

8 September 2023

Urban Planning and Heritage
Strategy and Environment
Ku-ring-gai Council
Locked Bag 1006
GORDON NSW 2072

Sent via the NSW Planning Portal

Dear Sir/ Madam

**LETTER OF OFFER TO ENTER INTO VOLUNTARY PLANNING AGREEMENT
345 PACIFIC HIGHWAY LINDFIELD PLANNING PROPOSAL**

Gyde Consulting acts on behalf of Bellpen Pty Ltd, the landowner and Augusta Advisors, the applicant for the accompanying Planning Proposal (PP) for the subject site.

This is a letter of offer to enter into a voluntary Planning Agreement (VPA) associated with the PP.

1. Introduction

- a. Augusta Advisors (the applicant), on behalf of the landowner Bellpen Pty Ltd (the landowner), is lodging a PP at 345 Pacific Highway, Lindfield (the subject site).
- b. In connection with the PP, the landowner is offering to enter into a VPA with Ku-ring-gai Council (Council) pursuant to Part 7 Division 7.1 of the *Environmental Planning and Assessment Act 1979* (NSW) (EP&A Act) for the provision by the landowner of material public benefits to be used for a public purpose, for the benefit of Council and the local community (contributions).
- c. The purpose of this letter is to set out the key terms of the landowner's offer so that the negotiation and preparation of a VPA on agreed terms can commence.

2. Description of Planning Proposal

- a. The PP applies to the subject site, known as 345 Pacific Highway Lindfield, legally described as Lot 1 DP 810773.
- b. The PP seeks an amendment to the maximum height of buildings and maximum floor space ratio development standards applying to the subject site pursuant to the *Ku-ring-gai Local Environmental Plan 2015* (KLEP).
- c. A summary of the changes is provided in the table below:

Development Standard	Existing	Proposed
Height of building	11.5m	55m
Floor space ratio	1:1	4.5:1

- d. There is no change proposed to the land use zone of the subject site.

3. VPA offer

The landowner offers to enter into a VPA with Council on the terms set out below:

a. *Parties*

The parties to the VPA will be:

- i. Bellpen Pty Ltd in its capacity as the landowner, and
- ii. Ku-ring-gai Council as its capacity as the planning proposal authority.

b. *Land*

The land to which the VPA will apply is the subject site, the public footpaths associated with the road reserves adjoining the subject site, and Ibbitson Park.

c. *The development to which the VPA will apply.*


- i. The VPA will apply to the PP as set out in the submitted application.
- ii. The landowner (and/ or the applicant as their representative) intends to negotiate and enter into the VPA with Council, in parallel with the assessment of the Planning Proposal, with a view to the VPA being entered into prior to the finalisation of the PP. The VPA will operate on and from the date of the coming into operation of the KLEP amendments the subject of the PP.

d. *Nature and extent of contributions*

- i. Under the VPA, the landowner will provide the following contributions:

Table 1: Contributions offer

Provision	Offer
Affordable Housing	<p>5% of the total residential floor space resulting from a future development application (DA) relying on the PP amendments, is to be affordable housing (AH).</p> <p>This would be for a period of 15 years and be offered to a registered Community Housing Provider (CHP) to manage.</p> <p>The provision of the 5% of development as AH is in line with the North District Plan.</p> <p>Evidence of the agreement with the CHP is to be provided to the Certifier prior to the issue of an Occupation Certificate for development resulting from a future development application (DA) relying on the PP amendments.</p>
Footpath upgrades	<p>The embellishment of the footpath areas around the boundary of the subject site, incorporating new lighting, new paving and furniture and street tree planting, and undergrounding of power lines as viable.</p> <p>This is consistent with the public domain works for other parts of the Lindfield Local Centre.</p> <p>The works are proposed to be completed prior to the issue of an Occupation Certificate for development resulting from a future development application (DA) relying on the PP amendments.</p>

Provision	Offer
<p>Proposed road widening of Havilah Street</p>	<p>The dedication, free of charge, to the relevant road authority, of the part of the subject site generally as indicated in Figure 1 below, for the purposes of road widening and/or traffic control devices.</p>  <p>Figure 1: Subject site outlined in red and indicative road widening zone shown outlined in green (Source: Nearmaps)</p> <p>The extent of road widening is to be determined with the relevant road authority.</p> <p>While there is an offer to dedicate this land for road widening, it is done so on the basis that the dedicated area is to remain part of the “site area” for the purposes of calculating floor space area for future development of the site.</p> <p>The dedication is proposed to be completed prior to the issue of an Occupation Certificate for development resulting from a future DA relying on the PP amendments.</p>
<p>Proposed landscape embellishment of Ibbitson Park</p>	<p>A monetary contribution or works for embellishment associated with Ibbitson Park. A scope of works is currently being prepared as a basis for discussion and agreement with Council, but could include:</p> <ul style="list-style-type: none"> • An upgrade of the existing playground, • A pedestrian connection along the share way connecting the two parts of Wolseley Road, • New park furniture, • New planting, • An improved interface between the park and Wolseley Road, and • A low impact pathway between the southern park entry and the child care centre. <p>The works are proposed to be completed or a monetary contribution is to be paid prior to the issue of an Occupation Certificate for development resulting from a future development application (DA) relying on the PP amendments.</p>

4. Mechanism for dispute resolution

- a. The VPA will contain a dispute resolution mechanism in accordance with Council's VPA Policy, under which such mediation will be conducted pursuant to the Mediation Rules published by the Law Society of NSW current at the time the agreement is entered into. If the dispute is not resolved under mediation, the dispute may, by agreement between the parties, be agreed to be resolved by expert determination by an independent expert in the relevant field.

5. Proposed means of enforcement

- a. The VPA will be registered on the title of the subject site and will contain a mechanism for removal of the VPA from title once the obligations under the VPA have been performed.
- b. The VPA will restrict the issue of particular Construction Certificates and/ or Occupation Certificates in accordance with ss 21, 34 and 48 of the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.
- c. The landowner will also provide reasonable security for performance of its obligations under the VPA.

6. Additional matters

- a. *Manner of design and construction of contributions*
 - i. The landowner acknowledges that the design of any works on public land will need to be to the satisfaction of Council, and/ or Transport for New South Wales (for works along the Pacific Highway). The VPA will contain a mechanism for Council and/ or Transport for New South Wales to review and approved any detailed design works.
- b. *Application of ss 7.11, 7.12 and 7.24 of the EP&A Act*
 - i. The VPA will not exclude the application of ss 7.11, 7.12 and 7.24 of the EPA Act to the Proposed Development.
- c. *Costs of negotiating, preparing and executing VPA*
 - i. The landowner will agree to pay Council's reasonable costs of preparing, negotiating, exhibiting and executing the VPA up to a total of \$5,000 plus GST.

We look forward to discussing these matters in more detail with Council and progressing the preparation of the VPA with Council.

If you have any questions please contact the undersigned on (02) 9068 7500 or davidr@gyde.com.au or Belinda Barrie (Senior Associate) on (02) 9071 1883 or by email: belindab@gyde.com.au.

Yours sincerely



David Ryan
Executive Director