

SITE ISOLATION AND CONSOLIDATION ASSESSMENT

EAST WALKER STREET PRECINCT

URBIS

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1. INTRODUCTION

This Site Isolation and Consolidation Assessment Report has been prepared to accompany the Planning Proposal submitted to North Sydney Council on behalf of Avenor Pty Ltd (**the proponent**). It relates to land referred to as the East Walker Street Precinct (**the Precinct**) and comprises 44 dwellings over seven lots:

Walker Street Properties (24 dwellings)

- 173 Walker Street - 6 strata units
- 175 Walker Street - 6 strata units
- 177 Walker Street - 6 strata units
- 179 Walker Street - 6 strata units

Hampden Street Properties (20 dwellings)

- 11 Hampden Street - 18 company title units
- 15 Hampden Street - 1 single detached dwelling
- 17 Hampden Street - 1 single detached dwelling

The intent of the Planning Proposal is to amend the *North Sydney Local Environmental Plan 2013* (NSLEP 2013) as it relates to the Precinct, to enable a:

- Base maximum building height control of RL133; and
- Base maximum floor space ratio control of 6.1:1.

These base controls are accompanied by proposed additional local provisions which have been designed to incentivise consolidation of the entire precinct through bonus height and FSR uplift. If all lots within the Precinct are amalgamated, the bonus provisions would permit a development with a:

- Maximum building height of RL148; and
- Maximum floor space ratio of 6.9:1

The purpose of this report is to demonstrate that:

- 1) site isolation would not occur as a result of the proposed amendments to the NSLEP 2013 or NSDCP 2013;
- 2) each site within the precinct can be developed within a compliant building envelope, in accordance with the proposed amendments to the NSLEP 2013 and NSDCP 2013 whilst also achieving compliance with relevant provisions of SEPP 65 and ADG; and
- 3) fair and reasonable attempts have been made to consolidate the properties within the Precinct, over the March 2017 – March 2019 period, which is demonstrated by the negotiations which have occurred with the individual land owners.

This report is supported by the following documentation:

- **Attachment 1** – Letter of Advice prepared by Mills Oakley;
- **Attachment 2** - Summary Negotiation Record prepared by Avenor;
- **Attachment 3** - Reference Scheme Test Fits and ADG Compliance prepared by SJB; and
- **Attachment 4** – Separate Land Holdings Test Fit and ADG Compliance prepared by SJB.

This report has been prepared in response to the matters of consideration in relation to site isolation, consolidation and precinct amalgamation raised by the Panel and by Council during the assessment of the original Planning Proposal, lodged in August 2017.

In doing so, it addresses the planning principles for site isolation, established by the NSW Land and Environment Court in proceedings of *Karavellas v Sutherland Shire Council* [2004] NSWLEC 251, which is normally required to be demonstrated at the Development Application stage.

This report and the attached documentation confirms that redevelopment on the site under the proposed planning controls, will not result in site isolation and that individual allotments within the Precinct can be developed in accordance with the proposed planning controls.

2. THE PRECINCT

The East Walker Street Precinct comprises 44 dwellings over seven lots, located at 173-179 Walker Street and 11-17 Hampden Street, North Sydney. The Precinct is bound by Hampden Street in the north, Warringah Highway in the east, Berry Street in the south and Walker Street in the west.

As illustrated in Figure 1 below, the Precinct comprises a total site area of 3,949m² and is made up of two main land holdings. The holding holdings are characterised by their street frontage, as follows:

1. **Walker Street Properties:** 173, 175, 177 and 179 Walker Street, North Sydney
2. **Hampden Street Properties:** 11, 15 and 17 Hampden Street, North Sydney

The land title arrangements and existing improvements are described in Table 1 below.

Figure 1: Aerial image of the Precinct illustrating the existing lot arrangements



Table 1: Land ownership

Address and legal description	Ownership	Existing development and access arrangements
173 Walker Street (SP 11082) 517.82m ²	Walker Street No. 100 Pty Ltd (being a related entity of Oxley Holdings Limited).	<ul style="list-style-type: none"> Three storey residential flat building comprising 6 strata titled units. Pedestrian access to the second floor, with on-street parking provided along Walker Street
175 Walker Street (SP 86752) 505.69m ²	Walker Street No. 100 Pty Ltd (being a related entity of Oxley Holdings Limited).	<ul style="list-style-type: none"> Three storey residential flat building comprising 6 strata titled units. Pedestrian access to the second floor, with on-street parking provided along Walker Street.
177 Walker Street (SP 9808) 506.06m ²	Walker Street No. 100 Pty Ltd (being a related entity of Oxley Holdings Limited).	<ul style="list-style-type: none"> Three storey residential flat building comprising 6 strata titled units. Pedestrian access to the second floor, with on-street parking provided along Walker Street
179 Walker Street (SP 64615) 809.33m ²	Walker Street No. 100 Pty Ltd (being a related entity of Oxley Holdings Limited).	<ul style="list-style-type: none"> Three storey residential flat building comprising 6 strata titled units. Pedestrian access to the second floor, with on-street parking provided along Walker Street
11 Hampden Street (Lot 1 in DP119732) 800m ²	<p>Eswod Home Units Pty Ltd (Company Title building)</p> <p>Put and Call Option: Under option to Hampden Street Pty Ltd.</p>	<ul style="list-style-type: none"> Part three, part four storey residential flat building comprising 18 apartments Vehicular access off Hampden Street
15 Hampden Street (Lot 1 in DP591516) 542m ²	Siew Kit Foo and Tung Sing Wong	<ul style="list-style-type: none"> Single storey detached dwelling Vehicular access off Hampden Street
17 Hampden Street (Lot 2 in DP591516) 267m ²	Liele Pty Ltd	<ul style="list-style-type: none"> Single storey detached dwelling

3. PLANNING PRINCIPLE – SITE ISOLATION

Consideration has been given to the planning principles for site isolation, established by the NSW Land and Environment Court in proceedings of *Karavellas v Sutherland Shire Council* [2004] NSWLEC 251. The process undertaken by the proponent, while most relevant at the Development Application stage and not nominally required at a Planning Proposal stage, demonstrates that site isolation would not occur as a result of the proposed amendments to the NSLEP 2013 and NSDCP 2013.

The principles to consider regarding the site isolation are:

1. ***Firstly, where a property will be isolated by a proposed development and that property cannot satisfy the minimum lot requirements then negotiations between the owners of the properties should commence at an early stage and prior to the lodgement of the development application.***

There are no objectives or controls in the NSLEP2013 or NSDCP 2013 in relation to site amalgamation or site isolation specific to the East Walker Street Precinct. Clause 6.12 of the LEP identifies minimum lots size requirements for residential flat buildings in the R4 High Density Residential zone, as follows:

Clause 6.12 of the NSLEP 2013:

6.12 Residential flat buildings

- a) *The objective of this clause is to ensure that dwelling houses or dual occupancies will not be left isolated on sites that are not reasonably capable of development for residential flat buildings.*
- b) *This clause applies to land in Zone R4 High Density Residential.*
- c) *Development consent must not be granted for development for the purposes of a residential flat building if the development will result in a single dwelling house or dual occupancy being located on adjoining land in Zone R4 High Density Residential unless:*
 - a. *the adjoining land is at least 900 square metres, or*
 - b. *the consent authority is satisfied that the adjoining land is land on which development may be carried out for the purposes of a residential flat building*

RESPONSE:

Part 1: This Planning Proposal **does not** seek development consent, as defined under Part 4 the *Environmental Planning and Assessment Act 1979*.

The Planning Proposal seeks to amend the LEP & DCP controls that apply equitably to all sites.

Any future development application lodged over the site, will need to demonstrate compliance with this clause and any other relevant provisions of the NSLEP 2013 and NSDCP 2013, as it relates to the site and proposed future land use. This is consistent with the Letter of Advice provided by Mills Oakley and included at **Attachment 1**.

Part 2: The properties **are** capable of satisfying the minimum lot requirements

The two main land holdings within the Precinct have a site area in excess of 900m².

Walker Street Properties:

- a) Individually, these lots are less than 900m² (being 518m², 506m², 506m² and 809m² respectively)
- b) The four lots combine to achieve a site area of 2,339m²
- c) These properties combine to achieve a site area greater than 900m² and therefore are not considered isolated, under Clause 6.12(c)(a).
- d) The reference schemes demonstrate that the combined site area is sufficient to achieve a high density residential tower form with appropriate separation distances to the Hampden Street tower.

Hampden Street Properties:

- a) Individually, these lots are less than 900m² (being 800m², 542m², 267m² respectively)
- b) The three lots combine to achieve a site area of 1,610m².
- c) These properties combine to achieve a site area greater than 900m² and therefore are not considered isolated, as per clause 6.12(c)(a).
- d) The reference schemes demonstrate that the combined site area is sufficient to achieve a tower form above an 8 storey podium with appropriate separation distances to the Walker Street tower.

Separate Landholdings Study:

In the event that the Hampden Street properties do not amalgamate, a reference scheme and test fit options, have been prepared to demonstrate that orderly and economic development of these properties for the purpose of a residential flat building, can be achieved.

This reference scheme, provided within Figure 3 below, illustrates the potential built forms achievable under the proposed LEP and DCP controls. This includes:

- a) An 8 storey built-to-boundary podium form, with front setbacks and a street wall height consistent with the DCP with other standard setback provisions above 8 storeys.
- b) A rear setback of 12m to allow for a consolidated communal open space area
- c) SEPP 65 and ADG summary compliance assessment demonstrating that a high level of amenity can be achieved

Part 3: Though not required, negotiations **have** been ongoing since 2017

As demonstrated in Part 1 & Part 2, the properties are capable of being independently developed in accordance with SEPP65 and the proposed LEP and DCP controls. Nonetheless, consolidation and precinct amalgamation has been pursued by various landowners.

Negotiation attempts and engagement has been made by the owners of :

- 173-179 Walker Street: with 11 Hampden, 15 Hampden and 17 Hampden
- 11 Hampden Street: with 15 Hampden and 17 Hampden
- 17 Hampden: with 11 Hampden and 15 Hampden

Negotiations began in March 2017, prior to the lodgement of the original Planning Proposal and continuously, up to the lodgement of this Planning Proposal.

A summary of the negotiations with the individual property owners at 11-17 Hampden Street are contained in **Attachment 2**.

Summary:

Given that the sites are capable of being developed for a range of permissible land uses under both the existing and proposed controls, it is established that the Hampden Street properties are not isolated.

The attached summary engagement record confirms that negotiations commenced prior to the lodgement of this Planning Proposal.

The above points of consideration and the attached documentation satisfies this principle.

2. *Secondly, and where no satisfactory result is achieved from the negotiations, the development application should include details of the negotiations between the owners of the properties. These details should include offers to the owner of the isolated property. A reasonable offer, for the purposes of determining the development application and addressing the planning implications of an isolated lot, is to be based on at least one recent independent valuation and may include other reasonable expenses likely to be incurred by the owner of the isolated property in the sale of the property.*

RESPONSE:

Part 1: Details of the negotiations **are** provided here, though are not required until development application

Though there is not an instance of isolation as demonstrated above, and there is not a development application that would necessitate details of negotiation to be provided, the negotiation details are provided here for reference, including the offers to the owners of the various properties.

As documented in the summary negotiation record contained in **Attachment 2** and summarised in Table 2 below, negotiations and ongoing discussions have occurred between the land owners within the Precinct over a 2 -year period. This included letters of offer, email exchanges, phone calls, text messages, stakeholder meetings and discussions at community information sessions.

Part 2: Offers **are** higher than values determined by an independent valuation

CBRE carried out an independent valuation on 28 February 2019. CBRE valued each of the lots based on the existing market value and the value of each lot if the proposed amendments to the LEP are gazetted.

The content of the valuations and the letters of offer are commercial-in-confidence and have not been disclosed as part of this Planning Proposal, however, further detail and evidence of the valuations, the offers and negotiations can be provided to relevant authorities upon request. Urbis confirms that it has sighted the valuations and the offers to purchase and is satisfied that the negotiations address the planning principles for site isolation.

Table 2: Summary of land valuation outcomes

Site	Land Owner	Offers
11 Hampden Street	Eswod Home Units Pty Ltd (Company Title building). Under option to Hampden Street Pty Ltd	Urbis confirms that offers have been made in excess of the market value uplift
15 Hampden Street	Siew Kit Foo and Tung Sing Wong	Urbis confirms that offers have been made in excess of the market value uplift
17 Hampden Street	Liele Pty Ltd	Urbis confirms that offers have been made in excess the market value uplift

All offers provided were in excess of the market values supported by independent valuations, on both an 'as is' basis not conditional on planning, and on a conditional basis that would be subject to planning approval.

Offers were made above market value, even though the sites would not be isolated.

Part 3: Offers **did** account for reasonable expenses

The offers that have been made and rejected were well above the market value of the land. This excess was more than sufficient to cover any reasonable expenses likely to be incurred by each property owner. As such, no specific reference to reasonable expenses is made in the offers. In any event, this aspect of the Court's planning principle does not apply in this instance as the Hampden Street sites will not be isolated.

The above points of consideration and the attached documentation satisfy this principle.

3. *Thirdly, the level of negotiation and any offers made for the isolated site are matters that can be given weight in the consideration of the development application. The amount of weight will depend on the level of negotiation, whether any offers are deemed reasonable or unreasonable, any relevant planning requirements and the provisions of s79C of the Environmental Planning and Assessment Act 1979*

RESPONSE:

Part 1: Negotiation **was extensive** and offers were **more than reasonable**, despite no isolation occurring

As documented in the Summary Negotiation Record contained in **Attachment 2** and summarised in Table 2 above, negotiations and ongoing discussions have occurred between the land owners within the Precinct over a 2 -year period. This included letters of offer, email exchanges, stakeholder meetings and attendance and the community information sessions, as part of the community engagement strategy.

The offers made to the land owners at 11-17 Hampden Street have been above and beyond the reasonable and fair market price. The attached documentary evidence establishes that the proponent has undertaken the necessary steps to procure the allotments or reach an agreement to consolidate and redevelop the Precinct.

As stated above, the properties are not isolated current or in the event that the planning controls change. Each lot is capable of being developed independently, within a compliant building envelope under either the existing controls or under the proposed LEP and DCP controls. Development on these sites are capable of achieving compliance with the amenity criteria outlined in SEPP65 and the relevant 'heads of consideration' under Section 4.15 of the *Environmental Planning and Assessment Act 1979* (former Section 79C).

The above points of consideration and the attached documentation satisfies this principle.

4. *Can orderly and economic use and development of the separate site(s) be achieved if amalgamation is not feasible? To assist in this assessment, an envelope for the isolated site may be prepared which indicates height, setbacks, resultant site coverage (both building and basement). This should be schematic but of sufficient detail to understand the relationship between the subject application and the isolated site and the likely impacts the developments will have on each other, particularly solar access and privacy impacts for residential development and the traffic impacts of separate driveways if the development is on a main road.*

Part 1: The separate sites **can** achieve orderly and economic use and development

The proposed reference schemes prepared by SJB and included at **Attachment 3** and **Attachment 4** demonstrates that the Hampden Street properties can be redeveloped in accordance with the proposed amendments to the NSLEP 2013 and NSDCP 2013 whilst achieving compliance with SEPP 65. This allows for the orderly and economic use and development of 11, 15 & 17 Hampden Street.

Figure 2 below illustrates the potential development staging that could take place, should the Walker Street Properties and Hampden Street Properties redevelop independently.

Figure 3 below illustrates the potential development staging that could take place, should each of the land holdings redevelop, independently.

Figure 2: Orderly and economic use and development of the Walker Street Properties and the Hampden Street Properties

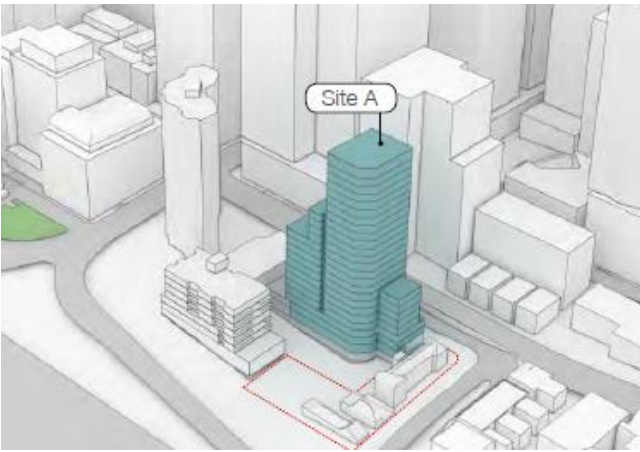
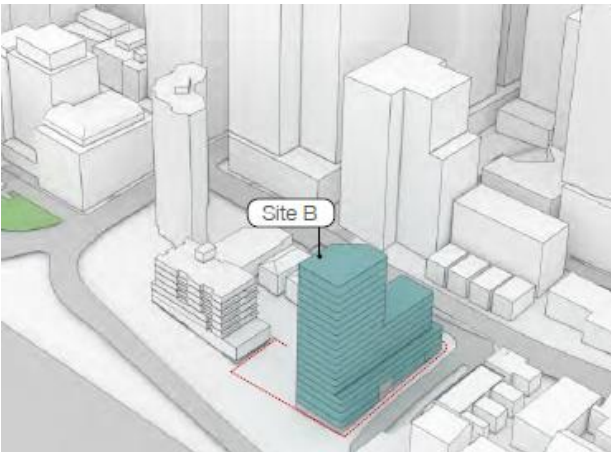
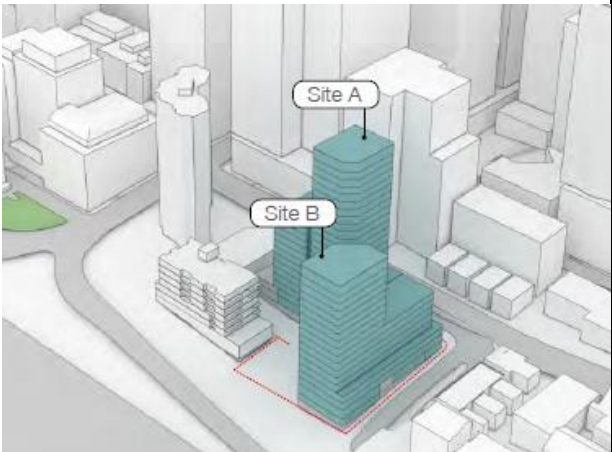
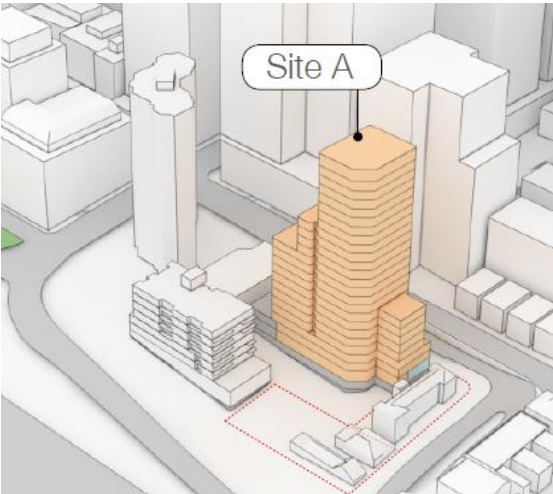
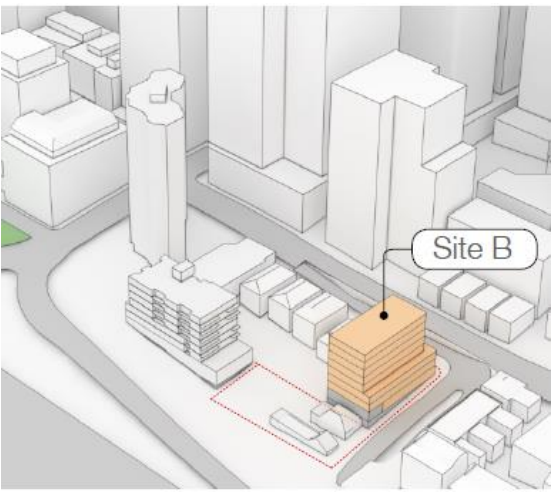
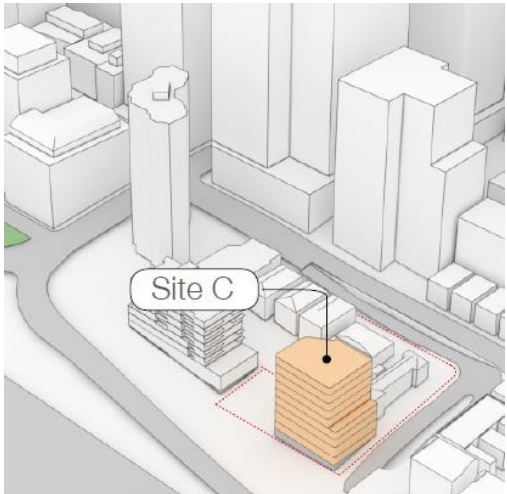
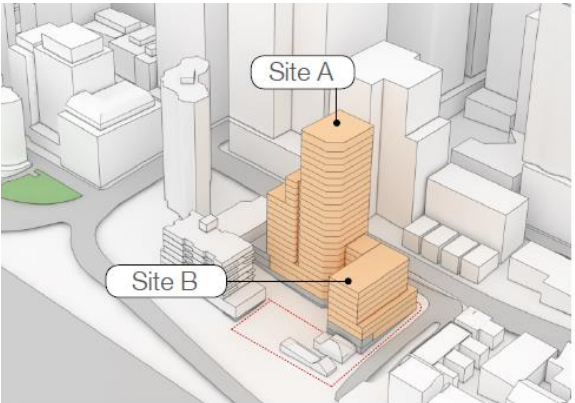
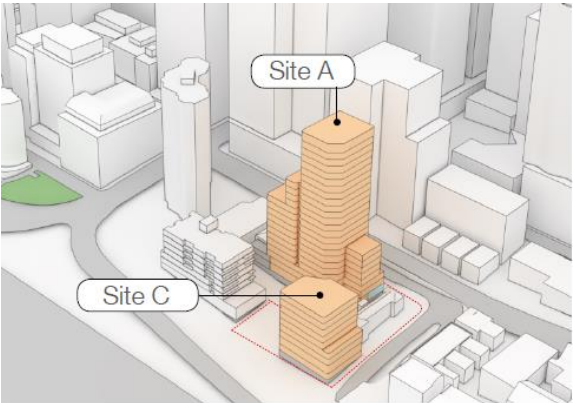
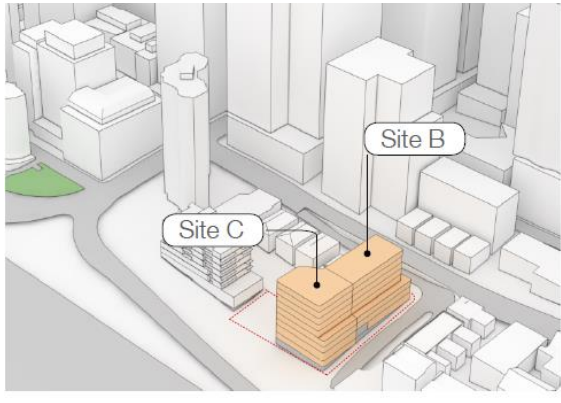
Walker Street Properties	Hampden Street Properties	Precinct Development
		
Site Area: 2,339m ²	Site Area: 1,610m ²	
FSR: 6.06:1 (within the 6.1:1 FSR LEP Control)	FSR: 6.07:1 (within the 6.1:1 FSR LEP Control)	FSR 6.07:1 ((within the 6.1:1 FSR LEP Control)
SEPP 65 and ADG Compliant	SEPP 65 and ADG Compliant	SEPP 65 and ADG Compliant

Figure 3: Orderly and economic use and development of the Hampden Street Properties in separate land holdings

Site A	Site B	Site C
		
Site Area: 2,339m ²	Site Area: 800m ²	Site Area: 809m ²
FSR: 6.06:1 (within the FSR control of 6.1:1)	FSR: 4.0:1 (within the FSR control of 6.1:1)	FSR: 3.8:1 (within the FSR control of 6.1:1)
Potential Staging Scenarios		
		

The above separate land holdings staging plan illustrates the following:

Site A: Walker Street Properties

Site A has a total site area of 2339m² with a 58.13m frontage to Walker Street, whereby vehicular access is obtained.

Pursuit to the proposed LEP amendments, the base controls on an unamalgamated site would enable a building envelope that has an 8 storey built form along the northern boundary where adjoining the Hampden Street properties. Respectful of the heritage items, this portion of the building has a 3 storey street wall height with a 3m upper level setback.

179 Walker Street has an 8-storey podium aligned with a potential 8 storey podium on 11 Hampden Street.

177 & part of 179 Walker comprise a tower envelope, setback from 11 Hampden, that steps down to 16 storeys to the south and to 12 storeys on 175 Walker Street.

173 Walker has no additional height as it is entirely used as a 12m setback from the adjacent 169 Walker Street. This portion of the built form has a 5m front setback to Walker Street, a nil street wall height and a 12m rear setback.

ADG Assessment:

SJB Architects have tested the building envelopes to ensure that the proposed built forms are capable of achieving compliance with SEPP 65 and the accompanying ADG. A summary compliance table is provided below:

Site A: SEPP 65 and ADG Compliance Table	Required	Provided
Communal Open Space	585m ²	1,013m ²
Deep Soil	351m ²	725m ²
Visual Privacy	12m	Complies
Solar and daylight Access	70%	Can comply
Natural Ventilation	60%	Can comply
Ceiling Heights	2.7m	Can comply
Apartment mix	Range of apartment sizes	<ul style="list-style-type: none"> • Studio: 0% • 1 bed: 27% • 2 bed: 31% • 3 bed: 42%

Site B: 11 Hampden Street

Site B has a total site area of 800m² with a 34.14m frontage to Walker Street whereby vehicular access is obtained.

Pursuit to the proposed LEP amendments, the base controls enable an 8 storey building envelope comprising a 3 storey street wall height with an upper level podium setback of 3 metres. A 5m setback to Walker Street and a 2m setback to Hampden Street is proposed.

The test fits undertaken by SJB confirm that a height of RL81.7 and an FSR of 4.0:1 is achievable.

ADG Assessment:

SJB Architects have tested the building envelopes to ensure that the proposed built forms are capable of achieving compliance with SEPP 65 and the accompanying ADG. A summary compliance table is provided below:

Site B: SEPP 65 and ADG Compliance Table	Required	Provided
Communal Open Space	200m ²	406m ²
Deep Soil	56m ²	92m ²
Visual Privacy	12m	Complies
Solar and daylight Access	70%	Can comply
Natural Ventilation	60%	Can comply
Ceiling Heights	2.7m	Can comply
Apartment mix	Range of apartment sizes	<ul style="list-style-type: none"> • Studio: 0% • 1 bed: 19% • 2 bed: 50% • 3 bed: 31%

Site C: 15 & 17 Hampden Street

Site C has a total site area of 809m² with a 20.12 frontage to Walker Street.

Consistent with Site B, the base controls enable a 9 storey podium envelope comprising a 3 storey street wall height with an upper level podium setback of 3m. The building envelope establishes a 2m setback to Hampden Street, nil side boundary setbacks to 11 Hampden and 179 Walker up to 9 storeys, and a rear setback of 12m.

The test fits undertaken by SJB confirm that a height of RL81.7 and an FSR of 3.8:1 is achievable.

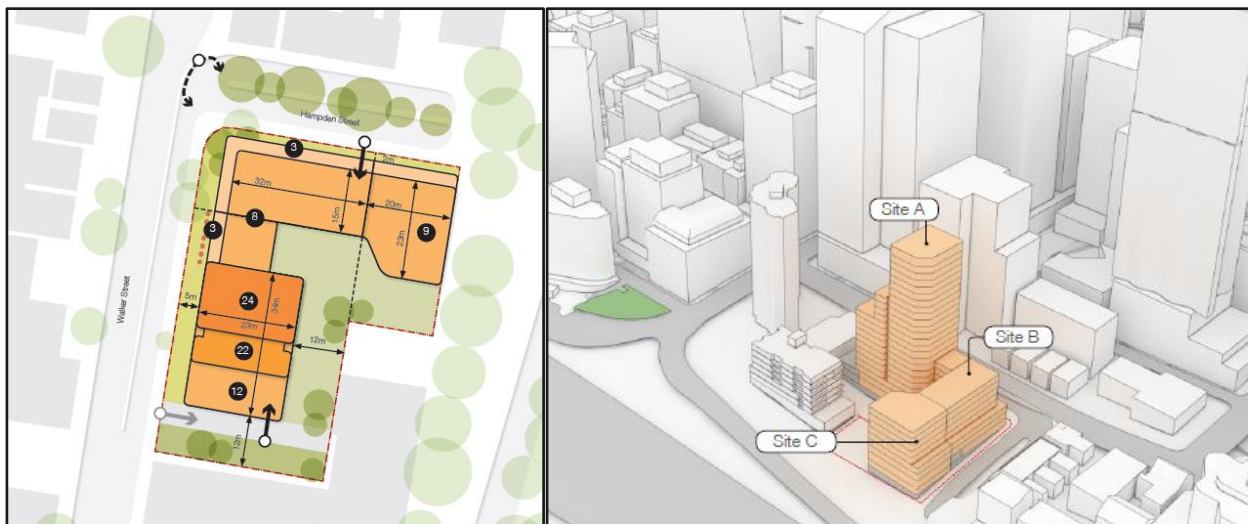
ADG Assessment:

SJB Architects have tested the building envelopes to ensure that the proposed built forms are capable of achieving compliance with SEPP 65 and the accompanying ADG. A summary compliance table is provided below:

Site C: SEPP 65 and ADG Compliance Table	Required	Provided
Communal Open Space	202m ²	563m ²
Deep Soil	57m ²	243m ²
Visual Privacy	12m	Complies
Solar and daylight Access	70%	Can comply
Natural Ventilation	60%	Can comply
Ceiling Heights	2.7m	Can comply
Apartment mix	Range of apartment sizes	<ul style="list-style-type: none"> • Studio: 0% • 1 bed: 42% • 2 bed: 53% • 3 bed: 5%

Complete Built Form Outcome:

Full redevelopment of the Precinct on a 'separate landholdings' basis would result in a building envelope as follows:



The setback controls, street wall heights and podium setbacks are established by the proposed amendments to the NSDCP 2013 and the creation of the *2.4.4 East Walker Street Precinct Controls*.

These controls will fall within Part C – Character Statements, Section 2 – North Sydney Planning Area and will form a sub-precinct within Section 2.4 Hampden Neighbourhood. The building envelope controls provide specific building envelope controls which will guide future development within the Precinct, regardless of the amalgamation strategy.

The proposed LEP and DCP amendments have been designed to ensure that future development of each of the three sites independently will be capable of achieving compliance with SEPP 65 and Part 3 and Part 4 of the Apartment Design Guide.

Together, the LEP, DCP and SEPP65 controls have been tested with regard to the potential development staging patterns.

The test fits confirm that compliance can be achieved with regard to separation distances and privacy, solar access and overshadowing, communal open space and deep soil planting and parking and access.

Testing of individual apartment mix and typology, layout, storage and other amenity requirement would be subject to further detailed planning design at the development application stage.

That DCP building envelope and setback controls have been specifically designed to ensure that an appropriate and compliant degree of amenity is achieved within the Precinct. This includes the built-to-boundary and nil side setback arrangements for the properties along Hampden Street.

The building footprint and proposed setbacks will support a substantial consolidated communal landscaped area at the rear of the sites.

4. CONCLUSION

This report has been prepared to address the matters of consideration relating to lot isolation and precinct amalgamation.

While this is not in support of a Development Application and is not required at this early stage in the planning process, this report has been prepared in accordance with the Planning Principles relating to lot isolation. The report and the accompanying documentation confirms that:

- 1) site isolation would not occur as a result of the proposed amendments to the NSLEP 2013 or NSDCP 2013;
- 2) each site within the precinct can be developed within a compliant building envelope, in accordance with the proposed amendments to the NSLEP 2013 and NSDCP 2013 whilst also achieving compliance with relevant provisions of SEPP 65 and ADG; and
- 3) fair and reasonable attempts have been made to consolidate the properties within the Precinct, over the March 2017 – March 2019 period, which is demonstrated by the negotiations which have occurred with the individual land owners.

DISCLAIMER

This report is dated 22 March 2019 and incorporates information and events up to that date only and excludes any information arising, or event occurring, after that date which may affect the validity of Urbis Pty Ltd's (**Urbis**) opinion in this report. Urbis prepared this report on the instructions, and for the benefit only, of Avenor Pty Ltd (**Instructing Party**) for the purpose of Amalgamation Strategy (**Purpose**) and not for any other purpose or use. To the extent permitted by applicable law, Urbis expressly disclaims all liability, whether direct or indirect, to the Instructing Party which relies or purports to rely on this report for any purpose other than the Purpose, and to any other person which relies or purports to rely on this report for any purpose whatsoever (including the Purpose).

In preparing this report, Urbis was required to make judgements which may be affected by unforeseen future events, the likelihood and effects of which are not capable of precise assessment.

All surveys, forecasts, projections and recommendations contained in or associated with this report are made in good faith and on the basis of information supplied to Urbis at the date of this report, and upon which Urbis relied. Achievement of the projections and budgets set out in this report will depend, among other things, on the actions of others over which Urbis has no control.

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Whilst Urbis has made all reasonable inquiries it believes necessary in preparing this report, it is not responsible for determining the completeness or accuracy of information provided to it. Urbis (including its officers and personnel) is not liable for any errors or omissions, including in information provided by the Instructing Party or another person or upon which Urbis relies, provided that such errors or omissions are not made by Urbis recklessly or in bad faith.

This report has been prepared with due care and diligence by Urbis and the statements and opinions given by Urbis in this report are given in good faith and in the reasonable belief that they are correct and not misleading, subject to the limitations above.

ATTACHMENT 1: LETTER OF ADVICE

21 March 2019

Mills Oakley
ABN: 51 493 069 734

Privileged and confidential

Your ref:
Our ref: AXGS/3273112

Walker Street No.100 Pty Ltd
C/- Suite 12 Level 12
37 Bligh Street
SYDNEY NSW 2000

All correspondence to:
PO Box H316
AUSTRALIA SQUARE NSW 1215

Partner
Aaron Gadiel +61 2 8035 7858
Email: agadiel@millsOakley.com.au

By email: Greg.gould@avenor.com.au

Attention: Greg Gould

Dear Greg

Advice re site isolation principles, 173 – 179 Walker Street and 11, 15 and 17 Hampden Street North Sydney

You have asked whether there has been sufficient compliance with the Land and Environment's Court site isolation principles in respect of a planning proposal you are pursuing for the above land.

The Land and Environment Court has established a 'planning principle' dealing the isolation of a site by the redevelopment of adjacent sites. This planning principle is set out in a decision known as *Karavellas v Sutherland Shire Council* [2004] NSWLEC 251 at [17]-[19].

The **first thing** to note is that this planning principle only directly applies in respect of a development application. It is typically triggered when there is some planning control (to be applied in development assessment) which requires either site amalgamation or consideration of whether adjacent sites will be 'isolated'.

This means that, in a strict sense, the planning principle has no implications for the progress of your planning proposal.

Nonetheless, it is open to the planning proposal authority to consider this planning principle in determining whether to adopt the planning proposal and submit it for gateway determination.

The **second thing** to note is that, in our opinion, no issue of 'isolation' actually arises in the present case.

The factor of 'isolation' can be considered from two perspectives:

- Can the potentially isolated blocks be acceptably developed, as a single site, in a manner which accords with the relevant planning controls?
- Can the alleged isolation of the adjoining blocks be overcome in the future by way of amalgamation with other adjoining land?

(680-682 Kingsway Caringbah Pty Ltd v Sutherland Shire Council [2017] NSWLEC 99 at [117]).

We have reviewed the *Site Isolation and Consolidation Assessment: East Walker Street Precinct* (Urbis, March 2019).

The 'Walker Street Properties' — which are in common ownership — exceed the 900 square metres in area that is set as a reference point under clause 6.12 of *North Sydney Local Environmental Plan 2013*. They comprise a potential 2,399m² site.

The 'Hampden Street Properties' — taken together — exceed the 900 square metres in area that is set as a reference point under clause 6.12 of *North Sydney Local Environmental Plan 2013*. They comprise a potential 1,610m² site.

While the Hampden Street Properties are not in common ownership, there is no apparent reason to believe that any one of the lots that comprise the Hampden Street Properties will be developed independently from the others. If this issue were to arise, it would ordinarily be addressed at the time that a development application is lodged.

In any event, figures 2 and 3 of the *Site Isolation and Consolidation Assessment* (and the accompanying analysis) make it clear that, separately or together, the Hampden Street properties are capable of development under the proposed planning controls.

Figure 2 also confirms that the Walker Street Properties can be developed without difficulty under the proposed planning controls.

Accordingly, in our view, none of the potential development sites that are affected by the planning proposal are isolated. This is because:

- The potentially isolated blocks are capable of being acceptably developed, as a single site, in a manner which accords with the proposed planning controls.
- For each of the blocks, amalgamation with adjoining land is possible (but is not necessary).

Given the above, the Court's planning principle really has little work to do in this matter. As there is no isolated site, there should be no obligation on any party to attempt the amalgamation of any sites.

However, on the assumption that your efforts to amalgamate the site require evaluation, we consider that the planning principle is achieved taking into account the circumstances of this matter.

We say this because:

- Negotiations commenced at an early stage and prior to the lodgement of the planning proposal.
- No satisfactory result was achieved from the negotiations.
- Reasonable offers have been made and not accepted — such offers being above those set out in an independent valuation.

Please do not hesitate to contact me on (02) 8035 7858 if you would like to discuss this advice.

Yours sincerely




Aaron Gadiel
Partner

Accredited Specialist — Planning and Environment Law

ATTACHMENT 2: SUMMARY NEGOTIATION RECORD

COMMERCIAL-IN-CONFIDENCE

Summary Engagement Record

11-17 Hampden Street North Sydney NSW 2000

Prepared by Avenor Pty Ltd on behalf of the Developer, Walker Street No. 100 Pty Ltd (being a related entity of Oxley Holdings Limited) on 21 March 2019.

This is a record of some correspondence regarding the purchase negotiations with owners of 11, 15 and 17 Hampden Street. The detail of the negotiations is generally commercial-in-confidence so has been retained and undisclosed.

11 Hampden Street North Sydney

Land Title: 1/DP119732 (property under option)

Overview:

Activity	Date	Description
Letter of Offer	18/08/2016	Avenor provided Letter of Offer to the Owners, for the purchase of 11 Hampden Street on behalf of Walker Street No. 100 Pty Ltd. The Owners provided a subsequently declined the offer and responded that they required a higher purchase price.
Letter of Offer	4/03/2017	Avenor provided Letter of Offer to the Owners, for the purchase of 11 Hampden Street on behalf of Walker Street No. 100 Pty Ltd. The Owners provided a subsequently declined the offer and responded that they required a higher purchase price.
Email Offer	1/06/2018	Avenor provided an email offer to the Owners of 11 Hampden Street to purchase the properties. The Owners elected not to proceed with the offer.
Deed of Put and Call Option	9/07/2018	A private company entered into a Deed of Put and Call Option with the Owners of 11 Hampden Street on 9 July 2018.
Phone Call with Option Holder	6/09/2018	Avenor spoke with the Option Holder on the phone. The Option Holder confirmed it was seeking to purchase 15 Hampden and 17 Hampden and had made offers to those parties.

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Activity	Date	Description
Letter of Offer from Avenor	22/10/2018	Avenor presented a letter to the Option Holder outlining a summary of an intended purchase structure that would take the form of a Call Option Novation Agreement.
Meeting between Avenor and Option Holder	6/11/2018	Avenor met with the Option Holder to discuss the purchase of the property under option at 11 Hampden Street.
Letter of Offer from Avenor	6/11/2018	Avenor provided a Letter of Offer to the Option Holder outlining an arrangement for an option novation agreement and providing a summary of terms of purchase for 11 Hampden Street.
Email Correspondence	7/11/2018	The Option Holder provided Avenor with a copy of the Call Option Agreement and Share Sale Agreement for 11 Hampden Street for due diligence purposes, and informed Avenor that the Option Holder had instructed their lawyer to prepare a draft document to reflect key terms.
Email Correspondence	7/11/2018	Avenor responded to the Option Holder that Avenor did not need the Option Holder to start drafting the novation agreement.
Phone Call	12/11/2018	Parties spoke about potential terms but could not come to an arrangement
Meeting with Avenor, and the Option Holder.	20/11/2018	Avenor met with the Option Holder to discuss the proposed terms.
Meeting with Avenor, the Option Holder, and SJB Architecture	29/11/2018	<p>Avenor met with the Option Holder and SJB Architecture for the purpose of presenting urban design studies undertaken by SJB and demonstrating development options for the site.</p> <p>SJB provided an overview of the planning proposal and the pre-lodgement concept design. Avenor expressed an interest to work together to develop a mutually beneficial plan for the site.</p>
Offer from Option Holder for sale of 11 Hampden Street to Avenor	30/11/2018	The Option Holder provided an email following the previous meeting. The Option Holders proposed a commercial agreement.

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Activity	Date	Description
Telephone Call between the Option Holder and Avenor	1/12/2018	<p>The Option Holder and Avenor discussed the terms of the agreement. Avenor stated that Walker Street No. 100 Pty Ltd would be unable to agree to the terms proposed.</p> <p>No agreement was reached in the course of the conversation.</p>
Meeting with Avenor and the Option Holder.	5/02/2019	<p>Avenor met with Option Holder and Urbis to discuss the intended amendments to planning controls in the Planning Proposal.</p> <p>Avenor presented the draft planning amendments as well as the latest concept design by SJB Architecture.</p>
Meeting with Avenor, Urbis, and the Option Holder.	4/03/2019	<p>Avenor met with the Option Holder and Urbis to discuss the intended amendments to planning controls in the Planning Proposal. Avenor presented the latest reference designs.</p> <p>Avenor provided a revised offer. The offer was not accepted by the Owner.</p>
Correspondence with the Option Holder	15/03/2019	<p>Terms were not able to be agreed between the Option Holder and Avenor.</p>

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15 Hampden Street North Sydney

Land Title: 1/DP591516

Overview:

Activity	Date	Description
Letter of Offer from Avenor	23/03/2017	<p>Avenor Pty Ltd on behalf of Walker Street No. 100 Pty Ltd had previously engaged Colliers International for the purpose of acquiring the properties at 11-17 Hampden Street.</p> <p>On 23/3/17, Colliers International submitted a Letter of Offer provided by Avenor to Purchase 15 Hampden Street North Sydney on behalf of Oxley Holdings Limited and invited the owner to discuss the letter of offer.</p> <p>The Offer was rejected by the Owner.</p>
Letter from Avenor	28/08/2018	<p>A letter was sent informing the owners that Avenor Pty Ltd had acquired 173-179 Walker Street and was working to develop a planning outcome for the site, following the recommendations of the Sydney North Planning Panel following the determination of the Planning Proposal for 173-179 Walker Street in April 2018.</p> <p>Avenor requested they contact Avenor to discuss the plans for 173-179 Walker Street and mutual planning opportunities and provided contact details for further engagement.</p>
Community Consultation Flyer	06/12/2018	<p>Avenor delivered a flyer to the owners informing them that it was undertaking community consultation on a planning proposal at 173-179 Walker Street North Sydney.</p> <p>The Owner did not attend the consultation session</p>
Community Consultation Flyer	06/19/2018	<p>Avenor delivered a flyer to the owners informing them that it was undertaking community consultation on a planning proposal at 173-179 Walker Street North Sydney with the intention to lodge a planning proposal on 11-17 Hampden Street and 173-179 Walker Street North Sydney.</p>

COMMERCIAL-IN-CONFIDENCE

Activity	Date	Description
Letter of Offer from Avenor	20/02/2019	Avenor submitted a Letter of Offer to Purchase 15 Hampden Street North Sydney on behalf of Oxley Holdings Limited and invited the owner to discuss the letter of offer.
Response to the letter of Offer to Avenor	28/02/2019	Avenor met with the Owner to discuss the Letter of Offer presented on 20.02.2019 and the Planning Proposal. The owner advised that the offer was not accepted, refused to negotiate and requested no further engagement.
Letter from Avenor	18/03/2019	Avenor provided a letter to the Owner confirming the Owner's rejection of the previous offer.

COMMERCIAL-IN-CONFIDENCE

17 Hampden Street North Sydney

Land Title: 2/DP591516

Overview:

Activity	Date	Description
Letter of Offer from Avenor	23.03.2017	<p>Avenor Pty Ltd on behalf of Walker Street No. 100 Pty Ltd had previously engaged Colliers International for the purpose of acquiring the properties at 11-17 Hampden Street. and provided a letter of offer to Colliers to provide to the owners.</p> <p>On 23 March 2018 Colliers International submitted a Letter of Offer provided Avenor, to Purchase 17 Hampden Street North Sydney on behalf of Oxley Holdings Limited and invited the owner to discuss the letter of offer.</p> <p>The offer was not accepted by the Owner.</p>
Meeting with Owner	01.08.2018	<p>Avenor met with the Owner to discuss future plans for the precinct, the outcome of the Rezoning Review , the planning pathway going forward and expressed an interest in purchasing the property. The Owner confirmed that the Option Holders for 11 Hampden Street had also made offers to purchase 17 Hampden.</p>
Community Consultation Flyer	06.12.2018	<p>Avenor delivered a flyer to the owners informing them that it was undertaking community consultation on a planning proposal at 173-179 Walker Street North Sydney. The Owner attended the Community Consultation meeting to discuss the Planning Proposal.</p>
Community Consultation Flyer	06.19.2018	<p>Avenor delivered a flyer to the owners informing them that it was undertaking community consultation on a planning proposal at 173-179 Walker Street North Sydney with the intention to lodge a planning proposal on 11-17 Hampden Street and 173-179 Walker Street North Sydney. The Owner attended the Community Consultation meeting to discuss the Planning Proposal.</p>

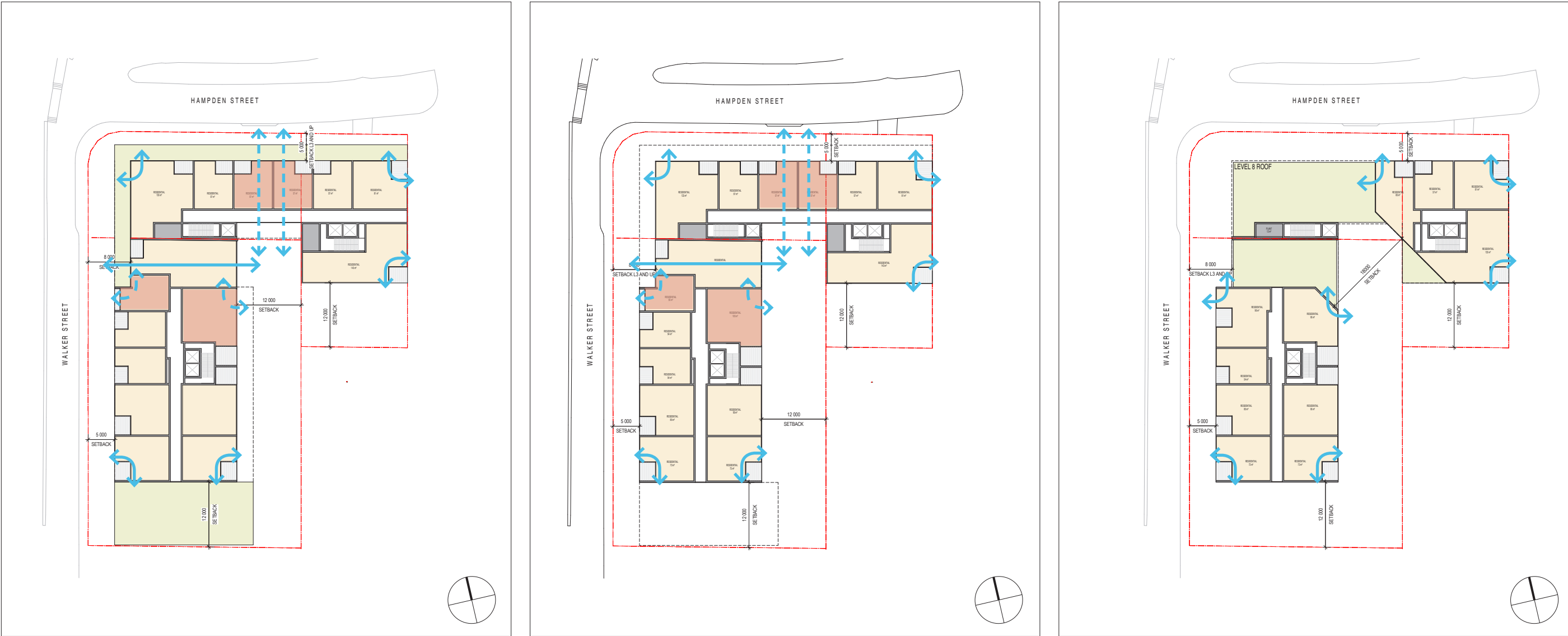
COMMERCIAL-IN-CONFIDENCE

Activity	Date	Description
Letter of Offer from Avenor	22.02.2019	<p>Avenor submitted a Letter of Offer to Purchase 17 Hampden Street North Sydney on behalf of Oxley Holdings Limited and invited the owner to discuss the letter of offer.</p> <p>The offer was not accepted by the Owner.</p>
Meeting with the Owner in response to the Letter of Offer	22.02.2019	<p>Avenor met with the Owner to present the Letter of Offer and discuss the Planning Proposal. The offer was rejected by the owner.</p>
Phone call and Revised Letter of Offer from Avenor	5.03.2019	<p>Avenor provided a revised offer to the Owner.</p> <p>This Offer was subsequently rejected by the Owner.</p>
Phone call	11.03.2019	<p>Further discussion regarding purchase arrangements.</p> <p>Confirmation that the offer was not accepted by the Owner.</p>
Letter from Avenor	18.03.2019	<p>Avenor provided a letter to the Owner confirming the Owner's rejection of the previous offer.</p>

ATTACHMENT 3: REFERENCE SCHEME TEST FIT AND ADG COMPLIANCE ASSESSMENT

Reference Scheme

6.12 Envelope test fit (L3-12)



Level 3

Levels 4 to 8

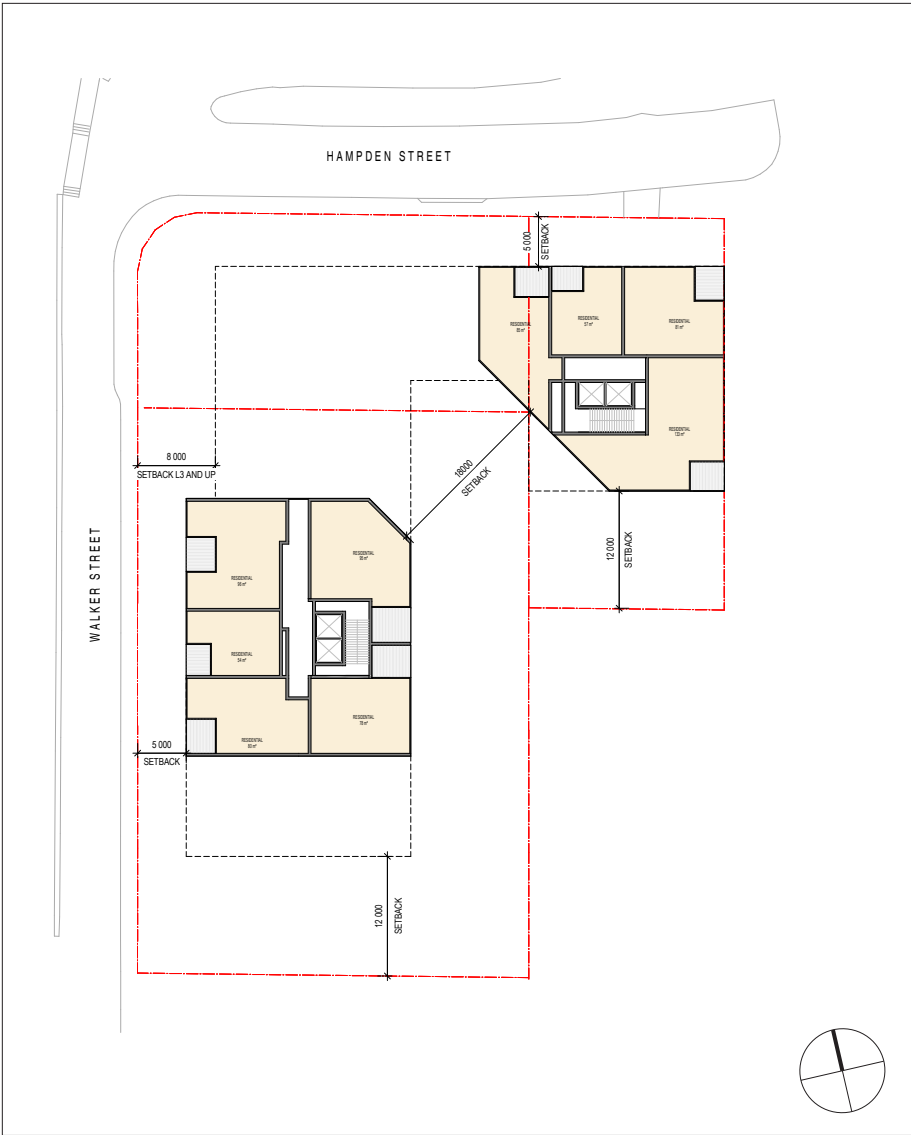
Levels 9 to 12

Key

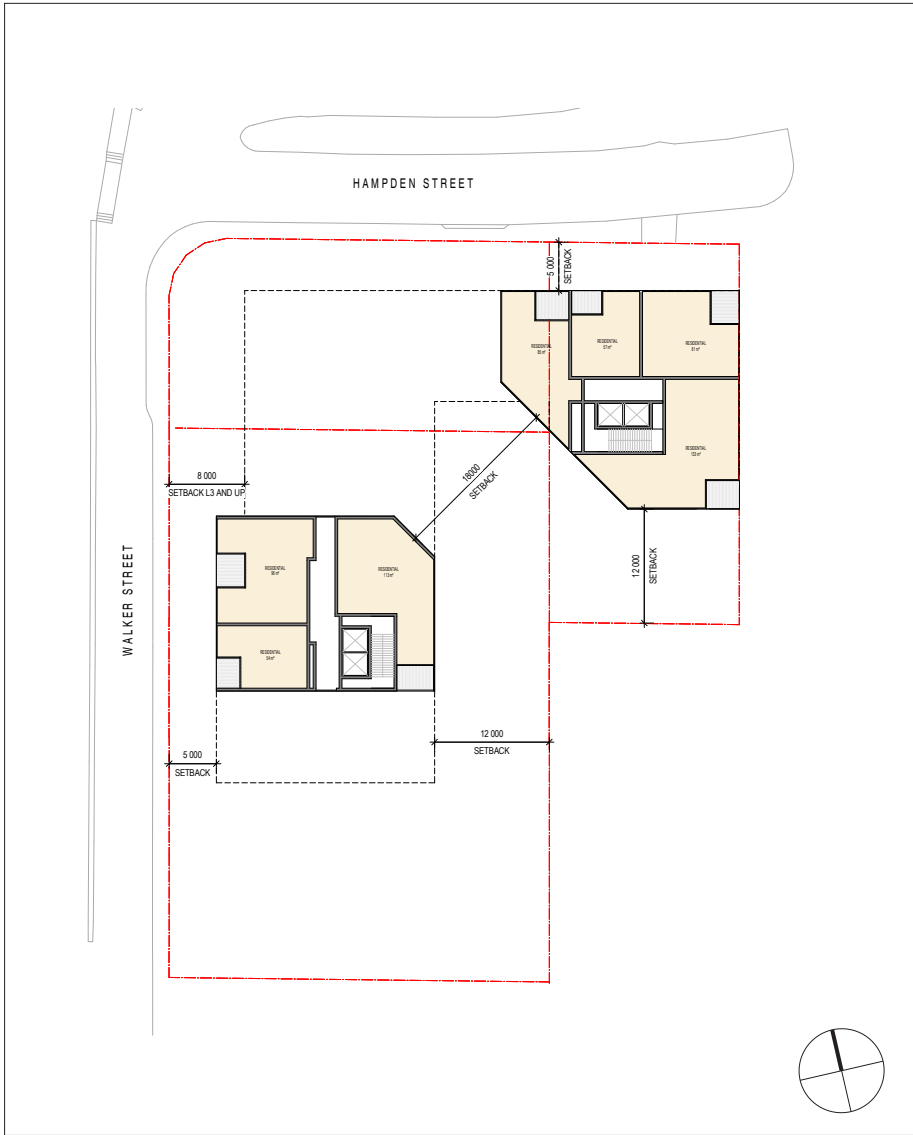
- Site Boundary
- ↔ Cross Ventilation
- ↔ Cross Ventilation can be achieved with alteration
- Apartments which can be altered

Reference Scheme

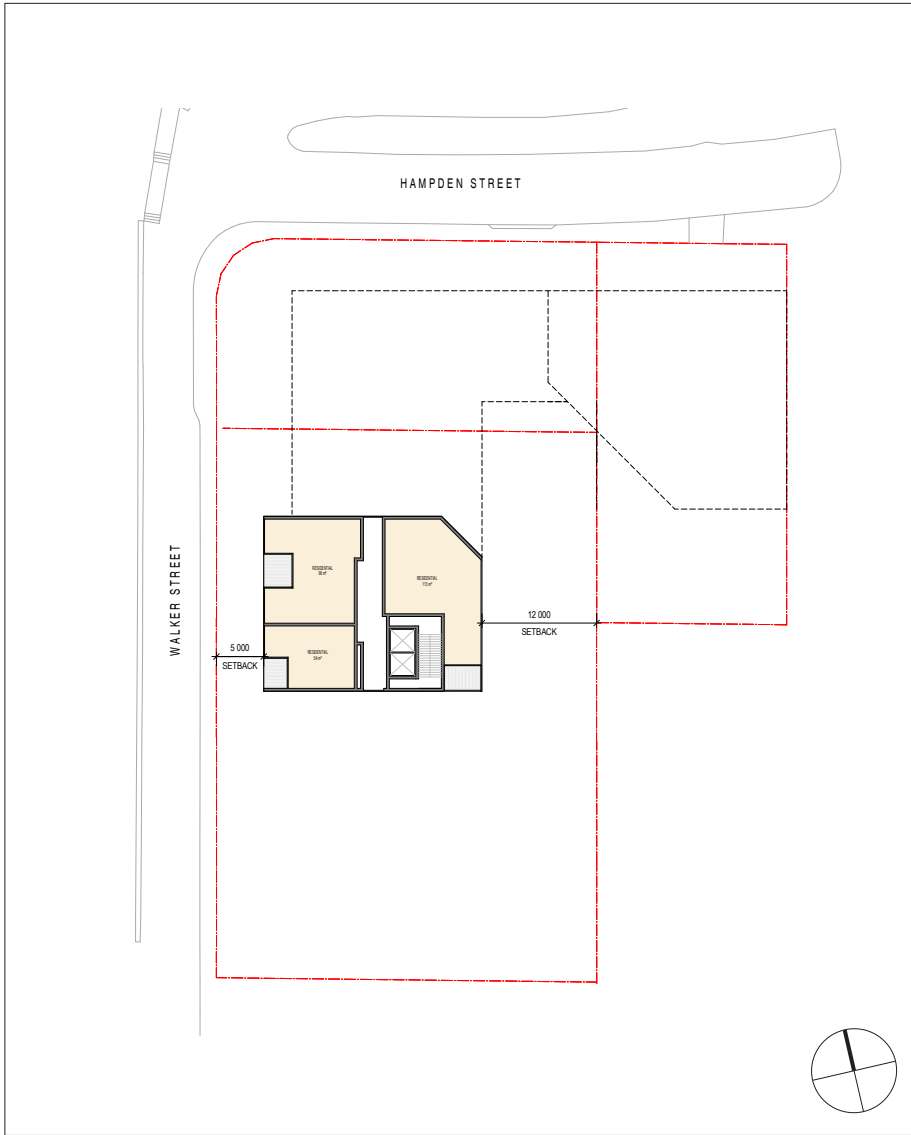
6.13 Envelope test fit (L13-L24)



Levels 13 to 16



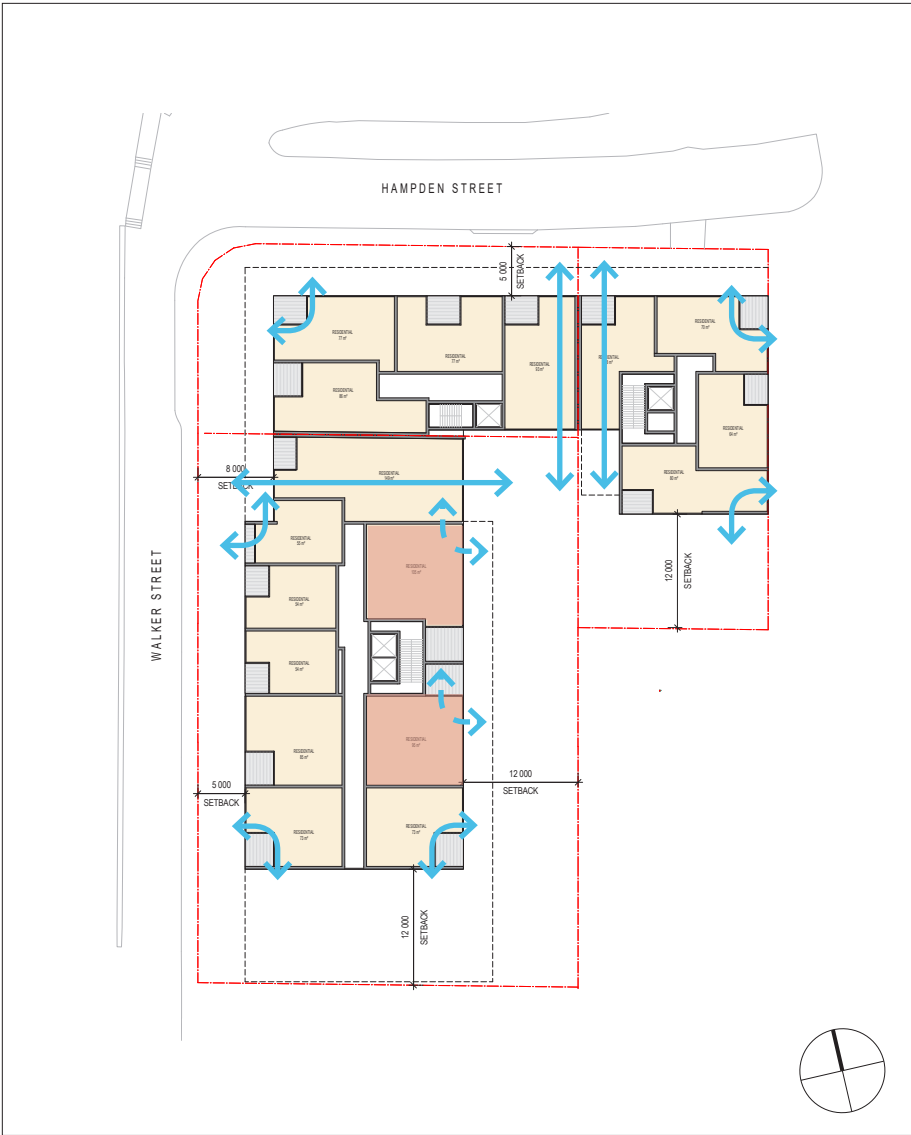
Levels 17 to 18



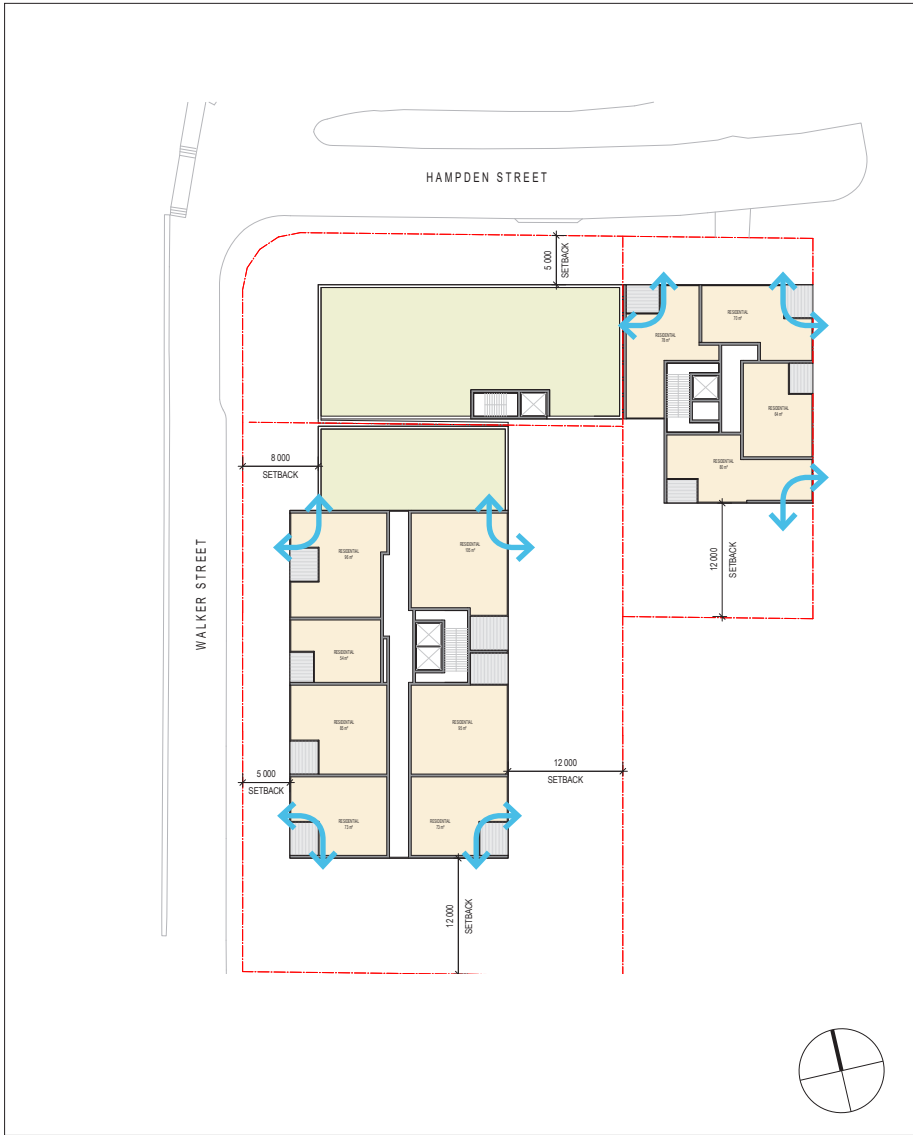
Levels 19 to 24

ATTACHMENT 4: SEPARATE LAND HOLDINGS TEST FIT AND ADG COMPLIANCE ASSESSMENT

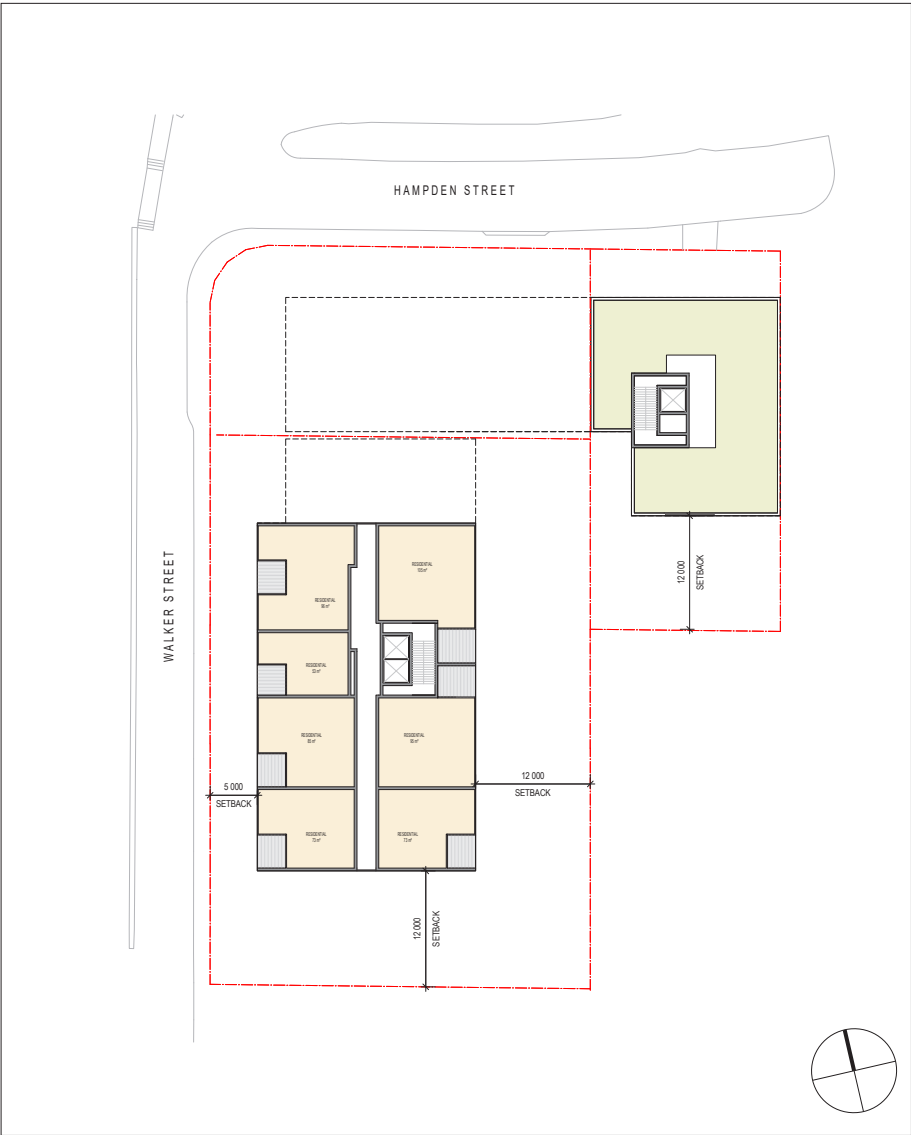
8.13 Envelope test fit (levels 3 to 11)



Levels 3 to 7



Level 8

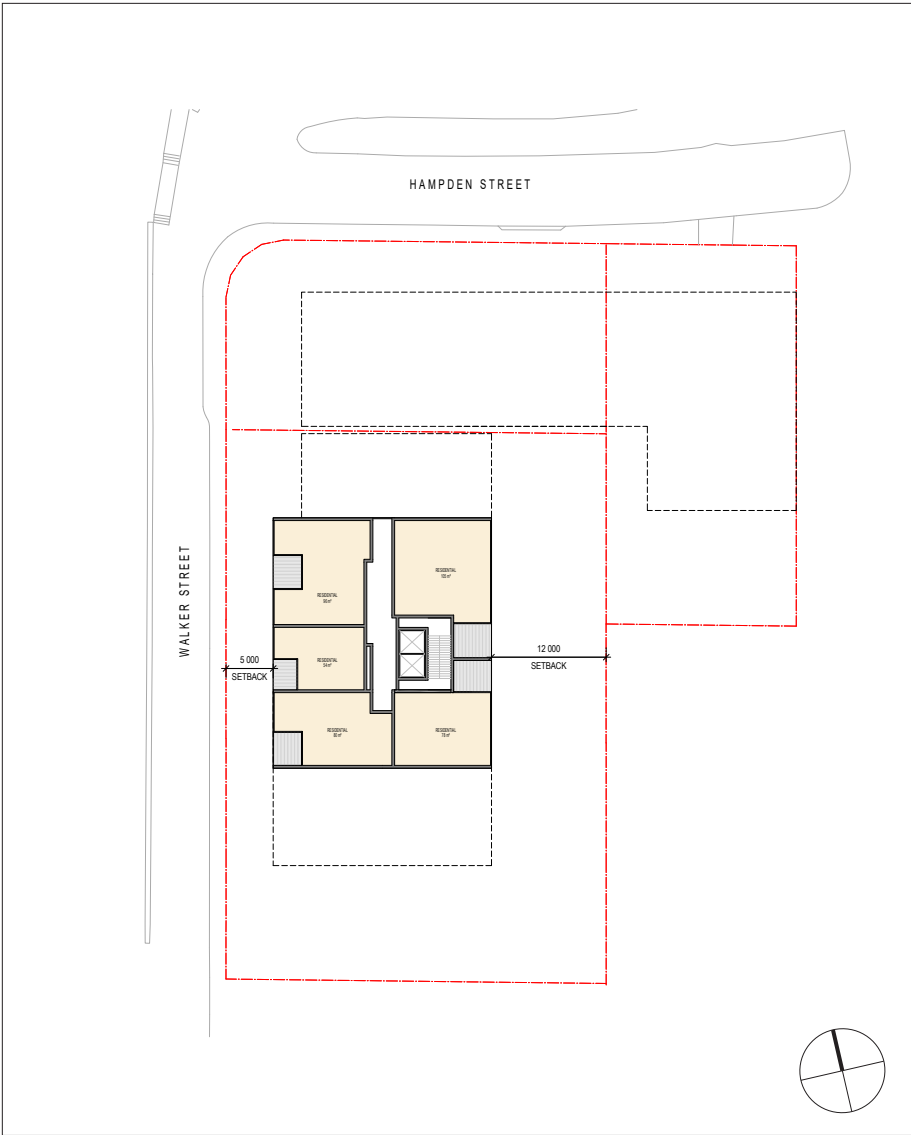


Levels 9 to 11

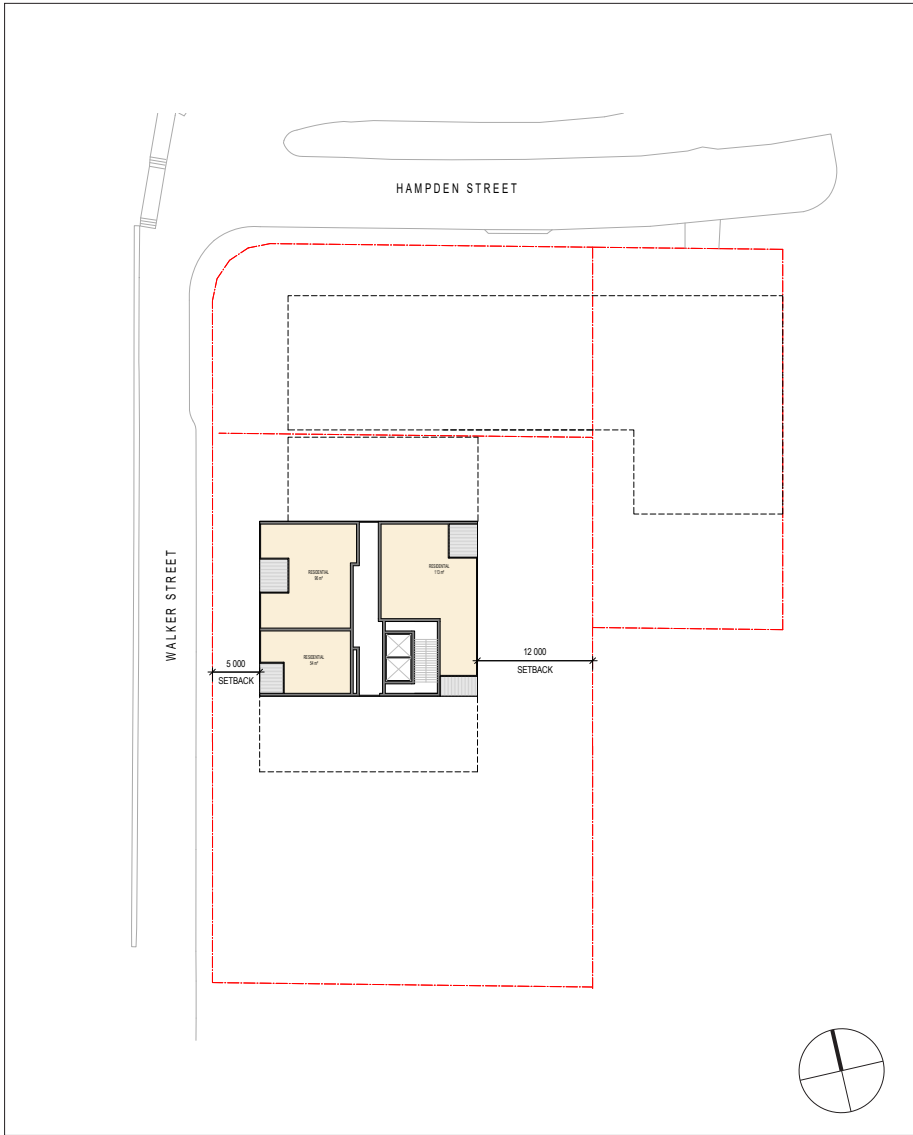
Key

- Site Boundary
- ↔ Cross Ventilation
- ↔ Cross Ventilation can be achieved with alteration
- Apartments which can be altered

8.14 Envelope test fit (levels 12 - 23)



Levels 12 to 15



Level 16 to 23



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