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Professor Mary O’Kane
Chair
Independent Planning Commission
Level 3, 201 Elizabeth Street
SYDNEY NSW 2000

Via email: ipcn@ipcn.nsw.gov.au

Subject: Questions on Notice and Request for Clarification

Dear Professor O’Kane

Thank you for the opportunity to brief the Independent Planning Commission (IPC) on 10 February 2023 and attend the public hearing on 21 and 22 February 2023 in relation to non-hosted short-term rental accommodation (STRA) in the Byron Shire local government area (LGA).

Please find information to follow in response to the questions posed by the IPC to the Department of Planning and Environment (the Department) during the briefing and the questions taken on notice by the Department at the public hearing.

1. To what extent is Byron Shire on track in terms of its housing supply in relation to the North Coast Regional Plan 2041 20-year framework and projected dwelling need?

The North Coast Regional Plan 2041 does not contain dwelling targets for individual LGAs. However, it is expected over the next 20 years the North Coast will need a minimum of 41,300 extra homes to meet the needs of the growing population.

Action 1 of the North Coast Regional Plan 2041 is to establish the North Coast urban housing monitoring program to improve the co-ordination and delivery of new housing. This work will ensure there is data and information on housing approvals and completions available to provide oversight of regional housing supply and trends to enable evidence-based monitoring.

The North Coast Regional Plan 2041 also:

- Sets a target for 40% of new housing to be multi-dwelling, which includes apartments, town houses, villas or small lot housing to encourage greater diversity.
- Encourages planning for the visitor economy, which includes seasonal workers and workers associated with major infrastructure projects.
- Encourages housing options which promote social inclusion, including crisis accommodation and affordable living for seniors, people with disability and single households.

- Includes Strategy 1.1 which requires a 10-year supply of residential zoned and developable land to be provided and maintained in local council plans endorsed by the Department. The first 2-5 years are to be zoned and development ready, with planning approvals and infrastructure plans in place.
- Includes Action 3 to establish housing affordability roundtables for each subregion with councils, community housing providers, State agencies and the housing development industry to look at measures to improve affordability and increase housing diversity.

2. The Regional Housing Taskforce's 2021 Recommendations Report provides a number of recommendations and targeted interventions to improve housing across the State – what is the implementation status of these, with particular reference to the context of regional NSW and Byron Shire?

There is significant work underway to address housing issues across the State, including those which are regionally targeted and directly respond to the recommendations of the Regional Housing Taskforce (the Taskforce).

It should also be noted that the recommendations of the Regional Housing Taskforce were not LGA specific and following the Taskforce's investigation in the North Coast context, flood recovery efforts became the primary focus of State and local governments following catastrophic flood events that severely impacted the North Coast and other areas of the State. In response the NSW Government established the Northern Rivers Reconstruction Corporation (NRCC) and subsequently the NSW Reconstruction Authority.

A summary of some of the key actions being implemented as part of the NSW Government's response to the Taskforce recommendations is provided below. Much of the work identified is funded by the \$2.8 billion housing package announced in June 2022. The 2022 Housing Package aligns with Housing 2041: NSW Housing Strategy, the NSW Government's 20-year vision for housing to ensure the homes of the future meet the needs of the people of NSW.

More information on that package, including a 6 month update released in January 2023 can be found [here](#).

Regional Housing Strategic Planning Fund

- The Department has launched Round 1 of the Regional Housing Strategic Planning Fund, a new competitive grant program to support regional councils to plan for the delivery of new housing to meet community needs.
- The fund will make up to \$12 million available over four years from 2022-23 to help deliver strategic planning and technical work required to enable housing delivery and provide greater certainty about where, when and what types of homes will be built.
- Up to \$3 million of funding was originally available in Round 1 for all councils outside of Greater Sydney. In response to strong interest and a high volume of applications, this was increased to up to \$4 million.
- Following rigorous assessment by an independent assessment panel, the NSW Government has endorsed funding for 20 projects from 19 councils in Round 1 of the program. Funded projects will be completed by 31 January 2024 as set out in the program guidelines.

- All regional councils are eligible to apply for the grant program. Byron Shire Council were unsuccessful in Round 1 but are eligible to apply for future rounds of the fund. Further details on the future rounds of the fund will be made available later in 2023.

Investing in infrastructure - Regional Housing Fund

- On 3 February 2022, the \$30 million NSW Regional Housing Fund was announced as an initial response to the recommendations of the Regional Housing Taskforce.
- The program incentivises councils to address the recommendations of the Regional Housing Taskforce by offering funding to deliver infrastructure and open space projects that directly support the delivery of new housing supply.
- Twenty-five projects have been approved for funding as part of the Regional Housing Fund. Projects include new roads, sewer upgrades, stormwater works, park upgrades, community facilities and new open space.
- Under the eligibility criteria for the Regional Housing Fund, Byron Shire Council were ineligible as they had previously received funding under the Public Spaces Legacy Fund.

Investing in Infrastructure – Accelerated Infrastructure Fund

- Under Round 3 of the Accelerated Infrastructure Fund (AIF), \$300 million is being provided to co-fund and accelerate the delivery of infrastructure to support housing supply and job generation in high-growth areas of NSW.
- The Department selected 41 eligible LGAs (including Byron Shire Council) based on analysis of the 2022 NSW population and housing projections. The nominated LGAs are experiencing and are forecast to experience some of the highest rates of housing growth and housing pressure over the next 10 years.
- Up to \$120 million of funding under Round 3 was reserved for regional projects. The funding is available for eligible councils, state agencies and utilities to deliver roads, stormwater, electricity infrastructure, sewerage and public open space projects, to enable and support the construction and delivery of new homes and development-ready land.
- Initial funding for AIF Round 3 has been announced, with \$254 million being allocated to 36 projects in metropolitan and regional NSW.
- Byron Shire Council was eligible to apply for AIF Round 3 but did not submit an application.
- Byron Shire Council may wish to apply for alternative grants that support infrastructure, including the Department of Regional NSW's Growing Regional Economies Fund, enabling infrastructure that will support investment in regional housing projects to meet demand generated by growth in employment and economic activity.

Partnerships to deliver new affordable housing

- Landcom is working in partnership with Byron Shire Council to develop 32 affordable homes on a council-owned site in Mullumbimby. Landcom is currently assessing responses to a Request for Proposal process which will identify a suitable Community Housing Provider partner.
- In December 2022, Landcom entered into an MOU with the NRRC. The MOU will support the sustainable growth of the Northern Rivers by providing a range of

affordable housing options for low to moderate income households including (but not limited to) key worker and Aboriginal community members. It will also further strategic partnerships with local councils, state and Commonwealth government agencies, non-government organisations and businesses to improve housing diversity and supply, and infrastructure outcomes in the Northern Rivers. Byron Shire is one of the seven LGAs in the NRRC's remit.

State Environmental Planning Policy (Housing) 2021 (Housing SEPP)

- The Housing SEPP aims to support industry with the delivery of diverse and affordable housing types through planning incentives (e.g. floor space ratio and building height bonuses) and other non-discretionary development standards.
- The Housing SEPP and the Standard Instrument Local Environmental Plan provisions relating to the following are currently being reviewed:
 - in-fill affordable housing;
 - planning pathways for social housing and affordable housing;
 - group homes and hostels;
 - temporary supportive accommodation;
 - seniors independent living unit accessibility standards; and
 - boarding houses.
- An Explanation of Intended Effect (EIE), setting out the proposed changes to these provisions, was exhibited from Tuesday 22 November 2022 until Friday 13 January 2023. The exhibited EIE can be viewed on the NSW Planning Portal.

Expanding Urban Development Programs (UDP) to new locations

- The Department has commenced an expansion of the UDP to the Central Coast, Upper Hunter and Mid Coast, and the Canberra Region
- A key component of the UDP framework is the UDP dashboard which provides readily available data and information on housing approvals and completions.
- Dashboards enable transparent oversight of regional housing supply and trends to enable evidence-based monitoring and decision making.
- In addition to developing new UDP dashboards for UDP regions, a dashboard has also been developed for the North Coast to support the North Coast Urban Housing Monitoring Program identified in the North Coast Regional Plan 2041 and to support the work of the NRRC.
- As part of this work the Department has also developed a Housing Supply Pipeline Audit methodology. Once tested and reviewed it is intended that that the methodology will provide a consistent approach to identifying:
 - whether development ready land supply is adequate to meet short term housing needs;
 - whether zoned land supply is adequate to meet future needs over the medium and longer term;
 - how quickly land progresses through the planning system and when zoned land capacity can be expected to be realised; and
 - barriers to the delivery of housing, including when these are resolved or if further intervention is needed.

- The Housing Supply Pipeline Audit methodology is currently being piloted in select LGAs subject to the UDP expansion. The audit methodology is also set to be piloted in the North Coast region in the coming months.

Supporting regional councils with the assessment of development applications

- The NSW Government acknowledged that some councils, especially those in regional areas, are experiencing a shortage of qualified planners meaning that under-resourced councils have reduced capacity to assess development applications (DA), leading to longer assessment times, fewer DAs determined and delays in the delivery of regional housing.
- In response, the NSW Government is boosting the capacity of councils to speed up assessment times and deliver housing in regional NSW through the Regional Housing Flying Squad.
- The Regional Housing Flying Squad initially launched a pilot program in April 2022.
- All 96 regional councils were eligible for the program if they demonstrated that DAs would support the delivery of housing in regional NSW. Byron Shire Council did not apply for assistance.
- The Department has partnered with the Planning Institute of Australia to help councils hire more student and graduate planners, by creating a new category on its job portal, and funding the advertising costs for councils lodging student and graduate job advertisements for 12 months to help councils hire more student and graduate planners
- The Department has also set up a supporting mentorship program, where student and graduate planners at councils can sign up to be mentored by senior staff at the Department.

Policy framework

a) In regard to the NSW Government's short-term rental accommodation (STRA) register:

- **What type of information is collected as part of the registration scheme?**

The information collected by the STRA Register is established under the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021* (the Regulation).

The Regulation establishes the legal mechanism for the STRA Fire Safety Standard and STRA Premises Register. Section 102C sets out that the Planning Secretary must establish and maintain a register of dwellings used for the purposes of short-term rental accommodation on the NSW Planning Portal (the Portal).

The register must contain the following information for each dwelling used for the purposes of STRA:

- the address of the dwelling;
- the type of residential accommodation (i.e. dwelling house, residential flat building, dual occupancy etc);

- whether the dwelling will be used as hosted short-term rental accommodation or non-hosted short-term rental accommodation;
- the name and address of the host of the dwelling (host being the owner or tenant); and
- a declaration that the dwelling complies with the STRA fire safety standard.

In addition, the *Environmental Planning and Assessment Regulation 2000* sets out the requirements for registration payment, registration duration and renewals.

A subsequent report will be provided to the Commission outlining the main findings from the register.

- **How are day limits monitored and how is the system being enforced?**

STRA is exempt development under the Housing SEPP and councils are responsible for compliance in their local government areas. This is consistent with the approach to other exempt development provisions (e.g. under the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 and most other local planning matters.

The Housing SEPP provides the planning pathway for STRA to occur in a lawfully constructed residential dwelling as exempt development. Exempt development is a planning pathway that allows certain development or activities to occur without planning approval provided they comply with the relevant standards and requirements.

Under the policy, hosted STRA can occur 365 days per annual period. Non-hosted STRA is restricted to 180 days per annual period in certain locations. The locations restricted to 180 days includes the Greater Sydney Region and some nominated regional areas, including the Byron Shire. In all other areas, non-hosted STRA can occur 365 days per annual period.

To assist councils in effective monitoring and enforcement of STRA compliance matters (including any relevant day cap) the STRA Register has been established to collect booking data for STRA dwellings.

The data is collected via agreements with major online booking platforms, including Airbnb, Booking.com and the Expedia Group. The platforms share data daily via an application programming interface with the Portal to update the STRA Register with current booking data for each registered property.

Hosts who do not use a major booking platform are required to manually record booked days within the STRA Register. The register allows hosts and platforms to add, modify or cancel upcoming bookings up to three years in advance. Hosts can therefore track their planned bookings for a registration year to understand when the STRA dwelling is approaching the cap.

The register also updates and counts completed bookings daily with a separate counter so a host can track the days that have been used so far in a registration year.

The register sends automated emails to non-hosted STRA hosts subject to the 180 cap as they are approaching the limit. The emails are sent when bookings reach 100, 120, 160 and 180 days.

The requirements for platforms to share data and for hosts to keep records of bookings are maintained within the mandatory Code of Conduct for the Short-term rental accommodation Industry that is administered by the NSW Department of Customer Service (NSW Fair Trading) and enforceable under the Fair Trading Act 1987.

Councils have access to the STRA register and booking data.

Each local council in NSW has access to STRA registration information in their LGAs via the Portal. In the Portal, authorised council staff can view all information provided by hosts in relation to STRA dwellings and the number of booked days used and planned in the current registration year. Councils can also view the upcoming bookings for the two following registration years.

- **Is there an exclusion register?**

Yes. The STRA exclusion register is the responsibility of NSW Department of Customer Service (NSW Fair Trading) and administered by the Commissioner of Fair Trading.

It is part of the mandatory Code of Conduct for the Short-term Rental Accommodation Industry that commenced on 18 December 2020. The Code is established under the *Fair Trading Act 1987* and the *Fair Trading Regulation 2019*. The code applies minimum standards of behaviour and requirements on all participants and lists disciplinary actions available to NSW Fair Trading when the code is breached.

Under Part 4.2 of the Code of Conduct, NSW Fair Trading is required to keep and administer an exclusion register that is publicly available. The Exclusion Register is a list of guests and hosts who have been excluded from participating in the STRA industry. Hosts can be listed either as a host in general, or as a host in relation to a specific premises.

Once listed on the Exclusion Register, the person or premises is prohibited from participating in the short-term rental accommodation industry for 5 years. Recording of a host, premises or guest on the Exclusion Register is subject to the disciplinary and compliance processes set out in the Code and the requirements relating to the Exclusion Register set out in the Code.

Currently, there are no people or premises listed on the Exclusion Register. Should the Department of Customer Services seek to record a host or property on the Exclusion Register, this action will also update the STRA Register with the excluded status.

More information on the Exclusion Register and Code of Conduct is available from NSW Fair Trading:

- [Short-term rental accommodation exclusion register](#)
- [Code of conduct for the short-term rental accommodation industry](#)

Regional Housing Taskforce

- b) How unique is the Byron Shire case study compared to other regions in NSW – are similar issues being experienced elsewhere in relation to housing availability and affordability?**

Data validity in relation to the planning proposal

- e) **There have been issues raised by key stakeholders in relation to the validity of the data obtained, particularly in relation to the proportion of non-hosted STRA in Byron Shire and differences between the Department's figures and estimates in Council's planning proposal (and the Economic Impact Assessment prepared by Urbis) - can the Department explain the differences between these figures?**

The key reasons behind the implementation of the NSW STRA Register was to improve guest and visitor safety in STRA dwellings and to give State and local governments better data to understand the size and location of the industry to help make informed decisions on future housing supply and impacts on local rental markets.

Prior to the register being in place, information regarding the location and scale of STRA properties was based on estimates and third party 'data scraping' of online booking platforms. In many cases, this data scraping poorly distinguishes residential properties and other forms of tourist accommodation that are commonly advertised on online booking platforms. This means that other non-STRA accommodation such as backpackers, serviced apartments, strata resort complexes, caravans and mobile homes are incorrectly counted as non-hosted STRA dwellings.

In addition, high level reports on STRA figures sourced by data scraping industry generally do not acknowledge the frequency of bookings or use of a particular property. For example, a property owner may have listed their second home or holiday home once or on a very infrequent basis a number of years ago. Whilst the property is kept for private use and no longer used for STRA, an owner will generally not delete an online booking listing as they want to keep a record of any positive reviews. This is on the chance they may choose to list the property again in the future. This results in many properties that are not on the active STRA market being included in the overall figures sourced by the data scraping operations, further increasing estimates of the current size of the industry.

It is also important to recognise the STRA policy framework seeks to regulate a previously unregulated industry. Key measures such as day caps, strata-by-law reform and compliance under the mandatory Code of Conduct seek to play a role in influencing property investment decisions to balance use between short-term and long-term rental accommodation. The ongoing impacts of the COVID-19 pandemic and state and international lockdowns are also considered to have had a role in limiting the opportunity benefit of STRA in some local housing markets.

The data relied on in the Economic Impact Assessment (EIA) was sourced from AirDNA and provided to Urbis by Council. AirDNA is a third-party source of Airbnb and Stayz listings data. AirDNA scrapes (extracts) data from Airbnb and Stayz then uses algorithms to identify dual-listed properties and distinguish between bookings and when a property has been blocked out by the host (but not booked by a guest). AirDNA also partners with channel managers, hosts, and property management systems to add real reservation data from over 1.1 million properties around the world. This is used as a quality control mechanism to fine-tune AirDNA's reporting and analytics. On their website, AirDNA claims that a report by CBRE found AirDNA data to be 97.5% accurate in reporting the active supply of holiday rentals.

The Department defines “non-hosted” STRA as “accommodation can be carried out without the host residing on the premises”. However, AirDNA does not use the terminology of “hosted” and “non-hosted”. Instead, AirDNA identifies properties by “Listing Type”, which includes the following categories:

- Private room
- Shared room
- Hotel room
- Entire Home / Apartment.

It is understood these Listing types come directly from the scraped Airbnb and Stayz data and are identified by the property hosts themselves. For the purposes of the EIA, Urbis assumed properties identified as Private rooms, Shared rooms or Hotel rooms were “hosted”, while properties identified as Entire Home / Apartment were “non-hosted”. This is consistent with Council’s planning proposal. However, it is possible that some hosts might categorise any type of self-contained accommodation as an “Entire Home / Apartment”, including cabins, bungalows, and caravans.

In comparison, it is understood the Department’s source of the count of non-hosted STRA is the STRA Register. As this is self-registered data, it is possible that owners may not categorise their STRA as “non-hosted” even though it may be defined by AirDNA as an “Entire Home / Apartment”. This may explain the differences between figures.

Nevertheless, the Department is of the view that the STRA Register is now the most accurate data source for identifying non-hosted STRA dwellings. This data was used by both Council and the Department at the recent public hearings. A further analysis of this data will be provided to the Commission.

Economic Impact Assessment

f) How has the non-hosted percentage of STRA in Byron Shire been calculated in the Economic Impact Assessment (EIA)?

The data relied on in the EIA was sourced from AirDNA and provided to Urbis by Council. AirDNA does not use the terminology of “hosted” and “non-hosted”. Instead, AirDNA identifies properties by “Listing Type”, which includes the following categories:

- Private room
- Shared room
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It is understood these listing types come directly from the scraped Airbnb and Stayz data and are identified by the property hosts themselves. For the purposes of the EIA, Urbis assumed properties identified as Private rooms, Shared rooms or Hotel rooms were “hosted”, while properties identified as Entire Home / Apartment were “non-hosted”.

g) In the EIA, data suggests that 62% of STRA properties are available for greater than 180 days, however 61% are occupied for less than 90 days – given this, is the introduction of a 90-day cap likely to make any significant difference?

In terms of whether the 90-day cap would make a significant difference to the housing market, the survey of property owners indicated that ~34% of STRA properties (or ~1,810 STRA properties) reported they would convert to long term rental or owner-occupation in response to the introduction of a 90-day cap outside of Council-defined STRA precincts. This equates to ~12% of the ~15,120 dwellings in the LGA, or an 18% increase in the total number of long-term rentals and owner-occupied dwellings.

However, the survey also indicated there would be a difference under the Base Case: SEPP Default with ~19% of STRA properties (or ~985 STRA properties) reporting they would convert to long term rental or owner-occupation in response to the introduction of a 180-day cap across the entire LGA. This equates to ~7% of the ~15,120 dwellings in the LGA, or a 10% increase in the total number of long-term rentals and owner-occupied dwellings.

Additionally, based on Urbis' assessment, the 90-day cap would make a difference to the tourism market. While 61% of STRA properties are occupied for less than 90 days, this does not equal 61% of STRA visitor nights. In other words, the 39% of STRA properties that are occupied for more than 90 days per year (23% of these STRA properties are occupied for 91-180 days, while 16% are occupied for 180-365 days) are contributing a larger share of visitor nights than the 61% of STRA properties that are occupied for less than 90 days.

3. What actions are being pursued in relation to housing for First Nations communities in Byron Shire and Northern NSW (e.g. Closing the Gap housing targets and outcomes)?

The NSW Government is pursuing several actions to ensure First Nations communities in Byron Shire have equal access to, and choice in, affordable housing.

The Aboriginal Housing Office owns, funds, and finances the delivery of, and access to affordable, quality socially and culturally appropriate housing for Aboriginal and Torres Strait Islander people and families in remote, regional, and metropolitan NSW. The AHO owns over 6,000 properties across NSW with an estimated book value of \$2.8 billion. There are 8 properties in Byron Shire under the AHO ownership. Whilst increasing access to dedicated Aboriginal social and affordable housing is a key priority, no new AHO homes are currently planned for the Byron Shire LGA and the AHO currently holds no land in the Byron LGA. The AHO have although, completed 6 new Dwellings within the surrounding LGA's of Lismore, Ballina and Tweed in FY 21-22 and have a further 16 in the pipeline for delivery across these LGA's through the 23-25 Financial Years.

In June 2022, AHO was awarded \$149.8m through the NSW Government's Housing Package to deliver a Closing the Gap focussed program of new housing construction and property upgrades. The Closing the Gap program aims to alleviate overcrowding in Aboriginal households by delivering housing types that are currently underrepresented in the AHO portfolio. Over the 3-years to June 2025, new homes will be built in more than 50 Local Government Areas.

As part of the Phase 2 implementation of Strong Family, Strong Communities Program, the NSW Government has invested \$67.2m to build and expand on successes achieved during the first four years of the strategy's implementation. Through the Strengthened Sector and Communities Program this investment is being used to deliver a suite of

programs aimed at improving housing outcomes and supporting sector growth which include:

- Home Ownership Options Program which will support up to 80 Aboriginal people to buy their own home per year, over four years.
- Tertiary Accommodation Grants which will support up to 75 student grants per year, over four years. Support for up to 260 families with Supporting Aboriginal Tenancy packages over four years.
- Aboriginal Housing Management Transfers which have seen the transfer of over 1000 dwellings in this financial year.
- Ongoing support for the NSW Aboriginal Community Housing Industry Association (NSW ACHIA).
- The Sector Capability Fund which will support up to 125 ACHPs to obtain and maintain registration, over four years.

In addition, the National Housing and Homelessness Agreement (NHHA) between the NSW and Commonwealth Government also commits to improving outcomes for Aboriginal social housing tenants. Achieving these targets under NHHA will support the outcomes being sought within the National Agreement on Closing the Gap.

4. Are local councils able to apply different rates levied under the Local Government Act to STRA properties under the current legislative framework? What would be required to do so?

Under the *Local Government Act 1993* the appropriate category for levying rates is based on an assessment of the dominant land use.

Rating provisions in the Local Government Act would not currently permit a council to apply a different rate for residential properties being used as STRA. Any change to this policy would need careful consideration by Government, broad consultation and an Act change.

The Department is committed to working with Byron Shire Council to achieve better housing supply and affordability outcomes. If the Commission has any further enquiries or requires additional information, I have arranged for Mr Malcolm McDonald, Executive Director, Local and Regional to assist. Mr McDonald may be contacted on 9274 6267.

Yours sincerely



2/3/2022

Monica Gibson
Acting Deputy Secretary
Planning Land Use and Strategy