

STATES OF JERSEY



HOUSING AFFORDABILITY CRISIS: ACTIONS TO BE TAKEN BY THE GOVERNMENT OF JERSEY

Lodged au Greffe on 6th April 2021
by Senator S.Y. Mézec
Earliest Date for Debate: 11th May 2021

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

that there exists a housing affordability crisis in Jersey, and that in order to deal with this situation –

- (a) legislation should be introduced to enhance security of tenure and tenants' rights to provide for 'open-ended' tenancies as standard practice;
- (b) rent stabilisation legislation and a Rent Commission or Board to monitor and decide on annual rent increases should be introduced;
- (c) the social housing rent setting should be reduced from charging rents of up to 90% of the market rate, to charging up to 80% of the market rate;
- (d) the annual financial return provided by Andium Homes to the Treasury should be amended in the Government Plan 2022-25 to enable this change in rents policy without negatively impacting on their housing development programme; and
- (e) the Council of Ministers is requested to produce a timetable for achieving these changes by no later than the end of July 2021.

SENATOR S.Y. MÉZEC

REPORT

Note – I had hoped to lodge this proposition after the report from the Housing Policy Development Board had been published (as this proposition quotes extensively from it). The report was finalised and passed on to the Chief Minister on 16th October, and has not been published, almost half a year later. Despite asking numerous times when the report would be published and, most recently, being told by the end of March, with that deadline passing, I am lodging this proposition and hope that it will spur on the publication of this important report. I will then set a time for the debate on this proposition to commence once States Members have had time to consider that report.

Summary

The proposition offers the States Assembly the opportunity to declare a ‘Housing Affordability Crisis’ in a similar vein to the declaration made in adopting P.27/2019 declaring a climate emergency. This will be an important statement which will show the public how seriously this subject is being taken.

It then provides the Assembly an opportunity to provide political approval for the Minister for Housing and Communities, and the rest of the Council of Ministers, to proceed with the implementation of some of the recommendations made in the Housing Policy Development Board in relation to rental housing, knowing in advance that the Assembly supports these recommendations.

Introduction

“Jersey’s housing market is not fit for purpose and will not improve without bold action and significant change from the status quo.” – Housing Policy Development Board report

The above statement is obvious to anyone who is paying attention and is backed up by all the objectively compiled data that Statistics Jersey have provided over recent years.

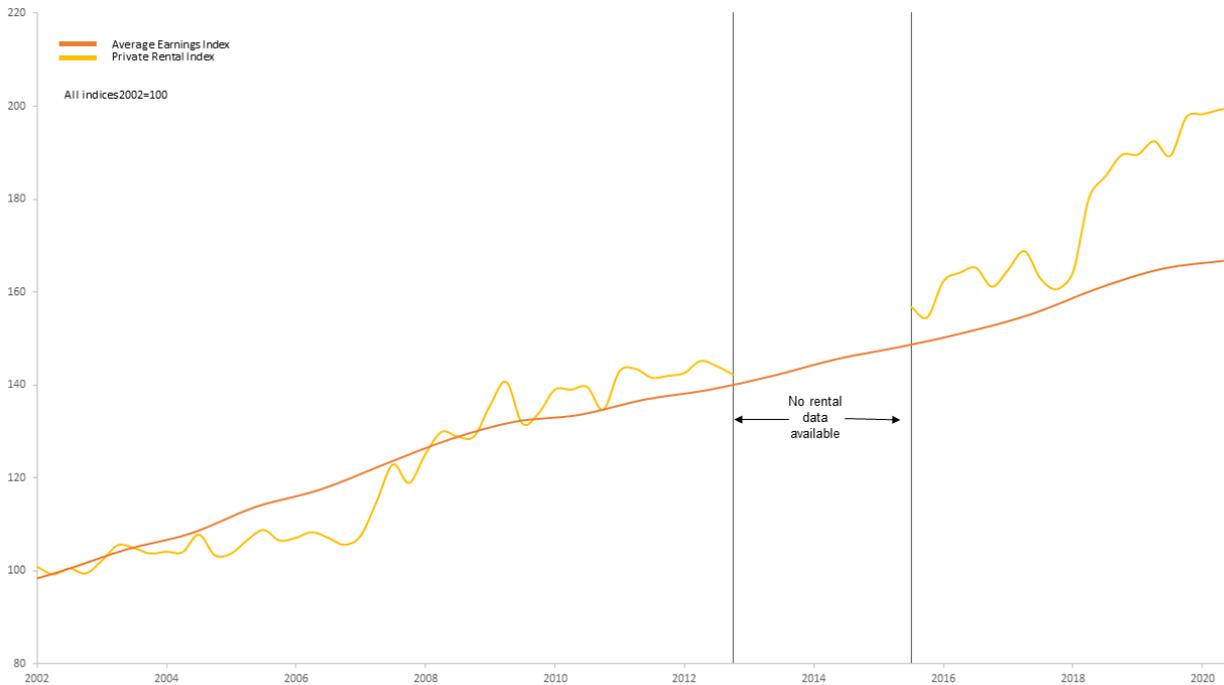
Housing affordability (for both ownership and rental) has been getting steadily worse over recent years. This is inarguable, based on numerous studies that have been undertaken, including the House Price Index¹, which is produced quarterly, and regularly hits the headlines in the media upon its publication. This is not surprising as it is clearly an item of considerable public interest, because of the picture it paints of an Island that is becoming increasingly unaffordable to live in or to plan a future here.

Alongside the Index of Average Earnings², which show that real terms earnings are lower today than they were a decade ago, it is clear that current policies are not working in delivering the government’s stated priority of “reducing inequality and improving the standard of living”.

¹<https://www.gov.je/Government/JerseyInFigures/HousingLiving/Pages/HousePrice.aspx>

²<https://www.gov.je/Government/JerseyInFigures/EmploymentEarnings/Pages/EarningsIncomeStatistics.aspx>

As the chart below shows, for rental accommodation, the cost of rent has been growing at a faster rate than average earnings have for the last decade.



Perhaps the most damning information can be seen in the Income Distribution Survey 2014/15³ which showed that the cost of housing was the single biggest contributory factor for causing Islanders to live in relative poverty. Even many of those living in social housing are considered to be living in rental stress. The whole point of social housing is meant to be to provide housing which is affordable for those who would struggle in the private market.

This proposition has been lodged to act as a springboard to get the recommendations of the Housing Policy Development Board considered and approved in principle by the States Assembly, to enable the government to proceed with their implementation, so that we do not delay the necessary action being taken to improve housing affordability in Jersey.

Background

When discussing my nomination as Minister for Housing with the Chief Minister in May 2018, we agreed that a policy development board would be set up to examine this area and produce a package of recommendations to deliver improvements to the housing market. It was acknowledged from the outset that this would be an in-depth piece of work that would need to encapsulate many areas and cover a lot of ground if its proposals were to be meaningful. It was also accepted that there was every likelihood that some of those recommendations could be radical by Jersey's standards.

³<https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/R%20Income%20Distribution%20Survey%20Report%202014-15%2020151112%20SU.pdf>

The board consisted of a number of States Members from within and without the Council of Ministers, representing a broad cross-section of political outlooks, as well as lay members from outside of politics, with an interest in affordable housing. The board was ably chaired by the former Greffier of the States, Michael de la Haye OBE.

The board worked with consultants Altair, who specialise in housing matters and were able to work with the board and engage with stakeholders to help us consider all the evidence available and produce recommendations.

A draft report was basically complete by March last year, but was held back from its final sign off, because of the developing situation with Covid-19, and our view that we wanted to ensure that our proposals remained relevant, given what was inevitably going to be a very different political and financial landscape we would face towards the end of the pandemic. The board had its last meeting in October last year, where the final wording was approved. It was then handed to the Chief Minister for him to decide how to proceed.

Despite not having a report at all when the Government Plan 2020-23 was produced, bids were successfully made for funding to pre-empt those recommendations so that resources were available immediately to begin that work when it became clearer. This was subsequently revised when the Government Plan 2021-24 was produced, to reflect the clearer direction we knew we were facing with the draft recommendations being in our possession at that point.

The Vision

The Housing Policy Development Board's report outlines a vision for the government to take leadership in providing new homes and setting the terms on which the housing market operates, so that Islanders have access to the types of homes they need, with greater supply, better affordability and more security. This requires a departure from the current approach which the evidence has shown has simply not been successful.

Much discussion was had by members of the board about housing as a basic human right. Having a stable and affordable home is fundamental to our well-being both individually and collectively because of the knock-on effect bad housing can have on educational and health outcomes. The recommendations were made with this philosophy in mind.

Though the word "European" is not used in the report, it is clear that what is proposed is a more European way forward, taking inspiration from the successes that other jurisdictions have had in housing their communities. It is not particularly inspired by housing regulations in the UK, which is not regarded as a jurisdiction that has performed well on many of the issues we were trying to tackle.

By providing an increase in supply, which is government-led and targeted at more affordable tenures, alongside increased protection in legislation for tenants, Jersey can ensure that everyone on our Island has a stable roof above their head, which they can afford, and which provides them the security they need to live their lives and thrive.

Proposals

A ‘Housing Affordability Crisis’

The statistics are clear. Housing is becoming more unaffordable to ordinary Islanders as time goes by. The trend is getting worse and, without clear action taken, this will continue. This proposition asks the Assembly to agree that this is a crisis and must be addressed.

For those who comfortably own their home (and perhaps even other homes which they rent out to receive passive income), the housing market may seem like it has nothing wrong with it. But for those who are living in rental stress, unable to save money or sometimes even provide the basics for their family, this is a crisis. For young people who do not see a future for themselves in their Island, because their prospects of owning a home like their parents were able to do (often on substantially lower incomes, without a higher education qualification or student debt) cannot be met here, this is a crisis.

By taking this stand and declaring this crisis, we are showing to the Island that this subject will be taken seriously, and the Housing Policy Development Board report will lead to action which Islanders can have confidence in will improve their lives.

Parts (a) and (b) – private rental housing

The first parts of this proposition are aimed at improving security and affordability in the private rental sector, by adopting measures which are commonplace throughout much of Europe, where there is a more prevalent renting culture than in British territories. Jersey is often perceived as having a British culture when it comes to housing (especially the aspiration for homeownership), but the surprising reality is that our rent/ownership balance is much closer to European levels than UK levels. This misunderstanding is perhaps part of why the legislation underpinning the rules of the private rental market is underdeveloped.

Part (a) is for amendments to legislation to be made to enhance security of tenure for tenants, including enabling open-ended tenancies to become standard practice.

The HPDB report provides the following description of this proposal -

7.2.6. Policy Description

7.2.7 This policy intervention acknowledges that the rental tenure should be an attractive alternative to owner occupation and that the ‘lived experience’ for tenants should be comparable to that of owner occupation. This policy intervention consists of:

- *Tenancy Terms* - Strengthening current legislation to create different leases with no fixed end date as standard and/or extending the current requirements of three months for the landlord, and one month for the tenant to tenancies of less than 5-years.

Tenancies with no fixed end date can only be ended by the tenant, or if the landlord has reasonable grounds (which should be clearly set out). This measure could in effect end ‘no fault’ evictions and means the presumption is in favour of the tenant that the tenancy will continue.

- *Security of Tenure* - Strengthening current legislation to specify when landlords may or may not evict tenants, in effect ending no-fault evictions which increases stability for tenants and reduces the need for costly unplanned moves – matched with robust grounds for repossession that will allow landlords to regain possession
- *Tenants' Rights* - Codifying best practice tenancy standards and responsibilities to landlords and tenants in legislation to promote greater tenants' rights, e.g. by enabling tenants to redecorate properties and keep pets, which would improve the lived experience of those living in rental homes. The GoJ may also wish to consider if the RTL is the appropriate law to make such provisions.

This would allow tenants to turn a rented property into a genuine home that they could feel comfortable and secure in for the long-term and build their life around it so they and their families can thrive.

It would end the scourge of no-fault evictions (a term which is much misunderstood in Jersey) whereby tenants can have their tenancies unilaterally ended for no reason at all, because they are only able to take up relatively short-term tenancy contracts, which will come up for a periodic renewal and associated negotiation in which they have little power. The current system puts greater negotiating power into the hands of the landlord to insist on restrictive clauses (i.e. no children, no pets etc) or unjustifiable rent increases, which take advantage of the relative immobility that a tenant may have, when there is a housing shortage and costs associated with moving.

It also puts off tenants from asking for their contractual and statutory rights to be upheld, for fear of coming across as a nuisance and giving the landlord a reason to end the tenancy so they can get a tenant who provides them with less hassle, even though the hassle may well be justified.

An argument against this may be made that landlords will be anxious about losing control of their assets. This issue will have to be explored and consulted on to determine the circumstances in which a tenancy can be ended. Other jurisdictions will be able to provide helpful examples with this. But it must be said that this would not stop landlords being able to evict tenants if their tenants broke the terms of their tenancy agreement. That process would remain exactly as it is now. A bad tenant will not gain any extra protection from this.

Extra measures to improve security of tenure could include stipulating in law that when an investor buys a property which is already tenanted, that they are obliged to honour the tenancy. It could also provide for when a tenant passes away whilst their relatives or dependents share the home, that those relatives or dependents can inherit the tenancy, thereby protecting families from upheaval after a tragedy.

Part (b) deals with private sector rents by introducing 'rent stabilisation' and the infrastructure to uphold it.

There is much debate about the effectiveness of rent control and, in particular, rent caps. But neither of these things are the same as rent stabilisation. The greatest virtue of rent stabilisation is simply that **it works**.

Rent stabilisation is the prohibition of rent increases above a certain level. It exists in various forms throughout the United States of America, however this proposition focuses more on the European models that operate successfully.

Many tenants in Jersey will already have clauses preventing above-inflation rent increases from being applied (as is recommended in the template tenancy promoted on the government website), however maintaining this as something promoted as purely voluntary, means that many tenants will not benefit from this protection, and could be causing wider rental inflation. It also does not apply when tenancies are renewed, where tenants can have significantly above-inflation rent increases made a condition of having the tenancy renewed.

The Housing Policy Development Board provides this description of rent stabilisation -

7.3.8 Policy Description

7.3.9 Rent stabilisation limits how much a rent can be increased by restricting increases in rents to a defined rate, rather than define rents in absolute terms, as forms of rent caps seek to do. Clause 5:4 of the Jersey Model Residential Tenancy agreement is an example of a non-mandatory rent stabilisation policy.

7.3.10 This policy intervention recommends a simple mandatory system that legislates that rents should be stabilised in line with an inflation metric, such as Jersey's Retail Price Index (RPI) or similar. In similarly small and homogenous rental markets, like San Francisco, rent stabilisation rates are also tied to cost of living indexes.

7.3.11 To develop the policy and supporting legislation, several steps should be undertaken. These include:

- Further Research on key policy areas
- Legislative Process
- Establishing a Rent Commission / Board

7.3.12 Further research on key policy areas

7.3.13 As most tenancies already limit in-tenancy increases to RPI, the GoJ should consider using this as the metric for increases to be introduced as a mandatory limit.

7.3.14 This rental growth should be a choice for landlords, not a requirement, to avoid rental growth that is not planned to occur – although if increased, it should not exceed this limit (RPI). Having this choice may mean that when the annual RPI change is negative, rents would not have to decrease, and thereby in effect, increase. This issue should be considered further as part of the detailed policy development.

7.3.15 The Board recommends that rent stabilisation should apply both between and during tenancies. This helps ensure market-wide stability, as without it the market could inflate rents between tenancies (as the evidence referred to above demonstrates).

7.3.16 During further development of this policy, the GoJ may wish to consider allowing rent increases between tenancies to have more flexibility, for example, a percentage increase of between RPI plus 0.5-2.0%.

7.3.17 In order to simplify its application, it is recommended that landlords are only entitled to raise rents once a year, either during a tenancy or between two tenancies.

7.3.18 Rent stabilisation policies tend to include a number of exceptions to protect landlords, and so these should be considered so as not to disincentivise landlords from providing much-needed private rental housing, or from maintaining this housing. These may include temporary exceptions to rent stabilisation / broader rent review, if changes to the property or its costs have been made (i.e. major renovations or increases in property taxes to the landlord).

7.3.19 *Legislation*

7.3.20 This policy recommendation assumes that rent stabilisation will be introduced into legislation designed to apply to all private sector tenancies including qualified rental homes and registered rental homes that are let via a tenancy agreement.

Rent Commission / Board

7.3.21 To monitor this policy, the GoJ should establish a Rent Commission / Board that provides a body for tenants to challenge rental increases and has power to enforce landlords to adhere to rent stabilisation. It may also engage with wider stakeholders on stabilisation measures.

7.3.22 This is the least resource-intensive method of monitoring rent stabilisation. It avoids the GoJ having to collect and manage rental data annually and empowers the tenants who are financially incentivised to monitor their rent. Similar Rent Commissions / Boards are integral elements of numerous rent stabilisation policies internationally, such as those found in the Netherlands and Ireland.

7.3.23 The Rent Commission / Board should also have procedures to assess the exceptions for improvement works.

A particularly helpful authority on the subject of rent stabilisation is the report “*Rent stabilisation: Principles and international experience*”⁴ from the London School of Economics, which was commissioned by the London Borough of Camden.

It is essential that parts (a) and (b) of this proposition go together, as they were deliberately intended to complement one another. By providing better security of tenure, both tenants and landlords can be assured more certainty in the level of rents charge, and tenants can seek to have their rights upheld by the Rent Tribunal without fear of repercussions.

Parts (c) and (d) - social rental housing

If social housing rents are charged at 90% of the market rate, then it is not social housing.

The purpose of social housing is that it is meant to provide security and affordability for those who would not be able to find this in the private market. Our current system does not fulfil this aim.

The ‘90% market rate’ rule was not introduced because of any affordability metric, but rather as a funding mechanism to sustain Andium’s refurbishment and development

⁴ <https://www.lse.ac.uk/geography-and-environment/research/lse-london/documents/HEIF-5-Addressing-Housing-Supply-Crisis/Rent-Stabilisation-report-2014.pdf>

programme, and still provide a substantial financial return to the Treasury every year (c.£30m). This is partly why many of the other social housing providers have not followed Andium in setting their rents to 90% but have maintained them at much lower levels.

In fact, we find ourselves in the opposite position to the UK, where their public housing rents were generally charged at lower rates than housing associations, and the government had to take action to get the housing associations to align their rents with public housing. In Jersey, our equivalents of housing associations (the housing trusts) charge rents lower than our equivalent of public housing (Andium).

When speaking to those who run Jersey's housing trusts, I have been left with a strong impression that their decision to keep their rents low (usually no more than 80% of the market rate) is done on principle, because charging high rents simply does not fit in with their ethos and purpose. When they have to refurbish properties or develop new ones, they simply arrange to do this within their current rent structure and arrange to finance it on that basis. A particularly impressive example of this is the Troy Court development by Les Vaux Housing Trust, where the new homes built are of outstanding quality, a drastic improvement on what was there before, and they have not imposed massive rent increases on their tenants to facilitate it.

The 2014/15 Income Distribution Survey showed that in the previous 5 years, the proportion of households living in social housing who were in relative poverty has risen from 27% to 66%. This was calculated shortly after the '90% market rate' rule was introduced, and so it is reasonable to assume that this could have got worse since then, as many tenants will have been put onto new contracts and had their rent bumped up to the maximum level.

Now that Andium is moving towards funding its new developments with private loans, it is right that the rent policy be set back at a level which is based on affordability.

Part (c) will reduce the maximum amount of rent that can be charged for social housing from 90% of the market rate to 80%.

The '90% market rate rule' was introduced to provide cashflow for Andium's development/ refurbishment programme, which was much needed after decades of successive governments refusing to properly maintain the social housing stock. This rule was **not** introduced based on any metric concerned with affordability. As a result, our main social housing provider does not resemble an actual social housing provider in this respect, as it charges rents which are unaffordable for many in the demographic they exist to serve.

There are also concerns at the effect their rent levels may have in acting as a benchmark for the private sector, given how close their rents are set. This is an inappropriate benchmark, given the differences in how social tenants are supported compared to what they would receive from a private landlord. This could also risk causing inflation in the private sector, which contributes to the housing affordability crisis.

The Housing Policy Development Board provides this description for the policy intention -

7.5.6 Policy Description

7.5.7 Reforming social rent setting, by adopting a model under which rents are reduced to either reflect average incomes or are set at a lower percentage of market rents (currently 90%), would both reduce the current rent roll and reduce the amount of Income Support paid to some social tenants.

7.5.8 If minded to reform social rents, the GoJ should explore the options presented to, and discussed, by the HPDB in the longlist stage of the development of this policy package. These options were as follows:

- Reduce the market rent equivalent (currently set at 90%)
- Calculate social rents according to a formula which considers the local property values, number of bedrooms, and other factors such as average incomes (similar to the UK's social / formula rent tenure)
- Set rents based on a percentage of median household incomes, considering the size of properties and potential variations between parishes.

7.5.9 To maintain investment in social housing this would require a shift from the current revenue subsidy model (that social housing rents are subsidised through Income Support), in favour of a capital subsidy model, with subsidy in the development phase of social housing. This would require detailed assessment, but the concept is:

- Reduce social rents from 90% of market to a lower percentage, thereby saving the GoJ money on its Income Support expenditure
- Use the money saved from Income Support revenue expenditure to help fund capital subsidy for social housing development
- Identify additional funding sources for capital subsidy

7.5.10 This policy intervention therefore represents a fundamental change in how Government funds social housing in Jersey. This recommendation is to undertake a financial assessment of how the GoJ is able to fund the delivery of new housing supply in Jersey. We understand that this is the subject of a specific review with involvement of the Treasury and the Housing Minister.

7.5.11 Policy Objectives and Benefits

7.5.12 The primary objective of reforming social rent setting in Jersey is to improve affordability for tenants who do not receive Income Support and make it more likely for more social housing tenants who receive small amounts of income support to afford housing costs without relying on Income Support.

7.5.13 Additional benefits of the policy are:

- It could help prevent dependency by making it more likely for more social housing tenants to afford housing costs without relying on Income Support
- It creates clearer differentiation between the social and market rented tenures on the Island
- It aligns rent levels to the purpose of social housing in providing more genuinely affordable accommodation

It is stated in various government documents (including the Government Plan) that the current position on social housing rents is that a review would take place in 2021. This position found its way into these documents despite my best efforts, and, in my view, against what was my clearly stated position to policy officers.

This review is unnecessary.

When I became Housing Minister after the 2018 election, my manifesto position that the current system should be scrapped and replaced with a system which is more affordable for tenants, without harming Andium's development programme (which it is accepted is fundamental to dealing with the housing crisis) was clear. I required no review of the validity of the current policy, because it was a political decision that I made that I did not want to carry on with that policy. I instructed officers to provide me with options for alternatives and the financial modelling for how they could work. In early 2020 I had to instruct that this work was suspended, as I felt there was a lack of commitment from those reviewing the policy to use the exercise to genuinely propose alternatives, but rather use it as an opportunity to justify the current policy. In discussions with Andium, I became convinced that an 80% policy would be sustainable, as it is with the other housing trusts. In fact, the average rent level charged by Andium is around 80%, due to the numbers of tenants on old tenancies pre-dating the current policy.

Andium Homes currently provides a much greater financial return to the Treasury than it receives from rental payments from Income Support. A recent written question⁵ shows that in 2020, Andium provided the Treasury with £30.5m as a return, whilst their tenants received only £18.7m in Income Support. The balance will come from the incomes of their tenants from other sources (around 40% of Andium tenants are not in receipt of Income Support), including earnings from employment and pensions. This essentially means that Andium is subsidising the government, not the other way round. That £18.7m Andium receives, only to give straight back to the Treasury, could be regarded as "wooden dollars".

A new rents policy can be afforded by reducing the financial return provided to Treasury in line with the money the government would save on Income Support payments, and through arranging the repayments of their loans based on the certainty of this new policy.

Part (d) simply ensures that the implementation of this new social housing rents policy does not unnecessarily impact on the development programme of Andium, which is desperately needed to add new supply to the housing market (and at a sub-market rate, which may help hold back rent inflation), and that this will be reflected in the next Government Plan.

When I froze Andium rents for the year 2021, a line had to be included in the Government Plan which acknowledged that this would be delivered in a cost-neutral way for the government, by reducing the expected financial return anticipated from Andium by the amount that the government would be saving in Income Support payments.

⁵[https://statesassembly.gov.je/assemblyquestions/2021/\(88\)%20approved%20and%20answered%20sen%20mezec%20to%20tr%20re%20andium%20homes.pdf](https://statesassembly.gov.je/assemblyquestions/2021/(88)%20approved%20and%20answered%20sen%20mezec%20to%20tr%20re%20andium%20homes.pdf)

A similar approach will be needed here, and it must not be used as an opportunity claw back more money from Andium tenants to subsidise other government services, at the expense of opportunities to reinvest that money in the delivery of new housing.

Finally, **part (e)** sets a deadline for producing a timeline that the Assembly and members of the public can have confidence in, and hold the government to account to, for implementing these proposals. The resources are already allocated to do this, so there is no excuse for falling behind on delivering on these.

Conclusion

The setting up of the Housing Policy Development Board demonstrated an acceptance that housing is a huge issue for Jersey and needs serious political attention to resolve. The report provides a series of recommendations which will make a real difference and cannot simply be left on a shelf to gather dust, whilst housing continues to become more and more unaffordable for ordinary Islanders.

This proposition enables the States to give a green light to that action and set us down that path.

Financial and manpower implications

There are no extra implications arising directly as a result of this proposal, as the necessary funding has already been approved in the Government Plans, with the revised allocation in the SPPP budget for 2021 being £305,000 to undertake work on implementing the HPDB recommendations (£175,000) and improving tenants' rights (£130,000). Further financial implications may arise as a result of amending the social housing rents policy, which could affect the financial return provided by Andium to the Treasury, but this would be subject to a further States debate as part of the Government Plan 2022-25.

Children's Rights Impact Assessment

A full Children's Rights Impact Assessment will be produced as an addendum to this report.

Appendix – Selection of the relevant recommendations as stated in the report from the Housing Policy Development Board.

8 | Recommendations

- 8.1.1. To administer the policy package, the Chief Minister should consider the following recommendations from the HPDB:
9. Security of tenure and tenants' rights should be enhanced by reviewing, amending or creating new legislation and enforcing changes made through a resourced programme.
 10. Rent stabilisation legislation and a Rent Commission or Board to monitor and decide on annual rent increases should be introduced.
 11. The implementation of a reformed Gateway, as endorsed by the Minister for Children and Housing, should be approved as part of the wider policy package.
 12. The existing '90%' social rents policy is considered too high and has potential adverse effects on tenants and the housing market. It should, therefore, be changed in order for social rents to be set and maintained at affordable levels for tenants, whilst taking account of the need to maintain a sustainable funding model for investment in social housing.