



New South Wales Government
Independent Planning Commission

TRANSCRIPT OF PROCEEDINGS

RE: BYRON SHIRE - SHORT TERM RENTAL ACCOMMODATION
PLANNING PROPOSAL (PP-2021-3351)

EMERITUS PROFESSOR PETER PHIBBS MEETING

COMMISSION PANEL: DR SHERIDAN COAKES (Panel Chair)
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LOCATION: VIA VIDEO CONFERENCE

DATE: 10.00AM, FRIDAY, 17 FEBRUARY 2023

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DR SHERIDAN COAKES: Good morning, Peter. Before we begin, I would like to acknowledge that I'm speaking to you from Worimi Land and I acknowledge the traditional owners of all the country from which we virtually meet today and pay my respects to their Elders past and present. Welcome to the meeting today to discuss the planning proposal to reduce the number of days of non-hosted short-term rental accommodation in parts of the Byron Shire currently before the Commission for advice. My name is Dr Sheridan Coakes, I am the Chair of this Commission Panel and I'm joined by my fellow Commissioners Professor Richard Mackay and Ms Juliet Grant. We're also joined by Stephen Barry and Oliver Cope from the Office of the
10 Independent Planning Commission.

In the interests of openness and transparency and to ensure the full capture of information from today's meeting, today's meeting is being recorded and a complete transcript will be produced and made available on the Commission's website. It is important for the Commissioners to ask questions of attendees and to clarify issues whenever it is considered appropriate. I request that all members here today introduce themselves before speaking for the first time and all members to ensure they do not speak over the top of each other to ensure accuracy of the transcript. We will now begin. So, thank you, Peter for joining us this morning.

PROF. PETER PHIBBS: Pleasure.

20 DR COAKES: Very much appreciate your time for this briefing meeting. We've provided you with an agenda for today's session and I guess really would like to focus on those key aspects if that's okay with you and I guess to kick off just in terms of - we've obviously had a look at your peer review of the EIA and also your additional advice to council on the planning proposal. Just to kick off with a key question, in your review you were quite critical of how the impacts on different stakeholder groups had been addressed in the assessment.

PROF. PHIBBS: Yep.

30 DR COAKES: Do you feel that the social impacts of the planning proposal have been adequately assessed and appropriately considered? So if we could just get some of your views around that, please, that would be great.

PROF. PHIBBS: Yeah. Okay. I think, yeah, the original EIA which was obviously a good for, you know, such a change, I didn't have any argument with a lot of the content in the EIA and I thought the, you know, obviously it's, you know, a good firm, they had a number of people working on it. The dilemma I had was the way they summarised all the evidence and they took a view that unfortunately some people have is that when you're not sure how to compare like a social impact on a long term renting family in Byron with access of a holidaymaker from Sydney to holiday accommodation they took the view, because they weren't really sure how to weight the different, sorry, the different elements, they decided not to weight it but what that means was essentially they were giving equal weight to all those considerations when
40 they added up their little sort of matrix.

So it's just that dilemma. If you don't know how to weight something, well, then you shouldn't add things up and try and come up with a score because you're implicitly assuming that things have equal weight and certainly as a researcher I think, you know, many people are making decisions, wouldn't, wouldn't value keeping costs down for holidaymakers for their, you know, 10-day stay in Byron Bay would be equivalent to providing access to a family that might be a long term resident of Byron Bay that's trying to stay there.

10 You know, in my personal view and I think a lot of planners' view is that, you know, the position of the long term renter should actually carry weight over essentially how much money someone's going to pay for a holiday in Byron Bay. So that was my dilemma with that, with the original EIA. So even though, even though the social impacts were considered, you know, maybe not incredibly rigorously. The biggest dilemma for me was when they tried to combine, you know, the sort of social economic impacts into some sort of decision framework, they erred in not realising, by not weighting things, they were actually weighting things.

DR COAKES: And can I just ask, Peter, just carry on from that point. How would you have approached that?

PROF. PHIBBS: How would I have approached that?

DR COAKES: Yes.

20 PROF. PHIBBS: I think I would've tried to weight it, you know, through, through a more explicit strategy, you know, and have a look and resile some of the different weightings, you know, and just say, okay, we need to weight it, let's, let's have a look at how that might stack up and, you know, different people have got different perspectives. If you're an owner of a property that you want to rent on STRA, you know, you think that's the most important thing in your life. I completely understand that. So you're going to give it a different weighting but you want to make the weightings explicit and then the decision makers can say, okay, well, we've got to make a decision, if we, if we weight people's long term rental needs higher than
30 get a different answer and then decision makers have got to decide what they think's most important.

DR COAKES: Okay. Just moving on then, Peter. In terms of the relationship between long term rental availability and STRA, what evidence, exists that demonstrates that the regulation STRA can contribute to solving rental housing supply shortages and I'll just add on, I noticed in your additional advice to council you actually made a point that you felt there may have been a potential overestimation of the conversion from STRA to long term rental so can you just speak that point? Yes, what evidence is there to...

PROF. PHIBBS: That's an interesting question. You know, there's really a, you know as a scholar, like there's just a very large body of evidence that shows that increasing short-term rentals has a negative impact both on long term rental supply but also prices. There's literally been - and, you know, I'm a short-term rental scholar and I review quite a lot of papers on short-term rentals and I read quite a lot. There's literally hundreds of studies across the world now that have shown as short-term rental increases in an area rents go up and, you know, as an economist that's not an incredibly surprising finding but people have just measured it and the short-term rental lobby, you know, and I've spent a fair bit of time with them, I actually visited their headquarters in San Francisco back in 2016, I think it was, at their invitation. They spend a lot of time - they're essentially a lobbying organisation, they're trying to obscure that fact.

So I live in Hobart, I've done a lot of work on short-term rentals in Hobart and they try and describe the short-term rental market as sort of additional stock that normally wouldn't be in the short-term rental - normally wouldn't be in a long term rental market and I think you might've spoken to Shelter from Tasmania as part of your exercise but one of the advantages in Tasmania is the government's got a record of every address of short-term rental properties in Tasmania and they platforms have to provide that information every quarter to the government, okay, it's empowered through an Act. So what we did down there was simply took the addresses of short-term rentals in central Hobart, looked them up on a core logic database and we could find about 50 per cent of those properties previously as long term renters. When we did the same thing in Launceston we got 60 per cent.

Now, the numbers aren't going to be that high for a holiday place like - like Byron Bay but there's obviously interchange and the world's greatest natural experiment on that interchange was COVID, where across the world we saw short-term rental properties contract, you know, the borders were shut, no one was available and people pushed their properties into, essentially into the long term rental market. Now, what's interesting, there was not like thousands of properties didn't convert. In Hobart about 120 properties did but in a tight rental market that's enough to move rents, right? So in Hobart rents went down 9 per cent.

We saw the same thing in Byron Bay, you know, if you actually plot the total bonds lodged, okay, the total active bonds in Byron Bay which I did in that most recent submission to Byron Council, that's available on the Rent and Sales report, you can monitor that, that's the best measure of the total long term rental stock. Okay. That went up by two or 300 properties during COVID and that was enough to push rents down and increase vacancy rates.

Now, the rents weren't only responding to the increase in supply. Obviously demand had dropped because, you know, some people had lost their jobs, so maybe they, you know, found alternative accommodation or people crowded in but one of the things that's interesting was, you know, the economic response to COVID was so comprehensive, for a lot of places incomes went up because of JobKeeper. So in Tasmania, you know, essentially quite a lot of people are on social service support and

you looked at total incomes in Tasmania, they actually went up during COVID, they didn't go down.

So I think that's probably pretty strong evidence. The short-term rental sector has argued forever that they don't have any impact on markets because they're such a small proportion of the total stock and you'll see that in all their submissions. What's important is simply the total number of properties, okay, compared to the vacancy rate in the rental market and you've only got to move the vacancy rate by one per cent and you'll impact rents.

10 So in Byron 30 properties converting from short-term rental to the long term market will actually have an impact on rents. So that's the, like, the issue. So people go, okay, well, we're not going to have many properties to convert, I agree with them, I don't think there's going to be - everyone's not going to suddenly decide to give up on short-term renting and putting in the long term rental market but you only small changes to impact markets and, you know, have a look at rents. I mean, I think the rents, the median rents now in Byron Bay are \$800, and back in 2019 they were 550. You know, so the market's really been crushed and you can see that those rents move as the total bonds change.

20 So total bonds now in Byron are about the same as they were in June 2019. Okay. So they went up during COVID, they've come down, okay, they decreased, they've sort of stabilised but essentially you've seen a situation where you probably added about 1,500 people to the LGA over those three years and the rental stock is the same. So you've just got, you know, greater number of people competing for the same rental stock, of course rents are going to go up.

DR COAKES: Okay.

PROF. PHIBBS: But that becomes the dilemma.

DR COAKES: Peter, Richard's got a question. Richard, you're on mute.

PROF. RICHARD MACKAY: Sorry, yes, it's the other scourge of COVID.

PROF. PHIBBS: Yeah.

30 PROF. MACKAY: Thank you, Peter. Absolutely understand the point you're making about the incremental effect on rents with just a small shift but what about the supply? I mean, at the end of the day rental rates is obviously affecting people's ability to pay but one of the things that the panel's been turning its mind to is whether that kind of marginal increase in supply is the best, you know, public policy mechanism or whether doing something a step further back to increase supply of residences that are not available for short-term rental is a better mechanism to address housing supply?

PROF. PHIBBS: Yeah. Yeah, I'd be trying to do both, Richard, I think. You know, you've got to do something about, you know, supply. We've seen, you know, quite big structural changes in Australian regions. You know, I've been, you know, writing about the leakage of population from the regions to the capital cities for most of my

career and COVID's really changed that. So we've seen some big structural changes. People are looking for more space in a house so the same number of people need more, need more rental stock. So we've got to do something to increase supply. I think the dilemma is if you keep increasing supply and you're losing that supply into short-term rental you're, you know, basically trying to fill a bucket up with water with a hole in it.

10 So one of the things I, you know, I think you're trying to do is to provide a signal to the market by this change that Byron Bay's interested in long term rental and if, you know, you want to, you want to be the world's, you know, greatest short-term rental landlord maybe Byron Bay's not the place for you to go. So I think it's a market signal to investors that the long term market is an opportunity and like at \$800 a week even with prices in, you know, Byron Bay that's not the world's worst rental yield. So, you know, there's some, there's some incentives for long term investors to get involved.

Yeah, like, I agree, if all Byron Bay could do was change short-term rentals, you know, through the policy what would happen is they'd probably have a short-term relief for the rental market but unless, you know, they could continue to increase rental supply in some way they wouldn't be really, in the longer term, fixing the problem.

20 MS JULIET GRANT: Can I just ask, building on that, but the process that you've called in your report, Peter, filtering, you know, the common thing we get thrown at us is, oh, it wouldn't make a difference because they're big, fancy houses, no one's - that's not affordable rental.

PROF. PHIBBS: Yeah.

MS GRANT: Can you talk me through and explain that process?

30 PROF. PHIBBS: Okay. Yeah. No, it's an interesting process because, yeah, it's a common reaction but what happens when the market is tight and there's not much stock, people on higher incomes simply go and rent, you know, a property that they normally wouldn't rent. So because they've got more money, you know, and they look better on a rental application they essentially crowd out the market, you know, for people on moderate incomes. So if you can free up some more expensive stock those people would probably prefer that stock so they'll gravitate up the market and that provides space for people on the bottom of the market and like we've seen that process operating in rental markets forever, you know, and, you know, certainly it's a lot of real research and I put a reference in my report about that where an AHURI study looked at that but, yeah, essentially, essentially if there's no stock available people on higher incomes take stock that people on moderate or lower incomes used to take.

40 You know, it's essentially like if you've got a low income it's like going to the movies and getting there late, you know, all that's left is, you know, a few seats in the front row and then the movie's really crowded there's nothing left and that's what - that's what the housing market's been like for a lot of people on moderate incomes in not only Byron Bay but lots of other coastal areas.

DR COAKES: And, Peter, you know, you mentioned - you gave that example of 30 STRA converting, you're saying even a small proportion. Is there a threshold there about what - - -

PROF. PHIBBS: Well, if the Byron Bay rental market's around 3,000 dwellings, you know, well, then, you know, 30 dwellings will move the vacancy rate, you know, so, you know, Hobart's a much bigger market, we moved rents nine per cent in COVID, they went down by nine per cent with 120 properties converting. So it, you don't need to see the whole market change, you know, just those incremental changes will help. The downside is, you know, that's a one term change so it will push rents down unless
10 you can keep adding to that, you know, vacancy rate, that vacancy rate simply gets absorbed by increasing population and you're back where you started.

So it's not a continuous change which is why I think, you know, I'd support Richard's point, this will help but if you're trying to improve things in the medium term you need to work out some mechanisms to keep delivering supply, you know, that go beyond, you know, simply the planning proposal in front of you.

DR COAKES: Okay. And, Peter, what's your view on the use of - we talked a bit about the caps but the precincts, defining precincts to better manage STRA?

PROF. PHIBBS: Yeah. You know, I guess what they're trying to do with the precincts was, you know, provide some areas where they could provide some
20 additional stock, you know, acknowledging the fact that tourism is, you know, such an important industry so they're, they're trying to compensate, if you like, for some of the stock they lose. I think it's a, I think, you know, the principle's fine. Just reading some of the submissions and like I'm not an expert on Byron Bay, I've been there, you know, a bit on holidays obviously but I haven't got a lot of local knowledge but some of the precinct boundaries maybe looked a bit strange. You know, maybe in some cases they could've gone over the road or something, you know, so I just, I think they've got to be, like do two things, have like some clear principles about why they've drawn the precinct boundaries and (b) have a review process where they can adjust those over time if they're, if they need adjusting.

30 DR COAKES: Okay. And how useful, I guess, are rates and levies in the management of STRA? We're noticing that, you know, some states have imposed those as part of the mix.

PROF. PHIBBS: Yeah. No, I think they help, yep, yep. Hobart's been talking about that. Some Tasmanian councils have done it. Yeah, you know, certainly, you know, it's now really - for a lot of people it's a commercial activity, you know, they probably should be charged commercial rates. One of the things that that would help do is actually just pay for compliance, like compliance around short-term rentals is expensive so collecting some additional rates would be useful. In a lot of, you know, US cities, you know, there's efforts to catch, capture bed taxes, things like that, you
40 know, are charged in commercial accommodation and a lot of those are actually collected through Airbnb, they actually direct the revenue to the city but, yeah, I think

you're just trying, you're trying provide a price signal to make, to make it (a), less attractive but you're also trying to recover the real cost of compliance which is incredibly expensive if you really get into it, you know, trying to work out whether someone's a tourist or someone's cousin coming from, you know, Mexico is expensive as we, you know, we found out in many cities.

DR COAKES: Richard.

10 PROF. MACKAY: Thanks. Just jumping back a little bit into the caps then. As we look around the country there seemed to be a whole raft of sort of views and approaches - I mean, if one accepts that caps is a, is a, is a tool that's available to regulate and reduce STRA, if that's the policy intent, we've got the sort of 365-day cap so kind of no cap, then we've got the 180-day cap that's been introduced in New South Wales, using a State Environmental Planning policy in certain areas and then the Byron 90-day cap is proposed. Urbis seems to say that it's, it's around about the threshold at which capping starts to have an adverse effect on the tourism industry and yet over in the west they're saying, well, actually we're going to, if we're going to cap we're going to have a 30-day cap because a 30-day cap actually represents the threshold where someone genuinely lives in the property and just puts it out on the short-term rental market when they go on holiday.

PROF. PHIBBS: Yeah, yeah.

20 PROF. MACKAY: And so I guess I'm very interested in your view firstly, on what's a good philosophical framing but also how you see these, these different approaches working because there seemed to be more opinions about that than there are people expressing them.

PROF. PHIBBS: Yeah, yeah. Yeah, the whole sort of area of, you know, regulating short-term rentals is like an interesting field. You tend to - like some cities have tried to ban it completely, you know, some European cities have gone down that route, others have tried caps, others have tried permits, none of them seem incredibly effective, like the history seems to be in the short-term they're effective and then a lot of times people try and work out ways around, around the caps.

30 It's a bit hard to say, sometimes it's, you know, growth of the market but I guess, you know, you're stuck with caps in New South Wales, it's not probably the way, you know, I think would be, you know, break, enter and steal- practice regulation but, you know, I don't think, you know, the government's going to change. I think the dilemma is a lot of decisions were made about short-term rental policy when the industry was really getting its feet in Australia, you know, so in Tasmania they announced regulation which Airbnb described as world's best practice.

40 Now, if I was a regulator and the regulator said it was world's best practice I'd be a tad worried and the reason they said it was world's best practice, there was essentially no regulation. You know, so you had to apply for a permit but all you've really got to do is have a house that's, you know, not bigger than 200 square metres and the council's got to issue you with permits. So, and at the time that probably wasn't the

world's worst decision but as their markets really tightened up then it's just problematic and I think that probably the same thing in New South Wales. If they'd anticipated the stresses in the rental market I think maybe they would've had a more aggressive approach because, yeah, a 180-day cap for a lot of operators is not really a cap, it's a pretend cap.

So 90 days obviously will make a difference, so, you know, that's why I think you've got to at least try that in some jurisdictions to see what happens if you're stuck with a cap or experimenting with caps but I think the dilemma is just regulation. You know, the way, you know, the way a lot of caps have worked overseas is they're run
10 completely through the platform. So the platform counts once you get to 90 days and you just get kicked off the platform until next year and I think, I think, you know, we're going to have some compliance problems with the New South Wales cap but, yeah, certainly 180 days isn't a cap, it's a pretend cap. It's a bit like the Tasmanian, you know - - -

PROF. MACKAY: If I may, just pushing you a little on that. I mean, it seems to us - well, it seems to me anyway that there's rationale for a 30-day figure, whether one agrees or not that that's the appropriate - you can say look, at 30 days it's clearly a normal residential home occasionally being let out for holiday purposes. The other
20 simply to my, to my observations seem to be sort of guess and check. Is there a, is there any rationale for calculating the number of days if one moves into caps?

PROF. PHIBBS: I think, you know, the cities who have done it have had a look at the number of days, you know, that are in the market and they're just trying to produce a cap that's going to, you know, impact supply, you know, make it, make it uneconomic for, you know, people to transfer over. So that would be one way to do it, you'd just look at the return, you know, from short-term rentals and long term rentals and you'd move the cap down until you could see you had a positive incentive for, you know, the long term market. But, yeah, I agree, it's not very rational, I think, you know, you're right, the 30-day cap has actually, you know, has a, you know, has a logic.

I think the dilemma would be you'd get a lot of pushback with a 30-day, 30-day cap
30 from like retirees, you know, who travel more than, you know, the four-weeks' holiday so, you know, that could be an issue but, yeah, like certainly a more aggressive cap actually looks like regulation. At the moment some of those caps are just pretend regulation and there's a lot of, there's a lot of compliance and a lot of expense for not much change, you know, so in a sense, the 90 days in Byron Bay is a - is a decent experiment of, you know, what a 90-day cap might do to the relative attraction of short-term rentals and long term rentals.

DR COAKES: And, Peter - - -

PROF. PHIBBS: As a researcher I'm interested which is a terrible motivation but, you know what I mean, it would be interesting to see what happens if there's a change and
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DR COAKES: Peter - - -

PROF. MACKAY: Sorry, yep.

DR COAKES: Sorry. I just wanted to ask about whether, in your knowledge, there's been any demonstration of the combination of the precinct and the cap effectively?

PROF. PHIBBS: Yeah. Not that I, not that I've come across, Sheridan. It's not something that like I've really put my mind to.

DR COAKES: Yes.

10 PROF. PHIBBS: I could have a look, I could have a look but, you know, it's got a bit of a logic. You know, if you're saying that, one of the dilemmas with short-term rentals is you're essentially changing a residential use into a tourist use, then having a precinct, you know, that's essentially, you know, a tourist area isn't likely to have the externalities that a tourist use in a conventional residential setting would have. So there's certainly a logic for it, you know, and if you look at the complaints you get from people around short-term rentals and the impact it has on their wellbeing as a long term resident you can see it makes sense but, yeah, I can't, I can't recall an area where I've seen it but I haven't really had much of a look for it, Sheridan.

20 DR COAKES: And so on that basis, if you're a creating precinct that is characterised as being a tourist precinct, you know, with a 360-day, you know, unlimited cap does that then give rise to the opportunity for that link with contributions perhaps? If you're acknowledging that it's no longer a residential use then is there a place then for funding mechanism to support the things that go with that?

PROF. PHIBBS: Yeah. No, that would be, that would be a good point, you know, because, you know, essentially you are now look at a, you know, a full-on commercial business, you can't pretend it's a residential use that you're, you know, you're just part-time engaging in some commercial activity so, yeah, that would be, that would be, you know, pretty logical. I think, you know, it's an interesting innovation saying, okay, rather than, okay, we want to reduce the caps but, you know, we don't want to, you know, we're concerned that we don't want to shock the market too much so let's try and increase the capacity inside precincts.

30 So, you know, I think that's, you know, council's obviously not sort of anti-tourism or anti, anti-business, they're trying to provide opportunities. They're just trying to do some planning, you know, redirect activities to places where maybe there's going to be less externalities. So that certainly gets a lot of discussion in the literature, you know, like residents' complaints around how it changes their street, you know, and you go to places like Surry Hills now that are essentially, you know, there's almost no one living there fulltime in parts of Surry Hills and, you know, people that live there, you know, really notice that difference, it's gone from a residential to a commercial area. So if you are living there it's a pretty different experience as a resident and I can understand their concern, you know?

DR COAKES: Just conscious of time, just sort of a couple of minutes left.

40 PROF. PHIBBS: Sure.

DR COAKES: So, Peter, just, I guess, to end up, are there any other potential housing supply and affordability recommendations that you'd make for Byron Shire?

10 PROF. PHIBBS: Well, yeah, they should build some more like, you know, social and affordable housing there, you know, the government's got a regional housing fund, hopefully that will, you know, that will, you know, turn up, you know, some better outcomes. You know, there is, you know, so much money in the, in the housing market there, having some sort of you know, contribution scheme or inclusionary zoning or, you know, some process to take the cream off, you know, some of those real estate transactions and redirecting them, you know, through an affordable housing scheme would probably be a good idea and I've also done some work for, recently, for
20 some north coast councils, Bellingen, Kempsey and Port Macquarie looking at a housing model called Community Land Trusts which I think, you know, which is essentially a tenure form where someone owns the land but the person's got control over the dwelling but they don't own the dwelling and you structure the scheme so you can provide what really looks like a home ownership product to people but they're not, you know, they don't realise the big capital gains out of the process, it gets shared with the trust.

DR COAKES: Okay. And I think Byron has looked at that?

20 PROF. PHIBBS: Yeah, yeah, they've, they've had a look at that and they've tried to set a scheme up, they've had some legal issues but, yeah, I mean, that's, that's not going to be a mainstream scheme but I think you're just trying to at least provide some opportunities where you can take, take some housing out of the normal turmoil of a market for such an attractive location.

DR COAKES: Lovely. All right. Well, thank you very much. Richard, Juliet, any further questions?

MS GRANT: All good.

DR COAKES: Thank you, Peter, very much appreciate your time.

PROF. PHIBBS: All the best with the deliberations. Pleasure. See you later.

MEETING CONCLUDED

[10.31am]

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