



Department of Justice

STATUTORY DECLARATION
OATHS ACT 2001

I (full name) Matthew Emmerson Hurst

Of (residential address) 191 George Street Launceston Tasmania

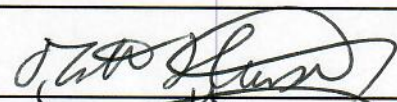
Occupation Town Planner (BTP), University Lecturer.

Do solemnly and sincerely declare that: the following pages of this PDF file are a true and accurate recollection of the events referenced and recorded therein. I have initialed each page. This Document has 8 pages in total including this signing page.

I make this solemn declaration under the *Oaths Act 2001*.

Declared at (place) Launceston Tasmania

On (date) 15/02/2024

Signature 

Before me  **Sonia Patricia Wood**
Justice of the Peace for Tasmania
JP No. 4411

(Justice, Commissioner for Declarations or authorised person)

Timeline of events regarding the AEON Site with regards to project commencement, Affordable Housing and Council's Correspondence

| Date | Event | Comment |
|----------------------------|--|---|
| Pre May 2017 | Purchase of 3 Macintosh and 2 Day Streets sites Commence | Shows an intention to consolidate the site and commence the rezoning with a Planning Proposal from this time onwards |
| May 2017 | Attempt to purchase 38 Anderson Street | Shows an intent by the Vakilis to consolidate the entire block to better align with Council's policy regarding amalgamated blocks and not leaving orphaned blocks |
| June 2017 | The Vendors of 38 withdrew from the sale due to disagreements between the owners regarding the deal | Shows an intent by the Vakilis to consolidate the entire block to better align with Council's policy regarding amalgamated blocks and not leaving orphaned blocks, this intent remained not withstanding this setback. |
| April 2021 | A new deal was agreed with the owners of 38 Anderson Street to sell to the Vakilis | Shows a continued intent by the Vakilis to consolidate the entire block to better align with Council's policy regarding amalgamated blocks and not leaving orphaned blocks, otherwise - by this time - a planning proposal for the other already consolidated blocks already acquired could have been lodged. |
| Late 2021 | The Vendors of 38 again withdrew from the sale due to disagreements between the owners regarding the deal | The Vakilis decide to try to move forwards with a Planning Proposal for the site, hoping that a deal regarding 38 Anderson Street can be achieved prior to lodgement |
| March to June 2022 | Council puts a draft LEP and DCP covering the entire CBD on Public Exhibition | Council's Draft documents discuss the intention to change the Affordable Housing policy requirement from 4% to 10%, however Council does not specifically notify the Vakilis that this will be applied to their already consolidated sites for which planning work had already commenced. |
| 20 th July 2022 | Preliminary meeting with Council Staff (Chris Nguyen) to discuss the controls that would need to be applied in the formulation of a Planning Proposal for the consolidated site. | This meeting was held to present the preliminary design concepts to a strategic planner at Council to obtain initial feedback. This represents a significant commencement of the work required for a Planning Proposal and represents the first time that written material was provided to council for consideration and comment. |
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| 28 th July 2022 | Christopher Nguyen from Council sends email stating that "The Council cannot guarantee that the controls exhibited in the draft LEP will be adopted." | It was further stated Council recognised at this time that "...the proposal complies with all controls of the Chatswood CBD Strategy". But a lack of certainty regarding the actual proposed changes to the LEP controls. This included a lack of certainty from Council regarding the possible changes to the Affordable Housing requirements for future developments – this triggered the need for further written clarification from Council through the formal Planning Proposal Pre-Lodgement process. |
| August 2022 | The Vakilis request a Pre-Lodgement Meeting with Council to Clarify the obligations that will apply to the site | This demonstrates the need to ensure that Council's expectations are clear before further commitment of time and resources are spent preparing a Planning Proposal |
| August 2022 | The Vakilis continue to try to consolidate the site to include 38 Anderson Street | This demonstrates a continued intent by the Vakilis to achieve outcomes that best align with Council's policies regarding site amalgamation |
| September 2022 | The Owners of 38 Anderson Street inform the Vakilis that they have no intention of selling the site. | The Vakilis decide that they must now proceed with a planning proposal that only includes the sites that have been amalgamated and that any further attempts to consolidate with 38 Anderson Street will simply waste further time and resources. |
| 28 th September 2022 | Pre-lodgement meeting held with Council regarding the Planning proposal for the now named AEON site. | This demonstrates the need to ensure that Council's expectations are clear before further commitment of time and resources are spent preparing a Planning Proposal for the site. |
| 17 th October 2022 | Pre-Lodgement report received from Council | <p>The report from Council clarified a number of obligations that the Vakilis should satisfy with their Planning Proposal, including specifically - with regards to affordable housing (in section 8 first dot point):</p> <p>8. Affordable Housing Officer Comments:</p> <ul style="list-style-type: none"> • 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. |
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| Late October 2022 | Vakilis decide to continue with the finalisation of the Planning Proposal | This represents a significant commitment of resources by the Vakilis on the basis of Council's clarifications contained in their pre-lodgement report |
| 22 nd December 2022 | Planning Report Lodged through the Planning Portal | The Planning Proposal has been prepared in complete alignment with the advice and clarifications provided by Council specifically relating to this site - on the basis that the advice is specific to the site and in accordance with the then current policies contained in various as then existing LEPs, DCPs, approved Strategy documents, and other approved policies, - not on the basis of any other information that may have been in various stages of development within Council and which at that time was otherwise not applicable to the site. |
| 9 th March 2023 | Council issue a letter informing the Vakilis Planner that the Planning Proposal should be amended (or otherwise withdrawn) to indicate an affordable housing component of 10% not 4%. | Council said that the lodged Planning Proposal was incorrect in its indication that 4% affordable housing would be provided because Council had placed on public exhibition in March 2022 draft planning documents that indicated Council's desire to change the policy requirements from 4% to 10%. They also infer in the letter that this represented notification of the change of policy and that this should have been adhered to in the Planning Proposal. This is in direct conflict with the written advice specifically sort by the Vakilis and previously received from Council in the form of Council's Pre-lodgement report of 17 th October 2022, which clarified that "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". |

Page 7 of 8

Record of Events for the AEON Site Planning Proposal regarding Council Interactions and Affordable Housing

22 August 2018 pre-lodgement meeting with Council

- Who was this with? The meeting was attended by the following Council Staff:
 - Norma Shankie-Williams (Strategic Planning Team Leader)
 - Emma Brown (Consultant Strategic Planner)
 - Gordon Farrelly (Traffic & Transport Team Leader)
 - Wil Robertson (Urban Design)

The meeting was attended by the following Project Team members:

- Harry Vakili
 - Reza Vakili
 - Matt Hurst, Parade Consulting P/L
- Which lots formed 'the site'? at the time of this meeting only 3 McIntosh and 2 Day Street had been consolidated into the site.
 - Was there any associated email correspondence? Yes, mostly just housekeeping, any discussing outcomes or decisions I will attach
 - What plans/documents were sent to Council? These are attached to this record as email attachments.
 - Did you issue any minutes? Council issues the minutes of Pre-lodgement meetings as a Record – attached.
 - Follow up with Council: Council sent us their record of the meeting and the Vakili's decided to attempt progress with further consolidation of the site.

20th July 2022 preliminary planning meeting with Council

Note that our first correspondence with Council regarding this project upon re-engagement was on the 14th of July 2022.

- The meeting was attended by the following Council Staff:
 - o Chris Nguyen (Council Strategic Planner)

The meeting was attended by the following Project Team members:

- Harry Vakili
 - Reza Vakili
 - Matt Hurst, Parade Consulting P/L
 - Drew Dickson , DDArchitects
- What was presented? The designs presented at attached as emails
 - At this time the site comprised of 3 McIntosh, 2 Day, 40 & 42 Anderson Streets Chatswood. Attempts to incorporate 38 Anderson Street into the consolidated site had failed on a number of occasions.
 - What was the PP seeking at this stage? The primary purposes of meeting with Council at this stage were to clarify the following:
 - o 1) to confirm that our own PP would progress in parallel with Council's LEP review
 - o 2) to confirm the planning controls that we wanted to change and what we wanted them to change to
 - o 3) to confirm that our PP would take precedence on this site should Council's LEP review progress on a faster timeline
 - What was discussed at the meeting and what was the outcome of the meeting? All of the items above were discussed at the preliminary meeting, and it was our understanding that each item above should be accepted for the purposes of moving the project forwards to a formal Pre-lodgement meeting. Council's officer also expressed Council's preference that the site be further consolidated to include 38 Anderson Street.
 - Council did not issue any formal minutes for this preliminary meeting, however, the following was provided by email:

From: "Nguyen, Christopher" <Christopher.Nguyen@willoughby.nsw.gov.au>
Date: 28 July 2022 at 09:36:53 AEST
To: Matt Hurst <matt.hurst@netzplan.com.au>
Cc: "O'Brien, Craig" <Craig.Obrien@willoughby.nsw.gov.au>, "Noble, Mitchell" <Mitchell.Noble@willoughby.nsw.gov.au>
Subject: Discussion regarding properties bound by Anderson St, McIntosh St and Day St

Hi Matt,

Following our meeting on 20 July 2022 (10am) regarding the properties bound by Anderson St, McIntosh St and Day St, I provide the following comments:

- A draft concept scheme was provided by Drew Dickson Architects. I provided my personal thoughts that I thought the scheme was positive, taking into consideration the proposal complies with all controls of the Chatswood CBD Strategy. I have to reiterate that I can never provide guarantees on outcomes for any proposed development whether for planning proposals or development applications. More thorough details can be provided if you apply for a pre-lodgement meeting.
- I would recommend lodging a pre-lodgement report for your planning proposal. This may involve having another meeting based on the updated documentation provided to Council and a report shall be drafted by Council which shall identify any changes that may be required or issues that must be resolved. Details and how to book a pre-lodgement meeting can be found in the link below:
<https://www.willoughby.nsw.gov.au/Development/Get-Approval/Pre-lodgement-Meetings>
- We discussed the timing of the comprehensive LEP currently off public exhibition. It is your team's decision regarding whether you'd like to lodge a planning proposal or wait until the comprehensive LEP is adopted to lodge a development application. The Council cannot guarantee that the controls exhibited in the draft LEP will be adopted. Please note that if a planning proposal is withdrawn, it is unlikely the Council would refund the fees paid due to an assessment and associated administrative works that have been conducted by Council.

Regards,

Chris

Christopher Nguyen - Strategic Planner
WILLOUGHBY CITY COUNCIL
PO Box 57 Chatswood NSW 2057
P +61 2 9777 7627 | M +61460006116
E Christopher.Nguyen@Willoughby.nsw.gov.au

We proceeded to book the Planning Proposal - Pre-lodgement Meeting (notwithstanding that Council's website contained the incorrect page address on the correctly "named" link for the correct type of meeting and only linked to the DA Pre-lodgement meeting booking page, this took me some weeks to convince Council that this was actually a problem as they kept repeatedly sending me the link containing the wrong page address and the site map also only linked to the landing page on which the incorrect link was located – hence the real booking page we needed was unreachable).

The Planning Proposal Pre-lodgement meeting was finally booked and paid for and held on the 28th of September 2022.

Page 6 of 8



28 September 2022 pre-lodgement meeting with Council

- Who was this with? The meeting was attended by the following Council Staff:
 - o Norma Shankie-Williams, Team Leader of Strategic Planning
 - o Craig O'Brien, Strategic Planner
 - o Christopher Nguyen, Strategic Planner
 - o Andrew Gillies, Strategic Transport Planner
 - o Wil Robertson, Urban Designer

The meeting was attended by the following Project Team members:

- Matt Hurst, Parade Consulting Pty Ltd
 - Drew Dickson, Drew Dickson Architects
 - Lauren Honey, Drew Dickson Architects
 - Hon Diec, Drew Dickson Architects
 - Harry Vakili (Property Owner)
- Which lots formed 'the site'? at the time of this meeting only 3 McIntosh, 2 Day, 40 & 42 Anderson Streets Chatswood had been consolidated into the site. Attempts to incorporate 38 Anderson Street into the consolidated site had progress further but failed again.
 - Was there any associated email correspondence? Yes, mostly just housekeeping, any discussing outcomes or decisions I will attach
 - What plans/documents were sent to Council? These are attached to this record as email attachments.
 - What was the PP seeking at this stage? The primary purposes of meeting with Council at this stage were to continue to verify the following:
 - o 1) to confirm that our own PP would progress in parallel with Council's LEP review
 - o 2) to confirm the planning controls that we wanted to change and what we wanted them to change to
 - o 3) to confirm that our PP would still take precedence on this site should Council's LEP review progress on a faster timeline
 - o 4) to confirm that the 4% Affordable Housing provision would remain the applicable provision in our Planning Proposal (in conjunction with a VPA).
 - What was discussed at the meeting and what was the outcome of the meeting? All of the items above were discussed at the pre-lodgement meeting, and it was our understanding that each item above should be accepted for the purposes of moving the project forwards to lodging a Planning Proposal on that basis. Council's officers again also expressed Council's preference that the site be further consolidated to include 38 Anderson Street. A number of items not related to Affordable Housing were also discussed.
 - Did you issue any minutes? Council issues the minutes of Pre-lodgement meetings as a Record – attached.
 - Follow up with Council: Council sent us their Record of the meeting and the Vakili's decided to attempt progress with further consolidation of the site and actioning of Option Contracts on that basis.
 - It should be noted that Council's "record" incorrectly stated that the date of the meeting as 28th of August 2022 when it was actually the 28th of September 2022.
 - Council's Record was issued to us on the 17th of October 2022 three weeks after the meeting.
 - Only a matter of weeks later in mid November "it was decided" that Planning Proposals that had not "sufficiently progressed" (defined as not having been lodged before 7th of June 2022) would not be excluded from the Council's LEP review process. However, we were not "told" of this decision, nor that it would be ratified by Council at a Council Meeting scheduled on the 12th of December 2022 – we only found this out via the grape vine after it was noticed in the Council Meeting Agenda Paper for the meeting, and issued only 2 business days before the meeting was held. No correspondence was ever sent to us informing us of this "decision", no notice was send to us informing us that the matter was to go before the Council, no opportunity was provided to allow us to comment on this "decision" as there was no due process. The decision was made "retro-actively" and there was no way we could have been able to comply with its requirements once it had been made, even though it was made with no consultation what-so-ever.
 - We were told specifically that we would be able to retain the 4% as a minimum with the VPA. This was subsequently changed but we were not told it was going to change nor afforded any opportunity to comment further after we had been informed in writing in October 2022 that the matter was clarified as 4%min with a VPA.

- This "decision" contradicted previously received written Council advice regarding the Affordable Housing provision. Our previous approaches to Council Regarding this provision represented our "providing of comments" regarding the proposed changes to 10% Affordable Housing that were proposed in the LEP review
- In the context of our own PP being developed in parallel, this was the appropriate way to raise such comments and have them resolved. Indeed it has never been suggested by Council that our approaches in this regard were wrong or insufficient, and Council has never stated that we didn't make these representations, instead they have simply (since March 2023 and now) continuously refused to acknowledge that these representations regarding confirming that status of our Affordable Housing provision actually occurred. Council Staff have continuously ignored our attempts to have them acknowledge that these representations did occur. They provide disingenuous answers when specifically asked about it – including in Council Meetings – stating instead that "we had the same opportunities to comment as did everybody else", ignoring the actual question, and the factual answer which is that we did actually comment and we received clarification – clarification that Council has subsequently reneged upon.