



**TENANTS'
UNION**
OF NEW SOUTH WALES

Tenants' Union of NSW P: 02 8117 3700
Suite 201 F: 02 8117 3777
55 Holt Street E: contact@tenantsunion.org.au
Surry Hills NSW 2010 **tenantsunion.org.au**
ABN 88 984 223 164 tenants.org.au

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Carlie Ryan,
Team Leader
Housing Policy
Department of Planning and Environment
GPO Box 39
Sydney
NSW 2001

By email LGRegReview@planning.nsw.gov.au

**Re: Submission on Review of Local Government (Manufactured Homes
Estates, Caravan Parks, Camping Grounds and Moveable Dwellings)
Regulation 2005 and SEPPs 21 and 36**

Dear Ms Ryan,

We refer to the November 2015 discussion paper and welcome the opportunity to make some preliminary comments to the Department of Planning & Environment on the discussion paper titled *Improving the regulation of manufactured homes, caravan parks, manufactured home estates & camping grounds*.

The Tenants' Union of NSW (TU) is the State's peak non-government organisation for residential tenants. We represent the interests of all renters in New South Wales, whether in the private market, social housing, residential communities (including both home owners and renters), boarding houses or marginal rental accommodation.

We are a specialist community legal centre, with our own legal practice in residential tenancies law, residential communities law and the primary resource agency for the State-wide network of local Tenants Advice and Advocacy Services (TAASs).

We reply to the matters raised in the discussion paper as follows;

Q1 Do you agree with the proposed changes to the definitions

We agree with and support the suggested changes to the definitions of 'caravan park' and 'manufactured home estate' to become 'residential park' and 'tourist park'. We do note however that the *Residential (Land Lease) Communities Act 2013* (the "**RLLC Act**") uses the definition 'residential community' rather than 'residential park' and

suggest that consideration should be given to adopting this definition in order to provide consistency.

We also welcome the proposed changes to the definition of building in the *Environmental Planning & Assessment Act 1979* (the "**EPA Act**") to include manufactured homes.

Q2 Should a threshold for permanent residents be set for residential parks?

The TU recognise that operators require flexibility in how they operate their parks and we support diversity of both residential and tourist parks. We support the idea of a threshold that parks must meet in order to be defined as either a residential or tourist park and agree that 75% is a sensible and workable threshold. Having clear definitions for parks will assist potential home purchasers to make informed choices about the type of park they are contemplating as their future place of residence.

If thresholds are adopted we would like to see a process whereby all current parks are defined based on the site designations within the park. As part of this process some sites may need to be redesignated as long term because we are aware of numerous parks where home owners reside on short term sites. These home owners should not be required to move their homes, or be disadvantaged by the process. If approval is required for the redesignation of sites from short to long term it should be given.

Two residential communities located at Chinderah NSW 2487 namely, Tweed River Hacienda Holiday Park (operated by Hacienda Caravan Park Pty Limited) and the residential community known as Homestead Holiday Park (operated by Gennacker Pty Limited) illustrate some of the difficulties around site designation that adversely affect both home owners and prospective home owners in residential parks. Site designations are often changed in these parks without the knowledge of the home owners.

Q3 Would a zoning approach be appropriate for Residential and Tourist Parks?

Yes, we support a zoning approach.

Q4 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?

The TU supports option 2 in relation to zoning for residential and tourist parks. Local councils are best placed to determine the needs of the area.

Q5 Would these proposed changes make the permissibility of manufactured homes clearer and contribute to a simpler approvals process?

Yes, and as previously stated, we agree to manufactured homes being included in the definition of a building.

Q6 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?

No comment.

Q7 How should the new framework facilitate the use of self-contained caravans and campervans?

No comment.

Q8 What provisions from SEPP 21 or SEPP 36 should be retained under the new framework?

We agree with the proposals set out in 'Appendix A' regarding the retention, amendment and deletion of provisions from SEPP 21 and SEPP 36.

We also agree with the transfer of existing provisions as set out in Appendix B but we support the development of a new SEPP for residential and tourist parks rather than a Guideline. Over 34,000 people currently live in residential parks in NSW and this number is increasing. It is essential that provisions for infrastructure, health & safety requirements and the quality of homes etc. are set out in a legally enforceable instrument.

Q9 Are there additional controls that should be included in the new framework to facilitate the development of new tourist parks or residential parks?

No comment.

Q10 Should new caravan parks, camping grounds and manufactured home estates be subject to one-off development consent rather than the existing approval to operate provisions?

Yes. Firstly, scrutiny through means of a development application is preferable because it would mean there is an independent record that is easier to navigate

namely, a development consent rather than ad-hoc mixed regulatory system under the *Local Government Act 1993* (the "LG Act") with limited scrutiny.

And in relation to the existing regulatory regime we fully support a move towards approvals and compliance for residential communities being through the EPA Act only rather than separate licensing and approval of operators via LG Act 1993 and the Regulation(s) thereunder.

The current system is clearly not time consuming or unnecessary (pg 34 discussion paper) rather, it is the experience of the TU that some rogue operators in the residential park industry have operated parks either while unlicensed or in breach of some of the terms of their approvals to operate. They have been able to do so – without any oversight or sanction being applied for these breaches. A better regulatory control through the EPA Act is required to benefit home owners and in some cases to protect the environment itself.

Q11 What other matters should be considered in camping grounds and primitive camping grounds approvals?

No comment

Q12 Do you agree existing parks should no longer be required to obtain 'approval to operate'? Should regular council inspections be required for these parks?

Yes, to both questions.

Existing penalty and infringement notices have proven to be inadequate. Some operators persistently ignore prescribed separation distances between dwellings and home owners have also been given consent to ignore the regulations when altering or adding to their homes on site. Once homes or structure are in place the cost of moving or removing is significant and in some cases it is simply not possible.

There are significant financial incentives involved for operators to ignore prescribed separation distances and site size requirements when installing new homes for sale – the more homes park operators can fit into a park, the higher the profit. Homes are sometimes placed on residential sites acquired by some park operators without prior approval of or scrutiny by the local council, resulting in new breaches of the regulation.

Regular council inspections should be required to ensure ongoing compliance with site size requirements, setbacks, separation distances etc. Manufactured homes are highly flammable and the health and safety of occupants must take precedence over the desire for flexibility or operator profit.

Q13 What controls should existing parks be exempt from when being considered under the new framework?

Savings provisions should be included in the applicable Act/Regulation/environmental planning instrument (SEPP or LEP) to protect existing residents' homes. Many of these home owners are elderly and vulnerable.

Q14 Is it appropriate that existing parks are considered under the new framework when lodging a development application for expansion or reconfiguration?

Yes.

Savings and transitional provisions should protect current home owners from any financial burden associated with compliance of their homes and associated structures on their residential sites but new sites and homes should come under the new framework.

Q15 What are your views on the proposed approach for exempt and complying development? (table 3 page 39)

Exempted development option 2 – we do not agree with permitting operators to switch between designated sites where threshold is not exceeded. As mentioned above, this has been a huge issue in the past and such practice has had a detrimental impact on many home owners. Operators can currently change the designation of sites without council approval and without notifying home owners residing on those sites. This often only becomes an issue when the home owner puts their home on the market only to be advised by the operator that it sits on a short term site and can only be sold to someone as a holiday home. This decreases the value of the home significantly.

It is our strongly held view that an operator should be required to submit a development application to change between short term and long term sites and vice versa. Further, council should be required to notify affected home owners and allow them to make submissions on any proposed change. The affect on home owners must be part of the consideration when council is assessing the application.

A detailed community map must be required and should set out in clear detail and identify the particular sites within the residential community. When any site designation is changed, the community map must be updated and attached as part of the development consent.

We agree with the other proposals in the table.

Q16 Should anything else be categorised as exempt, complying or development assessment?

Any new or improved infrastructure for utilities, additional or re-configuration of roads etc. should require development consent. We are aware of two parks where such changes were used to remove home owners from their sites. Again, home owners affected by this should be notified of the proposal and given an opportunity to comment.

Q17 Do you agree with the controls proposed for inclusion within a Guideline (as outlined in appendix B)?

As previously submitted, we believe that a new SEPP is the most appropriate instrument for the framework. The SEPP should be prescriptive in relation to homes, set backs, roads etc. however, we agree with some flexibility in relation to community facilities –communal laundries, toilet blocks etc.

Q18 Are there any specific controls where a performance-based approach would be better suited than the current prescriptive approach?

We have concerns with a move to 'performance based' system. For example, we are aware of one manufactured home builder that is closely linked to and has directors in common with two residential park operators. These operators have benefitted from a lack of oversight, scrutiny by Council and appropriate legislative deterrence. The homeowners have suffered considerable consumer detriment having invested in the region of \$180,000 for their manufactured homes that do not have the appropriate approvals to be located on site.

Q19 Is it appropriate to remove concurrence provisions and manage variations as part of the development application process?

We agree with the proposal to remove concurrences and manage variations as part of the development application process.

Q20 Do you agree with the proposed approach reducing duplication and providing greater clarity in definitions?

Yes, we agree with the proposed changes to the definitions.

Q21 Should sites be maintained [retained?] for tourist uses in a residential park and vice versa?

No. Operators have the right to operate their parks in the way that they wish. In areas where tourism is not strong a requirement to hold tourist sites could have a negative impact on the profitability of a residential park and in the long run both home owners and residents will bear the cost of the shortfall in income.

Q22 If so, should a threshold be set to provide for a mix of uses?

As above.

Q23 If so, what should the threshold be or should this be set by individual councils?

As above.

Q24 What controls should be in place to manage short-term housing for seasonal or itinerant workers?

Housing for itinerant and seasonal workers must not displace long-term housing in residential parks.

Q25 Within camping grounds and caravan parks, should long term structures, including glamping, be required to meet different controls to shorter-term structures like tents?

No comment

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

No comment.

Q27 Are there any provisions of the BCA that are not appropriate for manufactured homes?

No comment.

Q28 Should the process for design certification by a structural engineer continue? Should there be any other requirements?

Yes. It is paramount that new homes are correctly constructed and installed. However, home owners have expressed concern about the use of private certifiers that may undertake large contracts with operators. Consideration should be given to a more independent system of certification.

Q29 Should manufactured homes be subject to any mandatory inspections during installation?

Yes.

Q30 What fire safety controls should residential and tourist parks be required to meet?

All parks should be independently assessed by the appropriate Fire Authority/Body, regarding the necessary fire safety measures for that particular park. Residents have expressed concerns about having only one exit, insufficient fire hydrants and boom gates that cannot be opened when there is a power failure. Given that residential parks on the whole provide accommodation for older people it is essential that appropriate fire safety controls are in place.

Q31 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?

No, a physical inspection at least once annually of the residential park by the appropriate inspector should occur in addition to the submitting an annual statement by the operator.

Q32 What controls should apply to tourist and residential parks located on flood prone or bush fire prone land?

Strict adherence to the provisions of the *Floodplain Development Manual 2005*.

Q32 What would be the most effective and efficient enforcement approach?

If a park operator for example, does not comply with conditions of a development consent (or if a home owner in a residential community carried out unauthorised works on their residential site) there are clearly more significant controls infringement notices' etc. available pursuant to the EPA Act.

This would enable council to take enforcement action against the holder of the Consent (or against the home owner) including in the Land and Environment Court if necessary.

Development, operational and approval matters for residential communities (residential parks) could be better served under the EPA Act.

The TU recommend that as a matter of consumer protection that all home owners and renters in residential communities should be notified by their local council if the land owner/park operator has made an application to develop the land or otherwise submitted a development application to Council.

Additionally, a home owner or resident in a residential community should be notified if the park operator/owner has made an application in relation to the use of the land, subdivision of the land, the erection of a building, the carrying out of any work(s), demolition of a building or any other act controlled by an environmental planning instrument. To change the use of any land, dwelling or community facility within the residential community in any way or to change the designation of the residents/home owners/renters individual residential site(s) within the park-they should be subject to notification requirements.

If you have any questions in relation to this submission please contact Julie Foreman Executive Officer by email julie.foreman@tenantsunion.org.au or directly on (02) 8117-3701 Julie Lee, Residential Parks Officer by email Julie.lee@tenantsunion.org.au or directly on (02) 8117-3719 or Paul Smyth residential park solicitor directly on (02) 8117-3705 or by email paul_smyth@clc.net.au or paul.smyth@tenantsunion.org.au

Yours sincerely,



Tenants Union NSW Co-Op Ltd
Julie Foreman
Executive Officer
Email: Julie.Foreman@tenantsunion.org.au

Enclosures: nil