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Submission to:

**The Hon Gabrielle Williams  
Minister for Consumer Affairs Victoria**

**Ms Nicole Rich  
Executive Director Consumer Affairs Victoria**

**Ms Jaklin Trajkovski  
Acting Executive Director Regulation Policy and Dispute Services**

**Submission for the  
ABOLITION AND REMOVAL OF EXIT / DEFERRED MANAGEMENT FEES  
IN RESIDENTIAL LAND-LEASE VILLAGES IN VICTORIA**

**8 July 2024**

**N.B.** MHOA believes that the term used in the Act to describe communities of relocatable dwellings as 'Residential Parks' is inaccurate and misleading. In all its documentation, MHOA will be referring to these communities as 'land-lease villages', as this more accurately describes what they are and distinguishes them from caravan parks and retirement villages.

In addition, in this submission for the sake of consistency with the Act and for clarity, the owners of the land will be described as the 'Site Owners' and the owners of the dwellings will be described as the 'Site Tenants'.

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# 1 INTRODUCTION

## 1.1 About MHOA

The Manufactured Homeowners Association of Victoria (MHOA) is a non-profit, incorporated organization, volunteer staffed association, assisting owners of manufactured homes (Site Tenants) living in Victorian land-lease villages and in mixed villages.

MHOA provides its members with advice and information on matters relating to Part 4A of the Residential Tenancies Act, 1997, and assists members when problems arise between site tenants and the Site Owners.

The MHOA Committee is comprised of volunteers who have the lived experience of home ownership in land-lease villages and have vast knowledge of the Act which governs this form of housing.

# 2 EXECUTIVE SUMMARY

Our submission to you in November 2023, featured many and varied issues and recommendations relating to Residential Land Lease villages. One of the issues related to Deferred Management Fees (DMFs) or Exit Fees and their negative impact on Site Tenants living in these communities. As indicated in that submission, we are seeking the abolition of this fee and supply greater detail and rationale behind our recommendation.

In this submission, the prime focus is on Deferred Management Fees being applied on a future sale price, which is the case in the majority of land-lease villages. It is acknowledged that a smaller number of communities have a DMF that is based on the purchase price of the dwelling. However, this submission applies to both groups.

The following matters are the basis of our submission:

- The Residential Tenancies Act (RTA) makes no mention of, and is therefore silent, on Deferred Management Fees.
- It is the Government's intent that all costs imposed by a Site Owner are clearly identified at the signing of the Residential Site Agreement. This is evidenced by the 2010 Ministers second reading speech relating to the 2010 legislation, that in part says "...all fees and charges imposed by operators, along with their purpose and methods of calculation, must be clearly disclosed before entry into a site agreement."
- Section 206S (1) (a) of the RTA states "A site agreement must include details of the rent fees and other charges payable under the site agreement." As the sale price of the dwelling is unknown at the time of the applicant signing the contract, imposing a DMF of an unknown figure fails to detail the amount of the fee pursuant to this section.
- Section 206S (2) of the RTA states "A site owner must not require payment of any amount under the site agreement if the amount has not been disclosed in the site agreement in accordance with this section." For the majority of the villages that attract a DMF based on a sale price, it is obvious that it would be impossible to establish what a sale price would be at the time of signing the site agreement.
- The majority of mainstream states, including South Australia, Queensland and NSW enjoy legislation that does not include Deferred Management Fees/Exit Fees, and we believe that

Western Australia is about to do likewise. We are therefore seeking the same outcome for Victoria.

- The objective of this submission is to clearly demonstrate the urgency of revising the legislation regarding the Deferred Management Fee, or Exit Fee as it is commonly known, in residential land-lease communities that are governed by the Residential Tenancies Act 1997 - Part 4A.
- The key issue is the negative impact of the DMF as it relates to living in land-lease communities. MHOA is aware of recent proposed changes to DMF treatment for those living in retirement villages, via changes to the Retirement Village Act, but despite many similarities, these changes have not filtered through to land-lease villages.
- It is evident that DMFs are contributing to extreme financial hardship and as a result, there is a need for increased government support. The financial hardship occurs when a Site Tenant is required to, or chooses to leave their land-lease village and the DMF leaves them with insufficient funds to buy elsewhere. In addition, increased government assistance is often needed when the Site Tenant needs to leave the village to enter aged care and they have insufficient funds to do so.
- The DMFs are also unfair in that, in most cases, they include a percentage of any increased value of a home resulting from improvements that a Site Tenant has made and funded over time and that the Site Owner has not contributed to in any way.

### 3. SUMMARY OF RECOMMENDATIONS

**Recommendation 1:** *that the Victorian Government establish a central regulatory body for the registration and oversight of land-lease villages and compliance of land-lease village owners.*

**Recommendation 2:** *that the Victorian Government introduce legislation to prohibit the use of Deferred Management Fees, otherwise known as Exit fees, by all site owners of Land-Lease villages that come under the Residential Tenancies Act 1997 Part 4A.*

**Recommendation 3:** *that the Victorian Government introduce clear and concise regulations stating that no other fees beside site fees may be charged to the Site Tenant and that these regulations are monitored for compliance and enforcement.*

**Recommendation 4:** *that the Victorian Government establish a Dispute Resolution process as part of the registration of the Residential Tenancies Act Part 4A villages, to which all Site Owners must comply.*

#### 4. LAND-LEASE VILLAGE AND MANUFACTURED HOME DESCRIPTIONS

Land-lease villages are communities of relocatable dwellings, purchased outright as permanent homes. The relocatable dwellings are designed and manufactured to be able to be transported to another location.

They require a transport vehicle to move them and are different from dwellings such as mobile homes or caravans, which are required to be registered with Vic. Roads or other state equivalents. There are also some of these dwellings in caravan parks/mixed villages.

The land on which each dwelling sits is leased to the Site Tenant for the long term, anywhere from five to 99 years.

The land-lease village may also contain communal amenities such as a clubhouse, swimming pool, library, gymnasium, amongst others. The amenities vary greatly in quality and quantity from village to village.

Land-lease villages are typically marketed to people over the age of 55 as an affordable, attractive housing option for those wanting to downsize. While they have some similarities to retirement villages, land-lease villages do not have a similar stringency of regulation, thus leaving open the ability of site owners to abuse their power.

Land-lease villages in Victoria are on the rise. MHOA has data to show that there are approximately 100 of these villages across the state and the number is increasing steadily. There are approximately 20,000 Site Tenants leasing land in these villages.

There is, however, little, if any oversight of the regulations that govern these villages. As there is no central registration required, some Site Owners take full advantage and impose fees and restrictions on Site Tenants while taking little responsibility for the maintenance of the village.

MHOA urges the Victorian State Government to legislate a central registration regime for land-lease villages, as is the case with retirement villages, and to establish a body to regulate and monitor the management of these villages to ensure fairness and respect for the Site Tenants. Unless there is oversight and stronger regulations applied to the operation of these villages, such unfair practices as Deferred Management Fees/Exit Fees, will continue to cause much distress to older Victorians.

**Recommendation 1:** *that the Victorian Government establish a central regulatory body for the registration and oversight of land-lease villages and compliance of land-lease village owners.*

## 5 WHAT IS A DEFERRED MANAGEMENT FEE?

A Deferred Management Fee is a percentage of either the purchase or sale price of the home, decided by the Site Owner, which is paid to the Site Owner upon the sale of the home. This is in addition to the weekly, fortnightly or monthly rental paid by the Site Tenant for the lease of the land and to the Selling and Administrative Fees connected to the sale of the home.

Many Site Owners of land-lease communities use the DMF as an important revenue source.

A common formula for the amount to be paid is:

4% of either the purchase or sale price of the home, for each of the first 5 years and is capped at 20%.

## 6 ISSUES RELATED TO DEFERRED MANAGEMENT FEES

### 6.1 DMFs calculated on future sale price of home

Noting that the vast majority of DMFs are calculated on a **future sale price**, home purchasers cannot ascertain the true cost of what they are buying into. This makes an informed choice virtually impossible. Basing the DMF on a future sale price is also contrary to the requirements of the Government's intent and application of the Residential Tenancies Act that requires disclosure of the amount of all fees and other charges, as referenced in Section 206S and in the government's second reading speech of 2010.

Firstly, the RTA does not mention DMFs. However, the Government's intent is that all costs imposed by the Site Owner are declared at the time of signing the Residential Site Agreement. This is evidenced by the 2010 Minister's second reading speech relating to the 2010 legislation of the RTA that says:

*The bill will significantly improve the quality of information available to residents so they can make informed and confident decisions about entry into an owner-renter arrangement. The bill will require greater disclosure of information to residents before entry into a site agreement, while providing for a pre-contractual period of at least 20 business days to consider the site agreement as well as a cooling-off period of 5 days. All fees and charges imposed by operators, along with their purpose and methods for calculation, must be clearly disclosed before entry into a site agreement.*

Section 206S (1) (a) of the RTA that was legislated following the Minister's second reading speech, states:

*A site agreement must include details of – (a) the rent, fees, and other charges payable under the site agreement.*

Further, Section 206S (2) states:

*A site owner must not require payment of any amount under the site agreement if the amount has not been disclosed in the site agreement in accordance with this section.*

Both the second reading speech and Section 206S of the RTA clearly show the intent of the legislation is to require the disclosure of all costs imposed by a site owner for the services to be provided.

Whether a DMF is a fee or a charge is immaterial, having regard to the intent of the legislation, the common usage of those words and the Oxford and other dictionary definitions of these words that leave significant flexibility as to their meanings. Also, by its name, a Deferred Management Fee is a fee, and an Exit Fee is a fee.

Most site agreements for the purchase of Part 4A type dwellings, provide a method of calculating the DMF but do not provide the amount of the DMF. Factors unknown to the Site Tenant at the time of the home purchase that can affect the amount of the DMF include:

- The number of years before the home is sold
- The varying annual changes to housing prices in the community
- Improvements to the home undertaken and funded by the Site Tenant during the course of home ownership

It is therefore not possible for the amount of the DMF to be determined by the purchaser at the time of signing the agreement.

In addition, the agreements do not disclose any details of how the amount the DMF will be changed due to any amounts that the Site Tenant expends on improvements to the home.

A marketing approach by one larger Site Owner company, is that by downsizing to their homes, the person(s) will have extra funds to spend as they desire. It is therefore very common for most owners of the homes to want to spend some money on improvements such as flyscreens, external blinds, back gardens and solar panels etc. The reality is that in many cases, these improvements are critically important rather than a choice, as the standard building of these homes, more often than not, does not include these items.

It is a fact that the DMF based on the sale price would be increased due to the rise in value of the home from the improvements, including any inflation of that value. The increase in the DMF revenue is entirely windfall profit and totally unrelated to any input by the Site Owner.

As the Site Tenant may not know what improvements to the home are needed until having lived in the home, he/she cannot know at the time of signing the agreement, what costs will be incurred and the future effect on the DMF.

The agreement definition of the DMF therefore makes it quite impossible to provide details of the DMF amount at the time of the signing of the agreement, contrary to Section 206S of the Residential Tenancies Act 1997.



## 6.2 DMFs calculated on the purchase or sale price of the home

While some companies base their Deferred Management Fees on the purchase price, rather than the sale price of the home, this can still lead to serious financial disadvantage to the Site Tenant.

From discussions with many Site Tenants, the majority describe their understanding of this element of the site agreement as 'very poor'. Most have never heard of Deferred Management Fees before and state that it is not well explained in pre-purchase meetings with the Site Owner or their representative.

As it is something that will occur at the end of a lease, most buyers are not even considering this event at the time of purchase. Therefore, the matter of the amount they will need to pay to the site owner when they sell, is not even a consideration for many purchasers.

The following is one example of the disadvantage met by a Site Tenant upon the sale of her property in April 2024 and the considerable advantage to the Site Owner with the DMF payable on the **purchase** price of the home.

**Rent per fortnight** (increasing by 3.5% every year)

**Starting** \$376.97 per fortnight

**Finishing** \$403.00 per fortnight

**TOTAL RENT (APPROX.)** **\$22,000.00**

**Purchase price of home in April, 2022** **\$395,000.00**

**Sale price of home in April 2024** **\$435,000.00**

**Deferred Management Fee (based on purchase price)**

Year 1 – 365 days – 4% \$ 15,800.00

Year 2 – 365 days - 4% \$ 15,800.00

Year 3 – 44 days (to date of sale) \$ 1,904.00

**TOTAL DMF** **\$ 33,504.66**

**NB. The site owner did not contribute 1 cent to the upkeep of the Site Tenant's home but has profited by \$33, 504 from the sale of the home, In addition to the rent of approx. \$22,000.00 paid for the land.**

**Selling Fees**

Selling Administrative Fee \$ 550.00

Commission on sale of property (3% of purchase price) \$ 11,850.00

GST \$ 1,185.00

**TOTAL SELLING FEE** **\$ 13,585.00**

**TOTAL AMOUNT TO SITE OWNER** **\$ 47,089.66**

**TOTAL AMOUNT TO SITE TENANT**

**Amount left to tenant after sales fees and DMF in April, 2024** **\$387,000.00**

**=LOSS \$ 8,000.00**

The above illustrates the unfair imbalance of the Deferred Management Fee, in the time of soaring house prices in Victoria. The elderly Site Tenant has gained nothing from her downsizing and is now distraught that she may not have sufficient funds to upgrade a home she is looking to purchase.

Had this Site Tenant been forced to pay a Deferred Management Fee based on the sale price of her home, the loss would have been even greater (see below)

The DMF payable for the same property, had it been based on the <b>sale price</b> .	
<b>Rent per fortnight</b> (increasing by 3.5% every year)	
<b>Starting</b>	\$376.97 per fortnight
<b>Finishing</b>	\$403.00 per fortnight
<b>TOTAL RENT (APPROX.)</b>	<b>\$ 22,000.00</b>
<b>Purchase price of home in April, 2022</b>	<b>\$395,000.00</b>
<b>Sale price of home in April 2024</b>	<b>\$435,000.00</b>
<b>Deferred Management Fee (based on sale price)</b>	
Year 1 – 365 days – 4%	\$ 17,400.00
Year 2 – 365 days -4%	\$ 17,400.00
Year 3 – 44 days (to date of sale)	\$ 2097.53
<b>TOTAL DMF</b>	<b>\$ 36,897.53</b>
<b>NB. The site owner did not contribute 1 cent to the upkeep of the Site Tenant’s home but has profited by \$36,897.53 from the sale of the home, In addition to the rent of approx. \$22,000.00 paid for the land.</b>	
<b>Selling Fees</b>	
Selling Administrative Fee	\$ 550.00
Commission on sale of property (3% of sale price)	\$ 13,050.00
GST	\$ 1,305.00
<b>TOTAL SELLING FEE</b>	<b>\$ 14,905.00</b>
<b>TOTAL AMOUNT TO SITE OWNER</b>	<b>\$ 51,802.53</b>
<b>TOTAL AMOUNT TO SITE TENANT</b>	
<b>Amount left to tenant after sales fees and DMF in April, 2024</b>	<b>\$383,197.47</b>
	<b>= LOSS \$ 11,802.43</b>

It has also come to the attention of MHOA that some Site Owners use both methods to profit from the DMF. One company introduced DMFs based on sale price in 2010 and it was only after the Site Tenants protested loudly about the unfairness of this, that several years later, the company changed its position and brought in DMFs based on the purchase price.

However, not all Site Tenants were able to change and so, within the same company, and indeed, within the same village, there are some Site Tenants who will be charged a DMF on the sale price, while others will be charged a DMF based on the purchase price. A most unfair situation.

### **6.3 DMFs used to generate increased profits for Site Owners but the purpose not disclosed in site agreements**

Most, if not all, Site Owners of land-lease villages use DMFs to generate increased profits. Most agreements that Site Tenants enter with Site Owners are misleading and deceptive as the agreements fail to disclose that a significant portion of the DMF is used for the Site Owner's revenue. This is also contrary to the requirements of the RTA (Section 206S (1) (c) which requires that:

*A site agreement must include details of the purposes for which the rent, fees and other charges are charged under the site agreement.*

An example of how not to include all the details of the purpose for which the DMF is charged is provided by Victoria's largest owner of these villages. As a public company their financial statements are available online. The significance of the DMF to this company is illustrated by their General Manager's statement in his 2023 report to shareholders, that they have

*led the market with a deferred management fee which ensures the Lifestyle Communities are invested alongside our homeowners to ensure both us and our homeowners are incentivised to maintain and invest in our communities for the long term.*

Lifestyle Chair and Managing Director's Review for the 2023 Financial Year

<https://www.lifestylecommunities.com.au>

The company's definition of a DMF in the site agreements is:

*A fee paid to us as a contribution towards the costs of managing, maintaining and improving the Community, including your Share of the Community Infrastructure.*

By saying that the DMF is a "contribution towards..." implies that the purpose of the DMF is for the vast majority of the DMF revenue to be utilised for the benefit of the community.

On the contrary, the evidence confirms that a significant portion of DMF revenue is for company profits and shareholder dividends. As Lifestyle's publicly available reports include statements that they use DMF to pay dividends such as:

- *Completed communities build a long-term sustainable income and future dividends*
- *As a general principle, (the company) intends to pay dividends out of post-tax operating cash flow generated from community management including Operating cash flow generated from community management (net rental and DMF)*

### **6.4 Site owner but not site tenant, benefits from DMFs**

In the absence of appropriate and suitable regulations and greater clarity around total pricing, a high potential exists for price gouging. DMFs appear to provide Site Owners with an arbitrary means of increasing profitability, without showing the value the Site Tenant is receiving in return.

As DMFs are payable on the sale of the property, and the Site Tenant is likely leaving the village, there is no benefit, only loss, to the Site Tenant who has paid for improvements and who should reap the benefits of any value increase to the home.

The DMF model may have the effect of depriving the Site Tenant of the benefits of capital growth. Anecdotal information suggests homeowners, on average, spend between \$30k and \$50k on home improvements after purchase. These improvements undoubtedly add significant value to the home and ultimate sale price. The Site Owner is effectively “double dipping” by not only receiving a higher Deferred Management Fee but also a percentage of the money the Site Tenant has spent on improvements, to which the Site Owner has contributed nothing.

As few land-lease villages are owned by public companies, it is difficult to obtain comparisons of DMFs and the effect on the Site Tenants. However, the following table provides some comparisons of two-bedroom homes at three public companies’ villages that are in the same vicinity in Victoria.

**N.B** As indicated by the asking prices, there are likely to be some minor differences in the village facilities and houses. It is difficult to have precise comparisons between villages. Therefore, the amounts shown in the table below are indicative only.

It does show, however, that Site Owner X is significantly financially advantaged by using a Deferred Management Fee while the Site Tenant is significantly financially disadvantaged.

	Company X	Company Y	Company Z
Purchase price – Site Tenant	\$595,000	\$589,000	\$550,000
Value after 5 years – at increase of 3% p.a.	\$703,000	\$683,000	\$637,000
Less sale costs – at 3% of adjusted sale price	\$21,000	\$20,000	\$19,000
Less DMF – at 20% of sale price	\$140,000	Nil	Nil
<b>Net proceeds to site tenant</b>	<b>\$542,000</b>	<b>\$663,000</b>	<b>\$618,000</b>
Deferred Management Fee	\$140,000	Nil	Nil
Selling fees	\$21,000	\$20,000	\$19,000
Site rent fees for 5 years – for a couple, at increase of 3.5% p.a.	\$68,000	\$69,000	\$68,000
<b>Net proceeds to Site Owner</b>	<b>\$229,000</b>	<b>\$89,000</b>	<b>\$87,000</b>

Source: Owner X = Lifestyle Communities – from website for homes for sale at Mt Duneed  
 Owner Y = Stockdale Halcyon – from an email 30/11/23 re. their Armstrong Creek village  
 Owner Z = Ingenia – from an email 30/11/23 re. their Lara village

As can be seen in the above table, the Site Tenant in Company X’s village, incurs a loss of \$53,000 after the payment of the selling costs and the DMF. This is in addition to the site rental of \$68,000 paid over 5 years.

On the other hand, the owner of Company X has profited by \$229,000 from the sale of a home they did not own and to which they contributed nothing.

The table shows that there are minor differences in the average asking prices, possibly due to small differences in village facilities and minor differences in the rents charged.

However, it is very clear that in comparison with the other owners, Company X, by imposing a DMF, is significantly advantaged, while the Site Tenant is significantly financially disadvantaged.

**Recommendation 2:** *that the Victorian Government introduce legislation to prohibit the use of Deferred Management Fees, otherwise known as Exit fees, by all site owners of Land-Lease villages that come under the Residential Tenancies Act 1997 Part 4A.*

**Recommendation 3:** *that the Victorian Government establish a central regulatory body for the registration and oversight of land-lease villages and compliance of land-lease village owners.*

## 6.5 DMFs can adversely affect government taxation revenue.

This can occur when pensioner Site Tenants need to leave their villages to go into aged care – a very common scenario. The value of the Site Tenant’s assets will be significantly reduced when the DMF is deducted from the home’s sale price. Where the Site Tenant’s assets are insufficient to meet the aged care costs, further government subsidies from taxation revenue are required to meet the shortfall.

## 6.6 Ineffective dispute resolution process

Whilst VCAT is the accepted vehicle for dealing with disputes in Victoria, it is believed a large number of older Victorians feel disempowered, disengaged and intimidated by the VCAT process. While there have been challenges to the DMF taken to VCAT on the basis of it being a harsh and unconscionable penalty, we are aware of considerable wait times for cases to be heard. MHOA considers there is a strong need for a more efficient and effective dispute resolution process to be accessible to the Site Tenants in Part 4A villages.

**Recommendation 4:** *that the Victorian Government establish a Dispute Resolution process as part of the registration of RTA Part 4A villages, to which all site owners must comply.*

As VCAT does not provide a solution to the DMF problem, the result is that the problem is hidden.

Strong evidence of the difficulties that Site Tenants have with trying to seek resolution with VCAT, is in a letter dated June 23, 2016, from the Consumer Action Law Centre to the Legal and Social Issues Committee, Parliament House:

- *In December, 2014, 14 residents of a Part 4A village lodged a proceeding with VCAT regarding the unfairness of DMF. The proceeding was not listed to commence until July, 2016, 18 months later.*
- *All 14 site tenants had low levels of education and were either pensioners or low-income earners. The oldest site tenant was 84 years old and the youngest, 50 years old but suffered from an acquired brain injury. Prior to this case, all had limited (if any) exposure to the legal system and none had engaged a lawyer in relation to a consumer law or a commercial dispute.*
- *Six of the site tenants had undergone major health treatment after commencing the proceedings, including for cancer, heart attack and seizure, clearly showing that elderly site tenants (as typified by Part 4A villages) are ill-equipped to deal with such adversarial litigations.*
- *This proceeding, which was for a group of 14 site tenants, was set down for a 5-week trial. Elderly consumers are ill-equipped to handle the stress of sustained cross-examination that a powerful defendant could put them through for such a period of time.*
- *Such housing disputes are complex and hard fought, such that for a case to have an effective presentation and prosecution, it can be very expensive in legal fees. Far too much for most Part 4A housing retirees, whose vast majority are aged pensioners, to achieve justice.*

- *The evidentiary onus on a consumer to prove their claim is significantly higher at a Court or Tribunal.*
- *In the above-referenced proceedings, the parties and/or their legal representatives were required to attend direction hearings, two full-day mediations/compulsory conferences, and respond to and appear at 3 interlocutory applications on a variety of issues. The site tenants filed 30 witness statements spanning approximately 800 pages (including attachments). Both parties were ordered to make discovery and discovered 319 categories of documents. An elderly consumer could not have litigated this claim without legal representation.*

The above referenced letter provided this summary:

*While VCAT is, in theory, appropriate for many forms of civil dispute, it is manifestly unsuited to hear disputes around retirement housing. The process itself is so difficult that many retirees simply do not engage with it, and their complaints go unheard and unresolved. A lack of listings at VCAT is not a robust indicator of the level of disputation in the sector. The reality is that a large number of older Victorians feel disempowered, disengaged, and intimidated by the VCAT process. While Consumer Affairs Victoria (CAV) does have the power to conduct mediation or conciliation in retirement housing, it has no power to compel traders to participate in the process. This leaves retirees with nowhere to go.*

The effectiveness of VCAT's role in attempting to resolve such issues is also very doubtful. This is because of all the several known cases that have challenged the legality of the DMF and won, have been settled beforehand. This means that there has not been a VCAT determination in such cases and there is no publicly available evidence that any other Site Tenant can use for a challenge.

It is assumed that such cases have been settled beforehand by the Site Owners based on their own legal advice that they will lose the case, and so that any such evidence is not available to any other claimant.

The evidence of such cases includes the above referenced letter. Six of the fourteen clients settled on the basis that their DMF would be completely waived and all references to the DMF would be removed from their site agreements.

- Two of the clients settled on the basis that they would enter into a deed of variation, whereby their DMF would be reduced from 20% over a 5-year period, to a flat 4% of the Park Home Sale Price.
- The other six clients settled on the basis that they would enter a deed of variation to calculate the DMF as a 1.2% of the Park Home Sale Price for each year of occupancy, up to a maximum of 10 years (i.e. a total of 12%).
- Those clients also received a \$3,000 payment per household, in consideration of the personal stress and inconvenience suffered by them throughout the proceedings.

It is not known why there were different settlements in the above case. At least one other totally separate case is known, where settlement beforehand was on the condition of confidentiality, so that no details whatsoever are available.

Having regard to the known deficiencies in the Site Owners' agreements regarding DMF, the lack of listing at VCAT of this issue, is a very strong indicator that the VCAT system enables such issues to be hidden. This effectively facilitates the continuance of unfair site agreements.

## **6.7 DMFs take unfair advantage of vulnerable people**

Moving home is universally agreed to be one of the most stressful events in a person's life. Although many land-lease villages are marketed for 'over 50's', most of those who purchase these homes are retirees in the 60's or 70's. Such persons may be especially vulnerable due to such things as age, loss of a partner, needing to downsize for health or financial reasons, or even pressure from family members.

Under these circumstances, few are able to properly understand the intricacies and possible consequences of DMFs. Instead, they are persuaded by convincing salespeople and glossy brochures, of how much better off they will be by downsizing and having money left over to spend on enjoying this next phase of their lives.

Few also understand that by this choice, they are moving from being owners of their homes, who managed their lives independently, to paying someone else for services in a quite differently controlled environment. The experience of most residents has been of achieving capital gain through their home ownership so it is often a rude shock when they realise how much money they will lose when their home is sold.

Sometimes, that shock comes quite early, as in the case where a single pensioner may realise that they can't afford to stay, due to increasing rent. They also can't afford to move because the money remaining after the DMF deduction, means they will need to substantially downsize their standard of living.

The net effect is that the DMF system is taking unfair advantage of vulnerable people for the purpose of someone else's financial gain.

## 7 SUCCESSFUL OPERATION OF LAND-LEASE VILLAGES WITHOUT DEFERRED MANAGEMENT FEES

There is significant evidence that owners of land-lease villages can operate successfully without DMFs.

Firstly, a quick analysis of Lifestyle’s financial data, which is readily available online, confirms a very strong profit position, even if DMF income was removed. Adjusted operating profit, before tax, for the past three financial years is deemed to be for:

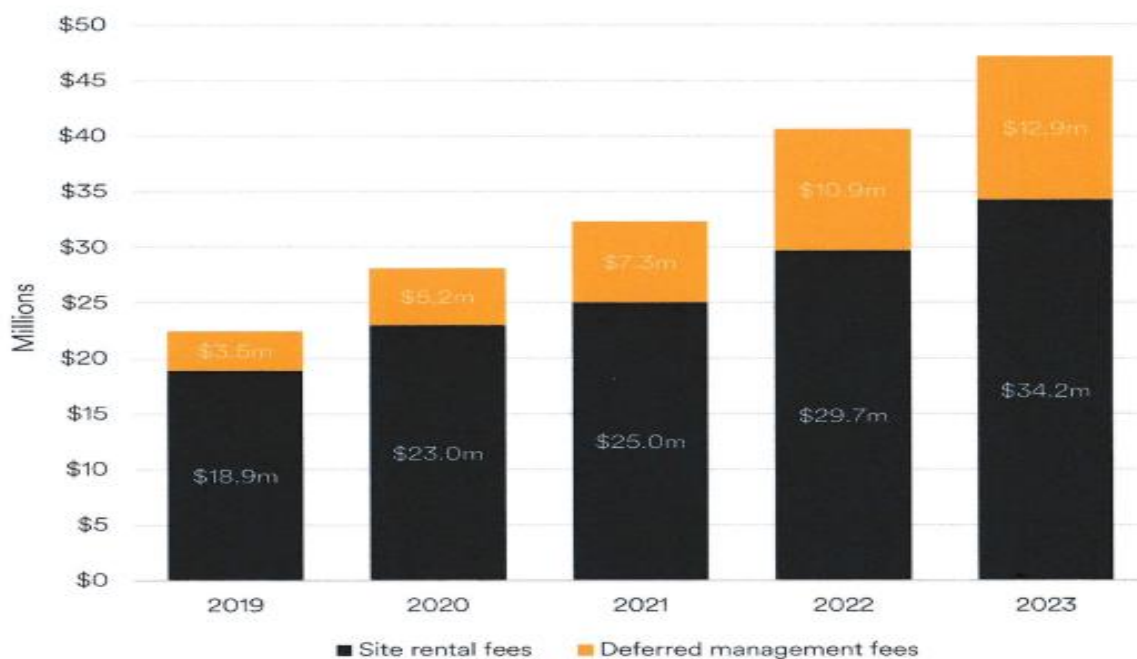
2021 financial year, \$45 million;

2022 financial year, \$77 million and

2023 financial year, \$99 million.

The following graph, compiled from information in Lifestyle’s 2023 Annual Report, shows the exponential growth of income of both site rental fees and deferred management fees over 5 years.

**Growing annuity income streams**



The Report also states that:

*Completed communities generate recurring revenue streams which are growing as new communities are added to the portfolio. Completed communities build a long-term sustainable income and future dividends from a combination of site rental fees and DMF.*

What is not shown however, is the unsustainable compound effect of site rental fee increases whereby single aged pensioners in 2023 contributed 35% of their pension income to rent. This is projected to rise to 45% by 2033.



It is important to recognise that historically, an average of just 40% of site rental fees (exclusive of DMF) is expended on the communities in the form of management services and maintenance. Thus 60% of the income from site rental and most, if not all DMF, is profit.

The Lifestyle Communities Annual Report has not provided any information as to what and how much DMF has been expended on the villages. The only exception is the statement by the Lifestyle General Manager that some specific villages have received works totalling \$1.6m funded by DMF but no details are available of the amounts expended at the individual villages.

In comparison, in Victoria, there are approximately 100 villages that come under Part 4A of the Residential Tenancies Act. As there is no central registry of them, and few are public companies, it is difficult to obtain information as to how any DMF revenue is expended, leaving them with unfettered opportunity to increase profits by minimizing expenditure on the facilities.

An example of one company’s use of DMF on capital improvement expenditure is shown below.

**LIFESTYLE COMMUNITIES AT CHELSEA HEIGHTS – ESTABLISHED IN 2013**

(taken from Lifestyle Communities Full Year Results Presentations)

	Prior to 2016 <sup>2</sup>	2016	2017	2018	2019	2020	2021	2022	2023 <sup>1</sup>
DMF/year <sup>3</sup>	\$251,059	\$21,140	\$712,080	\$556,000	\$991,520	\$1,158,600	\$726,800	\$979,200	\$576,600
Cumulative DMF		\$272,199	\$984,279	\$1,540,279	\$2,531,799	\$3,690,399	\$4,417,199	\$5,396,399	\$5,972,999
Capital Improvement Expended <sup>4</sup>					\$5,000	\$4,000	\$5,000	\$6,000	\$32,000
Cumulative Expended						\$9,000	\$14,000	\$20,000	\$52,000

Notes:

1. The amount of \$576,000 is for the first half of that financial year, as no DMF amounts for separate villages were published for the full year of 2023.
2. The DMF sale costs for this village are calculated as being the same proportion of the revenue as the total DMF sales costs to the total DMF revenue for each year.
3. The amount of DMF revenue prior to 2016 is calculated as the accumulated total amount in the company reports, less the published amounts for each year.
4. The amounts for upgrades and capital improvement expenditure are estimated, based on high estimates of the known capital expenditure works for each year.