

Attachment D

**Applicant's Objection to the affordable
housing contribution condition**



23 July 2026

Mia Music
Senior Planner
Planning Assessments
City of Sydney
GPO Box 1591
Sydney 2001

RE: D/2026/264 - 391-401 ABERCROMBIE STREET, DARLINGTON (ABERCROMBIE STUDENT ACCOMMODATION)

REQUEST FOR DELETION OF DRAFT CONDITION 2 - AFFORDABLE HOUSING CONTRIBUTION

Dear Ms Music,

1. INTRODUCTION

We write on behalf of The University of Sydney (**the Applicant**) regarding the draft conditions of consent (**draft conditions**) issued for Development Application D/2026/264 relating to alterations and additions to the existing Abercrombie Student Accommodation building at 391-401 Abercrombie Street, Darlington (**the application**). The works comprise internal alterations, the provision of a new commercial kitchen, reconfiguration of communal facilities and the enclosure of an existing courtyard to provide an enhanced dining facility for existing student residents. The development does not involve the creation of any additional student accommodation rooms, increase the approved occupancy of the building or introduce any new residential floor space.

The University respectfully requests the deletion of Draft Condition 2, which requires the payment of an affordable housing contribution pursuant to clause 7.13 of the *Sydney Local Environmental Plan 2012* (**Sydney LEP 2012**) and the City of Sydney Affordable Housing Program. The draft condition requires payment of an affordable housing contribution presently calculated at \$80,470.92 (indexed as at 14 July 2026).

While clause 7.13 of the Sydney LEP 2012 and section 7.32 of the *Environmental Planning and Assessment Act 1979* (**EP&A Act**) provide a mechanism through which an affordable housing contribution may be imposed, the exercise of that power remains discretionary. In exercising that discretion, the consent authority must be satisfied that the contribution is justified having regard to the specific circumstances of the development and that it bears a reasonable relationship to the impacts arising from the proposal. In this instance, no such relationship exists.

2. ABSENCE OF PLANNING NEXUS

A fundamental principle underpinning the imposition of development contributions is that there must be a demonstrable relationship between the development and the need for the contribution.

The approved development does not generate additional demand for affordable housing. It is not a residential expansion project, does not create any new dwellings, does not increase accommodation capacity and does not result in any increase in the approved student population accommodated on the site. Rather, the proposal is limited to improving dining facilities and associated amenities for existing residents.

Specifically:

- the development does not introduce additional student accommodation beds;
- the development does not increase approved occupancy numbers;
- the development does not create additional residential floor space;
- the development does not increase demand for housing within the Sydney local government area; and
- the development involves only a negligible increase in employment associated with operation of the upgraded facilities.



In these circumstances, there is no identifiable affordable housing impact requiring mitigation. Neither the proposal itself nor its anticipated operation creates any demand for affordable housing, reduces housing supply, displaces existing residents or contributes to housing affordability pressures. Accordingly, there is no planning nexus capable of supporting the imposition of the condition

3. STATUTORY FRAMEWORK CLAUSE 7.13 AND SECTION 7.32

The University's principal concern is that the condition appears to have been imposed solely because the development satisfies the technical trigger within clause 7.13 of the Sydney LEP 2012.

However, satisfaction of a statutory trigger does not, of itself, establish that a contribution should be imposed. Clause 7.13 identifies circumstances in which an affordable housing contribution may be considered. Similarly, section 7.32 of the EP&A Act provides a discretionary power to impose a contribution. Neither provision mandates that a contribution must be imposed merely because the threshold requirements have been satisfied.

The existence of a statutory power does not relieve the consent authority from considering whether the contribution is reasonable, proportionate and justified in the particular circumstances of the development.

In this case, there is no evidence that the development gives rise to any affordable housing impact which would warrant the exercise of that discretion. The existence of the statutory mechanism alone is therefore insufficient justification for retaining the condition.

4. CONSISTENCY WITH ESTABLISHED LEGAL PRINCIPLES

The New South Wales Land and Environment Court (**NSW LEC**) has confirmed that affordable housing contribution powers remain discretionary and must be exercised having regard to the particular circumstances of each development.

As recognised in *Freecity Alpha Development Pty Ltd v City of Sydney [2025] NSWLEC 1694*, the existence of an affordable housing contribution framework does not remove the requirement for the consent authority to properly justify the exercise of the power in a particular case.

Further, conditions of consent must satisfy the well-established principles derived from *Newbury District Council v Secretary of State for the Environment*, namely that a condition:

1. is imposed for a proper planning purpose;
2. fairly and reasonably relates to the development; and
3. is not so unreasonable that no reasonable consent authority would impose it.

While affordable housing generally serves a legitimate planning purpose, Condition 2 does not fairly and reasonably relate to the impacts of this development. The development generates no housing demand, no residential uplift and no identifiable affordable housing impact. As a consequence, the essential nexus required by the Newbury principles is absent.

5. NATURE OF THE DEVELOPMENT AND PUBLIC BENEFIT

The proposal relates to infrastructure operated by a public, not-for-profit educational institution that performs an essential public function.

The development is intended to improve the amenity, wellbeing and living experience of students already accommodated within the Abercrombie Student Accommodation facility. It represents an investment in student support infrastructure and forms part of the University's ongoing commitment to enhancing the quality of residential life on campus.

Unlike private commercial development, the proposal does not generate development profit, land value uplift or private commercial gain. Consequently, the affordable housing contribution does not operate as a mechanism to capture private development uplift. Rather, it operates as an additional cost imposed on public education infrastructure despite the absence of any housing-related impact arising from the development.



The practical effect is the diversion of capital away from student services and educational infrastructure toward a contribution that bears no relationship to the development's impacts.

6. THE UNIVERSITY ALREADY CONTRIBUTES TO AFFORDABLE HOUSING OUTCOMES

The University is one of the largest providers of University student accommodation in New South Wales and has invested, and continues to invest significantly in the delivery and operation of student housing across its campuses.

Importantly, the application involves works to an existing student accommodation building. The proposal directly supports and enhances an established accommodation asset that already provides housing to students in close proximity to their place of study.

The University also continues to provide student accommodation at rents below equivalent market alternatives, thereby delivering outcomes that are consistent with the underlying objectives of affordable housing policy. As recognised in recent Court consideration (*Freecity Alpha Development Pty Ltd v City of Sydney [2025] NSWLEC 1694*), student accommodation can make a meaningful contribution toward addressing housing affordability outcomes.

In this context, the imposition of an affordable housing contribution upon works that improve the operation and amenity of an existing student accommodation facility is particularly difficult to justify.

7. INCONSISTENCY WITH ESTABLISHED PRACTICE

The proposed condition is inconsistent with the long-established treatment of comparable university, health and Crown development projects.

As documented in the University's Ross Street Teaching and Learning Hub Modification Application, numerous University of Sydney SSD approvals have proceeded without affordable housing contribution requirements, including major education, research and student accommodation projects. These include the Darlington Terraces development, Regiment Building student accommodation project and the original Abercrombie Student Accommodation approvals.

Similarly, the Sydney Biomedical Accelerator (SSD-55388456) and Royal Prince Alfred Hospital Redevelopment were not required to make affordable housing contributions notwithstanding their substantial scale. In each case it was recognised that the developments delivered public infrastructure and did not create demand for affordable housing that warranted such a contribution.

The application of an affordable housing contribution to a project that neither creates additional accommodation nor increases student numbers represents a significant departure from this established approach.

8. BROADER PUBLIC INTEREST CONSIDERATIONS

The public interest is best served when development contributions are imposed in a transparent, evidence-based and proportionate manner.

The University's concern extends beyond this application. If the same approach were applied consistently across future university projects, substantial funding could be diverted away from the delivery of educational facilities, research infrastructure and student accommodation.

The outcome would be contrary to broader public policy objectives that seek to encourage investment in higher education infrastructure, improve student housing supply and support the operation of strategic education precincts such as the University of Sydney.



9. CONCLUSION

For the reasons outlined above, the University submits that Draft Condition 2 should be deleted from any final consent issued for D/2026/264.

The proposed development:

- does not create any additional demand for affordable housing;
- does not increase accommodation capacity or student numbers;
- does not generate private development uplift;
- does not create any identifiable affordable housing impact requiring mitigation;
- is inconsistent with the rationale underpinning affordable housing contribution mechanisms;
- is inconsistent with the treatment of comparable university and Crown development projects; and
- delivers a clear public benefit through the enhancement of student accommodation infrastructure.

Accordingly, the University respectfully requests that Condition 2 be deleted in its entirety from the final consent.

We would welcome the opportunity to discuss this matter and resolve it promptly.

If you have any further questions in relation to any of the matters outlined above, please do not hesitate to contact me at mark.broomfield@sydney.edu.au, OR 0412 295 082.

Sincerely,

Signed by:

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MARK BROOMFIELD
CHIEF UNIVERSITY INFRASTRUCTURE OFFICER (CUIO)
The University of Sydney