

Site fees

Site fees are the recurrent charges each home owner pays for leasing a site in a land lease community. They are similar to rent a tenant pays to a landlord or the strata levies payable in a strata scheme. Site fees are generally used to meet the maintenance and operating expenses of running the community.

How are site fees set?

The initial site fees must be set out in each home owner's site agreement. Site fees can be negotiable. The initial site fees cannot be higher than:

- what the outgoing home owner for the site was paying
or
- the average site fees for sites of a similar size and location in the community (whichever is the higher).

How can site fees be paid?

The method(s) by which site fees are to be paid must be:

- agreed between the parties
- specified in the site agreement.

You must provide at least one cost-free way of paying site fees, which may include paying in cash at the community's office or by direct debit. Any agreed method of payment can only be changed if a new method is agreed in writing by both parties.

The frequency of payment of site fees must also be agreed between the parties. You cannot require payment of site fees more than a fortnight in advance.

Must I give a receipt?

You must give a receipt for any site fees paid in person. However, if site fees are paid by any other method, you only have to give a receipt if you are asked for one.

Site fee receipts must include:

- the name and address of the community
- the name of the home owner
- their site number
- the amount paid

- any amount in debit or credit as at the date of payment
- the period covered by the payment
- the date the payment was received.

How can site fees be increased?

Site fees can only be increased by:

- a fixed method set out in the site agreement
or
- notice from the operator.

There are advantages and disadvantages under both methods for home owners and operators. Fixed method increases provide certainty while the notice method allows flexibility.

If a site agreement does not have a fixed method for future site fee increases then the site fees can only be increased by the 'notice' method.

Increasing site fees by 'fixed method'

Under this method there is an up-front agreement about how and when the site fees will increase. A fixed method may take a number of different forms. For example, increases in site fees could be linked to the Consumer Price Index (CPI), a percentage of the Aged Pension, a set dollar amount (for example, \$5 per year) or a set percentage (for example, 2% per year).

Under the fixed method of site fees:

- any fixed method must be set out in the site agreement.
- the fixed method may be either for the duration of occupancy by the home owner or for a shorter period specified in the agreement. Only one fixed method may be used in a site agreement. If more than one fixed method is specified, the method that results in the lowest increase is the applicable method.
- it is an offence for you to increase, or attempt to increase, the site fees other than in line with the agreed fixed method.

The agreement will need to specify how often the fixed method will be applied. There is no restriction to only increase fees once per year. For instance, a fixed method linking to rises in the Aged Pension could provide that the increase will occur annually or at each time the pension is increased during the year.

Whenever the site fees are to increase in line with a fixed method you must still give each home owner at least 14 days prior written notice. The notice must specify:

- the amount of the increased site fees
- how the formula was applied
- the day from which the new amount is payable.

Home owners are not required to pay any increase unless they have received proper notice. Download a copy of the model notice of site fee increase form available from the Forms section of the Fair Trading website.

As the fixed method has already been agreed by the parties upon signing the site agreement, increases in accordance with the method cannot be challenged in the NSW Civil and Administrative Tribunal. However, there may be other avenues for challenging (such as the unfair contract terms under the Australian Consumer Law).

Increasing site fees by 'notice method'

Under this method you can give all affected home owners (that is, those not on a fixed method) at least 60 days' written notice of a proposed increase in site fees.

Under the site fee by 'notice method':

- increases cannot occur more than once in any 12 month period
- the notice must provide an explanation for the proposed increase
- notice of the proposed increase must be given to all home owners in the same community at the same time and take effect on the same day.

Download a copy of the model notice of site fee increase form available from the Forms section of the Fair Trading website.

While it may often be simpler or fairer for everybody to be given the same amount or percentage increase, this is not required by law. You may give different increases to different groups of home owners within the same community. However, this must be for legitimate and justifiable reasons. For instance, increases could vary because the size of certain sites are bigger, the location of certain sites are better or some sites have exclusive access to services and facilities. It may be that the same percentage is applied, but this results in different dollar increases as not all home owners come from the same starting base.

After a notice of a proposed increase has been given, you have the option to cancel it or reduce the increase by issuing another notice. However, a new notice does not have to give a fresh 60 days and the reduced increase can take effect from the date specified on the original notice.