

## MARKET REVIEW OF SITE RENTS – A SUGGESTED APPROACH

### Introduction

Recent amendments to the Manufactured Homes (Residential Parks) Act (the **Act**) introduce changes to both the Market Review and Dispute Resolution processes which potentially are of benefit to Home Owners. With respect to the former there are now requirements for increased transparency and rigour (by use of an ‘independent’ valuer), and with respect to the latter a simpler process involving negotiation and mediation prior to reverting to the formal QCAT hearing process (see ARPQ Fact Sheets 9 & 11 for more information).

Further, the Park Owner or appointed independent valuer, must consult with Home Owners (through the Home Owners Committee (HOC) where one exists) at least 63 days prior to the scheduled review date.

### Aim

The aim of this document is to share information with Home Owners and HOCs to ensure they are in the best possible position when entering in negotiations with Park Owners on proposals to increase Site Rent as a result of a Market Review, and thereby minimise the extent of that increase.

### Be together/be proactive/be prepared

The consultation process is potentially an opportunity for Home Owners to attempt to set the parameters upon which the review will be based and to advise the Park Owner of relevant important issues. This can only happen if Home Owners/HOCs understand the challenges they face and are well prepared for that likely ‘one off’ consultation meeting. Further, if HOCs are to adequately represent Home Owners’ interests in this matter, they should firstly meet with all Home Owners to ensure they are fully across all the key issues.

We believe Home Owners/HOCs should insist that any review should entail not only comparing your Park to others considered equivalent, but also take into account all of the criteria that QCAT is required to consider as laid down in section 70 (5) of the **Act**. These are:-

- (a) *the range of site rents usually charged for comparable sites in comparable residential parks in the locality of the park;*

**ARPQ Advisory 1:** Firstly, it needs to be stressed that no two parks are so alike in facilities and services that valid comparisons at a macro level can legitimately be made. Detailed comparisons on the quality and adequacy of those facilities and services are necessary and should be provided as part of the market review. It might also be worthwhile determining the ‘independence’ of the valuer.

Furthermore, as many so called comparable Residential Parks in the locality of the park have a range of differing Site Rents, how is the baseline rent that will be used for comparison going to be derived?

- (b) *if it is impractical to obtain data for the range of site rents mentioned in paragraph (a), data is not available for that range or it is just and equitable to do so in the particular circumstances—the range of site rents usually charged for comparable sites in comparable residential parks in comparable localities to the locality the park is in;*

**ARPQ Advisory 2:** The same argument for criteria (a) needs to be pursued with the added challenge of what is meant by ‘comparable localities’ and what criteria has/is to be used to determine if they are ‘comparable’, bearing in mind very few localities separated by distance are truly comparable.

- (c) *if it is impractical to obtain data for the range of site rents mentioned in paragraph (a) or (b), data is not available for that range or it is just and equitable to do so in the particular circumstances—general trends in rent for residential accommodation in the locality the park is in;*

**ARPQ Advisory 3:** The main point to be made is the need to compare ‘like with like’. In the residential accommodation market, the renter is paying for fundamentally different things, including components covering both the home, the land, maintenance, insurances and sometimes utilities, whereas in a Residential Park the Home Owner owns the house and then rents the land at additional cost. Furthermore, Site Rents only cover the land (and use of the communal facilities) and do not cover the extra items included in rental accommodation, these being the separate liability of the Home Owner.

(d) *the increased site rent compared to the previous site rent;*

**ARPQ Advisory 4:** This should be relatively easy information to provide. However, where there are differing Site Rents being charged across the Park, it is important to stress that details of rents to be charged both before and after the review for the various groups need to be provided when proposing any increase.

(e) *The frequency, and amount, of past increases in the Site Rent payable under the agreement;*

**ARPQ Advisory 5:** Again, in the interests of transparency, it is important to determine that where differing Site Rents are being charged across the Park how these criteria will be applied

(f) *any increase in the CPI number during the previous site rent period;*

**ARPQ Advisory 6:** CPI is directly derived from market forces. A so called ‘market review’ if correctly and rigorously carried out is also based on market forces and ultimately (in theory) should not be too different. It is worthwhile stressing this point and emphasising that if they are significantly different an explanation should be provided and if it is not, questions will be raised that can only be resolved through the dispute process.

(g) *the amenity or standard of the common areas and communal facilities;*

**ARPQ Advisory 7:** It is considered necessary to detail any reduction in the standard of the common areas and facilities. For example, are the gardens properly maintained, is the bowling green deteriorating, are trees regularly pruned. All of these matters and many more are relevant and need to be considered in the market review.

(h) *any withdrawal of a communal facility or service previously provided at the park;*

**ARPQ Advisory 8:** If facilities or services which have been traditionally provided are withdrawn then site rent should be reduced accordingly, not increased, and Park Owners/valuers need to be made aware of instances of this nature prior to commencing the market review.

(i) *any addition of a communal facility or service not previously provided at the park;*

**ARPQ Advisory 9:** This is considered self-explanatory especially when considering the facilities or services available at comparable parks.

(j) *any increase in the park owner’s operating costs for the park during the previous site rent period;*

**ARPQ Advisory 10:** It could be argued that this should be the sole reason for Park Owners to seek a site rent increase. If the operating costs in running and maintaining the park (as opposed to capital costs) increase, then it could be argued that the Park Owners are entitled to an increase. However, it needs to be borne in mind that operating costs could reduce (especially per Manufactured Home in an expanding Park) and make any increase unnecessary.

(k) *whether the increase is fair and equitable in all the circumstances of the case;*

**ARPQ Advisory 11:** It is uncertain what this means but it could be argued that both parties, Park Owners and Home Owners, need to be treated not only fairly but also equitably. In other words Home Owners and Park Owners should each share the burden of any increase in operating or other costs.

(I) *anything else the tribunal considers relevant.*

**ARPQ Advisory 12:** This is an opportunity to raise other matters Home Owners/HOCs think are relevant to the review process and ultimately of likely interest to QCAT if the matter goes to dispute. One matter to consider is whether the Park Owner is abiding by the conditions laid down in the Act, including those setting out the process to be followed for a market review and the format and content of any General Increase Notice covering the market review.

All of the above factors could be considered important and Home Owners/HOCs need to be proactive in insisting they must all be taken into account in arriving at a so called “fair rent”. All discussions should be documented in preparation for subsequent steps.

### **The Next Step**

It is suggested that following the initial consultation meeting during the intervening 63 days before a General Site Rent Increase notice is issued, HOCs meet with all Home Owners to reach consensus on the way forward and prepare for a potential dispute and possible QCAT application. As a minimum, this should entail recording all and any services that have been reduced or removed and any facilities that have been downgraded. Try to establish when these occurred.

Also take this time to visit other Residential Parks in the area and record any and all facilities (with photographs) to establish if these are superior or inferior to yours. Similarly, what services are available to home owners in these parks which may differ to those offered to you. Finally, as far as possible talk to Home Owners in Parks that may be considered comparable to determine the level of site rent currently being paid.

### **Dispute Resolution**

After the General Site Rent Increase notice has been issued, Home Owners have 28 days to object via a Dispute Resolution Notice (Form 11). If they do not dispute, they are automatically taken to have agreed to the increase and have no further recourse. If Home Owners are unhappy about the increase notice for any reasons whatsoever, such as:

- The increase is considered excessive;
- The comparisons used are considered not valid or appropriate;
- The matters raised in the initial consultative meeting have not been addressed;
- The process followed and/or calculations used are not understood;
- The due process as outlined in the Act has not been followed (eg if other factors not permitted by the **Act** have been included in the valuation, such as the general increase in land value in the area);
- If the valuer carrying out the valuation is not considered ‘independent’.

it is recommended that all affected Home Owners, or their HOCs on their behalf, **immediately** start preparing for a Residential Park Dispute which is initiated by giving the specified Dispute Negotiation Notice (Form 11) notice to the Park Owner within the required 28 days. Notwithstanding the time constraints, this is a relatively easy process and by following it there is nothing to lose, but everything to gain.

From that point let the process take its course through negotiation, mediation and if no satisfactory agreement can be reached then a full QCAT hearing. Bear in mind that in particular circumstances under section 70 A (3) of the **Act**, QCAT may order a further valuation report at Park Owner’s expense. This could occur if the original report was found to be deficient in some way as set down in the **Act** and it is up to the home owners to make a case in this regard.

### **Disclaimer**

This document contains general suggestions only for Home Owners/HOCs to consider when faced with a Site Rent increase based on a market review. It should not be considered as legal advice. If this is required, you should contact the Queensland Retirement Village & Parks Advisory Service at Caxton Legal Centre.