



10 August 2018

Ms Jenny Mannering
Inquiry Secretary
Legislative Council Select Committee – Short Stay Accommodation in Tasmania
Legislative Council
Parliament House, HOBART 7000
Via email: ssa@parliament.tas.gov.au

Dear Ms Mannering

Re: Short Stay Accommodation in Tasmania

The Australian Institute of Building Surveyors (AIBS) is recognised nationally and internationally as the peak professional body representing building surveying practitioners in Australia.

The inquiry into the short stay accommodation industry in Tasmania is of interest to building surveyors in that it in part deals with matters relevant to the responsibility of building surveyors; building safety.

AIBS now makes a submission in respect of aspects of the fourth point in the terms of reference for the inquiry being the part which pertains to matters of a regulatory nature including guest safety. As a national representative body, AIBS hopes to assist the inquiry to understand the Tasmanian regulatory requirements related to the use of buildings for short stay accommodation and how the Tasmanian regulatory environment compares with that elsewhere in Australia.

Tasmanian legislative provisions

The Building Act 2016 (the Act) is relevant to the conduct of any building work or to the change of the use of a building in Tasmania. There are regulations made pursuant to the act known as the Building Regulations 2016.

Pursuant to the Act, there is a power for the Director of Building Control to make determinations about the administration of the Act which must also be followed in respect of relevant matters. The Director of Building Control has made a Determination on *Short or Medium-Term Visitor Accommodation (amendment 1 dated 1 July 2018)* (the Determination) which is relevant to the inquiry.

Additionally, the Act defines the technical requirements that are to be followed when designing and constructing buildings in Tasmania by referencing the National Construction Code Building Code of Australia produced by the Australian Building Codes Board (the NCC BCA).

Collectively, these instruments regulate the establishment, whether by new building work or by change of use to an existing building, of short and medium-term accommodation buildings in Tasmania.

Evaluation of occupant risk potential

The NCC BCA Volume One Clause A3.2 sets out how buildings are to be classified. The purpose of this is to establish a system of sorting buildings according to similar risk profiles so that requirements can be assigned commensurate with the appropriate risk profile.

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Buildings used for accommodation purposes typically do not have the same risk profile as a private dwelling and so attract a different building classification from that of private dwellings. A private dwelling could attract a classification of Class 1a or Class 2 depending on the situation of that dwelling relative to other buildings or dwellings. In general, a dwelling located above another dwelling or above another class of building will be a class 2 building otherwise class 1a will apply.

Buildings used for accommodation will be classified as Class 1b or Class 3 buildings. A class 1b building is very similar to a Class 1a building physically so that it is the occupant characteristics that define the different risk profile. This classification can only be applied where there are less than 12 occupants and the floor area of the building is less than 300m². A class 3 building is typically a multi-storey hotel and can be of motel type accommodation or buildings where class 1b limitations are exceeded.

There are distinct differences in requirements for these types of accommodation reflecting the differing risk profiles of the use of these buildings. Smoke alarms must be provided in all class 1 buildings however because of the increased risk to occupants of Class 1 buildings that are not private dwellings (i.e. Class 1b buildings), additional smoke alarms must be provided. Indeed, these buildings must also have a system that provides illumination in the event that a smoke alarm is activated to aid in evacuation of these buildings.

There are differences also related to buildings with classifications of Class 2 or Class 3. These differences become more pronounced as the height of the building (hence the number of storeys and building population) increases.

The approval pathway in Tasmania

There are two typical pathways provided within the Act whereby a building might be made available for short term accommodation. We present our view of requirements for each as follows.

New buildings

A newly constructed short-term accommodation building that is intended from the outset to be available for this purpose will need to be established in accordance with the requirements of the Act and the Determination. The building must, pursuant to Section 11 of the Act, be designed and constructed in conformity with the requirements of the NCC BCA.

Clause 3 of the Determination sets out a self-assessment process for short or medium-term accommodation buildings which can be used only if the property is the main place of residence for the owner and no more than four rooms are available for accommodation purposes. The Determination appears to have been made on the basis that there are no differences in technical requirements between buildings of this nature, and a private dwelling.

It is the view of AIBS that this is in fact not correct, particularly as making rooms available for short term accommodation purposes corresponds with the classification of Class 1b pursuant to the NCC BCA, not a class 1a building which relates to a private dwelling.

The issue with the Determination then is that those wishing to design and construct a short or medium-term accommodation building are given an understanding that they are entitled to do so without consideration to NCC BCA requirements.

This could potentially see buildings built without additional smoke alarms or lighting to assist evacuation and place occupants of such buildings at excess risk, particularly from a fire within the building.

Existing buildings

The conversion of existing buildings for short term accommodation purposes in Tasmania is subject to the same legislation (i.e. the Building Act 2016).

If a change of use is required, Section 55 establishes the process that must be followed to obtain a new occupancy permit for the proposed use. A new occupancy permit can be issued without further approval where no building work is required.

Determination of the need for further building work is made, pursuant to the Determination, by the property owner so that there is significant risk of self interest interfering with achievement of suitable standards of safety within existing buildings that have been converted for use as short or medium-term accommodation buildings.

Existing buildings are also often not constructed to contemporary standards for the existing use so that a change of use without upgrade is further problematic with respect to safety.

To illustrate this point, AIBS notes that since 1990, there has been a continual increase in stringency of requirements pursuant to the NCC BCA related to:

- construction of buildings within bushfire prone areas;
- construction of balustrades;
- construction of waterproof membranes in bathrooms;
- provision of safety glass;
- construction of stairs with respect to slip resistance;
- installation of heating appliances particularly freestanding wood burning appliances and associated features; and
- structural requirements, particularly those pertaining to light timber framing.

A building built as little as 20 years ago would be unlikely to comply with almost all of the technical requirements applicable for the same building today.

Whilst the Tasmanian Parliament has not considered it necessary for persistent existing use of existing buildings to undergo mandatory upgrade with stringency changes, it is not appropriate for buildings where the use changes to remain in a condition of inferior compliance. This is a position supported within Section 55 of the Building Act 2016.

Whilst there are provisions that allow for this in Section 55, in the view of AIBS, there should be little if any dispensation given with respect to meeting the requirements of contemporary requirements in the event of a change in use where those requirements relate to the safety of occupants.

Interstate legislative provisions

The NCC BCA is called up in all other states and territories of Australia and also by Commonwealth legislation dealing with Defence buildings and Federal Airport buildings. In this sense, the same technical requirements arise nationally regarding short or medium-term accommodation buildings.

The administrative provisions which govern the need or otherwise for an approval for these types of buildings are also largely uniform. New work of this nature is only permitted to be undertaken following a process of assessment against the provisions of the NCC BCA and an approval of some form where it has been demonstrated that requirements are to be met.

There are also similarities in most jurisdictions regarding the obtaining of a permit to occupy such buildings post completion of construction. Some jurisdictions do not require an occupancy permit to be

issued for Class 1 buildings but all require an occupancy permit of some form to be issued for Class 2 and 3 buildings.

All jurisdictions have requirements governing the process of changing the use of a building to address the need to review the suitability of the building from a technical compliance point of view for the proposed use.

Having said this, short and medium-term accommodation uses have provided difficulty for regulators nationally. There are examples of litigation which predominantly relates to matters of amenity impacts arising where a building has been approved for private residential use and then subsequently used for short or medium-term accommodation.

There are examples of litigation where issues arising related to technical compliance with building requirements have also been examined, particularly in association with larger commercial scale buildings. In these instances, the questions that typically arose related to the differences between buildings that had been classified as Class 2 and then subsequently alleged to be used as though they were Class 3 buildings.

However, for the purposes of this inquiry, we believe the focus we have placed on the issues arising from conversion of existing Class 1a building use to new Class 1b building use above is sufficient to illustrate that there is a problem that should be resolved.

Recommendations

AIBS recommends that a review be conducted into:

- the provisions within legislation that provide for owners to make declarations of fitness for purpose; and
- the provision within legislation which allow an owner to build short or medium-term accommodation buildings without resort to oversight from a building surveyor; and
- how the legislative provisions described in the two points above might be creating potential for negative safety outcomes for occupants of short or medium stay accommodation buildings.

Additionally, AIBS recommends that a review be conducted into the Determination for:

- similar impact potential for the safety of occupants of short and medium stay accommodation buildings; and
- consistency with the legislative scheme provided by the Act.

AIBS would be happy to assist the Committee to explore the issues raised herein further should it wish to do so. For more information, please contact Jeremy Turner, National Technical Manager on 1300 312 427 or via e-mail: tech.manager@aibs.com.au.

Yours faithfully
Australian Institute of Building Surveyors



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