



CITY OF BUSSELTON

HOLIDAY HOME REGULATORY FRAMEWORK REVIEW

DIRECTIONS PAPER

August 2021

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EXECUTIVE SUMMARY

In 2012 three interrelated, key instruments were introduced by the City to regulate holiday homes – these included a local law, provisions in the local planning scheme, and a local planning policy. The local planning policy has since been reviewed and amended, however the local law has remained unchanged, and the Scheme provisions were carried over in 2014, without substantial change, into *Local Planning Scheme No. 21*.

Over time, issues relating to holiday homes have arisen that may not be sufficiently addressed through the current regulatory framework. The primary purpose of this paper is to identify and seek comment on potential changes, with an aim to work toward a framework that provides more effective regulation.

A range of potential changes were supported by Council at its meeting of 9 June 2021, and in this paper are discussed as “opportunities for change”. Following the initial consultation process, Council will consider whether (and what) formal changes should be made. Should formal changes to the framework be supported, the process would then entail development of more detailed proposals and further consultation.



PART 1 – INTRODUCTION

Holiday homes have been part of the landscape and lifestyle in Busselton, Dunsborough, Yallingup, Eagle Bay, and many other places in Western Australia for many decades. However the scale and character of holiday homes has changed over time, principally due to a significantly increased population in the Perth metropolitan area (the City's main tourism market), greater mobility and affordability in interstate and international travel (other than over the last 18 months or so), and the emergence of online booking platforms such as *Airbnb*.

For the purpose of this paper, the term holiday home applies specifically to the exclusive use of a private dwelling (single house, unit, townhouse, apartment etc), for short-term accommodation, in return for hire or reward, and without a permanent occupant present at the premises ('un-hosted'). An approved holiday home could also be used for long-stay/permanent residential purposes.

The term holiday home does not apply to other similar short-term accommodation land uses such as bed and breakfast, chalet, guesthouse or tourist accommodation units, which are generally required to be 'hosted' by a permanent occupant of the site. Also, it does not apply to the more traditional 'personal and occasional' holiday use of a privately owned dwelling, where there is no contract of hire or financial reward.

Desktop research has been conducted into the current policy position of the State Government, other local governments (around Australia), and various international jurisdictions. A meeting was held with the Shire of Augusta-Margaret River to gain some insight into the effect and implementation of their regulatory approach. The Shire of Augusta-Margaret River and the City of Busselton collectively account for a significant proportion of holiday homes in Western Australia, and face many similar management issues.

This review coincides in a timely manner with a review of the *Holiday Homes Local Law 2012*, and the six opportunities for change were endorsed at the Ordinary Council Meeting of 9 June 2021. Additional conceptual ideas were explored, but not endorsed by Council. The full range of ideas that were put forth for Council consideration can be found at Item 12.1 of the [*Minutes for the Council Meeting Held on 9 June 2021*](#).



Thurstun and Gamble Cottages, Dunsborough. The Thurstun family took up land in Dunsborough in 1931, and holidayed there until they moved permanently to Dunsborough in 1954 (information supplied: L. Sutherland).

Photo credit: M. Thurstun. Supplied by: L. Sutherland.

PART 2 – CONSULTATION

Consultation is vital in ensuring that the community and industry stakeholders are involved in the decision-making process. The aim of consultation is to gauge whether there is a desire for change and, if so, what form that change should take.

It is envisaged that the main stakeholder groups with an interest in this matter will be holiday home owners, managers and management agencies, guests, neighbours, and local residents.

To facilitate consultation, the following actions will be undertaken:

- Targeted letters/emails to holiday home owners, managers, and management agencies.
- Notices in the local newspaper, the City's Bay to Bay digital newsletter, and the City's social media pages.
- A notice on the City's website, including a portal through the City's *Your Say* platform for the online lodgment of submissions.
- Public display boards in the administration building and Naturaliste Community Centre.
- Staffed public displays (temporary) at Busselton Central Shopping Centre and Centrepont Dunsborough.
- In-person information sessions in Busselton and Dunsborough.
- Online information sessions for stakeholders who aren't able to attend other sessions in person.

The outcomes of consultation will be used to inform what (if any) formal changes should occur. Should change be supported, this would entail development of more detailed proposals and further consultation.



PART 3 – BACKGROUND

The concept of a “sharing economy” can be described as the sharing of goods and services on a peer-to-peer basis, and is commonly applied to companies such as *Airbnb* and *Uber*. With the rise of online booking platforms this concept has evolved to become something more of an “access economy”, which is the engaging in commercial transactions between two individuals who are unacquainted. This is more likely to describe the behaviour of individuals who ‘purchase access’ to goods and services, rather than share them, and more accurately describes the current holiday home market and the role of online accommodation platforms. (Koh & King, 2017).

There are benefits and costs associated with online accommodation platforms: some benefits are that landowners are able to supplement incomes, and there is a greater choice in types of tourist accommodation, possibly attracting a market segment that may not previously have visited the region. Costs include a possible threat or disruption to housing affordability and availability; disruption to the amenity of local neighbourhoods and the sense of community; and the threat or disruption to existing tourist accommodation providers.

This has presented a challenge to regulators around the world as they strive to find an appropriate long-term response, while also attempting to support tourism markets. They are constrained by the difficulty in monitoring online operations and rapid changes in the industry.

In Western Australia, the City of Busselton has been one of the fore-runners in recognising the impact of holiday homes, by adopting a regulatory framework in 2012, and adapting to the rise of the online market.

3.1 The City of Busselton’s current regulatory approach

The three key instruments which make up the regulatory framework include provisions in *Local Planning Scheme No. 21* (the Scheme); *Local Planning Policy 4.1 Holiday Homes* (LPP 4.1); and the *Holiday Homes Local Law 2012* (the Local Law). A summary of these key mechanisms is provided below.

a) The Scheme - any proposed holiday home must be granted development approval prior to use. The number of occupants is capped depending on whether the proposal is for a grouped/multiple dwelling or a single house, and holiday homes are prohibited in some zones.

The ‘Table 1 - Zoning Table’ indicates, subject to the provisions of the Scheme, the uses permitted in the Scheme area in the various zones. The permissibility of uses is determined by cross-reference between the list of uses classes on the left hand side of the Zoning Table and the list of zones at the top of the Zoning Table. The symbols used in the Zoning Table have the following meanings:

- | | |
|-----|--|
| ‘P’ | means the use is permitted by the Scheme providing the use complies with the relevant development standards and requirements of the Scheme; |
| ‘D’ | means the use is not permitted unless the local government has exercised its discretion by granting development approval; |
| ‘A’ | means the use is not permitted unless the local government has exercised its discretion after advertising in accordance with the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i> ; |
| ‘X’ | means the use is not permitted by the Scheme. |

The ‘Table 1 – Zoning Table’ currently applies to holiday homes in the following manner:

Zone / Use Class	Residential	Regional Centre	Centre	Local Centre	Service Commercial	Tourism	Light Industry	General Industry	Rural	Viticulture / Tourism	Rural Residential	Rural Landscape	Conservation	Bushland Protection
Holiday Home (Multiple/Grouped Dwelling)	A	A	A	A	X	X	X	X	X	X	X	X	X	X
Holiday Home (Single House)	D*	D*	D*	D*	X	X	X	X	D*	D*	D*	D*	D*	D*

* provides reference to Clause 4.18.5 of the Scheme (see below).

In regard to the non-permissibility of holiday homes in the Tourism zone, the rationale for this is because the holiday home land use can be applied to a residential dwelling, however a residential dwelling is an 'X' use in the Tourism zone. A similar rationale is applied to Holiday Home (Multiple/Grouped Dwelling) in the Rural, Viticulture and Tourism, Rural Landscape, Conservation and Bushland Protection zones, because a Grouped Dwelling or Multiple Dwelling is not permitted in these zones.

Clause 4.18 'Bed and Breakfast and Holiday Homes' includes the following relevant clauses:

4.18.3 Advertising signage associated with 'Holiday Home (Single House)' and 'Holiday Home (Multiple/Grouped Dwelling)' shall have a maximum area of 0.2m².

4.18.4 Holiday Homes shall meet the development standards established by the Residential Design Codes of Western Australia, as modified elsewhere in this Scheme, for 'Single House', 'Grouped Dwelling' and 'Multiple Dwelling', as appropriate, although higher levels of car parking provision may be required for holiday homes providing accommodation for more than six people.

4.18.5 Notwithstanding the requirements of Table 1, a 'Holiday Home (Single House)' which proposes to accommodate 9 or more people will be considered under the 'A' symbol and will require public advertising pursuant to Clause 64 of the Deemed Provisions.

'Schedule 1 – Interpretations' includes definitions for land use terms found in the Scheme:

"Holiday Home (Multiple/Grouped Dwelling)" means a grouped dwelling or multiple dwelling, which may also be used for short stay accommodation for hire or reward for no more than six people (but does not include a bed and breakfast, chalet, guesthouse, rural tourist accommodation or tourist accommodation).

"Holiday Home (Single House)" means a single house (excluding ancillary accommodation) which may also be used for short stay accommodation for hire or reward for no more than 12 people (but does not include a bed and breakfast, chalet, guesthouse, rural tourist accommodation or tourist accommodation).

Other, similar short-term accommodation land uses occurring in the District are also defined in 'Schedule 1 – Interpretations':

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

“Chalet” means a dwelling forming part of a tourist facility that is —

(a) a self-contained unit that includes cooking facilities, bathroom facilities and separate living and sleeping areas; and

(b) designed to accommodate short-term guests with no guest accommodated for periods totalling more than 3 months in any 12 month period.

“Guesthouse” means a single building on a lot (which may be in addition to any single house already developed) utilised for the purpose of providing holiday accommodation and typically offering full board for guests. The building would be characterised by individual suites which are serviced by centralised dining (not being a public restaurant/café) and other facilities. Suites would not be self-contained and occupation would generally be reliant on services provided by management.

“Tourist Accommodation” means single occupancy accommodation units, which may be self-contained and may include associated central facilities for the exclusive use of guests, and includes serviced apartments.

b) LPP 4.1 – provides operational guidance for the assessment of development applications. When applying the policy, due regard is given to the following matters:

- The location of the holiday home, including whether:
 - it is in an existing, lawful dwelling;
 - has frontage to a public road and/or public open space;
 - has a minimum of 350m² exclusively for the use of the dwelling;
 - for grouped or multiple dwellings, whether written support has been received from the majority of owners within the strata company.
- Utility servicing, including:
 - adequate supply of potable water;
 - waste collection/disposal;
 - sewerage disposal.
- Car parking, including the required number of car parking bays.
- Dwelling design, including:
 - an existing, lawful dwelling, or equivalent design standards;
 - bedroom area requirements per occupant, and overall bedrooms for overall number of occupants;
 - bathroom and toilet requirements for overall number of occupants.
- Bushfire management, including compliance with *Local Planning Policy 4.2 Bushfire*.

c) Local Law - the more significant aspects of the local law are:

- The local law requires all holiday homes (as defined in the Scheme) to be registered.
- Registration can only occur where development approval has been granted.
- A manager and acting manager must be nominated.
- Conditions of registration can cover matters such as:
 - Maximum number of occupants and attendants (which term includes guests);
 - Provision of parking (including minimum and maximum number of vehicles);
 - Ensuring a responsive manager.

- If a manager ceases to be the manager then the registration is taken to be cancelled.
- If an attendant breaches a condition of registration then the manager must terminate the occupant's tenancy.
- The manager must be contactable at all times, and in any event within 24 hours.

These instruments took several years to develop and become operational and, with the exception of LPP 4.1, have not been changed since they were introduced.

3.2 Development of the current approach

The City's current regulatory framework emerged from work that began as early as 2002. This was through Amendment 46 to *Town Planning Scheme No. 20* (TPS 20). The proposal was delayed, though, for a variety of reasons, including a broader State Government review into the issue. By 2009 the Western Australian Planning Commission (WAPC) had developed *Planning Bulletin 99: Holiday Homes Guidelines* (PB 99), and the Minister for Planning directed the Council to modify and readvertise Amendment 46 in a manner consistent with PB 99.

After 2002, there was a noticeable shift in the nature of holiday homes, from a cultural and lifestyle option to an increasingly commercial enterprise. By 2010 it was estimated that there were approximately 500 properties in the District being used as holiday homes, making them an important part of the local tourism industry and economy. Holiday homes at that time were, in most respects, unregulated, and in some instances they were having significant impacts on the character and amenity of residential areas.

It was recognised by Council that a scheme amendment alone would not be sufficient to provide effective regulation. In 2010 some draft general principles, for inclusion in a local law and local planning policy, were endorsed by Council for public consultation. It was in that environment, in late 2012, that the Local Law was made, Amendment 46 to TPS 20 (in modified form, as directed by the Hon. Minister for Planning) was approved, and the holiday homes local planning policy provisions were introduced into the broader *Local Planning Policy 7 – Commercial and Industrial Development Policy* (now LPP 4.1). By mid-2013, there were around 500 holiday homes formally registered in the District.

At different points in the journey from 2002 to 2012, the Council had taken positions that holiday homes should remain unregulated, or should be prohibited entirely, to finally adopting a position that they should be regulated, but not prohibited.

The following table details the events that occurred to establish the City's holiday home regulatory framework as it is today.

2002	Amd 46 to TPS 20 – was initiated for community consultation and would have allowed the approval of holiday homes in residential areas (in most cases after community consultation).
2005	Amd 46 to TPS 20 - Council adoption for final approval, subject to changes that would have allowed holiday homes in residential areas without any need for the Shire's approval.
2005	The State Government established the 'Holiday Homes Working Group' (including representatives from the Shire of Busselton), charged with investigating and reporting on issues associated with holiday homes.
September 2009	The investigations of the State Government 'Holiday Homes Working Group' were considered by WAPC in their development of <i>Planning Bulletin 99: Holiday Homes Guidelines</i> (PB99). In broad terms, PB 99 recommended that holiday homes be permissible in suitable residential areas, but with the approval of the local authority.
October 2009	The Hon. Minister for Planning decided not to approve Amd 46 in the form recommended by Council in 2005. Instead, the Minister directed that the Shire modify and readvertise the amendment in a manner consistent with PB 99.

February 2010	Amd 46 to TPS 20 - Council resolved to adopt the modified amendment for readvertising, consistent with the Minister's direction. The Council also adopted, for consultation purposes, general principles for both a potential local planning policy and a potential local law that would supplement and complement with proposed TPS provisions.
November 2010	Council resolved that the CEO prepare a draft holiday homes local law.
September 2011	Council resolved to commence the law-making process for the Shire of Busselton <i>Holiday Homes Local Law</i> . The purpose of the local law being to provide measures to regulate the registration and management of holiday homes, to complement planning controls.
March 2012	Council resolved to make the <i>City of Busselton Holiday Homes Local Law 2012</i> .
April 2012	Gazettal of the City of Busselton <i>Holiday Homes Local Law 2012</i> , as made.
December 2012	Gazettal of Amendment 46 to TPS 20.
December 2012	Council resolved to adopt local planning policy provisions for holiday homes, by introducing Part 7C of the <i>Commercial and Industrial Development Policy</i> . This included provisions relating to preferred areas for the location of holiday homes, car parking, dwelling size, service connections, site maintenance, and fire management.
August 2015	Council resolved to support minor amendments to the local planning policy provisions, so that the word 'Preferred' was removed from the two areas in which holiday homes would be considered for approval; and incorporating Dunsborough Lakes into one of these areas of consideration.
March 2018	Council resolved to amend Local Planning Policy 7C Holiday Homes Provisions. Substantial changes included the removal of restrictions on holiday homes in some residential areas; the introduction of more comprehensive bushfire provisions; and revised formatting identifying 'deemed-to-comply' and 'performance criteria'.
March 2020	Council resolved to amend the Holiday Homes Local Planning Policy by removing the majority of bushfire provisions, and relocating them to a newly created Bushfire Local Planning Policy.

Related to the regulatory framework, a further Council decision (implemented at the start of the 2018/19 financial year) was the introduction of a five per cent increase in the 'rate in the dollar' for rating purposes (triggered by registration), with a transition to a ten percent higher 'rate in the dollar' in the 2019/20 financial year (which meant that holiday homes were rated at the same rate level as most other tourism accommodation).

While this framework is robust in comparison with other local government jurisdictions in Western Australia, Council have decided to seek community feedback on various ways to address issues relating to holiday homes, which have arisen since its introduction.

3.3 Current experience in the City of Busselton

At the start of the 2021/22 financial year there were 969 registered holiday homes in the District, and it was estimated that a further 50 properties were being let for the purpose of short-term accommodation, without planning and/or registration approval. These properties are often the subject of compliance activity.

After renewal letters were sent out in 2021, 59 registrations were cancelled because of:

- A view by owners that more income could be generated from the long-term rental market.
- Owners returning to live in the property, providing feedback that WA (and the SW) is a safe place during the Covid-19 pandemic.
- Difficulties in finding cleaning staff.
- Owner concerns about illegal activity.

- New property ownership (registration does not automatically carry over with the sale of the property).

At the start of the 2021/22 financial year a further 60 applications were pending development approval, or initial registration approval.

3.4 Issues and concerns

Following their emergence during the late 2000s, and the rapid rise in popularity of online booking platforms such as *AirBnB*, *Stayz* and *Booking.com*, there were concerns that an increasing number of holiday homes were being advertised without having first obtained development or registration approval. In early 2019, the City created a trial (three month) full time officer position to identify unapproved holiday homes, and to pursue compliance action. This was found to be an effective means of addressing this issue, and the position was retained on a permanent part-time basis.

Unauthorised holiday homes are detected through a quarterly report provided by a firm called *BnBGuard*, which cross references properties that have been granted approval, against properties that are being advertised by 13 online booking platforms. *BnBGuard* is able to detect properties that are being advertised but are not approved, and provide in most cases the exact address of the properties (many online advertisements will show an approximate location only).

With a single officer dedicated to monitoring approval of holiday homes, a better understanding has emerged of current issues and/or concerns raised by the community. The following is a summary of complaints received in 2020, and during January – June 2021, although it is considered that there may be an under-reporting of complaints to the City.

	Complaints received	No. properties	Properties with multiple complaints
2020	53	47	6
2021 (Jan – June)	29	27	2

Only one of the complaints received in 2021 was in relation to a property in a ‘newer’ residential area, which has not been subject to longer-term holiday home use. Typically the nature of these complaints include:

- Listings of properties that don’t have development and/or registration approval.
- Location of holiday homes in residential areas, with concerns around residential amenity (noise, behaviour, nuisance), safety and security, waste management, car parking.
- The number of people that are present at a property at any one time, whether they be the occupants or guests of occupants, i.e. ‘party houses’.
- The number of vehicles parked at a property at any one time, being greater than the number of car parking bays available (including boats, campervans etc).
- Dogs that have been left unattended in an unfamiliar environment, and become distressed (barking and whining). In some instances this includes multiple dogs.
- Lack of ability for a complainant to directly contact the manager, meaning that the reason for the complaint may have passed by the time contact is made.

These issues are consistent with those raised by other local governments during the 2019 State Government inquiry into short term accommodation, which is discussed in further detail below.

3.5 Regulatory approaches adopted by other local governments

A review of the regulatory framework adopted by 18 local governments in Western Australia has been undertaken, and it is evident that the approaches vary greatly. The least regulatory is where there are no formal provisions in place, for example in Subiaco and Mandurah. The table below provides a summary of the regulatory approach in place for each local government.

	LOCAL LAW	LOCAL PLANNING SCHEME – HOLIDAY HOME DEFINITION	LOCAL PLANNING SCHEME - ZONING TABLE PERMISSIBILITY	LOCAL PLANNING SCHEME – DEVELOPMENT STANDARDS	LOCAL PLANNING POLICY	COMMUNITY INFO SHEET	NOTHING IN PLACE
ALBANY		✓	✓				
AMR		✓	✓	✓	✓		
BELMONT		✓					
BROOME		✓	✓	✓			
BUSSELTON	✓	✓	✓	✓	✓	✓	
COCKBURN		✓	✓		✓		
DENMARK		✓	✓		✓		
EAST FREMANTLE						✓	
EXMOUTH		✓	✓	✓		✓	
FREMANTLE	✓	✓	✓				
JOONDALUP		✓	✓		✓		
MANDURAH						✓	
NORTHAMPTON		✓	✓		✓		
PERTH (CITY OF)		✓	✓	✓	✓		
ROCKINGHAM		✓			✓		
SUBIACO							✓
TOODYAY		✓					
WANNEROO	✓	✓	✓				

Many jurisdictions have minimal provisions in their local planning scheme, including:

- a land use definition; and/or
- permissibility set out in the zoning table.

Across the various local governments, holiday homes are generally a discretionary 'D' (or discretionary subject to advertising 'A') use in the Residential zone, Rural Residential zone, Centre zones, and Rural zones. Throughout all places reviewed, the only zone in which holiday homes may be a permitted 'P' use is the Tourism zone; they are always prohibited 'X' in different types of Industrial zones.

Further guidance on the assessment of development applications is often set out in a local planning policy. The policies reviewed provide guidance on some or all of the following matters:

- Preferred areas in which a holiday home can be located.
- Requirements around manager/responsible person contact details, including the display of these details on a sign which is visible from the street.
- Requirement for a manager to respond to complaints within a set time period, and to reside within reasonable distance of the subject property.
- Use of ancillary accommodation.
- Car parking.
- Utility servicing (water, effluent).

- Waste management.
- Lot size and dwelling design, including maximum number of people per bedroom, and outdoor living and screening.
- Bushfire provisions.
- Strata company requirements.
- Management plan, including details such as –
 - how bookings are made (marketing and advertising);
 - manager details (contact phone number);
 - duties of manager;
 - complaints procedure;
 - code of conduct for guests;
 - control of noise and other disturbances;
 - control of anti-social behaviour;
 - security of occupants, guests of occupants, and neighbours;
 - car parking for occupants and guests of occupants, including maximum number of vehicles.

In some instances, local governments have opted to include some of the provisions listed above as development standards in the local planning scheme (e.g. Augusta-Margaret River, Exmouth).

Fremantle and Wanneroo have developed local laws but do not have a local planning policy. These two local laws do not contain any significant provisions that are different from the City of Busselton Local Law.

The Shire of Noosa in Queensland has recently advertised a draft local law which would require occupants to comply with several ‘conditions of behaviour’, collectively called a code of conduct. This would make the manager responsible for ensuring compliance with the code of conduct, and responding to complaints within 30 minutes of receiving the complaint.

It is apparent from the review that, while the means of regulating holiday homes may vary, the matters to be addressed by the local government and landowner are fairly consistent.

3.6 State Government Policy Position

In 2019, the State Parliamentary Legislative Assembly Economics and Industry Standing 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).

This was prompted by “a groundswell of public agitation from the South West of the State, voicing concerns about the emergence of online accommodation platforms.” The 2019 Inquiry resulted in a record number of submissions from around the State.

The 2019 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 described herein as holiday homes.

In its final report (September 2019) the Committee made 10 recommendations, and on 12 February 2020 the State Government provided a formal response. Some of the recommendations are broadly relevant to the City’s regulatory framework, and in particular the State Government has committed (at a macro level) to undertaking the following actions:

- The establishment of an inter-agency working group, to develop legislative or regulatory mechanisms to require the display for a valid registration number for short-term rentals [holiday homes] advertised on online booking platforms.

- Amending land use definitions in the *Planning and Development (Local Planning Schemes) Regulations 2015* (the Regulations) to differentiate between hosted and un-hosted accommodation.
- Updating strata title guidance to include powers and processes open to strata companies to manage short-term rentals [holiday homes].
- Development of an education campaign to ensure owners, property managers, and purchasers are aware of their obligations regarding short-term rental properties.

The first commitment listed above is most relevant to this review, as it would (if implemented) sit alongside the City's register of approved holiday homes, making the compliance process simpler. The second commitment may have an impact on Scheme definitions, and the third commitment may impact some landowners, over and above the City's development/registration approval process.

At the time of writing this paper, none of the recommendations from the 2019 Inquiry have been actioned to the extent that there has been any change to the existing state-level regulatory framework. Should they be actioned, it is considered there will be no significant impact on the City's regulation of holiday homes.

This review is mindful of the 2019 Inquiry, and does not seek to pre-empt the outcomes of the Government response. Instead, it aims to explore options that will complement State-level regulatory controls.

PART 4 – POLICY FRAMEWORK

Any amendments to the current regulatory framework would require justification in the context of the State statutory framework. The following key statutory documents are of relevance if any formal changes should be proposed.

Local Government Act 1995 (LG Act)

Section 3.5 of the LG Act provides Council with the head of power for making local laws, which stipulates:

A local government may make Local Laws under this Act prescribing all matters that are required or permitted to be prescribed by a local law, or are necessary or convenient to be so prescribed, for it to perform any of its functions under this Act.

The local laws are all made under the head of power contained in section 3.5 of the LG Act.

Planning and Development Act 2005 (PD Act) and associated Regulations

The PD Act outlines the relevant considerations when preparing and amending local planning schemes.

The *Planning and Development (Local Planning Schemes) Regulations 2015* identify three different types of Scheme amendments (regulation 34), and set out the procedure for amending a local planning scheme (Part 5, regulations 35 - 64) and amending a local planning policy (Schedule 2, Part 2, clause 5).

PART 5 – OPPORTUNITIES FOR CHANGE

Through research and informal discussion with a range of stakeholders, as well as discussion with Council, a range of conceptual ideas, or opportunities for change, are discussed under the relevant headings below:

1. Exclude some residential areas from holiday home use.
2. Revise standards for the size or design of properties relative to maximum permissible occupancy numbers.
3. Change requirements and expectations for holiday home managers.
4. Change requirements and expectations for occupants and the guests of occupants.
5. Introduce controls on dogs being brought to holiday homes.
6. Develop a Council Policy to set out how the City intends to implement the Local Law.

1. Exclude some residential areas from holiday home use

In 2002, when the regulation of holiday homes was first drafted, Council proposed that holiday homes would be allowed in residential areas (in most cases after community consultation). In 2005 and following community consultation, Council adopted a position to allow holiday homes in residential areas without any need for the Shire's approval.

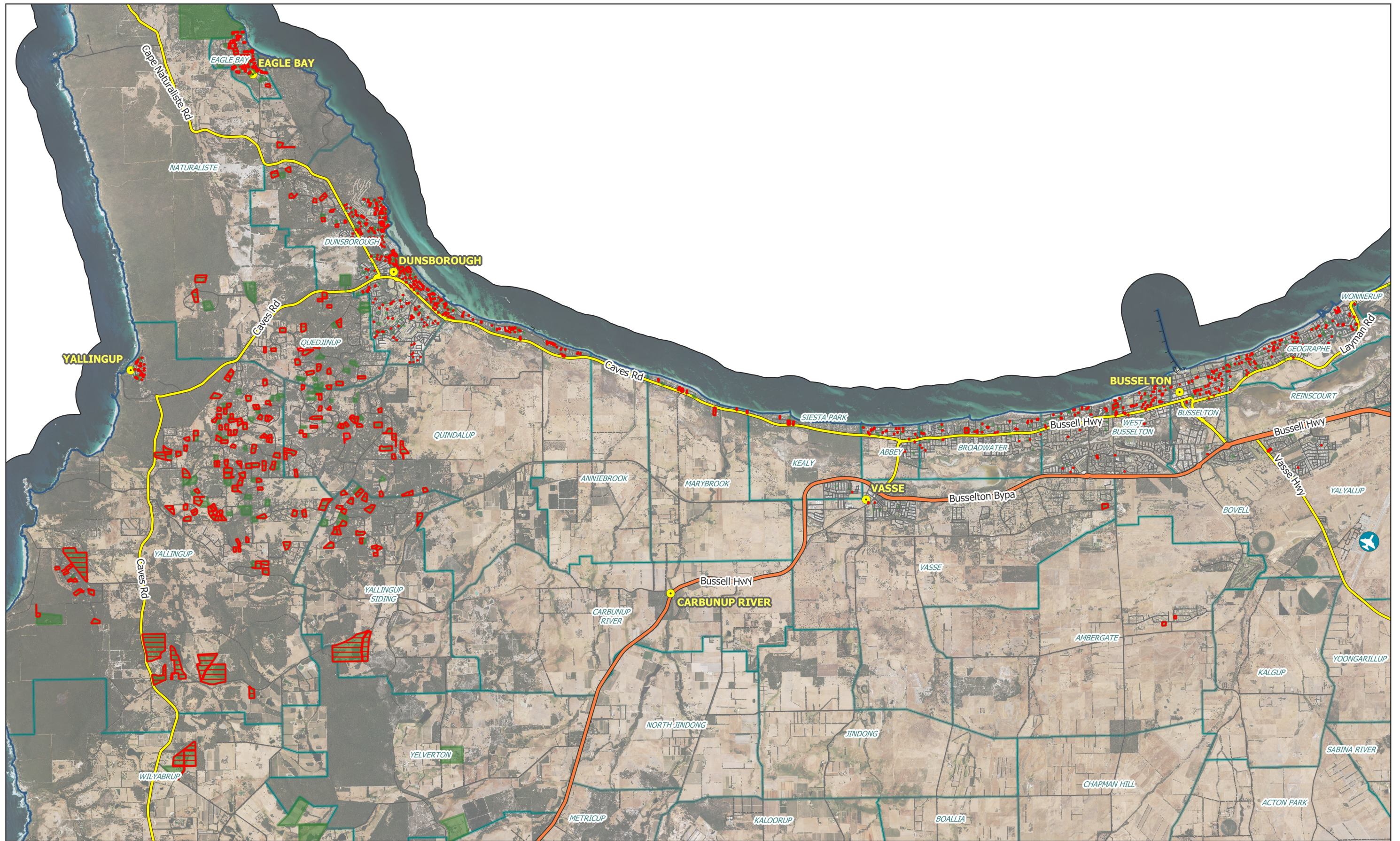
This position was not supported by the WAPC, who at that time were investigating issues associated with holiday homes. The Council was required to adopt the position outlined in PB 99, which provided guidance on the preferred location of holiday homes. On this matter PB 99 states:

To reduce conflict between holiday homes and ordinary dwellings, particularly in residential zones, ideally they should be located in preferred areas identified either through the tourism component of the relevant local planning strategy, or in a local planning policy. As a guide, holiday homes are more appropriate in areas of high tourism amenity and close proximity to key tourism attractions such as the beach, town centre or rural areas, but may not be appropriate in suburban locations.

Following the introduction of the current regulatory framework, there was an interim period when landowners who had been using their property as a holiday home were able, regardless of location, to apply for development approval. That interim period ended in mid-2013, and between then and 2018 holiday homes were generally not permitted on Residential-zoned land south of Bussell Highway, or west of Cape Naturaliste Road. In 2015 an exception was made for Dunsborough Lakes, when it became an area in which a holiday home could be considered. The residential area restriction was removed completely in 2018, and since then there have been a small number of approvals in the previously restricted area.

Despite the residential area restriction during 2013 - 2018, a number of applications were received and some of these were approved by Council. When reporting to Council in 2017 and recommending that the 'areas' be discarded from the local planning policy, officers wrote that the Australian Coastal Councils' Association had found that holiday homes played a significant role as part of a pathway to permanent residency in the District. During consultation, there were no specific objections to removing the area designations, other than those concerned with competition issues, and Council voted to support the proposal in 2018.

Figure 1 provides a visual demonstration of holiday homes across the District that have been granted development approval (approx. 1,500 properties), and that are currently registered (969 properties at the end of the 2020/21 financial year). In residential areas, holiday homes are generally clustered within areas of high tourist amenity, as was originally intended by PB 99.



**FIGURE 1: City of Busselton
Holiday Home Clusters**

Legend

- | | | |
|----------------------|------------------------|------------|
| Holiday Homes Health | Holiday Homes Planning | Localities |
| All Others | All Others | Localities |

0 2 4 6 8 10 km



Scale at A3 - 1:100,000



Disclaimer

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OPPORTUNITY 1: Introduce areas of exclusion.

Potential areas of exclusion are shown on Maps 1 - 5, and opportunity 1 could be implemented by:

- a) Modify the Scheme Zoning Table, which could clearly define a holiday home as an 'X' (prohibited) use in relevant zones, meaning that no discretion in a prohibited area could be exercised; and
- b) Introduce an 'Additional Use' right for those areas where holiday homes are otherwise an 'X' use (effectively 'excluding' some areas and 'including' others); or
- c) Reintroduce area designations through the LPP, meaning that a discretion to approve holiday homes in non-preferred areas could still exist.

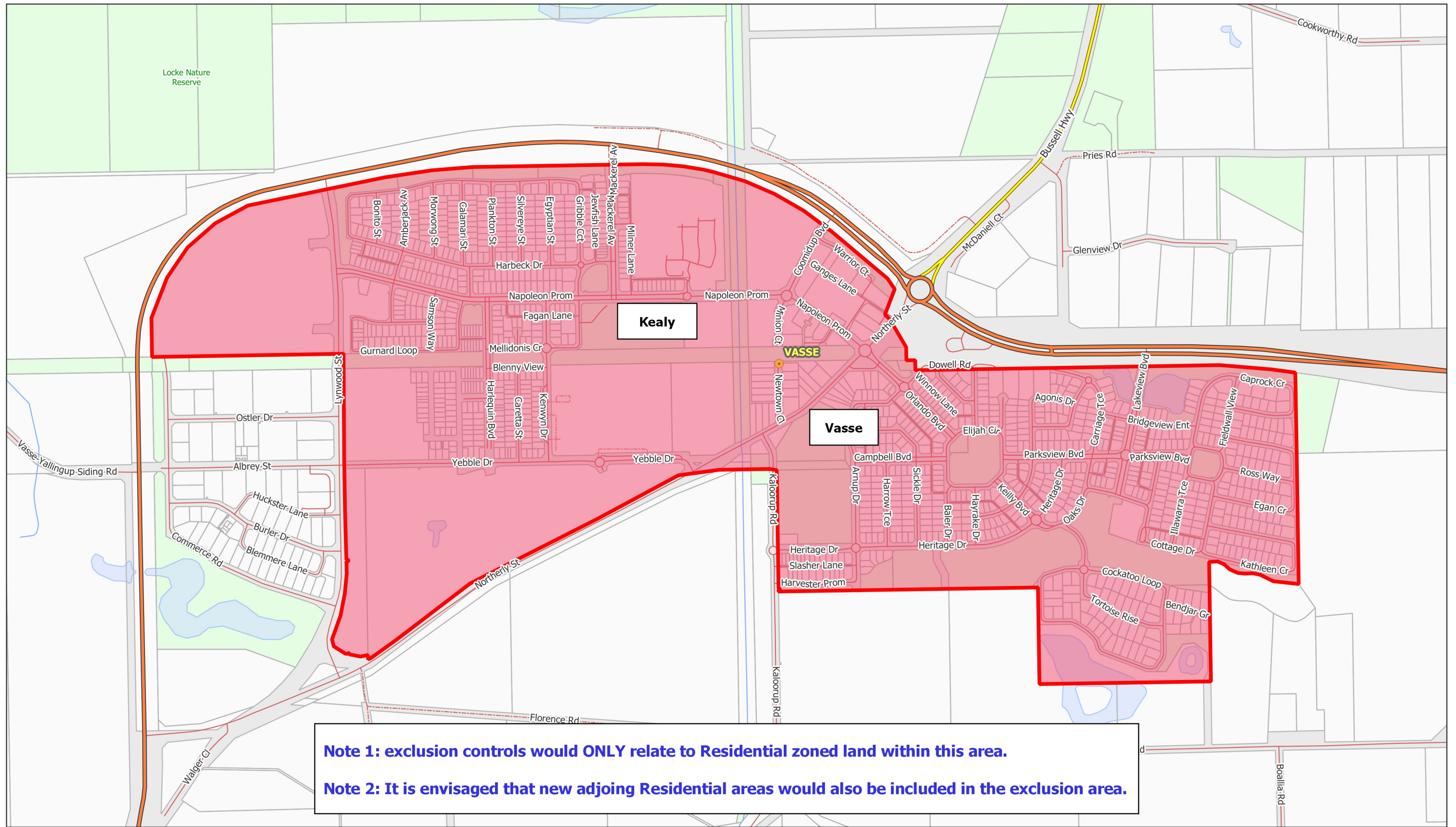
If new exclusion areas were introduced through the Scheme, the (already) approved holiday homes in non-permitted areas would become 'non-conforming' uses. Provided that a registration remained current, then the non-conforming use right would also remain current.

There are several reasons why exclusion areas might be re-introduced:

- a) PB 99 outlines that holiday homes are appropriate in areas associated with high tourism amenity. In the City of Busselton, this includes areas in close proximity to key tourist attractions such as beaches, town centres, or rural areas.
- b) PB 99 also discusses the potential conflict between holiday homes and the amenity of long-term residential dwellings. Conflict can occur as a result of issues such as noise, behaviour, nuisance, safety and security, waste management, and car parking.
- c) The 'local sense of community' can be eroded by the occurrence of too many holiday homes, and as a result of:
 - lack of neighbourhood support network during times of emergency or crisis, and passive surveillance for increased security and safety;
 - visitor disregard for the safety and security of children (or elderly) living in the street, and dangers associated with outdoor play, walking/cycling in areas without footpaths etc;
 - excessive noise/partying and visitor lack of understanding about the lifestyle of nearby residents, particularly those who are shift workers (or even just having to work the following day);
 - a sense that one's own home is not a place of sanctuary/relaxation because of the impact from nearby holiday homes.
- d) Housing availability and affordability can be affected by holiday homes. The 2019 Inquiry reported that there is some evidence of this occurring in the South West, however it found that "the impact of short-term letting on WA's long-term rental market seems minimal." That may have changed in the last 12 months, but may not be an issue that will persist in the long term.

There are also several risks associated with re-introducing exclusion areas:

- a) This may result in a greater concentration of holiday homes (over time) within some areas;
- b) The relationship between total number of approvals and management of individual sites is not clearly defined, i.e. a greater number of holiday homes does not necessarily result in a greater number of poorly managed properties;
- c) The difficulty in defining permitted/not permitted areas with a simple, understandable, and fair boundary;
- d) A perception around the lack of fairness that some residential areas may be spared from the negative impact from holiday homes, but other areas are not afforded the same right; or that economic opportunity may be pursued by landowners in some areas and not others.



- Holiday Home Exclusion Area
- Highway
- Main Road
- Sealed Road
- Unsealed Road
- Cadastre

Option 1 - Holiday Home Exclusion Area (Map 2)



Scale at A3 - 1:10,000

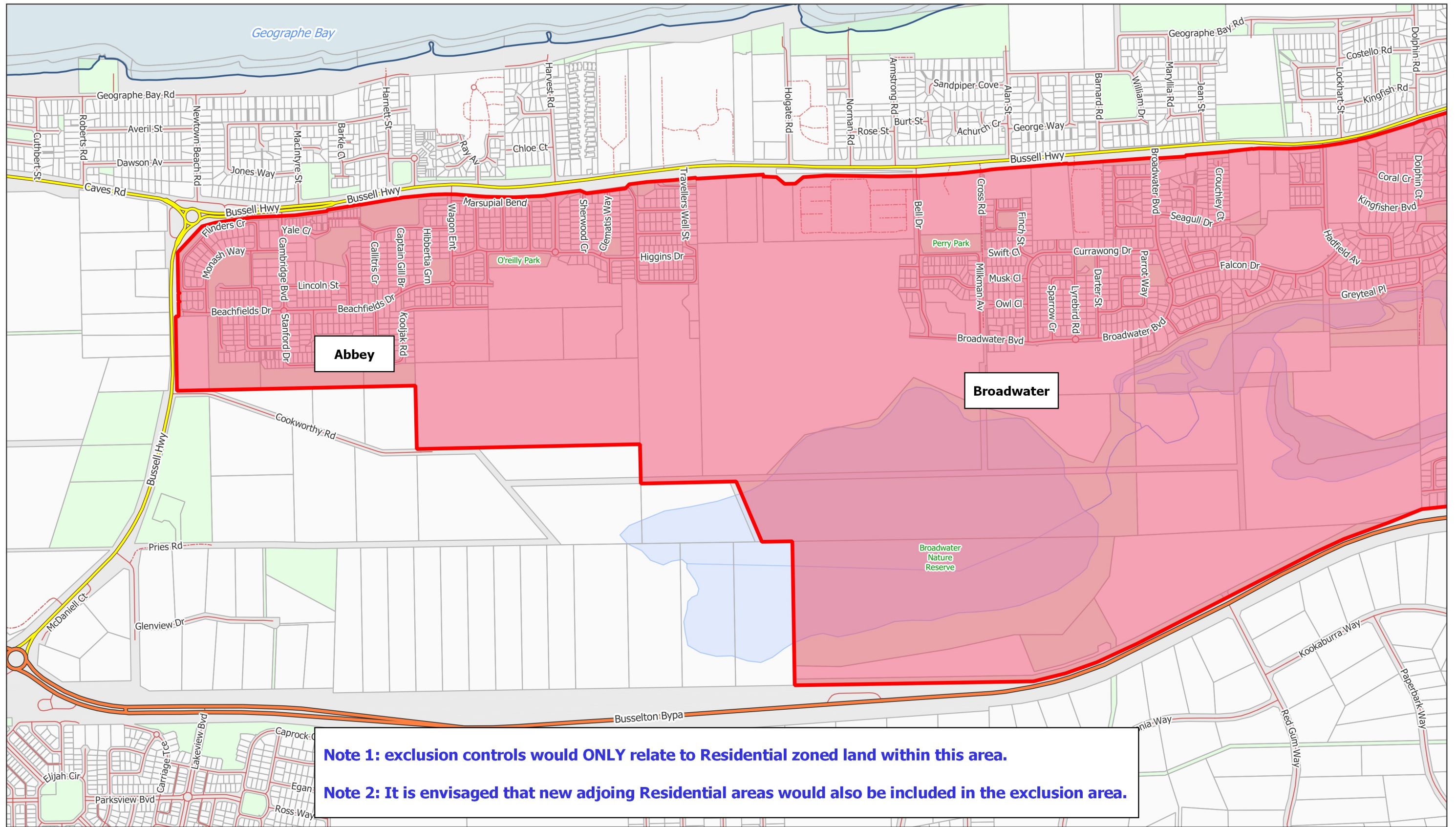


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- Holiday Home Exclusion Area
- Highway
- Main Road
- Sealed Road
- Unsealed Road
- Cadastre

Option 1 - Holiday Home Exclusion Area (Map 3)



Scale at A3 - 1:12,000

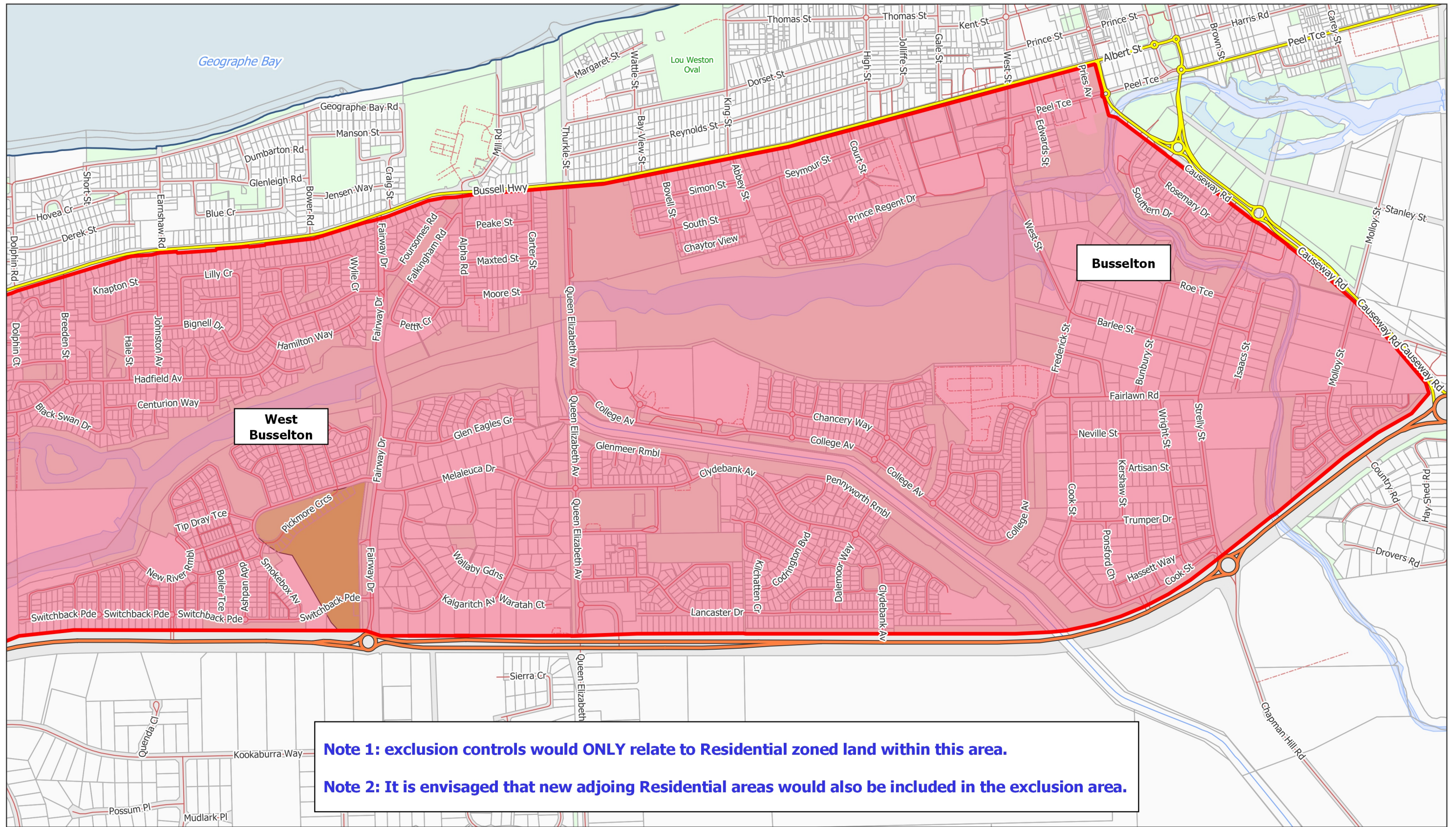


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- Holiday Home Exclusion Area
- Highway
- Main Road
- Sealed Road
- Unsealed Road
- Cadastre

Option 1 - Holiday Home Exclusion Area (Map 4)



Scale at A3 - 1:13,500

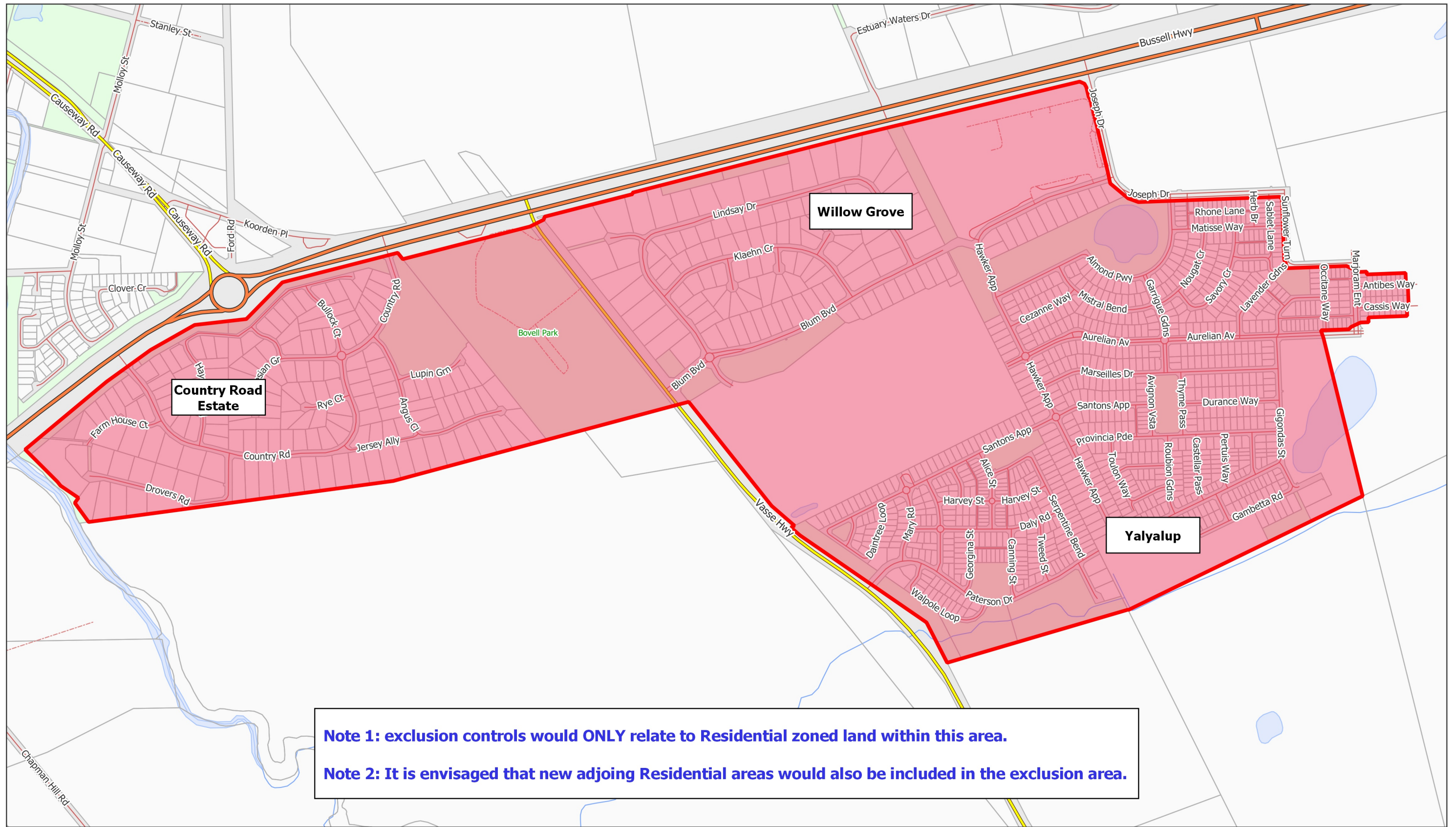


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- Holiday Home Exclusion Area
- Highway
- Main Road
- Sealed Road
- Unsealed Road
- Cadastre

Option 1 - Holiday Home Exclusion Area (Map 5)



Scale at A3 - 1:10,000



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2. Revise standards for the size or design of properties relative to maximum permissible occupancy numbers.

Currently, the Scheme establishes that the maximum number of occupants is restricted to 12 persons for a single house, and 6 persons for a grouped or multiple dwelling. There is no discretion to approve maximum occupant numbers higher than these limits.

The LPP establishes further occupancy restrictions through 'deemed-to-comply' requirements which are applied to dwelling design:

The Holiday Home satisfies the Deemed-to-Comply provisions if:

C4.3 The maximum number of occupants within a Holiday Home complies with the following standards:

- (a) There is 5.5 square metres per occupant in each bedroom utilising beds; and*
- (b) There is 3.5 square metres per occupant in each bedroom utilising bunks; and*
- (c) There is sufficient bedroom space to accommodate the maximum number of occupants consistent with (a) and (b) above.*

C4.4 Bedrooms in a Holiday Home are provided in accordance with the following rates:

<i>Maximum number of occupants</i>	<i>Minimum number of bedrooms required</i>
<i>1-2</i>	<i>1, or studio</i>
<i>3-4</i>	<i>2</i>
<i>5-8</i>	<i>3</i>
<i>9-12</i>	<i>4</i>

C4.5 Bathrooms and toilets in a Holiday Home are provided in accordance with the following rates:

<i>Maximum number of occupants</i>	<i>Minimum number of bathrooms/toilets required</i>
<i>1-6</i>	<i>1 bathroom and 1 toilet</i>
<i>7-12</i>	<i>1 or 2 bathrooms and 2 toilets</i>

For example, the following scenarios may occur:

- a) In a four bedroom house, three bedrooms are each 9.5m² and the fourth is 12m². The maximum number of occupants would be restricted to five if every bedroom contains a bed; or if the three smaller rooms propose to use bunks, the maximum number of occupants would be 6 (multiple/grouped dwelling) or 8 (single house).
- b) A dwelling would be restricted to a maximum of four occupants if it contains only two bedrooms (each greater than 11m² but less than 16.5m²) and two toilets.
- c) A dwelling would be restricted to a maximum of six occupants if it contains three bedrooms (each greater than 11m²) and two bathrooms, but only one toilet.

The LPP does however provide a discretion to vary dwelling design requirements through the following performance criteria:

A Holiday Home satisfies the Performance Criteria provisions if C4.1 or C4.2 is met, and C4.3 and C4.5 are met; and:

P4.1 The City is satisfied that the dwelling design is appropriate to accommodate the proposed maximum number of occupants. In general, if C4.4 is not met, this would only be the case if there are a smaller number of relatively large bedrooms.

An opportunity exists to strengthen these standards by revising land use definitions, and by introducing a new standard relating to the lot size. Options for the implementation of this change include:

OPPORTUNITY 2: Revise standards for the size and design of properties, relative to maximum permissible occupancy numbers, by:

- a) Initially in the local planning policy, and subsequently in the Scheme, introduce a maximum occupant restriction for Multiple Dwellings, to be no more than four occupants.
- b) Initially in the local planning policy, and subsequently in the Scheme, introduce further occupant restrictions based on lot size, as follows:

The maximum number of occupants under the 'Holiday Home (Single House)' or 'Holiday Home (Grouped Dwelling)' use class in the Residential zone is:

- i. 10 occupants for lots greater than 350m²; or
- ii. 7 occupants for lots 260m² - 350m²; or
- iii. 4 occupants for lots less than 260m².

There are several reasons why these standards may be considered appropriate:

- a) Grouped and multiple dwellings are primarily located in urban areas, on smaller lots with less separation from neighbouring dwellings, and with fewer car parking spaces. Currently there is not a large stock of multiple dwellings in the City, however this is becoming a more frequent type of development proposal. By capping the occupancy numbers through a new land use definition, this is one additional means of restricting the number of occupants and guests of occupants who visit these sites.
- b) Currently, the LPP requires a 350m² exclusive use area for a holiday home that is a single house. 350m² equates to R25 density or less, and therefore this provision doesn't take into account areas that are coded R30 (minimum area 260m²) or greater. This point could be clarified and strengthened through introduction into the Scheme, and by introducing maximum occupancy numbers depending on lot size.
- c) Given the nature of complaints that arise in the Residential zone (noise, parking, waste disposal, security etc), the maximum number of occupants could be capped at 10 in the Residential zone – currently, a maximum of 12 occupants may be approved, provided dwelling design criteria are met.
- d) Opportunity 2b) is drafted based on lot size rather than residential coding because:
 - i. Clause 4.3.1 (a) – (d) of the Scheme currently allow for development above the applicable coding, so that much residential land is effectively subject to a 'split coding'. For example, land that is coded R10 (minimum site area 875m²) may, in some instances, be developed with grouped dwellings with a minimum site area of 450m² (effectively R20). The effect of that, however, is that lots that are coded R10 may actually have a site area as low as 450m², rather than 875m²; and
 - ii. There are some older residential areas that have been subject to a strategic 'up-coding' or increased density, but have not been subdivided to their potential density coding. For example, lots that have recently been up-coded from R15 to R80, but have not been subdivided, will still have an R15 minimum site area (580m²). In reality, some of these sites are as large as 800m². Sites such as these may be home to dwellings at various life cycle stages (very new or very old) and, especially if newer, may have been developed with four or more bedrooms. Placing a restriction on these lots based on density coding, when lots of a similar site area are not subject to the same restrictions, may be perceived as an unfair restriction.

3. Change requirements and expectations for holiday home managers

The Local Law requires that a manager and acting manager must be nominated, and if an occupant or guest of the occupant breaches a condition of registration, then the manager must terminate the occupant's tenancy. The manager must be contactable at all times, and in any event within 24 hours.

In the instances where managers have provided their contact details to neighbours, then any complaints can be directed to the manager. Where no contact details are available, complaints about holiday homes are directed to the City, and in turn the City informs the manager.

Many other local governments require a manager to be contactable within 12 hours, and to reside within close proximity to the holiday home (this varies between a 10 minute and 30 minute drive). Some also require that a manager's details are to be displayed to the public on a sign that is visible from the street.

The Noosa Shire Council has recently advertised (April/May 2021) a local law pertaining to holiday homes, which includes specific requirements for managers. Some of the draft requirements for managers are that they must:

- be available 24 hours per day, 7 days per week;
- reside, or have a place of business, within 20 minutes travel time (by vehicle) of the premises;
- be responsible for responding to each complaint within 30 minutes of receipt of notification;
- be responsible for resolving each complaint at the premises, including ensuring compliance with the [management plan].

Furthermore, specific requirements have been drafted around a "contact person notice" [signage], such that the notice:

- must be visible to the public at all times, and not exceed 0.2m²; and
- must specify, in letters and numbers not less than 50mm high, the up-to-date manager details, including telephone number, and a statement that the manager is responsible for the supervision and management of the property.

A number of other local governments in Western Australia have established similar requirements through the scheme or in a local planning policy.

Opportunities exist to improve the requirements and expectations of managers, and particularly response times, through the Local Law, which in some cases may require an amendment to the Local Law.

Options for the implementation of this change include:

OPPORTUNITY 3: Revise and introduce new requirements and expectations for managers, by:

- a) Reducing the amount of time in which a manager must respond to any contact relating to the holiday home, from 24 hours to 12 hours.**
- b) Introducing a new clause requiring managers to reside within a 30 minute travel time from the holiday home.**
- c) Strengthening and clarifying the conditions of registration, so that the contact details of the manager are shown on a sign that can be visible from the street.**
- d) Strengthening and clarifying the conditions of registration, so that the manager is required to resolve complaints and ensure compliance at the premises.**

As a discussion starting point, a response time of 12 hours is proposed. In regard to this length of time, a question arises around a response time that may be considered reasonable ('reasonable' may be almost immediately with the existence of smart phones, however it may also be considered unreasonable to have a

smart phone turned on at all times, or in one's possession at all times). The question of reasonableness also applies to the potential to criminalise behaviour (the time to respond to a complaint) which may be disproportionate to the purpose sought to be achieved. For example, it may not be reasonable to criminalise a slow response to a complaint about an excessive number of vehicles parked at a property. It may be considered reasonable to expect a quick response an excessive number of noisy and disruptive holiday home occupants and guests during the night, however this sort of matter may also be more appropriately dealt with by the police rather than a manager.

Community and industry stakeholder feedback is invited on the question of a response time, which is both reasonable in the context of the nature of the complaint, and doesn't criminalise behaviour in a disproportionate manner.

In regard to requiring the contact details of the manager to be shown on a sign that is visible from the street, there is also potential to further include:

- a) contact details for the City of Busselton if the manager can't be contacted; and
- b) the registration number for the property, which would provide evidence that the property is legally registered, and ensure the property can be correctly identified.

4. Change requirements and expectations for occupants and guests

The Local Law allows for conditions of registration that can cover matters such as the maximum number of occupants and their guests; the number of on-site car parking bays for the exclusive use of occupants and guests; and the maximum of vehicles that may be parked on the premises at any time. An opportunity exists to clarify the requirements and expectations for the management of occupants and their guests, in the form of a code of conduct.

The Noosa Shire Council has recently advertised (April/May 2021) a local law pertaining to holiday homes, which would require occupants to comply with several 'conditions of behaviour', collectively called a code of conduct. The code of conduct would outline minimum behavioural standards for guests to maintain the residential amenity of surrounding permanent residents. If implemented, it would be the manager's responsibility to make occupants aware of the code of conduct, and to have a copy available within the premises. The manager would be responsible for enforcement.

As an opportunity for change in the City of Busselton, a code of conduct could include matters that relate to:

- a) The parking of vehicles within the premises boundary, in designated bays, and not causing a nuisance or inconvenience to adjoining properties.
- b) The use of the premises, including all outdoor areas, in a way that does not detrimentally affect neighbouring properties through noise, nuisance, unacceptable behaviour, overlooking or light spill;
- c) The restriction of sleeping or camping on the premises in a tent, caravan, campervan or similar.
- d) Management of pets so they don't cause a nuisance (including a noise nuisance).
- e) Disposal of waste.

Options for the implementation of this change include:

OPPORTUNITY 4: Introduce requirements and expectations for occupants and their guests, by revising the standard conditions of registration, so that a code of conduct is required that sets out expectations for the management of occupants and the guests of occupants, and requiring managers to communicate the code to the hirer, obtain their acknowledgement, and ensuring the code is clearly displayed within the holiday home.

There are several reasons why this opportunity is considered appropriate:

- a) A code of conduct provides a set of acceptable standards that would be applicable regardless of location.
- b) A clear expectation would be set that requires managers to display, receive acknowledgement from occupants, and enforce a code of conduct.
- c) A consistent approach to the expectation of managers, occupants and their guests could be achieved.

5. Management of unattended dogs

Holiday homes are often regarded as a 'home away from home' and provide a flexible opportunity for occupants to travel with pets. Dogs in particular can become distressed when left unattended, causing disturbance to neighbours, and the *Dog Act 1976* does not provide a workable means to address this matter.

The banning of all dogs from holiday homes has not been considered as part of this review, however the Local Law currently contains measures that could prohibit dogs from being left unattended. An opportunity exists to amend the Local Law to strengthen and clarify the conditions of registration.

Options for the implementation of this change include:

OPPORTUNITY 5: Introduce requirements for the management of dogs, by introducing conditions of registration that do not allow dogs to be left unattended at holiday homes.

There are several reasons why this opportunity is considered appropriate, including:

- a) Minimise stress caused to a dog or dogs if left unattended in an unfamiliar environment.
- b) Minimise any detrimental noise and amenity impact on neighbouring properties.

6. Council Policy to set out how the City intends to implement the Local Law

Council policies support the achievement of quality outcomes and reduce both operational and strategic risk by establishing standards and guiding decision making. The principles outlined in Council policies are shaped by the strategic objectives as set out in the City's Strategic Community Plan.

The City's *Strategic Community Plan 2021 – 2031* identifies the following key theme and community aspiration:

Leadership: A Council that connects with the community and is accountable in its decision making.

The introduction of a Council Policy would provide a strategic statement of Council's direction in regard to holiday homes. It would serve to:

- a) Provide guidance to staff and stakeholders in setting out how the City intends to implement the Local Law.
- b) Provide for more transparency in decision-making, and ensure that the direction taken by the City is in line with community vision, aspirations and expectations.

OPPORTUNITY 6: Develop a Council Policy to set out how the City intends to implement the Local Law, and to provide guidance to Councillors, officers and stakeholders.

As this is a new proposal to support the existing regulatory framework, the drafting of any new Council Policy would need to be carried out in accordance with current documented practices and procedures.

PART 6 – CONCLUSION

The Directions Paper provides context for the City’s current holiday home regulatory framework, how that framework was developed, how it has changed over time, current and ongoing issues, and the approaches adopted by other local government jurisdictions. It also considers the recommendations of the 2019 State Parliamentary Inquiry, and the subsequent State Government response.

As a result of this background research, a number of opportunities for change have been drafted. These include options for changes to the permitted location of holiday homes, standards to limit occupancy, and the requirements and expectations for managers, occupants, guests of occupants, and unattended dogs. It is also proposed that a Council Policy could be drafted to provide guidance on the implementation of the Local Law.

It is envisaged that the community and stakeholders will take an active interest in this review, and therefore consultation is vital to ensure that everyone with an interest is involved in the decision-making process. The outcomes of consultation will be used to inform what (if any) formal changes should occur.

Should changes be supported, then these will need to be drafted in the context of, and in accordance with, the State and Local statutory and policy framework.

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