

6 July 2020

Ms Wendy Devine
Queensland Law Society
Level 2, Law Society House
GPO Box 1785
Brisbane QLD 4001

Via email: policy@qls.com.au

Failure by local government to enforce PLANNING/BUILDING law.

Any responsible prospective residential strata property buyer would engage a conveyancing lawyer to undertake searches to review the planning, building and body corporate documentation, and is provided with: Documentation to secure a Residential owner's Property Rights

- * Residential zoning
- * Certificate of Classification under the Australian Building Code - Class 2.
- * Development Approval defining use as Multi Unit Dwelling.
- * Fire department certification for Dwelling use
- * Original By-Laws stating: Lots in the scheme are for Residential purposes only.

These documents should make the purchaser sufficiently comfortable that they are buying a property to live in and share with like-minded people. These documents are the primary mechanism that a prospective buyer is able to use to review the residential amenity of prospective strata titled property.

Why is it that when a management rights holder is engaged, they are able to turn a residential property (clearly denoted by the documentation mentioned above) into tourist accommodation. The residential owners should have the Planning, Building and Body Corporate law, coupled with local government enforcement obligations to protect their interests. However, the local government fail to enforce.

More recently Airbnb entered the fray and some owners in the scheme decided they would access this facility and do exactly as the managers were doing. To many this is a step too far, after all they purchased a residential lot, and their residential amenity was being totally trashed.

Owners complained to local government who are charged with the responsibility of enforcing the Building Act and Planning Act but were told that councils City Plan permitted such use. Owners produced their conveyancing documentation, yet the council stood steadfast claiming the City Plan outweighed the legal profession conveyancing documentation. UOAQ is informed "should the Council believe a change to the planning scheme that made short term accommodation (STA) accepted or self-assessable development over-rides the DA. It doesn't." Council is failing to enforce the law, and managers continue to operate tourist accommodation in Class 2 Residential buildings, on an unlawful basis. Airbnb has not been stopped in Residential buildings.

Unlawful STA voids Class 2 Building Insurance

Bodies corporate are now informed that unless they comply with law, by-law, safety requirement, Australian Standard or regulation of any Government or Local Government body, insurers will not be liable for loss, destruction, damage, liability, accidental injury or illness caused or contributed to by a schemes failure to comply with any of the above conditions.

The Body Corporate and Community Management Act contradicts Building/Planning law

Some owners have tried to pursue Airbnb under the Body Corporate and Community Management Act (BCCMA) and are stymied by Adjudicators and QCAT interpretation of Section 180(3) which states that a body corporate cannot have a by-law which restricts residential use, and that residential use includes tourist short term accommodation. The conveyancing documentation, that supposedly secured Class 2 building residential amenity is totally disregarded in the rulings of these lower administrative authorities.

Planning Act 2016

S164 Compliance with development approval

A person must not contravene a development approval.

Maximum penalty—4,500 penalty units. = \$600,525

Building Act 1975

S118 Restriction on use of buildings built on or after 1 April 1976

The owner of a building built after 1 April 1976 must ensure its use complies with its classification as stated in the last certificate of classification for the building.

Maximum penalty—165 penalty units = \$22,019.25

IS THIS LAW NOT CLEAR?

DO THE STATED PENALTIES DEMONSTRATE THE IMPORTANCE OF THIS LAW?

The 'Development Approval' and 'Certificate of Classification' are the dominant documents that determine the use of property. These documents are usually provided to a purchaser at the time of purchase of the property by the purchasers' conveyancing lawyer.

The Body Corporate being the owner of the building has the responsibility to ensure that these documents are fully complied with. Any owner or contractor undertaking STA that does not comply with this documentation is operating unlawfully and subject to enforcement by local government. STA usage is only permitted in a building with a Class 3 classification.

Building managers that do not comply with these requirements are in breach of the law.

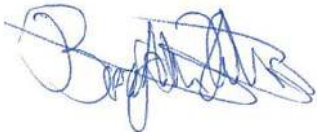
Inadequate authority to supervise Body Corporate contractors

Bodies Corporate subject to long term 10 and 25 year management agreements, together with failures of the dispute resolution process under the BCCM Act, and QCAT adjudicators failing to find in favour of owners under the pretext of protecting a managers investment and livelihood have unwittingly eroded the authority and control of owners to adequately self-manage these contractors to ensure that compliance of the law is fully maintained, as intended by the secondary objects of the BCCM Act.

And the councils decided they would have a piece of this action, lawful or not

Management rights evolved from a need to regulate STA through the BCCM Act 1997. Contractors who acquired management rights in Class 2 buildings tested the arrangements and found that growing a rental pool of STA delivered better returns and did not raise the ire or concerns of local government. The GCCC being envious of this expanding revenue established Category 3 Rating, providing double rating on lots being made available to transients. Minister Kate Jones during the Commonwealth games boasted that there were 30,000 of these units on the Gold Coast alone. Letting agents/managers operated with impunity, and GCCC raised an additional \$30 million in rates revenue, providing a massive incentive to turn a blind eye to clear breaches of Planning and Building law.

Yours sincerely



Bradley von Xanten

President

Unit Owners Association of Queensland Inc.