

Please note: these minutes  
are yet to be confirmed as a  
true record of proceedings

**CITY OF BUSSELTON**

**MINUTES OF THE COUNCIL MEETING HELD ON 9 FEBRUARY 2022**

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## MINUTES

MINUTES OF A MEETING OF THE BUSSELTON CITY COUNCIL HELD IN COUNCIL CHAMBERS, ADMINISTRATION BUILDING, SOUTHERN DRIVE, BUSSELTON, ON 9 FEBRUARY 2022 AT 5.30PM.

### 1. **DECLARATION OF OPENING / ACKNOWLEDGEMENT OF COUNTRY / ACKNOWLEDGEMENT OF VISITORS / DISCLAIMER / NOTICE OF RECORDING OF PROCEEDINGS**

The Presiding Member opened the meeting at 5.30pm.

The Presiding Member noted this meeting is held on the lands of the Wadandi people and acknowledged them as Traditional Owners, paying respect to their Elders, past and present, and Aboriginal Elders of other communities who may be present.

### 2. **ATTENDANCE**

Presiding Member:

Cr Grant Henley Mayor

Members:

Cr Paul Carter Deputy Mayor  
Cr Sue Riccelli  
Cr Ross Paine  
Cr Kate Cox  
Cr Anne Ryan  
Cr Phill Cronin  
Cr Jodie Richards  
Cr Mikayla Love

Officers:

Mr Mike Archer, Chief Executive Officer  
Mr Oliver Darby, Director, Engineering and Works Services (until 6.21pm)  
Mr Paul Needham, Director, Planning and Development Services  
Mrs Naomi Searle, Director, Community and Commercial Services  
Mr Tony Nottle, Director, Finance and Corporate Services  
Ms Sarah Pierson, Manager of Governance and Corporate Services  
Mr Eden Shepherd, Manager Major Projects and Facilities (from 6.21pm)  
Mrs Emma Heys, Governance Coordinator

Apologies:

Nil

Approved Leave of Absence:

Nil

Media:

“Busselton-Dunsborough Times”

Public:

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**3. PRAYER**

The prayer was delivered by Reverend Rose Guok of St Mary's Anglican Church.

**4. APPLICATION FOR LEAVE OF ABSENCE**

Nil

**5. DISCLOSURE OF INTERESTS**

Nil

**6. ANNOUNCEMENTS WITHOUT DISCUSSION**

**Announcements by the Presiding Member**

Nil

**7. QUESTION TIME FOR PUBLIC**

Prior to the Public Question Time commencing the Mayor advised that the questions taken on notice at the previous meeting had been circulated and would be tabled in the minutes.

**Response to Previous Questions Taken on Notice**

The following questions were taken on notice by the Council at the 25 January 2022 Ordinary Council meeting:

Mr Keith Sims

**Question**

Can you please confirm at what stage the Life Cycle Management Plan document is due given that GMAS and Creative Industries Hub revenue is not being included and how do we get a copy of that document.

**Response to question taken on notice**

**(Ms Naomi Searle, Director Community and Commercial Services)**

The LMP that the Business Case refers to is a Lifecycle Management Plan (LMP) which is used as a guiding document to form the basis for asset management planning as the construction of the BPACC progresses. The LMP outlines the costs of maintenance, operations and asset renewal and is based on best known information. The asset management plan will not be finalised until the as constructed documents are issued by the builder to the City. Once the City has this documentation the asset management plan will be finalised and will be based on known information rather than best known. This document in its current format is an internal working document, not a public document.

Mr Gordon Bleechmore

**Question**

In the conditions [of a extraction license], were officers given the right to place a caveat on the property of Mr Forrest?

**Response to question taken on notice**

**(Mr Paul Needham, Director Planning and Development Services)**

Conditions of approval require that legal agreements are entered into between the City and the landowner. To ensure that those agreements will continue to have currency should there be a change in the ownership of the land, it is appropriate to apply a caveat, requiring any purchaser to enter into a similar agreement.

**Question**

Recently, City compliance officers entered Mr Forrest extraction site unannounced and uninvited and attempted to stop works. Are City compliance officers allowed to enter a site without approval?

**Response to question taken on notice**

**(Mr Paul Needham, Director Planning and Development Services)**

Extractive Industry approvals are issued under the City's Local Planning Scheme No.21 and rights of access for compliance officers is provided under the Planning and Development Regulations 2015.

The City's compliance team has not recently entered Mr Forrest's site unannounced.

**Question**

What is the Council's policy regarding the time for phone calls, emails and questions taken on notice to be answered?

**Response**

**(Ms Sarah Pierson, A/Director Finance and Corporate Services)**

In relation to questions taken on notice, the City's Standing Orders states before the next ordinary meeting.

**Response to question taken on notice**

**(Ms Sarah Pierson, A/Director Finance and Corporate Services)**

The City's Standing Orders require responses to questions taken on notice to be provided prior to the next Council meeting. In relation to phone calls and emails, phone messages are to be responded to within two working days; email response times range from 5 to 21 working days depending on whether they contain an enquiry for basic information or whether they constitute a technical request.

**Question Time for Public**7.1 Mr Keith Sims**Question**

How much has the City now borrowed for the BPACC and what is the interest rate?

**Response**

**(Mr Mike Archer, CEO)**

The City has borrowed two lots of \$5million.

\$5 million at around 2% over 10 years and \$5 million at around 2.2% - 2.3% over 15 years.

**Question**

What are the overall borrowings so far for the BPACC?

**Response**

**(Mr Mike Archer, CEO)**

The City's budget for this year is \$10 million.

**Question**

The Art Geo Gallery is now the site office for Broad Constructions. Can you please advise what rent they have to pay for its use?

**Response**

**(Mr Mike Archer, CEO)**

The use of the Art Geo Gallery as site office for Broad Constructions was included as part of their tender submission and no rent is being charged.

**Response**

**(Ms Naomi Searle, Director Community and Commercial Services)**

It is not intended the contactors will occupy the site for the entire construction period. We will be undertaking an expression of interest to lease the Art Geo Gallery and once Council has made a decision and the administration process is complete, a lease agreement may be entered into and the new proponents will take over the occupancy of the Art Geo Gallery.

**Question**

Including the current Development Application for Duchess St, there are 17 bars in the City of Busselton CBD. My question is, who decided in the BPACC business case that the Art Geo Gallery should be a bar, was it staff or Councillors?

**Response**

**(Ms Naomi Searle, Director Community and Commercial Services)**

It was discussed with the working group and viewed as a value add to the BPACC to have a closely located food and beverage offering for the patrons of the BPACC.

**Response****(Mr Mike Archer, CEO)**

Through working groups since approximately 2004, the development of the Cultural Precinct has identified a need for a bar or wine bar in that area.

**Question**

Why does it have to be a bar? Why don't the city put out expressions of interest to lease that building, which could be whatever somebody expresses interest in.

**Response****(Mayor Grant Henley)**

Generally people who want to go to a show will want to have a glass of wine before or after the show or at intermission, it is useful addition to the precinct.

We could receive an expression of interest to have it as a restaurant but in all likelihood it will be a food and beverage offering which works complementary to the Cultural Precinct.

**Question**

Last year I suggested that the Community Access Sessions should be monitored because there was no record kept of the presentations or questions asked. There has been a committee decision to update the current policy on meetings and information, which touches on Community Access Sessions. When is the decision to be made on whether to record Community Access Session or not?

**Response****(Ms Sarah Pierson, Manager Governance and Corporate Services)**

Staff are currently working on that policy on the basis of the discussions that occurred at the last Policy and Legislation Committee meeting and that policy will go to the Policy and Legislation Committee meeting of either 23 February or 23 March 2022.

7.2

Mr Don Evill**Question**

Can you confirm that the City has approximately 600 non-compliance complaints that have not been actioned? Is there a time limit they have to be actioned?

**Response****(Mr Paul Needham, Director Planning and Development Services)**

The total number of compliance issues being investigated at any one point fluctuates, and includes a significant amount of minor matters, including swimming pool inspections and holiday homes. The number of significant issues is much smaller.

The time in which an issue will be actioned is highly variable and will depend on the matter.

**Response****(Mayor Grant Henley)**

We will provide you with a breakdown of what different types of non-compliance or open compliance matters the City is dealing with.

**Question**

What is the schedule of hire fees that you are going to charge to hire out the BPACC and where can we locate a copy?

**Response**

**(Mayor Grant Henley)**

Fees and charges are set by the Council each finance year. The fees and charges for the BPACC have been modelled on similar attendances at similar venues around the region.

**Response**

**(Ms Naomi Searle)**

The fees and charges are only proposed and are yet to be endorsed by Council. The proposed fees and charges are contained in the draft operations business plan, available on the City's website.

**Question**

Is the City still seeking grant funding for the BPACC? If a grant is awarded, will this offset the borrowings or be used to increase the build of the BPACC?

**Response**

**(Mayor Grant Henley)**

The Council resolution was for any grants obtained to offset the loan borrowings, unless they are predicted upon additional elements going into the BPACC.

**Question**

What is the total amount borrowed for the BPACC to date?

**Response**

**(As responded to Mr Keith Sims)**

**(Ms Sarah Pierson, Manager Governance and Corporate Services)**

One loan of \$5 million at 2.0990% over 10 years and another loan of \$5 million at 2.3850% over 15 years.

**Question**

So you are still looking at borrowing \$16 million. What would happen if you signed a contract to build the BPACC and then you couldn't obtain the funds?

**Response**

**(Mayor Grant Henley)**

Initial indications we've had from Treasury is that it would be considered favourably. However if that was not the case, we would seek other measures, including looking at our reserves.

**7.3** Ms Michelle Shackleton**Question**

Would the Council consider the implementation of a caretaker policy to avoid actions, decisions and publicity which could be perceived as intending to influence the election results, or to impose a commitment upon an incoming Council?

**Response****(Mayor Grant Henley)**

The Council can consider through the Policy and Legislation Committee the introduction of a care taker period and policy in time before the next election.

**Question**

Will the Council please consider the establishment of the mediation officer or service for aggrieved residents and ratepayers?

**Response****(Mayor Grant Henley)**

Council could discuss and consider that. The City has a complaints process that allows members of the public, who believe they haven't been treated in the correct manners to escalate their concerns. The policy and process is on the City's website.

**Question**

When can the community see the projected cash flows for the BPACC?

**Response****(Ms Naomi Searle, Director Community and Commercial Services)**

We are currently updating the business case. We're preparing it for the Building Better Regions funding programme which closes this month. The operating budget and the financial projections are on the City's website.

**Question**

Bay to Bay Action Group would like to request a detailed list of grants issued by the City for the last three years.

**Response****(Mayor Grant Henley)**

The details of funds administered through the City's various grant programs are detailed in the minutes of Council Meetings.

7.4 Mr Peter Bruhn**Question**

When will we receive some response and action to the requests we have made in relation to the bushfire risks and single access/egress at Big Rock Bushland Reserve?

**Response**

**(Mr Paul Needham, Director Planning and Development Services)**

I acknowledge it has taken some time to get back to you. We will come back to you next week, in terms of your requests.

**8. CONFIRMATION AND RECEIPT OF MINUTES****Previous Council Meetings**8.1 Minutes of the Council Meeting held 25 January 2022**COUNCIL DECISION****C2202/016**

Moved Councillor P Carter, seconded Councillor J Richards

**That the Minutes of the Council Meeting held 25 January 2022 be confirmed as a true and correct record.**

**CARRIED 9/0****Committee Meetings**8.2 Minutes of the Behaviour Complaints Committee Meeting held 8 December 2021**COUNCIL DECISION****C2202/017**

Moved Councillor P Carter, seconded Councillor J Richards

**That the Minutes of the Behaviour Complaints Committee Meeting held 8 December 2021 be noted.**

**CARRIED 8/1****FOR: CR HENLEY, CR CARTER, CR RICHARDS,  
CR COX, CR LOVE, CR PAINE, CR CRONIN, CR RICCELLI****AGAINST: CR RYAN**

8.3 Minutes of the Finance Committee Meeting held 19 January 2022**COUNCIL DECISION****C2202/018**

Moved Councillor M Love, seconded Councillor S Riccelli

**That the Minutes of the Finance Committee Meeting held 19 January 2022 be noted.****CARRIED 9/0**8.4 Minutes of the Audit and Risk Committee Meeting held 25 January 2022**COUNCIL DECISION****C2202/019**

Moved Councillor P Carter, seconded Councillor P Cronin

**That the Minutes of the Audit and Risk Committee Meeting held 25 January 2022 be noted.****CARRIED 8/1****FOR: CR HENLEY, CR CARTER, CR RICHARDS,  
CR COX, CR LOVE, CR PAINE, CR CRONIN, CR RICCELLI****AGAINST: CR RYAN**8.5 Minutes of the Policy and Legislation Committee Meeting held 25 January 2022**COUNCIL DECISION****C2202/020**

Moved Councillor K Cox, seconded Councillor R Paine

**That the Minutes of the Policy and Legislation Committee Meeting held 25 January 2022 be noted.****CARRIED 8/1****FOR: CR HENLEY, CR CARTER, CR RICHARDS,  
CR COX, CR LOVE, CR PAINE, CR CRONIN, CR RICCELLI****AGAINST: CR RYAN****9. RECEIVING OF PETITIONS, PRESENTATIONS AND DEPUTATIONS****Petitions**

Nil

**Presentations**

Nil

**Deputations**

Nil

**10. QUESTIONS BY MEMBERS OF WHICH DUE NOTICE HAS BEEN GIVEN (WITHOUT DISCUSSION)**

Nil

**11. ITEMS BROUGHT FORWARD**

**ADOPTION BY EXCEPTION RESOLUTION**

At this juncture the Mayor advised the meeting that, with the exception of the items identified to be withdrawn for discussion, the remaining reports, including the Committee and Officer Recommendations, will be adopted en bloc, i.e. all together.

**COUNCIL DECISION**

**C2202/021**

Moved Councillor A Ryan, seconded Councillor P Carter

**That the Committee and Officer Recommendations in relation to the following agenda items be carried en bloc:**

- 13.1 CITY OF BUSSELTON RESPONSE TO WAPC DRAFT POSITION STATEMENT: PLANNING FOR TOURISM
- 17.1 COUNCILLORS' INFORMATION BULLETIN

**CARRIED 9/0**

**EN BLOC**

**12. REPORTS OF COMMITTEE**

Nil

### 13. PLANNING AND DEVELOPMENT SERVICES REPORT

#### 13.1 CITY OF BUSSELTON RESPONSE TO WAPC DRAFT POSITION STATEMENT: PLANNING FOR TOURISM

<b>STRATEGIC THEME</b>	LEADERSHIP - A Council that connects with the community and is accountable in its decision making.
<b>STRATEGIC PRIORITY</b>	4.3 Make decisions that respect our strategic vision for the District.
<b>SUBJECT INDEX</b>	State Planning Policy
<b>BUSINESS UNIT</b>	Strategic Planning
<b>REPORTING OFFICER</b>	Planning Officer - Joanna Wilkinson
<b>AUTHORISING OFFICER</b>	Manager Development Services - Lee Reddell
<b>NATURE OF DECISION</b>	Advocacy: to advocate on its own behalf or on behalf of its community to another level of government/body/agency
<b>VOTING REQUIREMENT</b>	Simple Majority
<b>ATTACHMENTS</b>	Attachment A Consultation Submission <a href="#">↓</a>  Attachment B Position Statement - Planning for Tourism <a href="#">↓</a>  Attachment C Draft Planning for Tourism Guidelines <a href="#">↓</a> 

The officer recommendation was moved and carried.

#### COUNCIL DECISION

**C2202/022**

Moved Councillor A Ryan, seconded Councillor P Carter

**That the Council resolves to:**

- Note the draft Position Statement: Planning for Tourism and associated draft Planning for Tourism Guidelines; and**
- Support the consultation submission to draft Position Statement: Planning for Tourism (Attachment A) for the purpose of providing a formal response advocating the City's position.**

**CARRIED 9/0**

**EN BLOC**

#### OFFICER RECOMMENDATION

That the Council resolves to:

- Note the draft Position Statement: Planning for Tourism and associated draft Planning for Tourism Guidelines; and
- Support the consultation submission to draft Position Statement: Planning for Tourism (Attachment A) for the purpose of providing a formal response advocating the City's position.

#### EXECUTIVE SUMMARY

The purpose of this report is to request that Council resolves to support the attached consultation submission to draft Position Statement: Planning for Tourism (Attachment B) which is currently being advertised by the Western Australian Planning Commission (WAPC).

Officers are recommending that Council does not support the proposed policy, because it introduces state-wide provisions that would serve to undermine the City's current regulatory framework for short-term rental accommodation (e.g. 'Holiday Home' and 'Bed and Breakfast' land uses), and that are contrary to the community's preferred direction for the future regulation of Holiday Homes.

Furthermore, the draft policy proposes that planning reforms be introduced without providing detail around the development of concurrent mechanisms to introduce a state-wide registration scheme for short-term rental accommodation.

## BACKGROUND

In 2002, upon direction from the Minister for Planning, the Shire of Busselton set out to establish a policy position for Holiday Homes in the District. A regulatory framework was formally established late in 2012, and this continues to be one of the most comprehensive and effective in the State. The framework includes three key components: provisions in *Local Planning Scheme No. 21* (LPS 21) and *Local Planning Policy No. 4.1: Holiday Homes*, both pertaining to planning land use, and the *Holiday Homes Local Law 2012*, pertaining to registration and management.

In 2019, the State Parliamentary Legislative Assembly Economics and Industry Standing Committee (the Committee) conducted an inquiry titled *Levelling the Playing Field: Managing the impact of the rapid increase of Short-Term Rentals in Western Australia* (the 2019 Inquiry). The Inquiry was largely focussed on the distinction between traditional short-stay accommodation - properties that have long existed, have been developed specifically to provide for the recreation and business travel markets, and are appropriately licensed - versus the newer style of short-term rental properties that are defined in LPS 21 as either 'Holiday Home', which is an unhosted form of short-term rental accommodation, or 'Bed and Breakfast', which is hosted by a resident of the premises.

In its final Inquiry report the Committee made 10 recommendations, and on 12 February 2020 the State Government provided a formal response. In this response, the State Government committed to two overarching actions that were relevant to the City's Holiday Home regulatory framework:

- Amending land use definitions in the *Planning and Development (Local Planning Schemes) Regulations 2015* (the Regulations) to differentiate between hosted and unhosted accommodation; investigating the option of exempting hosted accommodation from requiring development approval; and updating planning guidance about ways to appropriately regulate short-term rental accommodation.
- Investigating the introduction of a State-wide mandatory registration scheme for both hosted and unhosted short-term rental accommodation, with a critical issue being the relationship between local and State government, including the legal mechanisms to be used by the State.

To satisfy the first action above, on 6 December 2021 the WAPC released a draft *Position Statement: Planning for Tourism* (PS) (Attachment B) and associated draft *Planning for Tourism Guidelines* (Attachment C). Officers have reviewed the documents, finding that they go beyond the scope of recommendations from the Inquiry and the State Government's formal response, and recommended that Council does not support the draft policy.

A major element in the draft policy that was not foreshadowed, and which will significantly undermine the City's current regulation, is the proposal to introduce an exemption for unhosted accommodation. The PS contains a note for consultation, which in summary states that the WAPC is considering a recommendation to Government to exempt unhosted accommodation from the need to obtain development approval, where the unhosted accommodation is let for no more than 60 days per calendar year. Unhosted accommodation is defined elsewhere in the PS as a holiday house, unit or apartment, usually built for residential purposes, offered for short-term letting, i.e. a 'Holiday Home'. If the proposed 60 day exemption is supported by the State, it will in effect mean that our current position is unenforceable.

It was foreshadowed that hosted accommodation should be exempt from obtaining development approval, however it is now clear that this would apply regardless of whether the accommodation is at a single house, or grouped or multiple dwelling. An exemption for single houses is supported in principle, however a number of concerns have emerged around the use of a grouped or multiple dwellings without first assessing the suitability of the premises.

The draft PS recommends amended land use definitions pertaining to hosted and unhosted short term accommodation, however the amended definitions are not consistent with the broader planning framework and/or do not recognise other types of short-term rental accommodation.

Finally, the draft PS makes some mention (within the informal notes for consultation) that the State Government is concurrently working towards implementation of a registration scheme, however no detail is given within the PS, and none has been provided upon request to the Department of Local Government, Sport and Cultural Industries (DLGSC) who is cited as the responsible agency.

Each of these concerns about the draft position statement is discussed in more detail below.

#### **OFFICER COMMENT**

Each of the issues raised below are addressed in the proposed Submission to Draft Position Statement: Planning for Tourism, for which officers are seeking the endorsement of Council.

#### 60 day exemption for unhosted, short-term rental accommodation

It is proposed that unhosted, short-term rental accommodation ('Holiday Homes') should be exempt from requiring development approval if it is intended that the premises is not let for more than 60 days in one calendar year. The term 'low-scale' is used in association with this proposal, however there is no further reasoning as to why the exemption is proposed, or the length of time suggested. In this regard the 2019 Inquiry report discusses a number of jurisdictions whereby short-term letting (in some instances hosted, in others unhosted) is permitted provided the property is the resident's principal place of residence. The length of time may be based on one's own ability to take four weeks of annual leave, plus public holidays (long weekends), thereby resulting in approximately 60 calendar days during which a principal place of residence is unoccupied.

Regardless of how the proposal was arrived at, any exemption such as this would undermine the City's current regulatory controls. All proposed Holiday Homes in the City require development approval, and subsequent registration approval. The City's regulatory position was arrived at in 2012 after many years of deliberation by Council and the State government, and was initiated as a result of a direction from the Minister for Planning prior to 2002, requiring that Holiday Homes (because of their significance in the District) should be considered as a matter separate to the broader *Local Tourism Planning Strategy*.

The types of matters considered during the assessment of a development approval are:

- a. proof that the premises is an approved, lawful dwelling;
- b. the number of occupants to be accommodated;
- c. the number and size of bedrooms;
- d. the number of bathrooms and toilets;
- e. the capacity of on-site effluent systems;
- f. the availability of car parking, for exclusive use by the development, within the development site boundaries;
- g. adverse impact from surrounding land uses;
- h. adverse impact on neighbouring properties; and
- i. potential risks arising from natural hazards, i.e. bushfire risk.

An exemption for any timeframe of use means that these matters would not be assessed, potentially resulting in an unknown number of occupants, vehicles etc. at a property that may or may not have adequate septic capacity and be exposed to bushfire risk. This could result in adverse impact on occupants and/or neighbours, and cumulative impact on the locality if multiple properties are exempted. This is particularly relevant in the City of Busselton, which is a peak tourism destination in Western Australia and accounts for a significant proportion of all Holiday Homes in the state.

Further, it is unclear how any exemption for unhosted accommodation would apply in areas designated as bushfire prone. Clause 61(6)(b) of the *Planning and Development Local Planning Schemes) Regulations 2015* indicates that the works and land use exemptions at cl 61(1) and cl 61(2) of the Deemed Provisions do not apply where land is bushfire prone land and a development approval is required by cl 78(D)(3). The difficulty however is that cl 78(D)(3) only requires development approval for land with a BAL-rating of BAL-40 or BAL-FZ. It is the City's position that development approval should be required for all unhosted accommodation in a bushfire prone area, irrespective of the BAL-rating and particularly for sites outside a 'Residential Built Out Area' given access can be limited and the risk of landscape bushfire high, to ensure that risk to guests can be considered.

A key point of discussion that arose from the 2019 Inquiry, which was reinforced in the State Government's response, was that the designation of land use permissibility for unhosted short-term accommodation should be determined through individual local planning schemes. This is a logical and sensible approach because each local government differs in terms of why there might be a demand for short-term rental accommodation, and where it might occur. Indeed the recent 'Holiday Home Regulatory Framework Review' consultation carried out by the City revealed that there is an appetite in the community for greater – not lesser – regulatory control of Holiday Homes.

During the past 10 years the City has amassed a considerable amount of experience, knowledge and expertise in managing Holiday Homes. It is not normally the role of the State Government to regulate individual land uses and in this case they have not acquired local specialist knowledge to inform or deem local regulation. Furthermore it is disappointing that the State policy team did not engage broadly with local government authorities when drafting the Position Statement, to discuss whether or not the proposed policy measures would be achievable.

The registration of Holiday Homes under the City's *Holiday Home Local Law* provides the ability to apply and enforce management requirements. If a 60 day exemption is introduced, it is unknown whether or not the City would be able to require the registration of an exempted Holiday Home. It is also unknown whether the State would monitor properties to ensure those operating for greater than 60 days would be required to seek development approval. While the draft PS includes a note

stating that all hosted and unhosted accommodation (including properties subject to exemptions) would be required to register with the state-wide registration scheme, there appears to have been no work carried out on the implementation of such a scheme. This is discussed in further detail below.

#### Exemption for hosted, short-term rental accommodation

The draft PS includes a notation for consultation proposing that the WAPC is considering a recommendation to Government to exempt hosted accommodation from the need to obtain development approval. Hosted accommodation is defined elsewhere as:

“a dwelling or ancillary dwelling, or portion thereof, used for the purpose of short-term accommodation, with a permanent resident who is present overnight for the duration of the stay either in the dwelling or ancillary dwelling.”

The rationale for the exemption is that low-scale impact would occur because a host resides on site and issues associated with guests can be managed, and because the tourism/commercial use of the property is incidental to the resident’s use of the property as a permanent place of residence.

The exemption would apply to any type of dwelling, i.e. a single house, grouped or multiple dwelling. The note for consultation suggests that the exempted hosted accommodation should not exceed a maximum of four adult persons (or one family) and a maximum of two guest bedrooms, however there is no further explanation as to how these caps would be applied to the proposed exemption (noting that they are not incorporated into the proposed definition of ‘hosted accommodation’).

Officers agree in principle that hosted accommodation in a single house (or ancillary dwelling) would have a low-scale impact due to the presence of host residing at the site, however the proposed number of guests is not supported because of the difficulty in making a distinction between the age of guests (how would an ‘adult’ be defined?), and proving that the guests are contained within one family. Rather, it is suggested that the maximum number of guests is restricted to six in total, and bedrooms to three, in line with the City’s current LPS 21 development standards (clause 4.18).

The proposal to exempt hosted grouped or multiple dwellings is not supported. These types of dwellings can vary greatly in terms of lot size, dwelling size, types of common property, parking and public transport availability, capacity of on-site effluent, risk from natural hazards etc. It is equally as important to assess the suitability of the dwelling, as it is to assess the impact on the surrounding neighbourhood.

Furthermore, in regard to multiple dwellings, clause 67 (2) (u) (v) of the Deemed Provisions (within the Regulations) requires consideration of the availability and adequacy for the development of access by people with disability. Under the Building Code of Australia, disability access requirements differ between a Class 2 building (block of flats or an apartment building containing two or more sole occupancy units) and a Class 3 building (typically a hotel, motel, or larger boarding house or hostel). A change of use for one sole occupancy unit within an apartment building would change the building class from 2 to 3, thereby potentially making disability access either unavailable or inadequate. It is important that this matter is assessed prior to the letting out for short-term accommodation.

### Amended land use definitions

It is proposed that a number of land use definitions, relating to tourism land uses, be either amended, introduced or deleted.

In regard to hosted accommodation and as detailed above, it is proposed that a single new definition be introduced. This would replace the current model definition of 'Bed and Breakfast' as provided in the Regulations, which differs from the City's LPS 21 definition. Officers do not support this proposal as the proposed new definition introduces a new concept into the planning framework (i.e. that accommodation can be hosted) without:

- distinguishing between different types of dwellings, i.e. single house, grouped or multiple dwelling, and therefore failing to recognise the different impact from and requirements that may apply to each dwelling type;
- considering other defined land uses that could also be used for hosted short-term residential accommodation, e.g. 'Residential Building' (can be used temporarily by two or more persons);
- addressing a type of short-term accommodation that is defined under the *Health (Miscellaneous Provisions) Act 1911*, e.g. 'Lodging House', whereby provisions exist but these may be difficult to enforce by a local government authority if the new definition is introduced.

In regard to unhosted accommodation, it is proposed that three new terms be introduced:

- Holiday House
- Holiday Unit
- Holiday Apartment

While officers support the differentiation between dwelling types, these are not planning terms and do not align with the broader planning framework, e.g. the Residential Design Codes, and appear to have been written for the general public. It is recommended by officers that the terms be amended to reflect terms currently in use throughout the planning framework, i.e. rather than 'Holiday Unit', the use of the term 'Holiday House – Grouped Dwelling'.

### State-wide registration scheme

Recommendations 7 – 10 of the 2019 Inquiry proposed the investigation of a state-wide registration scheme for both hosted and unhosted short-term rental accommodation, and included a comprehensive set of baseline requirements and key issues to be addressed.

The draft PS includes a note stating that all hosted and unhosted accommodation (including properties subject to exemptions) would be required to register with the state-wide registration scheme. No further detail is provided, and there is no evidence that recommendations 7 – 10 of the 2019 Inquiry have been investigated or undertaken.

It is concerning that planning reforms may occur without the concurrent development of a registration scheme. Through the development of our own regulatory framework, it is the City's experience that a balance needs to be struck between the interests of owners/managers and nearby residents/general community, and this is unlikely to occur through planning reform alone. It is considered imperative that the State's planning reform and registration scheme are developed in tandem.

In regard to the City's existing framework, the State Government response to the 2019 Inquiry stated that a critical issue for the implementation of a registration scheme would be the relationship between local and State Government, and the legal mechanisms to be used by the State. There is no certainty that the State's legal mechanisms will support the City's *Holiday Home Local Law*, enabling the effective regulation of Holiday Home management in a manner that is commensurate to the number and scale of holiday homes in the District.

It is entirely possible that the City's ability to regulate Holiday Home management at a local level could be overridden or undermined by the state-wide registration scheme.

Unsurprisingly, there is considerable variation in the regulation of tourism land uses across Western Australia. In light of this, officers have proposed a mechanism to support a state-wide registration scheme that is flexible but not too onerous for individual local governments. This would be similar in design to the section 39 and 40 certificates issued under the liquor licensing regime, whereby the local government could, through an 'opt-in' system, require that a 'certificate of local government authority' is issued prior to state registration. Through this system, the local government may require development and/or registration approval prior to the issuing of a certificate, which could also require periodic renewal and compliance with certain conditions. Some local governments may find this requirement to be onerous, and be afforded the flexibility to 'opt-out' of such a system.

### **Statutory Environment**

#### ***Planning and Development Act 2005 (PD Act)***

The PD Act sets out the procedure for the making of State planning policies, including their preparation and content, and consultation requirements. If a State planning policy is likely to affect a district or districts in particular, the WAPC is to consult the local governments for that district.

### **Relevant Plans and Policies**

#### ***Holiday Homes Local Law 2012 (Local Law)***

The purpose of the Local Law is to require the registration of all holiday homes, the nomination of a manager and acting manager, and to ensure the adherence to conditions relating to the orderly and proper use of the holiday home.

#### ***Local Planning Scheme No. 21 (the Scheme)***

The purpose of the Scheme is to set out the City's planning aims and intentions for the Scheme area, and to control and guide land use and development.

The aim of the Scheme is to provide for the development and the improvement of the City in physical, social and economic terms, and for orderly and economic development and optimum use of land, and to do so in such a way that the likely need and aspirations of the people of the City, the region and the State will be provided for and realised. A further aim of the Scheme is to provide a comprehensive planning instrument for the City.

### **Financial Implications**

There are no financial implications associated with the officer recommendation.

### **Stakeholder Consultation**

No external stakeholder consultation was required or undertaken in relation to this matter.

### **Risk Assessment**

No risks of a medium or greater level have been identified.

**Options**

As an alternative to the proposed recommendation the Council could:

1. Resolve to seek further information before making a decision.
2. Resolve to support the officer recommendation subject to identified modification(s).
3. Resolve not to support the officer recommendation.

**CONCLUSION**

Officers recommend that Council do not support the proposed Position Statement and associated Guidelines on the basis that they would introduce state-wide provisions that would serve to undermine the City's current regulatory framework for short-term rental accommodation (e.g. 'Holiday Home' and 'Bed and Breakfast' land uses), and that are contrary to the community's preferred direction for the future regulation of Holiday Homes.

**TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION**

The officer recommendation will be implemented prior to 7 March 2022, which is the closing date for providing submissions to the advertised *Draft Position Statement: Planning for Tourism*.



Our Ref: C2202/  
Contact: Paul Needham

9 February 2022

Jacquie Stone  
Director Policy  
Department of Planning, Lands and Heritage  
Via email to: [tourism@dph.wa.gov.au](mailto:tourism@dph.wa.gov.au)

Dear Ms Stone

**RE: SUBMISSION TO DRAFT POSITION STATEMENT: PLANNING FOR TOURISM**

Thank you for the opportunity to comment on the draft Position Statement: Planning for Tourism.

The City of Busselton has a significant, and growing, tourism based economy, likely amongst the largest in Western Australia. It is disappointing therefore, that the Department did not seek to engage with the City during the drafting of the Position Statement. The City has a number of concerns with the proposed Position Statement which are broadly outlined as follows:

- The proposed policy measures do not appear to be congruent with the outcomes of the 2019 inquiry *Levelling the Playing Field: Managing the impact of the rapid increase of Short-Term Rentals in Western Australia* (2019 Inquiry).
- Relevant to this submission, the 2019 Inquiry recommended that the State's role would be to amend/update land use definitions and corresponding planning guidance; and to develop a system for the registration of online booking platforms. It is the role of local government, rather than the State, to determine how the land uses should be regulated in each local government area.
- Unlike the State, local governments have extensive experience, knowledge and expertise in managing land uses. The State policy team did not engage broadly when drafting the Position Statement to discuss whether or not the proposed policy measures would be achievable.
- It is unclear how the Policy Objectives will be achieved by the proposed Policy Measures which appear to have been developed without clear and direct reference to the objectives.
- The opening statement under the proposed Policy Measures indicates that "*Local government are best placed to plan for tourism within their communities*". The City agrees with this statement and questions therefore, the need for such prescriptive content within a State level Position Statement.
- The City does not support the proposed Policy Measure seeking to ensure all existing and proposed caravan parks be zoned 'Special Use – Caravan Park'. While some protection may be required where land values, or other priorities, threaten the on-going use of a singular caravan park within a locality, within the City of Busselton caravan parks are abundant and it is not sensible or appropriate to sterilise such land from other tourism based land use opportunities.
- The state-wide 60 day exemption for unhosted accommodation is not supported as it will undermine the

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City's current controls. It is contrary to the preferred direction of our community, and appears to be unenforceable, de-facto regulation.

- Clarity is required in respect to whether the proposed 60 day exemption for unhosted accommodation will apply to all land designated bushfire prone.
- The City has many Rural, Rural Residential and Viticulture Tourism zoned properties that are attractive for short-term accommodation but are serviced by limited road access.
- The lack of detail around a state-wide registration scheme should not conflict with local laws which enable effective local management, and the state-wide registration scheme should be developed concurrently with the proposed policy reforms.

The regulation of short-term rental accommodation has been a significant issue for the City of Busselton, including residents, ratepayers and other stakeholders, for several decades. Working in tandem with the State the City first set out to draft a policy framework in 2002, which formally came into effect late in 2012. At the end of 2021 the City recorded close to 1000 holiday homes, currently operational, meaning that development and registration approvals are in place. A further 500 properties have been granted development approval, but are not currently registered for operation.

As a peak tourism destination the City accounts for a significant proportion of all holiday homes in WA, and has amassed a considerable amount of experience, knowledge and expertise in their regulation. It is nearly 10 years since the City's regulatory framework was established and, during 2021, Council resolved to undertake a review of the framework. Five key changes were proposed through broad scale community and stakeholder consultation. 570 submissions were received, with majority support for each of the key changes.

In drafting these changes, the City set out to make suggestions that were complementary to the recommendations of the 2019 Inquiry. Our understanding was that there were two key recommendations stemming from the Inquiry relevant to the City's framework, which the State government were committed to act upon: a) the establishment of a state-wide registration scheme; and b) amending land use definitions to differentiate between hosted and unhosted accommodation, and updating the associated planning guidelines.

On the basis of the City's experience with holiday homes, and the State government's commitments stemming from recommendations of the 2019 Inquiry, proposed changes advertised by the City were for more rigorous controls to the regulation of holiday homes. These changes included the introduction of residential areas in which holiday homes would not be permitted, reduced permissible occupancy numbers, and more clearly defined responsibilities and expectations for managers and occupants. The proposals received support during consultation, and the City is now in the process of drafting formal changes.

Furthermore, the City does not support a number of the proposed and/or amended land use definitions, and does not support a broad exemption for all 'hosted' accommodation, without further consideration of other legislation that may impact upon the operation of this type of short-term accommodation.

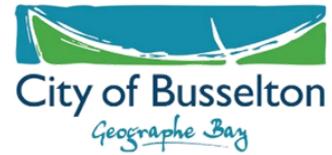
In respect to bushfire, the City is concerned that while cl 61(6)(b) of the *Planning and Development (local Planning Schemes) Regulations 2015* indicates that the exemptions at cl 61(1) and cl 61(2) do not apply to land designated bushfire prone, cl 78(D)(3) indicates that a development approval is only required for land with a BAL-rating of BAL-40 or BAL-FZ. It is the City's position that development approval should be required for all unhosted accommodation in a bushfire prone area, irrespective of the BAL-rating and particularly for sites outside a 'Residential Built Out Area' given access can be limited and the risk of bushfire high, to ensure that risk to guests can be considered. Amendments to the Regulations may be required to achieve this.

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For the reasons outlined above, the City submits that the draft Position Statement, in its current form, is not proportional to the significance of the issues arising from short-term rental accommodation in our District, and therefore many of the proposed measures are not supported.

Yours sincerely,

Paul Needham  
**Director Planning and Development Services**

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**OVERVIEW**

This template has been prepared to assist local governments and government agencies to provide comment on draft Position Statement: Planning for Tourism and accompanying Guidelines. Use of the template will greatly assist the Commission in analysing submissions.

Information on the draft Position Statement, including proposed development exemptions for short-term rental accommodation, definitions and amendments to the *Planning and Development (Local Planning Schemes) Regulations 2015* can be found on the Department’s [website](#).

To provide comments to be considered during the development of the proposed registration scheme, head to Section 6 of this template. Any feedback on the scheme will be forwarded to the Department of Local Government, Sport and Cultural Industries for consideration, as this is not within the scope of the draft Position Statement and cannot be considered by the Western Australian Planning Commission.

<b>SECTION 1 GENERAL INFORMATION</b>	
<b>What local government or agency are you responding on behalf of?</b> City of Busselton	
<b>What is your email address?</b> city@busselton.wa.gov.au	
<b>What region are you from?</b>	
<ul style="list-style-type: none"> <li>• Gascoyne</li> <li>• Goldfields</li> <li>• Great Southern</li> <li>• Kimberley</li> <li>• Mid West</li> </ul>	<ul style="list-style-type: none"> <li>• Peel</li> <li>• Pilbara</li> <li>• Perth</li> <li>• South West</li> <li>• Wheatbelt</li> </ul>
<b>SECTION 2 EXEMPTING HOSTED ACCOMMODATION</b>	
<b>Should hosted accommodation be exempt from development approval where it occurs in a single house (or ancillary dwelling)?</b>	
The City supports this measure, provided:	
<ol style="list-style-type: none"> <li>1. The maximum number of guests does not exceed six, and maximum number of guest bedrooms does not exceed three (inclusive of the aggregate number of bedrooms within any dwelling and ancillary dwelling located at the development site).</li> <li>2. A state-wide registration scheme is developed concurrently with the Position Statement, and all hosted accommodation is required to register through this scheme.</li> <li>3. As a pre-requisite to registration, the hosted accommodation provides:             <ol style="list-style-type: none"> <li>a. A ‘certificate of local government authority’, as outlined in the final section of this report; or if the local government does not opt-in to this requirement,</li> </ol> </li> </ol>	

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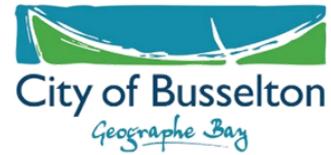
<ul style="list-style-type: none"><li>b. Proof that the premises is an approved, lawful dwelling.</li><li>c. The maximum number of guests to be accommodated.</li><li>d. Details of the number of bedrooms to be utilised and bathrooms available to guests.</li><li>e. Details of car parking arrangements, available exclusively for use at the development site, within the site boundaries.</li><li>f. Demonstrated suitability of design as a Class 1b building, including disability access, fire safety equipment and evacuation measures.</li><li>g. Where reticulated sewerage is not available, demonstrated compliance with the <i>Health (Treatment of Sewage and Disposal of Liquid Waste) Regulations 1974</i>.</li><li>h. Where food is to be served, approval from the local government authority through lodgement of a Food Business Notification/Registration form.</li></ul> <p>4. Full details of the registration are available to the local government authority at all times.</p>
<p><b>Should hosted accommodation be exempt from development approval where it occurs in a grouped dwelling?</b></p> <p>No, the City does not support this exemption:</p> <p>Grouped dwellings can vary greatly in terms of lot size, dwelling size, type of common property, parking and public transport availability, and a number of other matters. It should not be assumed that there will be lesser impact because the site is hosted.</p>
<p><b>Should hosted accommodation be exempt from development approval where it occurs in a multiple dwelling?</b></p> <p>No, the City does not support this exemption:</p> <ul style="list-style-type: none"><li>1. Multiple dwellings can vary greatly in terms of dwelling size, type of common property, parking and public transport availability, and a number of other matters. It should not be assumed that there will be lesser impact because the site is hosted.</li><li>2. Clause 67 (2) (u) (v) of the Deemed Provisions requires consideration of the availability and adequacy for the development of access by people with disability.</li><li>3. Under the Building Code of Australia, disability access requirements differ between a Class 2 building (block of flats or an apartment building containing two or more sole occupancy units) and a Class 3 building (typically a hotel, motel, or larger boarding house or hostel).</li><li>4. A change of use for one sole occupancy unit within an apartment building would change the building class from 2 to 3, thereby potentially making disability access either unavailable or inadequate.</li></ul> <p>Note: the <i>Guideline on the Application of the Premises Standards Version 2 (2013)</i> provides guidance on this matter, however unlike the <i>Building Code of Australia</i> it is not referenced in the <i>Building Regulations 2012</i>.</p>
<p><b>Does the room and guest cap for hosted accommodation appropriately capture low-scale hosted accommodation? Are there any other considerations or criteria which may be relevant?</b></p> <ul style="list-style-type: none"><li>1. The following maximum number is considered appropriate to exempted low-scale hosted</li></ul>

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accommodation in a single house (or ancillary dwelling), providing:

- There is no distinction between the age of guests and whether or not they will be contained within one family – how will this be regulated, and by whom?
- The criteria set out above (in response to hosted accommodation – single house) are satisfied.

	Max. number of guests	Max. number of guest bedrooms
Single house (or ancillary dwelling)	Six	Three

2. Maximum numbers for other types of hosted accommodation (grouped and multiple dwellings) should be determined at a local level by each authority, based on local experience, knowledge and expertise.

---

**SECTION 2 EXEMPTING UNHOSTED ACCOMMODATION**

**Should unhosted accommodation be exempt from development approval where it occurs in a single house?**  
No – see comments below.

**Should unhosted accommodation be exempt from development approval where it occurs in a grouped dwelling?**  
No – see comments below.

**Should unhosted accommodation be exempt from development approval where it occurs in a multiple dwelling?**  
No – see comments below.

**What length of stay timeframe is appropriate for unhosted accommodation to be exempt from development approval?**  
No ‘length of stay timeframe’ exemption is supported. This proposal is unenforceable and raises serious concern in respect of how bushfire risk is managed – see comments below.

**Do you have any additional comments on the proposed exemptions?**  
Unhosted accommodation exemptions are not supported for the following reasons:

1. The exemption is contrary to the policy objective (dot point five) which states  
“Ensure land use impacts between tourism activities and other land uses (including residential areas) are appropriately managed.”  
because the following matters cannot be assessed by the local government authority:
  - a. Proof that the premises is an approved, lawful dwelling.
  - b. The number of occupants to be accommodated.

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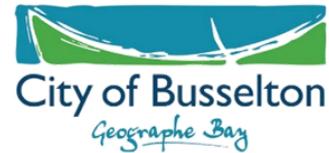
- c. The number and size of bedrooms.
  - d. The number of bathrooms and toilets.
  - e. The capacity of on-site effluent systems.
  - f. The availability of car parking, for exclusive use by the development, within the development site boundaries.
  - g. Adverse impact from surrounding land uses.
  - h. Ability to register properties under the City's *Holiday Home Local Law*.
  - i. Ability to ensure properties are appropriately managed under the City's *Holiday Home Local Law*.
  - j. Adverse impact on neighbouring properties.
  - k. Adverse cumulative impact (from multiple exempted properties) on the locality.
2. The exemption is contrary to policy measure 5 which states
- "Local governments are best placed to plan for tourism within their communities, with local knowledge of tourism activity, opportunities, constraints, including potential impacts and what requirements, if any, should be placed on tourism proposals."
- because:
- a. The City of Busselton began investigating the management of holiday homes (unhosted accommodation) in 2002 (upon direction from the then Minister for Planning), formally implementing a regulatory framework in 2012.
  - b. At the close of 2021, almost 1,000 holiday homes are registered under the City's *Holiday Home Local Law* for current use.
  - c. During this 20 year period, the City has amassed considerable local knowledge and expertise around the impact of holiday homes within the District.
  - d. A state-wide exemption would ignore the City's local knowledge and expertise, and undermines the City's regulatory framework – refer Finding 16 of *Levelling the Playing Field: Managing the impact of the rapid increase of Short-Term Rentals in Western Australia* (2019 Inquiry) which states
- "Local planning schemes, local planning policies and local laws provide the flexibility necessary for local governments to set effective planning controls for Short-Term Rentals appropriate to their local context. While some local governments have designed effective frameworks, there is considerable variation across Western Australia."
- The City of Busselton has an effective framework in place.
- e. Community consultation carried out by the City during 2021, which received 570 submissions, demonstrated majority support for greater regulation of holiday homes, rather than less.
  - f. The proposed exemption for unhosted accommodation will serve to undermine the future regulatory direction preferred by the City's Council and community.

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3. The exemption is contrary to policy measure 5.1 (dot point five) which states  
"Promote the location of tourist accommodation in areas with the highest tourism amenity... and adequate separation from, or management of, any interface with residential land uses."  
because:
  - a. The City's experience is that there are very few residential areas where no holiday homes are present, regardless of proximity to tourism amenity or the length of time that the residential area has been established.
  - b. The City's knowledge of where holiday homes are located is well informed and based on the regulatory framework in place (development and registration approval), plus the engagement of a company to regularly report on unregistered holiday homes.
  - c. While it may be argued that holiday home use limited to 60 days results in low impact, the cumulative impact of multiple exempted holiday homes within a residential area is not considered.
  - d. The City is moving towards achieving policy measure 5.1 (dot point five) by considering the introduction of defined residential areas in which holiday homes will not be permitted. There is support from Council and the community to introduce this measure.
4. For the reasons set out directly above, the exemption is also contrary to the policy measures set out at 5.3.2.2, which states  
"The regulatory and policy response of the local government should be proportional to the significance of the issues arising from unhosted short-term rental accommodation in their municipality."
5. No detail has been provided on how the exemption will be monitored and enforced:
  - a. If a property is listed with a single booking platform (and registered under a state-wide registration scheme) then there may be some ability to monitor the number of nights that the property has been let for, however there is no clarity around how the number of nights let will be monitored if a property is listed with multiple booking platforms.
  - b. The City's experience is that:
    - i. Many properties do list with multiple booking platforms.
    - ii. Most online listings do not provide a specific street address unless a booking is made.
    - iii. Considerable resources are required to locate unapproved holiday homes.
    - iv. Considerable resources are required to pursue non-compliant holiday homes.
  - c. Potentially it would require considerable resources to monitor the number of nights that unhosted properties are let for, to ensure that the exemption period has not been exceeded, and to pursue non-compliance. It is not clear whether this responsibility would fall to State or local governments.
6. The City is concerned that while cl 61(6)(b) of the *Planning and Development (Local Planning Schemes) Regulations 2015* indicates that the exemptions at cl 61(1) and cl 61(2) do not apply to land designated bushfire prone, cl 78(D)(3) indicates that a development approval is only required for

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land with a BAL-rating of BAL-40 or BAL-FZ.

It is the City's position that unhosted accommodation, especially outside 'Residential Built Out Areas', where access can be limited and the risk of landscape fire high, development approval should be required, irrespective of the BAL-rating so that risk to guests can be considered.

Being able to achieve a BAL-rating of BAL-29 or less does nothing to mitigate poor access. If no DA is required for such sites, neither a Bushfire Management Plan nor Emergency Evacuation Plan will be required to be prepared which may result in an increased risk to life for guests in the event of bushfire and/or subsequent evacuation.

### SECTION 3 DEFINING HOSTED ACCOMMODATION AND BED AND BREAKFAST QUESTIONS

#### Do you support the new land use definition for hosted accommodation?

No, the City does not support this measure because the definition introduces a new concept into the planning framework (i.e. the concept that accommodation can be hosted) without addressing a number of other factors:

1. There are other types of short-term accommodation defined under the planning framework (e.g. 'Residential Building') that could be but are not apparently captured by this definition. This is particularly problematic if capped numbers are introduced.
2. There are other types of short-term accommodation that are defined under the *Health (Miscellaneous Provisions) Act 1911* (e.g. 'Lodging House'), whereby provisions exist but these may be difficult to enforce by a local government authority if this definition is introduced.
3. The definition does not distinguish between different dwelling types (i.e. single house, grouped dwelling, multiple dwelling).
4. By failing to recognise different dwelling types, the definition does not address the different requirements that may apply to each dwelling type (see comments above).

#### Do you support the deletion of the bed and breakfast definition from Schedule 1 (Model Provisions) of the *Planning and Development (Local Planning Schemes) Regulations 2015*?

No, the City does not support this measure until the issues associated with the definition of 'hosted accommodation' (outlined above) are resolved.

### SECTION 4 GENERAL POLICY APPROACH TO SHORT-TERM RENTAL ACCOMMODATION

#### Do you support criteria outlined in sections 5.2.2. and 5.3.2 of the draft Position Statement to guide local government in determining how to plan for, regulate and manage short-term rental accommodation?

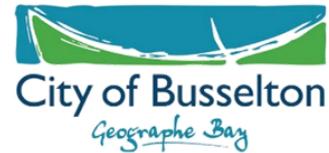
1. 5.2.2: The City has identified a number of concerns elsewhere in this submission in regard to the draft policy, and would prefer to see this section of the document to be redrafted in response to those concerns.
2. 5.2.2.1-5.2.2.2: No comment on these policy criteria as the City already has considerable local knowledge and expertise around the impact of holiday homes within the District.

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<p>3. 5.3.2:</p> <ul style="list-style-type: none"><li>a. The City supports an exemption for hosted accommodation in single houses, provided the various points set out above are addressed at registration stage.</li><li>b. The City does not support an exemption for hosted accommodation in grouped and multiple dwellings, as set out above.</li><li>c. The City does not support an exemption for unhosted accommodation, as set out above.</li></ul> <p>4. 5.3.2.1-5.3.2.2: The City supports these policy criteria provided they are not contradicted and undermined by exemptions for unhosted accommodation.</p>
<p><b>SECTION 5 GENERAL FEEDBACK</b></p>
<p><b>Do you have any additional comments on the Position Statement or Guidelines?</b></p> <ul style="list-style-type: none"><li>1. No detail has been provided on the state-wide registration scheme. In Part 5 of the Guidelines, the note for consultation (second paragraph) highlights that there is inadequate information available on the implementation of the registration scheme, particularly in relation to the ongoing operation of local laws. See further comments below.</li><li>2. Policy measure 5.1, dot point 11 refers to proposals in areas subject to natural hazards. It should be specified here that, under clause 61 (6) (b) of the Deemed Provisions, a proposal would not be exempt from requiring development approval if the development is undertaken on land designated as bushfire prone. As indicated previously in Section 2, further clarity is required on whether any such exemption would apply to all bushfire prone land or only sites with BAL-ratings of BAL-40 or BAL-FZ as per clause 78(D)(3)(a). It is the City's position that unhosted accommodation, especially outside 'Residential Built Out Areas', where access can be limited and the risk of landscape fire high, development approval should be required, irrespective of the BAL-rating so that risk to guests can be considered.</li><li>3. The City does not support the following new and amended definitions:<ul style="list-style-type: none"><li>a. The introduction of the term hosted accommodation, without differentiating between dwelling types (and further recommends that consideration be given to 'Residential Building' and other types of short-term accommodation defined by other Western Australian legislation).</li><li>b. Holiday house, unit and apartment – these are not planning terms and do not align with the broader planning framework, e.g. the Residential Design Codes, and appear to have been written for the general public. Similar to the various types of 'Industry' and 'Liquor Store' land uses, preferred terms are:<ul style="list-style-type: none"><li>i. Holiday House – Single House</li><li>ii. Holiday House – Grouped Dwelling</li><li>iii. Holiday House – Multiple Dwelling.</li></ul></li><li>c. Tourist development and serviced apartments – neither definition includes a requirement for 24 hour on-site management – are these hosted or not?</li></ul></li><li>4. The City does not support the proposed Policy Measure seeking to ensure all existing and proposed caravan parks be zoned 'Special Use – Caravan Park'. While some protection may be required where</li></ul>

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land values, or other priorities, threaten the on-going use of a singular caravan park within a locality, within the City of Busselton caravan parks are abundant and it is not sensible or appropriate to sterilise such land from other tourism based land use opportunities.

**17. Do you have any additional comments on proposed changes to the Regulations in accordance with section 256 of the *Planning and Development Act 2005*?**

No further comments.

**SECTION 6 REGISTRATION SCHEME FOR SHORT-TERM RENTAL ACCOMMODATION**

**18. If you have comment to provide on the development of the proposed registration scheme, please supply below and your comments will be forwarded to the Department of Local Government, Sport and Cultural Industries for consideration. You may be contacted by the Department via the provided email address.**

1. Recommendation 7 of the 2019 Inquiry included a number of undertakings by the intergovernmental working group to:
  - a. Establish baseline requirements for a state-wide registration scheme.
  - b. Determine legal mechanisms to introduce and enforce the scheme.
  - c. Determine an appropriate mechanism to collect and manage data.
  - d. Determine information disclosure requirements, sharing mechanisms and public availability.

There is no evidence of this undertaking, and it is of concern to the City that planning reforms will occur without the concurrent development of a registration scheme.
2. Recommendation 7, 7 of the 2019 Inquiry stated the following:

“Ensure that local governments maintain the ability to require the provision of additional information and impose additional licensing or operational requirements, depending on their particular circumstances.”

The PS and Guidelines provide no certainty around this part of the recommendation. Part 5 of the guidelines includes brief discussion around local laws but it is unclear whether the City’s *Holiday Home Local Law*, and ability to manage holiday homes at a local level, will be overridden or undermined by the state-wide registration scheme.
3. The City considers that it is imperative that the planning framework and registration scheme are developed concurrently:
  - a. Refer to comments above in regard to registration of hosted accommodation.
  - b. Registration of unhosted accommodation is supported provided:
    - i. The City has the ability to continue assessing the suitability of holiday homes through the development assessment process, and register holiday homes at a local level under the provisions of a local law, enabling the regulation of holiday homes in a manner that is commensurate to the number and scale of holiday homes in the District.
    - ii. The applicant provides proof to the state-wide registration scheme, demonstrating that development approval has been granted by the local government.

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- iii. Full details of the registration are available to the City at all times.
- iv. Monitoring and enforcement are responsibilities of the State.
- 4. The City is concerned that the DLGSC is not currently responsible for the ongoing issuing of licences and permits. In NSW, the short-term rental accommodation register is administered by NSW Fair Trading, and the City notes that Recommendation 6 of the 2019 Inquiry was for the establishment of an interdepartmental working group, including the Department of Commerce, to establish a state-wide registration scheme. Recommendation 7, 1d of the 2019 Inquiry was to identify the most appropriate agency to hold the register, and the City considers that Department of Commerce would be more appropriate than DLGSC.
- 5. The City acknowledges that there is considerable variation in regulatory frameworks across Western Australia. In light of this, the City recommends the following mechanisms to support a state-wide registration scheme:
  - a. A scheme that allows local government authorities to choose to 'opt-in' to a pre-requisite requirement for unhosted accommodation proposals to obtain, from the local government:
    - i. development approval; and/or
    - ii. local government registration approval,resulting in the issuing of a 'certificate of local government authority', which would also require:
    - i. periodic renewal; and
    - ii. conditions of compliance.
  - b. Should the local government choose not to 'opt-in', then owners, managers, booking platforms and any other entity responsible for obtaining state-wide registration would not be required to provide a 'certificate of local government authority', however other evidence should be provided to ensure that the amenity of surrounding properties is protected.

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**DRAFT**  
PUBLIC CONSULTATION



Department of Planning,  
Lands and Heritage



# Draft Position Statement: Planning for Tourism

December 2021

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Published by the  
Western Australian Planning Commission  
Gordon Stephenson House  
140 William Street  
Perth WA 6000

Locked Bag 2506  
Perth WA 6001

Published December 2021

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formats on application to the  
Communications Branch.

## 1. Policy intent

The intent of this Position Statement is to guide the appropriate location and management of tourism land uses through the planning framework and:

- facilitate acceptable development of new and evolving tourism opportunities
- provide a high-level of amenity in tourism areas
- deliver quality land use planning outcomes.

## 2. Planning for tourism in Western Australia

Western Australia's many natural and man-made features and attractions provide substantial opportunities for tourism, which is a significant contributor to the State and local economies, particularly in regional areas.

Tourism encompasses an array of development types, sizes and locations, and includes accommodation, attractions, facilities, infrastructure and other ancillary services.

Appropriate planning and management of tourist areas and uses is necessary for their promotion and retention, to prevent encroachment from incompatible land uses, to protect the amenity, environmental and landscape values of tourist areas, and to address potential land use conflict. Planning for tourism must be capable of adapting to changes in the sector and the consideration of value-add opportunities.

Local governments are encouraged to consult with Tourism WA and other relevant State Government agencies, tourism associations, local operators and the local community when undertaking planning for tourism as described within this Position Statement.

## 3. Application of this Position Statement

This Position Statement applies to all tourism proposals within all regions of Western Australia and should be applied in conjunction with the draft Planning for Tourism Guidelines (the Guidelines), available [online](#).

In this Position Statement the term 'tourist accommodation' refers to all tourist accommodation land uses provided within the *Planning and Development (Local Planning Schemes) Regulations 2015* (LPS Regulations) and this Position Statement (at Table 1). Where a land use definition within this Position Statement differs to that within the LPS Regulations, it is intended to update the LPS Regulations such that the land use definition is consistent with this Position Statement.

### Note for consultation:

This Position Statement will supersede and replace *Planning Bulletin 49 Caravan Parks 2014*, *Planning Bulletin 83 Planning for Tourism 2013* and *Planning Bulletin 99 Holiday Home Guidelines 2009*.

Land use definitions for short-term rental accommodation are either new or have been modified (refer to section 6 of this Position Statement). Notably, it is proposed to delete the 'bed and breakfast' land use definition from the model definitions of the LPS Regulations and combine it into a new land use definition for 'hosted accommodation'. Refer to Table 1 of this Position Statement for more information.

### 3.1 Exclusions

This Position Statement is not intended to capture the following forms of short-term and temporary accommodation, which are often subject to either alternative guidance and legislation or approaches by local government (further information available in section 4 of the Guidelines):

- house swapping and house sitting
- lodgers and boarders
- personal use of a holiday home or the sharing of a holiday home with the owner's family and friends
- student exchange accommodation
- workforce accommodation
- residential parks, park home parks, lifestyle villages.

### 4. Policy objectives

The policy objectives for planning for tourism are to:

- Provide a strategic approach to the sustainable development and management of tourism land uses by ensuring decision-making is guided by a local planning strategy which reflects the demand for local and regional tourism.
- Identify opportunities and protect locations, tourism precincts and sites (existing and potential) where demand for future tourism land use and development have been identified. The character, landscape, visual amenity, economic, social, cultural and environmental values of natural and/or built features that may have future tourism potential should be protected; any negative impacts minimised; and, where possible, values enhanced.
- Plan appropriate infrastructure and services necessary to support tourism development and ensure new and expanded tourism development has secure access to services/infrastructure.

- Recognise that the commercial sustainability of tourism may require flexibility in product mix, site design and risk mitigation approaches. Promote the co-location of complementary and compatible tourism land uses to create identifiable tourism precincts that benefit tourism amenity.
- Ensure land use impacts between tourism activities and other land uses (including residential areas) are appropriately managed.

### 5. Policy measures

Local government are best placed to plan for tourism within their communities, with local knowledge of tourism activity, opportunities, constraints, including potential impacts and what requirements, if any, should be placed on tourism proposals.

#### 5.1 General measures

In general, strategic and statutory planning decisions should:

- Encourage a range of tourist accommodation choices and experiences as required.

- Encourage sustainable eco-tourism that recognises and complements Western Australia's unique and sensitive natural environment, heritage and Aboriginal culture.
- Give effect to this Position Statement and Guidelines, and the *State Government Strategy for Tourism in Western Australia 2020* (as amended).
- Be consistent in the use of tourism land use and accommodation definitions contained in this Position Statement, the LPS Regulations and *State Planning Policy 7.3: Residential Design Codes*.
- Promote the location of tourist accommodation in areas with the highest tourism amenity (for example beach access, views, facilities, availability of services) and adequate separation from, or management of, any interface with residential land uses.
- Ensure areas used exclusively for tourism sites and precincts are zoned as Tourism or Special Use.
- Ensure that new and proposed caravan parks are zoned Special Use - Caravan Park to provide long-term security as a caravan park use.

- Maintain and support existing tourism and special use sites. Rezoning should only be supported if it is demonstrated that a tourism site is unfeasible in the long-term because of a lack of tourism demand, sustainable tourism function and a long-term decline of all tourism activities and accommodation types in the region.
- The inclusion of any land uses other than tourism land uses on tourism zoned land should be considered on a case-by-case basis. Consideration should include whether there is appropriate infrastructure and a planning framework that supports uses other than tourism on tourism zoned sites. The inclusion of permanent residential uses requires close consideration to ensure tourism remains the primary use of a site and a quality tourism outcome is achieved in conjunction with any residential component.
- Where permitted, tourism uses on agricultural or rural land should be secondary to agricultural and/or rural uses to protect the primacy of the land for rural uses (for example farm stay, restaurant

at vineyard, farm gate sales) as provided by *State Planning Policy 2.5: Rural Planning*.

- Proposals in areas subject to natural hazards (bushfire, coastal, cyclone and flood prone areas) are to meet the requirements set out in the relevant State planning policies (2.6: *State Coastal Planning*, draft 2.9 *Planning for Water*, 3.4: *Natural Hazards and Disasters* or 3.7: *Planning in Bushfire Prone Areas*). The *Position Statement: Tourism land uses in bushfire prone areas* should also be given consideration in decision-making.
- Where coordination is required (for example across multiple sites, stages or for infrastructure provision), proposals within tourism precincts or sites should be informed by the preparation of a structure plan and/or local development plan as appropriate. These plans should be required prior to subdivision or development approval.

## 5.2 Local planning strategy considerations

The local planning strategy provides the long-term planning directions and actions to manage the change and

development of a local government area. The local planning strategy also provides the line-of-sight between state-wide strategic planning and policy to the local framework and decision-making.

Local government are encouraged to incorporate a tourism component to ensure strategic tourism needs are addressed. The extent to which tourism is examined within the local planning strategy should be proportionate to the significance of tourism to the community and local economy.

The tourism component of the local planning strategy should:

- Reflect on the existing planning framework (including the local planning scheme and relevant local planning policies) and whether it is fit-for-purpose and achieving the tourism outcomes being sought.
- Discuss current and emerging tourism trends and issues, including the provision of information on existing tourism, aspirations for long-term tourism and existing problems related to tourism.
- Where tourism is significant to the locality or region, it should include substantial detail on tourism such

as an accommodation supply and demand analysis, the rationale for determining future land allocation (site size and location), suitable planning controls and anticipated tourism infrastructure needs.

- Identify suitable tourism sites and precincts in accordance with locational criteria developed by the local government and ensure these are located appropriately to townsites and in proximity to the features and attractions they are intended to serve. Locations identified for tourism should be consistent with other existing policies.
- Outline suitable planning controls to guide and manage tourism uses that will need to be incorporated in the local planning scheme.
- Be consistent with this Position Statement.

### 5.2.1 Caravan parks

Caravan parks are a fundamental component of the tourism accommodation mix and can experience competing demands from short-term and long-term guests. In addition, the demand for land in tourist locations has

contributed to numerous caravan park closures throughout Western Australia.

Strategic planning for caravan parks should:

- Ensure development and long-term retention of caravan parks as a form of short-stay (affordable) accommodation primarily for leisure tourists.
- Recognise that the commercial sustainability of caravan parks requires some flexibility in product mix, site design and risk mitigation approaches.
- Ensure any new caravan parks are located appropriately for their context and intended market and function.

#### 5.2.2 Short-term rental accommodation

Short-term rental accommodation is the collective name given to holiday homes, units or apartments (usually built for residential purposes) offered for short-term letting, often through an online booking platform or management agent. Short-term rentals are either hosted (where a permanent resident (host) is present) or unhosted (where guests have

exclusive use of an entire house, unit or apartment). Commonly, they can be:

- A family holiday home, periodically offered as a short-term rental.
- A property purchased for the sole intent of operating a short-term rental operation.
- Residents looking to let spare bedrooms on a short-term basis.

The success of online booking platforms offering short-term rental accommodation has seen a rapid increase in short-term rentals, with high concentrations occurring in popular tourist locations. In some cases, the rapid growth in the short-term rental market has placed management and compliance stress on local governments and can have a variety of negative flow on effects.

Local government should consider whether specific attention needs to be given to short-term rental accommodation in the local planning strategy. In areas where short-term rentals are in low demand and do not cause significant community concern, addressing the topic within the local planning strategy may be unnecessary.

#### Note for consultation:

Concurrent with the release of this draft Position Statement, the State Government is working towards implementation of a registration scheme for hosted and unhosted short-term rental accommodation, which was a key recommendation of the 2019 Economics and Industry Standing Committee's inquiry "Levelling the playing field: Managing the impact of the rapid increase of Short-Term Rentals in Western Australia". Further information on the registration scheme is available from <https://www.dlgsc.wa.gov.au/>.

#### 5.2.2.1 Supply, demand and pressures associated with short-term rental accommodation

To help understand current and emerging trends and issues, local governments are encouraged to undertake a short-term rental accommodation supply and demand analysis. A supply and demand analysis should include consideration of the short-term rental market,

the relationship with permanent housing provisions and the traditional accommodation provision.

Considerations may include:

- Identification of the existing short-term rental accommodation supply.
- Assessment of current and future short-term rental demands informed by Tourism WA and Australian Bureau of Statistics data, local government data and other planning documents.
- Identification of short-term rental accommodation opportunities.

Evidence from other jurisdictions (and increasingly from tourism locations in the South West) indicates that a rapid growth in or high supply of short-term rentals may affect the availability of long-term rentals and housing choice for longer-term residents of a community.

Local governments with areas subject to a high supply of short-term rental accommodation and relatively stable housing growth are encouraged to monitor the situation in their communities and adjust policy settings as appropriate.

#### 5.2.2.2 Location of short-term rental accommodation

Consideration should be given to the appropriate location of short-term rental accommodation; where it should be prioritised, permitted or avoided to further strategic planning objectives, enhance the tourism experience and avoid adverse impacts on surrounding land uses.

It is recognised that there is variation amongst local government in approaches taken, from broad acceptance of short-term rental accommodation in all residential areas, through to consideration in selective locations and/or prohibiting in others.

In seeking to guide the location of short-term rental accommodation, the following considerations may be relevant to the local government:

- Provision of and access to tourist amenity proximity to social, cultural, and leisure attractions, and accessibility to transport routes and public transport services.
- Adequate standard of services and infrastructure necessary, for example reticulated or drinking water supply and service, capacity of on-site solutions.

- Locations to minimise adverse interface issues, particularly amenity impacts on surrounding residential and other land uses (for example rural).
- Risk of natural hazards and the extent of measures which may need to be in place to address the level of risk.
- Any other relevant planning consideration and/or policy instruments within the planning framework.

#### 5.3 Statutory planning considerations

The local planning scheme and supporting local planning instruments (such as local planning policies) give effect to local strategic planning through statutory land use and development control.

Local planning schemes and amendments should:

- Include a range of tourism and mixed-use zonings allowing for tourism development and the permissibility of land uses in each zone, to provide for a diverse tourism industry consistent with the local planning strategy.

- Utilise land use definitions as set out in this Position Statement and LPS Regulations.

To complement local planning scheme provisions and guide the exercise of discretion, local government may utilise local planning policy to inform land use and development decisions.

The Guidelines provide further guidance on statutory planning considerations and approaches.

#### 5.3.1 Caravan parks

To support the policy objectives a local planning scheme should:

- Zone caravan parks as Special Use - Caravan Parks to provide long term security of use of the site as a caravan park.
- Identify caravan parks as a permitted (P) use in the Special Use - Caravan Parks and Tourism zones.
- Encourage the development and redevelopment of caravan parks in a manner that responds appropriately to the environment, economy and context.

The rezoning of Tourism or Special Use - Caravan Park zoned sites to residential, commercial or alike zones is generally considered inconsistent with the objectives of this Position Statement. However, if a rezoning is proposed it should be justified and assessed in context of this Position Statement, the Guidelines, and the relevant local planning strategy. Where it can be demonstrated that a caravan park site is no longer required, and this is supported by the Western Australian Planning Commission (WAPC) in consultation with relevant stakeholders, including long-stay tenants, the WAPC may recommend that the Minister for Planning approve the rezoning subject to all other relevant planning considerations.

#### 5.3.2 Short-term rental accommodation

Short-term rental accommodation is divided into two categories: hosted and unhosted. Local planning schemes can control the desired location of short-term rental accommodation through a combination of zoning and land use permissibility. Development control measures can be set through local planning schemes and local planning policies to manage size, location and potential amenity impacts.

**Note for consultation:**

The WAPC is considering recommending to Government to exempt the following forms of low-scale short-term rental accommodation from the need to obtain development approval:

**Hosted accommodation**

Hosted accommodation in a single house (or ancillary dwelling), grouped or multiple dwelling, which does not exceed a maximum of four adult persons (or one family) and a maximum of two guest bedrooms. This form of short-term rental accommodation is considered low-scale because the host resides on site, can manage any issues with guests and the tourism/commercial use of the property is incidental to the permanent residential use.

The cap of a maximum of four adult persons (or one family) and a maximum of two guest bedrooms is the same cap currently provided within the model definition of 'bed and breakfast'. The 'bed and breakfast' land use definition is proposed to be deleted from Schedule 1 (Model Provisions) of the LPS Regulations.

**Unhosted accommodation**

Unhosted accommodation in a single house, grouped or multiple dwelling where it is let for no more than 60 days per calendar year.

Note: This exemption is for a change of use. Unhosted accommodation in a single house, grouped or multiple dwelling operating for more than 60 days per calendar year would be subject to the requirements of the relevant local government's local planning framework.

Subject to the results of consultation, amendments to the LPS Regulations may be undertaken to make hosted and unhosted accommodation, which meet the conditions outlined above, forms of development for which development approval is not required.

It is proposed that these forms of short-term rental accommodation would still be required to register with the state-wide registration scheme.

**5.3.2.1 Hosted accommodation**

For new schemes, scheme amendments and scheme reviews, local government should incorporate the land use definition for 'hosted accommodation' (refer to Table 1).

To regulate forms of hosted accommodation through the local planning scheme or local planning policy, the following considerations may be relevant:

- Locational factors which may assist in determining appropriate locations for hosted accommodation within residential areas (refer to the Guidelines for further information).
- Suitability of the premises with regards to building design and form.
- Minimum car parking requirements.
- Servicing requirements, such as access to drinking water and wastewater systems.
- Room and guest caps.
- Preparation and approval of a management plan.
- Time or frequency of use limits.

Other building or health licensing requirements may also apply outside of the planning system, such as provisions relating to swimming pools, the serving of food, the provision of fire safety equipment and evacuation measures.

**5.3.2.2 Unhosted short-term rental accommodation**

**Local government has the flexibility to regulate unhosted short-term rental accommodation through its local planning framework to respond to local conditions (subject to regulatory processes). This Position Statement sets out considerations and approaches to achieve this.**

It is acknowledged there are various approaches to the regulation of unhosted short-term rental accommodation currently undertaken across Western Australia. The regulatory and policy response of the local government should be proportional to the significance of the issues arising from unhosted short-term rental accommodation in their municipality. In determining the appropriate way to regulate unhosted short-term rental accommodation the following statutory planning mechanisms can be considered:

- Utilising the zoning table, land use permissibility and other scheme mechanisms to control the locations whereby unhosted short-term rental accommodation proposals may be designated either permitted, discretionary, discretionary with advertising, or prohibited.
- Capping guest numbers permitted within a holiday home, holiday unit or holiday apartment through local planning policy and/or condition of a planning approval, to respond to constraints such as availability of vehicle parking, capacity of infrastructure (such as onsite effluent disposal) or to maintain appropriate levels of amenity in line with expectations (such as concerns regarding party houses).
- Utilising a local planning policy to guide discretionary decision-making, which may include but not be limited to, any of the following matters:
  - locational factors which may assist in determining appropriate locations for unhosted forms of short-term rental accommodation within residential areas (refer to the Guidelines for further information)
  - limits to the number of guests and/or rooms
  - limits to nights the property can be made available for rental in any one year
  - provision of car parking
  - minimum services such as potable water and reticulated sewerage
  - preparation and approval of a Management Plan
  - waste management
  - whether pets of guests (such as dogs) are permitted
  - managing for potential noise nuisance.
- If appropriate, initial development approval can be granted for a limited period (for example 12 months) and renewed on a longer basis (for example three to five years, or permanently) to ensure there is appropriate management of potential impacts on the amenity of neighbouring properties.

### 5.3.3 Other planning processes including structure plans, subdivisions and development applications

#### WAPC

Where appropriate, the WAPC will consider the application of this Position Statement in the assessment of structure plans, subdivision, strata, community titles and development applications on sites zoned for tourism purposes or where tourism uses can be considered.

In assessing proposals on land zoned for tourism purposes the WAPC will, among other things (including adopted plans and policies) consider whether the proposal will:

- Facilitate the development of a quality, sustainable tourism facility.
- Incorporate those facilities associated with tourist accommodation developments such as recreation, entertainment and integrated management.
- Provide for current and future tourism demand.
- Have the capacity to accommodate the necessary services, management and

support facilities without compromising the character, development flexibility or tourism amenity of the site.

- Provide for the retention or enhancement of the strategic value of the site for tourism purposes, including the relationship between individual lots and areas of high tourism amenity and the potential to accommodate current and future tourism demand.
- Result in the subdivision of a large tourism lot (for example, to separate the residential component from the tourism). This may result in tourism lots remaining undeveloped and future pressure to approve further residential components to finance development.

In the case of subdivision of an existing caravan park, subdivision is generally not supported. Excising a portion of a caravan park site may be supported if the excised portion is proposed to be developed for a compatible tourism use. Strata or community titling of caravan parks is not permitted as provided by the *Strata Titles Act 1985* and *Community Titles Act 2018*.

**Draft Position Statement:**  
Planning for Tourism  
December 2021

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#### **Local government**

Local government are encouraged to have regard to this Position Statement along with other relevant considerations in the assessment of development applications for tourism land uses and sites zoned for tourism purposes.

#### **6. Definitions**

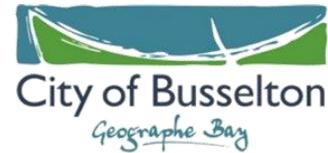
The definitions for forms of tourist accommodation not included in Table 1 of this Position Statement are as per provided in Schedule 1 (Model Provisions) of the LPS Regulations.

Table 1: New and amended definitions

Proposed land use term	Proposed meaning	Dwelling type under the R-Codes
Hosted accommodation (Note: new definition)	<i>means a dwelling or ancillary dwelling, or a portion thereof, used for the purpose of short-term accommodation, with a permanent resident who is present overnight for the duration of the stay either in the dwelling or ancillary dwelling.</i>	Single house, ancillary dwelling, grouped dwelling or multiple dwelling.  <b>Note:</b> The WAPC considers the use of an ancillary dwelling for short-term accommodation (where the host resides in the main dwelling and the guest stays in the ancillary dwelling – or vice versa) is a hosted form of short-term rental accommodation.
Holiday house (Note: amended definition)	<i>means a single dwelling used to provide short-term accommodation</i>	Single house
Holiday unit (Note: new definition)	<i>means a grouped dwelling used to provide short-term accommodation</i>	Grouped dwelling
Holiday apartment (Note: new definition)	<i>means a multiple dwelling used to provide short-term accommodation</i>	Multiple dwelling

Land use term	Proposed meaning
Tourist development (Note: amended definition)	<i>means a building, or a group of buildings forming a complex, other than a caravan park, used to provide –</i> <i>(a) short-term accommodation for guests; and</i> <i>(b) onsite facilities for the use of guests; and</i> <i>(c) facilities for the management of the development</i>
Serviced apartment (Note: amended definition)	<i>means a group of units or apartments providing –</i> <i>(a) self-contained short-term accommodation for guests; and</i> <i>(b) any associated reception or recreational facilities</i>
<b>Note:</b> It is intended to delete the land use term 'bed and breakfast' from Schedule 1 (Model Provisions) of the LPS Regulations.	
<b>Note:</b> It is intended to delete the land use term 'holiday accommodation' from Schedule 1 (Model Provisions) of the LPS Regulations.	

General term	Proposed meaning
Short-term accommodation (Note: amended definition)	<i>means temporary accommodation provided on a commercial basis, either continuously or from time-to-time with no guest accommodated for periods totalling more than 3 months in any 12-month period.</i>



Our Ref: C2202/  
Contact: Paul Needham

9 February 2022

Jacque Stone  
Director Policy  
Department of Planning, Lands and Heritage  
Via email to: [tourism@dplh.wa.gov.au](mailto:tourism@dplh.wa.gov.au)

Dear Ms Stone

**RE: SUBMISSION TO DRAFT POSITION STATEMENT: PLANNING FOR TOURISM**

Thank you for the opportunity to comment on the draft Position Statement: Planning for Tourism.

The City of Busselton has a significant, and growing, tourism based economy, likely amongst the largest in Western Australia. It is disappointing therefore, that the Department did not seek to engage with the City during the drafting of the Position Statement. The City has a number of concerns with the proposed Position Statement which are broadly outlined as follows:

- The proposed policy measures do not appear to be congruent with the outcomes of the 2019 inquiry *Levelling the Playing Field: Managing the impact of the rapid increase of Short-Term Rentals in Western Australia* (2019 Inquiry).
- Relevant to this submission, the 2019 Inquiry recommended that the State's role would be to amend/update land use definitions and corresponding planning guidance; and to develop a system for the registration of online booking platforms. It is the role of local government, rather than the State, to determine how the land uses should be regulated in each local government area.
- Unlike the State, local governments have extensive experience, knowledge and expertise in managing land uses. The State policy team did not engage broadly when drafting the Position Statement to discuss whether or not the proposed policy measures would be achievable.
- It is unclear how the Policy Objectives will be achieved by the proposed Policy Measures which appear to have been developed without clear and direct reference to the objectives.
- The opening statement under the proposed Policy Measures indicates that "*Local government are best placed to plan for tourism within their communities*". The City agrees with this statement and questions therefore, the need for such prescriptive content within a State level Position Statement.
- The City does not support the proposed Policy Measure seeking to ensure all existing and proposed caravan parks be zoned 'Special Use – Caravan Park'. While some protection may be required where land values, or other priorities, threaten the on-going use of a singular caravan park within a locality, within the City of Busselton caravan parks are abundant and it is not sensible or appropriate to sterilise such land from other tourism based land use opportunities.
- The state-wide 60 day exemption for unhosted accommodation is not supported as it will undermine the

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City's current controls. It is contrary to the preferred direction of our community, and appears to be unenforceable, de-facto regulation.

- Clarity is required in respect to whether the proposed 60 day exemption for unhosted accommodation will apply to all land designated bushfire prone.
- The City has many Rural, Rural Residential and Viticulture Tourism zoned properties that are attractive for short-term accommodation but are serviced by limited road access.
- The lack of detail around a state-wide registration scheme should not conflict with local laws which enable effective local management, and the state-wide registration scheme should be developed concurrently with the proposed policy reforms.

The regulation of short-term rental accommodation has been a significant issue for the City of Busselton, including residents, ratepayers and other stakeholders, for several decades. Working in tandem with the State the City first set out to draft a policy framework in 2002, which formally came into effect late in 2012. At the end of 2021 the City recorded close to 1000 holiday homes, currently operational, meaning that development and registration approvals are in place. A further 500 properties have been granted development approval, but are not currently registered for operation.

As a peak tourism destination the City accounts for a significant proportion of all holiday homes in WA, and has amassed a considerable amount of experience, knowledge and expertise in their regulation. It is nearly 10 years since the City's regulatory framework was established and, during 2021, Council resolved to undertake a review of the framework. Five key changes were proposed through broad scale community and stakeholder consultation. 570 submissions were received, with majority support for each of the key changes.

In drafting these changes, the City set out to make suggestions that were complementary to the recommendations of the 2019 Inquiry. Our understanding was that there were two key recommendations stemming from the Inquiry relevant to the City's framework, which the State government were committed to act upon: a) the establishment of a state-wide registration scheme; and b) amending land use definitions to differentiate between hosted and unhosted accommodation, and updating the associated planning guidelines.

On the basis of the City's experience with holiday homes, and the State government's commitments stemming from recommendations of the 2019 Inquiry, proposed changes advertised by the City were for more rigorous controls to the regulation of holiday homes. These changes included the introduction of residential areas in which holiday homes would not be permitted, reduced permissible occupancy numbers, and more clearly defined responsibilities and expectations for managers and occupants. The proposals received support during consultation, and the City is now in the process of drafting formal changes.

Furthermore, the City does not support a number of the proposed and/or amended land use definitions, and does not support a broad exemption for all 'hosted' accommodation, without further consideration of other legislation that may impact upon the operation of this type of short-term accommodation.

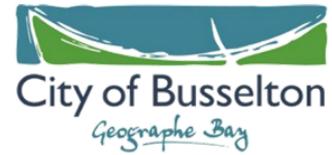
In respect to bushfire, the City is concerned that while cl 61(6)(b) of the *Planning and Development (local Planning Schemes) Regulations 2015* indicates that the exemptions at cl 61(1) and cl 61(2) do not apply to land designated bushfire prone, cl 78(D)(3) indicates that a development approval is only required for land with a BAL-rating of BAL-40 or BAL-FZ. It is the City's position that development approval should be required for all unhosted accommodation in a bushfire prone area, irrespective of the BAL-rating and particularly for sites outside a 'Residential Built Out Area' given access can be limited and the risk of bushfire high, to ensure that risk to guests can be considered. Amendments to the Regulations may be required to achieve this.

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For the reasons outlined above, the City submits that the draft Position Statement, in its current form, is not proportional to the significance of the issues arising from short-term rental accommodation in our District, and therefore many of the proposed measures are not supported.

Yours sincerely,

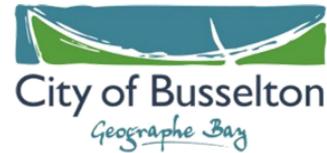
Paul Needham  
**Director Planning and Development Services**

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**OVERVIEW**

This template has been prepared to assist local governments and government agencies to provide comment on draft Position Statement: Planning for Tourism and accompanying Guidelines. Use of the template will greatly assist the Commission in analysing submissions.

Information on the draft Position Statement, including proposed development exemptions for short-term rental accommodation, definitions and amendments to the *Planning and Development (Local Planning Schemes) Regulations 2015* can be found on the Department’s [website](#).

To provide comments to be considered during the development of the proposed registration scheme, head to Section 6 of this template. Any feedback on the scheme will be forwarded to the Department of Local Government, Sport and Cultural Industries for consideration, as this is not within the scope of the draft Position Statement and cannot be considered by the Western Australian Planning Commission.

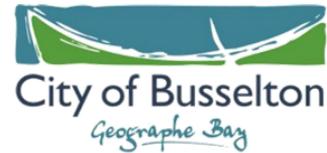
<b>SECTION 1 GENERAL INFORMATION</b>	
<b>What local government or agency are you responding on behalf of?</b> City of Busselton	
<b>What is your email address?</b> city@busselton.wa.gov.au	
<b>What region are you from?</b>	
<ul style="list-style-type: none"> <li>• Gascoyne</li> <li>• Goldfields</li> <li>• Great Southern</li> <li>• Kimberley</li> <li>• Mid West</li> </ul>	<ul style="list-style-type: none"> <li>• Peel</li> <li>• Pilbara</li> <li>• Perth</li> <li>• <b>South West</b></li> <li>• Wheatbelt</li> </ul>
<b>SECTION 2 EXEMPTING HOSTED ACCOMMODATION</b>	
<b>Should hosted accommodation be exempt from development approval where it occurs in a single house (or ancillary dwelling)?</b>	
The City supports this measure, provided:	
<ol style="list-style-type: none"> <li>1. The maximum number of guests does not exceed six, and maximum number of guest bedrooms does not exceed three (inclusive of the aggregate number of bedrooms within any dwelling and ancillary dwelling located at the development site).</li> <li>2. A state-wide registration scheme is developed concurrently with the Position Statement, and all hosted accommodation is required to register through this scheme.</li> <li>3. As a pre-requisite to registration, the hosted accommodation provides:             <ol style="list-style-type: none"> <li>a. A ‘certificate of local government authority’, as outlined in the final section of this report; or if the local government does not opt-in to this requirement,</li> </ol> </li> </ol>	

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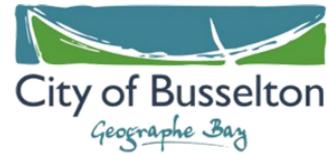
<ul style="list-style-type: none"><li>b. Proof that the premises is an approved, lawful dwelling.</li><li>c. The maximum number of guests to be accommodated.</li><li>d. Details of the number of bedrooms to be utilised and bathrooms available to guests.</li><li>e. Details of car parking arrangements, available exclusively for use at the development site, within the site boundaries.</li><li>f. Demonstrated suitability of design as a Class 1b building, including disability access, fire safety equipment and evacuation measures.</li><li>g. Where reticulated sewerage is not available, demonstrated compliance with the <i>Health (Treatment of Sewage and Disposal of Liquid Waste) Regulations 1974</i>.</li><li>h. Where food is to be served, approval from the local government authority through lodgement of a Food Business Notification/Registration form.</li></ul> <p>4. Full details of the registration are available to the local government authority at all times.</p>
<p><b>Should hosted accommodation be exempt from development approval where it occurs in a grouped dwelling?</b></p> <p>No, the City does not support this exemption:</p> <p>Grouped dwellings can vary greatly in terms of lot size, dwelling size, type of common property, parking and public transport availability, and a number of other matters. It should not be assumed that there will be lesser impact because the site is hosted.</p>
<p><b>Should hosted accommodation be exempt from development approval where it occurs in a multiple dwelling?</b></p> <p>No, the City does not support this exemption:</p> <ul style="list-style-type: none"><li>1. Multiple dwellings can vary greatly in terms of dwelling size, type of common property, parking and public transport availability, and a number of other matters. It should not be assumed that there will be lesser impact because the site is hosted.</li><li>2. Clause 67 (2) (u) (v) of the Deemed Provisions requires consideration of the availability and adequacy for the development of access by people with disability.</li><li>3. Under the Building Code of Australia, disability access requirements differ between a Class 2 building (block of flats or an apartment building containing two or more sole occupancy units) and a Class 3 building (typically a hotel, motel, or larger boarding house or hostel).</li><li>4. A change of use for one sole occupancy unit within an apartment building would change the building class from 2 to 3, thereby potentially making disability access either unavailable or inadequate.</li></ul> <p>Note: the <i>Guideline on the Application of the Premises Standards Version 2 (2013)</i> provides guidance on this matter, however unlike the <i>Building Code of Australia</i> it is not referenced in the <i>Building Regulations 2012</i>.</p>
<p><b>Does the room and guest cap for hosted accommodation appropriately capture low-scale hosted accommodation? Are there any other considerations or criteria which may be relevant?</b></p> <ul style="list-style-type: none"><li>1. The following maximum number is considered appropriate to exempted low-scale hosted</li></ul>

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accommodation in a single house (or ancillary dwelling), providing:

- There is no distinction between the age of guests and whether or not they will be contained within one family – how will this be regulated, and by whom?
- The criteria set out above (in response to hosted accommodation – single house) are satisfied.

	Max. number of guests	Max. number of guest bedrooms
Single house (or ancillary dwelling)	Six	Three

2. Maximum numbers for other types of hosted accommodation (grouped and multiple dwellings) should be determined at a local level by each authority, based on local experience, knowledge and expertise.

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**SECTION 2 EXEMPTING UNHOSTED ACCOMMODATION**

**Should unhosted accommodation be exempt from development approval where it occurs in a single house?**  
No – see comments below.

**Should unhosted accommodation be exempt from development approval where it occurs in a grouped dwelling?**  
No – see comments below.

**Should unhosted accommodation be exempt from development approval where it occurs in a multiple dwelling?**  
No – see comments below.

**What length of stay timeframe is appropriate for unhosted accommodation to be exempt from development approval?**  
No ‘length of stay timeframe’ exemption is supported. This proposal is unenforceable and raises serious concern in respect of how bushfire risk is managed – see comments below.

**Do you have any additional comments on the proposed exemptions?**  
Unhosted accommodation exemptions are not supported for the following reasons:

1. The exemption is contrary to the policy objective (dot point five) which states  
“Ensure land use impacts between tourism activities and other land uses (including residential areas) are appropriately managed.”  
because the following matters cannot be assessed by the local government authority:
  - a. Proof that the premises is an approved, lawful dwelling.
  - b. The number of occupants to be accommodated.

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- c. The number and size of bedrooms.
  - d. The number of bathrooms and toilets.
  - e. The capacity of on-site effluent systems.
  - f. The availability of car parking, for exclusive use by the development, within the development site boundaries.
  - g. Adverse impact from surrounding land uses.
  - h. Ability to register properties under the City's *Holiday Home Local Law*.
  - i. Ability to ensure properties are appropriately managed under the City's *Holiday Home Local Law*.
  - j. Adverse impact on neighbouring properties.
  - k. Adverse cumulative impact (from multiple exempted properties) on the locality.
2. The exemption is contrary to policy measure 5 which states
- "Local governments are best placed to plan for tourism within their communities, with local knowledge of tourism activity, opportunities, constraints, including potential impacts and what requirements, if any, should be placed on tourism proposals."
- because:
- a. The City of Busselton began investigating the management of holiday homes (unhosted accommodation) in 2002 (upon direction from the then Minister for Planning), formally implementing a regulatory framework in 2012.
  - b. At the close of 2021, almost 1,000 holiday homes are registered under the City's *Holiday Home Local Law* for current use.
  - c. During this 20 year period, the City has amassed considerable local knowledge and expertise around the impact of holiday homes within the District.
  - d. A state-wide exemption would ignore the City's local knowledge and expertise, and undermines the City's regulatory framework – refer Finding 16 of *Levelling the Playing Field: Managing the impact of the rapid increase of Short-Term Rentals in Western Australia* (2019 Inquiry) which states
- "Local planning schemes, local planning policies and local laws provide the flexibility necessary for local governments to set effective planning controls for Short-Term Rentals appropriate to their local context. While some local governments have designed effective frameworks, there is considerable variation across Western Australia."
- The City of Busselton has an effective framework in place.
- e. Community consultation carried out by the City during 2021, which received 570 submissions, demonstrated majority support for greater regulation of holiday homes, rather than less.
  - f. The proposed exemption for unhosted accommodation will serve to undermine the future regulatory direction preferred by the City's Council and community.

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3. The exemption is contrary to policy measure 5.1 (dot point five) which states  
“Promote the location of tourist accommodation in areas with the highest tourism amenity... and adequate separation from, or management of, any interface with residential land uses.”  
because:
  - a. The City’s experience is that there are very few residential areas where no holiday homes are present, regardless of proximity to tourism amenity or the length of time that the residential area has been established.
  - b. The City’s knowledge of where holiday homes are located is well informed and based on the regulatory framework in place (development and registration approval), plus the engagement of a company to regularly report on unregistered holiday homes.
  - c. While it may be argued that holiday home use limited to 60 days results in low impact, the cumulative impact of multiple exempted holiday homes within a residential area is not considered.
  - d. The City is moving towards achieving policy measure 5.1 (dot point five) by considering the introduction of defined residential areas in which holiday homes will not be permitted. There is support from Council and the community to introduce this measure.
4. For the reasons set out directly above, the exemption is also contrary to the policy measures set out at 5.3.2.2, which states  
“The regulatory and policy response of the local government should be proportional to the significance of the issues arising from unhosted short-term rental accommodation in their municipality.”
5. No detail has been provided on how the exemption will be monitored and enforced:
  - a. If a property is listed with a single booking platform (and registered under a state-wide registration scheme) then there may be some ability to monitor the number of nights that the property has been let for, however there is no clarity around how the number of nights let will be monitored if a property is listed with multiple booking platforms.
  - b. The City’s experience is that:
    - i. Many properties do list with multiple booking platforms.
    - ii. Most online listings do not provide a specific street address unless a booking is made.
    - iii. Considerable resources are required to locate unapproved holiday homes.
    - iv. Considerable resources are required to pursue non-compliant holiday homes.
  - c. Potentially it would require considerable resources to monitor the number of nights that unhosted properties are let for, to ensure that the exemption period has not been exceeded, and to pursue non-compliance. It is not clear whether this responsibility would fall to State or local governments.
6. The City is concerned that while cl 61(6)(b) of the *Planning and Development (Local Planning Schemes) Regulations 2015* indicates that the exemptions at cl 61(1) and cl 61(2) do not apply to land designated bushfire prone, cl 78(D)(3) indicates that a development approval is only required for

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<p>land with a BAL-rating of BAL-40 or BAL-FZ.</p> <p>It is the City’s position that unhosted accommodation, especially outside ‘Residential Built Out Areas’, where access can be limited and the risk of landscape fire high, development approval should be required, irrespective of the BAL-rating so that risk to guests can be considered.</p> <p>Being able to achieve a BAL-rating of BAL-29 or less does nothing to mitigate poor access. If no DA is required for such sites, neither a Bushfire Management Plan nor Emergency Evacuation Plan will be required to be prepared which may result in an increased risk to life for guests in the event of bushfire and/or subsequent evacuation.</p>
<p><b>SECTION 3 DEFINING HOSTED ACCOMMODATION AND BED AND BREAKFAST QUESTIONS</b></p>
<p><b>Do you support the new land use definition for hosted accommodation?</b></p> <p>No, the City does not support this measure because the definition introduces a new concept into the planning framework (i.e. the concept that accommodation can be hosted) without addressing a number of other factors:</p> <ol style="list-style-type: none"> <li>1. There are other types of short-term accommodation defined under the planning framework (e.g. ‘Residential Building’) that could be but are not apparently captured by this definition. This is particularly problematic if capped numbers are introduced.</li> <li>2. There are other types of short-term accommodation that are defined under the <i>Health (Miscellaneous Provisions) Act 1911</i> (e.g. ‘Lodging House’), whereby provisions exist but these may be difficult to enforce by a local government authority if this definition is introduced.</li> <li>3. The definition does not distinguish between different dwelling types (i.e. single house, grouped dwelling, multiple dwelling).</li> <li>4. By failing to recognise different dwelling types, the definition does not address the different requirements that may apply to each dwelling type (see comments above).</li> </ol>
<p><b>Do you support the deletion of the bed and breakfast definition from Schedule 1 (Model Provisions) of the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i>?</b></p> <p>No, the City does not support this measure until the issues associated with the definition of ‘hosted accommodation’ (outlined above) are resolved.</p>
<p><b>SECTION 4 GENERAL POLICY APPROACH TO SHORT-TERM RENTAL ACCOMMODATION</b></p>
<p><b>Do you support criteria outlined in sections 5.2.2. and 5.3.2 of the draft Position Statement to guide local government in determining how to plan for, regulate and manage short-term rental accommodation?</b></p> <ol style="list-style-type: none"> <li>1. 5.2.2: The City has identified a number of concerns elsewhere in this submission in regard to the draft policy, and would prefer to see this section of the document to be redrafted in response to those concerns.</li> <li>2. 5.2.2.1-5.2.2.2: No comment on these policy criteria as the City already has considerable local knowledge and expertise around the impact of holiday homes within the District.</li> </ol>

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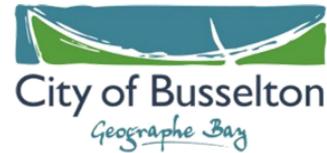
<p>3. 5.3.2:</p> <ul style="list-style-type: none"><li>a. The City supports an exemption for hosted accommodation in single houses, provided the various points set out above are addressed at registration stage.</li><li>b. The City does not support an exemption for hosted accommodation in grouped and multiple dwellings, as set out above.</li><li>c. The City does not support an exemption for unhosted accommodation, as set out above.</li></ul> <p>4. 5.3.2.1-5.3.2.2: The City supports these policy criteria provided they are not contradicted and undermined by exemptions for unhosted accommodation.</p>
<p><b>SECTION 5 GENERAL FEEDBACK</b></p>
<p><b>Do you have any additional comments on the Position Statement or Guidelines?</b></p> <ul style="list-style-type: none"><li>1. No detail has been provided on the state-wide registration scheme. In Part 5 of the Guidelines, the note for consultation (second paragraph) highlights that there is inadequate information available on the implementation of the registration scheme, particularly in relation to the ongoing operation of local laws. See further comments below.</li><li>2. Policy measure 5.1, dot point 11 refers to proposals in areas subject to natural hazards. It should be specified here that, under clause 61 (6) (b) of the Deemed Provisions, a proposal would not be exempt from requiring development approval if the development is undertaken on land designated as bushfire prone. As indicated previously in Section 2, further clarity is required on whether any such exemption would apply to all bushfire prone land or only sites with BAL-ratings of BAL-40 or BAL-FZ as per clause 78(D)(3)(a). It is the City's position that unhosted accommodation, especially outside 'Residential Built Out Areas', where access can be limited and the risk of landscape fire high, development approval should be required, irrespective of the BAL-rating so that risk to guests can be considered.</li><li>3. The City does not support the following new and amended definitions:<ul style="list-style-type: none"><li>a. The introduction of the term hosted accommodation, without differentiating between dwelling types (and further recommends that consideration be given to 'Residential Building' and other types of short-term accommodation defined by other Western Australian legislation).</li><li>b. Holiday house, unit and apartment – these are not planning terms and do not align with the broader planning framework, e.g. the Residential Design Codes, and appear to have been written for the general public. Similar to the various types of 'Industry' and 'Liquor Store' land uses, preferred terms are:<ul style="list-style-type: none"><li>i. Holiday House – Single House</li><li>ii. Holiday House – Grouped Dwelling</li><li>iii. Holiday House – Multiple Dwelling.</li></ul></li><li>c. Tourist development and serviced apartments – neither definition includes a requirement for 24 hour on-site management – are these hosted or not?</li></ul></li><li>4. The City does not support the proposed Policy Measure seeking to ensure all existing and proposed caravan parks be zoned 'Special Use – Caravan Park'. While some protection may be required where</li></ul>

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land values, or other priorities, threaten the on-going use of a singular caravan park within a locality, within the City of Busselton caravan parks are abundant and it is not sensible or appropriate to sterilise such land from other tourism based land use opportunities.

**17. Do you have any additional comments on proposed changes to the Regulations in accordance with section 256 of the *Planning and Development Act 2005*?**

No further comments.

**SECTION 6 REGISTRATION SCHEME FOR SHORT-TERM RENTAL ACCOMMODATION**

**18. If you have comment to provide on the development of the proposed registration scheme, please supply below and your comments will be forwarded to the Department of Local Government, Sport and Cultural Industries for consideration. You may be contacted by the Department via the provided email address.**

1. Recommendation 7 of the 2019 Inquiry included a number of undertakings by the intergovernmental working group to:

- a. Establish baseline requirements for a state-wide registration scheme.
- b. Determine legal mechanisms to introduce and enforce the scheme.
- c. Determine an appropriate mechanism to collect and manage data.
- d. Determine information disclosure requirements, sharing mechanisms and public availability.

There is no evidence of this undertaking, and it is of concern to the City that planning reforms will occur without the concurrent development of a registration scheme.

2. Recommendation 7, 7 of the 2019 Inquiry stated the following:

“Ensure that local governments maintain the ability to require the provision of additional information and impose additional licensing or operational requirements, depending on their particular circumstances.”

The PS and Guidelines provide no certainty around this part of the recommendation. Part 5 of the guidelines includes brief discussion around local laws but it is unclear whether the City’s *Holiday Home Local Law*, and ability to manage holiday homes at a local level, will be overridden or undermined by the state-wide registration scheme.

3. The City considers that it is imperative that the planning framework and registration scheme are developed concurrently:

- a. Refer to comments above in regard to registration of hosted accommodation.
- b. Registration of unhosted accommodation is supported provided:
  - i. The City has the ability to continue assessing the suitability of holiday homes through the development assessment process, and register holiday homes at a local level under the provisions of a local law, enabling the regulation of holiday homes in a manner that is commensurate to the number and scale of holiday homes in the District.
  - ii. The applicant provides proof to the state-wide registration scheme, demonstrating that development approval has been granted by the local government.

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- iii. Full details of the registration are available to the City at all times.
- iv. Monitoring and enforcement are responsibilities of the State.
- 4. The City is concerned that the DLGSC is not currently responsible for the ongoing issuing of licences and permits. In NSW, the short-term rental accommodation register is administered by NSW Fair Trading, and the City notes that Recommendation 6 of the 2019 Inquiry was for the establishment of an interdepartmental working group, including the Department of Commerce, to establish a state-wide registration scheme. Recommendation 7, 1d of the 2019 Inquiry was to identify the most appropriate agency to hold the register, and the City considers that Department of Commerce would be more appropriate than DLGSC.
- 5. The City acknowledges that there is considerable variation in regulatory frameworks across Western Australia. In light of this, the City recommends the following mechanisms to support a state-wide registration scheme:
  - a. A scheme that allows local government authorities to choose to 'opt-in' to a pre-requisite requirement for unhosted accommodation proposals to obtain, from the local government:
    - i. development approval; and/or
    - ii. local government registration approval,resulting in the issuing of a 'certificate of local government authority', which would also require:
    - i. periodic renewal; and
    - ii. conditions of compliance.
  - b. Should the local government choose not to 'opt-in', then owners, managers, booking platforms and any other entity responsible for obtaining state-wide registration would not be required to provide a 'certificate of local government authority', however other evidence should be provided to ensure that the amenity of surrounding properties is protected.

**All Communications to:**

T (08) 9781 0444  
E [city@busselton.wa.gov.au](mailto:city@busselton.wa.gov.au)

Locked Bag 1 Busselton WA 6280  
[www.busselton.wa.gov.au](http://www.busselton.wa.gov.au)

*Where environment, lifestyle  
and opportunity meet!*

## 17.1 COUNCILLORS' INFORMATION BULLETIN

<b>STRATEGIC THEME</b>	LEADERSHIP - A Council that connects with the community and is accountable in its decision making.
<b>STRATEGIC PRIORITY</b>	4.2 Deliver governance systems that facilitate open, ethical and transparent decision making.
<b>SUBJECT INDEX</b>	Councillors' Information Bulletin
<b>BUSINESS UNIT</b>	Executive Services
<b>REPORTING OFFICER</b>	Reporting Officers - Various
<b>AUTHORISING OFFICER</b>	Chief Executive Officer - Mike Archer
<b>NATURE OF DECISION</b>	Noting: The item is simply for information purposes and noting
<b>VOTING REQUIREMENT</b>	Simple Majority
<b>ATTACHMENTS</b>	Attachment A <a href="#">Current State Administrative Tribunal Reviews</a>   Attachment B <a href="#">Letter from WA Planning Commission – Leeuwin-Naturaliste Sub-Regional Strategy Amendment 2</a>  

The officer recommendation was moved and carried.

**COUNCIL DECISION****C2202/023**

Moved Councillor A Ryan, seconded Councillor P Carter

**That the items from the Councillors' Information Bulletin be noted:**

**17.1.1 State Administrative Tribunal Reviews**

**17.1.2 Letter from WA Planning Commission – Leeuwin-Naturaliste Sub-Regional Strategy Amendment 2**

**CARRIED 9/0****EN BLOC****OFFICER RECOMMENDATION**

That the items from the Councillors' Information Bulletin be noted:

17.1.1 State Administrative Tribunal Reviews

17.1.2 Letter from WA Planning Commission – Leeuwin-Naturaliste Sub-Regional Strategy Amendment 2

**EXECUTIVE SUMMARY**

This report provides an overview of a range of information that is considered appropriate to be formally presented to the Council for its receipt and noting. The information is provided in order to ensure that each Councillor, and the Council, is being kept fully informed, while also acknowledging that these are matters that will also be of interest to the community.

Any matter that is raised in this report as a result of incoming correspondence is to be dealt with as normal business correspondence, but is presented in this bulletin for the information of the Council and the community.

**INFORMATION BULLETIN**

**17.1.1 State Administrative Tribunal Reviews**

The current State Administrative Tribunal Reviews is at Attachment A.

**17.1.2 Letter from WA Planning Commission – Leeuwin-Naturaliste Sub-Regional Strategy Amendment 2**

This letter notifies the City that the WA Planning Commission (WAPC) resolved to adopt Amendment 2 to the Strategy.

See Attachment B.

**As at 21 January 2022**

APPLICATION (Name, No. and City File Reference)	PROPERTY	DATE COMMENCED	DECISION BEING REVIEWED	RESPONSIBLE OFFICER	STAGE COMPLETED	NEXT ACTION AND DATE OF ACTION AS PER SAT ORDERS	DATE COMPLETED / CLOSED
<b>CITY OF BUSSELTON</b>							
Lindberg v City of Busselton	4822 Bussell Highway, Busselton	October 2019	Review of a decision to give a direction under s.214.	Ben Whitehill / Lee Reddell	<ul style="list-style-type: none"> <li>Unauthorised development has been removed.</li> <li>Applicant was given leave to withdraw the proceeding and the proceeding was dismissed.</li> <li>Matter now considered completed.</li> </ul>	N/A	1 December 2021
Amber Cloud Pty Ltd v City of Busselton	Lot 101 Wilyabrup Road, Wilyabrup	November 2021	Review of a decision to refuse or conditionally grant an application under a planning scheme	Briony McGinty/Joanna Wilson	<ul style="list-style-type: none"> <li>Relates to DA19/0325 for 'Modified Building Envelope and Single House'</li> <li>Directions hearing on the 12 November 2021 against the decision of the City to refuse a development application. The matter is listed for Mediation on 7 February 2022.</li> </ul>	Mediation on 7 February 2022	
<b>JOINT DEVELOPMENT ASSESSMENT PANEL</b>							
DCSC Pty Ltd v Presiding Member of the Joint Development Assessment Panel	Lot 108 (No. 57) Dunn Bay Road and Lot 109 (No. 6) Cyrilleen Way, Dunsborough	TBC	Review of decision to refuse or conditionally grant an application under a planning scheme	Presiding Member of the Regional JDAP	<ul style="list-style-type: none"> <li>Directions hearing listed for 4 February 2022</li> </ul>	N/A	
<b>WESTERN AUSTRALIAN PLANNING COMMISSION</b>							
NIL							



Our ref: PLH2021P0120/1  
Enquiries: Ashley Randell (0401 660 399)

Mr Mike Archer  
Chief Executive Officer  
City of Busselton

Transmitted via email to: [city@busselton.wa.gov.au](mailto:city@busselton.wa.gov.au)

Dear Mr Archer,

**LEEWIN-NATURALISTE SUB-REGIONAL STRATEGY AMENDMENT 2**

As you are aware, the Western Australian Planning Commission (WAPC) has been coordinating activities to implement the *Leeuwin-Naturaliste Sub-regional Strategy* (the Strategy).

As outlined in my previous letters to the City (7 May and 3 November 2021), regarding the implementation of the Strategy, I advise as follows.

At its meeting on 8 December 2021, the Western Australian Planning Commission (WAPC) resolved to adopt Amendment 2 to the Strategy. Amendment 2 enacts the WAPC's resolutions regarding the PIAs and includes general updates to provide clarity and improve the currency of the Strategy.

The Strategy has been amended in response to the WAPC's decision and may be viewed at the following web address:

<https://www.wa.gov.au/government/publications/leeuwin-naturaliste-sub-regional-planning-strategy>.

Yours sincerely

A handwritten signature in black ink, appearing to be 'DC', followed by a horizontal line.

David Caddy  
Chairman  
Western Australian Planning Commission

12 January 2022

CC: Paul Needham, Director Planning and Development Services ( [Paul.Needham@busselton.wa.gov.au](mailto:Paul.Needham@busselton.wa.gov.au) )

**ITEMS FOR DEBATE**

## 14.1 BUSSELTON JETTY 50-YEAR MAINTENANCE PLAN REVIEW

<b>STRATEGIC THEME</b>	LIFESTYLE - A place that is relaxed, safe and friendly with services and facilities that support healthy lifestyles and wellbeing
<b>STRATEGIC PRIORITY</b>	2.12 Provide well maintained community assets through robust asset management practices.
<b>SUBJECT INDEX</b>	Busselton Jetty
<b>BUSINESS UNIT</b>	Community and Commercial Services
<b>REPORTING OFFICER</b>	Director, Community and Commercial Services - Naomi Searle Facilities Maintenance Coordinator - John Farrier Manager Major Projects and Facilities - Eden Shepherd
<b>AUTHORISING OFFICER</b>	Director, Engineering and Works Services - Oliver Darby
<b>NATURE OF DECISION</b>	Executive: Substantial direction setting, including adopting budgets, strategies, plans and policies (excluding local planning policies); funding, donations and sponsorships; reviewing committee recommendations
<b>VOTING REQUIREMENT</b>	Absolute Majority
<b>ATTACHMENTS</b>	Nil

Prior the meeting, Councillor Richards foreshadowed a motion that was different to the officer recommendation. The Presiding Member allowed the motion to be considered first as an alternative motion as per 10.18(6) of the City's Standing Orders Local Law. The alternative motion was moved and carried.

**COUNCIL DECISION****C2202/024**

Moved Councillor J Richards, seconded Councillor A Ryan

**That the Item be deferred until the 9 March 2022 Council Meeting to allow further clarifications to be provided to Council on the assumptions.**

**CARRIED 8/1**

**FOR: CR CARTER, CR RYAN, CR RICHARDS,  
CR COX, CR LOVE, CR PAINE, CR CRONIN, CR RICCELLI**

**AGAINST: CR HENLEY**

Reasons: To allow more information regarding the assumptions to be provided to Councillors and in particular the assumption around funding the spikes.

**OFFICER RECOMMENDATION**

That the Council:

1. Notes the review of the 50-year Busselton Jetty Maintenance Plan and the underlying assumptions as outlined in this report.
2. Note the next review of the 50-year Busselton Jetty Maintenance Plan will be undertaken in 2024 and every five years thereafter.

## EXECUTIVE SUMMARY

Following the refurbishment of the Busselton Jetty a 50-year Jetty Maintenance Plan was prepared to guide the asset maintenance and replacement requirements of the asset. In 2019/20, the City commissioned a 5-year structural review of the Jetty and has since updated the Maintenance Plan to reflect the outcomes of the review. This report summarises the review and recommends Council notes its key outcomes, and that the structural review process will be undertaken every five years, with the next review to be undertaken in 2024.

## BACKGROUND

In 2008, the City obtained grant funding of \$24 million from the State Government administered by the South West Development Commission (SWDC) for purposes of refurbishing the Busselton Jetty. In accordance with the grant agreement the City and Busselton Jetty Inc. (formerly Busselton Jetty Environment and Conservation Association) (BJI) entered into a licence agreement on 30 October 2009, which has since been amended (Busselton Jetty Licence). Under the Busselton Jetty Licence, BJI was granted the right to conduct certain commercial activities at/on the Busselton Jetty in consideration for payment of an annual licence fee, which includes collecting entrance fees from persons entering the Busselton Jetty from its land side and operating the Busselton Jetty train, the Underwater Observatory (UWO) towards the northern end of the Busselton Jetty and the Interpretive Centre.

These licensed activities constitute BJI's main business and main source of revenue, of which 25% is paid to the City as a contribution to the annual maintenance of the Jetty. In addition to this, rent received from Busselton foreshore leases, various commercial activities undertaken on the Busselton foreshore, and municipal revenue fund the balance of the annual annuity required to meet the Jetty's maintenance requirements as per the 50-year Jetty Maintenance Plan.

Following the refurbishment in 2012, Disley Civil Engineering (DCE) developed a document known as the 50-year Maintenance Plan which was produced as a guide to maintaining and prolonging the life of the Jetty, Interpretive Centre (IC) and Underwater Observatory (UWO).

The 50-year plan identifies scheduled and reactive maintenance, structural upgrades and replacements to the Busselton Jetty and associated infrastructure (i.e. the IC and the UWO) on an annual basis. The scope of maintenance works includes all structural works above and below the water line. The 50-year plan is based on the following assumptions:

1. Inflation rate: 3%
2. Interest rate: 6%
3. Spikes in 2035, 2055, and 2060 to be funded by external agencies to the value of 50% of the estimated cost
4. Annual annuity (in 2021): \$1,387,921

With respect to assumption three above, in 2013 the City and BJI agreed to assume the major works spiking in those years would be 50% funded by external agencies. These major works incorporated the following items:

Item	Value (\$2012)	Year
Replacement of Interpretive Centre Replace section 1 East Replace timber to section 1 West Blast & recoat steelwork to Section 2/3, 5 & 6 Replace timber, blast & recoat steelwork to HIN4 Replace Allies Landing Replace swim platforms 5A & 5B	\$17,698,925	2035
Refurbish piers & superstructure steelwork to section 4	\$1,007,842	2055
Replace timber to Section 1 East Replace section 1 West Replace section 2/3 Replace HIN 4 Replace Section 5 Deck and superstructure Replace Swim platforms 5A & 5B Refurbish piers & superstructure steelwork to section 6 Refurbish section 7 Demolish and replace UWO with equivalent	\$28,128,629	2060

The basis of this assumption was that grant funding would be obtained given the status of the Busselton Jetty being a State significant asset.

#### **OFFICER COMMENT**

In June 2019, and in accordance with the City's asset management plan, the City undertook a detailed assessment of the Jetty structure, to compare the actual structural integrity against the predictions in the 50-year plan. As a result of this review, a 5-year maintenance plan was produced and was used to update the 50-year plan.

The structural assessment undertaken in 2019 found the following:

- frequency and nature of the scheduled maintenance tasks generally align with the original 50 year plan;
- only minor adjustments are required, namely increasing the frequency of timber end grain treatment from 10 to 5 yearly cycles, and delaying the replacement of bolts around the splash zone by 6 to 10 years from 2019;
- the majority of capital works planned for 2020 could be delayed until 2030, the exception being installation of the handrail to the eastern side of the jetty (which is complete);
- capital works planned for 2030 can be pushed back to 2035;
- replacement of decking and refurbishment of steelwork to HIN 4 can be brought forward from 2035 to either 2025 or 2030 (to be confirmed during the next 5 yearly assessment in 2024).

Generally the jetty was found to be in good condition and better than expected considering the environment in which it sits.

All capital replacement items after 2040 are assumed to remain aligned with the original assumptions due to the difficulty in predicting so far into the future, however it is not unreasonable to expect further changes as the 5 yearly assessments are carried out.

Subsequent to this assessment, the 50-year Maintenance Plan was updated and presented at a Busselton Jetty Reference Group meeting, where the following assumptions were reviewed and endorsed by members:

1. Inflation rate: 3%
2. Interest rate: 3%
3. Spikes in 2035, 2055, and 2060 to be funded by external agencies to the value of 50% of the estimated cost
4. Annual annuity (in 2022/23) calculated on the latest detailed structural assessment is \$1,525,895. This figure is amended to \$1,467,669 based on the estimated 2022/23 opening balance of the Jetty maintenance reserve and including a \$3million contribution towards the AUDC.

The 2022/23 annual annuity does not include what are considered to be non- structural items such as air conditioning units and their replacement. The inclusion of these items would require an increase to the annual annuity and would be subject to further negotiations of the Busselton Jetty License Agreement with BJI.

### **Statutory Environment**

#### **Jetties Act 1926**

Pursuant to Section 7 of the *Jetties Act 1926* the Department of Transport granted the City a licence to construct, maintain and use the Busselton Jetty as a private jetty for purposes of recreation, tourism and heritage.

#### **Busselton Jetty Licence Agreement**

The City of Busselton has the control and management of Reserve 46715 (Lot 350 Queen Street, Busselton) through a Management Order and a Licence to use and maintain the Busselton Jetty through a Licence Agreement with the Department of Transport. The Licence Agreement states that amongst other things the City of Busselton must maintain the Jetty in accordance with the Jetty Maintenance Plan and must establish and maintain a Jetty Maintenance Reserve to provide for the ongoing maintenance of the Jetty into the future.

#### **Busselton Jetty Licence and Management Agreement**

BJI operates the Busselton Jetty under a Licence and Management Agreement with the City of Busselton, dated October 2009.

#### **Heritage of Western Australia Act 1990**

The Busselton Jetty was entered on the State Register of Heritage Places on 30 June 2009 (Interim Entry). The progression from interim to permanent registration was delayed for a number of years to allow for the completion of the 2009-12 refurbishment works. Following the practical completion of that work on 18 June 2012, the Heritage Council of Western Australia (HCWA), on 31 August 2012, resolved that Busselton Jetty should be progressed to permanent registration.

On 26 September 2012 the State Heritage Office on behalf of HCWA wrote to the City of Busselton seeking further written comments on the proposed permanent entry. On 21 February 2014, the Jetty was officially placed on the state heritage list.

### **Relevant Plans and Policies**

As detailed above, the 50-year Jetty Maintenance Plan identifies scheduled and reactive maintenance, structural upgrades and replacements to the Busselton Jetty and associated infrastructure (i.e. the IC and the UWO) on an annual basis.

### **Financial Implications**

The anticipated opening balance of the Jetty Maintenance Reserve as at 1 July 2022 is estimated to be \$5,820,080. \$1,467,669 is budgeted to be transferred into the Reserve during the year which comprises the BJI licence fee, fees associated with the Busselton Foreshore leases and commercial hire sites, along with municipal funds to fund the balance of the required annual annuity as per the 2012 50-year Busselton Jetty Maintenance Plan. In 2022/23 the annuity will increase to \$1,525,895.

Any increase to the annual annuity will be funded from a combination of municipal funds, Busselton Foreshore leases and commercial hire sites, and BJI licence fee. In 2022/23 BJI will contribute \$836,421. See attached draft LTFP.

Note that the annuity figures would reduce to \$1,405,728 in this current year if the \$3 million contribution to the AUDC was not made. Further, as noted earlier, the annuity would need to increase if what are currently considered to be non- structural items were included in the maintenance plan. The funding of any additional costs would be subject to further negotiations with BJI.

### **Stakeholder Consultation**

The review of the 50-year Maintenance Plan was presented at a Busselton Jetty Reference Group meeting held on 23 July 2020 and a subsequent meeting was held between BJI Board Member Mr Steve Disley, the original author of the plan, and City Officers to further review the updated plan. Reference Group members at the time included Mayor Cr Henley, Cr Cronin, City Chief Executive Officer Mike Archer, BJI Chairperson, BJI Board Member and BJI Chief Executive Officer.

### **Risk Assessment**

An assessment of the potential implications of implementing the officer recommendation has been undertaken using the City's risk management framework, with risks assessed taking into account any controls already in place. The following risks have been identified:

Maintenance works exceed the value of funds held within the Busselton Jetty Maintenance Reserve.			
<b>Risk Category</b>	<b>Risk Consequence</b>	<b>Likelihood of Consequence</b>	<b>Risk Level</b>
Financial	Major	Rare	Medium
Reputation	Major	Rare	Medium

### **Options**

As an alternative to the proposed recommendation the Council could:

1. Amend the underlying assumptions and request the CEO to further review the plan.
2. Determine an alternate structural review cycle.

**CONCLUSION**

The Busselton Jetty 50-Year Maintenance Plan was developed in 2011 following the rebuild of the Busselton Jetty. The plan guides the annual infrastructure maintenance requirements, however it is good asset management practice to undertake regular reviews to ensure it remains relevant.

**TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION**

Officers will finalise the review process and diarise the next review following the resolution of Council.

**16. COMMUNITY AND COMMERCIAL SERVICES REPORT**

Nil

**17. FINANCE AND CORPORATE SERVICES REPORT**

Nil

**18. MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN****18.1 BUSSELTON PERFORMING ARTS AND CONVENTION CENTRE**

Councillor Ryan gave notice of the following motion to be moved at the Ordinary Council Meeting on 9 February 2022. There was opposition to the motion and debate ensued.

**COUNCIL DECISION****C2202/025**

Moved Councillor A Ryan, seconded Councillor J Richards

**That the Council:**

1. Council Resolution C2111/093 confirmed the building construction contract for the Busselton Performing Arts & Convention Centre (BPACC) is a fixed price contract of not more than \$38m (excl GST) and including a contingency of \$3m. On this basis, there will be no other future construction contracts or variations (including landscaping and exterior lighting) entered into for the completion of the BPACC without prior Council approval.
2. The value adjustments to the contract to reduce its build cost (ie no second kitchen and bar and any other component) shall be assessed for loss of operating income and shall be reported to the Council. This modelling report shall specifically include total direct and indirect operating profit/losses modelled with underlying explicitly stated assumptions. These assumptions shall include a range of reasonably expected risk parameters. Additionally, the modelling shall include the total annual operating profit/losses as a net present value figure for the life of the building. Accordingly, the report will show how any such losses shall be recovered through a user pays usage fee/entry price regime and not be a burden on ratepayers.
3. With the announcement of the Georgiana Molloy PAC, modelling should be carried out, in conjunction with 2 above, as to the loss of operating income and impacts of this development on the BPAC.
4. Modelling to be carried out, in conjunction with 2 and 3 above, as to the loss of operating income and impacts on the BPACC of the conference facility which the Geographe Bayview Resort have put on hold at this time due to the impacts of Covid-19 but one which poses a very real competition possibility should they proceed.
5. The CEO shall provide to Council a list of the source of all funds (borrowings, grants, reserves etc) that will be directed towards the BPACC. No funding (whether internal or external), other than those amounts shown on the list, shall be directed towards the project without prior Council approval.
6. The CEO shall provide a report to Council clearly stating the value/cost of all Council staff and Council plant that will be used on construction of the BPACC and what works will be performed by the Council staff and Council plant. The report is to also document how these costs will be shown in the City's financial statements.
7. A report on Signal Park is to be submitted to Council to inform the community of its future use for parking in relation to the BPACC and any impacts, if any, on the community and other events conducted on Signal Park. Further, what impacts the BPACC will have on businesses customer parking availability in the CBD and how this will be ameliorated (if at all).

**LOST 1/8****FOR: CR RYAN****AGAINST: CR HENLEY, CR CARTER, CR RICHARDS, CR COX, CR CRONIN  
CR PAINE, CR LOVE, CR RICCELLI****MOTION**

That the Council:

1. Council Resolution C2111/093 confirmed the building construction contract for the Busselton Performing Arts & Convention Centre (BPACC) is a fixed price contract of not more than \$38m (excl GST) and including a contingency of \$3m. On this basis, there will be no other future construction contracts or variations (including landscaping and exterior lighting) entered into for the completion of the BPACC without prior Council approval.
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5. The CEO shall provide to Council a list of the source of all funds (borrowings, grants, reserves etc) that will be directed towards the BPACC. No funding (whether internal or external), other than those amounts shown on the list, shall be directed towards the project without prior Council approval.
6. The CEO shall provide a report to Council clearly stating the value/cost of all Council staff and Council plant that will be used on construction of the BPACC and what works will be performed by the Council staff and Council plant. The report is to also document how these costs will be shown in the City's financial statements.
7. A report on Signal Park is to be submitted to Council to inform the community of its future use for parking in relation to the BPACC and any impacts, if any, on the community and other events conducted on Signal Park. Further, what impacts the BPACC will have on businesses customer parking availability in the CBD and how this will be ameliorated (if at all).

## REASONS

There is significant unrest and concern in the community. This motion will respect and acknowledge that concern and thus try to placate ratepayers as to the financial impacts of the BPACC.

## OFFICER COMMENT

In responding broadly to Cr Ryan's notice of motion, it is important to consider the roles and responsibilities of the Council and the CEO under the *Local Government Act 1995* (the Act) and the distinction between governance and administration. This distinction is reflected in the statutory roles and functions of the Council and CEO as outlined in sections 2.7 and 5.41 respectively of the Act. In brief, the intended legislative objective of the Act is to give a local government's governance functions to the council and its administrative functions to the CEO. This distinction was highlighted by Mr Neil Douglas from McLeod's Barristers and Solicitors as part of recent Councillor training.

In the context of this notice of motion, much of the motion would, if accepted by Council, result in the Council becoming involved in administrative matters, such as the administration of the BPACC construction contract for example, which could compromise the efficient administration of the project. Further, officers provide the following specific response to each point.

- 1. Council Resolution C2111/093 confirmed the building construction contract for the Busselton Performing Arts & Convention Centre (BPACC) is a fixed price contract of not more than \$38m (excl GST) and including a contingency of \$3m. On this basis, there will be no other future construction contracts or variations (including landscaping and exterior lighting) entered into for the completion of the BPACC without prior Council approval.***

The overall project budget for development of the BPACC is \$44.5 million. This was clearly articulated in the agenda item 14.2 considered by Council on the 24 November 2021; with Council resolving (C2111/093)

*That the Council accepts the tender from Broad Construction Pty Ltd for RFT 22/21 Construction of the Busselton Performing Arts and Convention Centre subject to minor variations being negotiated in accordance with Regulation 20 of the Local Government (Functions and General) Regulations and subject to the building construction contract value not exceeding \$38,000,000 (excluding GST).*

This decision was the result of extensive consideration by Council of the benefits and costs of the project. The CEO has implemented council's resolution and entered into a construction contract with Broad Construction Pty Ltd (Broad) for a value of just under \$38 million.

As outlined in the 24 November agenda item, in addition to the construction contract value, the project budget (of \$44.5 million) includes a contingency sum plus allocations for professional fees, furniture and landscaping. The table below set out the overall project budget, the estimated project value and the variance to budget clearly indicating costs associated with the project beyond the construction contract.

	Project budget	Tender price (including options)	VE	Variance
Building contract including Weld Theatre upgrade	\$38,000,000	\$37,736,572		-\$263,428
<b>Other City costs</b>				
Consultant design	\$2,800,000	\$2,800,000		\$0
Contingency	\$3,000,000	\$3,000,000		\$0
Loose furniture	\$250,000	\$250,000		\$0
Landscaping	\$500,000	\$400,000*		-\$100,000
Additional design fees		\$69,000		\$69,000
Utility costs		\$193,000		\$193,000
<b>TOTAL</b>	<b>\$44,550,000</b>	<b>\$44,448,572</b>		<b>-\$101,428</b>

\* Landscape allowance reduced due to pricing at tender (VE savings swap granite for Queen St pavers (-\$100k))

The contingency sum of \$3 million caters for contract variations that may arise during the construction phase of project. As with any other project, it is to be expected that the construction contract will be subject to variations across the course of the project. Like all standard construction contracts, the contract includes a variation clause to allow for changes and provide a mechanism for determining and valuing those variations (up or down).

The administration of the contact falls within the scope of the CEO's functions. The administration manages contracts in accordance with the terms of the contract and applicable Council budgets. In relation to the BPACC Officers note that:

- the project can only be progressed in accordance with the project budget approved by Council;
- variations will likely require timely responses to ensure that contractors are not delayed (incurring cost). If Council approval for all variations were to be required then it is likely that significant additional costs would be incurred;

- the BPACC Councillor working group will be kept informed of matters relating to project progress, scope changes, expenditure and variations. Council has, on recommendation of the CEO, established this working group, consisting of three councillors and five staff. The Councillors appointed as members all have a good knowledge of and background to the project and will be in a position to provide some oversight and act as a communication and feedback link to Council through regular briefing sessions of all Councillors
- the CEO will have a tight control over variations and will approve each as recommended by the Principal's Representative and project team. Variations will primarily result from design errors and latent conditions. There may also be inclusions and/or changes that the project team see as a benefit to the project, these items will be discussed with the BPACC Councillor working group.

**2. The value adjustments to the contract to reduce its build cost (ie no second kitchen and bar and any other component) shall be assessed for loss of operating income and shall be reported to the Council. This modelling report shall specifically include total direct and indirect operating profit/losses modelled with underlying explicitly stated assumptions. These assumptions shall include a range of reasonably expected risk parameters. Additionally, the modelling shall include the total annual operating profit/losses as a net present value figure for the life of the building. Accordingly, the report will show how any such losses shall be recovered through a user pays usage fee/entry price regime and not be a burden on ratepayers.**

The value management options identified through the tender process and agreed to by Council have been incorporated into the contract with Broad. They do not have any material impact on the functionality of the building, or therefore the projected operating position. This was a condition placed on the selection of value management options. For this reason officers do not consider that further modelling is necessary.

**3. With the announcement of the Georgiana Molloy PAC, modelling should be carried out, in conjunction with 2 above, as to the loss of operating income and impacts of this development on the BPACC.**

The Georgiana Molloy Performing Arts Centre (PAC) is a private school facility built on the school grounds, primarily for the school's purposes. The BPACC on the other hand is a multi-purpose community facility built in the heart of Busselton.

The City has been aware for some time that the Georgiana Molloy Anglican School were looking to build their own performing arts facility, with this referenced as part of operational business planning for the BPACC. To date however the City has not seen a copy of the business model or plan for the facility and is not aware of the timeframe for construction.

Based on what the City does know, the differences between the Georgiana Molloy PAC and the BPACC are significant. The Georgiana Molloy PAC is a proposed 400 seat auditorium facility. The BPACC is a multi-purpose community facility with a (up to) 650 seat auditorium, of which 345 are retractable to create a 1000 capacity indoor concert venue. The BPACC also incorporates a new A-class art gallery designed as a flexible space to cater for the broadest possible range of exhibition requirements with a traditional white box exhibition space and a black box exhibition space which can be used in traditional or black room digital exhibition configuration. A studio/rehearsal room adjoins two multipurpose rooms. This area can open up into one large event space to provide a separate banquet room to hold around 400 people seated. There is also a courtyard which can be used for outdoor exhibitions, events space and an alfresco area for functions.

The BPACC can be used by any community group and will be accessible to all schools in the South West region and TAFE. The BPACC will also be hired commercially by touring shows, event organisers and local commercial groups such as the dance schools. The Georgiana Molloy PAC will not be able to provide the same level of access to the broader community, other schools, TAFE and commercial hirers. As a school facility their priority will be utilisation by their students.

While the Georgiana Molloy PAC may provide an alternative venue for some dance or other community based events, it will not have the functionality of the BPACC, functionality that was developed in consultation with key stakeholders including dance schools. The Georgiana Molloy PAC will also be somewhat constrained commercially by its location on a school ground, with a range of additional policy settings.

The business operations plan developed for the BPACC clearly articulates that GMAS are likely to utilise their own facilities rather than the BPACC. Given the above noted differences between the two facilities, the City does not consider that the Georgiana Molloy PAC will materially impact on the projected operating income for the BPACC, and therefore further modelling is not considered warranted and would not be a good use of resources.

***4. Modelling to be carried out, in conjunction with 2 and 3 above, as to the loss of operating income and impacts on the BPACC of the conference facility which the Geographe Bayview Resort have put on hold at this time due to the impacts of Covid-19 but one which poses a very real competition possibility should they proceed.***

The Geographe Bayview Resort was issued a development approval (DA) for a 5 storey development at the northern end of the Bayview Geographe site on 19 September 2018, with a condition requiring substantial commencement within two years. Under the COVID State of Emergency Declaration, the Minister for Planning issued a notice which provided an extension to all development applications that were valid as at 8 April 2020, with an additional two years to substantially commence. This means that the DA is valid until 19 September 2022. There are a number of conditions on the DA which need to be satisfied prior to commencement and a Building Permit will also be required.

No contact has been made with the City in relation to the development for a substantial period of time and the City is not aware of (a) the reason for the development not having proceeded to date or (b) whether the Geographe Bayview Resort intends to proceed with the development.

As already outlined, the BPACC will be a purpose built state of the art performing arts and convention centre. It will be multi-functional space catering for small workshops and seminars through to conferences, tradeshows and exhibitions that can cater for 400 plus delegates, and has the ability to host multiple events simultaneously or to be hired as a whole venue for a large delegation. It is centrally located within Busselton and will link to and activate the town centre. While the City has not been provided a copy of the business case for the development, there are likely to be significant differences between the BPACC and the Geographe Bayview Resort.

Regardless, Council has made a decision to proceed with the BPACC, based on the information available at the time and on an assessment of the costs and benefits, both social and economic. In a growing municipality such as the City of Busselton, there will be ongoing development of new and existing venues, and the City will seek to work collaboratively with other venues to achieve positive outcomes for the District. A South West Business Events Strategy, developed by Australia's South West, identifies significant opportunity for business events within the South West region and associated flow on benefits to increase and diversify tourism to the region. If the Geographe Bayview Resort was to proceed it would add to the capability of the region and also help to service the demand for these events, and would not necessarily detract from the BPACC.

Given that it is not known whether the Geographe Bayview Resort development will proceed, and noting that the City does not have a copy of its business plan, officers are not in a position, and also do not believe it is necessary, to undertake further modelling in relation to its impacts, if any.

- 5. The CEO shall provide to Council a list of the source of all funds (borrowings, grants, reserves etc) that will be directed towards the BPACC. No funding (whether internal or external), other than those amounts shown on the list, shall be directed towards the project without prior Council approval.**

The Long Term Financial Plan (LTFP) for the 10 years commencing 2022/2023 is currently being prepared and will be workshopped with Council in February. This will include the costs and funding allocations for the BPACC.

Further to this, the CEO intends to bring to a report to Council outlining the project funding and seeking a Council resolution in relation to the loan borrowings not already included in the currently adopted budget; such that these can be applied for and drawn down at a favourable interest rate. (The \$10M included in the current budget has been funded through the Western Australian Treasury Corporation).

The 2022/2023 budget will then be prepared based on the LTFP and the endorsed funding strategy, with funding for the project expected to be incorporated over the next two budget years. Council is of course required to adopt the LTFP and each budget and so, in effect, the City's normal budgeting processes will provide for this aspect of the notice of motion.

Officers note however that with respect to grant funding, the City continues to seek external grant funding for the project which is not provisioned for within the funding strategy. Where such grant funding is obtained, the CEO requires the ability to allocate those funds to the project, ahead of a formal budget amendment to recognise them. This is in accordance with previous Council resolutions instructing the CEO to pursue grant funding that can be applied to the project. The Councillor working group would be kept informed of any additional grant funding and opportunities for its allocation.

- 6. The CEO shall provide a report to Council clearly stating the value/cost of all Council staff and Council plant that will be used on construction of the BPACC and what works will be performed by the Council staff and Council plant. The report is to also document how these costs will be shown in the City's financial statements.**

As outlined in the opening commentary to this notice of motion, the CEO is responsible for administration of the City and for managing the day to day operations of the City. This includes the implementation of Council resolutions and allocating resources to delivery of budgeted services and projects.

Salaried costs associated with projects are not generally job costed against projects. This is because they are operational costs and to do this would be a manual and very time consuming exercise. Direct wages costs (e.g. outdoor staff) are job costed and can therefore be reported on as required against capital projects. Any associated direct plant costs are also generally be allocated to a project.

Officers note that at this stage there is no intention to allocate internal wages and/or plant to the construction of the BPACC, outside of overall existing project management costs, and that therefore reporting, while possible in terms of wages and plant costs, at this stage is not considered necessary.

- 7. A report on Signal Park is to be submitted to Council to inform the community of its future use for parking in relation to the BPACC and any impacts, if any, on the community and other events conducted on Signal Park. Further, what impacts the BPACC will have on businesses customer parking availability in the CBD and how this will be ameliorated (if at all).**

There are in excess of 2800 car bays across the Foreshore and City Centre Precincts. The Busselton City Centre Parking Utilisation and Turnover Survey in 2019 by SMEC Australia Pty Ltd (SMEC) found that there is sufficient parking capacity for the foreseeable future and that, overall, there is an oversupply of parking in the Busselton Town Centre.

These findings were confirmed by a further study conducted by SMEC in 2020 to address forecast demand for Busselton and Dunsborough. This study considered, amongst other things, the development of the BPACC, and concludes that there is an oversupply of parking within the Busselton Town Centre for both the Medium and Long Term.

While the BPACC will generate additional parking demand at times, the survey found that most of the parking demand generated in the Foreshore and Busselton City Centre Precincts is during the day, with occupancy rates declining steadily after 2pm. There is therefore likely to be an under-utilisation of available parking in the afternoons and evenings, hence opportunities for separate turnover in shared parking areas. Notwithstanding, as demonstrated through the above studies, even in peak periods, there is sufficient parking within the Busselton Town Centre. Not all of this parking is in the immediate surrounds of the BPACC, nor needs to be; however within the overall town centre, demand is not forecast to outstrip supply.

With specific reference to Signal Park, the City currently use Signal Park as overflow parking in peak periods and for specific events. The intention is for this over flow use of Signal Park to continue, however it is not intended that use of Signal Park in this manner would significantly increase. Given this officers do not believe a report to Council is necessary, and nor would officers be in a position to articulate anything further to the above commentary.

## **CONCLUSION**

In conclusion officers recommend that Councillors do not support the notice of motion on the basis that the motion would result in inefficiencies in the administration of the project and implementation of Council's decision to proceed with construction of the BPACC. It would result in officers being side tracked onto modelling and reporting that would have limited value and would likely have negative impacts on the delivery of other service deliverables, with time being diverted from them.

The establishment of a performing arts facility has been considered an important community priority for over a decade. The BPACC business case and business operations plan were developed well over two years ago and have been published on the City's website to enable the community access to information regarding the project. Further to this, there have been many opportunities and forums where members of the public have asked questions regarding the project and have been provided opportunity to have their concerns addressed. Council has considered in detail whether to proceed with this project on a number of occasions and on 24 November 2021 Council made a decision to proceed.

Officers consider that this notice of motion covers both administration matters and also matters that have already been considered by Council over a significant period of time. Therefore it is recommended energies be focused on delivering the best performing arts and convention centre for the District and on promotion and marketing of the centre and its benefits to deliver on and beyond the business case.

**19. URGENT BUSINESS**

**20. CONFIDENTIAL REPORTS**

21. CLOSURE

The Presiding Member closed the meeting at 6.59pm.

THESE MINUTES CONSISTING OF PAGES 1 TO 77 WERE CONFIRMED AS A TRUE AND CORRECT RECORD ON MONDAY, 21 FEBRUARY 2022.

DATE: 28/6/22 PRESIDING MEMBER: 