

Council Forum

Notes

8 August 2017

Unconfirmed Notes

These notes were approved for distribution on 15 August 2017.



Stan Scott
CHIEF EXECUTIVE OFFICER

When the Chief Executive Officer approves these Notes for distribution they are in essence "informal notes."

At the next Ordinary Meeting of Council the Notes will be received, subject to any amendments made by the Council.

The "Received" Notes are then signed off by the Presiding Person.

Attachments that formed part of the Program, in addition to those tabled at the Council Forum are put together as attachments to these Notes with the exception of Confidential Items.

Confidential Items or attachments that are confidential are compiled as a separate Confidential Noted Program Item.

Received Notes

These notes were received at an Ordinary Meeting of Council held on 22 August 2017.

Signed: 

Note: The Presiding Member at the meeting at which the notes were received is the person who signs above.

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ATTACHMENTS *with separate index follows Item 14.*

Shire of Toodyay

COUNCIL FORUM – 8 AUGUST 2017

NOTES

1. DECLARATION OF OPENING

Cr Dow, Shire President, declared the meeting open at 4.05pm.

The Shire President advised those present that all mobile phones and recording devices be switched off and advised that the recording of any part of the meeting was not allowed.

The Shire President advised those present the location of the exit doors in case of an emergency.

2. RECORDS OF ATTENDANCE/APOLOGIES

Members

Cr D Dow	Shire President
Cr T Chitty	Deputy Shire President
Cr E Twine	
Cr J Dow	
Cr S Craddock	
Cr R Welburn	
Cr P Greenway	
Cr B Rayner	

Staff

Mr S Scott	Chief Executive Officer
Ms A Bell	Manager Community Development
Mrs T Phillips	Manager Corporate Services
Mr G Bissett	Manager Planning & Development
Mr S Patterson	Manager Works and Services
Mrs K Stonham	Environmental Health Officer
Mrs M Rebane	Executive Assistant

Visitors

Nil

2.1 APOLOGIES

Nil

2.2 LEAVE OF ABSENCE

Nil

3. DECLARATIONS OF INTERESTS

The Chairperson advised that no disclosures of interest in the form of a written notice had been received prior to the commencement of the meeting.

4. PRESENTATIONS

Nil

5. PUBLIC QUESTIONS (relating to the contents of the program)

5.1 RESPONSES TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

At the Council Forum held on 11 July 2017 there were no questions taken on notice.

5.2 PUBLIC QUESTION TIME

Nil

6. PUBLIC SUBMISSIONS (relating to the contents of the program)

Nil

7. AGENDA FORUM MATTERS

7.1 Short-term Rental Accommodation & the sharing economy

Discussion Points (Set 1):

- Would you support a review of Planning Bulletin 99, Holiday Homes?
- If so, should any review also seek to elevate the status of the Bulletin?
- Should the Local Planning Scheme Regulations provide a definition of 'short-term rental accommodation' and a definition, or a cross reference to the definition of a 'dwelling' provided in the R-Codes?

Discussion Points (Set 2):

- Would you support the introduction of greater guidance or 'deemed provisions' relating to the control short-term rental accommodation?
- If so what controls would you like to see?
- Should the introduction of short-term rental accommodation controls be 'scale' based? And if so what should the threshold be?
- Should 'home sharing' (the rental of a room(s) within a person's primary residence) be managed differently to the rental of holiday homes (the rental of properties which are not a primary residence)?
- Should online short-term rental accommodation providers specify that all relevant government approvals have been satisfied and that if required, evidence of this is provided?

Discussion Points (Set 3):

- Would you support the introduction of 'party house' laws in WA to tackle problems with individual properties?
- Should the appropriateness of short-term rental accommodation within strata schemes be solely at the discretion of strata companies?

The CEO provided an overview of the guidance required in respect to the set of discussion points provided in the Discussion Paper.

Points raised as follows:

- Kitchens: how they keep premises clean and how they store food and utensils, etc.;
- Air BNB: thirteen premises running in the town, some since 2008. Decide upon controls for such businesses;
- Air BNB: have to meet requirements in respect to planning consent for their business and meet health requirements for the premises;
- How local government can support Air BNB's and regulate how they operate their business;
- The accessibility costs with respect to Air BNB's and rental market in town;
- "Holiday rental" length of stay an important factor in terms of imposing regulations and review of the Planning Bulletin 99, Holiday Homes;
- Content of Planning Bulletin to be elevated so that it is more comprehensive;
- LPS – currently under review;
- Meals on Wheels replaced by a private person doing the same thing – question about compliance. The MPD advised that there would be higher standards than even normal standards because the meals are being supplied to people who are at high risk. The Administration will look into it and although it is unrelated to this issue, the matter will be pursued separately;
- Definition of short-term accommodation – for LPS – is defined by the State and not by local government so we have to be objective as to how we go about applying wording to our LPS or our local planning policies;
- Caravans camping on farming properties for any length of time is governed by the *Caravan Parks and Camping Grounds Act 1995*. Permission of the local government can be sought if the period of stay is to be longer than 28 days. If it is more than one caravan the local government is to be advised;;
- The Administration to see what could be included in the LPS so that it would be covered;
- Business Activity rather than business advertisement is what local government should be interested in with respect to compliance;
- Registration of Air BNB's;
- Administration to check on Air BNB's site to make sure that they comply with the requirements of running such a business and afford them the opportunity of coming on board with the Visitor Centre;
- Controls concerning 4 points in respect to Set 2;
- Deemed provisions;

- Scale based thresholds for short-term rental accommodation not to be applied in terms of public health implications and food health implications;
- Book-easy widget being cancelled;
- More that Admin can be doing in the compliance space;
- Stringent Management Plans;
- Allow businesses to manage their own risks;
- Home sharing to be treated differently from other rental accommodation;
- Landlord and customer relationship not to be interfered with by local government;
- Local government lack of resources and there are limits in respect to enforcement ability in respect to short-term rental accommodation.
- Yes to the accommodation providers specifying they have government approval in some way through social media;
- Party-house definition explained;
- Controls around amplified noise exist in legislation; and
- Strata Schemes – still to be subject to local government approvals and should not be solely at the discretion of the strata companies.

Guidance from Elected Members

That the Administration make a submission to WALGA, that would include the above points raised.

7.2 Implementation of Local CAT Law

Points raised as follows:

- Modified penalty for cat creating a nuisance;
- Appropriate number of cats per local law;
- Remove 2.3 (2) (e) and move the word or up to (c);
- Clause 2.6 (1) (c) the word “if” replace the word “is”;
- How the local government determines if the property is adequately fenced;
- References from page 54 and in the Modified Penalty Schedule Clause 3.6 should be 2.6 and 3.2 should be 4.2 need to be amended pending cross-referencing of the legislation by the Administration;
- Penalty not noted in the Clause 3.1;
- Page 52 typographical error 2.7(1) (b);
- 10% of maximum penalty to be applied with respect to Modified Penalties at the CEO’s discretion;
- Security of Cat Management Facility;
- Page 57 5.2(1) double-up of term “are offences”;
- Inclusion of the local government being able to invoke Fines Enforcement Agency process in respect to the Local Law;
- Wording “subject to planning approval” be included regarding the alignment with setbacks for standard buildings and the CMF;

- (j) on page 59 – clarification with respect to “ordered by an authorised person”;
- Fauna Protection Buffer zones put additional requirements on landowners (Schedule 4);
- The word “buffer” be removed (cross-reference with page 50 and other pages throughout the local law that may have the word “buffer” specified) and Administration to calculate the risk of identifying Fauna Protection Zones in the local law;
- Prohibited areas not currently listed. Up to Council to identify whether reserves controlled by the Shire of Toodyay be identified as such; and
- Administration to populate the Reserve Land on Schedule 3; and Schedule 4 in accordance with the definition of the Clause.

Guidance from Elected Members

That a report be presented for consideration by Council at a forthcoming Council Meeting that would include and provide clarification in relation to the points raised.

The Shire President adjourned the meeting at 6.05pm.

The Shire President resumed the meeting at 6.45pm.

7.3 Proposed Tourism Signage at the Avon Valley National Park Entry

Cr Greenway declared a financial interest in this item pursuant to Section 5.60A of the Local Government Act 1995 as she runs a business that attracts tourists.

The Shire President sought leave of the Elected Members that as no decisions are made at Council Forums, Cr Greenway would be permitted to remain in Council Chambers, and to participate in any discussion/consideration of this item. No objections were raised.

Points raised as follows:

- Conversation with DPAW still yet to be had;
- Signage could be put into the Road Reserve if they do not agree to it being put adjacent to their signage; and
- Visitor Information rather than Toodyay Information.

Guidance from Elected Members

That a report be presented for consideration by Council at a forthcoming Council Meeting that would include and provide clarification in relation to the above.

8. CONCEPT FORUM MATTERS

8.1 Presentation – Document Information Management Process

This matter is minuted separately.

9. CHIEF EXECUTIVE OFFICER'S UPDATE

The CEO provided a verbal update.

10. CONFIDENTIAL MATTERS

The Shire President ruled the meeting go behind closed doors.

The Council Chambers were closed to members of the public at 7.00pm.

10.1 Planning Strategy & Town Planning Scheme No 4. Review

This matter is minuted separately.

The Shire President ruled the meeting come from behind closed doors.

The Council Chambers were re-opened to members of the public at 8.35pm.

11. SHIRE PRESIDENT'S UPDATE

The Shire President provided a verbal overview of public engagements, and meetings attended since the last Council Forum.

12. REPRESENTATIVE UPDATES

Verbal updates were provided by Elected Members in respect to the following:

- Avon Midland Zone;
- Toodyay Community Bus;
- Toodyay Tidy Towns Committee;
- Toodyay Road Liaison Committee & Toodyay Roadwise Committee;
- Avon Tourism Board; and
- Butterly Cottages Association Inc Committee.

13. STATUS REPORTS

13.1 COMMITTEE MEETING STATUS REPORT

The report was reviewed.

14. MEETING CLOSURE

The Shire President declared the meeting closed at 8.55pm.

Attachments to Notes

Council Forum

Tuesday 8 August 2017

Attachments that formed part of the Council Forum Program

Attachments to the August 2017 Council Forum Program

Note: This attachment contains their own numbering



Shire of Toodyay

COUNCIL FORUM PROGRAM 8 AUGUST 2017

1. **DECLARATION OF OPENING**
2. **RECORD OF ATTENDANCE/APOLOGIES**
3. **DECLARATIONS OF INTEREST**
4. **PRESENTATIONS**

There are no presentations to be made in the public forum
5. **PUBLIC QUESTIONS (relating to the contents of the program)**

Questions can be made ad hoc, but it is preferred that notice be given by midday on the day of the Council Forum.
6. **PUBLIC SUBMISSIONS (relating to the contents of the program)**

A submission can be made ad hoc, but it is preferred that notice be given by midday on the day of the Council Forum.
7. **AGENDA FORUM MATTERS**
 - 7.1 **Short-term Rental Accommodation & the sharing economy 1**

Attachment 1: WALGA Discussion Paper; and 6

Attachment 2. WAPC Short Term Accommodation Guidelines 31
 - 7.2 **Proposed Tourism Signage at the Avon Valley National Park Entry 35**

Attachment 1 – Request from Toodyay Caravan Park Operator; 38

Attachment 2 – Site Location (of proposed signage); 39

Attachment 3 – Detailed Site Plan Location; and 40

Attachment 4 – Signage Examples 41
 - 7.3 **Implementation of Local CAT Law 43**

Attachment 1 – Draft Shire of Toodyay CAT Local Law 2017; 47
8. **CONCEPT FORUM MATTERS SCA**

The Items listed below is provided as a separate confidential attachment.

 - 8.1 **Presentation – Document Information Management Process**

PROGRAM FOR COUNCIL FORUM
TO BE HELD IN COUNCIL CHAMBERS ON 8 AUGUST 2017

9. CHIEF EXECUTIVE OFFICER'S UPDATE

The CEO's Update is provided to Council as a separate confidential attachment.

10. CONFIDENTIAL MATTERS

SCA

The Confidential Matter listed below is provided to Council as a separate confidential attachment.

10.1 Planning Strategy & Town Planning Scheme No 4. Review

11. SHIRE PRESIDENTS UPDATE

Note: This is a verbal update provided at the forum.

12. REPRESENTATIVE UPDATES

Note: These are verbal updates provided at the forum.

13. STATUS REPORT

13.1 Committee Meeting Status Report

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14. MEETING CLOSURE

AGENDA FORUM DISCUSSION PAPER

Date of Report:	1 August 2017
Name of Applicant / Proponent/s:	WALGA
File Reference No.:	PLS1/WAL1
Author:	G Bissett – Manager of Planning and Development
Responsible Officer:	G Bissett – Manager of Planning and Development
Previously Before Council:	Nil
Nature of Council's Role in the matter:	Advocacy
Attachments:	1. WALGA Discussion Paper; and 2. WAPC Short-term Accommodation Guidelines.

7.1 SHORT-TERM RENTAL ACCOMMODATION AND THE SHARING ECONOMY DISCUSSION PAPER

PURPOSE OF THE DISCUSSION PAPER

To obtain guidance on how to respond to the WALGA discussion paper titled *Short-Term Rental Accommodation and the Sharing Economy*.

BACKGROUND

WALGA's discussion paper (**Att.1**) introduces the matter for consideration as follows:

"In recent years there has been an emergence and rapid rise in the 'sharing economy' with peer to peer platforms connecting customers and the providers of services such as ride sharing and short-term rental accommodation. In the context of short-term rental accommodation, the key distinction between peer to peer platforms and more traditional forms of tourist accommodation, is that these platforms do not own the properties listed, rather they simply connect customers and providers, facilitating the financial transaction between the two parties. As a result, many of the listings on these platforms have been located in residential buildings and neighbourhoods that have not traditionally contained short-term rental accommodation.

Peer to peer platform's such as Airbnb and Stayz have introduced new forms of short-term rental accommodation with people able to book a spare bed or room within a home as well as an entire home, this is commonly called 'home sharing'. These new rental accommodation types has led to community concerns arising from issues such as noise, car parking issues and other forms of anti-social behaviours.

7.1 Short-term Rental Accommodation and the Sharing Economy - continued

Whilst the appearance and growth in these platforms has been rapid, legislation governing short-term rental accommodation in Western Australia has not been revised since 2009.”

This report focuses on local government responsibilities governing short-term rental accommodation. The discussion paper defines “short-term residential accommodation” considered to be the rental of properties for a period of up to three months consisting of, or similar to:

- Bed and breakfast accommodation;
- Cabins and chalets (and similar units);
- Holiday homes; and
- Serviced Apartments Rental of room within a home.

CONSULTATION IMPLICATIONS

There has recently been informal representations from the operators’ accommodation who are operating within Shire approvals in relation to the issues raised by this paper. These were in the form of concerns that the businesses operating outside the approvals framework have an unfair cost advantage because they are not being made to comply with legislative requirements that they are.

The typical requirements that are claimed to be avoided include:

- The need for a food business license and all that entails;
- Additional approvals for spas/swimming pools;
- The need to provide a tested, safe water supply; and
- The cost of Approvals and Building upgrades

STRATEGIC IMPLICATIONS

Both the Shire’s Community Strategic Plan and Community Business Plan identify and promote the growth of tourism as an important part of the Shire’s future. Ensuring all providers of accommodation operate as fairly as possible will ensure the playing field is as level as possible for all to participate and benefit from the growth projected in this area.

POLICY IMPLICATIONS

There are no adverse policy implications envisaged from this report.

FINANCIAL IMPLICATIONS

There are no adverse financial implications envisaged from this report.

LEGAL AND STATUTORY IMPLICATIONS

Typically the *Planning and Development Act 2005* applies in some circumstances and planning approval under the Shire’s *Local Planning Scheme No. 4 (LPS4)* can be required.

Other relevant legislation includes:

- The Health Act and Regulations;

7.1 Short-term Rental Accommodation and the Sharing Economy - continued

- The Food Act and Codes; and
- The Building Act and Regulations.

RISK IMPLICATIONS

There is some risk in relation to accommodation businesses that operate in the sharing economy but are not meeting legislative requirements which could include:

- The preparation of food that has not been prepared in compliance with legal requirements;
- The use of unregulated pools and spas;
- The use of non-potable water; and
- Non-compliance with planning provisions.

The risk is of course commensurate with the numbers housed and the frequency of use. It could also be argued in some circumstances where risk is considered low the cost and requirement for compliance is not seen as not reasonable.

SOCIAL IMPLICATIONS

Impacts on neighbours from unregulated behaviour in short-term accommodation could be an undesirable social impact.

ENVIRONMENTAL IMPLICATIONS

There are no adverse environmental implications envisaged from this report.

ECONOMIC IMPLICATIONS

Concerns have been raised that there is potential for adverse economic impacts on accommodation providers operating within the local government approval framework. This is alleged because those operating outside the framework are charging less due to having lower overheads from avoiding compliance costs. This is anecdotal and makes a number of assumptions but is certainly possible.

OFFICER COMMENT / DETAILS

The discussion paper raises a number of important points; reviews the legislation in Western Australia, the other states and in one case internationally. Section 5.0 discusses findings and raises three sets of points for further discussion as follows:

Discussion Points (Set 1):

- Would you support a review of Planning Bulletin 99, Holiday Homes?
- If so, should any review also seek to elevate the status of the Bulletin?
- Should the Local Planning Scheme Regulations provide a definition of 'short-term rental accommodation' and a definition, or a cross reference to the definition of a 'dwelling' provided in the R-Codes?

As pointed out in the paper, the bulletin was produced in 2009 and technology has changed. It should therefore be reviewed and changed to reflect this.

7.1 Short-term Rental Accommodation and the Sharing Economy - continued

Additionally its status should be elevated to give it greater weight; and the Local Planning Scheme Regulations should be amended to provide a cross reference to the definition of a “dwelling” as provided in the R-Codes.

Discussion Points (Set 2):

- Would you support the introduction of greater guidance or ‘deemed provisions’ relating to the control short-term rental accommodation?
- If so what controls would you like to see?
- Should the introduction of short-term rental accommodation controls be ‘scale’ based? And if so what should the threshold be?
- Should ‘home sharing’ (the rental of a room(s) within a person’s primary residence) be managed differently to the rental of holiday homes (the rental of properties which are not a primary residence)?
- Should online short-term rental accommodation providers specify that all relevant government approvals have been satisfied and that if required, evidence of this is provided?

The introduction of greater guidance in ‘deemed provisions’ of the Planning Scheme regulations in relation to the control of short-term rental accommodation is supported. This could bring greater clarity and uniformity of the interpretations in relation short-term accommodation and give clearer guidance to operators on what approvals are required.

The introduction of provisions that provide greater clarity on what the types of accommodation should be regulated is seen as essential. This should include the modernisation of terms and definitions to ensure all accommodation that should be captured is. Some form of registration system would also be beneficial.

The introduction of short-term rental accommodation controls should be ‘scale’ based. The scale should be based on potential impact, frequency and risk. Trying to capture all of the sharing economy short-term accommodation through a regulated approach is not seen as practical or possible. Low use and numbers are seen as low risk. More work is needed to determine these levels.

‘Home sharing’ should be managed differently to the rental of holiday homes. This is due to differing potential impacts and risk. There is also different expectations.

Legislating online short-term rental accommodation providers detail all relevant government approvals have been satisfied with evidence appears to be draconian and would be difficult to police. It is suggested an education campaign be undertaken to encourage self-regulation and that customers be encouraged to satisfy themselves that providers are doing the right thing would be a better outcome.

Discussion Points (Set 3):

- Would you support the introduction of ‘party house’ laws in WA to tackle problems with individual properties?

7.1 Short-term Rental Accommodation and the Sharing Economy - continued

- Should the appropriateness of short-term rental accommodation within strata schemes be solely at the discretion of strata companies?

The introduction of 'party house' laws in WA that could be used to tackle problems with individual properties should be supported. Additional legislative tools that could be used in problem situations could be helpful to control them.

Short-term rental accommodation within strata schemes should not be solely at the discretion of strata companies. They should be brought into controls the same as non-strata properties. While this not currently an issue of significance in Toodyay it could be into the future.

This paper raises a number of very good points and suggests a number of reasonable responses. While the issues raised by this paper are important and relevant it should also be noted there are controls within the current system that can be used to bring a number these into the fold once we become aware of them. Modernising the current provisions and fine tuning the definitions will only help with this.

As with any system however, there will always be challenges with resourcing compliance and capturing providers flying under the radar. Despite this it is agreed that this is an area that the administration can seek to develop strategies to monitor this still emerging situation more closely and where needed, take appropriate steps to ensure greater compliance.

Policy measures such as those mentioned in the paper will also be looked at and brought to Council for consideration.

OFFICER'S RECOMMENDATION

That members give guidance on how the administration should respond to the WALGA discussion paper titled *Short-Term Rental Accommodation and the Sharing Economy*.



Short-term Rental Accommodation and the Sharing Economy **Discussion Paper**

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1.0 Introduction

In recent years there has been an emergence and rapid rise in the ‘sharing economy’ with peer to peer platforms connecting customers and the providers of services such as ride sharing and short-term rental accommodation. In the context of short-term rental accommodation, the key distinction between peer to peer platforms and more traditional forms of tourist accommodation, is that these platforms do not own the properties listed, rather they simply connect customers and providers, facilitating the financial transaction between the two parties. As a result, many of the listings on these platforms have been located in residential buildings and neighbourhoods that have not traditionally contained short-term rental accommodation.

Further, peer to peer platform’s such as Airbnb and Stayz have introduced new forms of short-term rental accommodation with people able to book a spare bed or room within a home as well as an entire home, this is commonly called ‘home sharing’. These new rental accommodation types has led to community concerns arising from issues such as noise, car parking issues and other forms of anti-social behaviours, as well as some strata issues like increased building maintenance.

Whilst the appearance and growth in these platforms has been rapid, legislation governing short-term rental accommodation in Western Australia has not been revised since 2009. The absence of any clear guidance from the State Government about how to manage the sharing economy has been challenging for some Local Governments. Therefore the purpose of this discussion paper is to review the effectiveness of current policy responses concerning short-term rental accommodation with a particular focus on the emerging practices and services offered by online organisations and to identify possible improvements for further consideration.

It is important to note that this report focuses on Local Government responsibilities governing short-term rental accommodation. The intention is not to examine issues beyond this. For example, many have questioned the appropriateness of allowing short-term rental accommodation within apartment developments. The purpose of this report is not consider this issue or whether the powers available to Strata companies to manage and respond to adverse impacts of short-term rental accommodation are appropriate or not. Likewise, the report does not examine the appropriateness of renters offering short-term rental accommodation with or without the consent of the landlord. Rather the focus of the report is on Local Government responsibilities concerning the management of short-term rental accommodation.

For the purposes of this paper, short-term residential accommodation is considered to be the rental for a period of up to three months of properties consisting of, or similar to:

- Bed and breakfast accommodation
- Cabins and chalets (and similar units)
- Holiday homes
- Serviced Apartments Rental of room within a home.

2.0 Existing Short-term Rental Accommodation Controls in Western Australia

2.1.1 State Government Land Use Planning Guidance

The land use planning framework operating in Western Australia offers limited and somewhat contradictory guidance concerning the management of short-term rental accommodation. Local planning schemes are governed by the *Planning and Development (Local Planning Schemes) Regulations 2015*, which contain a series of ‘deemed provisions’ that are automatically applied to all local planning schemes. Amongst the deemed provisions is set of defined land use terms, three of which relate to short-term rental accommodation, these are;

Table 1: Planning and Development (Local Planning Schemes) Regulations 2015, Schedule 2 Deemed provisions for local planning schemes.

<p>Land use terms used If this Scheme refers to a category of land use that is listed in this provision, the meaning of that land use is as follows —</p>
<p>bed and breakfast means a dwelling — (a) used by a resident of the dwelling to provide short-term accommodation, including breakfast, on a commercial basis for not more than 4 adult persons or one family; and (b) containing not more than 2 guest bedrooms;</p>
<p>holiday accommodation means 2 or more dwellings on one lot used to provide short-term accommodation for persons other than the owner of the lot;</p>
<p>holiday house means a single dwelling on one lot used to provide short-term accommodation but does not include a bed and breakfast;</p>

Given the land use terms set out by the Regulations and the type of accommodation offered by peer to peer platforms, there has been some confusion about the validity of ‘home sharing’. As the table above highlights, the difference between providing breakfast or not can be significant and adds further uncertainty for all stakeholders involved. For example, within the City of Busselton, ‘bed and breakfast’ uses are permitted in the Tourist Zone whilst holiday homes are listed as a ‘X’ use and therefore not permitted within this Zone by the Scheme. Issues such as these are discussed in more detail in section 2.1.2 Local Government Responses.

It is also important to note that there is no definition of a ‘dwelling’ provided by the Regulations. However ‘dwelling’ is defined in the Residential Design Codes (R-Codes) as;

“A building or portion of a building being used, adapted, or designed or intended to be used for the purpose of human habitation on a permanent basis by a single person, a single family, or no more than six persons who do not comprise a single family.”¹

This definition provides clearer guidance in relation to the ‘permanent’ use of a dwelling. Including such a definition, or a cross reference to the R-Codes definition within the

¹ WA Planning Commission (2015) State Planning Policy 3.1 Residential Design Codes

Regulations could add clarity as to whether or not short-term rental accommodation, particularly where the renting of a part of a dwelling, is valid or not.

As well as definitions, the Regulation's deemed provisions also prescribe a variety of objectives for various land use zones. The Regulations state that the objectives of the residential zone are to "*provide for a range of non-residential uses, which are compatible with and complementary to residential development*". This leaves the question of whether or not, short-term rental accommodation is appropriate in residential areas unresolved.

Beyond the Local Planning Scheme Regulations, there is no State Planning Policy, or Development Control Policy to set out controls or to provide strategic advice concerning the management of short-term rental accommodation. The guidance that is available is provided by [Planning Bulletin 99, Holiday Homes Guidelines](#), however this guidance is limited and having being adopted in 2009, the Guidelines do not respond to the contemporary practices of home sharing organisations. The Guidelines state that "*the policy excludes short-term accommodation where there is an onsite manager or owner such as bed and breakfast accommodation and guesthouses.*"² As such, the Guidelines do offer not advice concerning all products offered by platforms such as Airbnb, for example whereby a room within a house is let for short stay accommodation purposes.

The Planning Bulletin effectively delegates responsibility for managing short-term rental accommodation to Local Governments, referring decision makers to the provisions of local planning schemes, local planning policies, tourism strategies and any relevant standards. The Guidelines do however state that "*ideally holiday homes should be within preferred areas*" which;

*"As a guide, holiday homes are most appropriate in areas of high tourism amenity and close proximity to key tourism attractions such as the beach, town centre or rural areas. Suburban locations may not be appropriate. In general, holiday homes should be residential dwellings on freehold lots and not units or apartments unless the entire complex is established for this purpose."*³

The Bulletin goes on to state that the use of grouped or multiple dwellings is not supported, unless all owners are in agreement.

Despite the general lack of guidance, the Bulletin does state that a holiday home management plan should be submitted as part of a planning application, or may be required as a condition of approval. Such a plan may include details of how nuisances such as noise will be managed, the nomination of a property manager and a fire and emergency response plan.

Nevertheless, it is important to recognise that development does not have to conform to Planning Bulletin 99 as it purely offers guidance and is not a statutory requirement. The

² WA Planning Commission (2009) Planning Bulletin 99, Holiday Homes Guidelines.

³ Ibid

Local Planning Scheme Regulations do not ‘require due regard’ to be given to Planning Bulletins. This status, together with the fact that the Bulletin offers limited guidance, has resulted in Local Governments developing their own individual responses to issues associated with short-term rental accommodation and the sharing economy.

2.1.2 Local Government Responses

Local Governments are, by their nature reflective of their communities aspirations each with their own and often unique development pressures and community expectations. Given these differing pressures and the limited State Government guidance relating to short-term rental accommodation, not all Local Governments have adopted Local Planning Scheme provisions or Local Planning Policies (LPP) concerning short-term rental accommodation. However, in areas where short-term rentals are more prevalent, Local Governments are more likely to have adopted a LPP.

LPPs generally focus upon a specific type of development rather than dealing with the issue of short-term rental accommodation more generally. For the purposes of this study, a sample of LPPs relating to short-term rental accommodation has been examined.

Table 2: Local Planning Policy Responses Regarding Short-term Rental Accommodation

Local Government and Local Planning Policy Title	Augusta-Margaret River: Holiday Houses	Bridgetown-Greenbushes: Holiday Accommodation	Broome: Tourist Accommodation Development in Tourist Zone	Capel: Bed & Breakfast Accommodation	Chapman Valley: Rural Tourism Development	Donnybrook-Balingup: Chalet(s) Development & Bed & Breakfast	Exmouth: Bed & Breakfast Accommodation	Exmouth: Holiday Accommodation	Esperance: Holiday Homes – Development Requirements	Geraldton: Holiday Houses	Joondalup: Short-term Accommodation	Perth: Special Residential (Serviced & Short-term Accommodation)	South Perth: Serviced Apartments
Definitions													
Holiday House (or Home)	Y		Y					Y	Y		Y		
Holiday House (Large)	Y							Y					
Holiday Accommodation		Y		Y	Y		Y	Y			Y		
Bed & Breakfast					Y	Y		Y					
Dwelling / Residential						Y	Y	Y			Y	Y	
Guesthouse			Y	Y	Y								
Serviced Apartments			Y									Y	Y
Short-term Accommodation									Y		Y	Y	Y
Other Definitions			Y	Y	Y	Y		Y	Y			Y	Y
Requirements													
Restricted to Certain Zones	Y			Y				Y		Y			Y*
Minimum Lot Sizes / Density Restrictions	Y	Y	Y										
Maximum Occupancy / No. Rooms	Y			Y		Y		Y		Y			
Management Plan			Y	Y	Y			Y	Y	Y	Y	Y	Y
Emergency Response Plan		Y						Y	Y				Y
Annual Renewal of Approval				Y				Y	Y				
Design Provisions	Y	Y			Y		Y	Y		Y		Y	Y
Car Parking		Y	Y	Y	Y		Y	Y		Y	Y	Y	
Landscaping/Screening		Y	Y										
Concentration of Uses		Y											
Strata Restrictions / Evidence of Strata Approval			Y		Y							Y	Y
Maximum Length of Stay		Y							Y	Y			
On-site manager / Located Close by							Y	Y	Y				

Note: Y* Use restricted to grouped and multiple dwellings

Table 2 shows that there is a range of different LPPs dealing with the management of different forms of short-term rental accommodation. Whilst a variety of descriptions and definitions are used, as you would expect, the definitions used closely align with the specific form of development that the LPP seeks to manage. Where the same term or a similar term is used by different Local Governments, there is often a lot of consistency and commonality in the definition adopted to describe the particular form of development.

In line with the definition provided by the R-Codes, all but one of the 13 LPPs examined consider short-term rental to be a different form of development to a residential land use. Bridgetown-Greenbushes definition of holiday accommodation states that *“the short-term rental of residential dwellings to single parties shall not be classified as Holiday Accommodation. Council considers such a use as merely another form of landlord – tenant rental”*. The policy is aligned to developments of up to five chalets and cabins for short-term use of no more than three months by the same occupier.

Table 2 shows that the most popular forms of controls relate to car parking standards and the requirement for a management plan, with almost two-thirds of the local planning policies examined containing provisions relating to these. Following these controls, over half of the policies examined contain provisions relating to development design. Whilst these are somewhat varied, they generally relate to ensuring that the design of development is such that its use for short-term rental accommodation purposes does not adversely impact upon neighbouring land uses. Other common features include the restriction of development to certain zones or areas and the limitation of the number of occupants to six persons.

Typical examples of these controls are set out in table 3 below, whilst a summary of Local Government, LPP provisions relating to short-term rental accommodation is provided in Appendix A. It should also be noted that other Local Governments, such as the City of Fremantle have developed ‘Local Laws’ in relation to the management of short-term rental accommodation. The City’s Local Law contains similar provisions to those included within sample of LPPs examined, requiring short stay dwellings to be registered, with controls relating to the number of occupants, the provision of car parking and a contactable accommodation manager.

Table 3: Examples of Typical Local Planning Policy Definitions and Requirements

Definitions	
Bed & Breakfast Accommodation	Accommodation provided for hire or reward under the main roof of a dwelling house for not more than four (4) adults or one family in the form of a maximum of two (2) guest bedrooms and one (1) guest bathroom.
Holiday House (or Home)	A single house or grouped dwelling which might also be used from time to time for short stay accommodation for no more than six (6) people but does not include a bed and breakfast. “Holiday House (Large)” means premises conforming to the definition of “Holiday House” with the exception that the premises provide short stay accommodation for more than six (6) people but not more than 12 at any one time.

Serviced Apartment	An apartment which is one of a group of two or more apartments on the same lot, used, furnished and equipped to be used on a temporary basis in a manner similar to a Grouped Dwelling or Multiple Dwelling, for which laundry and cleaning services are provided, with or without other ancillary amenities.
Short-term Accommodation	Temporary accommodation provided either continuously or from time to time with no guest accommodated for periods totalling more than three (3) months in any 12 month period.
Requirements	
Concentration of Uses	<ul style="list-style-type: none"> • More than two Bed and Breakfast Accommodation uses within cul-de-sac or small residential streets may not be supported. • Developments should not contribute to a concentration of similar land use activities that would alter the established character of the surrounding area.
Design Provisions	<ul style="list-style-type: none"> • Decks and balconies are located away from the bedrooms of neighbouring dwellings and, if located close to living and dining areas of neighbouring dwellings, suitable screening is provided. • The minimum distance between the external walls of any building and another on the land shall be 10 metres for the purposes of privacy and amenity. • Developments that adjoin residential zoned land shall be designed so as not to impact negatively on the privacy and amenity of the adjoining residents.
Landscaping / Screening	<ul style="list-style-type: none"> • The site shall contain tree cover adequate to provide visual screening.
Management Plan	<ul style="list-style-type: none"> • The Management Plan is to include; <ul style="list-style-type: none"> ○ a code of conduct detailing the expected behaviour and obligations of guests which is to be displayed in a prominent position within the premises ○ a Complaints Management Procedure ○ details regarding guest check-in and check-out procedures ○ details regarding waste management
On-site Manager / Located Close by	<ul style="list-style-type: none"> • Manager or a contactable employee of the manager that permanently resides no greater than 1 hour's drive from the site. • The host is to permanently reside in the dwelling approved for a 'bed and breakfast' establishment. • All Holiday Accommodation is to be managed by local real estate agents, or have a local caretaker / manager living and readily contactable within 10 minutes of the property
Strata Restrictions / Evidence of Strata Approval	<ul style="list-style-type: none"> • The applicant is to provide evidence that: <ol style="list-style-type: none"> (a) the owners of all dwellings on that site have given written consent for the proposed use of particular dwellings as serviced apartments; (b) by-laws have been adopted by the strata company approving the proposed use and requiring the vendor of any existing dwelling on the site to inform all prospective purchasers of the approved use of particular dwellings as serviced apartments; and (c) the strata company has given consent to the management plan.
Other	<ul style="list-style-type: none"> • Amplified music is only played outside of the Holiday House or Holiday House (Large) between the hours of 10am and 10pm. • Written evidence demonstrating that the operator of the special residential use has valid membership to an appropriate professional board or body, which operates within a code of practice or licensing system • A proportion of the short-term and serviced apartments should be designed to accommodate people with a disability.

2.1.3 Building Act

In addition to land use planning controls, it is useful to note the ‘construction’ standards relating to residential and hotel uses. Under the Building Code of Australia, a residential building is either a Class 1 building, a single dwelling, or a Class 2 building, a multiple dwelling whilst a hotel or motel is a Class 3 building. Class 3 buildings are required to have fire-safety and disability access features not required for either Class 1 or 2 buildings. This distinction has added to the confusion and perhaps some of the inconsistency in how Local Governments treat short-term rental accommodation.

The differing construction requirements has created some resentment amongst traditional short stay accommodation providers such as the hotel industry. Some of these operators have argued that these different requirements adds an additional operating costs to their business that short-term rental accommodation providers in dwellings do not experience. Whilst the focus of this paper is not to examine this issue, it should be noted that the State Governments proposed State Planning Policy concerning Apartment Design includes universal design access requirements, which may remove this difference.

In 2012 the Australian Building Code Board stated that it had undertaken an extensive consultation on the issue of whether Class 2 buildings should exclude short-stay accommodation, however it found that the results of the consultation process provided no clear way forward. It was considered that the issue appeared to be focused on amenity issues and commercial interests. The Board concluded that there was no evidence to justify the application of Class 3 building provisions to apartments without imposing significant costs on the design and construction of all apartments for little or no life-safety gains.⁴

3.0 Controls in Other Australian States and Territories

Across Australia, there is very little consistency with regard to how each State, and Local Governments within each State, regulate short-term rental accommodation. The approaches taken are generally split between either the State Government adopting a clear position on short-term renting, or leaving Local Government to choose themselves how to manage short-term rentals.

Nevertheless, there has been an increasing and wide spread acknowledgement that ‘doing nothing’ has created several issues and inconsistencies in the management of short-term rental accommodation. This, alongside growing community concerns has led to both New South Wales and Victoria holding reviews to examine the adequacy of short-term rental accommodation regulations operating in both States. Likewise, the Tasmanian Government included a review of the adequacy of its short-term rental accommodation controls as part of a wider review of the planning system operating within Tasmania. Although these State Governments have yet to adopt a final policy response, the commonality of the issues experienced mean that lessons can be learnt from the findings of each of these reviews.

⁴ Victorian Government, Independent Panel on Short-Stay Accommodation in CBD Apartment Buildings Final Report

Before examining the various policy responses adopted by the other States, for the purposes of comparison, it is worth highlighting the number impact of short-term rental accommodation across Australia. This is highlighted by Table 4, below which shows that in 2015-16, WA recorded the fourth highest number of Airbnb bookings by State. Using the data, the average length of stay per booking is 4.7 nights and the average number of guests per booking is 2.8 guests.

Table 4: Airbnb bookings, by state or territory, 2015-16

State or Territory	Total bookings	Total guests	Total nights booked
New South Wales	289,600	742,800	1,418,900
Victoria	235,900	651,600	1,134,300
Queensland	133,300	343,800	586,700
Western Australia	62,100	171,500	292,900
Tasmania	46,800	124,500	126,300
South Australia	24,400	64,100	109,000
Australian Capital Territory	9,200	20,000	47,300
Northern Territory	4,200	8,800	18,000
Total	805,500	2,127,100	3,733,300

Source: Airbnb cited in Deloitte Access Economics⁵

3.1.1 New South Wales

In New South Wales, the *Environmental Protection Act 1979* (NSW) (EPA) allows Local Government to require or not require, a development approval to let a property as a holiday home. As a result, there is some inconsistency in the application of controls between individual Local Governments across the State. Perhaps as a result of this inconsistency and also given the prevalence of short-term rental accommodation within New South Wales, in 2015, an inquiry was established to inquire into the adequacy of the regulation of short-term holiday letting in New South Wales. This inquiry made a total of twelve recommendations with those relevant to this report set out in Table 5. Although the NSW Government has yet adopt policies concerning the management of short-term rental accommodation, the Government has announced that it is supportive of the majority of the Inquiry's recommendations.

⁵ Deloitte Access Economics (2017) Economic effects of Airbnb in Australia Airbnb Australia www2.deloitte.com/content/dam/Deloitte/au/Documents/Economics/deloitte-au-economics-effect-airbnb-in-australia-240317.pdf

Table 5 NSW Inquiry into Adequacy of the Regulation of Short-Term Holiday Letting, Relevant Recommendations

New South Wales' Legislative Assembly Committee on Environment and Planning: Inquiry into Adequacy of the regulation of short-term holiday letting in New South Wales		NSW Government Response
Relevant Recommendations:		
1	<p>Amend Planning Laws to Regulate Short-Term Rental Accommodation</p> <p>That the NSW Government amends:</p> <ul style="list-style-type: none"> a) the Standard Instrument - Principal Local Environmental Plan to include a definition of short-term rental accommodation in the category of tourist and visitor accommodation b) the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 to allow short-term rental accommodation. 	<p>Qualified Support</p> <p>Options paper to be developed</p>
2	<p>Allow Home Sharing and Letting a Principal Place of Residence as Exempt Development</p> <p>That short-term letting of rooms in any property where the landlord or host is present be permitted as exempt development.</p>	<p>Qualified Support</p> <p>Options paper to be developed</p>
3	<p>That short-term letting of a principal place of residence be permitted as exempt development.</p>	<p>Qualified Support</p> <p>Options paper to be developed</p>
7	<p>Develop a Compliance System</p> <p>That the NSW Government develops a compliance system for short-term rental accommodation under the Environmental Planning and Assessment Act 1979 which considers:</p> <ul style="list-style-type: none"> a) the use of the investigative powers in Division 1C of the Act b) streamlined development assessment (Complying Development Certificates) c) the Holiday and Short-Term Rental Code of Conduct d) 'party house' provision 	<p>Qualified Support</p> <p>Current legislation considered sufficient however will investigate if further regulation is required.</p>
8	<p>Issue Guidance and Provide Education For Councils and the Community</p> <p>That the NSW Government prepares advice to councils and the community outlining the changes which will apply to short-term rental accommodation, and implements a communication and monitoring program.</p>	<p>Support</p>
9	<p>That local councils be responsible for communicating with all landowners about their rights and obligations.</p>	<p>Support</p>

Source: Parliament of New South Wales

3.1.2 Queensland

In 2014, amendments were made to the Sustainable Planning Act 2009 in order to regulate 'party houses'. The Act defines party houses as *"a dwelling that is used to provide accommodation or facilities for guests if*

- a) *the premises, or any part of the premises, is regularly used by guests for parties, including, for example, bucks nights, hens nights, raves, wedding receptions or similar parties; and*
- b) *the accommodation or facilities are provided for a period of less than 10 days; and*
- c) *the accommodation or facilities are provided for a fee; and*
- d) *the premises is not occupied by the owner of the premises during the period mentioned"*⁶

The Act provides Local Government the power to require development approval for residential properties regularly leased, hired or rented on a short-term basis for housing parties and set a for assessing such development applications. Local Governments may also identify areas within, or all of its areas covered by its planning scheme as a 'party house restriction area'.

In accordance with these provisions, the City of Gold Coast has adopted a local law to control party houses. In summary, the City's local law seeks to *"ensure that excessive noise is not regularly emitted from a residential property which is made available for short-term rental accommodation."*⁷ The City has declared the entire Local Government area a party house restriction area, thereby requiring development consistent for a party house. Under the provisions of the Local Law, owners of short-term rental accommodation commit an offence if excessive noise is regularly emitted, which is defined as more than twice within a twelve month period.

The New South Wales Inquiry noted, whilst these provisions *"distinguish party houses from short-term rental accommodation, the evidence received by the Committee suggests that similar provisions may be usefully applied to short-term rental accommodation properties in which a predominant or recurring use by renters is the type of functions listed in the Queensland legislation"*.⁸

⁶ Government of Queensland (2009) Sustainable Planning Act 2009

⁷ City of Gold Coast (2013) Local Law No. 19 (Control of Party House Noise) 2013
www.goldcoast.qld.gov.au/local-law-no-19-control-of-party-house-noise-2013-14438.html

⁸ Parliament of New South Wales (2016) Adequacy of the regulation of short-term holiday letting in New South Wales (inquiry)

3.1.3 Victoria

Parallel to the New South Wales Inquiry, in 2015, the Victorian Government established an independent panel to examine the adequacy of regulations concerning [short-stay accommodation in CBD apartment buildings](#). In its report, the Panel noted that the Victorian Civil and Administrative Tribunal (VCAT) consider the Victorian Planning Provisions (VPP) to permit short-term rental accommodation in residential buildings providing that the dwelling is located in an area zoned for housing, the accommodation is self-contained and does not contain more than 10 habitable rooms.

The Panels' report presents a total of 13 options for regulatory reform, however it was somewhat unsurprising that the seven members of the Panel (which each represented a different industry groups) could not all agree on the merit of each of the options presented. Nevertheless, in response to the panel's report, in 2016 the Victorian Government announced that it would introduce new laws seeking to curb bad behaviour within short-term rental accommodation. The proposed measures will make apartment owners and their short-stay guests potentially liable for any damage, noise or loss of amenity caused by their guests. The proposal includes providing VCAT with powers to award compensation of up to \$2,000 to neighbours and ban short stay apartments which are repeatedly used for unruly parties. Guest could be fined up to \$1,100 for a range of anti-social behaviors including, creating unreasonable noise, health, safety or security hazards, damaging property.⁹

On a separate issue, it should also be noted that the Victorian Government signed an agreement with Airbnb to provide housing options for displaced community members and emergency workers during emergency events. A similar agreement was activated during the recent wildfires at Fort McMurray in Alberta, Canada when around 90,000 people were displaced. During the event, Airbnb automatically emailed hosts in surrounding areas asking them to consider listing their property for free. The company also waived all service fees for those affected by the fire.

3.1.4 South Australia

In 2016, a Victorian court decision raised questions as to whether home sharing constituted a change of use and therefore required development approval. In response, the South Australian Government issued a statement announcing that that it was supportive of home sharing and offered clarification that the use of a residential property for short-term stays did not constitute a 'change in use' under the Development Act.¹⁰ This statement appears to be founded upon the existing provisions contained within the South Australian statutory planning legislation as there has been no recent policy response to the issue of short-term rental accommodation.

⁹ Victorian Minister for Consumer Affairs, Gaming and Liquor Regulation, Jane Garrett, Media Release May 2016 www.premier.vic.gov.au/new-laws-for-short-stay-apartments/

¹⁰ South Australian Minister for Planning, John Rau 7 June 2016 Media Release www.premier.sa.gov.au/index.php/john-rau-news-releases/664-airbnb-boost-to-sa-tourism (Accessed 8/5/2017)

3.1.5 Tasmania

The Tasmanian Government is currently undertaking a series of planning reforms that will see the adoption of a State wide planning scheme. As part of the reform measures, the Government announced that up to four rooms can be rented in a home with the need for a permit.

The draft State Planning Provisions identify 'Visitor Accommodation in a dwelling (including a secondary residence)' as an exempt use if the following requirements are satisfied:

(a) the dwelling is used by the owner or occupier as their main place of residence, and only let while the owner or occupier is on vacation; or

(b) the dwelling is used by the owner or occupier as their main place of residence, and visitors are accommodated in not more than 4 bedrooms.¹¹

It is notable that a previous iteration of the draft State Planning Provision included an exemption for 'Visitor Accommodation' in a dwelling for 'no more than 42 nights in any calendar year'. This was removed following public consultation with the Tasmanian Planning Commission noting that *"that enforcement of the 42 day threshold set in the exemption would be difficult, if not impossible, particularly as properties may be multi-listed."*¹² This amendment was supported by the Tasmania Local Government Association who considered that the draft provision would have been difficult for Local Government to manage, however the proposed regulations "finds a good balance between the needs of private individuals and business"¹³

Following the Commission's recommended amendments, the Minister has directed the Commission to amend the 'Acceptable Solution' contained within the draft State Planning Provision, to increase the *"gross floor area from 160m² to 300m² for permitted visitor accommodation within an existing building in the relevant residential zone standards, to provide a better reflection of the size of an average 4 bedroom dwelling"*.¹⁴

¹¹ Tasmanian Government (2017) Tasmanian Planning Scheme www.justice.tas.gov.au/_data/assets/pdf_file/0007/370294/State_Planning_Provisions.PDF (Accessed 8/5/2017)

¹² Tasmanian Planning Commission (2016) *Draft State Planning Provisions Report* http://iplan.tas.gov.au/Temp/TrimDownload_906179.PDF (Accessed 8/5/2017)

¹³ ABC News 3 February 2017 *Tasmania eases Airbnb regulations for renting out rooms in sharing economy* www.abc.net.au/news/2017-02-03/tasmanian-government-lifts-red-tape-on-airbnb-rentals/8239486 accessed 10/4/2017

¹⁴ Minister for Planning and Local Government, (2017) Modifications to the Provision of the draft State Planning Provisions. www.justice.tas.gov.au/_data/assets/pdf_file/0008/370295/Ministers_Statement_of_Reasons_for_modifications_to_the_provisions_of_the_draft_State_Planning_Provisions.pdf accessed 22/5/17

4.0 International Experience

Opposition to short-term rental accommodation is not confined to Australia. In North American, Local Government concerns with broadly fall into two categories, the impact of short-term rentals on housing affordability as a result of the loss of housing to tourism uses and also the impact of short-term rentals on neighbouring residential properties. There, as within Australia, different responses have been adopted in different jurisdictions.

However, what is important to note from the North American experience is that the management of issues associated with short-term rental accommodation has led to the development of a software, data and consulting services provider, HostCompliance.com. Services provided by the company include the monthly monitoring of short-term rental listings at Local Government level and address identification. Whilst these services have to date only been provided within the United States of America, as a result of the rapid growth experienced by 'home sharing' providers, it is likely that such services will appear within Australia.

4.1 Operators Practices

The two leading platforms offering short-term rental accommodation in Australia are 'Airbnb' and 'Stayz'. In 2015-16 there were some 62,000 bookings were made via Airbnb in WA and there are currently 3,879 properties listed on Stayz¹⁵ across the State.

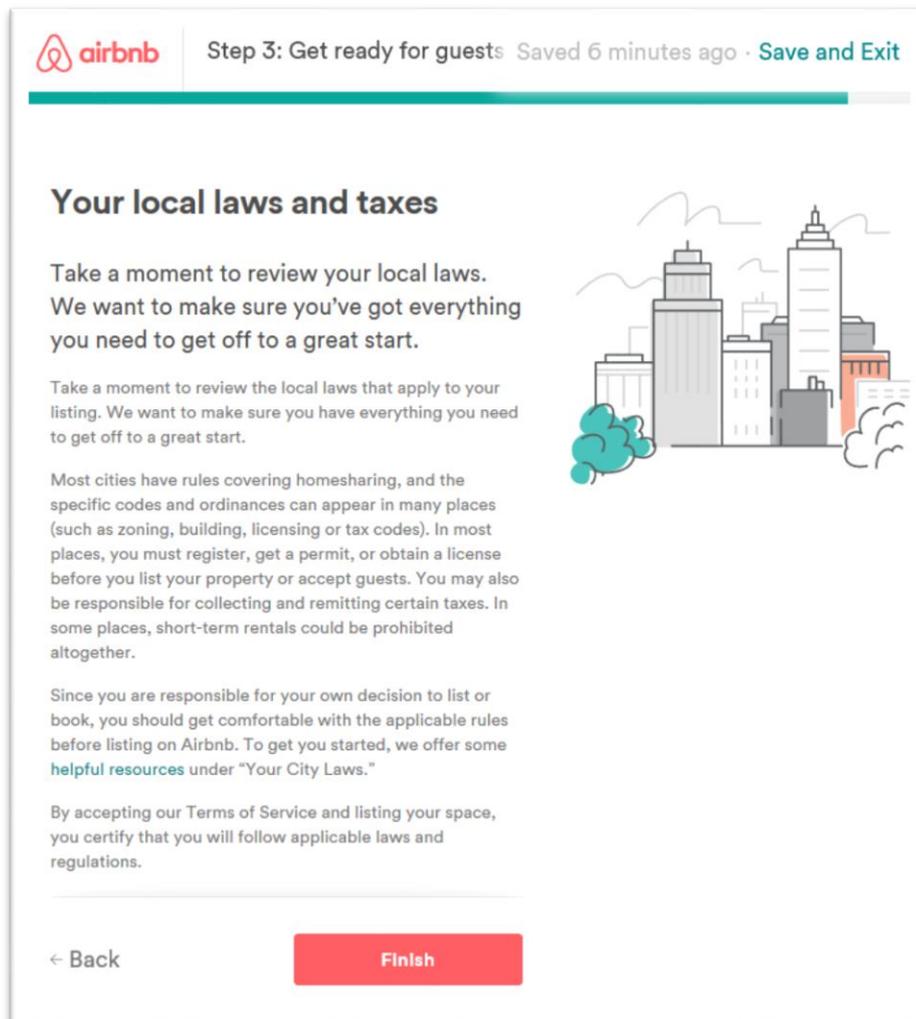
Airbnb invites tourists to 'live like a local' with the theme, "*don't go there. Live there*" running through the company's website and the services that it offers¹⁶. It has been suggested that this notion implies that tourist guests impose no addition burdens on neighbours and communities.¹⁷

In order to make a booking or to list a property on Airbnb, a terms of services agreement 'tick box' requires users to agree to Airbnb's 'Non-discrimination Policy'. This policy relates to non-discrimination by means of ethnicity, religion, sexual orientation, gender or marital status. As part of the home listing process, 'hosts' are not required to demonstrate that they are the property owner, or have their permission or provide evidence that they have any obtained any relevant planning or other necessary approvals. However, Airbnb does ask:

¹⁵ Stayz (2017) www.stayz.com.au/accommodation/wa?page=2 Accessed 31/5/2017

¹⁶ Airbnb (2017) www.airbnb.com.au/livethere 30/5/2017

¹⁷ N Gurran and P Phibbs Journal of the American Planning Association Volume 83, 2017. *When Tourists Move In: How Should Urban Planners Respond to Airbnb?*



Source: Airbnb www.airbnb.com.au/become-a-host/19002297/local-laws

Airbnb's 'helpful resources' link provides users with no further information about any relevant planning and other legislation that they may need to satisfy. Further, it is also important to note that Airbnb's website carries the following disclaimer:

*"Please note that Airbnb has no control over the conduct of Hosts and disclaims all liability. Failure of Hosts to satisfy their responsibilities may result in suspension of activity or removal from the Airbnb website."*¹⁸

As part of the online accommodation booking process, Airbnb guests are required to provide a variety of information including an email, phone number, payment information and confirm how many people are staying together with a check in time. Guest also need to agree to 'house rules', some of which are standard rules selected from a list by a property host whilst

¹⁸ Airbnb (2017) www.airbnb.com.au/help/article/1377/responsible-hosting-in-australia Accessed 31/5/17

bespoke rules can also be added and set by the property host. In addition, Airbnb hosts can also request that guests provide government-issued ID to Airbnb and that they have no negative reviews from other Airbnb hosts. It is not clear if this information would be passed on to any relate authorities should any antisocial behaviour issues arise from the short-term rental of a property.

Similarly ‘Stayz’ also offers limited advice concerning any approvals that may need to satisfied in order list a property for short-term rental accommodation. The company’s website does offer detailed advice concerning the management of a property including how to monitor and record damage to a listed property. With regards to land use planning requirements the website states that *“some councils may require you to seek approval for short-term leasing (i.e. less than 3 months) of your property. Contact your local council for guidelines and further information on approving your holiday rental”*.¹⁹

Nevertheless, as part of the property listing process, Stayz users are required to agree to the the [‘Owner Terms and Conditions’](#), the [Privacy Policy](#) and the [Holiday Rental Code of Conduct](#). Section 2.2.3 of the Holiday Rental Code of Conduct includes the requirement that *“The Property offered must: a) Be offered in a clean, safe and habitable state of repair; and b) Comply with relevant planning, building and fire safety and health regulations.”*²⁰ Whilst users agree to this requirement, they are not required to provide any such evidence in order to list a property.

5.0 Findings and Points for Further Discussion

Managing short-term rental accommodation is challenging for all tiers of Government however given the compliance responsibilities, it is particularly challenging for Local Government to manage. The challenges faced by Local Government are compounded by a lack of guidance from the State Government on the issue. The Local Planning Scheme Regulations fail to clearly define all types of short-term rental accommodation. Further, even though the statutory status of *Planning Bulletin 99, Holiday Homes Guidelines* means that it is somewhat toothless, in any case, it does not respond to the contemporary practices of the ‘home sharing’ industry and therefore fails to offer any meaningful guidance for decision makers. For these reasons it is evident that the current regulatory framework governing the management of short-term rental accommodation in WA should be improved.

Whilst amendments to the current arrangements may be required, it is important that the introduction of any controls governing short-term rental accommodation, either by the State or Local Government, are carefully considered to ensure that requirements are enforceable as well as reasonable. To assist this, another important trait of any legislation is that it should be simple for both the community and providers of short-term rental accommodation to

¹⁹ Stayz (2017) http://support.stayz.com.au/articles/en_AU/Article/How-do-I-list-my-property-on-Stayz-Your-guide-to-holiday-rentals?category=Advertise_a_Property Accessed 31/5/17

²⁰ Holiday Rental Industry Association (2015) *Holiday Rental Code of Conduct*

understand. If requirements are overly complicated and difficult to understand, they are unlikely to achieve appropriate levels of compliance.

Discussion Points:

- Would you support a review of *Planning Bulletin 99, Holiday Homes*?
- If so, should any review also seek to elevate the status of the Bulletin?
- Should the Local Planning Scheme Regulations provide a definition of 'short-term rental accommodation' and a definition, or a cross reference to the definition of a 'dwelling' provided in the R-Codes?

In summary, this study has found that LPP controls relating to short-term rental accommodation generally seek to ensure that development does not adversely impact upon surrounding uses. LPP provisions typically seek to control issues such as car parking and other features relating to design. It is also telling that a number of WA Local Governments differentiate between 'holiday homes' and 'large holiday homes'. The Tasmanian Government, whose policy controls governing short-term rental accommodation are the most progressed, also has a similar scale threshold. Tasmania's 'home sharing' threshold, a maximum of 4 bedrooms or 300m², is generally consistent with that of WA Local Governments who typically permit short stay accommodation for no more than six people.

Another common feature of Local Government controls is the requirement for a management plan. Similarly the Tasmanian requirements are also based on the premise that "*the dwelling is used by the owner or occupier as their main place of residence*". On this basis it is considered that the current controls set out by the R-codes may provide appropriate design controls for home sharing in smaller dwellings where the dwelling is used as main place of residence. Where a property is not a main place of residence or where a property exceeds a scale threshold, operations may be considered to be more commercial in nature and thereby constitute development which requires a development application.

It is also notable that some online short-term rental accommodation listing companies require users listing a property to agree to certain codes of conduct whilst other companies do not have the same requirements. Further these online platforms do not generally require users to provide any evidence that they obtained any necessary approvals to list a property for short-term accommodation purposes.

Discussion Points:

- Would you support the introduction of greater guidance or ‘deemed provisions’ relating to the control short-term rental accommodation?
- If so what controls would you like to see?
- Should the introduction of short-term rental accommodation controls be ‘scale’ based? And if so what should the threshold be?
- Should ‘home sharing’ (the rental of a room(s) within a person’s primary residence) be managed differently to the rental of holiday homes (the rental of properties which are not a primary residence)?
- Should online short-term rental accommodation providers specify that all relevant government approvals have been satisfied and that if required, evidence of this is provided?

Understandably, land use planning controls will not be able to totally resolve the anti-social behaviour issues that have sometimes become associated with short-term rental accommodation. To help overcome the community concerns relating to noise, property damage and other anti-social behaviours Queensland have adopted ‘party house’ laws, whilst the Victorian Government have similarly announced their intention to adopt laws to curb anti-social behaviour within short-term rental accommodation.

The Victorian Government’s Independent Panel investigation into short-term rental accommodation matters was primarily focused on issues within apartment buildings in Melbourne. Although the purpose of this study was to examine wider concerns rather the narrow issue of the appropriacy of short-term rental accommodation within apartment buildings, or strata schemes, it is evident that problems do exist within these forms of development. Accordingly, the Association queries whether the adoption of ‘party house’ laws alongside clearer parameters about what constitutes development would be an appropriate response to the issue. Likewise, it is queried whether it should be at the discretion of individual strata schemes to determine whether or not short-term residential is permitted within a strata scheme, or whether such discretion add further confusion about the validity of home sharing.

Discussion Points:

- Would you support the introduction of ‘party house’ laws in WA to tackle problems with individual properties?
- Should the appropriacy of short-term rental accommodation within strata schemes be solely at the discretion of strata companies?

Feedback in relation to these discussion points or this discussion paper more generally should be provided to Association by **31 July** to planning@walga.asn.au, or to discuss please call 9213 2000.

Appendix 1: Summary of a Selection Local Planning Policy Provisions

Summary of Local Government, Local Planning Policy Provisions

Shire of Augusta-Margaret River

Local Planning Policy: Holiday Houses

“Holiday House” means a single house or grouped dwelling which might also be used from time to time for short stay accommodation for no more than six (6) people but does not include a bed and breakfast.

“Holiday House (Large)” means premises conforming to the definition of “Holiday House” with the exception that the premises provide short stay accommodation for more than six (6) people but not more than 12 at any one time.

Objective: Holiday Houses are located in areas of high tourist amenity and attraction and in proximity to relevant services.

Summary of Requirements

- Located in coastal settlements or low density residential and rural lands.
- Holiday Houses and Holiday Houses Large (limited to 8 persons only) located in urban areas where the property either adjoins, fronts or is within an ‘area of significant tourist attraction’; or comprises an area of not less than 1000m².
- Grouped dwellings are limited to a maximum of 6 occupants (Holiday House).
- Decks and balconies are located away from the bedrooms of neighbouring dwellings and, if located close to living and dining areas of neighbouring dwellings, suitable screening is provided.
- Proposals require an Emergency Response Plan and Fire Management Plan, Management Plan with a manager or a contactable employee of the manager that permanently resides no greater than 1 hour’s drive from the site.
- Amplified music is only played outside of the Holiday House or Holiday House (Large) between the hours of 10am and 10pm.
- Renewals of approvals granted under previous Schemes shall be granted for a one year period unless the Local Government determines otherwise.

Bridgetown-Greenbushes

Local Planning Policy: Holiday Accommodation

“Holiday Accommodation” means accommodation which, by way of trade of business or for the purposes of any trade or business, is held out as being available or is made available for holiday purposes for occupation by persons other than the proprietor.

Holiday Accommodation should conform to either;

- A cabin unit constructed with cooking, toilet, ablution or laundry facilities provided as a communal facility and having a minimum floor area of 9.2m² and a maximum of 40m².
- A chalet – a detached self-contained unit including cooking, toilet and ablution facilities, with optional self-contained laundry facilities, and having a minimum floor area of 40m² and a maximum of 120m²

The short-term rental of residential dwellings to single parties shall not be classified as Holiday Accommodation. Council considers such a use as merely another form of landlord – tenant rental.

Summary of Requirements for Holiday Accommodation

- A site area of not less than 2 hectares.
- The site shall contain tree cover adequate to provide visual screening.
- Developments should not contribute to a concentration of similar land use activities that would alter the established character of the surrounding area.
- The minimum distance between the external walls of any building and another on the land shall be 10 metres for the purposes of privacy and amenity.
- Suitable car parking facilities (minimum 2 bays per unit) shall be provided.
- The same person is limited to stays of no more than three months in any consecutive twelve months

Shire of Broome

Local Planning Policy: Tourist Accommodation Developments (Excluding Caravan Parks) within the Tourist Zone

All accommodation development within a Tourist Zone shall comply with the objectives and guidelines of this policy.

Summary of Requirements

Development principles - Accommodation shall occur in a holiday atmosphere, and will also provide for permanent residents who prefer a more diverse and vibrant environment.

- Long Stay and Permanent Residential development shall be separated from short stay accommodation, so not to impact negatively on short stay holidaymakers.
- Developments that adjoining residential zoned land shall be designed so as not to impact negatively on the privacy and amenity of the adjoining residents.

Shire of Capel

Local Planning Policy: Bed and Breakfast Accommodation

Scheme defines 'Bed & Breakfast Accommodation' as "...accommodation provided for hire or reward under the main roof of a dwelling house for not more than four (4) adults or one family in the form of a maximum of two (2) guest bedrooms and one (1) guest bathroom".

Policy adds 'Bed and breakfast accommodation' means a detached single dwelling, used by a resident of the dwelling to provide short-term accommodation, and which may include the provision of breakfast.

Summary of Requirements

- Annual renewal of planning approval.
- Maximum number of three guest rooms.
- Requirement for on-site management of the establishment is implicit in any approval.
- Single dwellings only – grouped (or strata-subdivided) dwellings is not appropriate. Two (2) spaces for the dwelling and one (1) additional space per guest bedroom
- More than two Bed and Breakfast Accommodation uses within cul-de-sac or small residential streets may not be supported.
-

Shire of Donnybrook-Balingup

Local Planning Policy: Chalet(s)/Chalet Development & Bed and Breakfast Policy

Bed and Breakfast means a dwelling, used by a resident of a dwelling to provide accommodation for persons away from their normal place of residence on a short-term commercial basis and includes the provision of breakfast.

Summary of Requirements

- Bed and breakfast establishment providing accommodation for a maximum of six persons. (Beyond six persons establishments are considered to be lodging houses)
- Planning consent is required for a bed and breakfast establishment.

Shire of Exmouth

Local Planning Policy: Bed & Breakfast Accommodation

Dwelling' means (as per the Residential Design Codes) a building or portion of a building being used or intended, adapted or designed to be used for the purpose of human habitation on a permanent basis by:

- a single person
- a single family
- no more than six (6) persons who do not comprise a single family

Summary of Requirements

- Guest access to a kitchen for preparation of meals is not permitted;
- The host is to permanently reside in the dwelling approved for a 'bed and breakfast' establishment;
- 'Bed & Breakfast' accommodation must be for short-term guests only and not considered as long term permanent accommodation;
- On-site car parking is to be provided at a ratio of one (1) car bay per guest bedroom
- In the case of an existing dwelling (ie, Class 1a building) being granted planning approval for use as a bed and breakfast, the proponent shall make a separate application to the Shire for a 'change of use' to a Class 1b subject to Regulation 22 of the Building Regulations 2012. All works required to satisfy compliance with the Building Code of Australia Volume 2 – Part 3.7.2 Smoke Alarms relating to a Class 1b building shall be completed prior to the 'Bed and Breakfast' use commencing;

Local Planning Policy: Holiday Accommodation

'Holiday Home (standard)' means a single house, which may also be used for short stay accommodation for no more than six people (but does not include a bed and breakfast, guesthouse, chalet and short stay accommodation unit).

'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.

Summary of Requirements

- All Holiday Accommodation is to be managed by local real estate agents, or have a local caretaker / manager living and readily contactable within 10 minutes of the property.
- All planning applications for holiday accommodation shall include a Management Statement that includes a Code of Conduct that outlines occupant rules.
- An emergency response plan is also required.
- Annual permit required.

Shire of Gnowangerup

Local Planning Policy: Tourism Based Land Use Requirements

Bed and Breakfast - 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 includes provision of breakfast.

Summary of Requirements

- Permitted within the Town Centre zone.
- May be considered by Council in the Residential, General Agriculture or Rural Residential Zones.
- Maximum of three bedrooms being used for accommodation purposes and a total number of guests shall not exceed six.
- Off street car parking to be provided at the ratio of one bay for each guestroom.
- A separate toilet, shower or bath and hand basin is to be supplied for guests.

Permit is valid for twelve months and renewable annually by the Shire subject to no complaints being received by the Shire

City of Joondalup

Local Planning Policy: Short-term Accommodation

"Bed & Breakfast" is a dwelling used by a resident of the dwelling to provide short-term accommodation, including breakfast, on a commercial basis for not more than four (4) adult persons or one family; and containing not more than two (2) guest bedrooms.

"Dwelling" as defined by the Residential Design Codes of Western Australia means a building or portion of a building being used, adapted, or designed or intended to be used for the purpose of human habitation on a permanent basis by a single person, a single family, or no more than six persons who do not comprise a single family.

"Holiday house" means a single dwelling on one lot used to provide short-term accommodation but does not include a bed and breakfast.

“Holiday accommodation” as defined by Local Planning Scheme No. 3 means two (2) or more dwellings on one lot used to provide short-term accommodation for persons other than the owner of the lot.

“Short-term accommodation” as defined by Local Planning Scheme No. 3 means temporary accommodation provided either continuously or from time to time with no guest accommodated for periods totalling more than three (3) months in any 12 month period.

Summary of Requirements

- All parking is to be provided on-site
- Management Plan to be provided and will be included as a condition of any development approval issued. The Management Plan is to include;
 - a code of conduct detailing the expected behaviour and obligations of guests which is to be displayed in a prominent position within the premises
 - a Complaints Management Procedure
 - details regarding guest check-in and check-out procedures
 - details regarding waste management
 - compliance with Strata By-Laws (if applicable)
- Guest register, detailing names, addresses and period of stay to be maintained and available for inspection by the City.
- Proposals within residential zones require public consultation and if within a Strata title scheme, the strata body will be consulted. Applicants are encouraged to seek clarification as to whether or not the operation of short-term accommodation is compliant with any by-laws.
- Development applications for a holiday house within an existing dwelling will be processed as a change of use. Development applications for a purpose built holiday house are required to meet the relevant single house requirements.

City of Perth

Local Planning Policy: Special Residential (Serviced and Short-term Accommodation) Policy

Residential Use: means premises providing for long term or permanent residential accommodation including: aged persons dwelling, caretaker’s dwelling, grouped dwelling, single house, multiple dwelling.

Special Residential Use: means premises providing short-term, temporary or specialised residential accommodation including a lodging house, hotel and serviced apartment.

Requirements

- Written evidence demonstrating that the operator of the special residential use has valid membership to an appropriate professional board or body, which operates within a code of practice or licensing system.
- A management plan.
- Applications will need to demonstrate how the amenity and security of all occupants will be protected through the design and management of the development.
- A proportion of the short-term and serviced apartments should be designed to accommodate people with a disability.

City of South Perth

Local Planning Policy: Serviced Apartments

A serviced apartment is an apartment which is one of a group of two or more apartments on the same lot, used, furnished and equipped to be used on a temporary basis in a manner similar to a Grouped Dwelling or Multiple Dwelling, for which laundry and cleaning services are provided, with or without other ancillary amenities.

Summary of Requirements

- Cul-de-sac streets are generally not favoured for serviced apartments.
- A serviced apartment is not permitted to be occupied by the same temporary tenant for more than 6 months within any 12 month period with notice placed on title to inform prospective purchasers of this requirement.

- When the owner of a serviced apartment no longer intends to provide any laundry or cleaning services for temporary tenants; and wishes to extend the period of occupancy beyond the limit referred to in paragraph a planning approval for a change of use of the premises is required.
- Management Plan required.
- Where an application for planning approval is lodged for proposed serviced apartments on a site containing dwellings for long-term occupancy held on strata titles, the applicant is to provide evidence that:
 - (a) the owners of all dwellings on that site have given written consent for the proposed use of particular dwellings as serviced apartments;
 - (b) by-laws have been adopted by the strata company approving the proposed use and requiring the vendor of any existing dwelling on the site to inform all prospective purchasers of the approved use of particular dwellings as serviced apartments; and
 - (c) the strata company has given consent to the management plan.

Guidelines

Holiday Homes - short stay use of residential dwellings

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September 2009

1 Objectives and definitions

1.1 Objectives

The objectives of this policy are:

- 1.1.1 To establish clear guidelines for the short stay use of holiday homes for tourism accommodation. The policy excludes short term accommodation where there is an onsite manager or owner such as bed and breakfast accommodation and guesthouses.
- 1.1.2 To ensure that short stay use of residential homes occurs within appropriate locations to enhance the tourism experience and reduce existing or future land use conflicts such as impacts on residential amenity.
- 1.1.3 To ensure that all new holiday home rental accommodation is in accordance with relevant legislation, local planning schemes and policies, and management plans.

1.2 Definitions

For the purpose of this policy the following definitions apply:

Holiday home (standard) means a single house (excluding ancillary accommodation), which might also be used for short stay accommodation for no more than six people (but does not include a bed and breakfast, guesthouse, chalet and short stay accommodation unit).

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.

Short stay means that no person is to stay for more than three months in any 12 month period.

Landowner/manager means the owner of the premises for short stay purposes.

Grouped dwelling means a dwelling that is one of a group of two or more dwellings on the same lot such that no dwelling is placed wholly or partially vertically above another, except where special conditions of landscape or topography dictate

otherwise, and includes a dwelling on a survey strata with common property.

Multiple dwelling means a dwelling in a group of more than one dwellings on a lot where any part of a dwelling is vertically above part of any other but does not include a group dwelling.

2 Planning application and approval considerations

2.1 Application

An application for planning approval should be lodged with local government where holiday homes are a D or SA use in the zoning table of a local planning scheme.

In assessing applications, the local government shall have due regard to its local planning scheme, policies, tourism strategy and relevant standards such as the Building Code of Australia.

2.2 Advertising

If holiday homes are a SA use in a local planning scheme, the local government will advertise the proposal for public comment.

During the advertising period, the local government will notify, in writing, the owners and occupiers of adjoining and nearby properties likely to be impacted by the proposal. Comments received during any consultation process will be considered in the assessment of the application.

2.3 Location

It is recognised that, in certain locations, the renting of residential premises for short stay holiday accommodation is a legitimate way in which alternative, short stay tourism accommodation can be provided.

To reduce conflict between holiday homes and ordinary dwellings, particularly in the residential zone, ideally holiday homes should be within preferred areas identified either through the tourism component of the relevant local planning strategy, or in a local planning policy. As a guide, holiday homes are most appropriate in areas of high tourism amenity and close proximity to key tourism attractions such as the beach, town centre or rural areas. Suburban

locations may not be appropriate. In general, holiday homes should be residential dwellings on freehold lots and not units or apartments unless the entire complex is established for this purpose.

For those already operating in an area that was previously approved for holiday home letting, and where new approvals will no longer be granted, the holiday home use can continue as a non conforming use.

2.4 Amenity

A key concern with respect to the occupation of dwellings as holiday homes is to ensure that any such uses will not adversely impact on residential amenity currently enjoyed by residents in surrounding properties.

Any activities that result in a loss of enjoyment by neighbouring properties, for instance, unacceptable levels of noise, will be considered a breach of this approval.

2.5 Building standard

Dwellings should comply with the Building Code of Australia and local government policies and standards. Where the existing standard of a dwelling is considered to be inappropriate, consent to the use of the facility as a holiday home may not be granted until the dwelling is upgraded to a satisfactory standard. If, after inspection, the dwelling is considered to be unsafe or inadequate for holiday house use, the application will be refused.

2.6 Approval

Approval may be granted for either a holiday home (standard) or a holiday home (large) subject to compliance with relevant legislation, local planning schemes and policies.

Local government should be notified of any changes to a holiday home that may be deemed to affect the approval of the dwelling for such a purpose.

2.7 Grouped or multiple dwellings

The use of grouped or multiple dwellings will generally not be supported for holiday home accommodation given the potential impacts on adjoining residents, unless all owner are in agreement.

3 Approval conditions

Conditions in relation to the approval of applications for holiday homes may include the following.

3.1 Management

A holiday home management plan should be submitted as part of the planning application and prior to the commencement of business. In the case of an established business, the management plan should be submitted to local government within 12 months from the adoption of the local planning policy.

The management plan may include:

- Nomination of a local manager/ caretaker within the vicinity of the property. Where properties are remote from a town site or CBD, alternative arrangements for a manager/caretaker may be considered.
- Details of how nuisance issues such as noise will be addressed by the manager.
- A fire and emergency response plan

Other matters such as car parking provision, signage, the number of people occupying the premises, maximum period of stay can be imposed as part of the planning approval and subsequently enforced as pursuant to the *Planning and Development Act 2005*.

3.2 Fire and emergency response plans

In all cases, an emergency response plan (ie fire escape route maps) is required to be clearly displayed in a conspicuous location within the dwelling, plus:

- each bedroom is to be fitted with a hard wired smoke detector;
- a fire extinguisher, in a clearly visible location, is to be maintained in proper working order;
- outside barbeques are to be gas or electric.

3.3 Approval period

Initial approval should be granted for a limited period of one year, and renewed on a three year to five year period subject to compliance as determined by the local government to ensure that there is minimal impact on the amenity of neighbouring properties. This is designed to provide a degree of certainty to operators, while providing a degree of control to the local government. Existing holiday homes where it can be demonstrated that there is a history of minimal or no conflicts should be considered for the identified longer approvals subject to the requirements of the relevant local government.

4 Holiday homes register, non compliance and voluntary accreditation

4.1 Holiday homes register

A register of approved holiday homes should be established and maintained by the local government. The register should record basic details of the property including the contact details of the owner and/or manager; property address; and configuration (number of bedrooms, number of beds, bathrooms, car parking spaces etc). These matters should be considered for inclusion in the approved management plans for the operation of the holiday home.

4.2 Non compliance and cancellation

Any breach of approval conditions or the management plan can be dealt with in accordance with the enforcement provisions of local planning schemes and/or cancellation of a registration. A new application may be considered after a 12 month period.

A breach of a planning approval may be brought to the attention of local government as a result of an inspection or report by local government staff, a police report or by a member of the public.

4.3 Voluntary accreditation

Holiday home owners/managers are encouraged to attain accreditation from the Tourism Council of Western Australia.

Accreditation is a non regulatory, voluntary means of addressing the identified customer service and consumer protection issues. The benefits of accreditation include improvements in the quality of accommodation product through the application of standards, capture of accommodation provider details.

5 Other matters

It is recommended that landowners/managers seek independent legal advice on legislative requirements regarding the use and management of holiday homes. This would include, but is not limited to, checking the requirements of the *Equal Opportunity Act 1984* and the *Fair Trading Act 1987*.

As many residential public liability insurance policies exclude the use of premises for short term rentals, it is recommended that landowners/managers check this matter with their insurance providers.

6 Contact details

For more information contact:

Your local government

Western Australian Planning Commission
Phone: 9264 7777
www.planning.wa.gov.au

Tourism Western Australia
Planning section
Phone: 9262 1700
www.tourism.wa.gov.au

Tourism Council WA
Phone: 9416 0700
www.tourismcouncilwa.com.au

Australian Tourism Accreditation Program
www.atap.net.au

AGENDA FORUM DISCUSSION PAPER

Date of Report:	1 August 2017
Name of Applicant / Proponent/s:	Shire of Toodyay
File Reference No.:	TOU7
Author:	G Bissett – Manager of Planning and Development
Responsible Officer:	G Bissett – Manager of Planning and Development
Previously Before Council:	Nil
Nature of Council's Role in the matter:	Executive
Attachments:	<ol style="list-style-type: none">1. Request from Toodyay Caravan Park Operator;2. Site location;3. Detailed site location; and4. Signage Examples.

7.2 PROPOSED TOURISM SIGNAGE AT THE AVON VALLEY NATIONAL PARK ENTRY

PURPOSE OF THE DISCUSSION PAPER

To gauge Council's support for tourism signage at the entry to the Avon Valley National Park (AVNP).

BACKGROUND

A request for directional signage received from the owner of the two caravan parks in Toodyay (**Att.1**) which could not be considered because it did not comply with Council's Policy on directional signage has led to this report. The proposed signage policy variation was not supported because of the precedent it would have caused. It is acknowledged however, that there is a need for some form of signage in this location to direct visitors to the AVNP towards Toodyay accommodation and tourism opportunities.

CONSULTATION IMPLICATIONS

Discussions have been held with the operator of the two main caravan parks in Toodyay, the CEO and the Manager of Works and Services and the Manager of Community Development in relation to this matter.

If members indicate support in principle for this project the Parks and Wildlife Service which is part of the new Department of Biodiversity, Conservation and Attractions section of the State government will be contacted for their support to site a new sign just inside the park entry off Morangup Road (refer to **Att.2 and Att.3**).

*7.2 Proposed Tourism Signage at the Avon Valley National
Park Entry - continued*

STRATEGIC IMPLICATIONS

The Shire's Community Strategic Plan and Community Business Plan identifies the promotion and growth of tourism as an important part of the Shire's future.

POLICY IMPLICATIONS

There are no adverse policy implications envisaged from this report.

FINANCIAL IMPLICATIONS

Should Council support this proposal there will be some cost involved in the provision and erection of this sign. It is envisaged this would be less than \$1,000.

LEGAL AND STATUTORY IMPLICATIONS

There are no adverse legal nor statutory implications envisaged from this report.

RISK IMPLICATIONS

There are no adverse risk implications envisaged from this report.

SOCIAL IMPLICATIONS

There are no adverse social implications envisaged from this report.

ENVIRONMENTAL IMPLICATIONS

There are no adverse environmental implications envisaged from this report.

ECONOMIC IMPLICATIONS

There are no adverse economic implications envisaged from this report.

OFFICER COMMENT / DETAILS

The investigations carried out as part of the research into this matter highlighted there is a gap in the Shire's current tourism promotion in relation to visitors to the AVNP. While the AVNP has a map of the area which shows directions towards Toodyay (see **Att.4**) there is little detail about Toodyay and certainly no tourism or accommodation information for Toodyay indicated.

Erecting signs in the locations proposed (on **Att.3**) would address this.

Firstly a small finger sign could be placed under the main park entry sign with the words "Toodyay Information". This would point towards a second larger sign with the detailed information for situations where the AVNP was closed to highlight its availability. The second sign would be of dimensions of around 1.8m wide and 1.2m similar to that of the nearby park sign (see **Att.3 & Att.4**).

It would be a smaller, simpler version of the sign currently at the Northam/Toodyay Road intersection (see **Att.4**). It would contain only a Shire map showing key points, the Visitors Centre and main Tourist Information Bay and some simple wording about Toodyay and its benefits. It

*7.2 Proposed Tourism Signage at the Avon Valley National
Park Entry - continued*

could also generically highlight the location of the caravan parks to address the submission from the parks operator and complement the statement on the park sign discouraging caravans from using the park as a base by providing alternatives. The sign wording could also generically point visitors to the Tourist information in Toodyay for other accommodation options.

Approval for the proposed sign will need to be sought from the new Parks and Wildlife Service due to its location just within the National Park. After consultation with the Manager of Community Services on space availability, it is confirmed the Shire is in a position to offer an advertising panel at the new tourist information bay to this government department. This would both be a complementary promotion for the park and provide encouragement for their support for this sign.

OFFICER'S RECOMMENDATION

That Council give guidance on their support for new tourism signage to be located at the entry of the Avon Valley National Park on the following basis:

1. That a finger sign with the wording "Toodyay Information" to be attached under the main park entry sign on Morangup Road;
2. A sign to be positioned within the park entry in the location indicated by attachment 3 of similar size and construction to the nearby park information sign displaying information about Toodyay accommodation and attractions with a Shire map;
3. Approval for the siting of the larger sign be sought from the State Parks and Wildlife Service with the offer of a complimentary advertising panel on the Shires Information Bay on Stirling Terrace, Toodyay in return; and
4. An additional allocation of \$1,000 be included in the Tourism budget to fund the signage



Toodyay HOLIDAY PARK & CHALETS

Your bush escape

SHIRE OF TOODYAY		
Record Number: <i>ICR45517</i>		
19 JUN 2017		
Officer / Dept:	<i>EVENTS / EXECSEC</i>	<i>MPD</i>
File Number:	<i>A922 / 18RAC</i>	

Phone/Fax: (08) 9574 2534
 Email: info@toodyayholidaypark.com.au
 Web: www.toodyayholidaypark.com.au
 ABN: 22 147 444 175

Mr Stan Scott
 Chief Executive Officer
 Shire of Toodyay
 PO Box 96
 TOODYAY WA 6566

Dear Stan

In reply to your letter of refusal 11/5/17 for a direction sign to the Toodyay Holiday Park.

I would like to better explain the reason for the signage application in this location.

Over the 20 years of listening to people who visit the caravan parks in summer [to which there is not a lot, we have heard that a lot of them were intending to visit the Avon Valley National Park and were unable to do so due to it being closed for fire restrictions, vermin control etc. Thus, some people have ventured up to Toodyay, but I have always wondered how many did not, simply because there was no signage promoting them toward Toodyay.

Therefore as a small business we are always trying to find more customers for our business and the town, we were hoping to erect a sign to catch the eyes of people leaving the national park and direct them to Toodyay. Many people forget that we have a National Park in our Shire and that DEPAW spend a lot of money promoting their national parks and encouraging people to visit them. DPAW Mundaring office has told me that 12,000 people per year visit the Avon Valley National park. It would be remiss of us not to take advantage of the possible spin off from this promotion. In other words as people leave the national park they would see a sign prompting them toward Toodyay.

I understand that shire has policy constraints, but also understand that discretionary power exist to adjust policies if required. Also noted is that shire is concerned that other businesses may wish to erect signs at the same location if this one was allowed. Fact is that the national park has been there for about 40 years and no one has ever wanted to put a sign there.

Also if shire was to make a discretionary amendment to its signage policy, it could state that only a certain number of signs would ever be allowed at this site. Therefore I would like to ask the Shire of Toodyay to reconsider this signage application.

Regards

Kevin Hug

30th May 2017

Hug Nominees Pty Ltd trading as Toodyay Holiday Park and Chalets ABN 22 147 444 175



Attachment 2 detailed site plan Tourism signage at Avon Valley NP Entry



- Proposed new Information Sign
- Existing Park information Sign including a map
- Proposed location of small "Toodyay Information" finger sign under main sign



Welcome to ... Avon Valley National Park



- Park entry and camping fees apply.
- Generators can only be used between **8am and 9pm**. Please show consideration to other campers.
- **Road warning:** the roads within the park are all gravel with variable conditions. Drive with caution and consider the suitability of your vehicle. **Caravans not recommended.**
- Excessive noise and antisocial behaviour will not be tolerated.
- There is no access to the river in the park.

Emergency contacts:

Ambulance/Fire/Police phone 000
For non-urgent Police assistance phone 131 444

The nearest emergency hospitals are located in Midland (39kms) and Northam (42kms).

Department of Parks and Wildlife,
Mundaring Office Ph: 9290 6100

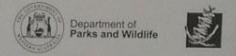
Enjoy your visit.



LEGEND

==== Railway	— National Park Boundary	— Avon River
— Sealed road	— Gate	— Entry station
— Unsealed road	● Camp sites	

Cec Barrow - group camping, booking essential. Ph: 9290 6100





AGENDA FORUM DISCUSSION PAPER

Date of Report:	2 August 2017
Name of Applicant / Proponent/s:	Shire of Toodyay
File Reference No.:	LAW1
Author:	K Stonham – Environmental Health Officer
Responsible Officer:	G Bissett - Manager Planning and Development
Previously Before Council:	Forum 13 June 2017
Nature of Council's Role in the matter:	Advocacy
Attachments:	1. DRAFT Shire of Toodyay Cat Local Law 2017

7.3 IMPLEMENTATION OF CAT LOCAL LAW

PURPOSE OF DISCUSSION PAPER

To consider the DRAFT *Shire of Toodyay Cat Local Law 2017* (Cat Local Law) and to advocate for a pre-consultation period to gauge public comment in relation to the creation of the Cat Local Law.

BACKGROUND

The Shire of Toodyay does not currently have a Cat Local Law in force throughout its district. Section 79 of the *Cat Act 2011* allows local government to create local laws prescribing all matters that are required, permitted, necessary or convenient to be so prescribed to perform any of its functions under the Act.

Without the provision of a Cat Local Law, the Shire's Rangers have limited powers to effectively manage cats, control cats and protect the environment from nuisances that cats can create. The Shire's Rangers predominately utilise the *Cat Act 2011* and the *Cat Regulations 2012* to control cat issues however there is only so much contained within the law that Rangers can enforce.

The current legislation does not outline the number of cats that may be kept on a premise nor does it stipulate areas that cats may or may not be prohibited from in order to protect vulnerable environments.

The DRAFT Cat Local Law has been written by compiling a number of other local governments' current cat local laws (both country and metropolitan). The Shire of Toodyay however, has its own individual needs for a cat Local Law and therefore it is hoped that the Draft Cat Local Law will ensure the needs of the community and the Shire are met. The Draft Shire of Toodyay Cat Local Law has been amended to accommodate local matters within the district in consultation with Shire Staff.

7.3 Implementation of CAT Local Law - continued

There has been a community push for the Shire to create and adopt a Cat Local Law to ensure protection of the Shire's vulnerable environmental areas and native species.

Suggested amendments from the 13 June 2017 Council Forum have been adapted to the current DRAFT Cat Local Law (**Att.1**).

CONSULTATION IMPLICATIONS

The Shire of Toodyay must give a State-wide and local public notice of the proposed DRAFT Cat Local Law if Council considers the adoption of the local law. After a six week notice period, any submissions received in relation to the Cat Local Law must be considered. Amendments to the Local Law to be proposed and discussed by Council.

STRATEGIC IMPLICATIONS

This proposal does not contain any notable strategic implications.

POLICY IMPLICATIONS

This proposal does not contain any notable policy implications.

FINANCIAL IMPLICATIONS

This proposal does not contain any adverse financial implications. Under section 3.10 of the *Local Government Act 1995*, local laws may provide for an offence to be punishable on conviction of a penalty not exceeding a fine of \$5,000 and a daily penalty not exceeding a fine of \$500. This Draft Cat Local Law is consistent with this section of the Act.

There are two proposed applications with subsequent fees for an approval, licence and/or renewal noted in the draft Cat Local Law; keeping 3 or more cats and operating a Cat Management Facility. These fees would need to be adopted into the Shire's 2017/2018 Fees and Charges through a separate advertising process under the *Local Government Act 1995* if adopted.

It was suggested from the 13 June 2017 Council Forum that the proposed modified penalty for operating a Cat Management Facility without a licence be increased to \$500 in Schedule 5. Under Section 9.17(3) of the *Local Government Act 1995*, a modified penalty for a prescribed offence cannot exceed 10% of the maximum fine that can be imposed for that offence by the court therefore the maximum penalty cannot exceed \$500.

LEGAL AND STATUTORY IMPLICATIONS

The procedure for making Local Laws is stated under section 3.12 of the *Local Government Act 1995*. This procedure must be adhered to in the sequence in which it is described within the Act. If during the procedure for making the Local Laws the local government decides to make it significantly different to what was first proposed, the procedure is to be recommenced.

RISK IMPLICATIONS

This proposal does not contain any notable risk implications.

7.3 Implementation of CAT Local Law - continued

ENVIRONMENTAL IMPLICATIONS

This proposal does not contain any notable environmental implications.

SOCIAL IMPLICATIONS

This proposal does not contain any notable social implications.

OFFICER COMMENT / DETAILS

The purpose of this Local Law is to provide the Shire of Toodyay with measures in addition to those under the *Cat Act 2011* to control the keeping of cats.

The effect of this Local Law is to control the number of cats that can be kept and places where cats can be kept.

The DRAFT Cat Local Law will provide additional management of cats that were previously unable to be dealt with by the Shire's Ranger's under the *Cat Act 2011* or its subsidiary legislation.

The Shire of Toodyay would benefit from the creation of a Local Law that better manages cats and can provide additional protection for the local environment where cats may become a nuisance.

The implementation of this Cat Local Law will be a gradual process that will require advocacy from Members and the Minister of Local Government as well as a period of consultation with the public.

The community demand for the Shire of Toodyay to create a Cat Local Law is predominantly in relation to protection of the environment and native species. There has also been mention of control of feral cats. The *Cat Act 2011* already has provisions for dealing with feral cats as stated in Section 34(2):

Despite subsection (1), the operator of a cat management facility may cause any cat kept at the facility to be destroyed in a humane manner immediately –

- (a) If the operator believes on reasonable grounds that the cat –*
 - (i) Is feral, diseased or dangerous; and*
 - (ii) Has caused or given, or is likely to cause or give, serious injury, or serious illness, to a person, another animal or itself; or*
- (b) In the circumstances, if any, prescribed.*

As well as in Section 49(1) of the *Cat Act 2011* which states:

An authorised person may cause a cat to be destroyed in a humane manner –

- (a) If the person believes on reasonable grounds that the cat –*
 - (i) Is feral, diseased or dangerous; and*
 - (ii) Has caused or given, or is likely to be cause or give, serious injury, or serious illness, to a person, another animal or itself, or*
- (b) At the request of the owner of the cat; or*
- (c) In the circumstances, if any, prescribed.*

7.3 Implementation of CAT Local Law - continued

With the control of feral cats being adequately covered within the *Cat Act 2011*, it raises the question as to what the public would feel beneficial to have managed and controlled within such a Local Law in addition to what has already been proposed. As there is a demand from the community for the Shire to create a Cat Local Law, a pre-consultation period is recommended to further gauge the position of the public and seek recommendations for content within the local law.

OFFICER'S RECOMMENDATION

That members advocate for a pre-consultation period to gauge public comment in relation to the creation of the DRAFT *Shire of Toodyay Cat Local Law 2017*.

ARRANGEMENT

DECLARATION

ARRANGEMENT

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- Schedule 1*
- Schedule 2*
- Schedule 3*
- Schedule 4*
- Schedule 5*

DRAFT

PART 1 – PRELIMINARY

1.1 Citation

1.1 This local law may be cited as the *Shire of Toodyay Cat Local Laws 2017*.

1.2 Commencement

1.2 This local law comes into operation 14 days after the date of its publication in the *Government Gazette*.

1.3 Application

1.3 This local law applies throughout the district.

1.4 Interpretation

1.4 (1) In this local law, unless the context otherwise requires -

Act means the *Cat Act 2011*;

applicant means a person who applies for an approval;

application means an application for approval;

approved person means the person to whom an approval is granted;

authorised person means a person appointed by the local government to perform all or any of the functions conferred on an authorised person under this local law;

Cat Management Facility has the meaning given to it in the Act;

cattery means any premises where more than 2 cats are boarded, housed or trained temporarily, usually for profit, and where the occupier of the premises is not the ordinary keeper of the cats;

CEO means the Chief Executive Officer of the local government;

district means the district of the local government;

keeper in relation to a cat means any of the following persons –

- (a) The owner of the cat as defined in the Act;
- (b) A person by whom the cat is ordinarily kept;
- (c) A person who has or appears to have immediate custody or control of the cat;
- (d) A person who keeps the cat, or has the cat in his or her possession for the time being;
- (e) A person who occupies any premises in which a cat is ordinarily kept or ordinarily permitted to live;
- (f) A permit holder of a permit which relates to the cat;
- (g) The holder of an exemption issued in relation to the cat.

local government means the Shire of Toodyay;

microchip has the meaning given to it in the Act;

nuisance means –

- (a) An activity or condition which is harmful or annoying and which gives rise to legal liability in the tort of public or private nuisance of law;
- (b) An unreasonable interference with the use and enjoyment of a person of his or her ownership or occupation of land; or
- (c) Interference which causes material damage to land or other property on the land affected by the interference;
- (d) Excreted or urinates on premises where the cat is not normally a resident;

- (e) Is, or likely to be, injurious or dangerous to the health of any person or domestic or Australian indigenous animal.

Regulations means the *Cat Regulations 2012*;

RSPCA means the Royal Society of the Prevention of Cruelty to Animals (Inc) of Western Australia;

sterilised has the meaning given to it in the Act;

Schedule means a Schedule to this local law;

Town Planning Scheme means a Town Planning Scheme of the local government under the *Planning and Development Act 2005*, or a Town Planning Scheme which was made under the *Town Planning and Development Act 1928*.

- (2) A term that is used in this local law and is not defined in subclause (1) has the same meaning given to it in the Act or, if not defined in the Act, the same meaning given to it in the *Cat Regulations 2012*, the *Cat (Uniform Local Provisions) 2013* or the *Local Government Act 1995*.

PART 2 – NUMBER OF CATS THAT MAY BE KEPT

2.1 Interpretation

- 2.1 For the purposes of applying this Part, a cat does not include a cat less than 6 months old.

2.2 Standard number of cats

- 2.2 For the purposes of the definition of standard number of cats in regulation 4(1) of the *Cat (Uniform Local Provisions) Regulations 2013*, no more than three (3) cats may be kept on premises at which a member of a cat organisation is not ordinarily resident.

2.3 Cats to which an approval is required

- 2.3 (1) Subject to subclause (2) a person is required to have an approval -
- (a) to keep more than 3 cats on any premises;
 - (b) to use any premises as a cattery; or
 - (c) to keep 1 or more cats in a Fauna Protection Buffer Zone as per Schedule 4.
- (2) An approval is not required under subclause (1) if the premises concerned are –
- (a) a refuge of the RSPCA or any other animal welfare organisation;
 - (b) an animal pound which has been approved by the local government;
 - (c) a veterinary surgery;
 - (d) a pet shop; or
 - (e) a premises with 3 or less cats.

2.4 Application for approval

- 2.4 (1) An application for approval to keep an additional number of cats at prescribed premises is dealt with in regulation 8 of the *Cat (Uniform Local Provisions) Regulations 2013*.
- (2) An application for approval must be accompanied by the application fee determined by the local government.

2.5 Determining an application

- 2.5 (1) For the purposes of determining whether to grant approval for an application to keep an additional number of cats at prescribed premises, the local government must have regard to –
- (a) the suitability of the zoning of the premises under the local planning scheme which applies to the premises for the use;
 - (b) the physical suitability of the premises for the proposed use;
 - (c) the environmental sensitivity and general nature of the location surrounding the premises for the proposed use;
 - (d) the structural suitability of any enclosure in which any cat is to be kept;
 - (e) the likelihood of a cat causing a nuisance, inconvenience or annoyance to an occupier of adjoining land;
 - (f) the likely effect on the amenity of the surrounding area of the proposed use;
 - (g) the likely effect on the local environment including any pollution or other environmental damage, which may be caused by the proposed use;
 - (h) any other factors which the local government considers to be relevant in the circumstances of the application; and
 - (i) any submissions received under subclause (2) within the time specified in subclause (2).
- (2) The local government may require an applicant to –
- (a) consult with adjoining landowners; and
 - (b) advise the adjoining landowners that they may make submissions to the local government on the application for the approval within 14 days of receiving that advice, before determining the application for the permit.
- (3) The local government may –
- (a) approve an application for a permit in which case it shall approve it subject to the conditions in clause 2.6 and may approve it subject to any other conditions it considers fit; or
 - (b) refuse to approve the application for an approval.
- (4) If the local government approves an application under subclause (3), then it shall issue to the applicant an approval in the form determined by the CEO.
- (5) If the local government refuses to approve an application under subclause (3), then it is to advise the applicant accordingly in writing.

2.6 Conditions

- 2.6 (1) For the purpose of ensuring that the premises to which an application relates are suitable for the additional number of cats, the local government may impose any condition that it considers to be reasonably necessary for that purpose, including –
- (a) that each cat on the premises to which the approval relates shall be registered under the Act;
 - (b) that the premises shall be maintained in good order and in a clean and sanitary condition;
 - (c) that the premises must be adequately fenced (and premises will be taken not to be adequately fenced if there is more than one escape of a cat from the premises);
 - (d) that there must be adequate space for the exercise of the cats;

- (e) that, in the case of multiple dwellings where there is no suitable dividing fence, each current occupier of the adjoining multiple dwellings must give their written consent to the approval; and
- (f) that, without the consent of the local government, the approved person must not substitute or replace any cat that dies or is permanently removed from the premises.

(2) An approved person who does not comply with a condition of the approval, commits an offence.

Penalty: a fine of \$5,000.

2.7 Renewal of an application

- 2.7 (1) An application is to be renewed if –
- (a) the approved person has not breached the conditions of the approval;
 - (b) the approval would have been granted if a fresh application for an approval had been made; and
 - (c) the renewal fee is paid in full, imposed and determined by the local government under sections 6.16 to 6.19 of the Local Government Act
- (2) On the renewal of an approval, the conditions of the approval that applied immediately before the renewal continue to have effect.

2.8 Transfer of an approval

- 2.8 (1) An approval relates only to the premises specified in the approval, and only to the approved person specified in the approval, and is transferrable only in accordance with this clause 2.8.
- (2) An application for the transfer of an approval from the approved person to another person must be –
- (a) made in the form determined by the CEO;
 - (b) made by the proposed transferee;
 - (c) made with the consent of the approved person; and
 - (d) lodged with the local government together with the fee for the application for the transfer of an approval that is imposed and determined by the local government under sections 6.16 to 6.19 of the *Local Government Act 1995*.

2.9 Variation or cancellation of an approval

- 2.9 (1) The local government may, at any time, vary the conditions of an approval by giving written notice to the approved person and specifying the date on which the changes will become effective.
- (2) The local government may cancel an approval –
- (a) on the request of the approved person;
 - (b) if the approved person breaches the Act, the Regulations, the *Cat (Uniform Local Provisions) Regulations 2013* or this local law; or
 - (c) if the approved person is not a fit and proper person to provide for the health and welfare of the cats.
- (3) If an approval is cancelled, the fee paid for the approval is not refundable for the term of the approval that has not yet expired.

2.10 Objection and review rights

- 2.10 Any person who is aggrieved by the conditions imposed in relation to an approval, the cancellation of an approval, or by the refusal of the local government to grant an approval may object to or appeal against the decision under Division 1, Part 9 of the *Local Government Act 1995*.

PART 3 – CONTROL OF CATS

3.1 Cat nuisance

- 3.1 The owner or occupier of premises on which a cat is ordinarily kept shall prevent the cat from creating a nuisance on other premises, to another person or exposing another person to health and/ or safety risk by:

- (a) the noise or odour generated by the presence of the cat;
- (b) the aggressive nature of the cat.

3.2 Cats in public places

- 3.2 (1) A cat shall not be in a public place unless the cat is, in the opinion of an authorised officer, under effective control
- (2) If a cat is at any time in a public place in contravention of clause 3.2(1) –
- (a) the keeper of the cat commits an offence; and
 - (b) an authorised person may seize and impound and deal with the cat pursuant to the Act.

3.3 Cats in other places

- 3.3 (1) A cat shall not be in any prohibited place as identified in Schedule 3.
- (2) A cat shall not be in any place that is not a public place unless –
- (a) consent to its being there has been given by the occupier, or a person apparently authorised to consent on behalf of the occupier; and
 - (b) it is under effective control
- (3) If a cat is at any time in a place in contravention of clause 3.3(1) –
- (a) the keeper of the cat commits an offence; and
 - (b) an authorised person may seize and impound the cat and deal with the cat pursuant to the Act.

PART 4 – DESIGNATED CAT MANAGEMENT FACILITIES

4.1 Interpretation

- 4.1 In this part and in schedule 2 –

licence means a Cat Management Facility licence issued under this local law;

licensee means the holder of a licence;

premises, in addition to the meaning given to it in section 3 of the Act, means the premises described in the application to be licensed as a Cat Management Facility;

animal establishment has the meaning given to the term in the Town Planning Scheme;

transferee means a person who applies for the transfer of a licence to him or her under clause 4.13.

4.2 Operating a Cat Management Facility without a licence

4.2 Unless exempt as an organisation listed in the Regulations, a person who operates a premises as a Cat Management Facility within the district without a licence commits an offence.

Penalty: a fine of \$2,000 and a daily fine of \$100.

4.3 Application for a licence to be designated as a Cat Management Facility

4.3 An application for a licence must be made in the form of that in schedule 1, and must be lodged with the local government together with –

- (a) plans and specifications of the premises, including a site plan;
- (b) written evidence that either the applicant or another person who will have the charge of the cats, will reside on the premises or, in the opinion of the local government, sufficiently close to the premises so as to control the cats and ensure their health and welfare.
- (c) a written acknowledgement that the applicant has read and agrees to comply with any code of practise relating to the keeping of cats which may be nominated from time to time by the local government; and
- (d) the fee for the application for a licence referred to in clause 4.8(1).

4.4 Determination of an application

4.4 In determining an application to be designated as a Cat Management Facility, the local government is to have regard to –

- (a) the matters referred to in clause 4.5;
- (b) any written submissions received on the proposed use of the premises;
- (c) the effect which the Cat Management Facility may have on the environment or amenity of the neighbourhood;
- (d) whether the Cat Management Facility will create a nuisance for the owners and occupiers of adjoining premises; and
- (e) whether or not the imposition of and compliance with appropriate conditions of a licence will mitigate any adverse effects of the Cat Management Facility identified in the preceding paragraphs.

4.5 Where applications cannot be approved

4.5 The local government cannot approve an application for a licence where –

- (a) the facility is proposed to be located in an area where an animal establishment is an 'X' class use under the Town Planning Scheme; or
- (b) an applicant or another person who will have the charge of the cats will not reside on the premises, or, in the opinion of the local government, sufficiently close to the premises so as to control the cats and so as to ensure their health and welfare.

4.6 Conditions of approval

4.6 (1) The local government may approve an application for a licence subject to the conditions contained in schedule 2 and to such other conditions as the local government considers appropriate.

- (2) In respect of a particular application for a licence, the local government may vary any of the conditions contained in Schedule 2.
- (3) Operators of Cat Management Facilities must comply with their obligations as specified in Part 3 of the Act.

4.7 Compliance with conditions of approval

4.7 A licensee who does not comply with the conditions of a licence commits an offence.

Penalty: a fine of \$2,000 and a daily penalty of \$100.

4.8 Fees

- 4.8 (1) On lodging an application for a licence, the applicant is to pay a fee to the local government.
- (2) On renewal of a licence, the licensee is to pay a fee to the local government.
- (3) On lodging an application for the transfer of a valid licence, the transferee is to pay a fee to the local government.
- (4) The fees referred to in subclause (1) to (3) are to be imposed and determined by the local government under sections 6.16 and 6.19 of the *Local Government Act 1995*.

4.9 Exemption from requirement to pay fees

4.9 (1) In this clause –

charitable organisation means –

- (a) An institution, association, club, society or body whether incorporated or not;
 - (b) Where its objectives are charitable, benevolent, educational, or other like nature concerned with the welfare of cats; and
 - (c) From which any members does not receive any pecuniary profit.
- (2) The local government may waive any fee required to be paid by the applicant for a licence, or the fee for the renewal of a licence by a charitable organisation.

4.10 Form of licence

4.10 The licence is to be in the form determined by the local government and is to be issued to the licensee.

4.11 Period of licence

- 4.11 (1) The period of effect of a licence is 12 months from the date of issue.
- (2) A licence is to be renewed if the fee referred to in clause 4.8(2) is paid to the local government prior to the expiry of the licence.
- (3) On the renewal of a licence the conditions of the licence at the time of its renewal continue to have effect.

4.12 Variation or cancellation of licence

- 4.12 (1) The local government may vary the conditions of a licence.
- (2) The local government may cancel a licence –
 - (a) on the request of the licensee;
 - (b) following a breach of the Act, the Regulations or this local law; or
 - (c) if, in the local government's opinion, the licensee is not a fit and proper person to hold a licence.

- (3) The date a licence is cancelled is to be, in the case of –
 - (a) paragraph (a) of subclause (2), the date requested by the licensee; or
 - (b) paragraphs (b) and (c) of subclause (2), the date determined by an authorised person.
- (4) If a licence is cancelled the fee paid for that licence is not refundable for the term of the licence that has not yet expired.

4.13 Transfer

- 4.13 (1) An application for the transfer of a valid licence from the licensee to another person must be –
 - (a) made in the form determined by the local government;
 - (b) made by the transferee;
 - (c) made with the written consent of the licensee; and
 - (d) lodged with the local government together with –
 - (i) written evidence that a person to whom the licence is proposed to be transferred will reside at or within reasonably close to the proximity to the premises subject to the licence; and
 - (ii) the fee for the application for the transfer of a licence referred to in clause 3.1.8(3).
- (2) The local government is not to determine an application for the transfer of a valid licence until the transferee has complied with subclause (1).
- (3) The local government may approve, whether or not subject to such conditions as it considers appropriate, or refuse to approve an application for the transfer of a valid licence.
- (4) Where the local government approves an application for the transfer of a valid licence, then on the date of the approval, unless otherwise specified in the notice issued under subclause 2.1.14(b), the transferee becomes the licensee of the licence for the purposes of this local law.

4.14 Notification

- 4.14 The local government is to give written notice –
 - (a) an applicant for a licence of the local government's decision on her or his application;
 - (b) a transferee of the local government's decision on her or his application for the transfer of a valid licence;
 - (c) a licensee of any variation made under clause 4.12(1);
 - (d) a licensee when her or his licence is due for renewal and the manner in which it may be renewed;
 - (e) a licensee when her or his licence is renewed;
 - (f) a licensee of the cancellation of a licence under clause 4.12(2)(a); and
 - (g) a licensee of the cancellation of a licence under paragraphs (b) or (c) of clause 4.12(2).

4.15 Inspection of Cat Management Facility

- 4.15 Subject to the provisions of the power to enter premises within the Act, an authorised person may inspect an approved Cat Management Facility.

4.16 Record Keeping

- 4.16 All designated Cat Management Facilities are required to keep and maintain a register of all cats entering and leaving the facility, and where entry to the premises has been made under clause 4.15, an authorised officer may inspect the register.

PART 5 – ENFORCEMENT

5.1 Interpretation

5.1 In this Part –

infringement notice means the notice referred to in clause 5.3; and

notice of withdrawal means the notice referred to in clause 5.6(1).

5.2 Modified penalties

5.2 (1) The offences contained in Schedule 5 are offences are offences in relation to which a modified penalty may be imposed.

(2) The amount appearing in the fourth column of Schedule 3 directly opposite an offence is the modified penalty payable in respect of that offence.

5.3 Issue of infringement notice

5.3 Where an authorised person has reason to believe that a person has committed an offence in respect of which a modified penalty may be imposed, he or she may issue to that person a notice in the form of Form 6 of Schedule 1 of the Regulations.

5.4 Failure to pay modified penalty

5.4 Where a person who has received an infringement notice fails to pay the modified penalty within the time specified in the notice, or within such further time as may in any particular case be allowed by the CEO, he or she is deemed to have declined to have the offence dealt with by way of a modified penalty.

5.5 Payment of modified penalty

5.5 A person who has received an infringement notice may, within the time specified in that notice or within such further time as may in any particular case be allowed by the CEO, send or deliver to the local government the amount of the penalty, with or without a reply as to the circumstances giving rise to the offence, and the local government may appropriate that amount in satisfaction of the penalty and issue an acknowledgement.

5.6 Withdrawal of an infringement notice

5.6 (1) Whether or not the modified penalty has been paid, an authorised person may withdraw an infringement notice by sending a notice to the form of Form 7 of Schedule 1 of the Regulations.

(2) A person authorised to issue an infringement notice under clause 5.3 cannot sign or send a notice of withdrawal.

5.7 Service

5.7 An infringement notice or a notice of withdrawal may be served on a person personally, or by leaving it at or posting it to his or her address as ascertained from him or her, or as ascertained from inquiries by the local government.

**SCHEDULE 1 – APPLICATION FOR A LICENCE FOR A DESIGNATED CAT
 MANAGEMENT FACILITY**

[clause 4.3]

APPLICANT/S DETAILS

Name of Applicant/s (in full)			
Residential Address			
Suburb		Post Code	
Postal Address (if different from above)			
Telephone	(H)	(W)	(M)
Fax		Email	

CAT MANAGEMENT FACILITY DETAILS

I/ We apply for a licence for a designated cat management facility at:			
Address of premises			
Suburb		Post Code	
For number of cats			
Person will reside (tick appropriate box) *evidence to be provided	<input type="checkbox"/>	At the premises	
	<input type="checkbox"/>	Sufficiently close to the premises so as to control the cats and so as to ensure their health and welfare	
Name of person (if not applicant/s)			
Address of residence (if not residing at the premises)			

Prior to approval the following must be attached:

- (a) A site plan of the premises showing the location of the cages and runs and all other building and structures and fences;
- (b) Plans and specifications of the Cat Management Facility;
- (c) Evidence that a person will reside –
 - i. at the premises; or
 - ii. sufficiently close to the premises so as to control the cats and so as to ensure their health and welfare; and
- (d) if the person in item (c) is not the applicant, evidence that the person is a person in charge of the cats.

Signature of applicant..... Date.....

Note: A licence if issued will have effect for a period of 12 months, effective from the date of issue unless and until is it revoked or the conditions of 3.1.3(b) are no longer complied with.

APPLICATION FEE	
Cat Management Facility Establishment Fee	\$200.00

OFFICE USE ONLY				
Application No.	Date	Receipt No.	Amount Paid	Cashier

SCHEDULE 2 – MINIMUM CONDITIONS OF A DESIGNATED CAT MANAGEMENT FACILITY

[clause 4.6(1)]

An application for a licence within the district may be approved subject to the following conditions –

- (a) each Cat Management Facility must have a secure area where cats are housed and can exercise and must be at a distance of not less than 10 metres from the front boundary of the premises and 5 metres from any other boundary of the premises;
- (b) Where floor washing is required, washings must pass through the drains and must be piped to an approved apparatus for the treatment of sewage (as specified by the *Health (Treatment of Sewage and Disposal of Effluent and Liquid Waste) Regulations 1974*) and in accordance with the health requirements of the local government;
- (c) All external surfaces of each Cat Management Facility must be impervious and kept in good condition;
- (d) Sufficient ventilation to keep animal housing areas free of dampness, noxious odours and draughts, and prevent accumulation of concentrations of gases;
- (e) Supply of fresh air, or if animals are housed in a totally enclosed area where forced ventilation is the only form of air movement there should be adequate air change rate;
- (f) Located away from sources of excessive noise or pollution, and draughts that could cause injury or stress to animals;
- (g) Natural lighting or lighting that duplicates the characteristics of natural light including a simulated day/ night period;
- (h) All cages and outdoor enclosures are to have adequate shelter in the form of a roof constructed of impervious material;
- (i) Must have a mix of cages to provide for individual housing where required and cages or modules constructed of impervious, washable materials;
- (j) All cages, outdoor enclosures and drinking vessels must be maintained in a clean condition and must be cleaned and disinfected when so ordered by an authorised person;
- (k) All refuse, faeces and food waste must be disposed of daily to the satisfaction of an authorised person;
- (l) Noise, odours, fleas, flies and other vectors of disease must be effectively controlled;
- (m) Suitable water both for cleaning and drinking must be available at the Cat Management Facility;
and
- (n) The licensee or the person nominated in the application for a licence, must, in accordance with the application for the licence, continue to reside –
 - i. At the premises; or
 - ii. In the opinion of the local government, sufficiently close to the premises so as to control the cats, and to ensure their health and welfare.

SCHEDULE 3 – CAT PROHIBITED AREAS

[clause 3.3(1)]

Reserve Land

All Conservation and Parks and Recreation reserved land designated under the *Transfer of Land Act 1893* and the *Shire of Toodyay Town Planning Scheme*.

Lot No/ Rural No	Road	Location

Note –

1. The list is correct at the time of publication in the Gazette.
2. Members of the public may inspect or obtain a copy of the Local Public Notice containing an up-to-date list of the specified lands and areas designated as Cat Prohibited Areas in accordance with this local law, from the Shire of Toodyay's Administration Centre or public library during normal office hours.

SCHEDULE 4 – CAT RESTRICTED AREAS – FAUNA PROTECTION BUFFER ZONES

[clause 2.3(1)(c)]

Conservation/ Preservation Areas

All land identified for the purposes of conservation and preservation of vegetation as designated under the *Shire of Toodyay Planning Scheme*, *Shire of Toodyay Local Planning Strategy* and any endorsed Structure Plan.

Lot No/ Rural No	Road	Location

Note –

1. The list is correct at the time of publication in the Gazette.
2. Members of the public may inspect or obtain a copy of the Local Public Notice containing an up-to-date list of the specified lands and areas designated as Cat Restricted Areas in accordance with this local law, from the Shire of Toodyay's Administration Centre or public library during normal office hours.

SCHEDULE 5 – OFFENCES IN RESPECT OF WHICH A MODIFIED PENALTY APPLIES

[clause 4.2]

	CLAUSE	NATURE OF OFFENCE	MODIFIED PENALTY
			\$
1	3.6	Failing to comply with the conditions of an application for additional cats	200
2	3.2	Operating a Cat Management Facility without a licence	500
3	3.7	Failing to comply with the conditions of a licence	200

COMMITTEE MEETING STATUS REPORT

Containing Recommendations to Council made by all Committees

Committee Meeting Date	Item / Res Number	Title / Description of Item	Responsible Officer	Recommendation by Committee	Council Resolution No & detail
27/07/2017 CDMAC Meeting	Resolution 04/07/17	2J 2 AIR Live Radio	D. Andrijich	The Community Depot Management Advisory Committee recommend to Council that Mr Mark Greenway be accepted as the 2J 2 Air Live Radio representative on the CDMAC	