

The Committee Secretary

State Development, Natural Resources and Agricultural Development Committee

Parliament House

George Street Brisbane 4000

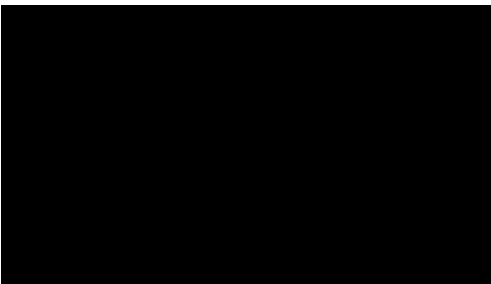
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SUBMISSION

THE SANCTUARY COVE RESORT ACT 1985 (SCRA) REQUESTED AMENDMENT

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PROPOSERS OF THIS SUBMISSION

This submission is prepared and lodged with the consent and request of the following persons:

John Smith, Chair Colvillia Residential Body Corporate (RBC)

Anthony Ellingford, Chair Washingtonia RBC

David Dyer, Member of Sanctuary Cove Principal Body Corporate (PBC) and PBC Executive Committee

Tony Scallan, Chair Bauhinia RBC

Ross Wharton Secretary and Treasurer Washingtonia RBC

Ian Cameron, Member Washingtonia RBC

Alan Lock, Plumeria RBC Members Nominee to the PBC

John Russell, Chair Adelia RBC and PBC member

Tony Scallan, Chair Bauhinia RBC

Jeff Ervin, Chair Araucaria RBC

Faye Wyer, Livingstonia RBC Member's Nominee to the PBC

Peter Cohen, Chair Cassia RBC

Richard Sherman, Member of Sanctuary Cove PBC and PBC Executive Committee

All are residents of Sanctuary Cove.

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BACKGROUND AND OPERATION OF SCRA

The Sanctuary Cove Resort Act was created to oversee the implementation and operation of the area legally defined as Sanctuary Cove. It creates and ensures certain rights and obligations both inside and outside the geographical area. It inter-plays with other Acts of Parliament.

It is the proposer's opinion that all residents are insistent that the Act remain in place and not be incorporated or amalgamated into separate legislation.

The current structure of Sanctuary Cove comprises, 24 Residential Bodies Corporate, the Principal Body Corporate (PBC) and a Primary Thoroughfare Body Corporate (PTBC), a village and marina, international hotel and 2 golf courses.

It is an iconic Queensland establishment with world recognition for the brand.

There have been several Amendments to SCRA since inception to assist better administration and also by Mulpha Sanctuary Cove Developments (MSCD) and associated entities to increase their development margins.

There have been few changes successfully initiated by residents or the PBC.

Unfortunately residential apathy is rife when it comes to processing community need for change.

The Proposers represent a broad range of RBC views and by providing their roles, gives the Committee an indication as to their active involvement in the governance process.

We now take this timely opportunity to request a small change in SCRA to give the property owners better protection and assist in the legal definition of "tenure", which is currently not adequately exact!

This proposed Amendment will "increase operational efficiency" being one of the prime purposes of the Committee review.

COMMUNITY EXPECTATIONS

The Proposers believe that individuals should be able to make representations to our legislators that are considered fairly and on their merits.

As public notice has been given for Submissions, it is an opportune time to amend SCRA with the resident's requests, as it has no impact outside the Sanctuary Cove boundaries.

The Proposers submit that these requested changes preserve the property values of all those who own land under SCRA, and rely upon the Queensland Government for protection of same.

REQUESTED AMENDMENTS

Insert in Section 104A (2) (a) before “; and” of the Sanctuary Cove Resort Act

“or a dispute or matter relating to a use restriction which limits the devolution of property rights for a period of one month or less”

The proposed amendment will read:

Sanctuary Cove Resort Act**Part 8 Miscellaneous provisions****Division 1 Resolution of particular disputes****104A Dealing with particular disputes under Building Units and Group Titles Act 1980**

- (1) Subject to subsection (2), a dispute about the operation of this Act or the rights and obligations of persons under this Act may be dealt with under the *Building Units and Group Titles Act 1980*, part 5.
- (2) However, this section –
 - (a) Does not apply to a dispute or matter mentioned in section 94T, 94U or 104B or a dispute or matter relating to a use restriction which limits the devolution of property rights for a period of one month or less; and
 - (b) Is subject to Section 104C.

EXPLANATION OF PROPOSED AMENDMENT

The Sanctuary Cove Resort Act includes a number of use restrictions in the Residential Zone Activity By-laws (Part 6A Sections 96A and 96B). Those by-laws were gazetted by the Minister responsible for the Sanctuary Cove Resort Act in 1994. One use restriction does not permit short term rentals. Further, at least one residential body corporate, which is a subsidiary body corporate of the Sanctuary Cove Principal Body Corporate has enacted a similar use restriction.

For the purpose of providing clarity this amendment defines that leases of one month or less are not permitted. Currently, there is considerable confusion with regard to the validity of the use restriction. Western Australia Appeals Court *Byrne v The Owners of Ceresa River Apartments Strata* and the Privy Council case *O'Connor (Senior) and others (Appellants) v The Proprietors, Strata Plan No. 51 (Respondent) (Turks and Caicos Islands)* December 2017 upheld use restrictions on legislation requiring leases to be at least one month.

This proposed amendment makes clear that leases of more than one month are permitted under Sanctuary Cove Resort Act and under By-laws of the subsidiary bodies corporate of the PBC.

A number of Queensland sister states have enacted or are considering enacting legislation based on the Privy Council case. This amendment will enable Queensland state government to evaluate the issues before making any decision to adopt similar legislation across all of Queensland. As previously explained Sanctuary Cove Resort Act is limited in scope to Sanctuary Cove.