

"Troy Green  
General Manager  
Tweed Shire Council  
PO Box 816  
Murwillumbah NSW 2484

Dear General Manager

I am writing in relation to my representations that were included in the agenda papers for the Council's 3 May meeting in regard to short term holiday lettings (STHL), and the decision taken by the Council to seek legal advice on appropriate enforcement action.

I wish to present facts to be taken into account in the legal advising to be provided by your solicitors. I ask that you forward this message and attachment to your solicitors for consideration in the context of the advice they give to you on STHL.

Firstly, and most importantly, my property has a Torrens title registration as residential/freehold. There are no Tweed Shire Council covenant restrictions registered on the title. That is, I have an indefeasible title right to use the property for self-residence purposes, or to enter into residential leases. Case law is clear that local governments in NSW may not validly impose any local rule/regulation that imposes a use encumbrance on my property, if that encumbrance has not been registered on my title. Your solicitors should, in particular, look at [2004] HCA 59 of 1 December 2004 – see <http://eresources.hcourt.gov.au/showCase/2004/HCA/59>. Attached is a copy of my title deed.

Secondly, there is nothing in NSW residential tenancy law that imposes a minimum period for a valid residential lease of my property. The relevant law requires that leases have to have a fixed price, a commencement date and a termination date. So, your local guidelines suggesting that "residential" leases require a minimum lease period are clearly at odds with higher NSW statutory law. As I see things, you would need to secure amendment of the Residential Tenancy Act to enforce a minimum period of time for my tenancy agreements. As I see things, this is your only valid pathway.

Now, I certainly do accept that residential tenants should comply with behaviour, environmental health/safety and community amenity rules and regulations. I do dispute the third party claims made to you in this regard, and I am quite prepared to further clear the air.

I wish to add that -

- I read the resolution of the 3 May meeting of elected Councillors as over-taking the earlier decision(s) on STHL enforcement
- The undertaking I gave to you not to enter any further leases until the NSW Government decision on STHL regulation is announced was given under duress, is over-taken by the 3 May decision that the legal basis for enforcement requires legal clarification, and imposed harsh and oppressive terms given that the NSW Government has abandoned its promised deadline for a STHL decision
- I have not taken any further STHL bookings, but have leases in the pipeline, and see my undertaking as now being null and void.

I would be prepared to revisit the question of a fresh undertaking once you have advice from your solicitors, and provided that advice fairly addresses the legal facts presented in this letter and attachment.

Yours sincerely"



Tania Burke  
25/05/2018

BOX 1W  
(AE541713)

NEW SOUTH WALES

# CERTIFICATE OF TITLE

REAL PROPERTY ACT, 1900



TORRENS TITLE

REFERENCE TO FOLIO OF THE REGISTER

IDENTIFIER **410/216388**

EDITION

**5**

DATE OF ISSUE

**11/3/2009**

CERTIFICATE AUTHENTICATION CODE

**P3G3-KV-4C76**

I certify that the person described in the First Schedule is the registered proprietor of an estate in fee simple (or such other estate or interest as is set forth in that Schedule) in the land within described subject to such exceptions, encumbrances, interests and entries as appear in the Second Schedule and to any additional entries in the Folio of the Register.



REGISTRAR GENERAL

LAND

LOT 410 IN DEPOSITED PLAN 216388  
LOCAL GOVERNMENT AREA: TWEED.  
PARISH OF CUDGEN COUNTY OF ROUS  
TITLE DIAGRAM: DP216388

FIRST SCHEDULE

TANIA MAREE BURKE

(CN AE541713)

SECOND SCHEDULE

1. LAND EXCLUDES MINERALS AND IS SUBJECT TO RESERVATIONS AND CONDITIONS IN FAVOUR OF THE CROWN - SEE CROWN GRANT(S)

\*\*\*\* END OF CERTIFICATE \*\*\*\*

ANY ATTEMPT TO ALTER THIS CERTIFICATE COULD RESULT IN HEAVY FINES OR IMPRISONMENT (S.141 REAL PROPERTY ACT).

WARNING: BEFORE DEALING WITH THIS LAND SEARCH THE CURRENT FOLIO OF THE REGISTER

**2764010**