

**Parliament of Victoria**  
Legislative Council  
Legal and Social Issues Committee  
Parliament House  
Spring Street  
East Melbourne, VIC 3000

By email: [publichousingtowers@parliament.vic.gov.au](mailto:publichousingtowers@parliament.vic.gov.au)

Dear Legislative Council Legal and Social Issues Committee,

**Re: Inquiry into the redevelopment of Melbourne's public housing towers**

The Law Institute of Victoria ('LIV') welcomes the opportunity to provide its views to the Legal and Social Issues Committee ('Committee') regarding its inquiry into the redevelopment plan for 44 public housing towers across Melbourne (the 'Inquiry').

The LIV is Victoria's peak body for lawyers and those who work with them in the legal sector, representing over 20,200 members. The LIV has a long history of contributing to, shaping, and developing effective State and Federal legislation and policies.

The letter that follows is informed by the views of members of the LIV's Human Rights Committee, Property Law Committee, and the Environmental Issues Committee. It first provides a brief background to the subject matter of this Inquiry, followed by high-level comments regarding the government's decision to redevelop Melbourne's high-rise public housing towers and the process for relocation of residents. It then responds to each of the Inquiry's Terms of Reference.<sup>1</sup>

## Executive Summary

### Comments regarding the redevelopment decision

- The LIV submits that relevant decision-makers were required to, and should have, adopted a human rights-based approach in the decision-making process to redevelop Melbourne's public housing towers ('Decision') as required by section 38 of the *Charter of Human Rights and Responsibilities Act 2006* (Vic) ('Charter') and it urges the Committee to investigate whether residents human rights were adequately considered in this process.

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<sup>1</sup> Parliament of Victoria, Legislative Council Legal and Social Issues Committee, Inquiry into the redevelopment of Melbourne's public housing towers (online, last accessed 20 March 2025) [Inquiry into the redevelopment of Melbourne's public housing towers - Parliament of Victoria](#)

- The LIV notes that relevant decision-makers were required to, but it is likely they did not, consult with the residents of the tower blocks *during* the Decision-making process.<sup>2</sup> The LIV urges the Committee to identify whether a failure to consult with the residents amounts to a violation of residents human rights and/or of Decision-makers obligation to consider the same, and to ascertain whether government intends to consult with residents if the project recommences.

## Comments regarding the relocation process

- The LIV notes that communications made to residents by government entities regarding the redevelopment project, which have emphasised that residents 'have the right to return based on...ongoing needs, eligibility, and suitability of new homes', may not accord with the governments actual relocation policy. The LIV is thus concerned that residents of the affected public housing towers may thus be operating under a mistaken belief that they are guaranteed a home in the redeveloped site, and/or that they are guaranteed a home that corresponds with their old home's location and conditions. The LIV respectfully asks that the Committee ascertain whether the process outlined in the governments Relocation Manual<sup>3</sup> will be applied, and/or the conditions upon which residents will be permitted to return to the redeveloped sites.

## Terms of reference

1. **Term A:** While the LIV cannot comment on the rationale and cost modelling for the decision, or on alternatives to demolition, it refers to research published by non-government organisations that suggests that alternatives to the redevelopment plan may be cheaper, deliver more public housing, and cause less disruption to residents.
2. **Term B:** The LIV is concerned that the redevelopment project may have the effect of significantly reducing the availability of public housing in Victoria, and that the transition from direct government management means that different conditions may be imposed on residents. Further, it will cause disruption to the lives of residents, particularly those who have already been relocated or are awaiting relocation and may result some residents not being entitled to return to redeveloped sites.
3. **Term C:** The LIV noted that consultations with residents of public housing towers throughout the decision-making process appears to have not occurred.<sup>4</sup>
4. **Term D:** The LIV considers the Ground Lease Model to provide an attractive and potentially efficient project delivery model, but it cautions that suitable safeguards and oversight mechanisms will be essential, and that regard needs to be had to the implications of transferring to the Ground Lease Model – specifically in relation to residents' human rights and rent.
5. **Term E:** The LIV submits that common building standards should be adhered to across public, community, and private housing components of the Projects to ensure that different housing types

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<sup>2</sup> See, e.g., *Barry Berih v Homes Victoria* [2025] VSC 30, [15] – [25].

<sup>3</sup> Department of Families, Fairness and Housing, Relocation Manual, Chapter 3: Move back' (October 2017)

[Relocation manual - DFFH Service Providers](#)

<sup>4</sup> (n 2).

are integrated throughout each project in a way that achieves a similar quality of building design and construction across those housing types.

6. **Term F:** The LIV submits that it is important for the redevelopment to include adequate community gardens, recreational areas, and open spaces. It notes that the Ground Lease Model for Flemington does not appear to include a commitment to providing open and public community spaces for residents,<sup>5</sup> unlike those for Brighton and Prahan, which will feature elements such as community garden plots and facilities, 2000m<sup>2</sup> central open space, rooftop communal space and terraces, and productive garden plots respectively.<sup>6</sup>
7. **Term G:** The LIV is concerned that the redevelopment project may significantly impact the number of available public housing in Victoria, despite the need for public housing.
8. **Term H:** The LIV suggests that the Committee satisfy itself that the Project will involve comprehensively addressing environmental and contamination issues (including asbestos removal) prior to any redevelopment in line with the requirements under the *Environmental Protection Act 2017 (Vic)*. Finally, the LIV respectfully asks that the Committee ascertain whether an equivalent or greater number of public housing units will be delivered by the Project as currently exists.

## Background

### The Housing Statement

On 20 September 2023 the Victorian Government published a policy statement, 'Victoria's Housing Statement: The decade ahead 2024-2034' ('Statement'),<sup>7</sup> articulating a multi-component plan to deliver 800,000 homes in Victoria by 2034. One of the components of the plan, as detailed in item 4, 'More Social Housing', is a project to 'upgrad[e] and revitalis[e]' Victoria's public housing infrastructure by 'retir[ing] and redevelop[ing]' Melbourne's 44 high-rise public housing towers, which currently house around 10,000 people, by 2051 ('Project'). The Project is intended to commence with three public housing towers in Flemington, North Melbourne, and Carlton ('Affected Towers'),<sup>8</sup> and will involve a

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<sup>5</sup> Homes Victoria, Ground Lease Model Project, Project Summary (online, last accessed 25 March 2025) 12 – 14 [Homes Victoria report template portrait](#)

<sup>6</sup> Ibid.

<sup>7</sup> Victorian Government, Victoria's Housing Statement: The decade ahead 2024-2034 (Report, 2023) 36 <[DTP0424\\_Housing\\_Statement\\_v6\\_FA\\_WEB.pdf](#)>

<sup>8</sup> Ibid, 31, 36, excerpted in full:

Melbourne's high-rise public housing towers were built after World War II, between the 1950s and 1970s. They're reaching the end of their useful lives, and no longer fit for modern living. Constructed at a time that pre-dates current building codes, the towers no longer meet the minimum standards Victorians expect – including many of Victoria's Better Apartment Design Standards. The towers fail against noise, sustainability, waste and recycling, bedroom area dimensions, room depth, ventilation, private open space, accessibility and minimum amenity standards. Substantial investment would be needed to retrofit the towers. But even then, their design means that many tower homes would never be able to meet contemporary codes, nationwide energy rating schemes or accessibility needs for many households. We'll launch Australia's biggest ever urban renewal project: retiring and redeveloping all of Melbourne's 44 ageing highrise public housing estates by 2051. Starting with towers in Flemington, North Melbourne and

program of works that will ‘progressively retire each tower and redevelop each site’.<sup>9</sup> The Statement claims the Project will increase the number of social homes across the sites by 10 per cent, increase the number of affordable and market homes across the sites, and accommodate 30,000 people.<sup>10</sup>

Immediately following the release of the Housing Statement, Homes Victoria – the statutory authority responsible for social housing in Victoria, including managing public housing towers - began notifying residents of the Affected Towers of the Project. Homes Victoria also provided information to residents regarding relocation options to other social housing during the works, and informed residents that they would be permitted to return to the redeveloped sites once the works were completed.<sup>11</sup>

## **Berih v Homes Victoria**

Upon being notified by Homes Victoria of the Project, a group of residents from the Affected Towers sought legal advice. On 24 January 2024, resident Barry Berih, represented by Inner Melbourne Community Legal, commenced a group proceeding in the Supreme Court of Victoria against the State of Victoria, the Minister for Housing, and Homes Victoria (noting the writ was later amended to omit the former two defendants), claiming that:<sup>12</sup>

- the decision to undertake the Project (‘Decision’) was made by the Cabinet when it should have been made by Homes Victoria and was affected by jurisdictional error;
- the Decision was made without any notice or consultation with the residents of the Affected Towers;
- Homes Victoria failed to properly consider the human rights of residents in accordance with the *Charter of Human Rights and Responsibilities Act 2006 (Vic)* (‘Charter’); and
- the Decision was incompatible with human rights in the Charter.<sup>13</sup>

Among other things, Mr Berih is seeking:

- a writ of certiorari quashing the Decision;
- a declaration that the Decision was affected by jurisdictional error and thus invalid;
- A declaration that the Cabinet acted incompatibly with the residents Human Rights.
- A declaration that the Decision failed to give proper consideration to the residents Human Rights.
- An injunction restraining the Homes Victoria from taking any steps to implement the Decision.

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Carlton, we’ll bring forward a program of works to progressively retire each tower and redevelop each site. Not only will the redevelopment mean households will move into a new home that meets every modern building standard – it’ll boost the overall number of social homes across these sites by 10 per cent, while also boosting the number of affordable and market homes across the sites. There are currently around 10,000 people living across the 44 towers. Once we’ve redeveloped them, we anticipate around 30,000 people will live across these sites.

<sup>9</sup> Victorian Government, Victoria’s Housing Statement (n 7).

<sup>10</sup> Ibid.

<sup>11</sup> *Barry Berih v State of Victoria & Ors* [2024] VSC 230 [4] & [6]

<sup>12</sup> *Berih v Homes Victoria*, Amended Writ (28 June 2024) [Amended writ.pdf](#)

<sup>13</sup> *Barry Berih v Homes Victoria* [2025] VSC 30 [9] – [11] Judgement of Keogh J, 10 February 2025.

- An injunction requiring Homes Victoria to engage in a process of consultation and decision making in accordance with the decision-making model in the 'Paving the Way Forward Initiatives' that Homes Victoria created for the residents of the Towers; and
- Payment of legal costs associated with the class action.<sup>14</sup>

Trial in the matter commenced on 28 October 2024, but was adjourned part heard when a question arose as to whether documents relevant to a Cabinet committees' consideration of the Project were required to be produced.<sup>15</sup> The question was heard on 11 December 2024 by Keogh J, who ruled that the documents were immune from disclosure on 10 February 2025.<sup>16</sup> A decision in the matter remains pending. Until it is handed down, Homes Victoria has been ordered to refrain from taking steps to progress the Project or implement the Decision.<sup>17</sup>

## LIV Comments

### Comments regarding the Decision

The LIV wishes to take this opportunity to provide some high-level comments on the Decision for the Committee's consideration.

First, the LIV submits that relevant decision-makers, i.e., Homes Victoria and Victorian government departments, officials, and authorities, were required to adopt a human rights-based approach during the Decision-making process, as required by section 38 of the Charter, because they were acting or making decisions that impact the rights of the public housing residents. Particular consideration should have been given to the right to not have the home or family unlawfully or arbitrarily interfered with, protected by section 13 of the Charter and grounded in international law. (Notably, the *International Covenant on Civil and Political Rights* prohibits State parties from arbitrarily or unlawfully interfering with a person's home, and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) providing a right to adequate housing, or the 'right to live somewhere in security, peace and dignity'.<sup>18</sup>) The LIV is not aware of the extent to which, if any, Homes Victoria and Victorian government departments, officials, and authorities, did adopt a human rights-based approach during the Decision making process, and it urges the Committee to investigate whether Decision-makers adequately considered the human rights of public housing tower residents in making the Decision.

Secondly, the LIV submits that relevant decision-makers were required to, and should have, meaningfully consulted with the residents of the tower blocks during the Decision-making process as

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<sup>14</sup> *Berih v Homes Victoria*, Amended Writ (28 June 2024) [Amended writ.pdf](#)

<sup>15</sup> *Barry Berih v Homes Victoria* [2025] VSC 30.

<sup>16</sup> Ibid.

<sup>17</sup> Inner Melbourne Community Legal, Class Action (online, last accessed 7 March 2025) [Public Housing Class Action | Inner Melbourne Community Legal](#)

<sup>18</sup> Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc HRI/GEN/1/Rev.9 (Vol 1) (27 May 2008) 194 [7]; Bill Swannie, *Examining BA v The King: Can a 'home' provide security from domestic violence?* Alternative Law Journal (online, 6 April 2024)

part of their obligation to properly consider human rights. Best practice guidelines on consultation provide that consultation must be meaningful and provide affected people with the opportunity to shape decisions, outcomes, and/or actions that impact them or their interests. Affected people should be given timely access to relevant, information available in readily comprehensible format and in suitable languages,<sup>19</sup> and they should be afforded the capacity to participate in discussions. Importantly, their views should be taken into consideration.<sup>20</sup> The LIV understands that, throughout the hearing in *Barry Berih v Homes Victoria*,<sup>21</sup> consultation with residents of the Affected Towers, in line with best practice guidelines, did not appear to occur during the Decision-making process, and it urges the Committee to investigate whether this failure amounted to a violation of residents' human rights, and/or of Decision-makers obligation to consider the same.<sup>22</sup> Further, the LIV respectfully asks that the Committee ascertain whether government intends to consult with residents if the project recommences.

The failure to consult with residents is particularly concerning given the Victorian Ombudsman's finding that the rights of public housing residents in North Melbourne and Flemington were breached when the Victorian Government failed to consult with residents prior to implementing an immediate and complete lockdown of the tower buildings to avoid the spread of Covid-19.<sup>23</sup> Consultation would have helped to ensure that the views and concerns of residents were heard and taken into account, and that human rights arrogations – like those which occurred during the lockdown - were avoided.<sup>24</sup>

### **Relocation comments**

The LIV has concerns about the process it understands will be followed by government in managing the relocation of residents of the Affected Towers during the Project and their return to redeveloped sites thereafter. This process is contained in the Victorian Government's 'Relocation Manual, Chapter 3: Moving back' ('the Policy'), which outlines the 'processes the department uses to manage the relocation of clients where this is necessary to allow redevelopments to occur', and which describes the options for relocation and moving back to a redeveloped site.<sup>25</sup>

The LIV acknowledges that the Policy may not apply in this specific context, and/or that it may have been superseded by another Policy unknown to the LIV.

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<sup>19</sup> Department of the Prime Minister and Cabinet, Guidance Note: Best Practice Consultation (online, March 2020) [Best Practice Consultation Guidance Note](#)

<sup>20</sup> Ibid.

<sup>21</sup> *Barry Berih v Homes Victoria* [2025] VSC 30.

<sup>22</sup> See., *Barry Berih v Homes Victoria* [2025] VSC 30, [15] – [25].

<sup>23</sup> Victorian Ombudsman, Investigation into the detention and treatment of public housing residents arising from a COVID-19 'hard lockdown' in July 2020 (17 December 2020) [Investigation into the detention and treatment of public housing residents arising from a COVID-19 'hard lockdown' in July 2020 | Victorian Ombudsman](#)

<sup>24</sup> Ibid.

<sup>25</sup> Department of Families, Fairness and Housing, Relocation Manual, Chapter 3: Move back' (October 2017) [Relocation manual - DFFH Service Providers](#)



However, as it is currently the only publicly available document, of which the LIV is aware, that refers to government policy regarding relocations, it may therefore apply in the current context.

As such, the LIV wishes to express concern with certain aspects of it.

In particular, the LIV is concerned that the technical detail of the Policy appears to be, or may be perceived to be, inconsistent with the communications of Homes Victoria and the Department of Families, Fairness and Housing (DFFH) to residents regarding the Project, which has emphasised that residents 'have the right to return based on...ongoing needs, eligibility and suitability of new homes.'<sup>26</sup> In reality, The Policy does *not* guarantee residents the ability to return to redeveloped sites; it provides that:<sup>27</sup>

[Residents] **may** move back to the redeveloped sites if they meet the... **eligibility criteria** [and] where there is insufficient redeveloped housing to be offered to tenants, they are offered the next vacancy at the site or a property in close proximity to the site where such a property is available. Where an appropriate property is not available to the site or nearby, alternative locations are discussed and agreed with the tenant. [emphasis added]

The eligibility requirements that must be satisfied for a resident to be able to return to a redeveloped site are as follows:<sup>28</sup>

Tenants who wish to move back to redeveloped housing are required to meet the Department's income and asset limits.

Tenants cannot move back to the redeveloped housing where:

- they no longer meet the Department's income and asset limits;
- they are no longer eligible for the redeveloped housing according to the Department's Housing Size Guidelines as referred to in the Allocations Manual;
- they accrued outstanding charges while in the interim housing;
- a Warrant of Possession is to be executed for either rental arrears or breaches of tenancy including nuisance and damage to interim housing;
- it is determined there is insufficient redeveloped housing for the tenant to relocate back to following thorough assessment of each relocated tenant's SHR and relative priority based on length of tenure.

If the Policy will apply to the Project, the LIV is thus concerned that residents may be operating under a mistaken belief that they are guaranteed a home in the redeveloped site. For many, this may not be

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<sup>26</sup> Homes Victoria, Information for relocating residents (Online, last accessed 21 March 2025) [Relocation hub | Big Housing Build](#)

<sup>27</sup> (n 25) 4

<sup>28</sup> Ibid.

the case: there are a range of circumstances that may operate to prevent residents from meeting the eligibility criteria, including:

- Household income and asset limits may change over time, particularly in circumstances where children grow up and are earning their own income while still residing in the housing, or where a resident receives a menial pay-rise that would be considered part of the household income. This is particularly concerning considering that increases in household income may be necessary to account for rising cost of living expenses, which may not be considered in current income thresholds for public or community housing.
- Accrual of outstanding charges may be more likely to occur for reasons beyond a residents' 'control in a cost of living crisis, such as medical, childcare or other such expenses;
- Given that a Warrant of Possession is applicable to the current renter of the property, it is unclear if the actions of others residing in the property may lead to a Warrant of Possession being applied to the renter, rather than the individual, and thus lead the renter to be ineligible. This may arise in circumstances where young children or teenagers may be responsible for causing nuisance, or a domestic violence perpetrator may be responsible for breaking tenancy obligations or cause property damage, which may cause the person named on the rental lease to fear being subject to a Warrant of Possession.<sup>29</sup>

Furthermore, the LIV is concerned that residents may be operating under a mistaken belief that they are guaranteed a home that corresponds with their old home's location and conditions. On the contrary, the LIV understands that residents will be required to return into community housing, rather than public housing (as will be further detailed in paragraph (d)), which has different conditions.<sup>30</sup>

Finally, if residents are required to apply to return to the redeveloped sites, the LIV is concerned that the eligibility criteria may intimidate residents into not applying to return to the redeveloped homes from fear of not meeting the eligibility criteria and being required to vacate public housing entirely.

For these reasons, the LIV respectfully submits that the Committee ascertain whether the Policy will be applied to the Affected Towers and/or the conditions upon which residents will be permitted to return to the redeveloped sites.

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<sup>29</sup> Consumer Affairs Victoria, Evictions and possession orders (online, last accessed 26 March 2025) [Evictions and possession orders - Consumer Affairs Victoria](#)

<sup>30</sup> The Age, Three public housing towers to be razed and rebuilt with no public housing (Online, 12 March 2025) [Flemington and North Melbourne towers to be redeveloped with no public housing](#)



## Terms of Reference

### **(a) the rationale and cost modelling for the decision to demolish and redevelop the 44 high-rise public housing buildings and associated sites ... including alternatives to demolition ....**

The LIV cannot comment on the rationale and cost modelling for the decision, or on alternatives to demolition, as it is not privy to this information. However, the LIV notes that non-government organisations with relevant expertise have published some information that is relevant to the rationale and cost modelling for the decision which the LIV urges the Committee to consider.

In particular, the LIV refers to a study published by 'Office', a not-for-profit design and research practice in Melbourne, which assessed the feasibility of refurbishing the high-rise towers in the Flemington Estate as an alternative to full-scale demolition.<sup>31</sup> The report, prepared by experts in the field including architects, engineers, surveyors, urban designers and researchers, outlines an alternative 'retain, repair and reinvest' approach which proposes to achieve a complete refurbishment of all homes, match the number of total dwellings proposed by the government's plan, increase the net number of public homes, avoid the displacement of residents - and potentially save \$364 million in costs.<sup>32</sup> According to Office, apart from a summary prepared by Hayball for the Flemington Estate which outlined the proposed demolition of four high-rise towers with plans for new commercial and residential developments, no feasibility studies have so far been provided by the Victorian Government supporting their decision to demolish and rebuild.<sup>33</sup>

Considering the above, the LIV submits that the Committee should assess the available alternative information regarding the rational and cost modelling of the decision for the purposes of determining whether the government's current proposal for full-scale demolition is justified.

### **(b) the impact of the plan, including the compulsory relocation and displacement of public housing residents on the future net availability of public community housing and the existing decanting plans and the department estimates on the number of people who will permanently leave the area being developed.**

In terms of the impact of the plan, the LIV submits the following high-level points:

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<sup>31</sup> Office, Retain, Repair, Reinvest: Flemington Estate (online, 2024) [OFFICE – Retain, Repair, Reinvest: Flemington Estate](#)

<sup>32</sup> Ibid.

<sup>33</sup> Ibid.

1. The Project will have the effect of significantly reducing the availability of public housing in Victoria.<sup>34</sup> Specifically, if it proceeds, the majority of public housing will be owned and managed by community housing providers (non-profit organisations registered and regulated by the state government)<sup>35</sup> rather than directly by the government, as is currently the case.<sup>36</sup> In addition, the transition to community housing means that different conditions may be imposed on residents,<sup>37</sup> provides less direct oversight and management by government, may result in higher rent rates,<sup>38</sup> and may reduce the rights residents currently have under the Charter (in comparison to public housing, as suggested in *Durney v Unison Housing*<sup>39</sup>).
2. The Decision will cause disruption to the lives of residents, particularly those who have already been relocated or are awaiting imminent relocation (noting the current injunction). The disruption will be especially severe for residents who are employed locally, and/or who have close friends and family members who provide childcare and/or general caring needs, and/or who avail of local services, including childcare.
3. The LIV is concerned that some residents may not be entitled to return to redeveloped sites, which may have a significant impact upon their connection with their family, community, access to services, and employment.

**(c) the findings and adequacy of consultations with: (i) public housing tower residents and their representatives; (ii) relevant local stakeholders ... (iii) state and federal government departments and agencies.**

According to plaintiffs per the amended writ in *Berih v Homes Victoria*,<sup>40</sup> and confirmed by Homes Victoria (outlined in the Ruling of Keogh J in the same matter),<sup>41</sup> the Decision and its underlying decision making process were made by a Victorian Government Cabinet committee without consulting public housing tower residents and/or their representatives.<sup>42</sup> It is apparent that Homes Victoria engaged several external companies to consult on the Decision making process, and the LIV understands that Homes Victoria held information sessions with tower residents after the Housing Statement was

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<sup>34</sup> The Age, Three public housing towers to be razed and rebuilt with no public housing (Online, 12 March 2025) [Flemington and North Melbourne towers to be redeveloped with no public housing](#); Homes Victoria, Ground Lease Model Project, Project Summary (online, last accessed 25 March 2025) [Homes Victoria report template portrait](#);

<sup>35</sup> Housing Vic, Community Housing (online, last accessed 26 March 2025) [Community housing | Housing.vic.gov.au](#)

<sup>36</sup> Homes Victoria, Housing Explainer (online, last accessed 25 March 2025) [Housing explainer | Big Housing Build](#); Homes Victoria, Ground Lease Model Project, Project Summary (online, last accessed 25 March 2025) 12 [Homes Victoria report template portrait](#)

<sup>37</sup> *Durney v Unison Housing* (2019) 57 VR 158.

<sup>38</sup> Housing Victoria, Public housing (online, 25 March 2025) [Public housing | Housing.vic.gov.au](#); Housing Vic, Community Housing (online, 25 March 2025) [Community housing | Housing.vic.gov.au](#)

<sup>39</sup> *Durney v Unison Housing* (2019) 57 VR 158.

<sup>40</sup> *Barry Berih v Homes Victoria*, amended writ (28 June 2024) <https://www.supremecourt.vic.gov.au/sites/default/files/2024-08/Amended%20writ.pdf>

<sup>41</sup> *Barry Berih v Homes Victoria* [2025] VSC 30.

<sup>42</sup> See, e.g., *Barry Berih v Homes Victoria* [2025] VSC 30, [15] – [25].

published.<sup>43</sup> However, these sessions cannot be properly characterised as constituting consultation since there was no capacity for the views of residents to be taken into account by decision-makers at that stage given that the Decision Housing Statement had already been published.<sup>44</sup>

As such, the adequacy of consultations with public housing tower residents and/or their representatives regarding the Decision and the Decision-making process appears to have been manifestly deficient.<sup>45</sup>

The LIV wishes to express concern that consultations with public housing tower residents did not take place regarding the Decision *during* the decision-making process despite the significant impact the Decision will have on residents' lives and interest. Their voices should have been heard during the decision-making process to ensure that their interests, needs, and relevant circumstances were taken into consideration by government which may have been relevant to the decision.

As to the adequacy of consultations with relevant local stakeholders and/or state and federal departments and agencies, the LIV is not aware of whether any such consultations occurred.

**(d) the efficacy of the proposed financial, legal, and project delivery models (including the ground lease model) to be used for the plan, versus alternative models to improve and increase the number of public and community homes on the sites in question and in Victoria.**

The LIV is not well placed to comment on the efficacy of the proposed financial, legal, and project delivery models to be used for the Project as compared with alternative models to improve and increase the number of public and community homes on the sites in question and in Victoria. However, the LIV submits that consideration should be given to alternative feasibility studies regarding the redevelopment project, as mentioned in response to paragraph (a).<sup>46</sup>

As to the efficacy of the ground lease model as a potential project delivery model for the Project, the LIV offers the following comments.

**Ground lease model**

*Background*

The LIV notes that in May 2021, HousingVic (a government entity managed by DFFH) entered into a contract with Building Communities (Vic) Limited ('Project Co') to deliver housing at sites in Flemington,

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<sup>43</sup> *Barry Berih v State of Victoria & Ors* [2024] VSC 230 [7]

<sup>44</sup> *Ibid.*

<sup>45</sup> *Barry Berih v Homes Victoria* [2025] VSC 30, [15] – [25].

<sup>46</sup> Office, Retain, Repair, Reinvest: Flemington Estate (2024) [OFFICE – Retain, Repair, Reinvest: Flemington Estate](#); Architecture AU, [Could, or should, Melbourne's public housing towers be saved?](#) (2 May 2024) [Could, or should, Melbourne's public housing towers be saved? | ArchitectureAu](#)

Brighton, and Prahran under the 'Ground Lease Model'.<sup>47</sup> The Ground Lease Model Summary outlines Project Co's responsibilities regarding the design, construction, financing and management of dwellings at each site over a designated period (40 years).<sup>48</sup>

According to relevant documents,<sup>49</sup> the Ground Lease Model proposed would, upon application of the Public Sector Comparator (an estimate of the hypothetical, risk-adjusted, whole-of-life cost of the Project if delivered by HousingVic) produce a better result than would be achieved if the sites were to be developed and maintained by HousingVic over the same time period, including by providing a larger number of dwellings overall and resulting in substantial cost savings.<sup>50</sup>

### *Terms*

The LIV has not accessed the actual form of the lease that would form the basis of the Ground Lease Model for the Project, and is relying upon the summary of its terms as set out in the Ground Lease Model Summary,<sup>51</sup> which explains that the ground lease for the Project would include the following provisions:

- **Default and Termination Regime:** HousingVic would be able to exercise various rights in the event of default by Project Co, including step-in rights (i.e. the right to assume control and management of the Project following major default events and default termination events), and partial and complete termination rights (depending on the circumstances);<sup>52</sup>
- **Departures from Standard Project Deeds,** including project specific regimes and negotiated outcomes, such as the remedying of defects in social housing dwellings, partial termination and requirements for social housing, affordable housing, and private rental dwellings;<sup>53</sup>
- **Abatements:** Levying of one-off abatements where certain Development Phase requirements have not been met;<sup>54</sup>
- **Director Rights at Expiry of Contract:** all Project Assets would have to be handed back at the end of the 40-year term or earlier termination,<sup>55</sup> and an independent expert must be appointed two years prior to this expiry to ensure that lifecycle and maintenance works are completed and that assets will meet the relevant handover condition.

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<sup>47</sup> Homes Victoria, Ground Lease Model Project: Project Summary (Online Report) 4 [Homes Victoria report template portrait](#)

<sup>48</sup> Ibid.

<sup>49</sup> See, for example, Table 9 and Table 10 of the Ground Lease Model Project: Summary.

<sup>50</sup> Ibid, 19 – 20.

<sup>51</sup> Ibid, 14 – 39.

<sup>52</sup> Ibid, 31, 36 – 38.

<sup>53</sup> Ibid, 30 – 31.

<sup>54</sup> Ibid, 21.

<sup>55</sup> Ibid, 38.

- **Audit and Inspection Rights of the Director:** HousingVic will be able to carry out specific audit and inspection activities,<sup>56</sup> including by disclosing information to the Victorian Auditor-General or to Parliament.<sup>57</sup>
- **Project Co Service Provision:** Project Co will have specifically defined responsibilities in managing the sites, includes by providing asset management and maintenance services, tenancy management services for all social housing, residential lease management, community building and engagement services and facilitating tenant transition from their existing accommodation.<sup>58</sup>

The LIV submits that these provisions, taken together with the findings of the Public Sector Comparator, make the Ground Lease Model an attractive and potentially efficient project delivery model.

The LIV does however caution that it will be essential for the Ground Lease Model to contain suitable safeguards and oversight mechanisms to ensure ongoing compliance throughout the 40-year term. In particular, it is vital that maintenance regimes are fully adhered to throughout to ensure standards and quality of life are maintained for all residents throughout that entirety of the term.

Further, the LIV cautions that regard needs to be had to the implications of transferring to the Ground Lease Model. Specifically, the LIV notes that residents may have less protection under the Ground Lease Model than they currently do under the Charter as suggested in *Durney v Unison Housing*,<sup>59</sup> and rents for tenants may increase: public housing rent is capped at 25% of total household income,<sup>60</sup> whereas community housing rent is capped at 30% of total household income.<sup>61</sup>

For these reasons, the LIV suggests that the terms of the Ground Lease Model could be improved by enhancing the extent to which it is subject to the Charter, and by requiring a human rights impact assessment to be prepared prior to any potential changes.

### **(e) building standards for the developments, including whether there will be the same standards for public, community and private housing;**

#### **Ground lease model**

The LIV understands that under the Ground Lease Model, Project Co will be contracted by the Director of Housing<sup>62</sup> to finance, design, construct, and manage the sites for 40 years, and may be required to

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<sup>56</sup> Ibid, 39.

<sup>57</sup> Ibid, 39.

<sup>58</sup> Ibid, 14.

<sup>59</sup> *Durney v Unison Housing* (2019) 57 VR 158

<sup>60</sup> Homes Victoria, Public housing rent explainer (online, 24 July 2024) [Public housing rent explainer | Homes Victoria](#)

<sup>61</sup> Homes Victoria, Community Housing Organisations (online, 24 July 2024) [Community Housing Organisations | Homes Victoria](#)

<sup>62</sup> Noting that the term 'Director of Housing' and Homes Victoria may be used interchangeably; See section 148 of the *Housing Act 1983* (Vic).

comply with additional standards beyond those mandated by the National Construction Code, as incorporated into Victorian legislation and applying to building work.

The LIV welcomes the Ground Lease Model's commitment to compliance with applicable building standards, in addition to meeting the National Construction Code and Standards and Liveable Housing Design Guidelines.<sup>63</sup> Specifically, the LIV understands that, in delivering the Project, Project Co must comply with a range of project requirements including:<sup>64</sup>

- Liveable Housing Design Guidelines (LHDG) Gold Level for 1- and 2-bedroom social housing dwellings and Silver Level LHDG for 3- and 4-bedroom social housing dwellings;
- constructing to a minimum standard of NatHERS 6 Stars with a 7-star average (social housing dwellings) and Green Star 5 Stars (all dwellings);
- Better Apartment Design Standards;
- Homes Victoria specific requirements for cladding, accessible dwellings and building services
- Alignment with the development plan overlays which specify communal open space provision, pocket parks, community facilities and commercial activities where applicable;
- The Director's detailed requirements for building elements and services, roads, car parking, and gardens.

In addition to these, the LIV suggests that the project deeds should also specify that:

1. Disability accommodation satisfies, or is capable of modification for compliance with, all NDIS required design standards;
2. Housing is culturally appropriate for residents with specific cultural needs;<sup>65</sup>
3. Housing meets requisite standards in respect of noise and other key amenity issues; and
4. All housing meets high environmental sustainability standards.

The LIV submits that common building standards should be adhered to across public, community, and private housing components of the Projects to ensure that different housing types are integrated throughout each project in a way that achieves a similar quality of building design and construction across those housing types. The sites should achieve seamless ownership and tenancy 'blindness' i.e. different housing types within the one project should not be easily identifiable. This will encourage social cohesion and an integrated community life across each development, avoiding the creation of 'silos' or 'ghettos' of particular housing types.

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<sup>63</sup> Homes Victoria, Ground Lease Model Project: Project Summary (Online Report) 12 [Homes Victoria report template portrait](#)

<sup>64</sup> Ibid.

<sup>65</sup> UNHCR, The human right to adequate housing (online, 26 March 2025) [The human right to adequate housing | OHCHR](#)



Finally, the LIV submits that consideration should be given to the question of whether the housing to which residents of Affected Towers will be relocated meets relevant standards.

**(f) how different development and ownership models will be integrated within each site to enhance community integration and achieve a diversity of tenants;**

The LIV submits that it is not clear if or how different development and ownership models are being integrated within each site to enhance community integration and achieve a diversity of tenants.

However, as mentioned above, the LIV submits that different housing types should be integrated into the Project that share a similar quality of design and construction and achieve seamless ownership and tenancy 'blindness' to promote social cohesion and avoid the creation of 'silos' or 'ghettos' based on different forms of tenancy.

The LIV submits that it is also important for the redevelopment to include adequate community gardens, recreational areas, and open spaces. It notes that the Ground Lease Model for Flemington does not appear to include a commitment to providing open and public community spaces for residents,<sup>66</sup> unlike those for Brighton and Prahan, which will feature community garden plots and facilities, 2000m<sup>2</sup> central open space, rooftop communal space and terraces, and productive garden plots respectively.<sup>67</sup>

**(g) the likely impacts of the plan on: (i) the number of bedrooms currently at each location versus the proposed number of new bedrooms per site; (ii) the number of public and community housing homes at each location and how remaining public land will be used; (iii) the Victorian Housing Register and homelessness while the plan is being delivered; (iv) the future of public housing in Victoria.**

Regarding the likely impacts of the plan on the above, the LIV provides the following comments:

1. The LIV is unable to comment on the likely impacts of the plan on the number of bedrooms currently at each location versus the proposed number of new bedrooms per site, as it does not have access to relevant information.
2. In respect of the number of public and community housing homes at each location and how remaining public land will be used, the LIV submits that each community site should include open space that accommodates the needs of the number of people living at that site;

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<sup>66</sup> (n 63) 12 -14.

<sup>67</sup> Ibid.

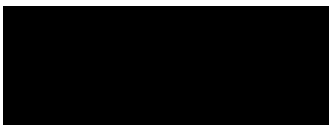
3. The LIV is concerned that the Project may significantly impact the number of available public housing in Victoria, despite the need for public housing - particularly given growing homelessness numbers in Victoria.<sup>68</sup>

**(h) any other related matters.**

In addition to the above-mentioned points, the LIV suggests that the Committee satisfy itself that the Project will involve environmental and contamination issues (including asbestos removal). This must be comprehensively addressed prior to any redevelopment in line with the requirements under the *Environmental Protection Act 2017 (Vic)*.

Finally, the LIV respectfully asks that the Committee ascertain whether an equivalent or greater number of public housing units will be delivered by the Project as currently exists.

Sincerely yours,



Adam Awty  
Chief Executive

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<sup>68</sup> Council to Homeless Persons, Victorians at risk of homelessness surges to almost one million people: report (18 November 2024) [Victorians at risk of homelessness surges to almost one million people: report - Council to Homeless Persons website](#)