

Examples of substantive case law to support the Class 2 classification position going forward.

<http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/vic/VSCA/2013/365.html>

<http://www.corrs.com.au/publications/corrs-in-brief/land-and-environment-court-clarifies-meaning-of-residential-buildings/>

In the *GrainCorp Operations Limited v Liverpool Plains Shire Council* [2012] NSWLEC 143 decision, the Land and Environment Court (Court) decision helps clarify the meaning of “residential” use.

At all times the management of the site reserved the right to re-allocate rooms to occupants on a needs basis and no occupant was permitted to stay longer than a pre-determined length of time

The Court confirmed the question of the proper characterisation of use as a jurisdictional fact; being a fact that must exist as a condition precedent to the proper exercise of a consent authority’s power.

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 residence 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 Pty Ltd* (1990) 21 NSWLR 532 and *Derring Lane Pty Ltd v Port Phillip City Council (No 2)* (1999) 108 LGERA 129.

The Proposed Development did not have this degree of permanency as it was intended to accommodate a transient population; ... and management had control over which units were allotted to occupants at all times. The Court concluded that the occupants would not regard the facility as their settled or usual abode, or the place where they lived.

The decision clarifies the previous uncertainty in decisions of the Land and Environment Court as to the meaning of a “residential” use or building.