

8 March 2023

## **RE: Submission re Byron Shire Short Term Rental Accommodation Planning Proposal**

To the Independent Planning Commission,

Homelessness NSW (HNSW) is a not-for-profit Peak body working to end homelessness in NSW. We exist to build the capability of people and capacity of systems to end homelessness. We have a vision for a future where everyone has a safe place to call home and connection to their community. Our 190 members include specialist homelessness services, allied organisations and services. We work with our members, people with lived experience and a broad network of partners to understand drivers of homelessness, advocate for solutions, build skills and knowledge, and scale innovation.

Last year, more than 68,000 people were assisted with homelessness, but the true extent of the problem is much worse. More than 50% of people who sought support could not have their needs met because services do not have the staffing and asset capacity to meet demand. This capacity is significantly hindered by a lack of social and affordable rental housing, causing a backlog in the crisis system. As the cost of living continues to spiral, rents rise and wages stagnate, the pressure on those vulnerable to homelessness – ordinary Australians – grows. HNSW has a vision for a future where homelessness should never be more than rare, brief and non-recurring. We cannot achieve this without adequate and sustained investment in social and affordable housing.

HNSW welcomes the opportunity to comment on the Byron Shire Short Term Rental Accommodation (STRA) Planning Proposal. While HNSW supports the Byron Shire STRA Planning Proposal including the non-hosted cap of 90 days per year outside the main Byron Bay centre, this measure alone will not be sufficient to limit the negative impacts of short-term holiday accommodation or the broader problem of homelessness in the region.

In this submission we make a range of recommendations based on international case studies and our experience of working with specialist homelessness services, people with lived experience of homelessness, First Nations communities and government partners. Our recommendations speak to the range of policy levers that need to be pulled simultaneously to address the significant problem of homelessness in the Byron Shire. Our recommendations call upon the NSW Department of Planning and Environment or / and NSW Government to:

1. Approve Byron Shire Short Term Rental Accommodation Planning Proposal including the non-hosted cap of 90 days per year outside main Byron Bay centre.
2. That the NSW Government legislate for short term rental accommodation to be restricted to principal place of residence only for a maximum of 90 days per year and allow Councils to set lower maximum day limits.
3. Establish a regulatory framework that effectively regulates and enforces short term rental accommodation operations in NSW, including limits on days of operation per annum.
4. Commit to a target of increasing the net stock of social housing from the current rate of 4.7% of total residential dwellings in NSW to 10% of total residential dwellings by 2050.

5. Invest an additional 30% funding per annum for specialist homelessness service delivery in the Byron Shire to support people who are homelessness.
6. Support use of unused properties (meanwhile use) in the Byron Shire to provide emergency and transitional accommodation for people experiencing homelessness.
7. The NSW Government and Byron Shire Council adopt further initiatives to improve housing outcomes for people at risk of homelessness

If you wish to discuss this submission further, please contact Dean Hart, Industry Capacity Manager, Homelessness NSW [Dean@homelessnessnsw.org.au](mailto:Dean@homelessnessnsw.org.au)

Thank you for considering our submission.

Yours sincerely,



Trina Jones,

Chief Executive Officer

## Introduction

Homelessness is a complex issue that affects many individuals and communities across NSW. In the Byron Shire region of New South Wales, homelessness is a significant concern, particularly in light of the increasing popularity of short-term rental accommodation (STRAs) in the area. Over 138 people are sleeping on the streets in Byron Shire with many uncounted in cars and couch surfing in the broader area<sup>1</sup>. At the 2016 census in the Byron Bay main town area there were 150 people per 10,000 experiencing homelessness. This rate of homelessness is three times the NSW rate (150 vs 50 per 10,000). In January 2023, 'North Coast NSW' which encompasses Byron Bay, recorded a rental vacancy rate of just 1.2%, compared with the 1.9% across NSW.<sup>2</sup> and rapidly rising and high rent costs out-stripping incomes of local people.<sup>3</sup> Over 50% of rental households are in rental stress and this has grown significantly in Byron Bay during the 10 years since the 2011 Census (from 23% to 50%) and is well above the NSW average (50% vs 36%).

While STRAs are widely perceived as a source of income for property owners and support for tourism, they are also contributing to the homelessness crisis by driving up rental prices, reducing the availability of long-term rental properties, and displacing vulnerable populations. In this submission, we will explore the link between homelessness and short-term rentals in Byron Shire and make recommendations on how to address this issue to better support those who are at risk of or experiencing homelessness.

### **Recommendation 1: Approve Byron Shire Short Term Rental Accommodation Planning Proposal including the non-hosted cap of 90 days per year outside main Byron Bay centre.**

In Byron Shire, the issue of short-term holiday rentals reducing long term rental accommodation and increasing homelessness has been a topic of concern for several years. The popularity of the region as a tourist destination and availability of short term rental applications (Airbnb, Stayz, etc) has led to an increase in short-term holiday rentals and a corresponding reduction in long term rental accommodation. Byron Shire estimates that up to 25% of the Shire's total dwelling supply was listed on Airbnb or Stayz in November 2019.<sup>4</sup> This situation is exacerbated by a lack of affordable housing options. All these factors combined have driven up the cost of housing and created a "perfect storm" - significantly reducing available accommodation for local residents and increasing homelessness.

Local people having a safe affordable place to live needs to be prioritised and holiday accommodation for visitors better managed. The Byron Shire STRA Planning proposal is an appropriate, propositional response and is supported in lieu of broader legislated changes to reduce the impacts of STRA across NSW.

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<sup>1</sup> Note: Street count – 2020 – 174, 2021 – 198, 2022 – 138 (2022 results excludes Brunswick Heads, Mullumbimby and surrounding areas as counts were unable to be completed in these areas due to extreme weather)

<sup>2</sup> SQM Research 2023, [Residential vacancy rates – North Coast NSW](#).

<sup>3</sup> SQM Research, [Rental Vacancy Rates Fall back to 1%](#).

<sup>4</sup> Byron Shire Council, [Planning Proposal 26.2020.1.1 Amendment to State Environmental Planning Policy \(Housing\) 2021 Short-term Rental Accommodation in Byron Shire](#).

**Recommendation 2: That the NSW Government legislate for short term rental accommodation to be restricted to principal place of residence only for a maximum of 90 days per year and allow Councils to set a lower maximum day limits.**

If STRA was limited to the “sharing economy” where people rent out their spare room or home for a couple of weeks when they are away there would be little impact of long term housing and homelessness. However, online applications like Airbnb have enabled long term rental accommodation to be commercialised as holiday rentals.<sup>5</sup> This has had a significant impact on housing availability and homelessness in some locations like Byron Bay. Controls are needed to address this problem and limit impact on housing availability and homelessness.

In addition to supporting the Byron Bay STRA planning proposal HNSW suggests legislation in support of councils and to restrict STRA in NSW. We recognise that the 90 cap alone will not be effective in curbing the impact of STRA on homelessness, because it won't reduce the number of STRAs, and secondly, it will be difficult to enforce in the current regulatory environment. Local Councils are best positioned to determine controls for their local communities. These controls and the other strategies in this submission will assist with the current housing crisis, reduce homelessness and the risk of homelessness, and ensure that the growth of the problems with STRA in locations like Byron Bay are halted.

Restricting STRA to principal place of residence only has been implemented in San Francisco, Amsterdam and Paris. A 90 day cap on non-hosted STRA has been implemented in San Francisco, London and Berlin. Amsterdam has a 30 day cap on non-hosted STRA.

**Recommendation 3: Establish a regulatory regime that effectively regulates and enforces short term rental accommodation operations in NSW, including limits on days of operation per annum.**

At present in NSW there is no effective regulatory framework to support caps on use of accommodation as STRA and no ability for effective enforcement, meaning that caps are, in effect, a “toothless tiger”. Data is self-input from the user and therefore can't be relied upon. In the past, tourism accommodation required a Development Application but it is now exempt, only requiring a registration, which has limited integrity. To register a property via the current system there is no identification required and no checking process in place for property location or appropriateness. This limited integrity of the data regulation and enforcement makes it impossible for councils to influence the STRA landscape in their regions. HNSW supports establishment of a regulatory system that improves the enforcement and effectiveness of any limits set on STRA.

**Recommendation 4: Increase the net stock of social housing from the current rate of 4.7% of total residential dwellings in NSW to 10% of total residential dwellings by 2050.**

Access to housing that people can afford to live in has significantly reduced across the state with regional areas, like Byron Shire reporting extreme shortages and research showing less than 1% of rentals available for people on low income.<sup>6</sup> Private renters experience tenure that is perpetually precarious and uncertain.

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<sup>5</sup> Harrison, R, 2022, [How the effective regulation of short term rental accommodation might contribute to housing affordability](#), Churchill Fellows Association of NSW.

<sup>6</sup> Anglicare 20222, [Rental Affordability Snapshot](#).

NSW currently has approximately 154,000 social housing properties, representing 4.7% of all occupied residential dwellings. In the Byron Shire Council local government area (LGA), the proportion of dwellings that constitute social housing is significantly lower, at only 1.7% (250 dwellings).<sup>7</sup> Current social and affordable housing stock has been estimated to only service 17% of people in need.<sup>8</sup> As a result, 50% of renter households (1,960) in the Byron Shire Council LGA are experiencing rental stress.<sup>9</sup>

Setting a social housing target of 10% of occupied residential dwellings by 2050 is needed to provide a significant increase in social housing levels in NSW to both prevent further crisis and eliminate the current backlog on the social housing waiting list. For current and future housing needs of people living within the Byron Shire LGA to be effectively met by 2041, it is estimated that social housing stock will need to grow by 10% each year.<sup>10</sup>

### **Recommendation 5: Invest an additional 30% funding per annum for specialist homelessness service delivery in the Byron Shire to support people who are homelessness**

Despite specialist homelessness services operating on average beyond their funded client numbers by 30%, in 21/2022, 50% of people who sought support could not have their accommodation needs met.

Services in Byron Shire cannot keep up with the demand. The need for crisis services continues. People that are experiencing homelessness or at risk of homelessness who are supported have little or no exit options because there's little to no housing available that's affordable.

### **Successful supported housing models – Case Studies**

Supported housing models for people experiencing homelessness provide an opportunity to break cycles of disadvantage as well as provide intensive support based on individual need.

Youth Foyers are integrated learning and accommodation settings for young people, typically aged 16 – 24 years, who are at risk of or experiencing homelessness. The Foyer model was developed in the United Kingdom more than 20 years ago and upholds that the only long term avenue out of homelessness for young people is through education and training, with a focus on nurturing an 'aspirational community' and securing sustainable employment and independent housing. Through this approach, Foyers are able to drive long term positive outcomes and impacts. The Foyer concept is considered international best practice in helping disadvantaged young people, aged 16-25 years who are homeless or in housing need, to achieve the transition to adult independence. Foyers have proven so successful that there are now more than 1,000 projects worldwide; including Australia, Ireland, the United States,

<sup>7</sup> Australian Bureau of Statistics, [Census of Population and Housing 2016 and 2021](#). Compiled and presented by .id (informed decisions).

<sup>8</sup> van den Nouweland, R, Troy, L, Soundararaj, B 2022, [Social and affordable housing: needs, costs and subsidy gaps by region](#), prepared for the Community Housing Industry Association.

<sup>9</sup> ABS 2021, [Census of Population and Housing 2021 – Byron LGA Quickstats](#).

<sup>10</sup> van den Nouweland, R, Troy, L, Soundararaj, B 2022, [Social and affordable housing: needs, costs and subsidy gaps by region](#), prepared for the Community Housing Industry Association.

Romania, Netherlands and Germany.<sup>11</sup>

Common Ground is a supportive housing model that accommodates people experiencing chronic homelessness. Common Ground models draw on Housing First principles, combining housing with wraparound support services. The target cohort of Common Ground projects are people with experience of chronic homelessness and with complex needs, including people with mental ill-health, experience of complex trauma, alcohol and drug use, chronic disease, and brain injury. The congregate setting of the building is designed to provide core support services on-site, create socially mixed communities, and strengthen neighborhoods.<sup>12</sup>

### **Recommendation 6: Support use of unused properties (meanwhile use) in the Byron Shire to provide emergency and transitional accommodation for people experiencing homelessness.**

Meanwhile use presents an opportunity to utilise existing assets to respond to homelessness across NSW. This means using what resources are available to respond to need at the local level. Meanwhile use is a critical opportunity to provide transitional accommodation and wrap around support, but it is “extra” accommodation and should not be an alternative to provision of appropriate levels of specialist homelessness services or social housing (Recommendations 4 and 5 above).

Regulation and “red tape” can be a barrier to progressing meanwhile use properties in a timely manner. HNSW support strategies to establish meanwhile use crisis and transitional accommodation rapidly.

### **Women’s Community Shelters – A Case Study**

A former aged care facility on the NSW Central Coast has been transformed into a 14-room transitional housing facility under an innovative partnership between Women’s Community Shelters and Pacific Link Housing. The facility is for older women (over 55) escaping domestic and family violence or who are at risk of homelessness. Funding support to develop the shelter was provided by the NSW government. The project was initiated by a local developer who purchased the property but did not plan to use the site for a three-year period. The site is ideal for this purpose with ensuite studio apartments, communal lounges, kitchens, laundry facilities and gardens. Women’s Community Shelters provide residents with case management support and coordinated community engagement and wellbeing activities as well on-site support services. The facility opened in September 2022 and is one of a number of meanwhile use projects implemented by Women’s Community Shelters.<sup>13</sup>

### **Recommendation 7: The NSW Government and Byron Shire Council adopt further initiatives to improve housing outcomes for people at risk of homelessness**

Controlling the proportion of housing stock reserved for STRA is only one of the levers available to governments pursuant to safeguarding housing stock for local residents and addressing

<sup>11</sup> Foyer Foundation, [Foyers in Australia](#).

<sup>12</sup> Alves, T, Brackertz, N, Roggenbuck, C, Hayes, L, McGauran, R, Sundermann, K & Kyneton, N 2021, [Common Ground Housing Model Practice Manual](#), prepared with MGS Architects, Mind Australia, Australian Housing and Urban Research Institute Limited, Melbourne.

<sup>13</sup> Women’s Community Shelters. Media Release. <https://www.nsw.gov.au/media-releases/new-safe-haven-for-vulnerable-older-women-east-gosford>



homelessness. While it is expected that a proportion of previous STRA properties will return to the private rental market due to the introduction of controls on STRA, the impact on improving overall housing supply may be limited compared with the potential impact of other policy levers available to government. Accordingly, local and state governments should work in partnership to enact the below initiatives, whereby controls on STRA should comprise just part of a suite of diverse policy responses to improving the supply of social and affordable housing.

### **7.1 Extending the Affordable Housing Contribution Scheme to social housing**

Inclusionary zoning is a land use planning intervention by government that either mandates or creates incentives so that a proportion of a residential development includes a set target of affordable or social housing – or the developer makes an equivalent “in lieu” financial contribution to an affordable housing investment fund.<sup>14</sup>

While Byron Shire Council retains the Affordable Housing Contribution Scheme (the Scheme), inclusionary zoning under the Scheme is only undertaken with respect to its namesake (i.e. affordable housing), but not social housing.<sup>15</sup> While affordable housing may be affordable relative to market rent, it is often not affordable relative to incomes, giving rise to the need for social housing.<sup>16</sup> With the disparity between rents and wages continuing to widen, it is therefore essential to also be delivering social housing across communities in NSW, including the Byron Shire Council LGA.

As a result, Byron Shire Council should extend the Scheme to social housing, whereby social housing contribution areas operate in tandem with affordable housing contribution areas under the Scheme.

### **7.2 Curbing excessive rent increases**

The Independent Pricing and Regulatory Tribunal (IPART) currently acts as independent pricing regulator for a range of sectors and undertakes reviews and investigations on a wide range of economic and policy issues. The Tenants Union of NSW recommends that IPART be allocated additional resources to also “monitor and review market rents” and make “a determination regarding a reasonable percentage increase to market rent within a defined period (e.g. each quarter), taking into account a consideration of market rents in the preceding period, and a range of other relevant factors to be determined.”

Section 44 of the *Residential Tenancies Act 2010* (NSW) provides that a tenant may challenge a rent increase because it is excessive, considering the general market level of rents and other factors (section 44). In applying to NCAT to challenge rent, the tenant bears “the onus of proof” but often does not have access to information and evidence to successfully substantiate their claim. Such information and evidence are generally more readily available to landlords. Tenants are also disincentivised from challenging a rent increase above market rent because of the risk of eviction.

In order to effectively sustain tenancies in NSW and prevent people from becoming homeless, legislation could be introduced to provide IPART with powers to make determinations about

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<sup>14</sup> Gurrán, N., Gilbert, C., Gibb, K., van den Nouwelant, R., James, A. and Phibbs, P. (2018) [Supporting affordable housing supply: inclusionary planning in new and renewing communities](#), AHURI Final Report No. 297, Australian Housing and Urban Research Institute Limited, Melbourne.

<sup>15</sup> Byron Shire Council, [Affordable Housing Contribution Scheme](#)

<sup>16</sup> AHURI 2023, [What is the difference between social housing and affordable housing - and why do they matter?](#).

limits on rental increases. Where a tenant makes an application to NCAT that a proposed rent increase by a landlord is excessive in being outside the parameters determined by IPART, the onus should instead be on the landlord to show that an increase is not excessive.<sup>17</sup>

### 7.3 Ending ‘no grounds’ evictions

It is pleasing that all major political parties in NSW have agreed to negating ‘no grounds’ evictions in NSW in some form as a policy platform in the lead-up to the 2023 NSW state election. Any proposed legislative amendment however should also prohibit ‘no grounds’ evictions for ‘fixed-term’ tenancies in addition to periodic tenancies. This is in line with recommendations from the NSW Tenants Union who report that “a majority of renters (71%) currently experiencing ‘no grounds’ evictions receive these at the end of a fixed term tenancy”.<sup>18</sup>

### 7.4 Reforming stamp duty

Transitioning from one-off stamp duty to a low-rate annual land tax in NSW has received widespread support from economists, who regard stamp duty as a highly inefficient and inequitable tax that:<sup>19</sup>

- Makes buying a home more expensive and constraining a household’s capacity to move, such as downsizing to a more appropriately sized home, leading to an inefficient use of housing; and
- Discourages property funds and financial institutions from large-scale investing in the private rental housing market, which has been cited as a significant factor contributing to the shortage of affordable housing.<sup>20</sup>

Conversely, applying land tax on property in NSW instead of one-off stamp duty, has been estimated to deliver a better allocation of housing stock leading to greater affordable housing in the long-run, particularly for larger households.<sup>21</sup> Improving the supply of affordable housing would mean less people are at risk of becoming homeless, particularly while there is a shortage of social housing. The NSW Government should therefore seek to progressively transition from one-off stamp duty to a low-rate annual land tax regime, as is currently occurring in the ACT over 20 years from 2012.<sup>22</sup>

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<sup>17</sup> Tenants Union 2021, [Submission: Buying in NSW, Building a Future](#).

<sup>18</sup> Tenants Union 2023, [NSW to ban ‘no grounds’ evictions for renters during periodic tenancies](#).

<sup>19</sup> Pawson, H, Randolph, B, Aminpur, F, 2021, [Housing and the Economy: Interrogating Australian Experts’ Views](#), City Futures Research Centre UNSW, A report to the Housing and Productivity Research Consortium.

<sup>20</sup> Australian Housing and Urban Research Institute 2022, [Scrap stamp duty, replace with a land tax – what are the impacts?](#)

<sup>21</sup> Coates, B 2019, [NSW should swap stamp duties for a broad-based property tax](#), Grattan Institute.

<sup>22</sup> ACT Revenue Office, [Tax reform](#).