

Explanatory Note:

**North Sydney Council,
Walker Street No. 100 Pty Ltd
and others**

Proposed Planning Agreement

Prepared in accordance with clause 25E of the
Environmental Planning and Assessment Regulation 2000

June 2021



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1. Introduction

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of a draft Voluntary Planning Agreement (**Planning Agreement**) under Section 7.4 of the *Environmental Planning and Assessment Act 1979* (**EPA Act**).

Clause 25E(1) of the *Environmental Planning and Assessment Regulation 2000* (**the Regulation**) requires that an explanatory note must be prepared to accompany a planning agreement.

The explanatory note must address the requirements of clause 25E(1)(a)-(b) of the Regulation. This explanatory note has been prepared to address these requirements.

Additionally, in preparing the explanatory note, the planning authority must consider any relevant practice note prepared by the Planning Secretary under clause 25B(2). The Planning Secretary has published *Planning agreements: Practice note – February 2021* but that practice note does not apply to a planning agreement that was substantially negotiated when the practice note was published and where public notice of the agreement is given before 1 July 2021.

Although the practice note says it does not apply, it has been considered by the parties in the course of preparing this explanatory note as required by clause 25B(3).

2. Summary of objectives, nature and effect

2.1 Parties and offer

A draft planning agreement (**the Planning Agreement**) has been prepared. The proposed parties to the Planning Agreement are North Sydney Council (**the Council**) on one hand, and:

- Walker Street No. 100 Pty Ltd;
- Hampden Street Pty Ltd (as trustee for the Hampden Street Unit Trust);
- Eswod Home Units Pty Ltd;
- Siew Kit Foo;
- Tung Sing Wong;
- Diane Sandra Fischer;
- The Owners — Strata Plan No 64615;
- The Owners — Strata Plan No 9808;
- The Owners — Strata Plan No 86752; and
- The Owners — Strata Plan No 11082

(**the Developer**) on the other.

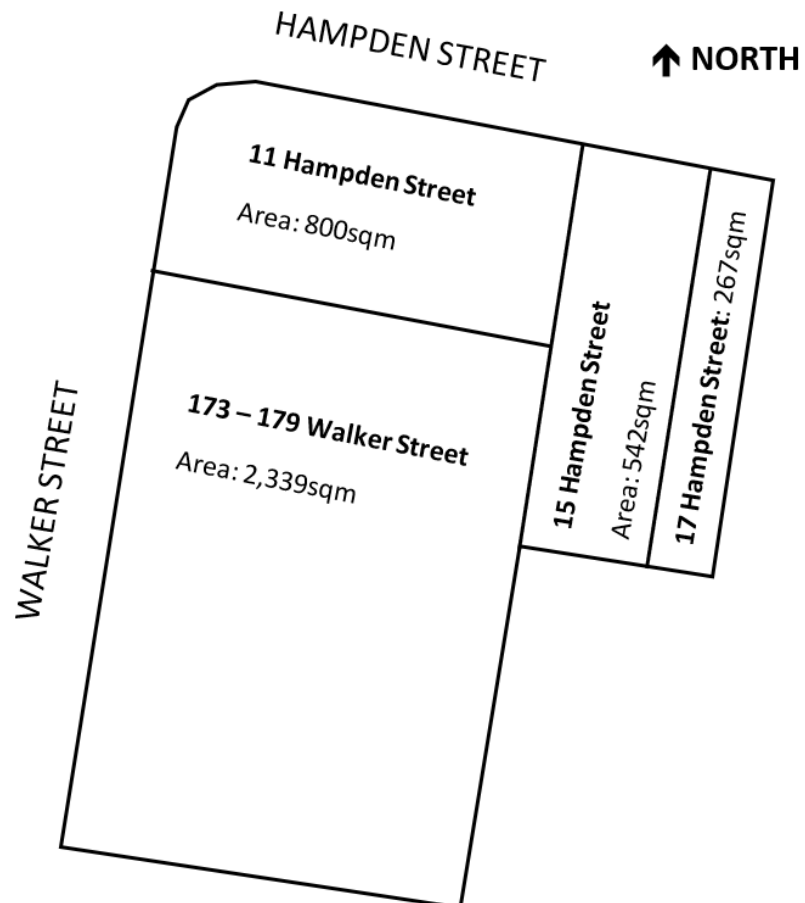
The Planning Agreement is the subject of an offer by the Developer.

2.2 Land

The Planning Agreement applies to the following land (the **Land**):

- Lots 1-6, SP64615, 179 Walker Street North Sydney;
- the common property of SP64615, 179 Walker Street North Sydney;
- Lots 1-6, SP9808, 177 Walker Street North Sydney;
- the common property of SP9808, 177 Walker Street North Sydney;
- Lots 1-6, SP86752, 175 Walker Street North Sydney;
- the common property of SP86752, 175 Walker Street North Sydney;
- Lots 1-6, SP11082, 173 Walker Street North Sydney;
- the common property of SP11082, 173 Walker Street North Sydney;
- Lot 1 DP119732, 11 Hampden Street North Sydney;
- Lot 1 DP591516, 15 Hampden Street; and
- Lot 2 DP 591516, 17 Hampden Street North Sydney.

The Land is shown visually in this image:



2.3 Instrument change, the development and the development application(s)

The Planning Agreement relates to:

- an 'Instrument Change' sought by the Developer; and
- future development of the Land for the purposes of residential flat buildings of a height, bulk and scale made possible by the 'Instrument Change'.

The 'Instrument Change' is any change to an environmental planning instrument such that:

- (a) the maximum height of buildings for the Land is:
 - (i) if all lots comprising the Land are amalgamated — RL148; and
 - (ii) otherwise —RL133;
- (b) the maximum floor space ratio for the Land is 6.1:1;
- (c) development of the Land must not result in a net increase in overshadowing of Doris Fitton Park between 12pm to 2pm on 21 June; and
- (d) there are no other new or amended provisions of an environmental planning instrument (when compared with what was in place on 20 October 2020) that would have the practical effect of preventing the realisation of a development of the height, bulk and scale anticipated by the above numerical maximums.

2.4 Objectives

The objective of the Planning Agreement is to provide a mechanism by which (in general terms):

- (a) either:
 - (i) the Developer will dedicate five per cent of the dwellings (apartments) within the new Development to the Council free-of-cost (with the intention that they then be used for affordable housing); or
 - (ii) the Developer will pay a monetary contribution in lieu of the dedication of dwellings; and
- (b) the Developer will make a monetary contribution for community infrastructure of \$15,100 for each net additional dwelling on the land (excluding any dwellings to be dedicated to the Council or for which a payment is made in lieu of such dedication).

The actual terms of the Planning Agreement should be studied to see how and when these obligations are triggered. The Planning Agreement also sets out detail designed to:

- protect the legitimate interests of the Council and the Developer during the course of the process; and
- govern a range of different development scenarios.

Under the Planning Agreement, the contributions towards affordable housing may be "scaled back", depending on the requirement to deliver affordable housing under any future development consent or by the NSW Government.

2.5 Nature

The Planning Agreement will be a voluntary Planning Agreement under section 7.4 of the EPA Act.

A Planning Agreement of this kind may require a Developer to dedicate land free of cost, pay a monetary contribution, or provide any other material public benefit to be used for or applied towards a public purpose.

In this particular case, the Planning Agreement provides for:

- the dedication of land free of cost (being the strata lots that comprise the dwellings to be dedicated); and
- monetary contributions

towards public purposes, namely the provision of affordable housing and community infrastructure.

2.6 Effect

In general terms delivery of the above contributions is timed to coincide with key benchmarks in the Development of the Land. This aligns the dedication of dwellings and the payment of monetary contributions in a way that is practicable for the Developer and ensures that contributions are delivered at appropriate times to provide for the needs of the new residents. The timing for delivery of contributions also ensures that dwellings can be lawfully occupied before they are dedicated to Council.

The Planning Agreement provides for the enforcement of the Planning Agreement by a suitable means if there is a breach by the Developer.

There is a requirement for security to be lodged prior to the issue of an occupation certificate for dwellings to be dedicated to Council. The security can be called on by Council if the Developer fails to dedicate the dwellings at the required time.

Monetary contributions are to be paid prior to the issue of an occupation certificate for dwellings within the development. An occupation certificate cannot be lawfully issued if the required monetary contributions are not made.

There are additional provisions allowing for the compulsory acquisition of dedication dwellings that have not been dedicated as required by the Planning Agreement and registration of the Planning Agreement on the title to the Land. Once registered, the Planning Agreement will bind future owners of the Land.

Where it is relevant to a development application, a consent authority must take into consideration a planning agreement — or any draft planning agreement — that a developer has entered into or offered to enter into (respectively).

A planning agreement cannot impose an obligation on a planning authority to actually grant a development consent. A merit assessment of the proposed development must still be carried out.

3. Assessment of the merits of the proposed Planning Agreement

3.1 Impact on the public or any relevant section of the public and the promotion of the public interest

The Planning Agreement will have a positive impact on the public and promotes the public interest.

This arises in two ways.

Firstly, the dwellings are to be dedicated:

- for the purposes of affordable housing (within the meaning of clause 6 of the *State Environmental Planning Policy (Affordable Rental Housing) 2009*); and
- to be managed by a registered community housing provider.

Where a monetary contribution is made in lieu of the dedication of dwellings, the monetary contribution is to be used for affordable housing.

This aspect of the Planning Agreement will contribute to the realisation of objective 11 of the *Greater Sydney Region Plan: A Metropolis of Three Cities* (March 2018). Objective 11 is that:

Housing [should be] ...more diverse and affordable

The proposed level of housing dedication (5 per cent) is consistent with that plan.

In general terms, registered community housing providers are required (as conditions of their registration) to make housing available for very low, low and moderate income households at controlled rents (1.3(d) of the EPA Act).

Secondly, the monetary contribution for community infrastructure is to be used by the Council to provide community infrastructure. This may include a 'pocket park' at the eastern end of Hampden Street (1.3(a) of the EPA Act).

The contribution towards community infrastructure is required in addition to any contributions under sections 7.11, 7.12 and 7.24 of the EPA Act (with a mechanism to adjust Planning Agreement contribution levels in limited circumstances). Accordingly, the contribution will positively contribute to the extent and quality of infrastructure available for use by the community.

3.2 Whether the Planning Agreement conforms with the planning authority's capital works program, if any

The contribution proposed under the Planning Agreement does not conform with the Council's capital works program (in the sense that the Planning Agreement creates opportunities not expressly envisaged by the capital works program).

The Planning Agreement will not have an adverse effect on this capital works program. Overall the Planning Agreement is likely to result in more capital works (to the benefit of the community) than would be the case without the Planning Agreement.

3.3 Whether the Planning Agreement specifies that certain requirements of the Planning Agreement must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued

The Planning Agreement does specify requirements that must be complied with before an **occupation certificate** is issued. In general terms, these relate to the making of monetary contributions and/or the provision of security.

The Planning Agreement does specify that a **construction certificate** cannot be issued for a relevant development, if a breach of the Planning Agreement has occurred in relation to that development (the overall development may comprise more than one development) and the breach has not been rectified.

The Planning Agreement does not specify any requirements that must be complied with before a **subdivision certificate** is issued.

4. Status of this explanatory note

This explanatory note has been agreed by parties proposing to enter into the Planning Agreement. This explanatory note is not to be used to assist in construing the Planning Agreement.