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ENQUIRIES Planning 9339 9339

22 February 2019

Ms J J Shaw MLA
Chair
Economics and Industry Standing Committee
Committee Inquiry into Short-stay Accommodation in WA
Legislative Assembly Western Australia

Dear Ms Shaw,

Response to Committee Inquiry into Short-stay Accommodation in WA

The Town of East Fremantle welcomes the opportunity to respond to the Committee Inquiry and has the following comments to make.

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

The Town deals with land use including short-stay accommodation through Local Planning Scheme No. 3. There are 3 forms of short-stay accommodation that are listed as uses in the zoning table: bed and breakfast, motels and hotels. There are no other short-stay accommodation uses that are formally recognised under the planning scheme. A proposal for short-stay accommodation, must therefore be considered as a 'use not listed' in the Zoning Table under the provisions of the planning scheme and advertised for public comment before Council can determine the application. In each instance the proposed accommodation would be required to comply with the relevant definitions and requirements as provided in the local planning scheme as listed below or have the Council determine the use is consistent with the objectives and purposes of the particular zone and permit the use:

Use Class	Definition
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 the provision of breakfast.
Hotel	Premises the subject of a hotel licence other than a small bar or tavern license granted under the Liquor Control Act 1988 including any betting agency on the premises.
Motel	Premises used to accommodate patrons in a manner similar to a hotel but in which specific provision is made for the accommodation of patrons with motor vehicles and may comprise premises licensed under the Liquor Licensing Act 1988 (sic Liquor Control).

The Town has not adopted any local planning policies or local laws regarding short-stay accommodation at this time. However, it does apply the Western Australian Planning Commission (WAPC) 'Holiday Homes Guidelines – Short Stay Use of Residential Dwellings' (published September 2009) which is intended by the WAPC to be used as a guide in the assessment of short-stay accommodation applications. The Town Building Surveyor also determines if the short-stay accommodation proposed will result in a change to the classification of the building/dwelling thereby requiring a Building Permit application to be submitted and compliance with the Building Codes of Australia. Council only grants temporary approvals, usually of 12 month duration with a condition of approval being that the applicant is required to re-apply at the expiry of 12 months. A standardised set of conditions is also imposed which are specific to matters such as number of bedrooms and occupants, vehicle parking, management plans and other general amenity matters. This approach enables Council to monitor the use and its potential impact on the surrounding locality and provides an ability to revoke the approval if this is considered necessary.

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

The differences between various types of short-stay accommodation appears to have become ambiguous. The emergence of online and mobile phone based accommodation booking services has meant that any owner of a room or dwelling including a bed, bedroom, apartment, 'granny flat' or house is able to market and sell accommodation globally in competition with established accommodation providers. Traditional barriers to entry of accommodation providers have been broken down and weakened the market dominance of the large motel and hotel operators in a similar way that Uber has forced change on the taxi industry and Netflix has changed television viewing habits. In a more deregulated environment prices typically fall, however, it could be at a cost with a decline in safety and accessibility regulations, quality of some accommodation and residential communities potentially suffering from a decline in amenity resulting from a variety of factors including increased vehicle traffic, parking difficulties, insufficient servicing (for example bin capacities and collection) and anti-social behaviour. On the other hand, the Town is aware that short-stay accommodation services are being provided without approvals (general location established from internet searches). Surrounding residents remain unaware of the use of these properties as the operators of the property manage their properties carefully and ensure that there are minimal impacts on the amenity of the neighbourhood. Air BnB is arguably the most well-known online accommodation booking platform, although there are many others including Stayz, Expedia, Wotif and Trivago. All provide booking services for a variety of accommodation, however, Air BnB has targeted residential properties to become holiday accommodation. Air BnB has received attention with stories of residential homes being used as 'party houses' and suffering damage by guests. A number of articles and documentaries have been produced, as well as a dedicated website created (insideAirBnB.com) that highlight issues around Air BnB operations. As previously stated, however, it is noted that there are a number of other online booking service operators in existence.

A search of Council's records, together with online data, shows that within the Town of East Fremantle:

1. 31 properties have approved ancillary accommodation;
2. 29 properties have had additions and extensions including studios or rooms (not categorised as ancillary accommodation);
3. 18 properties have formal approval for providing short-stay accommodation (not Air BnB);
4. 3 properties have been formally approved to operate a bed and breakfast use; □ 5 properties have been formally approved to operate as Air BnB; and
5. 84 properties are listed as being available for short-stay accommodation in East Fremantle according to "insideAirBnB.com" (accurate to October 2018).

It is possible that those properties with ancillary accommodation, granny flats, studios or additional vacant rooms may also have the potential to use those lodgings for short-stay accommodation. Some properties listed as being available in East Fremantle may be outside the Town's boundaries, but within close proximity to the Town's attractions. Dwellings are identified by general locality rather than specific address. Regulation alone does not necessarily prevent short-stay accommodation operating without the necessary approvals. The addition of onerous hurdles in approval processes could in fact discourage short-stay accommodation operators from seeking permission to operate. Having the ability to impose and enforce high penalties for operating without approval, however, could provide an appropriate incentive to gain approvals. If there are no significant amenity impacts on residential neighbourhoods, it is possible for the Town to be unaware of the operation of short-stay accommodation. In such instances, it may be difficult to justify the need or value of developing, implementing and enforcing regulation, although Council potentially has a responsibility to require approvals to ensure compliance with building codes, universal access and fire safety.

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

There is no simple delineation of issues or response to the issues created by the emergence of online booking platforms for short-stay accommodation. Many encompass a variety of operational, planning, building and health matters.

Lack of Personal Contact

Online booking platforms are simple to operate, portable, relatively anonymous and take relatively little time or effort compared to traditional booking systems. They have become a regular feature of people's lives. Operators of short-stay accommodation can remain relatively disconnected from formal government processes and customers of these services are happy to use online providers because they are quick, appear to provide value for money and are generally unconcerned by issues surrounding accommodation operations.

Building Classification Changes

The Building Code of Australia recognises different building/use categories and requirements depending on whether a structure is a single residential dwelling or a multi-storey residential dwelling and/or provides short-stay accommodation and how many people are staying within it. If the use of a residential dwelling changes to a commercial function, such as short-stay accommodation, there is a potential change in the classification for building purposes that places higher compliance requirements for safety, emergency and construction standards. In addition, as the number of rooms and guests increases the minimum acceptable criteria under the Building Code becomes more onerous. Short-stay accommodation that is not approved accordingly is in breach of the Building Code Australia.

Insurance

For insurance purposes there are different requirements for residential dwellings compared to commercial buildings. Some short-stay accommodation might be defined as commercial, rather than residential depending on the size of the operation and number of rooms. This is a matter for the operator of the accommodation to deal with and is not a local government consideration.

There is a requirement that all premises that serve food comply with the Food Act 2008. There is also a requirement that operators of short stay accommodation comply with the Environmental Protection Act 1986 and Health (Miscellaneous Provisions) Act 1911. Again it is the responsibility of the operator to comply with the relevant legislation, although local government is required to police non-compliance.

Unfair Competition

Short-stay accommodation businesses operating without a valid approval are financially and operationally advantaged over those that do. Savings are made in time and fees associated with not gaining approvals. In addition, approvals are generally subject to conditions that may impose operational limitations or additional costs in ensuring compliance with planning and building, requirements which are not necessarily self-imposed by those who operate without approvals. There needs to be a balance such that short-stay accommodation operators are not discouraged from applying for planning approval to ensure that providers meet health and safety requirements and do not cause a deterioration in neighbourhood amenity or public safety.

Neighbourhood Amenity

The concentration of short-stay accommodation in one particular residential area has the potential to concentrate potential problems. A large number of short-stay accommodation units located together increases the likelihood of neighbouring properties seeking out similar commercial opportunities that tap into the visitor population. Whilst there can be positive economic benefits for the accommodation operators and surrounding local economy,

informal and unregulated short-stay accommodation may become problematic if residential areas are overwhelmed by their activities and amenity impacts.

It is important to maintain the positive characteristics of precincts that are popular for short-stay accommodation including tree lined streetscapes, heritage properties, walkable built environments, safe and clean residential areas with high levels of amenity. From an urban planning perspective, there is a risk of incremental change occurring in residential areas where a concentration of short-stay accommodation has occurred. Residential areas can become increasingly commercialised and blighted. Urban infrastructure may deteriorate more quickly and require maintenance or replacement within shorter timeframes and extra burden can be placed on services such as waste collection.

In the Town's experience, short-stay accommodation is nearly always proposed to be located in residential zoned areas. Existing residents have a reasonable expectation that resident amenity should be maintained and should be prioritised over permitting commercial enterprises. Allowing a concentration of short-stay accommodation in residential zoned areas puts resident amenity at risk. Similarly, if established short-stay accommodation in appropriately zoned areas is not patronised then this may jeopardise the viability of existing accommodation businesses and other supporting commercial uses in areas designed and planned specifically for this purpose. Perceptions of the problems may be quite different from reality with social media and popular media amplifying the negative aspects of short-stay accommodation and ignoring the positive aspects. However, there may be residents that tolerate issues, do not contact the Town to complain about issues with nearby short-stay accommodation that does not have formal approval to operate.

Economy

As previously stated, short-stay accommodation may have positive benefits for the local economy including nearby businesses. Shortages of local short-stay accommodation may result in fewer spin-off benefits for the local economy.

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

The Town does not actively encourage short stay accommodation in residential areas because they are not zoned for these uses, however, landowners may apply for approval to utilise vacant bedrooms, studios, ancillary accommodation, apartments and homes as short-stay accommodation. The Town's preference is for this accommodation to operate through formal regulated channels to ensure potential issues can be identified and conditions applied as part of the planning and building approval process. This is to ensure that premises are compliant with relevant health and safety requirements, as well as maintain neighbourhood amenity. It is recognised, however, that online and mobile technology enables businesses to operate without the Town being appropriately notified. The Town does not want or intend to impose harsh measures to police short-stay accommodation. However, in a situation where the Town is made aware of problems associated with a property operating as short-stay

accommodation (whether approved or not) the Town will take measures to respond. Typically this would be addressed by the Regulatory Services section and might include ensuring compliance in relation to occupancy/bed numbers, noise, preparation of food by the proprietor, parking, traffic and waste disposal under the relevant legislation and regulations, as well as require the operators to submit a retrospective development application. The Town has not developed a local planning policy with regard to short-stay accommodation to date, however, it is something that may be contemplated in the future.

Concluding Comments

It is considered appropriate that Council makes a number of more general comments in relation to the Inquiry into Short-stay Accommodation.

Caution is needed when attempting to streamline and provide uniformity around the regulation of short-stay accommodation. A “one size fits all” approach to legislation and policies linked to short-stay accommodation is not considered appropriate. There are significant differences between local governments across the State in terms of surface area, population, economic and demographic profile, urban environments, attractiveness and suitability for short-stay accommodation. For this reason it may be more beneficial for local governments to formulate local planning policies and local laws under existing legislation and according to their own circumstance.

It is essential that details of any future short-stay accommodation regulatory and policy proposals by State government involve input and scrutiny from local government. If expected to implement policy and regulation it is critical that local government has input into its development. It is suggested that a working group be established to assist in the formulation of policies and regulation and should include officers from local government with a broad background in economic development, tourism, urban planning, building compliance and environmental health.

Caution is required to ensure that local governments are not unnecessarily burdened by proposals that increase compliance, responsibility and workloads. Proposals that increase the burden on local government in respect to costs and staffing need to be appropriately supported, resourced and compensated by State government. It is essential that smaller local governments are given the means to raise necessary funds to implement and enforce legislation or policies around short-stay accommodation, without sacrificing other expenditure priorities.

Any recommendations resulting from the Committee Inquiry need to be clearly communicated across communities to protect the interests of stakeholders including residents, property owners, and providers of short-stay accommodation. A well communicated stance by State government that does not give stakeholders mixed messages about short-stay accommodation is essential. It is considered essential that State government takes the lead role in developing a robust public awareness and information

campaign to explain and promote proposals linked to legislation or policies on short-stay accommodation.

The Town awaits the findings of the Inquiry. If you have any queries with regards to our submission do not hesitate to contact the Planning Department at the Town of East Fremantle by phone on 9339 9339 or email admin@eastfremantle.wa.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'A. Malone', with a long horizontal flourish extending to the right.

Andrew Malone for
GARY TUFFIN
Chief Executive Officer