

**0.0 HOUSING FOR DAREBIN COMMUNITY MEMBER****Author:** Manager City Futures**Reviewed By:** General Manager City Sustainability and Strategy

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**EXECUTIVE SUMMARY**

This report responds to the resolution of Council of 1 February 2024 in relation to 'Housing for Darebin community member'.

This matter refers to the eviction of a long-standing Darebin Resident - who was a pioneer of cooperative housing - from their home of 29 years by their then landlord Common Equity Housing Limited (CEHL). Following their eviction in February 2021, the property was transferred/purchased by a new owner, and this was recorded on title.

The Resident subsequently lodged a successful application for a caveat on the property, although this was later removed following an application to do so by the New Owner of the property.

Since mid-2022 the New Owner has sought and received several building permissions for the property, and commenced demolition works, presumably as a first step towards redevelopment.

Following a review of the legal framework governing land transfer and titles:

- The sale/transfer of the property from CEHL to the New Owner is recognised within Victoria's title system and on the basis of the principles that underpin Victoria's Torrens title system, this new ownership cannot be reversed.
- Council has no interest, legal or equitable, in the property and consequently has no legal standing to take steps to restore the Resident's caveat, or to require the new owner to re-instate the Resident's lease of the site.
- The Resident did not take action to substantiate their interest claimed in the original caveat, and so it is doubtful that a further caveat with the same claim would be accepted by Land Use Victoria.

While there are a limited number of provisions within the planning scheme that require a permit for demolition, none of them prohibit demolition. The likelihood of successfully introducing these controls for the subject property is very low given the lack of strategic justification.

Even if successful, the matters that Council can rely on to make planning decisions are not sufficiently broad to include a desire to re-instate the Resident's tenancy of the property. Should Council attempt to do so, it is likely such a decision would be overturned at VCAT and expose Council to potential costs and reimbursement of fees, as it could be argued Council has breached its duties.

In summary, there is no foreseeable way via the planning or land titles systems for the Resident to be reinstated in her former home.

The best alternative approach to achieving a just outcome for the Resident involves advocacy on their behalf to address their urgent and long-term need to secure appropriate housing. Over several years Council has undertaken a range of advocacy actions to this end, and is currently seeking to facilitate an introduction between the Resident and an advocacy support agency.

**Officer Recommendation****That Council:**

- (1) Notes the situation faced by many Victorians regarding homelessness, the housing affordability and rental crisis, and the intersection of these issues contributing to the precarious situation that vulnerable older women face in securing affordable and appropriate housing.
  - (2) Notes the content and conclusions of this report.
  - (3) Notes recent advocacy on behalf of this Darebin community member in line with Council's resolution of 1 February 2024.
  - (4) Notes that advocacy support has been sought and once confirmed an introduction between the resident and the agency will be arranged.
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**BACKGROUND / KEY INFORMATION**

All references to the personal identity of the Resident and their former property address have been deliberately excluded from this report for privacy reasons.

From 1991, the Subject Property owner was Common Equity Housing Ltd (or one of its antecedent bodies) which is a housing cooperative providing a housing program which is an alternative to private rental or home ownership.

The Resident lived at the Subject Property for 29 years, leasing/renting the Subject Property from CEHL.

There has been a longstanding dispute between the Resident and Common Equity Housing Ltd (CEHL). Some of these issues were ventilated before the Victorian Civil and Administrative Tribunal's Human Rights Division in a case in which the Resident believed that CEHL breached the Charter of Human Rights, in that it acted in a way that was incompatible with certain human rights. VCAT found that CEHL did not breach the Charter.

In February 2021, CEHL evicted the Resident from the Subject Land.

On 9 July 2021, the land was transferred from CEHL to a New Owner (who is the current registered proprietor) who was a *bona fide* purchaser for valuable consideration. As such, New Owner's interest is *indefeasible* (discussed below)

On 29 June 2022, the Resident lodged a caveat over the subject land. The caveat claimed a life estate on the grounds of *estoppel*. On 6 July 2022, the Caveat was recorded on the title of the Subject Property.

A Building Permit for 'Stage 1: Demolition to Rear of Building' was issued 27 July 2022 by a private building surveyor, presumably on behalf of the New Owner. Demolition works commenced and were completed shortly thereafter. It is understood that the property is partly demolished and vacant.

On 25 August 2022, the New Owner lodged an application to remove a caveat under section 89A of the *Transfer of Land Act 1958*. Section 89A enables a person with an interest in land affected by a caveat to make an application to the Registrar of Titles for its removal. Upon receiving an application, the Registrar gives notice of it to the caveator. A caveat will lapse unless the caveator provides the Registrar with written notice that proceedings are on foot to substantiate the caveator's claim.

On 7 October 2022 the Resident's caveat was removed by the Registrar of Titles as a result of the New Owner's application.

### Previous Council Resolution

At its meeting held on 1 February 2024, Council resolved:

#### ***That Council:-***

- 1) *Advocates to the State and Federal Government that Housing Co-operatives must be part of the solution to the housing crisis and that ██████ case must be redressed*
- 2) *Notes the previous actions of Council adopted on 22 March 2021 and June 2017 on this matter which included, which noted:*
  - i. *rent was always paid and was acknowledged on the 1st September 2020 by CEHL. (March 2021)*
  - ii. *the recent community protest held in Thornbury by residents in support the resident not being evicted and allowed to remain in her home. (March 2021) and*
  - iii. *the petition of over 35,000 citizens on Change.org to keep ██████ in her home*
- 3) *Continues to advocate on behalf of the constituent, who is a pioneer of cooperative housing in Darebin, including:*
  - a) *Writes to the Premier Jacinta Allan, Minister for Housing Harriet Shing and all Darebin based State and Federal lower and upper house MPs to:*
    - i. *Seek their supportive intervention on behalf of this constituent, and advocate to other levels of government and agencies where necessary*
    - ii. *Request for the constituent to be provided a secure interim housing in Thornbury that meets the standards in line with medical advice.*
    - iii. *They acknowledge the constituent status as a 'Forgotten Australian'*
    - iv. *consider the relevant medical evidence in any review*
  - b) *Facilitates the introduction of advocacy support to assist the constituent to write relevant letters to escalate concerns for independent investigations to be undertaken by the relevant State and Federal authorities.*
- 4) *Requests officers to report back to the Ordinary Council meeting in February 2024 on how to restore the caveat to ██████ life investment in a State funded co-operative property and under the Victorian Planning and Environment Act in respect to ██████ and Darebin's policy commitments to mitigate climate change and the heat island effect.*
- 5) *Requests that officers report back to the Ordinary Council Meeting in February 2024 on options to halt any further planning or demolition permits on the site to achieve the desired outcome of ██████ being reinstated in her ██████ home.*

At its meeting held on 22 March 2022, Council resolved:

*That Council:*

1. *Notes the unfortunate circumstances resulting in the eviction of a resident on the 9 February 2021 from her home of 29 years in Thornbury, by her landlord Common Equity Housing Ltd (CEHL) which has resulted in her now becoming homeless which is very disappointing as rent was always paid and was acknowledged on the 1<sup>st</sup> September 2020 by CEHL.*
2. *Notes the recent community protest held in Thornbury by residents in support the resident not being evicted and allowed to remain in her home.*
3. *Write to the Board and CEO of CEHL requesting that they compassionately reconsider evicting the resident in the spirit of finding a more humane solution that would allow her to continue living in her home preventing her becoming homeless at a senior age.*
4. *Urgently writes to the Housing Registrar, the Minister for Housing Richard Wynn and local MPs to intervene to ensure all vulnerable citizens who have been part of modernising public housing to social housing do not become permanently homeless.*
5. *Writes to Local MPs requesting they call for a Parliamentary inquiry into Safe Housing for Vulnerable older women.*

At its meeting on 19 June 2017, Council resolved:

*That Council:*

- (1) *Supports the 'Making Renting Fair Campaign' advocacy campaign by Tenants Union of Victoria to improve the safety, stability and privacy of renters in Victoria.*
- (2) *In cooperation with the Tenants Union of Victoria organise a public meeting to high-light the key advocacy messages aimed at the State Government. Council should consider inviting the Minister of Consumer Affairs, the Hon. Marlene Kairouz, (former Mayor of Darebin) and all local state MPs.*
- (3) *Write to all local MPs seeking letters of support for Darebin's Advocacy Plan.*
- (4) *Endorses the following advocacy actions:*
  - a) *Writes to the Minister of Consumer Affairs, the Hon. Marlene Kairouz, the Minister for Planning the Hon. Richard Wynne and the Minister for Housing the Hon. Martin Foley reaffirming the key messages of Darebin City Council's previous submissions.*
  - b) *Implements a community communications plan including a summary of the key issues in the Mayor's column, and a press release consistent with that from the 'Making Renting Fair Campaign'.*
- (5) *Notes the community campaign and petition of 31,367 signatories on behalf of local tenant [REDACTED] and her struggle for a just outcome with her current housing organisation provider and landlord and writes to the relevant Ministers and local MPs seeking their support and intervention on behalf of [REDACTED].*

## **ALIGNMENT TO 2041 DAREBIN COMMUNITY VISION**

*Strategic Direction 1: Vibrant, Respectful and Connected*

*Strategic Direction 2: Prosperous, Liveable and Flourishing*

## **ALIGNMENT TO 2021-25 COUNCIL PLAN**

*Strategic Direction 1: Vibrant, Respectful and Connected*

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## ALIGNMENT TO COUNCIL PLAN STRATEGIC OBJECTIVES

1.4 *We will increase social connection to reduce isolation and loneliness, and support positive mental health*

1.3 *We will embrace diversity and ensure everyone is included in our society, and no one is left behind – by combating discrimination, and championing equity, inclusivity and diversity*

2.3 *We will facilitate more affordable, social and public housing in Darebin, to meet our community's needs*

## DISCUSSION

The following discussion focuses on these matters:

- Land ownership and the history of the previous caveat.
- Available planning tools to prevent further demolition/planning applications.
- Effective advocacy on behalf of the Resident.

To re-iterate some of the information above, the current status of the Subject Property is that it has been legally owned by a private individual since July 2021 when the land was transferred from CEHL to a New Owner (who is the current registered proprietor) who was a *bona fide* purchaser for valuable consideration. As such, the New Owner's interest is *indefeasible*.

The concept of *indefeasibility* is central to Victoria's Torrens title system and means that the Register of Titles cannot be reversed except in the case of fraud. The Torrens title system works on three principles:

- The land titles register accurately and completely reflects the current ownership and interests of a parcel of land.*
- Title to land or an interest in land is obtained through registration.*
- A government guarantee provides for compensation to a person who suffers loss of land or a registered interest.*

(See: [Land Use Victoria](#))

This means that if a person is defrauded of their property and it is transferred to a *bona fide* purchaser for value, they are unable to recover 'their property' but rather have an action in indemnity against the Registrar of Titles. This is intentional: the registered proprietor's title is indefeasible; this means that anyone searching the Register can rely on it as conclusive proof as to proprietorship.

When the New Owner lodged an application to remove the Resident's caveat in August 2022, this was an opportunity for the Resident to challenge the removal of the caveat and substantiate their claim for a life estate in the Subject Property by initiating legal proceedings. It is assumed that this did not occur, as the caveat was subsequently removed by the Registrar of Titles in October 2022.

Once a caveat has lapsed it cannot be renewed by or on behalf of the same person in respect of the same interest. If the Resident wishes to lodge a new caveat, they will need to demonstrate they have a different caveatable interest to that previously claimed.

Because Council has no interest, legal or equitable, in the property it consequently has no legal standing to take steps to restore the Resident's caveat, or to require the new owner to re-instate the Resident's lease of the site.

On the basis of the above, the following is concluded:

- The sale/transfer of the property from CEHL to the New Owner is recognised within Victoria's title system and on the basis of the principles that underpin Victoria's Torrens title system, this new ownership cannot be reversed.
- Council has no interest in the Subject Property, and therefore no legal standing to restore the Resident's caveat.
- It is doubtful that a further caveat with the same claim would be accepted by Land Use Victoria.

Fundamentally, the current ownership and/or interests in the Subject Property are not matters that Council should or can involve itself in, given these appear to be private matters between individuals, particularly the Resident and their previous landlord CEHL.

### Available tools under the planning and building systems

Part 5 of Council's motion requests advice on "...options to halt any further planning or demolition permits on the site to achieve the desired outcome of [REDACTED] being reinstated in her [REDACTED] home.

Under Section 29A of the *Building Act* 1993:

- (1) *If an application is made to the relevant building surveyor under this Act for a building permit for the demolition of a building on land .... then the report and consent of the responsible authority under the Planning and Environment Act 1987 for the planning scheme relating to that land must be obtained to that application.*
- (2) *The responsible authority as reporting authority must refuse its consent to an application to which subsection (1) applies if a planning permit is required for the demolition and has not been obtained but **must not otherwise refuse its consent to the application.***

Accordingly, unless a permit for demolition is required under the Darebin Planning Scheme, Council must not refuse its consent to an application for demolition.

It should also be noted that building permits issued under the *Building Act* are issued by a private building surveyor (not Council) to ensure a structure/works complies with the *Building Act* and *Building Regulations*. Accordingly, Council has no power to direct a private building surveyor or the Municipal Building Surveyor not to issue a building permit on the Subject Property.

### *Permits for demolition under the Victorian Planning Provisions*

Under the Victoria Planning Provisions, the only provisions that can require a planning permit for demolition – they can't prevent demolition – are:

- Clause 43.01 'Heritage Overlay' (HO)
- Clause 43.05 'Neighbourhood Character Overlay' (NCO)
- Clause 45.01 'Public Acquisition Overlay' (PAO).

None of these overlays currently apply to the Subject Property. An amendment to the Darebin Planning Scheme would be required to introduce them.

Planning scheme amendments require the support of Council, the Department of Transport and Planning/Minister for Planning. Assuming a contested amendment process, such an amendment would take between 18 months to 2 years and attract costs in the order \$50k to

\$120k depending on a variety of factors. This would not include the costs of acquisition and associated compensation to the New Owner in the case of the PAO.

But most importantly, planning scheme amendments need to be strategically justified:

- The test for applying a Heritage Overlay is the heritage significance of the local place. A search of Council's heritage studies has not revealed any indication that the property could have a heritage significance having been identified in previous studies. A preliminary heritage assessment indicates that while the property is a fine example of an interwar dwelling, it is not individually significant. Nor is the local area worthy of inclusion of precinct scale heritage HO.
- The PAO is to be applied to reserve land for a public purpose. Acquisition in favour of an individual is extremely unlikely to meet this test. Council staff are not aware of any circumstances in which the PAO has been used in this manner.
- The Darebin Planning Scheme does not currently utilise the NCO to protect local character, and it can only be applied on a precinct-wide scale. At present, Council does not have sufficient strategic work to justify the introduction of such a control.

Consequently, the likelihood of such amendments succeeding would be low.

Even if successful, the matters that Council can rely on to make planning decisions (with regard to demolition) are not sufficiently broad to include a desire to re-instate the Resident's tenancy of the property. Should Council attempt to do so, it is likely such a decision would be overturned at VCAT and expose Council to potential costs and reimbursement of fees, as it could be argued Council has breached its duties under the *Planning & Environment Act 1987*.

### Next Steps

Given that there is no foreseeable way via the planning or land titles systems for the Resident to be reinstated in their former home, and the opportunity to influence built form outcomes for the Subject Property are limited, the best alternative approach for Council to support the resident to achieve a just outcome is advocacy on behalf of the Resident to address her urgent housing needs.

In its advocacy for an outcome for the Resident, Council has previously written to the Premier, Minister of Housing and local MPs. A meeting was arranged in 2023 between officers and the relevant state government department on this matter.

Council's decision on 8 January 2024 calls on the Victorian Government to increase public social housing and affordable housing in Darebin to address the current housing crisis. A subsequent letter has been prepared to the Minister for Housing.

Council's decision on 1 February 2024 requested officers:

1. *Write to the Premier Jacinta Allan, Minister for Housing Harriet Shing and all Darebin based State and Federal lower and upper house MPs, seeking supportive intervention and advocates for secure interim housing for [REDACTED].*

Based on Council's resolution draft letters have been prepared, signed and sent to the relevant Ministers requesting action.

2. *Facilitate the introduction of advocacy support to assist the constituent to write relevant letters to escalate concerns for independent investigations to be undertaken by the relevant State and Federal authorities.*

Officers are currently sourcing suitable advocacy support, once confirmed an introduction between the resident and the agency will be arranged.

## CONSIDERATION OF LOCAL GOVERNMENT ACT (2020) PRINCIPLES

### Financial Management

Some course of actions explored within this report would have significant financial implications for Council, such as planning scheme amendments. Such actions would require additional resources to be undertaken. Variation to Council's strategic planning work program would also be required to accommodate these actions, resulting in other Council projects being de-prioritised. A further report to Council would need to be prepared outlining the resources required, timing of any project and re-prioritisation of other projects.

Any continued advocacy on behalf of the resident, will require additional resources, predominantly officer time, other Council advocacy priorities may need to be de-prioritised to accomplish this outcome.

### Community Engagement

No community engagement is proposed in relation to this item, as the item concerns an individual member of the community.

Council continues to advocate more broadly on the issues of homelessness and housing affordability through a variety of forums and calls for policy reform.

### Overarching Governance Principles and Supporting Principle

(a) Council decisions are to be made and actions taken in accordance with the relevant law;

### Public Transparency Principles

(b) Council information must be publicly available unless (i) the information is confidential by virtue of this Act or any other Act; or (ii) public availability of the information would be contrary to the public interest;

### Strategic Planning Principles

(c) Strategic planning must take into account the resources needed for effective implementation;

### Service Performance Principles

(a) services should be provided in an equitable manner and be responsive to the diverse needs of the municipal community;

## COUNCIL POLICY CONSIDERATIONS

### Environmental Sustainability Considerations (including Climate Emergency)

Some vegetation has been removed from the Subject Property as part of the demolition of the rear of the building.

No application has been received for the development of the site (and a permit may not be required depending on the proposed development). If a permit is required there is an opportunity to address/request additional new canopy tree planting to mitigate urban heat island effect, as well as other ESD matters including onsite water retention and minimising non-permeable services.



It is unclear the degree to which any decisions in relation to the subject property relate to climate change and the urban heat island effect, other than the removal of some of the vegetation from the rear of the property.

Urban heat island effect can in part be addressed through preserving and increasing the urban tree canopy to provide shade and reduce temperatures. Council's Local Law, in conjunction with limited planning protections and Council's street and bushland planting program, is one of primary ways in which Council is influencing urban canopy.

#### **Equity, Inclusion, Wellbeing and Human Rights Considerations:**

An Equity impact assessment (EIA) / Gender impact assessment (GIA) has not been undertaken as the item is not a policy, project or program of Council, but rather is a response to the concerns of an individual.

It is noted that the individual has previously lodged an appeal against her treatment with VCAT in relation to *Victorian Charter of Human Rights and Responsibilities Act 2006* and the matter was dismissed.

#### **Economic Development and Cultural Considerations**

Not applicable

#### **Operational Impacts**

Not applicable as the item is not a policy, project or program of Council.

#### **Legal and Risk Implications**

Councillors should also be aware of the overriding requirement to ensure decision-making powers are exercised in accordance with sound administrative law principles. This applies to the decision-making powers referred to in this briefing conferred on Council by the *Planning and Environment Act 1987*, the *Building Regulations 2018* and other legislation. In short, decisions that are manifestly arbitrary, vague or irrational will be assailable on the ground that they are so unreasonable that no reasonable authority could have made the decision. Any such decisions could further result in adverse legal findings, claims for damages and/or other penalties.

#### **IMPLEMENTATION ACTIONS**

Officers are currently sourcing suitable advocacy support, and once confirmed an introduction between the resident and the agency will be arranged.

#### **RELATED DOCUMENTS**

None

**Attachments**

Nil

**DISCLOSURE OF INTEREST**

Section 130 of the *Local Government Act 2020* requires members of Council staff and persons engaged under contract to provide advice to Council to disclose any conflicts of interest in a matter to which the advice relates.

The Officer reviewing this report, having made enquiries with relevant members of staff, reports that no disclosable interests have been raised in relation to this report.

