MEMO

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Regarding: PR130430 Kings Hill: SIS Conclusion of No Significant Impact

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Kings Hill Concept Development Application – Reasons Supporting the Conclusion of a 'No Significant Impact' on Threatened Species

Prior to the consideration of complex mitigation, amelioration and compensatory measures, Kingshill Developments Pty Limited (the Proponent) formed the view that the development of land in Lot 41 DP1037411 and Lot 4821 DP852073 (the 'site') in a manner strictly in accordance with the approved land zones was likely to have a significant effect on threatened species, ecological communities and their habitats (hereafter referred to as threatened biodiversity). Consequently, the Proponent sought the Chief Executive Requirements (CERs) from the former NSW Office of Environment and Heritage (now NSW Environment, Energy and Science Group) for the preparation of a Species Impact Statement (SIS) to provide specific and detailed direction for a more detailed assessment of impacts arising from the development of these lands. This level of assessment is consistent with Section 3(e) of the *Threatened Species Conservation Act* 1995 (TSC Act), which states "*to ensure that the impact of any action affecting threatened species, populations and ecological communities is properly assessed*".

The CERs detail a clear project specific assessment framework for assessing 'subject species' and 'affected species' against the action proposed. Subject species are those that may be adversely impacted by the proposed action, whereas affected species are those that will be impacted. Affected species are identified through a comprehensive biodiversity investigation process, which are then assessed in accordance with the factors listed in Section 5A of the *Environmental Planning and Assessment Act* 1979 (EP&A Act), hereafter referred to as the 'Assessment of Significance'. In this respect, and in difference to the published Threatened Species Assessment Guidelines (NSW DPI 2008), the CERs states the following in relation to the scope for preparing an Assessment of Significance within the framework of an SIS:

'Assessment of Significance' (s. 5A EP&A Act) is to be provided for each of the affected species identified in the SIS, incorporating relevant information from sections 5.1 to 7 of the SIS. On the of these assessments a conclusion is to be provided concerning whether, based on more detail assessment through the SIS process and consideration of alternatives and ameliorative measures proposed in the SIS, the proposal is still considered likely to have a significant effect on threatened species, populations or ecological communities or their habitats (Page 29 of Attachment A of the CERs).

In the first instance, the Assessment of Significance provided in the SIS (Section 8) for each affected species was prepared in a manner consistent with the directions provided in the CERs, notably *the incorporation of relevant information from sections 5.1 to 7 of the SIS*. Section 7 of the SIS details the ameliorative measures proposed, which are also reflected in the Proposal description. Where appropriate, and where not inconsistent with the CERs, the Assessment of Significance had regard for the Threatened Species Assessment Guidelines (NSW DPI 2008).

A 'proper assessment' [Section 3(e) of the TSC Act] was prepared (SIS) in accordance with the CERs to assess the impacts of the Concept Development Application for future Residential Subdivision and Stage 1 Subdivision Works (the 'Proposal'). In broad terms, the Proposal describes the clearing of vegetation and habitat for future urban development as well as the establishment of an in-perpetuity Conservation Area located adjacent to the future urban area for the management and protection of biological diversity in the

local area. The Proposal demonstrates the avoidance of ~38.47 ha of high value habitat for locally occurring affected species, with this area of avoidance incorporated into a managed in-perpetuity Conservation Area.

Well known, well used and effective ameliorative measures, as proposed in Section 7 of the SIS, also form part of the Proposal description. These ameliorative measures are commonly used in the management of impacts on the natural environment and threatened species. The proposed ameliorative measures are commonplace in the restoration and management of conservation reserves for the protection of biological diversity and include bush regeneration (e.g. management of weeds, exotic fauna and fire regimes), habitat enhancement (e.g. fallen log emplacement and hollow / nest box installation), protection of species from threats (e.g. fences to prevent Koalas from entering hazardous environments such as urban precincts) and tree planting for the expansion and improvement of folivore habitat for species such as the Koala. These measures are routinely successful in meeting their objectives, with repeated examples of their successful deployment noted along the entire length of the M1/ Pacific Highway upgrade from Port Stephens to the Queensland border.

In combination with the proposed impact avoidance benefits, the embodiment of the proposed ameliorative measures within a managed 'like for like' in-perpetuity Conservation Area adjacent to the future urban area has the aim of:

- Preventing a viable local population of an affected species from being placed at risk of extinction (Section 5A(2)(a) of the EP&A Act);
- Preventing an adverse effect on the extent of the ecological community such that its local occurrence is likely to be placed at risk of extinction [Section 5A(2)(c) of the EP&A Act];
- Minimising the effects of habitat loss/ fragmentation and modification on affected species [Section 5A(2)(d) of the EP&A Act];
- Providing consistency with, where possible, the objectives or actions of a recovery plan or threat abatement plan [Section 5A(2)(f) of the EP&A Act]; and
- Providing a funded long term management of relevant key threatening processes that may operate/ increase because of the Proposal [Section 5A(2)(g) of the EP&A Act]. In relation to the 'land clearing' KTP, the Proposal is not likely to result in:
  - The extinction of species of restricted distribution;
  - The loss of local genotypes;
  - Fragmentation effects leading to limited gene flow;
  - Increased in dryland salinity;
  - The degradation of riparian zones;
  - Increased habitat for invasive species; and
  - Loss or disruption of ecological function.

Importantly, and in difference to a strict zone based site development approach, the provision of a managed in-perpetuity Conservation Area adjacent to the future urban area is not inconsistent with the objects of the TSC Act [i.e. Section 3(a)-(f)]. Notably, the Proposal can demonstrate a capacity:

a. to conserve biological diversity and promote ecologically sustainable development, and

b. to prevent the extinction and promote the recovery of threatened species, populations and ecological communities, and

c. to protect the critical habitat of those threatened species, populations and ecological communities that are endangered, and

d. to eliminate or manage certain processes that threaten the survival or evolutionary development of threatened species, populations and ecological communities, and

f. to encourage the conservation of threatened species, populations and ecological communities by the adoption of measures involving co-operative management.

A 'no significant effect' conclusion was reached and documented in Section 8 of the SIS for each affected species; a conclusion based on *relevant information from sections 5.1 to 7 of the SIS.* A fundamental pillar for this conclusion rests on the local benefit obtained from the provisioning of a managed 'like for like' in-perpetuity Conservation Area. This area has the primary purpose of protecting important habitat for threatened species, populations and ecological communities. The SIS and accompanying BMP has demonstrated that the habitat in the Conservation Area is:

- occupied by the threatened species affected by the Proposal;
- local (adjacent to the Proposal footprint);
- 'like for like';
- of sufficient size and shape for efficient conservation reservation; and
- Is adequately connected to other 'like for like' patches of within the local area.

As per the CERs, the 'no significant impact' conclusion allows the consent authority to not seek or require concurrence. This conclusion was informed by the following key factors:

1. Locally, the Proposal will 'conserve biological diversity and promote ecologically sustainable development' by:

    a. Making provision for an adequately sized and in-perpetuity managed Conservation Area comprising 'like for like' biodiversity values for the benefit of local biodiversity including affected species (see Section 2.2.1.2 and Section 7.1 of the SIS and Biodiversity Management Plan – Appendix C of the SIS).

    b. Promoting ecologically sustainable development outcomes by dispensing with the need for compensatory measures for residual significant effects (e.g. offsets) as the Proposal demonstrates:

        i. The avoidance of high biodiversity values from development, with these areas to be incorporated in the in-perpetuity Conservation Area (see Section 2.2.1.1 of the Species Impact Statement)

        ii. The minimisation of impacts through a careful vegetation clearing sequence and procedure (see Sections 2.2.1.3 and 2.2.1.5 and Vegetation Management Plan – Appendix D of the Species Impact Statement)

        iii. The mitigation of impacts through establishment works within the Conservation Area (see Section 2.2.1.2 and Biodiversity Management Plan – Appendix C of the Species Impact Statement)

2. The local provisioning of a managed in-perpetuity Conservation Area substantially contributes to the prevention of local extinction and supports the recovery of affected species. The Conservation Area is of adequate size and biodiversity value (i.e. type and condition) to support/ substantially contribute to the ongoing sustained presence of affected species in the local area (see Section 8 of the Species Impact Statement – assessments for affected threatened species and ecological communities).

3. Protecting and conserving critical habitat of threatened species and ecological communities that are endangered by establishing a clear managed boundary between the urban lands and those designated for in-perpetuity biodiversity conservation (i.e. Conservation Area). Consequently, there is to be no overlap or conflict between future land uses to an extent that would otherwise compromise the protection of this habitat for affected species.

4. The Proposal provides a fully funded in-perpetuity management regime for the elimination/ management of certain processes that threaten the survival or evolutionary development of threatened species, populations and ecological communities (see Sections 2.2.1.1 and 2.2.1.2 and Biodiversity Management Plan – Appendix C of the SIS).

5. The Proposal encourages the conservation of threatened species, populations and ecological communities by the adoption of measures involving co-operative management by making recommendation to consolidate local landholdings into a single conservation area to promote in common management objectives and actions (see Section 7.1.2.1.3 of the Species Impact Statement).

The impact avoidance, minimisation and mitigation measures incorporated into the Proposal for the management of impacts on the Koala is a prominent example of how affected species have been properly assessed in the SIS. The Proposal has taken into consideration specialist/ expert scientific contributions to manage and protect this species in the local area. The Proposal provides a local like for like conservation outcome that is equal to or better than the area of habitat impacted. The Proposal demonstrates sufficient impact avoidance, management and protection of high biodiversity value to allow for a sustainable development outcome. The conserved habitat amounting to ~245 ha forms part of a larger well connected habitat patch exceeding 1,300 ha. According to BioLink, this connected habitat area well exceeds the minimum required for the ongoing localised persistence of the Koala within a definition of a hub (i.e. >50 individuals within a minimum connected habitat area of 900 ha). Targeted measures to protect and manage impacts on the Koala in the Kings Hill local area includes for the purposes of sustaining a local viable population include:

- Establish and maintain an in-perpetuity 245 ha Conservation Area comprising high Koala habitat value.
- Revegetation and habitat enrichment to increase the browse value.
- Use of a koala fence, grids and bridges to keep koalas within the conservation area and out of the urban precinct where the negative effects of morality from vehicle strike and dog attack are likely.
- Implementation of bushfire regimes, informed by indigenous cultural practices, to reduce the threat from fires.

The Proposal appropriately reflects important and relevant the contemporary ecologically sustainable development principles expressed in the governmental inquiry into Koala populations and habitat in NSW (https://www.parliament.nsw.gov.au/lcdocs/inquiries/2536/Koala%20populations%20and%20habitat%20in%20New%20South%20Wales%20-%20Report%203.pdf.

The CERs require an evaluation of the compensatory measures (Section 7.1.2.2). This evaluation was performed against OEH's Principles for the use of biodiversity offsets in NSW (OEH 2014), as required by the CERs. While the Proposal does not require a formal offset, the SIS demonstrates that the proposed ameliorate measures are not inconsistent with the OEH (2014) principles should the provision of the managed in-perpetuity Conservation Area be assessed in this manner. The OEH (2014) principles are listed below:

- Impacts must be avoided first by using prevention and mitigation measures – considerable impact avoidance proposed;
- All regulatory requirements must be met – ameliorative measures can be implemented;
- Offsets must never reward ongoing poor performance – ameliorative measures are to be performance tested;
- Offsets will complement other government programs – ameliorative measures target the provision of lasting conservation outcomes;
- Offsets must be underpinned by sound ecological principles – ameliorative measures are commonly used and have high efficacy;
- Offsets should aim to result in a net improvement in biodiversity over time – viable local populations of threatened species are to be maintained in-perpetuity;
- Offsets must be enduring – they must offset the impact of the development for the period that the impact occurs – in-perpetuity conservation area is proposed;
- Offsets should be agreed prior to the impact occurring – provisioning of a voluntary planning agreement to ensure delivery of fully funded, managed in-perpetuity conservation area;
- Offsets must be quantifiable – the impacts and benefits must be reliably estimated - The Proposal provides for a conservation area of where the biodiversity values have been quantified using the same methods as those used to quantify the impact area;
- Offsets must be targeted – ameliorative measures 'like for like' and local;
- Offsets must be located appropriately - The Conservation Area is adjacent to the impact area and is within the same biogeographical setting as the impact area;
- Offsets must be supplementary - The conservation obligations of the proposal are independent of other schemes or arrangements; and
- Offsets and their actions must be enforceable through development consent conditions, licence conditions, conservation agreements or contracts - The VPA is a legally binding agreement that runs with the land.

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