



City of Busselton
Geographe Bay

Council Agenda

9 February 2022

ALL INFORMATION AVAILABLE IN VARIOUS FORMATS ON REQUEST

city@busselton.wa.gov.au

CITY OF BUSSELTON

MEETING NOTICE AND AGENDA – 9 FEBRUARY 2022

TO: THE MAYOR AND COUNCILLORS

NOTICE is given that a meeting of the Council will be held in the Council Chambers, Administration Building, Southern Drive, Busselton on Wednesday, 9 February 2022, commencing at 5.30pm.

Your attendance is respectfully requested.

DISCLAIMER

Statements or decisions made at Council meetings or briefings should not be relied on (or acted upon) by an applicant or any other person or entity until subsequent written notification has been given by or received from the City of Busselton. Without derogating from the generality of the above, approval of planning applications and building permits and acceptance of tenders and quotations will only become effective once written notice to that effect has been given to relevant parties. The City of Busselton expressly disclaims any liability for any loss arising from any person or body relying on any statement or decision made during a Council meeting or briefing.



NAOMI SEARLE

A/CHIEF EXECUTIVE OFFICER

28 January 2022

CITY OF BUSSELTON

AGENDA FOR THE COUNCIL MEETING TO BE HELD ON 9 FEBRUARY 2022

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1. **DECLARATION OF OPENING, ACKNOWLEDGEMENT OF COUNTRY AND ANNOUNCEMENT OF VISITORS**

2. **ATTENDANCE**

Apologies

Approved Leave of Absence

Nil

3. **PRAYER**

4. **APPLICATION FOR LEAVE OF ABSENCE**

5. **DISCLOSURE OF INTERESTS**

6. **ANNOUNCEMENTS WITHOUT DISCUSSION**

Announcements by the Presiding Member

7. **QUESTION TIME FOR PUBLIC**

Response to Previous Questions Taken on Notice

Public Question Time For Public

8. **CONFIRMATION AND RECEIPT OF MINUTES**

Previous Council Meetings

8.1 **Minutes of the Council Meeting held 25 January 2022**

RECOMMENDATION

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

Committee Meetings

- 8.2 Minutes of the Behaviour Complaints Committee Meeting held 8 December 2021

RECOMMENDATION

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

- 8.2 Minutes of the Finance Committee Meeting held 19 January 2022

RECOMMENDATION

That the Minutes of the Finance Committee Meeting held 19 January 2022 be noted.

- 8.4 Minutes of the Audit and Risk Committee Meeting held 25 January 2022

RECOMMENDATION

That the Minutes of the Audit and Risk Committee Meeting held 25 January 2022 be noted.

- 8.5 Minutes of the Policy and Legislation Committee Meeting held 25 January 2022

RECOMMENDATION

That the Minutes of the Policy and Legislation Committee Meeting held 25 January 2022 be noted.

9. RECEIVING OF PETITIONS, PRESENTATIONS AND DEPUTATIONS**Petitions****Presentations****Deputations****10. QUESTIONS BY MEMBERS OF WHICH DUE NOTICE HAS BEEN GIVEN (WITHOUT DISCUSSION)****11. ITEMS BROUGHT FORWARD FOR THE CONVENIENCE OF THOSE IN THE PUBLIC GALLERY****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

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

OFFICER RECOMMENDATION

That the Council:

- 1. Note the draft *Position Statement: Planning for Tourism* (Attachment B) and associated draft *Planning for Tourism Guidelines* (Attachment C); and**
- 2. 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) 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 PS 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 could 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 the 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

Jacque Stone
Director Policy
Department of Planning, Lands and Heritage
Via email to: 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 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 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.

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

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.

SECTION 1 GENERAL INFORMATION

What local government or agency are you responding on behalf of?

City of Busselton

What is your email address?

city@busselton.wa.gov.au

What region are you from?

- Gascoyne
- Goldfields
- Great Southern
- Kimberley
- Mid West
- Peel
- Pilbara
- Perth
- South West
- Wheatbelt

SECTION 2 EXEMPTING HOSTED ACCOMMODATION

Should hosted accommodation be exempt from development approval where it occurs in a single house (or ancillary dwelling)?

The City supports this measure, provided:

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).
2. A state-wide registration scheme is developed concurrently with the Position Statement, and all hosted accommodation is required to register through this scheme.
3. As a pre-requisite to registration, the hosted accommodation provides:
 - 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,

- b. Proof that the premises is an approved, lawful dwelling.
- c. The maximum number of guests to be accommodated.
- d. Details of the number of bedrooms to be utilised and bathrooms available to guests.
- e. Details of car parking arrangements, available exclusively for use at the development site, within the site boundaries.
- f. Demonstrated suitability of design as a Class 1b building, including disability access, fire safety equipment and evacuation measures.
- g. Where reticulated sewerage is not available, demonstrated compliance with the *Health (Treatment of Sewage and Disposal of Liquid Waste) Regulations 1974*.
- h. Where food is to be served, approval from the local government authority through lodgement of a Food Business Notification/Registration form.

4. Full details of the registration are available to the local government authority at all times.

Should hosted accommodation be exempt from development approval where it occurs in a grouped dwelling?

No, the City does not support this exemption:

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.

Should hosted accommodation be exempt from development approval where it occurs in a multiple dwelling?

No, the City does not support this exemption:

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.
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.
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).
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.

Note: the *Guideline on the Application of the Premises Standards Version 2 (2013)* provides guidance on this matter, however unlike the *Building Code of Australia* it is not referenced in the *Building Regulations 2012*.

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?

1. The following maximum number is considered appropriate to exempted low-scale hosted

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.

- 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.

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

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
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.
3. 5.3.2:
 - a. The City supports an exemption for hosted accommodation in single houses, provided the

various points set out above are addressed at registration stage.

- b. The City does not support an exemption for hosted accommodation in grouped and multiple dwellings, as set out above.
 - c. The City does not support an exemption for unhosted accommodation, as set out above.
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.

SECTION 5 GENERAL FEEDBACK

Do you have any additional comments on the Position Statement or Guidelines?

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.
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.
3. The City does not support the following new and amended definitions:
 - 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).
 - 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:
 - i. Holiday House – Single House
 - ii. Holiday House – Grouped Dwelling
 - iii. Holiday House – Multiple Dwelling.
 - c. Tourist development and serviced apartments – neither definition includes a requirement for 24 hour on-site management – are these hosted or not?
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 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.
 - 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.

DRAFT
PUBLIC CONSULTATION



Department of Planning,
Lands and Heritage



Draft Position Statement: Planning for Tourism

December 2021

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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*.

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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. Note: 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 – (a) short-term accommodation for guests; and (b) onsite facilities for the use of guests; and (c) facilities for the management of the development</i> |
| Serviced apartment (Note: amended definition) | <i>means a group of units or apartments providing – (a) self-contained short-term accommodation for guests; and (b) any associated reception or recreational facilities</i> |
| Note: It is intended to delete the land use term 'bed and breakfast' from Schedule 1 (Model Provisions) of the LPS Regulations. | |
| Note: 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> |



Department of Planning,
Lands and Heritage



DRAFT
PUBLIC CONSULTATION

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The Department of Planning, Lands and Heritage acknowledges the traditional owners and custodians of this land. We pay our respect to Elders past and present, their descendants who are with us today, and those who will follow in their footsteps.

Disclaimer

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PURPOSE OF THESE GUIDELINES

These Guidelines should be read in conjunction with the draft Position Statement: Planning for Tourism (the Position Statement). They provide guidance on its implementation and aim to:

- provide context for planning and decision making on tourism development and land use
- encourage strategic planning that considers local tourism and its wider context
- assist local government in planning for tourism in its local planning strategy and local planning scheme
- encourage a consistent approach to tourism in local planning frameworks
- encourage flexible and adaptive design of tourism and mixed-use development suited to each local government area.

These Guidelines supersede and repeal *Tourism Planning Guidelines* (May 2014) and *Holiday Home Guidelines – short stay use of residential dwellings* (September 2009).

BACKGROUND – PLANNING FOR TOURISM IN WESTERN AUSTRALIA

Tourism is a significant contributor to the national and state economy, particularly in regional areas. Western Australia has a diverse natural and cultural landscape which offers an array of unique experiences. The provision of sustainable facilities and businesses that serve tourists and strengthen and diversify the Western Australian economy are crucial to economic development. The *State Planning Strategy 2050* has additional information about tourism in Western Australia.

The planning system has an important role in facilitating investment in tourism in appropriate locations. Under or over supply of tourism facilities may be detrimental to local communities as well as the attractions and features which draw tourists.

Where tourism is considered significant within a locality or region, detailed tourism planning is advised. Planning should be undertaken in consultation with Tourism WA, State Government agencies, tourism associations, local operators and their local community, and take into consideration issues raised in the *State Planning Strategy 2050*, regional strategies, the Position Statement and these Guidelines.

1. LOCAL PLANNING STRATEGY CONSIDERATIONS

A local planning strategy provides the long-term planning directions and actions to manage the change and development of a local government area and informs the local planning scheme.

The strategy should be based on sound planning principles and provide the:

- rationale for future land allocation;
- planning controls; and
- infrastructure needs.

Where tourism is significant to a locality or region, a detailed tourism component should form part of the local planning strategy.

1.1 TOURISM COMPONENT OF THE LOCAL PLANNING STRATEGY

Further to section 5.2 of the Position Statement, local governments are encouraged to address tourism in the local planning strategy in a manner reflective of the importance of tourism in the municipality. Information that should be provided includes:

- Aims, visions and objectives for tourism development and land uses in the local government area.
- Description of current and potential roles for tourism in the local government area.



- Estimates of current and projected tourism demand for the local government area.
- Consideration, where appropriate, of existing and potential tourist zones, tourism precincts, tourism sites, tourism land requirements and opportunities for introducing new or specific tourism land uses.
- Guidance for assessing tourism proposals, including character and design measures, to achieve aspirational tourism development at particular locations.
- Identification of existing and potential tourism zones, tourism precincts and tourism sites through spatial/strategic mapping.
- Actions and timeframes to achieve the desired level of tourism.

The local planning strategy should be informed by available tourism statistics and may include:

- tourist visitation numbers
- an inventory of existing tourism uses and developments
- an inventory of the attractions and natural assets that draw tourists to an area
- local tourism activities
- actual and potential economic benefits of tourism to the local community
- any impacts and proposed treatment of issues (such as noise and waste) associated with tourism.

The *Local Planning Manual* (as amended) provides guidance on the preparation of local planning strategies and should be read in conjunction with these Guidelines.

1.2 SCOPE AND CONTENT

The tourism component of a local planning strategy should identify:

- tourism sites and assessment based on the capacity for quality, sustainable tourism, addressing current and future demands;
- a scope and process for additional detailed planning that may be required, to inform future local planning scheme amendments;
- criteria and principles to guide development of tourism precincts and sites;
- appropriate planning mechanisms to be introduced into the local planning framework, including the local planning scheme. This may include local planning policies, special control areas, specific tourism zones, detailed planning requirements (for example requiring preparation of a structure plan, or local development plan prior to subdivision or development), or incentives (for example a plot ratio bonus to encourage development or an increased scale of tourism within mixed use development); and
- key gaps and opportunities for tourism in a locality may be known or need to be identified in order to identify tourism precincts and sites.

1.2.1 Tourism objectives

Tourism objectives should be consistent with the strategic vision to guide appropriate tourism development throughout the locality. In defining tourism objectives, the following may be addressed:

- The nature and importance of tourism to the local economy in strategic plans/policies.
- Support for tourism through local planning scheme zones and provisions.
- Facilitate a variety of holiday accommodation types including short-term rentals and existing caravan parks and camping grounds in preferred locations.
- Protection of tourism precincts and sites for future tourism development to meet estimated demand, and from incompatible and/or conflicting land uses.
- Innovative tourist accommodation and facilities that respond to market needs.
- Tourism growth and development that reinforces unique and local tourism identity and features.

A tourism objective should be clear, consistent with goals/vision of the local government strategic plan and tourism characteristics of each locality.

1.2.2 State and regional planning context

A local planning strategy responds to the *State Planning Strategy 2050*, the *State Government Strategy for Tourism in Western Australia 2020* (as amended), and relevant regional and local factors. It should describe the role and importance of tourism in the area through analysis of existing State Government policy, assessment of local tourist attractions and features, contribution made to the local economy and any potential for expansion.



1.2.3 Local tourism profile

The local tourism profile should inform any proposed planning and recommendations for tourism in a local planning strategy. The profile may include an analysis of the characteristics of existing and potential tourism and identify the value of tourism to the local community. Existing, proposed and potential tourism development should be reviewed to establish tourist development needs.

This may include:

- Identification of new types of tourism.
- Justification for increasing the number of tourists accommodated overnight.
- The need for new or additional tourism facilities.

Visitor information statistics are helpful in determining the level of tourism that is occurring in a local government area. The following visitor information (where available) is recommended to be included in the background section of the local planning strategy:

- average length of stay (% overnight visitors);
- purpose of visit (holiday, business, specific attraction/event);
- accommodation selected (type, age, standard occupancy rates, peak periods/seasonality);
- mode of transport (to/from and within local area); and
- demographics (age, gender, international/interstate/intrastate).

Tourism WA and the Australian Bureau of Statistics are resources available to local governments for compiling visitor information.

Note for consultation:

Concurrent with the release of these Guidelines, the State Government is working towards implementation of a registration scheme for hosted and unhosted short-term rental accommodation. It is anticipated the registration scheme will be able to provide data on short-term rental accommodation. Further information on the registration scheme is available from <https://www.dlgsc.wa.gov.au/>

1.2.4 Local planning scheme review

As part of preparing a local planning strategy, a review of the existing local planning scheme should occur and consider whether:

- the local planning scheme adequately protects tourism/tourist uses at risk from other land use planning or zoning pressures;
- the existing planning framework influences location, design and type of tourism development;
- existing planning provisions and policies support and encourage the development of tourism facilities;
- growth and/or development of tourist accommodation, attractions, and/or facilities are influenced by the presence or absence of tourism policy and/or zones; and
- the local planning scheme includes tourism zones, and, if so, are non-tourism uses permissible or discretionary within the zone and if this has affected the development of tourism zoned land.

1.3 SITING AND DESIGN OF TOURIST DEVELOPMENT

1.3.1 Siting

Local governments have the opportunity to consider where tourism uses are best located and the amount of land required to service tourism through community consultation and the preparation or review of its local planning strategy, local planning scheme and local planning policies. The primary objective of a local planning strategy for tourism is the identification of tourism precincts and sites.

The tourism component of a local planning strategy may identify the locations which may be subject to future scheme amendments to cater for future tourism.

Tourism precincts and sites should be planned in locations which enhance the tourist experience and avoid or minimise interface/land use conflict with surrounding uses. Selection and justification of potential tourism locations should consider the following:

- the demand for a proposed tourism use, informed by the local tourism profile;
- access for pedestrians, vehicles and/or public transport;
- provision and access to tourist amenity (e.g. landscape, views, proximity to attractions);
- compatibility of tourism development with surrounding land uses;
- land constraints (e.g. steep slopes, coastal setbacks, water courses);
- vulnerability to natural hazards (e.g. bushfire, cyclone, flood, erosion);



- scale of tourism development and location suitability;
- infrastructure availability to service the proposed tourism uses; and
- for eco-tourism proposals, the use of education and conservation measures, construction materials, waste management, and energy efficiency.

1.4 TOURISM PRECINCTS

A tourism precinct is a defined area that has potential for the co-location of tourist accommodation, attractions, activities and/or amenities. Tourism precincts should be vibrant, attractive and inviting, offering a variety of uses within an accessible area. A tourism precinct could be an entire town centre or a street block, however it should be walkable. They can support detailed planning for specific tourist accommodation sites, complementary and supporting land uses, and the integration of tourism infrastructure.

The location and scale of a tourism precinct should be informed by the following factors:

- proximity to tourist attractions and facilities;
- be compatible with existing land uses and infrastructure;
- existing and potential tourist accommodation opportunities;
- desired or existing character and amenity;
- visitation statistics for the locality;
- access including transport opportunities; and
- capacity to accommodate a mix of uses that complement tourism development.

The local planning strategy should identify further detailed planning through the local planning scheme necessary to facilitate an identified tourism precinct.

1.5 TOURISM SITES

A tourism site may include an existing tourist development or non-tourism zoned land that has physical characteristics suited to tourism. Considerations for the selection and identification of tourism sites are provided in Table 1 of these Guidelines.

Future land use and development of tourism infrastructure can be introduced in a local planning strategy by identifying suitable tourism sites and detailing their significance to tourism. This will assist in determining the level of detailed planning to facilitate desired tourism development.

1.6 TOURISM FACILITIES

1.6.1 Tourist attractions, activities and amenities

The local planning strategy should include the following details on key tourist attractions, activities and amenities; including their size and the scale of the local tourism industry:

- details of the existing tourism market (for example is it event, cultural, sport, family, adventure, environmental, eco-tourism, health or agri-tourism based?);
- potential new or extended tourist markets to be explored;
- list the types of attractions and experiences (this may include national parks, coastal environments, winery region, cultural and sporting events);

Table 1: Tourism sites - site selection

| Criteria | Considerations |
|----------------------------------|---|
| Accessibility | Adequate existing or proposed transport links |
| Uniqueness | A prominent and/or unique landmark of significance |
| Setting | The site's views, or outlook that encourages recreational tourism activities and/or tourism character |
| Tourism activities and amenities | The site has or is within easy access of attractions and amenities that promote tours, fishing, historic sites, walk trails, environmental interpretation, cafes, restaurants, shops etc. or is capable of development for activities |
| Supply of land | The site represents a limited amount of land suitable for a significant tourism use |



- type, capacity and number of tourism businesses and activities by tourism category (for example art galleries, breweries, theme parks);
- emerging tourism development opportunities (for example events and/or activities such as festivals, concerts, sporting events, underutilised areas of natural beauty, and adventure activities); and
- tourist amenity of public areas including town centres, streetscapes and public open space.

1.6.2 Tourism infrastructure and services

A local planning strategy should consider infrastructure and services including:

- Identification of service capacity and infrastructure projects with potential to impact tourism growth or quality of visitor experience including access (for example roads, rail, airports), water, wastewater, telecommunications and power (along with potential impacts to other land uses).
- Consideration of tourist movement between accommodation and activities/attractions.
- Access to and from tourist destinations.
- Identification of infrastructure improvements related to tourism in the local government area (for example improve/expand road networks, increased capacity at a local airport to increase tourism access).

1.7 HERITAGE

1.7.1 Historic (built) heritage

Tourism can play a key role in conserving historic heritage when initiated and managed appropriately. The development of heritage buildings and places for commercial tourism may offer a commercially viable option for securing their future. Heritage tourism can contribute to the rejuvenation of regional and urban areas and spread economic benefits across a wide geographical area, such as through themed trails and driving routes.

1.7.2 Aboriginal heritage

Western Australia's rich and diverse Aboriginal heritage gives the State a unique point of difference over other holiday destinations. Aboriginal heritage includes both site and non-site specific values, experiences and activities in urban and regional areas. Tourism, if managed appropriately, can help preserve Aboriginal heritage by encouraging cultural site protection, environmental conservation, and the transfer of inter-generational cultural knowledge.

Tourism also represents a significant opportunity for Aboriginal people to secure sustainable economic, social and job outcomes. An example is the Camping with Custodians touring experience for travellers, which provides income, employment and training opportunities for Aboriginal communities across the Pilbara and Kimberley.

1.8 INTERIM MEASURES IN THE ABSENCE OF A LOCAL PLANNING STRATEGY

Where a local government does not have an endorsed local planning strategy, the assessment of a scheme amendment or development application which proposes a non-tourism use on an existing tourism site should consider the Position Statement, these Guidelines, the *Local Planning Manual* (as amended) and any relevant State and local policies.

For tourism sites within an existing or potential tourism precinct, assessment should consider issues and objectives relevant to the tourism precinct including the importance of tourism for the locality.

1.9 TOURISM RESOURCES

To inform economic development, environmental protection, resource management, housing provision and infrastructure (physical and social), liaison should be undertaken with relevant State agencies and the tourism industry. Tourism WA offers various resources to assist planning for tourism and should be consulted if preparing a local planning strategy for an area where tourism is important. Appropriate consultation should ensure the local planning strategy is relevant and reflective of the local community, industry expectations and wider Western Australian context.



2. GENERAL STATUTORY PLANNING CONSIDERATIONS

2.1 ZONING FOR TOURISM

A variety of tourism development can be accommodated within tourism, mixed use and special use zones. Uses permissible in each local planning scheme zone should reflect and be consistent with the intended tourism outcome. The *Planning and Development (Local Planning Scheme) Regulations 2015* (LPS Regulations) provide provisions for zones and land uses for the use of local government.

The objectives of the Tourism zone in the LPS Regulations are:

- To promote and provide for tourism opportunities.
- To provide for a variety of holiday accommodation styles and associated uses, including retail and service facilities where those facilities are provided in support of the tourist accommodation and are of an appropriate scale where they will not impact detrimentally on the surrounding or wider area.
- To allow limited residential uses where appropriate.
- To encourage the location of tourism facilities so that they may benefit from existing road services, physical service infrastructure, other tourist attractions, natural features and urban facilities.

In local government areas where tourism is economically significant, the local planning strategy may identify potential tourism zones for the local planning scheme where they do not already exist. Where a tourism site has different or additional objectives to the standard tourism and mixed-use zone objectives, the site may be considered as a special use zone to enable specific objectives unique to the site or tourism use to be included in the objectives for that zone/site only (for example caravan park).

2.1.1 Land use considerations

The local planning scheme needs to determine appropriate use classes and permissibility of tourist development in each zone. Considerations may include:

- a) Tourist development should be given priority in tourism zones. Local planning schemes that allow residential development in tourism zones need to provide guiding objectives or principles to ensure development is consistent with the tourism purpose of the zone.
- b) In areas of strong or developing tourism industry, a focus on tourism land use and development is necessary in the local planning scheme.

2.2 DESIGN OF TOURIST DEVELOPMENT

The design principles supporting tourism development siting and design include:

- context and character
- landscape quality
- sustainability

- functionality and build quality
- community
- amenity
- legibility
- built form and scale
- safety
- aesthetics.

Key State policies that support design and assessment include:

- *Visual Landscape Planning in Western Australia – a manual for evaluation, assessment, siting and design (Visual Landscape Manual)*
- *State Planning Policy 7 Design of the built environment (SPP7 and SPP7.3).*

Both documents are to be considered, where relevant, for tourism proposals and their assessment.

2.3 TOURISM SITES

Identification of tourism sites in the local planning scheme can facilitate long-term protection of land for tourism purposes.

Specific planning controls are encouraged for each tourism site and precinct to set parameters for future planning, such as a structure plan or objectives for development or redevelopment.



The design principles of tourist development listed in these Guidelines (section 2.2) should be considered during site selection and planning. In prioritising tourism sites and to inform detailed planning, the following specific site values may be considered in Table 2 of these Guidelines.

2.4 TOURIST DEVELOPMENT IN NON-TOURISM ZONES

A local planning scheme Tourism zone is provided for in the LPS Regulations. Prior to the introduction of this zone, tourist accommodation and development may have been approved on land not zoned for tourism, including in residential, mixed use, rural and town centre zones. Where appropriate, the local planning strategy should

identify opportunities to rezone these sites to tourism in the local planning scheme review. Tourism uses can be encouraged in mixed use and town centre zones as this may assist in providing a mix and scale of development attractive to both tourists and residents.

2.5 NON-TOURIST DEVELOPMENT IN TOURISM ZONES

Careful consideration is required for any proposal to develop tourism zoned land for non-tourist development, or to re-zone tourism land to an alternate zone, given this may collectively lead to lost opportunities for quality tourism development in the most appropriate locations.

There is a need to consider applications and sites on an individual basis, taking into account particular locational issues, in addition to their potential strategic tourism value. Local government may consider developing assessment criteria to determine the significance of any proposed loss of tourism.

Some local governments have adopted a variety of approaches when dealing with non-tourist development and subdivision on tourism zoned land. Considerations include:

- Residential development should be secondary to the tourism use. See Appendix 1 for further information.
- Establishment of length of stay occupancy restrictions for residential uses.
- Proposals are to remain incidental to, and support, the proposed tourism use on the site.
- Demonstration that non-tourist development will not compromise or adversely impact the tourism zone objectives or surrounding uses.
- Development to incorporate facilities normally associated with tourist accommodation development such as recreation, entertainment facilities and integrated management facilities.

Table 2: Tourism sites – criteria to inform detailed planning

| Criteria | Considerations |
|-----------------------------------|--|
| Suitability in a land use context | Is the tourism site located where potential tourism activity is likely to be limited by proximity to uses that might detract from the tourism character? |
| Capability | Is the site capable of being developed or expanded for tourism and associated servicing that will not impact its natural attributes or cause environmental damage (for example sewerage capacity, water supply and waste collection?). Preparing for climate change adaptation is important to the sustainability of many key tourism sites. |
| Size | Is the site of suitable size to sustain a proposed tourism development in terms of design, operation and function, without limiting future potential for expansion? Will development of the site contribute to the delivery of diversified and balanced tourism? |
| Function | Is the site suited to a particular type of tourist accommodation, certain tourism market needs or the desired range of tourist accommodation for the locality (e.g. beachfront caravan parks, school holiday camps, and Crown tourism leases?). |



3. TOURISM USES

3.1 RURAL TOURISM

There has been a long-term trend of increasing demand for tourist accommodation in rural areas, with significant variation in the preferred type and form throughout the State. For example, in pastoral regions there is higher demand for 'station stays' as well as 'adventure tourism', whilst in the South West the demand is for holiday houses in rural settings.

Tourism uses should be incidental to a primary agricultural use. *State Planning Policy 2.5: Rural Planning* provides guidance on land use planning in rural areas.

3.1.1 Strategic considerations

Rural tourism may be encouraged in areas with attractions, preferably with sealed road access. Opportunities may include small-scale caravan and camping grounds that are unlikely to compete with existing formal caravan parks as they offer a different experience, have minimal facilities, and are located in a rural setting.

Planning for rural tourism should be further informed by *draft State Planning Policy 2.9: Planning for Water*, *State Planning Policy 4.1 State Industrial Buffer Policy*, *Government Sewage Policy 2019*, *Department of Health Guidelines for separation of agricultural and residential land uses*, and *State Planning Policy 3.7 Planning in Bushfire Prone Areas*. The *Position Statement: Tourism in Bushfire Prone Areas* also provides relevant information.

3.1.2 Statutory considerations

Where appropriate, small-scale tourist accommodation should generally be either a discretionary (D) or a discretionary with advertising (A) use in the zoning table of a local planning scheme to minimise potential land use conflicts and maintain the primacy of rural land uses.

3.2 ECO-TOURISM

Western Australia's environment and landscape character creates a unique and attractive holiday destination and ecotourism is one of the State's key tourism markets. Eco-tourism attractions are popular with locals and visitors alike, and include the coastline and waterways, mountain ranges and ancient landforms, unique karri, tingle and jarrah forests and native wildlife, as well as a range of nature-based activities such as hiking, rock climbing, swimming, kite surfing, bushwalking, four-wheel driving and caving.

3.2.1 Strategic considerations

Many of the attractions that encourage tourism are located in regional and remote parts of the State. Some of these areas are prone to natural hazards, such as bushfires, flooding or waterlogging, coastal erosion or cyclones. *State Planning Policy 3.4: Natural Hazards and Disasters* (SPP3.4), *State Planning Policy 3.7: Planning in Bushfire Prone Areas* (SPP3.7) and *State Planning Policy 2.6: State Coastal Planning* (SPP2.6) provide detailed information on planning for vulnerable uses, such as tourist accommodation. The *Position Statement: Tourism in Bushfire Prone Areas* also provides pertinent information.

3.2.2 Statutory considerations

Where relevant, eco-tourism proposals should consider the following:

- bushfire management in accordance with SPP3.7 and State bushfire guidance;
- consistency with relevant zone objectives;
- impact on natural landscape, environment and conservation values;
- appropriate servicing and infrastructure to accommodate the proposed use in an environmentally responsible manner;
- design guidelines and visual impact;
- coastal setbacks in accordance with relevant State planning policy;
- impact on social and cultural values of the area or site; and
- consistency with any relevant National, State and local policy and guidance.



4. TOURIST ACCOMMODATION

There are many different types of tourist accommodation available in Western Australia, and a variety of controls exist to manage their use. As referenced in section 3 of the Position Statement, the term tourist accommodation means short-term accommodation and includes traditional accommodation (for example chalet, serviced apartment, hotel) and short-term rentals (holiday house, holiday unit, holiday apartment, hosted accommodation).

4.1 EXCLUSIONS

Further to section 3.1 of the Position Statement, it is not intended to capture other forms of short-term and temporary accommodation which are:

- not associated with the issues resulting from short-term rental accommodation offered on a commercial basis; and/or
- subject to alternative guidance, legislation and approaches by local government.

The Position Statement and these Guidelines do not apply to the following forms of short-term and temporary accommodation:

1. *House swapping and housesitting*
House swapping is a mutual arrangement made between owners of separate properties to 'swap' homes for a temporary period and is often for holiday accommodation purposes. House swapping is commonly organised through specialised websites.

Housesitting is a mutual arrangement whereby a person stays and cares for a property whilst the owner is away. Housesitting can be a commercial or non-commercial form of accommodation and is commonly arranged through specialised websites.

2. *Lodgers and boarders*

A lodging house is defined under the *Health Act 1911* as any building or structure, permanent or otherwise, and any part thereof, in which provision is made for lodging or boarding more than six persons, exclusive of the reward, not including the family or the keeper of the house. Common boarding arrangements include backpacker hostels, crisis accommodation, and student accommodation services.

The *Health Act 1911* requires boarding or lodging houses to be registered with a local government who may establish additional local laws for premises.

3. *Personal use of a holiday home or the sharing of a holiday home with the owner's family and friends*

Informal and infrequent sharing between family and friends, and the personal use of private holiday homes is considered a non-commercial arrangement.

4. *Student exchange accommodation*

This is temporary accommodation whereby students stay with a host family in their home whilst studying. These arrangements are commonly organised through student hosting organisations or educational establishments.

5. *Workforce accommodation*

Refers to premises, such as modular or relocatable buildings, used for the accommodation of workers engaged in construction, resource, agricultural or other industries on a temporary basis, and for any

associated catering, sporting and recreation facilities for the occupants and authorised visitors. Workforce accommodation is regulated by local government, except where the *Mining Act 1978* and State Agreement Acts prevail (refer to the *Position Statement: Workforce accommodation* for more information).

Residential parks, park home parks and lifestyle villages are also excluded from the Position Statement and these Guidelines as they are forms of long-stay accommodation defined as 'park home park', and are dealt with by other policy and legislation.

4.2 GENERAL STRATEGIC CONSIDERATIONS FOR TOURIST ACCOMMODATION

The impact of tourist accommodation varies throughout the State depending on the importance and prevalence of tourism activity in the locality. The local circumstances should therefore guide management and control of the use. Areas that are known tourism 'hot spots' such as coastal locations may need special attention to ensure the location continues to grow in a controlled manner as a tourist destination.

4.2.1 Land supply

If land supply pressures for tourist accommodation are evident or predicted in a local government area, the tourism component of the local planning strategy should be informed by an accommodation demand/supply study and analysis that forecast estimates of future tourism growth, including likely demand for tourist accommodation.



The detail of the accommodation demand/supply analysis should reflect the extent and importance of local tourism and land use/land supply pressures in the locality. Tourism accommodation sites are to be protected to ensure they cannot be developed exclusively as residential development. Refer to section 2.5 of these Guidelines for analysis considerations.

4.2.2 Site assessment

A local planning strategy should include identification of suitable land and an assessment of its availability for future tourist accommodation. It should note private, Crown, and local government land currently used for tourist accommodation, the type of accommodation, lease/management arrangements, and future development opportunities.

The following questions should inform the consideration of sites suitable for tourist accommodation:

- Is the site identified in a report/study as having potential for tourism?
- Does the site contain existing tourist accommodation development?
- Is the site located in an area of high tourist amenity and of adequate size to develop tourism facilities?

For short-term rental accommodation, the local planning strategy may identify localities/suburbs where this form of tourist accommodation may be suitable.

4.3 TRADITIONAL ACCOMMODATION

Traditional Accommodation refers to the following land uses:

- cabin
- chalet
- caravan park
- hotel
- motel
- serviced apartment
- tourist development.

4.3.1 Caravan parks

These Guidelines support sections 5.2.1 and 5.3.1 of the Position Statement to provide direction on matters to be taken into consideration when planning for caravan parks, including the development of new, or redevelopment of existing parks.

Caravan parks provide a range of accommodation and facilities that contribute to the diversity of Western Australia's tourist accommodation, particularly in regional areas. Caravan parks provide a comparatively affordable form of short-term accommodation serving caravanning and camping recreation and leisure needs.

Camping grounds, transit and informal camping sites are more likely to be in remote regional areas. Typically, these areas consist of cleared land with no or few facilities (for example toilets or bins). Transit sites may form part of a roadhouse or service station.

Separate to these Guidelines, the requirements of the *Caravan Parks and Camping Grounds Act 1995* and associated regulations, as administered by the Department of Local Government, Sport and Cultural Industries must be met.

Long term residential occupancy of a caravan park (for example residential parks, park home parks, lifestyle villages, transient workforce accommodation parks, and transit parks) is not addressed in these Guidelines.

4.3.1.1 Strategic considerations

4.3.1.1.1 Existing situation

The local planning strategy should identify existing and potential transit and informal camping sites and provide local governments with a sound rationale for determining the future land allocation, planning controls and infrastructure needs for caravan parks. The retention and development of caravan parks as affordable tourist accommodation is encouraged and subject to the following strategic considerations:

- the commercial sustainability of caravan parks and flexibility in product mix;
- facilitation of growth in the caravan park industry;
- the suitable separation of short and long-stay uses within a caravan park;
- development and redevelopment of caravan parks that responds to the site context, environment and economy; and
- caravan park locations and function based on market analysis.



Caravan parks experience competing demands and face many challenges including short-stay and long-stay demands, redevelopment pressures, regulatory requirements, ageing infrastructure and changing market demands. These demands and challenges have contributed to closures throughout the State.

4.3.1.1.2 Considerations for the location and siting of caravan parks

The purpose and design of the caravan park should be justified in relation to its location and context. The purpose for a caravan park may include a stop-over/transit caravan park, and/or a destination caravan park for tourists. Details of land tenure and lease agreements should inform any high-level planning.

The local planning strategy should identify potential future caravan park sites in tourism areas where high occupancy rates occur throughout the year. Once identified, future caravan park sites are encouraged to be retained in public ownership and zoned Caravan Park as freehold land is at risk of rezoning for other purposes.

Where practical, caravan parks comprising a long-stay component should be located where there is access to urban facilities and amenities.

There is a presumption against caravan parks comprised of long-stay residents being in areas of high tourism value because it is preferable that these sites/locations are secured for tourism purposes.

4.3.1.1.3 Topography, drainage, soils and vegetation

Caravan parks should not be located on flood prone or water-logged land, nor steep slopes unless suitable mitigation measures are demonstrated. Cleared sites are preferred and any clearing of vegetation for a caravan park development should be minimal and retain mature trees and vegetation.

Caravan parks are not supported in Priority 1 and Priority 2 water resource protection areas, however may be considered in Priority 3 areas provided deep sewerage is available.

Acid sulphate soils and other soil types may not be suitable for development as they are susceptible to slipping and slumping.

4.3.1.1.4 Coastal or fire hazard constraints

Proposed new coastal caravan parks or the redevelopment of an existing caravan park adjacent to the coast must consider coastal processes, landform stability, coastal hazards, climate change and biophysical criteria as part of the application. They may require a coastal hazard risk management and adaptation plan and a foreshore management plan. A bushfire hazard assessment and/or bushfire management plan may be required to inform caravan parks at risk from bushfire hazards. Refer to SPP2.6 and SPP3.7.

4.3.1.1.5 Visual impact

A proposed caravan park should consider impacts on the landscape character and visual amenity from scenic points to minimise visual impacts on high value public views (refer to the *Visual Landscape Planning in Western Australia – a manual for evaluation, assessment, siting and design*).

4.3.1.2 Statutory considerations

In addition to section 5.3.1 of the Position Statement, local planning schemes should address the following in relation to caravan parks and camping:

- facilitate the long-term retention, of caravan parks and camping grounds as a form of affordable short-term accommodation primarily for leisure tourists;
- caravan parks should not be located on land at risk from natural hazards, for example steep slopes or coastal land, due to the temporary and vulnerable nature of accommodation typically found in caravan parks (for example tents, caravans, campervans);
- caravan parks should be flexibly designed to provide a range of accommodation options to facilitate long-term viability, however short-term accommodation options should be the predominant use;
- minimise potential for conflict between short-term and long-stay users of caravan parks through appropriate separation including separate facilities and access;
- park home parks should be identified as not permitted (X) in the Tourism or Special Use – Caravan Park zones;
- caravan parks should identify overflow areas for peak periods where additional space is likely to be required;
- suitable access and egress should be provided to ensure safety of pedestrians, vehicles and cyclists;
- caravan parks should be connected to appropriate services, such as electricity and wastewater supplies;
- the local planning strategy should identify existing and potential transit and informal camping sites; and



- green title subdivision of caravan parks is generally not supported to ensure retention of the caravan park use and avoid management issues associated with private park sites.

Appendix 2 provides further design considerations for local government when assessing proposals for new, or redevelopment of existing caravan parks.

4.3.1.2.1 Accommodation products and permanent structures

Caravan parks may provide a range of accommodation products to meet visitor demand such as powered and unpowered camp sites, minimal service recreational vehicle (RV) sites, on-site vans, cabins, chalets and eco/safari tents. Caravan parks may also provide permanent structures including, but not limited to caretaker's dwelling/manager's residence, shop/office, café, games/recreation room, ablution facilities, camp kitchen and camp laundry. It should also be noted that not all of these accommodation types may be permitted under the *Caravan Parks and Camping Grounds Act 1995* administered by the Department of Local Government, Sport and Cultural Industries.

For the purposes of these Guidelines, constrained areas refer to a specific portion of land that may have restrictions in use due to environmental factors (for example flood plains, coastal land, bushfire prone areas).

4.3.1.2.2 Redevelopment and reinvestment in caravan parks

If a caravan park is proposed to be redeveloped to cater for other forms of tourist accommodation, the range of existing facilities on offer should be retained. Converting entire caravan parks into other forms of tourist accommodation is discouraged. The local planning strategy may suggest a local development plan be prepared when caravan parks are proposed for significant changes. Refer to Appendix 2 Design assessment for proposed or redeveloped caravan parks.

4.3.2 Hotels

Hotel developments are one of the more expensive tourist accommodation ventures and take a significant length of time to obtain a return on investment. Therefore, if a local government seeks to encourage development of a hotel in a tourism precinct or a particular tourism site, incentives to attract developers or measures to promote viability of a hotel or reduce costs may assist in drawing interest. Planning incentives may include plot ratio bonuses, facilitation of mixed-use outcomes and floor space and height inducements. Hotel developments also require other statutory approvals in addition to a development approval (for example liquor licence).

4.4 SHORT-TERM RENTAL ACCOMMODATION

Short-term rentals are the common name given to holiday homes, units or apartments (usually built for residential purposes in areas zoned for residential use) offered for short-term letting, usually through an online booking platform. The prevalence of residential properties being let as short-term rentals in residential areas has increased rapidly in Western Australia since the emergence of online e-commerce booking platforms.

Depending on the type and scale of the short-term rental accommodation proposed, a variety of controls may be applicable to manage the use. These Guidelines propose tailoring of local planning schemes and local planning policies to address the specific issues encountered by individual local governments around tourist accommodation.

Local government is best placed to know the needs of its community and what requirements may need to be placed on short-term rental accommodation providers. Local government is responsible for establishing local regulatory frameworks to manage short-term rental accommodation and for carrying out ongoing management and enforcement.

In addition to local government framework considerations addressed in section 5.2.2 of the Position Statement, the following statutory considerations will assist local governments to address short-term rental accommodation in their locality.



4.4.1 Statutory considerations

4.4.1.1 Zoning

Table 3: Short-term rental zoning considerations

| Criteria | Considerations |
|---|--|
| Determine where short-term accommodation is best located within the local government area | <p>Siting considerations may include:</p> <ul style="list-style-type: none"> • areas of high tourism amenity (e.g. beach access, views, facilities and availability of services) • natural hazards (for example bushfire, cyclone and floods). |
| Determine appropriate use classes and permissibility in each zone | <p>The following zoning options are suggested approaches for local government consideration:</p> <ul style="list-style-type: none"> • hosted accommodation – P use (exempt development 365 days of the year) in the Residential zone and any other zones deemed appropriate by a local government • all other forms of short-term rental accommodation – D use in local planning scheme and requires planning approval <ul style="list-style-type: none"> – This could apply to all forms of short-term rental accommodation, different types of short-term rental accommodation or be differentiated based on scale such as number of individuals to be accommodated. – For accommodation offering sleeping arrangements for 6 or less, could be D use, for 7 or more could be an A use to allow for advertising. • specific types of short-term rental accommodation – X use in local planning scheme. |

4.4.1.2 Local planning policies

Local planning policies can be prepared to inform land use and development control. Please refer to section 5.3.2 of the Position Statement for specific guidance on preparing local planning policies to outline local government’s approach to short-term rental accommodation.

4.4.2 Management plans

As referenced in section 5.3.2 of the Position Statement, where appropriate, local government may require the applicant to prepare a management plan to address

potential amenity impacts arising from short-term rental accommodation and necessary emergency protocols. A management plan may include, but not be limited to the following:

- Mitigation plan –
To control anti-social behaviour, noise and any other potential conflicts a mitigation plan may be appropriate. Anti-social behaviour should be dealt with by local governments/police in the same manner as a property being used as a residential dwelling.

- Complaints management procedure –
The manager of short-term accommodation should be contactable in the event that a complaint is made. The guest should have 24-hour access to the manager via phone, email or an online app. Some local governments may wish to receive from the operator a record of complaints made against short-term rentals and this should be reflected/included in the complaints management procedure.
- Guest check-in and check-out procedures
Clear check-in and check-out procedures should be outlined in the management plan.
- Health and safety protocols
Other legislation and standards govern the need to provide and maintain appropriate health and safety requirements in short-term rental accommodation. Local government may wish to advise short-term rental operators of these requirements in the management plan.
- Management and provision of car parking
On-site parking provision should be considered to accommodate additional vehicles within the property boundary and should align with existing local government parking policies.
- Waste management
Must specify the requirements of general waste and recycling, bin collection days and location of bins for collection.



4.4.3 Other local government considerations

Local governments may consider it appropriate to provide guidance to short-term rental accommodation operators on the variety of non-planning requirements necessary for the operation of short-term rental accommodation. This section outlines some non-planning requirements which may be relevant.

Note: The Department of Mines, Industry Regulation and Safety and the Real Estate Institute of Western Australia provide information for owners, real estate agents, property managers and purchasers, to address public health and safety, taxation, insurance and amenity requirements, as well as due-diligence processes for short-term rental operations. Further information can be found at www.dmir.wa.gov.au.

4.4.3.1 National Construction Code requirements

Short-term rental accommodation is provided for in a range of classifications used in the National Construction Code, available at ncc.abcb.gov.au.

4.4.3.2 Insurance and liability

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

4.4.3.3 Health and safety standards

Other health and safety requirements may be applicable to the operation, such as standards for the serving of food and maintenance of aquatic facilities such as pools and spas.

5. LOCAL LAWS

Note for consultation:

Concurrent with the release of the draft Position Statement and Guidelines, 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".

Some local governments currently have local laws requiring short-term rental accommodation operators register with the local government for an annual licence. How these existing local government registration systems will interact with or be superseded by the State registration scheme is currently under consideration. Further information on the registration scheme is available from <https://www.dlgsc.wa.gov.au/>

Under the *Local Government Act 1995*, a local government may create a local law when considered necessary. As such, local governments may consider introducing a local law where individuals running short-term rental accommodation must meet certain requirements in order to register with the State's mandatory registration scheme. The local government could outline conditions of operation such as parking requirements, emergency evacuation plans, and number of guests. Requirements could apply to all forms of short-term rental accommodation, different types of accommodation or be differentiated based on scale such as the number of individuals to be accommodated.

6. STRATA AND COMMUNITY SCHEME DEVELOPMENT

Under the *Strata Titles Act 1985* and *Community Titles Act 2018* strata and community schemes are comprised of by-laws; the scheme plan (depicting lots); and upon registration, the strata company or community corporation.

The *Strata Titles Act 1985* requires subdivision approval by the WAPC under the *Planning and Development Act 2005* and *Strata Titles Act 1985* prior to the registration of a strata plan to create a strata scheme. Section 6 of the *Strata Titles Act 1985* allows a strata/survey-strata plan to legally restrict uses on strata land.

For strata schemes, the subdivider/developer can supplement the deemed by-laws and add restrictions regarding short-term letting. For community schemes, the community corporation can also apply by-laws to allow or restrict uses within the community scheme as a whole or for schemes within certain tiers. Planning approval for short-term rental accommodation within a strata or community scheme does not override the need for body corporate approval.

The *Community Titles Act 2018* requires WAPC approval of the community development statement, which governs the subdivision and development of land subject to a community scheme, and subdivision. Sections 25 and 43 of the *Community Titles Act 2018* allows a community titles scheme plan to legally restrict uses on community titled land or development.

Note: The applicable strata or community titles scheme plan for grouped and multiple dwellings should be checked for consistency prior to an approval being issued.



6.1 SHORT-TERM RENTAL ACCOMMODATION IN RESIDENTIAL STRATA AND COMMUNITY TITLES SCHEME DEVELOPMENT

The use of a residential strata or community titles scheme property (for example apartment, unit, villa, flat, townhouse) for tourist accommodation has additional obligations to a single house on a freehold lot.

Strata and community titles scheme complexes could be more susceptible to the potential negative impacts of short-term rental accommodation due to:

- the proximity of neighbours
- the reliance on shared facilities
- the high proportion of whole-premise short-term accommodation (i.e. un-hosted).

Where development approval is required and is supported by the strata company or community corporation, one or more units or an entire development may be approved by the strata company or community corporation for short-term rental accommodation, subject to conditional requirements or restrictions. Strata companies and community corporations are suitably positioned to address neighbour concerns rather than individual strata or community titles owners. The strata company or community corporation may also vote to:

- prohibit the use of strata/community titles units for tourist accommodation;
- allow the use of particular properties for short-term rental accommodation;

- apply restrictions and management plans; or
- allow the use of all strata/community titles units for short-term rental accommodation.

Under current strata laws, strata companies can adopt model by-laws which enable them to:

- manage some of the impacts that may arise from uses such as short-term rental accommodation, including management of common property; and
- require that an owner/occupier must notify the strata company of a change of use of that lot including if it is to be used for short-term rental accommodation.

Strata companies and community corporations can also formulate their own by-laws to:

- help manage the behaviour of owners/occupiers and invitees, noise, vehicle parking, the appearance of a lot and waste disposal;
- vary the insurance payable by owner/occupiers who short-term let; and
- restrict the use of tenancies for the purpose of short-stay rental accommodation.

The *Strata Titles Act 1985* and *Community Titles Act 2018* do not include model by-laws to prohibit or restrict short-term rental accommodation. However, a strata company or community corporation may vote to set their own by-laws to prohibit or restrict the use.

The requirements of the *Strata Titles Act 1985* and *Community Titles Act 2018* must be observed in all circumstances. If strata or community scheme by-laws do not permit the use and the strata company has not approved the use, the use remains illegal under the *Strata*

Titles Act 1985 and *Community Titles Act 2018*. A planning approval does not override the need for an approval of the strata company or community corporation. Where it is proposed to use a strata or community titles property for short-term rental accommodation (or other form of tourist accommodation) the onus is on the owner to confirm the permissibility of the use under the relevant by-laws.

Landgate has prepared guidance to assist strata companies in managing short-term rentals in strata schemes. The Guide to Strata Titles can be found at www.landgate.wa.gov.au.



APPENDIX 1: MIXED USE RESIDENTIAL DEVELOPMENT

Factors to consider in determining the proportion of mixed use and/or residential development in areas of primary tourism.

- What are the tourism values of the site?
- What site, precinct and location factors support residential or mixed use of the tourism site?
- Is the site sufficiently large enough to cater for a residential component in addition to the intended sustainable tourism use?
- Is the proposed residential development appropriate and sustainable in the broader planning context?
- Isolated and new residential settlements should not be supported.
- What tourist accommodation facilities exist or are proposed in the area? Has the capacity for new tourism development and the projected demand and range of tourist accommodation been identified for the tourism site, precinct, locality and region?
- Residential development should complement tourism development.
- Tourism uses should be located in areas of greatest tourism amenity within a site (for example beachfront), not proposed residential uses.
- Residential dwellings should be designed and integrated into the tourism use and its management.
- Has a structure plan been prepared (or should it be) to integrate residential and tourism uses ensuring the proposed tourism use is enhanced and avoids potential land use conflict (for example noise from tourist accommodation impacting permanent residential amenity)?
- Do proposed residential lot sizes reflect and enhance the desired tourism use?
- Should length of stay residential occupancy restrictions be implemented?
- Are non-tourism land uses and development, and proposed tourism uses compatible in terms of proposed lot sizes, building heights, scale and character of development?
- Are there potential impacts to surrounding areas from combining tourism and residential uses?
- Relevant State and local government policies and guidelines should be considered in assessment.
- The design of the overall proposal should ensure ease of access in and around the site for tourists.
- Tourism uses should incorporate recreation, entertainment and integrated management traditionally provided in tourist accommodation (for example swimming pool, lookout area, cycle paths, barbecue area).
- Separate staging of tourism and mixed use/residential development is discouraged.
- Strata or community titling of tourist accommodation (including serviced apartments) should include an appropriate management statement to ensure tourist accommodation is restricted to short-term use, prohibit use as permanent accommodation and, preferably include on-site management.
- Proposing the inclusion of permanent residential accommodation into an existing tourism development should only be supported where it is demonstrated as facilitating a quality tourism outcome or benefit (for example major refurbishment of tourism use, increased capacity of tourist accommodation, renovation or development of new public space, new pool and restaurant facilities).



APPENDIX 2: DESIGN ASSESSMENT FOR PROPOSED OR REDEVELOPED CARAVAN PARKS

Caravan parks should separate short-term from long-term accommodation to reduce risk of noise and anti-social behaviour. Separate facilities and access for long and short-term accommodation is encouraged.

Small portions of long-term accommodation may be considered in caravan parks provided that short-term accommodation (tourist accommodation) is located in areas where the highest tourism amenity occurs (for example the beachfront, proximity to shared ablution blocks).

Where relevant, overflow caravan parking locations should be included in caravan park proposals. Local governments endorse the provision of overflow facilities as part of licences required under the *Caravan Parks and Camping Grounds Act 1995*.

Design should consider:

- (a) **Access** – Suitable access and egress must be demonstrated in proposals to ensure traffic, cyclist and pedestrian safety within the caravan park. Secondary or alternative access routes should be included in proposals to cater for emergency evacuation (for example fire or flood). Internal roads should be designed to minimise potential conflict between pedestrians and vehicles and allow manoeuvring space for recreational vehicles and vehicles towing caravans.
- (b) **Amenity** – Vegetation and landscape plans that integrate the proposed caravan park into the surrounding landscape should be included and assessed as part of any application. Design minimising opportunity for crime, the use of complementary structure styles, colours, materials, suitable fencing, and separate recreational areas (for example playgrounds and pools) and quiet activity areas should be considered in proposals and their assessment.
- (c) **Services** – Utility services such as electricity, landline telephone or mobile phone network accessibility, demonstrable water supply and the proposed system for wastewater treatment should form part of any proposal. Written confirmation by service providers of the availability and capacity of services, particularly in peak season, is to be submitted with applications for proposed caravan parks.

If reticulated sewerage is not available, on-site wastewater disposal must be proposed and provided to the satisfaction of the Department of Health.

Caravan parks used for short-term accommodation must have facilities that accept waste from caravans. Known as chemical toilet dump points, they should be located away from accommodation in areas with no tourism amenity. If seeking an exemption from providing a dump point in the proposed caravan park, access to an alternative off-site dump point must be identified as part of the application. Waste from mobile toilet and sanitation fixtures is not permitted in dump points as it will interfere with the efficient operation of conventional onsite water disposal systems. Further information is available from the Department of Health.

If a caravan park is proposed to cater for both long and short-term accommodation consideration should be given to the provision of additional services and infrastructure. Long-term caravan park sites must be fitted with individual meters for electricity and water tap or connection.

14. ENGINEERING AND WORK SERVICES REPORT

14.1 BUSSELTON JETTY 50-YEAR MAINTENANCE PLAN REVIEW

| | |
|----------------------------|--|
| STRATEGIC THEME | LIFESTYLE - A place that is relaxed, safe and friendly with services and facilities that support healthy lifestyles and wellbeing |
| STRATEGIC PRIORITY | 2.12 Provide well maintained community assets through robust asset management practices. |
| SUBJECT INDEX | Busselton Jetty |
| BUSINESS UNIT | Community and Commercial Services |
| REPORTING OFFICER | Director, Community and Commercial Services - Naomi Searle Facilities Maintenance Coordinator - John Farrier Manager Major Projects and Facilities - Eden Shepherd |
| AUTHORISING OFFICER | Director, Engineering and Works Services - Oliver Darby |
| NATURE OF DECISION | Noting: The item is simply for information purposes and noting |
| VOTING REQUIREMENT | Simple Majority |
| ATTACHMENTS | Attachment A – Provided under separate cover |

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; and**
- 2. Notes 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 Attachment A - Draft LTFP.

Note 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. | | | |
|--|-------------------------|----------------------------------|-------------------|
| Risk Category | Risk Consequence | Likelihood of Consequence | Risk Level |
| 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.

15. COMMUNITY AND COMMERCIAL SERVICES REPORT

Nil

16. FINANCE AND CORPORATE SERVICES REPORT

Nil

17. CHIEF EXECUTIVE OFFICERS REPORT

17.1 Councillors' Information Bulletin

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

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 |
|---|---|-------------------|--|---------------------------------------|---|---|-------------------------------|
| CITY OF BUSSELTON | | | | | | | |
| 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"> Unauthorised development has been removed. Applicant was given leave to withdraw the proceeding and the proceeding was dismissed. Matter now considered completed. | 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"> Relates to DA19/0325 for 'Modified Building Envelope and Single House' 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. | Mediation on 7 February 2022 | |
| JOINT DEVELOPMENT ASSESSMENT PANEL | | | | | | | |
| 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"> Directions hearing listed for 4 February 2022 | N/A | |
| WESTERN AUSTRALIAN PLANNING COMMISSION | | | | | | | |
| 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

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 read 'D. Caddy'.

David Caddy
Chairman
Western Australian Planning Commission

12 January 2022

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

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

Councillor Ryan has given notice of the following motion to be moved at the Ordinary Council Meeting on 9 February 2022:

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.
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).

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 |
| <i>Other City costs</i> | | | | |
| 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 |
| TOTAL | \$44,550,000 | \$44,448,572 | | -\$101,428 |

* 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, tradeshow 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 MATTERS

Nil

21. CLOSURE