



17 October 2018

The General Manager
Lake Macquarie Council
Box 1906
Hunter Region Mail Centre NSW 2310

Dear Sir/Madam,

387 Lake Road, Glendale (Site)
Revised Offer to enter into a Voluntary Planning Agreement with Lake Macquarie Council

1. Introduction

1.1 In correspondence dated 4 June, 2015 Stockland Development Pty Limited (**Stockland**) offered to enter into a Voluntary Planning Agreement (**VPA**) under section 93F of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* with Lake Macquarie Council (**Council**) and now makes this revised offer for:

- (a) the payment of a \$1,005,900 monetary contributions towards the construction of road works associated with Section 1 of Stage 1 of the Lake Macquarie Transport Interchange. The monetary contribution will be subject to CPI (All Groups) and a CPI formula is to be included in the VPA. The CPI Index Number is to be in accordance with paragraph 9 below; and
- (b) the transfer of part of the Site to the Council for the purposes of Section 2 of Stage 1 of the Lake Macquarie Transport Interchange (**LMTI Land**),

on the terms set out in this letter.

2. Land to which the VPA applies

2.1 The VPA will apply to land known as 387 Lake Road, Glendale being Lot 1 in DP 860494 known as the Stockland Glendale Shopping Centre (**Land**).

3. Development application to which the VPA relates

3.1 Stockland received development consent for DA No. 764/2014 on 24 July 2015 for alterations and additions to the Glendale Shopping Centre (**Development Application**). Stockland submitted an application on 30 August 2017 to modify the approved Development Application under Section 96(2) of the Act (**Modification Application**).

4. Nature of public benefits to be made under the VPA

4.1 The VPA will require Stockland to make the following contributions to the Council:

- (a) the payment of a monetary contribution to the Council towards road works associated with Section 1 of Stage 1 of the Lake Macquarie Transport Interchange comprising;
- (i) Part 1A-extension to Stockland Drive;
 - (ii) Part 1B-extension to Stockland access road; and
 - (iii) Part 1C-Stockland Drive, Pennant Street and Glendale Drive roundabout (**Road Works**)

See Figure 1 for Road Works plan.

The contribution by Stockland for the Road Works is \$1,919,400, less the agreed cost to Stockland of reconfiguring its car park to allow for the transfer of the LMTI Land being an amount of \$913,500.

The amount of total monetary contribution to be paid by Stockland under the VPA, excluding indexation, is \$1,005,900; and

- (b) the transfer of the LMTI Land to the Council for the purpose of road widening associated with Section 2 of Stage 1 of the Lake Macquarie Transport Interchange.

4.2 The monetary contribution that relates to the Stockland access road (see paragraph 4.1(a)(ii) above) is being paid by Stockland in lieu of Stockland's obligations in Condition 8 of the development consent granted to Development Application No. 4413/2004 dated 13 September 2005. A provision to this effect will be included in the VPA.

4.3 A further provision will be included to the effect that Stockland will make the necessary application to the Council for the deletion of Condition 8 from that development consent.

4.4 The VPA is to include provisions to the effect that:

- (a) the Council must use and apply the monetary contribution for the purposes of the Road Works referred to in paragraph 4.1(a) above; and
- (b) the Council must use the LMTI Land for the purposes of road widening and associated road works in connection with Section 2 of Stage 1, of the Lake Macquarie Transport Interchange only and not for the purpose of any commercial uses.

5. Time when the VPA would be entered into

5.1 The VPA would be entered into by Stockland and the Council *after* any approval has been granted to the Modification Application.

5.2 If the consent authority exercises its discretion to grant approval to the Modification Application it could modify the development consent subject to a condition generally consistent with Condition No.7 of the current development consent, requiring Stockland to enter into a VPA with the Council generally in the terms of this revised offer, before the issue of the first construction certificate for the Development or within 6 months of the date of issue of modified consent, whichever occurs first.

6. Commencement of the VPA

6.1 The VPA is to take effect on execution by Stockland and the Council.

7. Timing of provision of the contributions

Monetary Contributions

7.3 Subject to Stockland receiving approval for a Modification Application, Stockland offers to pay to the Council the total monetary contribution of \$1,005,900 (indexed) prior to the issue of a construction certificate to commence construction for the Modification Application works or within 6 months of commencement of the VPA under clause 6.1. The VPA is to include the following provisions for payment of the monetary contribution:

- (a) At least 30 days prior to the issue of a Construction Certificate for the proposed modified development and no more than 5 months after commencement of the VPA, Stockland is to notify the Council in writing of the amount of the monetary contribution to be paid by Stockland in accordance with the CPI indexation formula to be included in the VPA;
- (b) If the Council agrees with the calculation of the monetary contribution by Stockland, the Council is to issue to Stockland a tax invoice or other invoice;
- (c) If the Council disagrees with the calculation of the monetary contribution by Stockland the dispute provisions will apply;
- (d) Stockland has up to 30 business days after the Council has issued a tax invoice or other invoice to make the payment; and
- (e) Payment is to be effected when cleared funds are deposited by Stockland into the bank account nominated by the Council.

Transfer of the LMTI Land

7.4 The LMTI Land is to be transferred to the Council prior to the Council commencing construction on the LMTI Land. The Council must provide Stockland 6 months notification before construction on the LMTI Land is proposed to occur and include evidence with that notice that funding is in place for the construction. The LMTI Land is shown on the plan in Figure 2 a copy of which is enclosed.

7.5 The transfer is to be taken to have been made on registration of the transfer of the LMTI Land to the Council.

7.6 The VPA is to include provisions to the effect that:

- (a) Stockland will need to reconfigure its car park as proposed in Stage 2 of the Modification Application and then complete subdivision of the LMTI Land to create the parcel of land that will be transferred to the Council. Stockland is not required to reconfigure its car park until the notice described in paragraph 7.4 above has been issued by the Council;
- (b) Stockland is to take the necessary steps to obtain a Subdivision Certificate for the subdivision as part of the modified development proposal within 90 days of execution of the VPA and the Council is to pay Stockland's reasonable costs associated with the subdivision of the Site to create the LMTI Land parcel and the preparation of all documents required to be lodged with LRS to enable the registration of the transfer of the LMTI Land to the Council and Stockland must provide to the Council a copy of the subdivision documents in registerable form within 20 business days of the date of issue of the Subdivision Certificate ; and
- (c) the Council is required to transfer back to Stockland the LMTI Land if the Council has not used the LMTI Land for the purposes of the Stage 1 Lake Macquarie Transport Interchange within fifteen years (15) of the date of execution of the VPA.

8. Value of the Contributions

- 8.1 The value of the monetary contribution is to be specified in the VPA.
- 8.2 The value of the LMTI Land is to be acknowledged in the VPA as the value of the land at the time of the original offer (\$1,299,030 at June 2015) plus any escalation in land value.
- 8.3 The VPA is to include a provision to the effect that the Council acknowledges and agrees that the value of each of the contributions is as specified in the VPA.

9. Index Number

- 9.1 Means the Consumer Price index (All Groups) for the City of Sydney published from time to time in the Commonwealth Statistician's Summary of Australian Statistics. In the event that the Commonwealth Statistician shall update the reference base of the Consumer Price Index (All Groups) for the City of Sydney due conversion shall be made to preserve the intended continuity of calculation by using the appropriate arithmetical factor determined by the said Statistician. In the event that there is any suspension or discontinuance of the Consumer Price Index (All Groups) by the Commonwealth Authorities 'Index Number' shall mean such index published at the commencement of the Term and at the date of suspension or discontinuance of the Consumer Price Index (All Groups) in the Commonwealth Statistician's Summary of Australian Statistics which reflects fluctuations in the cost of living in Sydney and which the parties may mutually agree upon and if they are unable to agree then 'Index Number' shall mean such index as may be determined by a Valuer nominated by the President for the time being of the NSW Division of the Australian Property Institute or of the body replacing the same and such determination shall be binding upon the Lessor and the Lessee and the cost of such determination shall be borne by the Lessee.

10. Application of s7.11, s7.12 and s7.24 to the Development

- 10.1 The VPA will not exclude the application of sections 7.11, 7.12 and 7.24 of the EP&A Act to the Development.
- 10.2 The VPA is to include a provision to the effect that the Council must in determining the application of a section 7.11 or section 7.12 contribution or levy to the Development and any future development on the Site, take into consideration the benefits provided by Stockland under the VPA as required under section 7.4(3)(e) of the EP&A Act.

11. Security and enforcement

- 11.1 To secure the payment of the monetary contribution, Stockland agrees to provide to the Council at the time of execution of the VPA a bank guarantee with no expiry date in the amount of \$1,005,900 (indexed) in accordance with paragraph 9.
- 11.2 The VPA is to include provisions to the effect that the Council may call on a bank guarantee only if:
 - (a) Stockland has not made payment of the monetary contribution in accordance with the VPA only, and has failed to rectify the breach within 20 business days' after receiving written notice from the Council of the breach; or
 - (b) Stockland becomes insolvent.
- 11.3 The Council must return to Stockland the bank guarantee within 15 business days of receipt of a written request by Stockland and where either Stockland has paid the monetary contribution, or a third party who has purchased or been assigned Stockland's interests in

the Site has provided a replacement bank guarantee to the Council in accordance with the assignment provision in the VPA (see Section 13 below).

- 11.4 To secure the transfer of the LMTI Land, the VPA is to include provisions to the effect:
- (a) If Stockland does not dedicate the LMTI Land in accordance with the timing in paragraph 7, Stockland consents to the Council compulsorily acquiring the relevant part of the LMTI Land in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) (**Just Terms Act**) for the amount of \$1.00;
 - (b) Council acknowledges that the provisions of clause 7.6(b) is adequate security for the purposes of this Agreement and section 93F(3)(g) of the Act with respect to the obligation to provide the LMTI Land; and
 - (c) The parties agree this is an agreement between Stockland and the Council for the purpose of section 30 of the Just Terms Act.

12. Registration

- 12.1 The VPA is not to be registered on the title of the Land.

13. Assignment and dealings

- 13.1 Although Stockland does not have any current or future plans or proposal to assign or transfer its interest in the Site, it is proposed for the VPA to include a provision dealing with assignment and the transfer of the Site.

- 13.2 The provision will be to the effect that if Stockland enters into an agreement with a third party to sell, transfer, assign or novate or similarly deal with its right, title or interest in the Site or its rights or obligations under the VPA, Stockland may not complete the sale, transfer, assignment or novation, unless before completion of the relevant transaction, Stockland:

- (a) at no cost to the Council, has first procured the execution by the third party of an agreement in favour of the Council on the same terms as the VPA as if the third party were a party to the VPA and the third party has provided to the Council a replacement bank guarantee in lieu of the bank guarantee provided by Stockland (if at the time of the transfer, assignment or novation the monetary contribution has not been paid by Stockland to the Council); and
- (b) satisfies the Council that it is not in breach of its obligations under the VPA at the time of completion of the transaction with the third party.

- 13.3 The above requirements are not to operate where:

- (a) Stockland provides notice to the Council that it will retain responsibility for the contributions under the VPA; or
- (b) the transaction is by way of a mortgage or charge.

14. Indemnity

- 14.1 The VPA is to include a provision to the effect that the Council indemnifies Stockland against any damage, loss or liability suffered by Stockland as result of any act or omission by the Council or any of its employees, agents or contractors in connection with the carrying out of the road works adjacent to or along the boundary of the Site unless the loss

or damage or liability suffered or incurred by Stockland is caused by or contributed by the wilful or negligent act or omission of Stockland, its employees or anyone engaged by it including any contractors.

15. Defects Liability

- 15.1 The Council is to remedy any defects in the road works adjacent to or along the boundary of the Site to Stockland's reasonable satisfaction and within a reasonable period, having regard to the nature of the defect, provided that Stockland has notified the Council of the defect within 24 months from the date of completion of the Stage 1 Section 1 Lake Macquarie Transport Interchange road works.

16. Resolution of disputes

- 16.1 Any dispute under the VPA is to be resolved by expert determination or mediation in accordance with processes specified in the VPA.

17. Legal costs

- 17.1 The VPA is to provide that each party is to pay its own legal and other costs incurred relating to the VPA.
- 17.2 As noted in paragraph 7.6(b) above, Stockland's reasonable costs incurred in relation to the subdivision of the Site to create the LMTI Land parcel and the registration of the plan of subdivision creating that parcel of land, are to be paid to it by the Council.

18. Board approval

- 18.1 Entry into the VPA by Stockland is subject to approval by the Board of Stockland.

19. Other matters

- 19.1 The VPA will include a GST provision to the effect that if a supply is made under the VPA and is subject to GST then the recipient of the supply must pay, in addition to the other consideration payable or to be provided for the supply, an additional amount equal to the GST and the recipient must pay the additional amount to the supplier at the same time as the other consideration is paid.
- 19.2 It is prudent to include a GST clause notwithstanding that GST is currently not payable in relation to payments made under a VPA. (At present, the Australian Tax Office's ruling CR2013/13 applies and developer contributions pursuant to a voluntary planning agreement are currently exempt from the payment of GST.)
- 19.3 The VPA is to include a provision to the effect that the VPA does not limit or fetter in any way the exercise of any statutory discretion or duty imposed on the Council.
- 19.4 The VPA is to include administrative provisions relating to:
- (a) notices;
 - (b) entire agreement;
 - (c) governing law and jurisdiction – in this case New South Wales;
 - (d) the process for amending the VPA;
 - (e) waiver; and

(f) execution of the VPA in counterparts.

20. Conclusion

20.1 We look forward to the Council's response to the above matters and welcome the opportunity to discuss with the Council any matters in relation to the proposed VPA.

Yours faithfully,

A handwritten signature in black ink, appearing to read "A. S. Martin".

Anthony Martin
Development Manager



