



**HONES
LAWYERS**

Experts in Property & Planning Law

Our Ref: JBH:JBH:23095

20 March 2023

Director of Planning & Infrastructure
Willoughby City Council
PO Box 57
CHATSWOOD NSW 2057

By Email: hugh.phemister@willoughby.nsw.gov.au

Attention: Hugh Phemister

Dear Mr Phemister,

**Planning Proposal 2023/002
Ppty: 3 McIntosh Street, 2 Day Street, 40 & 42 Anderson Street,
Chatswood (Site)**

We act for 3 McIntosh Pty Limited concerning Planning Proposal 2023/002 (PP 002) and refer to Council's letter to Parade Consulting dated 9 March 2023.

The concern

Our client is concerned at the position taken by Council with regard to the application of a 10% affordable housing requirement to PP 002.

Our client is not concerned however at the requirement for affordable housing in general and indeed embraces it, rather the concern arises from the reasonable understanding arising from representations made by Council, and the history of the matter, that the affordable housing requirement was to be set at 4% of gross floor area (GFA). To understand this comment properly, it is necessary to understand the history of the matter.

The history

The history of client's actions are set out below, noting these comments concern 3 McIntosh Street, 2 Day Street, 40 Anderson and 42 Anderson Street, Chatswood (all known as the Site).

Prior to August 2018 our client optioned to purchase 3 McIntosh Street, Chatswood and 2 Day Street, Chatswood, with the intention being to consolidate those properties for the purposes of submitting an application for rezoning via a planning proposal.

Hones Lawyers Pty Ltd | ABN 56 605 585 041
Level 4 66 Berry Street North Sydney NSW 2060 | PO Box 1989, North Sydney NSW 2059
T +61 2 9929 3031 | F +61 2 9929 7071 | E reception@honeslawyers.com.au
W www.honeslawyers.com.au
Liability limited by a scheme approved under Professional Standards Legislation



On 22 August 2018 a preliminary planning proposal meeting was held with Council at which time our clients first iteration of its planning proposal was presented. The minutes of that meeting reflect a 4% affordable housing criteria.

During the next 18 months, our client managed to consolidate the rest of the Site being 40 Anderson and 42 Anderson Street Chatswood,

From late 2021 to June 2022 detailed planning work was undertaken concerning the submission of PP 002 for the consolidated Site which now also included 40 and 42 Anderson Street in an endeavor to fulfill Council's strategy recommendations.

From March to June 2022 Council's planning proposal to amend its LEP and DCP were on exhibition (**Council's PP**). Regrettably no notification was afforded our client that this would be applied to their already consolidated sites for which planning work had already commenced. By that time PP 002 was well advanced and ready for preliminary submission and comment with Council.

On 20 July 2022 a second preliminary planning proposal meeting was held with Council Staff (Chris Nguyen) to discuss the controls that would need to be applied in the formulation of PP 002 for the consolidated site. Significant documentation, which formed part of PP 002, was presented at that time. Importantly no mention of a requirement for 10% affordable housing was raised at that time.

Consequently, our client requested, and paid for, the third and current preliminary planning proposal in support of PP002 in August 2022, in a pre lodgment planning proposal, meeting.

The pre lodgment planning proposal meeting was subsequently held on 28 September 2022. During that meeting the 4% affordable housing requirement was maintained. Our client maintains that the payment for, and attendance at, three consecutive pre-planning proposals dating from August 2018 till Sept 2022 is clear and unequivocal indication of its intention to lodge PP 002, long before Councils indicated position of November 22 as stated in the letter of 9 March 2023.

On 17 October 2022 our client received the minutes from the pre lodgment meeting. Importantly those minutes included the following: (our emphasis)

8. Affordable Housing Officer

Comments:

- *A minimum of 4% affordable housing should be provided throughout the development (rather than together) in accordance with Council's existing LEP and DCP requirements.*
- *Council requires commitment to CBD Strategy Key Element 14 at Planning Proposal stage – with this affordable housing being within the residential floor space proposed.*
- *Any additional affordable housing contribution is encouraged as part of an offer to enter a Planning Agreement.*

As is readily apparent from the above extract of the minutes, affordable housing was still set at 4% and any increase was not mandatory but rather only encouraged.

On 12 December 2022 Council resolved to proceed with its planning proposal. In doing so Council acknowledged that existing planning proposals ought not be the subject of its planning proposal. Our client maintains that because it had paid for and participated in the three pre-lodgments starting from August 2018, including the 28 September 2022 pre-lodgment meeting and had formally lodged PP.002 only 8 business days after Council's resolution that the Site should be considered as one of the sites to which Council's planning proposal does not apply.

Consistent with the representations contained within the minutes of 17 October 2022, specifically as regards affordable housing, considerable time and expense was expended in finalising PP 002 with it being submitted on 20 December 2022.

The way forward

From what we have set out above it is readily apparent that, contrary to what is set out in Council's letter of 9 March 2023, namely that Council's position of a 10 % affordable housing criteria was clear, no such position was clear. Further support that Council's position was far from clear is found in the existing controls Council seeks to rely upon which, themselves, suggested the possibility of a range between 4% and 10% for the provision of affordable housing.

Our client reasonably understood in the context of all of its dealings with Council that its planning proposal should be based on a 4% affordable housing criteria and, based on that understanding (reinforced by the pre lodgement minutes), our client expended considerable funds in preparing PP 002 and in exercising options and ultimately fully acquiring the Site. Importantly all of these endeavours were running in parallel with Council's planning strategy.

Given the history we have recited above it seems to us that the fairest way to address our clients' concerns, and still achieve implementation of the goals that are sought to be achieved by the Council PP, would be to include a savings provision such that PP 002 was excluded from the application of Council's PP, or alternatively, limit the land to which Council's PP applies so that it does not apply to land the subject of PP 002.

We ask that Council give serious consideration to this submission.

Yours faithfully
HONES LAWYERS



Jason Hones
Managing Partner
jhones@honeslawyers.com.au



HONES LAWYERS

Experts in Property & Planning Law

Our Ref: JBH:JBH:23095

20 April 2023

Director of Planning & Infrastructure
Willoughby City Council
PO Box 57
CHATSWOOD NSW 2057

By Email: hugh.phemister@willoughby.nsw.gov.au

Attention: Hugh Phemister

Dear Mr Phemister,

Planning Proposal 2023/002
Ppty: 3 McIntosh Street, 2 Day Street, 40 & 42 Anderson Street,
Chatswood (Site)

We refer to your letter of 3 April 2023.

Firstly, we apologise in the delay in responding to you. Our delay arose as a consequence of the Easter period and the writer's absence.

Having now considered Council's letter we note that it, unfortunately, fails to properly address the reasonable expectation that our client had concerning the 4% affordable housing criteria that Council had put forward as the relevant affordable housing percentage as late as its minutes of 17 October 2022.

We also note that your letter seems to rely upon "a position established in November 2022". We are unaware of how that "position" was established. It certainly does not appear that comments from the public were sought prior to establishing such a position, nor was our client afforded any opportunity to address Council concerning it.

Irrespective of these matters, our client will not be withdrawing its planning proposal. Rather our client wishes for Council to fairly assess its proposal noting the history previously set out in our earlier letter and to apply a consistent approach to our client's proposal as it has done to other planning proposals which have proceeded through a pre lodgement process (such as our client's proposal).

Hones Lawyers Pty Ltd | ABN 56 605 835 041
Level 4, 63 Bury Street, North Sydney, NSW 2060 | PO Box 1989, North Sydney, NSW 2060
T +61 2 9921 3031 | F +61 2 9921 7071 | E enquiries@honeslawyers.com.au
W www.honeslawyers.com.au
Last updated by a Firm approved under Professional Standards Legislation



As we set out in our earlier letter it seems to us that the fairest way to address our clients' concerns, and still achieve implementation of the goals that are sought to be achieved by the Council's planning proposal, would be to include a savings provision such that our clients' planning proposal was excluded from the application of Council's planning proposal, or alternatively, limit the land to which Council's planning proposal applies so that it does not apply to land the subject of our clients' planning proposal.

In fact, the way forward that we set out in our earlier letter (and reiterate in this letter) seems entirely consistent with the way in which Council has suggested other planning proposals lodged **before the making** of Council's planning proposal be dealt with (see for example the following parts set out in the Council meeting report of 12 December 2022: para 4.7.6 on p.115; attachment 8 at p.1, recommendation 1(a) on p.2 and pp 7-8).

So as to avoid our client needing to unnecessarily consider its options regarding Council's planning proposal and the manner in which that proposal has been considered, we ask Council to confirm that it will agree to adopt one of the ways forward we have set out above.

We look forward to Council's positive response.

Yours faithfully
HONES LAWYERS



Jason Hones
Managing Partner
jhones@honeslawyers.com.au



HONES LAWYERS

Experts in Property & Planning Law

Our Ref: JBH:JBH:23095

7 June 2023

Director of Planning & Infrastructure
Willoughby City Council
PO Box 57
CHATSWOOD NSW 2057

By Email: hugh.phemister@willoughby.nsw.gov.au

Attention: Hugh Phemister

Dear Mr Phemister,

Planning Proposal 2023/002 Ppty: 3 McIntosh Street, 2 Day Street, 40 & 42 Anderson Street, Chatswood (Site)

We refer to previous communications in this matter.

We note that we have written to Council on 20 March 2023 and 21 April 2023. Copies of those letters are enclosed for completeness.

Our letters concerned our clients above planning proposal and Council's current planning proposal in which, amongst other things, it proposes to change the affordable housing criteria from 4% to 10%.

As you are aware, our client's planning proposal commenced preparation in 2018. At Council's behest it was requested that the planning proposal consolidate a number of additional sites. Our client did as requested, and ultimately consolidated a number of additional sites from what was first proposed.

Thereafter our client sought input from Council, ultimately engaging in a number of pre lodgement meetings, the last of which occurred on 28 September 2022.

At all times Council represented to our client that the relevant affordable housing criteria was 4%. It was never suggested, and it is in error to do so, that our client's site, and planning proposal, would be the subject of a 10% affordable housing criteria. In fact, the Council's minutes of the September meeting (erroneously recorded on the minutes as 28 August 2022) reflect what is set out above. A copy of those minutes is also enclosed.

Hones Lawyers Pty Ltd | A 34 56 605 755 041

Level 4, 100 Bury Street, North Sydney, NSW 2060 | PO Box 1999, North Sydney, NSW 2060

T +61 2 9929 5021 | F +61 2 9929 1121 | E enquiries@hones-lawyers.com.au

W www.honeslawyers.com.au

Liability limited by a scheme approved under Professional Standards Scheme



To the extent Council may suggest that our clients were made aware that their site would be the subject of a 10% affordable housing criteria, that suggestion is inconsistent with Council's prior written representations and so is in error. Our client seeks to address that error (to the extent it might exist) by Council adopting the way forward we have previously set out and which follows below.

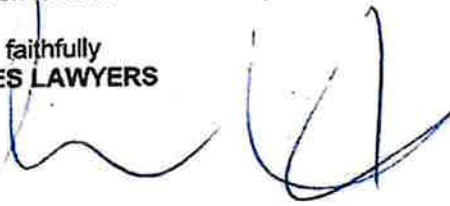
We have previously requested that Council adopt the same approach for our client that it has for a select few other planning proposals currently awaiting gazettal. That is, we have requested that our client's site be included in the savings provision for Council's planning proposal so that the 10% affordable housing criteria does not apply to its site. Regrettably Council has not seen fit to agree with this course, despite its previous representations that the 10% criteria would not apply.

We are again instructed to seek Council's agreement to include our client's site in the list of sites to which the savings provision applies.

In the event Council does not agree, then reluctantly our client has instructed us to investigate what legal options it might have to challenge any decision Council may make to not include our client in the savings provisions. In other words, to challenge the making, and decision making process, of Council's planning proposal.

We look forward to Council's positive response.

Yours faithfully
HONES LAWYERS



Jason Hones
Managing Partner
jhones@honeslawyers.com.au

Encl.

c.c Ms C. Brooks
Department of Planning
christina.brooks@planning.nsw.gov.au

