

Attachment 8 - Applicant's Planning Pathway advice

Our reference
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Quay Quarter Tower
50 Bridge Street, Sydney NSW 2000, Australia
GPO Box 9925, Sydney NSW 2001, Australia
Tel +61 2 9210 6500
Fax +61 2 9210 6611
www.corrs.com.au



Sydney
Melbourne
Brisbane
Perth
Port Moresby

31 July 2023

By email: ken.franklin@stockland.com.au
Ken Franklin
Stockland
Level 25, 133 Castlereagh Street
Sydney NSW 2000

Contact
Max Newman (02) 9210 6822
Email: max.newman@corrs.com.au

Partner
Christine Covington

Dear Ken

Planning and Local Government Act approval pathway for multi dwelling housing development operating as a Manufactured Home Estate

You have requested our advice about the approval pathways for a development that:

- (a) Is appropriately characterised as “multi dwelling housing” under planning legislation;
- (b) Is also appropriately characterised as a “manufactured home estate” (**MHE**) as defined in the *Local Government Act 1993 (LG Act)*;
- (c) Will be carried out on land to which Chapter 8 of the *State Environmental Planning Policy (Housing) 2021 (Housing SEPP)* does not apply; and
- (d) Where the homes will be constructed “on-site”, but will be designed so that they are capable of future relocation.

Specifically, you have asked us to consider whether an approval to operate an MHE under section 68 of the LG Act can be granted in these circumstances.

We have considered our advice in the context of a proposed development at 399 Bong Bong Road, Huntley. The proposed development is intended to comprise approximately 230 detached homes, constructed as manufactured homes and forming part of an MHE. The proposed development has been the subject of pre-lodgement advice from Wollongong City Council (**Council**) dated 21 February 2023, which we have reviewed in the preparation of this advice.

As we have set out below, despite some inconsistent definitions across planning and local government law, the approvals process for a development of this kind is valid and quite straightforward. The “on-site” construction of the homes is not an impediment to a local council granting appropriate approvals for the development and does not compromise the ability of the proposed dwellings to meet the definition of “manufactured home” under the LG Act.

We have set out a simple process guide at the end of this advice.

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1 Characterisation of proposed development

- 1.1 Often, an MHE development will be carried out under the facilitative provisions of Chapter 8 of the Housing SEPP, on land on which development for the purposes of a caravan park may be carried out.
- 1.2 In this case, we understand that Stockland does not intend to rely on Chapter 8 of the Housing SEPP for its proposed development. Instead, it intends to carry out a “multi dwelling housing” development as defined in the *Wollongong Local Environmental Plan 2009 (LEP)*.
- 1.3 We understand that Council has concerns regarding the ability for the proposed dwellings to meet the definition of “manufactured home” under the LG Act, particularly if they are constructed on-site.
- 1.4 A “manufactured home” is defined under the LG Act as:
- a self-contained dwelling (that is, a dwelling that includes at least one kitchen, bathroom, bedroom and living area and that also includes toilet and laundry facilities), being a dwelling—*
- (a) that comprises one or more major sections, and*
- (b) that is not a motor vehicle, trailer or other registrable vehicle within the meaning of the Road Transport Act 2013,*
- and includes any associated structures that form part of the dwelling.*
- 1.5 This means a dwelling will be a “manufactured home” under the LG Act if it:
- (i) includes at least one kitchen, bathroom, bedroom and living area;
 - (ii) includes toilet and laundry facilities;
 - (i) comprises one or more “major sections”, which is defined in the *Local Government (Manufactured Home Estates, Caravan Parks, Camping grounds and Moveable Dwellings) Regulation 2021 (LG (MHE) Regulation)* which prescribes minimum size (20m³) and “major components” of a home; and
 - (ii) is not a motor vehicle, trailer or other registrable vehicle within the meaning of the *Road Transport Act 2013*.
- 1.6 A “manufactured home” is also a “moveable dwelling” under the LG Act. Implicit in the definition and purpose of “moveable dwellings” is that they must be designed and constructed such that they are capable of being moved, that is they are able to be relocated from one location to another. Neither manufactured homes nor the broader class of moveable dwellings is considered to be a “building” under the LG Act or *Environmental Planning and Assessment Act 1979*.

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- 1.7 Finally, a “manufactured home” can, by definition, also include “associated structures”, which are defined in the LG Act as:

(a) a carport, garage, shed, pergola, verandah or other structure designed to enhance the amenity of a moveable dwelling and attached to or integrated with, or located on the same site as, the dwelling concerned, or

(b) a separating wall between 2 moveable dwellings.

- 1.8 It is clear from the above definitions is that there is no requirement for off-site construction. The concept of off-site construction arises separately (discussed below) and is in fact entirely irrelevant to whether the homes meet the definition of a “manufactured home” under the LG Act.

- 1.9 This is particularly apparent when comparing the definitions of “manufactured home” under the LG Act and EP&A Act. Whereas the EP&A Act strictly requires off-site construction (see **bold** text below), the LG Act does not:

LG Act	EP&A Act
<p><i>manufactured home means a self-contained dwelling (that is, a dwelling that includes at least one kitchen, bathroom, bedroom and living area and that also includes toilet and laundry facilities), being a dwelling—</i></p> <p><i>(a) that comprises one or more major sections, and</i></p> <p><i>(b) that is not a motor vehicle, trailer or other registrable vehicle within the meaning of the Road Transport Act 2013,</i></p> <p><i>and includes any associated structures that form part of the dwelling.</i></p>	<p><i>manufactured home means a self contained dwelling (that is, a dwelling that includes at least 1 kitchen, bathroom, bedroom and living area and that also includes toilet and laundry facilities), being a dwelling</i></p> <p><i>(a) that comprises 1 or more major sections that are each constructed, and assembled, away from the manufactured home estate and transported to the estate for installation on the estate, and</i></p> <p><i>(b) that is not capable of being registered under the Traffic Act 1909,</i></p> <p><i>and includes any associated structures that form part of the dwelling.</i></p>

- 1.10 Given that Stockland is not intending to carry out the proposed development under the facilitative provisions of Chapter 8 of the Housing SEPP, the definition of “manufactured home” under the EP&A Act, while a useful comparison to illustrate the differences to the definition under the LG Act, is irrelevant for the purposes of the current application.

2 Approval to install a manufactured home

- 2.1 It is clear from the above discussion that the definition of “manufactured home” under the LG Act does not require dwellings to be constructed off-site. Council may be of the opinion that section 41 of the LG (MHE) Regulation imposes this requirement. However, this is not the case.

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2.2 Section 41(1) of the LG (MHE) Regulation states:

(1) A manufactured home must not be installed on a dwelling site unless each major section of the manufactured home is—

(a) constructed and assembled at a place of manufacture outside the manufactured home estate, and

(b) transported to the manufactured home estate from the place.

2.3 Section 41 forms part of Part 2, Division 4 of the LG (MHE) Regulation. Division 4 is relevant because, in accordance with section 9 of the LG (MHE) Regulation, a manufactured home may be installed without approval if it is “designed, constructed and installed in accordance with Division 4”.

2.4 In other words, if:

- (i) a manufactured home is designed and constructed such that it **meets** the specifications in Division 4, including off-site construction and on-site installation, then an approval under section 68 of the LG Act **is not** required; and
- (ii) a manufactured home **does not** meet the specifications of Division 4, then a section 68 approval **is** required to install the home.

2.5 Section 68 of the LG Act, in Item 1 of Part A, makes provision for approvals to install manufactured homes. To the extent that Council may be of the view that a manufactured homes must meet all specifications (including off-site construction) in Division 4 of the LG (MHE) Regulation, otherwise they are not to be considered “manufactured homes” under the LG Act, this must be incorrect. If it were correct, there would be no provision for section 68 approvals to install manufactured homes.

3 Approval to operate an MHE

3.1 In addition to the requirement for an approval to install a manufactured home that is not constructed off-site, Item 3 of Part F in section 68 of the LG Act requires local council approval to operate an MHE. To obtain an approval to operate an MHE, the MHE must meet the requirements of Part 2, Division 3 of the LG (MHE) Regulation (see section 6).

3.2 In order to construct the homes on-site and the community in stages whilst the MHE is operating, Stockland would need to lodge an objection under section 82 of the LG Act to the restriction in section 36 of the LG (MHE) Regulation on MHEs being used “for the manufacture, construction or reconstruction of moveable dwellings [which is defined to include ‘manufactured home’]”. This restriction can be overcome if Stockland’s objection is sustained by Council, provided the following requirements of section 82 are satisfied:

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- (i) Stockland demonstrates in its application that compliance with the off-site construction requirement is “unreasonable or unnecessary in the particular circumstances of the case”;
- (ii) Council obtains the concurrence of the Chief Executive of the Office of Local Government; and
- (iii) Council directs that the restriction on on-site construction in section 36 of the LG (MHE) Regulation does not apply to the proposed development.

3.3 Provided this objection is sustained, a section 68 approval to operate an MHE could be granted. We understand that this has been done for MHEs using similar construction methodology in other NSW LGAs.

4 Certifications

4.1 Manufactured homes are subject to the certification process in Part 2, Division 4 of the LG (MHE) Regulation. In particular, the homes must be certified by a practising structural engineer (section 51), installed in accordance with the specifications set out in that certification and any specifications set out in the relevant section 68 approval (section 66) and a compliance plate affixed to the home (section 67). Council must be notified of the completion of the home (section 68) and issue a certificate of completion following inspection (section 69). Unlike for “buildings” under the EP&A Act, the homes cannot be certified upon completion by a private certifier.

4.2 As manufactured homes are not “buildings” under the EP&A Act, the construction and occupation certification regime does not apply. This is in recognition of the traditionally simpler design and construction methodology of these types of homes compared to a conventional dwelling house and other “buildings” under the EP&A Act.

5 Process Guide

5.1 In summary, the process outlined in this letter would be as follows:

- (i) Stockland lodges a development application for “multi dwelling housing” (including applications for section 68 approvals to install manufactured homes and operate an MHE, made via section 4.12(3) of the EP&A Act). As part of the development application, Stockland would need to demonstrate compliance with Part 2, Division 3 of the LG (MHE) Regulation;
- (ii) Council undertakes its assessment and grants development consent;
- (iii) Council grants the section 68 approvals to install the manufactured homes and operate the MHE (having sustained an objection under section 82 to the requirement for off-site construction in section 36 of the LG (MHE) Regulation);

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- (iv) Stockland completes construction of the homes, obtains an engineer's certificate(s), and applies to Council for a certificate(s) of completion under section 69 of the LG (MHE) Regulation; and
- (v) Council grants certificate(s) of completion and the homes may be occupied.

Yours faithfully

Corrs Chambers Westgarth



Christine Covington

Partner