

Site fee increase disputes

A new collective, community-wide approach applies to disputes about site fee increases. This approach aims to avoid time and effort being wasted on disputes about site fee increases that are broadly accepted by the home owners.

This information only applies when home owners receive an increase by notice. It does not apply to fee increases under a fixed method in their site agreement.

Threshold needed to challenge an increase

For an increase in site fees to be disputed, at least 25% of home owners who received the increase must object to it. Home owners at each community can decide how this is determined, for example:

- a vote at a meeting of home owners
- circulating a document to record the names of those who object.

For the purpose of counting numbers, if more than one home owner occupies a particular site, they only get one vote.

Is there any restriction on which increases can be challenged?

Any increase can be challenged if 25% or more home owners object. This includes small increases and those under consumer price index (CPI). Note that the operator is entitled to any proven increase in their outgoings and operating expenses.

Applying for compulsory mediation with NSW Fair Trading

If 25% or more of the home owners object to the increase, an application for compulsory mediation can be lodged with Fair Trading. Mediation is a free service. The application must be lodged within the first 30 days of home owners receiving the notice of increase. A copy of the Application for compulsory mediation form is available from the Forms page of the Fair Trading website.

The home owners can nominate one or more representatives for the mediation. They will advocate on behalf of all home owners.

Mediation is a quick and informal process to negotiate a resolution to a dispute. A neutral and independent mediator helps the parties involved to achieve their own resolution. All parties can explain their situation and are encouraged to actively take part.

Any agreement reached at mediation is binding on all parties but must not be inconsistent with the *Residential (Land Lease) Communities Act 2013*. The settlement must be put in writing and signed by the parties. If necessary, the NSW Civil and Administrative Tribunal (the Tribunal) may, on application by any party to the mediation, make orders to give effect to any agreement or arrangement arising out of mediation.

What happens if compulsory mediation is unsuccessful?

If an agreement cannot be reached at mediation, one or more of the home owners can apply to the Tribunal. When doing so, you can apply to the Tribunal for an interim order to delay the increase until the dispute is resolved. There is a fee for all Tribunal applications, for details visit www.ncat.nsw.gov.au

An application must be made within 14 days of the mediation failing. It must be accompanied by a letter from the mediator specifying the date that the mediation was unsuccessful.

What factors will the Tribunal consider?

The Tribunal may consider any of the following factors if evidence is presented:

- the frequency and amount of past increases in site fees for the community
- any actual or projected increase in the outgoings or operating expenses for the community since the last increase (if any), if this information is supplied by the operator
- repairs or improvements to the community either planned or carried out since the last site fee increase
- the general condition of the community including its common areas
- the range and average level of site fees within the community

- the value of the land comprising the community, as determined by the Valuer-General
- the value of any improvements to the community (including common areas) paid for or carried out by home owners
- the explanation for the increase provided by the operator in the notice
- variations in the CPI for Sydney
- whether the increase is fair and equitable in the operation of the community.

The Tribunal can no longer consider as a factor comparable site fees at other similar land lease communities in the same or a similar location.

What orders can the Tribunal make?

The Tribunal has a range of order-making powers. It can rule that the increase is to stand, or that it be reduced by a certain amount or not go ahead. The Tribunal can order that the increase only go ahead if certain conditions are met, for example if the operator carries out specified repairs. The Tribunal can make orders about the current increase as well as the increase in future years.

In most cases the Tribunal outcome will apply to all home owners in the community. This includes those who did not originally oppose the increase. However, if there is a strong reason why separate orders should apply to different home owners or groups of home owners, the Tribunal can consider doing this. There is no ability for a home owner to 'opt out' and pay the increase if it conflicts with the orders of the Tribunal.

Can I challenge my site fee increase individually?

Generally not. You can only apply to the Tribunal as an individual home owner to challenge a site fee increase if your increase is substantially excessive compared to the increases received by other similar sites in your community.