Short-term letting issues for managers

Whether a manager is entitled to let out a lot in a community title scheme (for short term purposes) is not always easy or simple to determine. There are a number of factors that must be taken into account, including:

- The terms of the planning or development approvals, which will outline what uses are lawful and unlawful.
- The terms of the relevant planning schemes for the local government area, which can change over time.
- The local laws in any particular local government area regarding short stay accommodation.
- The terms of the letting appointments with owners and the letting authorisation with the body corporate (which potentially can prohibit short-term letting); and
- compliance with the managed investment provisions of the *Corporations Act*.

In any case, the class of the building is irrelevant. Under current laws, a class 2 building and a class 3 building can both be used for either short or long term residential use. Furthermore, there are inconsistencies between Queensland and other states, so each case needs to be considered on its merits. We outline some of the rules below...

Brisbane

Under previous town planning schemes, a strata title unit complex was generally considered an "apartment building". The definitions failed to include any requirement or element of long term or permanency about it. As a result, it was previously widely accepted it was lawful to use those units

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or apartments for any duration of residential use, being either short or long term, serviced or otherwise. The council today will not necessarily accept this view.

However, things changed with the introduction of *Brisbane City Plan 2000* and changed again under *Brisbane City Plan 2014*. *The Brisbane City Plan 2000* changed the relevant term to "multi-unit dwellings" where the definition included an element of permanency.

It also introduced the concept of "Short Term Accommodation" for use of premises for short term accommodation (typically not exceeding two weeks) for tourists and travellers, giving serviced apartments as an example.

The Brisbane City Plan 2014 changed the term to "multiple dwelling" and introduced a new definition of "short term accommodation" (three months or less). The effect of these changes is that any building approved as "multi-unit dwelling" or "multiple dwelling" is not permitted to be used for short term accommodation without a further approval.

Gold Coast

Similar terminology and changes have also affected the Gold Coast. Previously under the *Gold Coast Planning Scheme* the use of an "apartment" did not have any reference to the length of the residential use.

However, the *Gold Coast City Planning Scheme* was amended in 2016 to introduce a new concept of "short-term letting" which created the same issues as Brisbane. As a result, an approval for an apartment alone (without any other approval for short-term letting) will not allow that apartment to be used for short term letting.

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Noosa

The Noosa Plan came into effect in 2020. It also introduced a new definition for "short stay accommodation". This introduction had similar effects as in Brisbane and Gold Coast.

To determine if short stay accommodation is permitted it is now necessary to look at the approvals currently in place to determine what those approvals allow and see if those uses fit within the current definition of short stay accommodation.

Additionally, in February this year a new local law was introduced requiring operators to hold an approval for "short stay letting" except for certain specified addresses which are excluded from the local law (for example Hastings Street precinct).

The purpose of this is to manage lawful short-term letting to reduce impacts on permanent residents and have a code of conduct for operators as well as guests. The application can be made free of charge until June 30, 2022.

There is a number of conditions on approval which will include 24/7 availability, residing or having a place of businesses within 20km of the premises, being able to respond within 30 minutes of a complaint and certain insurance requirements.

NSW

Late last year the NSW Government's STRA (short term residential accommodation) rules came into effect. Unless a lot has been approved for "tourist and visitor accommodation" the new rules will apply, including the managers will be required to register on the NSW STRA register; make sure the property meets the new fire safety standards; abide with the Code of Conduct; and take note of the number of days that the property can be rented for short term accommodation.

If the property is in Greater Sydney, Ballina shire or certain areas in Clarence Valley and Muswellbrook, short term accommodation will be limited to 180 days a year which will be monitored via the STRA register.

Additionally, unlike in Queensland where a by-law cannot directly prevent short term accommodation, in NSW a by-law may prevent short-term letting.

Next steps for managers

Unfortunately, determining if a lot can be used for short-term letting is never going to be clear and easy. It may require both legal and town planning advice. Managers should ensure such advice is obtained. If short-term letting is prohibited, then it is possible to make an application to the relevant council for a material change of use.

This may or may not be an easy and/or costly process depending on the property involved and the relevant attitudes of the council. ■