



## PLANNING AGREEMENT

between

**Clarence Valley Council**  
ABN 85 864 095 684  
(Council)

and

Corie Ross & Tanya Ross of 684 Lower Kangaroo Creek Rd, Coutt's Crossing  
NSW 2460  
(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: *Carmen Landers*

### Developer and Landowner

Name: Corie Ross & Tanya Ross  
Address: 684 Lower Kangaroo Creek Rd, Coutt's Crossing NSW 2460  
Telephone: 0401 766211  
Email: tcrosses@bigpond.net.au  
Representative: Corie Ross

### 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 ~~Eighteenth~~31 of May 2022

## Parties

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

Corie & Tanya Ross of 684 Lower Kangaroo Creek Rd, Coutt's Crossing NSW 2460

## Background

- A The Development Application SUB2021/0006 granted approval for a three (3) Lot Subdivision of Lot 6 DP 701625 known as 684 Kangaroo Creek Road, Coutts Crossing.
- 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 \$728.44 in lieu of imposed conditions to offset the removal of 145 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 5:1 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.

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## Agreed Terms

### 1 Interpretation

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#### 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 the *three (3) Lot Subdivision of Lot 6 DP701625*. 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 6 DP 701625 being 684 Lower Kangaroo Creek Rd, Coutt's Crossing

**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**

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### **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**

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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**

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### **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

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N/A

### 6 Dedication of land

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N/A

### 7 Security

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- (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.
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## 8 Enforcement

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### 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

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### 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.9-5**; or
  - (ii) mediation in accordance with clause **9.59-6 (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 9.59-6 or by technical expert determination in accordance with clause **Error! Reference source not found.9-5**, 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

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

## 11 Review of this Agreement

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N/A

## 12 Assignment

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- (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**

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N/A

**14 Notices**

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- (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**

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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**

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- (a) The Developer is to pay to the Council a contribution of \$576.30 (VPA Preparation) and \$142.80 (Advertising) 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**

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- (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**

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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 Notations on section 10.7(2) planning certificates**

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The Parties agree that the Council may, in its absolute discretion, make a notation under section 10.7 (5) of the Act regarding this Agreement on any certificate issued under section 10.7(2) of the Act relating to the Land.

## **20 Governing law and jurisdiction**

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- (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.

## **21 Change of Law**

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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.

## **22 Joint and individual liability and benefits**

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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.

**23 No fetter**

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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.

**24 Representations and warranties**

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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.

**25 Severability**

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- (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.

**26 Modification**

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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.

**27 Waiver**

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- (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.

**28 Confidentiality**

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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.

**29 Counterparts**

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

**30 Explanatory note relating to this agreement**

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- (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.

**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
<b>Monetary Contributions</b>			
Payment to CVC's Environmental Trust	To offset the removal of 145 trees at a ratio of 5:1 offset multiplier	\$728.44	\ Prior to issue of the Subdivision Certificate
<b>Dedication of Land</b>			
Not applicable			
<b>Carrying out of Work</b>			
Not applicable			
<b>Other material public benefits</b>			
Not applicable			



### Execution

**Executed** as an agreement on 31 May 2022

**Executed** by the **Clarence Valley Council** ABN 85 864 095 684 by its duly appointed officer in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
General Manager

\_\_\_\_\_  
Name/Position of Witness  
(BLOCK LETTERS)

\_\_\_\_\_  
Name of General Manger  
(BLOCK LETTERS)

**EXECUTED** by Corie & Tanya Ross in accordance with section 127 of the *Corporations Act 2001* (Cth):



\_\_\_\_\_  
Signature of landowner/developer

\_\_\_\_\_  
Director

\_\_\_\_\_  
Corie Ross and Tanya Ross

\_\_\_\_\_  
Name of Landowner/Developer  
(BLOCK LETTERS)

\_\_\_\_\_  
Name of Director  
(BLOCK LETTERS)

## Annexure A

(Clause 30)

### 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**)

Corie & Tanya Ross of 684 Lower Kangaroo Creek Rd, Coult's Crossing (**Developer and Landowner**)

#### Description of the Land to which the Agreement applies

684 Lower Kangaroo Creek Rd, Coult's Crossing being Lot 6 DP 701625

#### Description of the proposed Development

*The Development Application SUB2021/0006 granted approval for the Three (3) Lot Subdivision 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 \$728.44 towards Council's Environmental Trust Fund for the offset of 145 trees at a ratio of 5:1 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 5:1 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 5:1 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:

- o 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.
- o to have regard to the long term and cumulative effects of its decisions.
- o 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.
- o to exercise its functions in a manner that is consistent with and promotes social justice principles of equity, access, participation and rights.
- o 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.
- o 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 Subdivision Certificate.

**Annexure B**  
**Notice of Determination**



clarence  
VALLEY COUNCIL

4 February 2022

Reference: SUB2021/0006  
Contact: Carmen Landers

C J Ross  
684 Lower Kangaroo Creek Road  
COUTTS CROSSING NSW 2460

**NOTICE OF DETERMINATION OF APPLICATION**

Pursuant to Section 4.18(10)(a) of the Environmental Planning and Assessment Act, 1979

**Application No:** SUB2021/0006  
**Applicant:** Corrie John Ross  
**Owner:** Corrie John Ross & Tanya Lee Ross  
**Property Address:** 684 Lower Kangaroo Creek Road COUTTS CROSSING NSW 2460  
**Legal Description:** Lot 6 DP 701625  
**Development Proposal:** Three (3) lot subdivision

**DEVELOPMENT CONSENT**

Pursuant to Section 4.16(1)(a) of the Environmental Planning and Assessment Act, 1979, notice is hereby given that Council has considered your application for the subject Development. The subject determination is an "operational" consent which is effective from the date appearing on the bottom of each page of the formal notice.

**The Development Application has been determined by:**

Consenting to the development with conditions.

**Determination of the application was made:**

Under delegated authority of Council's Acting Coordinator Development Services.

**Determination Date:**

4 February 2022

**Approved Plans and Documentation**

THE DEVELOPMENT SHALL COMPLY WITH THE PLANS LODGED WITH THE APPLICATION AND AS MAY BE AMENDED BY THE FOLLOWING CONDITIONS OF CONSENT AND/OR BY AMENDED PLANS AND DETAILS.

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Locked Bag 23 GRAFTON NSW 2460  
p 02 6643 0200 w 02 6642 7547 e [council@clarencenew.gov.au](mailto:council@clarencenew.gov.au) www.clarence.nsw.gov.au

#### Definitions

**Applicant** means Corrie John Ross or any party acting upon this consent.

**NRDC** the current civil engineering standards in accordance with the relevant parts of the following guidelines

- a Northern Rivers Local Government Development and Design Manual (AUS-SPEC)
- b Northern Rivers Local Government Construction Manual (AUS-SPEC)
- c Northern Rivers Local Government Handbook for Driveway Access To Property (AUS-SPEC)

AUS-SPEC documents can be obtained from a [link](#) under the 'Planning & Building' section of the Clarence Valley Council webpage.

#### Advice to Applicant

Council in determining the subject application requests you to take note of the following advice and where pertinent to convey the advice to future owners or tenants:

1. Any activity to be carried out on any part of the road reservation requires the prior approval of Council under the NSW Roads Act 1993.
2. A Subdivision Certificate fee is charged for the endorsement of linen plans. Fees for the 2021/22 financial year are \$255.00 plus \$30.00 per additional lot (minimum \$255.00). An additional fee of \$115.80 is payable if the Subdivision Certificate requires the signing of an 88B instrument by Council.
3. If a Voluntary Planning Agreement (VPA) is entered into as part of this application, the applicant is required to pay Council's current costs of the VPA preparation fee plus advertising. Council's current fees for 2021/22 financial year are \$576.30 for the VPA preparation fee and \$142.80 advertising fee.

#### Conditions of Consent

1. The development being completed in conformity with the Environmental Planning & Assessment Act, 1979, the Regulations thereunder, the Building Code of Australia (BCA) and being generally in accordance with the following plan(s) as amended in red, or [where](#) modified by any conditions of this consent.

Plan No	Drawn by	Title	Plan Date
12917-01	<del>O. Donohue</del> Hanna & Associates	Plan of proposed subdivision of Lot 6 DP701625	18 January 2021

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2. Payment to Council of the contributions pursuant to Section 7.11 of the Environmental Planning and Assessment Act:

**Clarence Valley Contribution Plan 2011 Open Space/Recreation Facilities**  
Isolated Coastal and Rural \$3,869.35 x 2 = \$7,738.70 GL S94CVCOSRuralCoas

**Clarence Valley Contributions Plan 2011 Community Facilities**  
Grafton and surrounds \$3,869.35 x 2 = \$7,738.70 GL S94CVCCFGrafton

**Clarence Valley Contributions Plan 2011 Plan of Management**  
Rate per Dwelling/Lot \$74.10 x 2 = \$148.20 GL S94CVCPoMDwell

N.B.

The contribution(s) as assessed will apply for 12 months from the date of this approval. Contributions not received by Council within 12 months of the date of this notice will be adjusted in accordance with the adopted Schedule of Fees and Charges current at the time of payment.

The contributions are to be paid to Council prior to issue of the Subdivision Certificate.

In the event of any subsequent amendment to the approved Development Plans, the calculated contribution amounts may vary and if so will become the contribution payable.

All contribution plans are available for inspection at Clarence Valley Council Offices, 50 River Street, Maclean and 2 Prince Street, Grafton.

3. Prior to the issue of the Subdivision Certificate telecommunications and electricity must be provided to all lots within the subdivision in accordance with the requirements and specifications of the relevant service authorities, Australian Standards, the relevant parts of the applicable Clarence Valley Council Development Control Plans and NRDC.
- a All new services are to be provided within the service allocations within NRDC, unless an agreement has been obtained from Council for an alternative location.
  - b Written agreement of non compliance with the service allocations will be required from the affected service authorities.
4. Prior to the issue of the Subdivision Certificate, Council will require satisfactory evidence that all requirements of the relevant telecommunications and power authorities have been complied with and all required contributions have been lodged.
5. Plans are to be submitted and approved by Council prior to issue of the Subdivision Certificate which demonstrate that the driveway access locations for proposed Lots 61 and 62 satisfy the minimum sight distance requirements of AS2890.1 for domestic property accesses.
- A restriction on the title of each lot is to be created as part of the Subdivision Certificate provided which restricts future driveway locations in accordance with the approved plans.

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If the minimum site distance requirements of AS2890 cannot be achieved for individual accesses, Right of Carriageway or similar through adjacent lots is to be provided such that the driveway access location satisfies the requirements of AS2890.

6. Erosion and Sediment Control is to be implemented in accordance with the relevant parts of the applicable Council Development Control Plans, NSW Managing Urban Stormwater - Soils and Construction (Blue Book) and NRDC. These controls are to be maintained and managed by the applicant and/or the appointed contractor until suitable vegetation cover is achieved.
7. Prior to the commencement of construction, an Unexpected Heritage Finds Procedure for Aboriginal and non-Aboriginal Heritage must be prepared should actual or potential items or areas of Heritage be discovered during construction activities. This procedure must be tool boxed with all work crews and implemented during construction works. Should any Aboriginal or non-Aboriginal relics or artefacts be uncovered during works on the site, all work is to cease and Heritage NSW shall be contacted immediately and any directions or requirements of the Service complied with.
8. This approval has also been granted under Section 4.47 of the Environmental Planning and Assessment Act 1979. Compliance with the conditions and advice of the NSW Rural Fire Service, as contained in their letter dated 15 June 2021, consisting of three (3) pages, and as attached to this Notice of Determination. Compliance is to be demonstrated prior to release of the Subdivision Certificate.  
  
Should certification of compliance with the General Terms of Approval as granted by the NSW Rural Fire Service from a suitably qualified person/s not be presented to Council prior to issue of the Subdivision Certificate, Council will charge an Inspection Fee in accordance with the Fees and Charges for the financial year for Council to inspect the works are completed.
9. The Plant Community Type (PCT) 669: Riparian rainforest as shown on Figure 3 of the Ecological Assessment Report dated 8 December 2021 prepared by Biodiversity Assessments & Solutions Pty Ltd must be identified on the subdivision plan and restricted so that no clearing or development, including fencing, is to be undertaken in this area.
10. The habitat trees as shown on Figure 3 of the Ecological Assessment Report dated 8 December 2021 prepared by Biodiversity Assessments & Solutions Pty Ltd must be clearly identified on the subdivision plan and protected through a restriction on use prohibiting the removal/clearing of these trees.
11. The removal of 3,885m<sup>2</sup> of vegetation is required to be offset by planting 145 native trees of a mix of the species across the site (offset rate of 5:1). A plan showing the proposed location and species of trees; and a maintenance management plan is to be submitted for approval prior to the trees being removed. The trees are to be planted prior to the issue of the Subdivision Certificate and maintained in accordance with the approved Maintenance Management Plan.

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Alternatively, in lieu of imposed conditions to offset the removal of 145 trees, the applicant may offer to enter into a voluntary planning agreement (VPA) with Council to pay a monetary contribution of \$728 44 in accordance with Council's Biodiversity Offsetting Policy. This figure has been calculated in accordance with Council's Biodiversity Offsets Policy based on a ratio of 5:1 offset multiplier.

Council must be advised of the method of offsetting the removal of vegetation prior to any trees being removed. If a Voluntary Planning Agreement is entered into, pursuant to section 7.4 of the Environmental Planning and Assessment Act 1979 (EP&A Act), the applicant is to execute and deliver to the Council the Planning Agreement, in accordance with Subdivision 2, Division 6 of Part 4 of the EP&A Act, which the applicant/developer has offered to enter into and pay the monetary contribution prior to the release of the Subdivision Certificate.

12. A restriction-as-to-user is to be placed on **all** allotments requiring boundary fencing to be of the type which will allow free passage of native ground moving animals including Koalas.
13. The clearing of trees and shrubs are to be removed from the site during subdivision construction, with the exception of those necessary for site accesses, services laying, area to be built upon, the effluent disposal area and bushfire asset protection zones as required in this consent. No further clearing of trees is to occur without the prior written consent of Council.
14. Where possible, any felled trees should be placed on the ground as habitat features and not removed
15. The submission of the 88B Instrument, and one copy thereof, to Council prior to the release of the Subdivision Certificate.
16. Certification is to be provided to the Principal Certifying Authority by a Registered Surveyor prior to the issue of the subdivision certificate, that all services and domestic drainage lines are wholly contained within the respective lots
17. Should certification of compliance with the General Terms of Approval as granted by the NSW Rural Fire Service from a suitably qualified person/s not be presented to Council prior to issue of the Subdivision Certificate, Council will charge an Inspection Fee in accordance with the Fees and Charges for the financial year for Council to inspect the works are completed.

#### Reasons

1. To ensure that the development complies with the *Clarence Valley Local Environmental Plan 2011* and relevant Development Control Plan that is applicable to the proposed development.
2. To ensure that the surrounding environment is not detrimentally affected as a result of the development.
3. To comply with Council's Section 7.11 Contribution Plans.

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4. To ensure that adequate infrastructure and services are provided in accordance with Council's Engineering Specifications for development.
5. To ensure that vehicular access and parking are provided in accordance with Council's Engineering Specifications for Development.
6. To ensure compliance with Australia Standards.
7. To conserve Aboriginal cultural heritage.

**Right of Appeal and Validity of Consent**

Section 8.2 of the Act provides that you may request a review of your determination by Council. The review must be requested within 6 months of the date of this notice and must be accompanied by the prescribed fee.

Section 8.7 of the Act provides that you have a right of appeal to the Land and Environment Court against Council's decision in the matter, exercisable within 6 months after receipt of this notice.

Consent becomes effective from the consent validation date. Section 4.53 of the Act provides for the period of validity of consent, and it is the applicant's responsibility to ensure that commencement of the development is carried out within the prescribed period. The consent period for this application will be five (5) years.

If you require any further information in regard to this notice of determination please contact Carmen Landers of Council's Environment, Development and Strategic Planning section on 02 6645 0287.

Yours faithfully



Carmen Landers  
Acting Coordinator Development Services

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