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PIKES & VEREKERS
LAWYERS

29 June 2020

Union Street Developer Pty Ltd
c/- Zach Constantinou
Thirdi Group
343 Pacific Highway
NORTH SYDNEY NSW 2060

**BY EMAIL zach@thirdigroup.com.au**

Dear Sir

**ADVICE RE AFFORDABLE HOUSING CONTRIBUTIONS**
**1-5 WILLIAM STREET AND 2-4 BLUE STREET, NORTH SYDNEY**
**Our ref JRP:200421**
**Your ref Zach Constantiou**

We are instructed with respect to Development Application DA 47/20 (“the DA”) seeking approval for demolition of existing residential buildings and erection of a new 10 storey commercial building at 2-4 Blue St and 1-5 William St, North Sydney.

Specifically we are instructed to advise whether a condition requiring the payment of a monetary contribution for affordable housing could be lawfully imposed on ay consent granted, having regard in particular to the demolition of the buildings at 2 and 4 Blue St and 1 William St (“the subject buildings”).

The Sydney North Planning Panel (“the Panel”) is the consent authority for the DA pursuant to s2.15 and s4.5 of the *Environmental Planning and Assessment Act 1979* (“the Act”). North Sydney Council (“the Council”) is assessing the DA pursuant to s 4.7(2) of the Act, and is expected to publish and assessment report.

We are instructed that the Council in its assessment has determined that the DA, if approved, should be burdened with a condition requiring the payment of a monetary contribution pursuant to cl 51 of *State Environmental Planning Policy (Affordable Rental Housing)) 2009* (“SEPPARH”).

We have had the benefit of reviewing:

- Statement of Environmental Effects prepared by Ethos Urban dated 10 March 2020 (“SEE”);
- Affordable Rental Housing Assessment prepared by Andrew Martin Planning date 28 February 2020 (“ARH Assessment”);
- Internal Council Memorandum from Rebecca Aukim to Luke Donovan dated 4 June 2020 (“Aukim Memo”);

- Letter to Council from Andrew Martin Planning in response to Aukim Memo dated 11 June 2020;
- SEPPARH; and
- North Sydney Section 94 Contributions Plan ("the Contributions Plan").

We have also been provided with correspondence from the owner of the subject buildings, as well as Ethos Urban as to the records available regarding historical rentals of the units within the subject buildings (copies of this correspondence are enclosed).

**EXECUTIVE SUMMARY**

There is no basis upon which a condition requiring a contribution for affordable housing could lawfully be imposed on any consent granted with respect to the DA:

- there is no evidence demonstrating that the subject buildings were low-rental residential buildings at the relevant date, and as such cl 51 of SEPPARH does not apply;
- the Contributions Plan does not apply; and
- there is no other power pursuant to which a condition requiring a contribution could be imposed.

**CONTRIBUTIONS FRAMEWORK**

Conditions requiring monetary contributions on a development consent cannot be imposed except where permitted by express statutory provision (*Fitch v Shoalhaven City Council* (1987) 67 LGRA 165 at 170).

Following the reasoning in *Fitch*, s4.17(1)(h) of the Act provides that a condition requiring a monetary contribution can only be imposed if it is imposed in accordance with s7.11, s7.12, s7.24 or s7.32.

Contributions under s7.11 and s7.12 are Local Infrastructure Contributions levied by Councils and may only be imposed if allowed by and determined in accordance with a contributions plan (s7.13). Contributions under s7.24 are Special Infrastructure Contributions, levied by State Government, and similarly are also only able to be levied in accordance with a contributions plan. Section 7.32 provides an express regime for the levying of contributions for affordable housing.

Contributions pursuant to s7.12 may, for present purposes, be ignored as these are contributions calculated as a fixed percentage of development costs, and the contribution may be applied to any purpose. That is not the nature of the condition here being contemplated.

Section 7.24 may also be ignored as no contributions plan for Special Infrastructure Contributions relevantly applies.

## LOCAL INFRASTRUCTURE CONTRIBUTIONS

The relevant plan is North Sydney Section 94 Contributions Plan 2013 (s94 being the predecessor section to s7.11).

The Contributions Plan makes express provision for affordable housing contributions at Part 10, however the Part acknowledges the existence of SEPPARH and s94F (being the predecessor section to s7.32) and a Ministerial direction to transfer any affordable housing contributions to Housing NSW.

The plan expressly states:

> *"while the State regime relating to affordable housing remains in place, contributions for development consents issued after 2 October 2009 will not be levied for the loss of affordable housing under this Plan. Any payment of contributions for the loss of affordable housing will only be required in accordance with the provisions of the Affordable Housing SEPP and s.94F of the EP&A Act."*

Accordingly no affordable housing contribution can be levied pursuant to s7.11, as to do so not be in accordance with the Contributions Plan, and so in contravention of s7.13 of the Act.

## SEPPARH

Section 7.32 "applies with respect to a development application for consent to carry out development within an area if a State environmental planning policy identifies that there is a need for affordable housing within the area" and the consent authority is satisfied, relevantly, that the development will or is likely to reduce the availability of affordable housing, or will create a need for affordable housing (s7.32(1)).

If these criteria are not met, the section does not apply.

Where the section applies, it permits the imposition of a condition requiring the dedication of land or the payment of a monetary contribution (s7.32(2)) but only if:

> *(a) the condition complies with all relevant requirements made by a State environmental planning policy with respect to the imposition of conditions under this section, and*

> (b) *the condition is authorised to be imposed by a local environmental plan, and is in accordance with a scheme for dedications or contributions set out in or adopted by such a plan, and*
>
> (c) *the condition requires a reasonable dedication or contribution, having regard to the following—*
>
> > (i) *the extent of the need in the area for affordable housing,*
> >
> > (ii) *the scale of the proposed development,*
> >
> > (iii) *any other dedication or contribution required to be made by the applicant under this section or section 7.11.*

It should be noted that each of the above criteria must be satisfied in order for a condition to be lawfully imposed: the condition must comply with the SEPP requirements AND be authorised by and be in accordance with an LEP AND be reasonable having regard to the need in the area for affordable housing.

North Sydney Local Environmental Plan 2013 ("NSLEP") applies to the land, but makes no provision for affordable housing and so prima facie, no condition can be imposed. Pursuant to cl 15A of Schedule 4 to the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017* ("the Transitional Regulation"), however, the reference in s7.32(3)(b) to a condition authorised to be imposed by an LEP is to be read as a reference to a condition authorised to be imposed by a SEPP or an LEP[1].

The relevant instrument for the purposed of s7.32(1) and (3) is SEPPARH[2].

Cl 51(1) identifies a need for affordable housing in three areas – the Sydney Region, the Newcastle local government area and the Wollongong local government area – and then goes on to permit the imposition of a condition in certain circumstances, and specifies how the contribution is to be determined.

Cl 51, however, is found within Part 3 of SEPPARH, as is cl 49. Cl 49 specifies which building the Part, and hence cl 51, applies to. Cl 49(1) provides:

> *This Part applies only to those buildings that were low-rental residential buildings as at 28 January 2000, and does not apply to any building that becomes a low-rental residential building after that date.*

---

[1] We note we have some doubt as to the validity of this provision, but given that the ultimate result is that SEPPARH does not apply, we are prepared to accept the validity of the provision for the purposes of this advice.

[2] State Environmental Planning Policy No 70 – Affordable Housing (Revised Schemes) also identifies a need for affordable housing, but does not require the imposition of conditions, rather specifying the matters to which regard must be had in imposing a condition.

If the relevant buildings were not low-rental residential buildings as at 28 January 2000, then cl 51 will not apply to the development, and accordingly would not permit the imposition of a condition for the purposes of s7.32 of the Act.

Low-rental residential building is relevantly defined, at cl 47(1) to mean a building used as:

- a residential flat building containing a low-rental dwelling, being a dwelling let at a rental not exceeding the medial rental level for a dwelling of the same type and number of bedrooms, and in the same local government area; or
- a boarding house.

Having regard to the ARH Assessment, the subject buildings are arguably low-rental residential buildings as at the date the DA was made. That is not the test, however. The threshold question is whether the buildings were low-rental residential buildings on 28 January 2000.

*Hampstead Home Units Pty Ltd v Woollahra Municipal Council* [2016] NSWLEC 169 was a challenge to the validity of a condition requiring a contribution for affordable housing purportedly pursuant to cl51 of SEPPARH. His Honour Justice Moore held (at [7]-[9]):

> *There is, in consideration of this provision, no doubt that at the present time the building comprises a low rental residential building. There is, however, no evidence that the assessing officer ever asked himself, "Is there any evidence that demonstrates that this building was a low residential building as at 28 January 2000?".*
>
> *When I put that proposition to Mr Rigg, the solicitor who is appearing for the Council this morning, he quite properly conceded that there was at the present time no such evidence, and that it was unlikely that even if I were to permit the granting of subpoenas and provide an adjournment to permit exploration of this issue, that it would be possible to obtain evidence that would evince satisfaction of that preliminary fundamental precursor test in cl 49(1).*
>
> *The consequence of that is that the appeal must be upheld and condition G1 deleted.*

His Honour goes on to find (at [14]-[15]):

> *It is, however, expressly made clear that* ***the 28 January 2000 threshold is a fundamental hurdle that must be passed before anything else can be done under this part of the State Environmental Planning Policy (Affordable Rental Housing) 2009****.*

> *Properly considered, either by the assessing officer or those who may have subsequently considered the assessing officer's report further up the decision-making chain in the Council or by those who may have advised the Council over the intervening period of time**, it was obvious that the Policy - absent evidence to demonstrate compliance with cl 49(a) - could not possibly apply to this building**.* [our emphasis]

Notably in that matter, the Applicant was awarded its costs of the proceedings as the Court held that the Council's case, absent the necessary evidence was doomed to failure from the outset.

The Court followed the approach taken in *Hampstead Homes* in *RNB 49 Drumalbyn Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 1302. There, despite the Applicant being amenable to the imposition of the condition, the Court held that it had no power as it had no evidence that the building was a low-rental residential at the relevant date (at [84]-[90].

There is no evidence as to the rental details of any unit within the subject buildings as at 28 January 2000, nor within several years of that date.

The ARH Assessment does not include rental information dating back that far. The ARH Assessment is only of relevance if some other document demonstrates that SEPPARH applies, so as to require an assessment.

The enquiries made of the current owners of the buildings disclose, in the email of Robert Barnes of 25 June 2020, that they do not hold rental records going back to January 2000.

Similarly the enquiries made by Ethos Urban in preparing the SEE, as set out in their letter of 25 June 2020 and the enclosures therewith, disclose that no relevant public authority, including Council, holds any record which would evidence the rent at the relevant date.

Absent any evidence, the consent authority cannot be satisfied that Part 3, and cl 51, of SEPPARH applies. As the SEPP cannot be applied, there is no instrument to trigger the application of s7.32 of the Act.

## CONCLUSION

The Aukim memo states that the consent authority is entitled to consider refusal of the DA pursuant to cl 50(2)(e) of SEPPARH. Having regard to the above analysis, this is plainly incorrect as cl 50, falling within Part 3, can only be applied to a building demonstrated to be a low-rental building at 28 January 2000.

The Aukim memo goes on to recommend the imposition of a condition under cl 51 of SEPPARH. As demonstrated above, such a condition would be unlawful and open to challenge.

Any such challenge would, on the basis of the information to hand, have good prospects to success, with a reasonable prospect of recovering costs of the proceedings.

Yours faithfully

Joshua Palmer
Partner
Accredited Specialist Local Government and Planning Law

ETHOS
URBAN

25 June 2020

Mr Joshua Palmer
Partner
Pikes & Verekers Lawyers
Level 2, 50 King Street
Sydney, NSW, 2000

Dear Joshua,

**AFFORDABLE HOUSING RESEARCH**

We write to you in respect of the proposed development at 2-4 Blue Street and 1-5 William Street, North Sydney (the Site). Specifically, we write to advise of the research that was undertaken during the due diligence process that Thirdi undertook in purchasing the site.

Ethos Urban was engaged to provide planning advice in respect of the development potential of the Site. As part of that process we noted the potential for *State Environmental Planning Policy (Affordable Rental Housing) 2009* (AHSEPP) to apply. In order to confirm whether or not the AHSEPP was applicable we consulted with the following authorities to determine whether or not there were any records of buildings containing low rental dwellings as at 28 January 2000 which would allow us to determine if the AHSEPP was applicable or not:

- Department of Family and Community Services
- Department of Planning, Industry and Environment
- North Sydney Council

As can be seen from the correspondence attached, none of the three authorities had a readily accessible record of what properties comprised low rental accommodation at that date.

I trust the above is of assistance. Please let me know should you require any further information.

Yours sincerely,

**Jennie Buchanan**
Director
9409 4944
jbuchanan@ethosurban.com

**Subject:** FW: Affordable Housing
**Date:** Monday, 18 March 2019 at 2:17:19 pm Australian Eastern Daylight Time
**From:** Chris Patfield
**To:** Jennie Buchanan
**Attachments:** image005.jpg, image006.png, image007.png, image008.png

Hi Jennie,
Please see below for a response from Council. Nothing all too conclusive unfortunately.
Let me know if you need me to do any further following up or research.
Cheers,
Chris


**Chris Patfield**

ETHOS URBAN

Senior Urbanist
Planning

**T.** +61 2 9956 6962
**D.** +61 2 9409 4909
**M.** +61 4 3401 4517
**W.** ethosurban.com
173 Sussex Street
Sydney NSW 2000




**From:** cis <CIS@northsydney.nsw.gov.au>
**Sent:** Monday, 18 March 2019 2:15 PM
**To:** Chris Patfield <cpatfield@ethosurban.com>
**Subject:** Affordable Housing

Mr Patfield,
Further to your recent enquiry please be advised that Council does not keep a readily available record of what properties may be classified as affordable housing under the SEPP.
You may wish to arrange with our records team to search the recorda for the site as there is likely to be some primary or secondary evidence of the status of the site. This could be rates notices or evidence of annual boarding house license fees being paid or you might find planning consent or correspondence which helps clarify the question.
In respect of the second question unfortunately I am not in a position to advise whether the formula quoted is valid.
Yours,


**Gavin McConnell**
Executive Planning Advisor
**P** +61 2 9936 8481
**E** Gavin.McConnell@northsydney.nsw.gov.au

www.northsydney.nsw.gov.au

**Subject:** ARHSEPP - potential low rental dwellings
**Date:** Wednesday, 1 May 2019 at 9:08:26 am Australian Eastern Standard Time
**From:** Philippa Davis
**To:** Jennie Buchanan
**Attachments:** image001.png, image002.jpg, image003.png, image004.png, image005.png

Hi Jennie
Your email has been forwarded to me for a response. However, this is the Department of Planning and Environment's policy – the Affordable Rental Housing SEPP.
You need to contact them about any queries you have with interpretation or guidance on their policy.
I have previously dealt with Suzie Hatherly in the Housing Policy team in DPE on issues relating to part 3 of the ARHSEPP and I suggest you contact her:
Suzie.Hatherly@planning.nsw.gov.au
If you still need information about the Rent and Sales Report data after you have spoken to Suzie, then I suggest you get back to Shashi Karigiri here at FACS:
Shashi.karigiri@facs.nsw.gov.au
And she will put you through to a statistician who can assist you with your query. But be aware this is only if you have a question about the data and not interpretation of whether a dwelling falls under the definition of a low rental residential flat building for the purposes of the SEPP –FACS would not be able to assist you with that.
Thanks
Philippa

**Philippa Davis,**
**Community Housing and Pathways**
Department of Family and Community Services | Commissioning | Housing
**T** 02 8753 8526
**E** philippa.davis@facs.nsw.gov.au
**A** Level 5, 223 Liverpool Rd, Ashfield 2131
**W** www.facs.nsw.gov.au

NSW GOVERNMENT | Family & Community Services



**From:** Jennie Buchanan <JBuchanan@ethosurban.com>
**Sent:** Thursday, 11 April 2019 11:31 AM
**To:** FACSIAR <FACSIAR@facs.nsw.gov.au>
**Subject:** Potential existing low rental dwellings

To Whom It May Concern,
I have tried calling both the Land and Housing Corporation and also Family and Community Services and was passed around between several people, none of whom could assist with my query. I am wondering if someone in your department is able to help? We have previously contacted the Department of Planning and North Sydney Council who suggested that we contact yourselves for assistance.
We are advising a client within the North Sydney LGA who intends to redevelop a site that may be subject to the provisions of Part 3 of the Affordable Rental Housing SEPP. The site is not a boarding house and is not strata subdivided. However, we are struggling to determine if the site is 'a residential flat building containing a low-rental dwelling' under the provisions of the SEPP due to the lack of available information.
Firstly, does FACS have a register of what buildings were providing low rental dwellings as at 28 January 2000?
Secondly, we understand that a 'low rental dwelling' is one rented at or below the median level for that type of unit at any time in the 24-month period preceding the lodgement of a DA. We have access to

the ‘Rent and Sales Reports’ on the Family and Community Services website. The December 2018 quarter data shows the following for North Sydney:

| Dwelling Types | Bedroom Numbers | First Quartile Weekly Rent for New Bonds $ | Median Weekly Rent for New Bonds $ | Third Q Weekly New Bc $ |
|---|---|---|---|---|
| Flat/Unit | Total | 510 | 610 | |
| Flat/Unit | Bedsitter | 400 | 435 | |
| Flat/Unit | 1 Bedroom | 465 | 520 | |
| Flat/Unit | Not Specified | 473 | 600 | |
| Flat/Unit | 2 Bedrooms | 600 | 675 | |
| Flat/Unit | 3 Bedrooms | 806 | 963 | 1 |
| Flat/Unit | 4 or more Bedrooms | - | - | |

We are of the understanding that the highlighted column is the most relevant column. If we are to review data for the 24 month period prior to lodgement, this would include the following for North Sydney:

| Dwelling Types | Bedroom Numbers | December Quarter 2018 | June Quarter 2018 | Marcl |
|---|---|---|---|---|
| Flat/Unit | Total | 610 | 615 | |
| Flat/Unit | Bedsitter | 435 | 450 | |
| Flat/Unit | 1 Bedroom | 520 | 525 | |
| Flat/Unit | Not Specified | 600 | 600 | |
| Flat/Unit | 2 Bedrooms | 675 | 700 | |
| Flat/Unit | 3 Bedrooms | 963 | 1000 | |
| Flat/Unit | 4 or more Bedrooms | - | - | |

As is shown in the above table, the format of available information from September Quarter 2017 onwards is not consistent with data available prior to this date. We are of the understanding that if any unit is currently being rented at or below any of the rents highlighted in the table above, that this constitutes a ‘low rental dwelling’.

Can you please confirm that our understanding is correct?

Many thanks in advance for your assistance.

Kind Regards,

Jennie

**Jennie Buchanan**

Director
Planning

ETHOS URBAN

**T.** +61 2 9956 6962
**D.** +61 2 9409 4944
**M.** +61 404 909 035
**W.** ethosurban.com
173 Sussex Street
Sydney NSW 2000

**Please note I am not in the office on Fridays.**



==========================================================

Security Statement

**Subject:** RE: Defining 'Low Rental Dwellings' under the ARH SEPP
**Date:** Wednesday, 6 March 2019 at 12:33:00 pm Australian Eastern Daylight Time
**From:** Douglas Cunningham
**To:** Jennie Buchanan
**CC:** Chris Patfield
**Attachments:** image002.png, image003.jpg, image004.png, image005.png, image006.png, image007.jpg, image008.jpg, image009.jpg, image010.jpg, image011.jpg, image012.jpg, image013.png, image014.png, image015.png

Hi Jennie
Unfortunately, at this time I am unable to provide you a timeframe for when the upgrade will be completed.
Thanks
Doug

**Douglas Cunningham**
Planning Officer
Housing Policy
320 Pitt Street | GPO Box 39 | Sydney NSW 2001
T (02) 9274 6357 | E douglas.cunningham@planning.nsw.gov.au



**From:** Jennie Buchanan <JBuchanan@ethosurban.com>
**Sent:** Wednesday, 6 March 2019 12:24 PM
**To:** Douglas Cunningham <Douglas.Cunningham@planning.nsw.gov.au>; Chris Patfield <cpatfield@ethosurban.com>
**Subject:** RE: Defining 'Low Rental Dwellings' under the ARH SEPP
Thanks Douglas, are you able to advise when the online assessment tool will be available again? It is currently noted as being upgraded on your website.

**– ARHSEPP Part 3 information**

### Retention of existing affordable rental housing under Part 3 of the ARHSE

Part 3 of the ARHSEPP provides for the retention of existing affordable rental housing stock. Deve
demolish, alter or add, change the use of, or strata subdivide existing low cost rental dwellings ma
the provision of alternative affordable housing.

To find out what types of development trigger this requirement refer to Part 3 of the State Environm
(Affordable Rental Housing) 2009, and for more information about contributions refer to the Afforda
Guidelines for Retention of Existing Affordable Rental Housing, October 2009.

The Department's Online Assessment Tool for determining contributions payable under Part 3 of th
upgraded. In the meantime, data about the median rental and sales prices for developments is in t
local government area 2015 06 to 2017 03 (xlsx 38.3 KB) which can be used in calculations. This 
Department of Family and Community Services Housing Office Rent and Sales Report. More infor
Explanatory notes (PDF, 167 KB).

To ask a question about Part 3 of the ARHSEPP, please contact the Housing Policy team via Servi

Many thanks,
Jennie

**Jennie Buchanan**

Director
Planning

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**M.** +61 404 909 035
**W.** ethosurban.com
173 Sussex Street
Sydney NSW 2000

ETHOS URBAN



**From:** Douglas Cunningham <Douglas.Cunningham@planning.nsw.gov.au>
**Sent:** Wednesday, 6 March 2019 10:33 AM
**To:** Chris Patfield <cpatfield@ethosurban.com>
**Cc:** Jennie Buchanan <JBuchanan@ethosurban.com>
**Subject:** RE: Defining 'Low Rental Dwellings' under the ARH SEPP

Good Morning Chris

Thank you for your enquiry regarding Part 3 of the Affordable Rental Housing SEPP.

Under the SEPP, a low-rental dwelling means a dwelling that, at any time in the 24 month period prior to the lodgement of a development application, was let at a rental not exceeding the median rental level for that time. I can confirm that if one of the dwellings within your clients property was rented for a period at or below median rental level for that corresponding period, it can be considered to be a low-rental dwelling.

To determine if the property was a low rental dwelling as at 28 January 2000, you'll need to contact either FACS or North Sydney Council to see if they have that data available.

I can confirm that to calculate the replacement cost, you need to find the average value of the first quartile of sales of strata properties in the local government area, as specified in the 4 most recent editions of the Rent and Sales Report.

Unfortunately, the Department is not in a position to advise you as to where or not the calculations you've have provided are correct. Given the assessment and approval of this type of calculation is carried out as part of the development application process I would suggest talking to North Sydney Council.

Feel free to contact me if you have any further questions

Thanks

Doug

**Douglas Cunningham**
Planning Officer
Housing Policy
320 Pitt Street | GPO Box 39 | Sydney NSW 2001
T (02) 9274 6357 | E douglas.cunningham@planning.nsw.gov.au

NSW GOVERNMENT Planning & Environment



**From:** Chris Patfield <cpatfield@ethosurban.com>
**Sent:** Tuesday, 5 March 2019 4:27 PM
**To:** DPE PS Housing Policy Mailbox <housingpolicy@planning.nsw.gov.au>
**Cc:** Jennie Buchanan <JBuchanan@ethosurban.com>
**Subject:** Defining 'Low Rental Dwellings' under the ARH SEPP

Hi there,
I recently had a conversation with David from the Housing Policy team who recommended that I put my enquiry in an email to this address.
We are advising a client within the North Sydney LGA who intends to redevelop a site that may be subject to the provisions of Part 3 of the Affordable Rental Housing SEPP. The site is not a boarding house. However, in the first instance, we want to define whether the site is 'a residential flat building containing a low-rental dwelling' under the provisions of the SEPP.
We understand that a 'low rental dwelling' is one rented at or below the median level for that type of unit at any time in the 24-month period preceding the lodgement of a DA. We have access to the 'Rent and Sales Reports' on the Family and Community Services website. The December 2018 quarter data shows the following for North Sydney:

| **Dwelling Types** | **Bedroom Numbers** | **First Quartile Weekly Rent for New Bonds $** | **Median Weekly Rent for New Bonds $** | **Third Q Weekly New Bc $** |
|---|---|---|---|---|
| Flat/Unit | Total | 510 | 610 | |
| Flat/Unit | Bedsitter | 400 | 435 | |
| Flat/Unit | 1 Bedroom | 465 | 520 | |
| Flat/Unit | Not Specified | 473 | 600 | |
| Flat/Unit | 2 Bedrooms | 600 | 675 | |
| Flat/Unit | 3 Bedrooms | 806 | 963 | 1 |
| Flat/Unit | 4 or more Bedrooms | - | - | |

We are of the understanding that the highlighted column is the most relevant column. If we are to review data for the 24 month period prior to lodgement, this would include the following for North Sydney:

| **Dwelling Types** | **Bedroom Numbers** | | | |
|---|---|---|---|---|
| | | **December Quarter 2018** | **June Quarter 2018** | **March** |
| Flat/Unit | Total | 610 | 615 | |
| Flat/Unit | Bedsitter | 435 | 450 | |
| Flat/Unit | 1 Bedroom | 520 | 525 | |
| Flat/Unit | Not Specified | 600 | 600 | |
| Flat/Unit | 2 Bedrooms | 675 | 700 | |
| Flat/Unit | 3 Bedrooms | 963 | 1000 | |
| Flat/Unit | 4 or more Bedrooms | - | - | |

As is shown in the above table, the format of available information from September Quarter 2017 onwards is not consistent with data available prior to this date. We are of the understanding that if any unit is currently being rented at or below any of the rents highlighted in the table above, that this constitutes a 'low rental dwelling'.
Can you please confirm that our understanding is correct? Do you know how we can determine if the building was a low rental dwelling as at 28 January 2000?
Further to this, if we confirm that we are dealing with low rental dwellings, we understand that we need to calculate the contribution payable based on the 'replacement cost' in the following formula:

(3) If a condition is to be imposed under this clause, the amount of the contribution is to be calculated in accordance with the following fo

$C = L \times R \times 0.05$

where:

*C* is the contribution payable.

*L* is the total number of bedrooms in a low-rental dwelling and boarding rooms that will be lost by the proposed development.

*R* is the replacement cost calculated as the average value of the first quartile of sales of strata properties in the local government area i specified in the 4 most recent editions of the *Rent and Sales Report*.

We understand this is as follows for North Sydney:

| Dwelling Type | First Quartile Sales Price $'000s | | |
|---|---|---|---|
| | **September Quarter 2018** | **March Quarter 2018** | **December Quai** |
| Total | 855 | 912 | 914 |
| Non Strata | 1720 | 2000 | 2030 |
| Strata | 821 | 882 | 865 |

Can you also please confirm that our understanding is correct?

Very much appreciate your assistance. Please feel free to give me a call to talk through any of the above.

Kind regards,


**Chris Patfield**

ETHOS URBAN

Senior Urbanist
Planning

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**M.** +61 4 3401 4517
**W.** ethosurban.com
173 Sussex Street
Sydney NSW 2000

**Subject:** RE: Rent Records @ January 28th 2000
**Date:** Thursday, 25 June 2020 at 1:53:10 pm Australian Eastern Standard Time
**From:** Robert Barnes
**To:** Zach Constantinou
**Attachments:** image006.png, image007.png, image008.png, image009.png, image010.png

Zach,

I refer to your email below and advise that Woodford/ITI (the Vendors) do not have any rental information at the requested dates as we only started to buy into the site in 2006. I also confirm that none of the Body Corporates of the respective Strata Plans nor the Companies of the respective Company Title properties have that rental information.

Sorry that we could not assist with your enquiry.

Regards,
**Robert Barnes**
T: 61 2 9412 3033
F: 61 2 9411 3242
M: 0411 179 837
E: robert.barnes@stewartbrown.com.au
W: www.stewartbrown.com.au

AFR Top 100

StewartBrown Logo

Changing Banner



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**From:** Zach Constantinou <zach@thirdigroup.com.au>
**Sent:** Thursday, 25 June 2020 1:29 PM
**To:** Robert Barnes <Robert.Barnes@stewartbrown.com.au>
**Subject:** Rent Records @ January 28th 2000
**Importance:** High

Hi Robert,

We're doing some more work on the historical rents of the buildings.

Are you or the body corporate able to provide rent records **at 28th January 2000**? If not a year or 2 either side?

Please call me if you have any questions

Kind regards,

**Zach Constantinou**
Project Manager
(02) 9409 7200 | 0478 773 678 | zach@thirdigroup.com.au
thirdigroup.com.au | 343 Pacific Highway, North Sydney
NSW 2060