



PLANNING AGREEMENT

between

Clarence Valley Council
ABN 85 864 095 684
(Council)

and

Rachel Cairns
294 Brooms Head Road, Gulmarrad
(Developer and Landowner)

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SUMMARY

Council:

Name: **Clarence Valley Council**
Address: 2 Prince Street
GRAFTON NSW 2460
Telephone: +61 2 6643 0200
Facsimile: +61 2 6642 7647
Email: council@clarence.nsw.gov.au
Representative: Alex Clark

Developer and Landowner

Name: Rachel Cairns
Address: 294 Brooms Head Road, Gulmarrad
Telephone: 0455 108 990
Email: rachelcairns1978@hotmail.com
Representative:

Land:

See definition in clause 1.1.

Development:

See definition in clause 1.1.

Development Contribution:

See Schedule 1.

Application of section 7.11, section 7.12 and section 7.24 of the Act:

See clause 2.

Date

This **Agreement** is made on 15 April 2024

Parties

Clarence Valley Council ABN 85 864 095 684 of 2 Prince Street, Grafton NSW 2460 (**Council**)

Rachel Cairns of 294 Brooms Head Road, Gulmarrad

Background

- A The Development Application DA2023/0559 granted approval for a dwelling house, secondary dwelling and shed of Lot 1 in DP505536.
- B The Developer is the owner of the Land.
- C The Developer has offered to enter into a VPA and pay council a contribution of \$1,800.00 in lieu of imposed conditions to offset the removal of 9 native trees. The contribution is based on the Council's Biodiversity Offsetting Policy and this figure has been calculated in accordance with Council's Biodiversity Offsets Policy based on a ratio of 1:5 offset multiplier.
- D The Developer is prepared to make Development Contributions in connection with the carrying out of the Development in accordance with this Agreement.

Agreed Terms

1 Interpretation

1.1 Definitions

In this Agreement:

Act means the *Environmental Planning and Assessment Act 1979* (NSW).

Agreement means this planning agreement between the Parties and includes any schedules, annexures and appendices to this planning agreement.

Bank Guarantee means an irrevocable and unconditional undertaking without any expiry or end date by one of the following trading banks:

- (a) Australia and New Zealand Banking Group Limited;
 - (b) Commonwealth Bank of Australia;
 - (c) Macquarie Bank;
 - (d) National Australia Bank Limited;
 - (e) St George Bank Limited;
 - (f) Westpac Banking Corporation; or
 - (g) another financial institution approved by the Council, in its absolute discretion, in response to a request from the Developer.
-

Business Day means a day on which the banks are open for business in Sydney, New South Wales other than a Saturday, Sunday or bank or public holiday.

Defects Liability Period means 12 months from practical completion of Work undertaken under this Agreement.

Development means *dwelling house, secondary dwelling and shed of Lot 1 DP505536*. A copy of the Notice of Determination for the Development is included in Annexure B.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means a monetary contribution, the dedication of land free of cost, the carrying out of work, or the provision of any other material public benefit or any combination of them, to be used for, or applied towards a Public Purpose.

GST means goods and services tax or similar value added tax levied or imposed in Australia under the GST Law or otherwise on a supply.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

GST Law has the same meaning as in the GST Act.

Land means *Lot 1 DP505536* being 294 Brooms Head Road, Gulmarrad.

Map means the Map attached to this Agreement at Schedule Annexure C.

Party means a party to this Agreement, including their successors and assigns.

Public Purpose means any purpose that benefits the public or a section of the public, including but not limited to a purpose stated in section 7.4(2) of the Act.

Rectification Notice means a notice in writing that identifies a defect in any Work and requires rectification of the defect within a specified period of time.

Regulation means the *Environmental Planning and Assessment Regulation 2000 (NSW)*.

Security means a Bank Guarantee, or an insurance bond or other form of security to the satisfaction of the Council.

Summary means the summary which forms part of this Agreement.

Work means the physical result of any building, engineering or construction operations in, on, over or under land required to be carried out by the Developer under this Agreement.

1.2 Construction

In this Agreement, unless the context otherwise requires:

- (a) a reference to:
 - (i) one gender includes the other;
 - (ii) the singular includes the plural and vice versa;
 - (iii) money (including '\$', 'AUD' or 'dollars') is to Australian currency;
 - (iv) time is a reference to local time in Sydney, New South Wales;

- (v) a right includes a benefit, remedy, discretion or power;
 - (vi) 'include' or 'including' are to be taken to mean without limitation;
 - (vii) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes facsimile transmissions;
 - (viii) a \$ value relating to a Development Contribution is a reference to the value exclusive of GST;
 - (ix) a person includes an individual, a firm, a body corporate, a trust, a joint venture, an unincorporated association, partnership and a government or statutory body, authority or agency;
 - (x) a party includes the party's legal personal representatives (including executors), administrators, servants, agents, successors, permitted assigns and substitutes (including by way of novation);
 - (xi) any statute, ordinance, legislation, code or other law includes subordinate legislation (including regulations) and other instruments under it and includes consolidations, amendments, re-enactments, modifications or replacements of any of them;
 - (xii) any agreement, deed or document is a reference to that agreement, deed or document as amended, novated, supplemented or replaced; and
 - (xiii) a recital, clause, part, schedule, annexure or attachment is a reference to a recital, clause, part, schedule, annexure or attachment of or to this Agreement and references to this Agreement include any recital, clause, part, schedule, annexure or attachment.
- (b) if a word or phrase is defined its other grammatical forms have a corresponding meaning;
 - (c) all amounts under this Agreement are payable in Australian dollars;
 - (d) a clause of this Agreement must not be construed to the disadvantage of a Party merely because that Party was responsible for the preparation of this Agreement or the inclusion of the provision of this Agreement;
 - (e) all schedules, appendices, annexures and attachments form part of this Agreement;
 - (f) a guidance note is not an operative term of this Agreement; and
 - (g) if the day for doing an act, matter or thing under this Agreement is not a Business Day, the act, matter or thing is to be done instead on the next Business Day.

1.3 Headings

Headings and the table of contents are for convenience only and do not form part of this Agreement or affect its interpretation.

2 Planning agreement

2.1 Under the Act

This Agreement is a planning agreement within the meaning of Subdivision 2 of Division 7.1 of Part 7 of the Act and makes possible the provision of the Development Contribution for the Public Purpose.

2.2 Application of this Agreement

This Agreement applies to the Land and to the Development.

2.3 Application of section 7.11, section 7.12 and section 7.24 of the Act

This Agreement excludes the application of section 7.11 of the Act to the Development.

This Agreement excludes the application of section 7.12 of the Act to the Development.

This Agreement excludes the application of section 7.24 of the Act to the Development.

2.4 Further agreements

The Parties may, at any time, enter into agreements relating to the subject matter of this Agreement that they consider necessary or desirable in order to give effect to this Agreement.

2.5 Commencement

This Agreement commences on the day on which it is executed by the Parties.

3 Surrender of appeal rights

The Developer is not to commence or maintain or cause to be commenced or maintained, any court proceedings challenging the validity of a Development Consent relating to the Development or an approval under section 4.55 of the Act to modify a Development Consent relating to the Development to the extent that the consent or approval relates to the existence of this Agreement.

4 Development contributions

4.1 Provision of development contribution

- (a) The Developer is to make Development Contributions to the Council in accordance with Schedule 1 of this Agreement and otherwise to the satisfaction of the Council.
 - (b) The Council is to apply each Development Contribution made by the Developer towards the Public Purpose for which it is made or in accordance with clause (c).
 - (c) The Council may apply a Development Contribution toward a public purpose other than the Public Purpose specified in this Agreement if the Council considers that the public interest would be better served by applying the Development Contribution towards that other purpose.
-

4.2 **Monetary development contribution**

- (a) A monetary Development Contribution is made for the purposes of this Agreement when the Council receives the total amount of the contribution in cash, by bank cheque or by electronic funds transfer of cleared funds into a bank account nominated by the Council.
- (b) The Developer is to give the Council not less than two Business Days written notice of its intention to pay a monetary Development Contribution.
- (c) After having given notice under clause 4.2(b), the Developer is required to attend a Council Office to pay the monetary Development Contribution.

4.3 **Work**

(a) **Access to the Land**

- (i) The Developer is to permit the Council, its officers, employees, agents and contractors to enter the Land at any time, upon giving reasonable prior notice in order to inspect, examine or test any Work or to remedy any breach of the Developer relating to the carrying out of a Work.
- (ii) The Council is to permit the Developer to enter and occupy any land owned or controlled by the Council for the purpose of enabling the Developer to carry out any Work that is required to be carried out on such land or to perform any other obligation imposed on the Developer by this Agreement.

(b) **Variation of work**

- (i) Work is not to be varied by the Developer, unless:
 - (A) the Parties agree in writing to the variation; and
 - (B) any consent or approval required under the Act or any other law is first obtained; and
 - (C) the Developer bears all of the Council's costs of, and incidental to, agreeing to and approving the variation.
- (ii) A variation may relate to any matter in relation to the Work that is dealt with by this Agreement.

5 Compulsory acquisition of land required for work

N/A

6 Dedication of land

N/A

7 Security

- (a) The Parties agree that sufficient Security has been provided and that suitable enforcement of this Agreement, for the purposes of section 7.4 (3)(g) of the Act, does not require the provision of further Security.
-

8 Enforcement

8.1 Enforcement

- (a) Without limiting any other remedy available, the Parties may enforce this Agreement in any court of competent jurisdiction in New South Wales.
- (b) For the avoidance of doubt, nothing in this Agreement prevents:
 - (i) a party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement;
 - (ii) the Council from exercising any function under the Act or any other law relating to the enforcement of any aspect of this Agreement.

9 Dispute resolution

9.1 In accordance with this clause

- (a) Any dispute between the parties relating to this Agreement is to be dealt with in accordance with clause 9 of this Agreement.

9.2 Claim notice

- (a) If a Party claims that a dispute exists under this Agreement (**Claimant**), that Party is to give written notice to the other Party, or Parties, (**Respondent**) setting out the matters in dispute and nominating a person as its representative to negotiate the dispute on the Claimant's behalf (**Claim Notice**).

9.3 Response to claim notice

- (a) Within seven days of receipt of the Claim Notice, the Respondent is to notify the Claimant of its representative to negotiate the dispute on the Respondent's behalf.

9.4 Negotiation of dispute

- (a) The nominated representatives of each of the Parties are to:
 - (i) meet to negotiate the dispute in good faith within seven days after service by the Respondent of notice of its representative on the Claimant; and
 - (ii) use all reasonable endeavours in an attempt to settle or resolve the dispute with 14 days after the nominated representatives have met.
- (b) If the dispute is not resolved within 14 days after the nominated representatives have met, any Party may give written notice to the other Party calling for a determination of the dispute by:
 - (i) if the Parties agree that the dispute relates to a technical matter only which requires technical expertise to resolve, technical expert determination in accordance with clause **Error! Reference source not found.**; or
 - (ii) mediation in accordance with clause 9.5 (**Dispute Notice**).

9.5 Mediation

- (a) If a Party gives a Dispute Notice to the other Party calling for the dispute to be mediated:
- (i) the Parties are to mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales; and
 - (ii) the Parties are to request that the President of the Law Society of New South Wales, or the President's nominee, select a mediator.

9.6 Legal proceedings

If any dispute is not resolved by mediation in accordance with clause 9.5 or by technical expert determination in accordance with clause **Error! Reference source not found.**, then the Parties may exercise their legal rights in relation to the dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.

9.7 No merger

This clause 9 does not merge on completion or termination of this Agreement.

10 Registration of this Agreement

The Parties agree to not to register this agreement for the purposes of section 7.6 of the Act.

11 Review of this Agreement

N/A

12 Assignment

- (a) A Party must not assign or deal with any right under this Agreement without the prior written consent of the other Party.
- (b) Any purported dealing in breach of this clause is of no effect.
- (c) The Developer may not transfer, assign or dispose of its obligations under this Agreement to a transferee unless:
 - (i) the transferee delivers to the Council a deed signed by the transferee under which it agrees to comply with all the obligations of the Developer under this Agreement as if it were joined as a party to this Agreement in the place of the Developer (including obligations which arose before the transfer, assignment or disposition);
 - (ii) any default by the Developer under any provision of this Agreement has been remedied by the Developer or waived by the Council on such conditions as the Council may determine; and
 - (iii) the Council consents to the transfer, assignment or disposition.

13 GST

N/A

14 Notices

- (a) Any notice, consent, information, application, request or communication relating to this Agreement is given or made only if it is in writing and sent in one of the following ways:
- (i) personally delivered at the Party's address in the Summary;
 - (ii) posted to the Party at its address in the Summary;
 - (iii) faxed to that Party at its fax number in the Summary; or
 - (iv) emailed to the email address in the Summary.
- (b) Any notice, consent, information, application, request or communication is given if it is:
- (i) delivered, when it is left at the relevant address;
 - (ii) sent by post, two Business Days after it is posted;
 - (iii) sent by fax when the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number; or
 - (iv) emailed when it has left the sender's server and there is no failure notification to the sender.
- (c) A Party must give the other Party three Business Days notice of a change of its address, fax number or email.
- (d) If a Party gives the other Party notice of a change of address, fax number or email, any notice, consent, information, application, request or communication relating to this Agreement is given or made only if it is made in accordance with clause 14(a) and delivered, posted or faxed to the newest address, fax number or email.

15 Approvals and consent

Except as otherwise set out in this Agreement, a Party may give or withhold an approval or consent in that Party's absolute discretion and subject to any conditions determined by the Party and a Party is not obliged to give its reasons.

16 Costs

- (a) The Developer is to pay to the Council a contribution of \$614.35 (plus an advertising fee of \$260.00) towards the Council's costs of preparing a template planning agreement upon which this Agreement is based within 7 days of a written request by the Council for such payment.
- (b) The Developer is also to pay, the Council's reasonable costs of preparing, negotiating, executing, stamping and entering into this Agreement within 7 days of a written request by the Council for such payment.
-

- (c) The Developer is to pay to the Council the Council's costs of monitoring, reviewing and enforcing this Agreement within 7 days of a written request by the Council for such payment.

17 Entire agreement

- (a) This Agreement contains the entire understanding between the parties as to the subject matter of this Agreement.
- (b) No Party can rely on an earlier document or anything said or done by another Party, or by a director, officer, agents or employee of that Party, before this Agreement was executed, except as permitted by law.

18 Further acts

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Agreement and all transactions incidental to it.

19 Governing law and jurisdiction

- (a) This Agreement is governed by the law of New South Wales.
- (b) The Parties submit to the non-exclusive jurisdiction of the courts of New South Wales.
- (c) The Parties are not to object to the exercise of jurisdiction by the courts of New South Wales.

20 Change of Law

If this Agreement becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Agreement is entered into.

21 Joint and individual liability and benefits

Except as otherwise set out in this Agreement:

- (a) any agreement, covenant, representation or warranty under this Agreement by two or more persons binds them jointly and each of them individually; and
- (b) any benefit in favour of two or more persons is for the benefit of them jointly and each of them individually.

22 No fetter

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

23 Representations and warranties

The Parties represent and warrant that they have power to enter into this Agreement and comply with their obligations under the Agreement and that entry into this Agreement will not result in the breach of any law.

24 Severability

- (a) If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- (b) If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement but the rest of this Agreement is not to be affected.

25 Modification

No modification of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

26 Waiver

- (a) A Party does not waive a right or remedy under this Agreement if it:
 - (i) fails to exercise the right or remedy;
 - (ii) only partially exercises the right or remedy; or
 - (iii) delays in exercising the right or remedy.
- (b) A Party which exercises a single right or remedy or partially exercises a right or remedy maintains its right to:
 - (i) further exercise the right or remedy; or
 - (ii) exercise another right or remedy.
- (c) A waiver is effective only if in writing and signed by the Party to be bound and to the extent that is expressly stated in writing.

27 Confidentiality

The Parties agree that the terms of this Agreement are not confidential and this Agreement may be treated as a public document and exhibited or reported without restriction by any Party.

28 Counterparts

This Agreement may consist of a number of counterparts and, if so, then the counterparts taken together constitute this Agreement.

29 Explanatory note relating to this agreement

- (a) The Annexure A contains the Explanatory Note relating to this Agreement required by clause 25E of the Regulation.
- (b) Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note in the Annexure A is not to be used to assist in construing this Agreement.

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Schedule 1

Development Contributions (Clause 4)

Column 1 Contribution Item	Column 2 Public Purpose	Column 3 Nature, Value and Manner of the Contribution	Column 4 Specific Timing of the Contribution
Monetary Contributions			
Payment to CVC's Environmental Trust	To offset the removal of 9 trees at a ratio of 1:5 offset multiplier	\$1,800.00	Prior to issue of the Occupation Certificate
Dedication of Land			
Not applicable			
Carrying out of Work			
Not applicable			
Other material public benefits			
Not applicable			

Guidance note: the contents of Schedule 1 will necessarily be determined by the exact nature of the Development Contribution the subject of this Agreement. Delete this guidance note once drafted.

Execution

Executed as an agreement on 15 April 2024

Executed by the **Clarence Valley Council** ABN 85 864 095 684 by its duly authorised delegate pursuant to s.377 Local Government Act, 1919 in the presence of:

Witness

General Manager / Authorised Delegate

Name/Position of Witness
(BLOCK LETTERS)

Name of General Manger / Authorised
Delegate
(BLOCK LETTERS)

EXECUTED by Rachel Cairns in accordance with section 127 of the *Corporations Act 2001* (Cth):

Signature of landowner/developer

Director

RACHEL CAIRNS

Name of Landowner/Developer
(BLOCK LETTERS)

Name of Director
(BLOCK LETTERS)

Annexure A

(Clause 29)

Explanatory Note (Clause 25E of the Regulation)

Agreement

Under Subdivision 2, Division 7.1 of Part 7 of the *Environmental Planning and Assessment Act 1979* (NSW) (**Act**)

Parties

Clarence Valley Council ABN 85 864 095 684 of 2 Prince Street, Grafton NSW 2460 (**Council**)

Rachel Cairns of 294 Brooms Head Road, Gulmarrad (**Developer and Landowner**)

Description of the Land to which the Agreement applies

294 Brooms Head Road, Gulmarrad. Lot 1 in DP505536.

Description of the proposed Development

The Development Application DA2023/0559 granted approval for the dwelling house, secondary dwelling and shed upon the land

Summary of objectives, nature and effect of the Agreement [clause 25E(a)]

- **Objectives:**

The objective of the agreement is to accept a monetary contribution of \$1,800.00 towards Council's Environmental Trust Fund for the offset of 9 trees at a ratio of 1:5 offset multiplier.

- **Nature:**

The Developer has agreed to make a monetary contribution towards the continuing biodiversity of vegetation within the Council Area

- **Effect:**

The contribution will be put towards enhancing the natural environment in the locality of the land.

Assessment of the merits of the Agreement [clause 25E(b)]

- **Assessment of the merits:**

The Agreement is entered into to facilitate a contribution towards the planting of native species of trees at a ratio of 1:5 to those removed from the land.

- **How the Agreement promotes the 'Public Interest' and one or more of the objects of the Act:**

The Agreement is entered into to facilitate a contribution towards the planting of native species of trees at a ratio of 1:5 to those removed from the land.

- **How the Agreement promotes elements of the Council's Charter under section 8 of the *Local Government Act 1993* (NSW):**

The planning agreement promotes the following elements of Council's charter:

- to properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development.
- to have regard to the long term and cumulative effects of its decisions.
- to bear in mind that it is the custodian and trustee of public assets and to effectively plan for, account for and manage the assets for which it is responsible.
- to exercise its functions in a manner that is consistent with and promotes social justice principles of equity, access, participation and rights.
- to facilitate the involvement of councillors, members of the public, users of facilities and services and council staff in the development, improvement and co-ordination of local government.
- to keep the local community and the State government (and through it, the wider community) informed about its activities.

- **The planning purposes served by the Agreement, and how the purpose or purposes are reasonably achieved:**

In accordance with Section 7.4(2) of the Act, the Planning Agreement has the following public purposes:

Assist in providing for the conservation or enhancement of the natural environment.

- **Whether the Agreement conforms with the Council's Capital Works Program (if any):**

N/A

- **Whether certain requirements of the Agreement must be complied with before a construction certificate, occupation certificate or subdivision certificate is to be issued (if any):**

The requirement of the agreement must be complied with before the issue of the Occupation Certificate.

Annexure B**Notice of Determination****NOTICE OF DETERMINATION OF A DEVELOPMENT APPLICATION**

Application number	DA2023/0559 PAN-368199
Applicant	Kirkland Group Pty Ltd 13 Jamison Street MACLEAN NSW 2463
Description of development	Dwelling house, secondary dwelling and shed
Property	294 Brooms Head Road GULMARRAD NSW 2463 Lot 1 DP 505536
Determination	Approved Consent Authority - Council
Date of determination	20 December 2023
Date from which the consent operates	20 December 2023
Date on which the consent lapses	20 December 2028
Building Code of Australia building classification	1A

Under section 4.18(1) of the EP&A Act, notice is given that the above development application has been determined by the granting of consent using the power in section 4.16(1)(a) of the EP&A Act, subject to the conditions specified in this notice.

Reasons for approval

- The development complies with the *Clarence Valley Local Environmental Plan 2011* and relevant Development Control Plan that is applicable to the proposed development.
- The development is consistent with the objectives of the zone.
- The development, subject to the recommended conditions, will not result in unacceptable adverse impacts upon the natural or built environments.
- The development is consistent with the objects of the *Environmental Planning and Assessment Act 1979*.
- Community views were considered as part of the assessment and determination in accordance with the requirements of the Clarence Valley Community Participation Plan and *Environmental Planning and Assessment Act 1979*.

Right of appeal / request a review of the determination

If you are dissatisfied with this determination:

Request a review

You may request a review of the consent authority's decision under section 8.3(1) of the EP&A Act. The application must be made to the consent authority within 6 months from the date that you received the original determination notice provided that an appeal under section 8.7 of the EP&A Act has not been disposed of by the Court.

Rights to appeal

You have a right under section 8.7 of the EP&A Act to appeal to the Court within 6 months after the date on which the determination appealed against is notified or registered on the NSW planning portal.

Objector's right of appeal against the determination

The EP&A Act 1979 does not give a right of appeal against this determination to an objector.

The Dictionary at the end of this consent defines words and expressions for the purposes of this determination.

Carmen Landers

Development Planner (Systems)

Person on behalf of the consent authority



Annexure C

Map of Land



1 SITE PLAN
1 : 500

DA ONLY / NOT FOR CONSTRUCTION

