

**Submission
No 136**

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

Name: Name Suppressed

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Partially Confidential

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Submission to

The Legislative Assembly
Inquiry into

The Adequacy of The Regulation of Short-Term Holiday Letting
in NSW

By

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Dear Committee Members

I thank you for the opportunity and write offer comment based on my own recent (and ongoing) experience with a property let for “Short term Holiday Rental” and dealing with my local Port Macquarie–Hastings Council.

My contentions are:

- 1 That the Holiday Rental control guidelines are non-existent
- 2 That in my experience councils are naive in their understanding of the problems created by unsupervised short term holiday users and then decidedly unwilling or unable to assist in resolving problems.

Suggested Solutions

- A That an accepted definition be established - such as 1 day to 90 day occupation.
- B That Councils maintain a register of short term holiday rentals.
- C That Council establish zones and a separate council rating fee commensurate with the intensification of use associated with such usage.
- D That a strict guideline be implemented where any change in zoning or use within a zoning should first be based on the premise that the property **MUST** directly front a public road/lane/street for access.
- E That adjoining owners of properties or properties that are encumbered by a Rights of Carriageway (RoC), a Right of Way (RoW) or an easement for services through their property, have the right to veto any change of use including that to short term holiday rental or use as holiday accommodation of any sort.

My Property

I live on a small farm in a scenic valley at [REDACTED], inland from [REDACTED] on the mid north coast. My property is the first of four farms with sequential access along a rough gravel track contained loosely within a defined (registered on titles) Right of Carriageway (RoC).

My farm commences 300 metres from the end of a public lane and because of the valley layout the fourth is approximately 1000 metres from the same.

I take the liberty at this point to explain that a Right of Carriageway allows owners of a (dominant) property to travel across a (subservient) property within a designated zone while ownership of the land in the zone remains with the subservient property title.

My farm is nearly 70 acres in size and falls under the control of Port Macquarie-Hastings Council and is rated as Rural RU1

I specifically purchased the property in 2000 for it was quiet with no traffic and all six surrounding farms ran beef cattle. When I purchased and for some time after, all the neighbouring owners got along, waved, stopped to say hello and occasionally we even dined together. But with aging owners and small farms still requiring work, two properties were sold and purchase by couples "escaping" Sydney.

Not long after arriving, the owners of the fourth farm, suddenly announced that they would probably like to open their property as a "Bed and Breakfast" (B&B) to which I then expressed my utter horror.

They then applied to Council wishing to carry out building works which were described as alterations and additions for their children (they didn't have any) and their few visiting friends (never saw any). I approached the Council and informed officers of the owners previously stated intentions and complained that the proposed works clearly showed a third separate "independent" living area divided from the existing "two" sections of house by a breezeway. I was met with, " *we can only make decisions based on what is submitted*". The building works were then approved with no conditions and construction undertaken.

The owners never permanently moved in and I understand have built a new house in Newcastle.

To that point in time, my property had on average 3 cars travelling in two directions each day on the RoC. But with the advent of the following Christmas school holidays, I was suddenly subjected to 30 plus car transits a day with three different cars travelling to and from the fourth farm and often at excessively dangerous speeds.

It was so unsettling.

On a hunch, I look up the internet and suddenly found a listing for the property advertised as available for “Holiday Rental”.

The following Easter, I was awoken one morning at 6:15am by voices shouting from the track in front of my house and when I opened the curtains I saw two boys dismounted from push bikes throwing rocks at the wallabies in the adjoining paddock with the father just standing nearby his car. When I walked down towards them, the father threw the bikes in the vehicle and they drove off. So I then proceeded calmly round to where they were staying and asked that: they not behave in that manner, explained that the track was not a public road but my property and when travelling through could they observe the requested speed indicated on a sign and keep all seatbelts attached.

Over the following days the drivers continued to belligerently travel at dangerous speeds with their children seated on the vehicles open tailgate and one standing on the centre console through the roof. (See Photos – Appendix C”)

I even taped a sign requesting them to slow down and keep restraints attached which had no effect and following a near accident with my daughter in-law and two grandchildren (one in a stroller) having gone for an afternoon walk, a not so polite conversation ensued.

I tried to explain to the father for a second time, that in NSW, there is and had been at least one person every month killed and many more injured as a result hitting heads after falling from a farm ute while bouncing along a farm tracks.

The Impacts & Effects

The impact and effects that this commercial holiday operation (and it is a business not a home) have caused to me, my family and property are both tangible and intangible.

- 1 My insurance company (Commonwealth Bank) when informed of the holiday rental and change in my risk, would only insure my house paddock for public liability, cancelling the insurance on the RoC and the general farm (68acres), reasoning that paying guests to a commercial venture were now being invited onto my property.
- 2 The insurance company then announced that they would only insure my house structure cancelling the general insurance on the general farm shed, equipment and fencing for fire and theft, reasoning that I had no control over paying guests to a commercial venture who could wander through my property.
- 3 The danger to any stock and possible accidents on an uninsured track which is my property.
- 4 The noise created by so many vehicles travelling along a gravel track.

- 5 The noise from wandering people along the track including one charming group of children that said to my 4 year old granddaughter when she waved at them, *"What the ...k are you looking at"*
- 6 The timing of that noise as guests arrived late at night or returning late from dinners in town
- 7 Guests driving up my driveway and wandering around looking for the letting property
- 8 The inconvenience cause by guests at night driving with hi-beam lights
- 9 The danger to me and my family from excessive speed on the track by guests
- 10 The danger to the native fauna cause by reckless speeding
- 11 The increased degradation of the track surface and excessive dust created by the intensity and speed of traffic
- 12 The loss of privacy from my balconies facing the track with visitors slowing and constantly inspecting my house
- 13 The loss of security as unknown public wandering through my property
- 14 Rubbish tossed from unknown vehicles travelling through my property
- 15 The aggravation and ill feeling that has resulted
- 16 The loss of agreement over track maintenance
- 17 The general loss of camaraderie
- 18 General stress from all the above.

There are NO positive effects !

Port Macquarie-Hastings Council

When I contacted the Council, I thought I might at least get a sympathetic hearing but I was stone walled.

During several emails and meetings, I pointed out the effects that the operation of this property as a holiday rental had on me, my farm including the insurance issue but my concerns and objections were basically dismissed.

I pointed out that under the Council's definition of allowable businesses within the rating RU1 (See Appendix A), holiday accommodation rental as an enterprise was not included. This was dismissed.

I pointed out that under the local Council's LEP (See Appendix B) the objectives listed in Pt 1 are completely at odds with the detrimental effects caused by Holiday Rental.

Furthermore I then pointed out that Holiday Rental Accommodation was not listed as complying with or without consent. The Council officer replied that *"we allow it under Pt2 Home Occupations"*.

When I then pointed out that was not possible for Pt4 clearly states that if it is not listed in any of the above it is not allowed, The reply received was a shrug of the shoulders and “that is not our opinion”.

When I further pointed out that Short Term Holiday rentals was not allowed in normal residential homes as a result of the April 2012 Land and Environment Case involving a Holiday Rental at Avoca, the council officer, who was totally unaware of this case, replied with another shrug of the shoulders and “that is not our opinion”.

It was then suggested to me that I possibly could/should seek redress though the civil courts. I replied that the Council could be one of the defendants and a favourable result could possibly shut down all such accommodation within the council area, to which I got another shrug of the shoulders.

So the dealings with the Council were far from even reasonable. They appeared to be unwilling to comprehend my issues and/or unable to come to terms with their own rules and recent case law history.

Final Note- “like trying to keep frogs in a wheel barrow”

Following the dealings with Council, I considered my options and approached my local state member. The member kindly gave her and her assistants time, clearly understood my situation, understood the implications and showed concerned for me and gave me a very sympathetic hearing.

I understand that the member then made representation to the NSW Department of Planning seeking some understanding and possible assistance for myself.

Some weeks later, the Department replied suggesting politely that these matters should be taken up with my local council.

APPENDIX A –

PORT MACQUARIE LOCAL Rating RU1 – Definition

Rural Industry means the handling, treating, production, processing, storage or packing of animal or plant agricultural products for commercial purposes, and includes any of the following:

- (a) agricultural produce industries,
- (b) livestock processing industries,
- (c) composting facilities and works (including the production of mushroom substrate),
- (d) sawmill or log processing works,
- (e) stock and sale yards,
- (f) the regular servicing or repairing of plant or equipment used for the purposes of a rural enterprise

APPENDIX B –

PORT MACQUARIE LOCAL ENVIRONMENT PLAN

Port Macquarie-Hastings Local Environmental Plan 2011

Zone RU1 Primary Production

1 Objectives of zone

- To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.
- To encourage diversity in primary industry enterprises and systems appropriate for the area.
- To minimise the fragmentation and alienation of resource lands.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.

2 Permitted without consent

Extensive agriculture; Home occupations; Horticulture

3 Permitted with consent

Agriculture; Air transport facilities; Airstrips; Animal boarding or training establishments; Bed and breakfast accommodation; Building identification signs; Business identification signs; Cellar door premises; Community facilities; Dual occupancies (attached); Dwelling houses; Environmental facilities; Environmental protection works; Extractive industries; Farm buildings; Farm stay accommodation; Forestry; Helipads; Home-based childcare; Home businesses; Home industries; Intensive livestock agriculture; Intensive plant agriculture; Open cut mining; Roads; Roadside stalls; Rural supplies; Rural workers' dwellings; Sawmill or log processing works

4 Prohibited

Any development not specified in item 2 or 3