

2021 Review of Residential (Land Lease) Communities Act 2013

Executive summary

Site fees are of major importance to existing and incoming home owners in Residential (Land Lease) Communities. Having bought into these communities, home owners have become significant stakeholders both in terms of capital invested and ongoing payment of site fees. As potentially there are significant exit costs, home owners are in a sense locked in and at the mercy of the operators of such communities.

The Act provides operators with the power to set site fees and notify increases in them.

Where operators increase site fees by notice, they are required to provide an explanation for the increase. Whilst home owners can object to increase site fees, they face a complex process involving compulsory mediation and perhaps application to the Tribunal (NCAT). Clearly there are both power and information asymmetries between the operator and the home owners.

In order to create a more level playing field we suggest:

- The increase should be limited to the rate of increase in the CPI (Consumer Price Index Sydney All Groups) except in exceptional circumstances
- Where site fees are increased on the grounds of cost increases above CPI there should be clear criteria satisfied before such increase can be implemented.
- Where an increase above the CPI is sought, the operator should fully disclose the outgoings and operating costs and revenues of the community, as well as other benefits and detriments to the community
- Where a one-off increase to cover increased outlays and operating costs has been introduced, this must not be built into the base for future site fee notifications
- There must be provision to ensure that operators manage the residential community effectively and efficiently. To the extent operators seek to recover outlays and operating expenses from home owners, it is necessary that such outlays and operating expenses:

- must be directly identifiable with the operations of the land lease residential community or apportioned on a reasonable basis reflecting resource consumption;
 - must be supported by appropriate, verifiable records (not arbitrary or capricious allocations);
 - must not include the costs of activities associated with sales, marketing, land development, construction and other off-site activities;
 - must not include the costs of excess capacity; and
 - must reflect efficient and effective resource acquisition and utilisation.
- The disclosure statement issued to potential purchasers must disclose the current site fee for the home being resold, and the penalty for nondisclosure must be increased and substantial

We believe that the above recommendations are in the best interests of all stakeholders in residential land lease communities.

2021 Review of Residential (Land Lease) Communities Act 2013

The following addresses some of the perceived deficiencies in this Act with respect to setting of site fees (also known as rent) and increases thereto.

Site fees

s.4 (definitions) includes:

site fees means money paid or payable by a home owner to an operator on a periodic basis for occupation of a residential site under a site agreement.

The home owner enters into a site agreement which discloses the site fee payable at entry and the method by which the site fee may be increased.

The Act provides that the operator may increase the site fees. The significant question is how site fees may be increased under the Notice (non-fixed method).

The following case study reviews site fees at [REDACTED] owned by [REDACTED]. The current site agreement discloses [REDACTED] [REDACTED] as the owner of the community and [REDACTED] as the "PARK OPERATOR". For simplicity we have referred to the Operator in the following text.

A case study: OCR Site Fees, Historical 2013-2020, and Projected 2021-2023

Prior to May 2018, weekly site fees for all home owners were increased in line with increases in CPI, as set out in the following table.

Date	Prior Site Fee	CPI %	\$ Value of CPI increase	OCR advised Increase	New Site Fee
01/07/12					144.50
01/07/13	148.55	2.80	4.05	4.05	148.55
04/07/14	148.55	2.80	4.16	4.15	152.70
31/07/15	152.70	1.60	2.38	2.45	155.15
01/07/16	155.15	1.305	2.02	2.00	157.15
01/07/17	157.15	2.40	3.77	3.75	160.90

Since July 2018 then existing home owners and new incoming home owners have been subject to the following differential weekly site fees.

Year	Existing home owners	Incoming home owners
2018/19	168.90	185.00
2019/20	176.90	193.00
2020/21	184.90	201.00

Weekly site/rent fees for OCR, based on historical data, and projected using conservative assumptions are depicted in the graph on the following page.

The quantum of annual site fee increases, and the methods of determination of the increases as used by the Operator, clearly define three periods:

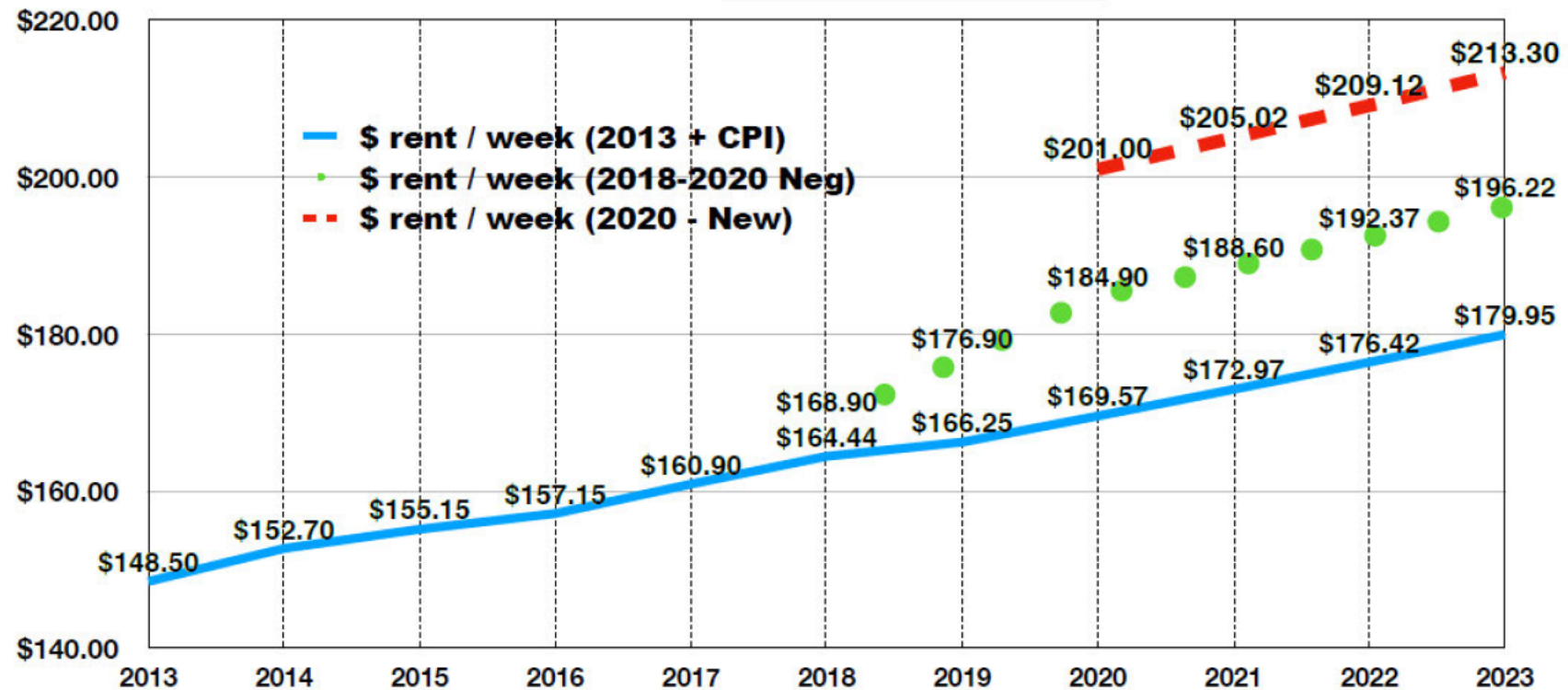
1. 2013 to 2017 – Site fee increases as per CPI

Weekly site fees payments were annually indexed in July, according to the annual CPI released for the March quarter of that year. This mechanism was generally accepted by home owners as it provided affordable increases on a recurring predictable basis. This level has been continued projected beyond 2018 on the graph to serve a baseline for comparison.

2. 2018 to 2020 – Site fee increases by compulsory mediation

In July 2017 the site fees were set at \$160.90 pw throughout the community. Shortly before July 2018, the Operator surprised home owners with a proposed quantum increase, well above that based on CPI increases. Subsequent to initial householder objections, the Operator produced a justification document for the increase citing the need to compensate for some of their historical cost overruns. Several home owners, who thought this justification was poorly argued and presented, decided to pursue the matter further with the NSW Department of Fair Trading (NSWFT). An \$8 pw increase for each of the years 2018 to 2020 was eventually agreed at the compulsory mediation conducted by the NSWFT, leading to site fees being \$168.90 pw in July 2018, \$176.90 pw in July 2019 and \$184.90 pw in July 2020.

Weekly Rent Fees at [REDACTED] 2013 - 2023



2% CPI assumed for projections of fees beyond 2020.

These issues are discussed more fully later in this document.

But could this set of increases have been avoided altogether? In Australian Financial Review article of 8 July 2014, Mr. John Gilmour, Director of Huntingdale Properties, and described as a partner in the development, was reported as saying: *"We always knew that to make these projects stack up you have to do it with sufficient scale, we always knew you'd need 250 houses as a minimum to make it work."*

Furthermore, in [REDACTED] Newsletter of January 2016, the Operator reported that there were 112 houses and *"Construction is still booming with 50 houses being built each year."*

Under this business plan the Operator would reach 250 houses in the latter half of 2018.

In summary, new home availability and sales performance has fallen well below the expectations of this business plan.

Less occupied houses yield less rental income. Simple analysis shows that by adding 10 new occupied houses for each of the 5 years 2016 to 2020, would have added over \$1.2M to OCR coffers, even based on the original CPI based rate in 1. above. **This would have eliminated the purported deficit described above, and still left the Operator with a handsome surplus! Should home owners be forced to carry the financial burden for Operator's overly ambitious or poorly executed Business Plans?**

3. 2021 to 2023 - What about the future?

It has become apparent that from July 2018, new house owners at OCR have been placed directly on a Weekly Site Fee Schedule that is well above the schedule in 2. above, even though that period has not yet expired. At the time of writing, this difference is significant at \$16.10 pw - \$201 pw for new home owners vs \$184.90 pw for existing home owners! In some cases the Operator may not have disclosed this information to potential new home owners, and even if they did, it was justified as some sort of "Fair Market Value".

Approaching July 2021, will the bulk of existing home owners be in for another nasty surprise? Having seeded the Resort with new arrivals paying the higher

rate of \$201 pw, it is not unreasonable to expect that the Operator will strive to move the remaining home owners, who form the bulk of the population, onto this new baseline level (or even beyond???).

Site fee increases

Of major significance is the question of site fees and the mechanism by which site fees are increased over time. It is clear from the above that there is little or no guidance as to the determination of the quantum of the increase nor the level of detail in the explanation for the increase.

s.67 deals with increase of site fees by notice.

- (1) This section applies to a site agreement that provides for the increase of the site fees by notice (otherwise than by a fixed method).
 - (2) An increase in the site fees is not payable unless the fees are increased in accordance with this section.
 - (3) The site fees must not be increased except by notice in writing given to all the home owners in the same community at the same time under site agreements to which this section applies.
 - (4) The notice must—
 - (a) specify the amount of the increased site fees, and
 - (b) specify the day (the *effective day*) on and from which the increased site fees are payable, and
 - (c) include an explanation for the increase, and
 - (d) include such other information as may be prescribed by the regulations, and
 - (e) be in the approved form (if any).
-

It is relatively easy to accept that that site fees may increase in line with variations in the relevant CPI. The Consumer Price Index (CPI) is a measure of household inflation and includes statistics about price change for categories of household expenditure. A CPI is a statistical estimate constructed using the prices of a sample of representative items whose prices are collected periodically.

Although imperfect CPI is widely used, for example in setting pension levels. To the extent it is used in setting pension levels it acts as a constraint upon the income of those residential village home owners who are pension recipients.

Where increases in site fees exceed CPI increases there is a significant probability the aged pensioners will be significantly disadvantaged and placed under financial stress. This is illustrated in the following example.

Example: Single Age Pensioner who is a home owner within the community.

The single age pension rate (including pension and energy supplements) is \$944.30 per fortnight (pf), effective from March 2020.

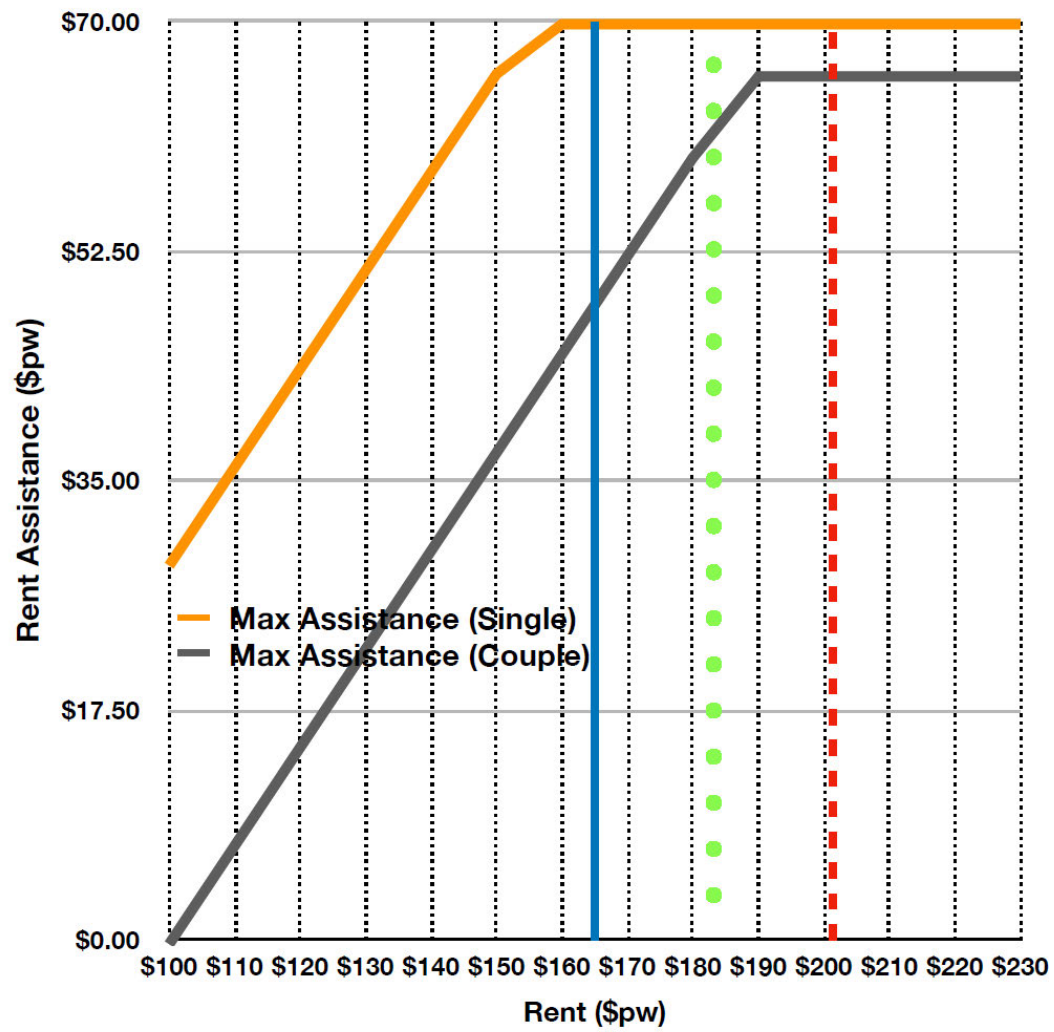
Current maximum rent assistance is \$139.60 pf (based on threshold of \$310.73 pf).

The current site fee for 2020/21 is \$369.80 pf as per Mediation agreement dated 23/06/2018. This exceeds the threshold (\$310.73 pf) for maximum payment of rent assistance.

The net rent after rent assistance is \$230.20 pf. As the site fee exceeds the threshold for maximum payment of rent assistance, the rent assistance payment is \$139.60 pf.

This is illustrated in the following diagram.

CentreLink Maximum Rent Assistance



Challenge to increased site fee

It is noted that NSW Fair Trading provides the following guidance:

“Any increase can be challenged if 25 percent or more home owners object. This includes small increases and those under consumer price index (CPI).”

<https://www.fairtrading.nsw.gov.au/housing-and-property/strata-and-community-living/residential-land-lease-communities/site-fee-increase-disputes>

Explanation for the increase (s.67(4)(c))

Prior to May 2018, site fees were increased in line with increases in CPI, as discussed previously.

For example, on 27th April 2017 the Operator [REDACTED] provided the following notice.

From the 1st July 2017 the rent for the residential premises occupied by you, at [REDACTED] will be \$160.90 per week. This is an increase of \$3.75 (being the CPI increase of 2.4% to 31st March 2017) from your current rent of \$157.15.

Yours sincerely

[REDACTED]

[REDACTED]

Note that in this advice the Operator uses “rent” in lieu of “site fees”.

In general the community accepted site fee increases in line with increases in CPI as fair and reasonable.

A case study of increase in site fees

It is noted that s.67 fails to prescribe the acceptable reasons and explanations for the increase.

This leads to operators providing minimal justification for the site fee increase, as exemplified by the following with respect to July 2018 increased site fees provided by the Operator of OCR on 4 May 2018):

Explanation for the increase:

Since 2013, the increase in the site fees has not kept pace with the actual increase in outgoings incurred by the resort operators. Your site agreement affords the operator the right to increase the site fees by Notice (non-fixed) Method.

Analysis of operating expenses shows significant annual outgoings increases over the last 5 years. We have also been advised by our waste management contractor of an increase in rubbish and recycling expenses well above expectations.

Following a formal independent valuation - the new site fee is \$185.00 per week.

As referenced previously site fees had until then been adjusted in line with increases in CPI.

Subsequent to this notice the Operator provided some further explanation in an undated letter. This included:

2. Site Rental Independently Assessed

The resort managers took the step to engage a qualified Valuer to research the market for similar resorts and provide an independent, professional opinion as to the rental value of the sites noting the location and quality of facilities.

We thought it was important to see how OCR compared to other independent seniors living resorts. The assessed rental of \$185 per week is above the median by 6.9% but 16.8% less than the highest. We are of the view that OCR is far better than average resorts but are prepared to accept the professional assessment.

The Operator stated that “analysis of operating expenses shows significant annual outgoings increases over the last 5 years”.

Full-time adult average weekly ordinary time earnings (trend) increased from \$1469.19 for November 2012 to \$1567.90 for November 2017, an average annual average increase of less than 2%.

There was no adequate explanation of these increased expenses and outgoings. As OCR was then and still is in the development stage, we are concerned that the methodology employed may not properly attribute outgoings and operating expenses to the various activities outside those properly attributable to existing occupied/owner homes. These other activities include sales and marketing, display homes, completed but unsold homes, houses in construction, empty lots, undeveloped land and other off-site developments. There is a perception that the proposed increase results in cross subsidisation which is unfair to current home owners.

This raises our concerns that other cost items may not be properly attributable in whole or in part to the land lease community (vs sales and marketing, and other development activities). From what we have been able to ascertain there is little in the way for formal recording of expenses to correctly identify shared expenses between the various activities. The allocation if done at all at best seems arbitrary and perhaps even capricious.

The Operator's undated letter issued to home owners in late May 2018 provided further cause for concern. Various %ages for cost items were stated but with no identification of dollar values, these are not helpful.

In this letter, for example, it is stated that postage costs have increased by 146.7% between 2014 and 2017. That this cost item is highlighted suggests that postage cost is considered by the Operator to be significant. But postage is more driven by sales and marketing activities than servicing the community of home owners. This was conceded at compulsory mediation.

Likewise, telephone expense was highlighted as another item. Again, this is more likely to be driven by sales and marketing activities than servicing the community of home owners? As the office hours for residents are restricted to 10 hours per week, it appears that sales and marketing activities are the heavy consumers of staff hours, office space and associated facilities and expenses.

Misunderstanding by the operator of operating expenses

Another specific item is land tax which was queried after mediation on the grounds that land tax did not apply to home owners within the residential community.

The Operator advised as follows:

“Operators of relocatable housing estates are exempt from land tax to the extent that the land has been developed for occupation, i.e. land on which completed communal facilities and houses have been completed. As each year goes by the land on which land tax is payable reduces as the site completes. At the end of the day no land tax will be payable once fully completed.”

BUT...

The relevant ruling is:

Revenue Ruling No. LT 071v3

*Exemption - Residential Parks Primarily Used and Occupied by Retired Persons
Section 10Q Land Tax Management Act, 1956*

Preamble

1. Where a residential park is used to provide homes for a community of senior or retired persons, an exemption from land tax or a reduction in the taxable land value of the land is available in accordance with the following Treasurer’s guidelines.

The test is **not** one of relocatable housing **but** of the community of senior or retired persons (as defined ... retired or at least 55 years old). In fact, relocatable housing or relocatable home is not specifically referred to in *Revenue Ruling No. LT 071v3*. *Inter alia*, the ruling refers to “manufactured home estate”.

Among the guidelines are:

3. These guidelines apply for the purposes of determining whether land which is or includes a “community or residential community” within the meaning of the [Residential \(Land Lease\) Communities Act 2013](#) (“RLLC Act”), and referred to in these guidelines as a “community”, is entitled to a land tax exemption or reduction in taxable value under s.10Q of the [Land Tax Management Act 1956](#) (LTM Act).

4. An exemption or reduction in taxable value does not apply unless the community is registered under [section 14](#) of RLLC Act.

5. If a parcel of land is used solely for the purposes of a community and more than 50% of the homes on the land are used and occupied by at least one qualifying home owner, the land is exempt low cost accommodation under s.10Q.

The Operator’s response suggests an elementary misunderstanding by the Operator of legitimate operating expenses.

Outcome of Mediation

As this was a new experience for the home owners representatives, contrasted with the representative for the Operator, they may have felt quite intimidated and preferred to accept mediation rather than proceed to the Tribunal.

The outcome of mediation on 21 June 2018 as signed by the Operator and its representative, the community’s representatives and the mediator was:

THE PARTIES AGREE THAT:

1. The site fee increase effective on or after 6th July 2018 will be \$8.00 per week for all home owners.
 2. The site fee increase effective on or after 6th July 2019 will be \$8.00 per week for all home owners.
 3. The site fee increase effective on or after 6th July 2020 will be \$8.00 per week for all home owners.
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On 26 June 2018, the Operator advised as follows:

Attached is an amended notice of site fee increase.

As a result of the compulsory mediation held on Thursday 21st June 2018, please see below variation to the previous rent review dated the 4th May 2018:

- The site fee increase effective on or after 6th July 2018 will be \$8.00 per week for home owners
- The site fee increase effective on or after 6th July 2019 will be \$8.00 per week for home owners
- The site fee increase effective on or after 6th July 2020 will be \$8.00 per week for home owners

Yours Truly



Matters the Tribunal may consider about excessive increases

s.74 provides some guidance as to the issues that may be considered in the case of the matter going to the Tribunal.

74 Matters to be considered about excessive increases

- (1) The Tribunal may have regard to any or all of the following factors when deciding whether to make an order under section 73:
 - (a) the frequency and amount of past increases in site fees for the community,
 - (b) any actual or projected increase in the outgoings and operating expenses for the community as provided by the operator since the previous increase (if any) in site fees for the community,
 - (c) any repairs or improvements to the community:
 - (i) carried out by the operator since the previous increase (if any), or
 - (ii) planned by the operator for the period covered by the increase being reviewed,
 - (d) the general condition of the community including its common areas,
 - (e) the range and average level of site fees within the community,
 - (f) the value of the land comprising the community, as determined by the Valuer-General,
 - (g) the value of any improvements to the community (including common areas) paid for or carried out by home owners,
 - (h) any explanation for the increase provided by the operator by notice in writing to the affected home owners,
 - (i) variations in the Consumer Price Index (All Groups Index) for Sydney,
 - (j) whether the increase is fair and equitable in the operation of the community,
 - (k) any other matters prescribed by the regulations.
 - (2) The regulations may require the Tribunal to disregard any specified matters (not being a matter referred to in subsection (1)), in any specified circumstances, when deciding whether to make an order under section 73.
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But there is ambiguity. s.74(1)(c) refers to “outgoings and operating expenses”. Clarification is needed as to what are allowable/recoverable outgoings and operating expenses.

As it is the Act is so vague that the issue of site fee increases is heavily weighted in favour of operators.

There is the prospect of non-recurring one-off cost increases being embedded in site fees and then continuing into future recurring site fees. It seems more appropriate for such non-recurring one-off cost increases to be clearly identified and subject to exclusion when subsequent future increases are sought. This could be achieved by such non-recurring one-off cost increases separately identifies and clearly excluded beyond the relevant period identified for the duration of the one-off increase.

There is ambiguity as to whether the cost of capital preservation, as distinct from routine repairs and maintenance, of community assets is fairly treated as an operating expense.

Clearly issues may arise in determining the proper outlays and operational expenses to be attributed to the residential land lease community.

It would seem appropriate to require the operator to provide a detailed report, with explanations and subject to scrutiny, of actual and budgeted/planned allowable/recoverable outgoings and operating expenses.

Some suggested criteria for statutory outlays and operating expenses are:

- must be directly identifiable with the operations of the land lease residential community or apportioned on a reasonable basis reflecting resource consumption;
- must be supported by appropriate, verifiable records (not arbitrary or capricious allocations);
- must not include the costs of activities associated with sales, marketing, land development, construction and other off-site activities;
- must not include the costs of excess capacity;
- must reflect efficient and effective resource acquisition and utilisation.

In summary much greater precision and clarity is required and should be provided in the Act. As it is there is little or no incentive to efficiently control resource acquisition and utilisation. There exists the very real possibility that the operator may pay excess remuneration to staff which may include

associates of the operator, or to deploy staff time and community assets to the benefit of those associates. With the present level of disclosure, clearly home owners are severely disadvantaged and largely at the mercy of the operator.

It is not clear how the criteria to be considered under s.74 are to be monetised. Some may offer benefits and some detriments to the community. Some may involve capital outlays which (hopefully) provide benefits over time. It is not clear whether the capital outlays are eligible to be recovered either immediately or by way of depreciation or amortisation or are not eligible to be recovered at all. By a sleight of hand operators may seek to recover both the capital outlay immediately as well on ongoing recovery through depreciation or amortization. There is a risk of double counting and hence over-recovery.

As at present minimal explanation is required to be provided by the operator, there is the presence of information asymmetry to the benefit of the operator and the detriment of home owners. In an effort to overcome this the information required should be both clarified and required to be disclosed. The provision of audited detailed statement of outlays and operating cost including the figures for the previous year, current year and the budgeted figure for the coming year is required and should be mandatory.

Site fees for resales

There is the opportunity for operators to gouge when entering into site agreements for resales by failing to comply with disclosure requirements.

s.109 includes:

- (5) The site fees under the new site agreement must not exceed fair market value.
- (6) Fair market value is the higher of the following:
 - (a) the site fees currently payable by the home owner who is selling the home,
 - (b) the site fees currently payable for residential sites of a similar size and location within the community.

It is noted that s.21 provides:

- (2) The disclosure statement is to be in the approved form and is to include—
 - (a) details of the fees and charges that will be payable under the proposed site agreement for the particular residential site, and
 - (b) details of the current range of site fees paid in the community...

NSW Fair Trading at <https://www.fairtrading.nsw.gov.au/help-centre/forms#Residentiallandleasecommunityformsandpublications> lists the following approved forms, one of which is “Disclosure statement”:

Residential land lease community forms and publications

Approved forms

- Registration form (PDF, 84.21 KB)
- Change in registered details form (PDF, 35.88 KB)
- Completion of mandatory education briefing for new operators (PDF, 76.87 KB)
- Disclosure statement (PDF, 39.87 KB)
- Moving into a land lease community (PDF, 279.52 KB) Order bulk copies at the NSW Government's online shop.
- Termination notice (PDF, 194.56 KB)
- Compulsory mediation form for site fee disputes (PDF, 243.84 KB)
- Other mediation/complaints form (PDF, 319.3 KB)

As it stands, s.21 does not require disclosure of current site fee payable by the outgoing home owner, although NSWFT has published the following which includes some additional information in the Disclosure Statement, as shown below.

Disclosure Statement

Residential (Land Lease) Communities Act 2013, section 21(2)

Included in this publication is the following:

3. SITE FEES

The current site fees for the site you are interested in are:

\$

☐ Weekly ☐ Fortnightly

Current range of site fees paid in the community:

Low:

\$

High:

\$

It is proposed that your site fees will be:

\$

☐ Weekly ☐ Fortnightly

In the future your site fees may be increased by: (tick only **ONE** option)

☐ Fixed method: (Give details of the method)

☐ By notice (non-fixed):

Date of the last increase:

/ /

Amount of last increase:

\$

Date of next increase (if known):

/ /

Note: Site fee increases by notice cannot occur more than once in any 12-month period.

s.109(5) requires that site fee under the new site agreement must not exceed fair market value. Fair Market Value may be defined as *“The price that would be negotiated in an open and unrestricted market between a knowledgeable, willing but not anxious buyer and a knowledgeable, willing but not anxious seller acting at arm’s length”*. In the case of resales, failure by the operator to fully disclose the current site fee being paid by the selling home owner for the property in which the prospective buyer is interested creates information

asymmetry between the operator (to its potential advantage) and the prospective incoming home owner (to his/her potential disadvantage).

It appears that it is not uncommon for operators to fail to disclose (either by ignorance, manipulation or malicious intent) the current site fees as shown in NSWFT approved Disclosure Statement.

The site fees currently payable by the home owner who is selling the home should be disclosed to the purchaser or prospective home owner. There is opportunity for the operator to gouge by including in the new site agreement a substantially higher site fee. As mentioned previously (see OCR site fees, Historical 2013-2020, and Projected 2021-2023), there have been occasions at OCR where the outgoing home owner was paying \$184.90 pw, but the new home owner was hit with \$201.00 pw, even though adjacent and nearby sites of similar size and location were levied at \$184.90 pw.

We are aware of a case in which the incoming home owner in October 2018 was advised that the then current site fee was \$185 pw, with increases of \$8 pw in July 2019 and again in July 2020 as agreed in mediation. However as at July 2018 the agreed site fee was set at \$168.90 pw as per the Mediation agreement. This is clearly a case of price gouging and misrepresentation by the Operator. It appears that incoming home owners, irrespective of whether they are purchasers on new homes or resales have been subject to a site agreement leading to a site fee of \$201 pw for the 2020/21 year.

A recent example of the advice of site fees given to an incoming home owner on a resale during the first quarter of 2021 is:

3. SITE FEES	
The current site fees for the site you are interested in are:	\$402.00 per fortnight
Current range of site fees paid in the community:	\$402.00 per fortnight
It is proposed that your site:	\$402.00 per fortnight
In the future your site fees may be increased by: (tick only ONE option)	
Fixed method: (Give details of the method)	
<input checked="" type="checkbox"/> By notice (non-fixed):	

This is clearly misleading. The outgoing home owner was paying \$184.90 pw, and the range of site fees was \$184.90 pw to \$201 pw. It may be that this is a device used by the Operator to indicate that the range and average level of site fees is limited to \$201 pw to support proposed future increased site fees, even though the vast majority of home owners are currently paying \$184.90 pw. To increase these site fees to \$201 represents an increase of 8.71%, let alone any further increase above \$201.

On 1 August 2020, the residents committee enquired about site fees, as follows:

Hi 

The RC has been contacted to clarify wording you have on the OCR public website, specifically,

1. What are the weekly fees?

The weekly fees cover resort maintenance and rates ranging from \$131.20 per week to \$201.00 per week depending on government rent assistance.

To the resident's knowledge, every home owner pays the same rent (with or without government assistance and taking into account the fee for parking a caravan or RV). Are you able to clarify the variation between \$184.90 and the \$201. Is the latter charge what we expect to be paying with the next fee increase?

cheers

RC

On 6 August 2020, the Operator replied as follows:

Yes the website is correct on the range of site fees (taking in consideration rental assistance when applicable)

As for future rent levels – I have no information.

Regards



Manager/Sales

Recommendations

s.21(2) should be amended to include as (a) details of the current site fees payable by the existing home owner for the site in which the prospective home owner is interested, or if there is no existing home owner then this is to be so stated.

Pursuant to this the existing (a), (b), (c), and (d) should be adjusted.

s.67(c) should be modified to specify more clearly what level of explanation is required.

s.67(d) provided for such other information as may be prescribed by the regulations. The regulations should provide clarity as to:

- Detailed statement of outlays and operating cost including the figures for the previous year, current year and the budgeted figure for the coming year, preferably or subject to scrutiny by the home owners;
- Clarification of the meaning of “outlays and operating expenses”;
- The extent to which the criteria set out in s.74 are to be incorporated in s.67(c) explanations; and
- How the criteria to be considered under s.74 are to be monetised.

In principle any increase in site fees should not exceed increases in CPI, as the income of many home owners is constrained by income streams indexed to CPI. Any increase above CPI should be subject to rigorous examination. s.67 should be modified to include this intended outcome.

There must be provision to ensure that operators manage the residential community effectively and efficiently. To the extent operators seek to recover outlays and operating expenses from home owners, it is necessary that such outlays and operating expenses:

- must be directly identifiable with the operations of the land lease residential community or apportioned on a reasonable basis reflecting resource consumption;
- must be supported by appropriate, verifiable records (not arbitrary or capricious allocations);
- must not include the costs of activities associated with sales, marketing, land development, construction and other off-site activities;
- must not include the costs of excess capacity; and
- must reflect efficient and effective resource acquisition and utilisation.

The provision of a disclosure statement to incoming home owners must be strengthened as it is clear that operators have avoided proper (and as required by s.21 and s.109) disclosure of fair market value of site fees, having regard to the current site fees payable by the home owner who is selling the home, and the site fees currently payable for residential sites of similar size and location with the community. The present provision (s.21) does not require disclosure of the current site fees payable by the outgoing home owner. The maximum penalty provided for breaching is 100 penalty points. Having regard to the potential damage to the incoming home owner, this is trivial and ought to be increased substantially.

Likewise there should be provision for the incoming home owner to recover additional costs from the operator if and when they become aware of the improper disclosure, with site fee being held at the rate paid by the selling home owner for a period of three (3) years from the date of the new site agreement. This would provide a significant penalty to discourage operators from committing this offence.

We contend that adoption of the above recommendations would strike an equitable balance between the interests of operators and home owners.