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Mr Luke Walton  
Executive Director, Housing and Economic Policy  
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Dear Mr Walton,

The Property Council of Australia welcomes the opportunity to provide a submission to the NSW Department of Planning, Housing and Infrastructure (Department) in response to the Phase 1 exhibition of proposed amendments to the planning framework for manufactured home estates, caravan parks and camping grounds.

We acknowledge that the proposed amendments represent the first stage of a broader review of the regulatory framework for these types of developments and have provided commentary in four sections:

1. Overview of Manufactured Home Estates (MHE) in NSW
2. Response to the Phase 1 Planning Reforms
3. Regulation of Prefabricated Building Work, and
4. Priorities for Phase 2 Planning Reforms.

Our members are the nation's major investors, owners, managers, and developers of properties of all asset classes. They create landmark projects, environments, and communities where people can live, work, shop, and play.

The property industry shapes the future of our cities and has a deep long-term interest in seeing them prosper as productive, sustainable, and safe places. Together, our members own, fund, develop and manage Australia's largest portfolios of residential and land lease communities (LLC) also known as MHE.

### **1. Overview of MHE in NSW**

The MHE sector in Australia is maturing and will play an increasingly fundamental role in the future of the state's housing mix. Land lease communities provide an attractive lifestyle choice, primarily for older Australians, while allowing younger families to access vacated residential homes. In the last 15 years, there has been a significant increase in the volume of established caravan and

holiday parks being reconfigured to be fully permanent MHE, as well as greenfield sites being developed as MHE to meet the growing demand for this housing typology.

However, compared to other international jurisdictions, MHE has experienced limited uptake in Australia. The MHE industry faces several barriers in respect to land use planning policy around Australia, including a lack of permissibly zoned land and an inconsistent approach to zoning, among other issues. In addition, LLC providers often have significant difficulty in acquiring sites in appropriate locations of a suitable size when competing on the open market.

Given the scope of the state's housing crisis, it's critical that supply of diverse housing such as MHE are not unintentionally prohibited or curtailed through the proposed phased changes to the state's planning framework. The Property Council's commentary to the Department is provided within this overarching framing.

## **2. Response to Phase 1 Planning Reforms**

The Property Council provides broad support to the proposed amendments, with some suggestions for minor amendments or adjustments to the draft instruments. The Phase 1 reforms have gone some way to correcting current legislative ambiguity, however we have identified some additional changes that are necessary to improve clarity and address unintended consequences in the current drafting.

### *2.1 Flood Standards*

In line with the recommendations of the 2022 Flood Inquiry, the consultation draft includes a proposal to prohibit new permanent dwellings on flood prone land in caravan parks. We note that short-term sites will continue to be permitted on flood prone land and the changes will not impact existing sites.

The Property Council recognises the importance of protecting communities from the risk of flood and other climate related risks. However, we do have concerns regarding the proposed amendments.

The proposed drafting of sections 6(2)(d) and (5) in the Local Government Amendment Regulation could give rise to ambiguity as to whether manufactured homes (which are, by their nature "long-term") can be installed within a flood planning area.

The apparent intention of the proposed amendments is to prohibit the installation of "long-term [caravan] dwelling sites" in flood planning areas, while providing MHE with approval if appropriate engineering works are undertaken to remove flood impacts.

The "long-term dwelling site" concept is limited to caravan parks, not MHE, being defined as "*a dwelling site specified as a long-term dwelling site in an approval to operate a caravan park*".

The Property Council recommends that Sections 6(2) and (5) should be redrafted to clarify the application of the flood control provisions to MHE. We also recommend Section 6(5) be redrafted to remove reference to an MHE so that there is no ambiguity.

In addition, sub-section (4) exempts flood matter considerations for "*a manufactured home estate, caravan park or camping ground that existed before the commencement of this section*". The Department should clarify that this provision extends to any land with an approved and valid Development Application, any park under construction or partially operating, and any park that exists but is subject to a new Approval to Operate pursuant to s.68 of the Local Government Act 1993 (LG Act).

## *2.2 Installation of caravans, campervans and tents without approval*

The consultation draft includes proposed changes to the current exemptions for the installation of a caravan or campervan outside a caravan park. It is understood that the intent of this provision is to “give Councils the opportunity to prevent caravan parks from being converted to (what are essentially) manufactured home estates on land where that use is not considered appropriate or would not be permitted under the Housing SEPP”. However, the wording and structure of this clause when concurrently read with Clause 11 is ambiguous and not reflecting the intended effect.

The reference to ‘approval’ presumably relates to a s.68 approval to install a dwelling in a caravan park or manufactured home estate. The industry is not averse to requiring development consent for the installation of manufactured homes in new caravan parks. However, the Property Council recommends that existing caravan parks be exempt from these requirements, including for those with approved DAs that are not yet constructed, and those currently under construction.

Furthermore, to avoid confusion around caravan parks and manufactured home estates, the Property Council recommends the Department release clear definitions of a manufactured home estate, caravan park (tourist park) and existing caravan park as part of the Phase 1 changes and not wait until the Phase 2 changes are exhibited.

## *2.3 Community map requirements*

The consultation draft proposes that new community maps will need to be prepared by a registered surveyor or other qualified person and must clearly identify a series of features. Across NSW there exist hundreds of caravan parks and older manufactured home estates where community maps are not based on a detailed land survey and accordingly, details such as setbacks, site sizes and road widths are not necessarily compliant.

While the industry is not opposed to the introduction of detailed community maps prepared by registered surveyors, the cost to meet this new requirement for older parks are likely to be significant. As such, the Property Council recommends that a sub-clause be included in the legislation that allows the industry to complete a community map within five years of the commencement of the regulation. In addition, we recommend a new sub-section be included in Section 9 of the Regulation to permit minor changes to a community map to be made without the approval of council.

## *2.4 Upgrades to fire hydrants and hose reel standards*

The Property Council understands the standards for fire hydrants and hose reels within caravan parks, camping grounds and manufactured home estates are unclear and differ from standards applicable for other buildings.

While the proposed changes to the requirements for fire hydrants and hose reels are generally acceptable by industry, these provisions will apply to existing assets where fire-fighting equipment has been installed to an existing standard. As such, any upgrades to older parks are likely to incur significant costs. To assist the industry in converting older infrastructure a transition period of 5 years should be applied.

## *2.5 Certification of completion*

We acknowledge the need to allow local councils additional time to issue certificates of completion. However, the LG Amendment Regulation, like the Current LG Regulation, does not outline the process that is to be followed if a council fails to issue a certificate of completion within the prescribed period.

There is no recourse for a proponent that is waiting for a certificate of completion to be issued, which is a pre-condition to occupation of a dwelling. To streamline the final certification process, alleviate resourcing issues for councils and expedite the delivery of housing to market, consideration should be given to formalising a role for private certifiers in the legislation.

The role of a local council in assessing a dwelling installation prior to issuing a certificate of completion is comparatively straightforward compared to the assessments that a private certifier must undertake before issuing an occupation certificate for a building under the EP&A Act. There is no reason why the role of a private certifier could not be expanded to include certificates of completion for manufactured homes.

Such a change would complement the reforms proposed under the Building Bill, which envisages introducing a role for private certifiers in the certification of prefabricated building work. Given this, it may be more suitable for a change of this nature to be included in Phase 2 of the staged reform process.

### **3. Regulation of Prefabricated Building Work**

As the Department is aware, the Building Commission NSW (Building Commission) is currently proposing a new regulatory framework for the design, manufacture, construction and certification of prefabricated building work.

It is critical that the Department and Building Commission carefully consider how these reforms will impact the treatment of MHE in the planning system, including how any reforms in either framework may inadvertently impact on the ability or capacity of MHE developers to provide much needed housing stock.

While we welcome proposed reforms to prefabricated building work, it is critical the distinction between “manufactured homes” and “buildings” is maintained so that the current approval pathway for MHE under section 68 of the LG Act is not undermined.

The Property Council understands the Building Bill aims to create a single regulatory framework for prefabricated building work and remove inconsistencies across the planning and building systems, effectively creating a new definition of prefabricated building work. While we are not opposed to these objectives, the reforms, unless carefully calibrated with the state’s planning system, may create a series of unintended consequences.

The position paper outlines the following, “*manufactured buildings will be treated as building work... to ensure that this type of building work is treated consistently with onsite construction - removing inconsistencies between local government areas and providing certainty for those seeking development consent. This definition will carry across the planning and building regulatory frameworks to ensure a consistent regulatory approach from initial planning consent through to occupation*” (p. 11).

While well intentioned, regulating manufactured homes as “buildings” under the Building Bill has the potential to undermine the existing approval pathway for MHEs under section 68 of the Local

Government Act 1993 (LG Act) if not carefully managed. The entire MHE feasibility relies on a fundamental legal distinction between manufactured homes and buildings, and as such should be kept separate to avoid seriously undermining a growing housing supply market.

The Building Commission also proposes that *“prefabricated design work and building work carried out in Australia will be subject to self-certification where the design or manufacturer holds a licence or registration issued by an Australian authority”* (p. 21). We understand the certification process will also be split into three processes covering design, manufacture, and transport and installation of prefabricated building work.

While the Property Council broadly supports improvements to the certification process for prefabricated building work, it is unclear whether this process is intended to run in parallel with or replace the existing certification regime for manufactured homes in the Local Government (MHE) Regulation. Further clarification is required for industry to better understand the implications of this regulatory change.

The Property Council broadly supports bringing prefabricated buildings into the Design Compliance Declaration (DCD) scheme under the Design and Building Practitioners Act 2020 (DBP Act), noting our comments above. The position paper states that off-site manufactured work would need to be accompanied by a “compliance declaration” by a manufacturer, which would be a precondition for the *“local council or certifier overseeing the development ... [to] allow the work to be treated as “prefabricated building work”* (p. 24).

It is important to note that private certifiers currently have no legislative function in the installation of manufactured homes and moveable dwellings. To support this change, we recommend amendments be made to the Environmental Planning and Assessment Act 1979 (EP&A Act) and current LG Regulation to allow private certifiers to have a greater role in the installation of manufactured homes. Furthermore, the Property Council recommends that a consistent private certification regime for all manufactured homes be established, irrespective of whether they are constructed off or on site, to better support product innovation and flexibility in construction and delivery while providing regulatory certainty.

#### **4. Priorities for Phase 2 Planning Reforms**

The Property Council supports the Department’s staged approach to consider more comprehensive and strategic reform in Phase 2 and have provided a series of recommendations about how this could be approached.

The MHE sector has evolved dramatically since the existing regulatory framework was established in the early 1990s, and the market has become increasingly competitive among developers creating high quality, attractive lifestyle communities.

The Phase 1 reforms have made limited changes to permissibility. The exclusion of the application of the Housing State Environment Planning Policy Amendment provisions from Greater Sydney reflect a historical view of the development type which isn’t reflective of today’s MHE market and modernised planning system.

As such, we recommend the Department amend the Housing SEPP in Phase 2 to remove the prohibition on MHE in Greater Sydney. The rationale underpinning this exclusion has become irrelevant as the quality of design and management of MHE has improved significantly over time, and represent an important housing typology in addressing Sydney’s supply challenges.

The Property Council also recommends the retention of the current wording of s.152 of the Housing SEPP Amendment which expands the areas where MHE are permitted to include rural zones, if the land adjoins land zoned for residential, employment, mixed use, business or industrial uses.

We also propose that the prohibition on MHE within Greater Sydney under s.153 of the Housing SEPP Amendment should be removed as part of the Phase 2 reforms. MHE permissibility is still tied to lands on which caravan parks are permitted and there is no clarity in the in the SEPP regarding where caravan parks and MHE are most appropriate.

Rather than a blanket geographic exclusion for a particular assessment pathway, the Property Council recommends the Housing SEPP provisions are applied statewide and are aligned with permissibility in Standard Instrument LEP land use zones. There are many locations, particularly in the Western Parkland City, where MHE could be developed in a manner that is compatible with residential-zoned land.

This would also mean that MHE could form a part of the setting of accountable housing targets for Greater Sydney local government areas under the new Six Cities Region Plan to be prepared in 2024. Housing supply and affordability issues are acute across NSW. Removing the prohibition on MHE within Greater Sydney would facilitate the immediate development of lower-cost housing in suitable locations in Sydney, without the need for a lengthy and time-consuming planning proposal process to rezone existing rural land to residential.

## **Conclusion**

We thank the Department for providing the opportunity to provide a detailed submission in response to the proposed amendments. We are supportive of amendments that will provide further clarity and certainty for operators, however do acknowledge that there are areas to be further considered so that the legislative framework supports the modern operation of MHE in NSW. If you have any questions about this submission, please contact NSW Policy Manger, Michael Player at [mplayer@propertycouncil.com.au](mailto:mplayer@propertycouncil.com.au).

Yours sincerely,



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