



The Secretary
Legislative Council Select Committee – Short Stay Accommodation in Tasmania
Legislative Council
Parliament House, HOBART 7000

Email: ssa@parliament.tas.gov.au

10 August 2018

Dear Members of the Committee,

**Submission to Legislative Council Select Committee Inquiry
Short Stay Accommodation in Tasmania**

Thank you for the opportunity to provide this submission which addresses item (4) of the terms of reference for the Legislative Council Select Committee (the Committee) inquiry into Short Stay Accommodation in Tasmania (the Inquiry).

1. Director's Determination – Short or Medium Term Visitor Accommodation

The Director of Building Control has issued a Determination on Short or Medium Term Visitor Accommodation (amendment 1 dated 1 July 2018) (the Director's Determination) which sets out a technical process and requirements for the self assessment of the change of use of an existing building for short term accommodation. This Determination may be defective for the following reasons.

The Determination at Clause 3 claims that 'there are no additional requirements under the *Building Act 2016* for owners or occupiers of a dwelling or residential premises used ... for short term or medium term accommodation, if the property is the main place of residence and it has no more than four bookable rooms that are available to be let to visitors.'

In this submission it is suggested that this is not the case.

Section 11 of the *Building Act* requires building work to comply with the National Construction Code (NCC). The NCC at Clause A3.2 establishes the classifications for buildings.

Typically the Director's Determination applies where a person is seeking to convert an existing dwelling to short term accommodation. There are variations to this typical arrangement, which are



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less likely to occur, which are more complex and more difficult for an owner and occupier to understand. These other variations are not considered in this submission.

A dwelling is a Class 1a building. Where the building is used as a boarding house, guest house, hostel or the like where there are less than 12 people resident and the floor area is less than 300m² the building is classified as a Class 1b building. Where there is a dwelling which has up to four bookable rooms (presumably let to independent persons or couples) within a dwelling, as identified in the Director's Determination, this is clearly a Class 1b building.

Section 55 of the Act establishes the statutory requirement for a change of use (change of classification) for a building. The Change of classification from a Class 1a building to a Class 1b building is a change of use. That process requires a building surveyor to issue a new occupancy permit if there is no building work required. The building surveyor is an independent technical person that is authorised at law to review and determine an acceptable level of residual risk in buildings on behalf of the Government. Building work may require further approval.

This assessment process is required by the statutory scheme where there is a change of use. Failure to comply with this requirement may void insurance cover for the owner / occupier.

If the dwelling is used as a single unit that is let to a single person or group of people (as opposed to different groups of people identified above) that are related (known to each other) it may be argued that there is no change of use and that the building remains Class 1a. Where the building is let to a single tenant there are still safety issues that require consideration and these are considered further below. That needs to be assessed to ensure that an appropriate level of safety is provided to the vulnerable tenants of short term accommodation.

2. Bushfire Protection

It is estimated that in excess of 90% of the existing dwellings in Tasmania in bushfire prone areas were built prior to the introduction of statutory bushfire protection requirements in either the building or planning regulations. In these more remote locations alterations sometimes occur without approval and hazard management areas for the benefit of occupant safety and other mitigation measures may not be maintained.

In this submission it is noted that dwellings may have been constructed in a flame zone and could be occupied as short term accommodation by people, for example, where English is not spoken and where the occupants do not have an ability to appreciate emergency broadcasts. This is a dangerous combination of circumstances where a catastrophic outcome is reasonably foreseeable.

The Director's Determination suggests that a Bushfire Hazard Management Plan (BHMP) may be necessary (discretionary language). It is noted that building approval by a building surveyor if there is a change of use and planning approval may be necessary to give effect to the BHMP if there is vegetation management required.

The Director's Determination uses the phrase BHMP. This is a defined term in the building regulations which differs from the definition provided in the Director's Determination. The approval

process under the building regulations provides for a prescriptive solution with an approval process where the approval authority is the building surveyor for the building work. The Director's Determination simply says that the BHMP needs to be approved by the Tasmania Fire Service (TFS). There is no defined mechanism for the approval by the TFS or the review of the approval or a benchmark standard for achieving consistent outcomes in the Director's Determination.

This creates uncertainty and ambiguity in both the standard of bushfire protection that must be provided and the approval process that must be followed.

It is plausible, for example, that in the absence of clarity, verbal approval from the local volunteer brigade may be construed as approval from the TFS for the purpose of the Director's Determination. An owner / occupier completing the self assessment process is unlikely to appreciate these nuances and will look for a favourable interpretation of the standards potentially to the detriment of occupant safety to potential tenants.

3. Building Standards Generally

There are a range of other issues that are not specifically captured in the Director's Determination that are critical safety issues. These include;

- Balustrades – Balustrades on existing buildings built prior to 1978 have balustrades that are lower than permitted now and where significant gaps in the balustrade are permitted. These balustrades continue to exist in some dwellings and they are hazardous, particularly where there are young children. Some of these balustrades have deteriorated structurally with time.
- Stairs – Stairs in new buildings are now required to be slip resistant because the largest cause of injuries in buildings is slips and falls. The NCC has been recently amended to introduce more stringent requirements for trips and falls because of the demonstrable level of risk. Many of the existing dwellings will have stairs and finishes where the level of slip resistance and arrangement of stairs (as required by the NCC) that is not compliant.
- Safety Glass – In older buildings there is often incorrect glass installed in locations where there is a higher probability of slips and injury associated with broken glass. There is legal authority that suggests that glass in commercial buildings like a rental property should be upgraded to the appropriate safety glass. This risk exists around showers, adjacent to doors and adjacent to baths in particular. There is no assurance that owners understand this risk and therefore have provided sufficient care for the tenant through the self assessment process.
- Wood Heaters – In older buildings there is a higher likelihood of wood heaters that are inappropriately guarded and where the occupants may have been sufficiently cautious about movement around the wood heater. A short term resident may not have the same level of understanding as a long term resident. International visitors in particular may not be aware of a risks associated with wood heaters.

Smoke alarms are identified in the Director's Determination as an element of the self assessment process though it is suggested that an owner occupier is unlikely to be able to determine whether or not the smoke alarm provided is compliant with the standard in the Director's Determination and

whether or not it is installed in the right location. There are smoke alarms in the market that are not compliant with the standard identified in the Director's Determination. Again there is exposure for the tenant and for the owner / occupier who incorrectly make a self assessment.

The Director's Determination also identifies that 'emergency evacuation lighting' is required in multi storey buildings. In a Class 1b building the NCC would require artificial lighting initiated by a smoke alarm to be provided in single storey buildings as well as a multi storey building. For short term accommodation where there is no or limited familiarity with the building the provision of automatic artificial lighting in the exit pathway can be very important, particularly where the exit pathway is obscured by smoke in a fire and the light switch is not readily apparent. There is some ambiguity about what is required by the Director's Determination making it virtually impossible for the owner / occupier to certify that the building is compliant in the self assessment process.

These are all issues where it is reasonably foreseeable that short term occupants may not sufficiently appreciate the risk that are present and which are less risky for long term residents that are familiar with the dwelling. Hence the need for an independent and competent assessment by an individual that is able to determine whether or not an acceptable level of residual risk is provided by reference to the NCC.

If it is acknowledged that the use of a dwelling for short term accommodation including up to four bookable rooms is a change of use for the purpose of the building regulations this list of issues will be considered by the building surveyor in the assessment of the proposed change of use.

4. Fit for Purpose

It is also noted that a part of the self assessment process in the Director's Determination is that the owner or occupier is to declare that the building is 'fit for purpose' where an occupancy permit is issued. In this submission the contention is that owners or occupiers have a vested interest in the use of the building and that they may not be sufficiently qualified or sufficiently removed to make an assessment of the range of issues identified above. Where the owner or occupier makes an assessment and they are not sufficiently competent this also gives rise to question the safety to the occupants and whether insurance will provide coverage to the owner / occupier in the event of injury that is caused by the condition of the building.

Interestingly the owner / occupier does not need to make a declaration of 'fitness for purpose' where the building was constructed or altered before 1994 as there is no occupancy permit under the regulations at that time. It seems incongruous that the Director's Determination is not concerned about these issues where the building was built or altered prior to 1994 where it is suggested that the risks are likely to be greater.

Recommendations

It is recommended that;

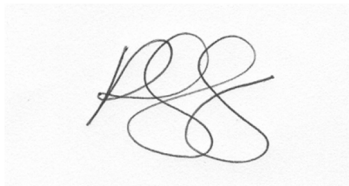
1. The Director's Determination be modified to acknowledge that the use of a dwelling by unrelated people in a dwelling is a Class 1b building and where, as a minimum, a new occupancy permit is required where the building surveyor would assess the risk associated with the change of use in accordance with the NCC, and
2. That a Director's Determination be provided that establishes definitively that the use of a Class 1a building where the building is to be used, for consideration, as short term accommodation is a change of use for the purpose of the building regulations.

While it is appreciated that it is desirable to reduce red tape it is also important to protect brand Tasmania. The consequences of having a product where there is a blatant disregard to safety standards where uninformed owners and occupiers are self certifying ambiguous and uncertain safety standards is difficult to comprehend.

Where discretion is provided for the self assessment of safety risks for vulnerable people by people with a vested interest, it is essential that there is clarity in the requirement for an acceptable level of safety. If certainty is not possible in the standards because of the complexity of the environment an independent person needs to be tasked with the assessment.

This program has parallels to the Commonwealth insulation batt program where there was a similar disregard for establishing a transparent and accountable process to implement safety standards.

Yours sincerely

A handwritten signature in black ink, appearing to be 'RM' or 'Ross Murphy', on a light grey background.

Ross Murphy

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