

PLANNING AGREEMENT

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (NSW)

514 NEWLINE ROAD, KINGS HILL AND 587 NEWLINE ROAD, RAYMOND TERRACE

PORT STEPHENS COUNCIL ABN 16 744 377 876

MCCLOY KINGS HILL PTY LIMITED ACN 652 158 202

DATE OF EXECUTION: 26/02/2026

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This Planning Agreement is dated:

Parties

Council Port Stephens Council ABN 16 744 377 876 of 116 Adelaide Street, Raymond Terrace NSW 2324

Developer McCloy Kings Hill Pty Ltd ACN 652 158 202 of 1 Dickson Road, Loxford NSW 2326

Introduction

- A. The Developer owns the Land.
- B. The Developer proposes to carry out the Proposed Development on the Development Land.
- C. The Development Consent has been granted for the Proposed Development.
- D. The Developer has offered to enter into this deed with the Council in connection with the Proposed Development to make contributions acceptable to Council 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 through the undertaking of the Conservation Area Works, the dedication or transfer of the Conservation Land and the making of the Monetary Contribution.
- E. The Council, being satisfied that the Developer's offer comprises the undertaking of works to rehabilitate and maintain the Conservation Land (in the case of the Conservation Area Works), the dedication of land free of cost (in the case of the Conservation Land Contribution) and the payment of a monetary contribution (in the case of the Monetary Contribution) for a public purpose accepts the Developer's offer and enters into this deed with the Developer pursuant to section 7.4(1) of the Act and condition 12 of the Development Consent.

Agreed Terms

1. Definitions and Interpretation

1.1. Definitions

In this document the following terms have the following meanings unless the context otherwise requires:

Term	Definition
Act	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
Address for Service	means the address of each party appearing at Item 1 of Schedule 4 to this deed or any new address notified by any party to all other parties as its new Address for Service.
Approval	means any approvals, consents, certificates, permits, licences, conditions or permissions (and any modification or variations to them) which may be required by law or by any Authority exercising its functions and powers, for the commencement and carrying out of any works required under this deed or the

	Development and includes a Development Consent, assessment of an activity under Division 5.1 of the Act, or other approval under the Act.
Approved Signing Method	<p>means signing electronically by:</p> <ul style="list-style-type: none"> (a) insertion of an image (including a scanned image) of the person's own unique signature onto the deed; or (b) insertion of the person's name onto the deed; or (c) use of a stylus or touch finger or a touch screen to sign the deed, <p>provided that in each of the above cases, words to the effect of '<i>Electronic signature of me, [insert full name], affixed by me, or at my direction, on [insert date]</i>' are also included on the deed; or</p> <ul style="list-style-type: none"> (d) use of a reliable electronic signing platform (such as DocuSign or AdobeSign) to sign the deed.
Authority	means any federal, state or local government or semi-governmental, statutory, judicial or public person, instrumentality or department.
Bank Guarantee	<p>means an irrevocable and unconditional undertaking without an expiry or end date in favour of Council to pay an amount or amounts of money to the Council on demand (being such amount as is required under this deed) issued by:</p> <ul style="list-style-type: none"> (a) one of the following trading banks: <ul style="list-style-type: none"> i. Australia and New Zealand Banking Group Limited, ii. Commonwealth Bank of Australia, iii. Macquarie Bank Limited, iv. National Australia Bank Limited, v. St George Bank Limited, vi. Westpac Banking Corporation, or (b) any other financial institution approved by the Council in its absolute discretion.
Base CPI	means the CPI number for the last quarter ending before the date of this Agreement.
Business Day	means a day that is not a Saturday, Sunday or public holiday or bank holiday in Newcastle, New South Wales.
CPI	means the ' <i>Consumer Price Index – Sydney All Groups</i> ' published by the Australian Bureau of Statistics
Claim	Includes any claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding or right of action howsoever arising and whether present or future, fixed or unascertained,

	actual or contingent whether at law, in equity, under statute or otherwise.
Clearance Certificate	means a clearance certificate issued by the Commissioner for Taxation under paragraph 14-220 of Schedule 1 of the <i>Taxation Administration Act 1953 (Cth)</i>
Current CPI	means the CPI number as provided in clause B of Item 4 of Schedule 3.
Conservation Land	means the land shown with hatching and referred to as “R1 Zoned Conservation Area” and “C2 Zoned Conservation Area” on the plan at Item 3 of Schedule 2.
Conservation Land Contribution	means the dedication or transfer of the Conservation Land to Council, in accordance with this deed.
Conservation Area Works	means the works specified in Item 2 of Schedule 3.
Corporations Act	means the <i>Corporations Act 2001 (Cth)</i> .
Costs	means any cost, charge, expense, outgoing, payment, fee or other expenditure.
Dealing	means in relation to the Development Land and Conservation Land (where applicable) to sell, transfer, assign, mortgage, charge, dispose, encumber or otherwise deal with the Land in whole or in part.
Development Application	means DA 16-2013-599, being a staged torrens title subdivision known as “Monarchs Rise”, located on Newline Road, Raymond Terrace and including vegetation works, clearing, park, earthworks, roads, landscaping and associated subdivision works and infrastructure.
Development Consent	means the development consent granted under section 4.16 of the Act to the Development Application on 8 July 2024.
Development Contributions	means the carrying out of the Conservation Area Works, the dedication or transfer of the Conservation Land and the payment of the Monetary Contribution which the Landowner agrees to provide under this deed as set out Schedule 3.
Development Land	means the land shown cross hatched and described as ‘R1 Development Lands’ on the plan in Item 2 of Schedule 2.
ELNO	has the same meaning as in the <i>Electronic Conveyancing National Law (NSW)</i> .
Encumbrances	means an interest or power: <ul style="list-style-type: none"> (a) reserved in or over the Land or an interest in any part of the Land or; (b) created or otherwise arising in or over any interest in any part of the Land under any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, title retention, conditional sale agreement, , option,

	<p>restriction as to transfer, use or possession, easement, covenant, lease, subordination to any right of any other person and any other encumbrance or security interest, trust or bill of sale; or</p> <p>(c) by way of security for the payment of a debt or other monetary obligation or the performance of any obligation.</p>
Foreign Resident Capital Gains Withholding Amount	means the amount a purchaser is required to pay to the Commissioner for Taxation under paragraph 14-200 of the <i>Taxation Administration Act 1953 (Cth)</i> .
GST	means any form of good and services tax payable under the GST Law.
GST Law	has the meaning given in the <i>A New Tax System (Goods and Services Tax) Act 1999 (Cth)</i> .
Land	means the land described at Item 1 of Schedule 2 and includes the Development Land and the Conservation Land collectively.
Mediation Rules of the Law Society of NSW	means the mediation rules published by the Law Society of NSW, from time to time.
Monetary Contribution	means the contribution identified at Item 4 of Schedule 3.
NSW-LRS	means NSW-Land Registry Services or such organisation as replacing or performing the functions thereof.
PEXA	means Property Exchange Australia Ltd.
Plan of Subdivision	means a plan of subdivision within the meaning of section 195 of the <i>Conveyancing Act 1919 (NSW)</i> .
Proposed Development	means the proposed development as described in the Development Application, and as approved by the Development Consent.
Real Property Act	means the <i>Real Property Act 1900 (NSW)</i> .
Register	means the Torrens Title register maintained under the Real Property Act.
Residential Development Lots	means lots created in the Development for separate residential occupation and disposition.
Subdivision Certificate	has the meaning given to the term in the Act.

Subdivision Works Certificate has the meaning given to the term in the Act.

VMP means the Vegetation Management Plan prepared by Restore dated 4 June 2024, and approved by the Development Consent, and amended from time to time with Council's approval.

1.2. Interpretation

In this document:

- a. a reference to a clause, schedule, annexure or party is a reference to a clause of, and a schedule or annexure or party to, this document and references to this document include any schedules or annexures;
- b. a reference to a party to this document or any other document or agreement includes the party's successors, permitted substitutes and permitted assigns;
- c. if a word or a phrase is defined, its other grammatical forms have a corresponding meaning;
- d. a reference to a document or agreement (including a reference to this document) is to that document or agreement as amended, supplemented, varied or replaced;
- e. a reference to this document includes the agreement recorded by this document;
- f. a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- g. if a day on or by which a person must do something under this document is not a Business Day, then the person must do it on or by the next Business Day;
- h. a reference to a person includes a corporation, trust, partnership, unincorporated body, government and local authority or agency, or other entity whether or not it comprises a separate legal entity; and
- i. a reference to 'month' means calendar month.

2. Operation and application of this deed

2.1. Operation

This deed commences on the date that this deed is signed by all the parties.

2.2. Planning Agreement under the Act

- a. This deed constitutes a planning agreement within the meaning of section 7.4 of the Act.
- b. The parties agree on the matters set out in Schedule 1.

2.3. Application

This deed applies to:

- a. the Land; and
- b. the Proposed Development.

2.4. Application of sections 7.11, 7.12 and Division 7.1 Subdivision 4 of the Act

The application of section 7.11, 7.12 and Division 7.1, Subdivision 4 of the Act is excluded to the extent stated in Schedule 1.

3. Development Contributions

3.1. Requirement to provide the Development Contributions

The Developer agrees to provide the Development Contributions in the manner and at the times set out in Schedule 3 to this deed.

3.2. Purpose of Development Contributions

- a. The Council is to apply each Development Contribution made by the Developer under this deed towards the public purpose of conservation and otherwise in accordance with this deed.
- b. Despite paragraph (a), the Council may apply a Development Contribution made under this deed towards a public purpose other than the public purpose specified in this deed if the Council reasonably considers that the public interest would be better served by applying the Development Contribution towards that other purpose rather than the purpose so specified.
- c. The Developer agrees that the Council has no obligation to repay the Monetary Contribution in any circumstances.

4. Enforcement and Indemnity

4.1. Indemnity

The Developer indemnifies Council in respect of any Claim that may arise in connection with the performance of the Developer's obligations under this deed but only to the extent that any such Claim does not arise as a result of the negligent acts or omissions of Council.

4.2. Suitable means of security

- a. To ensure enforcement of this deed by suitable means in the event of a breach of this deed by the Developer, the Developer agrees to:
 - i. register this deed in accordance with clause 5; and
 - ii. provide the Bank Guarantee meeting the requirements and at the time set out in clause C of Item 4 of Schedule 3.
- b. The parties acknowledge and agree that the registration of this deed in accordance with clause 5 and the provision of the Bank Guarantee constitutes 'suitable means' of enforcement for the purposes of section 7.4(3)(g) of the Act.

5. Registration on title

5.1. Land ownership

The Developer represents and warrants that it is:

- a. the legal and beneficial owner of the Land; and
- b. legally and beneficially entitled to obtain all consents and approvals and to otherwise do all things necessary for the Developer to comply with its obligations under this clause 5.

5.2. Registration of deed

- a. The Developer agrees to register this deed on title to the Land in accordance with this clause 5.2.
- b. The Developer as the registered proprietor of the Land acknowledges and agrees that entry into this deed constitutes consent to the registration of this deed on the title of the Land for the purposes of section 7.6(1)(a) of the Act.

- c. The Developer at its own cost must take all practical steps and otherwise do anything Council reasonably requires to procure:
 - i. the consent of each person, as required by the Registrar-General, who:
 - (A) has an estate or interest in the Land registered under the *Real Property Act 1900* (NSW); or
 - (B) is seized or possessed of an estate or interest in the Land,
 to registration of this deed on title to the Land and to the terms of this deed;
 - ii. the electronic lodgement of this deed in a registrable form through an ELNO for registration by the Registrar General in the relevant folio of the Register for the Land;
 - iii. the execution of any documents to effect clauses 5.2.c.i and 5.2.c.ii above;
 - iv. the registration of this deed in the relevant folio of the Register for the Land, including promptly responding to any requisitions made by the Registrar-General in respect of this deed and/or any ancillary documents.
- d. The Developer must provide Council with evidence of registration of this deed within 10 Business Days after registration.

5.3. Right to lodge caveat

- a. Until this deed is registered on title in accordance with clause 5.2, the parties acknowledge and agree that this deed confers on the Council an interest in the Land and entitles the Council to lodge and maintain a caveat on the title to the Land to prevent any Dealing in respect of the Land.
- b. Council may exercise its right to lodge a caveat in accordance with clause 5.3.a if the Developer does not register this deed in accordance with clause 5.2 within 10 Business Days of the deed commencing.
- c. If Council lodges a caveat in accordance with clause 5.3.b:
 - i. Council will do all things reasonably necessary:
 - A. to ensure that the caveat does not prevent or delay the Developer's registration of this deed in accordance with clause 5.2; and
 - B. to withdraw the caveat as soon as practicable after Council becomes aware that this deed has been registered on title in accordance with clause 5.2; and
 - ii. the Developer must pay all of Council's costs and expenses incurred in lodging and withdrawing the caveat promptly after receiving a tax invoice from Council following withdrawal of the caveat.

5.4. Release and discharge of deed

Provided the Developer is not in breach of this deed at the date of the request, Council agrees to do such things as are reasonably necessary to promptly release and discharge this deed:

- a. from the title to any Residential Development Lots; and
- b. in respect of the remainder of the Land, once the Developer makes the Conservation Land Contribution in accordance with this deed, and assuming all other obligations of the Developer under this deed have been met.

6. Dispute Resolution

6.1. Parties not to commence court proceedings without complying with dispute resolution procedures

- a. A party must not commence any court proceedings relating to a dispute unless it complies with this clause 6.
- b. Clause 6.1.a does not prevent, or prejudice the right of a party to institute court proceedings for urgent injunctive relief or declaratory relief in relation to any matter arising out of or relating to this deed.

6.2. Written notice of dispute

A party claiming that a dispute has arisen under or in relation to this deed must give written notice to the other party specifying the nature of the dispute (**'Dispute Notice'**).

6.3. Attempt to resolve through informal dispute resolution

After a Dispute Notice is received, the parties must:

- a. meet in an endeavour to resolve the dispute in good faith within 7 Business Days of the receipt of the Dispute Notice; or
- b. if the dispute is not resolved within that period endeavour in good faith to agree:
 - i. an informal dispute resolution technique;
 - ii. an independent person required to guide the parties to resolve the matters in the Dispute Notice using the informal dispute resolution technique;
 - iii. procedures and a timetable for the carrying out of the agreed informal dispute resolution technique.

6.4. Mediation if dispute not resolved through informal dispute resolution

- a. If the parties do not agree to the matters in clause 6.3.b within 7 Business Days of receipt of a Dispute Notice (or any further period agreed to by the parties in writing), the parties must:
 - i. mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales; and
 - ii. in preparing for this mediation, jointly request the President of the Law Society of New South Wales or the President's nominee to select the mediator.
- b. Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- c. The Parties are to share equally the costs of the President, the mediator, and the mediation.

6.5. When Court proceedings may be commenced

If the dispute is not resolved through mediation in accordance with clause 6.4, within 20 Business Days, then any party which has complied with the provisions of this clause 6 may:

- a. terminate the dispute resolution process undertaken under clause 6; and
- b. following termination, commence court proceedings in relation to the matter set out in the Dispute Notice.

6.6. Parties not to use dispute resolution information for other purposes

- a. The parties acknowledge the purpose of any exchange of information or documents or the making of an offer of settlement under this clause 6 is to attempt to settle the matter set out in the Dispute Notice.
- b. No party may use any information or documents obtained through any dispute resolution process undertaken under this clause 6 in any court proceedings or for any purpose other than in an attempt to settle the matter set out in the Dispute Notice.

7. Assignment and Transfer

7.1. Right to assign or novate

- a. The Developer must not assign this deed to any person except in accordance with this clause.
- b. If the Developer seeks to assign its rights or benefits or novate its obligations to another party, the Developer must:
 - i. satisfy the Council that the person to whom the Developer's rights or obligations are to be assigned or novated (**'Incoming Party'**) has sufficient assets, resources and expertise required to perform the Developer's obligations under this deed in so far as those obligations are to be assigned or novated to the Incoming Party;
 - ii. procure the execution of a deed by the Incoming Party with the Council on terms satisfactory to the Council under which the Incoming Party agrees to comply with the terms and conditions of this deed as though the Incoming Party were the Developer;
 - iii. satisfy Council, acting reasonably, that it is not in material breach of its obligations under this deed; and
 - iv. obtain Council's written notice that:
 - A. Council is satisfied that the requirements in clauses 7.1.b.i to 7.1.b.iii have been met; and
 - B. Council consents to the proposed assignment or novation.
- c. The Developer must pay the Council's reasonable legal costs and other expenses incurred under this clause 7.1 promptly after receiving a tax invoice from Council following the issue of Council's written notice under clause 7.1.b.iv.
- d. If at the date of the proposed transfer the Developer has provided Council the Bank Guarantee in accordance with clause C of Item 4 of Schedule 3, provided that:
 - i. the Developer has complied with clause 7.1; and
 - ii. the Incoming Party has provided Council with a replacement Bank Guarantee in accordance with the requirements of clause C of Item 4 of Schedule 3; on terms acceptable to Council,Council will promptly return the Bank Guarantee to the Developer.

7.2. Right to transfer Land

- a. Subject to clause 7.2.b, the Developer must not sell or transfer to another person (**Transferee**) the whole or any part of the Land:
 - i. on which this deed remains registered under section 7.6 of the Act; or
 - ii. for which the Development Contributions required under this deed remains outstanding.
- b. The Developer may sell or transfer the whole or any part of the Land to the Transferee if, before the sale or transfer the Developer:

- i. satisfies the Council, acting reasonably, that the proposed Transferee has sufficient assets, resources and expertise required to perform any of the remaining obligations of the Developer under this deed or satisfies Council, acting reasonably that the Developer will continue to be bound by the terms of this deed after the transfer has been effected;
- ii. procures the execution of a deed by the Transferee with the Council on terms satisfactory to Council, acting reasonably, under which the Transferee agrees to comply with the terms and conditions of this deed as though the Transferee were the Developer, which may include the provision of replacement Security;
- iii. satisfies Council, acting reasonably, that it is not in material breach of its obligations under this deed; and
- iv. obtains Council's written notice that:
 - A. Council is satisfied that the requirements in clauses 7.2.b.i to 7.2.b.iii have been met; and
 - B. Council consents to the proposed sale or transfer.
- c. The Developer must pay Council's reasonable legal costs and other expenses incurred under this clause 7.2 promptly after receiving a tax invoice from Council following the issue of Council's written notice under clause 7.2.b.iv.
- d. If at the date of the proposed transfer the Developer has provided Council the Bank Guarantee in accordance with clause C of Item 4 of Schedule 3, provided that:
 - i. the Developer has complied with clause 7.2; and
 - ii. the Incoming Party has provided Council with a replacement Bank Guarantee in accordance with the requirements of clause C of Item 4 of Schedule 3; on terms acceptable to Council,Council will promptly return the Bank Guarantee to the Developer.

8. Capacity and relationship

8.1. General warranties

Each party warrants to each other party that:

- a. this deed creates legal, valid and binding obligations, enforceable against the relevant party in accordance with its terms; and
- b. unless otherwise stated, it has not entered into this deed in the capacity of trustee of any trust.

8.2. Power of attorney

If an attorney executes this deed on behalf of any party, the attorney declares that it has no notice of the revocation of that power of attorney.

8.3. Assurances

Each party must promptly execute all documents and do everything necessary or desirable to give full effect to the arrangements contained in this deed.

8.4. Relationship of parties

Unless otherwise stated:

- a. nothing in this deed creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and

- b. no party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

9. GST

9.1. Definitions

Words used in this clause that are defined in the GST Law have the meaning given in that legislation.

9.2. Intention of the parties

The parties intend that:

- a. Divisions 81 and 82 of the GST Law apply to the supplies made under and in respect of this deed; and
- b. No additional amounts will be payable on account of GST and no tax invoices will be exchanged between the parties.

9.3. Reimbursement

Any payment or reimbursement required to be made under this deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which any entity is entitled for the acquisition to which the cost, expense or amount relates.

9.4. Consideration GST Exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this deed are GST Exclusive. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to the supply for the purposes of this clause 9.

9.5. Additional amounts for GST

- a. To the extent an amount of GST is payable on a supply made by a party under or in connection with this deed (**GST Amount**), the Recipient will pay to the Supplier the GST Amount at the same time and in the same manner as the consideration for the supply is to be provided. The Supplier must provide a tax invoice to the Recipient before the Supplier will be entitled to payment of the GST Amount.
- b. Clause 9.5 applies to non-monetary consideration.
- c. No additional amount shall be payable by the Council under clause 9.5 (a) unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.

9.6. No Merger

This clause will not merge on completion or termination of this deed.

10. Termination

10.1. Termination

This deed terminates if:

- a. the parties agree in writing to terminate the deed;

- b. the Developer has satisfied all of the obligations imposed on it under this deed in full; and
- c. the Council has issued written notice to the Developer stating that Council agrees that the circumstances above in clauses 10.1.a or 10.1.b have been achieved,.

10.2. Consequences of termination

If this deed terminates, then subject to any express provision in this deed to the contrary:

- a. all future rights and obligations of the parties under this document are discharged; and
- b. all rights and obligations of the parties existing at the time of termination, including the right for Council to retain any Development Contributions provided before termination, continue.

11. General provisions

11.1. Entire deed

This deed constitutes the entire deed between the parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between the parties, whether orally or in writing.

11.2. Notices and time for doing acts

- a. The provisions relating to the time for doing acts at Item 2 of Schedule 4 apply.
- b. The notice provisions at Item 1 of Schedule 4 apply.

11.3. Variation

This deed must not be varied except by a later written document executed by all parties.

11.4. Waiver

A right created by this deed cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

11.5. Preservation of existing rights

The expiration or termination of this deed does not affect any right that has accrued to a party before the expiration or termination date.

11.6. No merger

Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this deed for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

11.7. No fetter

Nothing in this deed will be construed as requiring Council, to do anything that would cause it to be in breach of any of its obligations at law and, without limitation, nothing will be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

11.8. Costs

The Landowner must pay Council's reasonable Costs incurred in preparing and executing this deed promptly after receiving a tax invoice from Council following commencement of the deed.

11.9. Counterparts

This deed may be executed in any number of counterparts. All counterparts taken together constitute one instrument. Delivery of this deed by email constitutes an effective mode of delivery.

11.10. Electronic execution and electronic exchange

- a. Each party consents to this deed being executed by a party by way of electronic signature using an Approved Signing Method.
- b. Where this deed is electronically signed by a party, the party warrants and agrees that the electronic signature has been used to identify the person signing and to indicate that the party intends to be bound by the electronic signature.

Schedule 1 – Requirements under section 7.4 of the Act

The parties acknowledge and agree that the table set out below provides for certain terms, conditions and procedures for the purpose of the deed complying with the Act

Requirement under the Act	This deed
<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) Yes in that McCloy Project Management Pty Ltd and McCloy Kings Hill Pty Ltd are associated entities.
<p>Description of land to which this deed applies – (section 7.4(3)(a))</p>	The land listed in Item 1 of Schedule 2.
<p>Description of development to which this deed applies – (section 7.4(3)(b)(ii))</p>	See description at Item 4 of Schedule 2.
<p>Description of change to the environmental planning instrument to which this deed applies – (section 7.4(3)(b)(i))</p>	Not applicable
<p>The scope, timing, and manner of delivery of contribution required by this deed – (section 7.4(3)(c))</p>	See Schedule 3.
<p>Applicability of section 7.11 of the Act – (section 7.4(3)(d)(i))</p>	This deed does not exclude the application of section 7.11 of the Act in respect of the Development.
<p>Consideration of benefits under this deed if section 7.11 applies - (section 7.4(3)(e))</p>	No.
<p>Applicability of section 7.12 of the Act – (section 7.4(3)(d)(ii))</p>	This deed does not exclude the application of section 7.12 of the Act in respect of the Development.
<p>Applicability of Division 7.1 Subdivision 4 of the Act – (section 7.4(3)(d)(iii))</p>	This deed does not exclude the application of Division 7.1, Subdivision 4 of the Act in respect of the Development.
<p>Mechanism for Dispute Resolution – (section 7.4(3)(f))</p>	See clause 6.
<p>Enforcement of this deed – (section 7.4(3)(g))</p>	See clause 4.
<p>No obligation to grant consent or exercise functions – (section 7.4(10))</p>	See clause 11.7.
<p>Registration of the Planning Agreement - (section 7.6 of the Act)</p>	Yes. See clause 5.
<p>Whether the Planning Agreement specifies that certain requirements of the deed must be complied with before a construction certificate is issued – section 21 of the <i>Environmental Planning</i></p>	No.

<i>and Assessment (Development Certification and Fire Safety) Regulation 2021)</i>	
Whether the Planning Agreement specifies that certain requirements of the deed must be complied with before an occupation certificate is issued – (section 48 of the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>)	No.
Whether the Planning Agreement specifies that certain requirements of the deed must be complied with before a subdivision certificate is issued – (section 6.15(1)(d) of the Act)	Yes. See Item 3 of Schedule 3.

Schedule 2 – Land and Development

Item 1 Land to which this deed applies

- (a) Lot 32 in Deposited Plan 554875, being folio identifier 32/554875
- (b) Lot 2 in Deposited Plan 37430, being folio identifier 2/37430

Item 2 Development Land



Kings Hill (West)
Monarch's Rise

Figure 2 -
Development Map

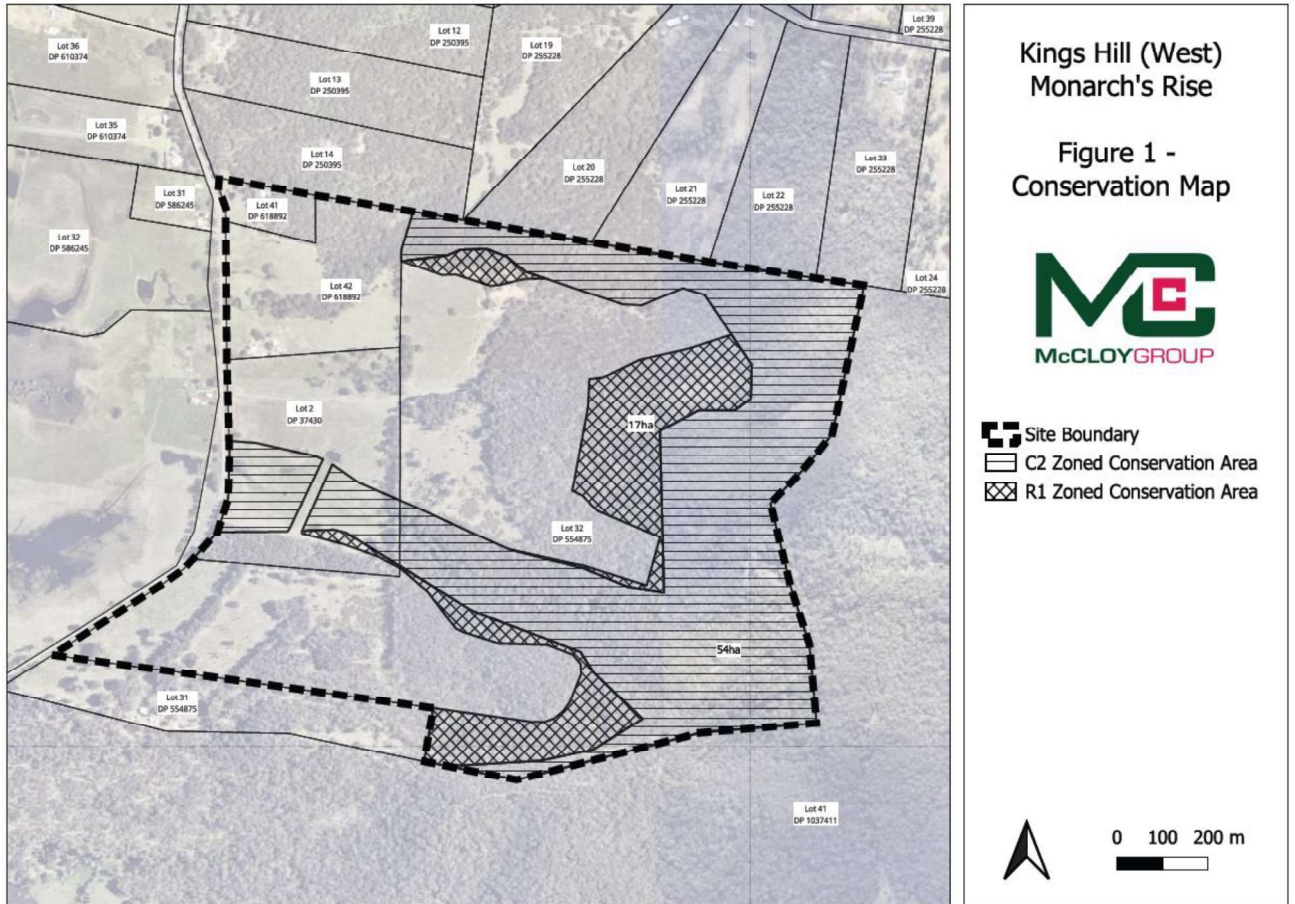


 Site Boundary
 R1 Development Lands



0 100 200 m

Item 3 Conservation Land



Item 4 Development

The Proposed Development on the Development Land in accordance with the Development Consent, excluding subdivision of the Conservation Land into a separate title for dedication to Council in accordance with this deed.

Schedule 3 – Development Contributions

Item 1 Development Contributions

- (a) The Development Contributions which the Developer agrees to provide under this deed comprises the:
- (i) Conservation Area Works;
 - (ii) Conservation Land Contribution; and
 - (iii) Monetary Contribution
- (b) The Items in this Schedule 3 set out:
- (i) a description of;
 - (ii) the value of;
 - (iii) the timing within which the Developer must provide; and
 - (iv) other commitments of the Developer relating to, the relevant Development Contributions to which the Item relates.

Item 2 Conservation Area Works

A. Carrying out of Conservation Area Works in accordance with VMP

- (a) The Developer must, at its cost, carry out the Conservation Area Works on the Conservation Land in accordance with the VMP and the Development Consent, including (without limiting the terms of the VMP and the Development Consent):
- (i) planting of a minimum of 1 260 koala feed trees, 1 260 supplementary trees/shrubs and groundcovers within the area of the Conservation Land shown as “Zone 1 - Revegetation” on Figure 3-1 in the VMP;
 - (ii) annual weeding and reporting of weeding located within the Conservation Land;
 - (iii) removal of all rubbish and existing fencing within the Conservation Land;
 - (iv) placement of nest boxes or placement of hollows within the Conservation Land in accordance with the VMP;
 - (v) annual monitoring and reporting on all nest boxes located within the Conservation Land;
 - (vi) annual reporting on all newly placed koala feed trees placed within the Conservation Land;
 - (vii) the installation of koala fencing separating the Conservation Land and the Development Land or any other land to be used for any proposed residential development;
 - (viii) the installation of access gates as located by Council separating the Conservation Land and the Development Land or any other land to be used for any proposed residential development;
 - (ix) upgrading of existing walking tracks and closure and rehabilitation of redundant walking tracks and trails as agreed in consultation with Council;
 - (x) undertaking the required pest animal control over the Conservation Land in accordance with the VMP;

- (xi) undertaking the required fire regime with prescribed ecological burns over the Conservation Land in accordance with the VMP.
- (b) The Conservation Area Works:
 - (i) must commence on the date on which the first Subdivision Works Certificate is issued for the Proposed Development under the Development Consent; and
 - (ii) must all be completed prior to the issue of the Subdivision Certificate for the 95th Residential Development Lot, subject to the requirements of the Development Consent and VMP for certain parts of the Conservation Area Works to be completed at earlier stages including prior to the issue of earlier Subdivision Certificates for the Proposed Development.
- (c) The Developer's obligations to complete the Conservation Area Works will be satisfied when the performance criteria set out in Table 5-1 of the VMP have been met, and Council has been provided with and approved the compliance report and documentary evidence from a qualified arborist and qualified ecologist in accordance with condition 71 of the Development Consent.
- (d) If there is any inconsistency between the Development Consent, this deed, and the VMP in respect of the carrying out of the Conservation Area Works, the Development Consent prevails, but if this deed requires anything additional to the Development Consent, that additional work must be carried out.
- (e) For the avoidance of doubt, any part of the Conservation Area Works which involves ongoing monitoring, weeding, reporting, pest control, or other action of a repetitive or ongoing nature, is only required to be carried out by the Developer until the date of dedication of the Conservation Land.

Item 3

Conservation Land Contribution

A. Subdivision of the Land to provide for the Conservation Land Contribution

The Developer must, at its cost:

- (a) obtain any Approvals necessary to create one or more separate lots for the Conservation Land; and
- (b) prepare a Plan of Subdivision to create one or more separate lot(s) for the Conservation Land; and
- (c) provide Council with the Plan of Subdivision for its approval, acting reasonably, prior to lodging the Plan of Subdivision for registration at NSW-LRS.

B. Dedication or transfer of the Conservation Land

- (a) The Developer must dedicate the Conservation Land to Council free of any trusts, estates, interests, covenants and Encumbrances prior to or in conjunction with the issue of the Subdivision Certificate to create the 95th Residential Development Lot, but not more than 40 Business Days before that date, and after completion of the Conservation Area Works in accordance with Item A.
- (b) The parties acknowledge and agree that the requirement to dedicate the Conservation Land in accordance with Item 3 of Schedule 3 is a restriction on the issue of the relevant Subdivision Certificate for the Proposed Development within the meaning of section 6.15(1(d) of the Act.

- (c) Upon receipt of Council's approval under Item 3A of this Schedule 3, the Developer must do all things necessary to enable registration of the dedication or transfer of the Conservation Land to Council.
- (d) The Conservation Land will be taken to have been dedicated to Council when:
 - (i) the Council is given:
 - A. a Clearance Certificate that is valid at the time of dedication of the Conservation Land, or
 - B. the Foreign Resident Capital Gains Withholding Amount in respect of the Conservation Land, and
 - (ii) One of the following has occurred:
 - A. a deposited plan is registered in the register of plans held with the Registrar-General at Land Registry Services - NSW that dedicates the Conservation Land as a public reserve or drainage reserve under the *Local Government Act 1993* (NSW), or
 - B. the Council is given evidence that a transfer of the Conservation Land to the Council has been effected by means of electronic lodgement and registration through PEXA or another ELNO.

Council must do all things reasonably necessary to assist the Developer in complying with its obligations under this clause including signing any necessary documents to authorise the transfer or dedication at the Developer's cost.

- (e) The Developer must meet all costs associated with the dedication of the Conservation Land including any administrative and legal costs incurred by Council in relation to that dedication.
- (f) The Developer will pay all rates and taxes owing in respect of the Conservation Land up to and including the date that the Developer dedicates or transfers the Conservation Land to Council.

C. Acquisition of Conservation Land

- (a) The Developer must act in good faith to provide the Conservation Land Contribution.
- (b) If the Developer does not provide the Conservation Land Contribution by the time required under clause B.(a) of Item 3 of Schedule 3, Council in its discretion may acquire and the Developer consents to Council acquiring the Conservation Land compulsorily for the amount of \$1 without having to follow the pre-acquisition procedure under the *Land Acquisition (Just Terms) Compensation Act 1991* (NSW).
- (c) Clause C.(b) in Item 3 of Schedule 3 constitutes an agreement for the purposes of section 30 of the *Land Acquisition (Just Terms) Compensation Act 1991* (NSW) and the parties acknowledge and agree that they have agreed on all relevant matters concerning the compulsory acquisition.
- (d) If, as a result of the acquisition referred to in clause C.(b) in Item 3 of Schedule 3, Council is required to pay compensation to any person other than the Developer, the Developer must reimburse Council that amount within 10 Business Days of receiving a written request to do so.
- (e) The Developer indemnifies and keeps indemnified Council against all Claims made against Council as a result of any acquisition by Council of the whole or any part of the Conservation Land or any interest in the Conservation Land in accordance with the terms of this clause.
- (f) The Developer must promptly do all things necessary, and consents to Council doing all things necessary to give effect to this clause, without limitation.

Item 4

Monetary Contribution

A. Monetary Contribution

- (a) The Council and Developer acknowledge and agree that the Monetary Contribution comprises the sum of the Portion 1 Contribution and Portion 2 Contribution set out in the table in paragraph (b) below) and is provided for the purposes of the ongoing management of the Conservation Land in accordance with the VMP.
- (b) The Developer agrees to provide the Monetary Contribution to Council in accordance with the timing set out in the table below:

Contribution	Monetary Contribution Amount	Timing
Portion 1 Contribution	The sum of \$700,000.	Prior to or simultaneously with the transfer of the Conservation Land to Council, and no later than the issue of the Subdivision Certificate to create the 95 th Residential Development Lot.
Portion 2 Contribution	The sum of \$700,000, indexed between the date of this deed and the date of payment in accordance with clause B of Item 4 of Schedule 3.	The date 5 years after the date of transfer or dedication of the Conservation Land to Council.

B. Adjustment of Monetary Contribution at Payment

- (a) The Portion 2 Contribution must be adjusted, at the time of payment, by multiplying the applicable base sum by an amount equal to the Current CPI divided by the Base CPI.
- (b) For the purposes of this clause B of Item 4 of this Schedule 3, the Current CPI is:
 - (i) if the Monetary Contribution is paid between 1 January and 30 June (inclusive) in any calendar year – the CPI number for the most recent quarter ending within that period which precedes the date of payment; and
 - (ii) if the Monetary Contribution is paid between 1 July and 31 December (inclusive) in any calendar year – the CPI number for the most recent quarter ending within that period which precedes the date of payment.

C. Bank Guarantee as security for Portion 2 Contribution

- (a) To secure performance of the payment of Portion 2 Contribution of the Monetary Contribution, the Developer must provide the Bank Guarantee on the date the Portion 1 Contribution is paid to Council.
- (b) The Bank Guarantee is to be for an amount equal to the Portion 2 Contribution.
- (c) The Bank Guarantee must:
 - a. name the Council as the relevant beneficiary; and

- b. have an expiry date no earlier than six months after the date on which payment of the Portion 2 Contribution is due under clause A of Item 4 of Schedule 3.
- (d) Council may call upon the Bank Guarantee immediately if the Developer does not pay the Portion 2 Contribution on the date it is due under clause A of Item 4 of Schedule 3.
- (e) If the Developer has paid the Portion 2 Contribution, Council will promptly return the Bank Guarantee to the Developer.

D. Interest for late payment of Monetary Contribution

- (a) If the Developer fails to pay a portion of the Monetary Contribution in accordance with the timing set out in the table at clause A of Item 4 of Schedule 3, the Developer must also pay to Council interest at a rate of 2% above the loan reference rate charged by the Commonwealth Bank of Australia from time to time in relation to the applicable portion.
- (b) Interest is payable on the daily balance of amounts due from the due date for payment of those amounts until all outstanding amounts (including interest on those amounts) have been paid to the Council.

Schedule 4 - Address for service and Notices

Item 1 Address for service

Council	
Contact	Senior Strategic Planner - Growth & Infrastructure
Address	116 Adelaide Street, Raymond Terrace NSW 2324
Email	Developmentcontributions@portstephens.nsw.gov.au
Developer	
Contact	Managing Director
Address	1 Dickson Road, Loxford NSW 2326
Email	james@mccloygroup.com.au

Item 2 Time for doing acts

- A. If:
- (a) the time for doing any act or thing required to be done; or
 - (b) a notice period specified in this deed,
- expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
- B. If any act or thing required to be done is done after 5pm on the specified day, it is taken to have been done on the following Business Day.

Item 3 Notice provisions

- A. Any notice, demand, consent, approval, request or other communication (Notice) to be given under this deed must be in writing and must be given to the recipient at its Address for Service by being:
- (a) hand delivered;
 - (b) sent by prepaid ordinary mail within Australia; or
 - (c) sent by email.
- B. A Notice is taken to have been given at the time stated in column 4, in relation to the method of giving the Notice stated in column 2 below, depending on the timing of delivery if relevant as set out in column 3 of the table below:

Ref	Method of giving notice	Timing of delivery	When the notice is taken to be given
1	Hand delivery	If delivery occurs after 5pm New South Wales time on a Business Day or at any time on a day	The next Business Day

		which is not a Business Day	
		If delivery occurs before 5pm New South Wales time on a Business Day.	On the date of delivery.
2.	Prepaid ordinary mail within Australia	N/A	On the date that is 4 Business Days after the date of posting.
3.	Email	If the email is sent before 5pm New South Wales time on a Business Day, and the sender does not receive a delivery failure notice.	On the date of sending.
		If the email is sent after 5pm New South Wales time on a Business Day or on a day that is not a Business Day.	On the next Business Day after the email is sent.

EXECUTED AS A DEED

Date: 26/02/2026

Executed by **PORT STEPHENS COUNCIL** pursuant to s377 of the Local Government Act 1993:

Tim Crosdale

[Tim Crosdale \(Feb 24, 2026 15:55:42 GMT+11\)](#)

Signature of General Manager

Ann Edwards

Signature of Witness

Tim Crosdale

Name of General Manager (print)

Ann Edwards

Name of Witness (print)

Executed by **McCloy Kings Hill Pty Ltd ACN 652 158 202** in accordance with Section 127 of the *Corporations Act 2001*

Paul Broad

[Paul Broad \(Feb 25, 2026 14:09:49 GMT+11\)](#)

Signature of director

S. Boslem

Signature of director/company secretary
(Please delete as applicable)

Paul Broad

Name of director (print)

Shane Boslem

Name of director/company secretary (print)
(Please delete as applicable)









McCloys Group - VPA

Final Audit Report

2026-02-24

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By:	Ann Edwards (Ann.Edwards@portstephens.nsw.gov.au)
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Monarchs Rise VPA - Final

Final Audit Report

2026-02-26

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