

July 14, 2023

**New York City Housing Authority
Public Hearing**

**Re: Draft Significant Amendment to the Fiscal Year (FY) 2023 Annual Plan and the
FY 2024 Draft Annual Plan
Written Testimony of the New York Legal Assistance Group**

The New York Legal Assistance Group (“NYLAG”) is a nonprofit legal services organization that provides free civil legal services and engages in policy advocacy efforts to help people experiencing poverty. NYLAG works closely with community organizations, agencies, and elected officials, and operates numerous legal clinics in locations such as community centers, courthouses, and hospitals. Since the implementation of the Right to Counsel at the NYCHA Office of Impartial Hearings (“OIH”), NYLAG has created the Public Housing Justice Project (“PHJP”) within its Tenants’ Rights Unit (“TRU”). NYLAG’s PHJP is the first team of attorneys in New York City solely devoted to the representation of NYCHA tenants. PHJP represents tenants in both Section 9 and RAD/PACT developments.

The proposed Significant Amendment includes the total demolition of three NYCHA developments and their replacement with a larger development that would include an additional 3,500 units of market rate and “affordable” housing. This demolition would result in the displacement—temporary or otherwise—of 5,000 residents. The draft Significant Amendment to NYCHA’s 2023 Annual Plan represents a substantial departure from the public’s understanding of how NYCHA’s RAD/PACT developments would handle the repairs and improvements of RAD/PACT developments and a massive undertaking for the City and the developer. While the amendment is ambitious, without proper planning before approval, the Amendment could profoundly harm the public housing community at Fulton and Chelsea-Elliott Houses and lead to the permanent displacement of members of this longstanding community. Furthermore, despite federal requirements to do so,¹ the draft Significant Amendment is devoid of policies, procedures and standards governing the rights of residents during this process. As such, we strongly urge NYCHA to withdraw the Significant Amendment until it can formally adopt procedural protections and rights for its residents.

- A. NYCHA must adopt formal and legally binding policies and procedures to ensure a resident’s continued housing and right to return before Fulton and Chelsea-Elliott Houses are demolished

¹ 42 U.S. Code § 1437c–1(d)(3,5-6).

When Fulton and Chelsea-Elliott Houses are demolished, 5,000 residents will be displaced while the development is rebuilt. The Significant Amendment currently provides no concrete plan to guarantee that residents not only remain housed, but remain in their neighborhood and community. It is absolutely vital that any plan include such protections, lest RAD/PACT become the vehicle for gentrification that residents, partners, and advocates fear.

Since the announcement that Fulton and Chelsea-Elliott Houses will be demolished and rebuilt, we have learned that NYCHA and its partner developers, the Related Companies and Essence Development, will not be able to build the new apartments before the existing apartments are demolished. This means, necessarily, that residents will be displaced to temporary housing during this process. Currently, there is no plan in place to ensure that Fulton and Chelsea-Elliott Houses residents will be able to remain housed in their neighborhood during the months or years that the new development is built. We strongly urge that NYCHA withdraw this Amendment and plan until it can legally guarantee replacement housing within the Chelsea neighborhood during this time as well as guarantee a spot in an appropriately sized unit in the new building once it is created.

Any legal guarantee must be accompanied by basic due process rights if a resident family disagrees with their placement. The U.S. Code governing Public Housing Authority Annual Plans requires that the annual plan and any significant amendment include the rules, policies and procedures around the eligibility, selection and admission to public housing, its operation and management, and any grievance procedures.² Despite this, the Significant Amendment contains no clear procedures or legally binding protections for current residents. It is crucial that the procedures guiding these due process rights be fully drafted before the Amendment is submitted or approved. Without clear procedures set out before the process begins, residents will have no way of knowing where they will live once demolition starts—or whether they will have anywhere to live at all. These procedures must include clear steps that a resident could take during this process if they want to file a grievance, a form that they would use to do so, and clear instructions about where the form would be submitted and to whom. In addition, these procedures should include clear, transparent standards and factors for how the grievance should be decided. Without these in place before the proposed Amendment is adopted and the demolition begins, residents with grievances will inevitably fall through the cracks without process and NYCHA will be forced to make up post-hoc, ad-hoc standards as issues arise.

B. NYCHA should withdraw the proposed Significant Amendment until there is a clear and concrete plan for housing all displaced residents in Chelsea

The Related Companies and Essence Development have represented that during demolition and development, residents will be housed either in vacant units in the standing Fulton and Chelsea-Elliott Houses or in nearby 421-a buildings. Currently, NYCHA and the development team have identified 80 units to be held for residents who are displaced by demolition, even though a total of 2,055 units will be demolished in the process. There is no

² 42 U.S. Code § 1437c-1(d)(3,5-6).

plan in place for the other 1,975 families who will be displaced by this demolition. The Related Companies and Essence Development have also committed to doing mold, lead, and asbestos remediation for residents awaiting new units, which would require additional vacant apartments be made available. Neither NYCHA nor the development team have proposed how they would secure enough vacant units in Chelsea to house the displaced families. In addition, they have not provided any insight into how many of the set-aside units are ADA accessible, or how they would guarantee accessibility outside of the development for residents who are disabled or elderly.

The most likely solution from the development team would be to provide displaced residents with a NYCHA Section 8 Housing Choice Voucher. However, this is simply unacceptable and illustrates why these solutions must be clearly outlined before the Amendment is adopted. Indeed, allowing the proposed Significant Amendment to move forward with these uncertainties would mean that a significant portion of this community would certainly be forced out of their neighborhood, possibly their borough, and possibly permanently.

A Section 8 voucher is simply not sufficient to keep a family in Chelsea in 2023. A two-bedroom apartment in Chelsea currently rents for around \$8,000 per month. At best, a Section 8 voucher will pay \$4,048 for a two-bedroom apartment. If resident families are forced to rely on Section 8 vouchers in the open market, they will be displaced not only from their homes, but from their entire communities and their neighborhoods. They will be forced to relocate far from medical providers, pulling children from schools, extracurricular programming, and the support systems that families require. It will extend commutes, forcing working parents to choose between their jobs and their childcare. Residents will have to negotiate longer journeys to seek medical care or transfer their care to a provider that does not know them or their medical histories. Some will simply go without. Everyone in this position will be displaced from their homes despite both NYCHA and HUD guaranteeing that RAD conversions would not have this result.

In order to avoid such a devastating outcome, NYCHA must withdraw its proposed Significant Amendment until it can ensure—legally and practically—that the Essence and Related Companies will house residents in rental properties that they own and manage in the neighborhood and that there are a sufficient number of accessible apartments in these holdings to properly accommodate existing residents in need of such.

C. NYCHA should withdraw the Significant Amendment due to concerns about the market rate and additional “affordable” units

The new plan to demolish and rebuild Fulton and Chelsea-Elliott Houses calls for the creation of an additional 2,500 market rate units and 900 “affordable” units. This staggering addition more than doubles the capacity of the development and outnumbers the apartments that the development team is ostensibly preserving. It also goes far beyond what the NYCHA and the development team presented to residents when they sought resident approval of this change. The utter dearth of any details surrounding this plan raises significant concerns that warrant the withdrawal of the Significant Amendment.

At the outset, the plan includes no details about the levels of affordability that will be included in the mixed-income buildings. It is absolutely crucial that any housing subsidized by the City, and developed on RAD-PACT grounds, further fair housing goals and address the City's dire need for deeply affordable housing set aside for low-income families.

Indeed, the current bare-bones plan invites a large influx of market-rate tenants into a public housing development in one of the most expensive neighborhoods in New York City. The plan does not address the effects that this addition will have on the Fulton and Chelsea-Elliott community. It is well-established that eviction rates have increased post-conversion in other RAD/PACT developments and it is a risk inherent in the conversion process.³ However, the current plan does not take into consideration how more than doubling the capacity of the development with mostly private housing would further drive the eviction and subsequent displacement of NYCHA residents. Furthermore, allowing the addition of so many private, market rate units—at the cost of building fewer low-income units and displacing current NYCHA residents—perversely incentivizes future RAD/PACT developers to push for the total demolition of their developments for the purpose of developing thousands of market rate units with zero land cost while all but ensuring the displacement of the current community during the demolition and development process—the very population RAD/PACT is designed to protect.

Finally, the plan is bereft of any details regarding how the additional revenue from the market rate units will be allocated, despite the fact that the development of these units will be publicly subsidized and built directly on public housing grounds. Unless the plan addresses this issue in advance, the revenue from the new market rate pockets is likely to line the pockets of wealthy developers at the expense of some of New York's most vulnerable residents. NYCHA should withdraw its Significant Amendment until it can develop an appropriate and legally binding plan for the allocation of these funds to benefit the existing community.

Given the utter dearth of detail in this plan, combined with the inherent risks of developing such a large number of private, market-rate units on public housing grounds without an adequate number of low-income units, NYCHA should withdraw the Significant Amendment. Instead of moving forward with the current, bare-bones plan, NYCHA should address these grave concerns and develop a detailed and transparent plan to share with the community and any other stakeholders before moving forward that ensures that the current community's rights are protected.

With New York City's deeply affordable housing stock dwindling further and further, it is of the utmost importance that existing stock be preserved and developed in a way that also ensures the dignity and safety of existing residents and their communities. Moving forward

³ Human Rights Watch, "The Tenant Never Wins," January 27, 2022, <https://www.hrw.org/report/2022/01/27/tenant-never-wins/private-takeover-public-housing-puts-rights-risk-new-york-city>

with any plan before figuring out the details risks an uneven and arbitrary enforcement of rights and a post-hoc, ad-hoc process that is developed as easily anticipated needs arise. Instead, we urge NYCHA to withdraw its Significant Amendment and come up with a more detailed plan before moving forward on any of these matters.

Respectfully submitted by:

A handwritten signature in black ink, appearing to read 'A Luft', written in a cursive style.

Anna Luft, Esq.
Supervising Attorney
Public Housing Justice Project
New York Legal Assistance Group