



PLANNING AND INFRASTRUCTURE
Planning Unit

9 March 2023

Parade Consulting PTY Limited
PO Box 239
Potts Point NSW 2000
Att: Matt Hurst

Dear Matt,

**RE: Planning Proposal 2023/002 (Portal reference: PP2022-4316)
3 McIntosh Street, 2 Day Street, 40 and 42 Anderson Street, Chatswood**

I am writing to you regarding the Planning Proposal 2023/002 (Portal reference: PP2022-4316) for 3 McIntosh Street, 2 Day Street, 40 and 42 Anderson Street, Chatswood.

The Council initiated Planning Proposal 2021/003 regarding the comprehensive review of Willoughby Local Environmental Plan 2012 (Portal Ref: PP2021-2560) was advertised between 5 March and 7 June 2022, with an affordable housing component of 10%.

As noted in the exhibition of Planning Proposal 2021/003, the increased affordable housing in new residential developments, from 4% of Gross Floor Area (GFA) to 10%, was in line with aspirations in the North District Plan and in recognition of the urgent need for more affordable rental housing in all parts of Sydney.

Planning Proposal 2023/002 provides 4% affordable housing.

A position was established in November 2022 that any Planning Proposal lodged after the 5 March and 7 June 2022 exhibition with an affordable housing component of less than 10% is unlikely to be supported as after this exhibition Council's position would be well known. In this regard you are invited to withdraw your Planning Proposal with a full refund.

The Department of Planning and Environment have advised Council that Planning Proposal 2021/003 is progressing towards finalisation in June 2023. The requested amendments in Planning Proposal 2023/001 may be addressed at that time.

Willoughby City Council

If you choose not to withdraw Planning Proposal 2023/002, then the affordable housing component is required to be increased to 10%. Please note that in this instance, finalisation of this Planning Proposal will be running a very close timeframe with Council's own Planning Proposal 2021/003.

Should you have any question in regards this letter please contact me on (02) 9777 7671.

Yours sincerely,



Norma Shankie-Williams
STRATEGIC PLANNING TEAM LEADER



**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.

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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



PLANNING AND INFRASTRUCTURE
Planning Unit

3 April 2023

Hones Lawyers Pty Ltd
PO Box 1989
North Sydney NSW 2059
Att: Jason Hones

Dear Mr Hones

**RE: Planning Proposal 2023/002 (Portal reference: PP2022-4316)
3 McIntosh Street, 2 Day Street, 40 and 42 Anderson Street, Chatswood**

I am writing to you regarding the Planning Proposal 2023/002 (Portal reference: PP2022-4316) for 3 McIntosh Street, 2 Day Street, 40 and 42 Anderson Street, Chatswood, and in response to your letter dated 20 March 2023.

We note and acknowledge the work carried out by your client to date. The preparation of Planning Proposals (PPs) take time and during that process certain benchmarks change. In this case it has been the parallel processing of our comprehensive Local Environmental Plan (LEP) which was exhibited from 5 March until 7 June 2022.

All property owners were notified of the exhibition of the draft LEP and Council carried out an extensive process to promote the exhibition. Any ownership of land involving your client by March 2022 would have resulted in the receipt of a letter from Council as we consulted with every ratepayer. The exhibition material clearly stated the affordable housing rate was being increased to 10% in the Chatswood CBD.

The Pre-Planning Proposal Meeting Notes of August 2022 were provided in good faith and are only relevant at the date they are issued. Such notes do not establish ongoing controls.

A position was established in November 2022 that any Planning Proposal lodged after the 5 March and 7 June 2022 exhibition with an affordable housing component of less than 10% is unlikely to be supported as after this exhibition Council's position would be well known. The point is made that Council needs to provide a cut-off point from 4% to 10% affordable housing provision at some stage in the process of progressing the comprehensive LEP.

In the Council report of 12 December 2022 on the comprehensive LEP, it was stated:

Willoughby City Council

"There are planning proposals (mainly in Chatswood CBD) that have been progressed in tandem or ahead of this comprehensive LEP review. If they have been lodged before the end of the exhibition period with a 4% agreed rate, it is proposed that rate remains as is".

The applicant did not submit their PP on the NSW Planning Portal until 20 December 2022, with the fee being received on 20 January and receipted on 23 January 2023.

Should your client not proceed with the PP, they will still benefit from a significant uplift in planning controls which are being processed in the comprehensive LEP. Council received expert advice on feasibility testing of the new affordable housing rate. It concluded that the requirement to provide 10% affordable housing is feasible for Chatswood given the uplift. In fact, other areas of the LGA will also incur a 10% affordable housing contribution rate such as Northbridge and North Willoughby. These areas did not result in the significant uplift in planning controls as Chatswood.

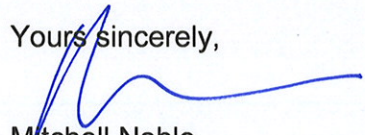
Moving forward, I see three possibilities:

1. The applicant withdraws the Planning Proposal, and receives a full refund. Council's comprehensive LEP will provide new planning controls and significant uplift for the site once gazetted. If this is done by 17 April 2023, a full refund may be provided. After 17 April 2023, Council assessment charges will be applicable to any refund.
2. The applicant revises the Planning Proposal to include 10% affordable housing. This is not encouraged, as it would deliver exactly the same controls as proposed in Council's comprehensive LEP which is expected to be made in June 2023. Given the impending gazettal of the comprehensive LEP, I see no reason to progress a separate Planning Proposal.
3. Council assesses the current Planning Proposal and reports it to the Willoughby Local Planning Panel for advice and an Ordinary Council meeting for a decision. This is unlikely to be supported given the Council's position on the affordable housing provision outlined above.

We are encouraged that your client embraces the need to provide affordable housing. We hope that we can work with your client to provide a resultant development which not only provides a benefit for the developer but also contributes such an important housing benefit for the Willoughby community.

I look forward to your response. Should you have any question in regards this letter please contact Norma Shankie-Williams, Team Leader Strategic Planning, on (02) 9777 7671.

Yours sincerely,


Mitchell Noble
Head of Planning

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From: [Polina Pavlenko](#)
To: [Booth, Adam](#)
Cc: [Harry Vakili](#); [Reza Vakili](#); [McCullagh, Roy](#); [Eriksson, Hugh](#); [Brendon.Zhu@Willoughby.nsw.gov.au](#); [Moratelli, John](#); [Taylor, Tanya](#)
Subject: Re: Hassan, Jilla, Reza Vakili letter to Clr John Moratelli
Date: Friday, 19 May 2023 11:18:48 AM
Attachments: [wccsia_wso2023_c1fc7553-d8d1-466c-8298-82bd591d7f17.ipg](#)
[Prelodgement Report - McIntosh Dav Anderson St Council's Comments.pdf](#)

Good afternoon Mr. Booth,

Thank you very much for reaching out and actioning this issue.

We are of the firm view that there are **4 key dates** in the processes of Council changing its policy from a 4% affordable housing requirement to a 10%, affordable housing requirement, those dates relevantly being as follows:

1. March 5th, Start of Draft LEP Exhibition
2. June 7th, End of Draft LEP Exhibition, and retrospectively also the Date chosen as the cut-off between 4% affordable housing and 10%.
3. Oct 17th, *Council written Advice received following a pre lodgement of planning proposal meeting that 4% and existing council DCP and LEP are still in effect for our site, (in the written response to our paid pre-lodgement meeting)*
4. Dec 12th, Council resolution to endorse the draft LEP and retrospectively adopt the date of June 7th as the cut-off date for 4% to 10% for the Affordable Housing Contribution,

We believe,

- that the Councillors' on Dec 12th, as a result of withheld information (namely, the failure to disclose the written advice of the Council's of October 17th) which should have been provided by the Council staff to the Councillors during the meeting (but was not) resulted in a decision making process that failed to follow a proper, fair and due process, with the consequence that some parties had been dealt with unfairly and in breach of Councils code of conduct 2020,; and
- That the Councillors' were not informed of key site-specific information during the Dec 12th meeting, namely that Council staff had after the June 7th conclusion of the draft LEP exhibition period confirmed to some parties in writing that the 4% affordable housing would still apply to their sites.

We believe that an *independent* analysis of the facts, dates, events, written correspondence exchanged, and review of the incomplete advice provided at the Council meeting, and withholding of key information to the councillors during that meeting, will reveal that - in this instance - there has been a significant failure in the fair and reasonable due process that Council is required to administer.

We believe that:

- a. an *independent* review of the facts will reveal that certain parties were dealt with unfairly,

in breach of the Willoughby City Council Code of Conduct 2020,; and

- b. Retrospective Council decisions such as the one made on December 12th, with regards to the setting of a retrospective cut-off date - which counteracts subsequent written advice in the intervening period - regarding affordable housing contributions, *should be corrected*.

We look forward to hearing from you further.

Kind regards,

Polina Pavlenko

I am in the office on Mondays, Tuesdays and Thursdays.

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From: Booth, Adam <Adam.Booth@Willoughby.nsw.gov.au>
Sent: Wednesday, 17 May 2023 2:22 PM
To: Polina Pavlenko <polina.pavlenko@mcr.com.au>
Cc: Connor, Samantha <Samantha.Connor@Willoughby.nsw.gov.au>
Subject: Hassan, Jilla, Reza Vakili letter to Clr John Moratelli

You don't often get email from adam.booth@willoughby.nsw.gov.au. [Learn why this is important](#)

Dear Ms Pavlenko

I am writing from the Governance team at Willoughby City Council.

We have received recent correspondence from Councillor John Moratelli regarding matters raised by you in letters dated 10 and 15 May 2023 on behalf of Hassan, Jilla and Reza Vakili.

So that we may review your matter, may I please ask you to reply to this email attaching your letters, together with any other relevant material? Once received, we will be in touch to let you know next steps.

Please feel free to call me on 02 9777 1024 should you wish to discuss.

Kind regards
Adam Booth

Adam Booth - Council & Corporate Support Officer

WILLOUGHBY CITY COUNCIL

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Council acknowledges the Gamaragal People as the Traditional Owners of these lands. We pay our respects to their Elders past and present.





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.

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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



PLANNING AND INFRASTRUCTURE

Planning Unit

21 June 2023

Hones Lawyers Pty Ltd
PO Box 1989, North Sydney NSW 2059
Att: Jason Hones

Dear Mr Hones

**RE: Planning Proposal 2023/002 (Portal reference: PP2022-4316)
3 McIntosh Street, 2 Day Street, 40 and 42 Anderson Street, Chatswood**

I am writing to you regarding Planning Proposal 2023/002 (Portal reference: PP2022-4316) for 3 McIntosh Street, 2 Day Street, 40 and 42 Anderson Street, Chatswood, and your letter dated 7 June 2023.

Your letter follows on from previous letters from you to Council dated 20 March and 20 April 2023, and the Council responses dated 3 April and 5 May 2023.

In addition Council has also written to the Planning Proposal proponent Parade Consulting dated 9 March 2023, the owner of the site on behalf of the Mayor dated 3 April 2023 and met with both the proponent and owner to discuss this matter on 16 May 2023.

The position outlined in your 7 June 2023 letter is again noted. Council has also considered the final paragraph where you identify the course of action you may take going forwards.

Council continues to reaffirm the importance of affordable housing and the relevance of 10% affordable housing provision with regards to Planning Proposal 2023/002.

As previously indicated, Council staff will proceed to conclude the assessment and report the Planning Proposal to a Council Meeting for a decision. The proponent will be advised of the meeting date when it has been identified.

Should you have any question in regards this letter please either contact myself or Norma Shankie-Williams, Team Leader Strategic Planning, on (02) 9777 7671.

Yours sincerely,

Mitchell Noble
Head of Planning