



Department of Planning, Industry & Environment

Byron Shire Council Residential Strategy – Peer Review

November 2021

We acknowledge the traditional custodians of the land to which this report applies and we pay respect to their elders – past, present and emerging.

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Executive Summary

This document is designed to assist the Department of Planning, Industry & Environment and Byron Shire Council to finalise the *Byron Shire Council Residential Strategy* (Residential Strategy) which was adopted by Council in December 2020. The peer review relates to:

- the differences of professional opinion, specific to key planning areas, contained in the Residential Strategy
- the interconnectedness of various planning projects, at the State and local level, with the Residential Strategy

Based on the Terms of Reference, the scope of the project focuses on four key planning areas as follows:

- Affordable Housing
- Housing Supply and Dwelling Targets (in the context of the North Coast Regional Plan)
- Short Term Rental Accommodation
- Investigation Areas

It is the opinion of the reviewers that there are a number of planning projects underway that interconnect with the Residential Strategy and this relationship needs to be considered in the finalisation of that document. These projects, and their timing, help inform the peer review and the differences of the professional opinion in the context of the four key planning areas. Further, these projects also inform the amount of detail that can reasonably be included in a strategic document of this nature at this time – a Residential Strategy prepared for a diverse, growing, engaged and changing population in a local government area with high desirability as a place to live and visit. It is noted this Residential Strategy was primarily prepared prior to the

COVID-19 pandemic which has further changed the planning landscape in regional localities like the Byron Shire.

Therefore, this peer review results in opportunities and options to ensure a future focussed approach to the implementation of the Residential Strategy, without losing sight of the agreed and known State and local level planning outcomes that the Residential Strategy has set out to achieve.

These opportunities and options are presented after a detailed discussion and review of each of the four key planning areas in the Terms of Reference.

Based on these four planning areas, the opportunities to move forward with finalising the Residential Strategy include:

1. The Residential Strategy has the ability to be the strategic vision and adaptable hub of interconnected planning projects that will realise positive, informed and necessary housing outcomes in the Byron LGA.
2. The Residential Strategy is a higher order document that is the enabler for housing related planning proposals to progress through the planning system, namely the AHCS planning proposal, STRA planning proposal and related 'investigation areas'.
3. The Residential Strategy, and related Background Report, provides an evidence base to support the implementation and timely review of the NCRP.
4. The Residential Strategy contains small, somewhat constrained 'investigation areas' due partly to the balancing of the known and variable housing considerations that exist in the LGA. Despite the

land constraints, the supply and demand assessment suggest they are appropriate at the strategic level. This is a good starting point for the staged implementation of the Residential Strategy.

The options below have been derived to achieve the opportunities outlined above and need to be considered in relation to resourcing, progress of other interconnected projects, Council reporting processes and the like. Based upon the peer review, the options are listed in order of preference below.

While it is preferable that Option 1 is pursued as this retains the local ownership of this local housing strategy with the Council, Option 2 would also deliver the intended planning outcomes. This may also be considered in the context of enabling the finalisation of the Residential Strategy in a timely manner.

Option 1

Council makes the following changes to the Residential Strategy as the related planning proposals progress:

- Revisit the staging/sequencing of the 'investigation areas' to better reflect the known constraints (including regionally significant farmland), including 'greenfield' and 'infill' options (noting 'infill' development is encouraged in the NCRP and already envisaged to make up 20% of the dwelling target in the Residential Strategy). This would enable the retention of all 'investigation areas' until more detailed planning has occurred to ascertain progress towards dwelling targets and site-specific land constraints. By the time all these areas are required, a new NCRP will have been developed and the basis of how regionally significant farmland is preserved may be reviewed in the context of situations such as that in the Byron LGA and revised population projections and dwelling targets will be available.

- Revise the Monitoring & Review section of the Residential Strategy to include an 'implementation plan' that will:
 - document in detail 'how' the monitoring will occur
 - detail the focus and timing of the next review
 - ensure the Residential Strategy (and relevant supporting documents) are updated as other interconnected projects create the evidence base to support the review (noting this is likely to be in less than 5 years)
 - respond and feed into the review of the NCRP
 - be an open, rolling, reporting opportunity to inform the community, Councillors and State agencies as to the performance progress of the Residential Strategy
- Revise the Actions section of the Residential Strategy to ensure they:
 - are not too detailed as to undermine their ability to be implemented and comply with current state policy directions
 - are based upon the level of information generally contained within a local housing strategy
 - have reasonable indicative timing
 - remain linked directly to the strategy directions
 - align with any changes made to the body of the document

Appendix A contains a summary of the recommended changes outlined in Option 1 above, noting there is understood to be other changes that require clarification between the parties that are outside of the Terms of Reference for this peer review.

Option 2

DPIE provide 'in principle' endorsement/ approval to the Residential Strategy subject to a number of conditions that ensure:

- key directions of the Residential Strategy that are consistent with State policy take effect
- Council makes the changes to the Residential Strategy (as generally identified in Appendix A of this peer review, noting there is understood to be other changes that require clarification between the parties that are outside of the Terms of Reference for this peer review) as the related planning proposals progress
- the related planning proposals are not impacted in relation to their intended outcomes (which includes the relationship between the affordable housing planning proposal, the STRA planning proposal and the investigation areas)
- Council provides a copy of the Residential Strategy with the changes so made for final endorsement by DPIE
- the review of the Residential Strategy is brought forward in line with the review of the NCRP

It is noted this option is not warranted for a high-level planning strategy document such as a local housing strategy, that has a review program to enable updates to occur over time.

Option 3

No change is made to the Residential Strategy and it is endorsed/ adopted 'as is'.

It is noted this option misses an opportunity to ensure all State policy is satisfied, improve the ability of the document to be effectively implemented and be responsive to the interconnected projects that will inform the review and success of the Strategy.

Option 4

No change is made to the Residential Strategy and its endorsement/ adoption is delayed until more detailed planning is undertaken.

1. Introduction

1.1 Purpose

This document is designed to assist the Department of Planning, Industry & Environment (DPIE) and Byron Shire Council (BSC) to finalise the *Byron Shire Council Residential Strategy* (Residential Strategy) which was adopted by Council in December 2020.

Specifically, the peer review relates to:

- the differences of professional opinion, specific to key planning areas, contained in the Residential Strategy
- the interconnectedness of various planning projects, at the State and local level, with the Residential Strategy

Based on the Terms of Reference, the scope of the project focuses on four key planning areas as follows:

- Affordable Housing
- Housing Supply and Dwelling Targets (in the context of the North Coast Regional Plan 2036 (NCRP))
- Short Term Rental Accommodation
- Investigation Areas

1.2 Methodology

Consistent with the Terms of Reference and the agreed high-level and desk-top based methodology for the peer review, the reviewer commenced with the following tasks:

- Review the matters raised in the DPIE letter to BSC dated 08.04.21 regarding Residential Strategy issues. Also consider

Council's response to DPIE dated 12.04.21, and other correspondence between DPIE and BSC.

- Review and analyse the Residential Strategy, draft Affordable Housing Contribution Scheme, proposed Short Term Rental Accommodation (STRA) Planning Proposal, Rural Land Use Strategy, associated documents, and their relationships.
- Consider the assumptions and validity of the housing supply and demand forecast for the Byron Shire based on the NCRP 2036, having specific regard to the various impediments to the delivery of housing stock.
- Review and analyse the impact of short-term rental accommodation on the housing supply targets contained in the NCRP 2036 (based on the proposed planning proposal of 365 v 90 days remainder of LGA) and determine whether the target needs to be reviewed.
- Evaluate whether the assumptions in the Residential Strategy will achieve the housing supply targets of the NCRP 2036.
- Identify whether additional supply contingencies are required to achieve housing supply targets of NCRP 2036.
- Develop recommendations, including high/medium/low growth scenarios to achieve housing supply targets of the NCRP Plan 2036, and
- Consider Urban Growth Boundaries and potential future release areas in conjunction with DPIE North Coast Settlement Guidelines and determine the appropriateness of the current boundaries.

Further, the peer review identified the need to review the following documents:

- Byron Shire Residential Strategy Background Report
- Planning Proposal - Lot 22 (DP 1073165) Stuart Street, Mullumbimby
- Section 9.1 Ministerial Directions of the *Environmental Planning & Assessment (EP&A) Act, 1979*
- Relevant State Environmental Planning Policies (SEPPs), including SEPP 70 and Coastal Management SEPP
- The NSW Housing Strategy Discussion Paper and the new Explanation of Intended Effect (EIE) for the integrated Housing Diversity SEPP, along with Council's submissions to DPIE on these strategic planning documents
- NSW DPI Options Paper - Agricultural Land Use Planning Strategy
- NSW DPI Northern Rivers Sub Region Agriculture Industry Snapshot for Planning
- DPIE's North Coast Settlement Planning Guidelines
- DPIE's Local Housing Strategy Guideline
- NCRP Variation Principles for Urban Growth Areas (Appendix A) and Important Farmland (Appendix B)
- Northern Rivers Farmland Protection Project – Final Recommendations
- Our Mullumbimby Master Plan
- Informed Decisions (ID) webinar last week entitled 'Regional renaissance - permanent or passing?', presented by Keenan Jackson.

The peer review has also been informed by two online 'workshop style' meetings with relevant staff from DPIE and BSC, a videoconference meeting with Selina Stillman and Paul Garnett from NSW DPI and phone conversations with staff from DPIE and BSC.



2. Key Planning Areas

2.1 Affordable Housing

2.1.1 Discussion

BSC has developed an Affordable Housing Contributions Policy and Procedure, including a draft Affordable Housing Contributions Scheme (AHCS).

The draft AHCS is required to be prepared in accordance with SEPP 70 and DPIE's Guideline for Developing an Affordable Housing Contribution Scheme (the Guideline). This is underpinned by Policy 2, and specifically Action 17, in the Residential Strategy and Section 5 of the Byron Shire Residential Strategy Background Report.

Specifically, Section 7.32 (3) (a) of the EP&A Act, prescribes the imposition of conditions on development consents as outlined in Schedule 2 of the SEPP. This level of detail is not a consideration for the content of the Residential Strategy, and is considered to be inherent in Action 17 of the document and the associated AHCS planning proposal that will ultimately amend Byron LEP 2014.

The Guideline states that *"the data gathering, and analysis undertaken by a Council to inform its Local Housing Strategy, including affordable housing data, demographic analysis and needs analysis, can be used to inform the development of an affordable housing contribution scheme"*.

In this case the Residential Strategy is a strong part of the evidence base (Key Step A in the Guideline) and also contains infill and greenfield 'investigation areas' proposed for 'upzoning' (relating directly to Key Step B in the Guideline), for developing the draft AHCS. It is

appreciated that analysis and testing of Council's policy approach to this planning issue has also been carried out separate to the Residential Strategy.

The development of the evidence base to support the way affordable housing has been addressed in the Residential Strategy, and subsequently the draft AHCS, also warrants discussion.

This evidence base is primarily contained in Section 5 of the Byron Shire Residential Strategy Background Report (which includes the JBA *Affordable Housing Contribution Scheme: Byron Shire Council* report). In comparison to other LGAs in the region and NSW overall, the report highlighted:

- Very high levels of rental and purchase stress
- Very high land values and costs, especially in relation to household incomes
- High levels of workforce containment, preventing people who work in the LGA from exploring cheaper options to rent or purchase and commute into the Byron LGA
- High percentage of housing stock not available for permanent residents
- High percentage of residents living in improvised dwellings
- Additional dwellings are likely to be in demand from couples and lone person households
- Limited opportunities for the market to meet the significant underlying demand for affordable housing in Byron LGA, especially for very low, low and moderate income households

- o The viability assessment supports the contribution rates approach and indicates limited sites are available to further explore the application of the AHCS. Greenfield investigation areas are the most likely to achieve the majority of affordable housing stock, although there are also some infill investigation areas that remain potentially viable.

In the context of the Residential Strategy and current NSW planning system, including the requirements of SEPP 70 and associated Guideline, it is accepted that effective outcomes can only be met by local solutions in this case. It is acknowledged that regional or sub-regional opportunities may exist outside of the Strategy framework in the future, but these are not available to be explored in the Residential Strategy at this time. This existing situation has been the basis of the Residential Strategy, including the use of Council owned land.

The issue of affordable housing is also inextricably linked to the issue of Short-Term Rental Accommodation (STRA) in the Byron Shire. Almost 20% of the total Shire's housing stock is listed as online holiday accommodation, equating to fewer homes for local residents (including the under supply of social housing and permanent rental stock). In 2017, Byron Shire attracted more than two million visitors who stayed some 4.5 million visitor nights and in the same year residential land sales jumped 26% in value (noting this is prior to the COVID pandemic, with the Byron Shire Tourism Forecasts now predicting Byron Shire can expect 3.86 million visitors and 8.5 million visitor nights in 2030 if trends continue.

It is acknowledged that this situation is vastly different to others that are seeking to develop and implement an AHCS and will be the subject of an economic impact assessment associated with the STRA Planning

Proposal which is discussed further in Section 2.3 below. It is also importantly understood the draft AHCS was submitted to DPIE in the form of a planning proposal in June 2021. The planning proposal was subsequently returned to Council by DPIE requesting further work be undertaken by Council in relation to the AHCS.

The planning process that has been followed to date now also inextricably links the Residential Strategy with the draft AHCS planning proposal, and one cannot progress in the current planning system without the other. There is a risk that the intended planning outcome of the AHCS planning proposal would be undermined should the concurrent finalisation/gazettal of both projects not occur i.e. land would have the ability to be 'upzoned' without the need for the AHCS contribution rate to be made.

It is noted the concurrent finalisation/gazettal of the Residential Strategy and the AHCS will generate the likely need to review at least part of the Residential Strategy, primarily being the content of Policy 2. However, DPIE do (in their Local Housing Strategy Guideline), encourage Councils to prepare planning proposals during the local housing strategy preparation process once it has become clear that they will be needed for the delivery of housing under a local housing strategy, such as the Byron Residential Strategy.

The above discussion indicates an evidence-based analysis that warrants the approach to affordable housing in the Residential Strategy and the linked draft AHCS. As an overarching strategic document or Local Housing Strategy, the content of the Residential Strategy enables the finer details of the draft AHCS to be explored and implemented. The AHCS will enable implementation via individual planning proposals for 'investigation areas' that are included in the Residential Strategy

(and other strategic documents where relevant). The individual planning proposals will enable a landowner/proponent to seek to amend the contribution rate only where an independent viability assessment is undertaken, and simultaneously with the 'upzoning'. This is consistent with Part 3J of the Guideline. The Guideline also recognises the housing and construction market is changing rapidly and allows for the contribution rates to be made via the dedication of land and/or payment of equivalent monetary contribution.

2.1.2 Identified Key Peer Review Issues

Based on the discussion above, the following key peer review issues have been identified in relation to affordable housing:

- The evidence base contained in Section 5 of the Byron Shire Residential Strategy Background Report highlights key differences between Byron LGA, other LGAs in the region and NSW overall, which are of relevance to affordable housing and have been addressed in the Residential Strategy based upon the best information at the time of preparation.
- There are significant impediments in the NSW planning system to the retention of housing stock for permanent residents at the local level, and this is directly linked to the issue of affordable housing in the Residential Strategy.
- The issue of affordable housing in the Residential Strategy and the ability to achieve good planning outcomes in this space is inextricably linked to both the draft AHCS planning proposal and the STRA planning proposal. The higher-level Residential Strategy now needs to allow these planning proposals to continue (although it is noted there are policy positions to be

determined between Council and DPIE in relation to these planning proposals), and timing of concurrent finalisation is a crucial consideration moving forward.

- Upon completion, the AHCS planning proposal and the STRA planning proposal are likely to warrant a review of the Residential Strategy (in a shorter period than currently stated in the document).

2.2 Housing Supply and Dwelling Targets

2.2.1 Discussion

It is appreciated the population projections and dwelling targets contained in the Residential Strategy are under review and likely to change as part of the NCRP review more broadly. It is understood this review is already in its early stages.

It would nonetheless be remiss not to note that various sources of information anecdotally suggest that population projections (and therefore dwelling targets) are likely to increase within the region (again exacerbated by the impacts of the COVID pandemic). A recent Informed Decisions (ID) webinar entitled 'Regional renaissance - permanent or passing?', provided a preliminary analysis of data collected over the last two years in relation to housing pressures in regional areas. This preliminary data suggests housing pressures in coastal, regional towns are being somewhat influenced by:

- less people leaving rather than a major increase in more people arriving in coastal, regional towns
- lower housing stock means properties are selling quickly, not that a higher number of houses are being sold

- the median house price rise in the regions is being partly driven by a decrease in the volume of listed properties
- supply is often hampered for reasons outside of planning constraints, stemming from the construction industry.

The above warrants monitoring in the context of trends in the Byron LGA and level of increase needs a strong evidence base that will be produced as part of the review of the NCRP.

This peer review has therefore assumed the current population projections and dwelling targets, whilst noting the difference between the 2016 dwelling estimate in the NCRP was 560 more than stated in the 2016 census. Reliance on the current population projections and dwelling targets in the NCRP (and noting the discrepancy above) ensures that the Residential Strategy is consistent with the relevant regional plan, as per DPIE's Local Housing Strategy Guideline.

In this context, it is important to reflect on what a local Residential Strategy can achieve and where the emphasis such a strategy should be focussed (in 2020/2021). As an example, it may be questioned whether the Byron Residential Strategy meeting a soon to be reviewed numeric target is as important as the housing diversity that is provided to meet the permanent resident demand? Further, should a numeric dwelling target have less of a local LGA focus and rather relate to a region or group of LGAs where land constraints and opportunities are not bound by an LGA boundary?

At the strategy level, the amount of detail available and to be reasonably included can be informed by the content of the NCRP and DPIE's Local Housing Strategy Guideline. Although many of the references in this Guideline are to the Sydney metropolitan area, it is a good indicator of the higher order document that a local housing or

residential strategy is expected to be in the context of the overall NSW planning system.

At this higher level in the planning process, the identification of 'investigation areas' that have development capacity is required to be theoretical. In the case of the Byron Residential Strategy, this includes exclusion of known impediments such as HEV vegetation, high hazard flood lands etc, and consideration of theoretical impediments which have been listed in the Residential Strategy such as hydrological issues, topographical constraints etc.

Generally speaking, a strategy contains approximate dwelling yields, with some contingency for known land constraints. In the case of the Byron Residential Strategy, based on the accepted dwelling target in the NCRP of 3,150 dwellings, this contingency is some 582 dwellings. This equates to a reasonable 18.5% contingency

Without detailed environmental studies, it is hard to pre-empt the final lot yields and take up rates of all forms of housing development – from infill to greenfield investigation areas – for the life of this Residential Strategy. The detail to determine the final lot yields then comes in future stages of the planning process, generally in the form of planning proposals and development consents, as the Residential Strategy is implemented. This implementation is inherently driven by the Actions contained at the end of the document in this case.

It is noted the assumed new infill development (that is factored into the 582 dwelling contingency) is likely to be driven by age of dwelling stock, cost of land/infrastructure provision, lots sizes, land availability and character considerations, as evidenced in the Residential Strategy. This is a common trend in coastal, regional areas in NSW where:

- the demand is strong in infill locations (often close to the coast where people desire to live)
- the household sizes being catered for are smaller, and
- although there are strong views from the community about retaining low scale and village character traits that are often at odds with greater intensity infill, greenfield opportunities are often limited.

The above is converse to the Sydney metropolitan area where greenfield opportunities are far greater and often directly supported by government agencies.

The issue of new infill development will be further informed by economic impact assessment associated with the STRA planning proposal which is discussed further in Section 2.3 below.

Finally, key to moving through the strategic planning process with a sharp eye on the realisation of the dwelling targets, as highlighted by DPIE, is to ensure effective monitoring, evaluation and review as the future infill and greenfield development comes on line.

2.2.2 Identified Key Peer Review Issues

Based on the discussion above, the following key peer review issues have been identified in relation to population projections and dwelling targets:

- It is evident the NCRP population projections and dwelling targets are in the throes of being reviewed and an update is imminent. For this reason, it is important to ensure the Residential Strategy can support and respond to this situation by being a high-level strategic and adaptable document.
- In order to satisfy the NCRP and evidence-based local housing needs (including affordable housing) the Residential Strategy has made reasonable trade-offs and assumptions around future housing models, lot sizes, land availability and household size.
- Sufficient high-level contingencies must be built into the Residential Strategy to ensure the importance of the dwelling targets are not lost, and can be effectively monitored, reviewed and evaluated as contemporary, evidence-based data becomes available (such as the STRA economic impact assessment and the phased release of the 2021 Census data that will start mid 2022). This may require the ability for each investigation area to collectively contribute to the most current dwelling target at the time of a planning proposal being finalised for each investigation area.

2.3 Short Term Rental Accommodation

2.3.1 Discussion

As discussed in previous sections, STRA is a pivotal issue in the Residential Strategy. In the Byron Shire, almost 20% of housing stock is listed as online holiday accommodation, equating to fewer homes for local residents (including the under supply of social and permanent rental housing stock).

As identified earlier, the Byron Shire attracted more than two million visitors in 2017 who stayed some 4.5 million visitor nights and in the same year residential land sales jumped 26% in value. This was prior to the COVID pandemic, with the Byron Shire Tourism Forecasts now

predicting Byron Shire can expect 3.86 million visitors and 8.5 million visitor nights in 2030 if trends continue. This will be the subject of an economic impact assessment associated with the STRA Planning Proposal, which in part seeks to limit non-hosted STRA to 90 days (which is outside of the current state-wide policy requirements).

In this regard, DPIE referenced the STRA Planning Framework Explanation of Intended Effect 2018 in their letter dated March 2021. Since then, the new state-wide regulatory framework for STRA has been implemented, which includes a new planning framework, fire safety standards for STRA dwellings and a new Government-run STRA Register. The Byron Shire has been excluded from the new policy until 31 January 2022, with DPIE's website noting that *"The NSW Government recognises that STRA is complex issue in the Byron Shire LGA."* At this stage, and until 31 January 2022, Byron Shire LGA is exempt from the state-wide STRA policy.

The STRA issue can't be resolved in the Residential Strategy based upon the level of detail available at this time. The planning proposal therefore needs to run its course to ensure the Residential Strategy outcomes can be realised. This means there is no current data to inform any change to the 10% contingency applied to the dwelling targets to accommodate new dwellings to be used for STRA. As a minimum, the document does however recognise the problem created by the historic approach to secondary dwellings, which is seeking to be addressed in the STRA planning proposal.

It is therefore integral that, at the higher strategic planning level, the Residential Strategy simply continues to allow the STRA Planning Proposal process to progress, although it is noted there remain policy positions to be determined between Council and DPIE in relation to this

planning proposal should it not be completed during the exemption period.

2.3.2 Identified Key Peer Review Issues

Based on the discussion above, the following key peer review issues have been identified in relation to STRA:

- The Residential Strategy (and associated Background Report) recognises the constraints that exist in the planning system for a local housing strategy to effectively address the matter of STRA. It includes reference to the STRA planning proposal in the actions, which is the best planning mechanism available at this time to address this matter.
- DPIE has recognised the complexity of this issue in the Byron Shire and have excluded the area from the new policy until January 2022. It will be important to fast track and monitor the timing of the planning proposal.
- It is now crucial to progress the STRA planning proposal (that is understood to have recently received a gateway determination and the planning proposal must reflect the recommendations of the economic impact assessment), noting that its completion is likely to warrant a review of the Residential Strategy (in a shorter period than currently stated in the document).
- Until such time that the STRA planning proposal is complete, all possible new housing opportunities should be retained in the Residential Strategy, otherwise any change would be pre-emptive without the evidence base that will result from this planning proposal.

2.4 Investigation Areas

2.4.1 Discussion

The 'investigation areas' included in the Residential Strategy are one of the means to achieve the housing principles and directions embodied in the document. They are the direct result of a capacity analysis and an opportunities and constraints analysis of land in the LGA (based on a 'suitable for use' principles test) that can theoretically meet the demand identified in the capacity analysis.

It is appreciated that significant and ongoing engagement between Council and relevant State agencies has occurred in relation to the 'investigation areas' and that post exhibition changes have also been made to the 'investigation areas'. It is for this reason that DPIE and Council have requested that the focus of the peer review be on 'investigation areas' 8 & 9, noting DPIE and Council continue to liaise on the other 'investigation areas' outside of this peer review process. The peer review of these two 'investigation areas' has been further informed by a videoconference meeting with Selina Stillman and Paul Garnett from NSW DPI, held on 28 July 2021.

NSW DPI hold the position that the between 'investigation areas' 8 & 9 and 'investigation area' 1 is that it is more isolated from other regionally significant farmland and that although they appreciate the constraints to deliver the projected dwelling targets, their desire continues to be for non-greenfield solutions to be sought in the Byron LGA. When NSW DPI were questioned on more detailed planning giving consideration to 'Land Use Conflict Risk Assessment' (LUCRA) and buffers in Areas 8 & 9 they stated they saw this as an option only if the loss of the farmland is

acceptable in the first instance (which they don't believe it is) and all other investigation areas have been exhausted.

Section 9.1 Ministerial Direction 5.3, 'Farmland of State and Regional Significance on the NSW Far North Coast', would need to be considered in any future rezoning of 'investigation areas' 8 & 9 (among others). It is noted *"a planning proposal may be inconsistent with the terms of this direction only if council can satisfy the Secretary of the Department of Planning and Environment (or an officer of the Department nominated by the Secretary) that the planning proposal is consistent with:*

(a) the North Coast Regional Plan 2036, or

(b) Section 4 of the report titled Northern Rivers Farmland Protection Project - Final Recommendations, February 2005, held by the Department of Planning and Environment."

As part of the peer review 'investigation areas' 8 & 9 have therefore been considered in the context of consistency with the overall NCRP (primarily the Important Farmland Interim Variation Criteria in Appendix B as discussed in the letters between DPIE and Council in March/ April 2021) and Section 4 of the Northern Rivers Farmland Protection Project - Final Recommendation. This consideration has:

- taken account of the 20-year life of the Residential Strategy
- been theoretically based on the level of detail available at this time (appreciating a future planning proposal would in itself be more detailed)
- focussed on consistency with the NCRP, as the Ministerial Direction requires the planning proposal to be consistent with either of the documents contained in 5(a) or (b) of the Direction (with the Important Farmland Interim Variation

Criteria (i.e. (b) above) being seen as a more contemporary planning tool and has recently been utilised in other LGAs in the region)

The findings of this consideration for 'investigation areas' 8 & 9 are outlined below:

- o Land capability - The land has a total area of just over 10ha which is relatively small for productive agricultural land. The land only appears to have been used for grazing purposes over the last 15+ years. It is noted that land area, fragmentation and the ability to expand an agricultural use has a direct correlation to agricultural capability. This is evidenced by the NSW DPI Northern Rivers Sub Region Agriculture Industry Snapshot for Planning (August 2020), which also highlights that Byron LGA (along with Ballina) generally have a lower percentage share of the main agricultural industries in the Northern Rivers sub region.
- o Isolation - The land is surrounded by developed, urban land to the west and north and is partly zoned RU2 Rural Landscape. The land is also bordered to the south west by 'investigation area' 7 which is Council owned land and a NCRP urban growth area. Once this land is rezoned as part of the implementation of the Residential Strategy the subject land would be relatively isolated from other agricultural land, except to the immediate east and south-east. This southern part of Mullumbimby is inherently accepted in the contemporary Our Mullumbimby Master Plan (2019), as being part of the expanded urban footprint of the town to meet housing needs (see Principle 1 and Precinct 4). It is noted although the Our Mullumbimby

Master Plan is not a DPIE endorsed plan it remains a local plan of relevance. The document was prepared with direct input from the 15-member local Guidance Group, suggesting extensive community involvement and support for the master plan.

- o Land Use Conflict – as noted above the land is directly adjacent to urban land and residential streets that make up the southern part of the town of Mullumbimby. Further, the land is less than 300m from the town centre. Given the existing interface between urban and rural zoned land the inclusion of this land as an 'investigation area' (and the ability to explore various options such as buffers and LUCRAS in future planning processes) is not envisaged to increase land use conflicts.
- o Infrastructure – The land is directly adjacent to an existing urban area and a future planning proposal could explore innovative options to augment and provide utilities such as water, sewer, power and telecommunications to the land. Other infrastructure such as social services, community services, employment and open space are all accessible in the town of Mullumbimby. Development of the land for housing that satisfies the character, urban design and housing type needs would demonstrate consistency with Section 9.1 Ministerial Direction 3.1 Housing, Infrastructure and Urban Development. Further, this land forms part of the Council's evidence-based ability to implement an AHCS, as this land is a viable affordable housing contribution area. This is largely due to the location of the land adjacent to an established urban area in a town with availability of services.

- Environment & Heritage – the land is primarily flat, cleared and disturbed land, with a riparian corridor along part of the southern boundary. The Residential Strategy states that any high environmental value (HEV) land and land subject to the Coastal Management SEPP and Koala Habitat Protection SEPP will be considered in a future planning proposal and will be excluded from the land to be rezoned to provide housing. Further the land does not contain items of environmental heritage in Schedule 5 of BLEP 2014. It is noted the land is adjacent to the Mullumbimby HCA listed as locally significant in Schedule 5 of BLEP 2014, as are the other ‘investigation areas’ located on the edge of the Mullumbimby Town Centre.
- Avoiding Risk – the land is relatively flat thus avoiding steep slopes and highly erodible land. The Residential Strategy states that any bushfire prone land (vegetation category 1) and land mapped as high flood hazard will be excluded from the land to be rezoned to provide housing.
- Other NCRP requirements – outside of the Important Farmland Interim Variation Criteria the NCRP also requires that Byron LGA:
 - identify additional urban investigation areas to meet dwelling targets and secure future housing
 - support local employment in key centres such as Mullumbimby (which is supported by local, permanent population)
 - investigate opportunities for increased housing diversity

The above highlights the theoretical potential for ‘investigation areas’ 8 & 9 to satisfy the Section 9.1 Ministerial Direction 5.3, noting this could only be determined by preparing a future planning proposal to rezone the land.

Outside of the Section 9.1 Ministerial Direction the inclusion or removal of ‘investigation areas 8 & 9’ have been considered in the context of all planning principles and priorities that the Residential Strategy sets out to achieve. The peer review therefore highlights the following planning matters of relevance to this decision that are specific to Byron LGA:

- The ability to provide more housing in Byron LGA has been well analysed and there are not many locations that satisfy the demographic demand and minimise impact on known physical land constraints. This is the reason why multiple ‘investigation areas’ will work collaboratively to meet the supply needed, and this will also enable a greater consideration of community and character as each ‘investigation area’ progresses.
- The inclusion of multiple greenfield and infill ‘investigation areas’ enables Council to explore various new residential forms and models, once again with the aim being to meet the identified demographic demand and minimise impact on known physical land constraints. This is a key action embodied in the document.
- The inclusion of all the ‘investigation areas’ is the policy key to addressing the interconnected and immediate affordable housing and STRA planning issues. These are fundamental planning issues in many locations, but have been specifically recognised as crucial in Byron LGA.

Further, it is understood that when the Residential Strategy was prepared the high-level staging/sequencing plan associated with the 'investigation areas' in Mullumbimby was focussed primarily on structure planning to achieve an integrated affordable housing outcome and could be amended/varied if warranted by this peer review.

2.4.2 Identified Key Peer Review Issues

Based on the discussion above, the following key peer review issues that have been identified in relation to 'investigation areas 8 & 9':

- This is a local housing strategy and the emphasis of this document needs to be on supplying the housing diversity to meet the demand (over and above other planning matters that will be considered at the planning proposal stage for each 'investigation area'), until such time that other regional or sub-regional models can be considered in relation to housing supply. This may be considered in the review of the NCRP.
- Although the Section 9.1 Ministerial Directions are triggered at the planning proposal stage, it is appreciated that consideration of the theoretical ability to satisfy all Section 9.1 Ministerial Directions is an issue at the current time. A preliminary assessment (as is all that is reasonably required at the strategy level) highlights the theoretical potential for 'investigation areas' 8 & 9 to satisfy the Section 9.1 Ministerial

Direction 5.3, noting this could only be confirmed by preparing a future planning proposal to rezone the land.

- A review of the staging/sequencing plan for the 'investigation areas' and associated text in the Residential Strategy could provide an opportunity for areas 8 & 9 to be considered after all other housing supply options in the Residential Strategy have been exhausted (i.e. as a low priority for progression, with some flexibility to avoid land banking, and subject to Council and state agencies working together to undertake more detailed analysis of the potential rezoning issues which would be expected at the planning proposal stage in any case). At the strategy level, and with a strong state and local evidence base to progress housing supply without delay in Byron LGA, it seems premature to entirely remove 'investigation areas' 8 & 9 at this point based solely on a single planning issue (loss of agricultural land).

3. Opportunities and Options for the Residential Strategy

This section provides further detail on the various opportunities and options based upon the peer review outcomes included in Section 2. It is noted the opportunities and options below are relevant for some or all of the four key planning areas that have been reviewed. This is due to the interconnectedness of many of the key issues that have been identified in the peer review

3.1 Opportunities for the Residential Strategy

As a result of the peer review the following opportunities for the Residential Strategy have been identified:

1. The Residential Strategy has the ability to be the strategic vision and adaptable hub of interconnected planning projects that will realise positive, informed and necessary housing outcomes in the Byron LGA.
2. The Residential Strategy is a higher order document that is the enabler for housing related planning proposals to progress through the planning system, namely the AHCS planning proposal, STRA planning proposal and related 'investigation areas'.
3. The Residential Strategy, and related Background Report, provides an evidence base to support the implementation and timely review of the NCRP.
4. The Residential Strategy contains small, somewhat constrained 'investigation areas' due partly to the balancing of the known and variable housing considerations that exist in the LGA. Despite the land constraints, the supply and demand assessment suggest they are appropriate at the strategic level. This is a good starting point for the staged implementation of the Residential Strategy.

3.2 Options to move forward with the Residential Strategy

The options below have been derived to achieve the opportunities outlined above and need to be considered in relation to resourcing, progress of other interconnected projects, Council reporting processes and the like. Based upon the peer review, the options are listed in order of preference below.

While it is preferable that Option 1 is pursued as this retains the local ownership of this local housing strategy with the Council, Option 2 would also deliver the intended planning outcomes. This may also be considered in the context of enabling the finalisation of the Residential Strategy in a timely manner.

Option 1

Council makes the following changes to the Residential Strategy as the related planning proposals progress:

- o Revisit the staging/sequencing of the 'investigation areas' to better reflect the known constraints (including regionally significant farmland), including 'greenfield' and 'infill' options (noting 'infill' development is encouraged in the NCRP and already envisaged to make up 20% of the dwelling target in the Residential Strategy). This would enable the retention of all 'investigation areas' until more detailed planning has occurred to ascertain progress towards dwelling targets and site-specific land constraints. By the time all these areas are required, a new NCRP will have been developed and the basis of how regionally significant farmland is preserved

may be reviewed in the context of situations such as that in the Byron LGA and revised population projections and dwelling targets will be available.

- Revise the Monitoring & Review section of the Residential Strategy to include an 'implementation plan' that will:
 - document in detail 'how' the monitoring will occur
 - detail the focus and timing of the next review
 - ensure the Residential Strategy (and relevant supporting documents) are updated as other interconnected projects create the evidence base to support the review (noting this is likely to be in less than 5 years)
 - respond and feed into the review of the NCRP
 - be an open, rolling, reporting opportunity to inform the community, Councillors and State agencies as to the performance progress of the Residential Strategy
- Revise the Actions section of the Residential Strategy to ensure they:
 - are not too detailed as to undermine their ability to be implemented and comply with current state policy directions
 - are based upon the level of information generally contained within a local housing strategy
 - have reasonable indicative timing
 - remain linked directly to the strategy directions
 - align with any changes made to the body of the document

Appendix A contains a summary of the recommended changes outlined in Option 1 above, noting there is understood to be other changes that require clarification between the parties that are outside of the Terms of Reference for this peer review.

Option 2

DPIE provide 'in principle' endorsement/ approval to the Residential Strategy subject to a number of conditions that ensure:

- key directions of the Residential Strategy that are consistent with State policy take effect
- Council makes the changes to the Residential Strategy (as listed in Appendix A of this peer review, noting there is understood to be other changes that require clarification between the parties that are outside of the Terms of Reference for this peer review) as the related planning proposals progress
- the related planning proposals are not impacted in relation to their intended outcomes (which includes the relationship between the affordable housing planning proposal, the STRA planning proposal and the investigation areas)
- Council provides a copy of the Residential Strategy with the changes so made for final endorsement by DPIE
- the review of the Residential Strategy is brought forward in line with the review of the NCRP

Option 3

No change is made to the Residential Strategy and it is endorsed/ adopted 'as is'.

It is noted this option misses an opportunity to ensure all State policy is satisfied, improve the ability of the document to be effectively implemented and be responsive to the interconnected projects that will inform the review and success of the Strategy.

Option 4

No change is made to the Residential Strategy and its endorsement/ adoption is delayed until more detailed planning is undertaken.

It is noted this option is not warranted for a high-level planning strategy document such as a local housing strategy, that has a review program to enable updates to occur over time.

4. Conclusion

This peer review provides a desk top high-level desk-top based examination of:

- the differences of professional opinion, specific to key planning areas, contained in the Residential Strategy
- the interconnectedness of various planning projects, at the State and local level, with the Residential Strategy

Based on the Terms of Reference, the scope of the project focuses on four key planning areas as follows:

- Affordable Housing
- Housing Supply and Dwelling Targets (in the context of the North Coast Regional Plan 2036 (NCRP))
- Short Term Rental Accommodation
- Investigation Areas

In order to achieve the above, various documents required review as outlined in Section 1.2. After a detailed discussion and identification of the key peer review issues for each of the planning areas, the peer review identifies opportunities and options (in Sections 3.1 and 3.2). These are aimed at:

- resolving the differences of professional opinion, specific to the key planning areas
- ensuring a future focussed approach to the implementation of the Residential Strategy

- not losing sight of the agreed and known State and local level planning outcomes that the Residential Strategy has set out to achieve.

This was the approach agreed at the mid-way point meeting with key stakeholders.

In general terms, the Residential Strategy is considered to adequately address the range of issues that may typically be expected of such a strategic level document. Since its development and adoption, further information and details of implementation factors have become apparent, and these could now be more easily reflected in the Strategy, at a high level, as outlined in the preferred option (Option 1) and in Appendix A.

The preferred option (Option 1) will ensure the key peer review issues identified for each planning area are appropriately addressed in the context of a local housing strategy. In this case the Residential Strategy will remain the local, strategic vision and adaptable hub of interconnected planning projects that will realise responsive housing outcomes in the Byron LGA, in the context of the NSW planning system. This will require the timely review of components of the Strategy as planning evidence (at the local and state level) becomes available to inform that review.

It is noted Option 2 would also deliver the intended planning outcomes.

Appendix A – Summary of recommended Residential Strategy changes

Note: there is understood to be other changes that require clarification between the parties that are outside of the Terms of Reference for this peer review.

Summary of Recommended Changes to the Residential Strategy (within the Terms of Reference of this peer review) - as outlined in Option 1 in the body of the report

No.	Section and Page Number of Strategy	Recommended Changes to Strategy
1	Section 3, Policy 1, Direction 1.2 – Pages 27 & 28	In relation to the capacity analysis, include reference to the review of the capacity analysis and dwelling targets being commenced immediately after 31 January 2022 (the completion date for the STRA planning proposal) to inform a review of parts of the Strategy. This review should also align with, and be informed by, the release of the revised population projections and dwelling targets at the regional level and the completion of the AHCS planning proposal.
2	Section 3, Policy 1, Direction 1.2 – Pages 28 & 29	In relation to the investigation areas, include reference to the staged approach to the investigation areas (and any other relevant investigation area changes that are being discussed by DPIE and Council outside of the peer review process), and reference Appendix A & C.
3	Section 3, Policy 2, Direction 2.2, Action Framework and Local Planning Actions – Pages 45 – 50	In relation to affordable housing, update this section and include reference to some of the evidence base included in the Background Report and the work that has now been undertaken to inform the AHCS planning proposal. Further, note the review of the capacity analysis and dwelling targets being commenced after 31 January 2022 (as per Item 1 above) to inform a review of parts of the Strategy. This review should also align with, and be informed by, the release of the revised population projections and dwelling targets at the regional level and the completion of the STRA planning proposal. It will most likely have flow on effects to other sections of the Strategy.
4	Section 3, Policy 4 – Pages 61 - 63	In relation to STRA update this section (including all relevant Directions) to reflect the current situation, including the exclusion from the State-wide policy framework until 31 January 2022. Include reference to the review of the capacity analysis and dwelling targets being commenced immediately after 1 February 2022 (the completion date for the STRA planning proposal) to inform a review of parts of the Strategy.

No.	Section and Page Number of Strategy	Recommended Changes to Strategy
5	Monitoring & Review – Page 65	<p>Update the Monitoring & Review Section to include:</p> <ul style="list-style-type: none"> reference to the revised Action Plan (in Appendix A) to become an Implementation Action Plan (that, as an appendix to the Strategy, can be readily updated as a performance measuring tool). This section will then be tied directly to the reviewed Action Plan in Appendix A. details of the initial review of the Strategy – to commence on 31 January 2022, and review periods thereafter.
6	Appendix A, Summary Action Plan – Pages 66 - 76	<p>Update Appendix A to create an Implementation Action Plan that includes:</p> <ul style="list-style-type: none"> the monitoring techniques, along with the measures currently included in the Action Plan. revised staging of the investigation areas, to ensure Investigation Areas 8 & 9 are considered after all other housing supply options in the Residential Strategy have been exhausted (i.e. as a low priority for progression, but noting that this will need a degree of flexibility to address 'land banking'). This would enable the retention of all 'investigation areas' until more detailed planning has occurred to ascertain progress towards dwelling targets and site-specific land constraints. where relevant, include links (in a separate column) between the actions in the Strategy with Council's adopted Local Strategic Planning Statement, Council's Community Strategic Plan and the NCRP to assist with implementation across these interrelated documents. where relevant, include how each action complies with the relevant State policy position (in a separate column) or how an alternative is and can be progressed within the existing planning system, with an evidence base. a review of the actions so they remain linked directly to the Directions in the Strategy, and contain the level of detail reasonably required at the local strategy level to inform the more detailed planning steps required to implement each action a review of indicative timing of each action. In relation to STRA reflect the current situation, including the exclusion from the State-wide policy framework until 31 January 2022.
7	Appendix C	Update to reflect the revised staging of investigation areas outlined in Items 2 & 5 above.

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