

**Report No. 13.9 Planning Proposal 26.2020.1.1 Amendment to State Environmental Planning Policy (Housing) 2021 Short-term Rental Accommodation in Byron Shire - Submissions Report**

**Directorate:** Sustainable Environment and Economy

**Report Author:** Shannon Burt, Director Sustainable Environment and Economy  
Sharyn French, Manager Environmental and Economic Planning  
Natalie Hancock, Senior Planner  
Ben Grant, Planner

**File No:** I2022/1432

**Summary:**

This report provides a summary of the findings of the recent exhibition of Byron Shire Council's Planning Proposal for short-term rental accommodation (STRA).

It also provides specific commentary on how Council has met the requirements of the gateway determination (a prerequisite for Council to move forward with its consideration of this planning proposal), and what further advocacy to State Government is required to enable the state created framework for STRA regulation to be reviewed to address anomalies and inadequacies in it as identified through the engagement process.

It needs to be acknowledged that Byron Shire, is the only local government area in NSW that has been given the opportunity to lodge a Planning Proposal that could identify or reduce the number of days that non-hosted STRA may be carried out in parts of its local government area.

This report recommends that Council adopt a Planning Proposal which amends State Environmental Planning Policy (Housing) 2021 to:

- increase the number of days of non-hosted short term rental accommodation in part of the Byron Shire Local Government Area from the current 180 day cap to a 365 day cap for areas in set precincts in the Brunswick Heads and Byron Bay localities; and
- reduce the number of days of non-hosted short term rental accommodation for the balance of the Byron Shire Local Government Area from the current 180 days cap to a 90-day cap.

This recommendation has considered the feedback from the engagement activities and submissions received as documented in the **Engagement with target stakeholders and community Report** (Attachment 2), and that of the **Consideration of Economic Impacts of the Planning proposal** (Attachment 8).

## BYRON SHIRE COUNCIL

If the changes are supported by Council, there will be a 12-month transition period for any changes to commence. This means any changes will not come into effect until 2024.

Council has been delegated authority to make the plan subject to the proposal not being amended to reduce non-hosted STRA period on any land to less than 90 days.

5

---

### RECOMMENDATION:

#### That Council:

- 10 1. amends the planning proposal to:
  - a) include in the 365-day cap precinct, the area as per the maps in the body of this report, namely:
    - 15 ii) Shirley Lane and south of Shirley Street and precinct west of bus interchange around Sommerset Street, Byron Bay
    - ii) Byron Bay central business area
  - b) remove from the 365-day cap precinct the areas as per the maps in the body of this report, namely:
    - 20 i) Suffolk Park
    - ii) area south of Booyun Street, Brunswick Heads
- 20 2. adopts the amended planning proposal to amend State Environmental Planning Policy (Housing )2021 to:
  - 25 a) increase the number of days of non-hosted short term rental accommodation in part of the Byron Shire Local Government Area from the current 180-day cap to a 365-day cap for areas in set mapped precincts in the Brunswick Heads and Byron Bay localities; and
  - b) reduce the number of days of non-hosted short term rental accommodation for the balance of the Byron Shire Local Government Area from the current 180-days cap to a 90-day cap.
- 30 3. forwards the adopted planning proposal to NSW Parliamentary Counsel's Office (PCO) requesting that the amendment to the Housing SEPP 2021 be finalised.
4. notes staff will report to Council in early 2023 on:
  - a) an updated STRA risk mitigation and monitoring strategy that reflects the finalised planning proposal and mapped precincts; and

# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.9

**b) STRA enforcement strategy.**

**5. notes should the planning proposal be adopted by Council, there will be a 12-month transition period for any changes to commence. This means any changes will likely not come into effect until 2024.**

**5 6. requests staff write to the NSW government advocating for changes in response to the alternative policy measures shared by many stakeholders including:**

**a) differential rating of STRA properties**

**10 b) establishing a levy to generate funds to cover enforcement and infrastructure demands**

**c) assigning the STRA register to Council to administer with appropriate fees for servicing**

**Attachments:**

- 15 1** Timeline summary Short term rental accommodation planning proposal - current to Sept 2022 - 26.2020.1.1., E2022/84003
- 2** Locale Consulting, Engagement Report - Short Term Rental Accommodation Planning Proposal exhibition, E2022/118657
- 3** Combined submissions without form letters, E2022/115754
- 20 4** Combined form letter submissions from business owners, E2022/115661
- 5** Combined form letter submissions from ASTRA, E2022/115638
- 6** Combined form letter submissions from bookings@byronbayaccom, E2022/115641
- 7** Combined form letter submissions from others, E2022/115662
- 8** Peter Phibbs, Epic Dot Gov - Report on Byron Shire's Planning Proposal on Short-Term Rental Accommodation, E2022/119043
- 25 9** Gateway determinations and letters 24 June 2021 and 3 June 2022, E2022/67974

## Report

### Background

5 The [Planning Proposal](#) is the result of a “Local Planning Direction” originally issued by the Minister for Planning on 15 February 2019. The Direction gave Byron Shire Council the opportunity to lodge a Planning Proposal that could identify or reduce the number of days that non-hosted STRA may be carried out in parts of its local government area.

The project has had a long project history dating back to 2003 (Attachment 1).

There have been reports to Council more recently on STRA which have provided a detailed background and rationale for the current approach and position of Council.

10 Report No. 13.21 Update - Impacts of and management options for short term rental accommodation (STRA) in Byron Shire [Agenda of Ordinary \(Planning\) Meeting - Thursday, 19 November 2020 \(infocouncil.biz\)](#)

15 Report No. 13.13 Economic Impact Assessment of Planning Proposal for Short-Term Rental Accommodation [Agenda of Ordinary Meeting - Thursday, 24 February 2022 \(infocouncil.biz\)](#)

It is not proposed to repeat or revisit in detail these reports unless necessary.

### What does the Planning Proposal do?

At the current time, non-hosted STRA is limited to 180-days per year. This rule is set by the NSW Government and has applied to the Byron Shire since 31 January 2022.

20 If the Planning Proposal is adopted, non-hosted STRA will be limited to 90-days per year in most of the Byron local government area. Exceptions to this are proposed. As exhibited these areas included four mapped precincts in parts of Byron Bay (East and West), Suffolk Park and Brunswick Heads where it would be permitted 365-days per year.

[26.2020.1.1-STRA-Planning-Proposal-Appendix-4-Mapping \(1\).pdf](#)

25 However, changes are now proposed to these indicative mapped precincts, as discussed in detail in section **Precinct Map Methodology**.

### **Key issues**

An altered gateway determination was issued by the Minister for Planning 3 June 2022, which altered the earlier gateway issued 24 June 2021 (Attachment 9).

30 In his issuing of the gateway determination the Minister advised Council of the following:

- Acknowledged Byron Shire’s unique and exceptional circumstances in relation to housing availability, affordability and the 2022 Flood events impact on local housing.

- 5
- Acknowledged the high proportion of STRA compared to permanent rental accommodation.
  - Concerned about the impact of the proposal on the economy and as such stated that any mapped precinct could not go below 90 days and that amendments to expand the 365 days should be explored.
  - Council must receive and assess submissions and respond accordingly.
  - Council must make public any justification for changes to the mapped precincts prior to proceeding to make the plan.

**Response to Gateway Determination and Minister's requirements**

- 10
- **Engagement with target stakeholders and community**

Locale Consulting was engaged by Council to assist with the design and delivery of a range of engagement activities during and following the exhibition period including the preparation of an Engagement Report, Attachment 2.

- 15
- It was important to engage an independent facilitator to provide impartiality to the process, especially as Council has been delegated to act as the Local Plan Making Authority.

In undertaking these engagement activities, Locale's role has been to listen and document the views of stakeholders and to report on these to Council for consideration in its decision-making process.

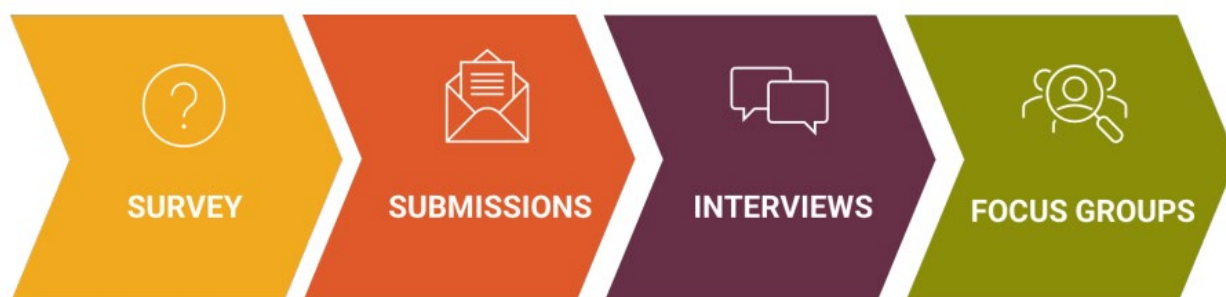
- 20
- Locale have not undertaken a review of the merits of the planning proposal, nor does the Engagement Report make any recommendations to Council about how the planning proposal should progress.

The Engagement Report documents the feedback received through the engagement activities and provides a high-level summary of this feedback to highlight any key themes as well as the different perspectives and views of stakeholder groups.

- 25
- The Report is being used to inform Council in its post-exhibition decision making process about the planning proposal. This being a requirement of the Minister as stated above.

Below is an extract from Locale Consulting's Engagement Report which can be viewed in full in Attachment 2.

The results of each engagement activity are summarised in the report as follows.



In total, over 1,500 forms of feedback were received whilst the planning proposal was on exhibition, refer to Attachments 2 to 7.

5 An online survey on the planning proposal was available on Council's Your Say webpage between 1 September and 31 October 2022. The survey sought to obtain information on:

- Where people lived, either within or outside the Byron Shire LGA
- Whether they owned residential property within the Shire
- Whether they used their property for STRA purposes
- Whether they lived or owned property within the proposed 365-day precincts
- 10 • Whether they agreed or disagreed with the proposed precinct boundaries, including how and why changes should be made to the boundaries
- What other interests they may have in the area and/or subject matter if not living or owning property in the Byron Shire
- How they believed they will be impacted by the changes
- 15 • Any other comments that they would like to make, and
- Whether they had made or were intending to make a written submission

The survey received a total of 766 responses.

784 written submissions were received over the exhibition period. 530 identified as STRA property owners and the majority of those submissions being pro-forma letters (379).  
20 There was also an online petition submitted via Change.org under the banner of 'Byron Deserves Balance'. The petition received 981 signatures online and 142 signatures offline.

Six one-to-one stakeholder interviews were undertaken during the exhibition period. This includes interviews with the STRA industry, online travel platforms and advocacy groups that campaign to regulate the STRA industry.

25 The interviews were based on a common set of questions which were provided in advance of the meetings. The interviews were attended by two representatives of Locale Consulting.

30 Eight focus group sessions were undertaken during the exhibition period. This included in-person and online sessions with a diverse range of stakeholders who represented various perspectives. This included local workers, local property industry, local property owners,

# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.9

5 local accommodation providers (who are not STRA operators), local community, local businesses, local tourism organisations and local renters / displaced people. A total of 130 stakeholders were invited to attend the sessions, plus an open invitation was made to local property owners via Council's Your Say page and e-news. A total of 69 stakeholders registered to attend a session, and a total of 46 stakeholders shared their feedback across the eight focus groups. The focus groups were facilitated by two representatives of Locale Consulting.

10 Overall, the feedback showed general support for some form of regulation of the STRA industry and that better management of STRA is required, particularly to address amenity impacts.

Many also agreed that it is important to provide more housing stock that is affordable for people in the Shire, particularly essential and frontline workers.

15 However, many felt that the planning proposal will not address the issues relating to housing affordability, availability and security in the Byron Shire and that housing supply is a separate issue (requiring different policy responses) to regulating STRA.

The lack of support for the planning proposal was often related to the significant changes that have occurred in recent years that stakeholders feel need to be considered in any policy response to STRA in the Byron Shire. These include:

- 20 • The introduction of a new regulatory framework by the NSW Government which took effect in the Byron Shire on 31 January 2022
- The professionalisation of the STRA industry and increasing reliance on third-party booking platforms since the arrival of Airbnb
- The impacts of COVID on travel patterns and visitation numbers, as well as housing prices
- 25 • The impacts of the flood events in early 2022 particularly concerning housing availability and affordability.

30 There was also concern about the potential for negative impacts on the local economy and employment. Many saw the local economy as intrinsically linked to tourism and the STRA industry, and that the proposed changes would create seasonal tourism and result in job losses, particularly for those industries that service STRA or indirectly benefit from STRA visitors.

35 There was, however, a difference of perspective between STRA property owners and other property owners or residents about the proposed changes. STRA property owners often raised concerns about the adverse impacts of the changes on their personal situations. Despite this concern, many stated they would retain their property for personal use rather than changing it to long-term rental. More broadly, the proposed changes and precinct model were often seen as inequitable and unfair, particularly for STRA property owners subject to a 90-day cap.

40 On the other hand, residents shared stories and lived experiences about the unpleasant impacts of STRA on their neighbourhood and the sense of community. These stakeholders

# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.9

welcomed the proposed changes as a way of addressing these impacts and some felt the changes could go further. At the same time, concern was expressed by some that the 365-day precincts would exacerbate the loss of a sense of community in those areas, particularly in areas such as Suffolk Park and Brunswick Heads.

5 There was also concern expressed that the proposed changes could result in a change in the demographic of residents and visitors alike, changing the fabric of the community and making holidaying in the area unaffordable for the average person and families. Others felt that the changes were long-overdue and would bring a sense of balance back to the community.

10 Overall, there was limited support for the proposed precinct model. Concerns were raised about its underlying basis, the data used, equity issues and financial implications for STRA property owners. Others were concerned about its practical implementation and how the rules will be enforced. The broader STRA industry (including STRA property managers and booking platforms) would prefer for there to be no cap at all or for the current  
15 regulatory framework to continue. Others, often residents of the area, want stricter controls in residential areas.

There was also a wide range of views expressed about the proposed precinct boundaries. Some people want the precincts to be removed completely, whilst others asked for the precincts to be expanded or reduced. Generally, STRA property owners asked for the  
20 boundaries to be expanded to include their property for equity reasons, whilst residents wanted them to be reduced due to amenity concerns.

Despite these differences of opinion, across the various engagement activities, there was some relatively consistent feedback about the precinct boundaries including the expansion of Byron Bay (East) and Byron Bay (West), the reduction or removal of Suffolk Park and  
25 reduction of Brunswick Heads. There was also commentary about expanding STRA opportunities to other towns/villages and hinterland areas.

Alternative policy measures were also 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  
30 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  
35 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  
40 demands



- Improving public transport to enable local workers to live across the Shire.

Separate commentary is provided on these in the **Other Issues** section below.

In summary, the exhibition process and engagement activities highlighted the wide diversity of views on both STRA and broader housing matters within the Byron Shire.

- 5 Views between different stakeholder groups varied widely, with highly passionate perspectives provided both in favour and against restrictions on STRA properties.

The issues raised during the exhibition process and engagement activities about Council's planning proposal have otherwise been considered and addressed in the report.

- **Consideration of Economic Impacts of the Planning proposal**

- 10 Dr Peter Phibbs previously provided an independent peer review of the Urbis EIA that the DPIE had required council to consider in its planning proposal.

As part of the process of finalising the planning proposal, Dr Peter Phibbs was engaged to provide further advice on aspects of the planning proposal. Issues considered:

Gateway requirement 1(b) Risk and Risk Mitigation

What has changed since the Urbis EIA was completed

The 365 day precinct boundaries

Respond to submissions which cover EIA

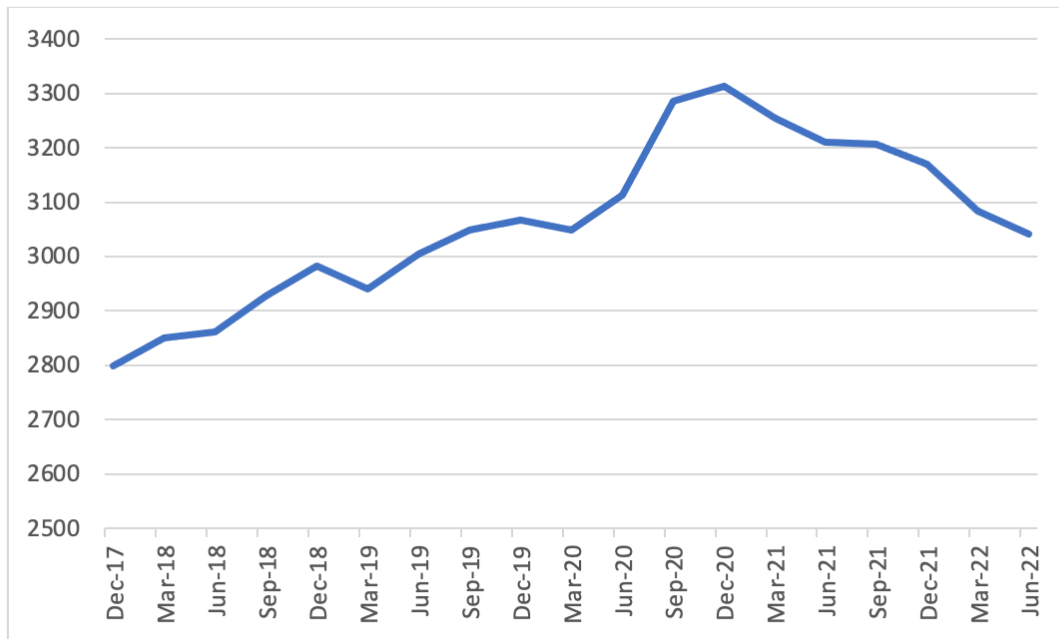
Comment on claims re the \$267 million hit to the economy

- 15 Below is an extract from Dr Phibb's report which can be viewed in full in Attachment 8.

The rental market has deteriorated significantly since the Urbis EIA report. A key statistic here is the size of the private long-term rental market which can be measured by the total number of active rental bonds. These are shown in Figure 1 and are based on figures from the NSW Rental Bond Board. Since the last reporting period from the Urbis EIA (March 2021), the rental market has continued to shrink, losing over 200 rental properties by the June quarter 2022. As supply has shrunk rents have risen – with the median rent rising from \$710 per week to \$775, or by about 9 percent, over this period.

- 20

**Figure 1. The total size of the Byron long term rental market 2017-2022**



Source: Department of Communities and Justice (2022)

Reliable estimates of the number of properties that will convert to the long-term market are difficult to produce. However, it must be remembered that even small changes in the number of rental properties available on the market can have a significant impact on rents. Rents are influenced by the size of the vacancy rate. 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. For example, the addition of only 70 properties can move rents from significant increases to stable rents.

5

A further point is that the planning proposal is not just about encouraging the conversion of existing STR properties to long-term rentals but also to provide a signal to future investors in the Byron residential property market that long-term rental is a better option. Without this signal the long-term rental market may continue to deteriorate (ie the shrinking long-term rental market trends shown in Figure 1 might continue).

10

This report is being used to inform Council in its post-exhibition decision making process about the planning proposal. This being a requirement of the Minister as stated above.

15

The general conclusions from the report show that Council has, and or can address all the requirements of the Gateway determination.

- **Risk Mitigation and Monitoring Report**

A matrix framework has been included in the planning proposal which:

20

- summarises the key potential risks of maintaining a 180-day per year cap versus a 90-day/365-day cap model on certain market segments.
- aims to minimise the potential risks associated with reducing the short-term rental accommodation day cap on certain key groups.

5 Comments have been provided in the Dr Peter Phibbs report about the matrix framework and monitoring strategy being fit for purpose.

10 However, a further update on the risk mitigation and monitoring strategy will be required following the finalisation of the planning proposal and its precinct maps. This will be reported separately to Council early 2023. Notwithstanding this Council intends to commit to a monitoring and review period of a minimum 3- 5 years to align with the ABS census cycles.

- **Precinct Map Methodology**

15 A key question that has come up time and time again during the planning proposal progression has been: *Are the boundaries shown on the indicative STRA precinct maps contained in the planning proposal appropriate? Should additional areas be added?*

The Minister also asked Council to consider the mapped precinct boundaries in issuing his revised gateway determination.

20 It is important to understand that the indicative precinct maps that were exhibited, were formed at a point in time, 2018/9 based on the data and information available to Council, as well as informed by earlier iterations of similar precinct map models endorsed by Council.

25 Previous reports to Council discussed this. In the absence of relevant stakeholder feedback, and other data i.e., data being made available from the online platforms like Airbnb to inform a review in between times, the precincts maps have remained static and as determined by Council back then.

Another point worth mentioning, and in response to feedback during the engagement activities about the precinct map model, is that it had been Council's preference prior to now to not apply a precinct map model. Instead, a 90-day cap on non-hosted across the Byron Shire was sought.

30 *"As reported to Council in February [sic] 2020, after considering community feedback and the results of further research, Council opted for a more simplified approach for STRA that seeks **to introduce a 90 day limit for non-hosted STRA in all areas as an initial planning control response**. The reason for this is that a proposed precinct model apart from being difficult to define in Byron Shire with hard boundaries, if done,*

35 *has the potential to create an unequal distribution of benefits and burdens across the community.*

40 *We also seek **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 and to meet the needs for permanent housing stock for our resident community and key workers. This also has not been accepted by the DPIE.”*

Links to reports in full:

5 [Agenda of Ordinary \(Planning\) Meeting - 20 February 2020 \(infocouncil.biz\)](#)

[Agenda of Ordinary \(Planning\) Meeting - Thursday, 19 November 2020 \(infocouncil.biz\)](#)

The DPIE rejected this approach to STRA leaving Council with no other option but to default to a mapped precinct model.

10 Moving forward, a robust set of criteria is needed to demonstrate that the final mapped precincts to be adopted by Council for the application of non-hosted 365-day caps are suitable and appropriate to the local context of Byron Shire.

So, to address the above question, and the Minister’s requirements, a set of criteria have been established.

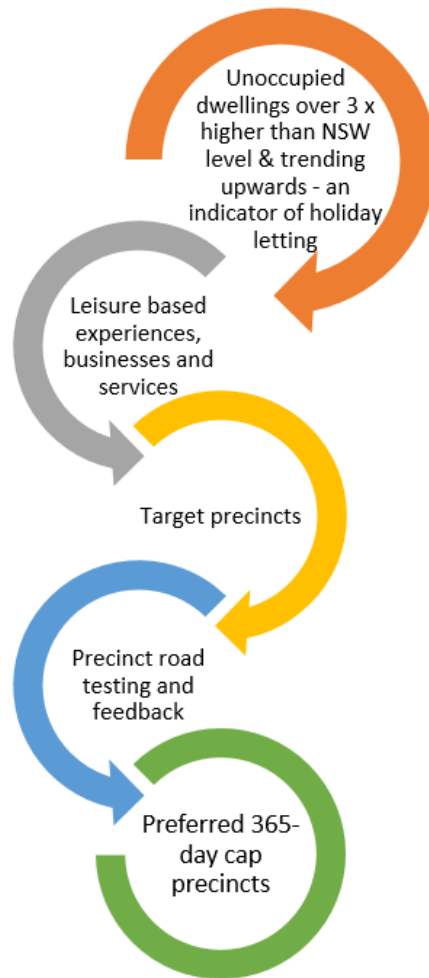
Three key attributes have been used to inform the criteria:

- 15
- 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.

20 As shown in Diagram 1, a series of steps have been applied using the quantitative and qualitative data to then identify localities and mapped precincts:

- with relatively high levels of unoccupied dwellings; and
  - with leisure-based experiences, attractions and services including safety and evacuation; and
- 25
- with correlated feedback received from engagement undertaken to inform the planning proposal including the most recent, in Oct- Nov 2022.

Diagram 1. Criteria assessment




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

5 Key

- 365-day cap precincts

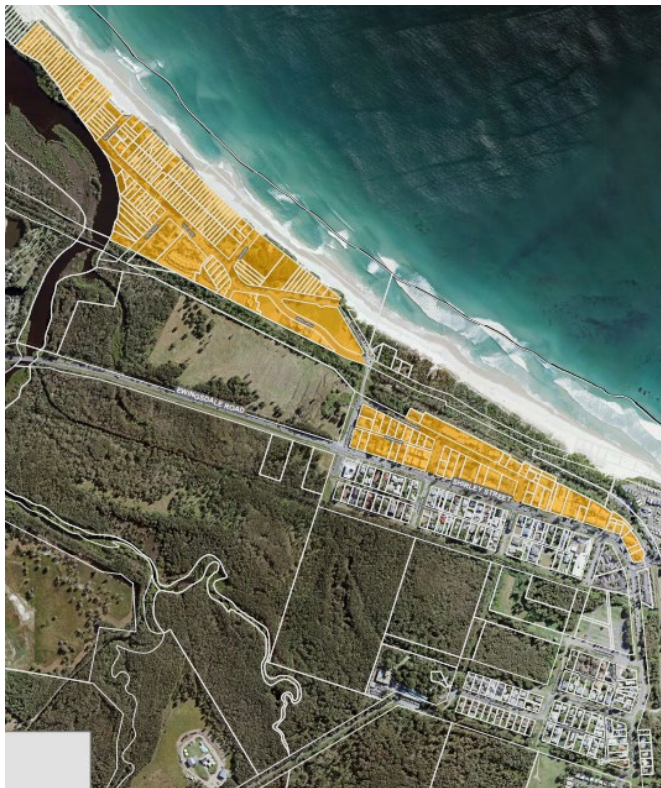
# BYRON SHIRE COUNCIL

## Byron Bay West

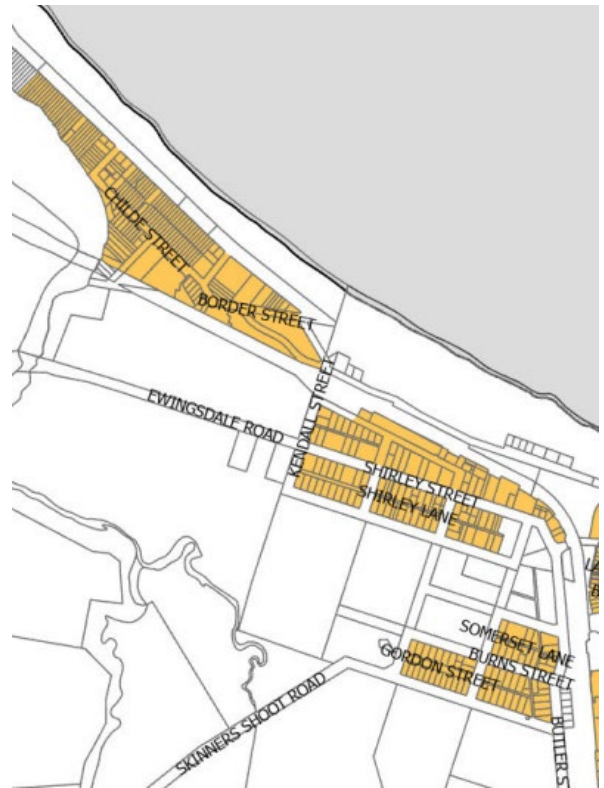
<b>Unoccupied dwellings</b> (dw) - an indicator of holiday let % unoccupied dw @ 2021 % change 2016- 2021	<b>Leisure based experiences &amp; attractions</b> 1: available 2: somewhat	<b>Tourist services</b> 1: available 2: somewhat 3. limited 4. none	<b>Relative safety, evacuation</b> 1: manageable 2: precautionary	<b>Feedback dominant view</b> 1: include 2: not definitive 3: remove/reduce
<div style="text-align: center;">                       ~ 50%                      Up ~25%                 </div>	1	1	1	1  expand to include south of Shirley St and Sommerset St area

**Recommendation:** Expand to include Shirley Lane and south of Shirley Street and precinct west of bus interchange around Sommerset Street.

**Exhibited**




**Proposed**





# BYRON SHIRE COUNCIL

## Byron Bay East

<b>Unoccupied dwellings</b> (dw) - an indicator of holiday let % unoccupied dw @ 2021 % change 2016- 2021	<b>Leisure based experiences &amp; attractions</b> 1: available 2: somewhat	<b>Tourist services</b> 1: available 2: somewhat 3. limited 4. none	<b>Relative safety, evacuation</b> 1: manageable 2: precautionary	<b>Feedback dominant view</b> 1: include 2: not definitive 3: remove/reduce
 ~51% Up 11%	1	3	1	1  some concerns regarding Wategos Beach inclusion

**Recommendation:** no change

**Exhibited**




**Proposed**



# BYRON SHIRE COUNCIL

## Byron Bay Central

This area is being included for consideration as a new precinct because of public feedback and its assessment against the quantitative criteria.

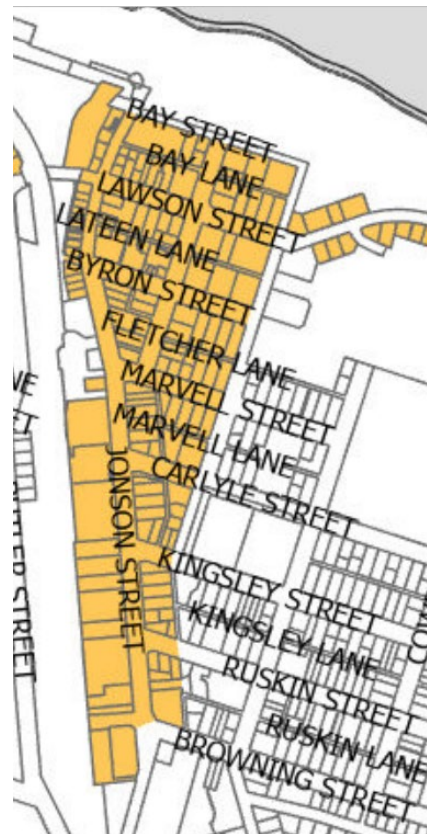
<b>Unoccupied dwellings</b> (dw) - an indicator of holiday let % unoccupied dw @ 2021 % change 2016- 2021	<b>Leisure based experiences &amp; attractions</b> 1: available 2: somewhat	<b>Tourist services</b> 1: available 2: somewhat 3. limited 4. none	<b>Relative safety, evacuation</b> 1: manageable 2: precautionary	<b>Feedback dominant view</b> 1: include 2: not definitive 3: remove/reduce
 ~72% Up ~30%	1	1	1	1 expanded to include the CBD

**Recommendation:** include CBD

**Exhibited**

N/A


**Proposed**





# BYRON SHIRE COUNCIL

## Brunswick Heads

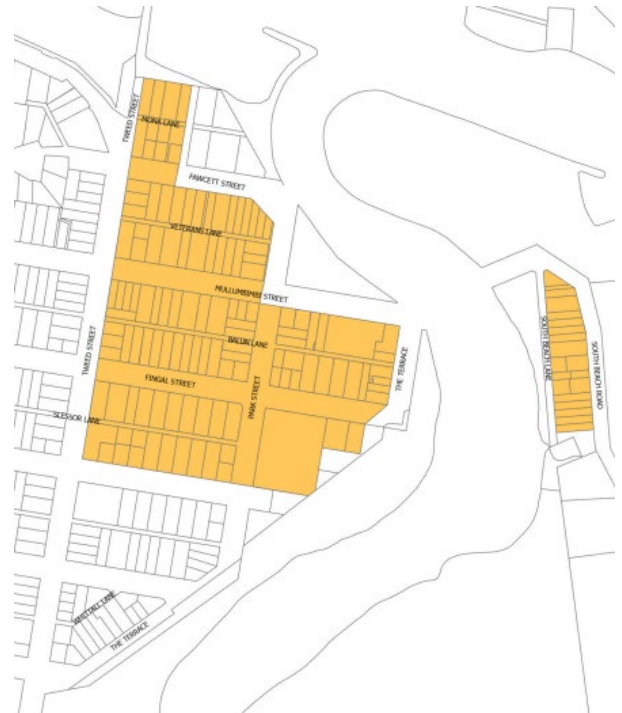
<b>Unoccupied dwellings</b> (dw) - an indicator of holiday let % unoccupied dw @ 2021 % change 2016- 2021	<b>Leisure based experiences &amp; attractions</b> 1: available 2: somewhat	<b>Tourist services</b> 1: available 2: somewhat 3. limited 4. none	<b>Relative safety, evacuation</b> 1: manageable 2: precautionary	<b>Feedback dominant view</b> 1: include 2: not definitive 3: remove/reduce
<div style="text-align: center;">                       ~ 30%                      Up ~13%                 </div>	1	1	1	3  more accepted areas - main town centre, north of Booyun Street, and east of Simpsons Creek

**Recommendation:** remove area south of Booyun Street

**Exhibited**




**Proposed**



# BYRON SHIRE COUNCIL

## Suffolk Park

<b>Unoccupied dwellings</b> (dw) - an indicator of holiday let % unoccupied dw @ 2021 % change 2016- 2021	<b>Leisure based experiences &amp; attractions</b> 1: available 2: somewhat	<b>Tourist services</b> 1: available 2: somewhat 3. limited 4. none	<b>Relative safety, evacuation</b> 1: manageable 2: precautionary	<b>Feedback dominant view</b> 1: include 2: not definitive 3: remove/reduce
 Varies ~17% - 29% Trend mixed ~2% down to ~8% up	2	2	2  evacuation routes	3  residents seeking intervention to avoid the deterioration of the community essence

**Recommendation:** remove Suffolk Park precinct

**Exhibited**




**Proposed**



**New Brighton**

Whilst New Brighton was not exhibited as a precinct, it did record an unoccupied dwelling rate of 34% which is greater than 3 times the NSW level of 9.4%. Hence, this location has been assessed against the criteria.

<b>Unoccupied dwellings</b> (dw) - an indicator of holiday let % unoccupied dw @ 2021 % change 2016- 2021	<b>Leisure based experiences &amp; attractions</b> 1: available 2: somewhat	<b>Tourist services</b> 1: available 2: somewhat 3. limited 4. none	<b>Relative safety, evacuation</b> 1: manageable 2: precautionary	<b>Feedback dominant view</b> 1: include 2: not definitive 3: remove/reduce
 ~34% up ~9%	2	3	2  flooding and evacuation routes	2

5 **Recommendation:** No change – remains 90 days and include as a focus area for monitoring and review.

• **Statutory Matters**

10 Council as the planning proposal authority is authorised to exercise the function of the local plan-making authority under section 3.36(2) of the EP&A Act subject to the following:

a) the planning proposal authority has satisfied all the conditions of the gateway determination

*The planning proposal has satisfied all of the conditions as discussed in the report.*

15 b) the planning proposal is consistent with applicable directions of the Minister under section 9.1 of the EP&A Act or the Secretary has agreed that any inconsistencies are justified

*The planning proposal is consistent with all applicable directions.*

20 c) there are no outstanding written objections from public authorities

*Both NSW Rural Fire Services and NSW Fair Trading were consulted.*

*The planning proposal will not facilitate additional development on bushfire prone land compared to the existing provisions in the Housing SEPP*

*Further consultation with the Secretary will occur as and if required to finalise the Plan.*

25

- d) that the proposal is not at any time amended to reduce non-hosted STRA periods on any land to less than 90 days

*The minimum period non-hosted STRA can be let on any land is 90 days.*

## Other issues

5 Response to the alternate policy options follow:

- **Differential rating of STRA properties**

Differential rating applies different rates to different land use categories. Under the Local Government Act 1993 the categories of rates are:

- 10
- farmland
  - residential
  - mining
  - business

15 STRA as defined under the Local Government Act is rated as residential. This is despite non-hosted STRA for 365 days being considered by many as a commercial use of residential land. Council has raised this as a concern previously with State Government.

There is support from other councils to look at a new rating category for this land use. See Shoalhaven Council link here:

[Shoalhaven Council investigates higher rates for holiday home owners - ABC News](#)

20 Further advocacy to, and support of State Government is required to recognise the need for a change in the Local Government Act 1993 for this to occur.

- **Addressing housing affordability and availability through other interventions e.g., affordable housing supply, new land release etc.**

There are many resolutions, actions and initiatives that Byron Shire has current to address housing affordability and availability.

25 [Housing Affordability Initiatives - Byron Shire Council \(nsw.gov.au\)](#)

Council also has a Housing and Affordability Advisory Committee

[Advisory Committees - Byron Shire Council \(nsw.gov.au\)](#)

The scope of the Housing and Affordability Advisory Committee is:

- 30
- Monitor and promote the implementation of Council's Affordable Housing Policy and other relevant policies and plans related to affordable housing for very low-, low- and moderate-income households, including essential workers, boarding house residents, homeless people and others experiencing housing stress.

- Serve as a resource for Council in relation to the housing market, trends and community impacts, including supporting access to and opportunities for affordable, sustainable and accessible housing options where relevant.
  - Suggestions on improving the development of housing options that support the retention of a diverse and inclusive community and an accessible and sustainable place to live.
  - Assist in the development of programs and initiatives to highlight the importance of housing to the well-being and dynamism of the community.
  - [Agenda of Housing and Affordability Advisory Committee Meeting - Thursday, 18 August 2022 \(infocouncil.biz\)](#)
  - [Agenda of Housing and Affordability Advisory Committee Meeting - Thursday, 17 November 2022 \(infocouncil.biz\)](#)
- **Restricting STRA properties based on zoning e.g., excluding STRA from residential zones**
- 15 [\(Housing SEPP\) commenced on 26 November 2021](#) now includes STRA. Because of this policy position councils are unable to exclude STRA from residential zones.

The Housing SEPP web page states the following:

### Short-term rental accommodation (STRA)

#### What is short-term rental accommodation (STRA)?

Short-term rental accommodation refers to the leasing of all or part of a legally constructed dwelling for a period of less than three months. The Housing SEPP defines STRA as either hosted or non-hosted accommodation and includes additional fire and safety standards which all STRA dwellings must meet. All STRA dwellings must be registered on the STRA register to confirm they meet the new fire and safety standards.

- 20 Examples of other councils that have resolutions looking at options to manage or restrict STRA in residential areas:

Ballina [Agenda of Ordinary Meeting of Ballina Shire Council - Thursday, 28 July 2022 \(nsw.gov.au\)](#)

Shoalhaven [Agenda of Ordinary Meeting - Monday, 12 September 2022 \(infocouncil.biz\)](#)

- **Increasing enforcement to better control STRA impacts and poor operators**

- 25 The need for an STRA enforcement strategy is acknowledged and will be the subject of a separate report to Council in early 2023.

- **Creating a stronger tourism focus within the Byron Bay township**

The proposed precinct maps address this issue directly. Council otherwise has strategies, plans and policies in place to support Byron Bay Township in this way.

- **Enabling a STRA approval process for quality / long-term operators**

- 5 A review of the State implemented STRA registration system and Code of Conduct is needed for this to occur.

There are many issues with these that need to be addressed for both to work transparently and with accountability. Further details will be reported in early 2023 as part of the Council's STRA enforcement strategy.

- 10 For example, other states enable councils to oversee the registration system. Council has requested this to be the case on numerous occasions.

[Short Stay Letting and Home Hosted Accommodation Local Law – Noosa Shire Council](#)

- **Establishing a levy to generate funds to cover enforcement and infrastructure demands**

- 15 The State Government recently removed Council' ability to levy for enforcement purposes.  
Report No. 13.25 Prohibition on Compliance Levy Changes [Agenda of Ordinary \(Planning\) Meeting - Thursday, 5 August 2021 \(infocouncil.biz\)](#)

Councils in NSW are otherwise restricted by the Local Government Act as to what levies can be imposed under what circumstances.

- 20 By comparison, other states like Queensland and Tasmania have imposed rates and levies on STRA recently:

[Brisbane City Council to hike rates on short-stay properties like Airbnb to tackle rental crisis - ABC News](#)

- 25 [Dorset Council hikes Airbnb waste levy by more than \\$2,000 to 'level the playing field' - ABC News](#)

- **Improving public transport to enable local workers to live across the Shire.**

Council has strategies, plans and policies in place that acknowledge the need to improve public transport across the Shire.

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

- 30 [Pedestrian Access and Mobility Plan - Byron Shire Council \(nsw.gov.au\)](#)



**Next steps**

- This report recommends that Council amends the planning proposal to:
  - 5 ○ include in the 365-day cap precinct, the area as per the maps in the body of this report, namely:
    - Shirley Lane and south of Shirley Street and precinct west of bus interchange around Sommerset Street, Byron Bay
    - Byron Bay central business area
  - 10 ○ remove from the 365-day cap precinct the areas as per the maps in the body of this report, namely:
    - Suffolk Park
    - area south of Booyun Street, Brunswick Heads
- adopts the Planning Proposal to amend State Environmental Planning Policy (Housing )2021 to:
  - 15 ○ increase the number of days of non-hosted short term rental accommodation in part of the Byron Shire Local Government Area from the current 180-day cap to a 365-day cap for areas in set precincts in the Brunswick Heads and Byron Bay localities; and
  - 20 ○ reduce the number of days of non-hosted short term rental accommodation for the balance of the Byron Shire Local Government Area from the current 180-days cap to a 90-day cap.
- Council has been delegated authority to make the plan subject to the proposal not being amended to reduce non-hosted STRA period on any land to less than 90 days.
- 25 • If the changes are supported by Council, there will be a 12-month transition period for any changes to commence. This means any changes will not likely come into effect until 2024.
- A further update on the risk mitigation and monitoring strategy will be required as a result of the finalisation of the planning proposal and its mapped precincts. This will be reported separately to council early 2023.
- 30 • Development of and subsequent implementation of a STRA enforcement strategy will be required also and will be reported separately to council in early 2023.
- Further advocacy to State Government is needed in response to the alternative policy measures shared by many stakeholders including:
  - 35 ○ differential rating of STRA properties

- establishing a levy to generate funds to cover enforcement and infrastructure demands
- return of the STRA register to council to administer with appropriate fees for servicing

**5 Strategic Considerations**

**Community Strategic Plan and Operational Plan**

<b>CSP Objective</b>	<b>CSP Strategy</b>	<b>DP Action</b>	<b>Code</b>	<b>OP Activity</b>
<b>4: Ethical Growth</b> We manage growth and change responsibly	4.1: Manage responsible development through effective place and space planning	4.1.4: LEP & DCP - Review and update the Local Environmental Plan and Development Control Plans	4.1.4.7	Progress Short Term Rental Accommodation planning proposal
<b>4: Ethical Growth</b> We manage growth and change responsibly	4.2: Enable housing diversity and support people experiencing housing insecurity	4.2.3: Legislation changes - Establish planning mechanisms and advocate for changes to legislation to support housing that meets the needs of our community	4.2.3.1	Prepare submission/s on draft changes to State government planning policy or legislative reforms.

**Recent Resolutions**

- 22-060

**Legal/Statutory/Policy Considerations**

- 10 Extract from Planning Circular, Delegation of plan making decisions (PS 22-002):



**Drafting and notifying LEPs for which council is the local plan-making authority**

Under section 3.36(1) of the Act the department requests the Parliamentary Counsel's Office (PCO) to draft the legal instrument to give effect to a planning proposal. However, when a council has been made the local plan-making authority, council will deliver its instructions directly to PCO.

The council will concurrently copy the instructions to the department for monitoring and reporting only. Council will then deal directly with PCO to negotiate and agree the final wording of the instrument, prior to making the LEP.

When a planning proposal relates to changes to LEP maps only (i.e. where there are no changes to the written instrument), council will deliver its instructions to the department (instead of PCO). The department will draft the legal instrument to give effect to a planning proposal.

When a plan is made, the department currently requests PCO to 'notify' the plan on the NSW Legislation webpage. The day the plan is notified on that webpage is the day the LEP becomes effective. This process will continue.

When a council has made an LEP it will be forwarded to the department. The department will request notification through PCO and will record the dates of making by the council and notification on the NSW Legislation web page. Changes to LEP maps resulting from this notification will be reflected on the planning portal.

**Financial Considerations**

Resourcing implications for Council to consider in its development and subsequent implementation of its enforcement strategy for STRA.

- 5 Further advocacy to State Government is required in response to the alternative policy measures shared by many stakeholders including:
  - differential rating of STRA properties
  - establishing a levy to generate funds to cover enforcement and infrastructure demands
- 10
  - return of the STRA register to council to administer with appropriate fees for servicing

These are within the remit of State Government to enable Local Government to do.

**Consultation and Engagement**

As discussed in the report and attachments.