

7th March 2023

Dear IPC Commissioners

**RE: Support for the Byron Shire Short Term Rental Accommodation (STRA)
Planning Proposal for a 90-Day Cap**

Thank you for taking the time to read our submission. Please note, throughout this submission we will be referring to this industry as non-hosted Short Term Holiday Letting (STHL), as that is the more accurate term.

We fully support Byron Shire Council's proposal to limit non-hosted STHL to 90 days in the majority of the Byron Shire, with designated 365-day precincts. Although we would prefer that alternate measures are used to regulate STHL, such as enforcement of zoning in Local Environment Plans and the definition of STHL as commercial activity, we recognise that the NSW Government has unfortunately over-ruled Byron Council's ability to effectively regulate land use zoning.

The reasons for our support are as follows, and we make several supplementary recommendations for consideration by the IPC:

1. Reduced amenity for neighbours from non-hosted STHL

We purchased a rural property in Eureka in 2008 with the aim of raising our young children in a peaceful community. Our property is zoned RU1 – Primary Production under the Byron Local Environment Plan 2014. Until 30th January 2022, tourist and visitor accommodation was only permitted in this zone with Development Approval, and only if it supported the objectives of the zone.

However, in 2014 the neighbouring small acreage property was sold to an interstate investor who undertook non-Council approved renovations on the heritage-listed property and started to run non-hosted STHL, including weddings. Almost overnight, the peaceful amenity of our home was destroyed. The STHL hosted raucous parties most weekends. STHL guests' cars would trespass on our property late at night seeking directions to the STHL. The police were always too busy to attend – fair enough, they are not a private security force for a commercial operation. One of us works as a consultant doctor at a large regional hospital, with a quarter of our life spent "on-call" – the sleep disruption caused by the STHL next door not only caused great distress, it contributed to fatigue potentially affecting patient safety.

The STHL's septic system had not been upgraded to cope with the number of guests accommodated, resulting in effluent overflow. There were insufficient garbage bins to cope with the waste generated, with overflowing garbage being strewn along the road. The absence of on-site owners meant that it fell to neighbouring residents to clean up the resulting environmental disaster.

Council attempted to intervene on our behalf, but these issues occurred concurrently with an exponential rise in STHL across the Shire, which overwhelmed council's limited resources to enforce compliance.

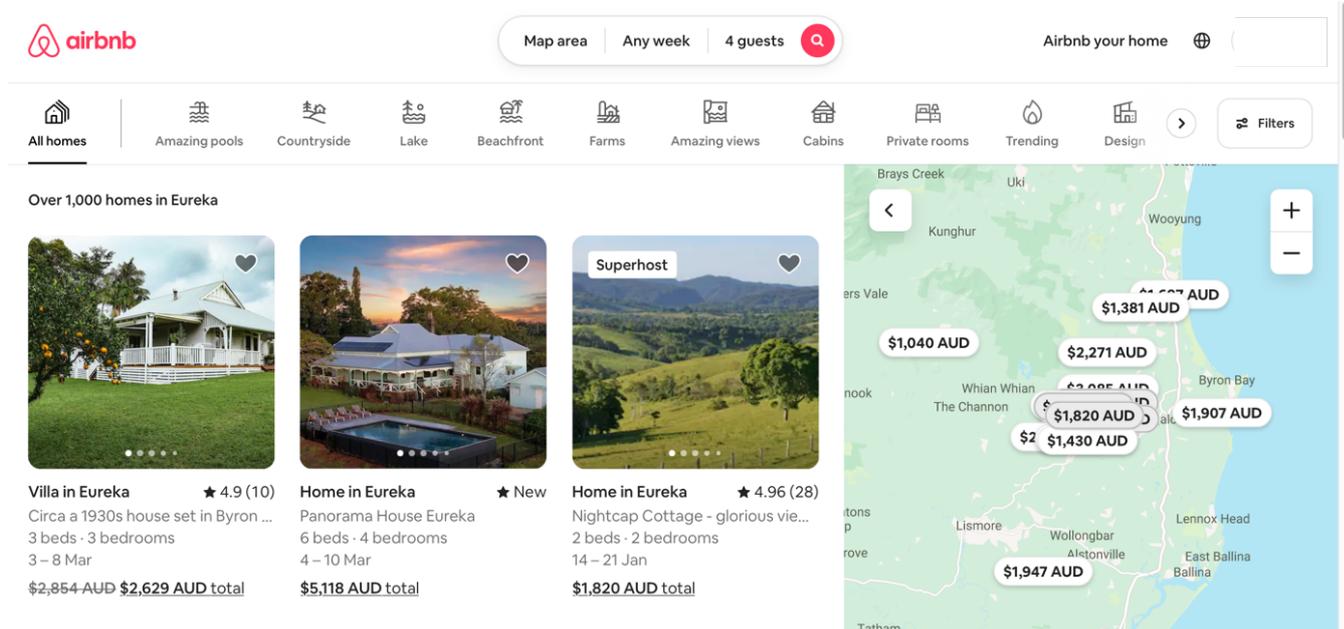
After the STHL owner tried and failed to gain Development Approval (DA) to operate as a wedding venue, the property was sold in 2017 with the real estate marketing campaign promoting it as an existing STHL property, even though it did not have development approval to operate as such. We reported this to NSW Fair Trading, but the property was sold before they could intervene, and once again the property was bought by non-resident investors.

Although the property could no longer be advertised as a wedding venue, there was no way to prevent the property being used in this manner. The ultimate insult was when they ran a wedding on the day that we got our son home from 6 months in hospital rehabilitation after a severe traumatic brain injury – he needed to sleep yet there was a wild party next door. Although we provided photographs and screenshots of the wedding Instagram posts, council lawyers said there was insufficient evidence, and nothing was done. Hence, the STHL issues continued until 2021 when the owners finally moved into the property during Covid and have remained there since.

However, we dread another local property selling because under the 180-day cap, anything sold is highly likely to be bought as a lucrative non-hosted STHL, rather than as a home or long-term rental. In fact, this has happened with the following properties in and around Eureka, a hamlet of only 146 dwellings:

1. Benny's Cottage (<https://www.bennyscottage.com.au>),
2. The Old Rectory – Panorama House (<https://www.airbnb.com.au/rooms/790699626953437692>)
3. Circa (<https://www.airbnb.com.au/rooms/619099249024450314>)
4. Nightcap Cottage (<https://www.airbnb.com.au/rooms/1130956>)
5. The Greenway (<https://www.airbnb.com.au/rooms/1130956>)
6. Amelika (<https://www.airbnb.com.au/rooms/52476806>)

These are in addition to the many other non-hosted STHLs operating in the nearby villages of Federal, Coorabell, Possum Creek, Binna Burra and Nashua (see screenshot below of Airbnb availability - over 1,000 homes - in the vicinity of Eureka taken on 3rd March 2023).



Particularly concerning to us is that living peacefully in rural properties anywhere will become impossible now that the NSW Government has:

- legalised STHL/ STRA as Exempt Development under the NSW Housing State Environmental Planning Policy Part 6; and
- introduced the NSW Agritourism policy (<https://www.abc.net.au/news/2022-12-01/nsw-farmers-go-ahead-agritourism-diversify-farm-business/101717830>) in line with the Airbnb-funded National Agritourism Strategy Framework (<https://news.airbnb.com/en-au/airbnb-funded-agritourism-2030-sets-a-roadmap-for-long-term-strategy-growth/>)

We are horrified by the far-reaching implications of this, given that there is now **nowhere** in NSW that a resident can be guaranteed to be free of a non-hosted-STHL next door despite the 2013 NSW Land and Environment Court¹ finding that living next to an STHL can cause overwhelming stress to neighbours who are entitled to peaceful amenity of their homes. And from our own experience, we would go further to say that STHL and residential amenity are fundamentally incompatible, hence the need to introduce STHL precincts and STHL-free zones.

Furthermore, we believe that the current NSW Fair Trading STHL Code of Conduct² is completely ineffective and has clearly been written to advantage the STHL industry as the expense of the community. Living rurally with few neighbours to make complaints, it is very easy for the Commissioner to dismiss our complaints as being “frivolous, vexatious, trivial, misconceived or without substance”. Indeed, this is also the case in Byron Bay, where many homeowners are now surrounded by a sea of STHLs.

We also note that:

- a member of the public has no easy way to check whether a property is listed on the STHL Register as it is not publicly available;
- as far as we are aware, there has been no audit of the STHL Register against non-hosted STHLs available for rent in the Byron Shire, including the number of nights rented. This gives no confidence in the accuracy of the Register or the level of compliance with the current 180-day cap;

¹ [2013] NSWLEC 61 - Justice J Pepper - Dobrohotoff v Bennic

² https://www.fairtrading.nsw.gov.au/data/assets/pdf_file/0012/925788/Code-of-Conduct-for-the-Short-term-Rental-Accommodation-Industry.pdf

- c) it is impossible to directly contact the Fair Trading STHL team by phone or on-line (see <https://www.fairtrading.nsw.gov.au/help-centre/online-tools/make-an-enquiry>). Instead, you can only get through to Service NSW by phone, and they cannot answer questions or transfer you to the relevant Fair Trading team. This is extremely frustrating and is an obvious barrier to vulnerable groups (eg those with disabilities, non-English speakers, the elderly etc);
- d) it is impossible for a member of the public to have any confidence in the existence of the exclusion register because there is no way to ascertain the number of entries on the register, or lack thereof. Although the exclusion register is searchable for a specific guest or STRA provider, in a phone call to Fair Trading via Service NSW on 6th March 2022, they were unable to tell us whether there were any entries on the register at all; and
- e) a property can be sold and then easily be taken off the exclusion register, just for the whole nightmare for neighbours to begin all over again.

Recommendation 1: Members of the public should have the ability to directly contact the STHL team at NSW Fair Trading by telephone and on-line, and be able to easily ascertain whether a particular STHL property is listed on the STHL Register and the actual number of properties listed on the Exclusion Register.

Recommendation 2: There should be a public review of the effectiveness of the Code of Conduct as soon as possible with recommendations for improvement/ a complete overhaul. The review should include an audit of the STHL properties listed on (and omitted from) the STHL Register in the Byron Shire, the numbers of complaints made to Fair Trading, how many were dismissed as vexatious etc, how many were accepted, the number of guests and STRA providers who have had action taken against them, how many guests and STRA are listed on the exclusion register, how many properties were taken off the exclusion register and then re-registered as STHLs, a survey of affected parties on the effectiveness of the Code of Conduct etc.

2. The affordable accommodation crisis

House prices in the Byron Shire are highly inflated because any dwelling that is sold (including small units up to large rural properties) but can be rented out for hundreds/ thousands of dollars per night on STHL platforms every school holiday and every weekend. Hence, dwellings that once were affordable and housed locals, including granny flats and secondary dwellings on rural properties, are now lucrative investments facilitated by negative gearing tax concessions.

There is now no financial incentive to live in a property full time and contribute to the community, or to rent to long term tenants. However, this comes at the expense of affordable housing for the local community, especially essential workers and their families, as shown by research both in Australia and internationally³. Instead, effectively unregulated STRA (as is the situation with the 180-day cap in NSW) causes conversion of long term to short term rentals, and the associated housing crises for essential workers. This situation has been exacerbated in the Byron Shire due to the Covid pandemic and the 2022 floods to the point that what was once a crisis, is now a catastrophe. We simply need to house our local community before providing our homes to tourists that can be adequately accommodated in existing Approved Accommodation such as hotels and motels.

Furthermore, in terms of rural localities in the Byron Shire, we have small and close-knit communities, and every home that is removed from the long-term residential owner-occupier or rental market means less diversity in our community, less children at our local schools and less volunteers to run local emergency services, community spaces, sporting groups and events, and it also leads to less social cohesion overall.

3. Lack of essential workers

Despite the STRA lobby's assertions that tourism is the main industry in the Byron Shire, the 2021 Census shows that this is not the case. The Health and Welfare Services, Education and Training Providers and Construction industries make up more than the Accommodation and Food Services and Retail jobs combined, and each of these sectors are at crisis point with respect to housing their employees. What is particularly ironic, is that even the STHL industry itself is reportedly struggling to find employees for cleaning and maintenance because they cannot afford to live within a reasonable commuting distance of their work!

In fact, this crisis goes much beyond workers on minimum wages. Our GP left the area 18 months ago with his young family because there was no way he could afford to have a reasonable standard of living in the Northern Rivers due to the housing costs. And our current GP has also expressed her concern regarding the impossibility of ever being able to buy her own home here. If even our medical professionals are struggling, what does this mean for the rest of our community?

³ IPC Submission - Byron Shire STRA Planning Proposal - Professor Jeffrey Lewis – 7th March 2023

Of particular concern has been the rise in the number of business owners reportedly providing accommodation for their employees. Whilst the majority of these owners are well-meaning, we would like to highlight the increased risk of exploitation when business owners are not only providing employment, but also a visa and accommodation. The incentives for exploitation are obvious.

4. Rebuttal of STHL industry arguments

Over the years, we have listened to the arguments of many STHL investors but have never found them to have substance. To our mind, they are based on financial self-interest, and the belief that they are “entitled” to do what they like with the community’s housing stock, despite the fact that many of our residents do not have a secure roof over their heads. As such, we attach an Appendix to this letter which gives the counter-argument to the form letters received by Council from STHL owners against the 90 day cap. We note that the Commission was particularly interested in these letters at the public hearing, and trust that the arguments given in our rebuttal letter will hold equal (or even greater) weight.

In addition, here are some of the most common arguments given and our rebuttals/solutions:

1. “Our holiday homes are worth millions of dollars and are not suitable for essential workers”. As Professor Phipps points out ⁴, “this doesn’t reflect how rental markets work. When vacancies are tight and properties scarce, higher income households end up outbidding lower income households for cheaper housing stock. Providing more expensive stock frees up lower income stock as higher income households are able to move into the more expensive stock if it becomes available”.
2. “If the cap is reduced to 90 days, I still won’t long term rent my property”. The solution to this is to introduce a substantial vacancy levy for each night that the property is not let. This levy should be used to provide funds for affordable housing projects in the Byron Shire that are protected from STHL in perpetuity. Moreover, by reducing the cap to 90 days, it sends a clear message to future potential investors that STHL is not a reliable income stream and that it is subject to changeable regulation where, should the 90-day cap not be effective, it could go further.
3. “It’s not STHL, it’s an issue with supply – we just need to build more”. With a 180-day cap on STHLs, there is no financial incentive to long term rent any property that is purchased in the Byron Shire. Instead, the owners are able to have their cake and eat it too by having a holiday home that makes money when they aren’t using it, and any losses can be negatively geared. Hence, we need to cap the number of allowable days to 90 (preferably 45/30 days), ban negative gearing on holiday homes and introduce a vacancy levy. Until, at the very least, the 90-day cap is introduced, there is absolutely no point in building more, thereby using more valuable resources and destroying more of our beautiful environment that has been protected for generations, just for more holiday homes. We simply must make better use of the residential dwellings that were built as homes, not de-facto hotels.
4. “We need more social and affordable accommodation”. Yes we do, but at the present time, here are no plans at any level of government to build further social housing in the Shire, and we have granny flats and units that have been approved as affordable rentals, but are operating as STHLs due to the legal confusion between whether a Council DA Condition of Consent can stand up in court against the NSW Housing SEPP Part 6 for hosted/non-hosted STHL. If the IPC could clarify this legal conundrum and make a recommendation for more social housing to be allocated to our Shire this would be very welcome.
5. “We just need a bed tax”. Whilst a bed tax would certainly be one option, this has currently been ruled out by the NSW Government. If it were to be introduced, the funds would need to go directly to Byron Shire Council rather than to consolidated revenue. As the ratepayer base is so low in the Byron Shire, it would certainly help with critical infrastructure costs as currently the rates of around 17,000 dwellings support approx. 2.2 million visitors – a ratio of 130 tourists to every household, but a bed tax alone will not provide affordable housing. Only making better use of existing homes by effective regulation of STHL and purpose-built housing protected from STHL will achieve this.

In summary, it is very clear that this rapacious industry needs regulation to swing the economic model back in favour of long-term rentals. Despite the socially destructive effects listed above, it is clear from the ASTRA-funded campaign that many STHL owners believe that their pursuit of individual profit outweighs all other considerations. They have shown that they view this as a Darwinian contest of strength where their financial might can overpower the community’s best interests. Regulation is the only “lever” to effect change, as ethical conscience does not factor into their balance sheet. For example, when we proposed a voluntary levy of \$5 per STHL per night to fund provision of affordable accommodation for essential workers, every STHL owner we spoke to laughed this concept off as absurd, despite some properties charging over \$2500 per night.

⁴ Peer Review of URBIS Economic Impact Assessment – Professor Peter Phipps – 24th Dec 2021

Furthermore, we suspect that NSW Members of Parliament are compromised in their ability to make a decision in the best interest of the community, due to conflicts of interest (many members own STHLs), industry donations (essentially bribery) and perhaps even "dirt files" held against politicians (essentially blackmail). We believe that those MPs who are compromised in their ability to make choices that are in the best interests of the community would actually welcome the IPC forcing effective regulation so that they can say that the decision was taken out of their hands.

In conclusion, we trust that the IPC will come to the same decision that our elected Council members have in that the 90-day cap is in the best interests of the community and recommend its adoption to the NSW Government.

Yours faithfully

Dr AB and Ms CD

Form letter from STHL owners to Council:

Dear Council Member,

I'm a local property owner writing to ask you to stand up against the proposal to cap short term rental stays to 90-days per year. This policy would strip my neighbours and me of our basic property rights without doing what it claims and increasing the rental pool for workers.

The policy depends on misleading data and incorrect assumptions. Council, you claim there are 5,428 non-hosted holiday homes in Byron Shire. That's just not the case! The NSW Government's mandatory property register which commenced on 31 January 2022, reported that as of 31 August 2022 there were 1,136 non hosted properties in Byron Shire. You simply can not return 1,500 homes to the permanent rental pool, because they don't exist.

My house is a holiday home not an investment property. I lease it out to families visiting the region to help cover expenses when I'm not staying in it and as a way of supporting the local community. If I were to rent it out permanently, I could no longer stay in my home.

When I put my property up for short term lease it generates value for local businesses and for the community. Short term rental accommodation (STRA) properties add 1,448 jobs and \$267m per year to the local economy. If this policy goes through, the person who cleans my home / maintains my garden / carries out repair work etc. will be out of a job. What's more, the café/restaurant down the road, retail outlets, transport providers etc. will suddenly lose an influx of local families who it relies on.

Most of my guests are families, because I know families will treat my home well and not disrupt our neighbours. Families tend to spend more money in the community eating out, shopping, and enjoying all the activities Byron has to offer.

I have been visiting Byron Bay for decades. I love this town and see myself as a part of the community. I want Byron Shire to thrive. I pay rates, vote in Council elections, and ensure my property adds value to the local business community, even when I'm not staying in it.

This policy makes me feel like the Mayor views property owners as second-class citizens. He has made us scapegoats for his policy failures.

As Michael Lyon himself said, "I think that landlords will either start selling, or look for longer term tenants and I don't think either of those outcomes are a bad thing because it puts downward pressure on housing prices." Property owners are not to blame for the development and sewerage moratoriums, low density housing strategy and decades of inaction on housing supply.

The mayor wants to rob me of my property rights and decrease the value of my home. Is council planning on reimbursing me and those like me for the lost income and the devaluing of our homes? This policy boils down to nothing more than discrimination against a subset of the Byron community.

Regards

An STRA Owner

To the IPC from us:

Dear IPC Panel Member,

We're local property owners writing to ask you to stand up for the proposal to cap short term rental stays to 90-days per year. This policy would increase the likelihood that we and our neighbours can live peacefully in a community in line with the basic property rights which were in place when we bought our properties, whilst increasing the rental pool for workers.

The ASTRA-funded campaign depends on misleading data and incorrect assumptions. Council claims there are 5,428 non-hosted holiday homes in Byron Shire as supported by the URBIS Economic Impact Assessment Report of November 2021. The NSW Government's mandatory property register which commenced on 31 January 2022, reported that as of 31 August 2022 there were 1,136 non hosted properties in Byron Shire but this has not been audited against all properties available on STRA platforms, and is therefore unreliable data. You can simply and easily return 1,500 homes to the permanent rental pool, if you were to reinstate the strict residential zoning as per the Byron Local Environment Plan 2014.

Our house is a home, not an investment property. If you want to increase the number of long-term rentals, you could also advocate for the Federal Government to remove the negative gearing on holiday homes.

We live in our home and support the local community by shopping locally and being involved in local community groups. If property investors were to rent out their holiday homes permanently, they could no longer stay in their investment properties and could instead level the playing field by staying with Approved Accommodation Providers that have Development Approval, pay business rates, adhere to safety standards, and have suitable parking and accessibility measures in place.

When families live in the Byron Shire it generates value for local businesses and for the community. Short term rental accommodation (STRA) properties add stress to neighbours due to noise, inappropriate behaviour of guests, and parking and garbage issues. This in turn causes the hollowing out of communities. If the 90-day policy goes through, the person who cleans our home / maintains our garden / carries out repair work etc. will still be in a job and will have somewhere affordable to live rather than in their car. What's more, the café/restaurant down the road, retail outlets, transport providers etc. will suddenly have their communities back again.

Most of the guests in STRA are paying a lot and the owners don't care if they disrupt our neighbours, reduce the availability of long-term rentals and erode the community base. Families that live in the community tend to spend more money eating out, shopping, and enjoying all the activities Byron has to offer over the period of a year, rather than just during holiday periods.

We have been living in the Byron Shire for 15 years and have seen the devastating effects caused by unregulated STRA. We love this naturally beautiful Shire and are committed volunteers. We want Byron Shire to thrive. We pay rates, vote in Council elections, and ensure our presence in the Shire adds value to the local business community, especially when we allow house-sitters to stay in our home for free when we are not staying in it.

This policy makes us feel like the Mayor views property owners and long term renters that live here as the beating heart of the Byron Shire, because they are the ones that have made the Byron Shire such a special place to live and visit. He, along with all Councillors who voted for the 90-day cap in December 2022, have put the best interests of the community front and centre with this policy.

As Michael Lyon himself said, "I think that landlords will either start selling, or look for longer term tenants and I don't think either of those outcomes are a bad thing because it puts downward pressure on housing prices."

STRA Property investors are uninterested in the decades of environmental protection that ensure that Byron retains its natural beauty. All they want is to maintain their holiday home "entitlement" and income stream, regardless of the effects on the environment and the community.

The Mayor wants to protect our property rights and increase the liveability of the Byron Shire for its community. Is the NSW Government planning on reimbursing us and those like me for the lost amenity of our home and the loss of our community by overturning sensible planning law to permit STRA in every corner and residential dwelling in NSW?

This policy boils down to nothing more than unwavering support for the majority of the Byron community and we totally support it. In fact, it could go further to 60 or 45 days to reduce the likelihood of 9 months leases for local families and ensure that more properties are turned back to fulltime long-term rentals.

We would also welcome the reintroduction of strict zoning where zero STRA nights are permitted, as having lived next to an STRA in a RU1 – Primary Production Zone for 8 years, where one would expect a reasonable level of peace and quiet, has truly made our lives hell. The fact that there is now NOWHERE in the whole of NSW where a

family can live that is protected from having an STHL next door is in our opinion, a crime against humanity and certainly one's sanity!

Regards

Dr AB and Ms CD