

The Hon. Jan Barham MLC

The Greens

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Fair Trading Policy

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PARRAMATTA NSW 2124

Via email: policy@services.nsw.gov.au

To Whom It May Concern,

**Re: Comments on Consultation Draft:
*Residential (Land Lease) Communities Bill 2013***

Thank you for the opportunity to submit comments on the NSW Government's consultation draft of the *Residential (Land Lease) Communities Bill 2013*. The Greens NSW have long advocated for policy reform that improves the availability of affordable housing, security of tenure and participation of residents in decisions about their housing. This has included recognition that caravan parks and other residential communities form an important but often neglected part of the state's housing sector. The importance of residential parks and communities, and the demands placed on the sector, are likely to grow due to factors that include our ageing population, the ongoing crisis of housing affordability and undersupply, and a desire by many to live independently but in a setting with a strong sense of community.

The draft Bill includes a number of positive steps that should improve the governance of residential communities. In particular, The Greens commend the Government for proposing rules of conduct for operators and sanctions for operators who violate those standards of professionalism, honesty, etc., and for introducing disclosure requirements before site agreements and contracts of sale can be entered into, although a positive licensing regime would have been a stronger approach to ensure standards of conduct in the sector are maintained. We also note that the draft Bill leaves some detailed features of the requirements for disclosure statements, standard forms of site agreement, and other parts of the new governance approach to regulations, which makes it difficult to clearly endorse these as positive outcomes at this time.

However, there are several key areas of concern with respect to the draft Bill that The Greens wish to comment on, and which we hope will be addressed before legislation is introduced to the Parliament.

Although we will restrict the detailed comments in this submission to several crucial issues, I must also note that during this consultation period my office has received correspondence and copies of submissions from individual park residents and residents associations. Many of them raise a range of concerns that are likely to be reflected in submissions you receive from residents and their advocacy groups. Despite being one of the key stakeholder groups, some residents and residents associations believe they have been underrepresented in the process leading to this draft Bill, and that consequently it overlooks their concerns and in a number of ways is insufficient in protecting their rights.

The Greens strongly urge that appropriate weight be given to understanding and addressing these concerns. As noted above, personal and social trends as well as housing affordability pressures are likely to make the residential community sector an even more important part of the NSW housing system. Ensuring that residents have security of tenancy and a sense that their rights to safe, comfortable and appropriate housing are protected is vital. This will contribute to ensuring the residential park sector is sustainable, vibrant and meets the needs of the community.

In addition to these general comments, The Greens NSW wish to raise the following concerns:

Education for operators (s 5.19)

In our submission on last year's "Improving the governance of residential parks" discussion paper, The Greens supported both a licensing regime and compulsory education for operators. The draft Bill's framework for education of operators appears **inadequate** to ensure that uniform high standards of professional conduct are maintained across the residential community sector for the following reasons:

- (i) The draft Bill places no requirement for education on existing operators. The presumption that current operators are all appropriately trained, particularly given that they will need to comply with the requirements of the new legislation, is flawed.
- (ii) The nature of the education requirement is only defined in the draft Bill as an "education briefing". The content and format of the education is delegated to the Commissioner, and there is no provision that operators must demonstrate understanding of the material covered (e.g., through a test or other assessment), nor is there provision for ongoing education or maintenance of knowledge.

If a positive licensing scheme is not to be adopted, then **at the very minimum** the education scheme must ensure that the content is adequate and that all operators, current and prospective, not only receive the content but demonstrate an adequate understanding of it. This should be particularly important to the Government with respect to communities operating on public lands, but The Greens encourage ensuring a strictly defined approach to professional standards across the entire sector.

Recommendation 1: The Greens recommend that the compulsory education requirement should be extended to existing operators.

Recommendation 2: The Greens recommend that the content required of an education programme be specified in the legislation or regulations, along with a requirement that operators be required to demonstrate satisfactory understanding of the content.

Procedure and costs for challenging site fee increases (Part 6, Divisions 4 and 5) and dispute resolution (Part 12)

In our submission on last year's discussion paper, The Greens supported mediation of disputes provided it was free and involved appropriately trained mediators. We also pointed to difficulties with the existing grounds on which rent increases could be challenged, which placed an undue burden on residents.

With respect to the draft Bill's requirement of compulsory mediation about site fee increases (**s 6.15**) and the resolution of other disputes (**Part 12**), we note that the legislation is silent about potential costs involved in lodging an application for mediation, although **s 12.5** does require the Commissioner to appoint mediators with appropriate expertise or experience.

With respect to the factors and process involved in challenging an increase, The Greens welcome the removal of factors such as "market rent" across comparable parks, which had placed an onus on residents to provide sector-wide evidence that was not readily available to them. However, we are concerned that the draft Bill allows both **projected** increases (**s 6.21(b)**) and **planned** repairs or improvements (**s 6.21(c)**) to be considered as factors in deciding whether a fee increase is excessive. This leaves residents at risk that the planned or projected basis for an increase may not eventuate. It also creates a situation in which projected or planned expenses might be presented as justification for a site fee increase in one year, but in a following year could be presented a second time once they have become an actual expense, which would create a potential for "double-dipping" in claiming increased expenses that could be difficult for the Tribunal to keep track of.

Recommendation 3: The Greens reiterate that **mediation should be free of charge**, and that the financial burden associated with disputing a fee increase must not become a disincentive to challenging notices of increase that residents believe are unreasonable. We recommend that this principle be made explicit in the legislation.

Recommendation 4: The Greens recommend that the factors the Tribunal can consider when deciding whether to make an order about fee increases relating to increased expenditure, repairs and improvements should be restricted to **actual** expenses and completed works, and projected or planned expenses should be excluded.

Payment of part of sale price to the operator (s 10.8)

Much of the rationale for the draft Bill and many of its provisions aim to improve the clarity of information available to residents and to protect their rights. However, The Greens are **deeply concerned** that the provision that new site agreements can ensure the operator will receive part of the sale price when an owner sells their home would undermine such positive outcomes from the draft Bill. This provision appears likely to create confusion and risk for home owners, while offering an unreasonable opportunity for community owners and operators to profit from the assets of home owners in their community.

The Greens argue that it is unreasonable for home owners in a residential community that, despite bearing the cost of maintaining and upgrading their homes, the operator could claim some portion of its value when it is sold. We also note that any contribution the operator has made to improving the value of their community would already be reflected in their capacity to charge higher site fees, as reflected in the matters that can be considered with regard to site fee increases (**s 6.21**). In addition, the operator's own capital gain would be reflected in the increased sale price they could attract if they chose to sell their business.

The inclusion of a portion of capital gains as a "departure fee" may be practised in the retirement village sector, but that does not make it an appropriate provision for residential parks and communities. Such a provision would still not provide security of tenure to home owners, and the provision could undermine the capacity for owners to relocate. It also seems difficult to accept any argument that the provision might allow home owners to negotiate reduced site fees or for this to reduce the pressure for site fee increases; even if this is a possible outcome, the complexity of weighing up the long-term financial implications of such alternatives would be a difficult task for prospective residents.

In addition to these concerns, we note that allowing site agreements to provide a share of the total sale price of the home (**s 10.8(1)(b)**) to the operator would create an incentive for operators to see greater turnover in home ownership and an unreasonable disincentive for owners to consider selling their home and relocating. This is because in an agreement in which the operator receives a proportion of the total sale price, home owners who (for whatever reason) choose to sell after a short period of time would be financially disadvantaged, and could conceivably lose money, while the operator would also benefit from greater turnover of ownership.

Recommendation 5: The Greens strongly recommend that the legislation should prevent site agreements from providing that part of any subsequent sale, whether expressed as a proportion of the capital gain or the total sale price, would be received by the operator. Furthermore, we recommend that under no circumstances should legislation allow site agreements to create a financial incentive for operators to see increased turnover of ownership in their residential community, such as by receiving a total share of the sale price.

Residents committees (Part 9)

The Greens **strongly support** residents' right to form and join organisations within their community or through an external organisation, and welcome the recognition of this right in the draft Bill. However, we note that for many residents who have previously lived in standalone dwellings, they may have had limited experience with being part of a community organisation or committee. As part of improving the governance of communities and ensuring residents are empowered to represent their community's interests, it would be appropriate for the Government to offer support and assistance to residents who may wish to participate in such organisations and committees.

Recommendation 6: The Greens recommend that the Government consider ways it can ensure that those who wish to form committees and contribute to community governance have access to information that would assist them in establishing and running an effective and inclusive residents committee.

I thank you again for the opportunity to submit comments on this consultation draft Bill. It is clear that there has been an effort to meet the needs for this housing sector to remain viable and sustainable, and to address some of the needs of operators as well as residents. The Greens hope that this submission and comments from other stakeholders will allow refinement of the legislation before it is introduced to the Parliament, so that we can be confident the residential parks and community sector will be able to play its crucial role in addressing housing needs across the state.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'J. Barham', written in a cursive style.

The Hon. Jan Barham MLC

The Greens NSW spokesperson on Housing