

Retirement Villages Regulation 2017

[2017-485]



New South Wales

Status Information

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **See also**
[Better Regulation, Fair Trading and Other Legislation Amendment Bill 2024](#)
- **Staged repeal status**
This legislation is currently due to be automatically repealed under the [Subordinate Legislation Act 1989](#) on 1 September 2024

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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New South Wales

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Retirement Villages Regulation 2017



New South Wales

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Retirement Villages Regulation 2017*.

2 Commencement

This Regulation commences on 1 September 2017 and is required to be published on the NSW legislation website.

Note—

This Regulation replaces the *Retirement Villages Regulation 2009* which is repealed on 1 September 2017 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

(1) In this Regulation—

Department means the Department of Customer Service.

Form means a form set out in Schedule 1.

relevant village information has the same meaning as in the Act, section 197B.

termination notice means a notice under section 131 of the Act (that is, a notice of intention to apply to the Tribunal for an order terminating a residence contract).

the Act means the *Retirement Villages Act 1999*.

Note—

The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

(2) Notes included in this Regulation (other than Schedule 1) do not form part of this Regulation.

4 Definition of “capital maintenance”

For the purposes of the definition of **capital maintenance** in section 4 (1) of the Act, capital maintenance does not include the following—

- (a) work done to substantially improve an item of capital beyond its original condition,
- (b) work done to maintain or repair an item of capital in circumstances where it would have been more cost effective to replace the item of capital.

5 Definition of “item of capital”

For the purposes of paragraph (d) of the definition of **item of capital** in section 4 (1) of the Act, the following items in a retirement village or residential premises within a retirement village are prescribed to be items of capital—

- (a) fixtures (for example, bench tops, built-in cupboards and wardrobes, floor coverings, hot water systems and stoves),
- (b) fittings (for example, light fittings, taps and sanitary fittings),
- (c) furnishings (for example, curtains and blinds),
- (d) non-fixed items (for example, whitegoods, portable air conditioners, fans, tables and chairs).

6 Definition of “operator”

For the purposes of paragraph (b) of the definition of **operator** in section 4 (1) of the Act, a person who is engaged under an agreement with—

- (a) the relevant community association, neighbourhood association or precinct association of a retirement village that is subject to a community land scheme, or
- (b) the owners corporation of a retirement village that is subject to a strata scheme, or
- (c) the company that is the owner of a retirement village that is subject to a company title scheme,

and who enters into individual village contracts with the residents of the village (or arranges for another person to enter into those contracts) is prescribed.

7 Definition of “optional services”

For the purposes of the definition of **optional services** in section 4 (1) of the Act, the following services are prescribed—

- (a) the provision of meals,
- (b) laundry services,

- (c) home cleaning,
- (d) domestic services (for example, hairdressing, shopping assistance or pharmaceutical services).

8 Definition of “resident”

- (1) For the purposes of paragraph (c) of the definition of **resident** in section 4 (1) of the Act, the person is prescribed if the person—
 - (a) was the spouse or de facto partner of a resident of a retirement village immediately before the resident died or otherwise permanently vacated the premises, and
 - (b) occupied residential premises in the retirement village with that resident, and
 - (c) continues to occupy the premises.
- (2) However, if the resident has died, subclause (1) does not apply if the terms of that resident’s will are such as to require (whether directly or indirectly) the spouse or de facto partner to vacate the residential premises concerned.

Note—

The will might provide, for example, for a bequest of a sum of money that the deceased resident’s estate can raise only by delivering vacant possession of the residential premises to the operator of the village so as to obtain a refund of the deceased resident’s ongoing contribution.

9 Definition of “retirement village”

For the purposes of section 5 (3) (i) of the Act, **retirement village** does not include a facility within the meaning of *Community Welfare Act 1987*.

Part 2 Information about retirement villages

10 Representations in promotional material

For the purposes of section 17 (5A) of the Act, the following representations in relation to a retirement village are prescribed—

- (a) that a person is likely to obtain a capital gain at the time of vacating the village,
- (b) any estimation of possible variations to future recurrent charges, except where the village contract provides for recurrent charges to be varied in accordance with a fixed formula,
- (c) any estimation of the future size of the village except in respect of development where construction is underway and a completion date is known,
- (d) any representation in respect of future ownership of the village, except if a contract to transfer ownership of the village has been entered into, in which case details about

that contract may be provided,

- (e) that the village is an approved provider of residential care within the meaning of the *Aged Care Act 1997* of the Commonwealth,
- (f) that residents of the village have priority access to residential care by an approved provider under the *Aged Care Act 1997* of the Commonwealth.

Note 1—

Section 5 (3) (a) of the Act excludes from the definition of **retirement village** buildings that are commonly known as Commonwealth-subsidised hostels and nursing homes.

Note 2—

Schedule 3A sets out the rules of conduct for operators, including rules relating to representations in promotional material.

11 General inquiry document and disclosure statement

- (1) For the purposes of section 18(2)(a) and (b) of the Act, a general inquiry document must—
 - (a) be in the form, and contain the information, set out in Schedule 1, Part 1, and
 - (b) contain a copy of the village rules, and
 - (c) contain a copy of the document *Moving into a retirement village?* prepared by the Department and published on a website of the Department.
- (2) For the purposes of section 18(3A)(a) and (b) of the Act, a disclosure statement must—
 - (a) be in the form, and contain the information, set out in Schedule 1, Part 2, and
 - (b) contain a copy of the village rules.
- (3) A disclosure statement provided to a prospective resident before 1 March 2018 is not required to include the average resident comparison figure.
- (4) For the purpose of the form of a disclosure statement, **average resident comparison figure** means the monthly average of the sum of the following amounts over a period of 84 months—
 - (a) the total amount of recurrent charges payable under the village contract,
 - (b) the departure fee payable by the resident if the premises are permanently vacated at the end of that period,
 - (c) capital gains, if any, payable to the operator by the resident at the end of that period.

- (5) The calculation of any amount in the disclosure statement relating to the future value of the property or the entry payment payable by the next resident (however described) is to be determined by varying the outgoing resident's entry payment in accordance with the average annual change in the March quarterly variation for the preceding 10 years, of whichever of the following indices published by the Australian Bureau of Statistics is applicable to the location of the premises—
- (a) Median Price of Established House Transfers (unstratified); Sydney index,
 - (b) Median Price of Established House Transfers (unstratified); Rest of NSW index,
 - (c) Median Price of Attached Dwelling Transfers (unstratified); Sydney index,
 - (d) Median Price of Attached Dwelling Transfers (unstratified); Rest of NSW index.
- (6) (Repealed)

12 Copies of certain documents to be available to residents and prospective residents

For the purposes of section 20 (1) (k) of the Act, the following documents are prescribed—

- (a) if the operator of the retirement village and a Residents Committee were parties to any proceedings before a court or a tribunal in the immediately preceding 5 years—each decision or order made in respect of the proceedings and any reasons given by the court or tribunal in respect of any such decision or order,
- (b) if the operator of the retirement village operates a waiting list for the village and charges a waiting list fee—the operator's written policy setting out the way in which the waiting list operates,
- (c) if the retirement village is subject to a company title scheme—such of the following as governs the company concerned—
 - (i) its constitution,
 - (ii) the replaceable rules set out in the *Corporations Act 2001* of the Commonwealth,
- (d) if the retirement village is subject to a community land scheme—
 - (i) the management statement of the scheme, and
 - (ii) any management agreement relating to the village to which the relevant community association, neighbourhood association or precinct association is a party, and
 - (iii) the minutes of the most recent annual general meeting of the relevant community association, neighbourhood association or precinct association,
- (e) if the retirement village is subject to a strata scheme—

- (i) the by-laws of the scheme, and
 - (ii) any management agreement relating to the village to which the relevant owners corporation is a party, and
 - (iii) the minutes of the most recent annual general meeting of the owners corporation,
- (f) every other document referred to in the disclosure statement for the village under the heading “Village Contracts”,
- (g) certificates of currency and policy documents (stating the nature of the risk insured against and the amount of the insurance) for the insurance required under section 100 of the Act for the retirement village,
- (h) the most recent safety inspection report for the retirement village made pursuant to section 58A of the Act,
- (i) a detailed list of all currently available premises in the retirement village,
- (j) the most recent 3-year report, within the meaning of clause 19A(2).

13 Operator to make safety inspection report available to residents

The operator of a retirement village must make a copy of the most recent safety inspection report made under section 58A of the Act available to any resident who requests a copy within 7 days after the request is made.

Part 3 Village contracts and village rules

14 Amount payable for legal and other expenses

For the purposes of section 31 (3) of the Act, the maximum amount payable by a resident for legal and other expenses incurred by the operator in connection with the preparation of a village contract is \$50.

15 Condition report

- (1) The operator, or an agent or employee of the operator, must inspect the premises and complete a condition report in accordance with this clause.

Maximum penalty—10 penalty units.

- (2) For the purposes of section 38 (2) of the Act, the condition report must be in the form set out in Part 3 of Schedule 1.

- (3) The report is to be completed in the presence of the prospective resident or a person nominated by the prospective resident, unless otherwise authorised in writing by the prospective resident.

- (4) The report must be completed to the best of the operator's knowledge (or, if the inspection is carried out by an agent or employee of the operator, to the best of that agent's or employee's knowledge).
- (5) If a required date is not known, an approximate date must be given and identified as such.
- (6) No less than 14 days must be allowed for the prospective resident (or the prospective resident's nominee) to examine the report and suggest changes to it.
- (7) The report must be signed by the operator (or, if the inspection is carried out by an agent or employee of the operator, by that agent or employee). The prospective resident (or the prospective resident's nominee) must also sign the report if he or she agrees with it.
- (8) For the purposes of section 38 (2A) of the Act, the condition report must be completed and provided to the prospective resident (or the prospective resident's nominee)—
 - (a) at least 14 days before the operator and the prospective resident enter into a village contract, or
 - (b) if the premises are still being constructed, 14 days before the prospective resident occupies the premises.

16 Matter to be excluded from village contract

For the purposes of section 42 (1) of the Act, the matter that is to be excluded from a village contract is the matter set out in Schedule 3.

17 Standard form of village contract

- (1) For the purposes of section 43 (1) of the Act, the standard form of a village contract is the Form set out in Schedule 2.
- (2) The standard form of village contract is prescribed for all village contracts except the following—
 - (a) a contract under which a resident of a retirement village obtains the right to use a garage or parking space, or a storage room, in the village (other than a residence contract or a service contract),
 - (b) a residence contract relating to premises that are subject to a community land scheme, company title scheme or strata scheme.

Note—

A service contract relating to premises referred to in subclause (2) (b) must be in the standard form of village contract.

- (3) The operator of a retirement village must not enter into a village contract for which

the standard form of village contract is prescribed, knowing that it is not in or to the effect of the standard form.

Maximum penalty—50 penalty units.

17A Current village contract information

For the purposes of section 69A(7)(a)(viii) of the Act, the following information concerning the rights and obligations of a resident who is a registered interest holder referred to in section 7(1)(c) of the Act is prescribed—

- (a) the rights of the resident under Part 10AA of the Act in relation to the payment of the resident's exit entitlement, within the meaning of that Part, by the operator of the retirement village before the resident's residential premises are sold,
- (b) the cessation of the resident's liability to pay recurrent charges under section 152(2)(e) of the Act.

18 Village rules

For the purposes of section 46 (2) (i) of the Act, village rules may relate to the following matters—

- (a) security in the retirement village concerned,
- (b) the external appearance of residents' premises in the village,
- (c) speed limits within the village,
- (d) smoking, the use of motorised wheelchairs or other restrictions on the use of communal areas.

Part 4 Financial management

Division 1 Annual budget

19 Matters that must be dealt with in proposed annual budget

- (1) For the purposes of section 112 (3) (a) of the Act, the matters that must be dealt with in a proposed annual budget are the following—
 - (a) the amount of recurrent charges payable by residents of the village during the year, including—
 - (i) the expected increases in the recurrent charges in line with a fixed formula, and
 - (ii) the expected increases in the recurrent charges as a result of clause 26AA,
 - (b) the method by which that amount has been calculated,

- (c) the total expected income from recurrent charges for the village for the year,
 - (d) the effect of the expected surplus or deficit (as the case may be) for the current year on the finances of the village,
 - (e) all proposed categories of expenditure (without grouping together 2 or more unlike categories),
 - (f) the proposed expenditure on each of those categories, the proposed expenditure on each of them as indicated in the approved annual budget for the current year, and the likely actual expenditure on each of them for the current year,
 - (g) if any expenditure (proposed or actual) is an apportionment of a total expenditure relating to the village and one or more other villages or businesses—the method or calculation by which the expenditure is apportioned,
 - (h) if any residents of the village are paying significantly higher recurrent charges than some other residents of the village (for example, because they are receiving optional services)—the method or calculation by which expenditure is apportioned between the categories of residents concerned,
 - (i) the total proposed expenditure of the village for the year,
 - (j) the expected surplus or deficit for the year.
- (2) If the annual budget includes any costs associated with the operator's head office or any management or administration fees—
- (a) those costs or fees are to be itemised to show the goods and services to which they relate and the approximate cost of those goods and services, and
 - (b) if the operator operates 2 or more retirement villages, details of how the costs or fees have been apportioned between the retirement villages.
- (3) Despite subclause (2) (a), an annual budget for a retirement village may provide a break down of the goods and services to which those fees relate instead of an itemised list, but only if the operator gives an undertaking that an itemised list will be provided within 10 business days of a request for the itemised list being made by a resident of the village concerned.

19A Matters to be included in proposed annual budget—3-year report

- (1) This clause applies only if section 98 of the Act applies to the operator of a retirement village.
- (2) In addition to the requirements under section 98 of the Act, the operator of a retirement village must include in the proposed annual budget a report relating to capital maintenance for major items of capital, including shared major items of

capital, for a relevant 3-year period that is extracted from the information contained in the asset management plan current for that period (**3-year report**).

- (3) The following matters must be included in the 3-year report—
- (a) in relation to each item of capital maintenance that is proposed to be carried out—
 - (i) an estimate of the costs of the proposed maintenance, and
 - (ii) the proposed maintenance dates, and
 - (iii) the type of maintenance that is proposed to be carried out, and
 - (iv) an estimate of the costs of any repairs that are proposed to be carried out, and
 - (v) the type of repairs that are proposed to be carried out,
 - (b) the amount of recurrent charges set aside in the capital works fund for capital maintenance,
 - (c) a list of the major items of capital—
 - (i) that have a year or less of effective life remaining, or
 - (ii) for an item other than a building—in relation to which the accumulated costs of repairs as at the date on which the 3-year report is prepared are greater than 90% of the purchase price of the item,
 - (d) for each major item of capital referred to in paragraph (c)—whether it is proposed to replace or continue to maintain the item.

Maximum penalty—20 penalty units.

- (4) In this clause—

effective life—see clause 26G.

major item of capital means the following, but does not include equipment that is a consumable used in the operation of an item of capital or in the day-to-day operation of the village—

- (a) an item of capital for which the operator of a retirement village is responsible that has a purchase price of \$1,000 or more,
- (b) a group of items of capital for which the operator of a retirement village is responsible—
 - (i) that are similar, and
 - (ii) have the same effective life and financial year of acquisition as each other,

and

- (ii) each of which has a purchase price of \$1,000 or more.

relevant 3-year period means a period of 3 years commencing on the commencement of the financial year to which the proposed annual budget relates.

shared major item of capital means a major item of capital that is also used in the operation of another retirement village or a residential aged care facility.

20 Notice accompanying proposed annual budget

- (1) For the purposes of section 112 (4) (e) of the Act, the notice accompanying a proposed annual budget must contain the following statements—
 - (a) the operator must provide information reasonably requested by the Residents Committee (or, if there is no such Committee established in the village, any resident) in relation to proposed expenditure specified in the budget within 10 business days after the information is requested,
 - (b) the operator must not expend money received by way of recurrent charges otherwise than in accordance with the approved annual budget, except for—
 - (i) a minor variation, or
 - (ii) a variation between items in the approved annual budget if the variation does not reduce the level of services provided and does not cause total expenditure to be exceeded.
- (2) If the recurrent charges within the budget have been increased since the previous annual budget and section 106 of the Act applies to that increase, the notice accompanying a proposed annual budget must also contain the following statements—
 - (a) it is a requirement of section 112 of the *Retirement Villages Act 1999* that the operator of the village supply each resident with a proposed annual budget for the financial year of the village at least 60 days before the commencement of the financial year concerned,
 - (b) it is a requirement of section 114 of that Act that the residents advise the operator of whether or not they consent to the proposed budget (and, if they do not consent, they must specify the item or items in the proposed budget to which they object),
 - (c) if the operator is not advised one way or the other, the residents are taken to have refused consent.
- (3) If the recurrent charges within the budget have not been increased since the previous

annual budget or if those charges have been increased but section 106 (1) of the Act does not apply to that increase, the notice accompanying a proposed annual budget must also contain whichever of the following statements is applicable in the particular case—

- (a) the residents are taken to have consented to the proposed annual budget as the recurrent charges have not been increased since the previous annual budget,
- (b) the residents are taken to have consented to the proposed annual budget because the increase in the recurrent charges is in accordance with the formula set out in the village contract,
- (c) the residents are taken to have consented to the proposed annual budget because the increase in the recurrent charges is not more than the increase in the Consumer Price Index.

21 Limit on contingencies in annual budget

For the purposes of section 115A of the Act, the maximum amount that may be allocated for contingencies in a proposed annual budget is \$1.

Division 2 Recurrent charges

22 Notice of variation—fixed formula

For the purposes of section 105 (2) (c) of the Act, a notice of variation of recurrent charges given under section 105 of the Act must contain—

- (a) the fixed formula set out in the contract and a demonstration, by an application of the formula, of the way in which the new recurrent charges have been calculated, and
- (b) the following statement as the first line of the notice—

This is a notice of a variation of recurrent charges in accordance with a fixed formula.

23 Notice of variation—no fixed formula and not exceeding CPI

For the purposes of section 105A (4) (c) of the Act, a notice of variation of recurrent charges given under section 105A of the Act must include the following statement as the first line of the notice—

This is a notice of a variation of recurrent charges (otherwise than in accordance with a fixed formula). The operator does not require the consent of the residents as the increase does not exceed the increase in the Consumer Price Index (CPI) since those charges were last increased.

For more information about your rights and responsibilities under the retirement village laws contact NSW Fair Trading by visiting

www.fairtrading.nsw.gov.au or calling 13 32 20.

24 Notice of variation—no fixed formula and greater than CPI

For the purposes of section 106 (2) (e) of the Act, a notice of variation of recurrent charges given under section 106 of the Act must include the following statement as the first line of the notice—

This is a notice of a variation of recurrent charges (otherwise than in accordance with a fixed formula). The increase in recurrent charges does not take effect until at least 60 days after the date of this notice. The increase in those charges exceeds the increase in the Consumer Price Index (CPI) since those charges were last increased and requires the consent of the residents affected by the variation or an order of the Tribunal to take effect.

For more information about your rights and responsibilities under the retirement village laws contact NSW Fair Trading by visiting www.fairtrading.nsw.gov.au or calling 13 32 20.

25 Provision of information regarding recurrent charge

- (1) For the purposes of section 107 (6) (a) of the Act, the information that the operator of a retirement village is required to provide under section 107 (4) of the Act must be provided within 7 days after the information was first requested.
- (2) For the purposes of section 107 (6) (b) of the Act, the operator of a retirement village is not required to provide the following information under section 107 (4) of the Act—
 - (a) information about the personal affairs of the operator, an employee of the operator or a contractor engaged by the operator,
 - (b) information that is unrelated to the operation of the village,
 - (c) information about individual sales or contracts that are not in the public domain,
 - (d) if the operator of a retirement village is an organisation that is subject to an approved privacy code or the Australian Privacy Principles under the [Privacy Act 1988](#) of the Commonwealth—information that would result in a breach of the code or those Principles if it were to be provided under that subsection.

26 Matters not to be financed by way of recurrent charges

For the purposes of section 112 (3) (b) of the Act, the following must not be financed by way of recurrent charges—

- (a) fees for membership of industrial or professional associations,
- (b) overseas travel by the operator of the retirement village or the operator's agent or employees,

- (c) any costs associated with marketing vacant units within a retirement village, including such costs that may have been included in wages or salaries,
- (d) payroll tax, unless—
 - (i) the wages paid by the operator in respect of operating the retirement village to which the recurrent charges relate (including any wages apportioned to the retirement village by the operator's head office) are more than the threshold amount within the meaning of Schedule 1 to the [Payroll Tax Act 2007](#), or
 - (ii) before 1 March 2010, the residents of the retirement village consented to the financing of payroll tax by way of recurrent charges and that consent has not been revoked,
- (e) land tax,
- (f) gifts or donations,
- (g) costs associated with the operator's head office or management or administration fees unless the costs or fees are associated with providing services to residents of the retirement village and are included in the annual budget in accordance with clause 19 (2),
- (h) more than 50% of any increase, from the previous year, in the experience premium component of the insurance premium payable by the operator for insurance that the operator is required to obtain and maintain under the [Workers Compensation Act 1987](#),
- (i) if the retirement village is subject to a strata scheme—
 - (i) the carrying out of any works or maintenance that is required to be carried out by the owners corporation under the strata scheme (unless the operator is engaged by the owners corporation to carry out the work), or
 - (ii) levies and other contributions payable by the operator of the retirement village under the [Strata Schemes Management Act 2015](#) in respect of that strata scheme (other than levies payable in respect of premises occupied by a resident of the retirement village),
- (j) if the retirement village is subject to a community land scheme—
 - (i) the carrying out of any works or maintenance that is required to be carried out by the relevant community association, neighbourhood association or precinct association under the community land scheme (unless the operator is engaged by the association to carry out the work), or
 - (ii) levies and other contributions payable by the operator of the retirement village under the [Community Land Management Act 2021](#) in respect of that community

scheme (other than levies payable in respect of premises occupied by a resident of the retirement village).

26AA Operator may increase recurrent charges after former occupant's liability to pay ceases

- (1) For the purposes of section 152(3) of the Act, an operator of a retirement village may increase the recurrent charges payable by residents of the retirement village as a result of the liability incurred by the operator once a former occupant's liability to pay the charges ceases under section 152(2) of the Act only if—
 - (a) the increase occurs as part of the approved annual budget for the financial year immediately following the financial year in which the former occupant's liability ceased, and
 - (a1) the former occupant's liability ceased after 1 January 2021, and
 - (b) the approved annual budget, including the proposed annual budget, for the financial year specifies—
 - (i) the manner in which the increase was calculated, including the total number of former occupants whose liability was ceased in the financial year, and
 - (ii) that the increase occurred for the purposes of this clause.
- (2) To avoid doubt, Part 7, Division 4 of the Act continues to apply to an increase in the recurrent charges payable by residents of a retirement village under this clause.

Division 2A Asset management plans

26A Definitions

In this Division—

3-year report—see clause 19A(2).

asset register—see clause 26F(1).

effective life—see clause 26G.

maintenance schedule—see clause 26D(1).

major item of capital—see clause 19A(4).

shared major item of capital—see clause 19A(4).

26B Operator to prepare asset management plan

- (1) For the purposes of section 101A of the Act, an operator of a retirement village must prepare an asset management plan every 10 years in relation to each retirement

village that the operator manages or controls.

- (2) An asset management plan expires on the date that is 10 years after the date on which the plan commenced.
- (3) The operator is to ensure that the first asset management plan prepared commences on the commencement of the next financial year of the retirement village after 1 July 2021.

26C Preparation of asset management plans

- (1) In the course of preparing an asset management plan, an operator of a retirement village must—
 - (a) obtain the written opinion of the auditor or an independent qualified quantity surveyor as to whether the plan contains the matters specified in clauses 26D and 26F (an ***independent assessment***), and
 - (b) attach the independent assessment to the proposed plan, and
 - (c) notify each resident of the retirement village that a copy of the proposed plan, including the attached independent assessment, can be inspected at all reasonable times at the village or at a place of business in New South Wales nominated by the operator in the notice, and
 - (d) have a copy of the proposed plan, including the attached independent assessment, available at the village or at a place of business in New South Wales for inspection at all reasonable times by a resident or prospective resident or a person acting on behalf of a resident or prospective resident.
- (2) The requirements in subclause (1) must be complied with at least 60 days before the day on which the asset management plan is to commence.
- (3) A resident is entitled to give to the operator the resident's comments on the asset management plan.
- (4) The operator must prepare a report of all comments received.
- (5) The operator must state in the report, for each comment received—
 - (a) whether the operator revised the draft asset management plan in response to the comment and, if so, in what respect, or
 - (b) the reason why the operator did not revise the draft asset management plan in response to the comment.
- (6) An operator who started to prepare an asset management plan that is to commence on or before 29 August 2021 is not required to obtain and attach to the proposed plan an independent assessment.

(7) However, an operator who is not required to attach an independent assessment to a proposed plan must, on or before the commencement of the next financial year of the retirement village, obtain and attach an independent assessment to the plan that is current at that time.

(8) In this clause—

independent qualified quantity surveyor means a quantity surveyor who—

- (a) is a member of the Australian Institute of Quantity Surveyors or the Royal Institution of Chartered Surveyors, and
- (b) does not have a pecuniary or other interest that could be reasonably regarded as capable of affecting the person's ability to assess the asset management plan of a retirement village in good faith.

the auditor means the auditor whose appointment as the auditor of a retirement village has received the consent, or is taken to have received the consent, of the residents of the retirement village under the Act, Part 7, Division 6, Subdivision 1.

26D Content of asset management plan

(1) An asset management plan is to include—

- (a) the information specified in this clause relating to capital maintenance and capital replacement of each major item of capital, including each shared major item of capital (a ***maintenance schedule***), during the 10-year period to which the plan relates, and
- (b) an asset register, and
- (c) any other information required to be included by guidelines issued by the Secretary under section 189B of the Act.

Note—

Clause 26F sets out the information that must be contained in an asset register, being a list of major items of capital as at the commencement of an asset management plan. The maintenance schedule is prepared from the asset register.

(2) The maintenance schedule must contain the following information relating to capital maintenance that is financed, or proposed to be financed, by way of recurrent charges or from the capital works fund—

- (a) for works proposed to be carried out for the purpose of maintaining the item—
 - (i) an estimate of the costs of maintenance, and
 - (ii) the proposed frequency of maintenance or dates on which maintenance is proposed to be carried out, and

- (iii) the type of maintenance,
 - (b) for works proposed to be carried out, or that can be foreseen will be needed, for the purpose of repairing the item—
 - (i) an estimate of the costs of the repairs, and
 - (ii) the dates on which the repairs are proposed to be carried out, and
 - (iii) a description of the repairs,
 - (c) for a shared major item of capital—an estimate of the proportion of the accumulated capital maintenance costs that can be attributed to the use of the item by the village.
- (3) The maintenance schedule must contain, as applicable, the proposed dates of capital replacement.

26E Currency of asset management plans

- (1) An operator of a retirement village must ensure that the asset management plan is kept up to date by revising the plan from time to time in accordance with this clause.
- (2) A major item of capital that is purchased after the plan commences must be included in the asset register within 7 days of the purchase of the item.
- (3) If the content of a 3-year report included in an annual budget approved during the currency of the asset management plan differs from the information that was included in the plan at the time the plan commenced, the operator must, within 28 days of the annual budget being approved, revise the plan to ensure it remains consistent with the 3-year report.
- (4) The plan must be revised to include the following information relating to capital maintenance and capital replacement of each major item of capital, including each shared major item of capital, as soon as reasonably practicable after each occasion that capital maintenance or capital replacement of the item has been carried out—
 - (a) in respect of maintenance—
 - (i) the actual costs of maintenance, and
 - (ii) the dates on which maintenance was carried out, and
 - (iii) the type of maintenance,
 - (b) the accumulated costs of all maintenance expressed—
 - (i) in dollar amounts, rounded up or down to the nearest dollar, and
 - (ii) as a percentage of the original purchase price of the item,

- (c) in respect of repairs—
 - (i) the actual costs of the repairs, and
 - (ii) the dates on which the repairs were carried out, and
 - (iii) a description of the repairs,
- (d) the accumulated costs of all repairs expressed—
 - (i) in dollar amounts, rounded up or down to the nearest dollar, and
 - (ii) as a percentage of the original purchase price of the item,
- (e) for a shared major item of capital—the proportion of the accumulated capital maintenance costs that can be attributed to the use of the item by the village,
- (f) the actual date on which capital replacement was carried out,
- (g) the actual costs of capital replacement.

Note—

To express the accumulated costs of maintenance or accumulated costs of repairs as a percentage of the purchase price, the total costs of all maintenance or repairs should be divided by the purchase price and multiplied by 100.

26F Asset management plan to include asset register

- (1) The operator of a retirement village must include in the asset management plan an **asset register**, being—
 - (a) a list of the major items of capital, including shared major items of capital, as at the commencement of the plan, and
 - (b) the information specified in subclause (2) for each item.
- (2) The asset register is to contain the following information for each major item of capital and shared major item of capital listed—
 - (a) a brief description of the item,
 - (b) the effective life of the item,
 - (c) the asset ID number,
 - (d) the brand model number, if available and applicable,
 - (e) the serial number, if available and applicable,
 - (f) for an item that is not a building, structure or part of the infrastructure of the residential village—

- (i) the date of purchase, and
 - (ii) the purchase price,
- (g) if the item is a building, structure or part of the infrastructure of the residential village—
- (i) the date on which construction of the building, structure or part of the infrastructure was completed, and
 - (ii) the costs of construction,
- (h) for a shared major item of capital—the name of the retirement village or residential aged care facility also using that item.
- (3) If the item was purchased or constructed before 1 February 2021, the information is to be recorded for each item to the extent that the information is available.
- (4) The funding of capital maintenance of a major item of capital from the capital works fund or recurrent charges for the retirement village is not authorised if the item is not included in the asset register.

26G Calculating effective life of items of capital

- (1) The **effective life** of an item of capital means the period over which the item can reasonably be expected to be operational or used, being—
- (a) for an item of capital for which there is a description in Table A or Table B of the Schedule to the Commonwealth Taxation Ruling that corresponds to that item, other than a motor vehicle or trailer—the number of years specified in column 2 of Table A or Table B opposite the description that corresponds to the item, or
 - (b) for an item of capital that is a motor vehicle or trailer for which there is a description in Table B that corresponds to that item and a hash (#) symbol in the third column opposite that item—the shorter period of—
 - (i) the number of years specified in column 2 opposite that item, or
 - (ii) the number of years specified in column 3 of the table to section 40-102(4) of the *Income Tax Assessment Act 1997* of the Commonwealth, or

Note—

A hash (#) symbol in the third column of Table A or Table B indicates a capped life is available for the depreciating assets under section 40-102 of the *Income Tax Assessment Act 1997* of the Commonwealth.

- (c) if there is no description in Table A or Table B that reasonably corresponds to the item of capital for which the effective life is to be estimated—the number of years estimated by the operator of a retirement village—

- (i) having regard to the reasonable wear and tear expected to result from the circumstances of the use of the item of capital, and
 - (ii) assuming that it will be maintained in reasonably good order and condition, and
 - (iii) having regard to the period within which it is likely to be scrapped, sold for no more than scrap value or abandoned.
- (1A) In identifying a description in Table A or Table B that corresponds to an item of capital, an operator of a retirement village is to follow the methodology of using the tables set out under the heading “How to use Tables A and B” in the Commonwealth Taxation Ruling.

(2) In this clause—

Commonwealth Taxation Ruling means *TR 2020/3 - Income tax: effective life of depreciating assets (applicable from 1 July 2020)*, being a public ruling made under section 358-5 of the *Taxation Administration Act 1953* of the Commonwealth.

26H Revised asset management plans

- (1) This clause applies if, at any time during the currency of an asset management plan, it becomes apparent to the operator of a retirement village that the total cost of capital maintenance for all major items of capital, including shared major items of capital, estimated at the commencement of the plan is likely to increase by 25% or more before the end of the 10-year period of the plan.
- (2) For the purposes of subsection (1), an increase in the cost of capital maintenance is to be calculated net of increases in the Consumer Price Index published in each relevant year of the asset management plan.

Note—

For example, if the Consumer Price Index has risen by 2.5% each year of the first 5 years of the asset management plan, the cost of maintenance could rise by 36% (24% + 12.5%) before the plan would need to be revised under this clause.

- (3) The operator of the retirement village must, as soon as reasonably practicable after becoming aware of the likely increase in capital maintenance costs—
- (a) revise the estimates of the capital maintenance costs in the asset management plan, and
 - (b) notify each resident of the retirement village that a copy of the revised asset management plan can be inspected at all reasonable times at the village or at a place of business in New South Wales nominated by the operator in the notice, and
 - (c) annex to the revised plan a notice in accordance with subclause (4).

- (4) The notice to be annexed to a copy of the revised asset management plan is to contain the following information—
 - (a) a list of the major items of capital and shared major items of capital in respect of which the estimate of capital maintenance costs has increased,
 - (b) the original and revised estimates of capital maintenance costs for each item,
 - (c) the reason for the change in the estimates.
- (5) For the purposes of section 20(1)(k) of the Act, a revised asset management plan is prescribed.
- (6) Clause 26C(3)–(5) applies to the revised asset management plan in the same way as it applies to the asset management plan as originally prepared.
- (7) Subclause (1) applies to the revised asset management plan in the same way as it applies to the asset management plan as originally prepared except that the total cost of capital maintenance for all major items of capital is taken to be estimated as at the date on which the plan was revised.

Division 3 Other

27 Interest

For the purposes of sections 24 (4) (b), 43 (8) (b), 155 (3), 180 (4) (b) and (5) (b), 181(7)(b) and 182AK(3)(b) of the Act, the prescribed rate of interest is the rate prescribed under section 101 of the *Civil Procedure Act 2005* with respect to the payment of interest on a judgment debt.

28 Capital works fund

- (1) For the purposes of section 99 (3) of the Act, if the operator of a retirement village is a property trust or other corporation constituted by an Act, money in the capital works fund for the village may be held in any fund administered by the property trust or corporation concerned.
- (2) For the purposes of section 99 (5) (c) of the Act, the operator of a retirement village may use money from the capital works fund for any purpose (other than a purpose set out in section 99 (5) (a) or (b) of the Act) but only if—
 - (a) the residents of the village have, by special resolution, consented to the money being used for that purpose, and
 - (b) the use of the money for that purpose does not involve the funding of any matter specified in section 97 (3) of the Act.

29 Copies of audited accounts

For the purposes of section 119 (7) (a) of the Act, if there is no Residents Committee established in a retirement village a copy of the audited accounts for the village must be displayed on a notice board in a common area of the village for a period of at least 1 calendar month commencing no later than 4 calendar months after the end of the financial year to which the accounts relate.

30 Making good of deficit

For the purposes of section 120C (3) (c) of the Act, the operator of a retirement village may carry forward a deficit to a subsequent financial year to the extent that the deficit is caused by—

- (a) maintenance (but not replacement) of an item of capital in circumstances where the maintenance was for the purposes of rectifying any of the matters set out in section 92 (2) (a)-(k) of the Act, or
- (b) an increase in the cost of the following—
 - (i) utilities (other than telephone),
 - (ii) statutory charges including rates and taxes,
 - (iii) wages and salaries increased under an award or an industrial agreement,
 - (iv) workers compensation premium (other than any increase in the experience premium component of the insurance premium above 50% that is payable by the operator for insurance that the operator is required to obtain and maintain under the [Workers Compensation Act 1987](#)),
 - (v) public liability insurance.

Part 5 Meetings

31 Agenda at annual meeting

For the purposes of section 72A (6) of the Act, the agenda for an annual management meeting must include the following—

- (a) a report on any expenditure in the previous financial year that was a variation between items in the approved annual budget (other than a minor variation),
- (b) the future plans for the village, including any proposed improvements,
- (c) the management of the village, including any change or proposed change to the management arrangements,
- (d) safety issues,

- (e) the asset management plan,
- (e1) a report of the operator of the retirement village prepared under clause 26C(4),
- (f) any changes to the proposed annual budget that do not require the residents' consent,
- (g) any proposals to undertake capital works that have not been notified in the annual budget,
- (h) any proposed changes to the level of service provided to residents of the village,
- (i) time for questions, including questions raised from the floor.

32 Questions at annual meeting

- (1) For the purposes of section 72B (3) (b) of the Act, the operator of a retirement village or a representative of the operator is not required to answer a question about the following—
 - (a) the personal affairs of the operator, an employee of the operator or a contractor engaged by the operator,
 - (b) any matter that is unrelated to the operation of the village,
 - (c) any matter in relation to individual sales or contracts that are not in the public domain.
- (2) Subclause (1) (a) does not apply so as to prevent an operator or a representative of the operator from answering a question as to the operator's solvency or financial viability.
- (3) If the operator of a retirement village is an organisation that is subject to an approved privacy code or the Australian Privacy Principles under the [Privacy Act 1988](#) of the Commonwealth, a representative of the operator is not required to answer a question to the extent that the answer would disclose personal information in breach of the code or those Principles.

33 Proxies

- (1) For the purposes of section 77 (2) of the Act, the appointment of a person as the proxy of a resident of a retirement village is to be made in the form set out in Part 4 of Schedule 1.
- (2) The appointment is effective in relation to a meeting of the residents of the village only if the duly completed form is given to the chairperson of the meeting before any vote is taken at the meeting.

Part 5A Payments if certain residential premises not sold

Division 1 Preliminary

33A Interpretation

Words and expressions used in this Part have the same meanings as in Part 10AA of the Act.

Division 2 Exit entitlement orders

33B Definition of “prescribed component”

For the purposes of the definition of **prescribed component** of an exit entitlement in section 182AA of the Act, the components of an exit entitlement, except for the following, are prescribed—

- (a) the former occupant’s share of capital gain under the village contract,
- (b) the former occupant’s share of capital loss under the village contract.

33C Definition of “prescribed period”

For the purposes of paragraph (a) of the definition of **prescribed period** in section 182AB(9) of the Act, the following period is prescribed—

- (a) for a retirement village located in a local government area specified in Schedule 5A—6 months,
- (b) for a retirement village located in another local government area—12 months.

33D Secretary must consider matters relating to unreasonable delay of sale of residential premises

- (1) For the purposes of section 182AC(3) of the Act, the Secretary must consider the following matters when determining whether or not an operator of a retirement village has unreasonably delayed the sale of a former occupant’s residential premises—
 - (a) whether the operator has taken reasonable steps to facilitate the sale of the premises and the time in which the steps were taken, including in relation to—
 - (i) the carrying out of an inspection of the premises, whether by the operator or on the operator’s behalf, and
 - (ii) refurbishment of the premises,
 - (b) if the operator is appointed by the former occupant as a selling agent of the premises under section 168 of the Act—
 - (i) whether the operator complied with the operator’s requirements under that

section within a reasonable time, and

- (ii) whether the operator arranged for an inspection of the premises for the purposes of the sale of the premises within a reasonable time,
- (c) whether the actions of the operator delayed the provision or use of services of an Australian legal practitioner, licensed conveyancer or selling agent, as applicable, in relation to the sale of the premises,
- (d) whether the operator complied with other requirements imposed by or under the Act or this Regulation in relation to the sale of the premises within a reasonable time.

(2) In this clause—

refurbishment has the same meaning as in Part 10, Division 4 of the Act.

33E Content of exit entitlement orders

For the purposes of section 182AD(1)(f) of the Act, an exit entitlement order must contain the following information—

- (a) the period of time for which the former occupant has occupied the former occupant's residential premises,
- (b) the ingoing contribution paid by the former occupant to the operator of the retirement village under the village contract of the former occupant,
- (c) the departure fee payable by the former occupant to the operator under the village contract,
- (d) the amount of capital gain the former occupant and the operator will each receive in relation to the premises, if any, calculated on the basis of the agreed valuation of the former occupant's exit entitlement,
- (e) if the former occupant is required to pay a share of capital loss in relation to the premises—the amount of capital loss calculated on the basis of the agreed valuation of the former occupant's exit entitlement.

Division 3 Aged care facility payments

33F Operator must keep records in relation to accommodation payments

For the purposes of section 182AG(5)(a), an operator of a retirement village who makes an accommodation payment to an approved provider of an aged care facility in which a former occupant resides or proposes to reside under section 182AG of the Act must keep a record of the following—

- (a) the amount of each accommodation payment made by the operator on behalf of the

former occupant,

- (b) the date on which each accommodation payment was made,
- (c) details of the approved provider of the aged facility to whom the operator has made an accommodation payment,
- (d) if the operator is no longer required to make an accommodation payment on behalf of the former occupant—
 - (i) the date on which the final accommodation payment is made, and
 - (ii) details about the written notice given to the former occupant or the approved provider of the aged facility under section 182AG(4)(a) of the Act, including the date on which the notice was given.

33G Operator must provide information in relation to accommodation payments

- (1) For the purposes of section 182AG(5)(b) of the Act, an operator of a retirement village who makes 1 or more accommodation payments to an approved provider of an aged care facility on behalf of a former occupant must provide the former occupant with a document summarising the payments made to the approved provider (the **summary document**).
- (2) The operator must provide the summary document to the former occupant—
 - (a) for the first summary document—within 6 months after the first accommodation payment is made, and
 - (b) for subsequent summary documents—every 6 months.

Part 6 Applications to Tribunal and orders

34 Time for making application to Tribunal

- (1) An application to the Tribunal under a section of the Act specified in Column 1 of Schedule 4 may be made only within the time specified in Column 2 of that Schedule in relation to the section.

Note—

The Tribunal may, of its own motion or on application by any person, extend the period of time for making such an application, even though the relevant period has expired. See section 41 of the [Civil and Administrative Tribunal Act 2013](#).

- (2) An application to the Tribunal under any other section of the Act may be made at any time.

35 Applications to Tribunal by Residents Committee

- (1) The Residents Committee of a retirement village may, at the request of one or more

residents of the village, apply to the Tribunal on behalf of the resident or residents concerned for any order for which a resident may apply.

- (2) The Residents Committee may apply to the Tribunal on behalf of all residents for an order for which a resident may apply if the residents consent to the application.
- (3) The consent of the residents under subclause (2) is to be obtained by the proposal being put to a meeting of the residents and the vote for the proposal being determined by a show of hands.
- (4) Any resident who does not wish to be a party to the proceedings may notify the Residents Committee in writing of that fact before the application to the Tribunal is made, and the Residents Committee must exclude that resident from the application.

36 Tribunal may determine other party to application made by operator

The Tribunal may, if it considers it appropriate to do so, order that—

- (a) one or more specified residents of a retirement village, or
- (b) all the residents of the retirement village,

is the other party, or are the other parties, to an application made to the Tribunal by the operator of the village concerned.

37 Additional orders of Tribunal

For the purposes of section 128 (1) (l) of the Act, the Tribunal may make an order that varies, sets aside or stays a previous order of the Tribunal that is in force under this Act.

38 Differential orders

The Tribunal may make different orders in relation to different residents (or groups of residents) of a retirement village in determining—

- (a) an application to which 2 or more residents of the village are parties (whether the application was made jointly by the residents or by the Residents Committee on behalf of the residents), or
- (b) an application made by the operator of the village, being an application to which 2 or more residents are the other parties.

39 Disputes between operator and resident

For the purposes of section 122 (2) of the Act, a resident of a retirement village is nominated as the representative of 2 or more residents in the village who claim that a dispute has arisen between those residents and the operator of the village (whether or not the nominated resident is a party to the dispute) if—

- (a) each resident who is a party to the dispute signs a statement to the effect that the

resident named in the statement is nominated as the signatory's representative, and

(b) the nominated resident consents in writing to the nomination.

Part 7

40-45 (Repealed)

Part 8 Miscellaneous

46 Renovations and alteration of fixtures and fittings

For the purposes of section 41A (7) (b) of the Act, the consent of the operator of a retirement village is not required in order for a resident to make renovations to, or to add, remove or alter any fixtures or fittings in, residential premises that are owned by the resident under a community land scheme, company title scheme or strata scheme.

46A Operator may enter residential premises in certain circumstances

- (1) This clause applies to a former occupant of residential premises in a retirement village in relation to whom an exit entitlement order has been made by the Secretary under section 182AC of the Act.
- (2) For the purposes of section 67(2)(g) of the Act, an operator of a retirement village or other person authorised by the operator may enter residential premises of a former occupant in the retirement village for the purposes of facilitating the sale of the premises.
- (3) However, the operator or other person may enter the premises of a prescribed former occupant only if the operator or other person and the prescribed former occupant agree in writing.
- (4) In this clause—

prescribed former occupant means a former occupant who—

- (a) does not intend to move out of the former occupant's residential premises while the premises are for sale, and
- (b) has given written notice to the operator of that fact under section 182AB(4)(c) of the Act, and
- (c) continues to occupy the premises on the date on which the operator proposes to enter the premises.

47 Liability of former occupant if village contract terminated during settling-in period

- (1) For the purposes of section 44B (1) (d) of the Act, if a village contract is terminated in accordance with Division 2 of Part 5 of the Act, the former occupant is liable to pay the

reasonable costs incurred in adding, removing or altering any fixtures or fittings, or making any renovations, to the unit at the resident's specific request.

- (2) For the purposes of section 44B (4) of the Act, \$200 is the maximum administration fee that may be charged under section 44B (1) (c) of the Act.

48 Membership of Residents Committee

- (1) For the purposes of section 70A (1) of the Act, a person may hold the same office on the Residents Committee of a retirement village for more than 3 consecutive years if—
- (a) the person is the only person standing for election to the office, or
 - (b) the residents of the retirement village, by special resolution, consent to the person standing for election to the office.
- (2) In this clause—

office, on a Residents Committee of a retirement village, means the office of chairperson, secretary or treasurer.

49 Termination notice

- (1) For the purposes of section 131 (2) of the Act, a termination notice is to be in the form set out in Part 5 of Schedule 1.

Note—

A termination notice does not have to be given if the application to terminate a residence contract is made on the grounds of the resident's causing serious damage to the village or serious injury to the operator, an employee of the operator or another resident. See section 135 of the Act.

- (2) Except in the case of an application referred to in section 136 of the Act, the notice is to be given no later than at the time at which the applicant makes the application to the Tribunal, but no earlier than 28 days before that time.
- (3) If the person who gave the notice does not apply to the Tribunal for the relevant order within 28 days after giving the notice, a fresh termination notice must be given (in accordance with subclause (2)) before the application may be made.

50 Protection of ingoing contributions

For the purposes of section 182A (1) (b) of the Act, the amount of \$10,000 is prescribed.

50AA Initial provision of relevant village information

- (1) For the Act, section 197B(1)(a), the operator of a retirement village must provide the relevant village information to the Secretary in an approved form—
- (a) for a retirement village in operation on the commencement of this clause—before 30 September 2022, or

(b) otherwise—at the point of registration of the retirement village.

- (2) If the relevant village information specified in Schedule 7 and provided under subclause (1) changes, the operator must provide the Secretary with the updated relevant village information within 21 days of the operator becoming aware of the change.

Maximum penalty—

- (a) for a body corporate—100 penalty units, or
(b) otherwise—50 penalty units.

50AB Annual provision of relevant village information

- (1) For the Act, section 197B(1)(a), the operator of a retirement village must provide the Secretary with the relevant village information as at the end of the previous financial year of the retirement village.
- (2) The operator must provide the information to the Secretary—
- (a) within 1 month of the end of each financial year, and
(b) in an approved form.
- (3) If relevant village information specified in Schedule 7 changes after the information is provided, the operator must provide the Secretary with the updated relevant village information within 21 days of becoming aware of the change.

Maximum penalty—

- (a) for a body corporate—100 penalty units, or
(b) otherwise—50 penalty units.

50AC Publication of relevant village information by Secretary

For the Act, section 197B(1)(b), the Secretary may publish relevant village information on a website of the Department.

50A (Repealed)

51 Service of documents generally

- (1) For the purposes of section 201 (1) (c) and (2) (c) of the Act, a notice (other than a termination notice) or other document may be given to the operator or a resident of a retirement village by any of the following methods—
- (a) left in a mailbox at the last known address of the person, or,
(b) if the person has agreed to notices or documents being given by email—to an

email address provided by the person, or

- (c) if the person is a resident—given by delivering it to the residential premises occupied by the person and leaving it there with a person apparently of or above the age of 16 years, or
 - (d) if the person is an operator—given personally to an employee of the person.
- (2) However, a notice (including a termination notice) or other document required to be given under the Act or this Regulation—
- (a) to a resident of a retirement village who is a protected person (within the meaning of the *NSW Trustee and Guardian Act 2009*) or who has a guardian—is to be given to the NSW Trustee and Guardian or the guardian as appropriate (and, if the resident is both a protected person and a person who has a guardian, is to be given to both the NSW Trustee and Guardian and the guardian), or
 - (b) to an operator of a retirement village in respect of whom a receiver, or a receiver and manager, or an administrator, has been appointed—is to be given to the receiver, receiver and manager or administrator concerned.
- (3) Subclause (1) extends to apply (with the necessary modifications) to a notice or other document that is required to be given to the NSW Trustee and Guardian, a guardian, a receiver, a receiver and manager or an administrator under subclause (2).

51A Exemption for certain village contracts

For the purposes of section 203(4) of the Act, a village contract is exempt from Part 10AA and section 152(2)(e) of the Act if—

- (a) the retirement village to which the contract applies is held in trust by a trustee, and
- (b) the trustee also holds each unit in the retirement village in trust for the benefit of a resident in the retirement village.

52 Conduct of written ballot

For the purposes of clauses 3 (1) (b) and 5 of Schedule 1 to the Act, a ballot is to be conducted in accordance with Schedule 6.

52A Rules of conduct for operators

The *Rules of Conduct for Operators of Retirement Villages* set out in Schedule 3A are prescribed as the rules of conduct for operators for the purposes of section 83B of the Act.

52B COVID-19 pandemic—extension of prescribed period

The prescribed period referred to in the Act, section 204(7) ends at the beginning of 31 March 2022.

53 Savings and transitional provisions

- (1) Any act, matter or thing that, immediately before the repeal of the [Retirement Villages Regulation 2009](#), had effect under that Regulation, continues to have effect under this Regulation.
- (2) An operator of a retirement village does not commit an offence under clause 19A for failing to comply with the requirements of that clause during the transition period.
- (3) An operator of a retirement village does not commit an offence under section 101A of the Act for failing to comply with the requirements of that section during the transition period.
- (4) Nothing in this clause affects the operation of clause 53(2) before its amendment by the amending regulation.
- (5) In this clause—

amending regulation means the [Retirement Villages \(Asset Management Plans and Exit Entitlements\) Amendment Regulation 2021](#).

transition period means the period commencing on the date on which the amending regulation commenced and ending on 30 June 2022.

Schedule 1 Forms

(Clause 3 (1))

Part 1 General inquiry document

(Clause 11 (1))

GENERAL INQUIRY DOCUMENT

Current as at...(insert date)

This general inquiry document is required to be given to you as a prospective resident or as a person acting on behalf of a prospective resident.

Village details

Name of retirement village

Street address

Website

Residency in this village is available under [tick one or more]—

strata title

leasehold

non-registered lease/licence

community title

- rental only
- company title
- other [*specify*]

Management details

Name of operator

How many retirement villages do we operate in NSW?

We have operated retirement villages in NSW since [*insert year*]

Are we a member of any industry association? Yes/No

If yes, name of association—

Contact person for further information about the village—

Name—

Position—

Phone—

Email—

Accommodation details

Has construction/development of the village been completed? Yes/No

There are currently/planned to be [*insert total*] residential premises in the village, made up of—

..x bedsitters

..x 1br premises

..x 2br premises

..x 3br premises

..x other [*specify*]—

The residential premises in the village are: [*tick all that are applicable*]

- Self-care premises/Independent Living Units
- Serviced apartments/Assisted Care Units
- Single storey and/or Multi-storey

Is there a residential aged care facility onsite or attached? Yes/No

Note—

Aged care facilities are not covered by the [Retirement Villages Act 1999](#) (NSW). Entry is not guaranteed and will be subject to availability and meeting the eligibility requirements set by Commonwealth government laws.

Financial matters

The asking price to enter the village is currently—

\$.. or ranges from \$.. to \$..

The amount of recurrent charges payable to live in the village is currently—

\$.. per .. or ranges from \$.. per .. to \$.. per ..

Do residents pay a departure fee when they leave? Yes/No

Do residents share in any capital gains? Yes/No

(Other fees and charges may apply.)

Village facilities and services

Facilities and services available at the village include: *[tick all that are applicable]*

- | | |
|----------------------------------------------------|------------------------------------------------------------------------------------|
| <input type="checkbox"/> on-site manager | <input type="checkbox"/> visiting hairdresser |
| <input type="checkbox"/> village bus | <input type="checkbox"/> swimming pool |
| <input type="checkbox"/> emergency call system | <input type="checkbox"/> tennis court |
| <input type="checkbox"/> restaurant | <input type="checkbox"/> bowling green |
| <input type="checkbox"/> dining room | <input type="checkbox"/> gym |
| <input type="checkbox"/> shop | <input type="checkbox"/> chapel/prayer room |
| <input type="checkbox"/> library | <input type="checkbox"/> workshop |
| <input type="checkbox"/> community room/centre | <input type="checkbox"/> storage area for boats/caravans |
| <input type="checkbox"/> arts and crafts room | <input type="checkbox"/> optional services (e.g. meals, laundry and home cleaning) |
| <input type="checkbox"/> activities/games room | <input type="checkbox"/> other <i>[specify]</i> |
| <input type="checkbox"/> medical consultation room | |

Village life

Are pets allowed in the village? Yes*/No

Can residents do their own gardening? Yes*/No

Are there organised social activities in the village? Yes/No

Are there any village rules in force in the village? Yes/No

Does the village have a residents committee? Yes/No

If yes, name of secretary or chairperson—

Phone No/email—

* Conditions and restrictions may apply

More information

This document gives a basic explanation about the village. It contains general information only and may be subject to change.

You can use the calculator for retirement villages published by NSW Fair Trading to calculate certain costs relating to moving into a retirement village by visiting www.rvcalculator.fairtrading.nsw.gov.au.

You should also read the NSW Fair Trading publication *Moving into a retirement village?* which gives an overview of the retirement village industry and contains a useful checklist for prospective residents. For more information on your rights and responsibilities, contact Fair Trading by visiting www.fairtrading.nsw.gov.au or calling 13 32 20. A disclosure statement and village contract will provide you with more information should you decide to become a resident.

Part 2 Disclosure statement

(Clause 11 (2))

DISCLOSURE STATEMENT

Retirement Villages Act 1999, section 18 (3A)

This disclosure statement is required to be given to you at least 14 days before you enter into a village contract. It contains important information about this village.

You should read this disclosure statement carefully. It is important that you understand this information and what it means for you. You should seek independent legal or financial advice if you are unsure about any details. Your village contract will contain more detail about some of the matters covered in this disclosure statement.

If you enter into a village contract, a 7 business day cooling-off period will generally apply, if you change your mind. The law also provides a 90-day settling-in period during which you may terminate the contract. Despite these protections, you should think carefully if living in a retirement village is right for you, and if so whether you have found the right premises, before you sign a contract.

For information on your rights and responsibilities under the retirement village laws, contact NSW Fair Trading by visiting www.fairtrading.nsw.gov.au or calling 13 32 20.

Name of village—

Premises in which you have expressed an interest No—

Amount of ingoing contribution/purchase price for the premises \$..

Current rate of recurrent charges for the premises \$.. per ..

Share of any capital gains payable to you on termination ..%

Formula for departure fee payable by you on termination—

* Other fees and charges may apply. For further details ask the operator or refer to the draft village contract.

Note—

If for any of the above the answer is not applicable, write NA in the space provided.

Average resident comparison figure—

Note—

The average resident comparison figure is indicative only and is based on assumptions that may differ from your individual circumstances. You can use this figure to more easily compare the costs of different village contracts, but it should not be relied on in place of the terms of your contract. This figure may not reflect the actual costs payable by the resident. For further information contact NSW Fair Trading by visiting www.fairtrading.nsw.gov.au or calling 13 32 20.

1 VILLAGE CONTRACTS

To become a resident you will need to enter into: *[tick those applicable]*

- a village contract
- a contract for sale of the premises
- other: *[specify, including the name of the contract and its purpose]*

Note—

An operator cannot by law enter into a village contract with you earlier than 14 days after you or your representative have been given a copy of the contract. You should use this time to read the contract carefully and seek independent advice, if needed.

2 DOCUMENTS YOU MUST PROVIDE

Will you have to provide any documents or reports before or at the time of signing a village contract? Yes/No

If yes, give details of what documents are required and who will have access to them—

3 VILLAGE DEVELOPMENT

Is the village fully or partially completed, or still to be built?

If the village is only partially completed or still to be built give particulars of all proposed stages, including the

estimated date of completion, the number of premises and whether development consent has been obtained—

4 VILLAGE MANAGEMENT

Name of operator—

Does the entity who manages the village also own the land? Yes/No

If no, give details of who owns the land—

Is any operator currently subject to any form of insolvency administration, such as receivership or being operated by a court appointed administrator? Yes/No

If yes, give details—

The law requires operators to hold annual management meetings with residents. In what month are these meetings usually held at this village?

5 VILLAGE SERVICES AND FACILITIES

Are there any plans to introduce a new service or facility in the village? Yes/No

If yes, specify the service or facility concerned and the date by which it is to be provided or made available—

Does the development consent require that a particular service or facility be provided for the life of the village? Yes/No

If yes, specify—

Are there any current proposals to reduce or withdraw a service or facility in the village? Yes/No

If yes, give details of the proposal—

Are there any services or facilities currently available in the village payable on a user pays basis and not covered by my recurrent charges? Yes/No

If yes, list the services or facilities and their current cost—

Are any facilities in the village available or proposed to be made available for use by non-residents? Yes/No

If yes, specify—

6 FINANCIAL MANAGEMENT

The financial year of the village is from [date] to [date]

Have residents of the village consented to any of the following?: [tick all applicable]

- not receiving a proposed budget each year
- not receiving quarterly accounts of income and expenditure
- not having the annual accounts of the village audited

Note—

These consents can only be given if the total recurrent charges for the village for the year are less than \$50,000.

Details of the surplus/deficit in the annual accounts for the last three financial years—

Financial year ending	Amount
	\$ (surplus/deficit)
	\$ (surplus/deficit)
	\$ (surplus/deficit)

Note—

Under the retirement village laws any deficit must generally be made good by the operator.

Does the village have a capital works fund for capital maintenance? Yes/No

If yes, the balance in the fund at the end of the last financial year was: \$

In which month/s are recurrent charges usually varied?

Are variations in recurrent charges linked to a fixed formula? Yes/No

If yes, give details of the formula—

If no, the recurrent charges for the premises you are interested in over the last 3 financial years have been as follows—

Financial year ending	Actual rate of recurrent charges	\$ change from previous year	% change from previous year
------------------------------	-----------------------------------------	-------------------------------------	------------------------------------

Note—

Previous increases are not necessarily an indication of future increases.

7 INSURANCE

The retirement village is insured as follows—

Type	Amount	Insurer	Period
-------------	---------------	----------------	---------------

Public liability

Building (including reinstatement)

Other—specify type

8 PAYMENT FOLLOWING TERMINATION OF CONTRACT

Were all payments due to outgoing or former residents in the last financial year made in full and on time? Yes/No

If no, give reasons—

Will there be any mortgage, lien or other charge on or over the land that will apply when you first have a right to occupy your premises (excluding the statutory charge under the retirement village laws)? Yes/No

If yes, give details—

Note—

In strata and community title villages 'land' refers to the unit or lot. For non-strata villages, 'land' means the village land.

How many premises were vacant as at the end of the last financial year?

Comment—

How many premises were reoccupied during the last financial year?

Comment—

9 SECURITY AND SAFETY

Does the premises you are interested in have a security screen door? Yes/No

Are all the windows of the premises fitted with key operated locks? Yes/No

Does the premises have smoke alarm/s as required by law? Yes/No

Has the operator been notified of any residential premises in the village having been broken into over the last two years? Yes/No

Are the premises and common areas in the village accessible to persons with impaired mobility, including those in wheelchairs? Yes/No/Partially

Does the village have a village emergency system that enables residents to summon assistance in an emergency? Yes/No

If yes, provide details—

Does the operator have a master key or copies of keys to all residential premises for use in an emergency? Yes/No

10 COMPLIANCE WITH LEGISLATION

Has the operator been convicted of an offence under the retirement village laws? Yes/No

If yes, give details of the offence and amount of penalty—

Has the operator complied with all requirements of any development consent relating to the village? Yes/No

If no, give details—

Has the village been registered as required by the retirement village laws? Yes/No

If no, give details of the delay—

11 DISPUTE RESOLUTION

Does the village have an internal system for resolving disputes? Yes/No

If yes, specify—

Are there any outstanding orders of the NSW Civil and Administrative Tribunal or a court involving the village which the operator has not complied with? Yes/No

If yes, specify—

12 MORE INFORMATION

You have the right to ask for a copy of, or to inspect, any or all of the following documents free of charge—

- a site plan for the village
- plans showing the location, floor plan and significant dimensions of residential premises available in the village
- examples of all contracts that you may be required to enter into
- the budgets for the last 3 financial years of the village, the current financial year, and the next financial year (if available)
- the annual accounts for the village for the last 3 financial years
- the most recent quarterly accounts of the income and expenditure of the village (unless the residents have consented to not receiving these)
- the trust deed for any trust fund into which money paid by residents is deposited
- the terms of any development consent, if the village is not complete or if the development consent requires a particular service or facility to be provided for the life of the village
- if the village has a capital works fund, statements showing the balance as at the end of each of the last 3 financial years of the village, and the most recent quarter
- the village's waiting list policy, if relevant
- court or Tribunal decisions from the last 5 years in which the operator and the Residents Committee were a party
- copies of certificates of currency of insurance and related policy documents
- the last annual safety inspection report for the village

- the company's constitution and replaceable rules (*company title villages only*)
- the management statement, management agreement and minutes of the most recent annual general meeting (*community land scheme villages only*)
- the by-laws, management agreement and minutes of the most recent annual general meeting (*strata scheme villages only*)
- a detailed list of all currently available/vacant premises in the village
- the most recent asset management plan
- the most recent 3-year report relating to capital maintenance extracted from the most recent asset management plan and included in the most recent annual budget
- other [*specify*]

This disclosure statement was:

- given personally
- sent by post
- other [*specify*]

Date given/posted—

Name of prospective resident/s—

Was this statement given to a person acting on behalf of the prospective resident/s? Yes/No

If yes, name of acting person—

The operator warrants that, to the best of the operator's knowledge, the information contained in this statement is true and accurate at the time it is provided.

Signed by operator—

Print Name—

Date—

13 STANDARD FEES AND CHARGES

The table below is a summary of the fees and charges in your retirement village contract. Use this Table with NSW Fair Trading's Retirement Villages Calculator to help you understand the costs of this retirement village. For more information or to use the calculator, visit rvcalculator.fairtrading.nsw.gov.au.

PROPERTY DETAILS

Postcode where retirement village is located—

Is the unit attached to other units in the village— Yes/No

Loan/Licence—Non-registered interest holder

Lease (50 years or less)—Non-registered interest holder

Title of the property: [*select only one*]

Lease (50 years or more)—Registered interest holder

Strata title—Registered interest holder

Community title—Registered interest holder

Company title—Registered interest holder

ENTRY FEES

Entry Payment— (This is a one-off fee, excluding the items below)	\$	
Other entry fees— <i>If none, put \$0 and strikethrough.</i>	Parking Space—	\$
	Garage	\$
	Storage Area—	\$
	Furniture—	\$
	Other—	\$

ONGOING FEES

Total recurrent charges—	\$	per: week / fortnight / month
Optional services of—	\$	are included in this amount
Strata levies	\$	per: week / fortnight / month

CAPITAL GROWTH

Share of capital gain (if none, put 0%)—
Share of capital loss (if none, put 0%)—

EXIT FEES

Departure fee is based on [select one only]—

Entry payment
New entry payment
Other: [please specify]

	Years	Fee percentage:
Departure fee structure—	to	%
[Insert additional rows if required]	to	%
	to	%
	to	%
Administration fee: [If none, put \$0]	\$	
Other exit fees: [If none, put \$0]	\$	

Part 3 Condition report

(Clause 15 (2))

RESIDENTIAL PREMISES CONDITION REPORT

Address of residential premises—

Date of inspection—

How to complete this report—

- 1 The operator, or an agent or employee of the operator, must inspect the premises and complete this report in accordance with these directions.
- 2 The report is to be completed in the presence of the prospective resident (or a person nominated by the prospective resident).
- 3 The report must be completed to the best of the operator’s knowledge (or, if the inspection is carried out by an agent or employee of the operator, to the best of that agent’s or employee’s knowledge).
- 4 During an inspection of the premises, the operator (or agent or employee of the operator) and prospective resident (or person nominated by the prospective resident) must record the condition of the premises by indicating whether the particular room is clean, undamaged and in working order, by placing a “Y” or “Yes” or “N” or “No” in the appropriate column and by including comments on the condition of the item where relevant. Photographs may be attached detailing the condition of the premises. If required, additional pages may be attached to list all other fixtures, fittings, furniture or household items supplied with the premises, clearly labelling the room to which the additional items relate.
- 5 If a required date is not known, an approximate date must be given and identified as such.
- 6 No less than 14 days must be allowed for the prospective resident (or the prospective resident’s nominee) to examine the report and suggest changes to it.
- 7 The report must be signed by the operator (or, if the inspection is carried out by an agent or employee of the operator, by that agent or employee). The prospective resident (or the prospective resident’s nominee) must also sign the report if he or she agrees with it.
- 8 The condition report must be completed and provided to the prospective resident—
 - (a) at least 14 days before the operator and the prospective resident enter into a village contract, or
 - (b) if the premises are still being constructed, at least 14 days before the prospective resident occupies the premises.
- 9 A copy of the condition report must be annexed to the first village contract that the prospective resident enters into with the operator.

CONDITION REPORT

Entrance/Hall	Clean	Undamaged	Working	Comments
Front door				
Screen door				
Walls/picture hooks				
Doorway frames				

Windows/screens/locks

Ceiling

Light fittings

Blinds/curtains

Light switches

Power points/switches

Skirting boards

Floor coverings

Other

Lounge room	Clean	Undamaged	Working	Comments
--------------------	-------	-----------	---------	----------

Walls/picture hooks

Doors/doorway frames

Windows/screens/locks

Ceiling

Light fittings

Blinds/curtains

Light switches

Power points/switches

Skirting boards

Floor coverings

Other

Dining room	Clean	Undamaged	Working	Comments
--------------------	-------	-----------	---------	----------

Walls/picture hooks

Doors/doorway frames

Windows/screens/locks

Ceiling

Light fittings

Blinds/curtains

Light switches

Power points/switches

Skirting boards

Floor coverings

Other

Kitchen	Clean	Undamaged	Working	Comments
----------------	-------	-----------	---------	----------

Walls/picture hooks

Doors/doorway frames

Windows/screens/locks

Ceiling

Light fittings

Blinds/curtains

Light switches

Power points/switches

Skirting boards

Floor coverings

Cupboards/drawers

Bench tops/tiling

Sink/taps/disposal unit

Stove top/hot plates

Oven/griller

Exhaust fan/range hood

Refrigerator

Microwave

Dishwasher

Other

Bedroom 1	Clean	Undamaged	Working	Comments
------------------	-------	-----------	---------	----------

Walls/picture hooks

Built in wardrobe/shelves

Doors/doorway frames

Windows/screens/locks

Ceiling

Light fittings

Blinds/curtains

Light switches

Power points/switches

Skirting boards

Floor coverings

Other

Bedroom 2	Clean	Undamaged	Working	Comments
------------------	-------	-----------	---------	----------

Walls/picture hooks

Built in wardrobe/shelves

Doors/doorway frames

Windows/screens/looks

Ceiling

Light fittings

Blinds/curtains

Light switches

Power points/switches

Skirting boards

Floor coverings

Other

Bedroom 3	Clean	Undamaged	Working	Comments
------------------	-------	-----------	---------	----------

Walls/picture hooks

Built in wardrobe/shelves

Doors/doorway frames

Windows/screen/locks

Ceiling/light fittings

Blinds/curtains

Lights/power points

Skirting boards

Floor coverings

Other

Bathroom	Clean	Undamaged	Working	Comments
-----------------	-------	-----------	---------	----------

Walls/tiles

Floor tiles/floor coverings

Doors/doorway frames

Windows/screens/locks

Ceiling

Light fittings

Blinds/curtains

Light switches

Power points/switches

Bath/taps

Shower/screen/taps

Shower seat

Hand held shower hose

Sink/taps

Mirror

Cabinet

Vanity

Towel rails

Grab rails

Toilet/cistern/seat

Toilet roll holder

Exhaust fan/vent

Other

Laundry	Clean	Undamaged	Working	Comments
----------------	-------	-----------	---------	----------

Walls/tiles

Floor tiles/floor coverings

Doors/doorway frames

Windows/screens/locks

Ceiling

Light fittings

Blinds/curtains

Light switches

Power points/switches

Washing machine/taps

Exhaust fan/vent

Washing tub

Dryer

Other

Security/Safety	Clean	Undamaged	Working	Comments
------------------------	-------	-----------	---------	----------

External door locks

Window locks

Other security devices

Smoke alarms

Electrical safety switch

Other

General	Clean	Undamaged	Working	Comments
----------------	-------	-----------	---------	----------

Heating/air conditioning

Staircase/handrails

Balcony/porch/deck

Garden

Lawns/edges

Clothesline

Garbage bins

Garage

Carport

Storeroom

Shed

Hot water system

Gutters/downpipes

Other

What keys are provided with the premises? *List:*

If the premises has carpet, when was it laid?

If the premises has blinds or curtains, when were they installed?

When was the kitchen installed?

When was the bathroom last renovated?

Is electricity available to be connected by the resident? Yes/No

Will the resident be separately billed by the supply authority for electricity charges relating to the premises? Yes/No

If yes, the electricity meter reading is—

Is gas available to be connected by the resident? Yes/No

Will the resident be separately billed by the supply authority for gas charges relating to the premises? Yes/No

If yes, the gas meter reading is—

Will the resident be separately billed by the supply authority for water usage charges relating to the premises? Yes/No

If yes, the water meter reading is—

Is there a telephone line installed on the premises available to be connected by the resident? Yes/No

Is there the ability for the resident to connect to the internet? Yes/No

If yes, is the village connected to the NBN— Yes/No

Are there any signs of mould/dampness? Yes/No

Are the premises generally clean and free of rubbish? Yes/No

Are there any signs of fleas, cockroaches, ants or other pests? Yes/No

At the end of the report above the signatures, insert a 'prospective resident comment' box that allows the prospective resident to make any comments about the condition report above, i.e. if they have noted something incorrect or that they disagree with.

Promised improvements/repairs—

Has the operator undertaken to do any improvements/repairs to the premises? Yes/No

Work to be undertaken

Estimated completion date

Signature of operator or operator's nominee—

Printed name of operator or nominee—

Date of signature—

Note—

The prospective resident, or the prospective resident's nominee, should not sign this report if they do not agree with it.

Signature of prospective resident or prospective resident's nominee—

Printed name of prospective resident or nominee—

Date of signature—

Part 4 Form of appointment of proxy

(Clause 33 (1))

Retirement Villages Act 1999

I, *[insert name of resident]* being a resident of *[insert address of resident]* appoint *[insert name of proxy holder]* of *[insert address of proxy holder]* as my proxy to vote for me on my behalf at a meeting of residents, held for the purpose of considering and voting on—

- (a) any matter in respect of which the consent of residents is required under the *Retirement Villages Act 1999*,
and
- (b) any other matter affecting the management and operation of the village.

I authorise my proxy to vote on my behalf in respect of *[tick whichever applicable]*—

- all matters raised at the meeting at their discretion, or
- the following matters only: *[Specify the matters and any limitation on the manner in which you want your proxy to vote]*.

Signature of resident—

Date of signature—

Notes—

- 1 A person who may be appointed as a proxy includes a friend or relative of the resident, the resident's guardian, a member of the Residents Committee or another resident of the retirement village, but no person may hold more than 2 proxies at the same time.
- 2 The Act does not allow an operator, or a close associate of the operator to hold or exercise a proxy on behalf of a resident.
- 3 This appointment is effective only if this duly-completed form is given, before any vote is taken, to the chairperson of the meeting at which the proxy is to vote.
- 4 However, this form does not authorise voting on a matter if the person appointing the proxy is present at the relevant meeting and personally votes on the matter.
- 5 This appointment terminates after the first meeting at which it is exercised, or 6 months from the date the appointment is made, whichever occurs first.
- 6 This form may be revoked at any time by the resident giving notice in writing to the person appointed as the resident's proxy.

Part 5 Form of notice of intention to seek termination of residence contract

(Clause 49 (1))

Notice of intention to seek termination (from an operator to a resident)

Retirement Villages Act 1999, section 131

To *[insert name of resident]*
of *[insert address of resident]*

This notice is to advise you that it is our intention to apply to the NSW Civil and Administrative Tribunal for an order terminating your residence contract.

This notice does not require you to vacate the premises. The decision as to whether your contract is terminated rests solely with the Tribunal. You will have an opportunity to argue your case at a hearing of the Tribunal. The Registry of the Tribunal will notify you regarding the date and venue of the hearing.

If, however, you choose to move out after receiving this notice your contract will terminate on the date on which you deliver up vacant possession of the premises. You will not be liable to pay any recurrent charges that arise in respect of the premises after that date, and any refund of your ingoing contribution must be made no later than one month after that date.

The reason or reasons for seeking an order to terminate your residence contract are as follows [*tick whichever applicable*]
—

- in our opinion the premises you currently occupy are no longer suitable for your continued occupation on the grounds of your physical or mental incapacity
- you have breached term [*insert term number*] of your village contract by [*insert details of alleged breach*]
- you have breached village rule number [*insert rule number*] by [*insert details of alleged breach*]

Note—

If notice is given on the grounds of a breach of a village contract or the village rules, the Tribunal may refuse to make an order terminating the residence contract if the breach is remedied. The Tribunal may also refuse to make an order if it does not agree that the breach was serious or persistent enough to justify terminating the contract.

- you have intentionally or recklessly caused or permitted, or are likely to intentionally or recklessly cause or permit [*delete whichever not applicable*]
—
 - (a) serious damage to any part of the village
 - (b) injury to the operator
 - (c) injury to an employee of the operator
 - (d) injury to any other resident
- it is our intention to carry out such substantial works in the village that we require vacant possession of your residential premises
- it is our intention to use the land on which the village is situated for a purpose other than a retirement village

Signature of operator or operator's nominee—

Printed name of operator or nominee—

Date of signature—

This notice was given personally/sent by post [*delete whichever is not applicable*]

Note—

This notice lapses if the operator does not apply to the Tribunal for an order terminating your residence contract within 28 days after service of the notice.

Notice of intention to seek termination (from a resident to an operator)

Retirement Villages Act 1999, section 131

To [*insert name of operator*]
of [*insert address of operator*]

This notice is to advise you that I/we [*insert name of each resident*] of [*insert address of resident/s*] intend to apply to the Tribunal for an order terminating the residence contract between us.

The reason or reasons for seeking an order to terminate the residence contract are as follows [*tick whichever applicable*]
—

- in my/our opinion the premises I/we currently occupy are no longer suitable for my/our continued occupation on the grounds of my/our physical or mental incapacity
- you have breached term [*insert term number*] of my/our village contract by [*insert details of breach*]
- you have breached village rule number [*insert rule number*] by [*insert details of breach*]

Note—

If notice is given on the grounds of a breach of a village contract or the village rules, the Tribunal may refuse to make an order terminating the residence contract if the breach is remedied. The Tribunal may also refuse to make an order if it does not agree that the breach was serious or persistent enough to justify terminating the contract.

Signature of each resident or resident's nominee—

Printed name of each resident or nominee—

Date of signature—

This notice was given personally/sent by post [*delete whichever is not applicable*]

Note—

This notice lapses if the residents/s does/do not apply to the Tribunal for an order terminating the residence contract to which you and the resident/s are parties within 28 days after service of the notice.

Schedule 2 Standard form of village contract

(Clause 17 (1))

Standard Form Village Contract

Retirement Villages Act 1999, section 43

Village:

Operator(s):

Resident 1:

Resident 2:

KEY TERMS

Operator(s)—

Name of Operator(s)—

[*Where there is more than one operator, refer to the additional terms for the rights and responsibilities of each operator*]

Address for service of notices—

Postcode—

Resident(s)—

Name of Resident 1—

Name of Resident 2—

Address for service of notices—

Postcode—

Where there is more than one resident they are joint tenants unless a tenancy in common is indicated in the additional terms or in a separate contract (if applicable).

Your premises—

[*Delete or cross out any of the below which do not apply*]

Premises Number—

Title Details for Premises—

Folio ID—

Lease Folio ID—

Part of lot as set out in attached plan

Shown in the plan memorandum registered no—

Title Details for Leasehold Village—

Trading Name of Village—

Address of Village—

Postcode—

What is included with your premises?

[Delete or cross out which of the below does not apply]

[Registered interest holders except registered long-term lessees] Your premises include—

[Non-Registered interest holders and registered long-term lessees] We grant you the right to occupy or use—

Garage (Number ..) Carport (Number ..) Parking Space (Number..)

Storage Area (Number..)

Furniture—

Other—

Attached list/plan

Is there a separate agreement dealing with any of the above inclusions?: Yes .. *[name of agreement]*/No

Is an additional fee payable for any of the above inclusions?: Yes/No

Note—

If yes, the fee payable is set out in the Financial Terms of this agreement.

What is not included with your premises?

[attach list if space is insufficient]

Fixtures/Fittings/Furnishings/Other—

Key dates—

Date you received a copy of this contract—

Date this contract is entered into—

Agreed date that you may occupy your premises *[entry date]*:..*[If known]*

Date from which you must pay us recurrent charges:..*[If known]*

Nature of residence right

[Delete or cross out which of the below does not apply]

[Registered interest holders except registered long-term lessees] Your right to reside in your premises arises on the following basis, and the provisions in this contract which apply to the residence right type ticked below will apply to you and us—

[Registered interest holders who are registered long-term lessees and non-registered interest holders] You do not own the premises. We grant you the right to occupy the premises on the following basis. The provisions in this contract which apply to the residence right type ticked below will apply to you and us—

Registered interest holder

[if above box is ticked, select one or more from **Non-registered interest holder** *the list below]*

- Owner of a lot in a strata scheme
- Owner of shares in a company title scheme
- Owner of a lot in a community land scheme
- Registered long-term lease* with a term of— Term [if any]—
(Only tick the last box if the term is at least 50 years (including options to renew) or for the life of the lessee, the contract includes provision for the resident to be entitled to 50% or more of the capital gain, and the lease will be registered.)

Does your residence right arise under an assignable lease? Yes /No

Registered interest holders: If the box is ticked indicating that you are a *registered interest holder*, you will not be a *registered interest holder* until, if the instrument under which you obtain your residence right requires registration, registration occurs (for example until your long-term lease has been registered) or you become the registered proprietor of land.

Contract subject to separate contract: If this box is ticked, this contract will not apply until you have acquired the premises (or, for company title, the shares which entitle you to occupy the premises) under a separate contract.

Note—

If this box is ticked, title to the premises is proposed to be conveyed under a separate contract and nothing in this contract constitutes a warranty or representation by us that you will obtain title to the premises or any inclusions.

Additional terms—

Additional terms may be added to the standard terms prescribed under the *retirement village laws* at the end of the contract.

Retirement village laws—

This contract is subject to the provisions of the *retirement village laws*. For information on your rights and responsibilities under the *retirement village laws* contact NSW Fair Trading by visiting www.fairtrading.nsw.gov.au or calling 13 32 20.

Terms in *italics* are defined in clause 1.2 of this contract.

FINANCIAL TERMS

Note—

The additional terms may set out more detail about the *entry payment* and other amounts payable as detailed below and, where there is more than one operator, the additional terms may specify which operator is to receive or make a payment.

A Entry payment

Are you required to pay an *entry payment*? Yes [continue to the remainder of item A]/No [delete or cross out the remainder of item A]

You must pay an *entry payment* in total of \$..as your—

- Ingoing contribution
- Purchase price
- Assignment fee

[Delete or cross out the below if the ingoing contribution is not divided into components]

Where an ingoing contribution is payable, it consists of the following components—

- Loan \$
- Lease Premium \$
- Prepaid rent \$
- Other \$

The waiting list fee of \$.. and/or the holding deposit of \$.. which you have already paid will form part of this amount. [delete or cross out if not applicable]

When is the full entry payment due?

Can the entry payment be paid in instalments? Yes [refer to additional terms for payment frequency/dates]/No

Is any of the entry payment non-refundable? Yes (\$..)/No

Is any interest payable if the entry payment is not paid by the date due? Yes (see additional terms)/No

[Delete or cross out the below if no separate additional fee applies for any inclusions]

In addition to the entry payment, you must pay the following fees for the inclusions detailed in the Key Terms—

- | | |
|------------------|------------------|
| Parking Space \$ | Garage \$ |
| Carport \$ | Storage Area: \$ |
| Furniture: \$ | Other: \$ |

B Deposit

Are you required to pay a deposit on signing this contract? Yes (\$..)/No

C Legal and other expenses payable on entry

You must pay to us on entry the following legal and other expenses incurred in connection with the preparation of this contract: (maximum \$50)

- Contribution to our legal expenses incurred in preparing this contract \$
- Other expenses [specify]

You must pay the following charges to third parties—

- Lease registration fee \$
- Other [specify]

[If “Contract subject to other contract box is ticked” (delete or cross out if not applicable)]

Additional fees may be payable under the separate contract you have entered into to acquire the premises (or, for company title, the shares which entitle you to occupy the premises).

D Recurrent charges

You must pay to us recurrent charges as follows—

Current frequency of payment: Weekly Fortnightly Monthly Other—

Current rate of recurrent charges for your premises: \$.. per ..

This amount includes \$.. as recurrent charges for general services as well as recurrent charges for optional services as detailed in Section F. [delete or cross out if no optional services are included in section F]

You may also need to pay levies to the owners corporation (for strata schemes), community association (for community land schemes) or company (for company title). The amount of the levies for your premises as at the date of this contract is \$.. per ..

E Variation of recurrent charges

We may vary your recurrent charges as follows—

Method of Variation [choose one method only]

Fixed formula

Your recurrent charges will be varied in accordance with—

- variation in CPI
- variations in (single/couple) [*delete or cross out whichever is not applicable*] age pension
- other [*specify*]

The first variation will be on—

After the first variation, variations will occur every—

The new amount of the recurrent charges will not take effect earlier than 14 days after we have given you notice of the new amount.

Non-fixed formula

We may vary the amount of recurrent charges payable from time to time (no more than once in a 12 month period)—

- (a) by giving you 14 days' notice in writing, if the increase does not exceed the *variation in CPI*, or
- (b) by giving you at least 60 days' notice in writing and seeking and obtaining the consent of residents affected by the proposed increase or an order of the *Tribunal*, if the increase exceeds the *variation in CPI*.

F Optional services

Do your recurrent charges include optional services? (optional services may include, for example, meals, laundry services and home cleaning) Yes/No

If yes, at the time of entry, the amount of recurrent charges attributable to the provision of optional services is \$.. This amount may change in the future.

G Capital gains and losses

If you are entitled to a percentage of capital gain, or are responsible for a percentage of capital loss, this may form part of the termination payment calculated in accordance with item I.

Capital gain/capital loss structure

Are you entitled to a percentage of any capital gain? Yes (..%)/No

Are you responsible for percentage of any capital loss? Yes (..%)/No

Different capital gain/capital loss structure

- [*delete or cross out if not applicable*] [*insert full details if the calculation does not fit within the above structure*]

H Departure fee

Does a departure fee form part of the payment on termination of this contract? Yes [*continue to the remainder of item H*]/No [*delete or cross out remainder of item H*]

If yes, this may form part of the termination payment calculated in accordance with item I. The departure fee is calculated on a daily basis (but does not accrue and is not payable on a daily basis). The box below shows you how your departure fee is calculated—

What is the departure fee % based on?

- the *entry payment* the *new entry payment*
 other (provide details)—

Departure fee structure

Time	Percentage	The maximum departure fee percentage you will pay is
Years.. to .. (inclusive)	..% per year	..% if the period between the entry date and the date you <i>permanently vacate</i> is ..years or more.
Years.. to .. (inclusive)	..% per year	
Years.. to .. (inclusive)	..% per year	

- Different departure fee structure** [*delete or cross out if not applicable*] [*insert full details if the departure fee is not the above structure*]—

I Calculation of payment on or before termination of residence right

[*Delete or cross out which of the below does not apply*]

[Registered interest holders except non-assignable registered long-term lessees]

We are not required to make any payments to you when your residence right is terminated. You are responsible for selling your premises and receiving the *new entry payment* from the person who buys your premises or your leasehold interest.

However, if we are required to pay you any part of your exit entitlement in accordance with an exit entitlement order under the *retirement village laws*—

- (a) we must pay you the exit entitlement before your residence right is terminated or as otherwise provided by the exit entitlement order, and
- (b) if you are required to pay us your share of any capital loss—we may set off and deduct your share of the capital loss from the exit entitlement we pay you before your residence right is terminated or as otherwise provided by the exit entitlement order.

[Non-registered interest holders and non-assignable registered long-term lessees]

The amount payable on termination is calculated as follows—

Payment on termination calculation

After termination of this contract (refer to Item J for specific detail about timing not otherwise addressed by this Item)—

- 1 We will repay you the—
 - Unearned rent (refer to the additional terms for how this is calculated)
 - Loan (Item A)
 - Lease premium (Item A)
- 2 We will pay you—
 - Your share of any capital gain (Item G)
 - Other [*specify*]—
- 3 You must pay us (or we may set off and deduct from the amounts we must pay you described in 1 and 2 above)—
 - Departure fee (Item H)
 - Your share of any capital loss (Item G)
 - Any non-refundable component of the *entry payment* (Item A)
 - Any accommodation payment made by us on your behalf in accordance with the *retirement village laws* to an approved provider of an aged care facility in which you reside or propose to reside
 - Other [*specify*]—

Different payment on termination calculation [*delete or cross out if not applicable*] [*insert full details if the calculation does not fit within the above structure*]—

Despite this Item and Item J, if we are required to pay you any part of your exit entitlement in accordance with an exit entitlement order under the *retirement village laws*—

- (a) we must pay you the exit entitlement before your residence right is terminated or as otherwise provided by the exit entitlement order, and
- (b) if you are required to pay us your share of any capital loss—we may set off and deduct your share of the capital loss from the exit entitlement we pay you before your residence right is terminated or as otherwise provided by the exit entitlement order.

[Items J and M below for *registered interest holders*. Items K and L below for *registered interest holders* and *non-registered interest holders*. *Cross out if not applicable*]

J Timing for payment on termination of your residence right

[*Delete or cross out which of the below does not apply*]

[Non-assignable registered long-term lessees]

- We must pay you the amount of your payment on termination of your residence right within 14 days after the date on which we receive full payment of the *new entry payment* except where we are required to pay you earlier under the *retirement village laws*.
- Different timing for payment** [*delete or cross out if not applicable*] [*insert full details if liability to make termination payment is to be made at a time that is earlier than that described above or in the retirement*]

village laws]

If more than one resident is a party to this contract, a payment will only be made after both residents have *permanently vacated* your premises.

[Registered interest holders except non-assignable registered long-term lessees]

You are responsible for obtaining the *new entry payment* from the person who buys your premises or leasehold interest.

K Liability for recurrent charges for optional services on termination

If you move out of your premises, your liability to pay recurrent charges for optional services ceases from the date you move out. If you die, your liability ends from the date we are notified. However, you will be liable for services provided before that date.

L Liability for recurrent charges for general services on permanent vacation of residential premises

- Except as otherwise provided by the *retirement village laws*, you must pay on and from the date you permanently vacate your residential premises—
 - (a) the full rate for general services until whichever of the following occurs first—
 - (i) a new resident enters into a contract with us to occupy the premises or moves into the premises,
 - (ii) a person takes up residence in the premises with the consent of the operator,
 - (iii) you permanently vacate the premises after receiving notice of our intention to apply to the Tribunal for an order terminating this contract,
 - (iv) if we buy the premises from you—the contracts for the purchase are exchanged, or
 - (b) for non-registered interest holders and registered interest holders referred to in section 7(1)(c) of the Act, the full rate for general services until whichever of the following occurs first—
 - (i) a circumstance referred to in paragraph (a)(i)–(iv) occurs,
 - (ii) 42 days immediately after the date on which you permanently vacate the premises have passed.
- Different provision** [*delete or cross out if not applicable*] [*insert full details if the liability to pay recurrent charges is to cease at a time that is earlier than that described in the above provision*]

Note—

This provision does not affect any levies payable by you in a strata scheme, company title or community scheme [*delete or cross out if not applicable*]

M Costs of sale

If you appoint a person other than us or a person chosen by us as a selling agent, you must pay the selling agent's commission (if any) in full.

All other costs of sale, including commission if you appoint us or our nominee as your agent, are to be shared between you and us in the same proportion as our respective capital gain percentage.

[Item N below for *non-registered interest holders*. *Cross out if not applicable*]

N Timing for payment on termination of your residence right

- We must pay you the amount of your payment on termination of your residence right—
 - (1) within 14 days after the date on which we receive full payment of the *new entry payment*, or
 - (2) within 14 days after the date on which an incoming resident takes up residence in your premises with our consent, or

(3) within 6 months after the date you *permanently vacate* your premises,

whichever occurs first, except where we are required to pay you earlier under the *retirement village laws*.

- Different timing for payment** [*delete or cross out if not applicable*] [*insert full details if liability to make termination payment is to be made at a time that is earlier than that described above or in the retirement village laws*]

If more than one resident is a party to this contract, a payment will only be made after both residents have *permanently vacated* your premises.

GENERAL TERMS

1 INTERPRETATION AND DEFINITIONS

1.1 Interpretation

- (a) Except as otherwise provided for in the additional terms—
- (i) When the words “you” or “your” appear in this contract, it refers to the Resident and includes the Resident’s executors or administrators but only to the extent necessary to enable them to discharge their duties.
- (ii) Where the Resident is more than one person, the words “you” or “your” apply jointly to the Residents and to each of them.
- (b) When this contract uses the words “we”, “us” or “our”, it refers to the Operator and where the context allows, its employees and agents. If there is more than one operator, use of the word “we”, “us” or “our” does not of itself imply any relationship between any of those operators, such as a partnership. The relationship of the operators to each other, and certain rights and obligations between each of them and you may be set out in the additional terms.
- (c) Expressions which are not defined in this contract but which have a defined meaning in the *retirement village laws* have the same meaning in this contract.
- (d) Headings are for convenience only and do not form part of this contract or affect its interpretation.
- (e) Unless expressly stated otherwise in this contract—
- (i) If a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.
- (ii) If the last day of a period of time prescribed or allowed by this contract for the doing of any thing falls on a day which is not a *business day*,
- the thing may be done on the first day following that day which is not a *business day*.
- (f) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (g) The meaning of any general language is not restricted by any accompanying example, and the words “includes”, “including”, “such as”, “for example” or similar words are not words of limitation.

1.2 Definitions

business day means a day which is not—

- (a) a Saturday or Sunday, or
- (b) a public holiday or a bank holiday,

in New South Wales.

entry payment means the amount of the purchase price, ingoing contribution or assignment fee payable by you as set out in the Financial Terms section of this contract.

item of capital means any building or structure in the village; any plant, machinery or equipment used in the operation of the village; any part of the infrastructure of the village; fixtures (e.g. benches, built-in cupboards, floor coverings, hot water systems and stoves); fittings (for example, light fittings, taps and sanitary fittings); furnishings (for example, curtains and blinds); and non-fixed items (eg whitegoods, portable air conditioners, fans, tables and chairs).

new entry payment means the amount provided by the next resident in connection with your premises after you leave.

non-registered interest holder means a resident who is not a *registered interest holder*.

permanently vacate means the occurrence of one of the following—

- (a) you (or a person on your behalf) delivers up vacant possession of your premises to us following your vacation of the premises,
- (b) the executor or administrator of your estate delivers up vacant possession of your premises to us following your death,
- (c) the *Tribunal* makes an order declaring that your premises were abandoned by you (and you are taken to have permanently vacated your premises on the day specified in the order),
- (d) if you are a *registered interest holder*, you die or move out of your premises, or
- (e) if the residence right for your premises was obtained by another person for the purpose of allowing you to live at your premises, or by a corporation, and you live at your premises with their consent, when you die or move out of the premises.

registered interest holder means a resident who—

- (a) is the registered proprietor of the premises,
- (b) is the owner of a lot in a strata scheme,
- (c) is the proprietor of a lot in a community land scheme,
- (d) is the owner of shares in a company title scheme for the premises, or
- (e) has a *registered long-term lease* that includes a provision that entitles the resident to at least 50 per cent of any capital gain.

registered long-term lease means a lease registered under the [Real Property Act 1900](#) (NSW) that has a term of at least 50 years (including any option to renew), or is for the life of the lessee.

rescission notice means a notice given by you or your legal representative that says that you rescind this contract.

retirement village laws means—

- (a) the [Retirement Villages Act 1999](#) (NSW), and
- (b) the [Retirement Villages Regulation 2017](#) (NSW),

as amended or substituted from time to time.

settling-in period means the period between the date of this contract and the later of the following—

- (a) 90 days after the date on which you are entitled to occupy your premises under this contract (or other relevant contract which is a residence contract for the purposes of the *retirement village laws*), or

- (b) if you occupy the premises before you are entitled to do so under the contract described in (a), 90 days after you first occupy your premises, or
- (c) any other date that we may agree with you in writing.

Tribunal means the NSW Civil and Administrative Tribunal.

variation in CPI means the difference between—

- (a) the Consumer Price Index (All Groups) for Sydney as published by the Australian Statistician most recently before the recurrent charges were last varied or, if the recurrent charges have never been varied, as published 12 months prior to (b), and
- (b) the Consumer Price Index (All Groups) for Sydney as published by the Australian Statistician most recently before the written notice of the proposed variation is given.

2 COOLING-OFF PERIOD

2.1 What is your right to terminate during the cooling-off period?

Before midnight on the 7th *business day* after the date you gave us a signed copy of this contract you are able to rescind this contract by giving us a *rescission notice*. You waive the right to rescind if you move into your premises.

2.2 What will we pay you if you terminate this contract during the cooling-off period?

If you rescind this contract during the cooling-off period, then this contract becomes void and we must repay you all money that has been paid to us under this contract by you as soon as is reasonably practicable (and no later than 1 month) after you give us the *rescission notice*.

3 SETTLING-IN PERIOD

3.1 What is your right to terminate during the *settling-in period*?

[Delete or cross out which of the below does not apply]

[All residence right types except *registered interest holders* where right to occupy the premises arises under a contract other than this contract (such as a contract for sale of land)]

You may terminate this contract during the *settling-in period* by *permanently vacating* your premises.

[*Registered interest holders* where right to occupy the premises arises under a contract other than this contract (such as a contract for sale of land)]

You may terminate this contract during the *settling-in period* by—

- (a) *permanently vacating* your premises, or
- (b) giving us written notice during the *settling-in period* that you want to terminate this contract for any reason.

3.2 What will we charge you if you terminate during the *settling-in period*?

[All residence right types]

If you terminate this contract during the *settling-in period*, we may only charge you—

- (a) the fair market rent, but only if you have occupied your premises,
- (b) the reasonable costs incurred by us in adding, removing or altering any fixtures or fittings, or making any renovations to your premises at your request, but only if you have occupied your premises, and
- (c) an administration fee of not more than \$200.

[Residents where the right to occupy the premises arises under this contract (*delete or cross out if not applicable*)]

(d) the cost of any repairs for damage to your premises in excess of fair wear and tear.

3.3 What are we required to pay you?

[Delete or cross out which of the below does not apply]

[Non-registered interest holders and registered long-term lessees]

If you terminate the contract within the *settling-in period*, we must refund the *entry payment* and any recurrent charges you paid us.

[Registered interest holders except registered long-term lessees]

If you terminate the contract within the *settling-in period* we must refund the proceeds of the sale to which you are entitled under this contract and any recurrent charges you paid us.

3.4 When are we required to pay you?

[Delete or cross out which of the below does not apply]

[Non-registered interest holders]

We must pay you the amount you are entitled to under clause 3.3 within 14 days after you terminate this contract or within such time as the *Tribunal* may order.

[Registered interest holders]

We must pay you the amount you are entitled to under clause 3.3 within 14 days after the date on which we receive full payment of the *new entry payment*, except where we are required to pay you earlier under the *retirement village laws*.

4 DISCLOSURE STATEMENT

4.1 What if this contract is inconsistent with the disclosure statement?

If any term of this contract (other than those which have been prescribed in the *retirement village laws*) is inconsistent, to your detriment, with the disclosure statement provided to you in accordance with the *retirement village laws*, this contract is to be interpreted (as far as practicable) as if it contained the information in the disclosure statement instead of the inconsistent term.

4.2 Can I terminate if the disclosure statement is false or misleading?

If the information in the disclosure statement is false or misleading in a material particular, you may apply to the *Tribunal* within 3 months of commencing occupation of your premises, for an order allowing you to rescind this contract.

5 SERVICES AND FACILITIES

5.1 Meaning of required services and facilities

We must provide you with a particular service or facility which we are required to provide to the residents for the life of the village in accordance with the terms of our development consent (*required services and facilities*).

5.2 Can we change the services and facilities?

Other than the *required services and facilities*, we may add a new service or facility or reduce, withdraw or otherwise vary the services and facilities if residents pass the change by special resolution in accordance with the *retirement village laws*.

5.3 What optional services will we provide you?

A list of optional services is included in the list of services and facilities annexed to this contract. Unless Item F in the Financial Terms section indicates that *recurrent charges* includes optional services, payment for these services and facilities is on a user pays basis.

6 ALTERATIONS AND ADDITIONS

6.1 Can you alter or renovate your premises?

[Delete or cross out which of the below does not apply]

[Non-registered interest holders and registered long-term lessees]

- (a) You may add, remove or alter any fixtures and fittings, or renovate your premises, but only with our prior written approval which we will not unreasonably refuse. We may include reasonable conditions in our consent. If we do not consent to your proposal, you may apply to the *Tribunal* to seek an order allowing you to proceed with your proposal.
- (b) Despite (a), our consent is not required to remove or alter any fixtures or fittings that were added by you unless the removal or alteration of the fixtures or fittings is likely to cause significant damage to the premises.

[All other registered interest holders]

You may add, remove or alter any fixtures and fittings, or renovate your premises provided that you obtain any other necessary consent required from any authority such as the local council or the owners corporation (for strata schemes), company (for company title) or community association (for community land schemes).

7 REPAIRS, MAINTENANCE AND CAPITAL REPLACEMENT

7.1 Can you request repairs?

You may request us to carry out necessary repairs and maintenance to your premises if we are responsible for those repairs and maintenance under the *retirement village laws* or the terms of this contract.

7.2 What repairs and maintenance are we responsible for?

Subject to clause 7.3, we must maintain each *item of capital* for which we are responsible in a reasonable condition, having regard to—

- (a) the age of the item,
- (b) the prospective life of the item,
- (c) the money paid to us by the residents under a village contract (including entry payments), and
- (d) the amount of money available to be used for the purpose of maintenance in accordance with the approved annual budget for recurrent charges.

7.3 What repairs and maintenance are we not responsible for?

We are not responsible for *items of capital* that—

- (a) you own, or
- (b) require repair because of damage (fair wear and tear excepted) caused by you or a person that you invited to the village, or
- (c) are association property under a community land scheme, or
- (d) are common property under a strata scheme.

7.4 What general obligations do you have in relation to repairs and maintenance?

- (a) You must notify us of the need for maintenance to be carried out on, or the replacement of, an *item of capital* for which we are responsible and that is located within your premises as soon as you become aware of the need for the maintenance or replacement of the item.
- (b) You must reimburse us in respect of any damage (other than fair wear and tear) caused by you or a person you invited to the village to an *item of capital* for which we are responsible.

- (c) You must not hinder or obstruct us or a person authorised by us from carrying out capital maintenance or capital replacement in respect of an *item of capital* for which we are responsible.

7.5 Who is responsible for the replacement of items of capital?

We must bear the cost of capital replacement in respect of an *item of capital* for which we are responsible under the *retirement village laws*.

8 OPERATOR'S ACCESS TO PREMISES

8.1 When may we access the premises?

[All residence right types]

We (or anyone authorised by us), may access your premises at any reasonable time in the following circumstances—

- (a) if you consent, or
- (b) in an emergency, or if we have reasonable cause for concern about the health or safety of a person that we believe is on your premises, or
- (c) to carry out urgent repairs, or
- (d) to carry out general maintenance, but only if we have given you 7 days' notice, or
- (e) if the *Tribunal* orders you to give us access, or
- (f) in any other circumstances that may be prescribed from time to time under the *retirement village laws*.

[Non-registered interest holders (delete or cross out if not applicable)]

- (g) to carry out a general inspection of your premises, but only if—
 - (i) we have given you 7 days' notice, and
 - (ii) a general inspection has not been carried out more than once in the immediately preceding 12 months.

9 VILLAGE RULES

9.1 How do the village rules apply?

If there are village rules—

- (a) you must comply with the village rules and use your best endeavours to ensure compliance with the village rules by any person who is lawfully in your premises or who you invite to the village, and
- (b) we must comply with the village rules and use our best endeavours to ensure compliance with the village rules by our residents, our tenants, employees and any other person that we invite to the village.

9.2 What if a village rule is inconsistent with this contract?

If a village rule is consistent with the *retirement village laws* but inconsistent with a term of this contract, the village rule prevails to the extent of the inconsistency.

10 GENERAL BEHAVIOUR OF OPERATOR AND RESIDENT

10.1 What are your general obligations?

You must—

- (a) not interfere or cause or permit interference, with the reasonable peace, comfort or privacy of another resident, and
- (b) respect our rights and the rights of our agents and employees, to work in an environment free from

harassment or intimidation, and

(c) not act in a manner that adversely affects the health and safety of persons working in the village.

10.2 What are our obligations?

We must—

- (a) not interfere or cause or permit interference, with the reasonable peace, comfort or privacy of a resident, and
- (b) take all reasonable steps to ensure that all residents meet their obligations under their contracts, the village rules and the *retirement village laws*, so that a resident does not unreasonably interfere with the peace, comfort and quiet enjoyment of other residents, and
- (c) not interfere with the right of any resident to autonomy over the resident's personal, financial and other matters and over the resident's possessions, and
- (d) not inhibit any resident from exercising self-reliance in matters relating to the resident's personal, domestic and financial affairs, and
- (e) use our best endeavours to ensure that each resident lives in an environment free from harassment and intimidation.

11 TERMINATION

11.1 When does your right to occupy your premises end?

[Delete or cross out which of the below does not apply]

[Non-registered interest holders and non-assignable registered long-term lessees]

This contract terminates and your right to occupy your premises ends on the earliest of the following dates—

- (a) the date on which you *permanently vacate* your premises,
- (b) the date of disclaimer (for example, if we accept your renunciation of this contract),
- (c) the date of the death of the last surviving resident under this contract,
- (d) the date specified by the *Tribunal*,
- (e) if we give you a notice that we are terminating this contract because it has been frustrated (for example, because the premises become uninhabitable), on the 8th day after the date specified in the notice,
- (f) for non-assignable *registered long-term lessees*—if an exit entitlement order is made by the Secretary in relation to your premises, the date on which we pay you the amount required under the order,
- (g) any earlier date of termination specified in the additional terms.

[Registered interest holders (other than registered long-term lessees)]

This contract terminates and your right to occupy your premises ends on completion of the sale of your premises.

[Assignable registered long-term lease]

Your right to occupy your premises ends on the assignment of your lease.

11.2 When can we terminate this contract?

[Delete or cross out if registered interest holder (other than registered long-term lessees)]

- (a) We can only terminate this contract, for the following reasons, if we obtain a decision from the *Tribunal* to allow the termination—
 - (i) on the grounds of your physical or mental incapacity, or

- (ii) for breach of contract or a village rule, or
 - (iii) if you are causing serious injury or damage to any part of the village, our employees or to any other resident, or
 - (iv) for upgrade or change of use of the village.
- (b) We may give you a notice of termination if this contract has been frustrated (i.e. if your premises are, otherwise than as a result of a breach of this contract, destroyed or rendered wholly or partly uninhabitable or cease to be lawfully usable for the purpose of a residence or are appropriated or acquired by any authority by compulsory process). You may seek an order of the *Tribunal* preventing the termination of the contract on this basis if you consider that the premises have not been rendered wholly or partly uninhabitable (as the case may be).

12 FINDING A NEW RESIDENT WHEN YOU LEAVE

12.1 Who sets the asking *new entry payment*?

[Delete or cross out which of the below does not apply]

[Non-registered interest holders]

Unless the additional terms provide otherwise, the amount we ask the next resident to pay as a *new entry payment* will be determined by us, we may appoint an agent of our choice and the process of finding a new resident for your premises will be handled by us.

[Registered interest holders]

You may set the asking *new entry payment* and if you do, you must notify us as soon as reasonably practicable of—

- (a) the amount you set as the asking *new entry payment*, and
- (b) any changes you make to the amount you have set as the asking *new entry payment*.

12.2 Are you entitled to appoint a selling agent of your choice?

You may appoint a selling agent of your choice provided that the selling agent is licensed as a real estate agent in New South Wales if required by law. You may appoint us if we are eligible to be appointed.

13 ASSIGNMENT AND SUBLETTING YOUR PREMISES

13.1 Can you assign this contract?

[Delete or cross out which of the below does not apply]

[Assignable leases]

You may assign your contract by completing a deed of assignment and consent with the new resident(s) and us and a transfer of lease with the new resident(s).

[All residence right types except assignable leases]

You may not assign this contract without notifying us and obtaining our consent.

13.2 Can you sublet your premises?

[Delete or cross out which of the below does not apply]

[Registered interest holders]

- (a) You may let or sublet your premises under a residential tenancy agreement provided that—
 - (i) the tenant is a retired person who is eligible under the *retirement village laws* to move into a retirement village, and
 - (ii) the term, together with any option to renew, is not more than 3 years, and

- (iii) you have given us written particulars of—
 - (A) the name and age of the proposed tenant or subtenant, and
 - (B) the term of the proposed residential tenancy agreement, and
 - (C) such other matters in relation to the proposed agreement as we may reasonably require,and we have consented in writing to the residential tenancy agreement.

(b) We must apply for an order of the *Tribunal* if we refuse to give you consent.

[Non-registered interest holders]

You agree that you may not assign, sublet or let others move in to your premises without notifying us and obtaining our consent. This does not apply to temporary visitors and guests.

14 TEMPORARY ABSENCE

14.1 What happens if you are temporarily absent from your premises?

If you plan to be away from the village for more than 28 days you must let us know. You will not be liable to pay recurrent charges for optional services for the days you are away after 28 days of absence.

15 CONDITION OF PREMISES ON TERMINATION

15.1 In what condition must you leave the premises?

[Delete or cross out which of the below does not apply]

[Registered interest holders]

You are not liable to pay for the cost of any improvement to your premises in excess of that required to reinstate your premises to the condition it was in when you commenced occupation (fair wear and tear excepted).

[Non-registered interest holders]

- (a) You must leave your premises as nearly as possible in the same condition (fair wear and tear excepted) as set out in the annexed condition report, allowing (subject to the reasonable conditions of our consent) for any renovations or alterations to fixtures or fittings made with our consent. If you do not, we may require you to bear the cost of any repairs required.
- (b) You are not required to refurbish your premises or pay for the cost of any improvement to your premises in excess of that required to reinstate your premises to the condition it was in (fair wear and tear excepted) at your entry date.

16 NOTICES

16.1 How are notices given and received?

- (a) A notice or other document given to you under this contract may be given—
 - (i) by delivering it personally to you, by sending it by post to the residential premises occupied by you and addressed to you, or in such other manner as may be approved by the *Tribunal*, and
 - (ii) provided that it is not a termination notice, by leaving it in the mailbox at your last known address (rather than sending by post), sending it to the email address you have provided or giving it to any person apparently at or above the age of 16 years at your residential premises in the retirement village.
- (b) A notice or other document given to us under this contract may be given—
 - (i) by delivering it personally to us, by sending it by post to our usual place of business, or in such other manner as may be approved by the *Tribunal*, and
 - (ii) provided that it is not a termination notice, by leaving it in the mailbox at our last known address (rather

than sending by post), sending it to our email address or giving it to one of our employees.

- (c) The *retirement village laws* set out the specific requirements for the giving of notices to protected persons within the meaning of the *NSW Trustee and Guardian Act 2009* and to operators in receivership or administration and those requirements also apply to this contract.
- (d) A notice given to a person in accordance with this clause is treated as having been given and received—
 - (i) if delivered in person, by hand or by email, on the day of delivery, or
 - (ii) if sent by post (unless evidence sufficient to raise doubt is adduced to the contrary), on the second *business day* after it was posted, or
 - (iii) if given in a manner approved by the *Tribunal*, when the *Tribunal* deems it to have been given and received.
- (e) A party may change its address for service by giving notice of that change to each other party.
- (f) A notice given to a person you have appointed as your agent to receive notices in accordance with the *retirement village laws* will be deemed to have been given to you, if given in accordance with this clause.

17 CHANGES IN CONTRACT

17.1 Can our rights and your rights under this contract be changed?

- (a) You are not obliged to agree to amend or terminate this contract and enter into a new one because of changes in legislation (unless the legislation requires the amendment or termination) or for any other reason.
- (b) If we propose a change to this contract we must pay the reasonable costs of a legal practitioner of your choosing to explain the proposed change to you and to provide a certificate in accordance with the requirements of the *retirement village laws*.
- (c) Your rights and responsibilities and our rights and responsibilities under this contract may change if the *retirement village laws* are amended.

18 DISPUTE RESOLUTION

18.1 How are disputes resolved?

If a dispute arises between you and us or between you and another resident we encourage you to notify us so we can try to resolve it but you do not have to do so if you do not wish to. If there is a dispute you may—

- (a) seek information from NSW Fair Trading by visiting www.fairtrading.nsw.gov.au or by calling 13 32 20, or
- (b) apply to the *Tribunal* for an order to be made under the *retirement village laws*.

You are not required to notify us before you do so.

18.2 Where can I get information if I have a dispute?

If a dispute arises, you may seek information from NSW Fair Trading by visiting www.fairtrading.nsw.gov.au or by calling 13 32 20.

ADDITIONAL TERMS

NOTE—

ANY ADDITIONAL TERMS ARE NOT REQUIRED BY LAW AND ARE NEGOTIABLE BEFORE YOU SIGN THIS CONTRACT.

Additional terms may be inserted here, but only if—

- (a) they do not contravene the *retirement village laws* or any other law, and

(b) they are not inconsistent with the standard terms prescribed under the *retirement village laws*.

ANNEXURES

The following documents are annexed to this contract [*tick whichever applicable*]

- a copy of the disclosure statement that we gave you (mandatory)
- your premises condition report (mandatory unless your premises are not yet constructed, you are a *registered interest holder* or you are moving into premises with a current resident)
- a list of services and facilities we provide (mandatory)
- the village rules (if any) (mandatory)
- a list of inclusions
- a list of exclusions
- the village site plan
- your premises floor plan
- other [*specify*]

EXECUTED as an agreement/deed [*delete or cross out whichever does not apply*]

[*Appropriate signing clause for the operator to be inserted*]

Signed by the Resident(s)

Resident 1

- I have obtained independent legal advice on this contract
- I have decided not to obtain independent legal advice on this contract

Signature of Resident 1

Print Name

Date

Signature of Witness (Resident 1)

Print Name

Resident 2

- I have obtained independent legal advice on this contract
- I have decided not to obtain independent legal advice on this contract

Signature of Resident 2

Print Name

Date

Signature of Witness (Resident 2)

Print Name

[*Appropriate signing clause for any other parties to be inserted if applicable*]

Schedule 3 Matter to be excluded from village contracts

(Clause 16)

1 Dispute resolution

A village contract must not require the parties to attempt to resolve disputes between them by any process other than the process provided under the [Retirement Villages Act 1999](#).

2 Wills

A village contract must not require a resident to have a Will or to advise the operator of the location of any Will.

3 Insurance

A village contract must not contain a provision under which the resident is required, or agrees, to take out an insurance policy, including contents insurance, ambulance fund or other form of health insurance. The only exception to this is that the contract may require a resident who uses a motorised wheelchair to take out appropriate insurance in relation to the wheelchair.

4 Legal, accounting and other expenses

A village contract must not contain a provision enabling the resident to be charged individually for legal, accounting or other services incurred by the operator in corresponding with the resident or a person acting on the resident's behalf or in enforcing the contract.

5 Absences

A village contract must not restrict the period of time the resident may be absent from the village.

6 Penalty terms

A village contract must not provide that, if the resident breaches the contract or the village rules, the resident is liable to pay an increased amount of recurrent charges, any amount as a penalty or any amount as liquidated damages.

7 Exclusions

A village contract must not contain a provision to the effect that the resident will not have the benefit or advantage of any statute that may come into force and has the effect of relieving the resident of any obligation or liability under the contract.

8 Recurrent charges

A village contract that makes provision for the recurrent charges payable by a resident to be varied according to a fixed formula must not include a component relating to the actual or proposed expenditure of the village.

9 Disclaimers

A village contract must not contain a provision removing liability from the operator for any negligent act or omission by the operator, its employees or agents.

10 Entire agreement

A village contract must not contain a provision to the effect that the written contract represents the entire agreement between the parties.

Schedule 3A Rules of Conduct for Operators of Retirement Villages

(Clause 52A)

Part 1 Preliminary

1 Name of Rules

These rules are the *Rules of Conduct for Operators of Retirement Villages*.

2 Commencement

- (1) These rules commence on 1 July 2019, except as provided by subrule (2).
- (2) Rules 11, 14, 15, 22, 27, 29, 30 and 34 commence on 1 January 2020.

3 Interpretation

- (1) In these rules—

elder abuse means a single or repeated act or lack of appropriate action, occurring within any relationship where there is an expectation of trust, which causes harm or distress to an older person.

the Act means the [Retirement Villages Act 1999](#).

the Regulation means the [Retirement Villages Regulation 2017](#).

working day means any day that is not a Saturday, Sunday or public holiday.

Note—

The Act and the [Interpretation Act 1987](#) contain definitions and other provisions that affect the interpretation and application of these rules.

- (2) Words and expressions used in these rules that are defined in the Act have the meanings set out in the Act.

Note—

For example, the following terms are defined in the Act: **operator**, **resident** and **retirement village**.

4 Objectives

The objectives of these rules of conduct are as follows—

- (a) to establish the standards of conduct and behaviour that are expected of operators and their staff in relation to the management and operation of a retirement village,

including a knowledge of relevant laws,

- (b) to encourage higher standards of customer service to ensure that residents and prospective residents are treated with respect, dignity and fairness, and improving awareness of elder abuse,
- (c) to promote fair, honest, transparent and ethical practices for the marketing and promotion of residential premises in retirement villages,
- (d) to establish minimum standards for operators in the handling of complaints and the resolution of disputes in a retirement village,
- (e) to set minimum training and competency standards for operators and their staff and ensure the effective oversight and supervision of staff.

Part 2 Standards of conduct

5 Operators must know and understand all relevant laws

- (1) An operator must have a knowledge and understanding of the Act and the Regulation, and any provisions of the following laws that are necessary to enable the operator to exercise the operator's functions lawfully—
 - (a) the *Strata Schemes Management Act 2015* and the regulations made under that Act,
 - (b) the *Corporations Act 2001* of the Commonwealth and the regulations made under that Act,
 - (c) the *Work Health and Safety Act 2011* and the regulations made under that Act,
 - (d) the *Australian Consumer Law (NSW)*,
 - (e) if residential tenancy agreements are in force at the retirement village or are available to prospective residents—the *Residential Tenancies Act 2010* and the regulations made under that Act,
 - (f) any other laws relevant to the management or operation of a retirement village (including laws relating to fair trading, trade practices, anti-discrimination and privacy).
- (2) An operator must ensure that each person involved in the management of the retirement village has a knowledge and understanding of the Act and the Regulation, and any other laws as may be necessary to enable that person to exercise the person's functions lawfully.

6 Operators must have regard to the best interests of all residents

- (1) An operator must have regard to the best interests of all residents in exercising the

operator's functions as far as is practicable or appropriate.

- (2) When dealing with a prospective resident, an operator must have regard to the best interests of the prospective resident in exercising the operator's functions.
- (3) In determining what is in the best interests of all residents, or of a prospective resident, the operator is to have regard to the following matters—
 - (a) the age and health of residents or the prospective resident,
 - (b) the views expressed by residents or the prospective resident,
 - (c) any requests made by residents or the prospective resident,
 - (d) the impact a decision or action may have on the health, finances and well-being of residents or of the prospective resident,
 - (e) past complaints, issues or concerns raised by all residents.

7 Operators must exercise skill, care and diligence

An operator must exercise reasonable skill, care and diligence when exercising the operator's functions.

8 Operators must act with honesty, fairness and professionalism

- (1) An operator must act honestly, fairly and professionally with all parties to negotiations, transactions or any other dealings relating to a resident or prospective resident.
- (2) An operator must not misinform or otherwise mislead or deceive any parties to negotiations, transactions or any other dealings relating to a resident or prospective resident.
- (3) An operator must not engage in high pressure tactics, harassment or harsh or unconscionable conduct in negotiations, transactions or any other dealings relating to a resident or prospective resident.
- (4) In this rule—

parties to negotiations, transactions or any other dealings includes the following—

- (a) the resident or prospective resident concerned,
- (b) the relatives of the resident or prospective resident concerned,
- (c) any other person acting on behalf of the resident or prospective resident concerned (including members of the Residents Committee of the retirement village).

9 Operators must not disclose confidential information about residents or prospective residents

- (1) An operator must not, at any time, use or disclose any confidential information about an interested person that was obtained in connection with the management or operation of the retirement village, unless—
 - (a) the interested person provides written authorisation for the disclosure of the information, or
 - (b) the operator is permitted or compelled by law to disclose the information, or
 - (c) the interested person was informed of the intended use of the information before providing the information.
- (2) An operator must ensure that the operator's staff—
 - (a) treats all information received in connection with the management of the retirement village in a professional manner, and
 - (b) does not disclose or seek to disclose the information outside of the requirements of the management of the retirement village.
- (3) In this rule, **interested person** means—
 - (a) a resident or prospective resident, and
 - (b) a relative of the resident or prospective resident, and
 - (c) any other person acting on behalf of the resident or prospective resident.

10 Operators must prepare strategy for preventing elder abuse

- (1) An operator must—
 - (a) prepare and give effect to a strategy for the identification and prevention of any elder abuse in the retirement village, and
 - (b) ensure that a copy of the strategy is posted on the notice board of the retirement village, and
 - (c) ensure that all of the operator's staff are familiar with the strategy.
- (2) Without limiting any other matter that may be included, the strategy must include all of the following information—
 - (a) examples of common forms of elder abuse as well as specific examples in relation to retirement villages,
 - (b) information on how to identify elder abuse including signs of elder abuse, and how

to prevent elder abuse,

- (c) information on ways to respond to elder abuse or concerns about suspected elder abuse (including procedures for reporting abuse and escalating matters to appropriate organisations and authorities, and response times),
- (d) an explanation of the roles and responsibilities of the operator and of the operator's staff in relation to elder abuse in the retirement village,
- (e) guidance for accessing the services and resources of the NSW Elder Abuse Helpline and Resource Unit, the Ageing and Disability Commissioner and other relevant local services and support agencies.

(3) An operator must review the strategy every 2 years.

11 Operators must provide information to external selling agents on request

- (1) This rule applies to circumstances where an operator is able to confirm that an external selling agent has been engaged by a resident of the retirement village to sell the resident's residential premises, where the resident is the registered interest holder in the premises concerned.
- (2) An operator must, at the agent's request, provide the agent with any information and assistance that is reasonable and necessary to facilitate the sale of the resident's residential premises, including the following—
 - (a) a copy of the general inquiry document and disclosure statement required by section 18 of the Act,
 - (b) access to copies of the documents required to be made available to prospective residents under section 20 of the Act,
 - (c) information about the type of contract or contracts the operator may offer to a prospective purchaser of the residential premises,
 - (d) free and unrestricted access to the residential premises and to the common areas of the retirement village during its business hours (or during other hours negotiated with the operator) for the purposes of inspection of the residential premises by prospective purchasers,
 - (e) access to the common areas of the retirement village that is reasonably required to take photographs for the purposes of marketing the residential premises.
- (3) Information and assistance required by this rule must be provided to the agent within 5 working days of a written request being received.
- (4) This rule is an offence provision.

Part 3 Representations in marketing retirement villages and units

12 Operators must not make false or misleading representations

- (1) An operator must not make any representations that are false or misleading in a material particular—
 - (a) in any promotional material for the retirement village, or
 - (b) in relation to the marketing of the retirement village or any particular unit within the village.
- (2) Subrule (1) does not apply to any representation to which section 197A of the Act applies.

Note—

Section 197A prohibits an operator from providing to residents information that the operator knows to be false or misleading in a material particular for the purported purpose of complying with requirements under the Act.

- (3) This rule is an offence provision.

13 Representations about ownership of units

An operator must not make any representation to a prospective resident that the prospective resident will acquire ownership of a unit within the retirement village, unless the operator intends to enter into a contract with the prospective resident following the purchase of a strata-titled, community-titled or company-titled unit in the retirement village.

14 Marketing of retirement villages must include certain information

- (1) This rule applies to written promotional material about retirement villages that contains 200 words or more.
- (2) An operator must ensure that the promotional material published or distributed by or on behalf of the operator contains the statements required by this rule, and that the statements are written in a size, style and format, and located in a position, that makes them clearly visible.
- (3) If the operator requires or intends to require the payment of a departure fee in a village contract with a prospective resident, the following statement must be included in the promotional material—

You may have to pay a departure fee when you leave this village.

- (4) If the operator requires or intends to require a prospective resident to share a percentage of capital gain, the following statement must be included in the promotional material—

You may have to share any capital gains received with the operator of this village.

- (5) This rule is an offence provision.

15 Marketing of units must include certain information

- (1) This rule applies to written promotional material about a particular unit within a retirement village that contains 100 words or more.
- (2) An operator must ensure that any residence-specific promotional material published or distributed by or on behalf of the operator contains the statements required by this rule, and that the statements are written in a size, style and format, and located in a position, that makes them clearly visible.
- (3) If the operator requires or intends to require the payment of a departure fee in a retirement village contract with a prospective resident, the following statement must be included in the promotional material—

You will have to pay a departure fee when you leave this village.

- (4) If the operator requires or intends to require payment of a departure fee in a retirement village contract with a prospective resident of an amount to be calculated on the selling price of the resident's unit, and this amount will impact the capital gains received when leaving the village, the following statement must be included in the promotional material—

You will have to pay a departure fee when you leave this village, which will impact on the capital gains received when leaving the village.

- (5) If the operator requires or intends to require a prospective resident to share a percentage of capital gain, the following statement must be included in the promotional material—

You will have to share any capital gains received with the operator of this village.

- (6) This rule is an offence provision.

Part 4 Avoiding conflicts of interest

16 Operators must avoid conflicts of interest

- (1) An operator must avoid acting or continuing to act in a function connected to the management or operation of the retirement village if—
- (a) the operator has a private interest in respect of the function, and
- (b) the private interest has the potential to come into conflict with, or does come into

conflict with, and affects the ability of the operator to carry out the operator's role impartially and in the interests of residents.

- (2) An operator must ensure that each of the operator's staff avoids acting or continuing to act in a function connected to the management or operation of the retirement village if—
 - (a) the staff member concerned has a private interest in respect of the function, and
 - (b) the private interest has the potential to come into conflict with, or does come into conflict with, and affects the ability of the staff member concerned to carry out the person's role impartially and in the interests of residents.
- (3) Without limiting the operation of this rule, a person has a **private interest** in respect of a function connected to the management or operation of a retirement village if there is a reasonable likelihood or expectation of an appreciable financial or other benefit or loss to the person or to an associate of the person.

17 Operators must disclose conflicts of interest

As soon as is practicable after an operator becomes aware of any conflict of interest of the operator or of the operator's staff of a type referred to in rule 16, the operator must give written notice of the conflict to each resident of the retirement village.

18 Operators to manage and resolve conflicts of interest

- (1) If a conflict of interest of a type referred to in rule 16 arises, an operator has a duty to manage and resolve the conflict of the operator or of the operator's staff.
- (2) Depending on the nature of the conflict, this may include, but is not limited to, any of the following—
 - (a) restricting the conflicted staff's involvement in a matter,
 - (b) engaging an independent party to oversee the matter,
 - (c) relinquishing or requiring staff to relinquish the personal interest that has caused the conflict.

19 Operators must not carry out functions without disclosing conflicts of interest

- (1) An operator must not carry out a function in connection with the management or operation of a retirement village if the operator has a conflict of interest that has not been disclosed in accordance with rule 17.
- (2) An operator must ensure that the operator's staff does not carry out a function in connection with the management or operation of a retirement village if the staff member concerned has a conflict of interest that has not been disclosed in accordance with rule 17.

- (3) This rule does not apply if it is not practicable or reasonable for the operator or the operator's staff to have no further involvement in a function where—
- (a) there is no other person with an equivalent level of authority or skill to carry out the function, or
 - (b) it would not be in the best interests of the residents or prospective residents of the retirement village if the function was carried out by another person.
- (4) This rule is an offence provision.

20 Operators must disclose previously undisclosed conflicts of interest

As soon as is practicable after becoming aware of a conflict of interest that has not been disclosed in accordance with rule 17, the operator must notify all residents in writing of the following—

- (a) the conflict of interest and the function connected with the management or operation of the retirement village to which the conflict of interest relates,
- (b) the reasons why the conflict of interest was not disclosed, if known,
- (c) an outline of the action that will be taken by the operator as a result of becoming aware of the conflict of interest.

21 Operators must review policies where conflicts of interest have been undisclosed

As soon as is practicable after becoming aware of a conflict of interest that has not been disclosed in accordance with rule 17, the operator must review all relevant internal policies and procedures to ensure that future conflicts of interest are properly disclosed, and ensure all staff are made aware of the policies and procedures.

22 Operators must keep records of conflicts of interest

- (1) An operator must keep records of the following information relating to conflicts of interest of the operator and any of the operator's staff—
- (a) the name, contact details and title of the person with the conflict of interest,
 - (b) the date the conflict of interest was disclosed to residents,
 - (c) the function connected with the management or operation of a retirement village to which the conflict of interest relates and the date on which the function was carried out,
 - (d) the nature of the private interest giving rise to the conflict of interest,
 - (e) details of any measures implemented to mitigate any effects of the conflict of interest.

(2) The records must be kept for the duration of the employment of the operator or the operator's staff member concerned, and for an additional 5 years in respect of each employment term.

(3) This rule is an offence provision.

23 Operators must provide residents and prospective residents with access to records of conflicts of interest

An operator must provide a resident or prospective resident of the retirement village with access to the records required to be kept under rule 22 within 5 working days of a request for access being received by the operator.

Part 5 Complaint handling and internal dispute resolution scheme

Division 1 Objectives and principles

24 Operators must ensure residents are encouraged to raise concerns

An operator must ensure that the retirement village promotes a culture that values and encourages residents to raise concerns and supports the effective resolution of any complaints.

25 Operators must not discourage residents from making complaints or pursuing internal disputes

(1) An operator must not discourage a resident or a person acting on behalf of a resident (including members of the Residents Committee of the retirement village) from making a complaint or pursuing an internal dispute.

(2) Examples of discouragement, include—

(a) imposing any fee or charge for making a complaint or pursuing an internal dispute,

(b) providing a reward, rebate, incentive or other benefit if the resident does not make a complaint or pursue an internal dispute,

(c) not accepting a complaint or internal dispute from a person acting on behalf of a resident,

(d) employing high pressure tactics, harassing the resident or undertaking any other form of harsh or unconscionable conduct,

(e) engaging in conduct that prejudices, harasses or intimidates the resident or exercising retribution against the resident as a result of the complaint being made or the internal dispute being pursued.

26 Operators must not prevent residents from consulting the Residents Committee

- (1) An operator must not prevent a resident from seeking assistance, support or representation from the Residents Committee of the retirement village to make a complaint or pursue an internal dispute, or resolve a complaint or internal dispute.
- (2) Nothing in this rule requires a resident to involve the Residents Committee or any other resident in the resolution of a complaint or an internal dispute.

Division 2 Complaint and internal dispute resolution processes

27 Operators must ensure complaint and internal dispute resolution processes are prepared and maintained

- (1) An operator must ensure that each of the following is prepared and maintained for the retirement village in accordance with this Part—
 - (a) a process for the resolution of complaints made by residents, including complaints made by persons acting on behalf of residents,
 - (b) a process for the resolution of internal disputes between a resident and the operator, or between 2 or more residents.
- (2) Both processes must be—
 - (a) written in plain English, taking into consideration the age-specific needs of current and prospective residents of the retirement village, and
 - (b) made publicly available on the operator’s website and posted on the notice board of the retirement village, and
 - (c) provided to all residents for free either in hard copy form or electronically, but only if the resident agrees to receiving an electronic version.
- (3) Both processes must also set out the following maximum time-frames—
 - (a) no longer than 5 working days for the acknowledgement of complaints or internal disputes,
 - (b) no longer than 60 days for the management of the complaint or internal dispute (and setting out an expected resolution date, where possible).
- (4) This rule is an offence provision.

28 Complaint and internal dispute resolution processes must outline certain matters

- (1) The complaint and internal dispute resolution processes must outline the following matters—
 - (a) the types of complaints and internal disputes that are covered and not covered by

each of the processes,

(b) the resolution options available for each type of complaint and internal dispute.

(2) Both processes must also—

(a) clearly explain the process, including the roles and contact details of relevant staff, and

(b) include a clear and understandable visual representation of the process, and

(c) outline the roles and responsibilities of relevant staff in receiving, reviewing, responding to, and resolving complaints or internal disputes, and

(d) outline the steps involved in each stage of the complaint or internal dispute resolution process and the expected actions that are generally involved at each stage of the process, and

(e) include information on the management and escalation of complaints, internal disputes, and the types of complaints and internal disputes that are not covered by either of the processes under subrule (1) (a), in the retirement village (through levels of village management) and to external organisations or authorities (for example, for a third party investigation, NSW Fair Trading or the Tribunal), and

(f) include measures to ensure the privacy of residents is maintained, and

(g) include measures for the review of organisational processes arising from the analysis of data about complaints and internal disputes and the continual monitoring of the process.

(3) An operator must review each of the processes every 2 years.

29 Operators must keep records of complaints and internal disputes

(1) An operator must keep a record of the following information about complaints and internal disputes that have been raised in the retirement village—

(a) details of each complaint or internal dispute, including the name and contact details of each resident concerned, and the date the complaint or dispute was raised,

(b) details of actions taken in response to each complaint or internal dispute, including the names and contact details of any staff involved in the handling of the complaint or internal dispute, and the date the action was taken,

(c) whether the complaint or internal dispute was resolved, withdrawn, referred or escalated or another outcome was achieved,

(d) the number of complaints or internal disputes handled each calendar year.

- (2) The records must be kept for at least 5 years.
- (3) This rule is an offence provision.

Part 6 Training and competencies

30 Operators must prepare and implement policies and procedures for training and competencies

- (1) An operator must prepare and implement written policies and procedures for the selection, training and ongoing supervision of the operator's staff, in accordance with this rule.
- (2) This rule is an offence provision.

31 Policies and procedures for training and competencies must include certain information

- (1) The policies and procedures must include the following information in relation to each role in which staff is employed or otherwise engaged—
 - (a) the key responsibilities of the role,
 - (b) the qualifications or experience required, if any,
 - (c) the performance standards for the role,
 - (d) details of how performance will be assessed and managed, and how any instances of under-performance will be handled,
 - (e) guidance and information on any relevant matter that is reasonably required to allow a person to carry out the functions of the person's role effectively, professionally and in the best interests of residents and prospective residents.
- (2) When determining the guidance to be provided under subrule (1) (e), an operator must have regard to the following matters (and any other matter the operator considers to be relevant)—
 - (a) the amount of time the role will require engaging with residents, including the frequency and purpose of the engagement,
 - (b) whether the role will involve the handling of disputes,
 - (c) any responsibilities assigned to the role for the purposes of responding to emergencies or the carrying out of evacuations,
 - (d) whether the role will be responsible for meeting with residents or prospective residents on behalf of the operator to explain a resident's current village contract information as provided by section 69A of the Act,

- (e) whether knowledge of first aid is required to carry out the role,
- (f) whether the role will have any involvement in, or the control or responsibility over, the finances of the retirement village,
- (g) the expectations of residents or prospective residents around standards of behaviour, service and conduct,
- (h) the type of recruitment, assessment and hiring method for the role,
- (i) whether any third-party checks or verifications are required (for example, criminal record checks).

32 Operators must ensure staff are trained in complaint handling and internal dispute resolution

An operator must ensure that all relevant staff—

- (a) are aware of policies and procedures about the handling of complaints and resolving internal disputes, and
- (b) are aware of their responsibilities for managing complaints or resolving internal disputes under the policies and procedures, and
- (c) know how to deal with unreasonable conduct by people making complaints or raising internal disputes, and
- (d) receive ongoing training in the effective handling of complaints or disputes under the policies and procedures, and
- (e) have clear delegations of authority and guidance about their discretion to respond to issues raised with them in the course of managing complaints or resolving internal disputes, and
- (f) are alert to identifying complaints or internal disputes and are aware of where or to whom they can refer a complaint that they are aware of, or an internal dispute that they have been given notice of, if unable to directly respond themselves.

33 Operators must ensure staff involved in internal dispute resolution receive additional training

An operator must ensure that the operator's staff who have responsibilities under the internal dispute resolution process—

- (a) are aware of their responsibilities for resolving disputes under the internal dispute resolution process, and
- (b) receive ongoing training in the handling of disputes, and

- (c) have clear delegations of authority and guidance about their discretion to respond to issues raised with them in the course of managing an internal dispute, and
- (d) know how to deal with unreasonable conduct by people raising internal disputes.

34 Operators must keep records of staff training and professional development

- (1) An operator must keep a written record of the training and professional development provided to the operator’s staff to ensure that they are familiar with, and able to comply with, the following—
 - (a) all of their functions as a staff member,
 - (b) all of the policies, procedures and processes required by these rules of conduct.
- (2) The records must be kept for at least 5 years.
- (3) This rule is an offence provision.

35 Operators must monitor staff compliance with policies and procedures

- (1) An operator must oversee and manage the operator’s staff, or have a structure in place to ensure the oversight and management of the operator’s staff, to ensure compliance with all relevant policies, procedures or processes required by these rules of conduct.
- (2) An operator must monitor staff compliance, or review any structure in place for the monitoring of staff compliance, every 2 years.

Schedule 4 Time for making of applications to Tribunal

(Clause 34 (1))

Column 1	Column 2
Section	Time during which application may be made
18 (6)	no earlier than 14 days after date of request for disclosure statement
36 (3)	no earlier than 1 month after service of rescission notice
36 (8) (a)	up to 3 months after date of rescission
36 (8) (b)	up to 3 months after date of rescission
37 (3)	up to 3 months after date of rescission
53 (3)	up to 30 days after date of notification of refusal to consent
107 (5)	no earlier than 14 days after date of request by Residents Committee under section 107 (4)
108 (1)	up to 30 days after date of notification of refusal to consent or, if residents do not notify, up to 14 days after expiry of period under section 107 (2)

113	no earlier than 59 days immediately prior to commencement of the financial year and any time until the end of the financial year
132 (3)	up to 7 days after date of notification of differing opinion as to condition of premises
134 (1)	no later than 28 days after service of termination notice
134 (2)	no later than 28 days after service of termination notice
135 (1)	up to 30 days after alleged incident became known to operator
140 (1)	up to 30 days after date fixed for vacation by earlier Tribunal order
146 (1)	any time before goods are disposed of under section 147 no earlier than 30 days after date of notice required under section 147 (2). If that notice cannot be given, application cannot be made earlier than 30 days after date on which—
147 (1)	(a) the former resident vacated premises concerned (if the residence contract was terminated by order of the Tribunal), or (b) the residence contract was terminated (in any other case)
148 (2)	up to 12 months after date operator deals with the goods
163 (6) (a)	up to 3 months after date of receipt of claim
163 (6) (b)	up to 3 months after date of receipt of claim
181 (5) (a)	no earlier than 1 month before expiry of period in section 181 (2) (f) and no later than 14 days after expiry of this period
181 (5) (b)	no earlier than 1 month before expiry of period in section 181 (2) (f) and no later than 14 days after expiry of this period
182 (1) (a)	up to 14 days after due date for payment

Schedule 5 Penalty notice offences

For the purposes of section 184 (6) of the Act—

- (a) each offence specified in this Schedule is an offence for which a penalty notice may be issued, and
- (b) the amount payable under any such penalty notice is the amount specified in this Schedule for the offence.

Column 1	Column 2
Provision	Penalty (\$)
Offences under the Act	
Section 17 (5A)	1,100
Section 18 (3)	440

Section 18 (4)	220
Section 18 (5)	2,200
Section 19 (2)	220
Section 20 (1)	550
Section 20 (3)	550
Section 21 (1) (a)	1,100
Section 21 (1) (b)	1,100
Section 21 (1) (c)	1,100
Section 24A (1)	2,200
Section 27	2,200
Section 29 (1A)	2,200
Section 39 (1)	1,100
Section 39 (2)	1,100
Section 39 (3) (a)	550
Section 39 (3) (b)	550
Section 58A (2A)	2,200 (in the case of a corporation) or 1,100 (in any other case)
Section 58B (1)	2,200 (in the case of a corporation) or 1,100 (in any other case)
Section 59A	440
Section 69A (1)	550 (in the case of a corporation) or 220 (in any other case)
Section 69A (5)	550 (in the case of a corporation) or 220 (in any other case)
Section 69A (12)	2,200 (in the case of a corporation) or 1,100 (in any other case)
Section 72A (1)	440
Section 72A (4)	440
Section 83C, in relation to a contravention of rule 11, 14, 15, 22, 27, 29, 30 or 34 under the <i>Rules of Conduct for Operators of Retirement Villages</i> set out in Schedule 3A to this Regulation	2,200 (in the case of a corporation) or 1,100 (in any other case)
Section 99 (5)	2,200
Section 101 (1)	440

Section 101A (1)	2,200 (in the case of a corporation) or 1,100 (in any other case)
Section 106A	1,100
Section 110 (1)	110
Section 110 (2)	110
Section 112 (1)	2,200
Section 118A	2,200 (in the case of a corporation) or 1,100 (in any other case)
Section 118E (1)	440
Section 119 (1)	1,100
Section 147 (5)	440
Section 165 (1) (a)	220
Section 165 (1) (c)	220
Section 165 (1) (d)	220
Section 165 (1) (e)	220
Section 180 (2)	2,200 in the case of a corporation or 1,100 in the case of an individual
Section 180 (3)	220
Section 181 (2)	1,100
Section 181 (4)	220
Section 182AC(7)	2,200 in the case of a corporation or 1,100 in the case of an individual
Section 182AE(3)	2,200 in the case of a corporation or 1,100 in the case of an individual
Section 182AG(6)	2,200 in the case of a corporation or 1,100 in the case of an individual
Section 182C (1)	2,200
Section 197	1,100
Offences under this Regulation	
Clause 19A	1,100 (in the case of a corporation) or 440 (in any other case)
Clause 50AA(1) or (2)	2,200 in the case of a corporation or 1,100 in any other case

Clause 50AB(1), (2) or (3)

2,200 in the case of a corporation or
1,100 in any other case

Schedule 5A Local government areas

(Clause 33C(a))

Bayside

City of Blacktown

City of Blue Mountains

Burwood

Camden

City of Campbelltown

Canada Bay

Canterbury-Bankstown

Cumberland

City of Fairfield

Georges River

City of Hawkesbury

Hornsby

Hunter's Hill

Inner West

Ku-ring-gai

Lane Cove

City of Liverpool

Mosman

City of Newcastle

North Sydney

Northern Beaches

City of Parramatta

City of Penrith

City of Randwick

City of Ryde

Strathfield

Sutherland Shire

City of Sydney

The Hills Shire

Waverley

City of Willoughby

Wollondilly

City of Wollongong

Woollahra

Schedule 6 Provisions relating to consent of residents

(Clause 52)

1 Definitions

In this Schedule—

ballot means a ballot conducted at a meeting of residents.

qualified voter means a resident of the retirement village.

returning officer means a resident (who is not a member of the Residents Committee and is not standing for election to the Residents Committee) selected by a show of hands at a meeting of the residents.

2 Notice of special resolution

If a measure or action requires a special resolution—

- (a) a resolution concerning the action or measure must be put to a meeting of residents of the retirement village, and
- (b) at least 21 days' written notice of the meeting must be given to all residents of the village, and
- (c) the notice must—
 - (i) set out the resolution, and
 - (ii) specify that the resolution is to be put as a special resolution, and

(iii) specify that residents of the village may submit their vote prior to the meeting in writing (and give directions as to the manner in which such a vote is to be recorded and submitted), and

(iv) be accompanied by a ballot paper initialled by the returning officer.

3 Postal votes

- (1) A qualified voter may, prior to a meeting in respect of a special resolution, submit a vote in writing (**postal vote**) to—
 - (a) the Residents Committee, or
 - (b) if there is no such Committee established in the retirement village, to the operator of the village.
- (2) The Residents Committee (or, if there is no such Committee established in the retirement village, the operator of the village) must keep all postal votes received prior to the meeting in a safe and secure location.
- (3) At the meeting in respect of a special resolution, each postal vote must be accounted for against a current list of residents and be handed to the returning officer.
- (4) If a qualified voter has submitted a postal vote in accordance with this clause, that voter may not change or withdraw the postal vote or vote in person or by proxy at the meeting in respect of the special resolution.

4 Quorum required for special resolution

- (1) A special resolution submitted at a meeting of the residents of a retirement village must not be considered unless there is a quorum present to consider and vote on the resolution.
- (2) There is a quorum for considering and voting on such a resolution only if—
 - (a) a minimum of 5 qualified voters, or 25% of qualified voters (whichever is the greater), or
 - (b) where the village has fewer than 10 occupied residential premises—the qualified voters from a majority of the occupied residential premises,is able to vote on the resolution at the meeting, either personally, by postal vote or by proxy.
- (3) If a quorum, as provided by subclause (2), is not present within the next half hour after the relevant resolution arises for consideration at the meeting, the meeting stands adjourned for at least 7 days.
- (4) If a quorum, as provided by subclause (2), is not present within the next half hour

after the time fixed for the adjourned meeting, the qualified voters present personally or by proxy or postal vote constitute a quorum for considering that resolution.

5 When written ballot required

- (1) The residents of a retirement village may decide, by a show of hands at any meeting at which a particular measure or action is discussed, whether or not the vote on the measure or action concerned is to be taken by means of a written ballot.
- (2) If 50% or more of the residents present at the meeting decide that the vote is to be taken by means of a written ballot, the vote must be taken by those means.

6 Conduct of written ballot

- (1) If a vote is to be taken by means of a written ballot (including a vote on a special resolution), the returning officer must cause sufficient ballot papers to be prepared so that a ballot paper can be given to each qualified voter.
- (2) The ballot paper must contain details of the measure or action requiring a vote and directions as to the manner in which a vote is to be recorded and returned to the returning officer.

Note—

For example, the ballot paper may have the question to be answered followed by a yes box and a no box and instructions that the voter clearly mark one of the boxes with a tick or a cross.

- (3) The returning officer must provide to each qualified voter (or if the qualified voter has a proxy, to the voter's proxy) at the meeting a ballot paper initialled by the returning officer.
- (4) In order to vote on the resolution at the meeting, a qualified voter (or if the qualified voter has a proxy, the voter's proxy)—
 - (a) must record a vote on the ballot paper in accordance with the directions shown on it, and
 - (b) must fold the completed ballot paper so that the vote cannot be seen, and
 - (c) must place the ballot paper in the ballot box.

7 Count of votes

- (1) The result of a vote is to be ascertained by the returning officer as soon as is practicable.
- (2) The returning officer is to count the votes (whether by written ballot or show of hands) and any postal votes received (in respect of a special resolution) to ascertain the result of the vote.

8 Returning officer's decision final

If the returning officer is permitted or required to make a decision on any matter under this Schedule, the decision of the returning officer on that matter is final.

9 Report of result

- (1) When he or she first ascertains the result of the vote, the returning officer is to announce the result and is then to prepare a written report of the result.
- (2) Copies of the report are to be given to the Residents Committee (if there is one) and placed on a notice board in a common area of the retirement village.

Schedule 7 Provision of certain village information

clauses 50AA and 50AB

1 Retirement village information

The following information relating to a retirement village—

- (a) the village trading name,
- (b) the village street address,
- (c) the village contact details, including telephone number and email address.

2 Retirement village operator information

The retirement village operator's full name.

3 Residents Committee information

The following information about a Residents Committee of a retirement village—

- (a) if there is a Residents Committee of the village,
- (b) the name of the secretary or the chairperson of the Residents Committee,
- (c) the contact telephone number and email address for the Residents Committee.

4 Retirement village units information

The following information relating to the number of units in a retirement village—

- (a) the total number of units,
- (b) the number of units with accessibility facilities.

5 Resident right types information

The following information relating to the presence of the following resident right types in a

retirement village—

- (a) strata title schemes,
- (b) leasehold arrangements,
- (c) non-registered lease or licence arrangements,
- (d) community land schemes,
- (e) rental arrangements,
- (f) company title schemes,
- (g) other residence rights.

6 Retirement village business information

The following information about the management and operation of a retirement village—

- (a) if company, sole trader, partnership, not for profit or charity—the entity type,
- (b) for a body corporate—the ABN, ACN, ARBN or other registration number,
- (c) for a business operating more than 1 retirement village in NSW—the number of retirement villages the business operates in NSW,
- (d) the name of any industry association the business is a member of,
- (e) the contact details for information requests, including the contact person's full name, title, telephone number and email address,
- (f) confirmation that the village is insured under the Act, section 100,
- (g) whether the operator has been convicted of an offence under the Act, including details of the offence and the amount of the penalty,
- (h) details regarding the extent to which the operator has complied with all requirements of any development consent relating to the village site,
- (i) whether the village has been registered under the Act, section 24A,
- (j) for a village that has not yet been registered under the Act, section 24A—the reasons for the delay,
- (k) if the operator does not own the land notified as a retirement village—details of the entity that owns the land.

7 Retirement village site information

The following information relating to the management and operation of the retirement

village—

- (a) the total size of the land, in square metres, that was notified under the Act, section 24A as comprising the retirement village,
- (b) the footprint of the buildings, in square metres, comprising the retirement village,
- (c) whether the development is fully completed, partially completed or still to be built,
- (d) for a retirement village that is partially completed or still to be built, the following particulars of all proposed stages—
 - (i) the estimated date of completion,
 - (ii) the proposed number of premises,
 - (iii) whether development consent has been obtained.