

INCREASING SITE FEES: YOU DESERVE AN EXPLANATION

Home owners in land lease communities understand that their site fees can increase and most are used to having an increase every year. Receiving a site fee increase might not come as surprise, but big or small, home owners want to know the basis for the increase. And for many homeowners it is now their right to receive an explanation from the operator.

When the *Residential (Land Lease) Communities Act 2013* (the Act) came into force at the end of 2015 it introduced a number of changes to site fee increases. One of the positive changes for home owners is that operators are now required to provide an explanation for a site fee increase 'by notice'.

There are two ways that site fees can be increased under the Act – 'fixed method' (these are written into the site agreement, and cannot be challenged) and 'by notice'. In both situations the operator is required to provide home owners with a notice of increase but only increases 'by notice' are required to contain an explanation. The intention behind this new requirement is to enable home owners to understand the need for the level of increase being sought by the operator.

Jill Edmonds, President of the Independent Park Residents Action Group (IPRAG) and a home owner at Central Coast's Karalta Court, received her annual notice of increase in April. The explanation in the notice was "We



Jock Plimmer, Affiliated Residential Park Residents Association (ARPR)

have assessed various issues as they impact the community since the last increase and determined that the site fees be increased as set out in this approved form notice of site fee increase." When Jill read this explanation, she felt it prompted a whole lot more questions than it answered. Was this really the kind of explanation intended in the Act?

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Jill did not believe the notice of increase provided an explanation and she decided it was important to challenge this. After discussion with other IPRAG members Jill made an application to the NSW Civil and Administrative Tribunal (the Tribunal). In her application she asked that the operator be required to provide a proper explanation. The Tribunal Member who heard the case agreed. The notice of increase was found to “not include an explanation” because it failed to identify and explain the various issues said to impact on the community. The Tribunal ordered the operator to comply with their obligation, observing that site fees cannot increase unless they are increased in accordance with the Act.

Hearing about Jill’s application, a home owner in another Central Coast park who had similar concerns about their notice of increase got in touch with her. Jill alerted Jock Plimmer from the Affiliated Residential Park Residents Association (ARPRA) and invited him to a meeting with these home owners. The home owners were keen to challenge their notice and Jock assisted them to apply to the Tribunal.

Once their application was submitted, the operator responded to the home owners’ application to the Tribunal with some initial legal manoeuvring. The operator quickly issued a second notice of increase providing slightly more information as an explanation. The Act allows for a later notice to replace the first (without having to restart the notice period) if the later notice is for a lesser

WHAT IS NCAT?

The NSW Civil and Administrative Tribunal (NCAT) is an independent body that hears matters on a range of disputes that can come up between residents and operators. NCAT is not a formal court and you do not need a lawyer to represent you but the decisions the Tribunal makes are legally binding.



Jill Edmonds, President of the Independent Park Residents Action Group (IPRAG)

amount. In the second notice the operator reduced the site fee increase by one cent!

Unfortunately for this operator, the determined home owners were still not happy with the explanation and decided to press ahead with their Tribunal application. On discovering this, the operator backed down and the site fee increase was cancelled. Home owners have been advised that a new increase notice will be issued in the future providing a consideration of the business expenses incurred and fair market value. It is now a wait and see situation for these home owners.

Jock had expected operators on the Central Coast to comply with the obligation under the Act to provide an explanation. However, Jock has found that “several operators to date have ignored this requirement of the Act and instead tried to get away with a common ‘tell nothing’ explanation”.

Jill Edmonds has sighted notices of increase from another five Central Coast land lease communities. Four of these notices have the same ‘explanation’ for the increase and one has no explanation at all. These four notices claim to be in the ‘approved form’, which

means the form has been approved by the Commissioner for Fair Trading. However, as Jill pointed out there is no 'approved form' of site fee increase notice, which means this statement is misleading. IPRA is also pursuing this issue as a breach of the rules of conduct for operators.

The collaboration of resident representatives Jill Edmonds and Jock Plimmer has produced positive outcomes for the home owners they are assisting, and seems to have had a broader impact across the Central Coast. They have been informed that other operators have become aware of the Tribunal applications, and have issued amended notices of increase as a result.

WHY IS AN EXPLANATION IMPORTANT?

One of the more controversial changes to site fee increases in the Act is that if a dispute proceeds to the Tribunal, the factors to be considered include "any actual or projected increase in the outgoings and operating expenses for the community" and any repairs or improvements to the community undertaken or planned by the operator. This enables operators to factor costs not yet incurred into site fee increases by notice, but without an explanation home owners have no idea what they are being asked to pay for.

Since the Act's introduction last November the Tenants' Union has heard reports of high site fee increases in a number of land lease communities across NSW. Jock Plimmer believes that the high increases are unfounded, explaining "the Consumer Price Index (CPI) has been low for some time and this means that costs have not risen remarkably. Unfortunately we can't judge this because operators are not providing home owners with information. We are entitled to know the reasons for the increases being sought".

This is the first round of site fee increases under the Act and it is important to get off on the right foot. If operators are seeking high site fee increases for projected increases in costs, but this is not clear in the notice, home owners could be asked to pay these costs again in the next site fee increase.

Home owners deserve an explanation, the Act requires one and it is disappointing that some operators are trying to avoid their legal obligations.

WHAT MIGHT A CLEAR EXPLANATION LOOK LIKE?

Although we now know the Tribunal won't accept vague references to the impact of 'various issues', it is still unclear what the Tribunal will accept as a valid explanation for a site fee increase. Jock believes that operators should clearly set out the basis for the increase. This will enable home owners to properly assess whether it is reasonable. As Jock says "having to specify which costs have actually increased and by how much may persuade some operators to modify their demands and this could lead to fewer disputes. Surely this is an outcome that benefits everyone".

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The Tenants' Union congratulates home owners and advocates on the Central Coast for taking up this issue. We hope that the action leads to improved practice in the land lease community industry and reasonable, justified site fee increases for home owners.

If you have received a notice about a site fee increase you would like to challenge, get in touch with your local Tenants Advice and Advocacy Service for some free advice. See back page for the contact details of your local service.

SITE FEE INCREASES UNDER THE NEW ACT

For home owners in land lease communities there are two methods for increasing site fees.

1. INCREASE BY NOTICE

OR

2. FIXED METHOD INCREASE

If you are on increase 'by notice':

- Your site fees can only be increased once a year
- Everyone in your community on increase 'by notice' should get an increase at the same time (though not necessarily for the same amount)
- You must be given 60 days notice
- The notice must:
 - ✓ Specify the amount of the increased site fees
 - ✓ Tell you the day when the increase will take effect
 - ✓ Include an explanation for the increase

If you are on 'fixed method' increase:

- The method of increase must be written into the site agreement
- Only one fixed method of increase should be specified
- You must be given 14 days notice

Get advice from your local service:

NSW Tenants Advice and Advocacy Services

Eastern Sydney	9386 9147
Inner Sydney	9698 5975
Inner West Sydney	9559 2899
Northern Sydney	8198 8650
Southern Sydney	9787 4679
South Western Sydney	4628 1678
Western Sydney	8833 0933
Blue Mountains	4782 4155
Central Coast	4353 5515
Hunter	4969 7666
Illawarra South Coast	4274 3475
Mid Coast	6583 9866
Northern Rivers	6621 1022
North Western NSW	1800 836 268
South Western NSW	1800 642 609

Aboriginal services

Greater Sydney	9698 0873
Western NSW	6884 0969
Southern NSW	1800 672 185
Northern NSW	1800 248 913



The Tenants' Union of NSW is:

- A community legal centre specialising in NSW residential tenancies law.
- The main resourcing body for the NSW Tenants Advice and Advocacy Program.

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