

Our ref: ECI05  
Your ref: A724417  
Enquiries: Kirsten Wood

14 December 2018

Ms J.J Shaw  
Parliament House  
4 Harvest Terrace  
WEST PERTH WA 6005

By email: [laeisc@parliament.wa.gov.au](mailto:laeisc@parliament.wa.gov.au)

Dear Ms Shaw,

#### **COMMITTEE INQUIRY INTO SHORT-STAY ACCOMMODATION IN WA**

Thank you for your letter dated 12 November 2018 advising of the Economics and Industry Standing Committee request for written submission on its inquiry into short-stay accommodation.

The Shire of Broome welcomes this inquiry given the importance of tourism to Broome's and the State's economy.

In relation to each of the questions, the Shire of Broome submits the following:

- 1) *The forms and regulatory status of short-stay accommodation providers in regional and metropolitan Western Australia, including existing powers available to local government authorities;*

The Shire of Broome Local Planning Scheme No 6 (**LPS6**) is the statutory instrument that controls land use and development across the Shire and was gazetted in January 2015. LPS6 is generally consistent with the State's land use definitions that are included in the Model Provisions within the *Planning and Development (Local Planning Scheme) Regulations 2015*.

LPS6 includes the following land use definitions for short-stay accommodation:

- **'Bed and Breakfast'** means a dwelling, used by a resident of the dwelling, to provide accommodation for persons away from their normal place of residence on a short term commercial basis and include the provision of breakfast.
- **'Caravan Park'** has the same meaning as in the Caravan Parks and Camping Grounds Act 1995.

- **'Holiday Home (Standard)'** means a dwelling which may also be used for short stay accommodation for not more than six people (but does not include a bed and breakfast, guesthouse, chalet and short stay accommodation).
- **'Holiday Home (Large)'** means premises conforming to the definition of holiday home (standard) with the exception that the premises provide short stay accommodation for more than six people but not more than 12 at any one time.
- **'Motel'** means premises used to accommodation patron in a manner similar to a hotel but in which specific provision is made for the accommodation of patrons with motor vehicles and may comprise premises licensed under the Liquor Licensing Act 1988.
- **'Tourist Development'** means a building, or a group of buildings forming a complex designed for the accommodation of short-stay guests and which provides on-site facilities for the convenience of guests and for management of the development, where occupation by any person is limited to a maximum of three months in any 12 month period; and
- **'Tourist Development – Low Impact'** means development predominately of a tourist nature for the accommodation of short stay guests that has been designed in such a manner to have minimal impact on the natural environment.

The Shire area is made up of the principal townsite/urban centre of Broome with a number of Aboriginal Communities, outstations and pastoral leases developed outside of the Broome townsite. There are several short-stay accommodation providers outside of the townsite in the form of caravan parks, camp sites and eco-tourism resorts (defined as low impact tourist development).

Within the townsite of Broome, the Shire has several short-stay accommodation providers in the form of resorts, hotels, serviced apartments and backpackers accommodation (all generally falling within the Tourist Development land use definition above). There are approximately 25 developments in Broome that are approved to operate as short-stay accommodation (this excludes Bed and Breakfasts). There are also seven registered Caravan Parks (and three over-flow caravan parks). These developments exist within the Mixed Use, Tourist or a specific Special Use zones under the Scheme.

In the Residential zone in Broome, the only type of short-stay accommodation that the Shire has the discretion to approve is 'Bed and Breakfast'. In the Shire of Broome, 'Holiday Home (Large)' and 'Holiday Home (Standard)' land uses are prohibited in the Residential zone. This essentially means that the Scheme allows for rooms in a dwelling to be used for short-stay accommodation as long as the occupier of the dwelling is also living in the house. If a landowner wishes to rent their entire dwelling for short stay accommodation (i.e. unhosted) it is a Holiday Home and is not permitted.

While this land use is not permitted, a simple search of the online booking platforms for Broome shows a substantial number of landowners are renting out their dwellings for short stay accommodation. The landowners making their entire property available for rent on a short-term basis are undertaking a Holiday Home land use which is not permitted by the Scheme, and therefore is a breach of the *Planning and Development Act 2005 (the Act)*.

The powers available to local governments to address this are established in Part 13 of the Act, and include the following:

- Issue a direction pursuant to s.214 of the Act requiring land owner to cease land use;
- Pursuant to section 218 of the Act, if a person contravenes the provisions of a planning scheme or carries out a development otherwise than in accordance with the Scheme, they commit an offence. The Shire then has the ability to commence prosecution actions and if convicted is liable to a fine of \$200,000 and \$25,000 for each day in which the offence continues; or
- Issue an infringement notice, which has a modified penalty of \$500.

While the fines contained in the Act are substantial, there are several factors which present challenges to local governments in undertaking compliance action. This includes:

- Often the addresses of the premises on the online booking platforms are not available, thus identifying the actual offenders can be a challenge;
- Local government, particularly in regional areas, are often not resourced with compliance officers making it difficult to review the online booking platforms and taking compliance action;
- The burden to collect sufficient evidence to successfully achieve a conviction of an offence under the Act can present challenges; and
- The modified penalty of \$500 if an infringement notice is issued is unlikely to be a sufficient deterrent to discourage offenders from continuing the land use.

2) *The changing market and social dynamics in the short-stay accommodation sector;*

The Shire does not have visibility of statistics that show the changing trends of the market and social dynamics in the short-stay accommodation sector.

What is evident is the rise of online booking platforms has given opportunity for landowners to market and make either rooms within their house or the whole house available for short-stay accommodation, which simply did not exist before. Prior to the rise of on-line booking platforms, the ability for travellers to book accommodation was generally only available via the traditional methods, giving favour to large accommodation chains or bookings managed through travel agents or local Visitor's Centres.

3) *Issues in the short-stay accommodation sector, particularly associated with emerging business models utilising online booking platforms; and*

The Shire does receive feedback from some members of the community expressing concern with short-stay accommodation being made available through online booking platforms. This can include the following:

- Unregulated short-stay accommodation providers create an inequity as they do not pay the same rates/levies and may not be paying taxes.
- Approved short-stay accommodation providers are required to meet higher regulatory standards when compared with buildings approved for permanent occupation. For example, a swimming pool in a resort is required to be registered as an aquatic facility, which requires inspections and annual fees, unregulated short-stay accommodation would not be meeting this. The

disparity between regulatory standards is particularly evident for multi-storey short-stay accommodation providers who have a higher level of building construction standards from a fire and accessibility point of view compared with multi-storey residential construction.

- Potential safety concerns over unregulated short-stay accommodation providers and whether operators would carry appropriate insurances.

The use of dwellings in residential areas for short-stay accommodation can also lead to land use conflicts. This can occur when dwellings are made available for un-hosted short-stay accommodation (Holiday Homes). Dependent on the hires, such occurrences can lead to 'party-houses' and cause disruption to the surrounding residential area.

Land use conflicts are heightened in grouped/multiple dwelling complexes. These types of complexes are generally designed for permanent accommodation and are managed by strata schemes. When some of the owners within the strata scheme make the dwellings available for short-stay accommodation it can lead to increase noise, inadequate parking, increase in movement of vehicles and people from premises, concerns over access and security, causing disruption to the typical residential amenity.

4) *Approaches within Australian and international jurisdictions to ensure the appropriate regulation of short-stay accommodation.*

In the time to prepare this submission for Council consideration, the Shire has not had an opportunity to investigate in detail the approaches in other jurisdictions.

An option that may be worth pursuing is introducing legislation requiring online booking platforms to have to screen subscribers offering short-stay accommodation prior to registering. This could involve mandating the need for subscribers to supply certification from the local government that the premises comply with the relevant planning and building laws prior to accepting them on the platform. Such a mechanism would place the onus on the booking facilities at making sure that subscribers have the correct approvals in place, as opposed to local governments having to adopt a reactive process of compliance which it is often not resourced to address.

The pre-screening of subscribers could also extend to other matters, such as requiring subscribers to demonstrate that they have adequate insurance, pay taxes and so on.

Greater level of guidance at the State level with regard to short-stay accommodation, from a land use perspective, would also assist to provide some continuity across local government areas. The current guidance in place is Planning Bulletin 99 – Holiday Homes – Short Stay Use of Residential Dwellings, which was prepared in 2009 and is in need of review.

Should you require anything further please do not hesitate to contact Kirsten Wood on (08) 9191 3456 or [kirsten.wood@broome.wa.gov.au](mailto:kirsten.wood@broome.wa.gov.au).

Yours faithfully

Sam Mastrolembro  
Chief Executive Officer