

TOWN OF COTTESLOE



SHORT STAY USE COMMITTEE

UNCONFIRMED MINUTES

MAYOR'S PARLOUR, COTTESLOE CIVIC CENTRE
109 BROOME STREET, COTTESLOE
2.00PM WEDNESDAY, 27 FEBRUARY 2019

MAT HUMFREY
Chief Executive Officer

1 March 2019

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- 1B. Points for Consideration **CONFIDENTIAL**
- 2. Town of Cottesloe Submission Standing Committee Inquiry
- 3. LPS Review Indicative Timeline
- 4. Case Studies on Short Stay Policies & Community Engagement
- 5. Short Stay Action List

1. DECLARATION OF MEETING OPENING / ANNOUNCEMENT OF VISITORS

The Presiding Member opened the meeting at 2.05 pm and welcomed the Committee.

2. ATTENDANCE**Committee Members Present**

Cr Lorraine Young	Presiding Member, Elected Member
Cr Melissa Harkins	Elected Member
Mr David Sharp	Community Representative
Ms Jane King	Community Representative (arrived 2.24pm)
Mr Peter Goff	Community Representative

Officers Present

Ms Jana Joubert	Coordinator Strategic Planning
Ms Liz Cartell	Senior Administration Officer

Apologies

Mr Mat Humfrey	Chief Executive Officer
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3. CONFIRMATION OF MINUTES FROM PREVIOUS MEETING

Moved: Cr Harkins Seconded: Mr Goff

The Minutes of the meeting of the Short Stay Use Committee held 10 October 2018 be confirmed as a true and accurate record.

CARRIED: 4/0

4. DECLARATION OF INTERESTS

None

5. DISCUSSIONS**5.1 Legal Advice received (attached at CONFIDENTIAL Annexure 1A) and points for consideration attached at CONFIDENTIAL Annexure 1B)**

Ms Joubert provided the Committee with a map and summary of Short Stay uses allowable. The Committee reviewed the mapped areas and discussed legal advice received to date.

Mr Goff requested clarification of the Town's terminology relating to the current scheme requirements. Ms Joubert provided definitions relating to Serviced Apartment Self-Contained Accommodation and Short Stay.

Cr Young thanked Ms Joubert for her summary.

5.2 **Update on Parliamentary Inquiry into Short Stay Accommodation** (Town of Cottesloe submission *attached at Annexure 2*)

Mr Sharpe gave a summary of the Parliamentary Inquiry to the Committee and referred to the terms of reference, impacts on the community and forthcoming recommendations. Cr Harkins thanked Mr Sharp for his comprehensive overview.

Ms King entered the meeting at 2.24pm

The committee discussed the position of strata owners. Cr Young questioned what is currently required in the case of strata properties in terms of numbers for a ban on hosting without physical presence at the property. Mr Goff advised that a quorum approval without dissent would be required.

Ms Joubert gave a summary of the expected timeframe for the Inquiry and indicated that the Preliminary recommendations are expected in late June 2019.

5.3 **The Local Planning Strategy review process and specific committee engagement** (*attached at Annexure 3*);

Ms Joubert outlined report timeframes. A scoping report would be prepared then go to Council. The Town would then ascertain whether Council was satisfied or alternatively whether they'd like additional information. This would then be collated in a discussion paper, opening the floor to the public with a summary of points that the Town needs addressing. Preliminary workshops would then start. Ms Joubert is currently working on an engagement plan with the CEO.

Cr Young questioned when the local planning strategy was last reviewed. Ms Joubert advised this was in 2008 however it should be every five years.

Cr Young suggested that the issue for Council is the extent to which short stay use is detailed and consulted on in the Local Planning Strategy (LPS) review given limited resources and the fact that the outcome of the forthcoming Parliamentary Inquiry is likely to impact on the issue at the State level, so that resources used to consult at a granular level might be wasted. It was suggested it was a council rather than committee level issue.

Mr Sharp queried whether there would be a resident survey. Ms Joubert suggested at this stage it would be a broad brush approach. Cr Young suggested it was potentially a labour intensive exercise that is probably not warranted in advance of the Parliamentary Inquiry.

Cr Harkins questioned whether the community would be approached to gauge thought. Cr Young suggested this would require decisions to be made on what information is provided to the community and possibly what recommendations or range of options might be considered in a survey. This would require a good deal of work and it is likely to be undone by the outcome of the Parliamentary Inquiry process.

Cr Young queried how long it would take for the scheme amendment to go through. Ms Joubert advised around 9 months after the Strategy review is completed (which is estimated at late 2020). So any changes to LPS3 in this area as a result of the strategy review are likely to come into effect about the same time as the Parliamentary review and outcomes are finalised.

The Committee queried the Town's strategy and processes when required to deal with issues such as noise, and suggested the community could be provided with some form of clarity as to how this is handled. Cr Young suggested that recommendations on enforcement and prosecutions fell outside the terms of reference of the Committee as per Council's resolution requesting that the committee be set up.

It was considered the website could be updated to give the community an update on the current situation in terms of what Council is doing in this sphere.

Cr Young suggested that the next meeting is held in July when the Parliamentary Inquiry is complete and suggested that the Town updates the committee when other jurisdictions update their position.

Ms King questioned how the antisocial association with short stay has been handled in terms of complaints. Ms Joubert explained the Town's position and process of contacting property owners and confirmed only two complaints have been received by the Town to date. These complaints were specifically noise related.

COUNCILLOR MOTION:

Moved: Cr Harkins Seconded: Ms King

The Short Stay Use Committee recommends;

- 1. That the Committee reconvene in July 2019 following the release of the findings and recommendations of the Parliamentary Inquiry Report into Short Stay Accommodation given the probability of the Inquiry impacting on the Town's future direction in the area**
- 2. That the Administration keeps the Committee informed of developments in this area generally;**

CARRIED: 5/0

- 5.4 **Case studies on short stay policies and community engagement, specifically Nedlands, Fremantle and Augusta-Margaret River (DRAFT/ONGOING Study attached at Annexure 4).**

These items will be reviewed by the Committee in their own time.

6. OTHER BUSINESS

There was no other business

7. NEXT STEPS

Way forward (in terms of either a local planning policy or local law) when the results of the Inquiry become available.

8. ACTION LIST

Updated 27 February (*attached at Annexure 5*).

9. NEXT MEETING

The next meeting was proposed for the end of July 2019.

10. MEETING CLOSURE

Cr Young declared the meeting closed at 3.16pm

ANNEXURES – Short Stay Use Committee Meeting

27th February 2019

- 1A. Copy of Legal Advice **CONFIDENTIAL**
- 1B. Points for Consideration **CONFIDENTIAL**
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Our Ref: Short Stay Use Committee
Enquiries: Planning Department



25 January 2019

Dr David Worth
Parliament House
4 Harvest Terrace
WEST PERTH WA 6005

Dear Dr Worth

SUBMISSION - COMMITTEE INQUIRY INTO SHORT STAY ACCOMMODATION IN WA

Thank you for providing the Town of Cottesloe with the opportunity to provide a written submission on the Committee's Inquiry into Short Stay Accommodation in Western Australia.

Background

Cottesloe provides commercial short-stay type accommodation concentrated at the main beachfront, which comprises its Foreshore Centre and Restricted Foreshore Centre Zones. These include a number of hotels, beach chalets, motels and serviced apartments. In addition, some blocks of units/apartments on the foreshore or nearby contain residences used for short-stay type accommodation, both professionally and privately managed. These tourist accommodation uses are mostly classified as being permissible or otherwise discretionary under the Town's Local Planning Scheme No. 3.

Beyond the beachfront, numerous residences including units/apartments, villas/townhouses and single dwellings are let for short stay type accommodation, also both professionally and privately managed. A recent search (January 2019) found that there are currently approximately 150 listings on the Airbnb website and 43 listings on the Stayz website marketing bedrooms as well as entire homes exclusively for short stay accommodation around Cottesloe. Most of these are located within the Residential Zone and many do not have the planning approvals in place to be able to operate these short stay accommodation activities. A number of these unauthorised uses have been the cause of complaints (largely within strata complex situations) received by the Town of Cottesloe (the Town).

It is thus apparent that that there exists a long-established practice of residences in the Residential Zone (where short-stay accommodation is not permissible) being used for short stay accommodation, and that it has become part of the character and culture of the district. Until the last few years, this has occurred largely under the radar of the Town, and essentially been condoned, unless problems or complaints have arisen.



Town of Cottesloe

In response to the terms of reference as specified within your letter, we have the following comments:

1. The Town is currently solely reliant on its Local Planning Scheme to identify (rather than regulate) non-compliant or unauthorised land-uses within specific zones. The Town's Local Planning Scheme No. 3 provides for 'Bed and Breakfast', 'Residential Building', 'Serviced Apartment' and 'Short-stay accommodation' uses as defined therein, with the permissibility set out within an extract of the Zoning Table as follows:

Use Class	Residential R20 - R30 Zone	Residential R35-R100 Zone	Foreshore Centre Zone	Restricted Foreshore Centre Zone	Hotel Zone	Town Centre Zone	Local Centre Zone	Residential Office Zone	Place of Public Assembly Zone	Development Zone
Bed and Breakfast	A	A	P	A	X	D	D	D	X	-
Residential Building	X	A	D	X	D	D	X	A	X	-
Serviced Apartment	X	A	D	D	D	D	X	D	X	D
Short-stay Accommodation	X	X	D	D	D	D	X	A	X	

Bed and Breakfast is considered to be home-based and private (and treated similarly to Home Based Business). Also, where activity is conducted on a personal basis and is occasional it tends to occur unnoticed and is of little concern.

The rest of the above, however, are of a commercial nature – where residential properties are used frequently or continually for short-stay accommodation, often without a resident owner or managing agent, it can cause conflict with either neighbours or residents within a neighbourhood or strata complex. In such instances, the Town has historically viewed the activity as equivalent to commercial accommodation and intervened to address the situation.

In addition, The Town currently does not rely on specific guidelines in the way of local planning policies or local laws to regulate short stay accommodation generally and Airbnb-type arrangements in particular. Short-stay residential accommodation in the form of a partial/whole house rental or house-swapping falls outside of a bed and breakfast operation as per the Scheme definition, is not expressly provided for under the current definition for Short-stay Accommodation within the Scheme and is therefore essentially unregulated.



Town of Cottesloe

2. Short-stay accommodation is ingrained in Cottesloe, although the spread of Airbnb letting has drawn more attention to the matter in recent years. As mentioned above, recent research indicates an increase in private residential short stay accommodation types via the online marketplace including Airbnb, Stayz, Villas, Homeaway, Flipkey, etc. These include apartment blocks/multiple dwellings, houses, villas/townhouses, granny flats or bedrooms. They are widely distributed, predominantly on or near the coastal strip and prevalent in South Cottesloe, while several are further afield, clustered around Stirling Highway. Many are within 100m of the beach; however, could be located up to 750m away. Quite a few of these are aimed at the luxury end of the market.
3. With regard to short stay accommodation operations within strata complexes, concerns of neighbours mostly centre around noise management, neighbour awareness, privacy complaints, security (safety gates, lifts and other aspects of access), and car parking access and availability. In addition to these, The Town has concerns around fire safety, emergency response procedures and the control of occupancy numbers. Complaints received from neighbours of single residences who operate unauthorised short stay accommodation activities mostly include noise and behavioural complaints.

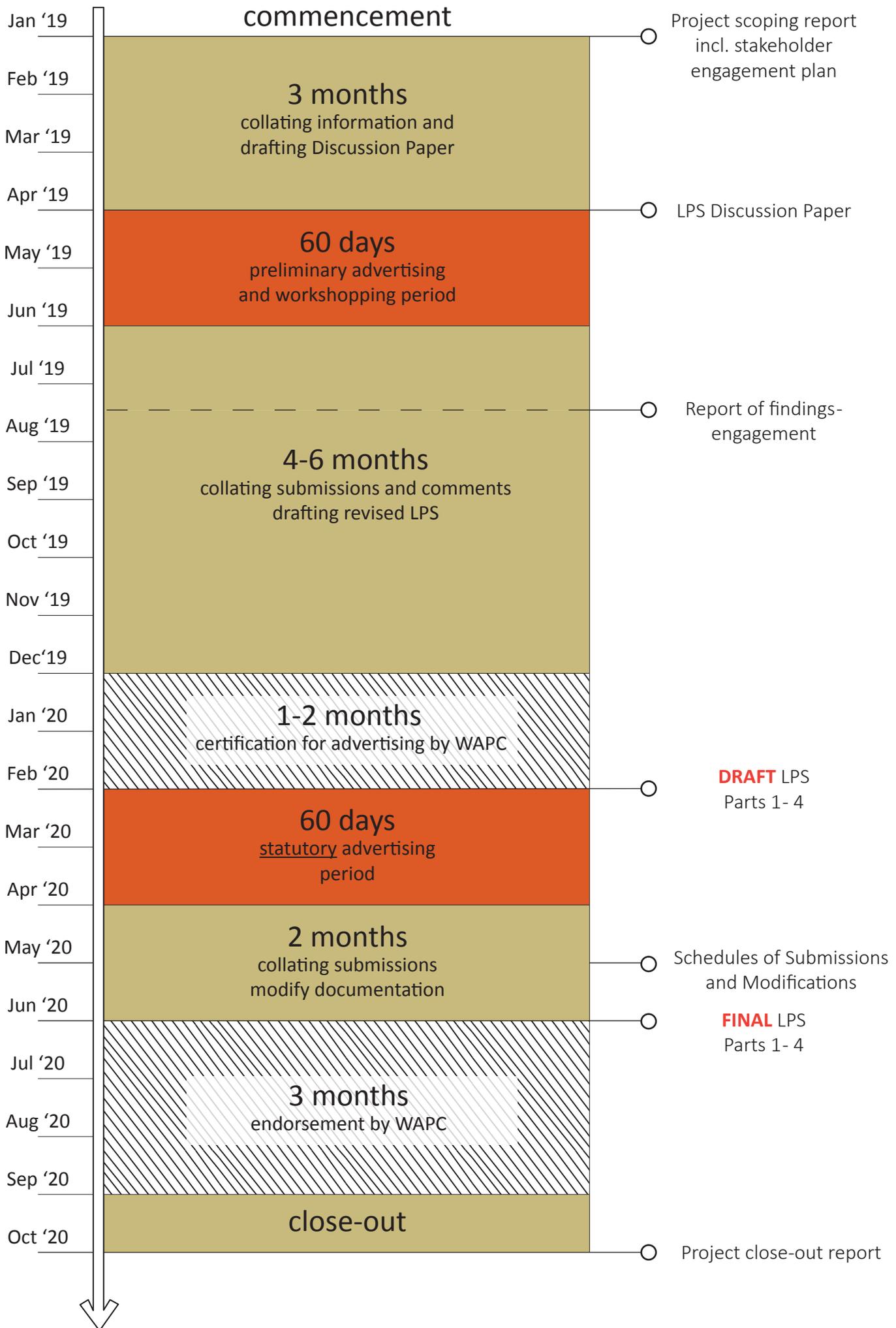
From a planning/building approval perspective, the design and standards of residential buildings such as single, grouped and multiple dwellings also do not always necessarily satisfy the Building Code of Australia for short stay accommodation.

4. In seeking legal advice in relation to short term accommodation generally and Airbnb type operations specifically; the Town was advised that the regulation of short stay accommodation could occur either through a local law or local planning policy, although either of these would involve a scheme amendment if the Town was to expand or alter the Scheme to enable more scope for short stay permissibility.

Please phone the Town on (08) 9285 5000 with any questions or should you require additional information.

Yours faithfully

Garry Bird
Acting Chief Executive Officer



CASE STUDIES AND BEST PRACTICE RESEARCH

The following report provides a succinct summary of research undertaken on short term rental accommodation in New South Wales, as well as Nedlands, Fremantle and Margaret River.

New South Wales Short Term Rental Accommodation (STRA)

- **2018** - Whole-of-government framework for STRA in New South Wales
 - **State wide planning framework**
 - **Mandatory Code of Conduct**

Mandatory Code of Conduct for online accommodation platforms, letting agents, hosts and guests would address impacts like noise levels, disruptive guests and effects on shared neighbourhood amenities.

The Code also includes a new dispute resolution process to resolve complaints, and NSW Fair Trading has the powers to police online platforms and letting agents.
 - **Changes to strata legislation**

Changes to the *Strata Schemes Management Act* allows owners corporations to adopt a by-law, with a 75 per cent majority, preventing short-term letting in their block if the host does not live in the unit they are letting out.
- Following a ministerial direction in February 2019, additional amendments were introduced which are currently out for advertising:
 - Introduction of a single definition
 - Introduction of exempt and complying development pathways eg.
 - Exempt development¹ for up to 365 days/year if hosted
 - Exempt development for up to 180* days/year (when not on bushfire prone land) if unhosted
 - Complying development²(when on bushfire prone land) if unhosted for up to 180 days/year
 - Introduction of minimum fire safety and evacuation requirements.

* *180 days a year limit approximately equates to weekends, school holidays and public holidays (a fair and balanced approach).*

(NOTE Two years from inquiry referred to government response)

¹ Exempt development does not require planning approval subject to the development satisfying exemption criteria

² Complying development requires planning approval under the Scheme.

City of Nedlands

The following information was gleaned from the City's Strategic Planning Department from a telephone discussion on Monday 18 February 2019.

- Currently considers short term accommodation applications under the classification of Use Classes Not Listed.
- Strategic Planning Department had put together a local planning policy (LPP) however Council refused to initiate the policy even before it was advertised for public comment.
- Nedlands Council is generally supportive of short stay accommodation in circumstances where the host is live-in/present (hosted accommodation).
- The City is in the process of drafting a new LPP based on the new land use terms of their revised Scheme, which is due to Council for initiation in the near future.

City of Fremantle

- The City currently has no LPP in place.
- Short term accommodation is regulated through a Local Law gazetted in 2008-
 - which requires registering a dwelling under the local law;
 - which provides certain conditions such as parking requirements (at least 1 on-site parking bay if up to 6 occupants) and minimum duration of stay (2 consecutive nights);
 - under which infringement notices may be issued if in breach.
- Registration does not affect the rights and obligations of an owner or occupier under the by-laws of a strata company, including any requirement to obtain approval, or to comply with any restrictions, in connection with the use of premises as a short stay dwelling.

Shire of Augusta-Margaret River

The following information was gleaned from the Shire's Strategic Planning Department from a telephone discussion on Thursday 21 February 2019.

- Has a LPP in place which guides the appropriate location, scale, use and management of short stay accommodation in the Shire.
 - Provides for the uses of Holiday Homes (Holiday House and Holiday House (Large)) to be rented out for short term accommodation where the property is located in whole or in part within the permitted area (as indicated on a map which forms part of the LPP).
 - Prohibits the uses of Single Bedroom Dwellings and Ancillary Dwellings to be used for the purposes of short stay accommodation.
- Initial development approvals are in place for a 1 year period. Renewal applications will be considered together with any comments or complaints made in that year relating to the property in question and other relevant information.

- Renewals of planning approvals will only be granted by the LG once it is satisfied that the property had been appropriately managed.
- If granted, the renewal may then be put in place for a further 3 years, and any subsequent renewals, for a 5 year period.
- Last reviewed in September 2018. Consultation measures included:
 - A total of 4 workshops prior to Council initiation, aimed at 3 different target groups, including accommodation providers, residents with existing approvals in place, residents running short stay activities without approvals in place (independent facilitator), and a general workshop.
 - Comments were analysed and considered prior to Council initiating the LPP for review and formal community comment.

Additional local governments to follow up on in the near future:

1. City of Busselton
2. City of Albany
3. City of Broome

Short Stay Use Action List

Meeting Date	Item Number	Responsible Officer	Action item	Complete (Y/N)	Comments
5 June 2018	1	CEO	The development of a brief for legal advice.	Y	Brief circulated with agenda document at committee meeting held 18 July 2018
5 June 2018	2	CEO	Advice on two failed prosecutions.	Y	Motion lost at committee meeting held 18 July 2018
18 July 2018		CEO	To obtain a quotation from solicitors to prepare a response to the 'Points for Consideration'	Y	Endorsed at committee meeting 18 July 2018
16 October 2018		CEO	Source NSW and other councils' policies on Short Stay Use	Y	Endorsed at committee meeting 10 October 2018 - will be actioned ASAP and findings presented at next Committee meeting.
27 February 2019	5.3	CEO	Administration to keep the Committee informed of developments further to the findings and recommendations of the Parliamentary Inquiry Report in to Short Stay Accommodation		