

Stakeholder Response Form

Please complete this Stakeholder Response Form in relation to the ABCB Discussion Paper on the NCC and short-term accommodation, and email to the ABCB at the following email address: NCCawareness@abcb.gov.au with the subject line: **Discussion Paper: Short-term accommodation**

Submissions close **8 April 2018**.

STAKEHOLDER INFORMATION

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The following two reminders, in relation to Concerns and Options explored in the Discussion Paper, are provided to assist those responding to the Stakeholder Questions.

Reminder:

Concern 1 – Unclear NCC definitions and criteria

Concern 2 – Unnecessary difference in technical standards

Concern 3 – Increase in fire safety risks due to unfamiliarity

Concern 4 – Increase in fire safety risks due to fire-isolated stairway requirements

Reminder:

Option A: No change (status quo)

Option B: Merge Class 2 and Class 3 classifications in the NCC

Option C: Specify that short-term accommodation is a Class 2 in the NCC

Option D: Specify that short-term accommodation is a Class 3 in the NCC

Option E: Define short-term accommodation as a new sub-classification in the NCC

Option F: Reduce the stringency of certain Class 3 DTS Provisions in the NCC

Option G: Include additional fire safety features in Class 2 buildings in the NCC, or through State and Territory regulation

Option H: Increase the stringency of the non-fire-isolated stairways requirement for Class 2 buildings in the NCC (D1.3)

Option I: Jurisdictions to specify whether short-term accommodation in Class 2 buildings is a Class 2 or Class 3 through their regulations

Option J: Expand the NCC Guide wording on Class 2 and Class 3 building classifications

Option K: Expand the NCC Guide wording on classifying parts of a building with more than one classification, for Class 2 and Class 3 buildings (A3.4)

Option L: ABCB to develop non-mandatory guidance on Class 2 and Class 3 Performance Solutions

Option M: Jurisdictions to issue guidance on whether short-term accommodation in Class 2 buildings is a Class 2 or Class 3

Option N: Expansion of Holiday and Short Term Rental Code of Conduct

STAKEHOLDER QUESTIONS

Opening statement

The Unit Owners Association of Queensland is the peak stakeholder representative of unit owners in Queensland since 1978.

This discussion paper seems to have a strong bias towards builders and developers and is directed primarily to their interest. Unit owners are the ultimate end users providing all of the funding necessary to see all such developments built. Unit owners therefore are the primary stakeholders and their interests should be considered above all others. Perhaps criticism that there is no representation of end users on the BCC further demonstrates this bias.

A unit owners primary interest when purchasing an apartment is who they will share the development with. The community is now well aware of the difficulties of sharing their home with others with different interests, such as investors looking for the highest and quickest return.

The preservation of strata scheme classification for residential purposes is an important amenity to maintain as the community accepts strata lifestyle becoming the dominant choice. Class 2 classification secures that essential amenity choice.

If a clear question was posed in this discussion paper to the effect: "as an owner in a class 2 building, are you agreeable to allowing short term accommodation such as airbnb and stayz in

your scheme?" it may have generated an overwhelming and informative response. If the right questions are not asked, wrong outcomes will result.

Debate has taken place for years over misuse of class 2 buildings in Queensland, but the wider community has only recently become aware of local government's responsibility in this area and the mechanisms in causing them to act. It has been reported from council that complaints of unlawful short-term rental are currently swamping their offices.

State government in the interests of maintaining strata buildings for tourism have not done owners any favours. A review of Queensland body corporate law is now in its 5th year and no legislation has been produced. Both sides of politics refuse to allow any review of management rights, the mechanism that strips control of strata buildings from owners and places it in the hands of managers and property agents, who believe they have the right to do whatever they like in the buildings. Unlawful short-term accommodation has abounded under management rights with developers arrogantly selling management rights in pursuit of boundless sale prices, to hotel operators (oaks, mantra). The intended residential amenity is disregarded and destroyed by these commercial operators on an unprecedented scale.

Reading the National Construction Code (NCC) and short-term accommodation in apartment buildings Discussion Paper-March 2018 leads to the conclusion that the decisions have been made and no amount of input from end users of the buildings will change the ABCB opinion.

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, has resulted in residential units being used as drug labourites and for drug distribution, brothels and 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.

Specifically:

- a. The ABCB has failed to clearly define the use of Class 2 buildings by not introducing a definition of "dwelling".

- b. Allowing the definition of "dwelling" to be confused by the courts by introducing a confusing definition of class 1b in the 2011 amends to the NCC. Confusion has 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'.

- c. Failed to comply with Australian Legislative Drafting Manual by allowing incorrect definitions of 'dwelling' to be used in the NCC.

- d. Failed to ensure the objectives of the Building Code Australia by allowing technical differences being introduced to blur the distinction of class 2 and 3.
- e. Failed to ensure consumer representation on the BCC thus ensuring developer predominance and therefore influence.
- f. Increased the fire safety risk by failing to ensure that there are fire marshals in class 2 buildings where used for short term accommodation.

STAKEHOLDER QUESTION 1

Do you consider the Holiday and Short Term Rental Code of Conduct has been effective in addressing issues such as limiting occupancy numbers, noise control, car parking, refuse and party rooms?

Yes No Please explain your answer.

We do not consider that the Holiday and Short-Term Rental Code of Conduct was an effective means of limiting conduct in Class 2 buildings. Owners have for years understood that a Class 2 building was for the use of resident occupiers and that the Building classification determined as to how the building should be used. Bodies corporate seemed to be the main controller of this supervision, as generally by-laws and the management agreement specified how the building was to be used. Class 2 buildings were well established over time for permanent occupancy and the people that purchased into those buildings understood that the Class 2 classification insured that permanent residents would only reside in that building.

Short term means that transient occupiers are hard to track, and hard to prove that they engaged in conduct contrary to the Code. They often use false names to hide their identity. The proprietors of popup-brothels and drug labs are not likely to leave a trail by revealing their true identity, the same applies to parties that get out of hand and destroy rooms and/or common property. The code of conduct is of no use without people to enforce it.

Furthermore, 'Codes of Conduct' have little legislative teeth to deter breach even if enforced.

STAKEHOLDER QUESTION 2

Do Concerns 1 – 4 adequately summarise the potential issues identified with short-term accommodation in Class 2 apartment buildings within the scope of the NCC?

Yes No Please explain your answer.

Concerns 1- 4 summarise only some of the potential issues. Amenity and liveability attributes of a building probably have a far higher priority to an intending buyer than fire and safety issues or criteria and technical standards. Intending buyers are influenced by living in a property of like-minded people who will more likely share the building (their homes) with the same care and consideration these intending buyers intend to exercise. Short term usage generally offends this premise.

The demography of the Australian population is aging while others are becoming more violent. It is not just older persons but all residents who seek security in the place they call home. The failure of the ABCB to clearly define buildings that comply with this objective, recognised as the preferred lifestyle option by the elderly – by failing to define Class 2 buildings as residential – has removed security from this class of resident. This failure by the ABCB jeopardises the financial security, living amenity, health and safety of our members as discussed in this document.

STAKEHOLDER QUESTION 3

Are there other potential issues with short-term accommodation in Class 2 apartment buildings within the scope of the NCC that are not captured by Concerns 1 - 4?

Yes No Please describe.

This list is endless, but examples abound. Local Government have introduced Party House regulation to prevent growing disturbance in residential areas. These disturbances are constantly reported in the media with residents' complaining endlessly. The issues of schoolies and motor racing festivals on the Gold Coast have required the council and state government to disregard the concerns and complaints of owners. During the motor racing festival it is believed that half of the residents living on the racing precinct, leave their homes to avoid these disturbances. That residents should be driven from their homes by government sanctioned activity is nothing less than disgraceful.

STAKEHOLDER QUESTION 4

Do you have evidence on the nature and extent of Concerns 1 - 4 and/or evidence of concerns not identified in this Discussion Paper that are within the scope of the NCC?

Yes No Please provide further information.

The greatest failing of Class 2 building classification is the failure of local government to properly and effectively regulate building classification. UOAQ has evidence of owners making complaints to local council, of misuse of a Class 2 building, and the compliance section of council deliberately

mishandles the complaint or claim they are unable to establish any breach of regulation. In one case evidence was provided to compliance officers of Council applying T3 rate notices being issued by council to lot owners in a Class 2 building, undertaking short term rental. This rating classification was for lots exercising transient accommodation. In the same complaint, the council officer failed to confirm that Material Change of Use approvals had been issued to any of the lots complained of. The council officer stated no breach had been found. These responses are in breach of section 115 of the Building Act 1975 and subject to penalty. Evidence provided at Question 10.

In may 2014 UOAQ wrote to the Attorney General as the Minister responsible for bodies corporate regarding misuse of Class 2 buildings and was misdirected into how these issues should be considered. State government is not immune from failing to provide the community with reasonable and clear guidance in matters of Class 2 building misuse and management rights in strata schemes.

EVIDENCE EXPRESSED IN MEDIA REPORTS

Pop-up brothels” and “all night parties

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

“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.”

2. Considering the *Queensland Property Occupations Act 2014* removes the requirement for Caretakers to live in the building, these developments present vastly increased risk to elderly, the disabled and all occupants in the event of fire. A highrise full of unassisted tourists being unfamiliar with their environment is a recipe for disaster.
3. 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)

4. 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.
5. 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
6. 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.
7. 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.

8. 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.
9. 9. February 18, 2016 12:00am
Former lawyer Briana Loannides 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.
10. 15 March 2016
An exploding drug cook oven at the Meriton Broadbeach cause a fire and evacuation of the building

Fire in hi-rise

11. 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.
12. 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.
13. 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.

14. Report to the Criminology Research Advisory Council (June 2013)
Crime in High-Rise Buildings: Planning for Vertical Community Safety
Michael Townsley, Sacha Reid, Danielle Reynald, John Rynne, Benjamin Hutchins

Results

The research was partitioned into three separate studies, each differentiated by the corresponding data sources and methodological approach. Qualitative analyses of police recorded crime incidents (Study 1) showed a high degree of concentration of crimes in a small proportion of high-rise buildings. This pattern was observed regardless of crime type or time of year. Building characteristics were examined and it was found that residential tenure appeared to have a relationship with the amount of crime recorded at the building level. Buildings with long-term residents recorded the lowest levels of crime, on average. Buildings with short-term tenancies (holiday apartments, hotels) had the next highest, and buildings with mixed tenure (both long and short term tenancies) recording the highest levels of crime.

www.criminologyresearchcouncil.gov.au/reports/1314/29-1112-FinalReport.pdf

15. March 14 2018 Channel 10 Sydney.
Police have seized more than 60kg of methyamphetamine worth an estimated \$30 million after emergency services responded to a unit fire in Epping in Sydney's north-west yesterday.

Fire and Rescue officers were called to the unit block in Hazelwood Place at 11.50am after a fire alarm was triggered.

When firefighters entered the unit, they found what appeared to be a clandestine laboratory, with neighbouring units evacuated by police as a precaution.

Ryde police have established a crime scene at the property.

Fire and Rescue Hazmat crew members and the Drug and Firearms Squad's Chemical Operations Unit entered the property and rendered it safe before dismantling the lab.

Police are now seeking the whereabouts of a man believed to have left the area shortly before emergency services arrived.

The man is described as being aged between 20 and 30, having a solid build, about 180cm tall, with an olive/tanned complexion, dark hair, and possibly suffering facial burns.

STAKEHOLDER QUESTION 5

In light of the work undertaken by the ABCB and others on this topic over the last decade, do you believe there is enough evidence of Concerns 1 – 4 for the ABCB to continue further work on this topic?

Yes No Please explain your answer.

There is wide belief that inadequate priority is being provided to the usage of a building as opposed to the building of them. Building is supervised by private certifiers who are in the employ of the developer. These certifiers are only concerned with the building up until it is fully built. There seems to be little to no supervision on how the building will be used once it is passed over to owners. This is demonstrated on the Gold Coast where it seems to be common knowledge in the city that the Hilton Hotel was built as a Class 2 building. Hotel is used as an example of a Class 3 building in the Australian Building Code.

STAKEHOLDER QUESTION 6

In relation to the NCC, are you aware of any options besides Options A – N, which could address Concerns 1 – 4?

Yes No Please describe.

Option D is the only relevant option from the above list that considers amenity and usage to the satisfaction of intending buyers and existing owners to ensure their common interests are fully and reasonably protected.

Option D: Specify that short-term accommodation is a Class 3 in the NCC

STAKEHOLDER QUESTION 7

Do you agree with the information provided on Options A - N and associated analysis?

Yes No Please explain your answer.

Options A-N seem to have been developed to attempt to provide a convenient fix for the failures of local government enforcing regulations that ensured buildings built for residential usage were not misused for short term accommodation. The fact that local government failed their responsibility should not require owners to accept the obliteration of their entitled amenity to remediate these issues.

STAKEHOLDER QUESTION 8

Do you agree with the conclusions drawn that a combination of Options F, G, H, K and L could be progressed by the ABCB, to address Concerns 1 – 4?

Yes No Please explain your answer. **THEY MIGHT?**

But Concerns 1-4 are not an exhaustive list of Concerns that exist in the community regarding unlawful short-term accommodation. We remind ABCB of the stated Overview of Discussion Paper

Discussion Paper: The NCC and short-term accommodation in apartment buildings

at 1.2 page 2: "The NCC sets the minimum required level for the safety and health; amenity and accessibility, and sustainability in the design, construction, performance and liveability of new buildings (and new building work in existing buildings) throughout Australia."

Concerns 1-4 address a limited list of concerns without considering from the above list: health, amenity, performance and liveability. These matters are of vital concern to any intending purchaser, if not the wider community. Any suggestion that adding greater stringency to Class 2 buildings may address the matters being considered must be considered a pipe dream. Current and intending users of building need clear distinction between a residential building and a building used by transients, in order that they can make clear decisions as to how they choose to live.

If Class 2 were ever intended to accommodate 'transients', this word would have been originally included with Class 2 just as it is explicitly included in class 3. Class 2 is correctly differentiated through the word 'dwelling' which is notably absent from Class 3.

STAKEHOLDER QUESTION 9

Which is your preferred option, or combination, of Options A – N that could address Concerns 1 - 4?

Please explain your answer.

Option D: Specify that short-term accommodation is a Class 3 in the NCC

The building classifications have existed for many years. Many owners have lived in Class 2 buildings that have been preserved exclusively for residential occupancy. This includes owner occupiers and tenants on leases of no less than 3/6 months. Currently in Brisbane and the Gold Coast, Class 2 buildings can only be lawfully used for short term accommodation if the owner of the lot has applied and obtained a Material Change of Use, and that application has been approved by the body corporate. It would seem that the vast majority of lots in these cities being used for short term accommodation, are being used unlawfully.

STAKEHOLDER QUESTION 10

Do you have any other information or comments in relation to the NCC and short-term accommodation in Class 2 apartment buildings?

Yes No Please describe.

We attach documents headed:

- Australian Building Codes Karen Andrews Misuse Class 2 Buildings;

Discussion Paper: The NCC and short-term accommodation in apartment buildings

- The Issues with Short-term Accommodation and Use of Strata Property in Queensland,
- Letter to GCCC Mayor Tate 15 March 2018 Lawful Use of Premises with attachments:
 - Reply from GC CEO office 17 July 2017
 - GCCC Complaint Letter 18 June 2017 Mediterranean
 - GCCC reply to Mediterranean complaint 7 August 2017
- Examples of substantive case law to support the Class 2 classification position going forward.