

Watergate: Supreme Court of Appeal decision

Genco & Anor v Salter & Anor [2013] VSCA 365

New 'sliding scale' to determine whether short-stay apartments change an apartment building's classification under the Building Act

Background

Watergate is mixed-use strata building located in Docklands, Melbourne. The lower levels of the building are commercial and there are a number of residential apartments on the upper levels. Certain apartment owners in Watergate operated commercial short-term stay accommodation from a number of the residential apartments. The City of Melbourne Council issued building notices to the owners corporation under the Building Act 1993 and the Building Code of Australia which provide for the construction, fire and safety standards of buildings. The Council's building notices stated the use of the apartments for short-term stays changed their classification under the Building Code from 'Class 2' to 'Class 3'. Class 3 buildings must meet higher building standards under the Building Code so building upgrades were necessary if the short-term stay apartments were in fact deemed to be Class 3.

Supreme Court of Appeal decision

The Supreme Court of Appeal judgment in Watergate was delivered on 12 December 2013. In summary, the case sets out the following principles of interpreting the Building Code:

1. The way in which a building is used may change result in a change of its original classification under the Building Code;
2. Whether the use of apartments for short-term stays has the effect of changing a building's classification from 'Class 2' to 'Class 3' will depend on a range of factors including whether the short-term stay apartments are "...of such a number and so physically disposed in relation to each other as to resemble the residential part of an hotel, and the range and nature of services provided to patrons of the apartments (paragraph [33]);
3. The test will be whether the short-term apartments in the building so much resemble the residential part of a hotel as to properly be classified as 'Class 3'.

With the Supreme Court of Appeal's guidance, the Building Appeals Board will re-hear the Watergate case and determine whether there is sufficient evidence to show short-term stays in that case resulted in a change to Watergate's building classification (our graphic of the test for assessment for Class 2 (Residential Apartments) and Class 3 (Hotels) can be seen on page 2).

Nicole Wilde, Senior Solicitor & Sylvia Zdunek, Solicitor

14 January 2013

Contact TEYS Lawyers based in Docklands on (03) 9600 1128 to discuss any legal issues your owners corporation is facing.

A Judicial Watergate Discrimination In Licensing Lawyers And Other Facts

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