

14 September 2020

Att: The General Manager
North Sydney Council
200 Miller Street
North Sydney NSW 2060

Dear Sir,

**RE: LETTER OF OFFER TO ENTER INTO A VOLUNTARY PLANNING AGREEMENT –
PLANNING PROPOSAL – 173-179 WALKER STREET AND 11-17 HAMPDEN NORTH SYDNEY**

Introduction

We write on behalf of the following land owners:

- Walker Street No. 100 Pty Ltd (The Developer), the owner of 24 properties located at 173-179 Walker Street North Sydney,
- Hampden Street Pty Ltd as trustee for the Hampden Street Unit Trust who holds options which entitle it to acquire all of the shares in Eswod Home Units Pty Ltd, the registered proprietor of 18 residential apartments located at 11 Hampden Street, North Sydney,
- Eswod Home Units Pty Ltd,
- Siew Kit Foo and Tung Sing Wong, the owners of 15 Hampden Street, North Sydney, and
- Diane Sandra Fischer, the owner of 17 Hampden Street, North Sydney.

In May 2020, Avenor Pty Ltd submitted a Planning Proposal (PP_2020_NORTH_004_00) to the Department of Planning, Industry and Environment for Gateway Determination. The planning proposal seeks to amend controls in the North Sydney Local Environmental Plan 2013 (NSLEP 2013) relating to the properties located at 173-179 Walker Street and 11-17 Hampden Street, North Sydney.

Submission of the planning proposal for Gateway Assessment follows the decision of the Sydney North Planning Panel in February 2020 that the objectives and intended outcomes of the planning proposal had Strategic and Site Specific Merit to proceed.

This voluntary offer to enter into a planning agreement has been prepared in alignment with North Sydney Council Voluntary Planning Agreements Policy, and in consideration of other established mechanism and policies throughout NSW. It has been prepared in consultation with statutory planners from Urbis and specialist VPA lawyers from Mills Oakley.

The purpose of this letter is to summarise the principal terms of the voluntary planning agreement (VPA) under Section 7.4(1)(a) and (b) of the Environmental Planning and Assessment Act 1979 (EP&A Act) that the Developer would be willing to enter into with North Sydney Council.

This letter is an offer to enter into a VPA for the purposes of s7.7(3) of the EP&A Act. In preparing this letter, consideration has been given to the following documents:

- Planning Proposal prepared by Urbis, dated March 2019
- North Sydney Local Infrastructure Plan Contributions Plan
- North Sydney Development Contributions Plan, 2013
- North Sydney Council VPA Policy
- Ward Street Precinct Master Plan,
- Draft Civic Precinct and Surrounds Planning Study, currently exhibited by Council

This letter of offer is for Council's initial consideration prior to the drafting of the voluntary planning agreement and explanatory note.

Background

A planning proposal has been lodged for the properties located at 173-179 Walker Street and 11-17 Hampden Street in North Sydney. The proposal seeks to amend the building height and FSR development standards as contained within the North Sydney Local Environmental Plan 2013, that apply to the subject site. The planning proposal does not seek to change the current R4 High Density Residential zoning. Amendments to the North Sydney Development Control Plan 2013 are also proposed as part of this Planning Proposal.

The Planning Proposal is accompanied by indicative concept plans prepared by SJB Urban Design and supporting technical studies which provide further guidance with respect to the anticipated development outcome and mitigating measures for the site. A letter of offer accompanied the planning proposal lodged with North Sydney Council on 22 March 2019. This revised letter of offer has been updated to reflect the current status of the properties, the decision of the Sydney North Planning Panel that the planning proposal proceed to Gateway Determination, and the draft recommendations of the Civic Precinct and Surrounds Planning Study.

As of the date of this letter, the Developer, the owners corporations and Walker Street No. 100 Pty Ltd are the registered proprietors of 173-179 Walker Street, Eswood Home Units Pty Ltd is the registered proprietor of 11 Hampden Street, Siew Kit Foo and Tung Sing Wong are the registered proprietors of 15 Hampden Street, and Diane Sandra Fischer is the registered proprietor of 17 Hampden Street.

The purpose of this offer is to provide an offer for a material public benefit and a monetary contribution to serve a public purpose.

Proposed Operative Provisions

It is proposed that the Parties enter into a planning agreement within the meaning of Section 7.4 of the *Environmental Planning and Assessment Act 1979*.

1. PARTIES:

- The Owners of Strata Plan 64615, Strata Plan 9808, Strata Plan 86752, Strata Plan 11082, Walker Street No. 100 Pty Ltd (ABN 26 612 695 244) of Suite 12, Level 12, 37 Bligh Street Sydney NSW 2000.
- Hampden Street Pty Ltd as trustee for the Hampden Street Unit Trust of Level 3, 107 Phillip Street, Parramatta NSW 2150
- Eswod Home Units Pty Ltd
- Tung Sing Wong of 15 Hampden Street, North Sydney, NSW, 2060
- Siew Kit Foo of 15 Hampden Street, North Sydney, NSW, 2060
- Diane Sandra Fischer of Ground Floor, 17 Hampden Street, North Sydney NSW 2060
("Developer")
- North Sydney Council (ABN 32 353 260 317) of 200 Miller Street North Sydney NSW 2000
("Council").

2. LAND TO WHICH VPA APPLIES

The VPA would apply to the land described as the East Walker Street Precinct (the Site) in the document titled Planning Proposal prepared by Urbis dated April 2020 (Planning Proposal).

The 'Walker Street Properties'

- 173 Walker Street (the common property and lots within SP 11082)
- 175 Walker Street (the common property and lots within SP 86752)
- 177 Walker Street (the common property and lots within SP 9808)
- 179 Walker Street (the common property and lots within SP 64615)
- 11 Hampden Street (Lot 1 in DP 119732)
- 15 Hampden Street (Lot 1 in DP 591516)
- 17 Hampden Street (Lot 2 in DP 591516)

3. INSTRUMENT TO WHICH THIS VPA RELATES

The VPA will relate to the instrument change sought in the Planning Proposal seeking to introduce a change to the NSLEP 2013 to implement the objectives and the intended outcomes of the Planning Proposal (The LEP Amendment):

- Amend the NSLEP 2013 *Height of Buildings Map* to provide a maximum building height of RL133;
- Amend the NSLEP 2013 *Floor Space Ratio Map* to provide a maximum FSR of 6.1:1;
- Introduce a new Special Provisions Map within the NSLEP 2013 and map the East Walker Street Precinct as "Area 1;" and
- Amend Section 6 Additional Local Provisions - Division 2 General Provisions to include:

6.20 East Walker Street Precinct

(1) This clause applies to land that is identified as "Area 1" on the Special Provisions Map and comprises the land in:

- o 173 Walker Street (SP 11082)
- o 175 Walker Street (SP 86752)
- o 177 Walker Street (SP 9808)
- o 179 Walker Street (SP 64615)
- o 11 Hampden Street (Lot 1 DP119732)
- o 15 Hampden Street (Lot 1 DP591516)
- o 17 Hampden Street (Lot 2 DP591516)

(2) Despite clause 4.3(2), if all lots within "Area 1" are amalgamated, the consent authority may grant development consent to the erection of a building on land to which this clause applies, to a maximum building height of RL148 metres.

(3) Despite subclause (2), development to which this clause applies must not result in a net increase in overshadowing to Doris Fitton Park between 12pm - 2pm on June 21st.

4. DEVELOPMENT TO WHICH THIS VPA RELATES

The VPA would apply to development of the East Walker Street Precinct, comprising properties at 173-179 Walker Street North Sydney and 11-17 Hampden Street North Sydney.

5. PROPOSED CONTRIBUTIONS TO BE MADE UNDER THIS AGREEMENT:

Following submission of this Letter of Offer to Council, and subject to Council agreement, Walker Street No.100 Pty Ltd proposes to prepare and submit for Council's consideration a draft voluntary planning agreement. It is proposed that the voluntary planning agreement will consist of the provision material public benefits and monetary contributions for the purpose of carrying out to serve a public purpose.

In its decision on 20 February 2020, the Sydney North Planning Panel recommended that as part of the assessment of the planning proposal, consideration to be had of the outcomes of any Northern CBD Planning Study. Following that decision, the Draft Civic Precinct Planning Study was adopted for purposes of public exhibition by North Sydney Council on 18 May 2020. The draft Study identifies a number of public benefits for Voluntary Planning Agreements in the Study Area, in which the East Walker Street Precinct is located. These benefits include public domain upgrades, including provision of a Pocket Park, as well as affordable housing provisions. The benefits outlined in this letter of offer are consistent with these recommendations.

(1) VPA Contribution to satisfy the social and community infrastructure requirement in the proposed amendments to NSLEP

a) **Affordable Rental Housing Contribution OR Equivalent Net Value as a Monetary Contribution:**

The Developer proposes to dedicate 5% of the residential yield (in terms of unit numbers) to affordable rental accommodation, in accordance with the *North Sydney Affordable Housing Strategy 2015*; to be dedicated to Council in perpetuity and managed as affordable housing by an affordable housing operator, or the dedication of an equivalent monetary benefit to Council to be used for the

provision of affordable housing. This contribution is intended to include 5% of the residential yield, comprising units nominated by the Developer on submission of a Development Application. This contribution will be proportionately scaled back to the extent that any affordable housing contribution is required as part of any development consent (including under Division 7.2 of the *Environmental Planning and Assessment Act 1979* (the EP&A Act)). For example, if a 5 per cent affordable housing contribution is required under the terms of the development consent, irrespective of any planning agreement, then the affordable housing contribution under the planning agreement will be nil.

b) Further Monetary Contributions:

The Developer proposes to provide monetary contributions for the purpose of carrying out community infrastructure within the North Sydney Centre and Hampden Neighbourhood as proposed in the Draft Amendment to the North Sydney Development Control Plan 2013 included in this Planning Proposal.

Community Infrastructure in this instance means development within the North Sydney Centre and/or within the Hampden Neighbourhood for the purposes of public road improvements, public domain improvements, public open space upgrades, establishment of a pocket park at the eastern end of Hampden Street, and residential parking improvements, public art, or other community facilities.

To assist in determining the need for these improvements, the Proponent undertook a Community Consultation process where it invited residents from more than 500 residences and business in the surrounding precinct to provide input on the development including potential considerations for future community infrastructure, as well as reviewed all public submissions regarding a previous planning proposal for the Site to ensure the public benefit offering considered their requests.

Additionally, the Draft Civic Precinct Planning Study identifies the eastern end of Hampden Street as a 'Pocket Park' as part of its recommended outcomes for the Precinct. The monetary contributions proposed by the Developer are able to provide funding for this purpose.

This monetary contribution is proposed to be calculated at a rate of \$15,100.00 per additional dwelling calculated by reference to the net increase in dwelling numbers approved under a development consent.

This amount will be in addition to whatever the normal amount of local infrastructure contributions is payable under section 7.11 or 7.12 of the EP&A Act.

If any special infrastructure contribution is required to be paid to the NSW Government under the terms of a development consent (or a separate planning agreement with the state government) the monetary contribution required under the planning agreement will be reduced proportionately.

(2) Development Contributions (in accordance with Section 7 of the EP&A Act)

- a) The benefits under the proposed planning agreement are not to be taken into consideration in determining a development contribution under section 7.11 of the EP&A Act.

6. APPLICATION OF THE DEVELOPMENT CONTRIBUTIONS:

The material public benefit items would be provided before the issue of any occupation certificate on the site. The value of the contribution and material public benefit offering is based on the development proposed under the submitted planning proposal and in the event of changes to the proposed built form controls as part of the Planning Proposal, the owner reserves the right to adjust its planning agreement offer. It is anticipated that the final contribution would be calculated by reference to the actual dwelling numbers approved under a development consent.

The application of contributions detailed in this offer are intended to apply to the properties at 173-179 Walker Street, North Sydney and 11-17 Hampden Street, North Sydney.

If the Council seeks further contributions to social and community infrastructure in relation to the development of 173-179 Walker Street North Sydney and 11-17 Hampden Street North Sydney prior to, or in the course of determining an application for development consent (other than contributions under section 7.11 or section 7.12 of the EP&A Act), any further such contributions must result in a pro-rata reduction of the contributions provided for in the planning agreement).

7. REGISTRATION OF THE AGREEMENT:

The agreement is proposed to be registered under the *Real Property Act 1900 (NSW)* in the relevant folios of the Register for the Land in accordance with s7.6 of the Act and the Developer at its own expense will, promptly after this agreement comes into operation, take all practical steps and otherwise do anything that the Council reasonably requires to enable the registration of an agreement mutually satisfactory to both parties.

The obligations of the planning agreement are therefore intended to be the responsibility of the owner of the subject property per the terms of the agreement, and not specifically the responsibility of Walker Street No. 100 Pty Ltd in the event a transfer of the land is made prior to completion a development on the subject property.

8. COMMENCEMENT:

The developer's obligation to provide the development contributions only arises if the planning controls are changed as proposed and a development consent is granted.

9. ENFORCEMENT OF THE AGREEMENT:

We do not propose to lodge any monetary security in relation to the above obligations. This is because the planning agreement will provide for the enforcement of the agreement by a suitable means in the following ways:

- The owner will arrange for the registration of the planning agreement on the title of the land. This means that the agreement will be binding on, and enforceable against, the owner of the land from time to time as if each owner for the time being had entered into the agreement (section 93H(3) of the *Environmental Planning and Assessment Act 1979*).
- Prior to registration, the owner will not be able to assign or novate its rights under the agreement, or transfer its interest the land, without Council's consent. The Council's consent may not be unreasonably

withheld, but consent may withheld if the owner is in material unremedied breach of the agreement. The restriction will not prevent the use of the land as security for the purpose of finance.

- The Council will be able to compulsorily acquire any acquisition land not dedicated in accordance with the requirement of the agreement for \$1.00.
- It is proposed that an occupation certificate (including an interim occupation certificate) will not be able to be issued if:
 - the necessary construction required by the planning agreement has not been completed;
 - the relevant land has not been dedicated; or
 - the relevant monetary contribution has not been made.

It is proposed that nothing within the proposed agreement prevents a party from bringing proceedings in the Land and Environment Court to enforce any aspect of this agreement or any matter to which this agreement relates, and the Council from exercising any function under the Act or any other act or law relating to the enforcement of any aspect of this Agreement or any matter to which this agreement relates.

10. DISPUTE RESOLUTION

The planning agreement will contain a mechanism for the resolution of disputes by way of mediation.

11. FORMAL DOCUMENT:

A formal planning agreement would need to be prepared in accordance with this offer. It should be expected that this document will contain reasonable safeguards to protect the owner's interests and those of the Council that are not expressly referenced in this letter. Ultimately any agreement will be dependent on the finalisation of this document in a form that is satisfactory to both the owner and the Council and the execution of that document. Until this process is completed no legally binding commitments can arise.

Acceptability Test

Council will apply the following test in order to assess the desirability of a proposed voluntary planning agreement:

4.4 Acceptability Test (Clause 4.4 of VPA Policy)	Proponent Compliance
a) <i>Is the proposed planning agreement directed towards a proper or legitimate planning purpose having regard to its statutory planning controls and other adopted planning policies and strategies and the circumstances of the case?</i>	Yes. It is directed towards achieving legitimate state, local community planning policies and strategies, targeted statutory planning outcomes and specific circumstances for the East Walker Street Precinct.
b) <i>Does the proposed planning agreement provide for a reasonable means of achieving the relevant purpose and outcomes and securing the benefits?</i>	Yes. It provides a clear and established method to ensure the proposed benefits will be secured and the purpose and outcomes achieved.
c) <i>Can the proposed planning agreement be taken into consideration in the assessment of the relevant instrument change or development application?</i>	Yes. The proposed agreement relates to the East Walker Street Precinct, to which the Planning Proposal applies.
d) <i>Will the proposed planning agreement produce outcomes that meet the general values and expectations of the public and protect the overall public interest against planning harm?</i>	Yes. In addition to aligning with heavily document public interest determined by State and Local Government policy, the proponent also undertook public consultation to gather local input potential benefits to be provided to the local community.
e) <i>Does the proposed planning agreement promote Council's objectives in relation to the use of planning agreements as set out in this policy?</i>	Yes
f) <i>Does the proposed planning agreement conform to the principles governing Council's use of planning agreements as set out in this policy?</i>	Yes. See above table.
g) <i>Are there any relevant circumstances that may operate to preclude Council from entering into the proposed planning agreements?</i>	No.
h) <i>Will the proposed planning agreement provide public benefits that bear a relationship to the development or is there justification for the provision of unrelated benefits?</i>	Yes. The public benefits offered related to community infrastructure upgrades for the surrounding precinct and North Sydney Centre.

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Guiding Principles

Council's use of planning agreements will be governed by the following principles:

4.1 Guiding Principles	Proponent Compliance
1) <i>Planning decisions will not be bought or sold through planning agreements;</i>	The Planning Proposal prepared is very clearly justified on its own strategic and site-specific merits and is capable of being approved in its own capacity. This VPA is voluntary and is simply to enhance the already positive planning outcome.
2) <i>Council will not allow planning agreements to improperly fetter the exercise of its functions under the Act, Regulation or any other act or law;</i>	Council is capable of progressing the Planning Proposal and this planning agreement under the normal and proper exercise of its functions.
3) <i>Council will not use planning agreements for any purpose other than a proper planning purpose;</i>	The planning agreement is simply provided for a proper planning purpose.
4) <i>Development that is unacceptable on planning grounds will not be permitted because of public benefits offered by developers, unless those public benefits address or offset the impacts of concern;</i>	The Development is acceptable on planning grounds, and as such, public benefits are only provided in conjunction with the justified planning outcome.
5) <i>Council will not seek benefits under a planning agreement that are wholly unrelated to a particular development, however a developer may offer benefits that are not connected to the proposed development;</i>	Council will not seek benefits unrelated to the development of the East Walker Street Precinct.
6) <i>When considering the merits of a proposed development or instrument change, the provision of any public facility or public benefits proposed in the planning agreement that is wholly unrelated to the application will be given little to no weight;</i>	The proposed public benefits are related to the Planning Proposal.
7) <i>When considering a development or instrument change, Council will not give undue weight to a planning agreement;</i>	The proposed planning changes are very clearly justified on their own strategic and site-specific merits and are capable of being approved in their own capacity. There is no need to give undue weight to this planning agreement.

8) <i>Council will not allow the interests of individuals or interest groups to outweigh the public interest when considering a proposed planning agreement; and</i>	The public interest is at the forefront of this planning agreement, as demonstrated unequivocally in the Planning Proposal.
9) <i>Council will not improperly rely on its position in order to extract unreasonable public benefits from developers under planning agreements.</i>	The public benefits offered under the proposed planning agreement are very reasonable.

Summary

This letter of offer is submitted to Council for your consideration. We would welcome the opportunity to meet with Council to discuss this proposal after which time we would proceed to the drafting of the Voluntary Planning Agreement. It is proposed that the agreement is entered into by the Developer and North Sydney Council.

The VPA would operate when the amendments to the Local Environmental Plan and Development Control Plan take effect.

Yours faithfully,



Low See Ching,

Director, Walker Street No. 100 Pty Ltd

On behalf of Walker Street No. 100 Pty Ltd (Developer) and Hampden Street Pty Ltd, Eswod Home Units Pty Ltd, Siew Kit Foo and Tung Sing Wong, and Diane Sandra Fischer

APPENDIX 1: VPA METHODOLOGY

1) VPA Methodology:

This voluntary offer to enter into a planning agreement has been prepared in alignment with North Sydney Council Voluntary Planning Agreements Policy, and in consideration of other established mechanism and policies throughout NSW. It has been prepared in consultation with statutory planners from Urbis and specialist VPA lawyers from Mills Oakley.

The contributions proposed as part of the Planning Proposal are based on policy recommendations by North Sydney Council, consultation with the Department of Planning and Environment, community consultation undertaken by Avenor, as well as consideration of the specific development feasibility of the subject site.

It is noted that the North Sydney Voluntary Contributions Policy does not contain a specific basis or scope for development contributions to be provided for the East Walker Street Precinct, nor an associated valuation method or notion of value capture.

This is seen to be appropriate as it is in line with North Sydney Council's VPA policy Guiding Principles. These Guiding Principles and the Acceptability Test have been considered in preparing this offer.

As such, the contributions have been determined organically for the Site by identifying key relevant areas of public interest determined by Council Policy. Key relevant documents drawn on are:

- North Sydney Community Infrastructure Policy
- Public Interest determined by Public Consultation with Local Community
- North Sydney Council Affordable Housing Strategy
- Draft Civic Precinct and Surrounds Planning Study

2) Affordable Rental Housing Contribution:

An affordable housing contribution is a public benefit associated with the Planning Proposal. North Sydney Council adopted an Affordable Housing Strategy (AHS) in 2013. One of the identified strategies outlined in this document seeks to "utilise the planning system to provide affordable housing". Associated with this strategy is to use voluntary planning agreements that accompany Planning Proposals to alter planning controls, which apply to a site, where such a change will significantly increase the value of the land.

The Affordable Housing Strategy States that,

'In considering the proportion of this value that should be dedicated to the provision of affordable housing, Council will need to consider whether other public benefits are being provided either on-site or by way of funds dedicated to Council for a specific alternate purpose. In instances where a Planning Proposal is a function of an adopted planning study, the adopted study is likely to provide guidance regarding the proportion of captured value dedicated to affordable housing.'

In addition, the Affordable Housing Strategy States that,

'The provision of affordable housing via Voluntary Planning Agreements should, in the first instance, occur on-site by way of dedication of dwellings to Council in perpetuity to be managed as affordable housing units. Only when it is considered inappropriate to require the provision of affordable housing on-site will Council consider a monetary contribution to be used for the provision of affordable housing.'

The Greater Sydney Commission identifies that between 5-10% of apartments for Planning Proposals that seek to alter planning controls in Sydney Metropolitan Area has been identified by the Great Sydney Commission as an appropriate means to increase the supply of affordable rental housing. It is reasonable to adopt a rate of 5% for consideration in addition to additional public benefits offered for community infrastructure.

Method for Determining the Equivalent Value of the Affordable Housing Contribution

- Step 1: Prepare design for Development Application to determine total number of proposed units
- Step 2: Calculate the number of units to be dedicated, being 5% of the total number of units (rounding down to the nearest whole unit)
- Step 3: Identify which particular units are to be offered for dedication to Council
- Step 4: Developer elects either to dedicate units to Council, or a monetary sum equal to the total value
- Step 5: In event, Developer elects to provide the monetary sum, Developer to obtain an independent valuation of the units from an independent registered valuer
- Step 6: Submit the independent valuation with the DA identifying the total value sum

Working Example of Calculation Method (For methodology purposes only. Not indicative of value.):

- Step 1: Total Number of Units in DA: e.g. 260 units (for example purposes only)
- Step 2: 5% of Total Number of Units: e.g. 13 units based on 5% of 260 units
- Step 3: Units Identified for Dedication: (Developer identifies units offered for dedication.)
- Step 4: Developer to elect: Developer elects either to dedicate the units or make monetary contribution. If elects monetary contribution, moves to Step 5.
- Step 5: Obtain independent valuation: [eg CBRE Valuations] value the 13 units at [e.g. \$1,000,000] each}
- Step 6: Submit Independent valuation: CBRE valuation submitted with DA noting total sum of \$13,000,000

3) Monetary Contributions:

A monetary contribution for community infrastructure works is proposed on the basis of a rate per additional dwelling approved in a Development Consent for any properties within the East Walker Street Precinct being 173-179 Walker Street and 11-17 Hampden Street. A rate of \$15,100 per additional dwelling is proposed.

Working Example of Calculation Method (For methodology purposes only. Not indicative of value.):

- Number of Dwellings: 260 dwellings in the Development Consent
- Number of Existing Dwellings: 44 dwellings
- Number of Additional Dwellings: 216 dwellings

Walker Street No 100 Pty Ltd

Level 4, 15 Castlereagh Street
Sydney NSW 2000 Australia
E info@avenor.com.au

Rate / Additional Dwelling: \$15,100
Monetary Contribution Value: \$3,261,600

4) Summary of Example Contributions Value:

The below table summarises the example values summarised above.

Description of Developer's Contributions	
Affordable Housing - 5% (approx. 13 units)	\$ 13,000,000
Monetary Contribution for community infrastructure	\$3,261,600
Total Estimated Contribution	\$16, 261,600