Retirement villages - a proposal for asset management plans

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Minister’s message

I am pleased to present this discussion paper for public consultation on proposed changes to asset management laws for retirement villages. This proposal will progress the NSW Government reform to increase transparency around maintenance and cost-recovery of the village’s assets.

The NSW Government wants the retirement village sector to offer our community an accommodation option that is secure and affordable.

Retirement villages accommodate over 66,000 retired people and we expect this number to double by 2033. Over the last 12 months, the Government has been pursuing a package of reforms to deliver improved business practices.

This paper delivers on the Government’s commitment to ensuring transparency around maintenance and costs of the village’s assets. The review of the sector conducted by Ms Kathryn Greiner AO discussed this issue extensively and highlighted it as an area that demands changes.

The paper asks targeted questions on the proposals. Through this paper I invite operators, residents, and the wider community to provide feedback on how the Government should implement these reforms.

I appreciate that the reform could change current business practices applied by village operators. By working through the issues, I believe that we can strike a balance that leads to improved outcomes for operators, residents, and their families.

I encourage you to take part in this consultation process and have your say on the design and implementation of the reform. A sector that operates transparently will support the best interests of the entire community.

Kevin Anderson MP
Minister for Better Regulation and Innovation

Making a submission

Have your say

We invite you to read this paper and provide comments. You may wish to comment on only one or two matters of interest, or all the issues raised.

We would prefer to receive submissions by email and request that any documents provided to us are produced in an 'accessible' format. Accessibility is about making documents more easily available to those members of the public who have some form of impairment (visual, physical, cognitive). Further information on how you can make your submission accessible is contained at http://webaim.org/techniques/word/

How to lodge your submission

You can provide a submission by email to rvdiscussionpaper@customerservice.nsw.gov.au, by using the online form on the Have your say page for this consultation, or by post to the following address:

Retirement Village Asset Management Plan Discussion Paper
Regulatory Policy, BRD
Department of Customer Service
2-24 Rawson Place
HAYMARKET NSW 2000
Submissions close 29 November 5pm

Important note: release of submissions

All submissions will be made publicly available. If you do not want your optional details or any part of your submission published, please indicate this clearly in your submission together with your reasons. You should also be aware that, even if you state that you do not wish certain information to be published, there may be circumstances in which the Government is required by law to release that information (for example, in accordance with the requirements of the *Government Information (Public Access) Act 2009*).

Glossary

References in this paper have the same meaning as those in the Retirement Villages Act 1999. In addition, the following terms referenced in this paper are defined below.

Term	Definition
approved annual budget	a budget taken to be an approved annual budget under section 116 of the Retirement Villages Act 1999
capital works fund	a fund established under section 99 of the Retirement Villages Act 1999 to set aside part of the recurrent charges paid by residents to fund capital maintenance beyond the end of the financial year to which the budget relates.
effective life of an asset	estimation of the period (in years, including fractions of years) the asset can be used by any entity for a specified purpose for tax purposes.
ingoing contribution	any money payable to the operator under a residence contract, but not including a waiting list fee; recurrent charges or the purchase price of the unit for Strata, Community or Company title lots.
proposed annual budget	a budget itemising how the operator proposes to spend the money received through recurrent charges from the residents of the village during the financial year.
recurrent charges	any amount (including rent) payable under a village contract, recurrently, by a resident of a retirement village.
useful life of an asset	estimated lifespan of the depreciable fixed asset, during which it contributes to the operation of the business.

Purpose of this Discussion Paper

In 2017, the final report on the *Inquiry into the NSW Retirement Village Sector* (the Greiner Review Report) made 17 recommendations to improve the legislative framework for retirement villages and the operational practices of both the industry and the regulator, NSW Fair Trading.

On 28 November 2018, the NSW Parliament passed the *Retirement Villages Amendments Act 2018* (the Amendment Act) to introduce reforms to the *Retirement Villages Act 1999* (the Act). One of the reforms requires operators to prepare and keep up to date an asset management plan (the plan) for the village's major items of capital and, to make the plan available to current and prospective residents to increase transparency.

The amendments to the Act give power to the regulations to prescribe the preparation, duration, revision, and content of the plan. They also give power to the Secretary to issue guidelines in relation to asset management. For example, the guidelines could potentially clarify ambiguous language such as "capital maintenance", "repair" and "capital replacement".

The NSW Government is seeking feedback from the retirement villages sector and broader community about how to progress this reform. Your feedback will help inform the detail of the regulations and the guidelines. It will help shape this reform and make sure it reflects the needs of residents and village operators.

The proposals in this paper reflect the Government's desire to develop reforms for greater transparency and accountability for maintenance of retirement villages, while minimising the regulatory burden on operators.

Issues outside the scope of this paper

The following is outside the scope of this paper:

- The responsibility of non-strata village residents for the costs of maintaining the operator's assets
- The process for dealing with defects in a village which is not provided for in the retirement villages legislation as it is subject to other applicable legislation.

Chapter 1– The problem defined

1.1 Introduction

The legislation applying to retirement villages in NSW is the *Retirement Villages Act 1999* (the Act) and the *Retirement Villages Regulation 2017* (the Regulation)[1]. The Act sets out the responsibilities for maintenance of the village's items of capital and maintenance costs between the resident and the operator.

The Greiner Review Report identified lack of transparency around the cost-recovery process for maintenance of village assets. Residents and operators may disagree about whether the resident or the operator pay for costs relating to items of capital, depending on whether a cost is 'capital maintenance' or 'capital replacement'.

The Act defines capital maintenance and capital replacement in broad terms. The meaning of "maintenance", "repairs" and "replacement'" is open to interpretation, and this is a key source of disputes between operators and residents. Compounding the issue is the limited guidance available to verify whether costs are correctly allocated.

1.2 Issues identified in the Greiner Review Report

Recommendations

The Greiner Review Report found that many consumers have concerns about the funding arrangements for maintenance in retirement villages and that maintenance fees are not clear and easy to understand. It also found that maintenance of village assets is an issue of great concern amongst retirement village residents. [2] This is because in most villages, the recurrent charges paid by residents, include their share of the cost of maintenance and repairs.

The Greiner Review Report made two recommendations:

1. Funding arrangements for maintenance

The Greiner Review Report recommended developing a retirement village maintenance guide for repairs and replacement, and clarifying the definitions for 'capital maintenance' and 'capital replacement'. It also recommended that the Government simplify the funding arrangements for maintenance of a retirement village by clarifying the definitions that apply to the industry (Recommendation 6).

[1] Other legislation that relates to Retirement Villages is presented in Appendix 4.
[2] *Inquiry into the NSW Retirement Village Sector (the Greiner Review Report),* p.31

2. Maintenance of the village's assets

Another recommendation of the Greiner Review Report was that operators keep an asset register, to increase transparency and accountability around maintenance of village assets. It was recommended that the asset register be shared with residents, to provide them with a forward plan for village maintenance and future expenditures. It suggested that, by making the asset register available to residents, it will be clearer when a capital item should be 'replaced' rather than 'repaired'. This would address the issue that often generates disputes in the sector. It suggested that prospective residents could also benefit by having access to this information (Recommendation 7).

See **appendix 2** for an extract from the Greiner Review Report.

Issues in relation to the conduct of operators

Prolonging repairs of capital items instead of replacing them

The Greiner Review Report identified that many residents sought clarity to determine when an item should be replaced rather than repaired. It suggested that the ambiguity of the concepts underpinning the funding arrangement does not incentivise timely replacements or upgrades to the village's condition. Some residents suggested that this could lead to the practice of transferring the financial responsibility from the operator to the resident, thus avoiding payments.

Lack of transparency about maintenance work, timing and costs

The Greiner Review Report also identified that residents expect that the operator will keep the village in good condition and also sought more transparency around the timing and correct allocation of any work to be cost-recovered from residents. Many residents sought certainty about the planned maintenance, and ongoing communication about future upgrades and maintenance, particularly for older villages.

Many residents were concerned about funding arrangements for maintenance and scrutiny of the budget for cost allocation towards residents. Residents sought more information about quotes for capital maintenance works to help them identify any discrepancies in the costs and as an assurance of the transparent management of the Capital Works Fund.

Some residents also referred to a perceived reluctance from operators to contribute to costs of maintenance, and the level of communication with residents about planned upgrades. The Greiner Review Report suggested that these appeared to augment resident concerns about fairness and transparency of the funding arrangements for maintenance in the village.

A number of residents expressed concerns about the potential for maintenance costs to increase each year with some holding the view that any identified maintenance would cause an increase in the annual budget.

Issues in relation to the legislation

Definitions of capital maintenance and replacement and responsibility for associated costs

The Greiner Review Report identified that many residents were unclear about the concepts defined under the Act, which determine the responsibility for costs associated with the maintenance and replacement of village assets. The ambiguity in the definitions was a major concern to residents looking to understand the costs likely to be recovered from them. A common source of disputes at villages was the different interpretations placed on these concepts by residents.

Another issue was the potential for disputes over responsibility for day-to-day maintenance in the village. Examples included the removal or lopping of trees, replacement of broken sections of water mains, or other village assets that are not owned by residents e.g. roads or defective paving[3]. Issues identified included delays in undertaking repairs and the level of communication between residents and operators about the responsibility to pay for them.

1.3 Factors affecting maintenance and associated costs

The responsibilities for maintenance and replacement of the village's assets and associated costs, depend on the:

- type of tenure,
- the term of individual contracts, and
- the requirements of the law.

These three dependencies are explained below.

Type of tenure

The Act recognises several types of occupancy and ownership arrangements in retirement villages. Ownership arrangements include registered interest holders and non-registered

[3] *Inquiry into the NSW Retirement Village Sector (the Greiner Review Report), p.32*

interest holders. Occupancy arrangements include own, lease, belong to strata or community schemes or have shares in the village under company titles schemes.

Each type of tenure has different obligations towards capital maintenance costs. For example, under a lease arrangement these terms would apply to all items of capital, while under a strata scheme, it would only apply to items of capital that are not common property under a strata scheme (i.e. the inside of the unit and other facilities).

Terms of individual contracts

Under the Act, a prospective resident must enter into a contract with the operator to occupy a place in a retirement village. This can be a contract, a service contract, or both. The contract, along with the Act, governs the arrangement between the village operator and the resident during their time of residency.

The operator determines the fees and charges that a resident must pay to enter, live and exit a retirement village, including maintenance fees. Individual contracts must detail the rights, responsibilities, and entitlements of the two parties to the contract. Contracts may include information such as the recurrent charges that a resident will pay, and the operator and resident obligations towards the costs of capital maintenance and replacement.

Requirements of the law

The Act defines ‘capital replacement’ and ‘capital maintenance’ and provides the ‘items of capital’ for which operators are responsible. It also sets out the rights and obligations for residents and village operators in relation to the maintenance, replacement and funding of items of capital. The Regulation prescribes additional items of capital and clarifies the works not included as capital maintenance.

Usually residents are responsible for personal items, such as fridges and microwaves or air conditioning units that residents have installed themselves.

Operators are responsible for any building or structure in a retirement village, plant, machinery or equipment used to run the village and any part of the infrastructure of the village. They are also responsible for fixtures, fittings, some furnishings and non-fixed items, such as hot water systems, stoves, light fittings, blinds and fans.

An operator must maintain the items of capital for which they are responsible, in a reasonable condition. The operator is not responsible for items owned by a resident or any items that are part of or owned, by a strata or community scheme.

Residents can apply to the NSW Civil and Administrative Tribunal (the Tribunal) if an operator does not maintain or replace items of capital for which they are responsible. The Tribunal has

the power to order the operator to carry out repairs, maintenance or replacement within a specified time. The Tribunal can also make an order to determine whether work is 'maintenance' or 'replacement' when there is a disagreement between the residents and operator.

Residents fund maintenance of items of capital through recurrent charges or the capital works fund (if one exists), while the operator must fully cover most capital replacement costs.

The table below illustrates the responsibility for maintenance and replacement for operators and residents under the Act.

	Capital maintenance	**Capital replacement**
Definition under the Retirement Villages Act	*'work carried out to repair or maintain an item of capital'* *'work does not include work done to substantially improve an item of capital beyond its original condition, or work done to maintain or repair an item of capital if it would have been more cost effective to replace it'*	*'works carried out for the purpose of replacing an item of capital but does not include capital maintenance'*
Type	• Planned maintenance • Day-to-day maintenance • Repairs (may involve replacement of parts)	• When it is not practical to maintain
Responsibility for cost	• Resident	• Operator
Source of funds	• Recurrent charges • Capital works fund (if it exists)	• Operator

Table 1: responsibilities for maintenance and replacement costs

Chapter 2– General requirements for the asset management plan

2.1 Introduction

This chapter discusses the proposals for preparing the asset management plan (the plan), including its components and requirements for information. The chapter also includes proposals for the format, duration and revision of the plan, its interaction with the budget process, and making the plan available to current and prospective residents.

The Greiner Review Report recommended that each retirement village set up an asset register, detailing proposed maintenance and replacement of village infrastructure, to increase transparency. It recommended that the register should record the useful life of major village assets, identify significant planned maintenance at the village and estimated cost for one to three years. The Greiner Review Report specifically noted external painting should be one item included in the asset register[4]. In response to these recommendations, the Amendment Act introduced a requirement for an asset management plan, which incorporates a register and plan for ongoing maintenance.

2.2 What is an asset management plan?

An asset management plan is a long-term plan that details relevant information about assets. The Australian Standards '*AS ISO 55:000:2014, Asset management–Overview, principles and terminology'* defines *'asset management plan'* as *'documented information that specifies the activities, resources and timescales required for an individual asset, or a grouping of assets, to achieve the organisation's asset management objectives.'* [5]

2.3 Main components of the proposed plan

In line with the Greiner Review Report recommendations outlined above, it is proposed the main components of the plan would be:

- a register of the village's major items of capital,
- a maintenance schedule of the village's major items of capital (including replacement), and

[4] *Inquiry into the NSW Retirement Village Sector Report (the Greiner Review Report),* p.38
[5] *AS ISO 55:000:2014, Asset management – Overview, principles and terminology,* p.14.

- a budget estimate of costs of significant planned maintenance over three years, and information about increases or decreases in costs over the budget year.

The figure below depicts the proposed components and information for the plan.

Asset Management Plan (proposed information)						
Register of major items of capital			**Maintenance schedule–10 years**		**Budget**	
List of items and ID	**Cost/Value**	**Effective life**	**Schedule**	**Costs**	**Estimates**	**Justification**
▪ owned by the operator ▪ meet the relevant limit or threshold (e.g. over $1,000) plus ▪ information that identifies each item, e.g. description, model, serial number, etc.	▪ purchase date ▪ purchase cost ▪ current value (cost minus depreciation)	▪ effective life (e.g. ATO tax rulings / Secretary Guidelines) ▪ remaining life	▪ type of maintenance ▪ frequency ▪ maintenance date ▪ repair date ▪ planned replacement date	▪ costs estimate ▪ actual maintenance costs ▪ % of maintenance costs /original purchase cost ▪ replacement costs	▪ 3-year estimates for the proposed annual budget	▪ decreases/ increases in maintenance costs ▪ decreases/increases in repair costs ▪ decreases/increases in replacement costs ▪ frequency of costs ▪ reasons for maintenance exceptions or planned maintenance not undertaken.
Item 1						
Item 2						

Figure 1: Proposed components and information for the plan

Each component of the plan is explained in the following sections.

2.4 Register of major items of capital

List of items of capital

Asset Management Plan (proposed information)						
Register of major items of capital			Maintenance schedule–10 years		Budget	
List of items and ID	Cost/Value	Effective life	Schedule	Costs	Estimates	Justification

It is intended that only 'major items of capital' be recorded in the asset management plan. Operators would need to identify and record the village's major items of capital. The next section discusses ways that could be used to identify what is 'major' and the details that would need to be recorded.

Identifying and defining what is a 'major' item of capital

One way to identify the village's major items of capital could be by adopting a $1,000 threshold, in line with the Australian Tax Office (ATO) instant write-off threshold. Under this proposal, operators would need to record all items of capital greater than the instant asset write-off threshold of $1,000.

The reason for adopting the ATO instant write off threshold is because businesses can claim an immediate tax deduction for the cost of purchasing depreciating assets up to this amount. It also reflects current financial practise and so will be better understood and less burdensome for operators.

It is proposed that operators will be required to value items as they do for their taxation. For example, if for taxation purposes an operator 'groups' individual items that are the same, for example dining chairs, then the same grouping will need to be mirrored in the plan.

If the ATO instant write-off threshold is adopted, items of capital costing less than $1,000 would not appear in the plan. However, residents will still have access to information about the cost of maintenance and replacement of these low-cost items through the budget process. While this is not as robust as for major items of capital, it will still give residents some information about this expenditure.

Questions for feedback

1. Do you agree to a threshold of $1,000 to identify the village's major items of capital? If not, why not?

Information to identify individual items of capital

Under this proposal, operators would need to record information in the register that identifies each item of capital, including an asset ID number brand, model number, serial number, type, category, description, date and cost of purchase.

It is important that each major item of capital is documented sufficiently in the register, in order to identify it. This information is common to most asset registers, thus this proposal should not impose a significant burden on operators.

Information about the cost/value of items of capital

Asset Management Plan (proposed information)						
Register of major items of capital			Maintenance schedule–10 years		Budget	
List of items and ID	**Cost/Value**	Effective life	Schedule	Costs	Estimates	Justification

The following information about the cost/value of each item of capital should be recorded in the register:

- purchase date
- purchase cost, and
- current value – (physical assets are usually valued by deducting the accumulated depreciation from the original purchase cost).

It is proposed to capture this information for transparency and to help residents determine when it is no longer cost effective to repair an item.

Information about the expected lifespans of items of capital

Asset Management Plan (proposed information)						
Register of major items of capital			Maintenance schedule–10 years		Budget	
List of items and ID	Cost/Value	**Effective life**	Schedule	Costs	Estimates	Justification

Under this proposal operators would need to estimate and record the effective life (also known as 'useful life'[6]) of the village's major items of capital. This will be estimated at the time of purchase and recorded in the register as a "one-off".

[6] Referred to as 'useful life' in the Greiner Review Report.

For taxation purposes, the effective life of a depreciating asset is used to work out the asset's decline in value (depreciation for income tax purposes). This is important in determining when an asset is too old and needs to be replaced.

Fair Trading proposes to use the methods and rulings of the ATO to estimate the effective life of the village's major items of capital.

The ATO have two methods to estimate the effective life of most depreciating assets. One method uses the effective life determined by the ATO Commissioner in a tax ruling. The other involves working out (self-assessing) the effective life of an asset. The latter is used when the ATO Commissioner has made no determination of the effective life of a named asset. These two methods are explained in further detail below.

ATO Commissioner's determination of the effective life of depreciating assets

The ATO ruling *TR 2019/5 Commissioner's Determination of the effective life of depreciating assets* (ATO Commissioner's ruling) includes a comprehensive guide to the effective lives of depreciable assets, including plant and equipment used by residential property operators to produce income.

The ATO annually reviews its determination by industry, including residential property operators. The table below shows an extract of the ATO Commissioner's determination for resident property operators that could be adopted by operators to determine the effective life of the village's major items of capital:

Residential property operators (67110)			
ASSET	**LIFE (YEARS)**	**REVIEWED**	**DATE OF APPLICATION**
Air handling units	20	*	1 Jul 2003
Furniture, freestanding	13 1/3		1 Jan 2001
Garbage bins	10	*	1 Jul 2004
Garbage compacting systems (excluding chutes)	6 2/3		1 Jan 2001
Generators	20		1 Jan 2001

Figure 2: Extract from the ATO Commissioner's ruling

When an asset is not listed in the ruling, it means the ATO Commissioner has not determined its 'effective life'. In these circumstances, operators would need to work out the 'effective life' themselves.

Self-assessed estimation of the effective life of assets[7]

It is proposed that where operators have to work out the 'effective life' themselves, that they calculate this using the ATO methods for depreciation.

For taxation purposes, there are two methods to calculate the decline in value of a depreciation asset: the prime cost method and the diminishing value method.

Under the prime cost method (also known as the straight-line method), businesses can claim a fixed amount each year based on a formula. The diminishing value method assumes that the decline in value each year is a constant proportion of the remaining value and produces a smaller decline over time.

See **appendix 3** for more details on both methods.

Calculating the 'effective life' of existing assets

The ATO Commissioner ruling only applies to new assets. For existing assets, at the time the legislation commences, operators would need to recalculate the decline in value of items of capital. They would use the tax methods, explained above.

Questions for feedback

2. Is the ATO Commissioner's ruling the right method to calculate the effective life of the village's major items of capital? If not, what method would be more appropriate for the industry to adopt?

2.5 Information for the maintenance and replacement schedule

Schedule and costs

Asset Management Plan (proposed information)						
Register of major items of capital			**Maintenance schedule–10 years**		Budget	
List of items and ID	Cost/Value	Effective life	**Schedule**	**Costs**	Estimates	Justification

The Act does not require operators to keep a maintenance and replacement schedule. The Greiner Review Report recommended that operators keep a maintenance and replacement schedule to increase transparency and to prevent "bill shock". Underlying this recommendation

[7] *https://www.ato.gov.au/business/depreciation-and-capital-expenses-and-allowances/general-depreciation-rules---capital-allowances/prime-cost-(straight-line)-and-diminishing-value-methods/*

is the assumption that operators plan for maintenance of the village and keep some information for accounting or taxation purposes, for example, to estimate depreciation rates.

Under this proposal, operators would need to record or reference a maintenance and replacement schedule (maintenance schedule for the purpose of this paper).

The maintenance schedule would include information about the operator's planned maintenance and replacement activities and costs for the duration of the plan. It could also contain information such as, maintenance type (planned, responsive, statutory, etc), frequency of maintenance activities and planned replacement dates. Information about the costs of maintenance may include an estimate of costs for the duration of the plan, actual cost and total maintenance costs.

This proposed maintenance schedule aims to increase transparency around these activities and to minimise disputes between residents and operators, particularly when there is disagreement around whether certain work should be maintenance or replacement of the item concerned.

Questions for feedback

3. Is there any specific information that should be included or excluded from the maintenance schedule?

2.5 Budget

Asset Management Plan (proposed information)						
Register of major items of capital			Maintenance schedule–10 years		**Budget**	
List of items and ID	Cost/Value	Effective life	Schedule	Costs	**Estimates**	**Justification**

The Greiner Review Report found that residents often sought more information to support the classification of 'maintenance' for items in the budget. Many residents sought clarification about how these distinctions are applied in the annual proposed budget, particularly to ensure that certain costs were correctly allocated in the budget. The Greiner Review Report recommended including significant planned maintenance and expected costs in the budget.

The Act, does not provide for a set period of planned expenditure and relies on the operator to provide information about future maintenance expenditure through the budget process[8]. Whether an operator is proposing to use any recurrent charges, or the capital works fund to pay

[8] Section 98 of the *Retirement Villages Act 1999.*

for future capital maintenance (over the budget year), the operator must include certain details in the proposed annual budget. These details must include a list of:

- each item of capital that needs maintenance
- details of the expected cost of maintenance
- any quotes that the operator obtained
- provisions for urgent capital maintenance.

In most cases, residents can approve or reject the costs of certain repairs and maintenance through the annual budget process.

The following sections propose the further information that could be included in the budget and how this links to the maintenance schedule and register.

Information for the proposed annual budget (estimates)

Under this proposal, operators would need to include certain details of planned maintenance in the proposed annual budget to increase transparency. This would include:

- an estimate of the expected cost of significant planned maintenance period and replacement over a 3-year period
- an explanation of the decreases/increases in maintenance, repairs and replacement costs, frequency of costs and other information.

It is likely that operators prepare estimates for maintenance expenditure over the mid-to long-term as part of their business financial planning. Operators could use this information or reference documentation that has this information to meet this proposed requirement. An example of how information for each item will be recorded and transposed from the Asset Maintenance Schedule to the 3 Year Budget Plan and then to the Annual Budget is shown in the diagram below.

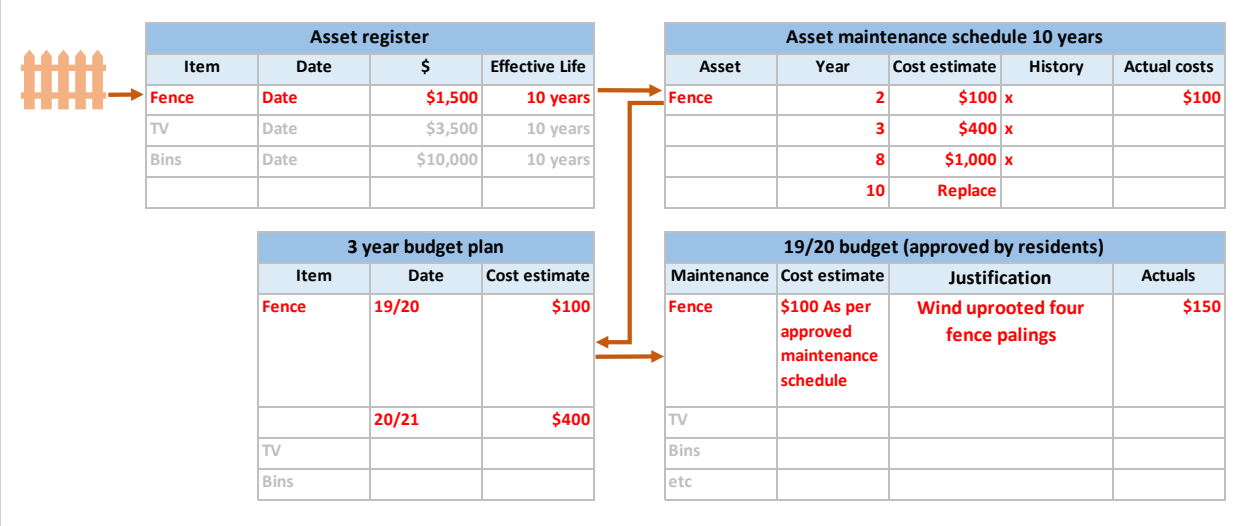

Figure 3: Example of proposed record keeping for maintenance costs

It is expected that preparing such an estimate should not impose a significant burden on operators, however it could affect funding arrangements for both residents and operators.

This proposal looks to minimise the potential for “bill-shock” and the potential for disputes between residents and operators, which were both identified in the Greiner Review Report as issues of major concern to residents. By including the plan in the annual budget process, residents will have more information to help them in their decision to either consent or reject the proposed budget. It will also provide residents with assurance that costs are correctly allocated and increase transparency around the management of the capital works fund.

Proposed information for the budget (justification)

Under the Act, an operator must supply residents with a proposed annual budget itemising how the operator proposes to spend the recurrent charges paid by residents. The budget must include a notice containing certain information, including briefly explaining the reasons for any changes in expenditure from the previous financial year [9].

Under this proposal operators would need to explain the reasons for decreases or increases of costs and the frequency of costs associated with maintenance or replacement of the village’s major items of capital. This could take the form of a short statement against each item recorded in the plan, or a summary statement in the notice accompanying the proposed annual budget. This should not impose an administrative burden on operators.

The aim of this requirement is to increase transparency by providing an explanation of the reasons for any planned maintenance undertaken or not undertaken. It will give residents certainty that operators are maintaining the standard of the village assets.

Amending the plan

It is also proposed that if the plan has changed significantly since the last approved budget, operators would have to seek the consent of the residents to amend it, for example because of unexpected significant expenditure. Under the current provisions of the Act, the operator may seek the consent of the residents to amend an approved annual budget, except where the Tribunal has made an order[10].

This proposal aims to increase the operators’ accountability around maintenance of villages’ assets and give residents certainty that the information in the plan is current. It is proposed that,

[9] *Section 112 of the Retirement Villages Act 1999*
[10] *Section 117 of the Retirement Villages Act 1999*

if a resident believes that the operator is not maintaining or replacing items of capital, they could apply to the Tribunal for an order under section 96 of the Act to compel the operator to do so.

2.6 Proposed implementation of the plan

Format of the plan

Operators will have the flexibility to have their asset management plan in whatever format is easier for them. Some large operators may already have asset management or accounting systems in place, which include the relevant information required under this proposal.

Duration and revision of the plan

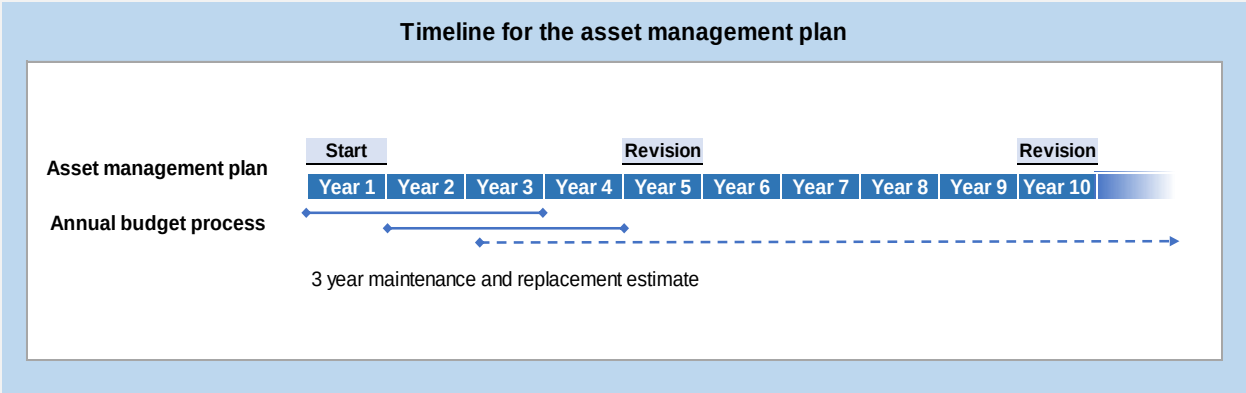

Figure 4: Duration and revision of the plan

The Greiner Review Report found that residents sought more information on the operator's plans to keep the village over time. Under this proposal, operators would need to prepare a 10-year forward plan followed by another plan for each 10-year period, after the expiry of the first period. Operators would also need to revise the plan at least every five years (or annually) as part of the budget process.

Similar requirements exist under the *Strata Management Schemes Act 2015* (the Strata Act). Section 80 of the Strata Act provides that an owners corporation must prepare a 10-year capital works fund plan and prepare a plan for each 10-year period after the first period expired and must review the plan at least once every 5 years. Included in the relevant provisions is a requirement that the plan include details of proposed work or maintenance for the period of the plan.

The aim of this proposed requirement is to increase transparency and promote good business practice. By requesting a 10-year plan, residents will have more certainty about the timing of future upgrades and expenditure. To ensure the currency and relevancy of the plan, it is proposed that the plan would need to include details of the version control (including date,

status, key changes made and person who approved it). This is a common document control process and should not impose a significant administrative burden on operators.

Capital works fund under the Act

A capital works fund (CWF) is a fund established under section 99 of the Act to set aside any part of the recurrent charges for funding future capital maintenance. If residents approved the expenditure during the annual budget process, operators must set up and keep a CWF for that purpose. Operators must also deposit a part of recurrent charges to cover the costs of capital maintenance in the CWF.

Under this proposal all operators would be required to set up a CWF and deposit a part of the recurrent charge paid by residents to cover the planned expenditure for three years. This may result in residents having to pay monies up front, however, they will have the certainty that costs for maintenance will be covered and “bill-shock” avoided.

Making the plan available

The Greiner Review Report identified that residents sought more information about the operator’s plan to meet their obligation under the Act and recommended making the plan available to residents to increase transparency. It also recommended making information available for review by prospective residents.

It is therefore proposed that operators give a copy of the plan to any resident or prospective resident (or a person acting on their behalf) upon request, not later than 7 days after receiving the request. The copy would need to be the one approved at the most recent annual budget meeting or amended, under the Act.

This requirement mirrors similar requirements that exist under the current Act where operators must supply current and prospective residents with copies of certain documents on request, within 7 days of the request being made[11].

By having access to the most current plan, and by reducing this information prior to signing a contract, current and prospective residents will benefit from an increase in transparency about these ongoing costs at an earlier stage.

Questions for feedback

4. Do you have any suggestions for the format, duration and availability of the approved plan?

[11] *Section 20 of the Retirement Villages Act 1999.*

Chapter 3–maintenance, repair and replacement

3.1 Introduction

This chapter discusses the issues surrounding the definitions of ‘capital maintenance’ and ‘capital replacement’ under the Act and proposes solutions to address residents’ concerns about whether an item is a ‘repair’ or ‘replacement’.

3.1 Definitions under the Act

The Act defines capital maintenance as ‘*work carried out to repair or maintain an item of capital’* (s4(1)). The work does not include work done to improve an item of capital substantially beyond its original condition, or work done to maintain or repair an item of capital if it would have been more cost effective to replace it (cl 5 *Retirement Villages Regulation 2017*). The Act defines capital replacement as ‘*works carried out for the purpose of replacing an item of capital but does not include capital maintenance*’ (s4(1)).

The term ‘capital maintenance’ describes the repair and maintenance of a village asset and ‘capital replacement’ describes upgrading or replacing a village asset, while the ‘Capital Works Fund’ provides for repairs and maintenance but not replacement.

The issue with these definitions

The Greiner Review Report found that the distinction between these terms is open to wide interpretation, with the resident and operator required to resort to the Tribunal for clarification when there may be disagreement and suggested simplifying these terms. [12]

Such broad definitions provide flexibility for the maintenance of items of capital to be considered on a case-by-case basis, to allow for contractual arrangements to be agreed between the resident and the operator and remain relevant as facilities change.

On the other hand, a resident has limited recourse to information about the practical distinction between these key concepts governing funding arrangements for ongoing costs that they can be liable to pay. For a resident not familiar with the Act, regulation and case law, it may be hard to determine whether a cost is ‘capital maintenance’ rather than ‘capital replacement’.

[12] *Inquiry into the NSW Retirement Village Sector Report (the Greiner Review Report),* p.36

The proposal below aims to assist residents and operators by clarifying this ambiguity, particularly the distinction between what is repair and replacement. It also aims to prevent prolonging of repairs of items of capital, when it would be more cost effective to replace the item.

3.1 Is it repair or replacement?

The Greiner Review Report found that there is a potential for ambiguity in the definition of capital 'maintenance' and 'replacement', which may create incentives for operators to prolong the repair of an item of capital rather than replacing.[13] It also identified that many residents have concerns about their ability to determine whether replacing parts of equipment (e.g. compressor of an air conditioner, removing a rusted section of guttering on a roof) is maintenance or replacement.[14]

Under the current Act, an operator must maintain each item of capital for which the operator is 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 (including ingoing contributions).

The Act provides that an operator must maintain or replace, an item of capital within a reasonable time after the need for the maintenance or replacement of the item becomes clear[15]. However, the Greiner Review Report agreed that the distinction between 'maintenance' and 'replacement' is not sufficiently transparent to residents and reliance on interpretation can give rise to the practice of repairing village assets multiple times instead of replacing the item.[16] This is to the advantage of the operator and expense to the residents.

It is therefore important to remove any potential ambiguities around when an item of capital needs to be replaced. The following subsection proposes methods to clarify when an item needs to be replaced.

[13] *Inquiry into the NSW Retirement Village Sector Report (the Greiner Review Report),* p.36
[14] *Inquiry into the NSW Retirement Village Sector Report (the Greiner Review Report),* p.33
[15] *Section 93 of the Retirement Villages Act*
[16] *Inquiry into the NSW Retirement Village Sector Report (the Greiner Review Report),* p.60

Methods to clarify when an item needs replacement

One way that could help clarify when an item should be replaced, is by using a formula to determine when it would be more cost effective to replace the item rather than continue repairing it.

One such formula could calculate the accumulated maintenance cost (AMC) expressed as a percentage of the original purchase cost (OPC).

Accumulated Maintenance Costs (Maintenance + Repairs) / Original Purchase Cost

It is proposed that an operator will be required to replace the item, when either of the following occurs, whatever happens first:

1/ the percentage of the accumulated maintenance costs (AMC) reaches 100 percent of the original purchase cost (OPC), and/or

2/ an item of capital reaches the end of its effective life[17].

Operators would need to include the formula or method adopted against each line item in the plan.

By using a formula to determine when an item should be replaced (and disclosing this method in the plan) or by using the end of the item's effective life as an indicator, residents and operators would be able to identify which items may need replacement. This will minimise disputes about responsibility for the costs.

The operator may choose to maintain the item rather than replace it after the items reaches the end of its effective life or where the accumulated costs of repair exceeds replacement. In these circumstances, the cost of maintenance will be at the operator's expense (that is, not funded by residents through recurrent charges). However, this option to continue to maintain an item should only be available where the item is still functional and in a good state.

This information could help operators to track the maintenance costs for an item and then use this information to determine if it would be more cost effective to replace the item. Residents would be able to verify whether costs were correctly allocated by comparing the last approved or amended plan with the new proposed plan. This will also enable residents to identify when the operator is prolonging repairs instead of replacing a particular item.

[17] See the described of effective life of an item of capital, in chapter 2 of this paper under the heading *Information about the expected lifespans of items of capital* (page 15).

This proposal aims to address concerns expressed by residents and to make sure that operators meet their obligations under the Act in relation to the cost of replacement. However, it does not intend to make operators replace an item of capital if it is unnecessary.

Questions for feedback

5. Is the proposed formula to determine when an item of capital needs replacement, appropriate? If not, is there another method/formula that could be used?

Appendix 1– summary of questions

1. Do you agree to a threshold of $1000 to identify the village's major items of capital? If not, why not?

2. Is the ATO Commissioner's ruling the right method to calculate the effective life of the village's items of capital? If not, what method would be more appropriate for the industry to adopt?

3. Is there any specific information that should be included or excluded from the maintenance schedule?

4. Do you have any suggestions for the format, duration and availability of the approved plan?

5. Is the proposed formula to determine when an item of capital needs replacement appropriate? If not, is there another method/formula that could be used?

Appendix 2– key findings of the Greiner Review Report

Section 5 of the Greiner Review Report focussed on the need to increase transparency and improve communication around maintenance activities and the costs of village assets. The key findings of the Greiner Review Report[18] were that:

- *'apart from the Act there is limited guidance available to help residents, village managers and operators to make practical distinctions between the terms 'capital maintenance' and 'capital replacement' which determine a resident's responsibilities for costs'.*
- *'there is a potential for ambiguity in the definition of capital maintenance and replacement to create incentives for operators to prolong the repair of a capital item rather than replacing it.'*
- *'there is no requirement for operators to set out a plan for village maintenance and replacement over time.'*
- *'funding arrangements in a leasehold village are perceived to be unfair and there is potential for alignment with the residential tenancy sector (owner is responsible for the cost of maintaining the property or assets they own).'*
- *'disputes relating to defects should be addressed by the operator not the residents.'*

[18] Inquiry into the NSW Retirement Village Sector Report

Appendix 3 – Australian Tax Office depreciation methods

1. Prime cost (straight line) method

Under the prime cost method (also known as the straight-line method), businesses can claim a fixed amount each year based on the following formula.

The diminishing value method assumes that the decline in value each year is a constant proportion of the remaining value and produces a progressively smaller decline over the asset's effective life. Businesses can choose the method that most suits their asset.

Asset's cost × (days held ÷ 365) × (100% ÷ asset's effective life)

For example, Leo purchased an air conditioning unit for the village. If the asset costs $80,000 (after excluding GST if entitled to claim it) and has an effective life of five years, it is possible to claim 20% of its cost, or $16,000, in each of the five years. The cost includes the amount paid for the asset and any additional amounts paid for transport, installation or making it ready to use.

Diminishing value method

The diminishing value method assumes that the value of a depreciating asset decreases more in the early years of its effective life. The formula for the diminishing value method is:

Base value × (days held ÷ 365) × (200% ÷ asset's effective life)

For example, Leo purchased a bus for the village for $80,000 (ignoring any GST impact). If the asset had an effective life of five years, using the above formula, the claim for the first year would be $32,000.

The cost includes the amount Leo paid for the asset (excluding GST if entitled to claim it) as well as any additional amounts paid for transport or making it ready for use.

The base value reduces each year by the decline in the value of the asset. This means the base value for the second year would be $48,000, that is $80,000 minus the $32,000 decline in value in the first year.

The claim for the second year will be $19,200. In the third year, the base value will be $28,800 and the claim will be $11,500. In the fourth year, the base value will be $17,280 and the claim will be $6,912. This will continue until the value reaches zero.

The claim amount for each year under the diminishing value method would remain constant over the period, whereas the claim amount for the prime cost method, if used, would reduce over the claim period.

Further information in relation to these depreciation methods is available from the Australian Taxation Office web site at: https://www.ato.gov.au/business/depreciation-and-capital-expenses-and-allowances/general-depreciation-rules---capital-allowances/prime-cost-(straight-line)-and-diminishing-value-methods/

Appendix 4 - Other NSW and Commonwealth legislation that relates to retirement villages

Legislation	Application
Australian Consumer Law (Schedule 2 of Competition and Consumer Act 2010)	applies nationally and in all states and territories to businesses and consumers, and covers matters such as advertising and promotion, as well as national unfair contract terms law covering standard form consumer and small business contracts.
Strata Schemes Management Act 2015	applies to retirement villages set up as strata schemes through owners corporations and sets out the obligations and responsibilities of owners corporations within retirement villages, including matters such as managing the finances of the strata scheme and keeping accounts and records.
Fair Trading Act 1987	applies to residents and operators as it relates to investigations and sets out the NSW Fair Trading powers to investigate such as obtaining information and documents and the inspection of documents.
Civil and Administrative Tribunal Act 2013	applies to residents and operators in accordance with *Retirement Villages Act 1999* and sets out the process for resolving certain disputes between residents and operators.