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12 May 2023

The Hon Anoulack Chanthivong MP  
Minister for Better Regulation and Fair Trading  
Minister for Industry and Trade  
Minister for Innovation, Science and Technology  
Minister for Corrections  
By email: [macquariefields@parliament.nsw.gov.au](mailto:macquariefields@parliament.nsw.gov.au)

## **ASSET MANAGEMENT PLANS NEED REFORM**

Dear Minister Chanthivong,

First and foremost, we would like to congratulate you on the election of the NSW Labor Government and your appointment as Minister for Better Regulation and Fair Trading, Industry and Trade, Innovation, Science and Technology, and Minister for Corrections.

With this in mind, we write to you in your ministerial capacity about important reforms that relate to your portfolio interests - asset management plans in retirement communities.

### About the Retirement Living Council

The Retirement Living Council is Australia's national leadership group representing the retirement living sector, championing policies that support more investment in age-friendly communities.

As Australia's preeminent industry voice, the RLC champions the growth and sustainability of retirement living, affordable housing options for senior Australians, advocating for fair and balanced regulation, ensuring best practices, providing strong industry leadership, and showcasing excellence.

Together with industry, we represent members on issues of national significance, such as planning and housing advocacy, village accreditation and wider industry reform like the Retirement Living Code of Conduct.

We manage a national research agenda for the sector, and work with state Property Council Divisions to help coordinate local retirement living advocacy, village manager training and industry education.

We also play an active role telling the industry's story - which now includes more than 260,000 village residents across the country aged 65 and over.

We're excited and energised by the opportunities for the industry and feel enormous pride for the work we do to create a better future for ageing Australians.

We send this letter together with the NSW Retirement Village Residents Association - which is the only organisation in NSW that represents and supports residents in retirement communities exclusively, with information, advice and advocacy.

In conjunction with the NSW RVRA representing more than 4,000 residents, we embody a significant and important component of the nation's housing sector and write to you to outline systemic problems and seek urgent clarity about possible solutions to all stakeholders involved: Government, residents and operators.

We understand you will receive an early briefing from your department about the above matters and state-of-play in this regard; however, we would appreciate an opportunity to provide you with a broad perspective from operators and residents alike. We would also like to raise issues relating to buyback timeframes, issues within the Housing SEPP, and zoning challenges placing retirement up against residential developers, who have much larger margins with which to 'play'.

The correlation between the impact of ageing in place and affordability must also be considered while seeking investment into the sector to achieve outcomes that benefit both the sector and NSW residents - after all, capital goes where it's welcome.

Please see attached a summary of one of the current problems relating to asset management plans, and several recommendations that both the RLC and the NSW RVRA believe are solutions the NSW Government can take to rectify the problems in this legislation to ensure that retirement living reforms deliver on their intended outcome.

Minister, please be assured that we are committed to making a positive, solutions-oriented contribution in this early phase of your Ministry to help chart a course towards an equitable solution for all. We write to draw your attention to this issue and seek a meeting with you to discuss the unintended consequences of this legislation and the impact it is having on the sector more broadly. We are available to meet at short notice (operators and residents together) to develop solutions.

Should you, or your office, require further information in relation to this matter, as well as to organise a meeting at a time most suitable to you, please contact National Policy & Stakeholder Manager - Retirement Living, Charles Kekovich on 0409 776 588 or by email at [ckekovich@propertycouncil.com.au](mailto:ckekovich@propertycouncil.com.au).

Yours sincerely,



Daniel Gannon  
Executive Director  
**Retirement Living Council**



Craig Bennett  
President  
**NSWRVRA**



## Asset Management Plans

### Background

Asset Management Plans continue to be the dominant regulatory issue for village operators and residents. The intention of the Asset Management Plan reforms was to provide residents with transparent information about how the recurrent charges they pay are used to maintain retirement village assets.

Unfortunately, the legislation and associated guidelines have not achieved that objective. At our Annual Retirement Forum in November 2022, 80% of attendees responded to a poll stating policy outcomes relating to AMPs do not meet the policy intent. The members of the Property Council are reporting to us that the requirements are expensive and burdensome. Both we and the RVRA believe that the result has been the production of extensive and needed information which provides the transparency sought - but the packaging and presentation of this information to residents could be very much simplified in order for residents to easily comprehend where their money is being spent. We are united in seeking reform of the AMP laws so that residents receive information which is transparent, useful, comprehensible and digestible.

Under section 101A of the Retirement Villages Act 1999 (the Act), all operators of retirement villages must prepare and keep up to date an asset management plan that complies with the Act and Regulation. Section 189B of the Act enables the Secretary to issue Guidelines to assist in complying with obligations regarding asset management plans.

Section 93 of the Act requires that operators maintain each item of capital for which they are responsible, in a reasonable condition, having regard to the age of the item, the prospective life of the item and the money paid to the operator by the residents under a village contract. The amendments to the Act to introduce the asset management plan requirements in section 101A of the Act support the obligation of the operator to maintain items of capital.

An asset management plan documents the costs of purchase and ongoing maintenance, repairs, and replacement of a retirement village's major items of capital, including shared major items of capital. This provides transparency around the maintenance and future costs of retirement village assets, for which residents pay the costs relating to maintenance.

Section 98 of the Act requires the inclusion of capital maintenance in the proposed annual budget. Operators must also include in the proposed annual budget a three-year report prepared under clause 19A of the Regulation for capital maintenance extracted from the asset management plan. The three-year report will inform expenditure for major items of capital in the annual budget. It will also provide information about the operator's proposal to replace or continue to maintain an item to encourage a discussion with residents at the annual budget. Following the expiry of the first 10-year period, Operators must prepare another asset management plan for each retirement village they operate every 10 years. Operators cannot charge residents for maintenance or repairs of a major item of capital if the item is not listed in the Asset Register.

### Challenges

In the current Australian economy inflationary pressures continue to raise the cost of living for all Australians including retirees. Factoring in CPI increases that are added to the annual budgets of most retirement villages, and the recent decision of the Fair Work Commission regarding the review of the Aged Care Award means residents' cost of living remains one of the most important challenges facing retirees.

Key challenges of the AMPs that are faced by operators and residents highlight the impractical nature of the documents and the challenge for residents to comprehend them. The templates shown in guidance notes from the Secretary (but not actually able to be downloaded and utilised), are

unreasonably detailed, and do not provide transparency when required, taking away the efficiency of using them. The format and utility of the documents make it difficult in capturing maintenance costs and tasks against a single item.

The AMP requirements have presented numerous challenges for operators and residents. It is these challenges which we are seeking to resolve so that the legislation can meet the intended objective:

1. **Complexity:** the asset register, maintenance schedule and 3-year plan requirements result in documents which are long and complex. This is due in part to the definition of major items of capital and the \$1,000 threshold. Our members have reported that asset registers can be 90+ pages and the three-year plans are often similar in length.
2. **Templates:** the templates provided in the Secretary's Guidelines are ineffective in their current form and are also not accessible as individual downloadable files.
3. **Cost:** the costs of implementing the complex AMP requirements are costing both operators and residents. Most operators are passing through the cost of the requirements to residents in the annual budget. These costs may relate to additional staff members or software costs which have been incurred to be able to meet the requirements. Costs have been reported to be between \$20,000 - \$24,000 per village. The 3-year report is required to be provided in the budget pack. This has resulted in an increased cost to residents in the operating budget.
4. **Understanding:** related to item 1, the complex nature of the materials has meant that many residents struggle to understand the detail which is provided in a way which supports the intention of the reforms - to provide transparency about where resident funds are being spent on maintenance. The requirement to provide the 3-year plan with the budget papers has resulted in feedback to operators that residents do not want that level of detail or are not showing interest through asking questions etc.
5. **Unfair and uncommercial:** retirement living assets are an individual's home, not a commercial property. Requiring access to premises and maintenance to be conducted can in some cases interfere with the resident's enjoyment of their property. For instance, repainting would usually only occur when a resident leaves. Residents want to be able to choose when maintenance occurs inside their unit, as would be the case if they were not in a retirement village.
6. **Sustainability and life span:** the Act and regulations require use of ATO benchmarks for life span, however in many instances this results in conflict with the general obligation to maintain having regard to age and prospective life. For example, the ATO life span for carpet is 8 years, but the actual useful life of the product could be much longer or shorter depending on use. The AMP should not determine when items should be replaced by operators, but rather, through monitoring and adherence to the operator's obligation to maintain the item under the Act, seek to better empower operators to extend the life of items or replace them as they see fit.

## Recommendations

### 1. Additional Transparency

AMPs in principle should support and simplify operations for retirement villages by enabling transparency in forecasting costs and risks, assisting OPEX/CAPEX cost optimisation and by giving priority of investment to areas of need and support to data-driven decision making. The Property Council and NSWVRRA recommends a simplified asset register. Allowing a simplified template, via a change to the document, can ensure all capital items have been captured with the appropriate detail that is needed for reporting requirements.

### 2. Adopt Uniformat II

The Property Council recommends the government adopt Uniformat II for AMPs. Uniformat II provides a common structure for describing major building systems linking building conceptual design, cost estimating, facilities management, and life-cycle cost engineering. Forecasting by item-type over the three and ten-year plans, allows the information to be collated in an efficient and meaningful way while reducing the demands on the organisation. Also, there is a need to adapt to condition-based depreciation rather than accepting the taxation depreciation schedule by

developing a baseline of useful life opposed to the period over which an asset can be depreciated. With evidence-based lifecycle planning, optimising OPEX can defer capital replacement, achieving more sustainable outcomes for the organisation. Reporting currently includes 37 columns; under a grouping category with condition-based depreciation the reporting system will reduce to 11 columns.

### **3. Index Existing Asset Thresholds with CPI**

There is no mention in the regulations that an annual cpi is to apply to the \$1,000 threshold relating to items of capital – therefore this \$1,000 threshold will continue to reduce in value each year, when applying an average 4% cpi per annum. This will reduce the threshold to \$700 in 10 years when operators are required to prepare their next 10-year plans. Concerns are raised by both residents and operators that nearly every item within a village will need to be included in the asset register at that stage (2031). The Property Council and RVRA recommends amending the existing legislation to index annual cpi increases to the existing \$1,000 threshold for items of capital.

### **4. Downloadable Template**

The Property Council recommends the Department of Fair Trading create a downloadable template for AMPs that meets requirements for both the three-year and ten-year reports. Templates are currently in the Secretary's Guidelines but are unable to be downloaded by users. This can achieve 2 things; it would allow users to gain easy access to a template that is supported by government and would highlight an example of what a correct and compliant AMP should contain in terms of data and presentation. This also gives the department an opportunity to express why AMPs are necessary and a requirement for operations and residents understanding.

### **5. Utilizing Quantity Surveyors**

The Property Council recommends supporting operators by using quantity surveyors to formulate reports. Appropriate approvals should be sought from residents prior to any formal engagement of services. AMPs should have the same due diligence and professionalism as a Strata Management report, a system that has been in use successfully by the Queensland Government for several years. Members have raised several issues regarding the requirements currently surrounding independent assessments by Auditors. There seems to be a significant knowledge gap by Auditors when examining AMPs which can often cause confusion, poor interpretation of existing legal and regulatory requirements and overall cost implications for residents and operators due to the significant amounts charged by Auditors for time examining AMP's. Often Auditors can issue incorrect determinations, which operators find very difficult to plan around during village budget setting periods.

### **6. Presentation Pack**

The Property Council recommends the introduction of a three-year summary document and removing the need to present a 3-year report to residents. The proposed summary document would group items and assets presented to residents during budget presentation periods. Any detail can be provided in the common area of the documents, with the format to be determined by operators, rather than prescribed by regulation or guidelines. Under the current legislation, AMPs are only available once a resident requests one, or if a dispute is in place regarding capital expenditure. The three-year report can be broken into three sections, the first year carrying the detail orientated information to allow for years two and three to reduce information, supporting an easier to read document and greater comprehension for residents.

### **7. Education**

The Property Council supports the Greiner Report recommendation to support education and understanding for residents and operators. The report recommended an independent body develop and deliver a two-page education document which would be titled an education piece and could be supported by an around the State listening tour, to hear from residents and operators about issues, complaints, as well as championing success in the sector.