

**Submission
No 5**

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

Name: Ms Margo Anderson
Date Received: 7/10/2015

November 7, 2015

[REDACTED]

[REDACTED]

[REDACTED]

I am the owner of a unit in a Heritage Listed Building, Strata Plan [REDACTED] known as [REDACTED], which sits on the northern end of Balmoral Beach, [REDACTED], Mosman 2088. Our building consists of 30 units, and as a result of the heritage listing, Mosman Municipal Council requested, the owners corporation secure a "Conservation Management Plan", in order for the Owners Corporation to make any alterations both externally and internally for the future. The owners corporation secured this Management Plan through Heritage Architects [REDACTED] a copy of this Management Plan could be forwarded if required. The report stipulates clearly that the building is for permanent residents, and any hotel/short term letting would not be permissible. Any alterations to the building or its use, should comply with this Management Plan.

Mosman Local Environmental Plan (LEP) states "tourist and visitor accommodation" including "serviced apartments" is PROHIBITED.

We have since 2011, had some owners who have abused the Special By-Law which prohibits short term leasing, anything under three months. These owners have abused the Mosman LEP, and abused the zoning:

R2 Low Density Residential – Short Term Lettings - Prohibited

R3 Medium Density Residential – Short Term Lettings – Prohibited

The owners in our strata plan have been attempting since early 2011 to have Mosman Council take action in connection with the illegal short term letting that has been taking place in the building. Since this time, the illegal activity has increased in scope and all attempts to have Council enforce the requirements of the relevant LEP have failed.

Mosman Council were furnished with details of the units, which were let on a short term basis, the Council were provided with the copies of advertisements, and details of the websites, for "Stayz", "Air BnB", "Property Partners", together with owners details, and their agents promoting this illegal use.

The unregulated short term letting continues, and although the owners corporation has a "Special By-Law", which prohibits this use, Mosman Council have failed to enforce the requirements under Mosman LEP, and ignored zoning regulations. It is over 4 years, and the problem still exists.

Since 2011, there have been two General Managers, two Director's of Environment and Planning, Compliance Management, and absolutely no action. We have had difficulty in securing any information from Mosman Council.

I submit a summary which commences with the previous Director of Environment and Planning, through to the current Director of Environment and Planning, wherein both confirm in writing there is a breach.

- 1. August 22nd, 2012** [REDACTED] the then Director Environment and Planning wrote to all owners: "I refer to complaints lodged with Council over the past year and a half relating to short term holiday letting of dwellings within [REDACTED]. Since coming into force of a new Mosman Local Environmental Plan (LEP) on February 1 2012, there is some added clarity as to the permissibility of particular uses in Residential Zones in the case of [REDACTED] [REDACTED] "tourist and visitor accommodation "including "serviced apartments" is prohibited. Serviced apartments means:
"a building (or part of a building) providing self-contained accommodation to tourists or visitors on a commercial basis and that is regularly serviced or cleaned by the owner or manager of the building or part of the building or the owner's or manager's agents".
I am drawing this to your attention to ensure that all owners are aware of the zoning restrictions that apply to the property and suggest that appropriate steps be made through the Owners' Corporation to ensure that use of the building conforms to the LEP and the amenity of all owners and residents is maintained".

- 2. Mosman Council Agenda Meeting July 2nd, 2013 – Item EP51 Short Term Letting**

The table on page 24 confirms the use of short term letting is PROHIBITED "Council has written to all owners in the subject property to advise that the short term lettings are prohibited and that steps should be taken to ensure that the use of the building conforms to the relevant zoning. Prior to the commencement of the MLEP on February 1, 2012 there was a lack of clarity about the permissibility of short term lettings. Since then the permissibility of particular uses within the relevant zones has been clarified "With the number of Mosman properties listed on various holiday websites and in light of the recent court judgement and MLEP 2012 provisions, there may be a number of properties that are operating as unauthorized uses".

R2 Low Density Residential: Short Term Lettings - Prohibited

R3 Medium Density Residential: Short Term Lettings - Prohibited

- 3. December 9, 2013 Correspondence from new Environmental Planning Director**

[REDACTED] - communication to the then Chairman of the Strata Plan [REDACTED]:

"I have reviewed the file regarding holiday letting and note that it is not permitted in the zoning of your property. I will have the matter investigated if you wish to advise which unit number you are concerned about. In the first instance Council will write to the owners of the units advising them of the issue and request a response. If we don't have the owners details we will need to request this of the Body corporate".

4. November 27th, 2014 Solicitor [REDACTED] Lawyers, addressed correspondence to the following:

General Manager [REDACTED], The Mayor, and Deputy Mayor

“as your records will show we act for Ms M Anderson, of the owners of the building.

Ms Anderson along with other rate payers owning strata units in the building have been attempting since at least early 2011 to have the Council take action in connection with illegal short term lettings that have taken place in the building. Over the time the illegal activity has increased in scope and all attempts to have the council enforce the requirements of the relevant LEP have failed”.

5. January - July 2015

- a. Illegal activity has increased
- b. Council is in receipt of all relevant proof of illegal activity.
- c. At a meeting with [REDACTED] on January 2nd, he apologised for the inactivity, ensured the Chairman of Strata Plan [REDACTED] that a Manager of Compliance was commencing on January 5th, 2015 and that this matter would be addressed immediately.
- d. Council is reluctant to issue relevant correspondence in relation to inspections.
- e. Second Meeting held with [REDACTED] General manager, [REDACTED] Environmental and Planning, together with the Chairman [REDACTED] Secretary [REDACTED] The Council advised they were working on the matter.

6. Minutes Meeting Mosman Council August 4th, 2015 – to Margo Anderson

Re: [REDACTED] Mosman

“In response to the above matter I wish to advise that the Council meeting held on August 4 2015 it was resolved that:

1. Council continue to investigate complaints about short term rentals on a case by case basis however only take enforcement action if there is shown to be a risk of life.
2. On receipt of a complaint regarding short term rentals the Council advise the Owners Corporation (if applicable) to commence its own action against the relevant owners Corporation.
3. All concerned parties in any current investigations be advised in writing of Council’s recommendations.
4. That council write to the NSW Government requesting that clearer rules re short term rentals be put in place. These rules should be effective and efficient to enforce at Local government level under LEP.

Council will be writing to the NSW Government as a priority seeking clarifications to this complex enforcement matter particular to definitions and consistency to assist New South Wales Local Councils.

The owners corporation may consider taking civil action in this matter, particularly to the by-laws not being complied with, as some units are being let for holiday rentals.

In addition, council's Compliance Officers will revisit this matter upon receipt of clearer and consistent advice being provided by the NSW Government.

Please do not hesitate to contact me if you need further assistance.

██████████ – Manager Compliance Mosman Municipal Council.”

Summary

- * I support our Premier, and State Government in their investigation.
- * I support the amalgamation of Local Councils.
- * The Council have not been honest and transparent in this matter.
- * The Council are in breach of their obligation to ensure compliance of LEP.
- * The Council have had over 4 years to address this problem.
- * I can confirm that Strata ████████ does have a By-Law which prohibits short term letting.
- * The correspondence from Compliance Manager dated August 4th, 2015 is not acceptable

Margo Anderson