

## Case Note: Kogon and City of Vincent

### Holiday accommodation in residential zones

In [Kogon and the City of Vincent \[2019\] WASAT 75](#), the Tribunal considered a decision by the City of Vincent to refuse an application for a change of use from a 'single house' to 'temporary accommodation (short term dwelling)'. The Tribunal affirmed the City of Vincent's decision to refuse the application as *"the [p]roposal would not be compatible with the immediate residential context which constitutes the relevant locality. The Land sits within, and is surrounded by, land which is used for residential purposes at relatively low density. That makes the Land a very sensitive site in which to locate what is a commercial use."* [149]

In making this decision the Tribunal was not convinced that the proposal warranted support as it, *"would be contrary to orderly and proper planning and has the potential to adversely affect the amenity of the locality particularly on the issue of noise."* [150]

In determining the suitability of the temporary accommodation land-use on residential zoned land, the Tribunal made clear that uses such as 'short term dwelling' or 'holiday house' are commercial and not residential in nature [91]. When considering the impacts of the amenity of the proposal, the Tribunal considered that should the property be suitable for use as temporary accommodation, *"then those who choose to stay should be entitled to use the Premises in an ordinary manner that one may use a holiday house"* [112]. This is arguably different to how a permanent resident would use a single house. Thus, when considering the likely future amenity of the immediate locality, the Tribunal was not satisfied that the proposal was acceptable from a noise amenity perspective.

Lastly, the Tribunal in its deliberations made commentary around the manner in which the proposal was classified by the City. The proposal was lodged as an application for 'temporary accommodation (short term dwelling)', as defined in the City's Local Planning Policy 7.4.5. As this use is not included within the Scheme's zoning table the city assessed the application as a 'use not listed'. The Tribunal noted that "[t]he Proposal would appear to fall within the terms of 'holiday house', which is defined in both the City's Scheme and the Deemed Provisions. In making this commentary, the Tribunal at [50] noted that:

*"where a proposed use falls within the terms of a land use that is defined in a planning scheme, it is preferable to classify the land use on the basis of that defined use as opposed to adopting another land use classification that is not recognised in the planning scheme. That is so even where the land use is not included in the Zoning Table. This is*

*because I consider that it is preferable for a land use to be at least recognised in the context of a local planning scheme, which has the force of law, as against a policy, which does not.”*