

**Submission
No 187**

**ADEQUACY OF THE REGULATION OF SHORT-TERM
HOLIDAY LETTING IN NEW SOUTH WALES**

Name: Mr Kym Burke
Date Received: 10/11/2015

Submission to the New South Wales Parliamentary Inquiry into short stay rental accommodation.

Background.

My wife, Rosemary and I purchased our home at [REDACTED], Byron Bay when visiting Byron Bay from Adelaide as part of the 2003 Variety the Children's Charity Bash. We literally fell in love with Byron and the location of the home at our first visit. The previous owner, a Frenchman, had nurtured the house and beautiful garden for 20 years, but lived in a studio on one side. The rest of the property was let to short stay holiday makers; many from Europe, Great Britain and the USA were repeat stays. Occupancy was steady and we regarded the income as sufficient to cover a mortgage, the relevant rates and taxes, cleaning, linen and general maintenance. Without this holiday letting income we could not have purchased the home.

This home, which we named [REDACTED] is nestled in a quiet cul-de sac only 400 metres from the Byron Bay Centre and a 100 metre walk to Belongal beach. It is in a prime location and surrounded by tourist accommodation, resort, and motel and back-packer accommodation. It is only one of three single homes in this tourist accommodation southern section of [REDACTED] and located within an FP2 Zone.

Despite its cottage character, the building was tired and in need of work. Sections of the roof leaked, with rusted gutters and the studio area often flooded during heavy rains. The building was unsafe in terms of electrical wiring, plumbing was antiquated and leaking. After settlement we discovered the timber flooring and some of the wall studs were riddled with white ants.

Whilst we hadn't planned to undertake significant repairs when we purchased the home, our impulsive decision was fast turning into an expensive one, with internal timber stud and cladding replacement, new floor coverings, plumbing upgrades, electrical wiring, repainting, re-roofing to sections, kitchen upgrades, re tiling, fencing and front gates. These works were undertaken progressively using all fully licensed local trades and suppliers of materials.

Based on the historic holiday letting activities at the time of purchase and the income stream necessary, we decided to maintain holiday letting activities along with our family use during the year and because we live in Adelaide, we sought out a highly professional holiday letting agency, [REDACTED] [REDACTED] to manage the property for us.

Property and tenants.

Since we purchased the property (and prior to our involvement) the target market for the rental has been for couples, families and small groups, with many of these being repeat occupancies. We do not promote occupancy during "Schoolies' week" although we have allowed parental controlled teenage occupancy in two "Schoolies' week" years. The majority of our stays are from interstate or overseas arriving by Byron Bay taxi or Airport bus. We have occasional arrivals with airport hire cars or interstate driven vehicles. We know from the hundreds of written comments in our visitors books, the on-line anecdotes and reviews and most importantly their behavior and the respect shown to our home, that our clientele are not disruptive, the property is impeccably managed and maintained and noisy or disruptive tenants would be few and even then any disturbance would be immediately

attended by our agent's security team. In over ten years of operating under our ownership and [REDACTED] and the more recent [REDACTED] Voluntary Code of Conduct, I am not aware of any complaints from neighbors or any police or security attendance as a result of disruptive activity.

We did (during a period when the home was unoccupied) have some rowdy campers take up position on public land immediately behind our rear fence for a week, but Council did relocate or move those people to a more suitable location.

Below are 14 unsolicited reviews from the [REDACTED] web-site, which give some insight into the [REDACTED] experience.

[Fantastic Spot](#) 03-20-2015

The place was great, just as described. [REDACTED] provided everything we needed, we had a great time. The house is in a fantastic spot.

[great spot in Byron for group holiday](#) 03-10-2015

booked a long weekend to hang out on the beach. unfortunately ended up being a cyclone but fortunately the house was a great place to hang out. Very comfortable. We had 7 people and were very comfortable. Kitchen well set up - because it was so wet we ended up eating in at night time. Highly recommend

[Perfect...](#) 03-07-2015

Three generations of our family recently had a ten night stay at [REDACTED] and the house accommodated us all perfectly with it's large living area, five bedrooms, outdoor area and beautiful tropical gardens.

The location is perfect - so close to the beach, Byron town and markets.

We all loved our stay in this beautiful home away from home, and would definitely return.

[REDACTED] 06-13-2014

We have stayed at [REDACTED] for the last four years. Eight women for a girls long weekend. Everything from the booking with Byron Holiday Rentals to the fantastic position of the house (walk to the beach and into town) booking a taxi to explore the surrounding towns, the cheap airfares-is easy and friendly. Hope to see you all again next May 2015. Cheers.

[Don't stay here...](#) 10-03-2013

...Because I want it available for our holidays every time!

Absolutely fantastic accommodation, catered for all needs. Brilliant for two families and young kids. Can not find one fault.

Great situation for walking into Byron along old railway line or down the street. Quiet cul de sac. Beautiful house and garden. Well equipped house. Thank you to the owners for their effort in this place.

[Delighted](#) 06-24-2013

[REDACTED] was perfect for our family and we were delighted with all the extras available for the young children (toys, games, baby bath, highchair etc.).

Enjoyed the flow and size of the large living area, and the separation of sleeping areas which gave each family a little bit of privacy. The garden was a hit with us all and it was super easy to access the beach and central Byron by foot.

We would certainly recommend this property to our friends and it has been added to our favourites.

Your service has been great and efficient.

Thank-you.

[Great House](#) 03-08-2013

Just finished up at [REDACTED] running my own fitness camp as had 8 people there and all the 8 really enjoyed the place, big enough to cope with the amount if people no problem, will be booking it again in August as will be using it as my base for

the fitness camp, thank you for providing such a great property. The gardens are nice and the outside area relaxing. 10/10 regards Matt Dundas personal training

[Extremely Impressed](#) 02-06-2013

I recently took a group of friends to stay at [REDACTED] I just wanted to let you know that we were extremely impressed with the house; it was a beautiful location to spend our holiday. When I originally started to make enquiries about where we could stay, I emailed a few real estate agents and holiday letting companies asking for information and the only person to respond to my requests was [REDACTED] from your office. She was extremely helpful and together we decided that [REDACTED] was going to be the right house for us with all of the facilities we required. Each time I had a question for [REDACTED] she responded immediately to my emails. I was very impressed with her customer service. Thank you so much for helping me with my very special holiday away, everything was perfect and it couldn't have gone better. I will definitely recommend [REDACTED] [REDACTED] to my friends and I will return to book with you when I come to Byron again. I will be pleased to leave a very positive review on your website for the [REDACTED] property.

[wonderful house](#) 01-19-2013

Our family of 6 adults and teenagers stayed at [REDACTED] for a week early January. Its position of the house is fantastic, over the railways line and down a track to the beach. An easy walk into town, which was great at the traffic, is very heavy. the house is very well equipped and has a wonderful feel to it. Would highly recommend.

[Spectacular!!](#) 01-11-2013

We are very happy to post a review...our time at [REDACTED] was spectacular and the house amazing, it certainly ticked all the boxes, we will in future source [REDACTED] for our family holidays at Byron. We thank your company and especially [REDACTED] for her wonderful, professional caring service of us booking [REDACTED] for our daughter's wedding.

Congratulations on your wonderful staff and especially [REDACTED] ! it is amazing !! so close, so convenient and yet so....isolated...

[Amazing](#) [REDACTED] 08-27-2012

We recently had an amazing time staying at [REDACTED] " The house accommodated all of us very well. It is in a fantastic location and was very clean and tidy. Thanks for making it all so easy. We loved it and hope to make it back some day.

[well equipped](#) 04-04-2012

We spent a terrific week here in March '12. The house is clean, well equipped with great access to beach and town. We were an extended family of 7 adults and 2 children and the accommodation was perfect. Highly recommend !

[WE WILL BE BACK!!!](#) 08-01-2011

Great location - so close to town. The house is beautiful and bigger than we thought. Perfect for a large group. Had everything we needed, and the gardens were stunning. Only problem was 3 nights wasn't long enough!!

[FANTASTIC](#) 03-04-2009

Such a beautiful beach house so close to Byron and so relaxing. We loved the gardens and of course our own private beach access!

What does [REDACTED] mean for Byron Bay?

Certainly [REDACTED] is just one of many lovely dwellings being used for holiday rental in Byron Bay, but it has a special ambience, garden and cottage character in a street of tourist accommodation. It nestles effortlessly into the beautiful garden and invites those seeking tranquillity and quality.

[REDACTED] could be a permanent home for a couple or a family or a large group as long term tenants. These permanent occupants may or may not be noisy or disruptive, the gardens may not be manicured and nourished as they are by [REDACTED] and our family.

It is used as our family holiday home and also for many from far and wide it is a wonderful retreat. Each week this property is cleaned, maintained and managed. Lawns cut, rubbish bins cleaned, linen supplied and taken away. [REDACTED] receive an agency and management fee and of course they employ staff. Painting internally and externally is done more regularly to ensure the home remains fresh and clean. In any one year over \$50,000 is paid to local workers who service this home.

Crucially, the home is let for much of the year with each group occupancy adding enormously to the local economy. A permanent home owner or tenant would of course buy local produce and add to the community and the economy, but at [REDACTED] each short stay occupier is eating out most nights, visiting tourist highlights during the day and spending on local produce, clothes, restaurants, bars, well-being and cultural activities, night clubs and ski and surf hire. Taxi and bus hire is used extensively by our tenants as few drive to the home. Proximity to the Byron Centre, beach and markets ensure regular walks and increased spending.

Self-evidently, short stay holiday makers paying for premium accommodation like [REDACTED] are in Byron to relax, experience the town and surrounding districts and spend in the local economy. We anticipate that each week a minimum of \$4,000 is spent within the Byron area directly as a result of our [REDACTED] holiday tenants. Coupled with the \$50,000 paid to those local workers and suppliers servicing [REDACTED], the holiday maker spend in the local economy exceeds \$250,000 per annum. This does not include other major high cost purchases such as jewellery, furniture, art works or housing, which might eventuate as a result of the Byron Holiday.

Impact on [REDACTED] with Byron Shire's changes to Policy and Planning.

We are sympathetic to Council's desire to maintain the character of Byron Bay and to ensure safety and peaceful enjoyment for permanent residents and visitors alike. We are extremely proud of the way we have operated and maintained [REDACTED] within the spirit of that objective. We and [REDACTED] have achieved that without impost or regulated arrangements and have worked within the voluntary "Code of Conduct " requirements of the [REDACTED].

Whilst we are surrounded by tourist accommodation, the irony is that we will not be able to satisfy the proposed amendments to Council's Development Plan and we will be immediately non-complying if we continue to let the property for short stay. This is an old building (albeit fully renovated). With two car parks at best for 4 or 5 bedrooms and with short stay occupancy for probably 200 days of the year, (well in excess of the 90 day limit), we will go from being Adelaide people with a love of our holiday home and passion for Byron Bay to owners of a non-conforming property with serious fines attached to any continuance.

So we will have three unpalatable choices.

1. Become criminals if we carry on letting in breach of Council's amendments.
2. Remove two bedrooms, have the house vacant for 6 months of the year and destroy a large section of the garden to accommodate two more car bays, which won't ever be used because of the nature of our tenancies.
3. Sell the house to a permanent home owner or rent the house to long term tenants.

Why are we forced to take one of 3 unpalatable choices, when no one is complaining about our tenants, we are adding \$250,000 at least to the Byron economy and we maintain and enhance a character cottage for the benefit of the community?

A suggested solution made as a compromise and to avoid unnecessary conflict.

Perhaps the above 3 options are the intended consequences of the amendments or perhaps these are unintended consequences. Regardless, we would ask the NSW Government and the Byron Shire review the current proposals so that existing character properties with gardens like [REDACTED] can continue with their existing arrangements.

We have no concern at all about being registered and licensed and bound to comply with management systems, signage, noise and dis-order requirements and if tenancy car parking concerns do arise to be obliged to take some remedial action in relation to car parking, but we cannot see why we should be penalised under these changes when we have added significant value to the streetscape, restored a white ant ridden house and encouraged, welcomed and hosted many hundreds of interstate and overseas guests, who add to the colour flavour and vibrancy of Byron Bay.

Simmering behind our concerns and we suggest many other holiday home owners is the fact that property rights, the most fundamental of our rights, are being diminished with this proposal. The proposition as we understand it and as presented by the Byron Shire Council is that the owner of a dwelling property has a designated, but restricted, land entitlement. The land use argument proposes that the dwelling can be used as a permanent residence, or leased to long term tenants, who like short stay holiday rentals also pay rent. The property may even be left vacant and that is not a change in use, but the moment the period of tenancy is short term tenants for holiday-makers, the use then apparently changes. Council finds that a specific term of paid occupancy of a dwelling for people on holiday constitutes a change of use.

The property right view is different and we would also argue more fundamental and compelling. We would claim we have the right to two residences (legal precedent supports that contention) and the fact that we choose to be absent for any period of time has no relevance to the status of the building as a detached dwelling. Permanency of occupancy (or otherwise) in our view should not determine land use nor does the fact that short term use by paying tourists or holiday makers during our absence remove the detached dwelling land use status.

Legalities aside, Council and Government in our view should be considering appropriate Code of Conduct legislation and be giving greater weight to the long established absolute and perceived rights of property and home ownership to have whom you want in your home as visitor or guest, whether paying or non –paying.

Our suggestion is as follows.

1. Councils or Shires should not attempt to control property rights or tenancy arrangements by land use. Going forward they should set (under regulation), desirable optimum standards for car parking, room numbers, toilets and bathrooms for dwellings and calculated on a site area or plot ratio basis for any new buildings (or room additions to existing dwellings).
2. In determining the regulations, assume that any new dwelling may potentially be used for short stay. Existing buildings should be deemed as complying.
3. If this does not already occur, State Government might strengthen accredited holiday letting agencies or owner managers with a License (for a fee) and under that license require that short stay dwellings are appropriately managed and to ensure properties display or provide appropriate signage, smoke detectors and the like.
4. Encourage existing short stay homes (under amnesty) to register and be licensed through an accredited Holiday letting agency or as an owner/manager.
5. Licensed owner/operators or agents are obliged to ensure compliance with noise and disturbance criteria and tenancy occupancy limits..
6. Only Licensed operators may display the Holiday Letting license certificate in marketing and on-line advertising.
7. Tourism agencies and Government and Shire tourist centres will promote only licensed holiday letting premises.
8. Fines can be issued and Licences revoked for serious or repeat offences or breaches.
9. Promote to the insurance industry that dwellings offering short stay should be licensed as licensed operators or agents will provide or demand appropriate safety requirements.
10. Non Licensed operator activity will not be illegal as such, but I expect occupancies will soon drop for non-licensed properties. Disruptive tenancies will always be there, whether short or long term and with or without planning or license controls and so non-licensed operators, who attract disruptive tenants and breach noise and disturbance limits under existing Laws, should be appropriately penalised.

Thank you for the opportunity to present our views to the New South Wales Parliamentary Inquiry into short stay rental accommodation.

We believe that proposals for changes to LEP's to restrict use by Planning amendment, rather than the more suitable Statutory Code of Conduct, will have a devastating effect on the vibrancy, activation and economic well-being of Byron Bay and other adjoining precincts.

These deliberations will be crucial to the viability of coastal towns and their economic and cultural framework and determine whether we maintain our superb holiday home or sell to a permanent owner.

Yours faithfully,

Kym and Rosemary Burke

██████████ . Byron Bay