

## airbnb



### Commissioners Corner – Airbnb in Strata Monday February 12th, 2018

One of the buzzwords of recent times is the idea of the “sharing economy”.

Typically this refers to people ‘sharing’ their asset and in the process getting a return out of it.

One example of this is Uber (for vehicles) and another example, which this column will focus is on, is short-term letting of one’s property.

A very high profile example of this is Airbnb, although there are numerous other companies and websites providing the facility for people to offer their lots for the purposes of short-term letting.

For the uninitiated, Airbnb and other sites like it contain listings from owners who offer part (e.g. a bedroom) or all of their lot for short-term accommodation, usually for a daily rate and often including a fee for cleaning or bond.

The key here is that the owner is usually handling the booking directly and without using an agent to do so.

Originally, the idea of Airbnb was not just simply to derive income out of letting.

Indeed, it was, and still is the case in many instances, that owners want to let out part or all of their lot simply so that they can meet people from other parts of the world, act as a host and have a social experience.

While this is admirable, in a community titles scheme it is apparent that having a regular turnover of visitors to the scheme can pose issues for a body corporate and other owners and occupiers.

Some of those issues might include:

- **Short-term occupiers not knowing fire escapes and other vital safety features;**
- **Concern that the by-laws for the scheme will not be made plain to these occupiers, which in turn might result in issues around things such as noise and parking; and**

- **Increased use of – and thus, wear and tear on – common property.**

The Information Service of my Office has seen an increase in questions about whether, in general terms, Airbnb and other services like it can be operated within a community titles scheme.

The short answer is ‘Yes’ but there are some things to be aware of before commencing any letting of a lot.

The first thing I should point out is that this fact sheet is about issues to do with body corporate legislation.

The broader issue of the overall legality and regulation of the sharing economy is not something I will address here.

If you are a lot owner who is or who is thinking of letting out your lot, or you are a member of a body corporate with some concerns about short-term letting occurring at your scheme, you might want to firstly seek some qualified legal advice about your rights and responsibilities.

From the general body corporate perspective, the scheme’s registered by-laws should be reviewed to determine if there is any regulation around short-term letting.

That said, it is important to point out that section 180 of the *Body Corporate and Community Management Act 1997* (the BCCM Act) sets out the limitations for by-laws. One of these is that *‘If a lot may lawfully be used for residential purposes, the by-laws cannot restrict the type of residential use’*.

So what is ‘residential use’ I hear you ask? The BCCM Act does not give a definition of this term. This is a matter about which you may need to seek independent legal advice in the context of any by-law for your particular scheme. The Information Service cannot provide an interpretation of by-laws, however past adjudicators’ decisions may have dealt with these matters and you can search for these decisions at <http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/qld/QBCCMCmr/>.

Another source of information about what is permitted within the lot is your local government (local council). The local government may have some further information including living or business restrictions for your scheme’s particular area based on the zoning and building classifications. For example, some schemes are not permitted to be used for residential purposes at all as they are deemed commercial or industrial areas only.

For a lot owner, a consideration before commencing the operation of an Airbnb is to review existing contractual arrangements in place in your scheme. For example, some schemes restrict, through their by-laws, any other person from operating a letting agent’s business within the scheme. This can be limited to the caretaking service contractor (also referred to as the onsite manager, caretaker, resident manager) to perform and may impact others from conducting businesses like Airbnb within the scheme. Again, queries about the interpretation of a by-law or the contractual terms, should be directed to a legal practitioner.

Consideration must also be given to any licensing requirements needed to conduct Airbnb in your own lot or another person’s lot. Further information on property industry regulation can be found on the [Office of Fair Trading](#) website. From the body corporate’s point of view, while the legislation seems clear on the topic of short-term letting, there may be some general things it can consider doing to address issues related to Airbnb and others like it, including:

- **Reviewing by-laws to ensure they are current and clear;**
- **Making sure by-laws are well “advertised”, to ensure that even short-term visitors would be aware of them; and**
- **Perhaps something as simple as talking with lot owners who are using Airbnb to let their lot, to at least communicate some of the concerns and see if a workable solution could be found.**

By discussing concerns early on, both the body corporate and the lot owner or owners can have a clear idea of what is at stake and then, what could be done to ensure that everyone’s interests can be fairly balanced.

For further information and for general queries about the body corporate legislation, please contact the Information Service of my Office on Freecall 1800 060 119, submit an online enquiry at [www.qld.gov.au/bodycorporatequestion](http://www.qld.gov.au/bodycorporatequestion) or visit our website [www.qld.gov.au/bodycorporate](http://www.qld.gov.au/bodycorporate).

*This article was contributed by Chris Irons – Commissioner for Body Corporate and Community Management.*

## Toowoomba Regional Council

The Toowoomba Regional Council has created their own information sheet on the topic – see attached.

Council can also apply fees

T. Short Term Accommodation	a. Base fee per application	i. Code/Base Fee	2,500.00
T. Short Term Accommodation	a. Plus per room accommodating a bed	i. Code Fee	583.00
T. Short Term Accommodation	b. Base fee per application	i. Impact Base Fee	3,425.00
T. Short Term Accommodation	b. Plus per room accommodating a bed	i. Impact Fee	796.00

Fees applicable at 1 July 2020

Council will also require a detailed application to be made – see some examples here

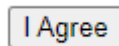
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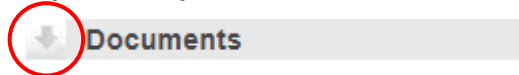
<https://pdonline.toowoombarc.qld.gov.au/MasterView/MODULES/Applicationmaster/default.aspx?page=wrapper&key=1004039>

When following the links

### Step One - Agree to the Disclaimer



### Step Two – Open the Documents Section (bottom of page)



### Step Three – Click on the Link for each document



Clicking the link will open each document and provide you a good understanding of the process that needs to be followed.

## The Bottom Line

Can the body corporate stop somebody from letting their unit via AirBNB ... probably not.

However, the body corporate can insist the owner comply with the law including the requirements of Council.

## Purpose of this Information Sheet

Airbnb is one of many online marketplaces and hospitality services for the rental or lease of short-term lodging for vacation rentals, apartment rentals, hotel rooms, bed and breakfast, farm stays and the like.

The purpose of this Information Sheet is to assist you to determine whether or not a Development Approval is required when renting-out all or part of your home or other accommodation premises through Airbnb or other services. This Information Sheet has been provided due to the increased popularity of Airbnb however, the information also applies to short-term accommodation not rented-out through Airbnb or other similar services.

Whether the premises or part of the premises being rented-out is a Dwelling House, Dual Occupancy or a Unit (part of a Multiple Dwelling), a Development Approval under Council's Planning Scheme may be required.

When renting-out all or part of your home or other accommodation premises for short-term accommodation through Airbnb or by other means, the applicable land use category under Council's Planning Scheme may be either 'Home Based Business' or 'Short term Accommodation'.

## When is the use a Home Based Business?

Where the permanent resident of the dwelling house or unit resides in the dwelling or unit whilst renting part of it out for short-term accommodation, the use may be defined as Home Based Business.

Home Based Business is defined as:

*The use of a dwelling or domestic outbuilding on the premises for a business activity that is subordinate to the residential use of the premises.*

Bed and Breakfast and Farmstay are examples of Home Based Business.

To be considered as a Home Based Business, the function and scale of the short-term accommodation must be subordinate to the primary use of the Dwelling as a private

permanent residence. *The use must also comply with the Home Based Business Use Code of the Toowoomba Regional Planning Scheme 2012 (Planning Scheme).*

The Home Based Business Use Code includes Acceptable Outcomes and Performance Outcomes specifically for Bed and Breakfast and Farmstay. Below is a brief summary of these requirements:

- The permanent resident must reside in the dwelling or unit;
- The maximum number of rooms for Bed and Breakfast, or accommodation units in a Farmstay is six (6) in the Rural Zone and three (3) in other zones;
- The maximum number of overnight guests is six (6) (other than in the Rural Zone where there is no limit);
- Meals must not be served for gain, other than to paying overnight guests; and
- One (1) additional car parking space must be provided for each room occupied by paying guests.

*Note: Please consult the Home Based Business Code for the actual Performance Outcomes and Acceptable Outcomes.*

*Note: Short term rental of a Secondary Dwelling (typically known as a granny flat or relative's apartment) is not considered a Home Based Business and would require development approval for Short-term Accommodation.*

Further information about Secondary Dwellings is provided in the Dwelling Houses, Secondary Dwellings and Dual Occupancy Information Sheet INFO 008.

Further information about Home Based Business is also provided in the Home Based Business Information Sheet INFO 009.

## When is the use Short-term Accommodation?

Where the owner/lessee of the dwelling or unit does not reside in the dwelling or unit and rents out all or part of the dwelling or unit for short-

term accommodation; the use may be defined as Short-term Accommodation.

In the case of a farmstay, where the owner/lessee does not reside on the same premises as the farmstay accommodation, the use may be defined as Short-term Accommodation.

Short-term Accommodation is defined as:

- a. *the use of premises for*
  - i. *providing accommodation of less than 3 consecutive months to tourists or travellers; or*
  - ii. *a manager's residence, Office, or recreation facilities for the exclusive use of guests, if the use is ancillary to the use in subparagraph (i); but*
- b. *does not include a Hotel, Nature-based tourism, Resort complex or Tourist Park.*

## Do I need to apply for a Development Approval?

The level of assessment for a Material Change of Use for Home Based Business or Short-term Accommodation can be determined by referring to Part 5 of the Planning Scheme.

A Material Change of Use for Home Based Business is Accepted Development Subject to Requirements in the following zones:

- Low Density Residential Zone;
- Low-medium Density Residential Zone;
- Township Zone;
- Rural Residential Zone; and
- Rural Zone.

Home Based Business becomes Code Assessable Development if not complying with one or more required acceptable outcomes of the Home Based Business Code.

A Material Change of Use for Short-term Accommodation is generally Impact Assessable development in residential zones, except where in the Low-medium Density Residential Zone or Township Zone where it is Code Assessable.

Code and Impact Assessable Development will require a Development Permit for Material Change of Use.

## How do I make a development application?

Lodge your development application:

- In person at Council's Customer Service at 4 Little Street, Toowoomba
- By email at: [development@tr.qld.gov.au](mailto:development@tr.qld.gov.au)
- By post to:

Toowoomba Regional Council

PO Box 3021

TOOWOOMBA QLD 4350

If you need assistance with your development application, a consultant town planner can assist in preparing and lodging the development application for you.

For information regarding making a development application, please contact Council's Technical Advice Officers on 131 TRC (872).

## Are infrastructure charges payable?

Infrastructure charges may be applicable. More information can be found on Council's website.

## Do I need any other approvals?

A range of development approvals may be required before a proposed use can lawfully commence. Development permits for building work, operational work (e.g. excavation or filling, vegetation removal, placing an advertising device on premises) or plumbing and drainage work may be required.

Other licences, for example a Food Licence may be required. Please contact Council to determine if other approvals and/or licences are required.

## Need Further Information

For further specific information on Home Based Business or Short-term Accommodation contact Council's Technical Advice Officers on 131 TRC (872) or visit your nearest Customer Service Centre during business hours.

Council offers an easy to-use PD Online service which provides 24-hour access to planning and development information, including site specific search capability. Visit [PD Online](#).

The Planning Scheme can also be viewed online. Visit:

<https://www.tr.qld.gov.au/>

## Disclaimer

**The information contained in this sheet is a guide only.**

*This information has been prepared by Toowoomba Regional Council to help people gain an understanding of the Toowoomba Regional Planning Scheme. Please consult the Toowoomba Regional Planning Scheme for detailed information including maps (zones, local plans, overlays and priority infrastructure plan), provisions and policies. The content of this information sheet is not intended to replace the provisions of the Toowoomba Regional Planning Scheme.*