

Byron Shire Council

Submission to Independent Planning Commission: Short Term Rental Accommodation Planning Proposal

Preamble

This submission is divided into the following sections:

- Planning Proposal (v5)
- Questions on Notice
 - Long term leases less than 12months
 - Georeferenced non-hosted STRA properties
 - Addressing affordable housing supply
 - Compliance
 - Levies and rates
 - Data collection
- What we need
- Global case studies

Note. Short term rental accommodation is also referred to as short term rentals, short term holiday lets or holiday lets in this submission

Due to privacy, some information and examples from the DPE Register have been deidentified. Further information can be provided on request.

Planning Proposal (v5)

At the 15 December 2022 Council meeting, Council resolved ([Res.22-729](#)) to amend the 365 day mapped precincts in the exhibited planning proposal and forward the adopted [planning proposal](#) to Department of Planning Industry and Environment requesting that the amendment to the Housing SEPP 2021 be finalised. In doing so, Council acknowledged that the Minister for Planning has sought the advice of the Independent Planning Commission (IPC) before finalising the planning proposal.

Council's adopted position supports a 90/365-day cap across different parts of Byron Shire.

A 90-day cap has been a long-held Council position. Originating in 2004 it was driven around amenity issues and was requested at this time to be an 'amendment to the Local Government Act to define that the activity of temporary letting of 90 days or less in an approved dwelling be required to obtain an approval of Council' (Res. 04-890).

For an overview on the history of short term rental accommodation (STRA) in Byron Shire refer to Figure 1. For further information on the 20 year STRA history (between 2003 to 2023) refer to the Timeline in Appendix 1.

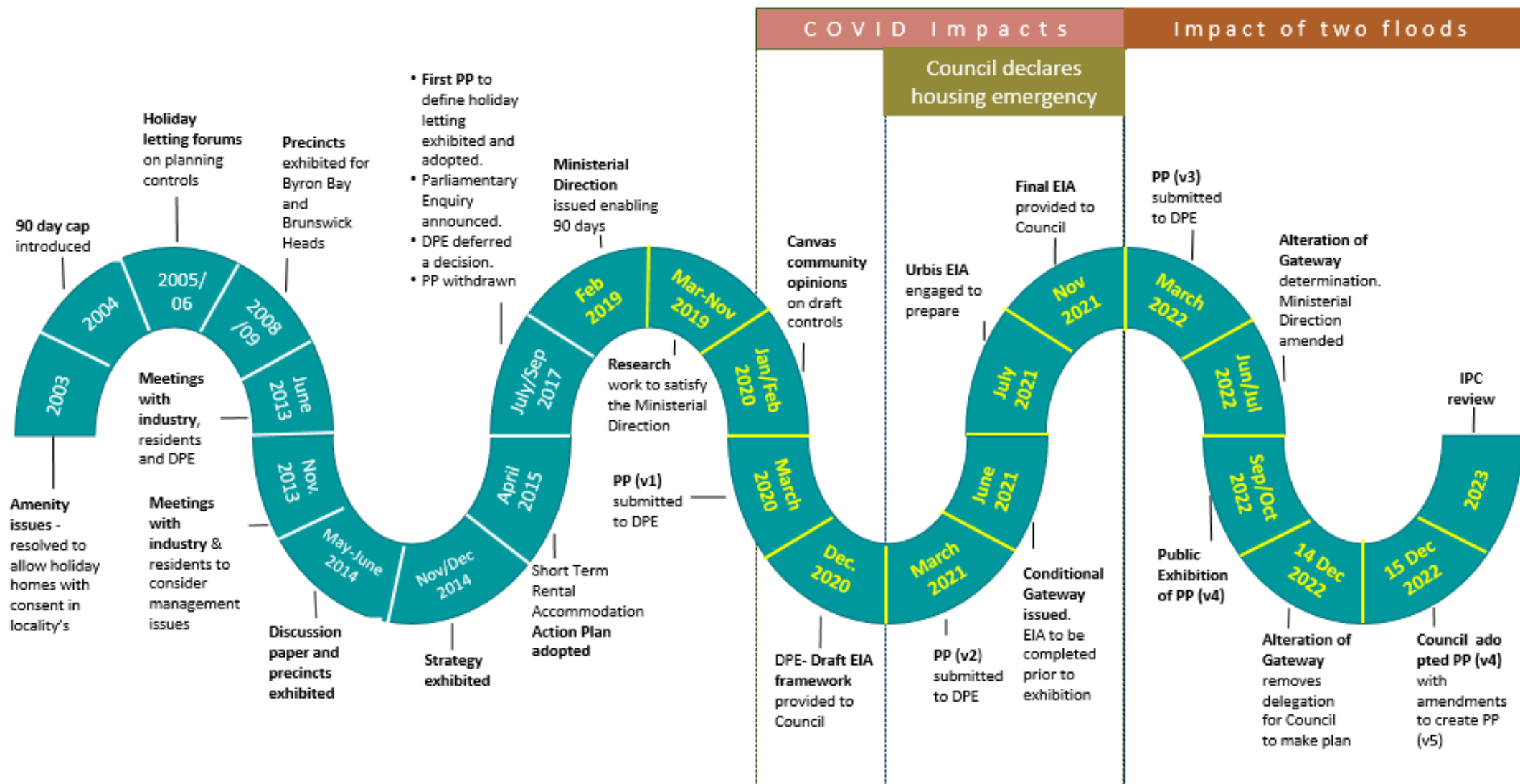


Figure 1. History of STRA from 2003 to 2023

Roll forward to 5 February 2019, when Ministerial Direction 7.2 (previously 3.4) was issued enabling Council to reduce non-hosted short-term rental accommodation to a minimum of 90 days per calendar year and subsequent Gateway determination (24 June 2021) requiring the preparation of an Economic Impact Assessment (EIA).

DPE advised Council that it needed to collate at least 5 years of data to support the EIA. At the time DPE kept no baseline data or criteria to inform Council on what was the minimum standard required in the EIA's preparation. Data was otherwise difficult to source as online platforms such as Airbnb would not supply their data to Council.

To address the Ministerial Direction, EIA and to inform the preparation of PP(v1) Council undertook several pieces of work:

- Preliminary research into Airbnb and other online platforms by staff (data collection, collation, and mining)
- Southern Cross University survey of Byron Shire residents on the impacts of Airbnb
- Southern Cross University research project to understand how Airbnb has impacted approved accommodation providers
- [Impact of Airbnb - Southern Cross University \(scu.edu.au\)](https://scu.edu.au/research/impact-of-airbnb)
- Baseline economic impact data developed

This information wasn't sufficient to satisfy DPE who required further economic information and eventually advised in July 2020 that they would provide guidance on what the EIA needed to address.

As such significant delays were experienced for the planning proposal with DPE guidance on a draft EIA framework not being provided to Council until December 2020. Urbis was engaged by the DPE Planning Development Unit in July 2021 and the final EIA was provided to Council in November 2021.

Post the preparation of the EIA, Council received advice from the Minister that stated:

Given the unique and exceptional circumstances facing Byron Shire regarding the impact of recent flooding on the availability and affordability of housing, combined with the existing high proportion of short term rental accommodation compared to permanent accommodation in the Shire, I have, however, determined it is in the public interest for this proposal to proceed to exhibition without incorporating the findings of the EIA to allow community consultation.

The Minister also gave Council delegation to make the plan on the basis that Council does not reduce non-hosted STRA on any land to less than 90 days. The Gateway was altered to include this provision.

Questions on Notice

During the Public Hearing the IPC asked several questions of Council. Some were partly addressed during the Hearing, and some were taken on notice. Further advice is provided on these questions below.

Long term leases less than 12months

Q. In regard to slide 5 ('Properties returning to long term rental market with 90-day cap') of Council's PowerPoint presentation to the Commission and specifically the 11% segment in the graphic presented therein (copied below), could Council please comment on the economic and social implications arising from the scenario (see dot point below) whereby a property is rented out on a 9-month lease and holiday let for 3 months:

- Under this scenario, a person working in the service industry would be able to access housing in Byron Shire on a 9-month rental lease but would then be unable to access rental housing within Byron Shire for the other 3 months of the year (likely to be summer), having been replaced in that housing by visitors requiring services. So it would seem that this scenario may give rise to an additional challenge in that greater demand for service industry staff would be created at the very time that the amount of accommodation for these staff would be reduced.

Properties returning to long term rental market with 90day cap

- 21% (10% + 11%) return to long term rental market (LTR)
- Based on the number of un-hosted STRA listed today on DPE Register, 286 dwellings would return to LTR
- 14% will sell
- 35% change in behaviour
- reduces rents

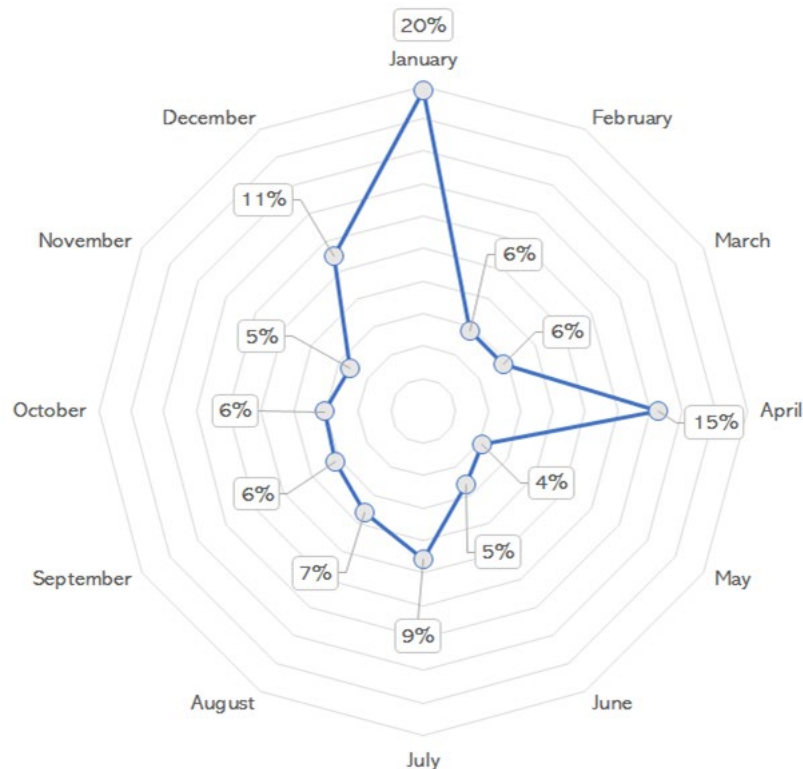
"In a market of about 3,000 long-term rental properties, a change as small as 30 properties can move the vacancy rate by 1%. This can have a significant impact on private rental rates"

(Dr Peter Phibbs)



In response to the question, in Byron Shire, the 90-day cap supports the school holiday periods, which align with our peak tourist seasons (refer to Figure 2) and public holidays/long weekends. January is our busiest period followed by April and then December and July for visitor nights, although there is a fairly strong and consistent visitation level throughout the remainder of the year.

Percentage of Total Rented House/Apartment/Flat or Unit (not serviced daily) Visitor Nights x Month Returned from Trip 2014-2019



Source: TRA National Visitor Survey. Unpublished data 2014-2019. Sample size related to these estimates = 308

Figure 2: Percentage of total rented STRA visitor nights

Long term leases are generally considered those that are greater than 3 months, this again supports the 90-day cap. Whilst the Residential Tenancies Act 2010 doesn't define the period/s of a fixed term lease, the Residential Tenancies Regulation 2019, Schedule 1 - Standard Form Agreement provides the following wording:

Term of agreement

The term of this agreement is—

☐ 6 months

☐ 12 months

☐ 2 years

☐ 3 years

☐ 5 years

☐ Other (please specify)—

☐ Periodic (no end date)

starting on / /20 and ending on / /20 *[Cross out if not applicable]*

Council's planning proposal preparation commenced in 2019 and at that time the Residential Tenancies Act 2010 included cl 8.1(h), which supported Council's position of 90 days. This clause was repealed on 10 April 2020 in line with changes to the STRA policy.

8 Agreements to which Act does not apply

(1) This Act does not apply to the following agreements—

- (h) an agreement made for the purpose of giving a person the right to occupy residential premises for a period of not more than 3 months for the purpose of a holiday,

Leases greater than 3months and less than 12 months are not uncommon in the Byron Shire long term rental market and can suit the needs of some tenants.

Custom and practice in Byron Shire has seen leases between 3 to 9 months met the needs of transient and seasonal workers.

Some tenants have been able to form an agreement with their landlord whereby they exit the dwelling for periods of time with an understanding that they can return post the short-term holiday let. During these times tenants stay with friends or relatives in the Shire or nearby, move into other forms of accommodation, stay in their car, couch surf, house sit, or go on their own holiday. And whilst this may not be ideal for some for others it is part of the compromise they make to secure housing for the better part of a year, particularly in the Byron Shire.

What has changed in recent years is the scale at which homes are now being used for short term holiday lets, both in location and number, due to the rise of home sharing platforms. Traditionally, holiday lets were a common feature of the beach side suburbs of Byron Bay and Brunswick Heads. However, with the rise of home sharing platforms, making it easy for landlords to short-term rent, the use of a residential dwellings for short-term holidays has extended into our traditional residential and rural areas.

'Airbnb was not the first online platform to offer residential tourist accommodation in Australia, but it popularised and scaled-up the notion that anyone could 'host' fee-paying visitors in their own home'¹

In Byron Shire holiday lets are no longer contained to urban areas, the valuer general report on NSW land values 2021 noted Byron rural land values increased 70.5% as the residential market moved into hobby farms and lifestyle properties.

The number of holiday lets in Byron Shire as a percentage of total housing stock is significant comparative to other LGAs, Figure 3.

Council	Housing stock	Airbnb listings	Airbnb % total housing stock	Airbnb whole homes, frequently available as % rental stock
Moreton Bay	166,860	523	0.3%	0.5%
Port Macquarie-Hastings	36,583	397	1.1%	2.5%
Eurobodalla	23,376	475	2.0%	4.5%
Sunshine Coast	129,978	2,710	2.1%	9.4%
Mornington Peninsula	88,996	3,305	3.7%	18.8%
Kiama	9,940	376	3.8%	19.7%
Shoalhaven	54,388	2,283	4.2%	21.6%
Moyne	8,055	362	4.5%	21.8%
Bass Coast	25,775	1,350	5.2%	21.9%
Busselton	18,677	1,001	5.4%	32.9%
Douglas	6,443	856	13.3%	43.4%
Byron	15,540	2,740	17.6%	48.3%
Total		16,378	4.0%*	20.6%*

Source: the authors, based on ABS 2016 (all private dwellings); Inside Airbnb December 2017

*Median of case study communities

Figure 3: Airbnb listings as a proportion of total dwellings, case study communities

Source: Planning responses to online short-term holiday rental platforms, 2018 Nicole Gurran et al

Between April 2016 and October 2020, **the number of properties listed as STRA jumped 137%** (2,030 new listings) from 1,483 to 3,513 properties, Figure 4.

¹ [Airbnb, Platform Capitalism and the Globalised Home - Critical Housing Analysis \(housing-critical.com\)](https://housing-critical.com/)

Extent of Airbnb listings within the Byron Shire

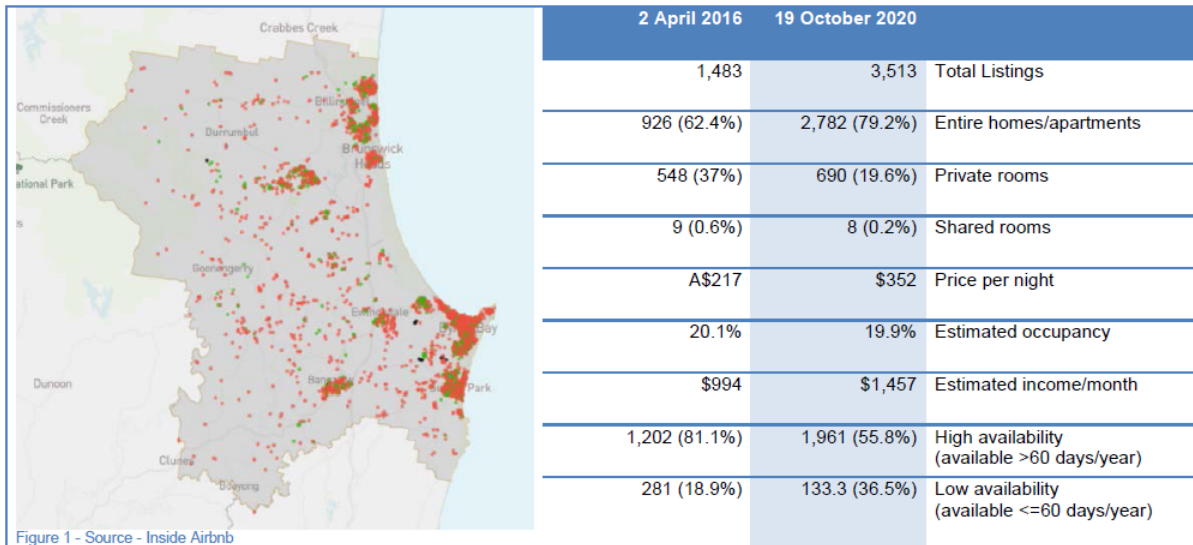


Figure 4: Increase in STRA listings between April 2016 and October 2020

As of 2 March 2023, there are a total of 2,436 homes used for STRA (1,376 non-hosted and 1,060 hosted) on the DPE Register, compared with 3,060 long term rentals (Rental Bonds Authority data 2022), Figure 5.

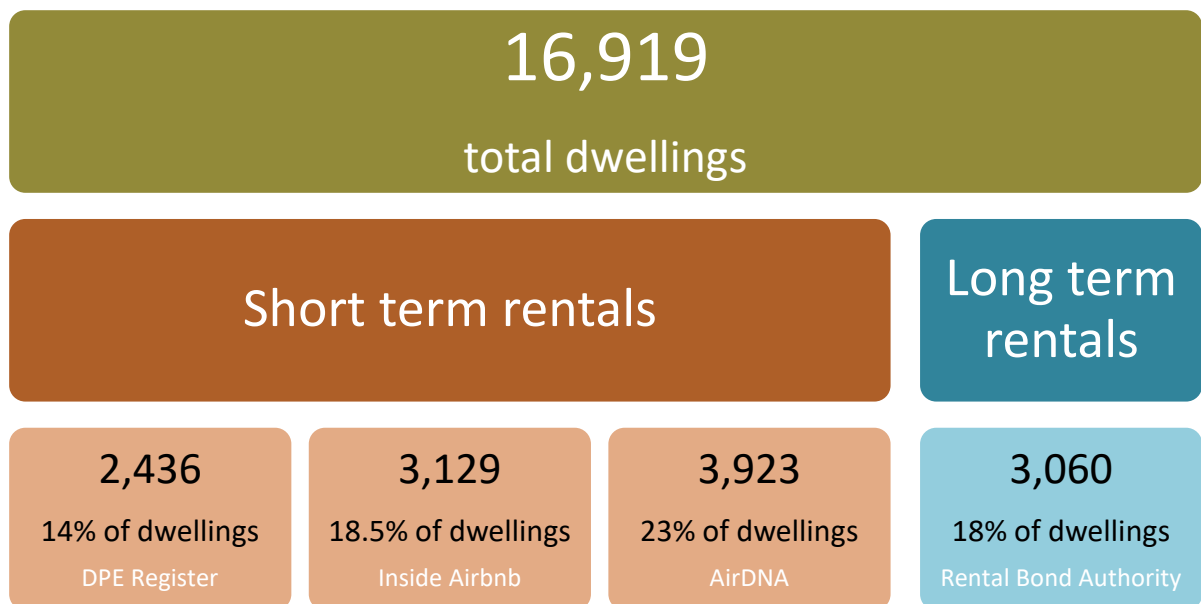


Figure 5: Total dwellings and number used for short term rental compared to long term rental

*16,919 dwellings <https://profile.id.com.au/byron/dwellings>

Whilst our housing supply has increased by 3,356 dwellings between 2006 and 2021, the Bonds held by the Rental Bond Authority have remained relatively stable since 2017.

'In Byron Bay, where Airbnb listings are equivalent to nearly half of the permanent rental stock (4.3%) and nearly a fifth of all homes (17.6%) are advertised on the platform, interviewees advised that local employees can no longer afford to rent or purchase in the area. The very high rents in Byron reflects a market long out of reach for local residents, at an end stage of gentrification. Further, although new homes are being constructed in Byron Bay, interviewees advised that this new stock is often absorbed by investors as holiday rentals, rather than contributing to permanent housing supply'²

Without a mechanism to disrupt the current investment preference and a mechanism to protect new dwellings from being used as holiday lets we are at risk of losing our community.

The growth in holiday letting with the rise of home sharing platforms, coupled with our housing crisis brought on by many factors colliding, including COVID and February-March 2022 floods, has resulted in a housing emergency.

COVID resulted in people moving from city areas to attractive tree-change and sea-change destinations like Byron Shire, taking up housing that might have otherwise been in the long term or short term rental markets. Some investors also moved into their investment property taking it off the rental market, and some short term rentals are being used to support those displaced by the 2022 floods.

Together this in turn increases the number of, and impact on, displaced long term tenants who are competing in a tight rental market.

It's not expected that all long-term rentals would convert to STRA over the same period ie. summer or for the same length of time, given that visitation is relatively strong and consistent throughout the year. The impact will be dispersed across the year and not everyone would be displaced all at once.

However, given peak holiday seasons are Christmas/New Year and Easter then it is likely that there will be a significant number of displaced tenants during this period coinciding with a high uptake of commercial accommodation and holiday homes by tourists. This will be particularly pronounced if no action is taken to curb the use of homes for holiday lets.

² ['Pop-up' tourism or 'invasion'? Airbnb in coastal Australia - ScienceDirect](#)

Western Australia is considering imposing a 60 day cap on short term rentals that would likely shift the economics further and return more properties to the long term rental pool.

On the back of COVID and the floods our visitor numbers and total visitor nights has significantly declined from the highs of 2019 where they reached 2.41million visitors and 5.42million visitor nights, but they are on their way back up, Table 1 and Figures 6 & 7.

Table 1: Total Visitors and Visitor Nights 2019 to 2022

Period	Total Visitors (million)	Total Visitor Nights (million)
Dec 2019	2.41 mil	5.42 mil
Dec 2020	1 mil	2.52 mil
Dec 2021	1.13 mil	2.5 mil
Sept 2022	1.28 mil	2.59 mil

Source: Byron Shire Tourism Monitors, Peter Valerio



Figure 6: Total visitors

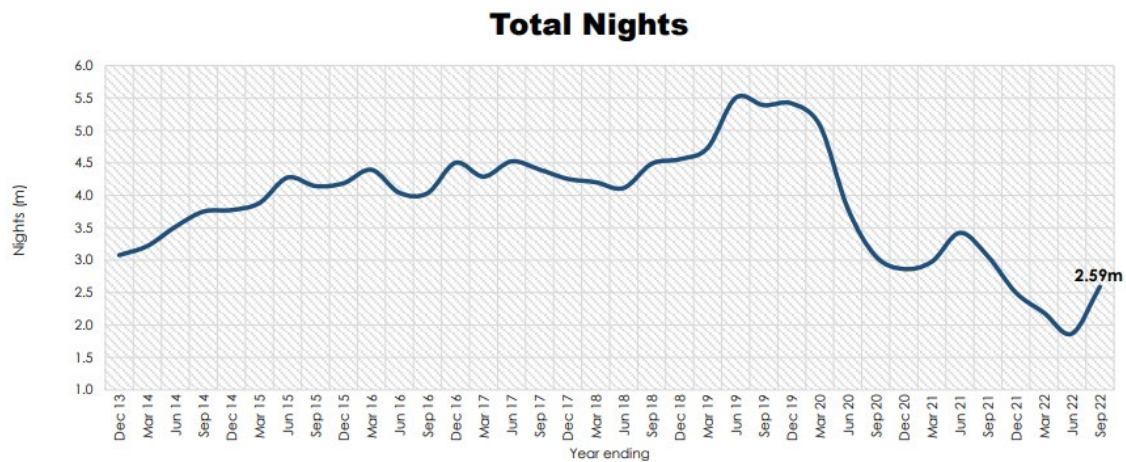


Figure 7: Total visitor nights

Tourism forecasts

Tourism forecasts from Council's Tourism Resilience Discussion Paper, October 2020 (which accompanied Council's exhibited Draft Sustainable Visitation Strategy 2020 – 2030) stated that due to the COVID impact on tourism:

- Visitors are not expected to return to 2019 numbers until 2024
- Visitor nights are not expected to return to 2019 levels until after 2030

Now is the time to act before visitor numbers and nights return to pre-COVID levels.

Table 2: Total visitors and visitor nights for 2019 compared with pre COVID and COVID impact forecasts to 2030

Total Visitor Statistics	2019 Actual	2020	2022	2024	2026	2028	2030
Visitors PRE-COVID	2,410,000	2,600,000	2,900,000	3,190,000	3,440,000	3,660,000	3,860,000
Visitors COVID Impact	Not applicable	1,480,000	2,130,000	2,440,000	2,640,000	2,770,000	2,870,000
Visitor nights PRE-COVID	5,420,000	5,870,000	6,550,000	7,180,000	7,610,000	8,070,000	8,580,000
Visitor nights COVID Impact	Not applicable	2,530,000	3,360,000	3,800,000	3,950,000	4,080,000	4,270,000

Source: Byron Shire Tourism Resilience Discussion Paper, October 2020

Some Byron Shire businesses are addressing the housing crisis head on by providing accommodation for their workers. This support ensures that accommodation is not a barrier to attracting and retaining staff and the business has staff available during peak visitor seasons.

For example, the difficulty with finding homes for employees to rent resulted in the business owner of Beach Byron Bay moving his family out of their home for his staff to rent.

[Byron Bay housing crisis the worst in the state \(smh.com.au\)](https://www.smh.com.au/news/byron-bay-housing-crisis-the-worst-in-the-state/2022/05/10)

Byron Shire Council is one of the Shire's largest employers with over 400 staff. Housing availability and affordability has emerged as a key issue in attracting and retaining staff in the last 12-18 months. Over 70% of staff live outside the LGA and some staff are leaving to move to other areas where housing is cheaper or to reduce commuting costs and time. Existing staff are concerned about being displaced from rental properties. Council is now considering a short-term accommodation allowance (in addition to relocation costs) to support new employees' relocation. This has already commenced in some work units of Council.

Council also has 3 dwellings which are currently rented to staff or in the process of being made ready to rent to staff. Additionally, Council has an option for up to four of the 32 units at 57 Station Street (affordable housing project with Landcom on existing council carpark) to provide accommodation for Council staff.

The current NSW government planning reforms for seasonal and temporary workers accommodation may also provide a form of housing relief for Council to engage with the state/ community/neighbouring LGAs on a Byron/Northern Rivers appropriate temporary workers accommodation hub/s - [Seasonal and Temporary Workers Accommodation Toolkit](#).

Summary of answer regarding long term leases less than 12 months

- Relative to the current situation, under a 90 day cap 10% of short term rentals would return year round to the long term rental market and 11% would offer up a 9 month long term lease, which is all an increase on the current situation, therefore to be welcomed
- The implementation of a lower day cap such as 60 days would return more properties year round and reduce the potential for displacement of long term tenants over the summer period
- Many transient, temporary workers or other tenants look for short term leases in any case as this suit their circumstances
- The 90 day STRA period would be across the year not just in summer as visitation is strong year round

Georeferenced non-hosted STRA properties

Q. Has Council mapped or georeferenced the 1200 registered STRA properties in Byron Shire and can this be provided to the Commission? (and/or what sort of visual analysis has Council prepared and can provide?)

Precinct model – past approaches

Variations on a precinct style model has been around since 2003 (Res. 03-43), when precincts were considered a way of containing holiday lets to defined mapped areas.

In 2008 Council exhibited proposed holiday letting precincts for Brunswick Heads and Byron Bay (Res. 08-676). This model was adopted by Council in 2009 (Res. 09-614) but was not supported by the Department as the activity was viewed as ancillary to the use of a dwelling house.

The first iteration of the current planning proposal was developed post an online community engagement activity to canvass community opinion on the draft planning controls, [Report No.13.27](#), 12 December 2019, [Res.19-676](#).

Feedback over the planning controls was generally mixed, with responses being roughly split between those who favoured a precinct model and those who felt a simpler 90 day cap should be applied equally in all areas.

After considering the community feedback and the results of further research Council opted for a more simplified approach for STRA that sought **to introduce a 90 day limit for non-hosted STRA in all areas**. The reason for this is that a proposed precinct model has the potential to create an unequal distribution of benefits and burdens across the community.

Council also sought **to introduce a ‘zero (0) day cap’ on Council managed land and new release areas identified in a strategy**. The reason for this was to address our housing deficit (the result of STRA occupations) necessary to achieve strategic planning objectives for residential dwelling targets under the Regional Plan and to meet the needs for permanent housing stock for our resident community and key workers.

DPE has made it clear that it is not supportive of the proposed zero day areas applying to council owned and managed land or release areas, and is unlikely to support a blanket 90 day cap for non-hosted STRA in all areas of the Shire without further economic impact analysis.

This resulted in Council amending the planning proposal to include 365 day mapped precincts, [Report No.13.21](#), 19 Nov 2020, [Res.20-605](#), so that a planning proposal could at least be presented to the community for consultation.

Planning Proposal v5

The current proposed 365 day precincts are based on three key attributes:

- visitors to Byron Shire do so predominantly for leisure-based activities
- as a coastal holiday hotspot, holiday homes may not necessarily have been attractive for holidaying in August* hence are unoccupied (*census month)
- the community seeks to maintain and enhance the sense of community and minimise the amenity impacts neighbours

These attributes are not new and underpinned the 2008 (Res. 08-676) and 2009 (Res. 09-614) Council resolutions, Appendix 2.

A series of steps (Figure 8) have been applied using quantitative and qualitative data to identify localities and mapped precincts:

- with relatively high levels of unoccupied dwellings
- with leisure-based experiences, attractions and services including safety and evacuation
- with correlated feedback received from engagement undertaken to inform the planning proposal including the most recent, in Oct- Nov 2022

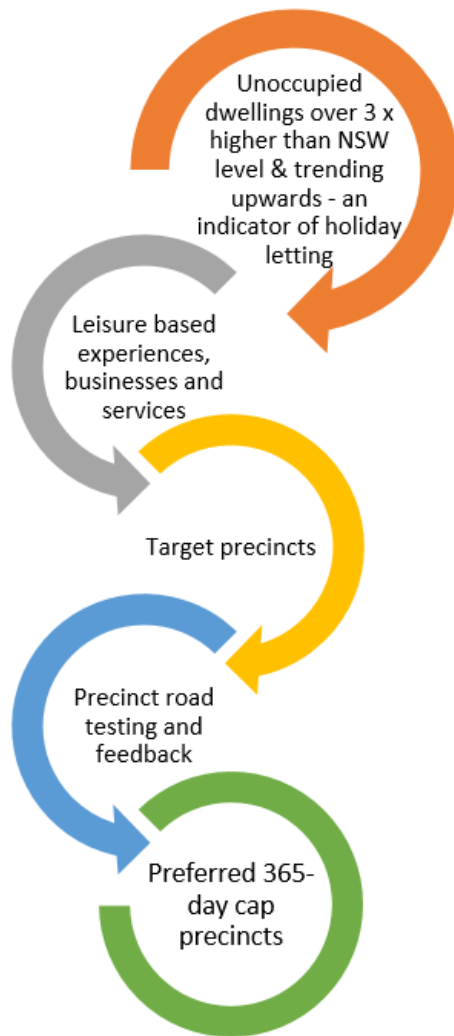






Figure 8: Criteria used to inform mapped 365 day precincts

On application of this criteria the following localities and mapped precincts have resulted, Table 3.

Table 3: Assessment of mapped precincts based on criteria

Unoccupied dwellings (dw) - an indicator of holiday let % unoccupied dw @ 2021 % change 2016- 2021	Leisure based experiences & attractions 1: available 2: somewhat	Tourist services 1: available 2: somewhat 3. limited 4. none	Relative safety, evacuation 1: manageable 2: precautionary	Feedback dominant view 1: include 2: not definitive 3: remove/reduce
Byron Bay West				
 ~ 50% Up ~25%	1	1	1	1 expand to include south of Shirley St and Sommerset St area
Byron Bay East				
 ~51% Up 11%	1	3	1	1 some concerns regarding Wategos Beach inclusion
Byron Bay Central				
 ~72% Up ~30%	1	1	1	1 expanded to include the CBD
Brunswick Heads				
 ~ 30% Up ~13%	1	1	1	3 more accepted areas - main town centre, north of Booyun Street, and east of Simpsons Creek

Figures 9 and 11 show Council's adopted 365 day precincts, and Figures 10 and 12 show heatmapping of the STRA properties listed as non-hosted on the DPE register as of 2 March 2023.



Figure 9: proposed 365-day STRA precincts, Byron Bay

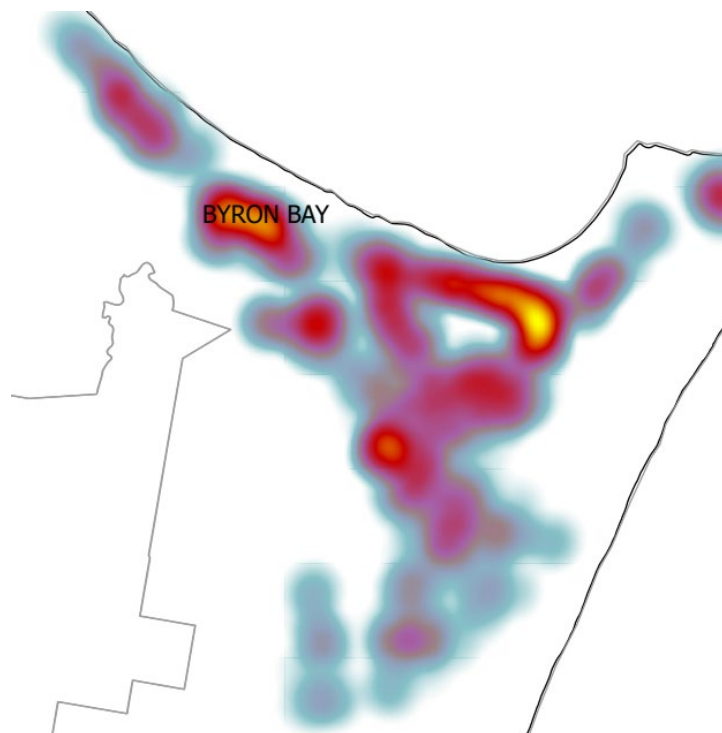


Figure 10: Heat mapping of non-hosted STRA properties based on DPE Register of 2 March 2023



Figure 11: proposed 365-day STRA precincts, Brunswick Heads



Figure 12: Heat mapping of non-hosted STRA properties based on DPE Register of 2 March 2023

Our Tourism & Hospitality sector is our third largest employer providing 1,974 jobs and in 2020/21, the total tourism sales was \$249.8m, the total value added was \$156.7 million.

Importantly, STRA is only one part of the Tourism and Hospitality sector and the changes Council is proposing will not 'wipe out' the entire Tourism and Hospitality economy, despite the claims of same.

Council's proposal only applies to non-hosted STRA, which on the 2 March 2023 accounted for 1,376 properties.

Of these 379 non-hosted properties (28%) are in the 365 day mapped precincts for Byron Bay (324) and Brunswick Heads (55). These properties will benefit from Council's proposal by enabling them to increase the number of days they can holiday let per year from the current cap of 180 days to unlimited 365 days.

These precincts will also concentrate tourism activity in appropriate locations and take the pressure off our residential, rural and hinterland communities. Noting that these areas already permit other forms of tourist and visitor accommodation with development consent.

Whilst non-hosted properties outside the mapped precincts will be capped to 90 days, URBIS EIA (p63) found that most non-hosted properties (61%) were occupied for less than 90 days in the year:

Table 2.8 – Non-Hosted STRA Properties (Jan 2019 – Dec 2019)

Byron LGA

	Available Properties		Occupied Properties	
	No.	%	No.	%
1-90 days	1,292	25%	2,636	61%
91-180 days	722	14%	1,014	23%
180-366 days	3,234	62%	696	16%
Total	5,248	100%	4,346	100%

Source: AirDNA, Urbis

There has been a 7% increase³ (between April 2017 to April 2021) of the global aggregate share of Airbnb units managed by medium to large property managers.

As such, Council's proposal is deliberate in its intent to disrupt the current investor led model for non-hosted short term rentals over long term rental accommodation in Byron Shire.

³ [HOTREC - position-paper-on-EU-wide-regulation-of-Short-Term-Rentals-FULL.pdf](#) page 25, **HOTREC is the umbrella Association of Hotels, Restaurants, Bars and Cafes** and similar establishments in Europe

‘Short-term rental platforms have supported those seeking to finance second or multiple homes, providing flexible rental income to service residential investments and/or consumption while draining local rental supply’⁴

Council’s proposal acknowledges that holiday letting has been a part of Byron Bay’s and Brunswick Heads accommodation options for many years by including key areas in the 365 day mapped precincts.

‘A number of case study communities.... have long traditions of second home ownership and tourism. ... many online listings of short term rentals in these communities pre-existed online platforms such as Airbnb, with listings growth reflecting new marketing and management rather than a strictly new phenomenon’⁵

Other tourist and visitor accommodation

One of the issues repeatedly raised by some during the public hearing is that Council is not supportive of new tourist development.

In response, it is expected that any STRA changes will be offset by new approved tourist and visitor accommodation in our towns and hinterland including:

- 176 tourist and visitor accommodation rooms recently approved in Marvel Street, Jonson Street and Habitat
- 130 facilities/cabins in hinterland areas approved
- Several DAs approved in Byron Bay town centre which will have ability to STRA 365 days
- Still more tourist and visitor accommodation in the Byron Town centre and Brunswick Heads in the pipeline
- Agritourism reforms imposed by the State Government on Councils at the end of 2022

Byron Echo | Local News

Work begins on 41 Byron holiday apartments

By The Echo | March 2, 2023 | 0

⁴ [Airbnb, Platform Capitalism and the Globalised Home - Critical Housing Analysis \(housing-critical.com\)](https://critical.com)

⁵ [‘Pop-up’ tourism or ‘invasion’? Airbnb in coastal Australia - ScienceDirect](https://www.sciencedirect.com/science/article/pii/S0969697920300000)



[Work begins on 41 Byron holiday apartments – The Echo](#)

Summary of answer regarding mapping of non-hosted properties

- The 365 day precincts represent less than 2% of our land area but contain 28% of all non-hosted short term rental accommodation
- The criteria for the precincts has been based on proximity to tourist services, community feedback and is measurable over time using ABS census data, as this data set informs the current precincts and will be used in future reviews

Addressing affordable housing supply

Q. What is Council is doing to address affordable housing supply?

Changes to STRA day cap is only one of Council's many strategies to address housing needs of our community.

Council has been working on several fronts to improve housing accessibility and affordability, including:

- Housing delivery
- Planning amendments
- Housing Forums
- Housing Strategies
- Advocacy
- Housing and Affordable Advisory Committee
- Regular reports to Council on Housing matters
- First Nations Housing

These initiatives are detailed further below.

Housing delivery

Project	Comment	Status
Secondary Dwelling Fee Waiver	921 secondary dwellings were approved between April 2011 to October 2019	Complete
80 Station Street – Council owned land	Council land sold to a Community Housing Provider	Dwellings built and residents moving in
57 Station St – Council owned land	<p>Council is working with Landcom through a tender to Community Housing Providers to construct affordable housing on what is currently a council carpark.</p> <p>The development will contain 32 dwellings, including 12 x studio, 14 x 1 and 6 x 2 bedroom units for people on low-moderate incomes, as well as 120m² of retail/commercial space.</p>	Tender in progress

Project	Comment	Status
	Affordable housing project in Station Street Mullumbimby - Byron Shire Council (nsw.gov.au)	
Mullum Hospital (Azalea Precinct) Council owned land	<p>Council purchased the old hospital site for \$1 from the state government and currently have a \$4.7million debt for the demolition and removal of the asbestos contaminated hospital buildings and site remediation, which will need to be recouped through the development of the site.</p> <p>Plans are in place to create a vibrant mixed-use sustainable neighbourhood with a range of dwelling types, including affordable, attainable and accessible housing.</p> <p>An R1 General Residential zone to enable the diversity of residential and community uses desired for the site, and an 11.5m building height is being proposed for this site, a first for Mullumbimby.</p> <p>Mullumbimby Hospital redevelopment - Byron Shire Council (nsw.gov.au)</p>	In progress
Longer term affordable housing opportunities – Transport Asset Holding Entity of NSW (TAHE)	<p>Council has an MOU with TAHE to investigate the TAHE-owned land around Mullumbimby Rail Station for the provision of affordable housing.</p> <p>Several sites in this area are identified for potential affordable housing, along with social and infrastructure uses including car parking, open space, community uses, shared paths or multi-modal public transport.</p>	In progress
Temporary housing pods – Resilience NSW	Providing 125 emergency housing accommodation for flood displaced in Mullumbimby and Brunswick Heads.	People moving into the pod villages
Fletcher Street Cottage	<p>Provides support, information, referral and advocacy to people at risk of homelessness or those already sleeping rough</p> <p>Fletcher Street Cottage</p>	Ongoing

Project	Comment	Status
North Coast Community Housing - MOU	Council entered into a MOU with North Coast Community Housing (Res.19-565) to facilitate work with Council on affordable housing issues affecting the shire	Ongoing
EOI Caravan Park and Manufactured Home Estates, 2012	Council called for submissions to establish new caravan parks / manufactured home estates for affordable housing in the Shire for consideration in the development of Local Growth Management Strategies. With the intent that any agreements entered into protect at least 50% of sites as long-term rental sites in perpetuity.	Complete
EOI Affordable Housing on Private Lands, 2017	Council called for expression of interest inviting land owners to submit land for affordable housing for Council's consideration as part of an early implementation program to supplement Council's Residential Lands Strategy.	Complete

Planning amendments

Council has undertaken several amendments to our Local Environmental Plan (LEP) and Development Control Plan (DCP) to enable the supply of more affordable housing, including:

- Dual Occupancies on rural land -Gazetted 2015 (Amend No 3)
- Secondary dwellings and Dual Occupancies on CT/MO -Gazetted Jan 2023 (Amend No 36)
- Affordable Housing Contribution Policy (AHCS) and Scheme -Gazetted Jan 2023 (Amend No 35). Byron Shire is the first regional council to have an AHCS. [Affordable Housing Contribution Scheme - Byron Shire Council \(nsw.gov.au\)](https://www.nsw.gov.au/affordable-housing-contribution-scheme-byron-shire-council)
- Investigate capacity for re-subdivision within existing R5 Large Lot Residential estates - Commencing in 2023
- Diverse housing clause Residential 1 Zone - In progress

Forums

Housing Summit, 2017

The Housing Summit brought together stakeholders from government, housing providers, private industry and community to look at current policies, development practices and programs for housing and to look at what could be done differently to improve the availability and supply of housing.

[Housing: Meetings and presentations - Byron Shire Council \(nsw.gov.au\)](#)

Byron Housing Roundtable, 2018

The purpose of the Roundtable was to discuss where Byron Shire is now 18 months on from the Summit, and where does it need to be to further support and deliver affordable housing outcomes for the community.

The Roundtable was arranged around themes to look at the following areas:

- Housing types and models
- Tenure types and security
- Planning enablers and barriers
- Finance and investment models

Housing Charette, 2018

The aim of the charrette, with community representatives and State Government agencies, was to agree on policy directions for delivering land and housing for a sustainable future.

The findings of the charrette helped inform the draft Residential Strategy.

Housing Challenge Forum, 2019

Three of Australia's experts in the field of affordable and social housing headlined the Council forum Our Housing Challenge: Local Communities, Local Solutions – a Byron Perspective.

Peter Mares (author of No Place Like Home: Repairing Australia's housing crisis), Tim Riley (Founder – Property Collectives) and Dr Kathleen Flanagan (Deputy Director of Housing and Community Research, University of Tasmania) addressed the forum providing their insight into housing affordability.

The Forum was recorded by BayFM [Listen to Our Housing Challenge](#)

Housing Forum, 2022

Council held the Byron Shire Housing Forum to address the following:

- In the absence of large scale federal and state government investment, what role is there for the community housing sector, ethical developers, and local government to provide stable, affordable homes that supports our community?
- What examples and ideas might inform our approach to housing our community?

[Byron Shire Housing Forum - Byron Shire Council \(nsw.gov.au\)](#)

Strategies

Affordable Housing Options Paper and Byron Affordable Housing Strategy: Background Report, Dr Judith Stubbs & Associates, 2009

This work identified two key housing issues:

- The need to significantly diversify housing opportunities and stock in order to meet changing demographic needs, including a strong increase in demand for smaller, more manageable dwellings for older households; and
- The serious current and projected shortfall in affordable housing, particularly affordable rental housing, to meet the needs of local low to moderate income families in housing stress and housing need. This includes long-term older asset-poor residents, younger families in the process of household formation and low to moderate income 'key workers' in industries such as education, health and hospitality.

It also recommended 19 key strategies, many of which have been completed or are in progress, to diversify housing stock to meet changing needs, and to maintain and increase affordable housing supply:

- Continue to Implement a Sustainability Framework
- Confirm Council's Level of Involvement in Affordable Housing and Develop an Affordable Housing Program
- Inclusion of Appropriate Objectives into Revised LEP

- Actively Seek to Diversify Type of Stock to Meet Changing Demand
- Increase Affordable Rental Housing through Development Partnerships on Council and Other Publicly Owned Land
- Developer Incentives in Selected Localities, Precincts and Sites
 - Increase Affordable Rental Housing Through Developer Incentives in Council's Planning Agreement Policy
 - Inclusion of Developer Incentives in Future EPIs density bonuses in Council's LEP was not supported by DPE)
 - Provision for Benefits Capture in Greenfield Sites, Brownfield Sites and Larger Developments
 - Developer Incentives (Density Bonuses) in Greenfield, Brownfield and Larger Sites
- Implementation of Developer Incentives and Benefits Share through Voluntary Planning Agreements (Council adopted the Planning Agreement Policy and Planning Agreement Template at its meeting of 26 March 2009)
- Set Up Appropriate Accountability Procedures
- Monitor Outcomes of Proposed Strategies
- Actively Pursue Best Use of Resources Through Development and Funding Partnerships
- Develop Management Partnerships (with Community Housing Providers)
- Negotiate an Affordable Housing Allocations Policy for Stock Created
- Actively Seek to Protect Existing Stock of Affordable Rental Accommodation
- Seek to Increase Low Cost and Affordable Rental Housing through Market Provision
- Seek to Increase Low Cost and Affordable Purchase Housing through Market Provision
- Review Draft LEP 2008 to ensure that its provisions do not have significant unintended consequences on housing affordability
- Review DCP to protect amenity in precincts recommended for density bonuses
- Council continue to promote its Affordable Housing Strategies and related Policies
- Council investigate a range of affordable rural residential options

Alternative Housing Models Research, Echelon, 2019 and update 2023

This paper sets out a summary of our Shire's key housing needs and an analysis of alternate housing models, such as:

- co-operative housing
- rent to buy
- others aimed at making housing more affordable.

It examines how these might be adapted for the Byron Shire.

[Housing models research - Byron Shire Council \(nsw.gov.au\)](#)

Affordable Housing Contributions Policy and Procedure, 2020

The [Affordable Housing Contributions Policy](#) offers a framework to facilitate, provide and manage affordable housing contributions in our Shire. It provides a mechanism to secure land and or monetary contributions to deliver affordable housing on certain land identified in the Residential Strategy.

The policy guides how contributions will be obtained through a voluntary planning agreement or the NSW State Housing SEPP, as a condition of development approval.

[Affordable Housing Contributions Policy and Procedure - Byron Shire Council \(nsw.gov.au\)](#)

Byron Shire Residential Strategy, 2020

This Strategy sets a clear vision and policy framework for how we deliver future housing in our urban residential towns and villages for the next 20 years.

Council adopted the Residential Strategy in December 2020, however it wasn't endorsed by NSW Dept Planning and Environment (DPE).

The Strategy is currently being revised with findings from:

- the peer review of the Strategy, requested by DPE
- the NSW Flood Inquiry Report recommendations following the 2022 floods
- Council's 'After the Floods Discussion Paper'
- Australia Bureau of Statistics staged release of 2021 census data in mid 2022
- DPE's updated North Coast Regional Plan 2041

Land Trust for Affordable Housing, 2021

Council resolved ([Res.21-062](#)) to investigate the Community Land Trust, Live-Work and Restricted Purchase models to see how they can be applied to Council owned land and developments including contributions under a SEPP 70 Affordable Housing Contribution Scheme and to receive a further report on this.

A [report](#) on the Land Trust was considered and Council resolved ([Res.21-066](#)) to establish a Land Trust, noting point 4:

4. Agrees that Byron Shire Land Limited will:
 - a) aim to provide 10% of the Shire's housing stock within the first 10 years of operation.
 - b) use 30% of the median weekly household income for the Byron Shire as the benchmark of affordability.

An application was made to the NSW Local Government Minister to grant approval for Byron Shire Council to create Byron Shire Land Limited (BSLL) set up as a social enterprise company.

The response provided by the Office of Local Government indicated that Council needed to provide more evidence in support of the application. This work is in progress.

Advocacy

Submission on proposed new Housing Diversity SEPP, 2020

A copy of Council's submission is attached to the 13 May 2021 Council meeting [Report No. 13.14](#) - Proposed Housing Diversity State Environmental Planning Policy (SEPP) Confirmation of Council's position on Boarding Houses in the R2 Low Density Residential Zone.

Council's submission supports initiatives to deliver diverse, affordable and resilient housing needed in NSW over the next 20 years and in summary Council sought:

- a delay in new SEPP until the NSW housing strategy is finalised
- a review of the aims of the SEPP to make diversity the priority not economic recovery

- better recognition of the fact that the population is extremely diverse group and tailored strategies should cater for and acknowledge this diversity in the housing response.
- a recognition of the role and value of Council housing strategies
- an expansion of the scope to cover all state regulations affecting housing diversity, including short term rental accommodation
- greater allowances for local responses and provisions
- better linkage between housing delivery and infrastructure planning and delivery, particular with regard to the allowance of bonuses/concessions.

Submission to NSW Legislative Assembly Committee on Community Services' Inquiry into options to improve access to existing and alternate accommodation to address the social housing shortage, 2021

This submission addresses options to improve access to existing and alternate accommodation to help address the social housing shortage in NSW, with particular reference to:

- options to better support 'meanwhile use' (temporary -supportive accommodation), and the current major planning barriers to 'meanwhile use'
- options to improve access to existing accommodation to provide community housing
- options for crisis, keyworker and other short-term accommodation models
- barriers to additional supply across NSW, including for smaller non-CHP housing providers
- support for and accountability of registered community housing providers

A copy of this submission is included in Attachment 2 in the submission to Regional Housing Taskforce, below.

Submission to the Regional Housing Taskforce, 2021

This submission talks to our housing crisis, and the despair felt by local community and key workers that have a right to live and work locally and cannot. It advocates for the following:

- Planning moving away from a one size fits all standard SEPP and LEP framework

- Partnerships enabled to lever local housing opportunities with others
- Pilots programs rolled out now to instil community confidence in local housing delivery

[Submission to the Regional Housing Taskforce - Byron Shire Council \(nsw.gov.au\)](https://www.nsw.gov.au/submitting-a-submission-to-the-regional-housing-taskforce)

Submission by Northern Rivers Joint Organisation to the Regional Taskforce, 2021

Council was instrumental in working alongside 5 councils in our region to identify the housing issues that affect us all and solutions/recommendations to address these.

A copy of this submission is included in Attachment 1 in the submission to Regional Housing Taskforce, above.

Housing and Affordability Advisory Committee

Council has a dedicated Advisory Committee on housing and affordability which meets 4 times per year. The role of the Housing and Affordability Advisory Committee is:

- Policy, research and priorities relating to the housing market and trends, and their impacts on the community, including the provision of appropriate, affordable housing and related opportunities as well as identification of service gaps
- Joint opportunities with State and Federal agencies, peak housing bodies and community housing providers
- Partnership opportunities with key stakeholders regarding best practice models for affordable, sustainable, accessible, diverse and inclusive housing.
- Implementation of policy
- Activities, forums, roundtables, projects, programs and events to encourage delivery of affordable and sustainable housing options for the community

[Advisory Committees - Byron Shire Council \(nsw.gov.au\)](https://www.nsw.gov.au/submitting-a-submission-to-the-regional-housing-taskforce)

Reports to Council and resolutions on housing matters

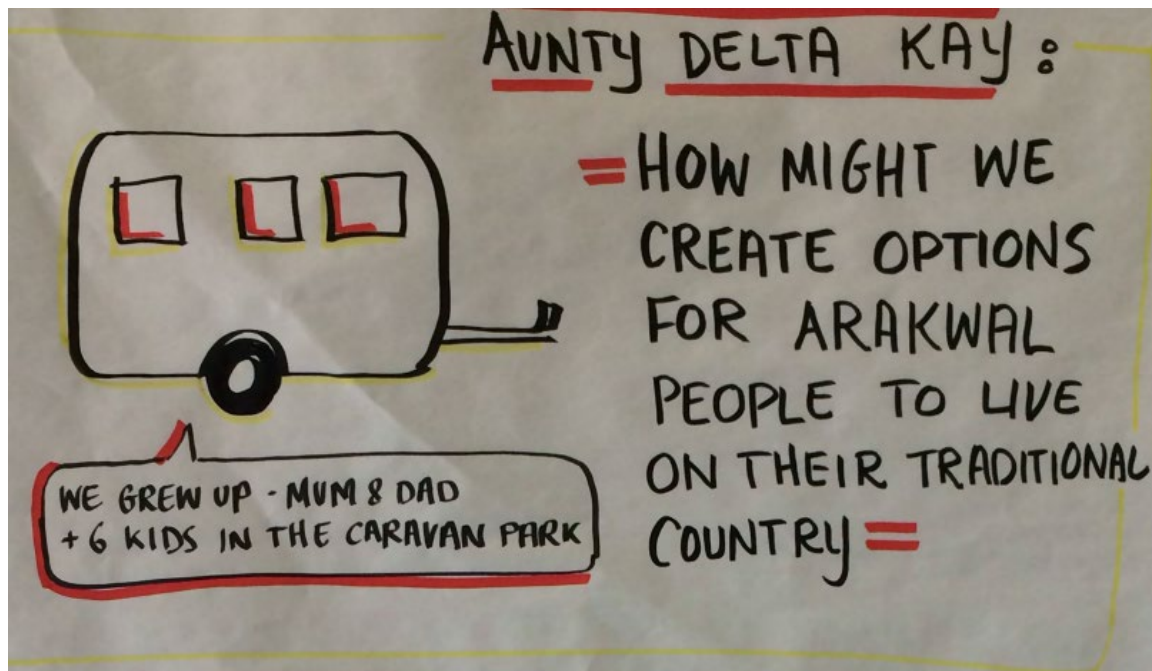
Council has a long history of regularly reporting on housing matters. The following provides a snapshot of housing related council reports between 2019 to 2023.

Topic	Report Title	Summary
SEPP 70	Report No. 6.8 - State Environmental Planning Policy No 70 Affordable Housing (Revised Schemes) (SEPP 70)	In 2019, SEPP 70 was expanded to include all councils across NSW. With Byron Shire being included in SEPP 70 Council resolved (Res. 19-152) to prepare an Affordable Housing Contributions Scheme.
Tiny Homes	Report No. 13.6 - Tiny House Development Proposal	Council resolved (Res. 20-016) to amend the Byron LEP 2014 to facilitate tiny house development on Council owned and or managed land for the provision of supported housing for people experiencing (or at risk of) homelessness.
STRA	Report No. 13.12 - PLANNING - 26.2020.1.1 - Planning Proposal for Short Term Rental Accommodation	Following community engagement, the introduction of a 90-day limit for non-hosted STRA in all areas is recommended as an initial planning control response, with further data analysis to continue on the potential for a precinct-based model which could be implemented at a future time. (Res. 20-021)
EOI – Carparks	Mayoral Minute No. 8.1 - Supporting Housing above Council Owned Carparks	Council resolved (Res. 20-069) to support the establishment of diverse, lower cost, and accessible housing on Council owned carparks.
Affordable Housing Contribution Scheme	Report No. 13.4 - Review of submissions on the draft Byron Shire Affordable Housing Contribution Policy and Procedure	Summary of key matters raised, following public exhibition of the Draft Byron Shire Affordable Housing Contribution Policy and accompanying Procedures and adoption of both. (Res. 20-365)
Lot 22	Report No. 13.4 - PLANNING - 26.2017.4.1 Lot 22 - Proposed Amendments to the Exhibited Planning Proposal	Following the public exhibition, public hearing, and submissions report, this report discusses the draft flood study and recommendations, draft structure plan for Lot 22, and changes required to the planning proposal provisions as a result. (Res. 20-611)
Residential Strategy	Report No. 13.3 - Final Residential Strategy including submissions review report	Summary of key matters raised, following public exhibition of the Residential Strategy. (Res. 20-686)

Topic	Report Title	Summary
Role in Housing Delivery	Report No. 13.4 -Council's role in Housing Delivery	<p>Following many resolutions that have highlighted the need to find a way to address housing availability and affordability, a decision on the most appropriate “affordable” housing delivery model/s to manage the Council land and land received through SEPP 70 is necessary.</p> <p>This report recommends that investigation into three different delivery models be further progressed - Community Land Trust, Live-Work and Restricted Purchase models. (Res. 21-062)</p>
Key Workers	Report No. 13.3 - Byron Shire Key Workers Issues Paper	<p>This report highlights the issues impacting key workers in Byron Shire accessing available, suitable and affordable housing locally, and the urgent need for a policy circuit breaker to enable the supply of low to high-end rental and ownership accommodation opportunities outside the current ‘inflated free market’ for displaced local community and key workers in regional areas like Byron Shire. (Res.21-066)</p>
Housing Crisis	Notice of Motion No. 9.4 - Housing Crisis	<p>Following a surge in property prices, a record year of property sales, unprecedented increases in rents, along with greater clarity through reports and community experience, Council declares a housing crisis and asks other councils to be united in request for State and Federal Governments who need to do more to protect and provide for our communities. (Res. 21-112)</p>
Land Trust	Report No. 13.3 - Update Resolution 21-062 Creation of a Byron Shire Council Community Land Trust	<p>Findings of an investigation into the Community Land Trust Model and how it can be applied to Council owned land and developments. Council resolves (Res. 21-123) to proceed with establishing a Land Trust as a Council entity to hold land for the development of local housing that meets the needs of the community.</p>
Housing Crisis	Report No. 13.24 - Responding to our Housing Crisis	<p>Update on some of the current work responding to our Housing Crisis, including The Housing Working Subgroup of the Northern Rivers Planners Group with their collaborative submission to improve access to existing and alternate accommodation to</p>

Topic	Report Title	Summary
		address the social housing shortage. This update notes delays by DPIE for Council Housing projects such as Lot 22, Tiny Homes, Short-term Rental Accommodation, and Affordable Housing Contribution Scheme. (Res. 21-303)

First Nations housing



Source: Housing Summit, February 2017

Arakwal – Native Title

The negotiation of the 1st Indigenous Land Use agreements (ILUA) in 2001 between the Arakwal people and the NSW Government provided the Arakwal with the first real chance to develop new opportunities for our people. The ILUA's and the establishment of the Bundjalung of Byron Bay Aboriginal Corporation (Arakwal) has meant that the Arakwal people are now in a better position to care for the well being of Arakwal people and land.

Alongside the welfare and social issues that we contend with every day, some of the main issues we seek to address are:

- Employment and education opportunities

- Cultural rejuvenation and practices
- Caring for Country beyond the Arakwal National Park
- Cultural resources agreement with Cape Byron Marine Park
- Children and youth support programs
- Adequate housing so mob can return to Country
- Business and economic development
- Social development and positive lifestyle choices

The National Agreement on Closing the Gap (the National Agreement) has 19 national socio-economic targets across areas that have an impact on life outcomes for Aboriginal and Torres Strait Islander people. The below target is number 9.

In consultation with Arakwal Native Title holders and Tweed Byron Local Aboriginal Land Council members. Council understands the importance of affordable housing for Aboriginal community members to be able to live on their traditional lands.

Aspiration - People can secure appropriate, affordable housing that is aligned with their priorities and needs

Outcome - Aboriginal and Torres Strait Islander people secure appropriate, affordable housing that is aligned with their priorities and need.

Targets - 9a: By 2031, increase the proportion of Aboriginal and Torres Strait Islander people living in appropriately sized (not overcrowded) housing to 88 per cent.

9b: By 2031, all Aboriginal and Torres Strait Islander households: within discrete Aboriginal and Torres Strait Islander communities receive essential services that meet or exceed the relevant jurisdictional standard in or near to a town receive essential services that meet or exceed the same standard as applies generally within the town (including if the household might be classified for other purposes as a part of a discrete settlement such as a “town camp” or “town based reserve”).

NSW Aboriginal Land Council Housing Strategy

There is currently a shortfall of over 24,000 social and affordable dwellings for Aboriginal people in NSW and this will rise to 65,000 dwellings by 2031. In addition, in 2016, 42% of Aboriginal households in NSW owned or were purchasing their home, compared with 65% of non-Aboriginal households. Indigenous people make up 3% of Australia’s population but 20% of the nation’s homeless. NSWALC’s

Housing Strategy seeks to address these gaps by: Housing owned by Local Aboriginal Land Councils (LALCs) makes up the largest part of the total portfolio that is managed by Aboriginal community housing providers. LALCs are facing a period of uncertainty with changes to Aboriginal Housing Office (AHO) registration and subsidy policies and head-lease arrangements under Build and Grow coming to an end.

NSWALC has a responsibility under the Aboriginal Land Rights Act 1983 to work to secure sustainable future housing management options for LALCs:

- increasing access to the range of housing options (across all forms of tenure) for Aboriginal people in NSW – and to the opportunities for social and economic participation that emerge when housing security is achieved
- expanding the opportunities for Aboriginal people to participate in the service delivery, management and governance of social and affordable housing in NSW
- establishing partnerships across the Land Council Network to leverage existing land assets and other strengths

Summary of answer to addressing affordable housing supply

Council has been and continues to be very active in the affordable housing space and regulation of STRA is just one piece albeit a very important piece of the housing puzzle.

Compliance

Q. Enforcing consent conditions for dwellings to not be used for STRA

Council has for many years responded to complaints received on inappropriate use of STRA (eg. noise, parking and amenity issues) and continues to do so.

What has changed is the complexity of the STRA policy framework and various Agencies' responsibilities making compliance and enforcement more complicated.

The STRA planning policy commenced for Byron Shire on 31 January 2022 and the Code of Conduct in December 2020.

Fair Trading, Police and Council all have a role in compliance and investigating complaints. DPE have a role of providing information to Councils through the STRA Register to inform investigations of non-compliance.

Code of Conduct

In June 2022, Council notified NSW Fair Trading of an alleged breach of the Code of Conduct. NSW Fair Trading responded and advised the notification would not be progressed unless Council provided a copy of conclusive evidence of the breach and a copy of all correspondence between Council and the owners of the property – an onerous evidence collection burden for Council.

During the public exhibition of the planning proposal, enquiries were received by property owners who suspected they were living next door to a holiday let and wanted confirmation. Under the Code of Conduct, Hosts have [obligations to neighbours](#):

The host must take reasonable steps to ensure that guests comply with their obligations under the Code.

The host must provide the following information to the occupants of residential premises directly neighbouring the hosted premises and, if within a strata scheme or community land scheme, to the owners corporation or association:

- advice that the host is using the premises for short-term rental
- the contact details of the host or their representative.

A host contacted by the guests, neighbours, owners corporation or association about potential breaches of the Code must take reasonable steps in a timely manner to address any concerns raised.

It is evident that there is limited awareness and or compliance with the Code of Conduct and its obligations. The compliance process under the Code further confuses responsibility for enforcement action and needs better qualification.

DPE STRA Register

Council has access to the DPE Register STRA property report and a STRA booking summary report with various categories. Not all information however is mandatory and relies on the host/owners/manger to populate in good faith.

There are inherent issues with the register that need to be addressed for local Councils to be able to manage it with proper real time data, in a downloadable form.

Reconciling the bookings is time consuming. An issue was identified where there were 180+ days on a property. On seeking clarification from the DPE STRA Team they advised 'there was system error creating duplicate entries last year which may have inflated the total number of booked days and that the error was apparently fixed in August last year'. The particular property identified was the subject of a complaint from a neighbour who was actively recording STRA stays and claimed the STRA nights had exceeded 180 days. Council does not have a way to verify this.

Reviewing the information is time consuming. Council's needs the ability to download the information via an application programming interface (API) or a simpler reporting tool that can flag properties with excess booking days.

There is no vetting of data entered and duplicate property registrations exist.

Reconciling bookings as per the current data/register is resource intensive, not user friendly and time consuming. Fees for Council to do this is another point of contention with DPE and Fair Trading.

As with most systems, people will work out ways to circumvent it and this is made especially easy when the system is flawed.

Many holiday lets are increasingly using their own webpage, facebook page, community notice boards etc as their online booking platform circumventing the DPE Register altogether. The source of bookings on the DPE Register are only from Airbnb and Booking.com. Whilst larger booking sites look to enforce the register there is mixed results from other platforms.

For example, a property hosted and managed by a local holiday accommodation management company, has none of their bookings listed on the DPE Register, yet bookings taken through Airbnb and Booking.com are listed.

Properties are being booked out for stays of more than 21 days, then sub-booking to bypass day limits.

Properties are being registered as hosted when checks of the online booking platform advise the property is clearly non-hosted.

Current STRA Compliance

A [Notice of Motion](#) (NOM) is being considered by Council at the 9 March 2023 meeting on Short Term Rental Accommodation Consent Conditions.

This NOM requests staff to enforce existing consent conditions which prohibit the use of a property as short term rental accommodation and continue to prohibit the use of short-term rental of housing in new approvals (secondary dwellings, standard homes in the residential areas and business zones of the Shire).

Council's compliance program

Breaches of the NSW Fair Trading's 'Code of Conduct for the Short-Term Rental Accommodation Industry' (where the breach falls within the jurisdiction of Council's enforcement powers) was added as a High Priority at 2.2 of Council's 2022 Compliance Priorities Program [Minutes of Ordinary Meeting - Thursday, 24 March 2022 \(infocouncil.biz\)](#)

Over the last year, Council responded to complaints where STRA use contravened specific DA conditions and generally monitored the STRA Register. Council's enforcement team responded to complaints in relation to recurring issues raised by the operation of STRA including (but not limited to) fire safety, noise, parking, dog issues, neighbourhood amenity issues and breaches of the State Environmental Planning Policies. The team continued to respond to compliance issues within the jurisdiction of Council's enforcement powers but did not undertake or report any formal compliance action to NSW Fair Trading (who technically enforce the Code of Conduct) as the circumstances did not arise and the burden of evidence required by NSW Fair Trading was unachievable.

Part 3.1.1 of the Code of Conduct states "*A person may lodge a complaint with the Commissioner about an alleged failure by a person to comply with an obligation under this code*". However, NSW Fair Trading 'Short-Term Rental Accommodation Complaints' webpage states "*Contact your local council if you have an issue or complaint relating to fire safety (including overcrowding), planning approvals, parking or ongoing noise.*"

In addition to contraventions of planning law (see 3.2.3 and 3.2.4 of the Code of Conduct), this places the majority of the compliance burden in relation to breaches of the Code, upon local councils and not NSW Fair Trading.

Complaints referred from Local Councils to NSW Fair Trading will only be accepted by the Commissioner if evidence of completed enforcement action by a council is provided (see 3.2.4 of the Code of Conduct). Practically this means local councils are required to take formal enforcement action in relation to any reported breach of the Code of Conduct before seeking NSW Fair Trading's involvement. Byron Shire Council received 176 noise complaints between 1 January 2022 and 31 December 2022. Many of these involved STRA guests and did not result in formal compliance action by Council but did require Council to investigate and respond to each complainant. For Council to commence formal enforcement action in all matters relating to breaches of the Code of Conduct would be resource intensive, costly and inconsistent with Council's usual enforcement approach and the NSW Ombudsman's enforcement guidelines for councils. The result has been that no complaints received by Council in relation to STRA have met the threshold to be capable of being reported to NSW Fair Trading. They have instead required Council to investigate and respond at significant cost to Council for which we don't receive any funding.

Past STRA Compliance

There have been several reports to Council on STRA enforcement options over the years.

- 28 February 2013 – [Report No. 12.7](#). Land and Environment Court Proceedings 40466 of 2012 – Byron Shire Council v Blaney – 21 Bay Vista Lane, Ewingsdale ("Holiday let matter") ([Res. 13-114](#))

Council resolved to defer authorisation of proceedings related to "holiday letting" pending the development of a strategy regarding options for regulation.

At this meeting Council noted that action remained open against "holiday let" properties should the behaviour of tenants of such properties cause significant impact on neighbourhood amenity.

That approach has been reinforced in numerous contexts thereafter such that it has been made abundantly clear that whilst Council would not take action relating to the holiday letting of properties per se, it would take action in respect of fire safety and amenity issues on a case by case basis as and when they arise.

- 27 October 2016 - [Report No. 13.7](#) PLANNING - 26.2015.5.1 Planning Proposal for Short Term Rental Accommodation - Update on LEP Amendment ([Res. 16-545](#))

Council considered a report on the changes required by Parliamentary Counsel's Office on the first planning proposal to facilitate STRA. Council resolved (Res. 16-545 relevant parts 4 & 5):

4. Not to take enforcement action against existing land owners for 6 months following the LEP amendment being made for using a dwelling for short term rental accommodation not in accordance with Byron LEP 2014, provided that use does not generate substantiated complaints relating to noise, amenity or public and occupant health and safety issues.
 5. Receive a report, before years end, on the legal and planning avenues to ensure 'granny flats/secondary dwellings' built without paying Council fees and or contributions are not being used and will not be used for short term rental accommodation purposes.
- 15 December 2016 - [Report No. 13.10](#) - Report update on resolution 16-545 Short Term Rental Accommodation ([Res. 16-673](#))

Report in response to part 5 of Resolution 16-545, on legal and planning avenues to ensure 'granny flats/secondary dwellings' built without paying Council fees and or contributions are not being used and will not be used for short term rental accommodation purposes

- 23 March 2017 – [Report No. 13.15](#) - Report update - Planning Proposal for Short Term Rental Accommodation ([Res.17-084](#))

Report on response to Parts 1 – 4 of Resolution 16-545. Council resolved (relevant parts 4, 5 & 6):

4. That should in the meantime a state environmental planning policy not be produced by the department of planning and environment for the purposes of short term rental accommodation by 1 July 2017, Council lift its current moratorium on legal action against unauthorised tourist and visitor accommodation (illegal holiday letting).
 5. That Council write to the department informing them of part 4.
 6. That Council be provided a discussion paper / report to the May Council meeting on the available enforcement options against unauthorised tourist and visitor accommodation (illegal holiday letting) and to councillors as early as possible.
- 22 June 2017 – [Report No. 13.17](#) - Short Term Rental Accommodation - Enforcement Options ([Res. 17-263](#))

This report responds to item 6 of resolution 16-545. Council resolved:

1. Note the report
2. Authorise the General Manager, in cases where a reasonable suspicion of unauthorised short term rental accommodation and unauthorised tourist and visitor accommodation is taking place, to issue Notices to the following to provide information and answer questions about property use:
 - Real Estate agents
 - Letting Agents
 - Website Hosts
 - Tenants
3. That Council confirms that:
 - a) in order to preserve the availability of long-term letting in the shire for long-term residents that the moratorium on prosecutions has been lifted.
 - b) it now intends to prosecute in the most effective manner where merit exists any and all instances of unauthorised short term rental accommodation occurring in the shire.
4. That a media release be shared on this resolution.
5. Compile a confidential list of properties against which it may commence legal proceedings based on the establishment of a prima-facie case of unauthorised short term rental accommodation and unauthorised tourist and visitor accommodation, and that this list is compiled as soon as possible.

As a result of this resolution Notices were issued and legal proceedings commenced on two properties.

Levies and rates

Council has been advocating for many years regarding the introduction of some form of Tourism Levy such as a 'bed tax' and has also looked at applying business rates to STRA properties.

At the 15 December 2016 meeting Council considered Report No. 13.2 on proposed special rate variation and resolved (Res. [16-658](#)), relevant parts only:

4. That to ensure an equitable distribution of any rate increase, the following information be provided to Council and the community before the next Ordinary meeting:
 - ii. Options for distributing a higher proportion of the rate burden to those businesses which benefit from tourism.
 - iii. An assessment of Holiday let properties within a business category.
5. That this report also include revenue raising options external to a special rate variation including:
 - i. Implications and particulars of a Tourism Levy, Tariff or something similar and its relationship to a Special Rate Variation.

Currently there is no legislative authority for Council to impose any form of Tourism Levy or Tariff. This would require the NSW State Government to introduce and approve legislation to enable the generation of revenue.

Randwick City Council recently considered a report titled 'Rating Options and Other Responses for Airbnb and short-term letting'. The report looked at rating options and other appropriate responses permitted under the NSW Local Government Act 1993 and NSW Local Government (General) Regulation 2021. It also looked at planning legislation and other initiatives addressing the impacts of short-term letting across the LGA.

Randwick Council resolve that they write to the Minister for Planning and Homes advocating for the introduction of a bed tax or other scheme to be remitted to councils to address the impacts of short-term rental accommodation on local communities. Shoalhaven Council have a similar resolution.

[Agenda of Ordinary Council - Tuesday, 28 February 2023 \(infocouncil.biz\)](#)

Voluntary visitor contribution

As Council is not able to apply a 'bed tax' under the Local Government Act, Council considered the introduction of a voluntary visitor contribution.

Council resolved to apply a fee to the Council managed First Sun and Suffolk Park caravan parks and invite businesses within Byron Bay to also take part. There were several reports to Council on this initiative, which in the end did not gain business support to proceed.

- 21 November 2013 - [Notice of Motion](#) No. 8.5 - Byron Bay voluntary visitor contribution (Res. [13-622](#))
- 23 August 2018 – [Notice of Motion](#) No. 9.1 - Byron Shire Voluntary Visitor Fund (Res. [18-556](#))
- 25 June 2020 – [Report No. 13.18](#) - Voluntary Visitor Fund - Project Update (Res. [20-353](#))
- 25 March 2021 - [Report No. 13.6](#) - Voluntary Visitor Fund (Res. [21-116](#))

STRA data collection

Q. What other data is Council collecting in relation to STRA and can this be shared with the Commission?

Monitoring and Review

As resolved (Res.22-729), staff will be reporting to Council in early 2023 on an updated STRA risk mitigation and monitoring strategy that reflects the finalised planning proposal and mapped precincts along with an Enforcement Strategy.

The planning proposal has a 12 month transition period before it comes into effect providing property owners and managers with time to update their property details on the DPE Register and honour any bookings already made.

Monitoring will be undertaken on a regular basis with a review period of 3 years and then 5 years to align with the ABS census cycles.

The review will benchmark Byron against the performance of other North Coast LGAs and will include:

- Impact of short term rentals on the availability and cost of long term rentals, including total active rental bonds, rent levels
- Community profile, including employment industries, unemployment rates, socio-demographic, living arrangements, live/work data
- Business and tourism economy
- Commercial tourist and visitor accommodation supply eg. hotels and resorts
- Short term rental accommodation, including nightly rates, non-hosted numbers and locations
- 365 day precincts
- Housing supply and impact on long term rental supply and holiday lets
- Unoccupied dwelling rates
- Research and analysis to understand implications for residential and rural areas and housing market

Data and information to inform the monitoring and review will be sourced from:

- AirDNA, InsideAirbnb, DPE Register
- Business and community surveys
- ABS Census data

- Rental Bond Authority
- Tourism Research Australia
- [.id community](#)
- Rate data
- Customer action requests
- Fair Trading

What we need

We request that the Commission support Council's Planning Proposal adopted at the 15 December 2022 meeting for a 90/365day precinct model. This will allow Council to monitor and review the model through a comprehensive assessment program and respond accordingly.

The report⁶ 'When Tourists Move In: How Should Urban Planners Respond to Airbnb? found:

'Airbnb listings aggregate in areas of high tourist visitation but also extend beyond the inner core'

'There is considerable potential for Airbnb (or other online holiday accommodation platforms) to remove whole homes from the permanent rental supply and therefore considerably increase pressures on rents'

Urbis's EIA showed that a 90 day cap will result in a 35% behaviour change with 21% of properties returning to the long term rental market and 14% selling.

Of the properties returning to long term rental, 27% are 'budget accommodation' and 11% 'mid-market', which in turns takes the pressure of those needing budget accommodation. Known as 'filtering' if there's little rental stock available people on higher incomes take the rental stock that people on moderate or lower incomes rent.

Even a small return flows on to decreasing rents:

*'In a market of about 3,000 long-term rental properties, a change as small as 30 properties can move the vacancy rate by 1%. This can have a significant impact on private rental rates'*⁷

We also request:

- A mechanism to exclude new housing from being used for non-hosted STRA purposes
- A portion of all new housing to be affordable housing in perpetuity (AHCS)

⁶ [Full article: When Tourists Move In: How Should Urban Planners Respond to Airbnb? \(tandfonline.com\)](https://tandfonline.com)

⁷ Dr Peter Phibbs, Byron Shire Planning Proposal on Short-Term Rentals Report to Byron Shire Council, EPIC DOT GOV PTY LTD, 2022- attachment to 15 December Council meeting

- STRA registration scheme that council administers locally with a fee regime to fund administration, auditing and enforcement
- Review of the rating system for STRA properties or a levy - to pay for monitoring and compliance (paid by owners) - and beyond to visitors to pay for additional load on infrastructure (bed tax)
- Requirement to apply for 'change of use' for non-hosted STRA
- Agreement on baseline data and the sharing of data between industries and government to allow real time monitoring
- Clarity on existing use rights

Council's public submissions report ([No.13.9](#), 15 December 2022) included alternative policy measures shared by many stakeholders. These measures were often aimed at addressing STRA management, along with housing affordability and access to housing. These were generally considered to be outside the scope of, or in addition to, the current planning proposal and included:

- Differential rating of STRA properties
- Addressing housing affordability and availability through other interventions e.g., affordable housing supply, new land release etc.
- Restricting STRA properties based on zoning e.g., excluding STRA from residential zones
- Increasing enforcement to better control STRA impacts and poor operators
- Creating a stronger tourism focus within the Byron Bay township
- Enabling a STRA approval process for quality / long-term operators
- Establishing a levy to generate funds to cover enforcement and infrastructure demands
- Improving public transport to enable local workers to live across the Shire

Global Case Studies - 90 day cap, other countries experiences

Case study 1. 90 day cap applied to limit STRA⁸

Research on outcomes of applying regulations referred to as Home-Sharing Ordinances (HSOs) in San Francisco

San Francisco imposed a 14% hotel tax (i.e. a Transient Occupancy Tax) and a cap of maximum 90 rental days per year.

Relevancy to Byron Shire: the research notes that this area is attractive to tourists and is the second most popular Airbnb city in the US after New York.

Purpose of research:

- to measure the impact of Airbnb, by far the largest STR-platform, on housing markets
- focus on the effects of policies that restrict the market for STRs

Findings:

- HSOs are very effective in reducing Airbnb listings of entire properties by approx. 50%
- Allowing the offering of hosted room listings shows that room listings do not reduce
- Suggestive evidence that the number of hotels increased due to the HSO – appears the formal hotel industry benefited from the implementation of HSO
- HSO reduced house prices and rents by about 2% on average

The decision to implement an HSO is a political one, with a clear group of winners and losers, and strong distributional effects - owners lose from HSO-induced house price reductions, whereas (long-term) renters benefit from lower rents.

⁸ Short-term rentals and the housing market: Quasi-experimental evidence from Airbnb in Los Angeles☆ Hans R.A. Koster a,1 , Jos van Ommerena,2,* , Nicolas Volkhausena [Short-term rentals and the housing market: Quasi-experimental evidence from Airbnb in Los Angeles - ScienceDirect](#)

Case study 2. 90 cap was applied to enable STRA⁹

Research on the potential impacts of the growth of short-term letting platforms on the private rented sector in Great Britain

Relevancy to Byron Shire: In 2015 a 90-day limit was enabled in London. Prior to 2015 the use of residential premises as temporary sleeping accommodation was restricted and was classed as a material change of use for which planning permission was required. The density of short-term letting activity is not uniform and disproportionately affects some areas.

Findings:

- **Professional lets of whole properties biggest risk to housing supply**
- Survey of landlords found that **providing capacity to STRA, incentivises** professional landlords to:
 - Choose **STRA over long-term rentals**
 - **acquire more properties for the purposes of STRA**
- Enabling STRA by introducing a 90 day limit incentivised professional landlords – 23% of landlords offered short-term tenancies, almost 30% had added properties to their portfolio or were new entrants that could have instead chosen to invest in properties for longer term tenancies
- The **main threat** to the availability of places for people to live in the private rented sector comes from **professional landlords** using short term letting platforms to rent out their property rather than having long-term tenants. A property that an individual rents out while they are on holiday would not have otherwise been used to house long-term tenants.
- Landlords surveyed were encouraged to change the use of properties to short-term lets because they thought they could achieve higher rents for the nights that the property is occupied and to avoid burdensome regulation of long-term lets.

⁹ The impact of short-term lets - Analysing the scale of Great Britain's short-term lets sector and the wider implications for the private rented sector 2020 - Capital Economics [PowerPoint Presentation \(propertymark.co.uk\)](https://www.propertymark.co.uk/powerpoint-presentation)

Case Study 3. Report from Action on Empty Homes, funded by Trust for London¹⁰

Relevancy to Byron Shire: Type of housing and regulation that encourages wealth investment in housing for STRA. This report draws on new data, discussions with impacted local communities and interviews with policy-makers on empty homes, and calls for housing development in London to meet local needs, not investors' priorities.

Findings:

- London is building the wrong housing to resolve the housing crisis
- Homelessness is rising at the same time as empty homes numbers shoot up and more second homes and Airbnb-ready flats are built in the capital
- A wide range of voices are saying it is time to stop building yet more empty homes
- The climate crisis shows us why we need to retrofit not demolish council estates and take a 'RetroFirst' approach to development, including retrofitting long-term housing stock for a more sustainable future

Key recommendations:

- London boroughs need to take action on empty homes, adopting more robust strategies to challenge emptiness of all types
- Bringing wasted empty homes into use is critical for sustainability
- Airbnb needs tighter regulation and data sharing with borough enforcement teams
- A Vacancy tax is needed
- The second homes category must be reformed or abolished
- A transparent national register of residential property ownership and usage is required
- A new Government-funded program of support for enforcement, incentives and investment at local level is needed
- Local Planning must be meaningful, informed and not undermined by national policy

¹⁰ [AEH NoHome Aug21 5.qxp \(fra1.cdn.digitaloceanspaces.com\)](#)

Case Study 4. Position paper on EU wide regulation of STRA¹¹

HOTREC is the umbrella Association of Hotels, Restaurants, Pubs and Cafes and similar establishments in Europe.

Relevancy to Byron Shire: International visitor status of Byron on par with some European cities. Offers hotel industry input and overview of varying policy approaches to regulation including need for the industry to require online Platforms to participate in the reporting and regulation.

Findings:

- Unlevel playing field with the commercial accommodation sector - unlike other tourism services, the activities of STR hosts remain to a large extent unregulated or underregulated
- View of HOTREC that platforms as major facilitators and developers of STR services should play a key role in supporting regulatory compliance by STR hosts.
- The **contribution of STR to jobs and outsourced activities for SMEs** (Small and medium-sized enterprises) **is marginal**, especially when compared to traditional accommodation service providers. Where STR hosts do create jobs and outsource activities, they will typically be providing a 'professional service' which is particularly unfairly underregulated compared to the traditional accommodation services.
- Around the globe, the **aggregate share** of Airbnb units which are managed by medium or **large property managers had increased** from 22% in April 2017 to 29% in April 2021 – these operators are **charging higher STRA rental rates** - average daily rate (ADR) for a two-bedroom vacation rental was 9% higher than in the first half of 2019.
- Offering accommodation as STR can be much more lucrative than placing the accommodation on the regular housing market. This has led to a reduction in the overall housing offer in major European cities, and to a rising demand. This situation sustains speculation in the property market, leads to a rise in prices for both buying or renting accommodation, and undermines access to affordable housing for people who wish to study, work and live in cities.

¹¹ [HOTREC Position paper on EU-wide regulation of Short-Term Rentals - HOTREC](#)

Appendix 1 – STRA Timeline

Appendix 2 – Council Resolutions 08-676 and 09-614, criteria used to determine precincts

Report DM797504 - PLANNING Draft Byron Shire-wide Local Environmental Plan LEP Minutes DM802209

08-676 Resolved:

1. That Council adopt for public exhibition an urban holiday letting precinct model for Byron Bay and Brunswick Heads.
2. That the area for Byron Bay include Belongil, Lighthouse Road and Wategos, to facilitate beachside areas and those precincts that are in close proximity to the town centre, tourism facilities and services and within walkable distances to those cultural experiences see Map 1 #805168.
3. That the area for Brunswick Heads exclude Bayside, but include the older area of town as the area that is in close proximity to the town centre, tourism facilities and services and within walkable distances to those cultural experiences including the beach see Map 2 #805167.
4. That this form of tourism use be regulated to provide an approval system, other than a development application. That an information brochure be developed for the public exhibition period of 28 days and be subject to a councillor workshop which includes specific information on:
 - a) part time rental of permanently occupied dwellings for the purpose of short term visitor use
 - b) a process for the regulation of holiday let properties by way of an annual licence and property identification as per Tourism Options Paper
 - c) a fee for inspection and contribution to Council proposal and how this compared with bed and breakfast
 - d) a Frequently Asked Questions leaflet
5. That Council receive a report on a revised process for the approval and developer contribution for Bed and Breakfast establishments.

Report DM858266 - Byron Shire Holiday Letting Model submissions analysis Minutes DM865239

09-614 Resolved:

1. That Council note the results of the public exhibition of the proposed holiday letting model as outlined in this report.

2. That Council reconfirm its Draft LEP Holiday Letting Precinct position with the inclusion of the South Beach Road and Riverside Crescent, Brunswick Head areas for holiday letting permissibility.
3. That Council reconfirm its Holiday Letting tourism model has been assessed as a tourism activity that considers the needs of visitors to be in close proximity to tourism related infrastructure and activities and the impact of the use on residential areas.