

22 March 2018

Mills Oakley
ABN: 51 493 069 734

c/o Mr Anthony Hudson
The General Manager
Ku-ring-gai Council
818 Pacific Highway
Gordon NSW 2072

Your ref:
Our ref: CLMS/AJWS/3253972

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Dear Anthony

**Offer to Enter into a Planning Agreement
Lindfield Pty Ltd v Ku-ring-gai Council; LEC proceedings no 2017/211098
Site: No 51, 55 and 55A Lindfield Avenue, Lindfield**

We act for Lindfield Pty Ltd, the Applicant in the above Class 1 proceedings currently on appeal in relation to Ku-ring-gai Council's deemed refusal of DA no. DA0176/17 (**our client**).

The Development application relates to No 51, 55 and 55A Lindfield Avenue, Lindfield and seeks approval for the demolition of the existing buildings and construction of a residential flat building with basement car parking. We confirm that our client is the owner of the properties.

Offer to enter into a Planning Agreement

We are writing to confirm that our client hereby formally offers to enter into a Planning Agreement with Council pursuant to section s7.4 of the *Environmental Planning and Assessment Act 1979* (NSW) (**the Act**), subject to the terms set out in this letter.

Our client's offer is strictly subject to the Parties' entering into an agreement under s 34(3) of the Land and Environment Court Act 1979, and the Court making orders to give effect to that agreement

We consider the above information to be relevant to Council's consideration of our client's offer, which includes the matters specified in s 7.4(3) of the Act

1. Our client offers to enter into a Planning Agreement involving the dedication of land by the Applicant, and at no cost to Council.
2. The extent of the land to be dedicated is highlighted as 'land dedication' in Drawing no 10, revision B, 'roof/site plan', prepared by Wolski Coppin Architecture.
3. The dedication of the land is for a legitimate public purpose, being the upgrading and widening of Havilah Lane.
4. The Planning Agreement can be imposed as a condition of consent, requiring a Planning Agreement to be entered into on terms consistent with this offer, pursuant to s7.7(3) of the Act, within:
 - (a) six months after the date of issue of the first construction certificate for the development, or
 - (b) 30 days of the Council resolving or otherwise deciding to enter into the planning agreement.whichever occurs first.
5. The Planning Agreement **would not** exclude the application of section 7.11(1) of the EP&A Act (formerly section 94 of the EP&A Act).
6. Once drafted, the VPA would also provide for the following matters as set out in Subsection 7.11(3)):

- A description of the land to which the VPA applies;
- A description of the development to which the VPA applies;
- The nature and extent of the provisions to be made by Lindfield Pty Ltd under the VPA, the time or times by which the provision is to be made and the manner by which the provision is to be made;
- Confirmation that the VPA does not exclude (wholly or in part) the application of Sections 7.11 (contributions), 7.12 (development levies) or 7.24 (special infrastructure contributions);
- A dispute resolution mechanism; and
- Suitable means for enforcement of the VPA in the event of Lindfield Pty Ltd's breach including registration of the Planning Agreement on the title for the site;
- Payment of the Council's reasonable costs of, and incidental to, the Planning Agreement.

Section 7.7(3) of the Act empowers a consent authority to require a Planning Agreement to be entered into as a condition of development consent where the Planning Agreement is in the terms of an offer made by the developer in connection with the relevant Development Application. This Letter of Offer therefore enables Ku-ring-gai Council to require this proposed VPA to be entered into as a Condition of Consent pursuant to the terms outlined above.

If you have any questions or require further information please do not hesitate to contact Caitlin McJannett on +61 2 8289 5849 or cmcjannett@millssoakley.com.au

Yours sincerely



Anthony Whealy
Partner
Accredited Specialist Local Government & Planning