

Special levy for community upgrade

Special levies are a new way in which home owners and operators can work together to fund future upgrades and improvements within a land lease community.

Why have a special levy?

A special levy may be useful to:

- give home owners a say in the services and facilities provided in the community
- provide another way to finance upgrades without permanently increasing site fees
- secure money to ensure the upgrade home owners want actually happens
- increase home value as a result of better services and facilities in the community.

What can a special levy be for?

A special levy can be used to fund a new facility, new service or other improvement in the community (for example, a new swimming pool or replacing electrical wiring in the community). Special levies are not designed for regular maintenance or recurrent operating expenses.

What must be covered in a special levy notice?

Notice of a proposal for a special levy must:

- be in writing
- clearly describe the proposed new service, facility, upgrade or improvement
- show the total amount proposed to be raised by the levy
- set out the amount or method of calculating the special levy needed from each home owner. Note that it must be in equal shares for each residential site
- state when the special levy will be due (this can be in instalments)
- explain how the home owners are to vote on the proposal.

How is a special levy passed?

Notice of the proposal must be given to all home owners. The special levy cannot go ahead unless at least 75% of all home owners (1 vote per site) in the community agree

within 90 days of the notice being given. Home owners who do not vote are deemed to be against the proposal.

Home owners have the right to seek independent advice about the levy before agreeing to it.

Even if the proposed special levy is passed by the home owners, you must also consent to the proposal. For example, if the new facility will result in ongoing expenses, a discussion about raising the site fees to cover these costs may be necessary. You have 90 days in which to advise home owners of your decision.

Both 75% of all home owners and you must agree with the proposal. The special levy will then become payable by everyone (including those who may have voted against the proposal).

Who is the special levy paid to?

All special levies are payable to you. Debt recovery action can be taken against any home owner who does not pay. Special levy payments are held on trust by you for the home owners. You can put the funds into your regular account or set up a separate account if you wish. It does not have to be in a trust account. Once special levy payments have been received you must, within a reasonable time, use the money for its intended purpose. The funds cannot be used for anything else. Any unused amount must be refunded to the home owners in equal shares.

What if a home owner disagrees with a levy proposal that has been passed?

The NSW Civil and Administrative Tribunal (the Tribunal) can hear disputes about special levies and has the power to make orders to either cancel or confirm a special levy. The Tribunal cannot cancel a special levy unless there are reasonable grounds for seeking such an order.

What happens when someone leaves or moves into the community?

If the departing home owner has not fully paid their share of the special levy, the incoming home owner becomes responsible for it. This happens as part of their agreement to move into the community. However, the

incoming home owner must first be advised of the outstanding special levy in the disclosure statement given to them by you before they move in.

Can I contribute to the cost of the special levy?

Yes. There is nothing in the law that prevents an operator from contributing to the cost of a community upgrade. For instance, you may wish to do so if the upgrade will provide future benefits. Remember, any fixture funded by a special levy technically will belong to you or the community owner. In such cases, the home owners and the operator can agree on the amount of their respective contributions.

What are the alternatives to a special levy?

Any upgrade or improvement to the community could be solely funded by you. The site fees could be increased until such time as there is enough surplus to pay for an upgrade or improvement. If you begin to receive voluntary sharing arrangements you could decide that a proportion of this money will be used to fund a new facility, new service or other improvement in the community.