

This policy has been produced by Strata Community Australia (WA) to provide the strata sector's view on short stay accommodation within strata schemes.

### What is “short stay accommodation”? What is “residential use”?

Local planning schemes often define short stay accommodation as accommodation of guests where occupation is limited to a maximum of three months in any 12-month period.

As for residential use, in its decision in *Byrne v The Owners of Ceresia River Apartments Strata Plan 55597*, the Court of Appeal decided that use of a property as a residence was use as a person's “settled or usual abode” and, further, that “tourist accommodation, or as accommodation for holidays or other breaks away from their settled or usual abode” was not use as a residence.

### Benefits of short stay use in some schemes

Allowing short stay use in a scheme that is well designed and adapted for short stay or non-residential use can be a desirable planning outcome in some contexts. It can also maximise the potential for owners in strata schemes to make a profit and maintain the property's value. In these schemes, with appropriate conditions on development approval in place, there are few conflicts between short stay guest and other owners.

It is also noteworthy that at least one short-stay aggregator is planning to introduce caps on short stay use of a property and share income with strata companies in schemes where properties are put to short stay use. These developments are welcomed.

### Issues with short stay use in other schemes

In some schemes predominantly used as residences, short stay use may create conflict with and between owners and residents over noise, anti-social behaviour and compromised security.

### Appropriate Responses

SCA (WA) believes that negative impacts of short stay use in some schemes can best be resolved by a combination of:

1. better planning control by improved local planning schemes, improved conditions being placed on development approvals and greater enforcement of conditions of development approvals
2. appropriate legislative changes to introduce sensible restrictions on short stay use
3. short stay aggregators doing more to improve guest behaviour and relationships with residents in schemes
4. improved design of buildings

However, if these things do not occur and serious problems occur, strata companies may need to themselves exercise greater control over the use of the commonly owned property. This may include such things as:

1. modifying the building
2. changing parking arrangements
3. introducing on-site management controls
4. developing and enforcing security protocols
5. clearly and regularly communicating the noise and nuisance prohibitions and security requirements
6. introducing incident reporting systems
7. applying to the State Administrative Tribunal for appropriate orders if necessary

As for by-laws, the *Ceresa River* decision confirmed that, in some schemes, a strata company by-law could operate to restrict use of a lot to use as a residence.

However, there are strong legal and practical limits on the power and ability of strata companies to validly make and enforce by-laws restricting the use to which a lot may be put. SCA(WA) recommends strata companies seek advice from an experienced lawyer before adopting, relying on or enforcing such a by-law.

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