

DOCUMENT NO: O201873
 FILE NO: LND/114
 OFFICER: Nick Logan



24 January 2019

Economics and Industry Standing Committee
 Parliament House
 PERTH WA 6000

PO Box 61, Margaret River
 Western Australia 6285
 T (08) 9780 5255 F (08) 9757 2512
amrshire@amrshire.wa.gov.au
amrshire.wa.gov.au
 ABN: 13 643 295 019

Dear Sir/Madam

Submission to Economics and Industry Standing Committee Inquiry into Short Stay Accommodation

Council, at its Ordinary Meeting dated 23 January 2019, resolved to provide the following submission to the Inquiry into Short Stay Accommodation.

Appearance before committee; The Shire would appreciate the opportunity to present this submission to the Inquiry in person.

INTRODUCTORY COMMENTS

The tourism industry is one of the key drivers of the local economy. The Shire is heavily reliant on the tourism and agricultural industries for jobs, drawing tourists by virtue of the region's world renowned vineyards and natural attractions. The accommodation and food services, construction, retail trade and agricultural sectors employ the bulk of the area's workforce and there is a significant inter-relationship between these industries.

The substantial growth in the Shire in the use of hosted and un-hosted dwellings for short stay purposes follows a global trend partly facilitated by online booking platforms. It is clear that there is significant demand globally and locally for hosted and un-hosted short stay accommodation, generally accepted as a consequence of efficiency in the transaction and the alternative nature of the product. In 2015 the number of holidaymakers in Margaret River using the Air BnB online platform alone accounted for over 8% of all visitors (see Figure 1). It should be noted that there a significant number of generally smaller scale 'traditional' tourism operators also utilising online booking platforms.

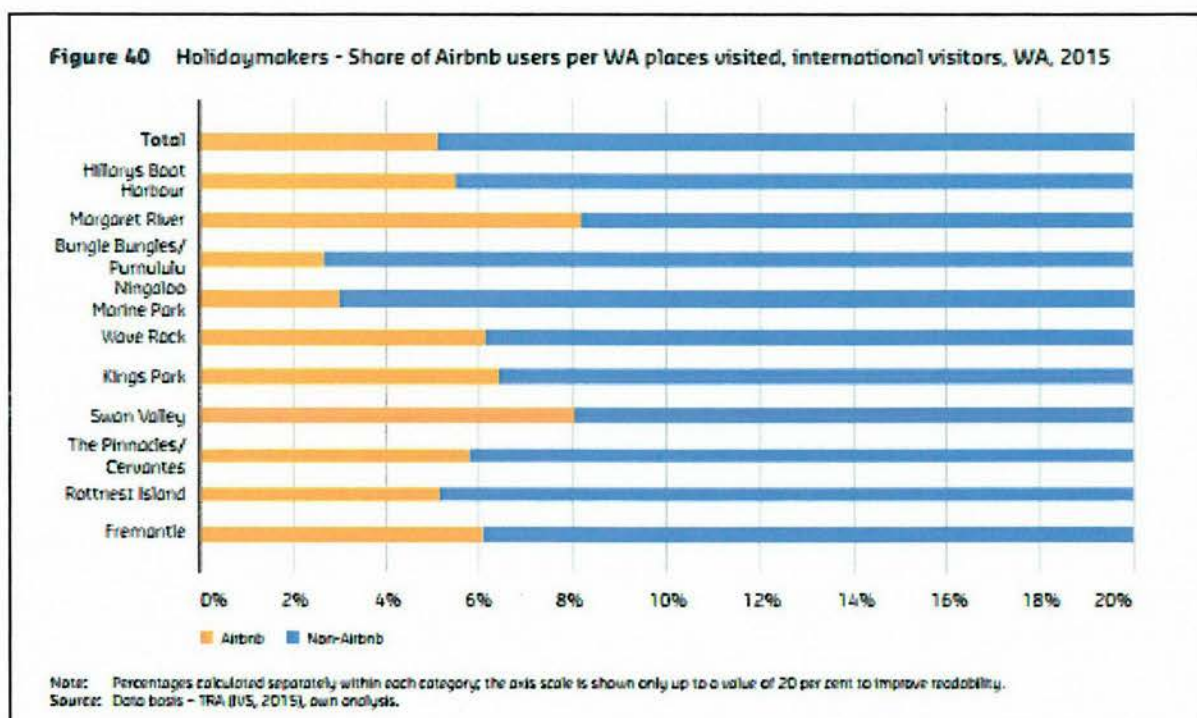


Figure 1. Proportion of Air BnB Users By Location

In 2018 the Shire had 314 separate approved premises that could be considered 'hosted' (holiday house or guesthouse; 255) and 'unhosted' (bed and breakfast; 67). Owing to issues associated with enforcement and compliance, the actual number of hosted and unhosted forms of accommodation is likely to be significantly larger.

The location of both hosted and unhosted forms of tourist accommodation is a consequence of the application of planning controls around the establishment of this type of land use, which is also largely reflective of the historical distribution and demand for this type of use in the Shire. This has resulted in the majority of holiday houses being located in the coastal communities of the Shire and concentrated in the Margaret River town centre and surrounding rural residential areas.

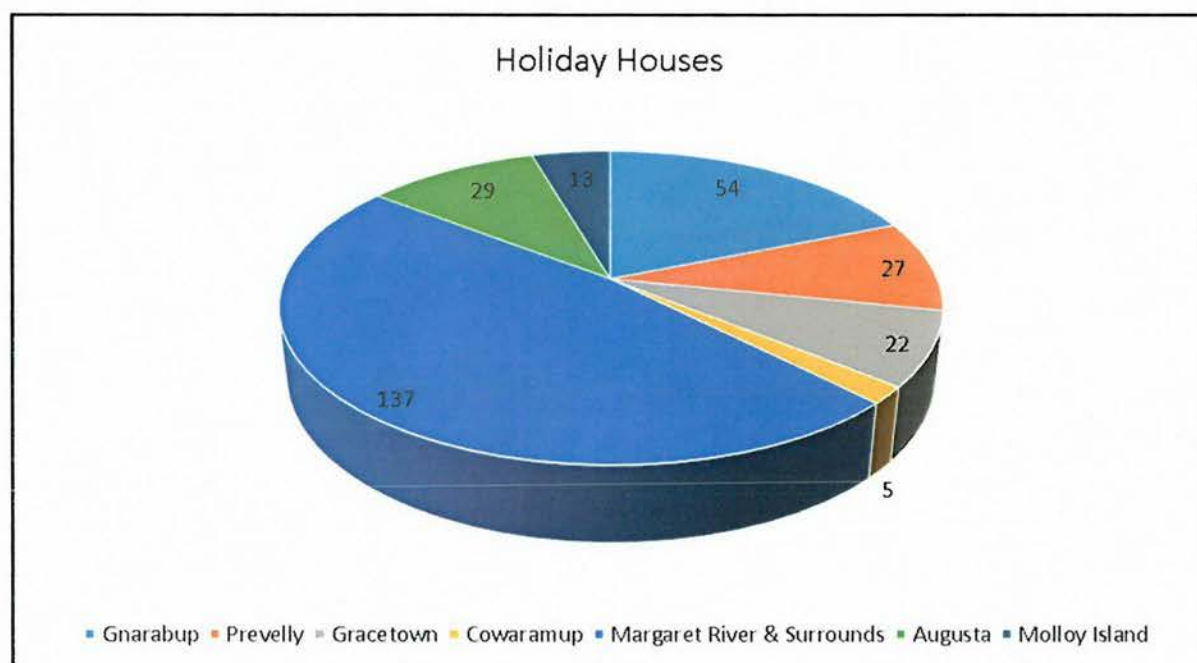


Figure 2. Proportion of Holiday Houses (Unhosted Short Stay) By Location

In coastal communities in particular unhosted accommodation (the 'Holiday House' use class under Local Planning Scheme No. 1) comprise a significant proportion of the dwelling stock. For example in the Gnarabup suburb where there were 54 approved holiday houses in 2017 and around 280 houses in total. It is likely that there were further, unapproved holiday houses also operating at this time.

Relative Numbers of Short Stay Use of Dwellings

At the 2016 census there were 7,740 dwellings in the Shire. While the proportion of short stay use (hosted and unhosted use of dwellings) initially seems comparatively small, the concentration of these dwellings in particular areas is within the range of what has been considered elsewhere as potentially having an impact on both rental availability, the cost of rental housing and also potentially house prices. This is exacerbated by the comparatively high demand for permanent rental accommodation. In particular, the availability of permanent rental accommodation in peak periods is a key consideration for the Shire.

Anecdotal, the use of dwellings for permanent accommodation in the winter months and residents leases terminating before the seasonal summer holiday period is a common occurrence. The Shire is pursuing partnership with Edith Cowan University to undertake further research into the scope and impact of this issue. ECU has undertaken background research into short stay use and prepared a review of relevant information that is appended to this submission.

Impacts on the Tourism Industry

Extensive consultation was undertaken by the Shire through 2018 in a recent review of Local Planning Policy 7. Short Stay Accommodation (LPP7 - attached). The impact of the short stay use of dwellings on tourism operators was a point consistent raised by operators of what could be considered 'traditional' forms of accommodation such as motels, chalets and the like. In particular representations were made around falling occupancy rates, the extent of and potential for unapproved operators, and the 'uneven playing field' arising from traditional operators being subject to more stringent regulatory requirements.

Amenity

A common issue that arises with the short stay use of dwellings is the unsociable behaviour of guests. The Shire's experience is that amenity impacts arising from poor guest behaviour is significantly more common in unhosted forms of accommodation.

Other potential amenity impacts that have arisen include the use of shared spaces or insufficient infrastructure (such as carparking) to cater for a particular short stay use.

A further, slightly less tangible impact on amenity is the general perception of cohesion in a neighbourhood, with others observing that many complaints are not only from tangible noise and nuisance factors but the perception that a new person or people are occupying premises each week; "the feeling of unease that the changing tide of faces brings on".

Enforcement and Compliance

While the Shire views regulation of both hosted and unhosted forms of accommodation as necessary, ensuring compliance with the Shire's regulatory framework has proven both difficult and resource intensive. This arises due to:

- The burden of proof for prosecution and the difficulty in proving illegal use or transactions have taken place.
- That the use of on-line platforms itself facilitates illegal or unregulated use but is not in of itself, an action that the Shire can control.

SHIRE MANAGEMENT OF HOLIDAY HOUSES

The Shire has actively been regulating the short stay use of hosted dwellings since the 1980's, and consideration of regulating unhosted dwellings began in the late 1990's. The Shire requires planning approval for both hosted and unhosted forms of short stay accommodation. Any approvals granted are limited in duration and require renewal as a form of licensing/registration utilising the planning system.

Both hosted and unhosted forms of short stay accommodation are discretionary uses under the Local Planning Scheme with that discretion guided by LPP7. LPP7 has been through several iterations since that time and through a detailed consultative process the current LPP7 was refined and adopted by the Council in 2018.

LPP7 identifies:

- How discretion under the Local Planning Scheme will be applied to planning approval requirements for both hosted and unhosted forms of accommodation.
- Spatial areas within which unhosted short stay use may be considered. These areas reflect a general acceptance of the use in traditionally holiday orientated areas of the Shire, such as coastal suburbs, together with locations central to Townsites. With this approach, unhosted short stay use is generally excluded from the majority of suburban residential areas.
- The requirement for appropriate and readily available management for unhosted dwellings.
- A general acceptance that there are typically less amenity impacts and housing availability issues, together with potential local economic benefits, arising from hosted accommodation. The hosted form of accommodation (bed and breakfast use under the Local Planning Scheme) can be undertaken throughout the Shire, subject to approval.

Using this framework, the Shire seeks to address the following issues arising from both hosted and unhosted accommodation through the associated mechanisms described in Figure 3 below:

ISSUE	SHIRE APPROACH
Housing/rental availability and social cohesion.	Preserve largely residential areas for residential purposes by preventing the use in suburban residential areas.
Amenity.	<ul style="list-style-type: none"> • The requirement to periodically renew planning approval for the use as a form of licensing regime. This provides a check point for the management and operation of the use. • Requiring assessment for basic levels of infrastructure such as parking.
The level playing field	Since 2014 the Shire has been applying the commercial rating category to both hosted and unhosted forms of accommodation, which is consistent with the rating of traditional forms of tourism.
Enforcement/compliance	<ul style="list-style-type: none"> • Due to the resource intensive nature of enforcement and compliance for this type of use the Shire has pursued compliance where known issues have arisen, such as through complaints. The Shire also periodically undertakes broader review of short stay operations in particular focus areas. • The process of ensuring that approvals are required and applications can be refused on reasonable grounds, also enables checks and compliance with other key considerations. This is particularly so for

	ensuring compliance with State Planning Policy 3.7 – Planning in Bushfire prone Areas, which requires discretionary decisions to be made in the application of the policy to what is considered a ‘vulnerable’ land use.
--	--

Figure 3. Issue Responses to Short Stay Accommodation in the Shire

This approach embodied within LPP7 has been successfully defended through challenge at the State Administrative Tribunal and Magistrates Court, through review of decision to refuse based on policy provisions (see example at: [Hewison And Shire Of Augusta-Margaret River \[2014\] WASAT 62](#) [Hewison and Shire of AMR](#)) and through prosecution.

POTENTIAL REGULATORY METHODS DESCRIBED BY DPLH

The Shire has reviewed the draft options paper provided by the Department for Planning, Lands and Heritage. The following observations are relevant in relation to the options detailed.

Option 1. No Change to Current Arrangements

The Shire is of the view that controls under the Local Planning Scheme and guidance by Local Planning Policy remain the most effective means to regulate the short stay use of dwellings within the Shire. This approach is preferred due to:

- The strength of enforcement and compliance options under the *Planning and Development Act (2005)*.
- The ability to take tailor an approach through the application of discretion under the Local Planning Scheme to address locally significant implications arising from the use (particularly the identification within a zone, or adjacent zones of different areas where short stay use is more or less permissible).
- The fact that a response should be relevant to the extent of the issue, which may vary throughout the State from requiring a facilitative approach with little to no intervention, to a more restrictive approach depending on local circumstances.

Option 2. Guidance Between Hosted and Unhosted Accommodation With Regulatory Discretion

The Shire supports the modification of current definitions to reflect the ‘hosted’ and ‘unhosted’ forms of accommodation. The current ‘bed and breakfast’ use class is considered outdated. In the application of this option regulatory discretion is supported for the reasons outlined under Option 1.

Option 3. Clear Policy Framework to regulate Un-hosted Short Stay Accommodation with Implementation Detail by Local Government

While the Shire supports a degree of State level policy guidance a local law is not a preferred mechanism for the Shire. A local Law is considered a more appropriate mechanism where a more permissive environment is appropriate, and where only a form of registration is required as there is little need for comparatively less significant enforcement and compliance measures associated with Local Laws.

In addition this option refers to the 180 day limit approach adopted by the NSW state Government. This approach of a somewhat arbitrary time limit seeks to address the issue of housing supply by making long term rental more profitable than short term rental, with the 180 day threshold equating roughly to weekends and public holidays.

In NSW an essentially permissive approach is taken, with short stay use ‘exempt development’. This is likely to make enforcement and compliance with the 180 day limit problematic. Where this approach has been used elsewhere it is typically supported by further regulation of online advertising that compliments (but doesn’t ensure) compliance with the 180 day limit.

In addition, the 180 day limit approach is unlikely to address the issue that it seeks to (the availability and price of rental accommodation) as the financial trigger point for the decision of long term versus short stay rental varies significantly from dwelling to dwelling and between individuals financial circumstances. This shortcoming is partly evident when viewing historical occupancy rates of traditional forms of tourism accommodation in the Shire that sit around the 50% or 180 day mark in any event (as shown in Figure 4).

In addition, accommodation demand in the Shire is largely seasonal, providing that a period of 180 day permanent and 180 day short stay rental of a dwelling still has similar potential impact on permanent rental supply in peak periods as would unregulated 365 day short stay use.

Figure 5.5: Guest Arrivals and Room Occupancy Rates, December 2006 – September 2011

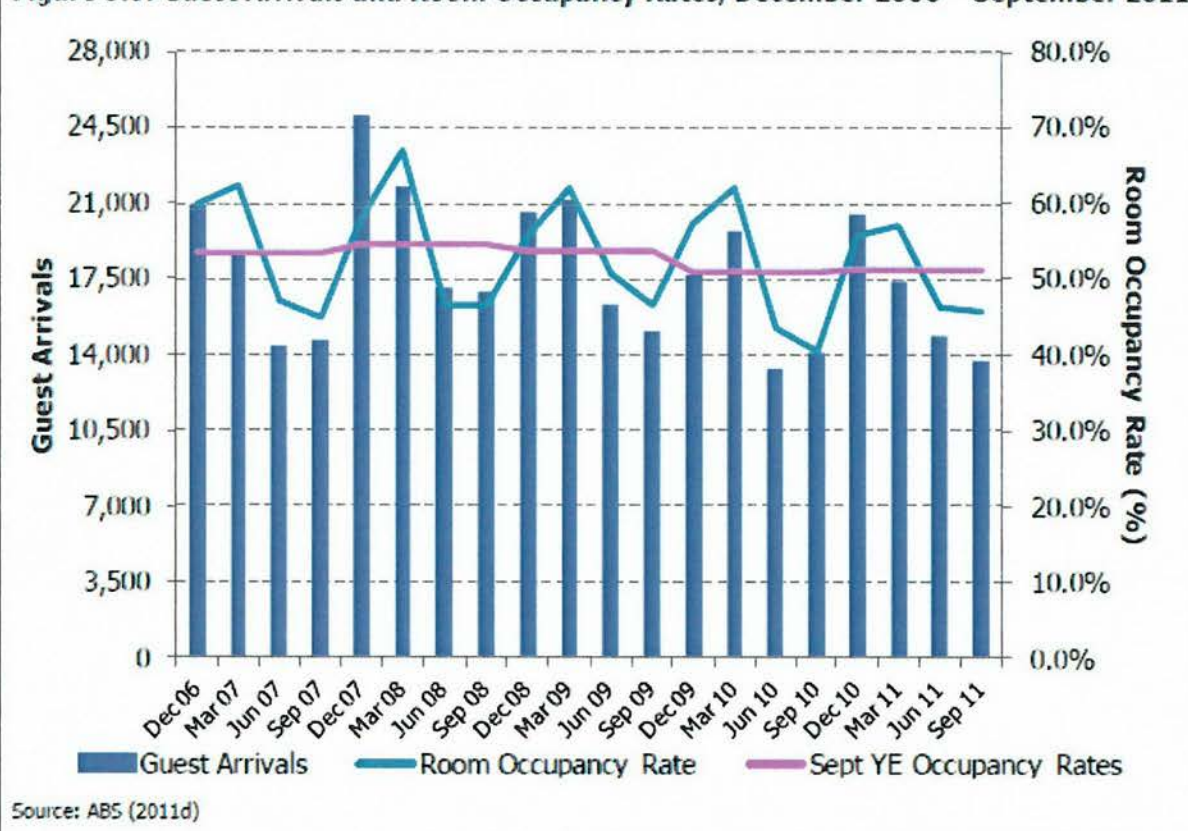


Figure 4. Proportion of Air BnB Users By Location

The 180 day limit also fails to address externalities arising from the use, such as inadequate infrastructure (parking etc) or the management of guests. NSW seeks to address these externalities with a supplementary 'mandatory code of conduct'.

In addition, and as where raised in other options the Shire considers the use of restrictions under the Strata Titles Act as unlikely to be effective as:

- It only provides for regulation of properties coming under strata title, which are the significant minority.
- Most strata titled properties exist making the application of restrictions only prospective.
- The restrictions may conflict with other statutory methods used by a particular local authority.

Option 4. The Introduction of Deemed Provisions

This approach is not favoured by the Shire. For the use of deemed provisions to be appropriate the implications arising from the short stay use of dwellings would need to

be relatively uniform through the State. It is considered that this approach is less appropriate than general guidance by the State, coupled with supporting actions in other areas such as restrictions on advertising together with a general flexibility to implement an approach relative to the significance of the issue in a particular Local Government area.

Option 5. Industry Based Approaches

Industry based approaches on their own are unlikely to have a significant effect, particularly given the financial incentive not to comply. The Shire views any industry based approaches as being complimentary mechanisms and the more any industry self-regulates the better for the future and well-being of the industry and the better the outcome for the community.

Industry based approaches should be encouraged as part of an overall strategy, whereby online platforms are encouraged to work with local government to establish and display easily identifiable registration certificates for registered providers on their websites, which could be a method of ensuring higher levels of compliance. These methods could include those identified in the DPLH options paper, together with an identification of statutory compliance showing (where relevant):

- local government approval;
- public liability insurance;
- required parking requirements; and/or
- approved fire safety standards.

OTHER ACTIONS AVAILABLE TO THE STATE

Enforcement and Compliance

A common issue that arises with the short stay use of dwellings, and particularly so with the use of online booking platforms, is the difficulty with undertaking enforcement and compliance. This arises from the problems associated with identifying, on a large scale, dwellings being advertised for short stay rental, proving actual transaction has occurred, and resourcing those investigations and subsequent compliance actions.

Any regulation needs to be enforceable to be meaningful, particularly in this case where there is a financial incentive to avoid compliance with the regulatory framework. The most effective way for this issue to be resolved would be for the State to prevent the advertising of illegal short stay rentals on online booking platforms. This could potentially be achieved through State level intervention such as restrictions on advertising administered by the Department of Mines, Industry Regulations and Safety, or through planning based approaches such as scheme provision, deemed provision, amendment to s218 of the P and D Act.

This is an issue that is unlikely to be resolved by individual local authorities. Conversely, the State has the potential to have far greater influence on the advertising practices of online marketing platforms. Whether by agreement with the operators of these platforms or by regulation (such as the ordinances of San Francisco), ceasing or preventing the practice of advertising illegal land use would greatly assist in the field of enforcement and compliance.

A 'Level Playing Field'

An issue consistently raised by traditional accommodation providers is the need for a 'level playing field'. This arises due to:

- Illegal operators avoiding approval requirements and associated fees, charges and tax.
- The change in use from a dwelling to short stay use of a dwelling not requiring building standards applicable to traditional commercial operators.

The Shire has sought to bring greater equity to the charges imposed on tourism operators through charging, since 2013, an additional rate above the standard residential charge to bring these fees into alignment with commercial charges. Those operating without approval are unlikely to be subject to this charge and may potentially avoid other taxes (including GST and Capital Gains) that could be payable.

Compliance with building standards is a matter for the State to resolve, with either the similar application of requirements of the National Construction Code to dwellings used for short stay accommodation, or alternatively a relaxation of the standards for traditional accommodation providers.

The more complicated issue is that of universal access, with a proportion of commercial accommodation units needing to provide for universal access features such as parking for wheelchair accessible vehicles and accessible buildings. There is no similar requirement for operators of individual properties to make a similar provision and this would require this to be addressed at the level of the collective body marketing a group of properties and requiring a certain proportion to comply with similar requirements. While this may be difficult to enforce, it is a matter to which the State could give further consideration.

Housing Affordability and the Provision of Sufficient Housing

The Shire is concerned that illegal (unregistered) short-stay accommodation providers are diverting housing stock from the rental market. This is particularly an issue when affordable housing stock, such as ancillary dwellings, is not available for rental for low-income earners in the community. In particular, Councillors and staff regularly hear community members state that they are building 'an AirBNB out the back', suggesting a lack of understanding of the purpose and restrictions of ancillary dwellings and short stay accommodation policies.

The Shire's *Affordable Housing Strategy* states that 'To most, the perception is that Margaret River is a wealthy, vibrant, thriving place and not one which would be in need of assistance in the area of affordable housing. However, closer inspection reveals that there are significant contradictions between perception and reality. Indeed it could be said that there is a proportion of the permanent population whose assets, education and personal income descriptors convey a picture of disadvantage' (p.1). Issues with short stay accommodation must be considered within the context of affordability of housing.

Housing in AMR is 'severely unaffordable', with a house price to income ratio ("median multiple") of 8.4, which is equivalent to the severely unaffordable ranking of Melbourne, Australia's second most unaffordable city. When compared with the rest of the South West Region of WA Augusta Margaret River displays a median multiple twice that applicable to other centres and significantly higher than Regional WA generally. 2011 Census data shows that median rent in AMR was \$370 per week, and only 36.7% of renters could sufficiently afford the median rent without suffering housing stress. Rates of homelessness in AMR are also alarming and rising. There is a severe lack of social housing in AMR, and a wait list of up to eight years for public housing. Although unemployment rates are relatively low in AMR, jobs in the main industries of tourism and agriculture are often seasonal, casual and low-paid, which can result in housing stress.

Local community organisations have observed that rental dwellings, particularly ancillary dwellings and single-bedroom houses, are increasingly unavailable for long-term rent, as the landlords choose to advertise the dwellings on online platforms for short-stay accommodation. The Shire is concerned that some affordable rental stock is not available due to illegal (unregistered) short stay accommodation.

In addition to planning controls on short stay accommodation as outlined in this submission, it is suggested that further policy changes are made to address unaffordability of housing in AMR and WA and curb gentrification:

- That the current State government position on Ancillary Dwellings is continued – that is, ancillary dwellings are not permitted for short stay accommodation.
- That WA government significantly increases investment in social housing, particularly in severely unaffordable tourism locations such as Margaret River.
- That a percentage of lots in new subdivisions are required to be affordable housing and social housing.
- That the *Residential Tenancy Act* is reviewed to protect tenants from no-fault evictions that free up housing stock for short stay accommodation during the tourism seasons.
- That Keystart, Opening Doors and other affordable housing schemes are expanded.
- That federal Rent Assistance is increased to more accurately reflect the high cost of housing.

SUMMARY

The Shire appreciates the opportunity to comment and the above can be summarised in three main points.

The Need for Approvals

There are potential and actual issues arising from the short stay use of dwellings. These issues differ from hosted and unhosted forms of short stay accommodation. Issues such as amenity, the cohesiveness of residential areas, availability of rental properties, addressing bushfire risk, ensuring appropriate management and operation, and equity in the application of fees and charges all suggest that an application and approval process is appropriate for this type of use. The level of assessment may be less stringent, or more permissive for hosted forms of accommodation.

The Need for Flexibility

Within different Local Government areas the issues associated with short stay use may be more or less significant. In addition, separate Local Government's may have differing views on appropriate levels of intervention. This suggests that there should be some flexibility to tailor an approach to a particular context.

The Need for Supporting Action

There are several key actions that could be undertaken by the State that are largely outside of the ability of disparate Local Government action. The State is viewed as having a role in providing direction on this issue, and also in that direction being delivered with appropriate flexibility. Complimentary actions could include, in particular, a statutory restriction on advertising of illegal short stay use. In addition, the encouragement of industry based approaches to support the policy approach set by the State could be negotiated and discussed with key online booking platforms.

RECOMMENDATIONS

The Shire's recommendations are therefore:

- To retain State guidance on this issue in the form of amendments to Planning Bulletin 99, providing flexibility to adapt an approach as is relevant to a local context.
- To support making a distinction between hosted/unhosted short stay use by modifying land use definitions.
- To introduce a statutory restriction on advertising illegal/unapproved short stay use.
- To encourage complimentary industry based approaches.
- To review mechanisms to bring equity to building standard requirements.

- To give consideration to issues and responses to matters of housing affordability and permanent rental availability when formulating a policy response.
- Not to rely on mechanisms under the *Strata Titles Act*.
- Not to pursue similar, generic and permissive approaches such as those using the 180 day permitted approach in NSW.

We look forward to discussing this further with the Committee in due course. Please contact me should you require any further information.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Nick Logan', with a long horizontal line extending to the right.

Nick Logan
Acting Director, Sustainable Development