

Submission on the Regulation of Manufactured Homes, Caravan Parks, Manufactured Home Estates and Camping Grounds

January 2016

Opening:

Local Government NSW (LGNSW) is the peak body for councils in NSW. It represents all 152 NSW general-purpose councils, associate members including 12 special-purpose county councils, and the NSW Aboriginal Land Council.

In essence LGNSW is the 'sword and shield' of the NSW Local Government sector. LGNSW is a credible, professional organisation representing NSW councils and facilitating the development of an effective community-based system of Local Government in NSW. LGNSW represents the views of councils to NSW and Australian Governments; provides industrial relations and specialist services to councils; and promotes NSW councils to the community.

Purpose

This submission is a response to the 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).

Background

The Discussion Paper 2015 outlines the planning and assessment issues around the cluster of activities that include caravan parks, manufactured home estates and camping grounds. It also covers manufactured homes that sit outside established parks.

Section A: General Comments

1. The uses need to be approved as a concept plan

LGNSW agrees with the purpose of the review process and shares the Department of Planning and Environment's concerns that the existing legal framework is out – dated and is in need of reform. The subject activities are managed by a conglomeration of laws and regulations that have resulted in a dual regulatory process that enables the 'use' of the land to be approved under the Environmental Planning and Assessment Act 1979 (EP&A Act) and 'operational issues' to be managed under the Local Government (Manufactured Home Estates, Caravans Parks, Camping Grounds and Moveable Dwellings) Regulation 2005. In practice, while these regimes overlap, the desired outcomes of each process has become blurred.

In principle, LGNSW supports the Department's proposed approach of having the relevant laws updated and nested under the EP&A Act as the issues mainly constitute land use matters and the on-going management practices can also be incorporated under that Act. It therefore follows that the use of the development application (DA) process is the more suitable pathway for consent.

Nevertheless, this approach should only be supported on the basis that the DA process is used as it was originally intended, as a means of approving the use of the land, via a concept plan which also provides for a level of flexibility within that consent between the proportion of caravans to manufactured homes, where applicable and acceptable. This avoids the proponent having to lodge DAs for minor changes to the layout of the park/estates, where the configuration complies with council's guidelines and conditions of consent.

This approach would rely on making use of the new definitions for Residential Parks and Tourist Parks as proposed in the Discussion Paper and the use of 'thresholds' to provide

guidance to the proportion of caravans to manufactured homes and vice versa for each use. As later discussed it is considered that these thresholds should be applied at the DA stage by councils, so that they can take into account local strategic planning matters, rather than being arbitrarily set across the state.

The use of the DA process to manage the relevant activities as described above means that:

- the proponent may be able to vary the ratio of caravans to manufactured homes and vice versa within the parameters of the approval without the need for a new consent;
- council would be able to enforce the relevant guidelines under the conditions of consent; and
- where applicable a section 96 modification to the DA consent would be required where the plans could not meet the relevant conditions of consent and or the relevant guidelines.

This process would provide a more flexible system of approval, as well as provide a means of managing operational issues under the consent in a realistic way.

The more challenging aspect of implementing a new system is to determine whether, and if so when, the existing operators should be required to transition to the new system. It would be preferable to require existing operators to lodge a DA as this would enable all proponents to be managed within the new system, however this system may need to be adopted progressively to avoid unnecessary hardship to local existing operators and on the advice of local councils.

2. Understanding the local context

Caravan parks, manufactured home estates and camping grounds are an important source of holiday accommodation. While historically located in popular tourist destinations, some of these parks have gradually changed in character and use by incorporating more durable forms of moveable housing, replacing the more mobile caravans and transitory tents for longer term residents.

At the same time, manufactured homes, such as kits homes and the like, have become increasingly popular outside their use in caravan parks for similar reasons. They can provide a form of affordable housing within the more typical housing estates for residents who live in regional areas, especially where construction costs are high.

Also, while the location of the earlier forms of caravan parks were often in the most attractive and sometimes more fragile environmental areas, subject to flood and bushfire risk, with the increasingly re-configuration of such parks to more durable and less moveable forms of housing, these risks have consequently increased.

Likewise the need to provide for a wider range of low cost housing across the state gives rise to the on-going debate around manufactured housing estates, for permanent residents as well as transient workers, in areas of acute housing shortage.

In short, the key considerations have become the need for providing short term accommodation for the tourist and the longer term residents on land that may or may not be subject to environmental risks.

Whatever changes are proposed, the laws must be able to be moderated for local circumstances: To be flexible enough to be able to take into account the history of these activities, the local context and the existing and future environmental risk of the area.

The Discussion Paper indicates that the Department of Planning and Environment will be developing a state housing policy. It is important that the emerging laws provide flexibility at a local level to manage the local housing issues.

3. Improving Strategic Planning

The current laws focus on the detail around the approval or management of these specific activities, in the absence of a more focussed strategic land use plan for the relevant activities. While councils' LEPs provide a wider local strategic context to the issues, generally these LEPs do not provide the level of detail needed to assist planning decisions on the relevant activities, such as the required ratio of tourist to longer term resident accommodation on the relevant site.

A local strategic land use plan is needed to evaluate the relevant existing and future activities and associated planning issues which cover:

- The environmental issues - the location of such activities in fragile environments;
- The social issues - the competing interests of the tourist and longer term residents; and
- The economic issues – the opportunities for new entries in the market activities and the broader tourism related economic development for local areas.

The key component of the local land use strategy is likely to be the history and legal implications of the existing uses. Will the existing activities be subject to the new framework or will they 'sit outside' this framework? If that is the case what will be the implications of the new framework on emerging practice?

An appropriate approach would be to implement a new system that enables existing and future activities of the type under discussion to progressively change and adapt to the new standards, where applicable, or to encourage relocation in a limited number of cases.

Notwithstanding the above, LGNSW is aware that the proposed Coastal Management State Environmental Planning Policy, on exhibition now, will enable the State Government to develop planning controls for the following management areas:

- The coastal vulnerability area;
- The coastal wetlands and littoral rainforests area;
- The coastal environmental area; and
- The coastal use area.

It would be sensible, where applicable, for councils to align their local strategic land use plans with these areas. To this end it may be practical to adjust any Guidelines that may be developed by the Department of Planning and Environment for Caravan Parks and Manufactured Estates to take into account the management areas within the Coastal Zone as identified in Stage 2 of the Coastal Reforms package, as these are the areas where the planning issues may be more pronounced.

4. Conclusions

The Department's overall approach to the reform the laws around the relevant activities is generally supported. It is agreed that placing the laws under the EP&A Act would be the more suitable approach given that the issues are land use planning issues. It is also suggested that:

- The DA pathway be used to approve a concept plan for a Residential Park or Tourist Park, under the new definitions, and that the proponent be able to vary the internal configuration between caravans and manufactured homes within the confines of the agreed threshold for the components of that consent. The consent may also provide a process for the management of these changes;

- Councils have discretion on how to convert existing uses to the new system;
- A local strategic land use plan be prepared by council that provides policy direction on such issues; and
- Where applicable, the Department's Coastal Management State Environmental Planning Policy align with council's local strategic land use plans.

The following section B provides specific comments on the questions posed in the Discussion Paper.

Section B: Specific comments on the key issues

Heading and questions	LGNSW response
Supporting Land Uses in the Right Locations/The changing nature of caravan parks and manufactured home estates	
1. <i>Do you agree with the proposed changes to the definitions?</i>	Yes - The proposal to replace the current terms 'caravan park' and 'manufactured home estate' is reasonable. (The new definitions are outlined below). ¹
2. <i>Should a threshold for permanent residents be set for Residential Parks? If so, do you agree with a 75% threshold?</i>	LGNSW has no position.
3. <i>Would a zoning approach be appropriate for Residential and Tourist Parks?</i>	See question 4.
4. <i>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?</i>	<p>LGNSW supports Option 2 as it allows the land use decisions to be based on the local strategic plan that will ensure that the local context and circumstances are taken into account within a strategic land use plan. Basing local controls on a local strategic plan usually produces a more robust and sensible land use plan for the area. General zonings can give rise to unexpected and adverse outcomes. Given the type of activities under consideration a thorough understanding of the local context is likely to produce a more subtle and workable plan that is easier to implement.</p> <p>The guidance expected from the State Government could be developed in associated with the Coastal Management State Environmental Planning Policy.</p>

¹ **Residential Park** – a place that primarily provides accommodation for permanent residents on which moveable dwellings are installed, manufactured homes are installed and which may or may not include communal living facilities and administrative buildings.

Tourist Park- a place that primarily provides accommodation for tourists and visitors on which moveable dwellings are installed, manufactured homes are installed, and which may or may not include communal facilities and administration buildings

Heading and questions	LGNSW response
Simplify Approvals	
Approval of manufactured homes outside caravan sites	
5. <i>Would these proposed changes make the permissibility of manufactured homes clearer and contribute to a simpler approvals process?</i>	Yes – there are no planning issues with the approval of manufactured homes outside the estates for councils as this type of building process has evolved, provided a range of design and quality options and enabling a more affordable dwelling house to be built in regional NSW where constructive costs can be high. The proposal to include manufactured home within the meaning of ‘building’ is reasonable and enables such homes to be approved similarly to other dwellings. This also removes the need for manufactured homes to be approved under the LG Act and the EP&A Act.
Approval of moveable dwellings	
6. <i>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?</i>	Individual councils will have different views on this.
7. <i>How should the new framework facilitate the use of self-contained caravans and campervans?</i>	
Facilitating the development of new caravan parks and manufactured home estates	
8. <i>What provisions from SEPP 21 and SEPP 36 should be retained under the new framework?</i>	Individual councils will have different views on this.
9. <i>Are there additional controls that should be included in the new framework to facilitate the development of new Tourist Parks or Residential Parks?</i>	
Streamlining approvals to operate for existing caravan parks, camping grounds and manufactured home estates	
10. <i>Should new caravan parks, camping grounds and manufactured home estates be subject to a one-off development consent rather than the existing approval to operate provisions?</i>	Yes – these activities are appropriate to be approved as a DA under the EP&A Act as they constitute development and require a merits assessment. The consent can be ‘one –off’ and the conditions can require periodic review or monitoring of the operations.

Heading and questions	LGNSW response
11. <i>What other matters should be considered in camping grounds and primitive camping grounds approvals? Should 'primitive camping ground be defined?</i>	LGNSW has no position on this question at the moment.
Transitioning existing estates, parks and camping grounds to a new approvals framework	
12. <i>Do you agree existing parks should no longer be required to obtain 'approval to operate'? Should regular council inspections be required for these parks?</i>	<p>The difficulty is managing existing uses and the 'current consents' that may apply to such uses. As these matters can be complex, depending on the history of the activity and have legal implications, they must be managed by council on a case by case basis. It may be more appropriate to transfer these activities to a DA process or leave them on a management plan depending on the circumstances.</p> <p>The aim would be to regularise this practice over a period of time so that when properties change or expand, a DA is required and they convert to the new system.</p>
13. <i>What controls should existing parks be exempt from when being considered under the new framework?</i>	This will depend on the nature of the existing approvals.
14. <i>Is it appropriate that existing parks are considered under the new framework when lodging a development application for expansion or re-configuration?</i>	<p>Generally yes. The opportunity to regularise the existing activities is when they expanding, or re-configuring. This is an opportunity to require a DA.</p> <p>This process can be modified depending on the scale of the expansion and level of re-configuration.</p>
Streamlining approvals through exempt and complying development	
15. <i>What are your views on the proposed approach for exempt and complying development?</i>	Disagree in principle and practice - it is inappropriate to introduce a role for a private or council certifier in relation to the approval of manufactured homes within estates or parks, when the requirements for such approvals are likely to be subject to debate and the level of compliance currently acknowledged to be low. As the Discussion Paper reveals there appears to be a regular shifting pattern of short term and long term accommodation in many parks that may not be subject to council approval. If councils already find this process challenging to manage it is

Heading and questions	LGNSW response
	<p>hard to understand why it would be easier for a certifier - be they council or private.</p> <p>As indicated many parks are subject to change of the level of tenure and this suggests that a DA consent may be more workable as it could approve a concept plan that can be varied within agreed limits of tenure. This would mean that tenure could change up to an agreed proportion of the overall number of activities.</p> <p>A DA is the appropriate assessment model as it enables council to make an informed decision on all the criteria of the application and is not limited to certain components be they very limited to expansive. This can be advantageous to the applicant where the pre -existing arrangements are of relevance and it is anticipated give rise to a fairer decisions to all parties.</p>
<p>16. <i>Should anything else be categorised as exempt, complying or development assessment?</i></p>	<p>See above</p>
<p>The introduction of a Guideline</p>	
<p>17. <i>Do you agree with the controls proposed for inclusion within a Guidelines (as outlined in Appendix B)?</i></p>	<p>Individual councils will have different views on this.</p>
<p>18. <i>Are there any specific controls where a performance –based approach would be better suited than the current prescriptive approach?</i></p>	
<p>Removal of the need for concurrence from the NSW Department of Planning and Environment</p>	
<p>19. <i>Is it appropriate to remove concurrence provisions and manage variations as part of the development application process?</i></p>	<p>Yes</p>
<p>Definitions of development types</p>	
<p>20. <i>Do you agree with the proposed approach reducing duplication and providing greater clarity in definition?</i></p>	<p>Yes- we generally agree with this approach.</p>

Heading and questions	LGNSW response
Promote Diversity of Housing	
Providing for a diversity of residential and tourist uses within parks	
21. <i>Should sites be maintained for tourist uses in a residential park and vice versa?</i>	While these are important questions they should be considered as part of the local strategic plan – Option 2 – as outlined in question 4.
22. <i>If so, should a threshold be set to provide for a mix of uses?</i>	
23. <i>If so, what should the threshold be or should this be set by individual councils?</i>	
Seasonal and itinerant workers accommodation	
24. <i>What controls should be in place to manage short-term housing for seasonal or itinerant workers?</i>	Individual councils will have different views on this.