

Our Ref: 0071/KH-01-000/2024

5 June 2024

The General Manager
Port Stephens Council
116 Adelaide Street
Raymond Terrace NSW 2324

Attention: Ryan Falkenmire, Development Planning Coordinator, Port Stephens Council

Dear Ryan,

Re: Voluntary Planning Agreement - Letter of Offer
514 & 587 Newline Road, Raymond Terrace

McCloy Kings Hill Pty Ltd (**Landowner**) are the owners of the above-mentioned land which is also known as Lot 32 in DP 554875 and Part Lot 2, DP 37430 (the **Land**). As such, a development application for the site, DA 16-2013-599-1 has been lodged by McCloy Project Management Pty Ltd (**Applicant**) as the applicant for the creation of the proposed 95 lot residential subdivision.

McCloy Kings Hill Pty Ltd wishes to enter into a Voluntary Planning Agreement (VPA) to make several contributions to protect, enhance and sustain the ecological values of the Land and result in a ‘net gain’ of Koala habitat in accordance with the Port Stephens Comprehensive Koala Plan of Management. Please accept this letter as our irrevocable letter of offer.

The purpose of this letter is to set out what those contributions are so that, if accepted, they be incorporated into a VPA.

Landowner’s VPA Proposal

1. If development consent is granted to the Development Application, the Landowner irrevocably offers:

Conservation of Residential Zoned Land	The Landowner will conserve approximately 17.5ha of land zoned R1 General Residential to protect Koala Habitat with a higher numbers of Koala food trees to be retained. This area will be managed in line with the
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	existing conservation land zoned C2 Environmental Conservation, as specified below for "Conservation Area Works" and as shown in Figure 1 – Conservation Map.
Revegetation of Koala Feed Trees	267 Koala Feed trees will be removed as part of the proposed development. To compensate for this removal, the Landowner will plant a minimum of 1260 Koala Feed trees and 1260 supplementary trees/shrubs to meet the requirements of a "net gain" of Koala Feed trees under the CKPoM. Planting of the Koala Feed trees and supplementary trees will be in the Conservation Area within the area marked "Revegetation Area". The species, timing, replanting in the event of mortality and other arrangements will be in accordance with the VMP prepared by Restore dated 4 June 2024.
Conservation Area Works	<p>The Landowner will carry out initial Conservation Area Works in accordance with the VMP prepared by Restore dated 4 June 2024. The initial Conservation Area Works to include the following:</p> <ul style="list-style-type: none"> • Planting of Koala Feed trees, supplementary trees/shrubs and groundcovers within the conservation area marked as "Revegetation Area". • Annual weeding and reporting of weeding located within the conservation area. • Removal of all rubbish and existing fencing within the conservation area. • Placement of nest boxes or placement of hollows within the conservation area in accordance with the VMP prepared by Restore dated 4 June 2024. • Annual monitoring and reporting on all nest boxes located within the conservation area. • Annual reporting on all newly placed Koala Feed trees placed within the conservation area. • The installation of Koala Fencing separating the Conservation Area Works and proposed residential development. • The installation of access gates as located by Council separating the Conservation Area Works and proposed residential development.

	<ul style="list-style-type: none"> • Upgrading of existing walking tracks and closure and rehabilitation of redundant walking tracks and trails as agreed in consultation with Port Stephens Council. • Undertake the required Pest Animal Control over the conservation area in accordance with the VMP prepared by Restore dated 4 June 2024. • Undertake the required Fire Regime with prescribed ecological burns over the conservation area in accordance with the VMP prepared by Restore dated 4 June 2024. <p>All Conservation Area Works will commence with the commencement of the 1st Subdivision Works Certificate over the Land. Landowner responsibility for initial Conservation Area Works will be fulfilled when the performance criteria in Table 5-1 of the Vegetation Management Plan have been met prior the the creation of the 95th Lot associated with DA 16-2013-599.</p>
Dedication of Conservation Area	Upon completion of initial Conservation Area Works, the Landowner will transfer the Conservation Area to Council free of any encumbrances. Transfer to occur with the Subdivision Certificate creating the 95 th Lot associated with DA 16-2013-599.
Monetary Contribution	<p>Prior to the transfer of the Conservation Area, the Landowner will pay Council a Monetary Contribution of \$700,000 for ongoing management of the Conservation Area in accordance with the VMP prepared by Restore dated 4 June 2024.</p> <p>Five years following the transfer of the Conservation to Council, the Landowner will pay Council an additional Monetary Contribution of \$700,000 for the ongoing management of the Conservation Area, which will bring the total Monetary Contribution to \$1,400,000.</p>
Administration Costs	The Landowner will pay all costs towards the administrative costs of Council in administering the VPA.
Security	The Landowner will provide a Bank Guarantee to Council

	to the amount of \$700,000 with the dedication of land to Council occurring with the creation of the 95 th Lot associated with DA 16-2013-599. The Bank Guarantee will be returned five years from the date the land is dedicated to Council and when the Landowner provides Council with a monetary contribution of \$700,000.
Registration	The VPA will be registered over the Land. The Conservation Area Works and obligations under the VPA will relate primarily to the Conservation Area and occur alongside the Development. For this reason, the VPA will be progressively discharged from any newly registered residential lots until such time as the conservation lands are dedicated to Council at which time the VPA will be released entirely.

2. The VPA will comply with all statutory requirements – **see Attachment 1**
3. Figure 1 – Conservation Map attached shows the Residential Zoned land to be conserved.

Negotiations

4. The Landowner is prepared to consider reasonable changes to the offer including the replanting of Koala Feed Trees and/or supplementary tree planting in another nominated location within the Ports Stephens LGA if directed by Council.
5. This offer remains open and capable of acceptance until COB on 20 June 2024.

I trust you find the above offer is satisfactory and I look forward to receiving your acceptance or otherwise at your earliest convenience.

Should you require further information please do not hesitate to contact me.

Yours faithfully,

James Goode

JAMES GOODE
Development Director

ATTACHMENT 1 – SUMMARY OF REQUIREMENTS

Requirement under the Act	VPA
<p>Planning instrument and/or development application – (section 7.4 (2))</p> <p>The Developer has:</p> <ul style="list-style-type: none"> a) sought a change to an environmental planning instrument. b) made, or proposes to make a Development Application. c) Entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies. 	<ul style="list-style-type: none"> a) No b) Yes c) No
Description of land to which this deed applies – (section 7.4(3)(a))	Lot 32 in DP 554875 and Part Lot 2, DP 37430.
Description of development to which this deed applies – (section 7.4(3)(b))	Development over the land which is the subject of development application reference 16-2013-599-1.
Description of change to the environmental planning instrument to which this deed applies – (section 7.4(3)(b))	Not applicable.
The scope, timing, and manner of delivery of contribution required by this deed – (section 7.4(3)(c))	Described in Letter of Offer.
Applicability of sections 7.11 and 7.12 of the act – (section 7.4(3)(d))	The application of sections 7.11 and 7.12 of the Act is not excluded in respect of the Development.
Applicability of section 7.24 of the Act (section 7.4(3)(d))	The application of section 7.24 of the Act is not excluded in respect of the Development.
Consideration of benefits under this deed if section 7.11 applies – (section 93F(3)(e))	No.
Mechanism for Dispute Resolution – (section 7.4(3)(f))	Yes – mediation, expert evaluation, and other agreed methods.
Enforcement of this deed – (section 7.4(3)(g))	Developer to provide Bank Guarantee. VPA to be registered over Land containing Conservation Area.

No obligation to grant consent or exercise functions – (section 7.4(10))	Nothing in the VPA will be construed as limiting or fettering in any way the discretion of the Council in exercising any of the Council's statutory functions, powers, authorities, or duties.
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Table 2 – Other matters

Requirement under the Act	VPA.
Registration of the Planning Agreement – (section 7.6 of the Act)	VPA to be registered over Land containing Conservation Area.
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a construction certificate is issued – (clause 25E(2)(g) of the Regulation)	No.

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ATTACHMENT 2 – CONSERVATION MAP

