I am a mostly retired town planner with around 50 years of experience, firstly with the State Government and subsequently, in private practice.

Approximately 12 years ago, my wife and I sold our single house and downsized by moving into an apartment block. The apartments were purely used for residential purposes and we appreciated living in a community environment, getting to know neighbours and living in close contact with other people with whom there was a high degree of familiarity.

As a result of my career, I have a reasonable familiarity with applicable Planning Schemes, Regulations and Policies impacting short-stay accommodation. The Town Planning (Local Planning Scheme) Regulations 2015 identify and define a range of short-stay accommodation types. It is open to Local Governments to incorporate this range of accommodation types into their Schemes and identify the zones in which they may be appropriate and under what conditions those uses may be acceptable.

In my view, there are no restrictions on the ability to develop regimes specifying the appropriate locations, terms and conditions under which these uses may be acceptable. The difficulties lie mostly in policing and interfacing with other regulatory requirements as well as ensuring a "level playing field".

Local Governments are generally charged with policing this issue and a major problem is likely to be experienced in gathering sufficient evidence in the event of a breach to justify prosecution and therefore control. For example, if a premises is leased illegally for a weekend, there is not likely to be much investigation of the alleged breach until the working week has commenced in which case, the lessees are likely to have moved on. Obtaining proof of the breach to enable prosecution is highly problematic. The Council is between a rock and a hard place, exposed to complaints from neighbours objecting to noise, parking issues and the loss of community on the one hand and the difficulty of policing on the other. The temptation on Local Government is to therefore "normalise" the use and try to pass responsibility for policing to landowners through the adoption of policies requiring registration and licensing of the use backed by a complaints procedure. In reality, there is limited control of the use and protection of neighbour's amenity by devolution to a "self regulation model". It gets the Council out of the "hot seat" but little else.

The next area of concern relates to interfacing with other regulatory matters such as fire regulations, universal access issues and safety standards. For example, our apartment building was constructed in 1986 in accordance with the then applicable standards. Those standards have since changed. For example, balustrades on balconies are no longer consistent with Building Code of Australia (BCA) standards. Not all balustrades protect private spaces, some protect common spaces. If an apartment is leased short-term, either legally or illegally, and a child is injured falling over or through now non-compliant balustrade, do all property owners have some liability through their interest in the common property?

In cases where apartment building upgrades are required to accommodate short-stay uses, is it reasonable that owners who may not want to change from their current residential use to have to pay for likely very expensive modifications to facilitate the use proposals of other owners? There may be other examples of non-compliance with current BCA requirements that I am unaware of and, if there are, then exposure to potential liabilities and costs of rectification in our old building which would not otherwise require rectification, apply equally.

It may be argued that it is wise to bring the building up to standard but, this potentially greatly increases the cost of living in higher density apartment buildings. Governments of recent years have consistently supported increased densities and apartment living. If there are unforeseen variables and associated hidden costs going forward, the attractiveness of this lifestyle diminishes to the detriment of policies encouraging intensification. These problems are particularly acute for older people like us who have planned and worked for retirement, now having a fixed amount of money on which to live.

Issues of fire protection also arise as I understand different requirements apply to residential uses versus “commercial” short-stay uses including the location and servicing of fire extinguishers.

There is a gap in understanding in respect of changes of use from permanent residential to short-stay use at State and Commonwealth levels. I have contacted the WA Building Commission to ask whether a change of use from permanent residential to short-stay in apartment buildings triggers a requirement to upgrade the building to current BCA standards or indeed, is there a change in the class of the building necessitating the application of different standards. The Commission officer I spoke to consulted other officers and subsequently advised that they did not know, suggesting I contact the Australian Building Codes Board who in turn could not enlighten me referring me back to the WA Building Commission.

There needs to be a resolution of these issues. It may be argued that, those staying short-term should not expect higher safety standards than permanent residents but such arguments ignore the fact that permanent residents become familiar with the building, knowing where the exits are and therefore more equipped to find their way out in the event of a fire and a smoke filled environment. Similarly, if a balustrade is no longer compliant and now considered unsafe, a permanent resident looking to buy or lease an apartment would normally inspect the site before purchase or leasing and therefore identify issues and conclude whether it is safe for family members or not before finalising arrangements. People staying a couple of nights would likely book online, sight unseen. Their position needs protecting as does the position of those remaining permanent residents in the apartment building as discussed earlier.

I am sure you will receive many submissions regarding the issue of "a level playing field". The matters discussed above also have some relationship to this issue and I would point out that people who lease out self-sufficient residential accommodation for short stay purposes do not pay GST. Conversely, a hotel room is not self-sufficient and therefore subject to GST. People leasing out a residence for short-stay are therefore clearly advantaged.

The WAPC has recognised the need to ensure a consistent supply of tourist accommodation and to this extent, has exercised policies to limit the use of potential tourist sites for permanent residential. If AirBnB style accommodation meets tourist accommodation demand, and hinders the development of hotels etc, how do you prevent that AirBnB accommodation switching back to permanent residential in accordance with changing economic circumstances and markets? A change in economic circumstances could lead to a shortfall in tourist accommodation.

In my view, short-stay use of otherwise residential premises has a role to play as there will be tourists wishing to try the local lifestyle as opposed to staying in hotel style accommodation. Further, in many country towns, the infrastructure does not exist for tourists to be accommodated in other than residential style accommodation particularly as far as families are concerned. The ideal form is accommodation in the form of Bed and Breakfast where the homeowner is on hand to look after guests and neighbours alike. In the event of a fire for example, guests are not left solely to their own devices and the generation of noise or other nuisance impacting neighbours is resolved by the owner's presence.

The problems relate mostly to the absentee leasing of short-stay accommodation and the policing of any rules which may be applied to control this style of accommodation.

In summary, I believe there are issues specific to apartments, separate from other styles of housing. One possible solution which occurs to me is to make use changes in apartment buildings subject to the approval of owners by vote without dissent. In this way, no one can be worse off and policing becomes an issue of the strata company.

The questions of interfacing with other regulations such as the BCA and responsibility for any necessary upgrades without penalising those apartment holders who do not wish to change use needs resolution with respect to starta accommodation.

With regard to housing on “green titles”, use for short-stay is at least likely to be more apparent and possibly more easily controlled making a licensing/self regulation model more workable. Evenso, regulatory and taxing requirements should be synchronized with those of commercial short-stay accommodation such as hotels and motels.