



Short-term Rental Accommodation and the Sharing Economy **Discussion Paper**

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1.0 Introduction

In recent years there has been an emergence and rapid rise in the ‘sharing economy’ with peer to peer platforms connecting customers and the providers of services such as ride sharing and short-term rental accommodation. In the context of short-term rental accommodation, the key distinction between peer to peer platforms and more traditional forms of tourist accommodation, is that these platforms do not own the properties listed, rather they simply connect customers and providers, facilitating the financial transaction between the two parties. As a result, many of the listings on these platforms have been located in residential buildings and neighbourhoods that have not traditionally contained short-term rental accommodation.

Further, peer to peer platform’s such as Airbnb and Stayz have introduced new forms of short-term rental accommodation with people able to book a spare bed or room within a home as well as an entire home, this is commonly called ‘home sharing’. These new rental accommodation types has led to community concerns arising from issues such as noise, car parking issues and other forms of anti-social behaviours, as well as some strata issues like increased building maintenance.

Whilst the appearance and growth in these platforms has been rapid, legislation governing short-term rental accommodation in Western Australia has not been revised since 2009. The absence of any clear guidance from the State Government about how to manage the sharing economy has been challenging for some Local Governments. Therefore the purpose of this discussion paper is to review the effectiveness of current policy responses concerning short-term rental accommodation with a particular focus on the emerging practices and services offered by online organisations and to identify possible improvements for further consideration.

It is important to note that this report focuses on Local Government responsibilities governing short-term rental accommodation. The intention is not to examine issues beyond this. For example, many have questioned the appropriateness of allowing short-term rental accommodation within apartment developments. The purpose of this report is not consider this issue or whether the powers available to Strata companies to manage and respond to adverse impacts of short-term rental accommodation are appropriate or not. Likewise, the report does not examine the appropriateness of renters offering short-term rental accommodation with or without the consent of the landlord. Rather the focus of the report is on Local Government responsibilities concerning the management of short-term rental accommodation.

For the purposes of this paper, short-term residential accommodation is considered to be the rental for a period of up to three months of properties consisting of, or similar to:

- Bed and breakfast accommodation
- Cabins and chalets (and similar units)
- Holiday homes
- Serviced Apartments Rental of room within a home.

2.0 Existing Short-term Rental Accommodation Controls in Western Australia

2.1.1 State Government Land Use Planning Guidance

The land use planning framework operating in Western Australia offers limited and somewhat contradictory guidance concerning the management of short-term rental accommodation. Local planning schemes are governed by the *Planning and Development (Local Planning Schemes) Regulations 2015*, which contain a series of ‘deemed provisions’ that are automatically applied to all local planning schemes. Amongst the deemed provisions is set of defined land use terms, three of which relate to short-term rental accommodation, these are;

Table 1: Planning and Development (Local Planning Schemes) Regulations 2015, Schedule 2 Deemed provisions for local planning schemes.

<p>Land use terms used If this Scheme refers to a category of land use that is listed in this provision, the meaning of that land use is as follows —</p>
<p>bed and breakfast means a dwelling — (a) used by a resident of the dwelling to provide short-term accommodation, including breakfast, on a commercial basis for not more than 4 adult persons or one family; and (b) containing not more than 2 guest bedrooms;</p>
<p>holiday accommodation means 2 or more dwellings on one lot used to provide short-term accommodation for persons other than the owner of the lot;</p>
<p>holiday house means a single dwelling on one lot used to provide short-term accommodation but does not include a bed and breakfast;</p>

Given the land use terms set out by the Regulations and the type of accommodation offered by peer to peer platforms, there has been some confusion about the validity of ‘home sharing’. As the table above highlights, the difference between providing breakfast or not can be significant and adds further uncertainty for all stakeholders involved. For example, within the City of Busselton, ‘bed and breakfast’ uses are permitted in the Tourist Zone whilst holiday homes are listed as a ‘X’ use and therefore not permitted within this Zone by the Scheme. Issues such as these are discussed in more detail in section 2.1.2 Local Government Responses.

It is also important to note that there is no definition of a ‘dwelling’ provided by the Regulations. However ‘dwelling’ is defined in the Residential Design Codes (R-Codes) as;

“A building or portion of a building being used, adapted, or designed or intended to be used for the purpose of human habitation on a permanent basis by a single person, a single family, or no more than six persons who do not comprise a single family.”¹

This definition provides clearer guidance in relation to the ‘permanent’ use of a dwelling. Including such a definition, or a cross reference to the R-Codes definition within the

¹ WA Planning Commission (2015) State Planning Policy 3.1 Residential Design Codes

Regulations could add clarity as to whether or not short-term rental accommodation, particularly where the renting of a part of a dwelling, is valid or not.

As well as definitions, the Regulation's deemed provisions also prescribe a variety of objectives for various land use zones. The Regulations state that the objectives of the residential zone are to "*provide for a range of non-residential uses, which are compatible with and complementary to residential development*". This leaves the question of whether or not, short-term rental accommodation is appropriate in residential areas unresolved.

Beyond the Local Planning Scheme Regulations, there is no State Planning Policy, or Development Control Policy to set out controls or to provide strategic advice concerning the management of short-term rental accommodation. The guidance that is available is provided by [Planning Bulletin 99, Holiday Homes Guidelines](#), however this guidance is limited and having being adopted in 2009, the Guidelines do not respond to the contemporary practices of home sharing organisations. The Guidelines state that "*the policy excludes short-term accommodation where there is an onsite manager or owner such as bed and breakfast accommodation and guesthouses.*"² As such, the Guidelines do offer not advice concerning all products offered by platforms such as Airbnb, for example whereby a room within a house is let for short stay accommodation purposes.

The Planning Bulletin effectively delegates responsibility for managing short-term rental accommodation to Local Governments, referring decision makers to the provisions of local planning schemes, local planning policies, tourism strategies and any relevant standards. The Guidelines do however state that "*ideally holiday homes should be within preferred areas*" which;

*"As a guide, holiday homes are most appropriate in areas of high tourism amenity and close proximity to key tourism attractions such as the beach, town centre or rural areas. Suburban locations may not be appropriate. In general, holiday homes should be residential dwellings on freehold lots and not units or apartments unless the entire complex is established for this purpose."*³

The Bulletin goes on to state that the use of grouped or multiple dwellings is not supported, unless all owners are in agreement.

Despite the general lack of guidance, the Bulletin does state that a holiday home management plan should be submitted as part of a planning application, or may be required as a condition of approval. Such a plan may include details of how nuisances such as noise will be managed, the nomination of a property manager and a fire and emergency response plan.

Nevertheless, it is important to recognise that development does not have to conform to Planning Bulletin 99 as it purely offers guidance and is not a statutory requirement. The

² WA Planning Commission (2009) Planning Bulletin 99, Holiday Homes Guidelines.

³ Ibid

Local Planning Scheme Regulations do not 'require due regard' to be given to Planning Bulletins. This status, together with the fact that the Bulletin offers limited guidance, has resulted in Local Governments developing their own individual responses to issues associated with short-term rental accommodation and the sharing economy.

2.1.2 Local Government Responses

Local Governments are, by their nature reflective of their communities aspirations each with their own and often unique development pressures and community expectations. Given these differing pressures and the limited State Government guidance relating to short-term rental accommodation, not all Local Governments have adopted Local Planning Scheme provisions or Local Planning Policies (LPP) concerning short-term rental accommodation. However, in areas where short-term rentals are more prevalent, Local Governments are more likely to have adopted a LPP.

LPPs generally focus upon a specific type of development rather than dealing with the issue of short-term rental accommodation more generally. For the purposes of this study, a sample of LPPs relating to short-term rental accommodation has been examined.

Table 2: Local Planning Policy Responses Regarding Short-term Rental Accommodation

Local Government and Local Planning Policy Title	Augusta-Margaret River: Holiday Houses	Bridgetown-Greenbushes: Holiday Accommodation	Broome: Tourist Accommodation Development in Tourist Zone	Capel: Bed & Breakfast Accommodation	Chapman Valley: Rural Tourism Development	Donnybrook-Balingup: Chalet(s) Development & Bed & Breakfast	Exmouth: Bed & Breakfast Accommodation	Exmouth: Holiday Accommodation	Esperance: Holiday Homes – Development Requirements	Geraldton: Holiday Houses	Joondalup: Short-term Accommodation	Perth: Special Residential (Serviced & Short-term Accommodation)	South Perth: Serviced Apartments
Definitions													
Holiday House (or Home)	Y		Y					Y	Y		Y		
Holiday House (Large)	Y							Y					
Holiday Accommodation		Y		Y	Y		Y	Y			Y		
Bed & Breakfast					Y	Y		Y					
Dwelling / Residential						Y	Y	Y			Y	Y	
Guesthouse			Y	Y	Y								
Serviced Apartments			Y									Y	Y
Short-term Accommodation									Y		Y	Y	Y
Other Definitions			Y	Y	Y	Y		Y	Y			Y	Y
Requirements													
Restricted to Certain Zones	Y			Y				Y		Y			Y*
Minimum Lot Sizes / Density Restrictions	Y	Y	Y										
Maximum Occupancy / No. Rooms	Y			Y		Y		Y		Y			
Management Plan			Y	Y	Y			Y	Y	Y	Y	Y	Y
Emergency Response Plan		Y						Y	Y				Y
Annual Renewal of Approval				Y				Y	Y				
Design Provisions	Y	Y			Y		Y	Y		Y		Y	Y
Car Parking		Y	Y	Y	Y		Y	Y		Y	Y	Y	
Landscaping/Screening		Y	Y										
Concentration of Uses		Y											
Strata Restrictions / Evidence of Strata Approval			Y		Y							Y	Y
Maximum Length of Stay		Y							Y	Y			
On-site manager / Located Close by							Y	Y	Y				

Note: Y* Use restricted to grouped and multiple dwellings

Table 2 shows that there is a range of different LPPs dealing with the management of different forms of short-term rental accommodation. Whilst a variety of descriptions and definitions are used, as you would expect, the definitions used closely align with the specific form of development that the LPP seeks to manage. Where the same term or a similar term is used by different Local Governments, there is often a lot of consistency and commonality in the definition adopted to describe the particular form of development.

In line with the definition provided by the R-Codes, all but one of the 13 LPPs examined consider short-term rental to be a different form of development to a residential land use. Bridgetown-Greenbushes definition of holiday accommodation states that *“the short-term rental of residential dwellings to single parties shall not be classified as Holiday Accommodation. Council considers such a use as merely another form of landlord – tenant rental”*. The policy is aligned to developments of up to five chalets and cabins for short-term use of no more than three months by the same occupier.

Table 2 shows that the most popular forms of controls relate to car parking standards and the requirement for a management plan, with almost two-thirds of the local planning policies examined containing provisions relating to these. Following these controls, over half of the policies examined contain provisions relating to development design. Whilst these are somewhat varied, they generally relate to ensuring that the design of development is such that its use for short-term rental accommodation purposes does not adversely impact upon neighbouring land uses. Other common features include the restriction of development to certain zones or areas and the limitation of the number of occupants to six persons.

Typical examples of these controls are set out in table 3 below, whilst a summary of Local Government, LPP provisions relating to short-term rental accommodation is provided in Appendix A. It should also be noted that other Local Governments, such as the City of Fremantle have developed ‘Local Laws’ in relation to the management of short-term rental accommodation. The City’s Local Law contains similar provisions to those included within sample of LPPs examined, requiring short stay dwellings to be registered, with controls relating to the number of occupants, the provision of car parking and a contactable accommodation manager.

Table 3: Examples of Typical Local Planning Policy Definitions and Requirements

Definitions	
Bed & Breakfast Accommodation	Accommodation provided for hire or reward under the main roof of a dwelling house for not more than four (4) adults or one family in the form of a maximum of two (2) guest bedrooms and one (1) guest bathroom.
Holiday House (or Home)	A single house or grouped dwelling which might also be used from time to time for short stay accommodation for no more than six (6) people but does not include a bed and breakfast. “Holiday House (Large)” means premises conforming to the definition of “Holiday House” with the exception that the premises provide short stay accommodation for more than six (6) people but not more than 12 at any one time.

Serviced Apartment	An apartment which is one of a group of two or more apartments on the same lot, used, furnished and equipped to be used on a temporary basis in a manner similar to a Grouped Dwelling or Multiple Dwelling, for which laundry and cleaning services are provided, with or without other ancillary amenities.
Short-term Accommodation	Temporary accommodation provided either continuously or from time to time with no guest accommodated for periods totalling more than three (3) months in any 12 month period.
Requirements	
Concentration of Uses	<ul style="list-style-type: none"> • More than two Bed and Breakfast Accommodation uses within cul-de-sac or small residential streets may not be supported. • Developments should not contribute to a concentration of similar land use activities that would alter the established character of the surrounding area.
Design Provisions	<ul style="list-style-type: none"> • Decks and balconies are located away from the bedrooms of neighbouring dwellings and, if located close to living and dining areas of neighbouring dwellings, suitable screening is provided. • The minimum distance between the external walls of any building and another on the land shall be 10 metres for the purposes of privacy and amenity. • Developments that adjoin residential zoned land shall be designed so as not to impact negatively on the privacy and amenity of the adjoining residents.
Landscaping / Screening	<ul style="list-style-type: none"> • The site shall contain tree cover adequate to provide visual screening.
Management Plan	<ul style="list-style-type: none"> • The Management Plan is to include; <ul style="list-style-type: none"> ○ a code of conduct detailing the expected behaviour and obligations of guests which is to be displayed in a prominent position within the premises ○ a Complaints Management Procedure ○ details regarding guest check-in and check-out procedures ○ details regarding waste management
On-site Manager / Located Close by	<ul style="list-style-type: none"> • Manager or a contactable employee of the manager that permanently resides no greater than 1 hour's drive from the site. • The host is to permanently reside in the dwelling approved for a 'bed and breakfast' establishment. • All Holiday Accommodation is to be managed by local real estate agents, or have a local caretaker / manager living and readily contactable within 10 minutes of the property
Strata Restrictions / Evidence of Strata Approval	<ul style="list-style-type: none"> • The applicant is to provide evidence that: <ol style="list-style-type: none"> (a) the owners of all dwellings on that site have given written consent for the proposed use of particular dwellings as serviced apartments; (b) by-laws have been adopted by the strata company approving the proposed use and requiring the vendor of any existing dwelling on the site to inform all prospective purchasers of the approved use of particular dwellings as serviced apartments; and (c) the strata company has given consent to the management plan.
Other	<ul style="list-style-type: none"> • Amplified music is only played outside of the Holiday House or Holiday House (Large) between the hours of 10am and 10pm. • Written evidence demonstrating that the operator of the special residential use has valid membership to an appropriate professional board or body, which operates within a code of practice or licensing system • A proportion of the short-term and serviced apartments should be designed to accommodate people with a disability.

2.1.3 Building Act

In addition to land use planning controls, it is useful to note the ‘construction’ standards relating to residential and hotel uses. Under the Building Code of Australia, a residential building is either a Class 1 building, a single dwelling, or a Class 2 building, a multiple dwelling whilst a hotel or motel is a Class 3 building. Class 3 buildings are required to have fire-safety and disability access features not required for either Class 1 or 2 buildings. This distinction has added to the confusion and perhaps some of the inconsistency in how Local Governments treat short-term rental accommodation.

The differing construction requirements has created some resentment amongst traditional short stay accommodation providers such as the hotel industry. Some of these operators have argued that these different requirements adds an additional operating costs to their business that short-term rental accommodation providers in dwellings do not experience. Whilst the focus of this paper is not to examine this issue, it should be noted that the State Governments proposed State Planning Policy concerning Apartment Design includes universal design access requirements, which may remove this difference.

In 2012 the Australian Building Code Board stated that it had undertaken an extensive consultation on the issue of whether Class 2 buildings should exclude short-stay accommodation, however it found that the results of the consultation process provided no clear way forward. It was considered that the issue appeared to be focused on amenity issues and commercial interests. The Board concluded that there was no evidence to justify the application of Class 3 building provisions to apartments without imposing significant costs on the design and construction of all apartments for little or no life-safety gains.⁴

3.0 Controls in Other Australian States and Territories

Across Australia, there is very little consistency with regard to how each State, and Local Governments within each State, regulate short-term rental accommodation. The approaches taken are generally split between either the State Government adopting a clear position on short-term renting, or leaving Local Government to choose themselves how to manage short-term rentals.

Nevertheless, there has been an increasing and wide spread acknowledgement that ‘doing nothing’ has created several issues and inconsistencies in the management of short-term rental accommodation. This, alongside growing community concerns has led to both New South Wales and Victoria holding reviews to examine the adequacy of short-term rental accommodation regulations operating in both States. Likewise, the Tasmanian Government included a review of the adequacy of its short-term rental accommodation controls as part of a wider review of the planning system operating within Tasmania. Although these State Governments have yet to adopt a final policy response, the commonality of the issues experienced mean that lessons can be learnt from the findings of each of these reviews.

⁴ Victorian Government, Independent Panel on Short-Stay Accommodation in CBD Apartment Buildings Final Report

Before examining the various policy responses adopted by the other States, for the purposes of comparison, it is worth highlighting the number impact of short-term rental accommodation across Australia. This is highlighted by Table 4, below which shows that in 2015-16, WA recorded the fourth highest number of Airbnb bookings by State. Using the data, the average length of stay per booking is 4.7 nights and the average number of guests per booking is 2.8 guests.

Table 4: Airbnb bookings, by state or territory, 2015-16

State or Territory	Total bookings	Total guests	Total nights booked
New South Wales	289,600	742,800	1,418,900
Victoria	235,900	651,600	1,134,300
Queensland	133,300	343,800	586,700
Western Australia	62,100	171,500	292,900
Tasmania	46,800	124,500	126,300
South Australia	24,400	64,100	109,000
Australian Capital Territory	9,200	20,000	47,300
Northern Territory	4,200	8,800	18,000
Total	805,500	2,127,100	3,733,300

Source: Airbnb cited in Deloitte Access Economics⁵

3.1.1 New South Wales

In New South Wales, the *Environmental Protection Act 1979* (NSW) (EPA) allows Local Government to require or not require, a development approval to let a property as a holiday home. As a result, there is some inconsistency in the application of controls between individual Local Governments across the State. Perhaps as a result of this inconsistency and also given the prevalence of short-term rental accommodation within New South Wales, in 2015, an inquiry was established to inquire into the adequacy of the regulation of short-term holiday letting in New South Wales. This inquiry made a total of twelve recommendations with those relevant to this report set out in Table 5. Although the NSW Government has yet adopt policies concerning the management of short-term rental accommodation, the Government has announced that it is supportive of the majority of the Inquiry's recommendations.

⁵ Deloitte Access Economics (2017) Economic effects of Airbnb in Australia Airbnb Australia www2.deloitte.com/content/dam/Deloitte/au/Documents/Economics/deloitte-au-economics-effect-airbnb-in-australia-240317.pdf

Table 5 NSW Inquiry into Adequacy of the Regulation of Short-Term Holiday Letting, Relevant Recommendations

New South Wales' Legislative Assembly Committee on Environment and Planning: Inquiry into Adequacy of the regulation of short-term holiday letting in New South Wales		NSW Government Response
Relevant Recommendations:		
1	<p>Amend Planning Laws to Regulate Short-Term Rental Accommodation</p> <p>That the NSW Government amends:</p> <ul style="list-style-type: none"> a) the Standard Instrument - Principal Local Environmental Plan to include a definition of short-term rental accommodation in the category of tourist and visitor accommodation b) the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 to allow short-term rental accommodation. 	<p>Qualified Support</p> <p>Options paper to be developed</p>
2	<p>Allow Home Sharing and Letting a Principal Place of Residence as Exempt Development</p> <p>That short-term letting of rooms in any property where the landlord or host is present be permitted as exempt development.</p>	<p>Qualified Support</p> <p>Options paper to be developed</p>
3	<p>That short-term letting of a principal place of residence be permitted as exempt development.</p>	<p>Qualified Support</p> <p>Options paper to be developed</p>
7	<p>Develop a Compliance System</p> <p>That the NSW Government develops a compliance system for short-term rental accommodation under the Environmental Planning and Assessment Act 1979 which considers:</p> <ul style="list-style-type: none"> a) the use of the investigative powers in Division 1C of the Act b) streamlined development assessment (Complying Development Certificates) c) the Holiday and Short-Term Rental Code of Conduct d) 'party house' provision 	<p>Qualified Support</p> <p>Current legislation considered sufficient however will investigate if further regulation is required.</p>
8	<p>Issue Guidance and Provide Education For Councils and the Community</p> <p>That the NSW Government prepares advice to councils and the community outlining the changes which will apply to short-term rental accommodation, and implements a communication and monitoring program.</p>	<p>Support</p>
9	<p>That local councils be responsible for communicating with all landowners about their rights and obligations.</p>	<p>Support</p>

Source: Parliament of New South Wales

3.1.2 Queensland

In 2014, amendments were made to the Sustainable Planning Act 2009 in order to regulate 'party houses'. The Act defines party houses as *"a dwelling that is used to provide accommodation or facilities for guests if*

- a) *the premises, or any part of the premises, is regularly used by guests for parties, including, for example, bucks nights, hens nights, raves, wedding receptions or similar parties; and*
- b) *the accommodation or facilities are provided for a period of less than 10 days; and*
- c) *the accommodation or facilities are provided for a fee; and*
- d) *the premises is not occupied by the owner of the premises during the period mentioned"*⁶

The Act provides Local Government the power to require development approval for residential properties regularly leased, hired or rented on a short-term basis for housing parties and set a for assessing such development applications. Local Governments may also identify areas within, or all of its areas covered by its planning scheme as a 'party house restriction area'.

In accordance with these provisions, the City of Gold Coast has adopted a local law to control party houses. In summary, the City's local law seeks to *"ensure that excessive noise is not regularly emitted from a residential property which is made available for short-term rental accommodation."*⁷ The City has declared the entire Local Government area a party house restriction area, thereby requiring development consistent for a party house. Under the provisions of the Local Law, owners of short-term rental accommodation commit an offence if excessive noise is regularly emitted, which is defined as more than twice within a twelve month period.

The New South Wales Inquiry noted, whilst these provisions *"distinguish party houses from short-term rental accommodation, the evidence received by the Committee suggests that similar provisions may be usefully applied to short-term rental accommodation properties in which a predominant or recurring use by renters is the type of functions listed in the Queensland legislation"*.⁸

⁶ Government of Queensland (2009) Sustainable Planning Act 2009

⁷ City of Gold Coast (2013) Local Law No. 19 (Control of Party House Noise) 2013
www.goldcoast.qld.gov.au/local-law-no-19-control-of-party-house-noise-2013-14438.html

⁸ Parliament of New South Wales (2016) Adequacy of the regulation of short-term holiday letting in New South Wales (inquiry)

3.1.3 Victoria

Parallel to the New South Wales Inquiry, in 2015, the Victorian Government established an independent panel to examine the adequacy of regulations concerning [short-stay accommodation in CBD apartment buildings](#). In its report, the Panel noted that the Victorian Civil and Administrative Tribunal (VCAT) consider the Victorian Planning Provisions (VPP) to permit short-term rental accommodation in residential buildings providing that the dwelling is located in an area zoned for housing, the accommodation is self-contained and does not contain more than 10 habitable rooms.

The Panels' report presents a total of 13 options for regulatory reform, however it was somewhat unsurprising that the seven members of the Panel (which each represented a different industry groups) could not all agree on the merit of each of the options presented. Nevertheless, in response to the panel's report, in 2016 the Victorian Government announced that it would introduce new laws seeking to curb bad behaviour within short-term rental accommodation. The proposed measures will make apartment owners and their short-stay guests potentially liable for any damage, noise or loss of amenity caused by their guests. The proposal includes providing VCAT with powers to award compensation of up to \$2,000 to neighbours and ban short stay apartments which are repeatedly used for unruly parties. Guest could be fined up to \$1,100 for a range of anti-social behaviors including, creating unreasonable noise, health, safety or security hazards, damaging property.⁹

On a separate issue, it should also be noted that the Victorian Government signed an agreement with Airbnb to provide housing options for displaced community members and emergency workers during emergency events. A similar agreement was activated during the recent wildfires at Fort McMurray in Alberta, Canada when around 90,000 people were displaced. During the event, Airbnb automatically emailed hosts in surrounding areas asking them to consider listing their property for free. The company also waived all service fees for those affected by the fire.

3.1.4 South Australia

In 2016, a Victorian court decision raised questions as to whether home sharing constituted a change of use and therefore required development approval. In response, the South Australian Government issued a statement announcing that that it was supportive of home sharing and offered clarification that the use of a residential property for short-term stays did not constitute a 'change in use' under the Development Act.¹⁰ This statement appears to be founded upon the existing provisions contained within the South Australian statutory planning legislation as there has been no recent policy response to the issue of short-term rental accommodation.

⁹ Victorian Minister for Consumer Affairs, Gaming and Liquor Regulation, Jane Garrett, Media Release May 2016 www.premier.vic.gov.au/new-laws-for-short-stay-apartments/

¹⁰ South Australian Minister for Planning, John Rau 7 June 2016 Media Release www.premier.sa.gov.au/index.php/john-rau-news-releases/664-airbnb-boost-to-sa-tourism (Accessed 8/5/2017)

3.1.5 Tasmania

The Tasmanian Government is currently undertaking a series of planning reforms that will see the adoption of a State wide planning scheme. As part of the reform measures, the Government announced that up to four rooms can be rented in a home with the need for a permit.

The draft State Planning Provisions identify 'Visitor Accommodation in a dwelling (including a secondary residence)' as an exempt use if the following requirements are satisfied:

(a) the dwelling is used by the owner or occupier as their main place of residence, and only let while the owner or occupier is on vacation; or

(b) the dwelling is used by the owner or occupier as their main place of residence, and visitors are accommodated in not more than 4 bedrooms.¹¹

It is notable that a previous iteration of the draft State Planning Provision included an exemption for 'Visitor Accommodation' in a dwelling for 'no more than 42 nights in any calendar year'. This was removed following public consultation with the Tasmanian Planning Commission noting that *"that enforcement of the 42 day threshold set in the exemption would be difficult, if not impossible, particularly as properties may be multi-listed."*¹² This amendment was supported by the Tasmania Local Government Association who considered that the draft provision would have been difficult for Local Government to manage, however the proposed regulations "finds a good balance between the needs of private individuals and business"¹³

Following the Commission's recommended amendments, the Minister has directed the Commission to amend the 'Acceptable Solution' contained within the draft State Planning Provision, to increase the *"gross floor area from 160m² to 300m² for permitted visitor accommodation within an existing building in the relevant residential zone standards, to provide a better reflection of the size of an average 4 bedroom dwelling"*.¹⁴

¹¹ Tasmanian Government (2017) Tasmanian Planning Scheme www.justice.tas.gov.au/_data/assets/pdf_file/0007/370294/State_Planning_Provisions.PDF (Accessed 8/5/2017)

¹² Tasmanian Planning Commission (2016) *Draft State Planning Provisions Report* http://iplan.tas.gov.au/Temp/TrimDownload_906179.PDF (Accessed 8/5/2017)

¹³ ABC News 3 February 2017 *Tasmania eases Airbnb regulations for renting out rooms in sharing economy* www.abc.net.au/news/2017-02-03/tasmanian-government-lifts-red-tape-on-airbnb-rentals/8239486 accessed 10/4/2017

¹⁴ Minister for Planning and Local Government, (2017) Modifications to the Provision of the draft State Planning Provisions. www.justice.tas.gov.au/_data/assets/pdf_file/0008/370295/Ministers_Statement_of_Reasons_for_modifications_to_the_provisions_of_the_draft_State_Planning_Provisions.pdf accessed 22/5/17

4.0 International Experience

Opposition to short-term rental accommodation is not confined to Australia. In North American, Local Government concerns with broadly fall into two categories, the impact of short-term rentals on housing affordability as a result of the loss of housing to tourism uses and also the impact of short-term rentals on neighbouring residential properties. There, as within Australia, different responses have been adopted in different jurisdictions.

However, what is important to note from the North American experience is that the management of issues associated with short-term rental accommodation has led to the development of a software, data and consulting services provider, HostCompliance.com. Services provided by the company include the monthly monitoring of short-term rental listings at Local Government level and address identification. Whilst these services have to date only been provided within the United States of America, as a result of the rapid growth experienced by 'home sharing' providers, it is likely that such services will appear within Australia.

4.1 Operators Practices

The two leading platforms offering short-term rental accommodation in Australia are 'Airbnb' and 'Stayz'. In 2015-16 there were some 62,000 bookings were made via Airbnb in WA and there are currently 3,879 properties listed on Stayz¹⁵ across the State.

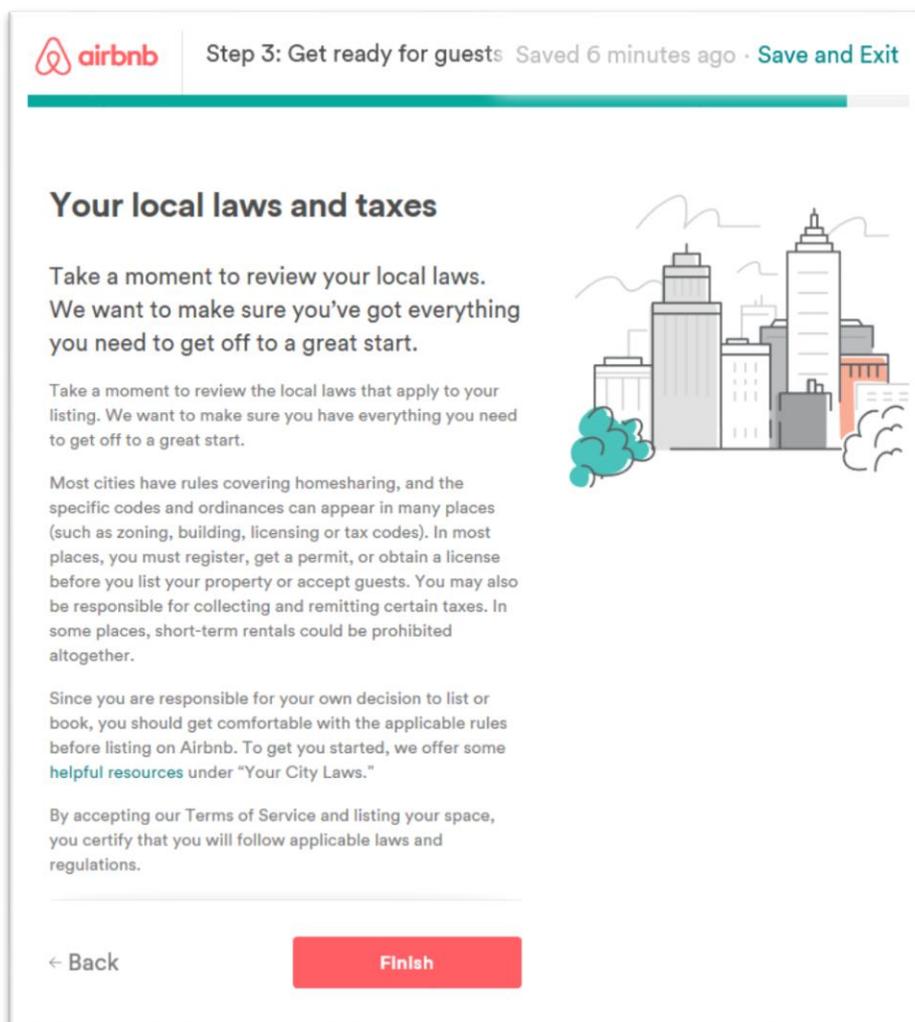
Airbnb invites tourists to 'live like a local' with the theme, "*don't go there. Live there*" running through the company's website and the services that it offers¹⁶. It has been suggested that this notion implies that tourist guests impose no addition burdens on neighbours and communities.¹⁷

In order to make a booking or to list a property on Airbnb, a terms of services agreement 'tick box' requires users to agree to Airbnb's 'Non-discrimination Policy'. This policy relates to non-discrimination by means of ethnicity, religion, sexual orientation, gender or marital status. As part of the home listing process, 'hosts' are not required to demonstrate that they are the property owner, or have their permission or provide evidence that they have any obtained any relevant planning or other necessary approvals. However, Airbnb does ask:

¹⁵ Stayz (2017) www.stayz.com.au/accommodation/wa?page=2 Accessed 31/5/2017

¹⁶ Airbnb (2017) www.airbnb.com.au/livethere 30/5/2017

¹⁷ N Gurran and P Phibbs Journal of the American Planning Association Volume 83, 2017. *When Tourists Move In: How Should Urban Planners Respond to Airbnb?*



Source: Airbnb www.airbnb.com.au/become-a-host/19002297/local-laws

Airbnb's 'helpful resources' link provides users with no further information about any relevant planning and other legislation that they may need to satisfy. Further, it is also important to note that Airbnb's website carries the following disclaimer:

*"Please note that Airbnb has no control over the conduct of Hosts and disclaims all liability. Failure of Hosts to satisfy their responsibilities may result in suspension of activity or removal from the Airbnb website."*¹⁸

As part of the online accommodation booking process, Airbnb guests are required to provide a variety of information including an email, phone number, payment information and confirm how many people are staying together with a check in time. Guest also need to agree to 'house rules', some of which are standard rules selected from a list by a property host whilst

¹⁸ Airbnb (2017) www.airbnb.com.au/help/article/1377/responsible-hosting-in-australia Accessed 31/5/17

bespoke rules can also be added and set by the property host. In addition, Airbnb hosts can also request that guests provide government-issued ID to Airbnb and that they have no negative reviews from other Airbnb hosts. It is not clear if this information would be passed on to any relate authorities should any antisocial behaviour issues arise from the short-term rental of a property.

Similarly ‘Stayz’ also offers limited advice concerning any approvals that may need to satisfied in order list a property for short-term rental accommodation. The company’s website does offer detailed advice concerning the management of a property including how to monitor and record damage to a listed property. With regards to land use planning requirements the website states that *“some councils may require you to seek approval for short-term leasing (i.e. less than 3 months) of your property. Contact your local council for guidelines and further information on approving your holiday rental”*.¹⁹

Nevertheless, as part of the property listing process, Stayz users are required to agree to the the ‘[Owner Terms and Conditions](#)’, the [Privacy Policy](#) and the [Holiday Rental Code of Conduct](#). Section 2.2.3 of the Holiday Rental Code of Conduct includes the requirement that *“The Property offered must: a) Be offered in a clean, safe and habitable state of repair; and b) Comply with relevant planning, building and fire safety and health regulations.”*²⁰ Whilst users agree to this requirement, they are not required to provide any such evidence in order to list a property.

5.0 Findings and Points for Further Discussion

Managing short-term rental accommodation is challenging for all tiers of Government however given the compliance responsibilities, it is particularly challenging for Local Government to manage. The challenges faced by Local Government are compounded by a lack of guidance from the State Government on the issue. The Local Planning Scheme Regulations fail to clearly define all types of short-term rental accommodation. Further, even though the statutory status of *Planning Bulletin 99, Holiday Homes Guidelines* means that it is somewhat toothless, in any case, it does not respond to the contemporary practices of the ‘home sharing’ industry and therefore fails to offer any meaningful guidance for decision makers. For these reasons it is evident that the current regulatory framework governing the management of short-term rental accommodation in WA should be improved.

Whilst amendments to the current arrangements may be required, it is important that the introduction of any controls governing short-term rental accommodation, either by the State or Local Government, are carefully considered to ensure that requirements are enforceable as well as reasonable. To assist this, another important trait of any legislation is that it should be simple for both the community and providers of short-term rental accommodation to

¹⁹ Stayz (2017) http://support.stayz.com.au/articles/en_AU/Article/How-do-I-list-my-property-on-Stayz-Your-guide-to-holiday-rentals?category=Advertise_a_Property Accessed 31/5/17

²⁰ Holiday Rental Industry Association (2015) *Holiday Rental Code of Conduct*

understand. If requirements are overly complicated and difficult to understand, they are unlikely to achieve appropriate levels of compliance.

Discussion Points:

- Would you support a review of *Planning Bulletin 99, Holiday Homes*?
- If so, should any review also seek to elevate the status of the Bulletin?
- Should the Local Planning Scheme Regulations provide a definition of 'short-term rental accommodation' and a definition, or a cross reference to the definition of a 'dwelling' provided in the R-Codes?

In summary, this study has found that LPP controls relating to short-term rental accommodation generally seek to ensure that development does not adversely impact upon surrounding uses. LPP provisions typically seek to control issues such as car parking and other features relating to design. It is also telling that a number of WA Local Governments differentiate between 'holiday homes' and 'large holiday homes'. The Tasmanian Government, whose policy controls governing short-term rental accommodation are the most progressed, also has a similar scale threshold. Tasmania's 'home sharing' threshold, a maximum of 4 bedrooms or 300m², is generally consistent with that of WA Local Governments who typically permit short stay accommodation for no more than six people.

Another common feature of Local Government controls is the requirement for a management plan. Similarly the Tasmanian requirements are also based on the premise that "*the dwelling is used by the owner or occupier as their main place of residence*". On this basis it is considered that the current controls set out by the R-codes may provide appropriate design controls for home sharing in smaller dwellings where the dwelling is used as main place of residence. Where a property is not a main place of residence or where a property exceeds a scale threshold, operations may be considered to be more commercial in nature and thereby constitute development which requires a development application.

It is also notable that some online short-term rental accommodation listing companies require users listing a property to agree to certain codes of conduct whilst other companies do not have the same requirements. Further these online platforms do not generally require users to provide any evidence that they obtained any necessary approvals to list a property for short-term accommodation purposes.

Discussion Points:

- Would you support the introduction of greater guidance or ‘deemed provisions’ relating to the control short-term rental accommodation?
- If so what controls would you like to see?
- Should the introduction of short-term rental accommodation controls be ‘scale’ based? And if so what should the threshold be?
- Should ‘home sharing’ (the rental of a room(s) within a person’s primary residence) be managed differently to the rental of holiday homes (the rental of properties which are not a primary residence)?
- Should online short-term rental accommodation providers specify that all relevant government approvals have been satisfied and that if required, evidence of this is provided?

Understandably, land use planning controls will not be able to totally resolve the anti-social behaviour issues that have sometimes become associated with short-term rental accommodation. To help overcome the community concerns relating to noise, property damage and other anti-social behaviours Queensland have adopted ‘party house’ laws, whilst the Victorian Government have similarly announced their intention to adopt laws to curb anti-social behaviour within short-term rental accommodation.

The Victorian Government’s Independent Panel investigation into short-term rental accommodation matters was primarily focused on issues within apartment buildings in Melbourne. Although the purpose of this study was to examine wider concerns rather the narrow issue of the appropriacy of short-term rental accommodation within apartment buildings, or strata schemes, it is evident that problems do exist within these forms of development. Accordingly, the Association queries whether the adoption of ‘party house’ laws alongside clearer parameters about what constitutes development would be an appropriate response to the issue. Likewise, it is queried whether it should be at the discretion of individual strata schemes to determine whether or not short-term residential is permitted within a strata scheme, or whether such discretion add further confusion about the validity of home sharing.

Discussion Points:

- Would you support the introduction of ‘party house’ laws in WA to tackle problems with individual properties?
- Should the appropriacy of short-term rental accommodation within strata schemes be solely at the discretion of strata companies?

Feedback in relation to these discussion points or this discussion paper more generally should be provided to Association by **31 July** to planning@walga.asn.au, or to discuss please call 9213 2000.

Appendix 1: Summary of a Selection Local Planning Policy Provisions

Summary of Local Government, Local Planning Policy Provisions

Shire of Augusta-Margaret River

Local Planning Policy: Holiday Houses

“Holiday House” means a single house or grouped dwelling which might also be used from time to time for short stay accommodation for no more than six (6) people but does not include a bed and breakfast.

“Holiday House (Large)” means premises conforming to the definition of “Holiday House” with the exception that the premises provide short stay accommodation for more than six (6) people but not more than 12 at any one time.

Objective: Holiday Houses are located in areas of high tourist amenity and attraction and in proximity to relevant services.

Summary of Requirements

- Located in coastal settlements or low density residential and rural lands.
- Holiday Houses and Holiday Houses Large (limited to 8 persons only) located in urban areas where the property either adjoins, fronts or is within an ‘area of significant tourist attraction’; or comprises an area of not less than 1000m².
- Grouped dwellings are limited to a maximum of 6 occupants (Holiday House).
- Decks and balconies are located away from the bedrooms of neighbouring dwellings and, if located close to living and dining areas of neighbouring dwellings, suitable screening is provided.
- Proposals require an Emergency Response Plan and Fire Management Plan, Management Plan with a manager or a contactable employee of the manager that permanently resides no greater than 1 hour’s drive from the site.
- Amplified music is only played outside of the Holiday House or Holiday House (Large) between the hours of 10am and 10pm.
- Renewals of approvals granted under previous Schemes shall be granted for a one year period unless the Local Government determines otherwise.

Bridgetown-Greenbushes

Local Planning Policy: Holiday Accommodation

“Holiday Accommodation” means accommodation which, by way of trade of business or for the purposes of any trade or business, is held out as being available or is made available for holiday purposes for occupation by persons other than the proprietor.

Holiday Accommodation should conform to either;

- A cabin unit constructed with cooking, toilet, ablution or laundry facilities provided as a communal facility and having a minimum floor area of 9.2m² and a maximum of 40m².
- A chalet – a detached self-contained unit including cooking, toilet and ablution facilities, with optional self-contained laundry facilities, and having a minimum floor area of 40m² and a maximum of 120m²

The short-term rental of residential dwellings to single parties shall not be classified as Holiday Accommodation. Council considers such a use as merely another form of landlord – tenant rental.

Summary of Requirements for Holiday Accommodation

- A site area of not less than 2 hectares.
- The site shall contain tree cover adequate to provide visual screening.
- Developments should not contribute to a concentration of similar land use activities that would alter the established character of the surrounding area.
- The minimum distance between the external walls of any building and another on the land shall be 10 metres for the purposes of privacy and amenity.
- Suitable car parking facilities (minimum 2 bays per unit) shall be provided.
- The same person is limited to stays of no more than three months in any consecutive twelve months

Shire of Broome

Local Planning Policy: Tourist Accommodation Developments (Excluding Caravan Parks) within the Tourist Zone

All accommodation development within a Tourist Zone shall comply with the objectives and guidelines of this policy.

Summary of Requirements

Development principles - Accommodation shall occur in a holiday atmosphere, and will also provide for permanent residents who prefer a more diverse and vibrant environment.

- Long Stay and Permanent Residential development shall be separated from short stay accommodation, so not to impact negatively on short stay holidaymakers.
- Developments that adjoining residential zoned land shall be designed so as not to impact negatively on the privacy and amenity of the adjoining residents.

Shire of Capel

Local Planning Policy: Bed and Breakfast Accommodation

Scheme defines 'Bed & Breakfast Accommodation' as "...accommodation provided for hire or reward under the main roof of a dwelling house for not more than four (4) adults or one family in the form of a maximum of two (2) guest bedrooms and one (1) guest bathroom".

Policy adds 'Bed and breakfast accommodation' means a detached single dwelling, used by a resident of the dwelling to provide short-term accommodation, and which may include the provision of breakfast.

Summary of Requirements

- Annual renewal of planning approval.
- Maximum number of three guest rooms.
- Requirement for on-site management of the establishment is implicit in any approval.
- Single dwellings only – grouped (or strata-subdivided) dwellings is not appropriate. Two (2) spaces for the dwelling and one (1) additional space per guest bedroom
- More than two Bed and Breakfast Accommodation uses within cul-de-sac or small residential streets may not be supported.
-

Shire of Donnybrook-Balingup

Local Planning Policy: Chalet(s)/Chalet Development & Bed and Breakfast Policy

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

Summary of Requirements

- Bed and breakfast establishment providing accommodation for a maximum of six persons. (Beyond six persons establishments are considered to be lodging houses)
- Planning consent is required for a bed and breakfast establishment.

Shire of Exmouth

Local Planning Policy: Bed & Breakfast Accommodation

Dwelling' means (as per the Residential Design Codes) a building or portion of a building being used or intended, adapted or designed to be used for the purpose of human habitation on a permanent basis by:

- a single person
- a single family
- no more than six (6) persons who do not comprise a single family

Summary of Requirements

- Guest access to a kitchen for preparation of meals is not permitted;
- The host is to permanently reside in the dwelling approved for a 'bed and breakfast' establishment;
- 'Bed & Breakfast' accommodation must be for short-term guests only and not considered as long term permanent accommodation;
- On-site car parking is to be provided at a ratio of one (1) car bay per guest bedroom
- In the case of an existing dwelling (ie, Class 1a building) being granted planning approval for use as a bed and breakfast, the proponent shall make a separate application to the Shire for a 'change of use' to a Class 1b subject to Regulation 22 of the Building Regulations 2012. All works required to satisfy compliance with the Building Code of Australia Volume 2 – Part 3.7.2 Smoke Alarms relating to a Class 1b building shall be completed prior to the 'Bed and Breakfast' use commencing;

Local Planning Policy: Holiday Accommodation

'Holiday Home (standard)' means a single house, which may also be used for short stay accommodation for no more than six people (but does not include a bed and breakfast, guesthouse, chalet and short stay accommodation unit).

'Holiday home (large)' means premises conforming to the definition of holiday home (standard) with the exception that the premises provide short stay accommodation for more than six people but not more than 12 at any one time.

Summary of Requirements

- All Holiday Accommodation is to be managed by local real estate agents, or have a local caretaker / manager living and readily contactable within 10 minutes of the property.
- All planning applications for holiday accommodation shall include a Management Statement that includes a Code of Conduct that outlines occupant rules.
- An emergency response plan is also required.
- Annual permit required.

Shire of Gnowangerup

Local Planning Policy: Tourism Based Land Use Requirements

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

Summary of Requirements

- Permitted within the Town Centre zone.
- May be considered by Council in the Residential, General Agriculture or Rural Residential Zones.
- Maximum of three bedrooms being used for accommodation purposes and a total number of guests shall not exceed six.
- Off street car parking to be provided at the ratio of one bay for each guestroom.
- A separate toilet, shower or bath and hand basin is to be supplied for guests.

Permit is valid for twelve months and renewable annually by the Shire subject to no complaints being received by the Shire

City of Joondalup

Local Planning Policy: Short-term Accommodation

"Bed & Breakfast" is a dwelling used by a resident of the dwelling to provide short-term accommodation, including breakfast, on a commercial basis for not more than four (4) adult persons or one family; and containing not more than two (2) guest bedrooms.

"Dwelling" as defined by the Residential Design Codes of Western Australia means a building or portion of a building being used, adapted, or designed or intended to be used for the purpose of human habitation on a permanent basis by a single person, a single family, or no more than six persons who do not comprise a single family.

"Holiday house" means a single dwelling on one lot used to provide short-term accommodation but does not include a bed and breakfast.

“Holiday accommodation” as defined by Local Planning Scheme No. 3 means two (2) or more dwellings on one lot used to provide short-term accommodation for persons other than the owner of the lot.

“Short-term accommodation” as defined by Local Planning Scheme No. 3 means temporary accommodation provided either continuously or from time to time with no guest accommodated for periods totalling more than three (3) months in any 12 month period.

Summary of Requirements

- All parking is to be provided on-site
- Management Plan to be provided and will be included as a condition of any development approval issued. The Management Plan is to include;
 - a code of conduct detailing the expected behaviour and obligations of guests which is to be displayed in a prominent position within the premises
 - a Complaints Management Procedure
 - details regarding guest check-in and check-out procedures
 - details regarding waste management
 - compliance with Strata By-Laws (if applicable)
- Guest register, detailing names, addresses and period of stay to be maintained and available for inspection by the City.
- Proposals within residential zones require public consultation and if within a Strata title scheme, the strata body will be consulted. Applicants are encouraged to seek clarification as to whether or not the operation of short-term accommodation is compliant with any by-laws.
- Development applications for a holiday house within an existing dwelling will be processed as a change of use. Development applications for a purpose built holiday house are required to meet the relevant single house requirements.

City of Perth

Local Planning Policy: Special Residential (Serviced and Short-term Accommodation) Policy

Residential Use: means premises providing for long term or permanent residential accommodation including: aged persons dwelling, caretaker’s dwelling, grouped dwelling, single house, multiple dwelling.

Special Residential Use: means premises providing short-term, temporary or specialised residential accommodation including a lodging house, hotel and serviced apartment.

Requirements

- Written evidence demonstrating that the operator of the special residential use has valid membership to an appropriate professional board or body, which operates within a code of practice or licensing system.
- A management plan.
- Applications will need to demonstrate how the amenity and security of all occupants will be protected through the design and management of the development.
- A proportion of the short-term and serviced apartments should be designed to accommodate people with a disability.

City of South Perth

Local Planning Policy: Serviced Apartments

A serviced apartment is an apartment which is one of a group of two or more apartments on the same lot, used, furnished and equipped to be used on a temporary basis in a manner similar to a Grouped Dwelling or Multiple Dwelling, for which laundry and cleaning services are provided, with or without other ancillary amenities.

Summary of Requirements

- Cul-de-sac streets are generally not favoured for serviced apartments.
- A serviced apartment is not permitted to be occupied by the same temporary tenant for more than 6 months within any 12 month period with notice placed on title to inform prospective purchasers of this requirement.

- When the owner of a serviced apartment no longer intends to provide any laundry or cleaning services for temporary tenants; and wishes to extend the period of occupancy beyond the limit referred to in paragraph a planning approval for a change of use of the premises is required.
- Management Plan required.
- Where an application for planning approval is lodged for proposed serviced apartments on a site containing dwellings for long-term occupancy held on strata titles, the applicant is to provide evidence that:
 - (a) the owners of all dwellings on that site have given written consent for the proposed use of particular dwellings as serviced apartments;
 - (b) by-laws have been adopted by the strata company approving the proposed use and requiring the vendor of any existing dwelling on the site to inform all prospective purchasers of the approved use of particular dwellings as serviced apartments; and
 - (c) the strata company has given consent to the management plan.