

**Submission  
No 138**

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

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**Submission to  
an Inquiry into the Adequacy of the Regulation  
of Short-term Holiday Letting in NSW**

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This submission primarily addresses Item “e) Regulatory issues posed by short-term letting including customer safety, land use planning and neighbourhood amenity, and licensing and taxation” and some aspects of Item “d) The economic impacts of short-term letting on local and state economies” in the Inquiry’s Terms of Reference.

**1. Background**

I live in a residential block of 19 apartments in Glebe.

The apartments are zoned R1 – General Residential under Sydney Local Environment Plan 2012. That zoning expressly prohibits “Tourist and visitor accommodation”.

Despite this prohibition, at least one apartment in the block has been let for bed and breakfast accommodation through AirBnB and another has been let, and is currently being promoted, through Stayz as a short-term serviced apartment.

We have sought Council support to enforce its zoning but have been told that the Council will not act unless the Owners Corporation passes a by-law supporting its prohibition on tourist and visitor accommodation. A motion to pass such a by-law was supported by the great majority of owners but failed to get the required 75% support (achieving 72.9%) because the owners providing tourist and visitor accommodation voted against it. Where an apartment is being used as a serviced apartment but is otherwise vacant, the owners of that apartment still have full voting rights on the Owners Corporation even though they may have no interest in preserving the residential amenity of the apartment block.

**2. Safety**

**(a) Safety Concerns**

The apartment complex and, in particular, the common property meets normal residential safety standards but not necessarily standards which are appropriate for commercial tourist accommodation.

The common property swimming pool is of particular concern. Amongst other things, a pool in a tourist complex may be expected to have depth markings, rescue equipment and first aid equipment; to prohibit some food, drinks and smoking in the pool area; to require showering before entering the pool and to have signage indicating that there is no lifeguard. Our residential pool has none of these.

Another area of significant concern is fire safety. Residential buildings, such as ours, do not have evacuation plans and notices, designated assembly points and regular inspection and approval to commercial standards that is required in tourist accommodation.

(b) Workplace Health and Safety Compliance

Members of the Executive Committee of the Owners Corporation are concerned that, as they understand the Work Health and Safety Act, if the common property is used in part for commercial purposes, it becomes a workplace and has to comply with the health and safety standards for workplaces.

The Executive Committee members would become the "persons conducting the business or undertaking" and be legally responsible for ensuring that the property complies with workplace health and safety standards. Failure to do so, which is largely out of their control, could lead to very substantial fines.

**3. Neighbourhood Amenity**

(a) Security

The apartments in question are in a garden setting within a secure perimeter fence. Once inside the fence, occupants have free access to the common property and easy access other apartments which open onto the garden.

Having tourists within this area leads residents to have serious concerns about security. This is particularly the case as many of the tourists are from overseas and may leave the country after a short stay in the apartments.

(b) Insurance

Because the provision of tourist and visitor accommodation is not permitted under the Local Environment Plan, apartment owners are extremely concerned that insurers may refuse any claim resulting from injury or damage on or to the common property on the basis that the activity is illegal.

The Owners Corporation has sought advice about this from its insurers but has been unable to elicit any response other than that the situation was "noted".

Members of the Executive Committee of the Owners Corporation are particularly concerned about this because they understand that the Strata Schemes Management Act requires them to keep the property insured.

(c) Deteriorating Neighbourly Relations

Since some residents have been offering short-term tourist accommodation, relations between them and the other residents who find this unacceptable have become very acrimonious. This has even extended to one party who is providing the tourist accommodation threatening legal action against the Body Corporate if it tries to stop this activity.

(d) Wear and Tear to the Common Property

Having tourists using the building's facilities, such as the pool, pool furniture and lifts, increases wear and tear on these facilities, to the cost of all owners. However, only those providing the tourist accommodation receive financial benefit from these activities.

This exacerbates the feeling of animosity among neighbours.

(e) Annoyance of Permanent Residents

Tourists and holiday makers tend to treat their accommodation as they would a resort hotel. For example, in our building permanent residents are annoyed by tourists asking for directions to reception (which does not exist), by ignoring "no exit" signs and frequently triggering alarms and by dropping cigarette butts into the courtyards of apartments below.

Once again, this exacerbates the feeling of animosity among neighbours.

(f) Non-Compliance with By-laws

(1) by Host Owners

The by-laws of our Strata Scheme require any owner of a lot to advise the Owners Corporation whenever the use of their lot changes in a way that affects the insurance of the strata scheme. Using an apartment for commercial purposes is such a change but to date owners have not been advising the Owners Corporation.

(2) by Tourist Customers

Holiday renters are not aware of the Strata Scheme's by-laws. As a result they do not comply with many of the by-laws, for example, by hanging towels over balconies and, most importantly, by ignoring swimming pool rules, such as not using the pool unless accompanied by a permanent resident.

(g) Noise

Apartments being let as serviced apartments, in particular, lends themselves to being rented by a group holding a celebration, with the consequent revelry and noise disturbing other residents.

4. **Economic Impacts**

Short-term letting of residential properties as serviced apartments decreases the stock of properties available for residential use and, consequently, increases the price of residential properties.

This is of particular concern in the case of apartment blocks because they tend to be purchased by young first home buyers or by retirees on fixed incomes.

5. **Licencing**

Our local Council regulations already allow property owners in Residential zoning to apply for Development Approval to provide bed and breakfast accommodation. If enforced, such accommodation could be provided and regulated so as to meet proper standards and not interfere with the rights of neighbours. However, Councils seem unwilling or unable to enforce these regulations.

Another approach would be to prohibit companies, such as AirBnB and Stayz, from advertising properties which are located in areas where short-term tourist accommodation is not permitted.

**Conclusion**

Residential apartment blocks are our homes and having short-term tourists sharing our common facilities is completely unacceptable to the majority of residential apartment owners who are being placed in situations of potential shared financial liability from tourist rentals that they do not wish to have in their complex, which are not permitted in their zoning and which were not anticipated when their apartment was purchased

As well as purely financial considerations, the current situation is unacceptable for the many reasons outlined above, including:

- Safety concerns
- Workplace health and safety compliance
- Security concerns
- Inability to get insurance
- Deteriorating neighbourly relations
- Excessive wear and tear on common property
- Annoyance of permanent residents
- Non-compliance with by-laws and
- Noise.

The current lack of effective regulation, and enforcement of those regulations which do exist, is resulting in great stress to residential apartment owners by denying them the “quiet enjoyment” of their properties to which they are entitled.