



TENANTS'  
UNION  
OF NEW SOUTH WALES

*Residential Land Lease  
Communities Magazine  
November 2023  
Issue 10*

# Outasite

## In this issue:

- After the floods: what we have learned and what is needed to protect residents
- Pets in land lease communities
- Site agreement struggle
- Windang residents avoid eviction



**VICTORY!**  
**BOGGABRI RESIDENT WINS  
9 YEAR BATTLE FOR REPAIRS**



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**Outasite magazine** Issue 10, November 2023

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## About the Tenants' Union

The Tenants' Union of NSW is the resourcing body for Tenants Advice & Advocacy Services (TAASs) and a community legal centre. We are an independent, secular not-for-profit membership-based co-operative. We receive principal funding from the TAAS Program administered by NSW Fair Trading, and the Community Legal Centres Program administered by Legal Aid NSW.

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# VICTORY!



*By Linda Grady (Tenant Advocate at New England and Western Tenants Advice & Advocacy Service), and Paul Smyth (Land Lease Communities solicitor at the Tenants' Union of New South Wales)*

**Boggabri Caravan Park is a residential land lease community consisting of 15 sites and some powered camping sites, located on Laidlaw Street in Boggabri. Boggabri is a small town in the Narrabri Shire, about 40km north of Gunnedah and 450km northwest of Sydney. The community is nestled in a quiet location away from the B51 main road, known as the Kamilaroi Highway.**

The local council, the Narrabri Shire Council, are the Crown Land managers of the community, which has just two elderly permanent home owners living there: Jeff Clark and Brian Fuller. Jeff lives in his home on site 12 and Brian lives in his home on site 10.

Boggabri Caravan Park is a mixed-use community with cabins, en suites, powered sites and communal laundry facilities, but not much else! However the local swimming pool is close by, and the shopping centre is within walking distance.

Brian is 71 years of age. He has lived in his home at Boggabri since 2005. Brian says: "I first moved into Boggabri before my marriage ended in 2005. I had cancer operations later on and after rehab I moved back – before 2007." Brian was happy to move into the Boggabri Caravan Park because he says "I had a lot of friends there and a lot of support in the park. I like the location and it's just about a block away from the main street. However, with uneven ground

# BOGGABRI RESIDENT WINS NINE YEAR BATTLE FOR REPAIRS

and pathways in poor condition it has its difficulties. Since I'm very community spirited, being so close to the centre of town is great for me for access to town meetings, fundraisers and other functions."

Brian does not have a written site agreement and neither does Jeff, the oldest resident at Boggabri at over 90 years of age. Jeff has lived at Boggabri Caravan Park since the early 1990s. They pay site fees on a weekly basis to the Narrabri Shire Council who manage the community. However, as we shall see the Council does not manage it very well.

During much of the mining boom in this area of NSW in the last decade (the Pilliga, Maules Creek) rental or short stay properties have been in high demand and the park managers permitted mine workers to stay in the Boggabri Caravan Park. The community was neglected, repairs and maintenance were not carried out. During this time a donation of \$1.6 million was given to Council by some mining companies towards the cost of repairs and upgrades to the Boggabri Caravan Park.

Jeff and Brian first contacted their local Tenants Advice & Advocacy Service, the New England & Western Tenants Advice & Advocacy Service (NEWTAAAS), for advice in



*Brian Fuller, home owner at Boggabri Caravan Park*

2014 particularly about the water drainage and sewerage problems in their community and the need for urgent repairs to be carried out.

There were many neglected aspects of the community but the most significant and immediate problems were the broken sewer pipes that resulted in raw sewerage leaking into areas of the community ensuites and onto the shower floors on an ongoing basis. This even occurred whilst residents were showering! There were asbestos contamination issues too, asbestos was found in the old wash house. There was no recycling service and though there were 15 sites, there were only 5 rubbish bins provided for use at Boggabri Caravan Park.

Brian says:

***"We were having trouble with the sewerage coming up into the showers and this was reported to the Council but they just put things off saying it was not a problem. It took a number of years for something to be done but things started to happen when we contacted NEWTAAS."***

*Continued on page 4...*

*NSC has requested that the following identified issues be repaired immediately by a local plumber*

- *Meeting with Local Plumber Pete Brien on site – Friday 5th December*
- *All broken sewerage pipes to be repaired*
- *Any pipes sticking out of the ground/pipes without covers*
- *Exposed sewage pipe is behind the wash house*
- *Down pipes from buildings repaired and re-attached*
- *Replace guttering around wash house*
- *Inspect Hot water systems and set hot water at max 60°C*
- *Check hot water systems – re rust – please advise if they need replacement*
- *Cabin repairs will also be covered*

*Above: Extract from correspondence from Narrabri Shire Council (NSC) from December 2014 to NEWTAAS, replying to concerns raised on behalf of residents, highlighting some of the issues.*

In addition to the checklist reproduced above, the Narrabri Shire Council as Crown Land Managers indicated that the communal building would also be assessed as part of the redevelopment of the park.

There were detailed Council minutes 604/2014 taken about the redevelopment. Significant expenditure was made on consultancy fees. Meetings were held with the Progress Association and some state and federal politicians attended the meetings.



*Asbestos contamination was also found at the caravan park*

## Narrabri Shire Council lodges DA

Finally there was a development application lodged in 2016. However, Paul Wearne, Director of Corporate Affairs at Narrabri Council in correspondence said “the upgrade is supposed to be happening but not moving forward. There are dramas with the upgrade.”

Frustrated by ongoing delay and seeming inaction at Narrabri Council, Brian Fuller again sought advice and assistance from NEWTAAS who contacted the Tenants’ Union land lease communities legal team for advice. Brian was assisted by NEWTAAS when he applied to the NSW Civil and Administrative Tribunal (NCAT) in 2015 and following some good advocacy work by February 2016 orders were made by the Tribunal for Narrabri Council to carry out works. It still took many months for the urgent repairs to the sewer pipe system to be carried out.

## What happened next?

It took a very, very long time for all the upgrade works to be completed. There were many plans submitted. The upgrade was completed but not quite to the plan specifications that were on display for the community to view. Boggabri Caravan Park upgrade did not end up looking quite like the plans envisaged.

However, the infrastructure upgrades to the sewerage system were completed which was a huge win for the residents. As part of the program of works road repairs were also carried out.

## Road repairs

Temporary relocation of residents took place within the Boggabri Caravan Park: Jeff Clark and Brian Fuller were both relocated to cabins within the park whilst the road resurfacing took place.

A new concrete slab was poured on site 12 for Jeff and he returned to his residence



where he is now happily residing. However Brian, who also returned to his van after the resurfacing took place, was not offered a new concrete slab, leaving his site situated much lower than the newly resurfaced internal roads.

Linda Grady says this was “a disaster waiting to happen.”

During heavy rain and flood events that were to follow, Brian’s home was impacted with flood water ingress damaging his timber flooring and the walls of his annexe, and ruining the carpets. Personal possessions in his home were also ruined.

NEWTAAS sent photos to Narrabri Shire Council highlighting the issue, showing the park with all the water pooling. Brian’s site was flooded in 2020 – the ten year drought had broken and the heavy rainfall resulted in Boggabri Caravan Park being flooded.

Brian says: “They left me without a cement slab under my home which allowed water to pool under the van and annexe. I got sick and I spent two weeks in hospital in the intensive care unit with terrible breathing problems. When I was discharged I then spent a further three months in Tamworth hospital recovering.”

*Continued on page 6...*



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NEWTAAS continued to advocate for Brian and requested Narrabri Shire Council pour a concrete slab on Brian's residential site as soon as possible. The Council reluctantly admitted that Brian "was not offered a new concrete slab to be laid on his site" to address flooding and water inundation. Council later reversed this statement by saying Brian "was offered a new concrete slab, but he declined the slab."

When Brian was released from hospital he contacted NEWTAAS again and their advocacy regarding the

***"They left me without a cement slab under my home which allowed water to pool under the van and annexe. I got sick and I spent two weeks in hospital in the intensive care unit with terrible breathing problems. When I was discharged I then spent a further three months in Tamworth hospital recovering."***

cement slab resumed. However Narrabri Shire Council did not waiver from their former stance. They still refused to do any form work or pour a concrete slab for Brian. Some Council staff even asserted incorrectly that under the provisions of the *Crown Land Management Act 2016 (NSW)* the home owners could not lawfully be living there at Boggabri.

## Back to the Tribunal

By March 2023 Brian applied to the Tribunal seeking orders for compensation to temporarily move his van and annexe and for Narrabri Council to arrange to lay a cement slab on his site 10. The Tenants' Union assisted with drafting of the Tribunal Residential Communities application for orders and the reasons for seeking those orders.

Narrabri Shire Council did not try to resolve the matter once Tribunal proceedings had been initiated. Instead Council engaged the services of a Local Government solicitor, who sought and was granted leave to legally represent. Evidence and written submissions were filed with the Tribunal.

At the final hearing an agreement was reached between the parties. At the Tribunal there were no jurisdictional questions raised by Council or their

lawyer to challenge coverage under *Residential Land Lease Communities Act*. Linda had negotiated well and the evidence and written submissions were strongly against Council.

## Success!

Brian finally had some success in his case in the Tribunal. The Council agreed to construct a concrete slab on Brian's site and cover his relocation costs up to the sum of \$7,000. The Council agreed to provide him with an alternative site in the community while the works were completed and to waive any site fees that would accrue during that time. These orders were made by consent in April 2023.

Brian had his caravan and rigid annexe moved onto a temporary site in Boggabri over the long weekend in June 2023. Brian arranged that relocation himself, not Council. Work finally commenced on Brian's permanent site 10 to lay the concrete slab on 20 September 2023. The Tribunal Notice of Order provides that the work be done by 30 September 2023. Better late than never!

At this time, Brian is yet to return to site 10, as he awaits for the slab to cure and arrangements to be made for him to relocate back to his original site.

Brian says, "I had NEWTAAS dealing with the Narrabri Shire Council for a number of



years and they have been unrelenting in my case, in particular Linda Grady and staff. They have been dealing with a Council that has little respect for the elderly and someone like me with a disability. I wish to thank all who assisted me for a great outcome”

Brian thanks Linda Grady, tenant advocate, very much for all of the support and work she has done for him and in fact all of NEWTAAS staff who helped out even just by talking with him and taking his messages. He says, “I felt very supported throughout the whole process and NEWTAAS showed that they care and that I mattered. It has been a real pleasure to have had the support, assistance and reassurance from Linda Grady with back up from the Tenants’ Union of NSW”.

Finally, advocate Linda Grady says “Something that should be noted is that since 2014 when Brian first contacted NEWTAAS, there has been significant staff turnover at the Narrabri Shire Council and we have had to deal with 9 or 10 different employees there who have managed the park over this time. This has caused confusion and delay in addressing matters which in turn has had a significant impact on the health and well-being of Brian and Jeff, two of our elderly and most vulnerable senior citizens. This really should not be happening in 2023.” ●



***“I felt very supported throughout the whole process and NEWTAAS showed that they care and that I mattered. It has been a real pleasure to have had the support, assistance and reassurance from Linda Grady with back up from the Tenants’ Union of NSW”***

*– Brian Fuller, home owner at Boggabri Caravan Park*

# • AFTER THE FLOODS •

## WHAT HAVE WE LEARNED AND WHAT IS NEEDED TO PROTECT RESIDENTS FROM FURTHER FLOODING DISASTERS



*By Eloise Parrab, Land Lease Communities Officer at the Tenants' Union of NSW*

Many residential land lease communities are located close to rivers and coastal areas of NSW and have been severely impacted by the major flooding events we have seen in NSW over the past couple of years. In *Outasite Magazine 8* – available online at [www.tenants.org.au/thenoticeboard/news/outasite-magazine-8](http://www.tenants.org.au/thenoticeboard/news/outasite-magazine-8) – we wrote an article about the impact of the late February and early March 2022 floods on the residents in residential land lease communities in the Northern Rivers region of NSW. A lot of these communities and residents are still continuing to recover from the devastation that was caused. The frequency and severity of disasters is increasing and the trend is expected to increase dramatically over the next couple of decades. These disasters affect every part of people's lives and take years to rebuild and recover.

The NSW Government established a Flood Inquiry in early 2022 to look at preparation for, causes of, response to and recovery from the 2022 catastrophic flood event across NSW.

The report from the Flood inquiry included a page on the flood risk to caravan parks and manufactured home estates. The inquiry found: "Caravan parks and manufactured home estates have been developed in places that are appropriate for tourist purposes but are not always ideal locations for permanent residents. Under the current planning system, there are significant legacy risks which mean that many permanent residents, who are generally older and often infirm, are living at significant flood risk."

The recommendation from the report was: "That, to ensure that permanent residents of caravan parks and mobile housing estates are protected from

flood, Government should:

- prohibit permanent residency in caravan parks and mobile housing estates situated below the risk-based flood planning level. Caravan parks for holiday makers could still be on the floodplain with the provision that, if a flood is imminent, they need to be evacuated
- address the issues raised in the NSW Department of Planning and Environment's Discussion Paper on Improving the Regulation of Manufactured Homes, Caravans Parks, Manufactured Homes Estates and Camping Grounds (Discussion Paper 2015)."

The NSW Government response to the recommendation is:

"The NSW Government is committed to better protecting permanent residents of caravan parks and mobile housing estates from floods. Further consideration needs to be given to the impacts of this recommendation on current residents and vulnerable people, and how Government could best support them with alternative accommodation options if permanent residency in caravan parks and mobile



housing estates is no longer an option.”

The State government produced a discussion paper in November 2015 which outlined issues and possible solutions to improve the regulation of manufactured homes and caravan parks. *The Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2021* (LG Regulation) details the provisions for the approval, design, operation and construction of manufactured home estates, camping grounds, caravan parks and moveable dwellings (including manufactured homes). A review into this regulation was welcomed as it was not keeping up with changes in the industry, since it was developed 20 years ago. The review included looking at what controls were needed for residential parks located on flood prone land as over time homes in communities had moved away from being temporary and relocatable. There have been no further papers or reports from the NSW Government on this review. There were some minor amendments to the LG Regulation when it commenced in September 2021 but the issues outlined in the discussion paper in November 2015 still exist. The Tenants’ Union is hopeful that once the statutory review of the *Residential (Land Lease) Communities Act 2013*

is finalised and we see the recommendations introduced into legislation that the NSW Government can focus attention on the regulation of manufactured home estates and caravan parks for a long overdue overhaul.

Since the recent floods, the Tenants’ Union has seen examples of operators failing to consider the implications of placing manufactured homes on flood liable land. This appears to be putting profits above people’s safety and wellbeing. At Woronora Village Tourist Park the operator has a development application before the local Sutherland Shire Council seeking consent to install two storey manufactured homes in the community. Many of these new homes are proposed to be placed in the part of the caravan park closest to the river and the area which in previous floods was the most impacted. This land is flood prone and therefore has only been designated for short term stays and camping only. This development application is currently going through the application process and residents of this community and the Tenants’ Union are hopeful that it will be rejected or recommended for refusal.

This year in the Tweed Chinderah area some operators have been bringing new homes into their residential land lease communities. Many of these communities experienced

***Since the recent floods, the Tenants’ Union has seen examples of operators failing to consider the implications of placing manufactured homes on flood liable land. This appears to be putting profits above people’s safety and wellbeing.***

severe flooding in March 2022 and many homes were severely damaged. Some of these communities are on flood liable land and this has implications for what structures can be installed and what permission must be sought from the local Council. The installation of new homes on flood liable land seems to be in direct contradiction to the recommendations

*Continued on page 11...*







*Artwork on facing page:  
'Flood house' from  
the 2022 series 'Rise'  
by Chas Glover*

**Artist statement:**

**By wintertime I was living in a house emptied of most of its contents.**

**The streets were now quiet, unpopulated.**

**The surrounding houses were broken, dark and lifeless.**

**The stripped lounge room became a studio. I lived alone and began to paint.**

**Pure colour was an escape from lands stained sepia into a world more connected with ideas and dreams. The paintings were taking me somewhere, and I followed where they wanted to go.**

**The process became intuitive. I disappeared into the work.**

**The work represented many ideas, not just the flood. Motifs appeared and repeated. The paintings transmuted a strangeness that comes from inhabiting a haunted landscape.**

**They were born of mud and blossomed into space...**

***Chas Glover is a painter and musician who lives in Lismore.***

[www.chasglover.com](http://www.chasglover.com)

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from the NSW Government flood inquiry.

The Tweed Council has recently announced they are working on a planning proposal to prohibit caravan parks on land zoned as RU2 rural landscape. This zone is for agriculture land and other supporting uses. The Mayor of the Tweed Council Chris Cherry was recently quoted in an article in the Echo as saying:

“There is a loophole in law that allows caravan parks to have moveable dwellings, that includes manufactured homes. Caravan parks are often built in floodplains, as you assume residents won't be there [when it floods] because they would have moved. We are very conscious that the legislation, as it stands, is allowing manufactured home estates to be built in rural locations. And at this point we've got no control over that.”

A recent Tweed Council Planning and Urban Design report said in reference to the existing caravan parks in the area: “Many are legacy developments that sit within the floodplain and the most affected and displaced persons from the 2022 floods were from

these sites, and there is no evidence of any new or converted caravan park that could affordably accommodate a transitioning flood affected person”.

It's good to see Tweed Council taking a proactive approach and not waiting for the NSW Government to bring about much needed amendments to the Local Government Regulations. What is also needed from the local Council is more pro-active compliance inspections of land lease communities where operators are flagrantly disregarding the current regulations and then taking action where they find operators are in breach.

With the research suggesting we will have more major flooding events we need to urgently see thoughtful and well considered policy solutions for residents who are currently residing in homes which are at risk of flooding. We look forward to the opportunity to contribute to these discussions. ●

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Find the flood inquiry report at:

[www.nsw.gov.au/nsw-government/projects-and-initiatives/floodinquiry](http://www.nsw.gov.au/nsw-government/projects-and-initiatives/floodinquiry)

# NAVIGATING PET OWNERSHIP

## ● IN LAND LEASE COMMUNITIES ●

*By Eloise Parrab, Land Lease Communities Officer at the Tenants' Union of NSW*

**For many people pets are part of the family. Pet ownership in Australia is among the highest in the world, and keeping pets has been shown to significantly improve physical and mental health and wellbeing. In particular for older people, research has found that keeping a pet can improve quality of life through increased mental and physical health. In 2021, there were almost 30 million pets in Australia, with the average being 3 pets per household.**

In recent years there has been a lot of discussion around pet ownership for people living in strata schemes and rental properties in NSW. The NSW Government recently undertook consultation looking at changing the laws around pet ownership for tenants. The NSW Court of Appeal in 2020 found that blanket pet bans in strata were 'harsh, oppressive and unconscionable.' This led to changes in the *Strata Scheme Management Act* in 2021 to allow strata owners to keep an animal unless the animal unreasonably interferes with another resident's use and enjoyment of a lot or common property.

The Tenants' Union hears a range of views from residents in land lease communities for and against pets. This article explores some of the issues and potential solutions for how

we think the question of pet ownership should be looked at in land lease communities.

Like many Australians there are many land lease community residents that would like to have a pet. There are some communities that have a blanket ban on keeping pets and others where there are community rules which provide conditions around the type and number of pets a resident can own. Some communities have a rule that you can bring your pet when you move to the community but you cannot replace a pet after it dies. The *Residential (Land Lease) Communities Act* (RLLC Act) is silent on pet ownership in land lease communities but the Land Lease Industry Association site agreement has a clause in the additional terms banning pets and this is used by many operators across the state.

Riley Brooke, then Policy and Campaigns Officer at the Tenants' Union published a blog post on our website in 2022 outlining the case to end blanket pet bans for renters in NSW. The reasons why we think this should happen include:

- Pet ownership in Australia is among the highest in the world
- Animal welfare – refusal to allow pets can make finding a home to rent if you have a pet can be tricky and often means

- well loved pets end up at animal shelters or abandoned
- Physical and mental health and wellbeing
- Domestic and family violence – lack of pet friendly rentals can be life threatening for people experiencing domestic violence
- Autonomy – arbitrary denial of permission for renters to have pets is indicative of a broader problem: a denial of autonomy to renters

The Tenants Union's guiding principles when advocating for pet ownership is that households should decide whether they have a pet, with reference to the appropriateness of the dwelling for that animal and any relevant animal welfare or community safety considerations and requirements. This should apply to owner occupiers and renters alike. This would include considering whether the keeping of the pet unreasonably interferes with others' use and enjoyment of their home or common areas in a building or community. The *Strata Scheme Management Act* has a list of circumstances that are considered unreasonable interference and we have seen similar lists in community rules of some land lease communities where pets are allowed. The



circumstances are:

- (a) the animal makes a noise that persistently occurs to the degree that the noise unreasonably interferes with the peace, comfort or convenience of another occupant, or
- (b) the animal repeatedly runs at or chases another occupant, a visitor of another occupant or an animal kept by another occupant, or
- (c) the animal attacks or otherwise menaces another occupant, a visitor of another occupant or an animal kept by another occupant, or
- (d) the animal repeatedly causes damage to common property

Pet ownership may not be suitable in some communities that are located in close proximity to environmental protection zones and where there are genuine concerns about threats posed to native animals. There may also be conditions on a community's approval to operate from the Local Council that relates to domesticated pets in a community. In addition not all pets are going to be suitable in all communities and there needs to be consideration of whether the type of pet is suited to a residents home and community. The lack of fences in some communities between sites and where homes are close together is a clear factor that needs to be considered when looking at the type of pet that would be suitable.

**Right: Some examples of community rules relating to pet ownership in land lease communities**

It is important to note that it's illegal for an operator to refuse a resident keeping an assistance animal, as defined under the *Companion Animals Act 1998 (NSW)*. Assistance animals are specially trained and need to be registered to assist a person with a disability.

Some of the community rules that we have seen relating to

pet ownership are very detailed and include rules around what is considered unreasonable interference. Some of the rules are excessive or unnecessary in our opinion – for example we have seen rules that require a resident to pay a fee called a pet bond. We do not agree that a resident should be required to

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#### **PETS**

- a) You may keep one small animal as long as you have our written consent beforehand.
- b) All cats and dogs kept as pets within the community must be de-sexed.
- c) Cats must be kept inside after dark and must wear a collar with a bell at all times.
- d) Dogs must be kept on a leash at all times when on common areas.
- e) Pets are not allowed in any building (other than in your home) or in any enclosed common area in the community, with the exception of a guide dog or hearing dog.
- f) You are responsible for your pet and must clean up after it.
- g) All animals kept in the community must not:
  - i. create unreasonable noise or nuisance (e.g. excessive barking), or
  - ii. attack or threaten people or other animals within the community, or
  - iii. cause damage to common areas or other residents' property.
- h) You agree that if these rules are breached seriously or persistently we may request that the animal be removed from the community within a specified time and you agree to comply with any such request.

#### **6 Pets**

- 6.1 Pets are allowed only with the **written permission of the** Community Manager and provided:
- 6.2 New owners are allowed to bring onto their site and keep a maximum of two dogs or two cats or one dog and one cat until one of these pets passes away, after which the second pet may not be replaced.
- 6.3 Existing homeowners are allowed to keep a maximum of two dogs or two cats or one dog and one cat until one of these pets passes away, after which the second pet may not be replaced.
- 6.4 Save as permitted by rules 6.2. and 6.3 no homeowner is allowed to bring onto their site or keep more than one dog or one cat.
- 6.5 The pet's details must be recorded in the register provided prior to the pet gaining entry to the community;
- 6.6 Such pets are not to be bred from;
- 6.7 No pet which is savage, creates a nuisance to the Operator or other homeowners. either by noise, behaviour or by leaving the homeowner's site or other areas of the community soiled, shall be permitted to remain in the community;
- 6.8 No pet shall be allowed to roam unattended and must be restrained by a lead at all times when off the homeowner's site;
- 6.9 Pet owners must immediately pick up their pet's droppings and dispose of it responsibly when the pet is off the homeowner's residential site.
- 6.10 No pet is allowed in or near the vicinity of the clubhouse or community amenities. Except for a current working service dog under effective control and on a lead.
- 6.11 The homeowner is responsible for ensuring the security of their yard so that dogs and cats are unable to escape, and any damage or alteration to the existing fence is prohibited.
- 6.12 Any breach of any condition shall result in such **permission being revoked** and the pet excluded from the community.

*Continued from page 13...*

pay any fee to seek permission for a pet on their site.

Community rules are also a common feature in retirement villages. For residents living in retirement villages a village rule under the *Retirement Villages Act 1999* can be challenged on the basis the rule is unjust, unconscionable, harsh or oppressive. Earlier this year a resident in a retirement village took the operator to the Tribunal due to a community rule that prevented keeping of pets (except for fish). The Tribunal was asked to look at whether this rule was unjust, harsh or oppressive as it applied to the resident who had been refused a request to keep two budgies in a cage in his home. The Tribunal found in favour of the resident as they considered that modifying the rule, keeping the birds in their cage and inside the residents apartment, and requiring him to follow the written guidelines of NSW Health would minimise any danger to other residents.

Interestingly the Tribunal noted in the decision the fact that the resident had prior knowledge of this rule before he moved into the village did not make the rule just. For the written decision: <https://www.caselaw.nsw.gov.au/decision/18888e845d1cc4f0fa04d486>

Under the RLLC Act a resident can make an application at the Tribunal disputing whether a community rule on pets is fair and reasonable. It would depend on the circumstances of the resident and the community they live in and the type of pet they would like to own as to whether the blanket rule banning pets or a rule that states a pet cannot be replaced after it dies is (considered) fair and reasonable. The Tenants' Union is not aware of any recent Tribunal decisions that have looked at this issue.

Geoff (name changed) has lived in two different land lease communities in NSW over the last three years and in both he has come up against a community rule which allows you to bring a pet with you when you move in but you're not allowed to replace the pet when it dies. Geoff relocated back to Australia from living overseas in 2020 and wanted to bring his little dog with him to live in the community. The operator agreed that he could have his dog in the community once it arrived from Canada. A key reason for Geoff wanting his little dog is that he suffers from anxiety and stress and she was fantastic at providing something positive for him to do each and every day.

To have a being that you are responsible for, and who is a great companion provides great benefits to Geoff for managing the impact of his anxiety and stress related disorders. Unfortunately the cost was too restrictive for Geoff to bring his dog from Canada. Geoff explained to the operator that he would instead look for a suitable little dog in NSW. Geoff provided the operator with letters from his GP and counsellor outlining the benefits of a companion animal to his physical and mental health. The operator said they would talk to him about it further when he found the dog he wanted. Geoff located a suitable dog and due to the high demand for pets had to pick her up the very next day. When Geoff showed the dog to the operator he was advised that he should have talked to them before he got the dog. Two days later Geoff received a notice of termination from the operator due to breach. Geoff had allegedly breached the community rule concerning replacement of dogs. With the help of a Tenant Advocate Geoff tried to resolve the dispute with the operator. In the end Geoff decided not to take the dispute to the Tribunal as he did not want to stay in a community where the operator did not want him and could make his life difficult. Geoff sold his home and moved out to live in another community. Geoff was able to bring his little dog to live with him in the new community but he knows that when his pet dies he will not be able to replace it.



*Geoff's dog*



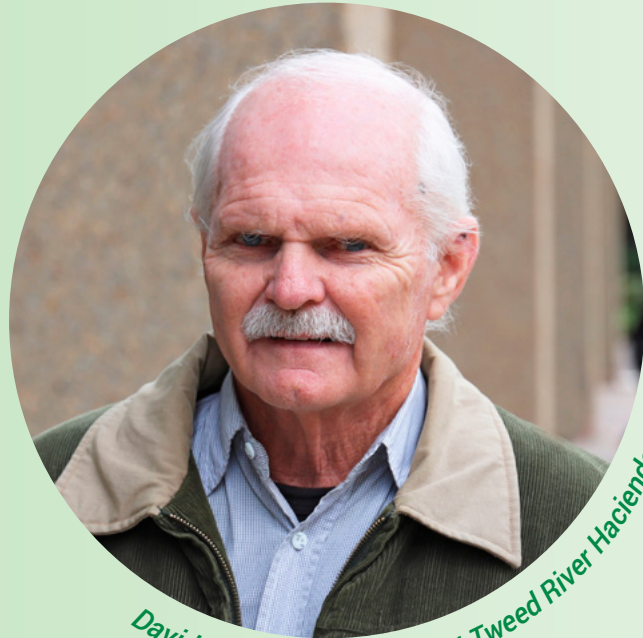
Geoff says: "Personally, I find this rule a terrible rule as there is so much evidence available regarding the benefits of having a pet to aged people's physical and mental well-being. Some elderly go through the situation of losing their husband or wife, then a short time later losing their long-term pet. The negative impact on a person through not only grief but what to do during the day, is substantial. To not allow a replacement pet is, from my perspective, very unreasonable and demonstrates little compassion for fellow human beings."

At the centre of any debate about pet ownership is the importance of both people and animals having safe homes, and of people having the autonomy to make adult decisions about their home. The impact on neighbours must be taken into account and this will mean there need to be restrictions on both the type of animal and the behaviours and activities around keeping an animal.

At the Tenants' Union we believe the best way to deal with many of the issues is giving people good guidance and structures through animal welfare laws and council regulations so that they apply to everyone fairly. It is a difficult task of balancing competing interests but we believe that it is possible by applying concepts of fairness and reasonableness. It's likely that changes are coming, and it's important that we have reasonable, fair rules for everybody. ●

# SITE AGREEMENT

## ● SIGHTED! ●



*David Dodge, home owner at Tweed River Hacienda Holiday Park*

In an update from a David and Goliath battle that we wrote about in *Outsite* issue 7 – available at [www.tenants.org.au/thenoticeboard/outsite-archive](http://www.tenants.org.au/thenoticeboard/outsite-archive) – we are pleased to report that David Dodge and Beryl Clarke, home owners at Tweed River Hacienda Holiday Park have finally been given a written site agreement.

The site agreement was belatedly provided to David after the Prothonotary of the Supreme Court of NSW (the Chief Clerk) instructed the Crown Solicitors Office to commence contempt proceedings against the operator in the Supreme Court. It only took 5 and a half years, and five separate

proceedings, for the operator to fully comply from the date that the NSW Civil and Administrative Tribunal originally ordered the operator to enter into a written site agreement with our client! The operator unsuccessfully appealed the NCAT first instance decision to the NCAT Appeal Panel and was unsuccessful again in their appeal before the Supreme Court of NSW. The home owners had to apply to the Enforcement Panel of NCAT who by written decision referred the matter to the Supreme Court of NSW where the Prothonotary commenced with a Summons against Tweed River Hacienda Holiday Park. ●

# • THIRTY YEARS •

## IN RESIDENTIAL COMMUNITY PARK LIVING

*By Jock Plimmer, Resident Advocate*

**Back in 1993 a move to downsize from Sydney led me to undertake a search for accommodation in the Central Coast and Nelson Bay areas. At this time a new concept of owning a dwelling and leasing the land was just starting to become popular and a number of private caravan park owners were taking advantage to expand their parks by offering permanent residency.**

While many parks had been providing permanent accommodation to old caravan owners who had extended their caravans by the installation of permanent annexes, park operators saw this new concept as a means of increasing their income by installing new prefabricated homes (generally comprising two bedrooms) and building new community facilities to make an attractive offer to downsizing people like me.

Because the asset of the dwelling is legally separated from the land, the concept of building a prefabricated home in two components offsite and then placing the portable dwelling on a designated site, was born. A whole new industry came into being. While in theory these portable homes could be later relocated to another park site, the reality



was that homes remained on their site to be later resold to incoming residents, who then either negotiated a new lease with the park operator or assigned the existing site agreement under a Deed of Assignment.

After much research I settled on a newly designed manufactured home at Palms Village Avoca Beach which still allowed me to commute to work by train from Woy Woy.

From the beginning I was helping other residents in my park at the Tribunal and also assisting residents in other nearby parks in disputes with their operator. I decided to join the Parks and Village Service – then part of Tenants Advice and Advocacy Services (TAAS) Network, and auspiced by the Combined Pensioners & Superannuants Association (CPSA). I attended their meetings and briefing

sessions and gained their valuable advice on how to interpret the Act and handle applications to the Tribunal. I also joined the Central Coast Association of Associated Residential Park Residents Association (ARPRA) as a member and later as President of that Association and a Vice President of the State Association. Through membership of both of these organisations I became aware of the many problems being experienced by residents in other parks around NSW.

The predominant issue that home owners have raised with me as a concern over the years is excessive site fee increases under site agreements that provide for the annual increase of site fee by notice method. Site fee increase by notice method can be scrutinised by the Tribunal. However, we are now seeing many park operators avoiding this protection afforded to home owners by only issuing site agreements where the site fee increase is a fixed method of a percentage or dollar value increase each year. The current Act does not allow any scrutiny or challenge of these fixed methods where they comply. Just how park operators persuaded the Government to adopt this clause is a matter of



conjecture. I can only suggest that any impending home owner should become fully aware of the implications of this clause and the cumulative effect of annual high percentage site fee increases.

Other current issues we face cover interpretation of the park community rules, electricity charges where the park operator is supplying electricity through an embedded network and the unreasonable issuing of termination notices. An unresolved issue still surrounds the action of many park operators who seize the opportunity to increase the site fees when a home is sold in the park. The new home owner is unfairly faced with a much higher rent than what the departing home owner was paying.

During the last thirty years I have witnessed many changes in our industry, the major one relating to changes in park ownership. Overseas and local investment corporations have realised the tremendous investment advantage to be gained from the "green field" development of land lease communities. They now buy large blocks of land and obtain development permission to convert the land into a land lease community to accommodate 200 to 400 home sites. They pay to develop the park with roads, reticulation and the provision of highly attractive community facilities. They then commission well designed manufactured homes which they market at an unknown profit to mainly downsizing new owners,

attracted to the facilities of the community. There is no doubt that this hidden profit incorporated in the sale of the dwelling goes a long way to offset the development costs of the park leaving them with a very high rate of profit return on their investment. Compared to investment returns in retirement villages (where the operator stands the cost of building each unit), it is little wonder that these large investment corporations are moving into land lease communities as a lucrative form of investment.

Over the years I have also seen many changes to how disputes between residents and operators have been dealt with. Historically, the adjudication of the *Residential Parks Act* came before a specially formed government statutory tribunal known as the Residential Tenancy Tribunal and then in 2002 it became the Consumer Trader and Tenancy Tribunal (CTTT) which concentrated on trading and tenancy matters and came under the jurisdiction of the Minister for Fair Trading.

A later Government move combined a number of other government tribunals and came under the jurisdiction of the Attorney General in a newly formed NSW Civil and Administrative Tribunal (NCAT). This has led to a wholly new legalistic approach to the administration and interpretation of the Act. While previously the CTTT was seen more or less as a "Peoples Court" with less formality and a better understanding of

*Continued on page 18...*

***"The predominant issue that home owners have raised with me as a concern over the years is excessive site fee increases under site agreements that provide for the annual increase of site fee by notice method. Site fee increase by notice method can be scrutinised by the Tribunal. However, we are now seeing many park operators avoiding this protection afforded to home owners by only issuing site agreements where the site fee increase is a fixed method of a percentage or dollar value increase each year. The current Act does not allow any scrutiny or challenge of these fixed methods where they comply."***

Continued from page 17...

community village life (with Tribunal Members free to visit individual villages or conduct site inspections to better assess the merits of each case before them), NCAT is by comparison very limited and restrictive.

The NCAT Appeal Panel also more readily grants legal representation to parties when hearing appeals. Well resourced park operators instruct solicitors from the big end of town to represent them, by contrast home owners generally only on pensionable incomes cannot afford this level of representation. If they're lucky to meet Legal Aid eligibility criteria they can avail of a grant of civil legal aid for their matter. This is completely unfair. The original concept of the less formal CTTT 'People's Court' has disappeared to our detriment.

***The most significant and challenging issue I have worked on is no doubt the recent attempted action of the new park operators at Oasis Village Windang to evict the permanent residents.***

The operators purchased Oasis Village Windang for the distinct purpose of developing it for other lucrative money making purposes. This needed the operators to evict all of the existing permanent home owners without any thought of compensation. They attempted to use a section of the *Residential (Land Lease) Communities Act 2013* that the residential sites were

not lawfully usable for the purposes of a residential site. The park was in dispute with the local Council and was currently not holding a valid operating licence (approval to operate under *Local Government Act*) and the operator saw this as a way to try and evict all the home owners.

At that point ARPRA stepped in to represent all the residents, to successfully prove before NCAT that the initial notice of termination was invalid and explore the events leading up to the dispute with the Council and the legal rights of the residents.

Without relating the various steps that were taken through NCAT but with support of the local Member of Parliament the whole matter was placed before the Commissioner of Fair Trading who finally agreed to apply to the NSW Supreme Court to appoint an Administrator to the park as the only possible way to resolve the matter. After a three year process there is relief for the residents with the Supreme Court of NSW appointing an administrator in September of this year to manage the community. This will hopefully protect the rights of the home owners innocently caught up in this unfortunate drama.

I believe the concept of land lease communities as it has developed over the past forty years is an excellent one. It can provide a high standard of living for those with insufficient financial resources to own a home outright. You

can own a very good home and in the right community can pay an affordable site fee to lease the land it is on, as well as maintaining or increasing the asset value of your home. This has given me security of tenure as well as the advantage of living in a community of similarly aged residents and enjoying the benefits of social activities in the village and the security of close neighbours.

As an ARPRA Advocate to NCAT I have been able to offer residents in villages on the Central Coast valuable advice on the protection they are afforded under our unique *Residential (Land Lease) Communities Act*. In my retirement I have found it to be rewarding to be able to help fellow residents who are often unaware of the protection afforded them by the Act and not comfortable to present in front of an NCAT Tribunal Member where the proceedings have progressively become much more formal and very legal.

In becoming a Residents Advocate I am indebted to the assistance and continued advice I have always received from the Tenants' Union and ARPRA. Neither organisation is sufficiently resourced to provide the level of legal assistance that we need to oppose the financial capacity and undoubted political influence of the park owners. This imbalance of resources is an ongoing issue that still needs to be addressed by the State Government. ●



# ● WINDANG WIN ●

## RESIDENTS AVOID EVICTION

**The Tenant's Union was pleased to hear that the NSW Supreme Court has appointed an administrator to manage the Oasis Village at Windang. This should lead to improved running of the community and security for residents.**

NSW Fair Trading made the application on behalf of home owners after the operator had let the land lease community fall into a dilapidated state. Residents at this community have been in dispute with the operator for the past five years. With the assistance of the Affiliated Residential Park Residents Association (ARPRA) and support of local MP Paul Scully, the residents have won their long and hard fought battle.

A short history of the events that led to this appointment... the local council – Wollongong Council – had deemed the park as non compliant and there was no licence to operate in place under the *Local Government Act 1993*. The operator tried to use this as a reason to evict the residents with only 30 days notice! The notice of terminations were disputed at the NSW Civil and Administrative Tribunal and ruled as invalid. There had also been a lack of maintenance at the community. The residents were successful at the Tribunal in getting orders for the operator to carry out maintenance at the community but the orders were ignored. The situation got so bad that the Tribunal ordered for all site fees to be paid into a special trust fund account to cover basic maintenance costs.

Now that an administrator has been appointed, they will look after the day to day running of the community and the residents are feeling very hopeful and more secure in their homes. ●



*Oasis Village at Windang*

## STAY IN TOUCH

We hope you will stay in touch – just scan the QR code to the right with your phone, then enter your email address, and **please make sure to tick 'Outasite Lite for Land Lease Communities,'** then tap Subscribe.

Alternatively, you can visit our website, or fill in the form below, or call us on 02 8117 3700. We would also love you to spread the word among fellow land lease community residents.

## Subscribe – it's free!

- Send me *Outasite* print magazine (1-2 times per year). If yes, how many copies (please circle): 1 3 5 10 20 50 100 more
- Send me *Outasite Lite* email news (sent once every few months)
- Send me the general *Tenant News* email (once every two months)

Name:

Address:

Park or organisation:

Email:

Phone:

Please tick all that apply to you:

- Land lease community home owner
- Land lease community tenant
- I would like to make a donation. Please contact me.

We welcome donations, but please note that you do not need to make a donation, or be a member to access advice. All permanent residents of land lease communities are entitled to free advice (and may get Tribunal appearance assistance) from your local Tenants Advice & Advocacy Service (see contact details at right).

Please return this form to:

**Tenants' Union of New South Wales**  
PO Q961  
QVB Market Street  
NSW 1230



## GET FREE ADVICE:



### Tenants' Advice & Advocacy Services

Eastern Sydney	9386 9147
Inner Sydney	9698 5975
Inner West Sydney	9559 2899
Northern Sydney	9559 2899
Southern Sydney	9787 4679
South Western Sydney	4628 1678
Western Sydney	8833 0933
Blue Mountains	4704 0201
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	1300 483 786



### Aboriginal Tenants' Advice & Advocacy Services

Greater Sydney	9833 3314
Western NSW	6881 5700
Southern NSW	1800 672 185
Northern NSW	1800 248 913

We regularly update *The Noticeboard* – our website for land lease communities. You can find over 20 factsheets, plus sample letters, and previous newsletters:

[tenants.org.au/thenoticeboard](http://tenants.org.au/thenoticeboard)

