

EXECUTIVE SUMMARY

Honourable Karen Andrews MP (Chair - Building Ministers' Forum)

Unit Owners Association Queensland Inc. (UOAQ)

Date/Time: 09:00 am 08 April 2016

Attendees: Mr Wayne Stevens. President UOAQ, Mr Gregory Carroll Executive Member

SUBJECT

PARAGRAPH REFERENCE

Introduction

1

Failure of the ABCB jeopardises the financial security, living amenity, health and safety of our members. The outcome sought is a clear definition of Class 2 buildings as places of long term or permanent residence.

Unit Owners Association of Queensland Inc.

2

The UOAQ is the single largest organisation in Queensland representing both investment unit owners and residential unit owners. The UOAQ also recognises the importance of our members to the Queensland tourism industry.

Tourism Implications

3

The standard of visitor accommodation constitutes a major part of the longer term memory of the visitor/tourist experience, and certainly is one of the major subjects of recommendation to friends and associates.

Misuse of Class 2 buildings

9

The misuse of Class 2 buildings for holiday letting has considerable implication for the tourist industry. The two types of residents are in conflict and tourists often become involved in heated arguments about noise, use of facilities and care for the complex.

Sydney City Council elucidated

14

There are clear reasons to define the distinction between the use of Class 2 buildings as residential and Class 3 buildings as transient accommodation.

Australian Building Codes Board (ABCB)

15

The Australian Building Codes Board (ABCB) is a Council of Australian Government (COAG) standards writing body that is responsible for the National Construction Code (NCC).

Background

16

“The goals of the NCC are to enable the achievement and maintenance of acceptable standards of structural sufficiency, safety (including safety from fire), health and amenity for the benefit of the community now and in the future.”

Definition of Class 2 and Class 3 buildings

18

Class 1 buildings were, and are, clearly understood as private residential dwellings.

Class 2 buildings were considered to be private residential dwellings (Class 1) built above, beside or below each other.

Class 3 buildings were considered to be commercial buildings providing accommodation for a variety of applications and a variety of persons.

Confusion as to the intent of Class 2 definition

47

The confusion was created by casting doubt on the definition and use of the word 'dwelling'.

NSW -HOME BUILDING REGULATION 2004 – REG 6

51

“dwelling”- certain residential buildings and other structures excluded. (f) a house or unit designed, constructed or adapted for commercial use as tourist, holiday or overnight accommodation,

ABCB Definition Review

53

In total this task has now been on the ABCB agenda for six years plus another two years in abeyance.

NCC 2016 aborted proposal

74

On 15 January 2016 the ABCB advised (by telephone) that the recommended changes would not be included in the 2016 NCC or Explanatory Notes thereto.

“Pop-up brothels” and “all night parties”

81

In addition to brothels and all night parties, there are repeated reports of drug labs being found in unit blocks. These drug manufacturing facilities have potential for explosion and fire.”

Drug Labs – Clandestine Drug Laboratories (Clan labs)

84

The ingredients used in drug labs to produce illicit drugs are highly toxic, flammable, and incredibly dangerous. Drug labs explode, ignite and emit harmful gases that can cause serious health problems and can be life-threatening.

Fire in hi-rise

91

Shooters night club and Top of the Mark (Class 2 unit building) experienced a major fire. Residents reported: “The smoke was so thick you could hardly see a meter in front of you.” Gold Coast police chief Paul Ziebarth said the fire could have been disastrous. “We dodged a bullet on this” he said.

Conclusion

94

The ABCB, BCQ and local councils will need to recognise the correct use of Class 2 and Class 3 buildings if Airbnb and Stayz are to operate in an orderly manner in the best interests of unit owners.

Recommendations

96

The UOAQ recommends in the strongest possible terms that the dictionary to the BCA be amended to include a definition of ‘Dwelling’ as a place of permanent or long term residence.

Introduction

1. The Unit Owners Association Queensland (UOAQ) on behalf of our membership of 4000 unit owners present this briefing paper to the Honourable Karen Andrews MP as Chair – “Building Ministers’ Forum”. We respectfully direct the Chair to the failure of the Australian Building Codes Board (ABCB) and its advisory committee the Building Codes Committee (BCC) to achieve their primary responsibility of providing clear definitions of the classification and use of Class 2 and Class 3 buildings. Resulting in residential units being used as drug laboratories and for drug distribution, as brothels and for uncontrolled parties. This failure by the ABCB jeopardises the financial security, living amenity, health and safety of our members as discussed in this document. The outcome sought is a clear definition of Class 2 buildings as places of long term or permanent residence.

Unit Owners Association Queensland Inc.

2. The UOAQ is the single largest organisation in Queensland representing both investment unit owners and residential unit owners. The UOAQ also recognises the importance of our members to the Queensland tourism industry. There are two distinct groups involved in unit ownership; the investment owners who provide the tourist accommodation, and the long term residential owners seeking an apartment complex that provides the amenity, level of health and safety commensurate with community expectations for places of permanent residence. Unfortunately, these two groups of occupiers, in most circumstances, are incompatible. In Queensland (because of the failure of the ABCB and BCC) there are no buildings providing the required standard of residential accommodation.

Tourism Implications

3. The Western Australian Government report titled “Investigation of the Impact of Combining Tourist and Permanent Residential Accommodation on Tourist Zoned Land and the Impact of Strata Titling of Tourist Accommodation” found:

“There is potential for conflict between short stay tourists and residents in a tourist facility due to the different objectives of the two groups in being at the premises. This conflict can manifest itself in many ways but has two primary outcomes:

A de-valuation of the “tourist” experience available at the development through there being a non-tourist character or ambience to the facility.

An impact on the amenity of the resident due to different lifestyle priorities to short stay tourists, who in many cases have a higher “recreation priority”.

4. A 2013 study: ‘Residents’ Experiences in Condominiums’: A Case Study of Australian Apartment Living, Ron Fisher & Ruth Mcphail. Griffith Business School, Gold Coast Campus, Griffith University, QLD, Australia -supported these findings:

“.....the tendency to focus on sales based on mixed usage militates against the interests of tourists, live-in owners, long-term renters and local authorities, all of whom recognise the

benefits of segregating tourists from resident owners and long-term renters. The potential for conflict between tourists and resident owners in multi-use complexes is high."

5. The Hotel Motel Accommodation Association (HMAA) also argue:

"Long-term residents in buildings used as 'de facto hotels and motels' suffer a considerable loss in amenity, due to increased noise and activity from transient tourists, as well as diminished security."

"Apartment residents should not have to share their amenities, such as gardens, pools and gyms with 'guests' (in effect, strangers)"

"..... increased visitor thoroughfare, including the movement of luggage, increases maintenance costs of corridors, lobbies, lifts and car parks.... a cost borne ultimately by permanent residents who do not enjoy any of the monetary benefit of the rental apartments and are unfairly cross-subsidising these owners (in addition to incurring the losses in amenity referred to above)."

6. The HMAA also stated:

"All providers of similar accommodation types should be required to comply with the same regulations, legislation and standards." That is, the HMAA members who must comply with Class 3 building standards and costs are being disadvantaged by tourism operators using Class 2 buildings as transient holiday accommodation."

7. The Tourism and Transport Forum Australia has expressed similar concerns to those stated by the HMAA.

"Legitimate operators face higher operating and compliance costs by providing properly trained staff, responsible management, compliance with building standards, disability access, insurance levies and payment of commercial council rates."

8. The standard of visitor accommodation constitutes a major part of the longer term memory of the visitor/tourist experience, and certainly is one of the major subjects of recommendation to friends and associates. Thus the standard of accommodation has considerable impact on new and repeat tourism business experienced by UOAQ accommodation providers.

Misuse of Class 2 Buildings

9. The aim of the Building Code Australia (BCA) and supporting State legislation should be to ensure that buildings are constructed to a standard for a specified end use, and that they are in fact used for that constructed and intended use. In some situations, the higher standard Class 3 building may be used for Class 2 long-term occupation; however, the use of Class 2 buildings for Class 3 transient accommodation defeats the objective of the BCA and Disability Discrimination ACT (DDA).
10. The use of Class 2 buildings for holiday letting has considerable implication for the tourist industry. The two types of residents are in conflict and tourists often become involved in heated arguments about noise, use of facilities and care for the complex. The resident caretaker has a

conflict of interests between his caretaking duties and running his letting business. Persons with a disability, using Class 2 buildings built before 2010, cannot be legally accommodated because the building has not been constructed to provide facilities required by the DDA, nor the BCA fire standards, to facilitate egress by persons with a disability. The deficient fire standards apply to all Class 2 buildings. Built either before or after 2010.

11. In 2001 the ABCB considered the problem of access by persons with a disability and determined a clear division of building use in an ABCB paper RD97/01 - Provisions for People with Disabilities - exempting Class 2 buildings from the DDA requirements with the following statement: “to exclude application of the provisions for people with disabilities to Class 2 buildings or Class 4 part because they are private residential in nature and not considered employment or general public applications.”
12. Class 3 buildings have always been required to comply with the requirements of the DDA and provide tourist accommodation for persons with a disability. However, Class 2 buildings have only been required to meet the DDA access requirements since 2010. Notwithstanding access requirements, Class 2 fire alarm standards remain as BCA Fire Specification E2.2a para. 3. (AS 3786).
13. The UOAQ has serious concerns for the insurance liability for Class 2 buildings being used as transient accommodation, but not meeting Class 3 construction and fire standards. The Queensland Body Corporate and Community Management Regulation 2008 (AM) s. 176 requires the body corporate to insure the common property and body corporate assets. However, the Body Corporate and Community Act 1997 s.180 (3) makes it unlawful for a body corporate to refuse to use a Class 2 building for accommodation of persons with a disability or for transient accommodation. In the event of death by fire in these circumstances the insurance company may refuse to pay compensation, thus making the body corporate liable.

Sydney City Council elucidated:

“The Building Code of Australia (BCA) classifies buildings according to the purpose for which they are designed and constructed or adapted. Premises providing tourist and visitor accommodation are classified under the BCA as either Class 1b or Class 3 buildings.”

“There are clear reasons to define the distinction between the use of Class 2 buildings as residential and Class 3 buildings as transient accommodation. Compliance with the DDA, the tourist industry accommodation standards and the tourism experience are all considerably enhanced by having dedicated buildings for transient tourist accommodation, and separate buildings for residential use.”

14. The UOAQ strongly supports the clear definition of the end use of all building classifications, but particularly Class 2 and Class 3 buildings that must clearly define the building end use to protect the living standards and financial investments of all members of our organisation.

Australian Building Codes Board

15. The Australian Building Codes Board web site provides an introduction to the ABCB:

"The Australian Building Codes Board (ABCB) is a Council of Australian Government (COAG) standards writing body that is responsible for the National Construction Code (NCC) which comprises the Building Code of Australia (BCA) and the Plumbing Code of Australia (PCA). It is a joint initiative of all three levels of government in Australia and was established by an inter-government agreement (IGA) signed by the Commonwealth, States and Territories on 1 March 1994. A new IGA was signed by Ministers, with effect from 30 April 2012.

Our mission is to address issues of safety and health, amenity and sustainability in the design, construction and performance of buildings. It is also a regulatory reform vehicle for COAG.

The work of the Board is supported by a professional, technical and administrative unit, the ABCB office.

The Board prepares an Annual Business Plan outlining its current work program and priorities.

In addition, the ABCB has two primary technical advisory committees, the Building Codes Committee (BCC) and the Plumbing Code Committee (PCC). These Committees provide a valuable national forum for regulatory authorities and industry to consider technical matters relevant to building and plumbing regulation reform and play an active role in assisting the Board in meeting its obligations."

Background

16. In 1980, by way of an inter-government agreement, a national body called the Australian Uniform Building Regulations Co-ordinating Council (AUBRCC) was formed. This organisation, which consisted of the Commonwealth, State and Territory governments, was principally created to develop a national building code. This task was successfully completed in 1990 with the production of the Building Code of Australia (BCA90).
17. The BCA relates to building use and is defined by the Australian Building Codes Board as:
- “The goals of the BCA are to enable the achievement and maintenance of acceptable standards of structural sufficiency, safety (including safety from fire), health and amenity for the benefit of the community now and in the future.”

Definition of Class 2 and Class 3 buildings

18. The building classifications of interest to this paper are:

Class 1 (private residential);
Class 2 (long term residential buildings); and
Class 3 (short term accommodation buildings).

19. The 1980/81 standardisation committee derived the building classification definitions from an assembly of submissions of building codes from every State and Territory in Australia and also submissions from New Zealand. There was clear logic to the development of the definitions within the guidelines established for the creation of a national building code.
20. **Class 1** buildings were, and are, clearly understood as private residential dwellings.
21. **Class 2** buildings were considered to be private residential dwellings (Class 1) built above, beside or below each other. The aim of the committee was to restrict regulation to that applying to Class 1 dwellings unless there were structural or safety requirements that justified additional regulation - thus minimum fire alarms and no access requirements for persons with a disability. The objective was to minimise cost of construction consistent with meeting the objectives of the committee and minimum burden on the community.
22. **Class 3** buildings were considered to be commercial buildings providing accommodation for a variety of applications and a variety of persons. This included commercial hotels, motels, boarding houses, student accommodation, etc. Thus the safety standards had to meet the worst case scenario of these uses. Fire alarm systems had to be fully automatic and provide coverage for the entire building (AS 1670). Access and egress was required for persons with a disability, structural sufficiency had to be developed to withstand high occupancy numbers, materials had to be higher fire resistance and escape systems had to be to the highest standards available in 1980/81. Class 3 buildings were of necessity more expensive to construct, but the committee was of the mind that higher construction costs could be absorbed because of the commercial nature of the buildings.
23. There was no doubt in the minds of the standardisation committee that they had clearly defined the classifications and building use.

The Queensland legislation was clear:

24. *“The Standard Building By-Laws 1975 (repealed), which preceded the BCA in Queensland, included the term ‘dwelling units’ in the definition of a Class 2 building and required a dwelling unit to be suitable for use as a separate domicile. The Concise Oxford Dictionary definition of domicile includes ‘a place of residence; an abode; a house or home; a permanent legal residence”*
25. Moreover, the Macquarie Dictionary (that superseded the Concise Oxford Dictionary as the Australian standard) defines dwelling as: *“1. a place of residence or abode; a house. 2. continued or habitual residence.”*

Furthermore:

26. *BCA 88 (1988) as published included classifications from existing State and Territory Building Acts and Regulations. At that time, Class 2 buildings were: “multiple residential, self-contained dwellings where occupants reside.”*
27. Adding further credibility to the interpretation of the correct definition of Class 2 buildings as places of long term or permanent residence is the Australian Bureau of Statistics who defines a

‘Dwelling Unit’: “A *dwelling unit* is a self-contained suite of rooms, including cooking and bathing facilities and intended for long-term residential use”.

28. The definitions of Class 2 and Class 3 buildings as introduced in 1990 were economical and succinct, satisfying the definition of “dwelling” contained in the Macquarie Concise Dictionary; Second Edition.
29. “dwelling / 1. a place of residence or abode; a house. 2. continued or habitual residence.”
30. The drafter of the definitions was obviously a person with a concise understanding of the English language and the definition and, the relevance and, intent of the use, of the word “dwelling”. The construction of the definitions using the word “dwelling” is not accidental... dwelling is only used in the definition of Class 1a, Class 2 buildings and Class 4 (part) buildings, and was deliberately omitted from the definition of Class 1b (pre 2011) and Class 3 buildings. Thus the intent of the drafter was clear, specific and concise. He defined a dwelling to be a building with continued or habitual residence.
31. When considering the GST definition of "residence" the Federal Court looked at the definition of "residence" and "occupy" in the Macquarie and Oxford Dictionary, and noted with approval the comment made by the UK VAT and Duties Tribunal (*Urdd Gobiath Cymru v Commissioner of Customs and Excise [1997] V &DR 273 at 279*): A residence clearly implies a building with a significant degree of permanency of occupation.
32. This same judgement also found that a Motel is not "Residential Accommodation" as residential implies a degree of permanency.
33. The most recent known decision on the definition of 'residential' was:
34. *The Grain Corp Operations Limited v Liverpool Plains Shire Council* (2012)
35. NSWLEC Decision 143. The Environment Court found that a proposed workforce accommodation developed primarily for fly-in fly-out (FIFO) workers lacked the element of permanency characterized as “residential buildings”.
36. The Court confirmed the question of the proper characterisation of as a jurisdictional fact; that must exist as a condition precedent to the proper exercise of a consent authority’s power.
37. The court analysed case law on the definitions of “residential accommodation”, “residential building”, “residential flat building”, “domicile” and “flats”, and concluded that there must be “an element of permanence or reside for a considerable time, or having the character of a person’s settled or usual abode, in order to constitute residential buildings” relying particularly on *North Sydney Municipal Council v Sydney Serviced Apartments NSWLR 532* and *Derring Lane Pty. Ltd. V Port Phillip City Council (No.2) (1999) 108 LGERA 129*.
38. The Proposed Development did not have this degree of permanency as it was intended to accommodate a transient population.
39. The BCA definitions:
40. Class 1a—a single dwelling being—

- (i) a detached house; or
- (ii) one of a group of two or more attached dwellings, each being a building, separated by a fire-resisting wall, including a row house, terrace house, town house.

Class 2 building are: “A building containing two or more ‘sole-occupancy’ units each being a separate dwelling.”

41. The use of the term 'dwelling' is definitive. If the drafter intended Class 2 to be “A building containing two or more ‘sole occupancy’ units”; he would have stopped the definition at that point. But he added “being a separate dwelling” to clearly indicate continued or habitual residence.
42. Having defined Class 1a and Class 2 as residential buildings as having continued or habitual residence, the drafter continued on to state:
43. Class 3: A residential building, other than Class 1 or 2, which is a common place of long term or transient living for a number of unrelated persons, including-
- (a) a boarding house, guesthouse, hostel, lodging-house or backpackers’ accommodation, or
 - (b) a residential part of a hotel or motel, or
 - (c) a residential part of a school, or
 - (d) accommodation for the aged, disabled or children, or
 - (e) a residential part of a health-care building which accommodates members of staff, or
 - (f) a residential part of a detention centre.

Note: No use of “dwelling”.

44. Class 1b building is a small guesthouse, boarding house or the like. Guest, boarding, or lodging houses which do not meet the criteria for a Class 1b building are classifiable as Class 3 buildings.

Note: No use of “dwelling” (before 2011).

45. The Class 1b classification was first introduced at Amendment 3 to the BCA 90 (1992), and it was intended for this classification to provide a concession for people to rent out rooms in a house, and for other purposes such as running a bed and breakfast or farm-stay business without having to comply with the more stringent Class 3 building requirements (BCA: 1990). Such buildings were previously considered as either Class 1 or Class 3 buildings. There was no evidence or justification not to enable the provisions for a Class 1 building to be similar to the new Class 1b. The BCA 1996 concludes that the Class 1b provisions presented a similar risk to Class 1a, as opposed to the generally more populated Class 3 building. In BCA 96 Amendment 10, the maximum floor area of 300m for all floors of a Class 1b building was measured over the enclosing walls. The BCA 2008 defined a Class 1b building as: "a boarding house, guest house, hostel or the like-with a total floor area not exceeding 300 m measured over the enclosing walls of the Class 1b; and Class-1b-ii in which not more than 12 persons would

ordinarily be resident, which is not located above or below another dwelling or another Class of building other than a private garage".

46. This understanding of the definition of Class 1b was confused in 2011 by an amendment to the BCA (NCC). This will be elucidated later in this complaint.

Confusion as to the intent of Class 2 definition

47. Unfortunately following the introduction of the Building Code Australia some developers working in cooperation with Local Government building inspectors began a campaign to confuse the intended classification of Class 2 and Class 3 building use. The confusion was created by casting doubt on the definition and use of the word 'dwelling'. This confusion varied from State to State, but was far more prevalent in Queensland where the State Government turned a blind eye to the incorrect use of buildings.
48. In Queensland this blind eye approach extended to Class 1b buildings until the tragic loss of 20 lives by fire at Childers and Sandgate. Class 1b had been introduced to reduce the gap between Class 1 and Class 3 buildings. Following this disaster, the Queensland Government quickly developed an understanding of Class 1a and Class 1b use and fire regulations.
49. Unfortunately, this understanding did not extend to Class 2 and Class 3 buildings, primarily, because of pressure from developers and the tourism industry
50. New South Wales subsequently introduced a clear understanding of the meaning of 'dwelling' in New South Wales Consolidated Regulations.

51. HOME BUILDING REGULATION 2004 - REG 6

Definition of "dwelling"-certain residential buildings and other structures **excluded**

For the purposes of the definition of "dwelling" in section 3 (1) of the Act, the following are declared to be excluded from that definition:

- (g) a boarding house, guest house, hostel or lodging house,
- (h) all residential parts of a hotel or motel,
- (i) any residential part of an educational institution,
- (j) accommodation (other than self-contained units) specially designed for the aged, persons with a disability or children,
- (k) any residential part of a health care building that accommodates staff,
- (l) **a house or unit designed, constructed or adapted for commercial use as tourist, holiday or overnight accommodation,**
- (m) any part of a non-residential building that is constructed or adapted for use as a caretaker's residence,
- (n) a moveable dwelling (with or without a flexible annexe) within the meaning of the Local Government Act 1993 that is, or is capable of being, registered under the Road Transport (Vehicle Registration) Act 1997 (such as a caravan or a motor home),

- (o) a residential building for the purposes of which development consent can be granted only because of State Environmental Planning Policy No 15-Rural Land sharing Communities.

52. On April 16, 2015 Jimmy Thompson reported in his Flat Chat column published in the Sydney Morning Herald: “The NSW Land and environment Court has given Australian Executive Apartments, managers in the Bridgeport building near Macquarie Street, until September to stop letting apartments as holiday rentals.

ABCB Definition Review

53. Because of the confusion introduced as to the intended definition and use of Class 2 and Class 3 buildings, the ABCB placed on its Annual Business Plan for 2006: 'The clarification of the definitions of Class 2 and Class 3 buildings'. Four years later (2010) the ABCB declared that the BCC was unable to reach agreement as to suitable definitions, and therefore the project would be discontinued.
54. Following this failure of the BCC and ABCB to achieve satisfactory definitions of the Class 2 and Class 3 building classifications, the Australian Government Productivity Commission released its Annual Review of Regulatory Burdens report in August 2010. This report raised concerns about classification and use of Class 2 and Class 3 buildings, and tasked the ABCB with reviewing the definitions and use of Class 2 and Class 3 buildings. In 2011 the ABCB sought comment from stakeholders in relation to Class 2 and Class 3 building classification. On 6 August 2012 the ABCB issued a non-binding clarification paper on the understanding of Class 2 and Class 3 definitions. Annexure: A.
55. On 19 December 2012 the ABCB circulated a letter effectively putting the clarification exercise on hold for two years.
56. The BCC from 2006 to 2010 was unable to agree on an acceptable definition. In total this task has now been on the ABCB agenda for six years plus another two years in abeyance. The ABCB appears to be either incapable of or unwilling to produce a definition of Class 2/3 buildings, and considering the six years already dedicated to this simple task, plus two years in abeyance, is most unlikely to achieve a satisfactory resolution of the problem. The delay simply allows developers to continue building sub-standard accommodation – primarily for the tourist industry - but owned by the mum and dad investors of Australia.
57. The letter issued from the ABCB clearly indicates that it has been influenced by the development lobby to discontinue the clarification exercise because it will be financially disadvantageous for the developers to construct the correct Class 3 buildings where they are now constructing less expensive Class 2 buildings for short term accommodation.
58. This opinion of collusion between the ABCB and developers was further strengthened in 2011 by the introduction of an amended definition of Class 1b buildings.
59. The original Class 1b definition was amended in May 2011 by the addition of paragraph (ii)

- (ii) “4 or more single dwellings located on one allotment and used for short – term holiday accommodation”
60. Resulting that the Class 1b definition reads:
- (b) Class 1b —
- (i) a boarding house, guest house, hostel or the like—
- (A) with a total area of all floors not exceeding 300 m² measured over the enclosing walls of the Class 1b; and
- (B) in which not more than 12 persons would ordinarily be resident; or
- (ii) 4 or more single dwellings located on one allotment and used for short-term holiday accommodation, which are not located above or below another dwelling or another Class of building other than a private garage.
61. The introduction of “(ii) 4 or more single dwellings located on one allotment and used for short –term holiday accommodation.” is:
- i) contrary to the stated objective of the introduction of Class 1b; and
- ii) contrary to the Macquarie Dictionary definition of ‘dwelling’.... as a ‘dwelling’ cannot be used in conjunction with short -term holiday accommodation and also maintain consistency with the Macquarie Dictionary definition.
- iii) Contrary to the BCA statement: “Guest, boarding, or lodging houses which do not meet the criteria for a Class 1b building are classifiable as Class 3 buildings.
- iv) Correctly, 4 or more single dwellings located on one allotment and used for short - term holiday accommodation would best be classified as a motel - Class 3.
62. The introduction of the amended definition appears to be completely unnecessary except for the purpose of confusing the understanding of ‘dwelling’ as originally confined to Class 1 and Class 2 buildings.
63. Confusion has already been achieved in the Victorian Supreme Court (Paul Slater v Building Appeals Board and Ors) VSC279 Beach 30 May 2013 where his Honour Judge Beach at [48] & [49] found that the new Class 1b definition diluted (confused) the definition of ‘dwelling’.
64. The UOAQ protested this change of definition to Building Codes Queensland (BCQ). This letter was responded at and subsequently forwarded to the ABCB as recommended; by BCQ.
65. The Building Code Australia (BCA) now renamed the National Construction Code (NCC) has the previously stated mission statement:
66. “The goals of the Building Code Australia (BCA) are to enable the achievement and maintenance of acceptable standards of structural sufficiency, safety, health and amenity for the benefit of the community now and in the future.”
67. This mission statement tasks the ABCB with the authority, responsibility and duty of care to the Australian people to correctly and accurately define the standards required to achieve “structural sufficiency, safety, health and amenity for the benefit of the community now and in the future.”

68. These standards are understood by the ABCB as evidenced by the non-binding clarification paper issued in 2012, but the ABCB appears to lack the intestinal fortitude to confront the developers.
69. The ABCB cannot abdicate this authority, responsibility and duty of care and retain any creditability.
70. Six years to establish a definition of the specification of Class 2 buildings that are the basis for achieving an understanding of the core elements of their mission statement is unacceptable by any performance standard.
71. The following “Part” of the BCA specifically states the “Principles” and “Intent”:

(i) PART A3 CLASSIFICATIONS OF BUILDINGS AND STRUCTURES

(a) A3.1 Principles of Classification Intent

To state the basis of any decision regarding the classification of a building or part of a building.

The use of a building determines its classification. Use is determined on the basis of its design, construction or adaptation.

3.2 Classification Intent

To categorise buildings of similar risk levels based on use, hazard and occupancy.

Classification is a process for understanding risks in a building or part, according to its use. It must be correctly undertaken to achieve BCA aims as appropriate to each building in each circumstance (underline emphasis added).

72. The logical conclusion from the above is that the BCC before advising the ABCB in determining the construction standards to meet a defined use and building classification must understand the intended use of the classification definitions (in this case Class 2 and Class 3). If the BCC does not understand the link between use and classification it cannot specify the standards required of the BCA (NCC). E.g. BCA Specification E2.2a para. 3. (AS 3786) for long term residential Class 2 buildings and BCA Specification E2.2a para. 4. (AS 1670) for short term accommodation Class 3 buildings, thus compromising fire safety standards.
73. In short the BCC cannot achieve its objectives and the ABCB cannot achieve its objectives. Therefore, the Government funding of these bodies does not achieve its objective "to enable the achievement and maintenance of acceptable standards of structural sufficiency, safety, health and amenity for the benefit of the community now and in the future."

NCC 2016 aborted proposal

74. During 2015 the ABCB invited input for the draft changes for the 2016 edition of the NCC. Submissions closed on 3 August 2015.

75. The UOAQ submission included the following:

- (a) “Clause/Figure/Table: Part A3.2 Classification Class 2 paragraph 1

“Recommended change to draft: A Class 2 building is a building containing more than one sole- occupancy unit each of which is generally used as a dwelling by the owner or occupants as their principal place of residence.”

76. Comment/reason for change:

“With the increasing popularity and ongoing discussions about short-term letting generally known as Airbnb and Stayz; how the ABCB deals with the classification and use of buildings will have a major impact on the threat to the safety, health and amenity of people using buildings as a place of permanent residence. (Class 2) The uncertainty surrounding the correct use of Class 2 buildings must be eliminated. Clearly defined explanations of the ABCB intended use of Class 1, 1b, 2 and 3 buildings must be a priority.”

77. The Queensland Building Occupations Act 2014 removes the requirement for a Caretaker/Letting agent to live on site (in the building) presenting major concerns for permanent residents in Class 2 buildings - many of whom are senior citizens - incapable of controlling transient residents gaining access via Airbnb and Stayz. UOAQ is receiving reports of building and unit keys being secreted in various locations, to facilitate afterhours access, thus jeopardising security of Class 2 buildings.

78. Clear and concise definition of Class 2 residential buildings providing safety, health and amenity for people using buildings as a place of permanent residence (Class 2) is now essential.”

79. On 15 January 2016 the ABCB advised (by telephone) that the recommended changes would not be included in the 2016 NCC or Explanatory Notes thereto. On 8 February the ABCB published for information a copy of the 2016 NCC and explanatory notes.

“Class 2

A Class 2 building is one which includes more than one dwelling, each of which is generally solely occupied by one or more people to the exclusion of others.

Such buildings must not be otherwise classified as a Class 1 or Class 3 building or Class 4 part. See Figure A3.2(1) for some configurations of Class 1 and Class 2 buildings.

Where a sole-occupancy residential unit is located above another sole-occupancy residential unit, the building containing the units can be either a Class 2 or a Class 3 building, depending on the other circumstances of the building proposal.

Class 2 buildings can be single storey attached dwellings. Where there is any common space below such dwellings, they are Class 2 (and cannot be Class 1) irrespective of whether the space below is a storey or not (see Figure A3.2(2)).

NCC 2016 Guide to the BCA Volume One Page 57

A3.2

GENERAL PROVISIONS

Class 2 buildings can be attached to buildings of another Class. The attached Class 2 buildings need not be attached to one another, and need not be more than a single storey.

When two or more dwellings are attached to another Class, they cannot be Class 4 parts, as any building can only contain one Class 4 dwelling.

Figure A3.2(1) ELEVATION SHOWING A TYPICAL CONFIGURATION OF CLASS 1 AND CLASS 2 BUILDINGS (with non-combustible roof coverings)”

80. The UOAQ suggest that the above explanation of Class 2 building use is of no assistance to any person attempting to gain an understanding of the authorised occupation of Class 2 buildings and adds to the confusion to allow developers to use Class 2 residential for Class 3 purposes.

Pop-up brothels” and “all night parties

81. On 6 January 2016 the Australian Broadcasting Corporation (ABC) 7.30 Report contained an article reporting “pop-up brothels” and “all night parties”

“The growth of short-term stays in high-rise apartments facilitated by companies like Stayz, Airbnb and other companies is seeing permanent residents living through all-night parties, pop-up brothels and building damage caused by weekend renters.

Over the past couple of years there has been an explosion of apartments being let out for short-term stays in Melbourne's inner city and neighbouring Docklands district.

Some residents have told 7.30 that the existence of short-stay apartments has ruined their experience of living in the area, with one resident revealing that he was selling his apartment after "two years of hell" sandwiched by two apartments that were being let out for short stays.

Another, who did not wish to be named, said she had a man knock on her door looking for a "massage" when an apartment down the hall was hired by three sex workers for the weekend.

"At least 40 per cent of the apartments are investor-owned in many of the blocks," RMIT Professor of environment and planning, Michael Buxton, said.

"A lot of people have loans to pay back, so some people are making good money out of getting groups of apartment owners to act as a quasi-hotel, and it's causing a lot of problems to long-term residents who actually like living here."

In addition to brothels and all night parties, there are repeated reports of drug labs being found in unit blocks. These drug manufacturing facilities have potential for explosion and fire.”

82. Considering the Queensland Buildings Occupation Act 2014, removes the requirement for Caretakers to live in the building, these developments present vastly increased risk to elderly and disabled occupants.
83. The Queensland Government and the ABCB has abandoned residents living in units to a standard of safety, health and amenity that fails to meet community expectations for people using buildings as a place of permanent residence (Class 2).

Drug Labs – Clandestine Drug Laboratories (Clan labs)

84. Drug labs pose a risk to the safety and security of all Queenslanders. The ingredients used in drug labs to produce illicit drugs are highly toxic, flammable, and incredibly dangerous. Drug labs explode, ignite and emit harmful gases that can cause serious health problems and can be life-threatening. The State Drug Squad is a specialist investigative unit which has responsibility for conducting and assisting in investigations of serious drug offences including the production of dangerous drugs and possession of drug lab equipment. The SDIU is responsible for safely dismantling drug labs.
85. Sex workers and druggies escape eviction from Gold Coast high rise apartments. SEX workers and drug dealers are using a lease loophole in holiday rentals which prevents them from being evicted from Gold Coast high rise apartments. Frustrated owners say they are in debt for thousands of dollars because it is taking up to 13 weeks to remove unpaying tenants who are prostitutes or operating amphetamine laboratories. Some high rise residents fearing for their safety say they are leaving buildings in Southport after prostitutes and dealers secured entire floors on long term holiday rentals. "They're bringing in girls from overseas and putting them on overseas visas. They're holiday rentals where they cook (drugs) as well, and just come in and out," a 32-year-old resident said. The breakdown in the tenancy system has been exposed after a Bulletin report about a concerned body corporate manager who made a balcony hop on the 29th level of the Beachcomber Resort following complaints about a prostitute.
86. June 18, 2014 12:50 pm POLICE have stumbled across a drug factory operating from inside a Surfers Paradise high rise apartment. The Bulletin reports the manager at Wyndham Resort called police to inspect the unit after noticing damage to the front door. Officers noticed a strong smell coming from the unit and when the resident let them inside, they allegedly found a fully-operational drug lab. The unit was evacuated while the lab was dismantled and chemicals removed.
87. January 14, 2016: Up to eight police officers have been treated for exposure to toxic chemicals, after they busted a drug lab in Sydney. Local police from Redfern and Botany Bay Local Area Commands evacuated nearby residents after discovering a unit alight. NSW Fire and Rescue, the State Crime Command Chemical Operations Unit and Hazmat were called in. (9NEWS) During the evacuation, officers allegedly located a clandestine drug laboratory inside the unit, which is believed to have caused the fire.
88. September 09, 2013 1:08PM Police sent to Gold Coast high-rise uncover alleged drug lab. Police were called to the International Beach Resort on The Esplanade about 8pm Sunday after

reports of furniture flying off a balcony on the 16th floor. After ensuring there were no injuries, police went to the unit to speak with the occupants only to find glassware, several chemicals and a strong odour. The two men were taken into custody for questioning and both were charged with possessing a dangerous drug. The 25-year-old is also charged with public nuisance.

89. February 18, 2016 12:00am Former lawyer Briana Ioannides and male friend busted in dawn drug raids at a Broadbeach unit. A FORMER Gold Coast lawyer spent the night behind bars after a dawn raid allegedly found dangerous drugs and stolen property inside a Broadbeach holiday unit. Police from Taskforce Maxima, Taskforce Latro and the Major Organised Crime Squad executed a search warrant at Mantra Broadbeach on the Park after 6am. During the search police seized ice, cannabis, liquid fantasy, ice pipes, a bong and stolen goods, including mobile phones, iPads and laptops.
90. 15 March 2016 an exploding drug cook oven at the Meriton Broadbeach cause a fire and evacuation of the building

Fire in hi-rise

91. The potential safety issues associated with high rise apartments were on full display in November 2014 when fire ripped up from the sixth floor to the 21st floor at the Lacrosse apartment complex at Melbourne's Docklands. The blaze required the services of around 80 firefighters, who took about 30 minutes to bring it under control, it and necessitated the evacuation of around 500 people.
92. December 2012 Shooters night club and Top of the Mark (Class 2 unit building) experienced a major fire in an electrical switch board. Residents reported: "The smoke was so thick you could hardly see a meter in front of you." Gold Coast police chief Paul Ziebarth said the fire could have been disastrous. "We dodged a bullet on this" he said. "It was fortunate we had the extra police here for Schoolies who acted quickly to avert a potential tragedy." Approximately 2000 people, including interstate Schoolies, spilled onto Orchid Avenue after being evacuated from nightclubs and apartment buildings.
93. 09 June 2013, 6:48am. The blaze in the complex known as Cathedral Place in Fortitude Valley began in a unit at around 4:30pm (AEST) yesterday and spread quickly to others on the top level. Three women were taken to hospital suffering from smoke inhalation while a man was treated at the scene. It is understood one woman was dragged from her unit unconscious. Several others who were trapped on the roof had to be rescued by firefighters in a cherry picker.

Conclusion

94. The proposed 'Guide' to the understanding of Class 2 and Class 3 building use, dated 6 August 2012 was fully supported by the Unit Owners Association of Queensland Inc.(UOAQ). As returning the intended use of Class 2 and Class 3 buildings to the intent of the 1980/81 standardisation committee. The UOAQ was most concerned that the document was a 'Guide'

and not a clear definition of the correct building use. We saw this as an open invitation to the blind eye approach as was experienced with Class 1a and 1b until some 20 deaths by fire forced the Queensland Government to act. It would be a tragic reflection on the ABCB and the Federal Government if a fire in a Class 2 building being used for Class 3 purposes, resulted in hundreds of death by fire.

95. The Unit Owners Association of Queensland (UOAQ) supports the encouragement of Airbnb and Stayz in Class 3 unit buildings, used for short term holiday letting, as proposed by the Queensland Tourism Minister. Airbnb and Stayz will provide a much needed alternative for rental owners who are currently locked into 25 year letting contracts awarded by the building developer with over inflated commission rates as high as 40 to 50% of the gross letting charge. The cost of caretaker/letting contracts, with the associated multi-million-dollar good will, is forcing the cost of unit ownership out of the reach of many potential purchasers. In the alternative UOAQ defends the rights of residential unit owners to the quiet enjoyment of their building as a place of permanent residence with privacy, safety and environment commensurate with community expectations. The Australian Building Codes Board (ABCB), Building Codes Queensland (BCQ) and local councils will need to recognise the correct use of Class 2 and Class 3 buildings if Airbnb and Stayz are to operate in an orderly manner in the best interests of unit owners.

Recommendation

96. The UOAQ recommends in the strongest possible terms that the dictionary to the NCC be amended to include a definition of 'Dwelling' as a place of permanent or long term residence. Unfortunately, the BCC and ABCB have since 2011 been confusing the definition of dwelling by incorrect and inappropriate use of the word in definitions. These definitions will also have to be rescinded. This extremely simple amendment will permanently clarify the correct use of Class 2 buildings and can be adopted by every state and territory as part of the May 2017 NCC amendments.

Wayne Stevens

President

Unit Owners Association of Queensland Inc.