Submission 21

Lend Lease

21 September 2012

The Research Director
Transport Housing and Local Government Committee
Parliament House
George Street
BRISBANE QLD 4000

By email: thlgc@parliament.qld.gov.au

Dear Sir/Madam

Lend Lease submission on the review of the Retirement Villages Act 1999 (Qld)

We refer to the Public Briefing on the review of the Retirement Villages Act 1999 on 28 August 2012.

We understand the Transport, Housing and Local Government Committee has been directed to carry out a review of the Act and consider the terms of reference outlined in the Committee's issues paper dated August 2012. Those terms of reference cover a wide range of issues relating to the operation of retirement villages and the accommodation options more generally available to aged Australians in Queensland.

Lend Lease is the largest for-profit owner, manager and developer of retirement living and aged care facilities in Australia. We have over 70 retirement villages and 30 aged care facilities in Australia and New Zealand and provide accommodation for over 15,000 residents. In Queensland, we own or manage retirement villages and residential aged care facilities across 16 different sites.

As an owner, manager and developer of specialised accommodation for older members of the Queensland community, Lend Lease welcomes the THLG Committee's review of the Retirement Villages Act. We view it as a positive indication of government's renewed focus on the retirement villages sector. We look forward to working through the review with the Committee and to achieving outcomes which underpin and promote growth in the sector.

Generally, we consider that the current Act provides a reasonable regulatory framework for operating retirement villages in Queensland. While Lend Lease proposes a number of changes to the framework which are aimed at reducing inefficient practices and promoting innovation and growth (these changes are outlined in detail below), Lend Lease does not support any proposal which would result in a wholesale change to the existing regulatory framework and generate uncertainty in the sector.

Further, while Lend Lease continuously strives to implement best practice and improve resident satisfaction in all its retirement villages, it does not support any proposal which would seek to achieve those aims by increasing the regulatory burden on operators.

Lend Lease participates in the voluntary Accreditation Scheme administered by the Retirement Villages Association. In our view, the scheme provides sufficient incentive for operators to pursue and achieve continuous improvement and best practice outcomes and there is no need to increase the regulatory burden on operators to achieve those objectives.

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Lend Lease's general response to the Committee's Issues Paper

We have been provided with the submission to the Committee prepared by the Retirement Villages Association (RVA). We support this submission and the recommendations it proposes.

The RVA submission highlights the importance of the retirement villages sector in providing economically diverse accommodation options for older members of the Queensland community.

The submission notes that, with encouragement from government, growth in the sector will continue and the growing numbers of older people across the community will have more choice and better quality housing when considering their accommodation options.

We strongly recommend the Committee adopt the recommendations of the RVA submission and to encourage support from the government for the following:

- Investment in and development of retirement villages in Queensland;
- Innovation in the retirement village sector;
- Minimal change to the current regulatory framework and to ensure balance between protection of resident interests and increased regulatory burden on operators.

Lend Lease's key issues for the Committee

We have set out below Lend Lease's comments on key issues relating to the existing regulatory framework. We ask the Committee to acknowledge these issues in the course of its review and to take account of our comments when making its recommendations to government.

The key issues are:

1. the statutory Public Information Document is inadequate, cumbersome and can be improved;

2. the regulatory framework can be improved to encourage innovation;

3. the Act could provide greater certainty in relation to the rights of residents;

4. the Committee should not recommend any change which adversely impacts deferred management fees;

5. the absence of 'rent assistance' for retirement village residents requires review;

6. the approach taken to planning for seniors housing by Local and State government can be improved;

7. the Committee should not recommend any change which operates retrospectively;

8. developments that meet the definition in the Act of a 'retirement village' only should be allowed to promote themselves as a retirement village; and

9. the existing regime for setting the resale or re-leasing price is impractical, cumbersome and can be improved.

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Issues (1.) to (8.) above are also referred to in the RVA submission. Our comments on these issues are intended to supplement the information contained in the RVA submission and to reinforce our support for the recommendations made by the RVA.

We address each of the above issues in turn below.

1. The statutory Public Information Document is inadequate, cumbersome and can be improved

Committee Issues Paper Term of Reference to which this issue relates:
Issue 1 – Does the Act provide adequate fair trading practice protection for residents; including providing appropriate material to enable informed decisions to be made?
Issue 3 – Consider whether the Act provides adequate certainty, accountability and transparency for residents in relation to their financial obligations, including the interests of residents in the event of a village closing down.

The Public Information Document is provided by operators to prospective residents of retirement villages. The PID is required to be in a form prescribed under section 74 of the Act.

Lend Lease recognises the need for prospective residents to have access to complete and relevant information when making their decision to move into a retirement village. On this basis, we are comfortable with the current regulatory approach of prescribing mandatory information to be given to prospective residents.

However, we consider it critical that all information given to prospective residents be in a format which can be easily read and understood and which provides key financial and other information up front. Unfortunately, in our view, the existing prescribed form PID fails to meet these objectives. In our view, the PID must be simplified so as to make it more useful to prospective residents

When compared with disclosure documents prescribed for use by governments of other States in which we operate (we have retirement villages in Queensland, New South Wales, Victoria, South Australia and Western Australia) the PID is by far the longest and most cumbersome.

This is largely due to the fact that the first 18 to 20 pages contains information relating to the regulatory framework applicable to retirement villages. The information is non-village-specific

We question whether there is a need for such lengthy information to be included in the PID. In our view, village specific information and key financial data should replace the general regulatory overview in a new prescribed form PID.

We understand the RVA has been working with the Association of Residents of Queensland Retirement Villages to develop a simplified PID which contains village specific and key financial information up front. Lend Lease supports the adoption of a new format for the PID in line with the format developed jointly by the RVA and ARQRV.

We are also concerned that residents are not obtaining appropriate professional advice regarding their PID and residence contract. So as to address this, Lend Lease proposes the Committee consider imposing a mandatory requirement for all prospective residents to either:

A. confirm, by signing a certificate in a prescribed format, that they have obtained legal advice and/or other professional advice in relation to their PID and proposed residence contract; or,

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B. acknowledge that they are aware of their entitlement to obtain legal advice and/or other professional advice but have chosen not to do so.

2. The regulatory framework can be improved to encourage innovation

Committee Issues Paper Term of Reference to which this issue relates:
Issue 2 – Does the Act avoid unnecessary restrictions and provisions which thereby increases the affordability of living in a retirement village.
Issue 6 – Does the Act adequately promote innovation and expansion in the retirement village industry, avoids purely 'red tape' requirements, and facilitates the ongoing viability of villages.

Lend Lease sees a number of issues affecting future growth and innovation in the retirement living sector in Queensland. These issues include lack of access to cost effective land, difficulties and bottle necks in the current Queensland planning system (see our further comments below in relation to this) and, critically, a regulatory framework which does not accommodate innovative operating models.

The regulatory framework which the Act establishes focuses on a single operating model, being one in which operators rely on a deferred management fee for profit. This means that were an operator to consider alternative operating models which do not rely on the DMF for profit, they would find it extremely difficult and uncommercial to implement while, at the same time, comply with the requirements in the Act.

Some examples of operating models which do not rely on DMFs include:

1. rental villages where residents pay for the cost of their accommodation over time rather than by way of a lump sum ingoing contribution; and

2. villages where residents receive services on a 'fee-for-service' basis where no costs or charges are deferred until a resident leaves.

In the case of example (2.) above, the operator would provide services to the whole of the village on a 'contract' basis. The terms of the contract would largely be left to the operator and the residents (or residents' committee) to agree upon, including what charges residents are willing to pay for the term of the contract.

In the case of example (2.), there is no policy basis for capping the fees that an operator may recover at its actual costs of providing the services; however, this is the likely outcome under the existing regulatory framework. There is also no basis for fixing increases in fees to changes in the relevant Consumer Price Index; however again, this would be the likely outcome under the Act. There would be no policy basis for imposing a range of other obligations under the Act too.

Where an operator seeks to adopt an operating model along the lines of example (2.), they should, in our view, be excused, in clear and unambiguous terms, from compliance with the full range of regulatory requirements in the Act. Unless the regulatory burden is reduced in this way for operators considering alternative operating models, the impetus for innovation will remain low.

The above is an example of only one potential alternative operating model. We ask that, in the course of its review, the Committee work with operators to look at making the Act more accommodative of alternative and innovative operating models such as, but not limited to, the model referred to here.

3. The Act could provide greater certainty in relation to the rights of residents

Committee Issues Paper Term of Reference to which this issue relates:
Issue 4 – Does the Act provide sufficient clarity and certainty in relation to the rights and obligations of residents and scheme operators?

The RVA submission identifies improvements that can be made to the Act to provide greater certainty in relation to residents' rights, specifically, their right to peaceful enjoyment of their premises and to live in an environment where their rights are respected by other residents.

Lend Lease considers there is a gap in the existing regulatory framework in relation to the rights of residents and strongly endorses the RVA's recommendation for the gap to be closed by incorporating provisions in the Act which mirror the provisions in section 83 of the *Retirement Villages Act 1999* (NSW).

4. The Committee should not recommend any change which adversely impacts deferred management fees

Committee Issues Paper Term of Reference to which this issue relates:
Issue 2 – Does the Act avoid unnecessary restrictions and provisions which thereby increases the affordability of living in a retirement village.
Issue 2, sub-issue (1) - Is the exit fee an appropriate source of profit for a retirement village operator?

As indicated earlier in this submission, Lend Lease does not support any proposal which would result in a wholesale change to the existing regulatory framework. This includes any change which would adversely impact on the operator's entitlement to receive a deferred management fee. Lend Lease strongly opposes any recommendation by the Committee which would have that effect.

The RVA submission sets out the key reasons why the deferred management fee model is an important part of the retirement living landscape. Critically, in our view, the Committee must acknowledge that the deferred management fee model is the principal driver of affordability in the retirement villages sector.

5. The absence of 'rent assistance' for retirement village residents requires review

Committee Issues Paper Term of Reference to which this issue relates:
Issue 2 – Does the Act avoid unnecessary restrictions and provisions which thereby increases the affordability of living in a retirement village.
Issue 2, sub-issue (5) - Are you aware of any unnecessary restrictions or provision which affect the affordability of living in a retirement village

An issue affecting affordability in the retirement villages sector is the absence of a scheme for rent assistance to be given to residents of retirement villages in Queensland.

The absence of such a scheme means that residents of retirement villages are disadvantaged when compared with older persons residing in other forms of accommodation, such as residents of manufactured home parks who are entitled to obtain 'rent assistance'.

Lend Lease considers residents of its retirement villages should not be disadvantaged in such a way.

While the 'rent assistance' scheme is administered by the Federal Government, we consider there is scope for the Committee to recommend and for the government to actively seek, changes to the 'rent assistance' scheme so that it is available to residents of retirement villages.

6. The approach taken to planning for seniors housing by local and State government can be improved

Committee Issues Paper Term of Reference to which this issue relates:
Issue 2 – Does the Act avoid unnecessary restrictions and provisions which thereby increases the affordability of living in a retirement village.
Issue 6 – Does the Act adequately promote innovation and expansion in the retirement village industry, avoids purely 'red tape' requirements, and facilitates the ongoing viability of villages.

Lend Lease considers there is an important planning role for government to take on in ensuring the continued expansion of the retirement village sector in Queensland. Specifically, the government should look to streamline and improve its planning approach for seniors housing.

The RVA submission sets out the existing deficiencies in the planning approach for seniors housing in Queensland. Specifically, the submission states that the current approach is two tiered and not conducive to continued expansion in the development of seniors accommodation.

Lend Lease supports the recommendation outlined in the RVA submission for planning reforms which are targeted towards the delivery of seniors housing.

Lend Lease commends to the Committee and to government the planning approach taken in other jurisdictions (notably the Australian Capital Territory) which involves identifying and zoning designated parcels of land specifically for seniors housing.

7. The Committee should not recommend any change which operates retrospectively

Committee Issues Paper Term of Reference to which this issue relates:
Issue 6 – Does the Act adequately promote innovation and expansion in the retirement village industry, avoids purely 'red tape' requirements, and facilitates the ongoing viability of villages.
Issue 6, sub-issue (4) - What are some of the key factors that facilitate, or hinder, the viability of retirement villages?

As mentioned previously, Lend Lease does not support any wholesale change to the existing regulatory framework and also does not support any increase in the regulatory burden on operators.

As a corollary to the above, Lend Lease asks the Committee to note that, should any change to the existing regulatory framework be proposed by the Committee, we contend that any such change should not operate retrospectively.

The RVA submission clearly identifies the adverse impact retrospective regulation has on the viability of the retirement villages sector. Lend Lease strongly urges the Committee to take account of these adverse impacts when making its recommendations to government.

8. Developments that meet the definition in the Act of a 'retirement village' only should be allowed to promote themselves as a retirement village

Committee Issues Paper Term of Reference to which this issue relates:
Issue 5, sub-issue (2) – How are residents assured quality service provision by the Act?

Not all types of accommodation available to older members of the Queensland community are 'retirement villages' within the meaning of the Act. Despite this, providers of these alternative accommodation types sometimes promote their developments as 'retirement villages'. This arguably creates a misleading impression in the market that their development is regulated by the Act and is subject to the same standards of best practice and industry Accreditation as retirement villages.

The misrepresentation of developments and complexes as retirement villages by alternative accommodation providers disadvantages operators of genuine retirement villages, who incur significant cost and are put to considerable effort to comply with the Act and meet the standards for industry Accreditation.

In response to this issue, the RVA submission recommends a provision be incorporated in the Act prohibiting the promotion of a development or complex as a 'retirement village' unless the development or complex is a retirement village within the meaning of the Act.

Lend Lease asks the Committee to adopt the recommendation in the RVA's submission in its report to government.

9. The regime for setting the resale/re-leasing price is impractical, cumbersome and can be improved.

Committee Issues Paper Term of Reference to which this issue relates:
Issue 1 – Does the Act promote consumer protection and fair trading practices?
Issue 2 – Does the Act avoid unnecessary restrictions and provisions which thereby increases the affordability of living in a retirement village.
Issue 2, sub-issue (8) – Is there an appropriate balance of the burden of responsibility for vacated residences?

Part 3, Division 5 of the Act sets out a regime dealing with the resale/re-leasing of a resident's 'right to reside'.

Under the regime, the operator and the resident are, in summary, to agree on the 'resale' value of the resident's premises.

Where the premises have not been 'sold' within 6 months of the date the former resident's 'right to reside' ended and the former resident has not been paid their exit entitlement, the operator and the resident must reconsider the 'resale' value every 3 months (90 days).

In practice, the obligation imposed on the operator and the former resident to reconsider the 'resale' value every 90 days is problematic. In our experience, the former resident or, where the former resident is deceased, the legal representative of their estate, has, in many cases, little interest in re-engaging with the operator to determine a new 'resale' value every 90 days.

The obligation to reconsider the 'resale' value every 90 days imposes a very large compliance burden on operators.

As the Committee is aware, under Part 3, Division 5, operators are obliged to promptly provide a former resident or their legal representative with details of any offer received to acquire their premises. In this context, the obligation to reconsider the 'resale' value of premises every 90 days appears largely unnecessary.

On the above basis, Lend Lease asks the Committee to recommend a change to Part 3, Division 5 of the Act. The requirement for operators and former residents to reconsider every 90 days the 'resale' value of premises should be repealed so as to reduce the compliance burden on operators in Queensland.

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Conclusion

Lend Lease supports changes to the existing regulatory framework so as to address the key issues referred to above. Lend Lease considers that changes to the Act in line with the above will promote innovation in the retirement villages sector in Queensland, reduce inefficiencies and underpin growth.

Aside from the key issues set out in this letter, Lend Lease is largely satisfied as to the reasonableness of the existing regulatory framework and does not support any proposal which would result in a wholesale change to it.

Any such change would generate uncertainty in the sector and consequently drive down investment and development in Queensland. Adverse effects would flow on to Queensland consumers and the accommodation options available to older members of the Queensland community would be likely to diminish.

Any change to the existing regulatory framework which increases the regulatory burden on operators is likely to have similar impacts on investment and development and reduce the accommodation offering for older members of the Queensland community.

We again urge the Committee to:

1. adopt the recommendations in the submission from the RVA; and

2. recognise the key issues identified in this letter and take account of our comments in any recommendations the Committee makes to government to address them; and

3. resist any proposal the Committee receives which would result in major changes to the existing regulatory framework or increase the regulatory burden on operators in the retirement villages sector.

Please contact us if you have any queries in relation to this letter and we welcome the opportunity to discuss further with you.

Yours sincerely,

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Lend Lease

Cc: Mr Andrew Giles, President, Retirement Villages Association