

Submission on Short-Term Accommodation

Introduction

The Western Australian Local Government Association is the united voice of Local Government in Western Australia. The Association is an independent, membership-based group representing and supporting the work and interests of 139 Local Governments in Western Australia.

The Association provides an essential voice for 1230 Elected Members and approximately 22,600 Local Government employees as well as over 2.67 million constituents of Local Governments in Western Australia.

The short-term accommodation sector, and the tourism sector more broadly, plays an important role in local economic development, providing employment, training opportunities, and injections of tourist expenditure into local communities across the state.

Changes in the composition of the short-term accommodation market have been challenging for Local Governments and their communities, particularly amenity issues such as noise, parking and waste management. Several Local Governments have sought to address these challenges through their local planning frameworks and through local registration schemes governed by local laws. These approaches have had varying degrees of success in addressing amenity concerns. Most concerningly, requirements set at the local level have not been sufficient to compel compliance from peer-to-peer platforms on matters such as data sharing and compliance with local requirements.

The Association therefore welcomes the opportunity to provide feedback on short-term accommodation to the Department of Planning Lands and Heritage (DPLH) and Department of Local Government, Sports and Cultural Industries (DLGSC) to inform the effective and efficient regulation of this sector.

This submission reflects the Association's existing advocacy positions as well as key issues and concerns raised by WALGA members during the consultation period.

Background

The emergence and rapid rise of the 'sharing economy', which utilises peer-to-peer platforms to rapidly connect customers and service providers, has produced several challenges for Local Government. In particular, platforms that support short-term rental accommodation offer these services in residential buildings and neighbourhoods that have not been designed to accommodate or provide these services.

The growth in short-term rental accommodation platforms and associated services has been rapid; however, planning legislation that governs short-term accommodation in Western Australia has not been revised since 2009. The absence of adequate State Government guidance on how to manage these services has been

challenging for some Local Governments, which has led many to regulate short-term accommodation through their local planning frameworks and the *Local Government Act 1995*.

In 2017, the Association prepared a *Short-Term Rental Accommodation Discussion Paper* in consultation with Local Governments. This discussion paper led to the adoption of a formal advocacy policy position by the WALGA State Council in December 2017, which states:

1. That WALGA request the Minister for Planning to establish, through the Department of Planning, Lands and Heritage, a Technical Working Group, with a goal to reviewing the planning framework in relation to short-term rental accommodation, that gives consideration to:
 - a. A review of Planning Bulletin 99 – Holiday Home Guidelines, with a particular emphasis on expanding the scope of Planning Bulletin 99 beyond ‘Holiday Homes’, to reflect changes in the accommodation market,
 - b. A review of ‘Land Use’ definitions within the Planning framework that relate to short-term accommodation, and
 - c. Establishing a ‘preferred’ approach for the management of ‘home-sharing’ within the planning framework

Parliamentary Inquiry into Short-Stay Accommodation

Considering WALGA’s adopted policy advocacy positions, the Association welcomed the nature and scope of the terms of reference for the Inquiry into Short-Stay Accommodation by the Legislative Assembly’s Economics and Industry Standing Committee in 2019.

The detail of the Association’s submission to the inquiry focused on points one (1) and three (3) of the terms of reference, providing a snapshot of the way Local Governments regulate short-term accommodation in Western Australia. WALGA’s submission also outlined the various concerns of Local Government and their communities regarding the impact that changes to the short-term accommodation market have had, and are continuing to have, on their localities. Finally, commentary was made on the issue of data-sharing, or lack thereof, between online listing websites, holiday house providers and government authorities and the issues this creates for authorities.

The findings and recommendations of the Inquiry, tabled in September 2019, were generally welcomed by the Local Government sector. For example, Recommendations 2 and 3 sought to contemporise land-use definitions through the *Planning and Development (Local Planning Scheme) Regulations 2015* and update planning guidance to reflect the changes to the definitions. These recommendations largely aligned with the Association’s adopted policy advocacy positions.

Recommendations 7 through 10 proposed the need for a state-wide registration scheme, established through appropriate legislative or regulatory mechanisms, and developed by an interdepartmental government working group in consultation with industry and the Local Government sector. The Committee’s findings placed considerable weight on the collective evidence provided by Local Government on how the short-term accommodation sector needs to be managed in line with local conditions and context. Recommendation 7 makes clear reference to the need for any state-wide registration scheme to ‘*ensure that Local Governments maintain the ability to require the provision of additional information and impose additional licencing or operational requirements, depending on their circumstances*’.

Recommendation 10 listed a range of matters that Local Governments should be responsible for. The State Government accepted both recommendations noting that the relationship between State and Local Government will be a critical issue in implementing a state-wide scheme.

The Association was pleased that the Government accepted Recommendations 2, 3, 7, 8, 9 and 10 and notes that these recommendations form the basis of the matters included in the current consultation being administered by the Department of Planning, Lands and Heritage (DPLH) and Department of Local Government, Sport and Cultural Industries (DLGSC).

General Comments

The Association welcomes the recent release of the *draft Position Statement: Planning for Tourism* and associated Guidelines for public consultation. The draft Position Statement and Guidelines provide an opportunity for the provision of clear and consistent direction to Local Governments on the definition and treatment of short-term rental accommodation in the Western Australia planning framework. Amongst other things, the draft Position Statement and Guidelines supersede and replace Planning Bulletin 99 and provide a more contemporary range of 'Land Use' definitions and a preferred model for the management of home-sharing in the planning framework. The intent of these approaches is consistent with WALGA's current policy advocacy positions. The following section outlines general areas of the *draft Position Statement* and associated Guidelines which are of concern to the Association. More specific, detailed commentary is provided in Appendix 1.

Consultation with the Local Government sector

The Association is concerned that there has been limited consultation with Local Government or WALGA prior to the release of the draft Position Statement the Government accepted the finding of the Inquiry in February 2020 and shortly after formed the interdepartmental working group to advance the matter. The items outlined in Recommendation 7 of the Inquiry provided a robust set of considerations that would have adequately guided the working group. The recommendation and the Government's response also outlined the importance of engaging with the Local Government sector to support the working group's activities. However, there has not been a formal approach by the working group to Local Government or WALGA to support their work. This should occur prior to endorsement of the Policy Statement by the Western Australian Planning Commission (WAPC).

Inconsistent or unjustified provisions

The draft Position Statement identifies that *'Local Governments are best placed to plan for tourism within their communities, with local knowledge of tourism activities, opportunities, constraints, including potential impacts and what requirements, if any, should be places on tourism proposals'*. However, a number of the general and specific policy measures are inconsistent with the policy intent.

For example, the Association has significant concerns regarding the proposal to exempt 'unhosted accommodation' from the need to obtain development approval where this use is not proposed to be let for more than 60 days per calendar year. This policy response was not proposed in either the Parliamentary Inquiry or the Government's inquiry response. Furthermore, the draft Position Statement provides limited justification as to why the exemption is being proposed or how it would work in practice. Consultation with Local Governments indicates that there is broad

opposition to this exemption for a range of reasons. Detailed commentary on this matter and other specific provisions are outlined in the Specific Comments section (Appendix 1).

Lead agency

Recommendation 7 (1d) of the Inquiry was to identify the most appropriate agency to hold the register. The Association understands that the DLGSC has recently been appointed as the lead agency. Considering DLGSC's limited role in the ongoing issuing of licences and permits and limited experience in establishing regulatory framework for industry, the Association does not believe that they are the most suited Department to establish or regulate the short-term accommodation sector. The Department of Mines, Industry Regulation and Safety would be a more appropriate choice for this role. This would be consistent with other Australian states. Regardless, WALGA looks forward to the opportunity to engage with the State on the development of this scheme in line with the Inquiry's recommendations and the State Government's response.

Conclusion

The Association supports in-principle the establishment of a state-wide registration scheme. Local Governments have indicated strong support for a scheme and the benefits it would bring to the regulation of short-term accommodation in their localities. However, given the limited detail provided, the Association's support for the scheme is conditional upon inclusion of the following factors and scheme features:

1. All hosted and un-hosted short-term accommodation must be required to be registered with the scheme before being able to advertise the property, and platforms must publish the registration number as part of the marketing and booking services,
2. All peer-to-peer platforms that seek to let short-term accommodation must be regulated through the scheme as a host platform,
3. Obligations of registration for both hosts and platforms must be clear and appropriate infringements and compliance tools should be embedded in the regulatory framework,
4. Local Governments must be able to maintain the ability to require the provision of additional information and impose additional licencing or operational requirements, depending on their circumstances, including both town planning and Local Government Act (Local Law) regulation,
5. Local Government's must be able to set fees commensurate with the cost of providing the service for any role undertaken as part of the scheme,
6. Local Governments must have access to all necessary data collected by the scheme to adequately manage the potential impacts of short-term accommodation providers and to ensure local requirements are being met by hosts, and
7. Sufficient funds being allocated to the lead Department to ensure the scheme is fit-for-purpose and able to adequately regulate hosts, platforms and guests.

Recommendations:

1. **That the WAPC not endorse the draft Position Statement: Planning for Tourism and the associated Guidelines prior to:**
 - a. **Additional engagement occurring with the Local Government sector, and specifically those Local Governments with significant tourism industries and knowledge and experience in the regulation of tourism land-uses,**

- f. **Local Governments must have access to all necessary data collected by the scheme to adequately manage the potential impacts of short-term accommodation providers and to ensure local requirements are being met by hosts.**

Appendix 1: Specific Comments

| Section | Comment |
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| Hosted accommodation | <p>The draft Position Statement proposes that a new definition of ‘hosted accommodation’ be incorporated into the Local Planning Scheme Regulations as a model provision. It is proposed that the definition of hosted accommodation will encompass all low-scale proposals where a host resides on site, this would include bed and breakfasts. The current definition of bed and breakfast would be deleted from the model provisions. The proposed definition of hosted accommodation would apply to all dwelling types and limit the number of visitors to 4 adult persons in a maximum of 2 bedrooms, this aligns with the current definition of bed and breakfast. Comments received in response to WALGA’s discussion paper in 2017 and in response to this consultation indicate broad support for the new definition of hosted accommodation and the subsequent deletion of bed and breakfast from the LPS Regulations. The Association supports this change.</p> <p>It is also proposed that hosted accommodation be exempt from requiring development approval through an amendment to clause 61 of the Deemed Provisions. That is to say that where the proposal meets certain conditions, such as the number of rooms and number of guests, there would be no requirement to seek development approval for the use. Local Governments indicated broad support for the use of exemptions for hosted accommodation. The Association supports this change.</p> <p>The draft Position Statement indicates that all hosted accommodation (including those not requiring development approval) would be required to be registered on the state-wide registration scheme. This would ensure that Local Governments are aware of relevant matters that would enable suitable regulation of the land uses to protect amenity issues should they arise.</p> |

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| | <p>The Draft Guidelines indicate that Local Governments should consider including hosted accommodation as a 'permitted' land use in the residential zone and as Local Governments deem appropriate in other zones. Current practice generally specifies bed and breakfast as either an 'A' or 'D' use in most suitable zones. It is unusual for a bed and breakfast to be a 'P' use.</p> <p>DPLH will need to consider transitional arrangements for existing schemes and definitions and how the exemption will be incorporated into the deemed provisions to facilitate the policy objectives of the Draft Position Statement. Clarification is sought on whether existing approved bed and breakfasts will automatically transition to the new terminology or will become non-conforming uses for the purposes of future assessment.</p> <p>DPLH will also need to consider the appropriateness of exempting hosted accommodation in bushfire prone areas and the alignment of such a decision with the intent and objectives of <i>State Planning Policy 3.7 Planning for Bushfire Protection</i>.</p> <p>Recommendation:</p> <ul style="list-style-type: none"> 6. Establish new definitions for hosted accommodation, 7. Include hosted accommodation as a matter exempt from seeking development approval in clause 61 of the Deemed Provisions, subject to suitable conditions relating to number of guests and number of rooms, and consideration of bushfire or other natural hazard, |
| Unhosted short-term accommodation | <p>The draft Position Statement proposes that two new and one amended definition related to unhosted accommodation be incorporated into the LPS Regulations as a model provision. Currently the model provisions provide a single definition for 'holiday house'. It is proposed to split this definition into three definitions that reflect the three types of dwellings in the Residential Design Codes: Single House, Grouped Dwelling, and Multiple Dwelling. The definitions are identical except for the type of dwelling.</p> |

Several Local Governments currently use definitions to distinguish between holiday homes in single houses and either grouped or multiple dwellings. Generally, land-use permissibility and number of guests vary between the two definitions with lower maximum guests' numbers on proposals in grouped and multiple dwellings. The draft Position Statement proposes that guest numbers and room caps would be managed through the local planning framework.

There is merit in splitting the land-use definitions by dwelling type, and this is supported. It is recommended that the words, 'for hire or reward' be added to the end of all three draft definitions. This will clarify that this land use is only to be applied to those holiday houses/units that are being used in a commercial manner and not for the personal use of a holiday home by the owner. Consideration should also be given to maintaining limits on the maximum number of guests and number of rooms that can be accommodated in each proposed definition. For example, limiting the maximum number of guests to 2 persons per bedroom.

The Draft Guidelines indicate that Local Governments should consider including holiday house/unit/apartments as a 'discretionary' land use in appropriate zone and suggest that advertising be required for proposals with more than 7 or more guests. This is generally consistent with current practice and supported.

Lastly, it is proposed that unhosted short-term accommodation (in a single house, grouped or multiple dwelling) will be exempt from requiring development approval where it is let for less than 60 days per calendar year. As already stated, no justification has been provided to support this proposal and this proposal was not contemplated or deemed necessary by the Parliamentary Inquiry. Submissions from Local Governments indicate that the practicalities of enforcing this requirement would be impossible and for many Local Governments that have established comprehensive regulatory regimes the change would mean a significant reduction in the ability to

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| | <p>adequately manage short-term accommodation and manage the amenity issues in line with community expectations.</p> <p>DPLH will also need to consider the appropriateness of exempting unhosted accommodation in bushfire prone areas and the alignment of such a decision with the intent and objectives of <i>State Planning Policy 3.7 Planning for Bushfire Protection</i>.</p> <p>It is noted that all unhosted accommodation, including those exempt from development approval, would be required to be registered through the state-wide scheme, and that this may allow for adequate regulatory oversight of unhosted accommodation. The lack of information in this consultation on how the scheme will operate, the data reporting requirements, and how local requirements will be incorporated into the scheme does not allow positions to be taken or recommendations made by the Association. Until such a time that additional information is provided, the Association is not able to support the exemption for unhosted accommodation. This position will be reassessed following the release of information on the Scheme and further consultation with Local Government.</p> <p>Recommendation:</p> <ul style="list-style-type: none"> 8. Include the words ‘for hire or reward’ to the draft definitions of holiday house, holiday unit and holiday apartment, 9. Consider the need for maximum guest and room limits for each draft definition, |
| State-wide registration scheme | <p>The Association supports the establishment of a state-wide registration scheme for short-term accommodation. Consultation with members demonstrates overwhelming support for a scheme and the benefits it would bring to the regulation of short-term accommodation in their localities.</p> <p>Local Government experience of local regulation of short-term accommodation through local laws shows the benefits of registration and regulation outside the planning system. The planning system has traditionally not been a useful instrument to manage ongoing compliance, and the use of local laws has</p> |

shown to be successful at ensuring amenity is maintained and hosts are held to account for the behaviour of their guests and the suitability of the premises.

Experience shows that local laws, and their registration scheme in Western Australia, has had limited success in compelling peer-to-peer hosting platforms to ensure compliance with local requirements prior to accepting properties for hire. As has been experienced in New South Wales and Tasmania, state-managed schemes have the power to compel such platforms to follow the rules and ensure compliance. This is vital for the success of any scheme.

As has been identified in the draft Guidelines, several Local Governments in Western Australia currently operate local registration and regulatory schemes. This is reflective of the varying impact short-term accommodation has on different communities. It is important that any state-wide scheme be able to capture this variation and reflect the desire of some communities to restrict and/or manage short-term accommodation.

In the Government's response to Inquiry recommendation 7 it was noted that the design of the system '*...needs to be flexible and not too onerous*' and '*simple, low cost and user friendly*'. Considering these requirements alongside the need to incorporate local requirements into registration, the development of a system similar in design to the section 39 and 40 requests in the liquor licencing regime has merit. This operates by an applicant lodging a request for registration with a state agency, as part of the application process a request for a certificate of compliance from the Local Government would be issued. This would allow the Local Government to determine if all local requirements, such as local registration, development approval, pool permit and food licence etc, had been met. Should those items not be required, this would be indicated in the response. This system would be consistent with the intent of Inquiry recommendation 10 and if adequately resourced would not act as an impediment to registration.

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| | <p>As previously stated, as there is limited detail on the scheme, the Association's support for the scheme should be read alongside several features already mentioned in the general comments.</p> |
| <p>Implications for Building Classification</p> | <p>Under the National Construction Code apartments are designated as Class 2 Buildings while buildings hosting tourist accommodation are generally classified as Class 3. There are significant differences between the two classes, such as sprinkler protection in Class 3. The design of Class 2 buildings regularly relies on performance solutions that assume a level of resident familiarity with the building, which is not the case for short-term guests. Class 3 buildings address this through higher safety standards.</p> <p>The existence of short-term accommodation in residential class 2 buildings causes difficulties for Local Governments when approving uses. Under current legislation, a change in the classification triggers compliance with the current standards. This would likely be onerous upgrades, particularly in older buildings. Secondly, it is unclear if the trigger would apply to only the apartment or the whole building. More guidance is needed on this issue.</p> <p>Recommendation: 10.DLGSC should seek guidance from DMIRS on possible solutions regarding the different safety standards for Class 2 and 3 buildings for short-term accommodation. This issue should be discussed in collaboration with Local Government and other relevant stakeholders,</p> |
| <p>5.2.1 Caravan Parks</p> | <p>The draft Position Statement includes several specific policy measures in relation to Caravan Parks and outlines the WAPC's preference for existing Caravan sites to be retained and zoned to facilitate this policy position.</p> <p>It is not considered appropriate for planning frameworks to address the issue of intended market and function. The commercial viability of a Caravan Park should be determined by the operator. This being said, in situations where the sole caravan park in a community is proposed to be rezoned, there may be</p> |

rezoned, it may be appropriate to not support a re-zoning to ensure the adequate supply of affordable accommodation.

To this end, the policy measure seeking to ensure all existing and proposed caravan parks be zoned 'Special Use – Caravan Park is not supported. As is outlined in Part 5 of the draft Position Statement, Local Governments are best placed to plan for tourism within their communities. Decisions on the appropriate zoning of existing and proposed caravan parks should be left to the Local Government in consultation with affected landowners and the community.

Recommendation:

- 11. Part 5.2.1 to be re-worded to remove the implied restriction on rezoning caravan sites for non-tourism land uses, and instead note that the WAPC will consider the current supply of caravan sites in an area prior to determining if a re-zoning is appropriate,**
- 12. Local Government, as part of a Scheme Review, should be able to identify the preferred long-term use for caravan sites and apply an appropriate zone in line with the review findings.**