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Dear Carlie

**IMPROVING THE REGULATION OF MANUFACTURED HOMES AND ESTATES,  
CARAVAN PARKS AND CAMPING GROUNDS  
DISCUSSION PAPER - NOVEMBER 2015**

I refer to the Discussion Paper of November 2015 regarding a review of the *Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005* (LG Regulation) and associated planning policies.

My responses to the questions raised in the Discussion Paper are as follows:

**1. Do you agree with proposed changes to the definitions?**

The creation of definitions for '*Residential Park*' and '*Tourist Park*' are broadly supported and are considered necessary as part of a modernised approach to managing such developments through the planning system.

Consideration should also be given to whether there is a need to define a type of park that is a hybrid of a Residential Park and a Tourist Park, where neither use would be characterised as being the dominant purpose of the development. While it is considered that there are existing parks that would fit such a description, for the purpose of the current exercise, it is relevant to consider whether the planning system should provide for the creation or regularisation of such a hybrid use. Perhaps the resolution of Question 2 below will resolve this issue.

**2. Should a threshold for permanent residents be set for Residential Parks? If so, do you agree with a 75% threshold?**

The suggested threshold appears to have merit, but careful consideration is needed to ensure that unintended consequences are avoided.

Given that the proposed definitions for '*Residential Park*' and '*Tourist Park*' begin with the words "*a place that primarily provides accommodation for*", it is implicit that the dominant purpose will be either residential or tourist in the respective case. The implications of the proposed threshold for Residential Parks are that it could be for guidance, it could be a development standard or it could be a permissibility test, depending on how the threshold is represented. There appears to be no reason why a similar principle would not also be applied to a Tourist Park, unless the underlying intent is for a proposed Tourist Park to not include residential use.

*3. Would a zoning approach be appropriate for Residential and Tourist Parks?*

It is considered that a zoning approach is appropriate for Residential and Tourist Parks.

*4. Should the permissibility of Residential or Tourist Parks be mandated in certain zones (Option 1) or should a council determine this based on their local strategic planning (Option 2)? If Option 1, what zones are appropriate?*

It is considered that the permissibility of Residential Parks and Tourist Parks should be mandated in certain zones (Option 1), consistent with the 'standard instrument' approach to land use planning in NSW. It is suggested that the following zones could be appropriate:

Residential Parks - RU5 Village, R1 General Residential, R3 Medium Density Residential, B2 Local Centre

Tourist Parks - RU5 Village, B2 Local Centre, SP3 Tourist, RE1 Public Recreation, RE2 Private Recreation, E3 Environmental Management, E4 Environmental Living

Some zones may be suitable in some council areas and not others, depending on the specific character of an area, so councils should have the ability to make a case for more or less zones to apply.

*5. Would these proposed changes make the permissibility of manufactured homes clearer and contribute to a simpler approvals process?*

Yes, defining manufactured homes as being buildings will clarify their permissibility outside caravan parks and manufactured home estates.

*6. How long should caravans, campervans or tents be permitted to be used on land outside of parks and camping grounds without the need for council approval?*

The existing provisions in clause 77 of the LG Regulation are noted. An extension to the exemption in clause 77(a) of the LG Regulation, for not more than two caravans, campervans or tents on any land, to cover long weekends and school holidays, is generally supported. However, it may be appropriate to set an upper limit of two or three weeks to reduce the potential for the creation of unsafe or unhealthy conditions.

*7. How should the new framework facilitate the use of self-contained caravans and campervans?*

The language of the LG Regulation, based on "installation", could be altered to refer to "positioned", or equivalent.

*8. What provisions from SEPP 21 or SEPP 36 should be retained under the new framework?*

Provisions for subdivision of Residential Parks and Tourist Parks should be retained in a new framework, though it would be appropriate to review the suitability of the existing provisions. In principle, it is considered that the potential for subdivision should be limited. For Tourist Parks the merits of enabling any type of subdivision are not clear, whereas, for Residential Parks, subdivision for lease purposes or,

perhaps, subdivision under the *Community Land Development Act 1989*, may be acceptable.

Otherwise, it is considered that no major issues arise from the analysis included in Appendix A of the Discussion Paper.

**9. Are there additional controls that should be included in the new framework to facilitate the development of new Tourist Parks or Residential Parks?**

To complement the clarity that can be provided by a new approach to zoning/permisibility, consideration could be given to including some "*standards that cannot be used to refuse consent*", similar to the approach taken in *State Environmental Planning Policy (Affordable Rental Housing) 2009*, e.g. minimum provisions for landscaping or parking.

**10. Should new caravan parks, camping grounds and manufactured home estates be subject to a one-off development consent rather than the existing approval to operate provisions?**

It is considered that new caravan parks, camping grounds and manufactured home estates should only be subject to a one-off development consent, consistent with the regime that applies to other development that requires consent.

While it is understood that there are concerns regarding enforcement issues in relation to such land uses, it is considered that approvals granted under the modern planning regime should be sufficiently robust to negate any need for a different enforcement regime that is targeted at such land uses. Enforcement provisions of the *Environmental Planning and Assessment Act 1979*, with the range of penalty infringement notices that are available, are considered to be superior to enforcement provisions in the *Local Government Act 1993*.

**11. What other matters should be considered in camping grounds and primitive camping grounds approvals? Should 'primitive camping grounds' be defined?**

There appears to be no clear imperative for defining the term "*primitive camping ground*", as the existing defined planning term "*camping ground*" is considered to be adequate for the purposes of integrating LG Regulation provisions into the planning system.

While clause 132 of the LG Regulation currently defines requirements for a "*primitive camping ground*", it is considered that some of those provisions are unrealistic, unnecessary and/or archaic in nature. It is considered that such issues can be adequately addressed via the planning system without the need for such specificity.

It is noted that the planning system definition of "*camping ground*" indicates a use that does not include a caravan park, whereas camping grounds have traditionally been integrated with caravan parks. The planning system definition of "*camping ground*" should be amended to clarify that it can be a component of a "*tourist park*" or "*residential park*", or be a stand-alone land use.

**12. Do you agree existing parks should no longer be required to obtain 'approval to operate'? Should regular council inspections be required for these parks?**

It is agreed that existing parks should no longer be required to obtain 'approval to operate'. Transitional provisions, including the suggested guidelines, should be created to establish the status of existing parks in the planning system.

It should be left to a council's prerogative as to whether regular inspections are carried out, consistent with the discretion that applies to most of the regulatory regimes that are administered by councils.

**13. *What controls should existing parks be exempt from when being considered under the new framework?***

It would be necessary to have a more detailed understanding of proposed controls, such as those that will appear in the proposed guideline, to provide an informed response to this question.

**14. *Is it appropriate that existing parks are considered under the new framework when lodging a development application for expansion or reconfiguring?***

It is appropriate to consider the new framework when assessing a development application for expansion or for reconfiguring of an existing park. However, the planning system should be flexible enough to give due consideration to existing circumstances, having regard for the approval and compliance history of an existing park.

With respect to the potential 'existing use rights' planning limitations that could apply to an existing park located in a land use zone where the park is not permissible, perhaps a 'sunset' clause could be established in the planning regime to make existing parks permissible in any zone, so as to create a window of opportunity for those parks to seek to resolve any immediate development aspirations.

**15. *What are your views on the proposed approach for exempt and complying development?***

The proposed approach to exempt and complying development is broadly supported, however, the practicality of the approach needs to be carefully considered. Some issues that may arise are:

- Historically, unless subject to formal subdivision, site boundaries in a park are unlikely to have been precisely established by survey and their size may otherwise not be well defined by any approval, or in any clear legal sense. With this background, the notion of changing the size of a site could be difficult to reconcile with reality.
- Given the common lack of legal formality for site boundaries in parks and the fact that site boundaries that are internal to a park have no status in the Building Code of Australia (BCA), the types of Codes SEPP provisions that apply to residential buildings cannot be simply extended to park situations. For example, the deemed-to-satisfy provisions of the BCA require a 1.8m separation between dwellings on the same allotment (as opposed to a park site) if the external walls/wall openings do not meet certain construction requirements for fire resistance that are not usually present in manufactured home construction. The application of such a requirement has significant potential to generate problems and disputes unless resolved via an integrated, orderly approach to the development of a park, which may fall

outside of the scope of the Codes SEPP regime. This issue does not presently arise as manufactured homes are not yet subject to BCA provisions.

- With respect to sites being for short term or long term use, in existing parks it may not be practical to definitively establish the status of any given site or to definitively establish the threshold of residential and tourist uses.
- For existing parks that are not permissible in their land use zone, it is anticipated that the usefulness of Codes SEPP provisions will be limited to exempt development.

**16. *Should anything else be categorised as exempt, complying or development assessment?***

Other categorisation opportunities are not immediately obvious.

**17. *Do you agree with the controls proposed for inclusion within a Guideline (as outlined in Appendix B)?***

While the detail of the guideline is yet to be established, the approach of using a guideline is supported. Consideration should be given to the potential for consolidation of provisions, to simplify the guideline.

**18. *Are there any specific controls where a performance-based approach would be better suited than the current prescriptive approach?***

The proposed guideline could be structured on the basis of performance based controls and acceptable solutions. However, the acceptable solutions should have regard for the types of issues that regularly arise from the current concurrence process.

**19. *Is it appropriate to remove concurrence provisions and manage variations as part of the development application process?***

The current concurrence process applies to issues that are often relatively trivial, making it wasteful and out of step with the way that exceptions to development standards are managed via the planning system. It is appropriate to remove concurrence provisions and manage variations via the development application process, noting that the foreshadowed approach is principally based on the use of a guideline rather than the creation of development standards in an Environmental Planning Instrument.

**20. *Do you agree with the proposed approach reducing duplication and providing greater clarity in definitions?***

Achieving greater clarity in definitions is an important component of the foreshadowed regulation improvements. The following comments are made in respect of the proposed definition changes set out in Table 4 of the Discussion Paper:

- Based on the wording of the proposed definition for "residential park", it is implicit that permanent residents could be accommodated in moveable dwellings, i.e. effectively any portable device used for human habitation, including tents. Consideration should be given to whether the definition was

intended to allow for permanent accommodation in moveable dwellings. While, for a new park, this aspect may be considered and managed through an approval process, existing parks might be unrestricted in this regard.

- The word "*installed*" in the definitions for "*residential park*" and "*tourist park*" could be expanded to "*installed, positioned or erected*" to address the methods used to locate the range of moveable dwellings/manufactured homes that the definitions relate to.
- The definitions for "*residential park*" and "*tourist park*" could be improved by replacing the words "*and which may or may not include*" with "*including any*" as it may be appropriate to provide for the inclusion of communal facilities and administration buildings, rather than to imply that they are not required in any circumstance.
- While no change is proposed in respect of the term "*camping ground*", it is considered that the reference in the definition to "*caravan park*" needs to be addressed. While a "*caravan park*" would become a "*tourist park*" in the proposed regime, the use described in the "*camping ground*" definition is also a subset of a Tourist Park and, possibly, a Residential Park. For clarity, it may be better to acknowledge the potential for a "*camping ground*" to be a component of a "*tourist park*" or "*residential park*", or to be a stand-alone land use.
- The definitions for "*short-term site*" and "*long-term site*" may need further consideration, given that the context in which they will be used is not yet clear. While the benchmark of 90 days is considered to be consistent with established concepts of permanency, consideration should be given to the potential for the intent of the wording to be manipulated and whether a more detailed definition is necessary, having regard for whether the associated risks warrant a more specific definition. An example of a more specific definition is as follows:

***Short-term site*** means a site in a Residential Park or Tourist Park that is not a Camp Site and is used for short-term accommodation by any person for 90 days or less in any 12 month period, whether the days are consecutive or aggregated.

- Consideration should be given to including a maximum period of occupation for a "*camp site*", consistent with a notion of short-term use for such sites.
- Continuation of the notion of a "*manufactured home*" not being self-contained may generate issues in respect of the way the BCA is applied when they are defined as buildings. It may be reasonable to expect that a manufactured home would be self-contained if it is for residential use, but not necessarily if it is for tourist use.
- There seems to be a recent trend toward carrying out a significant amount of on-site construction work in respect of manufactured homes, potentially compromising the concept of a manufactured home. Careful consideration should be given as to whether this trend should be either endorsed or constrained in the framework of the proposed regime.

**21. Should sites be maintained for tourist uses in a Residential Park and vice versa?**

The phenomenon of parks with a mix of permanent residents and tourists appears to have evolved from the desire of caravan park operators to improve their cash flow and long term viability. It could be that some such caravan parks are not located so as to be able to attract enough tourists to maintain their viability. It is considered that, given the experience of the historic evolution of caravan parks, proponents of new parks should be better placed to understand the economic viability of their proposed venture.

While it is considered that there is no major reason why parks should not continue to be able to accommodate both tourist and residential use, it is likely that the market will dictate a trend to one use or the other in any new park, particularly in respect of Residential Parks.

**22. If so, should a threshold be set to provide for a mix of uses?**

Assuming that a mix of uses is allowed, the primary benefit of thresholds would be to enable a more straightforward characterisation of use for planning purposes, such as determining permissibility and the application of any relevant planning guidelines.

**23. If so, what should the threshold be or should this be set by individual councils?**

It is considered that any threshold should be consistent throughout NSW, rather than being set by individual councils.

There has been insufficient experience of mixed use parks in the Newcastle Local Government Area to provide an enlightened opinion about thresholds, though the 75% figure suggested in the Discussion Paper appears to be reasonable. As previously suggested, there may be merit in providing for a hybrid residential/tourist park that falls in between the threshold range, particularly so that existing parks of this style can be categorised in the planning system.

**24. What controls should be in place to manage short-term housing for seasonal or itinerant workers?**

While there has been little or no demand for such housing in the Newcastle Local Government Area, it is considered that a key consideration is the categorisation of the types of housing that are envisaged by the Discussion Paper. A strategy to provide for such housing could include the following components:

- Such housing be given a unique characterisation/definition in the planning system and be excluded from the definition of a building.
- Guidelines are created to establish appropriate standards to be met for the erection/installation of such housing.
- Provide for "*standards that cannot be used to refuse consent*", similar to the approach taken in *State Environmental Planning Policy (Affordable Rental Housing) 2009*, e.g. minimum provisions for landscaping or parking.

*25. Within camping grounds and caravan parks, should long term structures, including glamping, be required to meet different controls to shorter-term structures like tents?*

In principle, it is considered that the pattern of use is more relevant to controls for structures than is the degree of permanency of the structure, though the potential for economic loss increases with the value of the structure. For example, it is considered that the assessment of flood impacts does not vary significantly between the use of a 'glamping' tent and a traditional tent, however, a 'glamping' tent is likely to involve a greater capital investment and therefore greater potential for financial loss. The potential for financial loss would increase with the value of the structure and, perhaps, the risk of the loss of a 'glamping' tent in a flood event may be a loss that might reasonably expected to be carried by the park owner or operator.

*26. How can the new planning framework provide opportunities for emerging forms of development that vary from traditional housing?*

The planning regime needs to contain an appropriate degree of flexibility to accommodate variations from traditional housing forms, which could at least partly be achieved through the implementation of performance based controls.

*27. Are there any provisions of the BCA that are not appropriate for manufactured homes?*

While defining manufactured homes as being buildings helps to clarify their status in the planning system, the concurrent application of the BCA to manufactured homes generates the potential to significantly change their nature. In particular, the application of the BCA is likely to make the construction of manufactured homes more like traditional homes and is likely to add to their cost. This would be more of a problem for the viability of manufactured homes inside Residential Parks and Tourist Parks and hence potentially affects the viability of the parks themselves.

It is broadly considered that there could be justification for the design life of manufactured homes in Residential Parks and Tourist Parks to be less than that of manufactured homes (and regular housing) outside of parks. If the structural provisions of the LG Regulation are expanded to include additional BCA structural provisions, Residential Parks may become more like a conventional medium density development, compared to a typical manufactured home estate.

While the BCA is a performance based document, it is considered impractical for manufactured homes to routinely be assessed outside of deemed-to-satisfy provisions of the BCA.

The following BCA matters are particularly relevant to manufactured homes:

- The LG Regulation currently applies the four parts of the primary loading standards to establish structural soundness for manufactured homes, whereas the BCA will apply a range of additional structural provisions.

Of particular note is AS 2870 *Residential Slabs and Footings*, which has the effect of more specifically matching footing design to the foundation conditions of a site. This is likely to cause footings for manufactured homes to become more substantial and costly, perhaps trending toward slab-on-ground construction, similar to the trend followed by conventional homes many years ago.



It is noted that the heading of clause 52 of the LG Regulation implies design loads for wind forces only, whereas, in addition to wind loads, the standards listed in clause 52 also includes standards for dead and live loads, snow loads and earthquake loads.

- The BCA provides for a range of separation and construction requirements among requirements for fire safety. These requirements could cause a shift from the outcomes that currently arise from the LG Regulation and, given that the BCA does not recognise site boundaries (see answer to question 15), there is significant potential for the orderly development of a park to be complicated by these requirements.
- While the *Rural Fires Act 1997* already includes manufactured homes within its definition for 'residential accommodation', with related implications for their assessment via the planning system, the application of standards specified by the BCA may have further implications for manufactured homes. While this could be considered to be an appropriate by-product of the foreshadowed reforms, the principle of minimising the amount of masonry construction in connection with manufactured homes may make them unviable in areas that are subject to the higher range of Bushfire Attack Levels.
- The BCA includes requirements for the inclusion of a range of facilities in residential buildings, including laundering facilities. The provision of communal laundering facilities, as often occurs in caravan parks, could be considered as a performance based solution, but may still add some complexity to the approval process.

**28. *Should the process for design certification by a structural engineer continue? Should there be any other requirements?***

The process for design verification and construction verification could be left for a Certifying Authority to resolve, however, given the unique processes that manufactured homes are subject to, there may be merit in maintaining a standardised verification process. In addition to design certification by a structural engineer, it may also be appropriate for the constructor to certify that the building has been constructed in accordance with the design.

**29. *Should manufactured homes be subject to any mandatory inspections during installation?***

In principle, the existing critical stage inspections applying to single dwellings should be maintained, except that the framing and wet area works carried out in a factory could be verified by suitable documentation in lieu of inspection. It is noted that the reputation of the manufactured home industry is somewhat dependent on the performance of wet area waterproofing, notwithstanding the potential rigours of being transported to site. The fact that the work is carried out in a factory environment, coupled with the potential for reputational damage, should compensate for setting aside inspection requirements.

**30. *What fire safety controls should Residential and Tourist Parks be required to meet?***

The existing fire safety controls of the LG Regulation are considered to be adequate. These controls can potentially be more onerous than those applying to other forms of medium density housing development, however, the nature of the park environment provides justification for consistent controls.

**31. *Would requiring residential and Tourist Parks submit an Annual Fire Safety Statement be an effective way to check essential fire safety measures have been met?***

While it is considered that the integrity of the existing system of submitting Annual Fire Safety Statements via the planning system can be questionable, there is no substantive reason why annual certification of fire safety measures in parks should not be aligned with the planning system requirements. It is noted that the LG Regulation does not currently require fire hydrant systems to be subject to annual certification and the introduction of such requirements for existing parks may cause deficiencies to be identified, particularly in respect of flow rate and pressure.

**32. *What controls should apply to tourist and Residential Parks located on flood prone or bush fire prone land?***

The fundamental nature of caravan parks is such that they have typically been located in places that are tenuous in terms of flooding and bush fire and, sometimes, potential coastal inundation and erosion. While the notion of emergency response management strategies has merit, it is considered that such strategies may carry little weight when dealing with risks associated with new park proposals, in the context of the planning system.

It may prove impractical to simplify approval pathways for proposed new parks in potentially hazardous locations, through special controls or otherwise.

**33. *What would be the most effective and efficient enforcement approach?***

It is appropriate to bring development in Residential Parks and Tourist Parks into line with existing compliance provisions for other development, as per the provisions of the *Environmental Planning and Assessment Act 1979*.

If you require any further information please contact Geoffrey Douglass, Senior Development Officer (Projects) on telephone 4974 2728.

Yours faithfully



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**MANAGER DEVELOPMENT AND BUILDING**