

Ms Jessica Shaw MLA, Chair

Economics and Industry Standing Committee

Legislative Assembly

Parliament House, 4 Harvest Terrace

West Perth WA 6005

Via email: laeisc@parliament.wa.gov.au

Submission to the Economics and Industry Standing Committee for the Parliamentary Inquiry into the regulation of short stay accommodation in Western Australia

Submission by Jamie and Lara McCall

Burnside Organic Farm

23.1.19

RE: Inquiry into Short-Stay Accommodation

Dear Committee Members,

We appreciate the opportunity to make a submission in respect of this inquiry and thank the committee for establishing the inquiry. We will address the four terms of reference in order, preceded by a description of our background in the industry and our experience of the sector over that time.

We have owned and operated a mixed tourism and farming business know as “Burnside Organic Farm” for 21 years (since December 1997).

Our business has been recognised and written about in many publications over that time, including by organisations such as Lonely Planet. Lara McCall has served on the committee of the Augusta Margaret River Tourism Association (now Margaret River Busselton Tourism Association) and Jamie McCall has served as a Councillor and Shire President with the Augusta Margaret River Shire Council. Jamie is currently the chair of RAPMRR (Registered Accommodation Providers of the Margaret River Region).

We have been active and connected members of the Margaret River Tourism industry and the Margaret River community, including being officeholders with junior sporting clubs and continuing to serve with the Volunteer Bush Fire Brigade.

We have built and operated our business for the past two decades to provide a unique and world class tourism product that creates memorable travel experiences for our guests who share that experience with their friends and enhance the brand “Margaret River”. We have been members of AMRTA and then MRBTA for all that time, participating in marketing

campaigns to promote the Margaret River Region. We have given up a lot of time over the years to promote the area. You can view a “Margie’s Moment” filmed with surfer CJ Hobgood, Peter Kuravita’s Margaret River cooking show amongst others. We have hosted many journalists to the region in cooperation with Tourism WA.

The rapid, uncontrolled rise in short-stay use of residential properties has caused a 30% drop in our gross revenue from accommodation over the past two years. Our expenditure on staff has also fallen 30%. Reinvestment projects on our property have been put on hold. Our discretionary personal expenditure, which was almost 100% within the region has been cut back, reflecting the revenue decline.

We are actively assessing the viability of our business into the future and without a change in direction we may, like many others, eventually exit the industry. Despite the significant investment in infrastructure, that can’t easily be re-purposed, we cannot continue to operate it if profitability continues to decline.

Our understanding is that our experience is similar to many other tourism accommodation operators. Un-regulated change to the accommodation industry is presently wreaking havoc amongst operators. This issue seems not to be appreciated by Shire staff at both AMR Shire and Town of Busselton. Councillors seem to have been effectively neutered by their staff and unable to act without staff consent and direction.

It has been suggested that the decline being experienced across the traditional accommodation industry is related to our business model, business type or other factors within our control. The decline is across caravan parks, bed and breakfasts, chalets (like ours), resorts and hotels. The simple fact is that you cannot add supply of over 9800 individual approved beds, and countless more unapproved without severely impacting the industry. (Figure is based upon 1000+ approvals in Busselton and 400+ approvals in AMR Shire by average 7 persons/private house accommodation. Illegal operators estimated to be greater in number).

The State appears to be the last avenue of appeal to restore some common sense planning before an industry is irrevocably destroyed. The quality of our tourism offering, as a region, and as a state is under severe threat if action is not taken.

Terms of reference:

1. The forms and regulatory status of short-stay accommodation providers in regional and metropolitan Western Australia, including existing powers available to local government authorities.

Over our 20 years in the industry we have observed a steady decline in the level of protection of the environment, and community amenity, by the AMR Shire. Tourism is a double-edged sword. It can provide community benefits through jobs and economic activity and it can leverage the sales of agricultural produce, particularly in its relationship with the wine industry. It can also create problems with infrastructure provision and community capacity at peak times, particularly volunteer capacity in a regional environment. There has

to be a careful balance to ensure the environment that is part of the drawcard for tourists is not damaged by their activities.

A well thought out regulatory approach at the AMR Shire has been watered down through a number of poorly considered scheme amendments in the past decade. The original AMR Shire Planning Scheme put the protection of agricultural land for agricultural purposes, and the associated amenity value of that land to the wider community and tourism industry as paramount, along with protection of the natural environment. Scheme changes, made under the auspices of “omnibus amendments” (supposedly of a technical and administrative nature) have removed many of these protections of the agricultural areas. The Local Planning Scheme now contradicts itself with the text of the Scheme still holding forth on the necessity to protect the agricultural zones from inappropriate non-agricultural development, but the use class table allowing a range of uses that were previously prohibited.

For the purpose of this submission we will confine our comments to two changes that relate specifically to short-stay. These are the uses “holiday house” and “caravan park”. These were previously “X” uses under the scheme, but are now “A” uses. This change to the use class table was never adequately advertised as it was hidden amongst many other changes characterised as “minor”, “technical” and “administrative”. In the case of the “caravan park” change there was no public consultation whatsoever as this was added to the omnibus amendment as a “post-advertising amendment”. How this was considered an acceptable process is beyond belief (please note that it passed through WAPC processes on its’ way to endorsement also).

The change for the use “holiday house” will have dramatic consequences for agriculture, community and bush fire risk into the future. Presently agriculturally zoned properties in the AMR Shire are limited to one residence per property. If this residence becomes a “holiday house” the farmer has nowhere to live on the farm. Absentee ownership of farming properties has a negative impact on rural communities, fire safety and agriculture. The removal of the farmer from the farm is at odds with the professed aims of the Local Planning Scheme to protect agricultural land for predominantly agricultural use. The new possibility of running a rural based residence as a “holiday house” means that agricultural land becomes more attractive for investors looking for a “holiday house” investment. These are not the same people who are looking to participate in growing the agricultural base of the region. More and more agricultural properties will be bought not for their agricultural value, but as an alternative to beach houses or other residential investments. Their predominant use will be non-agricultural in direct contradiction of the Local Planning Strategy and Local Planning Scheme.

The “caravan park” use restricts the number of bays per agricultural zoned property, but makes no judgement or restriction on the location. Every rural property in the Shire is eligible to apply for a caravan park, no matter how remote from services, tourist infrastructure or how suitable it is for the use. The change was made with no assessment or consideration of supply and demand, impacts on amenity, impacts on the ability to carry out farming practices or indeed any assessment whatsoever, including public consultation. With

no conditions to limit the location the Shire is unable to refuse an application as there are no grounds on which to do so in the Scheme or the Strategy.

A small caravan park does not have the capacity to install the type of infrastructure that makes it a destination in itself. These developments will operate at the lower end of the price range and risk becoming poorly run and maintained eyesores. The Shire does not have the will or capacity to police the short-stay regulations (no more than 3 months continuous occupation) and inevitable some will become low cost park home parks with permanent residents. They will detract from the visual and community amenity of rural areas.

There is already conflict between tourist and agricultural uses in the AMR Shire. Agricultural operations can be, at times, noisy at early or late hours. Caravan parks scattered throughout the rural areas is a recipe for conflict.

These two changes are emblematic of the disconnected and uncaring approach of the AMR Shire towards tourism development.

These changes are relatively recent and there is still opportunity to reverse them before too much inappropriate development occurs.

Unfortunately, the short stay use of residential properties has already escalated to a point where it is going to be more difficult to reverse.

Despite having a clause in the Local Planning Scheme, with supporting text in the Local Planning Strategy, describing the location of holiday houses within the inland residential areas as “inappropriate” there have been more than 300 approvals of this use since 2013. Most of these have occurred in the past few years, and many of them are in these inland residential areas. Despite the issues being created the AMR Shire has refused to halt or even slow these approvals.

Community understanding of the meaning of the word “inappropriate” is at odds with the understanding of the Shire staff who have determined that “inappropriate” somehow is a synonym for “acceptable”. Previous interpretation of the Scheme and Strategy had largely confined the holiday house use in residential areas to the coastal settlements of Gracetown, Prevelly, Gnarabup and Augusta. This understanding has vanished along with any protection for residents in the inland settlements who do not wish their street to be filled with pop-up hotels where once there were neighbours and a community.

Efforts to reason with the AMR Shire have come to nothing. A political agenda to promote any sort of development regardless of consequence seems to have come to dominate thinking in what has become an organisation disconnected from the community it is supposed to serve.

Councillors have attempted to address some of the issues, but have had their efforts strangled by staff with “due process”. Council staff have accepted a Council resolution to employ a consultant to look into scheme changes to address the issues, but refused to allow Council or community organisations (RAPMRR) to meet with the consultant to discuss the issues. Despite bringing scheme amendments to Council for approval on a regular basis the

staff threatened a Councillor, who attempted to bring a scheme amendment to Council, with reporting to the Dept. of Local Government for some alleged breach of process (attempting to represent the community perhaps?).

Our response to the particular point of reference of the inquiry is that Local Governments have the ability to deal with the issues being raised by the short-term holiday use of residential properties. In the case of the AMR Shire they actually had the scheme provision to regulate the use. Unfortunately, they have ignored their own scheme and have abandoned their responsibilities to the community. The evidence is that if the language in a planning scheme is not completely black and white then it is meaningless. In the case of AMR Shire, the word “inappropriate” should have been “prohibited”, as “inappropriate” is too loose a term for a qualified town planner to understand as a member of the community would understand it.

The AMR Shire is even more inept in their handling of the situation given their creation of a 2015 Tourism Strategy, that has been endorsed by the WAPC, and is supposed to be incorporated into the Local Planning Strategy and Scheme. Despite having this level of consideration and approval given to it, the Tourism Strategy is nowhere mentioned in any assessment of the residential short-stay issue by the AMR Shire, including changes to the LPP7 – Short-Stay local planning policy and approvals of holiday houses that have come to Council (most have been approved under delegated authority). As an endorsed strategy the Shire is required to have due regard for it, but nowhere has this been documented in all the approvals and deliberations on the short-stay issue.

The Tourism Strategy contains a diversity of reports and was no doubt produced at some serious cost. The over-riding thrust of the document exhorts Council to keep a close eye on the supply and demand of tourism accommodation in order to avoid an oversupply which would damage the industry and lead to an inability to create new product and maintain existing product to a high standard.

Many sites of tourism significance have been identified throughout the AMR Shire through a State Government mandated planning process. The intent was to preserve these sites for tourism development into the future. The sites are appropriately zoned, but have become undevelopable and unsaleable due to the extreme oversupply of accommodation product. The undeveloped sites at Gnarabup are just one example of this.

The other aspect that should have come into the Local Authority planning consideration of short-stay in residential areas is fire safety. The AMR Shire experienced a serious fire in 2011, at Prevelly in particular. There was an inquiry into this fire, and another into the Waroona fire more recently. As a result, the State introduced more stringent application of Building Code of Australia (BCA) standards for fire prone areas and planning guidelines for fire prone areas. The AMR Shire has adopted a “tick the box” approach to compliance.

Many of the Shire “holiday house” approvals have occurred in the Rural Residential zone between Margaret River Town and the coast. This is well known to local Volunteer Bush Fire Brigades as a “no-go” area in the event of a serious fire. The subdivision design of many of these areas predates the new guidelines. There are many cul-de-sacs, dead ends,

multiple driveways off narrow street endings and other hazards in the event of an emergency. The roads are windy and intersecting with a low level of legibility for a tourist that would become incomprehensible with smoke and fire. It is simply irresponsible of the AMR Shire to have repeatedly approved a known “vulnerable” land use in these areas. Not only does it endanger the lives of visitors to the region, but the lives of the volunteer fire-fighters who would be called upon to attempt to rescue them. It also creates the massive liability of destroying the image of the area. Numbers of dead tourists is not a statistic that would serve brand “Margaret River” well.

When the Margaret River fires were underway many residents of these areas found their driveways marked with crosses. These were to indicate to fire crews that these areas were not safe to enter, and the houses not possible to save. Many holiday houses are now located in these same areas.

The “tick a box” compliance is achieved by simply assessing an application on the BAL, which is calculated as a fee for service for the client by a consultant (what could possibly go wrong?). The benchmark is a BAL <29. This is considered a “high” fire risk. It is not a measure indicating the property is safe. The house is not assessed for compliance with the Building Code of Australia, and the exit route (often there is only one) is also not assessed for compliance with the guidelines for fire safe subdivision. There is little advantage being a tourist in a BAL <29 rated house if your escape route is a Flame Zone and you burn to death trying to get out.

At a public forum on amendments to the short-stay local planning policy a shire planner suggested that tourists were safer than residents as they had no attachment to a property and would be more likely to leave. This incomprehensible misunderstanding of the issues around fire safety for tourists directly contradicts the Shire’s own Bushfire Response Management Plan and the bushfire planning guidelines which explicitly recognises short stay as a “vulnerable” use.

The Shire’s cavalier attitude towards fire safety in their planning is in stark contrast to the hard work of volunteer BFB members in carrying out controlled mitigation burns to try and protect the community, ironically under the management of another department of the Shire. Holistic management with consistency of policy across the organisation is not a hallmark of the AMR Shire.

The fire guidelines require the protection of human life to be a priority and that planning decisions are made with the precautionary principle in mind. The AMR Shire has shown no understanding of the intent of the guidelines or the application of the precautionary principle. It again illustrates that the State must make clear policy that cannot be misunderstood or misapplied at the Local Government level.

AMR Shire had the knowledge, in the Tourism Strategy, and had the tools, in the Planning Scheme and fire guidelines, to appropriately control the development of short-stay accommodation in the Shire. They chose to ignore the knowledge they commissioned themselves at public expense, and had endorsed by the WAPC. They chose to ignore the controls existing in their own planning scheme and State planning fire Guidelines.

The economic damage they have caused to the accommodation industry in the Shire is considerable, and they bear full responsibility, and liability, for this damage. Without appropriate and immediate short term action to rectify the situation they are likely to face legal action from accommodation operators who have suffered loss as a result of their incompetence. This option is already being widely discussed, with the option of a class action a real and live possibility.

It is imperative that the State Government recognise the urgency of the situation, and the inadequate, and even incompetent, Local Government response in our premier regional tourism destination. Without some leadership at the state level the issue is unlikely to be settled amicably or in the best interests of the Margaret River Region and the State.

2. The changing market and social dynamics in the short-stay accommodation sector.

3. Issues in the short-stay accommodation sector, particularly associated with emerging business models utilising online booking platforms.

These two issues are inter-related and we will address them together.

There is no doubt that the rise of internet booking systems has revolutionised the tourism industry. We have been in the industry long enough to pre-date the internet. While online booking has created some advantages, it has also created two major problems.

The first of these is the emergence over time of international players. Initially local tourism associations were able to create online platforms to capture internet bookings and the money generated could feed back into destination marketing. The rise of global brand names and their domination of the market has created economic leakage of unprecedented proportions. The big players have driven costs up rather than down, despite the supposed efficiency of online transactions and booking. Commissions are now loaded with discount rates to achieve rankings on search algorithms. The operator is now losing more money to intermediaries than ever before and is still expected to contribute to destination marketing and brand awareness activities.

State and Federal Governments need to cooperate to ensure taxes are paid on this money and the revenue is spent appropriately where it was generated.

The second issue that has arisen is partly social. The gig economy has created a belief that aspects of life that were once for private use can be commercialised for profit. This has happened with Uber and Airbnb. People are encouraged to see their private cars and houses as commercial opportunities. It is well established, however, that the capital value of those assets is not recognised in the financial return generated. Other than in exceptional cases there is no business sense in operation as an Uber driver or Airbnb operator.

Unfortunately, there are many willing participants in these business models regardless of their viability.

The underlying asset value is so unrecognised in the tariffs set by many "holiday houses" that they undercut genuine businesses by large margins. While this appears to be good for

the consumer it is analogous to the arrival of the big-box store in the small country town. The cheaper prices seduce the shoppers who only realise the real cost when the traditional main street businesses go broke and close. The leakage of money from the shift from traditional hosted accommodation to the typically un-hosted “holiday house” is significant. The profits that would generally be spent locally are diverted to absentee investors.

The other factor is the lack of limit to the supply. Inevitably, if not controlled, there is oversupply and the activity becomes unprofitable for all those involved.

In the case of short-stay accommodation there was never a situation in which it was permissible to rent out a residential house for short-stay without an approval (at least in the jurisdictions I have looked at including AMR Shire and Busselton). To do so prior to Airbnb would have been unusual and generally mostly unthinkable. Intense marketing by Airbnb and the use of buzz words like “sharing economy” have convinced a proportion of people that they have rights that they never actually enjoyed. This has led to an enormous number of illegal operators. The AMR Shire has been unwilling until quite recently to act in any meaningful way against these operators. Under intense pressure the Council resolved to employ a compliance officer to deal with this issue and they are, we are told, shortly to start work. Much damage has already been done.

The consequences of the lack of control of the supply and demand balance in tourism accommodation were warned against in the AMR Shire Tourism Strategy, endorsed by the WAPC. I won't repeat those here, but highly recommend that document to the inquiry for its relevance to their investigations.

Given the lawless approach of the main player in the illegal short-stay accommodation market it is imperative that the State makes it clear where and to what extent the use is permissible in Western Australia. There is room for flexibility in this approach between jurisdictions with vastly different needs. What has become clear is that the anything goes approach by AMR and Busselton is not suitable for the Margaret River Region.

The sector can be controlled through planning and should be controlled through planning, just as every other land use is via sensible, considered provisions in planning schemes.

The social amenity of residential areas is being seriously eroded by the proliferation of both approved and illegal short-stay use of houses. Rental affordability and availability has declined seriously. Party houses become the bane of residents' lives. Streets no longer have neighbours, but a random progression of strangers moving through previously residential areas.

There must be a clear recognition of the difference between hosted and un-hosted accommodation. They have different impacts and should be treated quite separately. The comments we have made here relate to the un-hosted activity.

4. Approaches within Australia and international jurisdictions to ensure the appropriate regulation of short-stay accommodation.

We believe that Western Australia already has good planning mechanisms to address the short-stay issue. It needs to bring a State level focus to direct Local Government as to the appropriate management of short-stay. An excellent start would be the already approved and State endorsed AMR Shire Tourism Strategy being dusted off (approved by the Shire in 2015, but already forgotten and ignored) and meaningfully integrated into the AMR Planning Scheme with a strengthening of the controls already clearly intended by the Local Planning Strategy and Scheme. With the advanced analysis already existing in this jurisdiction, just not being adhered to, it can be put forward as a model for other jurisdictions. It is essential that both AMR Shire and Busselton are required to amend their current inappropriate practices before the already substantial problem is worsened.

The appropriateness of the fire planning regime must be investigated and remedied by the State to ensure the safety of visitors and residents in fire prone areas.

Internationally Japan has demonstrated that this issue need not be perpetuated. Strong government action closed down the illegal industry virtually overnight.

We support and endorse the submission of the Registered Accommodation Providers of the Margaret River Region (RAPMRR), particularly their proposed solutions commissioned from legal firm Squire Patton Boggs.

Many thanks for the opportunity to make this submission.

Jamie and Lara McCall

Burnside Organic Farm