA, Byron LGA, and specific areas in the Clarence Valley and Muswellbrook LGAs.<sup>45</sup> The Department advised the Commission during a meeting on 10 February and again during the Public Hearing on 21 February that there would be a review by the Department of the efficacy of the 180-day cap in the Housing SEPP.
28. The general requirements for STRA are set out at clause 113 of the Housing SEPP, and include the provisions that:
- (a) *the dwelling must have been lawfully constructed to be used for the purposes of residential accommodation, [...]*
  - (i) *the use of the dwelling for the purposes of short-term rental accommodation must otherwise be lawful.*<sup>46</sup>
29. Pursuant to Division 3 of Part 6 of the Housing SEPP, the Byron Shire was exempt from the above provisions until 31 January 2022.<sup>47</sup>

### 3.2.3 NSW STRA framework

30. The NSW Government implemented a state-wide regulatory framework for STRA in late-2021.<sup>48</sup> This framework incorporates a planning framework, fire safety standards for STRA dwellings, and a government-run STRA Register. The planning framework is enacted via Part 6 of the Housing SEPP (refer to section 3.2.2) and the fire safety standards via the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.
31. The planning framework came into effect on 1 November 2021 and complements the NSW Department of Fair Trading's (**Fair Trading**) mandatory Code of Conduct for the Short-term Rental Accommodation Industry (**Code of Conduct**) and changes to strata legislation made by the Department of Customer Service,<sup>49</sup> which were published on 22 October 2021.<sup>50</sup> The objectives of the Code of Conduct are as follows:
- *set out the rights and obligations of short-term rental accommodation industry participants*
  - *provide for resolution of disputes and complaints about the conduct of short-term rental accommodation industry participants*
  - *outline the compliance and enforcement approach that applies to contraventions of the code by short-term rental accommodation industry participants*
  - *facilitate the oversight of the short-term rental accommodation industry.*<sup>51</sup>
32. The Code of Conduct commenced on 18 December 2020 and is administered by the Commissioner for Fair Trading in the NSW Department of Customer Service.<sup>52</sup>
33. The NSW Government's STRA website notes that the STRA Register "will ensure compliance with the new fire safety standards, as well as tracking day limits of each STRA dwelling and provide details to assist local councils with monitoring STRA in their [LGAs]." The website also outlines that all "local councils in NSW have access to the STRA Register and have a role in enforcing the planning framework."<sup>53</sup>
34. All STRA properties are required to register on the STRA Register, with a registration fee of \$65 applying for all new registrations and registrations required to be renewed annually from the date of the original registration to remain active on the STRA Register. The renewal registration fee is currently \$25.<sup>54</sup>

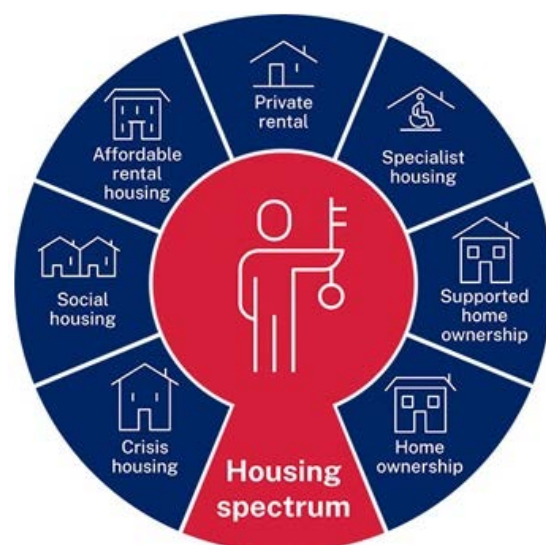
### 3.2.4 NSW Housing Strategy 2041

35. The long-term housing strategy in NSW is guided by the NSW Housing Strategy 2041 (**Housing Strategy**), which sets a 20-year vision for housing outcomes in the state and aligns with the Housing SEPP (refer above).<sup>55</sup>
36. The Housing Strategy centres on the four interrelated pillars of supply, diversity, affordability and resilience of housing (refer to Figure 7), defined as follows:
- **supply** – housing supply delivered in the right location at the right time;
  - **diversity** – housing is diverse, meeting varied and changing needs of people across their life;
  - **affordability** – housing that is affordable and secure; and
  - **resilience** – housing that is enduring and resilient to natural and social change.
37. The Housing Strategy emphasises a collaborative “whole-of-government” approach to housing regulation and provision. In its discussion of housing needs (including type, tenure and location), the Housing Strategy provides a long-term plan to improve housing outcomes across NSW centred around the above housing system pillars and a holistic framework of the different typologies of housing, ownership and renting that contribute to social and economic wellbeing and health outcomes (refer to Figure 8).<sup>56</sup>

Figure 7 – NSW Housing System Pillars<sup>57</sup>



Figure 8 – Housing spectrum<sup>58</sup>



### 3.2.5 Regional Housing Taskforce

38. Housing strategy in NSW is also informed by the work of the Regional Housing Taskforce (**Taskforce**), which was established by the NSW Government in June 2021. The Taskforce conducted wide consultation with a range of community, industry and governmental stakeholders, and delivered a Findings Report (dated September 2021) and a Recommendations Report (dated October 2021) to the NSW Government.<sup>59</sup>
39. The Taskforce was instructed to identify technical barriers in the planning system that are preventing the delivery of housing supply, including affordable housing, and to formulate recommendations to improve housing outcomes in regional NSW via the planning system and other government levers.<sup>60</sup>

40. The Taskforce's key findings include the following:

*While housing issues in regional NSW need to be understood in the context of broader housing trends, there are also unique factors and challenges in regional housing markets that frustrate the delivery of the right types of homes in the right locations and at the right time.*

[...]

*There is understood to be sufficient residential zoned land across most of regional NSW to accommodate forecast demand over a number of years, but not all land that is currently zoned for housing can or will be developed.*

[...]

*Approaches to infrastructure planning, delivery and coordination need to be improved to unblock regional housing supply.*

[...]

*Regional communities recognise the need for more diverse and affordable housing to better meet current and future needs, including smaller homes and housing for older people, but delivery of diverse and affordable housing is a significant challenge.*

[...]

*Regional housing markets are vulnerable to spikes in demand, including from temporary and seasonal workers, short-term holiday letting, and planning needs to better anticipate and respond to these impacts.<sup>61</sup>*

41. The Taskforce's key recommendations comprise:

- *Support measures that bring forward a supply of 'development ready' land.*
- *Increase the availability of affordable and diverse housing across regional NSW.*
- *Provide more certainty about where, when and what types of homes will be built.*
- *Investigate planning levers to facilitate the delivery of housing that meets short-term needs.*
- *Improve monitoring of housing and policy outcomes and demand indicators.<sup>62</sup>*

42. The Taskforce additionally recommended "reviewing the short- and longer-term impacts on regional housing outcomes of recent and planned reforms, such as [...] Short Term Rental Accommodation."<sup>63</sup>

43. All the Taskforce's recommendations were adopted by the NSW Government in August 2022 as part of its 2022 Housing Package.<sup>64</sup>

### 3.2.6 North Coast Regional Plan 2041

44. Strategic planning for northern NSW is additionally guided by the *North Coast Regional Plan 2041* (the **Regional Plan**), which sets a 20-year strategic land use planning framework for the LGAs of Ballina, Bellingen, Byron, Clarence Valley, Coffs Harbour, Kempsey, Kyogle, Lismore, Nambucca, Port Macquarie, Hastings, Richmond Valley and Tweed. The North Coast region incorporates the Northern Rivers and the Mid North Coast, with the Byron LGA part of the former together with Tweed, Lismore, Ballina, Richmond Valley, Kyogle and Clarence Valley LGAs.<sup>65</sup>

45. The Regional Plan identifies that “a minimum 41,300 extra homes will be needed to meet population growth” projected to 2041 in the North Coast Region,<sup>66</sup> and includes the following objectives and strategies related to housing:

*Objective 1: Provide well located homes to meet demand*

- *Strategy 1.1: A 10 year supply of zoned and developable residential land is to be provided and maintained in Local Council Plans endorsed by the Department of Planning and Environment.*
- *Strategy 1.2: Local Council plans are to encourage and facilitate a range of housing options in well located areas.*
- *Strategy 1.4: Councils in developing their future housing strategies must prioritise new infill development to assist in meeting the region’s overall 40% multi-dwelling / small lot housing target and are encouraged to work collaboratively at a subregional level to achieve the target.*

*Objective 2: Provide for more affordable and low cost housing.*

- *Action 3: Establish Housing Affordability Roundtables for the Mid North Coast and Northern Rivers subregions with councils, community housing providers, State agencies and the housing development industry to collaborate, build knowledge and identify measures to improve affordability and increase housing diversity.*<sup>67</sup>

### 3.3 Local Government

#### 3.3.1 Byron Local Environmental Plan 2014

46. The *Byron Local Environmental Plan 2014 (BLEP 2014)* provides a framework for land use management in the Byron LGA in accordance with the *Standard Instrument—Principal Local Environmental Plan (2006 EPI 155a)* under section 3.20 of the EP&A Act.<sup>68</sup>
47. The aims of the BLEP 2014 include “to build and sustain community resilience by encouraging a diversity of housing choice and affordable housing in appropriate localities”.<sup>69</sup>
48. STRA is not explicitly or specifically defined within the BLEP 2014, however the use of a building or place for ‘short-term accommodation’ is included as part of the definitions for ‘backpackers’ accommodation’, ‘bed and breakfast accommodation’, ‘eco-tourist facility’, ‘hotel or motel accommodation’ and ‘tourist and visitor accommodation’.<sup>70</sup> The latter use, for ‘tourist and visitor accommodation’ is defined as:
- a building or place that provides temporary or short-term accommodation on a commercial basis, and includes any of the following—*
- a) backpackers’ accommodation,*
  - b) bed and breakfast accommodation,*
  - c) farm stay accommodation,*
  - d) hotel or motel accommodation,*
  - e) serviced apartments,*
- but does not include—*
- f) camping grounds, or*
  - g) caravan parks, or*
  - h) eco-tourist facilities.*<sup>71</sup>



49. The Land Use Table within the BLEP 2014 specifies for each zone, development that may be carried out without development consent, development that may be carried out only with development consent, and development that is prohibited. Tourist and visitor accommodation is permitted with consent in the Byron LGA in the following zones: RU1 Primary Production, RU2 Rural Landscape and B2 Local Centre. It is prohibited in the following zones: R2 Low Density Residential, R3 Medium Density Residential, Zone R5 Large Lot Residential, and Zone B1 Neighbourhood Centre.<sup>72</sup>
50. Pursuant to section 3.28 of the EP&A Act, the BLEP 2014 is subject to the provisions of the Housing SEPP.<sup>73</sup>

### 3.3.2 Byron Shire Local Strategic Planning Statement

51. Strategic planning at a local level is guided by the Byron Shire Local Strategic Planning Statement (**Byron LSPS**), dated September 2020, which presents a 2036 vision and framework for land use within Byron Shire.<sup>74</sup>
52. The Byron LSPS identifies that meeting future housing demand “within the limits of available land” is one of the Byron Shire’s most significant land use planning challenges, and that the Byron Shire has “the highest housing stress levels in the Northern Rivers and higher than the New South Wales average.” A key priority of the Byron LSPS is to “support Housing diversity and affordability with housing growth in the right locations.”<sup>75</sup>

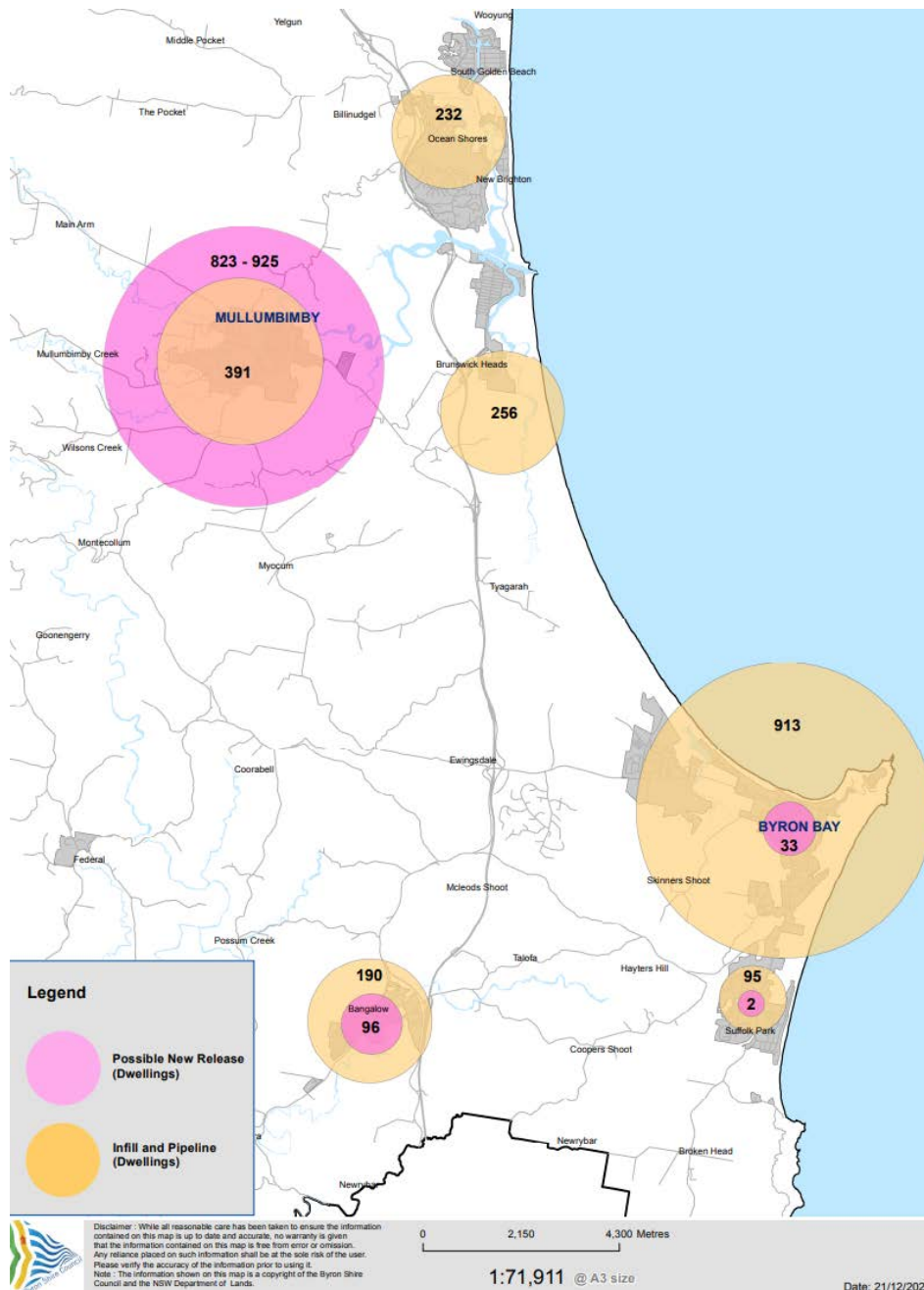
### 3.3.3 Byron Shire Residential Strategy

53. Council adopted the Byron Shire Residential Strategy (**Residential Strategy**) in December 2020.<sup>ii</sup> The Residential Strategy sets out Council’s policy framework for the delivery of housing to 2040.<sup>76</sup>
54. As part of the Residential Strategy, Council conducted a housing supply capacity analysis which identified that “the current supply of residential zoned land is insufficient to meet [the Byron Shire’s] future housing needs (including delivering secure affordable housing).”<sup>77</sup> The Residential Strategy proposes 14 urban growth investigation areas, with nine of these located in Mullumbimby, three located in Bangalow, and one each located in Byron Bay and Suffolk Park.<sup>78</sup> The Residential Strategy’s composite distribution of potential housing supply across the Byron Shire’s key settlements is shown in Figure 9.
55. Key directions advanced by the Residential Strategy to meet housing demand include:
- *Direction 1.1: The majority of our Shire’s future housing will be in urban towns and villages*
  - *Direction 1.2: Land for housing will be suitable for the use*
  - *Direction 1.3: New subdivisions and infill will support the attributes of liveable neighbourhoods*
  - *Direction 2.1: Enable opportunities for innovative new residential forms and models that give a sense of place, promote environmental stewardship and encourage social, economic and cultural diversity and equity*
  - *Direction 2.2: Facilitate and promote growth in the proportion of rental and to buy housing aimed at the lower end of the market, including those with very low incomes*
  - *Direction 2.3: Encourage use of low rise medium density housing types other than the detached house*

<sup>ii</sup> As Council note, the Residential Strategy was not endorsed by the Department, and is currently being revised in view of the release of reports including the NSW Flood Inquiry and the Regional Plan.

- *Direction 2.4: Support ‘urban village’ pockets of mixed-use activities close to business centres*
- *Direction 2.5: Continue to support detached houses but with a stronger emphasis on more diversity in lot and house size and using adaptable and liveable house design*
- *Direction 3.1: Respect the current and/or emerging character and values, as recognised in residential character narratives for specific areas*
- *Direction 4.1: Make dwellings ‘homes’ again*
- *Direction 4.2: Identifying areas and mechanisms where Short Term Rental Accommodation can be excluded<sup>79</sup>*

Figure 9 – Urban housing supply distribution<sup>80</sup>



### 3.3.4 Byron Shire Affordable Housing Contribution Scheme

56. On 11 August 2022, Council adopted its Affordable Housing Contribution Scheme 01 (AHCS). The AHCS seeks to:
- *facilitate the provision of affordable housing options within the Byron Shire Council area to meet the needs of very low, low and moderate income households so as to promote diversity, equity, liveability and sustainability; and*
  - *set out how, where and at what rate development contributions will be collected by Byron Shire Council to provide fairness, certainty and transparency for the local community, developers and other stakeholders.*<sup>81</sup>
57. The AHCS applies to residential development applications lodged for land and development within Byron Bay, Mullumbimby and Bangalow and sets the following contribution rates:
- *On-site: 20% of the area of residential lots in the development must be provided as an affordable housing contribution.*
  - *Monetary: 20% of the area of residential lots in the development must be provided as an affordable housing contribution monetised.*
  - *Other in-kind (dwellings): 20% of the area of residential lots in the development must be provided as an affordable housing contribution, as in-kind (dwellings) of equivalent value.*
  - *Combined: 20% of the area of residential lots in the development must be provided as an affordable housing contribution, in kind and monetised.*<sup>82</sup>
58. The AHCS rests on the investigation areas identified within Council's Residential Strategy and categories areas identified for inclusion in the AHCS according to the following tiers:
- *Tier 1: means that subject to site specific investigations this land may be suitable to progressing to a Planning Proposal to upzone.*
  - *Tier 2: means that the land has been flagged by the Department of Planning, Industry and Environment as having significant state matters of concern and hence whilst identified the Scheme these areas are subject to future consideration and resolution of outstanding state matters of concern.*<sup>83</sup>
59. The identified AHCS areas within Byron Bay, Mullumbimby, and Bangalow are shown at Figure 10, Figure 11 and Figure 12.

Figure 10 – Affordable Housing Contribution Area: Byron Bay (cropped)<sup>84</sup>



Figure 11 – Affordable Housing Contribution Area: Mullumbimby (cropped)<sup>85</sup>

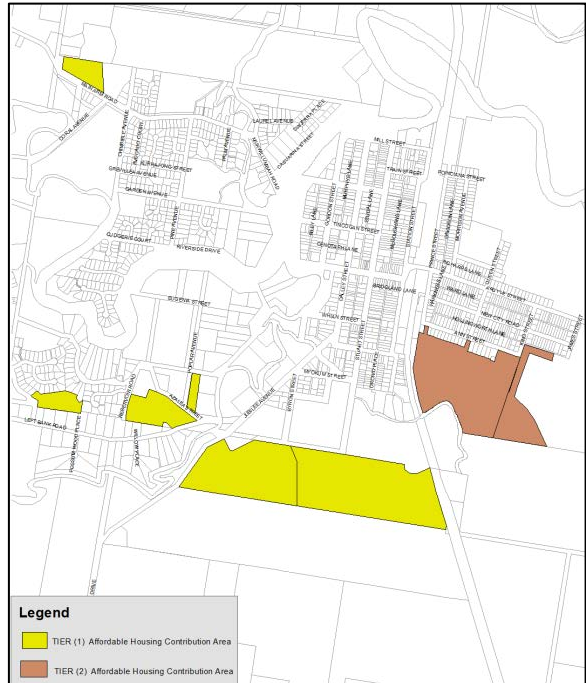


Figure 12 – Affordable Housing Contribution Area: Bangalow (cropped)<sup>86</sup>



### 3.3.5 Byron Shire Sustainable Visitation Strategy

60. On 19 March 2020 the Draft Byron Shire Sustainable Visitation Strategy 2020–2030 (**Sustainable Visitation Strategy**) was reported to Council.<sup>iii</sup> 87 The Sustainable Visitation Strategy advances the following vision:
- Byron Shire welcomes visitors and supports a visitor economy that cares for and respects our residents, creates low-impact visitor experiences, protects our natural environment, celebrates our cultural diversity and shares our social values.*<sup>88</sup>
61. The Sustainable Visitation Strategy identifies that visitor numbers to the Byron Shire between 2020 and 2030 “are forecast to grow by between 50% and 75%” and that by 2030, the Byron Shire “can expect 3.86 million visitors and 8.5 million visitor nights if trends continue.” Utilising visitor survey data from Tourism Research Australia, the Sustainable Visitation Strategy finds that there has been substantial growth between 2008 and 2019 in Byron Shire across the metrics of total visitor expenditure (high of \$776 million in 2019 and growth rate of 119%), the number of domestic day trip visitors (991,000 in 2019 and growth rate of 69%), domestic overnight visitors (994,000 in 2019 and growth rate of 91%), and total visitor nights (5,500,000 in 2019 and growth rate of 76%).<sup>89</sup>
62. Based on a 2019 Council audit of Byron Shire’s available tourism and visitor accommodation, the Sustainable Visitation Strategy outlines the following:
- *In 2019, Byron Shire has a capacity of 22,025 bed spaces recorded across 3,325 properties, as compared with 14,061 bed spaces in 2008. This shows a growth of 57% over the past 11 years.*
  - *In 2019, there are 13 camping grounds and caravan parks that account for 24% of the bed spaces.*
  - *In 2019, the majority of accommodation is holiday houses, which now account for 40% of all bed spaces in the Shire.*
  - *From 2008 to 2019 there has been a decrease in the number of bed spaces within resorts, holiday apartments and guest houses.*<sup>90</sup>
  - *Byron Bay has the highest percentage of accommodation properties in the shire, with 14,216 bed spaces totalling 52% of the total properties and 57% of the total bed spaces in the shire in 2019.*
  - *The number of bed spaces in Suffolk Park and Brunswick Heads has remained stable for the last 11 years.*
  - *Bangalow, Mullumbimby, Ocean Shores (which also includes the villages of South Golden Beach and New Brighton) and the Hinterland areas have shown the most growth in bed spaces over the last 11 years with increases between 200 – 300%. Most of this can be attributed to the growth in the number of holiday houses in the shire.*<sup>91</sup>
63. Regarding visitor accommodation, the Sustainable Visitation Strategy notes that consultation with the Byron Shire community identified that residents:
- do not “want to see high-rise hotel chains (higher than three storeys) or additional short-term rental accommodation”; and
  - are eager to “see a cross-section of visitors throughout the Shire; backpackers, families and business and conferencing delegates [but that] there is currently a lack of business and conference accommodation and venues”.<sup>92</sup>

<sup>iii</sup> The current version of the Sustainable Visitation Strategy was amended to incorporate requested changes from the 19 March 2020 Council Meeting, however does not appear to have been amended or adopted since.



64. Key actions advanced by the Sustainable Visitation Strategy include:
- *Prepare a planning proposal to define and regulate short term rental accommodation.*
  - *Review planning controls relating to rural tourism developments and make amendments to the Byron LEP 2014 and/or Byron DCP 2014 where necessary to clarify and confirm an appropriate development type and use.*
  - *Investigate the introduction of planning controls to support a diversity of accommodation types to suit various visitor types, with enough accommodation in different localities to encourage visitor dispersal and to minimise impacts on our communities and our natural environment.<sup>93</sup>*

## 4. The Commission's consideration

### 4.1 Material considered by the Commission

65. In this review, the Commission has considered the following material (**Material**), which is all available on its website:
- the Minister's cover letter requesting the Commission's review of the Planning Proposal and its attachments therein, received by the Commission on 14 December 2022;
  - documents provided by Council to the Commission on 23 December 2022, 3 February 2023, and 17 February 2023;
  - comments and presentation material provided at the stakeholder and briefing meetings with the persons as referenced in Table 3;
  - submissions and presentation material made to the Commission at the Public Hearing on 21 and 22 February 2023;
  - submissions made to the Commission within the period for written submissions (as extended) and analysis of these submissions;
  - responses to the Commission's questions on notice and requested clarifications by: the Department; Council; Byron Chapter, Australian Short-Term Rental Association (**Byron ASTRA**); Airbnb Pty Ltd (**Airbnb**); and Expedia Group Inc. (**Expedia**);
  - additional State and local government strategies and literature relevant to the Planning Proposal;
  - peer-reviewed academic literature relevant to the Planning Proposal; and
  - a report prepared by the Australian Housing and Urban Research Institute (**AHURI**), April 2023 (**AHURI report**).

### 4.2 Advice obtained by the Commission

66. AHURI was engaged by the Commission to undertake data analysis and review of the Byron Shire's housing and economic context, particularly with regard to relevant regulation in other jurisdictions and the key issue themes raised in submissions, including housing and rental affordability, long-term rental supply, housing tenure, income distribution and the role of STRA in the broader housing context.
67. Although the Commission was assisted by the analysis and review carried out by AHURI, the AHURI report itself is not an extension of the Commission's advice and does not constitute a formal part of this advice.

68. As part of the Commission's transparent processes in making case materials publicly available, the AHURI report has been published, in full, on the Commission's website.
69. The scope of the Commission's brief to AHURI is set out in the AHURI report and in preparing the AHURI report, AHURI was not provided with any data by the Commission that is not otherwise publicly available.

### 4.3 Commission meetings and briefings

70. To inform preparation of its advice, the Commission met with the persons listed in Table 3. All transcripts and associated presentations have been made available on the Commission's website. The Commission also received briefings on STRA regulatory approaches and research undertaken in Western Australia and Tasmania, including a briefing from Emeritus Professor Peter Phibbs on his peer review of the EIA and additional advice to Council.<sup>iv</sup>

*Table 3 – Commission's meetings and briefings*

| Meetings   | Date             | Published on the Commission's website |
|--|------------------|---------------------------------------|
| <b>Department and Urbis</b>  | 10 February 2023 | 15 February 2023                      |
| <b>Byron Shire Council</b>   | 17 February 2023 | 21 February 2023                      |
| <b>Byron Bay Chamber of Commerce</b>   | 17 February 2023 | 21 February 2023                      |
| <b>Brunswick Heads Chamber of Commerce</b>                                       | 17 February 2023 | 21 February 2023                      |
| <b>Destination North Coast</b>   | 17 February 2023 | 21 February 2023                      |
| <b>Destination Byron</b>   | 17 February 2023 | 21 February 2023                      |
| <b>Byron Visitor Centre</b>  | 17 February 2023 | 21 February 2023                      |
| <b>Byron ASTRA</b>   | 17 February 2023 | 21 February 2023                      |
| <b>Shelter NSW</b>   | 17 February 2023 | 21 February 2023                      |
| <b>Homelessness NSW</b>  | 24 February 2023 | 27 February 2023                      |
| <b>Airbnb</b>  | 27 February 2023 | 2 March 2023                          |
| <b>Expedia</b>   | 27 February 2023 | 2 March 2023                          |
| <b>Briefings</b>   |                  |                                       |
| <b>Department of Planning, Lands and Heritage, Western Australian Government</b> | 15 February 2023 | 21 February 2023                      |
| <b>ShelterTAS</b>  | 17 February 2023 | 21 February 2023                      |
| <b>Emeritus Professor Peter Phibbs, The University of Sydney</b>                 | 17 February 2023 | 21 February 2023                      |

<sup>iv</sup> The Commission notes Prof. Phibbs's membership of the Advisory Board of Inside Airbnb, which describes itself as "a mission driven project that provides data and advocacy about Airbnb's impact on residential communities" (<http://insideairbnb.com/about/>). The Commission has taken this into account in its consideration of material provided by Prof. Phibbs.

## 4.4 Commission locality tour

71. On 20 and 22 February 2023, the Commission conducted a tour of the locality relevant to the Planning Proposal, particularly the proposed 365-day precincts within Byron Bay and Brunswick Heads. Notes and maps of the Commission's locality tour were published to the Commission's website on 27 February 2023.

## 4.5 Public Hearing

72. The Commission conducted a Public Hearing over two days on 21 and 22 February 2023. The Public Hearing was held in-person at the Byron Community Centre in Byron Bay, with speakers presenting in-person or electronically via telephone or video conference. The Public Hearing was streamed live on the Commission's website.
73. At the Public Hearing, the Commission heard from the Department, Council, community and industry group representatives, and individual community members. In total, 75 speakers presented to the Commission during the Public Hearing.
74. Presentations made at the Public Hearing have been considered by the Commission as submissions and are referenced in section 4.6 of this report.

## 4.6 Public submissions

75. As part of the Commission's consideration of Council's Planning Proposal, the public were invited to make written submissions to the Commission from 22 December 2022 until 8 March 2023. The Commission notes that public submissions had previously been made to Council as part of its development of the Planning Proposal, which were made available to the Commission.
76. The Commission received a total of 532 unique author written submissions<sup>v</sup> on the Planning Proposal made via the Commission's online submission portal, or by email or post. Approximately 10% of these were brief submissions of 25 words or less. The Commission also received numerous form submissions and comments that were provided by Byron ASTRA<sup>vi</sup> and the 'Byron Deserves Balance'<sup>vii</sup> campaign.
77. The unique written submissions comprised (see Figure 13):
- 327 submissions in support of the Planning Proposal (61%);
  - 179 submissions in objection to the Planning Proposal (34%); and
  - 26 neutral comments on the Planning Proposal (5%).

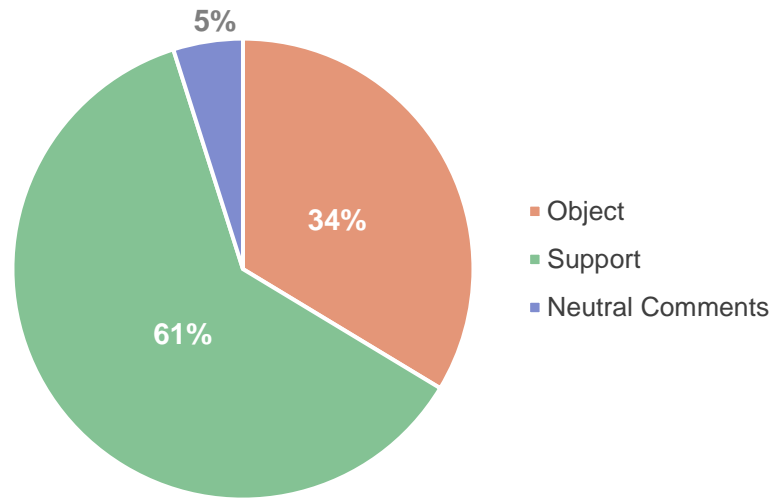
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<sup>v</sup> Identical submissions were considered as a single submission. Authors who made multiple submissions were considered as one unique submission per author.

<sup>vi</sup> Form letter submission from 'Property Owners of Byron Shire' numbering 331 individual owners. Available on the Commission's website.

<sup>vii</sup> Online petition comprising 2483 signatures at time of submission as well as individual comments from 197 petition signatories. Available on the Commission's website.

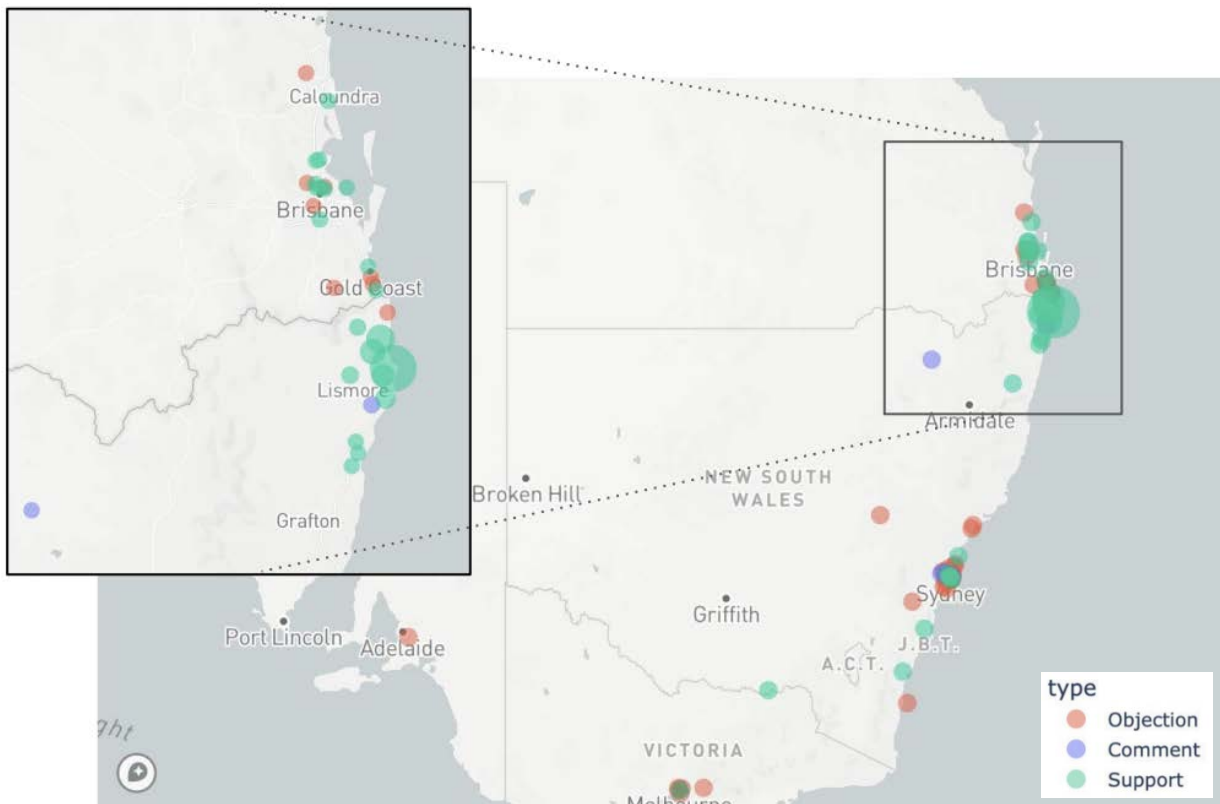
Figure 13 – Overview of submissions received by the Commission



#### 4.6.1 Geographic distribution

78. Most submissions were received from the Northern Rivers region of NSW, with some submissions made from interstate areas and capital cities including Brisbane, Sydney and Melbourne. The geographic distribution of submissions received by the Commission is illustrated in Figure 14.

Figure 14 – Geographic distribution of submissions



### 4.6.2 Key themes

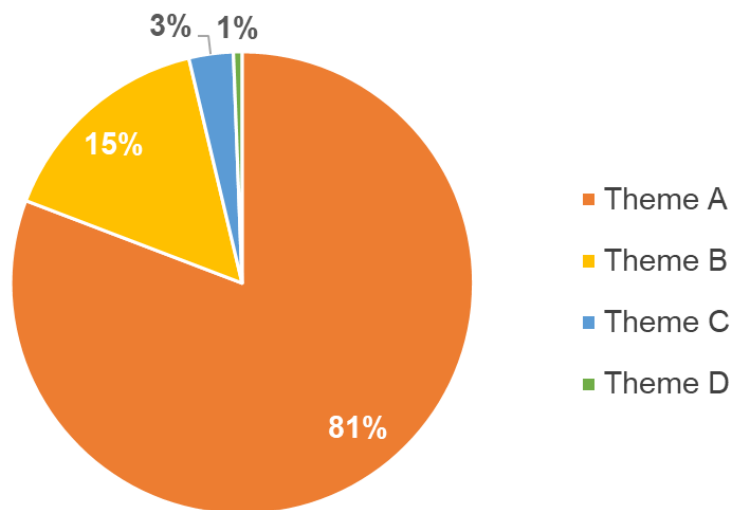
79. There were four overarching themes identified across the unique written and verbal submissions provided to the Commission. These themes were identified using natural language processing of keywords, phrases and word frequency<sup>viii</sup> that supplemented the Commission’s examination of issues raised in submissions. The four key themes are set out in Table 4.

Table 4 – Key themes identified in submissions to the Commission

| Theme  | Submissions |           |         |
|--|-------------|-----------|---------|
|  | Support     | Objection | Comment |
| <b>A</b> Lack of affordable long-term accommodation for local residents              | 65%         | 31%       | 4%      |
| <b>B</b> Benefits of short-term rental and risks of restrictions                     | 36%         | 52%       | 12%     |
| <b>C</b> Community way of life and community resilience                              | 80%         | 13%       | 7%      |
| <b>D</b> Compounding challenges of housing, flood disasters and mental health issues | 67%         | 33%       | –       |

80. The majority of all submissions related to the lack of affordable long-term accommodation for local residents (Theme A), as illustrated in Figure 15.

Figure 15 – Thematic analysis of submissions



<sup>viii</sup> These themes were identified in an automated review of the keywords, phrases and word frequency in the text of unique written and verbal submissions of more than 25 words. The analysis combined unique authors (where written or verbal submissions were made by the same person) and excluded form submissions.



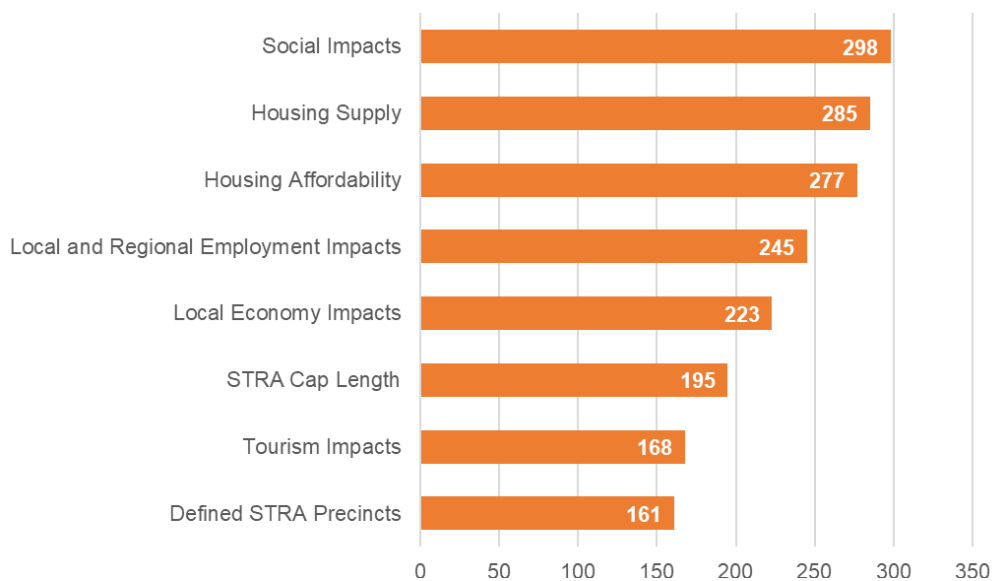
### 4.6.3 Key issues

81. The Commission’s analysis of submissions also identified four key issues of concern in the substance of the submissions: social impacts; economic impacts; housing impacts; and policy, regulation and management (Figure 16). Figure 17 shows the frequency of the key issues identified and the remainder of section 4.6 summarises the specific concerns of submitters.

Figure 16 – Key issues raised in submissions



Figure 17 – Top key issues (by frequency of occurrence)<sup>ix</sup>



<sup>ix</sup> Some submissions raised more than one theme, as such the graph total exceeds the number of submissions received by the Commission.

#### 4.6.4 Housing impacts

| Key housing issues                          | Overview of housing impacts raised in submissions  |
|---|--|
| <b>Housing supply and land availability</b> | The lack of housing supply in the Byron Shire was a concern, with submitters noting the slow delivery of new residential development, the lack of development-ready land, and the constraints on land release in the Byron Shire. Some noted the temporary usefulness of STRA during the 2022 NSW floods and other emergency events over the past decade in Northern NSW.  |
| <b>Purchase and rental affordability</b>    | Concern about the inability of local residents to access affordable housing for purchase or long-term rental within the Byron Shire was raised, given increases in average purchase prices and rental costs within the Byron Shire. Data cited indicated that purchase prices and rental costs in the Byron Shire outweigh those in surrounding regional LGAs and many LGAs within metropolitan Sydney.  |
| <b>Housing diversity</b>                    | A lack of access to diverse housing and accommodation within the Byron Shire that meets different needs in the community was identified, including social housing, key worker housing, housing for First Nations people, and housing for other at risk and marginalised groups, such as older single women. The adequacy and quantity of existing diverse housing within the Byron Shire was also raised.  |
| <b>Housing stress</b>                       | High levels of housing stress <sup>x</sup> in the Byron Shire was recognised, particularly per capita and by comparison with the rest of NSW. The high per capita rates of local homelessness were noted, with many including testimonies of individuals experiencing homelessness in their submissions, highlighting the many residents in the Byron Shire who may be misrepresented by homelessness data (i.e. those that are either sleeping rough or unable to secure housing tenure). An increase in rates of homelessness in the Byron Shire in recent years was reported. |
| <b>Housing tenure and security</b>          | Submitters drew attention to the lack of access to secure long-term rental tenure in the Byron Shire, with some noting that this access has particularly reduced due to the increased presence of non-hosted STRA in certain areas of the Byron Shire and during peak holiday periods. Increases in average rents with the proliferation of non-hosted STRA in recent years were reported, as was a high level of insecurity and fear of lease terminations in the Byron Shire, particularly in the lead up to peak tourist seasons.   |

<sup>x</sup> Housing stress is defined as lower-income households that spend more than 30% of gross income on housing costs (ABS 2019).

#### 4.6.5 Economic impacts

| Key economic issues          | Overview of economic impacts raised in submissions  |
|------------------------------|---|
| <b>Employment and labour</b> | Reference was made to the extent of employment within the Byron Shire that is associated with the STRA industry, and the reduction in employment and loss of labour that would result from the Planning Proposal. At the Public Hearing, the Commission heard from a range of business types that have been created or greatly expanded in recent years to serve the STRA industry, including cleaning, linen rental, waste collection and property management services.  |
| <b>Business costs</b>        | A proliferation of non-hosted STRA and the housing shortage in the Byron Shire was observed to result in increased business and service costs, particularly in relation to attracting and retaining staff. Some submitters had resolved to either directly provide, or assist their staff with finding, rental accommodation.   |
| <b>Local expenditure</b>     | Concerns were raised about the potential reduction in local expenditure within the Byron Shire as a result of changes to the STRA industry. Conversely, some submissions drew attention to the potential economic contribution of a more permanent local resident workforce that could result if there was an increase in long-term rental ( <b>LTR</b> ) accommodation as a result of the Planning Proposal.   |
| <b>Personal income</b>       | The likely potential for loss of income for local businesses that are currently dependent on the STRA sector was expected should the Planning Proposal proceed. Perceived disproportional impacts of the Planning Proposal were noted for non-hosted and hosted STRA operators (i.e. reducing the personal incomes of non-hosted STRA operators and thereby potentially increasing the personal incomes of hosted STRA operators).  |
| <b>Tourism accommodation</b> | A lack of suitable local tourism accommodation to meet current needs as well as emerging visitation needs and desires was identified. Examples include the preference of families for resort-style accommodation and the currently unmet demand for more apartment-style facilities.  |
| <b>Visitor economy</b>       | Reduced tourism activity within the Byron Shire was reported to have occurred as a result of COVID-19 and the 2022 NSW floods, with flow-on effects such as local business closures and reduced expenditure. Submitters were concerned about the impacts of tourism numbers potentially returning to 2018/2019 levels given existing housing and economic issues. It was suggested that reducing the supply of non-hosted STRA via Council's Planning Proposal could lead to increases in average daily non-hosted STRA rates across the Byron Shire. |

#### 4.6.6 Social impacts

| Key social issues                            | Overview of social impacts raised in submissions  |
|--|---|
| <b>Community resilience and contribution</b> | Concerns were raised about the Byron Shire's (and particularly Byron Bay's) reduced community resilience and service capacity arising from the diminished residential population base. Examples included Rural Fire Service volunteers being unable to afford housing close enough to fire stations, Byron Bay's inability to field amateur sports teams, and a decline of community volunteering in the Byron Shire in recent years. A number of STRA operators sought to emphasise that they are themselves community members and part of the population fabric of the Byron Shire, often performing key service roles, and contributing to the community through volunteering and support efforts. |
| <b>Population stability and resilience</b>   | Submitters queried the sustainability of the Byron Shire's residential community and whether the region is still achieving an appropriate balance between its resident and visitor population in order to operate as a functional and resilient community.  |
| <b>Social cohesion</b>                       | Submissions pointed to the loss of social networks and cohesion that has resulted from local residents relocating outside of the Byron Shire to seek secure and affordable accommodation. This highlighted the issue of the Byron Shire's workforce increasingly being based outside of urban areas and having to undertake long commutes to work.  |
| <b>Service provision</b>                     | Concern was raised about the difficulty of accessing key local services such as health, education, and emergency in the Byron Shire due to many key/essential workers being unable to access affordable housing in close proximity to the Byron Shire's service centres and localities. <sup>94</sup> Several submitters also cited the impact that access to affordable accommodation was having on the hospitality industry in the Byron Shire, with cafes and restaurants, for example, often struggling to attract and retain personnel, open their businesses and generate the necessary turnover for their survival.  |
| <b>Sense of place and community</b>          | Submissions identified a gradually decreasing sense of community for local long-term residents of the Byron Shire due to factors such as an increasingly high proportion of non-hosted STRA in residential areas, investor-owned properties and comparatively low numbers of owner-occupiers resulting in reduced contribution to community life and diminishing community resilience.  |
| <b>Social amenity</b>                        | Submissions raised concern about the reduced amenity and sense of comfort for residents living in proximity to properties utilised for non-hosted STRA. Some identified the potential for the proposed 365-day precincts to exacerbate this situation. Support for the Planning Proposal was expressed on the basis that the implementation of the 90-day cap would improve the social amenity of residential areas which currently have a high density of non-hosted STRA properties.  |

#### 4.6.7 Policy, regulation and management

| Key issues                                   | Overview of policy, regulation and management issues raised in submissions  |
|--|---|
| <b>Local policy and planning regulations</b> | Numerous submissions raised issues with the design and rationale of Council's Planning Proposal, particularly the precinct-based approach and the delineation of the 365-day precinct boundaries. Submissions questioned Council's action on the delivery of affordable housing within the Byron Shire, the ambition of the Byron Shire's residential strategies, the consideration given to alternative mechanisms aside from the non-hosted STRA day cap, and the rate of development application (DA) approvals within the Byron Shire.  |
| <b>Data validity and evaluation</b>          | The issue of data validity was frequently raised, particularly the lack of comprehensive data needed for an informed evaluation of the impacts of the existing 180-day cap as well as the proposed 90-day cap on non-hosted STRA. Numerous submissions questioned whether the existing 180-day cap had been operating for a sufficient time to allow for proper evaluation.   |
| <b>Property rights</b>                       | Some residents were concerned about changes to their existing property rights, particularly their capacity to rent out their property in a flexible and varying manner depending on their own personal context. Presenters at the Public Hearing raised uncertainty about existing use rights and the permissibility of the Planning Proposal's mechanisms.   |
| <b>Monitoring and compliance</b>             | The operation of the Code of Conduct was a concern, particularly its capacity to deal with issues of non-compliance, self-reporting, social amenity, and infringements. There was uncertainty relating to the enforcement of the Code of Conduct, and whether this ultimately sits with NSW Fair Trading, the Department, Council, or the STRA operators themselves. Some submissions doubted the function of the STRA Register and the management of its inputs and outputs as well as its transparency and public accessibility. The lack of resources and institutional capacity for local governments to systematically monitor and enforce STRA regulation was also noted. |

#### 4.6.8 Key issues by stakeholder group

82. The Commission received submissions from a range of stakeholder groups from the community and industry, including STRA owners and hosting platforms; local residents who own, rent or have insecure housing; local businesses; tourists, former residents and local workers who are visitors to the Byron Shire; academics; community groups and non-government organisations (**NGOs**).
83. This section expands upon the key issues as expressed in submissions across four of the main stakeholder groupings (non-hosted STRA owners, residents, visitors and community groups). The purpose of this analysis is to present a synthesised summary of the main viewpoints and recommendations of different key stakeholders. The Commission acknowledges the analysis does not cover all stakeholders and that there can be a diversity of views and perspectives within stakeholder groups which may not be fully reflected within the summaries below.



*Non-hosted STRA owners*

84. Non-hosted STRA owners were largely opposed to the Planning Proposal on private property and economic grounds and sought alternative interventions that instead address the broader issue of housing supply:

| <b>Key issue</b>                                      | <b>High level synthesis of non-hosted STRA owner submissions</b>  |
|---|---|
| <b>Housing impacts</b>                                | <p>A cap on non-hosted STRA would not assist to increase availability and affordability of housing.</p> <p>The community should balance housing for permanent residents and STRA for tourists.</p> <p>The proposed cap would not encourage property owners to provide permanent accommodation.</p>  |
| <b>Impact on investment</b>                           | <p>STRA properties were purchased without non-hosted STRA caps so the proposed caps infringe on property rights.</p> <p>There is reliance on STRA to supplement income or cover operating costs of the property. A cap on non-hosted STRA could force a sale or increase accommodation prices, which would decrease visitors and jobs in the community.</p>   |
| <b>Impact on local workforce and economy</b>          | <p>A non-hosted STRA cap would result in reduced tourist visitation to Byron Shire.</p> <p>A non-hosted STRA cap would negatively impact the local economy to which STRA contributes significantly through supportive industries such as photographers, plumbers, carpenters, cleaners, linen hire, shuttle buses, garbage collecting, property maintenance, window washing, gardening, lawn mowing, and property management.</p> <p>A non-hosted STRA cap would have a broader impact on other business such as cafes, restaurants, bars, tennis courts, golf courses, wedding industry, and transport, which would cause financial harm without necessarily increasing long-term rental availability.</p> <p>A non-hosted STRA cap would impact local business revenue, reduce staffing levels and impact income for the local workforce. This would be further exacerbated given the impact of Covid and floods on employment and local businesses. The area could do without further negative impacts from restricting visitor numbers by limiting accommodation options.</p> |
| <b>Key actions proposed by non-hosted STRA owners</b> | <p>Improving the local transport system in the Byron area to provide better accessibility for workers who live outside of Byron Bay.</p> <p>Introducing a levy on guests staying in Byron Bay that contributes to funding affordable housing solution and addressing social impacts.</p> <p>Placing a rental cap on all new land releases so that buyers are aware of the non-hosted STRA cap before purchasing.</p> <p>Encouraging permanent letting through incentives instead of constraints on short-term letting.</p> <p>Developing the old Mullumbimby hospital site to provide affordable housing relief.</p>  |

*Local residents (homeowners, renters and homeless residents)*

- 85. Local residents (who are not non-hosted STRA owners) were largely in favour of the Planning Proposal on the basis of social and housing impacts and generally proposed further restrictions or levies to limit non-hosted STRA in the Byron Shire:

| Key issue  | High level synthesis of local resident submissions  |
|--|---|
| <p><b>Social impacts</b></p>                         | <p>The 90-day cap is necessary to address the housing crisis and protect the interests of the local community.</p> <p>STRA has social impacts on the community as permanent resident numbers have diminished as a result of the increasing number of homes being used as short-term rentals.</p> <p>Negative impacts on the community are caused by the influx of tourists who use non-hosted STRA, including noise, anti-social behaviour, and a shortage of accommodation for workers.</p> <p>Wealth generated from non-hosted STRA exits the Byron Shire while the residual economic, environmental and social costs remain so that residential ratepayers bear the cost of infrastructure demand created by tourism.</p> <p>Non-hosted STRA creates a loss of permanent housing, displacement of local residents, strain on infrastructure and impacts on the environment.</p> <p>There is an erosion of community character, loss of community spirit and contribution to social infrastructure e.g., schools, local community groups and to the local economy.</p> <p>Mental health issues and stress for families were also raised.</p> <p>Some criticism was made of the STRA lobby and a perceived self-interest and lack of representation of local residents and concern that non-hosted STRA is operated by overseas/non-local interests that do not contribute to the community.</p>   |
| <p><b>Housing availability and affordability</b></p> | <p>A high demand for STRA from tourists has led to property owners demanding unaffordable rents, which has contributed to the housing affordability and availability crisis in Byron. The impact of STRA has been exacerbated by the housing crisis.</p> <p>High income generated by non-hosted STRA has affected the value of all analogous residential dwellings, leading in turn to higher expectations on rental return, even where the dwelling is not used for non-hosted STRA, and providing incentives for owners of dwellings used for long-term rental to sell them to investors, who then pursue non-hosted STRA.</p> <p>Unregulated STRA has contributed to homelessness and a shortage of locally based workers. It has affected the availability of accommodation for community service sectors such as volunteer emergency services who are often first responders to major incidents.</p> <p>Rising rents and housing shortages have led to difficulties for long-term renters and added pressure to local small businesses. There is a lack of available accommodation for workers, shortage of long-term accommodation leading to increased rents, and a disruption of children's education when forced to relocate.</p> <p>The negative impact of the real estate boom and popularity of short-term rental services has exacerbated the displacement of the Aboriginal and Torres Strait Islander community and other at-risk community members, given the lack of affordable housing.</p> |

| <b>Key issue</b>                               | <b>High level synthesis of local resident submissions</b>   |
|--|---|
|  | Recent flood events in the Northern Rivers and cost surges in electricity, education, interest rates, and building materials contribute to the financial pressures of the local population and homelessness.  |
| <b>Key actions proposed by local residents</b> | <p>Supplying additional housing in Byron Shire to cater for demand and provide housing relief so that people can live with dignity and security.</p> <p>Charging non-hosted STRA property owners commercial rates for the proportion of the year that they are rented out.</p> <p>Implementing a bed tax to help to address the negative impact of non-hosted STRA on the community, including contributions to local roads and services.</p> <p>Placing a limit on the number of days that non-hosted STRA can be rented out.</p> <p>Preventing the operation of commercial tourist facilities in residential areas.</p> <p>Allocating land close to the Byron Bay township for affordable housing, particularly for the elderly Aboriginal population, which would increase Aboriginal visitors to Byron Bay and contribute to a culturally rich community.</p> |

### *Visitors (tourists, long-term visitors, workers and former residents)*

86. Visitors to the Byron Shire are a diverse grouping and tended to either support the Planning Proposal for the same reasons as current residents or, as tourists, oppose the non-hosted STRA cap based on perceived tourism impacts:

| <b>Key issue</b>                          | <b>High level synthesis of visitor submissions</b>   |
|---|--|
| <b>Accommodation impacts for tourists</b> | <p>The proposed non-hosted STRA cap would likely limit the capacity of tourists to visit the Byron Shire due to reduced accommodation choice and supply and increased accommodation costs.</p> <p>Tourists who miss out on the opportunity to visit the region would likely travel elsewhere, resulting in tourism money being spent away from Byron Shire.</p>  |
| <b>Housing availability</b>               | <p>Former residents have moved to other areas (but remain regular visitors and would prefer to return) due to unaffordable rental accommodation prices, amenity impacts from non-hosted STRA properties and loss of sense of community. Their former rental accommodation was now used for non-hosted STRA.</p> <p>For former residents, the cap would help to keep Byron Bay an 'authentic' town where people can afford to live and work. Although there is no single solution, the cap would be a good first step and would make a positive difference to the community.</p> <p>For workers who commute to the Byron Shire for work but cannot afford to live close to their place of employment, the cap would provide a balanced and fair solution that helps provide more affordable local housing that essential workers can afford.</p> <p>The local housing crisis was made worse by the 2022 NSW floods.</p> |
| <b>Key actions proposed by visitors</b>   | Proposed actions largely aligned with either those of the non-hosted STRA owners (by tourists) or existing residents (by former or prospective residents).   |

### Community groups and NGOs

87. Community groups and NGOs are also a diverse grouping with some opposing views,<sup>xi</sup> but the majority tended to support the Planning Proposal for the same reasons as current residents, with particular concern about the urgent need to address homelessness and social cohesion. Proposals for further reform from this group included tightening the non-hosted STRA cap further and securing Council powers over non-hosted STRA approvals:

| Key issue  | High level synthesis of community group submissions  |
|--|--|
| <b>Housing impacts</b>                               | <p>The proposed non-hosted STRA cap would support the right to safe, secure, affordable housing, including for essential and emergency services workers.</p> <p>Even though the proposed non-hosted STRA cap would not make a major difference, it is worth pursuing because the homelessness issue is acute and any mechanism offering the possibility of immediate improvement, however small, would be desirable.</p> <p>Non-hosted STRA has potential to exacerbate rates of homelessness in the Byron Shire.</p>        |
| <b>Social impacts</b>                                | <p>Non-hosted STRA impacts on sense of community and social cohesion through the loss of population, community character and cultural values.</p> <p>Additional STRA regulation is unnecessary as the community already adequately manages STRA.</p>   |
| <b>Economic impacts</b>                              | <p>Poor affordability of local housing creates a shortage of labour force, including essential workers.</p>  |
| <b>Policy and regulation</b>                         | <p>Capping days is an inefficient tool due to difficulties of regulation and enforcement, such as the fact that the registration data is self-reported; however, a 90-day cap is a better option than the 180-day cap.</p> <p>Classifying STRA as a form of housing diversity under the Housing SEPP is generally not supported.</p>   |
| <b>Key actions proposed by community groups/NGOs</b> | <p>Allowing greater local autonomy, for example via the development assessment process and licensing issued by Council.</p> <p>Permitting non-hosted STRA only in commercial zones such as the B2 and B4 zones.</p> <p>Regulating STRA to prioritise access to housing for long-term residents.</p> <p>Reducing the day cap even further (noting that some groups were seeking to maintain 180 days and others to allow an increase in non-hosted STRA in Byron Bay in order to achieve a reduction in Brunswick Heads).</p> |

<sup>xi</sup> Community groups and NGOs that made submissions to the Commission included Rural Fire Service volunteer; Neighbours Not Strangers Community Group; Shelter NSW; Homelessness NSW; Planning Institute of Australia; Korinderie Ridge Community; Bangalow Community Association; the Suffolk Park Progress Association; Byron Bay Community Board; Women's Village Collective; Mullumbimby Neighbourhood Centre and Tallowood Community Group; Brunswick Heads Progress Association

## 5. Housing and non-hosted STRA

### 5.1 National housing context

88. Australia is currently experiencing significant housing availability and affordability issues, with researchers and commentators increasingly describing these issues as a national 'housing crisis' given the rising number of people and households struggling to pay their housing costs or access adequate shelter.<sup>95</sup>
89. Factors influencing housing availability and affordability are complex and multifaceted.<sup>96</sup> There are a range of local, regional, national and international influences on the demand and supply of housing stock, both within and outside of the housing system.<sup>97</sup> Within the housing market, housing demand and supply is influenced by economic growth, population growth and mobility, financial and taxation settings, planning regulations, residential construction rates, speculation, and lending rates.<sup>98</sup>
90. Contemporary Australian literature on housing points to a range of causes and symptoms relating to housing availability and affordability, including:
- a consistent period of very low rental vacancy rates in cities and regions (creating increased competition and demand for long-term rental housing);<sup>99</sup>
  - slowed rates of residential construction due to supply chain and worker shortages;<sup>100</sup>
  - a lack of supply of housing that is affordable to very low-, low- and moderate-income households;<sup>101</sup>
  - decreasing rates of home ownership as property prices outpace wage and income increases;<sup>102</sup>
  - internal migration from cities to regional locations;<sup>103</sup>
  - interest rate rises (impacting mortgage repayments and the cost-of-living);<sup>104</sup>
  - the flow-on effects on infrastructure and housing of recent disaster events;<sup>105</sup> and
  - increased immigration following the reopening of Australia's international borders.<sup>106</sup>
91. Housing availability and affordability issues have typically been more prevalent in capital cities and urban areas; however, they have recently become more acute in regional locations across Australia<sup>107</sup> such that "growth in median prices in regional NSW and Victoria has outpaced growth in their capital cities for both houses and attached dwellings".<sup>108</sup>
92. Figure 18 and Figure 19 show the median house price and the annual percentage change for both capital cities and at a regional level (excluding ACT). Between 2021 and 2022 the median house price in regional NSW increased 29.1%. In comparison, Sydney increased by 16.4% for the same period. The annual average change to median house prices for regional areas was also greater than the respective capital city for Victoria, Western Australia, and Tasmania.



Figure 18 – Median house prices and annual percentage change in capital cities, March quarter 2022<sup>109</sup>

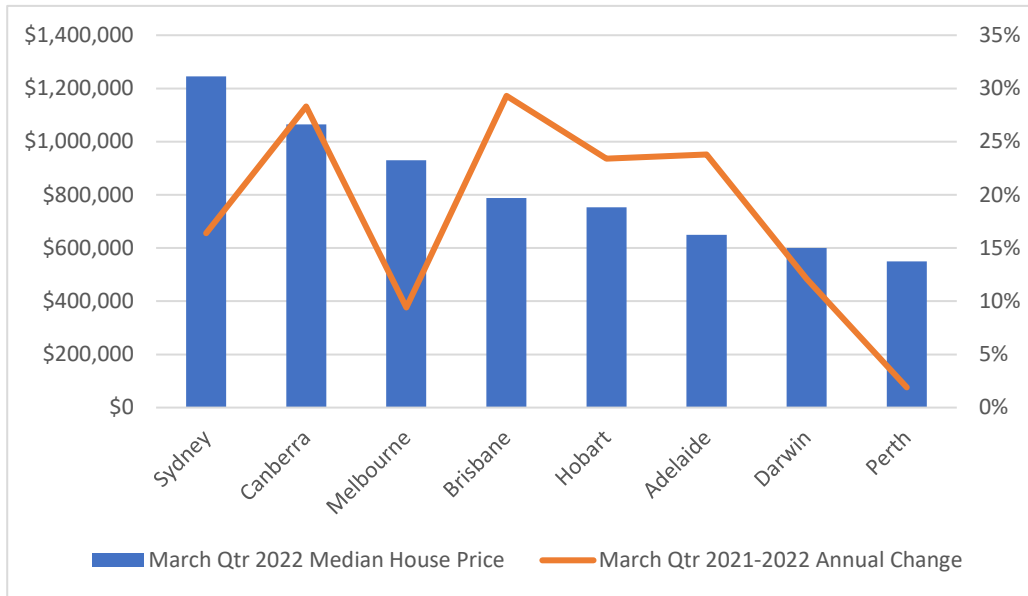
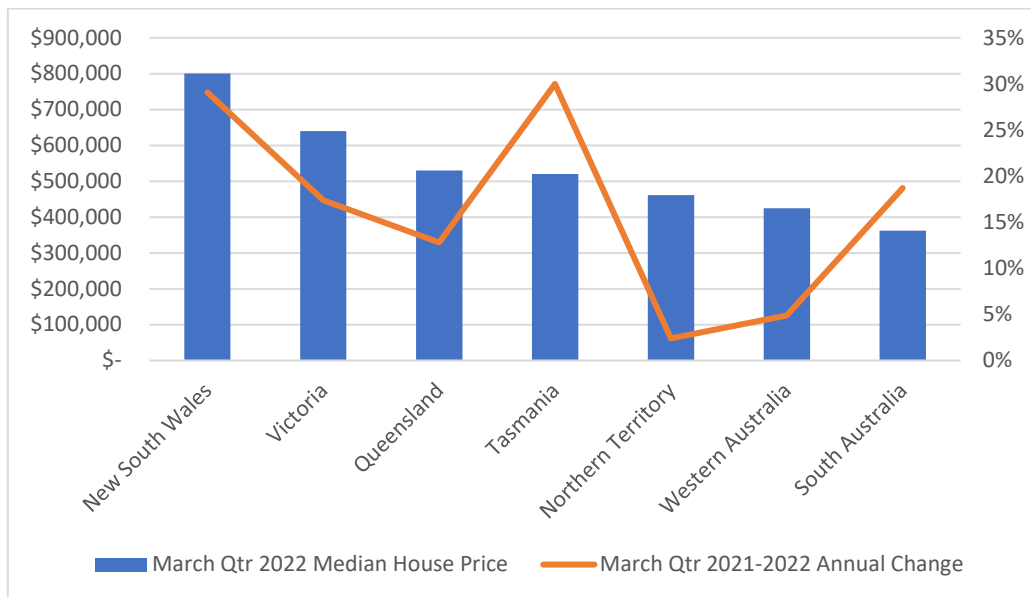


Figure 19 – Median house prices and annual percentage change in regional areas, March quarter 2022<sup>110</sup>



93. Stronger growth in regional prices is also reported in relation to the rental market, with median rents in regional NSW growing at a faster rate than in metropolitan Sydney between 2020 and 2021, and rental vacancy rates falling substantially following the arrival of the COVID-19 pandemic.<sup>111</sup>

94. Rental prices have also increased substantially across regional Australia. In its March 2023 bulletin, the Reserve Bank of Australia notes that advertised rent increases “were stronger in regional areas than in most capital cities through 2020 and 2021”.<sup>112</sup> The Reserve Bank of Australia concludes:

*Over the past decade, rents have grown modestly and this growth has been outpaced by growth in wages and household disposable income in the economy. Even so, the tightness in the rental market and the strong growth in rents that has occurred since the onset of the COVID-19 pandemic will have contributed to a deterioration in rental affordability and an increase in financial stress for some renter households.*<sup>113</sup>

## 5.2 Housing trends in Byron Shire

95. Sections 5.2 and 5.3 present a synthesis of relevant submissions and publicly available datasets on housing and STRA trends in Byron Shire. To supplement this review, the Commission engaged AHURI to conduct an analysis of STRA and other relevant housing data and trends in the Byron Shire (**AHURI report**). The AHURI report and its findings are referenced, where relevant, throughout these sections.
96. The data reviewed by the Commission and summarised in the following sections shows that Byron Shire, particularly the township of Byron Bay, is experiencing notable housing availability and affordability issues compared to the rest of NSW. Some of these issues are consistent with the overarching trend of declining housing affordability in Australia canvassed above and the specific pressures faced by desirable coastal and regional locations,<sup>114</sup> with others indicating that the issue is more acute in the Byron Shire than in other comparable LGAs. Research undertaken by the Australian National University’s Centre for Social Research and Methods also suggests that regional locations “are likely to be as influenced by local demand and supply conditions as by broad national conditions”.<sup>115</sup>
97. Byron Shire has its own geographical, economic and social characteristics that are impacting the affordability and availability of its housing. The Commission considers that these characteristics include (but are not limited to):
- high desirability as both a residential and visitor location given its natural capital and sense of community;
  - lack of developable hinterland;
  - vulnerability to flooding;
  - flow-on effects of the 2022 NSW floods;
  - Byron Shire’s statutory building height and density controls; and
  - the current proportion of non-hosted STRA within the Byron Shire, and particularly Byron Bay.

### 5.2.1 Home ownership

98. Figure 20 shows the median house price and number of dwellings sold in Byron Bay over five years to June 2022. Over this period, the median house price is shown to have approximately doubled to \$1.6 million by June 2022.

Figure 20 – Median sales prices and number of dwellings sold in Byron Bay<sup>116</sup>

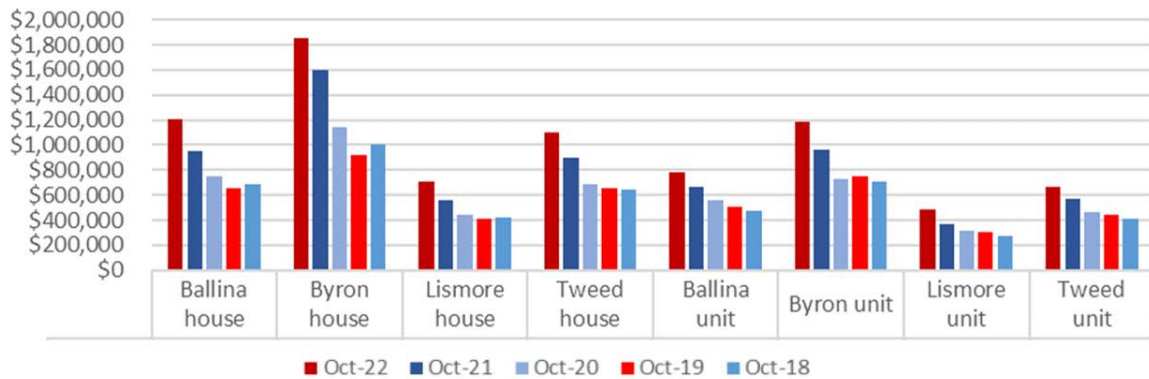
99. Data compiled by the NSW Department of Communities and Justice (DCJ)<sup>117</sup> indicates the rate of growth in house prices in Byron Shire is higher than other Northern Rivers LGAs and the rest of NSW, as is the highest median house sale price. Table 5 illustrates the median house price in Northern River LGAs in the years 2017 and 2021, and the associated percentage of change. Between those years Byron Shire has seen a 104.8% increase in median house sale price from \$830,000 to \$1.7 million. In the same period of time, NSW saw a 30.4% increase in median house sale price.

Table 5 – House sales price in the Northern Rivers LGAs and NSW<sup>118</sup>

| LGA                            | Med Value Dec 2017<br>(\$,000s) | Med Value Dec 2021<br>(\$,000s) | % Change |
|--------------------------------|---------------------------------|---------------------------------|----------|
| <b>Byron Shire</b>             | 830                             | 1,700                           | 104.8    |
| <b>Tweed Shire</b>             | 560                             | 870                             | 55.4     |
| <b>Clarence Valley Shire</b>   | 370                             | 550                             | 48.6     |
| <b>Ballina Shire</b>           | 594                             | 1,010                           | 69.9     |
| <b>Kyogle Council</b>          | 300                             | 500                             | 66.7     |
| <b>Richmond Valley Council</b> | 320                             | 488                             | 52.5     |
| <b>City of Lismore</b>         | 379                             | 690                             | 82.1     |
| <b>New South Wales</b>         | 675                             | 880                             | 30.4     |

100. Data presented to the Commission by the Department (Figure 21) gives yearly house and unit prices over a five-year period to October 2022 for Byron Shire and the adjoining LGAs. House and unit prices have generally increased and have remained consistently higher in Byron Shire than in the other nearby regional centres.

Figure 21 – House and unit prices for Byron Shire and surrounding LGAs<sup>119</sup>



- 101. The AHURI report notes that the years of income required for both moderate and low-income households to purchase a dwelling in Byron Shire has increased from the equivalent of 8 years in 2017 to 13.7 years in 2022<sup>120</sup>.

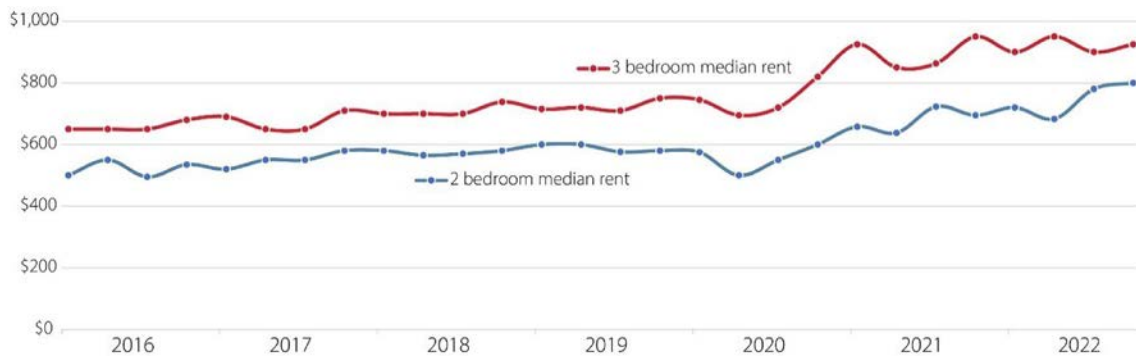
**5.2.2 Rental availability and affordability**

- 102. Byron Shire is not alone in having a rental affordability and availability issues however the experience in Byron Shire is more prominent than across regional NSW as a whole. The AHURI report states:

*The problem of rental availability and rent increases is a national and state problem, but not to the scale seen in Byron Bay. This is vividly illustrated by benchmarking Byron Bay against all regional NSW. While there has been a steady erosion of affordability for regional NSW it has only been from 97 percent affordability to 90 percent for a four-person moderate income household, compared to Byron Bay’s 42 percent down to 11.3 percent; the differential between Byron Bay and regional NSW is now enormous. The processes occurring in Byron Bay are now very different from much of the rest of regional NSW.<sup>121</sup>*

- 103. The AHURI report found that within Byron Bay, the number of properties advertised on Airbnb in 2022 was much greater and continued to grow throughout the year (by 19%), while the number of available long-term rentals, represented by new bond listings, declined (by 34%). The AHURI report states that it is not clear if there is a direct correlation between a decrease in long term rental (LTR) availability and an increase in STRA noting that, “more Airbnb’s come on to the market in the December quarter, with reduced numbers in other quarters. This suggest[s] a proportion of Airbnb providers are seasonal in their provision of STRA and may have limited or no provision during the rest of the year, perhaps reverting to a holiday house role for that time. No such seasonality exists in the LTR market.”<sup>122</sup>
- 104. The percentage of affordable 2-3+ bedroom dwellings available to moderate income households (key workers, younger professionals) in Byron Shire has substantially declined from 2016 to 2022.<sup>123</sup> Figure 22 shows a steady increase in median rent in Byron Bay for two-bedroom and three-bedroom rental properties from 2016 to 2022.

Figure 22 – Median rent in Byron Bay<sup>124</sup>



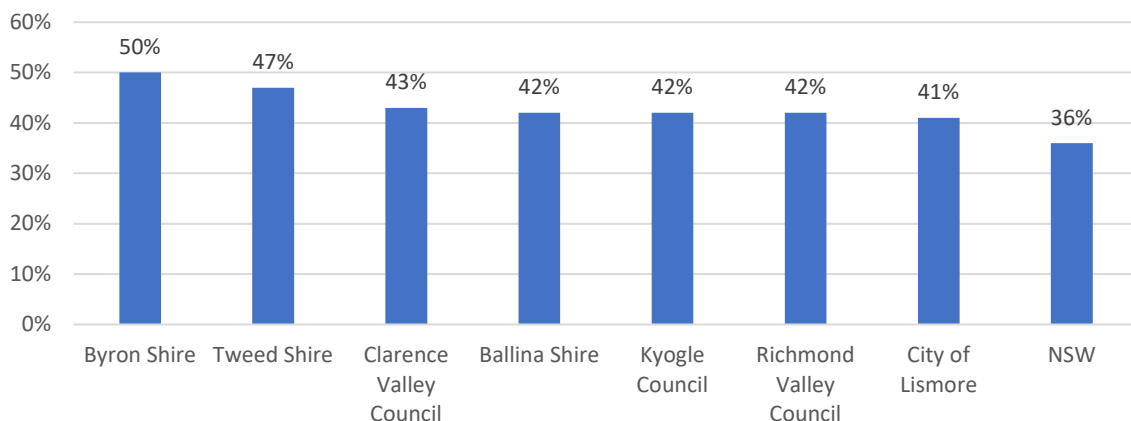
105. In its submission to the Commission, Homelessness NSW identify that the Byron Shire rental vacancy rate (1.2%) is lower than the average of NSW (1.9%),<sup>125</sup> and that less than 1% of Byron Shire rental stock is affordable to persons on low incomes.<sup>126</sup> The AHURI report states that “in a context of household incomes only increasing by about fifteen percent over the last 7 years, rents in Byron Bay increased by 57 percent between 2017 and end 2022.”<sup>127</sup>

106. The Commission received submissions providing evidence of this decline in affordability. In its presentation to the Commission at the Public Hearing, Council stated that:

- the percentage of households experiencing rental stress in Byron Shire (50.2%) is higher than the NSW average (35.5%) and the national average (32.2%);<sup>128</sup>
- the median per week household income in Byron Shire (\$1,602) is lower than NSW (\$1,829);<sup>129</sup> and
- the median per week rent in Byron Shire (\$520) is higher than NSW (\$420).<sup>130</sup>

107. The Australian Bureau of Statistics (ABS) report that rental stress is “typically described as lower-income households that spend more than 30% of gross income on housing costs”.<sup>131</sup> Figure 23 illustrates the level of rental stress in 2021 in the Northern Rivers LGAs and shows that Byron Shire has the highest percentage of rental stress within the Northern Rivers, and compared to NSW as a whole.

Figure 23 – Level of rental stress in the Northern Rivers LGAs and NSW in 2021<sup>132</sup>



108. Table 6 presents the median value of house rents for Northern River LGAs and NSW in the years 2017 and 2021. Byron Shire had the highest median rent compared to other Northern River LGAs and NSW as a whole in both 2017 and 2021.

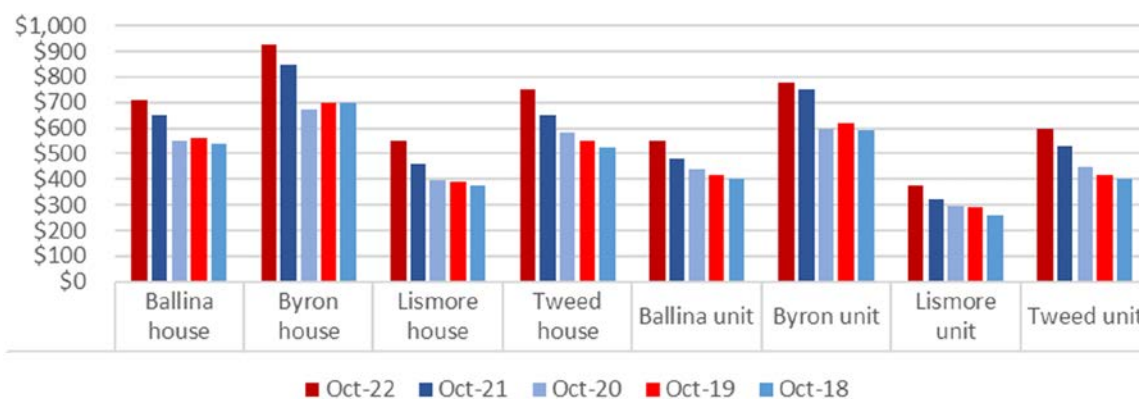


Table 6 – House rents in the Northern Rivers by LGA<sup>133</sup>

| LGA                     | Med Value Dec 2017 | Med Value Dec 2021 | % Change   |
|-------------------------|--------------------|--------------------|------------|
| Byron Shire             | 590                | 750                | 27.1       |
| Tweed Shire             | 430                | 600                | 39.5       |
| Clarence Valley Shire   | 350                | 430                | 22.9       |
| Ballina Shire           | 450                | 600                | 33.3       |
| Kyogle Council          | 280                | 320                | 14.3       |
| Richmond Valley Council | 310                | 420                | 35.5       |
| City of Lismore         | 330                | 450                | 36.4       |
| <b>New South Wales</b>  | <b>475</b>         | <b>495</b>         | <b>4.2</b> |

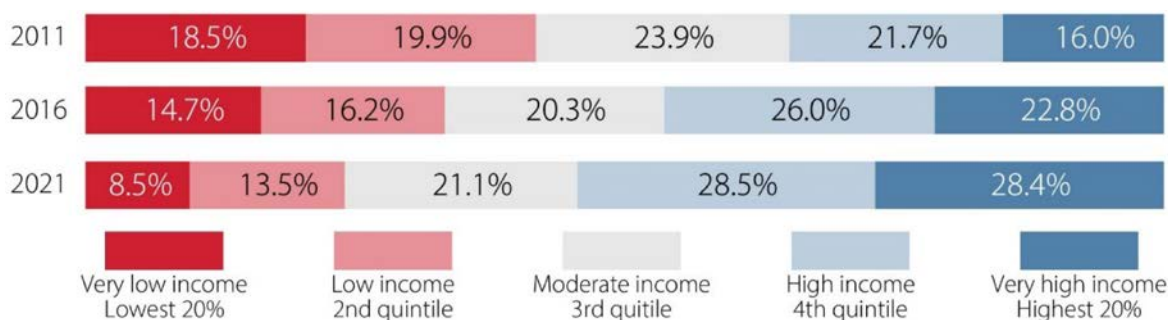
109. Data presented to the Commission by the Department (Figure 24) shows yearly rental and unit prices over a five-year period to October 2022 for Byron Shire and the adjoining LGAs. Rental prices have generally increased and have remained consistently higher in Byron Shire than in the other nearby regional centres.

Figure 24 – Rental prices for Byron Shire and surrounding LGAs<sup>134</sup>



110. As housing in Byron Bay has become more expensive, the percentage of high-income and very-high-income renters has increased, while the percentage of very-low-income and low-income renters has decreased (Figure 25).

Figure 25 – Equivalised income distribution for private renters Byron Bay 2011, 2016, 2021<sup>135</sup>



111. By comparison, ABS data from 2007 to 2020 indicates that the proportion of lower income households has remained relatively stable in Australia as a whole (3% to 2.8%), greater metropolitan Sydney (7.7% to 7.2%), and the rest of NSW (10.3% to 9.9%).<sup>136</sup>

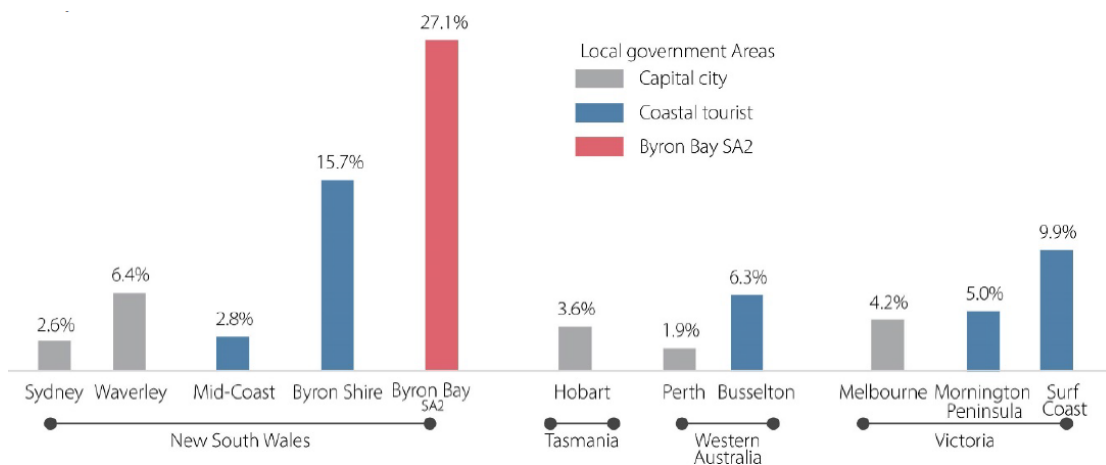
### 5.2.3 Housing need

112. The Commission received submissions that Byron Shire is experiencing high levels of homelessness. Council cited the most recent DCJ street-count of rough sleepers to be 221 persons across the Byron Shire,<sup>137</sup> and noted this as the second highest number in NSW behind the City of Sydney.<sup>138</sup> In the 2021 Census, Byron Bay recorded 107 persons experiencing homelessness.<sup>139</sup>
113. Submissions also raised concerns about Byron Shire's growing number of older residents, particularly women over the age of 50, who are increasingly experiencing homelessness.<sup>140</sup> The Australian Human Rights Commission research shows that women aged 55 and over were the fastest growing cohort of homeless Australians between 2011 and 2016 and are likely to remain so given ongoing demographic trends, gender equality gaps and affordable housing shortages.<sup>141</sup>
114. The demographic profile in the EIA shows that residents aged 65-84 will grow from 13% to 20% of Byron Shire's population by 2036.<sup>142</sup> Byron Shire's Residential Strategy notes that the large and growing older population are also affected by the lack of diverse and affordable housing in the area. There is unmet demand for affordable, small, low-maintenance dwellings within easy access to services in established locations, and a shortage in supply of affordable seniors' living options. Similar issues are faced by people with a disability and their families, with older people and those with a disability often living in housing poverty, and inappropriate, unsafe or poorly located accommodation. Local Bundjalung workers employed in areas such as National Parks and the accommodation sector are a growing workforce sector. The Residential Strategy highlights that land is of great significance to Aboriginal and Torres Strait Islander people and that, while their work is giving these workers connection to Country, they cannot afford to live locally on Country, which compounds the impact of dislocation.<sup>143</sup>
115. Many submissions to the Commission highlighted the shortfall of social housing stock in Byron Shire. Shelter NSW's 2021 'NSW Regional Housing Need Report' found Byron Shire had the second highest housing need in regional NSW behind Central Coast LGA, with an exceptionally high proportion of low-income households in rental stress, a low proportion of social housing stock (1.6%), and a high number of persons on the social housing waitlist (709 total) for all dwelling types.<sup>144</sup> Although DCJ data indicates that Byron Shire's social housing waitlist was relatively consistent with other Northern Rivers LGAs in 2021, research by the University of NSW City Futures Research Centre in 2022 indicated that the social housing and homelessness situation in the Northern Rivers has likely been significantly "worsened" as a result of the 2022 NSW Floods.<sup>145</sup>
116. The Commission also received a large number of submissions from local businesses reporting business-critical shortages of staff attributable to a lack of affordable housing for workers. The issue of local housing availability for key workers is presented in more detail in sections 5.3.1; 6.1; and 6.4.2.
117. The broader need for future housing to meet community needs is reflected in a number of the directions of the Byron Shire Residential Strategy in section 3.3.3.

### 5.3 STRA in Byron Shire

- 118. Byron Shire has been experiencing significant population growth<sup>146</sup> and since 2012 it has consistently grown at a rate (average of approximately 1.6%) above that of the rest of regional NSW (average of approximately 0.8%).<sup>147</sup> In 2021 it was home to a population of 35,993 and is projected to reach a population of 44,583 by 2041 (an increase of 8,590 persons).<sup>148</sup>
- 119. Visitor numbers to Byron Shire are also increasing (as previously discussed in section 3.3.5), driving ongoing demand for hosted and non-hosted short term rental accommodation in the area. There were 994,000 domestic overnight visitors in 2019 and Council anticipate growth of visitor numbers to be between 50% and 75% to 2030.<sup>149</sup> The summary of Council’s 2019 audit of available tourism and visitor accommodation at paragraph 62 shows the large and growing proportion of accommodation for domestic visitors that is being met by holiday houses as compared to apartments, private home stays, hotels or resorts.
- 120. Considering both hosted and non-hosted STRA together, 15.7% of the total housing stock in Byron Shire and 27.1% in Byron Bay is estimated by AHURI to be used as STRA.<sup>xii</sup> This exceeds proportions in other key urban and coastal locations in NSW and Australia (Figure 26).

Figure 26 – All STRA as proportion of total housing stock (select locations)<sup>150</sup>



- 121. Reliable data on non-hosted STRA properties can vary depending on the data source. The Commission observes that there is a general lack of adequate data with currently no single and easily accessible method to calculate and measure the impact of STRA within the housing market. Analysis of Airbnb datasets in the AHURI report estimates there are 1,307 non-hosted STRA properties in Byron Bay SA2 (which includes the Byron Bay township, Suffolk Park and part of Broken Head)<sup>151</sup>. Data provided by DPE from the STRA Register showed there were 1,292 non-hosted STRA properties in Byron Shire in January 2023, with the suburb of Byron Bay (663 total) being home to approximately half of all Byron Shire’s non-hosted STRA registrations.<sup>152</sup>

<sup>xii</sup> The Commission notes a difference between this figure and the estimate presented in the EIA (paragraph 16).

- 122. According to advice from the Department based on the STRA registration data, Byron Shire has the highest proportion of dwellings that are non-hosted STRA in NSW<sup>153</sup>
- 123. Table 7), with 8.49% of all dwellings in the Byron Shire registered as non-hosted STRA. Shoalhaven LGA is reported to have the highest number of registered non-hosted STRA overall.

Table 7 – Non-hosted STRA registrations as a percentage of all private dwellings<sup>154</sup>

| LGA                           | Percentage of dwellings that are non-hosted STRA |
|-------------------------------|--|
| Byron Shire Council           | 8.49   |
| Snowy Monaro Regional Council | 5.74   |
| Shoalhaven City Council       | 5.39   |
| Kiama Municipal Council       | 5.06   |
| Port Stephens Council         | 4.02   |
| Kempsey Shire Council         | 3.84   |
| Bega Valley Council           | 3.13   |
| Mid-Coast Council             | 2.93   |
| Waverley Council              | 2.69   |
| Clarence Valley Council       | 2.63   |

- 124. Figure 27 and Figure 28 present the DPE data on non-hosted STRA by dwelling type in both Byron Shire and Byron Bay. Non-hosted STRA is predominantly carried out in single dwelling houses both across the Byron Shire and within Byron Bay. This trend differs from metropolitan cities like Sydney or Melbourne, where a larger proportion of STRA properties are in the form of medium and high-density residential typologies such as apartments and units.<sup>155</sup>

Figure 27 – Byron Shire: Non-hosted STRA by dwelling type (top 5)<sup>156</sup>

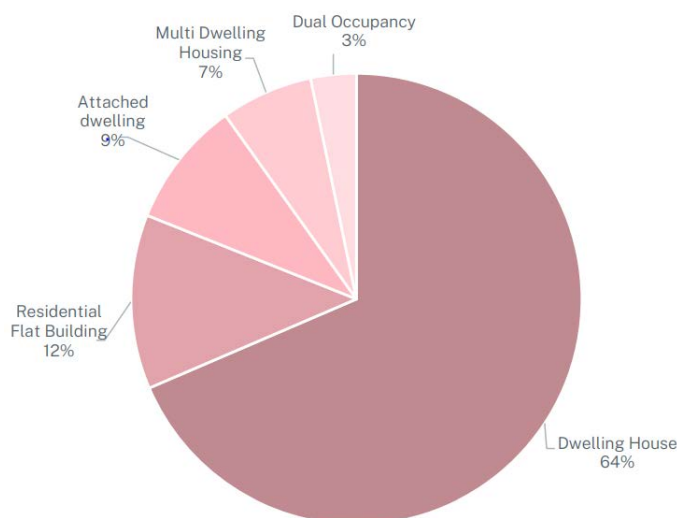
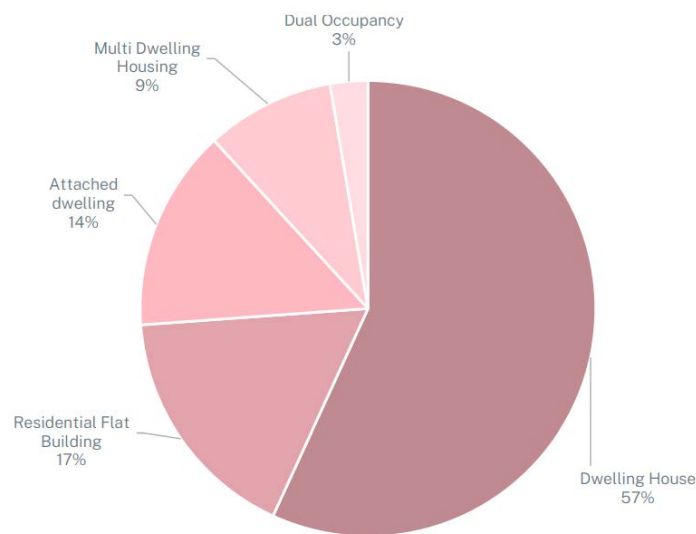


Figure 28 – Byron Bay: Non-hosted STRA by dwelling type (top 5)<sup>157</sup>



125. Many submissions to the Commission from local community members show that intensive use of properties as non-hosted STRA in a tight local residential market – which has already undergone a significant increase in property values – is a highly visible contributor to the persistent housing affordability and availability issues in the area. The Commission received submissions from non-hosted STRA owners and others (reinforced by commentary in the AHURI report)<sup>158</sup> that there was a significant pre-existing level of housing in Byron Bay historically being used as holiday homes. However, the Commission is of the view that some current non-hosted STRA will have previously been long-term rental (**LTR**) stock that is no longer available as housing for residents, though data constraints make it difficult to determine the exact proportion.
126. The high returns from non-hosted STRA, and its flexibility for the incidental use of dwellings or holiday homes, make it a highly attractive investment. Non-hosted STRA of the type exemplified in the Byron Bay experience is profitable and provides significantly better returns when compared to long term rental<sup>159</sup>.
127. The intensification of STRA per se is not unique to Byron Shire and is common to other tourist and coastal areas in both metropolitan and regional NSW.<sup>160</sup> However, the AHURI report offers this summary of the specific tourism drivers that underpin the economics of STRA in Byron Shire:
- ...in many other parts of Australia where STRA is growing, tourism is more seasonal and often confined to holiday periods, such as the summer break, Easter and school holidays. The difference is between the potential for high occupancy rates year-round [in Byron Shire] versus high occupancy rates for only 12 weeks, and lower occupancy for the remaining weeks [in other parts of Australia]. This is important for how we understand financial viability, visitor usage, investment potential and the effect of any policy interventions.<sup>161</sup>*
128. According to the AHURI report, multiple factors determine the extent of the impacts of STRA in local housing markets, including “...difference in size of the private rental stock, the size of a ‘holiday house’ market, dwelling composition (e.g. detached housing or apartments), the scale and type of tourism (i.e. domestic or international, all-year or seasonal), and the relationship to adjacent locations in terms of housing availability.”<sup>162</sup>



### 5.3.1 Economic impacts associated with non-hosted STRA

129. Definitively evaluating the impacts of STRA on housing demand and supply in the Byron Shire, or elsewhere, is challenging. There is a lack of substantial or long-term literature on the impacts and regulation of STRA,<sup>163</sup> reflecting the relative recency of online STRA platforms in Australia, as well as the changes in visibility and scale that these platforms have undergone since their initial introduction.<sup>164</sup> Much of the existing literature on the social and economic effects of STRA has been conducted overseas, prior to the onset of COVID-19, or in capital cities rather than regional locations.<sup>165</sup> Nonetheless, it is reasonable for the Commission to observe in the available data a correlation between the current STRA proportion in the Byron Shire and the diminished long-term rental housing stock available to its residents.
130. The Commission considers the impact of existing national and local trends in housing affordability and accessibility has been exacerbated in Byron Shire by the local intensification of STRA uses, but the exact causality is difficult to identify in a complex housing market using the data available and without the insights from longitudinal study. Notwithstanding, the Commission notes even a moderate increase in the number of properties available in the long-term rental market in other towns may have a material impact on affordability.<sup>166</sup> The scale needed to affect this change in the case of Byron Shire, and how this would interact with the market dynamics of a high-priced property market, is not predictable on the current available evidence. Rigorous monitoring of the impact of any policy changes is critical to an understanding of such thresholds in this location and for comparable towns.
131. The Commission reviewed submissions and pricing analysis<sup>167</sup> that showed a greater financial benefit accrues to non-hosted STRA owners under the current 180-day cap and, in consideration of flexibility benefits, would persist under a 90-day cap, making the economic case difficult and limiting the likelihood of the release of such properties onto the LTR market should a 90-day cap be introduced.
132. The Commission notes the high financial returns for property owners of non-hosted STRA that explain its popularity as an investment class also risks encouraging a significant uptake of larger scale investment in STRA, particularly in the context of forecast growth in tourist demand in Byron Bay. The Commission received submissions noting that individuals or corporations are buying or willing to buy large numbers of properties for the purpose of operating non-hosted STRA. The Commission considers that further intensification and growth of STRA would ultimately undermine the Housing SEPP's principles of managing the social and environmental impacts of STRA uses and mitigating the loss of existing affordable rental housing.<sup>168</sup> Conversely, the AHURI report indicates that the conversion of housing to non-hosted STRA in Byron Shire may have recently peaked and that the area has reached market saturation.<sup>169</sup> Given these two competing conclusions, further research into real trends in non-hosted STRA ownership investment is warranted.

133. Calculating the overall economic contribution of STRA to Byron Shire is complex and multi-faceted. The Commission received submissions from STRA owners and local businesses that provided detailed anecdotal evidence about the significance of the STRA industry in the Byron Shire economy. These demonstrated the importance of the industry in supporting local tourism activity, providing direct rental income (particularly significant to individuals who periodically convert their home to non-hosted STRA), and creating demand for ancillary services to support the operation and upkeep of non-hosted STRA properties. Businesses that are directly supported by STRA included cleaning companies (many of which are dedicated to servicing non-hosted STRA properties), property management, linen services, tradespeople and general property maintenance businesses. In accommodating holiday visitors in the Byron Shire, STRA also drives flow-on expenditure at local food vendors, venues and retail outlets, with 'accommodation and food services' being the highest employing industries in the Byron Shire per the 2021 Census.<sup>170</sup>
134. The Council's Sustainable Visitation Strategy notes the growth of the STRA industry within the Byron Shire economy,<sup>171</sup> but does not include specific quantification of the industry's contribution. The Commission's main source for a quantified economic contribution of STRA to Byron Shire is the EIA, which relies on 2019 data as a baseline given the impact of COVID-19 on the Byron Shire tourism industry.<sup>172</sup> The EIA calculates the economic contribution of STRA to the Byron Shire economy at 2019 as approximately \$123 million.<sup>173</sup> This compares to the contribution of all other tourist and visitor accommodation (i.e. hotels, hostels, bed and breakfasts etc.) to the Byron Shire economy at 2019 of approximately \$235 million.<sup>174</sup> By comparison, analysis by Leyshon Consulting (on behalf of Airbnb) estimates that "spending by tourists and visitors staying in non-hosted STRA properties in 2019 was some \$459.7 million (\$2019) or about 53% of the volume of total tourist and visitor spending as estimated by [Tourism Research Australia]."<sup>175</sup>
135. In its assessment of the six potential policy options (refer section 2.2.1 of this advice), the EIA finds that the impacts of each (including Council's Planning Proposal) on total accommodation revenue from non-hosted STRA between 2019 and 2027 are roughly similar.<sup>176</sup> Whilst Council's Planning Proposal is calculated to have the largest impact on foregone operational spending of each of the options, the impact of all six options on retail spending is again relatively similar.<sup>177</sup> Ultimately, the EIA finds that local employment would "decrease slightly" if Council's Planning Proposal progresses.<sup>178</sup>
136. The expenditure forecasts by Leyshon Consulting differ. Building on the EIA's analysis and relying on 2019 information from Tourism Research Australia and 2022 data on Airbnb bookings, this analysis estimates the impacts of both the existing state-wide 180-day and the proposed 90-day cap on annual expenditure by visitors utilising non-hosted STRA in Byron Shire. It models two scenarios<sup>xiii</sup> and estimates a reduction of "\$131.9 million or almost -60% from 2019" from the 180-day cap, and a reduction of "approximately -\$106.8 million (\$2019) compared with annual spending estimated to occur under the 180-day cap in 2022" from the 90-day cap.<sup>179</sup>

<sup>xiii</sup> Leyshon Consulting's two scenarios are: 1) a No Change scenario which "assumes no loss of properties from STRA sector either inside or outside of designated precincts"; and 2) a Change scenario which "assumes 24% loss of properties from STRA sector outside of designated precincts to long-term rental or private owner-occupier ownership", in line with Chart 3.2 (Response to Scenarios for Properties Outside the Council-defined STRA Precincts) of the EIA (p.22).

137. The Commission is aware of the limitations associated with these forecasts. Leyshon Consulting caution that the figure associated with the 180-day cap is not “due solely to [its] introduction”, and that its analysis “has not assumed a significant increase in average accommodation rates in [non-hosted] STRA properties” nor “assume[d] there will be any increase in the number of properties used for [non-hosted] STRA accommodation within the Council designated precincts”.<sup>180</sup> It also did not conduct modelling of local employment changes resulting from the existing 180-day or proposed 90-day cap.
138. A key criticism of the EIA raised in submissions was the adequacy of its consideration and assessment of social impacts and the fact that it does not apply equal weight to the impacts and benefits that may accrue to the different stakeholder groups as a result of the six potential STRA regulation options.<sup>181</sup> During the Commission’s meeting with the Department and Urbis on 17 February 2023, Urbis acknowledged that this was a limitation of the EIA, but that it had “no basis to assign any weightings” per its terms of reference.<sup>182</sup>
139. Nevertheless, the Commission notes the high number of submissions received raising concerns regarding social impacts (refer section 4.6 of this advice). The Commission considers that had an appropriate social impact assessment been undertaken (as part of or in addition to the EIA), the sensitivities and level of concern relating to each social impact would have been understood much earlier in the Planning Proposal process. The Commission acknowledges the pitfall of applying equal weight to all stakeholder impacts and benefits, particularly given the levels of housing stress and increased proportion of high- and very high-income households that coexist in Byron Shire (refer section 5.2).
140. The Commission received a large number of submissions from local businesses reporting business-critical shortages of staff attributable to a lack of affordable housing for workers, making a correlation between non-hosted STRA and the lack of available local housing. The Commission considers that any future quantification of economic benefits should also take into account the impact of affordable housing shortages on the capacity of local hospitality and retail business to attract and retain a workforce.
141. The Commission considers that the wider housing market and structural factors are the fundamental drivers of housing supply and affordability issues, and that this has been exacerbated by STRA. Any investigation of the role of non-hosted STRA in a local economy would need to have its foundation in comprehensive research and modelling of the specific relationship between non-hosted STRA and housing shortfalls that also takes into account the macro-level dynamics of the Australian property market and, importantly, overcomes live issues of accessibility to useful STRA data at the right level of granularity that have placed limitations on the extent of the Commission’s review.

## 6. Key findings

### 6.1 The Planning Proposal

142. The stated intent for the Planning Proposal is as follows:

*The objective of this planning proposal is to mitigate the significant impacts of short-term rental accommodation on permanent rental housing supply, amenity, local character, and community, while still allowing for a diverse and sustainable base of tourist accommodation options to support the local economy.*

*The objective will be achieved by reducing the 'day cap' for non-hosted short-term rental accommodation to 90-days per year across most of the Byron LGA, except in certain precincts where it will be permitted 365-days per year. The aim is to preserve permanent housing in most of the Shire's residential and rural areas, while also recognising that some areas with high tourism appeal near beaches and services may be more suitable for year-round holiday letting.<sup>183</sup>*

143. The Commission agrees the objective of the Planning Proposal is sound – however, based on the evidence before it and its own analysis, the Commission finds that the objective of the Planning Proposal is unlikely to be achieved for two principal reasons:
- a declaration of exempt development on its own (however that exemption is defined) is a broad, 'one-size-fits-all' tool, that effectively removes decision making from affected communities and does not allow for flexibility in managing impacts or in fostering a diverse and sustainable base of tourist accommodation options; and
  - to the extent that exempt development is part of the recommended policy settings, the proposed change from a 180-day to 90-day cap on non-hosted STRA as exempt development is unlikely to have the desired effect, largely because it would not adequately address the structural imbalance in financial returns between non-hosted STRA and other housing uses. This is because a 90-day cap would still provide for non-hosted STRA during the most lucrative holiday and summer periods each year (in addition to any single tenant stays of more than 21 days which do not count towards the cap) and would therefore not provide sufficient incentives for absent owners to revert to the long-term rental market.
144. Not only is the stated objective unlikely to be achieved, the Commission finds that the Planning Proposal is at risk of achieving adverse unintended economic and social outcomes, whereby the 90-day cap is significant enough to reduce visitor numbers materially and thereby impact the positive economic activity associated with STRA tourism, but not set at a level which is sufficiently low to trigger the return of sufficient property to the long-term rental market.

### *Exempt development alone is not sufficient*

145. The Planning Proposal seeks to achieve its objective through adjusting the existing settings for non-hosted STRA as exempt development. In other words, where the stated objective above refers to *'reducing the 'day cap' for non-hosted short-term rental accommodation ... except in certain precincts'*, the relevant 'cap' referred to relates only to carrying out non-hosted STRA as exempt development – that is, without development consent.
146. The Commission supports the use of exempt development as part of the set of policy settings for STRA in the Byron Shire but considers that exempt development alone is not a sufficient solution. As a 'one-size-fits-all' approach, exempt development does not allow for any flexibility in regulating specific STRA uses – through, for example, conditions of development consent – and cannot adapt to case or site-specific considerations.
147. Submissions from community groups and NGOs also indicate that capping days is an inefficient tool due to difficulties of regulation and enforcement, particularly because registration data is self-reported.

148. By relying exclusively on the mechanism of exempt development, the Planning Proposal does not propose any changes to:
- how STRA is integrated into the land uses provided for in the BLEP 2014; or
  - where and how development consent can be obtained for STRA within Byron Shire.
149. There are significant missed opportunities, particularly given:
- uncertainty raised in submissions about whether specific STRA uses are exempt development and therefore subject to the cap or are protected by existing or other lawful use rights; and
  - uncertainty as to whether specific STRA uses would be treated as ‘tourist and visitor accommodation’ under the Byron Local Environmental Plan (**BLEP 2014**).
150. Central to both of those issues is the characterisation of STRA for the purposes of planning law. As characterisation of development involves questions of fact and degree<sup>184</sup> it cannot be easily or consistently carried out in the abstract. The specific factors of a particular case are determinative. For that reason, the Courts exercise caution in attempting to characterise development by reference to analogous cases<sup>185</sup>.
151. Moreover, when it comes to relying on existing or other lawful uses (including for carrying out STRA uses), once it has been established that a particular use is prohibited, the onus of proof rests with person asserting the right<sup>186</sup> – not with the Council, the NSW Government or anyone else. Accordingly, the Commission cannot categorically state whether a particular existing use has the benefit of existing or other lawful use rights – this is an area of uncertainty that cannot be remedied by the Planning Proposal.
152. The Commission recommends specific measures to ameliorate this uncertainty at section 6.2, by allowing for a path to obtaining development consent for non-hosted STRA uses.

### *90-day cap on exempt development is inadequate*

153. To the extent that a declaration of exempt development is appropriate for non-hosted STRA in Byron Shire, the Commission finds that the 90-day cap (outside of the uncapped precincts) is both inadequate and apt to lead to unintended adverse consequences.<sup>xiv</sup>
154. The Planning Proposal’s proposed change from a 180-day to 90-day cap is unlikely to achieve the stated objective of the Planning Proposal, largely because it would not adequately address the structural imbalance in financial returns between non-hosted STRA and other housing uses. This is because a 90-day cap would still provide for non-hosted STRA during the most lucrative holiday and summer periods each year and would therefore not provide sufficient incentives for absent owners to revert to the long-term rental market. Submissions from non-hosted STRA owners state that the proposed 90-day cap would not encourage them to provide permanent accommodation on the long-term rental market, as it would not be financially viable. As is set out in more detail at 164 and 165 below, a 60-day cap is more likely to have the desired effect (as those who would leverage a 60-day cap would be more likely to be owners of holiday homes or residences seeking supplementary income, rather than those investing in housing assets purely for use as non-hosted STRA).

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<sup>xiv</sup> The Commission’s recommendation that the cap be restricted further (see paragraph 165) is part of a suite of advice that includes other measures to facilitate the availability of STRA in Byron Shire.



155. For that reason, the Commission agrees with submissions, including those from Airbnb, that regard the proposed 90-day cap as unlikely to lead to a significant increase in the supply of affordable rental accommodation.<sup>187</sup> This is borne out by the independent analysis obtained by the Commission from AHURI, which indicated that a 180-day cap would have no effect on supply and that the degree to which a 90-day cap would send signals to non-hosted STRA providers to switch to long-term rental would be doubtful.<sup>188</sup>
156. In addition, there is a material risk of unintended consequences – for example, that non-hosted STRA providers may offer a nine month lease on the long-term rental market<sup>xv</sup> and then switch back to STRA uses – displacing potentially much needed key workers at the very time there is additional demand created by higher numbers of tourists (a risk exacerbated by current ‘no grounds eviction’ laws, noting that these are proposed to be amended by the current NSW Government). This would create a material reduction in visitor numbers and the tourist economy without delivering the housing benefit for permanent residents.
157. Under the proposed 90-day cap, a potential scenario is that residents might access a property for long-term rental for most of the year but would then be displaced during Byron Shire’s peak tourism period in order for the property to be used as non-hosted STRA. This was raised during the Commission’s Meeting with Council on 17 February 2023, and a property manager at the Public Hearing,<sup>189</sup> with Council citing EIA survey results indicating that 11% of STRA owners would elect to “[r]ent out on a 9 month lease and holiday let for 3 months during Summer”.<sup>190</sup>
158. In line with community submissions, the Commission considers that this is a risk for renters, for example a local hospitality worker on a nine-month rental lease who is then unable to access local rental housing during summer when that dwelling is used for non-hosted STRA by holiday visitors, who in turn create demand for tourist-related hospitality services. Greater demand for service industry staff would be created at the very time that the amount of accommodation for these staff would be reduced. Council has maintained that “leases greater than 3 months and less than 12 months are not uncommon in the Byron Shire long term rental market and can suit the needs of some tenants”,<sup>191</sup> however the Commission finds this arrangement would not meet the stated objectives of the Planning Proposal and risks the effective functioning of Byron Shire’s tourism economy. This also suggests the need for more temporary worker accommodation to meet seasonal peaks in tourist visitors to Byron Shire, as suggested by the Brunswick Heads Chamber of Commerce in its 17 February 2023 meeting with the Commission.
159. The precinct system contemplated in the Planning Proposal is also unlikely to meet the stated objective of the Planning Proposal. The Commission finds that there is uncertainty as to the equity of the proposed precinct boundaries, their effectiveness, and the criteria utilised to define and adjust them. A material amount of the land within the precincts is zoned under the BLEP 2014 in a way that prohibits ‘tourist and visitor accommodation’ (see 3.3.1 above), a land use which appears to be capable of applying to many STRA uses. This potential prohibition in the relevant zoning of the precincts in turn leads to uncertainty as to whether STRA land uses within those proposed precincts can meet the other requirements for exempt development under the Housing SEPP.

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<sup>xv</sup> A prospect raised in written submissions and the Public Hearing.

160. Submissions raise uncertainty about the effectiveness of the precinct approach and whether the benefit to be derived would outweigh the increased impacts from concentration and intensification of STRA uses. The Commission finds that the precinct model would not address the issue of reduced residential population in central Byron, and may, in fact, result in greater intensification of non-hosted STRA. A more equitable sharing of both impacts and benefits of non-hosted STRA can be achieved (see section 6.2).

### Recommendation 1

The Planning Proposal should not proceed in its current form (no cap on non-hosted STRA in identified precincts, otherwise, a 90-day cap on non-hosted STRA) as it would not adequately achieve its stated objectives and may have unintended adverse economic consequences.

## 6.2 Recommended alternatives

161. In considering alternative approaches to Council's Planning Proposal, the Commission's aims are to:
- strike an appropriate and equitable balance between:
  - ensuring sufficient affordable housing is available in Byron Shire to meet critical human and economic needs; and
  - allowing for appropriate STRA land uses for a diverse and sustainable base of tourist accommodation options to support the local economy;
  - support the EP&A Act's objective of promoting the sharing of responsibility for environmental planning and assessment between the different levels of government in the State;<sup>192</sup>
  - provide flexibility to assess, plan for and manage the social and economic impacts and benefits of non-hosted STRA in line with community needs;
  - provide for greater clarity and certainty for all stakeholders; and
  - recommend solutions that can be implemented in the most administratively efficient manner available including for STRA providers as well as for State and local government. This includes minimising to the greatest extent any required amendments to the *Environmental Planning and Assessment Act 1979*.
162. The Commission's suggested policy settings for Byron Shire include:
- tightening the cap for non-hosted STRA as exempt development from 180 days to 60 days across the entirety of Byron Shire;
  - defining non-hosted STRA as a specific type of 'tourist and visitor accommodation' under the BLEP 2014;
  - permitting the carrying out of non-hosted STRA with development consent across the entirety of Byron Shire;<sup>xvi</sup>
  - preventing new housing supply being converted to non-hosted STRA through the imposition of conditions of consent on new housing; and
  - establishing transitional arrangements for the phasing out of the preceding policy settings, such as amnesty periods.
163. The rationale for each of these policy settings is explained further below.

<sup>xvi</sup> Specific and narrow carve-outs for certain Special Use zones and specific sites may be implemented without undermining this recommendation

### *Tightening the exempt development cap from 180 days to 60 days*

164. As set out above, the Commission finds that the proposed 90-day cap, used as the only regulatory tool, is not the appropriate policy setting to meet the stated objective of the Planning Proposal. The Commission finds that a more restrictive cap for exempt development – used alongside an expansion of the right to obtain development consent for STRA uses (see paragraph 170 below) – would have materially better prospects of meeting the stated objective of the Planning Proposal.
165. A 60-day cap for non-hosted STRA as exempt development (alongside the Commission’s other recommendations) is recommended on the basis that:
- unlike the proposed 90-day cap, a 60-day cap would send a serious market signal to encourage a shift from non-hosted STRA uses to long-term rental;
  - 60 days reasonably provides for owners to derive supplementary income for a household – for example, using their primary dwelling for STRA purposes while they are on holiday and/or short weekend breaks. This is, in part, why the Western Australian Government set a 60-day cap for non-hosted STRA land uses without planning approval;<sup>193</sup> and
  - non-hosted STRA owners seeking to exceed the cap would have a streamlined development consent pathway under Recommendation 2(c), with appropriate transitional arrangements in place.
166. In setting a 60-day cap for non-hosted STRA as exempt development, the Commission recommends maintaining the current exclusion at section 112(2) of the Housing SEPP, which provides that any consecutive period of 21 days or more during which non-hosted STRA is provided to the same person or persons is not counted towards the relevant cap. The 21 consecutive day exclusion is a sound and sensible policy of the NSW Government and ought to be maintained. This exclusion would mitigate any chilling effect that the 60-day cap on non-hosted STRA would have on bona fide longer-term rentals – which would also typically not involve many of the negative impacts of ‘party’ related non-hosted STRA uses for shorter periods.

### *Defining STRA as type of ‘tourist and visitor accommodation’ under the BLEP 2014*

167. As set out above at paragraph 149, the task of appropriately characterising STRA land uses is complicated by the fact that the use of land for STRA purposes is not explicitly contemplated in the BLEP 2014.
168. The absence of explicit reference to STRA in the BLEP 2014 has led to significant ambiguity as to its appropriate characterisation – with submissions suggesting that STRA land use:
- is a type of ‘tourist or visitor accommodation’;<sup>194</sup>
  - is a land use ancillary and incidental to development for the purposes of a dwelling;<sup>xvii</sup> or
  - is ‘innominate’ development – that is, development not specified within the BLEP 2014.<sup>195</sup>

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<sup>xvii</sup> A proposition rendered uncertain by the decision of Pepper J in *Dobrohotoff v Bennic* [2013] NSWLEC 61 albeit in the circumstances of that case

169. A clear and consistent characterisation of STRA land uses would offer a greater degree of certainty to STRA operators and other stakeholders and would simplify development assessment and enforcement of planning laws. Including STRA within the existing land use of ‘tourist and visitor accommodation’ appears to be the simplest method of formalising the characterisation of STRA land uses and is consistent with Council’s existing approach<sup>196</sup> and community submissions<sup>197</sup>.

### *Permitting non-hosted STRA land uses with development consent*

170. Given that ‘tourist and visitor accommodation’ is a land use prohibited in many zones under the BLEP 2014 (refer section 3.3.1 of this advice), a necessary corollary to the preceding recommendation is to permit the carrying out of non-hosted STRA with development consent within Byron Shire.
171. The Commission agrees with the submissions suggesting this approach, including by reason of facilitating “a more nuanced approach to determining whether a dwelling should be used for STRA beyond any ... cap based on an assessment of the particular facts pertaining to that dwelling”.<sup>198</sup> Permitting non-hosted STRA uses with development consent in Byron Shire would also ameliorate the impacts on the STRA industry of reducing the exempt development cap from the current 180 days to 60 days, and applying the 60 day cap across the entirety of Byron Shire.
172. The Commission recognises that Council is generally best placed to identify and balance the social and economic needs of Byron Shire<sup>199</sup> and to use development consents as the planning mechanism (in addition to the declaration of exempt development) to apply a wide range of conditions on STRA land uses.
173. Decision-making by consent authorities in relation to development applications for non-hosted STRA in Byron Shire ought to be guided by specific mandatory considerations related to the social and economic impacts on the Byron Shire, including:
- the current availability of long-term rental properties in the surrounding area (as indicated by rental vacancy rates), in line with the objectives of the Planning Proposal to “*mitigate the significant impacts of short-term rental accommodation on permanent rental housing supply*”
  - the alignment of the development application with relevant housing strategies and policies.
174. Formal provisions under an environmental planning instrument (whether the Housing SEPP, BLEP 2014 or another applicable environmental planning instrument) to be taken into account under section 4.15(a)(i) of the EP&A Act are the preferred mechanism for these considerations as they:
- apply equally to any relevant consent authority – whether the Council or the Court on appeal; and
  - reserve discretion as to how they are applied by the relevant consent authority in a particular case.
175. The use of development consents as a method of regularising non-hosted STRA land uses also permits a degree of flexibility not available to government when a land use is carried out as exempt development. Consent authorities may impose detailed conditions of consent responsive to the specific impacts of a specific non-hosted STRA land use. Given the importance of managing the risk of uncontrolled growth in conversion of existing and future housing stock to non-hosted STRA, conditions could be imposed time-limiting a non-hosted STRA land use<sup>200</sup> - with the appropriate time-limitation to be determined on a case-by-case basis in accordance with local policy guidance.

176. The Commission accepts that permitting non-hosted STRA land uses with development consent in zones where it was hitherto considered to be prohibited may increase the administrative burdens of planning regulation, for both applicants for consent and for Council. Accordingly, the Commission recommends the creation of clear guidelines and a streamlined approval pathway and fee structure for prospective applicants. The Commission also recommends that a streamlined pathway and fee structure (or even waiver) should apply to reduce or remove barriers to prospective applicants seeking development consent.

### *Controlling the conversion of new housing stock to non-hosted STRA*

177. In order to protect gains made in increasing housing stock (see recommendations 4, 5 and 6 below), the Commission recommends that the planning regime be utilised to protect new housing stock from subsequent, unapproved conversion to non-hosted STRA uses. A readily available tool for this purpose is the imposition of conditions on any consent for new housing stock to prohibit or limit its use for non-hosted STRA without further development consent being obtained.

### *Providing for appropriate transitional arrangements*

178. Although the Commission has limited its recommended changes to the planning regime, it accepts that the changes would require an appropriate transitional period. The Commission has received extensive submissions from non-hosted STRA providers who rely on the income derived from STRA land uses – and they should be given a sufficient opportunity to adapt to any new regulatory settings. To this end, the Commission recommends an amnesty period to allow for existing and prospective non-hosted STRA providers to bring their STRA land uses into conformity with the Commission's recommended policy settings. This would also allow Council to plan for and phase in its assessment of development applications for non-hosted STRA.

### *Strategic level impact assessment*

179. To inform its policy settings and determination of development applications for non-hosted STRA, Council should be supported in undertaking a strategic-level impact assessment of development applications for non-hosted STRA land uses. Council's strategies, policies and procedures should provide for ongoing evaluation of the Byron Shire's needs – and the requirement to undertake this assessment should not be deferred to applicants for development consent.

### Recommendation 2

Utilise the available regulatory regime to support Byron Shire Council to plan for and manage local impacts from the conversion of existing and future housing stock to non-hosted STRA by:

- a) Defining STRA as a permissible use by specifically listing STRA as a type of 'tourist and visitor accommodation' with the objective of facilitating STRA in well located and serviced areas already zoned for tourism.
- b) Tightening the exempt development non-hosted STRA day cap to a level that puts the financial returns from non-hosted STRA on a more level playing field with long-term rental housing. Amending the *State Environmental Planning Policy (Housing) 2021* to provide a 60-day cap in Byron Shire would be appropriate for this purpose and would continue to provide reasonable flexibility for the incidental use of a residence as STRA. The proposed precinct model should not be used and the recommended 60-day cap should apply across Byron Shire, consistent with the current application of the 180-day cap in the *State Environmental Planning Policy (Housing) 2021*.
- c) Permitting development consent to be obtained for the use of a property as non-hosted STRA in excess of the 60-day cap. When determining such development applications, Byron Shire Council should be supported in reviewing the available STRA data and considering:
  - i. specific matters related to the social and economic impacts on the locality, such as the current availability of long-term rental properties in the surrounding area and the alignment of the application with relevant housing strategies and policies
  - ii. conditions of consent to retain flexibility to manage non-hosted STRA across Byron Shire, such as time limits on approvals, and to require registration and compliance with the STRA Code of Conduct
  - iii. the creation of clear public guidelines and a streamlined pathway and fee structure (or even waiver) for applying for non-hosted STRA development consent
- d) Preventing the subsequent conversion of new housing supply to non-hosted STRA by requiring relevant conditions on development consent for new housing developments.
- e) Giving consideration to any transitional arrangements, such as an amnesty period, as may be appropriate in the implementation of Recommendation 2.
- f) Supporting Council in undertaking a strategic-level impact assessment of development applications for non-hosted STRA land uses to provide ongoing evaluation of Byron Shire's needs.

## 6.3 Housing market structure

180. The structure of the national housing market is a central driver of the housing affordability and availability issues affecting Byron Shire. Related factors that were frequently cited in submissions to the Commission – and are well-canvassed by experts and policy-makers – include:

- national tax policies and regulatory settings that encourage the prevailing investor view of housing as an asset class rather than a social good;
- a shortfall in the provision of social housing
- Insufficient availability of crisis housing;
- higher rates of multi-property ownership;
- lower rates of occupant home ownership;
- high rental insecurity; and
- increasing rates of homelessness.



181. These are complex issues that require urgent coordinated action across all jurisdictions and at all levels of government.
182. The Commission finds that availability of affordable housing in the Byron Shire is constrained for both prospective purchasers and long-term renters. Byron Shire has supply shortages and price increases that are coincident with increasing demand driven by the uniquely attractive attributes of the area. Change in the socio-economic make up of Byron Shire has concurrently accompanied a significant reduction in housing options for those on lower incomes, and housing in the area has also been affected by recent flood events. All these conditions are exacerbated by the effect of a growing non-hosted STRA industry on dwelling availability and affordability.
183. Material considered by the Commission (see section 5) provided evidence of an urgent national and local imperative to increase the availability of affordable housing options. This aligns with the AHURI report's characterisation of the current Australian housing market as having:
- an overall lack of affordability;
  - high rental insecurity;
  - reducing rates of home ownership;
  - increasing rates of homelessness; and
  - shortages of housing stock.
184. The Commission notes that these issues relate to the broader housing market structure and are influenced by policy settings at all levels of government.
185. In this market context, the AHURI report describes STRA as a part of a wider 'financialisation of property' trend driven by financial deregulation, prior low interest rates, tax incentives and positive returns on property investment which means: "(a) that property and housing, including STRA, are now seen as a source for substantial economic gains, and (b) property investment is an international process, as investors (both small scale and corporate) seek out the best property returns world-wide, and (c) a culture of 'a house as a home' has been replaced by 'a house as an investment'."<sup>201</sup>
186. As is noted in the AHURI report<sup>202</sup>, although all Australian states have been affected by the STRA sector, there is currently no national approach to intervene nor promote coordinated and nationally regulated market practices in cooperation with the STRA platforms. There is, however, a policy context of cooperation between jurisdictions on housing issues. As raised in numerous submissions to the Commission, coordinated government action is critical for addressing the poor performance of the housing market in terms of its current social outcomes.
187. The Commission is of the view that the structure and operation of the entire housing market – not just the individual components such as STRA – must be carefully considered in addressing these problems.

### **Recommendation 3**

The NSW Government should continue to work with all levels of government to use available levers to address misalignment between the functioning of the housing market and broader social objectives. This could put the economic returns from affordable long-term rental housing on a more level playing field with non-hosted STRA and other development types.

## 6.4 Housing supply

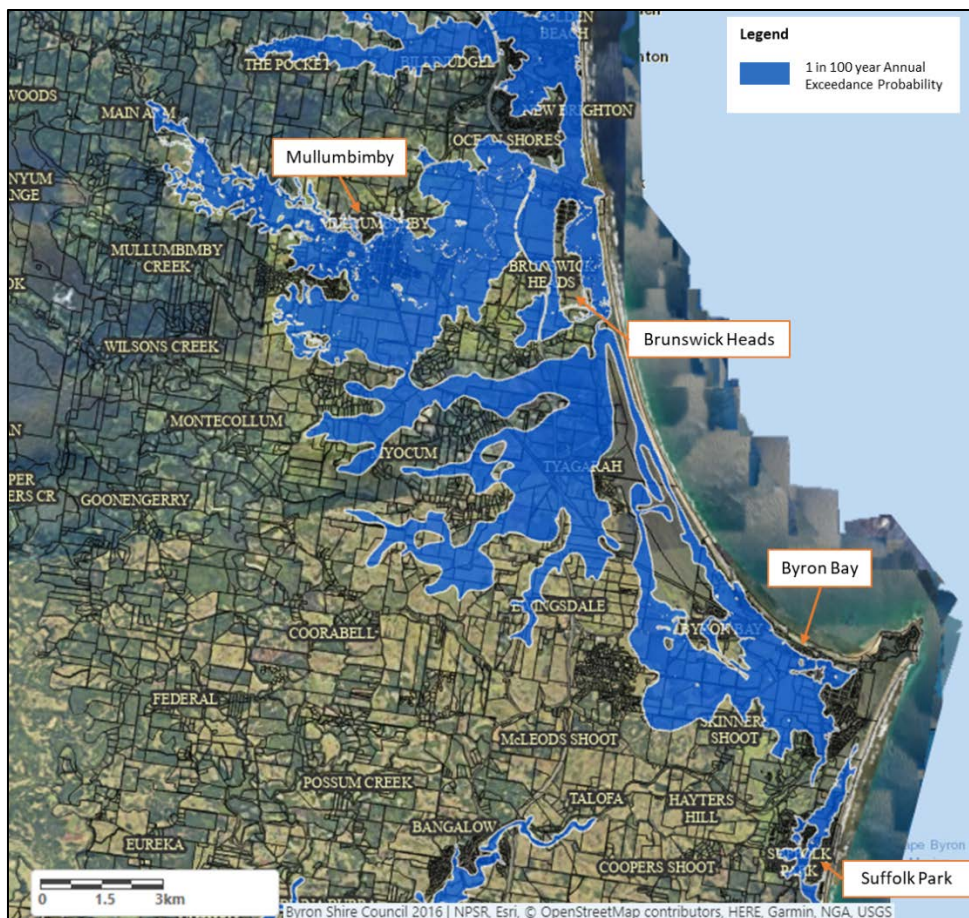
188. According to the Department's submission, dwelling houses are the predominant housing type in the Byron Shire, with low approval rates of development applications (DAs) relating to medium and high-density residential developments, and affordable rental housing.<sup>203</sup> Over the last two years the residential development approval rates of medium and higher density typologies such as townhouses and apartments has been comparatively low compared to dwelling houses.<sup>204</sup>
189. The Department's submission also noted that purchase and rental affordability has been decreasing in Byron Shire, and the supply of affordable and diverse housing has not kept pace with demand. Between 2011 and 2021, Byron Shire approved a total of four affordable rental housing DAs.<sup>205</sup> Shelter NSW's submission indicated that only 1.8% of total dwelling stock in Byron Shire is comprised of social housing and total numbers have declined from 2011 to 2020.<sup>206</sup> The Commission received numerous submissions from the local community raising concerns over an observed lack of action to facilitate new housing supply, including affordable housing, by Council.
190. A key limitation to any future increased approval of medium and higher density typologies in the Byron Shire is its existing permissible building height controls. Across most of the Byron Shire a maximum building height of 9 metres (i.e. 1-2 storeys) applies, with a height of 11.5 metres (i.e. 3-4 storeys) allowed within the area roughly corresponding to the Byron Bay central business district.<sup>207</sup>
191. The Commission acknowledges the various land and housing projects identified by Council in its submission and presentation at the Public Hearing that seek to deliver increased affordable and diverse housing within the Byron Shire.<sup>208</sup> Intervention would likely be required beyond these projects, most of which are currently at a planning and design stage. The Commission also acknowledges the recent adoption of Council's AHCS (refer section 3.3.4 of this advice). However, it has concerns about the capacity of this scheme to deliver the number of affordable dwellings that are needed by the Byron Shire both now and in the future given the limited application of the AHCS and the undetermined status of several of the identified AHCS areas.
192. The Commission is also not convinced of the practical capacity of the Byron Shire's Residential Strategy to facilitate full delivery of Byron Shire's required future dwellings. In its presentation to the Commission during their meeting on 10 February 2023, the Department identified that "[a]n additional 4,522 implied dwellings are required in Byron Shire LGA by 2041 to accommodate future population-driven demand"<sup>209</sup> and noted that "[t]here are significant constraints with some of the investigation areas identified in the Residential Strategy" and the Department's Planning Delivery Unit's review of the Residential Strategy had recommended "further work be undertaken before it could be endorsed."<sup>210</sup>
193. A significant barrier to the delivery of housing supply is the physical characteristics of the hinterland surrounding Byron Bay and other population centres within Byron Shire. As noted by Council at the Public Hearing, much of the hinterland is designated as important farmland, as seen in the brown shading in Figure 29 below.<sup>211</sup> In accordance with the NSW Government's Important Farmland mapping, this land is intended to be protected for agricultural use and from "incompatible, competing land uses",<sup>212</sup> and cannot be redeveloped for residential use.

Figure 29 – Important Farmland <sup>213</sup>



194. Further constraining potential supply as well as existing housing is the vulnerability of the Byron Shire to both riverine and flash flooding, with much of the land both surrounding and within its settlements situated within floodplains.<sup>214</sup>

Figure 30 – Byron Shire Flood 1 in 100 year LEP / DCP Controls<sup>215</sup>





195. Figure 30 above presents the 1 in 100-year flood mapping for Byron Shire and shows that large portions of Byron Bay, Brunswick Heads, Suffolk Park, and Mullumbimby are located within the 1 in 100 year Annual Exceedance Probability,<sup>216</sup> which signifies high potential risk for life and property and accordingly sets constraints for the granting of any development consent.<sup>217</sup>
196. The NSW Government has agreed in principle to all the recommendations of the NSW Independent Flood Inquiry 2022, which includes adopting guiding principles for flood plain management.<sup>218</sup> The overall impact of restricting future development on flood plains will increase pressure on land for housing supply in Byron Shire and surrounding areas.
197. The Commission encourages government action to assist with the provision of housing supply, in accordance with relevant and existing strategies. In consideration of material provided to the Commission, the Commission is of the view that potential mechanisms to improve supply in the Byron Shire could include reducing approval times, increasing land availability through rezonings and infill initiatives, and increasing density controls in appropriate locations. Delivery of alternative housing models could be incentivised and facilitated, including community land trusts, co-housing, cooperatives, build-to-rent, tiny homes, and other pilot projects.
198. While there are mechanisms that government can employ to increase housing supply, the Commission acknowledges AHURI's broader observation of the industry that "[o]verall housing supply can largely increase only by the number of households with the income to commission the construction of a new dwelling. As dwelling and land prices rise, particularly to the levels of Byron Bay, there will be fewer households that can afford to commission a dwelling [...]. This is a regional dimension of a national problem."<sup>219</sup>
199. The Commission encourages greater support of affordable housing schemes, inclusive of social housing and low-income affordable housing.
200. The Commission acknowledges the administrative and financial cost the intensification of efforts to boost supply may have and as part of its advice has recommended the introduction of a non-hosted STRA levy (Recommendation 8) that may in part facilitate support for some of these initiatives.

#### **Recommendation 4**

The NSW Government should continue to work with Council to identify and utilise every available mechanism to support:

- a) the urgent release of more land for housing development within Byron Shire (including the potential for infill development in Byron Bay);
- b) the timely delivery of new housing supply;
- c) the delivery of increased affordable, diverse, social and crisis accommodation; and
- d) protection of lessees.

### **6.4.1 Use of secondary dwellings and dual occupancies for STRA**

201. Council waived fees for 921 secondary dwellings approved between April 2011 and October 2019<sup>220</sup> with the intent of increasing local housing availability under conditions of consent that specify these dwellings not be used for STRA. There is evidence that a number of these dwellings have been converted to non-hosted STRA.<sup>221</sup> On 9 March 2023, the Council unanimously resolved to prohibit the use of STRA in new approvals for (among other approvals) secondary dwellings, standard homes in the residential areas and business zones of the Byron Shire.<sup>222</sup>

202. Similarly, dual occupancies within Byron Shire are reported as being commonly used for STRA, despite the intention of the dwelling type's introduction to facilitate the provision of affordable rental housing across the LGA.<sup>223</sup>
203. The Commission considers there may be opportunities to adopt the use of charges, rates or taxes that could encourage the use of these dwelling types for long-term housing rather than for STRA. This may also be helpful in addressing housing supply for key/essential workers.
204. The Commission strongly supports Council's efforts to enforce existing consent conditions on housing, particularly on development involving secondary dwellings and dual occupancies, where its use as STRA is prohibited, and to investigate the full range of legal and policy options for ensuring these dwellings are used for housing. The Commission recommends that the NSW Government support Council in these efforts.

#### **Recommendation 5**

The NSW Government should give consideration to the legal and policy options and implications of encouraging a return of dual occupancy and secondary dwelling properties to long-term rental, either by direct requirement or via an incentive program, and support Council in considering these matters.

#### **6.4.2 Accommodating anticipated tourism growth and workforce needs**

205. Submissions to the Commission from workers that support the tourism industry in Byron Shire reported the lack of local housing availability. A high number of submissions also came from local businesses reporting business-critical shortages of staff arising from the lack of affordable housing for key and essential workers.
206. The Commission separately notes that data available from the 2021 Census does not show an increasing number of people commuting long distances for work in the area and the proportion of commuters overall appears to have remained relatively stable.<sup>224</sup> Notwithstanding, the Commission is of the view that further research and consultation should be undertaken to quantify and address local and key worker accommodation requirements.
207. Submissions to the Commission observed that in Byron Shire, non-hosted STRA appears to be a more attractive option for consumers than more traditional modes of tourism and visitor accommodation. The Department notes that "Byron Shire Council has approved approximately 100 –150 residential CDCs/DAs on an annual basis and comparatively low tourist and visitor accommodation approvals over the same period"<sup>225</sup> Figure 31 shows the approvals in Byron Shire between 2011 and 2021. It is uncertain whether the visitor and tourist preference for STRA is a symptom of the available supply (or lack thereof) or a result of consumer preferences.

Figure 31 – Byron Shire approvals<sup>226</sup>



208. Anticipated domestic tourism growth in Byron Shire is predicted to be approximately 4 percent per annum.<sup>227</sup> The Commission finds that collaboration between Council and the tourism industry and other relevant stakeholders needs to improve and is of the view that Council’s Sustainable Visitation Strategy should be updated to identify and address current and future labour supply needs, including where this labour will be sourced from and housed. These issues are also being experienced more widely within the state and across Australia and are often further exacerbated in communities that have an economic dependence on tourism or other industries that experience large scale population influx and outflux. The Commission is of the view that improved collaboration facilitated by the NSW Government could support better access to and delivery of alternative modes of visitor accommodation as well as affordable housing for the key workers needed to support the Byron Shire visitor economy and community needs.

**Recommendation 6**

The NSW Government should support Council in collaborating with relevant stakeholders, particularly in the tourism and relevant community service industries, to address:

- a) worker accommodation requirements; and
- b) the supply of alternative (non-STRA) visitor accommodation consistent with the Byron Shire Sustainable Visitation Strategy 2020-2030 and the needs of the consumer, including consideration of increased density for visitor accommodation in the town centre.



## 6.5 Floods and crisis accommodation

209. Byron Shire and the Northern Rivers region were particularly affected by the catastrophic flood events that occurred in early 2022. Byron Shire was inundated by riverine flooding in late-February 2022<sup>228</sup> and flash flooding in April 2022<sup>229</sup> which caused power outages, extensive infrastructural damage, and left many communities isolated and homeless.<sup>230</sup> These two events are estimated to have impacted 2,170 properties (including public and commercial facilities).<sup>231</sup>
210. A report by the UNSW City Futures Research Centre, titled ‘The impact of housing vulnerability on climate disaster recovery: The 2022 Northern Rivers Floods’ made the following observations:
- There are two dimensions to regional rental markets that make them particularly susceptible to the shocks brought about by the loss of stock following a climate disaster, such as the recent Northern Rivers floods.*
- The first is the evidently small size of the private rental market – particularly sub-markets for which there are very few substitutes to absorb the loss of supply: small towns or more remote communities (particularly Indigenous communities) that are not well connected to other housing markets; and housing for large families and housing that is accessible to older people or those with a disability. These groups find it... most difficult to secure suitable housing on the rental market, unless compromising quality, location, or affordability.*
- The second dimension of the longer-term housing crisis in the Northern Rivers, and other regions, is the evident ‘decoupling’ of demand and supply, with a loss of private rentals that were, historically, available at a price point affordable to those whose incomes come from pensions or other government payments. Options on the private rental market for those on low incomes are increasingly scarce, creating a ‘tipping point’ where alternatives to private rental need to fill the gap in housing supply. Various forms of subsidised, social rental housing are not available at a scale for this growing cohort priced out of the private rental market. The shock to housing supply caused by the recent floods has accelerated this urgent and growing need for subsidised housing options in the Northern Rivers.<sup>232</sup>*
211. The loss of habitable properties resulting from the catastrophic flood events, and the subsequent increase of people experiencing homelessness,<sup>233</sup> has placed increased demand upon Byron Shire’s already strained housing market.<sup>234</sup> In response to the flood events, Airbnb (in coordination with the Australian Red Cross) announced an initiative where STRA hosts operating on its platform were invited to provide cost-free temporary accommodation to flood-affected residents.<sup>235</sup>
212. Community members also set up initiatives in collaboration with property managers, community organisations and individual STRA owners to facilitate the use of STRA properties for temporary accommodation.<sup>236</sup>
213. Submissions received by the Commission described that more than 1,200 STRA owners made their properties available as cost-free temporary accommodation for between two weeks and three months to accommodate families that had no accommodation after losing their homes. Use of STRA properties proved to be a valuable and effective emergency response to provide temporary housing during the flood events.

214. The Commission acknowledges that the impact of the 2022 flood events is ongoing and has exacerbated accommodation shortages in the Byron Shire. The Commission received submissions regarding the direct and severe impact that many families are still suffering because of the floods, including that people remain displaced from their homes and/or living outside of the area while their homes are being repaired. In some cases, families have had to move away from the area completely because they have been unable to secure new accommodation.
215. In July 2022, the findings of the NSW Independent Flood Inquiry were submitted to the NSW Government. The Commission notes the findings of that inquiry, particularly regarding accommodation impacts. One of the 2022 Flood Inquiry's recommendations was that Government establish a permanent state-wide agency dedicated to disaster recovery, reconstruction and preparedness.
216. The Northern Rivers Reconstruction Corporation (**NRRC**) was established in July 2022, as recommended by the 2022 Flood Inquiry, and is responsible for leading and coordinating the recovery and reconstruction of housing, essential assets and infrastructure in flood impacted areas across the Northern Rivers.<sup>237</sup> It has a direct role in alleviating housing stress in Byron Shire as part of the flood recovery process. The NRRC administers the 'Resilient Homes Fund', which is intended to improve the resilience of homes in high-risk flood areas in the Ballina, Byron, Clarence Valley, Kyogle, Lismore, Richmond Valley and Tweed LGAs. The Fund is made up of the following two programs:<sup>238</sup>
- the \$700 million Resilient Homes Program, which is 50:50 co-funded by the Australian Government and NSW Government; and
  - the \$100 million Resilient Lands Program, which is fully funded by the NSW Government.
217. The Commission acknowledges the ongoing work of the NRRC, including its work to improve the flood-resilience of residential properties in the Northern Rivers.
218. The Commission finds that STRA is an invaluable resource for providing temporary accommodation during emergency events. The NSW Government should support Council in making formal arrangements to request STRA owners make their properties available for temporary accommodation in times of emergency. The Commission considers that this approach should be formalised by agreement with STRA owners to be an effective crisis response and could be applied across NSW.

### **Recommendation 7**

The NSW Government should support Council in continuing to work with Northern Rivers Reconstruction Corporation to address the ongoing housing-related impacts of the 2022 floods and formalise arrangements for emergency use of STRA for crisis accommodation.

## 6.6 Local community benefits

### 6.6.1 Levies on non-hosted STRA

219. Many submissions received from local residents outlined the negative impacts of non-hosted STRA experienced by the community. These included increased strain on infrastructure, impacts on the environment, impacts to amenity, community resilience and stability. Submissions asserted that non-hosted STRA reduces the availability of permanent housing and creates a shortfall of accommodation for workers and displacement of residents.
220. Local residents also raised the concern that the residual economic, environmental and social costs of non-hosted STRA remain with residential ratepayers who bear the cost of infrastructure demand created by tourism and reduced social amenity and community contribution.
221. Submissions from non-hosted STRA owners often recognised that housing supply and affordability is an issue within Byron Shire (and broader NSW). Some suggested that improvements to the local transport system in the Byron area could provide better accessibility for workers who live outside of Byron Bay. Some also suggested the introduction of a levy on guests staying in Byron Shire could be used to contribute to affordable housing and to address social impacts.
222. The Commission notes that STRA hosting platform Airbnb, as part of a series of measures, has recently announced its support of the introduction of tourism levies in local communities across Australia to fund community infrastructure and services:
- Airbnb's view is that tourism levies are a fair and sustainable way to raise revenue for local communities, especially in areas of high tourism, as they broaden the revenue base without imposing an additional burden on local ratepayers or businesses. This includes measures to increase the affordable rental housing stock for low income earners.*<sup>239</sup>
223. The proposal from Airbnb includes “support for a tourism levy to fund housing and community projects...for example, key worker housing projects”<sup>240</sup>:
- We believe tourism levies are a fair and sustainable way to raise revenue for local communities, especially in areas of high tourism, as they broaden the revenue base without imposing an additional burden on local ratepayers or businesses. Airbnb is committed to working with the state and territory governments to enable local councils to establish — on an opt-in basis — a tourism levy applied to all accommodation providers*<sup>241</sup>.
224. Other local councils within Australia are investigating similar measures for STRA. For example, Cairns Regional Council is considering the introduction of a new rates category for non-principal places of residences<sup>242</sup>, and the City of Shoalhaven is considering a new rating category that has a special rate variation attached to it, with the intention to create an affordable housing fund.<sup>243</sup>
225. The Commission is of the view that, in the absence of tax regime or other changes, the imposition of such a levy could provide an income stream to Council which may assist in mitigating impacts on the local community. If a levy is introduced within STRA hosting platforms, it would need to be applied across all platforms to avoid the risk of any single provider collecting and distributing the levy proceeds and entrenching this provider as a monopolist and reducing competition. The Commission notes that the introduction and operation of such a levy would need to be balanced against the costs of regulation and the precedent value of collecting a levy.

226. As levy mechanisms, the NSW Government could examine:
- levying additional fees when STRA properties are registered with the NSW Government;
  - a reasonable per-booking levy on all STRA stays; and/or
  - the existing frameworks under Chapter 15 of the *Local Government Act 1993* – including but not limited to categorising dwellings used for STRA purposes differently from other dwellings - and levying a different rate. This could include establishing a subcategory of ‘residential’ rateable land for dwellings used for STRA purposes.

### Recommendation 8

The NSW Government should introduce a levy on all STRA properties in Byron Shire as a mechanism to provide an income stream to Council that will be used to address amenity, infrastructure, and service impacts from STRA on the local community and deliver community benefits. Levy mechanisms proposed for consideration in Byron Shire include:

- a) additional STRA property registration fees
- b) a per-booking levy on STRA stays
- c) an additional Council rate category for registered STRA properties

Implementation of this proposal needs to be balanced against the costs of regulation and the complexities of collecting a levy through third parties.

## 6.6.2 Compliance and enforcement

227. Some submissions from the community indicated low levels of confidence in the enforcement of the requirements of the Housing SEPP and the STRA Code of Conduct. Council has also identified challenges in enforcing a 180-day cap on non-hosted STRA, noting difficulties relating to funding for administering and enforcing compliance.<sup>244</sup> The Commission is of the view that the recommended levy (Recommendation 8) could be used to facilitate resourcing for enforcement.
228. Within the community, there are material concerns regarding transparency and visibility of the current regulatory arrangements. The Commission notes that the Code of Conduct, which commenced on 18 December 2020, was put in place to address amenity issues. The Commission’s recommendation for development consent for the use of a property in excess of the recommended 60-day cap (Recommendation 2) could provide improved opportunities for compliance monitoring and through the imposition of conditions of consent provide clear enforcement parameters.
229. To build community trust and confidence, there needs to be a high level of STRA industry compliance with regulatory requirements and effective enforcement by both Council and the NSW Government. This would need to be supported by improved communication and awareness-building within the community. Community trust would also be supported by greater enforcement of development consents and improved procedural visibility.

### Recommendation 9

The NSW Government should strengthen STRA industry compliance and enforcement arrangements and make them more visible to the community and other stakeholders, consistent with the principles of open government. This includes measures to continue to improve the effectiveness and monitoring of compliance with the STRA Code of Conduct.

## 6.7 Data and research

### 6.7.1 Access to reliable data

230. A critical limitation to the Commission's analysis in the preparation of this advice has been the difficulty of accessing accurate, reliable and specific data.
231. During the Public Hearing, stakeholder engagement and public submission process the Commission was presented with contrasting datasets, evidence and contentions from different submitters and stakeholders on the same key metrics. This occurred in relation to the total number of STRA properties in the Byron Shire and the estimated number of job losses resulting from the Planning Proposal, making the Commission's assessment of the scale and impacts of non-hosted STRA in the Byron Shire challenging. For example, the EIA presents a figure of 5,248 non-hosted STRA listings for the period of January to February 2019 in Byron Shire,<sup>245</sup> which was disputed at the Public Hearing<sup>246</sup> and by Byron ASTRA ahead of its stakeholder meeting with the Commission.<sup>247</sup> Research forming the background to Council's Planning Proposal (Version #3, March 2022) and provided to the Commission by Council on 23 December 2022 presents differing figures of 3,613 (implied to be non-hosted),<sup>248</sup> 3,684<sup>249</sup> and 3,513<sup>250</sup> (both unclear if referring to non-hosted or all listings together) all for the period of November 2019. At the Public Hearing in February 2023, the Commission was variously presented with figures of 1,200,<sup>251</sup> 1,136,<sup>252</sup> and 1,367<sup>253</sup> non-hosted STRA listings purporting to be taken from the STRA Register.
232. Similarly, the Commission received correspondence and submissions that suggested that the EIA estimate of a loss of 265 jobs were Council's Planning Proposal to proceed<sup>254</sup> was inaccurate, and that figures of 1,300<sup>255</sup> to 1,448<sup>256</sup> were correct based on survey data from Tourism Research Australia.
233. Some of these discrepancies can be partly explained by the grouping of hosted and non-hosted STRA listings data, the fact that the STRA Register updates its figures on a daily basis,<sup>257</sup> misrepresentation of aggregated tourism data,<sup>258</sup> and the invariably anecdotal nature of submissions at a Public Hearing. Nonetheless, they have constrained the capacity of the Commission to provide a definitive assessment of the impacts.
234. The Commission was provided with key statistics and a high-level analysis of data captured by the STRA Register by the Department in its submission, including a figure of 1,292 active non-hosted STRA registrations as at 23 January 2023.<sup>259</sup> The Department, however, declined to provide georeferenced data requested by the Commission on the basis of protecting proprietary information.
235. Both Airbnb and Expedia were extended the opportunity to provide de-identified occupancy and listing data to the Commission in their respective submissions, but declined based on the imperative to protect the personal privacy of STRA owners.<sup>260</sup>

236. The AHURI report drew on Rental Bond Board data, the Census, and other ABS sources in analysing the data that was provided by the platforms.<sup>261</sup> More specific data related to STRA in Byron Bay, including the number, rents and other attributes for non-hosted STRA listed through Airbnb and Vrbo,<sup>xviii 262</sup> were sourced from the online resources AirDNA (a paid subscription-based source)<sup>263</sup> and Inside Airbnb (open access).<sup>264</sup> AHURI notes limitations of both these online sources.<sup>265</sup>
237. A critical limitation relates to the available means by which STRA data can be accessed and monitored, as well as the general lack of adequate data and no single and easily accessible method to calculate and measure the impact of STRA within the housing market. As STRA platforms do not tend to provide direct access or listing-level data by jurisdiction,<sup>266</sup> the common method has been to rely on scraped data from AirDNA and Inside Airbnb.
238. As identified by Urbis in the EIA, data scraping tends to limit detailed analysis: “AirDNA [...] data does not provide any detail as to the type of guests making bookings, the purpose of their stays, or the type of owner.”<sup>267</sup> Hence listings extracted from these resources tend not to be disaggregated and are not categorised into, for example, hosted or non-hosted STRA listings.<sup>268</sup>
239. Consequently, in seeking to understand the actual and real time spatial pattern of STRA properties within Byron Shire, the Commission’s analysis has been constrained to anecdotal evidence from the Public Hearing, and the limited data contained within the documents provided by Council,<sup>269</sup> the Department’s 9 March 2023 Submission to the Commission,<sup>270</sup> aforementioned resources such as AirDNA and Inside Airbnb and additional analysis in the AHURI report.
240. The Commission is of the view that in order to achieve effective planning, regulation and community confidence in understanding and monitoring the impacts of STRA within the housing market, more comprehensive granular data should be shared by STRA platforms to all three tiers of government, the community and other stakeholders under open government principles. The Commission, however, notes data made available by STRA platforms needs to ensure personal data is appropriately protected.
241. Further, the Commission notes data related to Council STRA-approvals, as per Recommendation 2, should also be openly available to the community and other stakeholders.

### Recommendation 10

The NSW Government should address data access constraints in order to support effective planning, regulation and community confidence by:

- a) ensuring that STRA platforms and managers share more comprehensive data with all three tiers of government (at no cost to government) and requiring this data be made more available to the community and other stakeholders under open government principles, while maintaining privacy; and
- b) making Council STRA-approval data (per Recommendation 2) readily available in an accessible format to the community and other stakeholders.

<sup>xviii</sup> Vrbo (formerly HomeAway) is an online marketplace for vacation rentals which provides a platform for Stayz properties. The latter is part of the Expedia portfolio (refer endnote).



## 6.7.2 Evaluation and monitoring

242. Communities with a developed tourism industry are likely to experience a range of positive and negative social impacts due to the influx and outflux of tourist populations, including impacts on social amenity, access and capacity issues relating to service provision, community participation, livelihood/economic impacts and issues associated with housing availability to accommodate of the seasonal workforce population. While local amenity impacts may be easier to attribute to non-hosted STRA, mostly at specific neighbourhood or street level, the Commission has found that the multi-faceted nature of pressures in the housing market makes it difficult to establish a definitive causal relationship between STRA and increases in rental and house prices.
243. Despite the availability of data, studies, reports and submissions considered, the Commission notes there is still a lack of information in regard to how all the factors driving the housing market as a whole interact, including the decision-making of key stakeholders in relation to STRA, holiday homes, long-term rentals, and owner-occupied housing. The Commission also notes there is a lack of specific economic and tourism planning undertaken at the State and local levels that is supported by robust research. With the reliance on uncertain and ambiguous data, the Commission considers this a serious impediment to proper economic development and social planning.
244. The Commission supports the Department's planned review of the STRA regulatory framework including non-hosted STRA limits within 2 years of implementation.<sup>271</sup> Further, the Commission is of the view that there are opportunities for ongoing research and monitoring of STRA to better understand its economic and social implications to the Byron Shire. There is a need for reliable monitoring frameworks that distinguish between housing vacancies, non-resident periodic occupation (second homes) and permanent tourist accommodation, and which capture actual accommodation letting days per year and revenue. Accordingly, the Commission recommends the NSW Government (in partnership with the Commonwealth) initiate an ongoing research and monitoring program, and provide the community, stakeholders and all levels of government with a knowledge base of findings to inform the development of policy related to STRA and housing.
245. Nationwide and international approaches to the issue have varied, using different mechanisms, sometimes in combination with one another. They have not yet been in place for the long-term and there has been little effective monitoring of their success. This context underscores the need for appropriate and comprehensive evaluation of the effectiveness of different strategies and interventions.

### Recommendation 11

The NSW Government should lead research efforts to provide all three tiers of government and other stakeholders with the knowledge base to inform well targeted policy delivery by establishing and maintaining an appropriate ongoing STRA research and monitoring program (in partnership with the Commonwealth). This should extend to a longitudinal study quantifying the trends and economic and social effects of STRA.

### *Continuous improvement and review*

246. In considering any future changes to relevant environmental planning instruments (whether the Housing SEPP, BLEP 2014 or any other) the NSW Government should be informed by the outcomes of the proposed review of the current 180-day cap under the Housing SEPP. There should be a culture and practice of continuous improvement and refinement of policy settings based on the outcomes of such reviews.

247. Any implementation of the Commission's recommendations should also be evaluated within this framework.

#### **Recommendation 12**

The NSW Government should ensure continuous improvement to relevant environmental planning instruments, including any future changes to relevant environmental planning instruments, by establishing an evaluation program of the effectiveness of these recommendations as implemented, linked to the proposed review by the Department of the current 180-day cap in the *State Environmental Planning Policy (Housing) 2021*.

## **7. Recommendations**

248. The recommendations of the Commission presented throughout Section 6 and repeated below respond to the specific questions in the Minister's request and focus on planning considerations relevant to the tension between using residential properties for non-hosted STRA and ensuring the availability and affordability of long-term rental housing in Byron Shire.
249. They are presented as a suite of recommendations that are designed to work together as a package to address the significant housing pressures in Byron Shire and the impacts of non-hosted STRA in the area.

### **Planning Proposal**

#### **Recommendation 1**

The Planning Proposal should not proceed in its current form (no cap on non-hosted STRA in identified precincts, otherwise, a 90-day cap on non-hosted STRA) as it would not adequately achieve its stated objectives and may have unintended adverse economic consequences.

### **Recommended alternatives**

#### **Recommendation 2**

Utilise the available regulatory regime to support Byron Shire Council to plan for and manage local impacts from the conversion of existing and future housing stock to non-hosted STRA by:

- a) Defining STRA as a permissible use by specifically listing STRA as a type of 'tourist and visitor accommodation' with the objective of facilitating STRA in well located and serviced areas already zoned for tourism.
- b) Tightening the exempt development non-hosted STRA day cap to a level that puts the financial returns from non-hosted STRA on a more level playing field with long-term rental housing. Amending the *State Environmental Planning Policy (Housing) 2021* to provide a 60-day cap in Byron Shire would be appropriate for this purpose and would continue to provide reasonable flexibility for the incidental use of a residence as STRA. The proposed precinct model should not be used and the recommended 60-day cap should apply across Byron Shire, consistent with the current application of the 180-day cap in the *State Environmental Planning Policy (Housing) 2021*.

- c) Permitting development consent to be obtained for the use of a property as non-hosted STRA in excess of the 60-day cap. When determining such development applications, Byron Shire Council should be supported in reviewing the available STRA data and considering:
  - i. specific matters related to the social and economic impacts on the locality, such as the current availability of long-term rental properties in the surrounding area and the alignment of the application with relevant housing strategies and policies;
  - ii. conditions of consent to retain flexibility to manage non-hosted STRA across Byron Shire, such as time limits on approvals, and to require registration and compliance with the STRA Code of Conduct; and
  - iii. the creation of clear public guidelines and a streamlined pathway and fee structure (or even waiver) for applying for non-hosted STRA development consent.
- d) Preventing the subsequent conversion of new housing supply to non-hosted STRA by requiring relevant conditions on development consent for new housing developments.
- e) Giving consideration to any transitional arrangements, such as an amnesty period, as may be appropriate in the implementation of Recommendation 2.
- f) Supporting Council in undertaking a strategic-level impact assessment of development applications for non-hosted STRA land uses to provide ongoing evaluation of Byron Shire's needs.

## Housing market structure

### Recommendation 3

The NSW Government should continue to work with all levels of government to use available levers to address misalignment between the functioning of the housing market and broader social objectives. This could put the economic returns from affordable long-term rental housing on a more level playing field with non-hosted STRA and other development types.

## Housing supply

### Recommendation 4

The NSW Government should continue to work with Council to identify and utilise every available mechanism to support:

- a) the urgent release of more land for housing development within Byron Shire (including the potential for infill development in Byron Bay);
- b) the timely delivery of new housing supply;
- c) the delivery of increased affordable, diverse, social and crisis accommodation; and
- d) protection of lessees.

## Use of secondary dwellings

### Recommendation 5

The NSW Government should give consideration to the legal and policy options and implications of encouraging a return of dual occupancy and secondary dwelling properties to long-term rental, either by direct requirement or via an incentive program, and support Council in considering these matters.

## Accommodate tourism growth and workforce needs

### Recommendation 6

The NSW Government should support Council in collaborating with relevant stakeholders, particularly in the tourism and relevant community service industries, to address:

- a) worker accommodation requirements; and
- b) the supply of alternative (non-STRA) visitor accommodation consistent with the Byron Shire Sustainable Visitation Strategy 2020-2030 and the needs of the consumer, including consideration of increased density for visitor accommodation in the town centre.

## Flood and crisis accommodation

### Recommendation 7

The NSW Government should support Council in continuing to work with Northern Rivers Reconstruction Corporation to address the ongoing housing-related impacts of the 2022 floods and formalise arrangements for emergency use of STRA for crisis accommodation.

## Local community benefits

### Recommendation 8

The NSW Government should introduce a levy on all STRA properties in Byron Shire as a mechanism to provide an income stream to Council that will be used to address amenity, infrastructure, and service impacts from STRA on the local community and deliver community benefits. Levy mechanisms proposed for consideration in Byron Shire include:

- a) additional STRA property registration fees
- b) a reasonable per-booking levy on STRA stays
- c) an additional Council rate charge for registered STRA properties

Implementation of this proposal needs to be balanced against the costs of regulation and the complexities of collecting a levy through third parties.

### Recommendation 9

The NSW Government should strengthen STRA industry compliance and enforcement arrangements and make them more visible to the community and other stakeholders, consistent with the principles of open government. This includes measures to continue to improve the effectiveness and monitoring of compliance with the STRA Code of Conduct.

## Evaluation and monitoring

### Recommendation 10

The NSW Government should address data access constraints in order to support effective planning, regulation and community confidence by:

- a) ensuring that STRA platforms and managers share more comprehensive data with all three tiers of government (at no cost to government) and requiring this data be made more available to the community and other stakeholders under open government principles, while maintaining privacy
- b) making Council STRA-approval data (per Recommendation 2) readily available in an accessible format to the community and other stakeholders.

### Recommendation 11

The NSW Government should lead research efforts to provide all three tiers of government and other stakeholders with the knowledge base to inform well targeted policy delivery by establishing and maintaining an appropriate ongoing STRA research and monitoring program (in partnership with the Commonwealth). This should extend to a longitudinal study quantifying the trends and economic and social effects of STRA.

### Recommendation 12

The NSW Government should ensure continuous improvement to relevant environmental planning instruments, including any future changes to relevant environmental planning instruments, by establishing an evaluation program of the effectiveness of these recommendations as implemented, linked to the proposed review by the Department of the current 180-day cap in the *State Environmental Planning Policy (Housing) 2021*.



Dr Sheridan Coakes (Chair)  
Member of the Commission



Juliet Grant  
Member of the Commission



Prof Richard Mackay AM  
Member of the Commission

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*In addition to the requirements set out in this Part, adjoining owners' property rights, the applicable common law and other legislative requirements for approvals, licences, permits and authorities still apply. For example—*

- 1. the Strata Schemes Management Act 2015, section 137A provides that a by-law may prohibit a lot being used for the purposes of a short-term rental accommodation arrangement, and*
- 2. conditions of development consent, or a lease, may impose additional restrictions.*

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