

**Submission
No 6**

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

Name: Mr Richard Tier

Date Received: 8/10/2015

[REDACTED]

[REDACTED]

I write on behalf of the Owners Corporation of [REDACTED], an iconic, heritage-listed block of 30 apartments right on the sand at Balmoral Beach ([REDACTED], [REDACTED]). I am Secretary of our Executive Committee under Strata Plan [REDACTED]. For over 4 years our Owner's Corporation has been fighting to stop the short-letting of 5 apartments, 4 of which were owned by a family who live next door to [REDACTED] in a harbour-front home. In the past few months 3 of these apartments have been sold; however the remaining apartments are still listed for short-term rental on holiday websites such as *Airbnb, Stayz and Property Providers*.

Our Strata has a clear By-law in place requiring a minimum 3-month lease which corresponds to the LEP zoning laws of Mosman Council. A copy of this By-law 40 is attached for reference.

The general feeling of all owners and permanent residents is that [REDACTED] is our home – it's not a hotel. The family in question blatantly run a business here in our home. They set-out to make as much money as they can, causing gross inconvenience to all long-term residents at the expense of our peace and enjoyment of the home we purchased to live in.

They continue to flout the law, freely advertising on these holiday websites for 5-night and even 1-night rentals. They simply ignore continued instructions from the Executive Committee to stop. We have no means to fight this as we are being represented by a toothless local council.

It has been stated many times before, but just to reiterate; the effects that short-term holiday rentals has on our apartment block are:

- Short-term visitors are usually in "holiday-mode" – as opposed to the quiet, peaceful attitude of long-term residents.

- Short-term visitors have little regard to Strata By-laws including noise, cleanliness, smoking, garbage disposal and general respect of public space
- The result of short-term letting is the inconvenience of constant arrivals and departures of holiday makers, including the noise from commercial cleaners following every visit
- Our Strata insurance does not cover holiday lets. This places all owners in a serious legal situation should injury or death occur to a short-term visitor

During these 4 years, we have regularly tried to get Mosman Council to act:

- Numerous letters from the Executive Committee demanding action to be taken
- Requests for meetings with the Council to fight this practice
- We have sent numerous screen shots showing current booking Calendars on the website for each unit
- We have sent Stat Decs to Council confirming the continuous change-over of short term visitors
- Our lawyers have sent legal letters to Council demanding action (and have not even received acknowledgment of the letters let alone any action at all)

We suspect there is a serious conflict of interest at Mosman Council which would explain its reluctance to take any action. A senior member of Mosman Council who owns a beach-front house near [REDACTED] uses part of his house illegally for short-term letting. Further, the family in question are very good friends with this senior member of the Mosman Council.

After a campaign of emails and evidence which I sent to Mosman Council, and many subsequent follow-ups, they begrudgingly agreed to “look in to it”. They claimed that before any action could be taken, they would have to inspect the units in question. Obviously they received no cooperation from “the family” and finally *Notices to Enter* were issued to the owners – a process which took about 3 months to arrange. The Owner’s Corporation has requested copies of these “Notices to Enter” to ensure the wording accurately represented the breaches in question. The Council refused to release this correspondence unless I filled in a request via Government Information (Public Access) Act 2009 (GIPAA). I went ahead and submitted this request but I received a response still denying me access to this correspondence.

Our EC Chairman and I requested a meeting with the General Manager of Mosman Council as well as the Environmental Planning Manager. During this meeting, we were told that the report from the unit inspections had been sent to Council’s lawyers and they were awaiting advice. (Again, this advice would not be shared with our Owners Corporation). The General

Manager made the point that even if its lawyers confirmed that there was a case to answer, any decision to fight it in the Land and Environment Court would be put to Council members (to decide if rate-payer's funds should be spent in this legal action). She indicated that based on similar scenarios with other near-by councils, this would be voted down by the members.

Subsequently, through enormous persistence we managed to get the *Short-term letting* at [REDACTED] put on council's monthly agenda. A fellow resident, [REDACTED] and I attended the meeting but were told the discussion would be in closed session. We were allowed to speak ONLY with regard to why we felt it shouldn't be held in closed session. We were not permitted to discuss the short-term letting specifically. We had to leave the chamber and after an hour's deliberation, Council issued the following, feeble statement:

Re: [REDACTED]

"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.

[REDACTED] – Manager Compliance Mosman Municipal Council."

Clearly the Mosman Council is so toothless as to be unable to enforce its own LEP. In its own words, it is passing the buck to the NSW Government. Frankly, I don't know what it thinks is not "clear and consistent" when they themselves drafted an LEP which prohibits short term or holiday letting for a period less than 3 months.

It seems as if Mosman Council is treating our Owners Corporation – who is only trying to support Council's own LEP – as the enemy and seems to be doing everything to ignore this blatant short-term letting by this family.

We would be most grateful if the State Government could intervene and provide strong authority to stamp out this practice. It should be taken out of the hands of local government as they seem far too impotent to enforce such vital law.

Kind regards,

RICHARD TIER

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

Attachments:

- **My initial correspondence with Mosman Council ("Attention: General Manager") which includes various letters from [REDACTED] Lawyers regarding short term letting (none of which were acknowledged)**
- **Examples of website screen shots sent to Mosman Council supporting the claims we made concerning short term letting**
- **[REDACTED] By-law 40 regarding the prohibition of short-term letting as approved by the Owners Corporation on 13th November 2012**