



**Planning Proposal**  
**For Short-term Rental Accommodation in**  
**Byron Shire**

**(Byron Shire Council)**

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# Part 1 Introduction and background

## 1.1. Summary of Planning Proposal

The purpose of this Planning Proposal is to introduce new provisions into *Byron Local Environmental Plan 2014* (LEP 2014) to define short-term rental accommodation (STRA) and to improve the management of STRA in the Byron Shire.

Two categories of STRA will be defined:

- (1) Hosted STRA – where there is a ‘host’ residing in the dwelling during the period of accommodation.
- (2) Non-hosted STRA – where there is no ‘host’ residing in the dwelling during the period of accommodation.

The new provisions will establish the circumstances in which STRA is permitted as exempt development and the circumstances in which it will be permitted with consent through a development application process.

Non-hosted STRA will be limited to a maximum of 90 days per calendar year. Hosted STRA will not be subject to time limitations.

In addition, non-hosted STRA will be excluded from certain Council owned and/or managed lands, and land identified in a State Government or Council strategy or environmental planning instrument for future residential development. This is to ensure new land required to meet future population growth will not be utilised for STRA.

In particular, the following amendments are proposed:

1. The addition of a new land use definition for *short-term rental accommodation* in the LEP 2014 dictionary. Sub-definitions for *hosted short-term rental accommodation* and *non-hosted short-term rental accommodation* will also be added.
2. The addition of *short-term rental accommodation* as a permitted use in all land use zones where dwellings are permitted.
3. The addition of a new mapping overlay to identify land where short-term rental accommodation will not be permitted.
4. The addition of a new local provision that will establish matters for consideration when assessing a development application for STRA. Provisions will also be added that:
  - a. prohibit a dwelling from being used for non-hosted STRA where it is located on land identified by the STRA exclusion map,
  - b. prohibit a dwelling from being used for non-hosted STRA for more than 90 days per calendar year, and

- c. restrict the number of persons occupying a dwelling being used for non-hosted STRA to no more than 2 persons per bedroom, up to a maximum of 12 persons in total, whichever is the lesser.
5. The addition of a new clause into Schedule 2 of Byron LEP 2014 that will allow hosted and non-hosted STRA as exempt development subject to certain requirements. Non-hosted STRA will be limited to 90 days per year and will not be permitted on land identified in the short-term rental accommodation exclusion map. Hosted STRA will be permitted 365 days per year.

## 1.2. Background

Short-term rental accommodation, commonly known as ‘holiday letting’, refers to the use of an existing dwelling to provide temporary short-term accommodation on a commercial basis. The relatively recent advent of online booking platforms such as Airbnb has led to a rapid expansion in the STRA sector across Australia and particularly in Byron Shire. The last five years have seen significant growth.

Research into Airbnb and HomeAway, the two largest Australian booking platforms, indicates that approximately 25% of dwellings in Byron Shire and 62% of dwellings in Byron Bay were listed on the platforms by 1 November 2019. To put these figures in context, there are more Airbnb listings in Byron Shire than all the other Northern Rivers Local Government Areas (LGA’s) combined, and more listings than any LGA in the Greater Sydney Region except for Sydney and Waverly. This is particularly concerning given the relatively low population and supply of housing in Byron Shire compared to these metropolitan LGA’s.

The high concentration of STRA has environmental, economic and social implications for the community. As STRA has spread, Council has received increased reports of conflict over noise and antisocial behaviour, coupled with broader concerns over the availability of rental housing, worsening affordability and an increasing sense of dislocation from community.

### 1.2.1 Previous attempts to regulate

In 2015, Byron Shire Council attempted to regulate STRA through a planning proposal to amend LEP 2014. The proposed amendments involved permitting STRA as exempt development for dwellings comprising three bedrooms used for less than 90 days per calendar year. For dwellings that could not satisfy the exempt provisions, an enabling clause was proposed that would allow approval to be obtained via a development application process.

The Planning Proposal received a gateway determination on 31 August 2015 and went through a number of iterations over a two-year process. It was eventually submitted to the former Department of Planning and Environment (the Department) for completion following a final round of amendments in April 2017.

At the same time, a parliamentary inquiry into the adequacy of the regulation of short-term holiday letting was underway in response to growing public concern over STRA in NSW. The inquiries final report to Government concluded that STRA should be defined and enabled through the planning system as exempt or complying development, supported by a compliance system and a code of conduct. The NSW Government offered qualified support for most of the recommendations, indicating that an options paper would be prepared to implement a whole of government framework in the near future.

As a consequence of this announcement, the Department chose to defer making a decision on Council's Planning Proposal until after the release of an options paper outlining the intended regulatory approach. The impasse resulted in Council resolving to withdraw the Planning Proposal as it did not make sense to continue until it was known how it would interact with the new framework.

### 1.2.2. State Planning Framework

Since the withdrawal of the previous planning proposal, the Department has released an options paper on short-term holiday letting in July 2017 and exhibited an explanation of intended effect outlining a whole of government framework in October 2018. This was followed by the release of the draft regulatory framework for STRA in NSW in August 2019, comprising a new state environmental planning policy, fire safety standards, code of conduct and clarified Strata laws. The Department invited public submissions on the draft framework, which closed on 11 September 2019.

The proposed *State Environmental Planning Policy (Short-term Rental Accommodation) 2019* is a new SEPP created to provide State-wide land use planning controls for short-term rental accommodation. Under the SEPP, STRA will be permissible as either exempt or complying development, subject to a number of requirements for zoning, dwelling type, occupancy, and fire safety.

Non-hosted short-term rental accommodation will be limited to a maximum of 180 days per year in the Greater Sydney Region and for other nominated LGA's. Ballina, City of Lake Macquarie, Clarence Valley and Muswellbrook were identified in the draft SEPP (Byron Shire was not nominated). Other areas will not be subject to time limitations.

Supporting the new SEPP will be a code of conduct under the *Fair Trading Act 1987*, along with new fire safety regulations and clarified Strata laws. None of the proposed rules have come into force yet.

### 1.2.3. Ministerial Planning Direction 3.7 – Reduction in non-hosted short-term rental accommodation period

On 15 February 2019, approximately six months after the announcement of the STRA reforms, a Ministerial Planning Direction was issued to address the high concentration of short-term rental accommodation in the Byron Shire. The Direction provides Byron Shire Council with the opportunity to reduce non-hosted short-term rental accommodation to a minimum of 90 days per calendar year, as long as there is a sound base of evidence to support the proposed changes.

Part of Byron Shire Council's submission on the draft regulatory framework in August 2019 was a request to be excluded from the proposed SEPP. Unless this occurs, it will not be possible to implement local planning controls including the reduced limits on non-hosted STRA allowed by the Ministerial Direction.

The proposed LEP amendments in this Planning Proposal have been drafted with the aim of replacing the planning controls in the SEPP as they apply to the Byron Shire.

### 1.2.4. Existing planning controls

Council's current position is that the use of a dwelling for STRA would in most cases be characterised as *tourist and visitor accommodation*. Tourist and visitor accommodation is prohibited in residential zones under *Byron Local Environmental Plan 2014*, which raises

implications for the legality of many dwellings predominantly used for STRA at the current time.

Council previously resolved (17-263) to lift moratorium on prosecutions for STRA, and authorised the General Manager to issue notices where there was a reasonable suspicion of unauthorised short-term rental accommodation taking place. Council's community enforcement team began collecting evidence against a number of dwellings allegedly used for STRA, but action was eventually paused given the perceived immanency of new planning rules that would legitimise the activities. The pause on compliance action remains in place.

## **Part 2 Objectives and Intended Outcomes**

### **2.1 Planning Proposal aims**

The aim of the Planning Proposal is to minimise the impacts of short-term rental accommodation activity on permanent rental housing supply, residential amenity, local character and community; while still allowing for diversity in the type and tenure of visitor accommodation options in Byron Shire.

## Part 3 Explanation of provisions

### 3.1. Byron LEP 2014

To achieve the intended outcomes, this Planning Proposal seeks to amend Byron LEP 2014 in the manner described below. A summary of the proposed LEP amendments is included in **Appendix 4**.

#### 3.1.1. Definitions

A new land use definition will be required to differentiate *short-term rental accommodation* from the existing definition of *tourist and visitor accommodation*. The definitions shown below have been borrowed from the draft *State Environmental Planning Policy (Short-term Rental Accommodation) 2019*, except that any reference to the host residing ‘on the premises’ has been replaced with the phrase ‘in the dwelling’. This has been done to remove any ambiguity over the meaning of the term ‘premises’, which is not defined in the draft SEPP or the Standard Instrument.

Definitions are shown below. Proposed variations to the definition in the draft SEPP are highlighted in red.

***short-term rental accommodation means an existing dwelling—***

- (a) *that is lawfully used by the owner, tenant or permanent resident of the dwelling (the host) to provide accommodation on a commercial basis for a temporary or short-term period, with or without the host residing **in the dwelling** during that period, and*
- (b) *that, if it were used predominantly as a place of residence, would be one of the following types of residential accommodation—*
  - (i) *an attached dwelling,*
  - (ii) *a dual occupancy,*
  - (iii) *a dwelling house,*
  - (iv) *multi dwelling housing,*
  - (v) *a residential flat building,*
  - (vi) *a rural workers’ dwelling,*
  - (vii) *a secondary dwelling,*
  - (viii) *a semi-detached dwelling,*
  - (ix) *shop top housing*

***non-hosted short-term rental accommodation*** means short-term rental accommodation provided where the host does not reside **in the dwelling** during the provision of the accommodation.

***hosted short-term rental accommodation*** means short-term rental accommodation provided where the host resides **in the dwelling** during the provision of the accommodation.

**host**—see the definition of short-term rental accommodation

**permanent resident** of a dwelling means a person who permanently resides at the dwelling.

**tenant** has the same meaning as in the Residential Tenancies Act 2010.

### 3.1.2. Land use table

To achieve the intent of the Planning Proposal, it will be necessary to amend the land use table in LEP 2014 to make STRA permissible in all land use zones where dwellings are permitted with consent.

The following zones will be affected:

- RU1 Primary Production;
- RU2 Rural Landscape;
- RU 5 Village;
- R2 Low Density Residential;
- R3 Medium Density Residential;
- R5 Large Lot Residential;
- Zone B1 Neighbourhood Centre (shop top housing only);
- Zone B2 Local centre (shop top housing only);
- Zone B4 Mixed Use.

### 3.1.3. Short-term rental accommodation exclusion map

It is intended that STRA will be excluded from certain Council owned or managed land and land identified in a State Government or Council strategy or environmental planning instrument for new residential development. This will be achieved through a new mapping overlay, known as the Short-term Rental Accommodation Exclusion Map. The map will identify lands where non-hosted STRA will not be permitted. A map of proposed excluded lands is included in **Appendix 3**.

### 3.1.4. Matters for consideration

The assessment process will be guided by a new local provisions clause under Part 6 of LEP 2014. The clause will provide relevant matters for consideration and establish certain pre-requisites and prohibitions.

In summary, the new clause will:

- Establish the aims and objectives and matters to be considered when assessing a development application for short-term rental accommodation.
- Set out certain matters for consideration for potential impacts on neighbourhood amenity and the adequacy of parking and wastewater.
- Prohibit a dwelling from being used for non-hosted STRA for more than 90 days per calendar year.
- Prohibit a dwelling from being used for non-hosted STRA where it is located on land identified by the STRA exclusion map.
- Restrict the number of persons occupying a dwelling being used for non-hosted STRA to no more than 2 persons per bedroom, up to a maximum of 12 persons in total, whichever is the lesser.

### 3.1.5. Exempt development

Certain low-impact activities are intended to be permitted as exempt development. This will be achieved by inserting a new clause into Schedule 2 of Byron LEP 2014 that will allow hosted and non-hosted short-term rental accommodation as exempt development in the following circumstances:

- Hosted short-term rental accommodation allowed 365 days per calendar year;
- Non-hosted short-term rental accommodation limited to 90 days per calendar year;
- Non-hosted short-term rental accommodation not permitted on bush fire prone land or flood prone land;
- Non-hosted short-term rental accommodation not permitted on land identified on the short-term rental accommodation exclusion map.
- The dwelling must not be a (or be part of), a group home, a hostel, seniors housing, an eco tourist facility, tourist and visitor accommodation, a camping ground, caravan park or a moveable dwelling.
- The dwelling must not be approved under the *State Environmental Planning Policy (Affordable rental Housing) 2009*.
- Occupancy limited to 2 persons per bedroom, up to a maximum of 12 persons in total, whichever is the lesser;
- Requires property to be included on a Council register of short-term rental accommodation.
- Requires compliance with fire safety standards under the BCA and EP&A regulations.
- Requires an A3 sign to be placed at the front of the property advising the public of the landowners or property manager's details to enable complaints to be made and wording to advise that the property is registered with Byron Shire Council.
- Minimum requirement for car parking of 1 space for a two bedroom dwelling and two carports for a dwelling with three bedrooms or more.
- Dwellings not connected to reticulated sewer must be serviced by an approved on-site waste water management system with a current approval to operate.

Hosts who do not meet the exempt provisions will have the option of seeking consent by lodging a development application. The intent of these provisions is to acknowledge there is a mix of STRA operators, with many casual participants having minimal impact.

### 3.1.6. Registration

Adequate monitoring and enforcement of the planning controls will be impossible without a locally-operated STRA register to provide information to Council about which properties are used for STRA and the number of days that properties are let.

Council is intending to set-up a local STRA register to be implemented through Council's fees and charges under section 608 of the *Local Government Act 1993*. Annual fees levied for STRA registration would fund the establishment of the register and its ongoing operation and maintenance by staff; as well as inspections of properties required to ensure compliance with the conditions for STRA. Third party software solutions for registration and monitoring systems are also currently being investigated to assist in this regard.

Hosts that are intending to use a dwelling for either hosted or non-hosted STRA will be required to register with Council. The registration process for non-hosted STRA will require hosts to nominate the dates they are making a dwelling available in advance. Prospective hosts will be able to amend or delete available days on the register as the need arises, although no changes will be possible retrospectively.

Without a system of nominating available days in advance, there will be no way for Council to monitor active STRA properties, or track the number of days that a dwelling has been used for STRA without obtaining data from booking platforms or real estate agents. Given the reluctance of booking platforms to share data and considering the sheer number of operators in the STRA sector, this is considered to be the most practical and effective way of monitoring and enforcing the new planning rules at the current time.

The proposed Council led register will be tied to the planning system through conditions of consent or requirements for exempt development. A registration system to support the planning controls will be exhibited concurrently with the Planning Proposal.

## Part 4 Justification

### 4.1. Section A – Need for the Planning Proposal

#### Q1 Is the Planning Proposal a result of any strategic study or report?

This Planning Proposal has been informed by a detailed analysis of Airbnb and HomeAway listings in the Byron Shire.

In summary, the listings analysis identified a very high concentration of Airbnb and HomeAway listings in the Byron Shire. When considered as a proportion of dwellings, Airbnb and HomeAway listings equate to 25% of dwellings in the Shire and 62% of dwellings in Byron Bay. A full breakdown of the data is included in **Appendix 1**.

The Planning Proposal has also been informed by researchers from Southern Cross University who have undertaken two studies into the impacts of short-term holiday letting (particularly Airbnb) in the Byron Shire.

The first study, conducted in 2018, involved a series of in-depth interviews and a survey on the perceptions of Byron Shire residents on the impacts of Airbnb. A majority of respondents acknowledged the economic benefits of increased tourism due to Airbnb, but noted nine negative effects including reduced availability of affordable housing for residents (77%), increased traffic and parking congestion (75%), increased waste management problems (72%), and extra cost to ratepayers to provide infrastructure (71%). Respondents also perceived a loss of neighbourhood and community due to increasing STRA in residential

The second study, conducted in late 2019, looked at the perceived impacts of STRA (particularly Airbnb) on the Shires approved accommodation providers such as hotels and motels. Results show that most respondents pointed to the negative effects of STRA/Airbnb on their businesses along with the perception of an 'unfair playing field' that favoured the STRA market. Almost unanimously, respondents felt that greater regulation of STRA was required.

#### Q2 Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Yes. A Planning Proposal to amend LEP 2014 is considered to be the best available mechanism to achieve the desired outcomes outlined in Section 2.

The alternative is to allow STRA to be regulated through the proposed *State Environmental Planning Policy (Short-term Rental Accommodation) 2019*. As discussed earlier, the draft SEPP allows STRA to occur 365 days per year, with the exception of certain nominated LGA's (Byron Shire was not nominated) which will be limited to 180 days per year. This is not considered to be the most suitable approach given the unique situation facing Byron Shire.

### 4.2. Section B – Relationship to strategic planning framework

#### Q3 Is the Planning Proposal consistent with the objectives and actions of the applicable regional, sub-regional or district plan or strategy?

The North Coast Regional Plan is the NSW Government's strategic document that outlines a vision for the NSW North Coast over the next 20 years. It identifies key challenges and

opportunities for the region, with an emphasis on managing urban expansion and protecting coastal assets and the natural environment. The overall vision of the strategy is to maintain the distinctive character of the North Coast, by directing growth away from significant farmland and sensitive ecosystems and enabling efficient planning for infrastructure and services.

In response to these challenges and opportunities, the plan sets out four goals:

- The most stunning environment in NSW;
- A thriving interconnected economy;
- Vibrant and engaged communities;
- Great housing choice and lifestyle options.

To achieve these goals, the plan proposes 25 directions and associated actions, providing a regional framework for local environmental plans, local strategic land use plans and future development proposals. Actions of particular relevance to this Planning Proposal include:

*8.2 Facilitate tourism and visitor accommodation and supporting land uses in coastal and rural hinterland locations through local growth management strategies and local environmental plans.*

*8.5 Preserve the region’s existing tourist and visitor accommodation by directing permanent residential accommodation away from tourism developments, except where it is ancillary to existing tourism developments or part of an area otherwise identified for urban expansion in an endorsed local growth management strategy.*

The Planning Proposal will facilitate short-term rental accommodation through an amendment to LEP 2014, helping to contribute to a mix of accommodation options for visitors to the Byron Shire in both coastal and hinterland areas.

The Planning Proposal will not direct new residential accommodation towards existing tourist accommodation, or propose any rezoning of land that would result in new housing developments near existing tourism developments.

**Q4 Is the Planning Proposal consistent with a council’s local strategy or other local strategic plan?**

In 2012 Council adopted a 10 year + *Community Strategic Plan 2022*. The plan is based on five key themes being Corporate Management, Economy, Environment, Community Infrastructure, Society and Culture. The Planning Proposal is generally consistent with the following relevant goals:

<p>CM4.1 Promote community compliance with Acts, Regulations, Instruments and Council policies and standards.</p>	<p>Short-term letting of dwellings has been widespread throughout Byron Shire urban and rural areas. It has not been subject to the development assessment process and has resulted in compliance issues. Permitting it with consent or as exempt development (if on a small scale with low impacts) will reduce the level of non-compliance and reduce Council resources put into this issue.</p>
<p>EC2.1 Build a tourism industry that delivers local and regional benefits in harmony with the community’s values.</p>	<p>In the right setting and with good management short-term rental accommodation will provide rental income for a property owner with minimal impacts on the neighbourhood and infrastructure.</p>
<p>EC2.2 Develop Byron Shire as a</p>	<p>Short-term rental accommodation has grown rapidly in</p>

leader in responsible and sustainable tourism and encourage sustainable business practices within the tourism industry.	recent years, resulting in high concentrations of activity in some areas. New planning rules are required to achieve a more sustainable balance that allows for a diversity of tourism opportunities while also managing the impacts of this use on local neighbourhoods and preventing loss of residential housing stock.
EC2.3 Support and promote a collaborative shire-wide approach to managing tourism.	Short-term holiday rental accommodation management is being viewed on a shire wide basis and not just confined to Byron Bay.

The Planning Proposal is also consistent with other key strategic planning documents in the Byron Shire including the Byron Bay Town Centre Masterplan and the Byron Shire Rural Land Use Strategy.

**Q5 Is the Planning Proposal consistent with applicable State Environmental Planning Policies (SEPPs)?**

The Planning Proposal is considered to be consistent with applicable State Environmental Planning Policies (SEPP's). SEPP's with particular relevance to this proposal are as follows:

<b>State Environmental Planning Policy</b>	<b>Compliance of Planning Proposal</b>
SEPP (Coastal Management) 2018	<p>Permitting short-term rental accommodation in zones where dwellings are already permitted could result in development applications in the coastal zone of Byron Shire. The aim of the SEPP and the matters for consideration in the SEPP are matters that Council will consider on a site specific basis in future development applications. In most cases the change of use (if approved) will not result in impacts on the coast beyond that already generated by the existing dwelling.</p> <p>The Planning Proposal is considered to be compliant with the aims of the SEPP.</p>
State Environmental Planning Policy (Affordable Rental Housing) 2009	<p>The Planning Proposal envisages a control that prohibits the use of developments approved under the ARH SEPP for non-hosted STRA. In the Byron Shire, this will apply to secondary dwellings and infill affordable housing developments in the majority of cases.</p> <p>Any new provision that facilitates the conversion of affordable housing to STRA is considered to be contrary to the aims of the ARH SEPP and the objects of the EP&amp;A Act.</p>
SEPP 55 – Remediation of land	<p>In this case no land is actually being rezoned and short-term rental accommodation will only be permissible where a dwelling is already permitted on the land. This will not significantly increase the range of sensitive land uses on the site and past land use will still be addressed in any development application (if required). It is consistent with the SEPP.</p>

**Q6 Is the Planning Proposal consistent with applicable Ministerial Directions (s117 Directions)?**

Consistency with the s117 Directions is assessed in the following table:

**Section 9.1 Directions**

S9.1 Direction		Application	Relevance to this planning proposal	Consistency with Direction
1 Employment and Resources				
1.1	Business and Industrial Zones	Applies when a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed business or industrial zone (including the alteration of any existing business or industrial zone boundary).	This Planning Proposal will not affect the boundaries or extent of business zones. Shop top housing will be permitted to be used for short-term rental accommodation. This will not reduce the available area for employment land uses or alter locations for business or industry.	Consistent
1.2	Rural Zones	Applies when a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed rural zone (including the alteration of any existing rural zone boundary). Under this Direction a planning proposal must: (a) not rezone land from a rural zone to a residential, business, industrial, village or tourist zone. (b) not contain provisions that will increase the permissible density of land within a rural zone (other than land within an existing town or village).	This Planning Proposal will apply to rural zoned land where a dwelling is permitted. It will not alter the zone of any rural land or the density of land use within any rural zone.	Consistent
1.3	Mining, Petroleum Production and Extractive Industries	Applies when a relevant planning authority prepares a planning proposal that would have the effect of: (a) prohibiting the mining of coal or other minerals, production of petroleum, or winning or obtaining of extractive materials, or (b) restricting the potential development of resources of coal, other minerals, petroleum or extractive materials which are of State or regional significance by permitting a land use that is likely to be incompatible with such development.	Nothing in this Planning Proposal will prohibit or restrict exploration or mining.	Consistent

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
<p>1.4 Oyster Aquaculture</p>	<p>Applies when a relevant planning authority prepares any planning proposal that proposes a change in land use which could result in:</p> <ul style="list-style-type: none"> <li>(a) adverse impacts on a Priority Oyster Aquaculture Area or a “current oyster aquaculture lease in the national parks estate”, or</li> <li>(b) incompatible use of land between oyster aquaculture in a Priority Oyster Aquaculture Area or a “current oyster aquaculture lease in the national parks estate” and other land uses.</li> </ul>	<p>Priority Oyster Aquaculture Areas (POAA) exist in the Brunswick River. There is minimal likelihood the Planning Proposal will have adverse impacts on POAA as the proposed use of the land will be either minor (and therefore exempt development) or subject to an environmental assessment on a case by case basis through the development application process. Most land in the vicinity of the POAA is already zoned W1 Natural Waterways or E1 National Parks and Nature Reserves. Short-term rental accommodation would not be permissible in these zones.</p>	<p>Consistent</p>
<p>1.5 Rural Lands</p>	<p>Applies when a relevant planning authority prepares a planning proposal that:</p> <ul style="list-style-type: none"> <li>(a) will affect land within an existing or proposed rural or environment protection zone (including the alteration of any existing rural or environment protection zone boundary) or</li> <li>(b) changes the existing minimum lot size on land within a rural or environment protection zone.</li> </ul> <p>A planning proposal to which clauses 3(a) or 3(b) apply must:</p> <ul style="list-style-type: none"> <li>(a) be consistent with any applicable strategic plan, including regional and district plans endorsed by the Secretary of the Department of Planning and Environment, and any applicable local strategic planning statement;</li> <li>(b) consider the significance of agriculture and primary production to the State and rural communities;</li> <li>(c) identify and protect environmental values, including but</li> </ul>	<p>This Planning Proposal will affect land zoned RU1 or RU2 where a dwelling is permitted. It will not alter the minimum lot size on any land.</p> <ul style="list-style-type: none"> <li>(a) The proposal is consistent with the goals and directions of the NCRS 2036.</li> <li>(b) The use of dwellings for short-term rental accommodation is in response to the changing nature of agriculture in Byron Shire including the need for additional income to keep farm operations viable.</li> <li>(c) A change of use to STRA will not have a significant impact on environmental values because it will be exempt development and low impact by its nature, or will be subject to a development application process. In the latter case, the relevant biodiversity and environmental assessment requirements will apply during the assessment of a DA.</li> <li>(d) The draft controls have taken account for the natural and physical constraints of land being</li> </ul>	<p>Consistent</p>

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
	<p>not limited to, maintaining biodiversity, the protection of native vegetation, cultural heritage, and the importance of water resources;</p> <p>(d) consider the natural and physical constraints of the land, including but not limited to, topography, size, location, water availability and ground and soil conditions;</p> <p>(e) promote opportunities for investment in productive, diversified, innovative and sustainable rural economic activities;</p> <p>(f) support farmers in exercising their right to farm;</p> <p>(g) prioritise efforts and consider measures to minimise the fragmentation of rural land and reduce the risk of land use conflict, particularly between residential land uses and other rural land uses;</p> <p>(h) consider State significant agricultural land identified in State Environmental Planning Policy (Primary Production and Rural Development) 2019 for the purpose of ensuring the ongoing viability of this land;</p> <p>(i) consider the social, economic and environmental interests of the community.</p>	<p>used for STRA. This includes a limitation on occupancy, requirements for appropriate wastewater, and prohibitions on non-hosted STRA as exempt development where located on bushfire prone or flood prone land.</p> <p>(e) Facilitating STRA in rural land will provide farm owners with additional opportunities to diversify income streams by offering short-term rental accommodation to tourist and visitors.</p> <p>(f) The Planning Proposal will not have any significant impact on farmer's rights.</p> <p>(g) The Planning Proposal is unlikely to result in significant fragmentation or rural land or result in land use conflict.</p> <p>(h) SEPP (Primary Production) 2019 did not identify any State significant agricultural land at the time of writing.</p> <p>(i) Social economic and environmental interests are unlikely to be compromised by the Planning Proposal. STRA allowed as exempt development will be a low impact use occurring within an existing dwelling. Where new dwellings are constructed for the purposes of STRA (or as a dual use), the issues of land use conflict and environmental impacts will be addressed through the development assessment process.</p>	
2	Environment and Heritage		
2.1	<p>Environment Protection Zones</p> <p>A planning proposal must include provisions that facilitate the protection and conservation of environmentally sensitive areas.</p> <p>A planning proposal that applies to land within an</p>	<p>The Planning Proposal will not compromise the protection or conservation of environmentally sensitive areas. No environmental standards will be reduced by the proposed LEP changes.</p>	Consistent

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
	<p>environment protection zone or land otherwise identified for environment protection purposes in a LEP must not reduce the environmental protection standards that apply to the land (including by modifying development standards that apply to the land). This requirement does not apply to a change to a development standard for minimum lot size for a dwelling in accordance with clause (5) of Direction 1.5 “Rural Lands”</p>		
<p>2.2 Coastal Protection</p>	<p>This direction applies to land that is within the coastal zone, as defined under the Coastal Management Act 2016, comprising the coastal wetlands and littoral rainforests area, coastal vulnerability area, coastal environment area and coastal use area as identified by <i>State Environmental Planning Policy (Coastal Management) 2018</i>.</p> <p>A planning proposal must include provisions that give effect to and are consistent with:</p> <ul style="list-style-type: none"> <li>(a) the objects of the Coastal Management Act 2016 and the objectives of the relevant coastal management areas;</li> <li>(b) the NSW Coastal Management Manual and associated Toolkit;</li> <li>(c) NSW Coastal Design Guidelines 2003; and</li> <li>(d) any relevant Coastal Management Program that has been certified by the Minister, or any Coastal Zone Management Plan under the Coastal Protection Act 1979 that continues to have effect under clause 4 of Schedule 3 to the Coastal Management Act 2016, that applies to the land.</li> </ul> <p>A planning proposal must not rezone land which would enable increased development or more intensive land-use</p>	<p>Certain land affected by this proposal is located within the coastal zone, which affects the eastern half of Byron Shire. The Planning Proposal is consistent with the objects of the Coastal Management Act as there is minimal likelihood of physical impact on the environment and where a development is not minor it will require an assessment through a development application process.</p> <p>At the time of writing there were no coastal vulnerability areas identified by the SEPP. Specific erosion precincts on the coastal fringe are identified within Byron LEP 1988; this Planning Proposal will not apply to those lands.</p> <p>The Planning Proposal will not increase or involve the rezoning of land that would result in an increased intensity of use within the coastal wetlands and littoral rainforests area map.</p>	<p>Consistent</p>

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
	<p>on land:</p> <ul style="list-style-type: none"> <li>(a) within a coastal vulnerability area identified by the State Environmental Planning Policy (Coastal Management) 2018; or</li> <li>(b) that has been identified as land affected by a current or future coastal hazard in a local environmental plan or development control plan, or a study or assessment undertaken:</li> </ul>		
<p>2.3 Heritage Conservation</p>	<p>A planning proposal must contain provisions that facilitate the conservation of:</p> <ul style="list-style-type: none"> <li>(a) Items, places, buildings, works, relics, moveable objects or precincts of environmental heritage significance to an area, in relation to the historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value of the item, area, object or place, identified in a study of the environmental heritage of the area,</li> <li>(b) Aboriginal objects or Aboriginal places that are protected under the <i>National Parks and Wildlife Act 1974</i>, and</li> <li>(c) Aboriginal areas, Aboriginal objects, Aboriginal places or landscapes identified by an Aboriginal heritage survey prepared by or on behalf of an Aboriginal Land Council, Aboriginal body or public authority and provided to the relevant planning authority, which identifies the area, object, place or landscape as being of heritage significance to Aboriginal culture and people.</li> </ul>	<p>Byron LEP 2014 currently contains provisions that are consistent with this Direction. The new provisions will not have a significant effect on Indigenous or non-indigenous heritage. Where additional building works or vegetation clearing is proposed as part of the use of a dwelling for STRA, such works will be subject to an environmental impact assessment through a DA process.</p>	<p>Consistent</p>
<p>2.4 Recreation Vehicle Areas</p>	<p>A planning proposal must not enable land to be developed for the purpose of a recreation vehicle area (within the meaning of the <i>Recreation Vehicles Act 1983</i>):</p> <ul style="list-style-type: none"> <li>(a) where the land is within an environment protection zone,</li> <li>(b) where the land comprises a beach or a dune adjacent to</li> </ul>	<p>This Planning Proposal does not enable any land to be developed as a recreation vehicle area.</p>	<p>N/A</p>

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
	<p>or adjoining a beach,</p> <p>(c) where the land is not within an area or zone referred to in paragraphs (4)(a) or (4)(b) unless the relevant planning authority has taken into consideration:</p> <p>(i) the provisions of the guidelines entitled <i>Guidelines for Selection, Establishment and Maintenance of Recreation Vehicle Areas, Soil Conservation Service of New South Wales, September 1985</i>, and</p> <p>(ii) the provisions of the guidelines entitled <i>Recreation Vehicles Act 1983, Guidelines for Selection, Design, and Operation of Recreation Vehicle Areas, State Pollution Control Commission, September 1985</i>.</p>		
<p>2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs</p>	<p>This Direction applies when a relevant planning authority prepares a planning proposal:</p> <p>(a) that introduces or alters an E2 Environmental Conservation or E3 Environmental Management zone;</p> <p>(b) that introduces or alters an overlay and associated clause.</p> <p>A planning proposal must apply the proposed E2 Environmental Conservation or E3 Environmental Management zones, or the overlay and associated clause, consistent with the Northern Councils E Zone Review Final Recommendations.</p>	<p>This Planning Proposal does not introduce or alter any E2 or E3 zoning or overlays.</p>	<p>N/A</p>
<p>3 Housing, Infrastructure and Urban Development</p>			
<p>3.1 Residential Zones</p>	<p>This Direction applies when a relevant planning authority prepares a planning proposal that will affect land within:</p> <p>(a) an existing or proposed residential zone (including the alteration of any existing residential zone boundary),</p> <p>(b) any other zone in which significant residential</p>	<p>All of the relevant requirements for residential development in terms of location, permissible housing types, infrastructure, servicing and design are already provided within LEP 2014.</p>	<p>Consistent</p>

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
	<p>development is permitted or proposed to be permitted.</p> <p>A planning proposal must include provisions that encourage the provision of housing that will:</p> <ul style="list-style-type: none"> <li>(a) broaden the choice of building types and locations available in the housing market, and</li> <li>(b) make more efficient use of existing infrastructure and services, and</li> <li>(c) reduce the consumption of land for housing and associated urban development on the urban fringe, and</li> <li>(d) be of good design.</li> </ul> <p>A planning proposal must, in relation to land to which this Direction applies:</p> <ul style="list-style-type: none"> <li>(a) contain a requirement that residential development is not permitted until land is adequately serviced (or arrangements satisfactory to the council, or other appropriate authority, have been made to service it), and</li> <li>(b) not contain provisions which will reduce the permissible residential density of land.</li> </ul>		
<p>3.2 Caravan Parks and Manufactured Home Estates</p>	<p>Applies when a relevant planning authority prepares a planning proposal.</p> <p>In identifying suitable zones, locations and provisions for caravan parks in a planning proposal, the relevant planning authority must:</p> <ul style="list-style-type: none"> <li>(a) retain provisions that permit development for the purposes of a caravan park to be carried out on land, and</li> <li>(b) retain the zonings of existing caravan parks, or in the case of a new principal LEP, zone the land in accordance with an appropriate zone under the <i>Standard Instrument (Local Environmental Plans) Order 2006</i> that would facilitate the retention of the existing</li> </ul>	<p>The Planning Proposal does not identify any suitable zones or provisions for caravan parks.</p>	<p>N/A</p>

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
	<p>caravan park.</p> <p>In identifying suitable zones, locations and provisions for manufactured home estates (MHEs) in a planning proposal, the relevant planning authority must:</p> <ul style="list-style-type: none"> <li>(a) take into account the categories of land set out in Schedule 2 of SEPP 36 as to where MHEs should not be located,</li> <li>(b) take into account the principles listed in clause 9 of SEPP 36 (which relevant planning authorities are required to consider when assessing and determining the development and subdivision proposals), and</li> <li>(c) include provisions that the subdivision of MHEs by long term lease of up to 20 years or under the <i>Community Land Development Act 1989</i> be permissible with consent.</li> </ul>		
3.3 Home Occupations	<p>Planning proposals must permit home occupations to be carried out in dwelling-houses without the need for development consent.</p>	<p>Home occupations are currently permitted without consent under Byron LEP 2014. The Planning Proposal will not change this existing provision.</p>	N/A
3.4 Integrating Land Use and Transport	<p>This direction applies when a relevant planning authority prepares a planning proposal that will create, alter or remove a zone or a provision relating to urban land, including land zoned for residential, business, industrial, village or tourist purposes.</p> <p>A planning proposal must locate zones for urban purposes and include provisions that give effect to and are consistent with the aims, objectives and principles of: (a) Improving Transport Choice – Guidelines for planning and development (DUAP 2001), and (b) The Right Place for Business and Services – Planning Policy (DUAP 2001).</p>	<p>This Planning Proposal will alter the permitted uses on land zoned for residential (and other purposes) where dwellings are permitted. However, it will not alter zone boundary or create a new zoned area. The Planning Proposal is not inconsistent with the relevant guidelines and will not have a significant impact on public transport.</p>	Consistent

S9.1 Direction		Application	Relevance to this planning proposal	Consistency with Direction
3.5	Development Near Licensed Aerodrome	<p>Applies when a relevant planning authority prepares a planning proposal that will create, alter or remove a zone or a provision relating to land in the vicinity of a licensed aerodrome.</p> <p>The main requirements of the Direction are that Council considers the Obstacle Limitation Surface (OLS) as defined by that Department of the Commonwealth for residential purposes, and does not increase residential densities in areas where the ANEF, as from time to time advised by that Department of the Commonwealth, exceeds 25.</p>	The Planning Proposal will not create, alter or remove a zone relating to land in the vicinity of a licensed aerodrome.	N/A
3.6	Shooting Ranges	<p>Applies when a relevant planning authority prepares a planning proposal that will affect, create, alter or remove a zone or a provision relating to land adjacent to and/or adjoining an existing shooting range.</p> <p>A planning proposal must not seek to rezone land adjacent to and/or adjoining an existing shooting range that has the effect of permitting more intensive land uses in the area.</p>	The Planning Proposal will not create, alter or remove a zone relating to land in the vicinity of a shooting range.	N/A
3.7	Reduction in Short-term rental accommodation period	This direction applies to Byron Shire Council when the Council prepares a planning proposal to identify or reduce the number of days that non-hosted short-term rental accommodation may be carried out in parts of its local government area.	This direction is addressed in <b>Appendix 1</b> .	Justifiably Inconsistent
<b>4 Hazard and Risk</b>				
4.1	Acid Sulfate Soils	This direction applies when a relevant planning authority prepares a planning proposal that will apply to land having a probability of containing acid sulfate soils as shown on the Acid Sulfate Soils Planning Maps.	The Planning Proposal is consistent with the principles of the Acid Sulfate Soils Guideline.	Consistent
4.2	Mine Subsidence	Applies when a relevant planning authority prepares a planning proposal that permits development on land that:	Not applicable.	N/A

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
and Unstable Land	<p>(a) is within a mine subsidence district, or</p> <p>(b) has been identified as unstable in a study, strategy or other assessment undertaken:</p> <ul style="list-style-type: none"> <li>(i) by or on behalf of the relevant planning authority, or</li> <li>(ii) by or on behalf of a public authority and provided to the relevant planning authority.</li> </ul>		
4.3 Flood Prone Land	<p>Applies when a relevant planning authority prepares a planning proposal that creates, removes or alters a zone or a provision that affects flood prone land.</p> <p>A planning proposal must include provisions that give effect to and are consistent with the NSW Flood Prone Land Policy and the principles of the <i>Floodplain Development Manual 2005</i> (including the <i>Guideline on Development Controls on Low Flood Risk Areas</i>).</p> <p>A planning proposal must not rezone land within the flood planning areas from Special Use, Special Purpose, Recreation, Rural or Environment Protection Zones to a Residential, Business, Industrial, Special Use or Special Purpose Zone.</p> <p>A planning proposal must not contain provisions that apply to the flood planning areas which:</p> <ul style="list-style-type: none"> <li>(a) permit development in floodway areas,</li> <li>(b) permit development that will result in significant flood impacts to other properties,</li> <li>(c) permit a significant increase in the development of that land,</li> <li>(d) are likely to result in a substantially increased requirement for government spending on flood mitigation measures, infrastructure or services, or</li> <li>(e) permit development to be carried out without development consent except for the purposes of</li> </ul>	<p>Non-hosted STRA will be not be permitted on flood prone land as exempt development. Where a DA is required, flooding will be addressed through the existing provisions in Byron LEP 2014 and Byron DCP 2014.</p>	Consistent

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
	<p>agriculture (not including dams, drainage canals, levees, buildings or structures in flood ways or high hazard areas), roads or exempt development.</p> <p>A planning proposal must not impose flood related development controls above the residential flood planning level for residential development on land, unless a relevant planning authority provides adequate justification for those controls to the satisfaction of the Director-General (or an officer of the Department nominated by the Director-General).</p> <p>For the purposes of a planning proposal, a relevant planning authority must not determine a flood planning level that is inconsistent with the <i>Floodplain Development Manual 2005</i> (including the <i>Guideline on Development Controls on Low Flood Risk Areas</i>) unless a relevant planning authority provides adequate justification for the proposed departure from that Manual to the satisfaction of the Director-General (or an officer of the Department nominated by the Director-General).</p>		
<p>4.4 Planning for Bushfire Protection</p>	<p>Applies when a relevant planning authority prepares a planning proposal that will affect, or is in proximity to land mapped as bushfire prone land.</p> <p>In the preparation of a planning proposal the relevant planning authority must consult with the Commissioner of the NSW Rural Fire Service following receipt of a Gateway determination under Division 3.4 of the Act, and prior to undertaking community consultation in satisfaction of Division 3.4 of the Act, and take into account any comments so made.</p> <p>A planning proposal must:</p> <p>(a) have regard to <i>Planning for Bushfire Protection 2006</i>,</p> <p>(b) introduce controls that avoid placing inappropriate</p>	<p>Non-hosted STRA will not be permitted on bushfire prone land as exempt development. Where a development application for STRA is proposed, it will be subject to bushfire assessment as part of the DA process.</p> <p>Non-hosted STRA may potentially be characterised as a type of special fire protection purpose as defined under section 100B of the <i>Rural Fires Act 1997</i>. Consultation with the RFS will be required following a gateway determination to clarify how STRA will be addressed under the current legislative framework for bushfire assessment.</p>	<p>Consistent</p>

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
	<p>developments in hazardous areas, and</p> <p>(c) ensure that bushfire hazard reduction is not prohibited within the APZ.</p> <p>A planning proposal must, where development is proposed, comply with the following provisions, as appropriate:</p> <p>(a) provide an Asset Protection Zone (APZ) incorporating at a minimum:</p> <ul style="list-style-type: none"> <li>(i) an Inner Protection Area bounded by a perimeter road or reserve which circumscribes the hazard side of the land intended for development and has a building line consistent with the incorporation of an APZ, within the property, and</li> <li>(ii) an Outer Protection Area managed for hazard reduction and located on the bushland side of the perimeter road,</li> </ul> <p>(b) for infill development (that is development within an already subdivided area), where an appropriate APZ cannot be achieved, provide for an appropriate performance standard, in consultation with the NSW Rural Fire Service. If the provisions of the planning proposal permit Special Fire Protection Purposes (as defined under section 100B of the <i>Rural Fires Act 1997</i>), the APZ provisions must be complied with,</p> <p>(c) contain provisions for two-way access roads which link to perimeter roads and/or to fire trail networks,</p> <p>(d) contain provisions for adequate water supply for firefighting purposes,</p> <p>(e) minimise the perimeter of the area of land interfacing the hazard which may be developed,</p> <p>(f) introduce controls on the placement of combustible materials in the Inner Protection Area.</p>		

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction	
5	Regional Planning			
5.1	Implementation of Regional Strategies	This direction applies to land to which the following regional strategies apply: (a) South Coast Regional Strategy (excluding land in the Shoalhaven LGA) (b) Sydney–Canberra Corridor Regional Strategy	Not applicable.	N/A
5.2	Sydney Drinking Water Catchments	Applies when a relevant planning authority prepares a planning proposal that applies to the hydrological catchment.	Not applicable.	N/A
5.3	Farmland of State and Regional Significance on the NSW Far North Coast	This applies to Byron Shire Council except within areas contained within the “urban growth area” mapped in the North Coast Regional Plan 2036. A planning proposal must not: (a) rezone land identified as “State Significant Farmland” for urban or rural residential purposes. (b) rezone land identified as “Regionally Significant Farmland” for urban or rural residential purposes. (c) rezone land identified as “significant non-contiguous farmland” for urban or rural residential purposes.	The Planning Proposal does not involve rezoning land.	Consistent
5.4	Commercial and Retail Development along the Pacific Highway, North Coast	A planning proposal that applies to land located on “within town” segments of the Pacific Highway must provide that: (a) new commercial or retail development must be concentrated within distinct centres rather than spread along the highway; (b) development with frontage to the Pacific Highway must consider the impact the development has on the safety and efficiency of the highway; and (c) for the purposes of this paragraph, “within town” means areas which, prior to the draft local environmental plan,	The Planning Proposal does not propose and zoning changes or new provisions that would facilitate commercial or retail development near the pacific highway	Consistent

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
	<p>have an urban zone (eg “village”, “residential”, “tourist”, “commercial”, “industrial”, etc) and where the Pacific Highway speed limit is less than 80 km/hour.</p> <p>A planning proposal that applies to land located on “out-of-town” segments of the Pacific Highway must provide that:</p> <p>(a) new commercial or retail development must not be established near the Pacific Highway if this proximity would be inconsistent with the objectives of this Direction;</p> <p>(b) development with frontage to the Pacific Highway must consider the impact the development has on the safety and efficiency of the highway; and</p> <p>(c) for the purposes of this paragraph, “out-of-town” means areas which, prior to the draft local environmental plan, do not have an urban zone (eg “village”, “residential”, “tourist”, “commercial”, “industrial”, etc) or are in areas where the Pacific Highway speed limit is 80 km/hour or greater.</p>		
5.10 Implementation of Regional Plans	All planning proposals must be consistent with the applicable Regional Plan released by the Minister for Planning.	The Planning Proposal is generally consistent with the planning framework set out under the North Coast Regional Plan 2036.	Consistent
5.11 Development of Aboriginal Council Land	<p>This applies when preparing a planning proposal to which this direction applies, the planning proposal authority must take into account:</p> <p>(a) any applicable development delivery plan made under State Environmental Planning Policy (Aboriginal Land) 2019; or</p> <p>(b) if no applicable development delivery plan has been published, the interim development delivery plan published on the Department’s website on the making</p>	This Planning Proposal does not affect any land shown on the Land Application Map of State Environmental Planning Policy (Aboriginal Land) 2019.	N/A

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
	of this direction.		
6. Local Plan Making			
6.1 Approval and Referral Requirements	<p>A planning proposal must:</p> <ul style="list-style-type: none"> <li>(a) minimise the inclusion of provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority, and</li> <li>(b) not contain provisions requiring concurrence, consultation or referral of a Minister or public authority unless the relevant planning authority has obtained the approval of:                             <ul style="list-style-type: none"> <li>(i) the appropriate Minister or public authority, and</li> <li>(ii) the Director-General of the Department of Planning and Environment (or an officer of the Department nominated by the Director-General),</li> </ul>                             prior to undertaking community consultation in satisfaction of Division 3.4 of the Act, and</li> <li>(c) not identify development as designated development unless the relevant planning authority:                             <ul style="list-style-type: none"> <li>(i) can satisfy the Director-General of the Department of Planning and Environment (or an officer of the Department nominated by the Director-General) that the class of development is likely to have a significant impact on the environment, and</li> <li>(ii) has obtained the approval of the Director-General of the Department of Planning and Environment (or an officer of the Department nominated by the Director-General) prior to undertaking community consultation in satisfaction of Division 3.4 of the Act.</li> </ul> </li> </ul>	<p>This Planning Proposal will not include provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority. It does not identify development as designated development.</p>	Consistent

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
6.2 Reserving Land for Public Purposes	A planning proposal must not create, alter or reduce existing zonings or reservations of land for public purposes without the approval of the relevant public authority and the Director-General of the Department of Planning and Environment (or an officer of the Department nominated by the Director-General).	The Planning Proposal does not create, alter or reduce existing zonings or reservations of land for public purposes.	N/A
6.3 Site Specific Provisions	<p>Applies when a relevant planning authority prepares a planning proposal that will allow a particular development to be carried out.</p> <p>A planning proposal that will amend another environmental planning instrument in order to allow a particular development proposal to be carried out must either:</p> <ul style="list-style-type: none"> <li>(a) allow that land use to be carried out in the zone the land is situated on, or</li> <li>(b) rezone the site to an existing zone already applying in the environmental planning instrument that allows that land use without imposing any development standards or requirements in addition to those already contained in that zone, or</li> <li>(c) allow that land use on the relevant land without imposing any development standards or requirements in addition to those already contained in the principal environmental planning instrument being amended.</li> </ul> <p>A planning proposal must not contain or refer to drawings that show details of the development proposal.</p>	This Planning Proposal does not seek to facilitate the development of a particular site. Instead it will facilitate a new class of development that will be permissible in certain zones across the whole Shire.	N/A

### **4.3. Section C Environmental, social and economic impact**

**Q7 Is there any likelihood that critical habitat or threatened species, population or ecological communities, or their habitats, will be adversely affected as a result of the proposal**

No. It is unlikely that any critical habitat or threatened species, population or ecological communities, or their habitats, will be adversely affected as a result of this Planning Proposal.

**Q8 Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?**

STRA can potentially result in amenity issues such as noise disturbances and parking congestion. In areas without reticulated sewerage, there is potential for pollution and health risks if the number of persons occupying the dwelling during a period of STRA exceeds the capacity of the wastewater system.

To address these potential impacts, STRA permitted via exempt development will be required to adhere to minimum standards for dwelling type, occupancy, fire safety, parking and wastewater.

In the case of a development application for STRA, impacts on the natural and built environments can be suitably addressed through existing provisions in the planning system. Limitations on occupancy levels and a new clause providing mandatory matters for consideration will guide the assessment process.

**Q9 Has the planning proposal adequately addressed any social and economic effects?**

The Planning Proposal seeks to provide a balance between the economic benefits of tourism and the need to minimise impacts on neighbourhood amenity and prevent the loss of long term housing.

### **4.4. Section D State and Commonwealth Interests**

**Q10 Is there adequate public infrastructure for the planning proposal**

The additional use is based on existing dwellings which typically would be adequately served by water and sewerage or on-site sewage management. Power and telephone will usually be linked to the existing dwelling (if not also self-sufficient, e.g. solar or mobile phone). Existing road and transport infrastructure will be utilised by the proposed use.

**Q11 What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?**

The Gateway determination will advise the public authorities to be consulted as part of this Planning Proposal. It is requested that public authority consultation be undertaken concurrently with community consultation.

## Part 5 Mapping overview

This Planning Proposal will necessitate a new mapping overlay to Byron LEP 2014 to identify land where STRA is not permitted. Indicative maps are identified in **Appendix 3**.

## Part 6 Community Consultation

A pre-gateway community engagement activity was undertaken over December 2019 and January 2020. Feedback was sought on a set of draft planning controls that eventually formed the basis of this Planning Proposal.

The proposal will be exhibited in accordance with the Gateway determination and the terms of the *Environmental Planning and Assessment Act 1979*. This includes any required consultations under section 56(2)(d) of the Act and/or to comply with the requirements of the relevant section 9.1 Directions.

Notification of the exhibited Planning Proposal will include:

- a newspaper advertisement that circulates in the Byron LGA, which is the area affected by the Planning Proposal, and
- the website of Byron Shire Council and the Department of Planning and Environment.

## Part 7 Project timeline

The proposed timeline for the completion of the Planning Proposal is as follows:

Estimated completion	Plan making step
March 2019	Gateway determination issued by Department of Planning and Environment.
April 2019 – May 2019	Public exhibition of Planning Proposal. Government agency consultation.
June 2019 – July 2019	Analysis of public submissions. Preparation of Council report.
July – 2019	Public submissions report to Council.
August/September 2019	Endorsed Planning Proposal submitted to Department of Planning and Environment for finalisation or dealt with by Council under delegation.

## Summary and conclusions

This Planning Proposal seeks to amend Byron Local Environmental Plan 2014 to define short-term rental accommodation (STRA), and to introduce planning controls that will improve the management of STRA in the Byron Shire.

Non-hosted STRA will be limited to a maximum of 90 days per calendar year. Hosted STRA will not be subject to time limitations.

Given the high concentration and unique impacts of STRA in the Byron Shire, the proposed day limitation is considered necessary to achieve the aims and objectives of the Planning Proposal.

The Planning Proposal has been informed by research into the extent of online STRA listings, two studies by researchers from Southern Cross University and a pre-gateway community engagement activity.

## **Appendix 1 Analysis of Airbnb and HomeAway Listings in the Byron Shire**

# 1. Introduction and methodology

## 1.1 Introduction

This analysis looks at the pattern of Airbnb and HomeAway listings in the Byron Shire over a 3.5 year period from July 2016 to November 201. The purpose of the research is to investigate the distribution and concentration of listings and to gain insight into the type of accommodation being offered and the frequency of use.

## 1.2 Data sources

Two data sets have been used: one from consulting firm AirDNA, the second is a publicly available data set published by Insideairbnb.

Most of the analysis is based on data from AirDNA as it includes listings from both Airbnb and HomeAway and covers a greater period of time. Regional comparisons of Byron Shire with surrounding Northern Rivers and Sydney LGA's are drawn from Insideairbnb.

## 1.3 Why focus on Airbnb and HomeAway?

Given the number of different booking platforms and agents offering accommodation in the Byron Shire, it is not feasible to obtain data from all sites or agents. By focusing on the two most popular online platforms, it is hoped to obtain an impression of the STRA sector that is hopefully reflective of industry as a whole. The actual number of STRA properties is likely to be higher than the figures provided in this analysis as many listings may be managed through real estate agencies or advertised on other online platforms.

## 1.4 Limitations in the data

Airbnb and HomeAway do not make their data publicly available. This forces researchers to obtain information from third parties who 'scrape' data from the public facing section of these websites. The scraping method of data acquisition comes with inherent limitations which need to be acknowledged.

Airbnb and HomeAway randomise the geographical coordinates for each listing by up to 450 feet (approximately 130m), making it difficult to identify the property address for each listing (Wachsmuth et. al., 2017). While attempts have been made to organise listings by suburb, the nature of the data means there is a possibility for minor errors to accumulate when listings are grouped together. AirDNA also reports on both the availability and occupancy of each listing. It is understood that these figures are estimates calculated by an algorithm developed by AirDNA.

Despite these limitations, the AirDNA data is accepted as being a good estimation of short-term rental activity and has been used in recent studies into short-term rental accommodation by Australian and international researchers (Crommelin et. al., 2018).

## 1.5 Methodology

The AirDNA data set identifies the number of days per month that a listing is either 'available', 'reserved' or 'blocked'. A blocked listing means that the host 'blocked' it from being used for a specified number of days (or entirely) during the reporting period. This could be because the owner was staying in the dwelling at the time, or they simply didn't want it to be used for a specified period. An available listing means that the dwelling was 'available' for rent, while a reserved listing means that it had been 'reserved', or booked, by a prospective guest.

This analysis adopts a simplified methodology of counting listings that were either ‘available’ or ‘reserved’ for at least one day in the monthly reporting period. This is necessary to avoid inflated counts that include blocked listings.

Even though ‘available’ days do not involve any accommodation (otherwise they would be noted as ‘reserved’), they imply that a dwelling is not available for long term residential accommodation at that time, and hence is not part of the Shires dwelling supply for the listing period. This is essential to gain an understanding of the effect that STRA is having on the supply of housing and how many dwellings are being used for STRA casually versus commercially.

The dataset records four different accommodation types (1) entire home/apt, (2) private room, (3) shared room, (4) hotel room. Hotel rooms have been excluded from the count as we are only interested in the effect on the housing market. Private rooms and shared rooms have been combined into a single count due to the similarity between these use cases. It should be noted that shared rooms and hotel rooms comprise a negligible proportion of the total listings and do not have a significant effect on the analysis.

## **1.6 Dual listings**

Many STRA properties are listed across multiple advertising platforms at the same time. The AirDNA dataset identifies properties that are listed on both Airbnb and HomeAway, which removes the risk of duplicate counts.

## **1.7 Frequently available listings**

This analysis defines a ‘frequently available dwelling’ as an entire house or apartment that was available or reserved for more than 90 days in the previous 12 months.

Recent international and Australian studies into the impact of Airbnb on long term housing markets have adopted similar methodologies. Wachsmuth et. al. (2017) adopted a 60 day threshold in their analysis of short-term rentals in major Canadian cities, while Crommelin et. al. (2018) adopted a 90 day threshold in their recent study of the impacts of Airbnb on housing markets in Sydney and Melbourne.

As noted by Crommelin et. al. (2018), ‘a 90 day threshold is generally consistent with other international regulatory approaches and is considered to be the maximum period of time that long-term occupants could vacate their dwelling without having to alternative long term accommodation themselves’.

For the sake of comparison, this analysis also looks at dwellings that were ‘available’ or ‘reserved’ for more than 180 days in the previous 12 months. This is consistent with the 180 day limit for certain LGA’s adopted in the draft *State Environmental Planning Policy (Short-term Rental Accommodation) 2019*.

## **1.8 Breakdown of listings by suburb**

To simplify the analysis, dwelling numbers were obtained from the Byron Shire Community Profile, published by profile.id, which is based on data from the 2016 Australian Census.

The data includes a breakdown of dwelling numbers across eight different suburbs in the Byron Shire. Airbnb and HomeAway listings have been aggregated into the same suburb areas as the dwelling counts to enable a comparison of listings and dwellings in different parts of the Shire.

## 1.9 Estimation of dwelling numbers

Dwelling numbers in this analysis have been estimated by taking the dwelling count from the profile.id statistics (enumerated by suburb) and adding to it all occupation certificates for residential dwellings issued since the close of the census.

Occupation certificate data was harvested from Council’s internal records and was manually counted and added on a month by month basis. Some errors may exist due to a lack of accounting for dwelling demolitions, however, the figures provided are generally considered to be a good estimate of total dwelling numbers and any errors are likely to be minor in nature. The data allows for a timeline comparison of the growth of Airbnb and HomeAway listings relative to the growth of dwellings.

# 2. Number of listings

## 2.1 Total listings

The total number of listings on Airbnb or HomeAway for the Byron Shire was estimated to be 4237 at 1 November 2019. Of this figure, 3613 (85%) listings were for entire homes of apartments, and 624 (15%) listings were for private or shared rooms within a dwelling. The breakdown of dwelling type for total listings is shown in table 1.

**Table 1:** Airbnb and HomeAway listings in the Byron Shire, November 2019

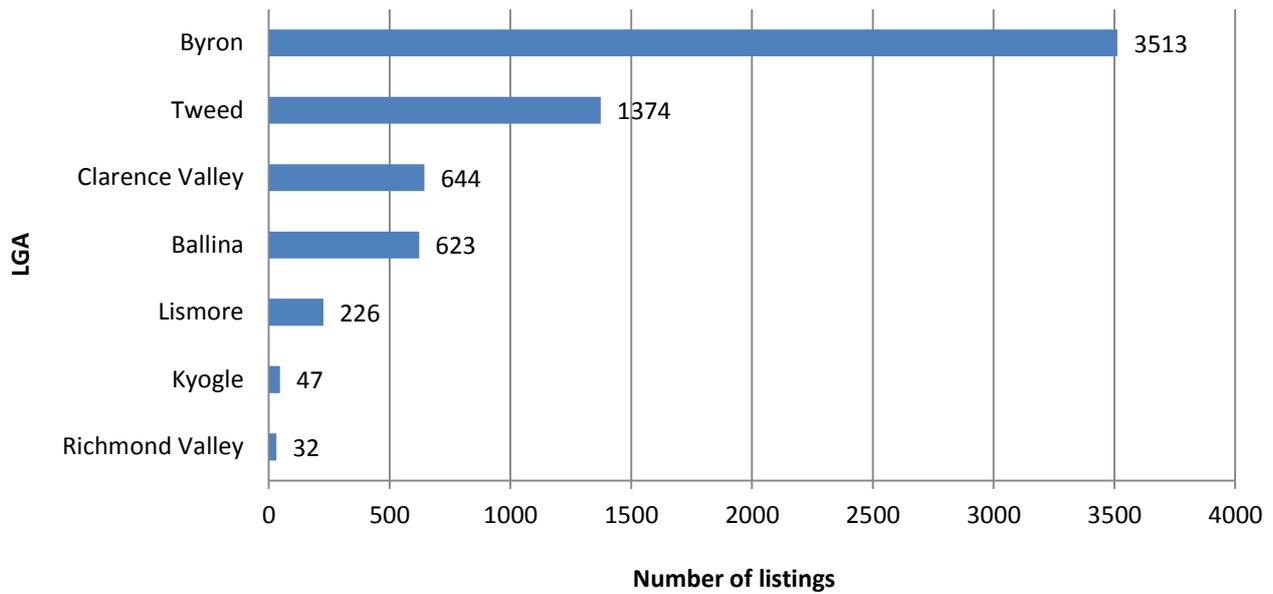
Accommodation type	No. of listings	%
Entire home/apt	3613	85%
Private or shared room	624	15%
Total (excluding hotel)	4237	100%

**Source:** Byron Shire Council, based on data from Airdna (2019)

## 2.2 Regional comparison

For a regional comparison, we use data from insideairbnb.com (Cox, 2019), which shows that the total number of Airbnb listings for the Byron Shire was estimated to be 3,513 at 30 November 2019. This compares to Tweed with 1374, Clarence Valley with 644 and Ballina with 623. Regionally, there are more Airbnb listings in Byron Shire than in all other northern Rivers LGA’s combined. A comparison of regional Airbnb listings is illustrated in figure 1.

**Figure 1:** Comparison of Airbnb listings for Northern Rivers LGA's

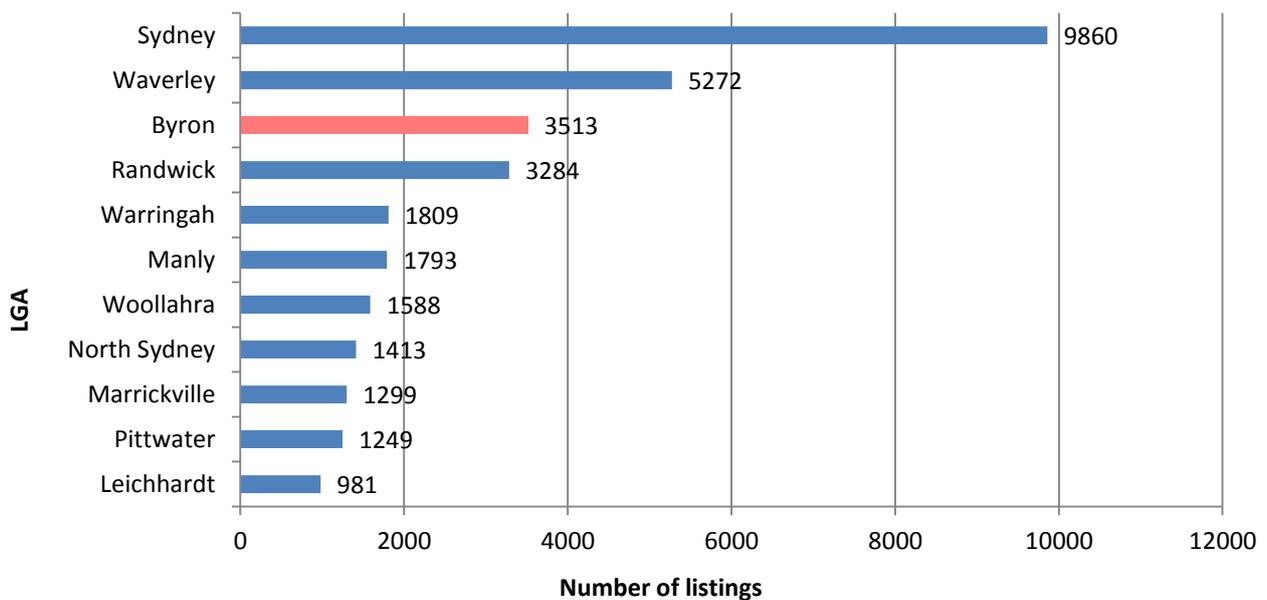


**Source:** Byron Shire Council, based on data from Inside Airbnb, 30 November 2019

### 2.3 Greater Sydney Region comparison

Only two LGA's in the Greater Sydney Region were shown to have more Airbnb listings than Byron Shire, those being Sydney (9860) and Waverly (5272), highlighting the prevalence of the Airbnb phenomenon in Byron Shire. This is a significant finding when considering the relatively low population and dwelling numbers in Byron Shire compared to these metropolitan LGA's. A comparison of Airbnb listings for Byron Shire and the top 10 LGA's for the Greater Sydney Region is illustrated in figure 2.

**Figure 2:** Comparison of Airbnb listings between Byron Shire and the top 10 LGA's in the Greater Sydney Region



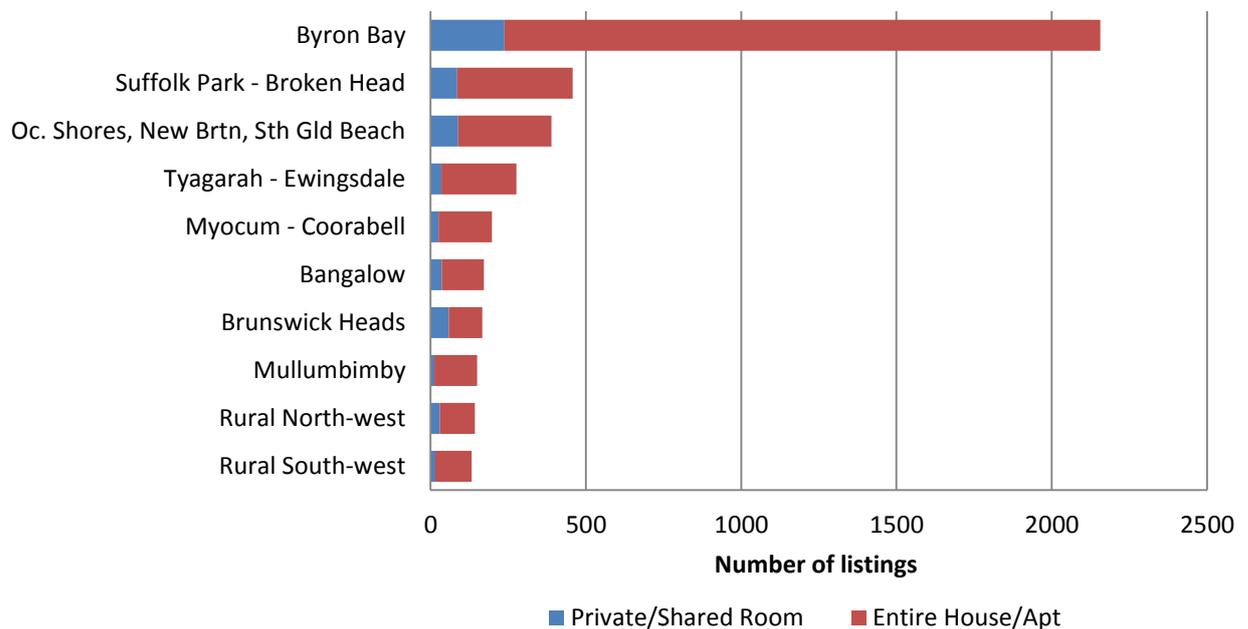
**Source:** Byron Shire Council, based on data from Inside Airbnb, 30 November 2019

## 2.4 Spatial distribution of listings

The majority of Airbnb and HomeAway listings are concentrated in Byron Bay, with Suffolk Park being the next most popular location. At 1 November 2019, Byron Bay had a total of 2157 listings, representing 62% of dwellings, followed by Suffolk Park/Broken Head with 457 listings, which equates to 24% of dwellings.

This finding reflects previous research on Airbnb that indicates listings tend to be concentrated in areas with significant tourism appeal (Crommelin et. al., 2018). Listings in other areas of the Shire were still considerably higher than the regional and State-wide averages, although the majority of activity appears to be occurring in coastal areas, particularly Byron Bay. A breakdown of total listings for eight different areas in the Shire is illustrated in Figure 3 and Table 1. Listings as a proportion of dwellings are shown in figures 11-13, in Section 4 of this Appendix.

**Figure 3:** Distribution of Airbnb and HomeAway listings in Byron Shire by suburb



**Source:** Byron Shire Council, based on data from AirDNA, 1 November 2019

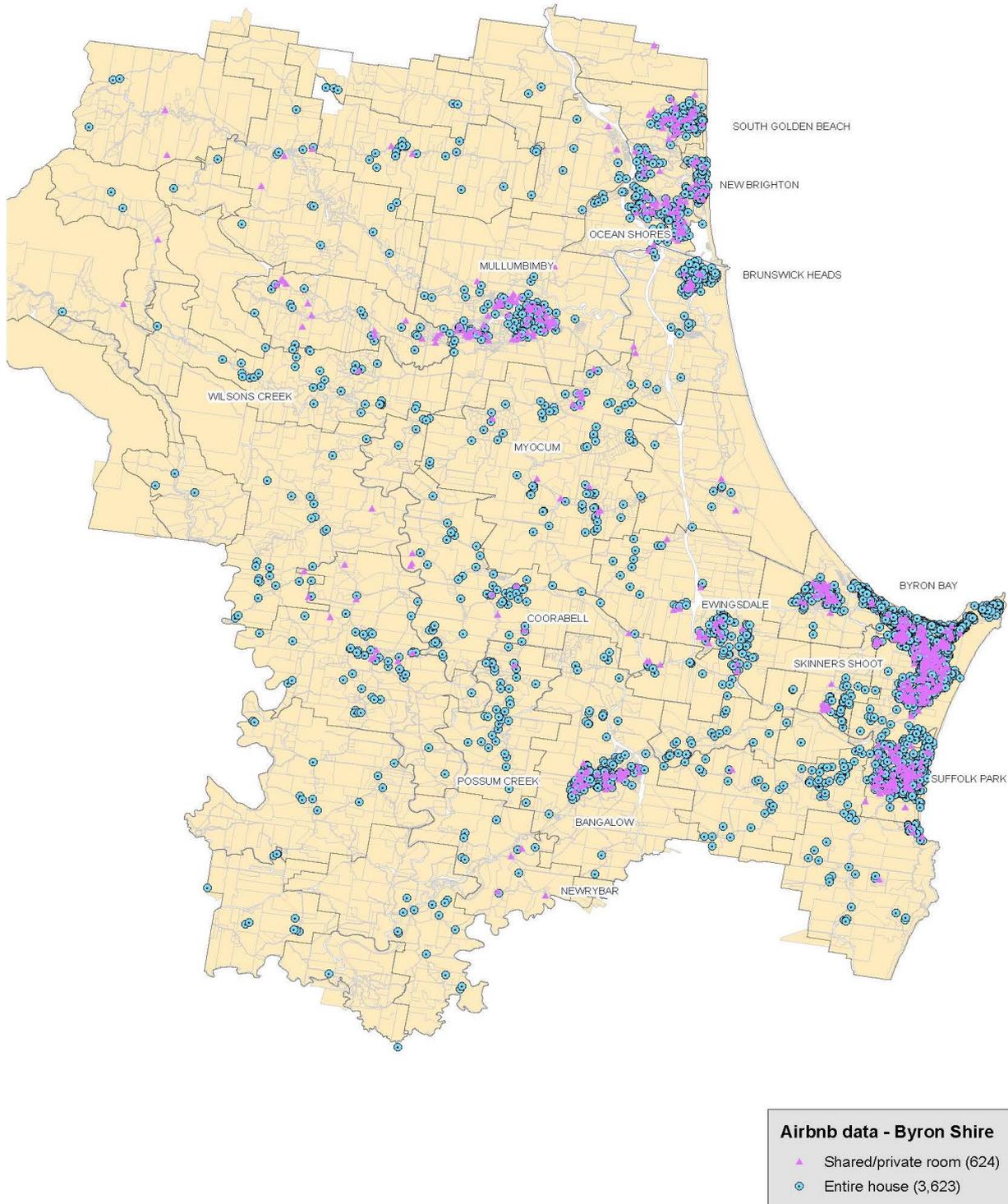
**Table 1:** Distribution of Airbnb and HomeAway listings in Byron Shire by suburb

Suburb	Private/Shared Room	Entire House/Apt	Total listings
Byron Bay	238	1919	2157
Suffolk Park - Broken Head	85	372	457
Oc. Shores, New Brighton, South Golden Beach	89	300	389
Tyagarah - Ewingsdale	35	241	276
Myocum - Coorabell	25	172	197
Bangalow	36	135	171
Mullumbimby	59	107	166
Brunswick Heads	12	138	150
Rural North-west	30	112	142
Rural South-west	15	117	132
<b>Total</b>	<b>624</b>	<b>3613</b>	<b>4237</b>

**Source:** Byron Shire Council, based on data from AirDNA, 1 November 2019

A clear spatial pattern of listings is evident in figure 4 which illustrates the concentration of activity in and around Byron Bay. Each listing is represented as an individual point on the map, with listings for entire houses or apartments shown as a blue dot and private or shared rooms shown as a purple triangle.

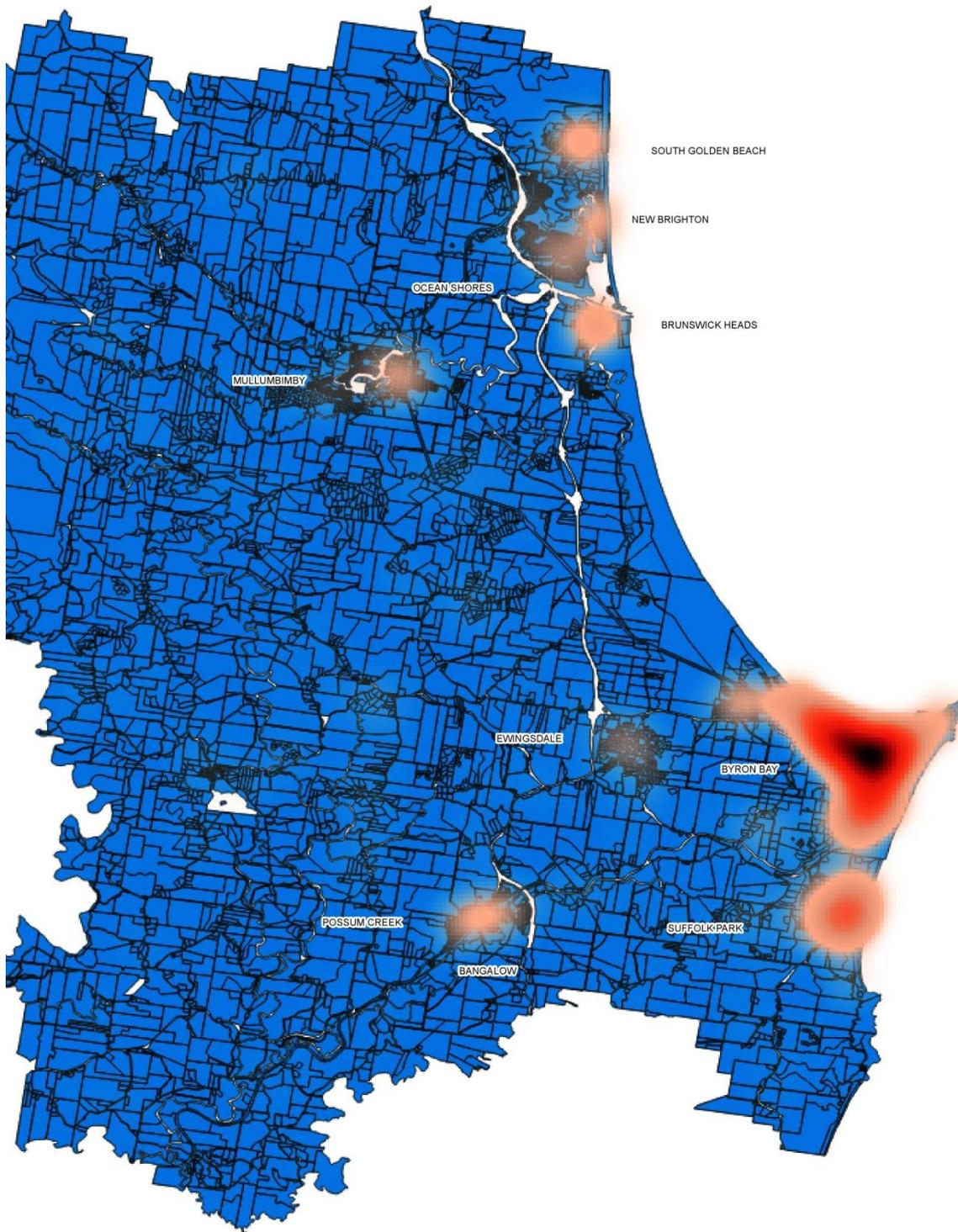
**Figure 4:** Airbnb and HomeAway listings based on publicly available spatial coordinates



**Source:** Map: Byron Shire Council (2019). Coordinate Data: Airdna (2019)

Due to the high number of listings, the concentration of activity is difficult to visualise using individual points on a map. Figure 5 uses a heat map to illustrate the density of listings, which gives a better impression of the concentration of activity in different parts of the Shire. As discussed earlier, Byron Bay is a clear hotspot of activity with 2157 listings accounting for 51% of total listings.

**Figure 5:** Heat map providing a visual guide for the concentration of Airbnb and HomeAway listings in Byron Shire



**Source:** Map: Byron Shire Council (2019). Coordinate Data: Airdna (2019)

## 2.5 Frequently available listings

Analysis of the data indicates there are a wide range of participants on both platforms, from hosts occasionally renting a single room through to professional investors renting out multiple properties year-round.

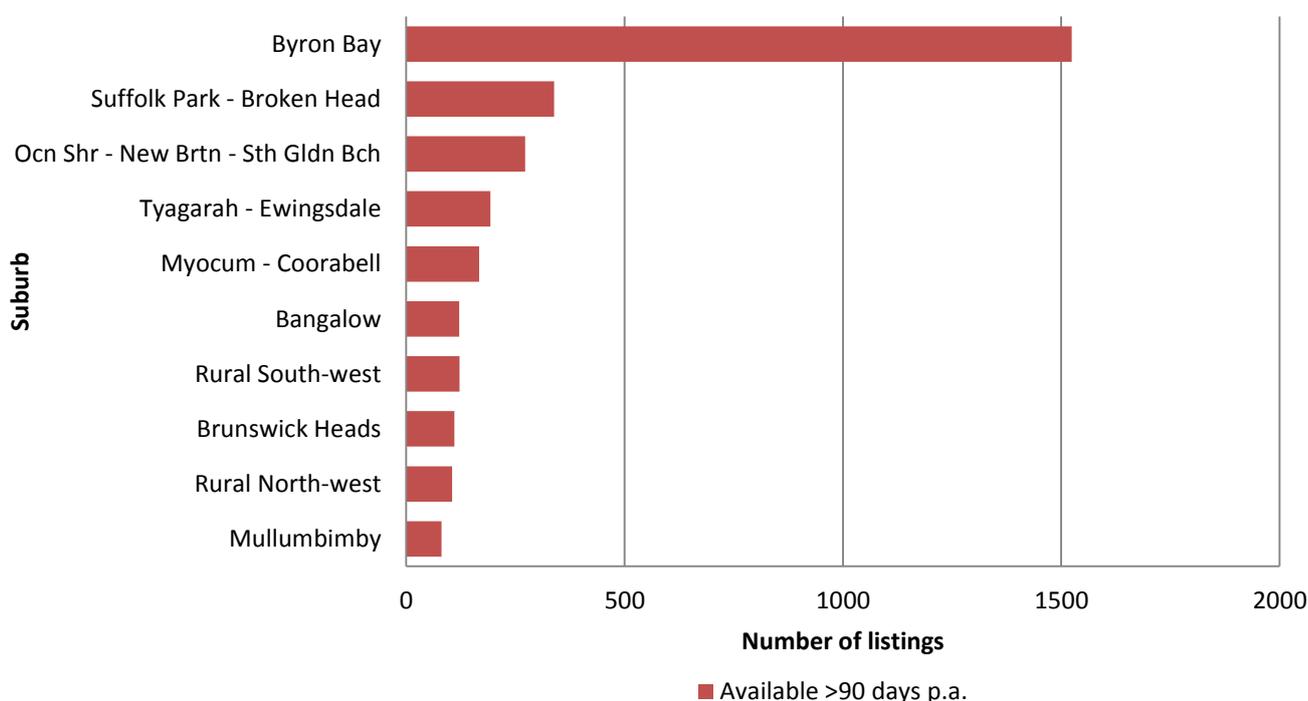
In terms of housing, we are interested in identifying the numbers of dwellings that are frequently used for tourist accommodation purposes, and thus are considered to have been removed from the long term housing market. Dwellings that are only partially or occasionally used for holiday letting while the occupants are away are not considered to have significant net impact on dwelling supply as the primary use of the dwelling has not substantially changed.

To estimate the impact, we have chosen to focus on entire houses or apartments that were listed as ‘available’ or ‘reserved’ for at least 90 days in the previous 12 months. For the sake of comparison, additional analysis using a more permissive 180 day threshold (similar to the draft SEPP) has also been carried out.

Out of a total of 3613 listings for entire houses or apartments, 3034 (84%) were ‘available’ or ‘booked’ for more than 90 days in the previous 12 months. Raising the threshold to 180 days in the previous 12 months reduced the number to 1794 which constitutes approximately 50% of listings. The majority of frequently available listings are concentrated in Byron Bay.

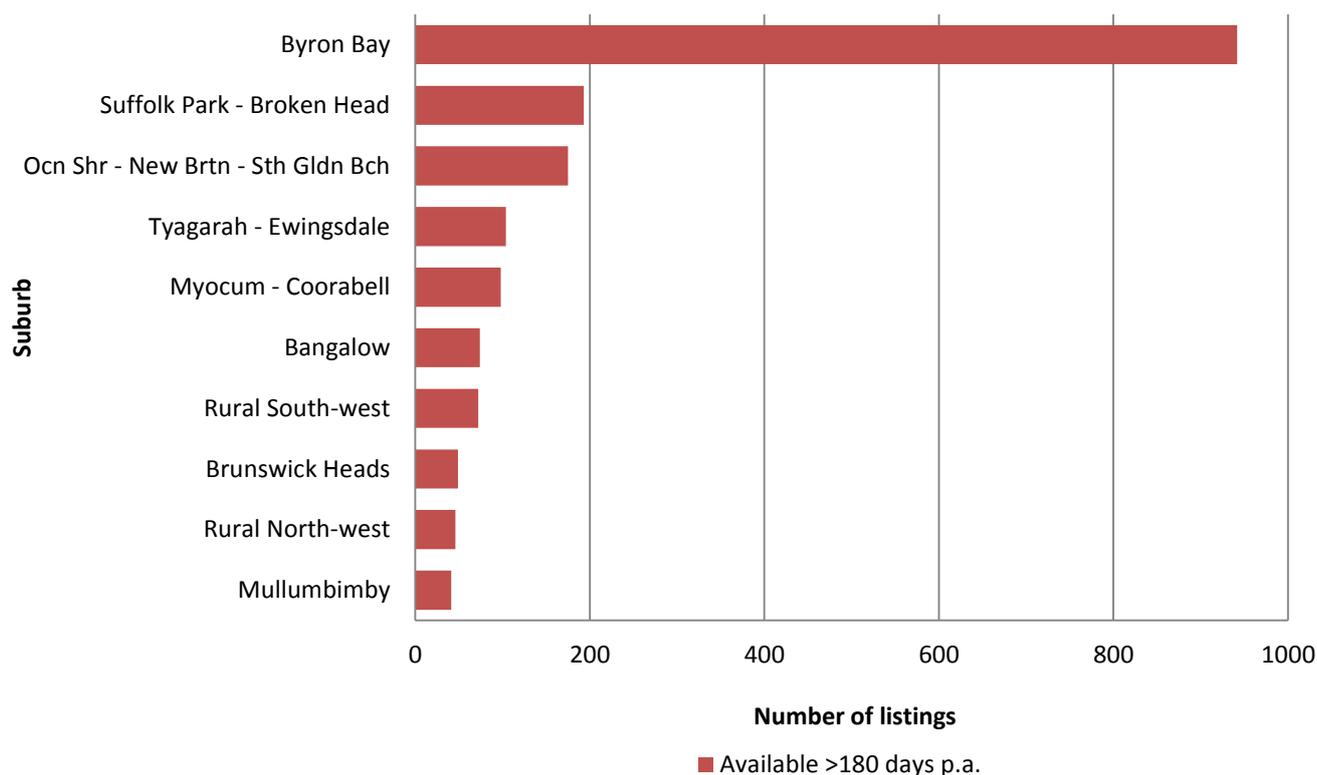
Figures 6 and 7 illustrate frequently available listings as a percentage of total listings. Figures for each suburb are shown in table 2.

**Figure 6:** Frequently available listings (>90 days p.a.) by suburb



**Source:** Byron Shire Council, based on data from AirDNA, 1 November 2019

**Figure 7:** Frequently available listings (>180 days p.a.) by census district



**Source:** Byron Shire Council, based on data from AirDNA, 1 November 2019

**Table 2:** Breakdown of frequently available listings by suburb

Suburb	Available >180 days p.a.	Available >90 days p.a.
Byron Bay	942 (44%)	1524 (71%)
Suffolk Park - Broken Head	193 (42%)	339 (74%)
Ocean Shores, New Brighton, South Golden Beach	175 (45%)	272 (70%)
Tyagarah - Ewingsdale	104 (38%)	193 (70%)
Myocum - Coorabell	98 (50%)	167 (85%)
Brunswick Heads	49 (33%)	110 (73%)
Bangalow	72 (42%)	122 (71%)
Rural South-west	74 (32%)	121 (92%)
Rural North-west	46 (32%)	105 (74%)
Mullumbimby	41 (21%)	81 (48%)
<b>Total</b>	<b>1794 (42%)</b>	<b>3034 (71%)</b>

**Note.** Percentages indicate frequently available listings relative to total listings

## 2.6 Number of reserved days

To gain an insight into the usage of properties, listings were filtered to identify the number of days that a property was listed as ‘reserved’ (i.e. booked), as this provides an indication of a dwelling being actively used for STRA. Listings were split into the following three groups based on the number of days they were reserved in the previous 12 months:

- 0-90 days;
- 91-180 days;
- 181-365 days.

Table 3 below illustrates that the market is roughly split between frequently and infrequently reserved properties. Slightly more than half of listings (55%) were reserved for less than 90 days per year, while 27% were reserved from 91-181 days per year and 18% of listings were reserved for more than 181 days per year.

This shows that while the number of ‘frequently available’ properties is relatively high, many of these dwellings have a usage of less than 90 days per year. There could be a number of explanations, such as holiday houses that are listed frequently but not often booked.

If new planning rules were introduced that reduced the period of non-hosted accommodation to 90 days, this would be likely to impact on 45% of listed properties. Slightly less than 20% would be affected if a 180 day threshold were adopted.

**Table 3:** Breakdown of reserved days

Reserved days (last 12 months)	Entire homes/apt	%
0-90	1958	55%
91-180	946	27%
181-365	645	18%
Total	3549	100%

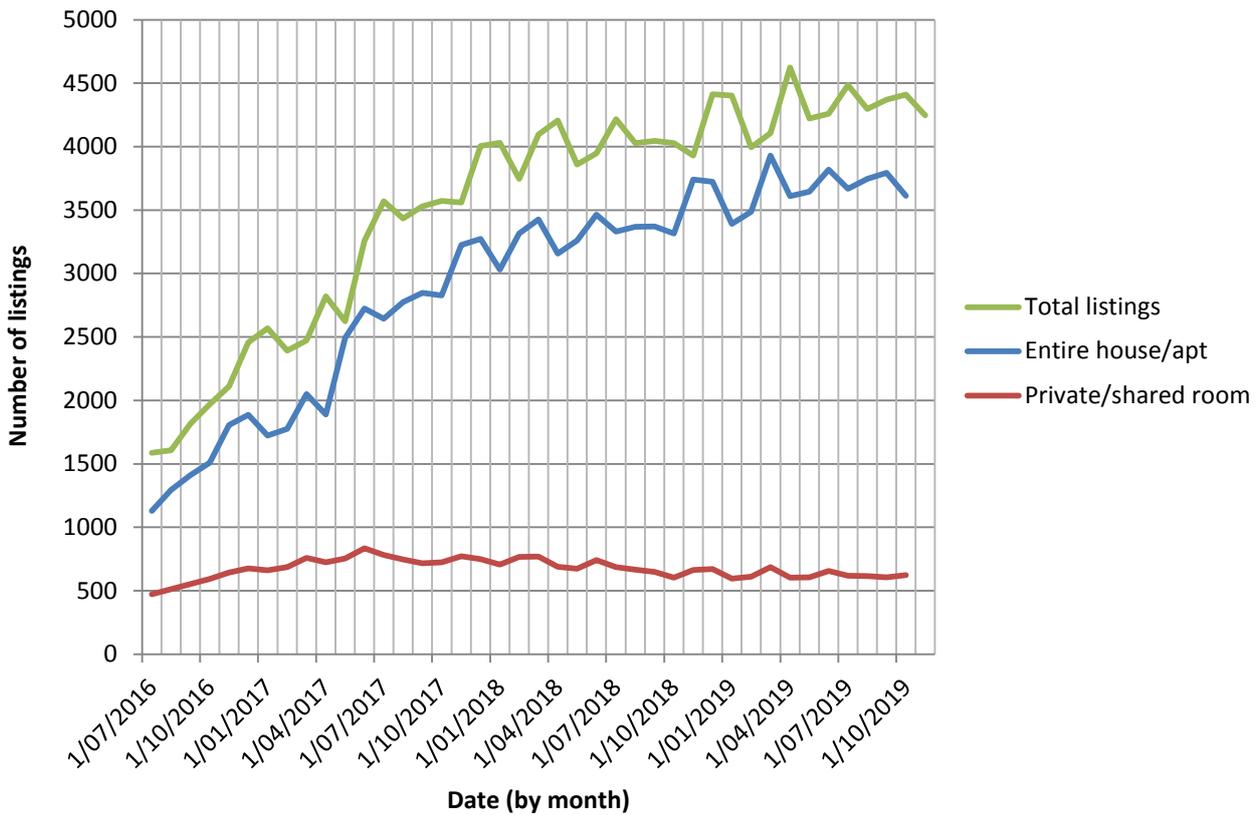
## 3. Growth Trends

### 3.1 Growth in total listing

Between 1 July 2016 and 1 November 2019 the total number of Airbnb and HomeAway listings increased from 1586 to 4237. Listings growth appears to have accelerated rapidly in period from 2016 – 2018. The total volume of listings is still increasing, but take up rates appear to be slowing overall. The majority of growth is being driven by listings for entire houses and apartments rather than for private/shared rooms.

It should be acknowledged that the growth trends are indicative of listings growth on the Airbnb and HomeAway platforms, and may not be reflective of actual STRA growth in the Shire as there is no way of knowing how many listings are ‘new entrants’ to the market or whether the trend represents a shift in advertising of existing properties. Nevertheless, the total volume of listed properties indicates a significant upward trend that is unlikely to be explained solely by a change in advertising mediums. Total listings growth is depicted in figure 8.

**Figure 8: Growth in total Byron Shire Airbnb and HomeAway listings Jul 2016 – Nov 2019**

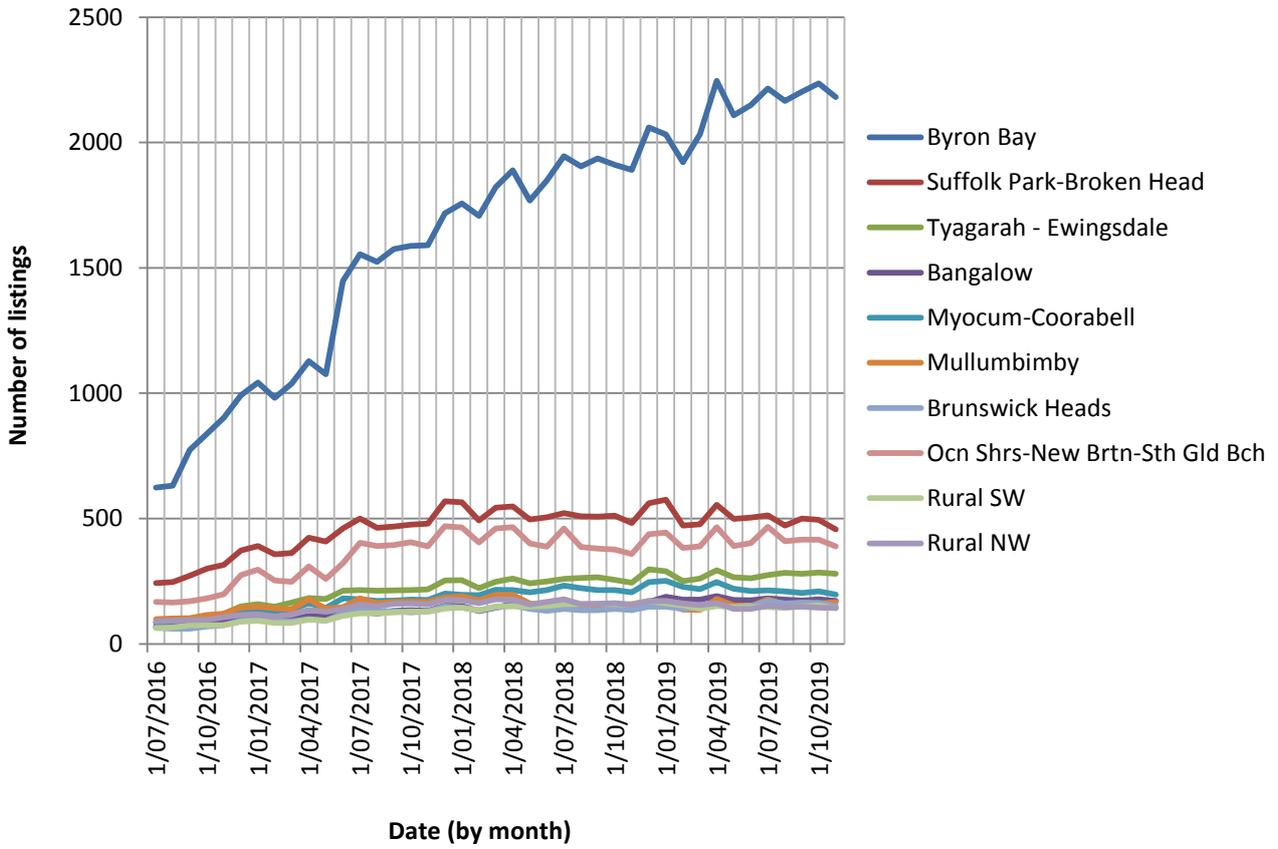


Source: Byron Shire Council, based on data from AirDNA, 1 November 2019.

### 3.2 Growth most evident in Byron Bay

When growth is filtered by suburb, it becomes clear that the strong growth trend is being driven primarily by listings in Byron Bay. Other areas of the Shire also experienced increased growth, but to a lesser degree. Listings growth by suburb is illustrated in figure 9.

**Figure 9:** Growth of total listings in Byron Shire, by suburb, Jul 2016–Nov 2019

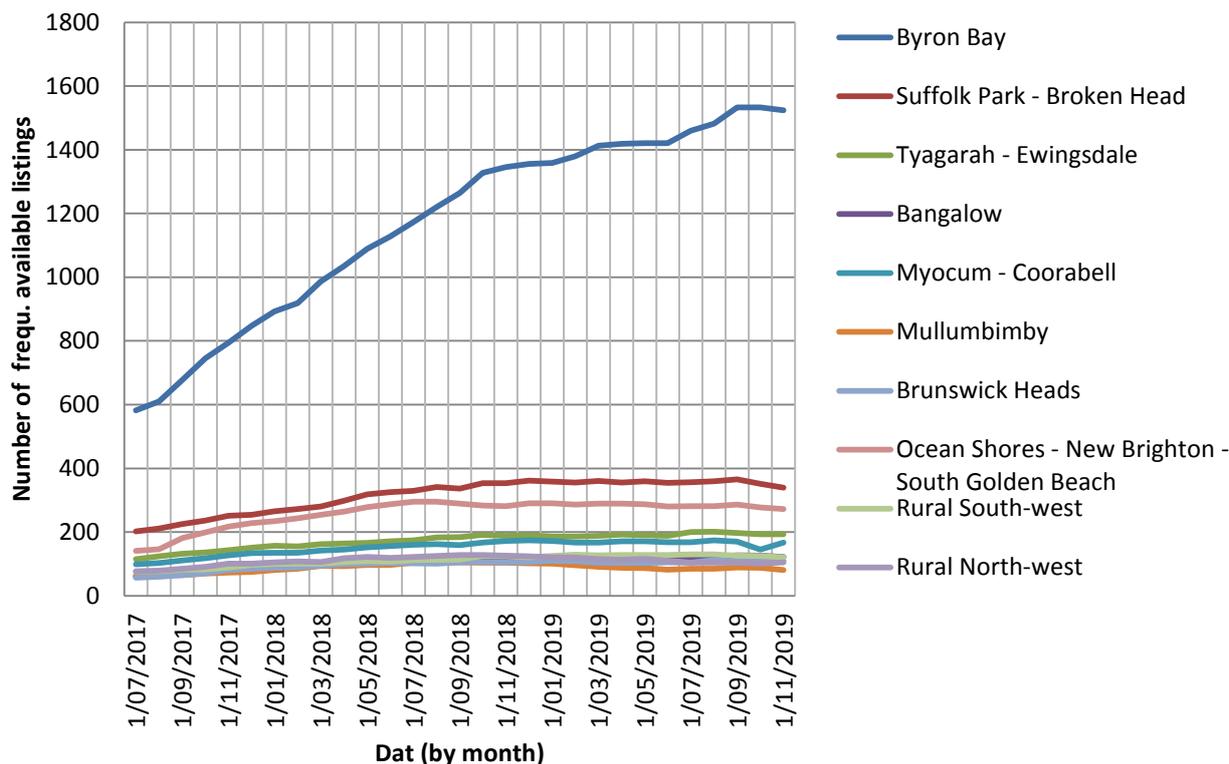


**Source:** Byron Shire Council, based on data from AirDNA, 1 November 2019

### 3.3 Growth in frequently available listings

Growth in frequently available properties, being whole houses or apartments that were available or reserved for more than 90 days in the previous 12 months, shows a similar trend to listings growth overall. The number of frequently available properties rose rapidly in the period of 2016 to 2018 with growth slowing in the past 12 months. The nature of this analysis results in a ‘smoothing’ of the growth trend because it averages the total number of available or reserved days over the previous 12 months. Again, the upward growth trend is primarily driven by growth in Byron Bay listings. Growth in frequently available listings by suburb is depicted in figure 10.

**Figure 10:** Growth of frequently available listings by suburb Jan 2017 – Oct 2019



**Source:** Byron Shire Council, based on data from AirDNA, 1 November 2019

## 4. Listings relative to dwelling supply

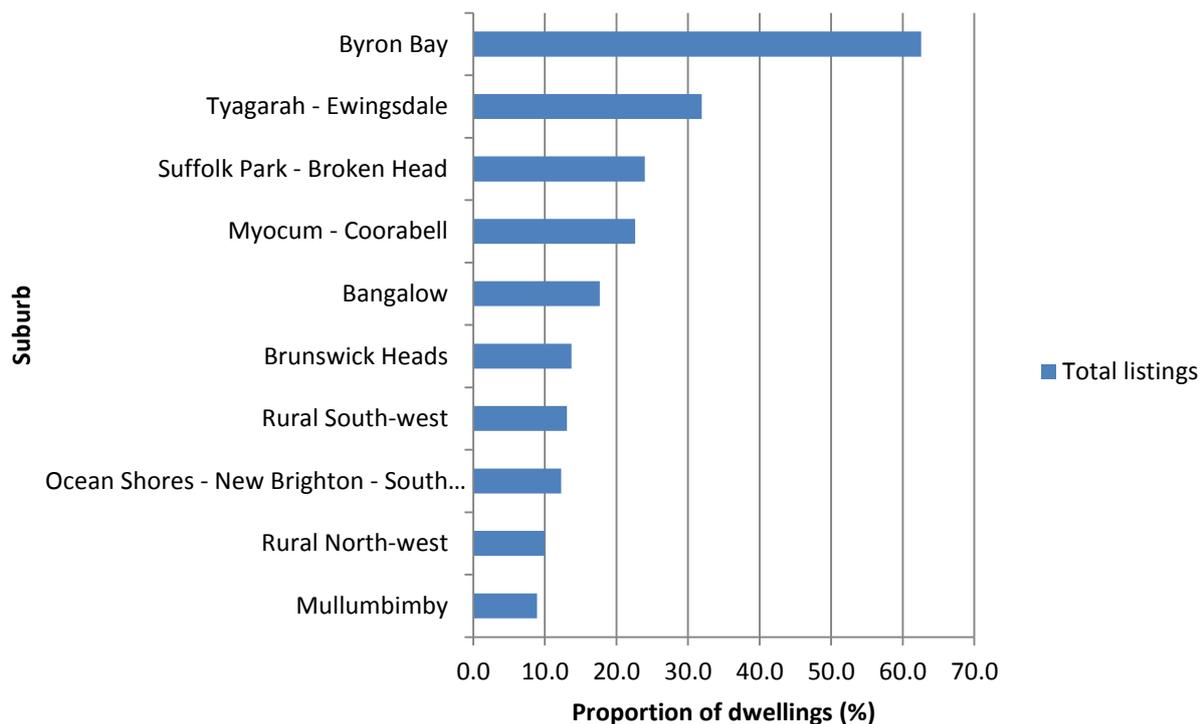
### 4.1 Significant proportion of dwellings

It is estimated there were 16,592 dwellings in the Byron Shire by 1 November 2019. When considered as a proportion of the total dwelling supply, Airbnb and HomeAway listings equate to 25% of total dwellings in the Byron Shire. Consistent with other findings in this analysis, the greatest concentration of activity was evident in Byron Bay, where Airbnb and HomeAway listings equate to approximately 62% of dwellings. This figure is inclusive of shared rooms, private rooms and entire dwellings and covers frequent and infrequent users.

Frequently available properties that were available or reserved for more than 90 days in the previous 12 months are estimated to comprise 18% of total dwellings. This figure reduces to 11% if the availability threshold is raised to a more permissive 180 days per year. To put this in context, this compares to a national rate of 0.2% and a rate of 1.7% for the Greater Sydney Region (Gurran et. al., 2018).

Charts 12-13 and tables 4-5 illustrate total listings and frequently available listings as a proportion of dwelling supply in each suburb.

**Figure 11:** Total listings as a proportion of dwelling supply, by suburb

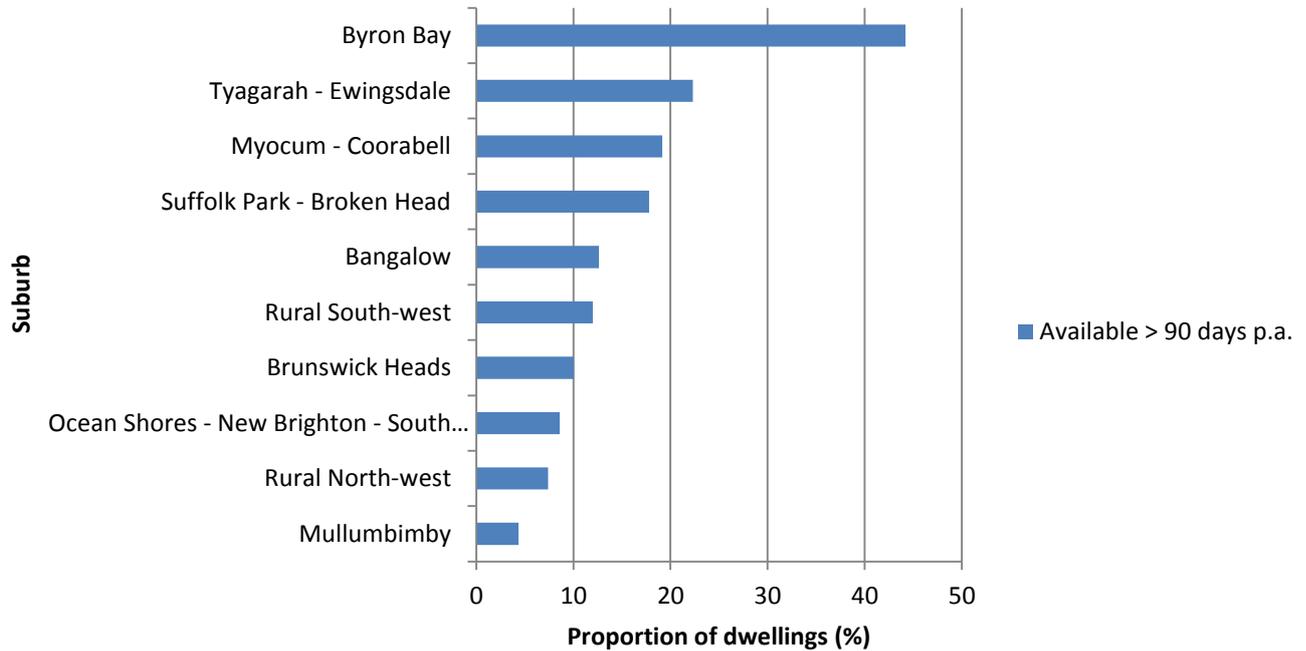


**Table 4:** Frequently available listings as a proportion of dwelling supply, by suburb

Suburb	Available (total)	Dwellings	Pct. of dwellings
Byron Bay	2,157	3,447	62.6%
Tyagarah - Ewingsdale	276	865	31.9%
Suffolk Park - Broken Head	457	1,905	24.0%
Myocum - Coorabell	197	871	22.6%
Bangalow	171	966	17.7%
Brunswick Heads	150	1,093	13.7%
Rural South-west	132	1,007	13.1%
Ocean Shores - New Brighton - South Golden Beach	389	3,162	12.3%
Rural North-west	142	1,418	10.0%
Mullumbimby	166	1,858	8.9%
<b>Total</b>	<b>4237</b>	<b>16,592</b>	<b>25.5%</b>

**Source:** Byron Shire Council, based on data from AirDNA, 1 November 2019

**Figure 12:** Frequently available listings as a proportion of dwelling supply, by suburb



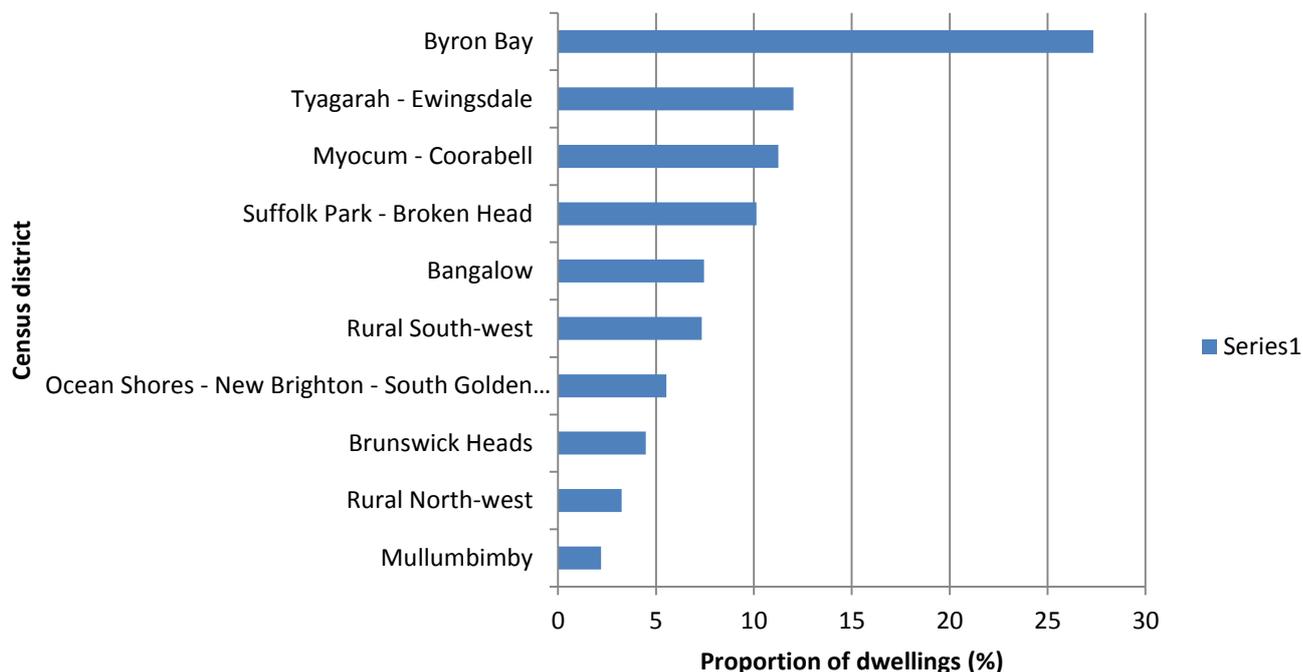
**Source:** Byron Shire Council, based on data from AirDNA, 1 November 2019

**Table 4:** Frequently available listings as a proportion of dwelling supply, by suburb

Suburb	Available >90 days p.a.	Dwellings	Pct. of dwellings
Byron Bay	1524	3,447	44%
Suffolk Park - Broken Head	339	865	18%
Ocean Shores, New Brighton, South Golden Beach	272	1,905	9%
Tyagarah - Ewingsdale	193	871	22%
Myocum - Coorabell	167	966	19%
Brunswick Heads	110	1,093	10%
Bangalow	122	1,007	12%
Rural South-west	121	3,162	12%
Rural North-west	105	1,418	7%
Mullumbimby	81	1,858	4%
<b>Total</b>	<b>3034</b>	<b>16,592</b>	<b>18%</b>

**Source:** Byron Shire Council, based on data from AirDNA, 1 November 2019

**Figure 13:** Frequently available listings (>180 days p.a.) shown as a proportion of dwellings, by suburb



**Source:** Byron Shire Council, based on data from AirDNA, 1 November 2019

**Figure 5:** Frequently available listings (> 180 days p.a.) as a proportion of dwelling supply, by suburb

Suburb	Available >180 days p.a.	Dwellings	Pct. of dwellings
Byron Bay	942	3,447	27%
Tyagarah - Ewingsdale	104	865	12%
Myocum - Coorabell	98	1,905	11%
Suffolk Park - Broken Head	193	871	10%
Rural South-west	74	966	7%
Bangalow	72	1,093	7%
Ocean Shores, New Brighton, South Golden Beach	175	1,007	6%
Brunswick Heads	49	3,162	4%
Rural North-west	46	1,418	3%
Mullumbimby	41	1,858	2%
<b>Total</b>	<b>1794</b>	<b>16,592</b>	<b>11%</b>

**Source:** Byron Shire Council, based on data from AirDNA, 1 November 2019

#### 4.2 Growth trends relative to dwelling supply

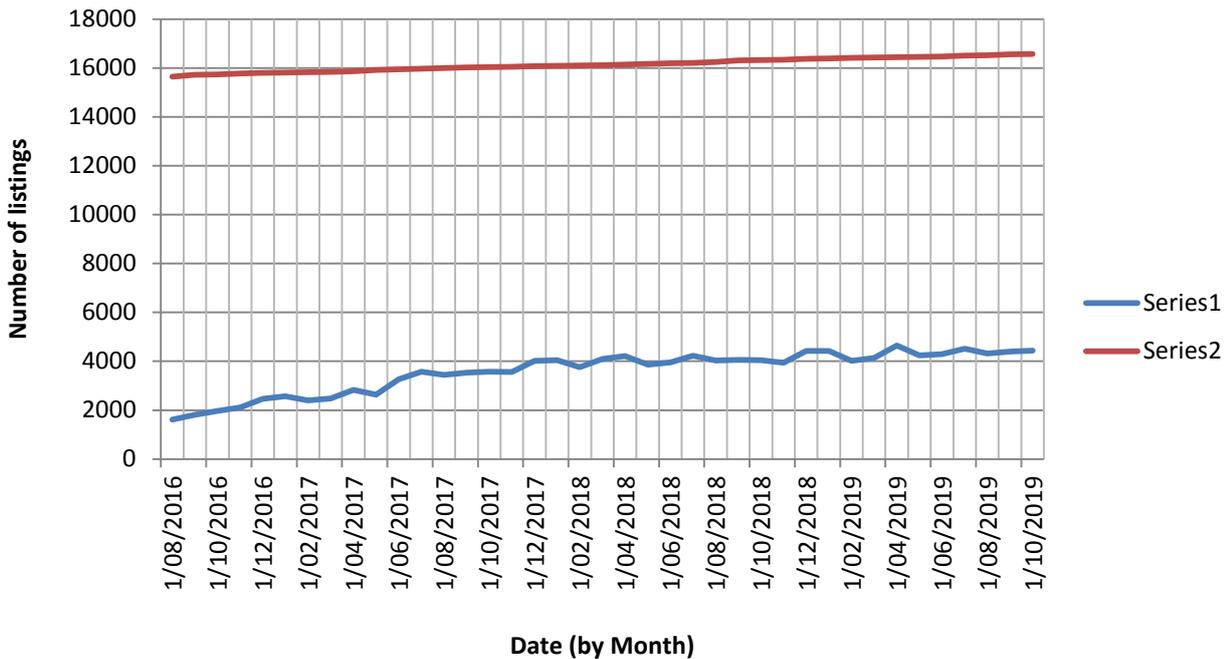
Between August 2016 and November 2019, 877 occupation certificates for residential dwellings were issued. The number of dwellings is estimated to have grown from 15,715 to 16,592 over that time, representing an increase of 5.5%.

Over the same period, total Byron Shire Airbnb and HomeAway listings rose by 264% from 1603 to 4237. Listings of frequently available dwellings grew by 211% from 1437 at 1 July 2017 to 3034 by 1 November 2019.

**Note:** A smaller time period was required for this analysis as the figures needed to be inclusive of the average number of days a property was available or reserved in the previous 12 months.

As indicated in figure 14, listings growth outpaced the supply of new residential accommodation over the reporting period and this trend appears to be ongoing.

**Figure 14:** Growth in Airbnb and HomeAway listings relative to growth in dwellings in Byron Shire



**Source:** Byron Shire Council, based on data from AirDNA, 1 November 2019

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<https://upgo.lab.mcgill.ca/publication/short-term-cities/short-term-cities.pdf>.

## **Appendix 2 Ministerial Direction 3.7 – Reduction in non-hosted short-term rental accommodation period**

# 1. Reduction in non-hosted short-term rental accommodation period

## 1.1. Background

On 11 February 2019, the former Minister for planning, the Hon. Anthony Roberts announced a new Ministerial Direction to address the high concentration of short-term rental accommodation in the Byron Shire.

Ministerial Direction 3.7 Reduction in non-hosted accommodation period provides Byron Shire Council with the opportunity to reduce non-hosted short-term rental accommodation to a minimum of 90 days per calendar year, as long as there is a sound base of evidence to support the proposed changes.

## 1.2. Objective

The objectives of this direction are to:

- (a) mitigate significant impacts of short-term rental accommodation where non hosted short-term rental accommodation period are to be reduced, and
- (b) ensure the impacts of short-term rental accommodation and views of the community are considered.

## 1.3. Application

Ministerial Direction 3.7 applies when Byron Shire Council prepares a planning proposal to identify or reduce the number of days that non-hosted short-term rental accommodation may be carried out in parts of its local government area.

## 1.4. What a planning proposal Authority must do if this direction applies

The council must include provisions which give effect to the following principles in a planning proposal to which this direction applies:

- non-hosted short-term rental accommodation periods must not be reduced to be less than 90 days.
- the reasons for changing the non-hosted short-term rental accommodation period should be clearly articulated.
- there should be a sound evidence base for the proposed change, including evidence of the availability of short-term rental accommodation in the area (or parts of the area) in the 12 months preceding the proposal, relative to the amount of housing in the area, and trend data on the availability of short-term rental accommodation over the past 5 years.
- the impact of reducing the non-hosted short-term rental accommodation period should be analysed and explained, including social and economic impacts for the community in general, and impacted property owners specifically.

## 2. Impacts of short-term rental accommodation

### 2.1. Local neighbourhood impacts

Poorly managed STRA can have adverse impacts on residential amenity and quality of life as a result of increased levels of noise, parking congestion and antisocial behaviour.

A recent study by researchers from Southern Cross University into the impacts of Airbnb in the Byron Shire drew similar conclusions. Around 70% of survey respondents agreed that Airbnb leads to increased noise levels and adverse impacts on the lifestyle of neighbourhood residents (Che et al., 2019).

A large number of complaints received by Council relate to STRA in some way, from conflict over noise issues, through to illegal building work such as enclosed garages, extensions or outbuildings that have been constructed to facilitate STRA.

Compliance and enforcement of these issues is also very challenging. Due to the intermittent nature of noise disturbances, it can be difficult for compliance officers to gather sufficient evidence to proceed with legal action. Often, disturbances return periodically resulting in repeat reports to Council and ongoing frustration for neighbours.

### 2.2. Housing market impacts

Detractors of platforms like Airbnb contend that increasing utilisation of dwellings for short-term rental accommodation is contributing to worsening affordability and availability of rentals by removing dwellings from the housing market.

Nicole Gurrán et. al.'s 2018 report for the Australian Coastal Council compared the Airbnb monthly income for frequently available whole houses as a proportion of median rental rates for seven coastal LGA's in Australia, and found that the income from holiday rentals was up to 170% of the income derived from existing permanent rental properties. Interviewees on NSW south coast, Byron Shire and Mornington peninsula commented on the rise of a new type of investor who purchased solely for the purpose of operating a holiday rental and that real estate agents had been spruiking priorities on the basis of income from short-term rental accommodation.

Anecdotally, this has resulted in displacement of long term residents leading to concerns over loss of community and lack of appropriate accommodation for key workers. Media reports have commented on the impact of the booming housing market on locals who face the prospect of being forced out of the area, while tenants face eviction as an increasing number of landowners move properties over to the tourism sector (MacKenzie, 2019).

Gurrán et. al. (2018) characterise this effect as 'tourism displacement', where local workers and residents can no longer afford to buy or rent in the locality, but there is an abundant supply of short term rentals. The report comments that 'Byron exhibits all the characteristics of a housing market that has been a housing market that had been distorted by Airbnb'.

### 2.3 Rental vacancy rates

The rental vacancy rate, expressed as a percentage, indicates how many places are empty and available for rent out of all the rental stock in an area. Vacancy rate is an important indicator of the relative supply and demand for rental properties.

A high or rising rental vacancy indicates low demand relative to the supply of available properties, whereas a low or falling vacancy rate indicates a tight rental market with high relative demand. Rental vacancy rates can be affected by a change in the supply of rental housing stock or the pool of prospective tenants, or both.

Over the past 3 years, the Australian national vacancy rate has sat between 2% and 3%, and this serves as a general benchmark for rental availability. If the vacancy rate falls below this level, it indicates an increased demand for rental properties relative to the available supply.

Using data published by SQM research, the rental vacancy for postcodes in the Byron Shire was compared to the North Coast region and the capital cities of Brisbane and Sydney. Byron Shire postcode rental vacancy rates at Jan 2020 were found to be the same as the North Coast region but lower than Sydney and Brisbane, except for Ocean Shores/Brunswick Heads, which is generally on par. Vacancy rates are shown in table 1 below.

**Table 1:** Comparison of rental vacancy rates at Jan 2020

Area	Rental vacancies	Rental vacancy rate % (Jan 2020)
Mullumbimby (2482)	7	0.7%
Bangalow (2479)	8	1.5 %
Byron Bay (2481)	45	2.2%
Ocean Shores – Brunswick Heads (2483)	46	2.9%
Byron LGA <sup>1</sup>	106	2.0%
North Coast NSW	1,401	1.9%
Brisbane	8,334	2.4%
Sydney	22,707	3.1%

Source: SQM Research (2020)

1. Assumption only as postcode 2480 partly in LGA.

Lower vacancy rates should be expected to place upward pressure on rental prices and this trend is evident in the data for Byron Shire. A review of January 2020 rental asking prices published by SQM shows that rents in the Byron Shire exceeded the NSW North Coast and Brisbane for both houses and units. The suburbs of Byron Bay and Bangalow also exceeded the average asking rent for houses and units in the Greater Sydney Region.

**Table 2:** Comparison of rental asking prices at Jan 2020

Location	\$ per week for houses	\$ per week for units
Byron Bay (2481)	\$940	\$695
Bangalow (2479)	\$813	\$513
Mullumbimby (2482)	\$663	\$400
Ocean Shores (2483)	\$647	\$503
NSW North Coast area	\$482	\$389
Brisbane	\$569	\$442
Sydney	\$707	\$501

Source: SQM Research (2020)

The number of properties that have likely been converted from permanent housing to predominantly tourist and visitor accommodation over the past few years is significant, with online listings for frequently available dwellings rising by 211% from 1437 to 3034 by 1 November 2019. This growth has outpaced the supply of new dwellings which rose by an estimated 877 new dwellings or approximately 5.5% over the same period. It is currently estimated that frequently available Airbnb and Home Away listings now comprise approximately 18% of the total dwelling supply for the Byron LGA.

While there are a number of factors that influence the availability and asking price for rental properties, the loss of permanent housing to the STRA sector is almost certainly having an influence. As evident in table 1, there were only 7 available rental properties in the Mullumbimby area in January 2020, and only 46 available in Ocean Shores, the area with the highest vacancy rate in the Byron LGA. Even a small increase in these locations would be likely to have a significant impact on supply.

### **2.3. Disruption to Sense of Community**

The increasing prevalence of STRA can lead to disruption in local communities as residents move away, only to be replaced by a transient population of tourists and visitors. Remaining residents can feel isolated and surrounded by strangers. Some commentators have also pointed to the loss of social capital with impacts on volunteering, community groups and sporting clubs.

In the 2018 SCU study into the impacts of Airbnb in the Byron Shire, concern over the displacement of locals and loss of community and neighbourhood was cited by over two thirds of the stakeholders interviewed. The most commonly cited negative impact associated with Airbnb was reduced housing supply followed by increased prices for long-term rentals (82%).

### **2.4. Impacts on approved accommodation providers**

In contrast with the STRA sector, traditional accommodation providers such as hotels and motels pay higher commercial rates, infrastructure servicing levies, provide car parking for guests and are subject to more stringent fire safety regulations. This has led to claims by some of an 'uneven playing field' which favours the short-term rental market.

Looking further into this impact, researchers from SCU's School of Business and Tourism investigated the impacts of STRA (including Airbnb) on Approved Accommodation Providers (AAP's) in the Byron Shire. The study conducted end of 2019 involved semi structured interviews and a survey to gain insight into the perspectives of AAP's.

Analysis of the survey data shows that the majority of respondents reported a decrease in occupancy rates (91%), average net rate (85%) and in their net revenue (92%) over the comparative period 2017/18 to 2018/19. The decrease in all three performance metrics was more severe over the 2017/18 to 2018/19 period than the year before.

As a consequence, around half of the respondents considered changing their business operations, including upgrading or renovating the property (58%), repositioning their business to target a different type of guest (45%), or selling (33%). There was a high degree of agreement that the growth in STRA had led to changes in personal lives, including increased workload (84%), stress (65%) and decreased job satisfaction (51%). Overwhelmingly, respondents felt that STRA needed better regulation and that the growth of the sector had led to an 'unequal playing field for AAP's' and decreased commercial viability for approved businesses.

## 3. Evidence for the proposed changes

### 3.1. Availability of STRA

Evidence of the availability of short-term rental accommodation in the previous 12 months, relative to the amount of housing in the area is provided in the listings analysis in **Appendix 1**.

### 3.2. Trend data

The Direction requires Council to provide trend data on the availability of short-term rental accommodation over the past 5 years. The listings analysis includes detailed trend data covering a period of 41 months or approximately 3 ½ years, which falls short of this requirement by 19 months.

#### *Justification for the inconsistency*

The inconsistency is considered to be of minor significance for the following reasons:

- Despite a literature review and exhaustive data search, detailed trend data for the Byron Shire going back 5 years to November 2014 could not be located. This is due to the fact that commercial platforms such as Airbnb and HomeAway do not make their data publicly available, which forces researchers to obtain data from third parties. None of the third parties contacted by Council had detailed data going back five years, with the most complete data set stretching back to mid-2016. Given these limitations, strict compliance with the Ministerial Direction is not possible in the circumstances.
- The data set used in this analysis covers a period of 41 months going back to July 2016. Figures 8 and 9 in **Appendix 1** illustrate a strong growth trend, with listings more than doubling over the reporting period. The growth trend provides evidence of a significant uplift in listings with a particular concentration of activity in Byron Bay. It is clear from the observed pattern that the number of STRA properties relative to dwelling supply is extremely high and there is a need to introduce planning controls which are responsive to local circumstances.
- Obtaining additional data going back a further 19 months (if even possible) would be highly unlikely to change the observed growth trend and is unnecessary to justify the reduced day limits for non-hosted STRA. Obtaining the additional data would not serve any meaningful purpose and therefore strict adherence could be viewed as unnecessary and unreasonable in the circumstances given that the intent of the Direction is satisfied by the available data.

## 4. Period of non-hosted accommodation

It is intended that STRA will be excluded from certain Council owned or managed land and urban release area land identified in a State or Council strategy or planning instrument. A map of the proposed excluded lands is included in Appendix 3. This is to ensure new land required to meet dwellings and population targets will remain available for long term residential accommodation and will not be utilised by the STRA sector.

Arguably, this amounts to a reduction in the period of non-hosted accommodation to less than 90 days in some areas.

### ***Justification for the inconsistency***

This inconsistency is considered to be of minor significance for the following reasons:

- The amount of excluded land is relatively small when compared to the amount of land where STRA will be permitted.
- New dwellings in the Byron Shire are at increased risk of being converted to STRA as a primary use. As such, excluding STRA from new release areas is essential for Council to be able to meet population and dwellings targets outlined in Council and regional Strategies.
- Areas identified for exclusion are currently undeveloped and there are no existing STRA operators in these areas that will be affected by the proposal.

## **5. Reasons for the proposed changes**

New planning rules are needed to manage the environmental, social and economic impacts of STRA in the Byron Shire. A reduction in the period of non-hosted short-term rental is considered necessary for the following reasons:

- A reduction in the number of days will reduce the intensity of usage in some areas experiencing high concentrations of STRA activity, leading to fewer neighbourhood conflicts, less noise, garbage problems and parking congestion. Limitations on occupancy levels and minimum standards for car parking will also assist in improving management of non-hosted STRA.
- Reducing the number of days may potentially encourage more dwellings back to the long term housing market. The day cap recognises that some dwellings are being used as de-facto tourist accommodation and this is having an adverse impact on the availability of housing.
- The prohibition on STRA for Council owned land and certain urban release areas will serve to protect new land from being consumed by the STRA sector, helping longer term planning efforts to provide enough new housing to meet population targets.
- The introduction of planning controls for the STRA sector will improve accountability and equity with traditional tourist and visitor accommodation providers and ensure appropriate oversight of the STRA sector.

## **6. Impacts of reducing the non-hosted short-term rental accommodation period**

### **6.1. Impacts on property owners**

The majority of property owners offering non-hosted accommodation for less than 90 days per year are unlikely to be significantly affected by the proposed planning rules. If a dwelling meets the relevant standards for exempt development, the host will be able to offer STRA without the need for Council approval.

STRA providers that are unable to satisfy the exempt development requirements will have the option of gaining consent through a development application and may incur costs associated with this process.

Frequently utilised properties which are reserved for more than 90 days per year will be the most significantly affected, as they will need to reduce the number of days they are currently operating and may also need to obtain development consent in some circumstances if they choose to continue with a 90 day operating limit. This is expected to affect approximately 45% of active listings.

Economic impacts will depend on range of factors including the difference in potential rental income between the short-term and long term markets. A 90 day cap has the potential to reduce the income that a property owner can achieve from the STRA market, although the significance of the impact will vary between properties.

## 6.2. Social and economic impacts

In 2019, the majority of accommodation in the Byron Shire is holiday houses (STRA), which is now estimated to account for 40% of all bed spaces (Byron Shire Council Accommodation Audit, 2019).

Capping the non-hosted accommodation period to 90 days per year could potentially have flow on effects to the economy and employment by reducing the number of beds available to overnight visitors. The level to which this would be offset by increased occupancy amongst approved accommodation providers or new casual entrants to the STRA market is difficult to estimate, although it is likely that the proposed planning rules would result in an overall decrease in the existing levels of tourist accommodation if fully implemented.

Whilst it is important to acknowledge the economic contribution of a large holiday letting sector, a balance needs to be struck between the economic benefits of tourism and the social and environmental implications of a run-away STRA sector.

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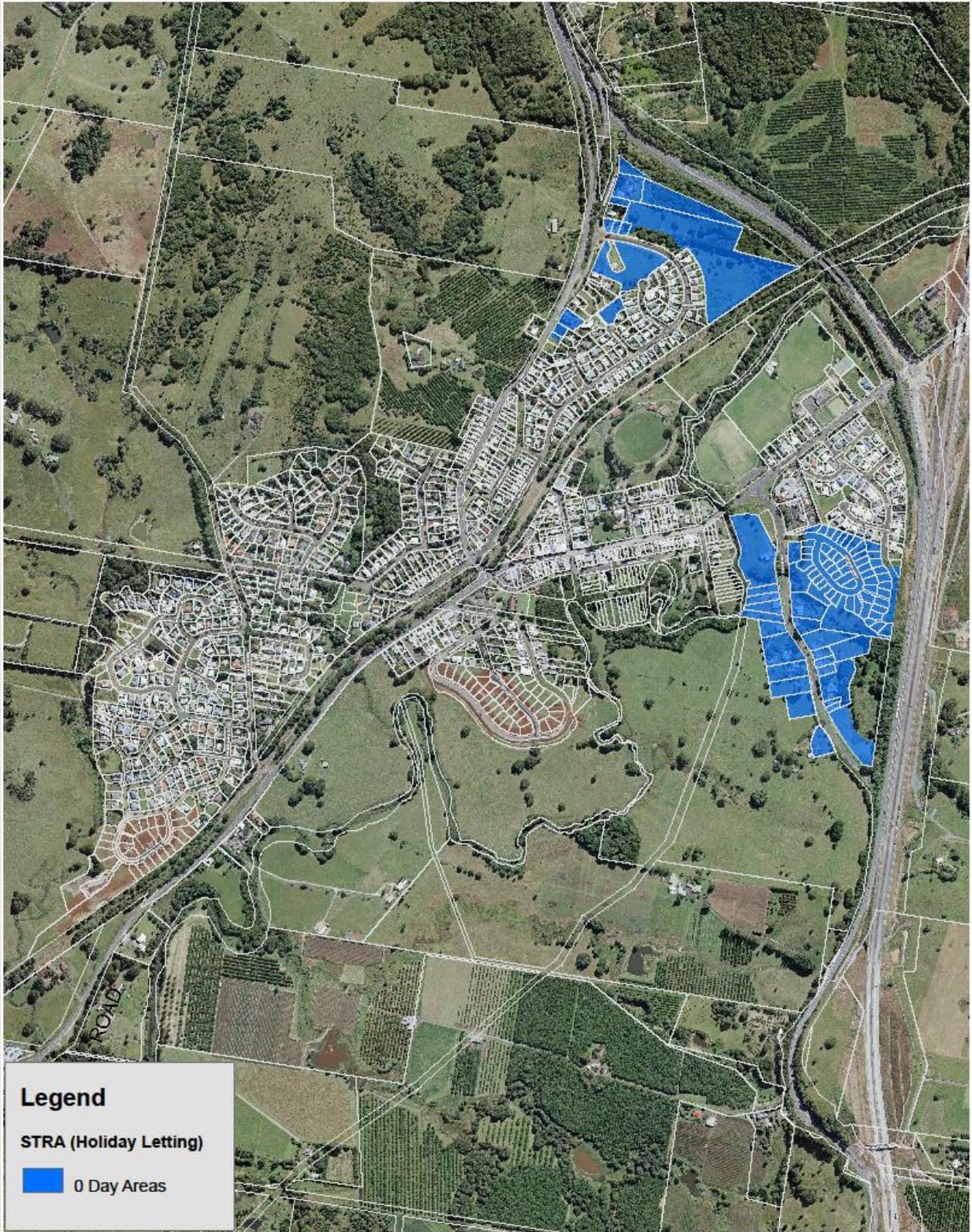
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## **Appendix 3 Mapping**

# Bangalow



## Legend

### STRA (Holiday Letting)

 0 Day Areas



Disclaimer : While all reasonable care has been taken to ensure the information contained on this map is up to date and accurate, no warranty is given that the information contained on this map is free from error or omission. Any reliance placed on such information shall be at the sole risk of the user. Please verify the accuracy of the information prior to using it.  
Note : The information shown on this map is a copyright of the Byron Shire Council and the NSW Department of Lands.

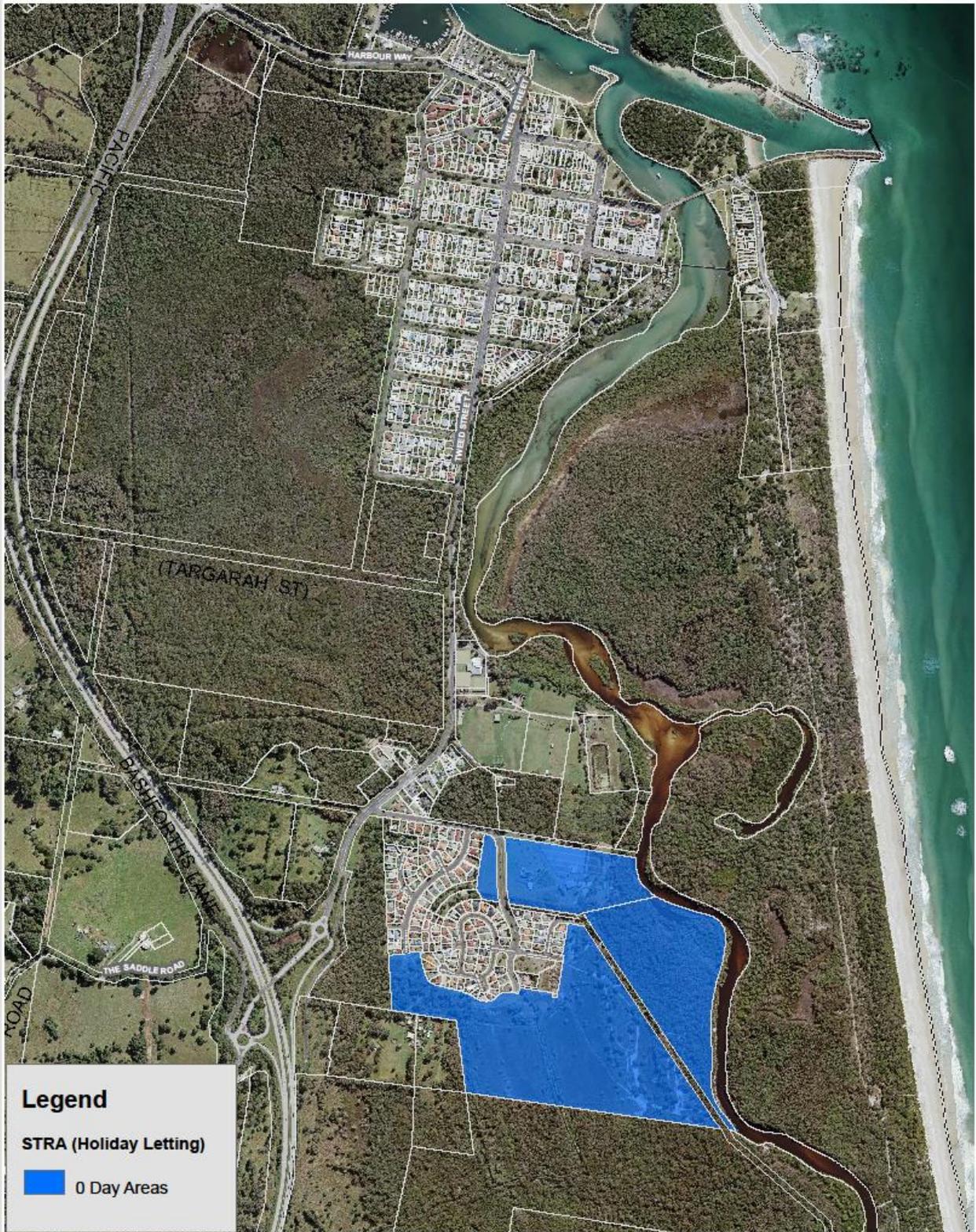
0 435 870 Metres

1:8,527 @ A3 size



Date: 3/02/2020

# Brunswick Heads



## Legend

STRA (Holiday Letting)

 0 Day Areas



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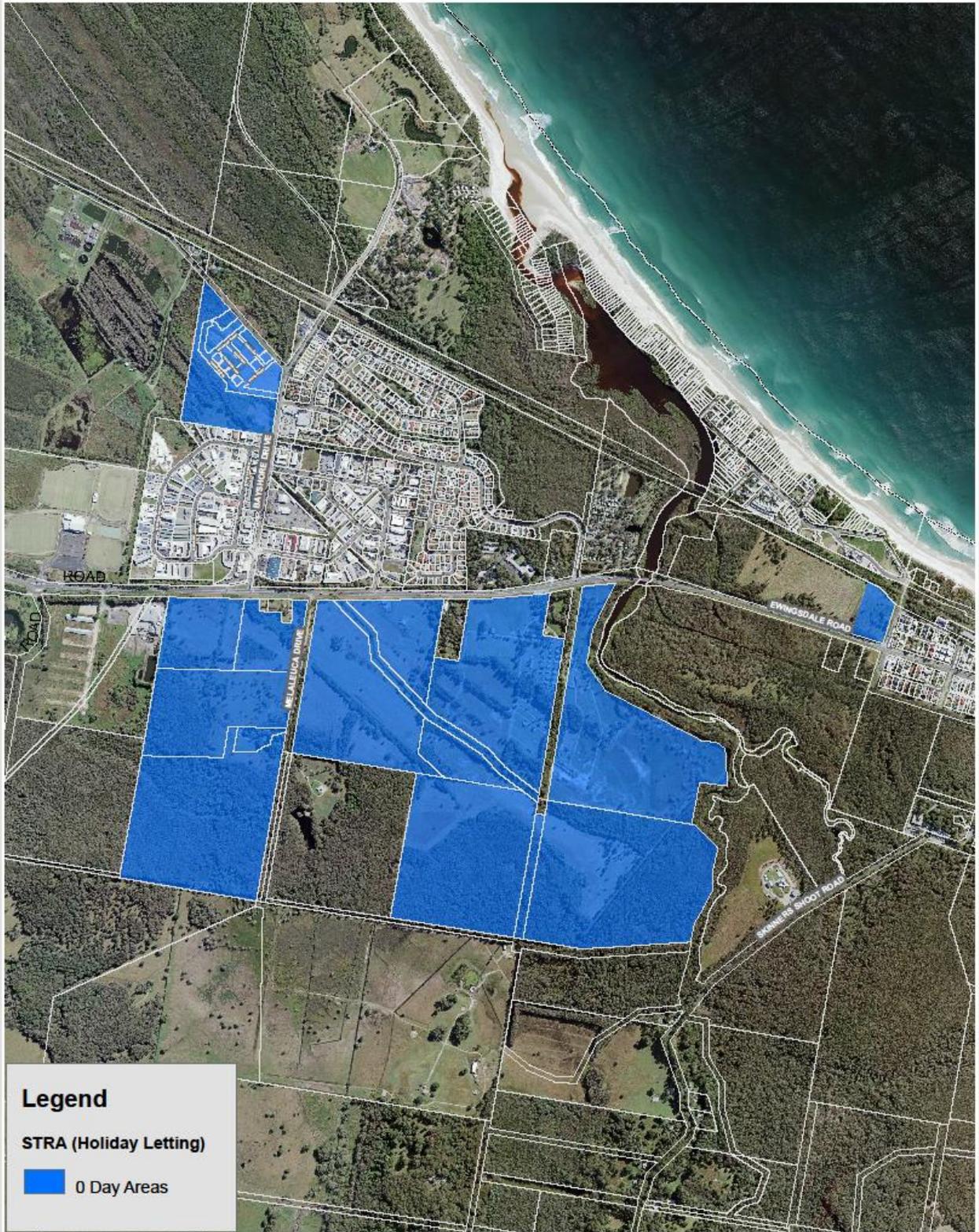


1:9,075 @ A3 size



Date: 3/02/2020

# Byron Bay



## Legend

STRA (Holiday Letting)

 0 Day Areas



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0 550 1,100 Metres

1:11,344 @ A3 size



Date: 3/02/2020

# Mullumbimby



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1:13,452 @ A3 size



Date: 3/02/2020



## **Appendix 4 Proposed LEP Amendments**

## 1. Definitions

Insert a new definition of short-term rental accommodation into the LEP 2014 dictionary as follows:

***short-term rental accommodation means an existing dwelling—***

- (a) *that is lawfully used by the owner, tenant or permanent resident of the dwelling (the host) to provide accommodation on a commercial basis for a temporary or short-term period, with or without the host residing in the dwelling during that period, and*
- (b) *that, if it were used predominantly as a place of residence, would be one of the following types of residential accommodation—*
  - (i) *an attached dwelling,*
  - (ii) *a dual occupancy,*
  - (iii) *a dwelling house,*
  - (iv) *multi dwelling housing,*
  - (v) *a residential flat building,*
  - (vi) *a rural workers' dwelling,*
  - (vii) *a secondary dwelling,*
  - (viii) *a semi-detached dwelling,*
  - (ix) *shop top housing*

***non-hosted short-term rental accommodation*** means short-term rental accommodation provided where the host does not reside in the dwelling during the provision of the accommodation.

***hosted short-term rental accommodation*** means short-term rental accommodation provided where the host resides *in the dwelling* during the provision of the accommodation.

***host***—see the definition of short-term rental accommodation

***permanent resident*** of a dwelling means a person who permanently resides at the dwelling.

***tenant*** has the same meaning as in the Residential Tenancies Act 2010.

## 2. Permissibility

Amend the land use table in LEP 2014 to make STRA permissible with consent in all land use zones where dwellings are permitted with consent, as follows:

- RU1 Primary Production;
- RU2 Rural Landscape;
- RU 5 Village;
- R2 Low Density Residential;
- R3 Medium Density Residential;
- R5 Large Lot Residential
- Zone B1 Neighbourhood Centre (shop top housing only)
- Zone B2 Local centre (shop top housing only)
- Zone B4 Mixed Use.

### 3. Mapping

Insert a new mapping overlay to identify land where non-hosted STRA will not be permitted. Refer to the indicative maps in Appendix 3.

### 4. Matters for consideration

Insert a new local provisions clause under Part 6 of LEP 2014 to set out the aims and objectives and matters to be considered when assessing a development application for short-term rental accommodation.

In summary, the new clause will:

- Establish the aims and objectives and matters to be considered when assessing a development application for short-term rental accommodation.
- Set out certain matters for consideration for potential impacts on neighbourhood amenity and the adequacy of parking and wastewater.
- Prohibit a dwelling from being used for non-hosted STRA for more than 90 days per calendar year.
- Prohibit a dwelling from being used for non-hosted STRA where it is located on land identified by the STRA exclusion map.
- Restrict the number of persons occupying a dwelling being used for non-hosted STRA to no more than 2 persons per bedroom, up to a maximum of 12 persons in total, whichever is the lesser.
- Requires property to be included on a Council register of short-term rental accommodation.

### 5. Exempt development

Insert a new clause into Schedule 2 of Byron LEP 2014 that will allow hosted and non-hosted short-term rental accommodation as exempt development in the following circumstances:

- Hosted short-term rental accommodation allowed 365 days per calendar year;
- Non-hosted short-term rental accommodation limited to 90 days per calendar year;
- Non-hosted short-term rental accommodation not permitted on bush fire prone land or flood prone land;
- Non-hosted short-term rental accommodation not permitted on land identified on the short-term rental accommodation exclusion map.
- The dwelling must not be a (or be part of), a group home, a hostel, seniors housing, an eco tourist facility, tourist and visitor accommodation, a camping ground, caravan park or a moveable dwelling.
- The dwelling must not be approved under the *State Environmental Planning Policy (Affordable rental Housing) 2009*.
- Occupancy limited to 2 persons per bedroom, up to a maximum of 12 persons in total, whichever is the lesser;
- Requires property to be included on a Council register of short-term rental accommodation.
- Requires compliance with fire safety standards under the BCA and EP&A regulations.
- Requires an A3 sign to be placed at the front of the property advising the public of the landowners or property manager's details to enable complaints to be made and wording to advise that the property is registered with Byron Shire Council.
- Minimum requirement for car parking of 1 space for a two bedroom dwelling and two carparks for a dwelling with three bedrooms or more.
- Dwellings not connected to reticulated sewer must be serviced by an approved on-site waste water management system with a current approval to operate.