



Shire of Wyndham East Kimberley

**Amendment No. 2 to Local Planning Scheme No. 9 - STRA
Amendment**

**Planning and Development Act 2005
RESOLUTION TO PREPARE AMENDMENT
TO LOCAL PLANNING SCHEME**

**Shire of Wyndham-East Kimberley
Local Planning Scheme No. 9**

Amendment Number 2

Resolved that the Local Government pursuant to section 75 of the *Planning and Development Act 2005*, amend the above Local Planning Scheme by:

1. In Part 6 Division 1 Clause 37, 'Terms Used':

A. Amend the general definition for *cabin* to:

means a building that -

(a) *is an individual unit other than a chalet; and*

(b) *forms part of -*

(i) *tourist and visitor accommodation; or*

(ii) *a caravan park;*

and

(c) *if the unit forms part of a caravan park - is used to provide accommodation for persons, on a commercial basis, with no individual person accommodated for a period or periods exceeding a total of 3 months in any 12-month period*

B. Amend the general definition for *chalet* to:

means a building that —

(a) *is a self-contained unit that includes cooking facilities, bathroom facilities and separate living and sleeping areas; and*

(b) *forms part of —*

(i) *tourist and visitor accommodation; or*

(ii) *a caravan park;*

(c) *and if the unit forms part of a caravan park - is used to provide accommodation for persons, on a commercial basis, with no individual person accommodated for a period or periods exceeding a total of 3 months in any 12-month period*

2. In Part 6 Division 2 Clause 38, 'Land Use Terms Used':

A. Delete the definitions for:

- *bed and breakfast;*
- *holiday accommodation;*
- *holiday house;*
- *motel;*
- *serviced apartment; and*
- *tourist development*

B. Amend the existing land use term for *road house* by deleting paragraph (d) and inserting:

(d) accommodation for guests, on a commercial basis, with no individual guest accommodated for a period or periods exceeding a total of 3 months in any 12-month period.

C.

Insert the following in alphabetical order:

“tourist and visitor accommodation —

(a) means a building, or a group of buildings forming a complex, that —

- (i) is wholly managed by a single person or body; and
- (ii) is used to provide accommodation for guests, on a commercial basis, with no individual guest accommodated for a period or periods exceeding a total of 3 months in any 12-month period; and
- (iii) may include on-site services and facilities for use by guests; and (iv) in the case of a single building — contains more than 1 separate accommodation unit or is capable of accommodating more than 12 people per night;

and

(b) includes a building, or complex of buildings, meeting the criteria in paragraph (a) that is used for self-contained serviced apartments that are regularly serviced or cleaned during the period of a guest’s stay by the owner or manager of the apartment or an agent of the owner or manager; but

(c) does not include any of the following —

- (i) an aged care facility as defined in the Land Tax Assessment Act 2002 section 38A(1);
- (ii) a caravan park;
- (iii) hosted short-term rental accommodation;
- (iv) a lodging-house as defined in the Health (Miscellaneous Provisions) Act 1911 section 3(1);
- (v) a park home park;
- (vi) a retirement village as defined in the Retirement Villages Act 1992 section 3(1);
- (vii) a road house;
- (viii) workforce accommodation;

hosted short-term rental accommodation means any of the following —

- (a) short-term rental accommodation where the owner or occupier, or an agent of the owner or occupier who ordinarily resides at the dwelling, resides at the same dwelling during the short-term rental arrangement; (b) short-term rental accommodation that is an ancillary dwelling where the owner or occupier, or an agent of the owner or occupier who

ordinarily resides at the other dwelling on the same lot, resides at that other dwelling during the short-term rental arrangement;

(c) short-term rental accommodation that is a dwelling on the same lot as an ancillary dwelling where the owner or occupier, or an agent of the owner or occupier who ordinarily resides at the dwelling, resides at the ancillary dwelling during the short-term rental arrangement;

short-term rental accommodation —

(a) means a dwelling provided, on a commercial basis, for occupation under a short-term rental arrangement; but

(b) does not include a dwelling that is, or is part of, any of the following —

(i) an aged care facility as defined in the Land Tax Assessment Act 2002 section 38A(1);

(ii) a caravan park;

(iii) a lodging-house as defined in the Health (Miscellaneous Provisions) Act 1911 section 3(1);

(iv) a park home park;

(v) a retirement village as defined in the Retirement Villages Act 1992 section 3(1);

(vi) workforce accommodation;

short-term rental arrangement means an arrangement under which — (a) a dwelling, or part of a dwelling, is provided for occupation by a person; and

(b) the person occupies the dwelling, or part of the dwelling, for a period or periods not exceeding a total of 3 months in any 12-month period;

unhosted short-term rental accommodation means short-term rental accommodation that —

(a) is not hosted short-term rental accommodation; and

(b) accommodates a maximum of 12 people per night;”

3. In Part 3 Table 4 ‘Zoning Table’ insert in alphabetical order the following land uses and permissibility:

A. *hosted-short term rental accommodation*; designate as ‘P’ uses in Residential, Rural Townsite, Mixed Use, Tourism, Agriculture-State of Regional Significance, Local Horticulture, Rural, Rural Residential, and Rural Smallholdings zones; and ‘X’ uses in all other zones.

B. *un-hosted short term rental accommodation*; designate as ‘P’ use in Tourism, designate as ‘A’ use in Residential, Rural Townsite, Mixed Use, Rural, Rural Residential and Rural Smallholdings, designate as ‘X’ use in all other zones.

C. *tourist and visitor accommodation* and designate as ‘P’ in Tourism, designate as ‘A’ use in Residential, Rural Townsite, Mixed Use, Rural, Rural Residential, Rural Smallholdings, , Designate as ‘X’ use in all other zones.

4. In table 4 ‘Zoning Table’, delete all references to:

A. *bed and breakfast*;

B. *holiday accommodation*;

C. *holiday house*;

- D. *motel*;
 - E. *serviced apartment*; and
 - F. *tourist development*
5. In Schedule 1 "Additional Uses" No A1 - Lot 2 Old Darwin Road, Kununurra, Delete reference to 'holiday accommodation' in additional use section and replace with 'tourist and visitor accommodation (Chalet)'.
 6. In Schedule 1 "Additional Uses" No A6 - Lot 649 Research Station Road, Kununurra, Delete reference to 'holiday accommodation' in additional use section and replace with 'tourist and visitor accommodation (Chalet)'.
 7. In Schedule 1 "Additional Uses" No A8 - Lot 530 River Farm Road Kununurra, Delete reference to 'holiday accommodation' in additional use section and replace with 'tourist and visitor accommodation (Chalet)'.
 8. In Schedule 1 "Additional Uses" No A10 - Lot 207 River Farm Road Kununurra, Delete reference to 'Bed and Breakfast' in additional use section and replace with 'Hosted-Short Term Rental Accommodation'.
 9. In Schedule 1 "Additional Uses" No A11 - Lot 511 River Farm Road Kununurra, Delete reference to 'Bed and Breakfast' in additional use section and replace with 'Hosted-Short Term Rental Accommodation'.
 10. In Schedule 1 "Additional Uses" No A13 - Lot 266 Packsaddle Road Kununurra, Delete reference to 'holiday accommodation' in additional use section and replace with 'tourist and visitor accommodation (Chalet)'.
 11. In Table 9 'Development Standards Table' replace:
 - A. 'Bed and Breakfast' under Land Use/Development with 'Hosted Short-Term Accommodation'.
 - B. "Tourist Accommodation" under Land Use/Development with Tourist and Visitor Accommodation"
 12. In Table 9 'Development Standards Table' delete reference to:
 - A. 'Motel'.

The amendment is **standard** under the provisions of Regulation 35(2) of the *Planning and Development (Local Planning Schemes) Regulations 2015* for the following reasons:

1. the amendment would have minimal impact on land in the scheme area that is not the subject of the amendment;
2. the amendment does not result in any significant environmental, social, economic or governance impacts on land in the scheme area;
3. the amendment is not considered a complex or basic amendment.

4. an amendment relating to a zone or reserve that is consistent with the objectives identified in the scheme for that zone or reserve.

Dated this _____ day of _____ 20__

(Chief Executive Officer)

AMENDMENT REPORT

1.0 INTRODUCTION

The purpose of this amendment is to amend the Shire local planning scheme to implement the State Government's planning reforms for short-term rental accommodation.

This amendment is required to ensure alignment with new 'deemed' and 'model' land use classes and general definitions introduced into the state planning framework. Most significantly, it includes amendments to reflect the 'deemed' land use classes for 'hosted short-term rental accommodation' and 'unhosted short-term rental accommodation', along with removal of superseded land uses. The following report provides further detail and background information on these changes, including specific implications for the City/Town/Shire.

2.0 BACKGROUND

Short-Term Rental Accommodation (STRA) refers to the practice of renting out a property (or part of a property) for a relatively short period of time, usually on a nightly or weekly basis. This type of accommodation is usually booked through online platforms and is popular among travellers and visitors seeking temporary lodging for holidays, business trips or other short stays. The State Government has committed to various initiatives to deliver better regulation of the short-term rental accommodation sector.

In November 2023, the Western Australian Planning Commission released its *Position Statement: Planning for Tourism and Short-Term Rental Accommodation* (Position Statement) and associated Guidelines. The release of the Position Statement complemented other whole-of-government reforms relating to STRA, responding to recommendations made in the 2019 parliamentary enquiry *Levelling the Playing Field: Managing the impact of the rapid increase of short-term rentals in Western Australia*. This included development of a state-wide registration scheme for STRA, as well as an incentive scheme to encourage transition of properties from the short to long term rental market.

Alongside the registration scheme, which sits separately to the planning system and is mandatory for all STRA, amendments to planning regulations were flagged as a key part of the State Government's goal to ensure a fairer and more consistent treatment of STRA from both a legal and practical standpoint. The planning changes, which have triggered the need for the City/Town/Shire to amend its scheme, aim to provide greater consistency across the state in relation to what approvals are needed for STRA proposals as well as how these uses are defined in local planning schemes.

3.0 State Planning Framework

The State Government's planning reforms for short-term rental accommodation are being implemented predominantly through the *Planning & Development (Local Planning Schemes) Regulations 2015* (LPS Regulations), which in turn have been informed by policy direction provided through the Position Statement.

Position Statement

The Position Statement foreshadowed a series of amendments to the LPS Regulations with the overall aim of providing more certainty and consistency across jurisdictions in respect to the treatment of STRA. Key changes flagged in this document included dedicated land use classes for STRA to ensure a clear delineation between this use and traditional accommodation types, as well as a state-wide exemption for hosted STRA and a 90-night exemption for unhosted STRA within the Perth Metropolitan Area. The Position Statement also includes guidance on strategic and statutory planning matters for both tourism and STRA, as well as local planning policy development.

LPS Regulations

The LPS Regulations are a key component of Western Australia's planning system comprising of three major parts:

- Regulations proper, which set out the process for preparing or amending a local planning scheme;
- 'Model' provisions, set out in Schedule 1, which are to be used by local governments in preparing or amending a local planning scheme; and
- 'Deemed' provisions, set out in Schedule 2, read automatically into all local planning schemes, and override any existing scheme provision to the extent of any inconsistencies. Where there is a conflict between these provisions and the scheme, the deemed provisions prevail.

Amendments to both Schedules 1 and 2 of these regulations have been made to facilitate the necessary planning changes of the State Government's short-term rental accommodation (STRA) reform initiatives, as envisaged by the Position Statement. These changes, most notably, include:

- i. new 'deemed' land use classes of 'hosted short-term rental accommodation' and 'unhosted short-term rental accommodation' to ensure these accommodation types are classified as dedicated land use classes in planning schemes;
- ii. new 'deemed' general terms to define 'short-term rental accommodation' and link to the overarching *Short-Term Rental Accommodation Act 2024*, which provides the legal framework for the STRA Register;
- iii. a new 'model' land use class of 'tourist and visitor accommodation' to differentiate these use types from STRA, and consolidate a number of existing land use terms for tourist and visitor accommodation (aside from 'hotel'), as well as other changes to general definitions;
- iv. a state-wide development approval exemption for 'hosted short-term rental accommodation' (this includes ancillary dwellings); and

- v. a 90-night (cumulative) exemption within a 12-month period for 'unhosted' short-term rental accommodation in the Perth metropolitan area.

The implications for these changes to the Shire are detailed further in the following sections of this report.

4.0 Local Planning Context

The Shire of Wyndham East Kimberley (SWEK) has seen a gradual evolution in its approach to Short-Term Rental Accommodation (STRA), particularly in response to growing tourism in the region and increasing demand for flexible housing options.

Local Planning Strategy and Tourism Considerations:

The Shire's *Local Planning Strategy* acknowledges the significant role of tourism in the local economy, particularly in areas like Kununurra and Wyndham, which attract visitors for natural attractions such as Lake Argyle, the Ord River, and the Bungle Bungle Range. The strategy promotes the diversification of tourism accommodation options, including STRA, to meet seasonal demand and support local businesses. However, it also emphasises the importance of managing these uses to minimise impacts on residential amenity and housing affordability.

Occurrence of STRA and Compliance History:

The occurrence of STRA within the municipality has increased over recent years, particularly in Kununurra and surrounding areas where demand peaks during the dry season. While formal development approvals for STRA have historically been limited, many properties have operated informally, leading to occasional compliance issues. These have typically involved noise complaints, parking congestion, and unauthorised land use. Compliance actions have been necessary in instances where STRA operations have conflicted with zoning provisions or where significant amenity impacts were reported by neighbouring residents.

Historical Treatment Under Planning Scheme and Policies:

Historically, STRA has been managed under the previous uses defined as *holiday accommodation or bed and breakfast* in the Shire's *Local Planning Scheme No. 9*. In areas zoned tourism and rural STRA has generally been supported, provided developments align with design and amenity standards. In residential zones, commercial, rural smallholdings and mixed use zones the treatment has been more restrictive, often requiring discretionary approval and advertising in accordance with clause 64 of the deemed provisions.

Additional use provisions for bed and breakfast and holiday accommodation have been applied in zones where the use is not permitted. Leading to inconsistencies in application of the Local Planning Scheme No.9.

The Shire is now considering more formalised controls and guidelines for STRA to balance the economic benefits with the need to protect residential amenity and maintain housing availability for long-term residents.

5.0 Proposed Amendment

With the introduction of the new deemed land use classes into planning schemes associated with short-term rental accommodation, this scheme amendment relates to the introduction, modification and deletion of various land use and general definitions to the Shire's planning scheme. The new exemptions are also 'deemed' and as such are already operative, however this amendment does include changes to the zoning table to reflect the hosted STRA exemption as a permitted use.

Deemed Short-Term Rental Accommodation Land Use Classes

Whilst the new 'deemed' land use classes are automatically read into the Shire's scheme through the LPS Regulations, along with the previously mentioned exemptions, these uses are being incorporated into scheme zoning tables to ensure absolute clarity from an interpretation perspective, particularly given these uses replace long-standing 'model' land use classes within the Shire's planning framework.

To implement the required changes, this amendment requires deletion of all references to the land use classes of *bed and breakfast* and *holiday house*, replaced with the new 'deemed' definitions of *hosted short-term rental accommodation* and *unhosted short-term rental accommodation*. This includes amending the Zoning Table and Definitions schedules of the scheme text accordingly.

In addition to the LPS Regulations, the Position Statement and Planning Bulletin 115 provide further direction for how STRA should be dealt with in local planning schemes from a permissibility standpoint. To reflect these requirements, this amendment proposes the following designations for these new land use classes:

- **'Hosted Short-term rental accommodation'** is proposed as a 'P' use in Residential, Rural Townsite, Mixed Use, Tourism, Agriculture-State of Regional Significance, Local Horticulture, Rural, Rural Residential, and Rural Smallholdings zones; and 'X' uses in all other zones.
- **'Unhosted short-term rental accommodation'** is proposed to be listed as a 'P' use in *Tourism*, designate as 'A' use in *Residential, Rural Townsite, Mixed Use, Rural, Rural Residential and Rural Smallholdings*, designate as 'X' use in all other zones.

Model 'Tourist and Visitor Accommodation' Land Use

A new model land use class of 'Tourist and Visitor Accommodation' has been introduced to supersede various traditional accommodation land use types (excluding 'hotel') and provide a clearer delineation between these uses and 'short-term rental accommodation'. In the context of the Shire's scheme, uses to be deleted through this change include:

- *Motel – specifically referenced in the new land use class definition;*
- *Serviced apartment – specifically referenced in the new land use class definition;*
- *Tourist development – directly replaced by the new use class;*
- *holiday accommodation - directly replaced by the new use class; and*
- *holiday house - directly replaced by the new use class.*

New and Revised Land Use & General Definitions

As part of the LPS Regulations changes, amendments to some other model definitions were also introduced so as to not cause confusion or conflict with the new short-term rental accommodation land use terms. These include deletion of the definition for 'short-term accommodation', which has been removed to avoid confusion with new terms relating to 'short-term rental accommodation'. This has consequentially resulted in modifications to the general model terms of 'cabin' and 'chalet', as well as the land use term for 'road house'. The new model terms are proposed to be introduced into the scheme text through this amendment.

Through deletion of the general term 'short term accommodation' it is proposed to insert into the scheme text the deleted model definition in-full wherever referenced, to replicate the changes made in the model provisions; this being:

accommodation for guests, on a commercial basis, either continuously or from time to time, with no guest accommodated for periods totalling more than 3 months in any 12-month period.

COUNCIL ADOPTION

This Standard Amendment was adopted by resolution of the Council of the **Shire of Wyndham East Kimberley** at the **[NAME]** Meeting of the Council held on the **[day]** day of **[month]**, 20**[year]**.

.....
MAYOR/SHIRE PRESIDENT

.....
CHIEF EXECUTIVE OFFICER

COUNCIL RESOLUTION TO ADVERTISE

by resolution of the Council of the **Shire of Wyndham East Kimberley** at the **Ordinary** Meeting of the Council held on the **[day]** day of **[month]**, 20**[year]**, proceed to advertise this Amendment.

.....
MAYOR/SHIRE PRESIDENT

.....
CHIEF EXECUTIVE OFFICER

COUNCIL RECOMMENDATION

This Amendment is recommended [for support/ not to be supported] by resolution of the **[LOCAL GOVERNMENT]** at the **[NAME]** Meeting of the Council held on the **[number]** day of **[month]**, 20**[year]** and the Common Seal of the **[LOCAL GOVERNMENT]** was hereunto affixed by the authority of a resolution of the Council in the presence of:

.....
MAYOR/SHIRE PRESIDENT

.....
CHIEF EXECUTIVE OFFICER

WAPC ENDORSEMENT (r.63)

.....
**DELEGATED UNDER S.16 OF
THE P&D ACT 2005**

DATE.....

APPROVAL GRANTED

.....

MINISTER FOR PLANNING

DATE.....