

# North Brighton Residents Action Group Inc.:

## Submission to the Parliamentary Inquiry into Public Housing Renewal



This feather is a symbol we used in closing comments at the Standing Advisory Committee hearing for Brighton. Found near the Brickwood St footbridge that morning, it represents our unique community - one that should be treated with respect, listened to and engaged with, to achieve the best possible public housing renewal in a great location. We have experienced too much of adversary politics in Nth Brighton and hope the Parliamentary Inquiry can be the beginning of a more positive approach to a serious community problem.

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**November 2017**

**[northbrightonresidentsaction.org](http://northbrightonresidentsaction.org)**

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## **SUBMISSION BY THE NORTH BRIGHTON RESIDENTS ACTION GROUP**

The North Brighton Residents Action Group (NBRAG) is pleased to make this submission to the parliamentary inquiry into the current public housing renewal program (the program). NBRAG would welcome the opportunity to appear before the Committee to speak to this submission. This submission details specific concerns which we believe are more appropriately dealt with by your Inquiry than within the limited scope of the planning process (Standing Advisory Committee hearings) available to us. The submission also includes our detailed response to the particular issues on the North Brighton (New St) site as prepared for the Standing Advisory Committee.

### **About NBRAG**

#### **NBRAG**

- Is an independent, not-for-profit community organisation incorporated under the Associations Incorporation Act
- Members are residents of the North Brighton area
- Was formed in response to the so called “engagement” forum held by DHHS at Elsternwick Primary School in June 2017
- Is entirely self-funded
- Has no political affiliation or alignment
- Has no affiliation with any other community organisation

### **NBRAG position**

As neighbours of the New Street Brighton public housing estate, NBRAG supports retaining public housing in public ownership and rejects inappropriate development of public housing land.

In relation to the New Street estate NBRAG supports -

- appropriate renewal of the New Street estate in a manner that complies with the existing Planning Scheme for the City of Bayside with Bayside City Council as the responsible authority;
- retaining the entire New Street land in public ownership so that it can continue to be used solely for public housing as intended when the land on which the estate is situated was granted by the Crown to the former Housing Commission in 1958.

NBRAG opposes the totally unnecessary and unwarranted proposals to rezone the New Street estate land from a general residential zone 1 to a mixed-use zone, make the Minister for Planning the responsible authority for the site and remove all third-party rights of appeal. This would, to use the common phrase, put the fox in charge of the hen house, given that the entire program has been designed to maximise the financial yield from the sale and development of public land.

NBRAG has made a detailed submission to the Standing Advisory Committee (SAC) appointed by the Minister for Planning in relation to the proposal developed by DHHS for redevelopment of the New Street Brighton public housing estate (Attachment 1). On 16 November 2017, representatives of NBRAG gave a comprehensive presentation to the SAC which expanded on our initial submission. A copy of our presentation is at Attachment 2.

NBRAG's submission and presentation to the SAC clearly demonstrate the manifest unsuitability of, and fundamental flaws in, the extreme, totally unreasonable and arrogant proposal that was submitted to the SAC.

The documentation relating to the New Street estate is inept, riddled with obvious errors and inconsistencies, includes references to other sites, makes major miscalculations (e.g. in relation to allowances made for on-site parking) and, overall reveals an extensive and alarming lack of due diligence on the part of DHHS. Evidently a cookie cutter approach has been largely adopted across the program without due regard to site specific considerations and constraints and the specific features of the local environment and community context.

In addition to NBRAG's submission over 120 local individuals made submissions to the Standing Advisory. All agreed that the land should not be used for private development. Overwhelmingly this community supports public housing renewal on this site and an increase in public housing, but not at the expense of the disposal of public land.

### **Approach to New Street indicative of wider program failures**

The multiple issues we have had to deal with in response to the DHHS proposal for the New St Housing Estate are dealt with in more detail in the Attachments—which are copies of our submission and presentation to the Standing Advisory Committee hearing for our site.

Although our primary focus has been on the New Street estate, as this is our area of particular knowledge and expertise, we believe that the mishandling of the proposals for renewal of the New Street estate is illustrative of fundamental failures in the design of the entire public housing renewal program.

Our experience has been of a highly adversarial and secretive process that has been designed to marginalise affected third parties and make it as difficult as possible for residents to understand and scrutinise the assumptions underlying the proposal. Anecdotally we understand that our experiences have been replicated across other sites involved in the wider public housing renewal program.

Disturbingly, NBRAG believe that the entire process has been concocted specifically to marginalise local communities with the objective of bulldozing through extreme and unreasonable proposals with minimal public scrutiny and debate. Our experience of the so-called community engagement was that it was tokenistic and meaningless; a "tick the box" exercise designed solely to provide information rather than to genuinely engage. There has been no effort whatsoever to draw on the expertise and local knowledge of community members. Instead, an adversarial approach has been adopted from the outset.

Local residents have been treated with contempt throughout the process. Community questions, and requests for basic data (such as the number of bedrooms in the New Street flats) as well as Ministerial correspondence have gone unanswered. In an effort to obtain data to inform our submission to the SAC, a representative of NBRAG made a freedom of information request to the proponent. Despite identifying multiple documents in scope of the request, no data was released that is not in the public domain. This request was not answered in the time specified under the FOI Act and the refusal to provide any information is now the subject of a complaint to the Information Commissioner.

There is no evidence whatsoever that a range of alternative policy options have been identified and duly considered by the Government. That option consideration is a basic feature of public policy analysis and development is acknowledged by the Victorian Public Sector Commission in its 'DEVELOPMENT GUIDE 13: Contributing to Public Policy' (<https://vpssc.vic.gov.au/html-resources/development-guides/development-guide-13-contributing-to-public-policy/>).

Reference was made by DHHS at the Brighton SAC hearing to a 'commercial in confidence' business case, however there was nothing in that comment, or in our experience of this program, to suggest that the business case was for the Brighton site alone. Indeed the 'cookie cutter' nature of the program, and the many site-related inconsistencies suggest there may only ever have been a generic business case applied across all sites. If this is the case we would contest that the unseen business case is unsound as it could not have adequately dealt with the many site specific constraints at each location.

While NBRAG members live primarily in the streets surrounding the estate, the neighbourhood is a friendly and inclusive one and it is in that context that we talk regularly with neighbours who are public housing tenants. We made a decision, as a group, early on not to add to our neighbours' stress at this time through directing overt lobbying at tenants, but we have invited participation from the whole community at our public events (community barbecues, information sessions etc). We have been astounded at the level of confusion and fear our neighbours are experiencing. This is, unfortunately, consistent with our experience of a program that suffers from being driven by pre-determined political and financial considerations.

### **New Street Land**

NBRAG has obtained a copy of the land title for the New Street estate. It provides that the land was granted by the Crown in fee simple to the Housing Commission "for the purpose set out in s.4 of the Housing Act 1943 and for no other purpose whatsoever". The grant of the land was conditional and the condition is an encumbrance on the title which will have to be removed if part of the land is to be sold for private development.

Section 4 of the Housing Act 1943 gave the Housing Commission power to do a number of things in order to carry out the Commission's objects which are set out in section 4 of the Housing Act 1937. These two Acts were designed to be read together. Section 1 of the 1943 Act states that -

'This Act may be cited as the Housing Act 1943 and shall be read and construed as one with the Housing Act 1937 and any Act amending the same all of which Acts and this Act may be cited together as the Slum Reclamation and Housing Acts''

The objects of the Commission as set out in section 4 of the 1937 Act were –

- (a) the improvement of existing housing conditions;
- (b) the provision of adequate and suitable housing for persons of limited means.

Under s.4(1)(i) of the 1943 Act, the Housing Commission was prohibited from selling any land granted to the Commission by the Crown. This prohibition is also a condition of the Crown grant of the land on which the New Street estate is situated. This was specifically to ensure that the land was retained in public ownership by the Commission and used solely for the purposes of providing housing to people of limited means as defined in the 1943 Act, together with community gardens,

open spaces and places of recreation for their use and benefit. The New Street estate has open spaces with community gardens and playgrounds which are well used by residents of the estate.

The Director of Housing has no power to sell Crown land under the Housing Act 1983. In 1993 Parliament passed the Land (Crown Grants and Reserves) Act 1993. It was designed to ensure that Crown land cannot be sold without the express authorisation of Parliament. In his second reading speech, the responsible Minister Mark Birrell said that the Bill “reinforces the long accepted principle that any decision to revoke any permanently reserved Crown land properly rests with this Parliament and not with those entrusted with a grant of land for a particular purpose”<sup>1</sup>. In the Parliamentary debates on the Bill, a member of the Opposition made the comment that “special protection of Crown land is needed and that protection should not be dispensed with in any way other than through express legislation.”<sup>2</sup>

NBRAG is aware that under the Development Victoria Act, the status of Crown land can arguably be altered without special legislation however this is clearly contrary to the intention of the land grant which should be honoured because the express need for which the reservation was made is the same as that which is driving the current proposal: ie the need for housing for people of limited means.

We also believe that the application of these powers on a single 1.4 hectare residential site is contrary to the intention of the power now expressed in the Development Victoria Act as it was conceived in the Victorian Urban Development Authority Act 2003 and captured, as follows, in the debate on the Bill; *In particular it (The Act) will facilitate well-planned, sustainable development in strategic locations where problem site assembly and market failures may otherwise delay or inhibit achievement of... outcomes.*<sup>3</sup>

The original intention of this clause to deal with revocation of reservations on title for the particular purpose of consolidating development sites is clearly and unambiguously carried through in the wording of the existing (Development Victoria) Act:

45. Revocation of permanent and temporary reservations (1) Subject to subsection (3), the Governor in Council, on the recommendation of the Minister and the Minister administering the Crown Land (Reserves) Act 1978, may by Order published in the Government Gazette declare that the temporary or permanent reservation under that Act of land which is in the project area and which is described in the Order is revoked.

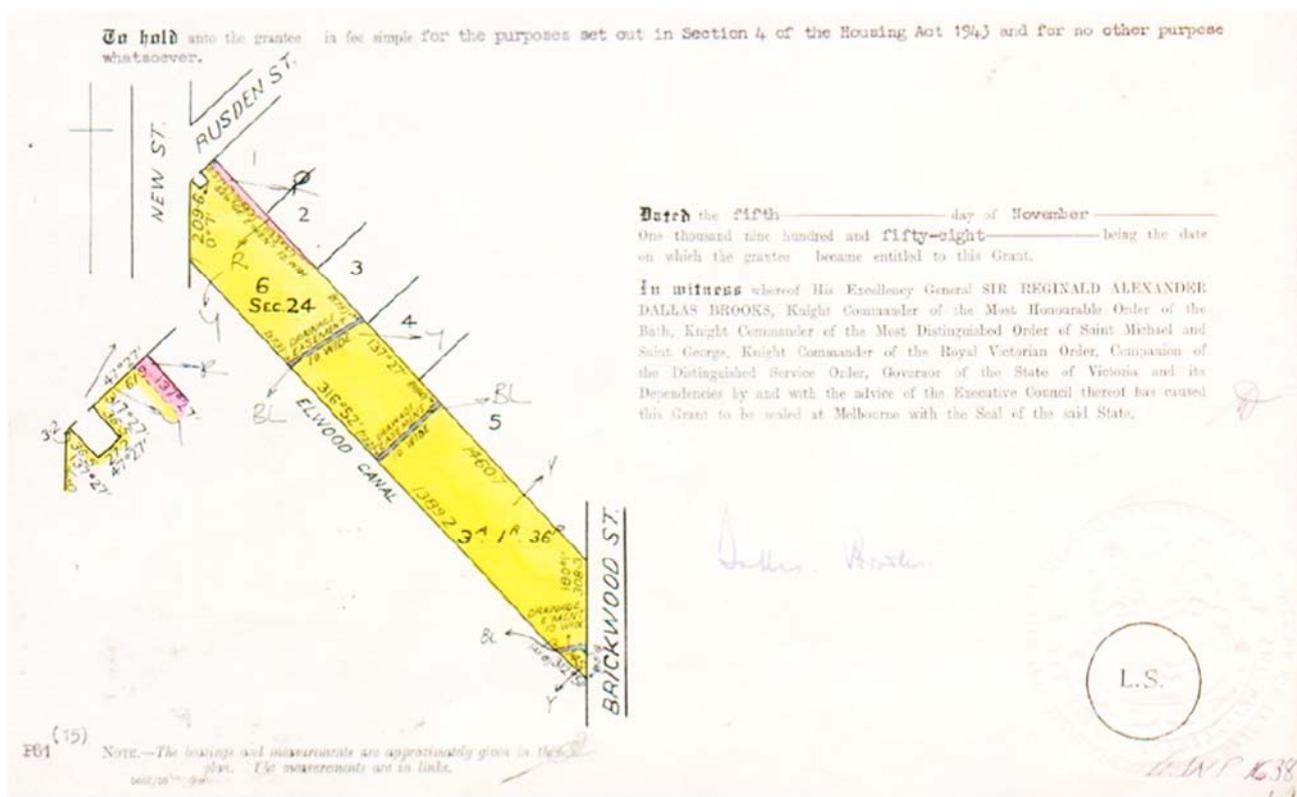
We believe that the use of these powers on sites such as the Brighton Estate is contrary to the intent of the Act and would accordingly be challengeable in court. We believe that the revocation of a reservation that supports housing for people of limited means, when that is the policy purpose of the proposed development, is wrong in law, anti-democratic, disrespectful of the original reservation of previously public land and morally questionable. Regardless of the powers of the Development Victoria Act (which, as stated above, we do not believe apply), because the revocation of the reservation is not directed to the consolidation of a development site, proper parliamentary consideration outside the process described in that Act is required.

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<sup>1</sup> Second Reading Speech for the Land (Crown Grants and Reserves) Bill 1993 Victorian Hansard Legislative Council Wednesday 7 April 1993 p.234

<sup>2</sup> Mr Thomson (Member for Pascoe Vale) Victorian Hansard Legislative Assembly Wednesday 7 April 1993 p.761

<sup>3</sup> Second Reading Speech for the Victorian Urban Development Authority Bill 2003 Victorian Hansard Legislative Council Wednesday 22 May 2003 p.82



(above) Detail from the land title for the Brighton Public Housing Estate

**Reliance on the misuse of a key strategic terminology**

A key terminology currently popular in public policy debates has been critically mis-applied in order to give the impression of rigour to this project. Of concern is the use of the concepts variously described as ‘value uplift’, ‘value capture’ or ‘value uplift capture’.

Value uplift capture, as it is meant to be understood is quite different to what is proposed on these housing renewal sites. At its heart ‘value capture secures some of the benefits delivered by public investment to offset the costs of provision.’<sup>4</sup> (The cited on-line discussion gives a useful summary).

In this instance there is no intrinsic change to land value based on a change of circumstances caused by government investment. The concept can be rightly applied to things like the impact of new rail infrastructure development on surrounding land values and refers to methods by which governments can attempt to secure (capture) some of that value, through levies or other mechanisms.

The Housing Renewal program is not an example of value uplift capture. There is no intrinsic change to the value of land created by the replacement of public housing with public housing. This is a nonsense.

Rather the program is constructed to artificially inflate the value of land through rezonings that are often (as at Brighton) not required to deliver the policy outcome and which in many cases do not reflect the intrinsic value or capacity of the land given its context.

<sup>4</sup> *Explainer: what is ‘value capture’ and what does it mean for cities?*, <https://theconversation.com/explainer-what-is-value-capture-and-what-does-it-mean-for-cities-58776>

Given the distinction between the approaches (genuine value uplift capture and the (mis)use of the term in this instance), rather than being described as a 'value uplift capture' the housing renewal approach might more accurately be described as simply an elaborate 'sale price manipulation', though it is doubtful such terminology would be touted quite so enthusiastically by the scheme's proponents.

### **Specific Procedural Concerns**

During day 1 of the Standing Advisory Committee meeting for Brighton it became clear that there was no expert opinion that supported the DHHS proposal. Both DHHS and Bayside City Council planning/urban design experts regarded, in particular, proposed heights as being unsustainable on this site.

As a result, and following intervention by North Brighton Residents Action Group, a contested re-draft of the core planning amendment document (the schedule to the Development Plan Overlay) was issued two days later.

The status of this document was never clear and NBRAG argued that its release, and the way it was produced, were clearly contrary to the Committee's Terms of Reference.

We respect the Committee's need to maintain the unnecessarily tight schedule required of them by the Minister, which we believe was always contrary to the requirements of proper policy consideration and good governance. With the introduction of what amounted to a new proposal (as it differed so fundamentally from the original) during the proceedings, the Committee found themselves between a rock and a hard place.

NBRAG contests that by basing their original proposal on a scheme that was not fit-for-purpose (being unable to stand even the scrutiny of their own experts) DHHS compromised the Advisory Committee process and diminished the capacity of the community and other stakeholders to be heard.

This situation came on the back of numerous concerns about inconsistency of documents, and the complex nature of documents and processes that provided a substantial barrier to engagement by stakeholders. In the light of the poor standard of initial engagement by DHHS, which we regard as being so flawed as to be essentially meaningless, and the removal of third-party and Council involvement and scrutiny if the proposal proceeds as designed, such barriers at the Standing Advisory Committee stage are unacceptable.

### **Standing Advisory Committee Report**

There is currently no indication that all the Standing Advisory Committee reports, which are provided to the Minister for Planning to inform him about decisions on each site, will be made public. We believe that the confidence of Victorians, in regard to such sensitive planning decisions, requires that these reports should be public documents and urge the Parliamentary Inquiry to take whatever steps are available to it to ensure this basic level of transparency is provided to stakeholders, affected parties and the Victorian public.

ATTACHMENT 1: Submission to the Standing Advisory Committee

## **NORTH BRIGHTON RESIDENTS ACTION GROUP INC.**

**\*THIS DOCUMENT IS AN EDITED VERSION OF THE SUBMISSION MADE TO THE STANDING ADVISORY COMMITTEE OF PANELS VICTORIA IN REGARD TO THE BRIGHTON HOUSING ESTATE: OCTOBER 2017\***

### **WHO WE ARE**

North Brighton Residents Action Group Inc. (NBRAG) is an Incorporated Association established by residents of North Brighton in response to concerns about the proposed approach to public housing renewal at the New Street, Brighton Housing Estate. NBRAG has no political affiliations and is entirely self-funded. We have around 100 members, all residents of the area.



(image altered to ensure compliance with SAC Privacy requirements)

### **BACKGROUND**

NBRAG formed when community members came together after the June DHHS consultation session at Elsternwick Primary School. The alarming nature of the proposal that was presented and the degree of design development undertaken prior to any neighbourhood dialogue, together with the chaotic nature of the

session, gave us no confidence that our valid concerns would be respected or considered during the re-development process.

NBRAG members have enjoyed living in a neighbourhood of mixed private and public housing for many years. In North Brighton we don't talk social mix, we do it. Our members quickly established a shared vision, based on achieving the best outcomes for tenants, neighbours and the whole community. We continue to pursue this vision (including through this submission) the tenets of which are:

- that the social housing outcome from the proposed renewal process is inadequate;
- that public housing land should not be sold or transferred for private development;
- that design should be sensitive to neighbourhood context;
- that Council should be retained as the responsible authority, and
- that third-party appeal rights should be protected.

## OUR CONCERNS

### 1. RESPONSIBLE AUTHORITY / REMOVAL OF THIRD PARTY APPEAL RIGHTS

It is important that any planning scheme amendment or subsequent planning application for such a substantial development, be subject to scrutiny through the planning process and the interests of those affected by the development, be taken into account in assessing the suitability of any plan, proposal or design. Plan Melbourne itself promises that: *Plans for each (housing renewal) site will be developed with input from residents, communities and other stakeholders*. The current proposal means that:

- the removal of Council as the responsible authority for any planning application under an amended planning scheme and the removal of access to third party appeal provisions, would directly limit the capacity for such input *from residents, communities and other stakeholders*;
- the removal of Council as the responsible authority for any planning application under an amended planning scheme would diminish the likelihood of local context being considered and local voices heard, given Council's unique capacity to understand and represent community concerns in the appraisal of planning decisions;
- the elimination of normal appeal avenues would further disenfranchise the stakeholder community, and
- the unnecessary concentration of decision-making at Ministerial level is to the detriment of the community and increases the likelihood of decisions being compromised by the influence of political, rather than planning/urban design imperatives.

In addition, given the nature of the financial benefit to the government from the sale and potential over-development of public housing land (including the potential inclusion of a so-called 'super profits' clause), the Minister for Planning cannot reasonably act as an independent agent. The process of which this planning scheme amendment is a part, creates an opaque decision-making environment where there is a significant risk of real or perceived conflicts of interest and/or duty.

This planning scheme amendment does not provide adequate guidance to mitigate problems that might be anticipated, given such a concentration of decision-making and the removal of appeals to tribunals or other bodies which are at arm's length to those decisions.

## 2. FAILURE TO ADDRESS URBAN CONTEXT

The proposed re-classification of the site as a Multi-Use Zone has no justified basis in planning, other than to allow over-development of the site for a profit-driven outcome. The scale of re-development proposed, is not supported even in existing activity centres across Bayside and neighbouring Councils, much less in areas deep within low-rise residential pockets with no other land-uses.

There is no evidence in the proposed planning scheme amendment documentation, to indicate that the proposal has been informed by a genuine analysis or understanding of the location, the interaction that occurs across the community, the constraints of the site, the architectural integrity of the area or any sense of how this part of Brighton functions as a distinct and vibrant neighbourhood.

The neighbourhood surrounding the subject site is overwhelmingly characterised by single-level family homes. There are currently no businesses or mixed-use properties in this area. The nature of the current design of the public housing is such that there is a great deal of interaction and integration between private homeowners and the community housing tenants. Local residents are able to utilise the walkways through the site to access Elsternwick Primary School, the canal footpath and Elsternwick Park. The area is located at around 700m from the closest point of Glenhuntly Road, which is across the ten-lane Nepean Highway. It is much further removed from the fringe of the Glenhuntly Road activity centre than implied by the proponent.

In addition, the proponent has indicated a reduction in the proportion of larger social housing units suitable for families. This fails to acknowledge the nature of the only immediately accessible services in the area (the primary school and kindergarten/maternal and child health centre). There appears to be no alignment between the target market for the proposed apartments and the nature of the North Brighton neighbourhood.

### 3. DESIGN PRINCIPLES

The 'Design Principles' which underpin the planning scheme amendment are substantially flawed.

- The 'Design Principles' are a generic set of drivers that have been applied to sites across Melbourne and as such, fail to respond to site specific conditions.
- The 'Design Principles' tend to treat sites as islands, in relative isolation, and attempt to apply to those sites principles that are more appropriately applied across neighbourhoods and precincts.
- Regardless of inherent flaws in the 'Design Principles' the planning scheme amendment demonstrably fails to deliver on a number of the 'Principles' including '03 - Safe Places', '04 - Site Features', '05 - Neighbourhood Contribution' and '12 - Integrated Landscape'.
- With the possible exception of '01 - Public Land Assets', which is not so much a design principle as a financial aspiration in support of a pre-determined outcome, the 'Design Principles' can all be achieved within the existing planning scheme provisions.

### 4. URBAN DESIGN

#### a. Height

- The proposed amendment indicates building heights that are significantly out of context and above current and proposed future neighbourhood height limits. They are totally incompatible with a tight and compromised site abutting a low-rise residential neighbourhood, adjacent to a flood-prone creek.
- Assumptions made in the documents appear to be based on heights above ground level, but the Special Building Overlay (SBO) will require that heights account for identified flood levels exacerbating all height, over-looking, over-shadowing and other height-related amenity (and visual amenity) concerns.
- Given the need to accommodate flood levels, NBRAG believes it is imperative, in order for the community to understand the implications of the planning scheme amendment, that height indications in the DPO Schedule are expressed as metres above ground level, as well as in the number of storeys.
- It should be made clear whether or not heights indicated in the DPO Schedule include any roof-top plant and services.

b. Interface treatments

- The important Brickwood Street interface, which impacts numerous neighbouring residences, is described in conflicting ways within the DPO schedule. The interface effects only area 5 which is described in one table as having a height of up to six-storeys, but is depicted diagrammatically as having a height after the setback from the three-storey level, of eight-storeys.
- The proposed interface treatments represent unreasonable impositions on neighbouring and nearby properties.
- The proposed interface treatments are inconsistent with existing Bayside Planning Scheme interface treatments.
- The proposed interface treatments do not align with treatments applied to similar sensitive interfaces at other proposed DHHS Public Housing Renewal sites.
- The least restrictive of the interface treatments (and hence the one most likely to impact on visual amenity, over-shadowing, passive-surveillance, neighbourhood character and so on), occurs along the long north-east-facing boundary abutting residential properties. This is an entirely inappropriate response to the urban design challenges posed by this interface, which is identified as sensitive in the Town Planning Report.
- Furthermore, the interface treatment along this north-east boundary will create a narrow, poorly defined and potentially dangerous space between unarticulated, three-storey high blank walls and the neighbouring homes.
- Mature trees on neighbouring land (including street planting and in private gardens) have not been accorded the same protections to root systems and canopies as have been provided for those retained on site.

c. Over-looking

- Problems with overlooking exist at all interfaces, as well as internally. In addition, there appears to have been no consideration of the significant over-looking of the private open spaces and exposed windows in the living areas of adjacent properties, from open space created on top of covered carparks.

d. Over-shadowing

- The extent of the impact of over-shadowing on surrounding land and properties as presented in the equinox diagrams, is flawed. For example, shadow diagrams of the three-storey blocks at 3pm do not follow the angles of other shadows and appear to be 'snapped' at the boundary fence of neighbouring properties, when other shadows continue.

- There will be substantial impacts on nearby properties to the east and west at other times of the year, as well as on the nearby cycle path, and on the proposed open space.
- Statements made to the community at information sessions, and included in the documents, to the effect that there will be 'no overshadowing' impact should be corrected accordingly.

e. Waste Management

The proponent has failed to address how the design will facilitate access to, and management of, waste, which is a significant issue at the current site. Access routes (including access streets) for the collection of waste are narrow and do not allow turning circles of sufficient size for either waste or emergency vehicles.

f. Light pollution and noise

No response has been provided as to how light and noise impacts from the site onto neighbouring residents will be managed and mitigated through the design and planning process.

g. Visual Amenity

The current medium buildings sit well as a not overly disproportionate backdrop to the neighbouring houses on the eastern side of the creek and largely curtailed by mature trees when viewed from sensitive locations on the other side of the creek (including Elsternwick Primary School, Murphy Street and Elsternwick Park). By comparison the proposal will substantially impact visual amenity from all vantage points, dominating views of the neighbourhood in a way that bears no relationship to the neighbourhood's character or architecture.

## 5. TRAFFIC & PEDESTRIAN SAFETY

a. Loss of separation of vehicles and pedestrians

There is a current complete separation of pedestrians and vehicles on this site which will be lost in the proposed development. Existing at grade pathways through the site car parks provide a low traffic link between Rusden Street and Brickwood Streets allowing a relatively safe walking environment for pedestrians such as neighbouring school children to access Elsternwick Primary School and the canal. With reduced separation and increased traffic, the risks for this and other vulnerable groups (including the elderly, people in mobility scooters and the like) will be greatly increased.

b. Traffic impacts on Elsternwick Primary School

The proponent has failed to consider traffic impacts on Brickwood/Cross Streets, which are significantly utilised during school drop-off and pick-up times. These times were not assessed by the proponent, nor has any reference been made to the use of these roads for access to Elsternwick Primary school by children.

c. Traffic impacts on Road Junctions

The proponent has failed to consider significant traffic impacts to the Ebden/Rusden Street junction, where all traffic from site and neighbourhood will require to access Nepean Highway.

## 6. PARKING

The parking allocation indicated in the Schedule to the Parking Overlay is grossly inadequate. Existing parking on the housing commission site, leads to a high



Overfull Brickwood carpark (no designated spots on l/h kerb)

demand for parking spots in Airlie, Salisbury and Brickwood Streets. Inadequate parking provisions will impact surrounding streets, as well as the amenity and convenience of tenants.

Greater demand for parking in Airlie and Salisbury Streets will render them single-lane roadways. These

streets have been identified as traffic access points to the housing site. Single lane access on these streets will have serious implications access for larger vehicle access, including waste and emergency vehicles.

## 7. OPEN SPACE

The desire for financial rather than good planning outcomes to maximise the amount of housing units located on the site, will lead to a drastic loss of public open space, servicing a larger population and will have a substantial detrimental effect on the quality of open space and its capacity to accommodate multiple uses for people of all ages. Impacts include (but are not limited to):

a. Loss of informal play space and outdoor options

Existing open space on this site is used for a range of functions. In particular, the existing design provides both formal and informal play options for children.

The existing design allows for a range of backyard functions in the row of triangular spaces created between the flats and the creek. These safe

spaces, away from traffic and with excellent passive surveillance, are well utilised by both children and teens. The flats define the entrance to these spaces, which thus have the feel of shared zones, over which tenants have ownership. They also provide community garden plots, barbeque, seating and other passive recreation opportunities.

Aside from one central space, which appears quite formal in nature, the usable open space provided by the proponent's scheme, is almost entirely indicated to be rooftop space above the carpark podium. It is therefore highly unlikely that the same level of informal communal space for all ages can be provided by the proposed model.

Open space calculations in the planning documents appear to include internal roadways. The space along the eastern boundary which is too narrow to be useful, has no defined activation or purpose (other than as a minimal setback with some level of retained screening planting) and raises safety and visibility concerns.

Current open space on-site includes community gardens which are highly utilised by public housing tenants. During consultations, DHHS staff were overheard advising concerned tenants that: "the community gardens will be retained", although this is not evidenced by the proponent's plans.

b. Loss of much-used incidental play space

Airlie, Salisbury and Brickwood Streets are all used in various ways – and particularly by children - as extensions of the open space available on the site. Relatively low traffic numbers and gentle hills make these streets perfect for bike-riding, skate-boarding and like activities and are often used for this purpose. A three-fold increase in traffic is likely to make this play option much less feasible and more unsafe.

c. Minimal private open space

Provisions for private open space which might offset some of the impacts of the loss of public open space, are minimal.

d. Open space provision is at odds with neighbourhood open space

The Bayside Planning Scheme observes that: *'The protection and enhancement of open space is key to the economic and environmental viability of the municipality.'*<sup>5</sup> In a zone that currently accommodates 50% open space coverage, **only 1,100 square metres of open space (including roadways and incidental spaces) is identified as being provided on this 14,000 square-metre site.** In addition, the lack of meaningful open space greatly reduces site permeability and potential deep planting sites suitable for canopy trees.

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<sup>5</sup> Bayside Planning Scheme, 21.02-3

## 8. FLOODING

The 2011 flooding of the site proved how vulnerable it is to inundation. At that time, water ran knee-deep through the carparks and across much of the site.

The proponent has not addressed the proposed updates to the SBO that impact the site, rather referencing an out-of-date SBO to develop its site design and layouts. Amendment C153 of the Bayside Planning Scheme (SBO) provides only limited protection in the event of a major flood event. The likelihood of such an event, is increased by the impacts of global warming and the proximity of the site to the bay. If a significant rainfall event were to coincide with high tides or storm surges, the impacts of flooding could be substantial. These problems are exacerbated by stormwater problems outlined in Section 9, below.

In these circumstances, NBRAG believes that the enormous reduction in site permeability and removal of vegetative cover caused by over-development and the works associated with such a large development on this site, will adversely impact water flows and flood risk both on and off the site, impacting neighbouring residents.

We are not convinced that the proposal or the associated documents provide anything like the level of guidance and oversight that would be required to ensure that properties in neighbouring areas would not be impacted by altered flood conditions.

Any re-consideration of the flood impacts and risks on this site or to neighbouring properties as a result of development altering the behaviour of flood waters on the site, should reference Bayside Planning Scheme, 22.08, Water Sensitive Urban Design (Stormwater Management).

## 9. WATER SENSITIVE URBAN DESIGN

For decades, substantial rain events in the area have resulted in stormwater backing up and flooding the carparks. The proximity of the site to the creek and the fact that water levels regularly exceed the height of the stormwater outlets from the site, exacerbate this problem. We are concerned that stormwater management, a persistent problem on this site, has received very little attention in the proposed design response. We also believe that some of the neighbouring properties have stormwater discharge to the housing site carparks.

## 10. SUSTAINABILITY

No clear targets or outcomes have been identified.

## 11. PUBLIC SAFETY & CRIME PREVENTION

Contrary to claims made in the re-development documents, the design approach will clearly decrease the levels of safety offered by passive surveillance and ground level activation (the basis for the so-called CPTED approach to creating safe environments). While the current outdoor laundries are problematic, such facilities would not be appropriate in any renewal model. Otherwise the existing design and density provides for a high level of both activation and surveillance across the site.

To accommodate greatly increased density on the site, a design approach has been proposed which will create the following issues:

- Loss of an activated entry frontage shared by both cars and pedestrians and over-looked from adjacent buildings, which will be replaced by car-parking beneath podiums. The entry frontage currently facilitates a great deal of day-to-day interaction between tenants and between tenants and others in their local community.
- Probable creation of blind spots along the narrow eastern interface with neighbouring residential properties. To accommodate screening trees and a more activated space, this interface needs to be properly resolved, be visible along its length and be provided with a greater purpose.
- The probable creation of numerous small and poorly resolved spaces between buildings.

## 12. COMMUNITY ENGAGEMENT

The level, nature and design of community engagement in regard to this proposal, has ensured that community concerns have not been heard.

It is important to note, that engagement with the wider community and neighbouring residents by DHHS has been minimal. Only one consultation session was held to solicit community views after a draft design had been completed. During this session, community views were often not recorded, and have not been responded to in the current report. Subsequent information sessions that were held were not consultation, in that no attempts to gain community views were noted, with the sessions merely serving to present DHHS's draft plans. A consultation session held primarily for tenants on the 5th of June 2017 provided **no interpreters**, even though many tenants have poor or no English language skills.

The Community Engagement Report provided as a support document, appears to be an incomplete draft. There are sections of it which, although referred to elsewhere in the Amendment documentation, have not been included.

In particular, there is no separate Phase 1 Engagement Report or analysis in the document.

There is no consultation report section, no process map(s), timelines, milestones or evaluation of the engagement sessions reported.

Furthermore, as attendees of engagement sessions conducted by DHHS, members of NBRAG have identified a number of examples of significant discussion points which are not properly captured within the report. These include (but are not limited to) the extent of consternation around flooding, traffic, the loss of appeal rights, the lack of detail around the proposal for non-residential use and Council's diminished role in any development.

Neither raw data nor any analysis is provided from the online questionnaire.

In any case, the online questionnaire became inactive soon after the Phase 2 consultation (which was the first that community members knew of the nature of the proposed plans). In addition, the design of the on-line questionnaire was entirely qualitative (no quantitative analysis) and was geared towards public housing tenants and not neighbouring residents, which the drop-box selections confirmed.

### 13. SALE OF PUBLIC HOUSING LAND

Having investigated the history of this site we do not believe that DHHS has the right to sell or transfer ownership of this land. This site was formerly public land used for community recreation and during the 1950s, was put aside for the provision of public housing. NBRAG believes that, unless it were to be returned to public open space usage, the site should continue to be used substantially for that identified and much-needed public housing purpose.

### 14. ABSENCE OF HERITAGE ASSESSMENT

There appears to have been no process conducted to identify potential heritage values associated with this site, including possible Indigenous heritage significance or the importance of this estate as an example of social architecture, representative of the progressive public housing policies of the Victorian Housing Commission in the mid-20<sup>th</sup> Century.

### 15. PROCEDURAL CONCERNS

- a. Terms of Reference are internally flawed
  - i. Background information has been included in the Terms of Reference that is outside the scope of the Committee's deliberations.

- ii. The background information provided in the terms of reference is selective and omits significant background information that might be less supportive of the proposal the Committee is being asked to advise on.

b. Inappropriate use of planning policy

Regardless of the convoluted case presented by DHHS, a reasonable conclusion, given the nature of this proposal, is that planning mechanisms are being used primarily to prosecute a financial case, which has been created by years of political inaction and mismanagement.

Multiple policy statements and audits since 2000 (and as recently as the 2017 Auditor General's report) have identified serious asset management issues associated with this State's public housing portfolio.

As long as the financial policy drivers and outcomes of the proposed amendment remain coupled to the social, this process and its outcomes will be compromised.

c. Failure of government agencies to deal appropriately with stakeholders

The agencies responsible for the carriage of this proposal have demonstrated a disregard for transparency. For example, reasonable and pertinent correspondence has routinely gone unanswered and information presented at public sessions has been inconsistent and often contradictory. An advertised telephone contact number directed inquiries to an operational/ building maintenance line, which could not provide assistance. **Our experience has been of a process designed to quash, rather than encourage input.**

d. Pre-determination of outcomes

The documents before us appear to have been commissioned to support a particular case (which is driven by maximisation of financial returns from the sale of public housing land). Pre-determination of outcomes in any public process, particularly where constituents are materially affected, risks contravening standards of administrative fairness. It is mind-boggling to find, in all the documentation, no evidence of a thorough examination of the many options available to deliver housing renewal (and a range of other beneficial outcomes) at this site.

e. Misuse of powers

While DELWP has not responded to our enquiries regarding the basis upon which the Minister is proposed to become the Responsible Authority, the standard triggers for such intervention are set out in the Department's own Practice Note. Based on this information and references on the SAC's website it appears that justification for this component of the proposed

Planning Scheme Amendment relies on a 'State Significance' argument. The project site is entirely contained within Bayside City Council boundaries and the primary outcome on this site is the building of private housing units. With only a 10% increase in social housing (replacing stock that was due for replacement in any case) and smaller unit sizes leading to a likely reduction in the number of social housing tenants at the site, any suggestion of 'State Significance' for this project is spurious in the extreme, and could be regarded as a misuse of Ministerial intervention.

f. Reduced protections for Brighton site

No explanation of the unusual treatment of the Brighton site has been provided by DHHS staff at any of the available opportunities. The New Street site was not included in the sites covered by the Registration of Capability process. The documentation available for that process, accords a level of assurance about the issues to be covered by any contractual arrangements that are not provided for this site. This represents an unacceptable risk and the deviation from a somewhat more transparent process (relatively speaking) is a serious concern.

g. Structural disincentives to engage fearlessly with the Advisory Committee process

The committee process design has not taken into account a core stakeholder group, being the public housing tenants, that is simultaneously involved in negotiations with the proponent. In order to encourage submissions from existing tenants of the estate, much more should have been done in the design of the process, to offset tenants' fears that criticism of the Department at this point in time, might translate into less favourable treatment, when relocation decisions are made. We believe this represents a major flaw and may expose the current Committee process to challenge on procedural fairness grounds.

h. Real or perceived conflicts / unjustified levels of Ministerial control

NBRAG has serious concerns for a process which gives the Minister for Planning the final say on the planning scheme amendment proposal, makes the Minister the responsible authority and changes planning provisions to remove avenues for appeal. The same amendment, as currently presented (and in particular the DPO) would subsequently bestow on the Minister - through its evasive language and discretionary nature - the capacity to over-ride design elements set out in the planning scheme amendment. In this artificially centralised and opaque decision-making environment, it will inevitably be extremely difficult to distinguish between the conflicting demands of good planning policy and political expediency.

## 16. PROCESS – DPO / MUZ

No case has been made for, and NBRAG believes there is no justification for, certain elements of the DPO and DPO Overlay, which have the capacity to undermine the effectiveness of advice provided by the Standing Advisory Committee. In particular:

- a. 43.04 – ‘*generally in accordance*’ is not adequately described and provides too much uncertainty in regard to development plan applications.
- b. 43.04-3 – The purpose of ‘*The development plan may be amended to the satisfaction of the responsible authority*’ is unclear and this statement appears to allow the Minister, as Responsible Authority, to permit plans substantially beyond even the ‘*generally in accordance*’ provision.
- c. The schedule to the Mixed Use Zone does not include any default height limits, which are required to provide some level of protection to neighbourhood stakeholders against potential abuses of the flexible DPO provisions identified in 16 a) & b) above.
- d. There is a need for mandatory, rather than discretionary, controls throughout, given no third-party appeals and the absence of other normal third-party protections.
- e. Other mandatory controls that should be identified by any DPO (in the event of a re-zoning) should include a maximum number of units on the site and an appropriate site cover ratio.

It is impossible to adequately respond to the proposal in a methodical way without an indication of priorities in regard to weightings to apply to the various criteria expressed throughout the documents, including, but not limited to, the Design Principles.

## 17. ALTERNATIVE PROPOSALS REQUIRED TO TEST VALIDITY OF THIS PROPOSAL

Both as locals and Victorians, we are entitled to expect the best planning, public policy and design outcomes from the renewal of public housing assets. As the life-cycle of the existing public housing units demonstrates, the opportunity to renew this infrastructure might come only once every six decades or more.

As such it is critical that all the opportunities available for renewal of Brighton’s public housing are assessed on a site-specific basis, with consideration of a range of design approaches and financial mechanisms.

North Brighton residents are not prepared to meekly accept a second- (or third-) best option. Under the Terms of Reference, the Committee is required to ‘...advise on the suitability of new planning proposals...’ A thorough examination of suitability, in a public policy context, demands the consideration of available alternatives. As the Victorian Public Sector Commission states:

*Any development ... in this (public policy) area should, at minimum, cover... Forming and assessing public policy options in consultation with appropriate stakeholders (including members of the affected communities and those responsible for service delivery).<sup>6</sup>*

By comparison, the proponents of this Amendment have been satisfied, if the background and support information they've provided is anything to go by, with a much lower threshold. DHHS has gone no further than to justify (often questionably, through selective use of policy document quotations and the like) the ticking of a series of outcome boxes, as demonstration of the so-called 'suitability' of their approach.

## 18. PLANNING SCHEME AMENDMENT DOCUMENTATION

NBRAG has serious concerns about inconsistencies in the planning scheme amendment documentation provided, which has made preparation of a meaningful response problematic. In particular (though these are not the limit of our concerns):

- The DPO proposes two distinct and contradictory treatments to the Brickwood St interface.
- The DPO schedule refers to a precinct that is not identified in this part of Brighton. We have not been able to determine if this is meant to refer to a precinct in the vicinity of the site (perhaps Nepean Highway) or if this is the result of documents having been prepared in a cut and paste manner across other 'Housing Renewal' sites.
- The supporting Engagement Report appears to be a draft document, with numerous errors and omissions of a number of key elements identified by the contents page of that same document. This is a key support document, and is referenced throughout the amendment proposal.
- At various points the architectural sketches suggest incompatible land uses including showing covered, ground level car-parking across most of the site, whilst also showing pedestrian and cycle links through the same central spine of the site (we assume the touted cycle/pedestrian link is not envisaged as a path through a carpark underneath a podium).

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<sup>6</sup> Victorian Public Sector Commission, *Development Framework For Victorian Public Sector Managers, Section 15: Contributing To Public Policy*, 2015, online at <http://vpsc.vic.gov.au/html-resources/development-framework-for-victorian-public-sector-managers/contributing-to-public-policy/>

## CONCLUSION

North Brighton Residents Action Group looks forward to presenting to the Standing Advisory Committee.

North Brighton Residents Action Group does not believe a planning scheme amendment is required to achieve the best possible planning and social housing outcomes at this location. Given the alarming consequences of the proposed Planning Scheme Amendment - if it were to proceed as designed - NBRAG is enthusiastic about the opportunity the Committee hearing provides. We look forward to informing the process further at that time, and helping to ensure the Minister receives comprehensive advice, in regard to the proposal put forward for this site.

On the basis of the detailed analysis provided in this submission, that advice, from the Standing Advisory Committee to the Minister should include:

- that the case that has been put by the proponent, in support of the proposed amendment, is not sound;
- that the planning scheme should not be amended;
- that Bayside City Council should remain the Responsible Authority on this site, and
- that a process to respond to the core policy need (public housing renewal) within the planning mechanisms provided by the Bayside Planning Scheme, be established as soon as possible under a more sustainable, inclusive and responsive decision-making framework.

## APPENDIX 1

### Email to Planning Panels re Document Issues

Att: Panels Victoria / DHHS

October 4 2017

Re: Incorrect Documentation – New Street Brighton Housing Renewal Program – Exhibition Documentation

Please note that review of the documentation provided as part of the exhibition phase of the New Street Brighton Estate has identified material inconsistencies, incorrect references and insufficient documentation. We request that the below identified items are corrected. Furthermore, given the extent of errors within the documentation, we request that all documentation provided is reviewed and adjusted to be accurate.

Given the extent of changes required, an extension of time for the Exhibition period and subsequent Standing Advisory submissions is required – particularly as the reference information the community has had the ability to review to date is incorrect and will cause misinformed responses.

Please confirm receipt of this email and confirmation that the documentation will be reviewed and re-issued. Furthermore, we request confirmation that the timing of the Exhibition and submission phase will be extended to allow for community members to fully review the revised documentation.

Reference documents with identified serious errors;

#### 1. Schedule 3 to Clause 43.04 Development Plan Overlay

- Page 2. Point 2 'Preliminary Architectural Plans' references 'Bell Street corridor' which relates to a different estate and identifies that the content has been re-used from another estate rather than being a bespoke response to the New Street Estate
- Page 5. Building heights in metres should be included
- Page 5. Interface Treatment B (Brickwood Street) references 8-storey buildings, which should be 6 storeys
- Page 8. The 'Development Concept Plan' needs to be to scale otherwise it has limited relevance as a reference point for future development plans.

#### 2. Community Engagement Report

- Comparison with reports produced in relation to other renewal sites confirms that this is an incomplete report
- There is no Phase One and Phase Two report (as referenced by Town Planning Report)
- Unlike reports produced for other sites, the report has been produced by DHHS rather than an external / independent consultant, raising serious concerns about transparency and independence
- The report appears to be a draft, and is filled with errors throughout. Section 3 'Consultation Report' (page 8) is actually Section 3 'What We Heard'. There does not appear to be a Consultation Report included.

- The report does not contain qualitative data, does not report survey results and does not report on key themes discussed by and with DHHS staff on the 13 of June.
3. Town Planning Report: At various points the architectural sketches suggest incompatible land uses including showing covered, ground level carparking across most of the site while also showing pedestrian and cycle links through the same central spine of the site. (We assume the touted cycle/pedestrian link is not envisaged as a path through a carpark underneath a podium). It's impossible to properly assess the proposal with inconsistencies such as these scattered throughout the documents.

These errors limit the capacity to respond to the Planning Scheme Amendment. We look forward to these errors being corrected and to the opportunity to respond to the complete and corrected information

Sincerely

North Brighton Residents Action Group Inc.

[REDACTED]