

KINGSHILL DEVELOPMENT NO.1 PTY LTD

ABN: 99 158 129 652

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KINGSHILL DEVELOPMENT NO.2 PTY LTD

ABN: 73 158 127 041

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10 December 2020

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

By Email: council@portstephens.nsw.gov.au

Dear Mr Wallis

**Letter of Offer - Kings Hill Development
Concept Development Application 16-2018-772-1**

Kingshill Development No 1 Pty Ltd ABN 99 158 129 652 and Kingshill Development No 2 Pty Ltd ABN 73 158 127 041 (together the **Landowner**) collectively own Lot 41 in DP1037411 and Lot 4821 in DP852073 (together the **Land**).

The Landowner made an application (reference 16-2018-772-1) to Port Stephens Council for a concept development for the future residential subdivision on the Land located within the Kings Hill Urban Release Area and Stage 1 subdivision works for initial site preparation and vegetation clearing (**Development**).

The development application (reference 16-2018-772-1) (**Concept Development Application**) is with Port Stephens Council (**Council**) for review and determination.

The Landowner irrevocably offers to make a number of contributions in connection with the Concept Development Application. The Landowner offers these contributions to enhance, maintain and sustain the ecological values of the Land to ensure that the Development is not likely to significantly affect a threatened species, population, or ecological community, or its habitat.

The Landowner proposes a staged Development on the Land and has a continued interest in the orderly management of the Conservation Area so that current and future local community needs can be met in an affordable way and in a way that enhances, maintains and sustains the ecological and cultural values of the Conservation Area.

The purpose of this letter is to set out what those contributions are so that, if accepted, they might be incorporated into a voluntary planning agreement (**VPA**).

Landowner's proposal

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

Conservation Area Works	<p>The Landowner will carry out Conservation Works (estimated to cost \$3,500,000) in accordance with the Biodiversity Management Plan prepared by RPS Group dated 24 July 2020 (version 06) submitted with the Concept Development Application.</p> <p>The Conservation Works are intended to enhance, maintain and sustain the ecological values of the Land.</p>
Dedication of Conservation Area	<p>Upon completion of the Conservation Works, the Landowner will transfer the Conservation Area to Council free from any encumbrances (except for a positive covenant that requires Council to maintain and manage the Conservation Area in accordance with the Biodiversity Conservation Area Management Plan prepared by RPS Group dated 27 June 2020 (version D02)).</p>
Monetary Contribution	<p>Prior to the transfer of the Conservation Area, the Landowner will pay Council a Monetary Contribution of \$3,000,000 for ongoing management of the Conservation Area.</p> <p>The Monetary Contribution will be adjusted by reference to CPI.</p>
Administrative Costs	<p>The Landowner will contribute \$50,000 each year (up to a maximum of \$250,000) towards the administrative costs of Council in administering the VPA.</p>
Security	<p>To secure the payment or performance of its obligations under the VPA, the Landowner will provide a Bank Guarantee of \$600,000 to Council.</p>
Registration	<p>The VPA will be registered over the Land.</p> <p>The Conservation 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 over lots in urban staged releases of the Land that do not include parts of the Conservation Area.</p>

2. The VPA will comply with all statutory requirements - see **Attachment 1**.
3. An indicative sketch of the proposed Conservation Area is attached at **Attachment 2**.

Negotiations

4. The Landowner is prepared to consider reasonable changes to the offer.

5. Ideally, the Landowner would like to progress negotiations and finalise matters arising from this letter so that the drafting of a VPA can be completed and executed by the end of this year.

Offer capable of acceptance

6. This offer remains open and capable of acceptance until **5pm on 24 December 2020**.

Yours faithfully

**Executed by Kingshill Development No 1
Pty Ltd** (ABN 99 158 129 652) in accordance
with section 127 of the Corporations Act:


.....
Signature of Sole Director


.....
Name of Sole Director

.....
Signature of Secretary

.....
Name of Secretary

**Executed by Kingshill Development No 2
Pty Ltd** (ABN 73 158 127 041) in accordance
with section 127 of the Corporations Act:


.....
Signature of Sole Director


.....
Name of Sole Director

.....
Signature of Secretary

.....
Name of Secretary

Attachment 1

Summary of Requirements

Requirement under the Act	VPA
Planning instrument and/or development application – (section 7.4(2)) The Developer has: <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 41 in DP1037411 Lot 4821 in DP852073
Description of development to which this deed applies – (section 7.4(3)(b))	Development the subject of concept development application reference 16-2018-772-1, being a concept development for the future residential subdivision on the Land located within the Kings Hill Urban Release Area and Stage 1 subdivision works for initial site preparation and vegetation clearing.
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.

Requirement under the Act	VPA
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.

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
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an occupation certificate is issued – (clause 25E(2)(g) of the Regulation)	No
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a subdivision certificate is issued – (clause 25E(2)(g) of the Regulation)	No

